Appendix N:
ACOE Jurisdictional Delineation Verification

DEPARTMENT OF THE ARMY

October 20, 2009

REPLY TO
ATTENTION OF
Office of the Chief
Regulatory Division

Bruce April
Chief, Environmental Stewardship Branch
North Coast Environmental Division
Caltrans, District 11 - San Diego
4050 Taylor Street, MS-242
San Diego, California 92110

Dear Mr. April:

Reference is made to your submittal (File No. SPL-2004-01089-SJH) dated September 24, 2008, requesting verification of the jurisdictional limits of the Section 404 of the Clean Water Act (CWA) for a number of water bodies, tributaries and wetlands occurring within the **Interstate 5 (I-5)North Coast Corridor Widening Project** study area located in the County of San Diego, along 26-miles of the I-5, from the I-805 (Mira Mesa Blvd. & La Jolla Village) to I-5 at Vandergrift Blvd., in the City of Oceanside, California. Your jurisdictional determination request is a formal concurrence point specified in the multi-agency collaborative process to integrate and streamline the requirements of the National Environmental Policy Act and Section 404 of the CWA for Surface Transportation Projects in the State of California. This letter of verification fulfills this concurrence point.

Based on our May 26, 2009 site visit and information furnished to our office, including the September 2008 jurisdictional delineation report entitled *"Interstate 5 North Coast Corridor Project Federal Wetland Delineation and Non-wetland Waters Report,"* we have determined that your proposed project does discharge dredged or fill material into a water of the United States (U.S.). Therefore, the project is subject to our jurisdiction under Section 404 of the Clean Water Act (CWA) and a Department of the Army (DA) permit is required from our office. According to the delineation report, the I-5 would result in the placement of fill material into the following water bodies, tributaries, and adjacent wetlands: San Clemente Creek, Los Penasquitos Lagoon, San Dieguito Lagoon, San Elijo Lagoon, Cottonwood Creek, Batiquitos Lagoon, Encina Creek, Agua Hedionda Lagoon, Buena Vista Lagoon, Loma Alta Creek, and the San Luis Rey River. Preliminary estimates indicate a range of approximately 22.97 to 28.86 acres of waters of the U.S., including wetlands, would be permanently impacted by the proposed I-5, depending on the alternative selected. Similarly, approximately 13.55 acres to 16.05 acres of waters of the U.S., including wetlands, would be temporarily impacted.

The enclosed tables list the waters of the United States, including wetlands, regulated by Section 404 of the CWA. Specifically, Table 1 identifies the permanent and temporary impacts to jurisdictional waters, including wetlands, occurring within each of the proposed I-5 project alternatives under consideration, Table 2 identifies permanent impacts to jurisdictional waters by watershed, and Table 3 identifies the I-5 jurisdictional watershed acreages. All tables referenced in this letter correspond to figures and maps compiled in the I-5 Federal Wetland Delineation and Non-wetland Waters Report (Caltrans, September 2008). The subject report

subject report will be retained in our office files as part of the project's official administrative record and the Corps' approved jurisdictional delineation/determination.

This delineation/determination has been conducted to identify the limits of the Corps jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This letter contains an approved jurisdictional determination for the **Interstate 5 (I-5) North Coast Corridor Widening Project**. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet (Appendix A) and Request for Appeal (RFA) form. If you request to appeal this decision you must submit a completed RFA form to the Corps South Pacific Division Office at the following address:

Tom Cavanaugh
Administrative Appeal Review Officer,
U.S. Army Corps of Engineers
South Pacific Division, CESPD-PDS-O, 2042B
1455 Market Street, San Francisco, California 94103-1399

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. Part 331.5, and that it has been received by the Division Office within 60 days of the date on the NAP. Should you decide to submit an RFA form, it must be received at the above address by December 20, 2009. It is not necessary to submit an RFA form to the Division office if you do not object to the decision in this letter.

This verification is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. If you wish to submit new information regarding the approved jurisdictional determination for this site, please submit this information to Stephanie Hall at the letterhead address by December 20, 2009. The Corps will consider any new information so submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. A revised or reissued jurisdictional determination can be appealed as described above.

If you have any questions, please contact Stephanie Hall of my staff at 213-452-3410 or via e-mail at Stephanie.J.Hall@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.

Sincerely,

Mark D. Cohen
Assistant Deputy Chief,
Regulatory Division

Enclosures

ENCLOSURE 1

Tables 1 through 3

Table 1. Permanent and Temporary Impacts to ACOE Jurisdictional Waters of the U.S.

	8+4 buffer	10+4 buffer	8+4 barrier	10+4 barrier
Permanent	acres	acres	acres	acres
other waters of the US	10.58	11.82	12.79	12.95
wetland	12.39	13.07	13.95	15.90
Total	22.97	24.89	26.74	28.86
Temporary				
other waters of the US	4.74	4.46	4.38	4.30
wetland	9.10	11.60	11.20	9.25
Total	13.84	16.05	15.58	13.55

Table 2. Permanent Impacts to ACOE Jurisdictional Waters of the U.S. by Watershed

Watershed	Jurisdiction	8+4 buffer acres	10+4 buffer acres	8+4 barrier acres	10+4 barrier acres
San Clemente Creek	other waters of the U.S.	0.00	0.00	0.00	0.00
	Wetland	0.01	0.01	0.01	0.01
Los Peñasquitos Lagoon	other waters of the U.S.	2.14	2.14	2.14	2.14
	Wetland	2.20	2.20	2.20	2.20
San Dieguito Lagoon	other waters of the U.S.	1.05	1.09	1.13	1.17
	Wetland	2.46	2.61	2.28	3.14
San Elijo Lagoon	other waters of the U.S.	0.60	0.64	0.66	0.70
	Wetland	1.18	1.55	1.74	2.37
Cottonwood Creek	other waters of the U.S.	0.03	0.03	0.03	0.04
	Wetland	0.26	0.27	0.23	0.38
Batiquitos Lagoon	other waters of the U.S.	0.97	1.05	1.21	1.11
	Wetland	3.60	3.71	4.81	5.06
Encina Creek	other waters of the U.S.	0.08	0.10	0.11	0.13
	Wetland	1.42	1.46	1.44	1.49
Agua Hedionda Lagoon	other waters of the U.S.	4.32	5.36	6.12	6.28
	Wetland	0.00	0.00	0.00	0.00
Buena Vista Lagoon	other waters of the U.S.	0.30	0.30	0.30	0.30
	Wetland	0.57	0.57	0.57	0.57
Loma Alta Creek	other waters of the U.S.	0.26	0.26	0.26	0.26
	Wetland	0.03	0.03	0.03	0.03
San Luis Rey River	other waters of the U.S.	0.84	0.84	0.84	0.84
	Wetland	0.65	0.65	0.65	0.65
Total		22.97	24.89	26.74	28.86
Subtotal	other waters of the U.S.	10.58	11.82	12.79	12.95
Subtotal	Wetland	12.39	13.07	13.95	15.90

Table 3. I-5 North Coast Corridor Drainages/Watershed ACOE Jurisdictional Acreage

Watershed/Drainage	Drainage ID	Latitude	Longitude	Area Reviewed (acres)	Wetland (acres)	Non-wetland WUS (acres)	Total (acres)
San Clemente Creek	**SCC**						
Voight –unnamed drainage	SCC-D1	32.8823	-117.2248	0.5	0.02		0.02
Los Peñasquitos Lagoon	**LPL**						
Genesee Unnamed Drainage	LPL-D1	32.8940	-117.227	18	2.44	0.5	2.94
Soledad Creek	LPL-D2	32.9006	-117.2234	5.0		2.44	2.44
Los Penasquitos Creek	LPL-D3	32.9042	-117.2237	5.0	2.02		2.02
Carmel Creek	LPL-D4	32.9297	-117.2405	42	30.92	1.54	32.46
San Dieguito Lagoon	**SDL**						
San Dieguito River	SDL-D1	32.9729	-117.2504	11	2.19	5.41	7.6
Drainage SE of San Dieguito River	SDL-D2	32.9683	-117.2478	10	1.77		1.77
Drainage NW of San Dieguito River	SDL-D3	32.9743	-117.2504	7.8	1.96		1.96
Drainage NE of San Dieguito River	SDL-D4	32.9763	-117.2510	7.8	2.08		2.08
San Elijo Lagoon	**SEL-D1**	33.0101	-117.2643	45.0	25.90	2.03	27.93
Unnamed drainage from South	SEL-D2	33.0069	-117.2619	1.0	0.02		0.02
Drainage Parallel to Manchester	SEL-D3	33.0118	-117.262	2.0	0.45		0.45
Drainage north of Manchester	SEL-D4	33.0132	-117.2685	1.0	0.15		0.15
Cottonwood Creek	**CC-D1**	33.0475	-117.2859	1.0		0.07	0.07
Drainage S of Requeza OC	CC-D2	33.0431	-117.2850	8.0	0.91		0.91
Moonlight Creek	CC-D3	33.0515	-117.2890	22.0	2.28	0.092	2.37
Batiquitos Lagoon	**BL-D1**	33.0907	-117.3023	100.0	29.38	39.3	68.68
Encina Creek	**EC-D1**	33.1169	-117.3181	3.0	0.45	0.22	0.67
Drainage to Encina Creek	EC-D2	33.1148	-117.3171	16.0	1.33	0.12	1.45
Agua Hedionda Lagoon	**AHL-D1**	33.0907	-117.3023	51.0		35.6	35.6

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Bruce April, Caltrans, District 11 - San Diego	File Number: SPL-2004-01089-SJH	Date: 10/20/2009

Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

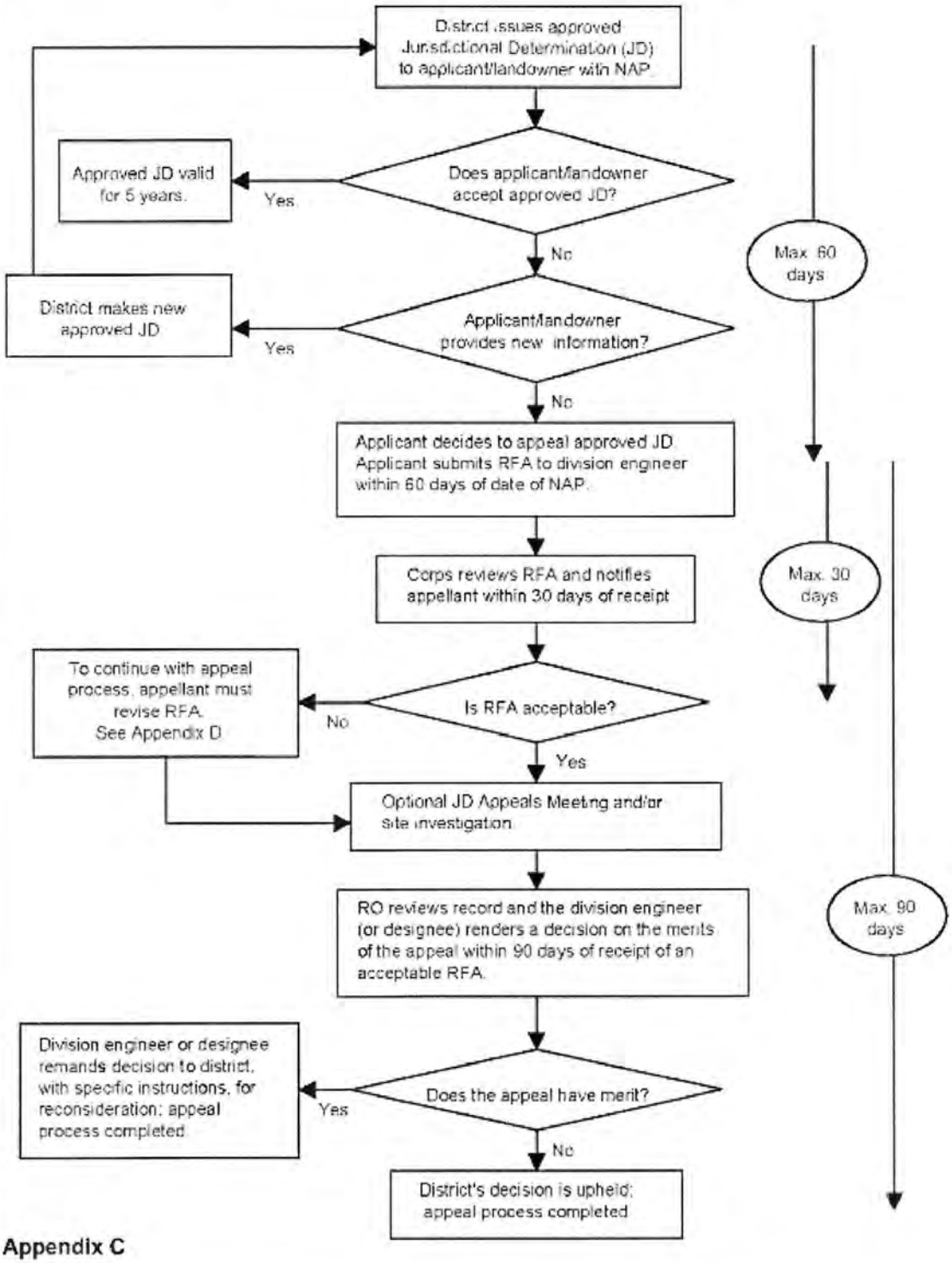
POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
DISTRICT ENGINEER Los Angeles District, Corps of Engineers ATTN: Chief, Regulatory Division P.O. Box 532711 Los Angeles, CA 90053-2325 Tel. (213) 452-3425	DIVISION ENGINEER South Pacific Division, Corps of Engineers ATTN: Tom Cavanaugh Administrative Appeal Review Officer, South Pacific Division, CESPD-PDS-O, 2042B 1455 Market Street, San Francisco, California 94103-1399 Tel. (415) 503-6574 Email: thomas.j.cavanaugh@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
_____ Signature of appellant or agent.		

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

Figure 1. I-5 North Coast Corridor Project

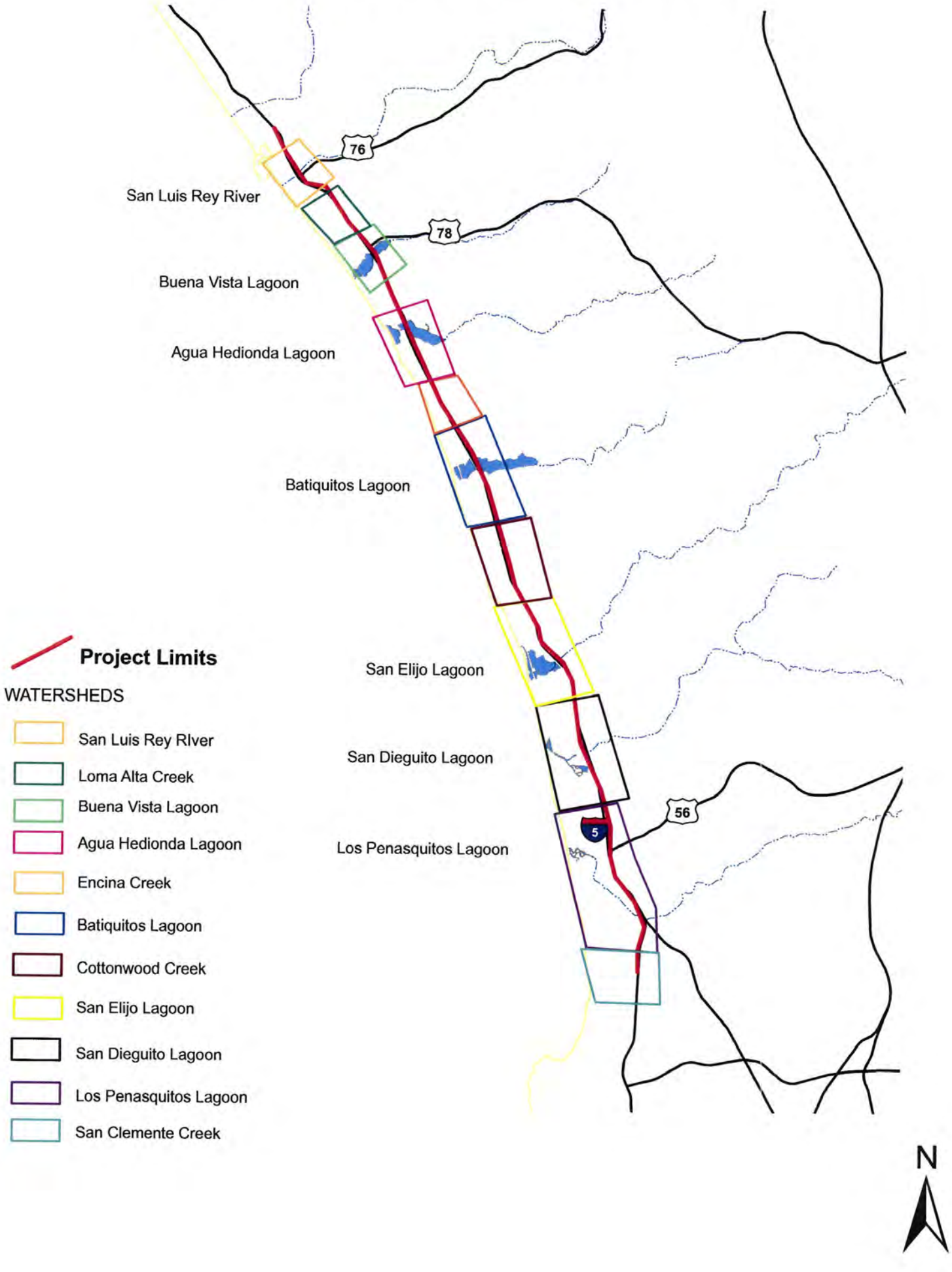


Figure 2. Voight/San Clemente Creek Jurisdictional Wetlands and Other Waters of the U.S.

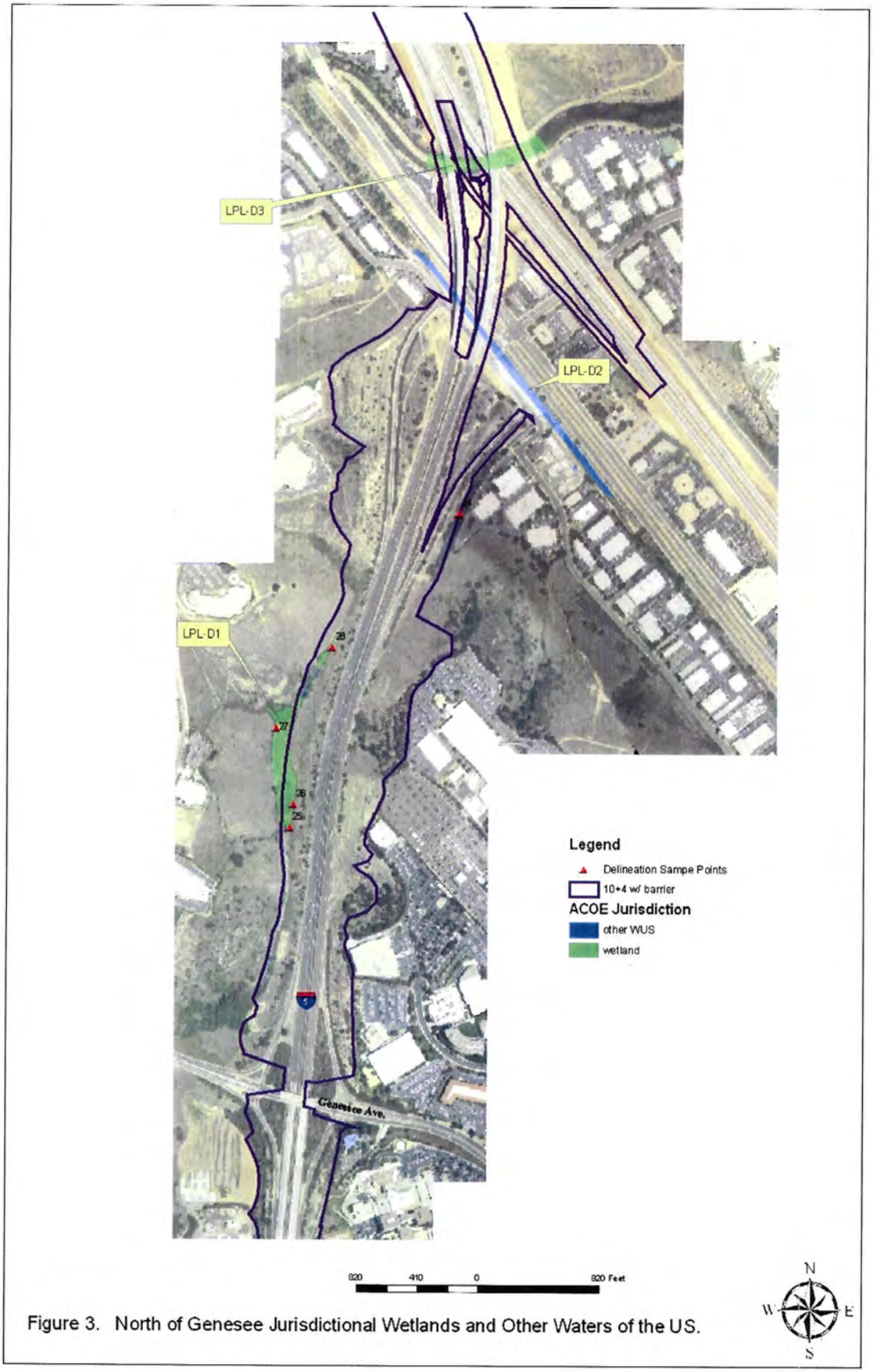


Figure 3. North of Genesee Jurisdictional Wetlands and Other Waters of the US.

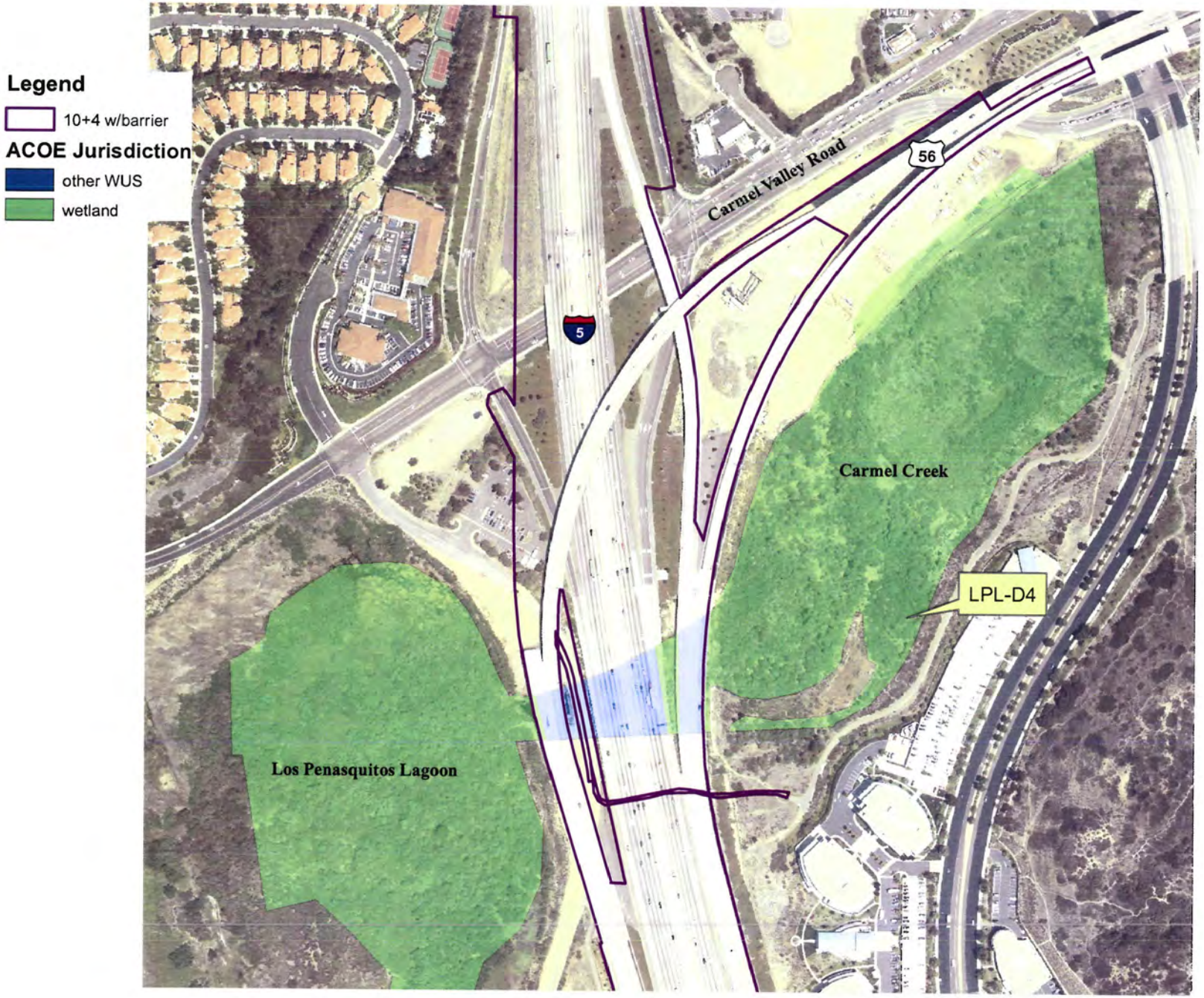


Figure 4. Carmel Creek/Penasquitos Lagoon Jurisdictional Wetlands and Other Waters of the U.S.

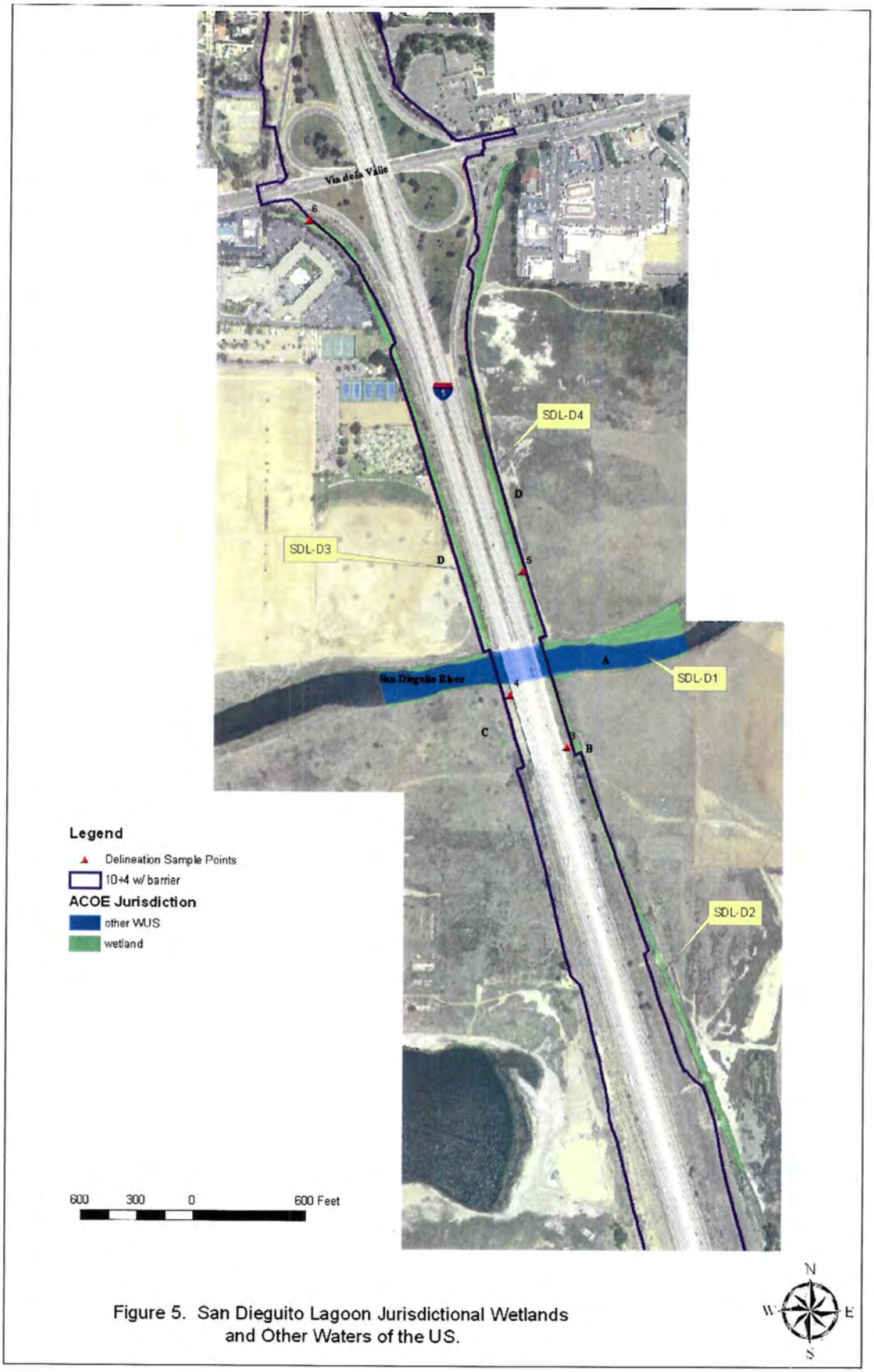


Figure 5. San Dieguito Lagoon Jurisdictional Wetlands and Other Waters of the US.

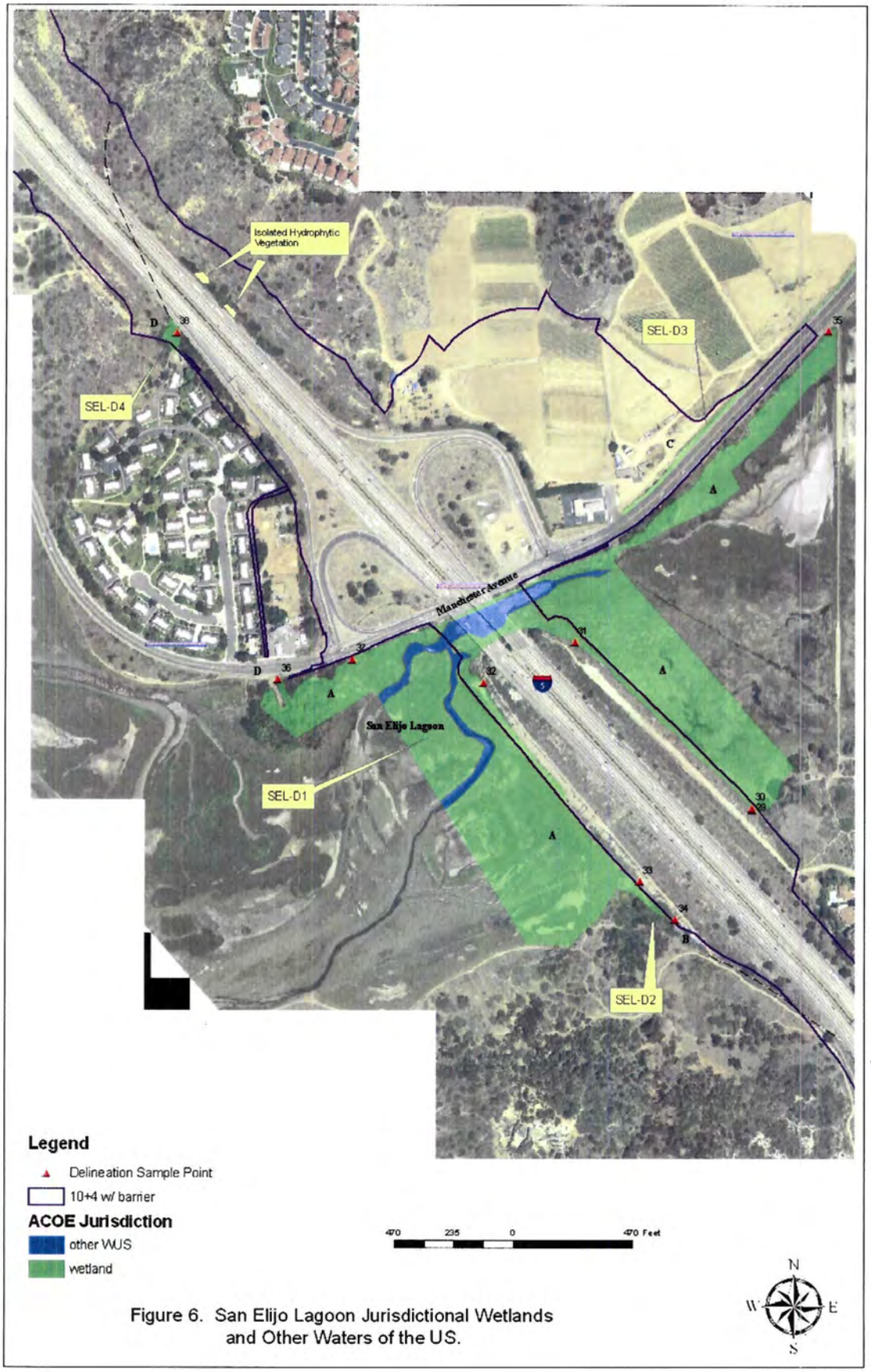


Figure 6. San Elijo Lagoon Jurisdictional Wetlands and Other Waters of the US.

Figure 7. Cottonwood Creek/Requeza Jurisdictional Wetlands and Other Waters of the US.

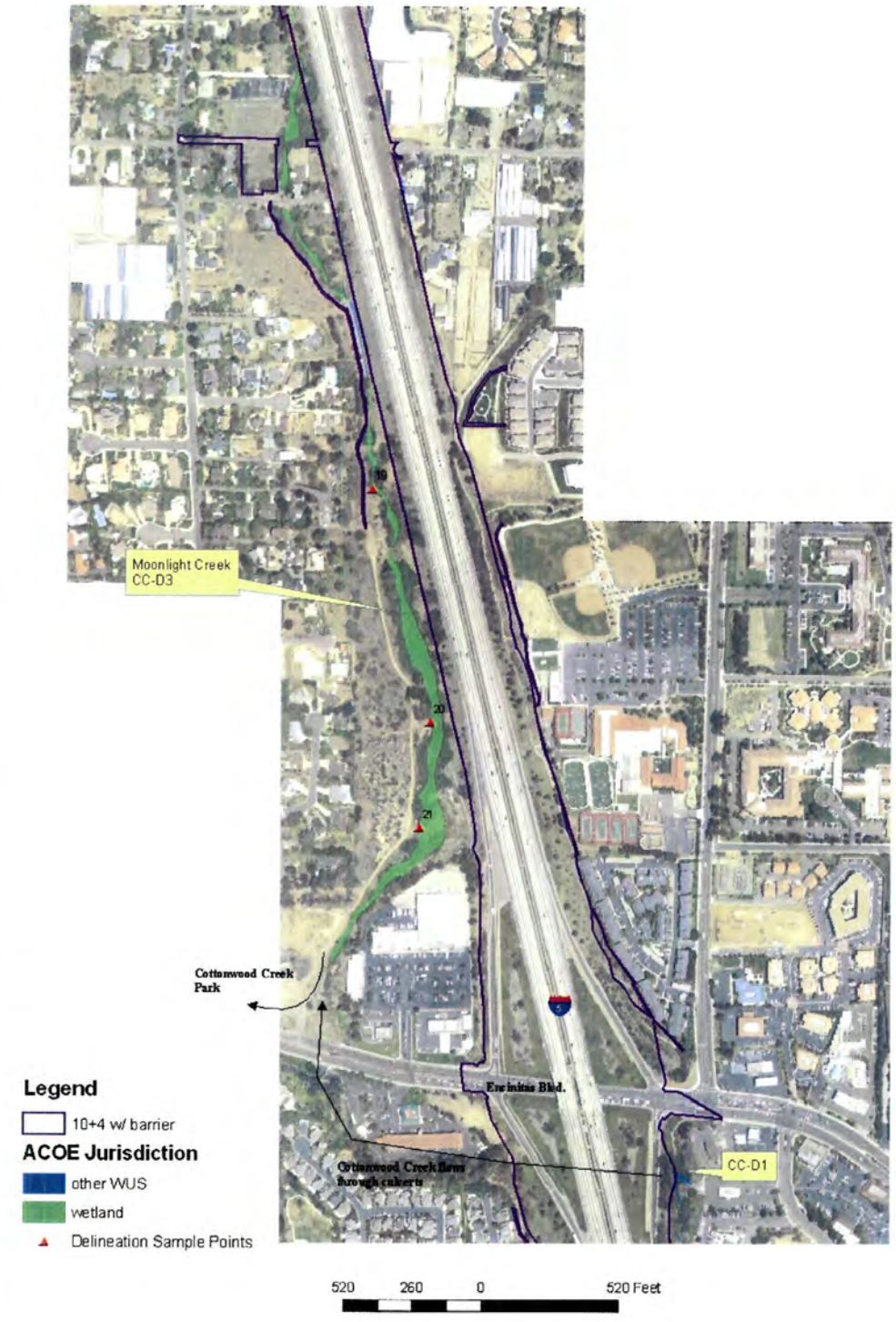


Figure 8. Moonlight Creek Jurisdictional Wetlands and Other Waters of the US.

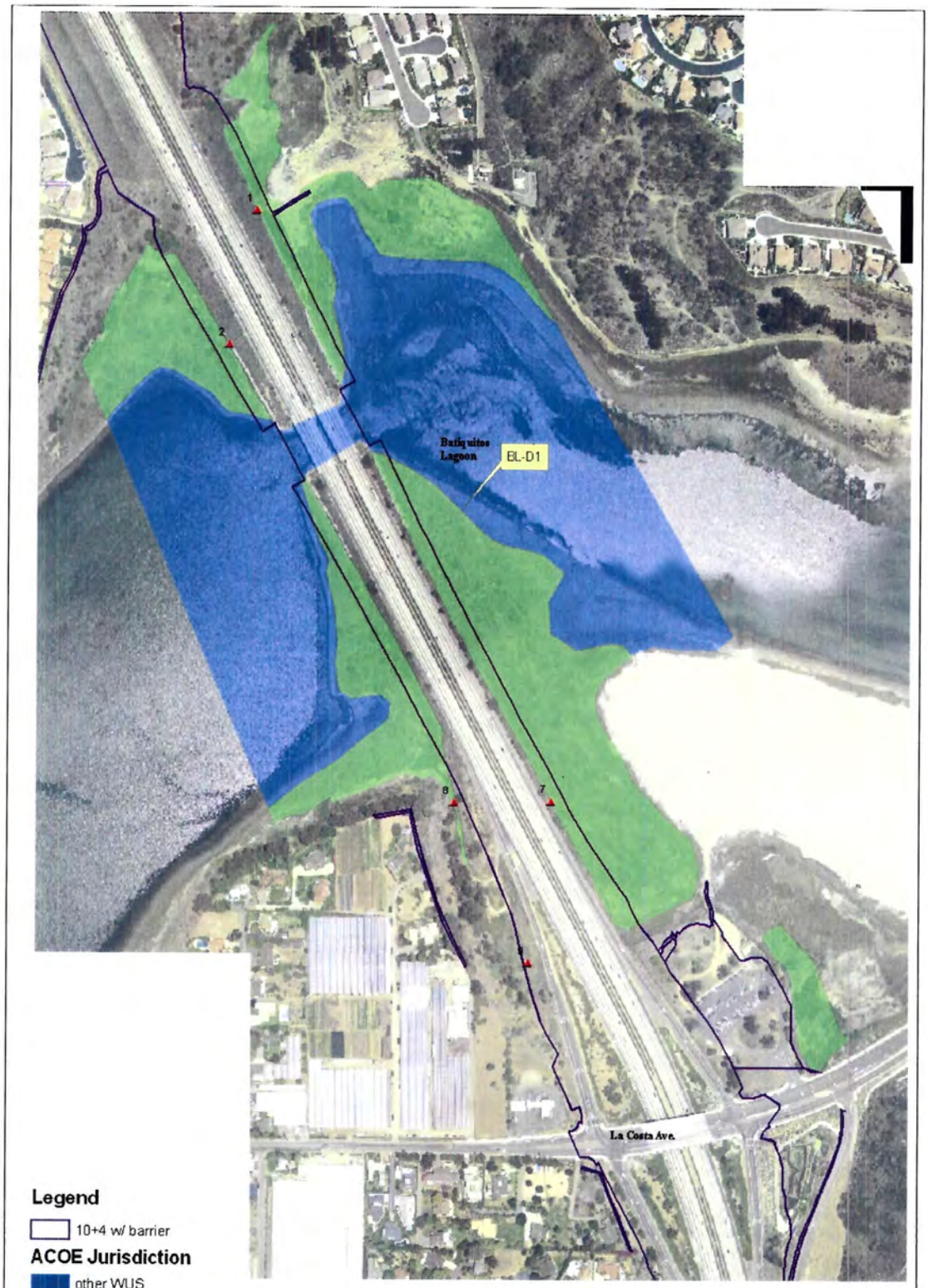


Figure 9. Batiquitos Lagoon Jurisdictional Wetlands and Other Waters of the US.

Figure 10. Encina Creek Jurisdictional Wetlands and Other Waters of the US.

Figure 11. Agua Hedionda Lagoon Jurisdictional Wetlands and Other Waters of the US.

Figure 12. Buena Vista Lagoon Jurisdictional Wetlands and Other Waters of the US.

Figure 13. Loma Alta Creek Jurisdictional Wetlands and Other Waters of the US.

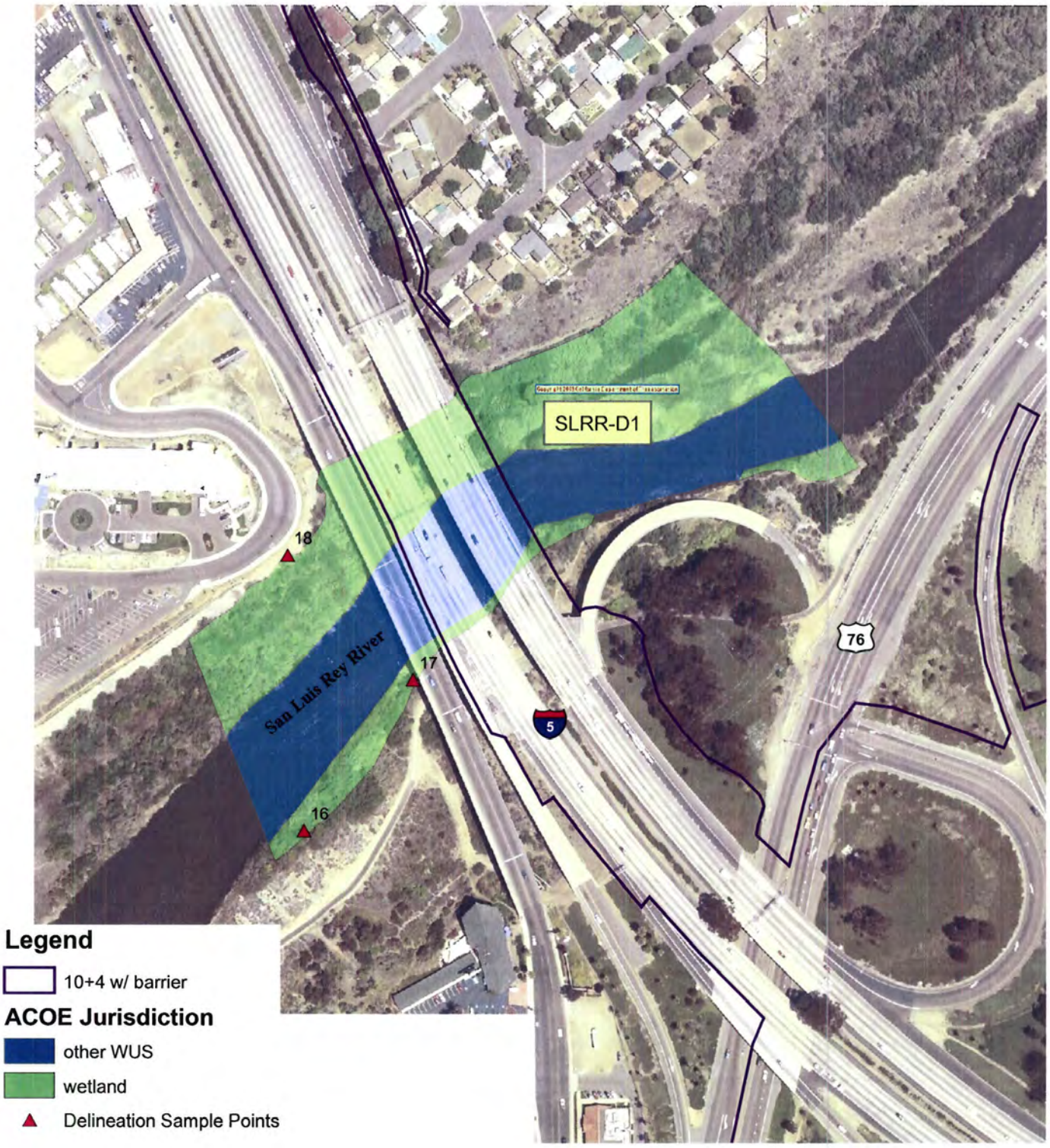


Figure 14. San Luis Rey River Jurisdictional Wetlands and Other Waters of the US.