

DECISION AND FINDINGS  
IN THE CONSISTENCY APPEAL OF  
SOUTHERN PACIFIC TRANSPORTATION COMPANY  
TO AN  
OBJECTION FROM THE CALIFORNIA COASTAL COMMISSION  
September 24, 1985

## SYNOPSIS OF DECISION

Southern Pacific Transportation Company (Appellant), San Francisco, California, proposes to rehabilitate its railroad bridge located across the Santa Ynez River mouth and on its right of way through Vandenberg Air Force Base near Surf, Santa Barbara County, California. Appellant's plan involves constructing a new northern abutment 200 feet north of its present location and excavating the northern embankment to eliminate a dogleg in the river. A pilot channel would be dredged under the center of the bridge. The southern abutment would be extended 160 feet north of its present location and filled in behind. As a result of the relocated abutments and general refurbishing, the bridge would be 40 feet longer and moved 200 feet to the north, better able to withstand flood conditions and less likely to require continual repairs.

At the mouth of the river and southeast of the bridge is the largest salt marsh in Santa Barbara county, as yet relatively undisturbed by human activity. In addition, the public access to the beach through Ocean Beach County Park would be closed during the six months of bridge construction.

The California Coastal Commission objected to Appellant's proposed project because it would alter the course of the Santa Ynez River, substantially affect the sedimentary processes in the salt marsh estuary, and interfere with public access to the beach during construction.

Under Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), and 15 CFR 930 of the Department of Commerce's implementing regulations, the Commission's objection to Appellant's project precludes all Federal agencies from issuing any license or permit necessary for the bridge rehabilitation to proceed, unless the Secretary of Commerce finds that the objected-to activity may be Federally approved because it "is consistent with the objectives of the [CZMA]" (Ground I) or is "otherwise necessary in the interest of national security" (Ground II) (Section 307(c)(3)(A) of the CZMA). If the requirements of either Ground I or Ground II are met, the Secretary must sustain the appeal.

On October 24, 1984, pursuant to Subparagraph A of Section 307(c)(3) of the CZMA and Subpart H of 15 CFR 930, the Appellant filed a Notice of Appeal with the Secretary of Commerce. The Secretary, upon consideration of the information supplied by Appellant, the Commission, Federal agencies and interested persons, as well as other information in the administrative record of the appeal, made the following findings required by 15 CFR 930.121:

Ground I

(a) Appellant's bridge rehabilitation project would contribute to the national interest in the development of coastal resources and the siting of transportation facilities and thereby furthers one or more of the competing national objectives or purposes contained in Sections 302 and 303 of the CZMA (pp. 7-8).

(b) The project's contribution to the national interest in safe rail transportation outweighs its adverse effects on the resources and land and waters uses of the coastal zone (pp. 8-16).

(c) The project will not violate any requirement of the Clean Air Act or the Clean Water Act (pp. 16-17).

(d) There is no reasonable alternative available to Appellant which would permit the project to be carried out without any adverse effects on the resources of the coastal zone, and in a manner consistent with the California Coastal Management Program (pp. 17-20).

Ground II

Since Appellant has met the requirements of Ground I, the Secretary declined to address the question of whether Appellant's project was also necessary in the interest of national security (p. 21).

Because the Secretary has found that Appellant has satisfied the requirements of Ground I set forth in 15 CFR 930.121, Appellant's bridge rehabilitation project, including the proposed Mitigation Plan, may be permitted by Federal agencies (p. 21).

Factual Background

Southern Pacific Transportation Company (Appellant), San Francisco, California, proposes to rehabilitate its railroad bridge located across the mouth of the Santa Ynez River and on its right of way through Vandenberg Air Force Base (VAFB) near Surf, Santa Barbara County, California. Administrative Record, Appellant's Environmental Assessment 1-1, 2-1 (hereinafter Environmental Assessment) [all references hereinafter are to the Administrative Record]. The bridge is part of the main coastal rail line that daily carries ten freight and two Amtrak passenger trains between Los Angeles and San Francisco, and serves to transport materials related to operations on VAFB. Id. at 1-1, 2-1, 2-2.

Originally constructed in 1896, the bridge has been modified and periodically repaired, primarily after sustaining storm or flood damage. The present structure is 549 feet long and consists of six 90-foot girder spans with a single track, supported by a combination of piers and temporary piles and by abutments built into the northern and southern embankments of the river. Id. at 2-2, 2-3. In 1979 a small rail and tire jetty was installed adjacent to the northern embankment upstream of the bridge to prevent damage to the bridge's northern (San Francisco) abutment from river flow erosion associated with a dogleg in the river. Id. at 2-3. The protective rail and tire jetty has since been destroyed by river flow erosion. Id.

In March 1983, high river flows resulting from a series of winter storms destroyed a cement pier and a 90-foot steel girder span near the southern (Los Angeles) end of the bridge. Id. Emergency repairs included the replacement of the missing span and the installation of four steel pile piers as a temporary foundation for the new span. Id. The existing bridge foundation consists of a variety of supports including masonry, concrete and steel piles. Id.

Appellant proposes to rehabilitate the Santa Ynez River railroad bridge by modifying two existing concrete pile-supported piers, removing existing foundations, and installing four new concrete piers and two new abutments, anchored by piles extending below the scour line of the river and designed to withstand maximum flood events. Id. at xi, 1-1, 3-1. A new San Francisco abutment would be constructed 200 feet north of its present location, and the northern embankment excavated to eliminate the dogleg in the river so that the main flow of the river would be directed under the center of the bridge

where a pilot channel would be dredged to provide a more direct flow to the ocean. Id. See Figure 1, attached. The new Los Angeles abutment would be constructed 180 feet north of its present location by extending the southern embankment into the river and filling in behind it. Id. at xii, 3-8, 3-10. See Figure 1. As a result of the relocation of the two new abutments, the bridge would be lengthened by 40 feet and moved 200 feet to the north. Id. at 3-1. See also Figure 2, attached. The girder span system would be retained. Id. The increased length and relocation of the bridge would be accommodated by installing two new spans and repositioning the existing spans over the new foundation, including the two modified piers. Id. at xii, 3-1, 3-9. Depending on their location, the old piers would be buried with the old Los Angeles abutment in the extended southern embankment fill or they would be removed along with the old San Francisco abutment as part of the excavation of the northern embankment. Id. at 3-10, 3-11.

The lengthening and relocation of the bridge and the excavation of the pilot channel are designed by Appellant to enhance the capacity of the river span beneath the bridge to carry flood flows, reduce the rate of flood waters rising at the bridge, and reduce existing erosion of the San Francisco abutment. Id. at xi, xii, 1-1. The project is also designed to eliminate the need for continual bridge repairs and to minimize the risk of bridge failure under extreme flow conditions. Statement of H.B. Berkshire, October 22, 1984, Assistant Vice President - Maintenance of Way and Engineering 3, 4 (hereinafter Appellant's Supporting Statement).

Construction would take six months to complete, during which Ocean Beach County Park, which provides access to the beach, would be closed to the public. Environmental Assessment 5.7-4.

At the mouth of the Santa Ynez River and southeast of the bridge is the largest salt marsh in Santa Barbara County. Proposed Southern Pacific Marsh Enhancement and Mitigation Plan (hereinafter Mitigation Plan), Attachment to Appellant's Supporting Statement 2. See also Environmental Assessment Fig. 5.5-1. Relatively undisturbed by human activity (with the exception of County Park roadway and several railroad embankments it consists of over 200 acres of Salicornia- and Frankenia-dominated marshlands traversed by a single main river channel. There is a sand bar at the mouth of the River, which is closed most of the year due to very low river flows. The closed sand bar forms a brackish lagoon that inundates the adjacent marshlands by sheet flow and subsurface seepage. This inundation is so widespread that the marsh areas south of the river channel, park roadway, and railroad embankment contain standing water for months. The water level of the

lagoon and salt marsh during this period appears to be four to five feet above mean sea level. *Id.*

On July 25, 1984, Appellant, in connection with its application to the U.S. Army Corps of Engineers (COE), under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, for permits to conduct dredge and fill activities associated with the bridge rehabilitation project in the navigable waters of the Santa Ynez River, submitted a consistency certification to the California Coastal Commission (Commission) for review under Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. § 1456(c)(3)(A), stating that "the proposed activity complies with the California approved coastal management program and will be conducted in a manner consistent with such program." Appellant's Supporting Statement 1; December 13, 1984 Response of the California Coastal Commission to Appeal by Southern Pacific Transportation Company, 5 (hereinafter Commission's Response); Commission's Response, Exhibit A, Adopted Staff Recommendation 2-3 (hereinafter Commission's Findings). On September 24, 1984, following a public hearing, the Commission, as the federally approved coastal zone management agency for the State of California under Sections 306 and 307 of the CZMA and 15 CFR Parts 923 and 930 of the implementing regulations of the Department of Commerce (Commerce), objected to Appellant's consistency certification. Commission's Response 6.

The Commission determined that Appellant's project as proposed did not comply with, and, therefore, was inconsistent with, the policies of the federally approved California Coastal Management Program (CCMP). Commission's Findings 3. The Commission objected to Appellant's bridge rehabilitation project because it would alter the existing course of the Santa Ynez River. Commission's Findings 2. In particular, the Commission objected to Appellant's filling in an area at the southern embankment, of 160 feet in length and 120 feet in width, and filling in the main channel of one of the few remaining unchannelized streams in southern California, making a "permanent commitment to armoring the channel," and substantially altering the sedimentary processes in the estuary. *Id.* at 5. The Commission also objected to the project's interference with public access to the beach during the construction period. *Id.* at 9-10. The Commission determined that the activities to which it objected failed to meet the enforceable policy requirements of the California Coastal Act [Section 30000 et seq. of the California Public Resources Code] (hereinafter CCA) relating to estuarine and wetland protection and coastal access (§§ 30230, 30231, 30233, 30236 and 30253, CCA). *Id.*

As provided at 15 CFR 930.64(b), the Commission identified alternative measures which, if adopted by Appellant, would permit the proposed activity to be conducted in a manner

consistent with the CCMP. Id. at 6; Commission's Findings 3. Specifically, the Commission found that Appellant's project would be consistent with the CCMP if (1) the closure of the county park were mitigated by Appellant's providing the public use and notice of the availability of Appellant's nearby railroad switchyard for coastal access during the project's construction phase, and (2) the project were redesigned to relocate the Los Angeles abutment to its existing site, to eliminate all channelization, and to improve circulation along the north bank of the River. Commission's Response 6; Commission's Findings 3. The Commission also notified Appellant of its right to appeal the Commission's decision to the Secretary of Commerce (Secretary) as provided under Section 307(c)(3)(A) of the CZMA and 15 CFR 930 Subpart H. Commission's Findings 10.

Under Section 307(c)(3)(A) of the CZMA and 15 CFR 930.131, the Commission's consistency objection precludes Federal agencies from issuing any permit or license necessary for the Appellant's proposed activity to proceed, unless the Secretary determines that the activity may be federally approved notwithstanding the objection because the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security.

#### Appeal to the Secretary of Commerce

On October 24, 1984, Appellant, as provided under Section 307(c)(3)(A) of the CZMA and 15 CFR 930 Subpart H, filed with the Secretary a Notice of Appeal and a supporting statement requesting that the Secretary find that Appellant's proposed Santa Ynez River railroad bridge rehabilitation activities are consistent with the objectives or purposes of the CZMA or are otherwise necessary in the interest of national security. Notice of Appeal 1-2; Appellant's Supporting Statement 1. I have retained the authority to decide such appeals under Department Organization Order 25-5A, Section 3.01(w).

Appellant also alleges that its project is consistent with the CCMP. Id. at 12. This last allegation, which this decision does not address for the reasons indicated, reflects a misunderstanding by Appellant of the appeals process. Under the CZMA, the authority and responsibility to determine whether a proposed activity is consistent with a federally approved State coastal management program is given to the State coastal management agency. The CZMA does not give the Secretary the authority to review the correctness of a State's consistency determination; rather, such determinations are subject to judicial review. All that Section 307(c)(3)(A) of the CZMA and the implementing regulations permit the Secretary to do is to determine whether Federal license or permit processes for a proposed project should be allowed to go forward despite a State consistency objection because the project is consistent with the objectives or pur-

poses of the CZMA or is otherwise necessary in the interest of national security. If a consistency objection is properly filed by the State coastal management agency, the inconsistency of the proposed project is presumed valid for purposes of the appeal.

Public notice of receipt of the appeal was published in the Santa Barbara News-Press (November 8, 1984), and in the Federal Register (49 Fed. Reg. 45470 (November 16, 1984)). On December 13, 1984, the Commission filed a response to the notice of appeal and became a party to this proceeding. A public hearing was neither requested nor held on the appeal. Comments on whether, how, and to what extent the Appellant's proposed activities would contribute to the national interest, including the national security interest, were requested from the Departments of Defense, Interior, Labor, Transportation and Treasury, and the National Aeronautics and Space Administration. Comments were received from all the solicited agencies except the Department of the Interior. Additional filings were received from Appellant and the Commission (including the record of Appellant's proceedings before the Commission and responses to specific written questions posed to both parties on my behalf by the General Counsel of the National Oceanic and Atmospheric Administration (NOAA) (hereinafter Written Questions)). All comments and information received by Commerce during the course of the appeal have been included in the Administrative Record. I find that this appeal is properly before me for consideration and that the parties -- the Appellant and the Commission -- have complied with Commerce's regulations governing the conduct of this appeal (Subparts D and H of 15 CFR Part 930).

#### Grounds for Sustaining an Appeal

Section 307(c)(3)(A) of the CZMA provides that Federal licenses or permits required for Appellant's proposed activities may not be granted until either the State concurs in the consistency of such activities with its federally approved coastal zone management program (its concurrence may be conclusively presumed in certain circumstances), or I find, "after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state," that the activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. Section 307(c)(3)(A) of the CZMA. Appellant has pleaded both grounds. Notice of Appeal 1-2; Appellant's Supporting Statement 1.

The regulations interpreting these two statutory grounds for allowing Federal licenses or permits to be granted despite a State's consistency objection are found at 15 CFR

930.121 ("consistent with the objectives or purposes of the Act") and 930.122 ("necessary in the interest of national security"); and are set forth in full below:

The term "consistent with the objectives or purposes of the [CZM] Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:

(a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 and 303 of the Act,

(b) When performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available (e.g., location[,], design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

15 CFR 930.121.

The term "necessary in the interest of national security" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity

directly supports national defense or other essential national security objectives.

15 CFR 930.122.

The regulations governing my consideration of an appeal provide:

[T]he Secretary shall find that a proposed Federal license or permit activity ... is consistent with the objectives or purposes of the [CZMA], or is necessary in the interest of national security, when the information submitted supports this conclusion.

15 CFR 930.130(a)

Ground I: Consistent with the Objectives of the CZMA

The first statutory ground (Ground I) for sustaining an appeal is to find that the activity "is consistent with the objectives of [the CZMA]." To make this finding, I must determine that the activity satisfies all four of the elements specified in 15 CFR 930.121.

First Element

To satisfy the first of the four elements, I must find that:

The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 or 303 of the [CZMA].

15 CFR 930.121(a).

Sections 302 and 303 of the CZMA identify a number of objectives and purposes which may be generally stated as follows:

1. To preserve, protect and where possible to restore or enhance the resources of the coastal zone (Section 302(a),(b),(c),(d),(e),(f),(g), and (i); and Section 303(1));
2. To develop the resources of the coastal zone (Section 302(a),(b) and (i); and Section 303(1) and
3. To encourage and assist the States to exercise their full authority over the lands and waters in the coastal zone, giving consideration to the need to protect as well as to develop coastal

resources, in recognition by the Congress that State action is essential to more effective protection and use of the resources of the coastal zone (Section 302(h) and (i); and Section 303(2)).

More specifically in the context of this appeal, the CZMA encourages coastal states to provide for orderly processes for siting major activities related to transportation that are coastal dependent (Section 303(2)(C)).

As I have stated in an earlier appeal, because Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources, this element will "normally" be found to be satisfied on appeal. Decision of the Secretary of Commerce in the Matter of the Appeal by Exxon Company, U.S.A., to a Consistency Objection by the California Coastal Commission (Feb. 13, 1984); 49 Fed. Reg. 3274 (March 6, 1984).

Appellant's proposal involves the rehabilitation of a bridge carrying freight and passenger trains between northern and southern California. Materials for VAFB are also transported across this bridge. Both parties agree that the bridge needs to be rehabilitated. Since the goals of the CZMA include both development and protection of coastal resources, as well as siting of transportation facilities, I find that Appellant's project to rehabilitate the bridge over the Santa Ynez River falls within and furthers one or more of the broad objectives of Sections 302 and 303 of the CZMA and therefore satisfies the first element of Ground I.

#### Second Element

To satisfy the second element of Ground I, I must find that:

When performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest.

15 CFR 930.121(b).

This element requires that I weigh the adverse effects of the objected-to activity on the natural resources of the coastal zone against its contribution to the national interest.

In order to perform the weighing required by this element, I must identify the adverse effects, if any, of Appellant's

project on the natural resources of the coastal zone as well as the project's contribution to the national interest.

### Adverse Effects

The parties differ in their characterization of these effects. In response to the Written Questions, the Commission characterized these effects as follows:

1. Short-term adverse effects. Effects resulting directly from the construction activity itself and occurring during the construction phase. The smothering and disturbance of bottom-dwelling organisms and impairment of circulation in a sandy area of the River. Restabilization can be expected relatively soon after the construction phase. Closure, during the construction period, of Ocean Beach County Park, which provides public access to the beach, would interrupt the public's recreational use of the beach.
2. Mid-term adverse effects. Construction effects spanning at least several years, and possibly several decades, depending on the frequency of major River flow. Could be offset eventually by sediment due to the new configuration of the River mouth. Loss of a 2.5 acre mudflat habitat along the north bank caused by construction on that bank and from altered River processes which would deepen the estuary at the north end of the bridge. This loss could be offset by reestablishment of mudflat along the south bank; however, there would be a loss of habitat values while the River mouth adjusts to the changes in flow direction.

During floods, the new southern abutment would constrict the flow of the River and exert tremendous force in altering water and sediment movement. Scour and erosion along the southern bank would be expected, damaging habitat values in the area. Sedimentation patterns would be changed with uncertain consequences for the adjacent wetlands.

Because of the new southern abutment, changes could occur in the morphology of the lagoon, possibly changing the lagoon into mudflats, resulting in a loss of lagoon habitat or interference with the lagoon's function in the estuary.

3. Long-term adverse effects. The permanent loss of 0.8 acres of lagoon habitat, about 1.45 acres of bare sand adjacent to the River channel, up to 2.5 acres

of shallow mudflat near the northern abutment, 0.3 acres of coastal strand and dune vegetation along the coast side of the railroad embankment, and disturbances to 0.2 acres of salt marsh near the northern embankment. Conversion of a portion of the lagoon into mudflats and possibly marsh lands. Conversion of a portion of wetlands into fastlands.

Response of the Commission to Written Questions  
1-10.

In its response to the Written Questions, Appellant has offset the adverse effects by netting them with alleged benefits of the proposed project and its proposed Marsh Enhancement and Mitigation Plan. Once the benefits are separated out, Appellant's characterization of the adverse effects of its project, as summarized in its response to the written questions and its Environmental Assessment, is as follows:

1. Short-term adverse effects. Effects which would cease or reverse upon completion of construction. Modification of surface topography and stream morphology near the railroad bridge. Minor adverse effects on air and water quality in the vicinity of the bridge. The temporary displacement of nearby fish and wildlife and degradation of aquatic habitat. The loss of small amounts of dune vegetation and shallow mudflat habitat. The possible reduction of local wildlife populations (mostly birds). The interruption of the recreational use of Santa Barbara County Ocean Beach Park. The degradation of the visual character of the River mouth because of the temporary presence of construction equipment, access berms, and an office trailer.
2. Long-term adverse effects. The loss of approximately 2.5 acres of shallow mudflats, 0.6-.08 acres of lagoon habitat, a few acres of salt marsh and a small amount of dune vegetation.

Response of Appellant to Written Questions  
1-5; Appellant's Environmental Assessment  
5.5-10-19.

Besides information from the parties, the record contains an assessment of the project's adverse effects by Federal and State agencies. The California Department of Fish and Game (CDFG), in comments to the Corps of Engineers, the Federal permitting agency, indicated that it would have no objection to the issuance of the Federal permit if "[t]he proposed filling of 160 ft. of wetlands under the southern side of the

trestle [were] deleted. This fill will cause a water slowdown and result in deposition of silt along the southeast side of the Santa Ynez Estuary. That will eventually block circulation to the entire southern side of the salicornia marsh in this area and damage it." Letter from H.W. Carper, Director, California Department of Fish and Game, to U.S. Army Engineer District, Los Angeles, California, December 2, 1983, in Commission's Response to Notice of Appeal, Exhibit I.

Similarly, the U.S. Fish and Wildlife Service (FWS), commenting on Appellant's application for a COE permit, identified the following unmitigated impacts associated with the project: 1) loss of some salt marsh (less than 0.1 acre) from the placement of riprap on the northern abutment; 2) increased sedimentation over about 100 acres of existing salt marsh and some conversion of wetlands to fastlands, resulting from the hydraulic diversion caused by the southern abutment; 3) suspended sediments and deterioration of water quality during the dredging and construction of the two temporary cofferdams; 4) conversion to tidal flat of coastal strand vegetation during the excavation of the pilot channel and removal of sand from a sandbar along the northern bank (about 4 acres); and 5) loss of 0.6 acres of habitat area resulting from the abutment addition on the southern bank (to be offset by a gain of 0.6 acres resulting from removal at the northern bank). Letter from Wayne S. White, Acting Field Supervisor, U.S. Fish and Wildlife Service, Laguna Niguel, California, to Colonel Taylor, Commander, Los Angeles District, COE, December 1, 1983, in Commission's Response to Notice of Appeal, Exhibit J, 2. Of these impacts, the FWS considered the degradation or loss of salt marsh on the south bank resulting from increased sedimentation to be potentially significant. Id.

Based on the record, without implementation of marsh enhancement or mitigation measures, I find that the mid- or long-term adverse effects of Appellant's project, considered by itself, are the loss of a 2.5 acre mudflat habitat, the loss of approximately 0.8 acres of lagoon habitat, the loss of approximately 0.8 acres of coastal strand and dune vegetation, the substantial disturbance and possible destruction of approximately 0.2 acres of salt marsh, increased sedimentation over about 100 acres of salt marsh and some conversion of wetlands to fastlands (resulting from the fill at the southern abutment), and the potential of additional damaged habitat value due to increased scour and erosion. I find that the short-term effects, other than interference with the public's access to the beach during construction, are de minimis.

The adverse effects of Appellant's project are offset to some extent by the benefits of the project and by proposed marsh enhancement and other mitigation measures. The principal

benefit of Appellant's proposed project is that the bridge would be designed to withstand maximum flood events, thus increasing public safety and decreasing the risk of rail traffic interruption due to bridge washout. Appellant's Environmental Assessment xi.

Regarding the closure of Ocean Beach Park during the construction period, Appellant has agreed, in its submissions in the record of this appeal, to provide the public access to its switchyard, to construct a walkway under the bridge for beach access and to post signs at the County Park to direct beach-goers to the alternate access site. Appellant's Rebuttal to California Coastal Commission Response to Appeal, February 25, 1985, 3. Appellant's Response to Written Questions 5. Therefore, I find that the project's adverse effects on public access to the beach, a natural resource of the coastal zone, have been mitigated to the maximum extent feasible.

To compensate for the loss of habitat values, described above, Appellant has developed, in coordination with FWS, CDFG and the National Marine Fisheries Service, a Marsh Enhancement and Mitigation Plan. Appellant's proposed Marsh Enhancement and Mitigation Plan (hereinafter Mitigation Plan), Enclosure 3 with Appellant's Notice of Appeal 1. Appellant's Mitigation Plan consists of enlarging the opening of two existing man-made channels that traverse the main salt marsh and connect to the main River channel, and monitoring these openings for 3 years; constructing a new 2,300-foot-long marsh channel adjacent to the road to the Ocean Beach County Park; installing several culverts under the County Park roadway and railroad at 4 locations in order to provide free water movement between the southern marshes and the main salt marsh; and excavating a 15-foot-wide channel to connect the River to a salt marsh along the new northern embankment. Id. at 3-8. See Figure 3, attached.

Appellant expects the Mitigation Plan to yield an expansion and improvement of the wetland habitat and, in turn, result in long-term increases in wetland species, especially resident and migrant bird species. Appellant's Response to Written Questions 4.

The Commission argues that the value of the Mitigation Plan is uncertain because little research exists on the ecology or morphology of estuarine systems like the Santa Ynez River system. According to the Commission, it is possible that implementation of the Plan would simply change high marsh habitat to open water, without enhancing habitat values or productivity at all. Id. at 8. Further, the Commission states that the Mitigation Plan would not create new habitat to offset habitat losses, but would only alter existing habitat. Id. at 9.

In summary, Appellant's Mitigation Plan is intended to offset the adverse impacts of the bridge rehabilitation project on the biological resources adjacent to the bridge, primarily the loss of wetlands and salt marsh habitat caused by increased fill at the southern embankment. I cannot with certainty conclude whether these losses will be totally offset by the Plan, but they may be to some extent. At best, there will be no net gain in habitat value.

Also uncertain is the potential impact on the Estuary from the increased scour and erosion that the Commission believes may occur from the placement of the southern abutment 160 feet into the existing River channel. But this impact is likely to be offset by the widening of the channel under the Bridge and the removal of an existing obstruction (the northern embankment), thereby allowing more direct flow of the River to the sea.

Besides the adverse effects from the project by itself, I must consider any cumulative effects caused by the project and other nearby construction projects. According to Appellant's Environmental Assessment, which is not refuted in this respect by the Commission, there appears to be no future project of similar magnitude near the location of Appellant's proposed project, either by private industry, VAFB, or governmental agencies. Therefore, I find that there are no cumulative adverse impacts associated with Appellant's proposal.

#### Contribution to the National Interest

In order to help assess the contribution to the national interest of Appellant's project, I sought the views of certain Federal agencies. The views expressed by Federal agencies regarding the national interest in this project are summarized below.

The Department of Labor indicated that, in view of the small scale of the project, i.e., a total investment of less than \$4 million, and the availability of other options, e.g., continual improvements of the existing bridge, the Department cannot find that the national interest would be adversely affected if the appeal is denied. Letter from Everson W. Hull, Deputy Assistant Secretary for Policy, to Robert J. McManus, General Counsel, NOAA (March 4, 1985).

The National Aeronautics and Space Administration (NASA) concluded that an investigation of the use of this bridge for transporting NASA Space Shuttle hardware and propellants reveals that none of these elements are required to cross the Santa Ynez River railroad bridge since, after arriving at VAFB, all Shuttle elements are routed off the main-line onto rail spurs

prior to crossing the bridge. Letter from C. R. Gunn, Director Shuttle Operations Division, to Dr. Anthony J. Calio, Deputy Administrator, NOAA (February 20, 1985).

The Department of Transportation stated that since the issue is one of the physical and engineering approach chosen by Appellant and not whether the bridge will continue to fulfill its transportation function, no national interests are involved in this matter. Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, to Dr. Anthony J. Calio (February 15, 1985).

The United States Air Force (USAF) advised that the bridge plays a significant role in support of national defense interests since items such as the solid rocket motor segments used for launch programs conducted at Space Launch Complex Four are routinely transported over the bridge. Transportation by other means would involve significant cost increases and could possibly impact vital missions of national significance. USAF expressed no opinion on the manner in which the project is carried out, by the Appellant's proposal or Commission's alternative, and acknowledged that environmental mitigation measures may be required for any potential environmental impacts. Letter from Robert L. Klingensmith, Colonel, USAF, Acting Assistant Director of Engineering and Services, to Dr. Anthony J. Calio (April 16, 1985).

While no Federal agency stated that the national interest would be impaired if the bridge was not rehabilitated in the manner proposed by Appellant, the Federal agencies recognized that continuation of the bridge through some sort of rehabilitation or replacement would contribute to the national interest in having an efficient rail system.

Further, I note that the existing bridge is vulnerable to immediate failure should a storm/flood event occur, because most of the existing piers are not anchored below the potential scour line of the river. In March 1983, a pier and two spans were destroyed by high river flows, requiring emergency repairs and installation of temporary steel pipe piles. Failure of the bridge would result in loss of property, interrupted passenger and commercial rail traffic and, if the bridge failed while a train was crossing, could result in a further loss of property and possibly personal injury or death. Environmental Assessment xi. Because the bridge is used to transport equipment and materials used at Space Launch Complex Four at VAFB, failure of the bridge could raise transportation costs to the Air Force and could otherwise impede national defense interests.

Based on the record, I find that Appellant's proposed bridge rehabilitation project will contribute to the national interest in safe and efficient railway transportation and in maintenance of rail access to VAFB.

### Weighing

Having described both the potential adverse effects on the natural resources of the coastal zone which may be caused by Appellant's bridge rehabilitation project and the national interest served by such a project, I am required to decide whether the project's adverse effects are substantial enough to outweigh its contribution to the national interest (15 CFR 930.121(b)).

To recapitulate, the potential adverse effects of Appellant's proposal, absent the Mitigation Plan, consist of the direct loss of 2.5 acres of mudflat habitat, approximately 3 acres of sand and dune vegetation and less than one acre of lagoon habitat. The proposal, unmitigated, also could result in the deterioration or loss of salt marsh at the mouth of the River caused by increased sedimentation at the new southern abutment. These losses, while not negligible, may be offset to some extent by Appellant's Mitigation Plan, although no net gain in habitat values is anticipated. Appellant's Mitigation Plan does not directly address the potential adverse effect on adjacent wetlands of constructing the new southern abutment 160 feet into the existing River channel, but I find, based in part on Appellant's expert testimony in the record before the Commission, that the risk of significant erosion occurring is speculative and likely to be offset by the construction of the new northern abutment and excavation of a pilot channel under the bridge, which will tend to force the River to meander in a more northerly direction.

I have previously found that the national interest in safe and efficient rail transportation, including the transportation of materials to VAFB, will be served by reconstruction of the Santa Ynez River Bridge. When I weigh the loss of known but small quantities of mudflat and saltmarsh habitat, which may be offset to some extent by Appellant's Mitigation Plan, and the theoretical but low risk of additional loss of unknown quantities of saltmarsh habitat against its contribution to the national interest in safe rail transportation, I find that Appellant's proposal, as mitigated by Appellant's Mitigation Plan, will not cause adverse effects on the resources of the coastal zone substantial enough to outweigh its contribution to the national interest.

Third Element

To satisfy the third element of Ground I mandamus

The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.

15.CFR 930.121(c).

The requirements of the Clean Air Act and the Federal Water Pollution Control Act (also the Clean Water Act) are incorporated in all State coastal programs approved under the CZMA. Section 307(f), CZMA.

The Clean Air Act

According to Appellant's Environmental Assessment, the only air emissions from the project would result from operation of the diesel-fueled construction equipment during the construction period. Environmental Assessment 5.4-2. The Commission has not objected to the air quality impacts of Appellant's project.

Section 202 of the Clean Air Act (42 U.S.C. 7521) directs the Administrator of the Environmental Protection Agency (EPA) to establish federal standards to regulate the emissions of carbon monoxide and hydrocarbons from mobile sources. Both EPA and the California Air Resources Board have established ambient air quality standards for air emissions from mobile pollution sources. Appellant's Environmental Assessment 5.4-1. Any emission from Appellant's construction activities will have to comply with these Federal and State standards. Therefore, I find that Appellant's activity will not violate any requirements of the Clean Air Act.

The Clean Water Act

Appellant's project will affect the water quality of the Santa Ynez River in two respects. During the construction period, as Appellant's Environmental Assessment acknowledges, water quality at the River mouth would be temporarily degraded by increased turbidity from fill and excavation activities within and adjacent to the lagoon, including the construction of the temporary access berms, excavation of the San Francisco embankment, and construction of the Los Angeles embankment. Environmental Assessment 5.3-1. The Commission has not objected to these temporary water quality impacts nor would they require a National Pollution Discharge Elimination System permit under the Clean Water Act (33 U.S.C. §§ 1251, 1311(a), 1342).

Appellant's project also entails the dredging and placement of filled materials in the Santa Ynez River. This activity requires a permit under both Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA). 33 U.S.C. § 402; 33 U.S.C. § 1344. The COE is the permitting agency for these permits and, pending my decision in this appeal, cannot issue them. If I decide this appeal in Appellant's favor, the COE can continue to process Appellant's application for these permits and decide whether to issue them. The COE cannot issue the Section 404 permit to Appellant if the activity were to violate the requirements of Section 404 of the CWA and the guidelines promulgated by the Administrator of EPA under Section 404(b)(1) of the CWA. Accordingly, I conclude that Appellant's proposed activity will not violate the CWA.

#### Fourth Element

To satisfy the fourth element of Ground I, I must find that:

There is no reasonable alternative available (e.g., location[,], design, etc.) which would permit the activity to be conducted in a manner consistent with the [State coastal zone management program.

15 CFR 930.121(d).

The Commission found that if Appellant's project were redesigned to retain the Los Angeles embankment at its existing location and to eliminate all channelization, the project would be consistent with the CCMP. Commission's Findings 3. The Commission cites as advantages of its alternative: diminished interference with hydrological processes; lower flow velocities, resulting in lowering of risks to the bridge and affected habitat areas; less adverse effect of sedimentation on the wetlands; and less scouring and less erosion along the south embankment. Commission's Response to Written Questions 11-13.

The Commission also initially found that, for the project to be consistent with the CCMP, circulation improvements on the north bank would have to be included to mitigate channel changes, Commission's Findings 3, but has not enumerated what improvements are required and, in its brief in this appeal, has stated that the Commission has no objection to the excavation on the north embankment. Commission's Response at 8. Therefore, I find that there is no reasonable alternative for that part of Appellant's project which affects the circulation of the River at the northern embankment.

Appellant opposes the Commission's recommended alternative of extending the Los Angeles embankment (which would require adding an additional 160 feet to the bridge span) because it would add approximately \$750,000 to the project's construction costs and \$20,000 per annum in additional maintenance costs, rendering the project economically infeasible and producing, according to Appellant, no demonstrated environmental benefit. Appellant's Notice of Appeal, Attachment 1, 5; Appellant's Response to Written Questions 6-7. Appellant also states that a longer bridge would require a longer construction period, and could not be safely completed during the construction window allowed by other regulatory agencies (after Labor Day and before March 31) without the risk of a project washout due to high river flows during late winter. Appellant's Rebuttal to Commission Response, February 25, 1985, 2.

As I have stated in earlier appeals, regulations at 15 CFR 930.121(d) indicate that an alternative to an objected-to activity may require major changes in the "location" or "design" of the project. Whether an alternative will be considered "reasonable" depends upon its feasibility and upon balancing the estimated increased costs of the alternative against its advantages. Decision of the Secretary of Commerce in the Matter of the Appeal by Exxon Company, U.S.A., to a Consistency Objection by the California Coastal Commission (Feb. 18, 1984); 49 Fed. Reg. 8274 (March 6, 1984); Decision of the Secretary of Commerce in the Matter of the Appeal by Exxon Company, U.S.A., to a Consistency Objection by the California Coastal Commission (Nov. 14, 1984); 50 Fed. Reg. 324 (Jan. 3, 1985).

In addressing first whether the longer bridge alternative is feasible, some question exists whether the Commission's preferred alternative can be completed during the 7-month construction window allowed by wildlife agencies (September through March). Appellant has indicated that construction of the longer bridge will take an additional five to six weeks, thereby extending the construction period to the end of March, when floods are more likely to occur. Appellant's Response to Written Questions 8. Appellant's Environmental Assessment indicates that the schedule for construction of a longer bridge would not differ substantially from the schedule for the Appellant's proposed project. Environmental Assessment 7-3. Therefore, I find that while the risk of winter flooding may increase as a result of constructing a longer bridge, it is feasible to complete construction during the seven-month window allowed by wildlife agencies. Further, I find based on the Administrative Record that Appellant has the financial resources or access to the financial resources to pay the \$750,000 additional construction costs associated with the longer bridge and the annual increased maintenance cost of

\$20,000. Thus, I find that the longer bridge alternative is feasible and available to Appellant.

Next, I must balance the costs of the Commission's preferred alternative against its advantages. To perform this weighing I must consider, first, how much less adverse the alternative would be to the land and water resources of the coastal zone and, second, the increased costs to Appellant of carrying out the rehabilitation project in a manner fully consistent with the CCMP.

The Commission's reasons for preferring the longer bridge were restated above. Appellant agrees that a wider span than it proposes to build would allow the River to meander more, but disputes that there is any value to this "benefit." Appellant's Response to Written Questions 6. Although the record in this regard is not well documented by the parties, I find that implementing the Commission's preferred alternative, i.e., leaving the southern abutment in situ, does have the advantage of decreasing sedimentation at the southern end and therefore reduces the risk of damage to the adjacent salt marsh. But, given my previous findings (supra at 15), that the risk of increased sedimentation may be offset to some extent by Appellant's Mitigation Plan and further that moving the northern embankment and excavating a pilot channel is likely to offset the risk of additional erosion and sedimentation at the southern embankment, I find that the Commission has not proven that its preferred alternative will have measurably less adverse effects on the land and water resources of the coastal zone.

Appellant asserts that the construction of a longer bridge will cost \$4 million, versus \$3.25 million for its proposal, figures which are not disputed by the Commission. Appellant's Response to Written Questions 7. Appellant also asserts that the longer bridge will require \$20,000 additional in yearly maintenance costs. Id. at 6.

Weighing the potential advantages of a longer bridge against the additional costs to be incurred in its construction, I find that the Commission's preferred alternative is not a reasonable alternative to Appellant's proposed rehabilitation of the Santa Ynez River bridge.

Brief mention has been made in the record of the possibility of repairing the existing bridge structure in place. According to the Commission's response to the Written Questions, Appellant has applied to the Commission for a permit to repair the existing bridge by placing a new pier in the channel and other rehabilitative measures. The cost of the repair work is estimated by the Commission to be \$2.2 million. The

record does not indicate whether the Commission has found the repair of the existing structure to be an alternative consistent with the CCMP, although the Commission staff has recommended approval. Assuming that the repair work would be consistent with the CCMP, I have reviewed the reasonableness of this alternative compared to Appellant's proposed rehabilitation project. The only substantive discussion of this alternative is in Appellant's Environmental Assessment at p. 7-2. According to the Environmental Assessment, the alternative of repairing the bridge in place would greatly reduce the environmental impacts of Appellant's project, but it would not provide as secure and long-lived foundation compared to the proposed project and, as a result of flood rise on the upstream side of the bridge, could lead to future bridge failure. Since, as stated above, the continual repair of the existing structure has not been successful, I find that the alternative of repairing the bridge in situ is not a reasonable alternative to Appellant's proposal because it would not accomplish Appellant's objective of building a bridge designed to withstand maximum floods.

In summary, leaving aside the issue of beach access, I find that construction of a longer bridge or repairing the existing structure are feasible alternatives to Appellant's proposal, but that they are not reasonable alternatives in light of, in the case of the longer span, its additional costs when measured against its speculative advantages and, in the case of the repair work, its disadvantages over a permanent rehabilitation. Therefore, I find, based on the Administrative Record, that there is no reasonable alternative available to Appellant which would permit the reconstruction of the Santa Ynez River bridge to be conducted in a manner consistent with the CCMP.

The Commission also recommended that Appellant adopt certain mitigation measures necessary to offset the closure of Ocean Beach Park during the construction period, including adequate signing and access to the Southern Pacific Switchyard. Commission's Findings 3. As noted above, Appellant has already agreed to these measures. Therefore, I find that there is no reasonable alternative to Appellant's proposed activity involving the temporary closure of beach access at Ocean Beach Park.

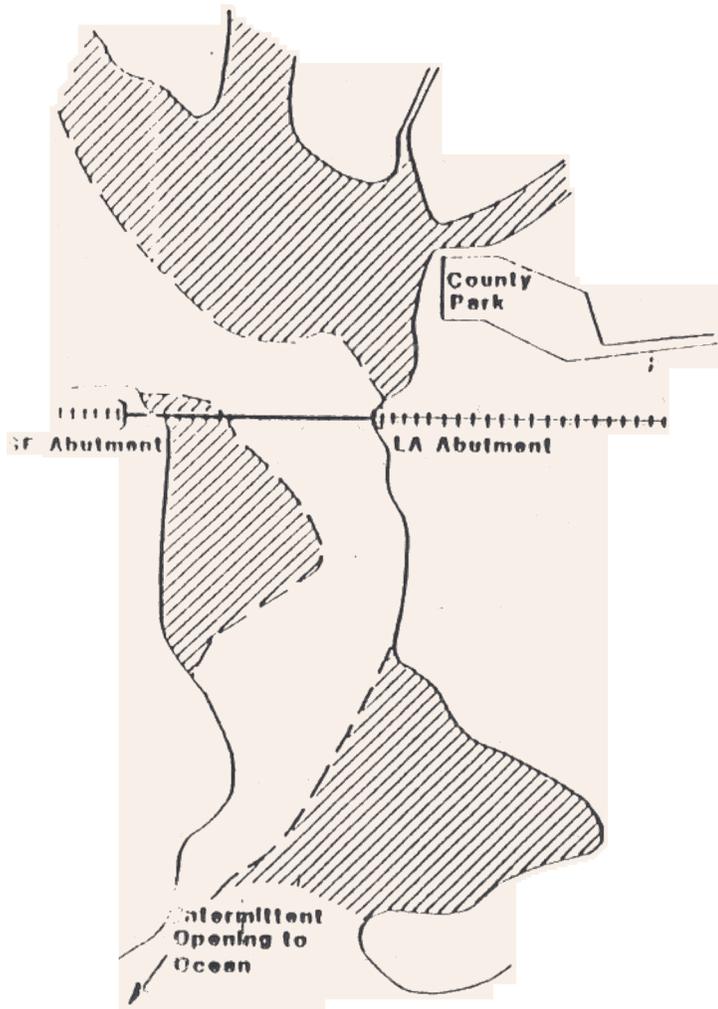
#### Conclusion for Ground I

On the basis of the findings I have made above, I find further that Appellant has satisfied the four elements of Ground I, and, therefore, that Appellant's proposed project, although presumptively inconsistent with the CCMP, is nevertheless consistent with the objectives of the CZMA.

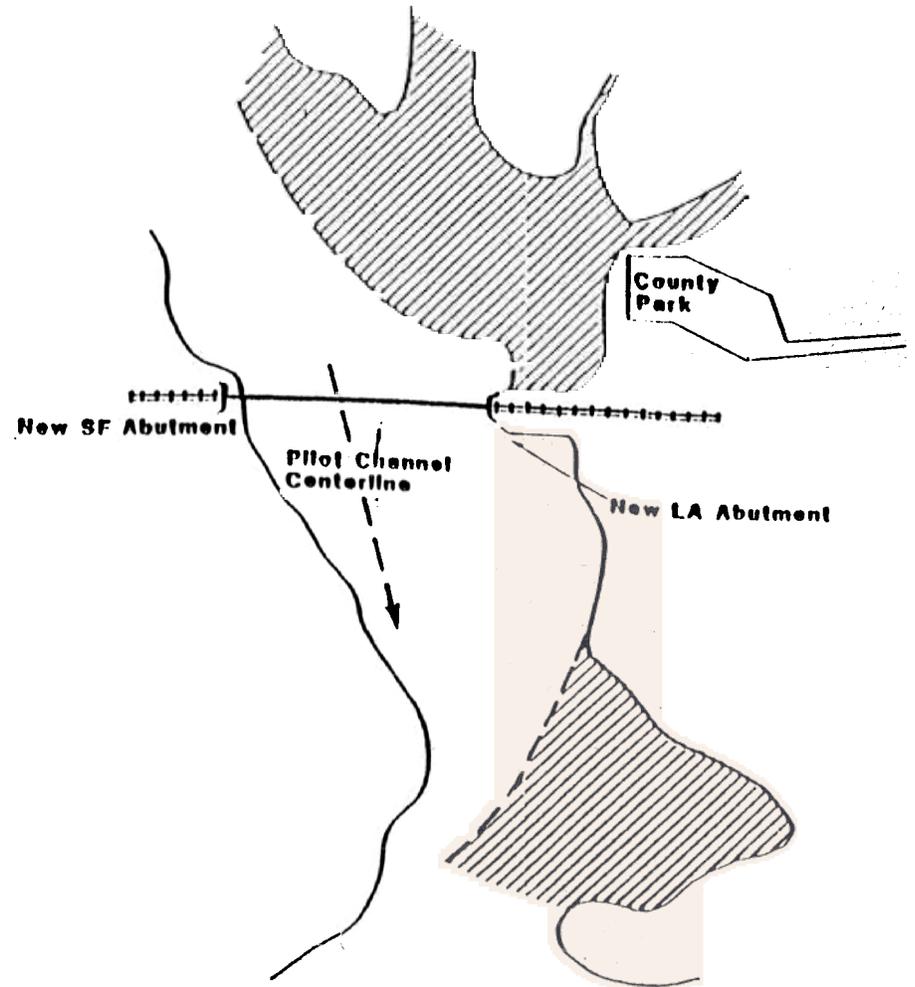
Conclusion

Because I have found that Appellant has satisfied the first of the two grounds set forth in the CZMA for allowing the objected-to activity to proceed notwithstanding an objection by the Commission, it is not necessary to address the second ground of "necessary in the interest of national security." The Appellant's project, including all of the elements of its proposed Mitigation Plan, may be permitted by federal agencies.

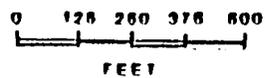
*Markus Belding*  
Secretary of Commerce



**EXIST NO BRIDGE**



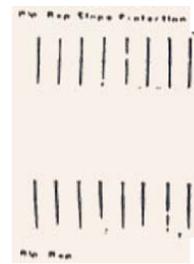
**PROPOSED BRIDGE  
(WITH DEEPER PILOT CHANNEL.)**



 Mudflats and Tidal Channels

**FIGURE 5.2-3**

**EXISTING AND PROJECTED  
RIVER MOUTH CONFIGURATION**

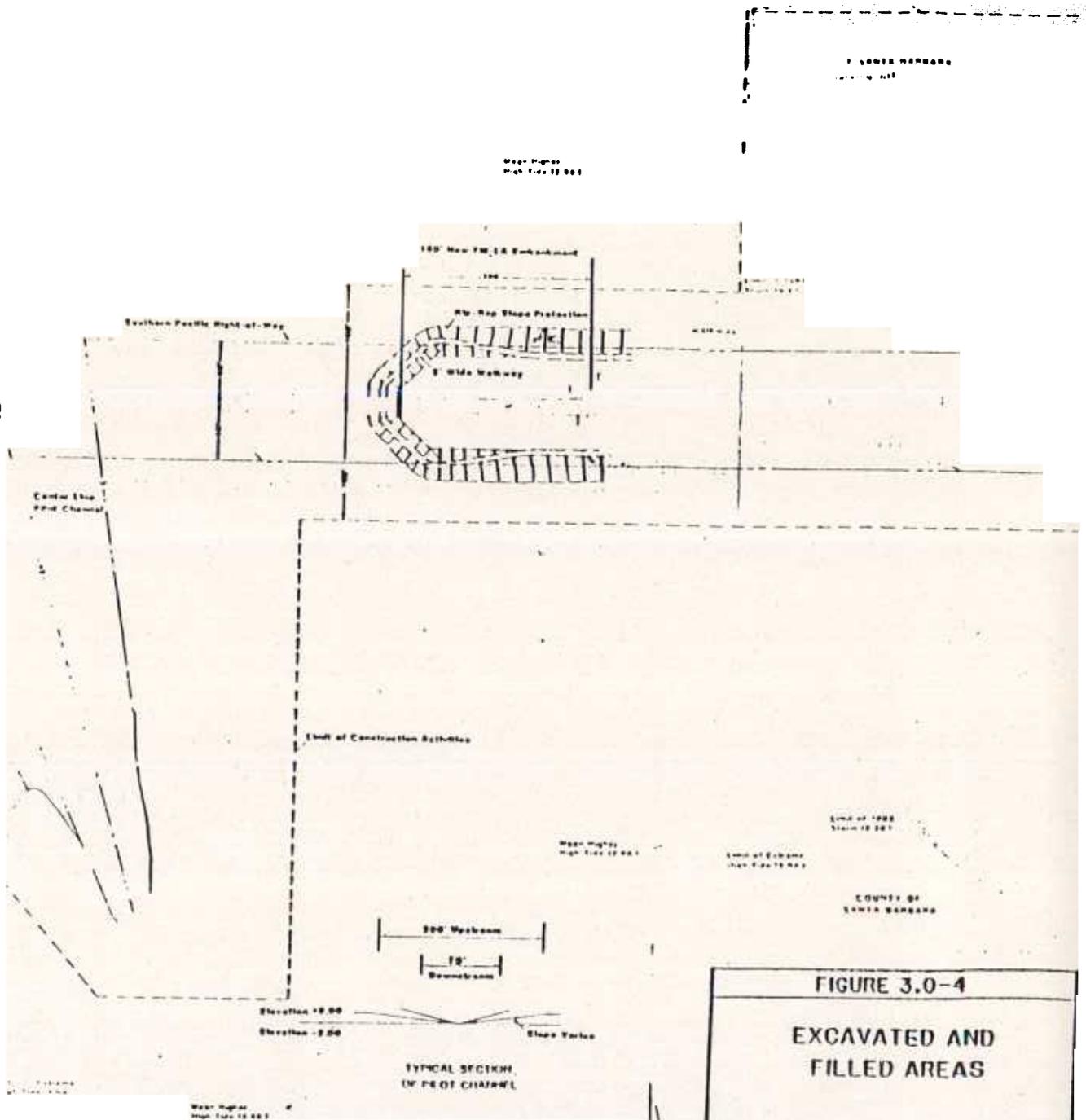


New Rep Embankment

Remove 100' Existing  
of Embankment

100'

A



ELEVATION DATA, 1988 MWD (MEAN SEA LEVEL)

FIGURE 3.0-4

EXCAVATED AND  
FILLED AREAS

Dames & Moore

