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

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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY CERTIFICATION

Consistency Certification No.:	CC-004-05
Staff:	MPD-SF
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3 Months:	4/5/2005
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Commission Meeting	11/16/2005

APPLICANT: North County Transit District

DEVELOPMENT LOCATION: Within railroad right-of-way adjacent to I-5, southern coastal portion of Camp Pendleton Marine Corps Base, northern San Diego County (Exhibit 1)

DEVELOPMENT DESCRIPTION: Construction of 1.8 mi. of new mainline track and rehabilitation of 0.9 mi. of existing track, adjacent and parallel to existing track (Exhibits 2-3)

SUBSTANTIVE FILE DOCUMENTS: See page 34.

EXECUTIVE SUMMARY

The North County Transit District (NCTD) proposes to construct the "O'Neil to Flores Second Track project" consisting of adding a second railroad track within the existing NCTD right-of-way along a 2.7 mi. stretch of railroad corridor, just east of Interstate 5 (I-5) on Camp Pendleton Marine Corps Base in northern San Diego County. The purpose of the "double-tracking" project is to reduce delays caused by trains traveling in opposite directions having to stop and wait until the line is clear. The project is intended to increase operational efficiency and service reliability, and, hopefully, to induce more people to use passenger rail as an alternative travel mode to the personal automobile. The Commission has previously concurred

with similar NCTD double tracking projects further north on Camp Pendleton, in the San Onofre area (CC-86-03), and further south on Camp Pendleton, across and south of the Santa Margarita River (CC-52-05).

The project will not adversely affect any existing public access and in fact will help maintain highway capacity on I-5 for access to and along the shoreline. One of the applicable Coastal Act access policies (Section 30252) encourages maintenance and enhancement of public access through facilitating the provision or extension of transit service. The project is therefore consistent with the public access policies of the Coastal Act (Sections 30210 and 30252). The project is also consistent with the air quality policy (Section 30253) promoting energy consumption-reduction strategies (e.g., reducing automobile vehicle miles traveled). The project includes appropriate Best Management Practices (BMPs) to minimize water quality impacts from construction and operation of the project, and the project will reduce automobile vehicle miles traveled, and, consequently, pollutants from highway runoff, thereby benefiting water quality. The project is therefore consistent with the water quality policy (Section 30231) of the Coastal Act.

Potential habitat issues raised are permanent effects on 2.96 acres (and temporary impacts on 2.77 acres) of natural habitat communities, including: upland vegetation (Diegan coastal sage scrub, valley needlegrass grassland, and non-native grassland)), and wetlands (southern willow scrub and mulefat scrub). NCTD surveys showed several environmentally sensitive species occurring in the area, including the California gnatcatcher, the least Bell's vireo, and vernal pools containing several sensitive species, including Riverside and San Diego fairy shrimp. The project has been designed to avoid impacts to these sensitive species to the degree possible, as construction activities have been scheduled to avoid impacts to California gnatcatchers and least Bell's vireos, and vernal pool impacts will be avoided through the construction of soil nail walls to contain the trackbed embankment. Mitigation commitments would include 2:1 mitigation for impacts to diegan coastal sage scrub; 3:1 mitigation for valley needlegrass grassland; 0.5:1 mitigation for non-native grassland; and 3:1 mitigation for wetland impacts (southern willow scrub and mulefat scrub). Minor increases in mitigation to assure no net loss of coastal sage scrub and wetland habitat are necessary to enable the project to comply with the mitigation requirements of the Coastal Act. Therefore, the Commission is conditionally concurring to require that the mitigation package, which includes a mix of acquisition, preservation, and new habitat creation, will need to increase the coastal sage scrub mitigation ratio from 2:1 to 3:1, and provide at a minimum 1:1 creation of new habitat for coastal sage scrub and wetland habitat. This requirement would mean NCTD must provide an additional ¼ acre of coastal sage scrub habitat creation and 2/3 acre of wetland creation, and the total package (i.e., acquisition plus preservation plus and new habitat) for coastal sage scrub would need to increase by 1.44 acres. (If NCTD does not agree to the condition, then the Commission's decision is treated as an objection and NCTD would have the right to appeal the decision to the Secretary of Commerce.)

In looking at the Coastal Act's wetland and habitat requirements, the project is the least environmentally damaging feasible alternative, and includes avoidance, minimization, monitoring and, as conditioned, mitigation where appropriate. The Commission found the two previous NCTD double tracking proposals involving wetland fill on Camp Pendleton to not increase capacity and to qualify under the wetland policy as incidental public services under Section 30233(a)(5) (CC-86-03 and CC-52-05). However, neither of these previous cases involved analysis under Section 30240, which contains a different and more stringent "allowable use" test. Because the subject project would be located within occupied coastal sage scrub/gnatcatcher habitat, which distinguishes it from the previously reviewed double-track proposals, despite the breeding seasons avoidance and off-site mitigation measures, it must be considered to be sited within an environmentally sensitive habitat area (ESHA). As such, it is inconsistent with the "allowable use" test of Section 30240(a) of the Coastal Act, which requires that "*...only uses dependent on those resources* shall be allowed within ... [environmentally sensitive habitat] areas." In addition, information NCTD has provided to support the project's access benefits analysis, combined with the programmatic operational discussion contained in the Fish and Wildlife Service's Biologic Opinion, lead to the conclusion that if not individually, then cumulatively the project is likely to increase capacity. If it increases capacity, it cannot qualify as an allowable use under Section 30233(a) as an incidental public service, and none of the other eight allowable uses in Section 30233 apply. Therefore, the only way the Commission could find the project consistent with the Coastal Act would be through the "conflict resolution" provision (Section 30007.5).

The project creates a conflict between the access/energy conservation/air and water quality policies of the CCMP on the one hand (Sections 30210, 30252, 30231, and 30253(4)) and the allowable use tests of the environmentally sensitive habitat/wetland wetland policies (Sections 30240 and 30233(a)) on the other. Although impacts have been avoided and minimized where feasible, and residual impacts would be mitigated, even as conditioned the project is not an allowable use under Sections 30240 and 30233 of the Coastal Act. If the Commission were to object to the proposed project based on environmentally sensitive habitat/wetland policy requirements, the result would frustrate public access and lead to conditions that are inconsistent with the access policies (Section 30210). Such an objection would also result in adverse effects to coastal waters and the air basin and be inconsistent with the achievement of water quality, air quality, energy conservation, and reductions in vehicle miles traveled goals expressed in Sections 30231, 30253(4), and 30252. In resolving the Coastal Act conflict raised, the Commission finds that the impacts on coastal resources from not constructing the project would be more significant and adverse than the project's ESHA and wetland habitat impacts, which will be mitigated. The Commission therefore concludes that, under Section 30007.5, and as conditioned, concurrence with this consistency certification is consistent with the Coastal Act because it is, on balance, most protective of coastal resources.

I. STAFF SUMMARY AND RECOMMENDATION:

A. Project Description. The NCTD proposes to upgrade its existing railroad track system by constructing a new second main track adjacent to its existing track in northern San Diego County (Exhibits 1-3). The project is located along the Los Angeles to San Diego (LOSSAN) Rail Corridor, within the boundaries of the U.S. Marine Corps Base Camp Pendleton (MCBCP), and east of I-5. NCTD leases the railroad right-of-way from the Marine Corps. The proposed project involves the construction of 1.8 mi (2.9 km) of new mainline track connecting the existing Stuart siding with the existing Pulgas siding, and rehabilitating the existing 0.9 mi. (1.45 km) Pulgas siding to mainline track standards. The track for the new second mainline would be located within the existing NCTD right-of-way, adjacent to and 15 ft. east of the existing mainline track. Manufactured slopes would extend outside the existing right-of-way in several places. In total, 10,640 ft. of new mainline track would be installed, 6,006 ft. of existing track would be shifted, and 1,653 ft. would be removed.

The new second mainline would be constructed on ballast, (underlain by subballast with a 2-ft. walkway). Cut areas would have a maximum slope of 1:1. Fill areas would have an outer 1.5:1 or 2:1 slope, depending on the height of the embankment. To minimize the project footprint, proposed embankments higher than 5 ft. would involve a geogrid reinforcing system, enabling a steeper slope. In order to avoid vernal pool complexes, two sections of soil nail retaining wall are proposed (at stations 240+55-250+46 and 258+50 to 259+68, 17 ft. and 11-ft. high respectively). Grading would involve 39,702 cu. yds. of excavation, 24,214 cu. yds. of which would be reused on the project as new embankment, with the remainder transported offsite. The project would also include: (a) extension of four existing box culverts (at mileposts MP 219.0, MP 219.2, MP 219.9, and MP 220.2 (Exhibit 2)); (b) removal of two track signal instrument houses and associated control point signal appurtenances; (c) construction of one intermediate signal and instrument house; (d) realignment of 31.39 meters (103 feet) of the drainage channel at the MP 220.2 culvert to restore positive drainage of French Creek; and (e) relocation of an existing Southern California Gas Company gas main and an existing MCI-Worldcom fiber optic telecommunications line. Construction access and staging would be from Stuart Mesa Road on Camp Pendleton, as well as within the existing ROW. Access to the tracks from the staging sites would be via existing dirt roads that are currently used by both military vehicles and railroad maintenance activities.

B. Background/Need. The rail line has served coastal Southern California for 113 years. In the late 1800s, the Atchison, Topeka and Santa Fe railway (AT&SF) built the "Surf Line" railroad line between Los Angeles and San Diego. The North San Diego County Transit Development Board (NSDCTDB) purchased the Surf Line in 1995. Currently, Amtrak operates 24 passenger trains per day along the project corridor as part of the Pacific Surfliner service between Los Angeles and San Diego. In addition to the Amtrak service, the Southern California Regional Rail Authority (Metrolink) operates 10 passenger trains each weekday through the project limits as a part of its commuter service between Los Angeles and

Oceanside. The Burlington Northern and Santa Fe Railway (BNSF) also typically operates four to eight daily freight trains through the project limits. Overall, approximately 36 to 42 revenue train movements occur per day (on weekdays).

The need for this project stems from the high levels of automobile congestion on Southern California's highway system. Caltrans' 2002-published California State Rail Plan, 2001-02 to 2010-11, articulates its vision for intercity passenger rail as achieving three objectives: (1) to "provide relief to highway and airway congestion" through reliable and efficient intercity rail service; (2) to promote intercity rail to "provide a rail transportation alternative to other travel modes"; and (3) to "improve air quality, conserve fuel, and contribute to efficient and environmentally superior land use."

The project corridor currently includes a single mainline track and the Stuart and Las Pulgas sidings within the North County Transit District (NCTD)/San Diego Northern Railway (SDNR) right-of-way on Camp Pendleton. The track is used for train travel in the Los Angeles to San Diego (LOSSAN) corridor, which operates near full capacity. Since throughout most of the corridor only one mainline track is available for both northbound and southbound trains, the trains must adhere to a fixed schedule in order to operate efficiently. However, when one train goes off schedule, the remaining trains must stop and wait on an existing siding for the first train to get back on schedule. This causes a cascading delay effect, negatively affecting on-time performance and service reliability. Increasing the amount of double track by connecting the existing sidings would allow trains to pass each other while underway, thus reducing overall train delays and providing improved, more reliable service. The proposed project would increase the capacity of the corridor enough to reduce the number and duration of train delays, thus improving service reliability and inducing people to turn to passenger rail as an alternative travel mode to the personal automobile.

When completed, the length of double track available for train meets and passes would extend for a total length of 4.7 miles (MP 218.1 to MP 222.8). The Commission has also: (1) concurred with two NCTD consistency certifications for double tracking on Camp Pendleton, a 2.6 mi. long double tracking project further north on Camp Pendleton, in the San Onofre area (CC-86-03), and double tracking further south on Camp Pendleton, across and south of the Santa Margarita River (CC-52-05) (Exhibit 1); and (2) approved several coastal development permits County-wide for double tracking (see following paragraph). NCTD does not anticipate submitting any further double tracking proposals on Camp Pendleton; future double tracking would likely be submitted as part of the LOSSAN high-speed rail project currently being studied by the California High-Speed Rail Authority, which the State established in 1996 to plan and implement a statewide high-speed train system for California, including a Los Angeles to San Diego segment.

C. <u>Procedures – Permitting Issue</u>. The project triggered federal consistency review because it needed U.S. Army Corps of Engineers and U.S. Marine Corps permission. However the Commission also believes it is subject to the permitting requirements of the

Coastal Act, as a private (i.e., non-federal) activity on federal land, based on the U.S. Supreme Court's "Granite Rock decision" (CCC v. Granite Rock Co.)(1986)(480 U.S. 572). The NCTD disagrees with this position; however the Commission is willing to conditionally concur with this consistency certification because it can be found consistent with Chapter 3 of the Coastal Act. Any permit review would involve the same substantive standard of review (i.e., Chapter 3). The Commission notes that the NCTD has applied for a number of permits for its "double tracking" activities in other sections of the coast, including, CDP's No. 6-01-64 (NCTD - Balboa Avenue), 6-01-108 (NCTD - Tecolote Creek), 6-93-60 (NCTD - Del Mar), 6-94-207 (NCTD - Solana Beach), 6-93-106 (NCTD – Carlsbad), and 6-93-105 (NCTD - Camp Pendleton).

D. Applicant's Consistency Certification. The North County Transit District certifies the proposed activity complies with the federally approved California Coastal Management Program and will be conducted in a manner consistent with such program.

E. Applicable Legal Authorities. Section 15 CFR § 930.4 of the Federal Consistency regulations provides, in part, that:

> *(a) Federal agencies, applicants, persons and applicant agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a . . . Federal agency's approval under Subparts D, E, F or I of this part, would allow the State agency to concur with the Federal action. If instead a State agency issues a conditional concurrence:*
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> > *(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart and notify, pursuant to §930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and*
> >
> > *(2) The Federal agency (for Subpart C), applicant (for Subparts D and I), person (for Subpart E) or applicant agency (for Subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall*

immediately notify the State agency if the State agency's conditions are not acceptable; and

(3) The Federal agency (for Subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

F. Staff Recommendation and Motion. The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission **conditionally concur** with the North County Transit District's consistency certification CC-004-05 that, if modified in accordance with the following condition, the project described therein would be consistent with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

The staff recommends a **YES** vote on the motion. Passage of this motion will result in a conditional concurrence with 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.

Resolution to Conditionally Concur with Consistency Certification:

The Commission hereby **conditionally concurs** with the consistency certification by the North County Transit District, on the grounds that, if modified in accordance with the following condition, the project described therein would be consistent with the enforceable policies of the CCMP.

Condition:

1. **Increased Mitigation**. NCTD shall add to the offsite mitigation program provisions for the creation of at least 1:1 creation of new coastal sage scrub and wetland habitat (i.e., by adding 0.25 acres of coastal sage scrub habitat creation and 0.65 acres of wetland habitat creation), and the mitigation ratio for coastal sage scrub mitigation shall be increased from 2:1 to 3:1 (i.e., that the total "package" - acquisition plus preservation plus new habitat for coastal sage scrub would need to include an additional 1.44 acres).

G. Right of Appeal (in the event the conditional concurrence is treated as an objection):

If NCTD does not agree to the condition, pursuant to 15 CFR Part 930, Subpart H, and within 30 days from receipt of notice of the Commission's action, NCTD may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the California Coastal Commission and the U.S. Army Corps of Engineers, U.S. Marine Corps, and Federal Transit Administration. The Secretary may collect fees from the NCTD for administering and processing its request.

II. Findings and Declarations.

The Commission finds and declares as follows:

A. Public Access and Recreation. Section 30210 of the Coastal Act provides:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access ... 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 30212 provides that access should not be provided where it would be inconsistent with public safety, military security needs, or the protection of fragile coastal resources. Section 30252 encourages public transit and identifies reducing traffic congestion as a coastal access benefit, providing, in part, that:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service....

Concerning access issues, NCTD maintains that the project will not interfere with existing public access to coastal areas and recreational opportunities. NCTD points out that the existing railroad right-of-way is not open to general access (beyond train travel itself) and is strictly controlled, due to military security and public safety needs. NCTD asserts that the project conforms with the public access objectives of the Coastal Act both because it would not alter access to any existing public coastal accessways, and because it would benefit public coastal access and reduce traffic congestion by providing improved public transportation rail services (i.e., Coaster, Metrolink, Pacific Surfliner) as an alternative to individual vehicles. NCTD also points out that: (1) any freight train service improvements would also contribute to relieving congestion on I-5; (2) construction and staging activities would be located outside publicly accessible areas and thus avoid affects to existing access; and (3) the project will contribute to

reduced energy consumption and vehicle miles traveled by providing a more efficient alternative to personal automobile travel, consistent both with Section 30252 as well as another Coastal Act goal expressed in Section 30253 (related to air quality).

In reviewing NCTD's proposal for Oceanside-Escondido Rail Project (CC-029-02), which was proposed from inland areas to the shoreline and was a conversion of a freight rail corridor to a public transit passenger rail system connecting Oceanside, Vista, San Marcos, Escondido, and unincorporated areas of San Diego County, the Commission noted that: (a) traffic congestion adversely affect public access to the shoreline; (b) Section 30252 of the Coastal Act identifies the connection between public transit and public access to the shoreline; (c) although that project was partly parallel and partly perpendicular to the shoreline, because its service area included coastal destinations (including public beaches and a recreational boating harbor in Oceanside), it would provide an alternative means to get to the ocean; (d) it would reduce auto-related air emissions, thereby contributing to the improvement of regional air quality; (e) as part of a regional public transportation system, including bus service, light-rail and commuter trains, and trolleys, the project would increase acceptance of public transit as a desirable mode of transportation; and (f) as its acceptance and use increases, public agencies may be motivated to further improve the public transit system and these improvements will result in corresponding reductions in traffic congestion. The Commission concluded:

> *In conclusion, the proposed project will improve public access to the shoreline by reducing traffic on roads that also provide for shoreline access and by encouraging mass transit as an alternative means to get to the shoreline. Therefore, the Commission finds that the proposed project is consistent with Sections 30210 and 30252 of the Coastal Act, and thus it is consistent with the access policies of the CCMP.*

Thus, in reviewing several past actions involving public transit improvements in San Diego County, including the previous NCTD double tracking projects to the north and south (CC-86-03 and CC-52-05, respectively), the Commission has recognized that: (1) traffic congestion constitutes a constraint on public recreation and access to the shoreline; (2) increased traffic on highways such as I-5, which is a major coastal access thoroughfare, reduces the ability of the public to attain access to coastal recreation areas and makes it more difficult for the public to get to the beach; and (3) improvements to public transit benefit public access, as discussed in Section 30252. However, due to the habitat impacts discussed in the following section of this report, the Commission staff requested a greater level of specificity describing the access benefits than for the previous two double tracking projects on Camp Pendleton. NCTD's response is that:

By implementing this project, two short passing tracks of approximately one mile, and approximately 2.2 miles in length, will be connected to form the single passing track of 4.7 miles. This will reduce from four to two the potential locations in this stretch of track where trains may currently have to idle, waiting for trains in the opposite direction to pass. This in itself is an environmental benefit. The new longer passing siding will also make possible "running meets", which shorten travel times, and make service more reliable, thus making passenger rail more attractive as a mode of transportation and reducing the environmental impacts of automobile travel through new rail patronage.

Double-track construction between the Orange County border and San Diego is part of a larger strategic planning effort for the second most heavily traveled intercity passenger rail corridor in the country and the only existing rail link between the cities of Los Angeles and San Diego (LOSSAN). The purpose of double-track construction in the LOSSAN corridor is to help meet the projected increase in travel demand for the year 2025 between the cities of Los Angeles and San Diego, to substantially reduce the travel time and increase reliability, and to increase the safety and accessibility of passenger rail service throughout the LOSSAN corridor (LOSSAN 2003). Forty-one percent of the 125-mile rail corridor consists of single-track. Train movement is constrained on these single-track sections because only a single train at a time can be present along a given single-track section, resulting in delays and a reduction in the attractiveness of rail as a travel choice (LOSSAN 2003).

Description of Services in Corridor and Benefits of Project
A major reason for proposing the O'Neil-Flores project is to improve the reliability of all current passenger rail services and to accommodate the projected growth in travel demand over the next 20 years. To the extent this travel demand increase can be accommodated on passenger rail services rather than the private automobile, air quality, energy savings, and traffic congestion relief benefits will accrue to the region. In addition, as described below, these services are all experiencing ridership increases now.

It should also be noted that the passenger rail services in the corridor provide significant coastal access for residents of inland areas. These services provide a direct connection to coastal areas just blocks from the beach, such as Oceanside Transit Center (OTC), San Clemente Train Station, Carlsbad, Encinitas, and Solana Beach Station.

Currently, Amtrak operates 11 to 12 trains in each direction per day through the action area as part of the Pacific Surfliner intercity passenger rail service between Los Angeles and San Diego. In addition, Metrolink operates 6 trains in each direction each weekday through the project limits from Orange County to the OTC as part of its

commuter rail service between Oceanside and Los Angeles. NCTD operates 11 trains in each direction each weekday as part of its Coaster Commuter Rail service between Oceanside and San Diego. The BNSF typically operates two to four freight trains in each direction through the action area. Thus, there are currently 19 to 22 revenue train movements north of OTC and 24 to 27 revenue trains movements south of OTC in each direction per day on weekdays. Amtrak operates 11 trains in each direction on Saturdays and Sundays. NCTD operates four trains in each direction of Saturdays. BNSF operates six to ten trains on weekends.

For the year 2020, future train volumes through the area are anticipated to increase to 16 Amtrak trains in each direction per day, nine Metrolink trains in each direction per day, 27 Coaster trains in each direction per day, and five to six BNSF freight trains in each direction per day (Table 1). Increased train volumes will result in 30 to 31 revenue trains in each direction per day north of OTC and 48 to 49 revenue trains in each direction per day south of OTC. The increase in train volume through the action area will almost double by 2020.

Table 1. Number of trains operated by Rail operators within the NCTD portion of the LOSSAN corridor, 2005 and projected 2020.

Rail Operator	*Current (2005)*	*Future (2020)*
NCTD (Stuart Mesa sout.	*11*	*27*
Metrolink (OTC north)	*6*	*9*
BNSF (entire length)	*2 to 4*	*5 to 6*
Amtrak (entire length)	*11 to 12*	*16*
Total trains	*30 to 34*	*57 to 58*

Detailed information on each rail service, and the related benefits of the project, are provided below.

Amtrak Pacific Surfliners

Amtrak's Pacific Surfliner operates 22 to 24 trains per day, seven days per week, between Los Angeles Union Station and San Diego, and all travel through the project area. Amtrak reports that in FY05, an estimated 1,378,300 passengers traveled through the O'Neil Flores route segment. This ridership has grown 37 percent in the past three years. Amtrak reports that the average trip length of passengers in this corridor is 80 miles. Based on this data, the Pacific Surfliner is providing over 110 million passenger miles per year, which would be up to 110 million vehicle miles traveled per year in private vehicles were it not for this inter-city service, resulting in a tremendous environmental benefit. To maintain and enhance this benefit, reliable operations through improvements such as O'Neil – Flores are needed.

Metrolink Commuter Trains

Metrolink currently operates six daily commuter trains between Oceanside Transit Center and downtown Los Angeles, traversing the O'Neil – Flores project limits, plus additional trains that start at points north of Camp Pendleton. In addition, Metrolink operates the Inland Empire – Orange County line with 30 trains per day serving portions of the Orange County corridor north of Camp Pendleton. All of these trains would benefit directly or indirectly from the O'Neil - Flores project by helping all trains in the corridor to stay on schedule.

These combined services, and related Metrolink riders on Amtrak trains using Metrolink passes, have shown a 29% increase in overall ridership in the past three years and are currently carrying almost 19,000 passengers per day. With average passenger trip lengths of 38.2 miles (Orange County Line) and 32.1 miles (Inland Empire – Orange County Line), these services together are providing over 111 million passenger miles per year, which would be up to 111 million vehicle miles traveled per year in private vehicles were it not for these services. This huge environmental benefit requires that train travel times remain competitive and reliable, through double-track projects such as the O'Neil – Flores project.

Metrolink Beach Trains

In addition to the regular weekday commuter trains, Metrolink operates special weekend "Beach Trains" each Saturday and Sunday during the summer months of July, August, and September. The schedules provide six trains each weekend day, with a southern terminus at Oceanside Transit Center, just two blocks from the beach. This beach train program is providing up to 2,000 passengers per weekend a direct access to the beach from Inland San Bernardino, Riverside, and Orange County areas.

NCTD Coaster Commuter Trains

NCTD's Coaster commuter rail service provides 22 to 26 trains per weekday, depending on special events and schedule in effect, between Oceanside Transit Center and downtown San Diego. Eight trains are provided on Saturdays. Ridership on the Coaster has been growing steadily since its inception in 1995. Over the past three years, Coaster ridership has grown 12%, and is currently carrying an average of 6,184 daily passengers (August, 2005). At an average passenger trip length of 28.2 miles per passenger, the Coaster is providing over 44 million passenger miles per year, which would be up to 44 million vehicle miles traveled per year in private vehicles were it not for the Coaster. Here again is a huge environmental benefit for the San Diego region. And, of course, the Coaster is providing direct access to coastal communities along the line from Oceanside to San Diego, with stops in between at Carlsbad, Encinitas, and Solana Beach. Transit centers in Oceanside, Carlsbad, Encinitas, Solana Beach, and San Diego provide connecting transit services to the Coaster, enabling inland-area residents to transfer to the Coaster and reach coastal destinations.

While the Coaster would not be a direct user of the O'Neil Flores double track segment on Camp Pendleton, it would clearly be an indirect beneficiary. As rail traffic in Los Angeles has increased over the past few years, on-time performance of Coaster trains has been declining, from an average of 94% in FY02 to about 90% currently. Delay reports for the Coaster show that the number one cause of late Coaster trains is schedule interference from late-running Amtrak Pacific Surfliner trains. This single cause accounted for 41% of the total late Coaster trains in the first three months of this fiscal year. By improving the on-time reliability of Amtrak trains through projects such as O'Neil – Flores, Amtrak's trains will have less impact on Coaster trains and the Coaster should be able to improve its reliability. This in turn will improve the attractiveness of Coaster service and further reduce auto travel in the region, with the attendant environmental benefits.

It should be noted that commuter train customers, in particular, are very sensitive to on-time performance, and if schedules are not reliable, they will reduce their use of the service. NCTD experienced this directly in December, 2004, when a BNSF freight train derailed in the Miramar area and severely damaged the connection to an important passing track. Due to loss of use of this one passing track, the Coaster lost 22 percent of its ridership over the following two months, as some train service was cancelled and many trains ran about 10 minutes late. It took several more months after repairs were completed to recover the ridership lost during this period. This real-world experience shows that passing tracks play a critical role in maintaining rail service reliability and retaining the ridership levels that contribute environmental benefits.

<u>BNSF Freight Trains</u>
Burlington Northern & Santa Fe Railroad currently operates 2 to 4 freight trains per day in the corridor between the Orange County line and San Diego, through the area where O'Neil – Flores will be constructed. Unlike the passenger trains, BNSF does not operate on a specific schedule, except that they are excluded during AM and PM peak commuter periods. As a result, their irregular schedules can wreak havoc with scheduled commuter and inter-city trains during mid-day and evening periods, and on weekends. Passing tracks, such as the long new segment made possible by O'Neil – Flores, are critical to providing a means for the faster passenger trains to meet or pass the slower moving freights, thus helping all services to stay closer to schedule and/or recover schedule delays.

<u>Conclusion</u>
For all of the reasons described above, the O'Neil – Flores double track project will generate and support significant environmental benefits, as well as operational improvements in reliability which are critical to attracting and maintaining passenger

rail ridership. The new 4.7 mile double track segment will reduce locations where trains idle during meets from four locations to two locations in this area, providing an environmental benefit. The new longer passing siding will also make possible "running meets", which shorten travel times, and make service more reliable, thus making passenger rail more attractive as a mode of transportation and reducing the environmental impacts of automobile travel through the new rail patronage.

This operational improvement will support the rapidly-growing ridership in the LOSSAN corridor, which takes thousands of commuters out of their automobiles and generates a reduction of up to 265 million vehicle miles traveled in the corridor per year. These services also provide thousands of inland Southern Californians with direct access to the beaches in Orange and San Diego Counties, both for regular weekday travel and for special train services such as Metrolink's summer "Beach Trains". For these reasons, we urge the California Coastal Commission to find the O'Neil – Flores double track project to be consistent with the Coastal Act, thus allowing this important transportation project to proceed.

The Commission agrees and finds that the proposed project would, both individually and cumulatively, provide public access and recreation benefits, both through reducing traffic congestion along the coast and bringing inland visitors to the coast, and is therefore consistent with the public access and recreation policies (including Sections 30210 and 30252) of the Coastal Act.

B. Environmentally Sensitive Habitat Areas. 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.

In addition, Section 30107.5 defines "Environmentally sensitive area" as follows:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The widened railroad bed fill slopes will permanently displace up to 2.96 acres of natural habitat communities (with temporary impacts to 2.77 acres), including: upland vegetation (Diegan coastal sage scrub, valley needlegrass grassland, and non-native grassland)), and wetlands (southern willow scrub and mulefat scrub)(Exhibit 4). NCTD surveys showed several environmentally sensitive species occurring in the area, including the California gnatcatcher, the least Bell's vireo, and vernal pools containing several sensitive species, including Riverside and San Diego fairy shrimp. The project has been designed to avoid impacts to these sensitive species where feasible, as construction activities have been scheduled to avoid impacts to nesting California gnatcatchers and least Bell's vireos. NCTD has incorporated soil nail walls into the trackbed embankment design to enable the project to avoid vernal pool impacts (containing federally listed as endangered Riverside and San Diego fairy shrimp). Despite these avoidance measures, and while the improvements would be adjacent to existing tracks, the project would still be located within environmentally sensitive habitat areas as defined by the Coastal Act.

NCTD has undergone an extensive, multi-project, formal Section 7 Consultation with the U.S. Fish and Wildlife Service for this project, and the Fish and Wildlife Service has issued a programmatic Biological Opinion[1], which includes and avoidance, minimization, mitigation, and monitoring measures. The Programmatic Biological Opinion (BO) covers the area between the north side of Marine Corps Base Camp Pendleton to southern Oceanside, which is subject to six double-track projects (the BO also includes review of construction, operations and maintenance activities). The BO addresses effects of the six projects on a number of species, including effects on the federally threatened coastal California gnatcatcher (*Polioptila californica californica*: gnatcatcher), western snowy plover (*Charadrius alexandrinus nivosus*: snowy plover), and thread- leaved brodiaea (*Brodiaea filifolia*); and the federally endangered arroyo toad (*Bufo californicus*), brown pelican (*Pelecanus occidentalis*: pelican), least Bell's vireo (*Vireo bellii pusillus*: vireo), California least tern (*Sterna antillarum browni*: least tern), light-footed clapper rail (*Rallus longirostris levipes*: clapper rail), tidewater goby (*Eucyclogobius newberryi*: goby), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonenis*), Pacific pocket mouse (*Perognathus longimembris pacificus*: pocket mouse), salt marsh bird's beak (*Cordylanthus maritimus* ssp. *maritimus*), and San Diego ambrosia (*Ambrosia pumilla*: ambrosia). The six projects reviewed (the subject project is in bold) consist of:

Project	Length (miles)	Location
San Mateo Creek Bridge and Second Track Project	1.8	MP 207.4 – MP 209.2
Pulgas to San Onofre Second Track Project	5.8	MP 212.3 – MP 218.1
O'Neil to Flores Second Track Project	**2.7**	**MP 218.1 – MP 220.8**
Santa Margarita River Bridge Replacement	2.9	MP 222.8 – MP 225.3

[1] Programmatic Biological Opinion for the Rail Corridor from the Orange County Border South to Southern Oceanside for Operations and Maintenance, and Six Double-Track Projects in San Diego County, California (1-6-05-P-4123.2)

and Second Track Project		
San Luis Rey River Bridge Replacement and Second Track Project	0.6	MP 225.3 – 225.9
Oceanside Passing Track Extension	1.2	MP 227.2 – MP 228.4

Source: Table 3. Biological Opinion 1-6-04-P-4123.2.

The opinion anticipates a programmatic increase in number of trains and train speeds, expecting an increase in train volume to "almost double by 2020," as follows:

Table 1. Number of trains operated by Rail operators within the action area for programmatic biological opinion 1-6-05-P-4123.2.

Rail Operator	**Current (2005)**	**Future (2020)**
NCTD (Stuart Mesa south)	11	27
Metrolink (OTC north)	6	9
BNSF (entire length)	2 to 4	5 to 6
Amtrak (entire length)	11 to 12	16
Total trains	30 to 34	57 to 58

Trains speed is anticipated to increase from a current average speed of 47 miles per hour (mph) to 63 to 69 mph from the construction of the proposed projects including those across Camp Pendleton and Oceanside, and ultimately up to up to 90 mph in urban areas and up to 110 to 124 mph across rural areas like Camp Pendleton (FRA and Caltrans 2004):

Table 2. Current train speeds versus future train speeds through Camp Pendleton and the City of Oceanside (mph).

Location	**Current (average)**	**Current (maximum)**	**Future (average)**	**Future (maximum)**
Orange County border San Luis Rey River	80	90	80	125
San Luis Rey River to OTC	50	90	50	90
OTC to Buena Vista Lagoon	60	90	60	90

For the subject O'Neil to Flores Second Track Project, the opinion assigns the following acreages of impacts and FWS-required mitigation of habitat types:

	O'Neil-Flores	**Mitigation Ratio**
CSS	1.44 acres	2:1
NNG	0.13 ac.	0.5:1
Native Grassland	0.74 ac.	2:1
SWS	0.62 ac.	3:1
MFS	0.03 ac.	3:1

CSS = coastal sage scrub, NNG = non-native grassland, SWS = southern willow scrub, and MFS = mulefat scrub.

Analyzing the impact of the subject project, the BO estimates the extent of "take" to be:

> *One (1) pair of coastal California gnatcatchers will be harmed by loss of habitat from the clearing of habitat for the construction of the O'Neil to Flores Second Track Project.*
>
> *Two (2) pairs of least Bell's vireo may be harmed through reduced reproductive output due to the displacement from occupied habitat to habitat of insufficient size or quality from the construction of the O'Neil to Flores Second Track Project. No vireo will be harmed from maintenance activities or the construction of the other two capital improvement projects fully analyzed in this Opinion.*

The BO elaborates:

> *Direct effects to one pair of gnatcatchers will occur from the permanent and temporary impacts of project construction. The permanent removal of 1.4 acres of CSS, 0.13 acre of non-native grassland, and 0.74 acre of native grassland will reduce the habitat available to breeding gnatcatchers. The linear nature of the project impact will result in a reduction of the edge of occupied gnatcatcher habitat resulting in a shifting of territories. The temporary removal of 1.24 acres of CSS will remove suitable habitat during construction and the first two years of revegetation efforts. Temporary impacts will eliminate a strip of vegetation along the rail corridor within occupied habitat and are expected to be reoccupied within a few years after initial revegetation efforts.*
>
> *The vireo population at Aliso Creek includes at least three vireo territories within the action area immediately east of the track. The permanent and temporal loss of approximately 0.6 acre of wetland/ riparian vegetation on the east side of the track at Aliso Creek would likely result in the shifting of territories with the potential for a reduction in one territory. The vireo population at French Creek includes at least four territories within the action area east of the track. The permanent and temporal loss of approximately 0.5 acre of wetland/riparian vegetation on the east side of the track at*

French Creek would likely result in the shifting of territories with the potential for a reduction in one territory. Since vireos are site tenacious, this reduction in available breeding habitat could cause increased competition for the remaining suitable habitat that could adversely affect one pair of vireo in Aliso Creek and one pair of vireo in French Creek. To reduce impacts to vireo at Aliso and French Creeks, all clearing of vegetation will occur outside of the vireo breeding season and all temporal impacts will be revegetated following completion of construction in these areas.

Effects from noise, lighting, and operational improvements are discussed above in the programmatic effects analysis. No access through the Las Pulgas Vernal Pool Area will occur for constructing the O'Neil Project. Therefore, there should be no adverse affects to San Diego and Riverside fairy shrimp from double track construction projects.

The mitigation measures required under the opinion include both programmatic and project-specific measures. The programmatic measures relevant to the species affected by this project are attached as Exhibit 5 and include requirements for:

1. limiting vegetation clearance to non-breeding seasons for migratory birds;
2. presence of on-site qualified biologist during construction and submittal of regular monitoring reports;
3. delineation of sensitive areas and temporary fencing to protect sensitive species;
4. implementation of Best Management Practices;
5. employee education;
6. refueling outside sensitive areas and prompt spill cleanup;
7. limiting staging areas to disturbed areas;
8. dust controls and trash debris collection;
9. limited if any night lighting, directionally shielded;
10. revegetation of disturbed areas with native species; and
11. offsite mitigation at the following ratios:

    a. Coastal sage scrub, southern coastal bluff scrub, maritime succulent scrub, and native grass communities will be offset at a 2:1 ratio with any combination of off-site preservation, creation, or restoration of like habitat;

    b. Non-native annual grasslands will be offset at a 0.5:1 ratio with any combination of off-site preservation, creation, or restoration of native habitat;

    c. Riparian areas will be offset at a 3:1 ratio with any combination of off-site preservation, creation, or restoration of native habitat; and

Details of FWS' offsite mitigation requirements for the subject project are as follows:

OP1 Permanent impacts to 1.44 acres of CSS and 0.74 acre of native grassland will be offset at a 2:1 ratio by purchasing and restoring 2.88 acres of CSS and preserving 1.48 acres of native grassland at the Foss Lake property currently being negotiated for purchase by Wildlands Inc. An additional 0.065 acre of non-native grassland will be purchased at the Foss Lake property to offset impacts to 0.13 acre of non-native grassland. A total of 4.425 acres of upland habitat will be purchased at Foss Lake.

OP2 Permanent impacts to 0.62 acre of southern willow scrub and 0.03 acre of mulefat scrub will be offset by purchasing 1.85 acre (3:1 ratio) of southern willow scrub occupied by at least one pair of least Bell's vireo at the Foss Lake property.

OP3 The Foss Lake property will be purchased by Wildlands Inc. and the entire site will be established as a Service approved mitigation bank (Bank). However, the 4.425 acres of upland habitat and 1.85 acre of wetlands will be purchased and preserved in perpetuity within the proposed Bank lands. Assurances of this purchase and preservation and management in perpetuity will be submitted to the Service prior to the start of construction.

OP4 The restoration plan for the CSS and native grassland will be approved by the Service prior to the start of construction.

The FWS requirements also specify that NCTD will need to provide detailed implementation schedules and plans for offsite mitigation, including FWS pre-approval of plans, a 5-year maintenance and monitoring program, establishment of performance criteria (including remediation if performance is not met), annual reporting documenting progress/success, financing mechanisms, long term management, a draft management plan within three months of the acquisition of the conservation parcels or easement, a final management plan within six months, provisions for management and preservation in perpetuity (and if the conservation sites are transferred to a third party for long-term management, an endowment with sufficient funds to be established).

Specific on-site measures to mitigate gnatcatcher impacts during the construction period include:

1. surveying for gnatcatchers and timing construction to avoid the Gnatcatcher breeding season (February 15 to September 1) to the extent practicable, unless the NCTD documents that the habitat to be affected is not occupied by the gnatcatcher;

2. avoiding noise for construction activities adjacent to occupied gnatcatcher habitat exceeding 60 decibels (dB(A) L_{eq}) and including noise attenuation structures where necessary to attain this goal; and

3. noise monitoring during the gnatcatcher-nesting season and be reported daily to the Service.

The BO requires similar measures addressing surveying, timing, lighting, noise, and monitoring for least Bell's vireo impacts.

Concerning water quality, the BO requires Best Management Practices, to be contained in water quality plans (Storm Water Management Plan, Storm Water Pollution Prevention Plan, and Water Pollution Control Program), to reduce the probability of erosion/siltation or spill of chemicals/fuels that could potentially affect sensitive habitat areas downstream. The plans would need to be prepared by a biologist, include photographs of installed BMPs, and be approved by FWS prior to construction.

In response to the Commission staff's request for more details on the offsite mitigation bank, NCTD states:

> *The project is anticipated to need 6.375 acres of mitigation .... Wildlands will provide AMTRAK 6.375 acres of mitigation at the 61.1-acre Foss Lake Site located approximately 7.2 miles from the project site and 5.9 miles from the coast (Figure 1 [Exhibit 6]). The mitigation site is located northwest of Douglas Drive between the Oceanside Municipal Golf Course and the Pilgrim Creek Mitigation Bank (Figures 2 and 3 [Exhibit 6]). Other managed open space [which] borders the site to the south and north and Camp Pendleton is in close proximity to the north (Figures 2 and 3 [Exhibit 6]).*
>
> *Nine vegetation communities currently occur on the Foss Lake site including disturbed alkali marsh, southern willow scrub, mulefat scrub, freshwater marsh, seasonal open water, Isocoma scrub, nonnative grassland, and disturbed and ruderal areas (Figure 4). No sensitive plant species have been detected and none are expected to occur. Further botanical and other studies will be conducted as part of the detailed mitigation planning. One state and federally-listed species, the least Bell's vireo (LBV) occurs on site (Figure 4 [Exhibit 6]).*
>
> *Prior to Wildlands, Inc. (Wildlands) entering into the process of acquiring the site, portions of the site were utilized as off-site mitigation for several development projects. Of the 61.1 acres, approximately 46.7 acres is available for AMTRAK and other future mitigation. Wildlands is currently in the early study and design phases for the property.*

It is Wildlands' intent to develop the unencumbered portions of the site into a mitigation bank.

Wildlands will provide AMTRAK with the proposed 6.375 acres of mitigation in the areas shown in Figure 5. The 2.88 acres of mitigation for coastal sage scrub (CSS) will be accomplished through the preservation of 1.69 acres of Isocoma scrub, and the creation/restoration of 1.19 acres of CSS along the margins of the southern half of the site. Mitigation for nonnative grassland (NNG) will consist of 0.065 acre of NNG preservation. Mitigation for native grassland will be accomplished through the restoration of 1.48 acres of Distichlis spicata-dominated grassland. Native grasses will also be included in the hydroseed mix for the CSS restoration areas. The 1.95 acres of mitigation for southern willow scrub and mulefat scrub will be accomplished through the preservation of 1.95 acres of LBV-occupied riparian habitat along Pilgrim Creek.

This narrative is intended as a preliminary description of the mitigation to be provided. A Habitat Mitigation and Monitoring Plan (HMMP) will be developed with detailed information on design goals and objectives, specifics of the restoration methods, maintenance and monitoring strategies, and long-term management techniques and endowment-funding mechanisms. We are proposing that the HMMP will be submitted to all permitting agencies within 120 days of the start of construction of the O'Neil-to-Flores project.

The BO concludes that, cumulatively, and with the mitigation measures required:

... it is the Service's biological opinion that the projects, as proposed, are not likely to jeopardize the continued existence of the coastal California gnatcatcher, least Bell's vireo, tidewater goby, arroyo toad, Riverside fairy shrimp, or San Diego fairy shrimp; nor adversely modify designated critical habitat for the gnatcatcher or tidewater goby. Therefore the O'Neil to Flores Second Track Project, Santa Margarita Bridge and Second Track Project, and the Oceanside Passing Track Extension Project will not likely jeopardize the continued existence of the coastal California gnatcatcher, least Bell's vireo, and tidewater goby nor adversely modify designated critical habitat for the tidewater goby. We present this conclusion based on the following reasons:

<u>*Coastal California Gnatcatcher*</u>

1. *Faster and more frequent trains may injure or kill one gnatcatcher every five to ten years due to vehicle strikes. The loss of a single individual every five to ten years will not significantly affect the gnatcatcher population on Camp Pendleton.*

2. *Up to five of gnatcatchers may be displaced to an area where reproductive output could be reduced due to inadequate habitat size or quality. The loss of reproductive*

output from two to three pairs of gnatcatchers will not significantly affect the gnatcatcher population of Camp Pendleton.

3. *The permanent loss of approximately 15.4 acres and temporary loss of up to 15 acres of suitable occupied habitat, including 2.6 acres of designated critical habitat, is not large relative to the extent of designated critical habitat remaining over the coastal California gnatcatcher's range and is not expected to significantly decrease the long-term viability of the gnatcatcher or designated critical habitat. The loss of 2.6 acres of designated critical habitat will not affect the overall function and conservation role of critical habitat Unit 6.*

4. *The anticipated permanent loss of occupied CSS/MSS will be offset at a 2:1 ratio through the restoration and preservation of CSS/MSS at a site to be determined. Temporary impacts will be revegetated on-site.*

Least Bell's Vireo

1. *Faster and more frequent trains may injure or kill one vireo every five to ten years due to vehicle strikes. The loss of a single individual every five to ten years will not significantly affect the vireo population on Camp Pendleton.*

2. *Four pairs of vireos may be displaced to an area where reproductive output could be reduced due to inadequate habitat size or quality. The loss of reproductive output from three to four pairs of vireo will not significantly affect the vireo population of Camp Pendleton.*

3. *The permanent loss of approximately 4 acres and temporary loss of less than 2 acres of suitable occupied habitat is not large relative to the extent of habitat remaining over the least Bell's vireo's range and is not expected to significantly decrease the long-term viability of the vireo.*

4. *The anticipated permanent loss of occupied scrub/shrub and forested wetlands will be offset at a 2:1 ratio through the restoration and preservation of scrub shrub and forested wetlands at Foss Lake and sites to be determined. All temporary impacts will be revegetated on-site.*

Also, NCTD has agreed to the Commission staff's request that it will provide the final mitigation plans, revegetation plans, and monitoring plans to the Executive Director for review and concurrence, prior to any use (operation) of the improved tracks. Finally, as is the case for Commission consistency review, the FWS BO contains a "reopener" provision in the event circumstances change, including a greater extent of "take" or lack of success of the on- or off-site mitigation.

One concern over the offsite mitigation package is that it is a combination of acquisition, preservation, and new habitat creation, and while the Fish and Wildlife Service indicates the currently proposed mitigation would provide valuable habitat benefits, the habitat mix does not include a minimum of 1:1 creation of new coastal sage scrub and wetland habitat compared to the project impacts. The Commission historically has required at least 3:1 ratio for coastal sage scrub mitigation, and at least 1:1 habitat *creation* (i.e., no net loss) and has not relied on acquisition alone to offset sensitive habitat and wetland impacts. Only fairly minor increases in mitigation would need to be provided to meet this policy goal; NCTD would need to provide an additional 0.25 acres of coastal sage scrub habitat creation and 0.65 acres of wetland creation to assure no net loss of either of these habitats, and to increase the total ratio package (i.e., acquisition plus preservation plus and new habitat) for coastal sage scrub by an additional 1.44 acres to bring the project into compliance with the ESHA and wetland mitigation requirements of the Coastal Act. Therefore, the Commission is conditionally concurring this consistency certification to require that the mitigation package include this additional habitat creation. (If NCTD does not agree to the condition, then the Commission's decision is treated as an objection and NCTD has the right to appeal the decision to the Secretary of Commerce.)

With the avoidance, minimization and monitoring measures incorporated into the project, (including but not limited to the requirements of the FWS BO), the Commission finds that, if modified in accordance with the condition on page 7, the project would be consistent with several of the requirements of Section 30240 that the project "protect against any significant disruption of environmentally sensitive habitat values" and that it "be compatible with the continuance of those habitat areas." However, since the project is within occupied coastal sage scrub habitat, despite the avoidance, minimization, on- and off-site mitigation, and monitoring measures, the Commission finds the project must be considered to be sited within an environmentally sensitive habitat area (ESHA). As such, the Commission finds it inconsistent with the "allowable use" test of Section 30240(a) of the Coastal Act, which requires that "...only uses dependent on those resources shall be allowed within ... [environmentally sensitive habitat] areas." The project is not a use "dependent on the habitat resources." Therefore, the only way the Commission could concur with this consistency certification would be if it finds the project consistent with the Coastal Act through the "conflict resolution" provision contained in Section 30007.5.

As discussed in Section II.F of this report, not approving the project would be inconsistent with the public access, energy conservation, and air and water quality policies of the Coastal Act, because it would eliminate the project benefits to coastal resources from improving existing and future public access, reducing vehicle miles traveled, and improving air and water quality by reducing traffic congestion. Thus, the project creates a conflict between the allowable use tests of the environmentally sensitive habitat policy (Section 30240) (and, as discussed in the following section below, the wetlands policy)(Section30233(a)) on the one hand, and the public access/air and water quality/energy conservation policies (Sections 30210, 30252,

30231 and 30253(4)) on the other. In the conclusory section of this report (Section F) the Commission will resolve these conflicts and determine that concurrence with this consistency certification, as conditioned, would, on balance, be most protective of significant coastal resources.

C. Wetlands. Section 30233 of the Coastal Act provides:

(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 [among other uses] *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.

NCTD states:

The proposed project will permanently impact federal and state jurisdictional wetlands. Permanent impacts to federal and state jurisdictional wetlands will be 0.65 acre.

One of the primary project design goals of the project was to avoid impacts to the vernal pool complexes (and their associated federally listed plant and animal species) that occur along a substantial portion of the project alignment. The project was designed to avoid all potential impacts to the vernal pool complexes and their watersheds. However, the linear nature of the proposed project, and the need to avoid these vernal pool complexes and watersheds and other sensitive upland resources (i.e., Diegan coastal sage scrub) resulted in a situation where permanent federal jurisdiction wetland (Southern willow scrub and Mulefat scrub) impacts will occur. The permanent wetland impacts are only 0.65-acre. There is no feasible less environmentally damaging alternative than the proposed project. Mitigation for the permanent impacts will be provided off-site at an approved wetlands mitigation bank. The Supplemental Information package, Attachment A – Section 2.0 provides additional discussion regarding mitigation.

This purpose is an incidental public service as outlined in Section 30233 (a)(5). The project has been designed to fulfill this purpose in the least environmentally damaging way possible. The mitigation measures outlined above have been developed to minimize any adverse environmental impacts. As such, the proposed project is consistent with Sections 30230, 30231, 30232, and 30233 of the California Coastal Act.

NCTD's wetland delineations considered both Army Corps, as well as the more stringent Coastal Act wetland definitions, and concluded that permanent wetland impacts would be 0.62 acres of southern willow scrub, and 0.03 acres of mulefat scrub, for a total permanent wetland fill impact of 0.65 acres. Temporary impacts (which would be restored) would be 2.77 acres. Due to this wetland fill, the project triggers the 3-part test of Section 30233(a) of the Coastal Act, which involve determining whether the project complies with the allowable use, alternatives, and mitigation tests of Section 30233(a).

Under the first of these tests, a project must qualify as one of the eight stated uses allowed under Section 30233(a). The Commission has considered minor expansions of existing roads, an airport runway (City of Santa Barbara, CC-058-02), and several past NCTD double tracking rail projects (including CC-55-05, CC-52-05, and CC-86-03) in certain situations to qualify as "incidental public service purposes," and thus allowable under Section 30233(a)(5), but only where no other alternative existed and where the expansion was deemed necessary to maintain existing traffic capacity.

The Court of Appeal has recognized this definition of incidental public service as a permissible interpretation of the Coastal Act. In the case of Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County (1999) 71 Cal.App.4th 493, 517, the court found that:

> *... we accept Commission's interpretation of sections 30233 and 30240... In particular we note that under Commission's interpretation, incidental public services are limited to temporary disruptions and do not usually include permanent roadway expansions. Roadway expansions are permitted only when no other alternative exists and the expansion is necessary to maintain existing traffic capacity.*

NCTD maintains the project fits into this historically accepted interpretation, and the Commission accepted this assertion in concurring with NCTD's previously-submitted "double-tracking" projects on Camp Pendleton (CC-86-03 and CC-52-05, NCTD, San Onofre Area and Santa Margarita River, respectively). The Commission found:

> *Allowable Use Test - Coastal Act Section 30233(a). Section 30233(a) does not authorize wetland fill unless it meets the "allowable-use" test. Similar to the Commission decision regarding safety improvements at the Santa Barbara Airport (CC-58-01), the proposed project is an allowable use as an incidental public service because is it necessary to maintain existing passenger service. The second main track project is being proposed to streamline service for existing trains, and would not result in an increase in the number of trains (capacity) utilizing the tracks. Rather, the proposed project would improve mass transit services by providing more efficient services, thereby increasing the incentive for travelers to choose this mass transit option instead of personal automobiles. Therefore, any increase in utilization of the train service would be related to an increase in number of passengers aboard, rather than an expansion of train services.*

In finding those projects 'limited expansions' and 'necessary to maintain existing capacity,' and thus an allowable use as an incidental public service under Section 30233(a)(5), the Commission reserved the concern over future double tracking proposals, stating that they would not necessarily continue to qualify under this section, because at some point with increasing numbers of double tracking proposals, the double tracking: (a) will no longer be limited; and (b) will contain enough length of a second set of tracks to in fact constitute an increase in capacity. However at that time and in those locations the Commission found that the double tracking projects did not meet either of these thresholds that would render the project ineligible for consideration as an incidental public service.

The piecemeal nature of NCTD's submittals has faced the Commission with a continuum of improvements, rather than a single unified project, which has made the determination of when increases in capacity are triggered a difficult one. To assist in this determination the Commission staff has requested information both about future double tracking proposals NCTD (or other proponents) are considering or planning for, and about documenting the public access benefits of improving public transit. On the first request, NCTD states future double-tracking proposals on Camp Pendleton would likely only be part of more comprehensive transportation improvement programs such as Los Angeles-San Diego Rail Corridor Agency (LOSSAN) and/or California High Speed Rail Authority projects. NCTD states:

> *Currently, no additional future double-track projects have been identified by NCTD to be constructed within the Camp Pendleton area. It should be noted, however, that NCTD performs railroad maintenance-of-way activities on a continuous basis, is required to respond promptly to emergency situations as they may occur along the railroad right-of-way, and is mindful of pursuing potential opportunities that may improve railroad operations. As such, it is possible that double-tracking projects may arise in the future as individual projects or as part of comprehensive transportation improvement programs, such as LOSSAN and/or the California High Speed Rail Authority.*

On the second request for individual and cumulative benefits, NCTD has provided the detailed discussion contained on pages 10-14 above, which establish that the project will benefit public access. This discussion, combined with the programmatic operational discussion contained in the Fish and Wildlife Service's Biological Opinion (see pages 15-16 above), make it clear that the numbers and speeds of trains are going to increase, if not individually from this project, then certainly cumulatively based on currently planned improvements, leading the Commission to conclude that the project is likely to increase capacity. If it increases capacity, it does not qualify as an allowable use under Section 30233(a) as an incidental public service, and none of the other eight allowable uses in Section 30233 apply. Therefore, as discussed in the previous section of this report (Section B, and with elaboration in Section F), the only way the Commission could find the project consistent with the Coastal Act would be through the "conflict resolution" provision (Section 30007.5).

Turning next to alternatives, NCTD looked at but rejected several alternatives to the proposed action, including the No Action alternative, "as infeasible and not meeting the project's purpose and need, stating:

> ***Alternative routes.*** *The LOSSAN corridor between Los Angeles and San Diego, in which the proposed project is located, has been an active rail corridor for 113 years. It plays a vital role in the transportation of people and freight between these two cities and points in between. Interstate 5, another transportation corridor, runs adjacent to the project within 152.4 meters (500 feet) of the tracks, through most of its length. Building a new mainline in a new corridor was rejected due to prohibitive cost and potentially major environmental impacts.*
>
> ***Build the new second track entirely within the existing R/W*** **[right-of-way]**. *Under this alternative, ... [NCTD] would construct the new second mainline to the east of and entirely within the existing NCTD/SDNR R/W. This alternative proposes the use of retaining walls to minimize cut and fill slopes in order to maintain all construction activities within the existing R/W. Since all project construction would be designed to stay within the existing R/W, no easements would be required for this alternative, and the existing gas main would not require relocation. This alternative was rejected due to the limited amount of funds available to the project. The retaining walls required for implementation of this alternative would far exceed the available funding for the project. Therefore, the alternative is considered to be economically impracticable.*
>
> ***Build the new second track on the west side of the existing track.*** *Under this alternative, ... [NCTD] would build the new second mainline track on the west side of the existing track, rather than the east side as proposed in the proposed project description. Several physical constraints cause this alternative to be rejected from further consideration.*
>
> *First, the existing sidings are located on the east side of the existing track. Building the second mainline track on the west side would require "reverse curves" to transition the track locations to tie into the existing sidings. These reverse curves can degrade the ride quality and passenger comfort, potentially resulting in reduced ridership. Reverse curves also require additional track maintenance, resulting in higher maintenance costs.*
>
> *Second, the support piers for the existing overhead bridge at MP 219.6 poses a constraint on the proposed new track location. The current distance from the existing track to the westernmost support pier is 3 meters (9.83 feet). The current distance from the existing track to the easternmost pier is 7.60 meters (24.92 feet). The new track would be constructed 4.57 meters (15 feet) from the existing track, in accordance with Amtrak standard criteria. Since the new track could not fit between the westernmost*

bridge support pier and the existing track, it must be constructed on the east side of the existing track where sufficient room is available. The bridge is also the only access for heavy military equipment to training areas west of the rail corridor. Rebuilding the bridge would be economically impractical and would cause unnecessary impediments to military training exercises during construction.

Third, the existing MCI-Worldcom Fiber Optic telecommunications line is located on the west side of the existing track and would need to be relocated through the entire project length, rather than 640.08 meters (2,100 feet) as is proposed. This would result in prohibitive project costs.

Addressing the No Project alternative, NCTD states:

Under the No Project Alternative, Amtrak would not build the new second mainline track between CP O'Neil and CP Flores. All existing structures would remain as they currently are and no changes to the existing mainline track, sidings or gas main would occur. No construction activities would occur and all environmental impacts identified for the Preferred Alternative would be avoided. However, without this project, reduced travel times through high-speed train meets and passes, and increased operational efficiency and service reliability are unlikely to occur in the project limits. As a result, people would be less likely to turn to passenger rail as an alternative travel mode to the personal automobile. The No Project alternative does not meet the project purpose and need.

Moreover, as discussed in the previous section of this report, where design features are feasible that would avoid wetland impacts (such as the soil nail wall design which eliminates any fill of highly sensitive vernal pool habitat), NCTD has included avoidance measures to protect wetlands and has scheduled the construction period to minimize impacts to environmentally sensitive habitat (i.e., outside the gnatcatcher and least Bell's vireo nesting seasons). The Commission agrees with NCTD that the project represents the least environmentally damaging feasible alternative and is therefore consistent with the alternatives test of Section 30233(a).

Concerning the mitigation test, NCDT proposes 3:1 mitigation ratios for permanent wetland losses and revegetation on-site for any temporary disturbances. The mitigation program is outlined in detail in the previous section (Section B) of this report; offsite mitigation for the Southern willow scrub (0.62 acres), and Mulefat scrub (0.03 acres) impact would be the purchase of 1.85 acre (3:1 ratio) of southern willow scrub occupied by at least one pair of least Bell's vireo at the Foss Lake property, to be purchased by Wildlands Inc., with the site to be established as an FWS-approved mitigation bank, and with the 4.425 acres of upland habitat and 1.85 acre of wetlands to be purchased and preserved in perpetuity.

As discussed in the habitat section above (Section II.B), one concern over the offsite mitigation package is that it is a combination of acquisition, preservation, and new habitat creation, and while the Fish and Wildlife Service indicates the currently proposed mitigation would provide valuable habitat benefits, the habitat mix does not include a minimum of 1:1 creation of new coastal sage scrub and wetland habitat compared to the project impacts. The Commission historically has required at least 1:1 habitat creation and has not relied on acquisition alone to offset sensitive habitat and wetland impacts. Only fairly minor increases in mitigation would need to be provided to meet this policy goal; NCTD would need to provide an additional 0.25 acres of coastal sage scrub habitat creation and 0.65 acres of wetland creation to assure no net loss of either of these habitats, and to increase the total ratio package (i.e., acquisition plus preservation plus and new habitat) for coastal sage scrub by an additional 1.44 acres to bring the project into compliance with the ESHA and wetland mitigation requirements of the Coastal Act. Therefore, the Commission is conditionally concurring with this consistency certification to require that the mitigation package include this additional habitat creation. (If NCTD does not agree to the condition, then the Commission's decision is treated as an objection and NCTD has the right to appeal the decision to the Secretary of Commerce.)

In addition, NCTD has agreed to the Commission staff's request that it will provide the final mitigation plans, revegetation plans, and monitoring plans to the Executive Director for review and concurrence, prior to any use (operation) of the improved tracks. With this commitment and the above measures, and the Commission concludes that, if modified in accordance with the condition on page 7, the project would provide adequate mitigation and be consistent with the alternatives and mitigation tests, but not with the allowable use test (for the reasons explained above), of Section 30233(a) of the Coastal Act.

D. Water Quality. Section 30231 of the Coastal Act provides for the protection of water quality resources. That section provides:

> *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.*

NCTD has included commitments for water quality protection in its consistency certification, stating:

> *The potential impacts to water quality are limited to the construction phase of the project only. Pollutants of concern during construction activities are erosion and sedimentation, and potential for hazardous materials spill or leakage from construction vehicles. In the*

long-term, at Mile Post 220.2 (French Creek), which is one of three areas along the project alignment that will impact jurisdictional wetlands, the project proposes to realign 103 feet of the drainage channel to restore positive drainage. Overall, this action is anticipated to improve hydrology function and water quality in French Creek through regular water flow, and the improvement of operational efficiency will have a beneficial effect by reducing the reliance on the automobile.

The Supplemental Information package, Attachment A – Section 3.0 provides a detailed analysis of the project's construction and post-construction best management practices (BMPs). The proposed project would include the preparation of a Storm Water Pollution Prevention Plan (SWPPP) by the project engineer, in compliance with the required National Pollution Discharge Elimination System (NPDES) general permit issued by the Regional Water Quality Control Board (RWQCB), identifying construction and post-construction best management practices (BMPs) to protect water quality. The temporary and permanent BMP's will conform to the Caltrans Storm Water Quality Handbook, Construction Site Best Management Practices Manual, November 2000.

After the project construction is completed, temporarily impacted areas will be reseeded with a hydroseed mix at the completion of project construction. The proposed hydroseed mix was previously approved by the U.S. Fish and Wildlife Service in conjunction with the recently approved, and constructed San Onofre Double Track project.

Stormwater runoff will also be improved by reducing the amount of non-point source water pollution generated by existing and future automobiles utilizing this corridor (i.e., I-5). The purpose of the project is to construct a new mainline railroad track between Control Point O'Neil and Control Point Flores and rehabilitate existing railroad track siding from Control Point Flores to Control Point Pulgas to mainline standards which will allow for reduced travel times through higher-speed meets and passes. This will increase operational efficiency and reliability. As a result, people would be more likely to turn to passenger rail as an alternative mode to the personal automobile. Passenger rail vehicles are much cleaner than highway vehicles with respect to oil and grease drips. This is partially attributed to the fact that any drips from rail vehicles fall into a ballasted ROW, where gravel and soil act as a filter to prevent runoff from moving contaminants and because rail transportation involves less oil, grease, and other hydrocarbons than automobiles. Automobiles are a significant source of hydrocarbons, which are then flushed by runoff from the I-5 area into nearby water bodies. It is likely the proposed project will increase passenger service along this corridor thereby reducing automobile vehicle miles traveled and the corresponding non-point source emissions.

Concerning hazardous material and spills, NCTD states:

> *Contractor operations are not anticipated to use or generate any unusual or significant amounts of hazardous wastes. All wastes generated will be disposed of at an approved disposal site outside of the Marine Corps Base Camp Pendleton. Hazardous materials temporarily held on-site will be stored in secure areas and in properly placarded containers. No hazardous materials will be stored within 150 feet of sensitive areas (water wells or washes) along the project. Potentially hazardous materials, which may be present on-site during construction of the project, are those generally associated with the operation and maintenance of vehicles and equipment. Though these potentially hazardous materials may be present on-site, the amount of material will be limited due to the mobile nature of the installation activities. The Contractor will develop a Spill Prevention Containment and Countermeasure (SPCC) Plan before construction begins.*

In addition, the FWS BO referenced in Section II.B above requires:

> *Storm Water Pollution Prevention Conservation Measures*
>
> *BMP1* *BMPs employed during maintenance activities will follow applicable guidelines and be detailed in NCTD's workplan. The BMPs will reduce the probability of erosion/siltation or spill of chemicals/fuels that could potentially affect sensitive habitat areas downstream.*
>
> *BMP2* *BMPs employed during construction will follow applicable guidelines and be detailed in the work-related Storm Water Management Plan, Storm Water Pollution Prevention Plan, and Water Pollution Control Program. Specific plans will be reviewed by a biologist and modified, if necessary, prior to implementation. The biologist will have the ability to suggest changes to reduce the probability of erosion/siltation or spills of chemicals/fuels that could potentially affect sensitive habitat areas downstream. Photographs of installed BMPs will be submitted to the Service at least seven days prior to initial grading and clearing.*

Finally, NCTD has agreed to the Commission staff's request that it provide the submit the water quality plans referenced above to the Executive Director for review and concurrence, prior to construction. With these measures and commitments, the project will not cause significant water quality impacts, and will in fact improve water quality, and the Commission finds the proposed project consistent with the water quality policy (Section 30231) of the Coastal Act.

E. <u>Air Quality and Energy Consumption</u>. Section 30253(4) provides that new development shall "minimize energy consumption and vehicle miles traveled." In reviewing NCTD's proposal for Oceanside-Escondido Rail Project referenced earlier in this report (CC-029-02), the Commission noted that the public transit project: (a) would reduce auto-related

air emissions, thereby contributing to the improvement of regional air quality; (b) as part of a regional public transportation system, including bus service, light-rail and commuter trains, and trolleys, the project would increase acceptance of public transit as a desirable mode of transportation; and (c) as its acceptance and use increases, public agencies may be motivated to further improve the public transit system and these improvements will result in corresponding reductions in traffic congestion. The Commission noted:

> *The air quality benefits [cited in that project's EIR[2]] are partially offset by increased pollution caused by the train's use of diesel fuel. However, as described in the Access Section above, the proposed project will probably have significant VMT reductions as the regional mass transit program expands and as public transit becomes a more accepted mode of transportation. As the percentage of traffic accommodated by mass transit grows, there will be a corresponding reduction in air pollution from automobiles. However, there will not be a corresponding increase in air pollution as ridership of the rail system grows. As ridership grows there will be more reductions in air quality impacts from automobiles.*
>
> *In conclusion, the Commission finds that the proposed project will reduce energy consumption and improve air quality.... Therefore, the Commission finds that the project is consistent with Section 30253 of the Coastal Act, and thus with the energy consumption and air quality policies of the CCMP.*

For the subject project, NCTD estimates the project's air quality benefits to included reduced idling time leading to reduced emissions of pollutants. NCTD estimates, for example, that reductions in the ozone precursor emissions NOx (oxides of nitrogen) to represent the equivalent of 5,000 vehicle-mile emissions on nearby I-5. The Commission finds that the proposed project will reduce energy consumption and improve air quality and is therefore consistent with Section 30253(4) of the Coastal Act.

F. <u>Conflict Between Coastal Act Policies</u>. Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies. Section 30007.5 provides:

> *The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner that on balance is the most protective of significant coastal resources. In this context, the Legislature*

[2] Estimated in that project's EIR to reduce automobile traffic by approximately 132,000 vehicle miles traveled (VMT) per day (or 28.5 million VMT per year), and an estimated energy savings of 174 billion Btu of energy per year.

declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

1) **Conflict**. In order for the Commission to consider balancing Coastal Act policies, it must first establish that there is a conflict between these policies. The fact that a project is consistent with one policy of the Coastal Act and inconsistent with another policy does not necessarily result in a conflict. Rather, the Commission must find that to object to the project based on the policy inconsistency would result in coastal zone effects that are inconsistent with the Coastal Act.

As discussed previously (Sections II.B and II.C above), because the subject project would be located within occupied coastal sage scrub/gnatcatcher habitat, the project is located within an environmentally sensitive habitat area but is not consistent with the "allowable use" test of Section 30240(a) of the Coastal Act, which requires that "*...only uses dependent on those resources* shall be allowed within ... [environmentally sensitive habitat] areas." In addition, because it would increase capacity, it does not qualify as an incidental public service under Section 30233(a)(5), Commission interpretations of which historically only allow transportation projects in wetlands where they are necessary to maintain *existing* capacity. Therefore, the only way the Commission could find the project consistent with the Coastal Act would be through the "conflict resolution" provision (Section 30007.5).

As described in the access section above (Section II.A), one of the project purposes/benefits is reduced traffic congestion relief on area highways. The Commission staff's request that NCTD elaborate on the congestion/traffic reduction features of the project elicited the NCTD discussion contained above on pages 10-14, which provides compelling evidence that the project would provide significant public access and recreation benefits, both through reducing traffic congestion along the coast and bringing inland visitors to the coast.

The Commission finds that traffic congestion interferes with access to the coastal recreational opportunities within northern San Diego County (including travelers from Los Angeles and Orange Counties). As traffic congestion increases with expected growth of the region, these access impacts will worsen, and when congestion increases, non-essential trips such as those for recreational purposes tend to be among the first to be curtailed. Thus, as the traffic increases, the ability for the public to get to the coast will become more difficult, which would result in a condition that would be inconsistent with the access policies of the Coastal Act.

As discussed in Sections D and E above, traffic increases that would occur if this project is objected to would also degrade air and water quality and result in a condition that inconsistent with the air and water quality policies of the Coastal Act, because they would exacerbate nonattainment status of the coastal air basin and adversely affect coastal water bodies. Section 30231 of the Coastal Act requires the maintenance and restoration of the

quality of coastal waters. Section 30253(4) provides for improved air quality and reductions in energy consumption and vehicle miles traveled. Section 30252 articulates that one of the Coastal Act's access goals is encouraging maintenance and enhancement of public access through facilitating the provision or extension of transit service. Thus, not only would objecting to this consistency certification be inconsistent with the access policies, but it would also result in adverse effects to coastal waters and the air basin and be inconsistent with the achievement of water quality, air quality, energy conservation, and reductions in vehicle miles traveled goals expressed in Sections 30231, 30253(4), and 30252. The Commission therefore finds that the proposed project creates a conflict between allowable use tests of the ESHA/wetland policies (Sections 30240(a)/30233(a)) on the one hand, and the water quality/air quality/energy conservation/reductions in vehicle miles traveled/public access and transit policies (Sections 30231/30253(4)/30252) on the other.

2) Conflict Resolution. Having establishing a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in manner that is on balance most protective of coastal resources. In this case, the proposed project will result in the displacement of 2.18 acres of ESHA (coastal sage scrub and native grassland) and fill of 0.65 acres of wetlands. The affected habitat is adjacent to the existing rail line, and as the Fish and Wildlife Service noted in its Biological Opinion (see pages 21-22 above), the sensitive species to be affected are likely to be able to adapt to this relatively minor rail line widening. The more highly sensitive and more easily disturbed species (federally listed as endangered fairy shrimp in adjacent vernal pools) has been avoided by design modifications. Moreover, and as conditioned, adequate on-site and off-site mitigation is being provided to compensate for the ESHA and wetland losses.

On the other hand, as stated above, objecting to this consistency certification would result in conditions that would be inconsistent with the access policies (Section 30210), and would result in adverse effects to coastal waters and coastal the air basin and be inconsistent with the achievement of water quality, air quality, energy conservation, and reductions in vehicle miles traveled goals expressed in Sections 30231, 30253(4), and 30252. In resolving the Coastal Act conflict raised, the Commission finds that the impacts on coastal resources from not constructing the project would be more significant and adverse than the project's ESHA and wetland habitat impacts, which would, as conditioned be adequately mitigated. The Commission therefore concludes that concurring with this consistency certification would, on balance, be most protective of coastal resources.

III. Substantive File Documents

1. CC-052-05, NCTD, Replacement of Santa Margarita River Railroad Bridge, Marine Corps Base Camp Pendleton.

2. Programmatic Biological Opinion for the Rail Corridor from the Orange County Border South to Southern Oceanside for Operations and Maintenance, and Six Double-Track Projects in San Diego County, California (1-6-05-P-4123.2)

3. CC-072-05, NCTD, after-the-fact consistency certification, emergency repairs, Bridge 208.6, San Onofre Creek, Marine Corps Base Camp Pendleton.

4. CC-86-03, NCTD, Second Track San Onofre Area, Camp Pendleton Marine Corps Base

5. CC-055-05, NCTD, Bridge replacement (single-track), Agua Hedionda Lagoon, Carlsbad.

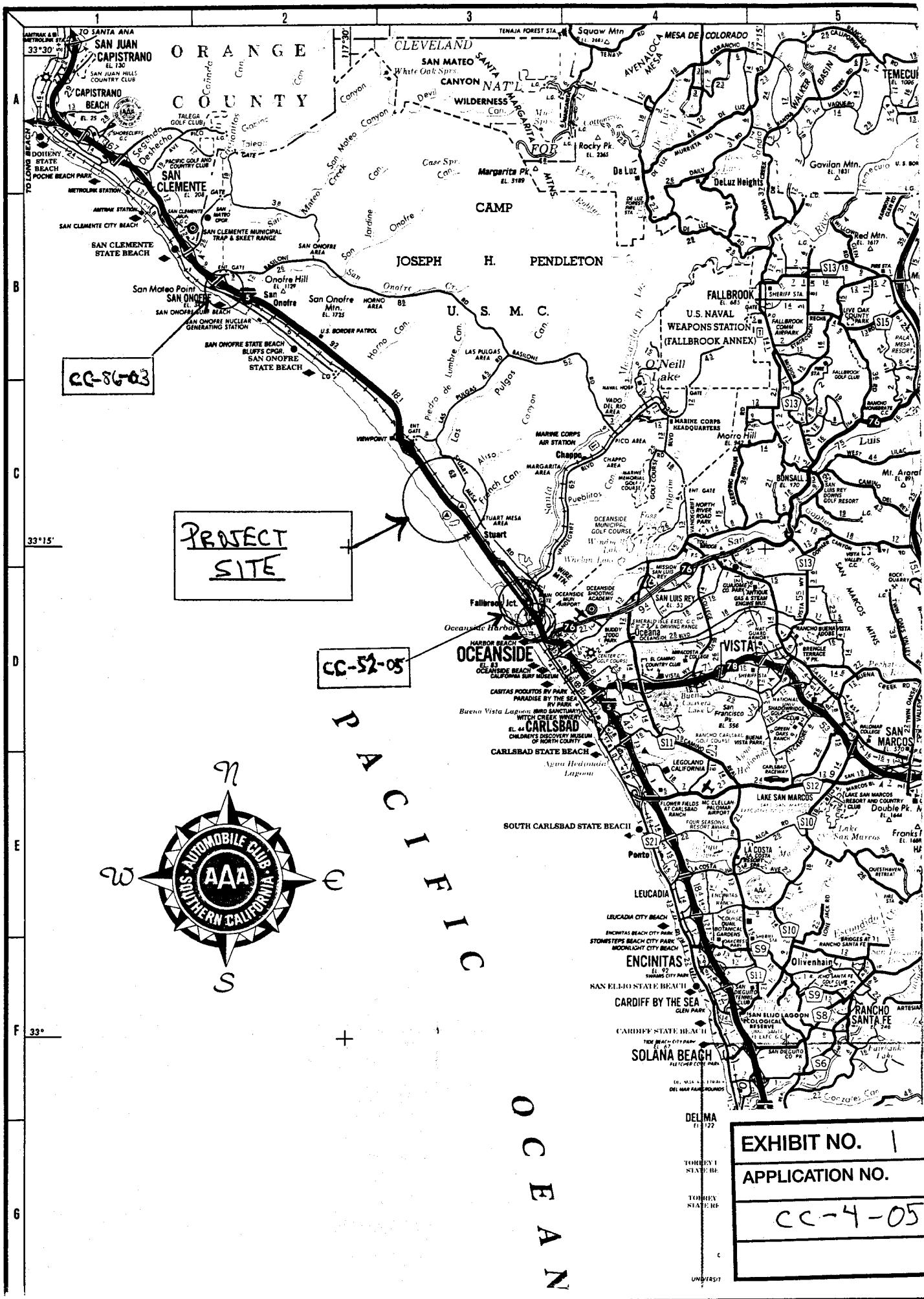
6. CC-029-02, NCTD, Oceanside-Escondido Rail Project.

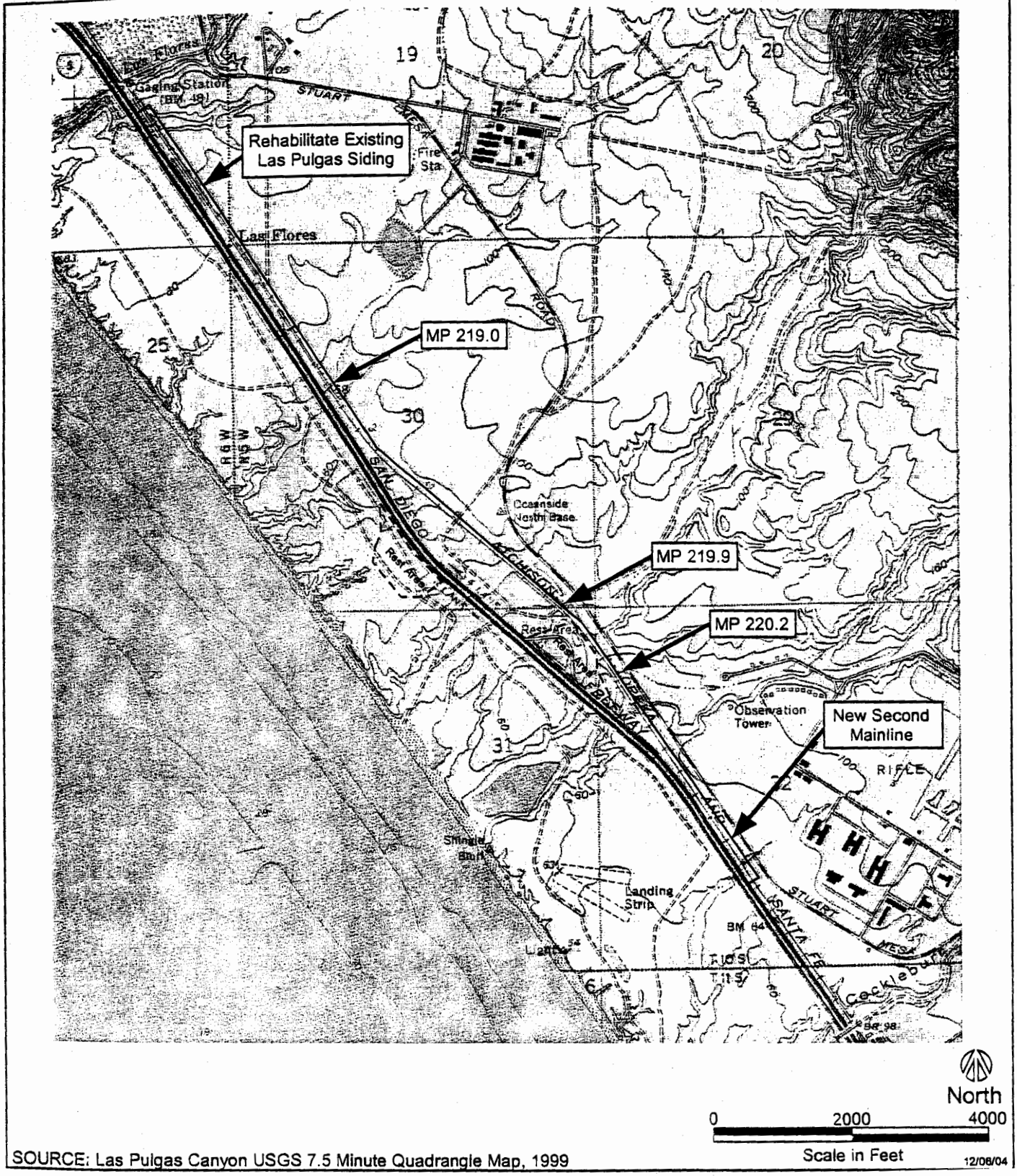
7. Pending NCTD Consistency Certification CC-048-04 (NCTD, Del Mar Bluffs Stabilization Project).

8. CC-064-99, Metropolitan Transportation Agency, Extension of Light-Rail, City of San Diego.

9. CC-058-02, City of Santa Barbara, modifications to the Santa Barbara Airport.

10. NCTD Coastal Development Permits 6-01-64 (NCTD - Balboa Avenue), 6-01-108 (NCTD - Tecolote Creek), 6-93-60 (NCTD - Del Mar), 6-94-207 (NCTD - Solana Beach), 6-93-106 (NCTD – Carlsbad), and 6-93-105 (NCTD - Camp Pendleton).


PROJECT SITE
CC-8-03
CC-52-05
PACIFIC OCEAN
ORANGE COUNTY
JOSEPH H. PENDLETON
CAMP
U. S. M. C.
SAN JUAN CAPISTRANO
CAPISTRANO BEACH
SAN CLEMENTE
SAN CLEMENTE STATE BEACH
SAN ONOFRE STATE BEACH
SAN ONOFRE NUCLEAR GENERATING STATION
MARINE CORPS AIR STATION
MARINE CORPS HEADQUARTERS
U.S. NAVAL WEAPONS STATION (FALLBROOK ANNEX)
FALLBROOK
OCEANSIDE
CARLSBAD
CARLSBAD STATE BEACH
SOUTH CARLSBAD STATE BEACH
VISTA
SAN MARCOS
ENCINITAS
LEUCADIA
CARDIFF BY THE SEA
SAN ELIJO STATE BEACH
SOLANA BEACH
DEL MAR
RANCHO SANTA FE
LAKE SAN MARCOS
CLEVELAND NAT'L FOR.
SAN MATEO CANYON WILDERNESS
AUTOMOBILE CLUB SOUTHERN CALIFORNIA AAA
EXHIBIT NO. 1
APPLICATION NO.
CC-4-05



SOURCE: Las Pulgas Canyon USGS 7.5 Minute Quadrangle Map, 1999

12/06/04

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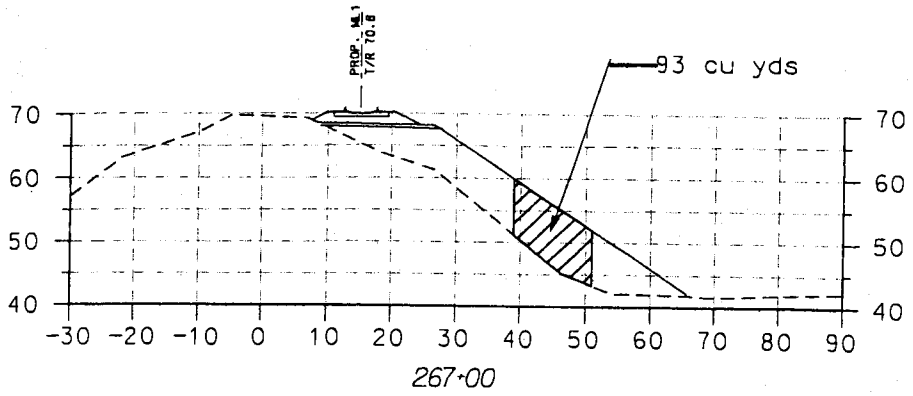
O'Neil to Flores Second Track Project

Project Location Map

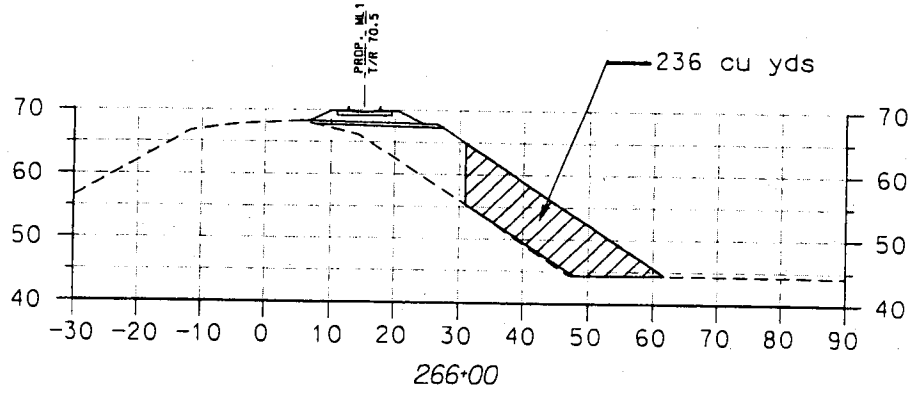
EXHIBIT NO. 2
APPLICATION NO.
CC-4-05

CROSS SECTIONS – PERMANENT IMPACT AREAS

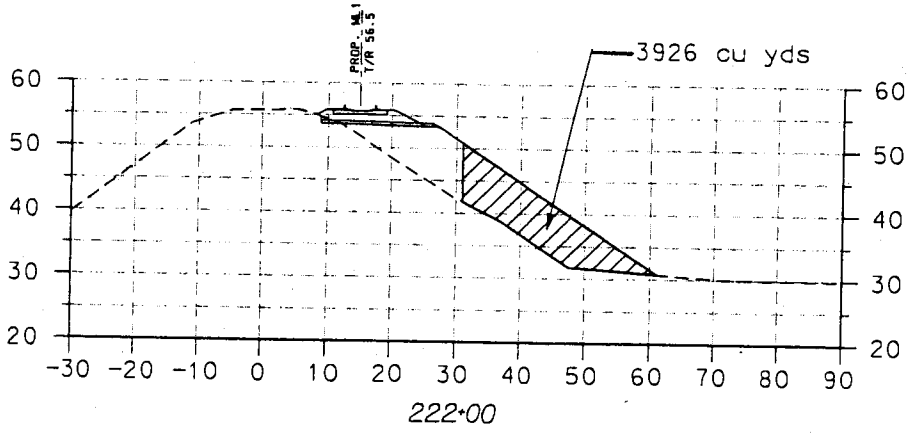
Mile Post 219.0



Mile Post 219.0



Aliso Creek
(Mile Post 219.9)



French Creek

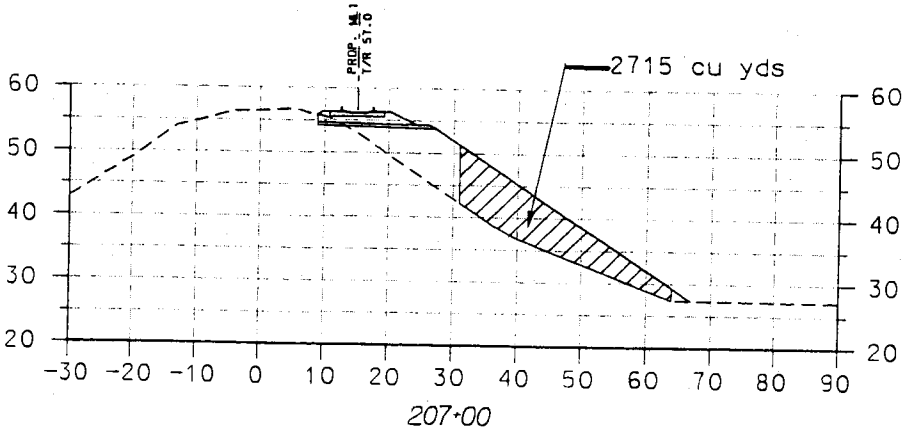
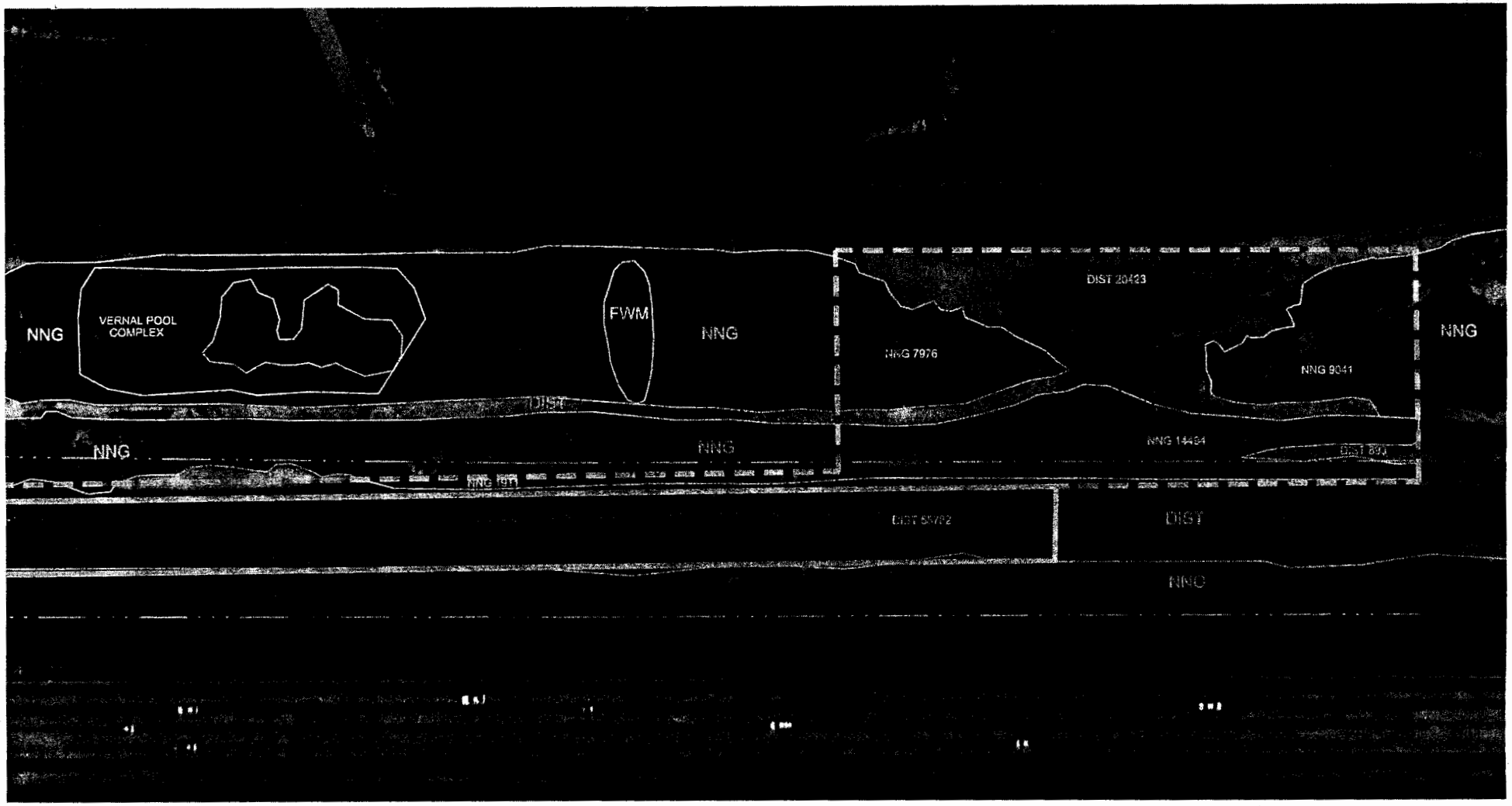


EXHIBIT NO. 3
APPLICATION NO.
CC-4-05



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

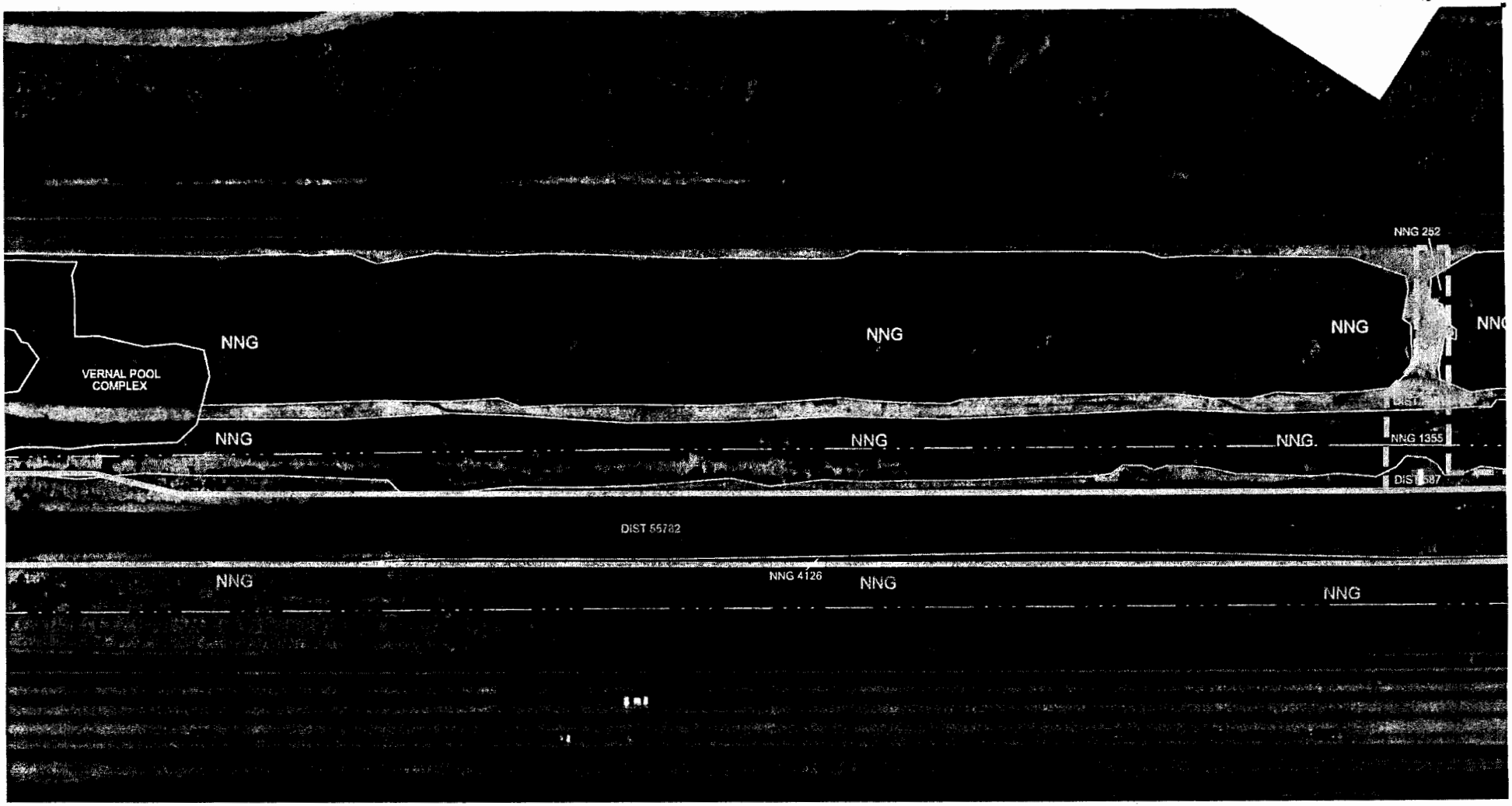
08/17/04

O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE 3.1-1A

EXHIBIT NO. 4
APPLICATION NO. CC-4-05



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

08/17/04

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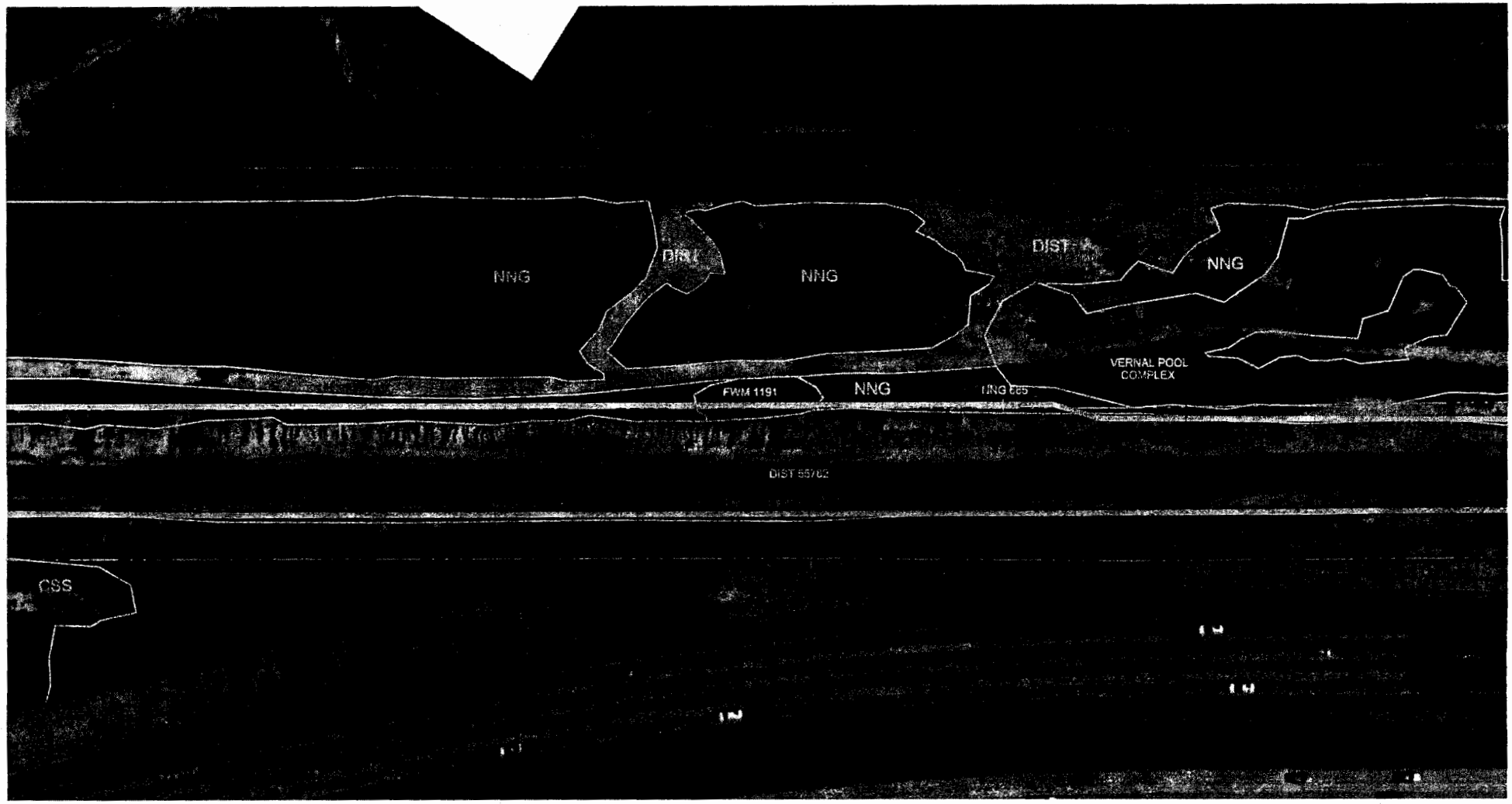
O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE

3.1-1B



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004. 08/17/04

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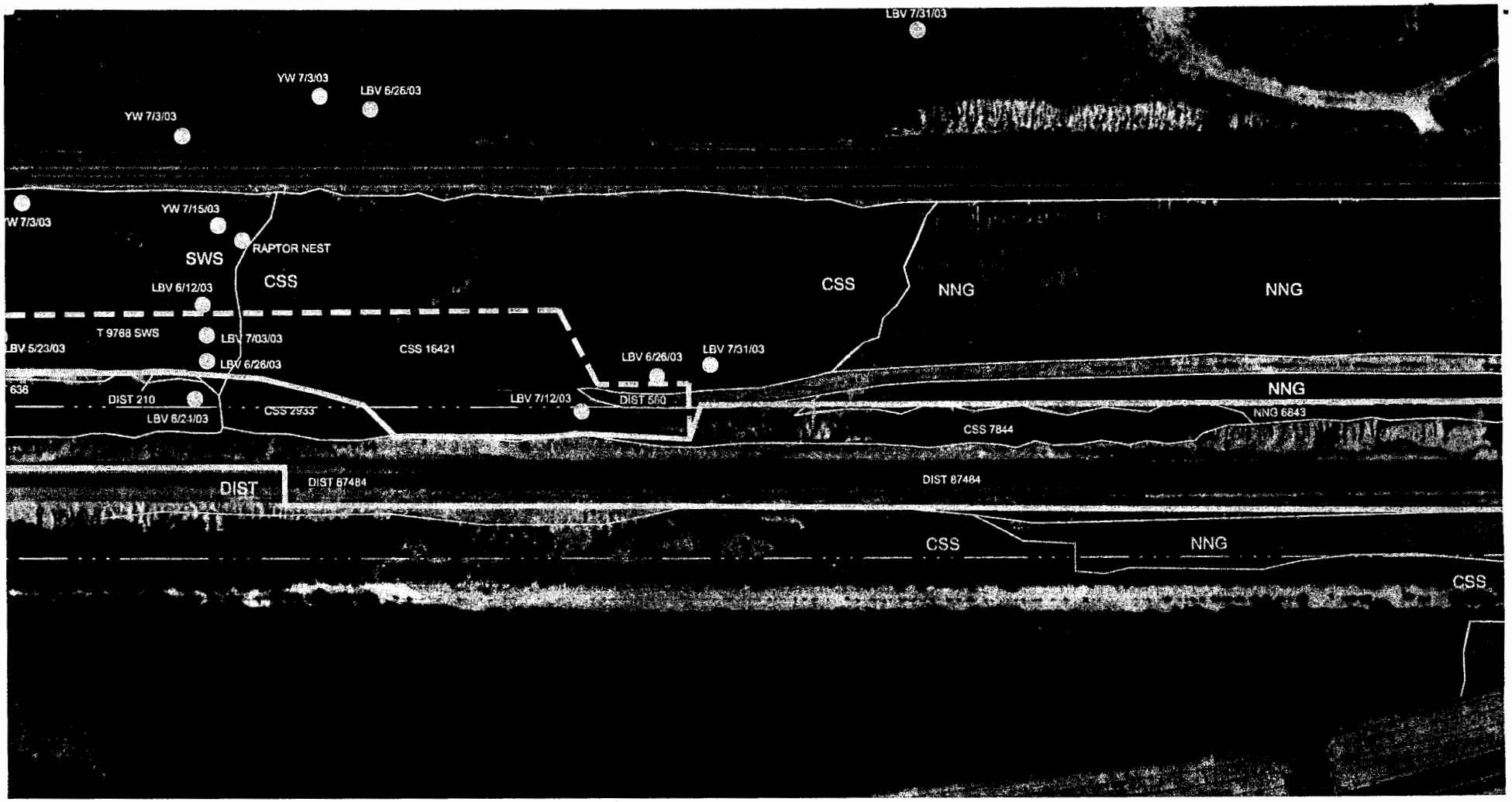
O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE

3.1-1C



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

08/17/04

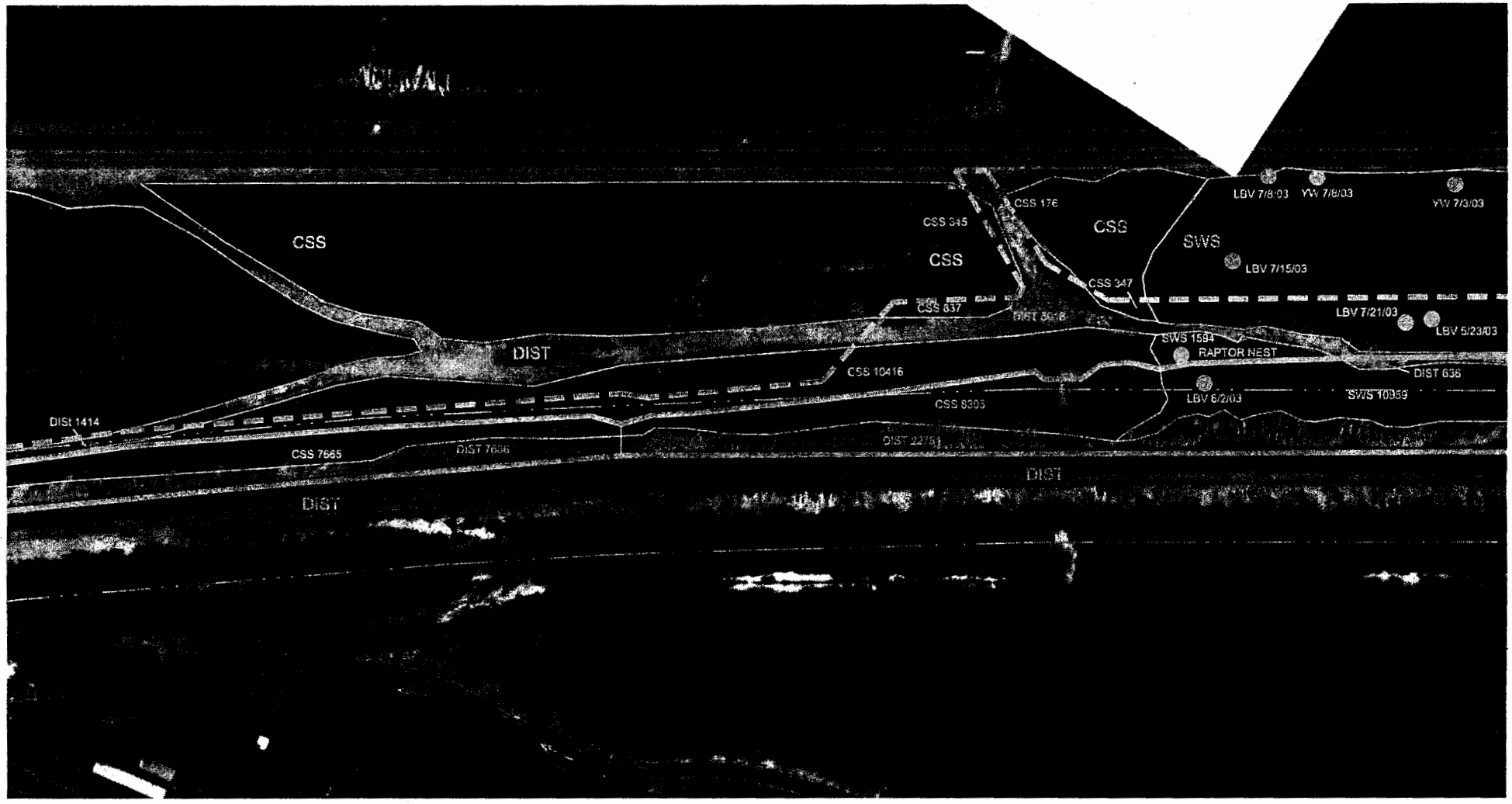
BRG CONSULTING, INC.

O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE

3.1-1D



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

08/17/04

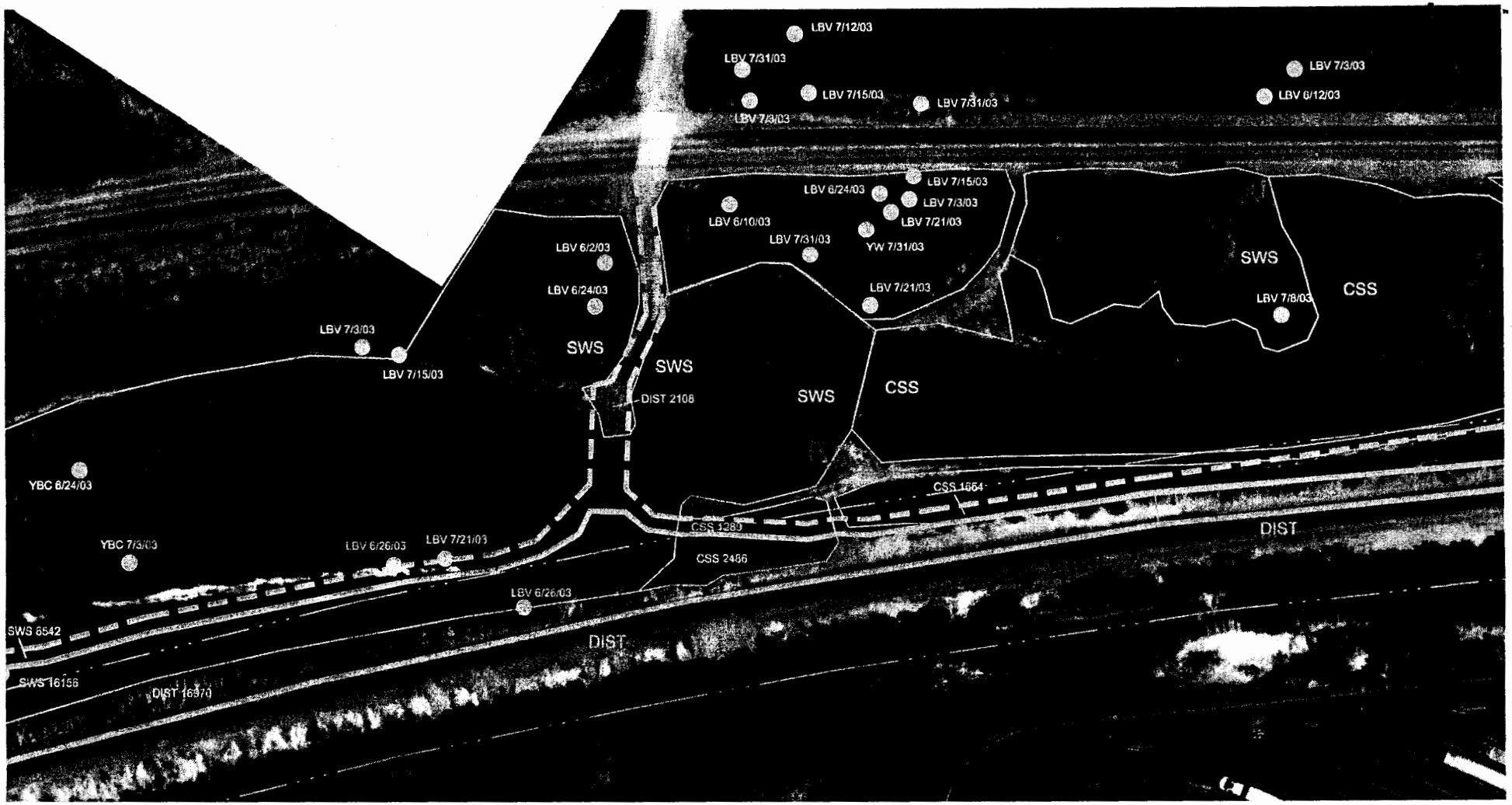
BRG CONSULTING, INC.

O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE

3.1-1E



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

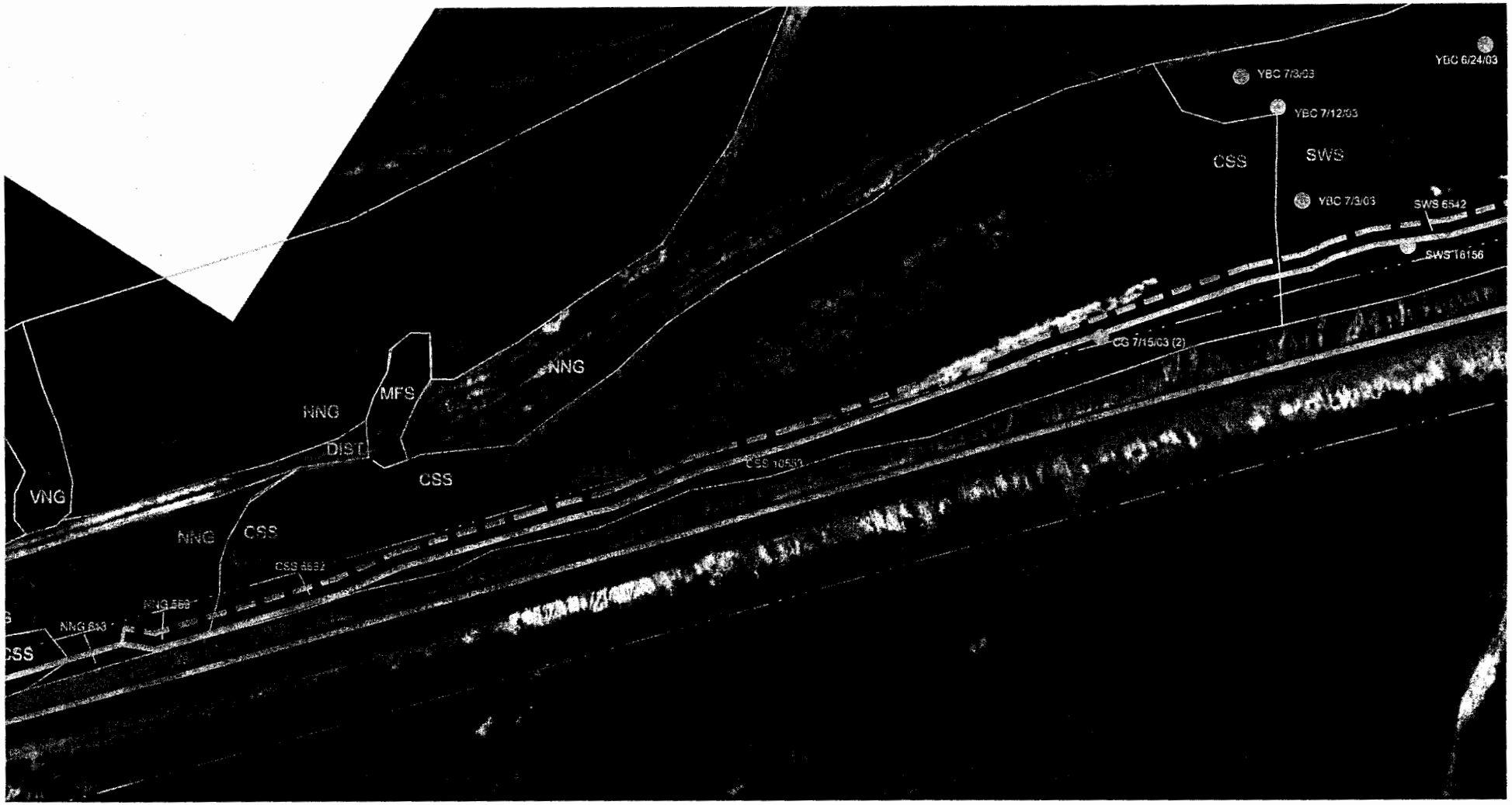
BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004. 08/17/04

BRG CONSULTING, INC.

O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE 3.1-1F



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

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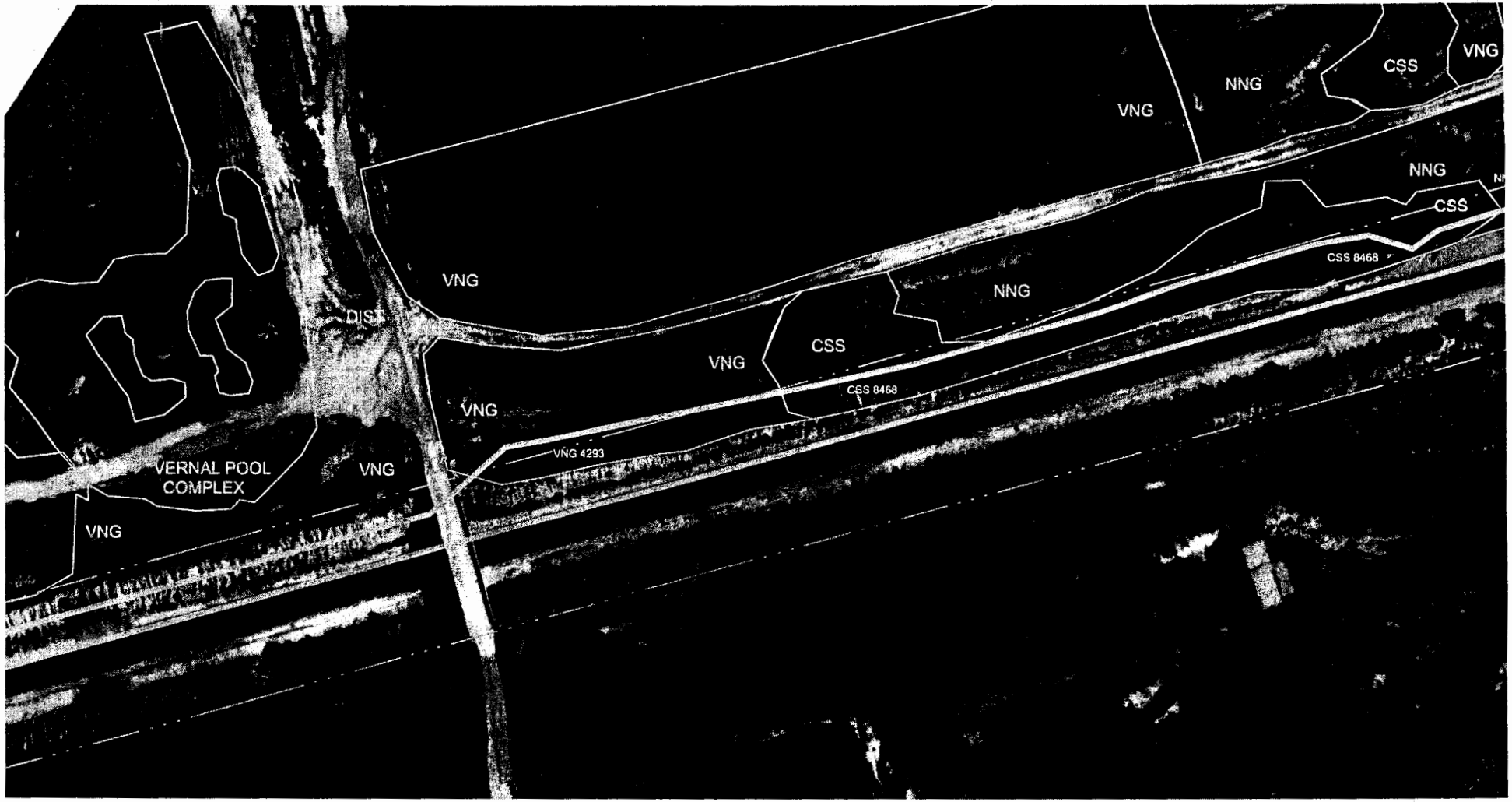
O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE

3.1-1G



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004. 08/17/04

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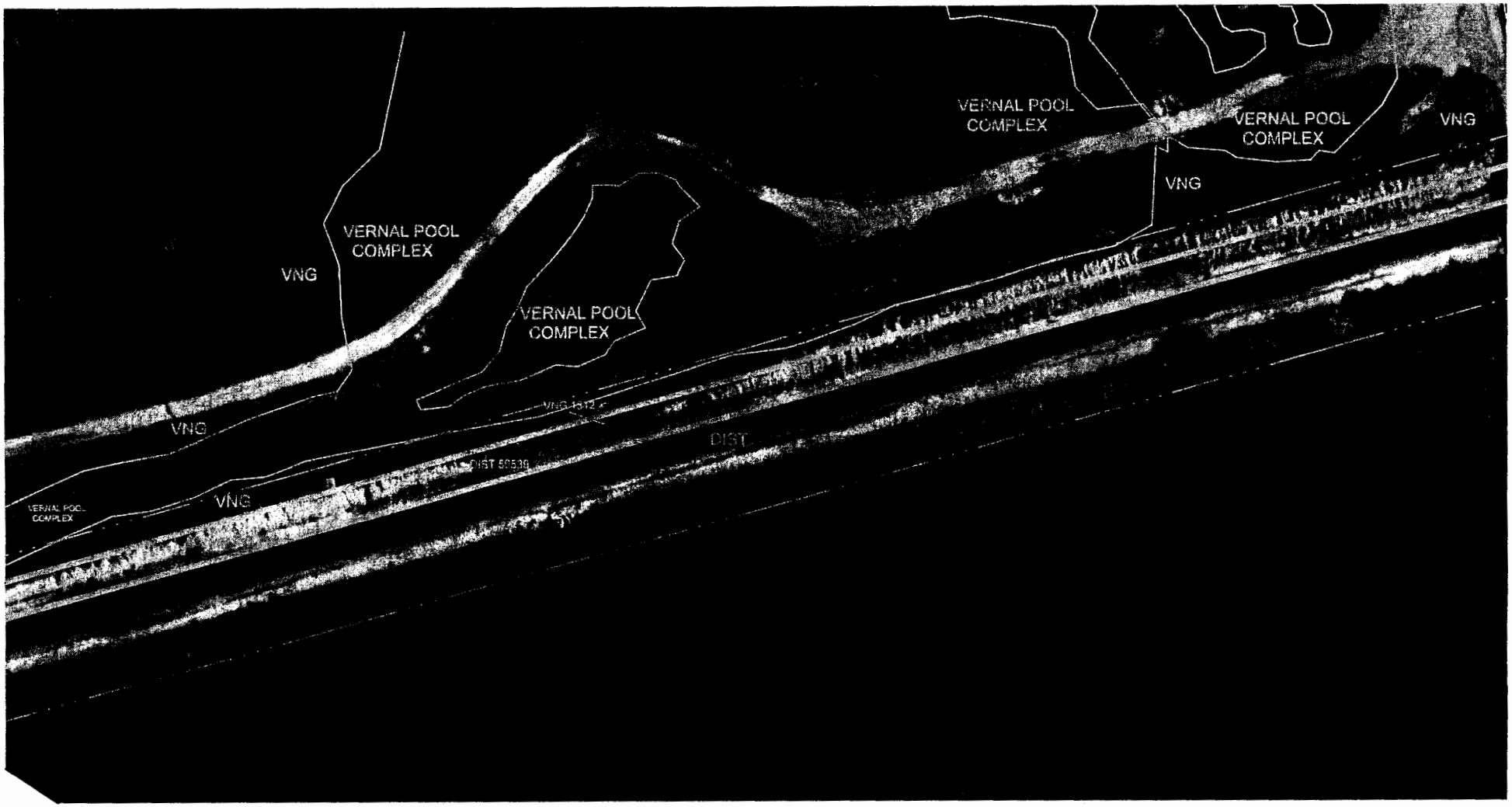
O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE 3.1-1H



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004. 08/17/04

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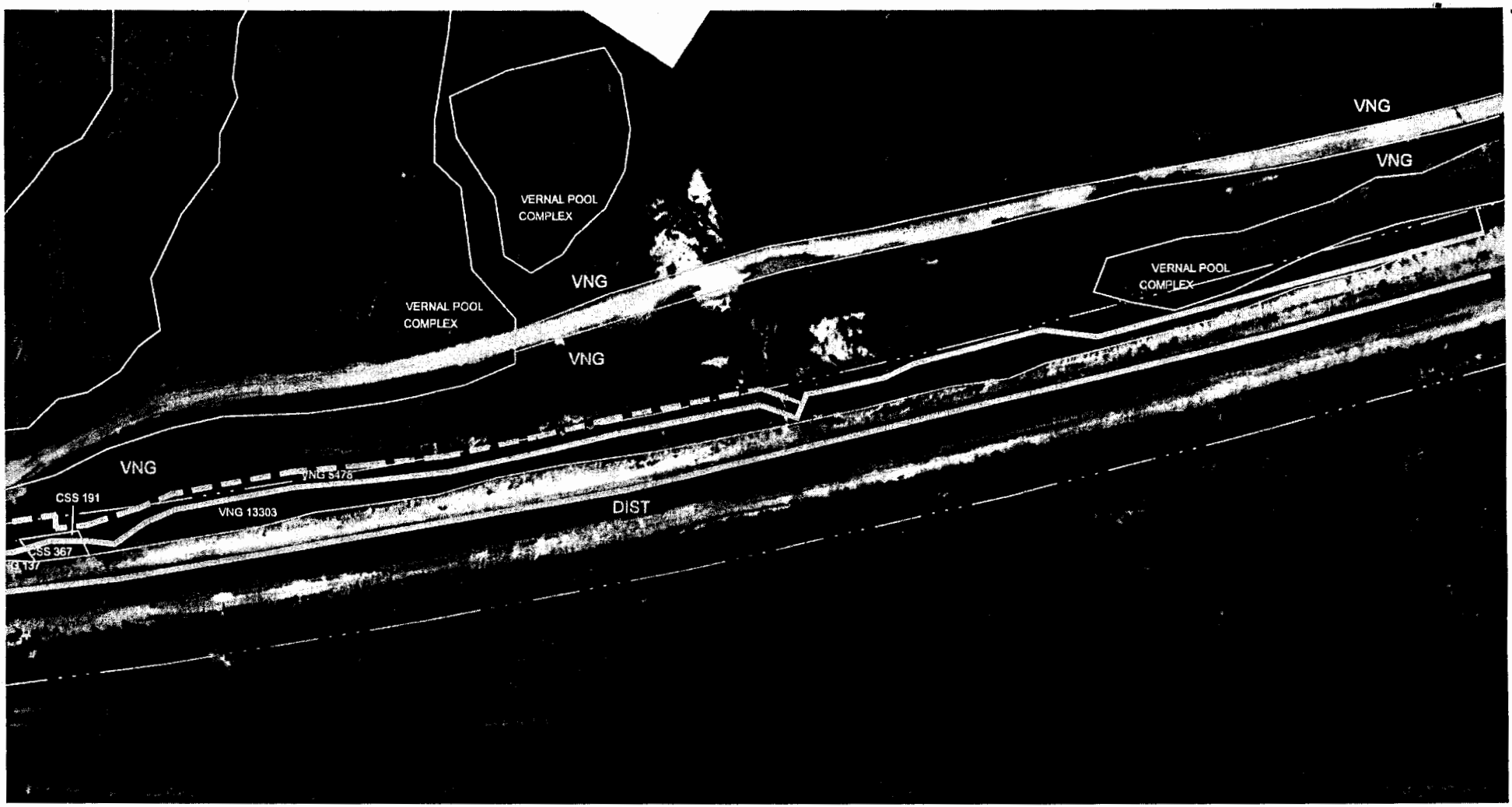
Existing Vegetation Communities and Listed Species Location Maps

FIGURE 3.1-11

4.6.1



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

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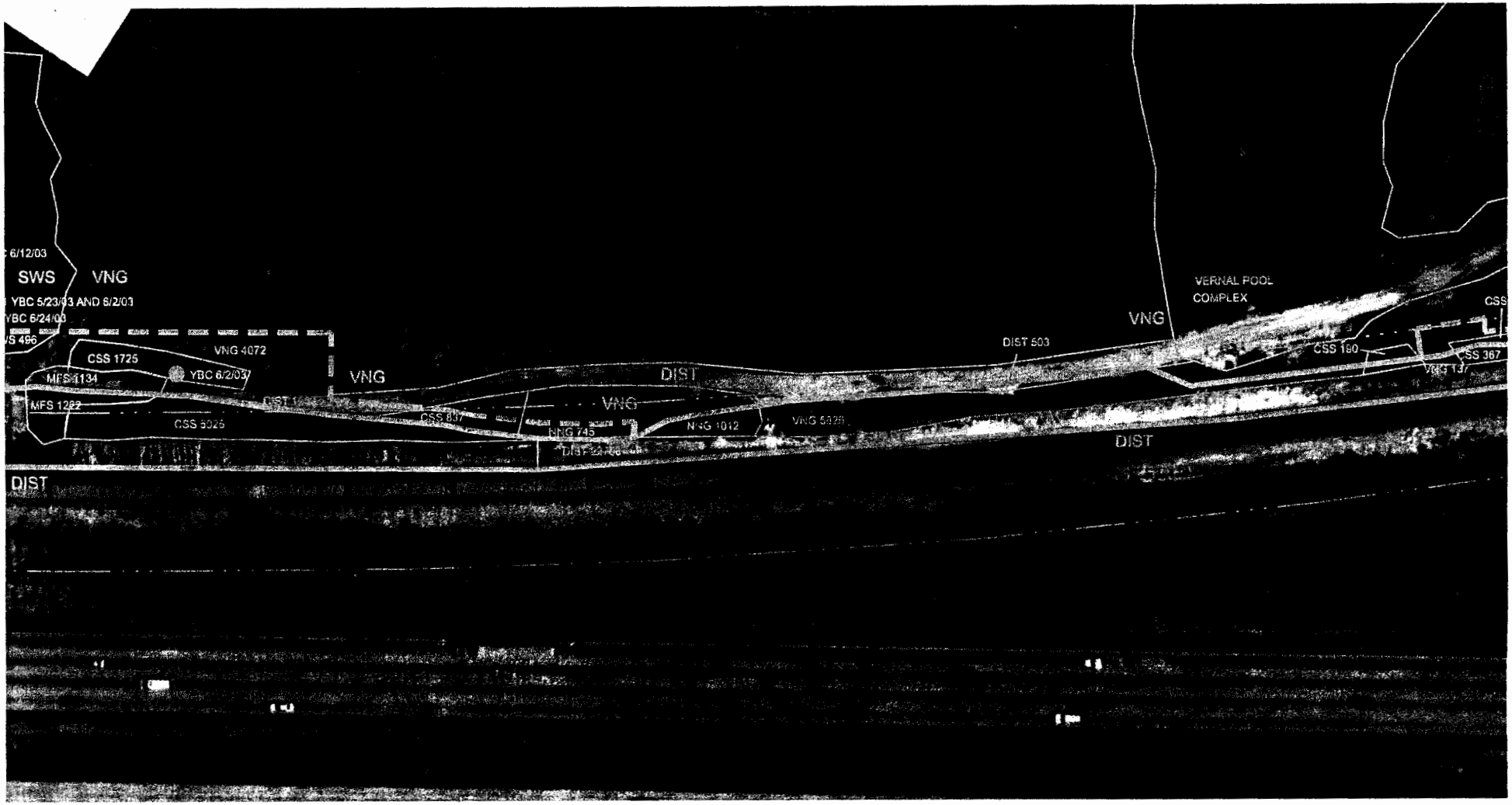
O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE

3.1-1J



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004. 08/17/04

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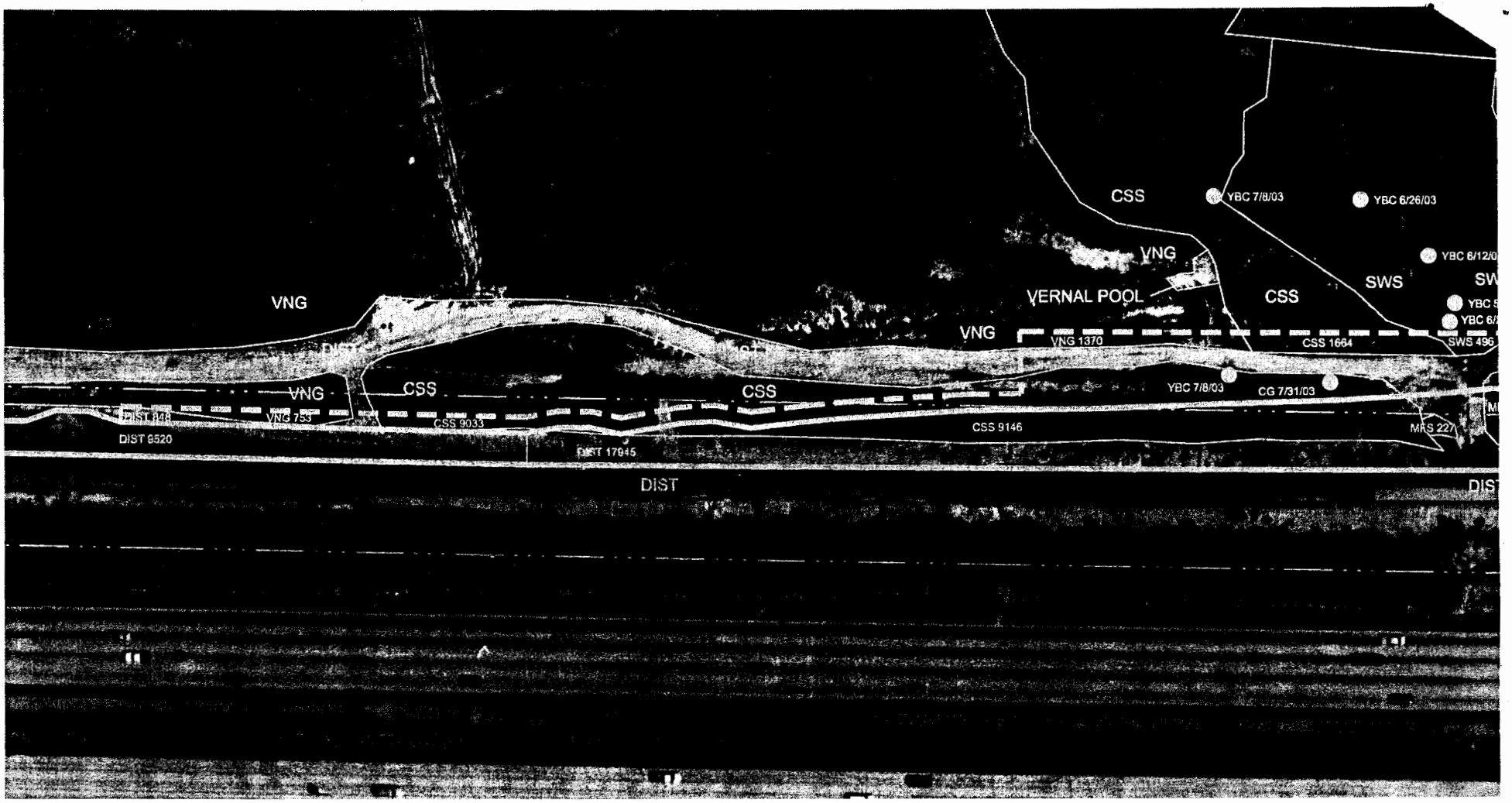
O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE

3.1-1K

3-40



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004. 08/17/04

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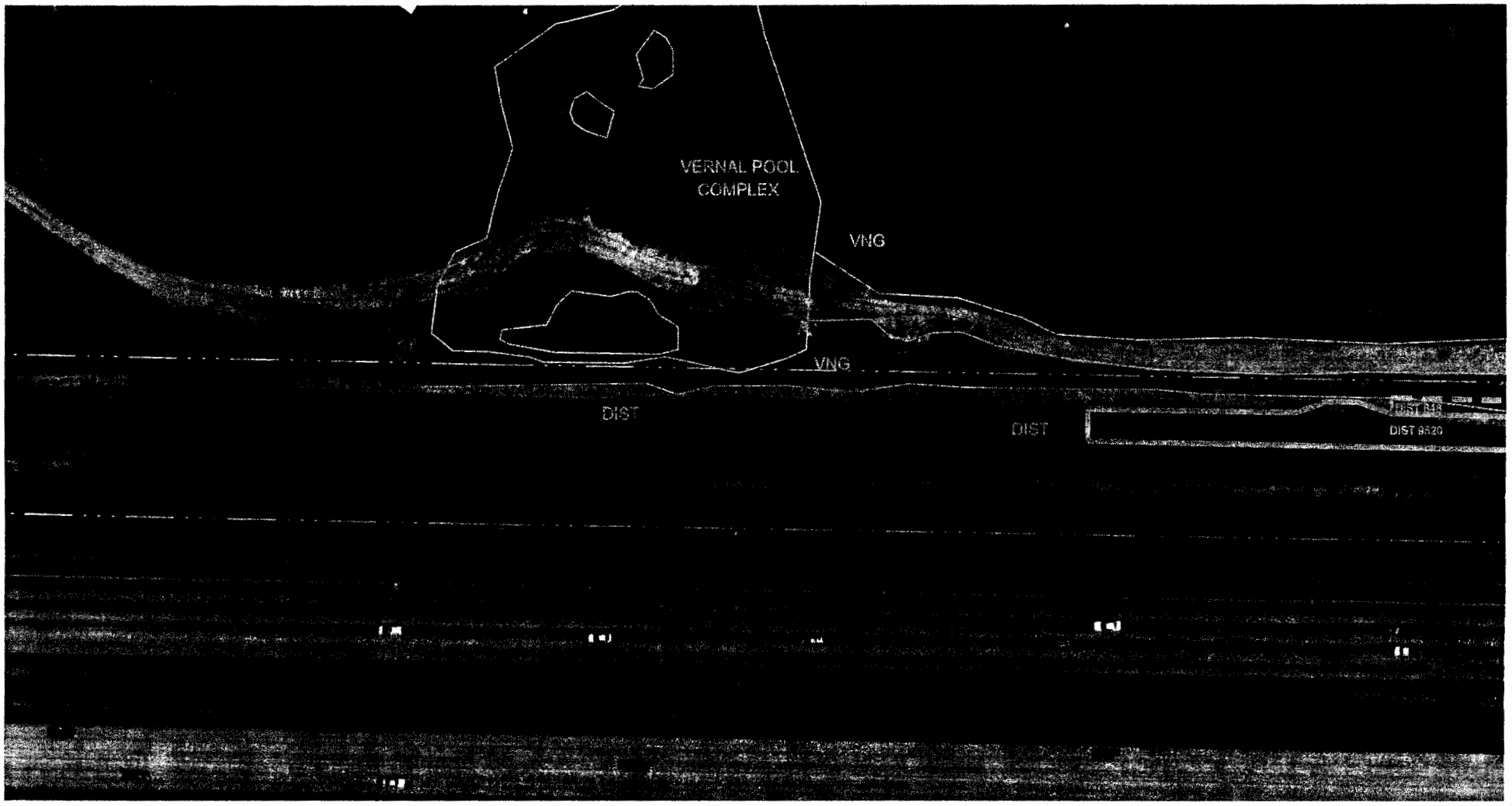
O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE

3.1-1L

4 of 12



LEGEND

Temporary Impact Boundary	NNG	Non-Native Grassland	MFS	Mulefat Scrub
Permanent Impact Boundary	CSS	Coastal Sage Scrub	YW	Yellow Warbler
Vegetation Boundary	FWM	Freshwater Marsh	LBV	Least Bell's Vireo
NCTD Right Of Way	VNG	Valley Needle Grassland	YBC	Yellow-breasted Chat
	DIST	Disturbed	CG	California Gnatcatcher

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: HDR Engineering, Inc., 2004; Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

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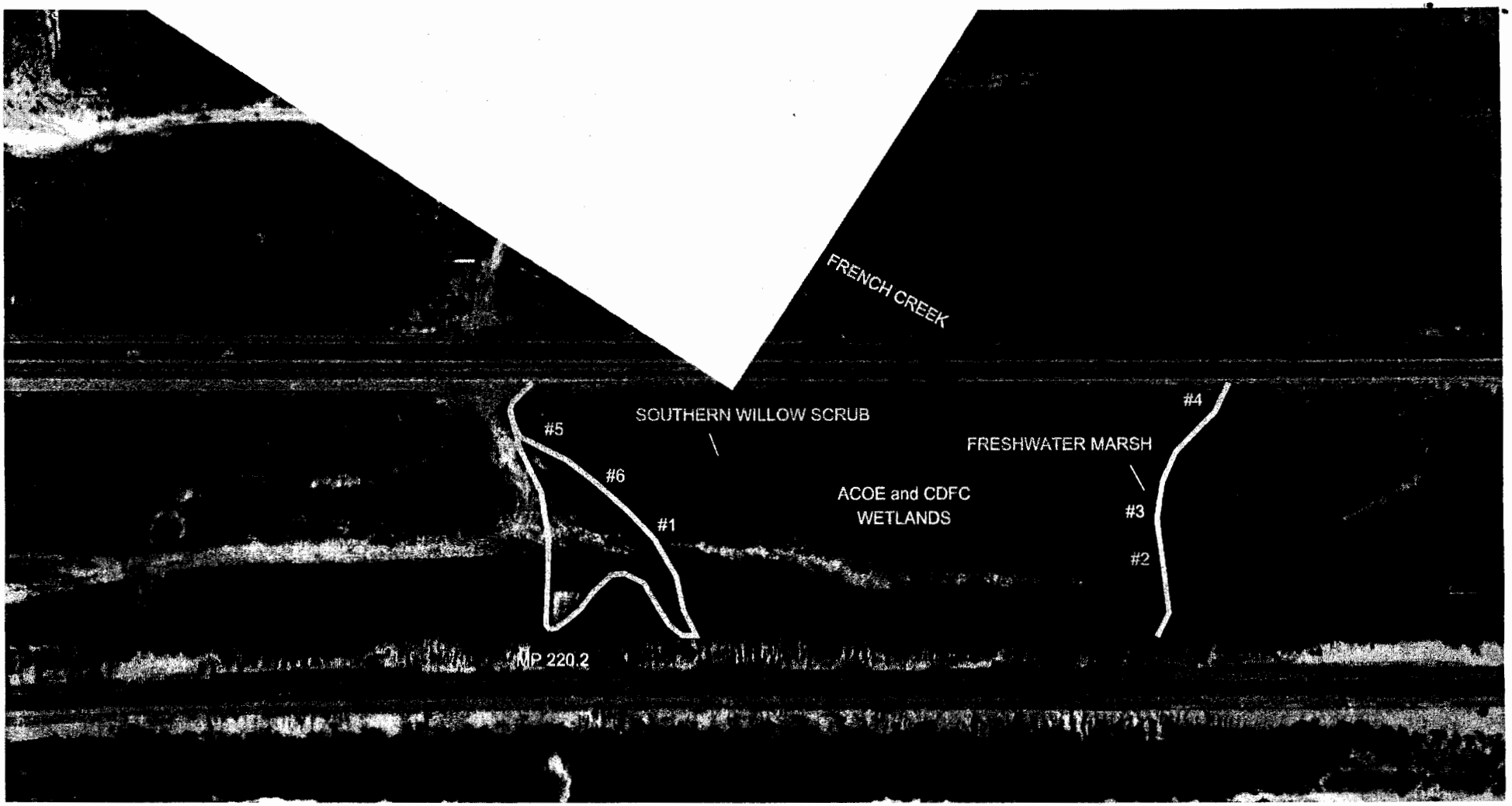
O'Neil to Flores Second Track Project

Existing Vegetation Communities and Listed Species Location Maps

FIGURE

3.1-1M

4 of 13



LEGEND

Wetland Boundary

#1 Soil Test Pit Location

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

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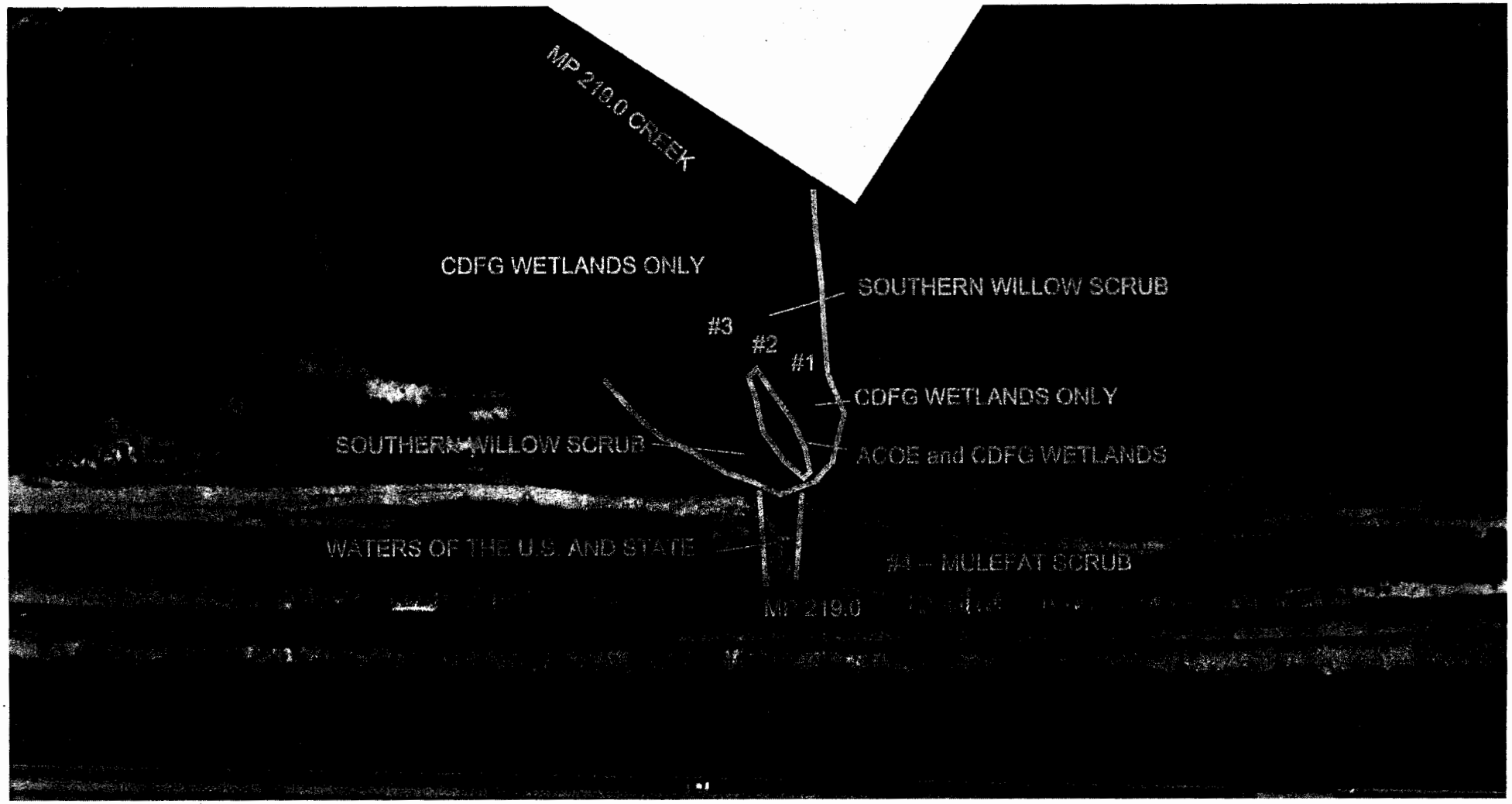
O'Neil to Flores Second Track Project

Wetland Delineation Map - French Creek and Vicinity

FIGURE

3.1-1N



LEGEND

Wetland Boundary

#1 Soil Test Pit Location

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

08/17/04

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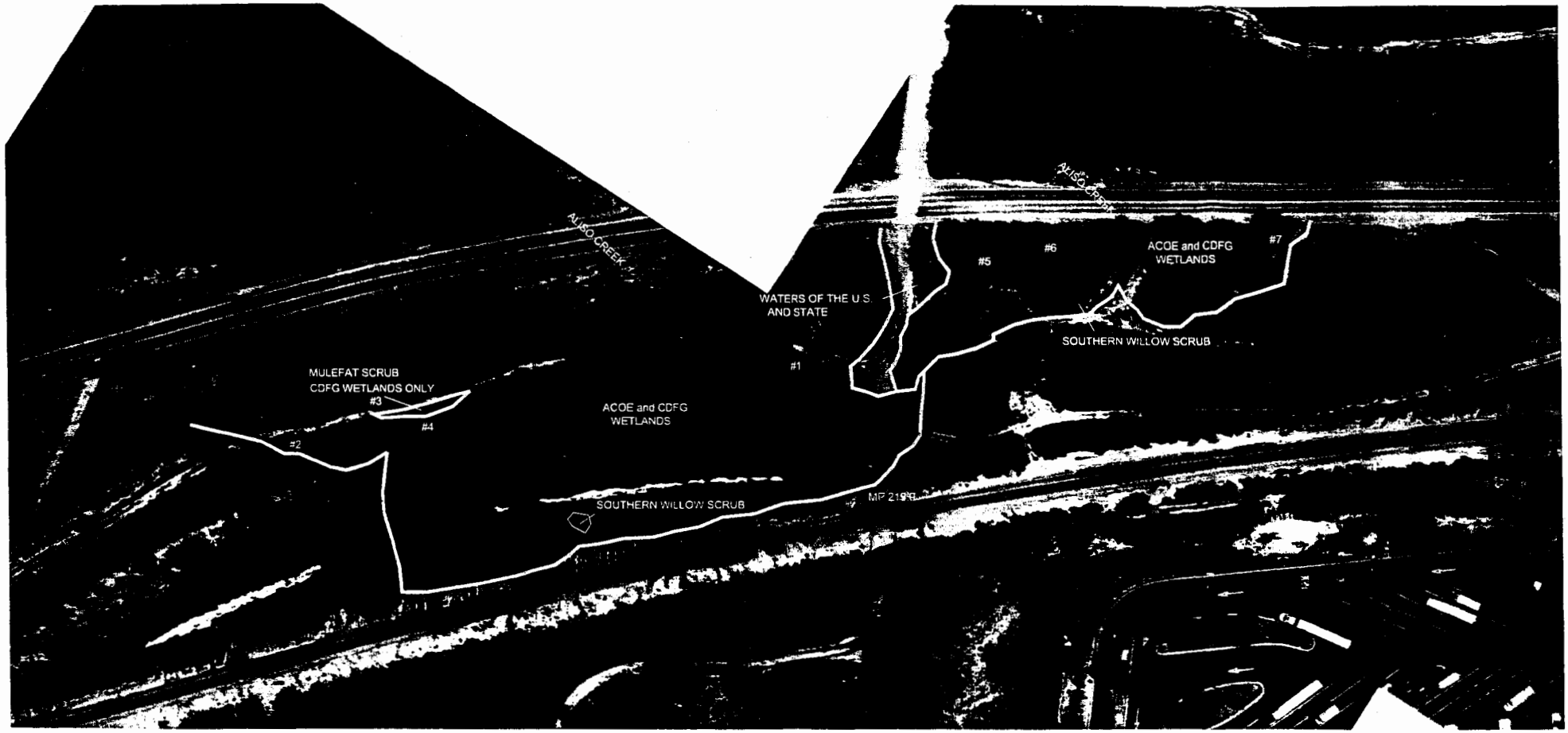
O'Neil to Flores Second Track Project

Wetland Delineation Map - MP 219.0 and Vicinity

FIGURE

3.1-1P

4p.15



LEGEND

Wetland Boundary

#1 Soil Test Pit Location

North

0 100 200

Scale in Feet

BASEMAP: NCTD, 2003. SOURCE: Vivian Marquez Biological Consultants, 2004; BRG Consulting, Inc., 2004.

08/18/04

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O'Neil to Flores Second Track Project

Wetland Delineation Map - Aliso Creek and Vicinity

FIGURE 3.1-10

4.p.16

Within the ROW, rehabilitation/restoration will involve the removal of temporary fencing, erosion controls and debris, decompaction, as well as the implementation of a restoration plan. This plan would include planting and/or seeding, and monitoring of the appropriate native species in temporarily impacted areas.

The overall construction timeframe is estimated to be approximately two years. Common earthmoving machinery and vehicles will be used for construction, including: Bull Dozers, Backhoes, Graders, Dump Trucks, Flatbed Trucks, Cranes, Pickup Trucks, and/or SUVs.

Conservation Measures

The conservation measures listed in this section are proposed by FRA, SANDAG and NCTD to avoid and minimize adverse effects to listed species and to compensate for unavoidable adverse effects. Appendix 1 identifies the routine maintenance activities that would not affect listed species.

General Conservation Measures

GEN1 All vegetation within the project footprint will be cleared between September 15 and February 14 to avoid and minimize impacts to migratory birds and raptors. If clearing activities must occur during the migratory bird and raptor breeding season, then pre-construction surveys will be conducted to ensure that no breeding migratory birds or raptors are present within or immediately adjacent to the proposed clearing area. Should a breeding migratory bird or raptor or nest be located, then clearing will be postponed until 2 weeks after the young have fledged or the biologist determines that the nest has failed.

GEN2 SANDAG or NCTD will designate a Service approved biologist (project biologist) who will be responsible for overseeing compliance with protective measures for the biological resources during clearing and work activities within areas of native habitat and adjacent to areas known to be occupied by sensitive habitats and species. The project biologist will be familiar with the habitats, plants, and wildlife on Camp Pendleton, and maintain communications with the Resident Engineer (RE), to ensure that issues relating to biological resources are appropriately and lawfully managed. The project biologist will review final plans, designate areas that need temporary fencing, and monitor construction. The project biologist will be made available to review grading plans, address protection of sensitive biological resources, and monitor ongoing activities. The biologist will monitor activities within designated areas during critical times such as vegetation removal, the installation of Best Management Practices (BMPs) and fencing to protect native species, and ensure that all avoidance and minimization measures are properly constructed and followed. The project biologist will immediately notify the RE to halt all associated activities that may be in violation of this biological opinion. In such an event, the RE will halt all

such activities and contact the Service within 24 hours. The project biologist will submit weekly reports to the Service during initial grading and clearing, and when in the opinion of the biologist, work occurs near sensitive biological resources. The project biologist will provide a final report documenting compliance with avoidance and minimization measures within 60 days of the completion of work. For projects lasting more than one year, an annual report will be submitted.

GEN3 An employee education program will be developed. Each employee (including temporary contractors and subcontractors) will receive a training/awareness program prior to conducting physical activities related to the work addressed by this biological opinion. The program will advise workers of potential impacts to the sensitive habitats and species and the potential penalties for impacts to such habitat and species. At a minimum, the program will include the following topics: occurrence of the listed and sensitive species in the area, a physical description and their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, and work features designed to reduce the impacts to these species; and to the extent practicable, promote continued successful occupation of areas adjacent to the work footprint. Included in this program will be color photos of the listed species, which will be shown to the employees. Following the education program, the photos will be posted in the contractor and resident engineer's office, where they will remain through the duration of the work. The proponent of the work and the project biologist will be responsible for ensuring that employees are aware of the listed species. Photos of the habitat in which sensitive species are found will be posted on-site.

GEN4 The changing of oil, refueling, and other actions that could result in a release of a hazardous substance will be restricted to designated areas that are sited as far as is practicable from any sensitive plant populations, sensitive habitats, or drainages. Such designated areas will be surrounded with berms, sandbags, or other barriers to further prevent accidental spill of fuel, oil, or chemicals. Any accidental spills will be immediately contained, cleaned up, and properly disposed.

GEN5 During the migratory bird and raptor breeding season, storage and staging areas will be placed as far from sensitive areas as practicable. To the maximum extent practicable, staging areas will be located within previously disturbed sites and no closer than 100 feet from sensitive habitat. Prior written approval from the Service is required for staging within native habitat areas or within 100 feet during the migratory bird and raptor breeding season.

GEN6 Impacts from fugitive dust will be offset through implementation of Caltrans Standard Specifications, including Section 7-1.01F Air Pollution Control, Section 10 Dust Control, Section 17 Watering, and Section 18 Dust Palliative. The project biologist will periodically monitor the work area to ensure that work activities do not generate

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excessive amounts of dust or cause other disturbances. Erosion control measures will be regularly checked by the RE or the RE's appointed representative.

GEN7 To avoid attracting predators of migratory birds, the work site will be kept as clean of debris as possible. All food related trash items will be placed in sealed containers and regularly removed from the site.

GEN8 Pets of personnel will not be allowed on the work site.

GEN9 Night lighting in the vicinity of native habitat areas will not occur to the maximum extent practicable. Any night lighting will be selectively placed, shielded, and directed away from all areas of native habitat to the maximum extent practicable.

GEN10 Environmentally Sensitive Areas (ESAs) include areas of native vegetation and habitat for listed species. ESAs along the edge of the project footprint will be delineated by the proponent. All parties associated with the work will strictly avoid these areas. No work activities, materials, or equipment storage or access will be permitted in an ESA. The boundaries of the ESA will be fenced with orange plastic snow fencing. Work areas will be marked clearly in the field and confirmed by the project biologist prior to habitat clearing, and the marked boundaries will be maintained throughout the duration of the work.

Conservation Measures for Temporary Vegetation Impacts

TVG1 Native vegetation in the temporary impact footprint shall be trimmed at the surface rather than uprooted to the maximum extent practicable.

TVG2 All generally native areas, as opposed to generally developed areas, temporarily impacted by work activities will be re-vegetated with native plant species using a standardized restoration plan submitted to the Service at least 90 days prior to planting. The restoration plan will describe revegetating all temporarily disturbed areas within the scope of this Opinion. All native seed and plant stock will be from seed and propagules collected within a five-mile radius of the work area to the extent practicable. Seed sources outside of the five-mile radius will be approved by the Service to determine whether the source is acceptable. All seeding will occur during the first winter or fall following completion of the work.

TVG3 No invasive exotic plant species will be seeded or planted adjacent to or near sensitive vegetation communities or waters of the U.S. In compliance with Executive Order 13112, impacted areas will be reseeded with plant species native to local habitat types, and will avoid the use of species listed in Lists A & B of the California Exotic Pest Plant Council's (Cal-EPPC) List of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999 to the greatest extent practicable.

5p.3

Areas hydroseeded for temporary erosion control measures will use native plant species.

TVG4 Temporary Impact areas will be restored in kind, except temporary impacts to disturbed habitat and non-native grassland in generally native areas will be revegetated with the most appropriate native plant palette following completion of the work. Any areas of disturbed habitat or non-native grassland revegetated with a native palette will not be counted as native habitat for any future transportation-related activity.

Conservation Measures for Permanent Vegetation Impacts

Because the public purpose of the NCTD ROW is a transportation corridor, it is recognized that NCTD cannot commit the ROW to long-term habitat preservation. Permanent impacts to vegetation associated with work within the ROW will be offset in an area outside of the ROW (off-site conservation area).

PVG1. The following measures apply to the off-site conservation area.

a. Coastal sage scrub, southern coastal bluff scrub, maritime succulent scrub, and native grass communities will be offset at a 2:1 ratio with any combination of off-site preservation, creation, or restoration of like habitat;

b. Non-native annual grasslands will be offset at a 0.5:1 ratio with any combination of off-site preservation, creation, or restoration of native habitat;

c. Riparian areas will be offset at a 3:1 ratio with any combination of off-site preservation, creation, or restoration of native habitat; and

d. All Federal waters will be offset following the requirements of the Regional Water Quality Control Board and the U.S. Army Corps of Engineers.

PVG2. A project-specific plan, outlining the details and implementation schedule of all enhancement, restoration, and creation to offset permanent impacts to vegetation will be prepared by the proponent and submitted to the Service for review and approval at least 90 days prior to the start of each of the three specific projects addressed by the biological opinion. All enhancement, restoration, and creation activities to offset permanent vegetation impacts will commence the first fall/winter season prior to or concurrently with the start of the work. The plan should also include:

a. A 5-year maintenance and monitoring program that will be implemented for the created, enhanced and/or restored habitats.

5, p. 4

b. If a performance criterion is not met, the proponent will prepare an analysis of the cause(s) of failure and, if deemed necessary by the Service, propose remedial actions. If any of the enhanced/restored/created habitats have not met a performance criterion during the initial 5-year period, the work proponent's maintenance and monitoring obligations will continue until the Service deems the enhancement/restoration successful, or contingency measures will be implemented.

c. Annual reports will be submitted to the Service by August 1 of each year. These reports will assess both the attainment of yearly success criteria and progress toward the final success criteria. The reports will also summarize compliance with the conservation measures, reasonable and prudent measures, and terms and conditions of this Opinion.

PVG3 The following measures will be implemented at all off-site enhancement, restoration, and creation sites to avoid and minimize effects to migratory birds during the five-year restoration period:

a. When maintenance and monitoring activities are conducted during the general migratory bird breeding season of February 15th to September 15th of each year, a qualified biologist will conduct a habitat assessment of the possibility for nesting birds no more than one week prior to the start of proposed activities.

b. If nesting birds are observed on-site, no maintenance activities will be conducted within 100 feet of a nest (exclusion zone), except to repair broken irrigation lines. If an irrigation line is broken and workers need to encroach into the 100-foot exclusion zone, then the project proponent and the Service will be notified immediately. Prior to maintenance workers accessing the 100-foot exclusion zone, the project proponent and the Service will determine the most appropriate timing and method of repair without causing harm to the nest and/or the nesting pair.

c. Herbicide application will occur outside of the 100-foot exclusion zone to avoid drift towards the nest. Only hand spraying downwind of the nest will be allowed. Herbicides will be applied strictly according to label instructions.

d. An education program will be implemented by the project proponent to ensure that all enhancement, restoration, and creation site maintenance workers understand the work restrictions during the general bird breeding season and are aware of the above described conservation measures.

PVG4 The work proponent will establish an appropriate financial mechanism (determined using a program such as the Property Analysis Report (PAR) system) to fully implement all appropriate conservation measures.

5.1.5

PVG5 The work proponent will ensure that long-term management of the conservation sites will occur. Within three months of the acquisition of the conservation parcels or easement, a draft management plan will be developed in coordination with the Service. The plan should be finalized within six months and implemented immediately following final sign off of all restoration activities for each parcel. If the conservation sites are transferred to a third party for long-term management, then an endowment with sufficient funds (determined using the PAR system or a PAR-like system) will be established subject to availability of funds, unless otherwise negotiated with the receiving party.

PVG6 All habitats to be restored, enhanced, created and/or preserved outside of the ROW, as stated above, will be managed and preserved in perpetuity. The work proponent will ensure there is a perpetual biological conservation easement over all properties used to offset impacts addressed in this Opinion and these lands will be managed according to a Service approved Long-Term Management Plan. The perpetual conservation easement and Long-Term Management Plan will be submitted to the Service prior to the start of the work.

Coastal California Gnatcatcher Conservation Measures

CGN1 Work in vegetation communities that support the gnatcatcher will be timed to avoid the breeding season (February 15 to September 1) to the extent practicable, unless the project proponent documents that the habitat to be affected is not occupied by the gnatcatcher. Occupancy surveys will be conducted during the breeding season to determine and document the presence/absence of breeding gnatcatchers.

Immediately prior to clearing vegetation outside of the gnatcatcher breeding season, the biologist will survey the work area for gnatcatchers. If gnatcatchers are found within the work footprint, the biologist will direct workers to begin initial vegetation clearing/grubbing in an area away from gnatcatchers. In addition, the biologist will walk ahead of clearing/grubbing equipment to flush birds toward areas of appropriate vegetation that are to be avoided. It will be the responsibility of the biologist to ensure that gnatcatchers will not be injured or killed by initial vegetation clearing/grubbing. The biologist will record the number and map the location of gnatcatchers disturbed by initial vegetation clearing/grubbing or construction and report these numbers and locations to the Service with 24 hours.

CGN2 For construction activities adjacent to occupied gnatcatcher habitat in which noise in excess of 60 dB(A) L_{eq} is produced or noise in excess of ambient noise levels if ambient noise levels exceed 60 dB(A) L_{eq}: noise attenuation structures will be placed prior to the beginning of breeding season to reduce noise levels to 60 dB(A) L_{eq} or to ambient noise levels if ambient noise levels exceed 60 dB(A) L_{eq}, except as necessary for emergency activities. During construction adjacent to these areas, noise

monitoring shall occur during the gnatcatcher-nesting season and be reported daily to the Service. Those construction activities that are creating noise in excess of the aforementioned levels will cease operation until effective noise attenuation structures or devices are in place to the extent practicable.

CGN3 Prior to replacing turnouts 209.2, 209.3, and 212.3 during the gnatcatcher breeding season (February 15 through August 30), focused surveys will be conducted to determine whether gnatcatchers are nesting in the area. If gnatcatchers are nesting within 100 feet of the site where the turnout will be constructed, all activities associated with constructing and replacing the turnout will be postponed until a week after the gnatcatchers fledge or immediately after the nest is abandoned.

Least Bells Vireo Conservation Measures

LBV1 Work within proximity to riparian habitat with the potential to create unacceptable noise and night lighting impacts, including clearing and grubbing, will be timed to avoid the breeding season of the vireo (March 15 to September 15) to the extent practicable, unless the project proponent provides documentation to the Service that the proximate riparian habitat is not occupied by the vireo. Occupancy surveys will be conducted during the breeding season to determine and document the presence/absence of breeding vireo.

LBV2 For construction activities adjacent to known vireo habitat in which noise in excess of 60 dB(A) L_{eq} is produced or noise in excess of ambient noise levels if ambient noise levels exceed 60 dB(A) L_{eq}: Noise attenuation structures will be placed prior to the beginning of breeding season to reduce noise levels to 60 dB(A) L_{eq} or to ambient noise levels if ambient noise levels exceed 60 dB(A) L_{eq}, except as necessary for emergency activities. During construction adjacent to these areas, noise monitoring shall occur during the vireo-nesting season and be reported daily to the Service. Those construction activities that are creating noise in excess of the aforementioned levels will cease operation until effective noise attenuation structures are in place to the extent practicable.

Tidewater Goby Conservation Measures

These measures apply to work in the following creeks and rivers when a survey cannot document to the satisfaction of the Service that the tidewater goby is and will remain absent from the work area: San Mateo Creek, San Onofre Creek, Las Flores Creek, Cockleburr Creek, and the Santa Margarita River.

TWG1 Prior to construction and/or equipment entering creeks or rivers, blocking seines will be installed at least 50 feet upstream and downstream from the outer limits of the instream work footprint to minimize gobies from entering the work site during

5, p.7

construction. After installing the blocking seines, all gobies will be seined from the work area by a permitted biologist and relocated to an area outside the perimeter of the blocking seines or coffer dams at the direction of the authorized goby biologist. Any non-native species caught in the seine will be destroyed.

For cofferdam installation: Prior to cofferdam(s) installation, blocking seines will be used as described previously to remove all tidewater gobies from within the boundaries of the blocking seines. After all gobies are removed, the cofferdam(s) will be installed within the inner limits of the blocking seines and the area within the cofferdams will be dewatered. After the cofferdam(s) is/are installed and dewatered, the blocking nets will be removed to allow tidewater gobies to move through the diversion area during construction activities. Blocking seines will be reinstalled and all tidewater gobies within the perimeter of the blocking seines will be removed prior to and during removal of the cofferdam(s).

TWG2 Prior to construction for any railroad bridge affecting San Mateo Creek, FRA, SANDAG and NCTD shall implement a 5-year, Service-approved, exotic predatory species removal program for the area from the San Mateo Creek Bridge downstream into the lagoon. The 5-year program is to begin no sooner than the end of the current removal program.

Arroyo Toad Conservation Measures

AT1 This conservation measure describes the installation of a permanent arroyo toad exclusion fence along the trestle on the north side of San Mateo Lagoon and clearance surveys following the installation of the fence. A permanent toad exclusion fence will be installed and maintained along the east side of the service road along the rail trestle on the north side of San Mateo Lagoon beginning at the end of curb along the east-west access road, along the outer edge of native vegetation, and ending at the edge of the lagoon. The fence will be at least 18 inches high with the bottom six inches buried along the road side of the lagoon area. If the fence is installed outside of the arroyo toad active season, no clearance surveys will be conducted. However, if the fence is installed during the arroyo toad active season, a biologist will perform a minimum of three focused surveys, on separate days/nights, in and around the barrier fencing for arroyo toad. When arroyo toads are encountered, they will be relocated to an area immediately adjacent to the lagoon on the outside of the project area fencing. If toads are encountered on the second or third night of surveys, then surveys will continue for two nights after the last arroyo toads are encountered. Once the initial surveys are completed, future arroyo toad surveys will be conducted for emergency repairs, repair/replacement activities, and construction projects along the north shore of San Mateo Lagoon.

AT2 This conservation measure describes the installation and clearance surveys for construction/repair/maintenance activities along the trestle on the north side of San Mateo Lagoon. During emergency repairs, repair/replacement activities, and all construction related activities at the trestle at San Mateo Lagoon, the permanent toad exclusion fence will be inspected and maintained daily. For work occurring during the active season for the arroyo toad, a temporary barrier fence (silt fence 18 inches high above ground and sand bags holding down the bottom of the fence) will be installed from the southern end of the permanent barrier fence, under the trestle, and to the emergent vegetation along the beach (an east-west fence line). Immediately following the installation of the temporary silt fence, a biologist will perform a minimum of three focused surveys, on separate days/nights, in and around the barrier fencing for arroyo toad. When arroyo toads are encountered, they will be relocated to an area immediately adjacent to the lagoon on the outside of the project area fencing. If toads are encountered on the second or third night of surveys, then surveys will continue for two nights after the last arroyo toads are encountered.

AT3 This conservation measure describes the installation and clearance surveys for construction/repair/maintenance activities that occur along the trestle on the south side of San Mateo Lagoon. During emergency repairs and all construction related activities and during the arroyo toad breeding season, a silt fence will be installed along the edge of the project footprint on the south side of San Mateo Lagoon to exclude arroyo toads from entering the project area. The bottom of the fence will be anchored with sand bags and the upper portion of the fence will be tied into the orange snow fence delineating the project footprint. Immediately following, the initial installation of the silt fence, a biologist will perform a minimum of three focused surveys, on separate days/nights, in and around the barrier fencing for arroyo toad. When arroyo toads are encountered, they will be relocated to an area immediately adjacent to the lagoon on the outside of the project area fencing. If toads are encountered on the second or third night of surveys, then surveys will continue for two nights after the last arroyo toads are encountered.

Riverside and San Diego Fairy Shrimp Conservation Measures

The following conservation measures for Riverside and San Diego fairy shrimp pertain to operations and maintenance activities in the Las Pulgas Vernal Pool Area.

FS1 All vehicles will stay on access roads and will not travel off of access roads. Vehicle speeds will not exceed 25 miles per hour. All vehicles will be inspected for chemical leaks (fuels, oil, etc) prior to entering the Las Pulgas Vernal Pool Area. If vehicles have chemical leaks, they will not access the Las Pulgas Vernal Pool Area until the leaks are fixed and the underside of the vehicle is cleaned. No blading or other earth disturbing activities will occur in the Las Pulgas Vernal Pool Area.

5.8.9

FS2 Since all work for the O'Neil Project will occur from the rail trench adjacent to the Las Pulgas Vernal Pool Area, no vehicle access to the top of slope will occur during construction of the soil nail wall through the Las Pulgas Vernal Pool Area. Foot traffic will occur along the top of the cutslope during construction of the soil nail wall.

FS3 No staging will occur within the Las Pulgas Vernal Pool Area.

FS4 All vernal pools in the Wire Mountain Vernal Pool Area will be strictly avoided. ESA fencing will be erected along the edge of the existing disturbed areas and no project activity will occur within ESAs.

Storm Water Pollution Prevention Conservation Measures

BMP1 BMPs employed during maintenance activities will follow applicable guidelines and be detailed in NCTD's workplan. The BMPs will reduce the probability of erosion/siltation or spill of chemicals/fuels that could potentially affect sensitive habitat areas downstream.

BMP2 BMPs employed during construction will follow applicable guidelines and be detailed in the work-related Storm Water Management Plan, Storm Water Pollution Prevention Plan, and Water Pollution Control Program. Specific plans will be reviewed by a biologist and modified, if necessary, prior to implementation. The biologist will have the ability to suggest changes to reduce the probability of erosion/siltation or spills of chemicals/fuels that could potentially affect sensitive habitat areas downstream. Photographs of installed BMPs will be submitted to the Service at least seven days prior to initial grading and clearing.

Santa Margarita Project

SMP1 The permanent (8.62 acres) and temporal (7.81acres) loss of 16.43 acres of CSS from the construction of the Santa Margarita Project will be offset by purchasing 25.05 acres (2:1 ratio for permanent impacts and 1:1 for temporal impacts) of CSS at a Service approve offsite location and revegetating 7.81 acres on-site according to the Service approved temporary revegetation plan immediately north of the Santa Margarita River between the rail corridor and northbound I-5. Five years after initial installation, revegetation efforts at the 7.81 acres temporal impact area will result in the establishment of a CSS community with 50-60 percent cover by native shrubs, zero percent cover of species listed in Lists A and B of the Cal-EPPC List of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999, and less than 10 percent total cover of non-native plant species.

SMP2 Permanent impacts to 0.09 acre of non-native grassland will be offset by purchasing 0.045 acre of suitable habitat at a Service approved offsite location. Permanent

5.8.10

impacts to 0.08 acre of saltpan/mudflats and 0.20 acre of mulefat scrub will be offset in-kind at a 3:1 ratio at a Service approved offsite location.

SMP3 The location where the 25.05 acres of CSS for offsetting permanent and temporal impacts will be approved by the Service prior to the start of construction. The 25.05 acres of CSS will be preserved in perpetuity through the establishment of a biological conservation easement on the 25.05 acres. If restoration is involved, a restoration plan covering 5 years of management and maintenance with success criteria will be approved by the Service prior to the start of construction. A long-term endowment for the management of the site will be established prior to the start of construction.

O'Neill Project

OP1 Permanent impacts to 1.44 acres of CSS and 0.74 acre of native grassland will be offset at a 2:1 ratio by purchasing and restoring 2.88 acres of CSS and preserving 1.48 acres of native grassland at the Foss Lake property currently being negotiated for purchase by Wildlands Inc. An additional 0.065 acre of non-native grassland will be purchased at the Foss Lake property to offset impacts to 0.13 acre of non-native grassland. A total of 4.425 acres of upland habitat will be purchased at Foss Lake.

OP2 Permanent impacts to 0.62 acre of southern willow scrub and 0.03 acre of mulefat scrub will be offset by purchasing 1.85 acre (3:1 ratio) of southern willow scrub occupied by at least one pair of least Bell's vireo at the Foss Lake property.

OP3 The Foss Lake property will be purchased by Wildlands Inc. and the entire site will be established as a Service approved mitigation bank (Bank). However, the 4.425 acres of upland habitat and 1.85 acre of wetlands will be purchased and preserved in perpetuity within the proposed Bank lands. Assurances of this purchase and preservation and management in perpetuity will be submitted to the Service prior to the start of construction.

OP4 The restoration plan for the CSS and native grassland will be approved by the Service prior to the start of construction.

Operations and Maintenance

O&M1 Permanent impacts to 1 acres of habitat within 25 feet of bridge structures will be offset at a 2:1 ratio by restoring two acres of upland habitat within the vernal pool complex on NCTD owned land at the Poinsettia Transit Center. The restoration plan will be approved by the Service no later than March 15, 2006. Restoration will commence immediately following approval of the plan.

5.8.11

O&M2 Permanent impacts to 1.38 acres of freshwater marsh/riparian habitat and 3.48 acres of CSS from clearing an additional five feet of native vegetation along the rail corridor will be offset by restoring/purchasing/preserving 4.14 acres of freshwater marsh/riparian habitat and 6.96 acres of CSS at a location yet to be determined. The location, restoration plan, and long-term management plan will be approved by the Service prior to clearing of vegetation.

STATUS OF THE SPECIES

Coastal California Gnatcatcher (*Polioptila californica californica*)

Listing Status

The Service listed the coastal California gnatcatcher as threatened on March 30, 1993 (*Federal Register* 58:16742-16757). As part of the Federal listing, the Service issued a special rule, pursuant to section 4(d) of the Act, defining the conditions under which take of the gnatcatcher would not be a violation of section 9 (*Federal Register* 58: 65088-65096). This special rule recognized the State's Natural Community Conservation Planning (NCCP) Program, and several local governments' ongoing multi-species conservation planning efforts [e.g., the Multiple Species Conservation Program (MSCP)] that intend to apply Act standards to activities affecting the gnatcatcher. An interim process was established whereby jurisdictions actively involved in NCCP planning would be allowed to take up to five percent of the remaining coastal sage scrub habitat for projects that were consistent with the NCCP conservation guidelines (California Department of Fish and Game and California Resources Agency 1993).

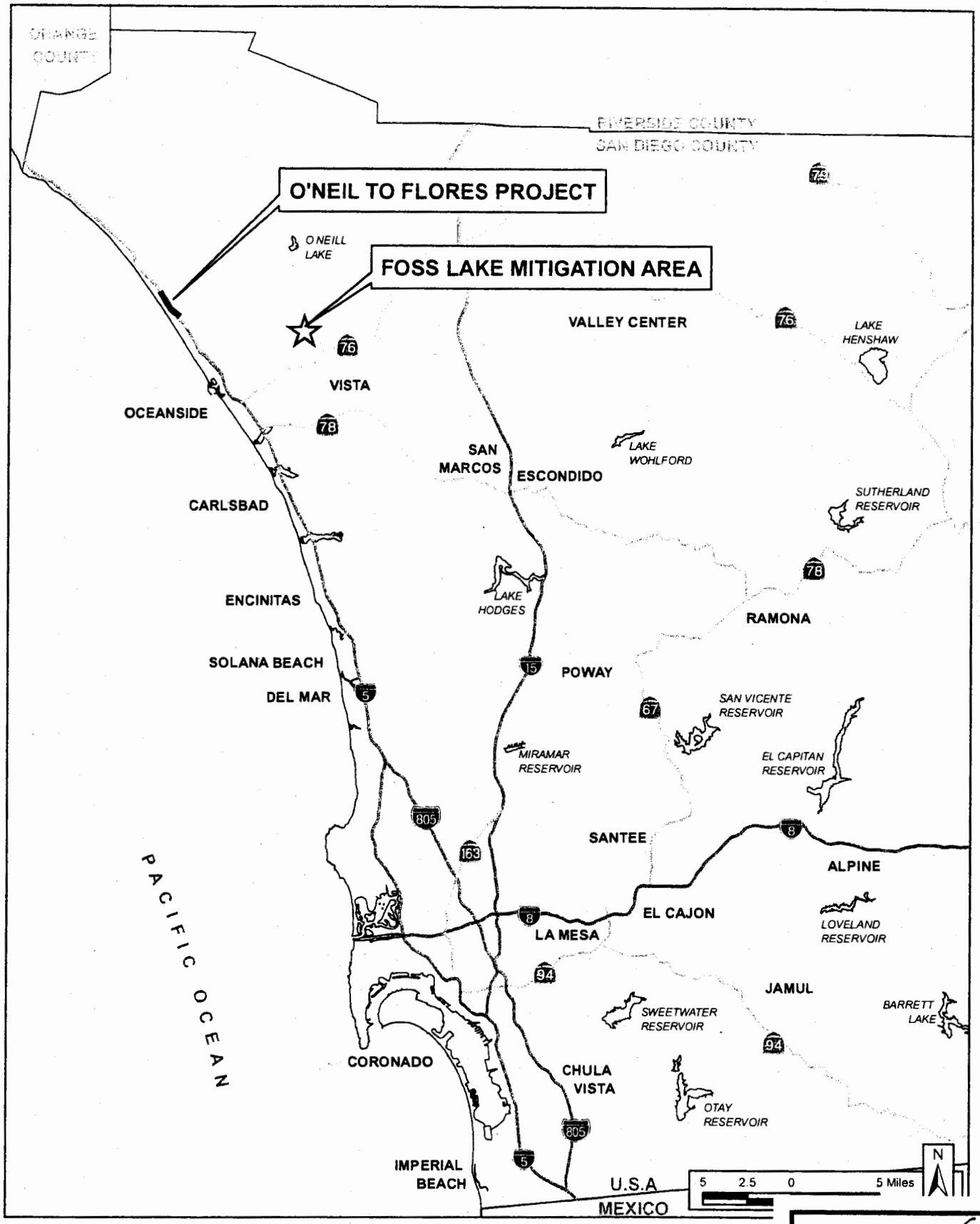
Species Description

The coastal California gnatcatcher is a small (length: 11 centimeters; weight: 6 grams), long-tailed member of the old-world warbler and gnatcatcher family *Sylviidae* (American Ornithologists' Union 1998). The bird's plumage is dark blue-gray above and grayish-white below. The tail is mostly black above and below. The male has a distinctive black cap which is absent during the winter. Both sexes have a distinctive white eye-ring.

The gnatcatcher is one of three subspecies of the California gnatcatcher (*P. californica*) (Atwood 1991). Prior to 1989, *P. californica* was classified as a subspecies of the black-tailed gnatcatcher (*Polioptila melanura*). Atwood (1980, 1988) concluded that the species was distinct from *P. melanura*, based on differences in ecology and behavior.

Distribution

Gnatcatchers occur on coastal slopes in southern California, ranging from southern Ventura southward through Palos Verdes Peninsula in Los Angeles County through Orange, Riverside, San Bernardino and San Diego Counties into Baja California to El Rosario, Mexico, at about 30



Wildlands, Inc.

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EXHIBIT NO. 6
APPLICATION NO.
CC-4-05

Figure 2

Wildlands, Inc.

Project Vicinity

6, p. 2 Foss Lake

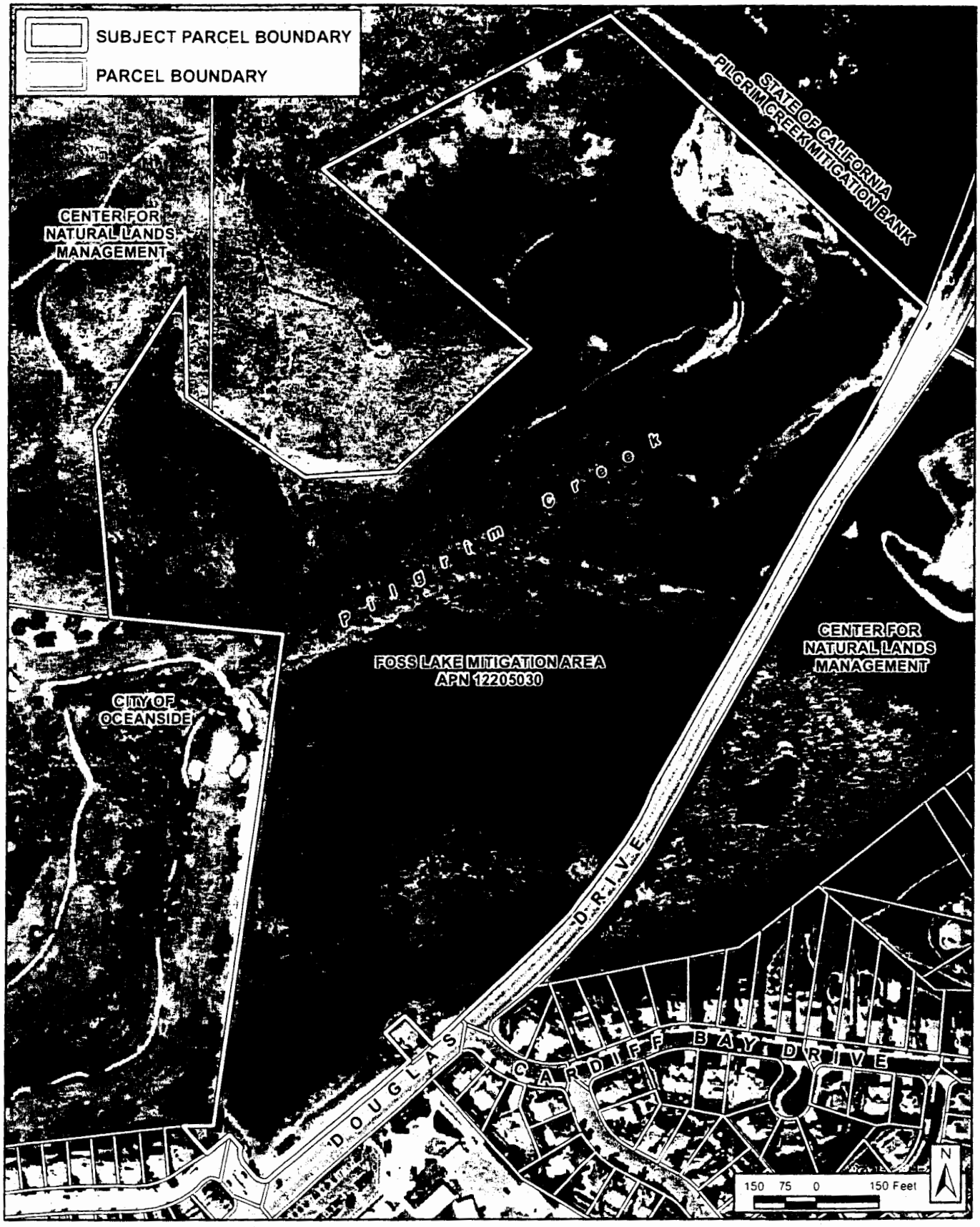

Figure 3

Wildlands, Inc.

Parcel Map

6/1.3 Foss Lake

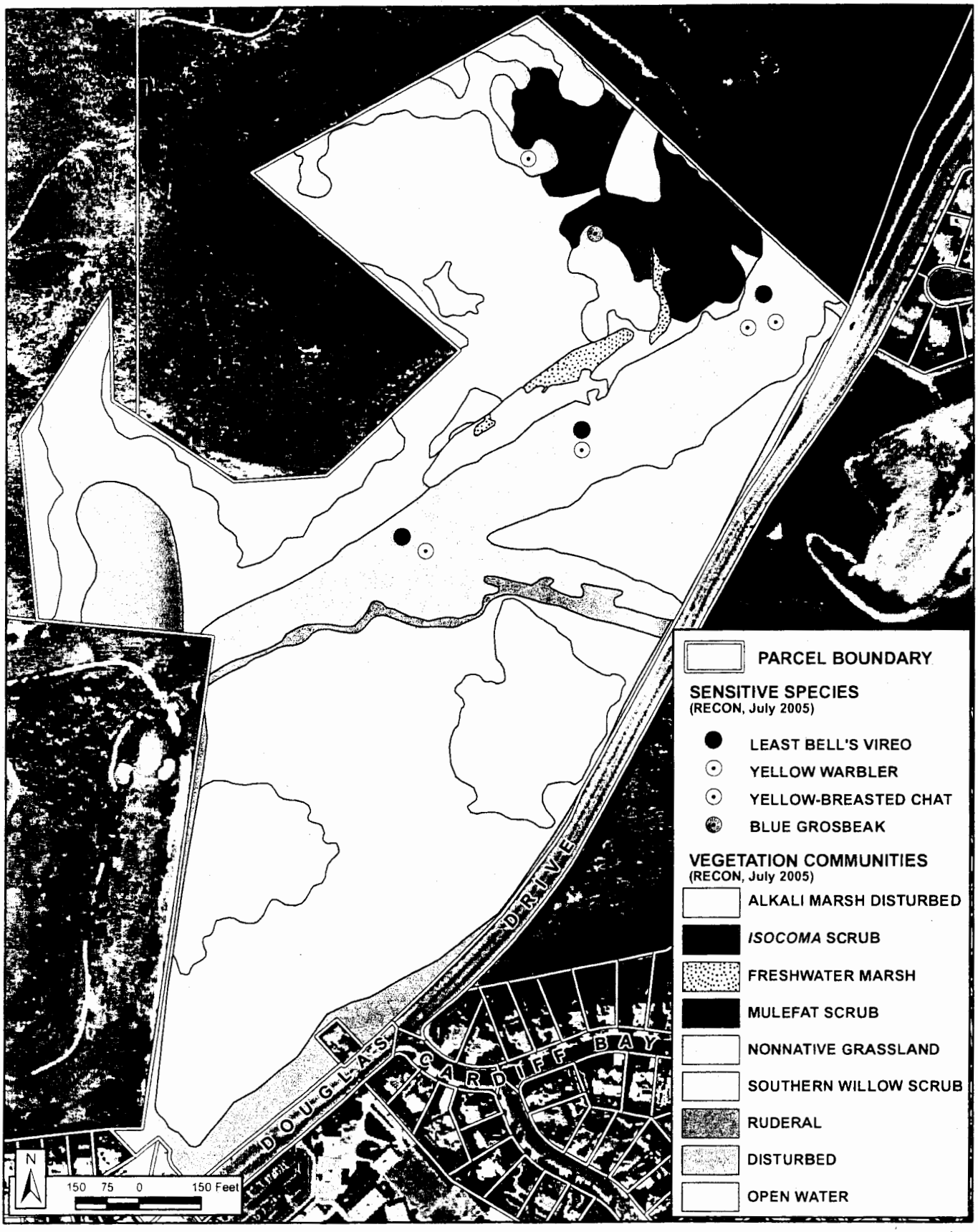

Figure 4

Wildlands, Inc.

Existing Vegetation and Sensitive Species

6, p.4 **Foss Lake**

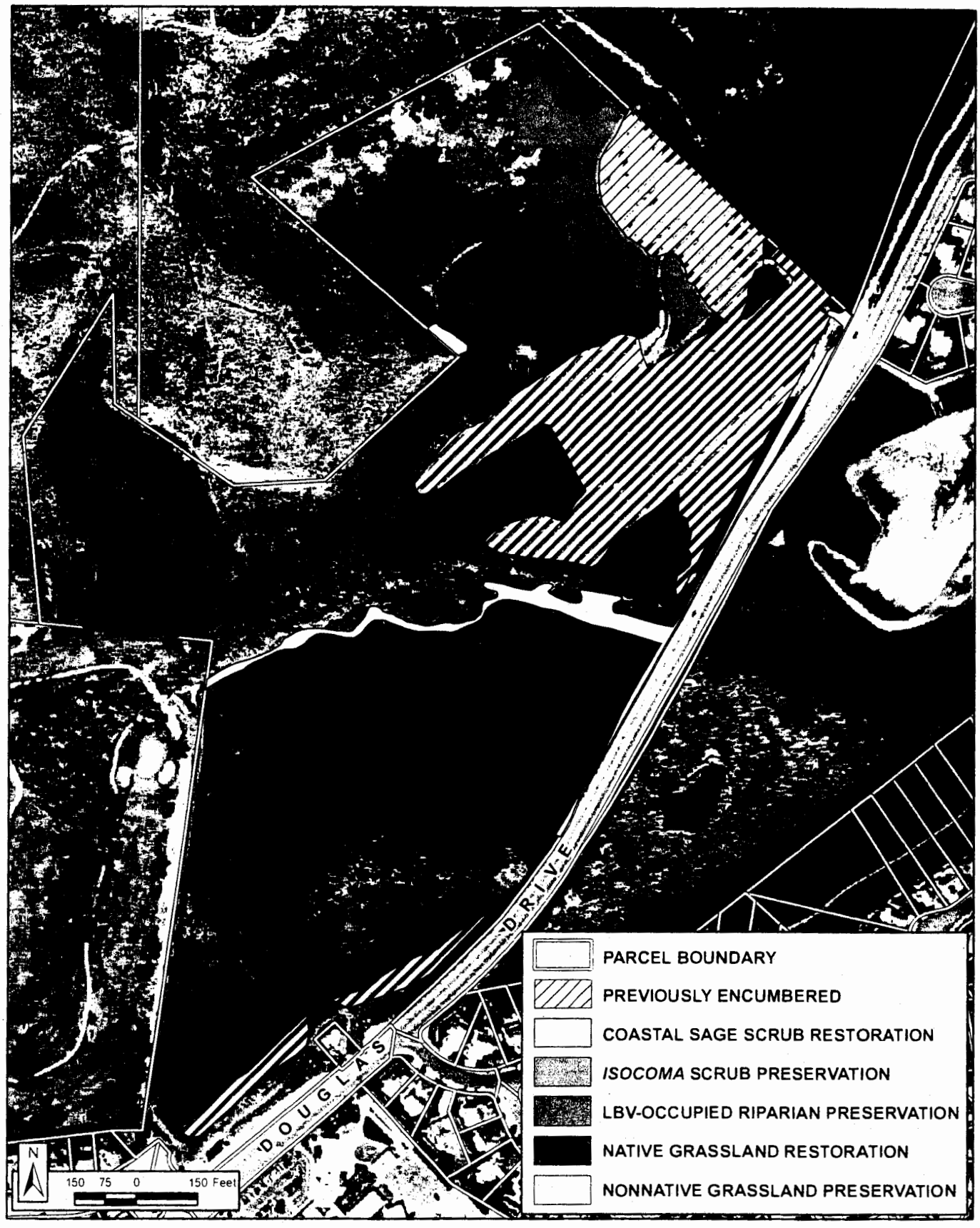

Figure 5

Wildlands, Inc.

AMTRAK O'Neal to Flores Mitigation Location

6.p.5 Foss Lake