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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36433

NORTH COUNTY TRANSIT DISTRICT –

PETITION FOR DECLARATORY ORDER

**CALIFORNIA COASTAL COMMISSION'S
UPDATE REGARDING RECENT APPROVAL
OF BLUFF STABILIZATION PROJECT**

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CALIFORNIA COASTAL COMMISSION'S UPDATE

The California Coastal Commission (Commission) provides this update in response to the incomplete, misleading update North County Transit District (District) filed on June 14, 2022.

KEY POINTS

The Commission emphasizes the following key points: 1) pursuant to the federal Coastal Zone Management Act (CZMA), on June 8, 2022, the Commission conditionally concurred with the San Diego Association of Governments' (SANDAG) federal consistency certification for the Del Mar Bluffs Stabilization Project 5 (Project) and SANDAG has publicly described the Commission's approval as "a mutually agreeable solution" reached "after substantial collaboration" between SANDAG and Commission staff; 2) in January 2022, NCTD and SANDAG agreed to "[p]repare and submit to the Coastal Commission a consistency certification application for the proposed project. This shall include detailed project descriptions, maps, graphics, and analyses to provide evidence that the proposed designs are consistent with the relevant policies of the Coastal Act"; 3) NCTD stated in public postings that SANDAG, not NCTD, is the agency that will be responsible for implementing the Project, a project that will be funded, in part, by a \$106 million grant from the California Transportation Commission; 4) the Federal Railroad Administration (FRA) approved the Project, is partially funding the Project, and prepared the federal environmental documents for the Project; 5) the Project is a rail safety project under the purview of the FRA; 6) the Project, even as conditioned, will not interfere with railroad operations and in fact will insure those operations are not jeopardized due to the instability and erosion of the bluffs both by stabilizing the bluffs in the short term and providing for a viable long term solution; and, as such, 7) there is no conflict presented in this matter between the Commission's approval of the Project under the CZMA and the Interstate

Commerce Commission Termination Act (ICCTA) and there is no conflict with rail transportation.

PRELIMINARY STATEMENT

In August 2020, NCTD filed a petition asking this Board to find the Commission is preempted from regulating certain activities, including bluff stabilization and fencing in the NCTD right of way in Del Mar. NCTD sought to prevent the Commission from exercising its authority under the CZMA to review NCTD's projects for consistency with the Commission's federally approved coastal zone management plan (16 U.S.C. §§ 1451–1465) on grounds that the application of the CZMA would be fundamentally inconsistent with the ICCTA. NCTD also sought to prevent the Commission from acting under the California Coastal Act of 1976 (CA Pub. Resources Code § 30000 et seq.) and the California Environmental Quality Act (CA Pub. Resources Code § 21000 et seq.) based on asserted inconsistencies with the ICCTA. However, these state laws are applicable to NCTD as a state government entity to ensure its actions adequately protect the scenic and visual qualities of the Del Mar coastal bluffs, minimize impacts to public access, and insure the stability and structural safety of those bluffs. (*See* Commission's March 8, 2022 Status Update and the Commission's April 26, 2022 Motion for Abeyance (processed on April 27, 2022 in filing 304442).)¹ The Commission provides this update in response to the incomplete and misleading update NCTD filed on June 14, 2022.

THE COMMISSION APPROVED A BLUFF STABILIZATION PROJECT

On June 8, 2022, the Commission heard and concurred in a federal consistency certification that SANDAG submitted for work to stabilize the very bluffs at issue in NCTD's

¹ NCTD removed the Commission's enforcement action to federal court. The District Court mistakenly issued a stay under the misunderstanding that this Board was going to take imminent action. The Commission has moved the Court to lift the stay and consider the Commission's motion to remand the matter to state court based on lack of subject matter jurisdiction and sovereign immunity. (Exhibit E.) The Court has not taken further action in the case.

petition, specifically Del Mar Bluffs Stabilization Project 5 (Project). (Exhibit A, Commission's Staff Report for Consistency Certification No. CC-0005-21.) Legally, SANDAG is the state-designated Regional Transportation Commission and the state entity responsible for rail planning, financing and construction in San Diego County. (CA Pub. Util. Code, § 13250 et seq.)² As such SANDAG was the applicant for the federal consistency certification. (Exhibit A, p. 1 (SANDAG is the applicant.) SANDAG worked closely with the Commission staff in reviewing the Project and supported the Commission's conditional concurrence. (Exhibit B, SANDAG Project Update for June 24, 2022 meeting.) Importantly, the Project the Commission approved was also approved by the FRA. The FRA acted as the federal lead agency under the National Environmental Policy Act (NEPA) and determined on March 16, 2021, that the Project meets the criteria for one of the class of actions that is categorically excluded from NEPA pursuant to Title 23 CFR 771.116(c)(20 and 22). (Exhibit A, p. 15.) In addition, the FRA is providing partial funding for the Project. (Exhibit A, p. 15.) This federal funding, in part, formed the basis for the Commission's jurisdiction over the Project under the CZMA. As the Commission's consistency report states, and SANDAG agrees, the "project triggers federal consistency review because SANDAG is required to obtain federal authorization under Clean Water Act Section 404 and Section 10 of the Rivers and Harbors Act for the project, and because it involves federal funding." (Exhibit A, p. 15.) NCTD ignores both the FRA's approval and its funding contribution. (NCTD Update.) NCTD also ignores the FRA's compliance with NEPA and the fact that the Project required other federal authorization, triggering CZMA review.

² In 2002, state law (SB 1703) consolidated all transit planning, programming, project development, and construction into the SANDAG. (CA Pub. Utilities Code, § 13250 et seq.) The SANDAG Board of Directors approves all funding for capital improvement projects. NCTD (as an advisory member to the Board) may object, but in the end it is a SANDAG Board decision since they approve the funding and are responsible for the provisions of the federal certification.

The Commission’s approval will allow SANDAG to implement the Project along a 1.6-mile-long segment of the existing railroad corridor in Del Mar. SANDAG, not NCTD, has been carrying out a multi-phase effort to install stabilization infrastructure on the beach at the toe of the bluffs and on the bluffs themselves along this section of the railroad corridor since the late 1990s. (Exhibit A, p. 8.) The Project is the latest and most expansive in this ongoing effort and includes approximately 3,800 linear feet of upper bluff stabilization structures (primarily underground infrastructure including soldier piles, tieback anchors, and horizontal lagging), the construction of approximately 2,500 linear feet of new seawalls with rip rap backfill as well as reductions in existing bluff slopes through grading and placement of fill, installation of new and retrofit drainage infrastructure, access road improvements, and public access improvements. (Exhibit A, p. 8.) SANDAG’s “stated intent in carrying out this proposed work is to help maintain the safety and operability of the rail corridor until it can be relocated inland, which SANDAG is aiming to accomplish by approximately 2035.” (Exhibit A, p. 8.)

Importantly, NCTD and SANDAG agreed in early January 2022 to “[p]repare and submit to the Coastal Commission a consistency certification application for the proposed project. This shall include detailed project descriptions, maps, graphics, and analyses to provide evidence that the proposed designs are consistent with the relevant policies of the Coastal Act.” (Exhibit D, p. 3, ¶ 7 [Addendum 18 Project Scope of Work EXHIBIT A S896855 for the “Del Mar Bluffs Stabilization 5,” signed by NCTD on January 3, 2022].) Given that SANDAG has complied with this agreement, submitted the consistency certification to the Commission, and obtained the Commission’s conditional approval, NCTD cannot now disavow its agreement and seek to invalidate the Commission’s approval after-the-fact. Indeed, in a publication NCTD posted on December 08, 2020, NCTD and SANDAG announced that the California Transportation Commission (CTC) awarded a grant request of \$106 million to fund trade corridor enhancements in

the San Diego region. NCTD's publication stated: "SANDAG will be responsible for implementing the program of projects which includes: Del Mar Bluffs Stabilization Project 5."

<https://gonctd.com/nctd-sandag-receive-106-million-grant-for-rail-improvements/> (Exhibit C.)

SANDAG, not NCTD, is spearheading the efforts to stabilize the bluffs and to insure rail safety. SANDAG is a separate public agency, is not a party to these proceedings, and will not be bound by any decision this Board reaches.

THE COMMISSION HAS FEDERAL CONSISTENCY JURISDICTION OVER THE PROJECT

The Commission explained its jurisdiction under the CZMA in its initial reply in this matter and does not repeat that here. The Commission has federal consistency review authority over the Project because the Army Corps must approve a permit for the project and because the project will be partially federally funded, thus triggering the Commission's review authority under two provisions of the CZMA. (16 U.S.C. § 1456, subd. (c) permitted projects) and (d) (federally funded projects).

The FRA has approved and partially funded the Project

The FRA has approved and partially funded the Project. (Exhibit A, p. 15.) The FRA is the federal agency responsible for railroad safety and the Federal Rail Safety Act is the primary statutory authority that that controls preemption in the sphere of railroad safety. (*Island Park, LLC v. CSX Transp.*, 559 F.3d 96, 107 (2nd Cir. 2009), see also *Tyrrell v. Norfolk Southern Railway Co.*, 248 F.3d 517 (6th Cir. 2001); *Nat'l Ass'n of Regulatory Util. Comm'rs v. Coleman*, 542 F.2d 11, 15 (3d Cir. 1976).)

NCTD has committed to provide future federal funding

NCTD has committed to provide future federal funding from the Federal Transit Administration. (Exhibit B, p. 2 [NCTD is contributing \$9,000,000 in future Federal Transit

Administration (FTA) 5337 funds from fiscal years 2023 through 2026]. This federal funding provides an additional basis for the Commission’s jurisdiction under the CZMA. (16 U.S.C. § 1456, subd. (d).)

The CZMA and the ICCTA must be harmonized to give effect to both bodies of law

As the Ninth Circuit Court of Appeals recently explained in *Swinomish Indian Tribal Community v. BNSF Railway Company*, 951 F.3d 1142, 1157 (9th Cir. 2020), when the Court upheld the Indian Right of Way Act under a challenge that the ICCTA preempted that Act, federal laws must be harmonized and effect given to both bodies of law, including where state entities are implementing federal law. Both the courts and the STB must harmonize separate bodies of federal law. The Court stated:

The ICCTA was enacted in 1995. The Act served Congress’s purpose of “substantially deregulat[ing] the railroad industry,” with an eye toward promoting competition, by preempting “a wide range of state and local regulation” that directly managed rail activity. *Ass’n of Am. R.R.s*, 622 F.3d at 1096–97; *DHX, Inc.*, 501 F.3d at 1082–83 (discussing the Act). Despite the broad “preemption” language of § 10501(b) of the ICCTA, and consistent with the jurisprudence on “implicit repeals,” courts and the STB have routinely held that the ICCTA does not repeal particular federal statutes and the remedies provided thereunder. They have harmonized the ICCTA with these other federal statutes, giving effect to both. *See, e.g., BNSF Ry. Co.*, 904 F.3d at 761–62 (harmonizing the Hazardous Materials Transportation Act and holding that fees permitted in that Act are not preempted by the ICCTA); *Ass’n of Am. R.R.s*, 622 F.3d at 1098 (“[T]o the extent that state and local agencies promulgate EPA-approved statewide plans under federal environmental laws (such as ‘statewide implementation plans’ under the Clean Air Act), ICCTA generally does not preempt those regulations because it is possible to harmonize the ICCTA with those federally recognized regulations.”); *Tyrrell v. Norfolk S. Ry. Co.*, 248 F.3d 517, 522–23 (6th Cir. 2001) (holding Congress did not intend for the ICCTA to repeal the Federal Railway Administration’s authority under the Federal Railway Safety Act to regulate rail safety); *BNSF Ry. Co. v. Albany & E. R.R. Co.*, 741 F. Supp. 2d 1184, 1196–98 (D. Or. 2010) (holding that the ICCTA does not displace the Sherman Act); *Ass’n of Am. R.R.s v. S. Coast Air Qual. Mgmt. Dist.*, 2007 WL 2439499, at *5 (C.D. Cal. Apr. 30, 2007) (“The District is correct that the ICCTA does not preempt the [Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*.]”); *Holland v. Delray Connecting R.R. Co.*, 311 F. Supp. 2d 744, 747–52 (N.D. Ind. 2004) (holding that the ICCTA does not repeal the Coal Industry Health Benefits Act); *Bos. & Me. Corp. & Town of Ayer, Mass.*, 2001 WL 458685, at *6 n.28 (“[N]othing in section 10501(b) is

intended to interfere with the role of state and local agencies in implementing Federal environmental statutes, such as the Clean Air Act [and the federal clean water statutes].”); *Auburn & Kent, WA*, 2 S.T.B. 330, 337, 1997 WL 362017 (July 2, 1997) (same), *aff’d sub nom. City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998).

Here, the Commission has been delegated the authority under the federal CZMA to review federally-permitted activities and federally-funded activities for consistency with California’s federally-approved coastal management program.

NCTD has not identified any conflict between the CZMA and the ICCTA or any conflict with rail transportation

NCTD has not identified any conflict between the CZMA and the ICCTA that cannot be harmonized and it has not identified any conflict with rail transportation. Indeed, but for stabilization of the bluffs in Del Mar, rail transportation would be jeopardized due to the bluffs’ instability and the threats of erosion and sea level rise. Despite this undisputed fact, NCTD attempts to create a “conflict” with interstate freight service when it speculates that the Commission’s condition limiting authorization of these bluff stabilization devices to 30 years will interrupt that service. (NCTD Update, p. 10.) This condition, however, is not only required to find consistency with the Coastal Act, but is also consistent with the only realistic approach for ensuring the continued viability of this vital rail line. Indeed, the condition is based on SANDAG’s own stated intent to move this critical portion of the rail line off the unstable and crumbling bluffs and to do so by 2035, well before 30 year term of the Commission’s condition. (Exhibit A, p. 10 (“The recently adopted SANDAG regional transportation plan, called San Diego Forward (2021), accelerated the timeframe to move train service off the bluffs and identified the year 2035 as the new target.”).)

As SANDAG stated in its federal consistency submittal to the Commission:

“The coastal bluffs supporting the rail alignment in the project area have a history of landslides and surficial failures. Furthermore, the bluffs are subject to ongoing erosion and failures that could threaten the viability of rail service. It is critical that a means of stabilizing the bluffs and preserving track support be implemented in order to maintain the use of the existing railroad track. This track is part of the Los Angeles to San Diego (LOSSAN) rail corridor and represents the only operating rail link to southern San Diego County. The LOSSAN corridor is a 351-mile-long rail corridor stretching from San Diego in the south, up the coast to Orange County, Los Angeles County, Ventura County, and Santa Barbara County to San Luis Obispo County. The LOSSAN corridor is the nation’s second busiest rail corridor and serves Southern California’s key coastal population centers and two of the state’s most congested regions: Los Angeles and San Diego.” (Exhibit A, pp. 8-9.)

This important rail corridor is shared by commuter and intercity passenger and freight rail services. (Exhibit A, p. 9.) SANDAG reiterated the importance of the Project in its Project update for its June 24, 2022 meeting. In Exhibit B, SANDAG describes the conditional approval as “a mutually agreeable solution” and that a “key milestone of the project” was the Commission’s conditional approval reached “after substantial collaboration between staff” from SANDAG and the Commission; the Commission’s conditional approval was imperative to allowing SANDAG to meet funding deadlines for grant funding of \$50 million; the eventual need to move the rail line off the bluffs is inevitable, not “entirely hypothetical”; and the project, as conditioned, is “a critical public safety project” and that “it is imperative to move forward with the project without delay.” (Exhibit B, pp. 1-2.)

NCTD also attempts to create a conflict between the Commission’s conditions regarding public access and rail transportation, alleging the conditions have no relationship to the Project’s effect on the coastal area. (NCTD Update, p. 11.) The Commission’s findings belie this claim and explain in detail the adverse impacts of the Project on beach access and recreation. (Exhibit A, pp. 46-56.) The public access conditions were required in order for the Commission to concur in the Project as consistent with the Coastal Act. Moreover, SANDAG has committed to develop and implement a capital improvement project that would include design, environmental

review, permitting and construction of the public access components which have been longstanding needs in the project area to better serve and expand existing use and would provide significant benefits to the public. (Exhibit A, p. 54.) Del Mar's beaches and coastal waters are a regionally important visitor-serving asset and expanded access to them through SANDAG's completion of its proposed capital improvement project would benefit the public both locally and regionally, including underserved communities outside of the project area. (Exhibit A, p. 54.) SANDAG's commitment to implement this capital improvement project is memorialized through Condition Two of the Commission's conditional concurrence. (Exhibit A, p. 54.) NCTD's complaints about the lack of a relationship between the impacts of the project and the public access conditions are baseless.

NCTD also complains about the costs of providing legal and safe public access in its attempt to create a conflict between the Commission's decision and rail transportation. NCTD speculates "railroads across the country in coastal zones could be required to pay these exorbitant costs in order to continue rail service which is clearly unsustainable economically." However, SANDAG stated that the access components will provide important safe public access and recreation and the Commission's access conditions "provide long-needed safe legal access to the beach which is an important regional goal as it will enhance public safety and improve freight and passenger rail operations." (Exhibit B, p. 2.) There is no interference with rail transportation.

PROCEDURAL CONSIDERATIONS

NCTD alleged in its update that the District Court has stayed the Commission's suit against NCTD pending a decision by STB. However, NCTD failed to mention that the Court entered the stay mistakenly believing there was an STB hearing scheduled for June 17, 2022 and

that the Commission immediately filed an ex parte application with the District Court to rectify this mistake. (See Exhibit E.)

The Commission has requested this Board continue to hold this matter in abeyance while the matter is pending in Court, and NCTD is attempting to capitalize on the Court's mistake to gridlock resolution by having the District Court maintain a stay awaiting a scheduled decision from the Board, which has not been scheduled, while the Commissions' request for abeyance is still pending before this Board.

CONCLUSION

Given the importance of this corridor and the rail service it provides, the Commission's conditional concurrence simply does not interfere with rail transportation but is instead in furtherance of safe transportation by rail. The Commission continues to urge this Board to deny NCTD's petition. Alternatively, the Commission renews its request for this Board to hold this matter in abeyance until the litigation is resolved by a court of law.

Dated: June 23, 2022

Respectfully submitted,

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EXHIBIT A

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W7b

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STAFF REPORT: REGULAR CALENDAR

Consistency Certification No. **CC-0005-21**

Applicant: San Diego Association of Governments

Location: Railroad right-of-way between Mile Post 244.1 near Coast Boulevard and Mile Post 245.7 at Torrey Pines State Beach in the City of Del Mar, San Diego County.

Project Description: Del Mar Bluffs Stabilization Project 5 to construct upper bluff stabilization structures, seawalls with rip rap backfill, new and retrofit drainage infrastructure, public access improvements, as well as grading and placement of fill to reduce bluff slopes and after-the-fact authorization for two recent emergency repairs in order to support the existing railroad and maintain its operations.

Staff Recommendation: Conditional Concurrence

SUMMARY OF STAFF RECOMMENDATION

The San Diego Association of Governments (SANDAG) submitted a consistency certification to implement the Del Mar Bluffs Stabilization Project 5 along a 1.6-mile-long

segment of the existing North County Transit District (NCTD) railroad right-of-way in the City of Del Mar. Within this reach the railroad runs atop coastal bluffs which are generally 50 to 70 feet high and have a history of landslides and slope failure. This rail line is part of the nation's second busiest rail corridor and serves Southern California's key coastal population centers and two of the state's most congested regions: Los Angeles and San Diego.

The proposed project would stabilize areas along the bluffs that were not included in previous, Commission-authorized projects and retrofit existing, previously approved stabilization infrastructure. SANDAG has proposed these efforts to help protect the existing railroad track and maintain it for rail operations, including passenger and freight, until it can be relocated off the bluffs. The proposed project can be grouped into the following categories of development: upper bluff stabilization structures (approximately 3,800 linear feet), seawalls and cutoff walls (approximately 2,500 linear feet) and changes to the bluff slope, installation of new drainage infrastructure and retrofit of existing drainage systems, access road improvements, and public access improvements. Overall construction is anticipated to take approximately 36 months.

The project also includes a request for after-the-fact authorization for emergency repair projects at Mile Post 245.2 and Anderson Canyon. The emergency repairs started on March 1, 2021 and focused on existing bluff stabilization structures/seawalls that had failed several weeks before.

The Commission's Sea Level Rise (SLR) Guidance identifies transportation corridors, such as the subject railroad section, as critical infrastructure and typically recommends analyzing the risks they will be subject to over a time frame of 100 years or more, as well as analyzing the risks from an extreme sea level rise scenario. SANDAG's analysis deviated from this approach and instead analyzed the proposed seawalls under 1 in 20 (or 5% chance) and low-risk sea level rise scenarios. SANDAG determined this analysis was appropriate because it has identified the need for, and begun pursuit of, the relocation of the rail corridor off the Del Mar bluffs by as soon as 2035, at which point the seawalls would no longer be necessary to protect the rail line and could be removed. However, it should be noted that final design, environmental review, and implementation of the relocation could extend beyond the target date of 2035. Because SANDAG is actively planning and seeking funding for relocation of the railroad, staff recommends that it is appropriate in this instance to use a shorter timeframe for analyzing the stability of the project seawalls and that it is appropriate for them to be designed to withstand lower amounts of SLR and be removable. However, because this infrastructure may not be safe and structurally stable for its full potential life, **Condition One** would limit the authorization term for it to 30 years and require that no less than six months prior to the expiration of that authorization, SANDAG submit an application to remove all of the shoreline armoring and restore the affected areas. In addition, SANDAG has committed to monitor and maintain the shoreline armoring in its approved state as part of its maintenance program. This would help ensure the stability and structural integrity of the rail corridor and minimize hazards from erosion over the 30 year authorized life of this aspect of the project. This would also allow SANDAG to protect the important railway line while planning for and pursuing relocation.

Over a 30 year life, the proposed project seawalls would occupy 49,566 square feet of beach area that would otherwise be available to the public for coastal access and recreation and retain approximately 17,824 cubic yards of sandy material from the bluffs. As mitigation for these impacts, SANDAG is proposing to carry out a capital improvement project that includes planning, design, environmental review and then construction of three significant coastal access and recreation features. These include a designated pedestrian railroad crossing at either 7th Street or 11th Street, a beach accessway from the bluff top to the beach below, and enhancement and formalization of the existing informal blufftop trail between 4th Street and Seagrove Park. The capital improvement project would provide significant coastal access and recreation benefits, most importantly, by addressing the long-standing need for a designated rail crossing and formal beach accessway in the project area. **Condition Two** would memorialize these commitments and facilitate completion of the capital improvement project in a timely manner by establishing its scope as well as start and completion deadlines that are aligned with the anticipated construction schedule of the stabilization project. Due to the extended duration of that construction schedule, measures would also be implemented to help minimize adverse impacts to access and recreation during construction. **Condition Five** would require SANDAG to submit a plan detailing how public access would be maintained to the maximum extent feasible during construction activities and **Condition Six** would require SANDAG to locate and configure storage and staging areas in a manner that avoids and minimizes loss of public beach access parking.

The project would not directly impact any environmentally sensitive habitat areas (ESHA), but construction would take place adjacent to an area with the potential to support California gnatcatcher (*Poliioptila California*). To protect these areas, **Condition Four** would prohibit project construction activities during the gnatcatcher breeding season (February 15 to August 31) within 300 feet. Also, the project would result in the permanent loss of 0.28 acres of wetland habitat. **Condition Three** would require SANDAG to provide evidence of and deduct adequate wetland habitat mitigation bank credit prior to the start of construction.

Condition Seven would help minimize the project's adverse impacts to scenic and visual resources by requiring monitoring and treatment methods to address stabilization infrastructure exposed due to erosion or vandalized. Nevertheless, the project includes a significant amount of bluff grading and fill, upper bluff stabilization, seawalls and drainage outlets in areas of natural character that currently do not have any existing structures and would thus be inconsistent with the Coastal Act's visual resource protection policy (Section 30251). Pursuant to Coastal Act Section 30235, however, the Commission is required to authorize shoreline protective devices even if they would be inconsistent with other Chapter 3 policies if certain conditions are met. In this case, those conditions have been met and may be authorized despite the adverse impacts to visual resources it would result in and its inconsistency with Section 30251.

The staff therefore recommends that the Commission **conditionally concur** with SANDAG's consistency certification CC-0005-21. 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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EXHIBITS

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[Exhibit 9 – Habitat with Potential to Support Gnatcatcher](#)

[Exhibit 10 – Draft CIP Sheet For the Coastal Access Improvements](#)

I. APPLICANT'S CONSISTENCY CERTIFICATION

The San Diego Association of Governments (SANDAG) has certified that the proposed activity (CC-0005-21) 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 **conditionally concur** with Consistency Certification CC-0005-21 on the grounds that, if modified in accordance with the conditions recommended by staff, the project described therein would be 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 conditional concurrence with the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution:

*The Commission hereby **conditionally concurs** with Consistency Certification CC-0005-21 on the grounds that, if modified in accordance with the conditions recommended by staff, the project described therein would be consistent with the enforceable policies of the CCMP.*

III. CONDITIONS

1. Authorization Term.

- a. Authorization for all seawalls included in this consistency certification (including those subject to emergency repairs in 2021) shall expire thirty (30) years from the date of Commission action (i.e., June 8, 2052) or upon relocation and legal abandonment of the sections of railroad at issue in this action, whichever occurs first. No less than six months prior to the expiration of the authorization, SANDAG shall submit to the Coastal Commission a complete coastal development permit application or consistency certification to remove all of the seawalls and rip-rap included in this consistency certification and to restore the affected areas to natural conditions, except as allowed pursuant to subsection (b). If a complete permit application or consistency certification is filed before the end of the authorization period, the authorization period shall be automatically extended until the time the Commission acts on the consistency certification or permit.

- b. If relocation and legal abandonment of the rail line has not been completed in 30 years and SANDAG wishes to keep any portion of the seawalls or rip-rap in place beyond the 30 year time period, it must submit a complete, new consistency certification no less than six months prior to the expiration of the authorization. At that time, the Commission will need to consider authorization for the retention of the seawalls in light of the then-existing standard of review, including assessment of any needed mitigation for the ongoing impacts of the structure(s) and an evaluation of actions to reduce or eliminate those impacts. If a complete consistency certification is filed before the end of the authorization period, the authorization period shall be automatically extended until the time the Commission acts on the consistency certification.
2. **Coastal Access and Recreation.** SANDAG shall develop and implement a capital improvement project, similar to that described in **Exhibit 10** ("Draft CIP Sheet"), to complete planning, design, environmental review, and construction of three projects to provide and improve safe public coastal access and recreation in the project area through: (1) enhancement of the north-south trail system east of the rail track on the top of the bluff between Seagrove Park and 4th Street; (2) construction of a CPUC-approved pedestrian rail crossing near 7th Street or 11th Street; and (3) construction of a beach accessway at or between 7th and 11th Streets that does not involve significant grading or alteration of the bluff beyond the work that is being performed as part of the Del Mar Bluffs Stabilization Project 5. The design of these three coastal access and recreation improvement projects shall be informed by the Coastal Connections Study, and construction of each access project shall not begin until all necessary authorizations for that project are obtained, such as from the California Public Utilities Commission, City of Del Mar and North County Transit District. Unless extended by the Executive Director of the Coastal Commission for good cause and based on diligent pursuit of project goals and milestones, SANDAG shall commence the construction of these three coastal access and recreation improvement projects within 36 months of the beginning of construction on the Del Mar Bluffs Stabilization Project 5 and complete construction within 60 months of the beginning of construction on the Del Mar Bluffs Stabilization Project 5. An extension by the Executive Director shall not exceed 24 months. A request by SANDAG for an extension beyond 24 months shall be subject to review and concurrence by the Commission.
3. **Mitigation for Permanent Impacts to Wetlands.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, SANDAG shall provide updated mitigation accounting tables, for the review and concurrence of the Executive Director, that demonstrate adequate credits have been released from the Resource Enhancement Mitigation Program (REMP) of the North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program (NCC PWP/TREP) to mitigate for all permanent losses to wetland habitat that would result from the project at a ratio of 1:1 (area created: area lost).

4. **Gnatcatcher Habitat Avoidance.** No project construction activities shall be carried out within 300 feet of identified areas of potential California gnatcatcher habitat (as shown in **Exhibit 9**) during the nesting season (February 15 to August 31).
5. **Construction Safety Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, SANDAG shall submit a plan for the review and concurrence of the Executive Director that describes the methods (including signs, fencing, posting of security guards, etc.) which accounts for pedestrian safety around the active construction sites and/or staging areas during all project operations. A person(s) shall be onsite to safely detour pedestrian and/or vehicular traffic around active construction sites. Construction is prohibited during weekends from the Saturday of Memorial Day weekend through Labor Day inclusive, except to the extent necessary to protect life and property. Maintenance of equipment and material storage is permitted during weekends and during non-daytime hours (i.e., from one-hour after sunset to one-hour before sunrise).
6. **Construction Staging and Storage.** SANDAG shall locate and configure all designated areas for the storage and staging of project materials, equipment and project personnel vehicles in a manner that avoids, and if avoidance is infeasible, minimizes, loss of public parking spaces on public streets in the City of Del Mar and within the Torrey Pines State Beach parking lot.
7. **Structural Appearance.**
 - a. PRIOR TO COMMENCEMENT OF CONSTRUCTION, SANDAG shall submit a plan for the review and concurrence of the Executive Director to monitor and address the potential visual impacts of the Del Mar Bluffs Stabilization Project No. 5 upper bluff stabilization components in the event that they are exposed and visible from the blufftop and/or the public beach as a result of earth movement or other circumstances. SANDAG shall also monitor and address the potential visual impacts of the seawalls in the event that they are vandalized (e.g. graffiti). SANDAG shall carry out the approved plan, which shall include the following requirements:
 - i. Yearly for three years after construction, and then tri-annually until the seawalls are removed, SANDAG shall monitor the visual impacts of the Del Mar Bluffs Stabilization Project No. 5 project's upper bluffs stabilization components. If the project's upper bluff stabilization components are exposed and viewable from the public beach below the site, then SANDAG shall submit photographs to the Executive Director within 30 days of exposure identifying the extent of the exposure. Within 30 days of submitting photographs identifying the extent of the exposure of the components. Exposed components shall be colored in such a way that the result would be

a natural, mottled appearance or, in SANDAG's discretion, SANDAG shall install a "breakaway" skirt wall to cover exposed earth and/or components. The breakaway skirt shall be colored in such a way that the result would be a natural, mottled appearance. SANDAG shall contact the Coastal Commission for a determination of whether or not the installation of the low "breakaway" skirt wall requires Commission concurrence.

- ii. A plan to address the vandalism by regularly monitoring for graffiti or other visual changes and to promptly clean off or otherwise remedy the visual impacts caused by the vandalism.

IV. FINDINGS AND DECLARATIONS

A. PROJECT PURPOSE AND BACKGROUND

The San Diego Association of Governments (SANDAG) proposes to implement the Del Mar Bluffs Stabilization Project 5 along a 1.6-mile-long segment of the existing railroad corridor between Milepost 244.1 near Coast Boulevard in the City of Del Mar and Milepost 245.7 in Torrey Pines State Beach (**Exhibit 2**). Within this reach, the rail alignment runs atop the coastal bluffs, which are generally 50 to 70 feet high. SANDAG has been carrying out a multi-phase effort to install stabilization infrastructure on the beach at the toe of the bluffs and on the bluffs themselves along this section of the railroad corridor since the late 1990s. The proposed project is the latest and most expansive in this ongoing effort and includes approximately 3,800 linear feet of upper bluff stabilization structures (primarily underground infrastructure including soldier piles, tieback anchors, and horizontal lagging), the construction of approximately 2,500 linear feet of new seawalls with rip rap backfill as well as reductions in existing bluff slopes through grading and placement of fill, installation of new and retrofit drainage infrastructure, access road improvements, and public access improvements. Also included in this proposal is a request for after-the-fact authorization for stabilization efforts carried out under emergency authorization that began on March 13, 2021. These efforts included the installation on the beach of a new 290 foot long seawall to replace a 60 foot long wall that failed and a 161 foot long cutoff wall (in front of an existing seawall) as well as bluff grading and associated activities. As of the date of Commission action all of the necessary engineering and structural support work for the emergency repair is complete and SANDAG has begun revegetation of the reconstructed slope. SANDAG's stated intent in carrying out this proposed work is to help maintain the safety and operability of the rail corridor until it can be relocated inland, which SANDAG is aiming to accomplish by approximately 2035.

In its consistency certification, SANDAG provides the following background information regarding the need for the project and importance of the rail corridor:

The coastal bluffs supporting the rail alignment in the project area have a history of landslides and surficial failures. Furthermore, the bluffs are subject to ongoing

erosion and failures that could threaten the viability of rail service. It is critical that a means of stabilizing the bluffs and preserving track support be implemented in order to maintain the use of the existing railroad track. This track is part of the Los Angeles to San Diego (LOSSAN) rail corridor and represents the only operating rail link to southern San Diego County.

The LOSSAN Corridor is a 351-mile-long rail corridor, stretching from San Diego in the south, up the coast to Orange County, Los Angeles County, Ventura County, and Santa Barbara County to San Luis Obispo County. The LOSSAN corridor is the nation's second busiest rail corridor and serves Southern California's key coastal population centers and two of the state's most congested regions: Los Angeles and San Diego. In San Diego County, the 60-mile coastal rail corridor extends south from Orange County to downtown San Diego through the coastal cities of Oceanside, Carlsbad, Encinitas, Solana Beach, Del Mar, and San Diego. With sections of the corridor dating back to the 1880s, about half of the corridor is single track. The San Diego County portion of the LOSSAN 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. NCTD's 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.

As noted above, the proposed project is the latest and largest of an ongoing multi-year and multi-phase effort to protect the existing railroad track in Del Mar. To date, SANDAG and NCTD have completed extensive field investigations and geotechnical studies to characterize the nature and cause of bluff erosion, have identified and prioritized the areas in need of stabilization, and completed several stabilization-related projects. A list of the projects carried out since 1996 is included in **Exhibit 8**.

Of these previous projects, the Commission's concurrence with the Del Mar Bluffs Project 4 is particularly notable in that it provided a process roadmap for subsequent projects, including the currently proposed project, that were being considered and undergoing initial planning at the time. Critical elements of that process roadmap included the Commission's acceptance and support for a "project-based" mitigation approach (as opposed to an "in-lieu fee" based approach) to address adverse impacts to coastal access and recreation associated with SANDAG's construction of seawalls, as well as memorialization of SANDAG's commitments to: (1) complete and provide to the Commission the results of a comprehensive study on coastal access opportunities, needs and challenges in the Del Mar area (referred to as the "Coastal Connections Study"); and (2) submit a draft proposal to, and begin coordination with, Commission staff on access and recreation mitigation for its next project in advance of the submittal of a consistency certification for that project. This proactive approach was intended to ensure that future projects—such as the current one—would be brought to the

Commission with “shovel-ready” public access projects included in the overall project, thereby ensuring that mitigation would occur simultaneously with project construction.

Unfortunately, SANDAG has been unable to fully meet the expectations and commitments outlined in that prior authorization. Although SANDAG has begun and progressed significantly on the Coastal Connections Study, it did not meet the February 2022 deadline for completion of the study, and the study remains several months from completion, with key elements such as stakeholder outreach yet to be started. In addition, SANDAG submitted its consistency certification for the current project without a proposed mitigation approach for the approximately ½ mile of seawalls it proposes and without any advance outreach to Commission staff regarding access and recreation mitigation. This failure of SANDAG to meet its commitments and follow the process roadmap established by the Commission in the Del Mar 4 Project has led to significant challenges with the review of the current project. Compounding these challenges has been SANDAG’s strong, stated need to begin construction of the proposed stabilization measures in advance of the 2023 rainfall season, and Commission staff’s accommodation of that need by expediting its review process to meet SANDAG’s preferred June hearing date. The Commission understands, however, that SANDAG’s project is motivated by safety concerns about the instability of the bluff and the critical nature of the rail corridor.

B. PROJECT DESCRIPTION

The proposed project would stabilize areas along the bluffs that were not included in previous, Commission-authorized projects and would retrofit existing, previously approved stabilization infrastructure. SANDAG has proposed these efforts to help protect the existing railroad track and maintain it for rail operations, including passenger and freight, until it can be relocated off the bluffs. SANDAG initially began to plan for relocation of the tracks in early 2020 with 2050 identified as the target date for complete relocation. The recently adopted SANDAG regional transportation plan, called San Diego Forward (2021), accelerated the timeframe to move train service off the bluffs and identified the year 2035 as the new target. SANDAG is currently in the process of planning to relocate the tracks consistent with the regional transportation plan; however, given the magnitude and complexity of that effort and outstanding funding needs for final design, environmental review, and construction, implementation of the relocation would likely extend beyond the target date of 2035.

The proposed project can be grouped into the following categories of development: upper bluff stabilization structures, seawalls and changes to the bluff slope, installation of new drainage infrastructure and retrofit of existing drainage systems, access road improvements, public access improvements, and after-the-fact approval for emergency work. Except for the after-the-fact emergency work, all of the individual stabilization components of the project included within these categories of development were analyzed in order to determine urgency and priority. This analysis was based on engineering factors of safety, distance from the bluff face to the center of the track, the specific bluff retreat rate, steepness of the bluff face, geologic units, the presence of any existing failures, field observations, review of survey data, and drone flight videos. High priority components were determined to be the most immediately necessary, followed

by medium, and then low. SANDAG has proposed to first address components identified as high and medium priority. Depending on the amount of available funding and resources for the project following completion of high and medium priority components, remaining medium and low priority components would then be constructed. A complete list of all of the project components and their priority ranking is included in **Exhibit 3** and a complete description of all of the project components is included in **Appendix B**. Although the rail corridor is planned to be relocated off of the bluffs by 2035, SANDAG has designed the proposed project to provide protection for the track for the next 30-years (until approximately 2050).

The project components can be generally described as follows:

Upper Bluff Stabilization Structures

The proposed subsurface stabilization improvements would consist of new stabilization structures and retrofits of existing stabilization structures. The new stabilization improvements would consist of a below ground soldier pile wall at the bluff top. This type of wall would consist of 36-inch to 42-inch diameter vertical piles placed at 9 to 10 feet on-center with a connecting cast-in-place concrete pile cap or grade beam at the top. If the wall needs to retain soil, the exposed surface between the piles would be infilled with facing material (lagging) and for taller walls, tieback anchors would be installed. In total, SANDAG is proposing to install approximately 3,800 linear feet of these structures across 40 individual sites ranging from 59 to 165 feet long.

The proposed track support retrofit areas would consist of adding lagging and tiebacks to existing piles. A shotcrete facing would be connected directly to the anchors similar to the emergency repair at 15th Street. The shotcrete lagging would be finished with a sculpted face similar to the color and texture of the existing bluff.

Seawalls and Changes to Bluff Slopes

The inclusion of seawalls and surface stabilization as part of the project is proposed by SANDAG to reduce erosion of the bluffs and improve overall bluff stability. As a result, in areas where seawalls are proposed, the project would be able to reduce the amount of bluff top improvements (number of tiebacks and depth of lagging) and therefore reduce disturbance to the upper bluff face.

Proposed seawalls would be constructed in-line with existing seawalls and would consist of vertical piles placed at 6 to 8 feet on center with wood lagging panels. The pile construction would be similar to the piles placed for track stabilization. The space behind the piles would be backfilled with rip-rap up to the top of the seawall and fill will be placed behind the seawalls at a slope ratio ranging from 5:1 to 2:1. In total, SANDAG is proposing to install approximately 2,540 linear feet of these structures across eight individual sites ranging from 48 to 814 feet long. These totals include the 290 foot long seawall and 161 foot long cutoff wall constructed on the beach as part of the emergency repairs discussed below.

Drainage Improvements

The proposed drainage improvements would occur within 15 different locations throughout the 1.6 miles of the Del Mar bluffs (as shown in **Exhibit 7**). The improvements generally would include: new and/or increased concrete trap ditches, new and/or improved drains and outlets, increased capacity for inlets, installation of debris control measures, installation of splash walls on the existing channels at the ends of City streets, replacement of down drains, repairs to existing culverts, and addition of underdrains.

In addition to these proposed new and enhanced drainage features, SANDAG also proposes to carry out a variety of activities to prevent surface erosion on the inland side of the rail line between Seagrove Park and 10th Street.

Access Road Improvements

The proposed access road improvements would include regrading the existing access roads at the south end of the corridor. A 6-inch DG surfacing would be added to improve stability while still maintaining the pervious surface.

Staging, Access and Construction Methods

Potential construction entrance areas would be located near the northern project limits at Coast Boulevard, at the termini of 8th Street and 7th Street, and near the southern project limits at Torrey Pines State Beach. These entrances would provide construction access along the east and west sides of the railroad tracks within the project limits using existing NCTD maintenance access roads. A temporary rail crossing would also be provided at 7th Street to allow construction vehicles to cross the tracks to access construction areas and staging locations.

Construction Duration

The overall construction schedule is estimated to take approximately 36 months; however, plant establishment from revegetation could take an additional two to three years. The timing of construction of the various components would depend on which can be conducted during active rail use. Construction of the various components would take place concurrently depending on site specific constraints.

Public Access and Recreation Improvements

As discussed further in the shoreline structures and geologic hazards section of this report, SANDAG is seeking Commission authorization for approximately 2,500 linear feet of seawalls that would result in the loss of approximately 49,566 square feet of sandy beach and 17,824 cubic yards of sediment that would otherwise augment beach sand levels. To address the resulting adverse impacts to coastal access and recreation from these seawalls, SANDAG is proposing to carry out a capital improvement project that includes planning, design, environmental review and then construction of three significant coastal access and recreation features. These include a designated railroad crossing at either 7th Street or 11th Street, a beach accessway from the bluff top to the beach below, and enhancement and formalization of the existing informal blufftop trail between 4th Street and Seagrove Park. Existing informal accessways that continue both

upcoast and downcoast of the proposed trail would not be enhanced and formalized but would remain available for informal use.

Conceptual plans for these three access and recreation improvements are currently being developed in the ongoing Coastal Connections Study. The approach being taken with the study is to identify several options for each of the three access and recreation improvements. For example, although SANDAG has only committed in its proposed capital improvement project to construct a single pedestrian rail crossing in the project area, concepts are being developed for under-, over-, and at-grade rail crossings at both 7th and 11th Streets. Similarly, although SANDAG's capital improvement project would include a single beach accessway, conceptual designs are being developed for both 7th and 11th Streets. The current concepts for 11th Street include an ADA-compliant ramp system, an improved trail and stairway combination, or a simple enhancement of the existing informal trail (installation of simple erosion control features such as water bars and individual steps) to help make it usable by a wider range of the public. This study is being carried out as part of the package of coastal access and recreation mitigation commitments made by SANDAG in 2019 during the Commission's review of the Del Mar Bluffs Stabilization Project 4 (Consistency Certification No. CC-0004-18). However, because the study has extended well past the February 2022 deadline committed to by SANDAG as part of that consistency certification, these conceptual designs are only partially complete. In addition, the public and stakeholder outreach portion of the study – during which community preferences and potential concerns with the concepts would be identified - has yet to begin. Because of this, SANDAG has stated that it is unable to identify the specific locations and designs of the access and recreation improvements that it would ultimately include in its capital improvement project.

However, to help expedite and streamline construction of that capital improvement project, these findings include a Coastal Act consistency analysis of several of the conceptual designs that have been developed. While some of the more complex concepts (such as the ADA-compliant ramp system) are not yet advanced or refined enough to allow for a full analysis, some of the other concepts have been more completely developed or are simple enough for the Commission to evaluate at this time. These are more fully described in **Appendix B** and include an enhancement and expansion of an existing informal blufftop trail on the landward side of the tracks between Seagrove Park and 4th Street, an at-grade pedestrian rail crossing near the end of 7th Street or 11th Street, and improvement of an existing informal beach access trail near the end of 11th Street.

This evaluation is being done in advance of the completion of the ongoing planning, design and outreach work of the study but would not replace or pre-judge the outcome of that necessary work. Instead, by completing the Coastal Act evaluation and consistency authorization for certain coastal access and recreation design concepts at this time, SANDAG would not need to go through additional Commission review if, once the study is complete, it selects an option that the Commission has already found to be consistent with the Coastal Act. By providing Commission review in this way,

construction of the access and recreation improvements may be expedited and streamlined.

However, SANDAG would also retain its full ability to instead decide, at the completion of the Coastal Connections Study process, to pursue an option that the Commission has not already vetted in these findings. Under this scenario, SANDAG would need to go through the process of seeking Commission concurrence for that changed aspect of the project prior to construction. Because the Commission is reviewing the proposed project through the federal consistency process as a consistency certification, the process that would be followed for that future Commission review is laid out in Section 930.65 of the federal consistency regulations. As established through Commission review of past projects under Section 930.65 that involved modifications to previously reviewed consistency certifications (such as NE-0001-19 for modification to Consistency Certification No. CC-0004-15¹) the Commission would consider if the change would cause the project to have an effect on any coastal use or resource substantially different than originally described and, as a result, would no longer be consistent with the Coastal Act. If the change is determined to not be substantially different and is still consistent with the Coastal Act, the project and proposed change could proceed. If the change is determined to be substantially different and no longer consistent with the Coastal Act, Commission staff would work with SANDAG to identify modifications or alternatives that could be implemented to achieve consistency and then bring them to the Commission for its consideration.

Emergency Repairs

The proposed project also includes a request for after-the-fact authorization for two emergency repairs, one at MP 245.2 and another at Anderson Canyon. Work on the emergency repairs began on March 13, 2021. As of the date of this staff report all of the necessary engineering and structural support work for the emergency repair is complete and SANDAG has begun revegetation of the reconstructed slope.

The emergency repairs at MP 245.2 included grading of the landslide area, installation of soldier piles at the top of the bluff, construction of a buttress, drainage improvements, and construction of a new 290 foot long, five to 13 foot-high tapered seawall with rip rap placed at both ends. Construction of the seawall required 53 soldier piles, spaced five to six feet apart, with wood lagging panels between them.

At Anderson Canyon, SANDAG built a 161 foot long cutoff wall located 2.5 feet seaward of the existing seawall and installed weepholes along the length of the Anderson Canyon seawall to mitigate potential hydrostatic pressure. The cutoff wall was constructed with 47 piles spaced 2.5 feet apart and a grade beam at the top of the piles.

Project plans and as-built photos of these emergency repairs are included in **Exhibit 6**.

¹ This involved another SANDAG rail project and its request – subsequent to the Commission's concurrence with its consistency certification - to permanently retain a construction access road that was originally proposed to be temporary.

C. SECURITY FENCING

Although the North County Transit District has expressed interest in the installation of security fencing along the length of its railroad ROW within the City of Del Mar, this activity is not proposed by SANDAG as part of the Del Mar Bluffs Stabilization Project No. 5, was not included in its consistency certification and is therefore not evaluated or considered further in this report.

D. COMMISSION JURISDICTION AND STANDARD OF REVIEW

The project triggers federal consistency review because SANDAG is required to obtain federal authorization under Clean Water Act Section 404 and Section 10 of the Rivers and Harbors Act for the project, and because it involves federal funding. The standard of review for this consistency certification is the Chapter 3 policies of the Coastal Act.

As noted in the Commission's adopted findings in support of its concurrence on CC-0004-18, the Commission, SANDAG, and NCTD have had a longstanding disagreement over whether SANDAG and NCTD rail projects are subject to state permit requirements. The Commission has generally agreed during past reviews, and is repeating this interpretation here, that as long as all the entities can agree as to the activity's consistency with the Coastal Act, it is not necessary to resolve any question as to the necessity of a coastal development permit.

E. OTHER AGENCY APPROVALS

U.S. Army Corps of Engineers (USACE)

SANDAG has applied to the USACE for a federal Clean Water Act Section 404 permit and authorization under Section 10 of the Rivers and Harbors Act. Commission staff have coordinated with USACE staff during the course of this review and will be carrying out additional coordination following the Commission's decision to help ensure compliance with applicable federal consistency regulations.

San Diego Regional Water Quality Control Board (SDRWQCB)

SDRWQCB staff are in the process of determining what level of review and permits may be required pending the results of jurisdictional waters of the United States verification. SANDAG has not yet submitted a permit application to the SDRWQCB.

Federal Railroad Administration (FRA)

The FRA is acting as the federal lead agency under the National Environmental Policy Act (NEPA) and determined on March 16, 2021, that the project meets the criteria for one of the class of actions that is categorically excluded from NEPA pursuant to Title 23 CFR 771.116(c)(20 and 22). In addition, the FRA is providing partial funding for the project.

California Department of Parks and Recreation (DPR)

SANDAG will apply to the DPR for a Right of Entry Permit for access to project sites from the beach.

City of Del Mar

SANDAG will apply to the City of Del Mar for an Encroachment Permit for work within the City's Right-of-Way.

Tribal Consultation

SANDAG retained a consultant (PanGIS) to conduct cultural resources studies for the project and coordinated with staff from the FRA to conduct Native American tribal outreach. FRA staff sent letters or emails and made follow-up phone calls to 28 tribal representatives in April 2021 and received two replies to the information requests. The tribes contacted were: the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, the Augustine Band of Cahuilla Mission Indians, the Barona Group of the Capitan Grande Band of Indians of the Barona Reservation, the Cabazon Band of Mission Indians, the Cahuilla Band of Indians, the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Ewiiapaayp Band of Kumeyaay Indians, the Lipay Nation of Santa Ysabel, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the Jamul Indian Village of California, the La Jolla Band of Luiseno Indians, the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, the Los Coyotes Band of Cahuilla and Cupeno Indians, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the Morongo Band of Mission Indians, the Pala Band of Luiseno Mission Indians of the Pala Reservation, the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, the Ramona Band of Cahuilla, the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, the San Pasqual Band of Diegueno Mission Indians, the Santa Rosa Band of Cahuilla Indians, the Soboba Band of Luiseno Indians, the Sycuan Band of the Kumeyaay Nation, the Torres-Martinez Desert Cahuilla Indians, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation. The FRA also identified organizations who may have an interest in the project. The organizations contacted were: the Juaneno Band of Mission Indians-Acjachemen Nation, the Kwaaymii Laguna Band of Mission Indians, and the San Luis Rey Band of Mission Indians. As discussed further in the Cultural Resources Section of this report, Commission staff reached out to the Native American Heritage Commission for a list of potentially affected Tribes and reached out to 13 listed Tribal contacts by letter and email in March of 2022. The Commission staff received a response from the Viejas Band of Kumeyaay Indians stating that the project area has a rich history and cultural significance and requested that cultural monitors be present for all ground-disturbing activities. SANDAG informed the Commission staff on April 14, 2022, that as with previous consistency certifications for LOSSAN rail projects, it would take steps to ensure that Tribal cultural monitors would be present during project ground disturbing activities.

F. SHORELINE STRUCTURES/GEOLOGIC HAZARDS

Section 30235 of the Coastal Act States:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act States (in part):

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...

Section 30270 of the Coastal Act States:

The Commission shall take into account the effects of sea level rise in coastal resources planning and management policies in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

The proposed project includes extensive shoreline armoring, including approximately 2,500 linear feet of walls and placement of rip-rap fill behind and at the ends of several wall sections. The purpose of this armoring is to stabilize and protect the Del Mar bluffs from erosion so that the existing rail line on the bluff top can continue to be operated. Because the project involves shoreline armoring and protection of existing critical infrastructure, it is evaluated below for consistency with relevant sea level rise policies and those sections of the Coastal Act that require consideration of alternatives and the analysis, minimization and mitigation of adverse impacts, while also assuring stability and structural integrity.

Sea Level Rise Analysis

The State of California has undertaken significant research to understand the possible range of sea level rise amounts to expect over this century based on future emission scenarios, and to anticipate the likely impacts of such sea level rise. In April 2017, a working group of the Ocean Protection Council's (OPC) Science Advisory Team released "Rising Seas in California: An Update on Sea-Level Rise Science." This report

synthesized research on sea level rise science at the time, notably including probabilistic sea level rise projections, as well as the potential for rapid ice loss to lead to extreme sea level rise. This science synthesis was integrated into the OPC's State of California Sea-Level Rise Guidance 2018 Update (Guidance). This OPC Guidance document provides high-level, statewide recommendations for state agencies and other stakeholders to follow when analyzing potential sea level rise vulnerabilities for various projects.

The appropriate time horizon to use to evaluate sea level rise depends on the expected useful life of development, after which point development is expected to be removed, replaced, or redeveloped. The Commission's Sea Level Rise Policy Guidance for Critical Infrastructure (SLR Guidance)² identifies transportation infrastructure, such as the LOSSAN rail corridor, as "critical" infrastructure given its long design life, generally low adaptive capacity, and the high consequences associated with its failure. In such cases, the OPC Guidance and Coastal Commission SLR Guidance recommend that applicants understand the risks associated with the medium-high risk aversion scenario and extreme (H++) risk aversion scenario and anticipate the need to plan for those scenarios over the expected life of the structure, which for critical infrastructure like the rail corridor is typically considered to be 100 years³. Taken together, the Rising Seas science report, updated OPC Guidance, and the Commission's SLR Guidance represent the current best available science on sea level rise for the State of California.

The OPC Guidance provides sea level rise projections, which the Commission adopted in 2018, for twelve California tide gauges, and recommends using the projections from the tide gauge closest to the project site. In this case, the La Jolla Tide Gauge is the closest. The following table depicts projected sea level rise at the La Jolla Tide Gauge under low-risk, medium-high risk, and extreme-risk aversion scenarios over the 30 year design life of the project proposed by SANDAG (based on the planned relocation of the line to a more inland location) as well as the 100-year project life as recommended by the Commission's SLR Guidance for critical infrastructure. The probabilities assigned to each scenario are for the likelihood that a given Sea Level Rise amount would be met or exceeded.

Projected Sea Level Rise (in feet)			
Year	Low-Risk Aversion (~17% probability)	Medium-High Risk Aversion (~0.5% probability)	Extreme Risk Aversion (no associated probability)
2050	1.2	2.0	2.8
2120	4.3	8.8	14.3

² https://documents.coastal.ca.gov/assets/slr/SLR%20Guidance_Critical%20Infrastructure_12.6.2021.pdf

³ Although the typical expected life of critical rail corridors is 100 years, as discussed previously in this report, SANDAG has identified a planning target of 2035 for complete relocation of the rail line off of the Del Mar bluffs. Conservatively providing approximately 17 years beyond that planned relocation date, SANDAG has designed the proposed stabilization measures with a design life of 30 years.

Future SLR is expected to exacerbate the existing problems of bluff erosion and instability on the Del Mar bluffs and will further threaten operations on the railroad corridor. Over time, sea level rise will tend to (i) shrink the distance between breaking waves and bluff toe and (ii) increase water depths and reduce wave attenuation in the nearshore, with the net effects of increasing the frequency and force of wave attack and accelerating bluff toe erosion. Although both the rate of future sea level rise and the sensitivity of the bluff to erosion response are uncertain, the potential for large amounts of sea level rise and accelerated bluff retreat in future decades must be factored into assessments of development risk, the design of protective structures, and adaptation strategies.

Adaptation Strategy

Although, as described above, statewide sea level rise guidance for critical infrastructure calls for considering and planning for a 100-year horizon and associated sea level rise projections, SANDAG's project proposes to deviate from this approach. This is because, unlike much critical infrastructure with high hazard exposure and little adaptive capacity, SANDAG has identified and begun pursuit of an adaptation strategy for the rail corridor on the Del Mar bluffs. SANDAG's 2021 Regional Transportation Plan identifies priorities to ensure that critical resiliency adaptations to the transportation system are made, including relocating the tracks off of the Del Mar bluffs due to their susceptibility to failure and inability to accommodate double-tracking. In the summer of 2020, SANDAG initiated a preliminary study (as part of a larger San Diego Regional Rail Alternative Alignment and Improvements Study) to evaluate five inland tunnel alternatives, including conceptual engineering and associated technical reports, cost estimates and implementation plans. The next step would be for SANDAG to conduct environmental review and engineering/design for the preferred alternative(s). When a tunnel alignment is selected and constructed, the existing rail track on the Del Mar Bluffs would be removed. SANDAG acknowledges that much additional planning is necessary before a tunnel alignment is identified. Recent direction from the SANDAG board accelerated the timeline for relocating the tracks from the bluffs by 2035 (the previous target date was 2050); however, final design, environmental review, and implementation of the relocation could extend beyond the target date of 2035, especially given that funding has yet to be obtained for design, environmental review, or construction. The cost for such a project is currently estimated at \$2.3 billion.

Relocation of the tracks off of the bluffs is consistent with the North Coast Corridor Public Works Plan (PWP), which provides further guidance and analysis of the need for rail corridor maintenance at this location and the benefits that would arise from track relocation off the bluffs. In addition to including the same Coastal Act requirements as discussed in this staff recommendation, the PWP states:

The proposed rail improvements provide a unique opportunity to improve the coastal bluff area in Del Mar with an option to remove the existing rail service from the bluff area, thereby alleviating the need for ongoing maintenance of shoreline protection devices previously permitted to ensure stability of the bluffs and rail operations. Should the rail service be removed from the coastal bluffs in this area, there could be an additional opportunity to remove the existing

shoreline protective system and restore the coastal bluff and thus reduce long-term shoreline erosion impacts associated with those shoreline structures; however, it is also recognized that there is a need for the existing, permitted shoreline protection system at the Del Mar Bluffs to protect the existing rail facility, and that this system could require maintenance to maintain site stability and rail operations in this area.

Because SANDAG is actively planning to relocate the railroad in the relatively near future and is trying to avoid any reliance on permanent protection, the Coastal Impact Report prepared for the project analyzed the anticipated sea level rise differently than for a critical infrastructure project with a more typical 100-year design life. The approach is described in the Coastal Impact Report as follows:

The most current synopsis of sea level rise projections for the State of California is documented in the California Ocean Protection Council, Science Advisory Team 2018 report, State of California Sea-Level Rise Guidance (Ref 3). The estimates outlined in the report represents a best practice for quantifying sea level rise on the California coastal areas. A previous report released in April 2017 by OPC entitled Rising Seas in California, An Update on Sea-Level Rise Science, provided a fuller range of projections. San Diego County is located within the La Jolla gage area, summary tables from those reports are provided in Appendix B-1. Sea level rise estimates based on the OPC documents assume a baseline year of 2000. The 2018 report categorizes the sea level rises as “Likely Range”, “Median”, “1 in 20 Chance” and “1 in 200 Chance”. The “Median” corresponds with a 50% chance that the sea level rise rate will be met or exceeded; “1 in 20 Chance” corresponds to a 5% chance, and “1 in 200 Chance” a 0.5% chance. A final condition referred to the H++ or extreme scenario is a theoretical highest level of sea level rise that has an unknown probability of occurrence. For the purposes of the Proposed Bluff Stabilization Project 5, the 5% and 0.5% chance of occurrence, and H++ scenarios were considered.

Neither the OPC’s guidance nor the Commission’s SLR guidance identify any specific contexts in which the 1 in 20 scenario would be applied. Both guidance documents identify the low, medium-high and extreme scenarios as the appropriate range of projections to be considered in project planning and design while providing enough flexibility to allow for final decisions to consider specific priorities or tradeoffs. For the proposed project, SANDAG initially considered the 1 in 20, low, medium-high and extreme scenarios; however, because SANDAG considers the protection to be temporary and also because of the low likelihood of the medium-high and extreme scenarios occurring before the tracks are proposed to be relocated, SANDAG determined that analyzing the project pursuant to the 1 in 20 scenario (which accounts for the 95th percentile of SLR projections in the OPC study) would be most reasonable and adequately precautionary.

Considering this approach, the anticipated sea level rise for the project analyzed in these findings is identified in the table below. For comparison purposes the anticipated

sea level rise pursuant to the Commission's guidance for critical infrastructure with an expected design life of 100 years is reiterated in the table.

Year	Projected Sea Level Rise (in feet)			
	Low-Risk Aversion (~17% probability)	1 in 20 (5% probability)	Medium-High Risk Aversion (~0.5% probability)	Extreme Risk Aversion (no associated probability)
2030	0.6	0.7	0.9	1.1
2040	0.9	1.0	1.3	1.8
2050	1.2	1.4	2.0	2.8
2120	4.3	5.5 ⁴	8.8	14.3

As shown in the table, although the difference in sea level rise between the 1 in 20 and the low-risk aversion scenario for a given year is relatively small, the difference between the 1 in 20 and low-risk aversion scenario compared to the medium-high and extreme risk aversion scenarios is greater and these discrepancies increase over time. In 2050, at the end of a 30-year design life, the differences between the 1 in 20 and medium-high and extreme risk scenarios are relatively modest, from 0.6 – 1.4 feet. But by 2120, which would equate to a 100 year design life, the critical infrastructure included in this project could be experiencing between 4.5 and 10 feet more sea level rise under the medium-high and extreme risk aversion scenarios, as compared to the 1 in 20 and the low-risk aversion scenarios.

With SLR, shoreline development will experience increasingly hazardous conditions, including worsening inundation, storm flooding, and erosion. On a relatively flat shoreline, even small amounts of SLR can cause large losses of beach width. For example, for a shoreline with a slope of 40:1, a simple geometric model indicates that every foot of SLR will result in a 40 foot landward movement of the ocean/beach interface, resulting in significant loss of beach habitat and recreational space as well as representing a change in the location of public tidelands subject to the public trust doctrine. This change could also expose previously protected backshore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently and to higher wave forces.

As discussed previously, the Commission's SLR Guidance recommends analyzing critical infrastructure (like the proposed railroad development) under the medium high-risk aversion and extreme-risk aversion scenarios because of its typically long design life, low adaptive capacity, and the high consequences associated with its failure. Here, the proposed improvements are intended to be temporary stabilization measures until the railroad is relocated, existing shore protection along other parts of this rail section

⁴ The value for anticipated sea level rise under the 1 in 20 scenario for the year 2120 was derived from Table 31 of the OPC SLR Guidance:
https://opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf

has been designed for only 1 to 2 feet of sea level rise, and use of higher risk aversion scenarios would result in more robust engineering that would be more difficult to remove. For these reasons, SANDAG believes that analyzing the project under the 1 in 20 and low-risk aversion scenarios within that timeframe is appropriate. Because SANDAG has committed to relocating the tracks and is actively in the process of planning for relocation, considering a shorter design life of the critical infrastructure included in this application is appropriate. **Condition One** would memorialize SANDAG's commitment to relocate the tracks and remove the seawalls at that time by establishing a 30-year term for the Commission's authorization of the seawalls that provide stabilization and requiring SANDAG to seek Commission authorization for removal of the seawalls prior to that date or upon completion of track relocation, whichever occurs first. The intention is to ensure that the armoring features are left in place only for as long as needed to protect the now-existing railroad tracks and that they will be removed when no longer needed for this purpose.

The coastal hazard analysis provided by SANDAG examined the proposed stabilization measures and determined that they would effectively prevent any further retreat of the bluff toe and determined that there would be less than a 10% chance that waves would overtop the seawalls in any given year under existing conditions. The report states that wave heights would not be expected to increase over time, but because of SLR more frequent overtopping of the seawalls would be expected. A major concern of overtopping of the seawall would be erosion and scour of the bluff face inland of the wall. SANDAG proposes to backfill the area behind several of the proposed seawalls with riprap in order to minimize erosion and undermining of the seawalls. The slope directly behind other proposed seawalls would also be graded or altered through the placement of fill material at a slope ranging from 5:1 to 2:1 to buttress the slope and reduce erosion of the natural bluff face from any wave overtopping. The area behind Components DMB2 (SN1S) and DMB2 (SN2) would also receive anchored turf reinforcement mats. **Exhibit 5** indicates the location and extent of each of these proposed reinforcement methods and shows which area of bluff would be covered in fill material and which would be graded. While the Climate Impact Report did not evaluate overtopping with future conditions, SANDAG believes these measures would provide appropriate erosion countermeasure features to ensure that the railroad infrastructure would be sufficiently protected until the tracks can be relocated off of the bluffs. It should also be noted that SANDAG initially proposed to carry out significantly more bluff grading and re-contouring work in its initial consistency certification for the project but was able to reduce the area of bluff face to be graded by approximately 71% through implementation of alternative stabilization and reinforcement methods. These methods include the proposed use of rip rap behind the proposed seawalls and placement of fill over the low half of certain bluff sections to achieve more gradual slopes. However, this approach does come with a trade off as reducing the overall area of grading by implementing more gradual slopes would require pushing the footprint of some seawalls further out and thus would occupy more of the sandy beach. The loss of beach area for at most 30 years was weighed against the permanent disturbance of the mid and upper bluff.

Additionally, SANDAG's design of the proposed seawalls with a limited life of 30-years and planned future removal also helps to minimize adverse effects on the bluffs and coastal resources. First, because the combined upper bluff stabilization and seawall components have a relatively short design life, the design helps ensure that the development is the minimum necessary to support the railroad until it can be relocated. Designing the bluff stabilization measures as a more permanent protection measure for upwards of 100 years would require more significant and larger construction (e.g., deeper soldier piles, more tiebacks and lagging, higher and more robust seawalls, more bluff face fill, etc.) which in turn would more substantially alter the bluffs and displace sandy beach areas. Secondly, the proposed seawall design allows the seawalls to be more easily removed once the tracks are relocated. Once the tracks are relocated, the lagging between seawalls would be removed and piles for the seawalls would be removed or cut down below the ground surface. Rip rap behind the seawalls would also be removed, thus allowing the fill material and native bluff soil to be removed or naturally erode onto the beach, thus returning the bluffs to a more natural condition. A combined stabilization/protection project designed to last 100 years would require more substantial and deeper stabilization work into the bluff face or on the beach and would likely be more difficult and destructive to remove.

Impacts from Shoreline Armoring

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, and other types of shoreline protective devices designed to forestall erosion also alter natural landforms and natural shoreline processes. Accordingly, Section 30235 imposes a limited requirement to approve the construction of shoreline protective works when they are required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion.

The Coastal Act provides this override provision because without it, shoreline structures would rarely be allowed, even when needed to protect historic or coastal-dependent structures. This is because they generally result in a variety of adverse impacts on coastal resources, including on sand supply, public access and recreation, coastal views, natural landforms, and overall shoreline beach dynamics on- and off-site, ultimately resulting in the loss of beach. The first way in which shoreline armoring can reduce available sand supply and public access is that it encroaches directly upon valuable beach space. Second, fixing the backshore prohibits landward migration of the shoreline through natural erosion and sea level rise over time, which results in "coastal squeeze," or the loss of beach space, area of sandy beach, and/or habitat. This reduces the usable area of any beach for the public. The third way in which it can affect sand supply and reduce public access is through a progressive loss of sand due to retention of sandy bluff material that would become beach sand if the bluffs were to continue to erode. Fourth, shoreline protective devices such as revetments and bulkheads can alter patterns of scour, resulting in end effects through the reflection of wave energy to adjacent unprotected sections of shoreline.

Shoreline protective devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line (the boundary between public

and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. In this case, the beach adjacent to the bluffs is entirely public land held by the State of California or the City of Del Mar. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during storm events and the winter season. As discussed by SANDAG in its consistency certification, in the case of Del Mar, the existing beach width generally varies between 30 feet to 70 feet depending on the seasonal variation of sand levels and storm activity. During winter, the beach area can be reduced by 25 feet and it can increase by as much as 25 feet in the summer due to changes in the amount and elevation of sand present. The beach elevation can vary by as much as five feet between winter and summer. As such, during winter months, the beach is submerged during periods of higher tides and storm activity, making it impassable for the public. As sea level rises, more beach area would be submerged more frequently and for longer periods, initially during high tide conditions and eventually during all tide conditions. Shoreline protective devices would halt the creation of new, inland beach area to replace the seaward beach that would continue to be lost to erosion and rising sea level, and eventually eliminate all dry beach and all lateral access opportunities along the beach as the entire area seaward of the armoring would be inundated. As discussed further below, projections provided by SANDAG as part of its consistency certification estimate that this would occur within the project area within the next 50 years.

Analysis of Consistency with Sections 30235, 30253, and 30270

Section 30253 prohibits new development that would “in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” Coastal Act Section 30253 also requires that new development minimize risk, assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. However, Coastal Act Section 30235 requires the Commission to authorize shoreline protection devices - even if they would be inconsistent with other Chapter 3 policies - when they are necessary to protect an existing structure or public beach in danger of erosion (or when necessary to serve coastal-dependent uses). Thus, while Section 30253 generally prohibits development that requires the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs, Section 30235 requires that such construction be permitted if certain criteria are met, even when it would alter natural shoreline processes.

Specifically, shoreline protective devices may be approved by Coastal Act Section 30235 if: (1) there is an existing structure; (2) the existing structure is in danger from erosion; (3) shoreline-altering construction is required to protect the existing threatened structure; and (4) the required protection is designed to eliminate or mitigate its adverse impacts on shoreline sand supply.⁵ Together, these criteria require findings that the proposed armoring is necessary, that it represents the least environmentally-damaging feasible alternative, and that adverse impacts have been eliminated or mitigated. In

⁵ Approval of a project also requires that projects be found consistent with the other policies of the Coastal Act in addition to these Section 30235 requirements.

addition, projects approved under Section 30235 must also still be consistent with other Coastal Act policies to the maximum extent feasible, including by incorporating mitigation for other impacts (e.g., visual impacts).⁶

In this case, the railroad tracks are an existing pre-Coastal Act structure that is currently in danger from erosion due to geologic instability and coastal hazards which threaten its structural integrity. The first two tests, above, are therefore met. The type and degree of risk from bluff erosion and instability varies by location but each project segment is expected to be in danger within SANDAG's 30-year planning horizon and most segments face significant, near-term hazards to the safe operation of the railroad corridor. All project segments are experiencing active bluff erosion and retreat, typically occurring episodically in small- to medium-sized erosion events caused by a combination of wave action, ground saturation during storms, heavy groundwater flow, and, in places, uncontrolled runoff. However, the potential for larger-scale bluff failure also exists along the entire project corridor, as evidenced by the February 2021 bluff collapse at MP 245.2, on a bluff segment SANDAG had previously considered to be at relatively low risk. This single bluff failure event extended more than 200 feet alongshore and resulted in up to 25 feet of inland bluff retreat. Based on slope stability analyses conducted by SANDAG, many of the project segments currently possess low factors of safety against bluff failure, especially if subject to strong ground-shaking during an earthquake. Other project segments have adequate factors of safety at present, but are experiencing relatively rapid bluff erosion and retreat, such that future instability beneath the track bed is foreseeable. At a number of the proposed retrofit segments, the bluff edge has retreated to within ten feet of the track, exposing portions of the stabilization piles installed during previous projects (Del Mar Bluff Stabilization Projects 2 and 3). **Exhibit 3** lists the proposed project segments by their priority ranking, which is generally based on the degree and immediacy of the bluff erosion and instability hazard at each site.

The proposed bluff stabilization improvements are intended to maintain stability of the corridor for approximately thirty years, or until 2050, by which time the railroad is planned to have been relocated. As described below, there is no feasible alternative to the bluff stabilization at this time that could both protect the endangered pre-Coastal Act structure and remain consistent with all applicable provisions of the Coastal Act. Thus, the proposed stabilization improvements are needed to ensure the near-term geologic and engineering stability of the existing railroad. Because there is no feasible alternative to meet the need for stabilization, the third test is met.

Finally, the project meets the fourth test because the selected design alternatives and mitigation measures (specifically, **Conditions 1 through 7**) would eliminate or mitigate adverse impacts on local shoreline sand supply, as well as on other resources. Thus, while the project cannot be found consistent with Section 30253's prohibition on protective devices, the armoring in this case is the least environmentally damaging feasible alternative that can achieve the project goal of protecting the threatened

⁶ See *Ocean Harbor House Homeowners Assn. v. California Coastal Com.*, 163 Cal.App.4th 215, 242.

structure. The project may thus be authorized using the “override” provision of Section 30235.

Coastal Act Section 30270 requires the Commission to take into account the effects of sea level rise and to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise. As described above, in most cases involving critical infrastructure, the Commission analyzes higher risk sea level rise scenarios to ensure stability over a long timeframe. Here, SANDAG’s current sea level rise analysis lacks sufficient information for the Commission to conclude that the project would be safe from increased frequency and intensity of wave overtopping through 2050 and beyond under higher risk sea level rise scenarios. Considering a 100-year design life of 2120 under the extreme risk aversion scenario, the site could see sea levels rise 12.9 feet higher than SANDAG’s consideration of the 1 in 20 scenario in 2050. If sea levels rise significantly more than projected by SANDAG, the project site would be increasingly vulnerable to high water levels and overtopping, which have potential to threaten the stability of the tracks until they are relocated.

However, due to SANDAG’s planning for rail relocation, which is a form of adaptation for this infrastructure, and due to the environmental benefits of not over-engineering the armoring structures (thereby making them easier to later remove), it is appropriate here to analyze the effects of sea level rise using a relatively shorter time frame and sea level rise scenario. However, in order to maintain the shoreline protection structures in their authorized state, ensure structural integrity and promote any needed adaptation, SANDAG has confirmed that it would inspect the seawalls over the authorized life of the development in order to identify damage or changes to these structures that would require maintenance and repair. Thus, while it is appropriate in this instance for SANDAG to construct the structures for a 30 year life, assuming that extreme sea level rise does not occur, SANDAG would also monitor the situation over time to ensure that the structures remain safe for their planned operating life. With this confirmation, the Commission has accounted for the effects of sea level rise and mitigated the effects it will have on the project and on surrounding coastal resources, in conformity with Section 30270.

Alternatives

The project objective of stabilizing the bluffs and rail line can be accomplished through a variety of engineering approaches. Alternatives evaluated by SANDAG include use of soil cement buttresses and soil nail reinforcement as well as predominant use of seawalls on the beach at the toe of the bluffs, predominant use of subsurface piles and lagging on the upper bluffs and a combination of the two. In addition, SANDAG and Commission staff also evaluated a “no project” alternative.

The need for the stabilization and retrofit improvements is described by SANDAG in its consistency certification as follows,

While the 2021 Regional Plan Update is targeting 2035 for the relocation of the tracks off the bluffs, at this time, the project funding is still to be identified. Based

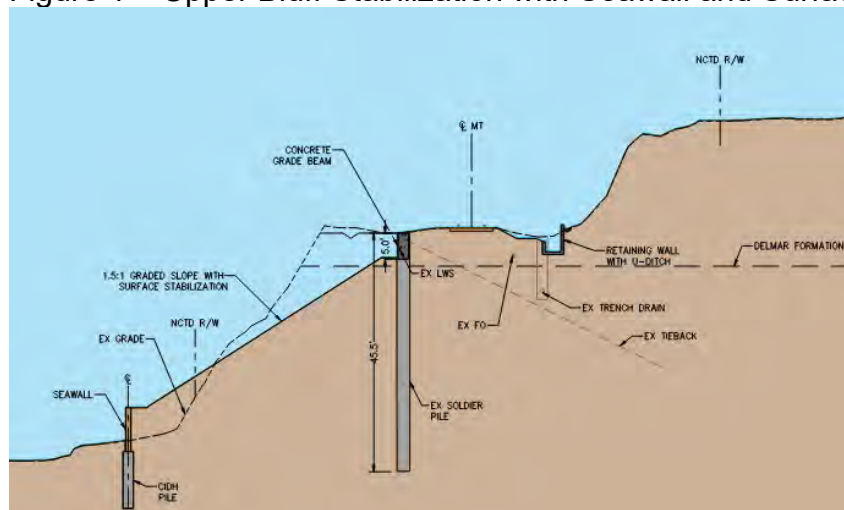
on previous projects of similar magnitude, this project will likely require more than 14 years to clear environmentally, plan, design, fund, and build. Designing the DMB5 improvements for a 30-year timeframe provides schedule contingency, ensuring that the trackbed remains stable while these activities occur.

The proposed construction of seawalls at the toe of the bluff and surface stabilization/grading of the slope behind the walls are the primary project elements that hold the potential for creating adverse impacts to shoreline processes, sand supply, and recreation. The proposed seawalls would be constructed by installing piles at six to seven feet on center, down to a depth of eight feet. The walls would be constructed in line with existing seawalls to an elevation of 15 feet above mean sea level, generally seven to eight feet high as measured from the sand, with wood lagging panels installed between the piles. This construction method is consistent with that used for the approximately 630 linear feet of existing seawalls currently in place within the project area. As shown in **Exhibit 5**, the space behind several of the proposed walls would be backfilled with riprap and fill would be placed behind the seawalls at a slope ratio ranging from 5:1 to 2:1 (H:V).

In addition to seawalls, the project also includes stabilization improvements and retrofit improvements to the bluff top for increased railroad support consisting of soldier pile walls placed 11 to 21 feet seaward of the track centerline, lagging between the pile walls, and installation of tieback anchors. The number of piles, depth of lagging, and number of tiebacks at each location along the bluff would be specific to the geotechnical and engineering requirements of each stabilization area. **Exhibit 4** identifies the location and extent of the stabilization features proposed for the upper bluff area.

A complete list of all project components including priority rankings, phases, and amount of development proposed for each component are included in **Exhibit 3**. **Exhibit 4** includes a visualization illustrating where each of the components would be constructed within the bluffs. Figure 1 below provides an illustration showing how the proposed seawalls would function in tandem with upper bluff stabilization measures.

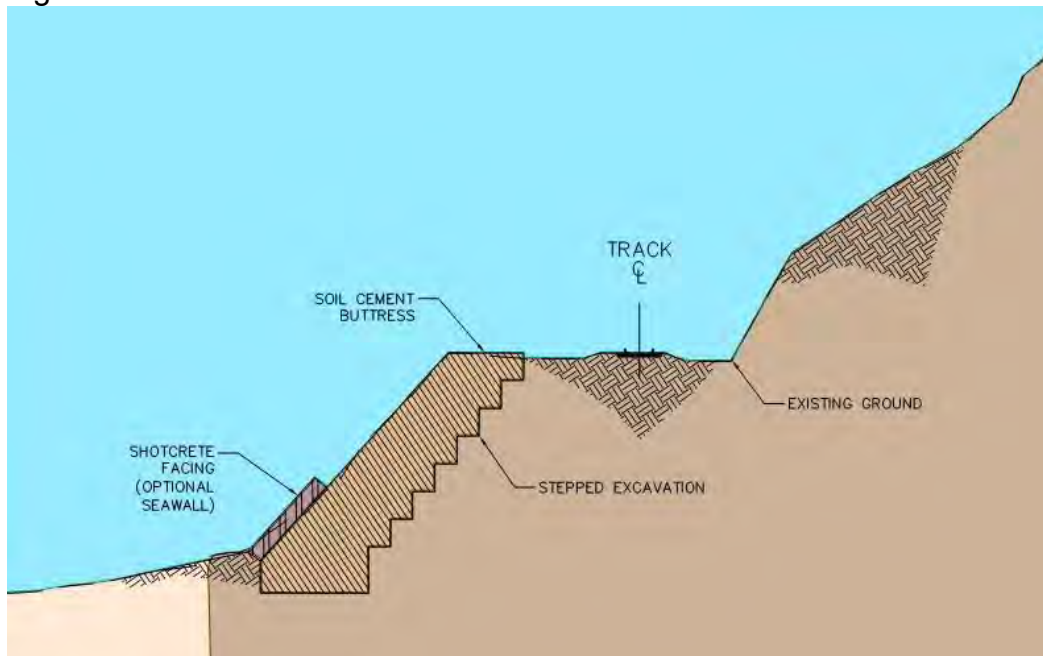
Figure 1 – Upper Bluff Stabilization with Seawall and Surface Stabilization



Soil Cement Buttress

Another alternative to the proposed slope stabilization and seawall construction includes construction of soil cement buttresses. Soil cement consists of a mixture of soil or another type of aggregate mixed with a small amount of cement and water to form a material that can be shaped and applied similar to cement. According to SANDAG this alternative is most viable where the bluffs have previously been graded and fill soils mantle the natural bluff materials. There are only two locations where this would be applicable (SA6N and SA8). To construct a soil cement buttress, the existing slope would be excavated in a terraced configuration to remove unstable material and replaced with soil cement. After curing, the soil cement would need to be covered with a layer of native soil held in place with pipe and board walls. The toe of the soil cement slope would require a layer of shotcrete to prevent erosion at the toe as a result of wave action. Figure 2 below provides a typical cross section of a soil cement buttress.

Figure 2 – Soil Cement Buttress

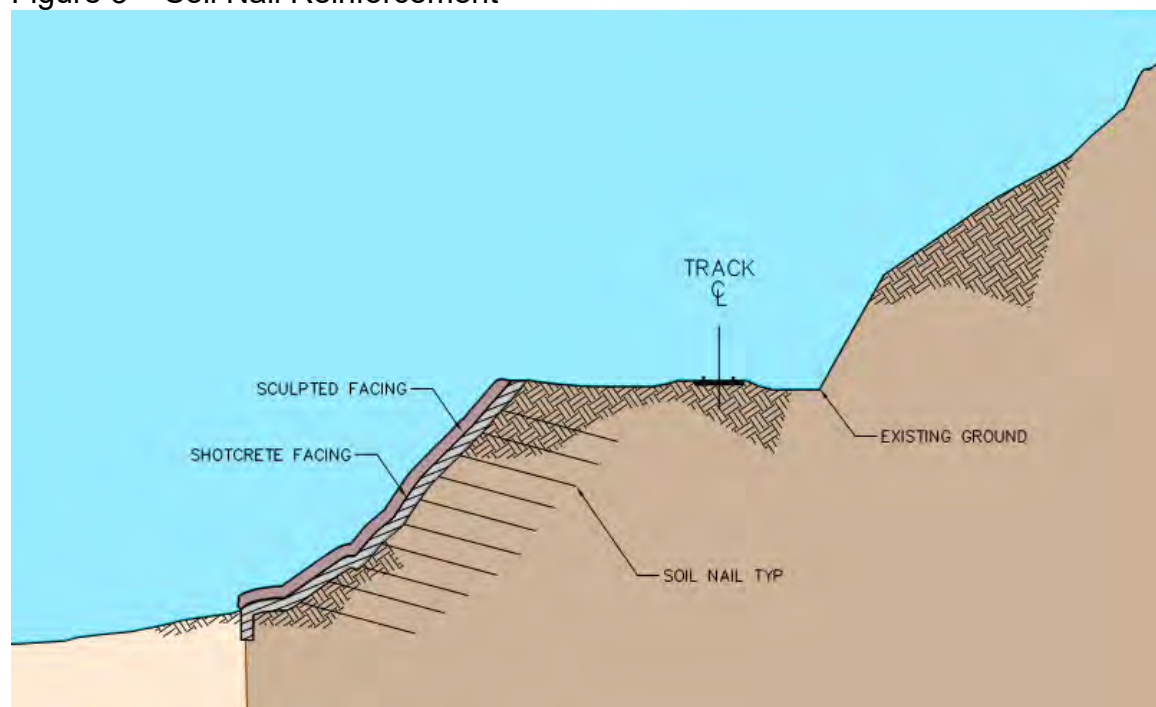


Although this design would eliminate the need for additional pilings and tieback anchors at the top of the bluff, the entire bluff face would need to be removed and replaced with soil cement. Soil cement is a more cost-effective approach to bluff stabilization, but once the tracks are relocated the soil cement would require significant engineering and disturbance to the bluff face to remove. Finally, construction of the soil cement buttress would not eliminate the need for shotcrete facing or a seawall to protect the toe of the slope from erosion. As such, the soil cement buttress alternative would require greater disturbance to the bluff face to construct, would still require toe protection that would encroach upon the public beach, and ultimate removal would be more difficult and destructive to the bluff face compared to the proposed upper bluff work in conjunction with seawalls.

Soil Nail Reinforcement

An additional alternative analyzed by SANDAG would include the use of soil nail reinforcement. This method requires drilling approximately 20 to 50 feet into the bluff face and then grouting high-strength steel bar into place. Next, cast-in-place or shotcrete facing is required to stabilize the soil between the nails. SANDAG concluded that this approach is best suited for areas of dense exposed bedrock where the surface is composed of relatively dense materials and that because the bluff face in the project area is less stable, facing treatments (such as shotcrete) would be strongly recommended. Figure 3 below provides a typical section of a Soil Nail Reinforcement.

Figure 3 – Soil Nail Reinforcement



Similar to the cement buttress alternative, this design would eliminate the need for additional pilings and tieback anchors at the top of the bluff. However, the entire bluff face would need to be covered in concrete or shotcrete for adequate stabilization. Once the tracks have been relocated the removal of the shotcrete facing would not be difficult, but because the soil nails are grouted into the bluff face their removal would require complete excavation which would result in significant disturbance to the bluff face. The soil nail alternative would require greater disturbance to the bluff face to construct, would still require surface stabilization, and ultimately removal would be more difficult and destructive to the bluff face.

Seawall-Only Alternative

Because SANDAG's eventual plan is to relocate the railroad from the bluff in the future and then remove as many as possible of the stabilization structures that had been installed to protect the rail line, SANDAG also considered whether solely constructing temporary bluff toe seawalls instead of new upper bluff stabilization systems would be

feasible. This seawall-only alternative would not require a different design or construction method as compared to the existing seawalls or the proposed seawalls. Seawalls under the seawall-only alternative would be constructed in line with existing seawalls to an elevation of 15 feet above mean sea level (generally seven to eight feet high as measured from the sand) with wood lagging panels installed between the piles. The space behind these walls would be backfilled with riprap and fill would be placed behind the seawalls at a slope ratio ranging from 5:1 to 2:1 (H:V).

As part of its project development process, SANDAG performed geotechnical analysis of the bluffs in order to determine the necessity and extent of stabilization required. The upper bluff components were selected based on the necessary factors of safety to support the railroad against the force of trains moving along the bluff (surcharge loading) and seismic earthquake conditions. Removing the upper bluff stabilization improvements from the project in lieu of solely constructing seawalls would not address these concerns because the projected bluff failure planes are located well above the proposed height of the seawalls. As such, installation of only seawalls with a top of wall design height of 15 feet would not provide the necessary support to the tracks to allow trains to safely operate nor would it protect against strong ground-shaking during earthquakes.

Further, although the seawalls could be designed to be removed upon relocation of the tracks, thus limiting the duration of adverse impacts to beach access and recreation, those impacts would still be maximized compared to other project alternatives while the tracks remain in their current location.

Upper Bluff Only Alternative

Predominant use of upper bluff stabilization measures would minimize adverse project impacts to beach access and recreation, but would also result in installation of more permanent infrastructure that may not be able to be removed once the tracks are relocated and bluff stabilization is no longer necessary. Additionally, because the toe of the bluff would still be exposed to wave action, the bluff face below the areas receiving upper bluff stabilization would continue to be threatened by erosion. In the future, seawalls would still be necessary in these areas to protect the railroad until it can be relocated. As such, an “upper bluff only alternative” would result in more permanent infrastructure and would only delay the construction of seawalls.

No Project Alternative

As summarized in the alternatives analysis provided by SANDAG with its consistency certification, the coastal bluffs are continuously subject to coastal erosion over time and also have a history of episodic landslides and more significant surficial failures. While the average bluff retreat rate within the project area is estimated at a maximum of 0.4 to 0.6 feet per year, corresponding to approximately 15 to 18 feet of retreat over a 30 year period, recent history has demonstrated that large episodic bluff failures can result in more than 20 feet of bluff edge retreat in a single event. Many of the proposed project segments are already vulnerable to bluff instability (especially during an earthquake), at most of the remainder, bluff retreat of this magnitude would threaten the stability of the railroad before it can be successfully relocated inland and away from the bluffs. This

threat of continual erosion within the timeframe of relocating the railroad in conjunction with the threat of severe, episodic erosion events means that a “No Project” alternative, or failure to construct the stabilization features, is not a feasible alternative because it would not fulfill the project objective of providing safety and stability of the tracks for continued rail operations.

Combined Seawall and Upper Bluff Stabilization Alternative

The seawalls and upper bluff work proposed by SANDAG as part of its project have been designed to complement one another so as to minimize overall disturbance to the bluffs. This is important because as discussed previously, upper bluff improvements including piles, tieback anchors, and lagging would be difficult to remove and, in some locations, the process of removal could result in irreversible damage to the bluffs. The seawalls have been designed to be relatively removable once the tracks have been relocated. Lagging between seawalls would be removed and piles would be cut at the depth of the Del Mar formation. This would then allow the bluffs and adjacent beach environment to return to a more natural state. The toe protection provided by the seawalls would reduce bluff erosion and retreat and preserve the stability of the bluffs. In addition, the proposed seawalls would also limit the potential for the upper bluff stabilization infrastructure (subsurface piles and lagging) to be exposed and undercut, thus limiting their efficacy. Although the incorporation of seawalls into the project does not eliminate the need for associated upper bluff stabilization, it does mean that less upper bluff work is necessary to sufficiently support the railroad. With the inclusion of the proposed seawalls in its project, SANDAG was able to reduce from ten to six the number of tieback anchors for new upper bluff stabilization while also reducing the depth of lagging from 20 feet to five feet. The diameter of new piles for upper bluff stabilization was also reduced from 60 inches to 42 inches. For retrofit areas, the inclusion of seawalls also allows the scope of proposed upper bluff work to be minimized, reducing the number of proposed tieback anchors from 33 to 15 and the depth of lagging from 30 feet to five feet.

Conclusion

The proposed seawalls and upper bluff stabilization have been designed and selected to be the most minimal amount of development necessary to support the railroad until it can be relocated. Initially, SANDAG designed the project to include development that would have provided sufficient stabilization to support the railroad for 50 years. As a result of coordination with Commission staff, SANDAG was able to focus on only the most necessary seawalls and upper bluff stabilization to support the railroad for the next 30 years. Additionally, by incorporating seawalls into the project that would ultimately be able to be removed, SANDAG was able to minimize the amount of upper bluff stabilization work. Multiple alternatives were analyzed, but none were demonstrated to meet the project objectives of providing sufficient support for the existing rail line while also minimizing adverse impacts to coastal resources.

Alternatives to Recently Completed Emergency Repairs

As part of its proposed project, SANDAG also seeks after-the-fact authorization for two emergency repairs that began on March 13, 2021, one at MP 245.2 and another at Anderson Canyon. As of the date of Commission action the necessary engineering and

structural support work for the emergency repairs is complete and SANDAG has begun revegetation of the reconstructed slope. Although this work has already been completed, alternative approaches were also considered for it.

The emergency repairs at MP 245.2 were necessary after an existing 60 ft long, 17 ft high concrete seawall (originally constructed over 100 years ago) failed on February 28, 2021, resulting in a complete collapse of the seawall, a landslide in the artificial fill slope behind, and major tension cracking and incipient failure in the adjacent natural bluff. Immediate emergency repairs and slope stabilization were necessary to prevent further erosion and provide sufficient stability so that trains could continue passing through the area of the bluffs in a safe manner. Repairs included grading of the landslide area to an approximate 2:1 finish slope, installation of 18 CIDH piles with tieback anchors and grade beams at a distance of 11 feet from the existing track center, construction of a buttress, drainage improvements, and construction of a 290 foot long, five to 13 foot high tapered seawall with rip rap placed at both ends. Construction of the seawall required 53 soldier piles, spaced five to six feet apart, with wood lagging panels between them. Similar to the design of other existing seawalls in this area, once the tracks have been relocated and the wall is no longer necessary, the lagging between the piles would be removed, the piles would be cut off at the depth of the Del Mar formation, and the rip rap would be removed off the beach.

Prior to authorizing the emergency repairs at MP 245.2 Commission staff and SANDAG staff held multiple coordination meetings to discuss the proposed repairs and whether there were any feasible alternatives. Alternatives considered whether the repairs could avoid construction of the cement buttress and temporary seawall, and instead rely upon the grading of the landslide area and installation of CIDH piles at the top of the bluff. However, the proposed buttress was critically important to providing the necessary general slope stability to meet the factors of safety (FOS) necessary for track support and railroad operations. Additionally, the seawall was designed to protect the buttress from undermining. Without the seawall, the buttress would be susceptible to failure and collapse, similar to the initial failure that happened in February 2021. As an additional alternative, staff also discussed whether the overall length of the seawall could be shortened. However, the design of the seawall to extend approximately 25 feet beyond the extent of the failure was determined to be necessary to prevent undermining of the slope and failure of the area of repairs. Any shorter length of seawall would not provide sufficient toe protection and leave the area susceptible to another failure.

At Anderson Canyon, a visual analysis conducted on site, along with geotechnical and structural assessments, determined that the existing seawall was showing signs of possible collapse and required immediate repairs to prevent a failure similar to what happened at MP 245.2 To prevent such a collapse, SANDAG built a 161 foot long cutoff wall located 2.5 feet seaward of the existing seawall and installed weepholes along the length of the Anderson Canyon seawall to mitigate potential hydrostatic pressure. The constructed cutoff wall was constructed with 47 piles spaced 2.5 feet apart and a grade beam at the top of the piles. Removal of the seawall in the future would require cutting off the piles at the depth of the Del Mar formation.

One alternative explored whether the existing seawall could be removed, thereby eliminating the emergency altogether. The area behind the seawall is comprised of artificial fill material that is much more erosive than the native bluff. Removal of the seawall would expose the erosive bluff to failure which would threaten the railroad. Ultimately, SANDAG determined that foundation support of the existing seawall was necessary to protect the artificial fill slope until the tracks can be relocated off of the bluffs.

Mitigation

Public Access

Shoreline armoring or protection devices directly interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line (the boundary between public and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during storm events and the winter season. As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of rock revetments and seawalls to protect development fixes a boundary on the beach and prevents any current or future migration of the shoreline and mean high tide line landward, thus eliminating the distance between the high-water mark and low-water mark. As the distance between the high-water mark and low-water mark decreases, the seawall effectively eliminates lateral access opportunities along the beach as the entire area below the fixed high tideline is inundated. The ultimate result of a fixed tideline boundary (which would otherwise normally migrate and retreat landward, while maintaining a passable distance between the high water mark and low water mark over time) is a reduction or elimination of the area of sandy beach available for public access and recreation.

Shoreline protective devices can also result in a number of adverse effects on the dynamic shoreline system. First, changes in the shoreline profile (particularly changes in the slope of the profile which result from a reduced beach berm width) alter the usable public beach area. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions would have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass or recreate on. Second, a progressive loss of sand occurs as shore material is held in place and prevented from eroding, thus making it unavailable to nourish the nearshore sand bar. The lack of an effective sand bar can allow for such high wave energy on the shoreline that beach materials may be scoured and pulled so far offshore that they are no longer available to nourish the beach. This further affects public access through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. Further, if a seasonal eroded beach condition occurs with greater frequency due

to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the shoreline protective device is only acted upon during severe storm events, beach scour during the winter season would be accelerated because there is less beach area to dissipate wave energy.

Shoreline protective devices are all physical structures that occupy space. When a shoreline protective device is placed on a beach area, the underlying beach area cannot be used as beach. This generally results in a loss of public access as well as a loss of sand-generating area. The area where the structure is placed would be altered from the time the protective device is constructed, and the extent or area occupied by the device would remain the same over time, until the structure is removed or moved from its initial location. The beach area located beneath a shoreline protective device, referred to as the encroachment area, is the area of the structure's footprint.

When a shoreline or beach segment is developed with a shoreline protective device, the natural exchange of material between the back beach, dune systems, foreshore and intertidal region can all be interrupted. The natural shoreline processes affecting the formation and retention of sandy beaches can be significantly altered by the construction of shoreline armoring structures depending on where these devices are located on the beach and the site-specific geomorphological characteristics of the shoreline. There are effects that a shoreline protective structure has on a shoreline which can be quantified, including, (1) the loss of beach area on which the structure is located, (2) the long-term loss of beach which would result when the back beach location is fixed on an eroding shoreline (also known as passive erosion); and (3) the amount of material which would have been supplied to the beach if the back beach were allowed to erode naturally. The location and alignment of a shoreline protective device on a beach dictates the amount of material that would otherwise have been supplied to the beach seaward of the device. Thus, the Commission has generally found in past approvals of shoreline protective devices that the furthest landward location of a device is preferable to maximize the amount of sandy beach available for public access seaward of the device and to reduce impacts to the natural environments and natural sand exchange systems existing along a beach.

The seawalls included in SANDAG's project are proposed to be constructed at varying distances from the existing toe of the coastal bluffs (within 0 to 26 feet). The Commission typically requires seawalls to be constructed as close to the bluff toe as possible in order to minimize the area of beach encroached upon by the shoreline armoring. In the present case, the relatively large gaps between the seawall and bluff toe would be limited to areas in which pocket coves have formed at the toe of the bluffs and for integrity reasons, the seawalls are proposed to span these voids rather than to follow the contour of the bluff toe. The portion of the beach that would no longer be available for public use would be equal to the area of the footprint of the seawalls themselves plus any appurtenant development such as backfilling the space between the toe of the bluff and seawalls and regrading of slopes. All of the proposed seawalls would be constructed similarly by installing piles with wood lagging between the piles

The space behind some of these walls would be backfilled with riprap and fill would be placed behind the seawalls at a slope ratio ranging from 5:1 to 2:1 (H:V). According to the project materials provided to Commission staff by SANDAG, the proposed seawalls would on average be two and a half feet wide and their total length would be 2,151 feet (among six individual seawalls between 48 and 814 feet long). In addition, the project includes the after-the-fact authorization for the seawalls constructed at MP 245.2 and Anderson Canyon (292 feet and 161 feet, respectively). Therefore, the total length of seawalls included in the proposed project, including those for which SANDAG is seeking after-the-fact authorizations, is 2,543 feet⁷. SANDAG has calculated that the total area of existing sandy beach that would be immediately lost from the direct occupation of the seawalls would be 5,955 square feet. As described previously, due to the steepness of the bluff face behind some of the seawalls, the project also includes regrading the slope of the bluff and backfilling the space behind the seawalls with riprap and fill. The area of backfill varies depending on specific site circumstances, but SANDAG calculated the beach area behind the seawalls lost due to grading and backfilling to be an additional 11,193 square feet. Added together, the footprint of the shoreline protective structures plus the area of backfill would total 17,149 square feet.

As stated by SANDAG in its consistency certification, the bluff retreat rate within the project area can be characterized as follows:

The average bluff retreat rates in the study area are estimated at a maximum of 0.4 to 0.6 feet per year. This corresponds to a retreat of approximately 15 to 25 feet over a 30-year to 50-year timeframe assuming the bluff will retreat at an average rate of 0.5 feet per year (Leighton Consulting 2020). South of 4th Street, a lesser bluff retreat has been observed; therefore, an average bluff retreat rate of 0.4 feet per year is assumed for the design and analysis of the bluff stabilization measures in that area, while 0.5 feet per year is used north of 4th Street.

Thus, in addition to the loss of public sandy beach area from the direct occupation of the seawalls and backfill, since the back of the beach would be effectively “fixed” by the proposed seawalls, they would also result in a loss of beach area for public use landward due to the elimination of area that would have become available for public use had the bluffs continued to erode and move landward. Given the average bluff retreat rates of 0.4 to 0.6 feet per year, and SANDAG’s proposed design life of 30 years for the seawalls (memorialized through **Condition One** which would limit the term of their authorization to that period), their presence would result in the expected loss of another 32,417 square feet of beach that would otherwise be available for public use. Therefore, over a 30 year period, the proposed seawalls would result in the loss of 49,566 square feet (footprint plus backfill plus erosional loss) of area that would otherwise have been sandy beach available for public access and recreation.

⁷ Although one of the emergency repair projects included a new 290 foot long seawall, it was installed to replace a previously existing 60 foot long seawall that failed in a portion of the same location. Thus, the length of previously unoccupied beach was slightly less, 230 feet.

Included as part of the proposed drainage improvements, the project calls for the removal of an existing concrete drainage chute in the area of 12th Street that has existed at the site since the early 1900s. SANDAG has determined that the chute is heavily deteriorated and beyond repair. In this area, drainage improvements include replacing the existing deteriorated chute with a new reinforced concrete pipe outlet to collect stormwater flows and channel the water down to the beach and out to the ocean. The existing chute would be removed from the beach and the beach surface would be regraded to match the surrounding area. The chute occupies an area of approximately 230 square feet and because removal of this structure would open up an area of the beach that is currently unavailable, the removal of the chute is credited to offset a part of the 49,566 square feet of beach area that would be lost as a result of the proposed project. With that credit the total amount of beach area lost would be 49,336 square feet or 1.13 acres.

The most obvious in-kind mitigation for this impact would be to create a new 49,336-square-foot area of beach/shoreline to replace what would be lost with an identical area of beach/shoreline in close proximity to the eliminated beach/shoreline area. While in concept this would be the most direct mitigation approach, in reality, finding an area that can be turned into a beach and ensuring it does so appropriately over time is very difficult. Both Commission staff and SANDAG have determined that no such opportunities are available in the project area. The calculations of the affected area do, however, provide an appropriate relative scale for evaluating commensurate alternative mitigations. In the past, the Commission has looked at several ways to value such beach and shoreline areas in order to determine appropriate in-lieu mitigation fees, including the real estate value of the land that will be taken from public use. As noted in the Commission's adopted findings in support of its 2019 concurrence with SANDAG's consistency certification for the Del Mar Bluff Stabilization Project 4, "The Commission has found using a real estate value method as a basis for identifying mitigation allows for objective quantification of the value of beach and shoreline area, and is related in both nature and extent of the impact. This method requires an evaluation of the cost of the land that could be purchased and allowed to erode and turn into beach naturally to offset the area that will be lost due to the revetment." Included in the Commission's findings for CC-0004-18 is a discussion of a per square foot in lieu fee rate of \$170 per square foot. This rate was derived as an average of rates considered as part of the Commission's review of several CDP applications from San Diego County between 2005 and 2012⁸. Over the subsequent 10 to 17 years, however, the real estate value of coastal property in San Diego County has significantly increased. More recent years have also seen sharp increases in inflation as well. As such, an in lieu fee rate of \$170 per square foot is not reflective of current values. However, for the purpose of comparison, use of a beach recreation value of \$170 per square foot and the estimated loss of 49,566 square feet of beach (seawall area plus backfill area plus area that would be created if erosion continued) would result in a beach recreation mitigation fee of \$8,387,103 for the proposed seawalls associated with this project. For the proposed project, however, calculation and payment of an appropriate in lieu fee would not be

⁸ CDP 6-05-072 (Las Brisas, Solana Beach, San Diego County), CDP 6-07-133 (Li, Encinitas, San Diego County), CDP 6-12-041 (Lampl, Encinitas, San Diego County)

necessary because SANDAG has instead proposed to implement a capital improvement project that would directly offset the adverse impacts to coastal access and recreation on the beach due to the proposed seawalls by implementing a capital improvement project to expand and enhance the informal lateral access trail between 4th Street and Seagrove Park and constructing a designated pedestrian rail crossing and beach accessway at either 7th Street or 11th Street. This proposal to directly compensate for adverse impacts to coastal access and recreation through implementation of access and recreation improvement projects rather than payment of an in-lieu fee is aligned with the approach accepted by the Commission in its concurrence with SANDAG's consistency certification for the Del Mar Bluffs Stabilization Project 4 in 2019 (CC-0004-18).

Retention of Potential Beach Material

Some amount of beach material would be added to the beach from the bluffs throughout the project area if the natural erosion process were allowed to continue (absent the proposed reconstruction of the new seawalls). The total volume of material that would have gone into the sand supply system over the lifetime of the shoreline structures would be the volume of material between (a) the likely future bluff face location with shoreline protection; and (b) the likely future bluff location without shoreline protection. Since the main concern is with the sand component of this bluff material, the total material lost must be multiplied by the percentage of bluff material which is beach sand, giving the total amount of sand which would have been supplied to the littoral system for beach deposition if the proposed device were not installed.

The Commission uses an established methodology to calculate this impact:

$$V_b = (R \times L \times W \times H \times S) / 27$$

V_b is the total volume of sand in cubic yards

R is the bluff retreat rate in feet per year

L is the design life of the armoring project in years

W is the width of the armored area in feet

H is the height of the armored bluff in feet

S is the percent sand (in decimal form) of the bluff materials

The bluff stabilization would, over the 30-year life of the project, retain approximately 27,850 cubic yards of bluff material from the bluffs. SANDAG determined that this material had an average sand content of 64% which would equal 17,824 cubic yards of sandy material⁹. Based on a cubic yard cost of \$17¹⁰ the sand loss mitigation in-lieu fee would be \$303,015.

Alternative Mitigation

As detailed above, the shoreline protective work would result in the loss of 49,336

⁹ Based on the mitigation proposal submitted by SANDAG on March 24, 2022.

¹⁰ SANDAG derived this cost from the findings of CDP No. 6-16-0281 (Winkler, Solana Beach, San Diego County). 17\$ per cubic foot may not be reflective of the current cost of sand and may represent a conservative estimate.

square feet of public sandy beach and 17,824 cubic yards of sandy material. The most appropriate mitigation for this loss of public sandy beach and sand would be to provide a new public sandy beach area of the same size, which affords the same recreational opportunities in the immediate vicinity of the site for the 30-year duration after which the tracks are anticipated to be relocated and the shoreline protective devices can be removed. However, such opportunities rarely exist, and in this case, neither the Commission nor SANDAG is aware of any equivalent private beach area in San Diego County available for purchase. Alternatively, an in-lieu fee could be required or one or more projects implemented to provide or enhance public access and recreation within the project area. For the proposed project, SANDAG has proposed mitigation approach with input from Commission staff and would involve implementation of a capital improvement project to expand and improve public access and recreation in the project area. This capital improvement project would include the planning, design and environmental review and then construction of three significant coastal access and recreation features. These would include a designated pedestrian railroad crossing at either 7th St. or 11th St., a beach accessway from the bluff top to the beach below and enhancement and formalization of the existing informal blufftop trail between 4th St and Seagrove Park. These three coastal access and recreation improvements, particularly the rail crossing and beach accessway, were selected to address longstanding deficiencies and priority needs for the project area. Although members of the public have been crossing the tracks outside of a designated crossing and accessing the beach through steep informal trails for many decades, a designated crossing and more formalized beach accessway would expand and improve this use. Typically, only a smaller group of public beach users have been comfortable with this type of informal coastal access. Because of the local and regional importance of Del Mar's beaches and coastal waters for coastal recreation, these improvements would likely allow for a wider range of public to use these areas, thus benefiting a large segment of the public, including underserved communities from outside the project area.

Conceptual plans for these three access and recreation improvements are currently being developed in the ongoing Coastal Connections Study. The approach being taken with the study is to identify several options for each of the three access and recreation improvements. For example, although SANDAG has only committed in its proposed capital improvement project to construct a single pedestrian rail crossing in the project area, concepts are being developed for under-, over-, and at-grade rail crossings at both 7th and 11th Streets. Similarly, although SANDAG's capital improvement project would include a single beach accessway, conceptual designs are being developed for both 7th and 11th Streets. The current concepts for 11th Street include an ADA-compliant ramp system, an improved trail and stairway combination or a simple enhancement of the existing informal trail (installation of simple erosion control features such as water bars and individual steps) to help make it usable by a wider range of the public.

This study is being carried out as part of the package of coastal access and recreation mitigation commitments made by SANDAG in 2019 during the Commission's review of the Del Mar Bluffs Stabilization Project 4 (Consistency Certification No. CC-0004-18). However, because the study has extended well past the February 2022 deadline

committed to by SANDAG as part of that consistency certification, these conceptual designs are only partially complete. In addition, the public and stakeholder outreach portion of the study – during which community preferences and potential concerns with the concepts would be identified - has yet to begin. Because of this, SANDAG has stated that it is unable to identify the specific locations and designs of the access and recreation improvements that it would ultimately include in its capital improvement project.

However, to help expedite and streamline construction of that capital improvement project, Commission staff have provided in this report a Coastal Act consistency analysis of several of the conceptual designs that have been developed. Commission staff have additionally committed to support SANDAG's efforts to secure funding to complete its capital improvement project (for example, through letters of support for grant applications). While some of the more complex concepts (such as the ADA-compliant ramp system) are not yet advanced or refined enough to allow for a full analysis, some of the other concepts have been more completely developed or are simple enough for Commission staff to evaluate and the Commission to consider.

This evaluation is being done in advance of the completion of the ongoing planning, design and outreach work of the study but would not replace or pre-judge the outcome of that necessary work. Instead, the idea is that by completing the Coastal Act evaluation now of those design concepts and options for coastal access and recreation improvements that can be evaluated, SANDAG would not need to go through additional Commission review if, once the study is complete, it selects an option that the Commission has already found to be consistent with the Coastal Act. By providing advance Commission review in this way, construction of the access and recreation improvements may be expedited and streamlined.

However, SANDAG would also retain its full ability to instead decide, at the completion of the Coastal Connections Study process, to pursue an option that the Commission has not already vetted in this report. Under this scenario, SANDAG would need to go through the process of seeking Commission concurrence prior to construction. Because the Commission is reviewing the proposed project through the federal consistency process as a consistency certification, the process that would be followed for that future Commission review is laid out in Section 930.65 of the federal consistency regulations. As established through Commission review of past projects under Section 930.65 that involved modifications to previously reviewed consistency certifications (such as NE-0001-19 for modification to Consistency Certification No. CC-0004-15), the Commission would consider if the change would cause the project to have an effect on any coastal use or resource substantially different than originally described and, as a result, would no longer be consistent with the Coastal Act. If the change is determined to not be substantially different and is still consistent with the Coastal Act, the project and proposed change would be allowed to proceed. If the change is determined to be substantially different and no longer consistent with the Coastal Act, Commission staff would work with SANDAG to identify modifications or

alternatives that could be implemented to achieve consistency and then bring them to the Commission for its consideration.

It should be noted that as part of its concurrence with SANDAG's consistency certification for the Del Mar Stabilization Project 4, the Commission made a significant effort to prepare for the current project and the anticipated adverse impacts to coastal access and recreation associated with it. This preparation included requiring commitments by SANDAG to engage in advance coordination with Commission staff and to fund and complete a coastal access needs study for the project area. In addition, Commission staff identified specific projects that would provide appropriate offset for loss of public access and recreation opportunities. The following is an excerpt from the relevant section of the Commission's findings for the Del Mar Stabilization Project 4 (Consistency Certification No. CC-0004-18), a project that involved installation of approximately 630 linear feet of seawalls in the project area:

The proposed project's impacts to sand supply and associated beach recreational values/use over the 30-year timeframe will lead to a loss of over 9,950 square feet of beach and over 15,750 cubic yards of sand, both finite and important coastal resources. Based on the above methodology the case could be made that SANDAG should be required to pay a total in-lieu-fee of approximately \$979,625 to offset project impacts. The Commission staff has been engaged in extensive discussions with SANDAG, following consideration of the type of mitigation requirements in the previous paragraphs and understanding that using such methodologies would involve levels of funding from SANDAG that are not currently available and would involve a very large percentage of the actual project costs. Through these discussions the Commission staff and SANDAG have attempted to identify some alternative forms of offsetting and providing an equivalent public access improvement package. These considerations have also attempted to take advantage of the fact that significant levels of funding would be necessitated, and likely available for long-term planning efforts for the rail line. Thus, the Commission has endeavored to identify compensatory mitigation in terms of public access value to offset impacts to coastal resources from proposed reconstruction of the existing retaining walls at the toe of the bluffs, while ensuring that SANDAG allocates financial resources both to short-term public access improvements and relocation of the railroad off the bluffs.

When the Commission staff informed SANDAG of the \$979,625 mitigation fee for the proposed project, it also suggested that a package of public access and/or recreation improvements in the Del Mar area could also serve to mitigate for project impacts to sand supply and recreation. Commission staff suggested that constructing a legal pedestrian crossing of the trackway on the bluffs and a connecting pathway or stairway from the bluff top down to the beach would significantly improve public access to the shoreline in the southern half of Del Mar. SANDAG replied that such a crossing would raise significant safety issues with the North County Transit District (owner of the railroad right-of-way) and the California Public Utilities Commission. SANDAG also provided Commission staff with a list of

potential coastal access and recreation projects in Del Mar that are currently under consideration by public agencies. Subsequently, in December 2018 SANDAG proposed to include in its consistency certification two additional public access improvements:

Powerhouse Park/Walkway Lighting. Install pathway of lighted bollards from street parking to Powerhouse Park to facilitate public access and safety during darker hours of the day. Project is construction ready – SANDAG proposes to include this project in our consistency request to help improve coastal access in the area.(Exhibit 24)

Eroded Gully near Carmel Valley Road and Highway 101 Intersection. SANDAG proposes to fill in this gully to improve pedestrian safety and access to this area as well as stabilize the area to prevent further erosion. Fill placed in this gully will be similar to the areas around the gully to ensure there are no negative visual impacts to the area.(Exhibit 25)

SANDAG also noted in this proposal that its consistency certification includes components that directly repair and improve public access and safety in the project area...

The Commission staff agreed that the two additional public access improvement projects are a positive addition to the consistency certification. However, the staff informed SANDAG in January that additional measures were needed in order to find that project effects on sand supply and beach recreation area were adequately mitigated. The staff proposed the following additional measures:

1. SANDAG will organize and participate in a comprehensive study with NCTD and the City of Del Mar to identify long-term public access improvements in Del Mar along with potential funding sources for those improvements. Within three years of Coastal Commission concurrence with CC-0004-18, SANDAG will submit the completed long-term access plan to the Commission staff. SANDAG will keep Commission staff informed about details of the study partners, organization and timelines, objectives, and funding sources. Commission staff will provide assistance to SANDAG in identifying potential sources of funding for the study and will provide comments on the study organization and objectives when those elements are available.
2. SANDAG commits to work with the Commission staff during development of the Del Mar Bluffs 5 program for seismic stability and drainage improvements (and subsequent Del Mar Bluffs stabilization consistency certifications, currently expected to be developed approximately every 5 years) in order to identify appropriate mitigation measures if required, prior to submittal of future consistency certifications. These measures could include coastal access improvements, recreation improvements, sand supply

mitigation measures, and/or funding for those measures that may be required for future Del Mar Bluffs stabilization projects.

3. SANDAG commits to include the aforementioned long-term public access plan and an updated and more detailed sea level rise vulnerability assessment (using the Commission's most recent sea level rise forecasts) for the railroad corridor in the Del Mar Bluffs 6 program consistency certification, which is planned to address future sea level rise.

On January 18, SANDAG agreed to incorporate the above measures and commitments into the subject consistency certification.

The Commission finds that the current project now includes numerous repairs and improvements to public access ways on the Del Mar Bluffs that will facilitate safer public use of coastal paths and viewpoints. SANDAG has committed to develop a long-term public access improvement plan, to coordinate with the Commission staff in the planning for future stabilization measures (including necessary and funded mitigation measures) through the federal consistency process, and to prepare an updated sea level rise vulnerability assessment for the Del Mar Bluffs 6 program. The public access plan to be developed in coordination with the City of Del Mar and the NCTD will provide the Commission with needed and valuable information to assist in future efforts to improve public access to and along the shoreline both in the Del Mar Bluffs project area and the City of Del Mar as a whole. The Commission also continues to strongly encourage SANDAG to undertake the necessary planning efforts needed to advance the relocation of the railroad off the Del Mar Bluffs, including the identification of funds for planning, design, engineering, and environmental studies. In conclusion, the Commission finds that the agreed-upon package of access improvements and repairs, the long-term public access plan, and the coordination commitments is an appropriate, more timely, and more valuable mitigation package for the sand supply and public recreation impacts associated with the proposed project, in particular, the reconstruction of the retaining walls at the toe of the bluffs.

Unfortunately, however, the first two commitments described above were not met by SANDAG. It delayed development of a mitigation proposal until well into the Commission's review period rather than to coordinate on it with Commission staff proactively. Progress on the coastal access study was also significantly delayed, with a tentative completion date of fall 2022 rather than the February deadline discussed above (within three years of the Commission's concurrence). These delays and the inherent logistical challenges associated with the coastal access improvements (a rail crossing, beach access route down the bluffs, and a blufftop trail) in the project area have resulted in significant uncertainty and outstanding design and planning work around the key elements of SANDAG's mitigation proposal. Commission staff have nevertheless worked diligently to address these issues and collaborate with SANDAG on an approach that would help increase the certainty and expedite the timeline for implementation of its mitigation projects. This approach includes the capital

improvement project SANDAG has proposed – memorialized through **Condition Two** which establishes the scope of the project and sets deadlines for both initiation and completion of construction for the access improvements – as well as Coastal Act analysis in this report for several of the improvement projects that SANDAG may decide to pursue. Specifically, enhancement and expansion of the informal north south trail on the landward side of the tracks between Seagrove Park and 4th Street, an at-grade rail pedestrian rail crossing and improvement of an informal beach access trail near the end of 11th Street.

Hazards Analysis of Public Access and Recreation Improvements

Due to the location of the blufftop trail and the at-grade railroad crossing at the top of the bluff and behind the project stabilization features, they will not be threatened by hazards during the permitted life of this project. Because they are an integral part of, and mitigate for the impacts of, the bluff stabilization project, the Section 30235 and 30253 consistency analysis for the overall project applies to these portions of the project as well. However, per **Condition One**, which limits the authorization for the shoreline protection measures to 30 years, and authorizes it only for the protection of the existing railway, those protection measures are not authorized to protect the accessways after the railroad is removed. At the time that the stabilization measures are planned for removal, the Commission will likely need to assess whether the accessways can remain stable without armoring, whether they need to be removed as well, or whether there is another solution to allow them to remain.

The beach accessway considered in this report would be located in an area between the upper bluffs and the beach level near the end of 11th Street which means it is possible that this improvement could be directly impacted by hazards. The beach accessway would be comprised of an eight-foot-wide decomposed granite path tied into a landing on a section of existing seawall or directly behind it. This beach accessway would follow the alignment and footprint of an existing informal vertical accessway and would involve enhancing and improving it so that it can more safely provide beach access for a wider range of the public. To carry out these enhancements, construction personnel would use machinery or hand tools to do limited grading and widening of the trail surface and steps would be molded into the bluff base material using techniques such as railroad ties secured in place with rebar stakes. Next, a decomposed granite base or similar surfacing material would then be applied and compacted over the graded trail surface area and running boards with water boards would be secured along the border of the trail to help hold the trail and bluff slope material together.

The trail would be located within the bluff face immediately landward of a seawall being proposed as part of this project and also an existing seawall that was retrofitted in consistency certification CC-0004-18 (approved by the Commission in February 2019). Both seawalls have been designed and analyzed to ensure they would provide sufficient protection of the bluff face and would be monitored and maintained as part of SANDAG's ongoing maintenance program. As such, the access trail located behind these seawalls would be safe from hazards for the authorized term of the project seawalls – i.e 30 years. The ultimate plan for the Del Mar bluffs includes relocation of the tracks and removal of seawalls which would mean that protection being provided by

the walls would no longer be afforded to the beach accessway. However, the accessway would not involve the construction of any concrete foundations, piles, or other structures that could not be easily removed if threatened in the future by coastal hazards. The location of the beach accessway behind the seawalls would assure stability while designing the accessway as a low-impact decomposed granite pathway requiring little to no structural support. This would minimize risks to property while also not contributing to erosion or destruction of the site in the event that the accessway needs to be relocated while the railroad and armoring is removed.

Long Term Stability and Maintenance

Coastal Act Section 30253 requires the project to assure long-term stability and structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future. For the proposed project, the main Section 30253 concern is assuring long-term stability. This is particularly critical given the dynamic shoreline and coastal bluff environment in which the project is located. Critical to the task of ensuring long-term stability, as required by Section 30253, is a formal long-term monitoring and maintenance program. If the project components, including the public access and recreation improvements, are damaged in the future (e.g., as a result of slope failure or wave action) it could lead to degraded public access along the bluff top and to the shoreline. In addition, such damage could adversely affect nearby beaches due to debris on the beaches and/or creating a hazard to the public using those beaches. Therefore, in order to find the proposed project consistent with Coastal Act Section 30253, the project must be maintained in its approved state.

Further, in order to ensure that SANDAG and the Commission know when repairs or maintenance are required, SANDAG must regularly monitor the condition of the project components, particularly after major storm events. Such monitoring would ensure that SANDAG and the Commission are aware of any damage to or weathering of the project components, and can determine whether repairs or other actions are necessary to maintain the components in their approved state before such repairs or actions are undertaken.

Previous SANDAG consistency certifications for Del Mar Bluffs trackway stabilization measures (CC-020-10 and CC-0004-18) incorporated numerous measures regarding maintenance and monitoring of components, including: (1) visual treatment plans for exposed soldier piles and grade beams; (2) annual monitoring and reporting (including to the Commission) on the status of stabilization structures, and following major storm events or earthquakes; (3) coordination with the City of Del Mar; (4) future stabilization measures needing additional federal consistency review; and (5) Commission review of the status of stabilization measures and structures at the end of their design life and/or in the context of railroad relocation planning.

SANDAG has agreed to incorporate these same measures into the subject consistency certification. SANDAG has also confirmed that it would include in these efforts monitoring of the shoreline protective devices over the authorized life of the development. This would ensure that SANDAG and the Commission would be made

aware of any damage to or weathering of the project components. This would also provide for consultation between SANDAG and the Commission to determine whether repairs or other actions are necessary and what type of federal consistency review may be needed for repair actions.

In recent CDPs regarding other critical infrastructure, such as at Piedras Blancas in San Luis Obispo (CDP No. 3-13-012) and at Gleason Beach in Sonoma County (CDP No. 2-20-0282), the Commission allowed temporary armoring to protect the threatened, existing highway structures for an interim period of time until the structures could be relocated, reconfigured or otherwise adapted for resiliency into the next century. Under this approach, the CDPs then directed that, depending on the most environmentally-preferred adaptive alternative selected, either the temporary armoring would be removed to restore coastal processes along the shore or the environmentally preferred alternative would advance another shoreline protection reuse strategy in ways that are consistent with Coastal Act policies. This approach both ensures that infrastructure public services are maintained and that coastal resources are protected over the long-term. Moreover, such phasing adaptation strategies can allow for the planning time needed for development of longer-term adaptation strategies.

SANDAG is in the process of planning to relocate the railroad within thirty years and the stabilization and retrofit improvements included in the project have been designed around that thirty-year timeframe. Thus, **Condition One** limits the term of authorization for the approved development to thirty years and requires that SANDAG submit a consistency certification to the Commission by December 8, 2051 for a long-term solution including removal of any project components that are no longer necessary. The development, design, and analysis of alternatives for large infrastructure projects such as the inland relocation of the rail corridor require considerable time and funding to plan and implement. As such, this 30-year authorization period is appropriate in order to allow SANDAG to protect the railroad in the near-term while also providing sufficient time to plan for relocation.

In summary, given the identified geologic instability and wave runup, currently as well as in the future from storm surge and sea level rise, all of which threaten the structural integrity of the site, the Commission finds that the existing rail line (originally constructed prior to the enactment of the Coastal Act) is in danger from erosion and that the proposed shoreline protective devices are necessary to protect it. The proposed project is the least environmentally damaging feasible alternative, with no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment. Therefore, the Commission finds that the proposed shoreline armoring, as conditioned, is consistent with Sections 30235, 30253, and 30270 of the Coastal Act.

G. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act 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.

Section 30212 of the Coastal Act states (in part):

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby...

(b) For purposes of this section, "new development" does not include:

...

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

Section 30213 of the Coastal Act states (in part):

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

Section 30214 of the Coastal Act states (in part):

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Sections 30211, 30213 and 30221 require new development to not interfere with existing public access and recreation opportunities, including those that are lower cost. Section 30210 requires the provision of maximum public access and recreation. Sections 30212 and 30214, recognize the need to consider public safety, topography, site geography, natural resources, and adjacent residential uses when providing public access.

History and Current Conditions Regarding Access and Recreation

The project shoreline area in the City of Del Mar is commonly referred to as South Beach, which extends from Powerhouse Park south down to Torrey Pines State Beach. Public parking for access to the blufftop and beach is available at Powerhouse and Seagrove Parks and on public streets near the west end of 13th through 6th Streets. On the blufftop, a historic network of informal pedestrian trails paralleling the railroad track provide informal access along the bluff, and two informal trails also go down the face of the bluff to the beach. As detailed in **Appendix C**, a variety of horizontal and lateral coastal access trails have been present in the project area since the rail line first came into use in 1910. A rail overcrossing was also historically present west of 10th St. between the 1930s and early 1970s. This overcrossing connected to a series of informal lateral trails along the bluff edge as well as a vertical trail down to the beach at 11th Street. This vertical overcrossing was removed sometime between 1932 and 1972.

Despite frequent and long-term public use, it is important to note that the rail operator and holder of the right-of-way upon which many of these trails are located, North County Transit District (NCTD), does not recognize the informal trails in the project area as providing legal access. SANDAG's consistency certification describes the situation this way:

The Proposed Action . . . would mostly occur within an existing ROW and would not affect legal beach access. While some improvements would be constructed on the beach outside of the rail ROW, legal access routes would be maintained during construction. NCTD's existing, safety-driven prohibition on public access along its ROW may be more strictly enforced during construction because of the increased presence of NCTD staff during this period. This temporary change would not have a significant effect on, or be inconsistent with, Coastal Act policies regarding beach access.

This is the same manner in which NCTD and SANDAG have described the situation in past Del Mar bluffs stabilization CDP and CC actions before the Commission. In those actions, the Commission found that construction-related access impacts would be temporary and informal public access on the bluff would be made safer due to proposed

bluff stabilization and drainage measures; however, some of the projects nevertheless led to permanent adverse impacts to beach recreation and sand supply. Although the scale of adverse impacts is larger for this project than past projects, the Commission takes the same overall approach here, and construction-related and permanent impacts to access and recreation are described separately below. As also discussed further below, SANDAG's proposal for mitigating the project's adverse impacts to coastal access and recreation would help resolve rail-related safety concerns that have been raised by NCTD because the access projects would formalize and enhance the existing trail network (thus encouraging the public to use a single formal trail rather than the current network of informal trails) and construct an authorized and designated pedestrian rail crossing and beach accessway. By providing a designated pedestrian rail crossing, the public would be provided with an opportunity to cross the tracks in a more controlled and managed manner than currently available.

The analysis below also discusses impacts to both recreation and access, which are interrelated concepts. Access is the mechanism by which the public is able to either get to, or enjoy, a particular recreational resource. Without access, the public would not be able to recreate. Conversely, recreational activities and experiences are the driving force for the need to develop access. Without a recreational draw, there is less demand for access to a particular area. In Del Mar, both the beach and the views from the coastal bluff are major recreational attractions for the public, but without trails, the public would not be able to access these resources. As described below, the proposed project would have adverse impacts both on access and recreation and the capital improvement project SANDAG has proposed as mitigation would provide not just a benefit to coastal access but to coastal recreation as well.

Construction Effects on Access and Recreation

The project would consist of new upper bluff stabilization structures, new seawalls and changes to bluff slopes, installation of new and retrofit drainage infrastructure, access road improvements, and after-the-fact authorization for emergency stabilization efforts. Construction of these features would affect coastal access and recreation. In addition, installation of potential components of the capital improvement project may also affect access and recreation, including augmentation of the existing informal coastal access in the area through enhancement of the blufftop trail, installation of an at-grade crossing and lateral beach accessway. Construction of the various components would require heavy machinery including drilling rigs, cranes, forklifts, excavators, and heavy-duty trucks, as well as staging areas for the construction equipment. These activities have the potential to result in adverse impacts to coastal access and recreation through the use of public parking areas for project materials and vehicle staging and storage, as well as blocking or impeding access at discrete work sites on bluff and beach areas. Project construction could also disrupt train schedules. These adverse impacts are more significant than for past projects in part because of the length of time that construction activities would take place.

Staging and access for the proposed project are described by SANDAG in its consistency certification as follows:

Potential construction entrance areas would be located near the northern project limits at Coast Boulevard, at the termini of 8th Street and 7th Street, and near the southern project limits at Torrey Pines State Beach. These entrances would provide construction access along the east and west sides of the railroad tracks within the project limits using existing NCTD maintenance access roads. A temporary rail crossing would also be provided at 7th Street to allow construction vehicles to cross the tracks to access construction areas and staging locations. Potential construction staging areas could be located at the following locations:

Staging Area 1 – Adjacent to the Coast Boulevard construction entrance west of the tracks

Staging Area 2 – Terminus of 12th Street east of the tracks

Staging Area 3A – West of the 8th Street construction entrance west of the tracks

Staging Area 3B – Adjacent to the 8th Street construction entrance east of the tracks

Staging Areas 4 – Near MP 245.2 west of the tracks

Staging Area 5A and 5B – Adjacent to the southern construction entrance near MP 245.7

Potential construction entrances for access to work areas on the beach include the west end of 18th Street and 17th Street next to the lifeguard station at the north end of the project limits and through the Torrey Pines State Beach access road at the south end of the project limits. Use of the beach access would be subject to tidal influences. In addition to the construction staging and laydown areas within the railroad ROW, portions of the Torrey Pines State Beach parking lot (up to 40 spaces), City owned lot at the end of 18th Street, and City streets could be used for additional staging and laydown subject to permits from the City of Del Mar and/or California State Parks.

Construction of soldier piles as part of the proposed railroad stabilization and stabilization retrofits would require drilling rigs and other equipment on or immediately adjacent to the railroad tracks, which would create a potential safety conflict with rail operations. To avoid these safety issues, night work is proposed for soldier pile construction which would generally occur over a period of five hours each weeknight between the last passenger train in the evening and the first passenger train in the morning (12:00 a.m. to 5:30 a.m.). This timeframe could be expanded from 9:30 p.m. to 5:30 a.m. if buses are available to shuttle passengers around the Del Mar Bluffs and allow trains to be offline longer. Other project components including surface stabilization, bluff toe protection, and drainage improvements, which are not as limited by conflicts with trains would take place throughout the day. The construction of

seawalls would be affected by high tides, waves, and storm surf and could not take place during periods with these conditions. Construction of the drainage improvements and retrofits would take place during regular day time hours but would not be completed during the rainy season.

In total, project components are anticipated to require 36 months (three years) of work to complete. Construction of the upper bluff stabilization components is expected to take 24 months. Construction of seawalls is anticipated to take approximately 24 months. Drainage improvements would require approximately 12 months to complete. Implementation of the capital improvement project (discussed further below) to construct the coastal access features (blufftop trail, rail crossing and beach accessway) is anticipated to take an additional 24 months. Some of the proposed work, however, could occur concurrently to shorten the overall construction duration. The project schedule would also include the option of absolute work windows (AWWs) which would allow work to take place during weekends when necessary. There would be up to six AWWs authorized per year, for a total of 18 AWWs over the three-year project timeline. The contractor selected by SANDAG to do the construction would not be required to use the AWWs but could exercise the option of using an AWW depending on scheduling and how the project progresses.

In reviewing SANDAG's previous consistency certifications for construction of similar types of stabilization improvements along the Del Mar bluffs, the Commission analyzed how project activities would result in temporary impacts to public access and recreation on the bluff top and at the base of the bluffs. In those projects, the Commission found that because the project construction schedule was relatively short (six to nine months) and would avoid the peak summer recreation season, any temporary impacts to access and recreation would not be significant. In the case of the subject consistency certification, although the project proposes to use the same staging areas as previous projects within the bluffs and includes similar construction methods, the duration and timing of construction is significantly longer and would thus result in greater adverse impacts.

Instead of six to nine months, the subject project is anticipated to require a total of 36 months (or three years) to complete. Project construction would occur year-round, but any work that requires construction on the beach would be avoided on holidays or holiday weekends. The timing of construction of the various components would depend on which can be conducted during active rail use. Construction of the various components could take place individually, or concurrently, depending on site-specific constraints and scheduling. The difference between this project and previous bluff work represents an approximately four-fold increase in construction duration that would extend over as many as three summer seasons. Considering the type of heavy-duty construction required for the project and inherent safety concerns that come with active rail use and operation of heavy equipment and machinery, the project would likely need to limit or restrict public access and recreation within, and in areas adjacent to, project sites during construction for safety. As such, access on the bluffs and beach would likely be somewhat restricted and the recreational experience degraded throughout all

or portions of the project area for approximately three years, or potentially longer for impacts related to construction of the new access trail improvements that may be selected for inclusion in the capital improvement project, as further described below.

Additionally, while previous SANDAG bluff stabilization projects were scheduled outside of the high beach-use summer months, SANDAG is not committing to avoid summer months for the proposed project or to change construction timing or implementation so as to accommodate the increased access and recreation during summer. This means that restrictions to access and recreation would be even greater during the summer when there will be larger numbers of visitors attempting to recreate along the bluffs and on the beaches within Del Mar.

In response to questions from Commission staff regarding access restrictions and enforcement, SANDAG staff indicated that: (1) the NCTD safety-driven prohibition on public access would include installing temporary, flexible construction fencing around active construction sites; (2) this fencing would prevent the public from passing directly through a construction zone, but would still generally allow the public to move laterally and vertically within the bluffs area and on the beach; (3) in cases where the public still manages to pass through the fencing and into a construction zone, workers would redirect the public back out of the construction zone; and (4) no law enforcement or private security guards would be onsite to manage public access and construction.

While the proposed project would make use of some of the same staging areas and implement similar safety restrictions as previous bluffs work, the proposed project is significantly greater in terms of scope, area, and duration and may therefore have more substantial impacts to access and recreation during construction. Since the project includes components located throughout the bluffs and along the beach, as well as staging areas above the bluffs, these construction impacts have the potential to disrupt access and recreation within the Del Mar Bluffs and Del Mar Beach for approximately three years through the displacement or temporary loss of public beach parking, beach areas and other access and recreational assets.

Stabilization Infrastructure Effects on Access and Recreation

The proposed project would result in the loss and displacement of coastal access and recreation resources such as beach areas due to the placement of stabilization infrastructure (seawalls, backfill, drainage features, etc.). Previous stabilization projects within the bluffs also resulted in permanent adverse impacts to access and recreation but in those cases the scope of work and adverse impacts were relatively minor. The Del Mar Bluff Stabilization Project 4 (Consistency Certification No. CC-0004-18) was the first project to result in significant losses to coastal access and recreation resources due to the 630 linear feet of bluff toe protection (seawalls) it included. In that project, the Commission found that adverse impacts to access and recreation would be significant and required mitigation. The currently proposed project includes significant infrastructure development within the entire length of the bluffs and also includes significantly more bluff toe protection seawalls (nearly four times more or approximately 2,500 linear feet) than what was considered in CC-0004-18.

As discussed in the previous section of this report, shoreline structures such as the proposed seawalls generate permanent negative impacts on coastal resources, including adverse effects on beaches and sand supply, which ultimately results in the loss of the beach. The footprint of shoreline structures also take up physical space on the beach that would otherwise be available for the public, thus preventing the public from accessing and recreating within an area of the beach. In this way, the approximately 2,500 feet of proposed bluff toe protection would adversely affect public access and recreation over the 30-year design life of the project.

Specifically, the total area of existing sandy beach that would be immediately lost from the direct occupation of the proposed seawalls would be 5,955 square feet, and proposed backfill behind the seawalls would occupy another 11,193 square feet. Added together, the footprint of the shoreline protective structures plus the area of backfill would total 17,149 square feet. In addition, the seawalls will prevent bluff retreat and nourishment of the beach. Given the average bluff retreat rates and SANDAG's proposed design life of 30 years for the seawalls (memorialized through **Condition One**), their presence would result in the expected loss of another 32,417 square feet of beach that would otherwise be available for public use. Therefore, over a 30-year period, the proposed seawalls would result in the loss of 49,566 square feet of area that would otherwise have been sandy beach available for the public to access and recreate on, although SANDAG's proposed removal of an existing concrete drainage chute reduces this amount by 230 square feet. It is additionally worth noting that by stabilizing the bluffs, the project would provide some indirect benefits to coastal access by allowing existing rail service to continue. As described earlier in this report, the rail line is shared by commuter and intercity passenger 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. NCTD's Coaster commuter trains operate south from Oceanside to downtown San Diego, serving the cities of Carlsbad, Encinitas, Solana Beach, and San Diego. Although the proposed stabilization of the bluffs would not expand or provide new rail service or rail-oriented coastal access opportunities, it would help prevent the loss of existing service and opportunities.

Coastal Act Analysis

Coastal Act Section 30210 requires the Commission to maximize public access and recreational opportunities, consistent with public safety, private property, and natural resource protection. Sections 30211, 30213 and 30221 require that new development not interfere with existing public access and recreation opportunities and that lower-cost recreation facilities shall be protected and, where feasible, provided. Section 30214 acknowledges that the manner of providing public access should account for topographic and geologic site characteristics, the fragility of natural resources, and other factors.

Project construction is anticipated to require a total of 36 months to complete and would occur year-round. The timing of construction of individual components would depend on several factors including train operations, and although construction on the beach would

be avoided on holidays or holiday weekends, construction is expected to take place during the summer, which is the peak access and recreation season. Construction staging and operations would occur on beach and bluff areas, as well as on roads and parking lots that provide public, coastal access parking. In order to protect the public, SANDAG proposes to install temporary fencing around construction zones, and construction workers would be onsite to prevent the public from entering construction zones. Considering the large scope, area, and duration of construction for this project, and that work is proposed during summer, the project could substantially interfere with public access and recreation within the area of the beach, bluffs, and roads and parking lots above the bluffs.

As proposed, the stabilization infrastructure will have significant impacts on public access and recreation due to the fact that it will take up beach space and will prevent bluff erosion that would otherwise provide sand for the beach. The stabilization infrastructure, by itself, would be inconsistent with Coastal Act policies requiring maximization of public access and recreational opportunities because it would limit beach access and reduce recreational uses on the beach, especially over time as sea level rise causes the useable area of beach to shrink. However, SANDAG is proposing, as part of this project, to design and construct three access improvements that will address these impacts.

Mitigation

The Commission has long encouraged public agencies to incorporate public access and recreation improvements into projects rather than contributing public funds into mitigation banks. For example, with the Del Mar Bluffs Stabilization Project 4 (CC-0004-18) SANDAG committed to implement several coastal access and recreation enhancement projects, including installing a pathway of lighted bollards from street parking to Powerhouse Park and filling in an eroded gully near the intersection of Carmel Valley Road and Highway 101 to improve pedestrian safety and access to this area. In addition, SANDAG also committed to three additional efforts in order to mitigate for the loss of coastal access and recreational resources associated with the project's 630 linear feet of seawalls. These three efforts are described in the Commission's adopted findings for Consistency Certification No. CC-0004-18 and cited earlier in this report on page 41. They include a study to identify long-term public access improvements in Del Mar, a commitment to work with Commission staff to identify appropriate mitigation for adverse impacts to coastal access and recreation associated with future Del Mar Bluffs stabilization projects, and inclusion of an updated and more detailed sea level rise vulnerability assessment for the railroad corridor along with the Del Mar Bluffs 6 consistency certification.

These efforts were intended to both augment the other mitigation measures included in the Del Mar Bluffs 4 project and to provide a process pathway for subsequent Del Mar Bluffs Stabilization Projects (including the current one) that involved more significant adverse impacts to coastal access and recreation. The Coastal Connection Conceptual Planning Study (Study) was to be completed and submitted to Commission staff within three years of the Commission's concurrence with CC-0004-18. The Commission

concluded with CC-0004-18 in February 2019. Although the Study is currently underway, it is not expected to be complete until the fall of 2022. Regarding the other two elements, SANDAG submitted its consistency certification for the current project without a proposed mitigation approach for the approximately ½ mile of seawalls it proposes and with limited advance outreach to Commission staff regarding access and recreation mitigation.

Despite these setbacks, Commission staff and SANDAG have worked to develop an appropriate mitigation approach for the current project. This approach includes both minimization measures and mitigation.

First, to minimize temporary impacts during construction, **Condition Five** would require SANDAG to submit a Construction Safety Plan detailing how public access will be maintained to the maximum extent feasible during construction activities. That plan would: describe the methods (including signs, fencing, etc.) by which safe public access to or around the project sites and/or staging areas would be maintained during all project operations. In addition, it would include the use of onsite personnel to safely detour pedestrian traffic around any closed areas. Further, **Condition Five** would require construction work to cease or occur outside of daylight hours during weekends from Saturday of Memorial Day weekend through Labor Day, unless the Executive Director authorized such work due to extenuating circumstances. **Condition Six** would further minimize adverse impacts to public access and recreation associated with construction activities by requiring SANDAG to locate and configure all of the storage and staging of materials and equipment in a manner that avoids and minimizes loss of public parking spaces in the City of Del Mar and the Torrey Pines State Beach parking lot. These measures would help ensure that project activities are effectively scheduled and implemented in order to minimize adverse impacts to access and recreation associated with project construction.

Secondly, SANDAG has committed to develop and implement a capital improvement project that would include design, environmental review, permitting and construction of: (1) a railroad crossing; (2) at least one beach accessway, at the end of either 7th Street or 11th Street, that would cross down the bluff slope and terminate at the sandy beach; and (3) a blufftop trail along the eastern, inland portion of the railroad ROW from Seagrove Park to 4th Street. These three coastal access and recreation improvements – most importantly, the rail crossing and beach accessway - have been longstanding needs in the project area to better serve and expand existing use and would provide significant benefits to the public. Del Mar's beaches and coastal waters are a regionally important visitor-serving asset and expanded access to them through SANDAG's completion of its proposed capital improvement project would benefit the public both locally and regionally, including underserved communities outside of the project area. SANDAG's commitment to implement this capital improvement project is memorialized through **Condition Two**. This condition would additionally establish a timeline for completion of these three coastal access and recreation improvements within five years of the start of construction on the bluff stabilization measures. This deadline could be

extended by a maximum of two additional years by the Executive Director for good cause and upon evidence of meaningful progress.

Although the final design and configuration of the improvements selected by SANDAG for inclusion in its capital improvement project is to be informed by the results of the Coastal Connection Conceptual Planning Study (which is targeted for completion in the fall of 2022), several of the simplest and/or most fully developed options from initial versions of that study have been included and evaluated in these findings. This was done in order to help expedite their implementation if they are ultimately selected by SANDAG for inclusion in its capital improvement project. However, SANDAG would also retain its full ability to instead decide, at the completion of the Coastal Connections Study process, to pursue an option that the Commission has not already vetted in these findings. Under this scenario, SANDAG would need to go through the process of seeking Commission concurrence for that changed aspect of the project prior to construction.

Specifically, these findings consider construction of an at-grade crossing near the terminus of 7th or 11th Streets, a vertical beach access trail near 11th Street and formalization of the informal lateral access trails on the landward side of the railroad tracks between Seagrove Park and 4th Street. Completion of these coastal access and recreation improvements would involve some minor construction-related impacts to coastal access and recreation, such as potentially blocking access along portions of the bluffs. However, because construction of the trails would involve light machinery and hand crews, and the trail design incorporates low-impact, minimalistic design features, the overall length of construction would be minimal. In addition, **Conditions Five and Six** apply to these aspects of the overall project as well and will help minimize construction-related impacts. Overall, these access features would significantly enhance existing coastal access and recreation opportunities in the project area and region, would appropriately address the impacts on shoreline sand supply and the loss of beach caused by the seawalls over time, and would lead to lasting benefits for the public.

Another important consideration regarding development of the public access and recreation improvements is parking and whether the project will adversely impact parking availability. The blufftop trail network currently spans from Seagrove Park in the north down to 4th Street in the south. As that trail runs laterally along the bluff it connects to the ends of City Streets (12th, 11th, 10th, 9th, 8th, 7th, 6th, and 4th) thus allowing trail users to enter and exit at any of these areas. At each of these City streets there is on-street parking available on both sides of the streets. Additionally, Ocean Avenue, Pacific Lane, and Stratford Court together form an approximately 1-mile-long, north-south street that runs parallel to the blufftop trail, one block inland, which currently provides parking for trail users if parking within any of the street ends is unavailable.

The proposed capital improvement project would not include construction of any new parking spaces, nor does it propose any changes to the existing parking. Although it would formalize and enhance existing trails, it would not significantly expand their

footprint. As such, it would not result in a significant increase in demand for parking. Because the parking in the area has been sufficient to serve use of the existing informal trails, development of the lateral blufftop trail, at-grade crossing, and beach accessway would not adversely impact parking.

Finally, the public is currently able to enjoy the informal blufftop trails and beach accessways all day and night, every day of the week. The access and recreation improvements analyzed also do not include any restrictions on use. Therefore, the analyzed access and recreation improvements would not result in any adverse impacts to available access and recreation within the bluffs and on the beach.

Conclusion

As conditioned, the Commission finds that the project is consistent with the access and recreation provisions of the Coastal Act, including Sections 30210, 30211, 30212, 30213, 30214, and 30221.

H. VISUAL RESOURCES

Section 30251 of the Coastal Act 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.

SANDAG examined in its consistency certification the potential adverse impacts to visual resources from a variety of project components:

Upper Bluff Stabilization Structures

For soldier pile improvements, the structural elements installed would be almost completely below grade (i.e., underground), with limited surface visibility. In addition, concrete would be colored to help match the color of the existing bluffs, and native material would be used to backfill holes and trenches not filled with concrete, further helping to minimize the visibility of the soldier piles and grade beams. The portion of a soldier pile wall that might be visible would be the tops of the piles or the grade beam. [...]

Bluff toe improvements [seawalls] and bluff face stabilization [grading and placement of fill to reduce steepness of slopes] would be included on a site-specific basis. Lagging and additional tiebacks needed would be reduced with the addition of bluff toe and bluff face stabilization measures (refer to Table 3).

This approach would minimize the depth of visible lagging on the bluff tops. However, this option would change the visual character of the bluff where regrading and revegetation are proposed and where seawalls would extend along the bluff toe. The new seawalls would be visible from the beach but would not be substantially out of character as they would not introduce new man-made visual elements within the project limits. Existing seawalls are present in this area and the new seawalls would be visually consistent with the existing seawalls. The new walls would be treated with a similar texture and color as the existing seawalls and to visually blend with the bluff above...

Track support retrofit improvements entail installation of lagging and/or tieback anchors in areas that were previously stabilized as part of Del Mar Bluffs Stabilization Projects 2 and 3. Tieback anchors are installed completely below the surface and no portions of them would be visible. Lagging on the exposed surface of soldier piles would consist of timber, precast concrete, or shotcrete. Bluff toe improvements and bluff face stabilization would be included on a site-specific basis... these changes would be visually consistent with the visual character of the area and would not result in substantial landform alteration effects.

Drainage Improvements

Several of these facilities would be installed at grade (storm drain inlets, channel aprons, weir structures, energy dissipators) or below grade (underdrains, storm drain pipelines) and thus, would either not be visible or would be surface features that would not be highly visible from surrounding areas. These improvements would be visually compatible with existing railroad infrastructure as they would not introduce new visual elements within the railroad corridor.

Similarly, the proposed trackside ditches and concrete channels are surface improvements and generally would not involve vertical elements or structures or other highly visual components. Small retaining structures constructed integrally with the channels would be required south of 15th Street and south of 11th Street. While additional concrete surfaces would be introduced, they would be at the ground level and generally adjacent to the railroad tracks and ballast...

One segment of new concrete channel would require taller retaining structures. An approximately 760-foot long section of channel north and south of 13th Street would require construction of a 10-foot to 20-foot high soil nail wall east of the track to stabilize the slope and provide adequate width for the new channel. This wall would have rockscaped treatment on the finished surface that is colored similar to the existing bluff face.

Proposed splash and retaining walls would consist of low-profile walls either supporting a slope behind it or extending from a trackside ditch or concrete channel. The height of the walls could be up to approximately eight feet, with most on the order of two to four feet high. Proposed walls could include color or

texture treatments to blend in with surrounding elements. Due to the relatively low height of the walls and the placement of some walls adjacent to the railbed, they would not be highly visible or prominent visual features from both within the rail corridor and adjacent areas.

A total of five new storm drain outlets on the beach are proposed associated with new underground storm drains. Outlet structures would include a headwall at the toe of the existing bluff that would include rock-scaped colored facing. Due to the location at the bottom of the bluffs at the beach, the new storm drain headwalls would primarily be visible from along the beach. The result of these drainage improvements would not impede views along the ocean, and the inclusion of a sculpted facing colored to resemble the existing bluffs would be visually compatible with the character of the area.

Access Road Improvements

Access road improvements entail re-grading two existing access roads and adding 6 inches of decomposed granite (DG) surface. These are surface improvements and would not involve vertical elements or structures or other highly visual components. The DG surface would blend into the surrounding areas and would not appear as prominent or contrasting visual features. These improved areas may be noticed by residents, train passengers, and beachgoers; however, these changes are not anticipated to be adverse.

Emergency Repairs

Track stabilization improvements entail the installation of soldier piles and tiebacks. For soldier pile improvements, the structural elements installed would be almost completely below grade (i.e., underground), with limited surface visibility. In addition, concrete would be colored to help match the color of the existing bluffs, and native material would be used to backfill holes and trenches not filled with concrete, further helping to minimize the visibility of the soldier piles and grade beams. The portion of a soldier pile wall that might be visible would be the tops of the piles or the grade beam. These would be at or close to the existing ground level, leaving only the very top of the piles or grade beam exposed.

Views to the top of the soldier pile wall from inland areas (such as public streets or private yards) would be intermittent. Although the tops of the piles or grade beam could be potentially visible from these areas, they would not draw viewers' attention because the soldier pile wall would be parallel to the existing railroad tracks (which include the rails, ties, and ballast rock) and because most views would be directed toward the beach and/or ocean, not the NCTD ROW. Views to the top of the soldier pile wall from residences/back yards inland of the ROW would, for the most part, be obstructed by intervening topography. Views from these residences/back yards would also primarily be directed toward the ocean, not the railroad ROW.

The tops of piles or the grade beam may be visible by passengers on passing trains (such as Pacific Surfliner or the Coaster), but only for extremely short periods of time (if at all) for any given passenger and probably only for passengers on the trains' lower levels. With regard to beachgoers, the potential for views to soldier pile walls would depend on the specific stabilization site and the bluff topography between that site and the beach. In general, however, views from the beach to the top of the soldier pile wall would be obstructed by topography.

The new seawall would be visible from the beach but would not be substantially out of character as they would not introduce new man-made visual elements within the project limits. Existing seawalls are present in this area and the new seawall would be visually consistent with the existing seawalls. The new walls would be treated with a similar texture and color as the existing seawalls and to visually blend with the bluff above. Although the regraded areas above the new seawall would initially be noticeable, particularly from the beach, they would visually blend over time as native vegetation is established softening the initial landform alteration of a portion of the bluff face. The cutoff wall, designed to prevent undermining of the seawall, would become seasonally exposed depending on the migration of the sand beachward, similar to the foundation of the existing wall. The cutoff wall will be color treated to blend in with the sand.

Section 30251 requires the scenic and visual qualities of this coastal area to be considered along with whether the development has been sited and designed to protect views, minimize the alteration of natural landforms, and be visually compatible with the character of surrounding areas.

The Commission agrees with SANDAG that upper bluff project components including soldier pile improvements, lagging, and drainage improvements would generally not result in visual impacts once construction is complete. This is due to the location of the development at the top of the bluffs, which would not be visible from the beach below and would also not be visible from the end of City streets. As seen from the bluff top the soldier pile improvements and lagging would be flush within existing disturbed areas and any excavations would be backfilled with native material. Drainage improvements in this area of the project would either be located inland of the track or below ground and thus not within the visual envelope of public views to and along the coast. All of these project components also include coloring and textural treatment methods in order to help the development blend with the visual environment of the bluffs and thus minimize any adverse effects on scenic views. Additionally, the proposed project is similar to and is an extension of the bluff stabilization projects previously concurred with by the Commission in SANDAG's consistency certifications CC-048-04, CC-020-10, and CC-0004-18.

The bluffs are highly erosive, retreating on average between 0.4 and 0.6 feet per year. This historic and continued erosion has caused upper bluff stabilization improvements that were installed within the bluff as part of previous bluff projects to become exposed

and visible from both the beach and blufftop. Although the improvements included in the proposed project are designed to slow the rate of erosion and support the tracks until they can be relocated in the future, it can be assumed that the bluffs will continue to erode into the future. As such, the approximately 1,700 linear feet of new upper bluff stabilization and approximately 2,000 linear feet of retrofit improvements being proposed as part of this project would become exposed and thus visible in the future. To minimize the visibility of these features once exposed, **Condition Seven** would require SANDAG to monitor, color, screen, or cover the exposed components to match the surrounding soils in order to minimize adverse impacts to public views.

As part of the proposed project, SANDAG would also implement a capital improvement project to construct public access and recreation improvements. Although the specific designs and locations of these improvements would be selected by SANDAG at the conclusion of the Coastal Connections Study process previously described in this report, they may include an at-grade crossing, a vertical access trail connecting the top of the bluff to the sandy beach below and enhancement of an existing informal horizontal accessway located parallel and inland of the railroad. All of these access improvements would require minimal grading of the bluff face in order to construct the necessary slope for pedestrian access, install support structures like running boards with water boards, and place directional and informational signage for users. **Condition Two** requires that the vertical accessway not involve significant grading or alteration of the bluff beyond the work that is being performed as part of the proposed stabilization work. Similar to the drainage improvements, the horizontal accessway and associated support structures and signage would be located inland of the railroad tracks and thus would not be expected to result in adverse visual impacts to users down on the beach and along the top of the bluffs. Once complete, the vertical accessway would slightly contrast with the visual landscape of the bluffs; however, the accessway has been designed so as to minimize grading of the bluff face to the maximum extent feasible, more closely follow the natural topography of the bluff and expand on an existing narrow informal beach access trail rather than involve construction of an entirely new route. It should be noted that similar to other project components, these access improvements would incorporate color and textural treatments to lessen any adverse impacts to scenic resources.

The at-grade crossing would include two eight-foot-tall CPUC-approved signal gates with a ten-foot-wide arm and also two steel emergency swing gates. Although the signal gates and emergency swing gates would slightly contrast with the greater bluffs environment, considering their location within the railroad ROW and not being visible from the beach, plus the relatively minor amount of development, they would not adversely impact visual resources. The blufftop trail would include fencing consisting of three-foot-tall wooden pylons and steel cabling, or another similarly low-profile design. The use of wooden pylons and low-profile designs would ensure that the fencing would not adversely impact visual resources.

For the emergency repairs, seawalls and drainage outlets, SANDAG determined that they would be visible from the beach, but because there are existing seawalls and other

man-made structures in the area, this development would not be substantially out of character with the current conditions. The seawalls at MP 245.2 and Anderson Canyon consist of gravity-style seawalls constructed over 100 years ago. The seawall at MP 245.2 was approximately 60 feet long and 17 feet tall while the landslide that resulted from collapse of the wall was approximately 80 feet wide. At MP 245.2 the landslide was regraded, 18 soldier piles and tiebacks were installed in the upper bluff, a compacted fill buttress was constructed with drainage improvements, and a 290 ft long, five to 13 ft high soldier pile seawall with wood lagging was installed at the toe of the buttress. Figure 4 below includes a photograph of MP 245.2 after the repairs were completed. At Anderson Canyon a cutoff wall was constructed in front of the existing seawall. A total of five new reinforced concrete pipes (RCP) and outlets would be constructed and three existing RCPs would be modified for drainage improvements. These outlets and RCPs are generally evenly spaced throughout the 1.6 miles of the bluffs.

Figure 4 – Emergency Repairs at MP 245.2



As demonstrated in the figure above, the bluff grading and installation of a new seawall and rip-rap end protection that was carried out as part of the emergency repairs at MP 245.2 resulted in significant alteration of the natural bluff landform and beach and is not visually compatible with the existing character of surrounding natural areas. The

steeper natural slope at this site was excavated and terraced and contrasts significantly from the surrounding natural bluffs.

Combined with those installed as part of the emergency repairs, the project would include a total of approximately 2,500 linear feet of seawalls. The majority of these seawalls would tie into existing seawalls beginning at 15th Street and create a continuous line of armoring downcoast to 11th Street, a distance of approximately 1,600 feet. There would then be another 300 foot segment from 8th Street to 7th Street. Lastly, an 800 foot segment of seawall would be constructed in the area of the recently completed emergency repairs for which SANDAG is seeking after-the-fact authorization. All of these seawalls would be similarly constructed with piles at 6 to 7 feet on center, down to a depth of 20 feet. The final elevation of the walls would be 15 feet above mean sea level with wood lagging panels installed between the piles. The space behind these walls would be backfilled with riprap to the top of the wall. Fill would be placed behind the seawalls at a slope ratio ranging from 5:1 to 2:1. The amount of fill and slope ratio behind each wall would be site-specific.

There are existing hard structures interspaced throughout the base of the bluffs, including the 630 linear feet of seawalls from CC-0004-18, but the areas where seawalls and drainage outlets are being proposed currently do not have any existing structures. As such, this development would alter the visual landscape along the toe of the bluffs in these areas. The seawalls that received emergency repairs were constructed over 100 years ago and had existed relatively unchanged for that span. However, the final repairs ultimately increased the amount of development in the area of those seawalls. Considering the highly scenic nature of the bluffs, this development must be carefully considered for its potential to adversely impact visual resources. Here, the development at the toe consisting of hard structures would create a visual contrast with the natural beach and bluff environment. Section 30251 requires permitted development to be sited and designed to protect views, but due to the steep topography of the bluffs and geotechnical constraints there are no siting alternatives that would allow the bluff toe development to be relocated so as to not disrupt visual resources. SANDAG has proposed a variety of methods to help minimize this visual incongruity, including use of concrete coloring and texture applications to help the development more closely match the aesthetic of the bluffs environment and construction of seawalls with timber paneling and lagging for a more natural appearance and consistency with existing seawalls. Examples of these existing seawall designs are shown in Figure 5 below. Despite these efforts to minimize the visual impacts of the proposed seawalls, they would be incongruous with the existing natural surroundings and alter natural landforms.

For these reasons, SANDAG and Commission staff also carefully considered the proposed infrastructure improvements and an array of design alternatives to minimize the total amount of development proposed within the bluffs. As a result of this effort, the scope of the project was refined and reduced during the course of the consistency certification review process. For example, SANDAG initially proposed to completely excavate and remove the 1,000-foot-long by 15 feet high berm feature located within the upper bluffs between Shippey Lane and 11th St (specifically, from Station 1518+85

to 1528+85). The pronounced shape and red color of the berm are a striking contrast to the shapes, colors and textures of the rest of the bluffs. As such the berm is a particularly prominent feature within the larger visual resource of the bluffs. Its removal would have significantly muted the visual character of this area and would have had a significant impact on visual resources. Following conversations with Commission staff and the City of Del Mar, SANDAG analyzed alternatives to removing the berm and found that installing approximately 100 piles west of the tracks on 10 foot intervals would provide adequate support and that removal of the berm would no longer be necessary.

Figure 5 – Seawall Design



Other examples of project refinement and reduction in scale include limiting the amount of development to only what SANDAG determined would be necessary to support the railroad for the next 30-years (considered to be a conservative estimate of the time needed for the rail line to be relocated off of the bluffs) and incorporating seawalls into the design so as to minimize the amount of proposed bluff grading, resurfacing and upper bluff work. In addition, the proposed seawalls have been designed to be removable upon relocation of the rail line (as further established through **Condition One**). By limiting project development to only include what SANDAG has determined to be the most necessary components and using seawalls where possible to minimize upper bluff stabilization features that would be more difficult than seawalls to eventually remove, SANDAG is not only minimizing disturbance to the visual bluff features but is also maximizing the potential restoration of the bluff once the tracks are relocated.

Should future remedial measures be required to protect the proposed bluff stabilization or erosion control measures SANDAG would consult with the Commission to determine if additional federal consistency review would be necessary to ensure that those remedial measures do not create adverse effects on scenic resources in the project area. In addition, SANDAG has agreed to incorporate into its consistency certification the maintenance and monitoring measures and commitments regarding bluff stabilization structures included in CC-0004-18, the previous Del Mar Bluffs 4 stabilization project. Those measures include visual treatment plans for exposed soldier piles and grade beams, collecting and restacking of any rip rap that become loose and spread out on the beach, annual monitoring and reporting (including to the Commission) on the status of the stabilization structures and shoreline armoring over the authorized life of the development, and Commission review of the status of stabilization measures and shoreline armoring structures at the end of their design life and/or in the context of railroad relocation planning. As described above, **Condition Seven** would memorialize this commitment and expand it to include a requirement for SANDAG to visually survey all of the project seawalls and to remove or cover with appropriately colored paint any vandalism such as graffiti.

With the aforementioned project elements and visual resource treatment measures proposed by SANDAG as well as the addition of **Condition Seven**, the project would minimize the adverse visual impacts of the upper bluff stabilization improvements and hard structures on the beach. However, the project would still include a significant amount of upper bluff stabilization, seawalls and drainage outlets in areas that currently do not have any existing structures and would thus be inconsistent with the visual character of the bluffs landscape. Further, the installation and presence of these stabilization features would result in significant alteration of the natural bluff landform and beach. As such, the project would not be visually compatible with the character of the bluffs environment and the Commission finds the project inconsistent with Section 30251.

However, Coastal Act Section 30235 requires the Commission to authorize shoreline protection devices – even if they would be inconsistent with other Chapter 3 polices – when they are determined to be necessary to protect an existing structure in danger of erosion and when they meet specific criteria. As discussed in the section above focused on shoreline structures and geologic hazards, the project would meet these criteria with the inclusion of **Condition One** and SANDAG’s commitment to monitor and maintain the shoreline armoring. With the project thus allowed pursuant to the “override” provisions of Coastal Act Section 30235, it may still be approved even though it would result in adverse impacts to visual resources and be inconsistent with Section 30251.

I. ENVIRONMENTALLY SENSITIVE HABITAT AREAS AND WETLANDS

Section 30107.5 of the Coastal Act states:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special

nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30233 of the Coastal Act 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:...

(5) 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

Section 30240 of the Coastal Act 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.

Environmentally Sensitive Habitat Area

Environmentally Sensitive Habitat Areas (ESHA) are areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. Coastal Act Section 30240 part (a) states that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas and part (b) states that development in areas adjacent to ESHA and parks and recreation areas shall not degrade those areas or be incompatible with their continued presence.

SANDAG's consistency certification states that the general project area includes limited biological habitat:

The NCTD ROW is subject to regular, ongoing disturbance associated with train traffic, track and ROW maintenance, and numerous informal pedestrian foot trails. For operational and safety reasons, the train tracks have been laid on a bed of crushed rock (i.e., ballast) that nearly excludes all plant growth and the area directly adjacent to the track is maintained to be kept free of weeds. Further from the tracks, however, the ROW and adjacent areas support a variety of habitat types and vegetation communities. The biological resources letter report

prepared for the Proposed Action (HELIX 2021) identified the following 13 vegetation communities and land cover types within the biological study area (BSA; encompasses 58.5 acres along the 1.6-mile linear project length, ranging in width from 220 to 390 feet), some of which also exist as disturbed phases: freshwater marsh (including disturbed), cismontane alkali marsh (including disturbed), arrow weed scrub, arundo-dominated riparian, beach, Torrey pine forest, saltgrass grassland, Diegan coastal sage scrub, coastal bluff scrub (including disturbed), unvegetated bluff, non-native vegetation, disturbed habitat, and developed land.

Of these habitats, three are considered potential Environmentally Sensitive Habitat Area (ESHA), including portions of the Diegan coastal sage scrub, arrow weed scrub, and Torrey pine forest. Potential ESHA identified in the BSA was generally based on habitat and/or species rarity, including global and state rarity rankings for habitats, and presence of listed plant or animal species, or species with other high sensitivity rankings.

Diegan coastal sage scrub and Torrey pine forest will be discussed in more detail below. Arrow weed scrub is a wetlands habitat and will be discussed in the wetlands portion of this staff report.

Diegan coastal sage scrub

The biological survey area identified a total of approximately 3.3 acres of Diegan coastal sage scrub within the project site. Diegan coastal sage scrub is a habitat subset comprised of two major vegetation types in California, coastal sage scrub and chaparral. In coastal areas of California this habitat is known to comeingle with coastal bluff scrub and the two habitat types include many of the same plant species such as California buckwheat (*Erigonum fasciculatum*) and California sagebrush (*Artemisia californica*). The biological survey also determined that the federally listed coastal California gnatcatcher (*Poliioptila californica californica*) has the potential to occur within the Diegan coastal sage scrub located in the southernmost area of the survey area.

The coastal California gnatcatcher (*Poliioptila californica californica*) was listed as threatened under the Endangered Species Act by the United States Fish and Wildlife Services (USFWS) on March 25, 1993. The coastal California gnatcatcher, a small gray songbird, is a resident of scrub dominated plant communities from southern Ventura County southward through Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, in California and into Baja California, Mexico. It is threatened in large part due to the loss of an estimated ninety percent of coastal sage scrub habitat from development. Remnant patches have also been degraded and lost by unnaturally frequent or intense wildfire. Preventing further loss of this bird and its habitat has been recognized as important in past Commission actions .

Development of the proposed project would adversely impact approximately 0.03 acres (1,307 square feet) of Diegan coastal sage scrub for construction of a new decomposed granite access road at MP 245.0 near 4th Street and approximately 0.02 acres (871 square feet) for construction of a concrete-lined trackside ditch located south of MP

245.6 (close to where Carmel Valley Road meets North Torrey Pines Road). For the site near 4th Street, SANDAG determined that because the total area of Diegan coastal sage scrub at this location is small, isolated from other habitat areas, has been continuously disturbed, and lacks the potential to support California gnatcatcher, it does not rise to the level of being considered ESHA. The Commission's staff ecologist reviewed the biological survey provided by SANDAG and agrees with this assessment.

In contrast, SANDAG found that the 0.02-acre area of coastal sage scrub near MP 245.6 in the southern part of the study area does have the potential to support California gnatcatcher and therefore could be considered ESHA.

However, although this area does have the potential to support California gnatcatcher, the project development proposed there - which is limited to access road improvements, a construction staging area, and drainage improvements - would take place outside of the areas known to provide suitable habitat for California gnatcatcher. As such this portion of the project would not be located within an area considered Diegan coastal sage scrub ESHA nor would it have the potential to impact any nearby Diegan coastal sage scrub ESHA. However, as discussed further below, the area is located within Torrey Pines State Beach (a park and recreation area) and is adjacent to areas that are likely to support gnatcatcher and be considered ESHA.

Torrey Pine Forest

The second habitat identified within the project footprint that could potentially be considered ESHA is an approximately 0.3 acre (13,000 square foot) area of Torrey pine forest comprised of three smaller locations within the southern part of the project. Torrey pine forest supports the Torrey pine (*Pinus torreyana*), an endangered species endemic to the Torrey Pines State Natural Reserve and Santa Rosa Island. According to SANDAG two of the Torrey pine forest habitats are small, remnant disturbed strands among walking paths adjacent to Camino del Mar, and one larger strand on the upper slopes and perimeter of a canyon near MP 245.5. Considering the rarity of Torrey pine forest this habitat does constitute ESHA; however the project as designed would avoid any temporary or permanent impacts to the Torrey pine forest.

Trail Development and Habitats

SANDAG is also proposing to carry out a capital improvement project that would include three public access and trail enhancements: (1) a railroad crossing, (2) enhancement of an informal beach access trail, and (3) enhancement and expansion of an existing informal lateral bluff top trail from Seagrove Park to 4th Street. Each of the access and recreation improvements would require minor grading and site preparation using hand crews and light machinery. After construction of the trail, decomposed granite or other similar natural surface treatments would be applied and compressed, followed by running boards. The lateral bluff top trail would also include fencing consisting of three-foot-tall wooden pylons and steel cabling or other similarly low-profile designs. All of the access and recreation improvements would be constructed within areas of unvegetated bluff, non-native vegetation, or areas that were previously developed or disturbed. None of the access and recreation improvements would take place within or adjacent to any ESHA or within areas known to support sensitive species.

Mitigation Measures

Although the project would not result in any impacts to ESHA, it is still possible that construction activities could adversely impact the sensitive habitats and species adjacent to the project area. Construction of the proposed project would take place along a 1.6 mile section of the Del Mar Bluffs over the course of 36 months. The project would also require work during the night with rotating shifts in order to complete all of the proposed development within the 36-month construction window.

Construction equipment would include various earth moving equipment, drilling equipment, delivery trucks, concrete trucks, excavators and loaders, and cranes. The mobilization, staging, and demobilization of all of the equipment could trample sensitive habitats or species if there is not sufficient oversight of equipment movement. Additionally, the operation of heavy equipment can result in significant levels of noise which could agitate various species of birds and disrupt nesting. Finally, the use of lighting for work at night has been shown to confuse migrating birds and attract both terrestrial and aquatic species, thus making them more susceptible to predation.

In response to these concerns, SANDAG's consistency certification includes a list of mitigation measures that would be implemented as part of the proposed project. These include the installation of temporary construction fencing around sensitive habitats, pre-construction surveys for sensitive bird species during breeding and nesting seasons, an onsite biological monitor during clearing or grading activities, and maintaining the lowest intensity, shielded lighting possible for construction activities.

One of the mitigation measures proposed to be implemented by SANDAG would be pre-construction surveys within the area of Diegan coastal sage scrub adjacent to the southernmost portion of the project area where California gnatcatcher have the potential to occur. The measure specifically requires the surveys if operation of construction equipment takes place within 300 feet of the Diegan coastal sage scrub during the breeding season for California (February 15 to August 31). If the surveys do not identify any gnatcatchers breeding, then construction would be allowed to proceed. If the surveys do identify breeding gnatcatchers, then construction would be paused until a biologist determines the nests are no longer active, or until a temporary noise barrier or berm is constructed to ensure that noise levels are reduced to below 60 A-weighted decibels (dBA) at the nest location.

However, through coordination with Commission staff, SANDAG has agreed that implementation of a simpler and more precautionary approach would be feasible. This approach is memorialized through **Condition Four** and would prohibit project construction activities during the breeding season (February 15 to August 31) within 300 feet of the Diegan coastal sage scrub area where the California gnatcatcher is likely to occur. Because of their rarity and cryptic nature, gnatcatchers can remain undetected during surveys. As such, this approach of assuming the presence of the birds within suitable habitat and appropriately buffering it from construction activities during the sensitive breeding season would provide a greater level of protection and help ensure that project activities adjacent to ESHA are carried out in a manner that is consistent with the continuance of that habitat. Because the work proposed by SANDAG within

300 feet of the Diegan coastal sage scrub area likely to be used by gnatcatchers is relatively minor, implementation of this more protective approach would not significantly impact project operations and scheduling.

Wetlands

The biological survey provided by SANDAG summarized jurisdictional delineations to determine regulatory jurisdiction of water and wetland resources within the project site for various federal and state resource agencies. Wetlands under the jurisdiction of the Commission identified within the proposed project footprint include freshwater marsh, cismontane alkali marsh and arrow weed scrub.

Freshwater Marsh

As part of the improvements to the drainage features within the project footprint, the existing trackside swales would be converted to concrete-lined trackside ditches to improve and increase stormwater capture and conveyance to outfalls. In total, these improvements would require the complete removal and replacement of the trackside ditches which would result in permanent impacts to approximately 0.2 acres (8,712 square feet) of freshwater marsh wetland habitat.

Cismontane Alkali Marsh

Cismontane alkali marsh consists of wet or inundated areas dominated by emergent vegetation, grasses and sedges. The cismontane alkali marsh in the project area is primarily located within existing swales and a small area also exists within the bluff face located west of Little Orphan Alley. The proposed conversion of the swales to concrete-lined ditches and construction of the seawall and slope recontouring would result in the displacement and permanent loss of 0.07 acres (3,049 square feet) of cismontane alkali marsh.

Arrow Weed Scrub

Arrow Weed Scrub is a riparian scrub dominated by arrow weed (*Pluchea sericea*), as well as other small trees or shrubs, but lacking any taller riparian tree species. Construction of a seawall and associated surface stabilization at the northern end of the project site would result in the complete removal of the 0.01 acres (435 feet) of arrow weed scrub.

Analysis

In total the project is expected to result in the loss of 0.28 acres (12,197 square feet) of wetlands. Under Coastal Act Section 30233 a project that involves wetland dredging or fill may only be authorized if the project passes three tests. The first test requires that the proposed wetland fill activity fit within one of the enumerated use categories described in Coastal Act Section 30233(a)(1)-(7). The second test requires that no feasible less environmentally damaging alternative exists. The third and final test mandates that feasible mitigation measures are provided to minimize any of the project's adverse environmental effects.

Allowable Use

The proposed project involves installing new seawalls and other surface stabilization

and drainage improvements in support of the existing railroad corridor along the Del Mar Bluffs. This rail corridor is part of the Los Angeles – San Diego – San Luis Obispo (LOSSAN) rail corridor which functions as a vital link for passenger and freight movements along a 351-mile length of railroad. Passenger and freight movement along this corridor is a critical public access amenity because it provides public transportation to multiple coastal cities within Southern California. The Commission has considered repair work to or minor expansions of existing roads, railroad lines, and airport runways in certain situations to qualify as “incidental public service purposes,” and thus allowable under Section 30233(a)(4), but only where no other feasible less damaging alternative exists and the work is necessary to maintain existing capacity. (e.g, CC-006-11, NCTD Railroad Bridge Abutment action; CC-055-05, NCTD, Railroad Bridge Replacement over Agua Hedionda Lagoon; CC-058-02, City of Santa Barbara, modifications to the Santa Barbara Airport; CC-052-05, NCTD, Bridge Replacement and Second Track, Santa Margarita River; and CC-086-03, NCTD, Second Track, San Onofre Area, Camp Pendleton.). Here, the fill is necessary as part of the safety and stabilization project, which itself will not expand railway capacity at all. Rather, it will simply help maintain the railway in its existing configuration. As such, the wetland fill is an allowable use under Section 30233.

Alternatives

The second test of Coastal Act Section 30233 is that there is no feasible less environmentally damaging alternative to the proposed dredging or fill of wetlands. The proposed project would result in the fill of a small area of wetland habitat associated with the installation of a seawall in the southern portion of the project area and the excavation/removal of wetland habitats in other portions of the project area associated with the installation of drainage improvements.

As discussed in the hazard section of this report, the proposed seawalls – including the one proposed to be placed within wetland habitat - would provide long term stability of the bluffs until the track can be relocated, in which case the seawalls are designed to be easily removed. However, because the bluff face in this area is especially steep, seawalls alone would not completely eliminate bluff retreat in the area of the railroad which is why surface stabilization and drainage improvements are also proposed. SANDAG provided an analysis of alternatives to the proposed seawalls, drainage improvements and surface stabilization and found that because of the anticipated erosion and need to stabilize the rail corridor until the tracks can be relocated, some level of toe protection and surface stabilization is necessary for the near term. As proposed, the seawalls and surface stabilization would be paired with lagging between existing soldier piles down to a depth of five feet. Without the seawalls and surface stabilization the area would require more tieback anchors drilled into the bluff face and deeper lagging to a depth of 30 feet. The addition of these tieback anchors and additional lagging require more excavation and alteration of the bluff face. As such, it would be more difficult to remove the development and restore the bluff to a more natural condition once the tracks have been relocated, as compared to the proposed seawalls and surface stabilization.

The wetlands within the project footprint that would be impacted by the proposed drainage improvements include areas within the existing drainage swales that run parallel to the railroad. These swales would be replaced in kind with new concrete lined swales which would require removing the disturbed wetlands that have established within the existing swales. As discussed above, the high velocity flows from the City of Del Mar occasionally overtop the existing drainage system which leads to pooling and increased erosion in the area of the railroad. In addition to the other drainage improvements, replacing the existing swales with new swales would more efficiently capture and direct water to the appropriately designed outlets, thus reducing the overtopping of water and erosion of the bluff. SANDAG considered alternatives with various channel bottom constructions, but the presence of groundwater and the requirement of a soldier pile wall meant that these alternatives were either infeasible or resulted in more disturbance. Additionally, because the new swales would replace the existing swales and be constructed in the same location and configuration, the project would minimize impacts to other coastal resources such as access and recreation features.

Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative as required by Section 30233(a).

Mitigation

The third test of Coastal Act Section 30233 is whether feasible mitigation measures have been provided to minimize adverse environmental impacts. The proposed seawalls, surface stabilization and drainage improvements would result in the loss of 0.20 acres of freshwater marsh, 0.07 acres of cismontane alkali marsh and 0.01 acres of arrow weed scrub for a total of 0.28 acres of wetland habitat. As mitigation for these adverse impacts, SANDAG is proposing to use Resource Enhancement Mitigation Program (REMP) credits from the North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program (NCC PWP/TREP). The NCC PWP/TREP functions as a single integrated document for comprehensively planning, reviewing, and authorizing the transportation, community, and resource enhancement projects within the North Coast Corridor from La Jolla to Oceanside along the north San Diego County coastline. Within the NCC PWP/TREP is a section identifying planned track improvements, including work along the Del Mar Bluffs for additional stabilization. This includes the replacement of eroded track bed support, protection of the bluff face, and reinforcement of the bluff toe to provide continued operation of the rail service. The stabilization and associated drainage improvements included in SANDAG's consistency certification are considered consistent with the planned track improvements identified in the NCC PWP/TREP.

The REMF included in the NCC PWP/TREP also includes projects for the restoration of significant areas of wetlands that are within various stages of planning, implementation, and monitoring. Projects that have been successfully completed and that are meeting identified performance standards generate mitigation credits that can be applied to other projects under the NCC PWP/TREP. In the case of the proposed project, SANDAG proposes to deduct mitigation credits from the NCC PWP/TREP bank as mitigation for the permanent impacts to wetlands it would result in. Consistent with past practice, the

mitigation ratio to be used for mitigation projects completed prior to the impacts associated with this project would be 1:1 (mitigation area: impact area).

In order to ensure that permanent impacts to wetlands are adequately mitigated, **Condition Three** would require that prior to commencement of construction, SANDAG provide updated mitigation accounting tables, for the review and written concurrence of the Executive Director, that demonstrate adequate credits have been released from the REMP to mitigate for all permanent losses to wetland habitat that would result from the project at a ratio of 1:1.

Therefore, as conditioned, the Commission finds that the project is consistent with the ESHA and wetland protection provisions of Sections 30233 and 30240 of the Coastal Act.

J. WATER QUALITY

Section 30231 of the Coastal Act 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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act 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.

Proposed project activities including mobilization, staging and construction have the potential to negatively impact water quality and the marine environment through sedimentation and turbidity, as well as the accidental spill or release of crude oil, gas, petroleum products, or other hazardous substances within the site. SANDAG included in its consistency certification commitments for water quality protection during construction of the proposed project, including preparation of a Storm Water Pollution Prevention Plan, compliance with its National Pollutant Discharge Elimination System permit, and implementation of construction best management practices:

A Storm Water Pollution Prevention Plan (SWPPP) would be prepared for the Proposed Action prior to construction in order to obtain National Pollutant Discharge Elimination System permit coverage for storm water discharges. SWPPP Best Management Practices (BMPs) would be implemented to ensure

that construction does not adversely affect water quality from the use, for example, of petroleum products (e.g., fuels, oil, and lubricants) and erosion of land cleared during construction. Therefore, potential, indirect effects to water quality during construction would be avoided or minimized.

The Proposed Action does not involve new facilities that would create contaminants or pollutants that could indirectly affect coastal wetlands. The Proposed Action would not substantially alter existing on-site drainage patterns, nor would it increase runoff volumes and velocities. Upon implementation of the Proposed Action, runoff on the bluffs would continue to flow west, down to the beach and ocean.

SANDAG's consistency certification states that the SWPPP would be prepared prior to the start of, and implemented during, project construction. The SWPPP, which SANDAG agrees to submit to the Executive Director for review and written approval prior to construction, would address construction-related erosion and sediment control measures, soil stabilization, pollutant control measures for hazardous construction materials (such as fuels and lubricants), a best management practices (BMPs) inspection and maintenance plan, and a monitoring program and reporting plan. The consistency certification further states that:

Contractor operations are not anticipated to use or generate any unusual or significant amounts of hazardous wastes. Potentially hazardous materials, which may be present on site during construction of the proposed action, are those generally associated with the operation and maintenance of vehicles and equipment. Though these potentially hazardous materials may be present on site, the amount of material would be limited due to the mobile nature of the installation activities. All wastes generated would be disposed of at an approved disposal site. Hazardous materials temporarily held on-site would be stored in secure areas and in properly placarded containers. The Contractor would develop a Spill Prevention and Containment Plan before construction begins to ensure that the release of any hazardous materials is properly controlled and cleaned up. This plan would demonstrate that hazardous material storage is as far away from sensitive areas as practicable, and that any such storage areas are fully contained to prevent discharges to sensitive areas.

With the above-referenced water quality protection measures, the Commission finds that the proposed project would not cause significant adverse water quality impacts at and adjacent to the project area and would repair existing damaged storm water conveyance facilities that contribute to bluff erosion. Therefore, the Commission finds that the project is consistent with the water quality and spill prevention policies of the Coastal Act (Sections 30231 and 30232).

K. CULTURAL RESOURCES

Section 30244 of the Coastal Act 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. SANDAG's consultant PanGIS prepared the Cultural Resources Survey for Del Mar Bluffs Stabilization Project 5, Del Mar, San Diego County, California (March 4, 2021) in order to determine the presence or absence of potentially significant prehistoric and historic resources within the project boundary. The report included a record search, a Sacred Lands File Search through the Native American Heritage Commission (NAHC), information requests from local Native American tribal representatives, an intensive pedestrian survey of the project area, and survey results.

PanGIS found in its cultural survey report that:

In summary, 16 known cultural resource sites are located within or adjacent to the DMB5 APE. During the current cultural resource survey, four new historical resources were identified and the condition and location of twelve previously recorded resources were updated. Of the updated resources, nine were previously recommended ineligible for listing on the National Register of Historic Places (NRHP) and/or California Register of Historical Resources (CRHR) (Ní Ghabhláin and Palette 2001; Ní Ghabhláin and Palette 2002; Mengers 2018a; Mengers 2018b), one has been destroyed and is ineligible for listing, one was unable to be relocated for evaluation and is assumed destroyed, and one has not been evaluated but has protected status and will be avoided. The four newly recorded resources have not been evaluated. Until evaluation, they should be treated as if they are eligible for listing and impacts to the resources should be avoided. If impacts are unavoidable, these resources will require evaluation to determine significance.

Based on the results of the cultural surveys SANDAG concluded that the proposed project would not impact any of the previously recorded or newly recorded resources.

On May 28, 2021, SANDAG initiated consultation with the State Historic Preservation Officer (SHPO) regarding the 12 previously recorded resources as well as the 4 newly recorded resources. After reviewing the documentation submitted by SANDAG the SHPO concurred that the Area of Potential Effect was adequately delineated and the 16 resources (including the four recently discovered resources) are not eligible for listing on the National Register for Historic Places. The SHPO concluded that it does not object to SANDAG's finding that the project would not affect any cultural resources.

PanGIS further reports in the cultural survey report that:

A Sacred Lands File Search request of the project area was submitted to the Native American Heritage Commission (NAHC) as part of the DMB4 project, and negative results were returned February 5, 2018 (Mengers 2018). The NAHC

provided PanGIS with a list of Native American Contacts who may be able to supply information pertinent to the project area. Each of the seventeen individuals listed were contacted by mail or email sent February 8, 2018. Follow-up phone calls were made by PanGIS, Inc., on February 26, 2018. No replies to information requests were received.

PanGIS determined that because the area of potential effect (APE) for the DMB4 project is the same as the APE for the proposed project, and because the Sacred Lands File Search for the DMB4 project was less than five years ago, the results of that search are still applicable. The consistency determination also includes a record of Tribal outreach letters sent by and phone calls made by PanGIS on behalf of SANDAG requesting information on potential Tribal cultural resources in the project area.

Independently, on March 28, 2022, the Commission staff mailed letters to the Barona Group of the Capitan Grande, Campo Band of Diegueno Mission Indians, Ewiiapaay Band of Kumeyaay Indians, Iipay Nation of Santa Ysabel, Inaja-Cosmit Band of Indians, Jamul Indian Village, Kwaaymii Laguna Band of Mission Indians, La Posta Band of Diegueno Mission Indians, Manzanita Band of Kumeyaay Nation, Mesa Grande Band of Diegueno Mission Indians, San Pasqual Band of Diegueno Mission Indians, Sycuan Band of the Kumeyaay Nation, and Viejas Band of Kumeyaay Indians informing Tribal representatives of the proposed project and requesting information on any Tribal cultural, historic, or religious sites within or adjacent to the project area.

The Commission staff received a response from the Viejas Band of Kumeyaay Indians. The response stated that the project area has a rich history and cultural significance to the tribes, and requested that cultural monitors from the tribes be present for all ground-disturbing activities. SANDAG informed the Commission staff on April 14, 2022, that as with previous consistency certifications for LOSSAN rail projects, it would take steps to ensure that Tribal cultural monitors would be present during project ground disturbing activities. SANDAG would also adhere to standard archaeological mitigation measures for protection of any cultural resources inadvertently discovered during project construction activities.

The Commission agrees with SANDAG that the proposed project would not adversely affect known 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 and to also have Tribal cultural monitors onsite 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).

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. CC-0005-21 (SANDAG, Del Mar Bluffs Stabilization Project 5) and accompanying technical documents.
2. North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program (Caltrans and SANDAG, December 2016).
3. San Diego Forward – the 2021 Regional Plan (SANDAG, December 2021).
4. 2050 Regional Transportation Plan (SANDAG, 2011).
5. CC-048-04 (SANDAG, Del Mar Bluffs Stabilization Project 2, Del Mar, San Diego County).
6. CC-002-10 (SANDAG, Del Mar Bluffs Stabilization Project 3, Del Mar, San Diego County).
7. CC-0004-18 (SANDAG, Del Mar Bluffs Stabilization Project 4, Del Mar, San Diego County).
8. CDP 6-01-081 (NCTD, Soldier Pile Installation, Del Mar Bluffs, Del Mar, San Diego County).
9. CDP 6-96-156 (NCTD, Soldier Pile Installation, Del Mar Bluffs, Del Mar, San Diego County).
10. CDP 6-05-072 (Las Brisas, Solana Beach, San Diego County)
11. CDP 6-07-133 (Li, Encinitas, San Diego County)
12. CDP 6-12-041 (Lampl, Encinitas, San Diego County)
13. CDP 3-13-012 (Caltrans, San Luis Obispo County)
14. CDP 2-20-0282 (Caltrans, Sonoma County)
15. CDP 6-16-0281 (Winkler, Solana Beach, San Diego County)

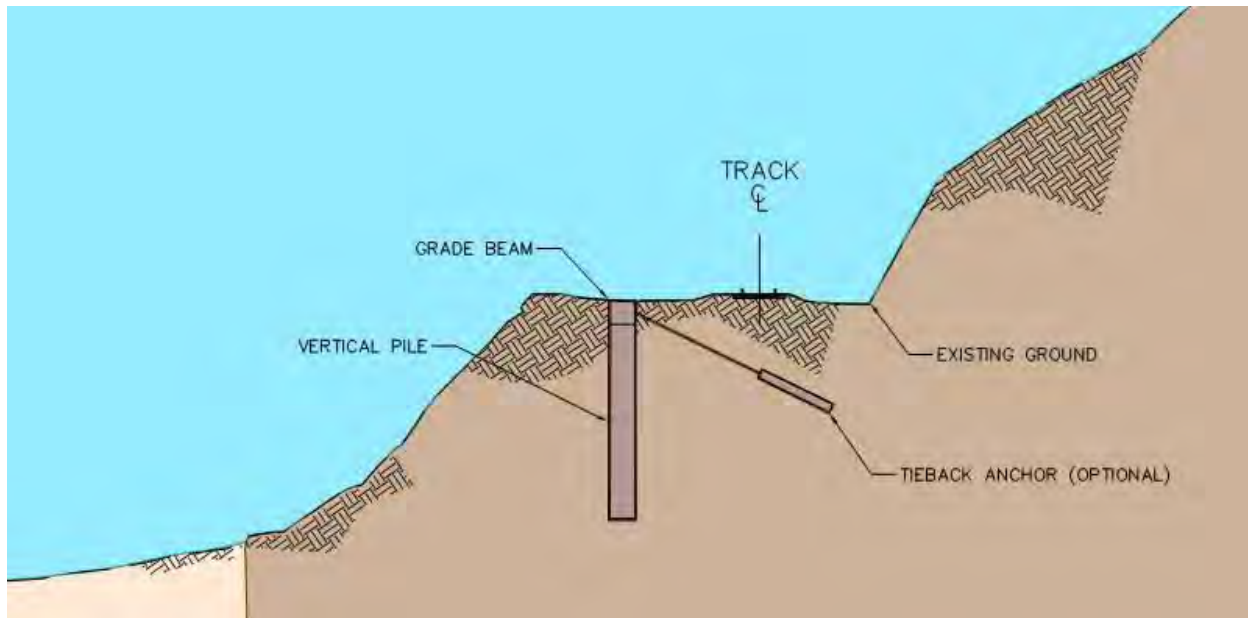
APPENDIX B - COMPLETE PROJECT DESCRIPTION

Upper Bluff Stabilization Structures

The proposed subsurface stabilization improvements consist of new stabilization structures and retrofits of existing stabilization structures. The new stabilization improvements are generally described by SANDAG in its consistency certification as follows:

Proposed stabilization improvements for most new areas consist of a [below ground] soldier pile wall at the bluff top to provide track support by retaining the earth behind the wall to prevent both local and global slope failures. This type of wall consists of vertical piles placed at 9 to 10 feet on-center with a connecting cast-in-place concrete pile cap or grade beam at the top. The piles would be constructed by drilling a 36-inch to 42-inch diameter hole, placing a steel beam in the hole (W shape) and filling the hole with concrete. If the wall needs to retain soil, the exposed surface between the piles would be in-filled with facing material (lagging) which may be timber, precast concrete planks or shotcrete. For taller walls, tiebacks would be required to anchor the soldier piles into the existing slope.... The soldier piles would be placed 11 feet to 21 feet seaward of the track centerline with the top of the wall about 1 foot below the top of tie. Generally, this would result in a wall that is initially buried; however, due to the natural bluff retreat, the top of the system may become exposed over time. Thus, the lagging would be finished with a textured and colored face similar to the color and texture of the existing bluff.

Figure 1 – Typical Section of a Stabilization Improvement Area



The amount and depth of piles, number of anchors and depth of lagging would be specific to the geotechnical and engineering requirements of each stabilization area, but

in total the project would include a total of 182 piles spread across eight locations with anywhere between 4 to 85 piles at each location driven down to a depth of 50 to 60 feet with roughly 10 feet between piles. The overall combined length of all of the stabilization improvements would be 1,761 feet. **Exhibit 3** includes a complete list of the upper bluff stabilization components and **Exhibit 5** shows their proposed individual locations and lengths. The addition of lagging (horizontal connections) between piles is proposed in eight locations where SANDAG has determined that the piles will need to retain soil. Once installed, the soldier piles and connecting lagging would essentially form a buried or subsurface wall that would extend from roughly even with the ground surface to five feet below ground surface. The addition of lagging in these areas would create eight new walls ranging in length from 59 feet to 165 feet. The overall combined length of the eight proposed subsurface walls would be 897 feet, as shown in **Exhibit 4**.

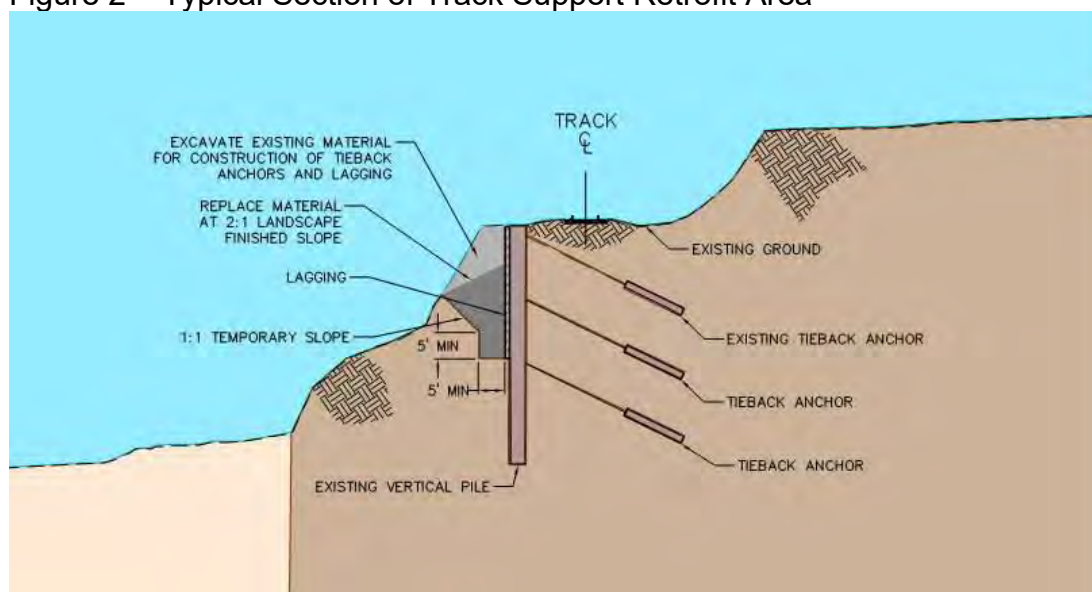
The proposed track support retrofit areas are generally described by SANDAG in its consistency certification as follows:

In general, the existing piles could be retrofitted by addition of lagging and tiebacks. The exposed surface between the piles would be in-filled with facing material (lagging) which may be timber, precast concrete planks or shotcrete. Lagging options would include placement of anchors into the existing soldier piles to support the facing. A channel could be attached to support panel lagging. A shotcrete facing would be connected directly to the anchors similar to the emergency repair at 15th Street. The shotcrete lagging would be finished with a sculpted face similar to the color and texture of the existing bluff.

Placing all lagging required for the 30-year bluff retreat in the initial phase of construction would require excavating and backfilling up to the required depth of lagging as shown in the graphic below. The depth of visible lagging is determined both by the extent of predicted bluff retreat, as well as the required excavation for the construction of tieback anchors... The excavation would be backfilled with a subdrain added to restore the bluff. Depending on the location and the depth of the replaced fill, the slope at the bluff face would be somewhat weakened with a slightly faster rate of retreat in that zone.

Most of the existing soldier piles would require addition of secondary anchors to extend the service life of the system. Addition of secondary anchors would require construction of a grade beam between the existing piles to support new tieback anchors. The grade beam could be a reinforced concrete beam or steel waler beam encased in shotcrete. Considering the need for adding grade beams to support additional tiebacks, the shotcrete lagging option is considered preferable because it would provide one consistent look for the wall system.

Figure 2 – Typical Section of Track Support Retrofit Area



Similar to the stabilization areas discussed above, the number of anchors and depth of lagging would be specific to the geotechnical and engineering requirements of each retrofit area. In total, there would be 32 areas within the bluffs that would be retrofitted in this manner. Each area would receive up to one additional tieback anchor and lagging would be down to a depth of up to five feet. The overall length of lagging added to the retrofit areas would be approximately 2,086 feet. See **Exhibit 3** for a complete list of the upper bluff stabilization components and **Exhibit 5** for individual component locations and lengths.

Figure 3 below is a photograph taken from the exhibits of Consistency Certification CC-0001-20 depicting retrofit construction, including lagging, made to existing soldier piles that had become exposed as a result of erosion (see sculpted wall directly below train). The lagging and shotcrete wall in that project would be similar to the walls being proposed as part of the retrofits for this project.

Figure 3 – Photograph of Soldier Pile Wall with Lagging



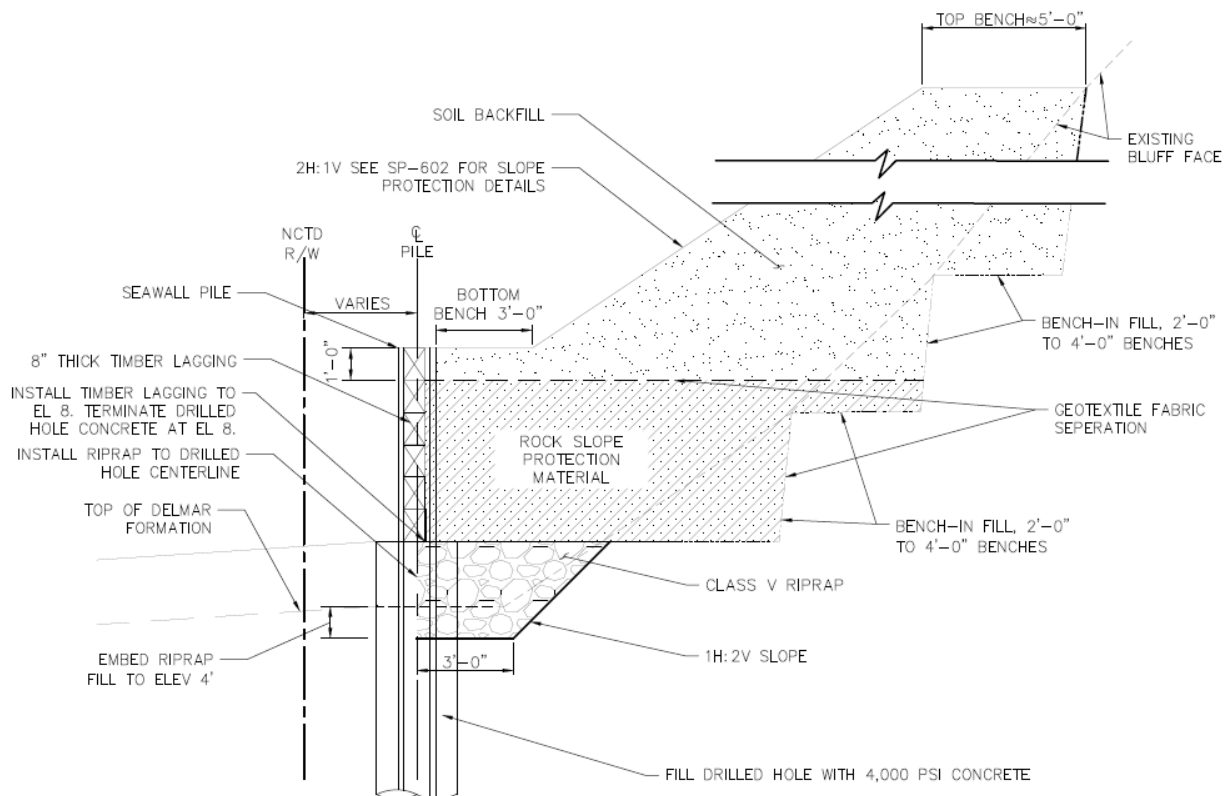
Seawalls and Changes to Bluff Slopes

The inclusion of seawalls and surface stabilization as part of the project is proposed by SANDAG to reduce erosion of the bluffs and improve overall bluff stability. As a result, in areas where seawalls are proposed, the project would be able to reduce the amount of bluff top improvements (number of tiebacks and depth of lagging) and therefore reduce disturbance to the upper bluff face.

The proposed seawalls are described by SANDAG in its consistency certification as follows:

Proposed seawalls consist of a soldier pile wall at the bluff toe with wood lagging panels. Proposed seawalls would be constructed in-line with existing seawalls, where present, to an elevation of 15 feet above mean sea level (MSL). This type of wall consists of vertical piles placed at 6 to 8 feet on center with wood lagging panels. The pile construction would be similar to the piles placed for track stabilization, except that the piles for the seawall would be smaller in diameter. The space behind the piles would be backfilled, up to the top of the seawall. Rip rap is proposed behind the proposed seawalls to minimize erosion and undermining of seawalls. Fill will be placed behind the seawalls at a slope ratio ranging from 5:1 to 2:1...

Figure 4 – Typical Section of a Seawall



In total, the project proposes 6 new seawalls ranging in length from 48 feet to 814 feet with a total combined length of 2,151 linear feet. The seawalls would generally be interspersed throughout the project area beginning at Seagrove Park in the upcoast area of the project site and ending near Anderson Canyon, as illustrated in **Exhibit 4**, and the distance between the seawalls and the bluff face would vary from immediately adjacent to upwards of 26 feet seaward depending on the shape of the bluff. The height of the seawalls with respect to the beach and sand level would vary throughout the year, but at a proposed elevation of 15 feet above MSL, the top of the walls would be approximately seven feet high from the ocean side. The rip rap placed being the seawalls would be Class V with individual pieces of rock ranging in diameter between 15.5 and 36 inches. On top of this rip rap, SANDAG proposes to place soil fill material to achieve a slope ratio ranging from 5:1 to 2:1 from the top of the seawall to approximately the middle of the bluff height. This fill would be placed to catch the slope and mid-bluff and provide added support against slumping or failure. This approach was developed by SANDAG as an alternative to grading and removal of material from the entire bluff face.

In two locations, DMB2 (SN5 from Station 1541+50 to 5143+25) and DMB2 (SN1S from station 1531+50 to 1534) (as shown in **Exhibit 4**), SANDAG has determined that the existing piles cannot handle the global and internal pressures caused by the natural material on the bluff face so is proposing to grade and buttress the bluff face at a slope of 1.5:1 all the way to the top of the bluff. At these two locations, the graded slope would be covered with anchored turf reinforcement mats, followed by a layer of soil, and then planting with native vegetation.

In planning the project, SANDAG also considered potential options that did not include seawalls to support the toe of the bluffs and instead relied on reducing the steepness of the bluff slope by extending it seaward with fill material. Based on this analysis, SANDAG determined that without seawalls, the project would require approximately 170,831 square feet of bluff face work. With seawalls and backfill, it determined that the amount of bluff face work would be reduced by approximately 71% for a total of approximately 48,970 square feet.

Drainage Improvements

The proposed drainage improvements would occur within 15 different locations throughout the 1.6 miles of the Del Mar bluffs (as shown in **Exhibit 7**). The improvements would be specific to the needs SANDAG has identified within each of those locations, but generally would include: new and/or increased concrete trap ditches, new and/or improved drains and outlets, increased capacity for inlets, installation of debris control measures, installation of splash walls on the existing channels at the ends of City streets, replacement of down drains, repairs to existing culverts, and addition of underdrains.

In addition to these proposed new and enhanced drainage features, SANDAG also proposes to carry out a variety of activities to prevent surface erosion on the inland side of the rail line between Seagrove Park and 10th Street. These activities include

regrading of eroded slopes, application of five to 20 foot high shotcrete, soil nail walls, soldier pile walls and/or retaining walls in select locations. These locations are shown in **Exhibit 7** and would include up to 4 sites and a combined total of approximately 1,000 linear feet of shotcrete or support walls...

Access Road Improvements

The proposed access road improvements are described by SANDAG in its consistency certification as follows:

Improvements include regrading the existing access roads at the south end of the corridor. A 6-inch DG surfacing would be added to improve stability while still maintaining the pervious surface.

The existing access road runs along the top of the bluffs parallel to the western side of the railroad beginning near Seagrove Park and extends to the North Beach Lot of the Torrey Pines State Beach. The two sections of the road identified for improvements are located in the southern half of the project site in the area of the bluffs between 6th Street and 4th Street and in the area where Carmel Valley Road intersects with Torrey Pines Road. The road improvements are identified with black dashed lines and black fill in **Exhibit 5**. The access road is approximately 15 feet wide and the overall length of road that would be graded and resurfaced would be 3,390 feet.

Staging, Access and Construction Methods

Staging and access for the proposed project are described by SANDAG in its consistency certification as follows:

Potential construction entrance areas would be located near the northern project limits at Coast Boulevard, at the termini of 8th Street and 7th Street, and near the southern project limits at Torrey Pines State Beach. These entrances would provide construction access along the east and west sides of the railroad tracks within the project limits using existing NCTD maintenance access roads. A temporary rail crossing would also be provided at 7th Street to allow construction vehicles to cross the tracks to access construction areas and staging locations. Potential construction staging areas could be located at the following locations:

Staging Area 1 – Adjacent to the Coast Boulevard construction entrance west of the tracks

Staging Area 2 – Terminus of 12th Street east of the tracks

Staging Area 3A – West of the 8th Street construction entrance west of the tracks

Staging Area 3B – Adjacent to the 8th Street construction entrance east of the tracks

Staging Areas 4 – Near MP 245.2 west of the tracks

Staging Area 5A and 5B – Adjacent to the southern construction entrance near MP 245.7

Potential construction entrances for access to work areas on the beach include the west end of 18th Street and 17th Street next to the lifeguard station at the north end of the project limits and through the Torrey Pines State Beach access road at the south end of the project limits. Use of the beach access would be subject to tidal influences. In addition to the construction staging and laydown areas within the railroad ROW, portions of the Torrey Pines State Beach parking lot, City owned lot at the end of 18th Street, and City streets could be used for additional staging and laydown subject to permits from the City of Del Mar and/or California State Parks.

Construction of bluff top stabilization structures would not require any beach access and would take place entirely within the railroad ROW at the top of the bluffs. Construction would require a drill rig and crane on or just east of the railroad track. Once situated the drill rig or crane would reach over the railroad track and drill into the upper bluff. The installation of tieback anchors would require an auger attached to the boom of an excavator. Lagging would consist of rebar cages placed between piles and shotcrete poured into the rebar. The outer face of the shotcrete would be colored and textured to match the surrounding natural bluff. Delivery trucks and cement trucks would traverse back and forth within the ROW in support of drilling operations.

Construction of seawalls and grading and placement of fill would require access from the beach. The area for the drilling rig on the beach would require excavating a small area of the beach to remove loose sand and establish a stable surface for drilling. Temporary casing would be installed around the perimeter of the area to be drilled in order to avoid sand sloughing into the hole. Once the hole has been drilled, a crane or excavator would place the steel beams into the hole and then concrete would be poured into the hole to set them. After the installation of piles is complete, lagging would be bolted to the flanges of the seawall piles. Next, excavators would place rip rap and fill material behind the wall, compact the soil down, followed by the mat and plantings.

Drainage improvements would include cut and cover and pipe jacking for new storm drains and outlets in order to avoid trenching through the existing bluff face. Excavators would work on the beach to excavate the toe of the slope so that the front face of the headwall can be constructed and tieback anchors installed. Shotcrete would then be applied and colored and textured so as to match the adjacent bluff material. Small backhoes and smaller trucks would be used in the construction of drainage channels and trackside ditches and for the repair of existing drainage inlets.

The improvements to access roads would remove existing material using backhoes and small dozers. A small dump truck would place the geogrid and aggregate material followed by compaction via a roller compactor.

Construction Duration

The overall construction schedule is estimated to take approximately 36 months; however, plant establishment from revegetation could take an additional two to three years. The timing of construction of the various components would depend on which can be conducted during active rail use. Construction of the various components would take place concurrently depending on site specific constraints.

Installation of soldier piles for upper bluff stabilization cannot take place during active rail use and would therefore occur at night and early morning, between 12:00 a.m. and 5:30 a.m. on weekday mornings. This timeframe could be expanded from 9:30 p.m. to 5:30 a.m. if busses are available to shuttle passengers around the Del Mar Bluffs and allow trains to be offline longer. In total, construction of the upper bluff stabilization components is expected to take 24 months. The construction of seawalls is not affected by train operations, but would be affected by high tides, waves, and storm surf and could not take place during periods with these conditions. Construction of seawalls is anticipated to take approximately 24 months. Construction of the drainage improvements and retrofits is similarly not affected by train activity and would take place during regular day time hours, but would not be completed during the rainy season. Overall, drainage improvements would require approximately 12 months to complete.

Project Duration

The proposed project submitted by SANDAG has been designed to accommodate a 30-year design life and encompasses a 1.6 mile section of the Del Mar bluffs. Previous bluffs projects considered by the Commission were constructed with a 20-year design life that could be extended with the addition of retrofit improvements such as tieback anchors and lagging. Previous bluffs projects considered by the Commission also consisted of project scopes and components of a significantly smaller scale than the project proposed in this consistency certification, generally consisting of no more than a few components encompassing linear extents of a few hundred feet to upwards of over a thousand feet. As such, this project is significantly larger and considers a longer-term planning horizon than previous projects. SANDAG has proposed these efforts to help protect the existing railroad and maintain it for rail operations, including passenger and freight, until the track can be relocated off the bluffs. Although SANDAG's current plan calls for relocating the tracks by 2035, full relocation will likely extend beyond the target date of 2035.

Public Access and Recreation Improvements

To address the resulting adverse impacts to coastal access and recreation from the projects proposed seawalls, SANDAG is proposing to carry out a capital improvement project that includes planning, design, environmental review and then construction of three significant coastal access and recreation features. These include a designated railroad crossing at either 7th Street or 11th Street, a beach accessway from the bluff top

to the beach below, and enhancement and formalization of the existing informal blufftop trail between 4th Street and Seagrove Park.

Conceptual plans for these three access and recreation improvements are currently being developed in the ongoing Coastal Connections Study. Because of this, SANDAG has stated that it is unable to identify the specific locations and designs of the access and recreation improvements that it would ultimately include in its capital improvement project.

However, to help expedite and streamline construction of that capital improvement project, these findings include a Coastal Act consistency analysis of several of the conceptual designs that have been developed. While some of the more complex concepts (such as the ADA-compliant ramp system) are not yet advanced or refined enough to allow for a full analysis, some of the other concepts have been more completely developed or are simple enough for the Commission to evaluate at this time. These are described below.

Rail Crossing

The rail crossing included in SANDAG's capital improvement project would provide a designated pedestrian access from one side of the railroad tracks to the other so that the public would be able to more safely access the seaward side of the bluffs and the beach accessway. Prior to construction of this crossing, SANDAG would need to conduct additional planning, design and environmental review work and obtain authorization from the California Public Utilities Commission (CPUC).¹¹ Because it would be constructed within the North County Transit District's railroad right-of-way, it would also need support from that agency. While several designs are currently being developed as part of the Coastal Connections Study, including "at-grade," over- and under-crossings, the furthest developed and simplest concept is the "at-grade" crossing that would be at the same elevation as the tracks and involve the most basic construction and design effort. Because this is the only crossing option that has been developed enough to allow for an evaluation of Coastal Act consistency, it is the only one reviewed as part of these findings.

The at-grade crossing concept would involve construction of a 15-foot wide by 40-foot-long concrete platform spanning across the railroad tracks. On both the seaward and landward ends of the platform, CPUC-approved signal gates would be installed to warn pedestrians of oncoming trains and also to block off access across the platform when trains are passing through the area of the bluffs. These signal gates would include an approximately eight-foot-tall pole with rail crossing signage and flashing lights connected to a ten-foot-wide arm that, when lowered, would span the width of the crossing. In addition to the signal gates, each side would also have a steel emergency swing gate. The purpose of this emergency swing gate would be to allow any

¹¹ Authority to construct a new public rail crossing is typically granted by the CPUC through the "formal application" process outlined in the [Rules of Practice and Procedure](#), Rules 3.7 to 3.11, which results in an Order issued by the Public Utilities Commission.

pedestrians accidentally trapped by the CPUC signal gate to safely exit the area of the railroad tracks in the event of an oncoming train.

In addition to the crossing itself, an access trail would also be needed to provide passage from the end of City streets down to the railroad tracks. One potential design currently being developed in the Coastal Connections Study involves a five-foot-wide decomposed granite path that would be constructed within the existing disturbed area of the bluffs located between the railroad and the street.

Construction of the at-grade crossing and access trail would require construction personnel using hand tools to do limited grading to create a level surface in the area of the tracks for the at-grade crossing and to prepare the five-foot-wide granite path. Once leveling is complete, construction personnel would construct the at-grade crossing by pouring a concrete foundation and installing the signals and gates. Construction of the path would require applying and compacting a decomposed granite base or similar surfacing material. Running boards with water boards would be installed along the border of the path to help hold the trail and bluff slope material together. In total the at-grade crossing and path would result in 1,600 square feet of disturbed area.

Beach Accessway

Similar to the rail crossing, several alternative design concepts for a beach accessway are currently under development as part of the ongoing Coastal Connections Study. Additional planning, design, and environmental review is proposed to be carried out by SANDAG to further refine and finalize these alternatives. Although SANDAG is waiting for the completion of the Coastal Connections Study to select which alternative to include as part of its proposed capital improvement project, the most fully developed draft is included in **Exhibit 10** and is comprised of an eight-foot-wide decomposed granite path tied into a landing on a section of existing seawall. Because it is a fairly simple design and has been developed sufficiently to allow for an evaluation of potential effects to coastal resources, it is included as part of these findings.

This beach accessway would follow the alignment and footprint of an existing informal vertical accessway and would involve enhancing and improving it so that it can more safely provide beach access for a wider range of the public. To carry out these enhancements, construction personnel would use hand tools to do limited grading and widening of the trail surface, and steps would be molded into the bluff base material using techniques such as railroad ties secured in place with rebar stakes. Next, a decomposed granite base or similar surfacing material would then be applied and compacted over the graded trail surface area and running boards with water boards would be secured along the border of the trail to help hold the trail and bluff slope material together.

Blufftop Trail Between 4th Street and Seagrove Park

As part of its proposed capital improvement project, SANDAG would also enhance and formalize into a single trail the informal patchwork of blufftop trails that exist on the inland side of the blufftop between 4th Street and Seagrove Park (a distance of approximately one mile). While the ongoing Coastal Connections Study is also refining

specific design elements for this trail (for example, the type of natural surfacing it would have, the precise location and amount of cut and fill needed for it to maintain a level grade, etc.), its basic route and general design features have been identified. The trail would extend along the blufftop between 4th Street and Seagrove Park and would be an approximately one mile long pathway composed of decomposed granite located entirely on the inland side of the railroad tracks. The trail would predominantly follow the existing footprint of informal trails from 4th Street to 11th Street that are elevated above the railroad tracks and set back 50 feet from their center. The proposed trail would provide a single, connecting trail that would generally follow the existing elevation and topography of this section of the bluffs and be constructed within existing disturbed areas.

Construction of the trail would require hand crews and light machinery to do limited grading of the trail surface before applying and compacting a decomposed granite base. Running boards and water boards would be installed along the length of the trail on both sides to help support the footprint of the trail. Fencing consisting of three-foot-tall wooden pylons and steel cabling or other similarly low-profile designs would be installed along the length of the trail for safety.

Moving upcoast to the area from 11th Street to Seagrove Park, a distance of approximately 1,500 feet, pedestrians have historically walked adjacent to the railroad ROW. Here, because there is only a narrow area of 15 feet between the railroad tracks and the bluffs, the trail would be constructed by cutting into the inland bluff material, supporting it behind a retaining wall or other similar structure and then constructing the level trail in the cleared area further from the tracks. In order to minimize the amount of grading of the bluff in this area, the trail would be directly incorporated into the work already proposed to occur in association with the drainage improvements and retrofit improvements – such as soil nail walls – where feasible.

Emergency Repairs

The proposed project also includes a request for after-the-fact authorization for two emergency repairs, one at MP 245.2 and another at Anderson Canyon. Work on the emergency repairs began on March 13, 2021. As of the date of Commission action, all of the necessary engineering and structural support work for the emergency repair is complete and SANDAG has begun revegetation of the reconstructed slope.

The emergency repairs at MP 245.2 were carried out after an existing 60 foot long, 17-foot-high concrete seawall (originally constructed over 100 years ago) failed on February 28, 2021. This failure resulted in a complete collapse of the seawall and a landslide of the adjacent slope. Immediate emergency repairs and slope stabilization was carried out by SANDAG to prevent further erosion and provide sufficient stability so that trains could continue passing through the area of the bluffs in a safe manner. Repairs included temporary grading of the landslide area to an approximate 2:1 finish slope, installation on the top of the bluff of 18 Cast-In-Drilled-Holes soldier piles ranging in length from 20 feet to 35 feet with tieback anchors and grade beams at a distance of 11 feet from the existing track center, construction of a buttress, drainage improvements, and construction of a new 290 foot long, five to 13 foot high tapered

seawall with rip rap placed at both ends. Construction of the seawall required 53 soldier piles, spaced five to six feet apart, with wood lagging panels between them. Similar to the design of other existing seawalls in this area, once the tracks have been relocated and the wall is no longer necessary the lagging between the piles would be removed, the piles would be cut off at the depth of the Del Mar formation, and the rip rap would be removed off the beach.

At Anderson Canyon, SANDAG used a visual analysis conducted on site as well as geotechnical and structural assessments, to determined that the existing 130 foot long, 19 foot high concrete seawall was showing signs of possible collapse. SANDAG determined that immediate repairs were necessary to prevent a failure similar to what happened at MP 245.2. To prevent such a collapse, SANDAG built a 161 foot long, cutoff wall flush with an existing splash pad and located 2.5 feet seaward of the existing seawall. SANDAG also installed weepholes along the length of the Anderson Canyon seawall to mitigate potential hydrostatic pressure. The constructed cutoff wall was constructed with 47 piles spaced 3 feet apart on center and a grade beam at the top of the piles. Removal of the seawall in the future would require cutting off the piles at the depth of the Del Mar formation.

Project plans and as-built photos of these emergency repairs are included in **Exhibit 6**.

APPENDIX C - HISTORY OF ACCESS AND RECREATION WITHIN THE DEL MAR BLUFFS

Construction of the railroad in its current location began in the early 20th century with the first train passing along the completed line in August 1910.¹² Sometime after completion of the railroad, a vertical overcrossing was constructed at the end of 10th Street that extended up and over the railroad and terminated on the bluff seaward of the tracks. This crossing connected to a series of informal lateral trails along the bluff edge as well as a vertical trail down to the beach at 11th Street. Figure 1 includes an aerial photograph from 1932 and the vertical overcrossing at 10th Street is highlighted with a black box. Various informal lateral access trails running along the length of the blufftop and the informal vertical trail leading down to the beach at 11th Street are also visible in the figure.

Figure 1 – Historic Overcrossing at 10th Street



(Photo Credit: C-1980, 73, February 28, 1932. Courtesy of UCSB Library Geospatial Collection)

¹² <http://thewebsters.us/2021/04/07/railroads-through-del-mar/>

This vertical overcrossing was removed sometime between 1932 and 1972 (it does not appear in aerial photographs from that year). Remnants of its structural foundation are still existing at the southern end of 10th Street, as illustrated in Figure 2 below.

Figure 2 – Remnants of Historic Overcrossing at 10th Street



(Photo Credit: Coastal Commission Staff, December 8, 2021)

Proposition 20 (the Coastal Zone Conservation Act) was on the November 7, 1972 ballot and was approved, effective February 1, 1973. The Coastal Zone Conservation Act created the State Coastal Zone Conservation Commission and six regional commissions. The Act was replaced with the Coastal Act of 1976, which became effective on January 1, 1977. Following passage of Proposition 20, any new, non-exempt development would be required to obtain Commission approval or, once its local coastal program was certified, City approval.¹³ Development is broadly defined in the Coastal Act to include not only more typical land development activities such as construction of physical buildings, but also any changes in the intensity of use of land or water, even where no physical construction may be involved. Pertinent to the historic trails and access and recreation within the Del Mar Bluffs, any action taken after 1972 that would have the effect of changing the intensity of use regarding access and

¹³ Note that the City of Del Mar has a certified Local Coastal Program that constitutes the standard of review for development projects within the City. However, the standard of review for the Commission's federal consistency review is the enforceable policies of Chapter 3 of the Coastal Act. Because this process is how the Commission has historically reviewed SANDAG projects along this section of rail, this report focuses only on Coastal Act policies.

recreation (whether temporary or permanent) would be considered development that would be subject to the policies of the Coastal Act and would require approval, unless exempt.

Figure 3 includes an aerial photograph from 1979 beginning at 12th Street and extending downcoast to 8th Street. The photograph illustrates the series of informal lateral trails along the bluff, as well as the informal vertical trail at 11th Street leading from the bluff top down to the beach.

Figure 3 – 1979 Aerial Photograph



(Photo Credit: Photography and website Copyright © 2002-2021 Kenneth & Gabrielle Adelman - Adelman@Adelman.com)

These trails have existed and been continuously used by the general public since construction of the railroad in the early 20th century and also since the passage of Proposition 20 and the Coastal Act. Any project that has the potential to adversely impact use of these trails for access or recreation is required to be reviewed pursuant to the relevant policies of the Coastal Act. SANDAG and NCTD have completed multiple stabilization-related projects within the bluffs beginning as far back as 1996. For each of these projects the Commission reviewed and analyzed all of the coastal resource effects of the proposed development, including temporary and permanent adverse impacts to access and recreation.

EXHIBIT B

Del Mar Bluffs Stabilization Project Update

Overview

The Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor connects San Diego with points north along the coastal rail corridor. It is the second-busiest intercity passenger rail corridor in the nation, part of the U.S. Department of Defense Strategic Rail Network (STRACNET), and San Diego's only viable freight rail corridor.

Part of the LOSSAN rail corridor traverses along the Del Mar Bluffs, a coastal bluff area that is subject to erosion. Beginning in 1998, North County Transit District (NCTD) and SANDAG implemented a multi-phase approach to preserving the single track on the Del Mar Bluffs. The most recent phase of this effort, Del Mar Bluffs Stabilization Phase 5, is in final design.

Action: **Information**

Staff will present an update on Phase 5 of the Del Mar Bluffs Stabilization project and the California Coastal Commission's Federal Consistency Certification Conditions.

Fiscal Impact:

None.

Schedule/Scope Impact:

None.

Key Considerations

In general, the Del Mar Bluffs Stabilization project area encompasses the 1.6 mile stretch of the LOSSAN corridor that runs atop the coastal bluff between Coast Boulevard and the Torrey Pines Overhead Bridge in the City of Del Mar. The purpose of this stabilization project is to protect the trackbed from potential instability from stormwater runoff, groundwater, bluff erosion, seismic events, and wave action until the long-term alternative of moving the tracks off the bluffs is implemented.

Through an extensive alternatives analysis process, the project team developed a plan to maintain trackbed stability for 30 years, which includes installation of drainage improvements to protect against stormwater runoff and groundwater, retrofit of existing and installation of new soldier piles to protect against bluff retreat and seismic events, and extension of existing seawalls to protect against wave action. SANDAG staff have worked with NCTD, City of Del Mar, and California Coastal Commission (CCC) staff for over two and a half years to develop the proposed project, which is the least damaging practical alternative to protect the rail line until it is relocated.

A key milestone of the project was the review and concurrence of the project's Federal Coastal Consistency Certification by the CCC. The project was heard at the June 8, 2022, CCC meeting, and, after substantial collaboration between staff from SANDAG and CCC, a mutually agreeable solution was developed that CCC unanimously approved. The approved stabilization project includes the following conditions:

- The removal of the seawalls within 30 years, or when the rail tracks are relocated off the bluffs, with a procedure to request additional time if the relocation takes longer than the 30-year permit period.

- As mitigation for sand and beach loss, planning, design, environmental review, and construction of three projects to provide and improve safe public coastal access and recreation: (1) a north-south trail on top of the bluff with adjacent low-profile fence; (2) a CPUC-approved pedestrian rail crossing near 7th Street or 11th Street; and, (3) a beach accessway at or between 7th and 11th Streets. The design of these access projects will be informed by SANDAG's Coastal Connections Study, which will be presented for public comment in the Fall of this year.
- Mitigation for: wetlands; gnatcatcher habitat avoidance; construction safety; construction staging and storage; and structural appearance of the buried piles if they become visible and the seawalls following construction.

Since the stabilization project is a critical public safety project, it is imperative to move forward with the project without delay. As demonstrated by the two recent bluff failures in November 2019 and February 2021, there is an urgent need to implement these safety improvements to avoid more failures, emergency repairs, and operational impacts in the future. CCC's approval of the Federal Consistency Certification for the project on June 8, 2022, also allows SANDAG to meet funding deadlines for over \$50 million in grant funding that SANDAG secured for the stabilization project, and avoid cost escalation due to construction inflation on this critical safety project. In addition, CCC's access improvement conditions provide long-needed safe legal access to the beach in this location, which is an important regional goal, as it will enhance public safety and improve freight and passenger rail operations.

Next Steps

SANDAG staff will continue to progress the project through final design and permitting and work toward preparing the project to advertise for bid.

Following the public comment period on the Coastal Connections Study, a separate Capital Improvement Project to implement the access improvement conditions for the bluff stabilization project will be brought to the Board of Directors for approval at a future meeting.

Sharon Humphreys, Director of Engineering and Construction

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EXHIBIT C

NCTD & SANDAG Receive \$106 Million Grant to Implement \$202 Million of Improvements on the San Diego Portion of the LOSSAN Corridor

December 08, 2020

Funding will deliver significant economic and quality of life benefits to the San Diego region

Oceanside, CA – The North County Transit District (NCTD) and San Diego Association of Governments (SANDAG) announced today that the California Transportation Commission (CTC) has awarded a grant request of \$106 million to fund trade corridor enhancements in the San Diego region. This announcement follows the recent release of a study outlining how to phase expansion of passenger and freight rail services along the Los Angeles – San Diego – San Luis Obispo (LOSSAN) rail corridor, the second busiest rail corridor in the nation. In a typical year, the LOSSAN rail corridor moves approximately \$1 billion of freight and over 8 million rail passengers. The \$106 million grant provides critical funding for a \$202 million program of projects for the San Diego portion of the LOSSAN rail corridor. SANDAG will be responsible for implementing the program of projects which includes: Del Mar Bluffs Stabilization Project 5, the construction of the COASTER Convention Center Platform in the Gaslamp area, Phase 1 of the San Dieguito Bridge located near the Del Mar Fairgrounds, and other rail line improvements on Camp Pendleton. The program of projects was developed as part of a [San Diego Pathing Study](#) (Pathing Study) funded by NCTD and BNSF.

“We are excited and grateful to the California Transportation Commission for selecting the region’s grant application for funding. The funding will support critical state of good repair and capacity enhancing projects that will increase transit ridership and rail freight movement,” said Tony Kranz, NCTD Board Chair and Encinitas Councilmember. “The funding of these projects will also create local jobs and help boost our economy which has been ravaged by the COVID-19 pandemic.”

The projects outlined in the trade corridor enhancement program grant will provide a host of benefits to the broader San Diego and Southern California region including, but not limited to:

- Expanding COASTER service to the Downtown San Diego Convention Center, which serves as a major entertainment and employment hub for the region;

- Extending service to a new Amtrak maintenance facility in National City that will aid LOSSAN *Pacific Surfliner* operations;
- Increasing freight services along the LOSSAN corridor to five roundtrips per day as part of the prioritized mid-term improvements;
- Minimizing rail crossing delays by extending signaling and Positive Train Control to improve rail speed and coordination with rail crossing gates; and
- Stabilizing the 1.7 miles of coastal bluffs within the City of Del Mar.

“This funding is critical to SANDAG’s goal of improving the speed, capacity, and safety of rail service along the second busiest rail corridor in the nation,” said SANDAG Chair and City of Poway Mayor Steve Vaus. “SANDAG remains fully committed to securing the bluffs in the short-term and identifying a feasible long-term solution for the corridor.”

With the award of this generous grant from the CTC, NCTD and its rail partners will work together with SANDAG, LOSSAN Corridor Agency, California State Transportation Agency, and other key stakeholders to identify the funds needed to implement the remaining phases of unfunded projects included in the San Diego Pathing Study.

About NCTD: *The North County Transit District is a public transportation agency providing over 10 million passenger trips in Fiscal Year 2019 throughout North San Diego County and into downtown San Diego. NCTD is designated as a rail common carrier by the Surface Transportation Board based on the movement of interstate commerce on the tracks and the Railroad of Record by the Federal Railroad Administration responsible for safety over the entire San Diego portion of the LOSSAN corridor. NCTD’s system includes BREEZE buses (with FLEX service), COASTER commuter trains, SPRINTER hybrid rail trains, and LIFT paratransit service. NCTD’s mission is to deliver safe, convenient, reliable, and user-friendly public transportation services. For more information visit: [GoNCTD.com](https://gonctd.com).*

About SANDAG: [The San Diego Association of Governments \(SANDAG\)](https://sandag.org) is the San Diego region’s primary public planning, transportation, and research agency, providing the public forum for regional policy decisions about growth, transportation planning and construction, environmental management, housing, open space, energy, public safety, and binational topics. SANDAG is governed by a Board of Directors composed of mayors, council members, and supervisors from each of the region’s 18 cities and the county government.

To protect the health and safety of staff, partners, and the general public, SANDAG offices are closed to the public. Our team is working remotely during this time to provide essential services, and to continue progress on critical regional projects. SANDAG will continue to

monitor the development of COVID-19 in the region and follow guidance from the [San Diego County Health and Human Services Agency](#).

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◀ **Previous Article** NCTD Thanksgiving Service Schedule & Amtrak Rail-2-Rail Program Blackout ^{recaptcha}
COMTO SoCal Fall Newsletter (featuring Matthew Tucker) **Next Article** ▶

EXHIBIT D

**Addendum 18 Project Scope of
Work EXHIBIT A
S896855**

NCTD File No.: 520003	SANDAG Ref. No.: 5000710 ADD 18 SOW 38 AM 2
CIP Title: Del Mar Bluffs Stabilization 5	
SANDAG CIP No.: 1147100	SANDAG Project Manager(s): Allie DeVaux NCTD Project Manager(s): Scott Shroyer
Lead Agency: SANDAG	Operating Agency: NCTD
Project Budget: \$67,998,950	Effective Date: September 2021

PLANNING	DESIGN	CONSTRUCTION
Estimated Start Date: TBD	Estimated Start Date: April 2019	Estimated Start Date: December 2022
Estimated Completion: TBD	Estimated Completion: June 2022	Estimated Completion: TBD
Estimated Budget: TBD	Estimated Budget: \$7,000,000	Estimated Budget: \$60,998,950

Intended Source of Funds:
The project is funded from the following sources:

Sources of Funds	NCTD Applied	SANDAG Applied	Total
FEDERAL:			
FTA 5307 - CA-90-Z207		\$320,000	\$320,000
FRA SOGR - Awarded in May 2020		\$11,570,250	\$11,570,250
FTA 5337 FY2023 (NCTD TCEP Match)	\$1,000,000		\$1,000,000
FTA 5337 FY2024 (NCTD TCEP Match)	\$5,200,000		\$5,200,000
FTA 5337 FY2025 (NCTD TCEP Match)	\$2,400,000		\$2,400,000
FTA 5337 FY2026 (NCTD TCEP Match)	\$400,000		\$400,000
RSTP Transfer to FTA		\$3,000,000	\$3,000,000
STATE:			
CA Natural Resource Agency General Fund Grant		\$ 2,928,700	\$ 2,928,700
TIRCP - Allocated by CTC Aug 2020		\$4,900,000	\$4,900,000
TCEP (Regional) - Awarded in Dec 2020		\$31,200,000	\$31,200,000
TCEP (State) - Awarded in Dec 2020		\$5,000,000	\$5,000,000
LOCAL:			
NCTD TDA Match for FTA CA-90-Z207	\$80,000		\$80,000
Total Sources of Funds:	\$9,080,000	\$ 58,918,950	\$ 67,998,950

**Addendum 18 Project Scope of Work
EXHIBIT A**

Describe Any Necessary Transfers of Project Funds Between the Parties:

SANDAG will be responsible for funding the project costs for the design phase of the project. SANDAG has issued a purchase order (PO) totaling \$128,200 to the North County Transit District (NCTD). To the extent that the Project Costs are defined in Addendum 18 and incurred for the Scope of Work as provided below exceed the amount identified herein, the parties will meet and confer to discuss whether a funding amendment is required in accordance with Section A.3 of Addendum 18 referenced above.

NCTD will authorize the transfer of \$320,000 of FTA grant funds from the Bridge 257.2 project (CIP 1146500) to replenish California Natural Resource grant funds that were transferred to Del Mar Bluffs Stabilization 4 project to fund change order work.

NCTD will transfer \$80,000 of local funding to match the FTA funds to be transferred from Bridge 257.2. SANDAG will invoice NCTD once the project is completed and the monies are expended.

NCTD is contributing \$9,000,000 in future Federal Transit Administration (FTA) 5337 funds from fiscal years 2023 through 2026, which should be used as the match to the \$36,200,000 in TCEP funds. SANDAG should ensure that project funds are programmed in a manner that ensures that expenditures charged to NCTD's FTA funds are within the period of fund availability as defined in the Code of Federal Regulations 2 CFR Section 215.28.

Project Description:

The purpose of this project is to provide engineering and design services for the repair of existing damaged and deteriorated North County NCTD drainage structures, installation of new drainage structures, as well as provide coastal bluff stabilization measures both above and below the railroad tracks within the Del Mar Bluffs corridor, MP 244.0 to MP 245.7. The design drawings, specifications, and construction estimate will include repairs to damaged drainage facilities, new drainage facilities and bluff stabilization measures both above and below the tracks throughout the Del Mar Bluffs corridor in order to maintain the integrity of the railroad tracks and continuous operation of the coastal rail corridor.

The design engineering services will include the following:

1. Hydraulic Study and Design of Drainage Improvements, potentially including:
 - a. Design a replacement for an existing concrete storm drain chute at beach level located at MP 244.4 with an underground storm drain system.
 - b. Design an extension of an existing headwall at MP 244.7
 - c. Design a new storm drain to the beach at MP 244.8 South of 7th Street
 - d. Design a new subdrain system from Anderson Canyon to MP 245.7.
 - e. Design a new subdrain system at MP 244.8 running North.
 - f. Design a new subdrain system North of MP 244.2.
 - g. Design a new subdrain system from MP 244.8 to MP 245.0.
 - h. Design a replacement for various small trapezoidal channels. Areas to be determined in preliminary engineering phase.
 - i. Design a repair of existing earthen channels in need of regrading.
 - j. Additional areas identified in 30% design schematic plans.

**Addendum 18 Project Scope of Work
EXHIBIT A**

2. Identify and design a solution for localized erosion areas, both above and below the railroad tracks. Areas will be identified in preliminary engineering phase, approximately 20 areas are anticipated to need stabilization with minor walls and grading.
3. Design soldier piles to stabilize areas that are identified as having inadequate seismic factors of safety. The following areas are anticipated:
 - a. Area SA-3 at MP 244.7
 - b. Area SA-5 at MP 244.8
 - c. Area SA-6 at MP 245.2
 - d. Area SA-8 North of MP 245.4
 - e. Area SA-9 South of MP 245.4
 - f. Additional areas identified in 30% schematic design plans.
4. Identify and design a solution for additional areas in need of stabilization with soldier piles due to anticipated bluff retreat. Provide additional geotechnical investigation in accordance with current design criteria to determine if additional locations in need of piling.
 - a. Design of new soldier pile stabilization areas identified in 30% schematic design plans and geotechnical report.
 - b. Design of potential trench area regrading.
5. Design of retrofit of existing soldier piles for bluff retreat anticipated until the train can be relocated off the bluffs.
 - a. Design retrofit of existing piles considering:
 - i. Lagging
 - ii. Tiebacks
 - iii. Grade Beams
 - iv. Inline Piles
6. Produce a Categorical Exclusion document for the project from the lead federal agency as determined by funding type.
7. Prepare and submit to the coastal Commission a consistency certification application for the proposed project. This shall include detailed project descriptions, maps, graphics, and analyses to provide evidence that the proposed designs are consistent with the relevant policies of the Coastal Act.
8. Request permits from RWQCB and USACOE.

Scope of Work to be performed by NCTD:

NCTD to provide design review and comments, meeting attendance, coordination, timely processing of this exhibit A and administration. Additionally, NCTD will provide any other services related to operations, maintenance, right-of-way and safety as the owner operator of the Rail Way per MOU Addendum 18.

**Addendum 18 Project Scope of Work
EXHIBIT A**

Scope of Work to be performed by SANDAG:

SANDAG will provide project management and administration of the design, coordinate with NCTD to obtain right of entry permits, and coordinate all activities that could affect NCTD and provide other applicable services as described in MOU Addendum 18.

Uses of Funds for All Project Phases	NCTD Cost	SANDAG Cost	Total Cost Estimate
Administration	\$128,200	\$1,900,000	\$2,028,200
Communications		\$250,000	\$250,000
Engineering & Design		\$4,500,000	\$4,500,000
Right of Way		\$200,000	\$200,000
Construction Management		\$12,000,000	\$12,000,000
Flagging		\$1,500,000	\$1,500,000
Professional Services		\$100,000	\$100,000
Construction		\$44,000,000	\$44,000,000
Environmental		\$2,100,500	\$2,100,500
Contingency	\$20,000	\$1,300,250	\$1,320,250
Total Uses of Funds:	\$148,200	\$ 67,850,750	\$ 67,998,950

Any Additional Project-Specific Conditions:

SANDAG received a Federal-State Partnership for State of Good Repair grant from the Federal Railroad Administration for the Project. In accordance with 49 U.S.C. § 22905(c)(1), SANDAG and NCTD agree to the following:

1. NCTD owns right-of-way that will be used for the Project;
2. The Parties agree that SANDAG will not provide any compensation to NCTD for SANDAG's use of NCTD's right-of-way for this Project;
3. SANDAG and NCTD assure the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations resulting from the Project;
4. NCTD assures that collective bargaining agreements with railroad employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by such employees on the railroad transportation corridor; and
5. SANDAG assures compliance with liability requirements consistent with 49 U.S.C. § 28103.

**Addendum 18 Project Scope of Work
EXHIBIT A**

APPROVED BY:

SAN DIEGO ASSOCIATION OF GOVERNMENTS

Andre Douzdjian

Jan 4, 2022

Andre Douzdjian
Chief Financial Officer

Date

NORTH COUNTY TRANSIT DISTRICT



1/3/2022

Scott Shroyer
Senior Rail Engineer

Date

SAN DIEGO ASSOCIATION OF GOVERNMENTS

Annie Smiddy

Jan 14, 2022

Annie Smiddy
Office of General Counsel

Date

NORTH COUNTY TRANSIT DISTRICT



1/3/2022

Eun Park-Lynch
Chief Financial Officer

Date

SAN DIEGO ASSOCIATION OF GOVERNMENTS

Sharon Humphreys

Jan 14, 2022

Sharon Humphreys
Engineering and Construction Department Director

Date

NORTH COUNTY TRANSIT DISTRICT



1/3/2022

Lori A. Winfree
General Counsel

Date

NORTH COUNTY TRANSIT DISTRICT



1/3/2022

Matthew O. Tucker
Executive Director

Date

SLH

Signature: 

Email: ado@sandag.org

Signature: 
Annie Smiddy (Jan 14, 2022 10:41 PST)

Email: annie.smiddy@sandag.org

Signature: 
Sharon Humphreys (Jan 14, 2022 15:25 PST)

Email: sharon.humphreys@sandag.org

(S896855) Addendum 18 SOW DMB5 - AM 2 - 2022-01-03

Final Audit Report

2022-01-14

Created:	2022-01-04
By:	Jennifer Howell (Jennifer.Howell@sandag.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsWMjIQhCiesbsT0J5Ad2iZVY9Eob9kv0

"(S896855) Addendum 18 SOW DMB5 - AM 2 - 2022-01-03" History

-  Document created by Jennifer Howell (Jennifer.Howell@sandag.org)
2022-01-04 - 8:56:45 PM GMT- IP address: 70.167.177.44
-  Document emailed to Andre Douzjdian (ado@sandag.org) for signature
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-  Document e-signed by Sharon Humphreys (sharon.humphreys@sandag.org)
Signature Date: 2022-01-14 - 11:25:00 PM GMT - Time Source: server- IP address: 76.176.58.193

✔ Agreement completed.
2022-01-14 - 11:25:00 PM GMT

EXHIBIT E

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California Coastal Commission

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION
13

14 **CALIFORNIA COASTAL**
15 **COMMISSION,**

16 Petitioner/Plaintiff,

17 v.

18 **NORTH COUNTY TRANSIT**
19 **DISTRICT, DOES 1-25;**

20 Respondents/Defendants,

21 **EXBON DEVELOPMENT, INC.;**
22 **AND DOES 26-50.**

23 Real Parties in
24 Interest/Defendants.

3-22-cv-00587-LL-BGS

PLAINTIFF'S EX PARTE
APPLICATION TO VACATE
STAY; AND RESUME MOTION
FOR REMAND

Courtroom: 2B

Judge: Hon. Linda Lopez

Trial Date:

Action Filed: April 19, 2022

25
26 Pursuant to Local Rule 83.3(g) and Chambers Rule 5, Plaintiff and Petitioner,
27 California Coastal Commission ("Coastal Commission") specially appear to bring
28 this *ex parte* application seeking the following relief:

1 i) That the Court vacate its order dated June 2, 2022, which was entered *sua*
2 *sponte* based on a mistake of fact;

3 ii) That the Court reset a briefing schedule for the Coastal Commission's
4 Motion to Remand; and

5 iii) That the Court refrain from making a decision on consolidation or stay of
6 the proceedings until after the remand is decided, if the Court denies the remand.

7 **NO WAIVER OF ARGUMENTS IN MOTION TO REMAND**

8 The Coastal Commission is challenging this Court's personal jurisdiction and
9 subject matter jurisdiction over this matter in a currently pending Motion to
10 Remand. However, given the Court's June 2, 2022 Order, the Coastal Commission
11 specially appears to make this *ex parte* request to avoid stagnation of this litigation
12 and to ensure the Motion to Remand can be heard before any other action is taken
13 in this matter. The Coastal Commission does not intend to waive its arguments set
14 forth in its Motion to Remand, nor involuntarily subject itself to the jurisdiction of
15 this Court.

16 **NOTICE TO OPPOSING PARTY**

17 On June 3, 2022, counsel for the Coastal Commission expressed its intent to
18 bring this *ex parte* application and requested to meet and confer with opposing
19 counsel. Carter Declaration, ¶ 2. Counsel for Coastal Commission met with
20 Attorney John Nelson, who represents both North County Transit District
21 ("NCTD") and Exbon Development Inc. ("Exbon") on Monday, June 6, 2022, at
22 10:00 a.m. to discuss the substance of this request. Carter Declaration, ¶ 4.
23 Although Mr. Nelson agrees that there is no Surface Transportation Board ("STB")
24 hearing set for June 17, 2022, or any other date certain, he indicated he would
25 **oppose** this *ex parte* request because he believes the stay is still warranted. Carter
26 Declaration, ¶ 5.

27 ///

28 ///

**THE COURT’S JUNE 2, 2022 ORDER IS BASED ON A MISTAKE OF
FACT**

In its June 2, 2022 Order, the court expressed the view that little harm would befall the Coastal Commission from a brief stay, based on the mistaken belief that there was an STB hearing that would occur on June 17, 2022. ECF. No. 11 at 8:12-13. However, there is no STB hearing scheduled for June 17, 2022, or any other date certain. Patterson Declaration, ¶ 8. Again, counsel for defendants does not dispute this. Carter Declaration, ¶ 5. In fact, the STB has been largely silent since 2021. *See* Patterson Declaration, ¶ 10. Further, it is possible that STB may be waiting for a state court decision, based on the Coastal Commission’s request, which NCTD opposed, to hold the STB matter in abeyance until guidance could be obtained from the state court. Patterson Declaration, ¶¶ 4, 5, and 9.

The only hearing scheduled for June 17, 2022, was NCTD’s Motion to Stay before the Honorable Dana Sabraw, which was calendared before this matter was transferred to the current Court. ECF No. 10 at 2:10-12.

ARGUMENT

I. The Coastal Commission will be harmed by the stay.

As the Court mentioned in its Order, “[I]f there is even a fair possibility that the stay ... will work damage to some one else, the stay may be inappropriate absent a showing by the moving party of hardship or inequity.’ *Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (citation and internal quotation marks omitted).” ECF No. 11 at 7:25-8:1.

The Coastal Commission has an interest in enforcing the Coastal Act and ensuring that California’s environmental laws are complied with, especially by state agencies using state funds. A stay in this matter will harm the Coastal Commission by impeding its enforcement, as well as rendering it unable to prevent irreversible damage to the coastal environment.

1 Although NCTD's Executive Director mentioned in his declaration in support
2 of Motion to Stay that he decided it was in NCTD's best interest to wait to proceed
3 with contracting with Exbon (ECF No. 4-2), his declaration does not prevent him
4 from altering his approach in the future, and there is no legal mechanism to ensure
5 that NCTD complies with the words of its Executive Director. This leaves open a
6 myriad of possibilities, such as the NCTD Board of Directors deciding to take
7 action despite its Executive Director's opinions, its Executive Director changing his
8 mind, the NCTD entering into a contract with a developer other than Exbon, or
9 NCTD taking other actions short of entering into a contract toward developing the
10 coastal bluffs without complying with California's laws. In entering the stay, this
11 Court did not simultaneously enter an injunction holding NCTD to the words
12 expressed in its Executive Director's declaration, and the Coastal Commission is
13 offered no enforceable assurances that development will not take place.

14 Further, the STB has not entered an order since April 7, 2021, and has shown
15 no indication of taking action any time soon. The Coastal Commission should be
16 able to expeditiously resolve this issue in the state courts to protect California's
17 coastal resources, and a stay until an STB hearing that has not yet been set or even
18 spoken of will indefinitely pause effective resolution for all parties and keep the
19 Coastal Commission stuck in a gridlock unable to exercise necessary enforcement.

20 Because the instant stay will cause harm to the Coastal Commission, it should
21 be vacated until after a Motion to Remand can be heard and decided.

22 **II. NCTD will not be harmed by lifting of the stay until after the Motion to**
23 **Remand can be decided.**

24 In contrast, NCTD will suffer no harm from lifting the stay until after the
25 Motion to Remand can be decided. In fact, NCTD had already agreed to have the
26 Motion to Remand heard before Motion to Stay. Further, the Coastal Commission
27 has already agreed to an extension of time for NCTD to respond to the complaint.

28 *See* ECF No. 10.

1 **III. Judicial Economy is served by hearing the Motion to Remand before**
2 **entering a stay or ordering consolidation.**

3 Because there is no June 17, 2022 STB hearing, entering a stay before
4 deciding whether this court even has jurisdiction over the matter no longer works to
5 serve judicial economy. Instead, judicial economy is served by deciding first
6 whether the case will be remanded. If the remand is granted, this court's inquiry
7 and job ends there. If the remand is denied, then the parties can brief their positions
8 regarding stay and consolidation with the certainty of knowing that the matter of
9 venue has been put to rest. If, on the other hand, this Court considers consolidation
10 first, and consolidation is granted, that may prejudice the Coastal Commission's
11 grounds for remand. If this stay remains intact, the Coastal Commission is unable
12 to be heard at all regarding remand, and this case remains on the Court's docket, in
13 limbo, for an indefinite period of time.

14 Judicial economy is best served by hearing the parties' arguments on the
15 pending Motion to Remand before the Court considers a stay or consolidation.
16 Accordingly, this Court should grant the relief requested.

17 **IV. Coastal Commission should be afforded the opportunity to fully brief its**
18 **opposition to the stay if the case is not remanded.**

19 Although this Court notes that it may enter a stay *sua sponte*, even in the
20 absence of a motion (ECF No. 11 at 8:11), it is important to note that in this case
21 there *is a noticed motion to stay*, and the Coastal Commission explicitly reserved its
22 right to oppose the motion and be heard by the court. *See* ECF No. 10. The
23 Coastal Commission is harmed and unfairly prejudiced by not being able to fully
24 brief its opposition to NCTD's Motion to Stay as the effect of the June 2, 2022
25 order is the same as a default taken under Chambers Rule 3(J), even though the
26 Coastal Commission is not in default.

1 Because the Coastal Commission will be harmed by the stay and has not even
2 had the chance to fully and properly brief its opposition to the stay, the requested
3 relief should be granted.

4 **V. The balance of harms favors granting the relief requested in this**
5 **application.**

6 As the Court noted in its order: “‘In determining whether a stay is appropriate,
7 a district court ‘must weigh competing interests and maintain an even balance.’
8 Landis, 299 U.S. at 254-55.” ECF No. 11 at 7:16-18. Because the Coastal
9 Commission faces significant harm due to the stay granted June 2, 2022, and
10 NCTD will suffer no harm from vacating the stay until after the Motion to Remand
11 is heard—as NCTD has already agreed to—the balance of harms heavily favors
12 granting the relief requested in this application.

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CONCLUSION

Because the Court's June 2, 2022 Order was based on a mistake of fact, and based on the foregoing argument, the Coastal Commission respectfully request that this Court enter an Order:

- i) Vacating its Order dated June 2, 2022, in its entirety;
- ii) Setting a briefing schedule for the Coastal Commission's Motion to Remand;
- iii) Pausing briefing on the Order to Show Cause regarding Consolidation and the NCTD's Motion to Stay (ECF No. 4); and
- iv) Ordering that no briefing schedule for the Motion to Stay or Order to Show Cause regarding Consolidation shall be set until after the Motion to Remand is decided.

Dated: June 7, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
JAMEE JORDAN PATTERSON
Supervising Deputy Attorney General

/s/ Roxanne J. Carter
ROXANNE J. CARTER
Deputy Attorney General
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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION
13

14 **CALIFORNIA COASTAL
COMMISSION,**

15 Petitioner/Plaintiff,

16
17 v.

18 **NORTH COUNTY TRANSIT
DISTRICT, DOES 1-25;**

19
20 Respondents/Defendants,

21 **EXBON DEVELOPMENT, INC.;**
22 **AND DOES 26-50.**

23 Real Parties in
24 Interest/Defendants.

3-22-cv-00587-LL-BGS

**DECLARATION OF ATTORNEY
ROXANNE CARTER IN SUPPORT
OF PLAINTIFF'S EX PARTE
APPLICATION TO LIFT STAY;
AND RESUME MOTION FOR
REMAND**

Courtroom: 2B

Judge: Hon. Linda Lopez

Trial Date:

Action Filed: April 19, 2022

25
26 I, Roxanne Carter, declare as follows:
27
28

1 I am a Deputy Attorney General with the California Attorney General's Office
 2 in San Diego. I have been assigned to represent the California Coastal Commission,
 3 ("Coastal Commission") in the above-entitled action.

4 I make the following statements based upon personal knowledge or upon
 5 information and belief based on publicly available information. If called upon to
 6 testify, I could and would competently testify to these statements.

7 1. On June 2, 2022, this Court entered into an order staying this matter, citing
 8 on page 8, lines 12-13 that the Surface Transportation Board ("STB") had a hearing
 9 scheduled on June 17, 2022.

10 2. On June 3, 2022, I contacted North County Transportation District
 11 ("NCTD") and Exbon Development, Inc.'s ("Exbon") attorney of record, L. John
 12 Nelson, to schedule the mandated meet and confer before filing this *ex parte*
 13 application, indicating that I believed a stay was entered by the Court *sua sponte*
 14 due to a mistake of fact that there was an STB hearing on June 17, 2022.

15 3. On June 3, 2022, Mr. Nelson indicated he disagreed with my position but
 16 would make himself available for a meet and confer on Monday, June 6, 2022.

17 4. On June 6, 2022, at approximately 10:00 a.m., I met and conferred with Mr.
 18 Nelson via BlueJeans video conferencing to discuss this *ex parte* application.

19 5. During our meet and confer, Mr. Nelson indicated he agreed that there is no
 20 STB hearing on June 17, 2022; however, he indicated he and his clients would
 21 **oppose** this application as he believes a stay is still warranted.

22 6. On our call, I told Mr. Nelson I planned to file this *ex parte* request at the end
 23 of the day on Monday, June 6, 2022, or the morning of Tuesday, June 7, 2022.

24 *I declare under penalty of perjury under the laws of the State of California that the*
 25 *foregoing is true and correct.*

26 DATED: June 7, 2022

27 
 28 Roxanne Carter

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Attorney General of California
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Supervising Deputy Attorney General
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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION
13

14 **CALIFORNIA COASTAL
COMMISSION,**

15
16 Petitioner/Plaintiff,

17 v.

18 **NORTH COUNTY TRANSIT
DISTRICT, DOES 1-25;**

19
20 Respondents/Defendants,

21 **EXBON DEVELOPMENT, INC.;**
22 **AND DOES 26-50.**

23 Real Parties in
24 Interest/Defendants.

3-22-cv-00587-LL-BGS

**DECLARATION OF ATTORNEY
JAMEE JORDAN PATTERSON IN
SUPPORT OF PLAINTIFF'S EX
PARTE APPLICATION TO LIFT
STAY; AND RESUME MOTION
FOR REMAND**

Courtroom: 2B

Judge: Hon. Linda Lopez

Trial Date:

Action Filed: April 19, 2022

25
26 I, Jamee Jordan Patterson, declare as follows:

27 I am a Supervising Deputy Attorney General with the California Attorney
28 General's Office in San Diego. I represent the California Coastal Commission,

DECLARATION OF ATTORNEY JAMEE JORDAN PATTERSON IN SUPPORT OF
PLAINTIFF'S EX PARTE APPLICATION TO LIFT STAY; AND RESUME MOTION FOR
REMAND (3-22-cv-00587-LL-BGS)

1 (“Coastal Commission”) in the above-entitled action and before the Surface
2 Transportation Board.

3 I make the following statements based upon personal knowledge or upon
4 information and belief based on publicly available information. If called upon to
5 testify, I could and would competently testify to these statements.

6 1. On December 30, 2021, North County Transportation District (“NCTD”)
7 informed the Surface Transportation Board (“STB”) that attempts to reach a
8 settlement had proved unsuccessful and requested that the STB lift its order of
9 abeyance.

10 2. On January 19, 2022, I made a request, on behalf of the Coastal Commission,
11 that the STB send the parties to mediation.

12 3. On April 19, 2022, we filed the above-entitled action in state court.

13 4. On April 26, 2022, I requested that the STB hold the matter in further
14 abeyance pending decision from the state court in interpreting *Friends of the Eel*
15 *River v. North Coast R.R. Auth.*, 399 P.3d 37 (Cal. 2017).

16 5. On April 29, 2022, NCTD opposed the request.

17 6. STB has failed to rule on our requests, or respond to NCTD’s oppositions.

18 7. STB has not entered any ruling on the merits of NCTD’s petition.

19 8. There is no set hearing date before STB at this time.

20 9. It is unclear when or if STB will make any decision prior to a state court
21 opinion.

22 10. On June 6, 2022, at 4 p.m. I checked the STB’s docket in this matter on the
23 STB website. As of that date and time, the STB’s docket shows that the STB has
24 made only 3 decisions regarding NCTD’s petition since the petition was filed: a
25 decision on September 23, 2020, extending the deadline to reply to NCTD’s
26 petition to October 5, 2020, a decision on November 30, 2020, to hold the matter in
27 abeyance until March 30, 2021, and a decision on April 7, 2021 to hold the matter
28 in abeyance until December 31, 2021. 2

1 *I declare under penalty of perjury under the laws of the State of California that the*
2 *foregoing is true and correct.*

3 DATED: June 7, 2022

4 *Jamee Jordan Patterson*
Jamee Jordan Patterson

CERTIFICATE OF SERVICE

Case Name: **CCC v. North County
Transit District**

Case No. **3-22-cv-00587-LL-BGS**

I hereby certify that on June 7, 2022, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **PLAINTIFF'S EX PARTE APPLICATION TO VACATE STAY; AND RESUME MOTION FOR REMAND**
- **DECLARATION OF ATTORNEY ROXANNE CARTER IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION TO LIFT STAY; AND RESUME MOTION FOR REMAND**
- **DECLARATION OF ATTORNEY JAMEE JORDAN PATTERSON IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION TO LIFT STAY; AND RESUME MOTION FOR REMAND**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 7, 2022, at San Diego, California.

A. Lopez
Declarant


Signature

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12, I hereby certify that on June 23, 2022, I served a copy of this **CALIFORNIA COASTAL COMMISSION'S UPDATE REGARDING RECENT APPROVAL OF BLUFF STABILIZATION PROJECT** on all parties of record by first-class mail and email as follows:

Daniel R. Elliott Daniel Elliott PLLC 2000 Pennsylvania Avenue NW, Suite 7000 Washington, DC 20006 1055 Thomas Jefferson Street NW Suite 500 Washington, DC 20007 Email: danelliottiii@outlook.com ; delliott@gkglaw.com	William C. Pate Devaney Pate Morris & Cameron LLP 402 W. Broadway, Suite 1300 San Diego, CA 92101 Email: wpate@dpmclaw.com
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A. Lopez

Declarant



Signature