

CALIFORNIA COASTAL COMMISSION

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

Staff: DSL/cm - SC
 Staff Report: 03/27/96 1805P
 Hearing Date: 04/11/96
 Item No.: TH3



COASTAL COMMISSION REVIEW OF
 THE EXECUTIVE DIRECTOR'S DECISION TO
 REJECT CALTRANS PROPOSED AMENDMENT
 TO PERMIT 4-81-194

TH3

SUMMARY

DESCRIPTION OF REJECTED AMENDMENT

In October of last year, CalTrans proposed an amendment to Coastal Development Permit 4-81-194 to abandon a 3.5 acre vista point/shoreline access known as Vista Point One, located 2.5 miles north of San Simeon on the west side of Highway One. This vista point provides parking for +/- 80 cars, as well as, shoreline access and was constructed as part of the road realignment approved as CDP 4-81-194 by the Commission in January 1982. The purpose of the abandonment was to facilitate compliance with a San Luis Obispo County condition imposed on a 1995 coastal development permit to re-align a 1.7 mile section of Highway One, three miles north of San Simeon. The County condition required Cal-Trans to mitigate the loss of access which would occur when the Highway was moved inland by establishing two formalized access points near the existing informal Twin Creeks Access. The County condition does not require the relinquishment of Vista Point One in exchange for formalizing the Twin Creeks Access, it merely points out that a "swap" may be one way of implementing their condition. The owner of the underlying fee title at Vista Point One and the proposed Twin Creeks access is the Hearst Corp.

The amendment request was not filed because the Executive Director determined that the deletion of the vista point lessened the intended effect of Coastal Development Permit 4-81-194 which was to maintain public access at, at least, pre-road re-alignment levels as documented in the 1982 findings. Neither did the Executive Director find that Cal-Trans has submitted any new, relevant information that would obviate the need for the vista point.

SYNOPSIS OF PERMIT PROPOSED FOR AMENDMENT

In June of 1981, Cal-Trans submitted an application to the Commission for the re-alignment of approx. one mile of Highway One, beginning just north of Arroyo Laguna in northern San Luis Obispo County. Along with the re-alignment, Cal-Trans also proposed the construction of two vista point/beach accesses (Vista Point One and Vista Point Two) and fencing of the new route. The South Vista Point (Vista Point One) was an approx. 3.5 acre parcel located 2.5 miles north of the village of San Simeon and was proposed to provide parking for approx. 80 cars or 40 buses. Vista Point Two was proposed on an approx. 4.5 acre parcel located 2500' north of Vista Point One. It was planned to provide parking for approx. 80 cars or 40 buses and, like Vista Point One, formalized shoreline access.

According to their 1981 application for the project, Cal-Trans indicated that the proposed Vista Points would enhance public access ... "with legal access to the beach and safer parking." The application notes also that Vista Point Two was included in an earlier coastal development permit for road re-alignment (CDP 140-02) approved in 1977, but was not, apparently, constructed at that time.

The primary focus of the 1981 staff report on the project was the consistency of the proposal with the Public Access Policies of the Coastal Act. Based on this report and testimony received at the hearing, the Commission found that although the proposed vista points would provide safer parking than that which currently was available and legal access to the shoreline, the fencing plan would interfere with existing pedestrian access and would have to be revised to allow for public access. The project was conditioned accordingly and approved in January of 1982.

Vista Points One and Two were secured by an easement from the Hearst Corporation, the underlying landowner, and constructed concurrent with the re-alignment. In 1990, the easement for Vista Point One was conveyed to the California Department of Parks and Recreation who planned to develop overnight vehicular camping on the site. Unable to obtain permission from the underlying landowner for this use, the vista point has remained a parking lot and has recently been re-conveyed to Cal-Trans by Department of Parks and Recreation.

In conclusion, the Commission found that the provision of the Vista Points was an essential component of the 1982 re-alignment project because they maintained existing parking (albeit in a more organized fashion) and access opportunities and thus, were necessary to ensure consistency with the Public Access Policies of the Coastal Act. (A copy of the complete findings for this project is attached as Exhibit A). Put another way, the vista points provided adequate mitigation for the re-alignment of the road landward by approx. 200 feet and the companion loss of extensive, informal shoulder parking which provided direct shoreline access to a variety of points along the old alignment of Highway 1.

STANDARDS OF REVIEW FOR AMENDMENTS:

Applications for amendments are governed, in part, by Section 13166(a)(1) of the Coastal Commission's Administrative Regulations. This section of the Regulations indicates that the Executive Director may refuse to file a proposed amendment if he determines that it will lessen or avoid the intended effect of the original approval unless the applicant also provides "newly discovered material information" which could not have been produced before the permit was granted. (Please see Exhibit B, Cal. Adm. Regulations Sec. 13166)

Neither the Coastal Act nor the Commission's regulations provide for Commission review of a determination by the Executive Director under Section 13166(a)(1). However, under Section 30330 of the Coastal Act, the Commission (as distinguished from the staff) has the "primary responsibility for the

implementation of the provisions of" the Coastal Act. The Commission thus, may independently act on the Cal-Trans request. The item has therefore been appropriately noticed and scheduled as a public hearing item on the April agenda. The issue to be decided by the Commission is the narrow question of whether the determination by the Executive Director to reject the CalTrans amendment request should be reversed.

STAFF RECOMMENDATION: Staff recommends that the Commission concur in the Executive Director's decision to reject the Cal-Trans amendment to abandon Vista Point One.

MOTION AND RESOLUTION

The issue before the Commission shall be decided by the following motion:

MOTION "I hereby move that the Commission reverse the determination of the Executive Director to reject, for processing under Section 13166(a)(1) of the Commission's Administrative Regulations, the CalTrans proposed amendment to Coastal Permit 4-81-194."

Staff recommends a NO vote which will result in the adoption of the following Resolution. A majority vote in the affirmative by a majority of the Commissioners present would be needed to pass the motion.

RESOLUTION: The Commission hereby finds that the Cal-Trans proposed amendment to permit 4-81-194 would (1) "lessen or avoid the intended effect" of the permit and (2) is not based on any "newly discovered material information", and therefore concurs in the determination of the Executive Director to reject the amendment application for processing under Section 13166(a)(1) of the Commission's Administrative Regulations.

FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

1. BACKGROUND ON COASTAL PERMIT 4-81-194:

This Coastal Development Permit provided for the re-alignment of approx. one mile of Highway One in northern San Luis Obispo County. Highway One along this section of coast between the small town of San Simeon and the boundary with Monterey County some 17 miles north was originally constructed circa 1938 as a narrow, curving two lane road which linked Big Sur and northern San Luis Obispo County. Over the years road standards and traffic have both significantly increased. In response to these changing circumstances, CalTrans has been making a number of safety/operational improvements to this portion of Highway One. These projects have generally involved moving the highway inland to allow for the construction of wider lanes, modern shoulders and safer curves.

Improvements made since the Coastal Act was passed in 1976 include those projects described in the following paragraphs. It is noteworthy that the preservation of existing public access was an important issue with each of these projects.

COASTAL DEVELOPMENT PERMIT P-140-02: This 1977 project proposed the realignment and fencing of approx. one-half mile of Highway One north of Adobe Creek. The purpose of the re-alignment was to update the road to current standards and to move the road away from an eroding area. This portion of road was moved a maximum of 300 feet inland. (Please see Exhibit C, staff report and map).

The staff report for the project focused on the impacts to public access that would occur due to the relocation of the road and the proposed fencing. In order to find consistency with Coastal Act Access Policies, this permit was approved with the condition that "the fence on the ocean side of the highway will provide for pedestrian access."

COASTAL DEVELOPMENT PERMIT 4-81-194 (SUBJECT OF THIS AMENDMENT REQUEST): This 1981 project proposed a road re-alignment for approx. one mile immediately south of the re-alignment approved in 1977. In this case, CalTrans proposed the re-location of the road a maximum of 200 feet inland of the existing alignment and included the development of two vista point/shoreline access parking lots to be constructed on portions of the old right-of-way. Fencing along the east and west sides of the new alignment was also proposed.

In their action to approve the project, the Commission found that the proposal did have the potential to adversely affect public access to the shoreline, but through a combination of project features (the vista points) and conditions regarding fencing, these effects were adequately mitigated. A detailed discussion relevant to the intent of the Commission's action forms part of the basis for this recommendation and is found on pages 5 to 8 of this report.

COASTAL DEVELOPMENT PERMIT P-3-95-80. This recent project by CalTrans provided for the replacement of the bridge at Pico Creek just north of San Simeon Acres approx. 3 miles south of San Simeon Village. The project site was located within the Commission's original jurisdiction area and thus was not subject to a local hearing.

One of the primary issues relevant to the analysis of this, like the preceding projects, was public access. The Commission approved the bridge replacement subject to a condition which required the development of a beach access trail passing under the new bridge.

In conclusion, a review of the subject permit 4-81-194 and the other two permits granted to Cal-Trans in the area between San Simeon Acres and Piedras Blancas indicate a consistent Commission concern for the impacts of the projects on public access which are mitigated by development included in the project by CalTrans or by conditioning the projects to maintain pre-development levels of access.

2. DESCRIPTION OF PROPOSED AMENDMENT

On October 2, 1995, CalTrans submitted an application to amend CDP 4-81-194. The amendment proposed the abandonment of Vista Point One described in preceding paragraphs. The purpose of the amendment was to facilitate CalTrans compliance with a condition attached to a new, 1995, road re-alignment project between the northernmost vista points (Vista Point 2), created pursuant to Permit 4-81-194 to just south of the Piedras Blancas Lighthouse. The project was recently approved by the County and is now on appeal to the Commission. This particular condition required CalTrans to mitigate impacts on access caused by the re-alignment by providing two accessways to accommodate windsurfers, kayakers, elephant seal watchers and other recreationists. The condition noted that CalTrans may, but would not be required to, trade existing Vista Point One, to the Hearst Corporation as a way of obtaining the new accesses. (Please see Exhibit D, CalTrans letter requesting amendment and Exhibit E, the relevant County condition).

3. STANDARD OF REVIEW RELEVANT TO THE ACCEPTANCE OF PERMIT AMENDMENTS

Applications for amendments to Coastal Development Permits are governed in part by Section 13166(a)(1) of the Commission's Administrative Regulations which provides:

- (a) Applications for amendments to previously approved developments shall be filed with the commission.
- (1) An application for an amendment shall be rejected if, in the opinion of the executive director, the proposed amendment would lessen or avoid the intended effect of a partially approved or conditioned permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

Thus, in order for an application to be accepted by the Executive Director, the applicant must demonstrate that the proposed amendment will not "lessen or avoid the intended effect of a conditioned permit" or, if the amendment would lessen the effect it must be predicated on "newly discovered material information" which could not have, with reasonable diligence, "been discovered and produced before the permit was granted." Therefore, in order to reverse the Executive Director's decision on this amendment the Commission must find that abandonment of Vista Point One is consistent with the 1982 action to preserve access in this area and/or newly discovered information obviates the intent to provide access.

4. EXECUTIVE DIRECTOR'S DECISION AND SUPPORTING ANALYSIS

On November 17, 1995 the Cal-Trans amendment application was rejected because it would lessen the intent of the Commission's action on the underlying permit (4-81-194) and because no newly discovered information which would eliminate the purpose of the action was submitted by the applicant.

a. Intended Effect of the 1982 Permit

The 1982 permit provided for the realignment of an approx. one mile section of Highway One approx. 200 feet inland of its original location which was essentially along the coastal bluff edge adjacent to the shoreline. The application by CalTrans also proposed the development of two vista points/shoreline accesses and fencing along both sides of the re-aligned roadway.

The staff report, adopted as Findings by the Commission, focused exclusively on the impact of the project on public access to and along the shoreline. (Please see Exhibit A for the complete text of the Findings). The Commission expressly found that the development of Vista Point One (the subject of the rejected amendment), located approx. 2500 feet north of Adobe Creek was particularly important because it was in an area where extensive public access currently existed. The Findings indicated that this area was a popular visitor stop because of its proximity to the bluff edge and to the nearby Hearst San Simeon Historical Monument which, at that time, was visited by over 900,000 sightseers annually. A preliminary prescriptive rights study undertaken by staff as part of the research for this project revealed that Vista Point One was also used by many visitors for access to more active recreational pursuits such as beach walking, fishing and scuba diving. The approx. 50 questionnaires in the file describe use of the area from 1953 to 1981 (the date of the application) by frequent visitors interested in these activities.

Re-alignment and fencing of the road was also determined to eliminate the approx. 120-150 existing informal parking spaces located along the old route and used by the public to gain access to the pocket beaches in this stretch of coast. The Commission found that improvement of the two vista points would adequately mitigate the impacts of the project on parking, but fell short of ensuring pedestrian access equivalent to pre-construction levels as indicated by the following excerpt from the staff report.

Given the numbers of people traveling down the highway and the small number of rest areas along Highway One to the north, it is likely that this vista point would receive a high amount of usage. The Tri-County Coastline: Policies for Conservation and Development: describes this coastal area as follows "extra-ordinarily rich in marine and wildlife habitats, valuable habitat areas exist through virtually the entire study area... The marine habitat areas that exist in the... intertidal and subtidal zones... within the tri-county area include abalone and clam beds, Sea lion, seal and sea otter habitats, sea bird

rookeries, tidepools, mud flats and marshes...". The area which is covered by the project alternates between sandy cove beaches and rocky tidepools. The area then is used not only by beach visitors, but by scuba divers, fishermen and surf fisherman as well.

Given the sensitivity and the high usage of the area and the evidence of historic public use, the Commission could not approve a project that eliminated public access to areas of historic use and confined the use exclusively to two areas. The Commission endorses the improved safety gained by the parking areas to be provided, as well as the increased number of parking spaces over the 120-150 spaces to be lost along the Highway. However, the Commission cannot find that the vista proposal provides public access equivalent to that which currently exists because it would disrupt access to sandy beach areas presently and historically used by the public. Therefore, in order to approve the project, the Commission finds that it is necessary to establish a special condition, providing for modification in the fencing plan to provide for continued lateral public access along the bluff. The Commission further finds that a suitable pedestrian gate could be established that would still prevent cattle movement. Thus, the Commission finds that imposition of this condition would not interfere with agricultural activities on the property.

Finally, the Commission found that the provision of the two vista points and the condition to provide for pedestrian access was consistent with Coastal Act access policies and would not prejudice the ability of San Luis Obispo County to prepare an LCP which, it was anticipated, would provide more detailed policies for this portion of the coast. The LCP, subsequently certified in 1988 is consistent with the intent of the 1982 permit and, as outlined in the following excerpt, indicates that CalTrans should continue to maintain these vista points. According to the policy, they may only be relocated if eliminated due to hazards or highway operational needs:

Shoreline Access Policy 4, pg. 49

Vista Points. The California Department of Transportation should continue to maintain the existing vista points north of Cambria and through the Hearst Ranch holdings. Where turnouts must be eliminated due to bluff erosion, other hazards or operational needs, the vista points/turn-outs shall be replaced in reasonable proximity.

Another LCP Policy (Hearst Ranch - Standards for Access pg. 8-3) requires that public access shall be provided at Vista Points One and Two pursuant to CDP 4-81-194.

1. Shoreline Access. Public access shall be provided at the time of each phase of development (as described below) and at the improvement of turn-out/vista points pursuant to Coastal Commission Permit No. 4-81-194. The accessway (unless otherwise stipulated in the following standards) may be operated via offer-of-dedication or deed restrictions, depending upon the particular location and circumstances of the accessway.

In conclusion, it is apparent that access was the only issue presented by the 1982 re-alignment project and that it was the clearly stated intent of the Commission to preserve access at the pre-project levels. According to the findings, the appropriate level on access was only preserved by the combination of improved vista points and revisions to the fencing plan to allow pedestrian access. The proposed amendment to abandon one of vista point/shoreline accesses eliminates half of the mitigation for the project and is clearly inconsistent with the intent of the Commission's action.

b. New Material Information

Even if a proposed amendment lessens or avoids an "intended effect" of a Coastal Development Permit, the Executive Director may, nevertheless, accept the application if "newly discovered material information" is presented which obviates the intent of the original permit.

Although not specifically stated by CalTrans as "new information" which would warrant overriding the Commission's intent to provide public access at Vista Point One as part of their approval of CDP 4-81-194, it can be inferred that compliance with the access requirements imposed by the County for the 1995 Highway re-alignment provides the basis for the CalTrans request. As such, this 1995 County condition can be considered "new information." The critical question, however, is whether this new information is material or, indeed even relevant to the Commission's intent as expressed in their 1982 action on a different re-alignment project.

An examination of the Commission's intent regarding the provisions of access at Vista Point One in 1982 reveals no connection with the County's action to require the provision of access at Twin Creeks in 1995 that would logically allow the abandonment of the earlier access in favor of the more recent one. Simply stated, the intent of the

Commission in 1982 was to mitigate the impacts on access occasioned by the re-location of the road by providing generally equivalent access at Vista Points One and Two. The goal of this mitigation was clearly to maintain the access "status quo" as much as possible while still allowing for the re-alignment at a significant distance inland.

In their 1995 action on a different re-alignment project beginning at the north end of the earlier 1982 project and extending 1.7 miles north, the County essentially repeated the Commission's 1981 approach to dealing with impacts on access. The County recognized that moving the road up to 250 feet inland, fencing and grade changes would significantly reduce existing access along the project route. In order to mitigate the impact of this project, the County required that CalTrans provide formalized access near Twin Creeks to accommodate the existing recreational use of that area.

CalTrans now proposes to trade the Vista Point required as mitigation for their 1982 project for an access required as mitigation for their 1995 project. This proposal, if approved, would allow the same mitigation (provision of an access) to be used twice. It was not the intent of the Commission in 1982 that the mitigation for that project was to be temporary and re-locatable up the coast when another re-alignment proposal was made. The net effect of the proposed amendment would be to eliminate one access in favor of another.

Finally, there is no relevant new information that would form a basis for by-passing the intent of the Commission to preserve access at Vista Point One. This Vista Point and shoreline access is still extensively used by the public and there is no information in the record that indicates otherwise.

5. COMMISSION'S ANALYSIS AND CONCLUSION

The Commission has given careful consideration to the arguments advanced by Cal-Trans and the Executive Director regarding whether the application to amend permit 4-81-194 should, under the standards of section 13166(a)(1) of the Commission's regulations, be accepted for processing. Based on its evaluation of the record, the Commission believes that the Executive Director's position is persuasive and is consistent with the manner in which the Executive Director has in the past interpreted and the applied the standards of section 13166(a)(1).

Therefore, for all the foregoing reasons identified by the executive director, the Commission finds that CalTrans proposed amendment to permit 4-81-194 would "lessen or avoid the intended effect of" that permit and (2) is not based on "newly discovered material information." The Commission therefore concurs in the determination of the Executive Director to reject under section 13166(a)(1) of the Commission's regulations CalTrans' amendment application.

California Coastal Commission
SOUTH CENTRAL COAST DISTRICT
735 State Street, (805) 963-6871
Balboa Building, Suite 612
Santa Barbara, CA 93101

REGULAR CALENDAR

STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No. 4-81-194

Applicant: California Department of Transportation
Jerry A. Hanto; District Design Engineer

Description: Relocation of approximately 1 mile of State Highway One, to approximately 200 feet inland; formalization of two (2) vista points with appropriate signing, stripping and red rock gravel parking areas for up to 200 cars or 100 buses in total (no structures proposed); and relocation of fencing on the east and west sides of State Highway One and the installation of new fencing on the west side of Highway One to run both parallel and perpendicular to the Highway, County of San Luis Obispo.

Land Use Designation: Agriculture

Site: State Highway One, from .1 miles north of Arroyo Laguna Creek Bridge to 1.4 miles north of bridge, just north of San Simeon, County of San Luis Obispo.

Preliminary Calendar: Hearing.

Substantive File Documents:

1. Regional Commission Permit File No. 140-02.
2. Minutes of the Regional Commission Meeting of August 26, 1977.
3. California Coastal Plan, California Coastal Zone Conservation Commissions, December, 1975.
4. Tri-County Coastline: Policies for Conservation and Development, Sedway/Cooke, September, 1972.
5. Implied Dedicated and Prescriptive Rights Manual; Relating to California Coastal Commission Matters, State of California Department of Justice, office of the Attorney General, 1978.
6. California Coastal Commission Statewide Interpretive Guidelines; Public Access (Shoreline) Section adopted February 20, 1980; May 5, 1981 edition.

Summary

The staff is recommending that this application be approved with conditions. The condition is intended to prevent interruption of public access from Highway One to the beach areas.

Staff Note: This application represents a major public benefit by creating a safer roadway and safer public parking. However, the fencing proposed in conjunction with the project raises a complex access question. Currently, the public pulls off the side of Highway One in this stretch of road and climbs down the bluff to the beach; the application file includes a substantial number of documents attesting to this public use over a number of years. It is not clear however, whether this use is sufficient to establish public prescriptive rights over the area in question.

The relocation project would move the Highway inland and provide substantially safer parking through the establishment of two vista areas. It will be possible to reach the sandy beach at the vista points. If the coast between the two vista points was a broad sandy beach, the ability of the public to reach the beach at the two vista points would them to reach all of the beach areas historically used, and the access and prescriptive rights questions would be less complicated. However, the coast in this area is rocky, with pocket beaches that cannot be reached at higher tides except from the bluff above the beach. In this situation, installation of the fences around the vista points would effectively preclude or limit access to the pocket beaches historically used by the public.

The initial staff recommendation on this application required that any fences constructed not prevent lateral bluff top or vertical access. The applicant and the underlying landowner, the Hearst Corporation, objected to that condition. Both are concerned about liability. The landowner is also concerned that such a condition would formalize and relocate the area of historic public access. The landowner is particularly concerned that allowing access laterally along a stretch of bluffs is substantially different than the historic use of parking and walking a short distance to reach the beach. The landowner is concerned that such a changed procedure might create new liability problems, and might be interpreted as establishing new possibilities for prescriptive rights.

The staff believes that the concerns of the landowner can be resolved. First, staff believes that recent legislation clarifies the situation that a landowner does not take on liability when they allow the public to use an area for access to the beach. Second, the staff believes that the landowner can record an instrument of permission to use the area that would prevent the public from establishing any new prescriptive rights. Staff is willing and available to work with the landowner in drafting and recording such an instrument. With these clarifications, and with a condition more clearly drafted to indicate that fencing not prevent lateral bluff top or vertical access, staff recommends approval of the project. In doing so, staff is not suggesting that the overall question of access be resolved at this time; no requirement for dedication of lateral access is included in the permit. Rather, the staff is suggesting that nothing be done to prevent public access, so that the access question can be fully debated and determined in the LCP process.

Preliminary Staff Recommendation:

The staff recommends the Commission adopt the following resolution:

I. Approval With Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Conditions

This permit is subject to the following conditions:

Standard Conditions: (See Exhibit A)

Special Conditions:

1. Prior to the issuance of a coastal development permit, the applicant shall submit revised fencing plans for the review and approval of the Executive Director providing for accessways that would not prevent pedestrian lateral bluff top or vertical access in the area between and to the north and south of the two vista points.

III. Findings and Declarations

The Commission finds and declares as follows:

1. Project Description

The proposed project includes three separate elements. The project proposes (a) to relocate approximately 1 mile of State Highway One up to approximately 200 feet inland of its present location just north of Arroyo Laguna Creek Bridge (See Exhibit A) to prevent safety problems along that portion of the Highway as the bluff continues to recede. Some sections of the Highway are currently within ten (10) feet to fifteen (15) feet of the bluff's edge. The project also proposes (b) the formalization of a vista point (Vista Point #1) to be located within a portion of the existing Highway One alignment; and (c) the creation of a second vista point (Vista Point #2) to be located north of the section of State Highway One proposed for realignment where the Highway was realigned in 1977-78, under Permit Number 140-02. Incidental activities which are part of the project include stripping of Highway One for two left turn and two right turn pockets for access to the two vista points, signing for each vista point (two per vista--one from each direction), grading of red rock gravel parking areas and removal of the existing paving (road bed gravel pad to remain). The project also proposes, in conjunction with the three specific activities, fencing along both the east and west sides of Highway One. The actual fencing plan to scale has been included (Exhibit B) as well as a schematic fencing plan, not to scale (see Exhibit C).

2. Surrounding Area

The area of the project proposal is from a point approximately .1 mile north of Arroyo Laguna Creek Bridge to 1.1 miles north of Arroyo Laguna Creek Bridge. The project is surrounded on each side by the Hearst Ranch holdings, and is just to the north of the Hearst San Simeon State Historical Monument. This area represents the southern most extent of the Big Sur Coast, one of, if not the most magnificent coastal areas of California. This stretch of coastline remains almost entirely undeveloped. With the exception of only a few developments, the area is primarily agricultural grazing land. The California Coastal Plan (1975), in fact, states "Current agricultural land uses are primarily responsible for the maintenance of the outstanding scenic character of this subregion" (emphasis added).

The area is heavily used by visitors to the area traveling along Highway One between Monterey and San Luis Obispo and by the over 900,000 annual visitors to the Hearst Castle. Since there are few rest areas north of the Castle, this area between the Highway and the ocean is used extensively by the public for viewing, rest stops and in many cases for direct access to the ocean. In fact, well over half of the project area remains unfenced between the Highway and the ocean, even though portions are within ten (10) feet of the roadway.

3. Public Access

Article X, Section 4 of the California Constitution states:

"No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purpose... and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof." (Emphasis added)

Public Resources Code Section 30210 states:

"In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse."

Public Resources Codes Section 30211 states:

"Development shall not interfere with the public's right of access to the sea where acquired through use of legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation."

Public Resources Code Section 30212.5 states:

"Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area."

Historic Use

The proposed project calls for the formalization of two (2) vista points located along the westside of State Highway One. One of these, Vista Point #1 (See Exhibit A), is located within the portion of the Highway proposed for realignment. This area is used extensively by the public, partially due to the current location of State Highway One adjacent to the bluff tops, and partially due to proximity to the Hearst San Simeon State Historical Monument.

The element of this project that raises access issues is not the relocation of the highway, but rather the construction of new fencing. Under the 1938 agreement with the Hearst Corporation under which the Highway was initially constructed, Caltrans may move the Highway, but must fence the new Highway location for agricultural purposes. The text of that agreement provides:

"The State, when it reconstructs said portion of said highway on the right of way to be granted by the Company, will either reset the existing fences or construct new standard cattle fences heavy salt-air resisting four-point four-wire property fence with iron posts on each side of said realigned or changed highway and will construct such cattle passes as are necessary underneath said highway to permit the reasonable use for agricultural purposes of the lands on both sides of said realigned highway." (Emphasis added).

The fencing proposed with the application is not merely the relocation of existing standard cattle fencing called for in the agreement, but also substantial construction of new no-climb fencing parallel to the Highway at the vista points and barbed wire fencing to be located between the Highway and the bluff up and downcoast of each vista point. This fencing is intended to prevent pedestrian and vehicular access across the bluffs.

Information from Cal-Trans indicates that in 1980, during the peak months, approximately 3,800 (2,000 in non-peak months) cars per day either drive up or down this section of the coast. On several occasions, staff has noted and photographed cars parked along the west shoulder of the road (right up to the bluffs edge). Many visitors use the area as a "rest area" for viewing, eating, etc. while others climb down over the bluffs edge (10-12 feet above the beach) and scramble down to the sandy beaches or rocky caves below. Less than half (2000 linear feet) of this area (approximately 5300 linear feet total) is currently fenced on the west side of the Highway and the entire stretch is used constantly by the traveling public.

The Statewide Interpretive Guidelines on Public (Shoreline) Access state:

"Public prescriptive rights must, therefore, be protected wherever they exist. Where there is evidence of historic public use which has been documented through photographs or statements by users of the shoreline area, and where a proposed development could interfere with the asserted right..." "The actions by the Commission should not diminish the potential prescriptive rights in any way."

As stated above, staff site visits have yielded data that show evidence of the existence of potential prescriptive rights. In addition, the staff initiated a small scale prescriptive rights study--Questionnaire and Declaration which was sent to several local organizations and interested parties. Over fifty (50) questionnaires have been returned to this office. All of the questionnaires indicate use of the area ranging from minimal to extensive. Most of the responses, however, indicate heavy use of the area between San Simeon Point and Piedras Blancas Light House. Length of use extends from 1953 to the present. There is, therefore, in these questionnaires, reliable evidence that historical use does exist in this area and that prescriptive rights may exist. Several inquiries have also been made regarding public access availability in the area south of Piedras Blancas that was fenced off when Highway One was relocated (Permit No. 140-02).

Vista Points

Vista Point #1 would be located within the area of the realignment that is currently unfenced; thus, in an area where extensive public access currently exists. As discussed in the previous section (Historic Use) fencing is proposed up and down coast of Vista Point #1. This fencing would run between the Highway and the top of the bluff, precluding access to the bluff top north and south of the vista point. This would prevent or limit access to sandy beaches which are now used by the public. These are pocket beaches which are often accessible only from the landward side.

The location of proposed Vista Point #2, unlike Vista Point #1, is currently completely fenced from public access along the westside of State Highway One (approximately ½ mile). The public had direct access to these beaches until 1978, when a portion of the highway was moved inland and new fences were constructed (Regional Commission Permit #140-02). The text of the original staff report on permit #140-02 stated "Access to this portion of the coastline should be available to the public at the north and south ends of the improvement project."

At the public hearing, however, the question of whether or not these two access points would be adequate (given the then existing available access) was discussed. The minutes of the August 26, 1977 public hearing state:

140-02 Commissioner Hynes asked if it was customary to fence roads.
(Dept./Transp.)

Dewey Bishop, Caltrans, testified that it is their policy to fence freeways or expressways. However, this is not a freeway or expressway. They have an agreement with the Hearst Corp. for an easement to move the highway away from the ocean. Under this 1938 agreement, it states that they must fence anything they build. The Hearst Corp. is demanding that they do it because they have cattle in the area. Commissioner Wright asked if it would be normal range fencing and was told it was barbed wire. Mrs. Hynes asked if they have cattle running on the ocean side of Highway 1. Mr. Bishop said they do in some places but he did not know whether they would here. They did not ask for a gate on the ocean side. They did not want automobiles and campers going through there and want to limit pedestrians. Chairman Rook asked if the fence would have pedestrian gates. Mr. Bishop said not but there would be room to go through at each end. Commissioner Hynes noted that the Coastal Act requires public access. Mr. Bishop emphasized that there is public access on each end, but not for vehicles. Chairman Rook suggested a condition that the fence not be continued unless access is added.

The condition was added by a unanimous voice vote. The Consent Agenda was approved 8-0 (4 Commissioners absent). Permit #140-02 was therefore issued with one condition; "The fence on the ocean side of the highway will provide for pedestrian access." In the process of reviewing permit application 4-81-194, it came to the staff's attention that the entire ½ mile of coastline developed under permit #140-02 is currently fenced with no apparent provision for pedestrian access. This matter is being investigated further. In any case, it is clear that the Commission has required that public pedestrian access be available between State Highway One and the ocean.

Ex. A

Agricultural Uses

It appears from testimony on the earlier permit that the primary reason for fencing the area is the presence of cattle. Caltrans has stated that fencing along and parallel to the Highway is appropriate for safety. Without fencing, parking along the Highway is, in effect, encouraged, thus creating hazards as automobiles pull off and onto the Highway. The project area is approximately 1.5 miles in length. Most of the area would be setback 200 feet from the existing location. As the coastline and Highway alignment are not strictly parallel, there are then roughly 36 acres of land between the new Highway location and the bluff. These are split up as follows:

| | |
|--|------------------|
| Arroyo Laguna Creek to Vista Point #1: | 10 acres |
| Vista Point #1: | 4.5 acres |
| Vista Point #1 to Vista Point #2: | 18 acres |
| Vista Point #2 | <u>3.5</u> acres |
| APPROXIMATE TOTAL: | 36 ACRES |

Information from John Evans, Farm Advisor reveals that in this area, each animal unit would require 6-8 acres of grazing land. Given that ratio, a total of three, possibly four cattle could be grazed in this area, and they would be split up; 2 or 3 and 1. . While it seems unlikely that grazing would occur in such a small area and while no grazing has been observed in the area of Vista Point #2, fencing could be utilized which would contain cattle but still allow pedestrian access on the westside of Highway One. Given the small number of cattle which could be grazed, this use would not be incompatible with the pedestrian access.

Effects on Access

One positive effect the proposed project would have on access is to formally reopen the bluff area of vista point #2 for public use. A break would be made in the existing fence and paving would be laid for ingress and egress, although the parking area itself would be red rock gravel. This would, in fact, bring the area into conformance with the condition of Permit #140-02 (see previous page). On the negative side, however, fencing is again proposed up and downcoast of the vista point which would run between the Highway and the top of the bluff.

The primary effect of this fencing would be to interfere with the potential prescriptive rights for lateral beach and bluff top access and vertical accesses that have existing in the past and that were protected by Condition No. 1 in Permit No. 140-02. The proposed project would eliminate or at least discourage public access to beach and bluff areas currently and historically used by the public. Vista Points #1 and #2 are about ½ mile apart, and are sufficiently centrally located within the project area of coastline that it is not inappropriate to concentrate parking at these two locations. However, the sandy beaches in the entire 1 mile stretch are used by the public. Because of the topography of the area, it is not possible to assure access to the entire area by providing vertical access only at these two points. Persons using the beach cannot traverse the sandy beach; headlands prevent lateral access at a number of points and visitors must return to the bluff top to reach other pocket beaches up and down coast of the vista points. Thus, the project as proposed would, at times, prevent access to the sandy beaches within the project area. Since the elimination of historic public use without a provision of adequate equivalent access to that which currently exists is direct interference with the public's right to access to the sea where (potentially) acquired through use, fencing of the entire area along the westside of State Highway One and up and downcoast of each vista point would therefore be inconsistent with PRC Section 30211.

Overuse of Resources

Given the numbers of people traveling down the highway and the small number of rest areas along Highway One to the north, it is likely that this vista point would receive a high amount of usage. The Tri-County Coastline: Policies for Conservation and Development: describes this coastal area as follows "extraordinarily rich in marine and wildlife habitats, valuable habitat areas exist though virtually the entire study area... The marine habitat areas that exist in the... intertidal and subtidal zones... within the tri-county area include abalone and clam beds, Sea lion, seal and sea otter habitats, sea bird rookeries, tidepools, mud flats and marshes...". The area which is covered by the project alternates between sandy cove beaches and rocky tidepools. The area then is used not only by beach visitors, but by scuba divers, fishermen and surf fishermen as well.

No formal vertical accessways exist within the project area. However, since the bluff is not particularly high throughout most of the project area, people do go down to the beach over the bluff. The types of impacts which occur are then related to disturbance of marine wildlife, removal of bluff top vegetation and erosion of bluffs. These impacts at present are spread out over a fairly long distance (approximately 1.5 miles), however, the heaviest use appears to be in the vicinity of Vista Point #1.

The installation of the proposed fencing up and down coast of the vistas between the Highway and the bluff would, in effect, concentrate these impacts by confining them to a relatively small area. The concentration of use within the vista points could lead to severe bluff top erosion and would adversely impact the existing marine wildlife and its habitat. Such a concentration of use would result in an overuse of the vista points, which would not be consistent with Public Resources Code Section 30212.5.

Given the sensitivity and the high usage of the area and the evidence of historic public use, the Commission could not approve a project that eliminated public access to areas of historic use and confined the use exclusively to two areas. The Commission endorses the improved safety gained by the parking areas to be provided, as well as the increased number of parking spaces over the 120-150 spaces to be lost along the Highway. However, the Commission cannot find that the vista proposal provides public access equivalent to that which currently exists because it would disrupt access to sandy beach areas presently and historically used by the public. Therefore, in order to approve the project, the Commission finds that it is necessary to establish a special condition, providing for modification in the fencing plan to provide for continued lateral public access along the bluff. The Commission further finds that a suitable pedestrian gate could be established that would still prevent cattle movement. Thus, the Commission finds that imposition of this condition would not interfere with agricultural activities on the property.

Conclusion - Public Access Concerns

The Commission finds that two aspects of the proposed project justify imposition of access conditions: the pattern of historic use and the adverse effects of concentrating all public use at two vista points. In finding that there is a pattern of historic public use that must be protected, the Commission is not finding that the public has established public prescriptive rights to the area in question. Rather, the Commission is finding that the evidence of public use is sufficient so that the Commission cannot approve a project that interferes with that use; whether or not that use is sufficient to establish prescriptive rights can only be determined by the courts. Further, the Commission's action in requiring that access not be disrupted is not intended to create new uses that would provide additional evidence of prescriptive rights. The landowner has recorded a document permitting the public to use the area, and the Commission will participate in further recordings that make it clear that this permit is

The Commission is not requiring an offer of dedication on this project, as it generally does in developments between the first public road and the sea because of the rather unique public access benefits brought about by the project. First of all, the applicant is formalizing public access rights on two vista points historically used for access. Second, the applicant is creating more parking than currently exists, and that parking is substantially safer than the present parking. Third, the direct construction effects of the project will not seriously impede access. These effects are certainly preferable to retaining the existing alignment and constructing protective devices to protect the highways. However, in order to meet the requirements of Public Resources Code Sections 30211 and 30604 that development not interfere with historic use and not prejudice preparation of an LCP, the Commission must require modification in the proposed fencing. As conditioned by special Condition No. 1, the Commission finds that the proposed project is consistent with the access policies of Chapter 3 of the Coastal Act.

4. Local Coastal Program (LCP)

Public Resources Code Section 30604(a) states:

"Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200)."

The subject of public shoreline access in this area and the entire area north of Cambria was raised quite early in the Local Coastal Program Issue Identification Phase. The current situation with State Highway One and the existing access situation was discussed along with the fact that there are proposals being planned for development on the Hearst Ranch. Policy I of the Shoreline Access Component of Chapter 2 of the Draft Land Use Plan states:

Policy I PROTECTION OF EXISTING ACCESS. Public prescriptive rights may exist in certain areas of the county. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions which incorporate access measures into new development.

The North Coast Planning area Hearing Draft of the Local Coastal Program further discusses the Hearst development and public access requirements more specifically. The issues of potential prescriptive rights in the County, including the westside of State Highway One and the existing location of Highway One are therefore being dealt with in the County's Land Use Plan. In a letter of comment to the County's Draft Plan dated April 3, 1981, the Commission's staff discussed shoreline access in this area. The letter commented as follows:

"There is interest in creating a continuous trail system throughout the State along Highway One for pedestrians, hikers, and bicyclists. At this time it does not appear possible to completely link such a system with Monterey County to the north, due to the site constraints with Highway One contiguous with the coastal bluffs. However, the State Department of Transportation plans to realign the stretch of Highway One between Adobe Creek and south of Piedras Blancas. At such time as the highway is abandoned "(relocated)" a continuous trail system could be developed. The impact on the agricultural lands of the Hearst holdings could be mitigated by such means as moving the existing fencing on agricultural lands oceanward. In the case of the Hearst holdings we would suggest that...at such time as Cal-Trans abandons "(relocates)" the road that it be utilized for the purposes just described."

Until the County's Land Use Plan is submitted to and adopted by the Commission, many of these issues may not be resolved. Cal-Trans has proposed to remove the pavement from the existing Highway, but will leave the road bed so that if a bikeway is later installed the old road bed can be used. In the mean time, however, the asphalt paving will not remain as an eyesore.

Approval of the proposed project, as conditioned, will preserve the greatest number of options for this area while approval without conditions could preclude access options for this area, such as the one noted above.

The Commission therefore finds that the project, as conditioned, is consistent with Public Resources Code Section 30604 (a).

CF/sm

§ 13166. Amendments to Permits Other Than Administrative Permits.

(a) Applications for amendments to previously approved developments shall be filed with the commission.

(1) An application for an amendment shall be rejected if, in the opinion of the executive director, the proposed amendment would lessen or avoid the intended effect of a partially approved or conditioned permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

(2) For those applications accepted, the executive director shall determine whether or not a proposed amendment is a material change to the permit. If the executive director determines that the proposed amendment is immaterial, notice of such determination including a summary of the procedures set forth in this section shall be posted at the project site and mailed to all parties the executive director has reason to know may be interested in the application. If no written objection is received at the commission office within ten (10) working days of publishing notice, the determination of immateriality shall be conclusive.

(3) If the executive director determines that the proposed amendment is a material change or if objection is made to the executive director's determination of immateriality or if the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access consistent with the findings required by Public Resources Code, Section 30604, the application shall be referred to the commission after notice to any person(s) the executive director has reason to know would be interested in the matter. If the applicant or objector so requests, the commission shall make an independent determination as to whether the proposed amendment is material.

(4) Unless the proposed amendment has been found to be immaterial, the commission shall determine by a majority vote of the membership present whether the proposed development with the proposed amendment is consistent with the requirements of the California Coastal Act of 1976. The decision shall be accompanied by findings in accordance with Section 13096.

(b) The procedures specified in this section shall apply to amendments of permits which were previously approved on the consent calendar unless the commission adopts expedited procedures for amendments to such permits.

(c) The procedures specified in this section shall apply to applications for amendments of permits issued under the California Coastal Zone Conservation Act of 1972, except as specified in Public Resources Code Section 30609.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30609, Public Resources Code.

HISTORY

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. New subsection (c) filed 6-10-77 as an emergency; effective upon filing (Register 77, No. 24).
3. Certificate of Compliance filed 9-16-77 (Register 77, No. 38).
4. Amendment of subsection (a) filed 4-27-78 as an emergency; effective upon filing (Register 78, No. 17).
5. Certificate of Compliance filed 8-10-78 (Register 78, No. 32).
6. Amendment filed 1-3-80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-3-80.
7. Certificate of Compliance transmitted to OAH 4-29-80 and filed 5-8-80 (Register 80, No. 19).
8. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).

California Coastal Commissions
SOUTH CENTRAL COAST REGIONAL COMMISSION
EAST VILLAGE CIRCLE, SUITE 30
BARBARA, CALIFORNIA 93108
7-5828

RECEIVED SEP 16 1977

RECEIVED
SEP 8 1977
CO. ENG.



COASTAL DEVELOPMENT PERMIT

On August 26 1977, by a vote of 8 to 0, the California Coastal Commission granted to Department of Transportation Permit # 140-02, subject to the conditions set forth below, for development consisting of realign State Hwy 1 between .9 mile north of Arroyo Laguna Creek and 2.4 miles south of Piedras Blancas, add shoulders, place drainage culverts and fencing

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in San Luis Obispo County at _____

After public hearing held on Aug 26 1977, the Commission found that, as conditioned, the proposed development is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976; will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program that is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976; if between the sea and the public road nearest the sea, is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976; and either (1) will not have any significant adverse impact on the environment, or (2) there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that the development as approved may have on the environment.

Issued on behalf of the South Central Coast Regional Coastal Commission on Aug 26, 1977.

GC 9/24/77

Carl C. Hetrick
Carl C. Hetrick
Executive Director

The undersigned permittee acknowledges receipt of the California Coastal Commission Permit # 140-02, and fully understands its contents, including all conditions imposed. (Please return one signed copy to the South Central Coastal Commission; upon receipt of same, the permit card will be mailed to you to post on project property.)

Date _____ Permittee Exhibit C

Permit # 140-02, is subject to the following conditions:

I. STANDARD CONDITIONS

1. Assignment of Permit. This permit may not be assigned to another person except as provided in Cal. Admin. Code, Title 14, Section 13170.
2. Notice of Receipt and Acknowledgment. Construction authorized by this permit shall not commence until a copy of this permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of its contents, is returned to the Commission.
3. Expiration. If construction has not commenced, this permit will expire two (2) years from the date on which the Commission voted on the application. Application for extension of this permit must be made prior to the expiration date.
4. Construction. All construction must occur in accord with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviations from the approved plans must be reviewed by the Commission pursuant to Cal. Admin. Code, Title 14, Sections 13164 - 13168.

II. SPECIAL CONDITIONS.

(The fence on the ocean side of the highway will provide for pedestrian access.)

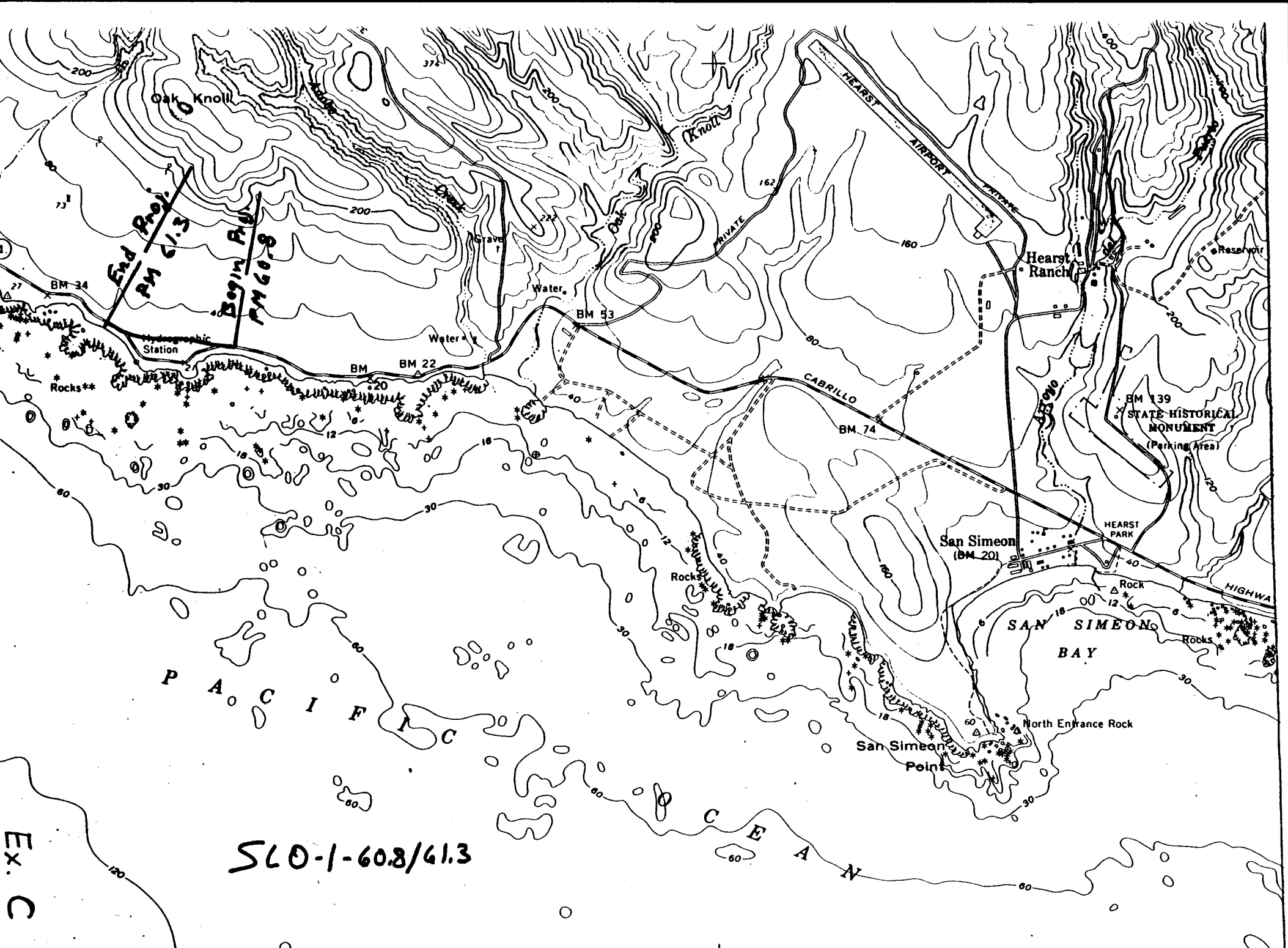
140-2

DEPARTMENT OF TRANSPORTATION, District 05; E. F. Gregory, District Director; P. O. Box L, San Luis Obispo, CA 93406
PROJECT: Realign State Highway 1 between .9 mile north of Arroyo Laguna Creek and 2.4 miles south of Piedras Blancas, add shoulders, place drainage culverts and fencing.

Existing highway pavement to be removed and maintained in grazing land. Access to this portion of the coastline should be available to the public at the north and south ends of the improvement project.

JY

Ex. C



SLO-1-60.8/61.3

EX. C

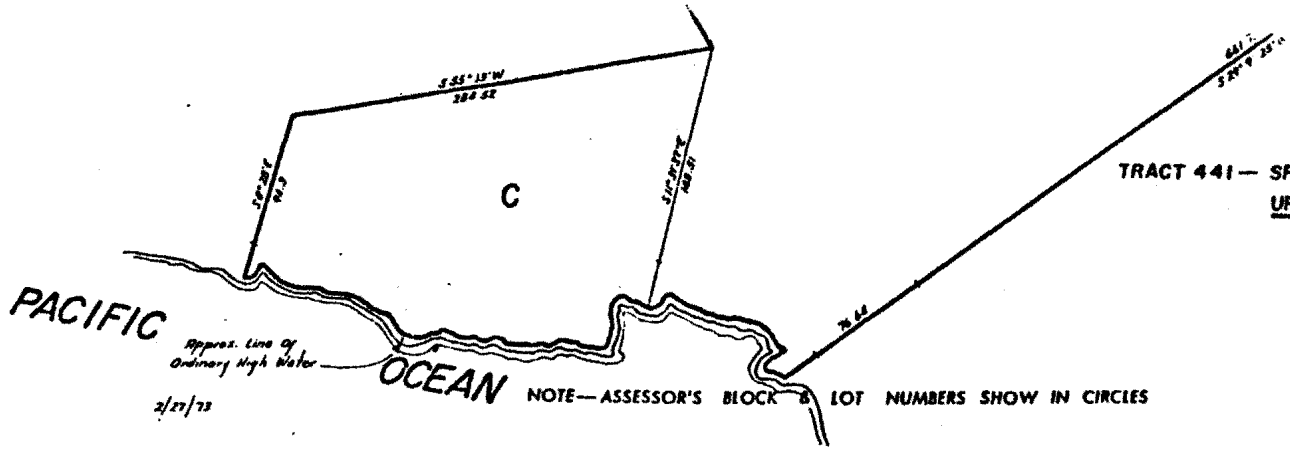
15'

1 040 000 FEET

12'30"

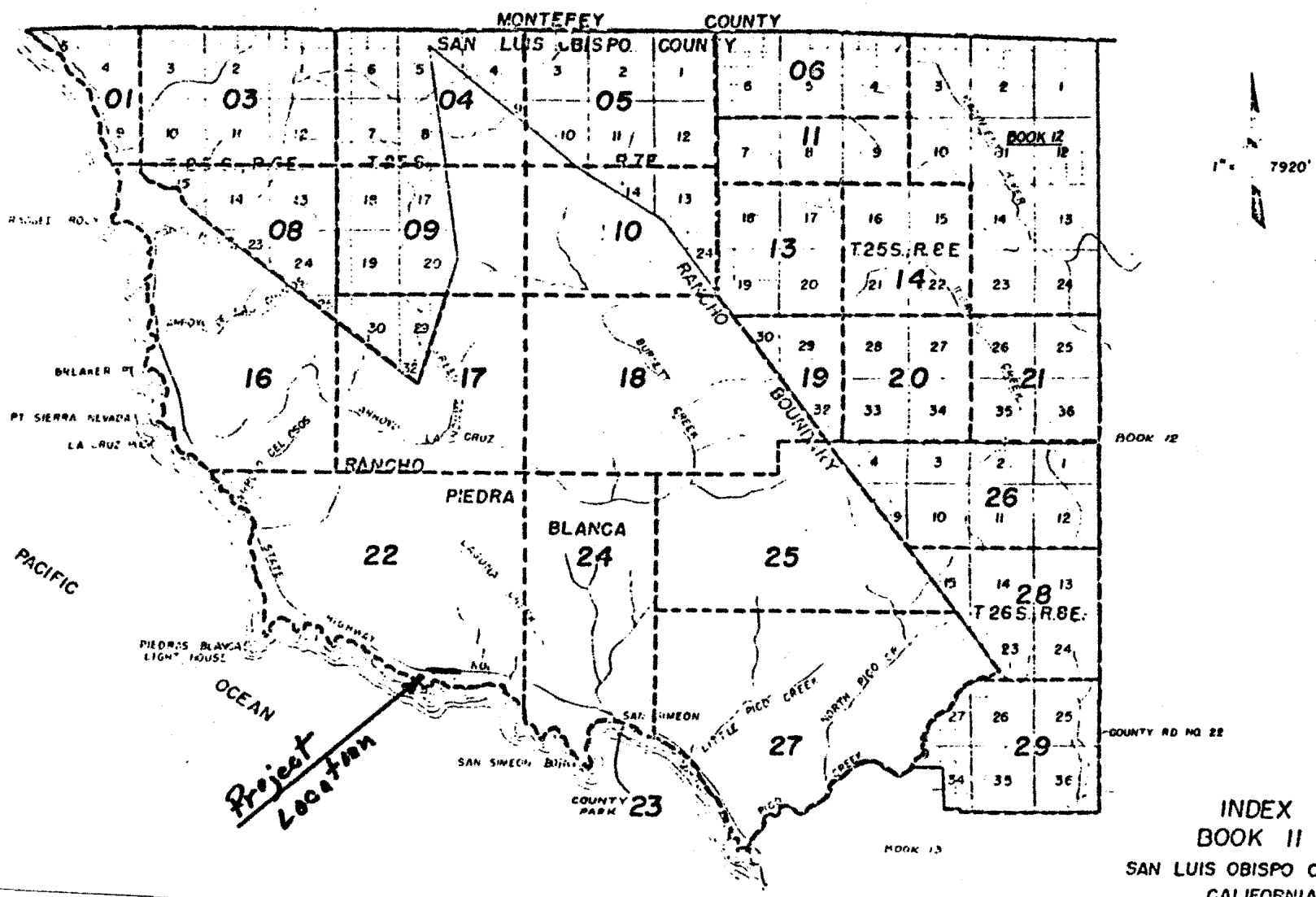
(PICO CREEK)

SCALE 1:24 000



TRACT 441— SPINDRIFT VILLAGE · R.M. BK. 8, PG. 27
UPPER LEVEL UNITS

TRACT 441
 CITY OF PISMO BEACH
 SAN LUIS OBISPO COUNTY
 CALIFORNIA



DEPARTMENT OF TRANSPORTATION

P.O. BOX 8114
 SAN LUIS OBISPO, CA 93403-8114
 TELEPHONE: (805) 549-3111
 TDD (805) 549-3259



RECEIVED
 OCT 4 1995

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

October 2, 1995

Steve Guinney
 California Coastal Commission
 725 Front Street, Ste 300
 Santa Cruz, CA 95060

Re: Amendment Request -- CDP 4-81-194

Dear Steve:

Caltrans is seeking to amend Coastal Development Permit 4-81-194 which allowed a realignment of Highway 1 in the vicinity of Arroyo Laguna near San Simeon (P.M. 60.0/61.3). This amendment request is linked to the recent action by the County of San Luis Obispo to approve a Coastal Development Permit to realign a 1.7-mile section immediately north (P.M. 61.3/63.0); see Exhibits A & B (vicinity and project maps). The subject of our amendment request is to relinquish one of two vista points which were formalized with the prior project. The vista point subject of this request is the southerly of the two (P.M. 60.6); see Exhibit C.

When originally proposed to the county, the currently proposed 1.7-mile highway realignment project (P.M. 61.3/63.0) did not include provisions for coastal access. Through an appeal of the Planning Commission's approval of a coastal development permit, Caltrans agreed to work toward a mutually acceptable resolution. A compromise scenario was agreed upon by the Board of Supervisors on September 19, 1995 in their action to approve the coastal development permit (Exhibit D). The ability to carry out the compromise plan depends on this amendment request as the circumstances limit our ability to provide for the desired accessways.

The idea to relinquish a vista point arised from discussions with the public, the affected property owner (Hearst Corporation) and staff from our office and the county during consideration of the appeal. Directly speaking, the proposal is suggested as a means to "acquire" (through easement dedication) high priority access areas identified by members of the public who frequent the area. Absent other means to acquire rights to the property, the "trade" would be considered as compensation to the landowner.



In regard to ownership of the two existing vista points, Caltrans negotiated an easement with the Hearst Corporation in 1982 and subsequently entered into a transfer agreement with the State Department of Parks and Recreation (DPR) in 1989 (Exhibit E). After unsuccessfully pursuing a land use change to accommodate recreational activities at the vista points, such as overflow camping, DPR is in the process of returning the easements to Caltrans. Documentation of this transfer is forthcoming.

The focus on access was brought forward by the appellant who organized a user's group now referred to as "Access Piedras", to bring together the concerns of the various users of this area of coastline (e.g. boaters, divers, fishermen, windsurfers). Historic use in the area brought up the question of prescriptive rights. A public notice filed by the Hearst Corporation in 1972 allows permissive use of their land and appears to make a potential claim of prescriptive right moot. It has been our position that the proposed realignment project does not impact coastal access. Our analysis presented in the 1992 draft environmental document (Initial Study/Environmental Assessment), adopted in 1994 (Negative Declaration/Finding of No Significant Impact), also did not include access provisions as part of the project. This notwithstanding, the project's importance to public safety motivated us to pursue the matter further in hopes of moving the project forward.

Objectives for siting access were to accommodate recreational uses as well as elephant seal viewing. Access Piedras asserts that the two objectives are not compatible; therefore, separate sites were suggested. Access Piedras prioritized specific areas based on their recreational activities. Among the locations identified, the site referred to as "Twin Creeks" received general consensus as a desirable location for access and one that could be accommodated with the project. A second site located immediately north of Twin Creeks was identified as the location which could accommodate elephant seal viewing. It is recognized that all details to organize a program are yet to be negotiated (such as developing a docent-led program). These sites are depicted on Exhibit F.

The existing use at the vista point suggested for relinquishment is not well documented. However, as an indicator, we performed traffic counts at both of the formalized vista points. For a three week period in summer (August 1995), 150 cars per day on average visited the southerly site (subject of relinquishment request), the highest daily count was 200 cars on a Sunday; at the northerly location, 125 cars per day on average, and a high of 150, was counted. Unfortunately, the data does not give any qualitative information, such as how many stayed to enjoy the view, hike, picnic or whether some used the area as a turn-around. It has been indicated by those frequenting this area of coastline that these vista points are not well-sited for active recreational uses.

Formalizing the access areas now enjoyed by the groups became a high priority in our discussions. Without any means to impose a requirement on the property owner (who



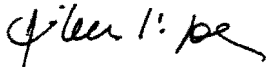
Steve Guinney
October 2, 1995

Page 3

is not imposing an impact), the voluntary trade of vista points became a reasonable proposal for consideration. The proposal may be considered an enhancement to access where a popular beach area is dedicated for public use by giving up an area which doesn't see the same degree of active use. It is this proposal which we now bring for the Coastal Commission to review in light of the circumstances.

We would like to see the issue of access resolved to an acceptable level for the individuals concerned. We are also very motivated to resolve the matter in order to carry on with the safety improvement project at this location. Please consider this information for the proposed amendment. Enclosed are the requested materials for filing the application, as well as a mailing list we have used recently to notify interested parties. If you have any questions or you need further information, please contact me at (805) 549-3103.

Sincerely,



Aileen K. Loe, Chief
Office of Environmental Management



DEPARTMENT OF TRANSPORTATION

P.O. BOX 8114
SAN LUIS OBISPO, CA 93403-8114
TELEPHONE: (805) 549-3111
TDD (805) 549-3259



November 14, 1995

Steve Guiney
CA Coastal Commission
Central Coast Area Office
725 Front Street, Ste 300
Santa Cruz, CA 95060

RECEIVED
NOV 15 1995
CENTRAL COAST

Re: Realignment of Highway 1 near Piedras Blancas
CDP 4-81-194-A, A-3-SLO-95-70

Dear Steve:

Enclosed please find the information responding to your correspondence dated October 13 and November 3, 1995. The earlier letter was a request to complete the filing of our amendment request. Stamped addressed envelopes for the mailing list are enclosed. Please note that the transfer agreement is still in draft form. We hope to have a final agreement signed by the end of this month. Further, the list of people who may communicate about the project on behalf of Caltrans is also included. Responses to the questions of your most recent letter with regard to the appeal follow:

1. The original easement, negotiated in 1938, was never described in the detail of contemporary documents. Our records indicate that the edge of pavement is contiguous with the limits of the easement (see attached map). The original document acknowledges the potential need for a future 80-foot easement at such time that a realignment is warranted.
2. The primary safety concern is related to the curvilinear roadway alignment; as such, achieving the minimum radius curves for an improved alignment requires deviation from the existing easement/alignment. The existing curves measure a radius of 500-feet; the proposed curve radii measure 1000-feet. The proposed project aligns the roadway as close as possible to the existing while accommodating the larger radius curves.
3. The safety concern generating the need for the project is a higher than expected rate of run-off-the-road type accidents. The primary contributing factor for this is the non-standard curves which allow maximum speeds of 35 mph. This contrasts with the roadway sections immediately south and north, which have standard geometry, allowing speeds of 55 mph. The proposed alignment would



Steve Guiney
November 14, 1995

Page 2

provide the driver with a reasonable expectation of consistent roadway conditions.

A second concern for safety is related to the increasing colonization of the adjacent beaches by elephant seals. There has been at least one report of an elephant seal getting onto the roadway. The proximity of the roadway to the dune area would perpetuate the risk of this recurring. Without the realignment, measures to preclude this would include some type of physical barrier; this could be placed as soon as the need to protect health and safety was clearly demonstrated.

Added concern is the proximity of the bluff to the edge of pavement. Some vehicle accidents have involved cars running off the road and careening down the bluff. Furthermore, continued bluff erosion would eventually undermine the roadway and result in an unsafe condition under any circumstances.

4. The proposed project went through an extensive Value Engineering analysis through which many alternatives were evaluated to address the project need. Advance warning methods were exhausted. The appropriate level of advanced warning (for recommended speed and chevrons indicating the curve ahead) have been installed. Additional warning systems in this location would be ineffective.
5. Safety projects are among the most difficult to qualify for funding as they must achieve a minimum cost-benefit ratio. If the maximum cost to achieve the minimum benefit is exceeded, the project would no longer qualify for funding under this program. The June 1996 date is important as it relates to meeting fiscal year targets. The project qualified for funding as a safety project in 1989; this qualification would remain valid for construction in subsequent years. Once a project is activated under this program, the funding (at a fixed maximum cost) is secure. However, if changes to the project scope add substantial cost, there is a good likelihood that this project would no longer be cost effective under the safety program. It is not likely that funding would be available from other sources for this project.

I hope this information answers your questions. If you would like any further clarification or documentation, please don't hesitate to contact me again.

Sincerely,



Aileen K. Loe, Chief
Office of Environmental Management



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 suitable ingress and egress for kayakers, divers, fisherman, windsurfers, etc., and to provide safe and controlled viewing of the elephant seal colony while eliminating existing hazards to health safety and the environment.
 - b) Submit an accessway improvement plan. (Location and level of improvement shall be sited and developed such that impacts to coastal resources will be minimized based on the environmental review prepared for the alignment project.)
 - c) Since the applicant is not the landowner and is not required to dedicate access at this time, a trade for an existing vista point south of the 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 lane 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 and egress, left turn lane channelization, 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 in preparing a resource protection program including elephant seals and other sensitive coastal resources in consultation with the effected 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.