

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

RECORD PACKET COPY

F 17b

**STAFF REPORT AND RECOMMENDATION****ON CONSISTENCY CERTIFICATION**

Consistency Certification No	CC-033-03
Staff	JRR-SF
File Date	4/11/2003
3 Months	7/11/2003
6 Months	10/11/2003
Commission Meeting	6/13/2003

APPLICANT: Southern California Regional Rail Authority

DEVELOPMENT

LOCATION: San Clemente Shoreline, Orange County (Exhibit 1)

DEVELOPMENT

DESCRIPTION: Maintenance of an existing rock revetment protecting railroad tracks

EXECUTIVE SUMMARY

The Southern California Regional Rail Authority (SCRRA) proposes to maintain an existing revetment protecting its railroad tracks within the City of San Clemente. Specifically, the SCRRA proposes to add new rock to four areas where erosion is threatening the tracks. To address concerns raised by the Commission, the applicant has modified its project to provide for development of a maintenance plan and commitments to provide long-term improvements for managing erosion. The project is a permissible shoreline structure because it is necessary to protect an existing structure, and, as modified, will mitigate for long-term cumulative impacts to sand supply. Therefore, the project is consistent with the shoreline structure policy (Section 30235) of the CCMP. As modified, the project also minimizes impacts to recreational resources and is consistent with the recreational policies (Sections 30210 and 30220) of the CCMP. Finally, the project will not affect habitat or visual resources of the coastal zone and is consistent with those policies (Sections 30230, 30240, and 30251) of the CCMP.

SUBSTANTIVE FILE DOCUMENTS: (See Page 10)

STAFF SUMMARY AND RECOMMENDATION:**I. Project Description**

The SCRRA proposes maintenance of an existing revetment at four locations within the rail right-of-way in the City of San Clemente. The SCRRA proposes to add new

rock to areas where erosion is threatening the tracks. The project will protect railroad tracks that provide the sole rail connection for passengers and freight between San Diego and Los Angeles. The proposed project includes the following elements:

1. SCRRA will add new rocks to the revetment at the following locations: (1) Cottons Point (Milepost 204.3); (2) Calafia (Milepost 205.5); (3) Linda Lane (Milepost 204.5); and (4) Mariposa Point (Milepost 204.3);
2. SCRRA will place the minimum amount of rock necessary to protect the track bed;
3. SCRRA will implement a pilot project at Calafia consisting of a beachside application of strategically placed rock, in order to reduce the footprint of the revetment at this location;
4. SCRRA will establish a limit line for future revetment maintenance activities in San Clemente; and
5. SCRRA will participate in the Army Corps of Engineers' evaluation of sand replenishment and other potential methods for future protection of public and private properties within San Clemente.

II. Status of Local Coastal Program

The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If an LCP that the Commission has certified and incorporated into the California Coastal Management Program (CCMP) provides development standards that are applicable to the project site, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The Commission has not incorporated the San Clemente LCP into the CCMP.

III. Applicant's Consistency Certification

The Southern California Regional Rail Authority certifies the proposed activity complies with the federally approved California Coastal Management Program and will be conducted in a manner consistent with such program.

IV. Staff Recommendation

The staff recommends that the Commission adopt the following motion:

A. Motion. I move that the Commission concur with consistency certification CC-033-03 that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

The staff recommends a **YES** vote on this motion. Passage of this motion will result in a concurrence in the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

B. Resolution for Concurrence with Consistency Certification. The Commission hereby concurs with the consistency certification made by the Southern California Regional Rail Authority, on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.

V. Findings and Declarations

The Commission finds and declares as follows:

A. Background. The Atchison, Topeka, and Santa Fe Railway built these railroad tracks in 1888 and constructed the rock revetment in the 1930's. The current owner of the right-of-way is the Orange County Transportation Authority (OCTA), which purchased this right-of-way in 1993. The SCRRA operates the Metrolink commuter rail service and maintains this right-of-way on behalf of the OCTA. The SCRRA maintains the rock revetment as erosion exposes the underlying sandy soil. The SCRRA conducted the most recent maintenance activity in 1999 following the El Niño storms of 1998.

The SCRRA planned a larger-scale maintenance operation in early 2003 at various locations of the existing revetment along the right-of-way in San Clemente. Interested parties expressed opposition to this project because it would result in an expansion seaward of the existing revetment. In response to these concerns, SCRRA met with representatives of the City of San Clemente, the City's Coastal Advisory Committee, the Surfrider Foundation, and the County of Orange on March 18, 2003. The result of these discussions was a modification of SCRRA's plan to the proposed project.

The SCRRA has submitted the proposed project to the Army Corps of Engineers, the National Marine Fisheries Service, the United States Environmental Protection Agency, the United States Fish and Wildlife Service, the California Department of Fish and Game, and the San Diego Regional Water Quality Control Board for their review. These agencies have approved this project provided the Corps' permit includes conditions for biological surveying, monitoring, and reporting. The Corps' authorization is included in Exhibit 2 and incorporated by reference.

The SCRRA's consistency certification included a request for emergency authorization to go forward with the project in advance of the Commission's review of the project. Although the federal consistency procedures do not provide for an emergency authorization, the Commission staff has, on occasion administratively authorized a project where warranted based on its coastal zone effects and the

nature of the emergency. In this case, the Commission staff was not completely convinced of the emergency, but considering the potential magnitude of an accident resulting from damage to the railroad tracks and the need to protect mass transit resources, the Commission staff provided an emergency authorization allowing the project to proceed (and with the applicant's understanding and the Corps' condition) that the Commission's final action would be determinative (Exhibit 3).

B. Shoreline Structures. Section 30235 of the Coastal Act provides, in part, that:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply....

The applicant proposes to add new rock to an existing revetment in order to fill in gaps in the structure. The additional rock is necessary to protect the existing railroad tracks. The applicant describes the current situation as follows:

The existing revetment is there solely to protect the operating railroad. At the four subject locations, the railroad is in immediate danger from existing and continuing erosion. It is the professional opinion of SCRRA's Director of Engineering and Construction that the next large storm, combined with high tides, could result in destabilization of the track. SCRRA has consistently operated well within margins of safety for track and structures, consistent with federal regulations, preferring to prevent emergencies rather than react to them. In the case of these specific locations, that margin of safety is nearing its lower limit.¹

Section 30235 of the Coastal Act provides two tests for evaluating the construction of revetments. First, the seawall must be necessary to protect an existing structure threatened by erosion. Second, the project must mitigate for impacts to local sand supply. In this case, it is clear that the proposed project is necessary to protect an existing structure. As described above, the purpose of the project is to protect the existing railroad tracks from waves and erosion. These tracks are located on the beach and are within the area where waves could reach and damage the tracks. According to the applicant, when the railroad company originally built the tracks, the beach was much wider and subsequent erosion has narrowed the beach. In the 1930s, the railroad company constructed the revetment. Although the applicant did not provide an analysis of alternatives, it is clear that relocation of the tracks to an area off the beach is not feasible at this time, because it would require the acquisition of an entirely new right-of-way and the reconstruction of several miles of new track. The cost of such an alternative is likely to be very expensive and could result in significant environmental impacts. Regardless, such an alternative is

¹ Consistency Certification Submittal, April 11, 2003, p. 4.

beyond the scope of this project, which is for the placement of new rock to fill in the gaps on the existing revetment. Without the project, the existing tracks could be subject to erosion from wave energy. Therefore, the Commission finds that the proposed project is required to protect an existing structure.

With respect to this project, the more complex question is that of mitigation for impacts to local sand supply. On its face, the proposed project will not significantly affect beach resources. However, the SCRRA regularly conducts these maintenance operations and these activities could have cumulative effects on sand resources. The SCRRA has not documented the fate of the rocks after it places them on the revetment. The rocks are either spreading laterally across the beach or washing offshore. In either situation, the rocks are covering beach sand. Part of the problem is that this revetment is not an engineered seawall, but a pile of dumped rock that the SCRRA maintains by dumping new rock. It appears there are several feasible mitigation measures that would minimize the project's effects on sand supply. These mitigation measures include using the displaced rocks whenever possible and replacing the existing structure with an engineered revetment, which would reduce the maintenance requirements.

In its consistency certification, SCRRA offers several commitments to reduce the project's adverse effects. These commitments include the following:

1. Limit the maintenance activities to four specific locations requiring immediate maintenance (Cottons Point (Milepost 204.3), Calafia (Milepost 205.5), Linda Lane (Milepost 204.5), and Mariposa Point (Milepost 204.3));
2. Place the minimum amount of rock at these locations necessary to establish sufficient levels of protection of the track bed;
3. Implement a pilot project at one specific location (Calafia), consisting of a beachside application of strategically placed rock, thereby further reducing the footprint of the revetment at this location;
4. Establish a limit line for future revetment maintenance activities in San Clemente; and
5. Participate in studies currently underway by the Army Corps of Engineers to evaluate sand replenishment and other potential methods for future protection of public and private properties within San Clemente.

Although these measures go a long way to resolving the cumulative impacts from the proposed project, they do not completely resolve the Commission's concerns. The Commission believes that additional measures are necessary to minimize the cumulative effects from the repair and maintenance of this revetment. Primarily, the Commission believes that the SCRRA should conduct routine maintenance of the revetment that emphasizes the re-use of rock that it previously placed on the structure. Additionally, the applicant could investigate a redesign of the revetment to minimize maintenance needs. The Commission suspects that an adequately engineered structure would have substantially less maintenance requirements and

provide better protection for the railroad tracks. Alternatively, it may be feasible to replace the riprap with sand, as part of a regional beach nourishment project.

The Commission notes that the U.S. Army Corps of Engineers is investigating shoreline erosion issues in San Clemente. It is working with the SCRRA, the City of San Clemente, and Orange County to analyze the erosion problem and various solutions. The Commission believes that the Corps is considering beach replenishment as one of its alternatives to the erosion problem in this area. However, the Corps is in the early stages of its investigation and has not determined if there is a federal interest for a project or if it is feasible.

In response to concerns raised by the Commission, the SCRRA has modified its project to address these issues. The modifications include the development of a maintenance plan that provides the following commitments:

1. Limit the placement of new rocks to those areas where the shoreline structure is no longer providing sufficient protection to the existing tracks.
2. Develop a seaward limit line for the revetment and do not place any rocks seaward of that line.
3. Whenever feasible, remove existing rock from the beach and replace it on the revetment.
4. Pre-project notice to the Commission, other relevant regulatory and resource agencies, City of San Clemente, and interested members of the public.
5. Annual monitoring of the maintenance activities that includes information on the amount and location of maintenance activities and reports on SCCRA compliance with above-described requirements.
6. Apply for a permit for a multi-year maintenance program that includes the above elements.

In addition, the SCRRA has agreed to investigate long-term projects such as beach nourishment or engineered revetment as methods to address erosion problems in this area while reducing the maintenance needs of the existing structure. With these modifications, the SCRRA will reduce the long-term cumulative impacts on sand supply from its regular maintenance activities.

In conclusion, the Commission finds that the proposed project is necessary to protect an existing structure threatened by erosion. Additionally, the Commission finds that the applicant will mitigate for impacts to sand supply by developing a short-term and long-term plan to address cumulative impacts associated with repeated maintenance activities. Therefore, the Commission finds that the project, as modified, is consistent with the shoreline structure policy of the CCMP, specifically Section 30235 of the Coastal Act.

C. Recreational Resources. Section 30210 of the Coastal Act provides that:

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 30210 of the Coastal Act provides that:

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

As described above, the SCRRA proposes to add new rock to an existing revetment to maintain protection of existing railroad tracks. The SCRRA and the previous owners of the rail right-of-way have implemented several similar maintenance activities in the past. The Commission is concerned that these repeated maintenance activities are adversely affecting recreational resources of the area. However, as described below, the applicant has modified the project to address cumulative impacts from its maintenance activities and, as modified, the project is consistent with the recreation policies of the CCMP.

This area of the coast is an important recreational resource. In its LCP, the City of San Clemente describes recreational resources of this area as follows:

San Clemente is a well-known surfing area and is the home of many of the world's past present and future [sic] surfing professionals. The surf areas located within or near the City's Coastal Zone are valuable recreational resources that are enjoyed year around [sic]. There are a total of eight established surfing areas within the City's boundaries. Perhaps the most well known surfing beaches in the area are Trestles and San Onofre, located just south of the San Clemente city limits.²

In addition, the public uses San Clemente beaches for other recreational uses including sun bathing, swimming, picnicking, and other relevant recreational uses.

The proposed project has the potential to affect the recreational resources of the area. Although the individual effect from the project may not be significant, the Commission is concerned about the cumulative effects from regular maintenance activities of this revetment. The Commission believes that these cumulative impacts to recreational use could be significant. The applicant's repeated placement of rocks has result in an expansion of the footprint of the structure. Additionally, rocks that fall off the revetment could move into nearshore waters and present a hazard to surfers and swimmers.

² San Clemente Coastal Element, January 18, 1995, p. 2-50.

In order to resolve these potential impacts, the SCRRA proposes to develop a maintenance plan and seek multi-year approvals for that plan. The SCRRA has committed to including within that plan provisions for minimizing the amount of rock placed on the beach and re-using rock that is no longer on the revetment. The SCRRA's commitment also includes provisions for a limit line beyond which it will not place any new rock and an investigation into the fate of rocks previously dumped on the revetment. Additionally, the SCRRA agreed to investigate long-term solutions to the regular maintenance activities. This commitment includes provisions for cooperating with the U.S. Army Corps of Engineers in its study for regional solutions to erosion issues along the San Clemente coast or, if that process should not proceed, investigating other measures that the SCRRA could use to protect its tracks. The measures that both the Corps and the SCRRA will investigate include a regional beach nourishment program, which would likely have significant benefits to recreational resources. Regardless of the final coastal protection project selected, both the long-term solution and the short-term maintenance plan will reduce the maintenance requirements for this revetment and will reduce the amount of rock that the SCRRA needs to use to protect its tracks. Therefore, as modified, the project will reduce the cumulative effects from regular maintenance activities on recreational resources. In conclusion, the Commission finds that the project is consistent with the recreational policies of the CCMP, specifically Sections 30210 and 30220 of the Coastal Act.

D. Habitat Resources. Section 30230 of the Coastal Act provides that:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

In addition, Section 30240 of the Coastal Act provides that:

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

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

The beaches in this area have the potential to provide habitat for the western snowy plover, a federally listed threatened species, and the California grunion, a biologically important fish that spawns on sandy beaches. Pursuant to requests from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, the applicant

investigated the habitat values of the project areas. With respect to snowy plovers, the SCRRA concluded the following:

Project repairs to the riprap along the railway will not impact the western snowy plover or their nesting activities. No plovers were observed during the survey and no evidence of nesting activity was found. Due to the daily high tide line, high levels of human activity, and presence of dogs on the beaches, it is highly unlikely that western snowy plovers utilize this area for nesting.³ (Exhibit 3)

The applicant also surveyed for California grunion. In that survey, the SCRRA concluded the following:

It is my professional opinion that work to reinforce the rip-rap along the Metrolink ROW will not significantly impact any grunion egg masses at three of the four site locations. The fourth site location at Miraposa Point did show positive signs of grunion egg masses, although these eggs were found between 15 and 20 ft. from the existing toe of the rip-rap. According to the manner in which this work will be done, I also don't believe that this work will bring any grunion egg masses into jeopardy. The plan for the reinforcement work is to push some of the existing rip-rap outward 3 – 5 ft. then additional rock will be piled on top of that. With that in mind, the only way any grunion egg masses could be affected would be if any of the rip-rap traveled 15 – 20 ft. onto the beach.⁴ (Exhibit 4)

Based on these surveys, it does not appear that the project site contains any environmentally sensitive habitat areas. Additionally, it is unlikely that the proposed project will affect any biologically important marine species. Therefore, the Commission finds that the project is consistent with Habitat Policies of the CCMP, specifically Sections 30230 and 30240 of the Coastal Act.

E. Visual Resources. Section 30251 of the Coastal Act provides, in part, that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed ... to be visually compatible with the character of surrounding areas

The proposed project provides for the placement of new rock on an existing revetment to cover areas where the revetment is no longer providing protection for existing railroad tracks. The revetment is located on sandy beaches that are accessible to the public. As described above, the railroad company constructed

³ Results of Western Snowy Plover Survey for Repairs to Riprap along the Metrolink Railway in San Clemente, California (undated), p. 2.

⁴ Untitled report describing grunion survey, April 10, 2003, p. 2.

these tracks in the late 1800s and constructed the revetment in the early 1900s. Thus, both the tracks and the revetment have been part of the visual landscape for many years. The proposed project will add a small amount of new rock to the existing revetment and will not change the visual character of the area. Therefore, the Commission finds that the project is consistent with the Visual Policy of the CCMP, specifically Section 30251 of the Coastal Act.

VI. Substantive File Documents

1. San Clemente Coastal Element, January 18, 1995.
2. Results of Western Snowy Plover Survey for Repairs to Riprap along the Metrolink Railway in San Clemente, California (undated).
3. Untitled report describing grunion survey, April 10, 2003.
4. Letter of approval from the U.S. Army Corps of Engineers, April 18, 2003.

-
1. COTTON'S POINT
 2. CALAFIA
 3. LINDA LANE
 4. MARIPOSA POINT

EXHIBIT NO. 1

APPLICATION NO. CC-033-03

 California Coastal Commission



RECEIVED
JAN 1974
FBI



1. TOTAL POINT
2. CALIFIA
3. LINDA LANE
4. MARITIME POINT





DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO
ATTENTION OF:

April 18, 2003

Office of the Chief
Regulatory Branch

Mr. Steve Wylie
Southern California Regional Rail Authority
700 S. Flower St., 26th Floor
Los Angeles, CA 90017

Dear Mr. Wylie:

This is in reply to your application (File No. 200300814-RLK) dated April 8, 2003 for a Department of the Army Permit to discharge up to 4,200 tons of rock along the seaward bank of the Metrolink rail line between mileposts 204.25 and 207.4 in the navigable waters of the United States, in the city of San Clemente, Orange County, California (Figure 1).

There are four specific locations to be repaired, and they are as follows:

Table 1.			
Location	Milepost Boundaries	Latitude/Longitude	Estimated Quantities
Cotton's Point	207.0 - 207.4	N 33°26'.451" W 117°35'.862"	1000-1200 tons
Calafia	205.98 - 205.2	N 33°24'.216" W 117°36'.313"	600-1000 tons
Linda Lane	204.5 - 204.6	N 33°25'.364" W 117°37'.369"	600-1000 tons
Mariposa Point	204.25 - 204.4	N 33°25'.549" W 117°37'.624"	600-1000 tons

To conduct the effort, stone will be placed in a berm to a height of 2-3 feet above the track on the ocean side, to fully secure the track ballast from backwash by breaking waves, and will then be sloped at the natural "angle of repose" of the broken rock (about 1:1) towards the beach. It is not expected that beach slope restoration activities would be required for this activity.

Replacement stone will be brought to the site by side-dump railroad cars. (Only clean and compatible (size, shape and color) stone will be used to rebuild the existing embankment.) Upon site arrival, the railroad cars will be lowered so that their sides are nearly the height of the track. After the cars are lowered, an end loader (or other similar piece of construction equipment) will be used to level the existing berm, if needed. Next, the rail cars will be dumped, causing the new stone to fall on top of the old stone. Construction equipment (end loaders and/or backhoes) will

EXHIBIT NO. 2

APPLICATION NO. CC-033-03

-2-

then be used to shape the new berm and make modifications to the shape of the new stone pile. At the Calafia site (generally at MP 205.98 – 205.20), the work will be accomplished by having a crawler backhoe on the beach to carefully re-stack the gravity-dumped rock. No vegetation will be disturbed. With the small quantities of rock to be placed, it is expected that work in each location will take two to three nights. It is expected that construction will be phased over a 3-week time period.

Based on the information you have provided, the Corps of Engineers has determined that your proposed activity complies with the terms and conditions of Regional General Permit (RGP) No. 63. As long as you comply with the special conditions below and the general permit conditions of RGP No. 63 (Encl 1), an individual permit is not required.

Special Conditions:

1 You are authorized to place rock as described herein and pursuant to Table 1. above. All rock shall be placed within the original footprint. The time limit for completing the authorized activity ends on March 1, 2004. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2 Any modifications or conditions to the project through the California Coastal Commission's concurrence with a coastal consistency certification are incorporated into this permit as special conditions. If the Coastal Commission later objects to the consistency certification, this project would no longer be authorized by this RGP and the Permittee would have to remove any rocks placed in reliance on the Commission's emergency authorization.

3 You shall retain a Corps-approved biologist(s) to monitor and inspect all on-site construction activities. Prior to initiation of construction, you shall request Corps approval, with the request stating the biological resource specialists' name, address, phone number, e-mail address and experience/credentials. The biological monitor(s) shall:

- Review, and/or inspect on-site construction activities to ensure no vegetative or other environmental impacts occur. If vegetative or other environmental impacts occur, the monitor shall note and report the size of the disturbed area and the vegetation community impacted in the weekly letter reports. Note that you may be responsible for mitigating for acreage impacted outside of the approved construction footprint. Additional mitigation shall be conducted at a minimum ratio of 5:1. In the event that mitigation is required, you shall develop the mitigation plan. The plan shall be submitted to the Corps within 30 days of recognition of the unauthorized/noncompliant activity for review and approval. You shall obtain final written approval of the Plan from the

Exhibit 2, page 2

-3-

Corps prior to implementing the plan. The Corps may waive the requirement for mitigation only if a justification for the impact is provided to us in writing and we concur that the justification is legitimate.

- Conduct grunion and plover monitoring activities as detailed in No.4 and 5 below, respectively.
- Be empowered to halt construction and contact Corps, Regulatory Project Manager if he/she believes the terms and conditions of this authorization are being violated, with non-compliance reported to the Corps within one (1) hour of detection.
- Submit weekly letter reports to the Corps and other Resource Agencies during project construction. Weekly reports may be mailed or sent electronically. The weekly reports shall document: 1) that project impact limits were not exceeded; and 2) that the terms and conditions of the Permit were complied with. All noncompliance activities shall be reported and photo-documented in the reports.
- Submit post activity report as described in General Condition No. 26 (Encl 1).

4. Grunion. For all work scheduled to occur between March 15 and August 15, 2003. You shall implement the grunion monitoring measures for work areas in and adjacent to waters of the U.S.

4.1 You may conduct pre-construction surveys in proposed work areas to determine habitat suitability to support grunion spawning. If areas are determined to be not suitable the supporting documentation shall be provided to the Corps, National Marine Fisheries Service (NMFS), California Department of Fish and Game (CDFG), and U.S. Fish and Wildlife Service (USFWS) for review and approval. If the Resource/Regulatory Agencies concur with your determination, additional monitoring may not be warranted at that time. If additional monitoring is warranted or no pre-construction surveys are conducted and approved by the Resource/Regulatory Agencies, the following conditions are applicable.

4.2 You shall monitor for grunion activity during construction, where construction is scheduled to overlap or follow (within a 2-week time period) a grunion spawning activity, based on the CDFG 2003 Expected Grunion Run Publication. Monitoring shall occur for a 2-hour period prior to the anticipated run, during the published two-hour period, and following, for a 2-hour period.

Exhibit 2, page 3

-4-

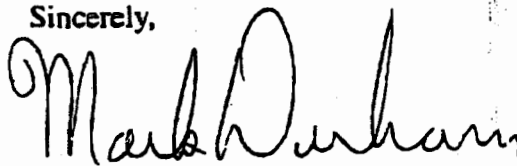
4.3 You shall provide the Corps, NMFS, CDFG and USFWS with a written record, when monitoring occurs, of all monitoring activities and if grunion activity was observed by 9:00 A.M. the next morning. For each monitoring activity, the following information shall be presented to the resource/regulatory agencies, via e-mail: location and date of monitoring event, procedures, time, and if grunion activities were present or absent. If present, a record shall be prepared to document when and where observed, and what operational changes were taken. (That is, did construction operations cease immediately, a buffer zone established to extend 100 feet shoreward of the MLLW line and 100 feet up- and down-coast of the activity.) Note that all buffer zones shall be in place for a minimum of 14 days to allow the eggs to hatch, and prior to opening a buffer zone, another survey shall be conducted, in the next survey window to document future use. No activities shall occur within an exclusionary buffer zone, until approved by the Corps.

5 Western snowy plover. You shall retain a biologist knowledgeable of the snowy plover and he/she shall survey the project area at Cotton's Point for snowy plover, including all permanent and temporary impact areas. Two surveys shall be conducted the week before project construction with the last survey done the day before construction. Project construction shall not be initiated until the Service and the Corps have received and approved of the survey report. If snowy plovers are found in the project area, project construction shall not be initiated until the Corps has consulted with the Service on the project's potential effects to the snowy plover.

A general permit does not grant any property rights exclusive privileges. Also, it does not authorize any injury to the property or rights of others or authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, State, or local authorizations required by law.

Thank you for participating in our regulatory program. If you have any questions, please contact Mr. Russell L. Kaiser of my staff at 213-452-3293.

Sincerely,



Mark Durham
Chief, South Coast Section
Regulatory Branch

Enclosure

Exhibit 2, page 4

CALIFORNIA COASTAL COMMISSION

5 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
OFFICE TDD (415) 904-5200

 California Coastal Commission



April 18, 2003

Russell Kaiser
Regulatory Division
U.S. Army Corps of Engineers, Los Angeles District
P.O. Box 2711
Los Angeles, CA 90053-2325

Steve Wylie
Assistant Executive Officer
Southern California Regional Rail Authority
700 S. Flower Street, 26th Floor
Los Angeles, CA 90017

RE: San Clemente Rail Right-of-Way Maintenance Project

On April 14, 2003, the Southern California Regional Rail Authority (Rail Authority) submitted to the Commission staff a consistency certification for the above-referenced project. In addition, the Rail Authority requested that the Commission provide immediate authorization to proceed with the project in advance of the Commission's review of the consistency certification, which will occur at its June meeting in Long Beach. The project involves the placement of rock (between 2,800 and 4,200 tons) to re-enforce an eroded rock revetment seaward of an earthen berm on which tracks the Rail Authority is responsible for maintaining are located. The Rail Authority has identified the following four locations where it believes the addition of new rock is necessary to protect the tracks: 1) Cotton's Point (N 33°25'.451" by W117°26".862"); 2) Calafia (N33°24'.216" by W117°36'.313"); 3) Linda Lane (N33°25'.364" by W117°37'.369"); and 4) Mariposa Point (N33°25'.549" by W117°37'.624"). At three of these locations, the Rail Authority will dump stone from side-dump railroad cars, which require it to "push off" the remaining berm with an end loader or other construction equipment. After the Rail Authority dumps the rocks, it will rebuild the berm. At the fourth location, Calafia, the Rail Authority will carefully place the stones using a backhoe on the beach in order to determine if such a method will provide a more durable revetment.

In support of its request for immediate authorization to proceed with its project, the Rail Authority asserts that because of voids in the rock revetment at the above-identified locations the berm on which the tracks are located is in imminent danger of destabilization in the event of water contact, caused either by a storm event or by high tide conditions, or both should they occur simultaneously. The Commission staff agrees that the Rail Authority has provided sufficient evidence to support its request to proceed with the project in advance of its review of the consistency certification. In addition to the evidence supplied by the Rail Authority, Commission staff finds the Rail Authority's request to be supported by the following additional considerations: 1) the Rail Authority's consistency certification documents potential for failure of the tracks at the four locations described above; 2) the potentially significant impact to public safety and mass transit should the tracks fail; 3) the new rock will be added to an existing revetment; 4) the applicant has designed a project, in cooperation with the City of San Clemente and other interested parties, to be the minimum necessary to address problem areas; and 5) the applicant

has already submitted a consistency certification. In addition, the Corps of Engineers has agreed to attach the following condition to its authorization:

Any modifications or conditions to the project through the California Coastal Commission's concurrence with a coastal consistency certification are incorporated into this permit as special conditions. If the Coastal Commission objects to the consistency certification, this project would no longer be authorized by this RGP and the permittee would have to remove any rocks placed in reliance on the Commission's emergency authorization.

With this condition, the Commission staff believes that any possible coastal issues can be resolved through its review of the Rail Authority's consistency certification.

In conclusion, the Commission staff agrees that there is a need for immediate action by the Rail Authority to protect the existing tracks and we do not object to the issuance of the Corps permit and placement of the rock in advance of the Commission's review of the consistency certification. If you have any questions, please contact James Raives of my staff at (415) 904-5292.

Sincerely,



PETER M. DOUGLAS
Executive Director

cc: City of San Clemente
Mark Cousineau, Surfriders
Deborah Lee, California Coastal Commission
Teresa Henry, California Coastal Commission
Steve Rynas, California Coastal Commission
Anne Blemker, California Coastal Commission
Alex Helperin, California Coastal Commission

Results of Western Snowy Plover Survey for Repairs to Riprap along the Metrolink Railway in San Clemente, California

Survey Methodology:

A western snowy plover (*Charadrius alexandrinus nivosus*) habitat assessment and nesting activity survey was conducted by Christine Tischer, a Chambers Group wildlife biologist, between 1045 and 1400 on April 10, 2003. A habitat assessment was conducted from the railway by Hy-Rail. These areas were then surveyed on foot between the railway riprap and the tide line while noting the general condition of the beach, low and high tide line, and sign (tracks, nest scrapes, eggs, etc.). The shore and dunes, both within the areas of proposed impact and in the vicinity of the project, were surveyed using 8 x 42 magnification binoculars to scan for the presence of western snowy plovers (plovers). All bird species encountered during the survey were recorded in field notes (see attachment).

Survey Results:

Habitat Assessment:

Marginally suitable nesting habitat for plover exists at the south end of the proposed repair area between Mileposts 207.0 and 207.4, just north of the Trestles bridge over San Mateo Creek. The amount of sandy beaches between tide line and riprap ranged from 150' to 235' at low tide. The distance between tide line and riprap during high tide ranged between 70' and 185'. During storm events, the high tide line extends to the riprap as evidenced by debris and based on results of questioning people familiar with the area that were encountered during the survey. Therefore, it was determined that a large enough area of beach was present for nesting plovers. However, due to the apparent frequent use of the dunes by humans, the habitat suitability was marginal at best.

The remainder of the rail line did not contain suitable nesting habitat for the snowy plover. The amount of sandy beaches between the riprap and tide line was limited to 100' or less during low tide and no beaches during high tide. Any nesting attempts by plovers within these areas would be washed out by the next high tide.

Nesting Activity Survey:

No plover nesting activity was noted during the survey. Adult plovers were not observed foraging along the shoreline or along the sand dunes. Bird species noted during the survey included, sanderling (*Calidris alba*), western sandpiper (*Calidris mauri*), dowitcher (*Limnodromus* sp.), whimbrel (*Numenius phaeopus*), willet (*Catoptrophorus semipalmatus*), rock dove (*Columba livia*), Heerman's gull (*Larus heermanni*), and western gull (*Larus occidentalis*). No plover nesting activity was observed in the project area. A large number of human and dog tracks were noted in all areas of the project. Tire tracks from frequent patrolling of lifeguards were observed between the tide line and half way up the sandy beaches in most areas. A possible set of plover tracks were

observed within a portion of the tire tracks between Mileposts 207.0 and 207.4, outside of the proposed impact area. These tracks were followed for approximately 60', but did not lead to a nest scrape or evidence of nesting activity.

Conclusion:

Project repairs to the riprap along the railway will not impact the western snowy plover or their nesting activities. No plovers were observed during the survey and no evidence of nesting activity was found. Due to the daily high tide line, high levels of human activity, and presence of dogs on the beaches, it is highly unlikely that western snowy plovers utilize this area for nesting.

Date: April 10, 2003

Surveyor: Todd Chapman, Chambers Group Inc.

Introduction

Surveys were conducted for the presence or absence of California grunion spawning activity at four locations along the Metrolink Right of Way (ROW) through the city of San Clemente. These surveys were conducted to provide Metrolink the ability to safely make additions to their rip-rap reinforcements along their ROW, without impacting any of the grunion populations. These retrofits are needed to protect the railroad during periods of extreme high tides and also during storms. All of these locations are losing sands from their beaches and this has allowed surf to undermine and compromise their ROW since the mid 1980's.

Methods

Each of the locations were accessed with the use of a highrail. Once each of the sites were located, a transect tape was extended perpendicular to the ROW, from the edge of the existing rip-rap down to the waters edge. At least two transects were conducted at each of the sites depending of the size of each of the locations. Each of the transects consisted of holes being dug every 10-15 ft. Beginning at MHHW mark, until at least 5-6 holes were completed per transect. Each hole was dug in a trench manner, beginning at the appropriate point along the transect tape and extending for 1.5 ft. The holes were 6 inches wide (the width of the shovel) and 18 inches deep. During the digging process, the vertical walls of the trench hole were visually examined along with the spoils from the hole for signs of grunion egg masses. Once the holes were complete, they were then filled and compacted. In the event grunion egg masses were found, secondary transects were to be setup 5 feet in either direction of the original transect tape orientated in the same manner. Additional holes would then be dug along the same reach in an attempt to find more egg masses.

Site Locations

Cottons Point (MP 207.4 – 207.0)

Three transects were conducted at this location, and 6 holes were dug along each of the transects. The entire beach face measured 180 – 240 ft. from the ROW to the waters edge. Beginning at 40 ft. (MHHW) from the ROW and working toward the water, there were no signs of any grunion egg masses on any of the transects.

Calafia (MP 206.5 – 206.2)

Two transects were conducted at this location, along each of these transects 6 holes were dug. The entire beach face measured 70 – 90 ft. from the ROW to

the waters edge. Beginning at 10 ft. (MHHW) from the ROW and working toward the water, there were no signs of any grunion egg masses along either of the transects.

Linda Lane (MP 204.5)

Two transects were conducted at this location, along each of these transects 6 holes were dug. The entire beach face measured 60 - 80 ft. from the ROW to the waters edge. Beginning at 0 ft. (MHHW) from the ROW and working toward the water, there were no signs of any grunion egg masses along either of the transects.

Mariposa Point (MP 204.5 – 204.3)

Two transects were conducted at this location, along each of these transects 6 holes were dug. The entire beach face measured 100 ft. from the ROW to the waters edge. Beginning at 0 ft. (MHHW) from the ROW and working toward the water, there were no signs of any grunion egg masses on the first transect. The second transect also beginning at 0 ft. from the ROW, exhibited positive signs of grunion egg masses between 15 and 20 ft. Two discreet egg masses were uncovered, both were buried 7 inches beneath the surface of the sand. Additional holes were also dug along two secondary transects placed 5 ft. in either direction of the original tape. 3 Holes were dug between 10 and 20 ft. on each of the secondary transects. No additional signs of grunion egg masses were uncovered in any of the holes.

Discussion

It is my professional opinion that work to reinforce the rip-rap along the Metrolink ROW will not significantly impact any grunion egg masses at three of the four site locations. The fourth site location at Miraposa Point did show positive signs of grunion egg masses, although these eggs were found between 15 and 20 ft. from the existing toe of the rip-rap. According to the manner in which this work will be done, I also don't believe that this work will bring any grunion egg masses into jeopardy. The plan for the reinforcement work is to push some of the existing rip-rap outward 3 – 5 ft. then additional rock will be piled on top of that. With that in mind, the only way any grunion egg masses could be affected would be if any of the rip-rap traveled 15 – 20 ft. onto the beach.



Surfrider Foundation

San Clemente Chapter

18 April 2003

RECEIVED

APR 23 2003

CALIFORNIA
COASTAL COMMISSION

Mr. James Raives, Consistency Coordinator
Consistency Determinations
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Subject: Comments to the Consistency Determination of Metrolink Related
to Track Maintenance Activities in San Clemente California

Dear Mr. Raives:

This letter has been prepared to offer the comments of The Surfrider Foundation related to the federal consistency determination submitted by SCRRA for proposed track maintenance activities in San Clemente California. In addition, this letter also follows up on our telephone conversation of the same topic. It is our understanding that SCRRA has submitted a 404 permit to the Army Corps of Engineers for certain track maintenance work to be conducted along the railroad track that runs on the beach in San Clemente. As part of that permit process, your agency is processing a Federal Consistency Determination as required.

The Surfrider Foundation has long been concerned with the track maintenance practices of SCRRA and has protested those in the past. In addition, we have also worked with Coastal Commission Staff in the past including members of the enforcement program. While SCRRA suggests that they are precluded from local regulation, we would note that this is the second permit they have applied for over the past few years, the first being a permit directly from the Coastal Commission. It is not the intent of this letter to debate the statements of the SCRRA regarding the authority of either the Army Corps or Coastal Commission to regulate the tracks in general nor to respond to the statements regarding access ways along the tracks. We shall agree to disagree and hold those discussions in other forums.

The specific concerns of Surfrider include but are not limited to:

- Potential expansion of the revetment over time and its encroachment onto the public lands of the State of California; taking of public land without notice or mitigation
- The potential for an increase in erosion caused by the larger footprint of the revetment;

EXHIBIT NO. 6

APPLICATION NO. CC-033-03

 California Coastal Commission

- The safety hazard to both people on the beach as well as those accessing the beach across the tracks at local coastal program designated accessways.

As mentioned in the consistency determination application, a meeting was held with SCRRA and members of the local community to discuss the proposed project, which resulted in a reduction in the magnitude of the project. We applaud the SCRRA for holding such a meeting and meeting with members of the local affected public. Given that this section of track is owned by the Orange County Transportation Authority (OCTA) and is therefore, locally owned, we are encouraged by this gesture. In addition, we are greatly encouraged by the change in approach of SCRRA from mass scale dumping of rock to a more precise and calculated process as well as their agreement to participate in the sand nourishment studies being conducted in San Clemente which could provide an alternative track protection mechanism. We generally agree with the items that were mentioned as discussed in the meeting. In addition, while it is our long-term goal to see the tracks removed from the beach, we do recognize the need for maintaining the tracks in a safe manner and also, generally are strong supporters of mass transit and more specifically, rail. In our meeting, we discussed the criteria for evaluating when a safety concern is present and what appropriate response actions would be. We also discussed surveying the location of the revetment footprint as well as the specific areas proposed for maintenance. It should be noted that Surfrider did not specifically agree on the proposals of SCRRA and have had subsequent dialogue with SCRRA on the proposals.

Given our meeting and discussions with SCRRA and the proposed Army Corps 404 permit, we offer the following comments, which have been also shared with SCRRA:

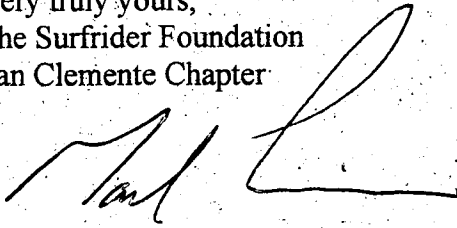
- It should be determined whether the proposed "maintenance" activities will be conducted on public lands of the State of California, and if so, appropriate notice to the State Lands Commission should be made and permits obtained and mitigation conducted
- The survey of the revetment line should be conducted in advance of further "maintenance" activity;
- We have examined the proposed locations of maintenance and while it appears that certain maintenance activity may be justified, we do not see any conditions that justify the processing of an *emergency permit*. In some of the areas proposed for "maintenance" there is a significant dry-sand beach buffer between the revetment and the ocean. We do not see any immediate threat to the tracks. If such an emergency approval is granted, we would suggest that a more proactive process be developed to avoid having to process emergency permits going forward;
- We suggest that the proposed maintenance locations, their size and dimensions be more specifically presented for evaluation in any pending permit;

Again, we do applaud the SCRRA for their recent change of heart in their proposed maintenance activities and thank them for acting more responsive to the concerns of the local community and in attempting to be more respectful of the ocean and beach

environment. We believe that these comments will only help to address areas of remaining differences and lead to an overall superior project and clarify the process for maintenance going forward.

Thank you for your time and the opportunity to review the consistency determination application.

Very truly yours,
The Surfrider Foundation
San Clemente Chapter

A handwritten signature in black ink, appearing to read 'Mark S. Cousineau', written over a horizontal line.

Mark S. Cousineau, REA II
Chapter Chair

Cc

Stephanie Dorey
Peter Douglas
Chris Evans, Esq.
Russell Kaiser
Toni Iseman
Wendy Morris
Sara Wan
Steve Wylie
Hollie Veale

