

**CALIFORNIA COASTAL COMMISSION**

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

**RECORD PACKET COPY****W 20b****STAFF REPORT AND RECOMMENDATION****ON CONSISTENCY CERTIFICATION**

Consistency Certification No. **CC-055-05**  
Staff: MPD-SF  
File Date: 4/19/2005  
3 Months: 7/19/2005  
6 Months: 10/19/2005  
Commission Meeting: 7/13/2005

**APPLICANT:** North County Transit District

**DEVELOPMENT**  
**LOCATION:**

Middle Agua Hedionda Lagoon Crossing, East of Carlsbad Blvd.,  
and west of I-5, Agua Hedionda Lagoon, Carlsbad, San Diego  
County (Exhibits 1-2)

**DEVELOPMENT**  
**DESCRIPTION:**

Replacement of Railroad Bridge (Exhibits 3-9)

**SUBSTANTIVE FILE**  
**DOCUMENTS:**

See page 18.

**EXECUTIVE SUMMARY**

The North County Transit District (NCTD) has submitted a consistency certification for the replacement of the existing deteriorating railroad bridge over Agua Hedionda Lagoon in Carlsbad. The replacement bridge would be a single-track, concrete bridge, replacing an existing wood piling bridge, which would be removed. The existing bridge is deteriorating, primarily due to wood borer infestation, and has limited load bearing capacity. The project includes realignment of 3,565 ft. of existing track. Maintaining the bridge and the rail line is essential to serve the Los Angeles to San Diego (LOSSAN) Rail Corridor, which is used by NCTD's Coaster commuter rail service, Southern California Regional Rail Authority's Metrolink commuter rail service, Amtrak's Pacific Surfliner intercity rail service, and Burlington Northern and Santa Fe Railway's freight service.

The project will help maintain highway capacity on I-5 for public access to and along the shoreline. Section 30252 of the Coastal Act encourages maintenance and enhancement of public access through facilitating the provision or extension of transit service. Section 30253 (the air quality policy) also promotes energy consumption-reduction strategies (e.g., reducing automobile vehicle miles traveled). The project will not cause any adverse temporary or permanent access impacts; in fact the only access concern raised is whether the project will affect or preempt planning options for: (1) the coastal rail trail, a region-wide bicycle and pedestrian trail linking the entire County shoreline region and which contemplates a lagoon crossing in this "middle lagoon" area of Agua Hedionda Lagoon; and/or (2) other regional trails, such as the City's proposed trail along the north shore of the lagoon, which might cross underneath the proposed bridge if the existing (to the west) and proposed (to the east) trail segments to either side of the bridge were to be connected. Some access occurs under the bridge now, although NCTD's position is that this is not legal access. While NCTD does not encourage access under the bridge, it does not actively pursue violations, and in fact the proposed bridge replacement design will provide for increased vertical clearance and the removal of bents (cross-bracing) (Exhibits 4-5). NCTD states that: "Such design does not include the construction of fences or trespassing-control barriers in the area located underneath the railroad bridge" and that NCTD "...will continue to work with the City in good faith via the plan review process that is currently in place regarding all proposed third-party projects that may affect the railroad right-of-way." With this commitment, the Commission agrees with NCTD that the project: (1) would not adversely affect any existing public access opportunities; (2) would not preclude options, and may even help facilitate trail access along the north shore of the lagoon and underneath the bridge, if that is ultimately selected as the desired trail link; and (3) would improve public access by maintaining the rail line, which reduces automobile traffic on I-5, in an area where the highway supports public access and recreation. The project is therefore consistent with the public access and recreation policies (Sections 30210-30212 and 30252) of the Coastal Act.

The project will slightly reduce the total square footage of bridge pilings in the lagoon. Nevertheless, because new piles will be placed in the lagoon, the project triggers the 3-part test of Section 30233(a) of the Coastal Act. The project meets these tests because: (1) it is an allowable use as an incidental public service (the Commission has historically interpreted Section 30233(a)(5) to allow a limited expansion of an existing transportation facility necessary to maintain existing capacity); (2) it is the least damaging feasible alternative; and (3) it includes avoidance, monitoring, and mitigation measures where appropriate. Also, Agua Hedionda Lagoon is one of the "priority wetlands" afforded additional protection under Section 30233(c). The project will not alter Agua Hedionda, and it can be considered a "very minor incidental public facility" based on the rationale discussed in the Commission's wetlands guidelines and a number of past Commission reviews, which apply the same test under Section 30233(a) as under Section 30233(c) – that a limited expansion of an existing transportation facility that is necessary to maintain existing capacity is an allowable use as an incidental public service. Finally, the project will not adversely affect the functional capacity of Agua Hedionda Lagoon, a secondary test of Section 30233(c). Therefore, the project is consistent with the applicable wetland tests of Section 30233(a) and (c) of the Coastal Act.

The project is not located within any environmentally sensitive habitat, and with the measures included, would be consistent with the sensitive habitat policy (Section 30240) of the Coastal Act. The project will remove creosote soaked piles from the lagoon and includes appropriate Best Management Practices (BMPs) to minimize water quality impacts from construction and operation of the project (with the final "SWPPP" and "SPCC" plans to be reviewed and approved by the Commission staff). The project is therefore consistent with the water quality policies (Sections 30231 and 30232) of the Coastal Act. The project will not adversely affect public views and is consistent with Section 30251 of the Coastal Act.

## **I. STAFF SUMMARY AND RECOMMENDATION:**

**A. Project Description.** The North County Transit District (NCTD) proposes to replace the single-track railroad bridge over the middle of the three sub-lagoons at Agua Hedionda Lagoon in Carlsbad (Exhibits 1-2). The site is approximately one-half mile south of Tamarack Avenue, three-quarters mile north of Cannon Road, and west of Interstate 5. The existing wood piling bridge is deteriorating, primarily due to wood borer infestation. Despite several temporary repairs, several pilings are in "non-bearing" condition, and the bridge currently retains less than half of its load bearing capacity. The primary project purpose is to restore structural and operation capacity for trains passing over Agua Hedionda Lagoon.

The rail line serves the Los Angeles to San Diego (LOSSAN) Rail Corridor, which is used by NCTD's Coaster commuter rail service, Southern California Regional Rail Authority's Metrolink commuter rail service, Amtrak's Pacific Surfliner intercity rail service, and Burlington Northern and Santa Fe Railway's freight service. Upon replacement of the bridge, full operational efficiency would be restored, and public and environmental safety concerns alleviated for people and freight being transported by rail over Agua Hedionda Lagoon.

The proposed project consists of three primary components: (1) construction of a new, 214 ft. long, 19 ft. wide, concrete railroad bridge, adjacent to and 23 ft. (center-to-center) west of the existing bridge; (2) realignment of approximately 3565 feet of main track; and, 3) removal of the existing timber trestle railroad bridge. Bridge support within the lagoon would consist of two 66-inch-diameter pile extensions, to be placed just inside the Ordinary High Water Mark (OHWM) on either side of the lagoon. The area is inundated during higher tides, with a primarily rock/riprap lagoon floor exposed during lower tides.

Embankment grading for the track approaches would involve widening the existing trackbed embankment by placing approximately 40 feet of fill width on the west side of the existing trackbed embankment. At the bridge abutments, the embankment fill height would be approximately 30 feet high to the bottom of subballast. The required fill width would taper down further from the bridge as the new and existing track alignments converge. Approximately 18,970 cubic yards of total embankment fill would be required for this project. Cut areas of 8,031 cubic yards would include a graded track ditch for runoff and variance slopes designed at 1.5:1. Fill slopes would at 2:1 ratios.

The project would also involve the removal of the existing single-track, and wooden railroad bridge. This bridge consists of fourteen 14-foot spans, was originally built in 1948 (the rail line was originally built in the late 1880s), and is approximately 200 feet long and 26 feet wide, with a maximum height of about 35 feet over the bottom of the lagoon channel. The piles on land would be removed to at least three feet below grade, and the piles and encasements in the water would be removed to a similar depth or to the mud line where the channel mean low water is deeper than three feet. Existing riprap would be restored or replaced.

An MCI underground fiber optic cable is located directly west of and adjacent to the existing mainline track for the majority of the project length. Construction of the proposed project would require relocation of the MCI cable within the limits of the bridge and the approaches.

The construction staging area would be located in an existing cleared area to the west of the existing tracks on the north side of the lagoon. Access to the staging area on the north would be via Garfield Street (off of Tamarack Avenue, west of I-5) through an existing gate and paved driveway to a fish hatchery, then onto an existing dirt road currently used by utility vehicles performing inspection and maintenance activities. Access to the south bank would be via Carlsbad Boulevard near Cannon Road through an existing power plant gate and paved roads to the existing tracks, where a dirt maintenance road runs north along the tracks utilizing two at-grade crossings. NCTD estimates the construction period to be seven months.

To the south of the site are the Cabrillo Power Plant and agricultural activities. To the east is a utility pipeline crossing the lagoon on a separate structure. To the southwest in the lagoon is a mussel farm. To the north is residential development. Carlsbad State Beach is approximately 1500 ft. to the west.

**B. Procedures – Permitting Issue.** The project triggers federal consistency review because it needs a U.S. Army Corps of Engineers ("Section 404") permit. The Commission also believes it is subject to the permitting requirements of the Coastal Act; however, NCTD disagrees with this position. Notwithstanding this disagreement about whether a coastal development permit (CDP) is needed, the Commission concurs with this consistency certification because it is consistent with Chapter 3 of the Coastal Act. Any permit review would involve the same substantive standard of review (i.e., Chapter 3), because the Agua Hedionda Lagoon portion of the City's LCP has not been fully certified. The Commission notes that the NCTD has applied for a number of permits for its rail improvement activities in other sections of the coast, including CDP's No.: 6-03-102-G (Agua Hedionda emergency repairs), 6-02-152 (San Luis Rey River bridge repair), 6-02-151 (Agua Hedionda bridge), 6-02-102 (Del Mar drainage outlets), 6-02-80 (Santa Margarita Bridge repair), 6-01-64 (Balboa Avenue), 6-01-108 (Tecolote Creek), 6-93-60 (Del Mar), 6-94-207 (Solana Beach), 6-93-106 (Carlsbad), and 6-93-105 (Camp Pendleton).

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

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

**MOTION:** I move that the Commission **concur** with the North County Transit District's consistency certification CC-055-05 that the project described therein is 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 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 Concur with Consistency Certification:**

The Commission hereby **concurs** with the consistency certification by the North County Transit District, on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.

**III. Findings and Declarations.**

The Commission finds and declares as follows:

**A. Public Access and Recreation.** Sections 30210-30212 of the Coastal Act provide for maximum public access to the shoreline, consistent with, among other things, public safety needs and fragile habitat protection. Section 30252 encourages mass transit and identifies reducing traffic congestion as a coastal access benefit. These sections provide, in relevant part, that:

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

*Section 30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,....*

*Section 30252: 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....*

In reviewing several past actions involving mass transit improvements in San Diego County, the Commission has considered traffic congestion to constitute a constraint on public recreation and access to the shoreline. 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. Section 30252 of the Coastal Act recognizes the importance of improving public access through, among other things, improvements in public transit. Maintaining existing public transit is equally important and beneficial to public access. Concerning access issues in general, NCTD states:

*The proposed action will not interfere with existing public access to coastal areas and recreational opportunities. The project will be constructed within an existing designated transportation corridor, which is not specifically authorized or utilized for public access or public recreational opportunities. Historically, unauthorized use of NCTD's railroad right-of-way has occurred by members of the public. These uses include walking, running, and access to some portions of Agua Hedionda Lagoon.*

*The proposed project conforms with the public access objectives of the California Coastal Act because it does not propose any change to existing public coastal accessways. ....*

*Additionally, the proposed project will not directly result in a noticeable increase in use of natural resource areas, recreational facilities, or public services in the coastal zone. The project will not result in any additional operations staff, nor will it require large numbers of construction staff for significant periods of time. The project will neither facilitate nor restrict local access.*

...

*The construction access routes that are proposed have been identified with the primary intent of minimizing impacts to sensitive coastal resources as well as not affecting public access to coastal areas.*

Maintaining the bridge and the rail line is essential to serve the Los Angeles to San Diego (LOSSAN) Rail Corridor, which is used by NCTD and other rail services, all of which reduce vehicles on I-5. The project will not cause any adverse temporary or permanent access impacts; in fact the only access concern raised is whether the project will affect or preempt planning options for: (1) the coastal rail trail (Exhibit 14, pp. 4-5 and 8-9), a region-wide bicycle and pedestrian trail linking the entire County shoreline region and which contemplates a lagoon crossing in this "middle lagoon" area of Agua Hedionda Lagoon; and/or (2) other regional trails, such as the City's proposed trail along the north shore of the lagoon (Exhibits 13-14), which might cross underneath the proposed bridge if the existing (to the west) and proposed (to the east) trail segments to either side of the bridge were to be connected. In response to Commission staff questions concerning the first of these proposed trails (the Coastal Rail Trail), NCTD states:

*While the Bridge 230.6 Replacement Project is in final design, it is NCTD's understanding that plans have yet to be developed by the City for a bike trail alignment in this vicinity. The replacement bridge will be located on the west side of the existing railroad bridge, while various conceptual alignments for a bike trail in this vicinity in the past have depicted that such trail would traverse the lagoon over a sewer bridge that is located to the east of the existing railroad bridge. In addition, [NCTD notes] ... that throughout the last few years the City has been provided with continuous progress reports on the status of the Bridge 230.6 Replacement Project. While the City continues to request updates on the Bridge Replacement Project, the City has never proposed that a bike trail alignment be located on the railroad bridges.*

*With regard to the inquiry of whether from an engineering standpoint it is possible to attach a rail trail to the replaced Bridge 230.6 at a later date, NCTD must be concerned and cautious for several reasons. \**

*Space and access must be preserved on the railroad right-of-way for ongoing maintenance, emergency access, and future expansion. The future vision of railroad right-of-way improvements is shared by the San Diego Association of Governments, the California High Speed Rail Authority, and the California Department of Transportation.*

*\*Also, NCTD's right-of-way is unique in that it is the only passenger rail corridor into and out of San Diego, and it passes through three military installations. In the aftermath of the September 11, 2001 terrorist attacks, there have been FBI warnings about threats against railroads. Consequently, the NCTD Security Department has identified areas of special concern, including bridges and other structures and locations along the railroad right-of-way that it believes should be unavailable for use by a bike trail.*

While the zoning phase of the City's LCP has not been completed, the Commission has certified the Land Use Plan for this area. The Agua Hedionda Land Use Plan, adopted May 1982, with a relevant "Kelly Ranch LCP amendment, May 2000, provides:

*7.6 Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development approval for all shorefront properties. All access ways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use. Access ways under the railroad and I-5 bridges may be designed for pedestrian use only, if bicycles could not feasibly be accommodated. If the City of Carlsbad cannot provide access under the two bridges through its best efforts, such access shall be required only if funding assistance is forthcoming*

*from the Coastal Conservancy or other public or private source and the relevant agencies (Caltrans and the railroad company) have given the necessary approvals.*

The October 2000 Mitigated Negative Declaration for the Coastal Rail Trail would appear to bear out NCTD's position that the sewer bridge, which is directly east of the existing rail bridge, is likely to be the preferred location for a north-south Coastal Rail Trail. This document states:

*Segment 3: Agua Hedionda Lagoon to Batiquitos Lagoon*

*Southbound users would cross the Agua Hedionda Lagoon on a bridge spanning the channel for approximately 220' in length (see page 47 of Appendix B). The bridge design would accommodate the future 48" to 54" Vista/Carlsbad Interceptor Sewer Main. The bridge design would not place supporting columns or falsework in the channel. The Class I bicycle path would continue south along the Agua Hedionda Sewer Pump Station.... [Emphasis added][see also, Exhibit 14, p. 11]*

*[For] Northbound users...The Class I bicycle path would continue north to the Agua Hedionda Lagoon bicycle/pedestrian bridge.*

Concerning an east-west trail link under the NCTD bridge, the City of Carlsbad, Recreation Department, has written a letter to the Commission staff dated June 9, 2005, which outlines a request to maximize trail connections and not lose opportunities presented by a bridge replacement proposal. The City's letter (Exhibit 14) includes the statement that:

*The construction for a trail connection to the CRT beneath the rail bridge is feasible only if done as a part of the construction for the bridge replacement. Should it not be done as part of this work, the opportunity may be lost for this vital connection.*

The City also notes that the City and the Commission required Hubbs-Sea World (6-93-113) to provide lateral access along the north shore of the lagoon between Carlsbad Blvd. and the west side of the NCTD right-of-way (see Exhibit 15, Hubbs-Sea World, access conditions, access findings, and map of access easement). The Commission notes that the Hubbs-Sea World lateral easement is along an alignment clearly designated in the adopted Land Use Plan, whereas it would appear that decisions on whether the trail would cross underneath the NCTD bridge have not yet been made.

NCTD believes the City's request is at best premature, and that there is no "nexus" (i.e., public access burden posed by the project) that would justify additional public access requirements. NCTD states:

*As is set forth in the Coastal Consistency Certification Analysis, the proposed project conforms with the public access objectives of the California Coastal Act as it does not propose any changes to existing public coastal access ways. There are no authorized coastal access ways located within the project's APE. Rather, this project will be beneficial to public coastal access by restoring the structural and operational capacity for trains passing over Agua Hedionda Lagoon, as well as alleviating public and environmental concerns.*

*... alignments and locations for future phases of the Coastal Rail Trail have yet to be proposed or developed.*

*... the design for this project will remove the existing bridge bents [Exhibit 5] that rail workers currently have to duck under when passing underneath the railroad bridge. As such, rail workers will be able to walk unimpeded under the new bridge upon its construction. In addition, the new bridge abutments will be approximately 15-feet further back from the water's edge, which should create more of an open area underneath the bridge for rail workers. From a safety perspective, it should also be noted that with the new design, individuals will no longer be able to climb up onto the bridge deck from underneath the structure. Based on this information, it appears as though one may surmise that the newly constructed railroad bridge will improve upon the status quo of what currently exists regarding coastal access that may be present in the vicinity of Railroad Bridge 230.6.*

In other words, NCTD's position is that while it does not encourage access under the bridge, it does not actively pursue violations and in fact the public does sometimes cross under the bridge. In addition, the proposed bridge replacement design will provide for increased vertical clearance and the removal of bents (cross-bracing) (Exhibits 4-5). NCTD states that: "Such design does not include the construction of fences or trespassing-control barriers in the area located underneath the railroad bridge" and that NCTD "...will continue to work with the City in good faith via the plan review process that is currently in place regarding all proposed third-party projects that may affect the railroad right-of-way." With this commitment, the Commission agrees with NCTD and finds that the project: (1) would not adversely affect any existing public access opportunities; (2) would not preclude options, and may even help facilitate trail access along the north shore of the lagoon and underneath the bridge, if that is ultimately selected as the desired trail link; and (3) would improve public access by maintaining the rail line, which reduces automobile traffic on I-5, in an area where the highway supports public access and recreation. The Commission therefore finds the project consistent with the public access and recreation policies (Sections 30210-30212 and 30252) of the Coastal Act.

**B. Wetlands and Environmentally Sensitive Habitat Areas.** Section 30233 of the Coastal Act provides that:

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

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

*(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, [and] nature study, ....*

Section 30240 provides:

*(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.*

NCTD calculates that by replacing approximately 50 wood pilings with two concrete piers the proposed bridge replacement will slightly *decrease* the amount of wetland fill in Agua Hedionda Lagoon, compared to the existing bridge. NCTD has also surveyed affected habitats and concludes that the project footprint is located outside environmentally sensitive areas. The project nevertheless triggers the 3-part test of Section 30233(a) of the Coastal Act, as well as the functional capacity tests of Section 30233(c), because the bridge replacement will include temporary and permanent placement of bridge piles in the Lagoon, and because Agua Hedionda Lagoon is one of the "priority wetlands" identified in Section 30233(c). The Commission therefore needs to analyze the project's consistency with the allowable use, alternatives, and mitigation tests of Section 30233(a), as well as the tests of Section 30233(c).

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, railroad lines, and airport runways in certain situations to qualify as "incidental public service purposes," and thus allowable under Section 30233(a)(5), but only where no other feasible less damaging alternative exists and the expansion is 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.4<sup>th</sup> 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.*

The project is clearly necessary to maintain existing rail capacity. Moreover, in several recent cases, the Commission has applied the same rationale to transportation modes other than roads (CC-058-02, City of Santa Barbara, modifications to the Santa Barbara Airport, CC-052-05, NCTD, Bridge Replacement and Second Track, Santa Margarita River, and CC-086-03, NCTD, Second Track, San Onofre Area, Camp Pendleton). For example, in reviewing CC-086-03, NCTD asserted, and the Commission found, as follows:

NCTD statement (CC-086-03):

*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 it is necessary to maintain existing passenger service.*

Commission Response (CC-086-03):

*The Commission agrees and finds that the project is a limited expansion and is necessary to maintain existing capacity, and can be considered an allowable use as an incidental public service under Section 30233(a)(5).*

In CC-052-05, the Commission found:

*Given this information, the Commission believes the same conclusion for the subject bridge replacement that it relied on in CC-86-03 is warranted, and that the project can be considered is a limited expansion and necessary to maintain existing capacity, and, therefore, an allowable use as an incidental public service under Section 30233(a)(5).*

In addition, unlike the above-two cases, the proposed project does not involve additional tracks; these cases are cited to establish that rail line maintenance can qualify as an incidental public service under Section 30233(a) when it is necessary to maintain existing rail capacity. Furthermore, while Agua Hedionda Lagoon is one of the “priority wetlands” afforded additional protection under Section 30233(c), which was not at issue in the above-referenced cases, the Commission finds that: (1) the project will not alter or affect the functional capacity of Agua Hedionda; (2) even if it considered the project to alter the lagoon, the project can be considered a “very minor incidental public facility” based on the same rationale discussed above and in the Commission’s wetlands guidelines<sup>1</sup> and several past Commission permit reviews.<sup>2</sup> These reviews and guidelines apply the same test for a project that the Commission has determined is necessary to maintain existing capacity to constitute an allowable use under Section 30233, regardless of whether it is being viewed as an “incidental public service” under Section 30233(a), or a “very minor incidental public facility” under Section 30233(c). Thus, the Commission has determined that a limited expansion of an existing transportation facility that is necessary to maintain existing capacity is an allowable use as an incidental public service under either Section 30233(a)(5) and Section 30233(c). Moreover, the project will not adversely affect the functional capacity of Agua Hedionda Lagoon, a secondary test of Section 30233(c). Therefore, the Commission finds that the project is an allowable use as an incidental public service and a very minor incidental public facility under both Sections 30233(a) and 30233(c) of the Coastal Act.

While the proposed single-track bridge is necessary to maintain existing capacity, having reviewed a number of NCTD double-track proposals, the Commission is aware of the potential for a future second bridge across this right-of-way. The Commission wishes to reiterate the notice it gave NCTD in reviewing two previous double-track consistency certifications (CC-086-03 and CC-052-05):

*The Commission agrees and finds that the project is a limited expansion and is necessary to maintain existing capacity, and can be considered an allowable use as an incidental public service under Section 30233(a)(5). In making this finding the Commission notes that future double tracking proposals may not 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 this time and in this location the Commission finds that the double tracking does not meet either of these thresholds that would render the project ineligible for consideration as an incidental public service.*

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<sup>1</sup> The Commission’s wetland guidelines include a footnote for “incidental public services,” which states: [Footnote 3:] “When no other alternative exist, and when consistent with the other provisions of this section, limited expansion of roadbeds and bridges necessary to maintain existing traffic capacity may be permitted.” The footnote for “very minor incidental public facilities” states: “(see footnote #3).”

<sup>2</sup> Including Coastal Development Permit 6-97-11, City of Carlsbad, Cannon Rd./Kelly Ranch.

The Commission believes that for any second track ultimately proposed across the lagoon, the same cautionary note will be applicable, and that the question of whether a second track across this right-of-way can be found an incidental public service or consistent with Section 30233 as the least environmentally damaging feasible alternative remains an unresolved issue at this time. The Commission will address that question at the appropriate time.

Concerning the alternatives test of Section 30233(a) for the proposed project, NCTD has examined the alternative of a free-span bridge, which would avoid wetland fill, and rejected it as infeasible, stating that it would add \$500,000 to the project cost (which NCTD currently estimates to be \$2 million), and that:

*The Lagoon Span Bridge Design Alternative would feature a minimum center span length of 126 ft. in order for the columns to clear the OHWM [Ordinary High Water Mark] zone, and secure into abutments outside the OHWM on the northern and southern edges of the lagoon. This alternative would meet the purpose and need of the Project. However, this option would require excessively deep and costly piers to withstand the American Railway Engineering and maintenance-of-Way Association (AREMA) loading criteria. Furthermore, this bridge structure would require that the weight of the end spans resist the bending load when a train is in the center span, so that the end spans to not lift up off the abutments when a train is in the center of the bridge. The bridge would need to be lengthened by at least 25 percent to avoid such "uplift" at the abutments. Historically, the railroad has preferred a series of "simple" spans to longer spans for maintenance purposes. As a point of comparison, the longest span designed for the BNSF Railroad to date using pre-cast concrete girders is 90 feet, currently under construction in San Bernardino.*

The Commission agrees that no less environmentally damaging alternative for this single-track bridge replacement project is feasible or available.

Concerning mitigation, the existing piers (50 piers, 14 inch-diameter) and bridge sills total slightly over 140 sq. ft. of existing wetland fill, which would be removed and replaced with two nine ft. diameter pilings totaling 128 sq. ft. of wetland fill. The result is a 12 sq. ft. reduction in wetland fill. NCTD also estimates less shading from the smaller extent of structural pilings over the lagoon. Because the project will not result in a permanent reduction in wetland acreage, the Commission also finds that no further wetland mitigation is required under Section 30233. For similar reasons, because it will reduce the bridge piling footprint in the lagoon, the project will slightly improve water circulation and will not adversely affect the functional capacity test of the Lagoon. NCTD also notes that an additional benefit of removing the existing timber trestle bridge is the avoidance of future, ongoing maintenance needed for the timber trestle bridge and increased water flow through the lagoon channel. The Commission agrees and concludes that the project is consistent with all the tests of Section 30233.

Concerning other marine and environmentally sensitive habitat issues raised, NCTD states:

*The proposed project is located in the area of Agua Hedionda Lagoon. No known sensitive marine resources are located in the area of construction activity associated with the lagoon.*

*Agua Hedionda Lagoon is listed as a Proposed Critical Habitat for the tidewater goby; however, there are no known tidewater gobies in Agua Hedionda Lagoon. Agua Hedionda Lagoon was designated as critical habitat for the endangered tidewater goby based upon the USFWS assessment that the Lagoon could be used in the event of a future reintroduction of the species throughout its native area. The proposed project would not interfere with the USFWS' ability to reintroduce the species in the future, because it would not result in an adverse effect to the existing environment.*

*The proposed project is located in an area identified as Essential Fish Habitat (EFH). Given the temporary nature of the proposed project construction activities within the lagoon, the net reduction of bridge structures within the lagoon (upon completion of the proposed project), and elimination of the need for future maintenance/repair work to the timber trestle bridge, no adverse effect to EFH is anticipated to occur with implementation of the proposed project (correspondence, National Marine Fisheries Service (NMFS), 1/28/05).*

*In Agua Hedionda Lagoon, the NMFS is concerned about the possible spread of *Caulerpa Taxifolia* within the EFH area. Agua Hedionda Lagoon is considered to be an infected System by the NMFS for *Caulerpa Taxifolia*. Based on the Agua Hedionda Lagoon *Caulerpa Taxifolia* Eradication Program, Summer 2003 Report, and a project-specific *Caulerpa* survey conducted by NCTD in September 2003 for repairs to Bridge 230.6, no *Caulerpa* has been found in the area of the proposed project (Bridge 230.6). No adverse effect associated with *Caulerpa* is anticipated to occur. However, based on correspondence with the NMFS (Hoffman, 1/28/05), compliance with the Draft *Caulerpa* Control Protocol (version 2.0) is required prior to project construction.*

*Through an informal consultation with the USFWS, Carlsbad Field Office (correspondence, DiGregoria, 2005), it was determined that the proposed project would have no effect on listed species. The USFWS is requiring that the manufactured slopes created by the proposed project be reseeded with native upland species after construction activities are complete.*

*... The permanent impacts to sensitive upland habitats (Diegan coastal sage scrub, disturbed Diegan coastal sage scrub) and Waters of the U.S. cannot be avoided. However, as can be seen, the permanent impacts to uplands and Waters of the U.S. are very small and have been minimized to the maximum extent possible. The proposed project will not cause any permanent effects on use of parks and recreation areas. ...*

*Implementation of the proposed project would result in the direct permanent loss of 0.124 acre of Diegan coastal sage scrub and 0.357 acre of disturbed Diegan coastal sage scrub. Construction of the project would result in a temporary impact to 0.001 acre of Diegan coastal sage scrub and 0.432 acre of disturbed Diegan coastal sage scrub. Construction of the project would result in a permanent impact to 0.003 acre of non-wetland Waters of the U.S. and temporary impacts to 0.014 of non-wetland Waters of the U.S.*

As noted above, although it determined no federally listed species were present, the Fish and Wildlife Service requested that NCTD agree to revegetate any disturbed areas with native species; in addition, NOAA Fisheries has requested that NCTD perform a pre-construction caulerpa survey. NCTD has agreed to both of these requests. Mitigation for permanent impacts to upland habitat will occur through revegetation (hydroseeding) of the disturbed and newly created slopes (Exhibits 11-12). The proposed hydroseed mix is similar to that previously approved by the U.S. Fish and Wildlife Service (USFWS) for NCTD's San Onofre Second Main Track project (CC-086-03). NCTD also proposes to replace the riprap located on the lagoon channel bottom to its original condition upon completion of pier construction, and to remove invasive vegetation from the drainage detention area located north of the lagoon channel, immediately east of the project site. This area is dominated by upland non-native and invasive species. Topographically, the drainage detention area does not provide an outlet for stormwater to enter Agua Hedionda Lagoon. In addition to removing the invasive vegetation, NCTD proposes to hydroseed approximately 0.014 acre of the drainage detention area with the upland species described above (and in Exhibit 12). Finally, in response to the Commission staff's request, NCTD has agreed that any revegetation plans would be submitted to the Commission staff for its review and concurrence, prior to commencement of construction.

The Commission agrees with NCTD that with these measures and coordination incorporated into the project as described in the previous paragraph, combined with the water quality measures (described in the following section of this report), the project has been designed to prevent impacts which would significantly degrade any nearby environmentally sensitive habitat areas, to be compatible with the continuance of any environmentally sensitive habitat areas, and to improve wetland functions and increase acreage compared to the existing bridge. The Commission therefore finds the project consistent with the requirements of Sections 30233 and 30240 of the Coastal Act.

**C. Water Quality.** Section 30231 of the Coastal Act 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.*

Section 30232 provides:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

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 spills or leakage from construction vehicles.*

*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 native upland species.*

*The proposed project would utilize Best Management Practices (BMPs) to avoid adverse environmental impacts. The BMPs would generally comply with the California Construction Handbook, latest edition. Such measures would include, but not be limited to the preparation of a Storm Water Pollution Prevention Plan (SWPPP), in compliance with the required National Pollution Discharge Elimination System (NPDES) general permit issued by the Regional Water Quality Control Board (RWQCB) [including]...*

*Best Management Practices (BMPs)*

- *Filter Fabric Fencing;*
- *Hay Bales;*
- *Sand Bags;*
- *Stabilized Construction Entrances;*
- *Construction Road Stabilization;*
- *Dust Control;*
- *Construction Area Limits Fencing and Inspection;*
- *Access Controls;*

- *Staging Area Controls;*
- *A Spill Prevention and Containment Plan;*
- *Vehicle & Equipment Maintenance, Fueling and Fuel Storage Requirements;*  
*and,*
- *Trash and Sanitation Controls.*

Concerning hazardous materials, 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. 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 (i.e., Agua Hedionda Lagoon). 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 those 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.*

NCTD also states:

*In order to prevent bridge hardware/debris from entering Agua Hedionda Lagoon during bridge removal activities, the following impact avoidance and minimization techniques shall be used.*

- *A debris net shall be installed under the existing bridge prior to commencement of bridge removal activities. No existing bridge members or hardware shall be permitted to fall in the lagoon.*
- *Prior to removal any portion of the existing bridge that is within the lagoon (e.g., concrete sills), floating surface booms and underwater debris nest shall be installed.*

The bridge removal will benefit water quality through removal of creosote soaked piles from the lagoon. As noted in the previous section of this report, erosion controls will also include post-construction revegetation efforts. In response to the Commission staff's request, NCTD agrees that the water quality, spill prevention, and revegetation plans will be submitted to the Commission staff for its review and concurrence, prior to commencement of construction. With the above measures, the Commission finds the project would not cause significant water quality impacts and would be consistent with the water quality policies (Sections 30231 and 30232) of the Coastal Act.

**D. Public Views.** Section 30251 of the Coastal Act provides:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

Addressing visual issues, NCTD states:

**Section 30251.** *The proposed project is located west of I-5, within NCTD ROW, inaccessible to the general public. Implementation of the proposed project will improve views to the west from automobiles using I-5 through removal of the existing timber trestle bridge that obstructs views to the west. The new bridge will require substantially less bridge mass in Agua Hedionda Lagoon, increasing the views to the west. The proposed project will not adversely affect the scenic or visual quality of the area.*

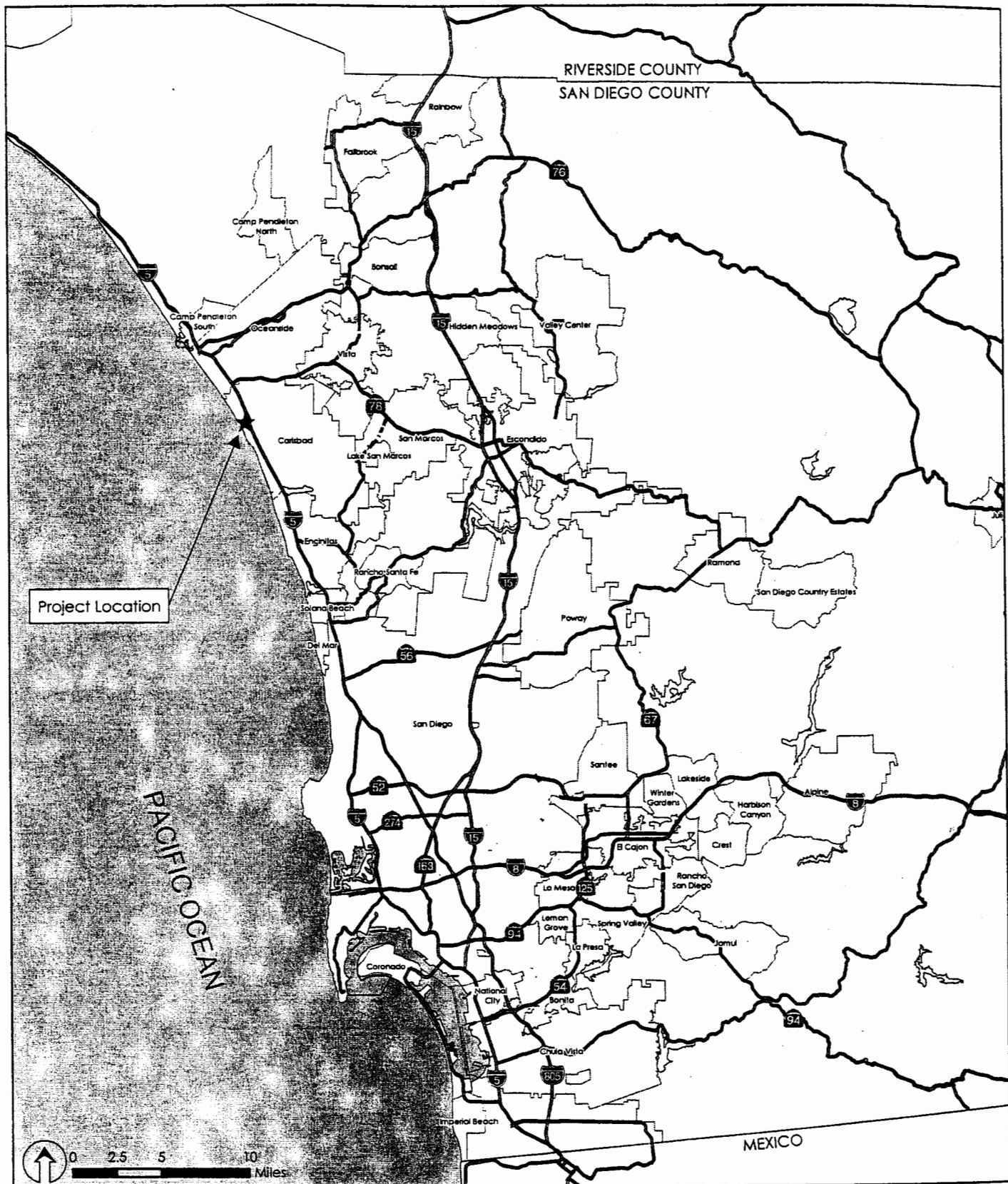
*The proposed project would not adversely affect the scenic and visual qualities of the area. The proposed project would result in a concrete railroad bridge in place of the timber trestle bridge within the Railroad ROW, that would decrease the mass in Agua Hedionda Lagoon, improving views from I-5 to the west.*

The Commission agrees and finds that the project would not adversely affect public views and would be consistent with the character of the surrounding highway and bridge structures. The Commission therefore finds the project consistent with Section 30251 of the Coastal Act.

**IV. Substantive File Documents**

1. CC-052-05, NCTD, Bridge Replacement and Second Track, Santa Margarita River (Camp Pendleton) to Oceanside.
2. CC-086-03, NCTD, Second Track, San Onofre Area, Camp Pendleton.
3. CC-029-02, NCTD, Oceanside-Escondido Rail Project.
4. Coastal Development Permit 6-97-11, City of Carlsbad, Cannon Rd./Kelly Ranch.
5. City of Carlsbad, Local Coastal Program (LCP), including Agua Hedionda Land Use Plan (May 1982), and Kelly Ranch LCP amendment (May 2000).
6. Pending NCTD Consistency Certification CC-048-04 (NCTD, Del Mar Bluffs Stabilization Project).

7. CC-064-99, Metropolitan Transportation Agency, Extension of Light-Rail, City of San Diego.
8. CC-058-02, City of Santa Barbara, modifications to the Santa Barbara Airport.
9. Coastal Development Permit 6-93-113, Hubbs-Sea World.
10. NCTD Coastal Development Permits No. 6-03-102-G (NCTD - Agua Hedionda emergency repairs), 6-02-152 (NCTD - San Luis Rey River bridge repair), 6-02-151 (NCTD - Agua Hedionda bridge), 6-02-102 (NCTD - Del Mar drainage outlets), 6-02-80 (NCTD - Santa Margarita Bridge repair), 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).



SOURCE: SANDAG and BRG Consulting, Inc., 2004



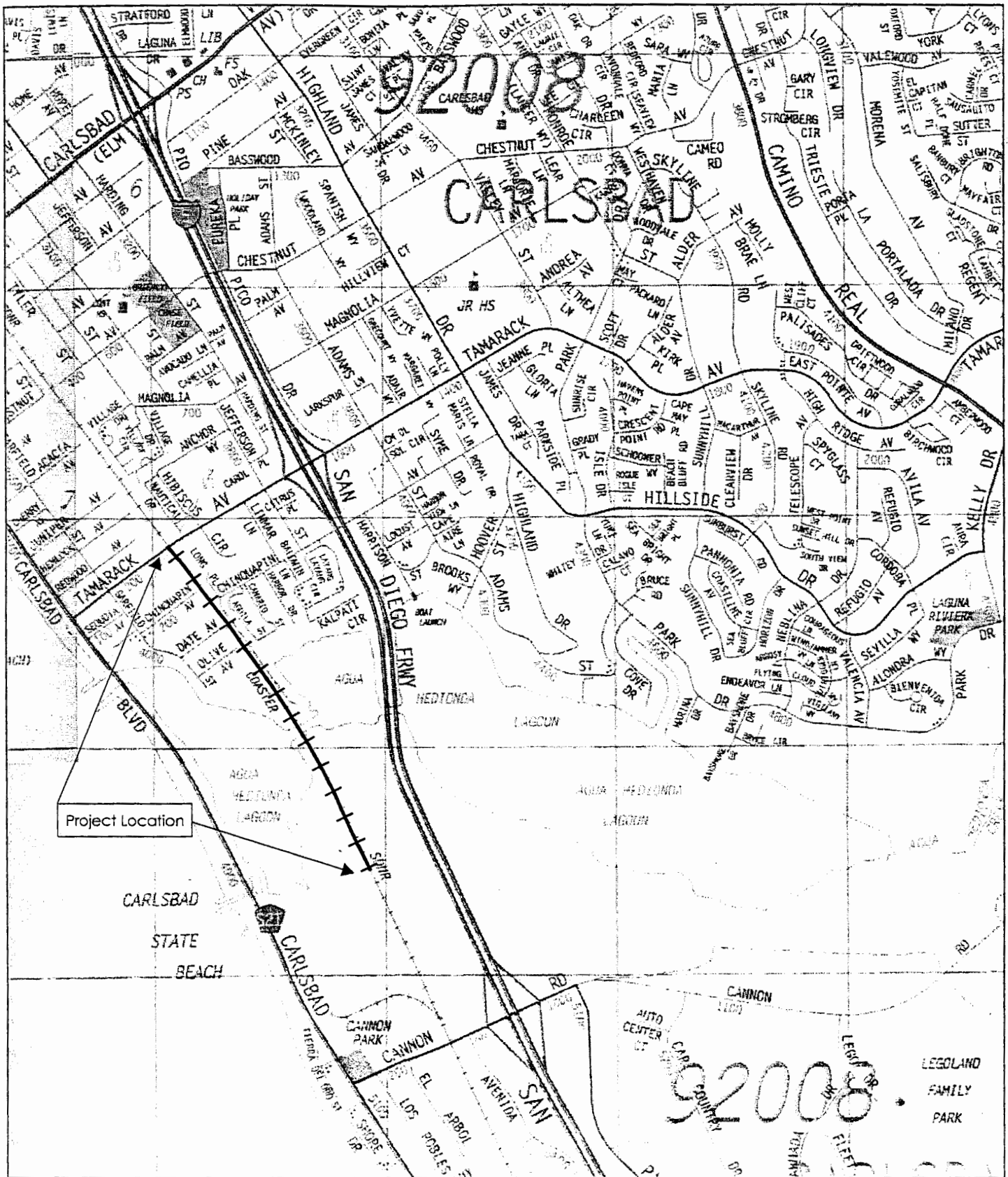
Railroad Bridge 230.6 Replacement

Regional Vicinity

EXHIBIT NO. 1

APPLICATION NO.

CC-55-05



SOURCE: Thomas Brothers Guide, 2002 and BRG Consulting, 2005

1/21/05



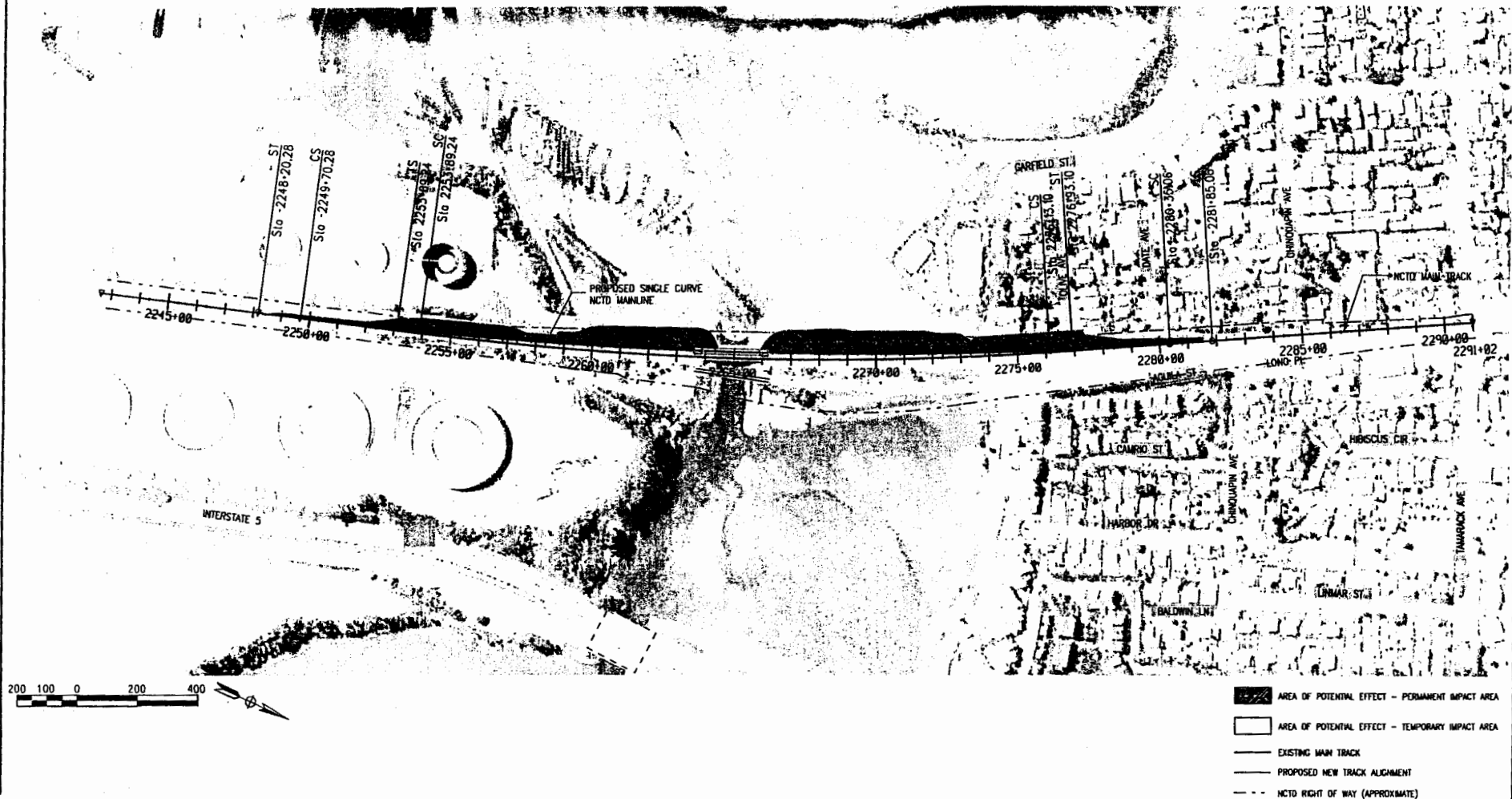
Railroad Bridge 230.6 Replacement

Project Location

EXHIBIT NO. 2

APPLICATION NO.

CC-55-05



on and NCTD , 2004

1/21/05

Railroad Bridge 230.6 Replacement

Area of Potential Effect

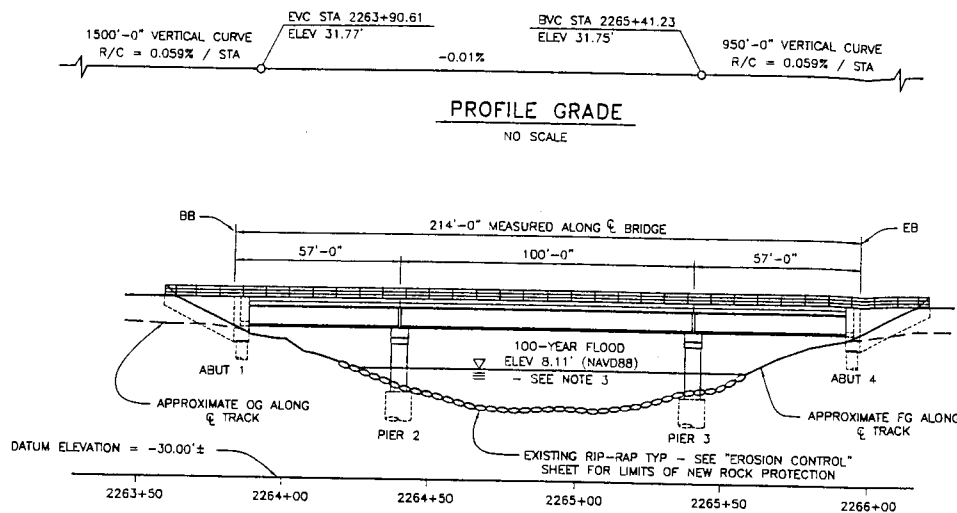
FIGURE

1-3

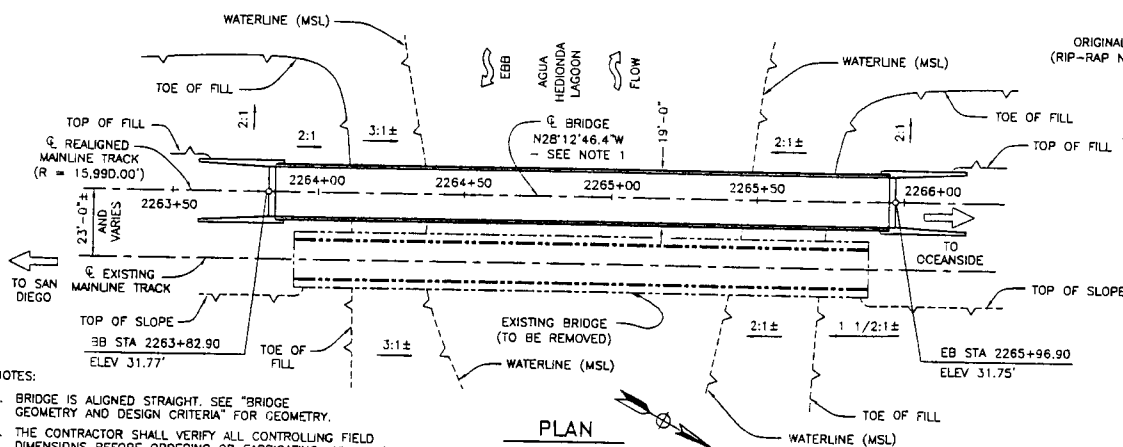
EXHIBIT NO. 3

APPLICATION NO.

CC-55-05

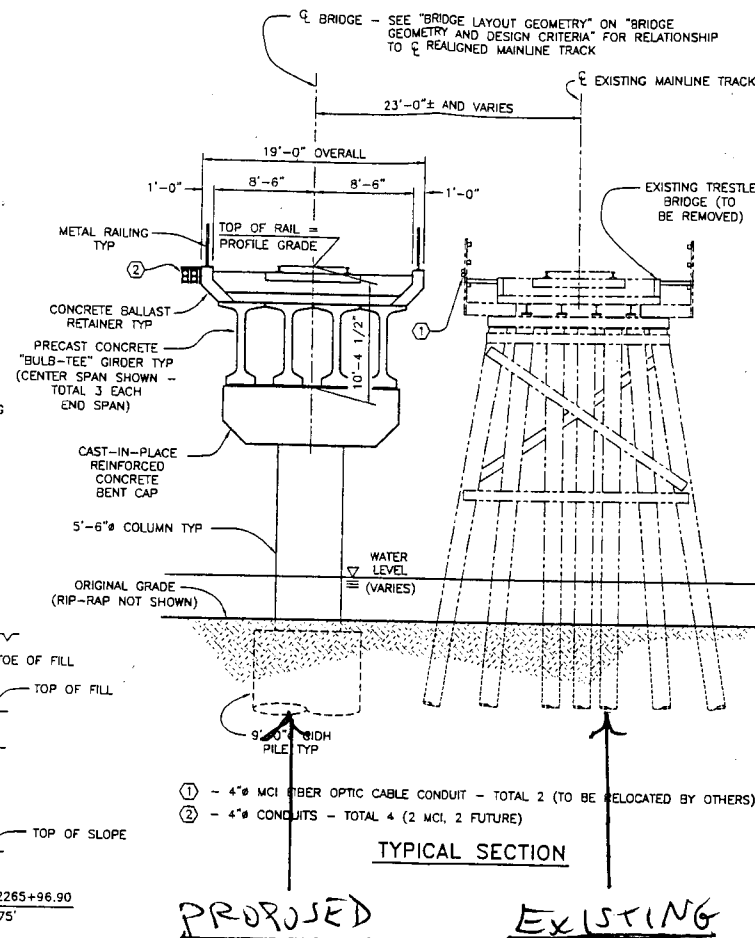


### ELEVATION



#### NOTES:

1. BRIDGE IS ALIGNED STRAIGHT. SEE "BRIDGE GEOMETRY AND DESIGN CRITERIA" FOR GEOMETRY.
2. THE CONTRACTOR SHALL VERIFY ALL CONTROLLING FIELD DIMENSIONS BEFORE ORDERING OR FABRICATING ANY MATERIAL.
3. MEAN WATER LEVEL (MSL) = 2.54', MEAN HIGH WATER = 4.41', AND MEAN LOW WATER = 0.72' (NAVD88).



### TYPICAL SECTION

PROPOSED

EXISTING

100% SUBMITTAL  
3-29-05  
NOT FOR CONSTRUCTION

4/1/05

Railroad Bridge 230.6 Replacement

General Plan

FIGURE

1-4i

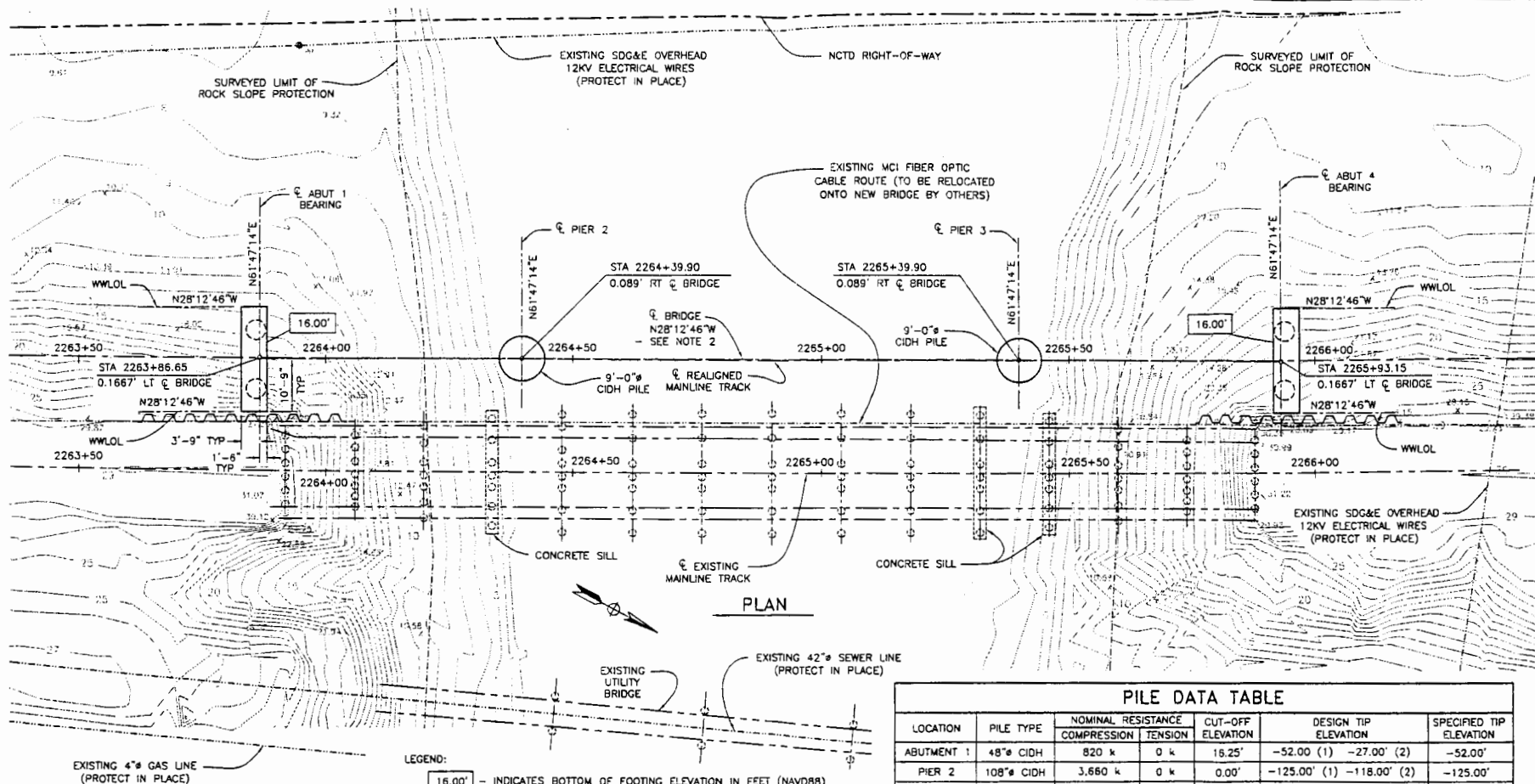
EXHIBIT NO. 4  
APPLICATION NO.

CC-55-05



EXHIBIT NO. 5
APPLICATION NO.
CL-055-05
Existing Bridge

(North side, facing east)



# NOTES:

1. CONTOUR LINES GENERATED FROM AERIAL TOPOGRAPHY.
2. BRIDGE IS ALIGNED STRAIGHT. SEE "BRIDGE LAYOUT GEOMETRY" ON "BRIDGE GEOMETRY AND DESIGN CRITERIA" FOR GEOMETRY.
3. THE CONTRACTOR SHALL VERIFY ALL CONTROLLING FIELD DIMENSIONS BEFORE ORDERING OR FABRICATING ANY MATERIAL.

## LEGEND:

- 16.00' - INDICATES BOTTOM OF FOOTING ELEVATION IN FEET (NAVD88)
- - INDICATES EXISTING TIMBER PILE
- - INDICATES 48" CIDH PILE
- x - INDICATES SPOT ELEVATION PER GROUND SURVEY
- ~ - INDICATES APPROXIMATE LOCATION OF CONSTRUCTION SHORING

PILE DATA TABLE						
LOCATION	PILE TYPE	NOMINAL RESISTANCE		CUT-OFF ELEVATION	DESIGN TIP ELEVATION	SPECIFIED TIP ELEVATION
		COMPRESSION	TENSION			
ABUTMENT 1	48" CIDH	820 k	0 k	16.25'	-52.00' (1) -27.00' (2)	-52.00'
PIER 2	108" CIDH	3,660 k	0 k	0.00'	-125.00' (1) -118.00' (2)	-125.00'
PIER 3	108" CIDH	3,660 k	0 k	0.00'	-117.00' (1) -81.00' (2)	-117.00'
ABUTMENT 4	48" CIDH	820 k	0 k	16.25'	-67.00' (1) -27.00' (2)	-67.00'

DESIGN TIP ELEVATION IS CONTROLLED BY THE FOLLOWING DEMANDS:  
(1) COMPRESSION (2) LATERAL

100% SUBMITTAL  
3-29-05  
NOT FOR CONSTRUCTION

NCTD, 2005

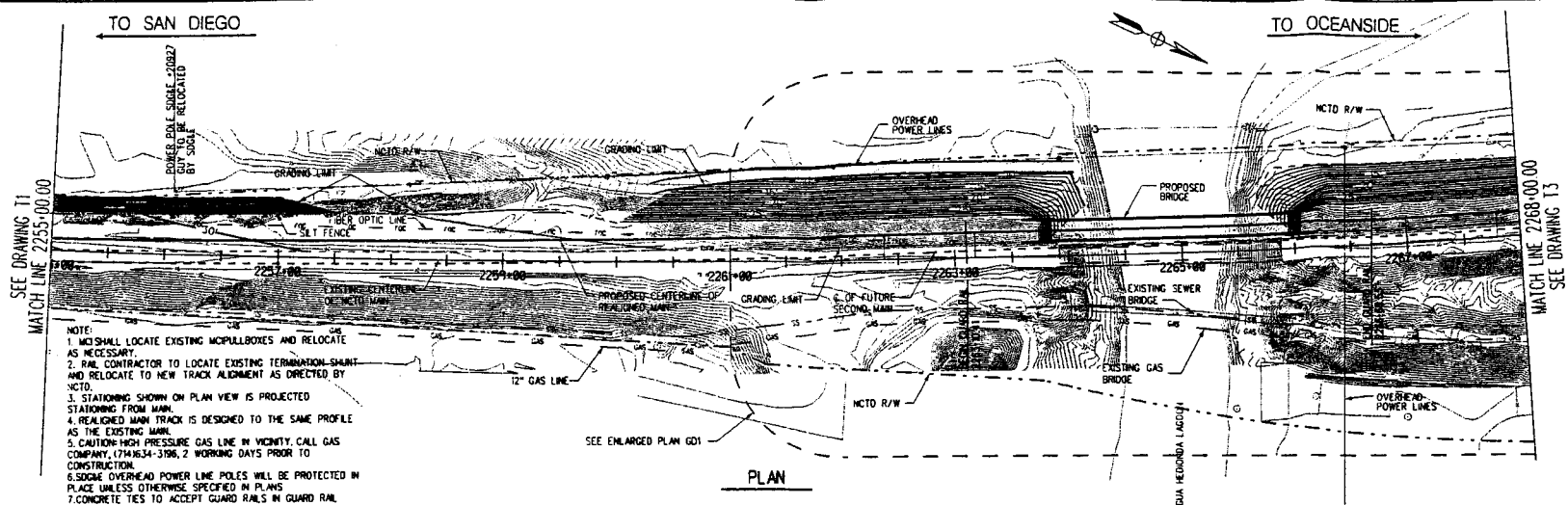
Railroad Bridge 230.6 Replacement

Foundation Plan

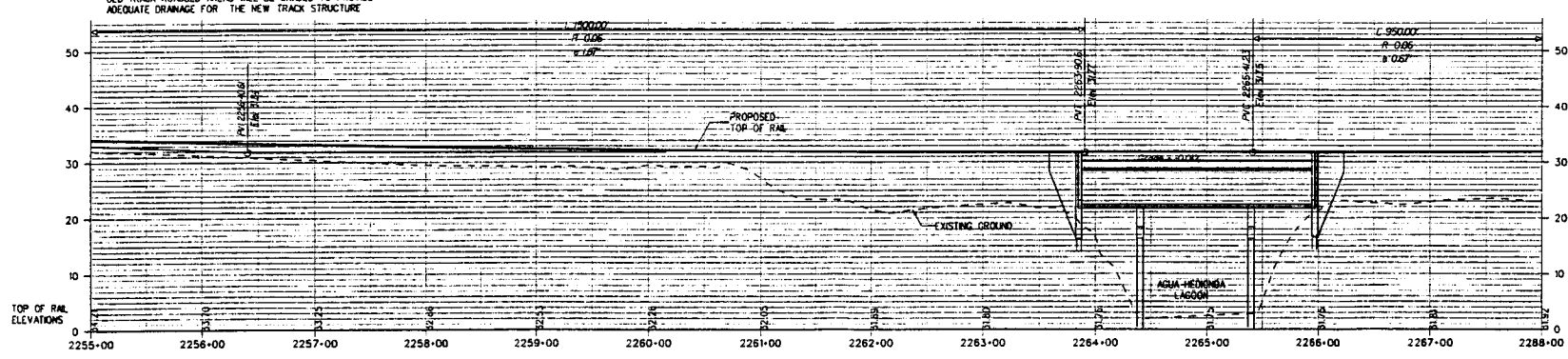
FIGURE

1-4j

EXHIBIT NO. 5, p2  
APPLICATION NO. CC-55-05  
EXISTING BRIDGE

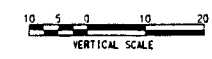
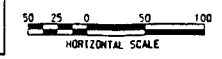


- NOTE:
1. MCI SHALL LOCATE EXISTING MOPULLBOXES AND RELOCATE AS NECESSARY.
  2. RAIL CONTRACTOR TO LOCATE EXISTING TERMINATION SHUNT AND RELOCATE TO NEW TRACK ALIGNMENT AS DIRECTED BY NCTD.
  3. STATIONING SHOWN ON PLAN VIEW IS PROJECTED STATIONING FROM MAIN.
  4. REALIGNED MAIN TRACK IS DESIGNED TO THE SAME PROFILE AS THE EXISTING MAIN.
  5. CAUTION HIGH PRESSURE GAS LINE IN VICINITY. CALL GAS COMPANY, (714) 634-3196, 2 WORKING DAYS PRIOR TO CONSTRUCTION.
  6. SOME OVERHEAD POWER LINE POLES WILL BE PROTECTED IN PLACE UNLESS OTHERWISE SPECIFIED IN PLANS.
  7. CONCRETE TIES TO ACCEPT GUARD RAILS IN GUARD RAIL LIMITS.
  8. CONTRACTOR WILL REMOVE AND HAUL OFF OLD BALLAST. OLD TRACK ROADBED AREAS WILL BE GRADED TO PROVIDE ADEQUATE DRAINAGE FOR THE NEW TRACK STRUCTURE.



PROFILE

100% SUBMITTAL  
3-25-05  
NOT FOR CONSTRUCTION



CTD, 2005

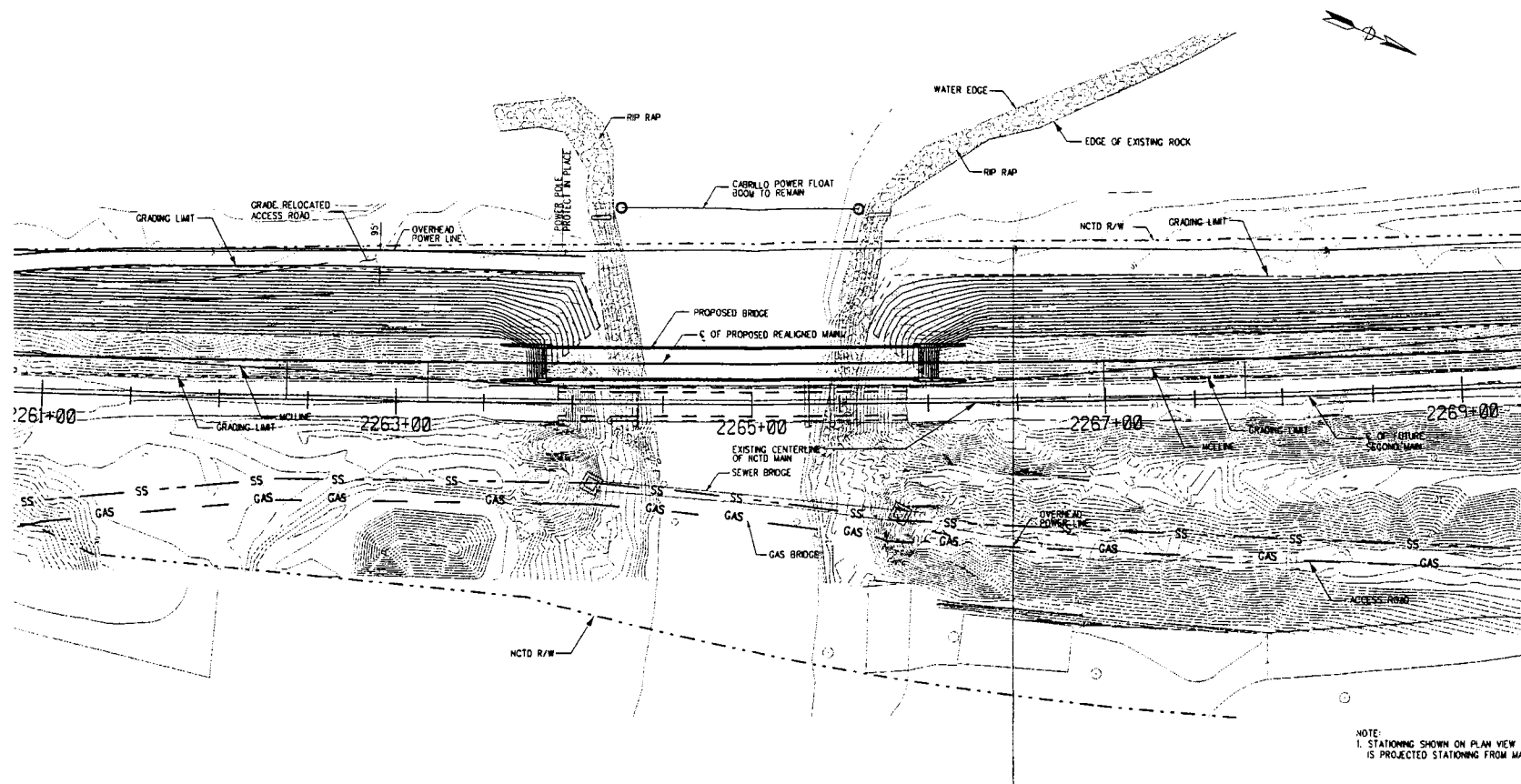
Railroad Bridge 230.6 Replacement  
STA 2255+00 To 2268+00

FIGURE  
1-4b

EXHIBIT NO. 6  
APPLICATION NO.  
CC-55-05

← TO SAN DIEGO

TO OCEANSIDE →



NOTE:  
1. STATIONING SHOWN ON PLAN VIEW  
IS PROJECTED STATIONING FROM MAIN

30 15 0 15 30  
feet

CITY OF CARLSBAD  
POINT NUMBER 142  
STATION NAME CLSB-142  
CCS 83 1999.92  
N=1987411.121 FT  
E=6233485.240 FT  
35.216 FT NAVD 88

100% SUBMITTAL  
3-25-05  
NOT FOR CONSTRUCTION

NCTD, 2005

Railroad Bridge 230.6 Replacement

Bridge Grading

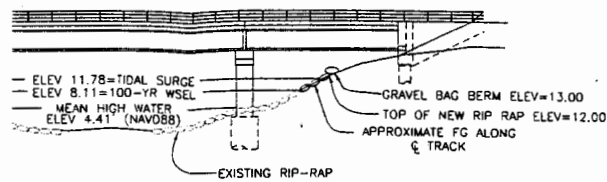
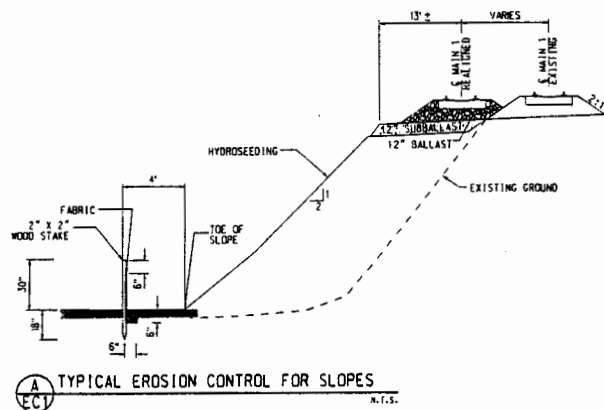
FIGURE  
1-4e

-15-

EXHIBIT NO. 7

APPLICATION NO.

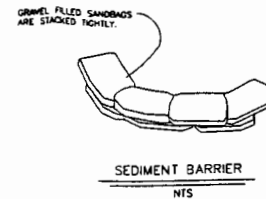
CC-55-05



NOTE: ANY DISTURBED RIP-RAP SHALL BE RESTORED TO ITS ORIGINAL CONDITION

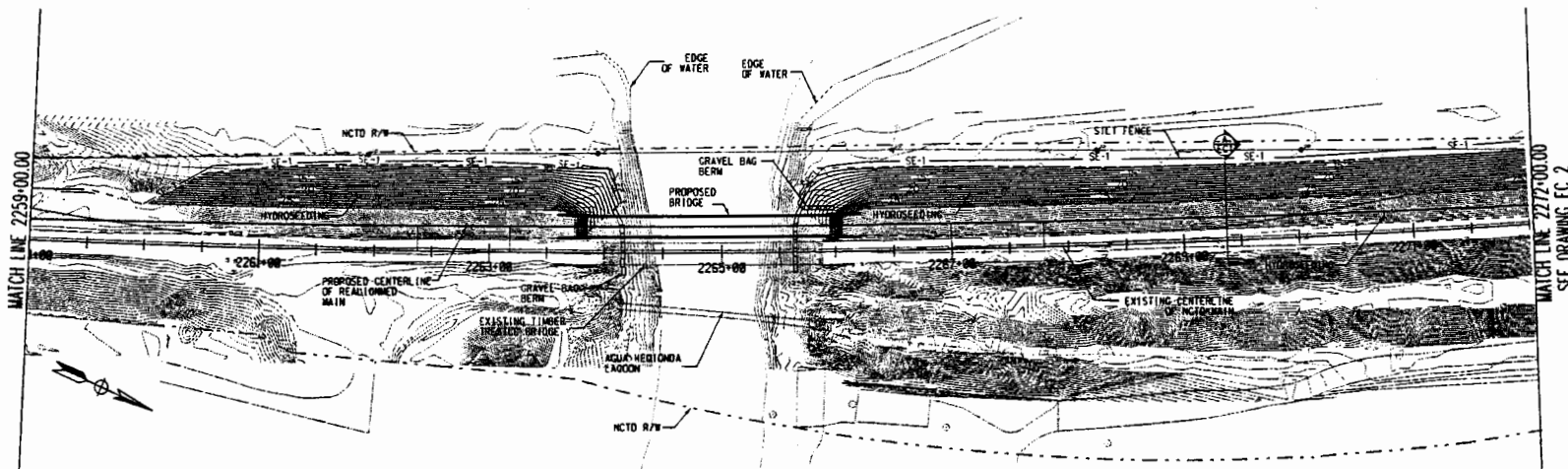
ELEVATION

N.T.S.



1. SANDBAGS OF EITHER BURLAP OR NOVEN GEOTEXTILE FABRIC, ARE FILLED WITH GRAVEL LAYERED AND PACKED TIGHTLY.
2. INSPECT BARRIERS AND REMOVE SEDIMENT AFTER EACH STORM EVENT.

NOTE:  
1. STATIONING SHOWN ON PLAN VIEW IS PROJECTED STATIONING FROM MAIN



100% SUBMITTAL  
3-25-05  
NOT FOR CONSTRUCTION



CTD: 2005

Railroad Bridge 230.6 Replacement

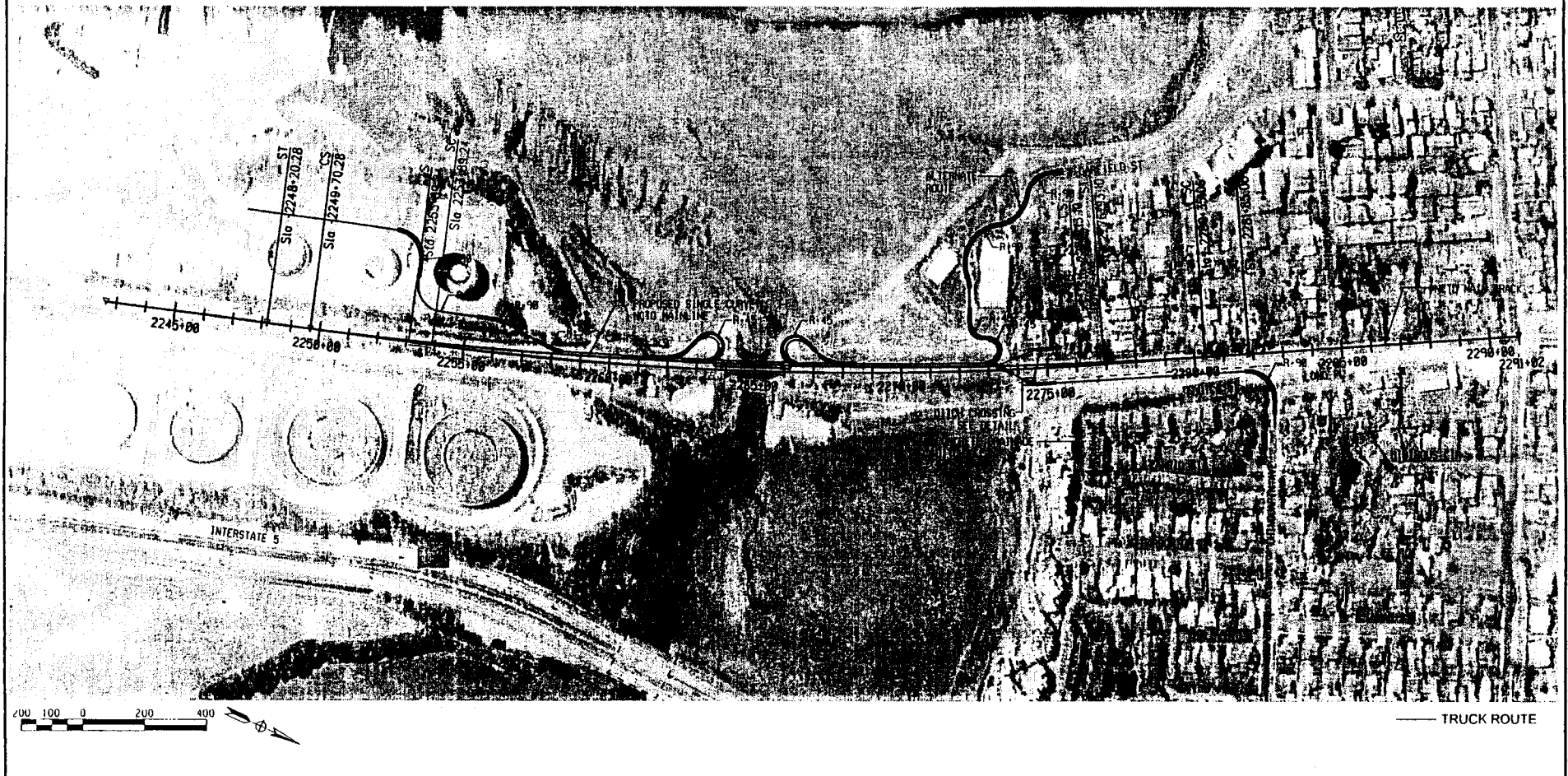
Erosion Control STA 2259+00 To 2272+00

FIGURE  
1-4g

EXHIBIT NO. 8

APPLICATION NO.

CC-55-05



son and NCTD, 2004

1/27/05

Railroad Bridge 230.6 Replacement

# Construction Access Route Plan

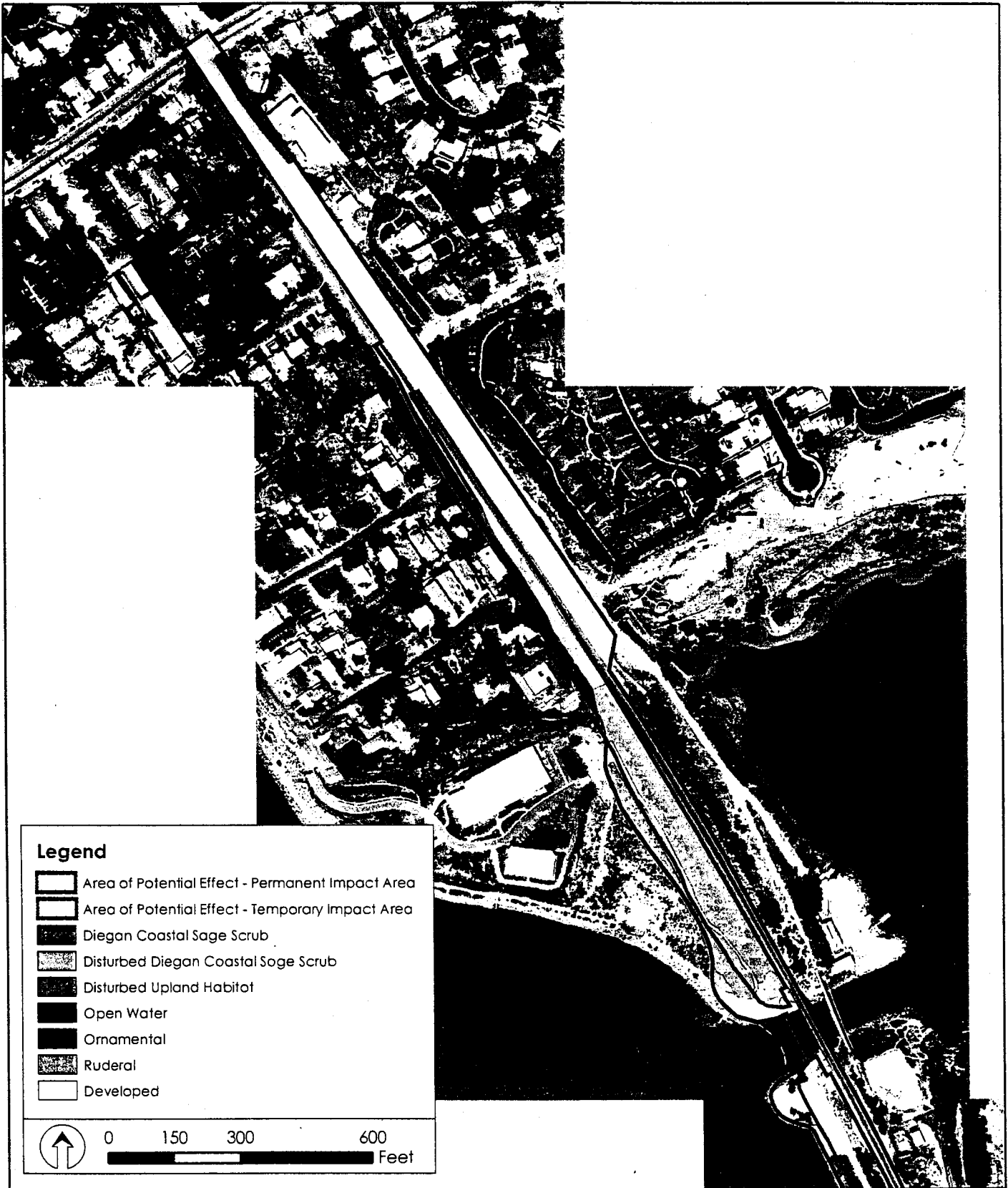
FIGURE

1-5

EXHIBIT NO. 9

APPLICATION NO.

CC-55-05



SOURCE: NCTD and Hanson Wilson, 2004, and Tierra Environmental Services, 2005



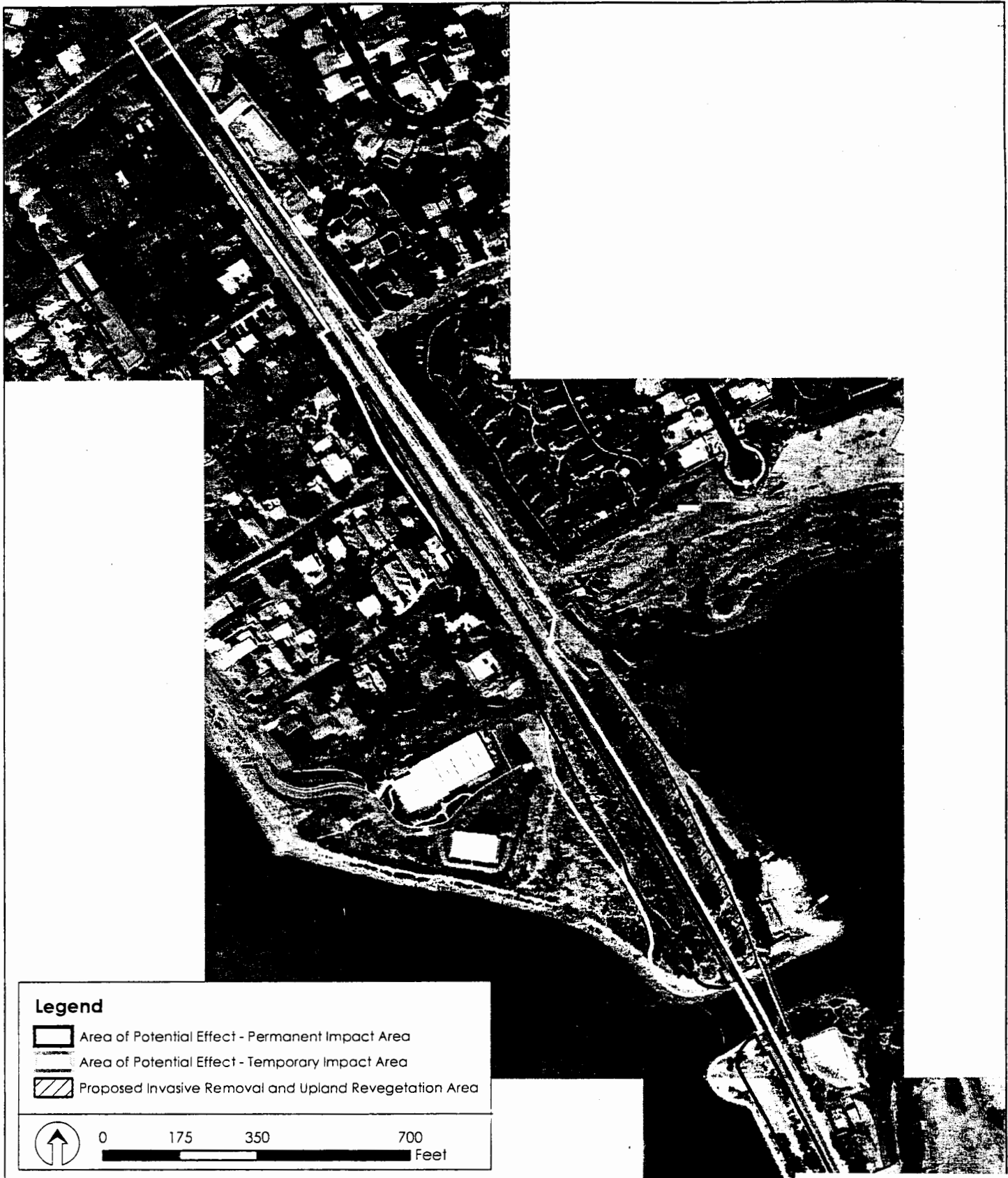
Railroad Bridge 230.6 Replacement

Existing Vegetation Communities

EXHIBIT NO. 16

APPLICATION NO.

CC-55-05



SOURCE: NCTD and Hanson Wilson, 2004, and BRG Consulting, Inc., 2005



Railroad Bridge 230.6 Replacement

Proposed Invasive Removal and Upland  
Revegetation Area

EXHIBIT NO. 11
APPLICATION NO.
CC - 35 - 05

## 5.0 PROPOSED MITIGATION

### 5.1 Permanent Impacts

Mitigation for permanent impacts to upland habitat is proposed to occur through revegetation (hydroseeding) of the manufactured slopes created by project construction requirements. Sensitive habitat types that will be permanently impacted by the proposed project are undisturbed and disturbed Diegan coastal sage scrub. Approximately 0.124 acre of undisturbed coastal sage scrub and 0.357 acre of disturbed coastal sage scrub will be permanently impacted, resulting in a total permanent impact of 0.481 acres. The proposed mitigation ratio is 2:1. At a 2:1 ratio, approximately 0.962 acre of the manufactured slopes created by the proposed project shall be hydroseeded with upland species.

The proposed hydroseed mix is anticipated to be similar to that previously approved by the U.S. Fish and Wildlife Service (USFWS) for the San Onofre Second Main Track project. These species are non-invasive species. The seed mix specification will include only non-invasive species, and is expected consist of the following:

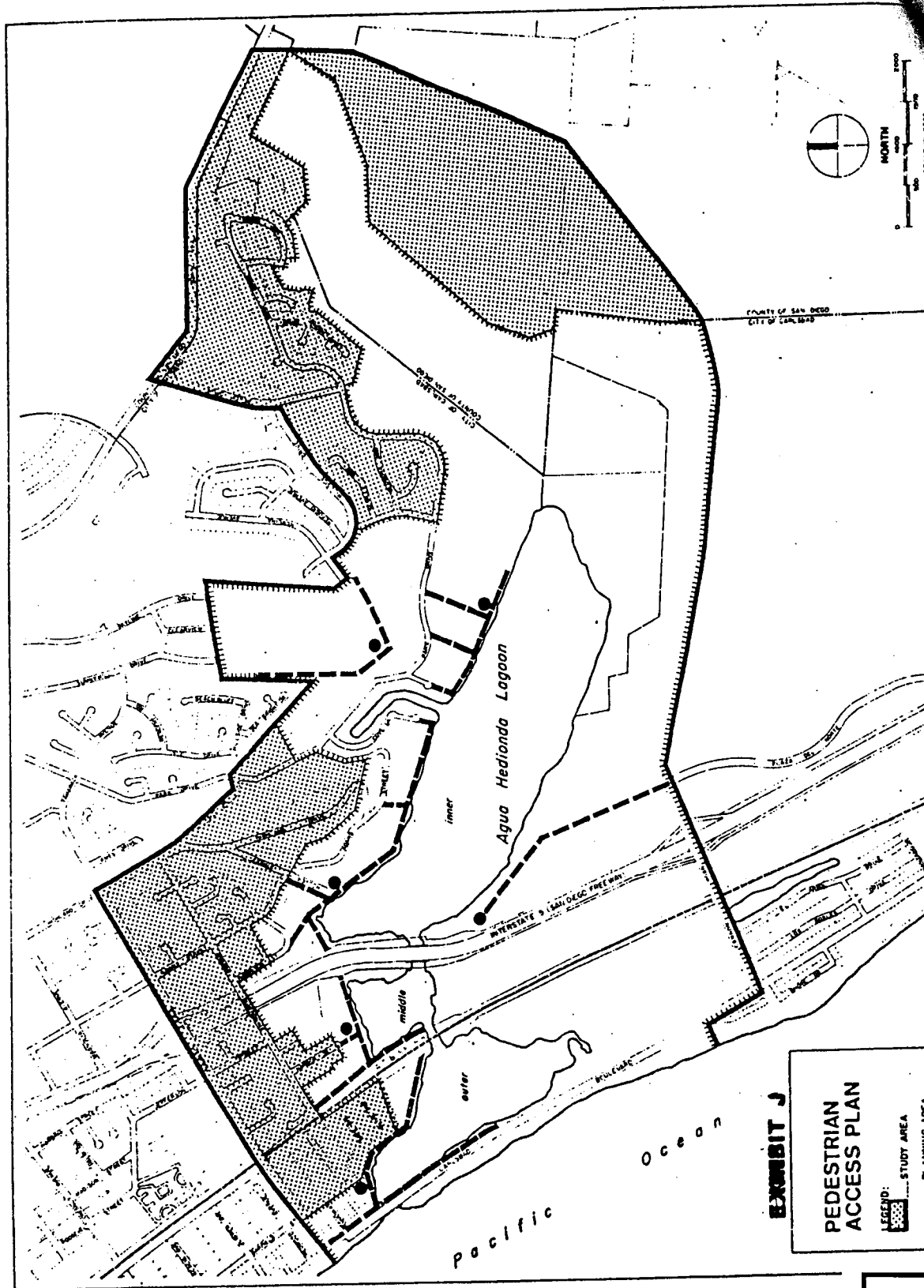
- California sage brush
- Deerweed
- Goldfields
- Golden Yarrow
- Blue-Eyed Grass
- Black Sage
- California Brome
- Bush sunflower
- California Buckwheat
- Arroyo Lupine
- White Sage
- Monkey Flower
- Purple Needlegrass
- Coast Range Melic

### 5.2 Temporary Impacts

Temporary impacts to the non-wetland Waters of the U.S. (0.014 acre) will be mitigated by replacing the riprap located on the lagoon channel bottom to its original condition upon completion of pier construction. In addition, NCTD proposes to remove invasive vegetation from the drainage detention area located north of the lagoon channel, immediately east of the project APE. This area is dominated by upland non-native and invasive species with some upland species. Figure 5-1, depicts the location of the drainage detention area. Topographically, the drainage detention area does not provided an outlet for stormwater to enter Agua Hedionda Lagoon.

In addition to removing the invasive vegetation, NCTD proposes to hydroseed approximately 0.014 acre of the drainage detention area with the upland species described above. Upland species are proposed for hydroseeding because the drainage detention area does not act as a functional wetland.





# AGUA HEDIONDA LCP

EXHIBIT NO. 13

APPLICATION NO.

CC-55-05



# City of Carlsbad

## Recreation Department

June 9, 2005

Mr. Mark Delaplaine  
State Coastal Commission Office  
45 Freemont St.  
Ste. 2000  
San Francisco, CA 94105

IMPROVING  
QUALITY  
OF LIFE

**Subject: Agua Hedionda Lagoon Rail Bridge Replacement Project  
Request For Public Trail Connection to the Future Coastal Rail Trail**

BUILDING  
COMMUNITY  
PRIDE

I am writing per our previous discussion, to request and support a condition of approval for the above named project, to include a public trail easement and trail construction for a trail connection to the proposed Coastal Rail Trail. In support of this very desirable connection, I have enclosed maps, plans and other information regarding previous and future trail planning in Carlsbad in the project vicinity. Please also consider the desire by citizens of Carlsbad, as well as the general public for access to Carlsbad's lagoons and beach areas.

Background:

STRENGTHENING  
FAMILIES

Since 1992, the City of Carlsbad has been applying a standard condition to new projects requiring and irrevocable offer of dedication for trail easements as one of the primary mechanisms for obtaining trail easements and construction of trails for a City wide trail system.

DEVELOPING  
TOMORROW'S  
LEADERS

Since that time many trails have been constructed and the City has begun accepting the offers of dedication for the trail easements in an effort to provide more trails and access to open space to the citizens of Carlsbad. One such type of offer, (a 25' public access easement) currently exists that is associated with the Hubbs-Sea World Research Facility along the north shore of Agua Hedionda Lagoon (See enclosed Exhibit A). This trail dedication is located between Carlsbad Blvd. and the NCTD bridge that is currently in design (See Exhibit B-Maps from CUP 92-10). In addition it is important to note that currently there exists a public access easement from Carlsbad Blvd. to the NCTD right-of-way (See Exhibit C- Existing easements)

An important part of the Citywide Trails Plan (enclosed as Exhibit D) includes access to regional trails, which would include the proposed Coastal Rail Trail (CRT). ( See enclosed Exhibit E Plans) Currently, construction is underway for Phase I of the CRT in Carlsbad from Oak Ave. to Cannon Road. The next phase of construction will include the CRT segment from Tamarack Ave. to Cannon Rd. In addition to the aforementioned trail planning, the City and the Agua Hedionda Lagoon Foundation will be requesting trail improvements along the north shore of the lagoon as part of the proposed I- 5 Widening Project- Enhancement Opportunities.

EXHIBIT NO. 14  
APPLICATION NO.

CC-55-05

Support for the Trail Connection:

Support for this particular public trail easement and connection is based upon the following criteria:

- Regional Trail Connection - This trail connection could provide an important regional trail connection to the Coastal Rail Trail. (See suggested alignment for the connection on Exhibit F)
- Increased Public Access to Coastal Natural Resources- This trail connection could provide for an uninterrupted trail link to the Pacific Ocean from other existing areas of public access and trails proposed along the Agua Hedionda north shore. These trails will be managed and maintained by both the Agua Hedionda Lagoon Foundation and the City (See enclosed Agua Hedionda Trails Concept Plan). Thus, it can provide the public the opportunity for interpretive trail hikes and educational aspects that promote a greater appreciation of the unique coastal natural resources of California.
- Sustainable Land Use Practices- This trail connection provides for sustainable land use practices as it is in keeping with the planning guidelines and vision outlined in Carlsbad's Local Coastal Program, Carlsbad's General Plan, (Open Space and Conservation Element) and the Agua Hedionda Lagoon Land Use Plan. Further, providing clear, managed trail routes along the shores of the lagoon will promote better management practices curbing erosion and destruction of sensitive habitat that is created when no clear demarcated trail route is designated or provided.
- Timing & Coordination -The construction for a trail connection to the CRT beneath the rail bridge is feasible only if done as part of the construction for the bridge replacement. Should it not be done as part of this work, the opportunity may be lost for this vital connection.

Should you have any further questions regarding the above, please feel free to contact me at 760-434-2978. For more specific questions pertaining to the Coastal Rail Trail, please contact Sherri Howard at the Engineering Department at 760-602-2756.

Sincerely,



Liz Ketabian  
Park Planner/Trails Manager

Enclosures:

- Exhibit A - Hubbs Sea World Research Institute- Coastal Conditions of Approval
- Exhibit B - CUP 92-10 Maps (2 sheets)
- Exhibit C- Easement Map Exhibit - North Shore Carlsbad Blvd. - NCTD
- Exhibit D- Citywide Trails Master Plan

Exhibit E- Coastal Rail Trail Plan – Agua Hedionda Vicinity  
Exhibit F- Preliminary Bridge Plans with suggested Trail connection location

cc: Ken Price, Recreation Director  
Don Rideout, Principal Planner, City of Carlsbad  
Scott Donnell, Associate Planner, City of Carlsbad  
Sherri Howard, Associate Engineer, City of Carlsbad  
Agua Hedionda Lagoon Foundation Chair, Herb Papenfuss

EXHIBIT 14 p. 3

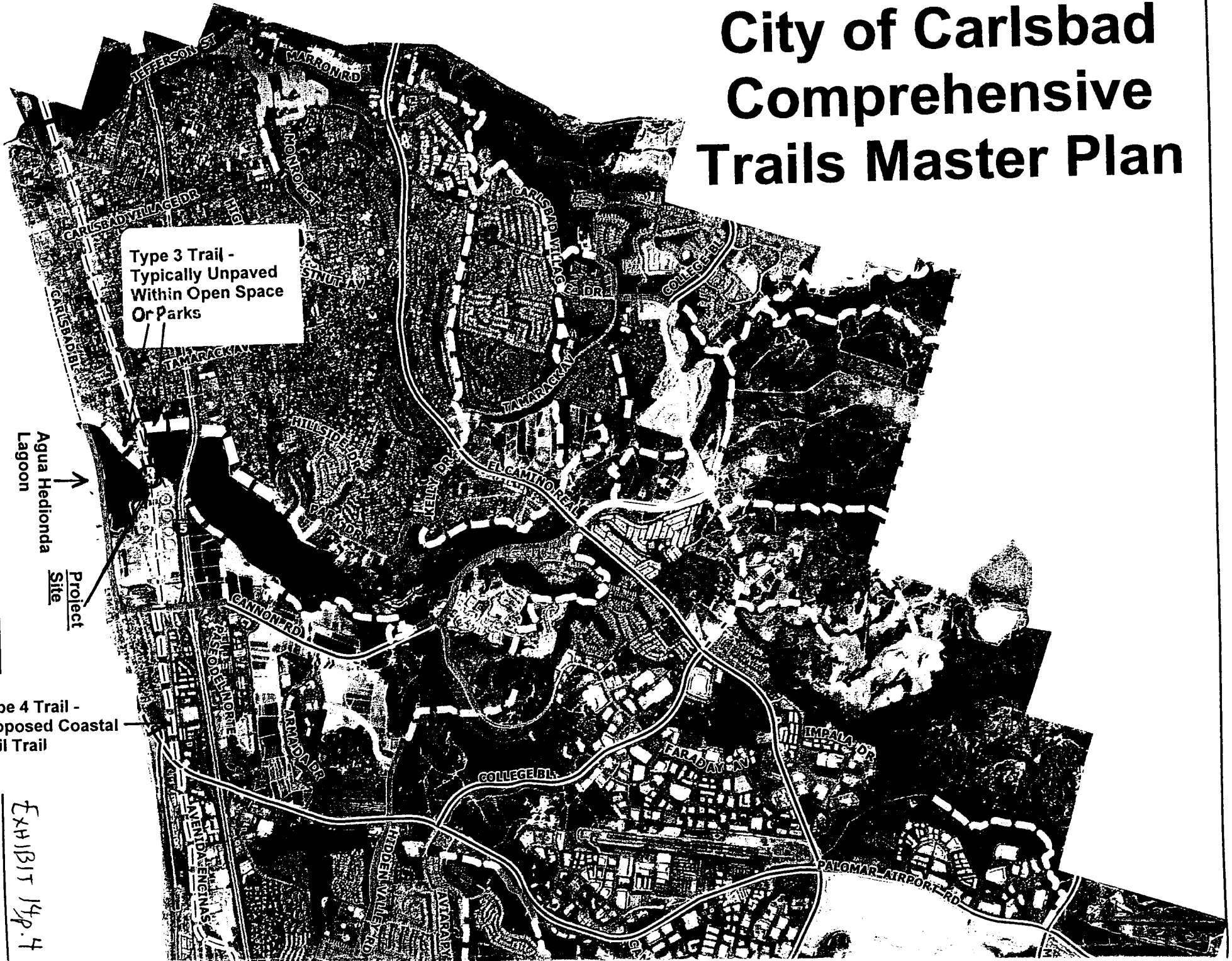
# City of Carlsbad Comprehensive Trails Master Plan

Type 3 Trail -  
Typically Unpaved  
Within Open Space  
Or Parks

Agua Hedionda  
Lagoon  
Project  
Site

Type 4 Trail -  
Proposed Coastal  
Rail Trail

EXHIBIT 14p.4



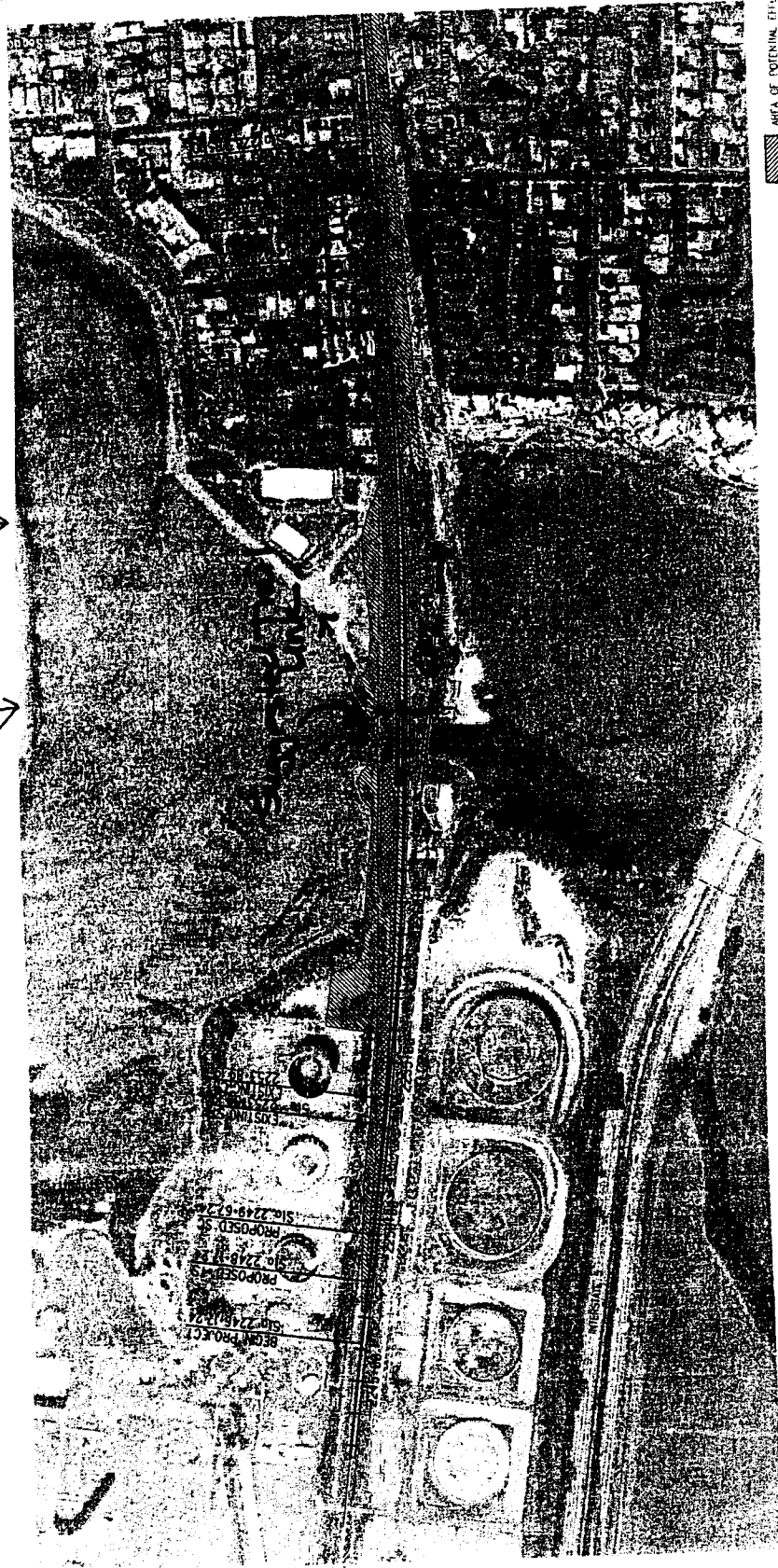


TO OCEAN

Hubbs  
Sea World →

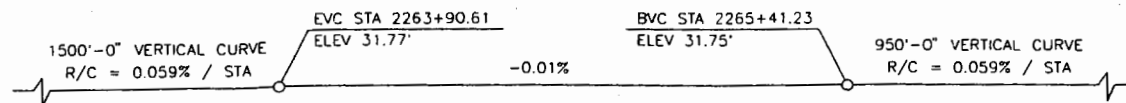
Project  
Site →

TO SAN DIEGO



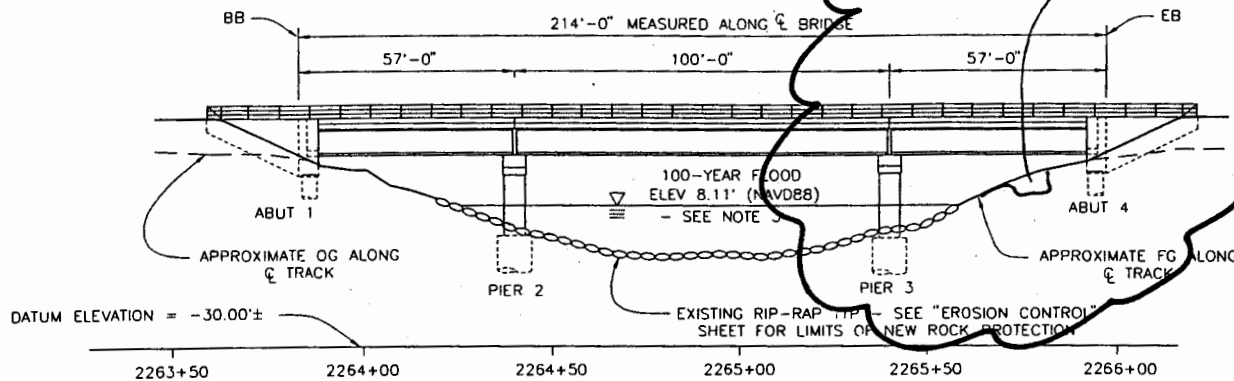
AREA OF POTENTIAL EFFECT  
AREA OF POTENTIAL EFFECT

L.S.M1  
AM By: khunter



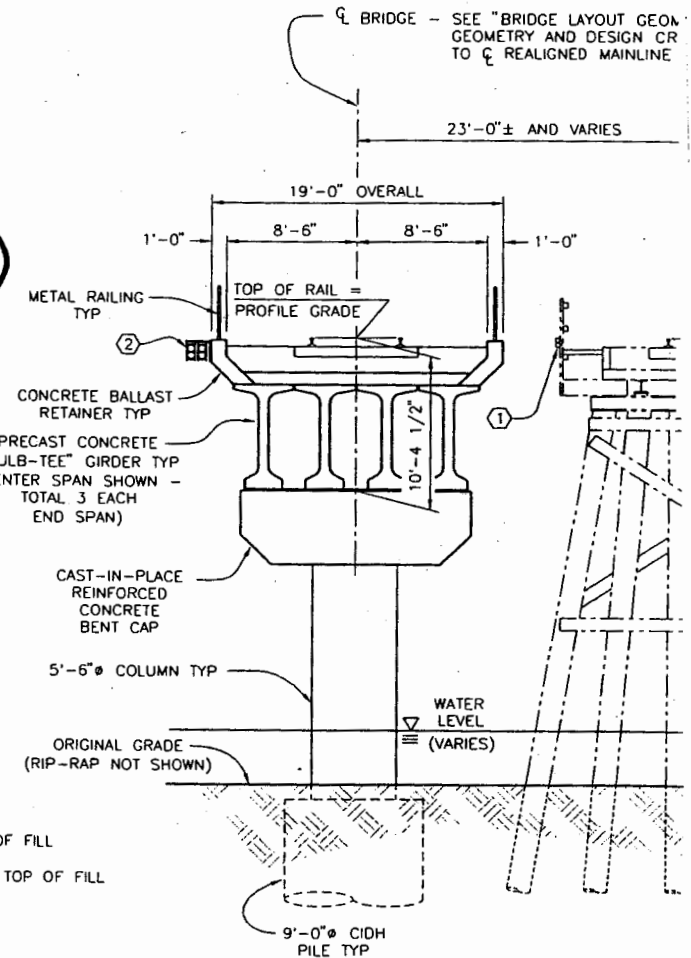
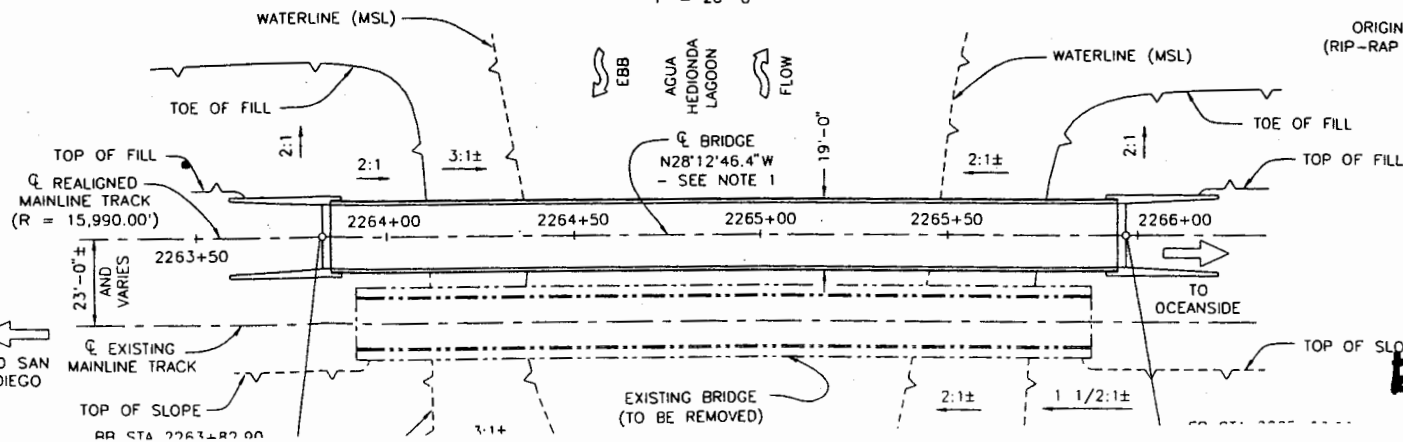
### PROFILE GRADE

NO SCALE



### ELEVATION

1" = 20'-0"



- ① - 4" MCI FIBER OPTIC CABLE CONDUIT - TOTAL 2
- ② - 4" CONDUITS - TOTAL 4 (2 MCI, 2 FUTURE)

## EXHIBIT F TYPICAL SECTION

1" = 5'-0"

EXHIBIT 14.7

SCALE 1 : 2000

PROPOSED AT GRADE  
PEDESTRIAN CROSSING

CLASS I BIKE PATH

UNSIGNALIZED CROSSING

YMCA CAMP

AGUA HEDIONDA  
LAGOON

**LEGEND:**

**DESCRIPTION**

**SYMBOL**

CLASS I BIKE PATH

-----

CLASS II BIKE LANES

-----

CLASS III BIKE ROUTE

-----

PEDESTRIAN TRAIL

-----

PEDESTRIAN TRAIL (UNIMPROVED)

-----

AT GRADE CROSSING



OVER CROSSING



BRIDGE



PLANS PREPARED BY:  
**TRANSTECH**  
624 BREA CANYON ROAD  
WALNUT, CA 91789  
(909) 393-8700  
DATE: 1/25/99

CITY OF CARLSBAD

WALNUT AVE. TO  
AGUA HEDIONDA LAGOON  
COASTAL RAIL TRAIL

376-9

SHEET 5 OF 48

PROJECT NO 3455

REVISED SHEET  
BY 10/99

**EXHIBIT E**

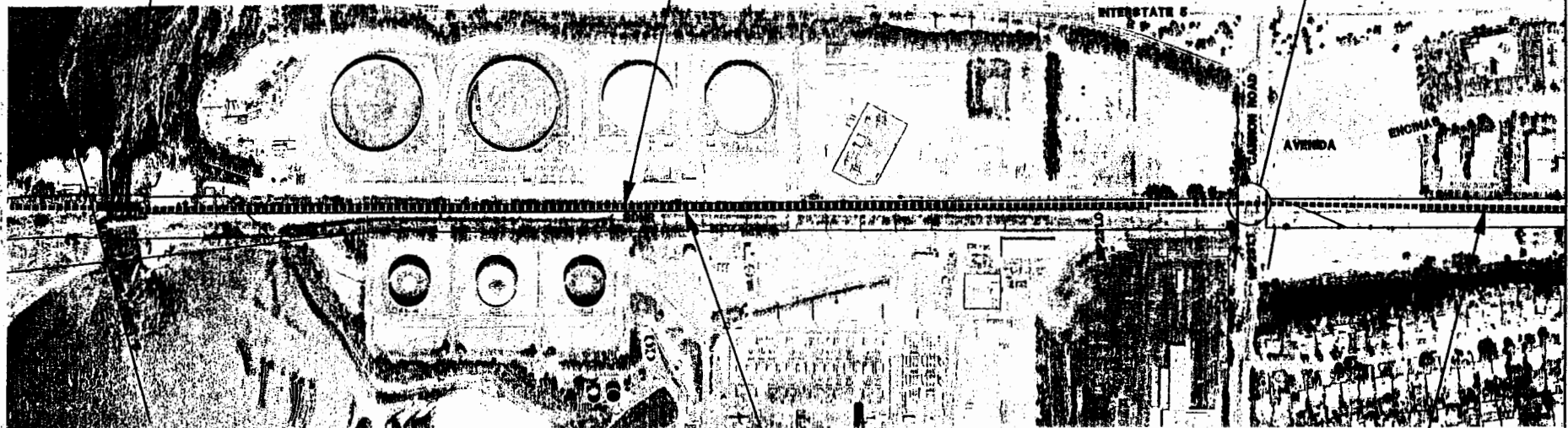
EXHIBIT 14.8

SCALE 1 : 2000

BRIDGE OVER OR ADJACENT  
TO EXISTING SEWER BRIDGE  
SEE DETAIL 3 ON SHEET 47  
LENGTH OF BRIDGE- 200' ±

CLASS I  
BIKE PATH

UNSIGNALIZED CROSSING



PROPOSED 800 L.F. RETAINING WALL ( MAX. HEIGHT 12')  
SEE DETAIL 9, PAGE 47

**LEGEND:**

DESCRIPTION	SYMBOL
CLASS I BIKE PATH	=====
CLASS II BIKE LANES	-----
CLASS III BIKE ROUTE	-----
PEDESTRIAN TRAIL	-----
PEDESTRIAN TRAIL (UNIMPROVED)	-----
AT GRADE CROSSING	☒
OVER CROSSING	☐
BRIDGE	⌞⌟

REVISIONS	DATE	SCALE
		HORIZONTAL AS SHOWN
		VERTICAL AS SHOWN



PLANS PREPARED BY:  
**TRANSTECH**  
484 BIRDA CANYON ROAD  
VALLEJO, CA 94591  
(925) 552-1777  
*Alfice*

CITY OF CARLSBAD

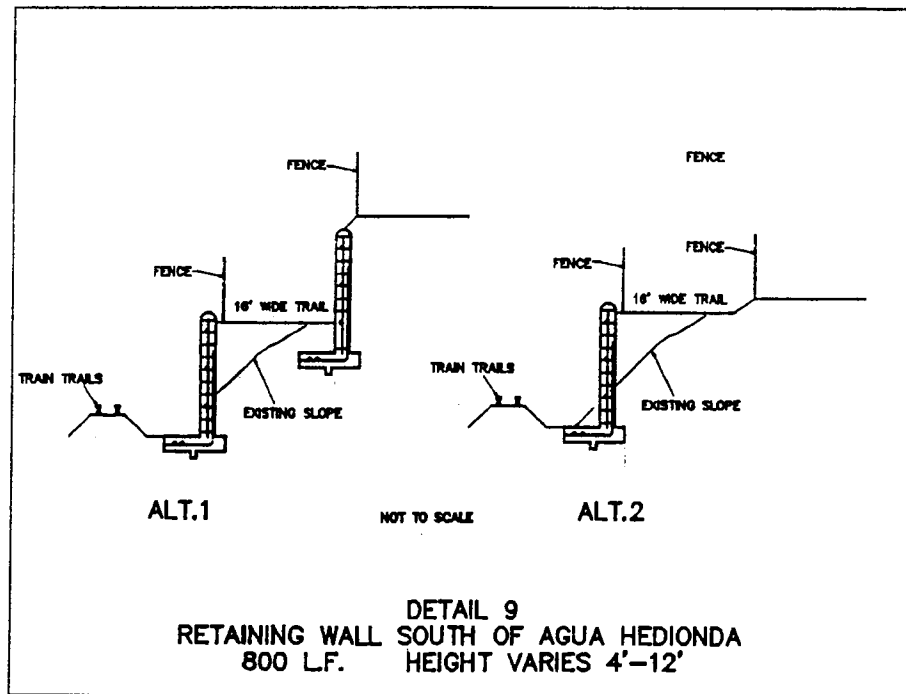
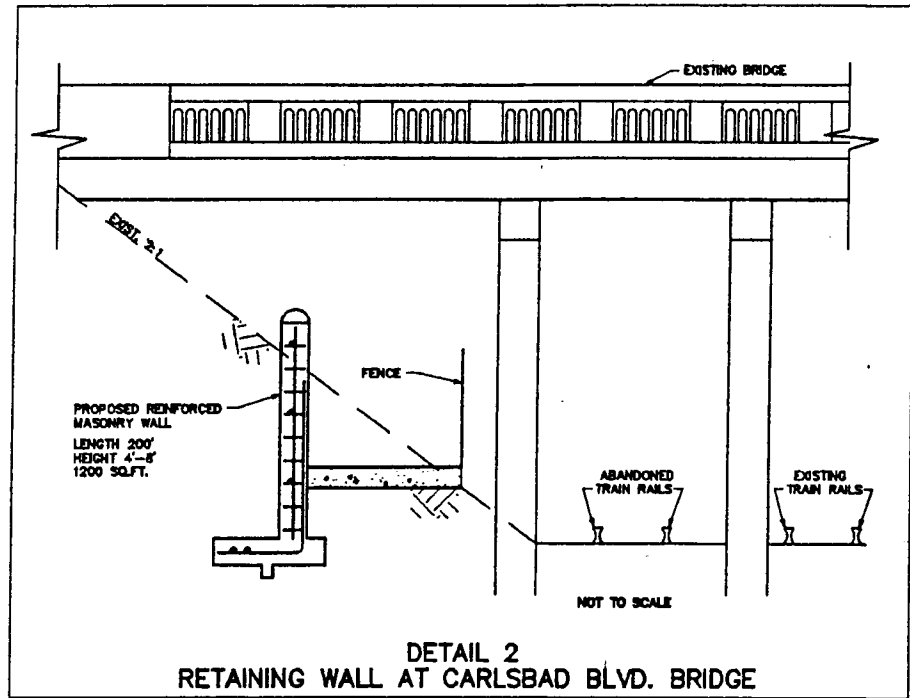
AGUA HEDIONDA LAGOON  
TO CANNON ROAD  
COASTAL RAIL TRAIL

376-9

SHEET 6 OF 49

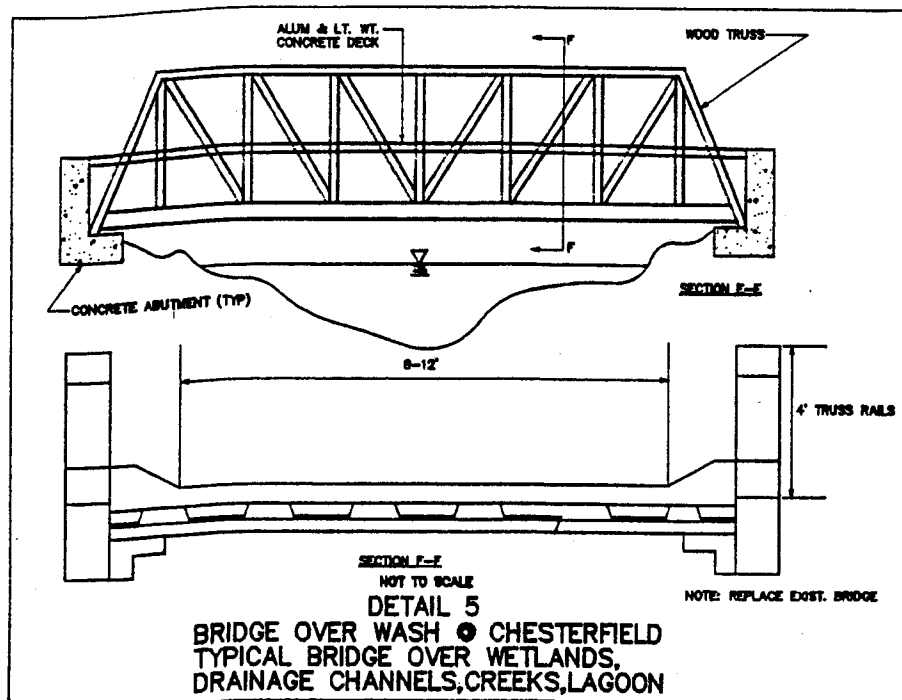
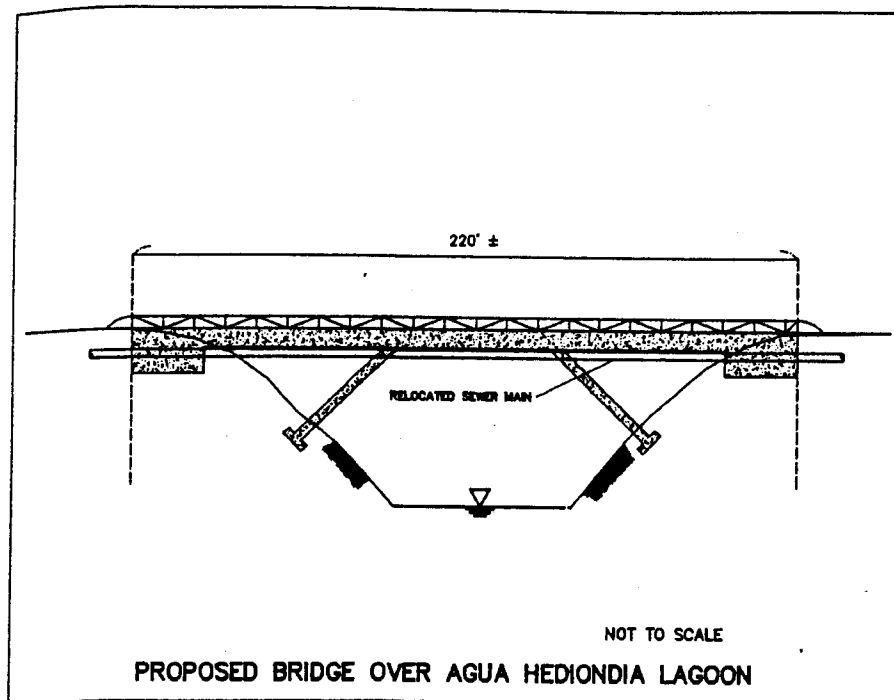
PROJECT NO. HST 00 22 00

EXHIBIT 14, p. 9



REVISIONS	DATE	SCALE
		HORIZONTAL AS SHOWN
		VERTICAL AS SHOWN

EXHIBIT 14 p. 10



PRELIMINARY  
NOT FOR CONSTRUCTION

PLANS PREPARED BY: *Lee Brockman Ed.*  
**TRANSTECH** Walnut, CA 91789  
Tel: 909-591-2599  
124 SUMMIT STREET, SUITE 120  
OCEANSIDE, CA 92054  
(760) 721-5877

*ACI* *3/2/00*  
ALL CAYN R.C.E. 47128 EXP. 12-31-03 DATE

CITY OF SAN DIEGO

PACIFIC HWY

COASTAL RAIL TRAIL

376-9

SHEET 47 OF 48

PROJECT NO. 3466

95052847/TC/ET  
09.22.00

EXHIBIT 14, P. 11

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

1 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

Staff: BP-SD  
 Staff Report: March 30, 1994  
 Hearing Date: 04/12-15/94

REVISED FINDINGS

Fr 9c

Application No.: 6-93-113

Applicant: Hubbs-Sea World

Agent: Benchmark Pacific

Approved 6-0  
 4/15/94 L.A. County

Description: Construction and operation of a 20-foot-high, 20,300 sq. ft. research and aquaculture facility, including installation of underground intake and discharge pipes from Agua Hedionda Lagoon; improvement of existing driveway access road; dedication of 25 foot wide public access easement.

Lot Area	453,024 sq. ft. (10.4 acres)
Building Coverage	20,300 sq. ft. ( 4%)
Pavement Coverage	28,968 sq. ft. ( 6%)
Landscape Coverage	129,656 sq. ft. (29%)
Unimproved Area	274,100 sq. ft. (61%)
Parking Spaces	13
Zoning	Residential Agriculture (R-A-10)
Plan Designation	Open Space
Ht abv fin grade	20 feet

Site: Southerly terminus of Garfield Street at North shore of Agua Hedionda Lagoon, Carlsbad, San Diego County, 206-070-11

Substantive File Documents: Certified Agua Hedionda Land Use Plan, City of Carlsbad Conditional Use Permit 92-10, Hillside Development Permit 93-05, Memorandum of Agreement for the State of California's Experimental Marine Fish Enhancement Hatchery.

STAFF NOTES:

Summary of Commission Action: Staff recommends that the Commission adopt the following revised findings in support of the Commission's action on February 17, 1994, approving the project with modifications to the following special conditions: #2 which requires the submittal of a public access plan to accommodate public access along the north shore of Agua Hedionda Lagoon; #8 which supports enhancement or expansion of wetlands on and/or adjacent to the project site, if feasible; and #9 to provide that any substantive change to the language of the draft MOA shall be approved by the Coastal Commission pursuant to an amendment to this coastal development permit.

Date of Commission Action: February 17, 1994

Commissioners on Prevailing Side: Calcagno, Cervantes, Doo,  
 Moulton-Patterson, Flemmit  
 Carpenter, Wright, Malcolm  
 Gwyn

EXHIBIT NO. 15

APPLICATION NO.

CC-55-05

STAFF NOTES:

Coastal Development permit 183-73, which the California Coastal Zone Conservation Commission (CZCC) issued to Southern California Edison Company (SCE) for the construction of Units 2 and 3 of the San Onofre Nuclear Generating Station, provided for the further conditioning of the permit to mitigate for substantial impacts to marine resources. On May 13, 1992, the Commission, acting as successor to the CZCC, voted to direct staff to prepare a condition for Permit 183-73, that would require SCE to provide funds for constructing a marine fish hatchery and evaluating the extent to which the hatchery is effective at increasing the stock of adult fish. The hatchery requirement serves as a supplemental element to the mitigation package required to address the adverse effects that the Marine Review Committee ("MRC") found the San Onofre Nuclear Generating Station ("SONGS") Units 2 and 3 to have on fish populations.

On March 17, 1993, the Coastal Commission adopted a resolution to add the new condition prepared by the staff to the Permit 183-73. The condition requires SCE to provide up to \$1.2 million toward the construction of a marine fish hatchery. The condition states that expenditure of the funds for hatchery construction is contingent on the signing of a Memorandum of Agreement ("MOA") between the California Department of Fish and Game ("DFG"), The Ocean Resources Enhancement Advisory Panel ("OREAP"), SCE and the Commission that, among other things: (a) requires at least \$170,000 in OREAP/DFG funds be allocated annually for 10 years after initial fish releases into the ocean to monitor and evaluate the marine fish hatchery program, (b) requires OREAP funds to be allocated to conduct a genetic quality assurance program, (c) specifies that the Commission, DFG, OREAP, and SCE jointly oversee the design and implementation of the evaluation and genetic quality assurance programs, and (d) requires DFG to prepare a Comprehensive Hatchery Plan that describes the methods for producing, growing out and releasing white seabass. The Hatchery Plan must be approved by the Coastal Commission Executive Director.

It is the intent of Hubbs Sea World to site the marine fish hatchery adjacent to Agua Hedionda Lagoon in Carlsbad. The hatchery would be operated in conjunction with grow-out facilities until the fish are large enough to be released into the marine environment at selected release sites. Volunteer angler and other groups would operate and maintain the grow-out facilities.

According to the MOA, a joint panel ("Joint Panel") would be formed consisting of a representative of the Commission, DFG, OREAP, SCE, the National Marine Fisheries Service and the University of California to oversee the development of the evaluation, environmental monitoring, and genetic quality assurance programs for the hatchery operations.

---

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the

EXHIBIT 15, p.2

provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Public Access Easement. Prior to the issuance of a coastal development permit, applicant shall submit evidence that SDG&E as landowner has executed and recorded a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, a 25-foot-wide easement for public pedestrian and bicycle access. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be over the lagoon-fronting portion of the property in its entirety as identified in the attached Exhibits I and J taken from the certified Agua Hedionda Land Use Plan and the attached Exhibit 2. The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

2. Public Access Plan. Prior to the occupancy of the research facility, the applicant shall submit to the Executive Director for review and written approval, in consultation with the Department of Fish and Game, a final public access plan, approved by the City of Carlsbad, including trail improvements. Said plan shall include:

a. Trail Improvements. At a minimum, the access plan shall include the provision of a ten-foot wide improved path within the 25-foot-wide easement for the entire length of the lagoon trail on the subject property as shown on attached Exhibit 2. The path shall be paved or covered with decomposed granite or other material acceptable to the Executive Director.

b. Accessory Facilities. The access plan to support the pedestrian/bicycle trail easement shall include at least two benches, two bike racks, and two trash receptacles.

c. Sign Program. The access plan shall include interpretive signage to facilitate and enhance public use of the lagoon trail. The public access signage shall include, at a minimum, public access signs visible from Carlsbad Boulevard's intersection with Tamarack, Sequoia, and Chinquapin Avenues, at Carlsbad State Beach where the bridge crosses Carlsbad Boulevard, and the terminus of Garfield Street. The signs shall clearly indicate how to locate

EXHIBIT 15, p. 3

the improved lagoon trail and shall read, "Public Access to Lagoon Trail - Open to the Public" or similar language. Interpretive signage identifying environmental and recreational benefits of the lagoon shall also be provided.

d. Timing of Construction/Maintenance. Prior to the occupancy of the research facility, the applicant shall deliver, to the satisfaction and approval of the Executive Director, a written agreement which provides for the construction and completion of the access improvements and signage within 120 days of acceptance of the public access easement, and maintenance responsibility therefore, by a public agency.

Provided, however, prior to occupancy and subject to the approval of the Executive Director, signage shall be installed at locations near the research facility, along the north shore of the lagoon, which shall distinguish the research facility from other areas of the site which are available for public use.

e. Access Authorization. Prior to the issuance of the coastal development permit, the applicant shall provide written evidence that SDG&E as landowner has given permission for the subject property to be developed as conditioned herein.

3. Public Rights. By acceptance of this permit, the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property. The applicant shall also acknowledge that issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

4. Grading/Erosion Control. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, final site and grading plans approved by the City of Carlsbad which incorporate the following requirements:

a. All grading activity shall be prohibited between October 1st and April 1st of any year.

b. All areas disturbed by grading shall be planted within 60 days of the initial disturbance and prior to October 1st with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect, shall provide adequate coverage within 90 days, and shall utilize vegetation of species compatible with surrounding native vegetation, subject to Executive Director approval.

5. Revegetation Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a detailed revegetation plan indicating the type, size, extent and location of all plant materials, any proposed irrigation system and other landscape features to revegetate all areas disturbed as a result of construction and grading. Enhancement of areas of

With respect to non-Coastal Act issues, the City found that project impacts associated with noise, odor, and economic issues, were either consistent with existing City wide standards, or in the case of economic impacts, the devaluation of residential property values is not considered a significant physical impact under CEQA and was not evaluated. The City found that no evidence had been submitted to support the claim of the lowered property values.

#### 5. Plan Area.

Agua Hedionda Lagoon is one of three coastal lagoons within Carlsbad, along with Buena Vista Lagoon and Batiquitos Lagoon. Agua Hedionda Lagoon comprises approximately 230 acres of water surface, and additional upland marsh and wetland areas. The lagoon extends 1.7 miles inland from the coast and is approximately .5 mile across at its widest point. The lagoon consists of three distinct areas:

Outer Lagoon, containing 66 acres of water surface, used as a cooling water source for the SDG&E facility;

Middle Lagoon, containing 27 acres of water surface, used principally for passive recreational uses;

Inner Lagoon, totals approximately 140 acres of water surface, used for active recreation activities. Additional wetland areas, containing environmentally sensitive habitats, are located at the extreme eastern portion of the lagoon.

The separation of the lagoon into three areas is the result of the development of transportation corridors crossing the lagoon body. These include the construction of the railroad in the late 1800s, the bridging of the lagoon mouth by Pacific Coast Highway in 1910, and the construction of the I-5 corridor in 1967.

Originally, the lagoon was an increasingly restricted salt water marsh, the result of accumulated sedimentation, and the absence of tidal flushing. Between 1952 and 1954, SDG&E removed approximately 310,000 cubic yards of sediment from the lagoon to an average 10 foot depth, and opened the lagoon mouth to permanent tidal flushing. The site of the proposed project is the outer lagoon.

#### 6. Public Access.

Section 30604(c) requires that for any development between the nearest public road and the sea, the Commission must find that the permitted development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

#### Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously

posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

#### Section 30211

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

The proposed project lies between Agua Hedionda Lagoon and the first designated roadway (Garfield Street). The proposed project is located on a 10.4 acre parcel that is owned by SDG&E. The applicant has a lease agreement to construct and operate the proposed facility from SDG&E. The owner has been invited to join the applicant in writing as co-applicant consistent with Section 30601.5 of the Coastal Act. This section requires that all holders or owners of any interests of record in the affected property shall be notified in writing of permit applications and invited to join as co-applicant. SDG&E has not responded that they wished to join as co-applicant. Consequently under 30601.5, the applicant must demonstrate the authority to comply with all conditions of approval prior to any coastal development permit issuance.

The applicant proposes to dedicate a 25-foot-wide lateral access easement on the site for public use (see exhibit 2). This dedication was also a requirement of the City's approval. In addition, there are beaten paths across the bluff face and along the shoreline indicating that pedestrians have informally used the subject site to access the lagoon's shoreline as well as to continue to the west either under or across Carlsbad Blvd. to the Pacific Ocean. For the most part the public uses a well-beaten dirt road that is unobstructed and extends to the northwest across the bluff face to get from Garfield Street to the lower access road and ultimately the ocean. Thus, the potential exists that the public may have acquired prescriptive rights across the bluff and along the site's frontage with Agua Hedionda Lagoon. However, because the applicant proposes to dedicate a 25 foot wide lateral access easement on the site, any potential prescriptive rights which may exist will not be significantly interfered with. In addition, Special Condition 3 requires that the applicant acknowledge that permit issuance is not a waiver of or interference with any existing public rights.

The public access policies of the certified Agua Hedionda LUP require that contiguous public access be provided along the north shore of the outer basin of the lagoon. The LUP contains a number of site-specific policies, including several which address improving public access along this particular parcel. Policy 1.8 of the LUP states the subject site, known as the "Ecke" property at that time (1982), shall be regulated as follows:

- a. The primary use of the site shall be aquaculture. Other coastal development and visitor-serving commercial uses shall be allowed, provided they occupy no more than 50% of the site;

EXHIBIT 15, p. 5

- b. As secondary uses, in the interim period while aquaculture alternatives are being studied, other uses may be permitted which would necessitate minimal site disturbance or capital investment, including active recreation (fishing, tent camping, etc), beach access parking, short-term recreational vehicle parking, and temporary accessory commercial facilities (bait-and-tackle shop food concession, etc.);
- c. All uses shall be regulated by conditional use permit. All proposed uses shall be conditioned to provide all necessary access improvements required by this plan [emphasis added], and shall provide peripheral landscaping which at maturity will screen all objectionable improvements (i.e., aquaculture facility, outside storage, parking areas, etc.) as viewed from Carlsbad Boulevard.

Therefore, all access improvements required by the certified LUP must be provided with this application. Policy 7.6 of the LUP calls for pedestrian/bicycle access to and along the north shore of the lagoon, including the shorefront area of the project site. Policies 7.3 and 7.4 provide that combination bicycle/pedestrian easements and lateral easements shall be a minimum 25 feet in width, which is the width of the easement the applicant is proposing with this application. All combination bicycle/pedestrian trails shall be a minimum of 10 feet in width. Policy 7.8 identifies the design of access easements, buffer areas, and adjacent development. All lateral public access easements shall be at least 25 feet in width landward of the mean high tide line, unless infeasible due to extreme topographic limitation (not the case here). The policy further provides that any development located within 100 feet of any access easement or other public recreational use easement shall be setback from the easement a distance equivalent to twice the height of the structure above finished grade and that new development shall provide landscaping adequate to minimize visual intrusion upon public use areas. Because the building is 20 feet high, the policy requires it to be setback at least 40 feet. The hatchery building would be located approximately 125 feet from the lagoon and setback 85 feet at its nearest point to the access easement (terrace). While the raceways are within the 40 foot setback and the access road that serves them abuts a portion of the access easement, the Commission finds they are allowable encroachments because they are required in this location as part of process operation and because they would not interfere with public access (i.e., would not be continuously manned by operational personnel who by their presence might inadvertently discourage use of the trail).

Policy 7.1 identifies that accessory facilities (bike racks, benches, trash containers, drinking fountains) shall be provided near the trail's intersection with Carlsbad Boulevard. Regarding the provision of drinking fountains, the Commission finds that because of costs associated with extending water lines to this area, maintenance/nuisance problems associated with their continued operation, and the fact that drinking fountains exist near the subject property on the west side of Carlsbad Boulevard at the Tamarack public restroom, the applicant will not be required to provide them with this application.

Policy 7.5 provides bike routes and pedestrian improvements shall be constructed at the expense of the developer at the time of development, or may be constructed by the city, subject to availability of funding. The City has indicated there are no available funds to construct the improvements at this time. Finally, Policy 7.9 (Access Signing) provides all public use areas shall be clearly identified through a sign program; signs or other devices which might deter use of public access areas shall be prohibited.

As noted, the above LUP requirements were included in the certified Agua Hedionda LUP as part of a larger public access system that was approved to promote and encourage public access to and along the shoreline of Agua Hedionda Lagoon and to the ocean shoreline.

The attached Special Conditions #1 and #2 memorialize the above requirements and mitigate the impacts of the proposed development on public use of the area. Special Condition #2 provides that the access improvements must be completed within 120 days of acceptance of the public access easement by a public agency. This language was accepted as an alternative to installation of the improvements concurrent with the project. However, prior to occupancy and subject to the approval of the Executive Director, signage shall be installed at locations near the research facility, along the north shore of the lagoon, which shall distinguish the research facility from other areas of the site which are available for public use. In this way public access currently available along the lagoon shoreline will not be adversely affected prior to completion of the required access improvements.

Special Condition #3 requires the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property. The applicant shall also acknowledge that issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

Only as conditioned to implement the public access and recreation provisions of the certified Agua Hedionda LUP can the Commission find the proposed project consistent with the Coastal Act and the certified LCP.

#### 7. Visual Impacts.

Section 30251 of the Coastal Act states in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas...

The project site is highly visible from Agua Hedionda Lagoon and Carlsbad Boulevard, designated as a Scenic Highway in Policy 8.1 of the LUP. The 20,300 sq. ft. structure is proposed at 20-feet-high, setback 125 feet from the water's edge, and is sited adjacent to the northern slopes of the site to

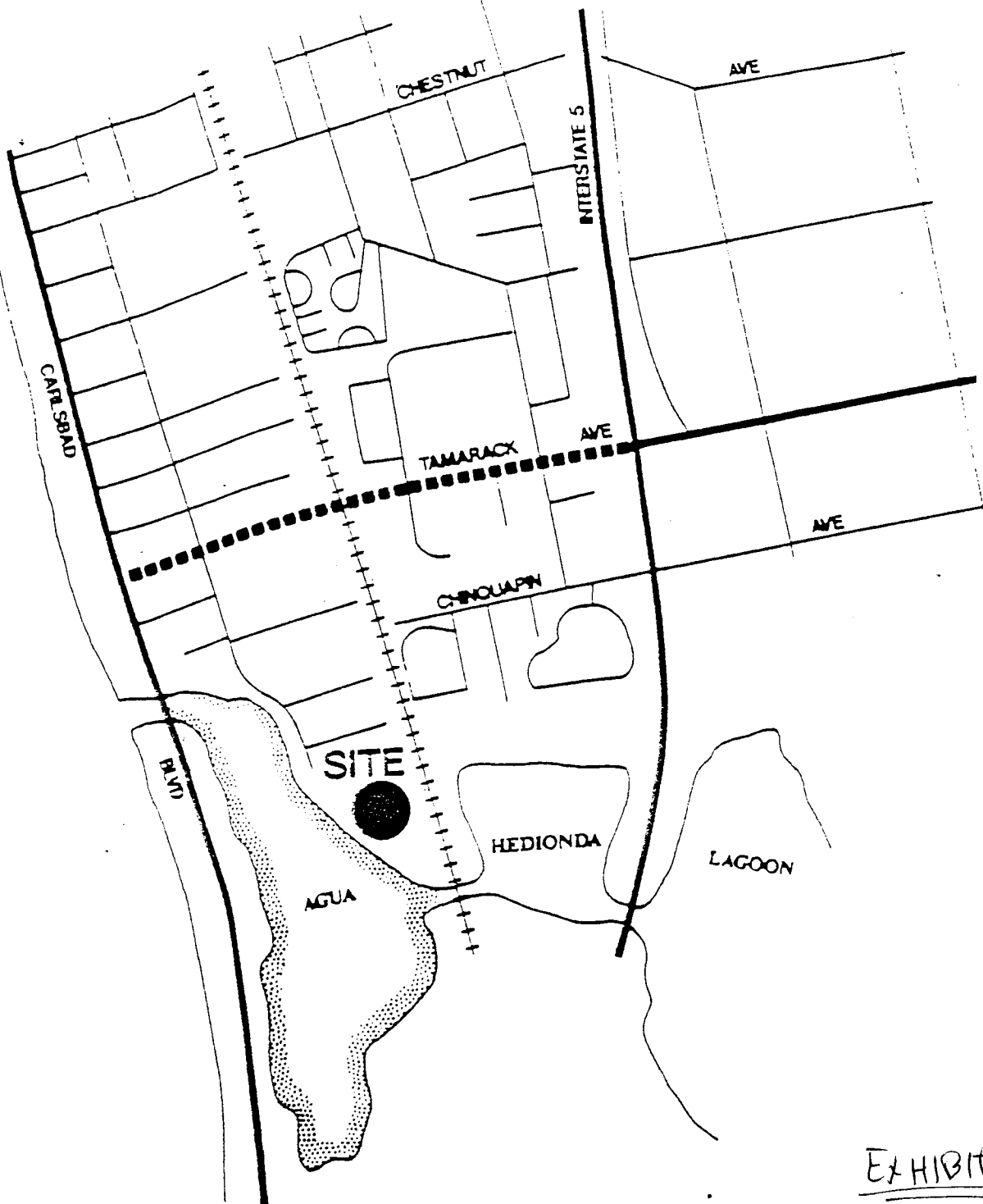
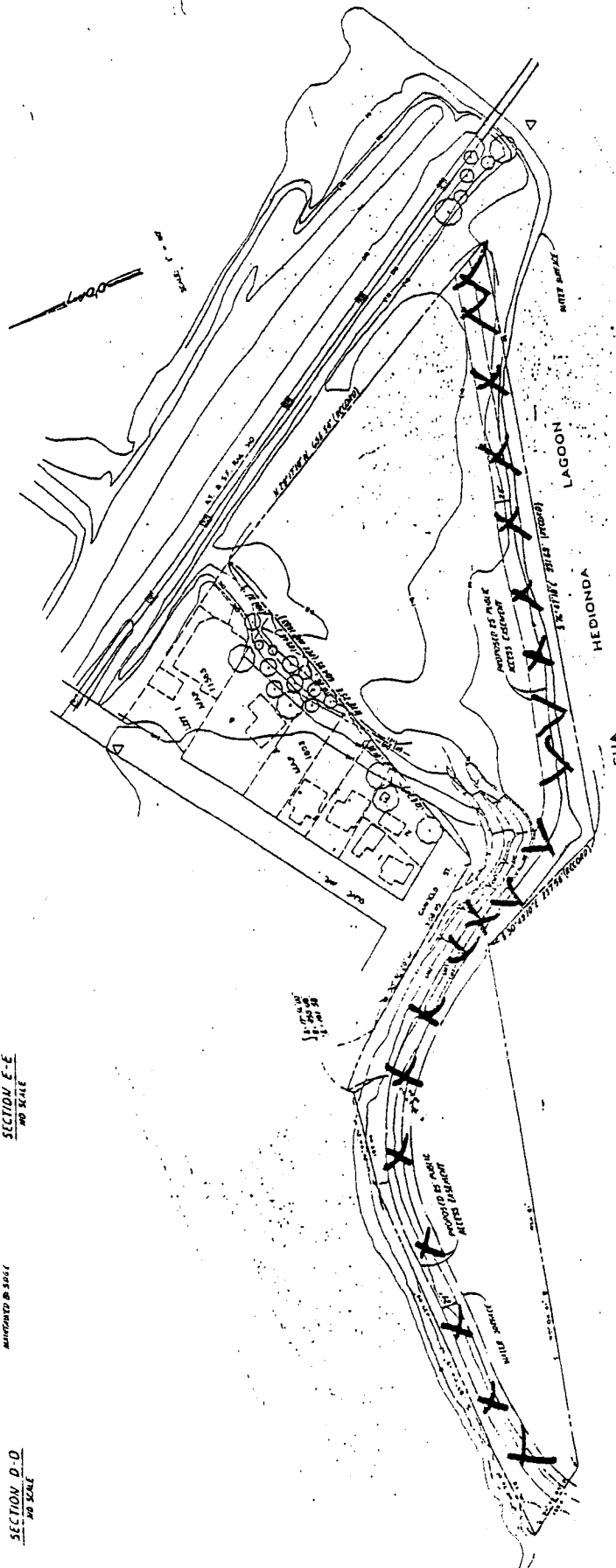


EXHIBIT 15, p. 8.

EXHIBIT NO. 1
APPLICATION NO. 6-93-113
Location
CCC California Coastal Commission

RESEARCH & HATCHERY FACILITY  
FOR MARINE ENHANCEMENT  
FOR  
HUBBS-SEA WORLD RESEARCH INSTITUTE  
/SAN DIEGO STATE UNIVERSITY

DRAWN BY: <i>W. D. Kelly</i> CHECKED BY: <i>W. D. Kelly</i> DATE: <i>10/1/83</i>	
PROJECT NO.: <i>83-113</i> SHEET NO.: <i>2</i>	
SCALE: <i>AS SHOWN</i> NORTH: <i>UP</i>	



Location of  
Access  
dedication

3/2

EXHIBIT 15, p. 9

EXHIBIT NO. <i>2</i>
APPLICATION NO. <i>0-93-113</i>
<i>Site Plan</i>
California Coastal Commission

PROPERTY BOUNDARY .....  
EXISTING CONDUIT ..... (14)  
PROPOSED CONDUIT ..... 5  
PROPOSED BUILDING .....  
PROPOSED STORM SEWAGE AND ESCAPE PIPE ..... 20-21  
PROPOSED FILTERS ..... 2  
PROPOSED INTAKE PUMP .....  
PROPOSED SECURITY GATE ..... 20

AGUA  
HEDIONDA  
LAGOON


GENERAL NOTES:

1. LEGAL DESCRIPTION:  
PORTION OF LOT "B" BAYARD ACUA RESIDUAL MAP NO. 833.  
SUPPORTERS OF COMMUNITY AND HEALTH AND PLANNING ACT  
ASSESSORS PARCEL NUMBER: 106-010-11  
(FOR PAR 3 SEE PAR 101-37-15G)
2. TOTAL ACREAGE: 104 A ±
3. EXISTING ZONING: R-1-10
4. PROPOSED ZONING: N/A
5. TOTAL BUILDING COVERAGE: 44% MIN. 67%
6. BUILDING SQUARE FOOTAGE: 20,100 SQ. FT.
7. PERCENT LANDSCAPING: 44% MIN. 40% MIN. 40% MIN. 40% MIN.
8. NUMBER OF OFF PARKING SPACES = 10 ± 8 AUTOS, 3 P.B. BUSES
9. OFFER DR. RECREATIONAL SPACES: N/A
10. EACH UNIT: N/A
11. TOTAL COMMON SPACE: N/A
12. DENSITY: N/A
13. CURB ELEVATION OF STORMAGE SPACES: 100 ± 5 FT. INSIDE BUILDING
14. AVERAGE DAILY TRAFFIC: N/A
15. LOT SIZES: N/A ± 1
16. GENERAL PLAN DESIGNATION: C-5
17. UTILITIES:  
WATER - CARLSBAD MUNICIPAL WATER DISTRICT  
SEWER - CITY OF CARLSBAD  
FIRE - CITY OF CARLSBAD FIRE DEPARTMENT  
ELECTRICITY - CARLSBAD ELECTRIC SCHOOL DISTRICT  
GAS - CARLSBAD ELECTRIC SCHOOL DISTRICT
18. EARTHWORKS QUANTITIES: (SEE ATTACHED DRAWINGS)
19. CUTS: ± 1000 CUBIC YARDS  
FILL: ± 1000 CUBIC YARDS  
IMPORT: ± 670 CUBIC YARDS  
EXPORT: ± 670 CUBIC YARDS  
TOTAL: ± 1000 CUBIC YARDS
20. TOPOGRAHY: (SEE CITY OF CARLSBAD 100 SCALE  
MAP OF CARLSBAD 100 SCALE  
MAP OF CARLSBAD 100 SCALE)
- OWNER: SAN DIEGO GAS AND ELECTRIC COMPANY

RESEARCH HATCHERY FACILITY  
FOR MARINE ENHANCEMENT  
FOR

APPLICANT: HUBBS-SEA WORLD RESEARCH INSTITUTE  
/SAN DIEGO STATE UNIVERSITY

CIVIL ENGINEERING SERVICES DONATED BY:

		DESIGNED BY <u>EL</u> DATE <u>AUG 31</u> DRAWN BY <u>EL</u> SCALE <u>1"=1'</u> PROJECT NO. <u>EL</u> JOB NO. <u>EL</u>	
FIRM NAME: <u>O'Day Engineering</u> FIRM ADDRESS: <u>1000 N. 10th St.</u> CITY: <u>Minneapolis, MN 55412</u> PHONE: <u>612-338-1100</u>		ENGINEER: <u>EL</u> LICENSE NO.: <u>EL</u> DATE: <u>8/31/80</u>	

2021-22  
2021-22

Location of Access dedication

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EXHIBIT NO. 2

APPLICANT NO. 6-93-73

Site How

**California Coastal Commission**

