STATE OF CALIFORNIA – THE RESOURCES AGENCY PETE WILSON, *Governor*

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
ICE AND TDD (415) 904-5200

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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY DETERMINATION

Consistency Determination No.	**CD-65-97**
Staff:	MPD-SF
File Date:	5/16/97
45th Day:	6/30/97
60th Day:	7/15/97
Commission Meeting:	7/8/97

FEDERAL AGENCY: **U.S. Immigration and Nationalization Service**

DEVELOPMENT LOCATION: San Clemente Border Patrol Checkpoint, Interstate-5 (I-5), Camp Pendleton Marine Corps Base, San Diego County (Exhibits 1-2)

DEVELOPMENT DESCRIPTION: Modifications to existing Border Patrol Checkpoint, consisting of construction of a Pre-Inspected Automated Lane to allow pre-authorized vehicles to bypass the primary inspection lanes (Exhibits 3-6)

SUBSTANTIVE FILE DOCUMENTS:

1. Negative Determination No. ND-99-96, INS/COE, Border Patrol Checkpoint Improvements.

EXECUTIVE SUMMARY

The U.S. Immigration and Nationalization Service (INS) has submitted a consistency determination for modifications to the San Clemente Border Patrol Checkpoint on I-5 on the Camp Pendleton Marine Corps Base in northern San Diego County. The project consists of

construction of a one mile long, special lane to allow vehicles equipped with an electronic device to bypass the inspection lanes at the checkpoint. To accommodate the lane, the existing northbound lanes of I-5 need to be shifted approximately 25 to 35 feet eastward. This shift necessitates a small degree of fill and loss of existing coastal sage scrub vegetation, which provides habitat for the California gnatcatcher. The INS has coordinated with the U.S. Fish and Wildlife Service and has committed to minimize temporary impacts by avoiding construction during the sensitive species for this bird species (as well as other measures). The INS further agrees to mitigate permanent habitat losses through provision of replacement habitat, at a 3:1 ratio, including, prior to commencement of construction, provisions for Executive Director review of specific planting, monitoring, and, if necessary, remediation efforts. With these measures, the project is consistent with the environmentally sensitive habitat policy of the Coastal Act (Section 30240).

The project will reduce traffic congestion at the Border Station Checkpoint and is consistent with the public access and recreation policies of the Coastal Act (Sections 30210-30213). Runoff controls and other water quality measures have been included in the project, and the project is consistent with the stream protection/water quality policy of the Coastal Act (Section 30231).

STAFF SUMMARY AND RECOMMENDATION:

I. Staff Summary:

A. Project Description. The INS proposes modifications to the San Clemente Border Patrol Checkpoint on I-5, which is located within the Camp Pendleton Marine Corps Base in northern San Diego County. The project consists of construction of a one mile long, Pre-Inspected Automated Lane (PAL) to allow certain vehicles traveling this route frequently (i.e., commuters with pre-authorized vehicles equipped with an electronic device) to bypass the primary inspection lanes at the San Clemente Checkpoint. The PAL will be used primarily by commuter or other designated traffic which travel this route frequently.

The primary purpose for establishing a PAL at the San Clemente Checkpoint is to increase the traffic capacity through the checkpoint, and to minimize backups and delays during peak traffic hours. The INS currently operates the checkpoint until a traffic backup extends south approximately one mile or when the backup would cause a 15 minute traffic delay. At that time, primary inspection ceases until the freeway returns to free flow. The INS is concerned over this situation because it provides opportunities for illegal immigration and drug smuggling activities.

Because Caltrans requires a 10-foot-wide buffer zone and a barrier type structure on both sides of a PAL, the existing northbound lanes of I-5 need to be shifted approximately 25 to 35 feet eastward. A buffer zone and barrier is also required between a PAL and regular freeway lanes for safety purposes. The buffer zone will be 1,500 feet long and will consist of two striped solid double

yellow lines. In addition to this buffer zone, a 10-foot-wide shoulder will be developed on both sides of the PAL. A 3-ft.-high concrete barrier will also be needed separating the northbound PAL from southbound lanes; this barrier will be similar to the current barrier which separates the north and southbound lanes. This concrete structure will be installed at the beginning of the PAL, located 4,000 feet south of the checkpoint, and terminate at the primary inspection area. The INS states these project features are required to meet Caltrans design standards.

A construction staging area is proposed within an already disturbed, 1.7 acre area near the checkpoint, located east of the freeway lanes and about 1,200 feet south of the inspection area. Construction is scheduled to begin December 1997 and be completed within 6 to 12 months. Canyon construction (see pages 4-6 below) would not occur between the February 15 - August 15 period to avoid impacts to the California gnatcatcher.

B. Status of Local Coastal Program. The standard of review for federal consistency certifications is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the LCP has been certified by the Commission and incorporated into the California Coastal Management Program (CCMP), it can provide guidance in applying Chapter 3 policies in light of local circumstances. If the LCP has not been incorporated into the CCMP, it cannot be used to guide the Commission's decision, but it can be used as background information. The San Diego County LCP has been certified by the Commission and has been incorporated into the CCMP.

C. Federal Agency's Consistency Determination. The INS has determined the project to be consistent to the maximum extent practicable with the California Coastal Management Program.

II. Staff Recommendation:

The staff recommends that the Commission adopt the following motion:

MOTION. I move that the Commission concur with the INS' consistency determination.

The staff recommends a **YES** vote on this motion. A majority vote in the affirmative will result in adoption of the following resolution:

Concurrence

The Commission hereby **concurs** with the consistency determination made by the INS for the proposed project, finding that the project is consistent to the maximum extent practicable with the California Coastal Management Program.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Environmentally Sensitive Habitat. The Coastal Act provides for the protection of environmentally sensitive habitat, as follows:

Section 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

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

Several sensitive wildlife species occur in the greater project vicinity, including six federally listed threatened and endangered species: the Riverside fairy shrimp, the San Diego fairy shrimp, the Pacific pocket mouse, the Quino checker spot butterfly, the southwest arroyo toad, and the California gnatcatcher. The INS has consulted with the U.S. Fish and Wildlife Service, and the only species whose habitat will be adversely affected by the project is the California gnatcatcher.

Construction of the PAL will require an eastward expansion of the freeway surface and include extension and stabilization of a new shoulder for an approximately one mile distance. The expansion will vary in width from a minimum of 25 feet (at the south end of project) to a maximum of 35 feet (at the north end, or checkpoint area). The majority of this land was developed and compacted during the original highway construction and is not particularly sensitive, and of the total affected area (approximately 3.65 acres), approximately 90% is disturbed and/or mowed periodically to control vegetation growth along the highway right-of-way. Only about 0.37 acre of land that will be affected by the project, located at the west embankment of a small canyon (Exhibits 3-7), is environmentally sensitive. This canyon contains coastal sage scrub vegetation, which is the preferred habitat of the Federally-listed threatened California gnatcatcher (Polioptila californica californica). Gnatcatchers were observed in the canyon during INS field surveys conducted in January 1997.

The western edge of the canyon will need to be built up about 20 feet to the east to support the widened road. The fill will include placement of a vertical retaining wall (Exhibit 5), approximately 25 feet high and anchored into the existing embankment below the freeway surface. Approximately 3,200 cubic yards of material will be removed from the small canyon to install the retaining wall and attain the proper road width. Once the wall is in place it will be backfilled and compacted.

These activities will have both temporary and permanent habitat impacts, which the INS describes as follows:

> *Gnatcatchers in this area will be forced to expand feeding territories eastward, away from the freeway. This change in behavior will come about naturally in response to loss of plants and slightly increased proximity of freeway traffic. Permanent increases in ambient noise level will not be significant on the far side of the canyon. Other short-term and temporary impacts can be attributed to construction activities. These include temporary machinery noise from the upper half slope, possibly a slight localized increase in atmospheric concentration of exhaust gases during the time machinery is used in the canyon, and the attractive nuisance of insects being disturbed during construction.*

The INS has designed the project to minimize habitat impacts and has agreed to incorporate a number of measures into the project to avoid where possible, and mitigate where appropriate, the project's impacts on coastal sage scrub/gnatcatcher habitat. The retaining wall has been designed to minimize the extent of fill to the maximum degree possible; without the wall additional fill and vegetation removal would be needed. Furthermore, Caltrans design standards prohibit any further narrowing of the road design. All construction work to prepare and complete this retaining wall will be accomplished from above (i.e., from the roadway or shoulder). No construction vehicles will be driven into the canyon below the position of the retaining wall for any reason, and construction materials and debris will not be stored in the canyon. Scheduling for construction of the retaining wall will be timed to avoid the sensitive season for the gnatcatcher. Retaining wall construction will be initiated soon after the breeding season ends in August, 1997, and will be completed before the start of the gnatcatcher breeding season in 1998. To minimize erosion, straw bales, sand bags, and/or siltation fencing will be erected below the retaining wall before surface preparation begins, and the equipment staging area will be fenced temporarily prior to construction. Finally, for construction outside the canyon in the surrounding area, the INS has agreed that no heavy duty construction equipment will be operated within 500 ft. of any gnatcatcher habitat during the nesting season (February through July).

In addition to minimizing construction impacts, the INS has agreed to mitigate permanent habitat losses. The INS has coordinated with the U.S. Fish and Wildlife Service, which equates the projects impacts to the gnatcatcher to constitute adverse effects to one breeding territory. The Fish and Wildlife Service recommends a 3:1 ratio of mitigation for habitat damage. Given that a gnatcatcher pair typically establishes a breeding territory of approximately 2 acres of coastal sage scrub habitat in this region (Bradley, 1977), mitigation for PAL construction needs to encompass 6 acres, according to the Fish and Wildlife Service.

The INS has committed to providing the Fish and Wildlife Service-requested restoration of coastal sage scrub habitat in the immediate vicinity of the INS checkpoint. At the request of the Commission staff, the INS has also committed that, prior to commencement of construction, it will submit, subject to Executive Director review and approval, the specific planting and monitoring

plans for the restoration. The INS agrees to monitor the restoration efforts to assure their success, and if the on-site efforts do not succeed the INS has committed to offsite restoration or purchase of suitable mitigation credits.

The INS agrees the specific restoration plans will include measures to assure adequate soil preparation and application of seed from native perennial species that comprise coastal sage scrub communities, and further, that these plans will be incorporated directly into landscape construction contract documents. The INS notes that the staging area is particularly well suited to coastal sage scrub restoration efforts. The INS also states that dirt roads previously created east of the freeway and between the staging area and the small canyon by irregular vehicular traffic will be eradicated.

These mitigation and monitoring measures will adequately offset the loss of gnatcatcher habitat in the small canyon. The Fish and Wildlife Service agrees that the INS has committed to sufficient measures to assure there will be no net adverse impacts to gnatcatcher habitat; for the Service's purposes the measures will be incorporated into the Biological Opinion that will be worked out between the INS and the Service. For the Commission's purposes, as stated above, the necessary commitments have been made and the final details will be reviewed prior to project commencement. In conclusion, with the mitigation measures described above incorporated into the project, the Commission finds that the INS has minimized adverse effects to the maximum degree possible, and, where the project would have residual impacts, that the measures incorporated into the project are adequate to mitigate the project's effects on environmentally sensitive gnatcatcher habitat. Moreover, additional commitments have been made to monitor and assure success of the revegetation efforts. With these measures, the Commission finds that the project is consistent with the environmentally sensitive habitat protection policy (Section 30240) of the Coastal Act.

B. <u>Public Access and Recreation.</u> The Coastal Act provides for the protection and maximization of public access and recreation opportunities, as follows:

> *Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

> *Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

The proposed I-5 widening operation will, by reducing traffic delays, benefit public access to the public coastal recreational opportunities in the area. Construction related activities will be limited to existing freeway lanes, shoulders, and the existing Caltrans highway easement. Construction activities may force closure of one or two of the northbound lanes of I-5, but other lanes would be available to allow traffic to proceed north on I-5. Physical (vehicular) access to San Onofre State Park will not be affected by the proposed action. Minor delays may occur to park users, as to other traffic traveling on I-5 North, due to construction occurring south of the checkpoint. This will occur because the San Onofre State Park access road is located north of the checkpoint. No delays are anticipated to park users traveling the opposite direction (I-5 South), since they will avoid the construction zone altogether. The AT & SF railroad (located west of I-5) will not be affected. The temporary construction-related effects will be more than offset by the project benefits, which will streamline traffic flow and reduce congestion on this important recreational thoroughfare. The Commission therefore concludes that the project is consistent with the public access and recreation policies (Sections 30210-30213) of the Coastal Act.

C. Water Quality/Runoff and Sedimentation. The Coastal Act provides for the protection of coastal waters, as follows:

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The INS has incorporated runoff controls into the project to minimize runoff and sedimentation and assure that the culverts and streamflow underneath I-5 will be maintained. The INS proposes:

WQ-1 *All construction equipment/work will occur above the embankment (west slope of canyon) or on the existing shoulder when performing the excavation, grading, material backfill, and compaction operation necessary to install the retaining wall for this section of Phase II construction.*

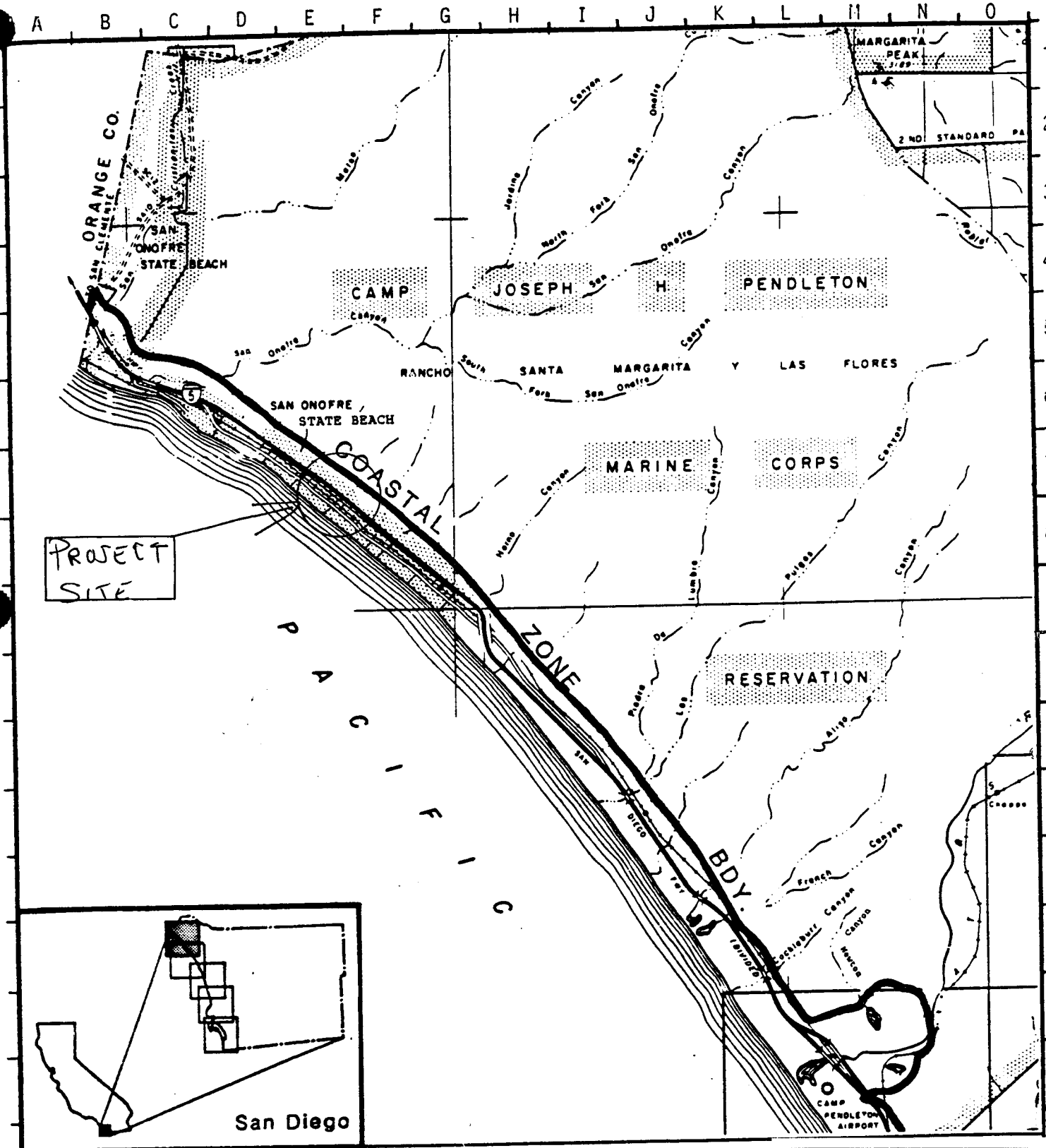
WQ-2 *Three 5-foot by 5-foot box culverts would be extended further east prior to the freeway widening operation to prevent future erosion at these location. The two other box culvert drainage structures along the freeway do not require improvement work.*

WQ-3 *Construction at the culverts will occur between August and November (outside the rainy season) to minimize sedimentation impacts.*

WQ-4 *Material will not be stockpiled or placed within any drainage.*

With these measures, the project will avoid adverse effects from alterations to the existing drainage patterns and adverse water quality effects from the project. The Commission therefore finds the project consistent with the stream protection policy (Section 30231) of the Coastal Act.

D. Previous Commission Action. The Commission staff previously concurred with a negative determination for a number of improvements at the San Clemente Border Checkpoint, in negative determination ND-99-96. That negative determination authorized: widening of the existing checkpoint from four to six lanes; adding a truck deceleration lane; adding a secondary inspection area on the west side of the northbound lanes; installing canopies over the new secondary inspection areas, plus the entire width of the freeway over the checkpoint; and construction of a new administrative building.

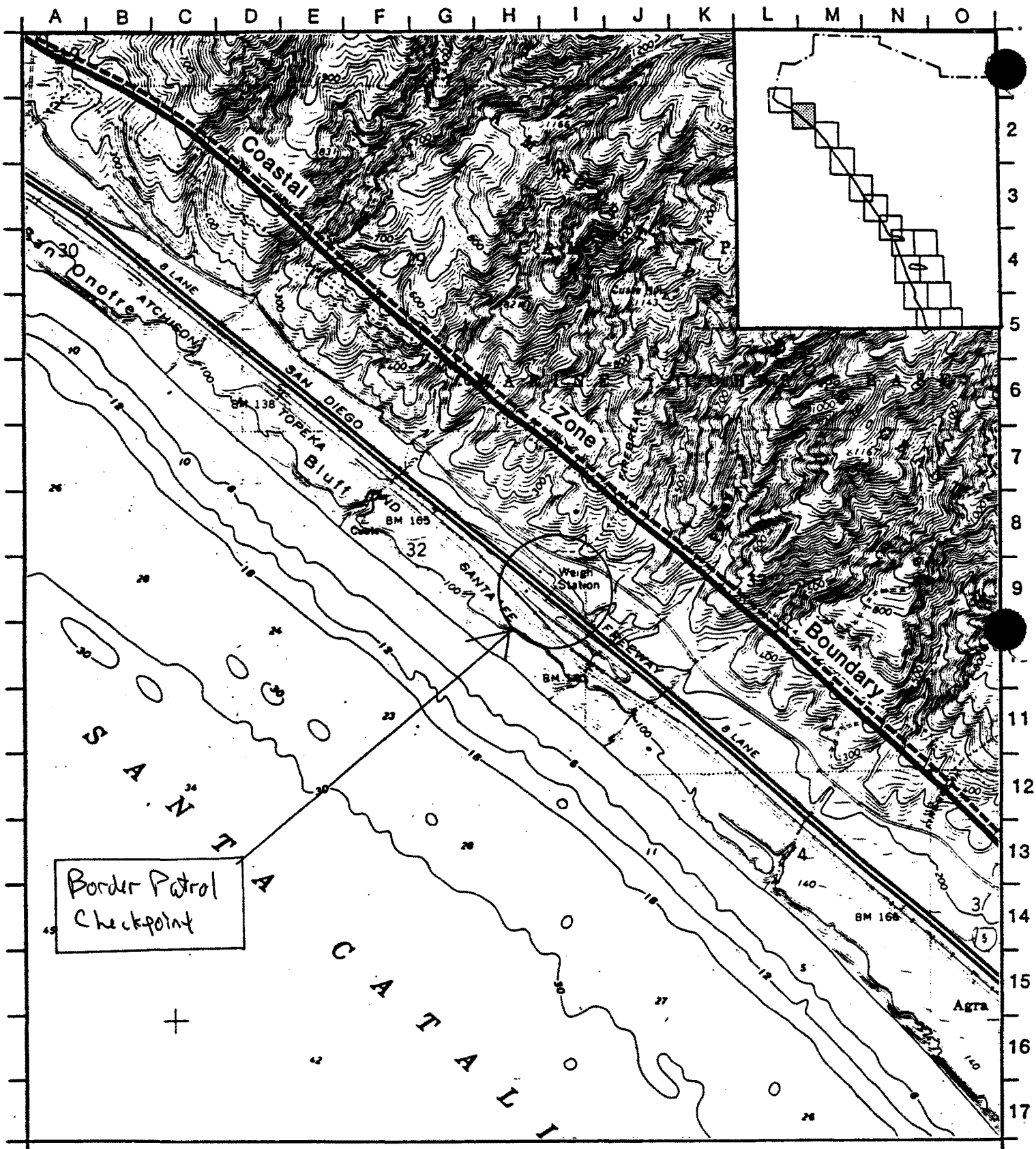


California Coastal Commission

LOCATION MAP

County of San Diego

EXHIBIT NO. 1
APPLICATION NO.
CD-65-97



California Coastal Commission

EXHIBIT NO. 2
APPLICATION NO.
CD-65-97

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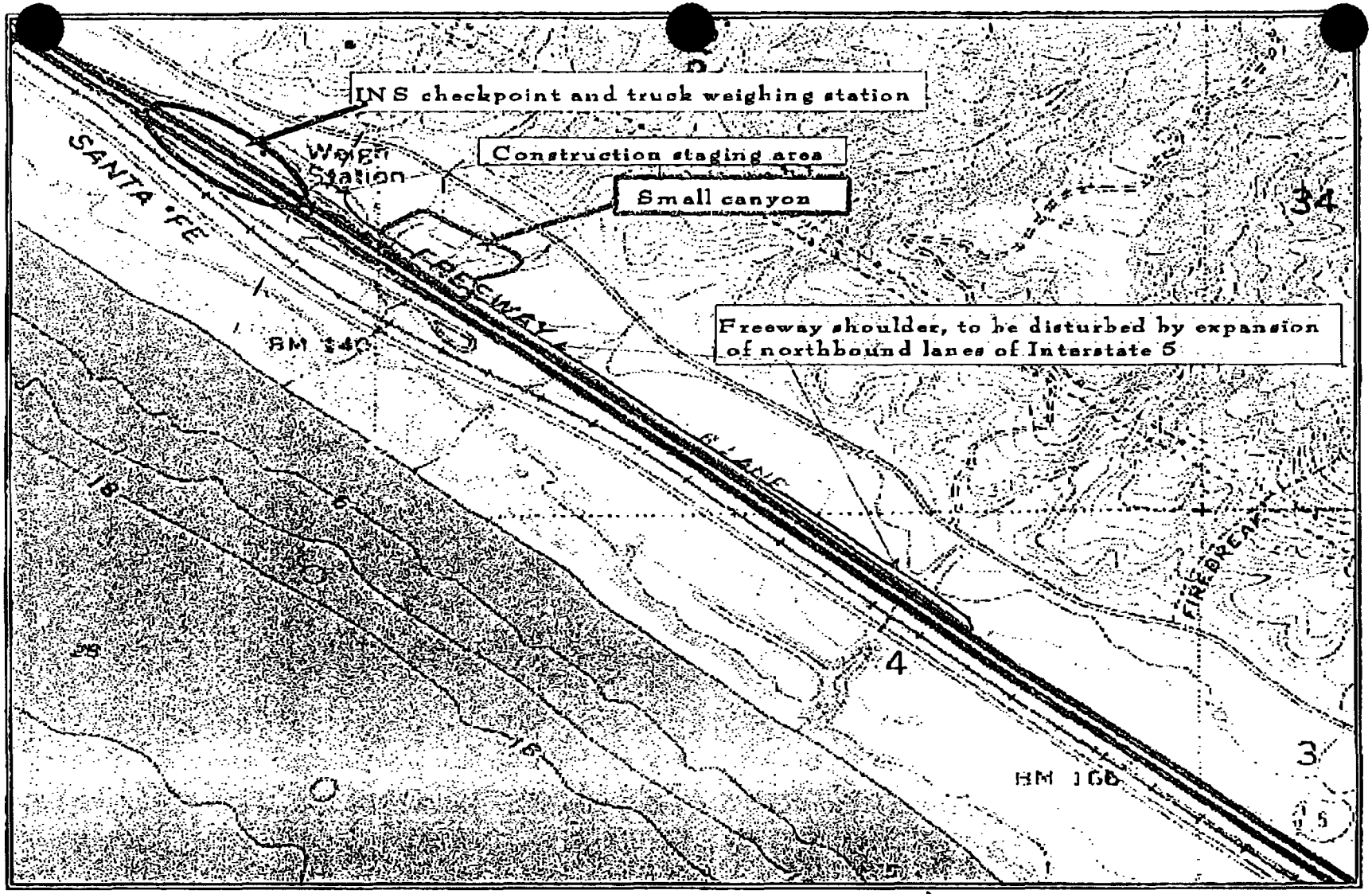

Fig. 1. Construction of the Pre-Inspected Automated Lane will affect a narrow strip between the present roadway and the easement fence on the eastern side of Interstate 5. A survey of the entire strip (blue shading) for significant biological resources was conducted ?6, 1997.

EXHIBIT NO. 3
APPLICATION NO. CD-65-97

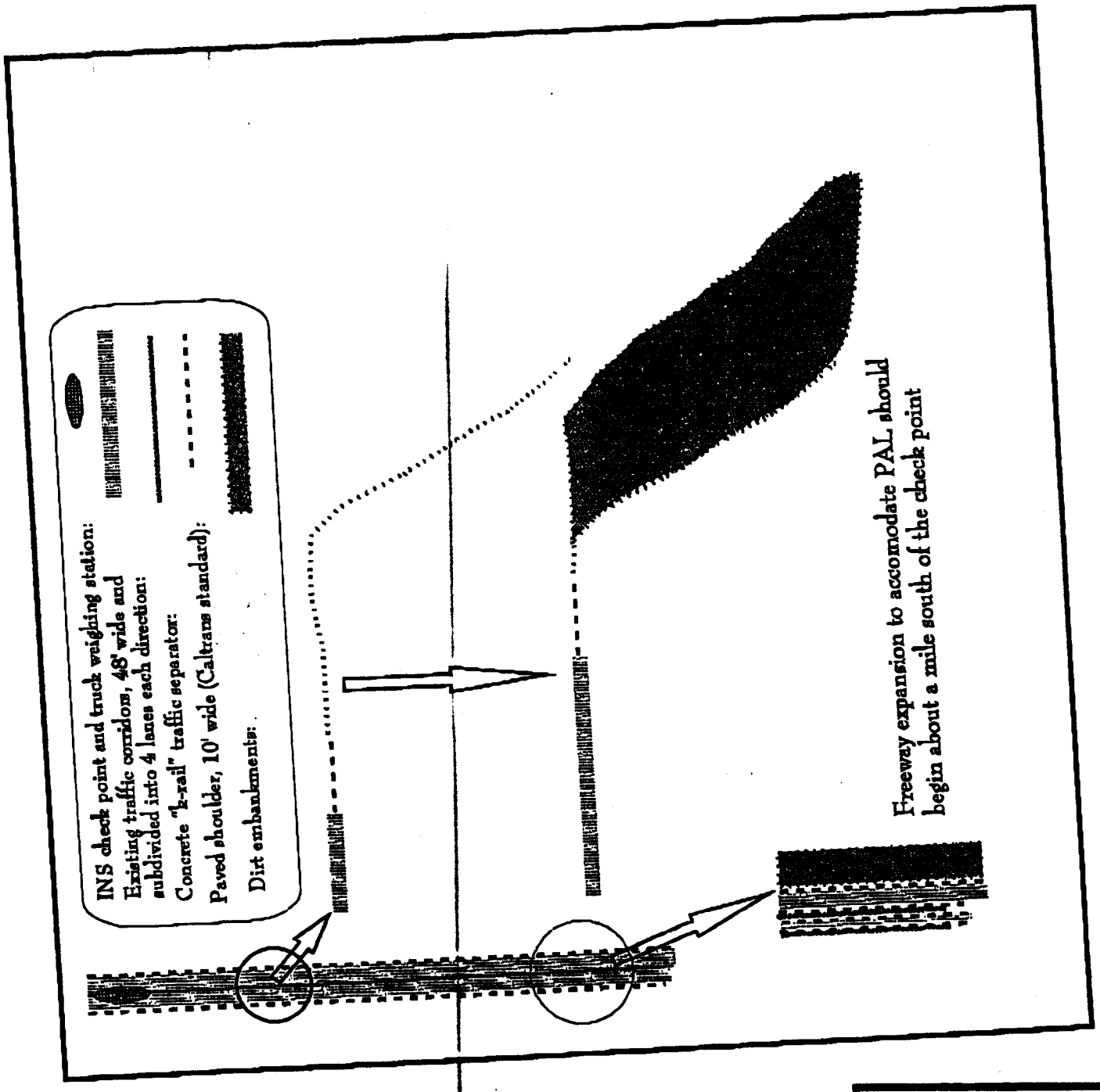

EXHIBIT NO. 4

APPLICATION NO.

CD-65-97

Cross sectional, diagramatic representation of the small south of the INS check station on I-5. Grid intervals Approximately to scale from field measurements.

EXHIBIT NO. 5
APPLICATION NO.
CD-65-97

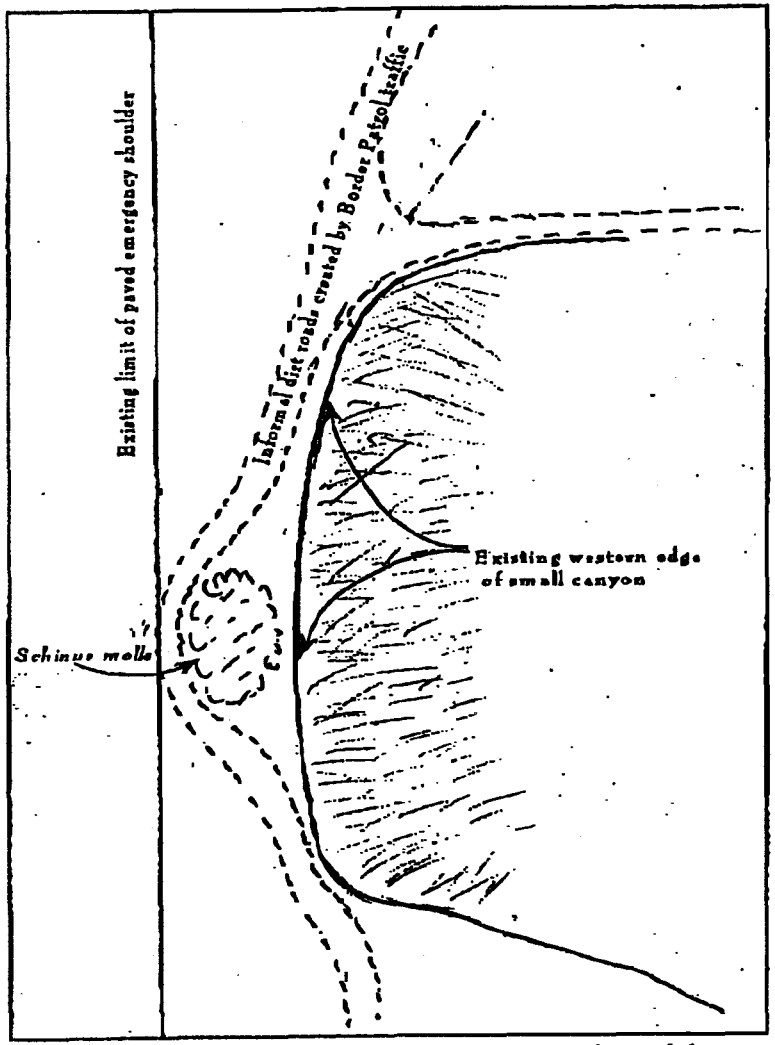

Fig. 3a. Limits of freeway shoulder, dirt roads, California pepper trees (*Schinus molle*), and western rim of the small canyon prior to construction of PAL and truck deceleration lane south of the INS checkpoint.

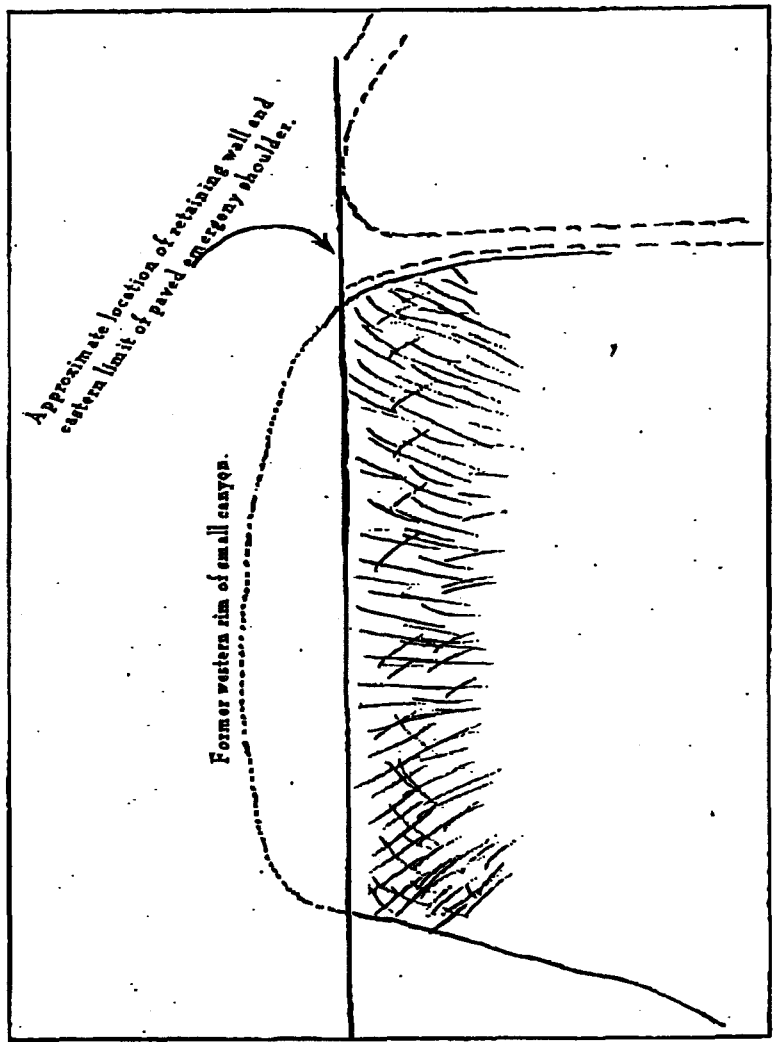

Fig. 3b. Limits of freeway shoulder and vertical retaining wall, dirt roads, and western rim of small canyon after construction of PAL and truck deceleration lane south of the INS checkpoint.

EXHIBIT NO. 6
APPLICATION NO. 6-95-97

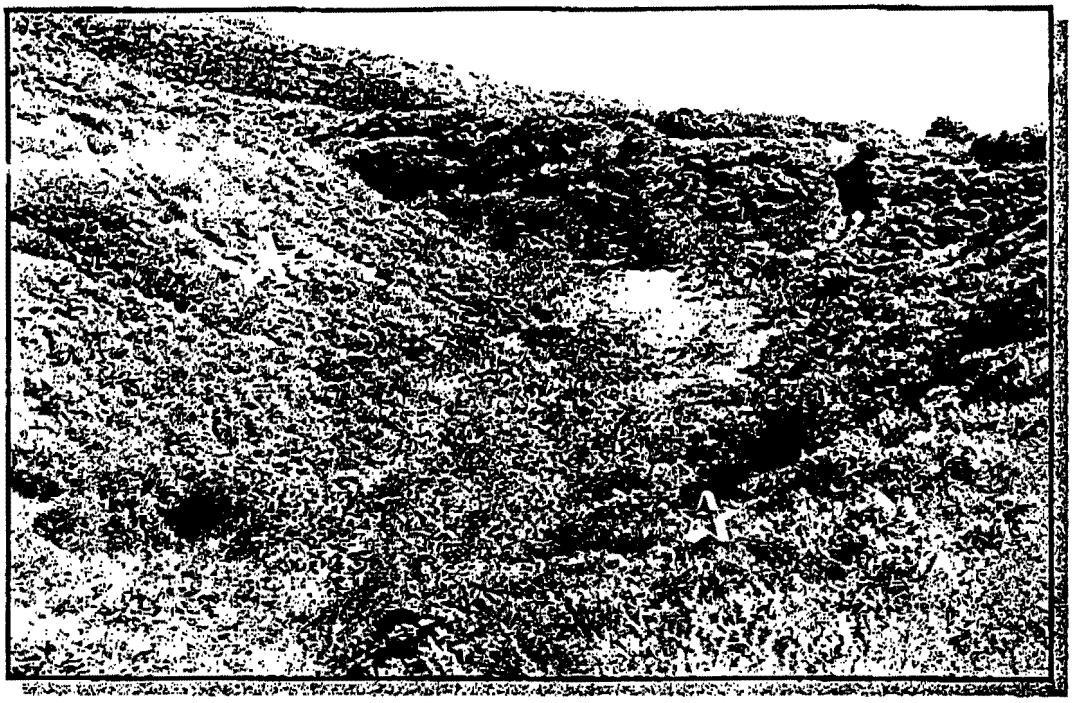

Fig. 4. View from the western edge and northern end of the small canyon. Construction of the retaining wall will impact vegetation in a strip below this edge. California gnatcatchers were seen near the locations marked by white symbols on both the west-facing natural hillside (far side of the canyon) and on the embankment below the freeway.

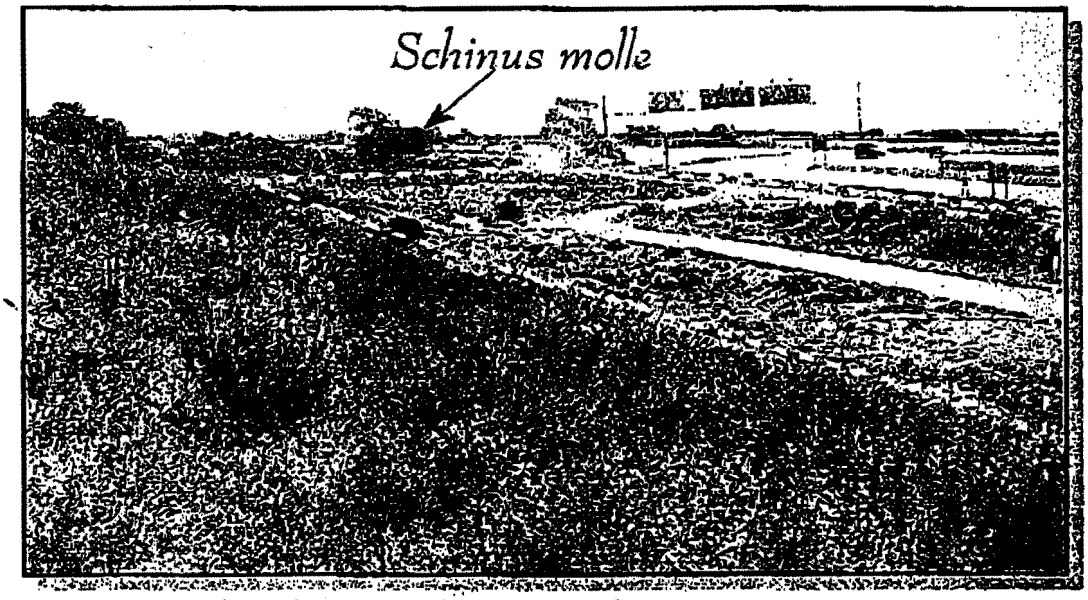

Fig. 5. View from farther north than that of Fig. 4. Staging area (approximated by grey dashed lines) for PAL construction is located imme east of the freeway and between the INS check point and the small canyo California pepper tree (Fig. 3a) grows on edge of the embankment.

EXHIBIT NO. 7
APPLICATION NO.
CD-65-97