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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY CERTIFICATION

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| Consistency Certification No. | CC-059-09 |
| Staff | LJS-SF |
| File Date: | 8/24/2009 |
| 3 Months: | 11/24/2009 |
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| Commission Meeting: | 2/10/2010 |

APPLICANT:

North County Transit District

**PROJECT
LOCATION:**

Los Penasquitos Lagoon, San Diego County (**Exhibits 1 and 2**).

**PROJECT
DESCRIPTION:**

Replacement of wood trestle railroad bridges 246.1, 246.9, and 247.1 with in-line concrete bridges

**SUBSTANTIVE
FILE DOCUMENTS:**

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EXECUTIVE SUMMARY

The North County Transit District (“NCTD”) has submitted a consistency certification for replacing three wooden trestle railroad bridges that cross Los Penasquitos Lagoon in San Diego County. The bridges were constructed in the early 1940s, are nearing the end of their design and

service life, and require frequent maintenance due to their age and from deterioration associated with the surrounding coastal environment. The project includes “in-line” construction of three concrete replacement bridges in the same location as the existing bridges and demolition and removal of the existing timber bridges in order to restore full structural and operational efficiency of commuter and freight rail operations at this location. The project also includes the removal of 2,500 square-feet of earthen railroad berm from the lagoon, restoration of temporarily and permanently affected wetland and upland habitat areas, and limiting construction to the September 1 to February 15 time period to avoid the avian breeding and nesting season. The subject consistency certification is the latest in a series of consistency certifications submitted by NCTD for railroad bridge replacement along the Los Angeles to San Diego (“LOSSAN”) rail corridor in San Diego County.

Construction of the project would affect wetland habitat and triggers the three-part test of Section 30233(a) and the functional capacity test of Section 30233(c) of the Coastal Act. The project is necessary to maintain existing capacity in the LOSSAN corridor and, as designed with mitigation measures to restore affected habitat areas, will not adversely affect the function of Los Penasquitos Lagoon. The project is therefore an allowable use and a very minor incidental public facility under both Sections 30233(a) and (c). NCTD examined a project alternative that called for continued repair and maintenance of the three timber bridges. However, given that the bridges are approaching their design life and are located in an environmentally sensitive area that constrains access for repair work, this alternative was rejected. The proposed alternative uses “in-line” replacement construction methods, removes over 2,400 sq.ft. of earthen railroad berm from the lagoon, eliminates timber pilings from the lagoon, and reduces shading effects. The project is the least damaging feasible alternative to maintaining rail operations in this area. Because the project will not result in a reduction in wetland habitat and temporary impacts to wetland habitat will be mitigated by restoration to pre-project conditions, no additional wetland mitigation is required. The project is consistent with the wetland policy of the California Coastal Management Program (CCMP; Coastal Act Section 30233).

The project includes avoidance measures to protect the federally listed tidewater goby and construction timing restrictions to protect listed bird species that nest and breed in the lagoon and adjacent upland areas. However, Bridge 246.1 is located within California gnatcatcher-occupied coastal sage scrub habitat, and while the proposed project includes avoidance, minimization, mitigation, and monitoring measures for impacts this habitat type, the proposed replacement of Bridge 246.1 and the associated maintenance way on the east side of the railroad track will nevertheless result in the permanent loss of 3,500 sq.ft. and temporary impacts to 0.47 acres of Diegan coastal sage scrub, an environmentally sensitive habitat area. The project is not a use “dependent on the habitat resources.” As such, the project is inconsistent with the “allowable use” test of Section 30240(a) of the Coastal Act, which requires that “. . . only uses dependent on those resources shall be allowed within . . . [environmentally sensitive habitat] areas.” Therefore, the project can only be found consistent with the Coastal Act through the “conflict resolution” provision contained in Section 30007.5.

The project includes commitments to protect water quality during construction, including preparation of a Storm Water Pollution Prevention Plan, construction and post-construction best

management practices, installation of a debris containment net under each bridge during demolition work, and the removal of creosote-soaked timber pilings from the lagoon. The project is consistent with the water quality protection policies of the CCMP (Coastal Act Sections 30231 and 30232). The project will not adversely affect any existing public access opportunities at Los Penasquitos Lagoon and would improve public access by maintaining the rail line used by NCTD and other rail services, which in turn helps to reduce automobile traffic on I-5 in an area where this freeway supports public access and recreation. The project is consistent with the public access and recreation policies of the CCMP (Coastal Act Sections 30210, 30212, and 30252).

The project consists of replacing three existing wooden trestle railroad bridges with precast concrete bridges. The design of the proposed bridges is consistent with other NCTD and Amtrak railroad bridge replacement projects previously reviewed by the Commission at locations in San Diego County. The proposed replacement bridges will not adversely affect public views to or across Los Penasquitos Lagoon and the project is consistent with the public view policy of the CCMP (Coastal Act Section 30251). The proposed bridge replacement project will not adversely affect known cultural resources and work will stop and mitigation measures implemented should any cultural resources be discovered during project construction. The project is consistent with the cultural resource policy of the CCMP (Coastal Act Section 30244).

The proposed project creates a conflict between allowable use test of the environmentally sensitive habitat policy (Section 30240) on the one hand, and the wetland (Section 30233), water quality (Sections 30231 and 30232), and public access and recreation policies (Sections 30210, 30212, and 30252) on the other. Although impacts have been avoided and minimized where feasible, and residual impacts would be adequately mitigated, the project is not an allowable use under the environmentally sensitive habitat area (ESHA) policy of Section 30240(a) of the Coastal Act. If the Commission were to object to the proposed project based on ESHA allowable use policy requirements, the result would lead to conditions that are inconsistent with the wetland habitat (Section 30233), water quality (Sections 30231 and 30232), and public access and recreation (Sections 30210, 30212, and 30252) policies of the Coastal Act. In resolving the Coastal Act conflict raised, the Commission finds that the impacts on coastal resources from not constructing the project would be more significant and adverse than the project's inconsistency with the ESHA allowable use requirement, given that the impacts to coastal sage scrub habitat would be adequately mitigated. The Commission therefore concludes that under Sections 30007.5 concurrence with this consistency certification is consistent with the Coastal Act because it is, on balance, most protective of significant coastal resources.

STAFF SUMMARY AND RECOMMENDATION:

I. STAFF SUMMARY.

A. Project Description. The North County Transit District (“NCTD”) proposes to replace three existing wooden trestle railroad bridges that cross Los Penasquitos Lagoon, which is located just inland of the Pacific Ocean within the Torrey Pines State Natural Reserve and south of the City of Del Mar in San Diego County (**Exhibits 1 and 2**). The three bridges 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. NCTD states that the existing bridges were constructed in the early 1940s, are nearing the end of their design and service life, and require frequent maintenance due to their age and from deterioration associated with the surrounding coastal environment. The project includes construction of three concrete replacement bridges in the same location as the existing bridges (using “in-line” construction methods), and demolition and removal of the existing timber bridges (**Exhibits 3 and 4**). Upon replacement of the three bridges, full structural and operational efficiency would be restored at this location, and public and environmental safety concerns alleviated for people and freight being transported by rail over Los Penasquitos Lagoon.

The proposed project includes the following components:

- Replacement bridges would be similar in size to the existing bridges and would consist of 30-inch-deep precast/pre-stressed concrete box girder spans. Each bridge would be 23 feet wide and the lengths of Bridges 246.1, 246.9, and 247.1 would be 280, 196, and 84 feet, respectively (**Exhibits 5-10**).
- Armor Flex will be incorporated into the design of bridge abutments. This is a flexible, interlocking matrix of concrete blocks connected by a series of cables that pass longitudinally through preformed ducts in each block. Armor Flex will provide erosion protection around the bridge abutments, while allowing water to permeate into the ground and wetland plants to grow within the preformed openings between the blocks.
- In addition to the removal of the three timber bridges and the large number of timber piles from Los Penasquitos Lagoon, the project also includes the removal of approximately 2,500 sq.ft. of earthen railroad berm from the lagoon environment due to the lengthening of the bridges and relocation of abutments.
- A new permanent maintenance road for Bridge 246.1 will be constructed within the existing disturbed portion of the railroad right-of-way.
- Phase 1 of construction includes installation of piles and bent caps while maintaining railroad service. Holes would be drilled on either side and down the center of the existing bridges at 28-foot intervals for the 2-foot-diameter concrete piles, followed by forming and casting the concrete bent caps. Bridge 246.1 will have 11 piles, Bridge 246.9 eight piles, and Bridge 247.1 four piles.
- Phase 2 includes demolition and removal of the existing timber bridges (piles would be removed to at least two feet below existing grade), compaction of embankment behind the new abutments, installation of the new bridge girders, and replacement of railroad track during two to three railroad service outages.

- Construction staging areas will be used to store equipment and materials and will use large timber matting in lieu of rock to reduce impacts to vegetation and soil. Construction access to Bridge 246.1 will be provided from the new maintenance access road within the existing railroad right-of-way. A temporary timber bridge will be constructed on either side of the existing Bridge 246.1 to facilitate construction while maintaining water flow in the lagoon. Bridges 246.9 and 247.1 can only be accessed by rail due to their remote location within the lagoon. All materials and equipment will be delivered to these construction sites via hi-rail equipment and temporary staging areas will be established adjacent to the railroad berm.
- The project will be scheduled to occur between September 1 and February 15 to avoid endangered bird species breeding activities within Los Penasquitos Lagoon and adjacent upland habitat areas.

The subject consistency certification is the latest in a series of consistency certifications submitted by NCTD for railroad bridge replacement and construction of sections of double tracking along the LOSSAN corridor in San Diego County. The Commission previously concurred with: (1) the 2.6-mile-long Pulgas to San Onofre double tracking at the north end of Camp Pendleton (CC-086-03); (2) the 2.9-mile-long Santa Margarita River double tracking project at the south end of Camp Pendleton (CC-052-05); (3) replacement of the railroad bridge over Agua Hedionda Lagoon (CC-055-05); (4) the 2.7-mile-long O'Neill to Flores double track project in central Camp Pendleton (CC-004-05); and (5) the 1.2-mile-long extension of passing track and construction of one replacement and one new railroad bridge over Loma Alta Creek in Oceanside (CC-008-07).

B. Procedures – Permitting Issues. The project triggers federal consistency review because it needs a U.S. Army Corps of Engineers (“Clean Water Act Section 404”) permit. The Commission also believes the project is subject to the permitting requirements of the Coastal Act; however, the North County Transit District (NCTD) disagrees with this position. Notwithstanding this disagreement about whether a coastal development permit is needed, the Commission concurs with this consistency certification because it is consistent with the Coastal Act. The Commission further notes that the NCTD has applied for a number a 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. North County Transit District has certified that the proposed activity complies with California’s approved coastal management program and will be conducted in a manner consistent with such program.

II. STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following motion:

Motion: I move that the Commission **concur** with North County Transit District’s consistency certification CC-059-09 that the project described therein is fully consistent with the enforceable policies of the California Coastal Management Program.

Staff Recommendation:

The staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the certification and adoption of the following resolution and findings. An affirmative vote of the 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 made by the North County Transit District for the proposed project, finding that the project is consistent with the enforceable policies of the California Coastal Management Program.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Wetlands. The Coastal Act provides the following:

Section 30233(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:

...

(4) 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 wetlands and estuaries shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the California Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, “Acquisition Priorities for the Coastal Wetlands of California”, shall be limited to very minor incidental public facilities, restorative measures, nature study . . . if otherwise in accordance with this division.

NCTD states that by replacing the numerous wood pilings that support the three wooden trestle bridges in Los Penasquitos Lagoon with concrete pilings, and by removing portions of the railroad track berms adjacent to the three bridges, the proposed replacement bridges will decrease the amount of wetland fill in Los Penasquitos Lagoon, compared to the existing bridges. The project nevertheless triggers the three-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 Los Penasquitos 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)(4), 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.4th 493, 517, the court found that:

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

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-055-05, NCTD, Railroad Bridge Replacement over Agua Hedionda Lagoon; 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 stated in CC-086-03 the following:

Allowable Use Test - Coastal Act Section 30233(a)

Section 30233(a) does not authorize wetland fill unless it meets the “allowable-use” test. Similar to the Commission decision regarding safety improvements at the Santa Barbara Airport (CC-58-01), the proposed project is an allowable use as an incidental public service because is it necessary to maintain existing passenger service.

The Commission responded in CC-086-03 as follows:

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 bridge replacement project in Los Penasquitos Lagoon does not involve additional tracks; the aforementioned consistency certifications 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 Los Penasquitos 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 Los Penasquitos Lagoon; and (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 guidelines¹ and several past Commission permit reviews.² 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)(4) and Section 30233(c). Moreover, the project will not adversely affect the functional capacity of Los Penasquitos Lagoon, another 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 three proposed single-track replacement bridges are necessary to maintain existing capacity, having reviewed a number of NCTD double-track proposals, the Commission is aware of the potential for future second bridges across Los Penasquitos Lagoon. The Commission

¹ 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).”

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

wishes to reiterate the notice it gave to 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)(4). 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.

NCTD responded to Commission staff inquiries regarding the potential for the subject bridge replacement project to potentially “lock-in” Los Penasquitos Lagoon as the route for a double-track segment along this portion of the LOSSAN corridor, and possibly eliminating the potential for relocating the railroad track out of the lagoon at some future date. NCTD stated that:

The Los Angeles-to-San Diego (LOSSAN) Program EIR/EIS (December 2006) identifies two options for a second railroad track in the vicinity of these three railroad bridges:

1) Camino del Mar Tunnel #1. The LOSSAN EIR/EIS states that “Double-tracking would be done via tunnel underneath Camino Del Mar. The tunnel would begin at Jimmy Durante Boulevard, and daylight at Carmel Valley Road where tracks would then connect with the existing LOSSAN alignment across Los Penasquitos Lagoon”. The LOSSAN EIR/EIS does not propose double-track across the lagoon. Replacement of Bridges 246.1, 246.9, and 247.1 will not in any way preclude implementation of this double track option as the replacement bridges will be located in essentially the same location as the existing bridges. This tunnel option would connect to the existing LOSSAN alignment near Bridge 246.1. The replacement bridge has been designed to be compatible with a future connection on either side of the existing track.

2) Tunnel under Interstate 5. The LOSSAN EIR/EIS states that “Double-tracking with this option would be done via tunnel that would run under I-5 and daylight along the southern boundary of the San Dieguito Lagoon...The existing rail track on the Del Mar bluffs would be removed from service. This option would be the most costly of the options considered but it would avoid the Penasquitos Lagoon required in the Camino del Mar #1 option, and the existing lagoon crossing structure would be removed from service. This option was developed and carried forward for further evaluation at the request of resource management agencies in the LOSSAN region”. Replacement of Bridges 246.1, 246.9, and 247.1 will not in any way preclude implementation of this double track option because the portion of the railroad within the lagoon would be removed from service.

The Commission finds that the proposed bridge replacement project will not prevent any future double-track alignment alternatives along this segment of the LOSSAN corridor from receiving

due consideration by NCTD during future project and environmental planning. The Commission believes that for any second track ultimately proposed across the lagoon, the same cautionary note discussed above 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 examined an alternative project that would repair the existing timber trestle bridges. However, NCTD determined that this alternative is not feasible:

Bridges 246.1, 246.9, and 247.1 are close to reaching the end of their service life and currently require substantial maintenance. These bridges have required frequent maintenance due to their age and typical deterioration associated with the surrounding marine environment. From the operational standpoint, if any complications arise during repair/maintenance of these bridges, the result is reduced train speed operation, schedule deviations, and possibly a complete track shut-down, which will require busing of all Amtrak and Coaster trains between Sorrento Valley and Del Mar. This will result in an overall decline in railroad efficiency and potentially ridership. Replacing these three bridges with new structures, designed to modern standards, will substantially reduce future maintenance needs on these structures, thereby enhancing the railroad's reliability, reducing potential delays and allowing NCTD maintenance dollars to be utilized in other areas. Furthermore, all-new bridge replacements are expected to reduce recurring environmental impacts associated with the ongoing repair/maintenance of the existing timber trestle railroad bridges. Replacement of the bridges will occur "in-line" (essentially the same location as the existing bridges).

In addition, previous and ongoing repair and maintenance activities at these three bridges have been and continue to be significantly hindered by the poor access and environmental constraints due to their location within Los Penasquitos Lagoon (**Exhibits 1-3**).

The Commission notes that the proposed alternative uses an "in-line" bridge replacement method that significantly reduces disturbance to the lagoon environment by limiting construction to the existing railroad right-of-way rather than constructing a replacement bridge parallel to the existing bridge. The replacement project will also result in a net reduction of railroad trestle structures from the lagoon of 147 sq.ft. In addition, at Bridge 246.1, the bridge abutment will be pushed back 21 feet on the north abutment and seven feet on the south abutment. This removes approximately 1,680 sq.ft. of existing railroad berm from the lagoon. At Bridges 246.9 and 247.1, the bridge abutments will be pushed back seven feet on the north and south ends of the bridges. This removes approximately 840 sq.ft. of existing railroad berm from the lagoon. The total amount of railroad berm and structure removed from the lagoon is 2,667 sq.ft.

Given the net reduction in the volume of railroad berms and structures in the lagoon under the proposed project, the "in-line" method of construction, and the constraints associated with continued repair of the existing bridges, the Commission agrees with NCTD that no less

environmentally damaging alternative for this single-track bridge replacement project is feasible or available.

Concerning mitigation, the existing timber pilings at the three bridges total slightly approximately 365 sq. ft. of existing wetland fill. These pilings would be replaced with 23 new 2-foot-diameter concrete pilings totaling 218 sq. ft. of wetland fill. The result is a 147 sq. ft. reduction in wetland fill from pilings. As noted above, the project also eliminates 2,520 sq.ft. of wetland fill associated with removal of railroad berm from the lagoon due to the lengthening of the bridges. NCTD also notes that there will be less shading from the smaller extent of structural pilings over the lagoon. The consistency certification, *Biological Technical Report*, and *Revegetation Plan* also include extensive documentation on the impact avoidance measures that are incorporated into the project, including “in-line” construction method, use of Armor Flex at the bridge abutments, a shortened maintenance road and use of temporary construction bridges at Bridge 246.1, rail access only at the Bridges 246.9 and 247.1 work sites, and best management practices to protect wetland habitat and water quality during and after construction.

Because the project will not result in a permanent reduction in wetland acreage, and because temporary impacts to wetland habitat will be mitigated by restoration to pre-project conditions as described in the project *Restoration Plan* (January 2010), the Commission also finds that no further wetland mitigation is required under Section 30233. The Commission also notes that in addition to the onsite restoration of temporary impacts, NCTD will also create approximately 3,500 sq.ft. of southern coastal salt marsh habitat in a currently unvegetated area northeast of Bridge 246.1 within a temporary impact area as mitigation for temporal impacts to wetland habitat. NCTD will also remove approximately one-third acre of non-native iceplant on the east side of the railroad track north of Bridge 246.1 as further mitigation for temporal wetland habitat impacts. Because the project will reduce the bridge piling footprint in the lagoon, the project will slightly improve water circulation and will not adversely affect the functional capacity 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 proposed project would not cause significant adverse impacts to wetland habitat and would be consistent with the wetland protection policies of the California Coastal Management Program (CCMP; Coastal Act Section 30233).

B. Environmentally Sensitive Habitat. The Coastal Act provides the following:

Section 30240.

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

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

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

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

The three bridge locations support suitable habitat for the federally listed tidewater goby. Prior to the start of construction tidewater goby surveys will be conducted and, if gobies are found within the work area, U.S. Fish and Wildlife Service-approved exclusionary methods will be implemented. Prior to the start of construction, blocking seines will be installed at least 50 feet upstream and downstream from the outer limits of in-water work to minimize gobies from entering this area. After installation, all gobies will be seined by a permitted biologist and relocated to an area outside the perimeter of the blocking seines.

The consistency certification addresses potential impacts on sensitive bird species and habitat that are known to occur adjacent to the project area. To avoid and minimize potential impacts, project construction will be scheduled to avoid the avian breeding season. However, NCTD states that should final construction activities (e.g., demobilization) occur during the beginning of breeding season, indirect impacts to sensitive zoological species such as the federally endangered California gnatcatcher and light-footed clapper rail may occur. In that case, preventive mitigation measures would be implemented, including nesting surveys, noise monitoring, noise attenuation structures, and suspension of noise generating activities. In addition, the project *Biological Technical Report* lists numerous general preventative mitigation measures that will be implemented during the project construction period, including using a U.S. Fish and Wildlife Service-approved biologist to oversee compliance with all measures to protect biological resources. Despite these avoidance and minimization measures, and while the bridge replacements would be constructed “in-line” along the existing railroad track, the project would still be located within and affect an environmentally sensitive habitat area as defined by the Coastal Act – gnatcatcher occupied Diegan coastal sage scrub.

The consistency certification next examines in greater detail how the project will affect Diegan coastal sage scrub. NCTD states that the project is designed to avoid significant disruption to Diegan coastal sage scrub habitat. However, approximately 3,500 sq.ft. of this habitat type in scattered patches adjacent to the railroad right-of-way on the north side of Bridge 246.1 would be permanently lost due to construction of the bridge maintenance way. In addition, the project will temporarily impact an additional 0.47 acres of Diegan coastal sage scrub habitat adjacent to this bridge. The *Protocol California Gnatcatcher Survey Report (November 2007)* prepared for NCTD for the proposed project states that a U.S. Fish and Wildlife Service protocol survey was conducted in 2007 in areas that support Diegan coastal sage scrub in the Los Penasquitos Lagoon survey area. This 235-acre study area includes approximately 17 acres of potential California gnatcatcher habitat, located primarily at the northern end of the lagoon east and west of the railroad line. The survey results reported that within the Los Penasquitos Study Area six individual California gnatcatchers were observed utilizing six territories within the study area.

These territories were identified in the northwest portion of the study area and all observed California gnatcatchers were observed within the larger patches of Diegan coastal sage scrub east of the North Torrey Pines Bridge. The *Survey Report* concluded that:

If bridge replacement occurs within the California gnatcatcher occupied areas as identified in Figures 2-4, appropriate mitigation would be required. These measures may include onsite preservation/restoration (as the project site offers opportunities for Diegan coastal sage scrub habitat restoration which could increase the total number of California gnatcatchers within the project area). Other avoidance mitigation measures may include construction outside the breeding season (February 15 – August 15) and/or noise abatement measures.

The project *Revegetation Plan* (January 2010) states that:

When project construction is completed, mitigation for impacts would be through onsite habitat restoration of temporarily impacted areas and onsite creation of habitat for permanently impacted areas. Restoration and creation of habitats will include a three to five year monitoring plan that includes planting/restoration measures, success criteria, and monitoring efforts as required by the RWQCB.

...

Permanent impacts to Diegan coastal sage scrub would be mitigated through onsite habitat creation of Diegan coastal sage scrub within the UD [urban/developed] area east of Torrey Pines State Beach parking lot. Mitigation would occur at a 2:1 ratio.

The *Revegetation Plan* includes details on site preparation, schedules, sources of plant materials, maintenance activities and schedules, monitoring methods and schedules, success criteria, and reporting. NCTD will submit copies of all revegetation monitoring reports to the Commission.

However, Bridge 246.1 is located within California gnatcatcher-occupied coastal sage scrub habitat, and while the proposed project includes avoidance, minimization, mitigation, and monitoring measures for impacts this habitat type, the proposed replacement of Bridge 246.1 and the associated maintenance way on the east side of the railroad track will nevertheless result in the permanent loss of 3,500 sq.ft. and temporary impacts to 0.47 acres of Diegan coastal sage scrub, an environmentally sensitive habitat area. The project is not a use “dependent on the habitat resources.” As such, the Commission finds the project inconsistent with the “allowable use” test of Section 30240(a) of the Coastal Act, which requires that “. . . only uses dependent on those resources shall be allowed within . . . [environmentally sensitive habitat] areas.” Therefore, the only way the Commission could concur with this consistency certification would be if it finds the project consistent with the Coastal Act through the “conflict resolution” provision contained in Section 30007.5.

As discussed in Section III.G of this report, not approving the project would be inconsistent with the wetland, water quality, and public access and recreation policies of the Coastal Act, because

it would eliminate the project benefits to coastal resources from reducing wetland fill at bridge abutments, improving water quality and circulation from removal of bridge structures and fill, and maintaining safe and efficient rail transit that provides public access to the San Diego County shoreline. Thus, the project creates a conflict between the allowable use test of the environmentally sensitive habitat policy (Section 30240) on the one hand, and the wetlands policy (Section 30233), water quality policy (Sections 30231 and 30232), and public access and recreation policies (Sections 30210, 30212, and 30252) on the other. In the conclusion section of this report (Section G) the Commission will resolve these conflicts and determine that concurrence with this consistency certification would, on balance, be most protective of significant coastal resources.

C. **Water Quality.** The Coastal Act provides the following:

Section 30231. The biological productivity 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. 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 in its consistency certification commitments for water quality protection for the proposed replacement bridges:

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

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]...

- *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 50 feet of sensitive areas (i.e., Los Penasquitos 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 that a debris containment net will be installed under each of the bridges to catch any debris generated by demolition activities. Access to areas under the bridges will be necessary for installation and removal of the debris containment system. As an additional precaution, booms will be strung across lagoon waters adjacent to each bridge to keep material that might escape the containment system from being carried away from the project site and to facilitate retrieval. The removal of the three existing timber trestle bridges will benefit water quality through removal of creosote-soaked pilings from Los Penasquitos Lagoon. As noted in the previous section of this report, erosion controls will also include post-construction revegetation activities. With the above measures, the Commission finds that the proposed project would not cause significant adverse water quality impacts and would be consistent with the water quality protection policies of the CCMP (Coastal Act Sections 30231 and 30232).

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

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 provides that access should not be provided where it would be inconsistent with public safety, military security needs, or the protection of fragile coastal resources. Section 30252 encourages public transit and identifies reducing traffic congestion as a coastal access benefit, providing, in part, that:

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

In reviewing 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 in its consistency certification:

Replacement of Bridges 246.1, 246.9, and 247.1 will not interfere with existing public access to coastal areas and recreational opportunities. Replacement of the bridges will occur 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 (ROW) has occurred by members of the public. These uses include walking, running, and access to some portions of Los Penasquitos Lagoon.

Replacement of the bridges conforms with the public access objectives of the California Coastal Act because no changes are proposed to existing public coastal accessways. There are no authorized coastal accessways located within the railroad ROW. The purpose of the proposed project is to replace the existing, damaged Railroad Bridges 246.1, 246.9, and 247.1 in order to restore structural and operational capacity for trains passing over portions of Los Penasquitos Lagoon, and to protect public and environmental safety.

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.

...

Portions of the Torrey Pines State Beach parking lot may be utilized for construction staging/laydown areas, subject to State Parks approval. The parking lot would only be used during the non-peak season, which is consistent with the project's commitment to construct outside of the [endangered species February 15 to September 1] breeding season.

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.

The three railroad bridges to be replaced by NCTD are located within Los Penasquitos Lagoon, which is designated as Los Penasquitos Marsh Natural Preserve within Torrey Pines State Natural Reserve. The designated Marsh Trail follows along the base of the bluff at the western edge of the lagoon and well west of the railroad track as it passes through the center of the lagoon. There are no other designated public trails that approach or cross over/under the railroad right-of-way. As a result, the bridge replacement project will not cause any changes in or adverse impacts to public access or recreation in this area.

The Commission agrees with NCTD and finds that the project would not adversely affect any existing public access opportunities and would improve public access by maintaining the rail line used by NCTD and other rail services, which in turn helps to reduce automobile traffic on I-5 in an area where this freeway supports public access and recreation. The Commission therefore finds the project consistent with the public access and recreation policies of the CCMP (Coastal Act Sections 30210, 30212, and 30252).

E. 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.

Regarding potential project impacts on scenic coastal views, the consistency certification states that:

The proposed project is located west of I-5, within the NCTD ROW [right-of-way], inaccessible to the general public. Implementation of the proposed project will improve views to the west from automobiles using Carmel Valley Road through the removal of the existing trestle bridge that obstructs views to the west. The new bridge will require

substantially less bridge mass in Los Penasquitos Lagoon, increasing the views to the west. The proposed project will not adversely affect the scenic or visual quality of the area.

The project consists of replacing three existing wooden trestle railroad bridges with precast concrete bridges. The design of the proposed bridges is consistent with other NCTD and Amtrak railroad bridge replacement projects previously reviewed by the Commission at locations in San Diego County. The Commission agrees with NCTD that the proposed replacement bridges will not adversely affect public views to or across Los Penasquitos Lagoon. The Commission therefore finds that the proposed project is consistent with the public view policy of the CCMP (Coastal Act Section 30251).

F. Cultural Resources. Section 30244 of the Coastal Act provides that “Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.” Included in the subject consistency certification is the February 2009 report, *Cultural and Historic Resources for the North County Transit District Bridge Replacement Project*, prepared by ASM Affiliates. The report presents the results of a cultural and historical resource inventory and evaluation conducted within the Area of Potential Effect (APE) for the proposed project. The report states that:

This study included a literature and records search, Native American consultation, a pedestrian survey of the project APE, and evaluation of Bridges 246.1, 246.9, and 247.1 for the National Register of Historic Places (NRHP). No archaeological sites were identified within the project APE as a result of the pedestrian survey or records search. Bridges 246.1, 246.9, and 247.1 are recommended not eligible for the NRHP. The proposed project will not result in adverse impacts to prehistoric or historical resources.

Notwithstanding this conclusion, NCTD has acknowledged in its consistency certification that there is always a possibility that previously unknown cultural resources may become visible once vegetation is removed or during construction excavation. Should any previously undiscovered historic or prehistoric resources be found during construction, NCTD has committed that work will stop until such time that the resources can be evaluated by a qualified archaeologist and appropriate mitigation actions taken as determined necessary by a qualified archaeologist.

The Commission finds that the proposed bridge replacement project will not adversely affect known cultural resources, and that work will stop and mitigation measures implemented should any cultural resources be discovered during project construction. Therefore, the Commission determines that the proposed project is consistent with the cultural resource policy of the CCMP (Coastal Act Section 30244).

G. Conflict Between Coastal Act Policies. Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies:

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the

provisions of this division such conflicts be resolved in a manner that on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

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

As discussed previously in Section III.B, above, because sections of the proposed project would be located within occupied coastal sage scrub/gnatcatcher habitat, the project is located within an environmentally sensitive habitat area but is not consistent with the “allowable use” test of Section 30240(a) of the Coastal Act, which requires that “. . . only uses dependent on those resources shall be allowed within . . . [environmentally sensitive habitat] areas.” Therefore, the only way the Commission could find the project consistent with the Coastal Act would be through the “conflict resolution” provision (Section 30007.5).

As described in the wetland section above (Section III.A), one of the project purposes/benefits is the reduction of wetland fill in Los Penasquitos Lagoon from the removal of trestle pilings and railroad track berms with the construction of the replacement bridges. The project will result in the removal of 2,667 sq.ft. of railroad structures and berm from the lagoon, the new bridges will create less shading of wetland habitat due to the reduced number of support pilings for the new bridges, and the reduced number of bridge pilings will improve water circulation within the wetland areas in this section of the lagoon. In addition, the replacement bridges will eliminate the need for NCTD to enter and temporarily disturb wetland habitat on a periodic basis to perform repair and maintenance work on the three deteriorating bridges within the lagoon. The wetland habitat impacts that would continue to occur if this project is objected to would be inconsistent with the wetland policy of the Coastal Act.

As described in the water quality section above (Section III.C), one of the project purposes/benefits is the removal of timber pilings and sections of earthen railroad berm from Los Penasquitos Lagoon. These activities will result in creosote-soaked pilings removed from lagoon waters, increased water circulation due to the reduced number of bridge pilings, and elimination of in-water repair and maintenance work on deteriorating bridge structures. The replacement bridges will lead to improved water quality and circulation in Los Penasquitos Lagoon. The impacts that would continue to occur to water quality if this project is objected to would be inconsistent with the water quality policy of the Coastal Act.

As described in the public access and recreation section above (Section III.D), one of the project purposes/benefits is reduced traffic congestion on area highways and improved public access to the coast by maintaining safe and efficient operations of existing passenger rail service along the San Diego County shoreline. Traffic congestion interferes with access to the coastal recreational

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

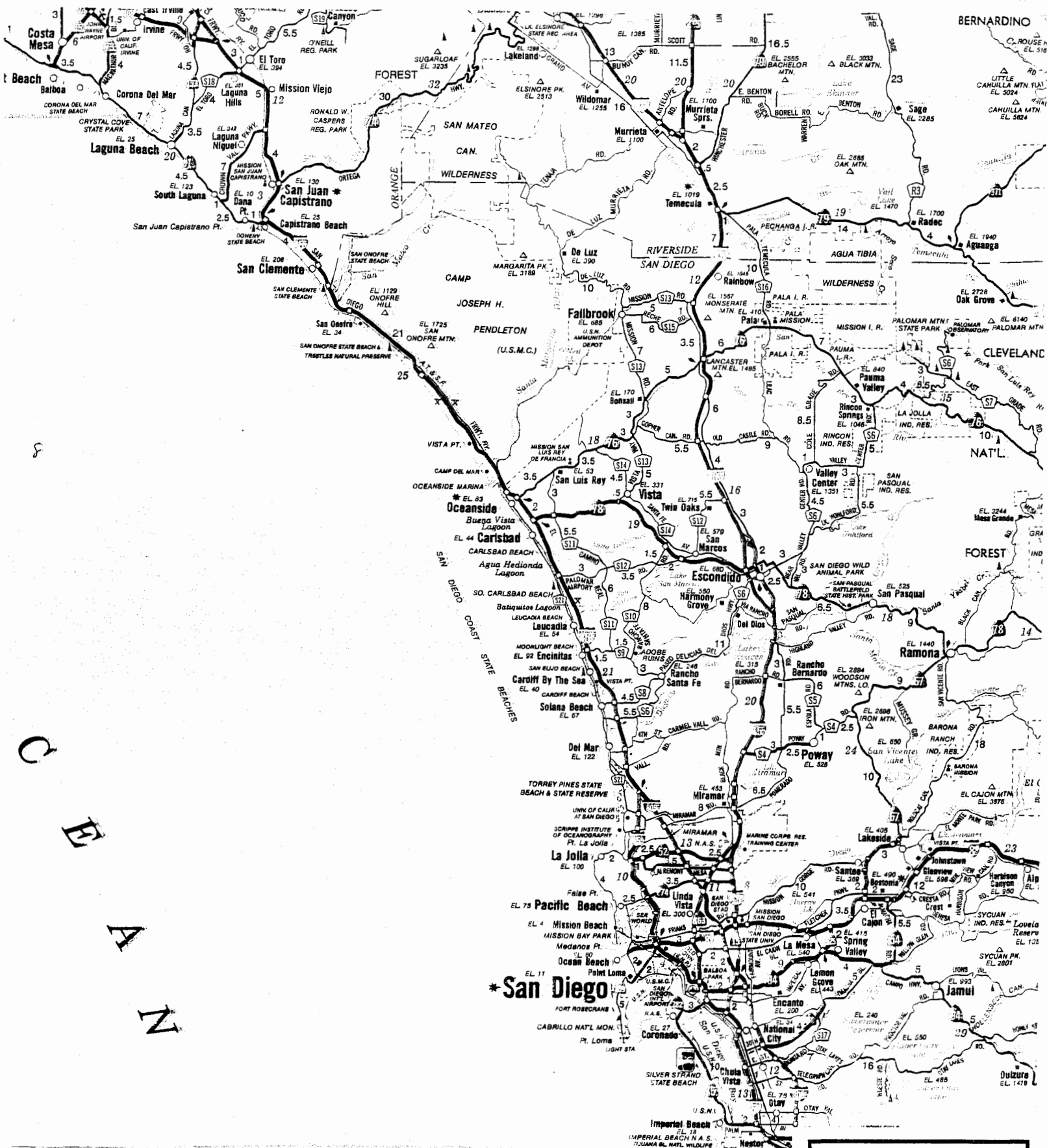
The Commission therefore finds that the proposed project creates a conflict between allowable use test of the environmentally sensitive habitat policy (Section 30240) on the one hand, and the wetland (Section 30233), water quality (Sections 30231 and 30232), and public access and recreation policies (Sections 30210, 30212, and 30252) on the other.

2) Conflict Resolution. Having established a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in manner that is on balance most protective of coastal resources. In this case, the proposed project will result in a non-allowable use to occur within an environmentally sensitive habitat area. Replacement of an existing railroad bridge and construction of the associated maintenance way would result in the permanent loss of 3,500 sq.ft. of gnatcatcher-occupied Diegan coastal sage scrub habitat and temporary impacts to 0.47 acres of this habitat type. Adequate on-site mitigation is being provided by NCTD to compensate for the habitat loss. On the other hand, as stated above, objecting to this consistency certification would result in conditions that would be inconsistent with the wetland policy (Section 30233), water quality policy (Sections 30231 and 30232), and public access and recreation policies (Sections 30210, 30212, and 30252). In resolving the Coastal Act conflict raised, the Commission finds that the impacts on coastal resources from not constructing the project would be more significant and adverse than the project's non-conformance with the environmentally sensitive habitat area allowable use policy, given that the impacts to coastal sage scrub habitat are adequately mitigated. The Commission therefore concludes that concurring with this consistency certification would, on balance, be most protective of coastal resources.

SUBSTANTIVE FILE DOCUMENTS:

1. CC-086-03 (NCTD, Pulgas to San Onofre double tracking at the north end of Camp Pendleton)
2. CC-052-05 (NCTD, Santa Margarita River double tracking project at the south end of Camp Pendleton)
3. CC-055-05 (NCTD, replacement of the railroad bridge over Agua Hedionda Lagoon)

4. CC-004-05 (NCTD, O'Neill to Flores double track project in central Camp Pendleton)
5. CC-008-07 (NCTD, extension of passing track and construction of one replacement and one new railroad bridge over Loma Alta Creek in Oceanside)
6. NCTD 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).

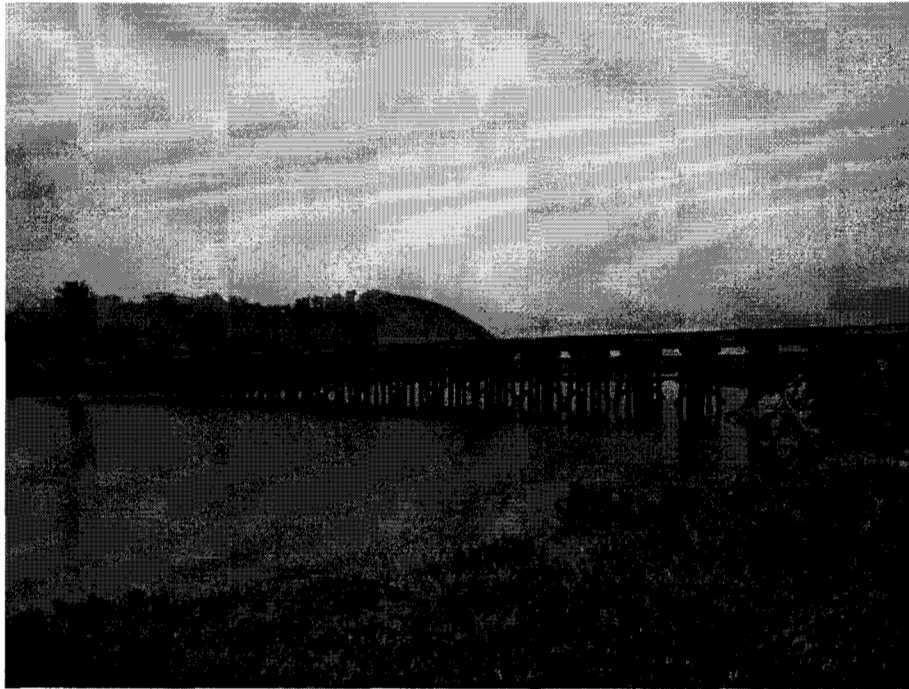


| |
|-----------------|
| EXHIBIT NO. 1 |
| APPLICATION NO. |
| CC-059-09 |

MOW Los Peñasquitos Lagoon Bridge Replacements (in-line) (246.1, 246.9, and 247.1)



| |
|-----------------|
| EXHIBIT NO. 2 |
| APPLICATION NO. |
| CC-059-09 |
| |



SOURCE: HDR, Inc., 2009; BRG Consulting, Inc., 2009

4/29/09



NCTD Bridge Replacement Project - Alternatives Report

Site Photograph Bridge 246.1

FIGURE

EXHIBIT NO. 3

APPLICATION NO.

CC-059-09



Bridge 246.9



Bridge 247.1

SOURCE: HDR, Inc., 2009; BRG Consulting, Inc., 2009

4/29/09



NCTD Bridge Replacement Project - Alternatives Report

Site Photograph Bridge 246.9 and 247.1

FIGURE

EXHIBIT NO. 4

APPLICATION NO.

CC-059-09

NORTH COUNTY TRANSIT DISTRICT PROJECT PLANS FOR THE REPLACEMENT OF TIMBER BRIDGE 246.1

NCTD GENERAL NOTES

1. FOR ALL EMERGENCIES AFFECTING THE TRUCK AND TRAIN SAFETY, CALL NCTD'S 24 HOUR SECURITY OFFICE AT (760) 964-6700.
2. ALL PERSONNEL ENTERING THE RAILROAD RIGHT-OF-WAY SHALL COMPLY WITH NORTH COUNTY TRANSIT DISTRICT LIMITED REQUIREMENTS. FAILURE TO COMPLY WILL BE GROUNDS FOR TERMINATION OF WORK AND REWARD OF DAMAGES.
3. PRIOR TO THE START OF CONSTRUCTION AND AT THE CONTRACTOR'S EXPENSE, ALL PERSONNEL INCLUDING SUBCONTRACTORS AND THIRD PARTIES SHALL COMPLETE NCTD'S CONTRACTOR SAFETY TRAINING COURSE. CONTACT LEE LUMMS AT (760) 967-2951 TO ARRANGE TRAINING. NCTD WILL PROVIDE A COURSE CERTIFICATE TO THE CONTRACTOR. THE JOB SITE NCTD FLAGMAN/DATE-IN-CHARGE (EIC), THE NCTD FLAGMAN/EIC HAS SOLE RESPONSIBILITY TO PROTECT THE RAILROAD INFRASTRUCTURE AND OPERATIONS AT ALL TIMES. THE CONTRACTOR SHALL FOLLOW THE FLAGMAN/EIC'S DIRECTION.

NCTD GENERAL NOTES (CONT'D)

5. ALL PERSONS ENTERING THE RAILROAD RIGHT-OF-WAY SHALL HAVE TAKEN THE NCTD SAFETY TRAINING COURSE AND SHALL HAVE THE NCTD SAFETY STICKER AFFIXED TO THEIR HARD HAT. NO WORK SHALL BE PERFORMED WITHIN THE RAILROAD RIGHT-OF-WAY WITHOUT A RIGHT-OF-CURRY PERMIT. FLAG REQUESTS SUBMITTED TO NCTD SHALL BE REVIEWED AND APPROVED BY NCTD PRESENT DURING ALL CONSTRUCTION AND RELATED ACTIVITIES.
7. THE CONTRACTOR SHALL COMPLY WITH ALL ENVIRONMENTAL AND THIRD PARTY PERMITS AS REQUIRED BY THE WORK.
8. THE CONTRACTOR SHALL MAKE THE NECESSARY ARRANGEMENTS FOR EACH EQUIPMENT OPERATOR TO HAVE CONSTANT AND DIRECT RADIO CONTACT WITH THE NCTD FLAGMAN/DATE-IN-CHARGE (EIC) THROUGHOUT CONSTRUCTION AND DIRECT CONTACT WITH THE NCTD FLAGMAN/EIC.
9. THE CONTRACTOR SHALL HAVE THE PERMITTED STAMPED SET OF PLANS ON-SITE. WORK WILL BE TERMINATED BY NCTD SHOULD NO STAMPED PLANS BE ON-SITE.
10. CONTRACTOR SHALL COMPLY WITH ALL NCTD (REG-246) AS APPLICABLE TO THE WORK. ALL WORKS SHALL BE ESTABLISHED PER THE TECHNICAL SPECIFICATIONS.
11. THE MOVEMENT OF TRAINS IS UNPREDICTABLE. TRAINS MAY APPROACH THE JOB SITE IN ANY DIRECTION. AT ANY SPEED, AT ANY TIME, AND MAY STOP AND OCCUPY THE TRACK WITHIN THE CONTRACTOR'S WORK ZONE FOR AN UNDETERMINED PERIOD OF TIME.
12. ALL PERSONNEL SHALL BE ESTABLISHED PER THE TECHNICAL SPECIFICATIONS.
13. NO PERSONNEL SHALL CROSS ANY TRACK WITHOUT THE APPROVAL FROM THE NCTD FLAGMAN.
14. ONLY THE NCTD FLAGMAN IS PERMITTED TO PERFORM FLAGGING AND SIGNALING ACTIVITIES.
15. CONTRACTOR SHALL MAINTAIN SAFE PUBLIC ACCESS BY FENCED CORRIDOR TO BEACH UNDER THE BRIDGE AT ALL TIMES THROUGHOUT THE CONSTRUCTION.
16. CONTRACTOR SHALL MAINTAIN SAFE PUBLIC ACCESS ALONG ACCESS ROUTES THAT ARE NECESSARY FOR SERVICE TO THE WORK SITE AND STORAGE AREAS TO PROTECT THEMSELVES AND PUBLIC AGAINST THEFT OR VANDALISM.
18. CONTRACTOR SHALL COORDINATE WORK ACTIVITIES WITH NCTD AND STATE AGENCIES BY PROVIDING UPDATED WORKPLAN WEEKLY. WORK PLAN UPDATES SHALL BE PROVIDED TO THE NCTD FLAGMAN AND AREAS WITH STATE AGENCIES (DAVID PROFFER - 949-491-4213).

| LIST OF DRAWINGS | |
|------------------|---|
| DWG NO. | TITLE |
| 246.1-01 | TITLE SHEET |
| 246.1-02 | GENERAL NOTES |
| 246.1-03 | LEGEND AND ABBREVIATIONS |
| 246.1-04 | SURVEY CONTROL |
| 246.1-05 | CONSTRUCTION ACCESS/STAGING PLAN |
| 246.1-06 | AREA OF POTENTIAL EFFECT |
| 246.1-07 | DRIFT EROSION CONTROL PLAN |
| 246.1-08 | TRACK PLAN AND PROFILE |
| 246.1-09 | STRUCTURAL GENERAL PLAN, ELEVATION, AND NOTES |

60% SUBMITTAL

NOT FOR CONSTRUCTION

IMPORTANT NOTICE

SECTION 42616(4)(7) OF THE GOVERNMENT CODE REQUIRES A PUBLIC ALERT IDENTIFICATION "PERMIT TO OCCUPY" WILL BE MAILED FOR YOUR DUE ALERT I.D. NUMBER CALL TOLL FREE 1-800-422-1133 TWO WORKING DAYS BEFORE YOU DIG. ALSO, NOTIFY NCTD FOR STAMMING MARK-OUTS.

ALL UTILITIES REQUIRING RELOCATION WILL BE RELOCATED BY OTHERS. CONTRACTOR SHALL CONTACT AND COORDINATE WITH UTILITY COMPANIES WITHIN THE PROJECT:

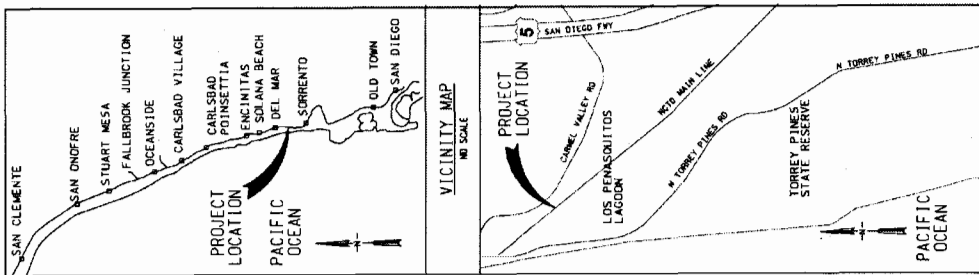
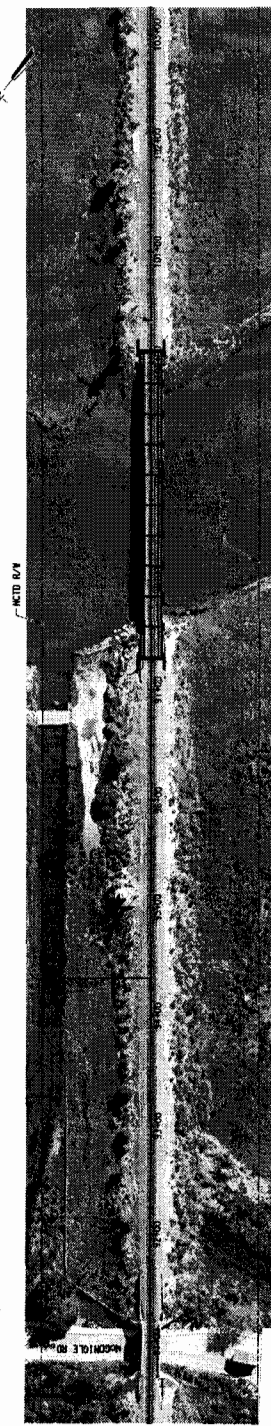
ONE CALL 800-422-4133
MC1 800-674-9675

NAME AND PHONE NUMBERS OF THE RAILROAD/NCTD PERSONNEL ON THIS PROJECT ARE:

MAINTENANCE-OF-WAY MANAGER - KETIN KENADA 760-967-2952
CHIEF RAIL ENGINEER AND PROJECT MANAGER - MITCH ALDERMAN 760-967-2968
REAL ESTATE MANAGER - ED SIMMER 760-964-6556
FLAG REQUEST - LEE LUMMS 760-967-2951
ENVIRONMENTAL PLANNER - KRISTIN INDMAN 760-967-2917

RAILROAD EMERGENCY 24-HOUR CONTACT NO. 760-966-6700

CONFIRMED
XXXX



5/16/09

FIGURE 1-4a

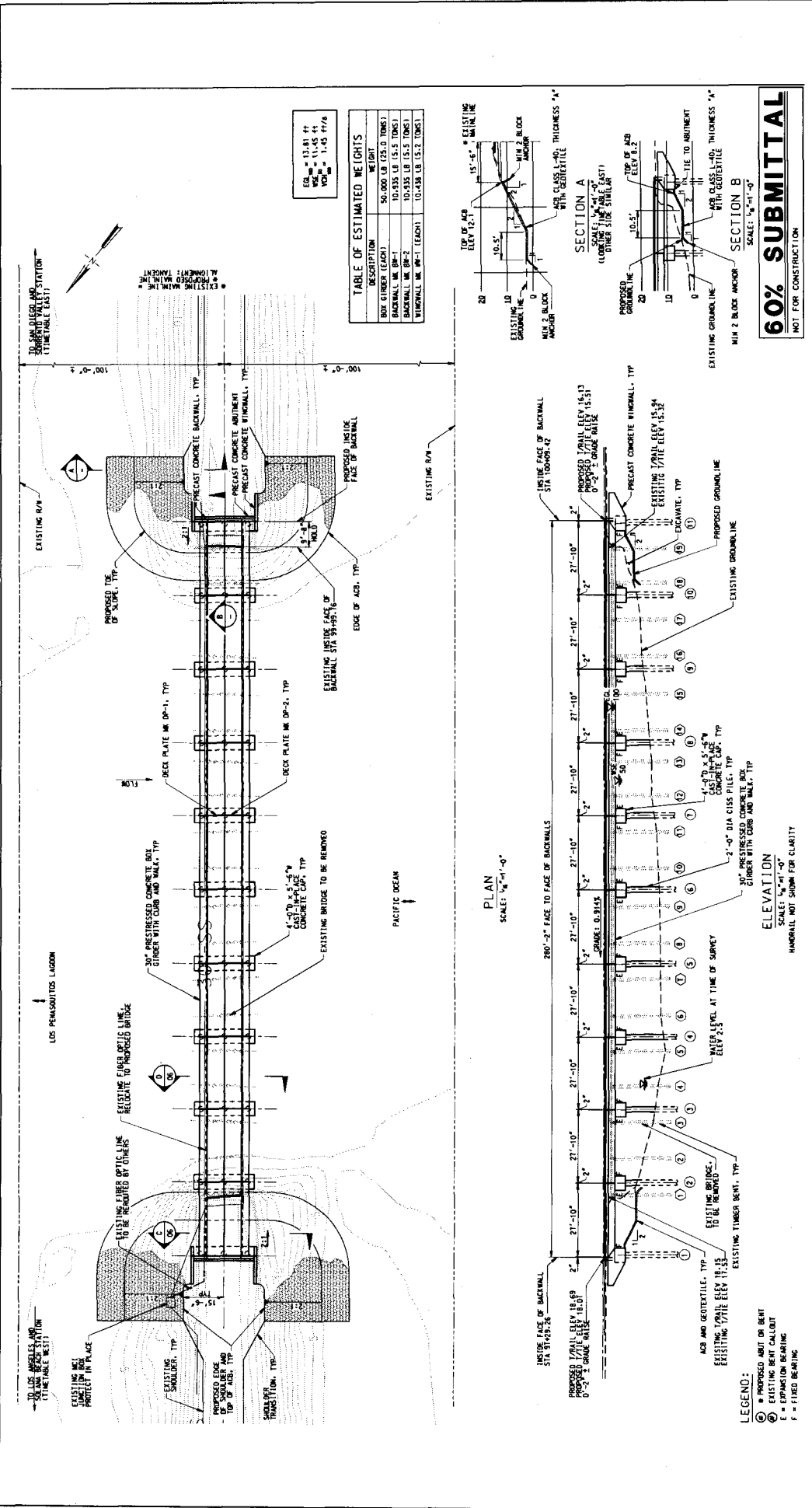
NCTD Bridge Replacement Project
Engineering Drawings
Title Sheet for Bridge 246.1

EXHIBIT NO. **65**

APPLICATION NO.

CC-059-09

E:\projects\NCTD\GIS\Permits\Map\Legend\Legend\Map\Spec 1-4a Title Sheet.dwg



S/6/09

FIGURE
1-4h

NCTD Bridge Replacement Project
Engineering Drawings
General Plan for Bridge 246.1

EXHIBIT NO. 6
APPLICATION NO.
CC-059-09

NORTH COUNTY TRANSIT DISTRICT PROJECT PLANS FOR THE REPLACEMENT OF TIMBER BRIDGE 246.9

NCTD GENERAL NOTES

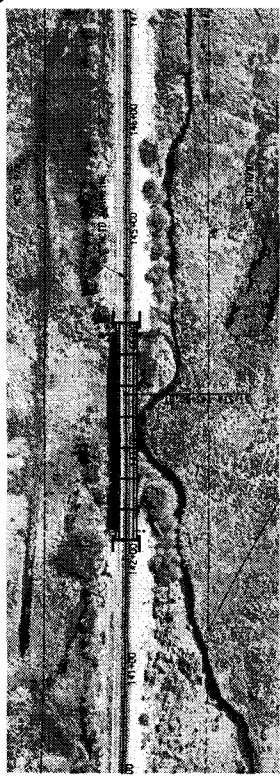
1. FOR ALL PERMITS AFFECTING THE TRACK AND TRAIN SAFETY, CALL NCTD'S 24 HOUR SECURITY OFFICE AT (760) 966-5100. SHALL COMPLY WITH NORTH COUNTY TRANSIT DISTRICT (NCTD) REQUIREMENTS. FAILURE TO COMPLY WILL BE GROUNDS FOR TERMINATION OF WORK AND RELOCATION OF THE RIGHT-OF-ENTRY (ROE) PERMIT.
2. PRIOR TO THE START OF CONSTRUCTION AND AT THE CONTRACTOR'S REQUEST, THE CONTRACTOR SHALL COMPLY WITH ALL NCTD TRAINING COURSES. CONTRACTOR SHALL COMPLY WITH ALL NCTD TRAINING COURSES. CONTRACTOR SHALL COMPLY WITH ALL NCTD TRAINING COURSES.
3. THE CONTRACTOR SHALL COMPLY WITH ALL NCTD TRAINING COURSES. CONTRACTOR SHALL COMPLY WITH ALL NCTD TRAINING COURSES.
4. THE CONTRACTOR SHALL COMPLY WITH ALL NCTD TRAINING COURSES. CONTRACTOR SHALL COMPLY WITH ALL NCTD TRAINING COURSES.

| DWG NO. | TITLE |
|-----------|---|
| 246.9-101 | TITLE SHEET |
| 246.9-102 | GENERAL NOTES |
| 246.9-103 | LEGEND AND ABBREVIATIONS |
| 246.9-104 | SURVEY CONTROL |
| 246.9-105 | CONSTRUCTION ACCESS/STARTING PLAN |
| 246.9-106 | AREA OF POTENTIAL EFFECT |
| 246.9-107 | GRAFT EROSION CONTROL PLAN |
| 246.9-108 | TRACK PLAN AND PROFILE |
| BR-246.9 | STRUCTURAL GENERAL PLAN, ELEVATION, AND NOTES |

60% SUBMITTAL
NOT FOR CONSTRUCTION

NCTD GENERAL NOTES (CONT'D)

5. ALL PERSONS ENTERING THE RAILROAD RIGHT-OF-WAY SHALL HAVE THE NCTD SAFETY SIGNAGE REFERRED TO THEIR HAND. NO WORK SHALL BE PERFORMED WITHIN THE RAILROAD RIGHT-OF-WAY WITHOUT A RIGHT-OF-ENTRY PERMIT. PLAN REQUESTS SUBMITTED TO ED SINGER, NCTD, AND A NCTD FLAGMAN PRESENT DURING ALL CONSTRUCTION AND RELATED ACTIVITIES.
6. THE CONTRACTOR SHALL MAKE THE NECESSARY ARRANGEMENTS FOR EACH PARTY PERMITS AS REQUIRED BY THE WORK. ENVIRONMENTAL AND THIRD PARTY PERMITS AS REQUIRED BY THE WORK.
7. THE CONTRACTOR SHALL MAKE THE NECESSARY ARRANGEMENTS FOR EACH PARTY PERMITS AS REQUIRED BY THE WORK. ENVIRONMENTAL AND THIRD PARTY PERMITS AS REQUIRED BY THE WORK.
8. THE CONTRACTOR SHALL MAKE THE NECESSARY ARRANGEMENTS FOR EACH PARTY PERMITS AS REQUIRED BY THE WORK. ENVIRONMENTAL AND THIRD PARTY PERMITS AS REQUIRED BY THE WORK.
9. THE CONTRACTOR SHALL MAKE THE NECESSARY ARRANGEMENTS FOR EACH PARTY PERMITS AS REQUIRED BY THE WORK. ENVIRONMENTAL AND THIRD PARTY PERMITS AS REQUIRED BY THE WORK.
10. THE CONTRACTOR SHALL MAKE THE NECESSARY ARRANGEMENTS FOR EACH PARTY PERMITS AS REQUIRED BY THE WORK. ENVIRONMENTAL AND THIRD PARTY PERMITS AS REQUIRED BY THE WORK.
11. THE CONTRACTOR SHALL MAKE THE NECESSARY ARRANGEMENTS FOR EACH PARTY PERMITS AS REQUIRED BY THE WORK. ENVIRONMENTAL AND THIRD PARTY PERMITS AS REQUIRED BY THE WORK.
12. ABSOLUTE WORK WINDOWS SHALL BE ESTABLISHED PER THE TECHNICAL SPECIFICATIONS.
13. THE CONTRACTOR SHALL CROSS ANY TRACK WITHOUT THE APPROVAL OF NCTD.
14. ONLY THE NCTD FLAGMAN IS PERMITTED TO PERFORM FLAGGING OPERATIONS WITHIN THE RAILROAD RIGHT-OF-WAY.
15. CONTRACTOR SHALL MAINTAIN SAFE PUBLIC ACCESS BY FENCED THROUGHOUT THE CONSTRUCTION BRIDGE AT ALL TIMES.
16. CONTRACTOR SHALL MAINTAIN SAFE PUBLIC ACCESS ALONG ACCESS ROUTES THAT ARE USED BY THE CONTRACTOR.
17. CONTRACTOR IS RESPONSIBLE FOR SECURING THE WORK SITE AND STORAGE AREAS TO PROTECT THEMSELVES AND PUBLIC AGAINST UNAUTHORIZED ACCESS.
18. CONTRACTOR SHALL COORDINATE WORK ACTIVITIES WITH NCTD AND STATE PARTS BY PROVIDING UPDATED WORKMAN MEETING.
19. CONTRACTOR SHALL NEGOTIATE REQUIRED ACCESS AND STARTING AREAS WITH STATE PARTS (DAVID PRIOR - 949-497-1421).

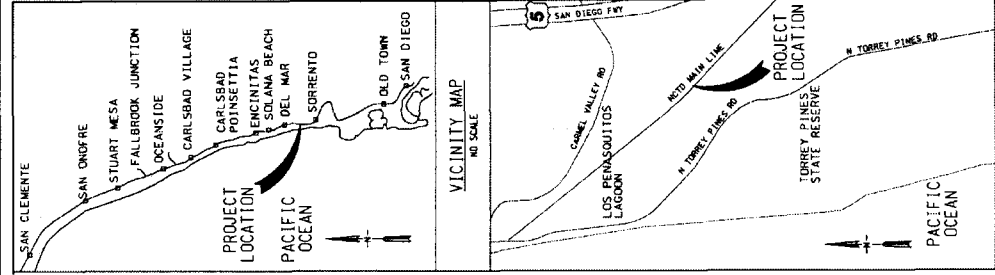


CONFIRMED
XXXX

RAILROAD EMERGENCY 24-HOUR CONTACT NO.
760-966-6700

IMPORTANT NOTICE
SECTION 4216/4217 OF THE GOVERNMENT CODE REQUIRES A 60-DAY ALERT IDENTIFICATION NUMBER BE ISSUED BEFORE ANY PERMIT TO CONDUCT WORK. THE NCTD-100 UNDERGROUND SERVICE ALERT TOLL FREE 1-800-422-4133 TWO WORKING DAYS BEFORE YOU DIG. ALSO, NOTIFY NCTD FOR STOWING MARK-OUTS.

| ONE CALL | 800-422-4133 |
|--|--------------|
| NCT | 800-624-9675 |
| NAMES AND PHONE NUMBERS OF THE RAILROAD/NCTD PERSONNEL ON THIS PROJECT ARE: | |
| MAINTENANCE OF-WAY MANAGER - KEITH KEMBA | 760-967-2882 |
| CONTRACT MANAGER - MATT ALBERMAN | 760-967-2848 |
| REAL ESTATE MANAGER - ED SINGER | 760-966-5538 |
| FLAG REQUEST - LEE KUMS | 760-967-2851 |
| ENVIRONMENTAL PLANNER - BRISTIN THOMAS | 760-967-2817 |



5/6/09

FIGURE 1-5a

NCTD Bridge Replacement Project

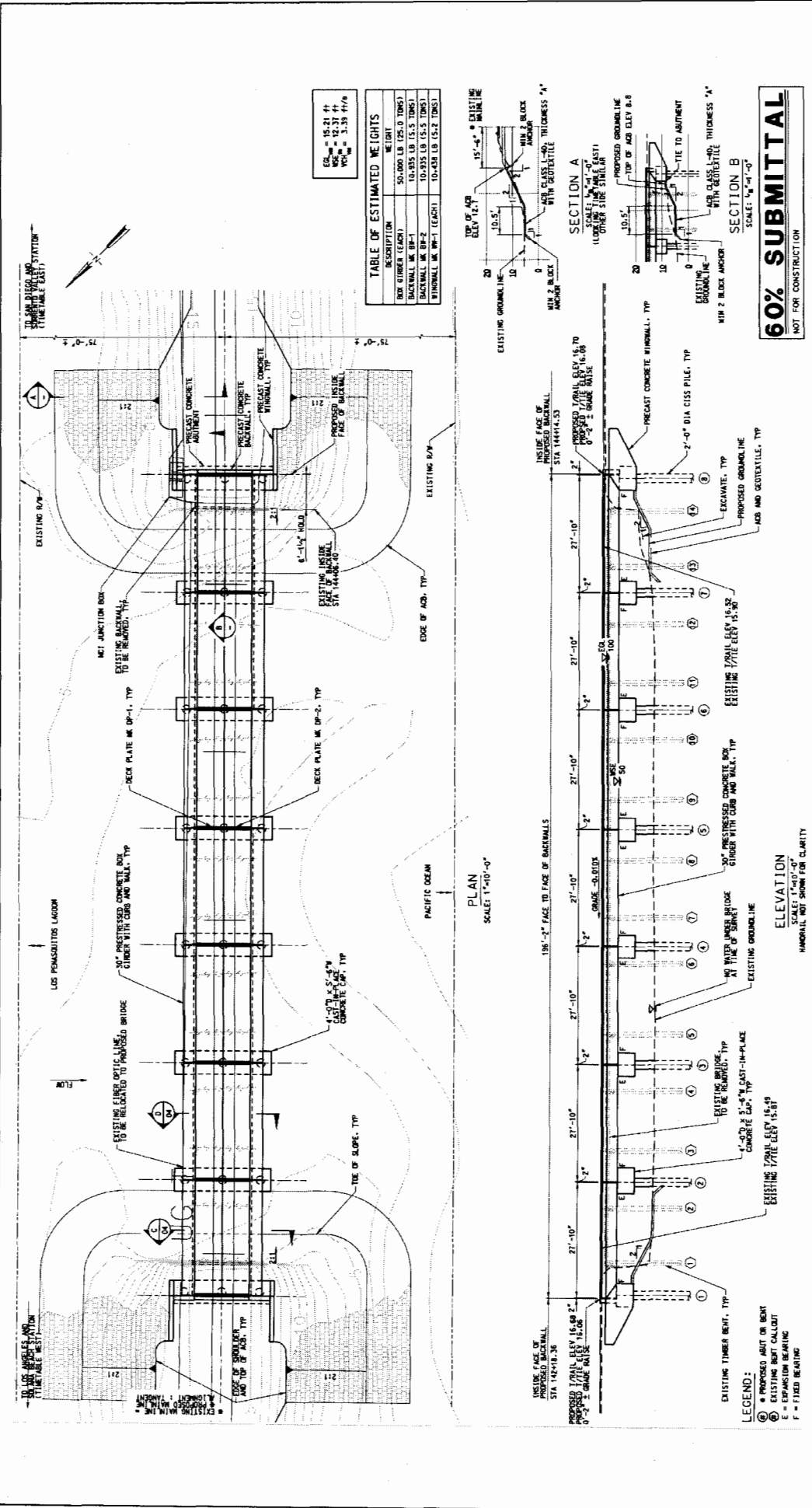
Engineering Drawings

Title Sheet for Bridge 246.9

EXHIBIT NO. 7

APPLICATION NO.

CC-059-09



5/6/09

FIGURE
1-5h

NCID Bridge Replacement Project
Engineering Drawings
General Plan for Bridge 246.9

60% SUBMITTAL
NOT FOR CONSTRUCTION

EXHIBIT NO. 8
APPLICATION NO.
CC-059-09

Prepared by: NCID, Los Angeles and San Diego Regional Offices, California Department of Transportation, Project No. 1-5h, General Plan

NORTH COUNTY TRANSIT DISTRICT PROJECT PLANS FOR THE REPLACEMENT OF TIMBER BRIDGE 247.1

NCTD GENERAL NOTES

1. FOR ALL EMERGENCIES AFFECTING THE TRACK AND TRAIN SAFETY, CALL NCTD'S 24 HOUR SECURITY OFFICE AT (760) 966-6700.
2. ALL PERSONNEL ENTERING THE RAILROAD RIGHT-OF-WAY SHALL COMPLY WITH NORTH COUNTY TRANSIT DISTRICT (NCTD) REQUIREMENTS. FAILURE TO COMPLY WILL BE GROUNDS FOR TERMINATION OF WORK AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL COSTS INCURRED PRIOR TO THE START OF CONSTRUCTION AND AT THE CONTRACTOR'S EXPENSE. ALL PERSONNEL INCLUDING SUBCONTRACTORS AND THIRD PARTIES SHALL COMPLETE NCTD'S CONTRACTOR SAFETY TRAINING COURSE. CONTACT LEE KUNGS AT (760) 967-2851 TO ARRANGE TRAINING.
3. THE CONTRACTOR SHALL ADVISE NCTD OF ALL REQUIREMENTS SET FORTH BY NCTD. THE CONTRACTOR SHALL MAINTAIN SAFE PUBLIC ACCESS TO THE NCTD FLAGMATIC HAS SOLE RESPONSIBILITY TO PROTECT THE RAILROAD INFRASTRUCTURE AND OPERATIONS AT ALL TIMES. THE CONTRACTOR SHALL FOLLOW THE FLAGMATIC'S DIRECTION.

| DWG NO. | TITLE |
|------------|---|
| 247.1-1001 | TITLE SHEET |
| 247.1-1002 | GENERAL NOTES |
| 247.1-1003 | LEGEND AND ABBREVIATIONS |
| 247.1-1004 | SURVEY CONTROL |
| 247.1-1005 | CONSTRUCTION ACCESS-STAGING PLAN |
| 247.1-1006 | AREA OF POTENTIAL EFFECT |
| 247.1-1007 | EMBED EROSION CONTROL PLAN |
| 247.1-1008 | TRUCK PLAN AND PROFILE |
| BE-247.1 | STRUCTURAL GENERAL PLAN, ELEVATION, AND NOTES |

NCTD GENERAL NOTES (CONT'D)

5. ALL PERSONS ENTERING THE RAILROAD RIGHT-OF-WAY SHALL HAVE TAKEN THE NCTD SAFETY TRAINING COURSE AND SHALL HAVE THE NCTD SAFETY STICKER AFFIXED TO THEIR HAND MAT.
6. NO WORK SHALL BE PERFORMED WITHIN THE RAILROAD RIGHT-OF-WAY WITHOUT A RIGHT-OF-ENTRY PERMIT. FLAG REQUESTS SUBMITTED TO NCTD SHALL BE REVIEWED AND APPROVED PRIOR TO THE START OF CONSTRUCTION AND RELATED ACTIVITIES.
7. THE CONTRACTOR SHALL COMPLY WITH ALL ENVIRONMENTAL AND THIRD PARTY PERMITS AS REQUIRED BY THE WORK.
8. THE CONTRACTOR SHALL MAKE THE NECESSARY ARRANGEMENTS FOR EACH EQUIPMENT OPERATOR TO HAVE EXHAUST AND DIRECT RADIANT CONTACT WITH THE AIR THROUGHOUT THE WORK AREA. CONTACT NCTD AND DIRECT CONTACT WITH THE NCTD FLAGMATIC.
9. THE CONTRACTOR SHALL HAVE THE PERMITTED STAMPED SET OF PLANS ON-SITE. WORK WILL BE TERMINATED BY NCTD SHOULD NO STAMPED SET OF PLANS BE ON-SITE.
10. THE CONTRACTOR SHALL CONTACT NCTD AT (760) 967-2851 48 HOURS PRIOR TO ANY INSPECTIONS REQUIRED. THE DATE, TIME, AND LOCATION OF TRAVEL IS UNPREDICTABLE. TRAVEL WAY APPROACH AND STOP AND OCCUPY THE TRACK WITHIN THE CONTRACTOR'S WORK ZONE FOR AN UNDETERMINED PERIOD OF TIME.
11. PERSONNEL SHALL BE ESTABLISHED PER THE TECHNICAL SPECIFICATIONS.
12. NO PERSONNEL SHALL CROSS ANY TRACK WITHOUT THE APPROVAL FROM THE NCTD FLAGMATIC.
13. ONLY THE NCTD FLAGMATIC IS PERMITTED TO PERFORM FLAGGING AND TRUCK POSITIONING. ALL OTHER PERSONNEL SHALL MAINTAIN SAFE PUBLIC ACCESS BY FENCED CORRIDOR TO BEACH UNDER THE BRIDGE AT ALL TIMES THROUGHOUT THE CONSTRUCTION.
14. CONTRACTOR SHALL MAINTAIN SAFE PUBLIC ACCESS ALONG ACCESS ROUTES THAT ARE USED BY THE CONTRACTOR AND THE WORK SITE AND STORAGE AREAS TO PROTECT THEMSELVES AND PUBLIC AGAINST THEFT OR VANDALISM.
15. CONTRACTOR SHALL COORDINATE WORK ACTIVITIES WITH NCTD AND STATE PARKS BY PROVIDING WORKING WEEKLY MEETING SCHEDULES AND ACCESS TO THE WORK SITE AND STAGING AREAS WITH STATE PARKS (DAVID PETER - 949-401-1421).

IMPORTANT NOTICE

SECTION 416.4(4)(1) OF THE GOVERNMENT CODE REQUIRES A DIG ALERT IDENTIFICATION NUMBER BE ISSUED BEFORE A "PERMIT TO EXCAVATE" WILL BE VALID. FOR YOUR DIG ALERT I.D. NUMBER CALL UNDERGROUND SERVICE ALERT TOLL FREE 1-800-422-4133. TWO WORKING DAYS BEFORE YOU DIG. ALSO, NOTIFY NCTD FOR STAMALING MARK-OUTS.

ALL UTILITIES REGARDING RELOCATION WILL BE RELOCATED BY OTHERS. CONTRACTOR SHALL CONTACT AND COORDINATE WITH UTILITY COMPANIES WITHIN THE PROJECT:

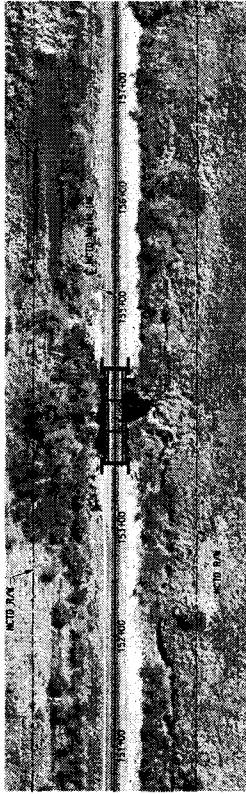
DIG CALL 800-422-4133
MCI 800-847-9675

NAME AND PHONE NUMBERS OF THE RAILROAD/NCTD PERSONNEL ON THIS PROJECT ARE:

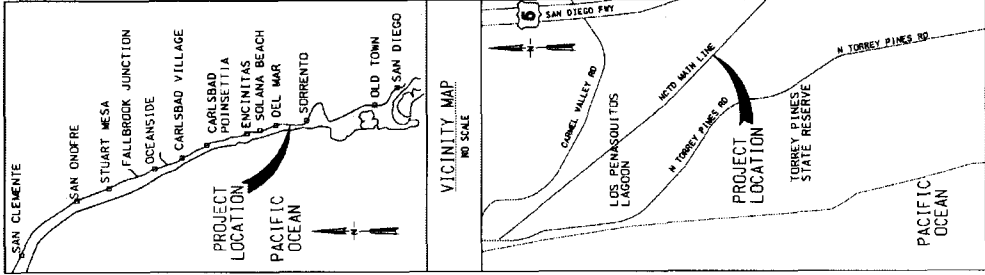
MANAGEMENT-347 MANAGER - KEITH KEMANA 760-967-2852
CHIEF RAIL ENGINEER AND PROJECT MANAGER - MITCH ALDERMAN 760-967-2848
REAL ESTATE MANAGER - ED SIMMER 760-966-6566
FLAG REQUEST - LEE KUNGS 760-967-2851
ENVIRONMENTAL PLANNER - KRISTIN THOMAS 760-967-2817

RAILROAD EMERGENCY 24-HOUR CONTACT NO.
760-966-6700

CONFORMED
XXXX



60% SUBMITTAL
NOT FOR CONSTRUCTION



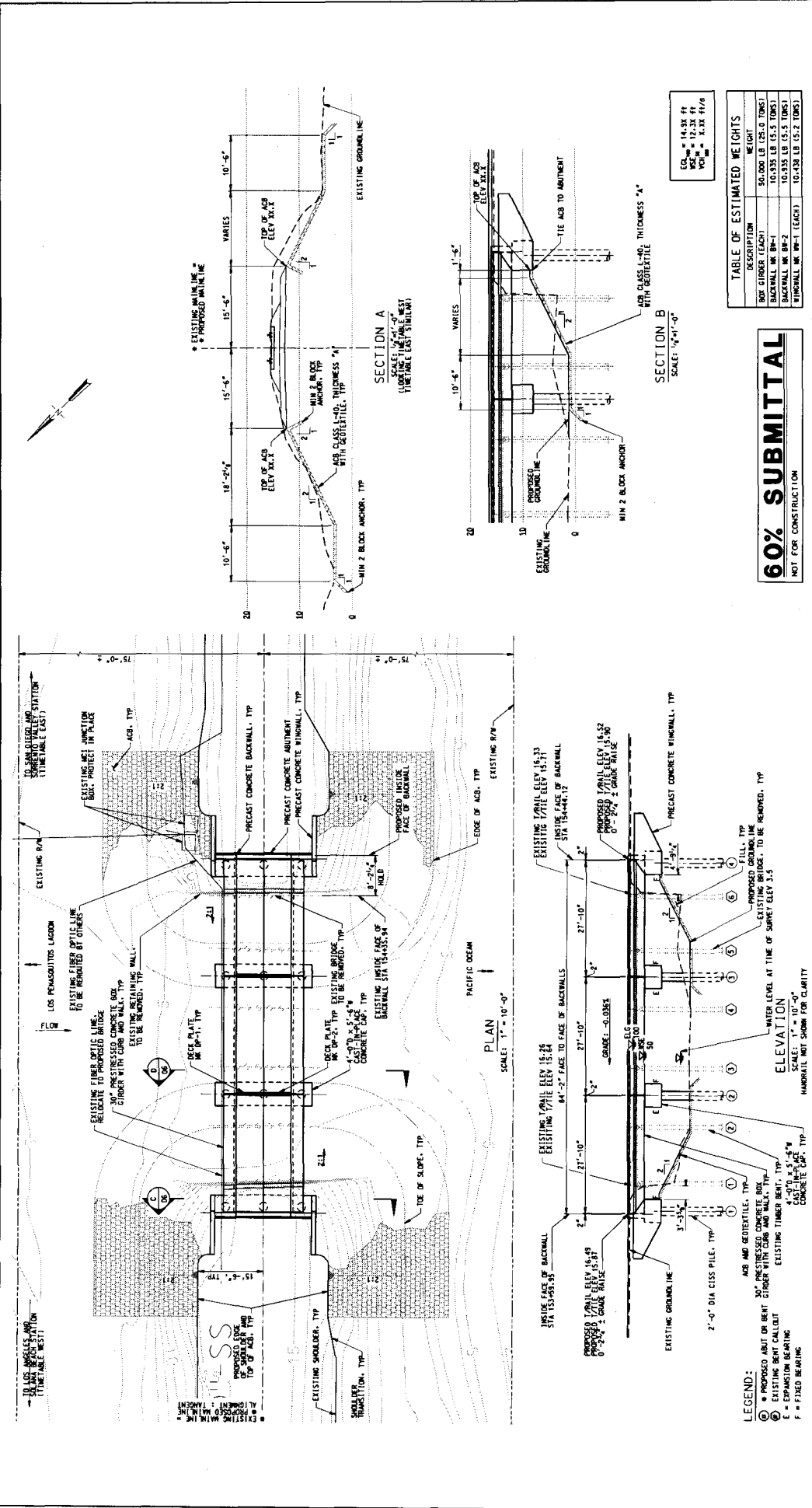
5/16/09

FIGURE
1-6a

NCTD Bridge Replacement Project
Engineering Drawings
Title Sheet for Bridge 247.1

| |
|-----------------|
| EXHIBIT NO. 9 |
| APPLICATION NO. |
| CC-059-09 |

E:\projects\138_NCTD\138_Plan\138_Plan\138_Plan\138_Plan.dwg (14/07/09) 14:07:09



5/6/09

FIGURE
1-6h

NCTD Bridge Replacement Project
Engineering Drawings
General Plan for Bridge 247.1

EXHIBIT NO. 10
APPLICATION NO.
CC-059-09

Approved: VADN, NCTD User Permission to Log onto System Between Collocated Sections. APPN Figure 1-6h General Plan