



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT CORPS OF ENGINEERS
REGULATORY DIVISION
CARLSBAD FIELD OFFICE
6010 HIDDEN VALLEY ROAD, SUITE 105
CARLSBAD, CA 92011

March 5, 2013

Regulatory Division

Mr. Rob Rundle
San Diego Association of Governments
401 B Street, Suite 800
San Diego, California 92101

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT VERIFICATION

Dear Mr. Rundle:

This letter of verification is in response to your application (SPL-2012-00705-CMS) for a Department of the Army (DA) permit for the proposed San Onofre to Pulgas Phase 2 Double Track Project (project). The project includes the construction of approximately 1.8 miles of a second mainline track parallel to the existing mainline track, within the existing rail corridor. The project would result in a discharge of dredged and/or fill material into waters of the United States (U.S.). Therefore, pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344; 33 C.F.R. parts 323 and 330), your proposed project requires a DA permit. The northern terminus of the proposed work would be located within the existing railroad corridor at Mile Post (MP) 216.65 (approximate Latitude 33.3089 N, Longitude -117.4728 W) and would extend south 1.8 miles, ending approximately 1,400 feet south of Las Flores Creek at MP 218.3 (approximate Latitude 33.2898 N, Longitude -117.4550 W) as shown on the attached maps, Figure 1-5 of 5.

The U.S. Army Corps of Engineers (Corps) has determined construction of San Onofre to Pulgas Phase 2 Double Track Project complies with Nationwide Permit (NWP) No. 14, Linear Transportation Projects, if conducted as described in your application.

Specifically, you are authorized to conduct the following activities:

1. Construct a second mainline track from Milepost (MP) 216.65 to MP 218.3, west of the existing mainline track within the railroad right-of-way. The new double track would connect to existing or proposed double track sections at the northern and southern ends of the project. The project would involve permanent impacts to 0.397 acre of jurisdictional waters of the U.S.
2. Reconstruct approximately 0.361 acre of waters of the U.S. parallel to the new mainline track.

3. Permanently fill approximately 0.004 acre of jurisdictional waters of the U.S. for the replacement of headwalls and soft bottom apron extension of an existing structure at drainage 12 to accommodate the second mainline track.

4. Permanently fill approximately 0.008 acre of jurisdictional waters of the U.S. through the extension of an existing culvert and the associated fill and rip rap at drainages 16 to accommodate the second mainline track.

5. Permanently fill approximately 0.005 acre of jurisdictional waters of the U.S. for maintenance of drainage 17 to accommodate the second mainline track.

6. Permanently fill approximately 0.38 acre of jurisdictional waters of the U.S. for the construction of the second mainline track at wetlands 2, 5, 6, 8, and 9.

7. Temporarily impact approximately 0.33 acre of jurisdictional waters of the U.S. for temporary use by vehicles at drainages 12, 13, 15, 16, and 17 and wetlands 2, 5, 6, 8, and 9.

8. Revegetate all temporary upland and waters impact areas with a native hydroseed mix within 60-days following completion of the construction.

9. Construct temporary access and staging areas at various locations along the construction corridor in the uplands, employ proper best management practices (BMPs) that inhibit any trespassing by vehicles or construction crews into avoided waters of the U.S. and limit any runoff of sediment or other contaminants from entering waters of the U.S. Use existing access roads to the maximum extent practicable.

For this NWP verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the following non-discretionary Special Conditions:

1. **Construction Designs:** Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division for review and approval updated hydraulic analysis and a complete set of final detailed construction plans showing all work and structures in waters of the U.S. The design of each crossing shall comply with General Condition 2 which requires that NWP activities be constructed to maintain aquatic life movements and General Condition 9 which requires that high water flows and natural sediment transport is maintained. Plans for each crossing shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated September 21, 2009 (http://www.spl.usace.army.mil/regulatory/pn/SPL-RG_map-drawing-standard_final_w-fig.pdf). All plan sheets shall be signed, dated, and submitted on paper no larger than 11x 17 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final

detailed construction plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans.

2. **Restoration of Temporary Impact Areas:** All temporary fill shall be removed and the area shall be restored to pre-construction conditions (elevations, contours and vegetated condition) within 60-days of completion of the project. The Permittee shall hydroseed the disturbed portions of the earthen stream banks with native vegetation of primarily facultative upland (FACU) or wetter species, as appropriate. The Permittee shall submit the proposed planting palette for review and approval by the Corps Regulatory Division prior to initiation of construction. The Permittee shall ensure the hydroseeded areas are maintained and monitored for a period of two years after completing the seeding activities, such that less than 10 percent of the areas disturbed by the project are vegetated by annual non-native plant species and zero perennial weeds are present.

3. **Mitigation:** The Permittee has proposed to mitigate for impacts to waters of the U.S., through implementation of the draft conceptual mitigation plan: "San Onofre to Pulgas Stage 2 Project Wetland Mitigation Plan," dated December 2012, and prepared by Foss Lake Conservation L.P. According to the draft mitigation plan, SANDAG would be the responsible party for all aspects of mitigation. The Permittee retains ultimate legal responsibility for meeting the requirements of the final mitigation plan. Detailed mitigation objectives, performance standards, and monitoring requirements are described in the above draft mitigation plan. Any requirements for financial assurances and/or long-term management provisions are also described in the above draft mitigation plan, as well as in special condition 6 below.

4. Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps a final mitigation plan prepared in accordance with the Corps' Los Angeles District Mitigation Guidelines and Monitoring Requirements, dated April 19, 2004 and the Mitigation Rule (33 C.F.R. Part 332; 73 FR 19670-19687 (April 10, 2008)). The final mitigation plan shall address the 0.398 acre of permanent and 0.365 acre of temporary impact to waters of the U.S. through restoration of 0.341 acre, establishment of 0.398 acre and enhancement of 1.125 acres of waters of the U.S. All maps and drawings shall be in compliance with the Final Map and Drawing Standards for the South Pacific Division Regulatory Program dated August 6, 2012 (<http://www.spd.usace.army.mil/Portals/13/docs/regulatory/standards/map.pdf>). No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps approval of the final mitigation plan. The Permittee shall complete site preparation and planting and initiate monitoring as described in the final, approved mitigation plan concurrently with impacts to waters of the U.S. Your responsibility to complete the required compensatory mitigation as set forth in this Special Condition will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the Corps.

5. **GIS DATA:** Within 60 days of this NWP verification letter, you shall provide GIS data (polygons only) to the Corps Regulatory Division that depicts the boundaries of all compensatory mitigation sites as authorized in the final mitigation plan referenced above. All GIS data and associated metadata shall be provided on a digital medium (CD or DVD) or via file transfer protocol (FTP), preferably using the Environmental Systems Research Institute (ESRI) shapefile format. GIS data for mitigation sites shall conform to the data dictionary, as specified in the current Map and Drawing Standards for the Los Angeles District Regulatory Division, and shall include a text file of metadata, including datum, projection, and mapper contact information. Within 60 days following completion of compensatory mitigation construction activities, if any deviations have occurred, you shall submit as-built GIS data (polygons only) accompanied by a narrative description listing and explaining each deviation.

6. Prior to initiating construction in waters of the U.S., the Permittee shall post financial assurance ("financial assurance") in a form approved by the Corps Regulatory Division for the estimated cost of implementing the approved mitigation plan (including a 20% contingency to be added to the total costs). The purpose of this financial assurance is to guarantee the successful implementation, maintenance and monitoring of the wetland and non-wetland waters creation, restoration, and enhancement work. The financial assurance may be in the form of an irrevocable letter of credit, performance bond, or escrow agreement. The preferred form of financial assurance is an irrevocable letter of credit. At a minimum and subject to Corps approval, you shall post financial assurance in the amount of 120% of the anticipated cost of the mitigation and monitoring associated with the project, as indicated above, in any manner permitted by Corps policy. In the event a Performance Bond is the desired and approved mechanism, the following apply:

- a. The bonding company must appear on the Department of Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies. For a current list of Treasury-authorized companies, write or call the Surety Bond Branch, Financial Management Services, Department of the Treasury, Washington DC 20227; (202) 874-6850 or at the following website: <http://www.fms.treas.gov/c570/c570.html>.
- b. The performance bond shall be released only upon a determination by the Corps Regulatory Division that successful mitigation has been completed.

7. **Endangered Species Act:** This Corps permit does not authorize you to take any threatened or endangered species, in particular the coastal California gnatcatcher (*Polioptila californica californica*), Least Bell's vireo (*Vireo bellii pusillus*), Tidewater Goby (*Eucyclogobius newberryi*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and Pacific pocket mouse (*Perognathus longimembris pacificus*). In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental

take" provisions with which you must comply). A programmatic BO and amendment were developed by the FWS with FRA. Your authorization under this Corps permit is conditional upon your implementation of all of the proposed avoidance and minimization measures within your project description and permit application package, which are incorporated by reference in this permit. Failure to comply with the required avoidance and minimization measures would constitute non-compliance with your Corps permit.

8. Cultural Resources: Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff within 24 hours (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861) and the Regulatory Division (Courtney Stevens at 760-602-4841). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

9. RWQCB 401 Certification: The Permittee shall implement and abide by the Section 401 Water Quality Certification (Cert No. 010C-029) dated February 22, 2013. The conditions of this permit have been integrated into this letter of verification by reference.

10. Coastal Consistency Certification: The Permittee shall abide by all conditions of the California Coastal Management Program (CCMP). The project was determined to be consistent with the CCMP by the attached letter dated February 12, 2013.

Your verification is valid through March 18, 2017. All NWPs will expire on March 18, 2017. It is incumbent upon you to remain informed of changes to the NWPs. A public notice of the change(s) will be issued when any of the NWPs are modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date on which the relevant NWP is reissued, modified, or revoked, you will have twelve (12) months from the date of the reissuance, modification, or revocation of the NWP to complete the activity under the present terms and conditions of the relevant NWP.

A preliminary jurisdictional determination (JD) was conducted on January 24, 2013, to determine the extent of Corps geographic jurisdiction, upon which this NWP verification is based. A preliminary JD is advisory in nature and is a written indication that Corps geographic jurisdiction may be present on a particular site, but is not appealable. An approved JD is an official Corps determination of the precisely identified limits of Corps geographic jurisdiction on a particular site, and is appealable. Should you wish to appeal an approved JD, you may request an administrative appeal under Corps

regulations at 33 C.F.R. part 331. Please refer to the enclosed Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form for more information.

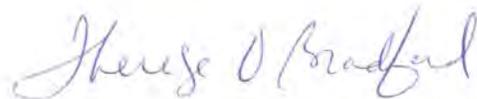
A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with any existing or proposed federal project. Furthermore, it does not obviate the need to obtain other federal, state, or local authorizations required by law.

Thank you for participating in our regulatory program. If you have any questions, please contact Courtney Stevens at 760-602-4841 or via e-mail at Courtney.M.Stevens@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <http://per2.nwp.usace.army.mil/survey.html>.

"Building Strong and Taking Care of People!"

Sincerely,



Therese O. Bradford
Chief, South Coast Branch

Enclosures



**LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS**

**CERTIFICATE OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT**

Permit Number: *SPL-2012-00705-CMS*

Name of Permittee: Mr. Rob Rundle, San Diego Association of Governments

Date of Issuance: *March 5, 2013*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it to the following address:

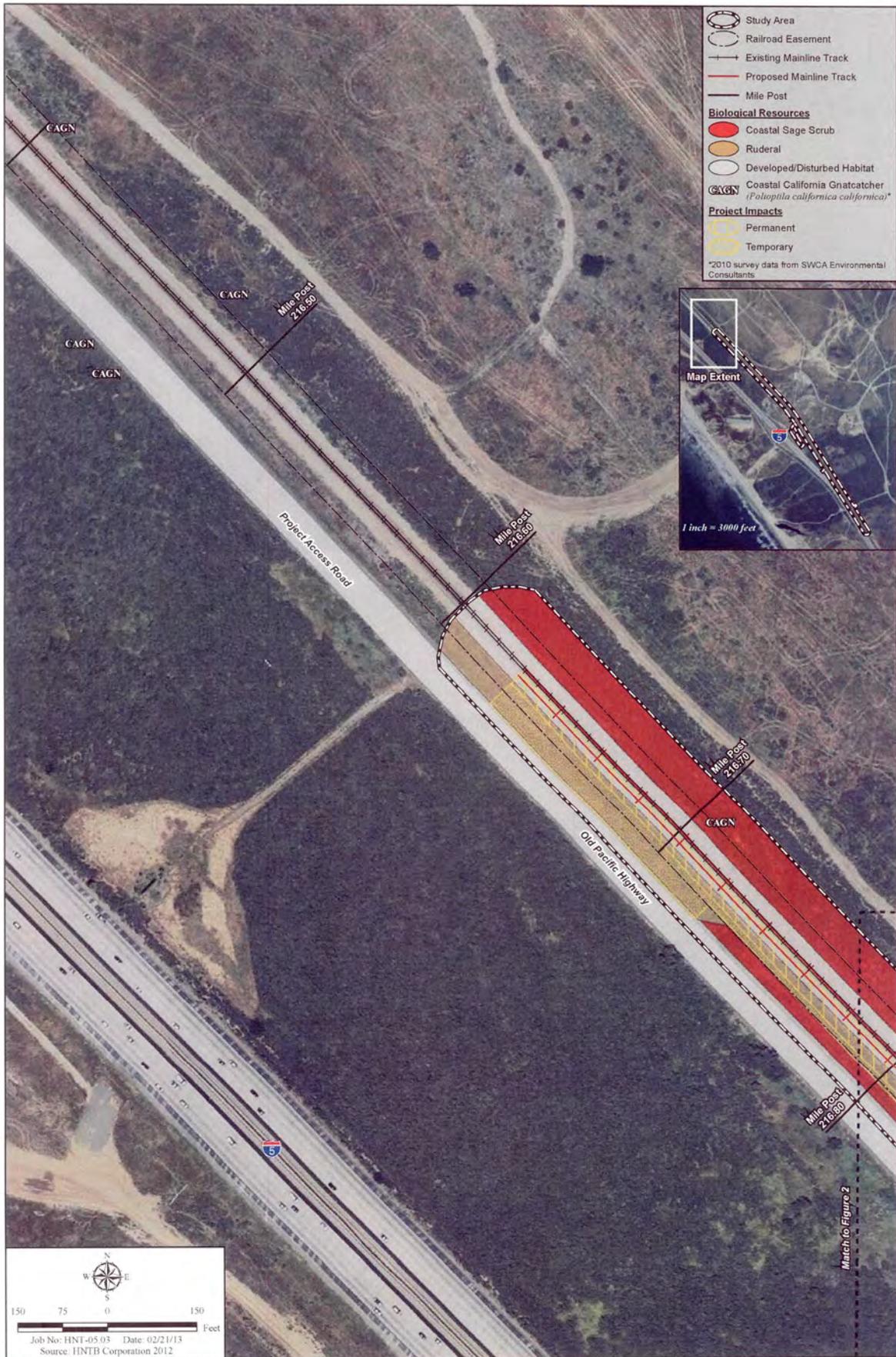
U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
ATTN: CESPL-RG-SPL-2012-00155-CMS
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this Nationwide Permit, you may be subject to permit suspension, modification, or revocation procedures as contained in 33 C.F.R. § 330.5 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit condition(s).

Signature of Permittee

Date



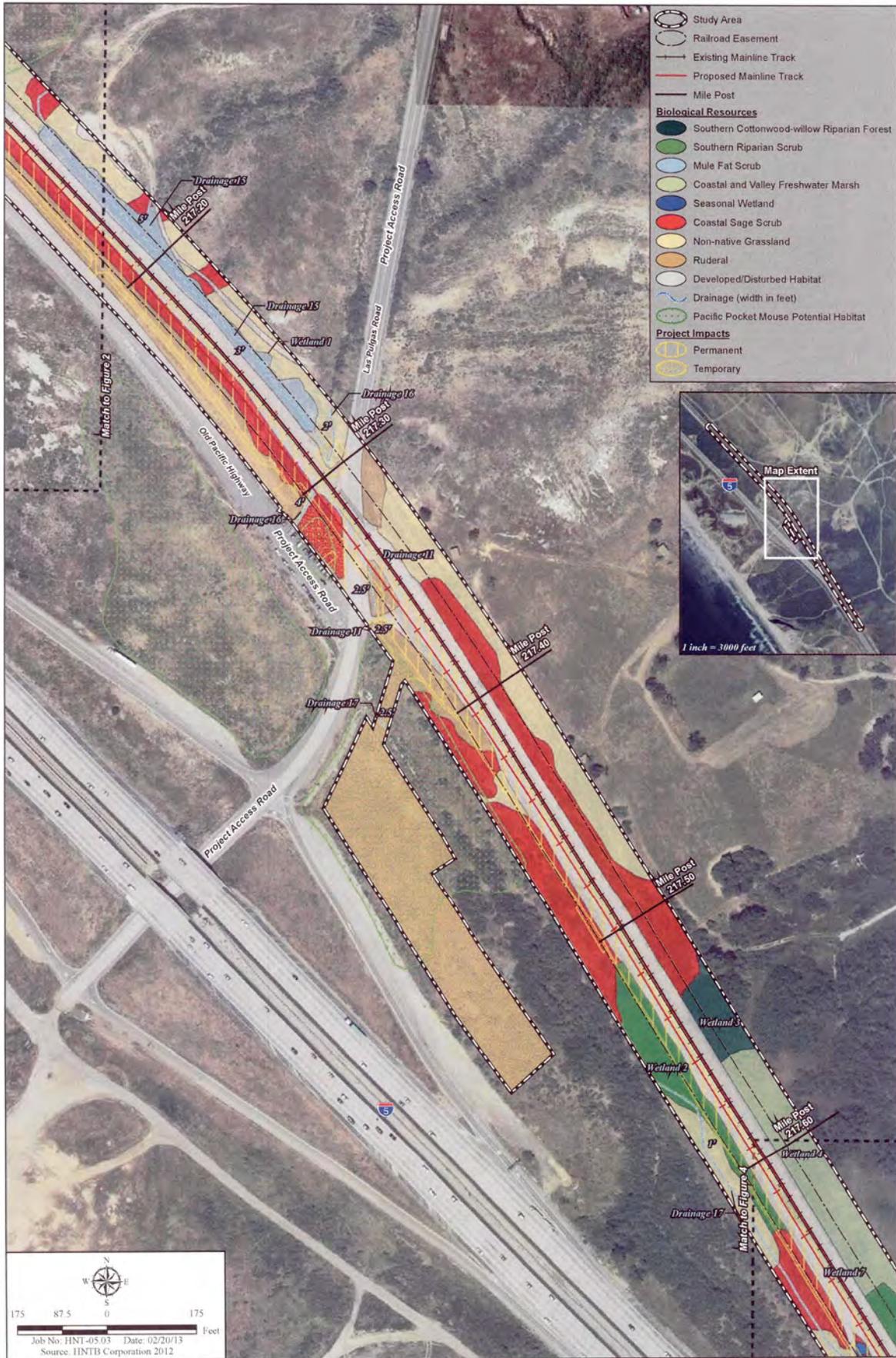
Existing Vegetation and Sensitive Resources/Project Impacts

CP SAN ONOFRE TO CP PULGAS DOUBLE TRACK PROJECT - STAGE 2: MP 216.5 TO MP 218.3



Existing Vegetation and Sensitive Resources/Project Impacts

CP SAN ONOFRE TO CP PULGÁS DOUBLE TRACK PROJECT - STAGE 2: MP 216.5 TO MP 218.3



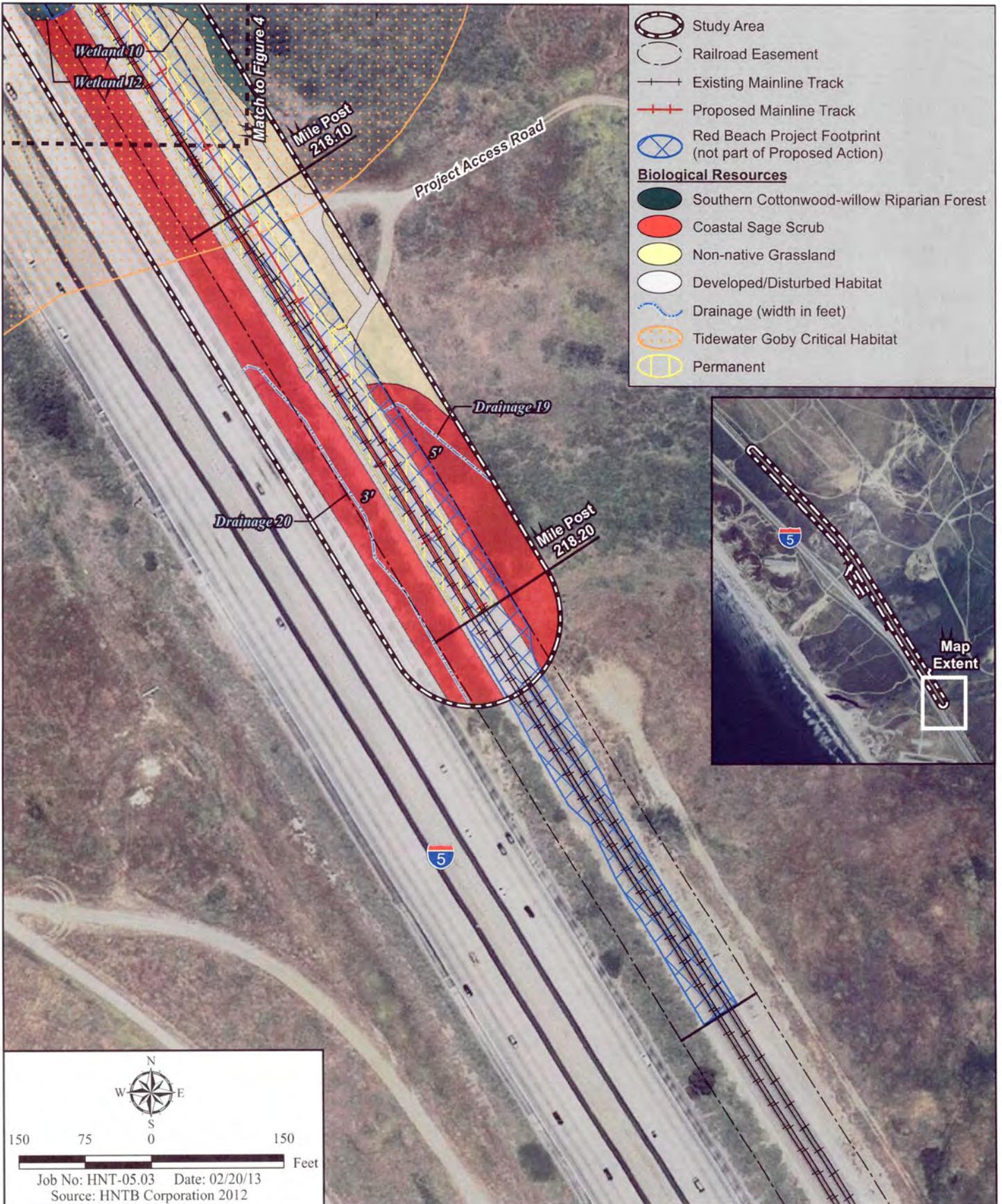
Existing Vegetation and Sensitive Resources/Project Impacts

CP SAN ONOFRE TO CP PULGAS DOUBLE TRACK PROJECT - STAGE 2: MP 216.5 TO MP 218.3



Existing Vegetation and Sensitive Resources/Project Impacts

CP SAN ONOFRE TO CP PULGAS DOUBLE TRACK PROJECT - STAGE 2: MP 216.5 TO MP 218.3



Existing Vegetation and Sensitive Resources/Project Impacts

CP SAN ONOFRE TO CP PULGAS DOUBLE TRACK PROJECT - STAGE 2: MP 216.5 TO MP 218.3