

CALIFORNIA COASTAL COMMISSION

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

**W 21c**

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STAFF REPORT: REGULAR CALENDAR

Consistency Certification No.: **CC-0002-19**

Applicant: **San Diego Association of Governments**

Location: Railroad Right-of-Way between Mile Post (MP) 234.2 in the City of Carlsbad and MP 235.2 in the City of Encinitas, and Batiquitos Lagoon Railroad Bridge 234.8, San Diego County ([Exhibits 1 and 2](#))

Project Description: Batiquitos Lagoon Double-Track Project to replace the existing single-track timber railroad bridge with a new 336-foot-long double-track concrete bridge, widen the lagoon channel under the bridge by 40 feet, install rock slope protection at bridge abutments and embankments, remove the rock layer on the floor of the channel under the existing bridge, install one mile of new second mainline track, construct drainage, signal, and utility improvements, and install public safety fencing along the project right-of-way.

Staff Recommendation: Concurrence

SUMMARY OF STAFF RECOMMENDATION

The San Diego Association of Governments (SANDAG) has submitted a consistency certification for railroad track improvements in southern Carlsbad, northern Encinitas, and across Batiquitos Lagoon in San Diego County. The project includes: (1) construction of one mile of

second mainline track west of the existing track; (2) construction of a 336-foot-long concrete double-track bridge across Batiquitos Lagoon to replace the existing 75-year-old timber single-track bridge; (3) widening the lagoon channel under the new bridge by 40 feet to improve tidal flows within the lagoon; (4) removal of a rock layer on the floor of the channel previously installed to protect the existing bridge pilings; (5) construction of a temporary trestle and earthen berms to support bridge construction across the lagoon; (6) construction of temporary access and staging areas; (7) installation of engineered rock slope protection at bridge abutments and embankments; and (8) trackway signal, utility, drainage, fencing, and maintenance access road improvements within the project corridor.

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 are generally scheduled for implementation during the 2021-2030 time period. SANDAG anticipates that construction of the Batiquitos Lagoon double-track project will commence in 2021.

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 or a very minor incidental public facility. It is therefore not an allowable use under Coastal Act wetland policies (Sections 30233(a) and (c)). 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 staff therefore recommends that the Commission find the project 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-0002-19 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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I. APPLICANT’S CONSISTENCY CERTIFICATION

The San Diego Association of Governments (SANDAG) has certified that the proposed activity (CC-0002-19) 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-0002-19 that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence in 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** in the consistency certification by SANDAG, on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.*

III. FINDINGS AND DECLARATIONS

A. PROJECT BACKGROUND

The proposed Batiquitos Lagoon double-track project includes construction of one mile of railroad double-track and replacement of the 75-year-old Batiquitos Lagoon railroad bridge within the LOSSAN (Los Angeles – San Diego – San Luis Obispo) railroad corridor ([Exhibits 1-4](#)). 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:

... increase the reliability, operational flexibility, and capacity of the LOSSAN rail corridor to add passenger and freight rail service to meet future transportation demands. The existing single track in the project area creates a bottleneck for trains traveling along the corridor. Current plans, both at the regional and corridor wide level, call for the level of service for intercity and commuter passenger and freight rail services to double in this segment by 2030, from a current average of 50 trains per weekday to 101 trains per weekday in 2030. This project is necessary to meet those service goals.

...

The proposed project is part of a package of recommended actions addressed in the LOSSAN Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) adopted by Caltrans and the Federal Railroad Administration (2009), and is consistent with SANDAG's 2015 Regional Plan, 2050 Regional Transportation Plan, and 2014 San Diego Regional Transportation Improvement Plan. The project also is a part of the coastal rail double track improvements identified in the TransNet Program, San Diego's half-cent sales tax program for local transportation projects.

SANDAG further states in its consistency certification that there is a need to replace the single-track wooden bridge with a modern double-track concrete bridge to reduce the bridge's in-water footprint and increase tidal flows into and out of the lagoon, while maintaining the track above the 100-year flood elevation given anticipated sea level rise.

The consistency certification states that while the proposed project is not yet funded for construction, it is recommended as a medium-term priority project in SANDAG's 2013 *Infrastructure Development Plan for the LOSSAN Rail Corridor in San Diego County*, and SANDAG currently anticipates commencing project construction in 2021.

B. PROJECT DESCRIPTION

SANDAG proposes to construct railroad track improvements between Mile Post (MP) 234.2 in the City of Carlsbad and MP 235.2 in the City of Encinitas ([Exhibits 2 and 3](#)). The primary project features are one mile of double-track and a new double-track bridge over Batiquitos Lagoon. The consistency certification provides the following information on the project elements:

Double-Track Segment

The project would construct a second track and ancillary improvements from the existing terminus of double track just north of the Avenida Encinas overcrossing near MP 234.2 in the City of Carlsbad to just south of the La Costa Avenue overcrossing in the City of Encinitas near MP 235.2 ([Exhibits 5 and 6](#)). The second track would be placed just west of the existing single track.

Construction of the new double track would require grading and retaining walls to widen the existing rail bed section and maintain permanent access roads within the corridor ([Exhibits 7 and 8](#)). All access roads within the ROW would be constructed using pervious crushed aggregate surfacing material. All new on-grade railway improvements would be constructed on a ballasted section.

Bridge Replacement

To accommodate the double track improvements through Batiquitos Lagoon, additional track embankment and a double-track bridge, west of the existing embankment and bridge, would be placed within the railroad ROW at approximately the same elevation as the existing bridge ([Exhibit 6, page 3](#)). The height of the railroad bridge and railroad berm through Batiquitos Lagoon would accommodate a 100-year storm event and the year 2100 predicted mean sea level rise, and is designed to be consistent with the CCC's Sea Level Rise Policy Guidance adopted August 12, 2015.

The existing railway bridge over Batiquitos Lagoon is a timber trestle 308 feet long, built in the 1940s ([Exhibit 4](#)). The existing bridge has 22 spans supported on timber pile bents 14 feet apart. The proposed double-track bridge would be 336 feet in length and consist of six-spans of 56-footlong concrete box girders to allow for enhanced Lagoon circulation and dredge passage ([Exhibit 10](#)). The new bridge has been designed for conformance with the Batiquitos Lagoon Bridge Optimization Study (Moffatt & Nichol 2012). It would increase the lagoon opening by 40 feet by lengthening the bridge; replace the 102 existing 15-inch diameter timber piles with 30 concrete piles, each with a diameter of 30 inches; and remove existing below-water rock in the lagoon channel to improve tidal and fluvial flows, which would enhance wetland habitats, water quality in the lagoon, and wildlife movement.

Temporary Construction Berm and Trestle

The new double track concrete 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 Batiquitos Lagoon. To further minimize the duration of work within the lagoon, a temporary construction working platform would be constructed on the west side and beneath the new bridge alignment to accommodate construction equipment and activities. The temporary construction platform would be in place for approximately 9 months; it would be comprised of an earthen berm extending into the lagoon from the north and south abutments, and a 92-foot temporary trestle to work from while keeping the lagoon open for tidal/fluvial flows and fish passage ([Exhibits 9 and 10](#)). Removal of the temporary platform and rock channel lining and subsequent restoration of the channel bottom west of the existing bridge would take approximately one month thereafter.

Upon transfer of train service to the new replacement bridge and removal of the westerly temporary work platform, the existing timber trestle and the rock sill

would be removed in the easterly portion of the channel. Temporary rock berms would be installed in phases from the north and south of the bridge embankments (for a period of two months) to allow for removal of rock from the open channel while maintaining the interim tidal flows. Existing rock would be excavated to be used to build rock berms into the channel on the east side of the existing bridge to help recover the existing rock channel armor from the bottom of the channel. The existing embankment would be excavated in stages, as dictated by water elevations and equipment capabilities (i.e., reach).

Track Embankment Protection

The new Batiquitos Lagoon rail bridge design would require the placement of RSP inside and outside the existing railroad ROW to protect the bridge abutments and embankment from channel scour and tidal energy. The existing bridge is protected with a combination of armored slope protection surrounding the abutments/embankment and a rock channel lining protecting the wooden trestle piles. Removal and replacement of this revetment to meet current design standards for erosion and sea level rise would result in extension of underwater revetment into land managed by the CDFW and owned by the California State Lands Commission, requiring a lease agreement on these lands.

Embankment protection could consist of various types, including but not limited to riprap and articulated concrete block (ACB), on both the east and west sides of the track, around both Bridge 238.4 abutments ([Exhibit 6, page 3, and Exhibit 10](#)). The embankment protection design would avoid or minimize damage to the track and bridge from storm events, scour, wave action, and projected mean sea level rise through 2100. Within the jurisdictional areas of the lagoon, the project would include installation of quarter-ton and one-ton rock around both bridge abutments. The rock would be placed on top of an aggregate base and would be covered with native sediments up to the upper limit of the intertidal zone.

Dredge and Discharge

Within CCC jurisdictional areas, permanent grading would include approximately 15,000 CY of dredge and 27,200 CY of discharge. In areas defined as “permanent fill/temporary loss,” in which rock revetment would be moved but functions and values would be restored once lagoon sediments are replaced, dredge and discharge of an estimated 31,000 CY would be balanced. In areas of channel reestablishment (removal of existing rock and sediments in the main channel below the bridge), approximately 17,000 CY of material would be dredged. As part of replacement of the rail bridge over the lagoon, it is anticipated that the project would remove 90 CY of wood piles and add 665 CY of concrete piles.

Temporary construction and later dismantling of the rock and work berms would require the balanced dredge and discharge of an estimated 10,000 CY. In other temporarily impacted areas (where over-excavation would occur to allow for placement of deep rock revetment) a balanced cut and fill of approximately

10,000 CY would occur, also resulting in no net change in material. Overall, a net 4,425 CY [sic; 4,225 CY] would be dredged from coastal wetlands, including the beneficial expansion of the lagoon channel.

Trackway Signal Improvements

The project would require railway systems modifications between future CP Breakwater (MP 233.5) and the 236 Intermediate Signals (MP 236.5). Railway systems modifications would consist of the installation of a new Switch Lock Case (with associated new instrument case) at MP 234.2; permanent removal of existing CP Ponto at Avenida Encinas (MP 234.5); and the installation of a new end-of-double-track control point (with associated new instrument house) at La Costa Avenue (CP La Costa at MP 235.1). Contract documents would specify the use of standard wayside ground signals, similar to those currently installed at existing CP Ponto.

A 40-foot monopole tilt-tower antenna would be installed within 50 feet of the instrument house at the new CP La Costa to support Office to Field Advanced Train Control System (ATCS) and Positive Train Control (PTC; 220 MHz) communications, and would be coordinated with the appropriate jurisdictions prior to construction.

Utility and Drainage Improvements

Public utility work within the project footprint would be limited to removal of abandoned gas mains and relocation of existing telecommunications conduits to accommodate the double track. Construction of the new double track would require grading and retaining walls to widen the existing rail bed section and maintain permanent access roads within the corridor ([Exhibits 7 and 8](#)). Trackside ditches would be constructed on both sides of the track alignment and would be protected from scour with vegetated RSP lining or pervious ACB mats, depending on the protection level needed. Surface drainage patterns and flow rates would generally be maintained, with culverts provided where needed to accommodate maintenance road access.

Fencing

For purposes of public safety and per NCTD design requirements, existing 6-foot-high chain link fencing would be relocated and extended along the edge of the railroad ROW and/or at the toe or tops of slopes to fill unfenced gaps, and access road entrances would be gated ([Exhibit 11](#)).

Construction Staging and Access

The main equipment and material storage yard for the project would be located off the intersection of Avenida Encinas and Ponto Drive, on the west side of the alignment north of the Batiquitos Lagoon bridge. A second temporary construction material storage and turnout laydown area would be located on the west side of the tracks, just north of the La Costa Avenue overcrossing and south

of the bridge. Construction and long-term access roads would be provided via two proposed maintenance roads ([Exhibit 5](#)).

The proposed project also includes 63,000 cubic yards of cut and 11,000 cubic yards of fill within upland areas of the project corridor, primarily to create a widened trackbed for the second rail line. Excess materials would be transported off-site. A permanent maintenance access road would parallel the east side of the trackway north of the bridge to north of Avenida Encinas. South of the bridge the permanent maintenance road would initially be on the east side of the trackway, cross to the west side near MP 235.0, and continue south to La Costa Avenue.

SANDAG reports that the project also includes repairs to ongoing wave erosion that has eroded approximately 0.5 acres of the California least tern nesting site, located on the west side of the Batiquitos Lagoon west basin and west of the trackway ([Exhibit 12](#)). SANDAG has worked with the California Department of Fish and Wildlife (CDFW) to develop a conceptual design for repairs to and replenishment of the site using excess sediments (10,000 cubic yards) and cobbles (3,000 cu.yds.) excavated as part of the double-track bridge abutment foundations. A temporary construction access berm between the railroad corridor and the nesting site would include temporary culverts to maintain tidal flows between the northern and southern portions of the west basin during sediment and cobble placement. The CDFW stated on May 21, 2019, that the proposed repairs would:

... replace the eroded material to the current height of the nesting site and protect the slope from further wave action. The Department concurs with the SANDAG conceptual design, and recommends that the Batiquitos Lagoon Double Track project monitor the improvements and make any needed modifications to the slope improvements to ensure their stability for an interim period. We feel that that period could coincide with the construction of the project, or for a period of one year if the nesting site improvements occur at the end of the project period.

The Department would maintain the tern site after the project completion, once the design is proved by the interim period, or appropriate adjustments to the design are implemented.

In a May 21, 2019, email to Commission staff, SANDAG agreed to implement the CDFW-recommended monitoring period.

The early planning stages for the proposed project included concurrent construction of the Interstate 5 (I-5) freeway bridge replacement project, located at the eastern end of the Batiquitos Lagoon central basin, in order to avoid multiple disruption of lagoon biological and hydrological functions ([Exhibit 2](#)). In large part due to funding issues, the I-5 bridge replacement is no longer on the same construction schedule as the railroad bridge project. SANDAG submitted a May 4, 2017, technical memorandum from Moffatt & Nichol that quantified habitat benefits from moving forward with the railroad bridge replacement in the absence of replacing the I-5 bridge. The memorandum reported that the railroad bridge replacement project would lead to 10.92 acres

of increased intertidal habitat in the lagoon. The I-5 bridge project, if undertaken concurrently with the railroad bridge project, would lead to an additional 1.18-acre increase of intertidal habitat. The memorandum concluded that:

The RR bridge is located at the downstream end of the lagoon and controls the tidal circulation of both the CB [central basin] and EB [eastern basin], while the I-5 bridge is primarily affecting the circulation of the EB. Therefore, it is more effective to replace the RR bridge than the I-5 bridge in terms of improving circulation and increasing habitat benefits.

While the ideal situation would be for both projects to move forward concurrently to avoid construction impacts to the lagoon extending over a longer time period, the significant improvements to biological and hydrological functions in the lagoon from construction of the double-track project (with its widened channel underneath the bridge) supports moving forward with the double-track project.

Project construction would occur over a two-year period and is not currently expected to commence until the year 2021, once construction funding is secured. However, the Commission notes that Design Development Strategy 8 in Section 5.5.3.3 of the *North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program (NCC PWP/TREP)* identifies that PWP construction activities should not occur in more than two San Diego County lagoons at any one time:

To minimize impacts to migratory birds dependent on lagoons for stop over, resting, and foraging habitats along the Pacific flyway, PWP/TREP infrastructure construction activities should not occur in more than two lagoons at any one time.

Restoration and widening of I-5 are ongoing at San Elijo Lagoon and SANDAG is in the planning process for restoration work at San Dieguito Lagoon. As a result, double-track and bridge construction in Batiquitos Lagoon needs to be scheduled and phased with the other PWP projects to avoid construction in more than two lagoons.

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 Batiquitos Lagoon 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 Batiquitos Lagoon double-track project construction, it will submit documentation to the Commission's Executive Director confirming that the required mitigation credits for the project are secured from the REMP program. Should REMP mitigation credits not be available, SANDAG will prepare and submit a second consistency certification for an alternate project mitigation plan; no project construction would 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-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.

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

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 earlier, the Batiquitos Lagoon Double-Track 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 five 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).
- 1.0 mile-long-segment of double-track and replacement of a single-track bridge over the San Luis Rey River (CC-0001-18).

E. OTHER GOVERNMENTAL APPROVALS AND CONSULTATIONS

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 Section 10 of the Rivers and Harbor Act. The Corps will assume the lead agency role in the following consultations: formal Section 7 consultation with the U.S. Fish and Wildlife Service and incidental take authority under the Endangered Species Act, and consultation with the National Marine Fisheries Service due to presence of essential fish habitat in Batiquitos Lagoon. Section 106 consultation with the State Historic Preservation Officer and tribal consultation under the National Historic Preservation Act was completed in 2017.

San Diego Regional Water Quality Control Board (SDRWQCB)

SANDAG has applied to the SDRWQCB for a Clean Water Act Section 401 Water Quality Certification.

California Department of Fish and Wildlife (CDFW)

A right-of-entry permit will be obtained from the CDFW for construction of a section of buried revetment outside the railroad right-of-way on CDFW property.

California State Lands Commission (CSLC)

A lease agreement will be obtained from the CSLC for construction of a section of buried revetment outside the railroad right-of-way on CSLC property.

Tribal Consultations

SANDAG retained Cogstone Resource Management, Inc. to conduct cultural resources studies for the project, including Native American tribal outreach. The USACE sent letters to Native American tribal contacts provided by the Native American Heritage Commission to inform them of the finding of no adverse effects on cultural resources from the proposed project. One response was received from the San Pasqual Economic Development Agency (an affiliate of the San Pasqual Band of Diegueño Indians) stating its interest in participating in cultural resource surveys, excavations, and monitoring.

F. WETLANDS

Coastal Act Section 30233 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

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California"; shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Batiquitos Lagoon is one of the 19 high-priority coastal wetlands afforded special protection by Section 30233(c), as well as protection provided by Section 30233(a) for all coastal wetlands and other waters.

The Batiquitos Lagoon double-track project *Biological Technical Report (November 2016)* and the project consistency certification describe the wetland habitat and resources present in the 107.9-acre biological study area (BSA) and the 42.3-acre project development footprint within the BSA. The *Biological Technical Report* and the *Jurisdictional Delineation Report (November 2016)* state that Coastal Act wetlands within the BSA include 15.58 acres of vegetated coastal wetlands (southern coastal salt marsh, coastal and valley freshwater marsh, herbaceous wetland, eelgrass, riparian scrub, mule fat scrub, tamarisk scrub, and arundo dominated riparian) and 20.33 acres of non-vegetated coastal wetlands (open water, intertidal mudflat, shoal, drainage track ditch, and southern foredune)([Exhibit 13](#)).

The proposed project would affect 4.45 acres of Coastal Act wetlands, including 1.76 acres of permanent impacts and 2.69 acres of temporary impacts ([Exhibit 14](#)). The consistency certification states that because it is not feasible to accurately distinguish temporary (less than 12 months) from long-term temporary (greater than 12 months) impacts in the project area, all of the project's temporary impacts are considered long-term temporary impacts for permitting and mitigation purposes. This calculation reflects the removal of the 0.71-acre rock sill that lines the bottom of the channel underneath the existing railroad bridge, and which also extends laterally to the east and west of the bridge. The impact calculations also incorporate the removal of the existing timber pilings, widening of the channel by 40 feet, modifications to the existing embankment, construction of the new concrete piers, and the placement of rock slope protection for the new bridge abutments and embankments.

The project *Biological Technical Report* states that the federally-listed Western snowy plover, California least tern, and light-footed Ridgway's rail were observed in wetland habitats within the larger BSA. Potential adverse effects to these species would result from removal of occupied or suitable nesting and foraging habitats and/or disruption of breeding due to construction noise. Bridge construction and demolition activities would temporarily disturb benthic and aquatic habitat in the lagoon. Post-construction, the proposed project – with a wider channel between the west and central basins, the removal of the existing rock layer on the channel floor, and the reduced number of bridge pilings in the channel – would result in improved tidal flows, water quality, and lagoon wetland habitats.

While the proposed project would improve tidal flows in Batiquitos Lagoon due to the widening of the channel, the new double-track bridge cannot be constructed without the aforementioned 4.45 acres of wetland fill arising from bridge columns, new embankments and abutments, and rock slope protection. The project therefore triggers the three-part test of Coastal Act Section 30233(a), and in addition, the functional capacity and allowable use tests of Section 30233(c). The Commission needs to analyze whether the project is an allowable use under these sections, 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 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, SANDAG double tracking projects reviewed by the Commission since 2005 have not qualified for this allowable use because they increased passenger and freight capacity in the LOSSAN corridor, and the same is true both individually for this project and cumulatively for the entire corridor. Moreover, the proposed project does not qualify under the more restrictive Section 30233(c) limitations on uses in Batiquitos Lagoon and other priority wetlands to “very minor incidental public services.”

Thus, the only way the Commission could find this project consistent with the California Coastal Management Program 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 2018 approval of SANDAG’s San Luis Rey River double-track bridge project (CC-0001-18), 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 Batiquitos Lagoon. The no-project and single-track alternatives would not meet the project’s objectives of improving rail service through the LOSSAN corridor. Complete wetland avoidance alternatives are not feasible or available as the proposed double-track bridge cannot reasonably be replaced without support columns and abutments/embankments in the lagoon. The consistency certification states that:

Four alternatives were analyzed during the 10 percent design phase for proposed double tracking in a 2.7-mile-long project study area from just south of the Poinsettia Lane overcrossing to just north of the Leucadia Boulevard at-grade crossing. These four alternatives addressed two possible locations of the replacement for Bridge 238.4 (i.e., west vs. east of the existing bridge) and two options to accommodate the proposed double tracking under the La Costa Avenue overcrossing (i.e., demolition and reconstruction vs. retrofitting and matching the overcrossing to the new rail line).

SANDAG subsequently shortened the project to a 1.0-mile-long study area to reduce project costs and the West Lagoon Bridge/Match La Costa alternative was refined during the 30 percent

design phase. Constructing the new bridge immediately adjacent to the west of the existing bridge would avoid significant loss of salt marsh habitat located adjacent to the east side of the existing bridge and trackway ([Exhibit 13](#)). In accordance with the *Batiquitos Lagoon Optimization Study (Moffat & Nichol 2012)*, the proposed 336-foot-long concrete bridge is 28 feet longer than the existing bridge, in order to construct a wider (by 40 feet) channel between the west and central basins, which in turn would provide improved tidal flows within the lagoon. To further reduce impacts to wetland habitat in the lagoon, eight retaining walls were added to the design along the sides of the new railroad embankments. The retaining walls would range between 5 and 15 feet in height and between 18 and 181 feet in length ([Exhibit 8](#)).

The consistency certification states that the proposed alternative includes protection of the bridge abutments and track embankments from tidal scour:

. . . the design was revised to include placement of one-ton rock revetment at both abutments, which would transition to quarter-ton rock along the embankment. The project designers determined that rock revetment was needed to provide adequate protection of the bridge from tidal and flood influences, and to avoid the frequent emergency revetment repairs that have been required to protect the embankment in the past. The buried rock revetment in tidally influenced areas would be covered with lagoon sediment to reestablish benthic functions and values as quickly as possible. Riprap would only be placed in areas where modeling predicts high wave and tidal energy, and would be buried to the fullest extent practicable. Furthermore, to the fullest extent practicable, permeable/plantable armoring would be implemented where necessary (e.g., in channel bottoms).

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

The design was modified to include temporary laydown areas and construction access locations while avoiding sensitive biological resources as much as possible. In addition, work berm and trestle options for constructing the new bridge were considered, and analyzed through modeling conducted by Moffatt & Nichol, to determine the best option for accommodating construction activities, while at the same time, maintaining acceptable tidal and fluvial flushing. Three different construction berm alternatives were analyzed and modeled, and it was determined that a work berm/trestle combination with an opening of 90 feet would minimize impacts to the central lagoon from tidal muting; maintain the lagoon opening for fish passage within acceptable levels; require a relatively short construction period; minimize pile driving and its effects on sensitive species; and reduce other environmental impacts such as the potential for contaminants entering lagoon. Construction methods and sequencing were studied to minimize effects such as noise impacts on breeding sensitive bird species. In addition, fencing was also included to ensure public safety and avoid potential indirect impacts to sensitive biological resources from human intrusion.

The proposed double-track bridge is designed to protect the rail line from a 100-year flood event and projected sea level rise. The project *Hydrology and Hydraulics Report (June 2016)* stated that one element of the double-track bridge design process was to determine:

... an optimal channel width and depth for bridge openings to provide favorable conditions for the conveyance of tides and storm flows, with an emphasis on maximizing lagoon tidal range, and limiting potential effects of flood levels.

The *Report* reviewed the technical analyses undertaken, including the Batiquitos Lagoon Bridge Optimization Study, and the bridge design criteria used. For the proposed bridge, water levels must remain below the underside of the bridge for a 50-year flood event and below the bottom of the trackway ballast for a 100-year flood event. The *Report* documented that the proposed project meets these design criteria.

Regarding projected sea level rise and the proposed bridge design and elevation, the 2016 *Report* stated that:

The maximum water surface elevations at the LOSSAN Rail Bridge occur when an extreme flood event coincides with an extreme high tide in Batiquitos Lagoon. Water surface elevations in the lagoon are sensitive to changes in ocean water level. Modeling scenarios were performed for the 50-year (design flood) and 100-year (base flood) events combined with extreme high tides at the current time horizon, and with projected sea level rise (SLR) in the years 2050 and 2100. The California Coastal Commission (2015) supported the June 2012 study by the National Research Council (NRC), Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future, which is currently considered to be the best available scientific data on SLR for California. The State Guidance on SLR is based on projections in the NRC study. The upper bound SLR projections provided in the 2012 NRC study of 2.0 feet (24 inches) for the year 2050, and 5.5 feet (66 inches) for the year 2100 were used.

The *Report* stated that the undersurface of the proposed bridge will be more than 3.5 feet above the projected base flood elevation in the year 2100, which includes the upper end of projected sea level rise at this location.

At the request of the Commission staff, SANDAG's hydraulic engineering consultant, Moffatt & Nichol, submitted an analysis (*SANDAG, Batiquitos Lagoon Double Track – Sea Level Rise Analysis, May 23, 2019*) of the potential extreme risk aversion scenario (H++) effects on the proposed double-track bridge:

Based on the new OPC [California Ocean Protection Council] 2018 SLR guidance, the projected SLR in year 2100 under the Extreme Risk Aversion (H++ scenario) is 10.2 ft for the San Diego region, which is 4.7 ft higher than the 5.5-ft scenario modeled previously. Conservatively, assuming that there is no muting by the tidal inlet, the 100-year maximum WSE [water surface elevation] will be at 16.3 ft (4.7 ft higher than 11.6), and the 50-year WSE will be 15.8 ft. The

proposed LOSSAN Rail bridge minimum soffit elevation is 16.6 ft NGVD29, which will still clear the 100-year maximum WSE of 16.3 in year 2100 and will be 0.8 ft above the 50-year maximum WSE. Therefore, the proposed bridge superstructure will still meet the design criteria in year 2100 with projected SLR under the Extreme Risk Aversion scenario.

The May 23, 2019, analysis also addressed the effects of the H++ scenario on the rock slope protection for the bridge abutments:

The top elevation of the rock slope protection (RSP) is 12 ft NGVD29, which was designed to be above the 100-year maximum WSE of 11.6 ft with 5.5-ft of SLR and to allow enough vertical clearance for bridge inspection. This elevation will be below the 100-year maximum WSE of 16.3 ft in the year 2100 under the Extreme Risk Aversion SLR scenario, but adaption options are available to address vulnerabilities from installing rock slope protection to a higher elevation if and when necessary, since the additional RSP can be easily placed on top of the currently proposed RSP to protect the track embankment. However, the bridge structure will interfere with the future high RSP placement under the bridge. Other measures would be required for the slope protection between the currently proposed RSP and bridge soffit. These measures can be using a shotcrete approach that could be accessed using hoses from above and sprayed onto the surface; installation of fabric bags that would be filled with pumped concrete; or installation of Armorflex types of block mat that would be unrolled and placed in small patches, then tied together.

In summary, the bridge superstructure and RSP design meet the LOSSAN design criteria affording protection for 5.5 ft of SLR. The bridge superstructure can also accommodate the Extreme Risk Aversion SLR (H++) scenario. In the event of the H++ scenario occurring, an adaptive strategy of raising the RSP along the trackside embankment and installing an alternative means of protection at the bridge abutments is feasible.

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, the requirement to design a bridge under sea level rise and flood constraints, 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 Technical Report* and consistency certification state that the proposed project would affect 4.45 acres of Coastal Act wetland habitat, including 1.76 acres of permanent impacts and 2.69 acres of temporary impacts from construction of the double-track bridge support columns, bridge abutments, and trackway embankments. However, the consistency certification states that because it is not feasible to accurately distinguish temporary (less than 12 months) from long-term temporary (greater than 12 months) impacts in the project area, all of the project's temporary impacts are considered long-term temporary impacts. Therefore, according to the aforementioned classification, these are treated as permanent impacts for permitting and mitigation purposes. The resultant 4.45 acres of permanent wetland habitat impact also reflects the removal of the 0.71-acre rock sill that lines the bottom of the channel underneath the existing railroad bridge, and which also extends laterally to the east and west of the bridge. The impact calculations also incorporate the removal of the existing timber pilings and the widening of the channel by 40 feet.

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 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 Batiquitos Lagoon 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. All short-term temporary impacts to CCC wetland habitat will be restored to existing contours and revegetated with appropriate native species ensuring no net loss of CCC wetlands from short-term temporary impacts. Additionally, avoidance and minimization measures described in the Programmatic Biological Opinion (USFWS, 2005 and 2014) would be implemented.

Prior to the start of project construction, SANDAG will submit to the Executive Director documentation confirming that adequate credits have been released from the Resource Enhancement and Mitigation Program (REMP) in order to provide compensatory mitigation for the permanent impacts to 4.45 acres of wetland habitat associated with the Batiquitos Lagoon double-track project at a 1:1 mitigation ratio. However, if mitigation credits are not available

from the REMP program by the start of project construction, SANDAG has committed to submitting to the Commission (prior to the start of project construction) a second consistency certification for a mitigation plan for the unavoidable impacts to wetland habitat arising from the proposed project. This plan would include the typical 4:1 wetland mitigation ratio required by the Commission, and all mitigation measures shall be consistent with the provisions of the REMP. 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.

In the scenario where REMP credits are not available and a separate mitigation plan is required, and given the significant time lag between the 2016 *Biological Technical Report*, the subject 2019 consistency certification, and the currently expected start of project construction (2021), SANDAG will also provide in the 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).

While SANDAG acknowledges that the mitigation plan for project wetland habitat impacts (should REMP credits not be available) would 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, the 2014 *PBO Amendment*, and the 2009 *LOSSAN Final Programmatic Environmental Impact Report/Statement*. The project *Biological Technical Report* includes descriptions of the avoidance and minimization measures incorporated into the proposed project to reduce impacts to wetland habitat and listed species present in project area wetlands (e.g., California least tern, light-footed Ridgway's rail). The measures include but are not limited to: (1) designation of a USFWS-approved project biologist to oversee compliance with and monitor all protective measures during project construction; (2) an employee education program to advise workers of sensitive habitats and species present in the project area; (3) on-site restoration of temporary wetland habitats; (4) a pre-construction eelgrass survey, and if eelgrass is present, a post-construction survey with impacts estimated, reported, and mitigated in accordance with the California Eelgrass Mitigation Policy; and (5) implementation of focused surveys and avoidance and protection protocols for Ridgway's rails and California least terns. In addition, SANDAG will avoid pile driving during the least tern nesting season unless given permission to do so by the U.S. Fish and Wildlife Service. SANDAG will notify the Commission's Executive Director should it receive said permission from the U.S. Fish and Wildlife Service.

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

Functional Capacity

In addition to the wetland tests discussed above, Section 30233(c) of the Coastal Act requires protection of Batiquitos Lagoon’s functional capacity. SANDAG notes in its consistency certification that the proposed double-track project would create net improvements to the lagoon through enlargement the river channel under the existing Bridge 234.8 by: (1) widening the floor of the channel by 40 feet; (2) replacing the existing 308-foot-long bridge with a 336-foot-long bridge over the widened channel; and (3) replacing the 102 existing timber pilings with a pre-cast concrete bridge supported by 30 concrete columns arranged in five bents. The longer bridge, widened channel, and fewer support columns in the channel will enhance tidal exchange in the lagoon and in the wetland complex upstream of the lagoon. Given these benefits to the hydrologic regime, the Commission agrees with SANDAG that the project will provide overall benefits to the functional capacity of Batiquitos Lagoon, and will therefore comply with Section 30233(c)’s requirement that the project “maintain or enhance the functional capacity of the wetland or estuary.”

Conclusion

As stated above, the Commission finds that the proposed project is consistent with the alternatives, mitigation, and functional capacity tests of Sections 30233(a) and 30233(c), but inconsistent with the allowable use tests of those sections. 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, prohibiting the project from proceeding 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) and (c)) 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 overall habitat values in and adjacent to Batiquitos Lagoon, and potential project impacts to wetlands, aquatic resources, and listed species using those habitats, are described in the previous section of this report. Upland environmentally sensitive habitat in the study area is limited to approximately 6.9 acres of Diegan coastal sage scrub (DCSS), a vegetation community which often supports the federally listed California gnatcatcher ([Exhibit 15](#)). The *Biological Technical Report* 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 sagebrush (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), laurel sumac (*Malosma laurina*), lemonade berry (*Rhus integrifolia*), and black sage (*Salvia mellifera*). Within the study area, the dominant shrubs in this habitat include California sagebrush, goldenbush (*Isocoma menzeisii*), California encelia (*Enceli californica*), laurel sumac, white sage (*Salvia apiana*), and black sage. The disturbed Diegan coastal sage scrub in the study area shows signs of human disturbance, has a sparse shrub cover, and includes a large variety of native and non-native understory species*

. . .

*Coastal California gnatcatchers 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 prefers stands of sage scrub that are dominated by California sagebrush (*Artemisia californica*). The species also uses chaparral, grassland, and riparian habitats where they are adjacent to sage scrub.*

HELIX conducted surveys for coastal California gnatcatcher in May and June 2014 (Appendix G). To date, at least one pair of coastal California gnatcatchers has been observed in the BSA. This pair occupied Diegan coastal scrub habitat in

the north of Batiquitos Lagoon, west of the ROW (Figure 4b). A second sighting east of the ROW is likely the same pair.

The consistency certification states that occupied Diegan coastal sage scrub is classified as environmentally sensitive habitat under Section 30240. The *Report* states that the project would result in direct effects to approximately four acres of mostly occupied coastal California gnatcatcher habitat, located between Avenida Encinas and the north side of Batiquitos Lagoon ([Exhibit 16](#)):

These adverse effects would result from slope modifications in the cut north of Batiquitos Lagoon, in an area that currently supports Diegan coastal sage scrub vegetation, where at least 1 pair of gnatcatcher was observed during focused surveys. Other areas of Diegan coastal sage scrub in the project area that would be affected are small and isolated, and are not occupied by coastal California gnatcatcher. The proposed action could also result in temporary adverse construction noise effects to occupied coastal California gnatcatcher habitat adjacent to direct effect areas of the project located north of Batiquitos Lagoon. Noise effects on nesting habitat during the gnatcatcher breeding season (February 15 through August 31) could result in reproductive failure by nesting gnatcatchers in the affected area.

The consistency certification concludes that Diegan coastal sage scrub (DCSS) is a sensitive upland vegetation community and that the locations where it occurs in the project area should be considered 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 double-track 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.

Similar to the discussion of temporary wetland habitat impacts in the previous section of this report, SANDAG also determined that a distinction between short-term temporary and long-term temporary impacts is not feasible, and that the project’s temporary construction impacts on Diegan coastal sage scrub habitat are considered long-term temporary impacts and will be mitigated as if permanently impacted, since on-site habitat restoration (to mitigation-level standards) of impacted areas within the railroad right-of-way is not feasible.

As was the case for the wetland impacts described in the previous section of this report, mitigation for the loss of four acres of ESHA will be addressed through the Commission-authorized PWP/TREP’s Resource Enhancement and Mitigation Program (REMP). As noted previously, the REMP designates specific mitigation sites to be used for NCC PWP/TREP transportation projects in order to coordinate and maximize the benefits of upland ESHA

restoration required as mitigation for these projects. To protect and to minimize adverse effects on environmentally sensitive habitat, the proposed project incorporates numerous avoidance and minimization measures listed in: (1) the U.S. Fish and Wildlife Service's 2005 *Programmatic Biological Opinion* for SANDAG double-track projects in northern San Diego County; (2) the 2014 *Programmatic Biological Opinion Amendment* developed specifically for the proposed project; and (3) the project *Biological Technical Report*. These measures include but are not limited to: (1) designation of a USFWS-approved project biologist to oversee compliance with and monitor all protective measures during project construction; (2) an employee education program to advise workers of sensitive habitats and species present in the project area; (3) timing restrictions on clearing of Diegan coastal sage scrub to avoid the gnatcatcher nesting season; (4) focused surveys for determining the presence of gnatcatchers; and (5) monitoring requirements. As noted in the previous section of this report, SANDAG will avoid pile driving during the least tern nesting season, unless given permission to do so by the U.S. Fish and Wildlife Service. This restriction will also benefit the gnatcatcher during its February 15 through August 31 nesting season.

SANDAG will mitigate impacts to Diegan coastal sage scrub at an off-site location consistent with the REMP. Prior to the start of project construction, SANDAG will submit to the Executive Director documentation confirming that adequate credits have been released from the REMP in order to provide compensatory mitigation for the permanent impacts to four acres of Diegan coastal sage scrub habitat associated with the Batiquitos Lagoon double-track project at a 1:1 mitigation ratio. However, if mitigation credits are not available from the REMP program by the start of project construction, SANDAG has committed to submitting to the Commission (prior to the start of project construction) a second consistency certification for a mitigation plan for the unavoidable impacts to Diegan coastal sage scrub habitat arising from the proposed project. This plan would include the typical 2:1 upland ESHA mitigation ratio required by the Commission, and all mitigation measures shall be consistent with the provisions of the REMP. This will ensure that the Commission will have the ability to review the details of the mitigation plan, and concur that the project is consistent with the protection/mitigation requirements of Section 30240, before SANDAG can commence construction of the double-track project.

In the scenario where REMP credits are not available and a separate mitigation plan is required, and given the significant time lag between the 2016 *Biological Technical Report*, the subject 2019 consistency certification, and the current expected start of project construction (2021), SANDAG will also provide in the second consistency certification an updated biological assessment to identify any changes in habitat area or conditions and updated calculations of potential project impacts to Diegan coastal sage scrub habitat (if necessary due to the findings in the updated biological assessment).

The Commission also notes that should the proposed off-site mitigation measures for 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 pages 23 and 24.

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, implementation of a spill prevention and containment plan, and implementation of construction best management practices. The consistency certification states that water quality would be protected by project design features including:

. . . concrete ties (vs. creosote ties to the extent practicable); slopes laid back or stabilized to reduce erosion and sediment; concrete piles in steel shells to support the new bridge; drains consisting of perforated pipe wrapped with filter fabric located beneath the bridge ballast; ballasted tracks; pervious gravel maintenance roads; articulated block- or rocklined ditch bottoms where water velocity is sufficient to cause scour; energy dissipation at drainage outlets; and rock slope protection in areas of high water velocity/wave action.

Trackside ditches would be constructed on both sides of the track alignment and would be protected from scour with vegetated RSP lining or pervious ACB mats, depending on the protection level needed. Surface drainage patterns and flow rates would generally be maintained, with culverts provided where needed to accommodate maintenance road access, as described below.

SANDAG also submitted a *Storm Water Management Memo (October 22, 2018)* as an element of its consistency certification. This document describes existing storm water conditions within the railroad right-of-way, anticipated post-project storm water conditions, and the management measures incorporated into the project to protect water quality in the project area. The *Memo* states in part that project improvements will:

. . . reduce erosion and limit sediment transport to the lagoon. New cut and fill slopes within the project will be protected from erosion using native vegetation. Existing native vegetation will be maintained where possible. Trackside ditches will typically be earthen soft bottom or permeable lined using options such as, Rock Slope Protection (RSP), Turf Reinforcement Mat (TRM) or Articulated Concrete Block (ACB) lining to allow for plant growth but prevent erosion and minimize sediment transport to the lagoon. Based on the geotechnical design report, perched groundwater or seepage conditions are expected to be encountered in the cut slopes north of the lagoon. Concrete lined ditches will be used in these non-jurisdictional trackside ditches to protect the trackbed which will then transition to pervious ditches before discharging to the lagoon.

Use of impervious paving and surfaces will be minimized. Maintenance access roads are infrequently used and therefore not anticipated to be a significant source of pollutants. Furthermore, stabilized maintenance access roads will be constructed of aggregate base and pervious concrete to allow infiltration. Use of impervious paving and surfaces will be limited to signal house structures, permanent grade crossings and access driveway from public street as shown on the project plans.

The *Memo* also summarizes project features that will minimize adverse effects to water quality during and after construction:

- 1. The double track bridge is designed in conformance with the Batiquitos Lagoon*

Bridge Optimization Study (Moffatt & Nichol 2012). The project will increase the lagoon opening by 40 feet by lengthening the bridge to improve tidal and fluvial flows, which will enhance wetland habitats and water quality in the lagoon.

2. To assist with the conservation of natural areas, soils, and vegetation, the project will minimize impacts to critical areas such as sensitive habitat, wetlands, and areas with erosive or unstable soil conditions.

3. The disturbance to natural drainage patterns will be minimized by providing a set-back envelope between improvements and flowline. Disturbance to existing drainage patterns will be limited.

4. The increase of impervious surface area will be minimized and discontinuous throughout the project site. Maintenance access roads will be pervious pavements. All trackbed improvements will be pervious surface materials.

5. All sheet flow runoff from impervious surfaces will drain to pervious areas prior to discharging to the Batiquitos Lagoon.

6. Erosion from slopes will be minimized following several strategies. Existing stable slopes will only be disturbed when necessary. Cut and fill areas will be minimized to reduce slope lengths. Retaining walls will be incorporated in some locations to reduce steepness of slopes and to shorten slopes. Disturbed slopes will be rounded and shaped to reduce concentrated flows. Flows will be concentrated and collected in stabilized drains and channels. Disturbed slopes will be vegetated or stabilized.

7. Energy dissipaters, such as RSP (a.k.a., rip-rap), will be installed at outlets which discharge to unlined channels in accordance with specifications to minimize erosion. Energy dissipaters shall be installed in such a way as to minimize impacts to receiving waters.

8. Landscaping improvements are a potential source for runoff pollutants for this project. Permanent source control BMPs will consist of minimizing disturbance of existing native plants. Revegetation of disturbed areas will use native hydroseed mixes which minimize the need for fertilizers and pesticides that can contribute to storm water pollution. Once plants are established, permanent irrigation will not be necessary. Landscaping specifications shall comply with NCTD and railroad standard storm water management operating procedures.

In conclusion, the project includes the removal of creosote timber pilings which support the 75-year-old timber bridge and replacement with fewer concrete support columns for the new double-track bridge. The project will increase by 40 feet the width of the lagoon channel underneath the railroad tracks, thereby improving lagoon hydrology and functional capacity. Erosion controls to protect water quality will also include post-construction revegetation activities across disturbed areas within the project corridor. The SWPPP and Storm Water

Management Memo include numerous water quality protection measures incorporated into the double-track project. As a result, the project will lead to long-term beneficial effects on water quality in the project area.

With the above measures, the Commission finds that the proposed project would not cause significant adverse water quality impacts at and adjacent to the project area and would be consistent with the water quality protection 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 ...*”) to protect, and where feasible, restore coastal water quality and that without this project, water quality resources at and adjacent to the Batiquitos Lagoon 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. Cogstone Resource Management, Inc. prepared a *Cultural Resources Technical Report* (July 2016; revised January 2017) for SANDAG 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* states that:

A search for archaeological and historical records was completed by the South Coastal Information Center (SCIC) at San Diego State University for a 0.5 mile radius around the proposed Project on June 3, 2016. Results of the record search indicate that 15 previously recorded cultural resources are within 0.5 miles of the Project Area including 12 with prehistoric components. Site P-37-011026 is located partially within the proposed Project Area.

...

An intensive-level pedestrian survey of the Project Area was conducted on January 15 and May 14, 2014. The area was heavily disturbed due to the construction of the railroad. Cultural materials were identified on the tops of the bluffs north of the lagoon within the boundary of site P-37-011026. Extended Phase I investigations conducted by Cogstone on June 14, 2016 in order to determine the vertical extent of P-37-011026 within the current Project Area. Six shovel test pits (STPs) were placed with the goal of reaching 100 cm below ground surface or two levels of culturally sterile soil, whichever came first. Native American monitor P.J. Stoneburner from Saving Sacred Sites was also present.

Results of the subsurface testing found no evidence of intact buried prehistoric archaeological deposits.

Based on the current and previous fieldwork and background research conducted, the portion of site P-37-011026 that intersects with the BLDT Project Area does not appear to be eligible for inclusion in the NRHP. No information has been found to suggest the site is directly associated with events or persons that are significant in local, state, or national history (Criteria A and B). There are no elements recorded for the site that would qualify as significant under Criterion C, and the high level of disturbance of the area and the lack of intact cultural material subsurface indicates that the area will not yield, or may be likely to yield, information important to history or prehistory (Criterion D). Therefore the portion of site P-37-011026 within the BLDT Project Area is recommended not eligible for inclusion in the NRHP.

...

In the event of an unanticipated discovery, all work must be suspended within 50 feet of the find until a qualified archaeologist evaluates it. In the unlikely event that human remains are encountered during project development, all work must cease near the find immediately.

SANDAG included in its consistency certification a copy of the May 24, 2017, letter from the State Historic Preservation Officer (SHPO) to the U.S. Army Corps of Engineers concluding Section 106 consultation undertaken by the Corps as an element of SANDAG's Section 404 Clean Water Act permit application to the Corps. SHPO stated in its letter that:

The Native American Heritage Commission (NAHC) was contacted and responded that a search of the Sacred Lands File was negative for Native American cultural resources in the immediate project vicinity. The Corps sent letters to the Native American contacts provided by the NAHC on March 07, 2017, and another letter on April 20, 2017 to inform tribes of a finding of no adverse effect. One response was received from the San Pasqual Economic Development Agency stating that the project is within their ancestral territory but they do not have any additional information.

The letter further states that the Corps is adding a special condition to SANDAG's Section 404 permit requiring SANDAG to retain archaeological and tribal monitors during earth-moving activities within the aforementioned Site P-37-0011926.

The above-referenced response letter from the San Pasqual Economic Development Agency also stated that:

Please note that we are interested in participating in Cultural Resource surveys, excavations and monitoring within our ancestral territory. Prior to conducting

any Cultural Resource surveys, excavations and/or monitoring, please contact the San Pasqual Economic Development Agency to schedule specifics.

SANDAG has incorporated into the proposed project the recommended mitigation and monitoring measures in the *Cogstone Report*. The Commission agrees with SANDAG that the double-track project would 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 Batiquitos Lagoon would be located just west of the existing single-track bridge. After demolition of the existing bridge, the public views at the railroad crossing of the lagoon will be similar to existing views. The consistency certification examines the visual differences between the existing and proposed bridges:

The existing railway bridge over Batiquitos Lagoon is a timber trestle 308 feet long, built in the 1940s. The existing bridge has 22 spans supported on timber pile bents 14 feet apart. The proposed double-track bridge would be 336 feet in length and consist of six-spans of 56-footlong concrete box girders to allow for enhanced Lagoon circulation and dredge passage. It would increase the lagoon opening by 40 feet by lengthening the bridge; replace the 102 existing 15-inch diameter timber piles with 30 concrete piles, each with a diameter of 30 inches. The proposed rail bridge over the lagoon would be constructed adjacent to the existing bridge, which would then be removed. The heights of the existing and proposed bridges would be substantially the same. Having fewer spans between piers of the proposed bridge when compared to the existing bridge would result in more open views under the bridge, which would provide more access to scenic coastal views.

The project design includes eight proposed retaining walls, ranging from 5 to 15 feet high and between 18 and 181 feet long, along the sides of the rail embankment near the lagoon ([Exhibit 8](#)). The consistency certification states that wall architectural treatments would be similar to what is being used for other transportation infrastructure projects in the North Coast Corridor, and that surface treatments and textures would be considered during the design of retaining walls to break up the surface plane and provide visual interest. The consistency certification further states that:

The retaining walls would be visible to pedestrians and vehicles, but would be distant for I-5 travelers, and for nearby viewers looking westward from Carlsbad Boulevard/North Coast Highway 101, La Costa Avenue, or the Coastal Rail Trail, the project features would be behind them, and thus would not block coastal views of scenic resources. The retaining walls would be on the south side of the lagoon, so they would be visible, but relatively distant for viewers from the recreational trail along the northern slopes of the lagoon near Gabbiano Lane.

The project would also create temporary visual impacts during the construction period, including stockpiled soil, demolition debris, scaffolding, temporary barriers, construction fencing, and heavy construction equipment. Visual disruptions to the existing views would be removed upon completion of each stage of the construction period.

As noted in the project description, the project would extend or relocate existing 6-foot-high chain-link fence along several segments of the railroad right-of-way or at the top or toe of slopes ([Exhibit 11](#)). The consistency certification states that the new fencing would be visible from close up, but would blend with the surrounding conditions when seen from more distant viewpoints and would not represent a substantial change from existing conditions.

The Commission agrees with SANDAG that proposed railroad infrastructure improvements would not adversely affect scenic visual resources in the project area. As described above, the construction of replacement and new railroad infrastructure, the Batiquitos Lagoon double-track bridge railroad bridge, and grading and retaining walls to accommodate the second mainline track are designed to minimize visual impact and landform alteration. The railroad has been a permanent feature of the landscape in the project area for 100 years and the proposed project will not significantly change that landscape or adversely affect scenic views in or across Batiquitos Lagoon. Therefore, the Commission finds that the project is 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 consistency certification states that the proposed project would not interfere with or change existing public coastal access:

Permanent improvements associated with the proposed action would take place almost exclusively within the existing rail ROW, and replacement of the existing bridge with the proposed bridge would occur within essentially the same location and alignment. Access to the lagoon would not change, as the proposed action would not impact Gabbiano Lane or Batiquitos Drive.

The proposed 6-foot high chain link fencing along the right-of-way or at the edge of slopes is a standard feature in railroad rights of way, and is required by NCTD design guidelines for all capital improvement projects. The fencing is not considered to have an adverse impact on public access since it is provided to help prevent unauthorized trespassing into the ROW and improve public safety. It is also noted that the project footprint includes sensitive lagoon habitats where human intrusion is discouraged, and that legal public access to the coast over the railroad right of way is provided on established roadways at both the north and south ends of the project footprint.

SANDAG further states in its consistency certification that public access to the hiking trail beginning at the end of Gabbiano Lane and continuing almost to El Camino Real on the east end of the lagoon, and public access to the beaches on either side of the Batiquitos Lagoon opening to the Pacific Ocean, would not be impeded by the project. Construction staging areas would occur within and outside of the railroad right-of-way. During construction of the project, pedestrian and vehicle access across Avenida Encinas and La Costa Avenue would be

maintained, and the contractor would not use public trails or other recreational facilities as construction access roads.

In conclusion, the Commission agrees with SANDAG and finds that the proposed project would not create adverse effects to public access and recreation in the project area. The project 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 of the project area; and (2) a new double-track railroad bridge across Batiquitos Lagoon to replace the existing single-track bridge at the end of its design life.

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 consistency certification states that:

The project is intended to increase use of passenger rail service as a mode of transportation. Although increased rail service may increase diesel emissions, a double track configuration would reduce overall idling times of trains throughout the corridor, which would reduce emissions compared to existing conditions. Furthermore, as the utilization of passenger rail service increases due to improved capacity, reliability, and efficiency (due, in part, to the project), vehicle miles traveled in the vicinity and region wide are anticipated to be incrementally reduced. A corresponding reduction in air emissions is anticipated.

There would be temporary construction emissions associated with vehicles and equipment traveling to and from the project site and operating on site; however, vehicle operations would not result in an adverse effect to air quality or cause localized pollution.

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 Batiqitos Lagoon 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 does not allow uses within ESHA other than a “use dependent on the resource.” 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, absent sufficient mitigation, 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 significant 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. For similar reasons, the project does not qualify as a very minor public facility under Section 30233(c), an additional allowable use test in priority wetlands. 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 Sections 30233(a)(4) and 30233(c), 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 result in construction of 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 improve and protect water quality in Batiquitos Lagoon by widening the lagoon channel under the railroad bridge and reducing the number of bridge support columns in the channel, leading to improved lagoon hydrology and functional capacity. 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 Batiquitos Lagoon. However, the alternative project designs would still require project activities to occur within Coastal Act wetlands and Diegan coastal sage scrub, in violation of the allowable use and resource-dependent use policies of Coastal Act Sections 30233(a) and (c) 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, impacts to wetland habitat and Diegan coastal sage scrub have been minimized to the maximum extent feasible, and mitigation for temporary and permanent impacts to these habitat types are incorporated into the project.

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 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 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-0002-19 (SANDAG, Batiquitos Lagoon Bridge Replacement and Double Track, San Diego County), and accompanying technical reports, consisting of: (1) Biological Technical Report, November 2016; (2) Jurisdictional Delineation Report for Batiquitos Lagoon Double Track, November 9, 2016; (3) Cultural Resources Technical Report for the Batiquitos Lagoon Double-Track Project, Cities of Carlsbad and Encinitas, San Diego County, California, January 2017; (4) May 24, 2017, letter from State Historic Preservation Office to U.S. Army Corps of Engineers; (5) General Hydrology and Hydraulics Report, June 17, 2016; (6) Lagoon Hydraulics and Hydrology Report, and Wave Model Report, June 17, 2016; (7) Water Quality Evaluation, Batiquitos Lagoon Double Track, November 11, 2016; (8) Preliminary Storm Water Pollution Prevention Plan, November 11, 2016; (9) Storm Water Management Memo, Batiquitos Lagoon Double Track, October 22, 2018; Updated Habitat Benefits of the Batiquitos Lagoon Double Track Project, May 4, 2017.
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-0001-18 (SANDAG), San Luis Rey River Railroad Bridge Replacement and Double Track Project, San Diego County.
11. CC-0001-17 (SANDAG), San Dieguito River Railroad Bridge Replacement and Double Track Project, San Diego County.
12. CC-0005-15 (SANDAG), Poinsettia Station Improvement Project, Carlsbad, San Diego County.
13. CC-0004-15 (SANDAG), San Elijo Lagoon Bridge Replacement and Double Track Project, San Diego County.
14. CC-0003-15 (SANDAG), San Diego River Railroad Bridge Replacement and Double Track Project, San Diego County.
15. CC-0006-14 (NCTD), San Dieguito River Railroad Bridge, Scour Repair Project, San Diego County)
16. CC-048-12 (SANDAG), San Onofre to Las Pulgas Double Track Project, San Diego County.
17. CC-009-12 (SANDAG), San Onofre-Pulgas Double Track Project.
18. CC-056-11 (SANDAG), Sorrento Valley Double Track Project, San Diego County.

19. CC-006-11 (NCTD), San Dieguito River Railroad Bridge, Southern Abutment and Scour Protection Project, Del Mar, San Diego County.
20. CC-020-10 (SANDAG), Del Mar Bluffs Stabilization Project, San Diego County.
21. CC-052-10 (SANDAG), Sorrento Valley Double Track project, San Diego County.
22. CC-075-09 (NCTD), Agua Hedionda Railroad Bridge and Double Track Project.
23. CC-059-09 (NCTD), Bridge Replacement Projects, Los Penasquitos Lagoon.
24. CC-008-07 (NCTD), Passing track and bridge improvements, Loma Alta Creek, Oceanside.
25. CC-055-05 (NCTD), Bridge replacement, Agua Hedionda Lagoon.
26. CC-052-05 (NCTD), Santa Margarita River double tracking project, Camp Pendleton.
27. CC-004-05 (NCTD), O'Neill to Flores double track project, Camp Pendleton.
28. CC-086-03 (NCTD), Pulgas to San Onofre double tracking project, Camp Pendleton.
29. CC-029-02 (NCTD), Oceanside-Escondido Railroad Project.
30. *Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County* (1999) 71 Cal.App.4th 493, 517