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## CALIFORNIA COASTAL COMMISSION

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Hearing Date: 04/11/96  
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-81-194-A

APPLICANT: CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)

AGENT: Aileen Loe, Chief, Office of Environmental Management

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Re-alignment of 1 mile of Highway One to a maximum of 200 feet inland from .1 mile north of Arroyo Laguna Creek Bridge to 1.4 miles north of the bridge, approx. 2 miles north of the village of San Simeon, San Luis Obispo County. Project approved also included the improvement of two vista point/shoreline accesses with total parking for a maximum of 200 cars, and placement of fencing which provides for pedestrian shoreline access.

DESCRIPTION OF AMENDMENT: Abandonment of Vista Point One (approx. 3.5 acres, parking for approx. 80 cars, shoreline access) located on the west side of Highway One, 2.5 miles from San Simeon.

LOCAL APPROVALS RECEIVED: None, but request is related to a suggestion in a condition imposed on CDP D940106D approved by San Luis Obispo County on September 19, 1995.

## SUBSTANTIVE FILE DOCUMENTS:

- o Amendment Application, October 2, 1995
- o San Luis Obispo County CDP D940106D.
- o Appeal A-3-SLO-95-70 filed 10/05/95.
- o San Luis Obispo Certified Local Coastal Program.
- o Coastal Commission Review of the Executive Director's Decision to Reject the CalTrans proposed Amendment to CDP 4-81-194, report dated March 27, 1996.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission deny the proposed amendment to abandon Vista Point One because it is inconsistent with Coastal Act access policies, the San Luis Obispo County Local Coastal Program and with past, precedential Commission actions relevant to access in the area of the northern San Luis Obispo County coastline.

STAFF RECOMMENDATION, MOTIONS AND RESOLUTION:Motion

"I move that the Commission approve the amendment to Coastal Development Permit 4-81-194 as proposed by the applicant."

The staff recommends that the Commission adopt the following resolution:

STAFF RECOMMENDATION:

Staff recommends a NO vote which will result in the adoption by the Commission of the following resolution. A majority affirmative vote by the members of the Commission present is required to approve the amendment.

RESOLUTION:

The Staff recommends that the Commission adopt the following Resolution:

Denial

The Commission hereby denies a permit for the proposed development on the grounds that it would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of the Coastal Act.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. PROJECT DESCRIPTION AND BACKGROUND

PROJECT DESCRIPTION: On October 2, 1995, CalTrans submitted an application to amend Coastal Development Permit 4-81-194, a Highway One re-alignment project approved by the Commission in January of 1982. The amendment proposes the abandonment of an approx. 3.5 acre Vista Point/Shoreline access located adjacent to the sea, west of Highway One and 2.5 miles north of the village of San Simeon (Please see Exhibit A, Location Map). The Vista Point contains a parking area adequate for eighty cars and a trailhead which provides access to the nearby rocky beach and tidepool areas and lateral blufftop access to a sandy beach at the mouths of Adobe and Arroyo Laguna Creeks. As part of the 1982 project (4-81-194), CalTrans acquired an easement over this Vista Point and a similarly sized one to the north from the Hearst Corporation so that continued public use would be undisputed. The cost of easements for both parcels totalled approx. \$57,000 according to information in the file.

The purpose of the amendment is to facilitate CalTrans compliance with a condition attached to a new, 1995 re-alignment project starting about 3 miles north of San Simeon and continuing north for 1.7 miles between Post Mile 61.3 and Post Mile 63.0, which was recently approved by the County and is now on appeal to the Commission. This 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). (These exhibits are attached to the previous hearing item, Commission Review of the Executive Director's Decision to Reject CalTrans Amendment to 4-81-194), to avoid unnecessary duplication.)

BACKGROUND ON CDP 4-81-194 AND OTHER RELEVANT PERMITS: The Coastal Development Permit proposed for amendment provided for the re-alignment of approximately 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 in 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 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 PERMIT 4-81-194 (SUBJECT OF THIS AMENDMENT REQUEST): This 1982 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. Please see Exhibit A, attached to agenda item TH4a, "Commission Review of the Executive Director's Decision to Reject CalTrans Amendment" for the complete findings for 4-81-194. A detailed discussion relevant to the issue of access to the shoreline is found on pages 4 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, about 3 miles S. of the Village of San Simeon. 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 vertical access trail.

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. These impacts have consistently been mitigated either by development included in the project by CalTrans or by conditioning the projects to maintain pre-development levels of access.

## 2. PUBLIC ACCESS

The proposed amendment to eliminate Vista Point One in exchange for the formalization of an existing access at Twin Creeks must be found consistent with applicable Coastal Act policies and the certified San Luis Obispo LCP if it is to be approved. Staff notes that the San Luis Obispo County LCP also includes policies virtually identical to the Coastal Act policies cited below.

Policies relevant to this proposal are as follows:

### Coastal Act Section 30210

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.

Coastal Act Section 30212.5

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.

Coastal Act Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

Coastal Act Section 30212 (continued)

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

San Luis Obispo County Land Use Element and Local Coastal Plan

(Page 49, Policy 4.)

4. 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.

(Page 8-3, Policy 1.)

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.

The proposed amendment is inconsistent with Public Resources Code Section 30210 because it will reduce rather than maximize access as required by this policy. Currently there are approx. fifteen vista point/shoreline accesses along the seventeen mile stretch of Highway One between San Simeon and the County line near Ragged Point where cars can park off the road and the shoreline can be reached. Only two of these are "formalized" accesses -- meaning the public's right to use them cannot be disputed. Vista Point One is one of these. The other similar accesses are "informal" and, although public use has been permitted by the landowner for many years, continued use is not guaranteed. All of these vista points/shoreline accesses are particularly important for two reasons. First, this approximate 70 mile section of Highway One between Carmel and Hearst Castle is one of the most scenic routes along the California coast. As a result, it is increasingly popular with visitors from

all over the world and currently carries approx. 1 million trips annually. The second reason the accesses are of particular importance is because, for south-bound travellers coming from Big Sur, it is the first opportunity in approx. 10 miles to be able to safely pull off the road and walk to the shoreline. It is thus entirely predictable and borne out by evidence of staff observations, public testimony and photographic documentation, that these accesses are extensively used by the public for a variety of recreational purposes. Given the consistent rise in tourism along this coast it can be reliably predicted that the use of all of the access points -- formal and informal -- will increase. It is, therefore, entirely inconsistent with PRC 30210 to eliminate a sizable access point which provides safe parking and easy shoreline access in an area that is increasingly in need of additional access opportunities.

The proposed amendment is also inconsistent with PRC 30212 which requires that new development shall provide public access. Vista Point One, now proposed for abandonment, was constructed in 1982 to meet the requirements of this very Coastal Act policy. The Commission in their action on the underlying permit (4-81-194) found that the proposed project -- a road re-alignment, would adversely affect public access to the ocean at that location and could only be approved if that impact could be mitigated. The mitigation was the provision of two "formalized" vista point/shoreline access (Vista Point One and Two) and revisions to the proposed fencing plans. The highway re-alignment authorized by Coastal Development Permit 4-81-194 was constructed; the adverse impacts on pre-re-alignment access were mitigated. It would therefore be inappropriate and inconsistent with PRC Sec. 30212 to now, fifteen years later, eliminate half of the mitigation required by the Commission to enable them, at that time, to find consistency with the Coastal Act. Finally, staff notes that the applicant has not submitted any information that would indicate, in hindsight, that the mitigation was not really needed. In fact, according to information in the file, it appears that Vista Point One is well used -- a CalTrans count in August of 1995 indicated a use by 150-200 cars per day over a period of three weeks.

PRC Section 30212.5 requires that access points, including parking, should be distributed throughout an area in order to avoid over-crowding and over-use of any particular site. Currently, Vista Point One provides parking for a substantial number of cars on a daily basis according to information supplied by the applicant, among other sources. This parking provides access to informally worn trails (outside of Cal Trans' easement) to both north and south. Notably, the trail to the south provides access to a crescent sandy beach extending approximately one to two miles south to San Simeon Point.

Although CalTrans did not make inquiry of the visitors at Vista Point One regarding their activities at that location, other information indicates a variety of pursuits. A preliminary prescriptive rights questionnaire circulated by staff as part of the research on Coastal Development Permit 4-81-194 indicates that the area is used by beach-combers, tide pool enthusiasts, fisherpeople, and divers. Staff observations add picnicking, photography and sightseeing to this list of activities.

Elimination of this access point will force the current users of Vista Point One to use other nearby locations. As discussed in an earlier section of this report, all of the existing accesses -- both "formal and informal" -- along this portion of the coast are used extensively now. Reduction of access opportunities will inevitably lead to over-crowding. As an example, the Twin Creeks access which the applicant wishes to formalize by abandoning Vista Point One is currently well used by windsurfers and kayakers. The current CalTrans proposal would, at best, allow facilities which maintain, but do not expand, existing parking and access in the vicinity of this site. If the displaced current (or potential future) users of Vista Point One, or even a significant percentage of them, re-located to the Twin Creeks access over-use may well occur. This problem is of course compounded at Twin Creeks because, due to its location in, and adjacent to an elephant seal habitat, it is very likely that it will be closed to public access for at least a portion of the year. If this occurs, pressure on the remaining year-round accesses will increase as well.

For these reasons, this amendment cannot be found consistent with Section 30212.5 of the Coastal Act because elimination of access here will result in over-use of the remaining accesses in the area.

The proposed amendment is also inconsistent with specific policies of the certified San Luis Obispo County Local Coastal Program. The Land Use Element for the North Coast Planning Area was certified in 1988, several years after the Commission's approval of Coastal Development Permit 4-81-194 and the construction of Vista Points One and Two. It clearly provides for the retention and allows for their re-location only if they become subject to a hazard (shoreline erosion) or if they must be moved to accommodate operational needs of the highway, (i.e., CalTrans determines a need to re-locate the Highway back to its' original alignment). The purpose given by the applicant for abandoning this Vista Point is to facilitate the mitigation requirements for a different re-alignment project elsewhere on the coast, not because the access has become hazardous or because it is needed for operational activities. The proposal is therefore clearly inconsistent with the direction given in this policy.

The LCP includes a policy (see pg. 6 above) which directly identifies the two access points "constructed pursuant to Coastal Commission Permit No. 4-81-194" and specifies that public access shall be provided at these points. Elimination of Vista Point One is contrary to this policy as well.

In conclusion, the County and the applicant have tried to accommodate the valid needs for access articulated by a vocal and organized group of users of the Twin Creeks Area without fully exploring the impacts the elimination of that access may have on the users of Vista Point One or, indeed, on all of the remaining accesses. While it is entirely appropriate to mitigate the impacts of this current project on access to Twin Creeks, any mitigation must also be consistent with the Coastal Act and the County's LCP.



### 3. ENVIRONMENTALLY SENSITIVE HABITATS

The proposed amendment must be consistent with Coastal Act policies relevant to the preservation of Environmentally Sensitive Habitats. The key policy in this case is PRC Section 30240 as follows:

#### Coastal Act Section 30240.

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

As discussed in detail in the previous Finding on access, the elimination of Vista Point One will increase the pressure for over use of the remaining access points in this area. Over a hundred cars and hundreds of users of Vista Point One will be displaced and can be expected to distribute themselves amongst the accesses which will be open. A certain percentage will no doubt re-locate to the Twin Creeks Area, an informal access point that already sustains extensive use by windsurfers, kayakers, elephant seal watchers and others.

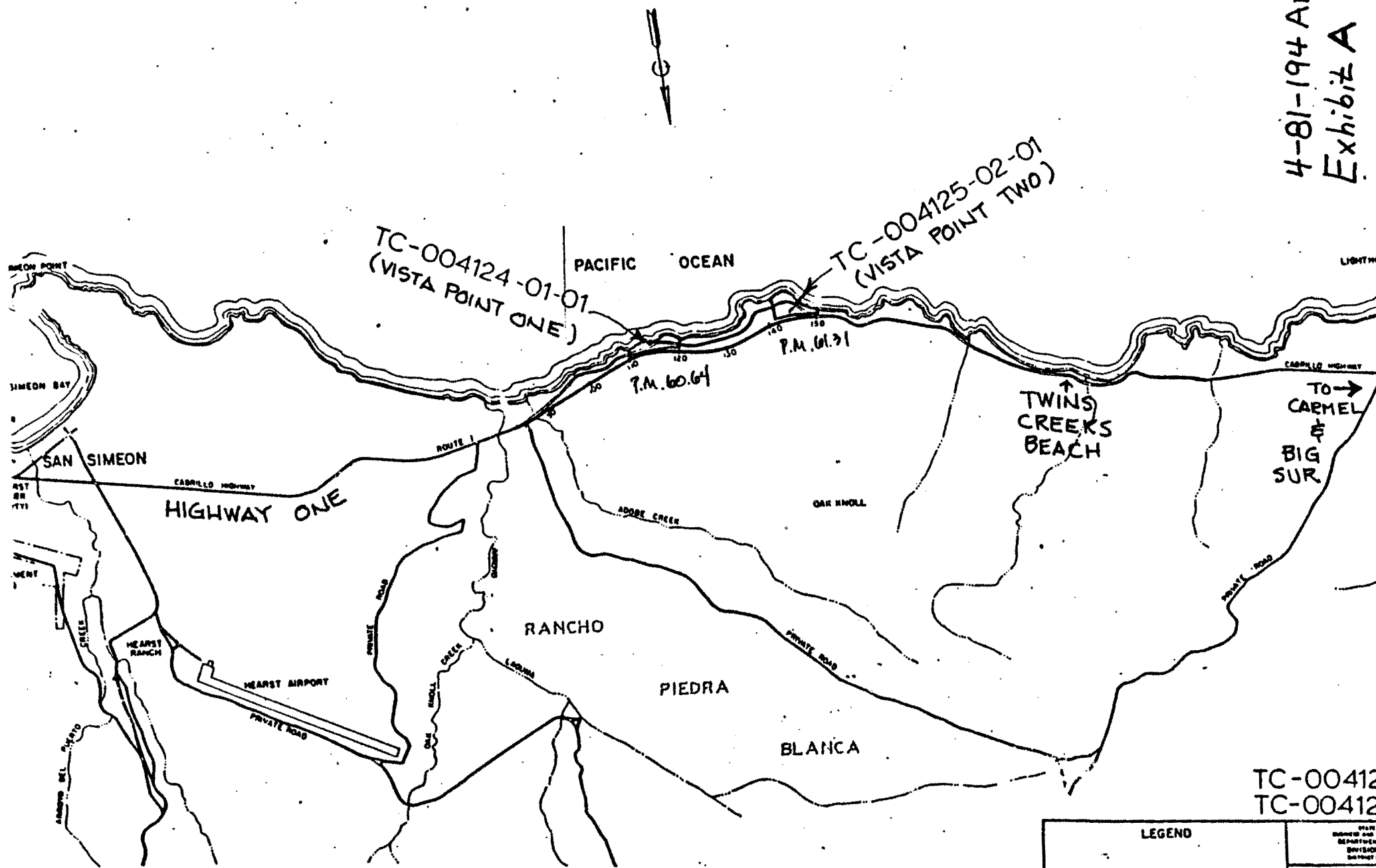
Twin Creeks provides ideal recreation amenities -- low bluffs, sandy beach, easy access to the water -- for a variety of human users. These same qualities also make this small beach very attractive to elephant seals, a growing but protected species. The beach is now used extensively by the seals during the winter and early spring months when the species typically haul-out. Under the definitions found in the Coastal Act, this beach is an Environmentally Sensitive Habitat, at least for part of the year because of its value as a seal haul-out.

As discussed in greater detail in the Environmentally Sensitive Habitat finding in the staff report prepared for the current appeal of the CalTrans re-alignment in this area (A-3-SLO-95-70), human activities within and near elephant seal habitat has adverse impacts on these pinipeds. Unrestricted and extensive human activity at Twin Creeks is already affecting the animals and is a cause for concern by biologists. Added to this situation, is the fact that the elephant seal population is reproducing at a rate of about 8% a year and most of their traditional predators (grizzly bears, wolves and human hunters) are gone. It can therefore be expected that the elephant seal populations will increase thus requiring more habitat and perhaps resulting in longer occupations of the beach as well. The introduction of more shoreline visitors into this particular area can, given this scenario, only cause more habitat disruption and is therefore inconsistent with the Coastal Act requirement to avoid significant disruption to ESHA's. The proposed elimination of Vista Point One will result in greater use of Twin Creeks by visitors and is therefore inconsistent with Public Resources Code 30240 and must be denied.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires consideration of project alternatives and measures to mitigate adverse environmental impacts to a level of insignificance. CalTrans' request to amend permit 4-81-194 to delete one of two existing formalized access/vista points contains no consideration or analysis of alternatives or mitigation measures from the resultant impacts to environmental resources as discussed in the findings above. Therefore, the proposal to amend permit 4-81-194 to delete an existing formal access/vista point is inconsistent with CEQA.

4-81-194 A  
Exhibit A



TC-00412  
TC-00412

<b>LEGEND</b>		STATE OF CALIFORNIA DEPARTMENT OF HIGHWAYS DISTRICT 8	
<b>RIGHT OF TRANSFER AND PO:</b>		SHMB DATE: 11/01/64	
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