

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 4/8-11/97
Commission Action:



Thila

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Ventura

DECISION: Approval with Conditions

APPEAL NO.: A-4-96-318 (formerly A-4-VNT-016)

APPLICANT: California Department of Transportation (Caltrans)

PROJECT LOCATION: .7 miles of Highway 150 along Rincon Creek bordered on the inland side by the Coastal Zone boundary, Ventura County.

PROJECT DESCRIPTION: Replacement (straightening) of 0.7 miles of highway, rebuilding of the northernmost bridge (51-141) in the existing location and moving and replacement of a second, southernmost bridge (51-140) sixty feet south of the existing location. Both bridges and the relocated roadway and right-of-way cross Rincon Creek, which defines the boundary between Ventura and Santa Barbara Counties. The project is confined to the Ventura County portions of each bridge and the related highway improvements. Permanent loss of wetlands is .03 acres in Ventura County.

APPELLANT: Geoffrey Latham

SUBSTANTIVE FILE DOCUMENTS: County of Ventura certified Local Coastal Program; County of Ventura administrative record for coastal development permit CUP-4942 (Caltrans); Coastal Commission Consistency Determination CC 7-95 (Caltrans); "Statewide Interpretive Guidelines for Wetlands and other Wet Environmentally Sensitive Habitats," California Coastal Commission, February 4, 1981; Coastal development permits: 1-96-08, Caltrans, Little River; 4-95-252, Department of Parks and Recreation, Gaviota State Beach.

STAFF NOTE: A separate coastal development permit for the portion of the Caltrans project in Santa Barbara County is in-process and may be subject to appeal after final local action and notification to the Coastal Commission. The timing and circumstances of these permit reviews prevent Coastal Commission consideration of both projects on the same agenda at this time.

SUMMARY OF STAFF RECOMMENDATION:

The appellant contends that the project is inconsistent with the Ventura County Local Coastal Program because the development would have a significant impact on the Rincon Creek corridor which is an environmentally sensitive habitat area (ESHA). The appellant cites two sections of the Local Coastal Program zoning ordinance: Section 8175-5.9 - Public Works Facilities and 8178-2.4.d - Specific Standards Wetlands.

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed because the project as submitted is consistent with the standards set forth in the certified local coastal program and the public access policies of the Coastal Act.

Should the Commission find a substantial issue exists and open the de novo hearing, staff recommends the Commission continue the de novo hearing to a subsequent meeting.

I. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act (Section 30603) provides for appeals to the Coastal Commission of certain local government actions on Coastal Development Permits. Development approved by counties and cities may be appealed if they are: (1) 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 any beach or of the mean high-tide line of the sea where there is no beach, whichever is the greater distance; (2) located within 100 feet of any wetland, estuary, or stream; (3) located in a sensitive coastal resource area. Furthermore, development approved by a County may be appealed if it is not designated as a principal permitted use in zoning ordinance or zoning district map, where located outside the designated appeal areas.

For development approved by the local government as noted above, the grounds for the appeal are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires that the Commission hear an appeal unless the Commission determines that no substantial issue is raised with respect to the grounds on which the appeal has been filed pursuant to PRC Section 30603. If the staff recommends "substantial issue" and no Commissioners object, the Commission may proceed directly to a de novo public hearing on substantial issue.

If the staff recommends "no substantial issue", or the Commission decides to hear arguments and vote on substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. It takes a majority of the Commissioners present to find that no substantial issue is raised.

Should the Commission find that substantial issue does exist, the Commission will proceed to a full public hearing on the merits of the project at the same time or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test of the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program pursuant to Section 30604(b) of the Coastal Act.

In addition, PRC Section 30604(c) of the Coastal Act requires that, for development between the first public road and the sea, a finding must be made by the approving agency, whether the local government or Coastal Commission on appeal, that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act.

In summary, with respect to public access and recreation questions, the Commission is required not only to consider the certified LCP, but also Chapter 3 policies when conducting a de novo hearing on a project which has been appealed. Finally, the only persons qualified to testify before the Commission during the substantial issue stage of the hearing are the applicant, persons who opposed the application before the local government (or their representatives), and the local government; all other persons may submit testimony in writing to the Commission or Executive Director. Any person may testify during the de novo stage of an appeal.

II. LOCAL GOVERNMENT ACTION

At their meeting of November 5, 1996, the Ventura County Board of Supervisors approved the request of Caltrans to replace two bridges and realign Highway 150 in Ventura County. The Board action was on an appeal of a denial of the project, CUP-4942 (Caltrans), by the County Planning Commission.

In addition, in the letter to Caltrans related to this decision, the Board encouraged the agency to pursue funds to modify the culvert under the 101 Freeway downstream to remove barriers and restore historical patterns of fish migration. The culvert located downstream was not part of this project.

Local government approval was subject to a number of conditions. The conditions of approval included:

- o County approval of landscaping and irrigation plans, including preparation and implementation of a "tree and creek protection and replacement program, prepared by an arborist/biologist".
- o Incorporation of mitigation found in the biological assessment prepared by Caltrans.
- o Requirements for signs, light standards and undergrounding of utilities.

Numerous mitigation measures were incorporated by reference from the FEIR (pp. 35 - 40) as part of County approval including: revegetation of all disturbed areas and other areas; creation of new wetland areas; controls on construction practices; and protection of rare, endangered or otherwise sensitive species.

III. APPELLANTS CONTENTIONS

The appellant contends that the project is inconsistent with the Ventura County Local Coastal Program because the development would have a significant impact on the Rincon Creek corridor which is an environmentally sensitive habitat area (ESHA). (See Exhibit 1) The appellant cites two sections of the Local Coastal Program zoning ordinance: Section 8175-5.9 - Public Works Facilities and 8178-2.4.d - Specific Standards Wetlands.

The appellant also cites an attached letter to the Board of Supervisors dated November 1, 1996 which makes further contentions as to the inadequacy of County consideration of the permit prior to Board consideration and action. This letter is not part of this appeal because it is addressed to the Board of Supervisors, predates their final action on the project, and does not address the project as finally approved and submitted for Coastal Commission review and appeal processing.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Public Resource Code Section 30603.

MOTION: I move that the Commission determine that Appeal No. A-4-96-318 raises NO Substantial issue with respect to the grounds on which the appeal has been filed.

A majority of Commissioners present is required to pass the motion. Staff recommends a YES vote on the above motion which would result in the finding of no substantial issue and the adoption of following findings and declarations.

V. FINDINGS AND DECLARATIONS ON SUBSTANTIAL ISSUE

The Commission finds and declares as follows:

A. Project Description and Background.

1. Proposed Project

The proposed project as approved by the County of Ventura includes replacement (straightening) of 0.7 miles of highway [total is for both Counties] and rebuilding of two bridges. (The northernmost bridge (51-141) will be replaced but remain in the same location. The second, southernmost bridge (51-140) will be replaced and the location moved to sixty feet south of the existing location. Both bridges and the roadway cross Rincon Creek, which defines the boundary between Ventura and Santa Barbara Counties. The proposed project also includes fill for slope protection and fish enhancement facilities in riparian wetland habitat. The project includes work in Santa Barbara County for reconfiguration of the Highway 150/192 intersection, which is not subject to this appeal.

The project and appeal is confined to the Ventura County portions of each bridge and the related highway improvements. As discussed in greater detail below, the full project in both Santa Barbara and Ventura Counties was subject to Federal consistency review by the Coastal Commission two years' ago.

Route 150 is a major link to coastal and inland cities when Highway 101 has been closed as it has been in recent years, by flooding of the Ventura River, landslides, or hazardous material spills. The 101 Freeway runs along the immediate coast between a ridge of coastal hills and the beach between Rincon Point and the City of Ventura.

Wetlands and riparian corridors constitute Environmentally Sensitive Habitat Areas (ESHAs). For this project, the wetland was defined as Rincon Creek including of the entire width of the bottom of the stream channel extending approximately two feet up the sides of the stream banks. In both Counties, a total of approximately 0.15 acres of aquatic emergent and scrub-shrub wetlands would be filled with a combination of rock, sand, and gravel, of which 0.06 acres would constitute permanent fill and the remaining 0.09 acres would constitute temporary fill. According to Caltrans (personal communication), since the area affected by the project in the stream is evenly divided between both Counties, the permanent loss of wetland is .03 acres based on the centerline of the stream as the County boundary.

Because of the sensitive nature of the project involving an ESHA, especially in light of past Coastal Commission decisions, consideration of project alternatives as part of local review is necessary to ensure conformance with the certified LCP. A number of alignment alternatives were considered as part of environmental review, including relinquishment of the roadway from the State Highway system, widening of the existing bridges, and abandonment of the project altogether. No alternative bridge locations were available that would alleviate the need for wetlands-encroaching slope protection.

Fill was necessary because, even though the abutments of the new single span (no center pier) bridges would not be placed within the wetlands, they did require protection from potential erosion caused by both ordinary and high-water levels. The fisheries restoration work that was part of the project also required fill i.e. placement of rock weirs perpendicular to the creek's flow line.

On the stream slopes, protection alternatives considered included the rock slope protection currently proposed, concrete slope paving, sacked concrete, gabion wire baskets, interlocking concrete pavers and bioengineered slope protection (i.e., the use of natural living materials such as brush or willow cuttings for stabilization). The bioengineered methods were shown through the local review process to have not proven durability and effectiveness under the peak "flash-flood" nature of southern California streams such as Rincon Creek. Rock slope protection was the option found most compatible with the proposed fisheries restoration work.

2. Federal Consistency Determination

At their meeting of March 8, 1995 the Coastal Commission approved a consistency determination for the whole project in both Counties. Federal consistency review under the Coastal Zone Management Act (CZMA) was triggered

by Caltrans' application for both Federal Highway Administration (FHWA) funding and a Section 404 permit from the U.S. Army Corps of Engineers. Because the project at that time did not contain all detailed, site-specific information, the consistency review focused on the preferred alternative location and major design features of the project, and, to the extent then anticipated, the project's impacts on coastal zone resources.

For subject consistency certification the standard of review was Chapter 3 of the Coastal Act. The Commission found that the project was consistent with Coastal Act wetland policies (Section 30233) as an allowable use as an incidental public service consistent with the Commission's wetland guidelines allowing fill for highways where no capacity increases are proposed, where it is the least environmentally damaging feasible alternative, and where adequate mitigation is provided. The Commission found that the project improved habitat resources by: (1) increasing the extent of buffer area available between the road and the creek; (2) incorporating a design that would improve fish passage, consistent with recommendations of the Department of Fish and Game (CDFG); and (3) including commitments for partial restoration of downstream fish blockage (at Highway 101). The findings indicate, further, that most of the project's agricultural impacts would be mitigated, and that the project would, by decreasing public safety hazards, improve public bicycle and vehicular access to the coast.

As noted in the consistency determination staff report, the staff would normally combine the Commission's consistency and permit reviews in order to expedite processing and avoid duplicative hearings. However, in that case choices among basic project alternatives had to be made early as required by the federal funding agency prior to the final acceptance of the Environmental Impact Statement (EIS) and award of funds.

B. Substantial Issue Analysis.

1. Conformance to Land Use Plan Standards

a. Allowed Land Use

The proposed development is an area designated Agriculture in the LUP. This designation is intended to identify and preserve agricultural land for cultivation of plant crops and raising of animals. The proposed development is, however, an allowed land use under the Agriculture designation in the certified LCP Zoning Ordinance, which permits non-County initiated public works facilities. The LUP allows public works such as a roads and bridges if designed to serve potential population and mitigate impacts on agriculture (LUP, p. 58). The County has made findings relative to location of the project in an agricultural area and found that the proposed project as conditioned is consistent with the LUP policies for agriculture. The appellant raises no contention as to the unsuitability of the allowed use according to the Land Use Map component of the certified LCP.

b. North Coast Creek Corridor Policies

The appellant's contention is that the project is inconsistent with the LCP because of the impact on the Rincon Creek corridor ESHA. The appellant does not identify any specific policy or standards relative to the corridor in the certified LUP with which the project would be inconsistent.

County findings area are based on the objectives and policies for the North Coast, one of three segments of the coastline of Ventura County. Each segment is designed to be a self-contained set of background material, objectives, policies, and standards for that portion of the coast.

The North Coast is the area between Rincon Point (Santa Barbara/Ventura County line) and the Ventura River. The certified LUP North Coast section (p. 28) notes that Rincon Creek is the only perennial riparian corridor on the North Coast. The County staff analysis notes that the project is consistent with the LUP provision for maintenance of native vegetation in creek corridors to help diffuse floods and runoff, minimize soil erosion, and retard sedimentation. The objective stated in the LUP (p. 28) for such areas is:

Objective:

To maintain creek corridors in as natural a state as possible while still accommodating the needs of public health and safety.

Policies to carry out this objective (LUP, p. 28), cited in the County LUP consistency analysis for this project, include [Note: the following numbers are the same as used by the County, LUP, p. 28]:

1. All projects on land either in a stream or creek corridor or within 100 feet of such corridor (buffer area), shall be sited and designed to prevent impacts which would significantly degrade riparian habitats, and shall be compatible with the continuance of such habitats.
2. Substantial alterations (channelizations, dams, etc.) to river, stream, or creek corridors are limited to:
 - a) necessary water supply projects;
 - b) flood control projects where no other method for protecting existing structures in the flood plain is feasible, and where such protection is necessary for public safety or to protect existing development;
 - c) developments where the primary function is the improvement of fish and wildlife habitat.
3. Projects allowed per the above policies will incorporate the best mitigation measures feasible.
4. Criteria set forth in the adopted Coastal Commission's "Statewide Interpretive Guidelines for Wetlands and other Environmentally Sensitive Wet Habitats" will be used in evaluating projects proposed within the Rincon Creek corridor.

c. Conformance to North Coast Creek Corridor Policies

The proposed project involves potential permanent and temporary impacts to wetlands. The question is if the appeal has raised a substantial issue relative to County-approved use and their evaluation and mitigation of any impacts.

In designing the project, Caltrans consulted with the California Department of Fish and Game (DFG) and Federal Fish and Wildlife Service (FWS) as shown in the County administrative record i.e. the "Endangered Species Biological Assessment", Appendix in Caltrans' EIR/S. This included a conceptual mitigation plan for the various habitat, wetland, and tree removal impacts, as well as a plan to improve fish passage for steelhead rainbow trout (Oncorhynchus mykiss), an anadromous species which is a Federal candidate endangered species and a State Species of Special Concern. Caltrans agreed that these measures will be incorporated into the final project "Plans and Special Provisions" for project construction including placing a series of rock weirs or check dams perpendicular to the flow line, and raising the streambed gradient by backfilling the areas between weirs with clean sand and gravel and topping that with material removed from the streambed during bridge construction. The Fish and Wildlife Service (FWS) stated that the proposed mitigation measures appear "adequate and appropriate," and that the proposed fish passage facilities "should greatly enhance the potential restoration of the steelhead run in Rincon Creek."

Caltrans discovered during review of the project that the yellow warbler (Dendroica petechia brewsteri), a California Species of Special Concern, was using the project area riparian habitat for breeding purposes. This resulted in highway alignment to replace Bridge 51-141 at the current location with a slight skew which moved the alignment easterly of the bridge through the middle of the adjacent avocado orchard. This impact is on agricultural land located in Santa Barbara County is not subject to this appeal, however. Further, Caltrans agreed that removal of any trees will not be undertaken during nesting season (15 April/31 July).

The administrative record indicates consideration of the Red-legged frog (Rana aurora draytonii) in the project design and County conditions of approval. The frog was recently listed as a threatened species (May 23, 1996). According to the Fish and Wildlife Service (personal communication) their internal list does not indicate the presence of this species in Rincon Creek, although it still could exist there. Caltrans has noted in the environmental document that they will annually survey for the presence of this species and also noted during the local hearings that they will relocate any frogs that are found as part of construction procedures.

In summary, because of the measures undertaken by the County which are consistent with the above Rincon Creek Corridor policies in the certified LCP, the appeal does not raise a substantial issue relative to the species noted.

Construction impacts were not found substantial by the County under the LUP policies for North Coast creek corridors. As described above, the project, in both Counties, involves temporary impacts to 0.09 acres of riparian wetlands which will be affected by construction activities and will be restored. Construction impacts are temporary, of short duration, are incidental to the replacement of the bridge. As such the Commission must conclude that such impacts do not constitute a substantial issue because there is consistency with the Rincon Creek Corridor policies in the certified LCP.

The permanent loss of 0.03 acres of wetlands, although a small amount of approximately 1300 sq. ft., deserves further consideration. In past Coastal Commission actions, including the Consistency determination for this project, the Commission has recognized that some roads and bridges will require repair,

maintenance, or improvements that require wetland fill. The Commission's Wetland Guidelines, incorporated as an appendix to the certified LUP, allow for fill associated with road work, if that work does not result in an increase in traffic capacity of the road. According to the Caltrans, the proposed project will not increase the capacity of the road and the County found that the project was necessary to maintain traffic capacity where there is no alternative. In summary, the proposed project would not add additional lanes, it would only upgrade this section of highway to current standards from those in use when the highway was constructed in 1927.

The County findings further note that all policies on creek corridors are applicable to the proposed project and that the project is consistent with the above four policies for the following reasons:

1. Policy 1 -- Siting and design/continuation of wetland: The siting and design of the project as conditioned by the County, described in preceding sections, does conform to Policy 1 (above) because all feasible mitigation measures have been utilized and impacts on riparian habitats have been mitigated. The project once completed will be compatible with the continuance of such habitats through the mechanisms included in the project design or imposed by the County through their conditional use permit.

The County found that Caltrans has selected the alternative entailing the least amount of wetland fill and mitigated the small amount of wetland fill. To mitigate the loss of wetland habitat, Caltrans committed to at least a 3:1 mitigation ratio in terms of area to be restored and is 10:1 in terms of tree replacement. Caltrans indicates that mitigation for the 0.06 acre in lost wetlands would occur through, for both Counties, the creation of approximately 2000 square feet of wetlands and the enhancement of approximately 1600 square feet of degraded wetlands. A more detailed discussion of mitigation measures is found in 3. (below).

The total permanent wetland loss, as previously noted, would be approximately .03 acres in Ventura County according to Caltrans. Part of the permanently lost wetland would be due to the placement of the rock weirs associated with the fisheries restoration work. County findings show that mitigation measures undertaken by Caltrans not only mitigate project impacts, but enhance the habitat in adjacent areas, such as right-of-way to be restored to adjacent property owners. The fill is to be carried out in a manner avoiding significant habitat disruption, and enhances the functional capacity of the wetland.

Further, the appellant has raised no factual allegations to the amount of wetland loss. For these reasons, and the evaluation of County review as found in the remainder of these findings, the Commission finds that while there is a permanent loss of wetland, it does not constitute a substantial issue because the project is sited and designed to prevent or mitigate significant impacts to riparian habitat consistent with the requirements of Policy 1 (above).

2. Policy 2 -- Substantial alteration. The County findings determined that the project is not a substantial alteration to the Rincon Creek corridor. The proposed development is an allowed use because it improves fish and wildlife habitat and provides flood protection. The County findings show that the project qualifies as a restoration project because of the measures undertaken to ensure vegetation replacement and fish passage.

The fish passage facilities are allowable because the primary function is the improvement of fish and wildlife habitat. The mitigation required for these facilities is addressed in the changes to the project developed through the County review process and conditions of approval, as described in these findings.

The realignment of a small section of streambank is also consistent with the County policy because no other method for protecting existing structures is feasible and because it is needed for public safety. The project would remediate a previous problem caused by inadequate design of the existing bridge, and it would reduce flooding problems compared to the existing situation. Therefore, the Commission finds that no substantial issue is raised relative to consistency with the referenced LUP policy 2 (above).

3. Policy 3 -- Incorporation of Best Feasible Mitigation. This policy requires that projects which are allowed incorporate the best mitigation measures feasible. The County review process determined that the mitigation measures required are the best feasible measures. The appellant has made no allegations to refute this. As noted by the County findings, they have applied all applicable policies of the LCP as developed through their permit review and environmental review process.

The mitigation measures incorporated by reference from the FEIR (pp. 35 - 40) as part of County approval include:

- o Revegetation of all disturbed areas.
- o Revegetation of other areas in the new highway right-of-way which are not disturbed.
- o Creation of new wetland area through excavation and contouring of streambanks and removal of paved invert and rubble in the streambed.
- o Planting of approximately 650 trees (total in both Counties) with mitigation ratios for tree replacement of:

<u>Species</u>	<u>Ratio</u>	<u>Number of trees</u>
Coast live oak	10:1	470
Sycamore	10:1	110
Arroyo willow	5:1	100
Walnut	10:1	80
Cottonwood	10:1	10
White Alder	10:1	80

- o Designated ESH protected area on the contract plans.
- o Fencing and other measures to control clearing and grubbing.
- o Hiring of separate contractors for revegetation efforts who specialize in that kind of work.
- o Innoculation (except for willows), fencing, irrigation, weeding, and monitoring of saplings for first five years, with monitoring only for an additional three years.

- o Preparation of annual reports documenting individual plant survival rates and status of site utilization by the Yellow Warbler.
- o Replacement of plants as determined by annual reports to ensure 80 % replacement in 3 years and 50 % replacement in 8 years.
- o Use of a 1.1 acre parcel as a mitigation bank planted at the same time.
- o Returning unused land to the adjacent property owners, with voluntary revegetation of these areas upon request, with Caltrans performing the work directly as a last resort.
- o Collection and stockpiling of duff for subsequent use.
- o Relocating species such as the red-legged frog and Pacific pond turtle just prior to construction.

In summary, these measures mitigate potential impacts on the steelhead trout and yellow warbler and other affected wildlife and compensate for the loss of vegetated wetlands and upland areas, in addition to restoring habitat in the stream and the buffer areas. This project includes other restoration areas enabling the County to find that the project has resulted in a net benefit to the area. The project has included restoration measures, such as the higher replacement ratios and timelines of the monitoring program, which are similar or more extensive than found in past Commission actions. Therefore, the Commission finds that no substantial issue is raised relative to consistency with the referenced LUP policy 3 (above).

4. Policy 4 -- Wetlands Guidelines: The County has used an older version of the Wetlands Guidelines in evaluating the project as required by this policy. As shown by the Federal Consistency Determination, the project is consistent with the current Wetlands Guidelines. Any differences between the two documents are minor and were not raised by the appellant. The Wetland Guidelines included in the LCP do allow limited expansion of roadbeds and bridges necessary to maintain existing traffic capacity when there is no other alternative. The bridge and roadway are clearly public improvements necessary to maintain existing traffic capacity. Therefore, the Commission finds that no substantial issue is raised relative to consistency with the referenced LUP policy 4 (above).

c. Conformance to Zoning Ordinance Standards

The appellant's contentions cite two specific sections of the County certified LCP Zoning Ordinance. The contentions do not address why the project or conditions of approval of the County do not conform to the standards of the certified LCP Zoning Ordinance. In reference to the two specific sections cited, no factual contentions are made as to conformance with the standards found in this portion of the Ordinance.

The appellant first contends "that the development would have a significant impact on the Rincon Creek corridor, which is an ESHA site. See LCP Article 5, Section 8175 - 5.9: ... ". The Section referred to is in the County LCP Zoning Ordinance. This Section states that:

Sec. 8175 - 5.9 - Public Works Facilities - Public Works facilities are subject to the provisions of this Section and all other provisions of this Chapter and the LCP land use plan. The types of facilities include, but are not limited to, the following: Roads, reservoirs, drainage channels, watercourses, flood control projects, pump stations, utility lines, septic systems, water wells and water storage tanks.

- a. New or expanded public works facilities (including roads, flood control measures, water and sanitation) shall be designed to serve only the potential population of the unincorporated and incorporated areas within LCP boundaries, and to eliminate impacts on agriculture, open space lands, and environmentally sensitive habitats.
- b. New service extensions required beyond the stable urban boundary (as shown on the LCP Land Use Plan maps) must be designed to mitigate any effects on agricultural viability.

Sections c. and d. of this section refer to transmission lines and are not relevant to the appeal.

The second contention of the appellant is "that the development would have a significant impact on the Rincon Creek corridor, which is an ESHA site. See LCP Article 5, ... Section 8178 - 2.4; ... ". The Section referred to, as well, is in the County LCP Zoning Ordinance. This Section states that:

Sec. 8178 - 2.4 - Specific Standards - The following specific standards shall apply to the types of habitats listed.

...

c. Creek Corridors

- (1) All developments on land either in a stream or creek corridor or within 100 feet of such corridor (buffer area), shall be sited and designed to prevent impacts which would significantly degrade riparian habitats, and shall be compatible with the continuance of such habitats.
- (2) Substantial alterations (channelizations, dams, etc.) to river, stream, or creek corridors are limited to: water supply projects necessary to agricultural operations or to serve developments permitted by the LCP Land Use Plan designations; flood control projects where no other method for protecting existing structures in the flood planing is feasible, and where such protection is necessary for public safety or to protect existing development; or developments where the primary function is the improvement of fish and wildlife habitat.
- (3) Developments allowed per the above policies shall incorporate the best mitigation measures feasible.

d. Wetlands

- (1) All developments on land either in a designated wetland, or within 100 feet of such designation, shall be sited and designed to prevent impacts which would significantly degrade the viability of the wetland. The purposes of such projects shall be limited to those in Section 30233(a) of the Coastal Act.
- (2) Where any dike or fill development is permitted in wetlands, mitigation measures shall, at a minimum, include those listed in Section 30607.1 of the Coastal Act. Other reasonable measures shall also be required as determined by the County to carry out the provisions of Sections 30233 (b and c) of the Coastal Act.
- (3) Habitat mitigation shall include, but not be limited to, timing of the project to avoid disruption of breeding and/or nesting of birds and fishes, minimal removal of native vegetation, reclamation or enhancement as specified in the California Coastal Commission "Interpretive Guidelines for Wetlands" and a plan for spoils consistent with paragraph (4) below. The Department of Fish and Game, as well as other appropriate agencies, shall be consulted as to appropriate mitigation measures.

...

The referenced Coastal Act policies in the above Zoning Ordinance are Sections 30233 and 30607.1 which are included in the text of the certified LUP (pp. 13 - 14) and are as follows. [Note: there are minor differences between the language that follows and that found in the Coastal Act as amended] :

PRC Section 30233 states (in part):

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

...

(7) Restoration purposes.

...

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

PRC Section 30607.1 states:

Where any dike and fill development is permitted in wetlands in conformity with this division, mitigation measures shall include, at a minimum, either acquisition of equivalent areas of equal or greater biological productivity or opening up equivalent areas to tidal action; provided, however, that if no appropriate restoration site is available, an in-lieu fee sufficient to provide an area of equivalent productive value or surface areas shall be dedicated to an appropriate public agency, or such replacement site shall be purchased before the dike or fill development may proceed. Such mitigation measures shall not be required for temporary or short-term fill or diking; provided, that a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time.

The project triggered the need for review under the three-part test of the LCP Zoning Ordinance, which is the same as that found in the Coastal Act. The project must: (1) be one of the allowable uses; (2) be the least damaging feasible alternative; and (3) include feasible mitigation measures to minimize adverse environmental effects. These concerns were addressed as shown by the above findings relative to the County's consideration of alternatives and findings and conditions relative to the certified LCP.

The following further summarizes why the approved project is consistent with the provisions of the Zoning Ordinance as certified.

1. Sec. 8175 - 5.9 - Public Works Facilities - The findings and environmental review in the administrative record of the County demonstrate that this is an allowed project designed to serve only the potential population of the area and is not growth inducing. The capacity of the roadway will not change except for potential bicycle traffic which is encouraged by the Recreation and Access policies of the certified LCP. Further, the project mitigates or eliminates impacts on ESHAs as discussed above.
2. Sec. 8178 - 2.4 - Specific Standards - The language of Zoning Ordinance Section c. (1) through (3) Creek Corridors repeats the policy language found in the North Coast segment of the certified LUP. For the reasons stated in the preceding sections of these findings, the proposed development is consistent with these standards.

Although the County has not performed a separate analysis under the above-referenced Section d. Wetlands, they found that the proposed

project is consistent with this Section, including the Coastal Act provisions referred to by the ordinance, because the project is sited and designed to prevent impacts which would significantly degrade the viability of the wetland. The project was consistent with the referenced purposes of a project in a wetland, as found in the referenced PRC Section 30233(a), because the proposed development is for incidental public purposes and nature restoration. The fill is to be carried out in a manner avoiding significant habitat disruption, and enhances the functional capacity. County findings show, as well, that the project was examined under aegis of the Wetlands Guidelines and that habitat mitigation includes timing of the project, minimal removal of vegetation, and reclamation and enhancement.

Therefore, the Commission finds that the approved project raises no substantial issue with the certified LCP Zoning policies.

C. Public Access Policies of the Coastal Act

As noted above, projects meeting PRC Section 30603(b) of the Coastal Act require a finding by the approving agency, whether the local government or Coastal Commission on appeal, that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. The appellant does not make a contention as to the project raising an issue as to the public access policies of the Coastal Act which would trigger consideration under PRC Section 30603(b).

Although the appellant does not cite lack of conformance with Coastal Act access policies as grounds for an appeal under PRC Section 30603(b), since Coastal Act Sections 30210-30214 provide for the maximization of public access and recreation opportunities, it is appropriate to further examine the proposed project in light of these policies. Highway 150 is a connector from coastal to inland recreation areas and an alternative route in the event of closure of the 101 Freeway.

As noted in the project's FEIR (p. 46):

Although coastal access is sometimes thought of only in terms of direct beach access for pedestrians, without an adequate roadway network, most people could not reach the direct accessways.

County findings on the proposed project describe the improvements to access and recreation opportunities resulting from the project. The project will benefit public access by reducing the public safety hazards and incorporating bicycle lanes onto this stretch of Route 150. Inadequate bridges, sharp curves and lack of bicycle lanes on Route 150 presently constrain public access. Bicyclists must share the highway's narrow pavement and tight curves with large agricultural vehicles as well as normal highway traffic. The existing pavement width does not allow for the striping of shoulders which could safely be used by bicyclists. These plans for upgrading bicycle service were submitted by Caltrans as required by Policy 1, Recreation and Access, General (p. 34), North Coast segment.

For these reasons, the Commission finds the project improves public access and recreation in a manner consistent with Coastal Act policies. Therefore, the appellant has not raised any substantial issue relative to Chapter 3 access policies.

D. Other Contentions Not Considered Part of Appeal

The appellant also cites an attached letter to the Board of Supervisors dated November 1, 1996 which makes further contentions as to the inadequacy of: scheduling the final County hearing; consideration of any significant impacts under the County General Plan; County finding of overriding considerations; mitigation to less than significant levels; compliance with EIR consultant recommendations and certification of the environmental document; elimination of all impacts on ESHs consistent with LCP zoning ordinance provisions; limiting expanded public works facilities under the certified LCP; Caltrans maintenance of roadways in project vicinity; elimination of vegetation and significantly degrading habitats in a manner inconsistent with LCP zoning ordinance provisions; and permitting a project without LCP-allowed substantial alterations to creek corridors.

This letter is not considered as part of this appeal because this letter is addressed to the Board of Supervisors, predates their final action as well as this appeal, and does not address the project as finally approved and submitted for Coastal Commission review and appeal processing. Criticisms by the appellant of County review under CEQA or State General Plan law cannot be resolved by this appeal process.

A review of the local government administrative record does not support the appellant's contentions with respect to procedural requirements. The County has duly noticed all hearings, prepared detailed analysis of each of the issues raised by the public, and has adopted findings in support of their action which are based upon substantial factual information in the record.

The County, as noted by these findings, has referenced both local policies, objectives and standards in both their LUP and LCP Zoning Ordinance including Coastal Act policies and the Wetlands Guidelines as included in the LCP. In summary, the County has discretion in applying their LCP and the appellant has not provided factual information to undermine in any substantive way the procedural soundness or policy interpretation of the County.

E. Summary and Conclusion

The grounds for appeal of a coastal development permit issued by a local government after certification of its local coastal program are limited. In this case, the appeal has not established that the proposed project, as approved by the County, does not conform to identified policies, objectives and standards of the certified Local Coastal Program.

The Commission finds that the appellant raises no significant issue relative to County approval of the project which they determined is: (1) an allowable use under the certified LCP; (2) the least environmentally damaging feasible alternative; (3) provides mitigation measures to protect wetland and riparian habitat resources; (4) would not adversely affect the functional capacity of the wetland; and (5) would improve habitat resources for several reasons. The shifting of the road alignment east of Bridge 51-140 to up to 200 feet away from the creek allows restoration of the creek's historic riparian buffer through revegetation of the old roadbed in these areas. The project improves

fish passage, including recommendations of CDFG and FWS and would improve potential fisheries habitat. The project also protects the habitat of the yellow warbler.

In summary, there are no grounds to the allegation that development does not conform to the standards of the certified LCP. There is no conflict with LUP land use designations and policies relative or provisions of the LCP Zoning Ordinance. For these reasons, the Commission finds that the proposed project does not raise substantial issue with respect to consistency with the policies and standards of the certified Local Coastal Program.

7727A

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

RECEIVED



Please Review Attached Appeal Information Sheet Prior To Completing DEC - 2 1996
This Form.

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

SECTION I. Appellant(s)

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

Geoffrey Latham
P.O. Box 8156
Pioneer CA. 95666 (209) 295-1641
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Final Decision of Ventura County Board of Supervisors approved Appeal 398, CUP 4942
2. Brief description of development being appealed: Rincon Creek / Hwy 150 Bridge Replacement
denial by Planning Commission of Cal-Trans request for CUP

3. Development's location (street address, assessor's parcel no., cross street, etc.): Rincon Creek / Hwy 150

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
b. Approval with special conditions: X
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: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

EXHIBIT NO. <u>1</u>
APPLICATION NO. <u>P1043</u>
<u>Appeal A-4-96-318</u>
<u>Latham/Caltrans</u>
<u>Appeal Form</u>

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

VENTURA COUNTY

6. Date of local government's decision: 10-5-96

7. Local government's file number (if any): Appeal 398, CUP 4942

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:
Caltrans, Box 8114, San Luis Obispo 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) Urban Creeks Council, Brian Trautwein
5771 Leeds Lane
Goleta, CA 93117 (805) 964-3105

(2) Carpinteria Creeks Committee, Bob Hansen
P.O. Box 1128
Carpinteria, CA 93014-1128 - (805) 684-7948

(3) David Shelton
519 Fir Avenue
Santa Barbara, CA 93101 969-4183

(4) Gail Wineman
Casita Pass Road
Ventura, CA

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 NO. <u>1</u>
APPLICATION NO. <u>p 2 of 3</u>
Appeal A-4-96-318 Latham/Caltrans
Appeal Form

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.)

The proposal is inconsistent with the Ventura County LCP and General Plan in that the development would have a significant impact on the Rincon Creek Corridor, which is an ESHA site. See LCP Article 5, Section 8175-5.9; & Article 8, Section 8178-2.4; General Plan; Biological Resources Policy No. 3
(See Enclosure, Copy of 11-1-96 Correspondence)

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.

Moffey D. Latham
Signature of Appellant(s) or
Authorized Agent

Date 11-22-96

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 NO. <u>1</u>
APPLICATION NO. <u>3 of</u>
Appeal A-4-96-318
Latham/Caltrans
Appeal Form

**A RESOLUTION OF THE VENTURA COUNTY BOARD OF SUPERVISORS
ADOPTING A CEQA STATEMENT OF OVERRIDING CONSIDERATIONS
FOR THE ADVERSE ENVIRONMENTAL EFFECTS CREATED BY THE APPROVAL
OF APPEAL 398 OF VENTURA COUNTY PLANNING COMMISSION DENIAL OF
CONDITIONAL USE PERMIT NO. 4942 CALTRANS BRIDGES
AND HIGHWAY 150 REALIGNMENT PROJECT.**

WHEREAS, a legally noticed hearing on this matter was held by the Board of Supervisors of Ventura County at Ventura, California on November 5, 1996; and

WHEREAS, the Board of Supervisors has independently considered all written and oral testimony and exhibits as well as the concerns of the Planning Commission and recommendations of the County staff; and

WHEREAS, the Board of Supervisors has independently reviewed and considered the Final Environmental Impact Report (FEIR) as certified by Caltrans.

NOW, therefore, the Board of Supervisors hereby resolves and finds that:

1. Highway 150 is a major link, especially when Highway 101 is closed as it has been in recent years, between the coastal cities of Santa Barbara and Carpinteria with the inland cities of Ojai and Santa Paula. The existing facilities were built in 1927. The horizontal and vertical alignment both contain sharp curves typical of the 1920's roadbuilding standards. The result is a section of highway with an accident rate twice the expected rate when compared with similar State Highways. Nearly all the accidents have occurred at two locations within the project limits; at Bridge 51-141 and at the intersection of routes 150 and 192.
2. Caltrans considered the two bridges to be functionally obsolete due to their structural design and narrow widths. The bridges have exceeded their design life expectancy of 50 years and have a low-load capacity rating. The existing road geometrics are outdated and the road width is substandard. The intersection of Routes 150 and 192 is skewed at such a sharp angle that both left and right hand turns are difficult even for automobiles.
3. The result of the proposed project would be a roadway designed to current standards based on a design speed of 40 miles per hour would allow for four-foot paved and striped shoulders for bicycling purposes. Realignment of the road would update the horizontal and vertical alignments, improve the intersections at Highways 150 and 192 and improve safety.
4. The new bridges would be built to current design standards and be widened from one to two lanes, thus improving public safety. The bridges have been designed to safely pass 100-year storm flows.
5. The project as adopted, results in minimal impacts on the neighbors to the project and land use.
6. The Board of Supervisors finds that the proposed project and the CUP conditions implement all feasible mitigation measures identified in the FEIR, and that the proposed project as conditioned by the CUP, would avoid or substantially lessen, all the mitigable impacts described in the EIR

EXHIBIT "14"
(with Planning Director Amendments Included)

EXHIBIT NO. 2
APPLICATION NO. p1 of 2
Appeal A-4-96-318
Latham/Caltrans
Local Gov't Resolution

NOW, therefore, be it further resolved that the Board of Supervisors of Ventura County hereby adopts this Resolution as its Statement of Overriding Considerations for its decisions to approve this project in that the beneficial impacts of the project listed herein outweigh the unavoidable visual impacts described in the FEIR for CUP-4942.

PASSED and ADOPTED this 5th day of November, 1996, by the following vote:

Ayes: Board Members

Lacey, Kildee, Mikels,
and Schillo.

Noes:

None.

Absent:

Board Member Flynn.

Frank Schillo

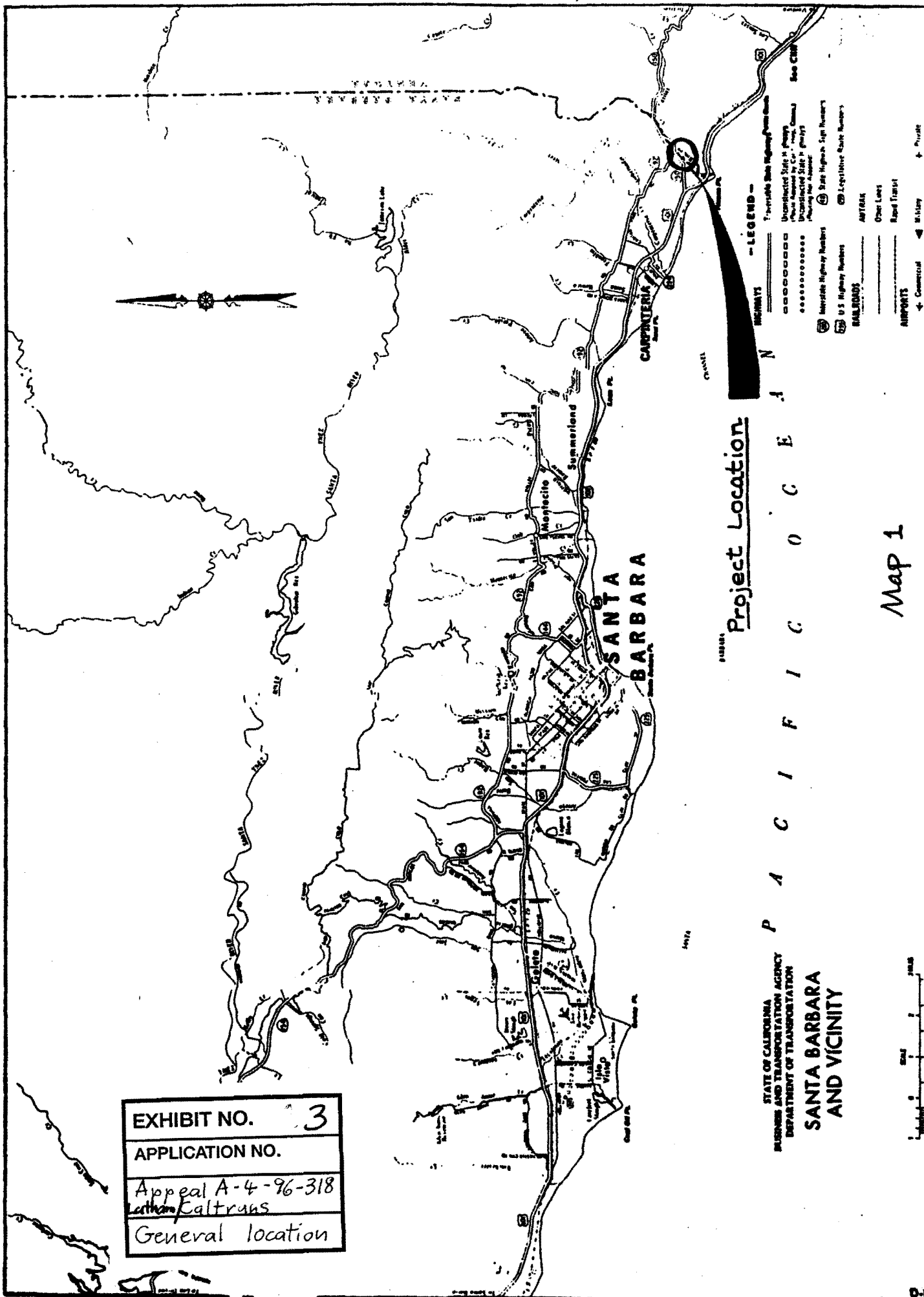
Chair, Board of Supervisors



ATTEST: RICHARD D. DEAN,
County Clerk, County of Ventura,
State of California, and ex-officio
Clerk of the Board of Supervisors
thereof.

By Roberta Rodriguez
Deputy County Clerk

EXHIBIT NO.	<u>p 2 of 2</u>
APPLICATION NO.	
Appeal A-4-96-318	
Latham/Caltrans	
Local Gov't Resolution	



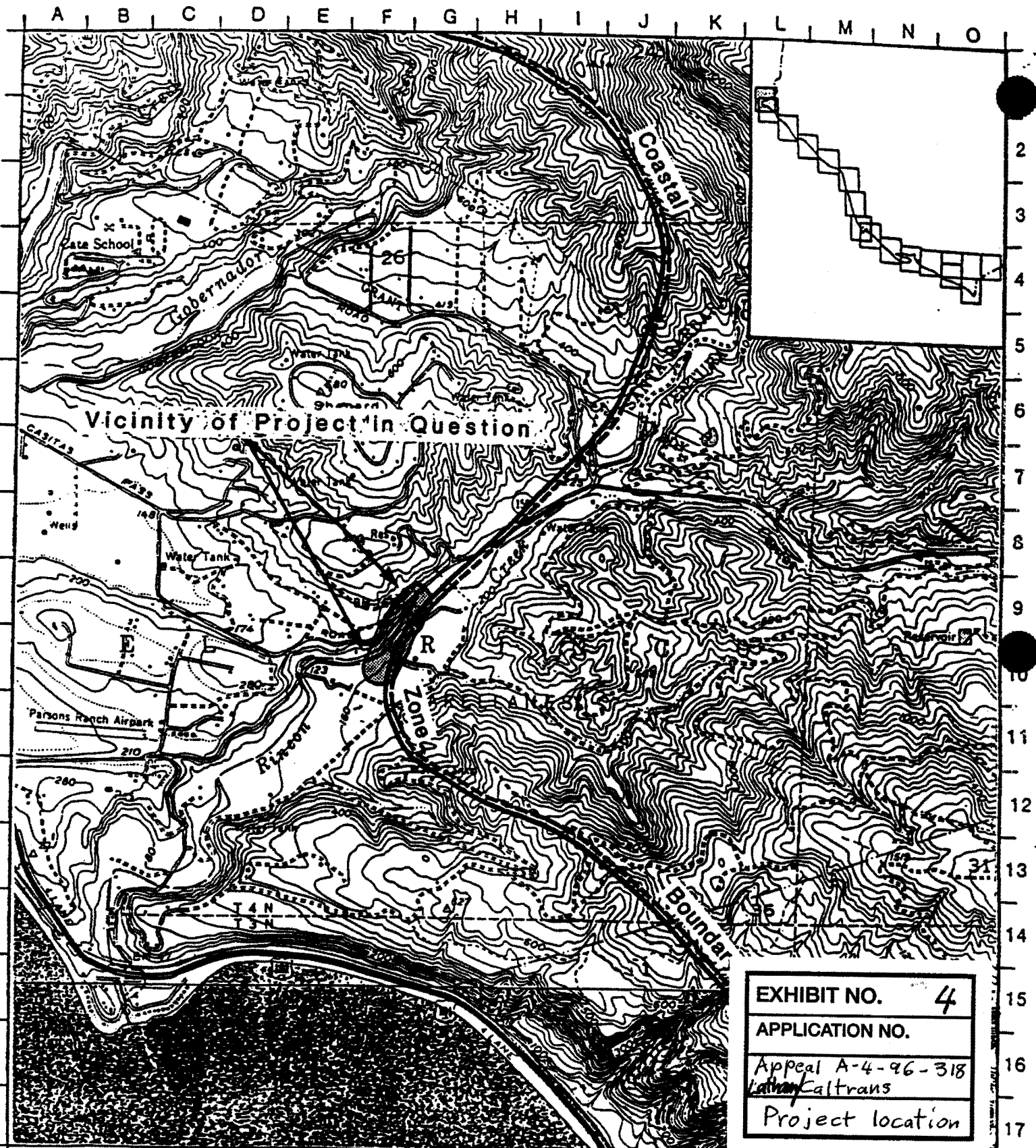


EXHIBIT NO. 4
APPLICATION NO.
Appeal A-4-96-318
~~Caltrans~~
Project location

BD 16-96
APNs 8-130-49, 8-160-14, 8-160-22



County of Ventura

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

PROJECT PLANS

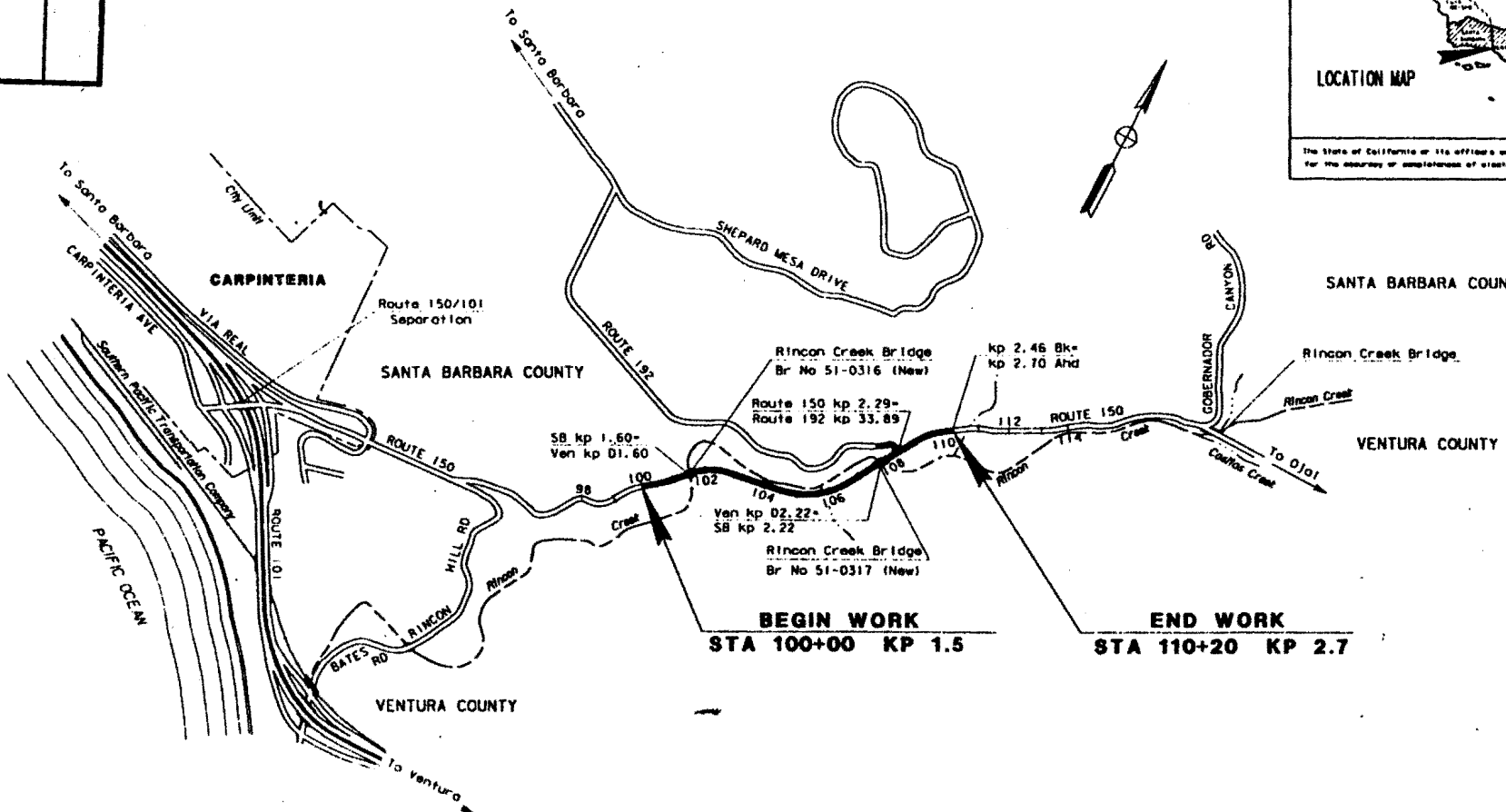
STATE HIGHWAY
IN SANTA BARBARA AND VENTURA COUNTIES
NEAR CARPINTERIA BETWEEN 1.5 KILOMETERS
AND 2.7 KILOMETERS EAST OF
ROUTE 150/101 SEPARATION

EXHIBIT NO. 5
APPLICATION NO.
Appeal A-4-96-318
Lathrop/Caltrans
Proposed project

DIST	COUNTY	ROUTE	KILOMETER POST TOTAL PROJECT	SHEET NO	OF
05	SB, Ven	150	1.5/2.7		



The State of California or its officers or agents shall not be responsible for the accuracy or completeness of electronic copies of this plan sheet.

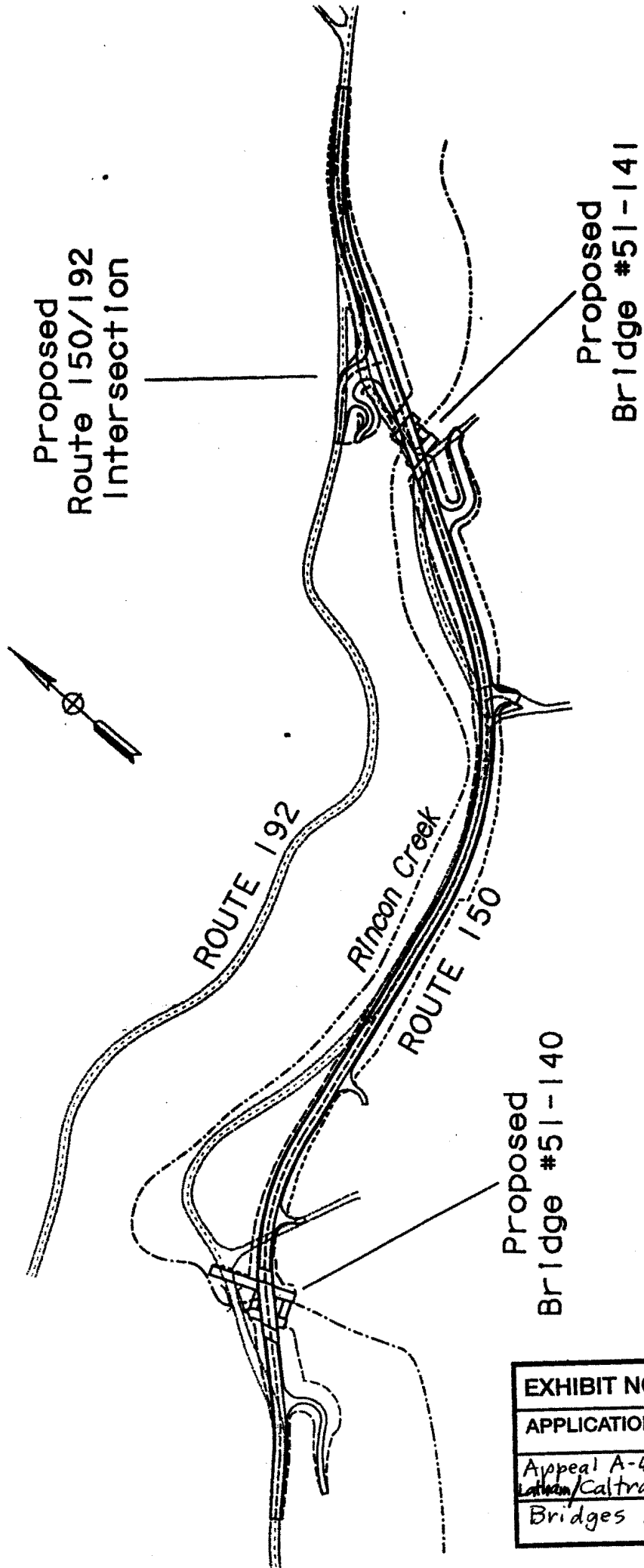


BEGIN WORK
STA 100+00 KP 1.5

END WORK
STA 110+20 KP 2.7

No Scale

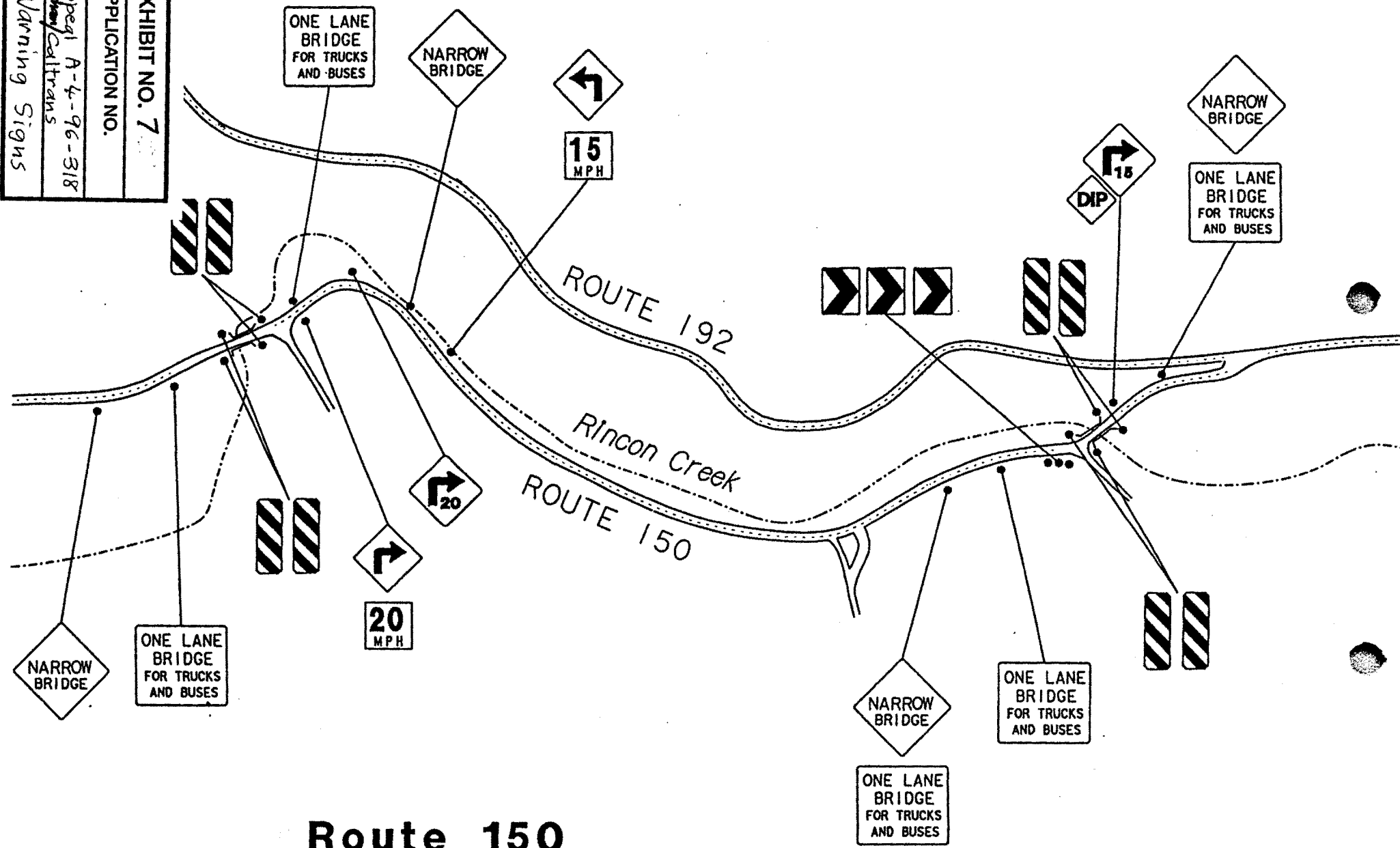
Contract No. 05 282814



Route 150 Proposed Alignment

EXHIBIT NO. 6
APPLICATION NO.
Appeal A-4-96-318
Caltrans
Bridges & Realignment

EXHIBIT NO. 7
APPLICATION NO.
Appeal A-4-96-318
Warning Signs



Route 150
Existing Warning Signs

Accident Rate (Accidents per Million Vehicle-Miles)				
Year	Actual Injury	Actual Total	Expected Injury	Expected Total
1986	7.20	8.99	0.83	1.57
1987	8.99	10.79	0.83	1.57
1988	1.79	5.38	0.83	1.57
1989	0.00	0.00	0.83	1.57
1990	3.60	5.40	0.83	1.57
1991	1.80	5.40	0.83	1.57
1992	1.84	11.05	0.83	1.58
1993	3.14	3.14	0.82	1.56
1994	1.55	4.66	0.82	1.56
1995	0.00	1.64	0.82	1.56

**Route 150 10-Year Accident History
Post Mile 1.0 to 1.76**

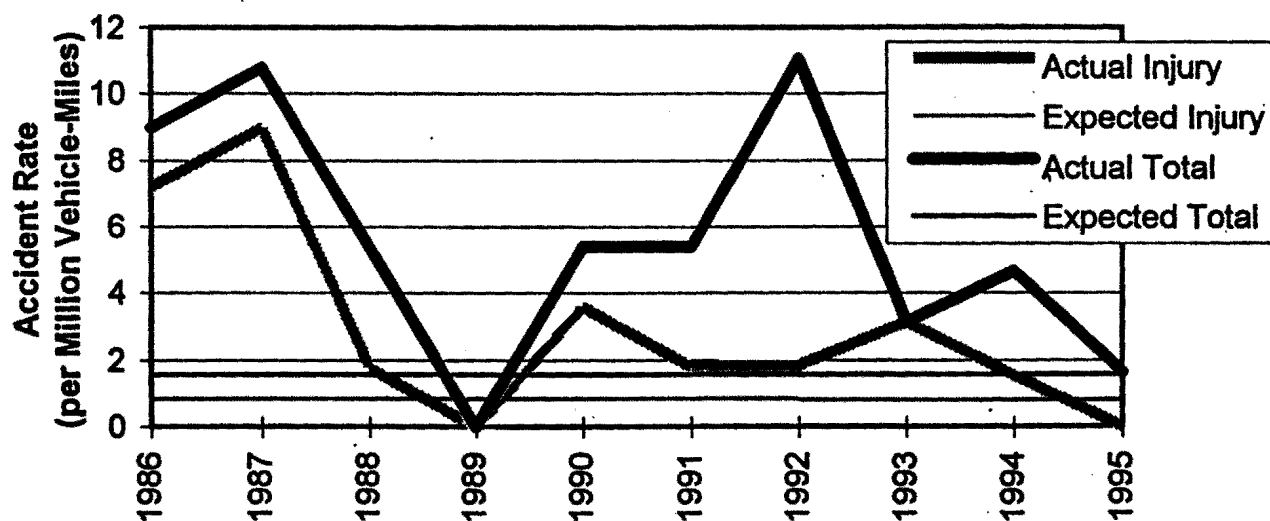


EXHIBIT NO. 8

APPLICATION NO.

Appeal A-4-96-318
Latham/Caltrans

Safety Data