

**CALIFORNIA COASTAL COMMISSION**

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# W21b

**DATE:** May 23, 2019

**TO:** Coastal Commissioners and Interested Persons

**FROM:** John Ainsworth, Executive Director  
Alison Dettmer, Deputy Director  
Mark Delaplaine, Energy, Ocean Resources, and Federal Consistency  
Division Manager

**SUBJECT:** NE-0001-19, SANDAG, Modification to previously concurred with Consistency Certification CC-0004-15 for the San Elijo Lagoon Double Track Project, Encinitas/Solana Beach, San Diego County

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## I. BACKGROUND

On May 11, 2016, the Commission concurred with a consistency certification submitted by the San Diego Association of Governments (SANDAG) for a 1.5-mile segment of double-track, between southern Encinitas and northern Solana Beach, and across San Elijo Lagoon. The project included a number of elements, including: (1) replacing "Bridge 240," a wood trestle bridge which traversed the lagoon's entrance channel, with a wider (but with less fill in the lagoon) concrete pile bridge; (2) widening and raising the height of the berm supporting the rail line across the lagoon; (3) making a number of signal, street crossing, and pedestrian crossing improvements; (4) installing riprap bank protection underneath the bridge; (5) installing culverts to maximize tidal flows; (6) construction of a temporary construction work berm for the bridge replacement; (7) making temporary and permanent infrastructure improvements; and (8) creating several staging areas to enable site access, construction, and equipment assembly. The bridge replacement construction was recently completed, and SANDAG is currently working on post-construction commitments such as site restoration and other activities.

As it was nearing completion of construction, SANDAG submitted a request to retain as permanent the authorized-as-temporary construction access road between San Elijo Ave. and the east side of the tracks, on the north side of San Elijo Lagoon ([Exhibit 2](#)). When the Commission reviews modifications to consistency certifications (and determinations) with which the Commission has previously concurred, the Commission relies on the "reopener" provisions of the federal consistency regulations (in this case, 15 CFR § 930.65) and looks at

whether such a project, as modified, would “remain consistent” with the Coastal Act. The motion and resolution for this determination are found below. (This process can be considered the federal consistency equivalent to the Commission’s procedures for amending coastal development permits.)

The Commission staff occasionally reviews and makes such determinations administratively. However, as the Commission staff noted when it initially presented this matter to the Commission on March 7, 2019, a number of area residents have expressed concerns over and objections to the request to keep the access road as a permanent feature. Staff also noted to the Commission at that time that it had issues with respect to the visual effects from fencing, as well as the need for effective barriers to trespass in areas near the San Elijo lagoon, that warranted further exploration and negotiation. Staff has therefore now scheduled this modification for a public hearing and Commission determination as to whether the project, as modified, remains consistent with the applicable Chapter 3 policies.

## II. PROCEDURES

The Commission’s review of this submittal is being carried out under Section 930.65 of the federal consistency regulations (15 CFR Part 930), which provides:

*§ 930.65 Remedial action for previously reviewed activities.*

*(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; ...*

## III. MOTION AND RESOLUTION

**Motion.** *I move that the Commission **concur** with SANDAG’s modification (NE-0001-19) to its original consistency certification (CC-0004-15) on the grounds that: 1) the modified project’s coastal zone effects are not substantially different than originally proposed and (2) the modified project remains consistent with the enforceable policies of the California Coastal Management Program.*

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 the findings above. An affirmative vote of a majority of Commissioners present is required to pass the motion.

**Resolution.** *The Commission hereby concurs with modification (NE-0001-19) to SANDAG's original consistency certification (CC-0004-15) for the proposed project, finding that the project, as modified: 1) will not have coastal zone effects that are substantially different than originally proposed; and 2) remains consistent with the enforceable policies of the California Coastal Management Program.*

#### **IV. FINDINGS AND DECLARATIONS**

##### **A. PROJECT MODIFICATION**

SANDAG requests permanent retention of the temporary access and maintenance road/ramp on the north side of the lagoon, which provides access to the east side of the tracks from San Elijo Ave. In its original proposal SANDAG had indicated that it had intended to use an “at-grade” crossing for future track maintenance. However, in its request for authorization of permanent retention of this feature, SANDAG indicates that state and federal agencies have urged reductions of at-grade crossings, and that the east side access road is needed to protect maintenance workers from accidents. SANDAG has written a letter, with an attached Briefing Memo to the Commission (both dated May 17, 2019) ([Exhibit 3](#)), which elaborates on the multiple reasons it is making this request. Pages 3-4 of the Briefing Memo specifically address the need for the east side access road, which is primarily to protect worker safety; SANDAG states if the access road is not retained, maintenance personnel would have to cross the tracks multiple times (6 times), removing and installing chain barriers with each crossing. SANDAG also notes trespasser safety may be at risk if it relies on automated crossing deterrence that might be used with an only-west-side access approach. SANDAG noted previously:

*[T]he at-grade crossings require maintenance workers to cross two sets of active railroad tracks 6 times in order to maintain the newly constructed bridge each time maintenance is required. The timetable speed for passenger trains through this section of track is 90 miles per hour. An incident involving a high-speed passenger train and a maintenance worker or vehicle could lead to serious injury or loss of life for the workers or passengers onboard the train. Additionally, the Federal Rail Administration (FRA) and California Public Utilities Commission (CPUC), the two public agencies which regulate railroad operations, have identified the reduction in the number of at-grade crossings as a mission on freight or passenger railroad mainlines in California.*

SANDAG also states that the Mayor of Encinitas has indicated the City's support for the modification; SANDAG has included 2 public agency letters of support, one from the Mayor to NCTD, dated November 29, 2018 ([Exhibit 4](#)), and one from NCTD to SANDAG, dated October 25, 2018 ([Exhibit 5](#)). In addition to retaining the access road, SANDAG proposes to install chain link fencing parallel to the tracks and around the base of the access road, and a bollard and chain barrier near the top of the access road fencing ([Exhibit 2](#)), in order to limit unauthorized use of the road and protect public safety and environmental health.

Concerns over the proposal have been raised by: (1) area residents, whose expectations originally were that the road would only be temporary during construction, and who expressed concerns at the Commission's March 7, 2019 meeting over visual impacts, unauthorized use of the access road and surrounding environment, water quality, and habitat impacts; (2) the San Elijo Lagoon Conservancy, which has expressed concerns over unauthorized access to areas of the lagoon (e.g., beneath the bridge over the lagoon entrance channel, and other areas of the lagoon), over which it does not have the ability to maintain and protect; and (3) Commission staff, who have expressed concerns to SANDAG over visual impacts of fencing, loss of public parking along San Elijo Ave., unauthorized use of the road, and habitat and water quality concerns.

### **Public Access and Recreation**

With respect to public access, the Commission agrees with SANDAG and the San Elijo Lagoon Conservancy that unauthorized access to the lagoon and the rail line would be inconsistent with public safety and sensitive habitat needs, that the proposed access road is necessary for legitimate public safety needs, and that restrictions on public use of the access road are necessary in order to protect both public safety and environmental resources. Specifically, additional fencing is needed to assure the project is consistent with the requirement of Sections 30210 and 30214 of the Coastal Act to: (1) consider public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse (30210); and (2) implement public access in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including topographic, public safety, sensitive habitat, and other resource protection needs (30214).

With respect to public parking along San Elijo Ave., while such parking is considered "unofficial" it is nevertheless available to and used by the public for coastal viewing. The Commission staff expressed concerns to SANDAG over the loss of up to two parking spaces if the access to the ramp road were off limits to public parking. SANDAG responded with a plan ([Exhibit 6](#)) which depicts parking availability to those two spaces the vast majority of the time, since SANDAG and NCTD would only need to access the road for maintenance activities approximately once/month. SANDAG has also agreed to the Commission staff's request to remove the stenciling on the paving which states "No Parking," as this stenciling gives the impression that the approximately two spaces are not usable by the public. These commitments enable the Commission to find that the project would not adversely affect public access and recreation and would be consistent with Sections 30210 and 30214 of the Coastal Act.

### **Visual Impacts from Fencing**

The Commission staff has had a number of discussions with SANDAG over the visual effects of the proposed fencing. The Commission staff expressed the belief, and the Commission agrees, that some form of additional fencing was needed to protect public safety, as well as to deter unauthorized access to San Elijo Lagoon. However, the Commission staff initially expressed concern to SANDAG regarding the proposed 300+

ft. chain link fence, which may be visible from Highway 101 and thus affect public views. The Commission staff was not concerned over the chain and bollard gate proposed at the top of the ramp ([Exhibit 2](#)), which would be used to deter unauthorized access below the chain and bollard. SANDAG states the chain and bollard gate “was purposefully kept minimal to avoid any visual impacts from nearby residents on San Elijo Avenue and from Hwy. 101.” However, SANDAG believes a longer chain link fence below the ramp ([Exhibit 2](#)) is necessary “to keep people from crossing the tracks” and “to prevent members of the public from injuries and/or death from being hit by a train.” SANDAG stated:

*The intention was that this fencing is being installed at much lower elevation to minimize visual impacts. Because this fencing is on the east side of the railroad berm, it likely won't be seen from those on Hwy 101.*

The Commission staff suggested that a chain link fence across the access road, about a third of the way down the berm so as not to be visible from San Elijo Ave., may suffice to deter unauthorized access to the tracks. Given how steep the slopes are on the west side of the access road, a much shorter amount of fencing in this location might solve the “unauthorized use” concern. The Commission staff noted that SANDAG and NCTD have agreed to install more aesthetically pleasing fencing at rail crossings in other segments of the rail corridor. However, SANDAG noted that those have been authorized when a local government has accepted liability for the more easily crossed (but more aesthetically pleasing) fencing. The Commission staff then agreed that the longer fencing parallel to the tracks might be acceptable if it would not be visible from Highway 101. SANDAG has agreed, and believes the fencing parallel to the tracks should not be visible from Highway 101. SANDAG has further agreed that if it is visible, SANDAG would undertake remedial actions to reduce the elevation of the top of the fence and eliminate its visibility.

With the commitments from SANDAG, which are incorporated as part of the proposed project, the project would protect public views in a manner consistent with Section 30251 of the Coastal Act. The Commission finds that the proposed chain link fencing will appropriately minimize visual impacts and protect scenic views to and along the ocean, consistent with Coastal Act Section 30251, so long as it is not visible from Highway 101. The Commission also finds that the fencing would address a number of concerns expressed by area residents, who have observed and submitted evidence of a number of instances where unauthorized use of the access road and surrounding area caused noise, litter and other adverse effects on coastal resources. The fencing is intended to eliminate this unauthorized use.

### **Other Visual Impacts**

With respect to other visual impacts, the impacts of the access road on public views from San Elijo Ave. would be minimal due to the grade of the road which slopes downhill from San Elijo Ave., and the visual impact from below the road to the west would be minimal given that the graded slope would be revegetated with native vegetation, thus minimizing visual impacts from the shoreline or Highway 101.

### **Water Quality**

With respect to water quality, SANDAG's current drainage proposal is shown in [Exhibit 7](#). In reviewing this plan the Commission staff requested that SANDAG consider further water quality improvements (e.g., installation of a bioswale between the lower end of the road and the lagoon to the south). SANDAG stated that its calculations are that a bioswale would not survive expected runoff velocities and would likely be scoured out, and would thus "be worse for erosion control than our current proposal." SANDAG stated:

*... [T]he option for a bioswale ... was sent on April 16<sup>th</sup> [ , 2019] ... along with plans showing the vegetated swale option attached (I've taken out the other two attachments from the original email for convenience). ... [O]ur calculations found that the velocities with the vegetated swale option would be higher than the rock lined channel, thus, the vegetated swale option would be worse for erosion control than our current proposal.*

SANDAG's calculations for a vegetated swale were that "Ultimately the calculations showed the vegetated swale option would result in a higher velocity (3.56 ft/s [feet per second]) and would have a higher potential for producing erosion than the rock lined channel." Under SANDAG's plan the runoff velocity would be 3.22 ft/s. The Commission staff indicated to SANDAG that there still may be feasible alternatives available to further reduce runoff and erosion, including finding a way to not combine the flow parallel to the tracks from the north with the flow from San Elijo Ave., or measures upslope of the energy dissipater that could further reduce flow velocities.

The Commission finds that SANDAG's proposed runoff plan will adequately protect and maintain the quality of coastal waters, consistent with Section 30231. The project as proposed, once the revegetation commitments have been completed, would not increase runoff beyond pre-project conditions. However, Section 30231 also requires the enhancement of coastal waters, where feasible. In order to enhance the quality of coastal waters, SANDAG has committed to continuing to work with Commission staff to consider whether there are additional, feasible measures that will enhance and restore the productivity and quality of coastal waters, and if so, to implement them.

### **V. CONCLUSION**

Given the above discussion concerning SANDAG's commitments in response to coastal resource concerns raised by the proposed access road project modification to SANDAG's San Elijo Lagoon Double Track project, the Commission concludes that the project, as modified, remains consistent with the California Coastal Management Program.

**EXHIBITS**

**Exhibit 1 – Project Location**

**Exhibit 2 – Aerial View, Access Road and Fencing Plans**

**Exhibit 3 – SANDAG Letter and Briefing Memo (5/17/19)**

**Exhibit 4 – Letter from Encinitas Mayor to NCTD**

**Exhibit 5 – Letter from NCTD to SANDAG**

**Exhibit 6 – Parking Plan, San Elijo Ave.**

**Exhibit 7 – Drainage Plan**

**Exhibit 8 – Photo/View from west**

**Exhibit 9 – Photo/View from across Highway 101**

**Exhibit 10 – Photo/View from southwest**

**Exhibit 11 – Photo/View from along San Elijo Ave.**