

CALIFORNIA COASTAL COMMISSION

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Staff: DSL/cm - SC
Staff Report: 06/21/96 1809P
Hearing Date: 04/11/96
Hearing Date for Revised Findings: 07/11/96



REVISED FINDINGS

Den
6/26/96

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

COMMISSIONERS ELIGIBLE TO VOTE ON THE REVISED FINDINGS: Rick, Calcagno,
Staffel, Flemming

SUMMARY

DESCRIPTION OF PROPOSED AMENDMENT

In October of last year, Caltrans proposed an amendment to Coastal Development Permit 4-81-194 authorizing it to exchange 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 exchange 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 Caltrans 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 states that the relinquishment of Vista Point One in exchange for formalizing the Twin Creeks Access, may be necessary to implement 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 filed because the Commission determined that the deletion of the vista point did not lessen the intended effect of Coastal Development Permit 4-81-194 and finds that there is new, relevant information which justifies the consideration of Caltrans' amendment application.

SYNOPSIS OF PERMIT PROPOSED FOR AMENDMENT

In June of 1981, Caltrans 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, Caltrans 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, Caltrans 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 for this use, the vista point has remained a parking lot and has recently been re-conveyed to Caltrans by the Department of Parks and Recreation.

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 A, Cal. Adm. Regulations Sec. 13166)

Neither the Coastal Act nor the Commission's regulations expressly 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, must have the authority to review the Executive Director's decision and to direct the acceptance of Caltrans' amendment request. The item was therefore appropriately noticed and scheduled as a public hearing item on the April, 1996 agenda. The issue to be decided by the Commission was the narrow question of whether the determination by the Executive Director to reject the Caltrans amendment request should be reversed.

MOTION AND RESOLUTION

The issue before the Commission was decided by the following motion:

MOTION "I hereby move that the Commission approve the revised findings and accept, for processing under Section 13166(a)(2) of the Commission's Administrative Regulations, the Caltrans proposed amendment to Coastal Permit 4-81-194."

RESOLUTION: The Commission hereby finds that the Caltrans proposed amendment to permit 4-81-194 does not lessen the intended effect of Permit 4-81-194 and also is based on "newly discovered material information", and therefore directs that the amendment application be accepted for processing.

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.

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.

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.

2. DESCRIPTION OF PROPOSED AMENDMENT

On October 2, 1995, Caltrans submitted an application to amend CDP 4-81-194. The amendment proposed the exchange 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 Vista Point Two, the northernmost vista points, created pursuant to Permit 4-81-194, and an area 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 stated that it may be necessary to trade existing Vista Point One, to the Hearst Corporation as a way of obtaining the new accesses. (Please see Exhibit B, Caltrans letter requesting amendment and Exhibit C, 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 exchange of Vista Point One is either consistent with the 1982 action to preserve access in this area or newly discovered information justifies the consideration of Caltrans' submittal.

4. COASTAL COMMISSION'S DECISION AND SUPPORTING ANALYSIS

On November 17, 1995, Caltrans' amendment application was rejected because the Executive Director concluded that (1) it would lessen the intended effect of the Commission's action on the underlying permit (4-81-194) and (2) no newly discovered material information which would eliminate the purpose for the action was submitted by the applicant. After giving due consideration to the evidence and testimony presented by the Executive Director, Caltrans and interested members of the public at the hearing on this matter, the Coastal Commission disagrees with the conclusions of the Executive Director and determines that this amendment application shall be filed in accordance with the Commission's regulations. The findings and reasons supporting this determination are provided below.

A. THE INTENDED EFFECT OF THE PERMIT AS CONDITIONED

An amendment to a permit shall be rejected for filing if the proposed amendment will lessen or avoid the intended affect of a partially approved or conditional permit unless the applicant present newly discovered material information. After considering the intended effect of the public access conditions placed on the 1982 permit issued to Caltrans and the purposes served by Caltrans' proposed amendment to the permit, the Commission finds the amendment application shall be accepted. The intended effect of the public access conditions placed on the 1982 permit will not be lessened or avoided if Caltrans' application is accepted for filing and approved. Instead, Caltrans amendment will achieve or exceed the same effects as the Commission's earlier permit decision.

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. 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. Therefore, in order to approve the project, the Commission found 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 found that a suitable pedestrian gate could be established that would still prevent cattle movement. Thus, the Commission found that imposition of this condition would not interfere with agricultural activities on the property.

The proposed amendment will not lessen or avoid the intended effect of the public access conditions placed on Caltrans' 1982 permit. As the discussion above indicates, the conditions placed on this permit required Caltrans to provide two vista points, with parking areas for up to 80 cars each, and a modified fencing plan that would allow for pedestrian access along the blufftop. These conditions were intended to offset the impacts of Caltrans' 1982 highway realignment project which would have the effect of eliminating informal parking spaces along the side of the road.

The Caltrans amendment would not affect all these conditions, but would only affect Vista Point One. Thus, on its face the proposed amendment would not totally avoid or lessen the effect of the previous public access conditions

and a substantial portion of the parking required by the Commission's permit conditions would be retained. Moreover, Caltrans permit amendment does not simply seek authority to abandon Vista Point One. Instead, this access area will be exchanged for two new northern vista points, including parking areas, near Twin Creeks. As will be discussed below, these northern vista points provide superior access to the types of access facilities most in demand by the public. For example, the beach at Twin Creeks is considered one of the best windsurfing locales in Central California. The Commission finds that the proposal to exchange Vista Point One for the superior access areas near Twin Creeks will not lessen or avoid the intended effect of the public access conditions placed on Caltrans' 1982 permit. Rather, this proposal is consistent with the Commission's earlier intent to provide access in this portion of the coast.

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. The Commission finds that new material information was presented both in written testimony and at the hearing which clearly demonstrates that Vista Point One is underused and other, superior access is located nearby, the new Vista Points 3 and 4 will provide better access, safety concerns regarding the portion of Highway One to be improved must be addressed expeditiously and the County's condition requiring access at Twin Creeks reflects current information on use of this section of the San Luis Obispo shoreline.

1. VISTA POINT ONE IS UNDERUSED

Vista Point One is located 2.5 miles north of San Simeon on the west side of Highway One. It provides parking for a maximum of eighty cars and a trail from the parking lot to the rocky shoreline. Other nearby parking and access areas include informal parking for 50-60 cars at Arroyo Laguna, $\pm 1/2$ miles south of Vista Point One. Parking facilities for an additional eighty cars are available one half mile north of this site at Vista Point Two. Vista Point Two, secured for public use by an easement purchased by Caltrans in the early 1980's, also provides pedestrian access to the shoreline. Currently there are approximately 220 parking spaces along this \pm one mile of rural shoreline and three pedestrian beach accesses (two are "formalized" for public use by easements, one is available by permission of the landowner).

In the years since the easements for Vista Points One and Two were acquired and the parking lots constructed, it has become apparent that Vista Point One is not receiving the use that was anticipated. Caltrans studies state that even during peak visitor periods only ± 200 cars per day

make use of Vista Point One and, in the off season, only three to five cars will be parked in the lot at any given time (transcript pg. 72-73). Numerous local residents and frequent visitors to this area testified in support of Caltrans' contention that Vista Point One was significantly underused. The County also offered information indicating that currently Vista Point One was not nearly as popular an access as others near by and, as a consequence, used very lightly by the public. The County also stated that should pressure for additional parking and access increase in the future, Vista Point One may be considered for re-dedication to public use as mitigation for future projects in the area (transcript pg. 106-108).

In conclusion, the Commission finds that the use levels anticipated when the easementsw for Vista Points One and Two were obtained in the early 1980's have not materialized. Adequate parking and access facilities to accommodate the current level of visitors to this portion of the San Luis Obispo shoreline available at Arroyo Laguna and at Vista Point Two. Vista Point One may, therefore, be relinquished because it is underused and not needed to accommodate current access demands.

2. SUPERIOR OR SIMILAR ACCESS IS LOCATED NEARBY

As discussed in the preceding paragraphs, there are two other parking areas and shoreline accesses within one mile of Vista Point One. One of these, Vista Point Two, is located one half mile north of Vista Point One and essentially duplicates the facilities of Vista Point One. Vista Point Two provides parking for eighty cars and offers access to generally the same area of the coast as Vista Point One. The informal parking area and access at Arroyo Laguna, one half mile south of Vista Point One, provides a superior access for visitors. Windsurfers particularly prefer the Arroyo Laguna access because it provides a much more direct route to the beach than the long trail from Vista Point One. The recent popularity of ocean sports, like windsurfing, which require the transportation of bulky equipment, give accesses that provide a direct, short path between car and beach a superior rating by enthusiasts of these sports.

Therefore, based on new information regarding use patterns and levels of use, the proposed amendment may be accepted for filing.

3. VISTA POINTS THREE AND FOUR WILL PROVIDE GREATER ACCESS FOR THE PUBLIC

Two important facts relevant to access along this portion of the coast were not available to the Coastal Commission in 1982 when they approved Coastal Development Permit No. 4-81-194 -- one, the tremendous rise in popularity of ocean sports like sea kayaking and windsurfing and two, the enthusiastic return of elephant seals to the California beaches. These two events, unanticipated in 1982, significantly affect patterns of use and the types of access facilities most in demand by the public.

The rise of ocean sports such as kayaking and windsurfing has resulted in a demand for parking facilities close to sandy beaches suitable for these sports. According to testimony received at the hearing on this item, the beach at Twin Creeks is one of the best windsurfing locales in Central California. As a consequence, the very limited and hazardous existing parking facilities cannot accommodate current demand at this site. According to Caltrans, the improvement of parking facilities and continued access at Twin Creeks will only be feasible if Vista Point One is exchanged in favor of an easement over this site.

The unexpectedly strong resurgence of elephant seal populations has also refocused demands for public access to the Twin Creeks area over other locations such as Vista Point One. Over the last several years the elephant seals have established a large colony at Twin Creeks Beach. During the portion of the year when the elephant seals are present on the beach they act as a magnet to curious passersby. As a result, the already severely limited parking availability is further constrained by visitors who want to see the seals. Competition for inadequate parking has resulted in a serious safety problem as described by a highway patrol officer in his testimony to the Commission. The fact that the elephant seal haul-out area is unmanaged also presents problems (disturbance of the elephant seals by people, damage to people by elephant seals).

Given these facts, it is clear that the types of access available at Twin Creeks (ocean sports/elephant seal watching) are extremely popular with the public and that improvements to accommodate this level of interest are sorely needed. These improvements can be made if Vista Point One is traded for a new formalized access at Twin Creeks. Therefore, based on this new information regarding use patterns and the unanticipated demand for parking facilities and management at Twin Creeks, the Commission finds that it is appropriate to entertain an amendment to Coastal Development Permit 4-81-194 to facilitate these new needs.

4. SAFETY ISSUES MUST BE ADDRESSED EXPEDITIOUSLY

Although Caltrans has had a long term plan to upgrade Highway One in the North County Area (1977, 1982, 1995 projects), road safety has deteriorated more quickly than anticipated. The accident rate for the section of Highway One between Post Mile 61.3 and Post Mile 63.0 is double that of comparable roads in the State highway system. In addition to this documented increase in accidents, the popularity of elephant seal watching coupled with inadequate parking has created a very hazardous situation at Twin Creeks. Finally, the elephant seals themselves have become a traffic hazard because they can, and do, attempt to cross the highway.

Testimony by Caltrans officials support the contention that, based on surveillance monitoring over a period of time since 1986, the accident rate in the vicinity of the proposed re-alignment is twice that statewide

(transcript pg. 51-52). An officer of the California Highway Patrol stated, in his testimony before the Commission, that the accident rate for the three and one half mile stretch of Highway One, which includes the project area, has twice the accident rate of the state. Most accidents occur because cars run off the road (transcript pg. 174-176). The officer also observed that the presence of the elephant seals has created a significant safety problem which has required the California Highway Patrol to increase their officers in the area (transcript pg. 177).

The higher accident rates have been observed since 1986 (Caltrans surveillance) and 1993 (CHP testimon) and thus were not available to the Commission in 1982 when Coastal Development Permit 4-81-194 was approved. The Commission was also not aware of the hazards presented by the elephant seals at that time because the beaches in North County did not support any colonies in the early 1980's. Both of these facts represent new information which could not have been known at the time of the 1982 Commission action. This new information coupled with the urgency to realign the road and manage the elephant seals in order to avoid more accidents causes the Commission to find that it is appropriate to file the proposed amendment to CDP 4-81-194 in order to consider whether it may be necessary to abandon Vista Point One in order to expedite the construction of safety improvements at and near Twin Creeks.

5. SAN LUIS OBISPO COUNTY'S ACCESS CONDITION REFLECTS CURRENT USE PATTERNS ALONG THE NORTH COUNTY SHORELINE

In their action on the Caltrans project in 1995, the County Board of Supervisors required the provision of formalized access at Twin Creeks as part of their approval of the Coastal Permit. The County condition stated that it may be necessary to trade an existing Vista Point for an easement at Twin Creeks. This condition was based on lengthy discussions and negotiations with various user groups, Caltrans and the landowner -- the Hearst Corporation, as supported by both written and oral testimony, the County and the others involved, determined that current use patterns and current safety issues gave the improvements at Twin Creeks a very high priority. It was also determined that the use of Vista Point One was quite limited and, if necessary, it could be closed because users of that site could be accommodated at similar points nearby (transcript pg. 88-97, 103-109).

As discussed in this and preceding paragraphs, these new use patterns have focused intense use on the Twin Creeks area which could not have been anticipated by the Commission in 1982. It is therefore appropriate to consider the proposed amendment to Coastal Development Permit No. 4-81-194 because it is supported by new material information not available in 1982.

CAL. ADM. REGULATIONS, SEC. 13166

§ 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.

EXHIBIT A
CAL. ADM.
REGS. SEC.
13166

DEPARTMENT OF TRANSPORTATION

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RECEIVED
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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.

EXHIBIT "B"
CALTRANS
AMENDMENT
REQUEST



Steve Guinney
October 2, 1995

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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

EXHIBIT B



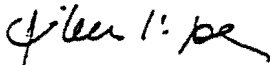
Steve Guinney
October 2, 1995

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



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

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

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

h. Scenic Resources

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

Public Access ← COUNTY ACCESS CONDITION →

- 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

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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.

EXHIBIT

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