

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



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STAFF REPORT: REGULAR CALENDAR

Consistency Certification No.: CC-0001-18

Applicant: San Diego Association of Governments

Location: Railroad Right-of-Way between Mile Post (MP) 225.15 and MP 225.95, and the San Luis Rey River Railroad Bridge 225.4, City of Oceanside, San Diego County ([Exhibits 1 and 2](#)).

Project Description: Eastbrook to Shell Double Track Project to replace the existing single-track railroad bridge with a new 700-foot-long double-track bridge over the San Luis Rey River, install one mile of new second mainline track, reconstruct drainage structures and culverts, modify or replace the pedestrian/vehicle undercrossing just north of Bridge 225.4, relocate and reconstruct the San Luis Rey River Trail under Bridge 225.4, and modify or construct four signal bungalows within the railroad right-of-way on Camp Pendleton between MP 222.4 and MP 225.1.

Staff Recommendation: Concurrence

SUMMARY OF STAFF RECOMMENDATION

The San Diego Association of Governments (SANDAG) has submitted a consistency certification for the Eastbrook to Shell Double-Track project in Oceanside, San Diego County.

The project includes construction of one mile of railroad double-track, replacement of the 93-year-old single-track San Luis Rey River railroad bridge with a double-track bridge, modification to the San Luis Rey River Trail where it passes underneath the bridge, modification or construction of trackway signal bungalows in the railroad right-of-way in Camp Pendleton, and new and replacement track signal systems and drainage improvements.

This project is listed as one of several “Mid-Term Phase” projects within the multi-decade “North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program” approved by the Commission in August of 2014 as a comprehensive program of transportation, community, and resources enhancement projects within the northern portion of the San Diego County coastline. Mid-Term phase projects, including the proposed project, are generally scheduled for implementation during the 2021-2030 time period. The subject consistency certification is the first of two such submittals to be made by SANDAG for the proposed project. A second consistency certification will be submitted to the Commission prior to the start of project construction and when SANDAG has: (1) secured funding for project construction; and (2) developed a mitigation program for unavoidable project effects on wetland and other environmentally sensitive habitat. The second consistency certification will include updated biological resource and habitat evaluations, updated calculations of project habitat impacts, and a mitigation program for those impacts.

The project involves wetland fill and development within environmentally sensitive habitat areas (ESHA). Because the double tracking would increase rail capacity, it cannot be considered an incidental public service. It is therefore not an allowable use under the Coastal Act wetland policy (Section 30233(a)). It is also not a use “dependent on the resources” and is therefore inconsistent with the environmentally sensitive habitat policy (Section 30240). The project is consistent with the alternatives and mitigation tests of these policies; nevertheless, it could only be found consistent with the Coastal Act through the “conflict resolution” provision contained in Section 30007.5, as discussed below.

The project includes adequate measures to protect water quality and would reduce automobile congestion, miles traveled, energy consumption, air emissions, and non-point source pollutants into nearby water bodies. The project would maintain and enhance public access by 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 therefore consistent with the public access and transit, water quality, air quality, and energy conservation policies of the Coastal Act (Sections 30210, 30213, 30252, 30231, 30232, and 30253).

The project creates a conflict between the allowable use tests of the wetland and ESHA policies 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. The project is similar to a number of previous SANDAG double tracking projects which the Commission determined could be concurred with using the conflict resolution section of the Coastal Act. More fundamentally, the Commission has already established the policy basis for the subject project qualifying for, and being found consistent with, Section 30007.5, through its review of the North Coast Corridor

Public Works Plan/Transportation and Resource Enhancement Program (NCC PWP/TREP - CC-0002-14/PWP-6-NCC-13-0203-1).

The staff therefore recommends that the Commission **concur** with SANDAG's consistency certification CC-0001-18 because authorization of the project would, on balance, be most protective of significant coastal resources and consistent with the conflict resolution policy of the Coastal Act (Section 30007.5). The motion and resolution are on **Page 5** of this report. The standard of review for this consistency certification is the Chapter 3 policies of the Coastal Act.

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- [Exhibit 12](#) – Coastal Act Wetlands
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I. APPLICANT’S CONSISTENCY CERTIFICATION

The San Diego Association of Governments (SANDAG) has certified that the proposed activity (CC-0001-18) complies with the California Coastal Management Program (CCMP) and will be conducted in a manner consistent with that program.

II. MOTION AND RESOLUTION

Motion:

*I move that the Commission **concur** with consistency certification CC-0001-18.*

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 a majority of the Commissioners present is required to pass the motion.

Resolution:

*The Commission hereby **concurs** with consistency certification CC-0001-18 by SANDAG on the grounds that the project is consistent with the enforceable policies of the California Coastal Management Program.*

III. FINDINGS AND DECLARATIONS

A. PROJECT BACKGROUND

The proposed Eastbrook to Shell double-track (EBSDT) project includes construction of one mile of railroad double-track and replacement of the 93-year-old San Luis Rey River railroad bridge within the LOSSAN (Los Angeles – San Diego – San Luis Obispo) railroad corridor ([Exhibits 1-3](#)). The corridor includes a 60-mile segment extending from Orange County to downtown San Diego through the coastal cities of Oceanside, Carlsbad, Encinitas, Solana Beach, Del Mar, and San Diego. Sections of the corridor date back to the 1880s and approximately half of the corridor is single-track. The San Diego County portion of the corridor is shared by commuter and intercity passenger and freight rail services. Amtrak’s Pacific Surfliner trains provide intercity passengers with stations in downtown San Diego, Solana Beach, and Oceanside that connect the region to the rest of the nation. The North County Transit District’s (NCTD) Coaster commuter trains operate south from Oceanside to downtown San Diego, serving the cities of Carlsbad, Encinitas, Solana Beach, and San Diego. The Burlington Northern Santa Fe (BNSF) Railway is the freight rail operator on the corridor, operating trains from the Port of San Diego north.¹

¹ The San Diego Association of Governments (SANDAG) is the agency that constructs railroad infrastructure in the San Diego County area of the LOSSAN Corridor. NCTD (North County Transit District) owns the railroad right-of-way in the San Diego County LOSSAN Corridor and also operates the Coaster commuter train service between Oceanside and San Diego.

SANDAG states that the purpose of the proposed project is to:

. . . improve commuter and freight rail services and reduce conflicts leading to train idling and delays . . . the project is consistent with the purpose of the LOSSAN North Corridor Strategic Plan (Caltrans, 2007) to develop a faster, safer and more reliable rail system that provides enhanced capacity in response to increased freight and passenger travel demand between Los Angeles, Orange and San Diego Counties.

SANDAG reports that the project is part of a package of recommended actions addressed in the *LOSSAN Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS)* adopted by the California Department of Transportation (Caltrans) and the Federal Railroad Administration (FRA) in 2009, and is consistent with *San Diego Forward: The Regional Plan* (SANDAG 2015), the *2050 Regional Transportation Plan* (SANDAG 2011), the *Infrastructure Development Plan for the LOSSAN Rail Corridor in San Diego County* (SANDAG 2013), and the *San Diego Regional Transportation Improvement Plan* (SANDAG 2014). SANDAG reports that the proposed project is not yet funded for construction and that it remains one of the mid-term railroad improvement projects, currently scheduled for construction during the 2021-2030 time period.

The rail corridor is double-tracked immediately to the north and south of the project area, and the proposed project would replace the existing one-mile-long section of single-track located between existing sections of double-track. SANDAG describes the need for proposed double-track projects throughout the LOSSAN corridor:

The existing single track in the Proposed Action area constrains the movement of trains by creating a bottleneck for trains traveling along the rail corridor. Only a single train at a time can travel along the stretch of single track, causing other trains to wait at either end of the single track section, resulting in delays and reducing the attractiveness of passenger rail as a travel mode choice. In the event of a track outage on a single track section, coastal rail service in San Diego County would be shut down until the track could be placed back into service. Double track eliminates the delays currently associated with trains waiting at a passing track for others to clear a single-tracked section and with any single track outage. Elimination of these types of delays would provide for a more consistent operating schedule for trains, greatly increasing on-time performance and reliability, as well as the movement of people and goods through the San Diego County portion of the LOSSAN Corridor.

SANDAG also notes in the consistency certification that the EBSDT project is needed in order to accommodate the forecasted doubling of train trips in the corridor by the year 2030:

As stated in the 2013 Infrastructure Development Plan (SANDAG, 2013), the EBSDT is a mid-term priority project required to support the goal of a 101-train weekday schedule in the LOSSAN corridor. Adding approximately one mile of double track, including replacing the bridge across the San Luis Rey

River with a double track bridge, will substantially increase the railroad's schedule, reliability, enhance operational flexibility, increase capacity and level of service and raise the track above the 100-year flood elevation (including sea level rise).

The consistency certification states that replacing the 93-year-old steel single-track bridge across the San Luis Rey River ([Exhibits 4 and 5](#)) with a double-track concrete bridge will substantially increase the railroad's schedule and operational flexibility, increase capacity and level of service, and raise the track above the 100-year flood elevation including anticipated sea level rise.

B. PROJECT DESCRIPTION.

SANDAG proposes to construct railroad track improvements, generally between Milepost (MP) 225.15 and MP 225.95, in the City of Oceanside ([Exhibits 1-3](#)). The primary project features are one mile of double track and a new double-track bridge over the San Luis Rey River. Exhibits to this report illustrate the bridge plans ([Exhibits 6-8](#)), the temporary construction berm and trestle plans ([Exhibits 9-10](#)), and the San Luis Rey River Trail realignment plan ([Exhibit 11](#)). The consistency certification provides the following information on the project elements:

Double-Track Segment:

The proposed one mile of second track would be installed generally parallel to the existing single track and is located entirely within the coastal zone. At the southern end of the project footprint two crossovers would be installed. Between MP 225.95 and MP 225.75, the second track would be located on the western side of the existing track. At the Surfrider Way at-grade crossing signal, modifications and minor roadway work would be required. At MP 225.75, approximately 1,100 feet north of the Surfrider Way at-grade crossing, the existing track would begin to shift east of its current location, and at approximately 1,500 feet north of the Surfrider Way crossing (MP 225.75), both of the proposed new tracks would be located to the east of the existing track. Between MP 225.75 and MP 225.35, the two proposed tracks would remain on the east side of the existing track. The two tracks would begin to shift back to the existing track approximately 400 feet south of the Harbor Drive overcrossing. The proposed track would merge with the existing track and the new section of double tracks would end just south of the Harbor Drive overcrossing. The project would be built generally at grade (with some areas of extensive fill) and would be constructed within the existing railroad ROW, although minor roadway improvements will occur within City of Oceanside property at Surfrider Way. Some retaining walls would be necessary along the tracks. The project also would reconstruct drainage structures and lengthen drainage culverts.

San Luis Rey River Bridge

The proposed double track replacement bridge over the San Luis Rey River (Bridge (BR) 225.4) would be approximately 700 feet long. Piers within the river would be generally parallel to the current flow of the river. After completion of the proposed bridge, the existing bridge and piers located to the west of the newly constructed bridge would be removed. ([Exhibits 6-8](#))

Pedestrian Undercrossing

The pedestrian/vehicle undercrossing (BR 225.33, located just north of the San Luis Rey River Bridge) that connects the Oceanside Harbor to the Oceanside Harbor parking lot located east of the tracks, would be modified or replaced under the proposed action.

San Luis Rey River Trail

To accommodate the replacement of BR 225.4 and the shifting of the tracks, a portion of the San Luis Rey River Trail (a paved bike trail), which crosses under the existing bridge within the railroad ROW, would be relocated and reconstructed. Modifications (i.e., re-striping) to the existing parking lot just north of the river and east of the existing track also would be necessary due to the need to widen the adjacent slope to the west of the parking lot to accommodate double tracking. ([Exhibit 11](#))

Trackway Signals

In addition, the proposed action would include the modification and/or construction of four signal bungalows, located at MP 222.40, MP 223.35, MP 224.05, and 225.10 within the railroad ROW in Camp Pendleton. The construction footprint for the signal bungalows would be no larger than 90-foot by 50-foot in area and access would be along existing access roads.

Construction Staging and Access

The project footprint also would include proposed laydown and construction access areas needed during the construction period. These areas would be located within existing parking lots in areas outside the existing NCTD ROW.

The consistency certification provides additional details regarding construction of the San Luis Rey River double-track bridge 225.4 ([Exhibits 9 and 10](#)):

The double track bridge would be constructed in a single phase, offline from the existing bridge, to maintain rail service during construction and decrease the duration of construction in the San Luis Rey River. To further minimize the duration of work within the river, a combination of temporary earthen berm and construction trestle platform is proposed to accommodate construction equipment and activities.

To provide a stable working surface above the high tide elevation, a temporary earthen berm consisting of clean sandy soil covered with a stabilized rock ballast surface will be installed. The work berm would be roughly 300 feet long north of and 90 feet long south of the open water channel. The top working area of berm would be about 70 feet wide and extend beneath the new bridge to allow installation of the cast-in-drilled-hole (CIDH) piles. Temporary access mats, such as composite, metal, geotextile/geocell or timber mats, may be used in addition to the earthen berm to distribute the loads from heavy equipment to protect the existing ground and provide a stable working surface. A temporary construction

access road would be created with fill from the parking lot over the top of existing levee which would then connect to the temporary earthen berm. The levee embankment would be protected in place and the original profile restored at the completion of bridge construction activities.

A temporary construction working trestle platform about 290 feet long would be constructed on the south end of the bridge spanning the open water channel which would then connect to a temporary earthen berm to be constructed the remaining length of the bridge to the northerly levee embankment adjacent to the Oceanside Harbor parking lot. A smaller work berm connecting south of the trestle would provide access to the south abutment. Sheet pile shoring at the end of the work berm may be used to maintain the open water channel. Heavy equipment such as bulldozers, loaders, truck haulers may be used in the construction of the work berm/trestle.

SANDAG currently estimates that project construction would last approximately two years during the 2021-2030 time period. A construction schedule, including the identification of time periods when the San Luis Rey River Trail would be temporarily closed, the length of time that construction staging areas would occupy public parking areas, and the length of time that earthen construction berms would be placed in the river channel, would be developed once construction funding is obtained. SANDAG has committed to provide the construction schedule to the Commission's Executive Director sufficiently in advance of the construction start date. This will provide the Commission staff adequate time to confirm that the schedule components are consistent with the project construction elements contained in the subject consistency certification, and that the schedule does not create new or more significant effects on coastal resources beyond that documented in the consistency certification.

The subject consistency certification is the first of two such submittals to be made by SANDAG for the proposed project. A second consistency certification will be submitted to the Commission prior to the start of project construction and when SANDAG has: (1) secured funding for project construction; and (2) developed a mitigation program for unavoidable project effects on wetland and other environmentally sensitive habitat. The second consistency certification will include updated biological resource and habitat evaluations, updated calculations of project habitat impacts, and a mitigation program for those impacts. Additional details regarding the second consistency certification for this project are provided in **Sections F and G** of this report.

C. COMMISSION JURISDICTION AND STANDARD OF REVIEW

The project triggers federal consistency review because SANDAG is required to obtain two federal permits from the U.S. Army Corps of Engineers: a Clean Water Act Section 404 permit and a Rivers and Harbor Act Section 10 permit. The Transportation and Resource Enhancement Program (TREP) component of the North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program (NCC PWP/TREP) functions as a master federal consistency certification to ensure the entire suite of rail, highway, transit, bicycle, pedestrian

and other community and resource improvements described therein will be appropriately linked, phased, and implemented in a manner consistent with applicable Coastal Act policies.

However, given the long-term nature (30 - 40 year planning horizon) of the planning process for those improvements, many individual project components (such as the subject Eastbrook to Shell double-track project) were not described to a level of specificity allowing final determinations of consistency when the Commission concurred with the TREP Consistency Certification (CC-0002-14) in August 2014. That initial review was therefore explicitly proposed to be programmatic, such that when specific projects become more fully developed and proposed, further federal consistency review would be conducted. In other words, federal consistency review is to be phased as plans evolve, and to be triggered as future federal funding and federal permitting decisions are being made. The standard of review in these cases remains the Coastal Act, with the affected LCP(s) and the NCC PWP/TREP providing guiding policy and/or background information. To assist in these reviews, the NCC PWP/TREP identifies specific filing content requirements regarding future federal consistency submittals for projects included within the NCC PWP/TREP.

The Restoration Enhancement and Mitigation Plan (REMP) of the NCC PWP/TREP provides directions on mitigation for unavoidable resource impacts of projects within the NCC PWP/TREP and identifies potential restoration site locations available to conduct any necessary mitigation. If mitigation sites have been installed in advance and have achieved identified performance standards, then mitigation credits would be available at a 1:1 ratio. However, if these mitigation sites are not performing sufficiently at the time that impacts from an associated development occur, then more typical mitigation ratios from the Commission would apply (e.g., 4:1 for wetland impacts, 2:1 for impacts to upland environmentally sensitive habitat areas).² SANDAG states that it will implement mitigation for unavoidable project impacts in accordance with and as required by the REMP. SANDAG further states that prior to the start of EBSDT construction it will submit to the Commission, for its review and concurrence, a second consistency certification for the project mitigation plan, and that no project construction will occur until and unless the Commission concurs with the second consistency certification.

In reviewing past consistency certifications for SANDAG (and North County Transit District (NCTD)) LOSSAN corridor double-track and bridge replacement projects, the Commission has noted a historic jurisdictional disagreement between the rail proponents and the Commission over whether the projects were subject to the state law coastal development permit requirement, or whether state law was preempted by the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. §§ 10101 *et seq.* and past court decisions applying it. At the same time, the Commission historically agreed to “set aside” such disagreements where the projects are still reviewable through the federal consistency process and rely on that procedure. When the Commission concurred with the consistency certification for and certified the “PWP/TREP” (as discussed below in **Section D**) on August 13, 2014, the Commission essentially agreed to continue this procedural approach. While the subject project is one of the PWP/TREP Phase II-listed projects scheduled for construction between 2021 and 2030, SANDAG is requesting Commission concurrence with this consistency certification now in order to be in a “shovel-

² December 1, 2014, letter to Linda Culp (SANDAG) from Gabriel Buhr (California Coastal Commission)

ready” position to apply for and obtain construction funding such that the project can move forward at the earliest possible time during the Phase II time period.

The standard of review under the federal consistency process for assessing consistency with the California Coastal Management Program is set forth in Chapter 3 of the Coastal Act (“Chapter 3”), Cal. Pub. Res. Code Sections 30200-30265.5.

D. RELATED COMMISSION ACTIONS

North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program (NCC PWP/TREP).

On August 13, 2014, the Commission authorized a comprehensive plan and set of procedures primarily for the upgrading of the I-5 (Highway) and LOSSAN Rail Corridor through northern San Diego County, in the form of a document known as the “North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program” (NCC PWP/TREP: CC-0002-14/PWP-6-NCC-13-0203-1). This plan serves as a single integrated document for comprehensively planning, reviewing, and authorizing a long list of transportation, community, and resource enhancement projects extending from La Jolla to Oceanside along the North San Diego County coastline. The NCC PWP/TREP creates a framework within which identified projects can be analyzed and implemented over the next 30 to 40 years under a coordinated plan. The goal of this process is to optimize the suite of included improvements so that transportation goals are achieved in a manner that maintains and improves public access while also maximizing protection and enhancement of the region’s significant sensitive coastal resources. As noted on the previous page, the subject project is listed in Phase II of the rail corridor expansion portion of the NCC PWP/TREP.

Previously Reviewed SANDAG/NCTD Double Tracking Projects.

Prior to Commission approval of the PWP/TREP in August 2014, the Commission reviewed double tracking projects in the LOSSAN Corridor in San Diego County on an individual basis. These past reviews consisted of consistency certifications submitted by SANDAG and NCTD for the following LOSSAN segments:

- 2.6-mile-long Pulgas to San Onofre double-tracking at the north end of Camp Pendleton (CC-086-03);
- 2.7-mile-long O’Neill to Flores double-track project in central Camp Pendleton (CC-004-05);
- 2.9-mile-long Santa Margarita River double-tracking project at the south end of Camp Pendleton (CC-052-05);
- 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);
- 2.4-mile-long segment of double-track and second railroad bridge over Agua Hedionda Lagoon in Carlsbad (CC-075-09);

- 1.2-mile-long segment of double-track and replacement of a single-track bridge in the Sorrento Valley in San Diego (CC-052-10);
- 1.0-mile-long segment of double-track and replacement of three single-track bridges in Sorrento Valley in San Diego (CC-056-11); and
- 4.3-mile-long segment of double-track south of San Onofre in San Diego County (CC-009-12);
- 1.8-mile-long segment of double-track from San Onofre to Las Pulgas on Camp Pendleton, San Diego County (CC-048-12).

Since approval of the PWP/TREP, the Commission has authorized three more SANDAG rail projects:

- 0.9-mile-long segment of double track and replacement of single-track bridge across the San Diego River (CC-0003-15);
- 1.5-mile-long segment of double-track and replacement of a single-track bridge across San Elijo Lagoon (CC-0004-15);
- Poinsettia Station improvements including track spacing improvements to increase rail capacity through the station (CC-0005-15); and
- 1.7 mile-long-segment of double-track and replacement of a single-track bridge over the San Dieguito River (CC-0001-17).

E. OTHER AGENCY APPROVALS

U.S. Army Corps of Engineers (USACE)

SANDAG has applied to the USACE for a federal Clean Water Act Section 404 Request for an Individual Permit, and a permit under Sections 10 and 408 (for impacts to a levee) of the Rivers and Harbor Act. The Corps will also complete the Magnuson-Stevens Act Essential Fish Habitat consultation with the National Marine Fisheries Service for the project.

San Diego Regional Water Quality Control Board (SDRWQCB)

SANDAG has applied to the SDRWQCB for a Clean Water Act Section 401 Water Quality Certification and a Clean Water Act Section 402 National Pollution Discharge Elimination System Permit.

Federal Railroad Administration (FRA)

The FRA serves as the lead agency for informal consultation under Section 7 of the Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act. FRA will determine if formal Section 7 consultation with the U.S. Fish and Wildlife Service is required.

FRA completed the Section 106 consultation with the State Historic Preservation Officer. SANDAG anticipates applying for funding from the FRA for project construction.

Other Agency Consultations

Prior to the start of project construction, SANDAG will coordinate with the FRA and the U.S. Fish and Wildlife Service in order to determine whether additional ESA Section 7 consultation is needed should project area conditions change prior to the start of construction.

TRIBAL CONSULTATION

SANDAG retained SWCA Environmental Consultants (SWCA) to conduct cultural resources studies for the project, including Native American tribal outreach. SWCA sent letters (dated September 19, 2011) to representatives of project area tribes on the California Native American Heritage Commission list. The tribes contacted were the Soboba Band of Mission Indians, Pauma Valley Band of Luiseño Indians, Rincon Band of Mission Indians, Pauma and Yuima Reservation, San Luis Rey Band of Mission Indians, Pechanga Band of Mission Indians, Pala Band of Mission Indians, and La Jolla Band of Mission Indians. SWCA also made follow-up telephone calls and left a message with each of the tribal contacts. SWCA received letters from the Pala Band of Mission Indians, the Rincon Band of Luiseño Indians, and the San Luis Rey Band of Mission Indians. SWCA staff also spoke on the telephone with a representative of the San Luis Rey Band of Mission Indians.

F. WETLANDS

Coastal Act Section 30233(a) states in part:

(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

The Eastbrook to Shell double-track project *Biological Assessment (July 2013)* and the project consistency certification describe the wetland habitat and resources present in the 71.5-acre biological study area (BSA) and the 20.6-acre project footprint within the BSA. The *Biological Assessment* and the *Jurisdictional Delineation (July 2013)* state that Coastal Act wetlands within the BSA include 1.61 acres of vegetated coastal wetlands (southern coastal salt marsh, coastal and valley freshwater marsh, and tamarisk scrub) and 1.46 acres of non-vegetated coastal wetlands (mudflats, open water, non-native vegetation, ephemeral drainages, and concrete-lines drainages)([Exhibit 12](#)). Eelgrass does not occur within or adjacent to the project footprint across the San Luis Rey River. Tidewater goby was not present in the San Luis Rey River during

focused surveys in the project area in 2013. However, the U.S. Fish and Wildlife Service considered the river to be occupied by the goby as of 2013, and the river is designated by the Service as critical habitat for the goby. Southern steelhead was not observed during the May 2013 surveys but has previously been observed in the river.

The proposed project would affect 2.77 acres of Coastal Act wetlands, including 0.15 acres of permanent impacts, 0.34 acres of long-term temporary impacts, and 2.28 acres of short-term temporary impacts. The project also includes the elimination of 0.06 acres of wetland fill due to the removal of the existing bridge pilings. Accordingly, the net impact to Coastal Act wetlands is 2.71 acres ([Exhibit 13](#)). The project therefore triggers the three-part test of Coastal Act Section 30233(a) and the Commission needs to analyze whether the project is an allowable use under this section, whether it is the least environmentally damaging feasible alternative, and whether adequate mitigation for wetland impacts is provided.

Allowable Use

Section 30233(a) of the Coastal Act limits uses involving wetland fill to seven categories of uses. During the numerous reviews of past SANDAG and NCTD rail projects involving wetland fill, the only arguable allowable use that could be considered for those projects would be as an “incidental public service,” as specified in Section 30233(a)(4). However, as the Commission has also established through more recent reviews, SANDAG double tracking projects no longer qualify for this use because they would increase passenger and freight capacity in the LOSSAN corridor. This is true both individually for this project and cumulatively for the entire corridor.

Thus, the only way the Commission could find this project consistent with the Coastal Act is through the “conflict resolution” provision in Sections 30007.5 and 30200(b) of the Coastal Act, if the project presents a conflict between Chapter 3 policies. In its consistency certification, SANDAG acknowledges the Commission’s position that the project is not an allowable use under Sections 30233(a) and (c). At the same time, and as will be discussed further below, SANDAG notes that the Commission in its certification of the North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program (NCC PWP/TREP - CC-0002-14/PWP-6-NCC-13-0203-1), adopted a framework, based on conflict resolution, through which it could and did authorize or indicate its intent to allow the various projects identified in that plan. In addition, the Commission reiterated its commitment to this approach most recently in its June 2017 approval of SANDAG’s San Dieguito River double-track bridge project (CC-0001-17), again using the “conflict resolution” provision of Section 30007.5. The conflicts presented by this project, and the resolution of those conflicts, will be discussed in **Section M**, below.

Alternatives

Concerning the alternatives test of Section 30233(a) for the proposed project, SANDAG designed the railroad bridge replacement and additional main line track in a manner that would minimize impacts to coastal resources, particularly at the crossing of the San Luis Rey River. The No Project and single-track alternatives would not meet the project’s objectives of improving rail service through the LOSSAN corridor. Wetland avoidance alternatives are not feasible or available as the proposed double-track bridge cannot reasonably be replaced without pilings in the river. SANDAG states in the *Final Hydrology and Hydraulics Report (August 2013)* that four bridge design alternatives were considered, two concrete designs and two steel

designs. A concrete span is preferred due to reduced maintenance costs and a longer design life. The selected alternative includes six pier locations (each with two circular columns) in the river and 763 square-feet of surface area taken up by the bridge piers. While the second concrete design alternative had a combined pier footprint of 692 square-feet, this alternative required nine pier locations in the river and was therefore considered a less preferred alternative due to impacts to river hydraulics from the increased number of piers in the river channel.

Regarding bridge construction alternatives to minimize adverse effects on wetlands and open water habitat, the consistency certification states that:

The double track bridge would be constructed in a single phase, offline from the existing bridge, to maintain rail service during construction and decrease the duration of construction in the San Luis Rey River. To further minimize the duration of work within the river, a combination of temporary earthen berm and construction trestle platform is proposed to accommodate construction equipment and activities.

To provide a stable working surface above the high tide elevation, a temporary earthen berm consisting of clean sandy soil covered with a stabilized rock ballast surface will be installed. The work berm would be roughly 300 feet long north of and 90 feet long south of the open water channel. The top working area of berm would be about 70 feet wide and extend beneath the new bridge to allow installation of the cast-in-drilled-hole (CIDH) piles. Temporary access mats, such as composite, metal, geotextile/geocell or timber mats, may be used in addition to the earthen berm to distribute the loads from heavy equipment to protect the existing ground and provide a stable working surface. A temporary construction access road would be created with fill from the parking lot over the top of existing levee which would then connect to the temporary earthen berm. The levee embankment would be protected in place and the original profile restored at the completion of bridge construction activities.

A temporary construction working trestle platform about 290 feet long would be constructed on the south end of the bridge spanning the open water channel which would then connect to a temporary earthen berm to be constructed the remaining length of the bridge to the northerly levee embankment adjacent to the Oceanside Harbor parking lot. A smaller work berm connecting south of the trestle would provide access to the south abutment. Sheet pile shoring at the end of the work berm may be used to maintain the open water channel. Heavy equipment such as bulldozers, loaders, truck haulers may be used in the construction of the work berm/trestle.

...

There is no feasibly less environmentally damaging alternative to constructing a new double track bridge. Impacts have been minimized through use of a combination berm/trestle. The proposed work berm/trestle described in Section 3.0

is a reasonable compromise between a full berm and a full trestle. The combination of the two would minimize tidal muting, maintain the open water opening for fish passage, allow passage of storm flows, and would result in less environmental impact than a full berm. Compared to a full trestle, the combination work berm/trestle would result in a shorter construction period; less temporary pile driving and associated noise; more protection for the river during foundation drilling operations; a lower probability of contaminants entering river due to working over open water; and lower construction costs. The work berm/trestle will be removed and restored to their pre-project conditions.

The double-track bridge is designed to protect the rail line from a 100-year flood event and projected sea level rise. The project *Final Hydrology and Hydraulics Report (August 2013)* evaluated floodplain-related issues for the proposed double-track bridge:

The proposed water surface elevation at the cross-section upstream of the proposed bridge (RS 2460) is 13.87 feet for the USACE 100-year discharge (70,000 cfs), 0.08 feet lower than the existing water surface elevation of 13.95 feet; and 14.00 feet for the design capacity discharge (71,200 cfs), 0.08 feet lower than the existing water surface elevation of 14.08 feet. Because the updated USACE hydrology has not been adopted by FEMA, the current regulatory (FEMA) 100-year flow of 51,000 cfs, was also analyzed. The proposed water surface elevation at RS 2460 was 11.62 feet for the FEMA 100-year discharge (51,000 cfs), 0.11 feet lower than the existing water surface elevation of 11.73 feet. These results will allow the City of Oceanside to approve the No-Rise Certification. The City may request FEMA's assistance to review the model and No-Rise Certification.

For the design capacity flow, the proposed bridge meets the SCRRRA design criteria which states the water must remain below the low chord (17.33 feet) or soffit for the 50-year flood event and the energy grade line of the 100-year flood event must remain below the subgrade (bottom of ballast is 28 inches below top of rail at 28.0 feet, or at an elevation of 25.66 feet). The water surface elevation upstream of the bridge for the 50-year discharge is 10.01 feet, 7.32 feet below the soffit elevation of 17.33 feet. Because the design capacity is slightly higher than the 100-year flow, the design capacity was used for the design criteria for a conservative elevation. The energy grade of the design capacity flood upstream of the bridge is at an elevation of 15.44 feet, 10.22 feet below the subgrade elevation of 25.66 feet. Also, because the proposed bridge is not expected to create any increase in the water surface elevations for the profiles analyzed, no impacts to the Corps flood-protection project are expected.

Regarding projected sea level rise, the *Hydraulics Report* states that:

A 4.6-foot (55 inches) sea-level rise was recommended in the Sea Level Rise Report (submitted under separate cover), which discusses considerations for sea-level rise and how to account for it. The report recommends an approach to address sea-level rise guidance from numerous federal and state agencies that is

based on sea-level rise projections from numerous sources and over different timescales (e.g., 2030, 2050, and 2100). Note that the interim Sea Level Rise statewide guidance developed by the Ocean Protection Council (OPC) in 2011 was meant to be in place until the new state guidance was developed through a study lead by the National Research Council of the National Academy of Sciences (NRC). In June 2012, the NRC released a report for that work titled, “Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future.” Even though the Sea Level Rise projections recommended by the NRC are different than those in the OPC interim guidance document and there are higher values of global mean sea rise mentioned in the various guidance documents, one of the more commonly referenced higher end values is 55 inches (4.6 feet) by the year 2100. Utilizing this value for preparation of the San Luis Rey Railroad Bridge would be consistent with the higher end value of global mean sea-level rise found throughout the various guidance documents. Given that the design life of the bridge structure is anticipated to be 75 to 100 years, it is also reasonable to use the global mean sea-level values for the year 2100.

The approach to sea-level rise presented in this report satisfies the guidance released to date. It should be noted that the State of California in March 2013 updated their Sea-level Rise Guidance document to incorporate the best available science as summarized in the NRC report. Also, SANDAG and Caltrans released a draft report titled “San Diego Region Coastal Sea Level Rise Analysis” in February 2013. Pending comments, the final report is expected to recommend matching the full sea-level rise range of 1.4 feet to 5.5 feet from 2000 to 2100. Continuing changes to the sea-level rise guidance are expected. Future design efforts for the Project may have to incorporate these new sea-level guidance regulations.

To this latter point, SANDAG provided further updated sea level rise analysis in its consistency certification:

The original analysis [in the 2013 Hydraulics Report] applied a sea level rise (SLR) of 4.6 ft for the year 2100 based on a review of the best available SLR estimates at the time of the design in 2012. The 100-year storm event (USACE flow of 70,000 cfs) analysis resulted in a water surface elevation of 13.87 ft. The Bridge is at 17.33 ft., which provides 3.46 ft. of freeboard. Subsequently, the California Coastal Commission (2015) issued state guidance on SLR based on projections in the National Research Council (NRC), Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future June 2012 study. The upper bound SLR projections provided in the 2012 NRC study were 2.0 ft. (24 inches) for the year 2050 and 5.5 ft. (66 inches) for the year 2100. The upper bound SLR of 5.5 ft. would reduce the freeboard for this bridge to about 2.56’ which is still more than adequate and within the allowable range per the Coastal Commission guidance.

The Commission notes, however, that the California Ocean Protection Council recently published a 2018 *Update* to its 2013 *State of California Sea Level Rise Guidance* document. This update includes an extreme case scenario that results in 10 feet of sea level rise by the year 2100, rather than the current upper bound of 5.5 feet. Given that the construction of the San Luis Rey double-track bridge is not scheduled to occur until the 2021-2030 time period, the Commission suggests that SANDAG should determine if it is prudent to incorporate this guidance update into project design.

The Commission agrees with SANDAG that the proposed double-track bridge is designed to not raise water surface elevations for 50-year and 100-year flood flows and incorporates information contained in the Commission's 2015 *Sea Level Rise Guidance* report. The Commission concludes that with the objectives to increase rail transit efficiency and capacity in the LOSSAN corridor, the need to replace an aging single-track bridge, the design requirements to construct bridge piers within the river, and with the bridge mitigation measures discussed in the following paragraphs, the project represents the least environmentally damaging feasible alternative and therefore complies with the alternatives test of Section 30233(a).

Mitigation

In order to find the double-track project consistent with Section 30233(a), mitigation must be provided for the wetland habitat impacts arising from project construction. The Commission defines temporal classifications of impacts as follows:

- Temporary impacts are those that would be caused by construction activities, but vegetation/habitat would be re-established in place, with the exception of when a non-native (and non-sensitive and non-jurisdictional) vegetation community/habitat is temporarily impacted; in this case, the most appropriate native plant palette would be used to revegetate the impacted area.
- Short-term temporary impacts would persist for less than 12 months.
- Long-term temporary impacts could persist throughout the approximately two-year construction period. For purposes of mitigation, this type of impact is considered permanent.
- Permanent impacts are those where the ground disturbance would be permanent where the biological resources would be replaced with proposed rail infrastructure.

The project *Biological Assessment* and consistency certification state that the proposed project would affect 2.71 acres of wetland habitat. Upland construction of the second main line track would permanently impact 0.10 acres of ephemeral drainages and concrete-lined drainages. The access ramps into the riverbed to support bridge construction would create 0.33 acres of long-term temporary impacts to vegetated and non-vegetated wetland habitats. Upland and riverside construction activities would also create 2.28 acres of temporary impacts to vegetated and non-vegetated wetland habitats. The permanent impacts to 0.06 acres of open water habitat arising from the new bridge piers would be offset by the removal of the existing bridge piers, which currently occupy an equivalent area of open water habitat.

Regarding the mitigation program for unavoidable impacts to wetland habitats, SANDAG states that:

In accordance with SANDAG and Caltrans's North Coast Corridor Public Works Plan/Transportation and Regional Enhancement Program (as amended 2016), SANDAG agrees that prior to construction, SANDAG will submit to the Executive Director evidence that adequate credits have been released from the Resource Enhancement and Mitigation Program (REMP) in order to provide compensatory mitigation. Presently, it is planned that such credits would come from the San Dieguito W19 and/or Hallmark (Agua Hedionda) REMP sites. All temporary impacts to CCC wetlands will be restored to existing contours and revegetated with appropriate native species ensuring no net loss of CCC wetlands from temporary impacts. Additionally, avoidance and minimization measures described in the Programmatic Biological Opinion (USFWS, 2005 and 2014) would be implemented.

In previous Commission concurrences with SANDAG double-track projects, the Commission adopted the following findings addressing the mitigation provisions in the North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program:

SANDAG and Caltrans collaborated with the CCC, local cities, resources agencies, and the public to develop the North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program (NCC PWP/TREP; June 2014). The NCC PWP/TREP serves as a programmatic federal consistency certification document for the transportation, community and resource enhancement projects included in the PWP/TREP. In addition, the PWP/TREP Resource Enhancement and Mitigation Program (REMP; Appendix H of the PWP/TREP) provides a regional approach to identifying, developing and implementing biological mitigation for north coast transportation projects, including the Proposed Action. The mitigation for direct impacts to wetlands and sensitive upland habitats for this project are proposed to be provided by allocation of REMP mitigation credits, and on-site establishment. In addition, the REMP allocates the SANDAG Environmental Mitigation Program (EMP) funds to regionally significant lagoon restoration opportunities and endowments for long-term resource maintenance needs.

As was contemplated in the Commission review of the PWP/TREP, mitigation for the subject project's wetland impacts (beyond the mitigation that is inherent in the removal of existing bridge piers) would be addressed through the PWP/TREP's Resource Enhancement and Mitigation Program (REMP), an element of the NCC PWP/TREP. The Commission's August 2014 approval of the PWP/TREP provided the authorization for an overall framework, under which identified projects would be analyzed, implemented, and coordinated over the next 30 to 40 years. The goal of this process was to optimize the suite of improvements so that transportation goals could be achieved while maximizing protection and enhancement of sensitive coastal resources, including wetlands, within the corridor. The REMP designates

specific mitigation sites to be used for NCC PWP/TREP-listed transportation projects, in a manner intended to coordinate and maximize the benefits of wetland and upland restoration required as mitigation. The REMP also contains the requisite overall monitoring and performance standards, as well as a plan for long-term management following the initial monitoring period, to assure restoration success.

The Commission noted the following in its review of the Caltrans I-5 crossing of San Elijo Lagoon (CDP 6-15-2092 and NOID NCC-NOID-0005-15):

The Resource Enhancement and Mitigation Program (REMP) within the NCC PWP/TREP was developed through a collaborative process with representatives from various resource agencies including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, the Regional Water Quality Control Board, NOAA National Marine Fisheries Service, the U.S. Environmental Protection Agency, and the California Coastal Conservancy. The development of the REMP was initiated by members of this group as early as 2010 in order to identify regionally significant restoration and enhancement opportunities within the NCC. Through the NCC PWP/TREP, this group has been formalized as the REMP Working Group and meets quarterly to track and guide progress through the planned implementation phases of the PWP.

In accordance with this “umbrella” program, SANDAG states that the proposed mitigation measures for the Eastbrook to Shell double-track project are consistent with the mitigation framework for LOSSAN corridor projects established in the REMP, and that it will implement mitigation for unavoidable project impacts in accordance with and as required by the REMP.

However, while SANDAG states in the subject consistency certification that it will mitigate impacts to wetland habitat, both within the project footprint and at an off-site location consistent with the REMP, it also acknowledged that it does not have a detailed mitigation plan for Commission review at this time. As a result, SANDAG has committed to submitting to the Commission (prior to the start of project construction) a second consistency certification for the mitigation plan for unavoidable impacts to wetland habitat arising from the proposed project. This will ensure that the Commission will have the ability to review the details of the mitigation plan, and concur that the project is fully consistent with Section 30233(a) mitigation policy before SANDAG can commence construction of the double-track project.

Given the significant time lag between the 2013 *Biological Assessment*, the subject 2018 consistency certification, and the current expected start of project construction (2021-2030), SANDAG will also provide in its second consistency certification an updated biological assessment to identify any changes in habitat area or conditions and updated calculations of potential project impacts to wetland habitat (if necessary due to the findings in the updated biological assessment). This second consistency certification will also include evidence, in a form and content acceptable to the Executive Director, that adequate credits have been released from the Resource Enhancement and Mitigation Program (REMP) in order to provide compensatory mitigation for the proposed project’s impacts to wetland habitat at a 1:1 mitigation ratio. If adequate credits are not available, the applicant shall provide mitigation from the REMP

using the typical 4:1 wetland mitigation ratio required by the Commission, and mitigation shall be consistent with the provisions of the REMP.

While SANDAG acknowledges that the mitigation plan for project wetland habitat impacts will not be completed and submitted to the Commission until a future date, it has incorporated into the project numerous conservation measures from the 2005 U.S. Fish and Wildlife Service's *Programmatic Biological Opinion (PBO)* for double-track projects in San Diego County and from the 2014 *PBO Amendment* pertaining to the Eastbrook to Shell double-track project. These measures are also incorporated into the project *Biological Assessment* and the subject consistency certification. Included are restrictions on the timing of vegetation clearing, requirements for biological monitoring and reporting during work activities in and adjacent to native and sensitive habitat areas, requirements for employee education programs prior to the start of construction, restoration guidelines for temporary and permanent vegetation impacts, measures to protect tidewater goby habitat at and adjacent to the instream work footprint to the project, measures to ensure steelhead passage through the work area should they be present in the river, and measures to avoid ephemeral basins adjacent to the trackway that could support San Diego fairy shrimp.

The Commission also notes that should the proposed on-site and off-site mitigation measures for permanent and temporary impacts to wetland habitat either not be available for use by SANDAG or not be implemented in the manner described in the consistency certifications, the Commission has the ability to "re-open" its decisions on the consistency certifications under the remedial action provisions of the federal consistency regulations at 15 CFR §930.65 which states in part that:

(a) Federal and State agencies shall cooperate in their efforts to monitor federal license or permit activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal license or permit activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program

Conclusion

As stated above, the Commission finds that the proposed project is consistent with the alternatives and mitigation tests of Section 30233(a), but inconsistent with the allowable use test of that section, notwithstanding project measures to mitigate the impacts to wetland habitat. Therefore, the only way the Commission could concur with this consistency certification would be if it finds the project consistent with the Coastal Act through the "conflict resolution" provision contained in Section 30007.5. As discussed in **Sections III.H, K, and L** of this report,

not allowing the project to proceed would be inconsistent with the water quality, public access and recreation, and air quality/energy consumption policies of the Coastal Act, because it would prevent benefits to coastal resources that are inherent in the project and mandated by the policies of the Coastal Act from accruing. 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 wetland policy of the Coastal Act (Sections 30233(a)) on the one hand, and the water quality, public access, and energy conservation policies of the Coastal Act (Sections 30231, 30232, 30210, 30213, 30252, and 30253) on the other. The following section of this report will identify a similar conflict with the Coastal Act's ESHA policy (Section 30240). In the concluding section of this report (**Section III.M**), the Commission will provide further analysis concerning the resolution of these conflicts.

G. ENVIRONMENTALLY SENSITIVE HABITAT

Coastal Act Section 30240 states:

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

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

The consistency certification states that upland environmentally sensitive habitat in the project area is limited to Diegan coastal sage scrub (DCSS), a vegetation community which often supports the federally listed California gnatcatcher. In the project footprint, healthy and disturbed pockets of DCSS are found in scattered locations, primarily along the project access route north of the San Luis Rey River to reach project areas in Camp Pendleton where railroad signal bungalows will be modified or constructed. The *Biological Assessment (July 2013)* for the proposed project examines this habitat and the gnatcatcher:

*Diegan coastal sage scrub is a habitat dominated by low, soft-woody subshrubs that are most active in winter and early spring. The coastal form of this community is characterized by California sage (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), laurel sumac (*Malosma laurina*), lemonade berry (*Rhus integrifolia*), and black sage (*Salvia melifera*). Within the BSA, the dominant shrubs in this habitat include California sage, goldenbush (*Isocoma menzeisii*), California encelia (*Encelia californica*), laurel sumac, white sage (*Salvia apiana*), and black sage. The disturbed Diegan coastal sage scrub in the BSA show signs of human disturbance, have a sparse shrub cover, and include a large variety of native and non-native understory species, including, but not limited to, yellow sweet clover (*Melilotus indicus*), purple needle grass (*Nasella pulchra*), bromes (*Bromus spp.*), monkey flower (*Mimulus spp.*), and wild lettuce (*Lactuca seriola*).*

...

Coastal California gnatcatchers [CAGN] occur on coastal slopes in southern California, including San Diego County. They typically occur in or near coastal sage scrub habitat, preferably in relatively open stands. The species tends to prefer stands of sage scrub that are dominated by California sagebrush. The CAGN also uses chaparral, grassland, and riparian habitats, where they occur adjacent to sage scrub. Six (6) focused protocol surveys for the CAGN [in the project area] were conducted in spring 2012 by a Bloom biologist, and were all negative (Bloom 2013; Appendix D).

The *Biological Assessment* further states that:

Because no CAGN were detected in the BSA during protocol surveys, the proposed action would have no direct or indirect effects on the species. The proposed action would, however, result in permanent impacts to 0.1 acre and short-term temporary impacts to 0.2 acre of potential habitat (Diegan coastal sage scrub) for CAGN. This habitat includes disturbed Diegan coastal sage scrub, which constitutes low potential habitat for the CAGN. The proposed action would not result in any impacts to CAGN critical habitat, or potential habitat that is contiguous with the critical habitat located east of I-5. Accordingly, no impacts to CAGN or critical habitat for the species would occur under the proposed action.

While the project would not affect the gnatcatcher, SANDAG states that the permanent and short-term temporary impacts to Diegan coastal sage scrub habitat from construction of the double-track line must still be mitigated per the requirements of the *Programmatic Biological Opinion* (PBO, USFWS, 2005) for SANDAG double-track projects in northern San Diego County. The *Biological Assessment* states that:

The PBO requires that permanent impacts to coastal sage scrub be mitigated at a 2:1 ratio and that permanent impacts to non-native grassland be mitigated at a 0.5:1 ratio with a combination of off-site preservation, creation, or restoration of native habitat. The PBO requires that a project-specific plan outlining the details and implementation schedule of all enhancement, restoration, and creation to offset permanent impacts to vegetation be prepared by the proponents and submitted to USFWS for review and approval at least 90 days prior to the start of each project addressed by the PBO (including the proposed action). Short-term temporary impacts also would be mitigated at a 2:1 or 0.5:1 ratio for Diegan coastal sage scrub and non-native grassland, respectively. Restoration will take place at the Stacco/Timeout mitigation site located in the City of Oceanside, or another mitigation site approved by the resource agencies.

The consistency certification concludes that Diegan coastal sage scrub (DCSS) is a sensitive upland vegetation community and that the areas where it occurs in the project area should be considered environmentally sensitive habitat areas (“ESHA”) for Coastal Act purposes. Because

this habitat constitutes ESHA, in order for the project to be consistent with Section 30240(a), the parts of the project occurring within that ESHA would need to be a “use dependent on the resource.” Because the project is not such a use, the Commission finds that the project does not comply with this test and cannot, therefore, be found consistent with Section 30240. However, because the staff is recommending that the Commission concur with this consistency certification, as discussed in **Section M** of this report (conflict resolution), a finding that Coastal Act conflicts are resolved in a manner which is, on balance, most protective of significant coastal resources, inherently means that the impacts to this habitat need to be mitigated. If they were not mitigated, the Commission would not be able to find the project most protective of significant coastal resources.

The July 2013 *Biological Assessment* states that 0.2 acres of Diegan coastal sage scrub will be temporarily affected by project construction. SANDAG states in its consistency certification that:

Temporary impacts to onsite environmentally sensitive habitat areas associated with construction access would be restored to their pre-project conditions by returning the area to its original grade. Additionally, where temporarily impacted areas are considered native they would be revegetated in-kind. Non-native or disturbed areas would also be revegetated with native habitats, improving the overall function of the sensitive habitat area. Additionally, the EBSDT would avoid and minimize impacts to animal life and their habitats through adherence to the PBO (USFWS, 2004 and 2015) issued for the project.

In addition to the 0.2 acres of temporary impacts, the *Biological Assessment* also states that the project will result in 0.1 acres of permanent impacts to environmentally sensitive Diegan coastal sage scrub habitat. As was the case for the wetland impacts described in the previous section of this report, mitigation for ESHA impacts will be addressed through the Commission-authorized PWP/TREP’s Resource Enhancement and Mitigation Program (REMP). As noted above, the REMP designates specific mitigation sites to be used for NCC PWP/TREP transportation projects in order to coordinate and maximize the benefits of wetland and upland restoration required as mitigation for these projects. To protect and to minimize adverse effects on environmentally sensitive habitat, the proposed project incorporates the numerous avoidance and minimization measures listed in the U.S. Fish and Wildlife Service’s 2005 *Programmatic Biological Opinion* for SANDAG double-track projects in northern San Diego County, and in the 2014 *Programmatic Biological Opinion Amendment* developed specifically for the proposed project.

While SANDAG states in the subject consistency certification that it will mitigate impacts to Diegan coastal sage scrub, both within the project footprint and at an off-site location consistent with the REMP, it also acknowledged that it does not have a detailed mitigation plan for Commission review at this time. As noted in the previous section of this report, SANDAG has committed to submitting to the Commission (prior to the start of project construction) a second consistency certification for the mitigation plan for unavoidable impacts to wetland habitat arising from the proposed project. SANDAG agrees that this second consistency certification will also include final details for mitigation of the above-referenced project impacts to Diegan coastal sage scrub habitat.

However, given the significant time lag between the 2013 *Biological Assessment*, the subject 2018 consistency certification, and the current expected start of project construction (2021-2030), SANDAG will also provide in its second consistency certification an updated biological assessment to identify any changes in habitat area or conditions and updated calculations of potential project impacts to ESHA habitat (if necessary due to the findings in the updated biological assessment). This second consistency certification will also include evidence, in a form and content acceptable to the Executive Director, that adequate credits have been released from the Resource Enhancement and Mitigation Program (REMP) in order to provide compensatory mitigation for the proposed project's impacts to Diegan coastal sage scrub ESHA at a 1:1 mitigation ratio. If adequate credits are not available, the applicant shall provide mitigation from the REMP using the typical 2:1 upland ESHA mitigation ratio required by the Commission, and mitigation shall be consistent with the provisions of the REMP.

The Commission also notes that should the proposed on-site and off-site mitigation measures for permanent and temporary impacts to Diegan coastal sage scrub ESHA either not be available for use by SANDAG or not be implemented in the manner described in the consistency certifications, the Commission has the ability to “re-open” its decisions on the consistency certifications under the remedial action provisions of the federal consistency regulations at 15 CFR §930.65, which are quoted above on page 19.

In conclusion, the Commission finds that the project is not a use allowed in an ESHA and would result in permanent and temporary impacts to Diegan coastal sage scrub habitat. As a result, the project is inconsistent with Section 30240, notwithstanding project measures to mitigate the impacts to Diegan coastal sage scrub. Therefore, the only way the Commission could concur with this consistency certification would be if it finds the project consistent with the Coastal Act through the “conflict resolution” provision contained in Section 30007.5. As discussed in **Sections III.H, K, and L** of this report, not allowing the project to proceed would be inconsistent with the water quality, public access and recreation, and air quality/energy consumption policies of the Coastal Act, because it would prevent benefits to coastal resources that are inherent in the project and mandated by the policies of the Coastal Act from accruing. 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 ESHA policy of the Coastal Act (Section 30240 on the one hand, and the water quality, public access, and energy conservation policies of the Coastal Act (Sections 30231, 30232, 30210, 30213, 30252, and 30253) on the other. In the concluding section of this report (**Section III.M**), the Commission will provide further analysis concerning the resolution of these conflicts.

H. WATER QUALITY

Coastal Act Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30232 states:

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 included in its consistency certification commitments for water quality protection during construction and operation of the double-track and bridge replacement project, including preparation of a Storm Water Pollution Prevention Plan (SWPPP), compliance with its National Pollutant Discharge Elimination System (NPDES) permit, and implementation of construction best management practices:

Impacts to water quality will be avoided and minimized through implementation of the project's SWPPP. The SWPPP includes pre-, during, and post-construction BMP's. To prevent transport of sediment into existing storm drain inlets and onto adjacent properties and roadways, before grading or clearing, the site perimeter will be stabilized using controls such as silt fences; tracking controls such as stabilized construction entrances; storm drain inlets will be protected; and sediment traps (if applicable) will be constructed. Erosion controls during construction include scheduling, preservation of existing vegetation, hydraulic mulch, hydroseed, earth dike and drainage swales, velocity dissipation devices, stream bank stabilization, soil preparation roughening, wind erosion control. Sediment controls during construction include silt fence, check dams, fiber rolls, gravel bag berm, street sweeping, storm drain inlet protection, stabilized construction entrance and exit. Post-construction BMPs include vegetated slopes, velocity dissipaters at proposed discharge locations, track surfaces stabilized with rock ballast and subbase.

The consistency certification also states that oil and hazardous material spills will be avoided through implementation of General Conservation Measure 4 outlined in the September 2016 amendment to the U.S. Fish and Wildlife Service's *Programmatic Biological Opinion* for

operations and maintenance of six double-track railroad projects in northern San Diego County, including the proposed project:

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

In previous reviews of SANDAG and NCTD double tracking projects in San Diego County, the Commission concurred with agency determinations 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.

With the above-referenced water quality protection 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 and spill prevention policies of the Coastal Act (Sections 30231 and 30232). In addition, the Commission finds that Coastal Act Sections 30231 and 30232 include affirmative language mandating approval (“*The biological productivity and the quality of coastal waters ... shall be maintained and, where feasible, restored ...*” and “*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided ...*”) to protect coastal water quality and that without this project, water quality resources at and adjacent to the San Luis Rey River project area will not be maintained, restored, and protected.

I. CULTURAL RESOURCES

Coastal Act Section 30244 states:

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 includes an examination of potential cultural resources within the project area. SWCA Environmental Consultants prepared a *Final Cultural Resources Survey Report for the East Brook to Shell Double Track Project, San Diego County California (July*

2013) in order to inventory cultural and historical resources in the project area and to comply with the provisions of Section 106 of the National Historic Preservation Act. The *Report* included a cultural resource inventory consisting of a records search, literature review, Native American correspondence, and an intensive pedestrian field survey. The *Report* examines the historic cultural setting of the project area:

The project APE is within an area historically occupied by the Luiseño, a Takic-speaking southern California native social group (Kroeber 1925; Bean and Shipek 1978) . . .

Luiseño territory was situated in the north half of San Diego County and the western edge of Riverside County. Their lands encompassed the southern Santa Margarita Mountains and the Palomar Mountains, and their foothills to the Pacific Ocean. It extended eastward into the San Jacinto Valley and the western foothills of the San Jacinto Mountains. Their neighbors to the north were the Juaneño (Acjachemen) who spoke a Luiseño dialect; the Cahuilla and Cupeño to the east who spoke other Takic Cupan languages; and the Ipai to the south who spoke a California-Delta Yuman language. Today, many contemporary Juaneño and coastal Luiseño identify themselves as descendants of the indigenous people living in the local area, termed the Acjachemen Nation.

. . .

Several Luiseño leaders signed the statewide 1852 treaty, locally known as the Treaty of Temecula (an interior Luiseño village), but the United States Congress never ratified it. By 1875, however, reservations for the Luiseño were established in the Palomar Mountains and nearby valleys, including Pala, Pauma, Rincon, Pechanga, La Jolla, and San Pasqual (CIAP 2003). No reservations were established for the remaining coastal people, whose lands had already been usurped by the Mexican ranchos. Today, the San Luis Rey group is actively petitioning the Bureau of Indian Affairs' Office of Federal Acknowledgement to review their request for federal recognition. By 2003, there were 1,340 enrolled members on four Luiseño reservations; today there are over 2,000 Luiseño, including non-enrolled but active members of the community.

The *Report* next describes the literature review undertaken by SWCA in 2011 of previous archaeological and cultural resource studies undertaken in and within one mile of the project Area of Potential Effects (APE). Studies and records were reviewed to identify cultural resources within the project area and surrounding area, identify and determine the adequacy of previous cultural resources studies in the project area, and assess what additional cultural resources studies would need to be undertaken for the proposed project. The records search indicated a total of 52 cultural resource studies have been conducted within a one-mile radius of the APE boundary. Of this total, 16 studies overlap at least a portion of the current APE, and an additional three studies were conducted in areas directly adjacent to the current APE. The records search indicated a total of 14 previously recorded cultural resources within a one-mile radius of the project APE. However, none of these resources occur within the project APE. Of the 14 resources identified

within one mile of the APE, seven are prehistoric (consisting of shell and lithic scatters), five are historic built-environment resources, and two are isolated marine shell fragments.

The *Report* next reviewed the outreach and consultation that occurred with the California Native American Heritage Commission and local Native American tribal representatives:

On September 9, 2011, SWCA requested that the California Native American Heritage Commission (NAHC) conduct a search of its Sacred Lands File to determine if cultural resources important to Native Americans have been recorded within and around the project APE. SWCA received a response from the NAHC (Appendix B) on September 12, 2011 stating that the search of its Sacred Lands File did not indicate the presence of Native American cultural resources within a one mile radius of the project APE, however, the NAHC did indicate that the project APE is located in an area of San Diego County that is “very culturally sensitive.”

The NAHC provided a list of nine Native American groups/individuals who may have knowledge of cultural resources located in and around the project APE. SWCA prepared and mailed a letter to each of the NAHC-listed contacts on September 19, 2011, requesting information related to any Native American cultural resources within or immediately adjacent to the project area. SWCA then made follow-up telephone calls to each contact on September 26, 2011, and made subsequent follow-ups as necessary. SWCA received four responses to the coordination letters.

The *Report* provides a record of subsequent telephone conversations and correspondence received from the Pala Band of Mission Indians and the San Luis Rey Band of Mission Indians. The tribal representatives recommended that ground disturbing activities be monitored by Native American representatives given the cultural sensitivity of the project area and the history of discoveries made in the area, and that communication with tribal representatives continue during project construction. The Commission staff mailed letters to the Pala Band of Mission Indians and to the San Luis Rey Band of Mission Indians on May 15, 2018, stating that a consistency certification for the proposed project would be heard by the Commission at its June 2018 meeting, and requesting information on any Tribal cultural or historical sites within or adjacent to the project corridor. No response was received as of May 23, 2018.

The *Report* documented the field surveys undertaken of the project area in 2011 and 2013 in order to identify and record any potential archaeological or cultural resources. The *Report* concluded that no archaeological resources were identified during the field surveys, and that:

. . . the negative archaeological survey results for the current study, in conjunction with a lack of significant previously recorded archaeological sites in the APE, and the knowledge that portions of the project area have been previously disturbed, indicates that the project area has a low sensitivity for encountering subsurface archaeological resources.

As a result, the *Report* states that no additional cultural resources mitigation measures will be necessary beyond the following standard archaeological mitigation measures to minimize impacts to unanticipated discovery of below-ground cultural resources or the unanticipated discovery of human remains:

Should cultural resources be encountered during ground disturbing activities, work in the area must be halted and an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for archaeologists (National Park Service 1983) should be notified immediately to evaluate the find. If the discovery proves to be significant, additional work, such as data recovery excavation, may be warranted and would be discussed in consultation with the relevant federal agency.

The discovery of human remains is always a possibility during an undertaking. State of California Health and Safety Code Section 7050.5 covers the unanticipated discovery of human remains on non-federal lands. This code section states that no further disturbance shall occur until the San Diego County Coroner has made a determination of origin and disposition pursuant to Public Resources Code (PRC) Section 5097.98. The San Diego County Coroner must be notified of the find immediately. If the human remains are determined to be prehistoric, the Coroner will notify the NAHC, which will determine and notify a Most Likely Descendant (MLD). The MLD shall complete the inspection of the site within 24 hours of notification and may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials.

The consistency certification included a March 18, 2014, letter from the State Historic Preservation Officer (SHPO) to the Federal Railroad Administration (FRA) concurring that the survey and consideration of archaeological and cultural resources undertaken by the FRA for the proposed project complied with the requirements of the National Historic Preservation Act. The letter also noted that because the area is highly sensitive for buried archaeological resources, the project includes provisions for protection of any cultural resources inadvertently discovered during ground disturbing activities.

SANDAG has incorporated into the proposed project the recommended mitigation measures contained in the *Final Cultural Resources Survey Report for the East Brook to Shell Double Track Project, San Diego County California (July 2013)* and the recommendations contained in the SHPO letter of March 2014. The Commission agrees with SANDAG that the proposed project will not adversely affect cultural resources. The resource inventory and evaluation work previously undertaken within the project area and the commitment by SANDAG to protect unknown cultural resources that may be uncovered during project construction demonstrates SANDAG's commitment to protection of cultural resources. Therefore, the Commission finds that the project is consistent with the cultural resource policy of the Coastal Act (Section 30244).

J. PUBLIC VIEWS

Coastal Act Section 30251 states:

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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed double-track project will occur within the existing railroad right-of-way and not significantly alter public views within or adjacent to the railroad corridor. The proposed double-track bridge over the San Luis Rey River will be located just east of the existing single-track bridge. After demolition of the existing bridge, the public views at the railroad crossing of the river will be similar to existing views. Temporary visual impacts during construction are unavoidable and will include the earthen berms and wooden trestle at the San Luis Rey River crossing, construction staging and equipment storage areas, and general construction activities in the right-of-way. Temporarily disturbed areas will be restored to pre-project conditions, as discussed previously in Sections F and G of this report. The Commission agrees with SANDAG that the project would not adversely affect the area's visual and scenic quality, and finds the project consistent with the visual resource protection policy of the Coastal Act (Section 30251).

K. PUBLIC ACCESS, RECREATION, AND TRANSIT

Coastal Act Section 30210 states:

In carrying out the requirements 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.

Coastal Act Section 30213 states in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred

Coastal Act Section 30252 states in part:

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 . . .

As SANDAG notes in its consistency certification (and as the Commission has consistently noted in its concurrences with previous SANDAG and NCTD double-track projects), one of the benefits of double-tracking along the North Coast Corridor is the improvement of public access to the shoreline, both directly by providing transportation alternatives, and indirectly through reductions in private vehicle use on corridor highways. The proposed project is an element in the LOSSAN North Corridor Strategic Plan to develop a more reliable passenger rail system that will in part serve to improve public access alternatives in the project area and within the LOSSAN corridor in San Diego and Orange counties.

The project *NEPA Categorical Exclusion Worksheet (July 2014)* examines temporary project impacts on local traffic and circulation patterns:

During construction, traffic control plan measures will be employed to minimize traffic interruptions. In the event of weekend closures of the existing road crossing in the vicinity of the project during construction, SANDAG will work with the City of Oceanside and the community to provide advance notification and minimize any disruption to local area traffic. Project consultations relative to the railroad and highway (streets) in the project area have been conducted with NCTD, Amtrak, BNSF, and the City of Oceanside.

The consistency certification notes that the existing pedestrian and vehicle undercrossing north of the San Luis Rey River bridge that connects Oceanside Harbor and the Oceanside Harbor parking lot (located east of the railroad track) would be modified or replaced as a part of the proposed project. SANDAG reports that it anticipates that some construction staging and storage areas may be located within existing public parking areas, including the Oceanside Harbor parking lot on the north side of the San Luis Rey River. However, SANDAG states that staging and storage footprints will be minimized to the extent practicable and are not expected to adversely affect public parking and access. At this time, SANDAG does not have final designs for the extent and location of these areas but it has committed to provide this information to the Executive Director prior to the start of project construction. This submittal would occur with sufficient time to allow the Executive Director to confirm that these elements of the project would not create significant effects on public access, and that the project remains consistent with the public access and recreation policies of the Coastal Act. However, should the Executive Director determine that the final project staging and storage areas would adversely affect public access, the Commission has the ability to “re-open” its decision on the consistency certification under the remedial action provisions of the federal consistency regulations (15 CFR §930.65), which are quoted above on page 19.

The consistency certification examines project impacts to the San Luis Rey River Trail, located on the south bank of the river and crossing under the existing railroad bridge to provide safe access to the shoreline from locations east of the railroad track:

The San Luis Rey River Trail is a 7.2 mile Class I bike path that is owned and maintained by the City of Oceanside. It extends along the south side of the San Luis Rey River from the North Pacific Street access to the eastern most point on the College Boulevard Bridge. The San Luis Rey River Trail is a paved bike trail that is open to pedestrians and other non-motorized users too. It crosses under the existing bridge BR 225.4 of the San Luis Rey River within the railroad ROW.

During construction of the new bridge and removal of the old bridge, the bike path would necessarily be closed for public safety in this area. There would be no access to the trail from the west side of the tracks. Access to the trail would still be available from the Neptune Way access (located on the east side of the tracks). Conspicuous signing would be posted to alert the public of the bike path closure and alternative access to the bike path. However, when the bridge replacement process is complete and the temporary berm/trestle is removed, the bike trail would be relocated and reconstructed allowing access from the trail to the coast.

SANDAG subsequently provided additional clarification regarding the trail closure and rerouting of the trail as an element of the double-track project:

At this point in project development, we anticipate the bike path will be closed for project construction due to the proximity of the path to the tracks and the slight shift of the path due to the shifting of the tracks. The path in front of the bridge abutment will be raised to reduce flooding that now occurs during small storms. Additionally, the bike trail connects both to the west at Pacific Street and also has a spur that parallels the track along the east, connecting to Neptune Way. The westerly connection, from the existing abutment up to Pacific Street, is extremely steep with tight turns. To improve safety, this portion of the bike trail will be rebuilt using larger curves and lesser slopes and provides improved sight visibility at the new connection point to Pacific Street. This will also remain in the same general location as the existing path. SANDAG is looking at alternatives to closing the entire path throughout construction by constructing the path/project in two phases with detours provided to the adjacent city streets, or onto either open bike trail, if available, in efforts to maintain access to the beach. The design does consider impacts to public access and directs the Contractor to minimize the duration of closure and detour to the extent practicable.

The Commission agrees with SANDAG that closure of the trail, and the resulting adverse effect on public access at this location, is unavoidable due to public safety restrictions that must be implemented during construction of the new double-track bridge and demolition of the existing bridge, currently scheduled to occur over a two-year time period sometime between 2021 and 2030. As noted above, SANDAG will examine construction alternatives that would avoid a two-year-long closure of the trail where it passes under the bridge. SANDAG has committed to work with Commission staff on this matter to develop measures to minimize access impacts. SANDAG will submit the project construction schedule, including trail closure periods, detour plans to minimize access impacts, and public notification measures identifying alternate access routes, to the Executive Director prior to the start of construction.

Similar to the process described above regarding final locations for staging and storage areas, the construction schedule submittal would occur with sufficient time to allow the Executive Director to confirm that the trail closure schedule and detour measures would minimize to the maximum extent practicable the temporary but unavoidable adverse effects on public access, and that the overall project, including the design measures to improve the safety of the western terminus of the trail, remains consistent with the public access and recreation policies of the Coastal Act. However, should the Executive Director determine that the final trail closure schedule and detour measures do not minimize to the extent practicable the adverse effects on public access, the Commission has the ability to “re-open” its decision on the consistency certification under the remedial action provisions of the federal consistency regulations (15 CFR §930.65), cited above.

In conclusion, the Commission agrees with SANDAG and finds that while the proposed project would create temporary adverse effects to public access due to the temporary closure of the San Luis Rey River Trail during railroad bridge construction and demolition activities, the project when completed, including the improved river trail, would improve public access and recreation in the project area and in the surrounding region. The project also would improve regional public access to the coast by reducing 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, 30213, and 30252).

In addition, the Commission finds that Coastal Act Sections 30210, 30213, and 30232 include affirmative language mandating approval (“*Maximum access ... and recreational opportunities shall be provided*”; “*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided*”; “*Upland areas necessary to support coastal recreational uses shall be reserved*”; “*The location and amount of new development should maintain and enhance public access*.”) to protect coastal access and recreation and that without this project, the following project elements would not occur: (1) a one mile section of new double-track railroad to connect existing sections of double-track to the immediate north and south of the project area; (2) a new double-track railroad bridge across the San Luis Rey River to replace the 93-year-old single-track bridge at the end of its design life; and (3) an improved San Luis Rey River Trail where it passes under the railroad bridge and connects with Pacific Street.

L. AIR QUALITY AND ENERGY CONSUMPTION

Coastal Act Section 30253 states in part:

New development shall do all of the following:

...

(d) Minimize energy consumption and vehicle miles traveled.

In past reviews of pre- and post-PWP/TREP SANDAG and NCTD rail improvement projects, as well as the PWP/TREP itself, the Commission has consistently found that SANDAG and NCTD

rail improvement projects would increase the use of public transportation, reduce automobile emissions and vehicle miles traveled, minimize energy consumption, and benefit regional air quality. The proposed project would provide these same benefits.

The project *NEPA Categorical Exclusion Worksheet (July 2014)* examines air quality impacts associated with operation of the proposed double-track project:

The project is included in SANDAG's Regional Transportation Plan (RTP) and Regional Transportation Improvement Program (RTIP). The RTP and the RTIP are required to be in conformity with the State Implementation Plan for meeting air quality standards. The project will make improvements that will reduce train delays that occur because of the lack of passing opportunity. Although operation of the proposed project would result in the emissions of criteria pollutants, air quality is expected to improve. It is assumed that air pollutant emissions would decrease during operation of the proposed project because the double tracks would allow trains to pass each other without having to stop. Idling, as well as stopping and starting, of trains emits more pollutants than a train constantly in motion. The proposed action will improve train movement within the rail corridor, enhance reliability, and reduce congestion. The project will reduce automobile trips and associated vehicular emissions by providing improvements within the LOSSAN corridor needed to support passenger and freight rail service.

Construction will occur in compliance with applicable Air Pollution Control District's rules. During construction, BMPs will be employed to ensure construction dust is minimized. BMPs include, but may not be limited to, covering of stockpiles and use of water trucks. The project is not expected to result in emissions of ambient criteria pollutants that would cause exceedances of the NAAQS [National Ambient Air Quality Standards], create new exceedances, or delay attainment of the NAAQS in the project area.

The proposed project's air quality benefits include reduced idling time by automobiles on highways and train locomotives in the LOSSAN corridor, which will lead to reduced emissions of air pollutants. In addition, the 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. The Commission has historically found that coastal resources would be directly affected by global climate change resulting from increases in greenhouse gas emissions, and finds that, as part of a larger SANDAG effort to improve and expand rail service in the LOSSAN corridor, the project would further help meet greenhouse gas reduction targets for San Diego County mandated under California's Climate Change Initiative (i.e., AB 32) and other legislation. Benefits to coastal resources include reductions in: (1) coastal flooding and erosion; (2) inundation of developed areas and public access and recreation areas; (3) alterations to existing sensitive habitat areas; (4) ocean warming and acidification; (5) changes in marine species diversity, distribution, and productivity; and (6) infrastructure damage arising from sea level rise.

Thus, actions to reduce greenhouse gases and to protect coastal resources at risk from the adverse effects of global warming are consistent with a number of Coastal Act goals and policies, including but not limited to the directive in Section 30253 to minimize energy consumption and vehicle miles traveled. The Commission has repeatedly drawn these conclusions in past SANDAG/NCTD consistency certification reviews, and, more importantly, reiterated them in its review of the PWP/TREP. The Commission concludes that the project would improve air quality and public transportation in the LOSSAN corridor, and help reduce energy consumption and greenhouse gas emissions, and would, therefore, be consistent with the energy minimization policy of the Coastal Act (Section 30253(d)). In addition, the Commission finds that Coastal Act Section 30253 includes affirmative language mandating approval (“*New development shall . . . minimize energy consumption and vehicle miles traveled.*”) of projects that include elements designed to minimize energy consumption and vehicle miles traveled. The San Dieguito double-track project includes these elements.

M. CONFLICT BETWEEN COASTAL ACT POLICIES

The following conflict resolution discussion is applicable to wetland and ESHA impacts associated with specific projects considered within the NCC PWP/TREP. Section 30233(a) of the Coastal Act only permits the diking, filling, or dredging of wetlands where there is no feasible less environmentally damaging alternative, where feasible mitigation measures have been provided to minimize adverse environmental effects, and when it is limited to certain uses. Section 30240 prohibits significant disruption or degradation of the habitat values of ESHAs. The findings for approval of the original NCC PWP/TREP (PWP-6-NCC-13-0203-1) found that the proposed fill, by itself, would not be an allowable use, and that other elements of the project would significantly disrupt and/or degrade ESHAs. However, the Commission also found that the project as a whole presented conflicts among Chapter 3 policies, and it used the “conflict resolution” provision of Sections 30007.5 and 30200(b) of the Coastal Act to allow limited dredging and filling of wetlands, despite its inconsistency with Section 30233, and limited impacts to ESHAs, despite their inconsistency with Section 30240.

When the Commission identifies a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict “in a manner which on balance is the most protective of significant coastal resources”. The NCC PWP/TREP findings identified that approval of the NCC PWP/TREP would result in the fill of approximately 24 acres of wetlands throughout the NCC despite not being one of the identified allowable uses in Section 30233 as well as impacts to approximately 64 acres of ESHA despite not being one of the identified allowable uses in Section 30240. However, denying the NCC PWP/TREP because of this inconsistency would have been inconsistent with mandates of other Coastal Act policies and would have resulted in significant adverse effects on public access, biological resources, water quality and air quality due to the persistence of the antiquated transportation system in the NCC. Thus, the Commission found a conflict, and it went on to find that approval of the NCC PWP/TREP, notwithstanding its inconsistencies with Coastal Act Section 30233, was the “most protective of coastal resources” for purposes of the conflict resolution provisions of Coastal Act Sections 30007.5 and 30200(b).

The standard of review for the Commission’s decision on a consistency certification is whether the proposed project is consistent with the Chapter 3 policies of the Coastal Act. In general, a

proposal must be consistent with all relevant policies in order to be approved. If a proposal is inconsistent with one or more policies, it must normally be denied or conditioned to make it consistent with all relevant policies.

However, the Legislature recognized through Sections 30007.5 and 30200(b) that conflicts can occur among those policies. It therefore declared that when the Commission identifies a conflict among the policies of Chapter 3, the conflict is to be resolved “in a manner which on balance is the most protective of significant coastal resources,” pursuant to Coastal Act Section 30007.5.

Section 30200(b) of the Coastal Act, at the beginning of Chapter 3, states:

Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

Section 30007.5 of the Coastal Act provides for the Commission to resolve conflicts between Coastal Act policies as follows:

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.

As discussed previously in **Sections III.F and G**, above, because the project would increase railway capacity, it does not qualify as an incidental public service under Section 30233(a)(4), as both the Commission and the courts have interpreted that phrase to apply to transportation projects only if they are necessary to maintain *existing* capacity. In addition, the project is not “allowable” under Section 30240 as a “use dependent on the resources” within an environmentally sensitive habitat area (ESHA) and if it significantly disrupts the Diegan coastal sage scrub habitat in the project area.

However, as discussed in **Sections III.H, K, and L**, if the Commission were to object and prevent the proposed double-track project from proceeding, increasing traffic congestion on regional and local roadways would continue to interfere with and lead to adverse effects on public access to coastal recreational areas in central San Diego County, and would also degrade water and air quality in the region, which would be inconsistent with the mandates of Coastal Act policies protecting those resources (Sections 30210, 30213, 30252, 30231, 30232, and 30253). In such a situation, when a proposed project is inconsistent with a Chapter 3 policy, but denial or modification of the project would be also be inconsistent with other Chapter 3 policies,

there is a conflict between policies, and Section 30007.5 of the Coastal Act provides for resolution of such a policy conflict in a manner that is most protective of coastal resources.

Applying Section 30007.5

Resolving conflicts through application of Section 30007.5 involves the following seven steps, each of which is explained in greater detail below, followed by how each applies to the proposed project:

- 1) The project, as proposed, is inconsistent with at least one Chapter 3 policy;
- 2) The project, if denied or modified to eliminate the inconsistency, would affect some coastal resource(s) in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of that resource(s);
- 3) The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement;
- 4) The project, if approved, would result in tangible resource enhancement over existing conditions;
- 5) The benefits of the project are not independently required by some other body of law;
- 6) The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to “create a conflict”; and,
- 7) There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

1) The project, as proposed, is inconsistent with at least one Chapter 3 policy:

For the Commission to apply Section 30007.5, a proposed project must be inconsistent with an applicable Chapter 3 policy. As discussed in **Sections III.F and G**, above, because the proposed double-track project includes wetland fill to expand railroad capacity and eliminates Diegan coastal sage scrub ESHA, it is not an allowable wetland use under Section 30233(a)(4), and is inconsistent with Section 30240 both because it is not a resource-dependent use and because it would significantly degrade the habitat.

2) The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources:

A true conflict between Chapter 3 policies arises when a proposed project is inconsistent with one or more policies, but for which denial or modification of the project would be inconsistent with at least one other Chapter 3 policy. Further, the policy inconsistency that would be caused by denial or modification must be with a policy that affirmatively mandates protection or enhancement of certain coastal resources. If the Commission were to deny the proposed double-track project, increasing traffic congestion on regional and local roadways would continue to interfere with and lead to adverse effects on public access to coastal recreational areas in central San Diego County, and would also degrade water and air quality in the region. Therefore, denial of the project would be inconsistent with numerous policies of this type: Section 30210, which requires, in part, that maximum access and recreational opportunities “**shall** be provided for all the people”; Section 30213, which requires, in part, that lower cost visitor and recreational facilities “**shall** be protected, encouraged, and, where feasible, provided”; Section 30252, which

requires, in part, that new development “**should** maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service”; Section 30231, which requires, in part, that the biological productivity and quality of coastal waters “**shall** be maintained”; and Section 30253, which requires, in part, that new development “**shall** . . . minimize energy consumption and vehicle miles traveled” [**emphasis** added in each]. In most cases, denying a proposed project will not cause adverse effects on coastal resources for which the Coastal Act mandates protection or enhancement, but will simply maintain the status quo.

Denial of the proposed double-track project would increase traffic congestion on regional and local roadways, which would continue to interfere with and lead to adverse effects on public access to coastal recreational areas in central San Diego County. Denial would also contribute to increasing reliance on automobile transportation and the resulting adverse impacts on water and air quality in the region associated with roadways and vehicles. Denial would be inconsistent with Coastal Act policies established to protect public access, recreation, transit, and water and air quality. If the project is approved, these resources would be protected, as affirmatively required by the Coastal Act. Therefore, approval of the project would result in resource enhancements over existing conditions.

3) The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement:

For denial of a project to be inconsistent with a Chapter 3 policy, the proposed project would have to protect or enhance the resource values for which the applicable Coastal Act policy includes an affirmative mandate. That is, if denial of a project would conflict with an affirmatively mandated Coastal Act policy, approval of the project would have to conform to that policy. If the Commission were to interpret this conflict resolution provision otherwise, then any proposal, no matter how inconsistent with Chapter 3, which offered a slight incremental improvement over existing conditions relevant to a single policy could result in a conflict that would allow the use of Section 30007.5. The Commission concludes that the conflict resolution provisions were not intended to apply to such minor incremental improvements.

As discussed previously in **Section III.B**, the proposed project would construct one mile of new double-track and other elements to improve railroad capacity and operational efficiency along the LOSSAN corridor in San Diego County. This project would not only protect against significant adverse effects to, but would affirmatively promote, public access, recreation, and transit, water quality, and air quality, and is therefore fully consistent with Coastal Act Sections 30210, 30213, 30252, 30231, 30232, and 30253.

4) The project, if approved, would result in tangible resource enhancement over existing conditions:

This aspect of the conflict between policies may be looked at from two perspectives – either approval of the project would result in improved conditions for a coastal resource subject to an affirmative mandate, or denial or modification of the project would result in the degradation of that resource.

As discussed in detail above and summarized here, approval of the proposed double-track project, with the resulting increase in railroad capacity and operational efficiency, would

improve public access, recreation, and transit opportunities in the project area. Approval would protect water quality in the San Luis Rey River through implementing construction best management practices, and by replacing a 93-year-old bridge at the end of its design life and before collapse of the structure into the river. Approval would improve public transportation and freight service, which will help reduce automobile congestion, reduce automobile vehicle miles traveled and the corresponding non-point source emissions, and minimize energy consumption and vehicle miles traveled.

5) The benefits of the project are not independently required by some other body of law:

For benefits of a project to yield a conflict, those benefits that would cause denial of the project to be inconsistent with a Chapter 3 policy cannot be those that the project proponent is already being required to provide pursuant to another agency's directive or under another body of law. In other words, if the benefits would be provided regardless of the Commission's action on the proposed project, the project proponent cannot seek approval of an otherwise unapprovable project on the basis that the project would produce those benefits. In essence, the project proponent does not get credit for resource enhancements that it is already being compelled to provide. In this case, the benefits of the project would not be provided in the absence of the Commission's approval of this project. SANDAG could not obtain the required Corps of Engineers Clean Water Act Section 404 permit to construct the double-track project if the Commission objected to this consistency certification. In addition, the project is not mandated by any other regulatory body nor is it required under any other body of law. Thus, this test is also met because the benefits of the project to public access, recreation, and transit, water quality, and air quality would not be provided if the Commission were to object to the proposed project.

6) The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to "create a conflict":

A project's benefits to coastal resources must be integral to the project purpose. If a project is inconsistent with a Chapter 3 policy, and the main elements of the project do not result in the cessation of ongoing degradation of a resource the Commission is charged with enhancing, the project proponent cannot "create a conflict" by adding to the project an independent component to remedy the resource degradation. The benefits of a project must be inherent in the purpose of the project. If this provision were otherwise, project proponents could regularly append tangential elements to their otherwise unapprovable projects to "create conflicts" and then request that the Commission use Section 30007.5 to approve the unapprovable projects. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and easily manipulated process, and were not designed to barter amenities in exchange for project approval.

The main purpose of the proposed project is to expand capacity and improve operational efficiencies in the LOSSAN railroad corridor which would enhance public access, recreation, and transit opportunities, and protect water and air quality through the provision of improved mass transit. The benefits of the project result directly from the main purpose, and not from any ancillary component. Thus this factor is satisfied as well.

7) There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies:

Finally, a project does not present a conflict among Chapter 3 policies if at least one feasible alternative would meet the project's objectives without violating any Chapter 3 policy. Thus, an alternatives analysis is a condition precedent to invocation of the balancing approach. If there are alternatives available that are consistent with all of the relevant Chapter 3 policies, then the proposed project does not create a true conflict among those policies.

The objective of the proposed project, as noted above, is to construct one mile of new railroad double-track in order to expand capacity and improve operational efficiencies in the LOSSAN railroad corridor. The project would enhance public access, recreation and transit opportunities, and protect water and air quality through the provision of improved mass transit. Accordingly, the "no action" alternative would not achieve the project objectives. As discussed in greater detail in **Section III.F**, above, SANDAG evaluated alternative project designs to construct the double track bridge across San Luis Rey River. However, in all cases, the alternative project designs would still require project activities to occur within Coastal Act wetlands and Diegan coastal sage scrub ESHA, in violation of the allowable use and resource-dependent use policies of Coastal Act Sections 30233(a) and 30240. Moreover, SANDAG determined, and the Commission concurs, that the proposed project design would minimize impacts to wetlands and upland ESHA in comparison to the design alternatives.

Existence of a Conflict Between Chapter 3 Policies

Based on the above, the Commission finds that the proposed project presents a conflict between the allowable use policy of Section 30233(a) and the resource-dependent use and habitat protection elements of Section 30240 on the one hand, and the mandates of Sections 30210, 30213, 30252, 30231, 30232, and 30253 on the other, a conflict that must be resolved through application of Section 30007.5, as described below.

Conflict Resolution

After establishing 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 would result in a non-allowable use in a wetland and a non-resource dependent use occurring within ESHA, thus making it inconsistent with the allowable use policies of Coastal Act Sections 30233(a) and 30240, respectively. However, and as described previously in this report, the wetland habitat that would be adversely affected by the project is located at the unavoidable crossing of the San Luis Rey River or is located in isolated ephemeral drainages and concrete-lined track ditches. The Diegan coastal sage scrub habitat that would be adversely affected is highly fragmented, occurs in linear strips along the railroad embankment, is subjected to train noise and vibration, and is unlikely to support the threatened Coastal California gnatcatcher.

However, denying the project because of its inconsistency with these wetland and ESHA policies would result in significant adverse effects to public access, recreation and transit, water quality, and air quality due the inability of SANDAG to construct the double-track project and to obtain additions to railroad capacity and improved operational efficiencies. As described previously in this report, the double-track project is needed in order to accommodate the forecasted doubling of train trips in the LOSSAN corridor by the year 2030. Without this project, the current section of single track will continue to serve as an obstacle to efficient and expanded train operations in

San Diego County. Denying the project would thus be inconsistent with the affirmative policies of Sections 30210, 30213, 30252, 30231, 30232, and 30253 to protect and maintain public access, recreation and transit, water quality, and air quality. The Commission finds that the impacts on coastal resources from not carrying out the project would be more significant and adverse than impacts stemming from the project's location within wetlands and ESHA, which would be addressed by the avoidance, minimization, and mitigation measures incorporated into the project. The mitigation measures will be included in a second consistency certification submitted to the Commission by SANDAG prior to the start of construction. The Commission therefore concludes that the project would, on balance, be most protective of significant coastal resources, consistent with Coastal Act Section 30007.5. As such, it is consistent with Chapter 3 as a whole, and the Commission therefore concurs with the consistency certification.

SUBSTANTIVE FILE DOCUMENTS

1. CC-0001-18 (SANDAG, Eastbrook to Shell Double Track, San Diego County), and accompanying technical reports and applications, consisting of: (1) Biological Assessment, July 2013; (2) Jurisdictional Delineation Report, July 2013; (3) Final Hydrology and Hydraulics Report, August 2013; (4) Federal Railroad Administration NEPA Categorical Exclusion Worksheet, July 2014; (5) Final Cultural Resources Survey Report, July 2013; (6) March 18, 2014, letter from State Historic Preservation Office to Federal Railroad Administration; (7) Programmatic Biological Opinion for the Rail Corridor from the Orange County Border South to Southern Oceanside for Operation and Maintenance, and Six Double-Track Projects in San Diego County, California (1-6-05-P-4123.2), September 2005; (8) Amendment to Programmatic Biological Opinion 1-6-05-P-4123.2 for the Eastbrook to Shell Double Track Project, San Diego County, California, September 2014.
2. *LOSSAN Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS)*, California Department of Transportation (Caltrans) and the Federal Railroad Administration (FRA), 2009.
3. *San Diego Forward: The Regional Plan*, SANDAG 2015
4. *2050 Regional Transportation Plan*, SANDAG 2011.
5. *Infrastructure Development Plan for the LOSSAN Rail Corridor in San Diego County*, SANDAG 2013.
6. *San Diego Regional Transportation Improvement Plan*, SANDAG 2014.
7. CDP 6-15-2092 and NOID NCC-NOID-0005-15 (Caltrans), San Elijo Lagoon I-5 Crossing.
8. CC-0002-14/PWP-6-NCC-13-0203-1 (SANDAG/Caltrans), North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Plan (NCC PWP/TREP), San Diego County.
9. NCC PWP/TREP Amendment No. PWP-6-NCC-16-0001-1.
10. CC-0001-17 (SANDAG), San Dieguito River Bridge Replacement and Double Track Project, San Diego County.
11. CC-0005-15 (SANDAG), Poinsettia Station Improvement Project, Carlsbad, San Diego County.
12. CC-0004-15 (SANDAG), San Elijo Lagoon Bridge Replacement and Double Track Project, San Diego County.
13. CC-0003-15 (SANDAG), San Diego River Railroad Bridge Replacement and Double Track Project, San Diego County.
14. CC-0006-14 (NCTD), San Dieguito River Railroad Bridge, Scour Repair Project, San Diego County)
15. CC-048-12 (SANDAG), San Onofre to Las Pulgas Double Track Project, San Diego County.
16. CC-009-12 (SANDAG), San Onofre-Pulgas Double Track Project.
17. CC-056-11 (SANDAG), Sorrento Valley Double Track Project, San Diego County.
18. CC-006-11 (NCTD), San Dieguito River Railroad Bridge, Southern Abutment and Scour Protection Project, Del Mar, San Diego County.
19. CC-020-10 (SANDAG), Del Mar Bluffs Stabilization Project, San Diego County.

20. CC-052-10 (SANDAG), Sorrento Valley Double Track project, San Diego County.
21. CC-075-09 (NCTD), Agua Hedionda Railroad Bridge and Double Track Project.
22. CC-059-09 (NCTD), Bridge Replacement Projects, Los Penasquitos Lagoon.
23. CC-008-07 (NCTD), Passing track and bridge improvements, Loma Alta Creek, Oceanside.
24. CC-055-05 (NCTD), Bridge replacement, Agua Hedionda Lagoon.
25. CC-052-05 (NCTD), Santa Margarita River double tracking project, Camp Pendleton.
26. CC-004-05 (NCTD), O'Neill to Flores double track project, Camp Pendleton.
27. CC-086-03 (NCTD), Pulgas to San Onofre double tracking project, Camp Pendleton.
28. CC-029-02 (NCTD), Oceanside-Escondido Railroad Project.
29. *Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County* (1999) 71 Cal.App.4th 493, 517