ENVIRONMENTAL IMPACT STATEMENT

SAN JUAN CREEK AND WESTERN SAN MATEO CREEK WATERSHED SPECIAL AREA MANAGEMENT PLAN (SAMP)

VOLUME IV: RESPONSES TO COMMENTS

US Army Corps of Engineers
Los Angeles District

U.S. Army Corps of Engineers
915 Wilshire Blvd., 11th Floor
Los Angeles, CA 90017-3401

Contact: Jae Chung

January 2007

VOLUME IV: RESPONSES TO COMMENTS
FINAL ENVIRONMENTAL IMPACT STATEMENT

SAN JUAN CREEK AND WESTERN SAN MATEO CREEK WATERSHED SPECIAL AREA MANAGEMENT PLAN (SAMP)

U.S. Army Corps of Engineers
915 Wilshire Blvd., 11th Floor
Los Angeles, CA 90017-3401

Contact: Jae Chung

January 2007

VOLUME IV
TABLE OF CONTENTS

Section **Page**

1 Introduction 1-1

2 List of Respondents 2-1

3 Comments Received and Responses to Comments 3-1

4 Clarifications and Revisions 4-1

5 Reference Materials 5-1

SECTION 1
INTRODUCTION

In accordance with the National Environmental Policy Act (NEPA) Section 1503.4, the United States Army Corps of Engineers (USACE), as the lead agency for the preparation of the Final Environmental Impact Statement (EIS) for the proposed San Juan Creek and Western San Mateo Creek Watershed Special Area Management Plan (SAMP), has prepared responses to comments received on the Draft EIS. All substantive comments received on the Draft EIS are provided in Section 3 of this Responses to Comments document. Responses to comments received on the Draft EIS are also provided in Section 3. As necessary to address the comments, revisions to the EIS have been provided. As such, the Responses to Comments document and the noted revisions to the EIS is the Final EIS for the San Juan Creek and Western San Mateo Creek Watershed SAMP.

The USACE, as lead agency for the EIS, released the Draft EIS for public review and comment on November 21, 2005. The public review period ended on January 16, 2006. Agency comments received after the closure of the public review period were accepted by the USACE.

The Response to Comments document has been organized as four sections: Section 1 provides the introduction; Section 2 provides a list of respondents to the Draft EIS; Section 3 contains the comments and responses to environmental comments received on the Draft EIS; Section 4 identifies modifications and revisions to the EIS text; and Section 5 includes reference materials.

SECTION 2
LIST OF RESPONDENTS

The following is a list of the public agencies, persons, and organizations that submitted comments on the Draft EIS. The comments included written and e-mail correspondence and oral testimony and comment cards from the December 6, 2005 public hearing held in City of San Juan Capistrano. Comments have been numbered and responses have been developed; both comments and responses are provided in Section 3.

Commentor No.	Commentor	Date of Correspondence	Page Number
Federal Agencies			
1	United States Department of the Interior	January 6, 2006	3-2
2	United States Environmental Protection Agency	January 27, 2006	3-3
State Agencies			
3	California Department of Fish and Game	February 10, 2006	3-35
Special Districts/Regional Governments			
4	Transportation Corridor Agencies	January 30, 2006	3-38
Local Agencies			
5	County of Orange, Resources & Development Management Department	January 17, 2006	3-39
6	City of San Juan Capistrano	January 30, 2006	3-43
Individuals/Organizations			
7	B. Sachau (e-mail)	November 16, 2005	3-44
8	Endangered Habitats League	December 8, 2005	3-45
9	Peter H. Bloom	January 15, 2006	3-48
10.	Rancho Mission Viejo	January 13, 2006	3-52
Public Hearing: December 6, 2005			
Oral Comments			
11	Dan Silver		3-53
12	Richard Gardner		3-53

SECTION 3
COMMENTS RECEIVED AND RESPONSES TO COMMENTS

Comments received during the 56-day public review period on Draft EIS raised an array of issues. The comments included written and e-mail correspondence, and comment cards and oral testimony at the December 6, 2005 public hearing held in the City of San Juan Capistrano.

United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
1111 Jackson Street, Suite 520
Oakland, CA 94607

RECEIVED
JAN 12 2006
Regulatory Branch
Los Angeles Office

1/06/2006

ER 05/977

U.S. Army Corps of Engineers
Yong (Jae) Chung
Project Manager
(213) 452-3292
915 Wilshire Blvd
Los Angeles, CA 90017

Subject: Notice of Availability for the Draft Environmental Impact Statement (DEIS) for the San Juan Creek Watershed/Western San Mateo Creek Watershed Special Area Management Plan (SAMP), Orange County, CA

Dear Mr. Chung

The U.S. Department of the Interior has received and reviewed the subject document and has no comments to offer. 1

Thank you for the opportunity to review this project.

Sincerely,

Patricia Sanderson Port
Regional Environmental Officer

cc: OEPC, HQ,
FWS, Portland, OR

3.1 RESPONSES TO FEDERAL AGENCY COMMENTS

COMMENTOR 1 UNITED STATES DEPARTMENT OF THE INTERIOR
Dated: January 6, 2006

Response 1

Comment noted.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

January 27, 2006

RECEIVED
FEB 08 2006
REGULATORY BRANCH
LOS ANGELES OFFICE

Colonel Alex Dornstauder
District Engineer
U.S. Army Corps of Engineers, LA District
Attn: Mark Durham
914 Wilshire Boulevard, 14th Floor
Los Angeles, CA 90017

Subject: Draft Environmental Impact Statement (DEIS) for the San Juan Creek and Western San Mateo Creek Watershed Special Area Management Plan (CEQ # 50490) and associated Special Public Notices

Dear Colonel Dornstauder:

The Environmental Protection Agency (EPA) has reviewed the documents referenced above. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Three Special Public Notices (SPNs) have been published concurrently with the DEIS. If implemented, these SPNs would determine the permitting process for future projects in the SAMP area, including the 22,815-acre Rancho Mission Viejo (RMV) Planning Area. As the documents are so integrally linked, we have combined our comments on the DEIS and SPNs into one response. Our detailed comments are enclosed.

We appreciate the opportunity to meet with you at your offices in Los Angeles on January 18, 2006. EPA supports a watershed-based approach to environmental permitting and planning and recognizes that the establishment of Special Area Management Plans (SAMPs) for areas of special sensitivity where development is planned can help to reduce cumulative impacts to aquatic resources and provide protection for high value resource areas. The proposed SAMP has a strong conservation component that will protect important aquatic resources with permanent conservation easements and long-term management. While four SAMPs are currently planned in southern California, this is the first SAMP that has resulted in the publication of an EIS. The subject SAMP covers a 131,000-acre area in the San Juan Creek and western San Mateo Creek watersheds in southern Orange County, California. 1

Printed on Recycled Paper

While we are supportive of the overall SAMP framework, we have some questions and concerns regarding the establishment of the proposed development areas, permitting procedures, management strategies, aspects of the SPNs, and compliance with the Clean Water Act (CWA) Section 404(b)(1) Guidelines (Guidelines). We have rated the proposed alternative as Environmental Concerns - Insufficient Information (EC-2) (see enclosed "Summary of Rating Definitions"). We recommend addressing these concerns before the Corps authorizes the long-term Individual Permit (IP) referenced in the SPN for the RMV Planning Area.

We have concerns regarding the alternatives analysis, cumulative impacts, and air quality impacts. In particular, we are concerned that only two action alternatives are analyzed in detail in the DEIS, and additional information is needed to determine if Alternative B-12 could be considered the Least Damaging Practicable Alternative (LEDPA). Sufficient detail to determine the LEDPA is important for the issuance of the CWA Section 404 permit, as only the LEDPA can be permitted. In particular, the rationale for eliminating the less environmentally damaging Alternative B-8 is not clear. The FEIS should explain why an effective conservation program could not be established as a component of Alternative B-8. We also recommend the analysis of an additional alternative that incorporates further on-site avoidance, as described in our detailed comments.

1 cont.

Once the long-term IP is issued, it appears development boundaries within the RMV Planning Area will be established, and no further avoidance or minimization will be required. Consequently, it is critical that prior to issuance of this permit, potential impacts to aquatic resources within the proposed development areas be avoided and minimized to the maximum extent practicable. We recommend requiring sustainable development measures within the areas targeted for development. A primary environmental benefit of developing and implementing a SAMP on a watershed scale is that cumulative impacts to waters can be more effectively evaluated and mitigated. As this document will serve as the basis for the impact analysis for future development in the area, it is important that the cumulative impacts in the area be analyzed in detail, including past and existing impacts or loss of waters of the U.S.

As stated earlier, this document will serve as the basis for the impact analysis for future development in the area. Therefore, it is also important to estimate and mitigate potential cumulative impacts to air quality in the area. The FEIS should evaluate the applicability of Clean Air Act General Conformity requirements for all reasonably foreseeable emissions of criteria pollutants for which the area is nonattainment or maintenance. In addition to air quality, it is also important that the FEIS account for the cumulative effect that past and existing projects have had on agricultural resources and non-aquatic biological resources.

We appreciate the opportunity to review this DEIS. When the FEIS is released for public review, please send (3) copies to the address above (mailcode: CED-2). If you have any questions, please contact me at 415-972-3988 or Summer Allen, the lead reviewer for this project. Summer can be reached at 415-972-3847. 1 cont.

Sincerely,

Duane James, Manager
Environmental Review Office

Main ID # 3665
Enclosures: Summary of Rating Definitions
Detailed Comments

cc: Ken Corey, US Fish and Wildlife Service

Alternatives Analysis

According to the DEIS and Aquatic Resources Restoration Plan (Appendix F2), Alternative B-12, the agency preferred alternative, involves future development and construction of infrastructure within the RMV Planning Area that would result in permanent impacts to 55.46 acres of waters and temporary impacts to 36.89 acres of waters. Additional impacts to waters elsewhere in the larger SAMP area are anticipated, but have not been quantified. Based on our review of the DEIS and the SPN for the RMV planning Area, we believe there is insufficient information to make a determination as to whether Alternative B-12 represents the LEDPA to meet the project purpose, as required under the Guidelines (40 CFR 230.10(a), 230.12).

According to the DEIS (page 3-5), the overall project purpose of the SAMP involves allowing reasonable economic activities and development and establishment of an Aquatic Resources Conservation Program (ARCP) within the SAMP area. Clarification is needed regarding what is considered "reasonable economic activities and development" to determine if less environmentally damaging alternatives that may, in fact, be practicable for the purposes of Section 404 permitting should be considered. For example, according to the DEIS (Table 5-2), Alternative B-8 provides more acres of open space and fewer acres of development and dwelling units than Alternative B-12, the agency preferred alternative. Alternative B-8 is expected to impact fewer acres of waters as well. However, the DEIS lacks sufficient information to justify removing Alternative B-8 from further consideration as a potential LEDPA.

In part, Alternative B-8 is considered to be economically infeasible because the acre ratio of 5:1 for open space-to-development is greater than the 2:1 ratio under other plan areas such as Newport Coast and Otay Ranch (DEIS, page 6-95). We note that the proposed Alternative B-12 has an open space-to-development ratio of 3:1, which is also greater than the two examples cited. Given these incremental differences, the threshold and justification for determining feasibility in terms of open space-to-development ratios is unclear. 2

Alternative B-8 is also considered infeasible because it would not fully achieve RMV's project needs as described in Chapter 3 of the DEIS. However, no specific information justifying this statement is provided in the document. For example, it is unclear if the 14,000-unit project under Alternative B-12 is being considered as a threshold for defining 'reasonable economic development' or determining the practicability of an alternative. If so, a justification for this threshold needs to be provided. Please note that an alternative that does not fully meet RMV's specific economic goals may still meet project purpose and be practicable for the purposes of Section 404 permitting. For instance, the DEIS lacks information regarding the practicability of increasing the density of units to reduce the overall footprint of development areas and impacts to jurisdictional waters. There also may be practicable options for re-configuring the proposed development to accommodate more dwelling units than the 8,440 units currently associated with Alternative B-8.

According to the DEIS (page 6-96), the development of 3,680 acres under Alternative B-8 would not generate sufficient mitigation funding to address all existing and future needs of the

aquatic resources in the 19,000-acre open space area, including the acquisition of conservation easements. The DEIS (page 6-97) further asserts that Alternative B-8 does not meet the overall project purpose of establishing an Aquatic Resource Conservation Program (ARCP). We do not believe that insufficient mitigation funding should be used as a basis to justify eliminating Alternative B-8, as this does not follow the mitigation sequencing guidelines set forward in the 1990 CWA Memorandum of Agreement between the Corps and EPA. Furthermore, it seems that Alternative B-8 could include a conservation easement component similar to the phased approach of establishing conservation easements under Alternative B-12.

The Aquatic Resources Adaptive Management and Monitoring Program describes short-term and long-term funding for implementation of the program (pages A22 to 24). It appears that the $700,000 from RMV's permitted Ladera Planned Community project and the $700,000 of Santa Margarita Water District funds could apply to Alternative B-8 for short-term implementation. The proposed long-term funding mechanism, based on property owner assessments, could still generate substantial annual funding at build-out under Alternative B-8. The FEIS should evaluate if some type of effective Aquatic Resource Conservation Program could be implemented under this reduced funding scenario.

Additional Avoidance Alternative: The range of development/open space alternatives is not sufficient to determine the LEDPA. In comparing the 2004 Jurisdictional Delineation Maps (Figures 4.1.2-7a-h) with the proposed development areas (Figure 5-13), there appear to be several opportunities to further avoid direct impacts to waters of the United States. According to the DEIS (pages 4.2-4 to 4.2-30) the sub-basins affected by the proposed development areas are basically intact. We presume the waters within the affected sub-basins are intact as well and should be considered for avoidance where practicable. Once the boundaries of the development areas are established under the proposed long-term individual permit, no further avoidance or minimization under Letter of Permission (LOP) procedures will be required for future development within these areas. 2 cont.

For Planning Areas 4 and 8, the exact footprint of future development has not been determined. However, issuance of the long-term IP would provide for the future development of 550 acres and a 175-acre reservoir in Planning Area 4, and 500 acres of future development in Planning Area 8. It is unclear how the number of development acres was determined and if a smaller development footprint would be practicable.

Recommendations:

The FEIS should include specific or more clearly defined economic goals of the SAMP participants that are used to define the project purpose. To support the selection of Alternative B-12 as the LEDPA, the FEIS should disclose what specific goals and objectives are being directly tied to project purpose or used as screening criteria to eliminate alternatives in Chapter 6 and clarify why such goals are appropriate to use.

The FEIS should describe what constitutes a "reasonable level of economic activities and development" and how the criteria have been used to determine whether or not a particular alternative meets the project purpose or is practicable for the purposes of Section 404 permitting.

The FEIS should include a clear demonstration of why Alternative B-8, a less environmentally-damaging alternative, does not meet the overall project purpose or is impracticable in terms of costs, logistics, or existing technology. The FEIS should address the specific issues raised in our comments regarding the economic feasibility and long-term management of aquatic resources under Alternative B-8.

The FEIS should evaluate the practicability of an alternative that incorporates additional avoidance of intact waters in the following development areas:

- Planning Area 2 (Figure 4.1.2-7b) the unnamed tributary along the southeast border of the development area;
- Planning Area 3 (Figure 4.1.2-7c) one or more of the five tributary systems in the development area;
- Planning Area 4 (Figure 4.1.2-7d) the tributary system to lower Vertuga Canyon, near the confluence with San Juan Creek;
- Planning Area 6 (Figure 4.1.2-7f) all direct and indirect impacts of proposed orchard development to Christianito Creek; and
- Planning Area 8 (Figure 4.1.2-7h) the Blind Canyon watershed and intact headwaters of Talega Creek.

We recommend requiring through the federal permit the implementation of Low Impact Development Strategies (LIDS) and other sustainable development measures within the areas targeted for development.[1] Such measures can reduce the adverse impacts of development both on-site and regionally at a watershed-scale. The FEIS should also document any mitigation opportunities or alternatives outside of RMV Planning Area, in addition to the alternatives listed in Chapter 6, to broaden the scope of the alternatives analysis. 2 cont.

Cumulative Impacts

The cumulative impacts discussion is restricted to foreseeable future projects and does not account for past or existing projects and the ongoing, related impacts to the ecosystem. Although the cumulative impacts discussion is limited to future projects, the DEIS still estimates that there will be unavoidable cumulative impacts to non-aquatic biological resources, agricultural resources, mineral resources, air quality, water quality, and noise (pp. 9-53 to 9-55). However, there is no discussion of the contribution of each alternative to these cumulative impacts or methods of alleviating the environmental impacts as a result of these multiple development and transportation projects. 3

We note that the proposed Southern Orange County Transportation Infrastructure Improvement Project (SOCTIIP) will add to cumulative impacts in the area. This DEIS states that the extent and type of impacts associated with SOCTIIP would vary dependent on the alternative selected. We appreciate the information on direct impacts given in Tables 9-2 to 9-4.

---

[1] http://www.lid-stormwater.net/clearinghouse
http://www.calthorpe.com
http://www.altarg.AM/Template.cfm?Section Pre Releases1&C 7285& APLA M/Content
display.cfm

However, the LEDPA recently selected for SOC TIP is not designated in the DEIS for the SAMP.

In addition, while we are supportive of the mitigation and the special conditions proposed in Section 7 that will be part of the permits, the management plan that will evaluate the effectiveness of these measures is not described in the document.

Recommendations:
The FEIS should include past/existing impacts to the area as contributing to the impacts of the area. EPA recommends the FEIS also include a discussion of each alternative's potential to contribute to cumulative impacts. If these impacts are assumed to be similar, the document should include a discussion of the reasoning that led to this conclusion. EPA recommends the FEIS include a general map of the projects in the area, both completed and planned as well as a map of "protected" areas and the level of protection (in terms of potential for fill discharges) for biological resources.

The document should address the steps that will be taken to lessen the cumulative impacts as a result of these projects through mitigation or avoidance. All of the projects analyzed as cumulatively impacting the area have particular mitigation measures designed to reduce the impacts of the project in isolation. However, the FEIS should explain how ecosystem goals will be met with all of these projects in combination. It should describe the monitoring planned for the area for the foreseeable future and the adaptive management plan that will be used to respond to ecosystem degradation. The applicability and status of the Natural Community Conservation Plan/Habitat Conservation Plan in and outside of the RMV Planning Area should be described.

We request that additional information be included that describes the LEDPA for the SOCTIIP project, which will be the permittable alternative. A detailed evaluation of this alternative will allow a more accurate representation of the cumulative impacts resulting from the project. 3 cont.

Air Quality

Orange County is located in the South Coast Air Basin (SCAB). Carbon Monoxide (CO) levels in the SCAB are approximately two times the federal National Ambient Air Quality Standard (NAAQS) (p. 4.1-158). This area is classified as a serious nonattainment area for this pollutant. SCAB is designated as severe non-attainment for the 8-hour ozone NAAQS. The 2001-2003 design value for 8-hour ozone in SCAB was 131 parts per billion by volume (ppbv), considerably higher than the 8-hour ozone NAAQS of 80 ppbv. SCAB is also designated nonattainment for particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM_{10}) and particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). For 2000 through 2002, the SCAB had the highest $PM_{2.5}$ annual mean concentration (29 micrograms per cubic meter or $\mu g/m^3$) in the country, indicating that significant emissions reductions will be needed to attain the annual NAAQS for $PM_{2.5}$ of 15 $\mu g/m^3$. In addition, data from 2000-2002 show that for the 24-hour 4

$PM_{2.5}$ NAAQS,[2] South Coast is one of two areas in the nation that are designated as nonattainment for this standard of 65 $\mu g/m^3$.

The DEIS states that the operation of the proposed alternative would result in significant emissions of all pollutants except sulfur dioxides on a regional scale based on South Coast Air Quality Management District (SCAQMD) thresholds of significance (p. 7.5-14). Specifically, the DEIS states that the "... short-term, construction-related emissions of NO_x [nitrogen oxides], CO, VOC [volatile organic compounds], and PM_{10} during the peak construction period would remain significant after mitigation (Alternative B-12, pp. 7.5.7.3)." The DEIS also states that the "[l]ong-term operational emissions of CO, VOC, NO_x, and PM_{10} would remain significant and unavoidable (Alternative B-12, pp. 7.5.7.3)."

Recommendations:
In addition to the construction emissions control measures cited in the DEIS, EPA recommends that the FEIS include a *Construction Emissions Mitigation Plan (CEMP)* that incorporates, to the extent appropriate, additional measures including the following:

- Use particulate traps, oxidation catalysts and other suitable[3] control devices on all construction equipment used at the construction site. Control technologies such as traps control approximately 80 percent of diesel particulate matter (DPM). Oxidation catalysts control approximately 20 percent of DPM, 40 percent of carbon monoxide emissions, and 50 percent of hydrocarbon emissions.
- Ensure that diesel-powered construction equipment is properly tuned and maintained to ensure they perform up to EPA certification levels and/or to ensure retrofit technologies perform up to verified standards. Shut off equipment when not in direct use.
- Prohibit engine tampering to increase horsepower.
- Locate diesel engines, motors, and equipment as far as possible from residential areas and sensitive receptors (schools, daycare centers, and hospitals).
- Lease or buy newer, cleaner equipment (1996 or newer model), using a minimum of 75 percent of the equipment's total horsepower.
- Work with the South Coast Air Quality Control District to implement the strongest suitable mitigation for reducing construction emissions, and include the above measures as part of the CEMP in the USACE Order authorizing the SAMP.

4 cont.

[2]On January 17, 2006, EPA published a Federal Register Notice on proposed revisions to the $PM_{2.5}$ NAAQS. The proposal includes lowering the existing level of the 24-hour standard from 65 $\mu g/m^3$ to 35 $\mu g/m^3$. The final rule is expected by September 27, 2006. The proposal is available at: http://www.epa.gov/fedrgstr/EPA-AIR/2006/January/Day-17/.

[3]Suitability of control devices may be based on the following: whether there is reduced normal availability of construction equipment due to increased downtime and/or power output, whether there may be significant damage caused to the construction equipment engine or whether there may be a significant risk to nearby workers or the public. The project sponsor may want to consider that such determination may be made in consultation with the control device manufacturer, equipment owner and the Air District.

EPA recommends that the FEIS consider additional mitigation for operational emissions that would reduce the project's VMT, including incorporation of Smart Growth measures and increased transit. EPA encourages coordination with the South Coast Association of Governments (SCAG) on transportation improvements to support future development.

Regarding applicable Federal Clean Air Act (CAA) requirements, EPA notes that only the PM_{10} portion of SCAB's 2003 Air Quality Management Plan (AQMP) has been approved by EPA. The 1997/1999 AQMP is the current approved State Implementation Plan (SIP) for 1-hour ozone, and the 1997 AQMP is the current approved SIP for CO and NO_2.

Recommendations:
The FEIS should include the information that was used to determine that the project's operational impacts to air quality will be consistent with the current Air Quality Management Plan. The appropriate SIP should be referenced for all applicable Federal CAA requirements. The FEIS should clarify how these additional developments, in combination with other proposed projects, such as SOCTIIP, will not interfere with the attainment goals of PM_{10} and ozone, set for December 2006 and November 2010, respectively.

The General Conformity requirement of the CAA (§176(c)(1)) mandates that the Federal government not license, permit, or approve any activity not conforming to an approved CAA implementation plan. EPA anticipates taking final rulemaking action to amend the General Conformity rule to address PM2.5, including the establishment of de minimis levels, by the end of the statutory grace period (April 5, 2006). Before the project can be approved by the Corps, General Conformity may need to be demonstrated for emissions associated with the Federal action for all criteria pollutants for which the area is nonattainment or maintenance. Since the proposed action is located in a nonattainment area for PM2.5, conformity must also be demonstrated for that pollutant after the end of the statutory grace period. 4 cont.

Recommendations:
The FEIS should evaluate the applicability of Clean Air Act General Conformity requirements for all reasonably foreseeable emissions of criteria pollutants for which the area is nonattainment or maintenance. EPA recommends that all mitigation, offsets, controls, credits and/or other measures needed to achieve and maintain General Conformity for the project should be discussed in the FEIS and included as specific commitments for the authorization of Clean Water Act §404 permits and any other permits associated with the Federal action in the SAMP. EPA will work with the Corps to determine the appropriate method for meeting the General Conformity requirements, according to the relevant requirements at the time of the Federal action.

<u>Special Public Notice No. 199916236-2-YJC for Letter of Permission (LOP) Procedures outside the RMV Planning Area</u>

Within areas eligible for abbreviated permits, the proposed LOP procedures could authorize any fill activity with no acreage limit except for activities that alter compensatory mitigation sites and capital improvement projects that convert soft-bottom channels to concrete 5

lined channels. The locations of these existing mitigation sites should be documented and mapped. In addition, the SAMP should also identify potential wetland mitigation opportunities outside of the RMV planning area.

The proposed ARCP applies exclusively to the RMV Planning Area. The SAMP does not include a conservation component for aquatic resources outside the RMV Planning Area. We are particularly concerned with the maintenance of flood control channels. According to the SPN, even within higher value aquatic resource areas generally not eligible for an abbreviated permit process, the maintenance of flood control channels could still be authorized under LOP procedures with no acreage limit (page 9). The DEIS and SPN lack a description of the Santa Margarita Water District's (SMWD) program for maintaining flood control channels. It is unclear how extensive the program is, what the existing baseline conditions of the affected stream reaches are, or if mitigation was ever provided for the maintained stream reaches.

EPA should be involved in the pre-application coordination for LOPs both within and outside the RMV Planning Area. Under the general condition number 8 (page 12), the second sentence should most likely read "...liquid substances, will be stored..." In addition, in the section regarding offsets for temporal loss (page 15); it is unclear why the ratios of compensatory mitigation vary depending on the stratum of vegetation impacted. 5 cont.

Recommendations:
The FEIS should include a map of the existing compensatory mitigation sites in the SAMP area and a description of potential mitigation opportunities outside of the RMV Planning Area. The specific stream reaches potentially affected under this provision of the proposed LOP should be identified.

The FEIS should include a description of SMWD's program for maintaining flood control channels, as indicated above. The FEIS should describe and identify the specific stream reaches supporting high value aquatic resources that could be affected by the maintenance of flood control channels. It should clarify how this provision of the LOP is consistent with the SAMP objective of protecting high value aquatic resources.

Special Public Notice No. 199916236-3-YJC for Long-term Individual Permit and LOP Procedures within the RMV Planning Area

As indicated in our comments on the alternatives analysis, we do not believe that sufficient information has been presented to demonstrate that Alternative B-12, the agency preferred alternative, represents the LEDPA to meet the project purpose as required under the Guidelines. The same concerns apply to the proposed long-term individual permit that would establish the boundaries of development areas within the RMV Planning Area, in accordance with Alternative B-12. According to the SPN (pages 9, 10), once the development areas are established, no further avoidance or minimization under future LOP procedures will be required. As stated earlier, it is important that prior to issuance of the long-term IP, impacts to waters of the United States within the proposed development areas be avoided to the extent practicable. 6

Additional information should be provided in the DEIS and SPN regarding the phased approach to recording conservation easements within the RMV Planning Area. It would be useful to include a copy or summary of the RMV Open Space Agreement cited in the SPN.

According to the SPN (page 11), the maintenance of flood control channels, even in higher value aquatic resources areas, would still be eligible for LOP procedures with no acreage limits. The DEIS and SPN lacks a description of the Santa Margarita Water District's (SMWD) program involving the maintenance of flood control channels. It is unclear how extensive the program is, what the existing baseline condition is of the affected stream reaches, or if mitigation was ever provided for the maintained stream reaches. The specific stream reaches potentially affected under this provision of the proposed LOP should be identified and quantified.

Regarding wildlife movement corridors (page 15), it is unclear if the 400-meter wide corridor applies to all of the named tributaries or just San Juan Creek upstream of Trampas Canyon.

Recommendations:
The FEIS should fully address concerns regarding the analysis of alternatives and the proposed long-term individual permit, as described in the discussion above.

The FEIS should include a description of the proposed phased approach to recording conservation agreements within the RMV Planning Area.

The FEIS should include a description of SMWD's program for maintaining flood control channels, as indicated above. The FEIS should describe and identify the specific stream reaches supporting high value aquatic resources that could be affected by activities associated with the maintenance of flood control channels. It should clarify how this provision of the LOP is consistent with the SAMP objective of protecting high value aquatic resources.

The FEIS should indicate the width of wildlife movement corridors to be established for each tributary specifically named in the SPN.

6 cont.

SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

COMMENTOR 2 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Dated: January 27, 2006

Response 1

Issues raised in the cover letter are addressed in subsequent responses to the U.S. Environmental Protection Agency (EPA).

Response 2

Introduction

To provide perspective for the USACE responses to the specific comments contained in EPA's comment letter, a few introductory comments are provided. In addition to the normal roles associated with a voluntary SAMP program, each of the following responses reflects the unique function of this SAMP as one component of a larger "coordinated planning process" for southern Orange County (see Draft EIS, Section 2.1). The other two elements of the coordinated planning process are the Southern Subregion Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (NCCP/MSAA/HCP) and the County of Orange Ranch Plan General Plan Amendment/Zone Change (GPA/ZC) for the Rancho Mission Viejo (RMV) Planning Area project. These other two components of the coordinated planning process identify areas containing wetland and riparian vegetation communities and upland vegetation communities for permanent protection and management within a proposed Habitat Preserve. A central and complementary goal of the SAMP Aquatic Resources Conservation Program is to identify and provide permanent protection for wetland/riparian vegetation communities through designation of Aquatic Resource Conservation Areas. As proposed by the NCCP/MSAA/HCP, achieving this central goal would be facilitated through creation of the final Habitat Reserve which encompasses the land and water areas contained within the designated SAMP Aquatic Resource Conservation Areas and results in a combined Habitat Reserve/ Aquatic Resource Conservation Areas that will be managed comprehensively over the long term as part of one coordinated management program. However, the SAMP has been prepared in recognition of the fact that the NCCP/MSAA/HCP has not yet been approved. Accordingly, the SAMP is also structured to function effectively as a stand-alone program. Finally, the following responses reflect the fact that because the formulation of alternatives for review under the coordinated planning process for southern Orange County has encompassed all three of its component programs, open space protection alternatives also were reviewed at a scale that includes upland vegetation communities and wetlands/riparian communities.

Overview of Project Purposes in Relation to the Alternatives

Basic Project Purpose and Overall Project Purpose

Several of EPA's comments raise questions regarding the manner in which the alternatives analyses in the Draft EIS relate to the basic purpose and overall project purpose of the SAMP. In order to provide an analytical framework for the responses to these comments, this subsection of the response presents a brief summary of the relationship between the purpose and need for the SAMP and the selection and review of alternatives.

Section 3.1 of the Draft EIS states:

Recognizing the need for a more comprehensive planning approach in 1998, a resolution by the United States House of Representative's Committee on Public Works authorized the USACE to initiate a SAMP within the San Juan Creek/Western San Mateo Creek Watersheds. A SAMP is an evaluation and management tool to achieve a balance between aquatic resource protection and economic development. The broad goals of the SAMP are to allow for comprehensive management and protection of aquatic resources and to increase regulatory predictability for development and infrastructure projects that would impact aquatic resources. Advanced planning would allow for more effective consideration of aquatic resource conservation and those development and infrastructure projects affecting aquatic resources. The development and infrastructure projects include those addressing the needs of the Rancho Mission Viejo, County of Orange, and the SMWD.

As further stated in the Draft EIS, Section 3.1.2.2 notes that the overall project purpose has two elements:

- *The SAMP involves establishment of an Aquatic Resources Conservation Program (ARCP) consisting of preservation, restoration, and management as mitigation for impacts authorized by the proposed permitting procedures. The Aquatic Resources Conservation Program involves coordination of components of mitigation including avoidance, minimization, and restoration. The Aquatic Resources Conservation Program would be developed in coordination with the Southern Subregion NCCP/MSAA/HCP habitat reserve.*

- *The SAMP involves allowing reasonable economic activities and development by identifying areas and/or activities suitable for coverage under a comprehensive, abbreviated permitting process for residential, commercial, industrial, recreational, infrastructure, and maintenance needs within the SAMP Study Area. The term "reasonable" is evaluated in consideration of the no federal action alternative, project needs of SAMP participants, and the SAMP tenets.*

The two main elements of the overall project purpose are summarized below.

Aquatic Resources Conservation Program

The Draft EIS summarizes the three components of the Aquatic Resources Conservation Program and the manner in which the EIS Alternatives Analysis addresses the ways in which different alternatives are reviewed in relation to the establishment of the Aquatic Resources Conservation Program.

- ***Aquatic Resources Preservation***: In conjunction with the NCCP/MSAA/HCP and GPA/ZC, the other two components of the "coordinated planning process," a wide range of development/open space alternatives have been identified for environmental review. The SAMP process is intended to examine these alternatives in order to determine the extent to which these alternatives, in conjunction with already protected open space, would preserve significant aquatic resources (identified in connection with USACE and NCCP/MSAA/HCP studies) within the SAMP Study Area. Avoidance/minimization of impacts to aquatic resources would also be examined in conjunction with a Section 404(b)(1) Guidelines review of permitting procedures. At the end of the SAMP process, aquatic resources recommended for permanent preservation would be identified. In this EIS, these areas are termed "Aquatic Resources Conservation Areas" (ARCAs).

- ***Aquatic Resources Restoration***: The USACE Engineer Research Development Center (ERDC) has prepared a *Riparian Ecosystem Restoration Plan for San Juan and Western San Mateo Creek Watersheds* to provide a broad-scale restoration template. Area-specific restoration opportunities and measures would be identified under the Section 404(b)(1) Guidelines review of proposed permitting procedures. Environmental review of this element in this EIS focuses on the consistency of alternative habitat reserve designs with the restoration recommendations and the extent to which specific habitat restoration measures can provide mitigation for impacts to aquatic resources that could potentially occur in connection with the proposed permitting procedures.

- ***Aquatic Resources Management***: Where applicable, management of aquatic resources would be carried out in accordance with the SAMP Aquatic Resources Adaptive Management Program (ARAMP). Adaptive management and monitoring activities would be conducted primarily in areas proposed to be protected in conjunction with proposed permitting procedures as mitigation for impacts to aquatic resources subject to USACE jurisdiction (these management and monitoring activities are described in the Aquatic Resources Adaptive Management Program reviewed in this EIS). The NEPA alternatives analysis will review the extent to which the different development/open space alternatives are consistent with habitat management recommendations set forth in the NCCP Southern Planning Guidelines and the Draft Watershed and Sub-basin Planning Principles (Watershed Planning Principles) at both a watershed- and sub-basin scale.

As reviewed in the Draft EIS, 5 “A” Alternatives (NEPA/USACE Section 404 required alternatives) and 12 “B” Alternatives (Habitat Reserve/Aquatic Resources Conservation Area design alternatives) are reviewed in relation to the extent to which each alternative addresses the aquatic resources protection, restoration, and management goals of the SAMP.

Reasonable Economic Activities and Development

The goals of the SAMP also involve “allowing reasonable economic activities and development by identifying areas and/or activities suitable for coverage under a comprehensive, abbreviated permitting process for residential, commercial, industrial, recreational, infrastructure, and maintenance needs within the SAMP Study Area.” As noted above, the economic activities and development include the development and infrastructure projects “addressing the needs of the Rancho Mission Viejo, County of Orange, and the SMWD.” The permit applicants have stated the following goal is to be addressed in conjunction with the Alternatives Analyses as set forth in Draft EIS Section 3.1.1.2:

> *Rancho Mission Viejo’s primary need is to provide an economically viable mix of residential, commercial, and other urban and natural open space lands capable of addressing the growth projections of an ever-expanding population of southern Orange County. In doing so, Rancho Mission Viejo has stated their purpose is to provide an economically viable mix of residential, commercial, and other urban and natural open space lands capable of addressing the societal needs and goals of southern Orange County as reflected in the plans and policies of the Orange County General Plan and the Orange County Projections (OCP)”*

The County of Orange needs considered in the assessment of reasonable economic activities and development include the County’s long-term housing goals identified in official projections (Orange County Projections [OCP]) used by the County and regional agencies for purposes of housing needs assessment, transportation planning and air quality planning:

> *In managing the ever-expanding population of southern Orange County, the County of Orange approved the Rancho Mission Viejo General Plan Amendment/Zone Change (GPA/ZC), which was done within the environmental planning framework established by County/SCAG planning programs to address a combination of environmental and other societal goals regarding housing and economic development. With regard to housing, transportation, and air quality goals, growth projections were adopted by Orange County (Orange County Projections−2004, "OCP−2004") for incorporation into SCAG's five-county growth forecast for the 2004 Regional Transportation Improvement Plan (RTIP) and the South Coast Air Quality Management District's Air Quality Management Plan (AQMP). OCP-2004 identifies approximately 20,000 housing units on the RMV Planning Area by 2025.* (Source: Draft EIS, Section 3)

Rancho Mission Viejo's statement of goals set forth in the Draft EIS also reference the balancing of economic, environmental, and other goals by the County of Orange in reviewing and approving The Ranch Plan GPA/ZC project, noting that the County's balancing process resulted in the approval of a General Plan amendment and zone change authorizing 14,000 housing units (6,000 fewer units than in the OCP Year 2025 projection).

EPA was concerned about the definition of "reasonable economic activities and development." Although the term "reasonable" is used several times within NEPA,[1] this term is not provided a regulatory definition within NEPA regulations or within the USACE SAMP Regulatory Guidance Letters. The lack of a technical definition, suggests that "reasonable" is defined in terms of its common sense, dictionary definition. According to Webster's Third New International Dictionary, "reasonable" is defined as "being in agreement with right thinking or right judgment; not conflicting with reason; not absurd; nor ridiculous; being or remaining within the bounds of reason; not extreme; not excessive." "Reasonable economic development" may be construed as economic development that is within reason, economic development that is not ridiculous, or economic development that is not excessive.

Lacking any quantitative clarification of the term "reasonable," any quantitative determination of the size of "reasonable economic development" was not attempted. In contrast, the definition of "reasonable economic development" was viewed through the lens of the no federal action alternative, local needs, and the SAMP Tenets with the understanding that substantial deviations from local needs and violations of the SAMP Tenets were not within reason. Those alternatives that substantially deviated from local needs and/or substantially violated the SAMP Tenets were determined to be unreasonable. Therefore, the USACE believes that consideration of the stated local needs were important in clarifying what is reasonable economic development as part of the overall project purpose.

In defining the overall project purpose, the USACE considered the needs of the applicants, Rancho Mission Viejo and Santa Margarita Water District, and the land use agency, the County of Orange. Rancho Mission Viejo saw a need to "have a development/open space plan approved that has the capability of providing the financial return necessary for the landowner to offset the level of risk inherent in long-term master plan development, the loss of investment opportunities, and the commitment of land and financial resources necessary to provide for the large-scale protection of many valuable resources, including required dedications for the SAMP." One component of Rancho Mission Viejo's financial commitment to the Ranch Plan project is represented by the South County Roadway Improvement Program (SCRIP). The SCRIP identifies south Orange County traffic improvements through which Rancho Mission

[1] NEPA has references to "reasonable alternatives" (Parts 1500.2, 1502.1, 1504.14), reasonable procedural time frames (Part 1507.3), and reasonable anticipation of cumulative impacts (Part 1508.27).

Viejo will contribute approximately $143,775,000 which exceeds its fair share responsibilities.[2] As noted, the County of Orange has housing, transportation, and air quality goals where growth projections were adopted by Orange County (Orange County Projections-2004 [OCP-2004]), which involved projections of 20,000 housing units on the RMV Planning Area by 2025. In determining the Least Environmentally Damaging Practicable Alternative (LEDPA), it was not enough for the needs of Rancho Mission Viejo to be addressed. If that were the case, then Alternative A-5, which would create 3,000 high-priced estate lots with minimal grading, may have satisfied all of Rancho Mission Viejo's economic goals. The needs of the County, as the local agency, also needed to be addressed as well in accordance with Regulatory Guidance Letters 86-10 and 05-09. The USACE believes that it was necessary to consider the County's growth projections, including the original 20,000 dwelling unit housing allocation for this part of the County.

EPA commented that the LEDPA may not achieve Rancho Mission Viejo's specific goals while still meeting the overall project purpose. The USACE concurs with this statement. Rancho Mission Viejo went through two iterations from their proposed development before Alternative B-12. Rancho Mission Viejo has shown flexibility in revising its project while seeking to meet the County's housing goals. Although Rancho Mission Viejo had very specific land use goals, including a development with five golf courses, those specific goals were changed over time in response to state and federal agency considerations and local input. Although general goals were a consideration in determining the LEDPA, specific goals did not have undue bearing on the decision as evidenced by project changes over the years.

Topics Addressed in the Alternatives Analyses

Section 6.5 of the Draft EIS reviews Alternatives Rejected from Further Consideration in Chapter 8.0 under Clean Water Act Section 404(b)(1), including the extensive analyses of the consistency of each of the "B" Alternatives with the SAMP Tenets and the Watershed Planning Principles. Chapter 5 of the Draft EIS presents the reasons for eliminating 12 of the 17 alternatives from further consideration in Chapter 6. For the reasons stated in Section 5.4.2 of the Draft EIS, five alternatives were selected for further review in Section 6.5: Alternatives A-4, A-5, B-8, B-10 Modified, and B-12.

All five of the alternatives selected for review in Chapter 6 of the Draft EIS were evaluated for: (a) consistency with the SAMP Tenets; (b) consistency with the Baseline Conditions Watershed Planning Principles; and (c) consistency with the Sub-Basin Watershed Planning Principles. All five alternatives were then reviewed for "Consistency with the SAMP Purposes and Goals." EPA's comments focus on the "B" Alternatives selected for further review in Chapter 6 of the Draft EIS. Alternatives B-8, B-10 Modified, and B-12 were reviewed under the following screening criteria used for assessing consistency with the SAMP goals and purposes and which are relevant to many of EPA's comments:

- Allowing Reasonable Economic Activities and Development
- Summary of Issues Raised in the Reviews of the Consistency of the Alternative with the SAMP Tenets and Watershed Planning Principles
- Feasibility of Assuring the Long-Term Protection of Aquatic Resources
- Long-Term Aquatic Resources Habitat Restoration and Management

[2] South County Roadway Improvement Program (SCRIP), October 2005.

As noted previously, the EPA's comments address several aspects of the alternatives analyses. Responses to the EPA comments include reference to the overall framework of the alternatives analyses summarized above and as specifically cited below.

A. *Is the 14,000 Unit Project under Alternative B-12 Being Considered as a Threshold for Defining "Reasonable Economic Development" or Determining the Practicability of an Alternative?*

B. *Adequacy of Information Regarding Impacts to Waters Outside of the RMV Planning Area*

C. *Adequacy of the Information to Justify Removing Alternative B-8 from Further Consideration as the LEDPA*

D. *Mitigation Considerations in Relation to Sequencing Requirements*

E. *Could Alternative B-8 Generate Adequate Funding to Carry Out the Proposed Aquatic Resources Adaptive Management and Monitoring Program*

F. *Rationale for Rejecting Alternative B-8*

G. *Additional Avoidance of Waters of the U.S. in Planning Areas 2, 3, 4, 6, and 8*

H. *Low Impact Development Strategies*

I. *Mitigation Opportunities or Alternatives Outside the RMV Planning Area*

A. *Is the 14,000 Unit Project under Alternative B-12 Being Considered as a Threshold for Defining "Reasonable Economic Development" or Determining the Practicability of an Alternative?*

EPA Comment

According to the EPA Comment letter, if the 14,000 unit project under Alternative B-12 is being considered as a threshold for defining "reasonable economic development" or determining the practicability of an alternative, a justification for this threshold needs to be provided. EPA states that "an alternative that does not fully meet RMV's specific economic goals may still meet project purposes and be practicable for the purposes of Section 404 permitting." EPA further states:

> *For instance, the DEIS lacks information regarding the practicability of increasing the density of units to reduce the overall footprint of development areas and impacts to jurisdictional waters. There also may be practicable options for reconfiguring the proposed development to accommodate more dwelling units than the 8,440 units currently associated with Alternative B-8….*
>
> *Recommendations:*
>
> *The FEIS should include specific or more clearly defined economic goals of the SAMP participants that are used to define the project purpose. To support the selection of Alternative B-12 as the LEDPA, the FEIS should disclose what specific goals and objectives are directly tied to project purpose or used as screening criteria*

to eliminate alternatives in Chapter 6 and clarify why such goals are appropriate to use.

The FEIS should describe what constitutes a 'reasonable level of economic activities and development' and how the criteria have been used to determine whether or not a particular alternative meets the project purpose or is practicable for the purposes of Section 404 permitting.

USACE Response

Defined Economic Goals and Criteria for Determining What Constitutes a Reasonable Level of Economic Activities and Development

The Draft EIS does clearly define the economic goals of the SAMP participants. Section 3.1.1.2 of the Draft EIS sets forth the needs and goals of Rancho Mission Viejo in relation to needs and goals identified by the County of Orange. The discussion in Section 3.1.1.2 includes the following two Rancho Mission Viejo goals: (a) "to provide an economically viable mix of residential commercial and other urban and natural open space lands capable of addressing the societal needs and goals of southern Orange County *as reflected in the plans and policies of the Orange County General Plan and the Orange County Projections (OCP)* (emphasis added)" and (b) "to have a development/open space plan approved that has the capability of providing the financial return necessary for the landowner to offset the level of risk inherent in long-term master plan development, the loss of investment opportunities, and the commitment of land and financial resources necessary to provide for the large-scale protection of many valuable resources, including required dedications for the SAMP." For instance, Rancho Mission Viejo will be making costly infrastructure investments in roads and bridges early in its development program that create an unacceptable level of risk if it is unable to carry out the development projects that will support such infrastructure in economic terms (see prior discussion of the SCRIP). Further, as noted in the Draft EIS, the OCP-2000 Projections provide for approximately 20,000 units in the RMV Planning Area. Therefore, a specific economic goal is defined as meeting OCP-2000 Projections. However, this economic goal is to be balanced by the environmental goals of the coordinated planning process including the County's balancing of environmental, societal and economic goals in acting upon The Ranch Plan GPA/ZC project (see Draft EIS Section 3.1.1.2).

Nowhere in the SAMP Draft EIS is the 14,000 dwelling unit total approved by the County of Orange for the RMV Planning Area as a part of The Ranch Plan GPA/ZC project stated as an absolute economic requirement defining a reasonable level of economic activities and development. As noted previously, the alternatives considered in the SAMP EIS and within the overall coordinated planning process range from 2,000 to 3,000 dwelling units for Alternative A-5, to 8,000 dwelling units for Alternative B-8, to 14,000 units for several of the "B" Alternatives, to 20,000 dwelling units for the County-formulated Alternative B-11 (the latter alternative providing housing units generally consistent with the OCP projections). The SAMP Draft EIS Alternatives Analysis recognizes both the balancing undertaken by the County of Orange in approving 6,000 fewer units than OCP-2000 in acting on The Ranch Plan GPA/ZC project and the importance of County housing goals in any assessment relating to a reasonable level of economic activities provided under the different "A" and "B" Alternatives. Furthermore, the Settlement Agreement entered into by the County of Orange, Rancho Mission Viejo, the Natural Resources Defense Council, the Endangered Habitats League, and others also recognizes the balance between a reasonable level of economic activities and development and the environmental goals of the coordinated planning

process. The Settlement Agreement as reflected by Alternative B-12 provides for 14,000 dwelling units while protecting key resource areas such as the majority of middle Chiquita and virtually the entirety of the San Mateo Watershed within the RMV Planning Area.

It is clear from a review of Draft EIS Section 6.5 that allowing reasonable economic activities is a screening criterion, *but this criterion is only one of several that are weighed together*. For instance, Section 6.5.2 states that Alternative A-5 "is considered economically feasible." However, Section 6.5.2.3 notes that Alternative A-5 does not meet County-stated goals regarding "the provision of needed housing both in terms of dwelling units and range of housing types. This analysis of Alternative A-5 then proceeds to consider shortcomings of this alternative with respect to the inability to assure long-term protection of resource areas, the absence of a regulatory basis for establishing a comprehensive Aquatic Resources Adaptive Management Program, and the inability to carry out comprehensive aquatic restoration. Therefore, even though Alternative A-5 would potentially meet some of Rancho Mission Viejo's economic goals, it was rejected for the failure to meet County societal goals and SAMP environmental goals.

Also, there is an impression that EPA is asking for an economic justification based on a certain level of return or profit. An overall project purpose that attempts to determine a precise economic threshold is meaningless for a project/process with a 25-year horizon that would involve periods of varying short- and long-term interest rates, economic outlooks, and government financial policies across multiple political terms on federal, state, and local levels. Rather the emphasis needs to be on certain physical or organizational objectives. Of course, the LEDPA needs to be financially attainable, but the emphasis is on purposes that serve a specific need that can be defined in terms of physical or organizational objectives such as addressing local housing needs.

Similarly, Section 6.5.3.2 of the Draft EIS reviews Alternative B-8 and notes not only the inability to provide housing units in the range indicated as acceptable by the County of Orange in approving The Ranch Plan GPA/ZC project, but also indicates that "given the limited land area available for housing development," Alternative B-8 "would likely not provide for as great a range of housing opportunities as the other "B" Alternatives. However, the review under "Allowing Reasonable Economic Activities and Development" is not by any means determinative. Section 6.5.3.2 goes on to review the "Economic Feasibility of Assuring the Long-Term Protection of Aquatic Resources" and "Long-Term Aquatic Resources Habitat Restoration and Management." In rejecting Alternative B-8, the Draft EIS analysis cites the failure of the alternative to meet reasonable economic activity goals as well as the SAMP aquatic resources protection, restoration, and management goals.

<u>Potential Development Re-Configuration or Intensification of Development</u>

EPA noted that they would like to have seen other alternatives including higher density alternatives and alternatives that avoid a particular tributary system within one of the Ranch Plan development planning areas. Having already examined 12 development alternatives involving establishment of the SAMP and 5 alternatives that do not involve establishment of a SAMP, the request of additional alternatives on the proposition that not enough alternatives have been examined is not considered to be reasonable. A full range of alternatives has been examined in light of the project purpose that considered the needs of local interests.

EPA also proposed consideration of other configurations of existing alternatives involving avoidance of an occasional tributary in some of the other development planning areas. EPA

is missing the context of the SAMP. The SAMP provides a different framework of analysis that looks at larger landscape elements as encapsulated by the SAMP Tenets. Many environmental issues are related to larger landscapes elements including lateral and longitudinal connectivity of riparian resources, maintenance of sediment equilibrium, provision of buffers, and protection of headwater areas over an extended time frame. As an example, Alternative 5 completely avoids Waters of the U.S. to create a financially viable project, but the alternative would doom many species dependent on movement corridors including the mountain lion and arroyo toad. Those larger landscape issues and obtaining assurances for their protection are more important than the nominal importance of avoidance of 0.5 acre of waters here or there. In consideration of the 3,222 acres of probable jurisdiction in the SAMP Study Area, including 857 acres of probable jurisdiction in the RMV Planning Area, it is important to look at larger landscape issues in order to have long-term protection of key ecosystem elements.

The 17 alternatives reviewed in the Draft EIS reflect a very broad range of development and open space configurations. The extent to which these different configurations attain the economic and environmental goals of the SAMP is thoroughly reviewed in the Draft EIS and it is difficult to imagine a reasonable development configuration that is not presented and reviewed in the 17 alternatives.

Density assumptions are based on site attributes and constraints and are uniform within development planning areas common to one or more alternatives. It is important to note that unlike areas with flat terrain, all of the planning areas involve substantial areas with slopes that reduce the extent of land that can be developed. The comment regarding examining intensification of development for any particular alternative would undermine the uniformity of assumptions for planning areas used across the different alternatives so that differences among the alternatives can be effectively evaluated.

B. Adequacy of Information Regarding Impacts to Waters Outside of the RMV Planning Area

EPA Comment

EPA's comment letter states:

> *…Alternative B-12…would result in permanent impacts to 55.46 acres of waters and temporary impacts to 36.89 acres of waters. Additional impacts to waters elsewhere in the larger SAMP area are anticipated, but have not been quantified. Based on our review of the Draft EIS and the SPN for the RMV Planning Area, we believe there is insufficient information to make a determination as to whether Alternative B-12 represents the LEDPA to meet the project purpose, as required under Guidelines (40 CFR 230.10(a), 230.12)..*

USACE Response

As stated in both the Special Notices and the Draft EIS, only the potential impacts associated with the permitting procedures for the proposed Rancho Mission Viejo long-term individual permit and the Regional General Permit (RGP) are assessed in the Draft EIS. The Draft EIS also states that impacts to aquatic resources outside the RMV Planning Area under the proposed RGP procedures have been determined to be very minor and comparable to the level of impacts which normally would be addressed by the existing Nationwide Permits program. With regard to future Letter of Permission (LOP) procedures

participants outside the RMV Planning Area, the Draft EIS makes clear that "the proposed LOPs would be subject to future NEPA review and evaluation under the Section 404(b)(1) Guidelines to determine the extent of impacts to riparian and wetland habitats" (see Draft EIS, Section 3.2.2.2). Further, the Draft EIS notes, "Given future NEPA and 404(b)(1) review and the provisions of the LOP procedures (including General Conditions and any future Special Conditions) future use of the LOPs would not likely have extensive impacts to higher quality aquatic resources" (see Draft EIS Section 3.2.2.2, see also Section 8.2.1). Therefore, all of the information required to assess the nature and extent of impacts that would result from the approval of the Rancho Mission Viejo and RGP permitting procedures (the only permitting procedures that would receive final authorization) is fully set forth in the Draft EIS.

C. Adequacy of the Information to Justify Removing Alternative B-8 from Further Consideration as the LEDPA

EPA Comment

> *In part, Alternative B-8 is considered to be economically infeasible because the acre ratio of 5:1 for open space-to-development is greater than the 2:1 ratio under other plan areas such as Newport Coast and Otay Ranch (DEIS, page 6-95). We note that the proposed Alternative B-12 has an open space-to-development ratio of 3:1, which is also greater than the two examples cited. Given these incremental differences, the threshold and justification for determining feasibility in terms of open space to development ratios is unclear.*

USACE Response

<u>Rationale for the Use of a 2:1 Dedication Ratio in Analyzing Alternative B-8</u>

In considering appropriate private property dedication ratios for assuring protection of Aquatic Resource Conservation Areas, the USACE examined the two large, single-owner landholdings in southern California that appear to be comparable in resource value and that were planned as part of large scale conservation planning programs (Newport Coast and Otay Ranch). These two large, private landholdings are comparable to the Rancho Mission Viejo lands with respect to significant resources and involvement in large-scale conservation planning programs (the Newport Coast plan resulted in the protection of all major riparian areas and Otay Mesa contains a broad spectrum of resources*)*. Conservation planning program approvals for the two comparable landholdings resulted in dedication ratios of approximately 2:1. As noted in the EPA comment, Rancho Mission Viejo's open space dedication commitments proposed under Alternative B-12 would result in an open space to development dedication ratio of approximately 3:1, very likely the highest dedication ratio for a landholding of this scale in southern California.

EPA's comment notes the higher ratio for Alternative B-12 open space dedication (3:1) than those of the comparable lands and believes there are no incremental differences between a dedication ratio of 3:1 and 5:1. We disagree. A 3:1 dedication ratio results in a 25 percent allowable development area, and a 5:1 dedication ratio results in a 16.7 percent allowable development area. Newport Coast and Otay Ranch projects had 33.3 percent allowable development areas. We believe any substantial deviation from what was performed in the recent past for similar planning efforts with similar issues would be deemed excessive and thus not reasonable. Whereas a 3:1 dedication ratio is slightly different than a 2:1 dedication ratio (decrease from a 33 percent development area to a 25 percent development area), it is not excessive compared to a 5:1 dedication ratio (decrease from a 33 percent development

area to a 16.7 percent development area). Thus, a 5:1 ratio is not deemed reasonable economic development in light of what has been accepted for similar projects in the recent past.

Furthermore, with respect to an open space protection program employing a 3:1 dedication ratio under Alternative B-12, it is reasonable for Rancho Mission Viejo, as a participant in the voluntary SAMP program, to express the acceptable level of dedication based on similar projects in the recent past in the context of Project Purposes. This is not any different for any entity asking to endure comparable costs as similarly positioned competitors within a region. This is consistent with the language in USACE Regulatory Guidance Letter 93-02 which states, "The determination of what constitutes an unreasonable expense should generally consider whether the projected cost is substantially greater that the costs normally associated with the particular type of project." For this situation, the cost is not in precise monetary units but in the acres of land that is required to be managed for long-term environmental conservation using the profits from 1 acre of development.

From the perspective of costs of managing preserved lands for ecosystem efforts as part of an open space dedication program, similar projects in the region have used a dedication ratio of 2:1 (1 acre of development funding the management of 2 acres of natural land). Rancho Mission Viejo has indicated that it is prepared to agree to a 3:1 dedication ratio to mitigate project impacts because of several factors vitally important to the attainment of its goals as stated in the Draft EIS: (a) the dedication program is the outcome of an unprecedented consensus Settlement Agreement with environmental groups; (b) the certainty provided through the combined effect of the NCCP/MSAA/HCP and SAMP programs, if approved, is extremely important to the applicant; (c) Alternative B-12 allows for 14,000 housing units, providing a wide range of housing opportunities addressing the applicant's need for an economic basis for the Habitat Reserve dedication program and substantially fulfilling the County's societal goals set forth in the Draft EIS; and (d) several of the features of Alternative B-12 respond to specific USACE concerns (e.g., the width of the San Juan Creek riparian wildlife movement corridor and the dimensions of the habitat linkage between the San Juan Creek and San Mateo Creek Watersheds). It should be noted that certainty of assuring permanent protection of aquatic resources is also a central goal of the SAMP.

In reviewing Alternatives B-8, B-10 Modified, and B-12, the USACE considered the ability of each of the alternatives to assure the permanent preservation of Aquatic Resources Conservation Areas in areas presently in private ownership that would be subject to the proposed RMV permitting procedures (including riparian areas and uplands areas outside USACE jurisdiction (see the discussion of "Aquatic Resources Preservation" in Draft EIS Section 1.1 and the discussions of long-term aquatic resources protection in Draft EIS Sections 6.5, 6.6, 8.9.2.3). Under NEPA, alternatives must be "reasonable." Under the Section 404(b)(1) Guidelines, alternatives must be "practicable" in relation to the Basic Project Purpose and as informed by the overall purposes of the permit applicants. Clearly, the feasibility of assuring permanent protection of aquatic resources through the establishment and long-term management of Aquatic Resources Conservation Areas is central to the goals of the SAMP as set forth in Chapter 3 of the Draft EIS.

The Draft EIS reviews the manner and extent to which the different alternatives (both the "A" and "B" Alternatives) have the ability to assure the permanent protection of Aquatic Resources Conservation Areas. For instance, Alternative B-10 Modified provides, through conditions adopted by the County of Orange in conjunction with The Ranch Plan GPA/ZC project, a phased dedication program that assures the protection of Aquatic Resource

Conservation Areas without requiring funds for public acquisition of designated Habitat Reserve lands. Through its proposed phased dedication program, Alternative B-12 achieves the same goal: protection of the Aquatic Resource Conservation Area without public funding. As noted, the issue of whether Alternative B-8 can assure the permanent protection of the Aquatic Resource Conservation Area is also reviewed in the Draft EIS. The conclusion was that such assurances would not be available under Alternative B-8.

In the case of Alternative B-8, the three planning areas identified for development have site characteristics reflecting past agricultural and resource extraction uses:

- Planning Area 1. Approximately 75 percent of this planning area has already been altered by agricultural activities (see Draft EIS Figure 4.1.2-7a).

- Planning Area 3. Approximately 40 percent of this planning area has been altered by agricultural and nursery activities (see Draft EIS Figure 4.1.2-7c).

- Planning Area 5. Approximately 40 to 50 percent of this planning area has been altered by Silica mining operations, including a large tailings pond (see Draft EIS Figure 4.1.2-7e).

Given the extent to which each of the above three planning areas designated under Alternative B-8 has been altered by past and present agricultural and resource extraction activities, it is difficult to find any basis for a dedication area in excess of the 2:1 dedication ratio for the comparable areas reviewed in the Draft EIS. In view of the degree of past alteration of Planning Areas 1, 3, and 5, it is exceedingly difficult to find a basis under "rough proportionality" legal concepts that would support a 3:1 dedication ratio for the lands impacted under Alternative B-12 much less the 5:1 dedication ratio that would be required under Alternative B-8, absent public acquisition funding. Accordingly, the Draft EIS use of a 2:1 dedication ratio is considered both reasonable and rationally related to existing site conditions and comparable large-scale plans.

<u>The Extent of Resource Protection that Could be Assured Under Alternative B-8 for Two Dedication Ratios</u>

For illustration purposes, using a 2:1 dedication ratio and a 3:1 dedication ratio, the potential dedication areas in relation to the 3,680 acres of development proposed under Alternative B-8 would be follows:

2:1 Dedication Ratio; Total dedication area = 7,360 acres

3:1 Dedication Ratio: Total dedication area = 11,040 acres

Under a 2:1 Dedication Ratio, 11,775 acres (22,815 acres [RMV Planning Area] – 7,360 acres [illustrative dedication] – 3,680 acres [development]) of Rancho Mission Viejo lands would not be committed to permanent habitat protection and would need to be acquired through the use of public funds. As noted in the Draft EIS, the lack of available identifiable public funding for land acquisition raises a significant question as to whether Alternative B-8 would be a reasonable alternative under NEPA and "practicable" under the Section 404(b)(1) Guidelines.

The 3:1 dedication ratio is also calculated above in order to present a hypothetical dedication program consistent with the maximum dedication ratio identified to date (the 3:1

dedication ratio under Alternative B-12) although the 3:1 ratio lacks a reasonable basis under the altered site conditions of much of Alternative B-8 development areas or the special factors cited by the permit applicant under Alternative B-12. Using a 3:1 dedication ratio for Alternative B-8, 8,095 acres (22,815 acres [RMV Planning Area] – 11,040 acres [illustrative dedication] – 3,680 acres [development]) of Rancho Mission Viejo lands would not be committed to permanent habitat protection. If these lands were to be included in the Habitat Reserve, they would need to be acquired through the use of public funds, thus heightening the question of whether Alternative B-8 would be practicable.

In addition to the question of the *size* of the potential dedication area under Alternative B-8, the *location* of the smaller dedication area in relation to the goals of the SAMP is important under the NEPA alternatives review in Chapter 6 of the Draft EIS. Dedication areas would generally be associated with development areas in a geographic sense. Under Alternative B-8 and a 2:1 dedication ratio open space program, the permanent protection lands would likely be in the San Juan Creek Watershed in order to provide a mitigation function proximate to areas where development impacts would occur, leaving a portion of the San Juan Creek Watershed and all of the San Mateo Watershed *outside* the Aquatic Resource Conservation Area within the RMV Planning Area. Under a 3:1 dedication ratio, dedication lands would again likely focus on the San Juan Creek Watershed with the dedication area also including only a small area for Aquatic Resource Conservation Area lands (approximately 1,046 acres) in the San Mateo Watershed. Importantly, even using the highly questionable 3:1 Dedication Ratio, the Alternative B-8 dedication program would leave 8,095 acres of the RMV Planning Area that is within the San Mateo Creek Watershed *outside* the protected Aquatic Resource Conservation Area. In relation to Orange County land values, public acquisition of such extensive acreage would be prohibitively costly (no funding sources have been identified).

<u>Significance of Resource Areas Where Protection Could Not be Assured through a Reasonable Dedication Program</u>

The San Mateo Creek Watershed portion of the RMV Planning Area is highly regarded by the wildlife agencies and environmental organizations for its long-term resource values and importance in maintaining both subregional and regional connectivity among remaining large blocks of natural lands within and adjacent to the SAMP Study Area (e.g., see the Draft EIS analyses of potential significant impacts of Alternative B-10 Modified on pages 8-25 to 8-26). Alternative B-8 or any other alternative that does not achieve protection of the RMV Planning Area portion of the San Mateo Creek Watershed would be considered less protective and less effective in contributing to long-term species and aquatic resource conservation goals set forth in the Draft EIS. Considering the impediments to acquisition of undedicated lands (both lack of available funding and lack of landowner commitment), the portions of the San Mateo Creek Watershed that would not be dedicated under Alternative B-8 (using either of the two dedication ratio formulas) would be potentially available for development purposes. Alternative A-5 (see Draft EIS Figure 5-1) provides an illustration of areas that would be potentially available for development without a USACE permit and no federally Endangered Specifies Act impacts.

<u>Conclusion Regarding Permanent Resource Protection</u>

Given the lack of rough proportionality in a 2:1 dedication ratio in the context of prior alteration of lands in the three Alternative B-8 development planning areas and given the unprotected acreage even under the 3:1 dedication ratio, Alternative B-8 would not be capable of implementing the Aquatic Resources Preservation element. As a consequence,

Alternative B-8 would not provide for one of the three essential elements of an Aquatic Resources Conservation Program that is central to the basic purpose of the SAMP. For these reasons, as reviewed in the Draft EIS in Section 6.5.3.2, Alternative B-8 was determined incapable of achieving the aquatic resources protection goals of the SAMP on the RMV Planning Area.

D. Mitigation Considerations in Relation to Sequencing Requirements

EPA Comment

According to the EPA comment letter:

> *The DEIS…further asserts that Alternative B-8 does not meet the overall project purpose of establishing an Aquatic Resource Conservation Program (ARCP). We do not believe that insufficient mitigation funding should be used as a basis to justify eliminating Alternative B-8, as this does not follow the mitigation sequencing guidelines set forward in the 1990 CWA Memorandum of Agreement Between the Corps and EPA. Furthermore, it seems that Alternative B-8 could include a conservation easement component similar to the phased approach of establishing conservation easements under Alternative B-12.*

USACE Response

Alternative B-8 was eliminated because it did not fulfill project purposes of reasonable economic development. First, with respect to not fulfilling reasonable economic development, Alternative B-8 would represent a drastic decrease from the original proposed project. Rancho Mission Viejo and the County's balancing process resulted in the approval of a County General Plan amendment and zone change authorizing 14,000 housing units (6,000 fewer units than in the OCP Year 2025 projection). Alternative B-8 would result in 8,400 housing units. This substantial reduction from the goals to accommodate an ever-expanding population is unreasonable. Second, with respect to the costs associated with long-term management, Alternative B-8 would result in 50 percent less development (33 percent allowable development to 16.7 percent allowable development) compared to similar large-area, single land owner planning efforts with higher per acre management costs if all the preserved lands were expected to be managed for ecological sustainability.

Alternative B-8 was also eliminated because it did not fulfill the purpose of establishing an Aquatic Resources Conservation Program for all of the areas that would be subject to the LOP permitting procedures proposed to be established through the proposed RMV long-term individual permit. Alternative B-8 does avoid more aquatic resource areas than Alternative B-10 Modified and Alternative B-12. *However, avoiding aquatic resource areas under a particular alternative does not equate with assuring the long-term protection of the aquatic resources in question.* This point was discussed in the prior response relating to dedication ratios and rough proportionality considerations as related to required dedications of land.

The EPA comment does not place the avoidance aspect of sequencing within the framework of the broad ecosystem-based planning considerations of the SAMP as set forth in the Draft EIS. The EPA comment presents Alternative B-8 as one that could meet the SAMP aquatic resources conservation goals. However, the discussion of dedication ratios under the prior EPA comment topic makes clear that, with private property dedications based on rough proportionality standards, substantial portions of the San Mateo Watershed would be left

without permanent protection and potentially available for future development. Under the 2:1 dedication ratio, the entire San Mateo Creek Watershed within the RMV Planning Area would not receive long-term protection and a portion of the San Juan Creek Watershed also would not be committed to long-term protection. Even under the 3:1 dedication ratio, approximately 85 percent (about 8,000 acres) of the San Mateo Watershed would not receive long-term protection.

According to Section 3.1 of the Draft EIS:

> *Through the avoidance of priority aquatic resources using local restrictions on undesirable activities and the requirements for compensatory mitigation, the objective of the SAMP is to accommodate conservation efforts within the watershed in a coordinated, comprehensive fashion. A goal of this process it to facilitate the establishment of a comprehensive reserve and adaptive management program in coordination with the Southern Subregion Natural Communities Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (NCCP/MSAA/HCP) that would provide for the protection of aquatic resources and upland natural resources.*

As noted in the prior response, all or very substantial portions of the San Mateo Watershed within the RMV Planning Area would not be assured permanent protection under Alternative B-8. As reviewed in the Draft EIS Section 6.5.2.2 and as depicted in Figure 5-1, Alternative A-5 (with substantial areas identified for development under the rigorous jurisdictional avoidance criteria specified for that alternative) presents a potential development scenario for these unprotected resource areas in the San Mateo Watershed.

In summary, the sequencing provision was not violated. Alternative B-8 was eliminated primarily because it did not meet the overall project purpose of reasonable economic development due to the drastic decrease in housing units not addressing the needs of the County of Orange and the Rancho Mission Viejo. Alternative B-8 was eliminated secondarily because it did not meet the overall project purpose of providing for a viable Aquatic Resource Conservation Program for the entire RMV Planning Area.

E. Could Alternative B-8 Generate Adequate Funding to Carry Out the Proposed Aquatic Resources Adaptive Management and Monitoring Program?

EPA Comment

According to the EPA comment letter:

> *….It appears that the $700,000 from RMV's permitted Ladera Planned Community project and the $700,000 of Santa Margarita Water District funds could apply to Alternative B-8 for short-term implementation. The proposed long-term funding mechanism, based on property owner assessments, could still generate substantial annual funding at build-out under Alternative B-8. The FEIS should evaluate if some type of effective Aquatic Resource Conservation Program would be implemented under this reduced funding scenario.*

USACE Response

It should be noted that the issue of funding to carry out the proposed Aquatic Resources Adaptive Management Program is important to fulfilling the SAMP Project Purpose in that

management funding affects two of the three components of the Aquatic Resources Conservation Program: 1) Aquatic Resources Restoration and 2) Aquatic Resources Management. The EPA comment involves both of these components of the Aquatic Resources Conservation Program.

With regard to short-term funding, the two funding sources noted in the comment are funds that would be provided by the permit applicants. It cannot be assumed that such funds would be available because funding would likely be forthcoming only if there is an approved project that meets the goals of the permit applicants as set forth in the Draft EIS or if funding could be justified through mitigation requirements. The ability of agencies to require mitigation funding depends on identifying impacts that would justify the regulatory requirement for a specific level of management and restoration funding, in the context of a practicable alternative. Given the altered conditions of the three Alternative B-8 development areas previously reviewed and the lesser degree of allowed economic activities, it is highly unlikely that the short-term management funding proposed for Alternative B-12 could be justified on a regulatory basis under Alternative B-8 (e.g., note the absence of significant aquatic resources within Planning Area 1, the first development area to be initiated in the short term).

With regard to long-term management funding, the Draft EIS discusses management funding considerations extensively in relation to the EPA comment as follows:

> *The SAMP Tenets include restoration and management goals. Because implementation of the B-8 Alternative would result in less development than any of the other "B" Alternatives, the restoration and management components of an Aquatic Resources Conservation Program for the B-8 Alternative would probably not be as extensive from a monitoring perspective. However, aquatic resources are currently impacted by invasive species that require comprehensive, long-term control measures (e.g., giant reed infestation emanating from upstream open space areas). Aquatic habitat conditions in areas such as Gobernadora Creek that provide habitat for listed aquatic species are currently being impacted by urban runoff and stormwater flows from previously urbanized areas and would benefit from enhancement/restoration actions in furtherance of the SAMP purposes. Such considerations exist independently of the level of development proposed under particular "B" Alternatives. Therefore, while some long-term monitoring costs under the B-8 Alternative are expected to be less than for the other "B" Alternatives, other costs related to management (e.g., monitoring and management for invasive plant and animal species) are expected to be as high or higher than for the other "B" Alternatives because of the larger proposed habitat protection areas requiring oversight. While mitigation required under the Section 404(b)(1) Guidelines for 3,680 acres of development could address some of these management/restoration needs of aquatic resources, it is unlikely that mitigation funding from such limited development areas could address all existing and future needs of aquatic resources in an approximately 19,000-acre open space area*.

Theoretically, funding for management of an aquatic ecosystem conservation program can come from any number of sources such as compensatory mitigation required with issued permits, restoration and ecosystem management grants, or as part of local agency budgets. For the SAMP Study Area, neither governmental nor non-governmental agencies are able to donate sufficient funds for management of the aquatic ecosystem. Governmental agencies, such as the County of Orange, do not have the financial standing to contribute funds for managing aquatic ecosystem restoration and preservation projects for an entire watershed.

Another source of funds may be restoration and ecosystem management grants. Even though there are select projects having received funds or are seeking funds for ecosystem restoration and management (e.g., Upper Newport Bay), the whole effort is piecemeal, not comprehensive, or too small to result in development and implementation of a comprehensive, adaptively managed aquatic resource conservation plan. Ultimately, there are no guarantees that there would be sufficient amount of grants to allow for the development of a comprehensive aquatic resources conservation plan within the RMV Planning Area portion of the SAMP Study Area, which is by far the vast majority of presently private landholdings within the SAMP Study Area, particularly when there are so many ecosystem restoration management organizations throughout the state competing for the same pool of money (e.g., Ahmanson Ranch or Playa Del Rey). Having considered these other sources, the most likely source of monies to develop and implement a comprehensive aquatic resource conservation plan would arise out of permit requirements for those projects authorized to impact aquatic resources. Recipients of permits can be required to contribute funds towards management of these systems at a rate commensurate with the magnitude of impact to the aquatic ecosystem.

Opportunities exist for providing recovery actions for aquatic species such as the arroyo toad and least Bell's vireo in the San Juan Creek Watershed through habitat restoration and invasive species control while actions to address existing areas of erosion in clay soils within the San Mateo Creek Watershed would benefit the arroyo toad. With considerably fewer residential units and opportunities for other types of development, Alternative B-8 would have reduced management funding capability when compared to the other alternatives. As a consequence, it is likely that Alternative B-8 would not implement several significant aspects of long-term monitoring, restoration, and adaptive management program essential for maintaining aquatic resource functions and values over the long term.

The importance of the potential inability to implement an effective AMP within the subregion is underscored by the comments provided by Drs. Noon and Murphy in their written comments to the County.[3] Noon and Murphy state that:

> *…common threats in southern California such as wildfire, invasive species, and extreme weather events have emphasized that reserve management may be even more important to the success of conservation than reserve extent. Coping with environmental change, both natural and human-caused, is the single greatest challenge facing conservation planners in the new millennium – one that we believe can be met only by using adaptive management* (page 1, October 2004 letter)" (Source: Draft EIS, pages 6-96 to 6-97)

The discussion from the Draft EIS quoted above provides a thorough assessment of potential Alternative B-8 funding for the Aquatic Resources Adaptive Management and Monitoring Program in comparison with other alternatives. Clearly, as stated in the Draft EIS, Alternative B-8 could generate management funds. However, funding for management is projected to be based on homeowner transfer fees and homeowners' assessments and thus the amount of available funding varies directly with the number of housing units generating the funding. As noted in the Draft EIS, although potential secondary effects of development would be less due to less overall development, invasive species issues presently exist and will continue into the future because future threats associated with invasive species are generally independent of the presence of development (e.g., under County of Orange Ranch

[3] Professor Noon is a recognized expert on the subject of monitoring and adaptive management and Professor Murphy was the Chairman of the Scientific Review panel that prepared the Conservation Guidelines for the Southern California NCCP Program).

Plan Final EIR 589's mitigation measures for the Ranch Plan project, new development projects prohibit the planting of invasive plant species). A larger area would have to be monitored for invasive species with a smaller revenue basis for management funding, including funds required for costly invasive species controls such as Arundo in San Juan Creek (originating in areas with no development), control of bullfrog populations presently impacting the arroyo toad, pampas grass, artichoke thistle, tamarisk, etc. Funds would also likely not be available for the Gobernadora Creek restoration program and other restoration measures identified in the SAMP. Thus, important goals of the Aquatic Resource Conservation Program very likely could not be achieved, at least in substantial part. Given existing degraded conditions within the San Juan Creek Watershed severely impacting riparian habitat and aquatic species such as the arroyo toad and invasive species found in the San Mateo Creek Watershed, comparative management funding under the different "B" Alternatives is clearly relevant to two of the three major components of the Aquatic Resources Conservation Program presented in the Draft EIS as a major goal of the SAMP.

F. Rationale for Rejecting Alternative B-8

EPA Comment

The EPA comment letter states:

> *The FEIS should include a clear demonstration of why Alternative B-8, a less environmentally damaging alternative, does not meet the overall project purpose or is impracticable in terms of costs, logistics, or existing technology. The FEIS should address the specific issues raised in our comments regarding the economic feasibility and long-term management of aquatic resources under Alternative B-8.*

USACE Response

The prior responses contained in this document cite specific sections of the Draft EIS that address each of the concerns raised in the above comments regarding Alternative B-8.

G. Additional Avoidance of Waters of the U.S. in Planning Areas 2, 3, 4, 6, and 8

EPA Comments

EPA's comment letter states that the Final EIS should evaluate the practicability of an alternative that incorporates additional avoidance of intact waters in the following development areas: Planning Areas 2, 3, 4, 6, and 8.

USACE Response

At the outset, it is extremely important to understand that the SAMP conservation strategy focus is to assure that all of the mainstem streamcourses and associated riparian habitats on the RMV Planning Area are avoided (except for limited, defined infrastructure impacts with required mitigation) and are included in the proposed Aquatic Resource Conservation Areas (see Figure 8-10 of the SAMP Draft EIS). In furtherance of the goal of protection significant aquatic resources, development areas have been concentrated in upland areas away from the mainstem streamcourses. As is shown on Figure 8-1 of the Draft EIS, all of the mainstem streamcourses and associated riparian habitats have been protected (limited impacts resulting from infrastructure impacts will be mitigated to assure no net loss in these

areas) and thus the major aquatic resources avoidance goal of the SAMP has been attained.

A second major avoidance goal of the SAMP is to avoid impacts on sources of coarse sediments and terrains characterized by sandy soils (see review of consistency with the Baseline Conditions Watershed Planning Principles in Section 6.3.2 of the Draft EIS) in order to assure protection of hydrologic and geomorphic conditions important to the long-term protection of natural processes vital to the aquatic ecosystem. Sources of coarse sediment in the Verdugo Sub-basin, Gabino Canyon, and La Paz Canyon have all been avoided. Sandy soils in the Chiquita Sub-basin have also been substantially avoided. In general development has been concentrated in areas with hard pan soils and clayey soils that do not generate sediments beneficial to hydrologic/geomorphic processes (resulting in some cases in impacts to non-wetland Waters of the U.S.).

EPA requested the consideration of additional avoidance of Waters of the U.S. within certain planning areas:

<u>Planning Area 2: The Unnamed Tributary along the Southeast Border of the Development Area</u>

***Response*:** Avoidance/minimization measures within Chiquita Canyon were focused on avoidance of mainstem Chiquita Creek which, according to Glenn Lukos Associates (GLA) (2004), supports 10.88 acres of wetlands and 1.25 acres of non-wetland waters within the area of potential development. The tributary referenced in the comment is described by GLA as 0.92 acre of non-wetlands waters and does not support wetlands. Given the extent of aquatic resource protection achieved under Alternative B-12 in both the Chiquita and Gobernadora Sub-basins, the avoidance of non-wetlands waters has been achieved consistent with the SAMP Tenets and the overall purpose of the SAMP reviewed in the Draft EIS.

<u>Planning Area 3: Additional Avoidance of One or More of the Five Tributary Systems in the Development Area</u>

***Response*:** Avoidance/minimization measures focused on pulling development away from Gobernadora Creek by eliminating development areas in non-USACE jurisdictional lowlands areas allowed under Alternative B-5 and Alternative B-6, providing setbacks from Bell Canyon in areas that were proposed for development by some of the “B” Alternatives and assuring a 400-meter-wide movement corridor along San Juan Creek between Planning Areas 3 and 4. Given the extent of aquatic resource protection achieved under Alternative B-12, provisions for permanent open space protection on 74 percent of the RMV Planning Area and the fact that the Planning Area 3 development area is common to all of the “B” Alternatives, avoidance of non-wetlands waters has been achieved consistent with the SAMP Tenets and the overall purpose of the SAMP reviewed in the Draft EIS.

<u>Planning Area 4: Avoidance of the Tributary System to Lower Vertuga [sic – Verdugo] Canyon</u>

***Response*:** As indicated in the Draft EIS, a final development configuration has not been determined for Planning Area 4 (the impact analysis is overstated for the reasons set forth in the Draft EIS). The overall size of Planning Area 4 has been reduced from that shown for Alternative B-9 and Alternative B-10 Modified as a result of consultation with the USACE and the Settlement Agreement. As reviewed in the Draft EIS, all significant sources of

coarse sediment in Verdugo Canyon are avoided under Alternative B-12 consistent with the SAMP Tenets and the Watershed Planning Principles reviewed in the Draft EIS.

Planning Area 6: Avoid All Direct and Indirect Impacts of Proposed Orchard Development to Christianito [sic. Cristianitos] Creek

***Response*:** As described in the Draft EIS, the potential development of orchards in Cristianitos Canyon is limited to 50 acres of the total 431-acre planning area. Within the 431-acre area shown on Figure 5-13 of the Draft EIS, certain limitations are assured as follows:

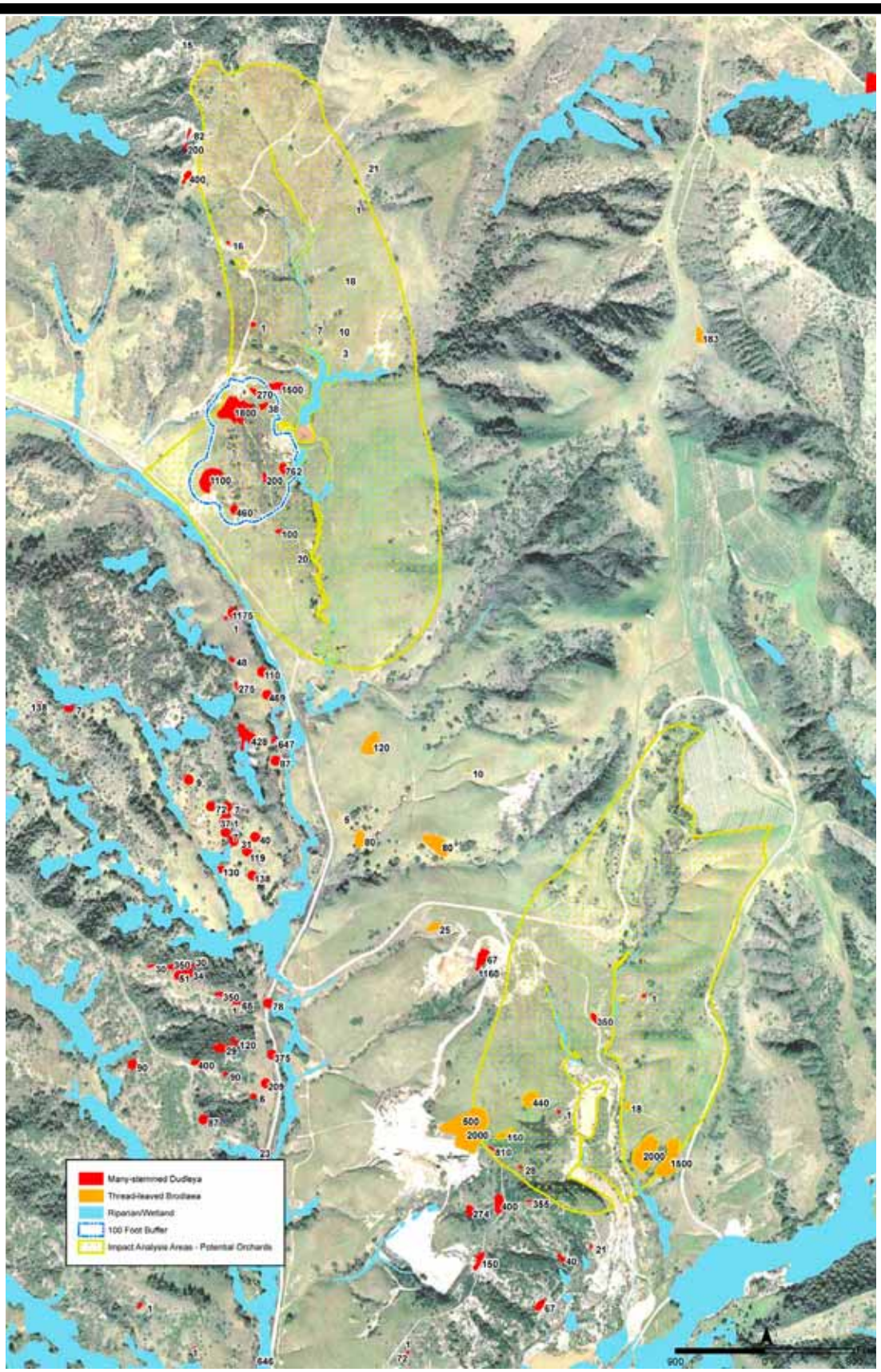
- Avoidance of USACE jurisdictional wetlands
- Avoidance of certain specific thread-leaved brodiaea populations
- Avoidance of certain specific many-stemmed dudleya populations; and
- Avoidance of western spadefoot toad and southwestern pond turtle foraging habitat

To illustrate these avoidance measures at a finer scale than shown in Figure 5-13, Figure 1 is provided.

Planning Area 8: Additional Avoidance of the Blind Canyon Watershed and Intact Headwaters of Talega Creek

***Response*:** The headwaters of Talega are outside the SAMP Study Area and outside of the RMV Planning Area and are generally within the San Mateo Wilderness and U.S. Marine Corps Camp Pendleton. As indicated in the Draft EIS, a final development configuration has not been determined for Planning Area 8 (the impact analysis is overstated for the reasons set forth in the Draft EIS). Although the Draft EIS impact analysis assumes full impacts to Blind Canyon, further planning would occur under the County of Orange regulatory program to determine where final development should be sited. It should be noted that only 500 acres out of a total of about 1,294 acres within Planning Area 8 can be developed and a substantial portion of the planning area has been altered by an existing industrial use. The Draft EIS further notes that the final design of these 500 acres would be influenced by the outcome of studies regarding arroyo toad movement from Talega Creek. A Special Condition is included in the Special Public Notice to carry out this requirement (see Special Condition I.D.8).

EPA's suggestions are unreasonable in light of what has been committed to preservation. The 55.46 acres of permanent impacts to field-delineated Waters of the U.S. within the RMV Planning Area under an overstated impact scenario represents impacts to only 6 percent of the total within the RMV Planning Area. For the EPA to ask for additional considerations that may amount to 0.5 acre of avoidance here or there is not reasonable. Given that substantial impacts have been avoided with appropriate setbacks in reference to the larger landscape issues, the avoidance of a small amount of Waters of the U.S. suggested by the EPA is not warranted. Although EPA believes the Section 404(b)(1) Guidelines may not be fulfilled for this SAMP, the USACE believes all regulations need to be applied using a reasonable person standard (i.e., how would a reasonable environmental professional apply those standards). If that were the case, the USACE believes most reasonable environmental professionals would accept impacts to only 6 percent of the total Waters of the U.S. on the project site.



Many-stemmed Dudleya and Thread-leaved Brodiaea Avoidance in Planning 6 and 7 Potential Orchards

Not to Scale

San Juan Creek and Western San Mateo Creek Watersheds SAMP EIS

Figure: 1

Source: Dudek, 2006

Date: Dec. 2006

H. Low Impact Development Strategies

EPA Comment

We recommend requiring through the federal permit the implementation of Low Impact Development Strategies (LIDS) and other sustainable development measures within the areas targeted for development. Such measures can reduce the adverse impacts of development both on-site and regionally at the watershed-scale.

USACE Response

The USACE has taken steps to reduce adverse impacts associated with the development of Alternative B-12 through: 1) the overall design of the alternative which protects all mainstem creeks with the RMV Planning Area in addition to other significant resource areas such as Chiquita Canyon and the San Mateo Watershed; 2) minimization measures contained in the Special Conditions set forth in the Special Public Notice, including the Water Quality Management Plan; and 3) the mitigation program contained in the Special Public Notice and Draft EIS Appendix F2.

The EPA recommends implementation of low impact development strategies and other sustainable development measures. The USACE considers its already existing minimization measures as fully adequate. Hydrology would be controlled to match flow duration levels of recurring rain events, water quality would be maintained by dual combination or single water quality basins that do not count towards compensatory mitigation, California toxic rule standards would not be exceeded, indirect effects to numerous aquatic species such as the unarmored three-spined stickleback and the arroyo toad would be avoided, and other measures would be implemented. If EPA has specific measures suggest, the USACE will take these into consideration.

I. Mitigation Opportunities for Alternatives outside the RMV Planning Area

EPA Comment

The FEIS should also document any mitigation opportunities or alternatives outside of the RMV Planning Area, in addition to the alternatives listed in Chapter 6, to broaden the scope of the alternatives analysis.

USACE Response

As noted in the Draft EIS, the USACE prepared Appendix F-1 to establish the template for restoration within the entire SAMP Study Area. Appendix F-2 is specific to the RMV Planning Area. Within the actual public notice for the LOP procedures outside of the RMV Planning Area, Item #4 under the General Mitigation Policies references the “Riparian Ecosystem Restoration Plan for San Juan Creek and San Mateo Creek Watershed: Site Selection and General Design Criteria” by U.S. Army Corps Engineer Research Development Center (ERDC) dated 2005,” which was provided as Appendix F-1 to the Draft EIS. The ERDC report identifies and associated GIS layers identifies potential restoration sites throughout the watershed based on a functional approach. The report also outlines the mechanism for determining the increase in wetland functional units to offset the loss of functional units due to a permit action.

Regarding off-site alternatives outside of the RMV Planning Area but within the SAMP Study Area, it should be noted that there are no other potentially developable properties that could be considered as an alternative site for the 22,815-acre Ranch Plan project. The only other large-scale developable areas in the SAMP Study Area are located in the Foothill/Trabuco Specific Plan area in unincorporated Orange County. However, the portion of the Specific Plan area in the SAMP Study Area is only 3,666 acres, considerably smaller than the Ranch Plan area (and considerably smaller than the acreage proposed for development under Alternative B-12). Furthermore, portions of the Foothill/Trabuco Specific Plan area are already proposed for development by other landowners pursuant to the County-approved Specific Plan. These other landowners are not participants in either the SAMP or the NCCP/MSAA/HCP planning processes.

Regarding off-site alternatives outside of the SAMP Study Area, Section 5.2 of the Draft EIS notes the following:

> *The SAMP is a watershed (landscape-level) approach to Section 404 permitting within the San Juan Creek and Western San Mateo Creek Watersheds consistent with the requirements of federal law. Federal waters, including wetlands, have been identified in the watershed and, to the extent feasible, have been avoided. Unavoidable impacts would be minimized and fully mitigated under the proposed permitting procedures resulting from the SAMP process. While several on-site alternatives have been identified, there are no off-site alternatives to the SAMP Study Area that could accomplish the watershed-scale economic development and aquatic resource protection goals of the SAMP for the San Juan Creek and Western San Mateo Creek Watersheds in Orange County. The SAMP process is based on location-specific planning criteria and analysis, and its goals cannot be accomplished in another watershed(s).* (Source: Draft EIS at page 5-2)

Response 3

The evaluation of cumulative impacts is addressed in the SAMP Draft EIS, most specifically in Chapter 8 with respect to potential cumulative impacts to aquatic resources, and in Chapter 9 with respect to all other potential cumulative impacts (see Draft EIS Figure 9-1). Because Rancho Mission Viejo owns the vast majority of private lands within the SAMP Study Area and the only other area of substantial private lands (i.e., the Foothill/Trabuco Specific Plan area) is treated as a constant under the Chapter 5 and Chapter 6 alternatives analyses of the Draft EIS, cumulative impacts are reviewed in relation to the different configurations of development and open space under the “A” and “B” Alternatives. Cumulative impacts are also addressed in The Ranch Plan Final EIR which is incorporated by reference in the SAMP EIS. As noted by the commentor and as reflected in the SAMP EIS’ cumulative impact analysis, the evaluation of cumulative impacts needs to consider the potential impacts on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (Source: 40 CFR 1508.7)

The SAMP EIS identifies and provides a summary of the known or anticipated environmental impacts associated with proposed or reasonably foreseeable future projects in the cumulative study area. However, it is important to note that while the proposed SAMP establishes a regulatory framework for implementing the Clean Water Act, the USACE does not have land use authority within the SAMP Study Area. Although impacts on resources other than Waters of

the U.S. are considered when determining the LEDPA, the regulation of other resources is outside of USACE's jurisdiction.

To ensure the evaluation of cumulative impacts is comprehensive, the SAMP EIS cumulative impact analysis considers past, present, and future actions (or projects). The detailed analysis of past actions was not performed because past effects are incorporated into the baseline and because past actions do not need to be catalogued in accordance with current federal guidance. With respect to past actions or projects, the EIS recognizes that existing conditions form the "environmental baseline" for project-specific and cumulative impact identification and the proposed project was thereby analyzed in relation to this baseline. The landscape-level functional assessment in Appendix E2 of the EIS accounts for the vast majority of historical impacts to the riparian ecosystem. These past individual actions or projects comprise the background/environmental baseline upon which future actions are assessed. The landscape-level functional assessment documents the historical aggregate impacts without identifying the individual causes of those actions.

In addition, the Council of Environmental Quality (CEQ) guidance does not require the listing and analysis of past actions. A memorandum dated June 24, 2005 by James L. Connaughton, Chairman of the CEQ, states, "The CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions." The guidance found that such listing of past activities do not necessarily inform decision making.

With respect to present and reasonably foreseeable future projects and as addressed in the SAMP Draft EIS, the emphasis of the cumulative impact analysis focuses on the contribution that the Ranch Plan Proposed Project and the Santa Margarita Water District (SMWD) Proposed Project would have based on authorization under the SAMP for discharge or fill in Waters of the U.S., combined with other known projects or reasonably foreseeable General Plan growth (anticipated future development in the adopted General Plans for the local jurisdictions within the SAMP Study Area). The RMV Planning Area is the largest privately held undeveloped property. Project mitigation has been presented to mitigate the project's contribution to impacts within a cumulative setting.

Future projects would be required to assess their project-specific impacts, as well as cumulative impacts associated with their individual actions. The range of projects considered in the SAMP EIS recognizes projects that may not involve the USACE but may still contribute to cumulative impacts in non-wetland areas.

For the General Plan-level analysis, this evaluation looks at the land use designations outside the RMV Planning Area. While it is recognized that there will be numerous future small-scale projects, the majority of the potential future developable acres are located in the City of San Juan Capistrano and the Foothill/Trabuco Specific Plan area of unincorporated Orange County. For example and as addressed in the SAMP Draft EIS, the Foothill/Trabuco Specific Plan area contains approximately 3,666 acres of undeveloped area within the SAMP Study Area.

Specific projects that have been considered for potential cumulative impacts were identified through several sources. In September and October 2003, as part of The Ranch Plan project (the RMV Planning Area) CEQA evaluation, multiple sources were used to identify projects that were being evaluated by agencies within south Orange County. This information was then sent to the jurisdictions with a request for confirmation that the list was comprehensive or, if it was found not to be comprehensive, with a request to identify projects that had not been included on the list. As a part of the SAMP EIS, the status of all prior cumulative projects were validated and contact was made with the additional jurisdictions not located within the RMV Planning Area but

are within the SAMP Study Area. At the same time and as noted in the SAMP EIS, not all of the cumulative projects identified for The Ranch Plan EIR are applicable to the SAMP cumulative study area because of: (1) their status (e.g., the distance of the project from the SAMP Study Area boundary; (2) the project is no longer being pursued; (3) the limited scale of the project or the limited nature of the project would not contribute to cumulative impacts; and (4) it has been completed and is now a part of the environmental baseline (past actions or projects) with respect to cumulative impacts.

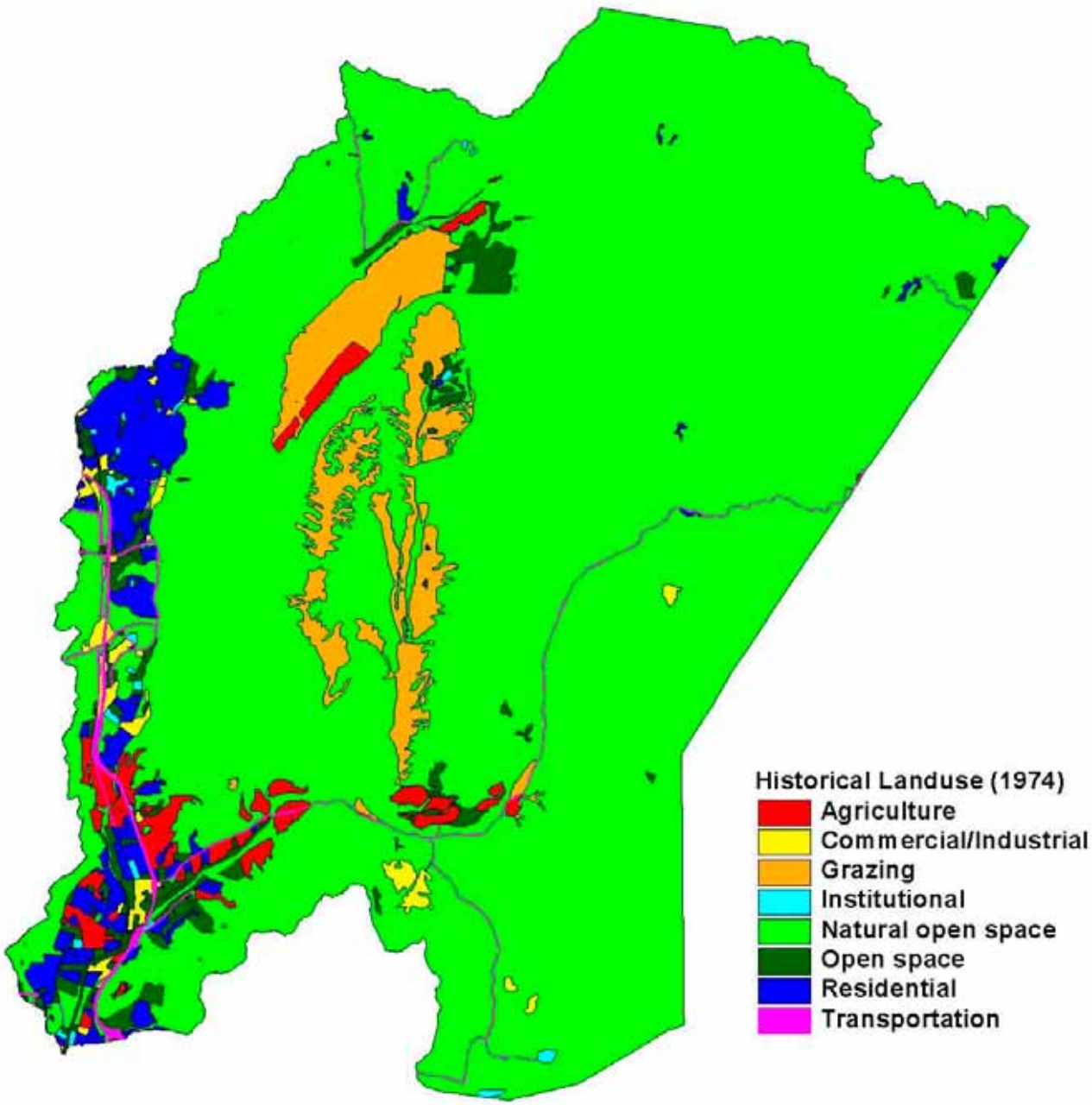
With respect to the request for additional information regarding SOCTIIP, the USACE recognizes that on February 23, 2006, the Foothill/Eastern Transportation Corridor Agency (F/ETCA) Board of Directors took action to certify the final Subsequent Environmental Impact Report (SEIR) component of the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) EIS/SEIR and adopt a locally preferred alternative, the A7-FEC-M alignment. The A7-FEC-M is also the alignment for which the USACE has issued a preliminary LEDPA (Least Environmentally Damaging Practicable Alternative) determination (November 2005) on the basis of the reduced impacts to wetlands anticipated to result from implementation of this alternative. The USACE acknowledges the selection of the A7-FEC-M Alternative as the Preliminary LEDPA. However, any final selection of a permittable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD).

The SAMP Draft EIS notes that with respect to SOCTIIP, no net unmitigated impacts would occur on aquatic resources through Section 404 compliance, sources of coarse sediments would be protected, and existing stormwater volumes would be maintained and potentially increased (to the benefit of downstream aquatic habitats). The selection of the A7-FEC-M alignment as the locally preferred alternative and the preliminary LEDPA would reduce Cristianitos sub-basin conflicts, particularly those related to coastal sage scrub/valley grassland restoration, the alkali wetlands, and the headwaters of Cristianitos Creek. This alignment would also reduce conflicts with the lowland portion of linkage N through the grasslands/coastal sage scrub adjacent to Cristianitos Creek.

With respect to EPA's request for an overview of land use changes (past actions), land uses have been characterized for the SAMP Study Area for years 1974 and 2000. A year in the mid-1970s was chosen because this timeframe is close to the passage date for the Clean Water Act (1972) and its subsequent implementation. The available photographs were flown in December 1974. A more recent year was chosen to capture the cumulative changes to the landscape. The available photographs were flown in winter 2000. Although more recent aerial photographs for the entire SAMP Study Area were not available, the use of photographs from 2000 allows for a good characterization of land use changes over time.

Land uses were mapped for both periods for several land use classifications. Classified land uses include agriculture (row crops, citrus, avocados, etc.), commercial and industrial land uses (office buildings, shopping centers, sand and gravel operations, etc.), grazing, institutional (schools, universities, research installations, etc.), natural open space, open space (ball fields, graded areas, golf courses, fuel modification zones, ornamental landscapes, etc.), residential (multi-family homes and single-family homes), and transportation (roads and highways).

As shown in Figures 2 and 3 and identified in Table 1, from 1974 to 2000, there have been moderate changes to the SAMP Study Area. During that timeframe, natural open space decreased from 93,966 acres (84.4 percent of the SAMP Study Area) to 82,110 acres (73.7 percent of the SAMP Study Area). As a result, there have been increases in commercial/industrial land uses from 969 acres to 2,230 acres and residential land uses from 4,097 acres to 15,421 acres.



Land Uses in the SAMP Study Area in 1974

Not to Scale

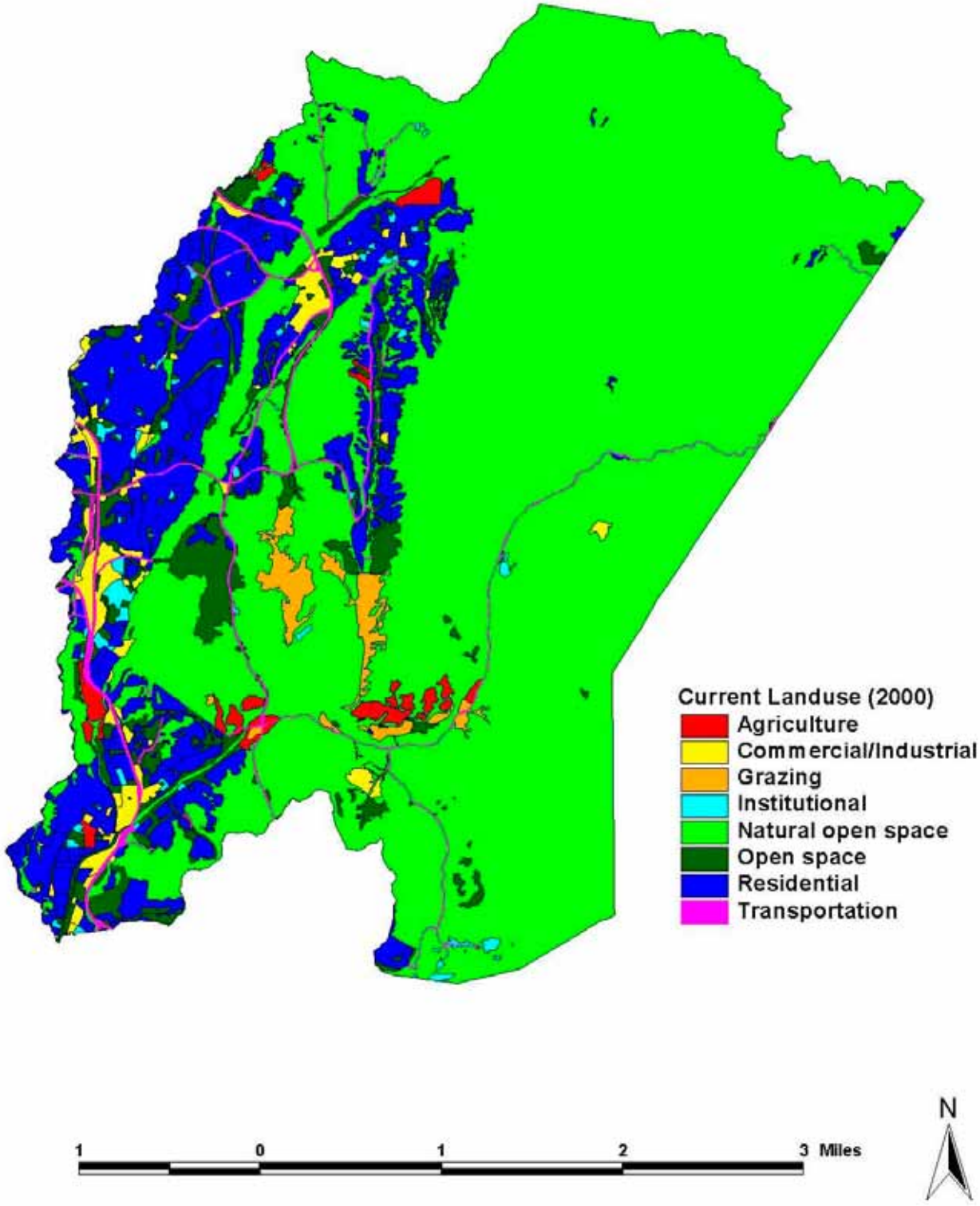
N
W
E
S

San Juan Creek and Western San Mateo Creek Watersheds SAMP EIS

Figure: 2

Source:

Date: Dec. 2006



Land Uses in the SAMP Study Area in 2000

Not to Scale

San Juan Creek and Western San Mateo Creek Watersheds SAMP EIS

Figure: 3

Source:

Date: Dec. 2006

In association with these land use changes, there have been impacts to riparian areas. In lieu of calculating a decrease in acreage of riparian habitat, the main aquatic resource within the SAMP Study Area, historical impacts to riparian areas were measured in terms of impacts to USGS blueline streams. In 1974 and 2000, there were 655.9 km and 593.2 km of USGS blueline streams, respectively. This represents a cumulative loss of 62.7 km of USGS blueline streams of 9.6 percent of the total in 1974. Since 2000, there were two major developments (Ladera Ranch and Whispering Hills) that increased the cumulative loss to 70.4 km or 10.7 percent of the 1974 baseline. These two major developments were not thoroughly accounted within Figure 3 due to the inability to obtain more recent aerial photographs.

The main foreseeable future action consists of the proposed development within the RMV Planning Area. The RMV Planning Area development would have an additional loss of 32.7 km of USGS blueline streams. After including these foreseeable impacts to the baseline, there will be a cumulative loss of 15.6 percent of USGS blueline streams since 1974. The losses of these riparian areas will be mitigated in accordance with the Special Conditions for the proposed Letter of Permission program for the RMV Planning Area including, but not limited to, requirements for successful aquatic resource creation/restoration installation before project impacts for each phase, minimization of indirect impacts to hydrology and water quality through flow duration control and water quality treatment basins, and a long-term adaptive management program.

TABLE 1
LAND USE TOTALS FOR 1974 AND 2000

	Year 1974			Year 2000		
	Acres	**Hectares**	**% Study Area**	**Acres**	**Hectares**	**% Study Area**
Agriculture	2,332	944	2.1	1,204	487	1.1
Commercial/Industrial	969	392	0.9	2,230	903	2.0
Grazing	5,749	2,327	5.2	1,463	592	1.3
Institutional	319	129	0.3	930	377	0.8
Natural open space	93,966	38,027	84.4	82,110	33,229	73.7
Open space	3,231	1,308	2.9	6,802	2,753	6.1
Residential	4,097	1,658	3.7	15,421	6,241	13.9
Transportation	680	275	0.6	1,181	478	1.1
Total	**111,343**	**45,059**	**100**	**111,342**	**45,059**	**100**

Response 4

Regarding the EPA's initial comment regarding the SAMP Study Area being located within the South Coast Air Basin (SCAB), a nonattainment area for federal 8-hour ozone standards, PM_{10}, and $PM_{2.5}$, pollutant concentrations measured from "source-receptor" area (SRA) 19 (applicable for the SAMP Study Area) are lower than for the overall SCAB and have decreased in 2003, 2004, and 2005 (the most recent published data from the South Coast Air Quality Management District [SCAQMD]). However, with respect to ozone, the peak ozone concentrations in the SCAB over the last two decades have occurred at the base of the mountains around Azusa and Glendora in Los Angeles County and at Crestline in the mountains above the City of San Bernardino. As addressed in the Draft EIS, air quality improved considerably throughout the SCAB in the 1990s and into the 2000s. Specific to SRA 19, these improvements in ozone concentrations have occurred despite extensive population growth in Orange County. Between 1998 and 2005, the federal maximum 8-hour ozone concentration level of 0.08 parts per million (ppm) has been exceeded by no more than 3 days per year with the exception of 2003 (8 days). With respect to $PM_{2.5}$, the EPA notes that the 2000-2002 SCAB $PM_{2.5}$ annual mean concentration was 29 $\mu g/m^3$; however, the $PM_{2.5}$ annual mean concentration for SRA 19 was 13.1 $\mu g/m^3$ in 2003, 12.1 $\mu g/m^3$ in 2004, and 10.7$\mu g/m^3$ which is below the federal standard of >15 $\mu g/m^3$. Further, with respect to the federal 24-hour for $PM_{2.5}$, the EPA's comment notes that the SCAB is in nonattainment of the 24-hr 65 $\mu g/m^3$ standard. This federal standard has never been exceeded at SRA 19 since monitoring was initiated in 1999. For the last three years (2003, 2004, and 2005) of published measurements by the SCAQMD for SRA, the concentrations were 50.6 $\mu g/m^3$,49.4$\mu g/m^3$, and 35.4 $\mu g/m^3$, respectively.

With respect to EPA's recommended additional mitigation, these measures are currently stated in both the SAMP Draft EIS and The Ranch Plan EIR, either specifically or as required by the SCAQMD in compliance with Rule 403.

With respect to EPA's request for additional measures to reduce the project's (presumably the Ranch Plan component of the SAMP project) vehicle miles traveled, several similar suggestions were provided to the County of Orange in their consideration of alternatives to the Ranch Plan project. It was noted at that time and is stated here again because it remains true, that many measures are beyond the jurisdiction of the USACE or the County of Orange or are not within the project applicant's purview. The requests to require the RMV Planning Area project to provide for alternative fuel distribution or charging stations are not appropriate because electric vehicles are not likely to be in widespread use at any time in the future. This is an area in great flux at the present time. Most automobile manufacturers are concentrating on hybrid vehicles that run on both gasoline and electricity, but generate electricity while in use rather than through recharging. However, the County of Orange, which has land use authority over The Ranch Plan project, would determine at the Master Area Plan stage whether new developments need support facilities recommended by the SCAQMD or CARB. However, it should be noted that there is nothing in The Ranch Plan project that would preclude the establishment of these uses should there be sufficient demand to make them cost effective. As such, The Ranch Plan EIR included the following measure: "With the submittal of each Master Area Plan, the project applicant shall identify locations where alternative fueling facilities could be sited."

Similarly, measures pertaining to the provision of transit services, including bus service, bus turn-outs, and Dial-a-Ride, are the responsibility of the Orange County Transportation Authority (OCTA), not the USACE or the County of Orange. OCTA regularly evaluates the provision of transit services and modifies their routes to optimize the distribution of services to maximize effective use of resources. At the tentative tract map stage for each phase of The Ranch Plan project, the County and Rancho Mission Viejo would consult with OCTA to determine the

feasibility and potential location of local transit service lines to the newly developed area. At that time, the two agencies (OCTA and the County) would determine whether Rancho Mission Viejo should be required to incorporate support facilities such as bus benches and bus turnouts in the project design to facilitate transit usage. Again, there is nothing about The Ranch Plan project or the SAMP project that would preclude transit services from being provided to the RMV Planning Area should OCTA determine that this is an effective use of resources.

With respect to federal Clean Air Act Conformity requirements and specifically $PM_{2.5}$ requirements, the EPA is correct that the project will be required to comply with any applicable requirements that may be imposed in the future. No additional requirements for $PM_{2.5}$ have been imposed at this time.

The Ranch Plan component of the SAMP project is consistent with the Air Quality Management Plan (AQMP). The SCAQMD and the Southern California Association of Governments (SCAG) jointly prepare the AQMP for the SCAB. The AQMP contains measures to meet state and federal requirements. When approved by CARB and the EPA, the AQMP becomes part of the State Implementation Plan. The most recent AQMP was prepared by the SCAQMD and SCAG in 2003, and the SCAQMD adopted the revised plan as the 2003 AQMP on August 1, 2003. CARB approved the 2003 AQMP in October 2003 and forwarded it to the EPA for review and approval. When approved, the revised plan will replace the *1997/1999 AQMP* as the State Implementation Plan for the SCAB. Consistency with an AQMP requires that a project be consistent with the approved Air Quality Management Plan/State Implementation Plan for the region that provides controls sufficient to attain the national ozone standards by the required attainment date. The AQMP is based on growth projections agreed to by the five affected counties and SCAG. If the total population accommodated by a new project, together with the existing population and the projected population from all other planned projects in the subarea, does not exceed the growth projections for that subarea incorporated in the most recently adopted AQMP, the completed project is consistent with the AQMP. The entire County of Orange is considered to be one subarea. The AQMP is region-wide and accounts for, and offsets, cumulative increases in emissions that are the result of anticipated growth throughout the region. Because implementation of the proposed Ranch Plan project would not exceed growth projections for the subarea, the Ranch Plan project was determined to be consistent with the AQMP. With respect to the SMWD proposed project under consideration in the SAMP, SMWD is responsible for providing water and wastewater service for a portion of the San Juan Creek and San Mateo Creek Watersheds. SMWD periodically adopts plans of works and capital improvement programs identifying facilities to be constructed and operated in response to the existing and planned land uses.

<u>Response 5</u>

EPA Comment

A. *The FEIS should also document any mitigation opportunities or alternatives outside of the RMV Planning Area, in addition to the alternatives listed in Chapter 6, to broaden the scope of the alternatives analysis.*

B. *EPA was also concerned about conservation components for aquatic resources outside of the RMV Planning Area.*

C. *EPA was concerned about the Santa Margarita Water District's (SMWD) program for maintaining flood control channels.*

D. EPA was also concerned over the lack of involvement in the pre-application coordination meetings.

E. EPA would like an explanation regarding how allowing flood control activities in higher value aquatic resource areas is consistent with protection of higher value aquatic resources.

USACE Response

A. Within the actual public notice for the LOP Procedures Outside of the RMV Planning Area, Item #4 under the General Mitigation Policies references the "Riparian Ecosystem Restoration Plan for San Juan Creek and San Mateo Creek Watershed: Site Selection and General Design Criteria" by U.S. Army Corps Engineer Research Development Center (ERDC) dated 2005," which was provided as Appendix F-1 to the Draft EIS. The ERDC report and associated GIS layers identify potential restoration sites throughout the watershed based on a functional approach. The report also outlines the mechanism for determining the increase in wetland functional units to offset the loss of functional units due to a permit action.

   The USACE will provide a final map of all existing compensatory mitigation sites within the watershed as part of the final public notice.

B. The USACE was also concerned about this as well. However, no other interested parties chose to approach the USACE about their permit actions. For these areas outside of the RMV Planning Area, the USACE could have identified areas for conservation regardless of any input from the owner of the land. The USACE chose against this action because it would not have been productive for a federal agency with a program authority under the Clean Water Act to systematically identify private lands for conservation purposes. Such an action is outside of the USACE's scope and authority. The USACE did identify areas for restoration. Based on this information, any organization or agency may propose sites for restoration in conjunction with willing land owners of these riparian elements.

C. For the record, the SMWD is a water supply agency and does not undertake flood control activities. Most of the flood control activities are undertaken by the County of Orange. The County of Orange has not provided details of their program with respect to specific geographic areas. Nevertheless, based on understanding provided from past permits and discussions with the County of Orange regarding their flood control actions, the USACE has a good understanding of the components of the County program. County of Orange flood control activities include either capital improvement construction or maintenance of existing flood control facilities. County of Orange capital improvement projects within higher value aquatic areas are not eligible under the LOP program. For these capital improvement projects outside of higher value aquatic areas, the Draft EIS provides an explanation in the footnote on Page 7.12-4 that summarizes typical responses on public notices that involve capital improvement projects in lower value aquatic areas. A review of the public notices for such proposed projects indicated the absence of interest from other federal and state resource agencies for such projects and minimal interest from the general public.

   For maintenance activities, the County of Orange conducts several actions on a regular basis. Such activities include repairing concrete structures, replacing riprap that may have washed away, removal of sediments, and removal of vegetation through mechanical or chemical means. Much of the vegetation removal is undertaken through the application of herbicides, an activity that is not regulated by the USACE. These maintenance activities

occur within areas eligible for abbreviated permitting and areas ineligible for abbreviated permitting.

D. The USACE will invite the EPA to all future pre-application coordination meetings for all activities outside of the RMV Planning Area. It should be noted that the EPA participated in the pre-project meetings with the USACE and Rancho Mission Viejo for the RMV Planning Area.

E. The USACE believes maintenance of flood control structures involving high value aquatic resources is not inconsistent with the SAMP objectives of protecting high value aquatic resources. The fact that some of these areas maintained for flood control are already identified as high value aquatic resources suggest the absence of any categorical contradictions. If all flood control activities affected aquatic resources adversely, then no flood control maintenance areas would be within high value aquatic resources.

   The USACE believes flood control maintenance appropriately implemented can minimize any adverse effects to the aquatic environment. For other geographic locations within the County of Orange, the USACE is working with County representatives to minimize temporal loss, maintain a minimum amount of standing vegetation, and develop more environmentally sensitive maintenance cycles. Where appropriate, the USACE has required compensatory mitigation for maintenance as was the case for the establishment of the Serrano Creek maintenance plan in the San Diego Creek Watershed. Combined with any pre-application coordination and coordination through the LOP interagency coordination, flood control maintenance activities can be minimized with proper conditioning and be consistent with the goals of protecting high value aquatic resources.

   In response to the other commenting agencies, the USACE will provide more clarifying language on maintenance baselines similar to the one provide in Nationwide General Permit 31. This will benefit both the aquatic environment and future applicants. In general, work consistent with a maintenance baseline, even in high value aquatic areas, will not require compensatory mitigation. Establishment of a maintenance baseline may require compensatory mitigation. A maintenance baseline is not the same as the flood control design.

<u>Response 6</u>

EPA Comment

A. EPA's comment letter again states that insufficient information has been presented in the Draft EIS to support the USACE's representation of Alternative B-12 as the LEDPA.

B. EPA's comment letter requests additional information be provided in the SAMP EIS and the Special Public Notice regarding the phased approach for recording conservation easements within the RMV Planning Area.

C. EPA's comment letter requests a description of the Santa Margarita Water District's (SMWD) program for the maintenance of flood control channels.

D. EPA's comment letter requests clarification regarding the width of wildlife movement corridors.

USACE Response

A. For responses regarding selection of Alternative B-12 as the preliminary LEDPA, please refer to prior responses.

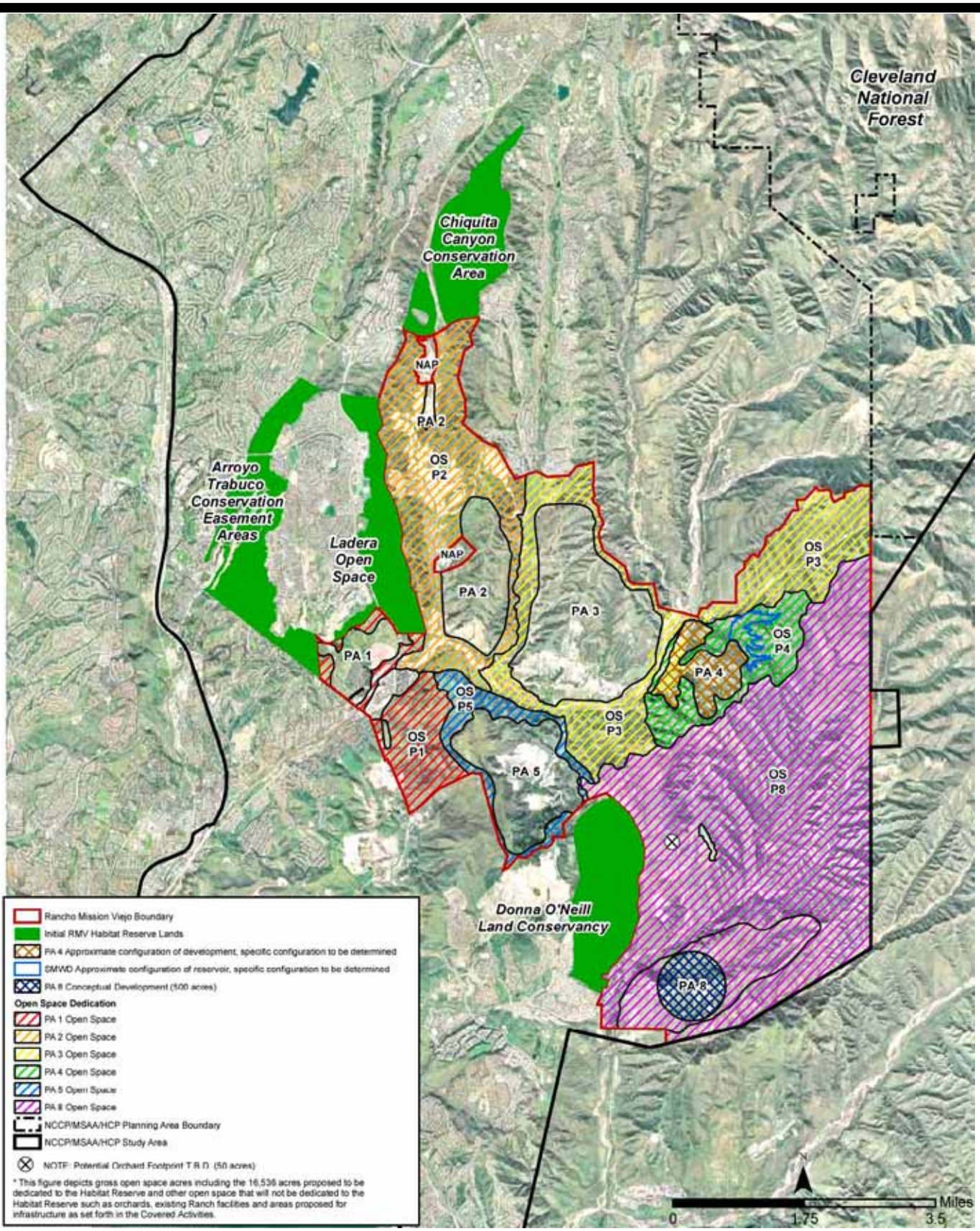
B. Regarding the phased dedication approach for future RMV Planning Area open space conservation easements, the following information is provided.

As previously described, the SAMP is part of a three-part coordinated planning process that has involved preparation and approval of a General Plan amendment and zone change for Rancho Mission Viejo lands, this SAMP, and a future Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (NCCP/MSAA/HCP). If the NCCP/MSAA/HCP is approved, the future Aquatic Resource Conservation Areas will be contained within larger open space lands, including uplands areas, to be dedicated as part of the NCCP/MSAA/HCP Habitat Reserve. A total of 16,536 acres of Rancho Mission Viejo lands, inclusive of the Aquatic Resource Conservation Areas, will be enrolled in a phased manner into the Habitat Reserve. The enrollment will occur through a two-step process of open space dedication consisting of: (1) the recording of an irrevocable covenant (IC) at the time of the commencement of clearing and grubbing within each RMV Planning Area (or portion thereof) to be developed, followed by (2) the phased recordation of conservation easements (the "Conservation Easements")no later than three years after recordation of the IC. Rancho Mission Viejo, its successors or assigns, will retain fee title to the lands covered by the Conservation Easements.[4] Since the SAMP permitting procedures have been reviewed in the Draft EIS as a "stand-alone" avoidance, minimization, and mitigation program, in the event the NCCP/MSAA/HCP is not finally approved, the dedication program would be adjusted to correspond with the EIS avoidance/Aquatic Resource Conservation Areas provisions.

Figure 4, "RMV Open Space & Phasing Plan" generally depicts the 16,942 acres of gross open space within the Ranch Plan area including the 16,536 acres of designated Future Rancho Mission Viejo Open Space Dedication Areas proposed to be dedicated to the Habitat Reserve and other open space that will not be dedicated to the Habitat Reserve such as orchards, existing ranch facilities, and areas proposed for infrastructure. Those portions of the designated Future Rancho Mission Viejo Open Space Dedication Areas to be dedicated into the Habitat Reserve in conjunction with the development of each of the RMV Planning Areas 1 through 5 and 8 are also generally depicted on Figure 4. For example, the area that is designated "OS P1" (Figure 4) is the open space that is to be dedicated with the development of RMV Planning Area 1.

A Master Area Plan will be prepared for approval by the County for each RMV Planning Area prior to the commencement of development within that planning area. The Master Area Plan will identify each separate phase of development (i.e., Subarea) within the planning area, if any. The Master Area Plan for each of the planning areas will show the total open space to be dedicated to the Habitat Reserve for that planning area, prior to approval of a Master Area Plan for development in the San Juan Creek watershed, RMV will also identify the portion of the overall open space for the planning area that is to be dedicated to the Habitat Reserve in conjunction with development of each of the Subareas within that particular planning area.

[4] Please refer to NCCP/MSAA/HCP EIS/EIR.



Phased Dedication of RMV Open Space

Not to Scale

N
W
E
S

San Juan Creek and Western San Mateo Creek Watersheds SAMP EIS

Figure: 4

Source: Dudek, 2006

Date: Dec. 2006

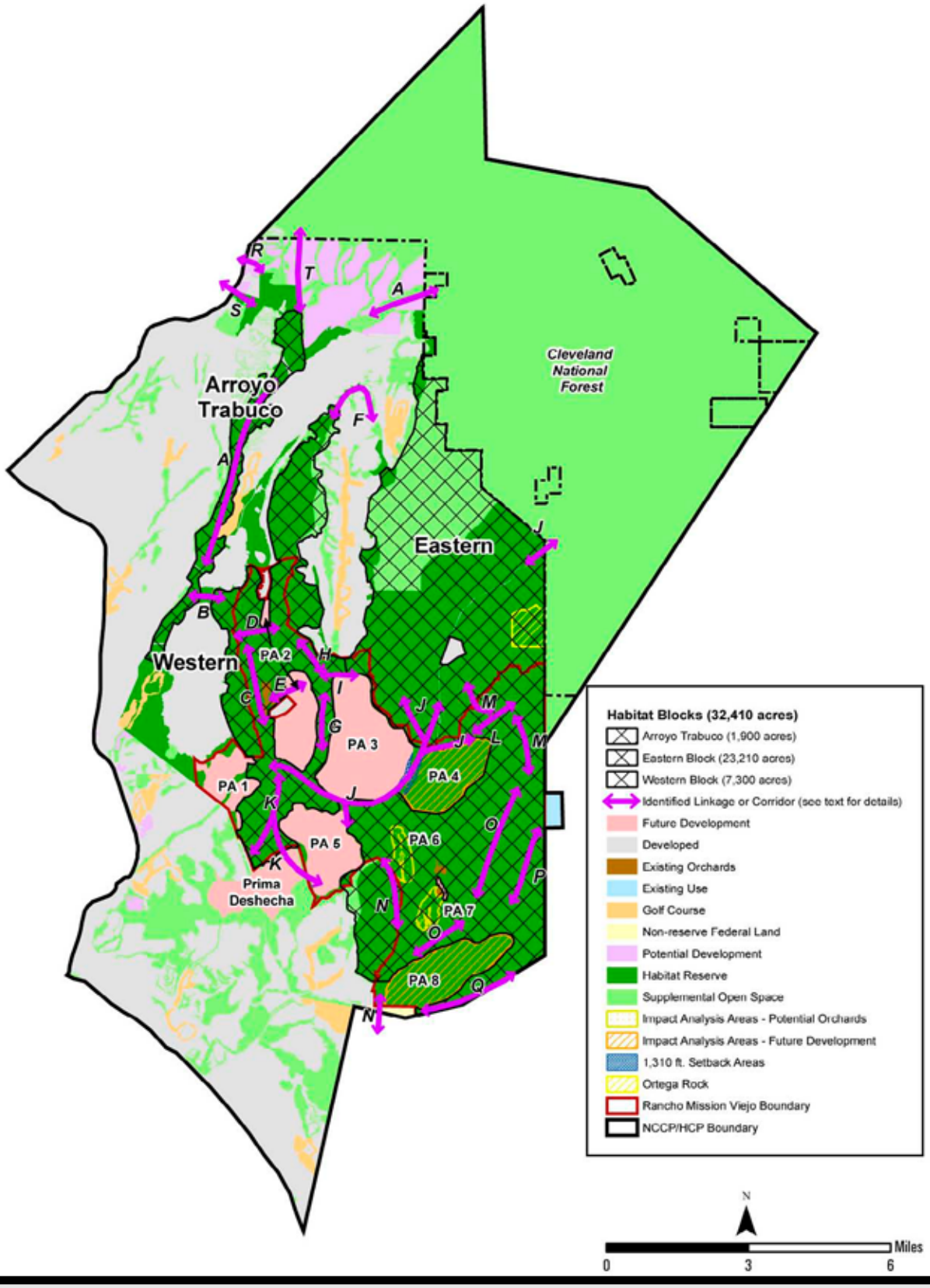
C. SMWD does not maintain Orange County flood control facilities. Rather, as described in the Draft EIS, SMWD is a purveyor of domestic and non-domestic water supplies. Only the Regional General Permit (RGP) permitting procedures involve existing flood control channels and the *de minimis* impacts allowed by the RGP permitting procedures are fully addressed in the Draft EIS. SMWD is Orange County's second-largest water district, providing water and wastewater treatment services to more than 150,000 residents and businesses in the cities of Mission Viejo and Rancho Santa Margarita and communities of Coto de Caza, Las Flores, Ladera Ranch, and Talega. As described in Section 8.1.1.2 of the Draft EIS, "SMWD provides water, and sewer service to approximately 52,000 households through a network of existing facilities comprised of 1,330 miles of water and sewer mains, 15 connections to other water districts, 30 domestic reservoirs (298 million gallons of storage), 4 non-domestic reservoirs (1.5 billion gallons of capacity), 21 water pump stations, 30 pressure reducing stations, 6 non-domestic water pump stations, 2 wells with chlorine injection, 21 sewer lift stations, and 3 sewage treatment plants. These existing facilities require ongoing operation and maintenance as described in the Draft EIS.

The impacts to wetlands and Waters of the U.S. that would result from SMWD's maintenance of their existing facilities are described in Section 8.4.1.1 of the Draft EIS and specifically set forth in Table 8-3 as 3.34 acres of impacts to wetlands and 14.54 acres of impacts to non-wetland Waters of the U.S. Mitigation for these impacts is described in the Draft EIS and the Special Public Notice (see page 21 in the Special Public Notice) and includes project design and construction minimization measures and compensatory mitigation in the form of a monetary contribution towards management of the preserved aquatic resources in the amount of $700,000.

D. The 400-meter-wide corridor applies to just San Juan Creek upstream of Trampas. In a study published in the *Journal of Wildlife Management* (59:228-237) in 1995, Dr. Paul Beier, researcher with extensive experiencing studying mountain lions in southern California, published recommendations for wildlife movement for mountain lions suggesting a corridor "400 meters wide for distances of 1-7 kilometers." Dr. Beier in an electronic mail communication dated January 10, 2005 attested to the study's validity even after 10 years. The 400-meter-wide corridor is applicable for extended distances with constrictions allowed for short distances. Because San Juan Creek upstream of Trampas was the only area within the SAMP Study Area where there was an extended corridor between developments along a streambed, the USACE required a 400-meter-wide corridor along this reach. The 400-meter-wide corridor was not applied anywhere else within the SAMP Study Area.

Figure 5 illustrates Alternative B-12 habitat blocks. From this exhibit, it can be seen that this alternative would create three large blocks of habitat that are connected with each other and other large-scale conserved areas (i.e., Cleveland National Forest, Camp Pendleton). The Arroyo Trabuco block is 1,903 acres, the Western block is 7,304 acres, and the Eastern block is 23,212 acres. The three habitat blocks are all interconnected by habitat linkages. The Arroyo Trabuco and Western habitat blocks are connected by existing linkage B between Ladera Ranch and Las Flores, which has a minimum width of approximately 1,500 feet. The Western and Eastern blocks are connected by linkages I and J. Linkage I is located between Coto de Caza and Planning Area 3 in the Gobernadora sub-basin and would have a minimum width of 2,000 feet. Linkage J is located along San Juan Creek and would have a minimum width of approximately 1,320 feet with planned setbacks from the 100-year floodplain. Regarding the width of wildlife movement corridors, Figure 5 is provided to illustrate the relationship of the wildlife movement corridors along San Juan Creek, Cañada Chiquita, Cañada Gobernadora, Cristianitos Creek, Gabino Creek, and Talega Creek and adjacent development. It should be noted that the wildlife movement corridors

depicted for Cristianitos, Gabino, and Talega Creeks are conceptual and subject to change because the 500-acre development footprint for Planning Area 8 is defined in the future based on input from the arroyo toad studies required per Special Public Notice Special Condition I.D.8.



Alternative B-12 Habitat Blocks with Habitat Linkages & Wildlife Corridors

Not to Scale

San Juan Creek and Western San Mateo Creek Watersheds SAMP EIS

Figure: 5

Source: Dudek, 2006

Date: Dec. 2006

State of California The Resources Agency Arnold Schwarzenegger, *Governor*

DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201

RECEIVED
FEB 17 2006
REGULATORY BRANCH
LOS ANGELES OFFICE

February 10, 2006

Jae Chung
U.S. Army Corps of Engineers
Los Angeles District
P.O. Box 532711
Los Angeles, California 90053-2325

Comments on the Draft Environmental Impact Statement (No. 199916236-YJC) for the San Juan Creek and Western San Mateo Creek Watershed Special Area Management Plan (SAMP) in Orange County, California

Dear Mr. Chung:

The Department of Fish and Game (Department) has reviewed the Draft Environmental Impact Statement for the San Juan Creek and Western San Mateo Creek Watershed Special Area Management Plan (SAMP). The SAMP is a watershed-level planning and permitting program for landowners and public agencies proposing actions affecting the Army Corps of Engineers' (ACOE) jurisdictional Waters of the U.S (WoUS).

The SAMP is one of multiple planning processes being concurrently developed to conserve and protect the biological resources of Southern Orange County. A Habitat Conservation Plan (HCP) is being developed by the U.S. Fish and Wildlife Service (Service) to address impacts to federally-listed species. The County of Orange is processing a General Plan Amendment/Zone Change for the proposed development on the Rancho Mission Viejo (RMV) property.

The Department is identified as the administrator of the Natural Community Conservation Plan (NCCP), a program being developed concurrently with the HCP to protect sensitive species and habitats. The Department will also prepare the Master Streambed Alteration Agreement (MSAA), a program to address impacts to state jurisdictional lake and stream resources throughout the area. Pursuant to Section 1802 of the Fish and Game Code, the Department also has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species. We stress the need for projects near and within creeks to avoid deposits of material deleterious to fish, plant and bird life. Activities and/or structures that impede or prevent the passage of fish should also be avoided. Minimum flows within a creek should be maintained at all times, including downstream of temporary dams and other obstructions.

The ACOE has performed extensive studies and has identified geographic areas of higher-, medium- and lower-quality aquatic resources within the Southern Orange County area. The SAMP proposes the development of three additional, abbreviated permitting processes – generally for lesser-quality aquatic resource impacts to WoUS: 1) an expedited Regional General Permit (RGP), which could be issued for projects outside of the RMV Planning Area that result in up to 0.5 acre of

temporary impacts (of which up to 0.1 acre may be vegetated with predominantly native wetland or riparian vegetation) in lower quality aquatic resource areas; 2) a Letter of Permission (LOP), which could be issued for projects that result in less than 0.1 acre of permanent impacts to higher- or medium-quality aquatic resource areas, or any area of low-quality aquatic resource (except

mitigation sites and/or channelization of a major streamcourse); and 3) a long-term Individual Permit-LOP process that would be established for projects within the RMV Planning Area, an area where extensive project delineations have been performed. Projects that do not meet the issuance criteria mentioned above would need to pursue Individual Permits. Additionally, a comprehensive aquatic resources conservation program for the RMV Planning Area will be established as part of the SAMP.

The Department offers the following comments and recommendations on the proposed SAMP permitting processes:

General Comments

1) Required project design features should ensure that sediment/debris transport functions of the stream are maintained and that topography is not altered to the extent that fish and arroyo toad (*Bufo californicus*) passage/migration is precluded. 1

2) To avoid impacts to avian nests, vegetation removal within the stream between March 15 and September 15 should only occur if surveys indicate absence of nesting birds within a 300' radius of the work area or if the project biologist determines, and receives concurrence from the Service and the Department, that work would not interrupt any nesting activity. Nesting surveys should be performed by a qualified biologist and the last survey should occur at most 3 days prior to commencement of vegetation removal. 2

3) We recommend that applicants provide a summary report (including representative photos, if appropriate) following completion of work to document compliance with all project conditions. Where applicable, progress reports of any restoration effort should also be provided which summarize success, failure and any subsequent remediation efforts. 3

Comments on the RGP Process

Although this permit is intended to address minor, temporary impacts, the general permit conditions suggest that an RGP could expire up to 5 years after issuance. Activities eligible for this permit include repair and/or replacement of bank stabilization structures, weirs, drop structures, and installation of temporary cofferdams and water diversion structures. If carried out to the full extent of the permit period, these activities within the stream could result in the temporal loss of stream resources for up to 5 years. We recommend that RGP permits expire after two years after initiating work, or require a renewal process, to ensure that loss of any habitat/wildlife use is minimized. 4

3

2. Temporary impact areas should be monitored to ensure that restoration efforts were successful and to ensure exotic, invasive plants do not become established in the project footprint. We recommend that temporary impact areas be monitored for a minimum of two years. If native cover is not reestablished after this period or, if exotic species comprise greater than 10% of the vegetative cover or if any California Invasive Plant Council (CalIPC) List A species is present, the applicant should develop and implement a restoration plan to ensure that these areas return to a predetermined baseline. A final report should be submitted to the ACOE, Service, and Department (collectively, the Resource Agencies) at the conclusion of the monitoring period. 5

Comments on the LOP Process Outside the RMV Planning Area

) In addition to an ACOE jurisdictional delineation and impact/mitigation proposal, a delineation of Department jurisdictional streams and an assessment of impacts should also be provided by the applicant to expedite pre-application coordination meetings. Additionally, any National Environmental Policy Act (NEPA)/CEQA documents that have been completed for the project should also be submitted to the Resource Agencies prior to meetings. 6

2) We recommend annual reports be submitted to the Resource Agencies to document the progress of the restoration and exotic species management efforts. 7

Comments on the LOP Process Within the RMV Planning Area

1) RMV Individual Permit Special Conditions

a) It is unclear where plantings for coast live oak mitigation would occur. We recommend adding a condition that plantings will be coordinated with the Resource Agencies and/or the management entity established for the eventual NCCP/HCP reserve. We also recommend the use of 1-gallon coast live oaks or smaller seedlings for mitigation planting. Specimen boxed trees are generally pruned to an unnatural single-trunk and high branching "standard", are less wind-resistant, and are subject to increased weed competition than low-branching natural trees. Containerized trees also generally have circling roots or large diameter roots cut during repotting. Larger trees are less able to establish an extensive root system, essential for survival in arid California. Planting palettes for oak woodland habitats should include native understory species and should be monitored for a minimum of 10 years to ensure success. 8

b) Stream crossings should be designed to facilitate wildlife movement. Bridges, spanning from top-of-bank to top-of-bank, should be used to the extent feasible. Crossings constructed should not result in stream cutting or changes to surface flow and should be engineered to allow the full flow of the stream in a flood event. Retrofitting of existing crossings should be incorporated into the project design, where feasible, and should incorporate prefabricated drainage-wide spans 9

(e.g., Con/Spans' prefabricated arches) or another design to ensure full function for fish passage and wildlife movement. 9 cont.

c) Passive recreation, agriculture and other allowable uses specified in conservation easements to be recorded within the RMV Planning Area should be consistent with those allowed/specified in the NCCP/HCP. Per the NCCP/HCP, these activities are subject to management plans which have been analyzed to ensure that habitat/species impacts are minimized. 10

d) Although compensatory mitigation is not required for temporary impacts to WoUS, unvegetated or vegetated by upland species, we recommend adding a restoration and monitoring component to each project to ensure that exotic, invasive species do not encroach into these areas. Left unchecked, such pockets of exotic species could undermine larger scale efforts to control exotic species within a watershed. 11

The Department may provide additional comments regarding the revocation of selected Nationwide Permits at a later date.

The Department appreciates the opportunity to comment on the SAMP and looks forward to working with you to implement our respective conservation programs in Southern Orange County. Questions and comments regarding this letter should be directed to Warren Wong at (858) 467-4249. 12

Sincerely,

Michael J. Mulligan
Deputy Regional Manager

3.2 RESPONSES TO STATE AGENCY COMMENTS

COMMENTOR 3 CALIFORNIA DEPARTMENT OF FISH AND GAME
Dated: February 10, 2006

Response 1

The SAMP permitting policies were designed to address sediment/debris transport functions and movement of aquatic animals. To maintain sediment and debris functions within areas inside of the RMV Planning Area, development was focused away from sources of sand and sediment to allow for continued transport of sands from upland sources to downstream areas. In addition, all major stream crossings involve span crossings or sufficiently sized culverts to allow for downstream transport of water and sediments. To maintain sediment and debris functions within areas outside of the RMV Planning Area, projects will be reviewed on a case-by-case basis as projects apply for permits and project details become known. With increased coordination with the resource agencies including the California Department of Fish and Game, new projects should be able to minimize any adverse impacts on sediment and debris functions.

To protect wildlife corridor movement, policies were developed to protect longitudinal corridors for fish and amphibians. Within the RMV Planning Area, major stream crossings would either be spanned or involve culverts sufficiently sized to allow for movement. In addition, all major streams are required to have sufficient setbacks to allow for movement along the stream channel; refer to the response to EPA Comment 6D. For Cow Camp crossing (the only existing crossing within the RMV Planning Area affecting fish movement), RMV's long-term individual permit requires the redesign of the crossing to allow for fish movement when the authorization for the discharge of fill materials associated with the planning area is authorized. For streams outside of the RMV Planning Area, General Condition 19 for Letters of Permission (LOPs) outside of the RMV Planning Area requires stream crossings in Arroyo Trabuco or San Juan Creek, the two main perennial streams in the SAMP Study Area, to be passable by fish.

Response 2

The SAMP permitting policies condition authorizations would not allow initial vegetation clearing during breeding bird season between March 15 and September 15. Activities within the breeding season may occur if bird surveys indicate absence of breeding birds within 50 feet of the vegetation clearing. The USACE believes the 50-foot-wide radius is a reasonable initial condition. A requirement for a 300-foot-wide radius may be overly protective, especially if the vegetation is cleared by hand. Nevertheless, the USACE reserves the right to condition distances greater than 50 feet based on additional information provided during the application process related to method of vegetation removal.

Response 3

The SAMP permitting policies do not require a summary report for all actions. The USACE envisions requiring a summary report where appropriate. For the RMV long-term individual permit, a summary report with as-built drawings and demonstration of compliance with permit conditions is required. However, for other projects, this may be an excessive requirement for paperwork, especially if the project is small and routine, such as cleaning a culvert or conducting maintenance work. The USACE believes the requirement for summary reports should be determined on a case-by-case basis after specific impacts have been assessed, as was the case for the RMV long-term individual permit.

Response 4

The USACE believes the Regional General Permit (RGP) process will not result in appreciable temporal loss of riparian resources. The RGP may be used in riparian areas with lower ecological integrity, may be used for no greater than 0.5 acre of temporary impact total, and may not result in greater than 0.1 acre of temporary impacts to native riparian vegetation. Many of these areas will be so close to existing urban habitats that meaningful riparian habitat would not be available. Given that any impacts will be confined to a small amount of native riparian vegetation with lower ecological integrity, the adverse impacts to quality riparian habitat is minimal.

The USACE also needs to clarify a misunderstanding. The 5-year duration is the life of the permit. Each action requires processing as a separate action. The 5-year duration applies to the program established by the RGP and not necessarily to any specific action. Typically, individual actions are authorized for a duration of two years.

Response 5

The USACE believes requiring revegetation and monitoring of invasive exotic vegetation for impacts eligible for this RGP would be excessive. As stated previously, impacts to native riparian vegetation would be confined to a small area and would be to riparian vegetation with lower ecological integrity. Given that the majority of these actions would be for small actions, the amount of monitoring and revegetation required as a blanket condition would be a large expenditure of resources and paperwork without any commensurate benefit to protecting the aquatic ecosystem.

Even for the larger projects involving temporary impacts to up to 0.5 acre, the USACE believes expenditures for monitoring of invasive exotic species would be excessive. Many of these areas are typically maintained on an infrequent basis, such that exotic vegetation does not have a foothold. To require monitoring for up to 2 years when the area may be cleared of vegetation soon thereafter would be wasteful use of administrative resources for the permittee and the regulatory agencies assigned to review the monitoring reports. In addition, disturbances of the system from these RGP actions would be small compared to natural disturbances from annual storms. Any benefit of maintaining areas cleared as part of a maintenance action would be drowned by exotics that may infest areas disturbed by natural actions. Consequently, there would not be any benefit to the riparian ecosystem from just maintaining a few acres clear of exotic vegetation when natural disturbances create opportune areas for invasive species infestation of thousands of acres.

The USACE reserves the right to require additional conditions where appropriate. There may be instances where the USACE will require additional monitoring if specific invasive species were removed such as *Arundo* or *Tamarix*. However, the USACE believes a blanket condition would be counterproductive in light of the objective of minimizing regulatory delays for actions with minimal impacts to the aquatic ecosystem.

Response 6

The USACE will specify the requirement of a CDFG jurisdictional delineation as part of the pre-application process.

Response 7

The USACE will require submittal of annual report to the Resource Agencies if monitoring is required for restoration and exotic species management efforts.

Response 8

The USACE will require any coast live oak mitigation planting in compensation for oaks dying of inundation to be coordinated with the Resource Agencies. In addition, 1-gallon oaks will be required for the plantings rather than 10-gallon oaks. Finally, planting of an oak understory will be required and a minimum of 10 years of monitoring will be required.

Response 9

The USACE believes stream crossings have been designed to facilitate wildlife movement. Span crossing will be used for most stream crossings. In a few instances, culverted crossings may be used but the clearing will be a minimum of 20 feet from the bottom of the stream invert.

Response 10

The USACE supports the requirement that passive recreation in conservation easement areas would be consistent with the NCCP/HCP and any resulting management plans. The USACE will continue coordinating with the Resource Agencies to ensure of this.

Response 11

For the Rancho Mission Viejo long-term individual permit, the permittee is already required to comply with the Adaptive Management Program and the Invasive Species Control Plan as part of Special Conditions III.4 and III.5, respectively.

Response 12

The USACE appreciates the CDFG's comments in making the SAMP a stronger program in terms of ecological protection. Although the CDFG expresses interest in providing additional comments on the revocation of the Nationwide General Permits, any official comments will have been received outside the official comment period and cannot be made part of the administrative record.

San Joaquin Hills
Corridor Agency

Chairman:
Bert Hack
Laguna Woods

TRANSPORTATION CORRIDOR AGENCIES

Foothill/Eastern
Corridor Agency

Chairman:
Ken Ryan
Yorba Linda

January 30, 2006

Jae Chung
U.S. Army Corps of Engineers
915 Wilshire Blvd., 11th Floor
Los Angeles, CA 90017-3401

Subject: Comments on the Draft Environmental Impact Statement (DEIS) for the San Juan Creek/Western San Mateo Creek Watershed Special Area Management Plan

Dear Jae Chung;

Thank you for the opportunity to review and comment on the Draft Environmental Impact Statement for the San Juan Creek and Western San Mateo Creek Watershed Special Area Management Plan (SAMP).

As you are aware, the A7-FEC-M (Green) Alternative was selected in November, 2005, as the Preliminary Least Environmental Damaging Practicable Alternative (LEDPA) by your agency and concurred to by the U.S. Environmental Protection Agency. As well, the U.S. Fish and Wildlife Services has provided their preliminary conclusion of no jeopardy for the A7-FEC-M. The TCA staff has recommended the A7-FEC-M as the locally preferred alternative to the Foothill/Eastern Transportation Corridor Agency (F/ETC) Board of Directors. The action of certifying the Final Subsequent Environmental Impact Report (FSEIR) and adopting the locally preferred alternative was heard at the January 12 and 19, 2006 Board meetings and will be considered for decision on February 23, 2006. The following are the TCA's comments:

1. The A7-FEC-M needs to be incorporated into the SAMP environmental document as the locally preferred alternative and preliminary LEDPA. This project was selected because of the decrease in wetland impacts and its compatibility with the Southern Natural Communities Conservation Plan (SNCCP). Its westerly location maximizes the open space to the east as compared to the Far East Corridor. 1

2. With the Far East Corridor-Modified alternative not being selected as the locally preferred alternative, the potential impacts and conflicts with the restoration recommendations for the sub-basin (page 6-83) will not occur. TCA believes that the SOCTIIP preferred alignment would not conflict with the SAMP in general or with Alternative B-12 in particular. Please reflect this in the document. 2

125 PACIFICA, SUITE 100, IRVINE CA 92618-3304 • P.O. BOX 53770, IRVINE CA 92619-3770 • 949/754-3400 FAX 949/754-3487
www.thetollroads.com
Members: Aliso Viejo • Anaheim • Costa Mesa • County of Orange • Dana Point • Irvine • Laguna Hills • Laguna Niguel • Laguna Woods • Lake Forest
Mission Viejo • Newport Beach • Orange • Rancho Santa Margarita • Santa Ana • San Clemente • San Juan Capistrano • Tustin • Yorba Linda
Printed on Recycled Paper

3. The cumulative impacts section should note that the refinements that yielded the FTC-S preferred alternative (A7-FEC-M) have reduced impacts. This information is included in Section 4.10 of the FSEIR, entitled, "Affected Environment, Impacts and Mitigation Measures Related to Waters and Wetlands". This information should be included in the EIR. 3

The document is unclear as to who would be eligible for the future Letter of Permission (LOP) and General Permit (RGP). The document should stipulate that the Transportation Corridor Agency/Caltrans would be eligible for the future LOP and RGP procedures for the construction/operation/expansion of the SOCTIIP or the existing Nationwide Permits (NWPs). 4

If you have any comments, please contact me at (949) 754-3483.

Sincerely,

Macie Cleary-Milan

Macie Cleary-Milan
Deputy Director, Environmental Planning
Transportation Corridor Agencies

3.3 RESPONSES TO SPECIAL DISTRICTS/REGIONAL AGENCIES COMMENTS

COMMENTOR 4 TRANSPORTATION CORRIDOR AGENCIES
Dated: January 30, 2006

Response 1

The USACE recognizes that on February 23, 2006, the Foothill/Eastern Transportation Corridor Agency (F/ETCA) Board of Directors took action to certify the final Subsequent Environmental Impact Report (SEIR) component of the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) EIS/SEIR and adopt a locally preferred alternative, the A7-FEC-M alignment. The A7-FEC-M is also the alignment for which the USACE has issued a preliminary LEDPA (Least Environmentally Damaging Practicable Alternative) determination (November 2005) on the basis of the reduced impacts to wetlands anticipated to result from implementation of this alternative. The USACE acknowledges the selection of the A7-FEC-M Alternative as the Preliminary LEDPA. However, any final selection of a permitable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD) by the FHWA.

Response 2

The USACE again acknowledges that the A7-FEC-M was selected as the locally preferred alternative (F/ETCA Board of Directors, 2/23/06) and the preliminary LEDPA (see Section 4).

Response 3

The selection of the A7-FEC-M alignment as the locally preferred alternative and the preliminary LEDPA would reduce Cristianitos sub-basin conflicts compared to the alignments that would be implemented east of the Donna O'Neill Conservancy, particularly those related to coastal sage scrub/valley grassland restoration, the alkali wetlands, and the headwaters of Cristianitos Creek. This alignment would also reduce conflicts with the lowland portion of linkage N through the grasslands/coastal sage scrub adjacent to Cristianitos Creek (see Section 4).

Response 4

The USACE acknowledges changes and refinements have been made.

Response 5

The USACE expects the eventual permit mechanism will be determined upon receipt of a complete application and finalization of the ROD. At this point, SOCTIIP is not eligible for any of the abbreviated permits such as the Letter of Permission (LOP) or RGP. A standard individual permit would be expected for each discrete phase. The USACE expects maintenance activities to be processed as LOPs because the impacts are temporary, but within higher value areas.

COUNTY OF ORANGE

RESOURCES & DEVELOPMENT MANAGEMENT DEPARTMENT

Bryan Speegle, Director
300 N. Flower Street
Santa Ana, CA

P.O. Box 4048
Santa Ana, CA 92702-4048

Telephone: (714) 834-2300
Fax: (714) 834-5188

NCL 05-050

January 17, 2006

RECEIVED
JAN 20 2006
Regulatory Branch
Los Angeles Office

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch
ATTN: CESPL-CO-R-199916236-1-YJC
P.O. Box 532711
Los Angeles, CA 90053-2325

SUBJECT: Public Notice/Application for Maintenance Regional Permit for the San Juan Creek/Western San Mateo Creek Watershed Special Area Management Plan

Dear Sir/Madam:

The above referenced item is a Public Notice/Application involving a new Regional General Permit (RGP); two new Letters of Permission (LOP) and the revocation of selected Nationwide Permits (NWPs) for the U.S. Army Corps of Engineers (Corps). The County of Orange has reviewed the above mentioned project and offers the following comments:

OPEN SPACE/RECREATION

Chapter 2.0, Project Coordination Efforts and Overview of Potential Projects:

1. Page 2-3, Gobernadora Multipurpose Basin; subject basin is not depicted within Figure 2-3, SMWD Existing and Future Facilities. Figure 2-3 should be revised to show this proposed facility. 1

Chapter 4.0, Existing Conditions:

2. Page 4.1-212 – Section 4.1.13.3 Regional Parks; the last sentence reads "Although facilities are planned as part of the County of Orange Master Plan of Riding and Hiking Trails, there are no existing trails that link these regional parks. This is incorrect. Three Regional Riding and Hiking Trails link O'Neill Regional Park to Caspers Wilderness Park. The trails include the Bell View Trail (previously the Bell Canyon Trail), Tijeras Creek Trail and the Arroyo Trabuco 2

Trail. The three-trail connection between the parks opened in 1998. The text should be revised. 2 cont.

3. Page 4.1-214 – Section 4.1.12.4 – Trails and Bikeways (Riding and Hiking Trails); the paragraph should note that the Orange County General Plan contains a Master Plan of Regional Riding and Hiking Trails as part of the Recreation Element. The text alludes to this document, but does not specifically mention it. Please include a reference to the trail plan. 3

4. a. Page 4.1-214 – Section 4.1.12.4 – Trails and Bikeways (Bikeways), second paragraph; the second sentence should read, "...and designated primarily for the use of bicycles, although pedestrian and equestrian use is allowed on Orange County regional Class I bikeways".

   b. The last two sentences should read, "Some of these bikeways are also included on the County of Orange Bikeway Plan. The County's Bike- Plan is a component of the Transportation Element of the General Plan". 4

5. Figure 4.1.12-2, Trails in SAMP Study Area; subject figure should show all County Master Planned Regional Riding and Hiking Trails existing or proposed within the SAMP study area. For example, the figure should include the Arroyo Trabuco Trail from upstream of County's O'Neill Regional Park to the Cleveland National Forest, and also the Main Divide Trail and several other regional and National Forest trails. 5

6. Figure 4.1.12-3, Commuter Bikeway Strategic Plan Bikeways in SAMP Study Area; subject figure should show the Trabuco Creek Bikeway joining the San Juan Creek Bikeway at the confluence of the two creeks. The San Juan Creek Bikeway then extends south to Doheny State Beach. 6

<u>Chapter 7.0, NEPA Public Interest Issues:</u>

Recreation:

7. a. Page 7.10-12, Section 7.10.6 Alternative A-4 – Require the Construction or Expansion of Recreational Facilities Resulting in Adverse Physical Impacts on the Environment; the sentence reads "Alternative A-4 would not conflict with the implementation of the implementation of the Master Plans of Bikeways." It is suggested the sentence be revised to read "Alternative A-4 would not conflict with the implementation of the Orange County Transportation Authority (OCTA) Commuter Bikeways Strategic Plan and the County's Bikeway Plan." 7

A similar change could also be made to pages:

7.10-14 under Impact 7.10.7-2.

ii. 7.10-15 under Require the Construction or Expansion of Recreational Facilities Resulting in Adverse Physical Impacts on the Environment.

iii. 7.10-15 under Levels of Significance after Mitigation.

iv. 7.11-16 under Alternative A-5.

b. Page 7.10-14, 15, first paragraph – Section 7.10.7 Alternative A-5; the text discusses the possibility that regional and local trails and Class I and II bikeways may not be constructed as part of the development entitlement process due to potential gaps in the implementation of the County Master Plan of Regional Riding and Hiking Trails, County Bikeway Plan and OCTA's Strategic Bikeway Plan.

The text should also discuss the potential use of Community Facilities Districts (CFD's) as a way to ensure all programmed trails and bikeways are built. CFD's are also a tool used to finance these and other types of public benefits.

7 cont.

FLOOD CONTROL

8. The SAMP should identify all existing flood control facilities (open channels and basins) that have been designed and constructed with the assumption that they would be maintained to a standard that allows the design discharge to be adequately conveyed by the facility. Such maintenance should be allowed to continue and proceed with an exemption or minimal notification requirements. This will help to ensure that flood protection can continue to be provided under the terms that such projects were originally approved and additional requirements will not hinder the provision of needed flood protection.

8

9. The proposed SAMP has identified OCFCD flood control channels in lower San Juan and Trabuco Creeks as ineligible for use of the RGP or LOP procedures by designating channel reaches as aquatic resource areas. Because these flood control channel reaches require additional improvements, it is critical that these channels be properly maintained. The proposed permitting policy eliminates these channel reaches from the streamlined permitting procedures and will unnecessarily delay routine maintenance activities that may well jeopardize flood protection.

OCFCD needs to continue using maintenance related nationwide permits 3, 31, 33, 42 and 43 for the following OCFCD maintained channels:

a. San Juan Creek (L01) from its ocean outlet to upstream of La Novia Bridge and for the main access road dip crossing at Caspers Regional Park.

9

b. Trabuco Creek (L02) from its confluence with San Juan Creek to approximately 3,000 feet upstream of Del Obispo Street and 700 feet downstream of Camino Capistano Road to the San Juan Capistrano city limit.

c. Oso Creek (L03) from approximately 900 feet downstream of the San Juan Capistrano city limit to the San Diego Freeway (I-5) and Galivan Retarding Basin (L03B02).

9 cont.

WATER QUALITY

10. The DEIR needs to discuss that the County of Orange through its Resources and Development Management Department is working with the Planning Division of the U.S. Army Corps of Engineers to implement a major project in the watershed. The project is a multi-purpose project to look at flood control enhancement together with ecosystem restoration. The County and the Corps completed the San Juan Creek Watershed Feasibility Study and we have now moved into the Spin-off Feasibility Phase. We are also currently working on preparing a Locally Preferred Plan (LPP) for the lower San Juan Creek. The preliminary draft LPP calls for replacing the existing concrete lined portions of San Juan Creek and Trabuco Creek with new vertical concrete walls and maintaining the existing natural invert. No concrete is proposed where concrete does not exist today within San Juan and Trabuco Creeks.

10

Thank you for the opportunity to respond to the Public Notice/Application. If you have any questions, please contact Charlotte Harryman at (714) 834-2522.

Sincerely,

Ronald L. Tippets, Chief
Environmental Planning Division

3.4 RESPONSES TO LOCAL AGENCIES COMMENTS

COMMENTOR 5 COUNTY OF ORANGE
RESOURCES AND DEVELOPMENT MANAGEMENT DEPARTMENT
Dated: June 28, 2004

Response 1

Figure 2-3 has been modified to include the proposed Gobernadora Multipurpose Basin and is included in Section 4 of this Reponses to Comments document.

Response 2

This referenced sentence has been revised as follows (see Section 4):

> ~~Although facilities are planned as part of the County of Orange Master Plan of Riding and Hiking Trails, there are no existing trails that link these regional parks.~~ Three County of Orange Master Plan of Riding and Hiking Trail facilities link O'Neill Regional Park to Caspers Wilderness Park: Bell View Trail, Tijeras Creek Trail, and Arroyo Trabuco Trail.

Response 3

Clarification is provided as follows (see Section 4):

> Figure 4.1.12-2 illustrates the trails within the SAMP Study Area that are on the Orange County General Plan Recreation Element Master Plan of Regional Riding and Hiking Trails Map.

Response 4

The sentences have been clarified as follows (see Section 4):

> A Class I bicycle trail is a paved facility, which is physically separated from a roadway and designated primarily for the use of bicycles and designated primarily for the use of bicycles, although pedestrian and equestrian use is allowed on Orange County regional Class I bikeways.
>
> Some of t~~T~~hese bikeways also are included on the County of Orange ~~Master Plan of Bikeways~~ Bikeway Plan. The Master Plan of Bikeways is a component of the Recreation Element of the General Plan.

Response 5

Figure 4.1.12-2 has been revised to incorporate additional riding and hiking trails (see Section 4).

Response 6

Figure 4.1.12-3 has been revised to incorporate the requested changes (see Section 4).

Response 7

Clarification is provided as follows (see Section 4):

> Alternative A-4 would not conflict with the implementation ~~of the implementation of the Master Plan of Bikeways~~ of the Orange County Transportation Authority (OCTA) Commuter Bikeways Strategic Plan and the County's Bikeway Plan.
>
> Alternative A-5 would potentially conflict with the implementation of the ~~County Master Plan of Bikeways~~ Orange County Transportation Authority (OCTA) Commuter Bikeways Strategic Plan and the County's Bikeway Plan.
>
> Alternative A-5 would not have any significant physical impacts on recreational resources. However, this alternative does not provide for the comprehensive implementation of the County Master Plan of Riding and Hiking Trails, ~~the County Master Plan of Bikeways~~ the County's Bikeway Plan, or the OCTA Commuter Bikeway Strategic Plan within the RMV Planning Area.
>
> There are two designated bikeways within the limits of Alternative B-10 Modified. Both bikeways would be provided for as part of the development of Alternative B-10 Modified…. Alternative B-10 Modified would not conflict with the implementation of the ~~Master Plan bikeways~~ Orange County Transportation Authority (OCTA) Commuter Bikeways Strategic Plan and the County's Bikeway Plan.

With respect to the use of Community Facilities Districts to finance trails and bikeways, the comment is noted. However, the USACE does not have land use authority over the SAMP Study Area and, more specifically, the RMV Planning Area to impose Community Facilities Districts as a part of the SAMP project.

Response 8

The USACE recognizes that existing flood control facilities need to be maintained and strives to minimize permitting delays for these activities that protect the public from flooding dangers. The USACE also recognizes that some of these flood control facilities provide functions related to habitat and water quality that are of interest to the local community and environmental organizations. In the face of the need to balance interests that sometimes appear to be opposing forces, the USACE has developed policies within the SAMP Study Area that seek to accommodate these disparate purposes of these resources. For small actions in relatively poor quality aquatic resources, the USACE proposes to fully implement the Regional General Permit (RGP) program for maintenance. The RPG program for maintenance would result in authorizations within as little as 15 days of notification to the USACE, would include a program level Section 401 certification, and would not require compensatory mitigation. Even though the USACE cannot make these types of activities exempt or free of notification requirements in light of the public concerns over these resources, the USACE can attempt to accommodate these types of facilities while still considering the concerns by interested citizens and environmental groups.

For larger permitting actions, the USACE proposes to fully implement the Letter of Permission (LOP) program even within higher value aquatic areas. Regardless of the location of the flood control facility, the LOP program would allow for maintenance activities consistent with established maintenance baselines. The maintenance baseline definition is the same as the one provided for Nationwide General Permit 31. As is the case with Nationwide General Permit 31, activities consistent with the established maintenance baseline would not require compensatory mitigation. Activities not consistent with an established maintenance baseline or undertaken without maintenance baseline would require compensatory mitigation depending on the extent of impacts. The definition and application of maintenance baseline provision shall be made

more explicit within the SAMP LOP permitting procedures. In comparing processing times of the LOP program with existing Nationwide General Permits used for flood control facility maintenance, the design of the LOP program does not penalize applicants in time delays while resulting in more interagency coordination that makes the permitting outcome more environmentally defensible.

For the record, the USACE will change the pre-application requirements for the LOP process outside of the high quality areas. After informal discussions with the U.S. Fish and Wildlife Service and the California Department of Fish and Game, the pre-application consultation threshold for eligibility outside of high quality areas will be changed from 0.1 acre to 0.5 acre. Given the low quality of these areas and the absence of critical habitat for listed threatened and/or endangered species, the LOP process including pre-application meetings and inter-agency coordination should still provide the appropriate amount of aquatic resource protection.

Response 9

Portions of Arroyo Trabuco and San Juan Creek were included as high quality aquatic resources because of the recently finalized steelhead critical habitat. Even under the existing permitting system involving the use of NW 3, 31, 33, 42, and 43, formal Section 7 consultation with the National Oceanic and Atmospheric Administration (NOAA)-Fisheries pursuant to the Endangered Species Act would be required with a formal biological opinion taking about 135 days to complete from start to finish. By revoking the Nationwide General Permits and implementing the alternative permitting system subject to additional LOP requirements, the USACE will be able to undertake more effective consultation with NOAA-Fisheries to fully minimize impacts to the southern steelhead. The LOP requirements of greater interagency coordination also formalizes exchange of information between the USACE and other state and federal agencies, allowing environmental decision-making to be more effective in these critical habitat areas. The only operational change to applicants in establishing this new process involves more upfront coordination which the County of Orange and USACE permitting staff already undertake on a regular basis for most activities.

The USACE acknowledges portions of Trabuco Creek and San Juan Creek as ineligible for Regional General Permits (RGPs). However, it must be clarified that these areas would be eligible for maintenance activities through the LOP process. The only effect of making these areas ineligible for most LOP activities is the imposition of the 0.1 acre threshold for permanent impacts because of the high value nature of these geographic areas. For non-maintenance flood control activities, the main effect of this threshold is to require a standard individual permit for activities such as placement of large amounts of riprap. For other temporary activities, a standard individual permit will not be required.

Regarding the references to San Juan Creek, Arroyo Trabuco, and Oso Creek, the County of Orange will not be prohibited from obtaining permit authorizations for maintenance activities. LOP procedures would allow for maintenance while allowing for appropriate permit review. Of the three listed creek systems, Oso Creek is completely outside the higher value areas. This is due to the overall lower ecological integrity of that creek and the absence of listed threatened and/or endangered species or their critical habitat. Aside from capital improvement projects and impacts to compensatory mitigation sites, many activities would be eligible for the full range of abbreviated permitting within the Oso Creek Watershed.

Response 10

The SAMP does not affect other USACE studies. Permitting for other USACE studies is not performed by USACE' regulatory staff and are often so large as to require standard individual rather than any abbreviated permitting. Nevertheless, the proposed Locally Preferred Plan within the lower San Juan Creek may be an exception in terms of abbreviated permitting. The proposal to raise channel side walls and/or replacing concrete with concrete for the most part does not constitute a permanent impact. This type of impact as envisioned would result in less than 0.1 acre of permanent impact and would thus qualify for the LOP process. The USACE still expects Section 7 consultation within areas designated as critical habitat for the southern steelhead.

32400 PASEO ADELANTO
SAN JUAN CAPISTRANO, CA 92675
(949) 493-1171
(949) 493-1053 FAX
www.sanjuancapistrano.org

MEMBERS OF THE CITY COUNCIL
SAM ALLEWATO
DIANE BATHGATE
WYATT HART
JOE SOTO
DAVID M. SWERDLIN

January 30, 2006

Jae Chung, SPL
U.S. Army Corps of Engineers
915 Wilshire Blvd., 11th Floor
Los Angeles, CA 90017-3401

Subject: Response to Draft Environmental Impact Statement (DEIS) for the San Juan Creek and Western San Mateo Creek Watersheds Special Area Management Plan (SAMP)

Dear Mr. Chung:

The City appreciates the opportunity to review and comment on the Draft Environmental Impact Statement (DEIS) for the San Juan Creek and Western San Mateo Creek Watersheds Special Area Management Plan (SAMP). We understand that the EIS represents your agency's evaluation of the project-related environmental impacts under the provisions of the National Environmental Policy Act (NEPA). While we've reviewed the Draft EIS, we also request a copy of the SAMP for review and comment. We have the following comments on the DEIS analysis:

1. Under Regional General Permit (RGP) Procedures, General Condition 13. Avoidance of Breeding Season. All work in waters **must occur** between September 15 and March 15. This is in conflict with Orange County Flood Control District (OCFCD) conditions which usually **prohibit** work in stream corridors under their jurisdiction between October and April. OCFCD has certain jurisdiction over San Juan Creek through the City of San Juan Capistrano. This would create a condition that would allow for a one month window for work within jurisdictional waters. The City recommends that ACOE work with the United States Fish & Wildlife Service (USFWS) and Orange County Flood Control District (OCFCD) to establish appropriate conditions that protect listed species while allowing necessary stream and flood channel improvements to proceed. 1

2. **Hydrology.** The City is concerned about any diversion of or impact on surface waters or groundwater that would reduce the flow of such water towards the City. Specifically, the City opposes any component of the proposed project that would reduce current stream flows or reduce groundwater levels in the San Juan Basin in a manner that would diminish the production of the City's groundwater wells. The City has invested substantial public funds in the development and operation 2

of its Groundwater Recovery Plant ($32 million in capital funding expended), a fundamental part of the City's adopted Domestic Water Master Plan (DWMP). The City recommends that the ACOE require, and that the EIS demonstrates no change to the historic surface water and groundwater hydrology along San Juan Creek. The SAMP should be required to include provisions for maintaining adequate seasonal stream flows capable of maintaining the existing riparian habitat along San Juan Creek within the City of San Juan Capistrano. Further, the SAMP should be required to include provisions that assure that groundwater flows within the San Juan Basin will adequately serve the City's groundwater recovery well system. 2 cont.

As a result of our review, the City of San Juan Capistrano finds that with the incorporation of revisions previously noted in bullets 1&2 above into the EIS for the San Juan Creek and Western San Mateo Creek Watersheds Special Area Management Plan (SAMP), and addressed within the SAMP itself, the Draft EIS would be substantially adequate. We look forward to working with the Army Corps of Engineers in the development of the subject SAMP, and would be glad to meet to review and discuss our comments. 3

At such time that a Record of Decision has been rendered approving the subject EIS and SAMP, the City of San Juan Capistrano respectfully request that the ACOE provide two copies of each document to the City for record keeping and public inquiries purposes.

Sincerely,

Molly Bogh
Planning Director

Cc: Nasser Abbaszadeh, Engineering & Building Director
Sam Shoucair, Senior Engineer
Brian Perry, Senior Civil Engineer
Amy Amirani, Public Works Director
Eric Bauman, Water Engineer Manager
William Ramsey, AICP, Principal Planner

COMMENTOR 6 CITY OF SAN JUAN CAPISTRANO
Dated: January 30, 2006

Response 1

The USACE acknowledges that some flood control maintenance work needs to occur between March 15 through September 15. Given that breeding birds are not always present and are not present throughout the entire spring and summer, the exception to allow work if breeding birds are absent allows the work to occur in the spring and summer. Rather than one month, the actual realistic window for maintenance activities is several months. This condition along with the exception in various forms has become a typical permit condition by the USACE, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game. In addition, if the action is needed to address an emergency situation, applicants can always use Regional General Permit Number 63 for emergency actions.

Response 2

One of the goals of the SAMP was to maintain similar hydrologic profiles before and after the project. Sections 6.3.2.2 and 6.3.2.4 of the SAMP Draft EIS discusses the potential project design features addressing both surface hydrology and groundwater hydrology. Appendix D of the Draft EIS provides quantitative estimates of the monthly water budget for each major basin based on a full water balance analysis. As part of the water balance analysis, all components of the hydrological cycle including imports, evapotranspiration, infiltration, and precipitation were considered. Due to project design features that direct development and impervious surfaces onto poorly infiltrating soils and using retention basins in sandy soils to promote infiltration, impacts to the hydrologic cycle are not substantially different before and after the project except for increased groundwater outflow.

In terms of the groundwater wells used by the City of San Juan Capistrano, the RMV Planning Area development directs water towards areas of infiltration in order to not adversely deplete groundwater supplies. The net result is an increase in groundwater recharge. For example, groundwater flows would increase by 200 acre-feet per year in the Chiquita Sub-basin, by 300 acre-feet per year in the Gobernadora Subbasin, by 700 acre-feet per year in the Trampas Sub-basin, and 900 acre-feet per year in the East Ortega Sub-basin. The data and analysis are available in Section 5 in Appendix D of the SAMP Draft EIS.

Response 3

The comment is noted.

fr doc 05 22718
army corps of engineers and san juan creek

didn't the army corps of engineers plan and develop the new orleans levies that failed?

doesnt the army corps of engineers give 99% approval to every applicant who seeks to destroy environmental protections?

i think the army corps of engineers is anathema to environmental interests and so oppose their involvement in this at all.

i think the record of this agency is extremely poor since they seem to consider only business interests, and have an extremely poor record on protecting the environment.

1

b. sachau
15 elm st
florham park nj 07932

Yahoo! FareChase: Search multiple travel sites in one click.
http://farechase.yahoo.com/

3.5 RESPONSES TO INDIVIDUALS AND ORGANIZATIONS

COMMENTOR 7 B. SACHAU
Dated: November 16, 2005

Response 1

The opinions of the commentor are noted.

ENDANGERED HABITATS LEAGUE

DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE

EHL

December 8, 2005

Jae Chung
USACE, Los Angeles District
Regulatory Branch
ATTN: CEPL-CO-R-199916236-1-YJC
CEPL-CO-R-199916236-2-YJC
CEPL-CO-R-199916236-3-YJC
P.O. Box 532711
Los Angeles, CA 90053-2325

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL # of pages ▸ 4

To Laura Engeborg	From Jae Chung
Dept./Agency	Phone #
Fax #	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

RE: San Juan Creek/Western San Mateo Creek Watershed SAMP

Dear Mr. Chung:

The Endangered Habitats League (EHL) appreciates the opportunity to comment upon the SAMP for these important watersheds. Within these particular geographic areas, developed uses must be reconciled with wetland and watershed values. Therefore, EHL supports the SAMP approach, which identifies higher and lower value resources, and tailors streamlined – or more detailed – permitting within this comprehensive framework. However, the comments below are based on very limited review, and should not be considered exhaustive or an endorsement of all the elements. The intent here is to raise selected issues so as to improve the outcome.

1. Maintenance Regional General Permit

For these limited, temporary impacts outside of the RMV Planning Area, we have no comment. } 1

2. Letter of Permission Procedures for Areas Outside the RMV Planning Area

EHL is concerned that – especially in higher value, "ineligible" areas – the proposed procedures may not provide the Corps sufficient opportunity to explore and require proper avoidance and minimization measures, through redesigned or alternative projects. It appears that the "fail safe" is the ability to withhold an LOP if a judgment is made that standard permitting would result in a substantive change to the project. Does the Corps have full discretion to make this determination? Is the information contained in a project description sufficient? In particular, for projects in *higher value, ineligible* areas with 0.1 acre or less of impact, in which LOPs are nevertheless anticipated, will there be sufficient information available on avoidance, minimization and alternatives?

Does the Corps have the opportunity to withhold an LOP regardless of whether pre-application coordination is required? If not, this should be changed, as otherwise impacts to 0.1 acres or less of high value aquatic resources will go forward automatically. } 2

Within higher value, ineligible areas, pre-application coordination would be prudent for impacts of *all* sizes, to ensure that opportunities for appropriate avoidance and minimization are not lost, and to ensure that LOPs are not issued inappropriately.

In all cases, we are assuming that the mitigation requirements to ensure no-net-loss of function and acreage are well formulated and effective. 2 cont.

3. Letter of Permission Procedures for Areas Within the RMV Planning Area

EHL strongly supports the RMV project as modified in Alternative 12, as well as a SAMP that implements this alternative.

Correction:

With the 400-meter corridor along San Juan Creek, staging and picnic areas are not allowable uses. 3

Comments:

The requirement to eradicate bullfrogs from water quality treatment basins within 0.5 km of streams known to have arroyo toads is not sufficient in and of itself, due to the ability of bullfrogs to easily travel longer distances. We suggest that this requirement be viewed as a priority *initial* step, within the context of the overall RMV adaptive management plan – supported by EHL – which has the goal of complete eradication of this voracious, exotic species. 4

Regarding special permit conditions for the Santa Margarita Water District (SMWD), additional specific conditions should be formulated to address exotic species, such as bullfrogs and crawfish, which may utilize the *reservoir* or other water bodies created by the district. There must be a rigorous and complete monitoring program as well as the imposition of perpetual and enforceable eradication requirements. 5

Regarding the compensatory mitigation for SMWD projects, contribution of $700,000 to the adaptive management plan appears insufficient. The impacts to wetlands and other water of the US that result from the reservoir and other facilities must be fully mitigated so that there is no net loss or acreage, functions or values. While a contribution to adaptive management and restoration may be appropriate, it is unclear how the proposed, relatively small, dollar amount will accomplish the goal. 6

Thank you for the Corps' commitment to this ecologically-oriented SAMP.

Sincerely,

Dan Silver
Executive Director

COMMENTOR 8 ENDANGERED HABITATS LEAGUE
Dated: December 8, 2005

Response 1

The comment is noted.

Response 2

In developing the Letter of Permission (LOP) procedures within the higher value, ineligible areas, the USACE sought to maximize aquatic resource protection while not overburdening most projects having minimal or minor impacts to the aquatic ecosystem. To accomplish this, the USACE needed to consider an appropriate threshold within these higher value areas that would separate activities into those warranting permit review through the full standard individual permit process (i.e., activities that have the potential to have more adverse impacts to Waters of the U.S., including wetlands) from those warranting permitting the abbreviated LOP procedures (i.e., activities that would not have adverse impacts with appropriate permit conditions). If the impact threshold to Waters of the U.S. is too high (e.g., 1.0 acre), more activities with potentially adverse impacts would not receive the benefit of full review through the standard individual permit, which requires dissemination of a public notice for public input and impact analysis through an environmental assessment. Conversely, if the threshold is too low (e.g., 100 square feet), more routine activities with insignificant impacts to the aquatic resources will undergo unnecessary paperwork and time delays associated with a standard individual permit, even if dissemination of a public notice elicits no response from the interested public. Given that most standard individual permits elicit no response from the public or from the resource agencies, a substantial amount of USACE staff time would be spent on writing and reviewing 3 to 7 page public notices and 12 to 15 page environmental assessments when it could be spent addressing impacts that could have more substantial impacts to the aquatic environment.

In consideration of the above issues, the USACE chose a threshold of 0.1 acre or 4,356 square feet of Waters of the U.S. for these higher value aquatic areas, which are characterized by high ecological integrity or possess critical habitat for listed threatened and/or endangered species. This threshold is the same as the one used in the Upper Santa Margarita River Watershed in Riverside County, a threshold above which a standard individual permit is required. The USACE believes that the threshold is low enough to allow full review associated with standard individual permits for most activities with potentially adverse effects to the aquatic ecosystem. For impacts below that threshold, the USACE believes the impacts are small enough to not have adverse effects that cannot be minimized through appropriate project permit conditions developed in coordination with the resource agencies.

The USACE acknowledges that certain types of impacts warrant more review and coordination. After informal discussions with the U.S. Fish and Wildlife Service and the California Department of Fish and Game, the USACE is proposing to modify the LOP procedures in the higher value aquatic areas by requiring a pre-application coordination for any project that may affect a listed threatened and/or endangered species or their listed critical habitat, regardless of the extent of impact.

As a point of clarification, the USACE has the sole authority to require a standard individual permit for those activities that would otherwise be eligible for the LOP procedures. If the USACE determines that a project may not be eligible for a LOP after coordination with the resource agencies, the USACE will require processing of the action through a standard individual permit. However, the USACE believes most impacts below 0.1 acre can be minimized to the same

degree as can be obtained through a standard individual permit through proper conditioning of the authorization. The requirement of a standard individual permit for impacts to less than 0.1 acre of Waters of the U.S. in these higher value resource areas would not be common.

Response 3

The USACE accepts this language suggestion. The 400-foot-wide buffer along San Juan Creek between Planning Areas 3 and 4 will not have staging and picnic areas.

Response 4

Rancho Mission Viejo is not relying on eradication of bullfrogs from water quality basins within 0.5 km of streams as the sole measure to control bullfrogs. Rancho Mission Viejo has developed an Invasive Species Control Plan as a component of the Adaptive Management Program that includes bullfrogs as a target species for control/eradication throughout the RMV Planning Area. The Invasive Species Control Plan, as a component of the Adaptive Management Program, is based on extensive site surveys which mapped occurrences of invasive species (plants and animals) as well as providing a variety of methods for eradication. The section of the Invasive Species Control Plan that addresses bullfrogs identifies known and potential locations throughout the RMV Planning Area that would be subject to the specified control methods as part of the Adaptive Management Program. The mitigation measure referenced by the commentor would be implemented as part of the combined measures prescribed for bullfrogs the water quality basins and the Invasive Species Control Plan.

Response 5

As described in Section 8.1.1.2 of the Draft EIS, the Santa Margarita Water District desires to construct two domestic reservoirs and one non-domestic reservoir and have identified two locations for these facilities: Upper Chiquita and San Juan Creek East 3 for the domestic reservoirs and San Juan Creek East 3 and Trampas Canyon Pit from the non-domestic reservoir. The two domestic reservoirs are for emergency storage of potable water; they would be constructed with earthen dams and would be lined and covered with a floating cover. The water will not be exposed to the atmosphere and, as such, would not promote the breeding of bullfrogs. The non-domestic reservoir would also be an earthen dam and provide for seasonal storage of recycled water. Although not covered and lined, it would be designed to control bull frog breeding through steep slopes and preclusion of vegetated areas, low spots, shelves or other areas that could inadvertently support bullfrog breeding. The seasonal operation of the reservoir would include filling the reservoir during low irrigation demands during the winter and drawing from the reservoir for use during high irrigation demands during the summer. The cyclic operation would allow for periodic reviews to determine the level of, if any, and the removal of bullfrog habitat.

Response 6

As described in Section 8.4.1.1 of the Draft EIS, the impacts to USACE regulated wetlands and waters by the Santa Margarita Water District Proposed Project (maintenance of existing facilities) are 3.34 acres of wetlands and 14.54 acres of waters. As noted in the Draft EIS, these impacts would all be temporary and would occur over many years as Santa Margarita Water District maintains its existing facilities. The Draft EIS and Special Public Notice set forth minimization and mitigation measures for these impacts including restoration of all temporarily impacted areas and the contribution of $700,000 towards the protection and management of permanently preserved aquatic resources through implementation of the Aquatic Resources

Adaptive Management Plan. It is the opinion of the USACE that the combination of restoration of all temporarily impacted areas and the funding of management measures designed to maintain and where feasible enhance the functions and values of the preserved aquatic resources, in addition to those other measures set forth in the Special Public Notice will result in no net loss of acreage, functions, and values.

January 15, 2006

Mr. Jae Chung
U.S. Army Corps of Engineers
Los Angeles District, Regulatory Branch
P.O. Box 532711
Los Angeles, CA 90053-2325

Dear Mr. Chung:

Thank you for the opportunity to comment on the Draft Environmental Impact Statement for the Special Area Management Plan (SAMP) for the San Juan Creek and Western San Mateo Creek Watersheds, Orange County, CA. As you may know, I am a zoologist who has worked intensively on Rancho Mission Viejo for approximately 20 years and on adjacent Marine Corps Base, Camp Pendleton for 35 years. As a result, I am very familiar with the ecology, problems, and distribution and relative abundance of many of the sensitive plant and animal species identified in the above document. Please consider this letter an offer to voluntarily assist in fine tuning the analysis and discussion sections of the above SAMP.

I found the information in the above document to be basically sound but needing to be more current and perhaps more refined, and although information collected by myself was cited, no one invited me to review the draft before it was published, and valuable, more recently collected material was left out. For instance, there is no mention of voucher specimen records of red-legged frogs (*Rana aurora boylii*) from Canada Gobernadora. 1

Although the Arroyo Toad population in San Juan Creek continues to decline, this creek and the Cristianitos and Gabino Creek complex continue to support the largest populations of Arroyo Toads in Orange County. My most recent records of Arroyo Toads (*Bufo californicus*) in the upper most reaches of Cristianitos Canyon place the species as much as 3.3 km north of the nearest natal site in Gabino Canyon and equal distance south of San Juan Creek. I should also clarify that the distribution of breeding arroyo toads in Gabino Canyon extends about 0.75 km upstream of the confluence with La Paz Canyon. 2

I also have concerns related to the development of Rancho Mission Viejo as it relates to sensitive species, and the Arroyo Toad in particular. The five most important factors affecting the continued existence of Arroyo Toads within the San Juan Creek watershed in descending order are seasonal water availability, upland habitat destruction, exotic aquatic predators, riparian habitat conversion to *Arundo* forests and road mortality. All need to be cautiously considered when evaluating development and agricultural proposals on the ranch and the Ortega Highway, but guaranteeing enough water at the appropriate season for larval development is paramount. The Cristianitos drainage has a similar but shorter list of concerns as it relates to the toad, with seasonal water availability, exotic aquatic predators and road mortality being most important. 3

While addressed in the document, important information such as roost site locations and new nest sites of the white-tailed kite (*Elanus leucurus*), northern harrier (*Circus cyaneus*), and historic nest sites of peregrine falcons (*Falco peregrinus*) were not mentioned and should have been. Also missing were wintering locations of burrowing owls (*Speotyto cunicularia*), Swainson's hawk (*Buteo swainsoni*), ferruginous hawk (*B. regalis*), and merlin *(Falco columbarius*) to name a few. 4

Again, thank you for the opportunity to provide comments. I remain available to provide updated accounts on the above species and many other sensitive species found within the SAMP coverage area and may be reached at PHBloom1@aol.com. My goal is to help make this document more insightful and relevant to species conservation and wise land development with current information.

Respectfully,

Peter H. Bloom
13611 Hewes Avenue
Santa Ana, CA 92705

COMMENTOR 9 PETER BLOOM
Dated: January 15, 2006

Response 1

The species information provided in the Draft EIS was current to spring 2004, as provided in the Draft Southern Subregion NCCP Southern Planning Guidelines. The Draft Southern Planning Guidelines provided in Appendix B1 to the SAMP Draft EIS. The Draft Southern Planning Guidelines also are available on the County of Orange NCCP and SAMP website as a source material for the SAMP, the 2004 General Plan Amendment/Zone Change EIR, and was included in the Southern Subregion NCCP/MSAA/HCP.

Although the red-legged frog is considered to be extirpated from Orange County, Mr. Bloom was contacted and requested to provide further information on the voucher specimen for the California red-legged frog data.

Response 2

As noted in Response 1, the species information provided in the Draft EIS was current to spring 2004 as provided in the Draft Southern Subregion NCCP Southern Planning Guidelines and has been available for public review since May 2004. Mr. Bloom was contacted and requested to provide his most recent information for arroyo toad locations in Cristianitos Creek. The clarification that the distribution of breeding arroyo toads in Gabino Canyon extends to about 0.75 km upstream of the confluence with La Paz Canyon is noted. The distribution of this breeding population extending upstream of La Paz Canyon is shown on Figure 8-9 of the SAMP Draft EIS.

Response 3

The USACE concurs with the commentor's concerns related to potential development impacts on the arroyo toad and other sensitive aquatic/riparian species and has addressed these concerns through the: (1) Aquatic Resources Adaptive Management Program (ARAMP; see Appendix F3 of the SAMP Draft EIS); (2) Aquatic Resources Restoration Plan (ARRP; see Appendix F2 of the SAMP Draft EIS); and (3) Invasive Species Control Plan (ISCP; see Appendix F4 of the SAMP Draft EIS). The ARAMP is the programmatic approach to management and monitoring of the arroyo toad and other sensitive aquatic/riparian species. The ARRP and ISCP are plans that describe in more specific detail the implementation of the ARAMP. In addition, the *Geomorphic and Hydrologic Needs of Aquatic and Riparian Endangered Species: San Juan and Western San Mateo Watersheds* (see Appendix G of the Draft EIS) provides an extensive discussion of the natural history and ecology, subregional distribution, and conservation and management concerns for the arroyo toad, as well as other listed aquatic/riparian species.

The ARAMP provides an extensive discussion of the management and monitoring issues regarding the arroyo toad and other sensitive aquatic/riparian species. It identifies the environmental factors (termed stressors in the ARAMP) potentially affecting arroyo toads noted in the comment that will require long-term management and monitoring, including water availability and exotic invasive plant and animal species (e.g., giant reed and bullfrogs). Management objectives stated on page A-38 of the ARAMP directly pertaining to the arroyo toad include:

- Maintain the ability of the subregion to support populations of aquatic listed and focal species by implementing management activities in areas where: (1) habitat degradation has been determined to adversely affect habitat use by those species; and (2) it is unlikely that the area would naturally regenerate without management intervention; e.g., where giant reed invades arroyo toad habitat.

- Maintain and, where feasible, enhance long-term net habitat value in order to mitigate for proposed impacts and to further recovery of listed aquatic species…

  - Implement invasive plant and animal species control plans along San Juan and Cristianitos Creeks to improve breeding habitat for the arroyo toad and least Bell's vireo.

  - Maintain flow characteristics of episodic events and assure water quality in drainages supporting the arroyo toad.

The ARAMP also describes the general monitoring approach for the arroyo toad (see pages A-58 and A-59) although the precise details of the monitoring program, such transect locations, timing of surveys, etc. will be described in the initial Management Action Plan to be developed over the first 18 months of initiation of the ARAMP.

The ARAMP discusses adaptive management approaches pertinent to the arroyo toad (see pages A-59 and A-60). For example, general management strategies that could directly affect arroyo toad habitat include:

- Emulate natural flood regimes to maintain coarse sediment yields, storage, and transport.

- Emulate natural timing of peak flows of each sub-basin relative to mainstem creeks.

- Manage existing groundwater recharge areas supporting riparian zones and maximize groundwater recharge of alluvial aquifers to the extent consistent with aquifer capacity and habitat management goals.

- Manage water quality through various strategies, with an emphasis on natural treatment systems such as water quality wetlands, swales and infiltration areas and application of Best Management Practices.

At a specific level relevant to the arroyo toad, these strategies include:

- Management of excessive surface and subsurface flows and sediment in Gobernadora Creek (relates to downstream water availability in San Juan Creek to support arroyo toad breeding populations).

- Management of potential changes in water supplies to San Juan Creek.

- Control of invasive exotic plant species such as giant reed, tamarisk, and pampas grass in riparian zones, particularly in San Juan Creek and lower Cristianitos Creek.

- Management of ponds and other open waters with lacustrine and fresh emergent vegetation (e.g., water quality and invasive species that may appear, such as bullfrogs and crayfish)

- Control of human access and recreational activities in wetland/riparian areas.

The ARAMP includes "near-term" active management strategies relevant to arroyo toads that have high priority for early implementation, including:

- Control of Argentine and red imported fire ants.
- Control of exotic predators (bullfrogs, crayfish, and possibly introduced fishes).
- Control of specimen collections and harassment by humans.
- Provision of adequate wildlife crossings/habitat linkages and fences along roadways at key crossing locations.
- Control of artificial lighting and noise.

Finally, the ARAMP includes experimental management hypotheses relevant to the arroyo toad, including:

- Control of bullfrogs in CalMat Lake will increase arroyo toad populations.
- Control of giant reed in San Juan Creek below Bell Canyon will increase local arroyo toad populations.
- Increasing spring stormwater flows into San Juan Creek through the Water Quality Management Plan-proposed Combined Control System will increase breeding habitat quality for the arroyo toad by providing breeding pools that persist longer and support the full toad reproductive cycle.

With regard to upland habitat destruction adjacent to San Juan Creek, there will be some loss of potential arroyo toad upland habitat (based on suitable soils and vegetation communities) adjacent to Planning Areas 3 and 4. However, Ramirez (2003) demonstrated with radio telemetry that arroyo toad habitat use along San Juan Creek is primarily confined to the active floodplain that will remain undisturbed. Furthermore, development setbacks from Planning Areas 3 and 4 designed in coordination with the U.S. Fish and Wildlife Service and California Department of Fish and Game will result in a 400 meter-wide area along San Juan Creek that will provide additional potential upland habitat for the arroyo toad.

The development footprint for Planning Area 8 adjacent to the lower Gabino/Cristianitos/Talega arroyo toad populations will be limited to 500 acres within the 1,349-acre planning area. As required by Special Condition I.D.8, five years of monitoring studies on the arroyo toad will be completed by Rancho Mission Viejo, and the results of these studies will be used to design appropriate measures to minimize impacts to the arroyo toad in Planning Area 8. No impacts to the Talega Canyon major population/key location are anticipated to occur as a result of the development of the 500 acres in the Talega Canyon/Blind Canyon sub-basins.

Response 4

Representatives of Rancho Mission Viejo and Phil Behrends of Dudek met with Mr. Bloom on March 24, 2006. Mr. Bloom did not identify any new nest sites for raptors. Two roost sites for the white-tailed hawk were identified by Mr. Bloom; one is located in GERA and one in the Donna O'Neill Land Conservancy. No new information was provided regarding important winter

locations for non-resident raptors beyond that information provided by Mr. Bloom in 1998. Given the high conservation level of riparian habitats that provide nesting and roosting for raptors in the SAMP Study Area and high conservation and grassland and suitable agricultural (i.e., barley fields) foraging habitats, these additional locations do not significantly affect the conservation analysis of these species.

RANCHO MISSION VIEJO

MEMORANDUM

TO: Jae Chung, USACE

FROM: Laura Coley Eisenberg

DATE: January 13, 2006

SUBJECT: RMV Comments on SAMP Draft EIS

We have reviewed the SAMP Draft EIS and offer the following comments for your consideration:

1. Balance Hydrologics has prepared a technical memorandum (Attachment A) to Appendix H.

2. GLA has reviewed all of the impact calculations regarding infrastructure assumptions and noted the inadvertent omission of impacts related to a fire protection facility and utility facilities located adjacent to Planning Area 1. These impacts were previously analyzed in the GPA EIR for Alternatives B-4 and B-10 Modified, and should be included for the B-12 Alternative as follows:

   CORPS IMPACTS (using SAMP/GLA data)

   Fire Protection: 0.01 acre non-wetland waters
   Utility Facilities: 0.38 acre non-wetland waters and 0.18 acre of wetland (0.17 acre mulefat scrub and 0.01 acre FWM)

   CDFG IMPACTS (using NCCP/GLA data)

   Fire Protection: 0.06 acre Riparian (Mulefat Scrub)
   Utility Facilities: 0.80 acre Riparian (0.01 acre FWM, 0.01 acre Arroyo Willow Riparian Forest, 0.23 acre Willow Riparian Scrub, 0.55 acre Mulefat Scrub)

Rancho Mission Viejo is very appreciative of the USACE's efforts to date on the SAMP as an essential element of the coordinated planning process for south Orange County. We look forward to concluding this planning phase of the SAMP process and beginning the implementation phase. Should you have any questions regarding these comments, please contact me at (949) 240-3363 Extension 297.

Attachment A

BALANCE HYDROLOGICS, Inc.

Memo

To: Laura Coley Eisenberg, Rancho Mission Viejo
From: Scott Brown and Barry Hecht
Date: December 30, 2005
Subject: **Assessment of potential changes to sediment generation and transport associated with the proposed B-12 alternative, Rancho Mission Viejo, Orange County, CA.**

Introduction

In June 2004, Balance Hydrologics issued a report describing potential changes in sediment generation and transport as a result of proposed urbanization within Rancho Mission Viejo (RMV). That report considered the potential impacts as a result of the B-4 planning alternative ("Ranch Plan"), which was the preferred alternative among several considered within the EIR for RMV's request for a General Plan Amendment/Zone Change.

The 2004 report was updated and re-issued in June 2005 (Brown and others, 2005) to consider alternative B-10m, the project approved by the County in November 2004. Since that update, an additional alternative has been proposed (B-12), in response to comments from USACE, CDFG, USFWS, the environmental community and the general public.

RMV has asked Balance to provide an analysis of potential impacts to sediment generation and transport as a result of the B-12 alternative. The following analysis describes potential differences between the B-12 alternative and the originally-analyzed B-4 alternative. It also considers changes relative to the B-10m alternative, which was considered in the June 2005 update to the original report. This memorandum is intended as a companion document to the June 2005 report, rather than a stand-alone document, as many of the concepts in the 2005 report (describing the effects of the B-4 and B-10m alternatives) are also applicable to the B-12 alternative.

Also included in this memorandum are updates of two of the figures that appeared in the June 2005 report. These figures highlight the distribution of the planned land use changes within the context of sources of coarse sediment supply (Figure 2) and classification of channel bed conditions (Figure 5). Other figures from the report were not updated, as no changes were necessary to update to the B-12 alternative conditions.

2. Discussion

As a whole, the B-12 project is similar to the B-4 and B-10m alternatives, in that it consists of individual, isolated planning areas (or development 'bubbles') within RMV. The initial siting of these planning areas was guided by a series of planning principles established for the various sub-watersheds within RMV to protect habitat functions and value. In part, these planning principles were intended to encourage, to the extent practicable, a reduction in fine sediment generation, and to maintain, as best as possible, the existing regime of coarse sediment generation and transport needed to maintain channel form and beach supply. These general principles, which are also applicable to the B-12 alternative, are described in sections 4.3.1.2 and 4.3.2.2 of the 2005 report; their geomorphic and ecological bases are elaborated in a number of prior background reports (e.g. NCCP/SAMP, 2003; PCR and others, 2002). Conclusions based on these planning principles are made in Chapter 6 of the 2005 report (points 2, 3, and 6).

The following sections compare the differences between the B-12 and the B-4 and/or B-10m for each of the individual planning areas. While the planning areas as a whole were designed to maintain the current episodic sediment regime, needed to sustain several key species and communities, anticipated effects of individual planning areas are discussed in order to compare to the estimated sediment yields summarized in table 4 in the 2005 report.

2.1 Planning Area 1

Urbanization within PA-1 for the B-12 alternative is very similar to that in both the B-4 and B10m. Coarse sediment contribution to San Juan Creek from this small area is currently very low (see Figure 2), and therefore the impact will be similar to that under the B-4 alternative—a slight, beneficial, decrease in fine sediment production with a minimal effect on coarse sediment generation.

2.2 Planning Area 2

The urban area within PA-2 (Chiquita Canyon) has been significantly reduced in the B-12 relative to the B-4 and B-10m alternatives, and therefore we expect the changes in sediment production to be correspondingly reduced. In addition, much of the low-density, ridge-top residential development has been consolidated in the upland surrounding the existing water treatment plant, an area that is presently not a significant source of coarse sediment (Figure 2). The addition of a small area of urban development near Tesoro High School (at the northern edge of the Planning Area) may slightly reduce coarse sediment generation, however it is very small relative to the general reduction in size of the urban area as a whole.

2.3 Planning Area 3

In PA-3 (Gobernadora Canyon), urbanized area is slightly less under the B-12 alternative than the B-4 (GeoSyntec, 2005). Correspondingly, estimated changes in sediment transport rates are anticipated to be less under the B-12 alternative than in the B-4 alternative. Compared to the B-10m alternative, an additional side-canyon will be urbanized under the B-12, however this side-canyon is not a significant source of coarse sediment, as much of the sediment generated in the sub-watershed is stored within the side-canyon itself, and does not reach the stream network.

2.4 Planning Area 4

Under the B-12 alternative urban development within PA-4 (East Ortega) is less than that which was planned under the B-10m alternative. The B-12 includes 550 acres of urban development as well as a 175-acre reservoir. As described in the 2005 report, urbanization within this watershed is likely to reduce sediment supply to San Juan Creek (due to the relatively high sediment delivery ratio under existing conditions); however, the reduction in coarse sediment is not likely to be significant, as much of the bedrock underlying this watershed is fine-grained sedimentary rock that was originally deposited in a continental-shelf (fine sediment) environment, so relatively little coarse sand is delivered to the creek. The northernmost portion of the Verdugo watershed, which contributes much of the episodic coarse sediment supply, is planned to remain as open space and therefore much of the coarse sediment supply will be maintained.

2.5 Planning Area 5

Anticipated land use in PA-5 (Trampas Canyon) under the B-12 alternative is similar to both the B-4 and B-10m alternatives. Existing sediment contribution to San Juan Creek within the sub-watershed is limited due to an existing impoundment, and therefore will not change significantly under urbanized conditions.

2.6 Planning Areas 6 and 7

Planned urbanization within PA-6 and 7 is much less under the B-12 alternative than that planned under the B-4. Under B-12, planned land use is restricted to 50 acres of orchard, within specified areas intended to avoid impacts to wetlands and sensitive species, and the relocation of Ranch Headquarters on 25 acres.

While the impacted area is less than that planned under the B-4 alternative, the change in planned land use (from grazing land under existing conditions to orchard under the B-12 alternative) could result in a significant increase in fine sediment generation. The Upper Cristianitos watershed is underlain by geologic formations (and their derivative soils) that are

generally fine-grained sedimentary units[1] which could contribute additional fine material to the stream if concentrated runoff from compacted agricultural areas induces gullying. The Final EIR (County of Orange, 2004) outlines several erosion/runoff control best management practices suited to this setting and recommended for use in agricultural areas. These include variants on approaches such as contour planting, vegetative buffers (both perimeter and internal), and detention/ retention ponds to limit peak flows and to encourage infiltration. Appropriate implementation of these BMPs within the 50 acres of orchard should effectively protect the existing natural drainage network under the minimal land use change planned for PA-6 and 7 under the B-12 alternative.

In the 2005 report, the stream channels within PA-6 and 7 were identified as potentially susceptible to incision and/or channel widening in response to increases in impervious area. While the likelihood of channel response would be reduced under the potential B-12 alternative orchards and Ranch Headquarters (compared to more extensive light urban uses under the B-4 and B-10m alternatives), the channels could still respond to increases in runoff from compacted or channelized/hard-drained areas within the orchard. However, the erosion control measures listed above, especially the vegetated buffer zones, will also serve to reduce the concentration of runoff and therefore reduce the potential for channel response to the limited change in land use.

2.7 Planning Area 8

Under the B-12 alternative, only 500 acres of urban area are planned for PA-8 (Blind/Talega Canyons), though the exact location has not yet been defined. This is less than that planned under the B-4 and B-10m alternatives, for which the 2005 concluded that there would not be significant impacts. If Blind Canyon were to be filled, coarse sediment transport from Blind Canyon would be reduced; however, the contribution from that canyon is insignificant compared to the coarse sediment being transported from the La Paz/Gabino watershed upstream. If the canyon is not filled, runoff control emulating the existing hydrographs will be effective means of avoiding channel modification downstream from urbanized areas.

3. Conclusions

In general, the potential effect of the B-12 alternative on sediment generation and transport is consistent with the B-4 and B-10m alternatives in that 1) planning areas are sited such that they reduce fine sediment generation while preserving significant sources of episodic coarse sediment input; and 2) mainstem and tributary stream corridors are generally preserved, with little infrastructure present that would interrupt the continuity of sediment transport from the upper portions of San Juan and San Mateo Watersheds. These conclusions are fully explained in Chapter 6 of the 2005 Balance report.

[1] Only a small percentage of the rock is coarse sand or sandstone.

Eliminating much of the proposed urban areas within the upper Cristianitos watershed reduces the chance of channel incision within that watershed, when compared with the B-4 alternative. Care is warranted, though, in selecting and effectively implementing the appropriate runoff/erosion controls. Such measures in any cultivated areas within the upper Cristianitos watershed can inhibit tendencies for channel incision or slope gullying. Minimizing compacted and hard-drained areas and implementing the proposed erosion/runoff control BMPs within the planned 50 acres of orchard and proposed Ranch Headquarters, especially the internal and perimeter vegetated buffers, will serve to reduce the concentration of storm runoff from compacted surfaces and reduce the potential impacts to less than significant.

In general, effects of the B-12 alternative on the channel network and the supply of coarse sediment are distinctly less than those stated for the B-4 alternative. They are also less than those of the B10m plan, and significantly less so in the Chiquita and San Mateo, as well as the lower Verdugo, watersheds. With the B-12 alternative, effects are quite small relative to the total sediment transport within the watersheds, and are therefore unlikely to be geomorphically significant.

4. References

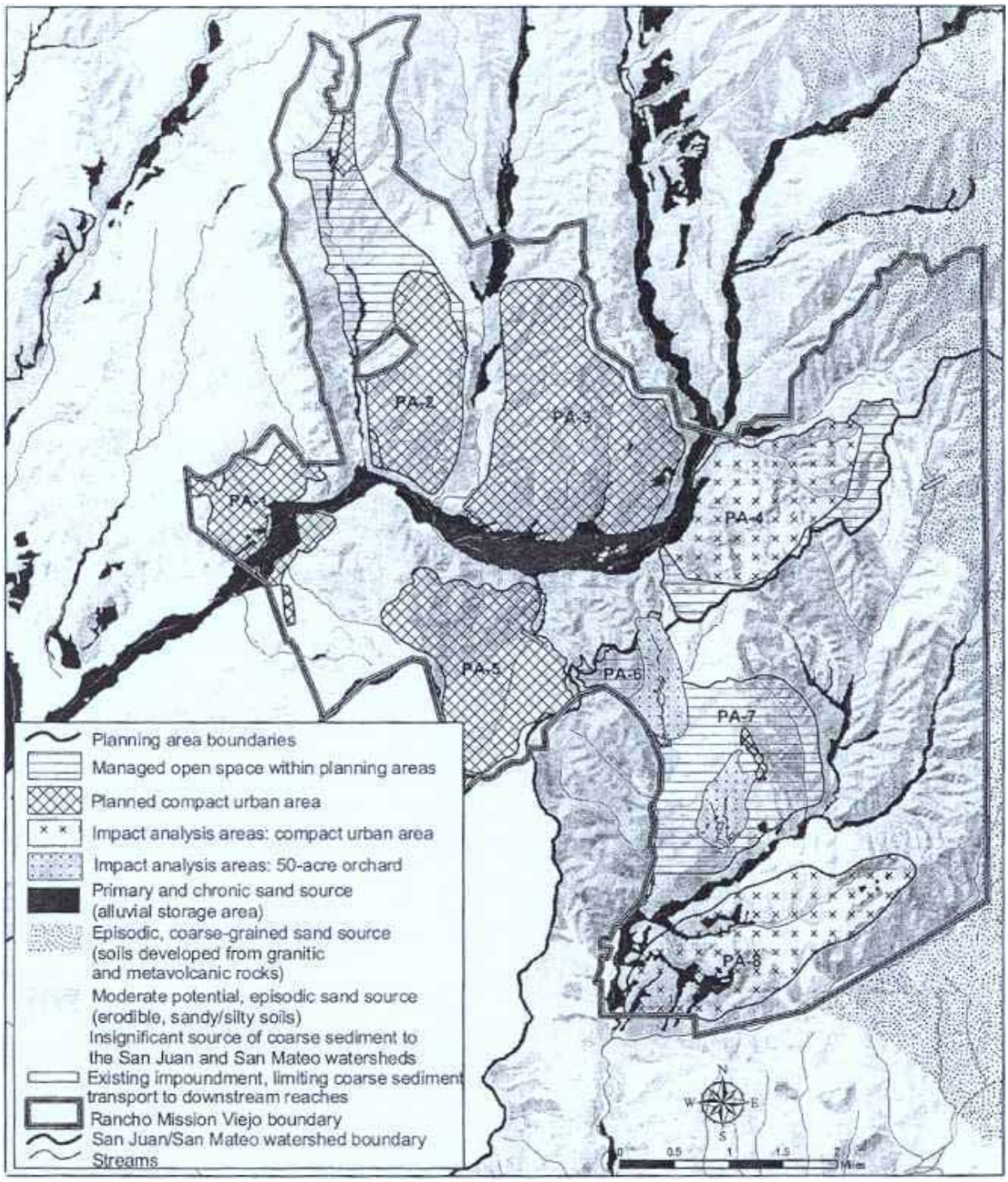
Brown, S., Hecht, B., and Mallory, B., 2005, Geomorphologic factors affecting sediment generation and transport under pre- and post-urbanization conditions at Rancho Mission Viejo and in the San Juan and San Mateo watersheds, Orange County, California. Consulting report prepared by Balance Hydrologics for Rancho Mission Viejo, 49 p.

County of Orange, 2004, Final Environmental Impact Report 589, The Ranch Plan, Rancho Mission Viejo November 2004.

Mangarella, P., Austin, L., and Rathfelder, K., 2005, Assessment of hydrologic and water quality impacts of the B-8 and B-12 alternatives. Technical memorandum prepared by GeoSyntec Consultants for Rancho Mission Viejo, September 26, 2005.

NCCP/SAMP Working Group, 2003, Draft watershed and sub-basin planning principles, San Juan/ Western San Mateo watersheds: Orange County, California.

PCR Services Corporation and Dudek & Associates, 2002, Geomorphic and hydrologic needs of aquatic and riparian endangered species, San Juan/Western San Mateo watershed, Orange County, California. Consulting report prepared for Rancho Mission Viejo and appendix G-9 to the FEIR 589, 147 p.



Balance Hydrologics, Inc.

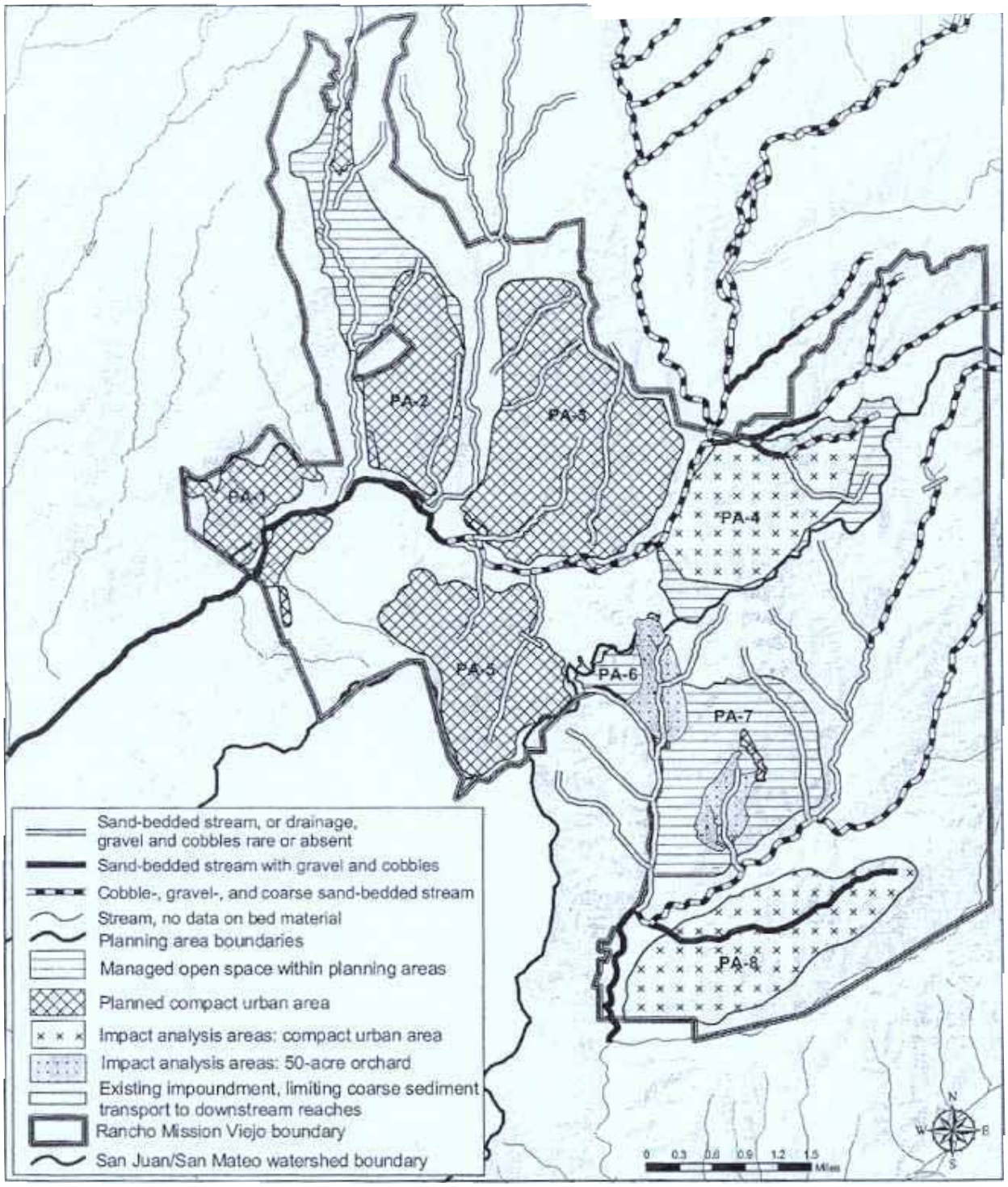
Figure 2. Proposed planning areas, showing relations to primary coarse sediment areas, Rancho Mission Viejo, Orange County, California

Note: No obstructions to continuity of coarse sediment conveyance to the ocean are proposed as part of this project.

See Figure 1 for sediment sources in the greater San Juan and San Mateo watersheds.

W:\Projects\205069\205069_SAMP sand source RMV (Figure2).mxd

©2005 Balance Hydrologics, Inc.



W:\Projects\205069\205069_Stream sediment RMV (Figure5).mxd

©2005 Balance Hydrologics, Inc.

COMMENTOR 10 RANCHO MISSION VIEJO
Dated: January 13, 2006

Response 1

The comment is noted.

Response 2

Table 8-6 of the SAMP EIS as been modified as follows:

TABLE 8-6
SUMMARY OF INFRASTRUCTURE IMPACTS TO USACE WETLANDS AND NON-WETLAND WATERS BY INFRASTRUCTURE TYPE FOR ALTERNATIVES B-10 MODIFIED AND B-12[a.]

USACE Jurisdictional Areas						
Alternative	Wetlands (acres)		Non-Wetland Waters of the U.S. (acres)		Total USACE (acres)	
	Temp.	Permanent	Temp.	Permanent	Temp.	Permanent
B-12 Alternative[b.]						
Trails	5.11	2.30	5.32	2.63	10.43	4.93
Drainage Facilities[c.]	0.65	2.03	0.20	0.42	0.85	2.45
Water-Sewer[d.]	0.57	1.19	0.20	0.92	0.77	2.11
Road/Bridge Construction [e]	4.02	3.01	6.36	2.15	10.38	5.16
Maintenance of Existing RMV Planning Area Facilities	5.47	0.00	8.99	0.00	14.46	0.00
Fire Protection	0.00	0.00	0.00	0.01	0.00	0.01
Utility Facilities	0.00	0.18	0.00	0.38	0.00	0.56
Total	**15.82**	**~~8.53~~ 8.71**	**21.07**	**~~6.12~~ 6.60**	**36.89**	**~~14.65~~ 15.22**
B-10 Modified Alternative						
Trails	3.71	1.94	4.65	2.72	8.36	4.66
Drainage Facilities[c.]	0.15	1.66	0.01	0.14	0.16	1.80
Water-Sewer[d.]	1.61	3.51	1.59	3.25	3.20	6.76
Road/Bridge Construction[e]	5.17	1.91	6.08	1.77	11.25	3.68
Maintenance of Existing RMV Planning Area Facilities	5.55	0.00	8.75	0.00	14.30	0.00
Total	**16.19**	**9.02**	**21.08**	**7.88**	**37.27**	**16.90**

a. Jurisdictional areas falling outside of the GLA study area boundary are estimated using ERDC data.
b. As previously discussed this represents an overstated impact analysis and ultimate impacts will be less due to the limitations on development in Planning Areas 4 and 8, and orchards in Planning Areas 6 and 7.
c. Includes culvert outfalls and Gobernadora Water Quality Basin
d. Includes non-domestic water, domestic water, and sewer.
e. Due to the lack of final design details on the location of road/bridge construction, a contingency of 50 percent of additional impact is assumed for both alternatives.

3.6 USACE PUBLIC HEARING

Oral testimony was taken at the USACE Public Hearing on December 6, 2005. A transcript of the hearing was made; a copy of the transcript is provided in Section 5 of this document. The following are responses to the comments made at the hearing. The numbering of the comments is provided in the copy of the transcript. The comments made by the speakers are numbered sequentially since all the comments are combined in the one document.

COMMENTOR 11 DAN SILVER
REPRESENTING ENDANGERED HABITATS LEAGUE AND SEA AND SAGE AUDUBON SOCIETY

Response 1

Endangered Habitats League and Audubon Society's support for the SAMP process is noted.

COMMENTOR 12 RICHARD GARDNER
REPRESENTING SELF AND DIRECTOR OF SOUTH COAST WATER DISTRICT

Response 2

Jae Chung of the USACE in his response noted that the 400-meter-wide corridor is from edge to edge which is suitable for wildlife movement. Please refer to the transcripts for an expanded response.

Response 3

Jae Chung in his response noted that the different branches of the USACE have coordinated on this SAMP proposal. Please refer to the transcripts for an expanded response.

Response 4

Lt. Col. Mark Blackburn and Mr. Chung, both with the USACE, indicated that they could provide the commentor with information regarding USACE flood control programs outside of the public hearing for the proposed SAMP project.

Response 5

Jae Chung noted that groundwater issues are addressed by the state, not the USACE. The USACE's mission does not have a regulatory nexus to groundwater. Please refer to the transcripts for an expanded response.

Response 6

Jae Chung noted that the USACE's focus, with respect to this project, is on adaptive management. Please refer to the transcripts for an expanded response.

SECTION 4
CLARIFICATIONS AND REVISIONS

Revisions and clarifications have been made to the SAMP EIS based on input received during the public review period and the preparation of responses to comments on the Draft EIS. This Clarifications and Revisions section of the Responses to Comments document follows the organization of the Draft EIS. Only those sections of the EIS which have revisions and/or clarifications are noted.

SECTION 2: PROJECT COORDINATION EFFORTS AND OVERVIEW OF POTENTIAL PROJECTS

Text Changes

Pages 2-16 through 2-18 have been updated to reflect that the A7-FEC-M Alternative has been selected as the Preliminary LEDPA. However, any final selection of a permittable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD).

Southern Orange County Transportation Infrastructure Improvement Project (SOCTIIP)

The Southern Orange County Transportation Infrastructure Improvement Project (SOCTIIP (previously referred to as the Foothill Transportation Corridor South project) is the proposed extension of State Route 241 (SR-241) toll road south to Interstate 5 (I-5) near the City of San Clemente. This extension would traverse the RMV Planning Area. SR-241 extension is the final segment of the Transportation Corridor Agencies' 67-mile public toll road network. The proposed southerly extension is intended to relieve present and future traffic congestion along I-5 and local arterials in south Orange County. The SOCTIIP EIS/Supplemental EIR, distributed for public comment in May 2004, analyzes ten alternatives. The Foothill/Eastern Transportation Corridor Agency Board of Directors and the Federal Highway Administration are responsible for choosing a final alternative. The Alignment 7 Corridor-Far East Crossover-Modified Alternative (A7-FEC-M) was selected as the Preliminary LEDPA. However, any final selection of a permittable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD). The SOCTIIP Alternatives, in relationship to the SAMP Study Area and RMV Planning Area, are depicted on Figure 2-5. The Transportation Corridor Agencies, in conjunction with the FHWA, is pursuing separate Section 404 authorization for the SOCTIIP….

Construction of the SOCTIIP ~~is estimated to~~ could begin in ~~2006/2007~~ 2007/2008 with completion ~~expected~~ in ~~2008/2009~~ 2010/2011 (www.thetollroads.com, accessed August 3, 2005 December 4, 2006).

Figure Changes

Figure 2-3 has been modified to include the proposed Gobernadora Multipurpose Basin.

SECTION 4: EXISTING CONDITIONS

Text Changes

Page 4.1-212 has been revised as follows:

> ~~Although facilities are planned as part of the County of Orange Master Plan of Riding and Hiking Trails, there are no existing trails that link these regional parks.~~ Three County of Orange Master Plan of Riding and Hiking Trail facilities link O'Neill Regional Park to Caspers Wilderness Park: Bell View Trail, Tijeras Creek Trail, and Arroyo Trabuco Trail.

Page 4.1-214 has been revised as follows:

> Figure 4.1.12-2 illustrates the trails within the SAMP Study Area that are on the Orange County General Plan Recreation Element Master Plan of Regional Riding and Hiking Trails Map.

Page 4.1-214, second paragraph, has been revised as follows:

> A Class I bicycle trail is a paved facility, which is physically separated from a roadway and designated primarily for the use of bicycles and designated primarily for the use of bicycles, although pedestrian and equestrian use is allowed on Orange County regional Class I bikeways.

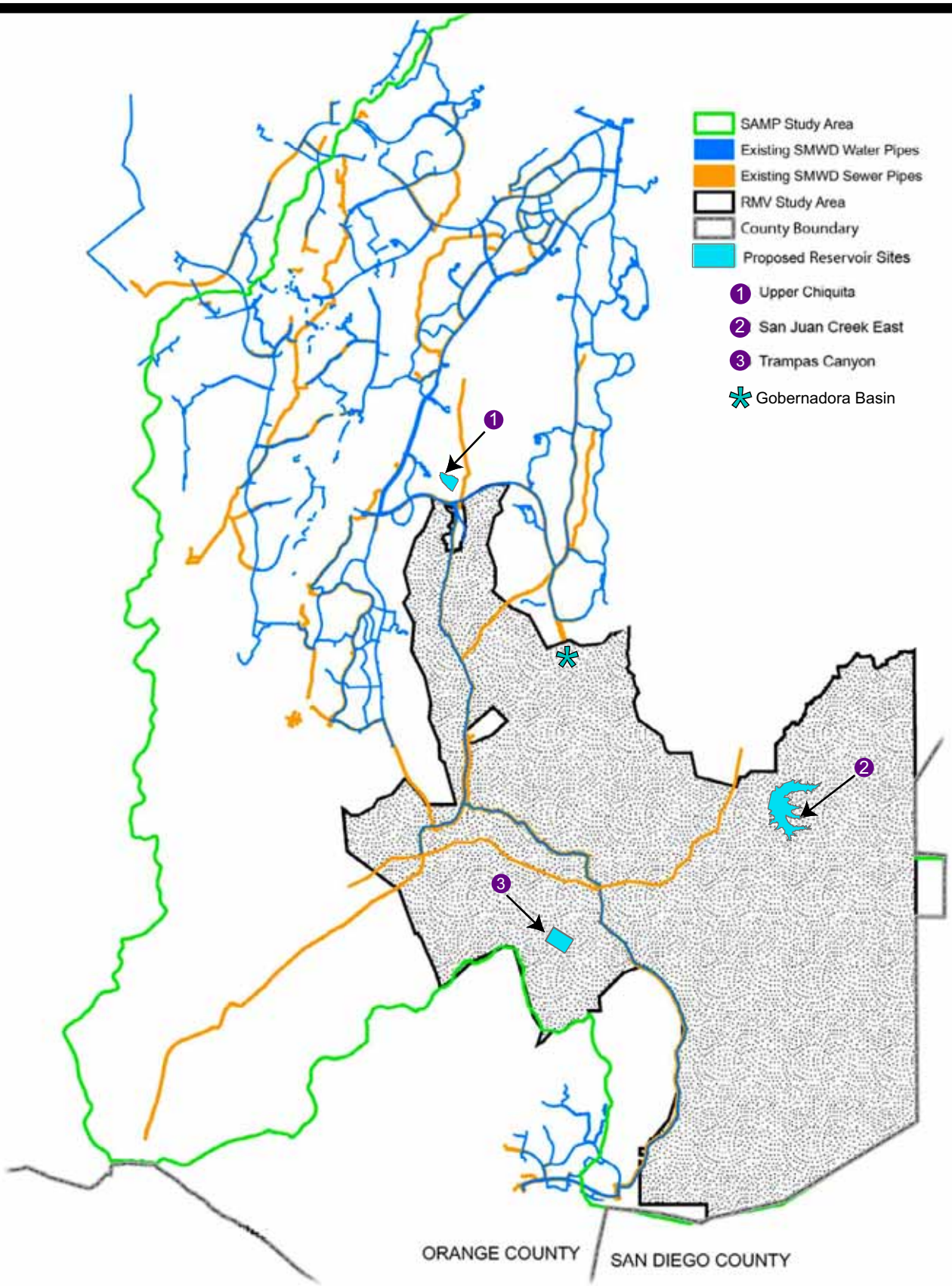
Page 4.1-214, last two sentences, have been revised as follows:

> Some of t~~T~~hese bikeways also are included on the County of Orange ~~Master Plan of Bikeways~~ Bikeway Plan. The Master Plan of Bikeways is a component of the Recreation Element of the General Plan.

Figure Changes

Figure 4.1.12-2 has been revised to incorporate the requested additional riding and hiking trails.

Figure 4.1.12-3 has been revised to incorporate the requested changes.



SMWD Existing and Future Facilities

Not to Scale

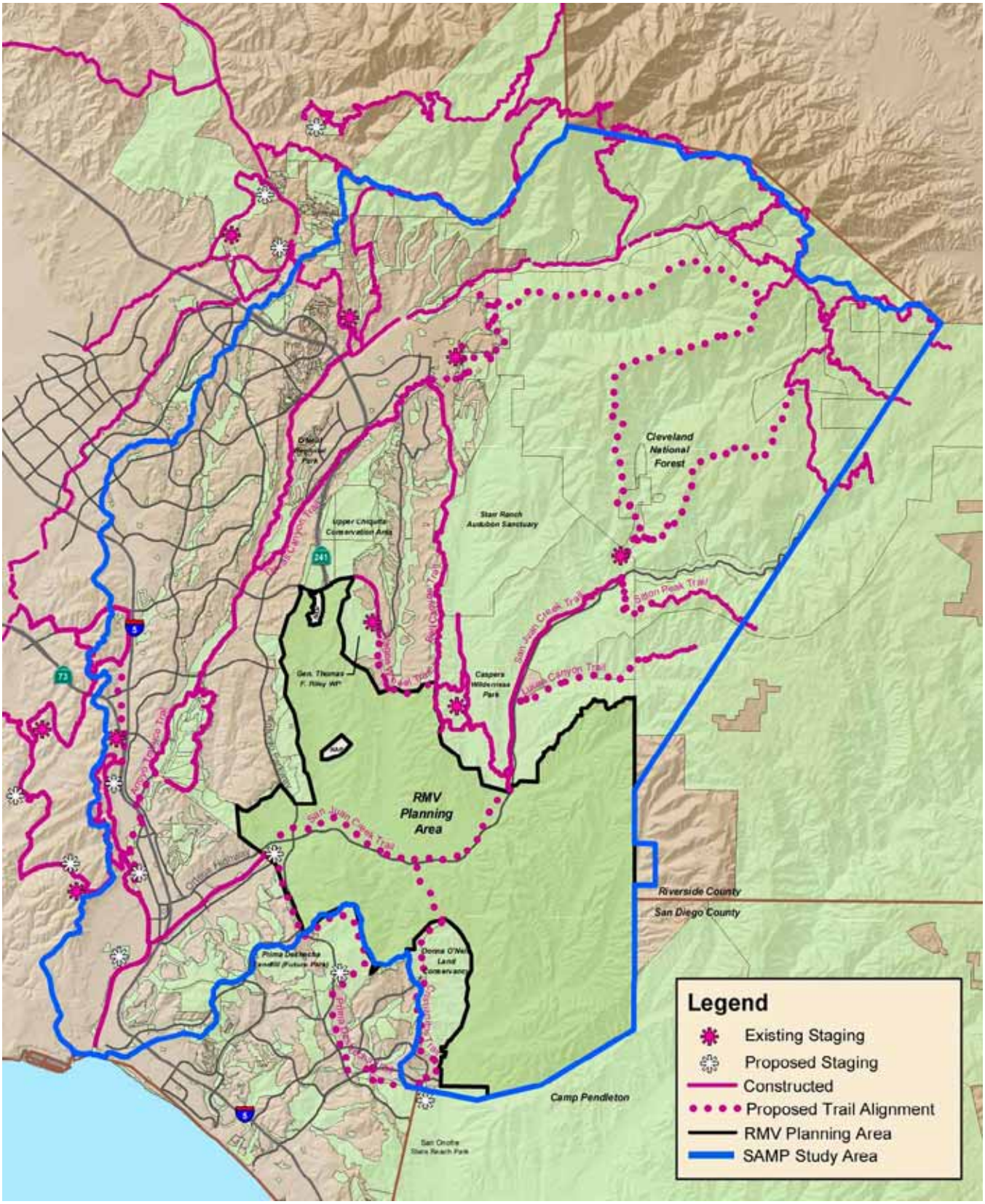
N
W
E
S

San Juan Creek and Western San Mateo Creek Watersheds SAMP EIS

Figure: 2-3

Source: Glenn Lukos Associates

Date: Dec. 2006



Trails in SAMP Study Area

Not to Scale

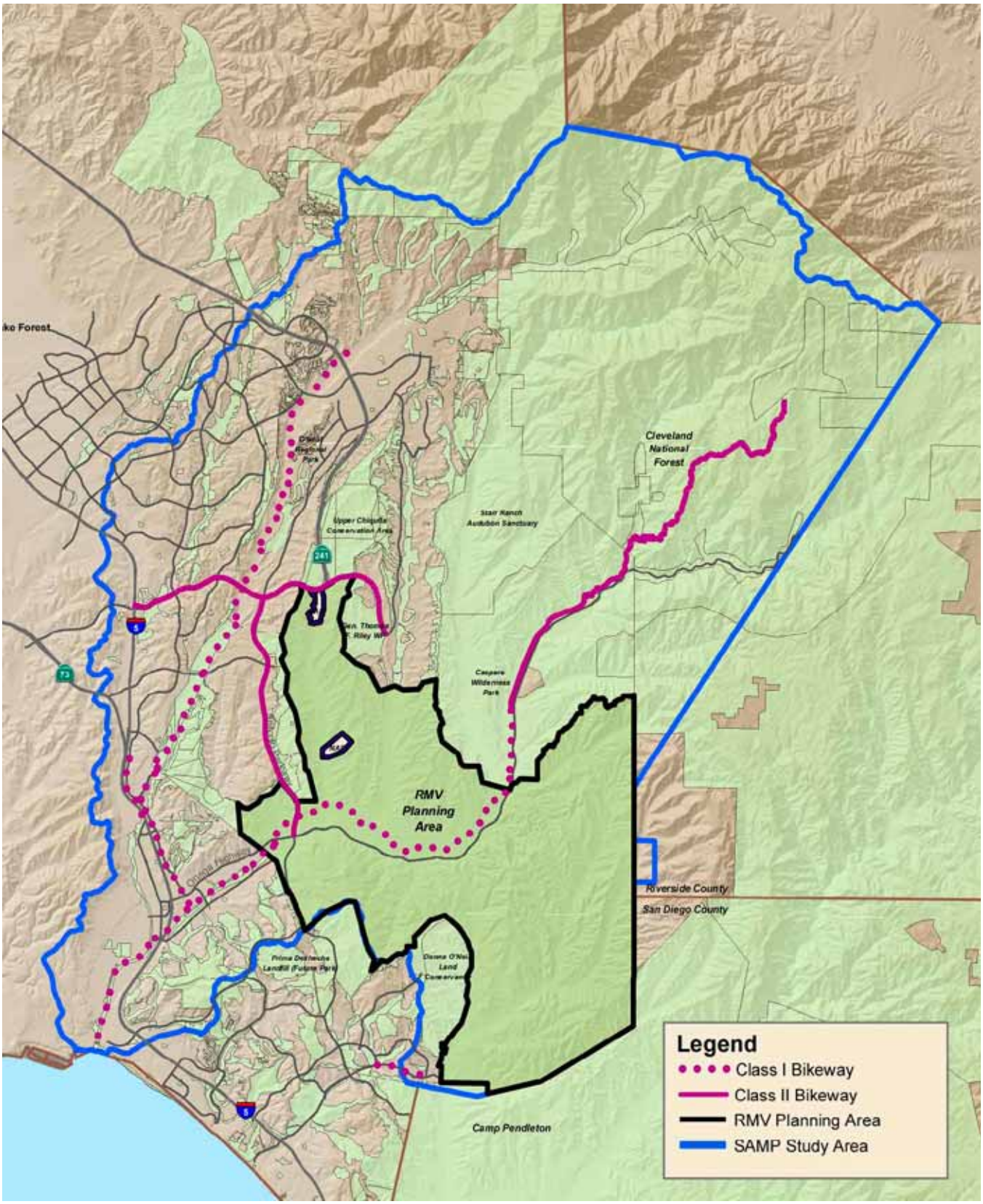
N
W
E
S

San Juan Creek and Western San Mateo Creek Watersheds SAMP EIS

Figure: 4.1.12-2

Source: EDAW, 2004

Date: Dec. 2006



Commuter Bikeway Strategic Plan Bikeways in SAMP Study Area

Not to Scale

N
W
E
S

San Juan Creek and Western San Mateo Creek Watersheds SAMP EIS

Figure: 4.1.12-3

Source: EDAW, 2004

Date: Dec. 2006

SECTION 7: NEPA PUBLIC INTEREST ISSUES

Text Changes

Section 7.6, Noise, pages 7.6-12 and 7.6-13 have been updated to reflect that the A7-FEC-M Alternative has been selected as the Preliminary LEDPA. However, any final selection of a permittable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD).

SR-241 Southerly Extension

The proposed southern extension of SR-241 (i.e., the alignment that was selected by the Transportation Corridor Agencies [TCA] as the locally preferred toll road alignment in 1991) would traverse the RMV Planning Area. The TCA and Federal Highway Administration (FHWA) are currently evaluating the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP), which includes the southern extension of SR-241. ~~Should t~~ The TCA and FHWA have selected an alignment for the SR-241 extension that is different from the 1991 alignment; the Alignment 7 Corridor-Far East Crossover-Modified Alternative (A7-FEC-M) was selected as the Preliminary LEDPA. However, any final selection of a permittable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD). Alternative B-10 Modified would be modified to reflect the adopted alignment. The impacts associated with the construction of the extension of SR-241 are being addressed in a separate environmental document for the SOCTIIP study….

Section 7.10, Recreation, page 7.10-12 has been revised as follows:

Alternative A-4 would not conflict with the implementation ~~of the implementation of the Master Plan of Bikeways~~ of the Orange County Transportation Authority (OCTA) Commuter Bikeways Strategic Plan and the County's Bikeway Plan.

Section 7.10, Recreation, page 7.10-14 has been revised as follows:

Alternative A-5 would potentially conflict with the implementation of the ~~County Master Plan of Bikeways~~ Orange County Transportation Authority (OCTA) Commuter Bikeways Strategic Plan and the County's Bikeway Plan.

Section 7.10, Recreation, page 7.10-15 has been revised as follows:

There are two designated bikeways within the limits of Alternative B-10 Modified. Both bikeways would be provided for as part of the development of Alternative B-10 Modified…. Alternative B-10 Modified would not conflict with the implementation of the ~~Master Plan bikeways~~ Orange County Transportation Authority (OCTA) Commuter Bikeways Strategic Plan and the County's Bikeway Plan.

Section 7.10, Recreation, page 7.10-16 has been revised as follows:

Alternative A-5 would not have any significant physical impacts on recreational resources. However, this alternative does not provide for the comprehensive implementation of the County Master Plan of Riding and Hiking Trails, ~~the County Master Plan of Bikeways~~ the County's Bikeway Plan, or the OCTA Commuter Bikeway Strategic Plan within the RMV Planning Area.

SECTION 8: COMPLIANCE WITH SECTION 404(B)(1) GUIDELINES

Text Changes

TABLE 8-6
SUMMARY OF INFRASTRUCTURE IMPACTS TO USACE WETLANDS AND NON-WETLAND WATERS BY INFRASTRUCTURE TYPE FOR ALTERNATIVES B-10 MODIFIED AND B-12[a.]

USACE Jurisdictional Areas						
Alternative	Wetlands (acres)		Non-Wetland Waters of the U.S. (acres)		Total USACE (acres)	
	Temp.	Permanent	Temp.	Permanent	Temp.	Permanent
B-12 Alternative[b.]						
Trails	5.11	2.30	5.32	2.63	10.43	4.93
Drainage Facilities[c.]	0.65	2.03	0.20	0.42	0.85	2.45
Water-Sewer[d.]	0.57	1.19	0.20	0.92	0.77	2.11
Road/Bridge Construction [e]	4.02	3.01	6.36	2.15	10.38	5.16
Maintenance of Existing RMV Planning Area Facilities	5.47	0.00	8.99	0.00	14.46	0.00
Fire Protection	0.00	0.00	0.00	0.01	0.00	0.01
Utility Facilities	0.00	0.18	0.00	0.38	0.00	0.56
Total	**15.82**	**~~8.53~~ 8.71**	**21.07**	**~~6.12~~ 6.60**	**36.89**	**~~14.65~~ 15.22**
B-10 Modified Alternative						
Trails	3.71	1.94	4.65	2.72	8.36	4.66
Drainage Facilities[c.]	0.15	1.66	0.01	0.14	0.16	1.80
Water-Sewer[d.]	1.61	3.51	1.59	3.25	3.20	6.76
Road/Bridge Construction[e]	5.17	1.91	6.08	1.77	11.25	3.68
Maintenance of Existing RMV Planning Area Facilities	5.55	0.00	8.75	0.00	14.30	0.00
Total	**16.19**	**9.02**	**21.08**	**7.88**	**37.27**	**16.90**

a. Jurisdictional areas falling outside of the GLA study area boundary are estimated using ERDC data.
b. As previously discussed this represents an overstated impact analysis and ultimate impacts will be less due to the limitations on development in Planning Areas 4 and 8, and orchards in Planning Areas 6 and 7.
c. Includes culvert outfalls and Gobernadora Water Quality Basin
d. Includes non-domestic water, domestic water, and sewer.
e. Due to the lack of final design details on the location of road/bridge construction, a contingency of 50 percent of additional impact is assumed for both alternatives.

Page 8-90 has been updated to reflect that the A7-FEC-M Alternative has been selected as the Preliminary LEDPA. However, any final selection of a permittable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD).

SR-241 SOCTIIP

In May 2004, the Transportation Corridor Agencies, Caltrans, and FHWA released for public review a Draft EIS/SEIR for the South Orange County Transportation Infrastructure Improvement Program (SOCTIIP).… The alternatives being evaluated in

the SOCTIIP are described in Chapter 2.0 (Figure 2-5). The TCA and FHWA have selected an alignment for the SR-241 extension that is different from the 1991 alignment; the Alignment 7 Corridor-Far East Crossover-Modified Alternative (A7-FEC-M) was selected as the Preliminary LEDPA. However, any final selection of a permittable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD). Based on information from the EIS/EIR, the impacts to wetlands for each alternative are shown in Table 8-12….

SECTION 9: GROWTH-INDUCING IMPACTS AND CUMULATIVE IMPACTS

Text Changes

Page 9-16 has been updated to reflect that the A7-FEC-M Alternative has been selected as the Preliminary LEDPA. However, any final selection of a permittable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD).

SR-241 SOCTIIP. In May 2004, the Transportation Corridor Agencies, Caltrans, and FHWA released for public review a Draft EIS/SEIR for the South Orange County Transportation Infrastructure Improvement Program (SOCTIIP). The purpose of SOCTIIP is to evaluate regional circulation needs in south Orange County. The potential extension of SR-241 south to I-5 and the Orange/San Diego county border is one component of the SOCTIIP. The extension of SR-241 would traverse the RMV Planning Area. The SOCTIIP EIS/EIR evaluates six corridor alternatives for SR-241, each of which would consist of four mixed-flow lanes initially and six mixed-flow plus two HOV lanes ultimately. SOCTIIP includes one alternative to improve existing and master planned arterial highways, one alternative to widen I-5 from the County border north to the I-405 interchange, and two No Action Alternatives (Figure 2-5). The alternatives being evaluated in the SOCTIIP are described below. The Alignment 7 Corridor-Far East Crossover-Modified Alternative (A7-FEC-M) was selected as the Preliminary LEDPA. However, any final selection of a permittable alternative awaits further public interest review by the USACE as well as a final Record of Decision (ROD).

SECTION 5
REFERENCE MATERIALS

TRANSCRIPT OF PROCEEDINGS

December 06, 2005

CONDENSED TRANSCRIPT AND KEYWORD INDEX

RI ORTER'S TI NSCRIPT OF PROCEEDINGS

'uesday, Dec ıer 6, 2005

APPEARANCES:

Army Corps of Engineers:
Lt. Col. Mark Blackburn
Mr. Jae Chung

Public Speakers

SAN JUAN CAPISTRANO, CALIFORNIA.
TUESDAY, DECEMBER 6, 2005
6:23 P.M.

LT. COL. MARK BLACKBURN: Can you hear me? Good evening, ladies and gentlemen. Welcome to the public hearing for the Draft Environmental Impact Statement for the Special Area Management Plan for the San Juan Creek Watershed and Western San Mateo Creek.

I'm doing this intentionally because of the public record in order to have this documented for future. I'm going to stay to the script even though I hate reading from the script. I'll do some ad-libbing as we go over the slides and as I transition over to Jae Chung, who is the guy in the green pickle suit.

My name is Lieutenant Colonel Mark Blackburn. And I will serve as the presiding officer for this public hearing in place of the District Engineer for the Los Angeles District of the Corps of Engineers, who is Colonel Alex Dornstauder. He could not be here with us this evening because he's in Washington, D.C. with some congressional issues that are going on right now.

This Special Area Management Plan or SAMP is a culmination of major efforts by the Corps, our fellow state and federal agencies, the environmental community,

and the participating landowners. We believe that the SAMP will promote the appropriate balance of aquatic resource protection and reasonable economic development within the San Juan Creek and western San Juan Creek watersheds. We are cognizant of the special aquatic ecological resources in this SAMP study area. We are also aware of the needs of the County of orange and the Rancho Mission Viejo to service the ever-expanding population of Orange County. Through all of our efforts, we believe that we have come out with the best alternative that serves the interest of all interested parties.

Through the draft Environmental Impact Statement, which Jae Chung to my left is going to cover in a minute, we're going to present the Corps preferred alternative and the analysis that supports that alternative. The public hearing will provide an opportunity for the public to verbally express their comments to the Corps on the SAMP. And as a caveat, for the record, this public hearing is not about the South Orange County Transportation Infrastructure Improvement Project, or what's been better known as the Toll Road project. This project has its own Environmental Impact Statement and the SAMP does not provide any regulatory coverage for that project. Also for the record, even

after this public hearing, we will still accept written comments until January 16th.

Now let's see if I can be technically capable here. Okay.

Like I said, I'm going to turn this over to the real person that's done this for the Corps, all the detail work, Jae. Jae is actually going to cover several things, not just a quick overview of the regulatory organization that he represents inside the Corps. And then he's going to talk about the SAMP and the principles behind that. And he's going to go into the analysis and the alternatives that we took a look at. That will take about 15 to 20 minutes. And then we will turn this over and I'll pick it back up and then we'll take written and verbal comments.

When you came in, you should have received a card if you wanted to make a statement. We'll solicit those statements after Jae is finished. And we have a process to go through. I'll cover that as we get through to the questions -- or to the statement and comment form. So with that, I would like to turn it over to Jae.

Oh, one last thing I forgot. We're going to talk a little bit about where we're at. This is actually a result of a number of years of work. We are

right in here. We've already -- which goes back to 2000. Started taking a look at the whole area and started working with the other partners. It's not just the Corps of Engineers, but, of course, the folks that I just rattled off, to where we're taking a look at the draft EIS.

And then when I talked about up until January 16th we'll take comments from the public, we'll take a look at those comments and imbed them and vent them through a final EIS after we talk with the Fish and Wildlife Service. That's that consultation right here. We hope that will be September of next year, with the decision in the fall of 2006.

With that, I will turn this over to Jae.

JAE CHUNG: Thank you, sir.

All right. Just some background on who we are. We're the Corps of Engineers. The Corps of Engineers has main responsibilities dredging harbors, building dams, supporting our troops abroad and at home. We also have an important responsibility to protect our nation's aquatic resources due to Section 404 of the Clean Water Act. We dredge and fill materials into waters of the U.S., including streams, wetlands, oceans and rivers. We generally authorize activities for three different options. For smaller activities, we generally authorize

and do general permits, the nationwide general permits. And for large activities, we authorize and review those activities through individual permits. Individual permits involve the public notice and involve a full environmental assessment. This is the step that environmental agencies want us to do. The third option is LOP through coordination with other agencies, but without publication of the public notice.

The first -- step back. SAMP is one of three processes occurring in this area. SAMP is the responsibility of the Corps. And the Corps is mainly concerned about those processes that affect the aquatic resources. Processes are general plan amendment and zone change that was finalized by the County of Orange last year in 2004 in November.

Another process we're concerned with or working with is the NCCP/MSAA/HCP, which is being implemented by the Department of U.S. Fish and Wildlife Service and National Marine Fishery Service. It should be noted that SAMP and NCCP are resolving to get done at the same time. We expect finalization to occur within months of each other. And we're working with this service on a daily basis to inform them of our process and --

RICHARD GARDNER: You're working with which service?

JAE CHUNG: The U.S. Fish and Wildlife Service and

also the Nation Marine Fishery Service.

THE WITNESS: Could you say who those people are.

JAE CHUNG: The person at the service I'm working with is Ted Quarry, at U.S. Fish and Wildlife Service. And National Fishery, I forget his name. I'm working with someone regarding the steelhead fish.

Thank you, Richard.

THE WITNESS: I'm trying to get a little more personal.

JAE CHUNG: Okay. The SAMP has specific goals. The SAMP strives to allow useful economic development consistent with our regulations. We're trying to provide the public with predictability as well as get giving them opportunities to manage these resources, aquatic resources, for a very long time.

The second goal of the SAMP is in the aquatic resources conservation program to be preserve and restore and enhancing aquatic resources and presenting a long-term management plan that provides for in-perpetuity management.

The third goal of SAMP is to protect these aquatic resources both individually and cumulatively.

The central premise of the SAMP is not all aquatic resources are equal. Some aquatic of lower resource value don't have much species, don't have much

1 ecologic processes. Those are those aquatic resources
2 that are higher. They may provide habitat for birds and
3 amphibians, a wide range of ecological functions. These
4 mirror a different type of approach that we currently
5 do.
6 Let's go to the next slide.
7 The SAMP has four elements. The first element
8 is the concern of our draft EIS. The Corps proposes
9 issuing alternative systems to act for these different
10 kinds of resources. We propose a regional general
11 permit to facilitate routine maintenance. We're
12 revoking nationwide permits and establishing letters of
13 permission procedures. We believe that the nationwide
14 permits at times provide an inappropriate level of
15 protection. And we believe there's other ways to better
16 accomplish our mission of protecting resources and
17 providing economic development opportunities. And the
18 third procedure involves establishing a long-term
19 individual permit for specific participating landowners,
20 including the San Juan Water District.
21 Another element of SAMP is inform aquatic
22 resources. Measurable ecological benefits need to be
23 identified and set aside for preservation and
24 importunity. A third component is restoration of key
25 features that will enhance watershed functions. We

1 identify those elements that strategically have value in
2 the watershed and restore them accordingly. And the
3 last element is to manage these resources in terms of
4 long-term management plans and preservations set aside.
5 Here is a SAMP study area. This is familiar to
6 many of you, to the three of you. You can see it covers
7 a large area as well as cities, including Mission Viejo,
8 Rancho Santa Margarita, portions of Dana Point,
9 Laguna Niguel, and Laguna Hills. You can see the area
10 in yellow this is the source of many open space areas.
11 The other major open space area is to the east, the
12 Cleveland National Forest. And within this watershed
13 are immense aquatic resources. Which around 3,200 acres
14 consist of waters of the U.S. that we regulate. Within
15 the RMV portion, there's also large amounts of riparian
16 habitat, which around 900 acres are regulated by the
17 Corps under our permitting program. We have numerous
18 types of habitat. All these habitats provide valuable
19 resources for species, including the steelhead, the
20 southwestern willow flycatcher, arroyo toad. Many rely
21 on these aquatic resources for their persistence.
22 In conducting our analysis, we focus on tenets.
23 These are principles that form our analysis and help us
24 with our decision making. Many of these tenets are
25 rather familiar. The loss of waters and functions is

1 standard for us for many years. There's additional
2 important tenets I would like to discuss here. One is
3 for providing continuous riparian corridors along the
4 waterways. These areas provide corridor movements,
5 opportunities for mountain lions and other species. And
6 these need to be considered.
7 Another feature or tenet that we are concerned
8 with are the buffers. It makes no sense to build to the
9 edge of the stream bed, because that results in direct
10 impacts to the wildlife.
11 The last tenet that we're focusing on are the
12 progression of the riparian areas and the habitat that
13 support the species that I alluded to before.
14 We have a series of alternatives that we
15 analyze within the EIS. I'm only going to discuss the
16 ones that would be undertook in our co-equal analysis.
17 We've looked at alternatives A-4 and A-5. These
18 alternatives are what could occur if the SAMP has never
19 been implemented. A-4 is essentially business as usual.
20 Taking a permit-by-permit approach without concern or
21 consideration to the overall watershed. We believe this
22 is not the best way to protect aquatic resources.
23 Another alternative is avoiding all waters of the U.S.,
24 all development or most of the development occurring in
25 upland habitats. The problem with this is we have no

1 corridors or buffers. In Riverside County, we see
2 people building right to the stream bed, compromising
3 ecological integrity. This is not the best way to
4 manage these resources.
5 We have a series of alternatives within the RMV
6 property. Since the RMV -- we're the only organization
7 to provide descriptions, these -- this is only applicant
8 with which we developed alternative -- alternative
9 development configurations. I would like to focus on
10 two alternatives. The B-10 alternative was approved by
11 the County in 2004. And Corps had some concerns about
12 that alternative with respect to specific issues as
13 related to wildlife corridors and movement of aquatic
14 species. We've been working with the applicant, with
15 the County, with our sister federal and state agencies
16 at developing an alternative that addresses many of the
17 concerns. With valuable impact to the environmental
18 community, we're able to come up with an alternative
19 that meets our concerns and needs.
20 The next slide will discuss alternative B-12 in
21 more detail and particulars that you should review on
22 your own time.
23 This is a map of all the watershed that we're
24 going to focus on within the SAMP. We've identified
25 areas with respect to their quality. We realize, again,

1 not all aquatic resources are equal. We've identified
2 those aquatic resources that have medium to high
3 integrity for high controlling ecology and habitat
4 integrity. We use a generous cutoff. Any area that
5 received 40 percent of maximum score was included.
6 We've added habitat for the steelhead, gnatcatcher and
7 Riverside fairy shrimp. And we've removed developed
8 areas as they provide little ecological functions and
9 features.
10 Based upon where you are located in this
11 watershed, a certain type of permitting process will be
12 implemented. With the higher value resources, we
13 envision individual permits and more thorough review.
14 This allows us to offer protection in this process.
15 With the lower resource areas, we minimize delays in
16 providing alternate permit for those that comply with
17 the concepts of the SAMP.
18 Here I'm showing the different options of
19 permitting. Depending where you are, you will take the
20 high road or the low road. Regardless of where you are,
21 we believe the nationwide permits provide an
22 inappropriate protection given the quality at hand.
23 Sometimes protection is not enough. In some cases,
24 there are too many delays, especially in the lower value
25 resource areas.

1 The higher quality resource areas, as I alluded
2 to before, most actions will process individual permits.
3 This will involve a full public notice, interest review.
4 We believe with these quality resources we should take
5 that extra step to conduct the full analysis. In the
6 lower quality areas, individual permits will be
7 exceedingly rare. Most activities will be processed as
8 letters of permissions. And this will involve
9 coordination with the other resource agencies and allows
10 us to work at minimizing impacts with that
11 collaboration.
12 Lastly, for these lower quality areas, we
13 envision issuing a regional general permit that allows
14 for implementation of maintenance activities with
15 minimal delays.
16 I would like to focus on the RMV report
17 property. This was a project that involved a lot of
18 work and effort. In this graphic, we've identified
19 areas that are permitible in terms of the long-term
20 individual permit and areas that are not. Most of the
21 areas in light color, they're eligible for the long-term
22 individual permit. These areas, 4 and 5, based upon
23 future studies with respect to geotechnology and also
24 road studies, will allow development within those areas
25 based on the findings. And lastly, this area will be

1 open space. It will be managed as open space and no
2 future impacts are anticipated. All the blue areas will
3 be managed as actively managed riparian corridors. And
4 the areas in light blue are protected streams. I would
5 like to emphasize these alternatives that we're
6 proposing as our alternative. One is through this
7 process. We've identified over 90 percent of the
8 resources within this SAMP area as protected. They will
9 undergo the full review possible. And this allows us to
10 provide the appropriate amount of protection for this
11 watershed.
12 We're also looking at the conservation of over
13 90 percent of U.S. waters within the Rancho Mission
14 Viejo property. 90 percent of 800 to 900 acres of
15 waters will be avoided in gratuity. In addition, we've
16 been able to establish ecologically meaningful buffers
17 within all the RMV property. In some cases, we have
18 400-meter-wide corridors along the San Juan Creek. This
19 is important for the mountain lions that require habitat
20 to go upstream and downstream of their destinations.
21 We've allowed for intra-watershed movement for the
22 arroyo toad.
23 Lastly, we've avoided major impacts to arroyo
24 toad and lesut bells vires. And for the areas outside
25 of this RMV property, we're striving to insure that all

1 crossings are passible by fish. We see that this will
2 be habitated by many, many steelhead. We do not want to
3 have any obstacles to the population.
4 Some other features that I would like to go
5 over before we conclude this presentation are down at
6 the bottom. We're requiring that all compensatory
7 mitigation must be achieved before impacts to wetlands
8 and vegetated waters. And any impact will be
9 successfully mitigated because it's a requirement.
10 We're also proposing the eradication of 90 acres of
11 Arundo donax on the property.
12 Lastly, a key feature of this whole process is
13 the development of the in-perpetuity of adaptive
14 management of major stream systems. That insures that
15 all these values will remain how they are in-perpetuity
16 or remain in the better stages.
17 That concludes my presentation. We have a
18 public comment period now. We also have a Website here
19 that you can refer to for any additional information.
20 On this Website, you can download our ESI document if
21 you don't have a CD, as well as any other associated
22 documents.
23 LT. COL. MARK BLACKBURN: Thanks, Jac. Could
24 somebody get the lights for me, please.
25 Okay. So with the public hearing, now is the

1 time that we're going to solicit comments from the
2 public. You can speak on this project. We're going to
3 focus right now on this project. Again, not the other
4 project that I referred to earlier, the Toll Road piece.
5 What I'm going to ask is those who want to speak from an
6 individual perspective, we're going to give you three
7 minutes. Have you come up to the podium. Have you
8 state your name and if you are representing an
9 organization, who you represent. Again, this will be
10 captured by the court reporter. And if you are from an
11 organization, we're going to give you five minutes to
12 speak. So having said that, do we have --
13 UNIDENTIFIED SPEAKER: I have one for Dan silver.
14 LT. COL. MARK BLACKBURN: Okay. And, Richard, did
15 you have a comment that you wanted to make?
16 RICHARD GARDNER: Would it be permissible before we
17 make our comments to have questions of the presentation?
18 LT. COL. MARK BLACKBURN: Okay. This forum is a
19 means for the public to generate comments. So you can
20 make comments, anything you want. We're not going to
21 necessarily address every single question because we
22 don't have the time for that. We could be here for
23 hours and hours and hours.
24 RICHARD GARDNER: I saw on your schedule of time
25 that you had set aside approximately two and a half

1 hours for comments. And I thought that perhaps since
2 there are only a handful of people and maybe only two or
3 three that would wish to speak for three minutes, even
4 if each of us spoke for five, it wouldn't make even an
5 hour. I thought perhaps a few direct comments or
6 questions of the presentation might be appropriate.
7 LT. COL. MARK BLACKBURN: What I'll do, Richard, is
8 have you come up here and you can ask your questions.
9 And then we'll jot those down. And if we have time to
10 answer -- answer those, we will. Okay?
11 RICHARD GARDNER: Okay. Okay. Should I go up there
12 now?
13 LT. COL. MARK BLACKBURN: No. Believe it or not,
14 I'm going to ask Dan to come up here for a second.
15 RICHARD GARDNER: Okay.
16 LT. COL. MARK BLACKBURN: Actually, Dan, you can
17 have three minutes at the podium.
18 JAE CHUNG: Dan is with Endangered Habitats Leagues.
19 DAN SILVER: I won't take all the time.
20 I'm Dan Silver, Endangered Habitats League.
21 I'm also representing tonight the CNH Audubon Society.
22 We would like to generally support this entire SAMP
23 process. We believe it is appropriate for this part of
24 Orange County. We support the streamline permitting
25 based on comprehensive analysis of watershed quality and

1

1 meeting the broad ecological objectives. We would like
2 to very specifically support the program that is
3 proposed for the RMV portion. We were able to work
4 cooperatively with RMV to develop a common vision and
5 partnership for this very important property, and we
6 feel that Alternative 12 is a very excellent alternative
7 to integrate with the NCCP and the SAMP. So we
8 specifically want to endorse Alternative 12 as well as
9 the Adaptive Management Plan that goes with it for
10 inclusion into the SAMP.
11 We will be getting you some written comments
12 that largely pertain to the areas outside RMV, with more
13 specific comments on the Santa Margarita watershed
14 properties. We'll get you those. Thank you.

cont.

15 LT. COL. MARK BLACKBURN: Okay. Was there anybody
16 else besides Richard?
17 Okay. Richard, the podium is yours for three
18 minutes.
19 RICHARD GARDNER: Well, I'll be -- first, I would
20 like to speak as Richard Gardner, a watershed advocate.
21 And later, I'll come back as a director of the South
22 Coast Water District.
23 My first question is the 400 meters, is that
24 bank to bank? Inside? Outside? 400 from bank over?
25 How did you measure that? And, of course, the stream is

1 not delineated anywhere. So it's a difficult thing.
2 So second question. You don't have to answer
3 first because we decided not to do it that way. I only
4 have three minutes. I have to talk fast. Anyway, the
5 other part is when you go into (unintelligible), each
6 one of the canyons, you mean 400 meters wide on each one
7 of the canyons. So the belt canyon, we're talking Doe
8 Canyon all the way up. Every canyon gets 400 meters.
9 That sounds really good.

2

10 The other thing is the SAMP doesn't really
11 address the portion of the work that's been done by the
12 Army -- other division of the Army Corps. Your -- your
13 the regulatory; right? The other branch of the Army
14 Corps is not here. Are they represented here, the flood
15 people? So we have a complete -- the same problem
16 that's been persistent for many years. A lack of
17 communication within one organization. That problem --
18 that needs to be addressed seriously. And I would like
19 to see their comments regarding flood control in the
20 San Juan basin -- the whole San Juan watershed as it
21 reflects on the SAMP. Because that's what is very
22 important.

3

23 The other part -- there were a couple of
24 things. One was you spoke of some kind of management
25 plan with some kind of an entity. I don't know what

4

1 would be taken care of or managing. It's a story --
2 it's a fairytale to think someone can manage. So far,
3 it's been impossible to have all the parties working
4 together to come up with plans, whether it's the
5 property owners, whether it's the regulatory, whether
6 it's the cities, whether it's flood control or the
7 County. The land use, none of them work together well.
8 And that's the history. So I don't know what you have
9 that will bring this together unless you were thinking
10 of a resource conservation district that would take the
11 management and the development agreements and implement
12 them through an actual organization that would have that
13 as a responsibility. That might work. But you didn't
14 suggest that.
15 So those are just some questions. I don't
16 think you elaborated in that one.
17 Then, as a director of the San Juan Basin
18 Authority, okay, I want to say that from the
19 possibilities of using water resources, the San Juan
20 Basin is 175 square miles, has the Cleveland National
21 Forest, absolute pristine watershed. You have the
22 Caspers Park, just wonderful, beautiful open areas. You
23 have some suburban areas, but primarily a recharge of
24 good water for the San Juan basin, which is now being
25 utilized to draw 500-acre feed for San Juan. And it

4 cont.

1 will be close to 12,000 acres of ground water to plenish
2 our drinking supplies that will not have to come out to
3 of the delta that will not have to come from the
4 Colorado River. And you know the salmon and problems in
5 the delta area are monumental. So to be independent of
6 that water source is a great goal for us in Southern
7 California to hope for. In the Santa Ana watershed,
8 Santa Ana River, there's great progress. And hundreds
9 of millions of dollars have been spent to manage that
10 river and to provide --
11 I'm on the second guy, though. That other guy
12 was Richard Gardner. This is the San Juan Basin.
13 The --
14 LT. COL. MARK BLACKBURN: See, it's going to beep at
15 you, Richard.
16 RICHARD GARDNER: I'm just going to say there are
17 opportunities for conjunctive use. Ground water
18 management, which your SAMP didn't even discuss, and the
19 possibility of recharge and utilizing large portions of
20 the San Juan Creek for both flood control and potable
21 water recharge. Although we don't have an on-the-books
22 project, that's the appropriate thing to do. That's the
23 correct thing to do for the population, for the people
24 who live here, for our -- to provide a good independent
25 long-term water source supply. So that portion needs to

5

1 be brought forward. I think it would come more from the
2 other -- the other Army Corps guys that don't have
3 uniforms.
4 LT. COL. MARK BLACKBURN: Okay.
5 RICHARD GARDNER: Thank you.
6 LT. COL. MARK BLACKBURN: Thanks, Richard.
7 JAE CHUNG: Thank you, Richard.
8 LT. COL. MARK BLACKBURN: Jae, do you want to answer
9 some of those that Richard brought up?
10 JAE CHUNG: The corridor that is just through
11 San Juan Creek, we looked at the literature look for the
12 good number that's allowing the species to move
13 throughout the watershed. For distances, you need a
14 400-meter corridor. The area that you need extensive
15 distances is along the main San Juan Creek. The other
16 areas you might have some pitch points. But for the
17 most part, they are suitable for mountain lions to move
18 through.
19 When we talk about this 400-meter corridor,
20 we're talking about from edge to edge. It's not with
21 respect to any Corps of Engineers jurisdictional
22 feature. It's 400 meters of usable space that is
23 longitudinally located along San Juan Creek.
24 RICHARD GARDNER: The reason I asked is you had
25 mentioned it would be good not to allow development

5 cont.

1 right up -- bring the development up. And I'm agreeing
2 whole heartily. So the statement of what that buffer is
3 and how you determine, that's where -- that's the meat.
4 That's where you get into the meat. That's the money.
5 JAE CHUNG: Yes.
6 RICHARD GARDNER: And if you don't have that, then
7 it ends up over here.
8 JAE CHUNG: That's right. And with this
9 development, if you take out the maps and take out a
10 ruler, you'll see that most of the developments are
11 located some distance away from an active water body.
12 We're insuring that for most portions of this watershed
13 that you will have substantial amount of buffers that
14 are ecologically beneficial.
15 The second question regarding planning
16 division, we give them our documents. The first day, I
17 walked up and gave them the CDs for EIS. That's the
18 internal coordination. We talk amongst each other. We
19 know what we're doing. We don't have the combined
20 sessions. We just try to communicate and talk amongst
21 each other, informing them what we're doing and what
22 they're doing. That's how we coordinate. There's no
23 official product of that coordination. It just happens.
24 RICHARD GARDNER: Okay. Is there still someone
25 working on it or did they run out of funds? I thought

it was done. Have they set aside any money or not?
LT. COL. MARK BLACKBURN: To be honest, Richard, I couldn't talk intelligently about that specific project. That's a civil works project where you have to have an appropriation from Congress. That's where the elected officials get in and say you have to do something. You have to have appropriation and have moneys. Corps doesn't go out, contrary to popular belief, and build things on our own. We get marching orders from Congress. We're dealing with permitting here. How does that impact the flood control issue? I could not answer that for you right now. And that's why we've taken this question, and we'll feedback to you.
To reiterate what Jae just said, we don't do things in a vacuum. The Corps of Engineers in the Los Angeles District has multiple functionalities. Regulatory is just one subset of that. Another is civil works, which is the military stuff. So there's a clearing house of information that that goes through. So it's cross level. The information is cross level.
JAE CHUNG: Richard, give me a call. We'll talk.
RICHARD GARDNER: Is Hitchenson still involved in the watershed?
JAE CHUNG: Again, I can't give you that answer. But we'll talk later.

RICHARD GARDNER: And Adams; right?
JAE CHUNG: Adams is long gone.
RICHARD GARDNER: He's history.
JAE CHUNG: He's history.
LT. COL. MARK BLACKBURN: Can we go on to the --
RICHARD GARDNER: Next question. Ground water.
JAE CHUNG: Ground water is a great resource. It's a noble consideration that we should all do. But nevertheless, ground water issues are addressed by the state. There's nothing in the Corps regulations that allows us to have any nexus with the ground water. It's an issue that is to be considered, but it's not within the realm of Corps regulatory program. There's a lot of issues with ground water that can be addressed outside the waters of U.S. We only talk about issues that may affect certain issues unrelated to our statutory authority.
RICHARD GARDNER: So ground water is out of scope for the SAMP?
JAE CHUNG: Not to say it's not an issue.
RICHARD GARDNER: I wasn't sure where the boundary went when you get into subterranean. It's defined as a subterranean flowing stream. I thought maybe Army Corps might want to go down a few feet and see whatever is in the ground, and maybe there's some involvement there.

But that's okay.
JAE CHUNG: Right.
RICHARD GARDNER: I'm not worried about that part from a SAMP. But I'm certainly concerned with the other guys from the flood -- what is their group called? You're the regulatory. They're --
JAE CHUNG: Planning.
RICHARD GARDNER: It's plain planning?
LT. COL. MARK BLACKBURN: And they cover military construction and they cover civil works, which flood control planning is part of that subset -- a subset of that.
RICHARD GARDNER: Okay. How about the comment regarding the management of this area, this special area management? 6
JAE CHUNG: Again, our focus is on adaptive management. You're right. It is hard to plan and manage for these areas. And you really need to have an approach that is based upon feedbacks and informed decision-making. We can't pretend to think we know everything about aquatic resources. We can only establish a program that allows us to learn from our mistakes and build on the aquatic literature. You're right. It's hard to plan. We need to be flexible.
RICHARD GARDNER: Nobody would criticize you. You

put us on our bike and we have training wheels and we've been out there doing. You need to get back. We don't need you back to try to manage whatever our local thing is. You did your thing. You came down. You did this much work. You've broken it up. You've got the special areas, the bicorridors, and you've done it. And you've beat -- you've made it in the year 2005, which you said you would have to me in December, which you did. You get thumbs up because you guys made the date. That planning office was -- how many years behind were they? They couldn't get close. So you guys did your job. That's beautiful. And the compliments are there. But I'll still -- you know, I'm struggling a little because I see some things that sound good.
JAE CHUNG: Uh-huh.
RICHARD GARDNER: But in reality, I don't think they're -- right now, I don't see how it's going to happen. It won't happen with the Ranch doing it. It hasn't happened.
LT. COL. MARK BLACKBURN: Let's agree on this, if we will, Richard, because we're talking two separate issues here. The two are not necessarily interconnected to it, the regulatory and permitting piece. What we need to do is have a discussion outside of this to talk about the flood control issues, which are more inclusive of what I

can possibly give you right now. That's why, like Jae was saying, we need to talk with and you share with you what's going on in that area.

RICHARD GARDNER: Okay.

JAE CHUNG: Mindful of some people's time, I know some people have to make a train. I would like to give an opportunity for those departing individuals to say anything else. Dan? Okay. Great. You have a train to catch.

RICHARD GARDNER: Thank you very much for coming.

PUBLIC SPEAKER: Thank you for all this work.

JAE CHUNG: You have my phone number. And we'll discuss.

LT. COL. MARK BLACKBURN: Okay. And with that, that then adjourns the public meeting.

(The public meeting was concluded at 7:05 p.m.)

STATE OF CALIFORNIA }
} ss.
COUNTY OF RIVERSIDE }

I, Brooke Silvas, Certified Shorthand Reporter, Certificate No. 10988, for the State of California, hereby certify:

I am the person that stenographically recorded the public hearing on December 6, 2005.

The foregoing transcript is a true record of said meeting.

Dated:

_____

A

able 13:18 16:16 20:3
about 5:20 6:10,13,24 7:7 8:12 13:11 24:19 24:20 26:3 27:15 28:3 28:13,21 29:24
abroad 7:19
absolute 22:21
accept 6:1
accomplish 10:16
accordingly 11:2
achieved 17:7
acres 11:13,16 16:14 17:10 23:1
act 7:22 10:9
actions 15:2
active 25:11
actively 16:3
activities 7:24,25 8:2,3 15:7,14
actual 22:12
actually 6:7,25 19:16
Adams 27:1,2
adaptive 17:13 20:9 28:16
added 14:6
addition 16:15
additional 12:1 17:19
address 18:21 21:11
addressed 21:18 27:9 27:14
addresses 13:16
adjourns 30:15
advocate 20:20
ad-libbing 4:13
affect 8:12 27:16
after 6:1,18 7:10
again 13:25 18:3,9 26:24 28:16
agencies 4:25 8:6,7 13:15 15:9
agree 29:20
agreeing 25:1
agreements 22:11
Alex 4:20
allow 9:11 15:24 24:25
allowed 16:21
allowing 24:12
allows 14:14 15:9,13 16:9 27:11 28:22
alluded 12:13 15:1
along 12:3 16:18 24:15 24:23
already 7:1
alternate 14:16
alternative 5:11,16,17 10:9 12:23 13:8,8,10 13:12,16,18,20 16:6 20:6,6,8
alternatives 6:12 12:14 12:17,18 13:5,10 16:5
Although 23:21
amendment 8:13
amongst 25:18,20
amount 16:10 25:13
amounts 11:15
amphibians 10:3
Ana 23:7,8
analysis 5:16 6:12 11:22,23 12:16 15:5 19:25
analyze 12:15
Angeles 4:19 26:16
Another 8:16 10:21 12:7,23 26:17
answer 19:10,10 21:2 24:8 26:11,24
anticipated 16:2
anybody 20:15
anything 18:20 30:8
Anyway 21:4
anywhere 21:1
APPEARANCES 3:1
applicant 13:7,14
approach 10:4 12:20 28:19
appropriate 5:2 16:10 19:6,23 23:22
appropriation 26:5,7
approved 13:10
approximately 18:25
aquatic 5:2,5 7:21 8:12 9:15,16,18,22,24,24 10:1,21 11:13,21 12:22 13:13 14:1,2 28:21,23
area 4:8,23 5:6 7:2 8:10 11:5,7,9,11 14:4 15:25 16:8 23:5 24:14 28:14,14 30:3
areas 11:10 12:4,12 13:25 14:8,15,25 15:1 15:6,12,19,20,21,22 15:24 16:2,4,24 20:12 22:22,23 24:16 28:18 29:6
Army 3:3 21:12,12,13 24:2 27:23
around 11:13,16
arroyo 11:20 16:22,23
Arundo 17:11
aside 10:23 11:4 18:25 26:1
asked 24:24
assessment 8:5
associated 17:21
Audubon 19:21
authority 22:18 27:17
authorize 7:24,25 8:2
avoided 16:15,23
avoiding 12:23
aware 5:7
away 25:11
A-4 12:17,19
A-5 12:17

B

back 6:14 7:1 8:9 20:21 29:2,3
background 7:16
balance 5:2
bank 20:24,24,24
based 14:10 15:22,25 19:25 28:19
basin 21:20 22:17,20 22:24 23:12
basis 8:23
beat 29:7
beautiful 22:22 29:12
bed 12:9 13:2
beep 23:14
before 12:13 15:2 17:5 17:7 18:16
behind 6:11 29:10
being 8:17 22:24
belief 26:8
believe 5:1,10 10:13,15 12:21 14:21 15:4 19:13,23
bells 16:24
belt 21:7
beneficial 25:14
benefits 10:22
besides 20:16
best 5:10 12:22 13:3
better 5:22 10:15 17:16
bicorridors 29:6
bike 29:1
birds 10:2
bit 6:24
Blackburn 3:4 4:5,16 17:23 18:14,18 19:7 19:13,16 20:15 23:14 24:4,6,8 26:2 27:5 28:9 29:20 30:14
blue 16:2,4
body 25:11
both 9:22 23:20
bottom 17:6
boundary 27:21
branch 21:13
bring 22:9 25:1
broad 20:1
broken 29:5
Brooke 31:4
brought 24:1,9
buffer 25:2
buffers 12:8 13:1 16:16 25:13
build 12:8 26:8 28:23
building 7:18 13:2
business 12:19
B-10 13:10
B-12 13:20

C

California 4:1 23:7 31:1,5
call 26:21
called 28:5
came 6:16 29:4
canyon 21:7,8,8
canyons 21:6,7
capable 6:3
CAPISTRANO 4:1
captured 18:10
card 6:17
care 22:1
cases 14:23 16:17
Caspers 22:22
catch 30:9
caveat 5:19
CD 17:21
CDs 25:17
central 9:23
certain 14:11 27:16
certainly 28:4
Certificate 31:5
Certified 31:4
certify 31:6
change 8:14
Chung 3:5 4:15 5:14 7:15 8:25 9:3,10 19:18 24:7,10 25:5,8 26:21,24 27:2,4,7,20 28:2,7,16 29:15 30:5 30:12
cities 11:7 22:6
civil 26:4,17 28:10
Clean 7:21
clearing 26:19
Cleveland 11:12 22:20
close 23:1 29:11
CNH 19:21
Coast 20:22
cognizant 5:5
Col 3:4 4:5 17:23 18:14 18:18 19:7,13,16 20:15 23:14 24:4,6,8 26:2 27:5 28:9 29:20 30:14
collaboration 15:11
Colonel 4:16,20
color 15:21
Colorado 23:4
combined 25:19
come 5:10 13:18 18:7 19:8,14 20:21 22:4 23:2,3 24:1
coming 30:10
comment 6:21 17:18 18:15 28:13
comments 5:19 6:2,15 7:8,9 18:1,17,19,20 19:1,5 20:11,13 21:19
common 20:4
communicate 25:20
communication 21:17
community 4:25 13:18
compensatory 17:6
complete 21:15
compliments 29:12
comply 14:16
component 10:24
comprehensive 19:25
compromising 13:2
concepts 14:17
concern 10:8 12:20
concerned 8:12,16 12:7 28:4
concerns 13:11,17,19
conclude 17:5
concluded 30:16
concludes 17:17
conduct 15:5
conducting 11:22
configurations 13:9
Congress 26:5,10
congressional 4:22
conjunctive 23:17
conservation 9:17 16:12 22:10
consideration 12:21 27:8
considered 12:6 27:12
consist 11:14
consistent 9:12
construction 28:10
consultation 7:11
continuous 12:3
contrary 26:8
control 21:19 22:6 23:20 26:11 28:11 29:25
controlling 14:3
cooperatively 20:4
coordinate 25:22
coordination 8:7 15:9 25:18,23
Corps 3:3 4:19,24 5:15 5:19 6:6,10 7:4,17,17 8:11,11 10:8 11:17 13:11 21:12,14 24:2 24:21 26:7,15 27:10 27:13,23
correct 23:23
corridor 12:4 24:10,14 24:19
corridors 12:3 13:1,13 16:3,18