

## 8.0 OTHER FEDERAL AND STATE IMPACT CONSIDERATIONS

### 8.1 SHORT TERM USES VERSUS LONG TERM PRODUCTIVITY

The CEQ's NEPA Guidelines requires that an analysis of potential environmental impacts include a discussion of the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity of the human environment. Under CEQA, a lead agency is required to find that a project could have significant effect on the environment when, among other conditions, the project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals [CEQA Guidelines Section 15065(a)(2)].

Section 4 contains a discussion of potential impacts from seven activity categories that may be authorized under the proposed SAMP Permitting Program/WSAA Process. The short-term uses of the land that may result directly or indirectly from these authorizations are not expected to impact the long-term productivity of aquatic resources in the Watershed. The proposed RGP, LOP and WSAA Process contain impact acreage restrictions and numerous general conditions to help minimize impacts to riparian and wetland habitats, hydrology and water quality, so that degradation to the ecosystem integrity of the Watershed is minimized overall.

The SAMP/WSAA Process is regulatory program and mitigation framework designed to conserve and enhance the aquatic, wetland, and riparian habitats of the Watershed while allowing for reasonable economic development and necessary infrastructure construction and maintenance. The SAMP/WSAA Process is based on a comprehensive assessment of the Watershed's aquatic resources to allow for more informed permit decision-making that better protects aquatic resource integrity areas and targets mitigation/restoration in areas that will enhance the aquatic ecosystem over the long-term. The SAMP Permitting Program/WSAA Process would replace existing case-by-case permitting and would allow for more regulatory predictability for projects that impact aquatic resources. As such, the proposed activities in the Watershed are expected to contribute to (and sustain in the long term) the local economy through the construction and maintenance of residential/commercial/industrial development, infrastructure, and new restoration projects throughout the Watershed.

### 8.2 IRRETRIEVABLE OR IRREVERSIBLE COMMITMENT OF RESOURCES

The proposed SAMP/WSAA Process involves issuance of a Corps RGP and LOP and a Department WSAA Process as well as the associated Strategic Mitigation Plan and Mitigation Coordination Program. The SAMP/WSAA Process would not directly result in a physical change in the environment. Land development, road construction and other infrastructure projects would be expected to occur as proposed in local general plans, MPAH, local capital improvement projects, etc. The SAMP/WSAA Process would not increase or decrease the amount of land development or infrastructure construction and maintenance that is anticipated for the Watershed, and thus does not directly involve irretrievable and irreversible uses of land, water, and natural resources including building materials. Construction and maintenance impacts would occur regardless of whether the SAMP/WSAA Process is implemented.

Indirectly, however, future activities that may be approved under the SAMP Permitting Program/WSAA Process would result in conversion of agricultural and undeveloped land to residential, commercial and industrial uses and neighborhood parks. Development and subsequent occupation of additional homes and businesses would require additional amounts of natural resources. This land use conversion would create irreversible environmental changes in the local area. Natural resources that would be utilized during construction and operation of these developments include building materials such as lumber, fossil fuels and water. In addition, as individual developments occur, there would be an irreversible loss of open space and some loss of wildlife, native plant habitat, further degradation of ambient air quality and further increase in local and regional traffic. Although these resource commitments and environmental changes would occur gradually, their combined loss would be considered irreversible, as an indirect result of the SAMP/WSAA Process.

However, the SAMP/WSAA Process represents greater opportunities for avoidance of aquatic resource integrity areas and targeted restoration that would help maintain and improve the ecosystem function in the Watershed in the long term. These aquatic resources would be maintained for the duration of the SAMP/WSAA Process. Therefore, while the loss of some resources would be irretrievable, the SAMP/WSAA Process aims to maintain and restore high value aquatic resources which could be considered a beneficial long-term effect for the Watershed's aquatic ecosystem.

### 8.3 ENVIRONMENTAL JUSTICE IMPACTS

#### 8.3.1 Federal Environmental Justice Requirements

Environmental justice refers to the concept that minority or low-income populations should not be disproportionately exposed to environmental hazards. EO 12898 directs each federal agency “to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations”<sup>1</sup>

#### 8.3.2 State Environmental Justice Requirements

In 1999, the State of California enacted legislation<sup>2</sup> establishing environmental justice as an aspect of state law. California law defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” Under this law, the CalEPA, identified as the coordinating agency in state government for environmental justice programs, developed a draft environmental justice mission statement during 2001. In designing its mission statement, the law indicates that CalEPA shall, among other things, “Promote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.” It is recognition of this state law and the principles of environmental justice that issues in this section are addressed pursuant to both federal requirements and the requirements of CEQA.

---

<sup>1</sup> Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, EO 12898, February 11, 1994.

<sup>2</sup> Public Resources Code Section 72000-72001.

### 8.3.3 Study Area Demographics

The Environmental Justice analysis contained herein was based on updated demographic information from the 2000 U.S. Census data.

The majority of residents within the study area are non-Hispanic Whites, with Hispanics and Americans of Asian descent forming the second and third largest ethnic and racial groups, respectively (U.S. Census Bureau, 2003). The cities of Irvine and Santa Ana support a larger population of minority groups than the other portions of the Watershed (Corps, 2001). The racial and ethnic composition in Irvine in 2000 is presented in Table 8.3-1. Data for the County are provided for comparative purposes<sup>3</sup>.

**Table 8.3-1. Race and Ethnicity - 2000**

Race/Ethnicity	City of Irvine		County of Orange	
	Number	% of Total	Number	% of Total
White	87,354	61.1	1,844,652	64.8
Asian	42,672	29.8	386,785	13.6
Hispanic or Latino (of any race) <sup>4</sup>	10,539	7.4	875,579	30.8
Black or African American	2,068	1.4	47,649	1.7
American Indian and Alaskan Native	257	0.2	19,906	0.7
Native Hawaiian and Other Pacific Islander	194	0.1	8,938	0.3

Non-Hispanic White persons are the majority group in Irvine. In 2000, approximately 60 percent of Irvine’s population was White, compared to 65 percent countywide. Hispanics are the County’s second largest racial/ethnic group, representing 31 percent of the population in 2000. In comparison, only 7 percent of the Irvine residents were Hispanics. The Orange County General Plan indicates that international migration will account for a major portion of net migration, including undocumented immigration to the extent that it continues.

### 8.3.4 Low Income Composition

The 2000 Census reported on household income earned during 1999. Table 8.3-2 displays the household income data for Irvine and Orange County<sup>5</sup>.

**Table 8.3-2. Household Income 1999**

	City of Irvine	County of Orange
Median Household Income	\$72,057	\$58,820
Per Capita Income	\$32,196	\$25,826
Persons below poverty, percent	9.1%	10.30%

### 8.3.5 Impacts

The SAMP/WSAA Process involves the establishment of a watershed-specific permitting system for the issuance of CWA Section 404 permits and Section 1600 et seq. streambed alteration agreements. The program also establishes a Strategic Mitigation Plan and Mitigation Coordination Program to target mitigation and restoration in areas that will provide the most functional benefit to the riparian ecosystem

<sup>3</sup> <http://factfinder.census.gov/servlet/SAFFFacts>

<sup>4</sup> Includes White, Black and Asian persons who identify themselves as being of Hispanic origin.

<sup>5</sup> <http://www.census.gov/main/www/popunder.html>

of the Watershed, and provide for long-term management of the riparian ecosystem. Under the proposed SAMP/WSAA Process, the Corps and the Department would permit temporary and permanent impacts to waters of the U.S. from the construction of bridges, land development, and public facilities/utilities in accordance with a long-term permit program administered by the Corps and Department. The watershed-specific permitting program and mitigation elements would replace existing case-by-case permitting

No significant impacts on low-income or minority populations are anticipated by implementation of the SAMP/WSAA Process and mitigation program elements. The proposed SAMP/WSAA Process, applicable to future regulated activities requiring dredge and fill in jurisdictional waters, would be in effect equally throughout the Watershed, and would not create disproportionately high and adverse human health or environmental effects on minority populations and low-income populations of the Watershed.

#### 8.4 FLOODPLAIN EXECUTIVE ORDER

EO 11988 (Floodplain Management) states “Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities... If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains.” The SAMP/WSAA Process provides several examples where the sustainability of floodplains have been considered and addressed to help comply with EO 11988.

For example, the SAMP tenets (the overarching, guiding principles for the Watershed based on the LLFA) include: “*Maintain or Restore Floodplain Connection*” (see Section 2.1.1.3). This tenet acknowledges that:

“high integrity riparian reaches have active floodplains that flood on a regular basis. This overbank flooding is vital for maintaining sediment regimes and allowing for native habitat, including the recruitment of riparian plant species. It also allows interchange of biotic materials and nutrients between the active floodplain and the active channel, allowing for transport of detritus and nutrients to downstream areas and maintaining ecosystem processes”.

This tenet is carried forth in the restoration goals (detailed in the SAMP Strategic Mitigation Plan) that seek to restore and enhance the hydrologic connectivity of riparian habitat located on floodplains in the Watershed. Additionally, the data gathered in the PLD and LLFA, upon which the SAMP/WSAA Process permitting and mitigation framework are based, provided for the identification of high and medium quality floodplain areas, and serve as one basis for permit analysis and decision-making for future regulated activities in the Watershed.

The regulated activities analyzed in Section 4 of this EIS/EIR include flood control maintenance activities, although some unknown, future flood control projects may not be consistent with the natural and beneficial values element of this EO. These flood control activities may protect human safety, health and welfare from flooding events. These protections will be considered in the decision making process for future permits, along with its location in relation to aquatic resource integrity areas. Section 4 includes an impact analysis of the SAMP/WSAA Process on riparian habitats and floodplain values. Section 5 discusses alternatives to the proposed SAMP/WSAA Process, and together with Appendix E (Compliance

with the 404(b)(1) Guidelines) provides justification that the proposed SAMP/WSAA Process is the LEDPA. Given these various provisions of the SAMP/WSAA Process and evaluations in this Program EIS/EIR, the SAMP/WSAA Process is considered consistent with EO 11988.

## 8.5 WETLAND EXECUTIVE ORDER - NO NET LOSS

EO 11990 (Protection of Wetlands) states, “Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities.” Federal agencies are required to avoid undertaking or providing assistance for new construction located in wetlands unless there is no practicable alternative. The SAMP/WSAA Process contains compensatory mitigation policies that require no net loss in wetland acres and functions.

This order requires federal agencies to “...avoid to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct and indirect support of new construction in wetlands wherever there is a practicable alternative...”

The SAMP/WSAA Process contains numerous protections that are expected to result in no net loss, and even a net gain, of wetlands in the Watershed. The permitting program has relevant conditions adapted for this Watershed, some NWPs are to be revoked, and the new mitigation framework for the Watershed includes a no net loss provision. The SAMP Strategic Mitigation Plan (based in part on Smith and Klimas [2002]) provides that sufficient restoration opportunities exist to ensure no net loss. Thus, it is anticipated that any functional losses will be adequately mitigated.

The mitigation policies of the proposed RGP and LOP permit program include:

- **Mitigation Sequencing.** This includes required avoidance and minimization to the maximum extent practicable. The SAMP/WSAA Process has already provided for the avoidance of high and medium quality wetland areas. [Sources: Stakeholder coordination, Smith 2003]
- **Prioritization of Mitigation Sites.** Mitigation will be performed according the Watershed restoration goals of the SAMP Strategic Mitigation Plan. Mitigation sites will aid in connecting isolated wetlands to the other riparian areas, as well as providing habitat for riparian dependant species. [Sources: Smith 2003, Smith and Klimas (2002)]
- **Recommended Restoration.** Mitigation will be required to be in conformance to the provisions of the SAMP Strategic Mitigation Plan that relate to site selection and design criteria [Sources: Smith and Klimas (2002)]
- **Conformance with the LAD Mitigation and Monitoring Requirements.** All mitigation must be consistent with these guidelines dated April 19, 2004, and any applicable regional conditions for the NWP not revoked by the SAMP/WSAA Process. [Sources: Corps 2004]
- **No Net Loss of Acreage and Functions.** Acreage and functions should not be reduced within the Watershed on a program level. All permanent impacts should be mitigated at a minimum 1:1 ratio (for low quality elements and those who perform mitigation before impacts), and a proposed functional mitigation tool developed by the Corps will use the LLFA data to arrive at a no net loss in functions (e.g. hydrologic, water quality, and habitat integrity indices) as well as acreage of wetlands. [Sources: Proposed Mitigation Policy]

Although a state agency is not subject to this EO requirement, the Department's mitigation policies of the Level 1 – 3 SAA templates of the WSAA Process would also serve to ensure no net loss. These specific mitigation policies are equivalent to those of the proposed SAMP RGP and LOP above.

The proposed SAMP/WSAA Process Strategic Mitigation Plan is watershed-focused, designed to ensure no net loss of aquatic resource acreage and functions in the Watershed. The focus is on avoiding and minimizing impacts to high quality aquatic resources and restoration of lower quality habitats to improve functional integrity overall in the Watershed (ultimately a net increase in high quality aquatic resources).

In addition to the mitigation policies discussed above, key aspects of the proposed SAMP Permitting Program/WSAA Process and SAMP Strategic Mitigation Plan and associated Mitigation Coordination Program that provide for future no net loss of wetlands are:

- Low acreage impact thresholds for LOP eligibility of projects in aquatic resource integrity areas;
- Identification of future restoration opportunities of areas within and outside of the aquatic resource integrity areas;
- The designation of future mitigation, restoration, and enhancement sites as aquatic resource integrity areas after project completion; and
- Long-term management program to ensure success of restoration/enhancement sites.

In summary, the proposed SAMP Permitting Program/WSAA Process and mitigation programs are consistent with the Federal Wetland EO of no net loss of wetlands, as well as the State's goals of (a) no overall net loss, and (b) long-term net gain in the quantity, quality, and permanence of wetlands acreage and values. The SAMP/WSAA Process allows for watershed-based planning and tracking of mitigation sites, increased mitigation performance standards as compared to regulations and policies of the past decade, and an ability to determine mitigation requirements on a functional basis (according to integrity, not just acreage). If the mitigation is not acceptable, then the process will default to a SIP process, thus allowing for agency coordination and a public comment period.

The Participating Applicants' projects, listed in Section 2.1.2.2 were evaluated through the SAMP/WSAA Process stakeholder coordination process resulting in avoidance and minimization of wetlands and other aquatic resources. Due to the mitigation policy elements listed above, the general conditions of the WSAA Process, RGP and LOP, and provisions of the SAMP/WSAA Process Strategic Mitigation Plan and Mitigation Coordination Program, future activities will be consistent with EO 11990. Thus, the proposed SAMP/WSAA Process is consistent with EO 11990.

## **8.6 INVASIVE SPECIES EXECUTIVE ORDER**

EO 13112 (Invasive Species) requires federal agencies to "...use relevant programs and authorities to...detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; monitor invasive species populations accurately and reliably; provide for the restoration of native species and habitat conditions in ecosystems that have been invaded..."

The proposed general conditions of the LOP, RGP and Level 1 – 3 SAA templates and SAA Templates Master Conditions List of the WSAA Process include provisions for the management of invasive plant species. Invasive plants are the major concern within the Watershed, and past planning efforts such as the

NCCP have included elements addressing invasive plant issues. The proposed SAMP/WSAA Process includes an emphasis on invasive plant management.

The following RGP and LOP condition of the proposed SAMP/WSAA Process applies to project sites:

- Exotic Species Management. All giant reed (*Arundo donax*), salt cedar (*Tamarix* spp.), and castor bean (*Ricinus communis*) must be removed from the project site and ensure that the site remains free from these non-native species for a period of five years from completion of the project.

Within the SAA Templates Master Conditions List, Condition No. 42, Exotic Vegetation Eradication Control, contains numerous requirements regarding removal of non-native vegetation at project sites and restoration/enhancement sites, and includes provisions for protection of wildlife and native habitat.

The proposed Mitigation Coordination Program element of the SAMP/WSAA Process contains a series of Management Measures recommended to help in the conservation of aquatic resource integrity areas and to help ensure the long-term success of compensatory mitigation sites (see Section 2.1.3.2- long-term conservation of aquatic resource integrity). One such measure involves Invasive, Exotic Species Control as follows:

- Management Aspect: A list of target species of invasive, exotic vegetation is provided (Table 5-1 of Corps SAMP document). Only herbicides and associated surfactants approved by EPA for use in wetlands and with no/low toxicity to aquatic organisms may be used in aquatic resources.
- At Compensatory Mitigation Sites: including preserved areas within the aquatic resource integrity areas, the planting, introduction or deliberate dispersal of invasive, exotic plant or animal species is prohibited.
- Within Aquatic Resource Integrity Areas: To avoid redundancy and improve program efficiency, any new efforts for the control of invasive, exotic vegetation, cowbird trapping, bullfrog and African clawed frog control measures within the aquatic resource integrity areas should be coordinated and to the extent practicable with other land owners/managers with ongoing control programs within the Watershed, in both riparian and terrestrial habitats.

Due to the mitigation policy elements listed above, the general conditions of the Level 1 – 3 SAA templates of the WSAA Process, RGP and LOP, and provisions of the SAMP/WSAA Process Strategic Mitigation Plan and Mitigation Coordination Program, future activities will be consistent with EO 13112. Thus, the proposed SAMP/WSAA Process is consistent with EO 13112.

## 8.7 EFFECTS OF SAMP COORDINATED PERMITTING PROCEDURES ON FUTURE APPLICANTS

This section summarizes the effects on the regulated community from the changes to the Corps proposed regulatory program with establishment of the SAMP, as compared with the existing Corps permitting processes. The existing permitting system utilizes NWP for permanent impacts (generally  $\leq 0.5$  acre of permanent impacts to waters of the U.S.) and SIPs for projects with greater permanent impacts to waters of the U.S., regardless of the project location. The proposed changes to the SAMP permitting process consist of the revocation of specific NWPs followed by establishment of an RGP for maintenance activities, establishment of LOP procedures for all other activities, and may include long-term individual

permit(s) for the Participating Applicants with additional project- or activity-specific environmental review to cover projects or types of activities reviewed and redesigned as part of the SAMP formulation process.

Implementation of the SAMP permitting processes is dependent on the location of the proposed regulated activity within the Watershed. Projects affecting aquatic resources outside identified aquatic resource integrity areas are able to benefit from the shortened processing times of the SAMP permitting procedures using the RGP for projects with temporary impacts to waters of the U.S. (most maintenance activities) and LOPs for projects with permanent impacts to waters of the U.S. Projects affecting aquatic resources within aquatic areas integrity areas may be eligible for LOP procedures for projects with either temporary impacts or small permanent impacts ( $\leq 0.1$  acre of impact). Otherwise, regulated activities conducted within aquatic resource integrity areas would require individual permits for all impacts ineligible for an LOP.

The concept that aquatic areas of different condition warrant different considerations in the Section 404 permitting program is suggested in the Section 404(b)(1) Guidelines, the substantive regulations that govern the Section 404 permitting program. The Section 404(b)(1) Guidelines state, “Although all requirements in [the Guidelines] must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities” (40 CFR 230.10 introduction). The Section 404(b)(1) Guidelines further emphasize that the evaluation of proposed activities “must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation” and that “the level of documentation should reflect the significance and complexity of the discharge activity” (40 CFR 230.6(b)).

A determinant of whether an activity will have a high level of impact is in part based on its location in the Watershed. Projects that propose to impact waters of the U.S. within aquatic resource integrity areas would impact higher quality aquatic resources and warrant the appropriate level of permitting review commensurate with the level of impacts. Projects that propose to impact waters of the U.S. in areas eligible for abbreviated permitting outside aquatic resource integrity areas would impact lower quality aquatic resources and warrant the appropriate level of permitting review commensurate with the level of impacts. The analysis in this section differentiates between permitting processes for regulated activities affecting jurisdictional areas within aquatic resource integrity areas and those outside aquatic resource integrity areas.

### 8.7.1 Revocation of Selected Nationwide General Permits

An important step in implementing the SAMP permitting processes is the revocation of specific NWP, including NWP 14, NWP 39, NWP 40, and others. Many NWPs have a threshold of 0.5 acre of permanent impacts. Under the current permitting framework, projects impacting greater than 0.5 acre of waters of the U.S. must undergo processing as an SIP. Projects impacting 0.5 acre or less of waters of the U.S. would undergo processing as a NWP. This threshold is applied regardless of the type of aquatic resource involved.

In consideration of the SAMP Analytical Framework, the Corps concludes the current NWP framework provides an inappropriate level of protection for the Watershed. In some areas where the riparian condition is poor, the thresholds required by the NWP program result in delays and uncertainty for projects proposing impacts to greater than 0.5 acre of these lower quality aquatic resources. These types of aquatic resources have a low level of hydrologic, water quality, and habitat integrity with little strategic value in the landscape context. The procedures (i.e., a public notice and environmental assessment, required under the SIP program) tend to elicit little input from the public and other resource agencies, or provide minimal additional insight on the aquatic resource condition beyond what was obtained by the formal assessment methods used for the SAMPs<sup>6</sup>. In light of the degraded condition of the aquatic resources outside aquatic resource integrity areas, the Corps believes NWP thresholds are unnecessarily restrictive in these areas.

In other areas where riparian ecosystems have been identified as strategic for the overall condition of the Watershed (i.e. within aquatic resource integrity areas), the Corps believes the NWP procedures provide an insufficient amount of review for those projects proposing to impact these higher quality aquatic resources. Within the aquatic resource integrity areas, these aquatic resources possess a moderate to high level of hydrologic, water quality, and habitat integrity with important strategic value in a landscape context with respect to endangered aquatic species habitat and riparian movement corridors. The NWP thresholds do not provide the public the appropriate amount of permit review in light of the condition of the aquatic resources in question. The Corps contends that additional public input and review is needed to ensure these higher quality resources receive the appropriate amount of review and regulatory attention.

Consideration was given to retaining the NWPs for use within the lower quality aquatic resource areas. These considerations were made after receiving input from specific individuals and organizations from the regulated community in working sessions through the course of SAMP development. Whereas there was an understanding of the need for additional permit review for projects affecting higher value aquatic resources, some comments questioned the need to revoke selected NWPs in the lower value aquatic areas. In particular, the primary concern was for additional time delays in using an LOP system instead of a nationwide general permit system. After considering these issues and modifying specific program elements to address the expressed concerns, the Corps has determined that for several reasons retaining the NWPs is unnecessary, given the establishment of the LOP procedures and an RGP.

First, the use of the SAMP permitting procedures alone would be simpler than establishing an alternate permitting process AND retaining the existing NWP framework within the Watershed. With multiple thresholds and activity specific conditions for multiple NWPs, the existing NWP framework combined with the SAMP permitting processes results in a complex system that may be difficult for the regulated

---

<sup>6</sup> A review of the Corps permit database was performed to identify those projects permitted to impact lower quality aquatic resources within Orange County. The focus of the review was on channelization projects converting undersized riprap-lined channels to larger riprap-lined channels or concrete-lined channels. The riprap-lined channels were considered lower ecological quality. The review indicated that there were 7 permits issued for such projects. Six of the seven permits during the public notice phase elicited 0 to 3 comments from individuals or organizations outside of the federal and state agencies. One elicited 12 comments from individuals or organizations outside of the federal and state agencies. Most of the comments were focused on insuring the construction did not infringe on people's property with some concerns over the loss of wildlife habitat within the channels. A few comments expressed concern over people using the larger channels to trespass onto people's property. In general, the comments did not express appreciable opposition to these projects, and comments were addressed by requiring the work to stay within public right-of-way and through compensation of impacts to any low quality habitat.

public and future regulators to understand and implement. The proposed revocation of selected NWPs and the establishment of the RGP and the LOP procedures would simplify the process. The alternate permitting process would be similar to the Department's Section 1600 *et seq.* streambed alteration agreements, which do not have multiple thresholds for multiple activity types. Future permit applicants with projects affecting lower quality aquatic resources have to consider only three options for activities that would not be covered by the retained NWPs: an RGP for maintenance actions, and LOP procedures and SIPs for all other actions.

Second, the alternate permitting procedures would allow for processing of permits on similar timelines as the existing NWP framework. Table 2-2 (in Section 2.1.2.3) shows that for actions eligible for permitting by the revoked NWPs, there would be no time delays due to the timeframes established for the proposed RGP or the proposed LOP procedures. For the proposed LOP procedures, actions would be completed within 45 days. This is possible due to the advanced analysis undertaken in terms of baseline aquatic resource characterization in support of any potential decision-making, (i.e., the SAMP Analytical Framework) and the required pre-application consultation. If there had not been any detailed upfront analysis performed in the context of the SAMP, the relatively quick review times would not have been possible. For the maintenance activities eligible under the proposed RGP, the actual processing time is substantially faster than the NWP, resulting in authorizations within 15 days. When combined with a pre-approved Section 401 certification, the time savings for the RGPs would be substantially greater overall for these types of activities compared to the current NWP framework.

Third, the increased pre-application coordination required of the LOPs would not require an excessive amount of coordination between the regulated community and the Corps, as compared with the existing NWP framework. Most routine maintenance activities eligible under the proposed RGP would not require pre-application consultation. For other activities eligible for LOP procedures, the pre-application coordination would be required of only those projects that permanently impact greater than 0.1 acre of waters of the U.S. or temporarily impact greater than 0.25 acre of native riparian vegetation. Also, given the amount of coordination most applicants in southern California already undertake with other state and federal resource agencies, additional coordination with the Corps in the context of the LOP procedures would not result in additional delays. In fact, the upfront coordination would be expected to avert potentially disruptive and time consuming conflicts.

Fourth, the use of the alternate permitting program provides the appropriate amount of review that ensures projects have the supporting environmental analysis to make informed decisions, as compared with the existing NWP framework. By providing a more comprehensive review, as required by the LOP procedures, the Corps improves its decision-making process and increases the defensibility of its permit decisions. Although rendering well-reasoned environmental decisions may be perceived as burdensome to applicants, increased defensibility helps applicants, especially in a regulatory climate that results in the cessation of projects with faulty environmental analysis. For the alternate permitting procedures, the additional environmental analysis has been performed up-front to ensure that projects are reviewed in consideration of the broader landscape and watershed contexts.

Overall, use of the alternate permitting procedures includes program-level safeguards to ensure that the same advantages provided by the NWPs are not lost. The alternate permitting program allows for a

simpler process akin to the Department's Section 1600 *et seq.* streambed alteration agreement, a process that does not rely on the multitude of NWP's for different categories of activities. Combined with program-level considerations with respect to timing and coordination, and in the context of California's regulatory climate, the alternate permitting procedures would not adversely affect the regulated community. With the adoption of LOP procedures and an RGP, there is no need for most NWP's in the Watershed.

### 8.7.2 Permitting Outcomes Before and After the SAMP

To provide some sense of the effects of the SAMP permitting procedures on the regulated public, the outcome of permit actions from the last seven years were re-examined in light of the alternate permitting processes. This analysis involved final NWP and SIP actions initiated in the last seven years (September 2000 to 2007) within the two Orange County SAMP Watersheds for both the San Juan Creek/San Mateo Creek Watershed and the San Diego Creek Watershed. These actions were re-evaluated using the 0.5-acre thresholds of the 2002 NWP<sup>6</sup>, where permanent impacts greater than 0.5 acre would involve processing as SIPs and impacts at the threshold or less would involve processing as NWP's. Any instances of pre-application coordination were noted. These actions were also re-evaluated using the SAMP alternate permitting procedures in terms of which permitting process would be undertaken after factoring in its location with respect to the areas ineligible for abbreviated permitting and the size of the permanent impact.

The two permitting scenarios differ greatly. Using the 2002 NWP thresholds, the 103 actions in the review timeframe were processed as 18 SIPs and 85 NWP's, involving 17 pre-application meetings. In contrast, under the SAMP permitting procedures, these actions would have been processed as 6 SIPs, 8 NWP's, 12 RGP's, and 77 LOP's, involving 40 pre-application meetings. The alternate system would have resulted in a marked decrease in the number of SIPs processed in the Watershed areas. The retained NWP's would have been issued for boat docks, single-family homes, and geotechnical surveys (i.e., actions with minor impacts to the aquatic environment and quickly processed). For 12 projects, the RGP for maintenance would have been used, resulting in a quick review and authorization of these activities. The main difference would have been the issuance of 77 LOP's under the alternate permitting system. Of these, 15 LOP's would have been issued in place of a SIP, resulting in times savings for those applicants, and 62 LOP's would have been issued in place of a NWP. Of the 62 LOP's, there would have been 25 pre-application meetings required because the permanent impacts would have been greater than 0.1 acre of waters of the U.S., with the remainder of the LOP applicants applying directly to the Corps. As stated above, the use of LOP's instead of NWP's would not adversely affect applicants, because of built-in timelines that would allow the LOP's to be processed in the same timeframes as the NWP's. Although the LOP's involve greater review, much of the analysis has been performed up-front in the course of developing the SAMP, allowing for decreased project review times.

### 8.7.3 Effects of Implementing the RGP

In California, actions involving maintenance of structures, requires authorizations from Corps, the Department, and the RWQCB. Even though some maintenance activities do not require pre-construction

---

<sup>6</sup> The majority of the analysis was performed prior to the authorization of the 2007 NWP's on March 12, 2007 (72 FR 11092), as corrected on May 8, 2007 (72 FR 26082) and then updated subsequent to their re-authorization.

notification to the Corps, all actions are required to have approvals from the Department (Section 1600 *et seq.* streambed alteration agreement) and the RWQCB (Section 401 certifications). Nevertheless, many applicants also request from the Corps verification that an activity would be covered by a NWP when such notification is unnecessary.

For the Watershed, there will be expected time savings due to the maintenance RGP for Section 404 actions. The Corps will apply for a Section 401 certification for the RGP, obviating the need for obtaining a Section 401 certification for individual maintenance actions. Thus, in terms of the Section 404 action and the associated Section 401 certification, applicants will only have to contact the Corps for individual actions. As a result, the RGP would allow for more predictability by the regulated community and less consternation over the perceived difficulties of obtaining permits from two different agencies. The mandated 15-day time frame ensures that the regulated public agencies can undergo their maintenance activities for roads, flood control channels, weir structures, pipelines, bank protection structures, and other projects with less regulatory hindrances.

#### 8.7.4 Effects of Implementing the LOP Procedures

The effects of implementing the LOP procedures depend on the location of the proposed project within the Watershed. The effects will depend on whether those projects are located within or outside aquatic resource integrity areas. Areas in aquatic resource integrity areas are generally ineligible for abbreviated permitting because they tend to have higher quality aquatic resources. Thus, the Corps will restrict the use of LOPs for authorizing impacts to waters of the U.S. within aquatic resource integrity areas by requiring SIPs for permanent impacts greater than 0.1 acres of waters of the U.S. Areas outside SAMP aquatic resource integrity areas are generally eligible for abbreviated permitting because they tend to have lower quality aquatic resources. Thus, the Corps will not have any thresholds governing the use of LOPs outside aquatic resource integrity areas, except in instances involving substantial modifications to compensatory mitigation sites or capital improvements of major stream courses, where a SIP review process would be required.

Within aquatic resource integrity areas, there will be a threshold of 0.1 acres. Impacts greater than 0.1 acre of waters of the U.S. may be authorized with a SIP, and impacts at or less than 0.1 acre of waters of the U.S. may be authorized with a LOP. These higher value aquatic resources require the appropriate amount of review to minimize impacts to the maximum extent practicable. Consequently, within the aquatic resource integrity areas most actions will undergo review through the SIP process, whereby opportunities will be given to other resource agencies and to the public to review and comment on the proposed action. In addition, a full environmental assessment will allow for the appropriate level of review within the decision-making process. Although actions having impacts at or less than 0.1 acre of waters of the U.S. will be processed as LOPs rather than SIPs, review of these actions by other agencies through the inter-agency notification process will help minimize adverse impacts that may result. Requiring SIPs for impacts greater than 0.1 acre of waters of the U.S. has precedence within the Los Angeles District for the upper Santa Margarita River Watershed in Riverside County due to the concern about cumulative impacts to waters of the U.S.

Overall, with the SAMP permitting procedures there will be additional restrictions on permit applicants with projects affecting jurisdictional waters in aquatic resource integrity areas. Actions that could have been processed within 45 days as a NWP would now be processed within 120 days as a SIP. Although

processing times will be extended, the Corps believes the need to protect higher value aquatic resources is important in the context of implementing regulations supportive of the goal of the Clean Water Act, which is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” The requirement of processing most actions through SIPs will ensure that all impacts to waters of the U.S. are unavoidable.

Outside of aquatic resource integrity areas, the LOP procedures will be without a threshold for use. Most regulated activities not involving maintenance would be processed as LOPs instead of NWP or SIPs. Only those actions that propose to line major streams with concrete or those actions that propose to impact compensatory mitigation sites would require SIPs. As a result, permit review for SIPs would be rare outside aquatic resource integrity areas. Due to the lower quality of these aquatic resources, the additional review afforded by the SIP process would not result in any appreciable benefit to the Watershed’s aquatic environment. Under the current permitting process, public notices disseminated for these types of proposed projects tend to elicit no appreciable opposition from other regulatory agencies or the public. Nevertheless, the review of all non-maintenance actions through LOPs would involve inter-agency coordination, ensuring an opportunity for other regulatory agencies to provide review and comments.

Overall, there would be a net benefit to permit applicants outside of aquatic resource integrity areas where a majority of actions would be eligible for abbreviated permitting. For projects that propose impacts to greater than 0.5 acre of waters of the U.S., the LOP process would allow for quicker resolution of permit actions, resulting in a permit within 45 days rather than 120 days within the current SIP process. Comments concerning the effect of the proposed action on aquatic resources will still be provided by the resource agencies, but no public notice or full environmental assessment would be included. Savings in applicant time and resources would result. For projects that propose impacts at or less than 0.5 acre of waters of the U.S., the LOP process would not result in adverse consequences as discussed above in the discussion on revoking the NWPs. There will not be time delays due to the LOP processing times. The requirements for pre-application coordination will not adversely affect applicants since many applicants already undertake coordination with the other California resource agencies as part of their normal regulatory permit application process.

#### **8.7.5 Effects of Department’s WSAA Process as Part of the SAMP’s Coordinated Permitting Processes**

This section summarizes the effects of the Department’s WSAA Process on the regulated community, as compared with the existing Section 1600 *et seq.* procedures. With the implementation of a watershed-specific WSAA Process, the Department would leverage the SAMP Analytical Framework for its streambed alteration program. The Department would expand upon its relatively new WSAA Process program by creating a watershed-specific WSAA Process for the Watershed; in particular, the Department is proposing three template agreements: Level 1, 2, and 3. The Level 1 template SAAs apply to proposed activities that would alter aquatic resources outside aquatic resource integrity areas that are not mainstem streams. The Level 2 template SAAs apply to activities that would alter mainstem stream reaches outside aquatic resource integrity areas. The Level 3 template SAAs cover certain types of activities within aquatic resource integrity areas.

The Department will retain the authority to require individual (i.e., non-template) SAAs for those activities and projects inconsistent with the SAMP Analytical Framework. For example, a project that would propose to alter a streambed within the aquatic resource integrity area, adversely affecting the aquatic resources or the state-listed threatened or endangered species or species of concern would be inconsistent with the SAMP Analytical Framework and therefore, and ineligible for the WSAA Process. However, such instances where the WSAA Process would be unavailable are expected to be infrequent. Otherwise, the WSAA Process will apply to all activities and projects within the Watershed.

Applicants will benefit from the WSAA Process as compared with the standard individual SAA process. The WSAA Process offers greater certainty to the applicant who will know upfront and be able to plan for the conditions that will likely apply to their project or activity. Although no formal changes to agreement processing times are proposed, given the advanced planning afforded by the SAMP, along with the coordinated permitting with the Corps and procedures for interagency coordination, the applicant can expect expedited processing under the WSAA Process for SAMP-compliant activities and projects.

#### **8.7.6 Effects of Implementing the SAMP Mitigation Framework**

Mitigation includes avoidance and minimization of impacts as well as compensation for unavoidable impacts, and is within the regulatory purviews of both the Corps and the Department. Both agencies have agreed to a set of mitigation policies and to implement the SAMP Strategic Mitigation Plan. Although the mitigation framework is informed primarily by the Section 404(b)(1) Guidelines and agencies “Los Angeles District’s Final Mitigation Guidelines and Monitoring Requirements”, it incorporates the implementation practices of both agencies.

Implementation of the SAMP mitigation framework would result in the standardization of the following two policies that hitherto have been implemented on a case-by-case basis by one or both agencies: 1) long-term management; and 2) standard mitigation ratios based on ecological integrity scores. Long-term management has long been recognized as a need to maintain the ecological integrity of both aquatic and terrestrial conservation areas. In accordance with CESA requirements, the Department requires the permittees to provide for long-term management of a mitigation site along with an endowment or other financial assurances to do so. The Corps has previously addressed the need for preserving the conservation values of mitigation sites by requiring conservation easements that specify a permittee provide basic long-term maintenance such as trash and exotics removal from mitigation site. However, with regards to financial assurances, the Corps has usually only required financial assurances for the installation and maintenance and monitoring until a compensatory mitigation site meets its performance criteria (typically five years).

Mitigation ratios indicate the acreage of mitigation required to offset impact acreage. More often than not, mitigation ratios reflect the difficulty of habitat replacement and/or function of an impacted site even without explicit functional assessment data. Furthermore, the Department and the Corps often coordinate mitigation requirements on a case-by-case basis. The Department policy is more specific with regards to mitigation ratio requirements by habitat type. In an effort to streamline the permitting process, the Corps has agreed to adopt the ratios typically required by the Department. Additionally, with the development of a mitigation formula, the Corps has factored functional integrity of the impact area and mitigation area with acreage to ensure no net loss of aquatic resource function and acreage in the Watershed.

Mitigation requirements under the agencies' existing permitting procedures are often unpredictable for the applicants. Further, the agencies' policies pertaining to mitigation, especially those of the Corps, have come under increasing scrutiny for inability to assure the success of compensatory mitigation sites and for whether or not the Corps is achieving its own no net loss policy. The Corps and the Department believe the implementation of the SAMP mitigation framework will increase regulatory predictability and consistency across permittees and across agencies, while advancing the agencies' capacity for assuring successful mitigation and for achieving their no net loss policies.

### 8.7.7 Summary

Overall, the benefit of the alternate permitting system depends on the location of the proposed project within the Watershed. Excessive delays will be minimized for permit applications proposing to impact lower quality aquatic resources. Increased review of permit and consequent duration it takes to receive permits will increase for permit applications proposing to impact higher quality aquatic resources. The SAMP permitting process results in a common-sense approach allowed by the Section 404(b)(1) Guidelines, which emphasizes providing the appropriate amount of documentation commensurate with the level of impact to the aquatic environment.

The SAMP mitigation framework is consistent with the Corps and the Department's existing policies and guidance on mitigation. Moreover, the framework increases the agencies ability to provide predictability to the regulated community and increased assurance that mitigation will offset functional losses of aquatic resources with permitted impacts.