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6-26-96**CALIFORNIA COASTAL COMMISSION**

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Filed: 10/05/95
49th day: 11/23/95
180th day: 04/02/96
Staff: SG/LO-SC
Staff Report: 03/28/96
Hearing Date: 04/11/96
Commission Action: Approved
with Conditions

**REVISED FINDINGS: APPEAL
DE NOVO HEARING**

COMMISSIONERS ELIGIBLE TO VOTE: Rick, Calcagno, Staffel, Flemming

LOCAL GOVERNMENT: San Luis Obispo County

DECISION: Approval with Conditions

APPEAL NUMBER: A-3-SLO-95-70

APPLICANT: CALIFORNIA DEPARTMENT OF TRANSPORTATION

APPELLANTS: (1) W. Duane Waddell, (2) Department of Transportation, and (3) Sierra Club c/o Mark Massara/Jesse Arnold, Deborah L.K. Barker, and Paul Schiro

PROJECT LOCATION: Highway One at Post Mile 61.3 to 63.0, north of Arroyo Laguna Creek and south of Piedras Blancas Lighthouse, north of the community of San Simeon, San Luis Obispo County; APNs: 011-221-015, and -026.

PROJECT DESCRIPTION: Realign a 1.7 mile stretch of Highway One by straightening portions of the highway and relocating portions up to 250 feet inland from the present alignment; provide two new public access areas (per County conditions), fence right-of-way; and abandon existing highway segment, which currently provides informal beach and blufftop access opportunities.

SUBSTANTIVE FILE DOCUMENTS: San Luis Obispo County Local Coastal Program, Caltrans Route 1 Realignment Initial Study/Environmental Assessment, San Luis Obispo County Coastal Development Permit D940106D, Coastal Commission Coastal Development Permits 140-02 and 4-81-194.; Northern Elephant Seal Research Photography (National Biological

Service, Department of Parks and Recreation, Caltrans, and S. Foster); Transcript of April 11, 1996 hearing, Agenda Items 3, 4, and 5; revised findings for Executive Director's determination and amendment to CDP 4-81-194.

List of Exhibits

- Exhibit 1 - Appeal of W. Duane Waddell
 - Exhibit 2 - Appeal of Caltrans
 - Exhibit 3 - Appeal of Sierra Club
 - Exhibit 4 - San Luis Obispo County Findings and Conditions
 - Exhibit 5 - Vicinity Map
 - Exhibit 6 - Existing and Proposed Realignment
 - Exhibit 7 - County-approved Conceptual Location of Proposed Twin Creeks and Northern Accessways
 - Exhibit 8 - National Biological Service Map of Elephant Seal Locations and Population in the Piedras Blancas area
 - Exhibit 9 - Caltrans Draft Management Strategy Outline
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I. EXECUTIVE SUMMARY

Having found Substantial Issue on March 14, 1996, the Commission continued the de novo hearing open in order to clarify the project parameters, impacts, recommended conditions, and relationship to previously-approved realignment projects. This project includes realignment of Highway 1, provision of two new formal access areas, new fencing, and removal of the old highway segment which presently provides substantial informal public access opportunities. The staff recommendation is for approval of the project, with conditions which clarify and modify the County's action. The conditions: allow Caltrans to substitute the opening of public access to the federally-owned Piedras Blancas Lighthouse Reservation in place of one of the required new public access facilities; require submittal of necessary construction detail not addressed by the County's approval, such as fencing, elephant seal barriers, parking area capacity, and signage; require construction to be phased to minimize impacts on public access and elephant seal pupping; require formulation of an Interim Management Program (IMP) for minimizing elephant seal-human conflicts; specify Caltrans' responsibility for maintaining the public access areas and implementing the IMP until another agency can take over; and provide for an environmental and condition compliance monitor.

Below is a more detailed outline-form summary of the project description, issues and recommendation. The complete revised staff recommendation, including revised conditions and findings, follows.

I. **PROJECT DESCRIPTION.** The project entails a number of different development actions, as follows:

A. **Components as submitted to the County:**

1. **New Highway Segment.** Build a 1.7 mile section of new 2-lane highway, generally parallel to and up to 250 ft. inland from existing Hwy. 1 location.
2. **Highway Abandonment.** The existing approx. 1.7 mile segment of Hwy. 1, most of which is unfenced on the seaward side and provides direct informal access from the blufftop to the beach, would be abandoned, scarified, and revegetated. Under a 1938 agreement, the old highway easement would revert to the Hearst Corp. This is a development because, in terms of Coastal Act Section 30106, it is a "demolition" and it changes access to the water.
3. **Fencing.** The actual location, length and design of new fencing is not specified in the application. However, per agreement with the Hearst Corp., both sides of the new highway segment potentially could be continuously fenced with standard range fence (typically, 3-strand barbwire).
4. **Cattle Underpass.** This structure at the north end of the project would provide a new connection between the grazing lands on the inland side of the highway and the coastal bluff on the seaward side of the new highway alignment.

B. Additional components required by the County as conditions of approval:

1. **Construct New Public Access Facility at Twin Creeks Beach.** This would be a new "formal" public accessway, including a parking area, driveway entrance, highway left turn channelization, signs and "sufficient clear area for launching of kayaks and similar small craft." The automobile parking capacity is not specified. Also not specified is whether or not it would be paved.
2. **Construct (or Bond for) New Public Access Facility North of Twin Creeks Beach.** This would include a parking area, driveway entrance, highway left turn channelization and signs. Neither automobile parking capacity nor paving is specified.

NOTE: The total area of the two access easements would equal "approximately 7.64 acres." A stated purpose for both is "to provide safe and controlled viewing of the elephant seal colony," but no physical facilities are identified for this purpose, except for an indirect reference to fencing and signing; nor is a permanent management entity specified to manage resource and recreational uses at the site.

C. The project as currently before the Commission does NOT include:

1. **Moveable concrete barriers ("K-rail") or other measures to effectively keep elephant seals off the highway and/or parking areas;**
2. **Seasonal parking area fencing and/or parking area entry gates to prevent people from approaching the elephant seal pupping area too closely;**
3. **Viewing blinds or platforms which would be essential for safe public observation and enjoyment of the elephant seal colony.**

II. ISSUES. The primary, and sometimes conflicting issues fall into three categories: public safety, environmentally sensitive habitat (Northern elephant seal pupping area), and retention of existing public access.

A. Public Safety. Significant hazards include:

1. **Substandard highway dimensions.** The existing highway segment dips and curves irregularly, has narrow pavement and minimal shoulders—all typical of earlier rural highway construction. Applicant cites a need based on elevated accident rate, although it is not clear whether this is mainly because of its old-style construction or because it has become a popular informal shoreline access area with consequent frequency of turning movements, etc., associated with concentrated recreational use and marine mammal observation.

2. **Potential for automobile-elephant seal collisions.** The seals apparently have gotten onto the roadway, with one seal injury already reported. The Alpha bulls reach two tons in weight, more than a typical automobile. With a rapidly expanding seal colony, the potential for both seal deaths and human deaths is very great.
3. **Potential for harm to visitors.** Elephant seals do bite intrusive humans; serious incidents have been reported from both Ano Nuevo and Piedras Blancas. Bull elephant seals will also crush all that lies within their path—pup fatalities are common, and the potential is there for humans to suffer as well.

B. Environmentally Sensitive Habitat Area. The Coastal Act requires that environmentally sensitive habitat areas (ESHA) be protected from any significant disruption of habitat values. Here, the elephant seal breeding colony constitutes a primary ESHA. Significant disruptions (which all probably constitute illegal "harassment" under the Marine Mammals Protection Act) would include:

1. **Any reduction in suitable beach or dune area accessible from the sea.** Road fill or parking lot surfacing over any sandy area would reduce available/potential breeding habitat. The seals need loose sand to "flip" over themselves and pups—probably a temperature-regulation behavior.
2. **Repeated intrusion by humans during pupping season.** In one recent incident at Bolinas on the Pt. Reyes Peninsula, a female seal gave birth to a pup on the beach but then abandoned the newborn after excess close-up human attention. Also, bull elephant seals challenging intruders, both human and pinniped, can run over seal pups and crush them to death. At Ano Nuevo State Reserve, rangers and docents work hard to keep the public at a distance that does not result in disturbance of the seals. There is no such management program at Piedras Blancas, where the seals are much closer to (and easily seen from) the highway. Possible mitigations include a carefully-regulated program of supervised observation (like Ano Nuevo's); seasonal beach/parking closures; seasonal fencing/observation blinds (like the Harbor seal protections provided by Pebble Beach Co. along 17 Mile Drive); or locating the highway far enough away from the beach that passerby won't see all the seals (and succumb to temptation to stop and approach the animals). Signs and range fencing alone are unlikely to be effective in preventing intrusions.
3. **Noise, dust and vibrations.** The potential for disturbance to the colony from construction activity is unknown. The animals seem to be tolerant to blowing sand and noise in their natural environment, but we don't have data on artificial disturbances of this type. Potential mitigations include building the new highway segment further inland, or limiting potentially disturbing construction work to the off-season (non-breeding periods).
4. **Collisions with automobiles.** As the colony increases, we can expect a rising potential for road kills. Unless the project is designed with sturdy barriers or really steep fill embankments, we can expect elephant seals to get onto the nice, warm,

flat surface of any portion of the highway near the beach. If the highway is modernized in a way that allows higher speeds, stopping distances will increase and so will the likelihood of deadly automobile-elephant seal collisions.

C. Public Access. Existing informal public access along this section of the coast is already provided along the unfenced margin of the existing highway. This bluff edge parking opportunity can accommodate an estimated 100-200 cars. To the south of the project site, a slightly smaller number of automobiles can be accommodated at two developed "formal" access sites (shown as "Vista 1" and "Vista 2" on map, Exhibit 5, attached). The publicly-owned federal lands at Piedras Blancas lighthouse, immediately north of the project, are occupied by National Biological Service researchers, and are not open to the public. Public access would be affected by:

1. **Reversion of the existing highway easement to Hearst Corp.** Pedestrian access from the highway to the shoreline is possible at several points along the existing highway segment, the most popular being Twin Creeks Beach. The realigned highway would in some sections be further from the shoreline, making it a long haul for kayakers, wind surfers, SCUBA divers, etc. The County's conditions mitigate this impact by requiring the provision of two formal access facilities bracketing Twin Creeks Beach.
 2. **Giving up one of the existing formal access areas south of the project.** The idea suggested, but not required, in the County's conditions is to swap the existing access facility known as "Vista Point One" for the land needed for the new access facilities required by the County. This existing formal access area was created by Caltrans pursuant to a 1981 highway realignment project (CDP 4-81-194) and accommodate somewhat different recreational uses than those which are favored at Twin Creeks Beach. "Vista Point Two," the other formal access facility created by Caltrans in 1981 would not be affected by this proposal. This access area accommodates the same recreational uses as "Vista Point One."
 3. **Fencing.** The seaward side of the existing alignment is mostly unfenced. The terms of Caltrans' 1938 agreement with the Hearst Corp. reportedly provide for fencing both sides of the highway upon realignment. This will compound the access problems of increased distance from the beach.
 4. **Displacement by Elephant Seals.** During the breeding season, public access on seal beaches should be limited to either active resource management by an appropriate agency or organization providing escorted nature walks (as at Ano Nuevo) or viewing areas/blinds/platforms where physical separation can be maintained; or, some other comparable access management technique(s).
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II. MOTION AND RESOLUTION.

MOTION

"I move that the eligible Commissioners approve and adopt the revised findings, attached, for permit A-3-SLO-95-70."

RESOLUTION

Adoption of Findings

In support of the approval of Coastal Development Permit No. A-3-SLO-95-70 on April 11, 1996, the Commission hereby **adopts** the attached revised Findings, indicating that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the local government's Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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.

III. SUMMARY OF APPELLANTS' CONTENTIONS

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

1. **W. Duane Waddell**, received October 5, 1995. This appeal contends that the proposal is inconsistent with the LCP because:
 - It does not meet the access requirements set out in section 23.04.420 of the County's Coastal Zone Land Use Ordinance nor the requirements of chapter 2 (Shoreline Access) of the County's Coastal Plan Policies document;
 - It does not meet the requirements for public works as set out in chapter 8 of the Coastal Plan Policies document;
 - The proposal would result in loss of an existing, formalized vista point, contrary to Combining Designation 4, Vista Points, in Chapter 7 of the County's North Coast Area Plan portion of the LCP.

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

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

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

- It does not meet the access requirements set out in section 23.04.420 of the County's Coastal Zone Land Use Ordinance;
 - The proposal is not consistent with the public access and recreation policies of Chapter 3 of the Coastal Act;
 - The proposal is inconsistent with other, non-public access or recreation policies of the Coastal Act and the Commission's *Proposed Guidance on Actions Limiting Public Access to Beaches and State Waters*. (NOTE: The standard of review for appeals between the sea and the first public road paralleling the sea is limited to the LCP and the public access and recreation policies of the Coastal Act, not other Coastal Act policies or Commission documents. Therefore, these other, non-public access or recreation policies and guidance documents were not considered further in the substantial issue determination.)
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IV. LOCAL GOVERNMENT ACTION

The proposal was originally approved by the San Luis Obispo County Planning Commission on April 13, 1995. That decision was appealed to the Board of Supervisors by Deborah Barker, one of the appellants here, raising questions about the potential for the highway realignment to restrict existing public access. The Board of Supervisors held hearings on the appeal on June 20, July 18, and September 19, 1995. At the last hearing the Board denied the appeal, affirmed the decision of the Planning Commission, and approved the application for realignment with conditions different from those imposed by the Planning Commission. Those different conditions dealt with access. A notice of final local action was received in the Commission's Central Coast Area Office on October 4, 1995. The 10 working day appeal period began on October 5 and concluded at 5:00 P.M. on October 19, 1995.

V. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of a beach. Furthermore, developments approved by counties may be appealed if they are not a type of development designated as the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by a city or county (Coastal Act Section 30603(a)).

For projects not located between the sea and the first public road paralleling the sea, the grounds for an appeal shall be limited to an allegation that the development does not conform to the certified LCP (Coastal Act Section 30603(b)(1)). Since this project involves the first public road paralleling the sea and public access to the shoreline between the road and the sea, the grounds for an appeal to the Coastal Commission include not only the allegation that the development does not conform to the standards set forth in the certified local coastal program but also the allegation that the development does not conform to the public access and recreation policies of the Coastal Act.

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

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

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

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

In this particular case, the Commission found substantial issue at its March 14, 1996, meeting and opened and continued the de novo hearing on the project. Any person may appear and testify during this de novo stage of the appeal.

VI. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VII. SPECIAL CONDITIONS

1. INCORPORATION OF COUNTY COASTAL PERMIT CONDITIONS

This permit hereby incorporates by reference all conditions of San Luis Obispo County coastal development permit (minor use permit) no. D940106D, attached as Exhibit 4. These conditions require provision of two new formal public access facilities in the vicinity of Twin Creeks Beach.

2. ALTERNATIVE PUBLIC ACCESS AUTHORIZED

If permittee elects, instead of providing the most northerly formal access facility as specified in the County permit, permittee may substitute the permanent opening of regular public access to the federally-owned Piedras Blancas Lighthouse Reservation in place of constructing the new access facility (as further modified below) north of Twin Creeks Beach. The specific arrangement required to implement this provision shall be submitted for review and approval by the Executive Director, in order to confirm that this alternative will effectively provide equivalent public access.

3. REVISED FINAL PLANS

PRIOR TO COMMENCEMENT OF CONSTRUCTION ON THE REALIGNED HIGHWAY

SEGMENT, permittee shall submit revised plans for review and approval by the Executive Director. Such revised plans shall show the following:

- a. Provision of public access facilities as provided in the County coastal permit or Special Condition no. 2 above, including left turn lane(s) and driveway connections to the realigned highway segment. Legal documents which indicate permittee's interest in the two new public access points shown on exhibit 7 shall accompany the revised final plans. These documents shall include: 1) an executed right of entry for the construction of the two new public access points shown on exhibit 7; 2) evidence of submittal to escrow of executed easement agreements in recordable form in favor of permittee for the two new public access points shown on exhibit 7; 3) evidence of submittal to escrow of an executed Director's Deed in recordable form conveying permittee's easement interest in Vista Point 1 (Vista 1), as shown on exhibit 5, to the grantor of the easements referenced in 3(a)(2) above; 4) escrow instructions executed by permittee and the grantor of the easements referenced in 3(a)(2) above, with such instructions requiring recordation of the easements and Deed described in 3(a)(2) and 3(a)(3) above.
- b. Structural measures to be employed to keep elephant seals off the highway and public parking areas, and to exclude them from culverts and the proposed cattle underpass. The placement of such structural measures shall be limited to those locations and seasons of the year where existing or potential hazards actually exist. These measures may include moveable concrete "K-rail type" barriers; fill slopes compacted and stabilized at an angle of sufficient steepness that will preclude elephant seals climbing the slope; fill slopes protected by or incorporating a bulkhead or lip that precludes climbing by elephant seals; vertical surface such as crib wall or sheet pile that precludes climbing by elephant seals; steel or concrete post palisades; or functionally equivalent measures. Assertions that the chosen measure(s) will be effective to preclude climbing by elephant seals must be supported by appropriate research, field demonstration, or expert opinion. Barrier measures which would impair scenic public views from Highway 1 to and along the shoreline should be designed for removal by Caltrans during those periods of the year when they are not needed;
- c. Fencing location and design, including gates and stiles. No new fencing on the seaward side of the new alignment is authorized, except for: 1) temporary construction security fence; 2) exclusionary fences to protect environmentally sensitive native plant or archaeological features; 3) standard range fence needed to fulfill permittee's contractual obligations with the Hearst Corp.

(the fence on the ocean side of the highway shall provide for pedestrian access with respect to blufftop lateral access); and, 4) any additional fencing identified in the approved Interim Management Program (see Special Condition 5 below) for the purpose of minimizing human intrusion into elephant seal pupping areas.

- d. Parking area details including type of surfacing to be used (either abandoned highway pavement, or porous baserock) and number of parking spaces. Unless permittee demonstrates that the shoulder of the old highway segment, including informal turnouts, accommodated a lesser number, the total capacity of the new public parking facilities shall be at least 200 vehicles. Parking area layout and turn lanes for the new northernmost vista point shall be designed to also accept tour buses. Final location of improved parking facilities, however distributed, shall provide parking for at least 100 vehicles in the Twin Creeks Beach area (approximate stations 200+00 to 210+00 on the project plans) and shall not cover any loose-sand areas likely to be preferred elephant seal habitat; and
- e. Location, size and text of all permanent signage, including locations of "no parking" signs, informational and directional signs, including those identified by the Interim Management Program (see below).

4. PROVISION OF PUBLIC ACCESS THROUGH CONSTRUCTION PHASE

To the maximum extent feasible, construction activities shall be phased to a) maintain public access to Twin Creeks Beach or nearby access points during construction and, b) avoid disturbance of elephant seals during the pupping season. Accordingly, **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, permittee shall submit for review and approval by the Executive Director, a construction phasing schedule (which, at permittee's option may be incorporated in the Interim Management Program described below). Such schedule shall provide for opening the new public access facilities for public use concurrently with completion of the realigned highway segment; provided, that if the bonding option is elected for the "north of Twin Creeks Beach" facility, the bond may be extended up to 3 years if negotiations are underway to secure public access to the Piedras Blancas Lighthouse Reservation in lieu of such new access facility construction.

If the phasing schedule indicates that construction activity will take place during the elephant seal pupping season, the permittee shall also provide expert information (e.g., from the National Biological Survey, National Marine Fisheries Services, or equivalent) to show that such construction activity is of such a nature or location that it is unlikely to disrupt the local pupping season.

By accepting this permit, applicant agrees to not close Vista Point One until both of the new public access facilities, identified in Special Condition 3.a above, have been opened to public use.

5. INTERIM MANAGEMENT PROGRAM

PRIOR TO COMMENCEMENT OF CONSTRUCTION OR WITHIN 120 DAYS OF PROJECT APPROVAL, WHICHEVER COMES FIRST, the permittee in consultation with the County and appropriate State and Federal agencies, shall submit to the Coastal Commission for review and approval an interim program for managing public access and marine mammal interaction at the

project site. The interim program shall include written and graphical information as necessary for the following:

- a. a description of the seasonal use of the beaches along the project length by the public and by the elephant seals, including the location of existing parking use and approximate vehicle capacity, foot trails, and recorded maximum seasonal seal densities;
- b. interpretive signing language describing the proposed project, and providing information about elephant seals, including, but not limited to: the nature of their use of the beaches, their protected legal status, and the potential for human injury from elephant seal bites and crushing;
- c. proposed location of an interpretive sign in each of the two existing formalized access/vista points just south of the proposed realignment as well as in each of the two new access points required under this permit, and other signage along appropriate areas of the road where seals are visible, directing people to the interpretive signs;
- d. a summary of measures proposed to keep elephant seals off the highway during and post-construction (including K-rail at Twin Creeks or other structural measures to be shown on revised final plans) during those periods when the seals occupy the beach; such measures shall be designed to not interfere with public access during those periods when the beaches are not occupied by the elephant seals, and to minimize impacts to scenic views from Highway 1 to and along the shoreline; and,
- e. location and text of any additional, temporary or changeable signage needed at public access points and along the realignment section on a seasonal basis, depending on the nature of the use of the beaches by elephant seals. Such signage may, if demonstrated to be necessary, prohibit parking on the highway shoulders during pupping season.

The Interim Management Program shall be formulated in consultation with the interagency group members listed in Exhibit 9, attached, and shall be implemented concurrently with construction of the realignment and shall remain in place until the management responsibilities for the new public access facilities are transferred to another agency for the long term. Until such time, permittee shall be responsible for the maintenance of these public access facilities and implementation of the Interim Management Program.

6. PROJECT ENVIRONMENTAL AND CONDITION COMPLIANCE MONITOR

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall submit the name, address, telephone number, and qualifications of a project environmental and condition compliance monitor to the Executive Director for review and approval, along with a work program which will guide the activities of the monitor. The primary purposes of the monitor will be to insure that applicable Best Management Practices are utilized to minimize erosion and sedimentation impacts from work in and around the coastal drainage courses; that seed collection, transplanting and reseeding of the Compact Cobweb Thistle is properly completed; that exclusionary fences are properly placed to protect sensitive native plant and archaeological features; and that during the course of construction, resident elephant seals are not harassed in any way.

The environmental and condition compliance monitor shall be either a regular Caltrans employee or an independent consultant/contractor funded and provided by the permittee. The environmental and condition compliance monitor shall submit twice-annual reports to the Executive Director describing the permittee's conformance with permit requirements, beginning six months after Commission action on this permit and continuing during construction and until all conditions of this permit are fulfilled. The environmental and condition compliance monitor shall be empowered to halt construction, after consultation with the Executive Director, if it is necessary to ensure that permittee is complying with all conditions of this permit. Disputes between the monitor and the permittee shall be settled by the Executive Director.

VIII. FINDINGS

A. Project Description

Caltrans proposes to realign a 1.7 mile section of Highway One north of the historical community of San Simeon and south of the Piedras Blancas lighthouse in San Luis Obispo County. This section of the highway is an older roadway with no paved shoulders and "substandard" curves with advisory speed limits as low as 30 miles per hour. North of the proposed realignment the older highway with its substandard geometry and roadway width continues along the Big Sur coast to Carmel, with sections upgraded over the years where necessary, as in the case of slide-destroyed sections, and elsewhere when opportune and possible. Much of the road will probably never be widened or straightened to current standards because of the cost of construction where the highway is a narrow shelf clinging to the cliffs.

Immediately south of the proposed realignment is a section of the highway which was realigned with paved shoulders and fenced in the late 1970's and early 1980's. These earlier alignments were implemented pursuant to Coastal Development Permits no. 140-02 and 4-81-194. Public access to the shoreline was a major consideration in each case; provision of formal blufftop access areas and fencing design modifications offset the impacts of moving the highway away from the shoreline. From the village of San Simeon, about four miles south of the proposed realignment, Highway One is a two lane road with standard geometry and roadway width to Cayucos, about 30 miles south of San Simeon. From Cayucos to San Luis Obispo, where it joins Highway 101, Highway One is a four-lane highway.

On May 20, 1994, Caltrans issued a Negative Declaration/Finding of No Significant Impact (ND/FONSI) which described the purpose and need for the proposal as follows. *"The non-standard curves within the proposed section of State route 1 (P.M. R61.3/63.0) initiated this safety project. In addition, encroaching coastal bluff erosion of the road necessitates the need for the realignment. Realigning the roadway away from the eroding bluffs and eliminating curves is proposed to reduce the accident rate and maintenance requirements. The proposed alignment takes sensitive biological and visual resources into consideration with the intent of minimizing possible impacts. . . In the three year period 01 January, 1988 through 31 December, 1990 there were fourteen accidents within the project limits. . . The accident rate within the project limits was 3.17 accidents per Million Vehicle Miles (MVM), which is above the statewide average of 1.98 accidents/MVM for similar rural two-lane highways in the state. . . Alternate I, the selected alternate, runs parallel to the bluffs while realigning*

non-standard sections to create 55-MPH design speed for the project. The new alignment would consist of two 12-foot lanes with 8-foot shoulders. Although not included in the ND/FONSI, information provided by the CHP indicates that most of the accidents were run-off-the-road type accidents, apparently because of the relatively sharp curves, narrow roadway, and driver inattentiveness due to the scenic views and views of elephant seals.

The ND/FONSI disclosed that the proposal would impact 0.053 acres of vernal marsh and 0.044 acres of stream wetland, numerous individuals of the rare Compact cobweb thistle (*Cirsium occidentale* var. *Compactum*), and possibly the Burrowing Owl (*Athene cunicularia*) and American Badger (*Taxidea taxus*). The document did not discuss the current or historic presence of elephant seals on the beaches in the project area or within the Highway One right-of-way. The Monterey Bay National Marine Sanctuary parallels this shoreline, but its jurisdictional boundary does not extend landward of the mean high water mark, to include the elephant seal upland haul-out areas.

Under a 1938 agreement with the Hearst Corporation, the surrounding and underlying property owner, Caltrans was granted an easement apparently coincident with the existing roadway. Upon realignment of the highway, Caltrans will be allowed an eighty-foot wide right-of-way. The agreement states that a realigned highway will be fenced on both sides. The realigned roadway generally would be inland of the existing road, by as much as 100 feet, but in several places the realigned road would be on fill, up to 15 feet deep, placed on top of the existing road alignment. The ND/FONSI dealt briefly with the issue of public parking and coastal access as follows: *"The new alignment is located away from the denuded blufftops and would allow for the revegetation of these unofficial parking/camping sites. While the selected alternate will have eight-foot shoulders capable of yielding parking space to automobiles, that is not the intent of the shoulders. . . The ROW boundaries will be fenced to prevent livestock access to the traveled way and to restrict vehicle access to sensitive resources. Parking within the proposed project will be limited to the existing Vista Point at the project's southern terminus."*

B. Appeal Issues

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

1. The proposal is not consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.
2. It does not meet the access requirements set out in chapter 2 (Shoreline Access) of the County's Coastal Plan Policies document; nor the requirements of section 23.04.420 of the County's Coastal Zone Land Use Ordinance.
3. It does not meet the requirements for public works as set out in chapter 8 of the Coastal Plan Policies document.
4. The proposal would result in loss of an existing, formalized vista point, contrary to Combining Designation 4, Vista Points, in Chapter 7 of the County's North Coast Area Plan portion of the LCP.

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

C. San Luis Obispo County Access Conditions

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

Public Access

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

D. Analysis: Conformance with LCP and Coastal Act

1. Access Issues: Appellant Sierra Club contends that the approval given by the County is inconsistent with the Coastal Act sections relating to public access and recreation listed below. Appellant W. Duane Waddell contends that the County's approval does not meet the access requirements set out in chapter 2 (Shoreline Access) of the County's Coastal Plan Policies document (he did not specify any particular policies), nor the requirements of section 23.04.420 of the County's Coastal Zone Land Use Ordinance (he did not specify any particular subsections), and that the approval would result in loss of an existing, formalized vista point, contrary to Combining Designation 4, Vista Points, in Chapter 7 of the County's North Coast Area Plan portion of the LCP. Appellant Sierra Club also contends that the County's approval does not meet the access requirements of sections 23.04.420(b), (c), and (g) of the County's Coastal Zone Land Use Ordinance. Appellant and applicant Caltrans contends that there was no basis for attaching access conditions to the permit, because there was no impact on access.

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

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

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

The public has informally used the entire coastline along the proposed realignment for many years. The seaward side of Highway 1 in this area is generally unfenced.

While there has been no adjudication of prescriptive rights nor has there been legislative authorization of access along the coastline in the project area, the public has used that area for at

least 40 years. Appellant Sierra Club has provided staff with 10 questionnaires solicited from current and previous users of the beaches in this area showing unrestricted public use of the beaches since at least 1956. Additionally, as of the date of this staff report, staff had received two petitions with 23 signatures and well over 100 letters, all requesting that public access be enhanced in this area and not restricted. From those expressions of public experience and sentiment, it appears that frequent public use of the coastline is long-standing. Staff has personal knowledge of the use of the area as far back as the mid-1960's. Staff has also been to the site several times in the last five months and observed upwards of 30 vehicles at a time in the informal turnouts along the existing 1.7 mile section of road which is proposed to be realigned. Therefore, absent a legal determination that no public access rights exist, an important consideration in this permit is to avoid the placement of fencing, signs, or other impairments to existing public use.

Visitors traveling this scenic stretch of coast which includes Big Sur and Hearst Castle frequently pause along this section of the highway to view the scenery, picnic, etc. This area is particularly popular with southbound travelers as opportunities to stop near the shore are very limited in the 70 miles of winding road through Big Sur. Further, in recent years use of this portion of the coast has become increasingly prevalent due in part to the rise in popularity in ocean sports like sea kayaking and windsurfing. For example, the area around the Arroyo Escondido, also known as Twin Creeks, is considered one of the better windsurfing locales in Central California. There also has been escalated interest in this area in recent years due to the resurgence in the elephant seal population. Many travelers are known to stop along the highway in this stretch of the coast to watch the seals in their haul-out areas.

If all available shoulder parking were utilized, an estimated 100-200 vehicles might be accommodated under existing conditions. However Caltrans, neither in its environmental document nor in its application to the County for a coastal development permit, addressed the issue of possible restrictions on public access as a result of the proposed highway realignment. Such restrictions would result not only from the abandonment of the existing bluff-edge alignment, but also from any fencing that may be installed between the new highway alignment and the sea. Excessively restrictive signage could also impair such public access and use.

To address this oversight, the County conditioned its approval of the realignment proposal with conditions that required Caltrans to provide for two public accesses, one at Twin Creeks and one near the north end of the proposed work. However, the County's access conditions also state that *"... a trade for an existing vista point south of the project site may be necessary. . . 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."* (County Condition no. 3.C)

This condition reflected an agreement by the County and Caltrans with the Hearst Corporation, the underlying and surrounding land owner, that it would be amenable to Caltrans creating a public access point at Twin Creeks concurrent with the realignment, and to the future development of a turnout for elephant seal viewing at the north end of the realignment, if a land trade occurred. The land to be traded for the proposed accessways is a 4.77 acre easement, known as Vista Point One, which includes an existing, formalized public parking area approximately 1.75 miles south of the proposed new formal access at Twin Creeks Beach. Vista Point One was one of two parking and access areas created as the mitigation for loss of public access in a 1982 permit issued by the Commission to Caltrans to realign another section of the highway. Each of these parking areas can accommodate approximately 80 cars.

On October 4, 1995, Caltrans applied to the Commission to amend the 1982 permit to allow for the relinquishment of Vista Point One. The amendment request was rejected by the Executive Director on November 17, 1995, on the basis that the proposed amendment would lessen the intended effect of the condition, i.e., the amendment would allow for the relinquishment of Vista Point One which was established as mitigation for the loss of public access from the 1982 highway realignment, and because there was no new material information justifying the amendment. At the March 1996 substantial issue hearing, the Commission found that a substantial issue existed, continued the de novo hearing, and directed staff to bring the amendment request to the Commission for action. On April 11, 1996, the Commission directed the Executive Director to file the amendment request; on that same day the Commission approved the amendment request, finding that there was new material information and that the amendment would not lessen the intent of the 1982 permit. The Commission found that the new material information included evidence that Vista Point One was underutilized by the public in contrast to informal turnouts upcoast and downcoast from Vista Point One. For example, Caltrans studies indicate that as few as three to five cars at a time will be parked in this area during the off season. Based on this evidence the Commission concluded that vehicles that might be displaced by the relinquishment of Vista Point One could be easily accommodated at Vista Point Two, the other access area required by the 1982 permit. Additionally, the Commission found that exchanging Vista Point One for two new formal access areas to enhance public access at the more popular destination points at Twin Creeks would not lessen the intent of permit 4-81-194. Please see the staff reports relating to application 4-81-194-A for the complete findings.

The proposal is consistent with Coastal Act Section 30211 because, although it would result in the loss of an existing, formalized access (Vista Point One), it would result in the creation of two new formalized accesses and would preserve an existing access (Vista Point Two, about three-quarters of a mile upcoast from Vista Point One) which provides access similar to that provided by Vista Point One. However, as constructed, the County's permit does not adequately address the issue of retaining existing access because it does not specify the vehicle capacity of the proposed public access facilities, nor does it relate such capacity to the existing highway segment's capacity to provide parking and access. Therefore, to assure conformance with Coastal Act Section 30211 and the counterpart policies of the San Luis Obispo County LCP, this permit is further conditioned to: clarify that the capacity of the new public access parking facilities must be at least equivalent to that which already is available along the existing highway alignment (an estimated 100-200 vehicles); and that the details of fencing, parking area capacity, and signage must be shown on revised final plans for confirmation that public access will not be unnecessarily impaired or curtailed.

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.*

The existing, formalized access areas are both located south of the proposed realignment (see Exhibit 5). The north one ("Vista Point 2") is a 5.2 acre easement and is located about one mile from Twin Creeks. The south one ("Vista Point 1," the one that Caltrans proposed to trade to Hearst) is a 4.77 acre easement located about 1.75 miles from Twin creeks. They can collectively accommodate approximately 160 cars. However, since Vista Point One is relatively little utilized, the number of vehicles actually there at any one time is much less than the number of vehicles it could accommodate at any one time. Those vehicles that would be displaced by the relinquishment of Vista Point One can easily be accommodated at Vista Point Two.

In addition to these formal accessways, it is estimated that an additional 100-200 vehicles might be able to park informally along the existing highway segment bracketing Twin Creeks Beach. As further conditioned by this permit, the number of vehicles which will be accommodated in the two new formal accesses will be the same or slightly higher than in the existing informal turn-outs and blufftop highway shoulders. Therefore, the provision of two new formal access facilities in the general area of the existing informal roadside access opportunities, would not be expected to result in significant impacts resulting from redistribution of public use.

Because elephant seals increasingly occupy the Twin Creeks Beach area for part of the year during pupping season (generally Nov. through March), the specific issue of seal-human conflicts must be taken into account. As detailed in the environmentally sensitive habitat findings below, too much human intrusion poses risks for both the seals and visitors. One way to reduce potential conflicts is to distribute public use more widely to those locations best able to tolerate it. Any closure of existing public access areas in the long run would not tend to concentrate public use more intensely at the new Twin Creeks Beach formal access facility because of the provision of a second new access north of Twin Creeks and because of the capacity of Vista Point Two. It is possible that use might be concentrated at Twin Creeks if the north of Twin Creeks access is bonded for rather than built and opened concurrently with the completion of highway realignment. To avoid this result however, Special Condition 4 requires the permittee to not close existing access (Vista Point One) until both new access facilities are opened to public use. As conditioned, this permit will support the Coastal Act Section 30212.5 objective of distributed public use.

Even so, another opportunity to better distribute public uses is evident immediately to the north of this project: the Piedras Blancas Lighthouse Reservation. This site would provide notably better distribution of public access, and it also represents an outstanding interpretive opportunity with respect to the elephant seal colony, the history of the lighthouse and the Hearst Ranch, the Big Sur Coast looming to the north, and the Monterey Bay National Marine Sanctuary—whose waters surround the point on three sides. The facilities, although in public ownership, are currently occupied by National Biological Survey researchers and are not open to the public. To encourage negotiations aimed at opening this environmentally superior alternative to public use, this permit is conditioned to allow Caltrans to postpone (under bond) installation of the northernmost of the two new formal access facilities for up to 3 years. If success is achieved, Caltrans would be allowed to substitute such public access at the existing Piedras Blancas Lighthouse Reservation for the required northerly access facility, thereby better meeting the requirements of Coastal Act Section 30212.5 and companion LCP requirements

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

As discussed above, public access and recreational opportunities currently are provided both formally and informally along the entire highway segment between San Simeon and Piedras Blancas Lighthouse. In the south the existing Vista Points One and Two provide substantially similar facilities and afford access to the rocky shore and a trail that leads to the beach near Arroyo Laguna Creek. In the north, near Twin Creeks, there also is access, but it currently is more informal and parking is only available along the shoulder of the highway. This area has been demonstrated to be the more popular destination point, however, because it is available for a combination of active uses, such as windsurfing and kayaking, and passive uses such as watching the elephant seals. All these public opportunities are available at no charge.

As conditioned, Caltrans' realignment project will preserve and enhance access in this area. Access to the shoreline south of the project site will continue to be available at the formal accessway facilities of Vista Point Two, or the informal access areas around the beach at Arroyo Laguna Creek. More significantly, the underutilized access site at Vista Point One will be exchanged to provide safer, improved access to the more heavily used recreation areas around Twin Creeks. These new, formal access areas will be subject to signing, fencing and management requirements that will ensure that they will remain available for low-cost recreation. Accordingly, economical public access will continue to be available at essentially the same or enhanced levels as presently exist. Therefore, as conditioned, this project will be consistent with the requirements of Coastal Act section 30213.

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

The County's approval contained conditions that attempted to provide for continued public access to the sea adjacent to the highway segment proposed for realignment. As further conditioned by this Commission, this permit generally will assure continuity of public access opportunities at levels and at such locations as presently are available. The project will, therefore, conform with both Article X of the California Constitution and section 30214(b) of the Coastal Act.

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

Section 30221: *Oceanfront land suitable for recreational use shall be protected for recreational use. . . .*

The proposed project will realign a 1.7 mile stretch of highway to improve traffic safety. It does not envision any additional development, except for the construction of the access areas required as a condition of this permit. Thus, this permit will not preclude future water-oriented recreational activities along this portion of the coast. As to the existing recreational uses in this area, ocean diving, windsurfing, ocean fishing and beachcombing all rely on an ocean location and are currently engaged in at both the "formal" Vista Point One and Vista Point Two accessways, at numerous pocket beaches in the vicinity, and also at the existing "informal" Twin Creeks access location. As discussed earlier, these access areas provide for a wide range of recreational uses.

The conditions of the approval of this permit may reduce some of the existing informal shoreline access from the seaward edge of the highway near Vista Point One, but through conditions would provide for the creation of two new formal accessways to the north. The provision of these two new formal accessways, along with the retention of Vista Point Two, will ensure the continued availability of suitable sites for the existing range of different recreational uses. The exchange of Vista Point One will not preclude existing public access along the bluff from Vista Point Two south to Arroyo Laguna Creek. With additional conditions cited above regarding fencing, signage and parking capacity, the County's action will conform with Coastal Act sections 30220 and 30221.

CZLUO Section 23.04.420c. When new access is required. Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) Access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources. . . .

The existing Highway One alignment provides abundant opportunities for access from the unfenced public roadway to the shoreline. The realigned highway, as approved by the County, will provide for two new formal access facilities to offset the loss of the informal blufftop parking now available. As further conditioned by this permit to require parking capacity equivalent to the lost informal parking opportunities, and to insure that public beach access is not frustrated by unnecessary fencing or signage, the project will conform with the basic requirements of this LCP section.

However, because of the elephant seal colony, the issues of public safety and fragile coastal resources remain. The Northern elephant seal is a species protected by the Marine Mammal Act, and the haul-out sites for marine mammals are considered fragile coastal resources. Bull elephant seals are large, potentially aggressive, and capable of inflicting serious injury on other bull elephant seals—and intrusive humans.

Even without the proposed project, there are significant public health and safety issues relating to elephant seal-human interaction in this area. The existing highway alignment brings the public into close contact with the elephant seals, and the seals have also apparently strayed onto the roadway. There has been an unconfirmed report of a person bitten by an elephant seal at Twin Creeks beach. There are confirmed reports of people being bitten by elephant seals at Ano Nuevo State Reserve in southern San Mateo County.

Unfortunately, the new alignment will not eliminate this problem. At Ano Nuevo State Reserve in San Mateo County, elephant seals travel up to ¼ mile inland. At Twin Creeks Beach, the realignment is so minimal that it will partially cover the existing bluff-edge road surface with fill, up to 15 ft. deep. Further, this elevation of the highway on fill won't prevent contact between people and seals; passersby may have an even better view of the elephant seal colony on the beach below, and be even more likely to stop and approach the animals. Also, staff has observed that elephant seals will climb slopes as steep as 30% at Santa Barbara Island, so placing the road on fill will not necessarily preclude automobile vs. seal collisions. Neither will the proposed range fencing be effective against the massive bull seals.

Nonetheless, the approval of this permit does provide an opportunity to begin addressing the problems that are created by the interaction of elephant seals and the public. As the California Dept. of Parks and Recreation has demonstrated at Ano Nuevo State Reserve, through careful management, public access and elephant seals can co-exist. Therefore, in order to provide for public access while minimizing risks to public safety and the vulnerable coastal resource, this permit is further conditioned to require revised final plans showing structural measures to keep elephant seals off the highway and public parking areas; and to develop and implement an Interim Management Program, to include measures such as signage and possibly fencing to seasonally regulate human intrusions into the seal colony. Therefore, with these additional conditions, the project will conform with the above-cited LCP (CZLUO) policy.

CZLUO Section 23.04.420d. Type of access required:**(1) Vertical access:**

.....
(ii) In rural areas: In rural areas where no dedicated or public access exists within one mile, or if the site has more than one mile of coastal frontage, an accessway shall be provided for each mile of frontage

The proposed realignment involves a 1.7 mile section of the highway. There is an existing formalized access at the southern end of the realignment. There are about a half-dozen informal accesses along the 1.7 mile section; the next formal access is several miles up the coast from the north end of the proposed realignment. The County's approval requires construction of a new formalized access at Twin Creeks and either construction of or bonding for another new access near the northern end of the realignment. This Commission permit authorization requires the same access provision; this frequency of access is consistent with LCP subsection 23.04.420d.

CZLUO Section 23.04.420e. Timing of access requirements.

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

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

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

The County's approval was for a minor use permit to allow the highway realignment. As conditioned, the project will include public accessways. The approval is consistent with this subsection.

CZLUO Section 23.04.420g. Where public coastal accessways are required by this section, approval of a land division, or land use permit for new development shall require guarantee of such access through deed restriction, or dedication of right-of-way or easement. Before approval of a land use permit or land division, the method and form of such access guarantee

shall be approved by County counsel, and shall be recorded in the office of the County Recorder, identifying the precise location and area to be set aside for public access.

The County's approval was apparently given without any ". . .method and form of such access guarantee. . . ." having been approved by County Counsel or recorded with the County Recorder. Therefore, the County's approval is inconsistent with this subsection. However, it is apparent that first, the permittee is well-experienced in formulating the necessary easements (as evidenced by the existing formal accessway easements established in 1982); and, secondly, the exact location of the necessary easements will depend on the outcome of the revised final plans required by this permit (which, for example, require that the parking facilities not cover any loose sand areas needed by the elephant seals).

Therefore, in order to achieve conformance with this CZLUO requirement, this permit is conditioned to require that the revised final plans for the new formal accessway(s) be accompanied by the proposed easement text to provide an opportunity for review and approval by the Executive Director. The conditions also require that if public access to the Piedras Blancas Lighthouse Reservation is substituted for the required new northerly accessway, then the specific arrangement for this shall similarly be submitted for review and approval by the Executive Director.

CZLUO Section 23.04.420h. Requirements for access improvements and support facilities.

Coastal access required by this section or by planning area standards of the Land Use Element shall be physically improved as provided by this subsection.

CZLUO Section 23.04.420i. Accessway signing. Where required through land use permit of tentative subdivision map approval, signs installed in conjunction with accessways shall conform to the following standards. . . .

These subsections list various improvements that may be required, such as drainage, fences, steps, etc. The County's approval required that Caltrans "Construct all related improvements. . .for the Twin Creeks public accessway. . ." and "Construct or bond for all related improvements. . .for the northerly public accessway." The County's approval is consistent with these subsections; the conditions attached to this permit improve conformance by requiring submittal of revised final plans showing the details of parking layout, fencing and signage.

CZLUO Section 23.04.420j. Restoration of degraded access areas. Existing coastal access areas that have been degraded through intense use shall be restored along with construction of new development on the site to the maximum extent feasible.

The County's approval requires restoration of degraded areas. The approval is consistent with this subsection.

CZLUO Section 23.04.420k. Sighting criteria for coastal accessway. In reviewing a proposed accessway, the applicable review body shall consider the effects that a public accessway may have on adjoining land uses in the location and design of the accessway. . .

(1) Accessway locations and routes should avoid. . .sensitive habitats. . . .

(3) Review of the accessway shall consider: safety hazards. . . .

(4) Limiting access to pass and repass should be considered. . . where there are habitat values than can be disturbed by active use.

Elephant seal-human interaction is a safety hazard. The beaches at the site have habitat values that can be disturbed by active use and they are sensitive habitats, at least for the part of the year that elephant seals are there. -The County's approval required provision of access prior to development of an access and elephant seal management program. See "Hazards" finding below for further discussion and conformance with LCP policies.

North Coast Area Plan document, Chapter 7, Combining Designation Program 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.*

As conditioned, this project is consistent with the direction provided in this plan. Vista Point Two will be maintained. Vista Point One will be relinquished, but in exchange for an improved, formal accessway at Twin Creeks Beach, plus the construction of (or bonding for) a second formal accessway north of Twin Creeks. These will constitute "replacement in reasonable proximity" of the several, smaller informal turnouts that exist.

2. Basis For Requiring Public Access: Appellant and applicant Caltrans contends that there is no basis for requiring access conditions ". . .because the project as proposed did not impact any existing public access. . . ." The realignment project as submitted would result in a fenced roadway, where now the seaward side is unfenced and numerous informal turnouts exist. The existing blufftop highway segment would be abandoned. If not posted as a no parking area, the shoulders of the realigned roadway could serve as replacements for the existing informal turnouts. However, these parking opportunities would generally not be as close to the bluffs, and there would be a fence blocking access to the shoreline. Therefore, it is clear that the proposed realignment would impact existing public access. Therefore, with respect to this issue, the necessary nexus exists and it was appropriate for the County to require access conditions. This permit incorporates these conditions by reference, provides for parking equivalency with respect to the lost informal parking opportunities, requires detailed review of fencing and signage, and limits fencing to those situations where it is actually warranted for resource protection or agricultural reasons. As conditioned to protect public access, the project will conform with the Coastal Act and LCP public access and recreation policies cited above.

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

4. Hazards: Two public safety issues are apparent: one involves the highway physical characteristics, the other elephant seals. Applicant asserts there is a need for this project because the existing highway geometry, with its irregular dips and curves, narrow shoulders and pavement, is substandard and contributes to an elevated accident rate in this area. However, this is also a popular informal shoreline access area, and is likely to become better known for its opportunity to

observe elephant seals; the consequent frequency of vehicle turning and stopping movements may therefore also be a contributing factor to the accident rate.

The LCP does not directly address either issue; and, the project is designed only to correct the issue of substandard highway dimensions. By creating a replacement road segment with modern turn radii, 12-foot travel lanes and 8-foot shoulder widths, improved highway safety can be expected from the project.

With the expansion of the elephant seal colony, the potential risk for automobile-elephant seal collisions is increasing. Seals have apparently already crossed onto the existing roadway, with one seal injury already reported. Alpha bulls reach two tons in weight, more than a typical automobile. And, elephant seals will bite intruders; human injuries are reported from both Ano Nuevo State Reserve and the Piedras Blancas area. The bulls have been observed to crush most anything in their path, including seal pups.

Therefore, to minimize risks for both seals and humans, it is essential to provide for physical separation at critical locations during the pupping season. This permit incorporates, by condition, several measures to reduce such hazards. These include a requirement to provide revised final plans, including structural measures to keep elephant seals off the highway; formulation and implementation of an Interim Management Plan (including public warnings, seasonal and interpretative signage, and possibly fencing); and retention of an environmental and condition compliance monitor, whose duties will include the prevention of any elephant seal harassment during the course of construction. These measures will provide conformance with LCP public access policies, and will provide for improved safety of access consistent with CZLUO Section 23.04.420k cited above.

5. Environmentally Sensitive Habitat Area. The protection of environmentally sensitive habitat areas is an important consideration in this instance. Here, the Northern elephant seals of the Piedras Blancas region have established a haul-out area and seasonal breeding colony on the narrow beach area between the existing alignment of Highway One and the sea. According to information provided by the National Biological Service (NBS), which maintains a research station at Piedras Blancas, elephant seals have been on the beaches in that area since 1977. However, it wasn't until 1992 that the first elephant seal pup was born in the area. A census of the animals that year revealed that some 1,350 individuals were present on the beaches. The 1995 census counted up to 3,850 individuals in the spring and 2,150 in the fall. NBS estimated 600 pups were born in 1995 and that 900 will be born this year. As can be seen from Exhibit 8, the seal population has expanded rapidly and they have expanded their population and range from the south side of Piedras Blancas Point to both the north and south over the past three years and have expanded south of Twin Creeks. The beaches in the area have become marine mammal haul out areas and it is highly likely that there will be increasing instances of elephant seal-human interaction.

Under the San Luis Obispo County LCP, such breeding sites are designated as environmentally sensitive habitats and no significant disruption of habitat values is allowed. The applicable LCP environmentally sensitive habitat policies include:

Policy 1 Limits uses within or adjacent to environmentally sensitive habitat, generally requires 100 foot buffers from the resource (e.g., habitat, breeding sites, etc.)

Policy 27 Protection of Terrestrial Habitats: requires that development adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts and shall be compatible with the continuance of such areas.

Policy 29 Trails adjoining sensitive habitats: trail design shall minimize adverse impacts on these areas.

Policy 38 Shoreline access consistent with habitat protection: monitor and regulate impacts on marine resources including limiting the use of coastal access

The project clearly poses access issues as detailed above. While the realigned highway would be elevated and in some places moved away from the shoreline, this alone will not preclude conflicts between elephant seals and curious visitors who would otherwise approach the animals too closely. In fact, the seal colony may become more visible from the realigned highway's elevated vantage point. Visitor intrusion could affect pupping success; at Bolinas on the Pt. Reyes Peninsula, a female gave birth on the beach, but abandoned the pup after too much up-close human attention. And, when bull elephant seals challenge intruders, they may run over any unfortunate pups in their path. While highway elevation may reduce the potential for automobile collisions with elephant seals which stray onto the roadway, the higher speeds that the realigned road will allow (55 m.p.h. as designed, vs. 30 m.p.h. currently advised) would mean those collisions which do occur will have more serious consequences.

To address the issues posed by potential interaction between elephant seals and the public, this permit is conditioned to provide for an interim management plan, to be created in consultation with an interagency task force. The required Interim Management Plan (IMP), together with the final revised plans, monitoring, and construction phasing program also required as conditions of this permit, is necessary to guide permittee's activities both during and after construction, especially with respect to the project's seasonal phasing, management of public use within Caltrans' right of way, and other measures to minimize elephant seal-human conflicts. These measures include barriers to seal movement, warning/interpretive signage, possible fencing to direct public use, and provision of an on-site environmental/condition compliance monitor to prevent seal harassment during construction. Only if conditioned in this manner can the project be found consistent with LCP policies cited above.

Public access maintenance and especially elephant seal management are not within the customary scope of Caltrans' responsibilities. Other agencies including the Calif. Dept. of Parks and Recreation, and National Park Service already have substantial experience in managing elephant seal and public recreational uses together. Several federal agencies have a direct responsibility or interest in the elephant seal issue as well: the National Marine Fisheries Service (Marine Mammal Protection Act enforcement), National Biological Service (research), NOAA (adjacent marine habitat within the Monterey Bay National Marine Sanctuary), and possibly the U.S. Fish and Wildlife Service (manages seal refugia, including elephant seal colony at Farallon Is. National Wildlife Refuge).

The logical need is for an overall strategy for Northern elephant seal management throughout its range, along with a long-term management program that is specific to the Piedras Blancas breeding colony. One vehicle for doing that is a multi-agency task force which would look at all these issues and would develop a long-term management program based on scientific information; statutory responsibility of local, State, and Federal agencies; the desires of various interested individuals and

groups; and legal constraints and opportunities. The Research Advisory Panel of the Monterey Bay National Marine Sanctuary has already appointed a representative to participate in this process. Caltrans has provided additional information and has created a draft management strategy (see Exhibit 9) which will form the basis for development of a long-term management program.

Such long-term management is beyond the scope of this permit. It is also outside the scope of Caltrans' normal responsibilities and expertise. Therefore, the IMP is intended only as a temporary measure, and is not intended to include the full range of on-site supervision and management activities that would be appropriate over the long run. That will be left to other agencies. Accordingly, this Commission will support permittee in its efforts to find an appropriate agency or agencies to assume management of public recreational uses at the new formal accessways which will be created pursuant to this permit; and to assume the lead role in elephant seal management.

6. Scenic Resources. State Highway Route 1 between San Simeon and Carmel is one of California's most treasured scenic resources. While not designated as a State Scenic Highway, Highway One in this area traverses open grasslands with sweeping views of the Pacific Ocean and the Santa Lucia Mountains. For northbound travelers, this area is the beginning of the Big Sur coast. For those driving down the coast, this section of highway hugs the coast but brings the traveler down next to the sea, unlike farther up the Big Sur coast where the highway is often perched on a narrow shelf high above the sea.

Applicable LCP policies in the San Luis Obispo County Coastal Plan Policy document include:

Policy 1: Protection of Visual and Scenic Resources. Unique and attractive features of the landscape, including...scenic vistas and sensitive habitats are to be preserved...

Policy 2: Site Selection for New Development. Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas...

Policy 4: New Development in Rural Areas. New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style), to be subordinate to, and blend with, the rural character of the area...

Policy 11: Development on Coastal Bluffs: New development...shall be sited and designed to be compatible with the natural features of the landform as much as feasible. New development on bluff tops shall be designed and sited to minimize visual intrusion on adjacent sandy beaches.

The project as designed will be generally consistent with these policies, as it merely substitutes one alignment of Highway 1 for another in the same vicinity. To some extent, because the new highway segment will be partly elevated on fill, broader vistas will be afforded. However, three project details, not addressed in the County's approval, could degrade or impair these highly scenic views. These are fencing (if anything other than standard 3- or 4-strand wire range fencing is erected); signs, to the extent that an excess will result in visual "clutter" along the highway; and elephant seal barriers, which could potentially block views or create structural intrusions in otherwise natural landscapes.

Accordingly, this permit is conditioned to provide for Executive Director review and approval of final revised plans, including fencing, signs and elephant seal control structures; and to specify that

fencing, signs and barriers needed for elephant seal management be placed or operative only when needed during pupping season. Therefore, with these additional conditions, the project will conform with the above-cited LCP policies.

7. Agriculture. The approx. 77,000 acre Hearst Ranch is probably the single most extensive agricultural operation in the California coastal zone. It is also the owner of all the land in the vicinity of this project, except for the federally-owned Piedras Blancas Lighthouse Reservation immediately to the north. Cattle grazing is the primary economic activity, with a carrying capacity to support about one animal unit per 6-8 acres.

At present, the inland side of the existing 1.7 mile highway segment is fenced for cattle grazing. Except for a small area at the extreme north end of the project, none of the seaward side of the highway is fenced and no grazing is evident. As submitted, the highway would be shifted somewhat inland, thereby isolating approx. 10 acres of existing grazing land (enough to support at least one cow). Preliminary plans show a cattle underpass structure to be constructed; and, although not shown on these plans, both sides of the realigned highway would be fenced at State expense.

LCP Coastal Plan Policy 12 addresses public access in agricultural areas. It states, in part:

Consistent with other applicable access policies which provide for access dedications, the county shall require at the time a Coastal Development permit is processed, the establishment of vertical and/or lateral access to the beach for which no established vertical or lateral access exists. ...Improvement and management practices shall include, but not be limited to, the following... b. Develop access trails with fences or other buffers to protect agricultural lands.

In this case, there is virtually unlimited public use between the existing Highway 1 segment and the sea. The County's permit action sought to mitigate access impacts by providing for two new formal accessways. However, the specific consideration of the location and design of fencing is not apparent in the County decision.

Therefore, in order to achieve conformance with the LCP's access and agriculture policy, and Coastal Act public access policies, this permit is conditioned to require submittal of final plans showing location and design of fencing, for Executive Director review and approval. In order to maintain the present "status quo" separation of cattle grazing and public recreational access, this permit allows range fencing along the entire inland frontage of the realigned 1.7 mile highway segment. On the seaward side of the realigned highway, only that fencing necessary to enclose currently grazed lands between the old alignment and the new alignment, is authorized. Because of the minuscule amount of grazing capacity seaward of the existing highway alignment, further seaward extensions of fencing for range enclosure purposes would be unwarranted. Therefore, no new fencing which would block continued public access is authorized.

Where fencing seaward of the existing highway alignment may be recommended by the required Interim Management Program for elephant seal management purposes, it must be designed to accommodate continued lateral and vertical public access during those seasons when such use is not precluded by the presence of the elephant seal colony. Therefore, as conditioned to include these standards, the project will be consistent with the above-cited agriculture and access policies.

E. California Environmental Quality Act (CEQA)

Section 13096 of the California code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Caltrans, the lead agency for the project, circulated and certified a combined Negative Declaration/Finding of No Substantial Impact which addressed three alignment alternatives. The County, as a responsible agency, made standard CEQA findings.

However, additional impacts, alternatives, and mitigation measures were identified during the analysis process for this appeal. The elephant seal issue, in particular, had not been adequately addressed. These additional topics are addressed in the above findings. Therefore, only with the additional necessary mitigation measures incorporated in this permit's Special Conditions, will the realignment project be consistent with CEQA, the Coastal Act and the County LCP and not have any significant adverse impacts on the environment.

CALIFORNIA COASTAL COMMISSION

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

RECEIVED
OCT 5 1995



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

SECTION I. Appellant(s)

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

W. Duane Waldell
6030 Hwy 1 Cayucos, Ca
93430 (305) 995-1353
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: San Luis Obispo County

2. Brief description of development being appealed: the realignment of a 1.7 mile section of Coastal Highway involving closure of existing historical access along the 1.7 mile road segment 12m n of Union, S of Pinalis Blv.

3. Development's location (street address, assessor's parcel no., cross street, etc.): Ap State right of way Route 1 P.M R 61.3 to 63.1

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: D940106 D Cal-Trans CDP
- c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

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

DATE FILED: 10/5/95

DISTRICT: CEN COAST

EXHIBIT NO. <u>1</u>
APPLICATION NO. <u>A-3-SLO-95-70</u>
CALTRANS

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: Sept 19, 1995

7. Local government's file number (if any): D940106D

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Jim Perano
Caltrans P2 Box 5114
San Luis Obispo Ca 93403-5114

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Jesse Arnold
Box 1211
Cambria Ca 93428

(2) Ruel J Czuch A.I.A
50 N Ocean Ave Suite A
Cayucos Ca 93430

(3) Mark Massara
Director Coastal Program
Sierra Club 1642 Ghast Hwy
San Francisco Ca 94122

(4) Dorothy L. Barker
PO Box 223
Cayucos Ca 93430

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

EXHIBIT I

A-3-56-45-70

p2

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

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

CZLVO Section 23.04 420

Land Use Element local Coastal Program:

Costal Plan Policies Chapters 2 + 8

Land use element + local Coastal plan, N

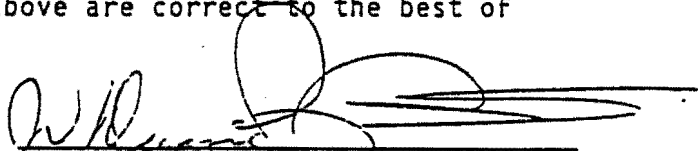
Coast Planning area Chapter 7,

C Combining designation programs, LCP = 4

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date 10-6-95

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

EXHIBIT 1

A-3-56-95-70

p3

This Caltrans development plan would take a Historical Beach now owned by the State Parks System & deed it to the Hearst Corp., even though their own survey claims 150 cars a day stop and use this beach.

To remove this beautiful historical beach from our State Parks System would deny forever the public's use of this beautiful South Sur Access.

With increasing population & development it is necessary to acquire more accesses and protect the ones we already have.

EXHIBIT 1

A-3-56-95-70

P4

RECEIVED
PETE WILSON, Governor
OCT 10 1995

CALIFORNIA COASTAL COMMISSION
NORTH COAST AREA
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260

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

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

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):
STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION - LEGAL DIVISION
DANIEL C. MURPHY, ANTONIO R. ANZIANO, MAXINE F. FERGUSON
P.O. BOX 7444 - SAN FRANCISCO, CA (415) 982-3130
Zip 94120-7444 Area Code Phone No.

SECTION II. Decision Being Appealed

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

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

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

4. Description of decision being appealed:

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

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

TO BE COMPLETED BY COMMISSION:

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

DATE FILED: Appeal originally filed 10/5/95

DISTRICT: Central Coast

H5: 4/88

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. ~~City/County~~ Board of Supervisors d. Other _____

6. Date of local government's decision: SEPTEMBER 19, 1995

7. Local government's file number (if any): D940106D

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

- a. Name and mailing address of permit applicant:
STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION - DISTRICT 5
AILEEN K. LOE, CHIEF
OFFICE OF ENVIRONMENTAL MANAGEMENT
P.O. BOX 8114 - SAN LUIS OBISPO, CA 93403-8114
- b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) SEE EXHIBIT "A" (ATTACHED)

- (2) _____

- (3) _____

- (4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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

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

SEE EXHIBIT "B" (ATTACHED)

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date OCTOBER 13, 1995

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

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

INTERESTED PARTIES

ACCESS PIEDRAS
C/O DEBORAH BARKER
P.O. BOX 223
CAYUCOS, CA 93430

HEARST CORPORATION
C/O JAY D. ROCKEY
SIDLEY & AUSTIN
555 WEST 5TH STREET
LOS ANGELES, CA 90013-1010

ALEX HINDS
PLANNING DIRECTOR
COUNTY GOVERNMENT CENTER
SAN LUIS OBISPO, CA 93408

HEARST CORPORATION
C/O ROGER LYON
1104 PALM STREET
P.O. BOX 922
SAN LUIS OBISPO, CA 93406

DEPT OF PLANNING & BUILDING
COUNTY GOVERNMENT CENTER
ATTN: TERRY WAHLER
SAN LUIS OBISPO, CA 93408

SLO CO BOARD OF SUPERVISORS
COUNTY GOVERNMENT CENTER
ATTN: SUSAN MCDONALD
SAN LUIS OBISPO, CA 93408

SUPERVISOR BUD LAURENT
BOARD OF SUPERVISORS
COUNTY GOVERNMENT CENTER
SAN LUIS OBISPO, CA 93408

CA DEPT OF FISH & GAME
213 BEACH STREET
MORRO BAY, CA 93442

DEPT OF PARKS & RECREATION
750 HEARST CASTLE ROAD
ATTN: WILLIAM KRAMER
SAN SIMEON, CA 93452-9741

DEPT OF PLANNING & BUILDING
COUNTY GOVERNMENT CENTER, RM. 310
ATTN: MATT JANSSEN
SAN LUIS OBISPO, CA 93408-2040

DEPT OF PARKS & RECREATION
1416 NINTH STREET
ATTN: WARREN WESTRUP
P.O. BOX 942896
SACRAMENTO, CA 94296-0001

CALIFORNIA RESOURCES AGENCY
1416 NINTH STREET, STE. 1311
ATTN: BRIAN BAIRD
SACRAMENTO, CA 95814

SENATOR JACK O'CONNELL
ATTN: GEOFF WEG
1260 CHORRO STREET, STE. A
SAN LUIS OBISPO, CA 93401

RON DeCARLI
EXECUTIVE DIRECTOR
SLO COUNCIL OR GOVERNMENTS
1150 OSOS STREET, STE. 202
SAN LUIS OBISPO, CA 93401

CA DEPT OF FISH & GAME
213 BEACH STREET
MORRO BAY, CA 93442

NATIONAL BIOLOGICAL SERVICE
P.O. BOX 70
ATTN: NORM SCOTT/GALEN
SAN SIMEON, CA 93452

CA COASTAL COMMISSION
725 FRONT STREET, STE. 300
ATTN: STEVE GUINNEY
SANTA CRUZ, CA 95060

CA DEPT OF FISH & GAME
20 LOWER RAGSDALE DR. STE. 100
ATTN: DEB HILLYARD
MONTEREY, CA 93940

EXHIBIT 2

A-3-SLO-95-70

p4

EXHIBIT "A"-1

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION

393 MARKET STREET, SUITE 1700
P.O. BOX 7444
SAN FRANCISCO, CA 94120-7444
FAX # (415) 495-2317
(415) 982-3130



October 13, 1995

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

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

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

Dear Mr. Wahler:

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

Thank you for your assistance.

Yours very truly,

Tony Anziano
Attorney

cc: California Coastal Commission

ORIGINAL TRANSMITTED BY FEDERAL EXPRESS

EXHIBIT 2

A-3-56-95-70

p5

EXHIBIT "A"-2

REASONS FOR THIS APPEAL

The subject project is a major public works project involving realignment of a 1.7 mile (Post Mile R61.3/63.0) stretch of State Route 1, due to an above-average accident rate. This road was built in the early 1900's and is well below current standards.

The Coastal Development Permit challenged in this appeal was issued by the San Luis Obispo County Board of Supervisors after its consideration of an appeal (hereinafter "underlying appeal") of a Coastal Development Permit approved by the Planning Commission. The Board of Supervisors approved a Coastal Development Permit subject to the following conditions of providing 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 (sic), 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 craft. The purpose of the accessways will be to provide suitable ingress and egress for kayakers, divers, fisherman (sic), 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

EXHIBIT 2

A-3-slo-95-70

pg

EXHIBIT "B"

REASONS FOR APPEAL
PAGE TWO

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

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

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

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

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REASONS FOR APPEAL
PAGE THREE

2. No basis exists for requiring public access as a condition of approval because the project as proposed did not impact any existing public access, and the requirement of public access is therefore not consistent with the California Coastal Act or the Local Coastal Program.

The Coastal Development Permit was approved with the above conditions over the objections of the STATE. The STATE has filed this appeal to challenge the inclusion of these conditions, based upon its earlier objections.

EXHIBIT 2

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CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-4843
HEARING IMPAIRED: (415) 904-5200



May 9, 1995

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

Dear Ms. Loe:

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

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

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

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

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EXHIBIT "C"

Aileen Loe
Caltrans - Environmental Planning
May 9, 1995
Page 2

Simply put, this section indicates that terms used in Title 23 will, as required, be defined within the Title where they are used or can be found in the Definitions section of the ordinance. In this case, the definition of "aggrieved person" is relevant to determine who may appeal coastal development permit decisions. The definition of "aggrieved person," consistent with 23.01.041(b)(2) is found at Section 23.01.43(a)(2) of Title 23 as follows:

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

There is no other definition of "aggrieved person" in Title 23. It must therefore be assumed that, for the purposes of the Certified Implementation Plan, whenever the term "aggrieved person" is used, the definition found in Section 23.01.043 is applicable.

The County LCP also provides for an appeal procedure for local coastal permits. Section 23.01.042 provides for the appeal of Planning Commission decisions to the Board of Supervisors. Eligible appellants are the applicant and any aggrieved party. Appeals must be filed within fourteen days of the decision.

In order to file a valid appeal, the successful appellant must satisfy both the tests of "standing" and timelines. In this case, the appeal was timely because it was filed within the fourteen day appeal period.

The requirement that the appellant have "standing" was not, however, met. Ms. Parker does not qualify as an "aggrieved" party because she did not testify before the Planning Commission and there is no information that would indicate she was, for good cause, unable to participate.

In conclusion, it appears that the County action on your Coastal Permit is final. Upon receipt of the County's Notice of Final Action in the Santa Cruz Office of the Coastal Commission we will begin our ten working day appeal period of this public works project. (Cal. Administrative Regulations, Title 14, Section 13571, 13572).

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

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

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

Very truly yours,



Diane S. Landry
Legal Counsel

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

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

RECEIVED
OCT 18 1995

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

October 17, 1995

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

EXHIBIT NO. 3	APPLICATION NO. A-3-540-95-70	CALTRANS
---------------	----------------------------------	----------

Dear Steve:

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

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

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

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

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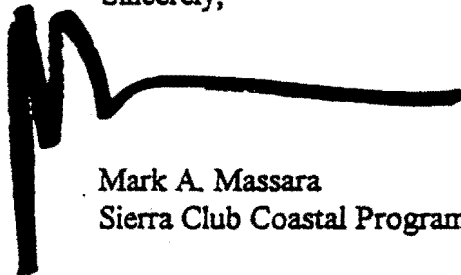
Steve Guiney
October 17, 1995
Page Two

which has become the object of enormous public interest. CalTrans failure to do any environmental analysis whatsoever has handicapped the Commission with respect to your own obligation to insure the resource is protected.

Lastly, the permit fails to remediate or impose penalties or require restoration of CalTrans existing Coastal Act violations at the site. As you are aware, CalTrans has erected "No Parking" signs along approximately one mile of Highway #1 without benefit of a coastal permit, in violation of the Coastal Act. They have threatened further closures and illegal structures if the Commission objects to their current proposal. CalTrans' actions are not supported by the circumstances or compelling interest, are not the least damaging alternative, and whatever CalTrans' hoped to accomplish could most likely have been accomplished without eliminating beach access and parking for over 50 cars. This Coastal Act violation should be resolved in the context of this permit review, or separate enforcement action immediately.

Please let me know when would be a good opportunity to get together. We will notify interested parties of the appeal within the week. Thank you for your assistance.

Sincerely,

A large, bold, handwritten signature in black ink, appearing to be 'M' followed by a long horizontal stroke.

Mark A. Massara
Sierra Club Coastal Program

EXHIBIT 3

A-3-560-95-70

p2

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

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

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

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

Dear Coastal Commission:

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

Section I

Appellants:

(1) Sierra Club

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

Jesse Arnold
Executive Committee, Santa Lucia Chapter, Sierra Club

EXHIBIT 3

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p3

Cambria, California 93428
#805-927-3096

- (2) Deborah L.K. Barker
P.O. Box 223
Cayucos, California 93430
#805-772-7257
- (3) Paul Schiro
San Luis Bay Chapter, Surfrider Foundation
354 Main Street, Ste. C
Pismo Beach, California 93449
#805-773-3500

Section II

Decision Being Appealed

1. Local Government: San Luis Obispo County Board of Supervisors
2. Description of Decision: Issuance of CDP to CalTrans to reconstruct and realign scenic Highway #1 along Pacific Ocean south of Piedras Blancas. Project affects 1.7 miles of roadway and virtually eliminates historic formal and informal public beach access both along the project site and proposes elimination of an existing, formal State Park beach located offsite with 100 parking spaces. Project will also eliminate hundreds of parking spaces along both sides of Hwy #1 and contains no parking analysis or mitigation. In addition, the project fails to account for or evaluate potential adverse environmental impacts to a seasonal elephant seal colony which has been established north of the project site since the project was first proposed.
3. Location of Project: Project is to realign Hwy #1 south of Piedras Blancas, 9 miles north of Cambria, California at P.M.R. 61.3/63.0 north of Arroyo Laguna Creek bridge. APN Nos. 11-22-015 & 11-221-26
4. Description of Decision Being Appealed: Approval with Special Conditions.
5. Decision was made by San Luis Obispo County Board of Supervisors.
6. Date of Decision: September 19, 1995.
7. Local Government File No.: D940106D

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Section III

Identification of Other Interested Parties

- a) Permit Applicant: CalTrans
Attn: Ken Nelson, District Supervisor
Cal. Dept. of Transportation
P.O. Box 8114
San Luis Obispo, California 93403-8114

- b) Other Interested Parties: See Attachment A.

Section IV

Reasons Supporting Appeal

- 1. Impacts to Public Access in Violation of Law
 - a) Coastal Act Chapter 3 (PRC Section 30200 et. seq.)

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

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

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

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

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

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

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PRC Section 30234.5 provides "[T]he economic, commercial and recreational importance of fishing activities shall be recognized and protected."

PRC Section 30252 requires that "[T]he location and amount of new development should maintain and enhance public access to the coast...."

The San Luis Obispo County Local Coastal Zone Land Use Ordinance (SLO LCP) Section 23.04.420 provides "[D]evelopment within the Coastal Zone...shall protect and/or provide coastal access....The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution." (emphasis added)

SLO LCP Section 23.04.420(b) provides further with respect to existing coastal access that "[D]evelopment shall not interfere with public rights of access to the sea where such rights were acquired through use...."

Where new access is required by a development pursuant to SLO LCP Section 23.04.420(c), the SLO LCP requires that such access not be illusory under SLO LCP Section 23.04.420(g), which provides that "[B]efore approval of a land use permit...the method and form of such access guarantee shall be approved by County Counsel, and shall be recorded in this office of the County Recorder, identifying the precise location and area to be set aside for public access."

The CalTrans proposal to realign Highway #1 south of Piedras Blancas violates each and every section cited above.

First, the project will eliminate public access rights acquired by decades of use to the entire 1.7 mile stretch of the project. CalTrans proposes to eliminate the historic access rights along the entire project length, an area where the public has enjoyed unobstructed access for at least five decades, for purposes of hiking, surfing, diving, swimming, picnicking, beach combing and enjoyment of spectacular scenic vistas. The public's use of the area has been well documented since at least 1921, and has been reaffirmed and discussed in Coastal Commission guidance documents and in at least two prior permits affecting the area (4-81-194 and 140-02).

Currently the public enjoys complete access along the project area, with hundreds of parking spaces along the entire length of the project location, on both sides of Highway #1.¹ CalTrans will destroy all existing parking, eliminating hundreds of free parking spaces and access opportunities for low income coastal visitors.

¹ The proposed permit fails to remediate or reconcile an existing illegal development constructed mid-1995 by CalTrans, wherein CalTrans illegally and without a Coastal Development Permit erected "No Parking" signs along approximately 1 mile of Hwy #1 north of the project site, and eliminated approximately 50 parking spaces. To date no enforcement, penalties or mitigation has occurred and the violation continues unabated.

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A-3-SLO-95-70

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

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

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

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

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

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

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

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First, the Commission requires that the access limitations are required by actual public safety need. Here, CalTrans proposes to straighten Hwy #1 in order to "improve safety" and increase the speed limit. Yet, CalTrans only evidence in support of its contention that this road is dangerous is that it is curved. CalTrans fully fails to account for the scenic nature and value of winding, rural, Big Sur Highway #1. How will straightening this one small section of Hwy #1 improve safety along the entire Big Sur coast? Does CalTrans propose to straighten the entire road? By CalTrans own admission, there has not been a single auto accident casualty along the project site since 1985! CalTrans has also failed entirely to consider that people enjoy the slower, winding scenic nature of this highway, particularly the fact that the road in the project location is very close to the ocean. At no other stretch along Hwy #1 can handicapped visitors get so close to water and waves, salt air and smell. Moreover, CalTrans doesn't address the issue of the propensity for increased traffic accidents after the road is straightened and the speed limit is increased.

Yet, even if CalTrans could show a public safety need to realign Hwy #1, they certainly have failed to comply with the Guidelines requirement that the access limitations be narrowly tailored as to time, place and manner. See also, PRC 30214. CalTrans has made no showing that public access limitations are necessary for this project. In fact, it would have been easy for CalTrans to maintain existing access opportunities throughout the entire project location had they been so inclined.

Thus, not only does the project fail to comply with existing law, but it also violates the Commission's specific Guidance for public safety projects.

2. Impacts to Coastal Resources in Violation of Law

PRC Section 30230 provides "[M]arine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance."

PRC Section 30240(a) provides "[E]nvironmentally sensitive habitat shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas."

PRC Section 30240(b) provides "[D]evelopment 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."

The proposal by CalTrans to realign Hwy #1 at Piedras Blancas violates the above referenced resource protection laws. With impunity, CalTrans has failed to conduct an Environmental Impact Report to support the project. Despite a newly established elephant seal colony near the project site, CalTrans still refuses to conduct an environmental analysis for the project. Elephant seals are a unique and rare marine mammal, previously

EXHIBIT 3

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

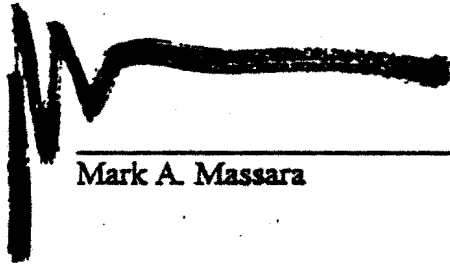
Although the Coastal Commission is not required by law to conduct an EIR itself, the Commission is a "functional equivalent" agency that must produce an environmental analysis of the project's potential for impacts to this ESHA area. Yet the Commission cannot be expected to manufacture such biological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

Section V

Certification

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

Dated: 10/17/95



Mark A. Massara

Dated:

Jesse Arnold

Dated:

Deborah L.K. Barker

Dated:

Paul Schiro

EXHIBIT 3

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

Section V

Certification

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

Dated:

Mark A. Massara

Dated:

Jesse Arnold

Dated: *October 17, 1995*

Deborah L.K. Barker

Deborah L.K. Barker

Dated:

Paul Shiro

EXHIBIT 3

A-3-S6-95-70

p 10

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

Section V

Certification

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

Dated:

Mark A. Massara

Dated:

Oct. 17, 1995

Jesse Arnold
Jesse Arnold

Dated:

Deborah L.K. Baker

Dated:

Paul Shiro

EXHIBIT 3

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Department of Planning and Building San Luis Obispo County

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

DATE: SEPT. 29, 1995

NOTICE OF FINAL COUNTY ACTION ::

SUBJECT: DA40106D DEVELOPMENT PLAN / COASTAL DEVELOPMENT PERMIT
CALTRANS - HIGHWAY ONE RE-ALIGNMENT

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

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

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

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

Sincerely,

Jerry Kehler
Development Review Section
**FINAL LOCAL -
ACTION NOTICE**

BSNOFA.LTR
10/06/93/lj

REFERENCE # 3-SLO-95-130
APPEAL PERIOD 10/5-10/19/95

* LAND USE PERMIT ALREADY STORED.

RECEIVED
OCT 4 1995

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

EXHIBIT NO. 4
APPLICATION NO. A-3-SLO-95-70
CALTRANS

COUNTY OF SAN LUIS OBISPO

LAND USE AND COASTAL DEVELOPMENT PERMIT

PERMIT NO. D940106D



This Land Use/Coastal Development Permit allows the approved use described below to be established on the site referenced by the Assessor Parcel Number listed below. Any attached conditions of approval must be completed by the applicant as set forth by the condition. In addition to the conditions of approval, the approved use must also satisfy all applicable provisions of the Coastal Zone Land Use Ordinance and the Building and Construction Ordinance.

APPROVAL GRANTED
APPROVED USE:
1.7 MILE REALIGNMENT OF HIGHWAY 1 AT P.M. R 61.3/630 INCLUDING RELATED PUBLIC COASTAL ACCESS PER CONDITIONS OF APPROVAL AND ENVIRONMENTAL MITIGATION.
ASSESSOR PARCEL NUMBER(S):
11-221-015 & 11-221-26

ISSUED TO:
CALTRANS

CONDITIONS ATTACHED: YES NO
FINDINGS ATTACHED: YES NO

EFFECTIVE DATE
Unless an appeal is filed, this approval will become effective on OCTOBER 16, 1995, and will be valid for two years. If an appeal is filed as provided by Section 23.01.042 and 23.01.043 of the Coastal Zone Land Use Ordinance, this approval may be affirmed, affirmed in part, or reversed. After two years the approval will expire and become void unless one of the following occurs:

a. The project has been completed.
b. Work has progressed beyond the completion of structural foundations.
c. A written extension request has been filed with the Planning Department prior to the date of expiration and has been granted.

NOTE: THIS IS NOT A BUILDING PERMIT

Applicant must sign and accept conditions or permit is void.
Mileen F. Fox 9/29/95
Signature Date
DEPARTMENT OF PLANNING AND BUILDING VERIFICATION.
BY: [Signature] DATE 9/29/95

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A-3-50-95-7
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EXHIBIT A
FINDINGS D940106D

ENVIRONMENTAL FINDINGS

I. BACKGROUND/PROJECT DESCRIPTION

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

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

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

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

II. THE RECORD

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

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

EXHIBIT 4
A-3-510-95-70
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Commission during the public hearing on the project.

- B. The Negative Declaration/Finding of No Significant Impact (ND/FONSI) prepared and circulated in 1992.
- C. Matters of common knowledge to the Commission which it considers, such as:
 - a. The County General Plan, land use maps and elements thereof.
 - b. The text of the Land Use Element.
 - c. The County Code of San Luis Obispo.
 - d. The County and State Environmental Quality Act Guidelines.
 - e. Other formally adopted policies and ordinances.

III. FINDINGS FOR IMPACTS IDENTIFIED AS SIGNIFICANT (But Mitigable)

A. TOPOGRAPHIC ALTERATION/GROUND DISTURBANCE

- 1. Impacts - Refer to ND/FONSI page 10.
- 2. Mitigation - Temporary and permanent erosion control measures in these areas should prevent significant soil runoff and/or sedimentation.
- 3. Finding - Insignificant
- 4. Supportive Evidence - No significant impacts related to erosion or sedimentation should occur pursuant to erosion control measures (including netting, straw punching, and seeding) being implemented as soon as possible after grading activities have concluded.

B. STREAM MODIFICATION/ALTERATION

- 1. ~~Impacts - Refer to ND/FONSI page 10.~~
- 2. Mitigation - All potentially significant impacts occur in the Arroyo Escondido Creek area. The streambed to the east will not have to be realigned and will be fenced off and designed as an Environmentally Sensitive Area (ESA) during construction. All fill slopes will be vegetated to prevent erosion and sediment impacts to the creek.
- 3. Finding - Insignificant

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

C. WETLANDS

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

D. CULTURAL RESOURCES

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

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with Native American advisors. A Data Recovery plan has been reviewed and approved by the State Office of Historic Preservation and the Advisory Council on Historic Preservation. If additional cultural remains are unearthed during project construction, work will be stopped in the location of the find until a qualified archaeologist can evaluate the find and recommend appropriate mitigation.

3. Finding - Insignificant
4. Supportive Evidence - No significant cultural resource impacts are anticipated based on the implementation and monitoring of mitigation measures. Other realignment alternatives resulted in more sites being impacted by the project. The proposed alignment is the least damaging of the alternatives.

IV. FINDINGS FOR IMPACTS IDENTIFIED LESS THAN SIGNIFICANT

A. VEGETATION REMOVAL/SENSITIVE PLANTS

1. Impacts - Refer to ND/FONSI page 11.
2. Mitigation - All disturbed areas including fill slopes and cut banks, as well as the abandoned portion of the old alignment, will be revegetated with native species (this should provide erosion control and result in a no net loss in plant numbers). Pre-construction surveys will be conducted by a Caltrans biologist to determine the presence of sensitive plant species (e.g. rare Compact cobweb thistle) within the construction zone. Any specimens located will be transplanted to suitable area and monitored for success. Seeds will be collected from plants within and adjacent to State right-of-way and used to revegetate disturbed areas after construction.
3. Finding - Insignificant
4. Supportive Evidence - Realignment of the existing road will allow the existing populations of the cobweb thistle an opportunity to spread to the old roadway alignment area. Any sensitive plants identified prior to construction will be relocated and monitored until successfully established.

B. BIOLOGICAL RESOURCES (Wildlife)

1. Impacts - Refer to ND/FONSI page 11.

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

C. AIR QUALITY

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

For Nox and ROG (BACT) Mitigation Measures

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

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For PM-10 (BACT) Mitigation Measures

- a. Reduce the amount of the disturbed area.
- b. Use water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceeded 15 mph.
- c. All dirt stockpile areas should be sprayed daily as needed.
- d. Permanent dust control identified in the approved project revegetation and landscape plans should be implemented as soon as possible following completion of any soil disturbing activities.
- e. Exposed ground areas that are planned to be reworked at a date greater than one month after initial grading should be sown with fast-growing native grass seed and watered until vegetation is established.
- f. All disturbed areas not subject to revegetation should be stabilized utilizing approved soil binders, jute netting or other methods approved in advance by the APCD.
- g. 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.
- h. 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.

3. Finding - Insignificant

4. Supportive Evidence - The San Luis Obispo Air Pollution Control District has reviewed the project design and prescribed mitigation to

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

D. SCENIC RESOURCES

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

V. FINDINGS FOR IMPACTS IDENTIFIED AS SIGNIFICANT AND UNAVOIDABLE

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

VI. STATEMENT OF OVERRIDING CONSIDERATIONS

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

PLANNING DIVISION FINDINGS

VII. LOCAL COASTAL PLAN/ORDINANCE AND GENERAL PLAN FINDINGS

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

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permissible uses within the Agriculture land use category. The use is consistent with other elements of the general plan.

- B. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- C. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the realignment project will include mitigation for coastal resources and environmental protection, and the project will be designed by registered civil engineers to ensure safe design and will provide improvements for storm water drainage.
- D. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is similar to the existing roadway and the site is located in a rural area and surrounding private land is used for agricultural purposes.
- E. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the no additional traffic is associated the realignment project.
- F. The project will not adversely impact the view of the ocean from Highway One or other public view corridors, because the realigned roadbed will road be at the existing elevation or somewhat higher in elevation so that public views from the highway will be enhanced, not reduced.
- G. The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design, because the project includes ~~restoration~~ and ~~measures to protect coastal~~ environmental resources.
- H. Natural features and topography have been considered in the design and siting of all proposed physical improvements, and disturbance to those areas will be avoided where feasible.
- I. Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified resource.

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

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EXHIBIT B
CONDITIONS OF APPROVAL D940106D

Approved Development

1. This approval authorizes a 1.7 mile realignment project for Highway One at P.M. R 61.3/63.0. north of Arroyo Laguna Creek bridge and south of Point Piedras Blancas, north of San Simeon. The realignment will be contained within a 100 foot right-of-way/easement except as necessary for fill slopes. Remnant road sections will be removed and restored and disturbed areas shall be revegetated.

Coastal Resource Protection and Enhancement/Environmental Mitigation

2. The project shall include the following measures to comply with the Local Coastal Plan and implement the mitigation measures of the environmental document.

- a. Topographic Alteration/Ground Disturbance

Mitigation - Temporary and permanent erosion control measures in these areas should prevent significant soil runoff and/or sedimentation.

- b. Stream Modification/Alteration

Mitigation - All potentially significant impacts occur in the Arroyo Escondido Creek area. The streambed to the east will not have to be realigned and will be fenced off and designed as an Environmentally Sensitive Area (ESA) during construction. All fill slopes will be vegetated to prevent erosion and sediment impacts to the creek.

- c. Wetlands

Mitigation - Adjacent wetlands within the project boundaries will be delineated on the plans as Environmentally Sensitive Areas (ESA) and fenced prior to construction to preclude inadvertent impacts during construction. Caltrans will acquire additional right-of-way immediately upstream from the new culverts and vegetate the grassy slopes with native riparian species. This enhancement should increase wildlife uses. In addition, Caltrans is in the process of negotiating a conservation easement to create new, functional marshes adjacent to the existing wetlands.

- d. Cultural Resources

Mitigation - All archaeological resources (referred to as sites) identified

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

e. Vegetation Removal/Sensitive Plants

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

f. Biological Resources (Wildlife)

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

g. Air Quality

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

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reduce the predicted air quality impacts, and shall be made part of the Special Provisions for the construction project:

For Nox and ROG (BACT) Mitigation Measures

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

For PM-10 (BACT) Mitigation Measures

- 7) Reduce the amount of the disturbed area.
- 8) Use water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceeded 15 mph.
- 9) All dirt stockpile areas should be sprayed daily as needed.
- 10) Permanent dust control identified in the approved project revegetation and landscape plans should be implemented as soon as possible following completion of any soil disturbing activities.
- 11) Exposed ground areas that are planned to be reworked at a date greater than one month after initial grading should be sown with fast-growing native grass seed and watered until vegetation is established.
- 12) All disturbed areas not subject to revegetation should be stabilized

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

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

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

h. Scenic Resources

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

Public Access

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

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AMENDED

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.

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PROJECT LOCATION

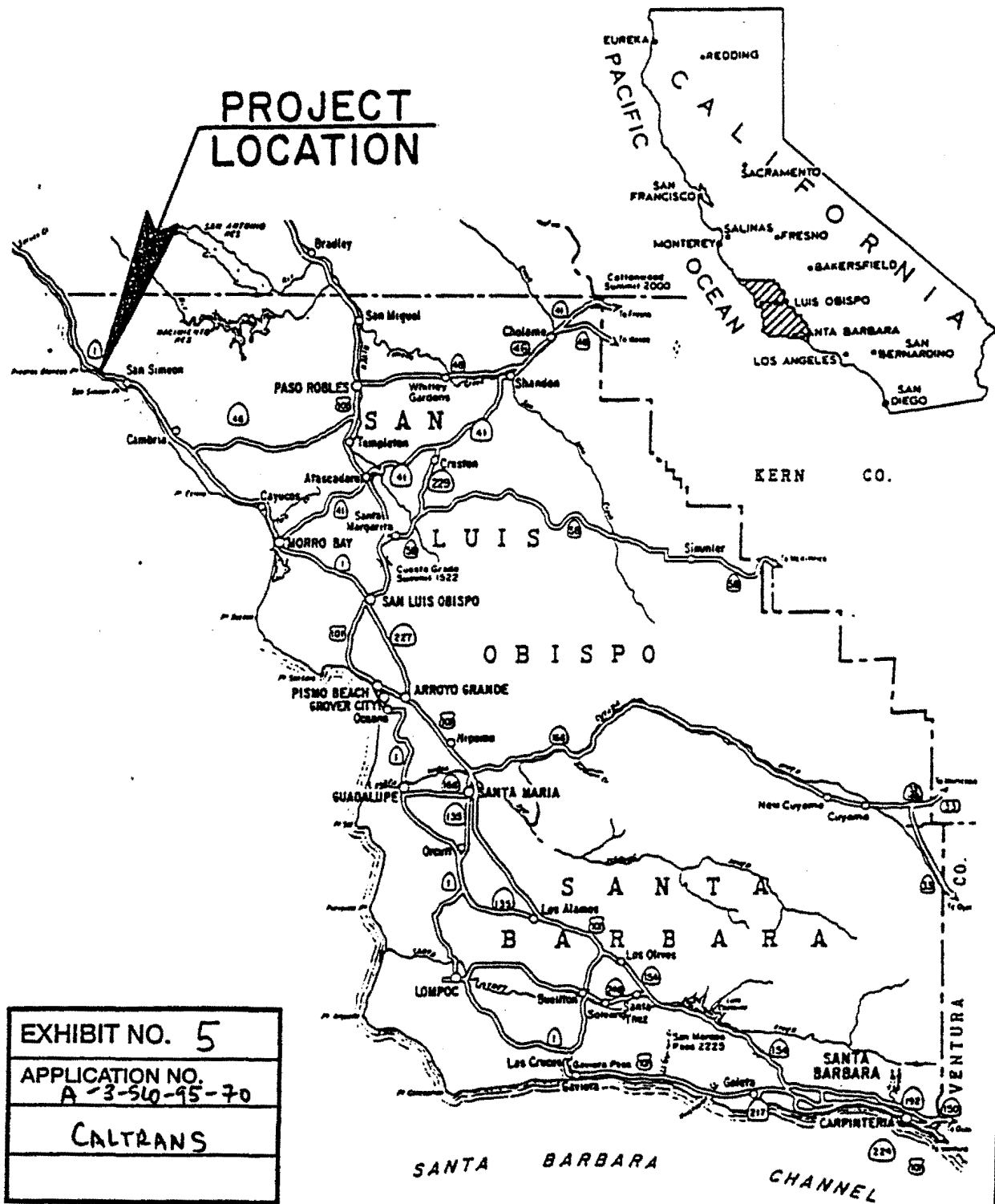


EXHIBIT NO. 5
APPLICATION NO. A-3-56-95-70
CALTRANS

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



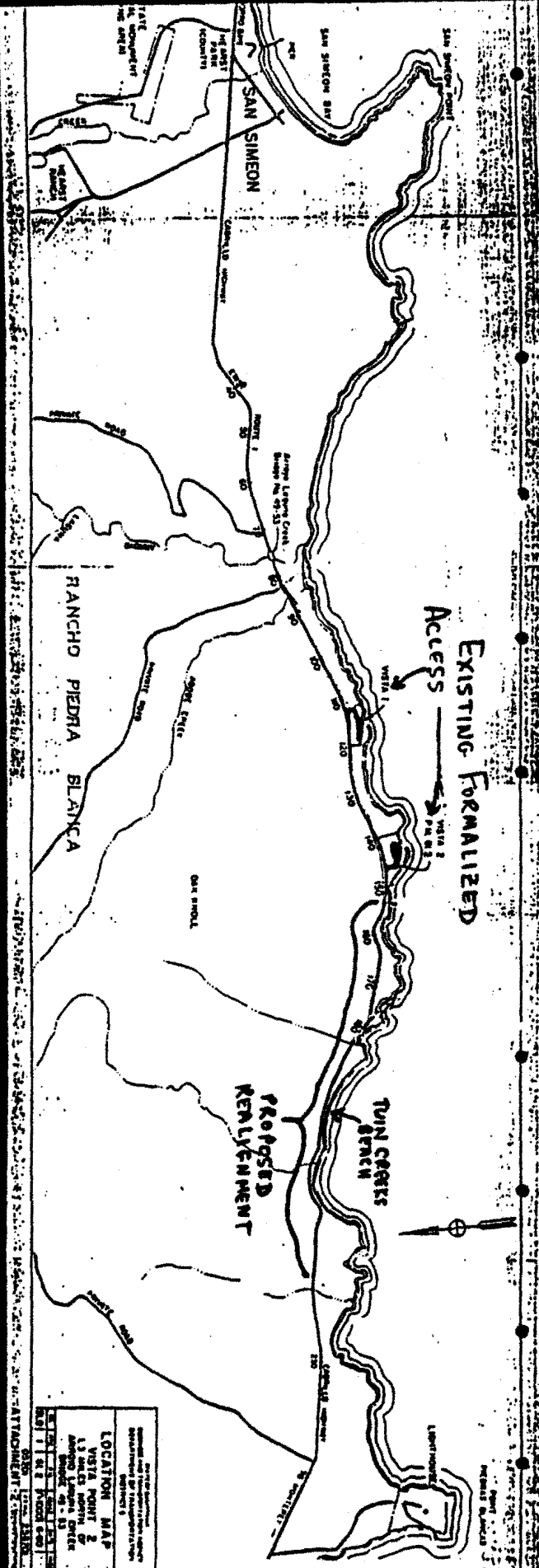
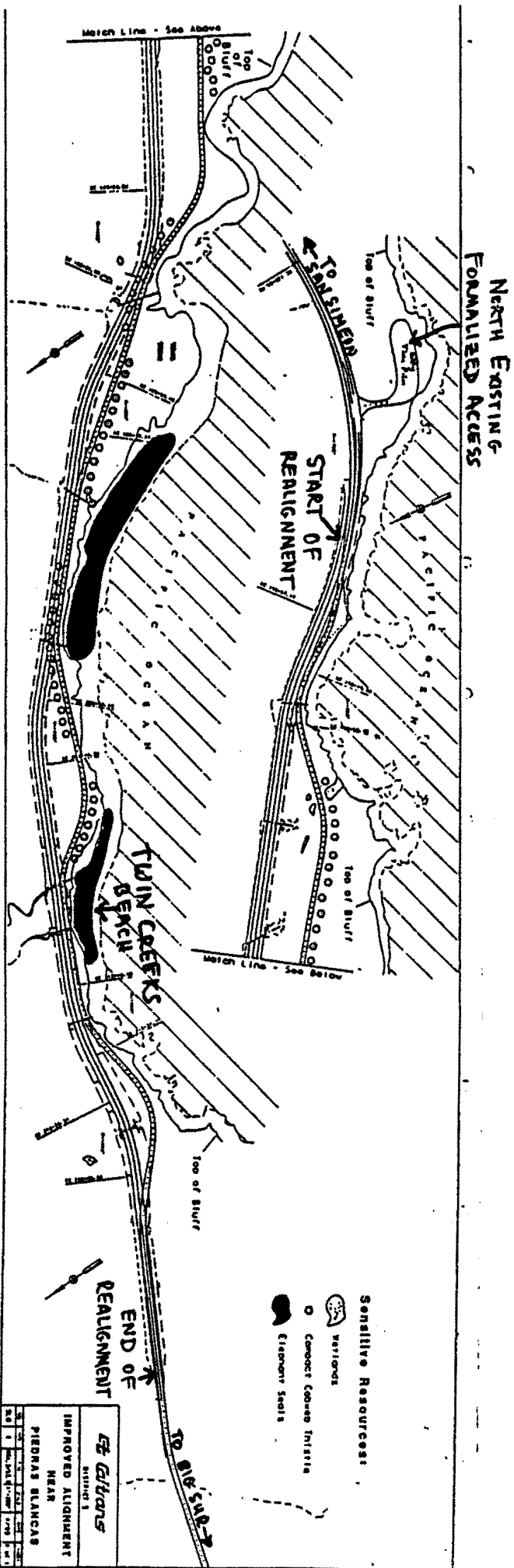


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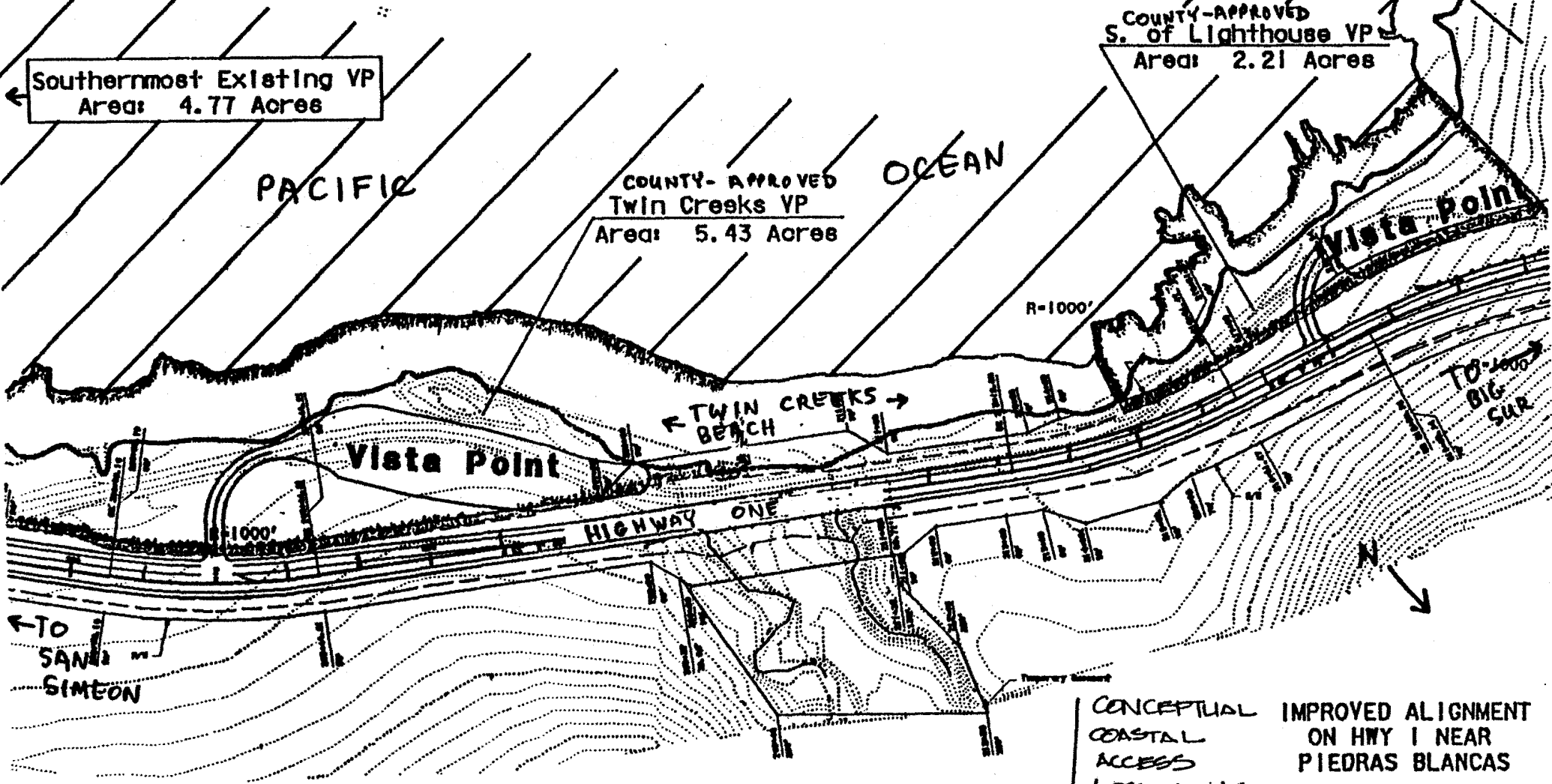
NORTH EXISTING
FORMALIZED ACCESS

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

Sensitive Resources:
 WETLANDS
 Compact Coastal Intertidal
 Euphorbia Shoals

Caltrans
 IMPROVED ALIGNMENT
 NEAR
 PIEDRAS BLANCAS
 DISTRICT 1
 EXHIBIT B

EXHIBIT NO. 7
APPLICATION NO. A-3-SLO-95-70
CALTANS



DETAIL

CONCEPTUAL IMPROVED ALIGNMENT
 COASTAL ACCESS
 LOCATIONS
 APPROVED 8/5 9/19

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

yr	Spring	Fall
90	150
91	400	650
92	1,350	1,150
93	2,650	1,300
94	3,050	1,550
95	3,850	2,150

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

up to born late Dec to late Jan

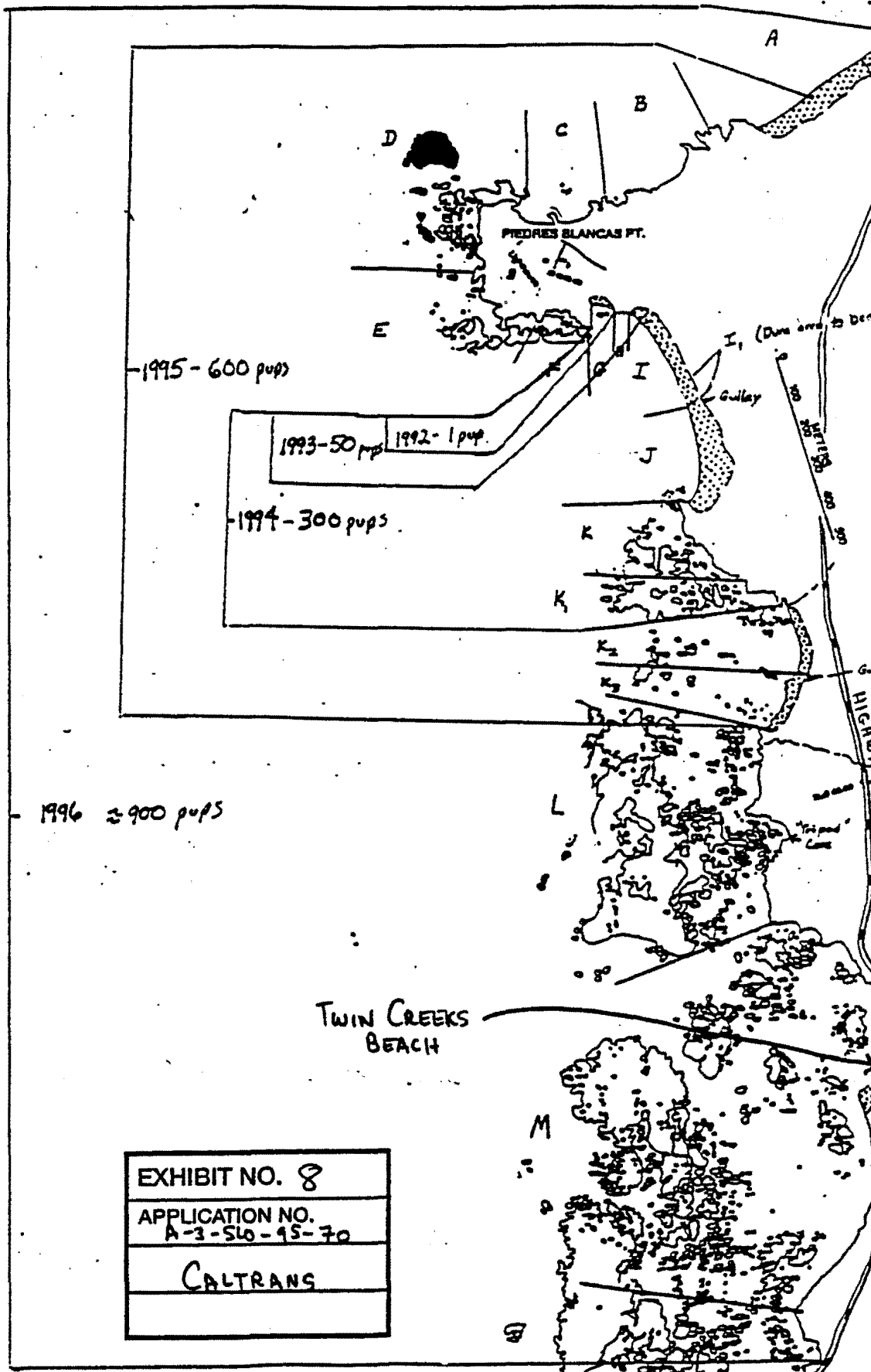


EXHIBIT NO. 8
APPLICATION NO. A-3-SLO-95-70
CALTRANS

R. Jameson and B. Hotfield, NBS unpublished data
as provided by Norm Scott 2/9/96

Piedras Blancas
DRAFT OUTLINE
Long-term Management Strategy
Elephant Seals

I. Need for a Plan

The growing elephant seal population has resulted in their southward migration along our coast. Seeking sandy beaches for haul out areas, the seals have taken to the Piedras Blancas area in recent years. Where the seals are visible from Highway 1, there is an increasing potential for conflict between public safety, resource protection and access to public lands (over private property). In an effort to minimize conflicts, it is necessary to develop a plan that would provide for public safety while protecting the resources held in the public trust.

A proposal to realign a 1.3-mile section of Highway 1 in the vicinity of the coastline where seals are hauling out has brought even more focus on the issue. Direct access over private property from the highway to a beach popular with recreationists, has now also become popular with the elephant seals. Physical conditions for people accessing this beach, known as "Twin Creeks" would change slightly with the realignment project. During consideration of the coastal development permit for the project, much discussion ensued on whether the realignment project should include formalizing this access through public dedication. Due in large part to the heavy use of this beach by the elephant seals, it is inappropriate to site a public access point absent any plan to provide for long-term management and protection of these marine mammals and for public safety.

II. Purpose of the Plan

The purpose of the plan is to minimize conflicts between public safety, protection of marine mammals and other sensitive coastal resources and public access. The plan would seek a balance, giving the highest regard to public safety and protection of the sensitive coastal resources, in particular, the marine mammals.

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CALTRANS

III. Elements of the Plan

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

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

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

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

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

National Marine Sanctuary	CA Resources Agency
National Marine Fisheries Service	CA Coastal Commission
National Biological Service	CA Coastal Conservancy
	CA Dept of Fish & Game
County of San Luis Obispo	CA Dept of Parks & Recreation
Community members/Recreationists	CA Dept of Transportation
Hearst Corporation (property owner)	CA Highway Patrol

Caltrans' role is to initiate the first phase of discussion toward developing a long-term management plan. After this initial coordination, it is expected that an agency with appropriate jurisdiction and authority will take the lead to fully develop and carry out the management plan. Caltrans will continue to participate in the process consistent with its role as a transportation agency and work to facilitate improvements related to the safe operation of Highway 1.

Similarly, other agencies' roles would be established consistent with their respective legislated responsibilities and authority.

V. **Timeframe** Ultimately, the timeframe would be developed by the working group. The group would need to establish a schedule for its work sessions. A possible scenario would involve 4-6 months to establish respective roles and responsibilities in developing the plan and to actually develop its scope. Necessary following development of the plan is an implementation strategy. Throughout these steps, the subject of funding the various efforts must also be considered (no specific funding sources have been identified).

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