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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY CERTIFICATION

Consistency Certification No.	CC-052-10
Staff:	LJS-SF
File Date:	9/22/2010
3 Months:	12/22/2010
6 Months:	3/22/2011
Commission Meeting:	2/9/2011

APPLICANT: **San Diego Association of Governments (SANDAG)**

PROJECT LOCATION: Sorrento Valley south of the I-5/805 Junction, San Diego County (Exhibits 1 and 2)

PROJECT DESCRIPTION: Construct a 1.2-mile-long segment of second mainline railroad track and replace a timber single-track bridge with a steel double-track bridge over Carroll Canyon Creek.

SUBSTANTIVE FILE DOCUMENTS: See Page 31

STAFF RECOMMENDATION: Concurrence: Motion is on Page 7

EXECUTIVE SUMMARY

The San Diego Association of Governments (SANDAG) has submitted a consistency certification for constructing a second mainline railroad track along an approximately 1.2-mile-long segment of railroad right-of-way (Milepost (MP) 249.8 to MP 251.0) in southern Sorrento Valley in the City of San Diego. While only the western third of the project corridor is located within the coastal zone, the consistency certification examines the entire project for consistency with the Coastal Act due to the location of the railroad trackway alongside Carroll Canyon Creek (a tributary to Los Penasquitos Lagoon) and the potential for adverse effects on coastal resources. The majority of the double-track would be placed on the inland (east) side of the existing track. The project also includes replacing the single-track Bridge 249.9 with a 131-foot-long and 30-foot-wide steel deck, double-track bridge on the west side of the existing wooden trestle bridge. The new bridge would require the placement of three bridge bents within Carroll Canyon Creek. SANDAG also proposes to install a new crossover north of Bridge 249.9, relocate Control Point (CP) Pines from its existing location north of Bridge 249.9 to MP 251.0, and construct a 12-foot-wide access road north of the existing railroad track along much of the project alignment. All trackway improvements will occur within the existing railroad right-of-way. The purpose of the project is to improve freight movement, increase railroad capacity and speed in the Sorrento to Miramar Hill area, reduce bridge maintenance costs, allow for the staging of freight trains at the bottom of Miramar Hill, and provide for future demand for rail services in the LOSSAN (Los Angeles – San Diego) rail corridor.

Construction of the project would affect wetland habitat and triggers the three-part test of Section 30233(a) of the Coastal Act. The project is consistent with the wetland fill alternatives and mitigation tests, but is not consistent with the allowable use test of Section 30233(a) because the project will, cumulatively and over time, serve to increase the capacity of the LOSSAN corridor. Therefore, the project can only be found consistent with the Coastal Act through the "conflict resolution" provision contained in Section 30007.5. No environmentally sensitive upland habitat in the coastal zone section of the project would be affected by project construction activities. While the project would cause temporary and permanent impacts to sensitive plant communities inland of the coastal zone, the project construction footprint here does not include occupied California gnatcatcher habitat, occupied least Bell's vireo habitat, or occupied San Diego fairy shrimp habitat. In addition, project construction is scheduled to avoid the breeding season of the California gnatcatcher, least Bell's vireo, and the southwestern willow flycatcher, and includes avoidance, minimization, mitigation, and monitoring measures for temporary and permanent impacts to sensitive vegetation communities. Therefore, the plant communities inland of the coastal zone that would be affected by the proposed project are not occupied by listed species, and are therefore not environmentally sensitive habitat (ESHA) under the Coastal Act. Construction of the project will not affect ESHA and is consistent with the ESHA policy of the CCMP (Coastal Act Section 30240).

The project includes commitments to protect water quality during and after construction, including preparation of a Storm Water Pollution Prevention Plan, implementation of best management practices, and post-construction revegetation to control soil erosion. The project is consistent with the water quality protection policies of the CCMP (Coastal Act Sections 30231

and 30232). The project, and the resulting improvements to public transportation in the LOSSAN corridor, will help to reduce energy consumption, reduce greenhouse gas emissions, and improve air quality, and is therefore consistent with the energy minimization policy of the CCMP (Coastal Act Section 30253(d)).

The proposed segment of double track and the replacement bridge would not adversely affect any existing public access opportunities, and would improve public access by maintaining and expanding the rail line used by SANDAG 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 design of the proposed double track railroad bridge is consistent with other SANDAG and NCTD railroad bridge replacement projects previously reviewed by the Commission at locations in San Diego County. The project would not create any adverse effects on scenic public views to or along the shoreline and is consistent with the public view policy of the CCMP (Coastal Act Section 30251).

A National Register listed Native American village site, considered to be a significant cultural resource, is located within the project's area of potential effect (APE). The project would adversely affect cultural resources. However, SANDAG has undertaken cultural resource inventory and evaluation work within the project area; has and will continue to consult and coordinate with designated Native American representatives; will implement extensive mitigation measures prior to, during, and after completion of construction activities; will protect to the maximum extent feasible all known and unknown cultural resources in the project area; and will implement a Historic Property Treatment Plan to mitigate adverse project impacts on cultural resources. The project is consistent with the cultural resource policy of the CCMP (Coastal Act Section 30244).

The proposed project creates a conflict between the allowable use test of the wetland policy on the one hand, and the public access and transit, water quality, air quality, and energy conservation policies of the Coastal Act on the other. 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 the permanent fill of 0.45 acres, and temporary impacts to 1.07 acres, of coastal freshwater wetland habitat. The affected habitat is adjacent to the existing rail line, the amount of fill has been minimized to the maximum extent practicable, and on-site restoration of temporarily affected habitat and off-site mitigation for permanent loss of wetland habitat are project elements. On the other hand, objecting to this consistency certification would result in conditions that would be inconsistent with the access policies (Section 30210), and would result in adverse effects to coastal waters and the coastal air basin, and would be inconsistent with the achievement of water quality, air quality, energy conservation, and reductions in vehicle miles traveled goals expressed in Sections 30231, 30253(d), and 30252. In resolving the Coastal Act conflict raised, the impacts on coastal resources from not constructing the project would be more significant and adverse than the project's coastal waters impacts, which would, as designed by NCTD, be adequately mitigated. Concurring with this consistency certification would, on

balance, be most protective of coastal resources, and the project is consistent with the conflict resolution policy of the CCMP (Coastal Act Section 30007.5).

STAFF SUMMARY AND RECOMMENDATION:

I. STAFF SUMMARY.

A. Project Description. The San Diego Association of Governments (SANDAG) proposes to construct a second mainline railroad track along an approximately 1.2-mile-long segment of railroad right-of-way (Milepost (MP) 249.8 to MP 251.0) in southern Sorrento Valley in the City of San Diego (**Exhibits 1-3**). While only the western third of the project corridor is located within the coastal zone, the consistency certification examines the entire project for consistency with the Coastal Act due to the location of the railroad trackway alongside Carroll Canyon Creek (a tributary to Los Penasquitos Lagoon) and the potential for adverse effects on coastal resources. The majority of the double-track would be placed on the inland (east) side of the existing track. The project also includes replacing the single-track Bridge 249.9 with a 131-foot-long and 30-foot-wide steel deck, double-track bridge on the west side of the existing wooden trestle bridge. The new bridge would require the placement of three bridge bents within Carroll Canyon Creek. SANDAG also proposes to install a new crossover north of Bridge 249.9, relocate Control Point (CP) Pines from its existing location north of Bridge 249.9 to MP 251.0, and construct a 12-foot-wide access road north of the existing railroad track along much of the project alignment. All trackway improvements will occur within the existing railroad right-of-way (**Exhibits 4-7**).

SANDAG states that the proposed project will be constructed in two stages:

> *Stage 1 – The first stage consists of the construction of the western half of the new Bridge 249.9. The temporary construction berm will be built on the west side of the existing Bridge 249.9 within Carroll Canyon Creek. The berm will be constructed of imported fill and have a 25-foot top width, with a slope of 2:1. It will utilize four 24-inch Corrugated Metal Pipes (CMP) to allow the creek water to flow during construction. The first stage also includes construction of the new track, crossover, and grading north of Bridge 249.9. Once the south half of Bridge 249.9 and the crossover has been constructed, the Main Line (ML)-2 will be shifted to tie into the existing track and train traffic will be moved to the new track.*
>
> *Stage 2 – The eastern portion of the new Bridge 249.9 will be constructed during Stage 2. The temporary construction berm will be installed on the east side of the existing bridge utilizing similar dimensions as the berm constructed in Stage 1. Once the bridge is complete, ML – 1 will be built to connect the north half of the bridge with the north track. Also, a combination of track shifts and new track construction will occur to tie in the north track with the diverging side of the turnout and the south track to the straight side of the turnout. A turnout will be installed inline. The second stage also includes the demolition of the existing Bridge 249.9.*

The *Biological Technical Report* (November 2010) supporting the consistency certification provides additional information on the replacement bridge construction:

> *The proposed Phase I project involves the construction of the west half of a steel double-track railroad bridge adjacent to the existing single-track wooden trestle bridge and the associated project components identified above. Phase II involves the demolition of the single-track wooden trestle bridge and construction of the east half of the new steel trestle bridge, resulting in a double-track bridge. After both phases are complete, the new Bridge 249.9 would consist of three intermediate bents and two abutments. The new Bridge 249.9 would be approximately 131 feet long and 30 feet wide. To facilitate project construction, a temporary construction access berm directly west of Bridge 249.9 will be utilized for construction access during project construction. A temporary construction railroad crossing would tie into the temporary construction berm to provide construction equipment access to the west side of the rail. An assembly/construction staging area will be located north of the bridge within existing disturbed habitat area and will be used to store equipment and materials associated with the project.*
>
> *Armor Flex (or similar product) will be incorporated into the design of the bridge abutments. Armor Flex is a flexible, interlocking matrix of concrete blocks of uniform size, shape and weight connected by a series of cables that pass longitudinally through preformed ducts in each block. Armor Flex provides erosion protection around the bridge abutments, while allowing water to permeate into the hydrologic system, and allowing plants/habitat to grow within the preformed openings.*

The *Biological Technical Report* also outlines the proposed construction access and staging areas for the project:

> *Access to the project site is generally limited due to the presence of sensitive vegetation communities associated with Soledad Canyon Creek. There are five potential temporary construction access roads. Final project implementation may not utilize all of the access roads. Access Road 1 will allow access to the eastern portion of the southern survey area north of the railroad. Access Roads 2, 3, 4, and 5 will enter the site off of Sorrento Valley Road and will allow access to the southern survey area east of the railroad. Access Roads 2, 3, and 4 will utilize existing bridges to cross Soledad Canyon Creek. If access Road 5 is utilized during project construction a temporary access berm will be constructed to cross Soledad Canyon Creek.*
>
> *A temporary construction berm will be utilized to access the north and south sides of the creek at Bridge 249.9. The berm will utilize four 42-inch Corrugated Metal Pipes (CMP) with imported fill that will be installed under Phase 1 on the west side of existing bridge. The temporary construction berm will have a 25-foot top width and slope down at 2:1. Under Phase 2, the temporary construction berm will be installed on the east side of the existing bridge utilizing similar dimensions.*

> *The project will require the use of two temporary construction staging areas. The staging areas will be utilized to stage, assemble, organize, and store equipment. Staging Area 1 is located approximately three-quarter mile southeast of the intersection of Sorrento Valley Road and I-5. Staging Area 1 will be utilized for the construction of Bridge 249.9. Staging Area 2 is located at the end of Sorrento Valley Road.*

Project construction is scheduled to avoid the breeding season of the California gnatcatcher (February 15 to September 1), Least Bell's vireo (March 15 to September 15), and Southwestern willow flycatcher (March 15 top September 15).

Regarding the purpose and need for the proposed project, SANDAG states in the consistency certification that:

> *The Sorrento to Miramar Double Track Project – Phase 1 is needed to construct a second track along the rail corridor through the provision of freight train side tracking to improve freight movement, increase capacity and speed in the Sorrento to Miramar hill area, and potentially reduce bridge maintenance costs for San Diego Association of Governments (SANDAG) and North County Transit District (NCTD). The project will also provide sufficient track to allow the ability to stage freight trains at the bottom of Miramar Hill, just south of the Sorrento Valley Coaster Station and the single-track section of track that runs through Los Penasquitos Lagoon.*
>
> . . .
>
> *The rail corridor within the City of San Diego is owned by the San Diego Metropolitan Transit System (MTS). The corridor is operated and maintained by North County Transit District (NCTD). NCTD operates the COASTER commuter rail services through Sorrento Valley and also acts as host railroad for Amtrak's Pacific Surfliner intercity passenger rail service, and Burlington Northern and Santa Fe Corporation (BNSF) freight rail services. The existing transportation network is currently operating at, or near, its design capacity. Improvements to the LOSSAN [Los Angeles to San Diego] rail corridor would help meet Southern California's existing and future transportation needs.*

The subject consistency certification is the latest in a series of consistency certifications submitted by SANDAG and 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); (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); (6) the replacement of three timber railroad bridges over Los Penasquitos Lagoon in San Diego (CC-059-09); and (7) the construction of a 2.4-mile long

segment of second mainline railroad track and second railroad bridge over Agua Hedionda Lagoon in the City of Carlsbad (CC-079-09).

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, SANDAG and NCTD disagree with this position. Those agencies believe that based on a decision by the federal Surface Transportation Board, they are not required to obtain coastal development permits for track improvements and are only subject to federal consistency review for such projects. However, the Commission still holds to its long-standing position that railroad projects in the LOSSAN corridor sponsored by SANDAG and NCTD, especially if affecting mass transportation, including the proposed project, are subject to the permitting requirements of the Coastal Act. The Commission further notes that NCTD has previously 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). Notwithstanding this disagreement about whether a coastal development permit is needed, there is no dispute that the project is subject to the Commission's federal consistency review authority, which involves a similar standard of review, and employing that standard, the Commission concurs with this consistency certification based on its finding that the project is consistent with the Coastal Act.

C. Applicant's Consistency Certification. SANDAG 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 SANDAG's consistency certification CC-052-10 that the project described therein is fully consistent with the enforceable policies of the California Coastal Management Program and will be conducted in a manner consistent with the 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 SANDAG for the proposed project, finding that the project is consistent with the enforceable policies of the California Coastal Management Program and will be conducted in a manner consistent with the 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

Most but not all of the proposed project construction activities would occur within previously developed areas in the railroad right-of-way. The 2010 *Biological Technical Report* (*BTR*) for the Sorrento to Miramar Double Track – Phase 1 project documents the existing freshwater wetland resources in and adjacent to the project corridor, the anticipated permanent and temporary impacts to those resources from the project, and the avoidance, minimization, and mitigation measures to be implemented. The report states that there are 16.55 acres of Coastal Act wetlands located within the project survey area, comprised of the railroad right-of-way and adjacent areas (generally within 300 feet of the railroad centerline). The native vegetation communities designated in the *Biological Technical Report* as wetland habitat in the project area, their dominant species, and acreage present are as follows:

- Coastal and Valley Freshwater Marsh; dominant species include bulrush and cattail; 1.55 acres.

- Southern Willow Scrub; dominant species include red willow, arroyo willow, narrow-leaf willow, and blue elderberry; 9.89 acres.

- Southern Arroyo Willow Riparian Forest; the dominant species is arborescent arroyo willow; 4.93 acres.

Permanent wetland impacts would arise from construction of the new steel double-track bridge across Carroll Canyon Creek (Bridge 249.9), which will require the placement of three bents and two abutments all or partially within the creekbed, and from fill placed in wetland habitat along the track alignment immediately south of the bridge to support widening of the trackway and construction of the second track.

The existing timber pilings occupy 136 sq.ft. of southern willow scrub wetland habitat at the creek crossing; however the new bridge pilings will occupy only 5.7 sq.ft. of habitat. The new north abutment will occupy the same area of habitat as the existing north abutment; however the new south abutment will occupy an additional 436 sq.ft. of habitat. As a result, the new bridge will lead to an increase in wetland fill of 305 sq.ft. over present conditions. Immediately south of the bridge, fill will be placed in three separate areas of freshwater marsh habitat within the coastal zone (two on the northeast side of the track and one on the southwest side), and in areas of riparian forest and willow scrub along the trackway within and inland of the coastal zone in order to widen the trackbed to construct the second track. As a result, construction of the new bridge and trackbed widening would result in a permanent loss of 0.45 acre of wetland habitat. Temporary impacts to approximately 1.07 acres of wetland habitat would arise from the placement of temporary earthen berms in the creekbed that are needed to construct the new bridge and remove the existing bridge, and from access, construction, and demolition activities at the Carroll Canyon Creek bridge location and along the trackway immediately south of the bridge. Permanent and temporary impacts to wetland habitat will require mitigation, which is described below and detailed further in the 2010 *Conceptual Revegetation Plan*.

The project triggers the three-part test of Coastal Act Section 30233(a) because the project includes temporary and permanent fill in wetlands and coastal waters. The Commission therefore needs to analyze the project's consistency with the allowable use, alternatives, and mitigation tests of Section 30233(a).

1. <u>Allowable Use</u>. Under the first of these tests, a project must qualify as one of the seven allowable uses listed under Section 30233(a). The only one that could arguably apply would be the "incidental public service purpose" use in 30233(a)(4). The Commission has considered minor expansions of existing roads, an airport runway (City of Santa Barbara, CC-058-02), and NCTD double tracking projects (CC-086-03, CC-052-05) 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 interpretation of incidental public service use 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.*

SANDAG states in the subject consistency certification that the proposed project is:

> *. . . needed to construct a second track along the rail corridor through the provision of freight train side tracking to improve freight movement,* ***increase capacity*** *and speed in the Sorrento to Miramar hill area, and potentially reduce bridge maintenance costs for San Diego Association of Governments (SANDAG) and North County Transit District (NCTD). The project will also provide sufficient track to allow the ability to stage freight trains at the bottom of Miramar Hill, just south of the Sorrento Valley Coaster Station and the single-track section of track that runs through Los Penasquitos Lagoon.* [Emphasis added]

The Commission has accepted the assertion that double track projects are an incidental public service in two previous concurrences with NCTD double track construction projects in northern San Diego County which involved fill of coastal waters and wetlands (CC-086-03 and CC-052-05). The Commission found in CC-052-05 that:

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

However, the Commission found more recently in CC-004-05 (NCTD, O'Neil to Flores double track) that:

> *In finding those projects [CC-086-03 and CC-052-05] "limited expansions" and "necessary to maintain existing capacity," and thus an allowable use as an incidental public service under Section 30233(a)(5)* [now (a)(4)], *the Commission reserved the concern over future double tracking proposals, stating that they would not necessarily continue to qualify under this section, because at some point with increasing numbers of double tracking proposals, the double tracking: (a) will no longer be limited; and (b) will contain enough length of a second set of tracks to in fact constitute an increase in capacity. However, at that time and in those locations the Commission found that the double tracking projects did not meet either of these thresholds that would render the projects ineligible for consideration as an incidental public service.*

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

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

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

As a result, while the Commission concurred with CC-004-05, it found that the project was not an allowable use under Section 30233(a). However, the Commission found that the impacts on public access, water and air quality, and energy conservation from not constructing the project would be inconsistent with other policies listed in Chapter 3 of the Coastal Act (Cal. Pub. Res. Code Sections 30200-30265.5) and would be more significant and adverse than the project's wetland habitat impacts (as mitigated). Using the "conflict resolution" provision of Section 30007.5 of the Coastal Act, the Commission concluded that concurrence with the consistency certification would, on balance, be most protective of coastal resources.

Subsequent to that action, the Commission adopted similar findings in NCTD's consistency certification CC-008-07 for 1.2 miles of double tracking and a second bridge over Loma Alta Creek in the City of Oceanside:

> *The Commission previously determined in CC-004-05 that the programmatic railroad operational discussion contained in the U.S. Fish and Wildlife Service's 2005 Programmatic Biological Opinion made it clear that the numbers and speeds of trains in the corridor are going to increase over time (if not individually from the CC-004-05 project then certainly cumulatively based on planned trackway improvements) and that the CC-004-05 project would likely increase capacity in the LOSSAN corridor. Given that finding for the third double-tracking project in the corridor reviewed by the Commission, and given that the proposed project will add an additional 1.2 miles of double-tracking in the corridor, the Commission therefore reaches the same conclusion in this, the fourth, double-tracking project. The proposed Oceanside passing track extension will, cumulatively, serve to increase the capacity of the LOSSAN corridor.*

The Commission concluded that Oceanside project also was not an allowable use under Section 30233(a) and that the only way the Commission could find that project consistent with the Coastal Act was through the "conflict resolution" provision of Section 30007.5.

As of June 2007, the Commission had determined that the two most recent double tracking projects that involved fill of coastal waters or wetlands (CC-004-05 and CC-008-07) were not allowable uses under Section 30233(a) due to the likely increase in rail line capacity arising from the cumulative effect of those two projects and previously-approved double tracking projects.

Subsequent to those Commission decisions, a July 2009 report prepared for the California Department of Transportation and the Rail Prioritization Working Group, the *San Diego – LOSSAN Corridor Project Prioritization Analysis*, analyzed and prioritized potential rail investments in the San Diego County portion of the LOSSAN (Los Angeles-San Diego) corridor to support phased expansion of rail capacity. This report identified forty rail improvement projects for evaluation and prioritization, and included double tracking, tunnels, grade separations, and station improvements:

- For **near-term** service expansion, eight low-cost track projects are recommended to provide increased operational flexibility near several stations and double track configuration at some key choke points. These projects will result in 9.9 additional miles of double track.

- For **mid-term** service expansion, four additional track projects are recommended to provide continuous double track configuration from Carlsbad northward to CP Songs and for a ten-mile stretch south of University Town Center. These projects will result in 5.7 additional miles of double track.

- For **long-term** service expansion, five additional double track projects are recommended to provide continuous double track configuration except through Del Mar and Los Penasquitos Lagoon. These projects will result in 7.4 additional miles of double track.

The report also noted that the prioritization process produced project groups that were keyed to three service scenarios in the San Diego County portion of the LOSSAN corridor. These service scenarios represent the following progressive expansion of passenger and freight rail service over time:

- **Near-term** service expansion, which equates roughly to year 2015, would expand service to 79 trains each weekday. This expansion would provide 6 to 14 more trains per day compared to 2008, with most service expansion for peak period COASTER operations and AM and mid-day Amtrak operations.

- **Mid-term** service expansion, which equates roughly to year 2025, would expand service to 93 trains each weekday. This expansion would provide 20 to 28 more trains than 2008, with more service throughout the day for all operators except Metrolink. COASTER trains would run about every 25 minutes in the peak direction, and about every 90 minutes in the mid-day and evenings. Amtrak would have consistent hourly service in both directions throughout the day. BNSF would add a second manifest train in the mid-day.

- **Long-term** service expansion, which equates roughly to year 2030, would expand service to 119 trains each weekday. This expansion would provide about 50 more trains than 2008, with more service throughout the day for all operators except BNSF. As envisioned in the SANDAG 2020 RTP, COASTER trains would run about every 20 minutes in the peak direction, and about every 60 minutes in the mid-day and evenings. Amtrak would have consistent hourly service in both directions, with additional trips in peak intercity travel hours.

In March 2010 the Commission concurred with consistency certification CC-075-09 for the Carlsbad double tracking and Agua Hedionda Lagoon second bridge project, which was one of the listed near-term service expansion projects examined in the *San Diego – LOSSAN Corridor Project Prioritization Analysis* report. The information in that report supported the Commission's previous determinations that the double tracking projects in CC-004-05 and CC-008-07 would cumulatively support an expansion of capacity in the LOSSAN rail corridor, and further supported the Commission's finding in CC-075-09 that Carlsbad double tracking project would, cumulatively and over time, serve to increase the capacity of the LOSSAN corridor.

The proposed Sorrento to Miramar Double Track – Phase 1 project is also one of the near-term service expansion projects examined in the *San Diego – LOSSAN Corridor Project Prioritization Analysis* report. The Commission finds that the proposed project would also cumulatively support an expansion of capacity in the LOSSAN rail corridor. As explained previously in this report, if a transportation project increases capacity, it does not qualify as an allowable use under Sections 30233(a)(4) and none of the other allowable uses in Section 30233(a) apply. Therefore, the proposed project is not an allowable use under Section 30233(a) and, as discussed below in **Section H** of this report, the only way the Commission could find this project consistent with the Coastal Act would be through the "conflict resolution" provision of Section 30007.5.

2. Alternatives. During project design for constructing a second track between MP 249.8 and 251.0, SANDAG examined two project alternatives: placing the second track to the west of the existing track (Alternative 1) or placing it east of the existing track (Alternative 2). SANDAG used three evaluation criteria to compare the two project alternatives: track alignment design, constructability, and cost. The *Alternative Analysis Report* (May 2010) determined that:

- *Alternative 1 will require many earthwork excavations near existing tracks and may require track closures. Earthwork embankment fills for Alternative 2 is not anticipated to require track closures.*

- *Operations to perform cut retaining wall work along the south side of the tracks in Alternative 1 pose a significant safety risk.*

- *There are locations with suspected landslides located on the hillside slopes south of the existing tracks in Alternative 1.*

- *There is limited construction access along the hillside on the south side of the tracks for Alternative 1.*

- *Alternative 2 is the preferred project alternative.*

SANDAG held meetings with resource and regulatory agencies (including Coastal Commission staff) during the analysis of project alternatives to obtain input on potential impacts from project alternatives on sensitive natural resources located within and adjacent to the railroad corridor. The general consensus of the agency staff's participating was that Alternative 2 (placing the second track east of the existing track) would result in significantly reduced impacts to wetland habitat and sensitive upland habitats supporting listed species. To further minimize project impacts, SANDAG eliminated an access road initially proposed to run alongside the trackway south of Bridge 249.9 due to fill of wetland habitat that would be required to construct this roadway. The Commission finds that the proposed alternative avoids and minimizes adverse effects to wetland habitat from the project to the maximum extent practicable, and agrees with SANDAG that there is no feasible, less environmentally damaging alternative to constructing the proposed second railroad track east of the existing track between MP 249.8 and MP 251.0.

3. Mitigation. The *Biological Technical Report* for the proposed project states that temporary and permanent impacts to Coastal Act freshwater wetland habitat would occur and require mitigation.

Temporary Impacts. Approximately 1.07 acres of wetland habitat (freshwater marsh, southern arroyo willow riparian forest, and southern willow scrub) at and adjacent to Bridge 249.9 and along the trackway (both within and inland of the coastal zone) would be temporarily affected by project construction activities. These areas would be restored to pre-project conditions, and enhancement of these habitats would occur through exotic vegetation removal in immediately adjacent areas. Restoration and enhancement of temporarily affected wetland habitat in the project area will be guided by a revegetation plan that includes planting/restoration measures,

success criteria, and monitoring efforts. The details of this mitigation effort are provided in the *Conceptual Revegetation Plan for the Sorrento to Miramar Double Track – Phase 1* (November 2010), which states in part that:

> *A Conceptual Revegetation Plan will be prepared to address temporary impacts. Revegetation of habitats will include a five-year monitoring plan, which will include planting/restoration measures, success criteria, and monitoring efforts as required by the USFWS. All native seed and plant stock will be from seed and propagules collected within a five-mile radius of the work area to the extent practicable. Seed sources outside of the five-mile radius will be approved by the Service to determine whether the source is acceptable. All seeding will occur during the first winter or fall following completion of the construction. No invasive exotic plant species will be seeded or planted adjacent to or near sensitive vegetation communities or waters of the U.S. In compliance with Executive Order 13112, impacted areas will be reseeded with plant species native to local habitat types, and will avoid the use of species listed in Lists A and B of the California Exotic Pest Plant Council's (Cal-EPPC) List of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999 to the greatest extent practicable. Areas hydroseeded for temporary erosion control measures will use native plant species. Implementation of the proposed mitigation reduces temporary impacts to sensitive vegetation communities to less than significant.*

The *Biological Technical Report, Revegetation Plan,* and consistency certification also include extensive documentation on the impact avoidance and minimization measures that are incorporated into the project, including but not limited to the use of pile drilling rather than dredging to construct the new bridge support bents, the elimination of a portion of the access road south of Bridge 249.9 to avoid wetland impacts, the placement of the new bridge on the west side of the existing bridge and placing most of the new track to the east of the existing track to avoid wetland habitat, the use of Armor Flex (or a similar product) in the design of bridge abutments to provide space for the planting and growth of wetland habitat while protecting the abutments from erosion, and the use of best management practices to protect wetland habitat during construction and demolition activities.

The *Revegetation Plan* states that to be considered successful, the temporarily impacted and revegetated area must be monitored for a minimum of five years and meet the following criteria:

- The revegetation and restoration areas must attain at least 80 percent cover of native species;

- All mitigation areas must have less than 5 percent cover of annual exotic species and zero percent cover of perennial exotic species;

- The revegetation and restoration areas must be self-sustaining and the plants shall be thriving despite the lack of supplemental irrigation after two years.

The *Revegetation Plan* concludes that:

> *When the above criteria have been met, the RWQCB, USACE, and CCC will be notified in writing. The compensatory mitigation will not be considered successful without an on-site inspection by RWQCB, USACE, and CCC personnel and/or written confirmation that success criteria have been achieved.*

Permanent Impacts. In addition to these temporary impacts, the project would also lead to the permanent loss of 0.45 acres of wetland habitat: 0.24 acres of freshwater marsh within the coastal zone, 0.2 acres of southern willow scrub within and inland of the coastal zone, and 0.01 acres of southern arroyo willow riparian forest inland of the coastal zone. SANDAG has committed in its consistency certification to mitigate this habitat loss at an off-site location (most likely Caltrans' Pardee Mitigation site in Carmel Valley, approximately four miles northeast of the project area; **Exhibit 8**) and create 0.96 acres of freshwater marsh (using a 4:1 acreage mitigation ratio), 0.6 acres of willow scrub, and 0.03 acres of willow riparian forest (the latter two habitat types using a 3:1 acreage mitigation ratio).

SANDAG included in its consistency certification conceptual elements of the habitat restoration project that is proposed for the Pardee site. Those elements include grading and erosion control plans, planting lists, planting plans, and irrigation plans. The wetland habitat restoration project would also incorporate the guidelines contained in the *Conceptual Revegetation Plan* for temporary impact mitigation (e.g., site preparation, sources of plant and seed materials, maintenance activities and schedules, monitoring, reporting, success criteria). SANDAG also provided additional information to the Commission staff (and other resource and regulatory agency staff) regarding management responsibilities for the habitat restoration work proposed for the Pardee Mitigation site:

- Caltrans is preparing the final mitigation plan, which will include restoration plans and assurances of long-term protection, funding, and management.

- Caltrans will own a conservation easement over the land and manage the site during the initial 5-year monitoring period; the Pardee Company will own the land in fee title and will then transfer title to the City of San Diego after success of the mitigation site is determined. The City's Department of Parks and Recreation will manage the site afterwards with an endowment from SANDAG. A management agreement between SANDAG and the City will be entered into prior to the City taking over the site.

- Caltrans plans on starting grading of the site in Fall 2011 and finishing within six months. Planting of vegetation would start in the Spring 2012. This schedule coincides with project impacts.

Notwithstanding the above information, the conceptual wetland restoration plan submitted by SANDAG for permanent wetland habitat impacts from the proposed project is not developed to a level of detail that allows the Commission to determine that impacts will be sufficiently mitigated. As a result, SANDAG has agreed to submit to the Commission, prior to the start of

construction of the Sorrento to Miramar Double Track – Phase 1 project, a second consistency certification for the final mitigation plan for permanent wetland habitat impacts associated with the project. In addition, should SANDAG determine that the Pardee site will not available in a timely manner to provide sufficient acreage to implement the required wetland habitat mitigation, the second consistency certification will identify an alternate site that will be available and suitable for the necessary restoration work. With the adequate mitigation plan for temporary wetland habitat impacts, and with the agreement by SANDAG to submit (prior to the start of double track project construction) a second consistency certification for a mitigation plan for permanent wetland habitat impacts, the Commission finds that the proposed project will include adequate mitigation for impacts to wetland habitat.

4. Conclusion. The Commission finds that the proposed Sorrento to Miramar Double Track – Phase 1 project is consistent with the wetland fill alternatives and mitigation tests, but is not consistent with the allowable use test of Section 30233(a) of the Coastal Act for the reasons described above. 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.[1] As discussed in **Sections III.C, D**, and **E** of this report, not approving the project would be inconsistent with the water quality, air quality/energy consumption, and public access and recreation policies of the Coastal Act, because it would eliminate benefits to coastal resources that are inherent in the project and mandated by the policies of the Coastal Act. Those benefits include the maximization of existing and future public access, the facilitation of public transit and the minimization of vehicle miles traveled, and the improvement of air and water quality by reducing traffic congestion. Thus, the project creates a conflict between the allowable use test of the wetlands policy of the Coastal Act (Section 30233(a)) on the one hand, and the water quality, public access, and energy conservation policies of the Coastal Act (Sections 30231, 30232, 30210, 30212, 30252, and 30253) on the other. In the concluding section of this report (**Section III.H**) the Commission will resolve these conflicts and determine that concurrence with this consistency certification would, on balance, be most protective of significant coastal resources.

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.

[1] SANDAG in its consistency certification determined that the proposed project is an allowable use under the incidental public service provision of Section 30233(a)(4). The Commission disagrees with this determination for the reasons discussed in this staff report and instead uses the Section 30007.5 "conflict resolution" provision.

In addition, Coastal Act 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.*

While most of the proposed project construction activities would occur within previously developed areas in the railroad right-of-way, the 2010 *Biological Technical Report* for the Sorrento to Miramar Double Track – Phase 1 project does confirm the presence of sensitive upland plant communities in and adjacent to the project corridor (environmentally sensitive wetland habitats present in the project area were separately analyzed in **Section III.A** of this report, above). The *Report* also examines the anticipated permanent and temporary impacts to those plant communities from the project and the avoidance, minimization, and mitigation measures that SANDAG will implement. The *Report* states that there are 24.39 acres of sensitive plant communities located within the project survey area, comprised of the railroad right-of-way and adjacent areas (generally within 300 feet of the railroad centerline). Several of these areas provide suitable habitat for listed species such as the California gnatcatcher, least Bell's vireo, and Southwestern willow flycatcher. These plant communities, their characteristic species, and the acreage present in the project area are as follows:

- Diegan coastal sage scrub: California sagebrush, flat-top buckwheat, lemonade berry, and laurel sumac; 10.47 acres.

- Diegan coastal sage scrub – baccharis dominated: coyote brush, broom baccharis; 1.56 acres.

- Southern coast live oak riparian forest: coast live oak, western sycamore, mugwort; 1.24 acres.

- Southern mixed chaparral: lemonade berry, yellow bush penstemon, California buckwheat; 2.73 acres.

- Sycamore alluvial woodland: western sycamore, coast live oak, willow; 8.39 acres.

The *Biological Technical Report* states that none of these sensitive plant communities are present within the coastal zone portion of the project survey area (except for two small areas of Diegan coastal sage scrub, which are situated well away from the construction zone). Therefore, no sensitive upland habitat within the coastal zone would be affected by grading or building of structures to accommodate the widening of the trackway for the second track in the coastal zone portion of the project.

Inland of the coastal zone the project would lead to temporary impacts on 1.17 acres and a permanent loss of 0.98 acres of sensitive plant communities. The project would temporarily affect 0.7 acres of Diegan coastal sage scrub, 0.08 acres of Diegan coastal sage scrub – baccharis

dominated, 0.06 acres of southern coast live oak riparian forest, 0.22 acres of southern mixed chaparral, and 0.11 acres of sycamore alluvial woodland. The project would lead to the permanent loss of 0.61 acres of Diegan coastal sage scrub, 0.11 acres of Diegan coastal sage scrub – baccharis dominated, 0.08 acres of southern coast live oak riparian forest, and 0.18 acres of southern mixed chaparral.

The aforementioned listed bird species are inherently mobile. As such, they move in and out of the coastal zone without regard to the location of the coastal zone boundary. Any birds found within the coastal zone on a regular basis constitute a coastal resource. 15 CFR Section 930.11(b). These birds also depend upon and use the types of vegetation and habitat described above. Thus, if the plant communities described above that are inland of the coastal zone are used by one or more of the aforementioned listed bird species, then the removal of those plant communities would have an impact on a coastal resource. The Commission would then consider those plant communities as Coastal Act ESHA and would evaluate the project for consistency with the policies of Section 30240 of the Coastal Act, including its allowable use provision. As a result, the Commission has historically determined that adverse project effects on ESHA inland of the coastal zone hold the potential to adversely affect those bird species, which are a coastal zone resource (i.e., CC-018-07, Transportation Corridor Agencies; Foothill Transportation Corridor, State Route 241 Extension, Orange and San Diego Counties).

However, the *Biological Technical Report* states that the while the project will temporarily and permanently affect habitat that could support listed species inland of the coastal zone, the project construction footprint inland of the coastal zone does not include occupied California gnatcatcher habitat, occupied least Bell's vireo habitat, or occupied San Diego fairy shrimp habitat. In addition, project construction is scheduled to avoid the breeding season of the California gnatcatcher, least Bell's vireo, and the southwestern willow flycatcher, and includes avoidance, minimization, mitigation, and monitoring measures for temporary and permanent impacts to sensitive vegetation communities (**Exhibit 9**). Therefore, the Commission determines that the vegetation communities inland of the coastal zone that would be affected by the proposed project are not occupied by listed species, are therefore not ESHA under the Coastal Act, and as a result the project segment inland of the coastal zone will not affect ESHA.[2]

The consistency certification discusses the proposed mitigation measures for the unavoidable temporary impacts to sensitive plant communities in the project area both inside and inland of the coastal zone. These affected areas will be restored in-kind and in-place. Native vegetation in the temporary impact footprint shall be trimmed at the surface rather than uprooted to the

[2] It is important to note that if the vegetation communities inland of the coastal zone were documented in the Biological Technical Report as occupied habitat for one or more listed bird species (or if the last pre-construction surveys for the project identify occupied habitat in this area), the Commission would classify these communities as ESHA and would find 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." The only way the Commission could then concur with this consistency certification would be if it found the project consistent with the Coastal Act through the "conflict resolution" provision contained in Section 30007.5.

maximum extent practicable. The project's *Conceptual Revegetation Plan* addresses temporary impacts on sensitive plant communities:

> *Revegetation of habitats will include a five-year monitoring plan, which will include planting/restoration measures, success criteria, and monitoring efforts as required by the USFWS. All native seed and plant stock will be from seed and propagules collected within a five-mile radius of the work area to the extent practicable. Seed sources outside of the five-mile radius will be approved by the Service to determine whether the source is acceptable. All seeding will occur during the first winter or fall following completion of the construction. No invasive exotic plant species will be seeded or planted adjacent to or near sensitive vegetation communities or waters of the U.S. In compliance with Executive Order 13112, impacted areas will be reseeded with plant species native to local habitat types, and will avoid the use of species listed in Lists A and B of the California Exotic Pest Plant Council's (Cal-EPPC) List of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999 to the greatest extent practicable. Areas hydroseeded for temporary erosion control measures will use native plant species.*

SANDAG has committed in its consistency certification to mitigate the permanent loss of sensitive plant communities in the project area both inside and inland of the coastal zone at an off-site location (most likely the Pardee Mitigation site in Carmel Valley, approximately four miles northeast of the project area). SANDAG included in its consistency certification conceptual elements of the habitat restoration project that is proposed for the Pardee site, which would provide mitigation for the permanent impacts to sensitive plant communities within the double track project corridor. Those elements include grading and erosion control plans, planting lists, planting plans, and irrigation plans. The restoration project would also incorporate the guidelines contained in the *Conceptual Revegetation Plan* for temporary impact mitigation (e.g., site preparation, sources of plant and seed materials, maintenance activities and schedules, monitoring, reporting, success criteria). SANDAG also provided additional information to the Commission staff (and other resource and regulatory agency staff) regarding management responsibilities for the habitat restoration work proposed for the Pardee Mitigation site (see page 16, above).

However, the conceptual restoration plan submitted by SANDAG for permanent impacts to sensitive plant communities from the proposed project is not developed to a level of detail that allows the Commission to determine that impacts will be sufficiently mitigated. As a result, SANDAG has agreed to submit to the Commission, prior to the start of construction of the Sorrento to Miramar Double Track – Phase 1 project, a second consistency certification for the final mitigation plan for permanent impacts to sensitive plant communities associated with the project. In addition, should SANDAG determine that the Pardee site will not be available in a timely manner to provide sufficient acreage to implement the required mitigation, the consistency certification will identify an alternate site that will be available and suitable for the necessary restoration work. With the adequate mitigation plan for temporary impacts to sensitive plant communities, and with the agreement by SANDAG to submit (prior to the start of double track project construction) a second consistency certification for a mitigation plan for permanent

impacts to sensitive plant communities, the Commission finds that the proposed project will include adequate mitigation for impacts to these habitats.

The Commission agrees with SANDAG that with the above measures incorporated into the project, combined with the wetland and water quality protection measures described in other sections of this report, the project is designed to prevent significant adverse impacts to sensitive upland habitats within and adjacent to the double tracking project area. The Commission therefore finds the project consistent with the habitat protection policies of Section 30240 of the Coastal Act.

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

> *Section 30231. The biological productivity and 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. 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.*

SANDAG has included in its consistency certification commitments for water quality protection for the proposed double track and bridge replacement project, including development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), a Spill Prevention Containment and Countermeasure (SPCC) Plan, and associated best management practices to avoid and minimize the potential for adverse impacts to water quality in and adjacent to the project area. The consistency certification states that:

> *The potential impacts to water quality are limited to the construction phase of the project. Pollutants of concern during construction activities are erosion and sedimentation, the inadvertent dropping of materials into Carroll Canyon Creek, and potential for hazardous materials spill or leakage from construction vehicles.*
>
> *The proposed project would include the preparation of a SWPPP by the contractor, 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 BMPs will conform to the Caltrans Storm Water Quality Handbook, Construction Site Best Management Practices Manual, November 2000. Fiber rolls and hydraulic mulch will be used to reduce erosion potential on newly*

> *constructed slopes and berms. After the project construction is completed, temporarily impacted areas will be reseeded with native species to reduce sedimentation runoff into wetlands.*

Concerning hazardous materials used during project construction, SANDAG states in the consistency certification that:

> *Contractor operations are not anticipated to use or generate any unusual or significant amounts of hazardous wastes. Potentially hazardous materials, which may be present on-site during construction of the project, are those generally associated with the operation and maintenance of vehicles and equipment. Though these potentially hazardous materials may be present on-site, the amount of material will be limited due to the mobile nature of the installation activities. 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 and no hazardous materials will be stored within 50 feet of sensitive areas. The contractor will develop a SPCC plan before construction begins to ensure that the release of any hazardous materials is properly controlled and cleaned up.*

In previous reviews of SANDAG and NCTD double tracking projects in San Diego County, the Commission concurred with these agency's determination that:

> *Passenger rail vehicles are much cleaner than highway vehicles with respect to oil and grease drips. This is partially attributed to the fact that any drips from rail vehicles fall into a ballasted ROW, where gravel and soil act as a filter to prevent runoff from moving contaminants and because rail transportation involves less oil, grease, and other hydrocarbons than automobiles. On the other hand, automobiles are a significant source of hydrocarbons, which are then flushed by runoff from the Interstate 5 area into nearby water bodies. The proposed project will provide improved public transportation service and freight service, which will help reduce automobile congestion and reduce automobile vehicle miles traveled and the corresponding non-point source emissions.*

As noted in a previous section of this report, erosion controls to protect water quality 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 at and adjacent to the project area and would be consistent with the water quality protection policies of the CCMP (Coastal Act Sections 30231 and 30232).

D. <u>Air Quality and Energy Consumption</u>. Coastal Act Section 30253(d) provides that new development shall "minimize energy consumption and vehicle miles traveled." During its review in 2002 of NCTD's proposal for the Oceanside-Escondido Rail Project (CC-029-02), the Commission noted that the public transit project: (a) would reduce auto-related air emissions, thereby contributing to the improvement of regional air quality; (b) as part of a regional public transportation system, including bus service, light-rail and commuter trains, and trolleys, the project would increase acceptance of public transit as a desirable mode of transportation; and (c) as acceptance and use of public transit increases, public agencies may be motivated to further

improve the public transit system and these improvements will result in corresponding reductions in traffic congestion. The Commission noted:

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

The proposed project's air quality benefits include reduced idling time by automobiles on highways and train locomotives in the LOSSAN corridor and will lead to reduced emissions of air pollutants. In addition, the anticipated operational efficiency improvements arising from construction of an additional segment of double track are expected to increase ridership on existing passenger trains in the corridor and to correspondingly reduce automobile trips and vehicle miles traveled in the corridor. These project benefits are also consistent with recent Commission actions (e.g., CC-079-06, BHP Billiton LNG International, Inc., Ventura and Los Angeles Counties) to protect coastal resources that would be directly affected by global climate change resulting from increases in greenhouse gas emissions. Potential adverse effects on coastal resources associated with global climate change include sea level rise, increased coastal flooding and erosion, inundation of developed areas and public access and recreation areas, alterations to existing sensitive habitat areas, ocean warming, changes in marine species diversity, distribution, and productivity, and increased ocean acidification.

Numerous Coastal Act policies provide a basis for Commission action to reduce greenhouse gases and to protect coastal resources at risk from the adverse effects of global warming, including the air quality and energy minimization policies (Section 30253). The Commission recently adopted findings in support of these goals when it concurred with consistency certification CC-075-09 by NCTD for a double tracking project in Carlsbad in northern San Diego County. The Commission finds that SANDAG's proposed double tracking and bridge project, and the resulting improvements to public transportation in the LOSSAN corridor, will help to reduce energy consumption, reduce greenhouse gas emissions, and improve air quality, and is therefore consistent with the energy minimization policy of the CCMP (Coastal Act Section 30253(d)).

E. <u>Public Access, Recreation, and Transit</u>. Section 30210 of the Coastal Act provides:

> *<u>Section 30210</u>. 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, SANDAG states in its consistency certification that:

> *Phase 1 will not interfere with existing public access to coastal areas and recreational opportunities. The project 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 the railroad right-of-way (ROW), including running and walking, has occurred by members of the public.*
>
> *The purpose of the proposed project is to construct a second track along the rail corridor through the provision of freight train side tracking to improve freight movement, increase capacity and speed in the Sorrento to Miramar Hill area, increase on-time train performance, reduce travel time on the LOSSAN corridor, and protect public and environmental safety. Phase 1 conforms with the public access objectives of the California Coastal Act because it does not propose any change to existing public coastal accessways and there are no authorized coastal accessways located within the project's area of potential effect (APE).*
>
> *Construction access to the northern end of the project (Control Point (CP) Pines and Bridge 249.9) will be from Sorrento Valley Road. The adjacent parking lots near MP 250.2 and a potential access location from Mira Mesa Boulevard under I-805 may provide construction*

> *access at the middle and southern ends of the project site. 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. All materials and equipment necessary for construction will be stored at staging areas within the railroad ROW.*
>
> . . .
>
> *The proposed project is anticipated to be beneficial to public coastal access by increasing the structural and operational capacity for trains passing through the Phase 1 area . . . .*

The Commission agrees with SANDAG and finds that the proposed project would not adversely affect any existing public access opportunities and would improve public access by maintaining and expanding the rail line used by SANDAG 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).

F. <u>Cultural Resources</u>. 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.*

The consistency certification states that an important archaeological site is located within the proposed project's Area of Potential Effect (APE), is considered to be a significant resource, and is a National Register Listed Native American Village Site. Included in the subject consistency certification are two reports prepared for SANDAG:

- Draft Cultural and Historical Inventory and Impacts Assessment Report for San Diego Association of Governments Sorrento-to-Miramar Double Track Project, San Diego County, California (ASM Affiliates, November 2010)

- Draft Historic Property Treatment Plan for CA-SDI-4609/SDM-W-654, Sorrento-to-Miramar Double Track Project, San Diego County, California (ASM Affiliates, November 2010)

The first report presents the results of an extensive cultural and historical resource inventory and evaluation conducted within the APE for the proposed project. The Executive Summary provides in part the following:

> *In compliance with Section 106 of the National Historic Preservation Act (NHPA), a cultural resources inventory was completed to identify all cultural resources within the proposed Area of Potential Effect (APE). The initial cultural resources inventory was completed by ASM Affiliates, Inc. (ASM) in 2007 for North County Transit District's*

(NCTD) Bridge Replacement Project (BRP), which proposed the replacement of eight timber trestle bridges, including Bridge 249.9 in the current APE. Based on records search results and field survey completed by ASM within the project boundary, it was determined that two previously recorded archaeological sites, CA-SDI-4609/SDM-W-654 and SDI-10,438, are located within the project APE. Historical structures within the APE included one timber bridge at mile post (MP) 249.9 and one 1949 concrete culvert. ASM evaluated these historic resources for eligibility for inclusion in the National Register of Historic Places (NRHP) and recommended that they are not eligible for the NRHP as they fail to meet any of the criteria for eligibility (Ní Ghabhláin 2008).

SDI-4609/W-654 is identified as the location of the ethnohistoric village site of Ystagua. A portion of this site, also known as the Sorrento Valley site, has been listed in the NRHP since 1975. A portion of this site adjacent to the NCTD ROW has also been designated as a historic landmark by the City of San Diego Historic Resources Board . . .

ASM completed subsurface testing within the APE for NCTD's Bridge Replacement Project in 2007. Subsurface testing was conducted within the project APE determine if cultural deposits associated with SDI-4609/W-654 extended into the project APE, to assess the integrity of those deposits, and to evaluate them for eligibility to the NRHP. In order to facilitate future impacts analysis, subsurface testing also sought to determine site boundaries, to identify buried deposits, and to determine the depth of deposits. Native American monitors were present for all phases of work. Site testing confirmed that cultural deposits associated with the site do extend into the NCTD ROW, and cultural material was recovered to a maximum depth of approximately 160 cm in shovel test pits (STPs). Based on the results of STP and auger excavation, it appeared that intact midden soils containing cultural material extended into the Area of Direct Impacts (ADI) in the vicinity of Bridge 249.9.
…

SDI-10,438 is a prehistoric site located within the NCTD ROW approximately 280 m south of NCTD Bridge 249.9. This site was evaluated for NRHP eligibility in 1985 and was recommended as ineligible for listing. The portion of the site within the NCTD ROW was not included in the 1985 evaluation. While very few surface materials were noted in the NCTD ROW during the 2007 survey, a subsurface component was identified as a result of STP excavations that same year. Subsurface testing in 2010 suggests that cultural deposits extend from SDI-4609/W-654 south to this location and that SDI-10438 is a locus of SDI-4609/W-654 . . .

Additional subsurface testing took place in April and September 2010. A series of 17 STPs and 21 augers were excavated on both sides of the railroad track between MP 248.9 and 250.0 to further define site boundaries south of Bridge 249.9. Four test units were also excavated within the ADI to assess potential impacts and to aid in the development of an appropriate treatment plan. All excavated soil from unit excavation was water screened at the request of Native American representatives to increase the recovery of small finals and faunal remains. A Native American monitor was present for the duration of field testing

during the 2010 testing program, and during lab sorting and cataloguing. Agency representatives met with Native American representatives Clint Linton and Gabe Kitchen to discuss possible mitigation measures.

This testing program has positively confirmed that extensive and significant cultural deposits are present within the APE for the Sorrento-to-Miramar Double Track Phase 1 project and that these deposits are contributing elements of NRHP-listed site SDI-4609/W-654. The excavation of the test units suggests that the more sensitive materials and concentrations can be found north of the NCTD Bridge 249.9 and adjacent to it. These areas contain high densities of archaeological remains along with good artifact diversity. The research potential of the cultural deposits within the project APE is considered to be exceptionally high. This site is also considered highly sensitive by the Native American community as human remains have been recovered from several locations within the site boundary. Human remains have also been recovered within the NCTD ROW and the ADI for this project.

The current project as proposed would have an adverse effect on the archaeological resources recorded as SDI-4609/W-654. Grading and disturbance of the ground from construction, drainage installation, and construction of retaining walls and access roads will destroy portions of this NRHP-listed site with high research potential, and of additional significance, have the potential to destroy or damage human burials. Under the provisions of Section 106, these effects may be mitigated by a data recovery program, which would be directed toward intensive archaeological excavations within those areas that will be disturbed by project implementation.

The report also proposes numerous mitigation measures to be implemented by SANDAG during project construction; those measures can be found in **Exhibit 10** of this staff report.

The Historic Property Treatment Plan (HPTP) describes a program to mitigate adverse impacts to the NRHP (National Register of Historic Places) archaeological resource in the form of the proposed implementation of a data recovery plan for those portions of SDI-4069/W-654 within the project APE. The aim of the data recovery plan is to address a series of important research questions relevant to the site as a whole and specifically those portions of the resources within the APE subjected to impact by the proposed project. The HPTP provides information on research design and objectives for the data recovery plan (site formation processes, chronology and dating, settlement organization and site function, subsistence orientation, acculturation, and traditional cultural properties), and on the following data recovery methods:

- Native American participation
- Field methods (mechanical coring and unit excavations)
- Treatment of human remains

- Laboratory and analytical methods (flaked stone artifact analysis and recording procedures, invertebrate faunal analysis, vertebrate faunal analysis, historic artifact analysis, curation of the archaeological collection, and construction monitoring)

The HPTP also includes a monitoring and discovery protocol for additional cultural resources that may be discovered during construction. Regarding monitoring of ground-disturbing activities during project construction, the HPTP states that:

> *Provision will be made for a Native American monitor(s) and archaeological monitoring of all grading, trenching, and subsurface disturbance at the site during project development. That includes grubbing, grading, excavation, geotechnical investigations, and other activities that disturb the ground. Daily logs will be kept by all monitors, and a monitoring report will be prepared at the conclusion of each phase of monitoring. Should human remains be found during any phase of the project, including monitoring during construction grading, soils associated with the remains will not be removed from the site area. All soils from the site should remain within the site.*

SANDAG states in the consistency certification that the U.S. Army Corps of Engineers has initiated consultation regarding the proposed project with the State Historic Preservation Officer (SHPO), in compliance with Section 106 of the Natural Historic Preservation Act. That consultation is ongoing, and upon completion the Corps will require SANDAG to incorporate into the proposed project any additional or modified mitigation measures (beyond those contained in the aforementioned reports) required by SHPO before the Corps will issue the Clean Water Act Section 404 permit for the project to SANDAG. SANDAG confirmed with Commission staff that it has agreed to this process and will incorporate into the proposed project and consistency certification the additional and/or modified cultural resource mitigation measures required by SHPO.

The Commission agrees with SANDAG that the double track and bridge replacement project would adversely affect cultural resources, but that the mitigation measures to be implemented prior to, during, and after completion of construction activities will render the project consistent with the cultural resource protection policy of the Coastal Act. The resource inventory and evaluation work previously undertaken within the project area; the previous, ongoing, and future consultation and coordination with designated Native American representatives; and the commitment by SANDAG to protect to the maximum extent feasible all known and unknown cultural resources in the project area and to implement the Historic Property Treatment Plan demonstrates SANDAG's commitment to protection of this highly sensitive Native American site under the provisions of Section 106 of the National Historic Preservation Act. With the aforementioned commitments, the Commission therefore determines that the proposed project is consistent with the cultural resource policy of the CCMP (Coastal Act Section 30244).

G. <u>Public Views</u>. 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 east of I-5, near the I-5 and I-805 interchange, within the existing railway ROW. The project area does not have views to the ocean or the Los Penasquitos Lagoon. The proposed double tracking of the existing railway and bridge replacement will not adversely affect the scenic or visual quality of the area.*

The design of the proposed double track railroad bridge is consistent with other SANDAG and NCTD railroad bridge replacement projects previously reviewed by the Commission at locations in San Diego County. The Commission agrees with SANDAG that the proposed segment of double track and the construction of a replacement bridge in the same location as the existing bridge is not located in an area that provides scenic public views to or along the shoreline or to other scenic features, and will not adversely affect public views. The Commission therefore finds that the proposed project is consistent with the public view policy of the CCMP (Coastal Act Section 30251).

H. 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, to identify a conflict, 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 some other policy or policies of the Coastal Act.

As discussed previously in **Section III.A**, above, because the project would increase railway capacity, it does not qualify as an incidental public service under Section 30233(a)(4), Commission interpretations of which historically only allow transportation projects in wetlands and open coastal waters where they are necessary to maintain *existing* capacity. Therefore, because the project is not an allowable use, the only way the Commission could find the project

consistent with the Coastal Act would be through the "conflict resolution" provision (Section 30007.5).

As described in the access section above (**Section III.E**), one of the project purposes/benefits is reduced traffic congestion on area highways. NCTD has provided evidence in previous consistency certifications that double-tracking projects provide significant public access and recreation benefits, both through reducing traffic congestion along and improving public access to the coast. NCTD has reiterated that finding in its subject consistency certification. The Commission finds that traffic congestion interferes with access to the coastal recreational opportunities within northern San Diego County (including travelers from Los Angeles and Orange Counties). As traffic congestion increases with expected growth of the region, these access impacts will worsen, and when congestion increases, non-essential trips such as those for recreational purposes tend to be among the first to be curtailed. Thus, as the traffic increases, the ability for the public to get to the coast will become more difficult, which would result in a condition that would be inconsistent with the access policies of the Coastal Act.

As discussed in **Sections III.C and III.D** above, traffic increases that would occur if this project were not to go forward would also degrade water and air quality. This would result in conditions that are inconsistent with the water and air quality policies of the Coastal Act, because they would adversely affect already impaired coastal water bodies and exacerbate non-attainment status of the coastal air basin. Section 30231 of the Coastal Act requires the maintenance and restoration of coastal water quality. Section 30253(d) provides for improved air quality and reductions in energy consumption and vehicle miles traveled. Section 30252 articulates that one of the Coastal Act's access goals is encouraging maintenance and enhancement of public access through facilitating the provision or extension of transit service. Thus, not only would objecting to this consistency certification be inconsistent with the access policies, but it would also result in adverse effects to coastal waters and the air basin, and be inconsistent with the achievement of water quality, air quality, energy conservation, reductions in vehicle miles traveled, and transit goals expressed in Sections 30231, 30253(d), and 30252. The Commission therefore finds that the proposed project creates a conflict between allowable use test of the wetland policy (Section 30233(a)) on the one hand, and the water quality/air quality/energy conservation/reductions in vehicle miles traveled/public access and transit policies (Sections 30231/30253(d)/30252) on the other.

2. <u>Conflict Resolution</u>. Having established a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in a manner that is on balance most protective of coastal resources. In this case, the proposed project will result in the permanent fill of 0.45 acres, and temporary impacts to 1.07 acres, of coastal freshwater wetland habitat. The affected habitat is adjacent to the existing rail line, the amount of fill has been minimized to the maximum extent practicable, and on-site restoration of temporarily affected habitat and off-site mitigation for permanent loss of wetland habitat are project elements. On the other hand, as stated above, objecting to this consistency certification would result in conditions that would be inconsistent with the access policies (Section 30210), and would result in adverse effects to coastal waters and the coastal air basin, and would be inconsistent with the achievement of water quality, air quality, energy conservation, and reductions in vehicle miles traveled goals expressed

in Sections 30231, 30253(d), 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 coastal waters impacts, which would, as designed by SANDAG, be adequately mitigated. The Commission therefore concludes that concurring with this consistency certification would, on balance, be most protective of coastal resources, and that the project is consistent with Coastal Act Section 30007.5.

Substantive File Documents:

1. CC-086-03 (NCTD, Pulgas to San Onofre double tracking at the north end of Camp Pendleton)

2. CC-004-05 (NCTD, O'Neill to Flores double track project in central Camp Pendleton)

3. CC-052-05 (NCTD, Santa Margarita River double tracking project at the south end of Camp Pendleton)

4. CC-055-05 (NCTD, replacement of the railroad bridge over Agua Hedionda Lagoon)

5. CC-079-06 (BHP Billiton LNG International Inc., Ventura and Los Angeles Counties)

6. CC-008-07 (NCTD, extension of passing track and construction of one replacement and one new railroad bridge over Loma Alta Creek in Oceanside)

7. CC-059-09 (NCTD, replacement of three railroad bridges over Los Penasquitos Lagoon, San Diego)

8. CC-075-09 (NCTD, construction of second mainline track and second railroad bridge over Agua Hedionda Lagoon, City of Carlsbad, San Diego County)

9. 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).

10. *Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County* (1999) 71 Cal.App.4th 493, 517.

11. Biological Technical Report, Sorrento to Miramar Double Track – Phase 1, San Diego County, California (HDR Engineering, November 2010)

12. Conceptual Revegetation Plan, Sorrento to Miramar Double Track – Phase 1, San Diego County, California (HDR Engineering, November 2010)

13. Draft Cultural and Historical Inventory and Impacts Assessment Report for San Diego Association of Governments, Sorrento-to-Miramar Double Track Project, San Diego County, California (ASM Affiliates, November 2010)

14. Draft Historic Property Treatment Plan for CA-SDI-4609/SDM-W-654, Sorrento-to-Miramar Double Track Project, San Diego County, California (ASM Affiliates, November 2010)

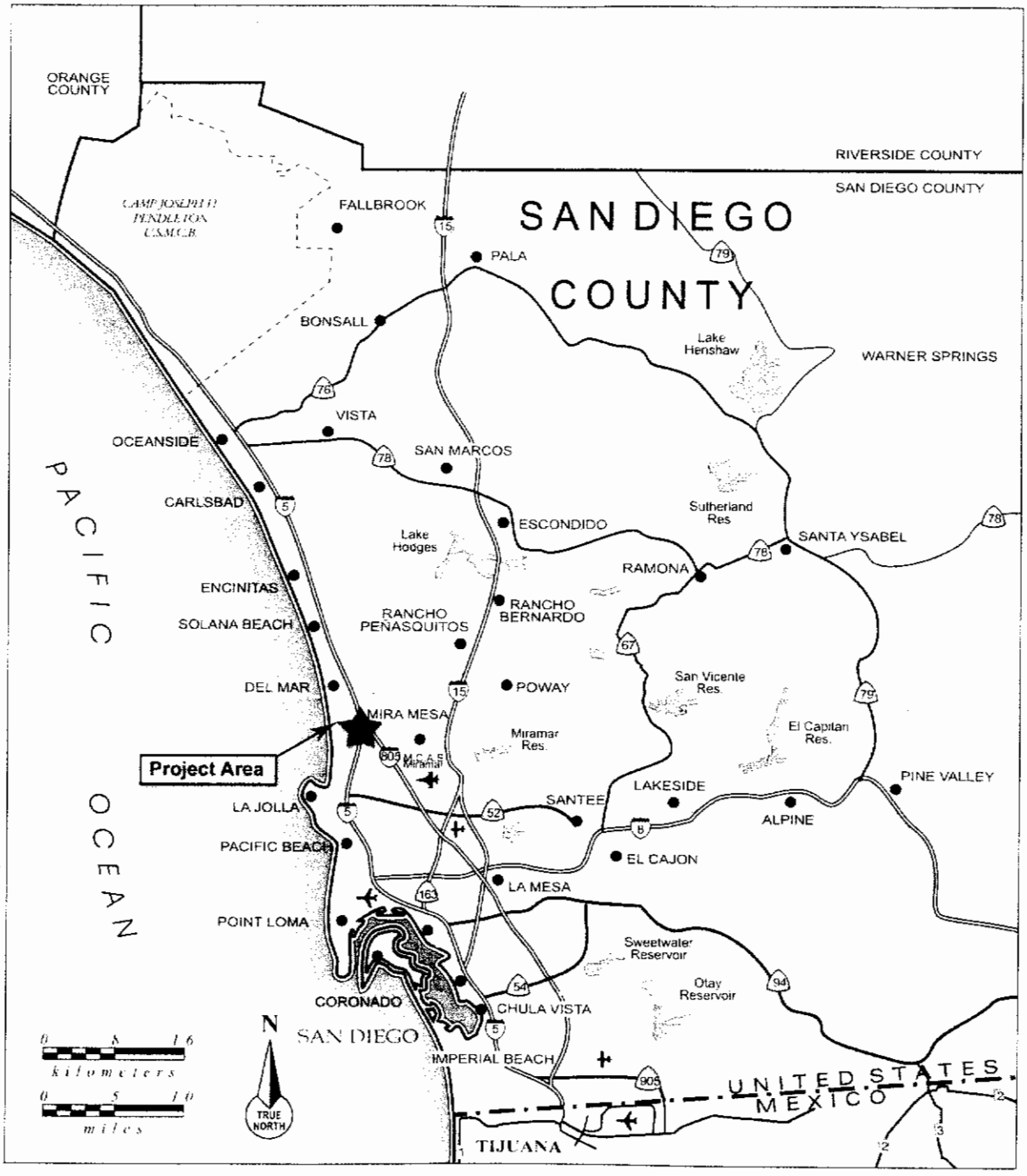
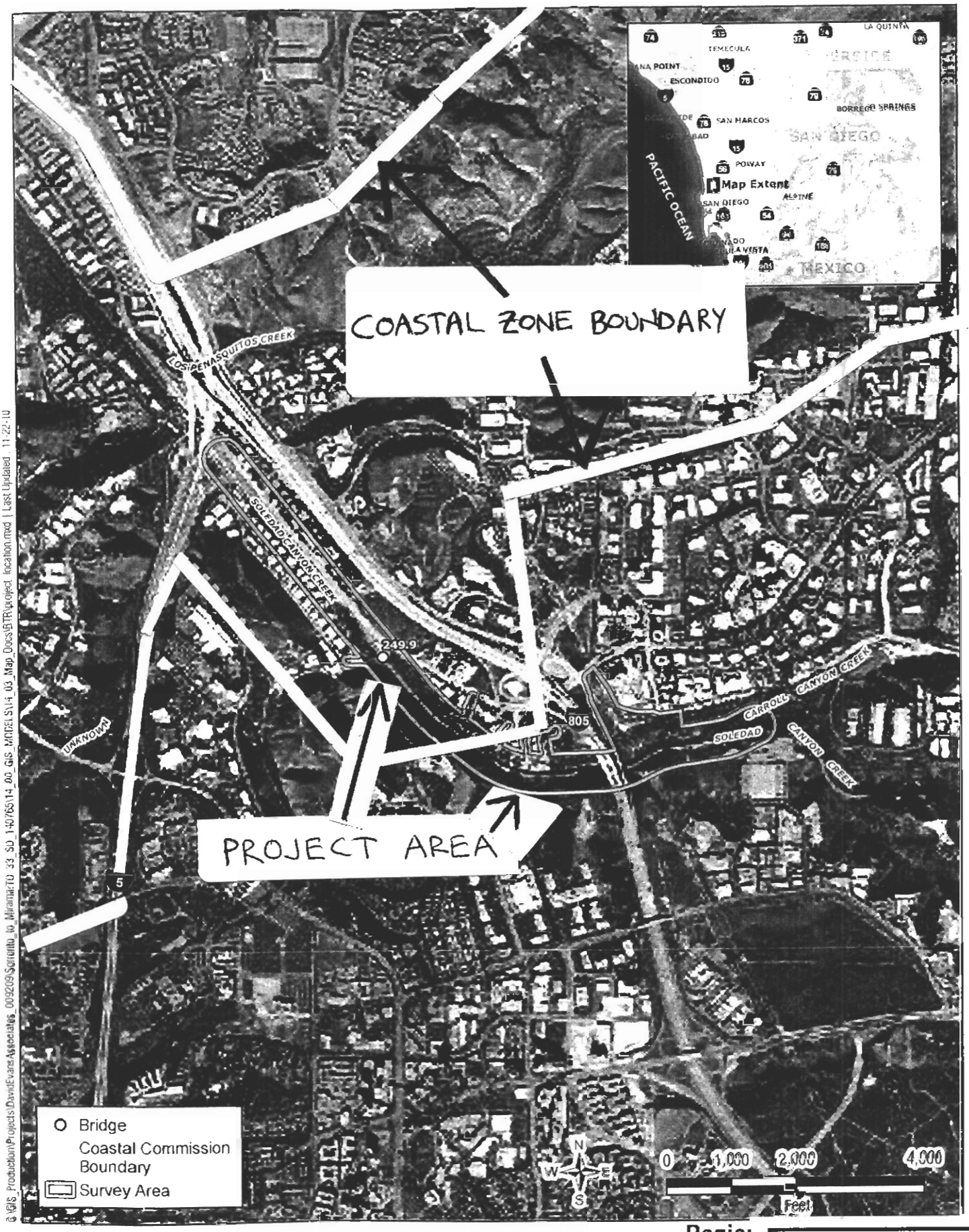


Figure 1. Regional project location.

EXHIBIT NO. 1
APPLICATION NO.
CC-052-10



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HDR
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EXHIBIT NO. 2
APPLICATION NO.
CC-052-10

Sorrento To Miramar Phase 1

Study Area Map

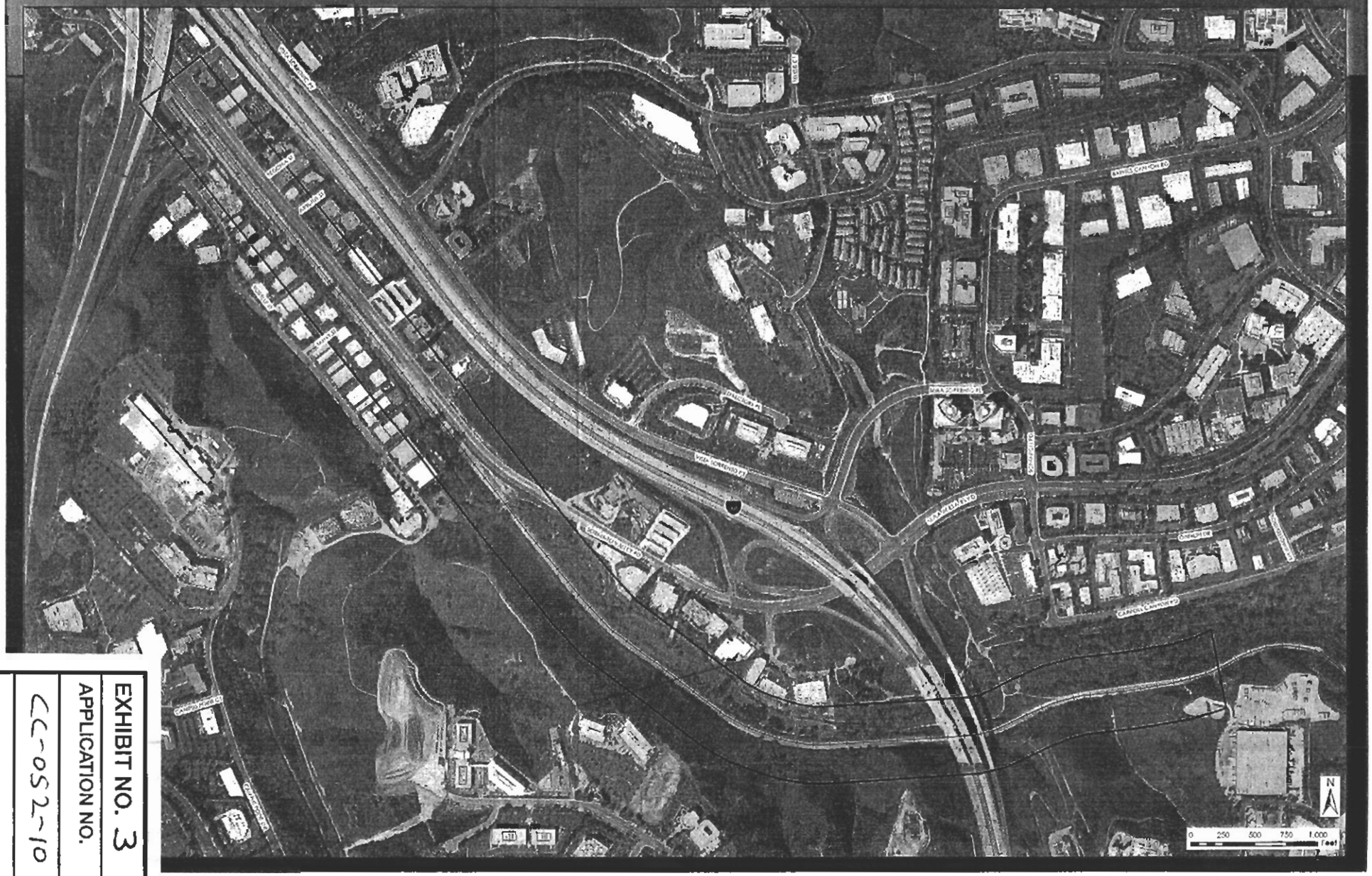
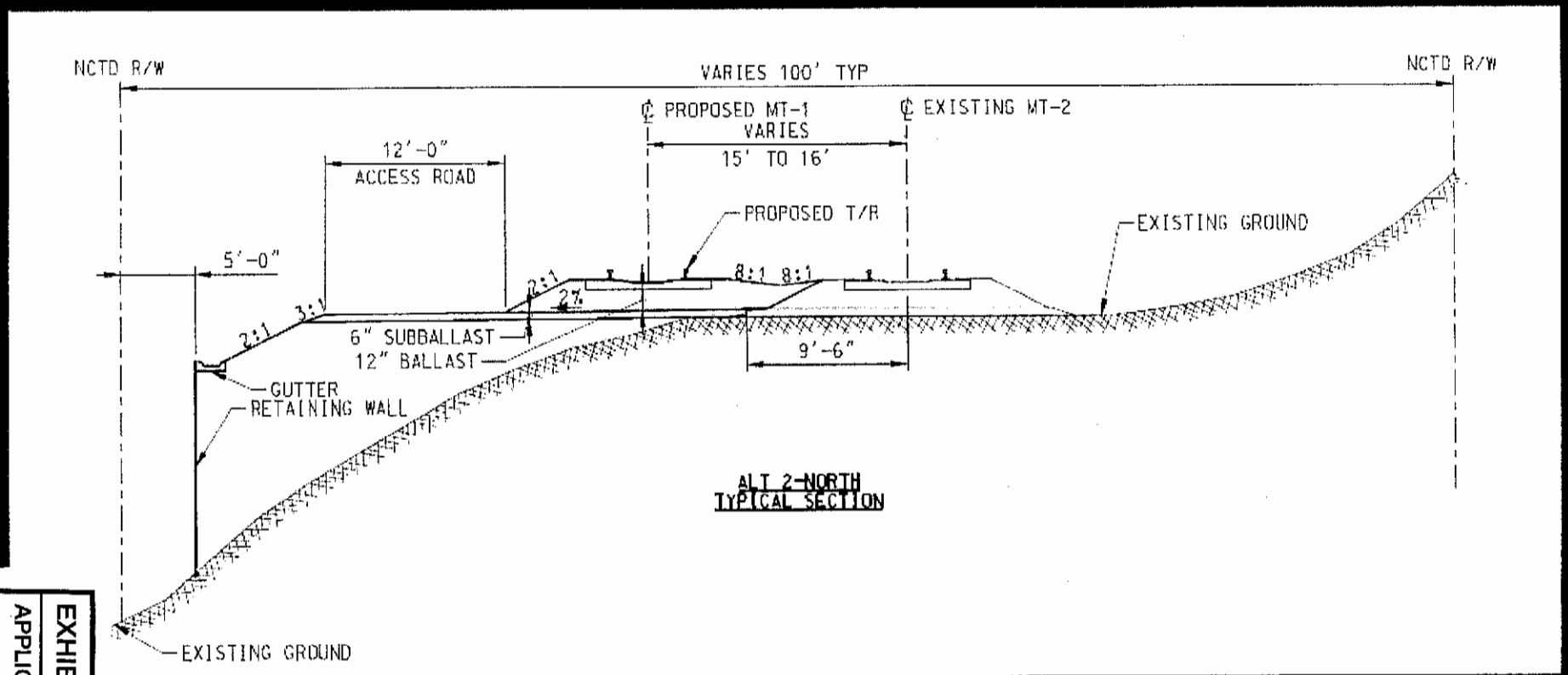


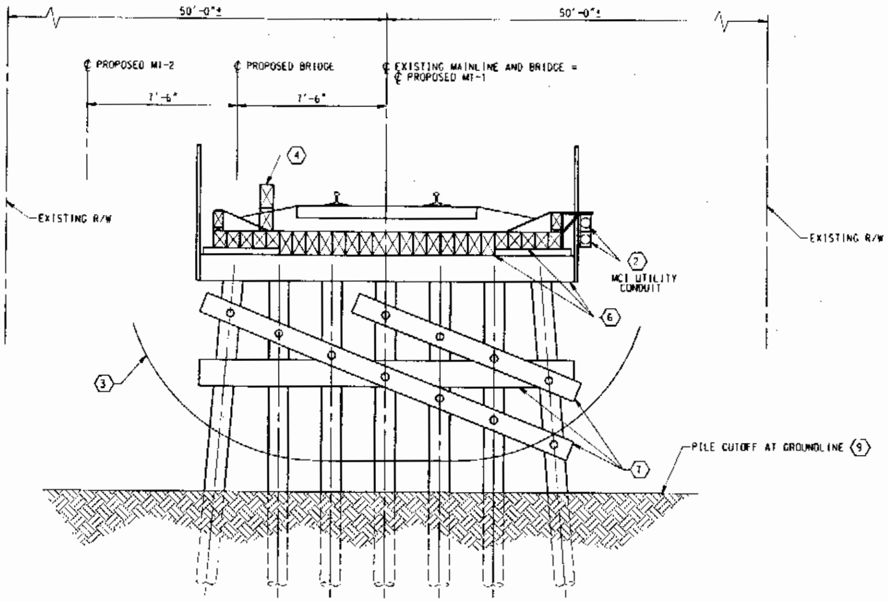
EXHIBIT NO. 3
APPLICATION NO.
CC-052-10

Sorrento To Miramar Phase 1 – Alternative 2



ALT 2-NORTH
TYPICAL SECTION

EXHIBIT NO. 4
APPLICATION NO.
CC-052-10



EXISTING BENT TYPICAL SECTION

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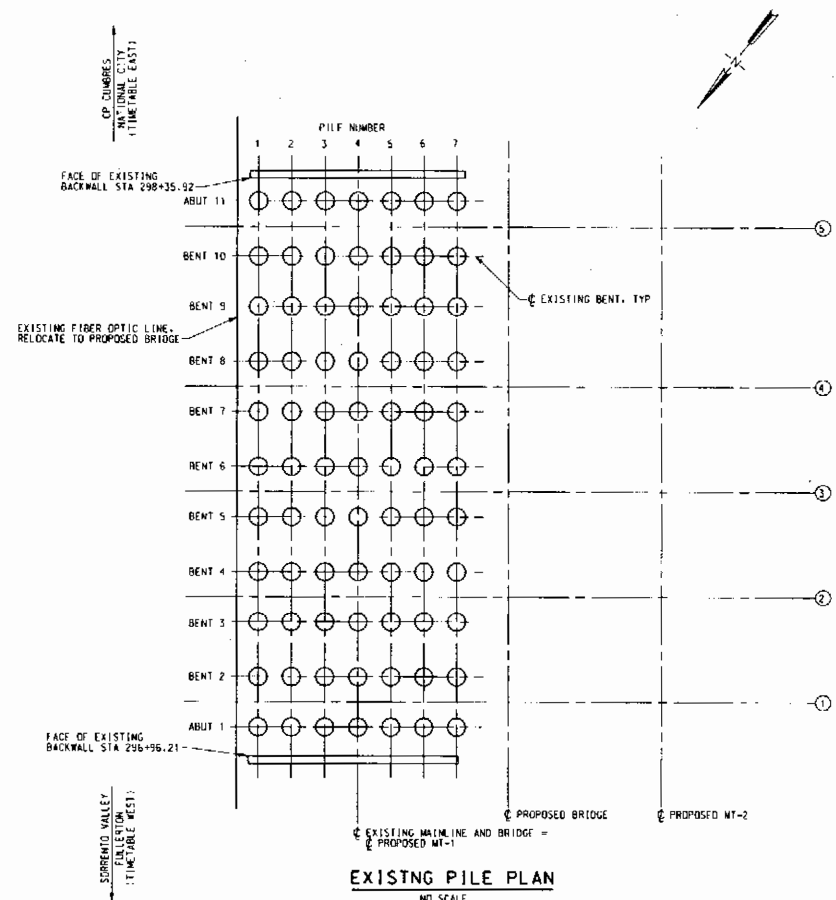

EXISTNG PILE PLAN

NO SCALE
(BENT SKEW ANGLE NOT SHOWN FOR CLARITY)

PILE LEGEND:

(#) ℄ PROPOSED ABUTMENT OR HP14x117# BENT
○ EXISTING PILE

BRIDGE REMOVAL NOTES:

1. CONTRACTOR SHALL SUBMIT A BRIDGE REMOVAL AND DISPOSAL PLAN FOR APPROVAL BY NCTD PRIOR TO COMMENCING ANY BRIDGE REMOVAL. THE REMOVAL PLAN SHALL CONFORM TO CONTRACT AND SHOW THE METHODS AND SEQUENCE OF REMOVAL AND EQUIPMENT TO BE USED.
2. MCI SHALL TEMPORARILY RELOCATE FIBER OPTIC UTILITIES FROM EXISTING BRIDGE PRIOR TO START OF CONSTRUCTION OR PRIOR TO REMOVAL OF EXISTING BRIDGE. CONTRACTOR TO REMOVE UTILITY HANGERS AND CONDUIT. COORDINATE REMOVAL WITH MCI.
3. ERECT A PLYWOOD DEBRIS BARRIER AND A FABRIC DEBRIS NET UNDER THE EXISTING BRIDGE PER THE TYPICAL SECTION. NO EXISTING BRIDGE DEBRIS SHALL BE ALLOWED TO FALL ONTO THE EMBANKMENT OR INTO THE EXISTING WATERWAY BELOW THE BRIDGE. ALL DEBRIS FROM THE REMOVAL PROCESS SHALL BE CONTAINED AND REMOVED FROM THE SITE AND PROPERLY DISPOSED.
4. CONTRACTOR SHALL INSTALL TEMPORARY BALLAST CURB TO ENSURE ADEQUATE CLEARANCE BETWEEN EXISTING AND NEW BRIDGE DURING PHASED CONSTRUCTION.
5. PRIOR TO COMMENCING ANY REMOVAL OPERATIONS OVER THE WATER, CONTRACTOR TO INSTALL AND MAINTAIN EROSION CONTROL BEST MANAGEMENT PRACTICES.
6. REMOVE EXISTING TIMBER DECK, STRINGERS AND PILE CAPS.
7. REMOVE EXISTING TRANSVERSE TIMBER BRACES.
8. REMOVE ALL TEMPORARY SUPPORTS, FLOATING BOOMS AND DEBRIS NETS.
9. ALL PILES SHALL BE CUT-OFF AND REMOVED TO THE EXISTING GROUNDLINE.

PROGRESS PRINT –
NOT FOR CONSTRUCTION

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FOR REDUCED PLANS ORIGINAL SCALE IS IN INCHES
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IS	BY	CHK	APRV

DAVID EVANS AND ASSOCIATES INC.

HDR Engineering, Inc. 3230 EL CAMINO REAL SUITE 200 IRVINE, CA 92602

90% SUBMITTAL

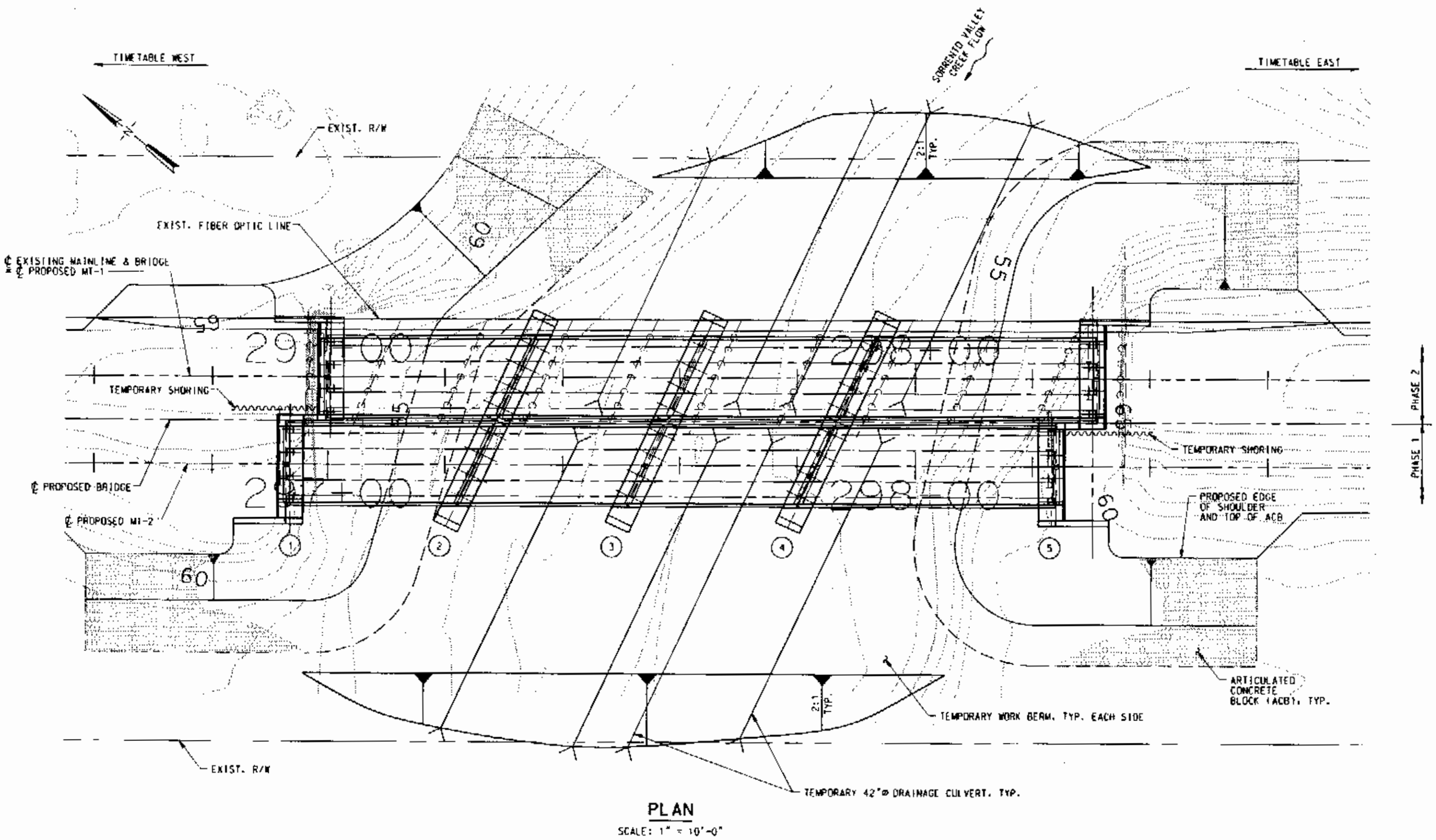
DESIGNED BY PJG	DATE 11/10
DRAWN BY JYM	11/10
CHECKED BY PJG	11/10
SANDAG PRJ. ENG. PD	11/10

SANDAG
San Diego's Regional Planning Agency

SORRENTO TO MIRAMAR – PHASE 1
BRIDGE 249.9 REPLACEMENT
BRIDGE REMOVAL PLAN AND DETAILS

SCALE	AS NOTED
SANDAG CONTRACT NO.	1239801
DRAWING NO. ST-03	SHEET NO.

EXHIBIT NO. 5
APPLICATION NO.
CC-052-10



PLAN
SCALE: 1" = 10'-0"

PHASE 1 (RR-SOUTH PORTION)

1. CONSTRUCT TEMPORARY WORK BERM AND DRAINAGE CULVERTS.
2. INSTALL TEMPORARY SHORING AT ABUTMENT 1.
3. INSTALL TEMPORARY BALLAST CURB AND REMOVE HANDRAILING AND BALLAST CURB ON SOUTH SIDE OF EXISTING BRIDGE.
4. DRIVE PILING.
5. EXCAVATE AT ABUTMENT 1.
6. CONSTRUCT CIP CONCRETE SUBSTRUCTURE ELEMENTS.
7. CUTOFF EXPOSED TEMPORARY SHORING AND BACKFILL ABUTMENT 1. BACKFILL ABUTMENT 5.
8. INSTALL ACB, SOUTH SIDE.
9. ERECT STEEL SPANS.
10. CONSTRUCT TRACK ON NEW BRIDGE.

PHASE 2 (RR-NORTH PORTION)

1. INSTALL TEMPORARY SHORING AT ABUTMENT 5
2. SHIFT TRAIN TRAFFIC TO NEW BRIDGE.
3. TEMPORARILY RELOCATE FIBER OPTIC LINE FROM EXISTING BRIDGE.
4. REMOVE EXISTING BRIDGE.
5. DRIVE PILING.
6. CONSTRUCT CIP CONCRETE SUBSTRUCTURE ELEMENTS.
7. BACKFILL ABUTMENT 1. CUTOFF EXPOSED TEMPORARY SHORING AND BACKFILL ABUTMENT 5.
8. INSTALL ACB, NORTH SIDE.
9. ERECT STEEL SPANS.
10. PERMANENTLY RELOCATE FIBER OPTIC LINE ONTO NEW BRIDGE.
11. CONSTRUCT TRACK ON NEW BRIDGE.
12. SHIFT TRAIN TRAFFIC ONTO NEW BRIDGE.
13. REMOVE TEMPORARY WORK BERM AND DRAINAGE CULVERTS.

REFERENCES

CTP-01 TRACK PLAN AND PROFILE
ST-03 BRIDGE REMOVAL PLAN AND DETAILS
ST-04 TYPICAL SECTIONS

LEGEND

(#) = NEW ABUTMENT/BENT NUMBER

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S	BY	CHK	APRV

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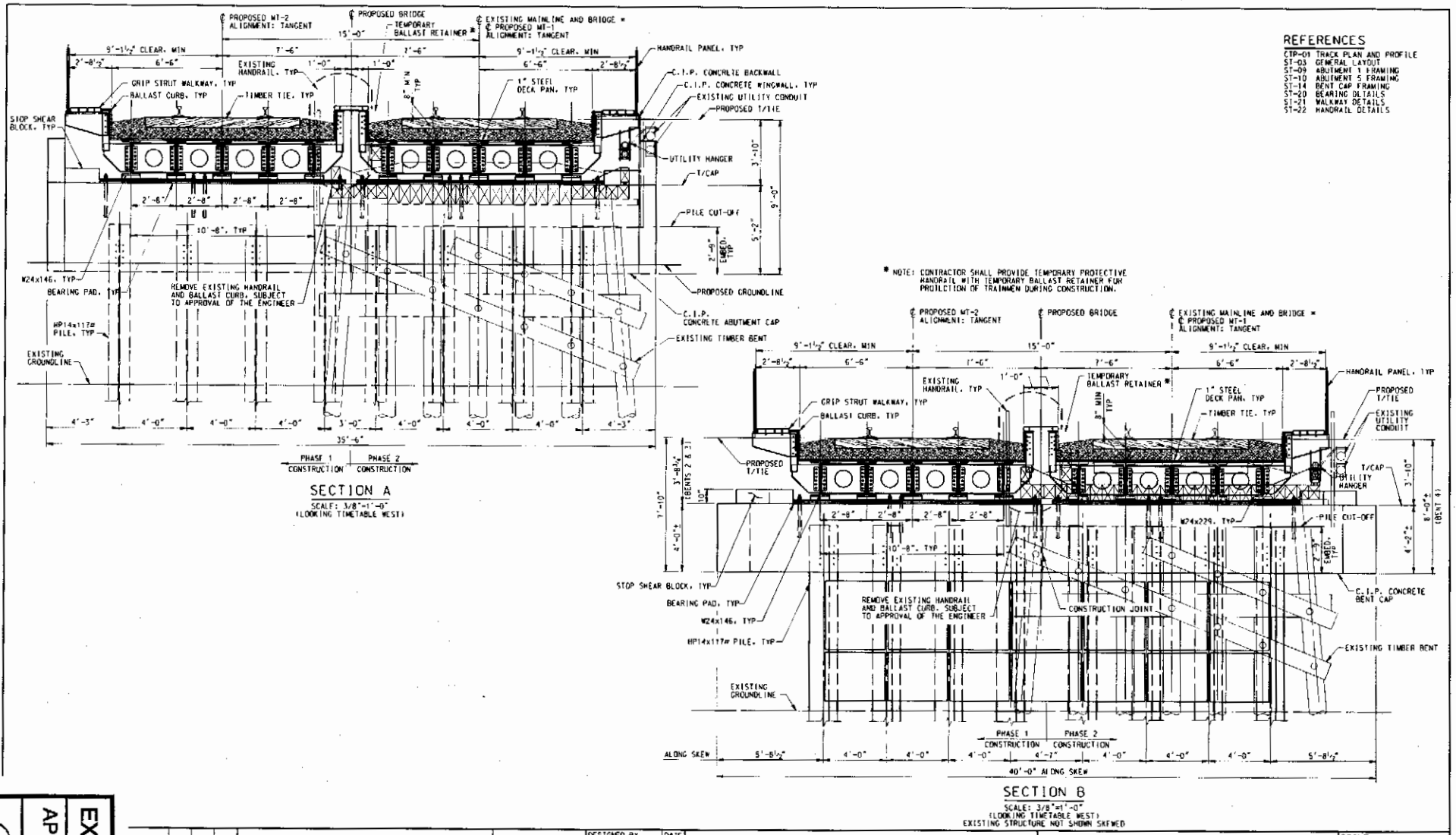
DRAWN BY JYM	11/10
CHECKED BY PJG	11/10
SANDAG PRJ. ENG. PD	11/10

SANDAG
San Diego's Regional Planning Agency

SORRENTO TO MIRAMAR - PHASE 1
BRIDGE 249.9 REPLACEMENT
BRIDGE CONSTRUCTION SEQUENCE

SCALE: AS NOTED
SANDAG CONTRACT NO. 1239801
DRAWING NO. ST-02
SHEET NO.

EXHIBIT NO. 6
APPLICATION NO.
CC-052-10



REFERENCES

CTP-01 TRACK PLAN AND PROFILE
ST-03 GENERAL LAYOUT
ST-09 ABUTMENT 1 FRAMING
ST-10 ABUTMENT 5 FRAMING
ST-14 BENT CAP FRAMING
ST-20 BEARING DETAILS
ST-21 WALKWAY DETAILS
ST-22 HANDRAIL DETAILS

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EXHIBIT NO. 7
APPLICATION NO. CC-052-10

IS	BY	CHK	APRV

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DRAWN BY	JYM
DATE	11/10
CHECKED BY	PJG
DATE	11/10
SANDAG PRJ. ENG.	PD
DATE	11/10

SANDAG
San Diego's Regional Planning Agency

SORRENTO TO MIRAMAR - PHASE 1
BRIDGE 249.9 REPLACEMENT
TYPICAL SECTIONS

SCALE	AS NOTED
SANDAG CONTRACT NO.	1239801
DRAWING NO.	ST-05
SHEET NO.	

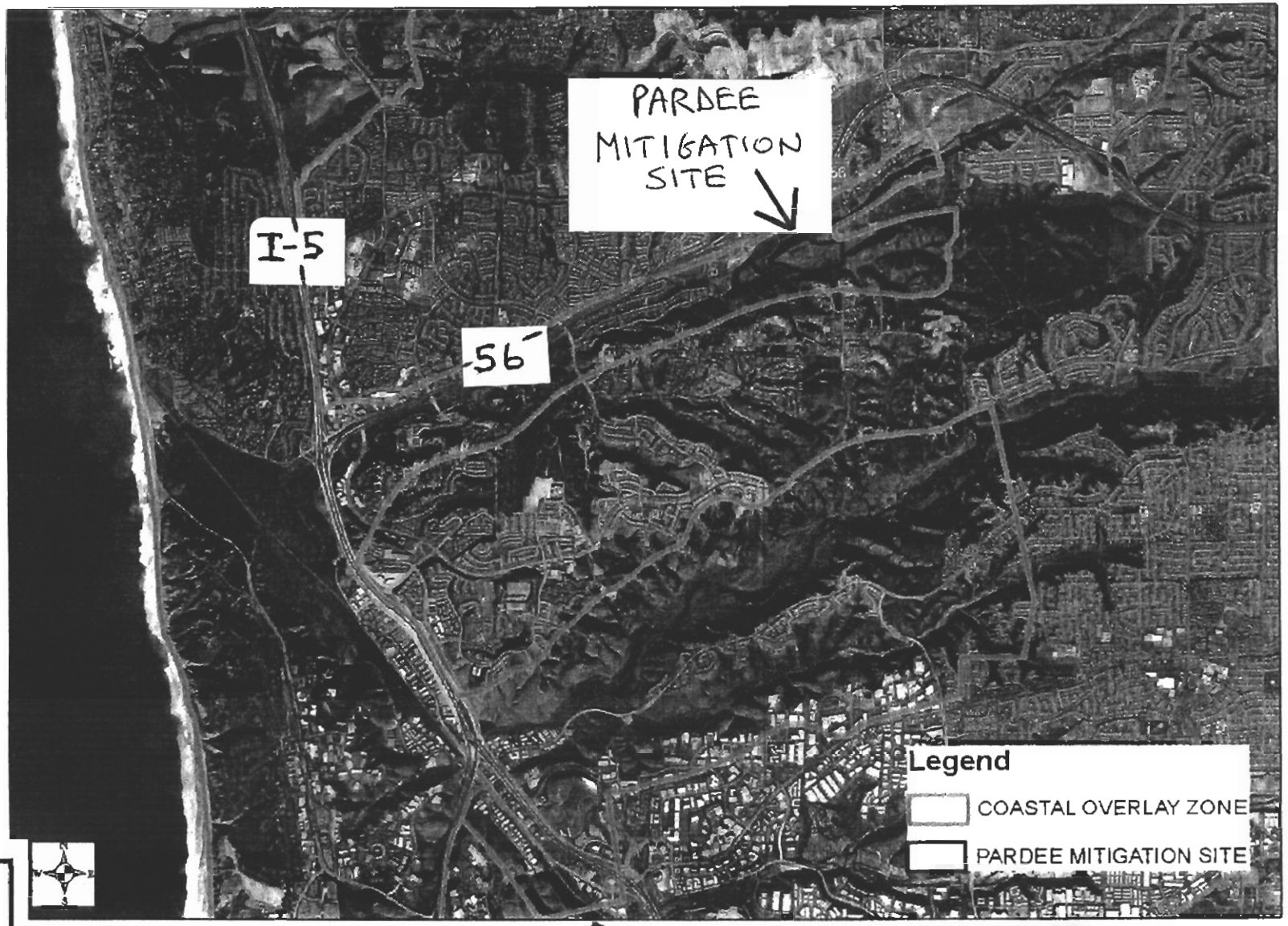

EXHIBIT NO. 8
APPLICATION NO.
CC-052-10

Sensitive Plant Community Protection Measures

- *Project construction (including clearing and grading) has been scheduled to avoid avian breeding season. Work in vegetation communities that support CAGN* [California gnatcatcher] *will be timed to avoid the CAGN breeding season (February 15 to September 1) to the extent practicable, unless the project proponent documents that the habitat to be affected is not occupied by CAGN. Work within the proximity to riparian habitat with the potential to create unacceptable noise and night-lighting impacts, including clearing and grading, will be timed to avoid the LBV* [least Bell's vireo] *breeding season (March 15 to September 15), to the extent practicable, unless the project proponent provides documentation to FWS* [U.S. Fish and Wildlife Service] *that the proximate riparian habitat is not occupied by LBV.*

- *During construction activities, a biological monitor would be required. The biological monitor's responsibilities may include approval of construction fencing and erosion control measures, conduct preconstruction clearance surveys, and preparation of monitoring logs during construction activities.*

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

- *SANDAG will designate a USFWS approved biologist (project biologist) who will be responsible for overseeing compliance with protective measures for the biological resources during clearing and work activities within and adjacent to areas of native habitat. The project biologist will be familiar with the local habitats, plants, and wildlife and maintain communications with the contractor to ensure that issues relating to biological resources are appropriately and lawfully managed. The project biologist will review final plans, designate areas that need temporary fencing, and monitor construction. The project biologist will review grading plans, address protection of sensitive biological resources, and monitor ongoing activities. The biologist will monitor activities within designated areas during critical times such as vegetation removal, the installation of Best Management Practices (BMPs) and fencing to protect native species, and ensure that all avoidance and minimization measures are properly constructed and followed. The project biologist will submit weekly reports to the Service during*

initial grading and clearing. The project biologist will provide a final report documenting compliance with avoidance and minimization measures within 60 days of the completion of work.

- *Project employees and contractors that will be on-site will complete worker-awareness training conducted by the project biologist. The training will advise workers of potential impacts to the sensitive habitat and species and the potential penalties for impacts to such habitat and species. At a minimum, the program will include the following topics: occurrences of the listed and sensitive species in the area, a physical description and their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, and work features designed to reduce the impacts to these species; and to the extent practicable, promote continued successful occupation of areas adjacent to the work footprint. Included in this program will be color photos of the listed species, which will be shown to the employees. Following the education program, the photos will be posted in the contractor and resident engineer's office, where they will remain through the duration of the work. The proponent of the work and the project biologist will be responsible for ensuring that employees are aware of the listed species. Photos of the habitat in which sensitive species are found will be posted on-site. Employees and contractors will be instructed to immediately notify the project biologist of any incidents, such as construction vehicles that move outside of the work area boundary. The project biologist will be responsible for notifying the USFWS within 72 hours of any similar incident.*

- *Orange construction fencing shall be placed along the perimeter of the identified construction area. Work areas will be marked clearly in the field and confirmed by the project biologist prior to habitat clearing, and the marked boundaries will be maintained throughout the duration of the work. Staging areas, including lay down areas and equipment storage areas shall be flagged and fenced with orange construction fencing.*

- *No work activities, materials or equipment storage or access will be permitted outside of the work area. All parking and equipment storage related to the proposed project will be confined to the construction area or to previously disturbed offsite areas. Undisturbed areas and off-site species habitat will not be used for parking or equipment storage. Proposed project related vehicle traffic will be restricted to the railroad, established roads, construction areas, storage areas, and staging and parking areas.*

- *Work with the potential to create unacceptable noise and light impacts occurring within 500 feet of occupied habitat will also be avoided during the CAGN (February 15 through September 1) and LBV and SWWF (March 15 to September 15) breeding seasons to the extent practicable, unless the project proponent provides documentation to FWS that the proximate riparian habitat is not occupied by LBV or SWWF.*

- *In the event that construction activities are proposed within 500 feet of occupied habitat within the respective breeding season for each species, mitigation would be required if noise in excess of 60 dB(A)Leq is produced or noise in excess of ambient noise levels exceed 60 dB(A)Leq. Mitigation would consist of the placement of noise attenuation structures prior to the beginning of breeding season to reduce noise levels to 60 dB(A)Leq or to ambient noise levels if ambient noise levels exceed 60 dB(A)Leq. During construction adjacent to these areas, noise monitoring should occur during the CAGN, LBV and SWWF nesting season and be reported daily to FWS. Indirect impacts from fugitive dust will be offset through implementation of Caltrans Standard Specifications, including Section 7-1.01F Air Pollution Control, Section 10 Dust Control, Section 17 Watering, and Section 18 Dust Palliative. The project biologist will periodically monitor the work area to ensure that work activities do not generate excessive amounts of dust.*

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

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MITIGATION MEASURES

The Sorrento-to-Miramar Phase 1 project will include construction of a second railroad track from MP 249.8 to MP 251.0, resulting in approximately 6,300 ft. of new double track; construction of a two new concrete bridges at MP 249.9; construction of a 12-ft. access road north of the track along most of the alignment; and construction of a new control point. Construction impacts will include extensive grubbing and grading, construction of retaining walls, construction of drainage structures, construction of a hydraulics wall, grading for an access road, and pile-driving for bridge construction. These together define the APE for the identification of adverse effects to archaeological resources. The current project does not propose to avoid impacts to archaeological site SDI-4609/W-654. Therefore, the following mitigation measures are proposed, in compliance with Section 800.6 and PRC 5097.98:

A. A treatment plan for the archaeological data recovery program will be prepared. The treatment plan will identify the APE and take into consideration the vertical and horizontal extent of proposed grading and ground disturbing activities within the APE. The plan will describe how archaeological data will be scientifically and systematically collected from the site area that will be impacted by project development, and how these data will be used to address research issues.

B. The project proponents will continue to work with Native Americans. To date, the proponents have established close communication with Native Americans during the course of the project. This will continue through the future phases of the project.

C. The lead agency will attempt to obtain a pre-excavation agreement with the MLD to define treatment of human remains if they are discovered during archaeological excavations and subsequent project development.

D. A Native American monitor will be on site during any excavation and grading within the APE.

E. Specialized studies of cultural materials recovered during the test phase will be completed. While field testing, laboratory processing and cataloging of recovered materials and preliminary analysis has been completed, specialized studies could not be completed within the time schedule for this project. Consequently some technical analyses including lithic artifact analysis, shellfish analysis, chronometric studies, and faunal studies have been deferred. These studies should be completed as part of the data recovery program described below.

F. Data recovery will be completed. The data recovery phase will be based on the results of the test phase, and will focus on recovering archaeological data sufficient to mitigate the destruction of a portion or all of the site within the APE. Data recovery will consist of the excavation of additional areas of the site within the APE; the amount of excavation and the locations of the excavation will be determined through the results of the test phase. As with the test phase, standard hand-excavated archaeological 1-x-1-m test units can be used during this phase, although these may be expanded if features are discovered or to cover a larger part of the APE. The units will be excavated by hand

using arbitrary 10-cm levels, unless cultural stratigraphy is identified. Hand tools potentially including shovels, picks, trowels, brushes, and probes, will be used in the excavation. All soils will be passed through 1/8-in. mesh screen (or smaller if column samples are taken and processed), using a water-screening technique. Water screening is recommended for this site because this technique washes the cultural materials in the field, making it easier to identify sensitive objects such as human bone and small shell beads. The need for water screening will be evaluated should conditions at a particular unit not warrant this method. Following completion of excavation, all cultural materials will be washed, cataloged, and analyzed. Technical analyses will include lithic artifact analysis, shellfish analysis, chronometric studies, faunal studies, and other analyses as needed to describe the cultural materials and address the research issues. A data recovery report will be prepared.

G. At the completion of the data recovery program, an updated State of California Department of Parks and Recreation 523 site form will be prepared and submitted to the SCIC. The form will provide revised site boundaries, as determined by the archaeological investigations, and will include a description of the artifacts and deposits found at the site.

H. If human remains are discovered, they will be treated with respect. If human remains are found during any ground disturbance associated with project development activities, including the archaeological test or data recovery programs, the agency will comply with PRC 5097.98. Details of this law are provided in the Regulatory Framework section of this technical report, and summarized below for this project.

   a. The discovery location will be protected and secured from further disturbance.
   b. The Project Manager will contact the San Diego County Medical Examiner. Since the Kumeyaay Cultural Repatriation Committee (KCRC) was identified by the NAHC as the MLD during the previous testing at the site, the Project Manager will also contact the KCRC directly.
   c. If the remains are determined by the Medical Examiner or an authorized representative to be Native American, the Medical Examiner will contact the NAHC.
   d. The NAHC will contact the MLD.
   e. SANDAG will provide the MLD with access to the discovery location, which will have been protected from damage.
   f. The MLD will make a recommendation for treatment of the remains within 48 hours. Possible options for treatment include:
      i. Preservation in place and avoidance.
      ii. Removal by a qualified archaeologist. Analysis by an osteologist or physical anthropologist may or may not be possible.
      iii. Repatriation of the remains to the MLD following the NAGPRA process.
      iv. Reburial of the remains on the property.
   g. If the MLD does not make a recommendation within 48 hours, or if the recommendations are not acceptable to SANDAG following extended

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discussions and mediation, SANDAG will reinter the remains and burial items with appropriate dignity on the property, in a location not subject to further subsurface disturbance. The location of reinterment will be protected by one of the three following measures:

i. Record the location with the NAHC or the SCIC.
ii. Utilize an open space or conservation zoning designation or easement.
iii. Record a document with San Diego County.

h. If multiple human remains are found, extended discussions will be held with the MLD. If agreement on the treatment of these remains is not reached, they will be reinterred in compliance with PRC 5097.98(e).

I. Provision will be made for a Native American monitor(s) and archaeological monitoring of all grading, trenching, and subsurface disturbance at the site during project development. This includes grubbing, grading, excavation, geotechnical investigations, and other activities that disturb the ground. Daily logs will be kept by all monitors, and a monitoring report will be prepared at the conclusion of each phase of monitoring. Should human remains be found during any phase of the project, including monitoring during construction grading, soils associated with the remains will not be removed from the site area. All soils from the site should remain within the site.

SUMMARY

The current project as proposed would have an adverse effect on the archaeological resources recorded as SDI-4609/W-654. Grading and disturbance of the ground from construction, landscaping, drainage installation, and construction of retaining walls and access roads will destroy portions of a significant archaeological site with much research potential, and of additional significance, have the potential to destroy or damage human burials. As stated in the paragraphs above, under the provisions of Section 106, these effects may be mitigated by a data recovery program, which would be directed toward intensive archaeological excavations within those areas that will be disturbed by project implementation.

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