

CALIFORNIA COASTAL COMMISSION

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W 13b

CC-0001-20 (SANDAG)

July 23, 2020

EXHIBITS

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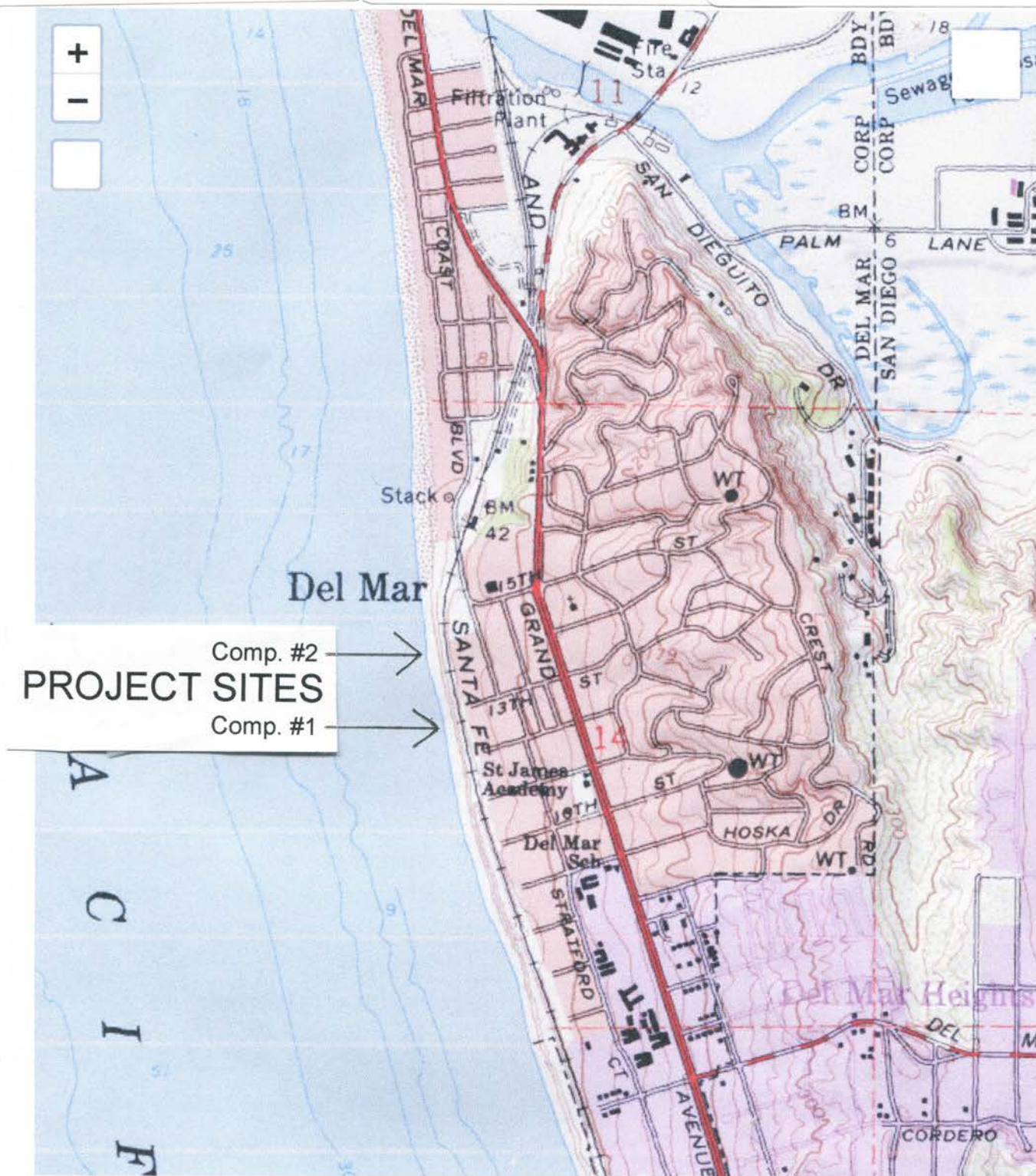


Exhibit 1

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Photo 1: Pre-construction view (looking north) of Component 1

Exhibit 2

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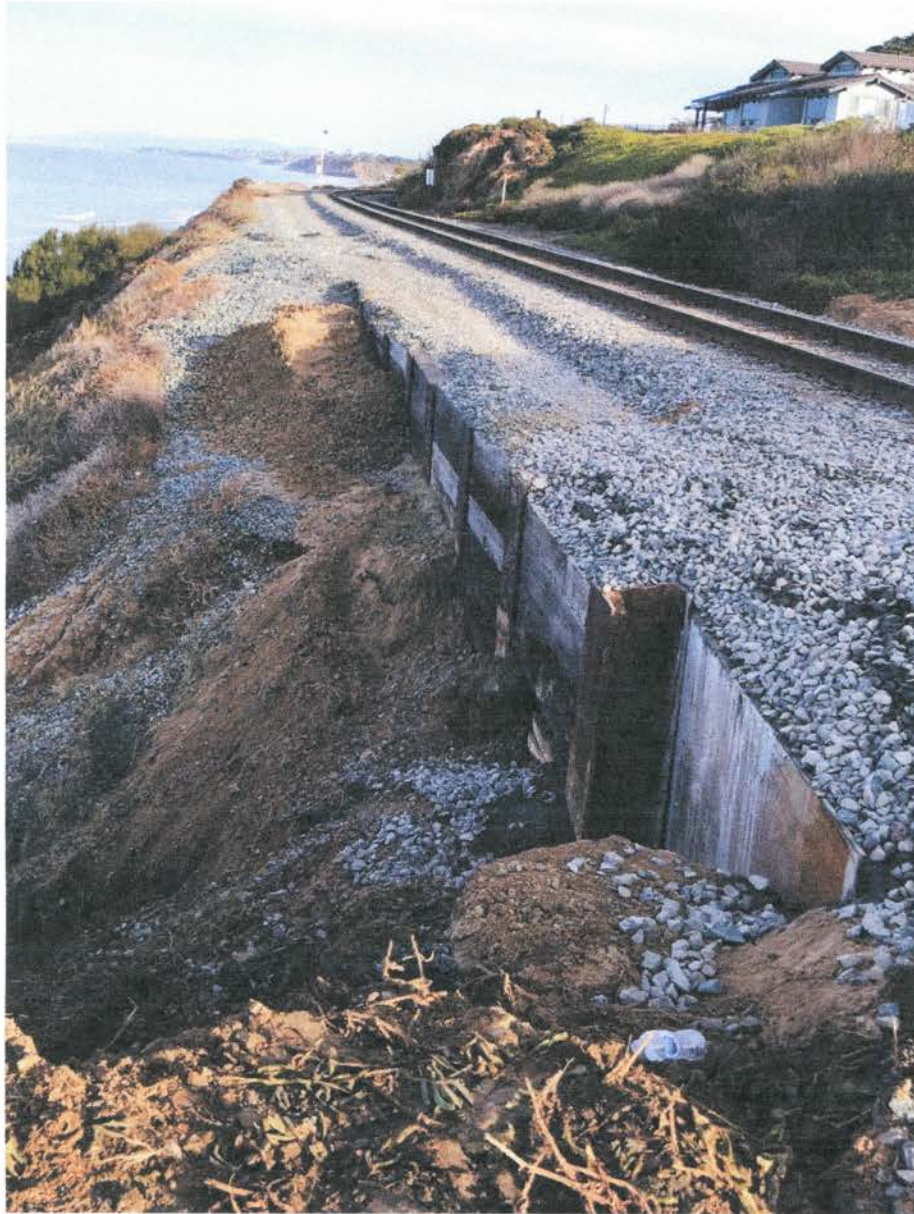


Photo 5: Post-construction view (looking north) of Component 1

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Photo 7: Pre-construction view (looking north) of Component 2

Exhibit 4

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Photo 13: Post-construction view (looking southeast) of Component 2

Exhibit 5

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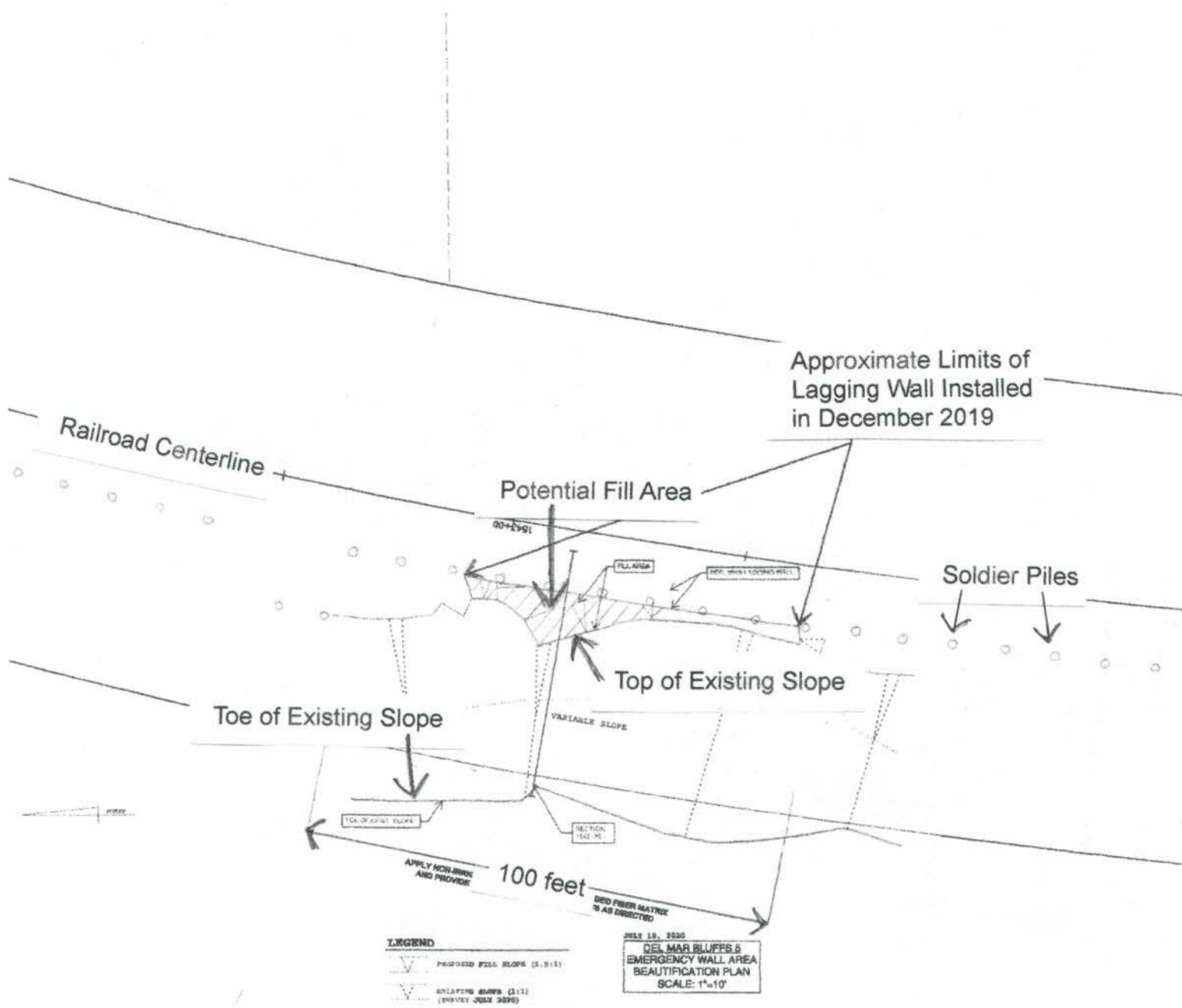


Exhibit 6

CC-0001-20

ADOPTED FINDINGS FROM CC-0001-18 (SANDAG, EASTBROOK TO SHELL DOUBLE TRACK RAILROAD PROJECT, CITY OF OCEANSIDE, SAN DIEGO COUNTY)

C. COMMISSION JURISDICTION AND STANDARD OF REVIEW

The project triggers federal consistency review because SANDAG is required to obtain two federal permits from the U.S. Army Corps of Engineers: a Clean Water Act Section 404 permit and a Rivers and Harbor Act Section 10 permit. The Transportation and Resource Enhancement Program (TREP) component of the North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program (NCC PWP/TREP) functions as a master federal consistency certification to ensure the entire suite of rail, highway, transit, bicycle, pedestrian and other community and resource improvements described therein will be appropriately linked, phased, and implemented in a manner consistent with applicable Coastal Act policies.

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

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

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

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.

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.