



# SPECIAL PUBLIC NOTICE

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

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## **Updates to Letter of Permission Procedures and Regional General Permit No. 74 for Covered Activities in Special Area Management Plan (SAMP) Areas in Orange County, California**

**Public Notice/Application Numbers:** SPL-1999-16236-2, SPL-1999-15966, and SPL-2010-01020

**Comment Period:** November 6, 2020 through November 27, 2020

**Project Manager:** Eric Sweeney; 760-602-4837; [Eric.R.Sweeney@usace.army.mil](mailto:Eric.R.Sweeney@usace.army.mil)

Interested parties are hereby notified that the U.S. Army Corps of Engineers (Corps) is preparing to publish updated versions of its previously approved Letter of Permission (LOP) Procedures for covered activities within the San Juan Creek / Western San Mateo Creek (SJC/WSMC) Watershed Special Area Management Plan (SAMP) and San Diego Creek (SDC) Watershed SAMP areas. These finalized LOP Procedures modify established procedures by which the Corps issues or denies LOPs under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) within the SJC/WSMC and SDC Watersheds. We invite you to review today's public notice and provide views on the proposed revised versions of the LOP Procedures, which are provided for the SJC/WSMC Watershed SAMP and SDC Watershed SAMP as Enclosures 1 and 2, respectively. By providing substantive comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become a part of the record and will be considered in the decision.

**Due to COVID-19 please submit all comments electronically to:** [Eric.R.Sweeney@usace.army.mil](mailto:Eric.R.Sweeney@usace.army.mil)

### **Activity**

To revise and publish final LOP Procedures to improve implementation of the existing permit processes established in 2010. Final LOP Procedures will reflect minor modifications to provide clarification of the terms, general conditions, and definitions contained in the originally published as part of the respective final Environmental Impact Statement for the SAMP. Most substantively, with these updates the Corps proposes to expand availability of non-Rancho Mission Viejo (RMV) Planning Area LOP Procedures for the SJC/WSMC Watershed SAMP to encompass the entire SJC/WSMC Watershed SAMP area (Figure 1). Only minor clarifying updates will be made to improve consistency and efficiency of implementation of the existing SDC Watershed SAMP LOP Procedures.

Additionally, the Corps proposes to reissue RGP 74 ("Maintenance Activities within Special Area Management Plan Areas in Orange County, California") to cover eligible maintenance activities throughout the entire SJC/WSMC Watershed SAMP area. Expanding the availability of RGP 74 would ensure consistency with the SAMP permitting framework, which intended that non-RMV SAMP LOP Procedures be used in conjunction with a maintenance RGP. Our proposed revised version of RGP 74 is provided as Enclosure 3.

### **Additional Information**

After several years of implementation, the Corps recognizes that with changes in regulations, terminology and implementing policies have evolved. Updates to the LOP Procedures are needed to provide consistency and clarity to support effective program implementation.

The Corps also became aware that within the RMV Planning Area of the SJC/WSMC Watershed SAMP, prospective permit applicants face regulatory challenges that were not anticipated or accounted for during the original formulation of the SAMP permitting framework. Specifically, the Corps previously revoked the use of selected Nationwide Permits throughout the entire SAMP area to ensure appropriate level of permit review for aquatic resources in the SAMP watersheds. Further, abbreviated permitting under SAMP LOP Procedures—linked to a SAMP long-term programmatic permit—are only available for use by the original permittees (RMV and Santa Margarita Water District). Consequently, other prospective permittees operating within the RMV Planning Area and seeking authorization for minor impacts to the aquatic environment are unable to use the abbreviated permitting processes, i.e., SAMP LOP Procedures and the Nationwide Permit Program. Therefore, by expanding the non-RMV SAMP LOP Procedures to the entire SJC/WSMC Watershed SAMP area, the Corps would address this permitting shortfall.

Following the comment period, the Corps' will publish its final updated SAMP LOP Procedures to the District's website at: <https://www.spl.usace.army.mil/Missions/Regulatory/Established-LOP-Procedures/>. For additional information, please contact Eric Sweeney at 760-602-4837 or via email at [Eric.R.Sweeney@usace.army.mil](mailto:Eric.R.Sweeney@usace.army.mil). This Public Notice is issued by the Chief, Regulatory Division.

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Figure 1. Location of the San Juan Creek/western San Mateo Creek watershed SAMP in Orange County, California.



# San Juan Creek / Western San Mateo Creek Watershed SAMP Letter of Permission Procedures

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

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## LETTER OF PERMISSION PROCEDURES FOR COVERED ACTIVITIES IN THE SAN JUAN CREEK / WESTERN SAN MATEO CREEK WATERSHED SPECIAL AREA MANAGEMENT PLAN (SAMP)

Issuance Date: TBD

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**ACTION ID: SPL-1999-16236-2-CJF**

**AUTHORITY:** 33 C.F.R. §325.2(e)(1)(ii) and 33 C.F.R. §330.5(c).

### **Location**

The affected area includes eligible portions of the San Juan Creek and Western San Mateo Creek Watersheds in Orange County, California. These LOP Procedures apply to eligible areas both within and outside the boundaries of the Rancho Mission Viejo (RMV) Planning Area. The San Juan Creek and Western San Mateo Creek Watersheds encompass portions of the Cities of Mission Viejo, Rancho Santa Margarita, San Juan Capistrano, Dana Point, and Laguna, and unincorporated Orange County, California (see Figure 1).

### **Purpose**

Pursuant to 33 Code of Federal Regulations (C.F.R.) section 325.2(e)(1)(ii) and 33 C.F.R. section 330.5(c), the U.S. Army Corps of Engineers (Corps), Los Angeles District has established Letter of Permission (LOP) Procedures for the San Juan Creek and Western San Mateo Creek Watersheds. The effective date for these final LOP Procedures is [TBD]. These final LOP Procedures will protect the aquatic environment and the public interest while effectively authorizing activities that have no more than minor individual and cumulative adverse environmental effects.

Any project-specific regulated activities authorized by LOP must also meet the LOP general conditions listed below. A flow chart to support an initial decision of whether a project could be eligible for authorization under these final LOP Procedures is provided (Figure 2).

## **Background**

The Corps issues LOP Procedures to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899 (RHA). The purpose of these final LOP Procedures for the San Juan Creek and Western San Mateo Creek Watersheds is to authorize discharges of dredged and fill material into waters of the United States ("waters of the U.S.") associated with covered activities, and in accordance with the [Special Area Management Plan \(SAMP\)](#) formulated for the San Juan Creek/Western San Mateo Creek Watershed (December 2006).

These final LOP Procedures establish an abbreviated permit process available to all applicants for Department of the Army permits for activities meeting the criteria and conditions described in these procedures. If the proposed activity fails to meet the terms and conditions of the LOP Procedures, the activity may be evaluated under a different permit procedure, i.e., retained Nationwide Permit (NWP), Regional General Permit (RGP), or Standard Individual Permit (SIP).

The Regulatory Division of the Los Angeles District of the Corps of Engineers originally developed LOP Procedures as an element of the permitting strategy for its SAMP for the San Juan Creek and Western San Mateo Creek Watersheds. The Regulatory Program mission is to provide efficient and transparent regulatory services by leveraging strong relationships and a creative science-based watershed approach to ensure the protection and enhancement of aquatic resources while allowing for reasonable development. In response to economic developmental pressures on the water resources, namely the riparian ecosystem including streams, wetlands, and riparian vegetation within the San Juan Creek and Western San Mateo Creek Watersheds, the Corps undertook to pioneer an innovative tool, i.e., a cooperative SAMP formulation process. It involved collaboration with local participating applicants, including private landowners and local public agencies, participation from the California Department of Fish and Wildlife (Department), local government, state and federal resource agencies, local landowners, and other interested parties to develop a cohesive, Watershed-specific plan to address wetlands permitting, compensatory mitigation, and long-term protection of aquatic resources. The Corps completed an [environmental impact statement \(EIS\) for the San Juan Creek/Western San Mateo Creek Watershed SAMP \(December 2006\)](#).

The SAMP program structure uses a watershed systems approach to provide context and predictability to project permitting. While the permitting program framework may be relatively novel, the regulatory policies that it implements are the same. Rather than starting with the site level, this process starts with the watershed scale and works its way down to enable permitting processes more tailored to the specific context of a site to inform regulatory decisions. The Corps completed another, separate SAMP process within the San Diego Creek Watershed.

One of the first steps of the SAMP was to use a riparian ecosystem model to characterize the existing condition of the water resources within the watershed.<sup>1</sup> A multi-metric assessment method incorporating hydrology, water quality, and habitat integrity and other regionally important ecosystem criteria was applied as an analytical framework to improve our understanding of the condition of the water resources and their upland areas of influence. As part of the model, the watershed was divided into zones that reflect the level of alteration or modification of a riparian reach and its drainage area from its expected undisturbed condition. To support the SAMP goals, one zone was identified as having met a set of criteria for identifying the aquatic resources with a low to moderate degree of alteration. This zone is referred to as the “Aquatic Resource Integrity Areas” outside the RMV Planning Area and “Aquatic Resource Conservation Areas” within the RMV Planning Area. The other zone, comprised of aquatic resources and their upland areas of influence that did not meet the criteria, fall outside the Aquatic Resource Integrity Areas and Aquatic Resource Conservation Areas.

With the SAMP, the Corps established policies to support the protection of aquatic resource ecosystem functions and values in the San Juan Creek and Western San Mateo Creek Watersheds. The SAMP formulation and implementation process resulted in watershed-wide, landscape-based tools to improve the Corps’ capacity to make informed decisions that balance aquatic resource protection and reasonable development. Besides permitting strategies, mitigation policies and a riparian ecosystem restoration plan are also included in the SAMP. Such alternate permitting strategies incorporate policies to implement watershed-based mitigation, aquatic resource conservation, and permitting under the Corps’ continuing regulatory program.

A Record of Decision to implement elements of the SAMP program, including the permitting strategy and mitigation policies, was signed by the District Commander (March 16, 2007). The Corps’ final decision to revoke the use of selected 2007 NWP within the San Juan Creek and Western San Mateo Creek Watersheds in association with the adoption and implementation of the SAMP, as prescribed by regulations published in 33 C.F.R. §330.5(c), was made by the South Pacific Division Commander in his Record of Decision (July 19, 2010) for the revocation of selected NWPs. Subsequently, the Division Commander affirmed the decision to revoke the use of selected 2012 (March 2012) and 2017 NWPs (March 2017). Consequently, the following 24 NWPs are no longer available for use within the San Juan Creek and Western San Mateo Creek Watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. All NWPs that are currently in effect, and not among these 24 revoked NWPs, are retained for use in the SAMP Watersheds. A

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<sup>1</sup> Note that boundaries for the San Juan Creek and Western San Mateo Creek Watersheds used as part of the SAMP process were identified based on U.S. Geological Survey (USGS) topographic maps available at the time of the SAMP studies. Boundaries since identified for the San Juan Creek and San Mateo Creek Watersheds in the USGS’ widely used Watershed Boundary Dataset (Hydrological Unit Code 10; 1807030101 and 1807030102, respectively) do not correspond exactly with the San Juan Creek/Western San Mateo Creek Watershed SAMP area boundaries.



complete overview of available forms of permitting within the San Diego Creek Watershed SAMP is provided in Table 1.

Table 1. Available forms of CWA Section 404 permits to authorize discharges of dredged or fill material within waters of the U.S. located in the San Juan Creek and Western San Mateo Creek Watersheds.

Available Form of Permit	NWPs	RGP 74	LOPs			SIPs
Applicable Use Areas	All areas	Outside aquatic resource integrity areas	Outside aquatic resource integrity areas	In major stream systems <sup>1</sup> outside aquatic resource integrity areas	Inside aquatic resource integrity areas	All areas
Covered Regulated Activities	Specified for each retained NWP <sup>2</sup>	Anticipated maintenance activities <sup>3</sup>	Anticipated activities <sup>4</sup>	Anticipated activities <sup>4</sup> ; No stream channelization or stream replacement with pipes.	Anticipated activities <sup>5</sup> ; No stream channelization or stream replacement with pipes.	All regulated activities ineligible for abbreviated permitting procedures.
Permanent Impacts to waters of the U.S. Authorized <sup>5</sup>	Generally ≤ 0.5 acre	Not authorized	No limit <sup>6</sup>	No limit <sup>6</sup>	≤ 0.1 acre	No limit <sup>7</sup>
Temporary Impacts to waters of the U.S. Authorized	No limit	≤ 0.5 acre <sup>8</sup>	No limit <sup>6</sup>	No limit <sup>6</sup>	No limit <sup>6</sup>	No limit
Target Review Time	≤ 60 days	≤ 15 days	≤ 60-120 days	≤ 60-120 days	≤ 60-120 days	approx. 120 days
Pre-Application Coordination	Preferred	Preferred	Required <sup>9</sup>	Required <sup>9</sup>	Required <sup>9</sup>	Preferred
Inter-Agency Review	None	None	All actions	All actions	All actions	All actions

**NOTES:**

1. San Juan Creek, Oso Creek, Arroyo Trabuco, Chiquita Creek, Canada Gobernadora, San Mateo Creek, Gabino Creek, and Cristianitos Creek.
2. Proposed activities meeting the terms of a retained NWP, i.e., a NWP other than 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50, may be used to authorize regulated activities in the SAMP Watersheds. Information on all NWPs currently in effect as of the latest NWP reissuance is provided at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.

3. The discharge of dredged or fill material associated with the following anticipated maintenance activities may be eligible for authorization under RGP 74: 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).
4. The discharge of dredged or fill material associated with the following 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. LOP procedures may not be used to authorize the alteration of a compensatory mitigation site required by a Corps permit, or for the conversion of a soft-bottom channel to a concrete-lined channel within the major stream systems of San Juan Creek, Oso Creek, Arroyo Trabuco, Chiquita Creek, Canada Gobernadora, San Mateo Creek, Gabino Creek, and Cristianitos Creek.
5. The discharge of dredged or fill material associated with the following anticipated activities may be eligible for LOP procedures: Maintenance and repair of public and private utilities, including utility lines; Maintenance and repair of public and private drainage and flood control facilities, including outfall and intake structures, bank stabilization structures, flood control channels (consistent with an established maintenance baseline), and flood control basins (consistent with an established maintenance baseline); Maintenance and repair of public and private roads and bridges; Habitat restoration improvement projects, including wetland restoration and creation; and loss of up to 0.1 acre of WoUS associated with activities listed in above in Note 3.
6. Provided the project is in full compliance with LOP procedures.
7. In evaluating projects under the SIP process, the Corps would need to assure project compliance with the 404(b)(1) Guidelines. Except as provided for by section 404(b)(2), no discharge of dredged or fill material into waters of the U.S. would be permitted by the Corps if the effects of the discharge, considered either individually or cumulatively, would contribute to the significant degradation or impairment of waters of the U.S. (40 C.F.R. Part 230).
8. The RGP authorizes up to 0.5 acre of temporary impacts, of which up to 0.1 acre may be vegetated by predominantly native riparian and/or wetland vegetation.
9. For >0.1 acre of loss of 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.

**Definitions:** Note the following definitions of “permanent impacts” and “temporary impacts” that are used throughout these LOP Procedures:

**Permanent impacts:** Permanent impacts are discharges of dredged or fill material that permanently change an aquatic area to dry land, increase the bottom elevation of a waterbody, or permanently change the use of a waterbody (Federal Register, Vol. 82, No. 4, p. 2006).

**Temporary impacts:** Minor impacts to aquatic resources that occur for a short-duration during authorized activities wherein, following completion of the permitted work, the affected aquatic



resources are completely restored to pre-construction elevations and contours, conditions and functionality.

### **LOP Procedures – Terms, Conditions, and SAMP Mitigation Framework**

An LOP will be issued only for those activities which meet all of the criteria identified in this notice, including the terms and general conditions (1-26), and which have no more than minor impacts on jurisdictional waters of the U.S. Applications for the LOP must include a mitigation plan that clearly demonstrates that impacts to aquatic resources have been and will be avoided and minimized to the maximum extent practicable and there will be a net increase in functions of aquatic resources. The Corps reserves the use of its discretionary authority to determine that an activity may be authorized under an LOP, that an activity may be authorized under an LOP with the addition of special conditions, or that an activity may not be authorized by an LOP and will instead require authorization under another permit type. Most maintenance and repair activities outside Aquatic Resource Integrity Areas and Aquatic Resource Conservation Areas would be expected to be eligible under Regional General Permit 74.

#### **A. LOP Terms**

To qualify for an LOP under these procedures, activities must meet the following terms:

1. **Covered Activities** – The categories of covered activities eligible for authorization by LOP are similar to those described in the NWPs. However, eligibility for using the LOP Procedures is determined by the nature and location of the proposed activity within the watershed. Specifically, whether the activity would occur outside or within Aquatic Resource Integrity Areas or Aquatic Resource Conservation Areas of the watershed affects the eligibility for an LOP. Covered activities that may be authorized outside and within Aquatic Resource Integrity Areas or Aquatic Resource Conservation Areas are listed in Table 2.

Table 2. Categories of activities eligible for authorization under LOP Procedures. Eligibility of a proposed activity is dependent on the project's location outside or within Aquatic Resource Integrity Areas and Aquatic Resource Conservation Areas.

<b>Activities Outside of Aquatic Resource Integrity Areas / Aquatic Resource Conservation Areas</b>		<b>Activities Within Aquatic Resource Integrity Areas / Aquatic Resource Conservation Areas</b>	
<b>Covered Activities</b>	<b>Ineligible Activities</b>	<b>Covered Activities</b>	<b>Ineligible Activities</b>
<p>LOP Procedures may be used to authorize permanent and temporary discharges of dredged or fill material into waters of the U.S. located outside Aquatic Resource Integrity Areas (Figure 3) and Aquatic Resource Conservation Areas (Figure 4) when associated with the following types of activities:</p> <ul style="list-style-type: none"> <li>• Public and private utilities, including utility lines and maintenance of utility lines;</li> <li>• Public and private drainage and flood control facilities, including construction of outfall and intake structures, construction of bank stabilization structures, and maintenance of all flood control facilities;</li> <li>• Public and private roads and bridges, including lengthening, widening, and maintenance;</li> <li>• Public and private land development, including residential, commercial, institutional, and recreational uses;</li> <li>• Habitat restoration and water quality improvement projects, including wetland restoration and creation and construction of stormwater management facilities; and</li> <li>• Public and private water storage facilities and impoundments.</li> </ul>	<p>A Standard Individual Permit process may be required to authorize permanent discharges of dredged or fill material into waters of the U.S. located outside Aquatic Resource Integrity Areas (Figure 3) and Aquatic Resource Conservation Areas (Figure 4) when associated with the following types of activities:</p> <ul style="list-style-type: none"> <li>• Activities that would have substantial, unmitigated impacts to the aquatic environment;</li> <li>• Activities that would substantially alter a compensatory mitigation site previously established for a Corps permit;</li> <li>• Flood risk management projects involving conversion of a soft-bottom channel to a concrete-lined channel; and</li> <li>• New flood risk management projects (non-maintenance), stream channelization, or stream replacement with pipes within the major stream systems, including San Juan Creek, Oso Creek, Arroyo Trabuco, Chiquita Creek, Canada Gobernadora, San Mateo Creek, Gabino Creek, and Cristianitos Creek.</li> </ul>	<p>LOP Procedures may be used to authorize temporary and no more than 0.1 acre of permanent discharges of dredged or fill material into waters of the U.S. located within Aquatic Resource Integrity Areas (Figure 3) or Aquatic Resource Conservation Areas (Figure 4) when associated with the following types of activities:</p> <ul style="list-style-type: none"> <li>• Maintenance and repair of public and private utilities, including utility lines;</li> <li>• Maintenance and repair of public and private drainage and flood control facilities, including outfall and intake structures, bank stabilization structures, flood control channels (consistent with an established Corps-approved maintenance baseline), and flood control basins (consistent with an established Corps-approved maintenance baseline);</li> <li>• Maintenance and repair of public and private roads and bridges;</li> <li>• Habitat restoration improvement projects, wetland restoration and creation; and</li> </ul>	<p>A Standard Individual Permit process may be required to authorize permanent discharges of dredged or fill material into waters of the U.S. located within Aquatic Resource Integrity Areas (Figure 3) or Aquatic Resource Conservation Areas (Figure 4) when associated with the following types of activities:</p> <ul style="list-style-type: none"> <li>• Activities that are inconsistent with eligible activities provisions for covered activities;</li> <li>• Activities that would substantially alter a compensatory mitigation site previously established for a Corps permit;</li> <li>• Activities associated with flood risk management projects (non-maintenance), stream channelization, or stream replacement with pipes within the major stream systems, including San Juan Creek, Oso Creek, Arroyo Trabuco, Chiquita Creek, Canada Gobernadora, San Mateo Creek, Gabino Creek, and Cristianitos Creek.</li> </ul>

**2. Pre-Application Coordination – Requirements and procedures for Pre-Application Coordination before submitting an application to use the established LOP Procedures are summarized as follows:**

- For proposed projects with permanent impacts up to 0.1 acre or less of waters of the U.S. and temporary impacts up to 0.25 acre or less of waters of the U.S. containing native wetland and/or riparian vegetation, pre-application coordination is not required. The applicant only needs to submit the application(s) directly to the agencies.
- Pre-application coordination is required for proposed projects with permanent impacts to waters of the U.S. greater than 0.1 acre, or for projects with temporary impacts greater than 0.25 acre of waters of the U.S. containing native wetland and/or riparian vegetation.

<b>Pre-Application Coordination</b>
<ul style="list-style-type: none"> <li>• Pre-application coordination must involve the Corps, the Department, the San Diego Regional Water Quality Control Board (RWQCB), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Environmental Protection Agency (EPA).</li> </ul>
<ul style="list-style-type: none"> <li>• For the pre-application meetings, the applicant may meet with the agencies separately or in small groups, consult by telephone, or schedule a pre-application meeting to be held at the Corps' District office. A written record of the proceedings must be provided afterwards to the Corps, documenting substantive issues discussed, agency recommendations, and any pertinent conclusions.</li> </ul>
<ul style="list-style-type: none"> <li>• In preparation for the pre-application meeting, the following information should be provided to the agencies at least two weeks prior to the meeting:               <ul style="list-style-type: none"> <li>✓ A delineation of aquatic resources, including the Corps, Department, and RWQCB jurisdictional resources, within the project area;</li> <li>✓ A site location and plan view of the proposed project areas and acreage to be impacted showing permanent and temporary impacts to waters of the U.S.;</li> <li>✓ A draft statement addressing the Section 404(b)(1) Guidelines<sup>2</sup>;</li> <li>✓ A draft mitigation plan, if unavoidable permanent impacts would occur; and</li> <li>✓ When appropriate, a cultural resources inventory and results from an endangered or threatened species survey for the project area.</li> </ul> </li> </ul>

<sup>2</sup> The applicant must provide information documenting the evaluation of alternatives to the proposed impacts to aquatic resources. The basic premise of the Section 404 Clean Water Act program is that no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded. In other words, when you apply for a permit, you must first show that steps have been taken to avoid impacts to wetlands, streams and other aquatic resources. You must also demonstrate that potential impacts have been minimized and that compensation will be provided for all remaining unavoidable impacts.

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| <ul style="list-style-type: none"> <li>• Following the pre-application coordination, the Corps will make an initial determination as to whether the project may qualify for the LOP Procedures based on a preliminary determination that the project meets certain requirements:           <ul style="list-style-type: none"> <li>✓ Complies with the CWA Section 404(b)(1) Guidelines;</li> <li>✓ A determination by the Corps that the project is consistent with the SAMP;</li> <li>✓ A determination by the Corps that Standard Individual Permit processing with Public Notice review would not result in a substantive change in the proposed project or compensatory mitigation.</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>• If the Corps makes an initial determination that the project may not qualify for the LOP Procedures, the Corps will provide recommendations that would enable the project to qualify for the LOP Procedures.</li> </ul>   |

### 3. LOP Application Submittal

The following informational items are needed for a complete application per the LOP Procedures. The [Updated Map and Drawing Standards for the South Pacific Division \(SPD\) Regulatory Program](#) shall apply to the LOP application and related submittals.

Application Package	
<ul style="list-style-type: none"> <li>• A completed Department of the Army application form (Eng Form 4345)</li> </ul>	
<ul style="list-style-type: none"> <li>• A complete project description, which includes the following information:           <ul style="list-style-type: none"> <li>✓ Pre-project photographs of the project site;</li> <li>✓ A site location map and view of the project showing areas and acreage to be impacted on 8.5" x 11" sheets;</li> <li>✓ Location coordinates: latitude/longitude or UTM;</li> <li>✓ Volume, type and source of material to be placed into waters of the U.S.;</li> <li>✓ Total area of waters of the U.S. to be directly and indirectly affected;</li> <li>✓ A Corps-verified delineation of waters of the U.S. located in the project area including a wetland delineation map on 8.5" x 11" sheets;</li> <li>✓ A description of habitat, including plant communities, located in the project area;</li> <li>✓ A description of methods to avoid, minimize, and compensate for adverse impacts to water quality or aquatic function at the project site including best management practices used during project implementation to control siltation and erosion;</li> <li>✓ Any other information pertinent to the wetlands, stream, or waterbody involved;</li> <li>✓ Proposed project schedule.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• A record of pre-application coordination with the Corps, the Department, RWQCB, USFWS, and EPA:</li> </ul>	

<ul style="list-style-type: none"> <li>✓ The record must document comments and concerns made by each agency during pre-application consultation. If the applicant participated during the formulation of the SAMP, and the activity was reviewed, this requirement does not apply.</li> <li>✓ A discussion of how each agency comment/concern was addressed. If the applicant participated during the development of the SAMP, this requirement does not apply</li> <li>✓ If coordination was not accomplished with an agency, the applicant must show that a concerted effort was made to meet with the agency and explain why such coordination was not achieved.</li> </ul>
<ul style="list-style-type: none"> <li>• A statement addressing the Section 404(b)(1) Guidelines alternatives analysis. If the applicant participated during the formulation of the SAMP and the activity was reviewed, this requirement does not apply.</li> </ul>
<ul style="list-style-type: none"> <li>• A statement explaining how avoidance and minimization of discharges to jurisdictional waters were achieved on the project site.</li> </ul>
<ul style="list-style-type: none"> <li>• A compensatory mitigation plan consistent with the SAMP mitigation framework (see below) to address any unavoidable impacts to jurisdictional waters and the program goal of no net loss of wetlands.</li> </ul>
<ul style="list-style-type: none"> <li>• Local approvals or other evidence that the project has been reviewed by the appropriate local governmental body and has been found to be consistent with state and local land use plans and policies, particularly state and local wetland policies.</li> </ul>
<ul style="list-style-type: none"> <li>• Appropriate surveys, inventories, or reports that will allow the Corps to make a determination of the effect of the proposed project (and if necessary consult) pursuant to the federal Endangered Species Act (ESA) or evidence of incidental take authorizations under ESA.</li> </ul>
<ul style="list-style-type: none"> <li>• A pre-construction eelgrass (<i>Zostera marina</i>) survey, conducted in accordance with the California Eelgrass Mitigation Policy (CEMP), and pre-construction Caulerpa (<i>Caulerpa taxifolia</i>) survey, conducted in accordance with the Caulerpa Control Protocol, for jurisdictional activities that would occur within tidally influenced areas.</li> </ul>
<ul style="list-style-type: none"> <li>• Evidence of compliance with Section 106 of the National Historic Preservation Act (NHPA), or a comprehensive statement indicating which historic property might have the potential to be affected by the proposed activity. Include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties.</li> </ul>

#### 4. Application Processing Procedures

Once the applicant has compiled the information required for a complete application, the Corps will proceed with processing the application as follows:

<b>Application Processing</b>
<ul style="list-style-type: none"> <li>• The applicant will provide the Corps and the other federal and state review agencies (EPA, USFWS, Department, RWQCB) with complete applications.</li> </ul>
<ul style="list-style-type: none"> <li>• The Corps will review the applicant's submission and assign an action ID number.</li> </ul>



<ul style="list-style-type: none"> <li>• Within approximately fifteen (15) calendar days of receipt of an application, the Corps will determine if the application is complete.               <ul style="list-style-type: none"> <li>✓ If an application is incomplete, the Corps will notify the applicant of the needed information items and the applicant will be required to resubmit.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Within approximately fifteen (15) calendar days of receiving a complete application, the Corps will submit materials to the agencies (the Department, RWQCB, USFWS, EPA, and State Historic Preservation Office (SHPO) via email and request the agencies provide comments on the following subjects:               <ul style="list-style-type: none"> <li>✓ Conformity of the proposed project with the SAMP;</li> <li>✓ Accuracy of the jurisdictional delineation and the resource assessment;</li> <li>✓ Minimization of impacts to aquatic resources to the maximum extent practicable;</li> <li>✓ Consistency of the proposed project-specific compensatory mitigation with the SAMP mitigation framework and Watershed Coordination Program;</li> <li>✓ Whether federally listed species issues have been resolved in a manner consistent with the local NCCP/HCP program</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• The agencies (except for SHPO) will provide comments to the Corps within 21 calendar days. The SHPO will provide comment within 30 calendar days. "No objection" comments may be provided by phone, but substantive comments should be provided and confirmed by email, FAX, or letter.</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution or status of compliance with Section 106 of the NHPA;</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution or status of the 401 certification</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution of ESA Section 7, if applicable</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution of adverse effects on Essential Fish Habitat (EFH), if applicable</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution or status of compliance with CZMA, if applicable</li> </ul>
<ul style="list-style-type: none"> <li>• After all the comments are received from the resource agencies, the Corps will perform a final evaluation of the project. Any problems identified during the LOP notification process by the resource agencies will be resolved before an LOP is issued.</li> </ul>
<ul style="list-style-type: none"> <li>• The Corps will review the comments received and make a final determination within 120 calendar days of receiving the complete application, unless consultation under Section 7 of ESA, the EFH provisions of the Magnuson-Stevens Fisheries Conservation and Management Act, or Section 106 of NHPA is required, which would likely extend the processing time for a final permit decision.</li> </ul>
<ul style="list-style-type: none"> <li>• If the project meets the criteria for LOP authorization, an LOP will be issued.</li> </ul>
<ul style="list-style-type: none"> <li>• If the project fails to meet the criteria for LOP authorization, the Corps will notify the applicant of need for review through a Standard Individual Permit process.</li> </ul>

## B. LOP Conditions

Any activity authorized by LOP must also meet the 26 general conditions listed below. Further, on a case-by-case basis the Corps may include project-specific special permit conditions for any LOP.

<b>General Conditions –</b>
1. <i>Avoidance and Minimization.</i> The permittee must provide a written statement describing avoidance and minimization measures used to minimize discharges to jurisdictional waters at the project site to the maximum extent practicable.
1. <i>Ineligible Impacts.</i> Projects ineligible for LOP Procedures include activities not evaluated for LOP Procedures, projects that substantially alter a previously established compensatory mitigation site, or projects that involve the conversion of a soft-bottom channel to a concrete-lined channel within San Juan Creek, Oso Creek, Arroyo Trabuco, Chiquita Creek, Canada Gobernadora, San Mateo Creek, Gabino Creek, and Cristianitos Creek. Those proposed projects must be authorized using a Standard Individual Permit (Figure 2).
<p>2. <i>Mitigation Policy.</i> The permit must comply with the SAMP mitigation framework (see Section E below), including the Strategic Mitigation Plan, established in conjunction with the proposed permitting procedures. In accordance with the Final Mitigation Rule (33 C.F.R. §332.3(k)), for an LOP that requires permittee-responsible mitigation, the special conditions of the LOP shall:</p> <ul style="list-style-type: none"> <li>✓ Identify the party responsible for providing the compensatory mitigation;</li> <li>✓ Incorporate, by reference, the final mitigation plan approved by the district engineer;</li> <li>✓ State the objectives, performance standards, and monitoring required for the compensatory mitigation project, unless they are provided in the approved final mitigation plan; and</li> <li>✓ Describe any required financial assurances or long-term management provisions for the compensatory mitigation project, unless they are specified in the approved final mitigation plan.</li> </ul>
3. <i>Soil Erosion and Siltation Controls.</i> 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, 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 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.

4.	<i>Equipment.</i> 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.
5.	<i>Suitable Material.</i> No discharge of dredged or fill materials 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 (per Section 307 of the Clean Water Act).
6.	<i>Management of Water Flows.</i> To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, 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.
7.	<i>Removal of Temporary Fills.</i> 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. (See General Condition 14).
8.	<i>Proper Maintenance.</i> Each permittee who receives an LOP from the Corps must maintain the activities authorized by the LOP in good condition and in conformance with the terms and conditions of the LOP. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition No. 25 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification for the LOP from Regulatory Division, which may require restoration of the area.
9.	<i>Preventive Measures.</i> 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.

10. <i>Staging of Equipment.</i> 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.
11. <i>Fencing of Project Limits.</i> The permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter preserved waters of the U.S. and riparian wetland/habitat areas shown on a project-specific figure attached to the LOP. Adverse impacts to waters of the U.S. beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil, or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.
12. <i>Avoidance of Breeding Season.</i> With regard to federally listed avian species, avoidance of breeding season requirements shall be those specified in the Federal Endangered Species Act Section 7 consultation for the LOP (See General Condition 19). For all other avian 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, in accordance with the Department's WSAA Process and a signed agreement with conditions prescribing procedures for grading of mitigation sites or biological surveys and time restrictions.
13. <i>Exotic Species Management.</i> All giant reed ( <i>Arundo donax</i> ), salt cedar ( <i>Tamarix spp.</i> ), and castor bean ( <i>Ricinus communis</i> ), in addition to other invasive non-native plants categorized as "High" on the California Invasive Plant Council's (Cal-IPC) Invasive Plant Inventory ( <a href="http://www.cal-ipc.org/ip/inventory/index.php#categories">http://www.cal-ipc.org/ip/inventory/index.php#categories</a> ), must be removed from the affected area. Permittee must ensure that the affected area remains free from these invasive, non-native species for a period of five years from completion of the project.
14. <i>Site Inspections.</i> 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.
15. <i>Posting of Conditions.</i> A copy of the LOP General 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.
16. <i>Post-Project Report.</i> Within 45 days of completion of impacts to waters, as-built drawings with an overlay of waters that were impacted and avoided must be submitted to the Corps. Post-project photographs, which document compliance with permit conditions, must also be provided.

17. *Water Quality.* An individual Section 401 water quality certification must be obtained (see 33 C.F.R. 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 directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the activity. Indirect effects are those effects on listed species and critical habitat that are caused by the LOP activity and are later in time, but still are reasonably certain to occur.
- 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. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA Section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under Section 7 of the ESA.
- 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 application 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 application. 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 ESA Section 7 consultation has been completed.
- d. As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to LOPs.
  - e. Authorization of an activity by an LOP does not authorize the “take” of a threatened or endangered species as defined under the ESA. 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, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
  - f. If the non-federal permittee has a valid ESA Section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed LOP activity, the non-federal applicant should provide a copy of that ESA Section 10(a)(1)(B) permit with their application. The district engineer will coordinate with the agency that issued the ESA Section 10(a)(1)(B) permit to determine whether the proposed LOP activity and the associated incidental take were considered in the internal ESA Section 7 consultation conducted for the ESA Section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed LOP activity and the associated incidental take were considered in the internal ESA Section 7 consultation for the ESA Section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA Section 7 consultation for the proposed LOP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete application whether the ESA Section 10(a)(1)(B) permit covers the proposed LOP activity or whether additional ESA Section 7 consultation is required.
  - g. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at <http://www.fws.gov/carlsbad/> and <http://www.nmfs.noaa.gov/pr/species/esa/>, respectively.
  - h. Activities authorized under LOP Procedures shall comply with the following applicable conservation measures to ensure the activity will not adversely affect federally listed species; however, additional project-specific measures may be required pursuant to an ESA Section 7 consultation for a specific project:

- i. Removal of gnatcatcher habitat within non-Reserve areas of the Orange County Southern Subregion NCCP/HCP will follow the Construction and Minimization Measures for the NCCP/HCP;
- ii. Removal of suitable habitat for the gnatcatcher and construction work within 300 feet of suitable habitat for the gnatcatcher will occur outside the gnatcatcher breeding season between February 15 and August 31. If work is necessary within 300 feet of suitable gnatcatcher habitat during the breeding season, a qualified biologist will perform protocol surveys in the area to determine whether any nesting gnatcatchers are present. If nests are absent, work will continue. If a nest is present, the permittee shall notify the Corps, the Department, and the USFWS of the location of the nest, a 300-foot buffer around the nest will be clearly demarcated, and the area avoided until the nest is abandoned. A biological monitor with authority to stop construction will be present onsite during breeding-season construction to ensure the limits of construction do not encroach into suitable gnatcatcher habitat or within 300 feet of a nesting gnatcatcher;
- iii. Removal of suitable habitat for the least Bell's vireo (LBV) and construction work within 300 feet of suitable habitat for the LBV will occur outside the LBV breeding season between March 15 and September 15. If work is necessary within 300 feet of suitable LBV habitat during the breeding season, a qualified biologist will perform protocol surveys in the area to determine whether any nesting LBVs are present. If nests are absent, work will continue. If a nest is present, the permittee shall notify the Corps, the Department, and the USFWS of the location of the nest, a 300-foot buffer around the nest will be clearly demarcated, and the area avoided until the nest is abandoned. A biological monitor with authority to stop construction will be present onsite during breeding-season construction to ensure the limits of construction do not encroach into suitable LBV habitat or within 300 feet of a nesting LBV;
- iv. Removal of suitable habitat for the southwestern willow flycatcher (flycatcher) and construction work within 300 feet of suitable habitat for the flycatcher will occur outside the flycatcher breeding season between May 15 and July 31. If work is necessary within 300 feet of suitable flycatcher habitat during the breeding season, a qualified biologist will perform protocol surveys in the area to determine whether any nesting flycatchers are present. If nests are absent, work will continue. If a nest is present, the permittee shall notify the Corps, the Department, and the USFWS of the location of the nest, a 300-foot buffer around the nest will be clearly demarcated, and the area avoided until the nest is abandoned. A biological monitor with authority to stop construction will be present onsite during breeding-season construction to ensure the limits of construction do not encroach into suitable flycatcher habitat or within 300 feet of a nesting flycatcher; and

<p>v. If vernal pools are observed within a proposed project site under the LOP Procedures, vernal pool/fairy shrimp protocol surveys will be performed and the permittee shall notify the Corps, the Department, and the USFWS of the results prior to initiating any ground disturbance.</p>
<p>20. <i>Fish passage.</i> For projects resulting in construction or replacement of stream crossings in Arroyo Trabuco or San Juan Creek, the resulting structure must comply with NOAA-Fisheries and CDFW requirements for fish passage.</p>
<p>21. <i>Essential Fish Habitat.</i> In tidally influenced areas, a pre-construction eelgrass survey shall be conducted in accordance with the California Eelgrass Mitigation Policy (CEMP) (<a href="http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/Final_CEMP_October_2014/cemp_oct_2014_final.pdf">http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/Final_CEMP_October_2014/cemp_oct_2014_final.pdf</a>) and submitted to the Corps Regulatory Division and NMFS before project-related activities commence. In addition, a pre-construction Caulerpa (<i>Caulerpa taxifolia</i>) survey shall be conducted in accordance with the Caulerpa Control Protocol (<a href="http://www.westcoast.fisheries.noaa.gov/publications/habitat/caulerpa_taxifolia/caulerpa_control_protocol_4.pdf">http://www.westcoast.fisheries.noaa.gov/publications/habitat/caulerpa_taxifolia/caulerpa_control_protocol_4.pdf</a>) and submitted to the Corps Regulatory Division and NMFS before project-related activities commence. No work shall be conducted until a Notice to Proceed is issued by the Corps Regulatory Division. If the pre-construction eelgrass survey demonstrates eelgrass presence within the project vicinity, a post-project survey shall be conducted and impacts to eelgrass mitigated in accordance with the CEMP. In the event that Caulerpa is detected within the project area, the permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory Division, in consultation with NMFS and CDFW.</p>
<p>22. <i>Historic Properties.</i></p> <ul style="list-style-type: none"> <li>a. In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places (Register), the activity is not authorized, until the requirements of Section 106 of the NHPA have been satisfied.</li> <li>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. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under Section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with Section 106.</li> <li>c. Non-federal permittees must submit information on historic properties that may be affected by the proposed work or include a vicinity map indicating the location of the</li> </ul>

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 Register (see 33 C.F.R. §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 identification efforts, the district engineer shall determine whether the proposed activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of Section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might 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 NHPA Section 106 consultation has been completed.

- d. If NHPA Section 106 consultation is required, 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 Section 110k of the NHPA [54 U.S.C. 306113] 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, 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.

23. *Discovery of Previously Unknown Remains and Artifacts.* If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by a LOP, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
24. *Air Quality.* No activity is authorized that causes or contributes to any new violation of national ambient air quality standards, increases the frequency or severity of any existing violation of such standards, or delays timely attainment of any such standard or interim emission reductions, as described in the applicable California State Implementation Plan for the South Coast Air Basin. As part of the Corps application package, the applicant shall submit an air quality emission and impact analysis for the proposed activity if the project would result in long-term or permanent stationary (point or area) source or indirect mobile source emissions, or if the proposed activity would result in area source and direct mobile source emissions that exceed the annual *de minimis* emissions thresholds for any criteria air pollutant or its precursors.
25. *Transfer of LOPs.* If the permittee sells the property associated with a LOP, the permittee may transfer the LOP to the new owner by submitting a letter to Regulatory Division to validate the transfer. The letter may be submitted via email at [splregorcs@usace.army.mil](mailto:splregorcs@usace.army.mil). A copy of the LOP and the name and all available contact information, including company name, addresses, telephone numbers and e-mail, must be attached to the letter, and the letter must contain the following statement and signature:
- “When the structures or work authorized by this LOP are still in existence at the time the property is transferred, the terms and conditions of this LOP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this LOP and the associated liabilities associated with compliance with its terms and conditions, the transferee must sign and date below.”
- \_\_\_\_\_  
(Transferee)
- \_\_\_\_\_  
(Date)
26. *Compliance Certification.* Each permittee who receives an LOP from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation within 45 days after completing construction activities. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be



addressed separately by the district engineer. The Corps will provide the permittee the certification document with the LOP. The certification document will include:

- a. A statement that the authorized activity was done in accordance with the LOP authorization, including any general or activity-specific conditions;
- b. A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- c. The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

The use and implementation of the LOP Procedures for Corps permit applications is contingent on compliance with the terms and conditions of the LOP Procedures. 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 \$22,321, per violation of a permit condition, to a maximum of \$55,801.

### C. SAMP Mitigation Framework

The following mitigation policies apply to LOPs (and Standard Individual Permits and General Permits, as appropriate) issued within the San Juan Creek and the western San Mateo Creek Watersheds.

#### Mitigation Policies –

1. *Mitigation Sequencing.* Under the SAMP, the mitigation sequencing required pursuant to the CWA Section 404(b)(1) Guidelines (40 C.F.R. Part 230 and the MOA between EPA and the Department of the Army, dated February 6, 1990), whereby the discharge of dredged or fill materials into aquatic resources within the Corps jurisdiction (i.e., waters of the U.S.) must first be avoided and/or minimized to the maximum extent practicable, is being applied to the watershed scale as well as the site scale. An activity seeking authorization under the SAMP permitting framework and evaluated in this Program EIS/EIR would be deemed to have undertaken the requisite avoidance measures by avoiding aquatic resources identified as part of Aquatic Resource Integrity Areas or Aquatic Resource Conservation Areas. Projects directly and

permanently impacting substantial amounts of aquatic resources with moderately to well-developed wetland or riparian vegetation located outside of Aquatic Resource Integrity Areas and Aquatic Resource Conservation Areas could still need to demonstrate avoidance, but without a formal alternatives analysis under the LOP Procedures or RGP. Minimization measures would be met by demonstrating consistency with the LOP and RGP conditions. Compensatory mitigation would be required to offset any unavoidable impacts that would occur after avoidance and minimization measures have been implemented to the maximum extent practicable, pursuant to the 404(b)(1) Guidelines.

2. *No Net Loss in Acreage and Functions.* Consistent with the Corps-EPA MOA, Corps' RGL 02-02, and the [Final Mitigation Rule \(33 C.F.R. Parts 325 and 332 \[40 C.F.R. Part 230\]\)](#), overall acreage, services, and functions of wetlands should not be reduced within the Watershed on a program level. In consideration of the SAMP Process, permanent impacts to aquatic resources (wetland and non-wetland) shall be mitigated within the San Diego Creek Watershed. Final determination on the amount of required compensatory mitigation requires Corps approval, and must be, to the extent practicable, sufficient to replace lost aquatic resource functions.
  - a. Appropriate functional or condition assessment methods (e.g., the SAMP Landscape Level Functional Assessment, California Rapid Assessment Method (CRAM), or Hydrogeomorphic Approach (HGM)), or other suitable metrics should be used to evaluate the impact site and to determine suitable compensatory mitigation. If a functional or condition assessment, or other suitable metric is not used, a minimum one-to-one (1:1; acreage created and restored to acreage permanently impacted) or linear foot compensation ratio shall be used.
  - b. Compensatory mitigation sites shall be designed and maintained to avoid impacts to any existing wildlife movement corridor.
  - c. Upland or riparian buffers that provide habitat or corridors necessary to maintain or promote a suite of ecological functions of the aquatic resources may be required as part of a compensatory mitigation site and credit will be provided for such buffers.
3. *Preparation of a Mitigation Plan.* All habitat mitigation and monitoring plans shall comply with the requirements of the [Corps/EPA Final Mitigation Rule "Compensatory Mitigation for Losses of Aquatic Resources"](#) (33 C.F.R. Parts 325 and 332 [40 C.F.R. Part 230]) and the [Final 2015 Regional Compensatory Mitigation And Monitoring Guidelines for South Pacific Division USACE](#) (dated January 12, 2015, or as subsequently revised). The mitigation plan shall be reviewed in conformance with [SPD Uniform Performance Standards for Compensatory Mitigation Requirements \(QMS Procedure No. 12505\)](#).

4. *Prioritization of Mitigation Sites.* To the extent practicable, the selection of compensatory mitigation sites should be prioritized to support implementation of the Strategic Mitigation Plan, which is informed by [ERDC's Riparian Ecosystem Restoration Plan for the San Juan Creek and Western San Mateo Creek Watersheds](#).
5. *Recommended Restoration.* The Corps will evaluate restoration design plans for compensatory mitigation sites in consideration of the SAMP Strategic Mitigation Plan and site selection and design criteria provided by [ERDC's Riparian Ecosystem Restoration Plan](#). The ERDC restoration plan provides recommended restoration goals in consideration of landscape setting. The Corps will also apply its Regulatory Program [Standard Operating Procedure for Evaluation of Proposed Compensatory Mitigation Sites \(12512-SPL\)](#).
6. *Calculating Compensatory Mitigation.* Projects that would result in unavoidable permanent impacts to aquatic resources shall provide compensatory mitigation in conformance with the following requirements. The Corps will determine mitigation ratios in consultation with the Department and the applicant in a manner to achieve no net loss of aquatic resource function and acreage in the Watershed, as discussed above (see No Net Loss in Acreage and Functions).
  - a. Mitigation Ratios. The Corps South Pacific Division's [Standard Operating Procedure for Determination of Mitigation Ratios](#) shall be used to determine appropriate mitigation ratios.
    - i. Assessment data for the riparian ecosystems as prepared by the Corps for the SAMP ([Landscape Level Functional Assessment](#)) are available from the Corps. The method used multiple indicators and indices of integrity to assess the riparian ecosystem condition in a watershed context. Expected loss and gain, measured in terms of functional units with respect to hydrology, water quality, and habitat indices at the impact and mitigation sites, will be used by the Corps in its quantitative analysis referenced as the Before-After-Mitigation-Impact (BAMI) procedure. CRAM or HGM data may be used to supplement the SAMP landscape-level data in that step.
    - ii. For rarer, non-riparian/riverine resources such as estuarine wetlands, alkali meadows, or vernal pools, the SAMP data do not apply. In such cases, the Corps will use a functional and acreage-based assessment to determine the appropriate mitigation ratios in accordance with the Corps' procedure for determining mitigation ratios. The Corps recommends the applicant conduct an assessment using generally acceptable methodologies such as the CRAM, approved site-level standardized monitoring protocols, or HGM to evaluate the baseline conditions of the impact and potential mitigation sites.
    - iii. As a reminder, when using the integrity indices-based ratios, required mitigation shall always be greater than or equal to 1:1 in terms of acreage, even if the actual calculated ratios to achieve functional replacement are less

than 1:1, which would most likely occur when the impacted resources have low functions as compared to the functions of the mitigation site. If the calculated ratio is less than 1:1 using an approved assessment method, mitigation at 1:1 replacement of acreage will generate a functional gain that exceeds the calculated ratio and will reduce additional mitigation requirements for any temporal loss.

- b. **Offsets for Temporal Loss.** Temporary and permanent impacts to riparian habitat authorized by LOPs and Standard Individual Permits shall be compensated through consideration of the time needed to fully recover temporarily impacted functions. Temporal loss will apply when compensatory mitigation does not occur prior to or concurrent with impacts, and only to the habitat index, since the other two indices (i.e., water quality and hydrology) should not have a temporal lag. In general, mitigation for temporal loss will be factored into the ratio per the Corps Standard Operating Procedure referenced above. Compensatory mitigation required above replacement (1:1) may be satisfied through additional restoration and/or enhancement efforts within Aquatic Resource Integrity Areas or Aquatic Resource Conservation Areas of the Watershed, or by contribution of fees equivalent to per acreage costs to a Corps-approved third-party mitigation program with projects within the Watershed.
- c. **Delays in Implementation of Compensatory Mitigation.** Implementation of compensatory mitigation shall begin, to the maximum extent practicable, before or concurrent with the activity causing the authorized impacts to jurisdictional areas, and according to a Corps-approved plan and construction schedule. The Corps expects the permittee to schedule the installation of mitigation projects to avoid and minimize temporal losses in function, such that offsite mitigation shall be initiated upfront, and onsite mitigation shall be scheduled to account for project site readiness.
  - i. To offset temporal losses of aquatic functions resulting from the permitted activity, the Corps may require, on a case-by-case basis, additional compensatory mitigation for delayed implementation of compensatory mitigation beyond the Corps-approved final construction schedule that extends installation into the next year's growing season<sup>3</sup>. At such time the permittee anticipates any delays in the schedule for implementing the mitigation, the permittee must notify the Corps and the Department to provide explanations for the delay and the new expected start date. The Corps will informally consult with the Department and the permittee to determine what additional compensatory mitigation or additional monitoring time, if any, will be required to correct any environmental damage due to the temporal lag between functional losses at the impacted habitat and functional gains at the mitigation site not already accounted for in the previously approved mitigation ratio.

<sup>3</sup> Generally, the growing season for non-tidal wetland and riparian systems not subject to snowfall extends from March through September, although the season may begin earlier at lower latitudes and altitudes.

- ii. Factors the Corps will consider include timing of impacts, time to implementation of mitigation, certainty of completion, assessment of functions and services at impacted site, and time to develop targeted functions at the compensatory mitigation site.
- iii. The Corps will give due consideration to special circumstances and may waive the requirement for additional compensatory mitigation in cases where no substantive temporal loss to functions or services occurred, or where delayed compensatory mitigation was a result of natural causes beyond the permittee's control, including without limitation, fire, flood, storm, and earth movement, or as a result of any prudent action taken by the permittee under emergency conditions to prevent, abate, or mitigate significant injury to persons and/or the property resulting from such causes. [Note: Any action involving a discharge of dredged or fill material into aquatic resources within the Corps' jurisdiction that is undertaken during emergency conditions must receive prior authorization from the Corps.]
- iv. Accordingly, should any additional mitigation be required, the Corps will modify the terms and/or special conditions of the permit to reflect any changes to the mitigation requirements (33 C.F.R. §325.7) to remedy any non-compliance with permit conditions.
- v. The Corps shall consider additional or protracted delays in implementation, permittee non-responsiveness, or failure to take agreed upon corrective measures as permit non-compliance. The Corps would pursue all available remedies under its authority for supervision of authorized activities (33 C.F.R. §326.4), including, but not limited to the following actions: invoking the financial assurances, i.e., calling in part of or the entire performance bond, escrow account, or letter of credit to initiate corrective measures; suspending or revoking the permit (33 C.F.R. §325.7); and pursuing Class I administrative penalties (33 C.F.R. §326.6).

7. *Temporary Impacts.* The following mitigation measures would be required for projects or activities with temporary impacts to aquatic resources.

- a. *Restoration On-Site.* Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the U.S., dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate (see 7.c.). Re-vegetation shall commence within three months after restoration of pre-construction elevations and be completed within one growing season. If re-vegetation cannot start due to seasonal conflicts (e.g., impacts occurring in late fall/early winter shall not be re-vegetated until seasonal conditions are conducive to re-vegetation), exposed earth surfaces shall be stabilized immediately with jute-netting, straw matting, or other applicable best management practices to minimize any erosion from wind or water.



- b. Offsets for Temporal Loss. Temporary impacts to riparian habitat authorized by LOPs and Standard Individual Permits shall be compensated through consideration of the time needed to recover fully the temporarily impacted functions. Temporal loss will apply when compensatory mitigation does not occur prior to or concurrent with impacts, and will only apply to the habitat index, since the other two indices (i.e., water quality and hydrology) should not have a temporal lag. In general, the ratios of compensatory mitigation described above will apply to offset temporal losses of habitat function.
- c. Preparation of a Revegetation Plan. All on-site revegetation efforts require preparation of a revegetation plan. The plan must be approved by the Corps prior to implementation. Revegetation is a minimization measure and does not necessitate preparation of a compensatory mitigation plan.

8. *Long-term Conservation.* Any compensatory mitigation associated with permanent, unavoidable jurisdictional impacts within the Watershed will require legal assurances to ensure the long-term protection of the site's aquatic resources against degradation of integrity at the Watershed scale over time, unless otherwise approved by the Corps. Legal assurances include, but are not limited to conservation easements, restrictive covenants, land dedications, and implementing agreements. The [Final Mitigation Rule \(33 C.F.R. §332.7\)](#) contains more details on legal assurances as well as requirements for long-term conservation management (including in-perpetuity maintenance, monitoring, identification of conservation manager, estimate of annual costs and long-term funding mechanism).

9. *Third-Party Mitigation Program or Mitigation Bank.* An alternative method to satisfy compensatory mitigation requirements is the purchase of credits or payment of fees to a Corps-approved third-party mitigation program within the Watershed, including a mitigation bank, conservation bank, or for the enhancement, establishment, or restoration of identified offsite aquatic resources. Use of an approved third-party mitigation program conducting preservation and enhancement efforts for identified sites would be available to offset temporal loss instead of contracting with a separate conservation manager or establishing a separate endowment for individual mitigation sites. Additionally, compensatory mitigation requirements for permanent impacts may be satisfied by contribution to a Corps-approved third-party mitigation bank that is conducting establishment (creation) and/or restoration efforts in the Watershed. All third-party mitigation programs must comply with the requirements of the [Corps/EPA Final Mitigation Rule \(33 C.F.R. §332.8\)](#).

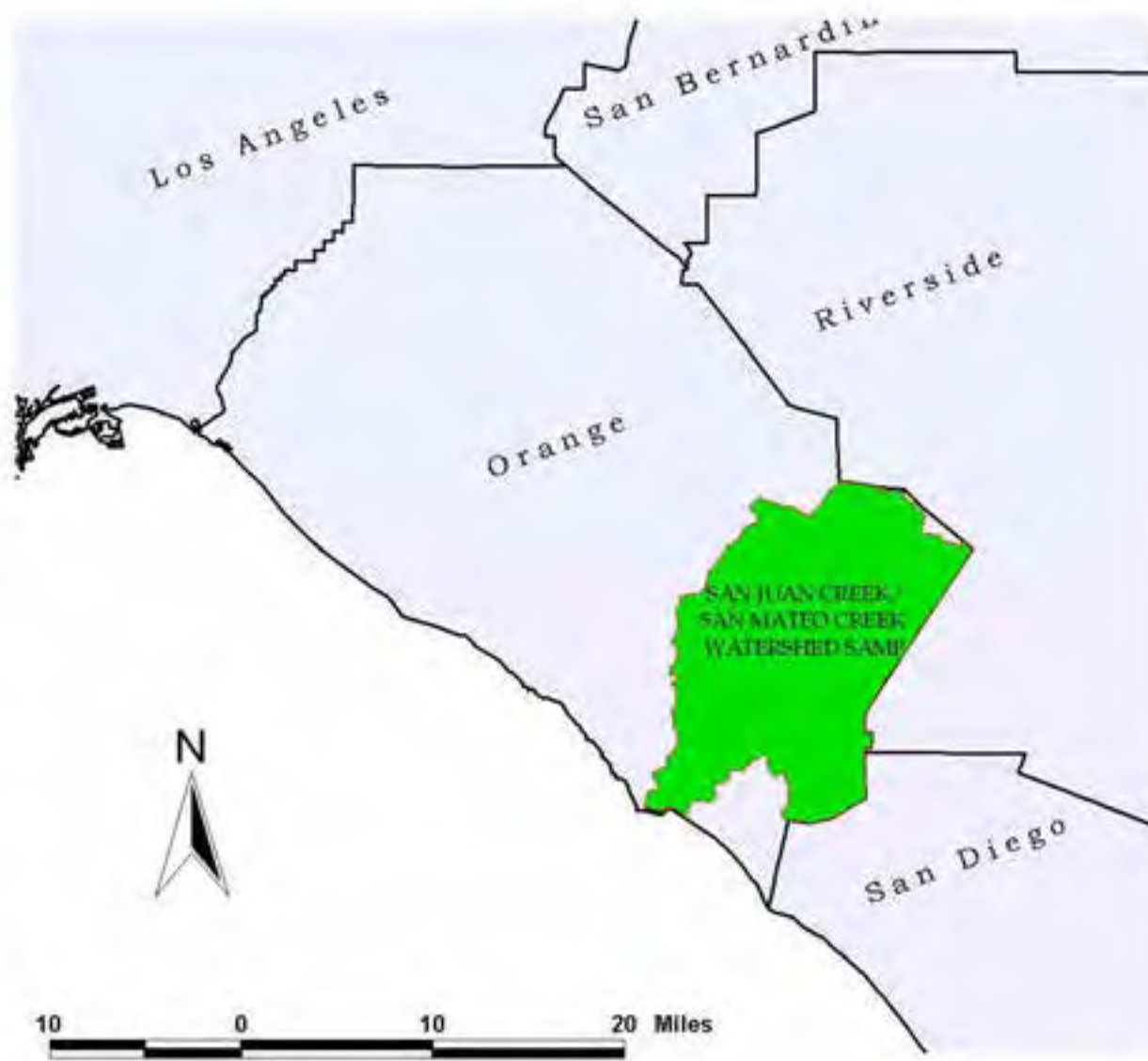


Figure 1. Location of the San Juan Creek/western San Mateo Creek watershed SAMP in Orange County, California.

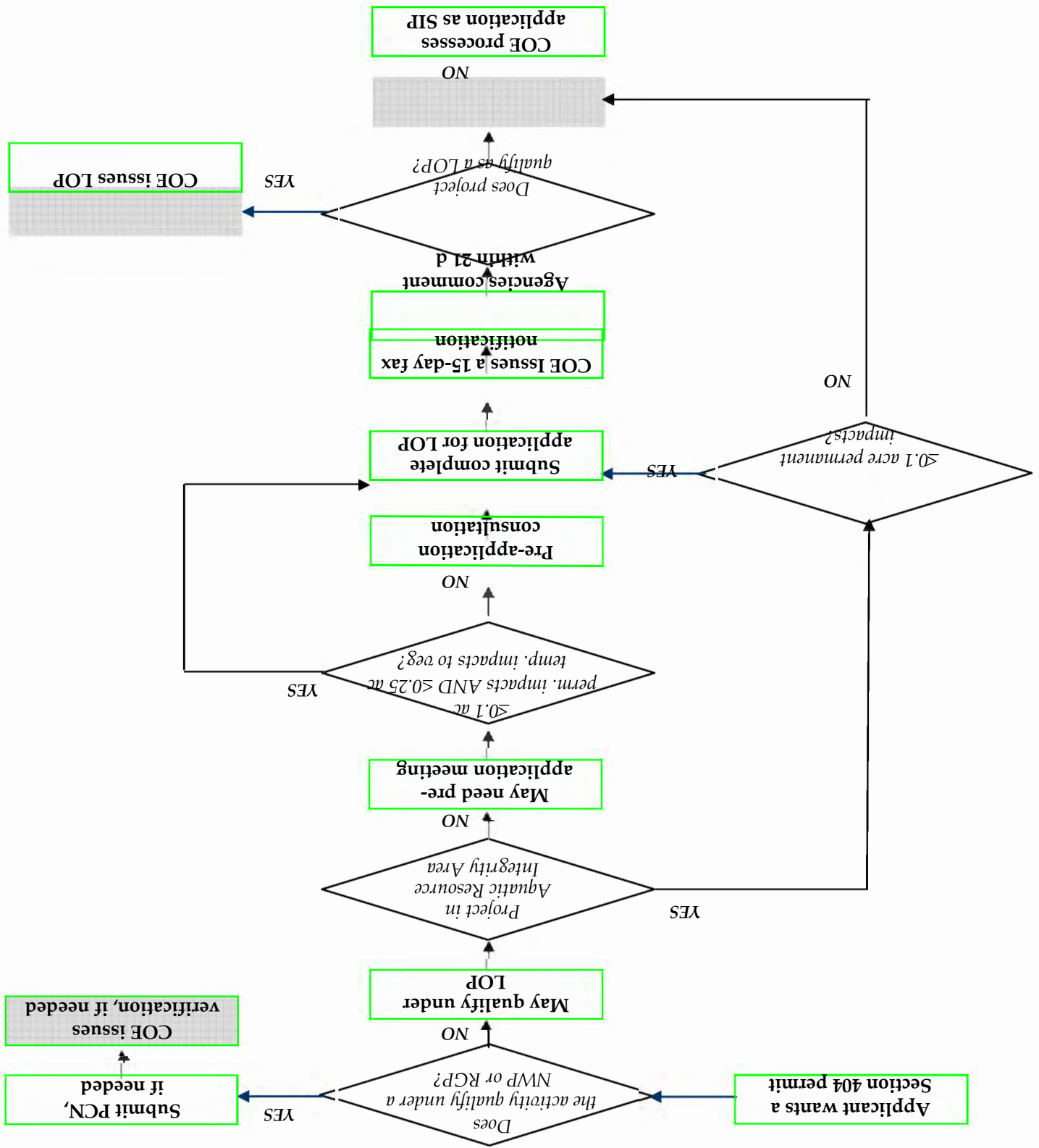


Figure 2. Generalized flow chart for the San Juan Creek and the western San Mateo Creek Watersheds permitting process.

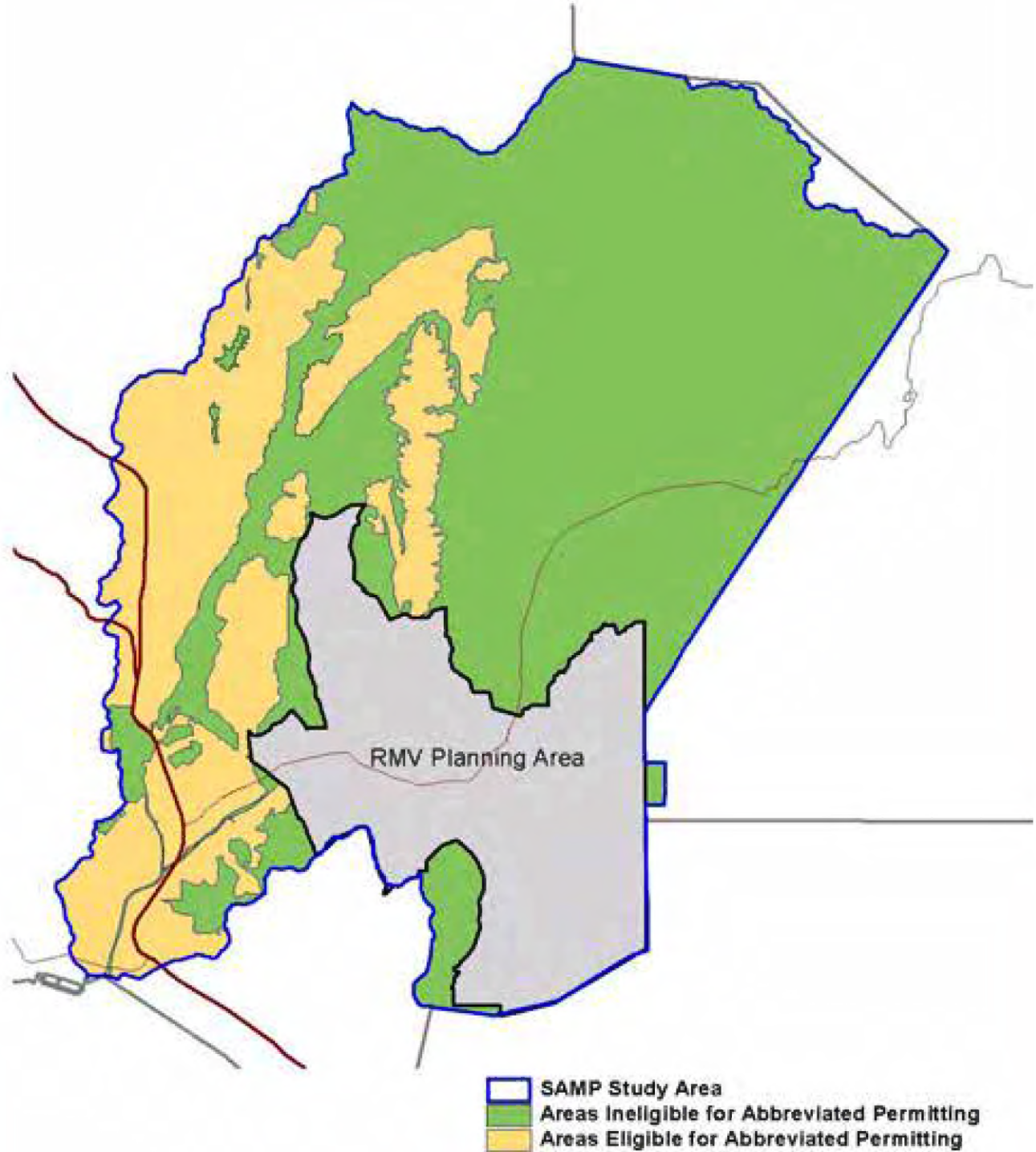


Figure 3. Aquatic Resource Integrity Areas within the San Juan Creek/Western San Mateo Creek Watershed SAMP (outside the RMV Planning Area).



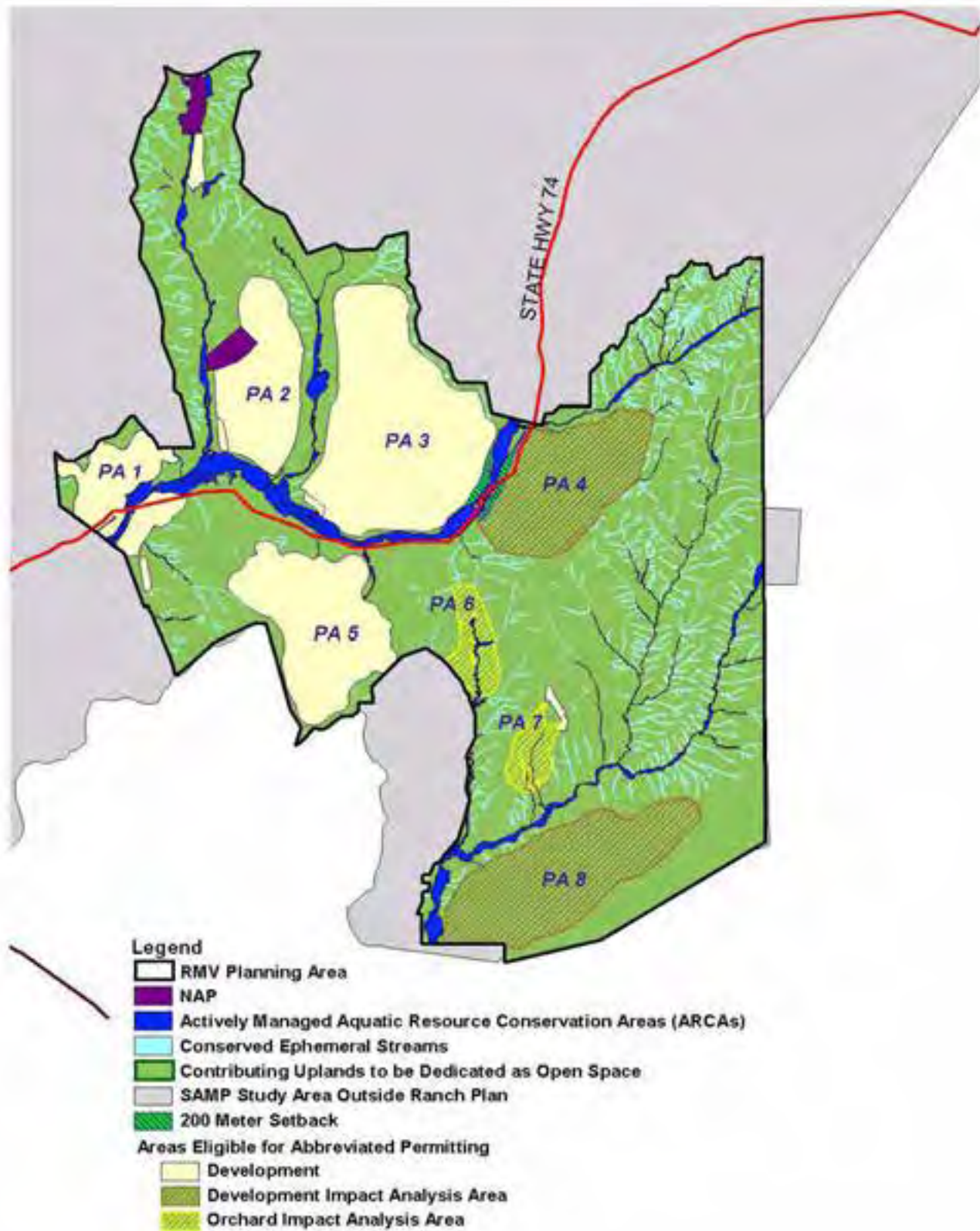


Figure 4. Aquatic Resource Conservation Areas within the RMV Planning Area of the San Juan Creek/Western San Mateo Creek SAMP include all areas located outside "Areas Eligible for Abbreviated Permitting," as identified above.



# San Diego Watershed SAMP Letter of Permission Procedures

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

**BUILDING STRONG®**

## **LETTER OF PERMISSION PROCEDURES FOR COVERED ACTIVITIES UNDER THE SPECIAL AREA MANAGEMENT PLAN (SAMP) FOR SAN DIEGO CREEK WATERSHED, ORANGE COUNTY, CALIFORNIA**

Issuance Date: TBD

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**ACTION ID: SPL-1999-15966**

**AUTHORITY:** 33 C.F.R. §325.2(e)(1)(ii) and 33 C.F.R. §330.5(c).

### **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).

### **Purpose**

Pursuant to 33 Code of Federal Regulations (C.F.R.) section 325.2(e)(1)(ii) and 33 C.F.R. section 330.5(c), the U.S. Army Corps of Engineers (Corps), Los Angeles District has established Letter of Permission (LOP) Procedures for the San Diego Creek Watershed. The effective date for these final LOP Procedures is [TBD]. These final LOP Procedures will protect the aquatic environment and the public interest while effectively authorizing activities that have no more than minor individual and cumulative adverse environmental effects.

Any project-specific regulated activities authorized by LOP must also meet the LOP general conditions listed below. A flow chart to support an initial decision of whether a project could be eligible for authorization under these final LOP Procedures is provided (Figure 2).



**Background**

The Corps issues LOP Procedures to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899 (RHA). The purpose of these final LOP Procedures for the San Diego Creek Watershed is to authorize discharges of dredged and fill material into waters of the United States ("waters of the U.S.") associated with covered activities, and in accordance with the [Special Area Management Plan \(SAMP\)](#) formulated for the San Diego Creek Watershed (February 2009).

These final LOP Procedures establish an abbreviated permit process available to all applicants for Department of the Army permits for activities meeting the criteria and conditions described in these procedures. If the proposed activity fails to meet the terms and conditions of the LOP Procedures, the activity may be evaluated under a different permit procedure, i.e., retained Nationwide Permit (NWP), Regional General Permit (RGP), or Standard Individual Permit (SIP).

The Regulatory Division of the Los Angeles District of the Corps of Engineers originally developed LOP Procedures as an element of the permitting strategy for its SAMP for the San Diego Creek Watershed. The Regulatory Program mission is to provide efficient and transparent regulatory services by leveraging strong relationships and a creative science-based watershed approach to ensure the protection and enhancement of aquatic resources while allowing for reasonable development. In response to economic developmental pressures on the water resources, namely the riparian ecosystem including streams, wetlands, and riparian vegetation within the San Diego Creek Watershed, the Corps undertook to pioneer an innovative tool, i.e., a cooperative SAMP formulation process. It involved collaboration with local participating applicants, including private landowners and local public agencies, participation from the California Department of Fish and Wildlife (Department), local government, state and federal resource agencies, local landowners, and other interested parties to develop a cohesive, Watershed-specific plan to address wetlands permitting, compensatory mitigation, and long-term protection of aquatic resources. The Corps completed an [environmental impact statement \(EIS\) for the San Diego Creek Watershed SAMP \(February 2009\)](#).

The SAMP program structure uses a watershed systems approach to provide context and predictability to project permitting. While the permitting program framework may be relatively novel, the regulatory policies that it implements are the same. Rather than starting with the site level, this process starts with the watershed scale and works its way down to enable permitting processes more tailored to the specific context of a site to inform regulatory decisions. The Corps completed another, separate SAMP process within the San Juan Creek and Western San Mateo Creek Watersheds in Orange County.

One of the first steps of the SAMP was to use a riparian ecosystem model to characterize the existing condition of the water resources within the watershed.<sup>1</sup> A multi-metric assessment method incorporating hydrology, water quality, and habitat integrity and other regionally important ecosystem criteria was applied as an analytical framework to improve our understanding of the condition of the water resources and their upland areas of influence. As part of the model, the watershed was divided into zones that reflect the level of alteration or modification of a riparian reach and its drainage area from its expected undisturbed condition. To support the SAMP goals, one zone was identified as having met a set of criteria for identifying the aquatic resources with a low to moderate degree of alteration. This zone is referred to as the “Aquatic Resource Integrity Areas”. The other zone, comprised of aquatic resources and their upland areas of influence that did not meet the criteria, fall outside the Aquatic Resource Integrity Areas.

With the SAMP, the Corps established policies to support the protection of aquatic resource ecosystem functions and values in the San Diego Creek Watershed. The SAMP formulation and implementation process resulted in watershed-wide, landscape-based tools to improve the Corps’ capacity to make informed decisions that balance aquatic resource protection and reasonable development. Besides permitting strategies, mitigation policies and a riparian ecosystem restoration plan are also included in the SAMP. Such alternate permitting strategies incorporate policies to implement watershed-based mitigation, aquatic resource conservation, and permitting under the Corps’ continuing regulatory program.

A Record of Decision to implement elements of the SAMP program, including the permitting strategy and mitigation policies, was signed by the District Commander (June 16, 2010). The Corps’ final decision to revoke the use of selected 2007 NWP within the San Diego Creek Watershed in association with the adoption and implementation of the SAMP, as prescribed by regulations published in 33 C.F.R. §330.5(c), was made by the South Pacific Division Commander in his Record of Decision (July 19, 2010) for the revocation of selected NWPs. Subsequently, the Division Commander affirmed the decision to revoke the use of selected 2012 (March 2012) and 2017 NWPs (March 2017). Consequently, the following 24 NWPs are no longer available for use within the San Diego Creek Watershed: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. All NWPs that are currently in effect, and not among these 24 revoked NWPs, are retained for use in the SAMP Watersheds. A complete overview of available forms of permitting within the San Diego Creek Watershed SAMP is provided in Table 1.

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<sup>1</sup> Note that boundaries for the San Diego Creek Watershed used as part of the SAMP process were identified based on U.S. Geological Survey (USGS) topographic maps available at the time of the SAMP studies. Boundaries since identified for the San Diego Creek Watershed in the USGS’ widely used Watershed Boundary Dataset (Hydrological Unit Code 10; 1807020401) do not correspond exactly with the San Diego Creek Watershed SAMP area boundaries.

Table 1. Available forms of CWA Section 404 permits to authorize discharges of dredged or fill material within waters of the U.S. located in the San Diego Creek Watershed.

Available Form of Permit	NWPs	RGP 74	LOPs			SIPs
Applicable Use Areas	All areas	Outside aquatic resource integrity areas	Outside aquatic resource integrity areas	In major stream systems <sup>1</sup> outside aquatic resource integrity areas	Inside aquatic resource integrity areas	All areas
Covered Regulated Activities	Specified for each retained NWP <sup>2</sup>	Anticipated maintenance activities <sup>3</sup>	Anticipated activities <sup>4</sup>	Anticipated activities <sup>4</sup> ; No stream channelization or stream replacement with pipes.	Anticipated activities <sup>5</sup> ; No stream channelization or stream replacement with pipes.	All regulated activities ineligible for abbreviated permitting procedures.
Permanent Impacts to waters of the U.S. Authorized <sup>5</sup>	Generally ≤ 0.5 acre	Not authorized	No limit <sup>6</sup>	No limit <sup>6</sup>	≤ 0.1 acre	No limit <sup>7</sup>
Temporary Impacts to waters of the U.S. Authorized	No limit	≤ 0.5 acre <sup>8</sup>	No limit <sup>6</sup>	No limit <sup>6</sup>	No limit <sup>6</sup>	No limit
Target Review Time	≤ 60 days	≤ 15 days	≤ 60-120 days	≤ 60-120 days	≤ 60-120 days	approx. 120 days
Pre-Application Coordination	Preferred	Preferred	Required <sup>9</sup>	Required <sup>9</sup>	Required <sup>9</sup>	Preferred
Inter-Agency Review	None	None	All actions	All actions	All actions	All actions

**NOTES:**

1. Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek
2. Proposed activities meeting the terms of a retained NWP, i.e., a NWP other than 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50, may be used to authorize regulated activities in the SAMP Watersheds. Information on all NWPs currently in effect as of the latest NWP reissuance is provided at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.
3. The discharge of dredged or fill material associated with the following anticipated maintenance activities may be eligible for authorization under RGP 74: 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).
4. The discharge of dredged or fill material associated with the following anticipated activities ineligible for NWP or RGP may be covered activities under these 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. LOP Procedures may not be used to authorize the alteration of a compensatory mitigation site required by a Corps permit, for capital improvement flood control projects involving conversion of a soft-bottom channel to a concrete-lined channel, or for capital improvement flood control projects within Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek.
  5. The discharge of dredged or fill material associated with the following anticipated activities may be covered activities under these LOP Procedures: Maintenance and repair of public and private utilities, including utility lines; Maintenance and repair of public and private drainage and flood control facilities, including outfall and intake structures, bank stabilization structures, flood control channels (consistent with an established maintenance baseline), and flood control basins (consistent with an established maintenance baseline); Maintenance and repair of public and private roads and bridges; Habitat restoration improvement projects, including wetland restoration and creation; and permanent impacts to up to 0.1 acre of WoUS associated with activities listed in above in Note 3.
  6. Provided the project is in full compliance with LOP Procedures.
  7. In evaluating projects under the Standard Individual Permit process, the Corps would need to assure project compliance with the 404(b)(1) Guidelines. Except as provided for by Section 404(b)(2), no discharge of dredged or fill material into waters of the U.S. would be permitted by the Corps if the effects of the discharge, considered either individually or cumulatively, would contribute to the significant degradation or impairment of waters of the U.S. (40 C.F.R. Part 230).
  8. The RGP authorizes up to 0.5 acre of temporary impacts, of which up to 0.1 acre may be vegetated by predominantly native riparian and/or wetland vegetation.
  9. 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.

**Definitions:** Note the following definitions of “permanent impacts” and “temporary impacts” that are used throughout these LOP Procedures:

**Permanent impacts:** Permanent impacts are discharges of dredged or fill material that permanently change an aquatic area to dry land, increase the bottom elevation of a waterbody, or permanently change the use of a waterbody (Federal Register, Vol. 82, No. 4, p. 2006).

**Temporary impacts:** Minor impacts to aquatic resources that occur for a short-duration during authorized activities wherein, following completion of the permitted work, the affected aquatic resources are completely restored to pre-construction elevations and contours, conditions and functionality.

## **LOP Procedures – Terms, Conditions, and SAMP Mitigation Framework**

An LOP will be issued only for those activities that meet all of the criteria identified in this notice, including the terms and general conditions (1-26), and have no more than minor impacts on jurisdictional waters of the U.S. Applications for an LOP must include a mitigation plan that clearly demonstrates that impacts to aquatic resources will be avoided and minimized to the maximum extent practicable, and there will be a net increase in functions of aquatic resources. The Corps reserves the use of its discretionary authority to determine that an activity may be authorized under an LOP, that an activity may be authorized under an LOP with the addition of special conditions, or that an activity may not be authorized by an LOP and will instead require authorization under another permit type. Most maintenance and repair activities outside Aquatic Resource Integrity Areas would be expected to be eligible under Regional General Permit 74.

### **A. LOP Terms**

To qualify for an LOP under these procedures, activities must meet the following terms:

1. **Covered Activities** – The categories of covered activities eligible for authorization by LOP are similar to those described in the NWP. However, eligibility for using the LOP Procedures is determined by the nature and location of the proposed activity within the watershed. Specifically, whether the activity would occur outside or within Aquatic Resource Integrity Areas of the watershed affects the eligibility for an LOP. Covered activities that may be authorized outside and within Aquatic Resource Integrity Areas are listed in Table 2.

Table 2. Categories of activities eligible for authorization under LOP Procedures. Eligibility of a proposed activity is dependent on the project's location outside or within an Aquatic Resource Integrity Area.

Activities Outside of Aquatic Resource Integrity Areas		Activities Within Aquatic Resource Integrity Areas	
Covered Activities	Ineligible Activities	Covered Activities	Ineligible Activities
<p>LOP Procedures may be used to authorize permanent and temporary discharges of dredged or fill material into wetland and non-wetland waters of the U.S. located outside of Aquatic Resource Integrity Areas of the watershed (Figures 3 through 8) when associated with the following types of activities:</p> <ul style="list-style-type: none"> <li>• Public and private utilities, including utility lines and maintenance of utility lines;</li> <li>• Public and private drainage and flood control facilities, including construction of outfall and intake structures, construction of bank stabilization structures, and maintenance of all flood control facilities;</li> <li>• Public and private road crossings, including bridges, culverts, lengthening, widening, and maintenance;</li> <li>• Public and private land development, including residential, commercial, institutional, and recreational uses;</li> <li>• Storm water treatment and management facilities (construction and/or maintenance of new and existing facilities);</li> <li>• Habitat restoration and enhancement projects (construction and/or maintenance of new and existing projects); and</li> <li>• Fire abatement and vegetative fuel management activities</li> </ul>	<p>A Standard Individual Permit process may be required to authorize permanent discharges of dredged or fill material into wetland and non-wetland waters of the U.S. located outside of Aquatic Resource Integrity Areas of the watershed (Figures 3 through 8) when associated with the following types of activities:</p> <ul style="list-style-type: none"> <li>• Activities that would have substantial, unmitigated impacts to the aquatic environment;</li> <li>• Activities that would substantially alter a compensatory mitigation site previously established for a Corps permit;</li> <li>• Flood risk management projects involving conversion of a soft-bottom channel to a concrete-lined channel; and</li> <li>• New flood risk management projects (non-maintenance), stream channelization, or stream replacement with pipes within the major stream systems, including Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek</li> </ul>	<p>LOP Procedures may be used to authorize temporary and no more than 0.1 acre of permanent discharges of dredged or fill material into wetland and non-wetland waters of the U.S. located within Aquatic Resource Integrity Areas of the watershed (Figures 3 through 8) when associated with the following types of activities:</p> <ul style="list-style-type: none"> <li>• Maintenance and repair of public and private utilities, including utility lines;</li> <li>• Maintenance and repair of public and private drainage and flood control facilities, including outfall and intake structures, bank stabilization structures, flood control channels (consistent with an established Corps-approved maintenance baseline), flood control basins (consistent with an established Corps-approved maintenance baseline), and landfill concrete channels and sedimentation basins (consistent with an established maintenance baseline);</li> <li>• Maintenance and repair of public and private road crossings, including bridges and culverts;</li> <li>• Maintenance of storm water treatment and management facilities;</li> <li>• Habitat restoration and enhancement projects, including wetland restoration and creation; and</li> <li>• Fire abatement and vegetative fuel management activities</li> </ul>	<p>A Standard Individual Permit process may be required to authorize permanent discharges of dredged or fill material into wetland and non-wetland waters of the U.S. located within Aquatic Resource Integrity Areas of the watershed (Figures 3 through 8) when associated with the following types of activities:</p> <ul style="list-style-type: none"> <li>• Activities that are inconsistent with eligible activities provisions for covered activities;</li> <li>• Activities that would substantially alter a compensatory mitigation site previously established for a Corps permit;</li> <li>• Activities associated with flood risk management projects (non-maintenance), stream channelization, or stream replacement with pipes within the major stream systems, including Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek</li> </ul>



**2. Pre-Application Coordination – Requirements and procedures for Pre-Application Coordination before submitting an application to use the established LOP Procedures are summarized as follows:**

- For proposed projects with permanent impacts up to 0.1 acre or less of waters of the U.S. and temporary impacts up to 0.25 acre or less of waters of the U.S. containing native wetland and/or riparian vegetation, pre-application coordination is not required. The applicant only needs to submit the application(s) directly to the agencies.
- Pre-application coordination is required for proposed projects with permanent impacts to waters of the U.S. greater than 0.1 acre, or for projects with temporary impacts greater than 0.25 acre of waters of the U.S. containing native wetland and/or riparian vegetation.

<b>Pre-Application Coordination</b>
<ul style="list-style-type: none"> <li>• Pre-application coordination must involve the Corps, the Department, the Santa Ana Regional Water Quality Control Board (RWQCB), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Environmental Protection Agency (EPA).</li> </ul>
<ul style="list-style-type: none"> <li>• For the pre-application meetings, the applicant may meet with the agencies separately or in small groups, consult by telephone, or schedule a pre-application meeting to be held at the Corps' District office. A written record of the proceedings must be provided afterwards to the Corps, documenting substantive issues discussed, agency recommendations, and any pertinent conclusions.</li> </ul>
<ul style="list-style-type: none"> <li>• In preparation for the pre-application meeting, the following information should be provided to the agencies at least two weeks prior to the meeting:               <ul style="list-style-type: none"> <li>✓ A delineation of aquatic resources, including the Corps, Department, and RWQCB jurisdictional resources, within the project area;</li> <li>✓ A site location and plan view of the proposed project areas and acreage to be impacted showing permanent and temporary impacts to waters of the U.S.;</li> <li>✓ A draft statement addressing the Section 404(b)(1) Guidelines<sup>2</sup>;</li> <li>✓ A draft mitigation plan, if unavoidable permanent impacts would occur; and</li> <li>✓ When appropriate, a cultural resources inventory and results from an endangered or threatened species survey for the project area.</li> </ul> </li> </ul>

<sup>2</sup> The applicant must provide information documenting the evaluation of alternatives to the proposed impacts to aquatic resources. The basic premise of the Section 404 Clean Water Act program is that no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded. In other words, when you apply for a permit, you must first show that steps have been taken to avoid impacts to wetlands, streams and other aquatic resources. You must also demonstrate that potential impacts have been minimized and that compensation will be provided for all remaining unavoidable impacts.

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| <ul style="list-style-type: none"> <li>Following the pre-application coordination, the Corps will make an initial determination as to whether the project may qualify for the LOP Procedures based on a preliminary determination that the project meets certain requirements:           <ul style="list-style-type: none"> <li>✓ Complies with the CWA Section 404(b)(1) Guidelines;</li> <li>✓ A determination by the Corps that the project is consistent with the SAMP;</li> <li>✓ A determination by the Corps that Standard Individual Permit processing with Public Notice review would not result in a substantive change in the proposed project or compensatory mitigation.</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>If the Corps makes an initial determination that the project may not qualify for the LOP Procedures, the Corps will provide recommendations that would enable the project to qualify for the LOP Procedures.</li> </ul>   |

### 3. LOP Application Submittal

The following informational items are needed for a complete application per the LOP Procedures. The [Updated Map and Drawing Standards for the South Pacific Division \(SPD\) Regulatory Program](#) shall apply to the LOP application and related submittals.

Application Package	
<ul style="list-style-type: none"> <li>A completed Department of the Army application form (Eng Form 4345)</li> </ul>	
<ul style="list-style-type: none"> <li>A complete project description, which includes the following information:           <ul style="list-style-type: none"> <li>✓ Pre-project photographs of the project site;</li> <li>✓ A site location map and view of the project showing areas and acreage to be impacted on 8.5" x 11" sheets;</li> <li>✓ Location coordinates: latitude/longitude or UTM;</li> <li>✓ Volume, type and source of material to be placed into waters of the U.S.;</li> <li>✓ Total area of waters of the U.S. to be directly and indirectly affected;</li> <li>✓ A Corps-verified delineation of waters of the U.S. located in the project area including a wetland delineation map on 8.5" x 11" sheets;</li> <li>✓ A description of habitat, including plant communities, located in the project area;</li> <li>✓ A description of methods to avoid, minimize, and compensate for adverse impacts to water quality or aquatic function at the project site including best management practices used during project implementation to control siltation and erosion;</li> <li>✓ Any other information pertinent to the wetlands, stream, or waterbody involved;</li> <li>✓ Proposed project schedule.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>A record of pre-application coordination with the Corps, the Department, RWQCB, USFWS, and EPA:           <ul style="list-style-type: none"> <li>✓ The record must document comments and concerns made by each agency during pre-application consultation. If the applicant participated during the formulation of the SAMP, and the activity was reviewed, this requirement does not apply.</li> </ul> </li> </ul>	

<ul style="list-style-type: none"> <li>✓ A discussion of how each agency comment/concern was addressed. If the applicant participated during the development of the SAMP, this requirement does not apply</li> <li>✓ If coordination was not accomplished with an agency, the applicant must show that a concerted effort was made to meet with the agency and explain why such coordination was not achieved.</li> </ul>
<ul style="list-style-type: none"> <li>• A statement addressing the Section 404(b)(1) Guidelines alternatives analysis. If the applicant participated during the formulation of the SAMP and the activity was reviewed, this requirement does not apply.</li> </ul>
<ul style="list-style-type: none"> <li>• A statement explaining how avoidance and minimization of discharges to jurisdictional waters were achieved on the project site.</li> </ul>
<ul style="list-style-type: none"> <li>• A compensatory mitigation plan consistent with the SAMP mitigation framework (see below) to address any unavoidable impacts to jurisdictional waters and the program goal of no net loss of wetlands.</li> </ul>
<ul style="list-style-type: none"> <li>• Local approvals or other evidence that the project has been reviewed by the appropriate local governmental body and has been found to be consistent with state and local land use plans and policies, particularly state and local wetland policies.</li> </ul>
<ul style="list-style-type: none"> <li>• Appropriate surveys, inventories, or reports that will allow the Corps to make a determination of the effect of the proposed project (and if necessary consult) pursuant to the federal Endangered Species Act (ESA) or evidence of incidental take authorizations under ESA.</li> </ul>
<ul style="list-style-type: none"> <li>• A pre-construction eelgrass (<i>Zostera marina</i>) survey, conducted in accordance with the California Eelgrass Mitigation Policy (CEMP), and pre-construction Caulerpa (<i>Caulerpa taxifolia</i>) survey, conducted in accordance with the Caulerpa Control Protocol, for jurisdictional activities that would occur within tidally influenced areas.</li> </ul>
<ul style="list-style-type: none"> <li>• Evidence of compliance with Section 106 of the National Historic Preservation Act (NHPA), or a comprehensive statement indicating which historic property might have the potential to be affected by the proposed activity. Include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties.</li> </ul>

#### 4. Application Processing Procedures

Once the applicant has compiled the information required for a complete application, the Corps will proceed with processing the application as follows:

<b>Application Processing</b>
<ul style="list-style-type: none"> <li>• The applicant will provide the Corps and the other federal and state review agencies (EPA, USFWS, Department, RWQCB) with complete applications.</li> </ul>
<ul style="list-style-type: none"> <li>• The Corps will review the applicant's submission and assign an action ID number.</li> </ul>
<ul style="list-style-type: none"> <li>• Within approximately fifteen (15) calendar days of receipt of an application, the Corps will determine if the application is complete.</li> </ul>

<ul style="list-style-type: none"> <li>✓ If an application is incomplete, the Corps will notify the applicant of the needed information items and the applicant will be required to resubmit.</li> </ul>
<ul style="list-style-type: none"> <li>• Within approximately fifteen (15) calendar days of receiving a complete application, the Corps will submit materials to the agencies (the Department, RWQCB, USFWS, EPA, and State Historic Preservation Office (SHPO) via email and request the agencies provide comments on the following subjects: <ul style="list-style-type: none"> <li>✓ Conformity of the proposed project with the SAMP;</li> <li>✓ Accuracy of the jurisdictional delineation and the resource assessment;</li> <li>✓ Minimization of impacts to aquatic resources to the maximum extent practicable;</li> <li>✓ Consistency of the proposed project-specific compensatory mitigation with the SAMP mitigation framework and Watershed Coordination Program;</li> <li>✓ Whether federally listed species issues have been resolved in a manner consistent with the local NCCP/HCP program</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• The agencies (except for SHPO) will provide comments to the Corps within 21 calendar days. The SHPO will provide comment within 30 calendar days. "No objection" comments may be provided by phone, but substantive comments should be provided and confirmed by email, FAX, or letter.</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution or status of compliance with Section 106 of the NHPA;</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution or status of the 401 certification</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution of ESA Section 7, if applicable</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution of adverse effects on Essential Fish Habitat (EFH), if applicable</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution or status of compliance with CZMA, if applicable</li> </ul>
<ul style="list-style-type: none"> <li>• After all the comments are received from the resource agencies, the Corps will perform a final evaluation of the project. Any problems identified during the LOP notification process by the resource agencies will be resolved before an LOP is issued.</li> </ul>
<ul style="list-style-type: none"> <li>• The Corps will review the comments received and make a final determination within 45 calendar days of receiving the complete application, unless consultation under Section 7 of ESA, the EFH provisions of the Magnuson-Stevens Fisheries Conservation and Management Act, or Section 106 of NHPA is required, which would likely extend the processing time for a final permit decision.</li> </ul>
<ul style="list-style-type: none"> <li>• If the project meets the criteria for LOP authorization, an LOP will be issued.</li> </ul>
<ul style="list-style-type: none"> <li>• If the project fails to meet the criteria for LOP authorization, the Corps will notify the applicant of need for review through a Standard Individual Permit process.</li> </ul>

## B. LOP Conditions

Any activity authorized by LOP must also meet the 26 general conditions listed below. Further, on a case-by-case basis the Corps may include project-specific special permit conditions for any LOP.

<b>General Conditions –</b>
1. <i>Avoidance and Minimization.</i> The permittee must provide a written statement describing avoidance and minimization measures used to minimize discharges to jurisdictional waters at the project site to the maximum extent practicable.
2. <i>Ineligible Impacts.</i> Projects ineligible for LOP Procedures include activities not evaluated for LOP Procedures, projects that substantially alter a previously established compensatory mitigation site, or projects that involve the conversion of a soft-bottom channel to a concrete-lined channel within San Diego Creek, Peters Canyon Wash, Hicks Canyon Wash, Serrano Creek, and Borrego Canyon Wash. Those proposed projects must be authorized using a Standard Individual Permit.
3. <i>Mitigation Policy.</i> The permit must comply with the SAMP mitigation framework, including the Strategic Mitigation Plan, established in conjunction with the proposed permitting procedures. In accordance with the Final Mitigation Rule (33 C.F.R. §332.3(k)), for an LOP that requires permittee-responsible mitigation, the special conditions of the LOP shall: <ul style="list-style-type: none"> <li>✓ Identify the party responsible for providing the compensatory mitigation;</li> <li>✓ Incorporate, by reference, the final mitigation plan approved by the district engineer;</li> <li>✓ State the objectives, performance standards, and monitoring required for the compensatory mitigation project, unless they are provided in the approved final mitigation plan; and</li> <li>✓ Describe any required financial assurances or long-term management provisions for the compensatory mitigation project, unless they are specified in the approved final mitigation plan.</li> </ul>
4. <i>Soil Erosion and Siltation Controls.</i> 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, 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 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.
5. <i>Equipment.</i> If personnel would not be subjected to additional, potential hazardous conditions, heavy equipment working in or crossing wetlands must be placed on

<p>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.</p>
<p>6. <i>Suitable Material.</i> No discharge of dredged or fill materials 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 (per Section 307 of the Clean Water Act).</p>
<p>7. <i>Management of Water Flows.</i> To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, 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.</p>
<p>8. <i>Removal of Temporary Fills.</i> 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. (See General Condition 14).</p>
<p>9. <i>Proper Maintenance.</i> Each permittee who receives an LOP from the Corps must maintain the activities authorized by the LOP in good condition and in conformance with the terms and conditions of the LOP. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition No. 25 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification for the LOP from Regulatory Division, which may require restoration of the area.</p>
<p>10. <i>Preventive Measures.</i> 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.</p>



11. <i>Staging of Equipment.</i> 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. <i>Fencing of Project Limits.</i> The permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter preserved waters of the U.S. and riparian wetland/habitat areas shown on a project-specific figure attached to the LOP. Adverse impacts to waters of the U.S. beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil, or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.
13. <i>Avoidance of Breeding Season.</i> With regard to federally listed avian species, avoidance of breeding season requirements shall be those specified in the Federal Endangered Species Act Section 7 consultation for the LOP (See General Condition 20). For all other avian 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, in accordance with the Department's WSAA Process and a signed agreement with conditions prescribing procedures for grading of mitigation sites or biological surveys and time restrictions.
14. <i>Exotic Species Management.</i> All giant reed ( <i>Arundo donax</i> ), salt cedar ( <i>Tamarix spp.</i> ), and castor bean ( <i>Ricinus communis</i> ), in addition to other invasive non-native plants categorized as "High" on the California Invasive Plant Council's (Cal-IPC) Invasive Plant Inventory ( <a href="http://www.cal-ipc.org/ip/inventory/index.php#categories">http://www.cal-ipc.org/ip/inventory/index.php#categories</a> ), must be removed from the affected area. Permittee must 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. <i>Site Inspections.</i> 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. <i>Posting of Conditions.</i> A copy of the LOP General 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.
17. <i>Post-Project Report.</i> Within 45 days of completion of impacts to waters, as-built drawings with an overlay of waters that were impacted and avoided must be submitted to the Corps. Post-project photographs, which document compliance with permit conditions, must also be provided.

18. *Water Quality.* An individual Section 401 water quality certification must be obtained (see 33 C.F.R. 330.4(c)).

19. *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)).

20. *Endangered Species*

- a. No activity is authorized which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the activity. Indirect effects are those effects on listed species and critical habitat that are caused by the LOP activity and are later in time, but still are reasonably certain to occur.
- 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. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA Section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under Section 7 of the ESA.
- 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 application 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 application. 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 ESA Section 7 consultation has been completed.
- d. As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to LOPs.
  - e. Authorization of an activity by an LOP does not authorize the “take” of a threatened or endangered species as defined under the ESA. 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, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
  - f. If the non-federal permittee has a valid ESA Section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed LOP activity, the non-federal applicant should provide a copy of that ESA Section 10(a)(1)(B) permit with their application. The district engineer will coordinate with the agency that issued the ESA Section 10(a)(1)(B) permit to determine whether the proposed LOP activity and the associated incidental take were considered in the internal ESA Section 7 consultation conducted for the ESA Section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed LOP activity and the associated incidental take were considered in the internal ESA Section 7 consultation for the ESA Section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA Section 7 consultation for the proposed LOP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete application whether the ESA Section 10(a)(1)(B) permit covers the proposed LOP activity or whether additional ESA Section 7 consultation is required.
  - g. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at <http://www.fws.gov/carlsbad/> and <http://www.nmfs.noaa.gov/pr/species/esa/>, respectively.
  - h. Activities authorized under LOP Procedures shall comply with the following applicable conservation measures to ensure the activity will not adversely affect federally listed species; however, additional project-specific measures may be required pursuant to an ESA Section 7 consultation for a specific project:

- i. Removal of gnatcatcher habitat within non-Reserve areas of the Orange County Central/ Coastal NCCP/HCP will follow the Construction and Minimization Measures for the NCCP/HCP;
- ii. Removal of suitable habitat for the gnatcatcher and construction work within 300 feet of suitable habitat for the gnatcatcher will occur outside the gnatcatcher breeding season between February 15 and August 31. If work is necessary within 300 feet of suitable gnatcatcher habitat during the breeding season, a qualified biologist will perform protocol surveys in the area to determine whether any nesting gnatcatchers are present. If nests are absent, work will continue. If a nest is present, the permittee shall notify the Corps, the Department, and the USFWS of the location of the nest, a 300-foot buffer around the nest will be clearly demarcated, and the area avoided until the nest is abandoned. A biological monitor with authority to stop construction will be present onsite during breeding-season construction to ensure the limits of construction do not encroach into suitable gnatcatcher habitat or within 300 feet of a nesting gnatcatcher;
- iii. Removal of suitable habitat for the least Bell's vireo (LBV) and construction work within 300 feet of suitable habitat for the LBV will occur outside the LBV breeding season between March 15 and September 15. If work is necessary within 300 feet of suitable LBV habitat during the breeding season, a qualified biologist will perform protocol surveys in the area to determine whether any nesting LBVs are present. If nests are absent, work will continue. If a nest is present, the permittee shall notify the Corps, the Department, and the USFWS of the location of the nest, a 300-foot buffer around the nest will be clearly demarcated, and the area avoided until the nest is abandoned. A biological monitor with authority to stop construction will be present onsite during breeding-season construction to ensure the limits of construction do not encroach into suitable LBV habitat or within 300 feet of a nesting LBV;
- iv. Removal of suitable habitat for the southwestern willow flycatcher (flycatcher) and construction work within 300 feet of suitable habitat for the flycatcher will occur outside the flycatcher breeding season between May 15 and July 31. If work is necessary within 300 feet of suitable flycatcher habitat during the breeding season, a qualified biologist will perform protocol surveys in the area to determine whether any nesting flycatchers are present. If nests are absent, work will continue. If a nest is present, the permittee shall notify the Corps, the Department, and the USFWS of the location of the nest, a 300-foot buffer around the nest will be clearly demarcated, and the area avoided until the nest is abandoned. A biological monitor with authority to stop construction will be present onsite during breeding-season construction to ensure the limits of construction do not encroach into suitable flycatcher habitat or within 300 feet of a nesting flycatcher; and

- v. If vernal pools are observed within a proposed project site under the LOP Procedures, vernal pool/fairy shrimp protocol surveys will be performed and the permittee shall notify the Corps, the Department, and the USFWS of the results prior to initiating any ground disturbance.

21. *Essential Fish Habitat.* In tidally influenced areas, a pre-construction eelgrass survey shall be conducted in accordance with the California Eelgrass Mitigation Policy (CEMP) ([http://www.westcoast.fisheries.noaa.gov/publications/habitat/california\\_eelgrass\\_mitigation/Final\\_CEMP\\_October\\_2014/cemp\\_oct\\_2014\\_final.pdf](http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/Final_CEMP_October_2014/cemp_oct_2014_final.pdf)) and submitted to the Corps Regulatory Division and NMFS before project-related activities commence. In addition, a pre-construction Caulerpa (*Caulerpa taxifolia*) survey shall be conducted in accordance with the Caulerpa Control Protocol ([http://www.westcoast.fisheries.noaa.gov/publications/habitat/caulerpa\\_taxifolia/caulerpa\\_control\\_protocol\\_4.pdf](http://www.westcoast.fisheries.noaa.gov/publications/habitat/caulerpa_taxifolia/caulerpa_control_protocol_4.pdf)) and submitted to the Corps Regulatory Division and NMFS before project-related activities commence. No work shall be conducted until a Notice to Proceed is issued by the Corps Regulatory Division. If the pre-construction eelgrass survey demonstrates eelgrass presence within the project vicinity, a post-project survey shall be conducted and impacts to eelgrass mitigated in accordance with the CEMP. In the event that Caulerpa is detected within the project area, the permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory Division, in consultation with NMFS and CDFW.

22. *Historic Properties.*

- a. In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places (Register), 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. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under Section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with Section 106.
- c. Non-federal permittees must submit 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 Register (see 33 C.F.R. §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 identification efforts, the district engineer shall determine whether the proposed activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of Section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might 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 NHPA Section 106 consultation has been completed.

- d. If NHPA Section 106 consultation is required, 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 Section 110k of the NHPA [54 U.S.C. 306113] 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, 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.

23. *Discovery of Previously Unknown Remains and Artifacts.* If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by a LOP, you must immediately notify the district



engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

24. *Air Quality.* No activity is authorized that causes or contributes to any new violation of national ambient air quality standards, increases the frequency or severity of any existing violation of such standards, or delays timely attainment of any such standard or interim emission reductions, as described in the applicable California State Implementation Plan for the South Coast Air Basin. As part of the Corps application package, the applicant shall submit an air quality emission and impact analysis for the proposed activity if the project would result in long-term or permanent stationary (point or area) source or indirect mobile source emissions, or if the proposed activity would result in area source and direct mobile source emissions that exceed the annual *de minimis* emissions thresholds for any criteria air pollutant or its precursors.

25. *Transfer of LOPs.* If the permittee sells the property associated with a LOP, the permittee may transfer the LOP to the new owner by submitting a letter to Regulatory Division to validate the transfer. The letter may be submitted via email at [splregorcs@usace.army.mil](mailto:splregorcs@usace.army.mil). A copy of the LOP and the name and all available contact information, including company name, addresses, telephone numbers and e-mail, must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this LOP are still in existence at the time the property is transferred, the terms and conditions of this LOP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this LOP and the associated liabilities associated with compliance with its terms and conditions, the transferee must sign and date below.”

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

26. *Compliance Certification.* Each permittee who receives an LOP from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation within 45 days after completing construction activities. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the LOP. The certification document will include:

- a. A statement that the authorized activity was done in accordance with the LOP authorization, including any general or activity-specific conditions;

- b. A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- c. The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

The use and implementation of the LOP Procedures for Corps permit applications is contingent on compliance with the terms and conditions of the LOP Procedures. 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 \$22,321, per violation of a permit condition, to a maximum of \$55,801.

### C. SAMP Mitigation Framework

As described in the [SAMP document](#) and reiterated below, the following mitigation policies apply to LOPs (and Standard Individual Permits and General Permits, as appropriate) issued within the San Diego Creek Watershed.

Mitigation Policies –
<ol style="list-style-type: none"> <li>1. <i>Mitigation Sequencing.</i> Under the SAMP, the mitigation sequencing required pursuant to the CWA Section 404(b)(1) Guidelines (40 C.F.R. Part 230 and the MOA between EPA and the Department of the Army, dated February 6, 1990), whereby the discharge of dredged or fill materials into aquatic resources within the Corps jurisdiction (i.e., waters of the U.S.) must first be avoided and/or minimized to the maximum extent practicable, is being applied to the watershed scale as well as the site scale. An activity seeking authorization under the SAMP permitting framework and evaluated in this Program EIS/EIR would be deemed to have undertaken the requisite avoidance measures by avoiding aquatic resources identified as part of the Aquatic Resource Integrity Areas. Projects directly and permanently impacting substantial amounts of aquatic resources with moderately to well-developed wetland or riparian vegetation located outside of Aquatic Resource Integrity Areas could still need to demonstrate avoidance, but without a formal alternatives analysis under the LOP Procedures or RGP. Minimization measures would be met by demonstrating consistency with the LOP and RGP conditions. Compensatory mitigation would be required to offset any</li> </ol>

unavoidable impacts that would occur after avoidance and minimization measures have been implemented to the maximum extent practicable, pursuant to the 404(b)(1) Guidelines.

2. *No Net Loss in Acreage and Functions.* Consistent with the Corps-EPA MOA, Corps' RGL 02-02, and the [Final Mitigation Rule \(33 C.F.R. Parts 325 and 332 \[40 C.F.R. Part 230\]\)](#), overall acreage, services, and functions of wetlands should not be reduced within the Watershed on a program level. In consideration of the SAMP Process, permanent impacts to aquatic resources (wetland and non-wetland) shall be mitigated within the San Diego Creek Watershed. Final determination on the amount of required compensatory mitigation requires Corps approval, and must be, to the extent practicable, sufficient to replace lost aquatic resource functions.
  - a. Appropriate functional or condition assessment methods (e.g., the SAMP Landscape Level Functional Assessment, California Rapid Assessment Method (CRAM), or Hydrogeomorphic Approach (HGM)), or other suitable metrics should be used to evaluate the impact site and to determine suitable compensatory mitigation. If a functional or condition assessment, or other suitable metric is not used, a minimum one-to-one (1:1; acreage created and restored to acreage permanently impacted) or linear foot compensation ratio shall be used.
  - b. Compensatory mitigation sites shall be designed and maintained to avoid impacts to any existing wildlife movement corridor.
  - c. Upland or riparian buffers that provide habitat or corridors necessary to maintain or promote a suite of ecological functions of the aquatic resources may be required as part of a compensatory mitigation site and credit will be provided for such buffers.
3. *Preparation of a Mitigation Plan.* All habitat mitigation and monitoring plans shall comply with the requirements of the [Corps/EPA Final Mitigation Rule "Compensatory Mitigation for Losses of Aquatic Resources"](#) (33 C.F.R. Parts 325 and 332 [40 C.F.R. Part 230]) and the [Final 2015 Regional Compensatory Mitigation And Monitoring Guidelines for South Pacific Division USACE](#) (dated January 12, 2015, or as subsequently revised). The mitigation plan shall be reviewed in conformance with [SPD Uniform Performance Standards for Compensatory Mitigation Requirements \(QMS Procedure No. 12505\)](#).
4. *Prioritization of Mitigation Sites.* To the extent practicable, the selection of compensatory mitigation sites should be prioritized to support implementation of the Strategic Mitigation Plan, which is informed by [ERDC's Riparian Ecosystem Restoration Plan for the San Diego Creek Watershed](#).
5. *Recommended Restoration.* The Corps will evaluate restoration design plans for compensatory mitigation sites in consideration of the SAMP Strategic Mitigation Plan

and site selection and design criteria provided by [ERDC's Riparian Ecosystem Restoration Plan](#). The ERDC restoration plan provides recommended restoration goals in consideration of landscape setting. The Corps will also apply its Regulatory Program [Standard Operating Procedure for Evaluation of Proposed Compensatory Mitigation Sites \(12512-SPL\)](#).

6. *Calculating Compensatory Mitigation.* Projects that would result in unavoidable permanent impacts to aquatic resources shall provide compensatory mitigation in conformance with the following requirements. The Corps will determine mitigation ratios in consultation with the Department and the applicant in a manner to achieve no net loss of aquatic resource function and acreage in the Watershed, as discussed above (see No Net Loss in Acreage and Functions).
  - a. Mitigation Ratios. The Corps South Pacific Division's [Standard Operating Procedure for Determination of Mitigation Ratios](#) shall be used to determine appropriate mitigation ratios.
    - i. Assessment data for the riparian ecosystems as prepared by the Corps for the SAMP ([Landscape Level Functional Assessment](#)) are available from the Corps. The method used multiple indicators and indices of integrity to assess the riparian ecosystem condition in a watershed context. Expected loss and gain, measured in terms of functional units with respect to hydrology, water quality, and habitat indices at the impact and mitigation sites, will be used by the Corps in its quantitative analysis referenced as the Before-After-Mitigation-Impact (BAMI) procedure. CRAM or HGM data may be used to supplement the SAMP landscape-level data in that step.
    - ii. For rarer, non-riparian/riverine resources such as estuarine wetlands, alkali meadows, or vernal pools, the SAMP data do not apply. In such cases, the Corps will use a functional and acreage-based assessment to determine the appropriate mitigation ratios in accordance with the Corps' procedure for determining mitigation ratios. The Corps recommends the applicant conduct an assessment using generally acceptable methodologies such as the CRAM, approved site-level standardized monitoring protocols, or HGM to evaluate the baseline conditions of the impact and potential mitigation sites.
    - iii. As a reminder, when using the integrity indices-based ratios, required mitigation shall always be greater than or equal to 1:1 in terms of acreage, even if the actual calculated ratios to achieve functional replacement are less than 1:1, which would most likely occur when the impacted resources have low functions as compared to the functions of the mitigation site. If the calculated ratio is less than 1:1 using an approved assessment method, mitigation at 1:1 replacement of acreage will generate a functional gain that exceeds the calculated ratio and will reduce additional mitigation requirements for any temporal loss.

- b. Offsets for Temporal Loss. Temporary and permanent impacts to riparian habitat authorized by LOPs and Standard Individual Permits shall be compensated through consideration of the time needed to fully recover temporarily impacted functions. Temporal loss will apply when compensatory mitigation does not occur prior to or concurrent with impacts, and only to the habitat index, since the other two indices (i.e., water quality and hydrology) should not have a temporal lag. In general, mitigation for temporal loss will be factored into the ratio per the Corps Standard Operating Procedure referenced above. Compensatory mitigation required above replacement (1:1) may be satisfied through additional restoration and/or enhancement efforts within the Aquatic Resource Integrity Areas of the Watershed, or by contribution of fees equivalent to per acreage costs to a Corps-approved third-party mitigation program with projects within the Watershed.
- c. Delays in Implementation of Compensatory Mitigation. Implementation of compensatory mitigation shall begin, to the maximum extent practicable, before or concurrent with the activity causing the authorized impacts to jurisdictional areas, and according to a Corps-approved plan and construction schedule. The Corps expects the permittee to schedule the installation of mitigation projects to avoid and minimize temporal losses in function, such that offsite mitigation shall be initiated upfront, and onsite mitigation shall be scheduled to account for project site readiness.
  - i. To offset temporal losses of aquatic functions resulting from the permitted activity, the Corps may require, on a case-by-case basis, additional compensatory mitigation for delayed implementation of compensatory mitigation beyond the Corps-approved final construction schedule that extends installation into the next year's growing season<sup>3</sup>. At such time the permittee anticipates any delays in the schedule for implementing the mitigation, the permittee must notify the Corps and the Department to provide explanations for the delay and the new expected start date. The Corps will informally consult with the Department and the permittee to determine what additional compensatory mitigation or additional monitoring time, if any, will be required to correct any environmental damage due to the temporal lag between functional losses at the impacted habitat and functional gains at the mitigation site not already accounted for in the previously approved mitigation ratio.
  - ii. Factors the Corps will consider include timing of impacts, time to implementation of mitigation, certainty of completion, assessment of functions and services at impacted site, and time to develop targeted functions at the compensatory mitigation site.
  - iii. The Corps will give due consideration to special circumstances and may waive the requirement for additional compensatory mitigation in cases where no substantive temporal loss to functions or services occurred, or where delayed compensatory mitigation was a result of natural causes beyond the permittee's

<sup>3</sup> Generally, the growing season for non-tidal wetland and riparian systems not subject to snowfall extends from March through September, although the season may begin earlier at lower latitudes and altitudes.



control, including without limitation, fire, flood, storm, and earth movement, or as a result of any prudent action taken by the permittee under emergency conditions to prevent, abate, or mitigate significant injury to persons and/or the property resulting from such causes. [Note: Any action involving a discharge of dredged or fill material into aquatic resources within the Corps' jurisdiction that is undertaken during emergency conditions must receive prior authorization from the Corps.]

- iv. Accordingly, should any additional mitigation be required, the Corps will modify the terms and/or special conditions of the permit to reflect any changes to the mitigation requirements (33 C.F.R. §325.7) to remedy any non-compliance with permit conditions.
- v. The Corps shall consider additional or protracted delays in implementation, permittee non-responsiveness, or failure to take agreed upon corrective measures as permit non-compliance. The Corps would pursue all available remedies under its authority for supervision of authorized activities (33 C.F.R. §326.4), including, but not limited to the following actions: invoking the financial assurances, i.e., calling in part of or the entire performance bond, escrow account, or letter of credit to initiate corrective measures; suspending or revoking the permit (33 C.F.R. §325.7); and pursuing Class I administrative penalties (33 C.F.R. §326.6).

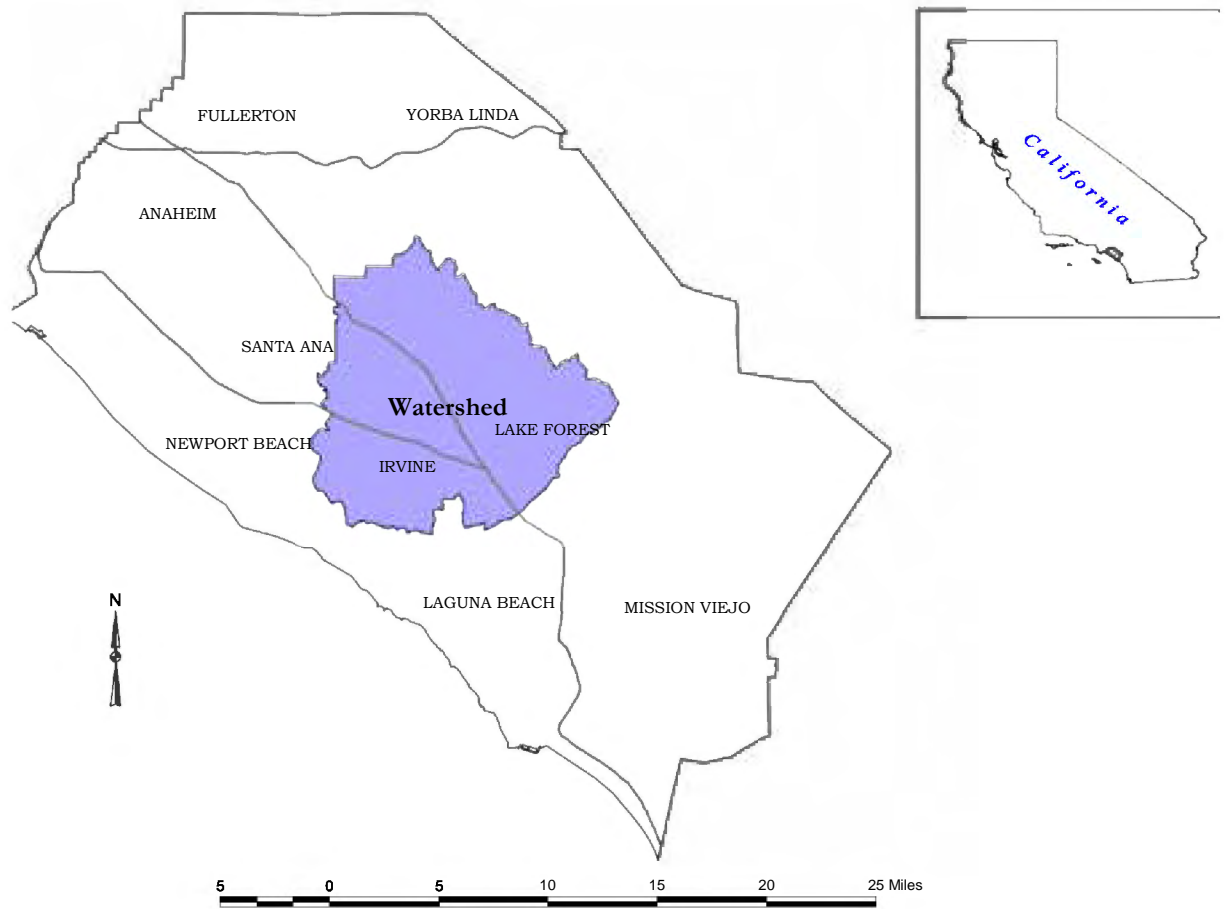
7. *Temporary Impacts.* The following mitigation measures would be required for projects or activities with temporary impacts to aquatic resources.

- a. *Restoration On-Site.* Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the U.S., dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate (see 7.c.). Re-vegetation shall commence within three months after restoration of pre-construction elevations and be completed within one growing season. If re-vegetation cannot start due to seasonal conflicts (e.g., impacts occurring in late fall/early winter shall not be re-vegetated until seasonal conditions are conducive to re-vegetation), exposed earth surfaces shall be stabilized immediately with jute-netting, straw matting, or other applicable best management practices to minimize any erosion from wind or water.
- b. *Offsets for Temporal Loss.* Temporary impacts to riparian habitat authorized by LOPs and Standard Individual Permits shall be compensated through consideration of the time needed to recover fully the temporarily impacted functions. Temporal loss will apply when compensatory mitigation does not occur prior to or concurrent with impacts, and will only apply to the habitat index, since the other two indices (i.e., water quality and hydrology) should not have a temporal lag. In general, the ratios of compensatory mitigation described above will apply to offset temporal losses of habitat function.

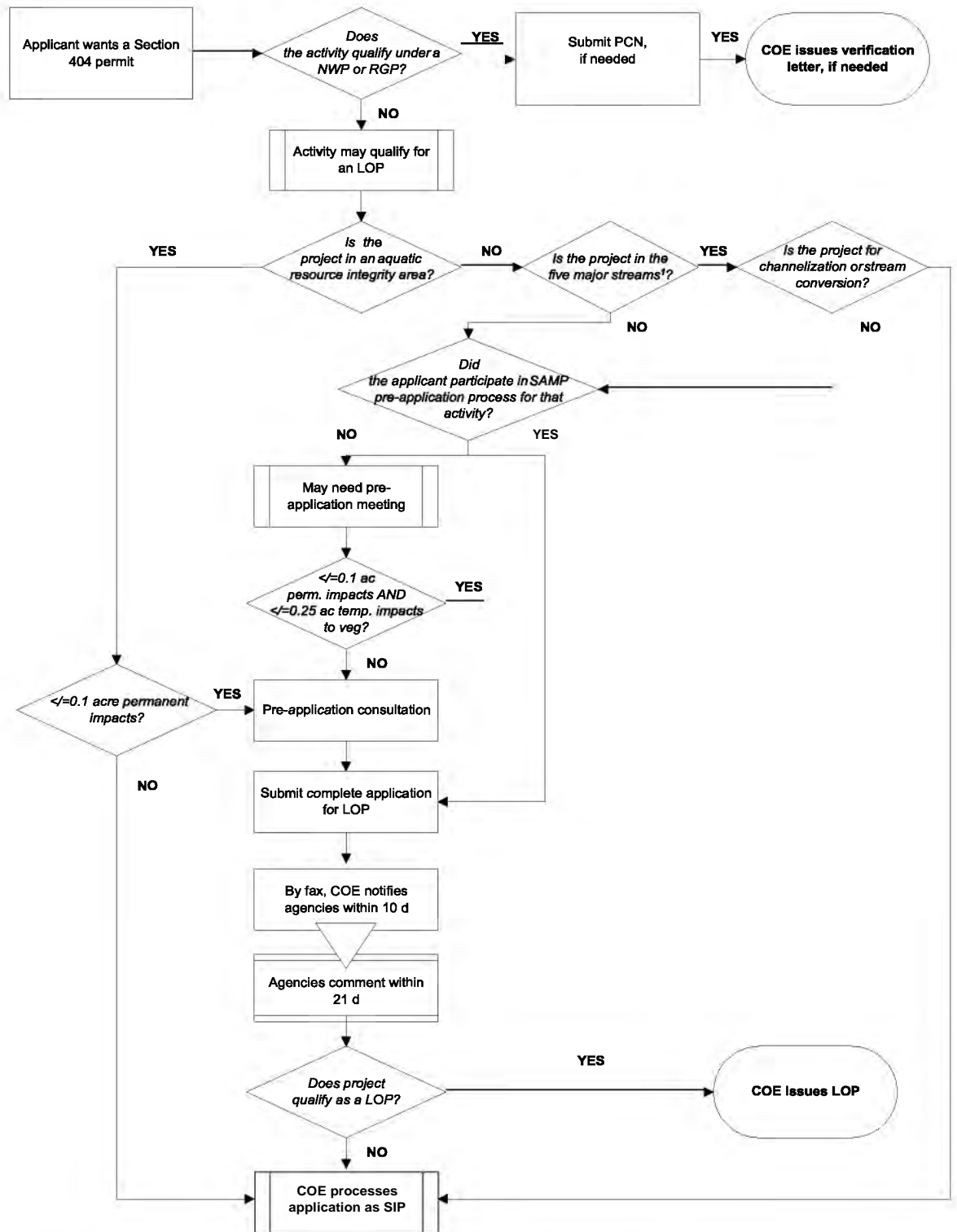
c. Preparation of a Revegetation Plan. All on-site revegetation efforts require preparation of a revegetation plan. The plan must be approved by the Corps prior to implementation. Revegetation is a minimization measure and does not necessitate preparation of a compensatory mitigation plan.

8. *Long-term Conservation.* Any compensatory mitigation associated with permanent, unavoidable jurisdictional impacts within the Watershed will require legal assurances to ensure the long-term protection of the site's aquatic resources against degradation of integrity at the Watershed scale over time, unless otherwise approved by the Corps. Legal assurances include, but are not limited to conservation easements, restrictive covenants, land dedications, and implementing agreements. The [Final Mitigation Rule \(33 C.F.R. §332.7\)](#) and Section 3.6(h)(4) of the [SAMP document](#) contain more details on legal assurances as well as requirements for long-term conservation management (including in-perpetuity maintenance, monitoring, identification of conservation manager, estimate of annual costs and long-term funding mechanism).

9. *Third-Party Mitigation Program or Mitigation Bank.* An alternative method to satisfy compensatory mitigation requirements is the purchase of credits or payment of fees to a Corps-approved third-party mitigation program within the Watershed, including a mitigation bank, conservation bank, or for the enhancement, establishment, or restoration of identified offsite aquatic resources. Use of an approved third-party mitigation program conducting preservation and enhancement efforts for identified sites would be available to offset temporal loss instead of contracting with a separate conservation manager or establishing a separate endowment for individual mitigation sites. Additionally, compensatory mitigation requirements for permanent impacts may be satisfied by contribution to a Corps-approved third-party mitigation bank that is conducting establishment (creation) and/or restoration efforts in the Watershed. All third-party mitigation programs must comply with the requirements of the [Corps/EPA Final Mitigation Rule \(33 C.F.R. §332.8\)](#).



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



<sup>1</sup> Five streams: Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek

**Figure 2. Generalized flow chart for the Corps Section 404 permitting procedures within the San Diego Creek Watershed after adoption of the SAMP.**

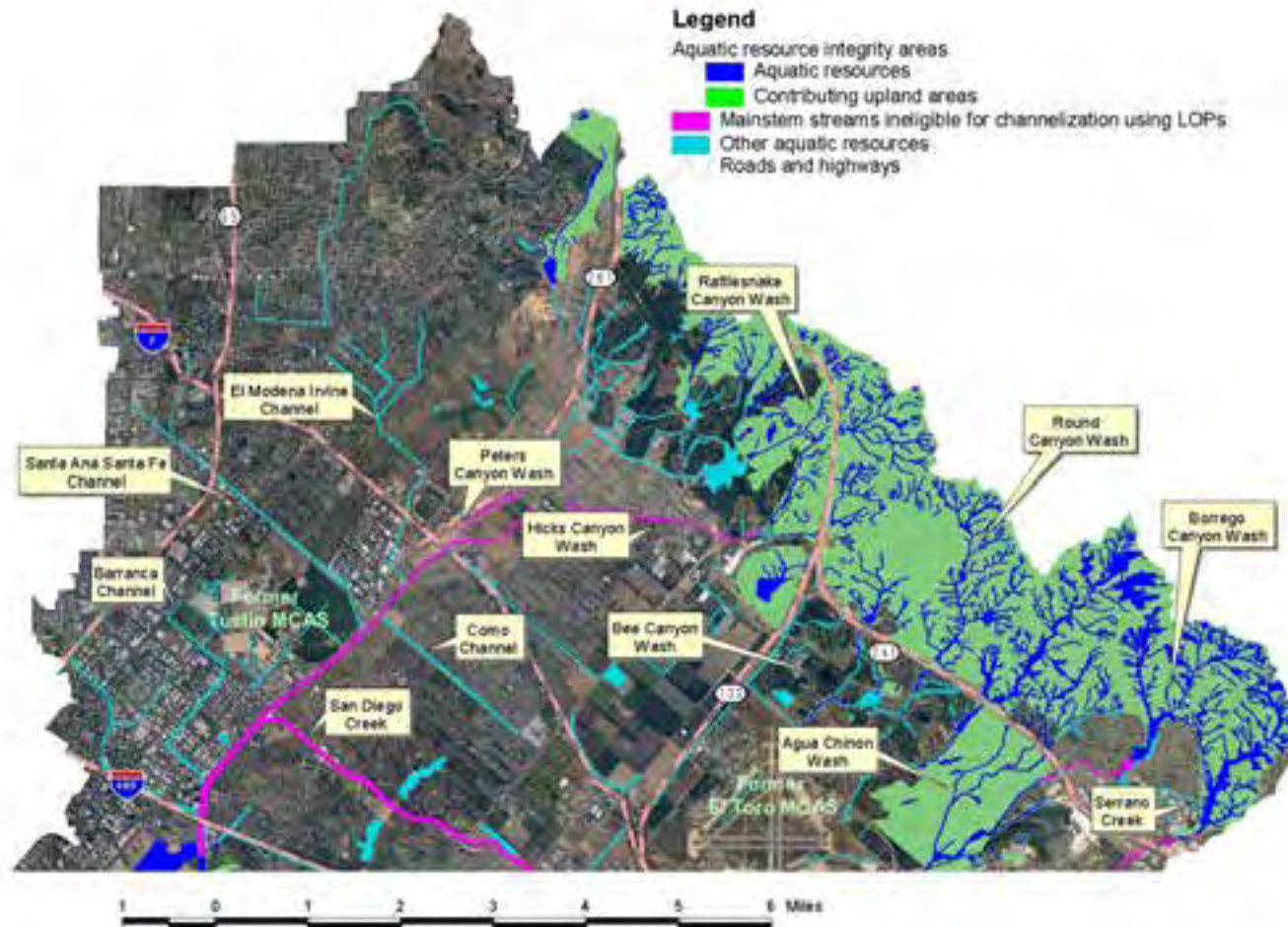


Figure 3. Depiction of the northern portion of the San Diego Creek Watershed with the SAMP permitting framework overlaid. Aquatic Resource Integrity Areas and mainstem streams ineligible for channelization using LOP Procedures are shown.



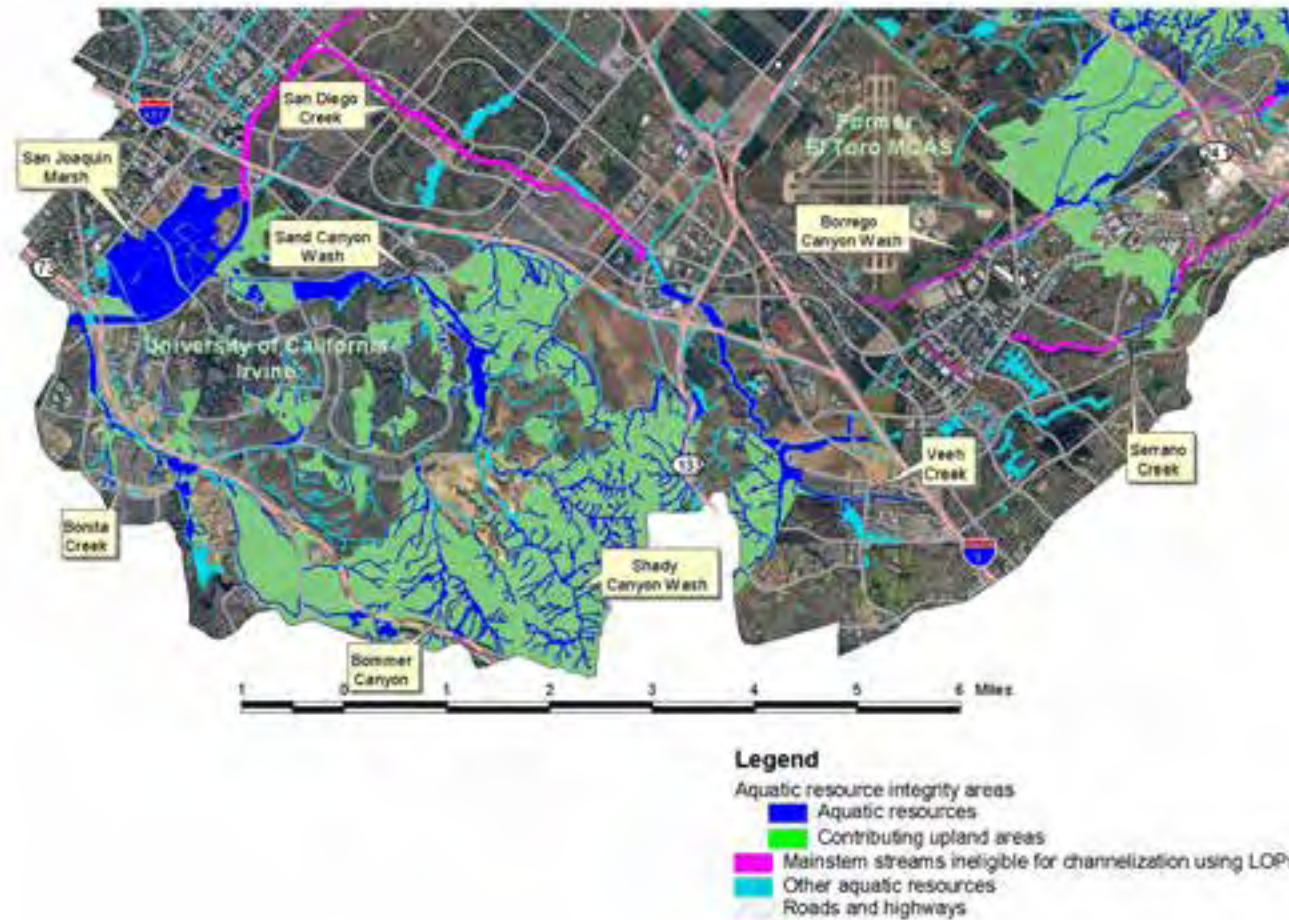


Figure 4. Depiction of the southern portion of the San Diego Creek Watershed with the SAMP permitting framework overlaid. Aquatic Resource Integrity Areas and mainstem streams ineligible for channelization using LOP Procedures are shown.

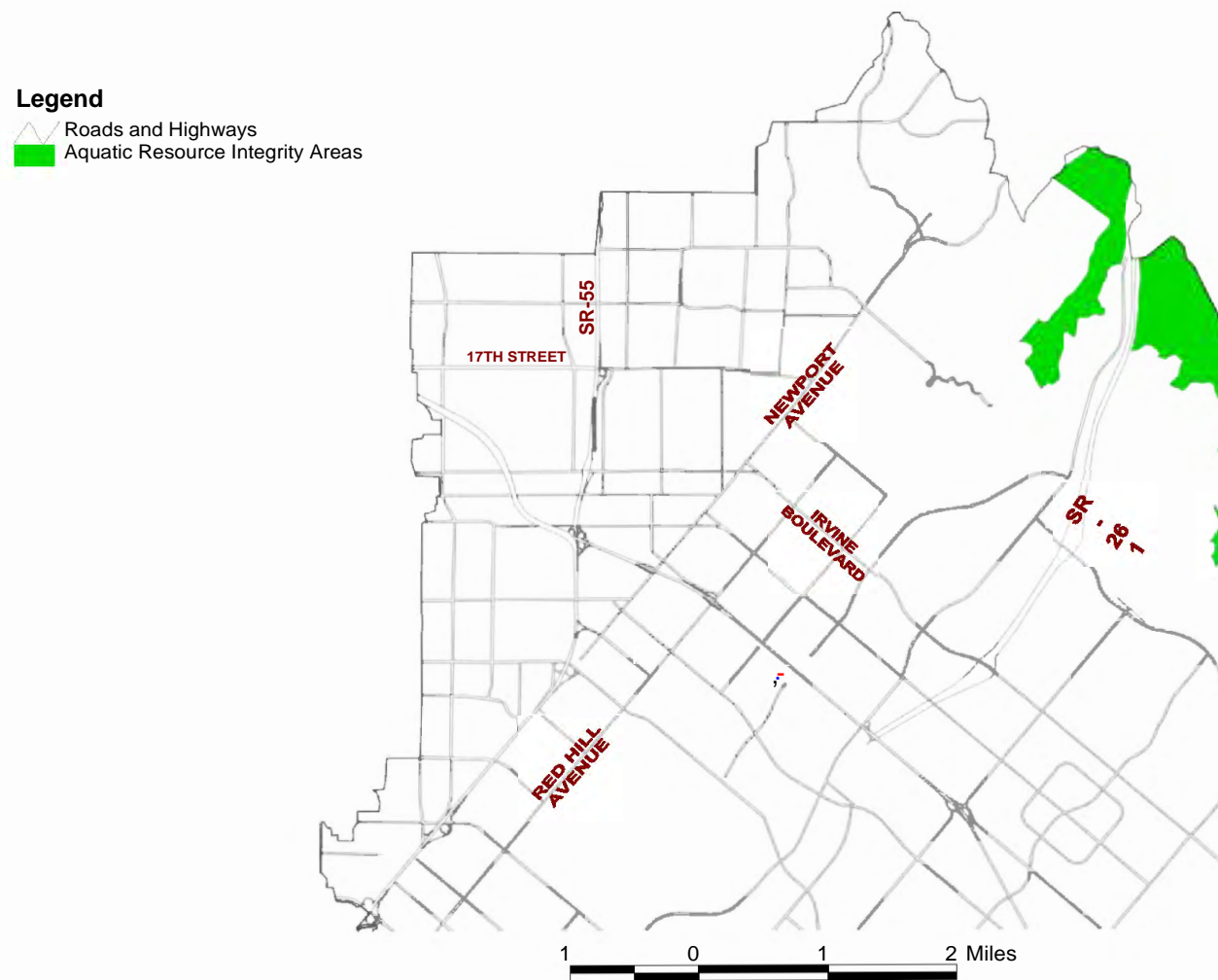


Figure 5. Detail of the Aquatic Resource Integrity Areas in the northwestern portion of the San Diego Creek Watershed.

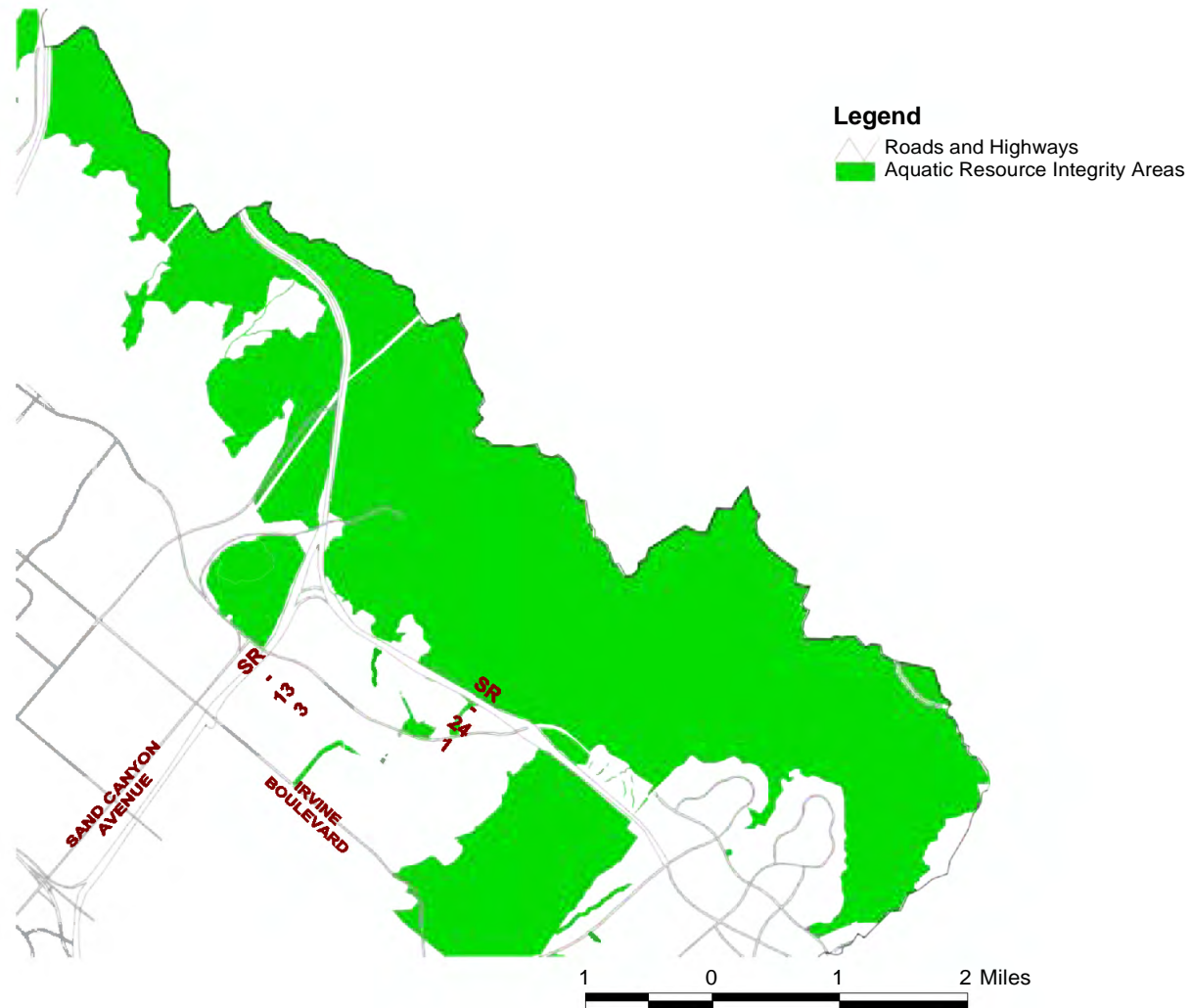


Figure 6. Detail of the Aquatic Resource Integrity Areas in the northeastern portion of the San Diego Creek Watershed.



Figure 7. Detail of the Aquatic Resource Integrity Areas in the southwestern portion of the San Diego Creek Watershed.



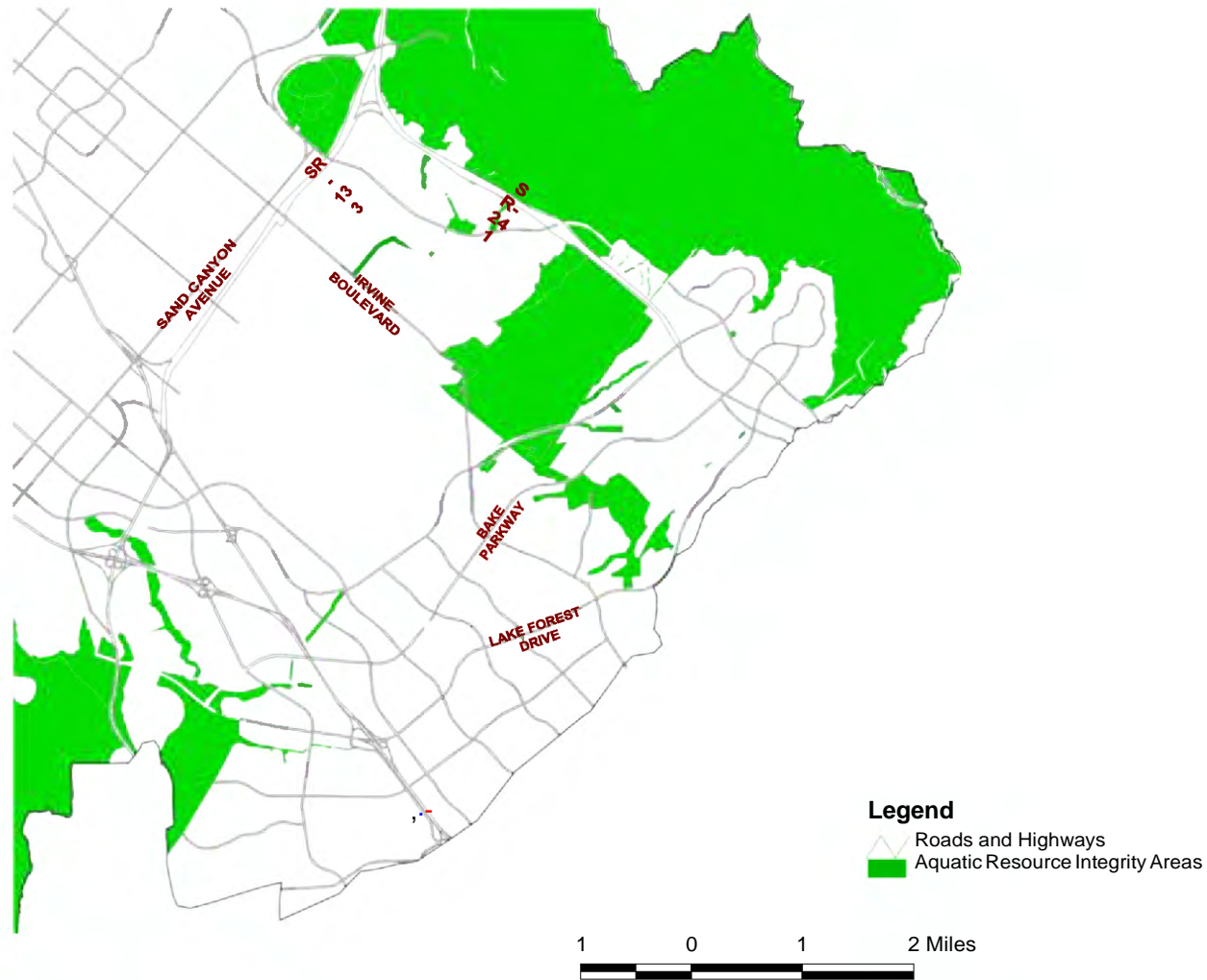


Figure 8. Detail of the Aquatic Resource Integrity Areas in the southeastern portion of the San Diego Creek Watershed.





**DEPARTMENT OF THE ARMY  
REGIONAL GENERAL PERMIT NUMBER 74  
FOR  
MAINTENANCE ACTIVITIES  
WITHIN  
SPECIAL AREA MANAGEMENT PLAN AREAS  
IN ORANGE COUNTY, CALIFORNIA**

**PERMITTEE:** Individuals, public and private entities, and government agencies seeking authorization for activities to occur within the boundaries of the San Diego Creek Watershed, the San Juan Creek, and Western San Mateo Creek Watersheds, Orange County, California

**PERMIT NUMBER:** SPL-2010-01022-ERS

**ISSUING OFFICE:** Los Angeles District

**ISSUANCE DATE:** TBD

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

After you receive written approval that your project complies with the terms and conditions of this RGP from this office, you are authorized to perform work in accordance with the General Conditions specified below and any project-specific conditions.

**PROJECT DESCRIPTION:**

The District Engineer (DE) of the U.S. Army Corps of Engineers, Los Angeles District, hereby issues Regional General Permit (RGP) No. 74. RGP 74 authorizes discharges of dredged or fill material resulting in temporary impacts up to ½ acre of jurisdictional waters of the United States ("waters of the U.S.") in eligible areas, no more than ¼ acre of which may be vegetated with native riparian and/or wetland vegetation. No permanent impacts to waters of the U.S., including impacts from fills, flooding, excavation beyond a Corps Regulatory Division-approved maintenance baseline, or drainage are permitted under this RGP.

## **Definitions:**

1. **Temporary Impact:** Minor impacts to aquatic resources that occur for a short-duration during authorized activities wherein, following completion of the permitted work, the affected aquatic resources are completely restored to pre-construction elevations and contours, conditions and functionality.
2. **Permanent Impact:** Permanent impacts are discharges dredged or fill material that permanently change an aquatic area to dry land, increase the bottom elevation of a waterbody, or permanently change the use of a waterbody (Federal Register, Vol. 82, No. 4, p. 2006).
3. **Maintenance Baseline:** 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 be available for use in this Watershed. The definition of baseline maintenance as defined in NWP 31 (82 FR 1991) 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 adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. This RGP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any activity-specific conditions. 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. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

**Eligible Activities:** The temporary discharge of dredged or fill material into waters of the U.S. associated with the following activities may be authorized under this RGP:

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 this office with a complete application. This office 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 project 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 General Condition No. 4 for Notification requirements).

#### **PROJECT LOCATION/ELIGIBLE AREAS:**

Areas eligible for the use of this Regional General Permit (RGP) are limited to jurisdictional waters of the U.S. located within selected areas of the San Diego Creek Watershed Special Area Management Plan (SAMP) area and the San Juan Creek/Western San Mateo Creek Watershed SAMP area, in Orange County, California, as described in General Condition No. 3 below. The San Diego Creek Watershed SAMP area includes portions of the cities of Santa Ana, Orange, Tustin, Laguna Hills, Newport Beach, Irvine, Lake Forest, Laguna Woods, and unincorporated areas of Orange County. The San Juan Creek/Western San Mateo Creek Watershed SAMP area includes portions of the cities of Mission Viejo, Rancho Santa Margarita, San Juan Capistrano, Dana Point, and Laguna, and unincorporated areas of Orange County. This RGP is available for use both within and outside the Rancho Mission Viejo (RMV) Planning Area of the San Juan Creek/Western San Mateo Creek Watershed SAMP area.

#### **ADDITIONAL INFORMATION:**

RGP 74 is one part of the permitting frameworks developed for the Corps' two Special Area

Management Plans (SAMPs) in Orange County, California: the San Diego Creek Watershed SAMP and the San Juan Creek/Western San Mateo Creek Watersheds SAMP. Specifically, the SAMP permitting frameworks include this RGP 74 and Clean Water Act section 404 letter of permission procedures in combination with the use of selected nationwide permits and standard individual permits. The SAMP permitting frameworks consider the type of regulated activity, permanency of impacts, and location of proposed activity within the SAMP Watersheds, that is, whether the activity would affect sensitive aquatic resources also identified in the SAMPs as aquatic resource integrity areas. Watershed-specific mitigation policies apply within the SAMP Watersheds.

## **GENERAL CONDITIONS:**

1. **Expiration:** RGP 74 will expire five years from the date of its authorization, on **August 3, 2025**. Further reauthorizations of the RGP will be contingent upon compliance with permit conditions, including the provision of notifications. Failure to comply with these conditions could result in the suspension or revocation of the permit prior to its expiration date, or its non-renewal.
2. **Impact Limits:** The RGP authorizes up to  $\frac{1}{2}$  acre of temporary impacts, of which up to  $\frac{1}{10}$  acre may be vegetated by predominantly native riparian and/or wetland vegetation. Non-native riparian and/or wetland vegetation does not count to the  $\frac{1}{10}$ -acre threshold. For facilities with an established maintenance baseline, more than  $\frac{1}{10}$  acre of native riparian and/or wetland 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 in jurisdictional areas located outside of sensitive aquatic resources identified as Aquatic Resource Integrity Areas within the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watershed SAMP areas (outside the RMV Planning Area; (Figures 2-8 and Figure 10, respectively). This RGP shall also be available for use in jurisdictional areas located outside Aquatic Resource Conservation Areas within the San Juan Creek and Western San Mateo Creek Watersheds (within the RMV Planning Area; Figure 11).
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:
  - a. Name, address and telephone numbers of the applicant, and appropriate point of contact and their address and phone number;
  - b. Project description of proposed activities;
  - c. A delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the

- delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 15-day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
- d. Project plans that shall include a pre-project site description that is adequate to document resource conditions at the site and provide a comparison of pre- and post-project conditions;
  - e. Pre-project photographs of the project site
  - f. 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;
  - g. Location coordinates: latitude/longitude or UTM's;
  - h. Volume, type and source of material to be temporarily placed into waters of the United States;
  - i. Total area of waters of the United States to be directly and indirectly affected; and
  - j. Proposed project schedule.
  - k. Notification requirements for activities potentially affecting endangered species, essential fish habitat, or historic properties as identified in General Conditions 19, 20, and 21, respectively.
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, 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 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 materials 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 (per section 307 of the Clean Water Act).
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,



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.

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. (See General 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:** The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter preserved waters of the U.S. and riparian wetland/habitat areas shown on attached Figure 1. Adverse impacts to waters of the U.S. beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil, or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.
13. **Avoidance of Breeding Season:** With regard to federally listed avian species, avoidance of breeding season requirements shall be those specified in the Federal Endangered Species Act section 7 consultation for the RGP (See General Condition 19). For all other avian 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, in accordance with the Department's WSAA Process and a signed agreement with conditions prescribing procedures for grading of mitigation sites or biological surveys and time restrictions.
14. **Exotic Species Management:** All giant reed (*Arundo donax*), salt cedar (*Tamarix spp.*), and

castor bean (*Ricinus communis*) , in addition to other invasive non-native plants categorized as ““High” on the California Invasive Plant Council’s (Cal-IPC) Invasive Plant Inventory (<http://www.cal-ipc.org/ip/inventory/index.php#categories>), 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 anytime.
16. **Posting of Conditions:** A copy of the RGP General 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.
17. **Water Quality:** An individual section 401 water quality certification must be obtained (see 33 C.F.R. §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 directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.
  - 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. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.
  - 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 ESA Section 7 consultation has been completed.

- d. As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to RGPs.
- e. Authorization of an activity by an RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. 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, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- f. If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed RGP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with their pre-construction notification. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed RGP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed RGP activity or whether additional ESA section 7 consultation is required.
- g. Information on the location of threatened and endangered species and their critical

habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at <http://www.fws.gov/carlsbad/> and <http://www.nmfs.noaa.gov/pr/species/esa/>, respectively.

- h. Activities within the San Diego Creek Watershed authorized under this RGP shall comply with the following applicable conservation measures resulting from the Corps informal Section 7 consultation (FWS-OR-08B0392-08I0418) for the RGP and LOP Procedures within the San Diego Creek Watershed to ensure the activity will not adversely affect federally listed species:
  - i. Removal of habitat for coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher) within non-Reserve areas of the Orange County Central-Coastal Natural Communities Conservation Planning Subregional Plan/Habitat Conservation Plan (NCCP/HCP) will follow the Construction and Minimization Measures for the NCCP/HCP, or the Orange County Southern Subregion NCCP/HCP;
  - ii. Removal of suitable habitat for the gnatcatcher and construction work within 300 feet of suitable habitat for the gnatcatcher will occur outside the gnatcatcher breeding season between February 15 and August 15. If work is necessary within 300 feet of suitable habitat for gnatcatcher during the breeding season, a qualified biologist will perform protocol surveys in the area to determine whether any nesting gnatcatchers are present. If nests are absent, work will continue. If a nest is present, the permittee shall notify the Corps, the Department, and the Service of the location of the nest, a 300-foot buffer around the nest will be clearly demarcated, and the area avoided until the nest is abandoned. A biological monitor with authority to stop construction will be present onsite during breeding-season construction to ensure the limits of construction do not encroach into suitable gnatcatcher habitat or within 300 feet of a nesting gnatcatcher;
  - iii. Removal of suitable habitat for the least Bell's vireo (LBV) and construction work within 300 feet of suitable habitat for the LBV will occur outside the LBV breeding season between March 15 and September 15. If work is necessary within 300 feet of suitable LBV habitat during the breeding season, a qualified biologist will perform protocol surveys in the area to determine whether any nesting LBVs are present. If nests are absent, work will continue. If a nest is present, the permittee shall notify the Corps, the Department, and the Service of the location of the nest, a 300-foot buffer around the nest will be clearly demarcated, and the area avoided until the nest is abandoned. A biological monitor with authority to stop construction will be present onsite during breeding-season construction to ensure the limits of construction do not encroach into suitable LBV habitat or within 300 feet of a nesting LBV;
  - iv. Removal of suitable habitat for the southwestern willow flycatcher (flycatcher) and construction work within 300 feet of suitable habitat for the flycatcher will occur outside the flycatcher breeding season between May 15 and July 31. If work is necessary within 300 feet of suitable flycatcher habitat during the

breeding season, a qualified biologist will perform protocol surveys in the area to determine whether any nesting flycatchers are present. If nests are absent, work will continue. If a nest is present, the permittee shall notify the Corps, the Department, and the Service of the location of the nest, a 300-foot buffer around the nest will be clearly demarcated, and the area avoided until the nest is abandoned. A biological monitor with authority to stop construction will be present onsite during breeding-season construction to ensure the limits of construction do not encroach into suitable flycatcher habitat or within 300 feet of a nesting flycatcher; and

- v. If vernal pools are observed within a proposed project site under the RGP, vernal pool/fairy shrimp protocol surveys will be performed and the permittee shall notify the Corps, the Department, and the Service of the results prior to initiating any ground disturbance.
20. **Essential Fish Habitat:** A pre-construction notification shall be submitted to the Corps Regulatory Division for any activity that may result in impacts to eelgrass (*Zostera marina*). In tidally influenced areas, a pre-construction eelgrass survey shall be conducted in accordance with the California Eelgrass Mitigation Policy (CEMP) ([http://www.westcoast.fisheries.noaa.gov/publications/habitat/california\\_eelgrass\\_mitigation/Final\\_CEMP\\_October\\_2014/cemp\\_oct\\_2014\\_final.pdf](http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/Final_CEMP_October_2014/cemp_oct_2014_final.pdf)) and submitted to the Corps Regulatory Division and NMFS before project-related activities commence. In addition, a pre-construction Caulerpa (*Caulerpa taxifolia*) survey shall be conducted in accordance with the Caulerpa Control Protocol ([http://www.westcoast.fisheries.noaa.gov/publications/habitat/caulerpa\\_taxifolia/caulerpa\\_control\\_protocol\\_4\\_.pdf](http://www.westcoast.fisheries.noaa.gov/publications/habitat/caulerpa_taxifolia/caulerpa_control_protocol_4_.pdf)) and submitted to the Corps Regulatory Division and NMFS before project-related activities commence. No work shall be conducted until a Notice to Proceed is issued by the Corps Regulatory Division. If the pre-construction eelgrass survey demonstrates eelgrass presence within the project vicinity, a post-project survey shall be conducted and impacts to eelgrass mitigated in accordance with the CEMP. In the event that Caulerpa is detected within the project area, the Permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory Division, in consultation with NMFS and CDFW.

## 21. **Historic Properties:**

- a. In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places (Register), 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. The district engineer will verify that the appropriate documentation has



been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

- c. Non-federal permittees must submit with their pre-construction notification 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 Register (see 33 C.F.R. §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 identification efforts, the district engineer shall determine whether the proposed activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might 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 NHPA section 106 consultation has been completed.
- d. If NHPA section 106 consultation is required, 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 section 110k of the NHPA [54 U.S.C. 306113] 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, 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.

22. **Mitigation Policy:** Compensatory mitigation will not be necessary unless required through General Conditions 12, 17, 18, 19, 20, or 21. Should compensatory mitigation be required within the San Diego Creek Watershed, it shall be performed in conformance with the Mitigation Framework for the San Diego Creek Watershed SAMP, as described in the Special Public Notice for the LOP procedures (Corps, March 7, 2008), revised LOP procedures (November 2020), and Corps SAMP document (December 2009) for the San Diego Creek Watershed SAMP. Should compensatory mitigation be required within the San Juan Creek/Western San Mateo Creek Watersheds, it shall be performed in conformance with the Mitigation Framework for the San Juan Creek/Western San Mateo Creek Watersheds SAMP, as described in the Special Public Notice for the LOP procedures (Corps, November 21, 2005) and revised LOP procedures (November 2020).

**ACTIVITY-SPECIFIC SPECIAL CONDITIONS:** For each project, additional activity-specific permit Special Conditions may be included as necessary.

**COMPLIANCE:** The use and implementation of RGP 74 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 authorization for that permittee 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 \$22,321, per violation of a permit condition, to a maximum of \$55,801.

**FURTHER INFORMATION:**

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:  
  
(X) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).  
(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

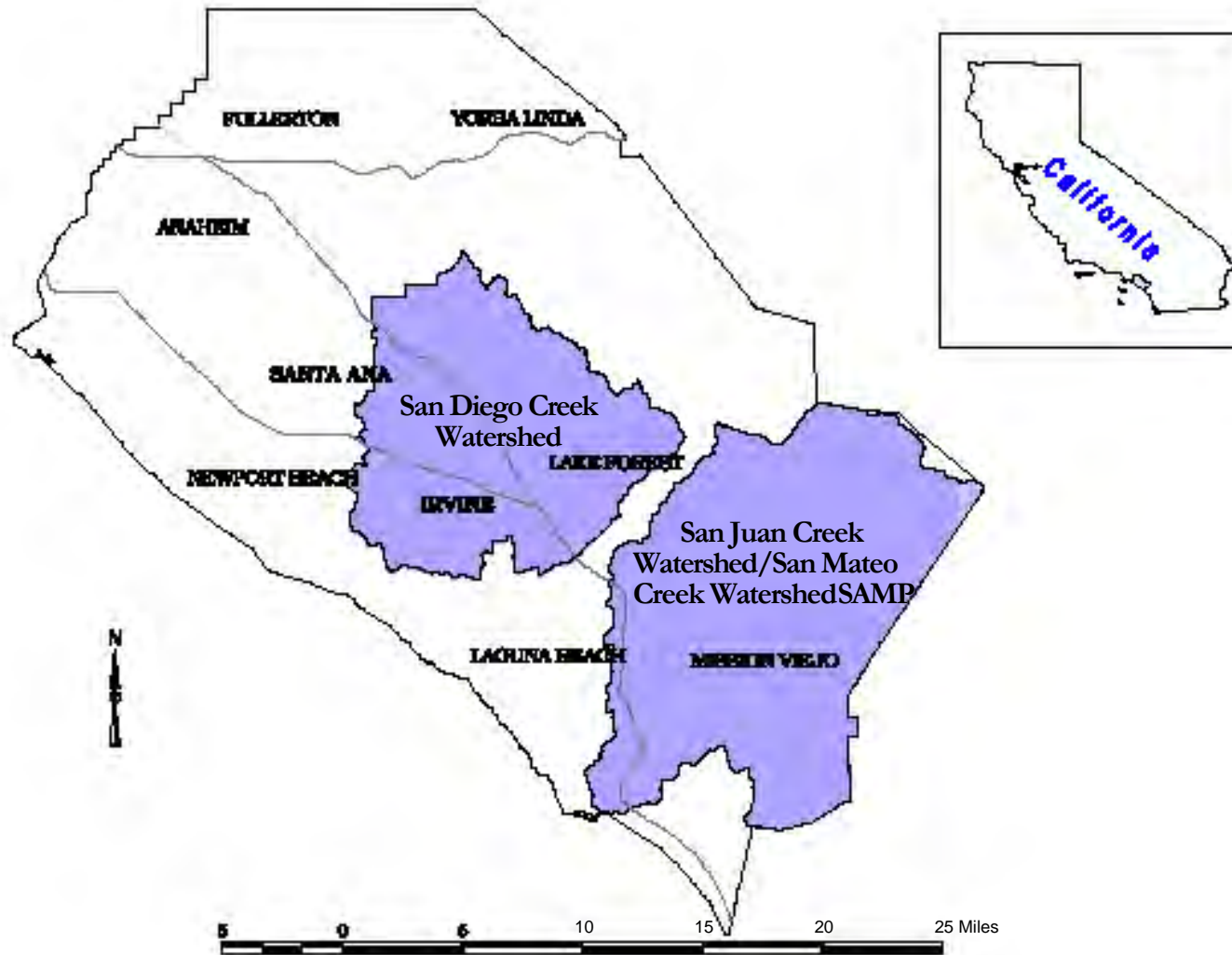
This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

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Corice J. Farrar  
Chief, South Coast Branch  
Regulatory Division

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DATE



**Figure 1. The Special Area Management Plan study areas for the watersheds of San Diego Creek, San Juan Creek, and parts of San Mateo Creek in Orange County, California.**



**Figure 2. San Diego Creek Watershed showing SAMP aquatic resource integrity areas.**



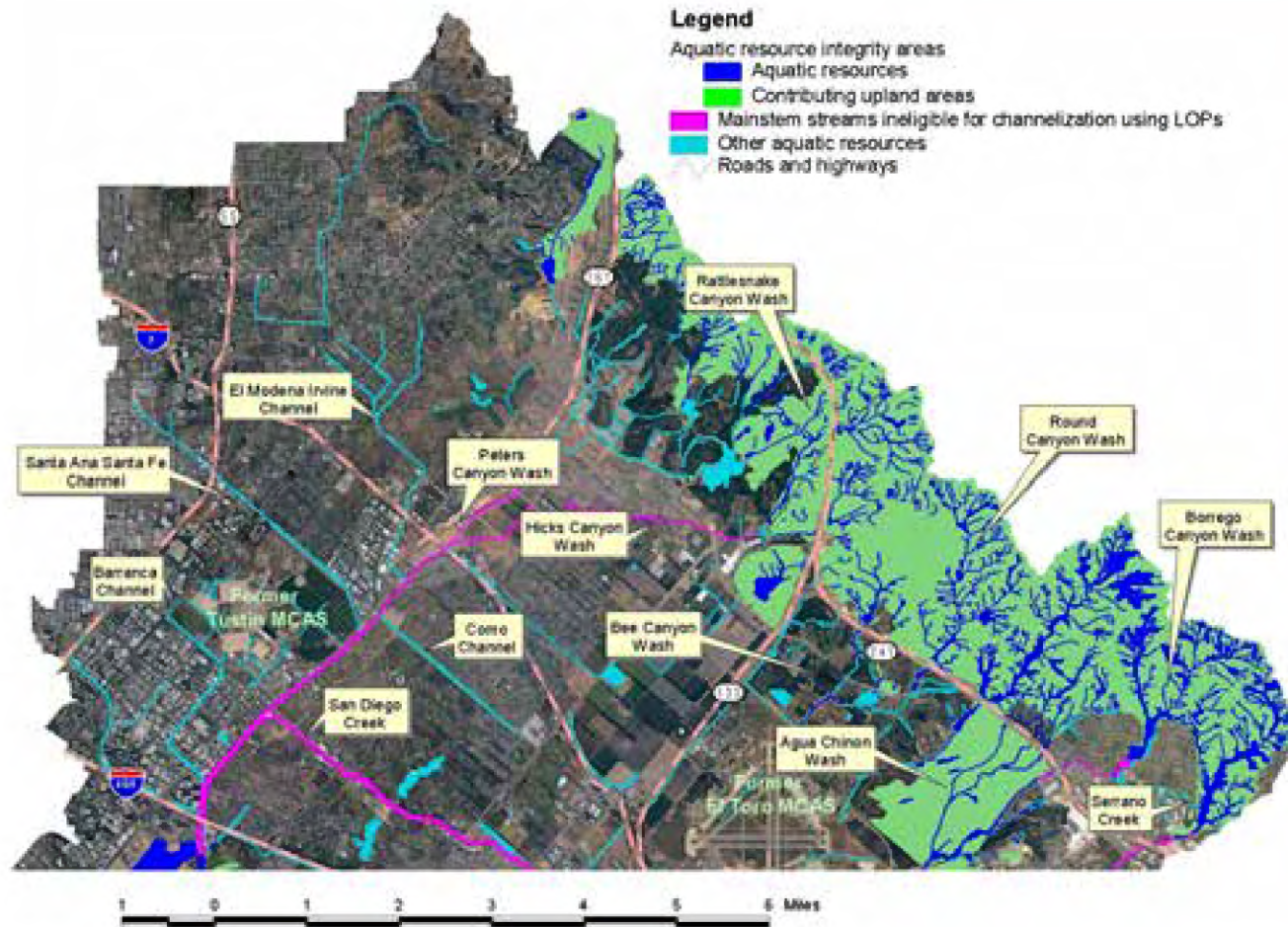



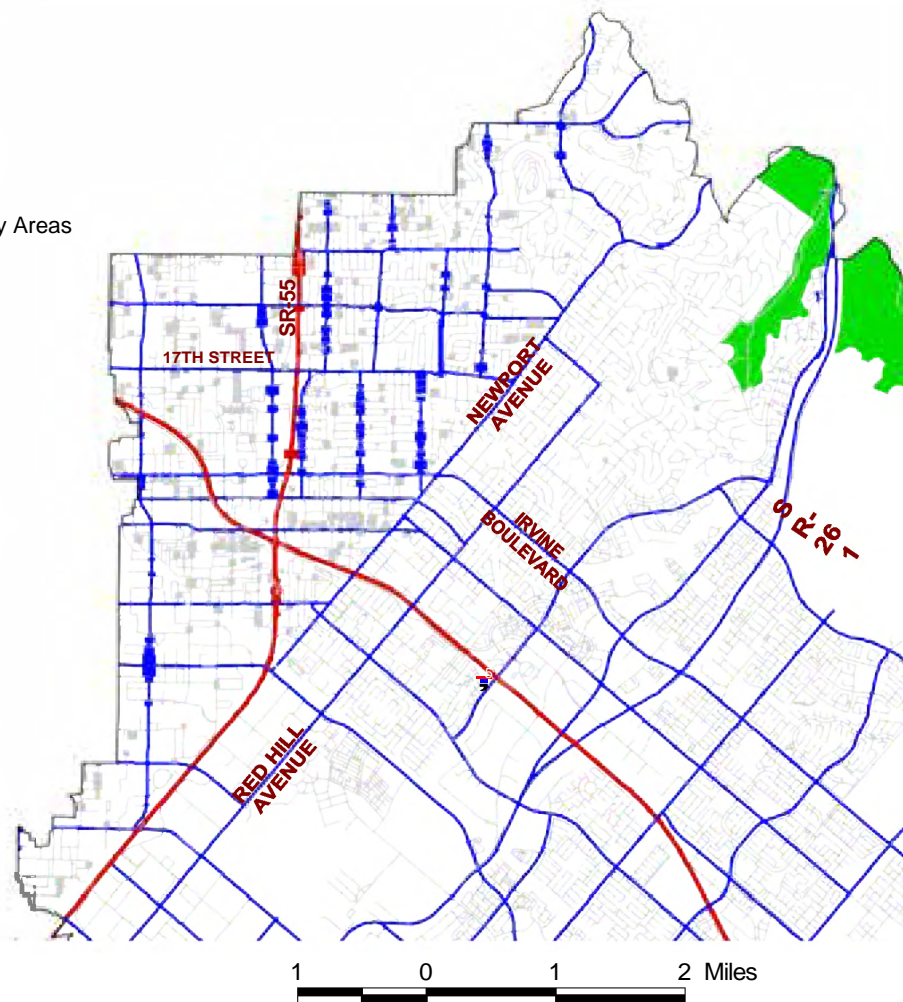
Figure 3. Depiction of the northern portion of the San Diego Creek Watershed with the SAMP permitting framework overlaid. RGP would be eligible for use in jurisdictional waters located outside the aquatic resource integrity areas. See Figures



**Figure 4. 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.**

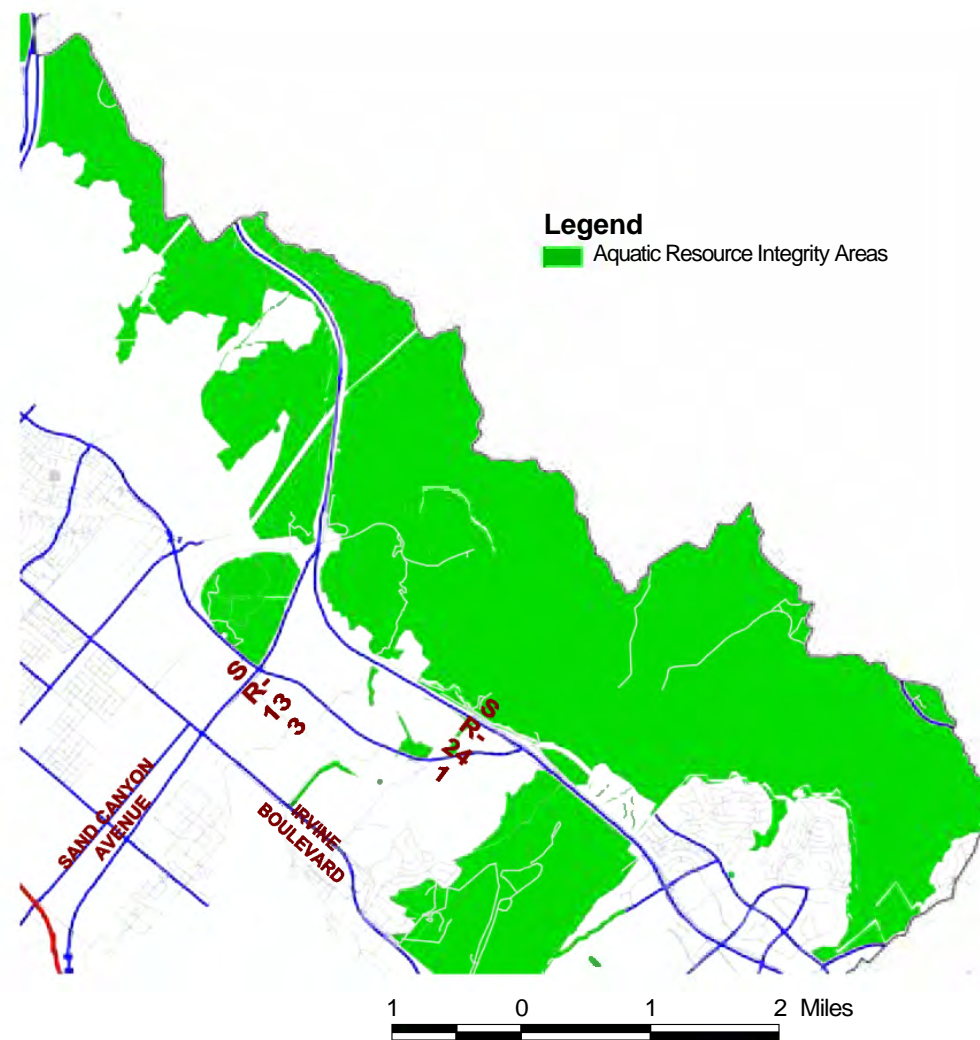
**Legend**

 Aquatic Resource Integrity Areas



**Figure 5. Aquatic resource integrity areas in the northwestern portion of the San Diego Creek Watershed.**

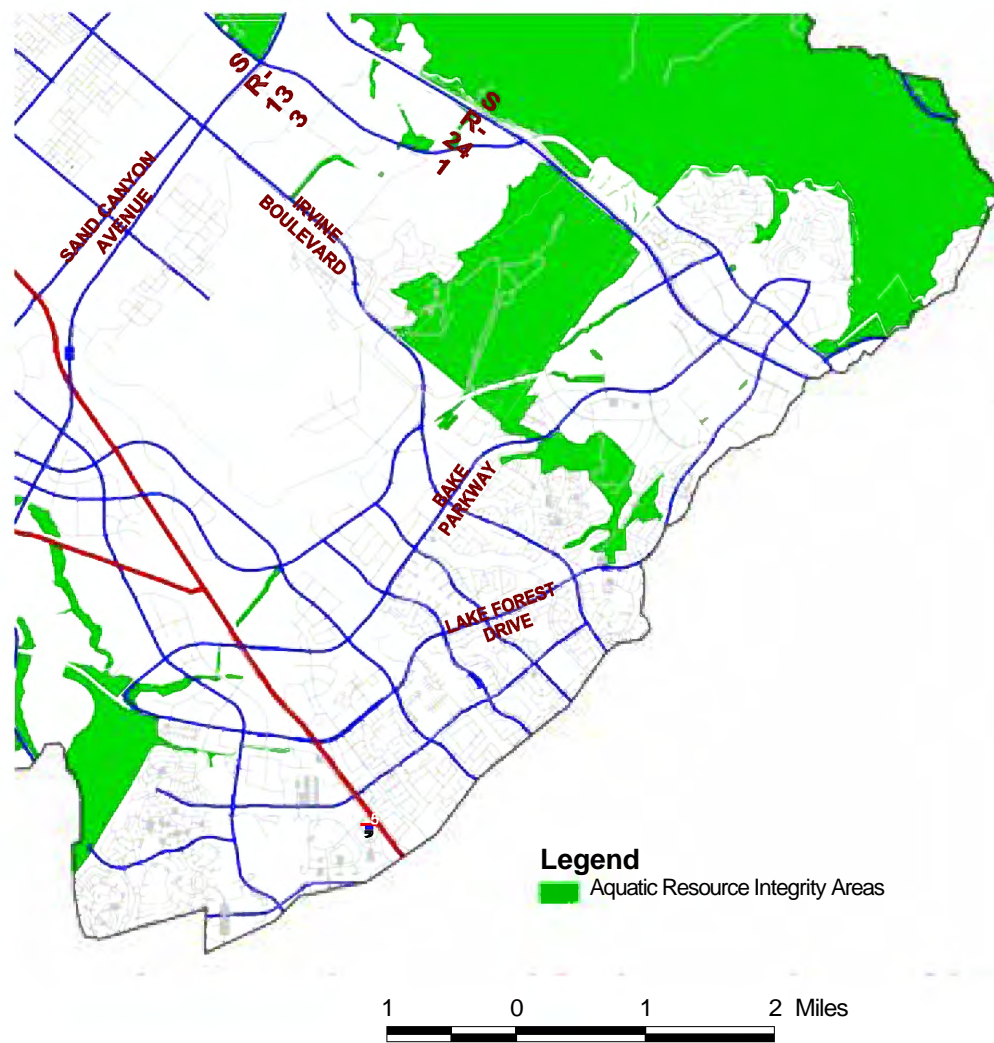




**Figure 6. Detail of the aquatic resource integrity areas in the northeastern portion of the San Diego Creek Watershed.**



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

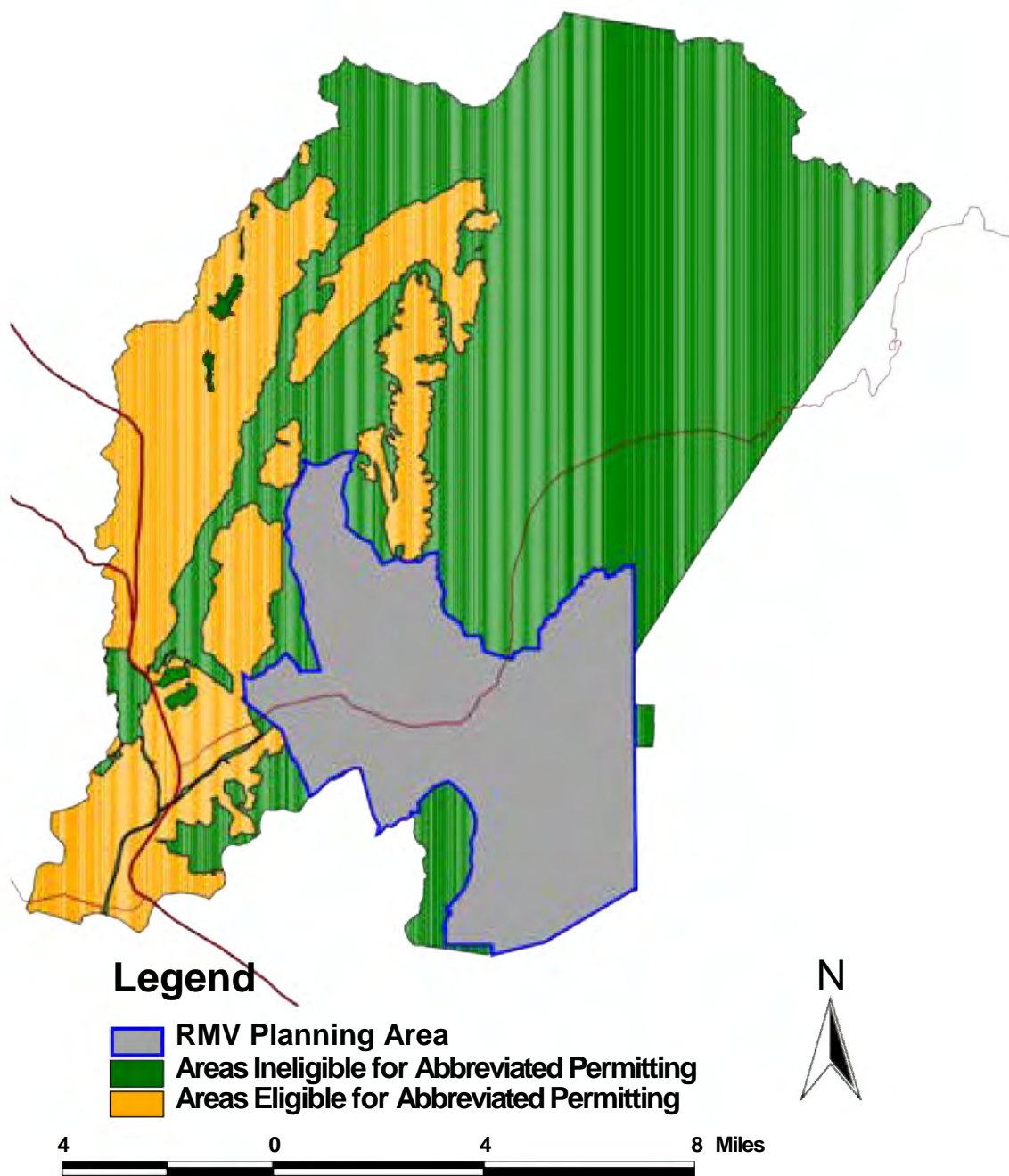


**Figure 8. Detail of the aquatic resource integrity areas in the eastern portion of the San Diego Creek Watershed.**

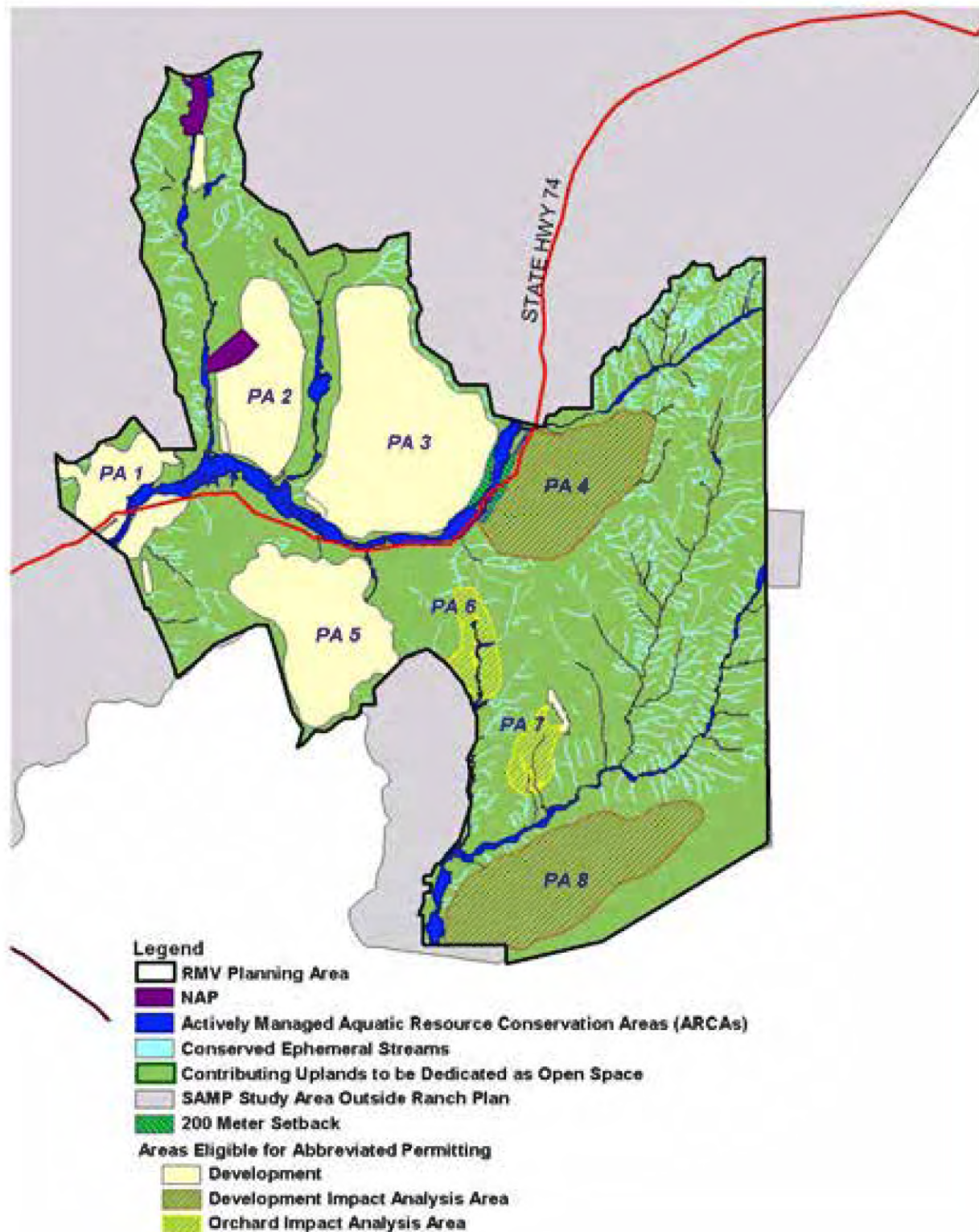




**Figure 9. Location of the San Juan Creek/Western San Mateo Creek Watersheds SAMP in Orange County, California.**



**Figure 10. Areas eligible for RGP 74 outside the RMV Planning Area of the San Juan Creek/Western San Mateo Creek Watershed SAMP include jurisdictional areas located within the “areas eligible for abbreviated permitting” (i.e., areas outside Aquatic Resource Integrity Areas) shown above.**



**Figure 11. Areas eligible for RGP 74 within the RMV Planning Area of the San Juan Creek/Western San Mateo Creek Watershed SAMP include jurisdictional areas located within the “areas eligible for abbreviated permitting” (i.e., areas outside Aquatic Resource Conservation Areas) shown above.**