

204354

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34111

**NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD
-PETITION FOR DECLARATORY ORDER-**

**REPLY OF CITY OF ENCINITAS TO THE COMMENTS OF
THE ORANGE COUNTY TRANSPORTATION AUTHORITY**

ENTERED
Office of the Secretary
JAN 10 2002
Part of
Public Record

Communications with respect to this document should be addressed to:

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Counsel for CITY OF ENCINITAS

DATED: January 8, 2002

The City of Encinitas ("City") did not have an opportunity to object to the Petition of the Orange County Transportation Authority ("OCTA") for leave to intervene since it received the OCTA's Petition and this Order granting the Petition on the same date.

The City fails to see how the OCTA has a direct interest in this particular effort to construct a passing track in the City of Encinitas. The OCTA has failed to explain how it will be impacted one way or another by this particular passing track. Indeed, like the NCTD¹ the OCTA has failed to establish how this passing track will affect freight operations at all. This may be due to the fact that there are at least eight passing tracks on the NCTD line. (See Exhibit P, San Diego Northern Railroad Track Chart). No one has established, either through its own arguments or the declarations by freight carrier BNSF², that the BNSF use of the tracks warrants or is in need of further passing tracks to operate its "average" of six freight trains daily. Indeed, these trains are already restricted from using the NCTD track during heavy commute hours and further the BNSF itself has not stated any need for an additional passing track. Thus the OCTA has failed to make any showing of any real interest in the Encinitas Passing Track. Nevertheless, the City responds to the OCTA's comments as follows:

The OCTA essentially echoed the arguments being made by the NCTD in an effort to obtain Board jurisdiction over the construction of this passing track. In order to avoid duplication, the City will not reiterate the arguments made in response to the NCTD's comments but instead fully incorporates herein by this reference, its initial Reply to the NCTD's Petition for Declaratory Order filed with the Board on October 31, 2001 as well as the Reply to the Board's Order, filed on January 4, 2002.

CONCLUSION

Although the OCTA agrees that the STB only retained jurisdiction over the NCTD to ensure that the NCTD did not interfere with freight operations, it asks this City, to take the illogical leap of assuming that because the STB retained such jurisdiction that

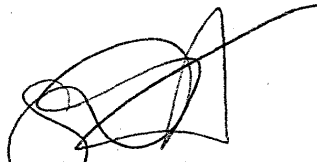
¹ North San Diego County Transit Development Board

² Burlington, Northern and Santa Fe Railway Company

it also reserved jurisdiction over any improvement the NCTD cared to make to their line without any showing of an effect on interstate freight transportation. Clearly, the Board should not take that step for many sound reasons.

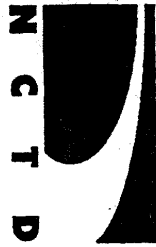
Like the NCTD, the OCTA first fails to address what the City considers to be the primary issue: that is the Board's lack of authority to regulate a political subdivision of the State of California (the NCTD) when it concerns the internal limits on its power placed there by the California state legislature in the NCTD's statutory charter. Second, the OCTA also ignores the fact that there has been no showing that this passing track will have any impact on interstate freight operations. Third, the OCTA has also failed to address any concurrent jurisdiction that the California Coastal Commission (and the City) may have by reason of the California Coastal Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stephen M. Uthoff', is written over a horizontal line.

Stephen M. Uthoff
CONIGLIO & UTHOFF
A Professional Law Corporation
Attorneys for
CITY OF ENCINITAS

EXHIBIT P



North San Diego County Transit District

SAN DIEGO NORTHERN RAILROAD TRACK CHART

From County Line (MP 207.4) to San Diego (MP 267.5)

ISSUED 7-1999

HDR

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ABBREVIATIONS

BRIDGES

Ab	Abutment
Ap	Approach
Ar	Arch
B.D.	Ballast Deck
Br	Bridge
Bx	Box
C	Concrete
C.I.P.	Cast Iron Pipe
C.P.	Concrete Pipe
C.M.P.	Corrugated Metal Pipe
D.G.	Deck Girder
D.T.	Deck Truss
DBL	Double
Ext.	Extension
F.T.	From Trestle
F.T.	From Trestle
I.Bm.	1-Bay
Lg.	Long
May.	Masonry
O.D.	Open Deck
O.C.P.	Oval Concrete Pipe
O.R.C.	Oval Reinforced Conc. Pipe
P.C.	Pre-stressed Concrete
Pod.	Podestol
P.T.	Pile Trestle
R.C.P.	Re-Inforced Concrete Pipe
S.S.C.	Steel Stringers and Caps
S.S.P.	Structural Steel Pipe
Sto.	Stone
T.R.	T-Rail
Th.G.	Thru Girder
Th.T.	Thru Truss
T.Bk.	Timber Box
T.	Trestle
Tr	Truck
Tr	Truck
W.F.	Wide Flange
Wd.	Wood
Wt.	Wrought Iron Pipe

Add "s" to the above abbreviations when plural form is required.

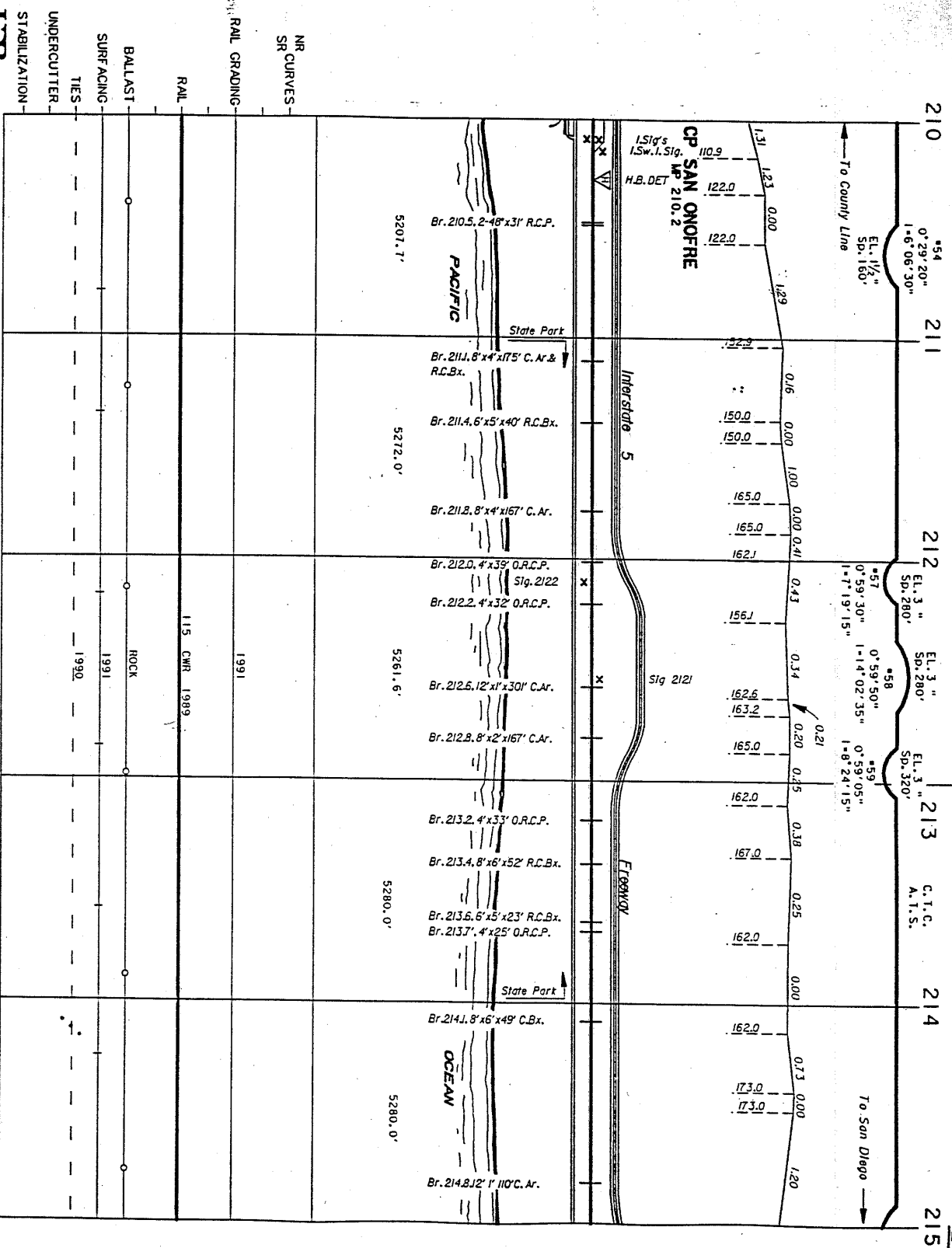
MISCELLANEOUS

A.B.S.	Automatic Block System
Auto. Gate	Automatic Gate
A.T.S.	Automatic Train Stop
Av.	Avenue
Bch.	Branch
Bldg.	Block
Bivd.	Boulevard
Br. Sig.	Bridge Signal
B.P.	Bumping Post
Cont. Sig.	Control Signal
CR.	Creek
Co.	County
C.T.C.	Centralized Traffic Control
C-Sig.	Control Signal
D.C.-Sw.	Dual Control Switch
DIV.	Division
E.W.	Eastward
ET.	Elevation of Curves
F.Lub.	Florida Lubricator
Fish. Sig.	Fishing Signal
F.L.P.	Flag Light Pole
F.L.T.	Flag Light Tower
F.T.	Flag
At Grade	At Grade
H.B. Def.	Hot Box Detector
H.B. Refl.	Hot Box Reflector
Hf.	Head Free
Hw. Def.	Highwater Detector
Hw.	House
Hwy.	Highway
I.	Total Curve Angle
I. Sig.	Interlocking Signal
I. Sw.	Interlocking Switch
Jct.	Junction
Lt.	Left
Mt. 1	Main Track No. 1
Mt. 2	Main Track No. 2
Mt. 3	Main Track No. 3
Mt. 4	Main Track No. 4
O.H.	Overhead
O.P.	Overpass
Pasgr.	Passenger
P.O.	Police
P.V.	Private (also Pr.)
P.V.D.	Public
R.R.	Railroad
R/R	Railroad
R/S.	Resume Speed
Rt.	Right
R.W.	Right-of-way
Riv.	River
Rd.	Road Crossing
Sec.	Section
Sig.	Signal
S.B.	South Bound
Sp.	Spiral Length (also Spl.)
S.M.	South Main (also S.)
St.	Street (also Stale)
Sta.	Station
Trk.	Track
U.P.	Underpass
W.W.	Westward
Yd.	Yard
YL	Yard Limits

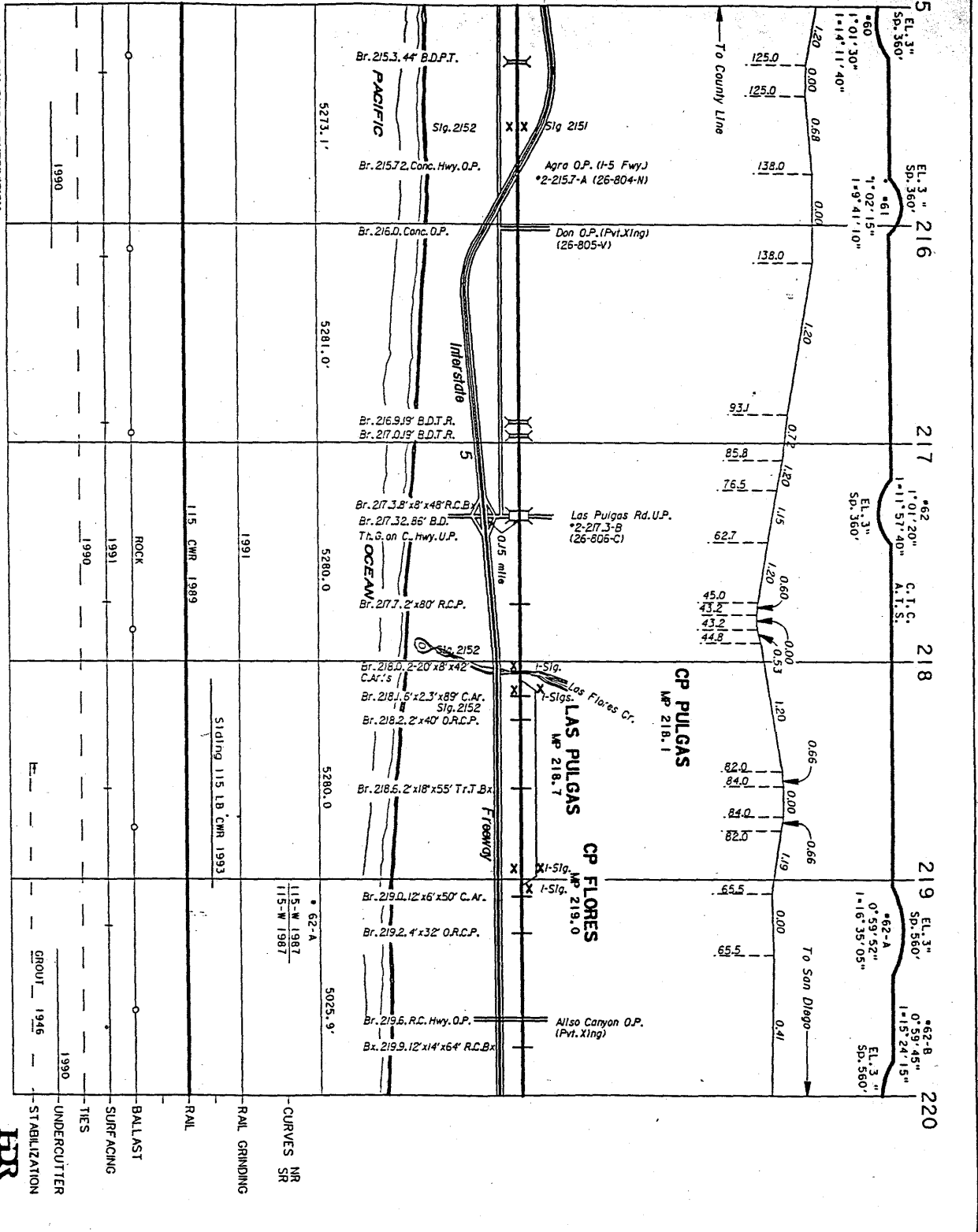
HDR

HR

HR
SDR SAN DIEGO SUBDIVISION



SPNR SAN DIEGO SUBDIVISION



HDR

HDR

SAN DIEGO SUBDIVISION

STABILIZATION

UNDERCUTTER

TIES

SURFACING

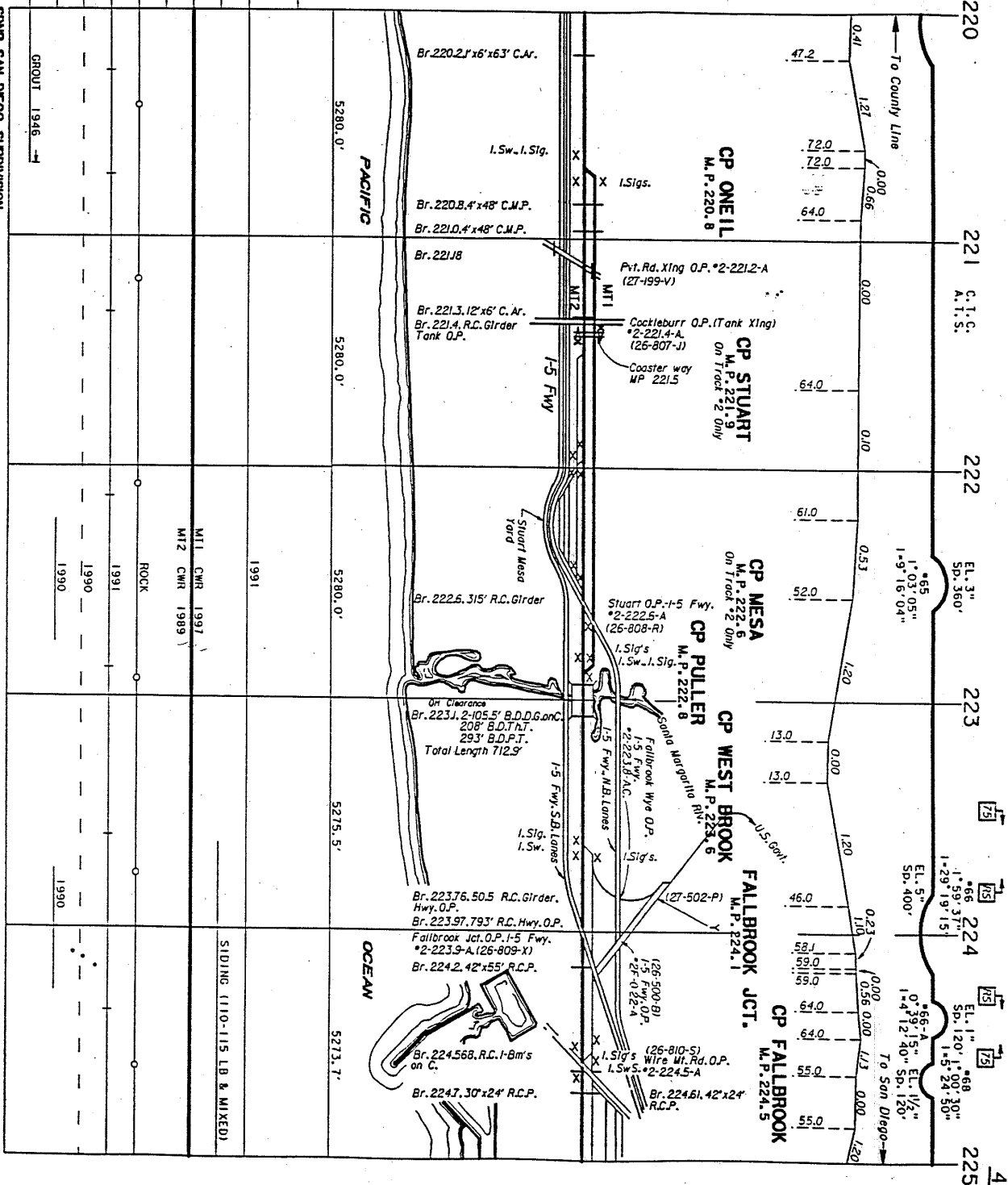
BALAST

RAIL

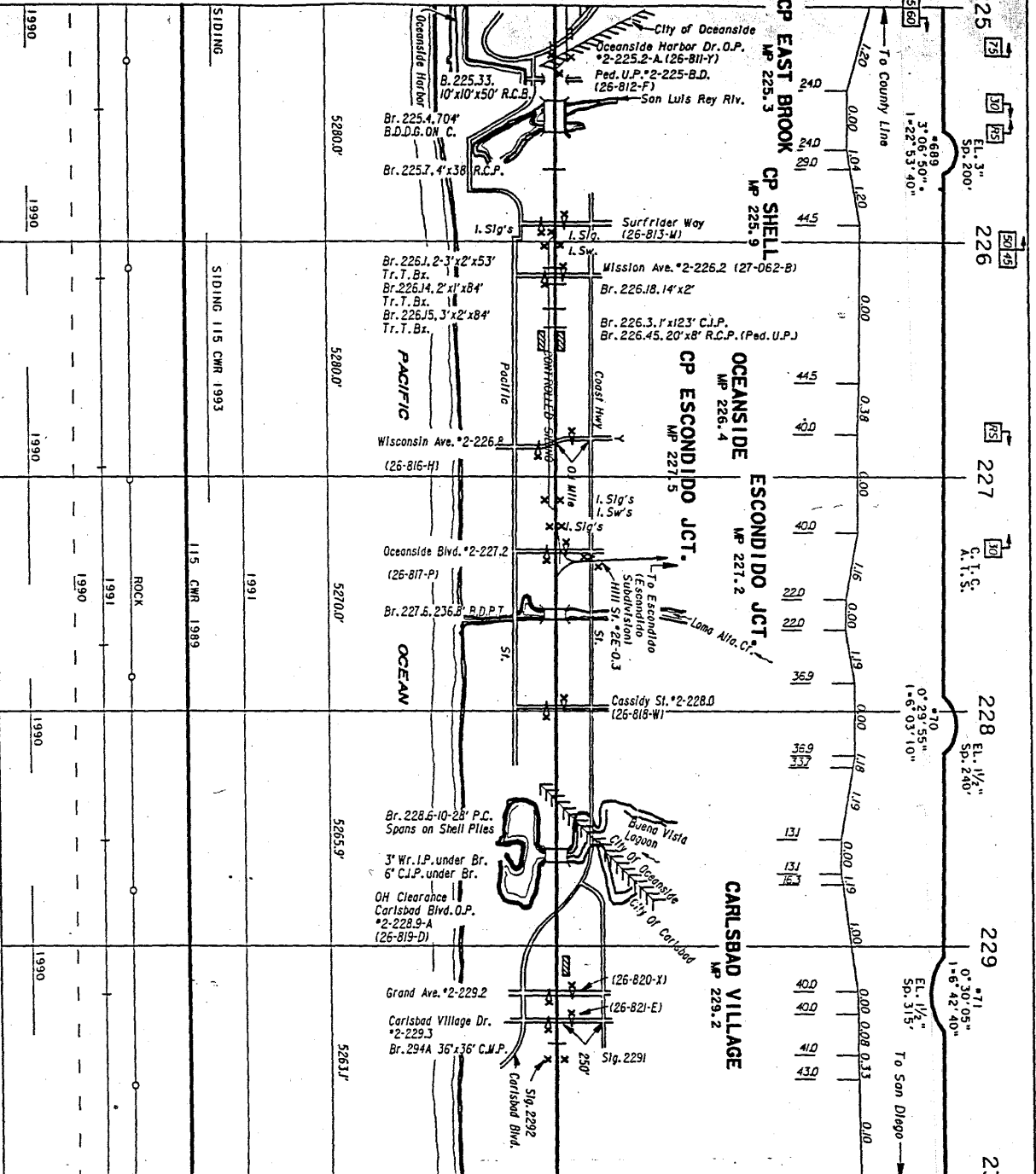
RAIL GRINDING

NR CURVES

SR CURVES



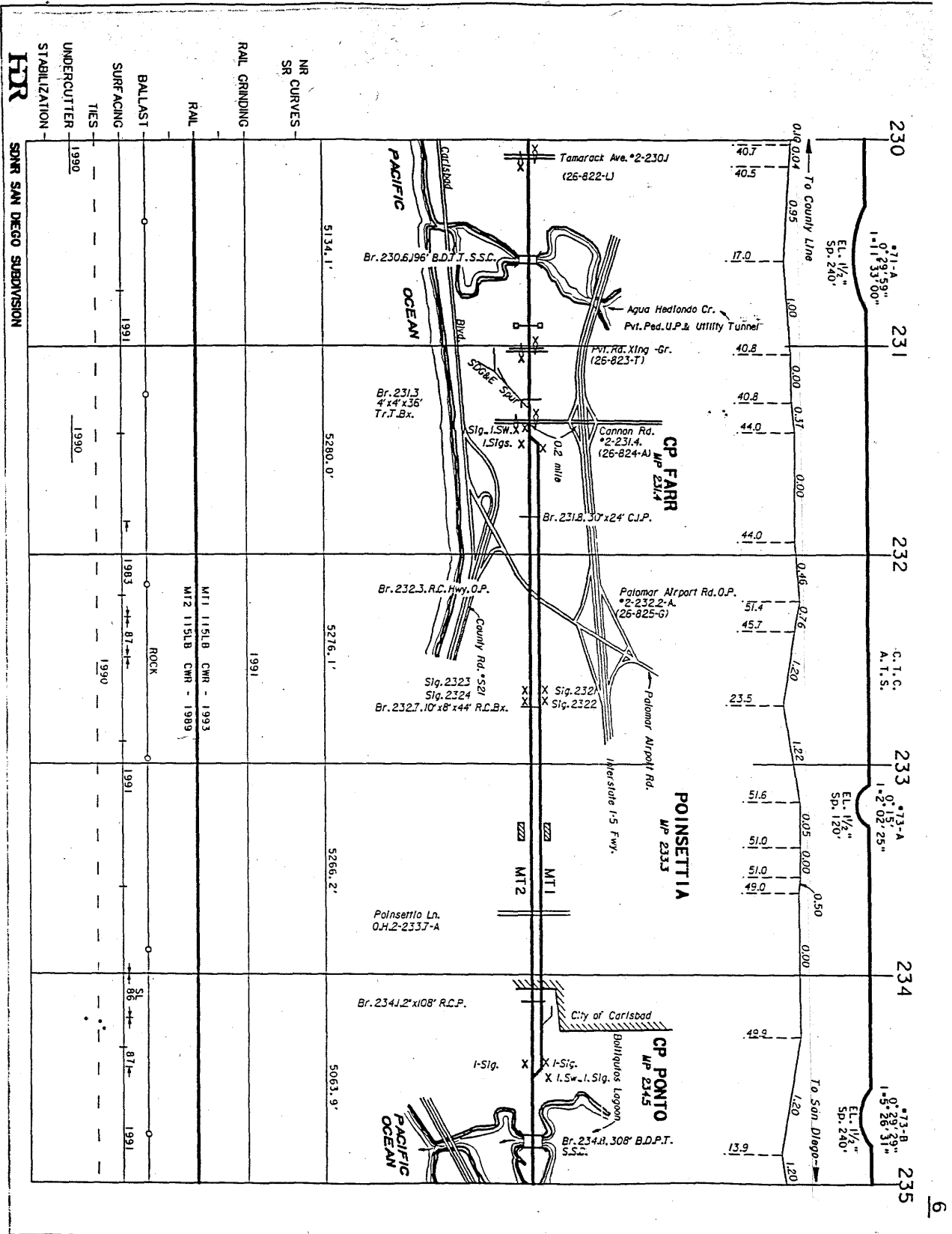
SAN DIEGO SUBDIVISION

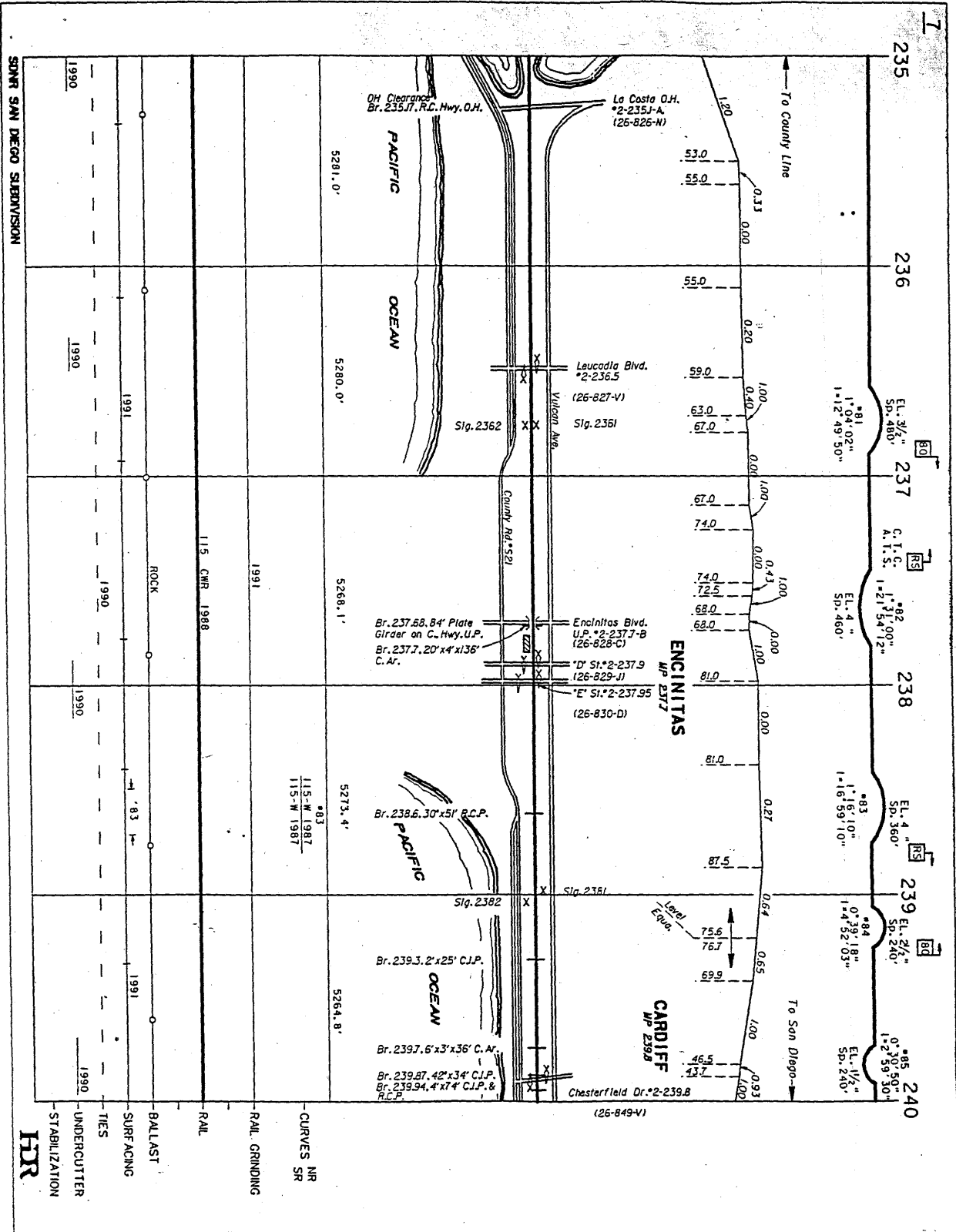


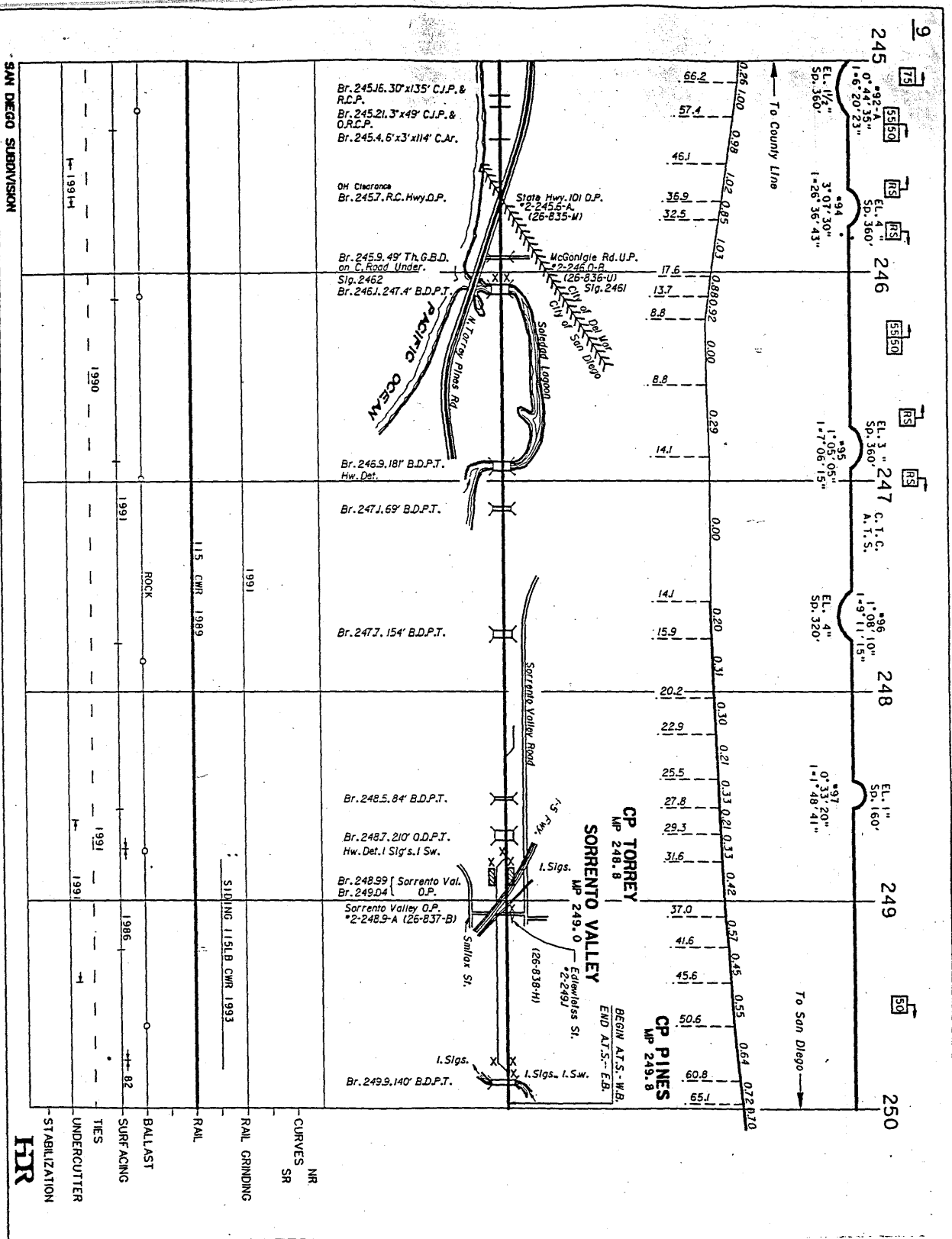
NR

NR
CURVES SR
RAIL GRINDING
RAIL
BALLAST
SURFACING
TIES
UNDERCUTTER
STABILIZATION

NR

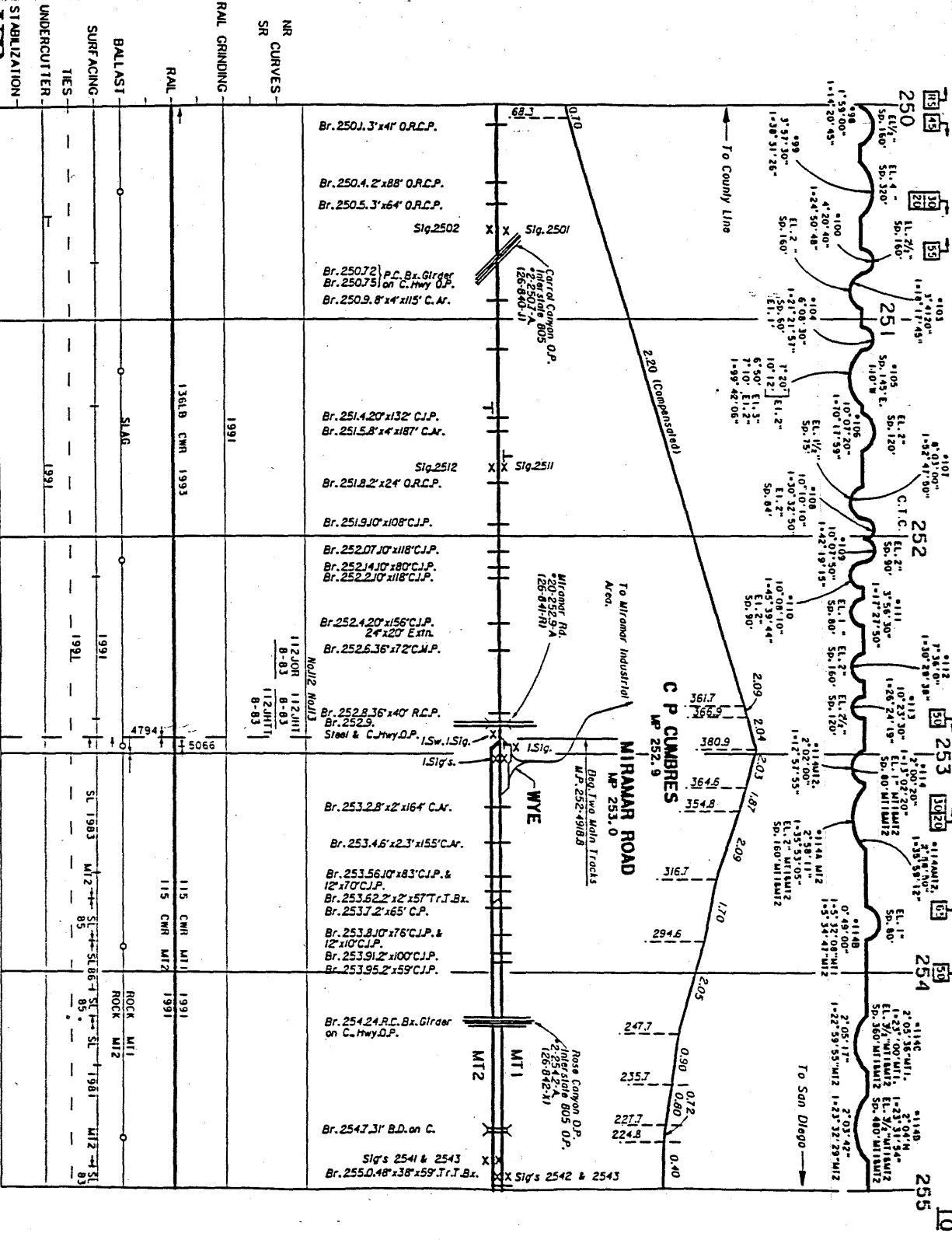


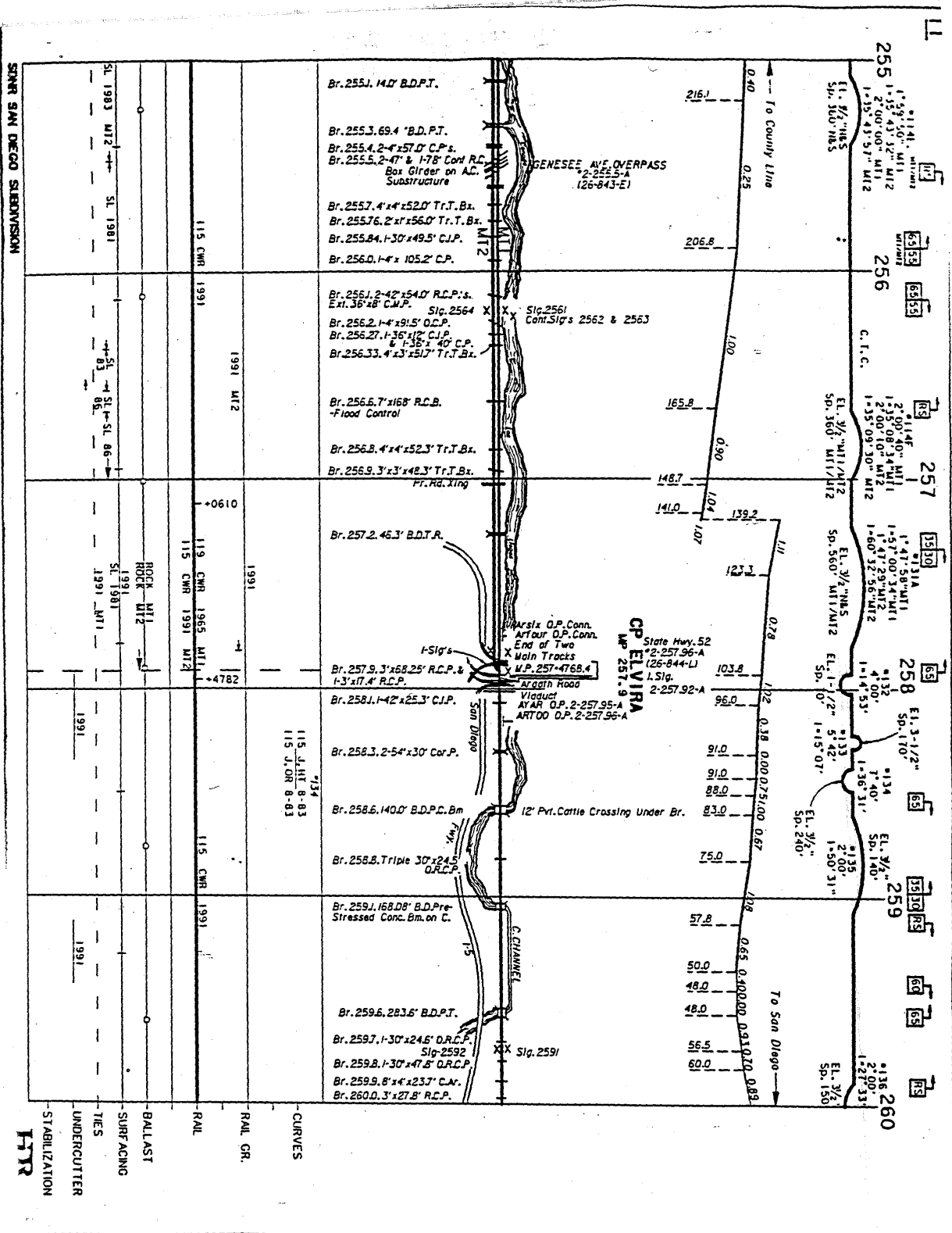




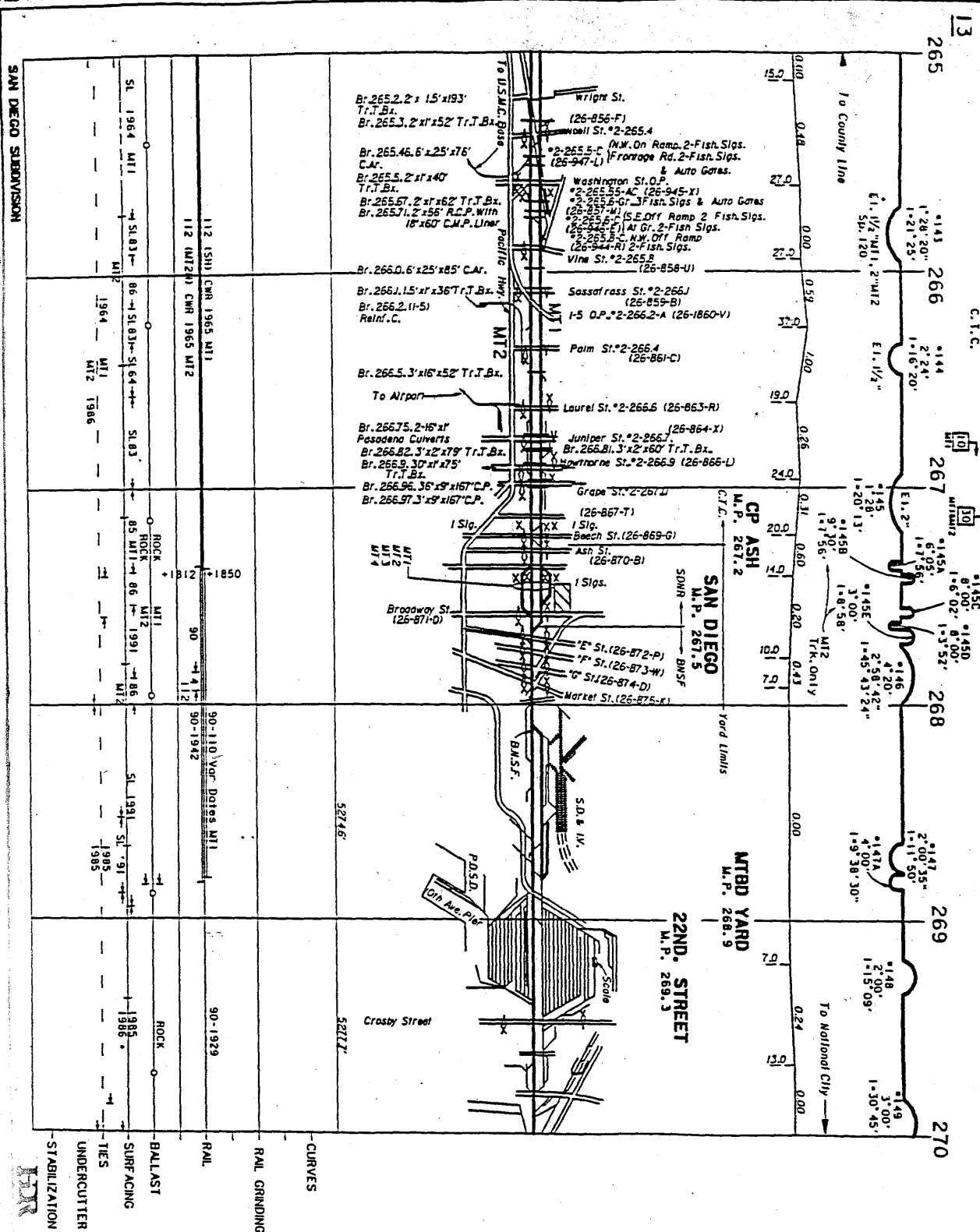
HDR

SPRINT DEPO SUBDIVISION









CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing Reply of City of Encinitas to the Comments of the OCTA on the persons listed below by Federal Express, prepaid and properly addressed.

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I declare under penalty of perjury under the laws of the State of California and the
United States of America that the foregoing is true and correct.

DATED: January 8, 2002



STEPHEN M. UTHOFF