US Army Corps of Engineers®

SPECIAL PUBLIC NOTICE

LOS ANGELES DISTRICT

PROPOSED REGIONAL GENERAL PERMIT
Regional General Permit No. 74: Maintenance Activities within the San Diego Creek Watershed Special Area Management Plan (SAMP) Study Area

Public Notice/Application No.: 199915966-3-CJF
Comment Period: **March 7, 2008 through April 21, 2008**
Project Manager: Corice Farrar Tel: (213) 452-3296;
Email: Corice.J.Farrar@usace.army.mil

TO WHOM IT MAY CONCERN:

Location:

The affected area is the San Diego Creek Watershed in Orange County, California. The San Diego Creek Watershed encompasses portions of the Cities of Irvine, Tustin, Santa Ana, and Lake Forest and unincorporated Orange County (see Figure 1).

Activity:

As part of the effort to develop a Special Area Management Plan (SAMP) for the San Diego Creek Watershed (Watershed), the U.S. Army Corps of Engineers, Los Angeles District (Corps) proposes to establish alternative permitting procedures for the Watershed involving the following features: a new Regional General Permit (RGP) for maintenance activities; new Letter of Permission (LOP) procedures for activities that would not substantially affect aquatic resource functions and values; and the revocation of selected Nationwide Permits (NWPs) (Table 1).

This Special Public Notice concerns only the Corps proposal to establish an RGP to authorize the discharge of dredged or fill material associated with regulated activities resulting in temporary impacts to waters of the United States ("waters of the U.S.") within the San Diego Creek Watershed. This general permit would apply to maintenance and operation activities affecting waters of the U.S. with little or no native riparian or wetland vegetation and that are located

outside the areas characterized as aquatic resource integrity areas through the SAMP formulation process. This general permit would be issued under section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and would apply to anyone wishing to conduct routine maintenance activities in a manner consistent with the terms and conditions of this RGP. Implementation of an RGP for the maintenance activities in the San Diego Creek Watershed would allow permittees to conduct routine maintenance and operations activities in a timely manner.

In a separate Special Public Notice (Corps Reference No. 199915699-4-CJF), the Corps proposed to use LOP procedures to authorize eligible activities for those applicants who performed effective pre-application coordination with the Corps, complied with the section 404(b)(1) Guidelines, and included effective compensatory mitigation for unavoidable impacts. Additionally, the Corps proposed to revoke the use of selected NWPs within the San Diego Creek Watershed pursuant to 33 CFR 330.4(e) and 33 CFR 330.5(c) associated with the establishment of those LOP procedures.

Interested parties are invited to provide their views on the proposed RGP for implementation in the San Diego Creek Watershed study area. Comments received will be included in the administrative record and considered in the final decision. The proposed RGP will be adopted pursuant to section 404 of the Clean Water Act of 1972 (333 U.S.C. 1344).

Comments should be mailed to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
ATTN: CESPL-CO-R-199915966-3-CJF
P.O. Box 532711
Los Angeles, California 90053-2325

Alternatively, comments may be submitted electronically to Corice.J.Farrar@usace.army.mil.

EVALUATION FACTORS:

The decision to adopt the RGP for the proposed maintenance activities in the San Diego Creek Watershed will be based on the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national and regional concerns for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, since the proposal would discharge dredged or fill material,

the evaluation of the activity will include application of the U.S. Environmental Protection Agency (EPA) Guidelines (40 C.F.R. 230) as required by section 404 (b)(1) of the Clean Water Act.

To consider and evaluate public interest, the Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties. The Corps will consider all comments received on this notice in its decision of whether to adopt the RGP. The comments will be used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are also used to determine the overall public interest of the proposed activity. The Corps will coordinate the review of comments with the public review of the draft Program Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the San Diego Creek Watershed Special Area Management Plan/Watershed Streambed Alteration Agreement Process (SAMP/WSAA Process).

Preliminary Review of Selected Factors

Following is a review of federal compliance, as it relates to the activity proposed and described herein.

NEPA – EIS- In compliance with the National Environmental Policy Act, the Corps has published a Program EIS/EIR concurrently with this Special Public Notice. Additional details of the draft EIS/EIR can be found at http://www.spl.usace.army.mil/samp/sandiegocreeksamp.htm.

Clean Water Act – Water Quality- In most situations, an applicant is required to obtain a water quality certification, under section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires that any applicant for an individual section 404 authorization provide proof of water quality certification to the Corps of Engineers prior to permit issuance. For the RGP, the Corps is applying directly to the State Water Resources Control Board (SWRCB) and Santa Ana Regional Water Quality Control Board (RWQCB) for section 401 certification of the RGP. If the SWRCB and Santa Ana RWQCB provide a water quality certification for the RGP, individual water quality certifications would not be required for individual projects. The Corps is submitting all relevant documents to the SWRCB and Santa Ana RWQCB with respect to the formulation of the SAMP. In the event the SWRCB and Santa Ana RWQCB do not provide water quality certification for the RGP, the Corps will require that an applicant provide proof of water quality certification for each activity.

Endangered Species Act (ESA) – Federally Listed Species- Four federally listed species are found or are potentially present in the Watershed: the coastal California gnatcatcher (*Polioptila californica californica*), the least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and the Riverside fairy shrimp (*Streptocephalus woottoni*). Of the four species, only the California gnatcatcher has critical habitat designations that are in effect over portions of the Watershed. The Riverside fairy shrimp and the southwestern willow flycatcher previously had critical habitat designations in effect over portions of the SAMP planning area until vacated by court order. Recovery plans have been prepared for the southwestern willow flycatcher, least Bell's vireo, and Riverside fairy shrimp (the Riverside fairy shrimp is covered by the Recovery Plan for Southern California Vernal Pools).

The Corps has informally consulted with the U.S. Fish and Wildlife Service (USFWS), a Federal cooperating agency for the SAMP, to ensure any impacts to federally listed species, or their critical habitat, are avoided, minimized, and compensated consistent with the requirements of the ESA. The Corps will also initiate formal consultation for the SAMP in a forthcoming letter pursuant to section 7 of the ESA for effects to the above-listed species and their critical habitat, where applicable.

National Historic Preservation Act (NHPA) – Cultural Resources- The RGP will be used within portions of the San Diego Creek Watershed for temporary impacts associated with existing structures, including bridges, outfall structures, debris basins, and others facilities and infrastructure. These areas have been previously impacted and would not be expected to have cultural resources eligible for listing in the National Register of Historic Places. In the rare event that a proposed project may impact a cultural resource within the Corps' area of potential effect, the Corps, in coordination with the State Historic Preservation Office (SHPO), will evaluate the cultural resource for eligibility for listing in the National Register of Historic Places pursuant to the NHPA.

Coastal Zone Management Act (CZMA) – Coastal Resources- For those projects in or affecting the coastal zone, the federal Coastal Zone Management Act requires the Corps to obtain concurrence from the California Coastal Commission (CCC) that the project is consistent with the State's Coastal Zone Management Plan prior to issuing the Corps authorization for the project. Although the majority of the San Diego Creek Watershed is outside the coastal zone, certain areas around the San Joaquin Marsh are within the coastal zone. In a separate letter to the CCC, the Corps will request a consistency determination with the CZMA for activities within the coastal zone potentially authorized under this RGP.

Magnuson-Stevens Fishery Conservation and Management Act (Act) - Essential Fish Habitat (EFH)- This notice initiates the EFH consultation requirements of the Act. Due to the inland location of most of the eligible activities and the limited extent of the predicted project activity impacts on EFH resources such as Upper Newport Bay, our initial determination is that the proposed activity would not have a substantial adverse impact on EFH or federally managed fisheries in California waters. In a separate letter to NOAA Fisheries, the Corps will request concurrence that the activities potentially authorized under the RGP procedures would not have a substantial adverse impact on EFH or federally managed fisheries in California waters.

Public Hearing- The Corps will hold a public meeting for the SAMP during the public comment period. The date and time of this meeting will be announced separately. Interested parties should e-mail the Corps at Corice.J.Farrar@usace.army.mil in order to be placed on our San Diego Creek SAMP electronic mailing list. Any person may request, in writing, within the comment period specified in this notice, that in addition to the public meeting, a formal public hearing be held to consider this proposal for a new RGP. Requests for a formal public hearing shall state with particularity the reasons for holding a public hearing in addition to the public meeting.

PROPOSED ACTIVITY:

The proposed activity is to establish an alternative permitting process within eligible areas within the San Diego Creek Watershed using an RGP for maintenance activities to authorize the discharge of dredged or fill material into waters of the U.S. pursuant to section 404 of the Clean Water Act (33 USC 1344). This Special Public Notice concerns the Corps' proposal to establish an RGP in accordance with its regulations in 33 C.F.R. 325.2(e)(2). RGPs are issued for activities substantially similar in nature and with minimal impacts to the environment on a regional basis.

The Corps proposes to establish the RGP to authorize temporary impacts up to 0.5 acre in lower quality aquatic resource areas within the San Diego Creek Watershed. The RGP would allow such discharges to be authorized within 15 days of notification with no compensatory mitigation requirements due to the low quality of the aquatic resources, the temporary nature of the impacts, and the limited extent of disturbance.

EFFECTIVE DATE:

The effective date will be determined based on final action. A subsequent public notification of the effective date will be published and circulated to inform interested parties.

SUPPLEMENTARY INFORMATION:

Background

In response to economic developmental pressures on the Watershed's aquatic ecosystem, i.e., streams, wetlands, and riparian vegetation, the Regulatory Division of the Los Angeles District of the Corps of Engineers is developing a SAMP in coordination with the California Department of Fish and Game's (the Department) WSAA Process. The Corps and the Department have worked collaboratively to undertake a long-term, joint process with local participating applicants, including private landowners and local public agencies, to develop a cohesive, Watershed-specific plan to address wetlands permitting, compensatory mitigation, and long-term management of aquatic resources. Through this process, the Corps proposes to establish policies to promote aquatic resource ecosystem functions and values in the San Diego Creek Watershed. The SAMP formulation and implementation process provides the Corps with new tools to improve its capacity to make informed decisions that balance aquatic resource protection and reasonable development, as compared with the conventional project-by-project review, which is limited by its inability to have a true watershed-wide, landscape-based perspective.

Special Area Management Plan (SAMP)

The SAMP is a plan, which is comprised of the following elements: an Analytical Framework for Corps and Department decisionmaking; modified, watershed-specific permitting processes, including the Corps and the Department's watershed- and resource-based permitting protocols and a mitigation framework; a Strategic Mitigation Plan, which is based upon a riparian ecosystem restoration plan; a Mitigation Coordination Program to achieve implementation of the Strategic Mitigation Plan and foster a coordinated approach to aquatic resource management in the Watershed; and an implementation plan for the SAMP.

Analytical Framework - Through the compilation of technical environmental data and analysis from its watershed-wide studies and SAMP formulation process, the Corps has characterized the aquatic resources in the Watershed in terms of their hydrologic, water quality, and/or habitat integrity, provision of habitat for threatened or endangered species, wildlife connectivity value, and/or whether they are headwater stream systems. Further, the Corps identified geographic areas with higher quality aquatic resources (Figure 2). These aquatic resources have medium to high hydrologic, water quality, and/or habitat integrity; provide habitat for threatened or endangered species; and include aquatic areas with wildlife connectivity value. Along with their drainage sub-basins, these aquatic resources are referred to collectively as aquatic resource integrity areas.

Conversely, specific areas have been identified as having less valuable resource areas, suitable for an alternate permitting process for selected classes of activities. The less sensitive areas include aquatic resources with generally low hydrologic, water quality, and habitat integrity; with less habitat value for threatened or endangered species; and with low wildlife connectivity value. Collectively, these low integrity aquatic resources and their sub-basins are situated outside the aquatic resource integrity areas.

With the results of comprehensive studies on the location and quality of aquatic resources within the San Diego Creek Watershed, the SAMP provides a contextual Analytical Framework to implement an effective permitting system that provides additional protections to higher value resources while minimizing future processing delays for projects affecting lower value resources.

Permitting and Mitigation Frameworks- The SAMP Analytical Framework will be applied while reviewing applications and the alternate permitting processes will be used to authorize the discharge of dredged or fill material into waters of the U.S. within the Watershed. The alternate permitting system involves the establishment of abbreviated permit procedures in the form of an RGP and LOP procedures in combination with the use of selected NWPs and a mitigation framework. The Strategic Mitigation Plan involves establishing priorities for implementing a Watershed-wide riparian ecosystem restoration plan. Overall, the SAMP assists applicants and the Corps in complying with the section 404(b)(1) Guidelines through more effective and proactive avoidance, minimization, and compensation of impacts to aquatic ecosystems.

The implementation of the alternative permitting system depends on the type of activity, permanency of impacts, and location of proposed activity within the San Diego Creek Watershed, that is, whether the activity would affect aquatic resources located within or outside aquatic resource integrity areas. Within the aquatic resource integrity areas, most classes of activities with permanent impacts to aquatic resources would be ineligible for LOP procedures. Specifically, eligibility for an LOP within the aquatic resource integrity areas would be limited to activities resulting in a maximum permanent impact of 0.1 acre of waters of the U.S. Thus, in areas of high resource value, proposed activities would likely require review under the standard individual permit process, allowing for the appropriate amount of review by resource agencies and the interested public. Outside of aquatic resource integrity areas, aquatic resources were identified as being of lower value on a watershed basis. Within these less sensitive resource areas, the permitting process would involve abbreviated permitting procedures such LOPs in order to minimize delays and to provide increased certainty to the applicant, while providing appropriate aquatic resource protection.

Strategic Mitigation Plan and Mitigation Coordination Program - To complement the watershed-specific permitting process, the SAMP seeks to develop a Strategic Mitigation Plan and propose a Mitigation Coordination Program to support its implementation. The SAMP for San Diego Creek Watershed, Orange County, California, and its Program EIS/EIR address key components of the proposed plan and program.

Proposed Establishment of an RGP

This Special Public Notice addresses the establishment of an RGP to authorize the discharge of dredged or fill material that temporarily impact waters of the U.S. with little or no native riparian or wetland vegetation located outside the aquatic resource integrity areas. In a separate, but concurrent Special Public Notice, the Corps proposes alternative permit procedures involving LOP procedures and the revocation of certain NWPs. . Additional details of the SAMP are provided in the SAMP document and the Program EIS/EIR. [A separate, but concurrent comment public period is given for the draft EIS/EIR, as provided for by separate public notice.]

In order to implement the SAMP permitting and mitigation frameworks that consider the condition of the aquatic resources being affected, the Corps proposes to revoke the use of several NWP[1] authorizations within the San Diego Creek Watershed, in accordance with 33 CFR 330.5(c). In consideration of the SAMP watershed-wide assessment, the abovementioned NWPs may provide an inappropriate level of protection to aquatic resources within this Watershed. For instance, in some situations, the NWPs may be insufficiently protective of the aquatic resource areas with strategic conservation value against cumulative impacts measured on a watershed scale. In other situations, some of the NWPs may be overly restrictive for projects with minor impacts to the aquatic environment. In place of the revoked NWPs, the RGP and LOP procedures would minimize delays for projects with minor impacts on the aquatic environment and provide greater efficacy in protecting the aquatic environment by strengthening the permit evaluation process through increased inter-agency review. The Corps believes these steps would strengthen aquatic resource protections in the Watershed's higher value areas and provide regulatory flexibility for activities affecting lower value resource areas in situations where the impacts are not substantial.

A summary of the differences between existing and proposed alternate permitting processes within the San Diego Creek Watershed is provided in Table 1. The permitting process outlined in Table 1 is a product of the SAMP Analytical Framework and plan formulation process and applies only to the San Diego Creek Watershed.

[1] NWPs authorized by the Corps on March 18, 2007 expire on March 18, 2012. The list of NWPs proposed for revocation in the San Diego Creek Watershed described herein reflects the 2007 NWPs.

Table 1. Comparisons between current and proposed permitting systems for abbreviated permitting for discharges of dredged or fill material within waters of the U.S. (WoUS) located in the San Diego Creek Watershed.

	CURRENT SYSTEM		PROPOSED SYSTEM					
Permit Program	**NWPs**	**SIPs**	**NWPs**	**RGP**	**LOPs**			**SIPs**
Applicable Use Areas	All areas	All areas	All areas	Outside aquatic resource integrity areas	Outside aquatic resource integrity areas	In major stream systems[1] outside aquatic resource integrity areas	Inside aquatic resource integrity areas	All areas
Eligible Regulated Activities	Specified for each NWP: NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33,	All regulated activities ineligible for NWPs.	Specified for each retained NWP: NWP 1, 2, 4, 5, 6, 8, 9, 10, 11, 15, 20, 22, 23, 24, 28, 30, 32, 34, 35, 36, 37, 38, 45, 47, 48	Anticipated maintenance activities[2]	Anticipated activities[3]	Anticipated activities[3]; No stream channelization or stream replacement with pipes.	Anticipated activities[3]; No stream channelization or stream replacement with pipes.	All regulated activities ineligible for other permitting procedures.

	CURRENT SYSTEM		PROPOSED SYSTEM					
Permit Program	**NWPs**	**SIPs**	**NWPs**	**RGP**	**LOPs**			**SIPs**
	34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50							
Permanent Impacts to WoUS Authorized	Generally ≤ 0.5 acre	No limit[4]	Generally ≤ 0.5 acre	None	No limit[5]	No limit[5]	≤ 0.1 acre	No limit[4]
Temporary Impacts to WoUS Authorized	No limit	No limit	No limit	≤ 0.5 acre	No limit[5]	No limit[5]	No limit[5]	No limit
Review Time	≤ 45 days	approx. 120 days	≤ 45 days	≤ 15 days	≤ 45 days	≤ 45 days	≤ 45 days	approx. 120 days
Pre-Application Coordination	Preferred	Preferred	Preferred	Preferred	Required[6]	Required[6]	Required[6]	Preferred
Inter-Agency Review	Generally >0.5 acre	None	None	None	All actions	All actions	All actions	All actions

[1] Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek
[2] Anticipated maintenance activities ineligible for NWP may be eligible for RGP: Utility Lines (maintenance of new and existing facilities); Flood Control Facilities (maintenance of new and existing facilities); Road Crossings, including bridges and culverts (maintenance of new and existing crossings); Land Development for Residential, Commercial, Industrial, Institutional and Recreational Facilities (maintenance of new and existing land development and recreational facilities); Storm Water Treatment and Management Facilities (maintenance of new and existing facilities); Habitat Restoration and Enhancement Projects (maintenance of new and existing projects).
[3] Anticipated activities ineligible for NWP or RGP may be eligible for LOP procedures: Utility Lines (construction and/or maintenance of new and existing facilities); Flood Control Facilities Maintenance (construction and/or maintenance of new and existing facilities); Road Crossings, including bridges and culverts (construction and/or maintenance of new and existing crossings); Land Development for Residential, Commercial, Industrial, Institutional and Recreational Facilities (construction and/or maintenance of new and existing land development and recreational facilities); Storm Water Treatment and Management Facilities (construction and/or maintenance of new and existing facilities); Habitat Restoration and Enhancement Projects (construction and/or maintenance of new and existing projects); and Fire Abatement and Vegetative Fuel Management Activities.
[4] In evaluating projects under the SIP process, the Corps would need to assure project compliance with th e 404(b)(1) Guidelines. Except as provided for by section 404(b)(2), no discharge of dredged or fill materi al into waters of the U.S. would be permitted by the Corps if the effects of the discharge, considered eithe r individually or cumulatively, would contribute to the substantial degradation or impairment of waters of the U.S. (40 CFR Part 230).
[5] Provided the project is in full compliance with LOP procedures.
[6] For >0.1 acre of permanent impacts to waters of the U.S. or >0.25 acre of temporary impacts to waters of the U.S. with native riparian and/or wetland vegetation.

REGIONAL GENERAL PERMIT PROCEDURES:

Pursuant to its authority under 33 C.F.R. 325.2(e)(2) and in accordance with the procedures for processing permits (33 C.F.R. 325), the Corps proposes to establish the San Diego Creek Watershed Maintenance RGP to authorize discharges of dredged or fill material resulting in temporary impacts up to 0.5 acre of waters of the U.S., of which only 0.1 acres may be vegetated with native riparian and/or wetland vegetation. Areas eligible for the use of this RGP are limited to aquatic resources located outside of the aquatic resource integrity areas within the Watershed. Permanent losses of waters of the U.S., including impacts from fills, flooding, excavation (beyond a Corps-approved maintenance baseline[2]), or drainage are not permitted under this RGP.

[2] The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, which will no longer available for use in this Watershed. The definition of baseline maintenance as defined in NWP 31 (72 FR 11186) applies here. The district engineer will approve the maintenance baseline of flood control channels and flood control basins based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has

Eligibility for the Maintenance RGP

Temporary impacts from the discharge of dredged or fill material may be authorized under this RGP, including the following activities:

1. Repair, rehabilitation, and replacement of currently serviceable outfall structures, utility lines, pump stations, bank stabilization structures, concrete flood control structures, weirs, drop structures, grade stabilizers, at-grade road crossings, culverts, bridges, pilings, and piers;
2. Temporary construction activities and installation of temporary cofferdams, water diversion structures, and access roads; and
3. Removal of accumulated sediment in flood control channels and basins (debris, retention, and detention) to restore the facility to maintenance baselines and within its design capacity.

RGP Application Processing Procedures

When the applicant has assembled the information required for a complete application, the application shall undergo the following steps:

1. The applicant will provide the Corps with a complete application. The Corps will review the applicant's submission and assign an action ID number.
2. Within seven (7) calendar days, the Corps will determine if the application is complete. If an application is incomplete, within seven (7) calendar days, the Corps will notify the applicant of the needed information items and the applicant will be required to resubmit.

3. This RGP would allow a permittee to commence work in eligible areas 15 days after the Corps receives proper written notification. Upon receipt of a complete notification and within the 15-day notification period, the Corps may verify the activity with a letter and add any special conditions. If the Corps provides no response within 15 days after complete notification, the project proponent may assume Corps approval of the work. (See proposed Condition 4 for Notification requirements).

Proposed General Conditions

The Corps proposes 21 general conditions applicable for the maintenance RGP issued within the Watershed (Table 2).

Table 2. Proposed General Conditions for the San Diego Creek Watershed Regional General Permit for Maintenance Activities.

RGP General Condition	Description
1. Expiration	This RGP shall expire five years from its effective date.

not been recent maintenance). Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this RGP. This RGP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

RGP General Condition	Description
	Further reauthorizations of this permit will be contingent upon substantial compliance with permit conditions, including the provision of notifications. Failure to comply with these conditions could result in the suspension or revocation of this permit prior to its expiration date, or its non-renewal.
2. Impact Limits	This RGP authorizes up to 0.5 acre of temporary impacts, of which up to 0.1 acre may be vegetated by predominantly native wetland or riparian vegetation. Non-native wetland vegetation does not count towards the 0.1-acre threshold. For facilities with an established maintenance baseline, beyond 0.1 acre of vegetation may be removed only if the work is consistent with the established maintenance baseline.
3. Eligible Areas	This RGP shall be available for use only in areas outside of the aquatic resource integrity areas (Figures 3-2 and 3-3).
4. Notification	The permittee must provide the Corps with prior notification for each separate maintenance activity at each site. A complete notification includes the following information: 1. Name, address and telephone numbers of the applicant, and appropriate point of contact and their address and phone number; 2. Project description of proposed activities; 3. Pre-project photographs of the project site; 4. A site location map and view of the project showing areas and acreage to be impacted, including any areas with native riparian and/or wetland vegetation; submit on 8.5" x 11" sheets; 5. Location coordinates: latitude/longitude or UTM's; 6. Volume, type and source of material to be temporarily placed into waters of the United States; 7. Total area of waters of the United States to be directly and indirectly affected; and 8. Proposed project schedule.
5. Soil Erosion and Siltation Controls	Appropriate erosion and siltation controls such as siltation or turbidity curtains, sedimentation basins, and/or hay bales or other means designed to minimize turbidity in the watercourse to prevent exceedences of background levels existing at the time of project implementation, shall be used and maintained in effective operating condition during project implementation. Projects are exempted from implementing controls if site conditions preclude their use, or if site conditions are such that the proposed work would not increase turbidity levels above the

RGP General Condition	Description
	background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation and no later than November of the year the work is conducted to avoid erosion from storm events.
6. Equipment	If personnel would not be subjected to additional, potential hazardous conditions, heavy equipment working in or crossing wetlands must be placed on temporary construction mats (timber, steel, geotextile, rubber, etc.), or other measures must be taken to minimize soil disturbance such as using low pressure equipment. Temporary construction mats shall be removed promptly after construction.
7. Suitable Material	No discharge of dredged or fill material into jurisdictional waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).
8. Management of Water Flows	To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. To the maximum extent practicable, the activity must provide for the retention of excess flows from the site and for the maintenance of surface flow rates from the site similar to pre-project conditions, while not increasing water flows from the project site, relocating water, or redirecting water flow beyond pre-project conditions unless it benefits the aquatic environment (e.g., stream restoration or relocation activities).
9. Removal of Temporary Fills	Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing conditions, including any native riparian and/or wetland vegetation. If an area impacted by such temporary fill is considered likely to naturally reestablish native riparian and/or wetland vegetation within two years to a level similar to pre-project or pre-event conditions, the permittee will not be required to restore the riparian and/or wetland vegetation. However, Exotic Species Management may be required to prevent the establishment of invasive exotic vegetation.

RGP General Condition	Description
	(See Condition #14).
10. Preventive Measures	Measures must be adopted to prevent potential pollutants from entering the watercourse. Within the project area, construction materials, and debris, including fuels, oil, and other liquid substances shall be stored in a manner as to prevent any runoff from entering jurisdictional areas.
11. Staging of Equipment	Staging, storage, fueling, and maintenance of equipment must be located outside of the waters in areas where potential spilled materials will not be able to enter any waterway or other body of water.
12. Fencing of Project Limits	Prior to initiation of the project, the boundaries of the project's impact area must be delimited by the placement of temporary construction fencing, staking, and/or signage. Any additional jurisdictional acreage impacted outside of the approved project footprint shall be mitigated at a 5:1 ratio. In the event that additional mitigation is required, the type of mitigation shall be determined by the Corps in accordance with the SAMP mitigation framework and may include wetland enhancement, restoration, creation, or preservation.
13. Avoidance of Breeding Season	With regard to federally listed avian species, avoidance of breeding season requirements shall be those specified in the section 7 consultation for the RGP. For all other species, initial vegetation clearing in waters of the U.S. must occur between September 15 and March 15, which is outside the breeding season. Work in waters may occur during the breeding season between March 15 and September 15 if bird surveys indicate the absence of any nesting birds within a 50-foot radius.
14. Exotic Species Management	All giant reed (*Arundo donax*), salt cedar (*Tamarix spp*.), and castor bean (*Ricinus communis*) must be removed from the affected area and ensure that the affected area remains free from these invasive, non-native species for a period of five years from completion of the project.
15. Site Inspections	The Corps shall be allowed to inspect the site at any time during and immediately after project implementation. In addition, compliance inspections of all mitigation sites shall be allowed at any time.
16. Posting of Conditions	A copy of the RGP conditions shall be included in all bid packages for the project and be available at the work site at all times during periods of work and must be presented upon request by any Corps or other agency personnel with a reasonable reason for making such a request.

RGP General Condition	Description
17. Water Quality	A section 401 water quality certification must be obtained unless a general section 401 certification is issued or waived for this RGP in the project area (see 33 CFR 330.4(c)).
18. Coastal Zone Management	An individual California state coastal zone management consistency concurrence must be obtained or waived where the project may affect the Coastal Zone (see 33 CFR 330.4(d)).
19. Endangered Species	(a) No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the ESA or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall not begin work on the activity until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is authorized. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until section 7 consultation has been completed. (d) As a result of formal or informal consultation with the USFWS or NMFS, the district engineer may add species-specific regional endangered species conditions to the RGP notices to proceed. (e) Authorization of an activity by an RGP does not authorize the "take" of a threatened or endangered species as defined under the ESA.

RGP General Condition	Description
	In the absence of separate authorization (e.g., an ESA section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. USFWS and NMFS or their World Wide Web pages at http://www.USFWS.gov/carlsbad and http://www.noaa.gov/fisheries.html respectively.
20. Historic Properties	(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of section 106 of the NHPA have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the NHPA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit with their application information on historic properties that may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the SHPO or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties that the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under section 106 of the NHPA has been completed. (d) Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until section 106 consultation is completed. (e) Prospective permittees should be aware that

RGP General Condition	Description
	section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.
21. Mitigation Policy	Compensatory mitigation will not be necessary unless required through general conditions 12, 17, 18, 19, or 20. Should compensatory mitigation be required, it shall be performed in conformance with the mitigation framework developed for the San Diego Creek SAMP, as described in the Corps' SAMP for this Watershed and the Special Public Notice for the San Diego Creek LOP procedures issued concurrently with this Special Public Notice.

The use and implementation of the RGP for Corps permit applications is contingent on compliance with the terms and conditions of the RGP. Should a permittee become non-compliant with permit conditions, the Corps may suspend, revoke, or modify the permit and assess administrative penalties. Pursuant to section 309(g) of the Clean Water Act, the Corps is able to levy Class I Administrative Penalties of up to $11,000 per violation of a permit Special Condition, to a maximum of $27,000.

Activity-Specific Conditions

For each project, additional activity-specific conditions may be included.

MITIGATION FRAMEWORK:

For the San Diego Creek Watershed, the Corps proposes to implement the mitigation pol icies developed for the SAMP. These policies would apply primarily to LOPs and standard indi vidual permits issued within the Watershed, but are applicable to general permits as determine

d appropriate by the Corps in accordance with proposed RGP General Condition 21.

For additional information, please call Ms. Cori Farrar of my staff at (213) 452-3296 or Corice.J.Farrar@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.

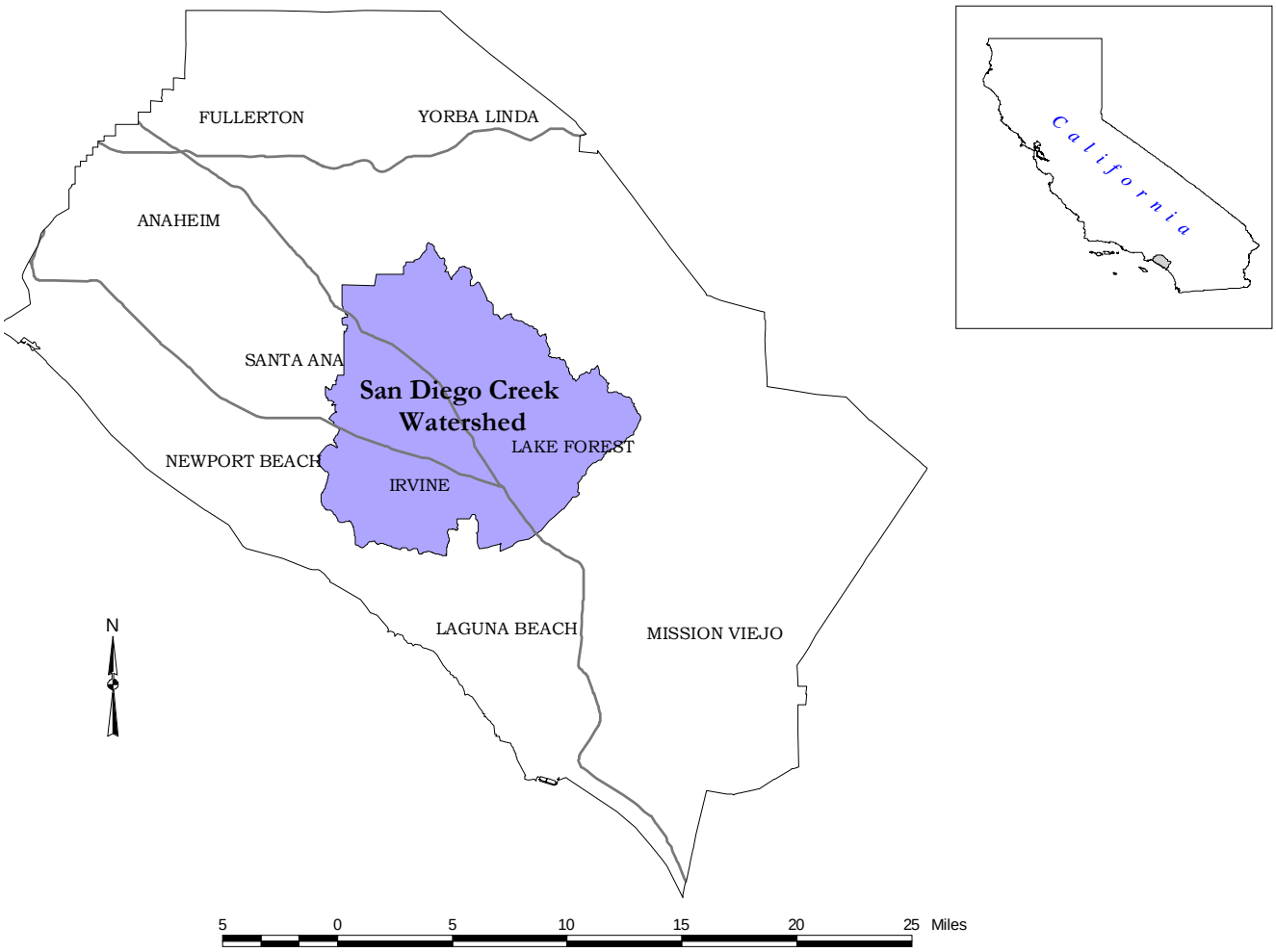


Figure 1. The San Diego Creek Watershed Special Area Management Plan study area in Orange County, California.

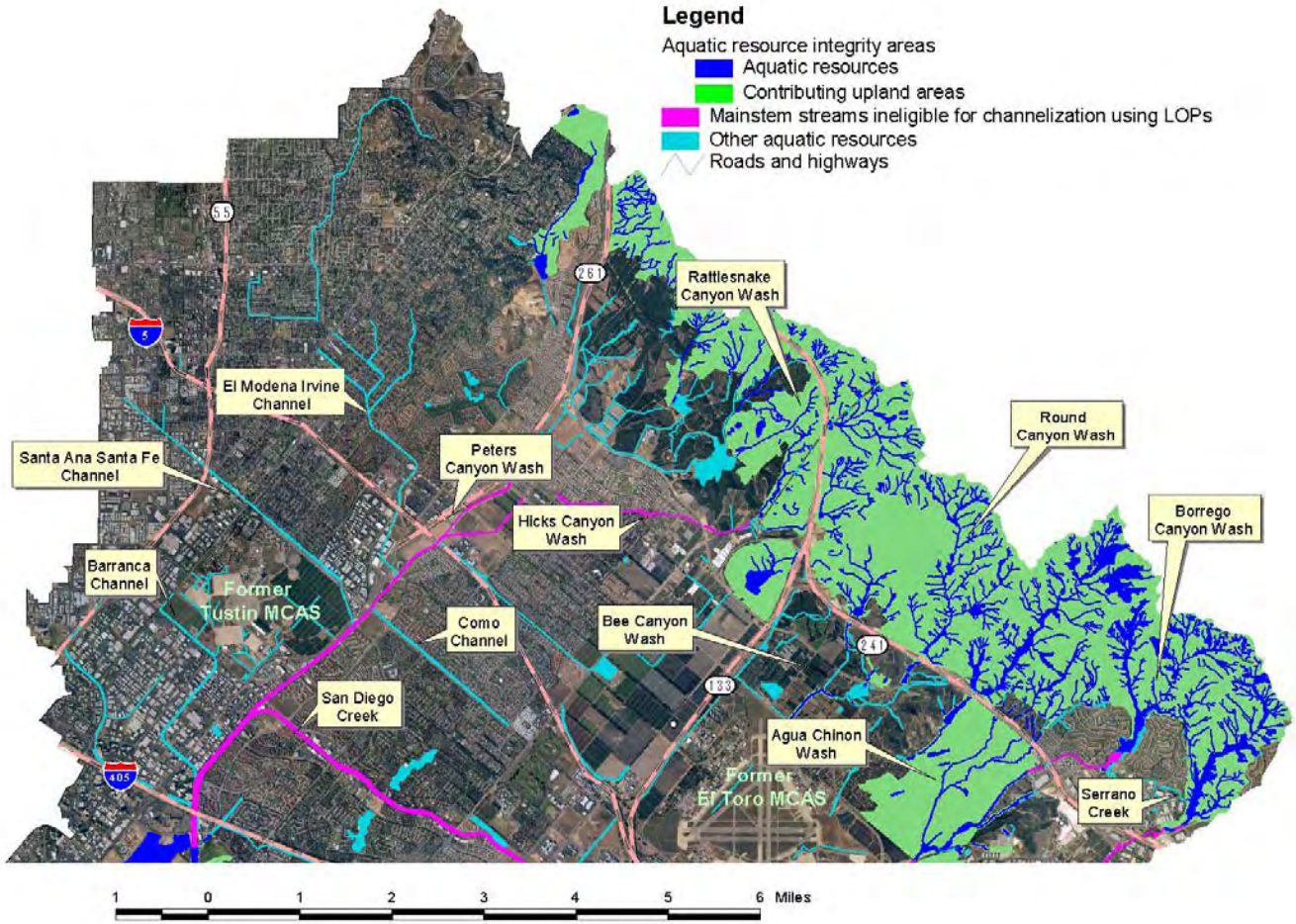


Figure 2. Depiction of the northern portion of the San Diego Creek Watershed with the SAMP permitting framework overlaid. RGP would be eligible for use in jurisdictional waters located outside the aquatic resource integrity areas.

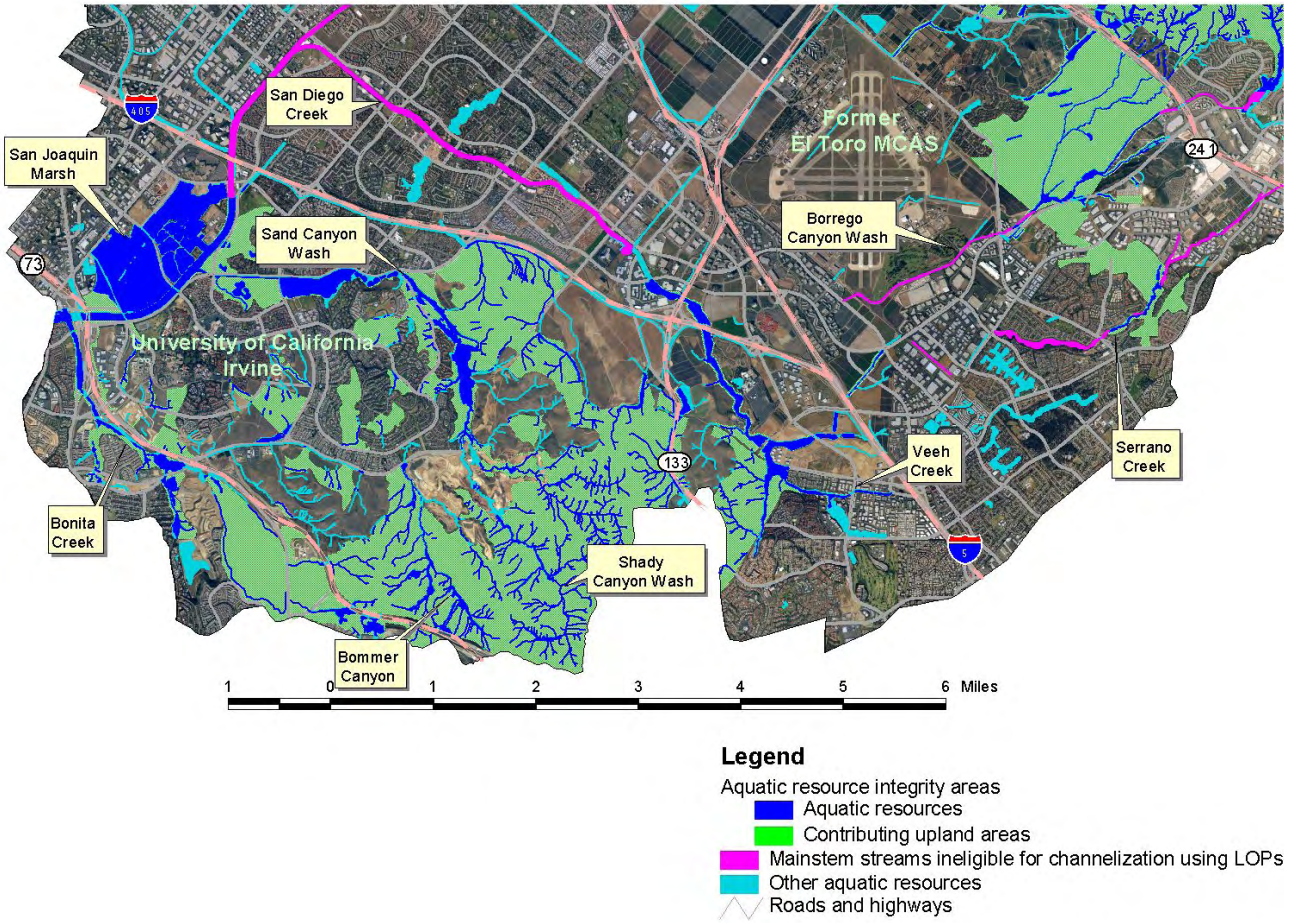


Figure 3. Depiction of the southern portion of the San Diego Creek Watershed with the SAMP permitting framework overlaid. RGP would be eligible for use in jurisdictional waters located outside the aquatic resource integrity areas.

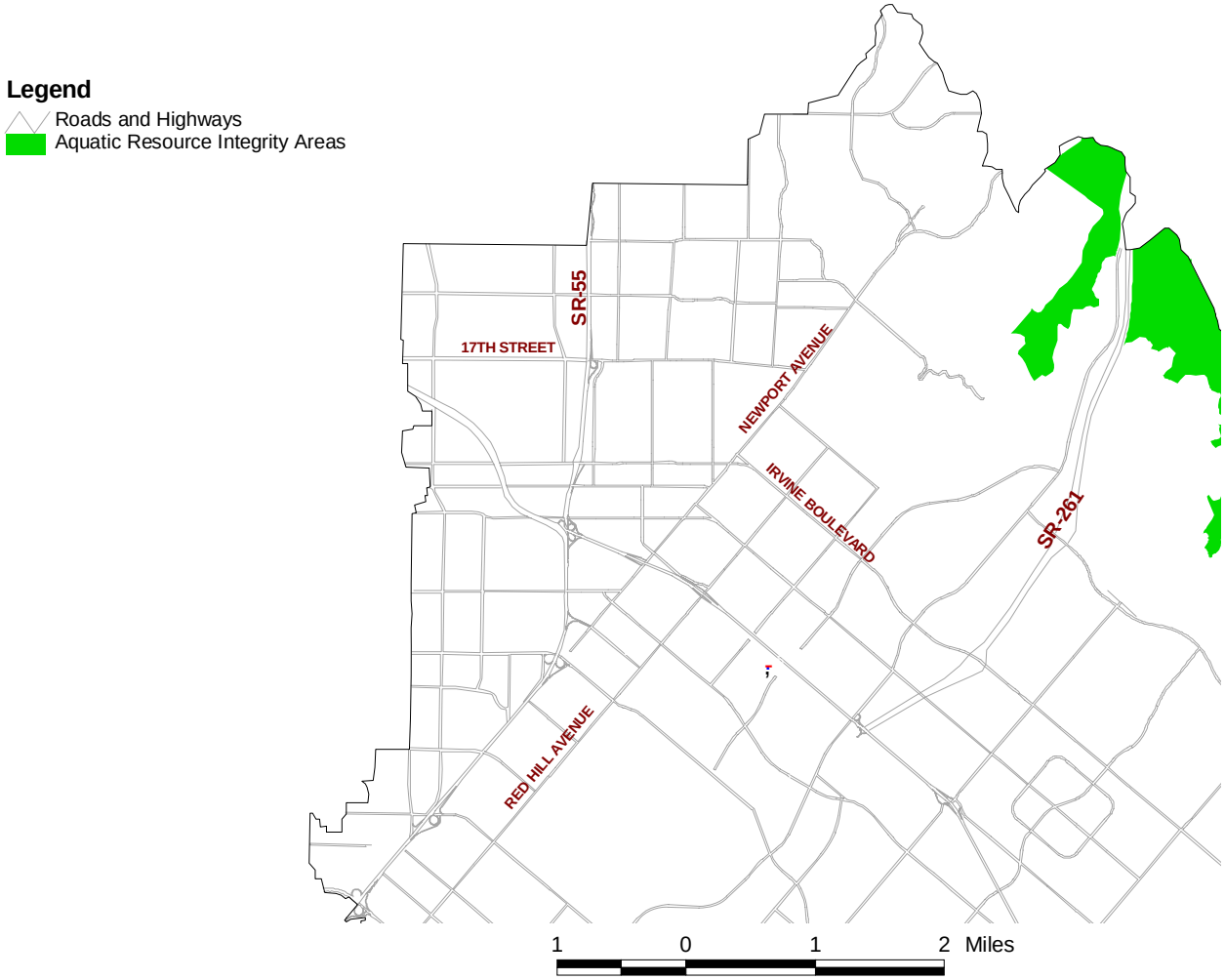


Figure 4. Aquatic resource integrity areas in the northwestern portion of the San Diego Creek Watershed.

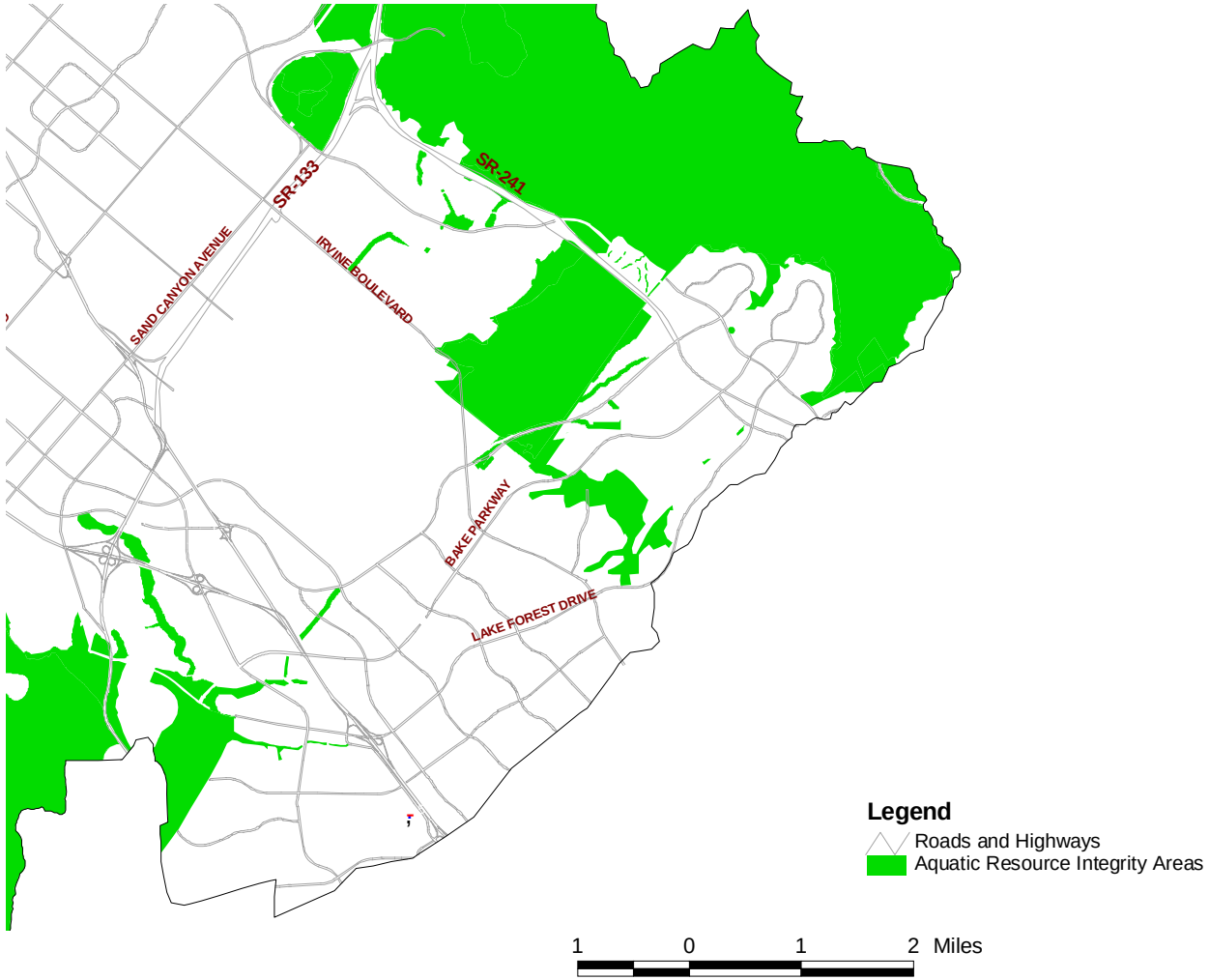


Figure 5. Detail of the aquatic resource integrity areas in the northeastern portion of the San Diego Creek Watershed.

Figure 6. Detail of the aquatic resource integrity areas in the southwestern portion of the San Diego Creek Watershed.

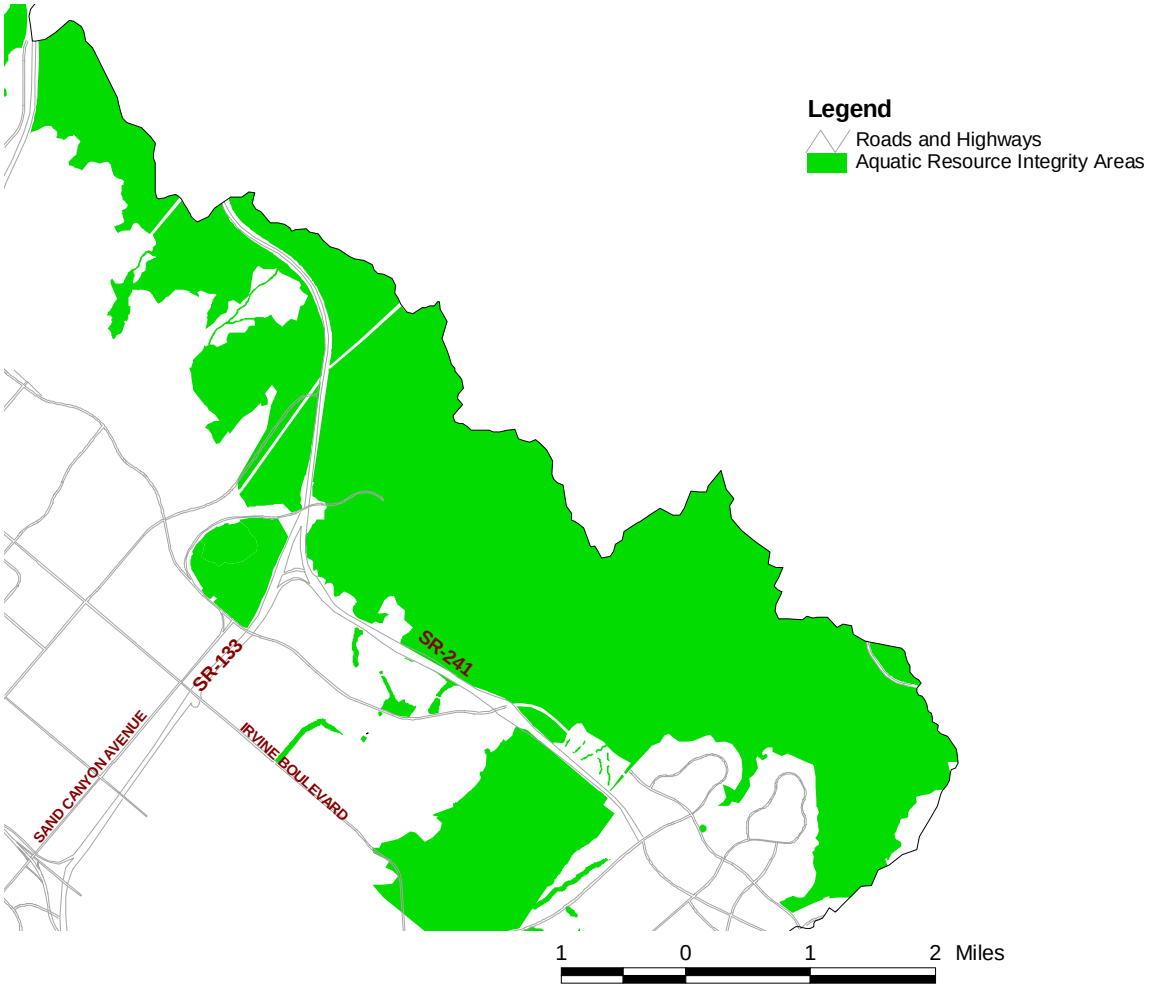
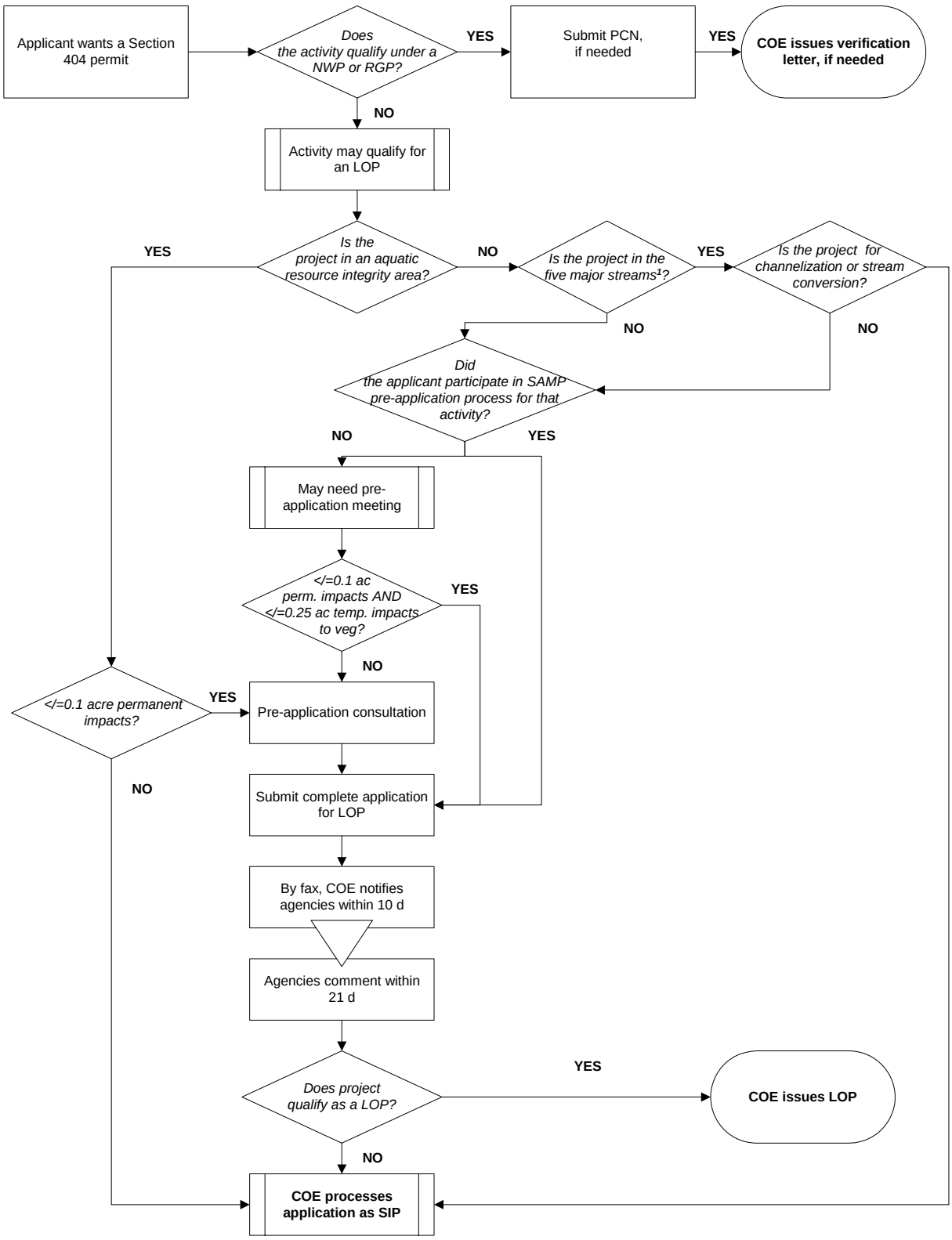


Figure 7. Detail of the aquatic resource integrity areas in the southeastern portion of the San Diego Creek Watershed.



[1] Five streams: Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek

Figure 8. Generalized flow chart for the Corps section 404 permitting procedures within the San Diego Creek Watershed after adoption of the SAMP.