



PUBLIC NOTICE

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

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APPLICATION FOR PERMIT Batiquitos Lagoon Double Track Project

Public Notice/Application No.: SPL-2016-00786-WSZ

Project: Batiquitos Lagoon Double Track Project

Comment Period: February 24 through March 27, 2017

Project Manager: Winston Zack; (760) 602-4838; Winston.S.Zack@usace.army.mil

Applicant

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Contact

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HELIX Environmental Planning
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Location

The 1-mile long Project site is located along the railroad that crosses Batiquitos Lagoon, between Mile Post 234.2, just north of the Avenida Encinas overcrossing in the City of Carlsbad and just south of the La Costa Avenue overcrossing in the City of Encinitas near MP 235.2 (Latitude 33.094394° N, Longitude -117.312478° W) in San Diego County, California (Figures 1 and 2).

Activity

The Applicant proposes to permanently impact 1.09 acres of jurisdictional wetland (0.13 acre) and non-wetland (0.96 acre) waters of the U.S., and temporarily impact 2.99 acres of jurisdictional wetland (0.24 acre) and non-wetland (2.75 acres) waters of the U.S. within Batiquitos Lagoon for the construction of this double-track bridge replacement and construction Project (Figures 3a and 3b).

The Project proposes to construct and operate a second mainline rail track in the existing railroad right-of-way (ROW) in a one-mile segment that includes Batiquitos Lagoon in the cities of Carlsbad and Encinitas. For more information see Additional Information section below.

Interested parties are hereby notified an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the U.S. Army Corps of Engineers (Corps) Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Comments should be mailed to:

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
ATTN: Winston Zack
5900 LA PLACE COURT, SUITE 100
CARLSBAD, CALIFORNIA 92008

Alternatively, comments can be sent electronically to: Winston.S.Zack@usace.army.mil.

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts

of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made an environmental impact statement (EIS) is not required for the proposed work.

Water Quality- The Applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps prior to permit issuance.

Coastal Zone Management- The Applicant has certified the proposed activity would comply with and would be conducted in a manner consistent with the approved State Coastal Zone Management Program. For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that prior to issuing the Corps authorization for the project, the Applicant must obtain concurrence from the California Coastal Commission the project is consistent with the State's Coastal Zone Management Plan. The District Engineer hereby requests the California Coastal Commission's concurrence or non-concurrence.

Essential Fish Habitat (EFH)- The Corps' preliminary determination indicates the proposed activity may adversely affect EFH. Pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Corps hereby requests initiation of EFH consultation for the proposed project. This notice initiates the EFH consultation requirements of the Act (abbreviated consultation). In order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), pursuant to 50 CFR 600.920(e)(3), I am providing, enclosing, or otherwise identifying the following information:

1. Description of the proposed action: see project description on page 1 of this public notice.
2. On-site inspection information: see baseline information on page 5 of this public notice.
3. Analysis of the potential adverse effects on EFH: Removal and replacement of rock under the bridge will impact the benthic community. Eelgrass will be adversely impacted within the intertidal and subtidal flats west of the bridge. Temporary sedimentation rates will change through removal of rock under the bridge. Noise levels will temporarily increase during construction from machinery and pile driving, and permanently from an increase in rail traffic. Shading will also increase from the widening of the bridge over the lagoon.
4. Proposed minimization, conservation, or mitigation measures: Preconstruction eelgrass surveys will be completed and mitigation will be provided in conformance with the Eelgrass Mitigation Policy. Turbidity and siltation curtains, and cofferdams will be used to minimize the spread of suspended sediment and debris during construction. Flows will be maintained through the main channel for fish passage and to minimize tidal muting. Bubble curtains will

be used to minimize noise and vibration.

5. Conclusions regarding effects of the proposed project on EFH: Based on the project description and EFH assessment provided by the Applicant, the proposed project would result in disturbance of approximately 1.39 acres of substrate. Furthermore, the affected substrate would likely consist of soft-bottom sediments and hard rock substrate.

Therefore, it is my initial determination the proposed activity may adversely affect **but would not** have a substantial adverse impact on EFH or federally managed fisheries in California waters. My final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with NOAA Fisheries. If I do not receive written comments (regular mail or e-mail) within the 30-day notification period, I will assume concurrence by NOAA Fisheries **with the proposed mitigation measures**.

Cultural Resources- A survey of the Area of Potential Effect (APE) was completed in 2014 and 2016. Past investigations of the property included pedestrian surveys, significance evaluations of identified cultural resources, and testing to determine if resources on site are eligible for listing on the National Register of Historic Places (NRHP).

The Corps has not yet begun its Native American tribal coordination efforts. The Corps will contact the Native American Heritage Commission (NAHC), and then send project description letters to all the tribes listed on the NAHC contact list. If any response letters are received from the Tribes the Corps will respond accordingly. The Corps will also need to consult with the State Historic Preservation Office (SHPO) pursuant to Section 106 of the National Historic Preservation Act.

The Corps has made a preliminary determination of an 'Adverse Effect' on potentially eligible historic properties within the project area as determined by the results of the above-mentioned cultural resource surveys (including test excavations). The Corps will continue to coordinate and consult with the Tribes, SHPO and ACHP, as needed.

Endangered Species- The Corps has preliminarily determined that the proposed Project may affect, is likely to adversely affect the federally endangered California least tern (*Sturnula antillarum browni*; least tern); the federally threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher); the federally endangered western snowy plover (*Charadrius nivosus nivosus*; plover); and may affect, not likely to adversely affect the federally endangered light-footed ridgway's (clapper) rail (*Rallus obsoletus* [=longirostris] *levipes*; rail), all four of which may utilize habitat within the Action Area. Therefore, formal consultation under Section 7 of the Endangered Species Act will be required at this time. The Corps anticipates initiating formal consultation with the U.S. Fish and Wildlife Service (USFWS) pursuant to Section 7 of the Endangered Species Act (ESA) to address the potential direct and indirect effects of the proposed Project on these four species.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the Applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only

when the proposed activity would discharge dredged or fill material into a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). The basic Project purpose for the proposed Project is railroad transportation. The Project is not water dependent. The discharge of fill material is proposed to occur in special aquatic sites. Therefore, the Applicant must rebut the presumption that practicable alternative sites or designs that do not affect special aquatic sites are available, practicable, or less damaging.

Overall Project Purpose- The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the Applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to increase the reliability, operational flexibility, and capacity of the Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor to add passenger and freight rail service to meet future transportation demands.

Additional Project Information

Baseline information- The 107.9-acre Project site is comprised mostly of disturbed, bare ground, and developed land (53%), with the remaining vegetation communities primarily consisting of native habitat (open water, marsh, eelgrass, mudflat, shoal, foredunes, scrub, grassland, riparian). Waters of the U.S. associated with the on-site Project site totals 31.68 acres, of which 17.37 acres consist of jurisdictional wetlands. There are no proposed impacts to off-site jurisdictional waters.

Proposed Mitigation- The proposed mitigation may change as a result of comments received in response to this public notice, the Applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence avoidance/minimization/compensation, as applied to the proposed project is summarized below:

Avoidance: The on-site Project area covers 31.68 acres of which there are 17.37 acres of wetland and 14.31 acres of non-wetland waters of the U.S. Permanent impacts would occur to 1.09 acres (3.4%) of jurisdictional wetland (0.13 acre; 0.07%) and non-wetland (0.96 acre; 6.7%) waters of the U.S. Temporary impacts would occur to 2.99 acres of jurisdictional wetland (0.24 acre) and non-wetland (2.75 acres) waters of the U.S.

Minimization: Unavoidable impacts to jurisdictional waters/wetlands were minimized through alternative railroad track designs that reduced impacts to jurisdictional waters/wetlands. Additional minimization measures include construction-related best management practices and the vegetation of graded slopes with native species. Additional minimization measures may be incorporated/required by the project.

Compensation: Compensatory mitigation for unavoidable impacts to waters of the U.S. may include the purchase of in-kind habitat credits at a Corps-approved mitigation bank or Permittee-responsible mitigation. A detailed mitigation proposal has not yet been received for onsite habitat creation, restoration and enhancement.

Proposed Special Conditions

Special conditions providing for the avoidance, minimization and mitigation of impacts to waters of the U.S., threatened and endangered species, and cultural resources would likely be incorporated into the Corps permit, if issued. No specific conditions are proposed at this time.

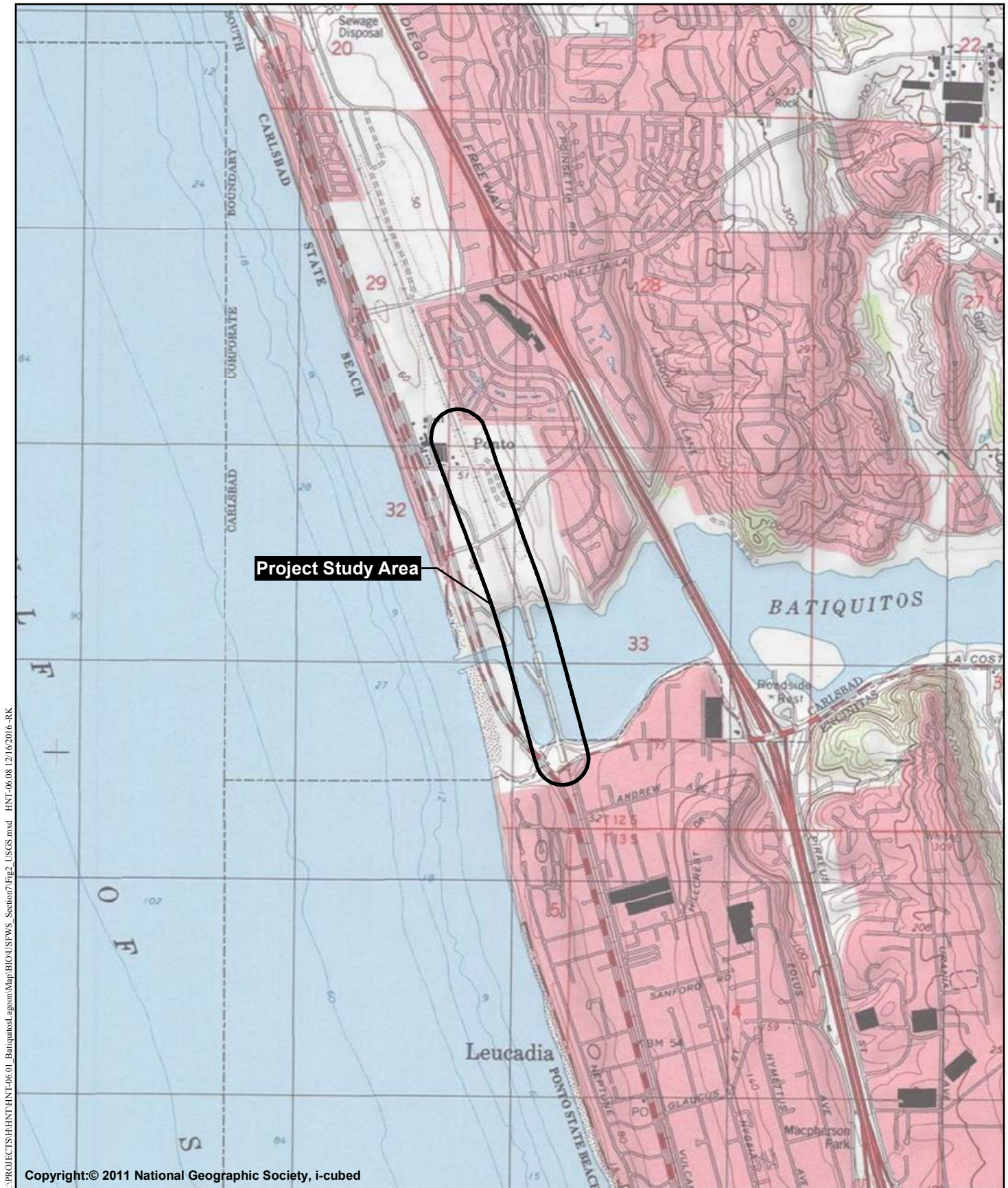
For additional information please call Winston Zack of my staff at (760) 602-4838 or via e-mail at Winston.S.Zack@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
5900 LA PLACE COURT, SUITE 100
CARLSBAD, CALIFORNIA 92008
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Project Vicinity Map (USGS Topography)

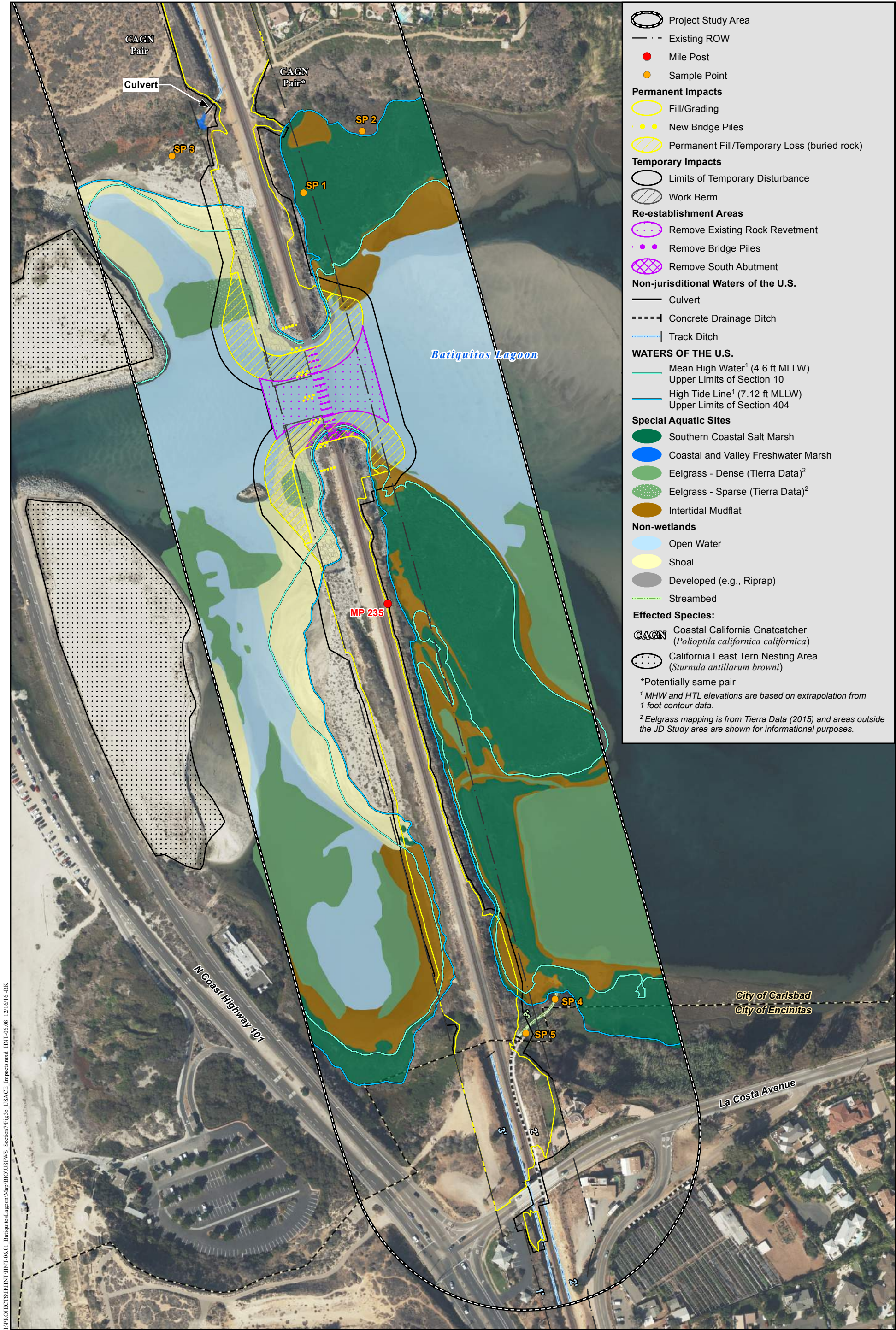
BATIQUITOS LAGOON DOUBLE TRACK PROJECT



Aerial Photo Source: SANDAG, 2014

Waters of the U.S. and Effected Species/Impacts

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Aerial Photo Source: SANDAG, 2014

Waters of the U.S. and Effected Species/Impacts

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Figure 3b