

**US Army Corps
of Engineers®**

SPECIAL PUBLIC NOTICE

*SOUTH PACIFIC DIVISION
LOS ANGELES DISTRICT*

REVOCATION OF SELECTED NATIONWIDE PERMITS AND PROPOSED LETTER OF PERMISSION PROCEDURES for the San Diego Creek Watershed Special Area Management Plan (SAMP)

Public Notice/Application No.: 199915966-4-CJF
Comment Period: March 7, 2008 through April 21, 2008
Project Manager: Corice Farrar Tel: (213) 452-3296;
Email: Corice.J.Farrar@usace.army.mil

TO WHOM IT MAY CONCERN:

Location:

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

Activity:

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

This Special Public Notice concerns only the Corps' proposal revoke selected NWP, to use LOP procedures to authorize the discharge of dredged or fill material within waters of the United States ("waters of the U.S.") for eligible activities, and to establish a SAMP mitigation framework with policies and compensatory mitigation requirements. The

LOPs would be issued under section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and would apply to those applicants who performed effective pre-application coordination with the Corps, complied with the section 404(b)(1) Guidelines, and included effective compensatory mitigation for unavoidable impacts. The Corps proposal to revoke the use of selected NWP within the San Diego Creek Watershed pursuant to 33 CFR 330.4(e) and 33 CFR 330.5(c) is associated with the establishment of LOP procedures. Implementation of the LOP procedures in the San Diego Creek Watershed would allow the Corps to undertake the appropriate of permit review in consideration of the quality of the aquatic resource(s) that would be affected.

In a separate Special Public Notice (No. 199915966-3), the Corps proposes to use RGPs to authorize discharges of dredged or fill material that temporarily impact waters of the U.S. with little or no native riparian or wetland vegetation located in lower value aquatic resource areas of the San Diego Creek Watershed.

Interested parties are invited to provide their views on the proposed revocation of selected NWP and the new LOP procedures for implementation in the San Diego Creek Watershed. Comments received will be included in the administrative record and considered in the final decision. The proposed LOP procedures and revocation of selected NWP will be adopted pursuant to section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344).

Comments should be mailed to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
ATTN: CESPL-CO-R-199915966-4-CJF
P.O. Box 532711
Los Angeles, California 90053-2325

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

EVALUATION FACTORS:

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

proposal would discharge dredged or fill material, the evaluation of the activity will include application of the U.S. Environmental Protection Agency (EPA) Guidelines (40 CFR Part 230) as required by section 404 (b)(1) of the Clean Water Act.

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

Preliminary Review of Selected Factors

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

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

Clean Water Act – Water Quality- The Corps is submitting all relevant documents to and coordinating with the Santa Ana Regional Water Quality Control Board (RWQCB) with respect to the development of the SAMP. Prior to permit authorization for individual projects, section 401 of the Clean Water Act requires that any applicant requesting an LOP under section 404 provide proof of water quality certification to the Corps. After the Corps receives proof of water quality certification of a particular project, we would be able to issue a final permit decision.

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

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

National Historic Preservation Act (NHPA) – Cultural Resources- Within the urbanized portions of the San Diego Creek Watershed, preliminary determinations indicate most areas of the Watershed do not have sites eligible for listing in the National Register of Historic Places. Should cultural resource(s) be discovered within the Corps' area of potential effect for a project requiring a Corps authorization, the Corps, in coordination with the State Historic Preservation Office (SHPO), will evaluate the cultural resource(s) for its eligibility as a listed site in the National Register of Historic Places pursuant to the NHPA.

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

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

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

PROPOSED ACTIVITY:

The proposed activity is to establish an alternative permitting process within the San Diego Creek Watershed for using LOP procedures to authorize the discharge of dredged or fill material into waters of the U.S. pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344). This Special Public Notice concerns the Corps' proposal to issue LOP procedures in accordance with its regulations in 33 CFR 325.2(e)(1). LOPs would be issued for eligible projects, which have undergone effective pre-application coordination, complied with the section 404(b)(1) Guidelines, and included suitable compensatory mitigation for unavoidable impacts.

The LOP authorization is an abbreviated method for issuing an individual permit, whereby the Corps' decision to issue a permit authorization is made after coordination with federal and state fish and wildlife agencies, and a public interest evaluation (33 CFR 325.2(e)). LOP authorizations are reserved for non-controversial projects anticipated to result in minor impacts to aquatic resources and differ from a standard individual permit process in that an LOP may be issued without publishing a public notice for each project, and without completing a detailed environmental assessment. Similar to the NWP, an individual public notice would not be distributed to the public. However, the LOP procedures include standardized protocols for increased interagency coordination, which is not required by the NWP program.

Additionally, the Corps proposes to revoke the use of selected NWP authorizations within the geographic area of the San Diego Creek Watershed (Figure 1), as consistent with its authority under 33 CFR 330.4(e) and procedures outlined in 33 CFR 330.5(c) for issuing, modifying, suspending, or revoking NWP authorizations. Specifically, the Corps Division Engineer, through his discretionary authority is proposing to revoke the use of the following 24 NWPs within the 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. The remaining 25 NWPs would be retained for use in the Watershed: 01, 02, 04, 05, 06, 08, 09, 10, 11, 15, 20, 22, 23, 24, 28, 30, 32, 34, 35, 36, 37, 38, 45, 47, and 48 (Table 1). The affected NWPs would otherwise expire on March 18, 2012.

EFFECTIVE DATE:

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

GRANDFATHERING PROVISION:

Activities that have commenced (i.e., are under construction) prior to the effective date, or are under contract to commence in reliance upon an authorized NWP will remain in effect provided the activity is completed within twelve months of the effective date of the revocation, as consistent with 33 CFR 330.6(a).

SUPPLEMENTARY INFORMATION:**Background**

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

Special Area Management Plan (SAMP)

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

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

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

With the results of comprehensive studies on the location and quality of aquatic

resources within the San Diego Creek Watershed, the SAMP provides a contextual Analytical Framework to implement an effective permitting system that provides additional protections to higher value resources while minimizing future processing delays for projects affecting lower value resources.

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

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

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

Proposed Revocation of Selected NWPs and Establishment of LOP Procedures

This Special Public Notice addresses the establishment of alternative permit procedures for use within the Watershed involving new LOP procedures and the revocation of selected NWPs (Table 1). In a separate Special Public Notice, the Corps proposes to use RGPs to authorize the discharge of dredged or fill material that temporarily impact waters of the U.S. with little or no native riparian or wetland vegetation located outside the aquatic resource integrity areas. Additional details of the SAMP are provided in the SAMP document and the Program EIS/EIR available for public review. [A separate, concurrent comment public period is given for the Program EIS/EIR, as provided for by separate public notice.]

In order to implement the SAMP permitting and mitigation frameworks that consider the condition of the aquatic resources being affected, the Corps proposes to revoke the use of several NWP¹ authorizations within the San Diego Creek Watershed, in accordance with 33 CFR 330.5(c). In consideration of the SAMP watershed-wide assessment, the abovementioned NWPs may provide an inappropriate level of protection to aquatic resources within this Watershed. For instance, in some situations, the NWPs may be insufficiently protective of the aquatic resource areas with strategic conservation value against cumulative impacts measured on a watershed scale. In other situations, some of the NWPs may be overly restrictive for projects with minor impacts to the aquatic environment. In place of the revoked NWPs, the LOP procedures would minimize delays for projects with minor impacts on the aquatic environment and provide greater efficacy in protecting the aquatic environment by strengthening the permit evaluation process through increased inter-agency review. The Corps believes these steps would strengthen aquatic resource protections in the Watershed's higher value areas and provide regulatory flexibility for activities affecting lower value resource areas in situations where the impacts are not substantial.

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

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

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

Permit Program	CURRENT SYSTEM		PROPOSED SYSTEM					
	NWPs	SIPs	NWPs	RGP	LOPs			SIPs
Applicable Use Areas	All areas	All areas	All areas	Outside aquatic resource integrity areas	Outside aquatic resource integrity areas	In major stream systems ¹ outside aquatic resource integrity areas	Inside aquatic resource integrity areas	All areas
Eligible Regulated Activities	Specified for each NWP: NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50	All regulated activities ineligible for NWPs.	Specified for each retained NWP: NWP 1, 2, 4, 5, 6, 8, 9, 10, 11, 15, 20, 22, 23, 24, 28, 30, 32, 34, 35, 36, 37, 38, 45, 47, 48	Anticipated maintenance activities ²	Anticipated activities ³	Anticipated activities ³ ; No stream channelization or stream replacement with pipes.	Anticipated activities ³ ; No stream channelization or stream replacement with pipes.	All regulated activities ineligible for other permitting procedures.
Permanent Impacts to WoUS Authorized	Generally ≤ 0.5 acre	No limit ⁴	Generally ≤ 0.5 acre	None	No limit ⁵	No limit ⁵	≤ 0.1 acre	No limit ⁴
Temporary Impacts to WoUS Authorized	No limit	No limit	No limit	≤ 0.5 acre	No limit ⁵	No limit ⁵	No limit ⁵	No limit
Review Time	≤ 45 days	approx. 120 days	≤ 45 days	≤ 15 days	≤ 45 days	≤ 45 days	≤ 45 days	approx. 120 days
Pre-Application Coordination	Preferred	Preferred	Preferred	Preferred	Required ⁶	Required ⁶	Required ⁶	Preferred
Inter-Agency Review	Generally >0.5 acre	None	None	None	All actions	All actions	All actions	All actions

¹ Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek

² Anticipated maintenance activities ineligible for NWP may be eligible for RGP: Utility Lines (maintenance of new and existing facilities); Flood Control Facilities (maintenance of new and existing facilities); Road Crossings, including bridges and culverts (maintenance of new and existing crossings); Land Development for Residential, Commercial, Industrial, Institutional and Recreational Facilities (maintenance of new and existing land development and recreational facilities); Storm Water Treatment and Management Facilities (maintenance of new and existing facilities); Habitat Restoration and Enhancement Projects (maintenance of new and existing projects).

³ Anticipated activities ineligible for NWP or RGP may be eligible for LOP procedures: Utility Lines (construction and/or maintenance of new and existing facilities); Flood Control Facilities Maintenance (construction and/or maintenance of new and existing facilities); Road Crossings, including bridges and culverts (construction and/or maintenance of new and existing crossings); Land Development for Residential, Commercial, Industrial, Institutional and Recreational Facilities (construction and/or maintenance of new and existing land development and recreational facilities); Storm Water Treatment and Management Facilities (construction and/or maintenance of new and existing facilities); Habitat Restoration and Enhancement Projects (construction and/or maintenance of new and existing projects); and Fire Abatement and Vegetative Fuel Management Activities.

⁴ In evaluating projects under the SIP process, the Corps would need to assure project compliance with 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 substantial degradation or impairment of waters of the U.S. (40 CFR Part 230).

⁵ Provided the project is in full compliance with LOP procedures.

⁶ For >0.1 acre of permanent impacts to waters of the U.S. or >0.25 acre of temporary impacts to waters of the U.S. with native riparian and/or wetland vegetation.

LETTER OF PERMISSION (LOP) PROCEDURES:

Pursuant to its authority under 33 CFR 325.2(e)(1)(ii) and in accordance with procedures outlined in 33 CFR Part 325, the Corps proposes to issue LOPs for activities that are consistent with the purposes and goals of the SAMP. Such activities would need to have undergone effective pre-application coordination, complied with the section 404(b)(1) Guidelines, and included appropriate compensatory mitigation for unavoidable impacts. The LOP authorization is an abbreviated method for issuing an individual permit, where a decision to issue permit authorization is made after coordination with federal and state fish and wildlife agencies, a public interest evaluation, and a concise environmental review, but without publishing an individual public notice. Review involving other resource agencies will ensure adverse impacts are minimized to the maximum extent practicable.

The LOP procedures apply to eligible projects that otherwise do not qualify for a NWP or RGP. However, unlike general permits, LOPs are not limited to certain classes of activities. Generally, the Corps would issue LOPs within 45 days of receipt of a complete application. As proposed, the San Diego Creek SAMP LOPs would not have acreage thresholds in areas without strategic conservation value. Despite the higher acreages of permanent impacts that could be allowed, adverse effects would be avoided and minimized due to the more detailed review by the resource agencies as compared to the NWP permit process. Moreover, the use of LOPs for the permanent discharge of dredged

or fill material would be restricted primarily to the lower value aquatic resource areas within the San Diego Creek Watershed. Within aquatic resource integrity areas, LOPs would authorize temporary impacts for the purpose of maintenance of established structures and would authorize permanent impacts up to 0.1 acre of waters of the U.S., including projects such as utility substations, small bank protection structures, and recreational trail crossings. A summary of the procedures is provided in Figure 3.

Eligibility for LOP Procedures

Certain activities may be eligible for LOP procedures, while other activities would require standard individual permits. Many of the activities otherwise eligible under NWRPs selected for revocation would also be eligible for LOPs, if they are consistent with the SAMP goals and objectives. Regulated activities to be conducted in waters of the U.S. *outside of aquatic resource integrity areas* (Figure 2) that are eligible for LOP procedures include:

1. Public and private utilities, including utility lines and maintenance of utility lines;
2. 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;
3. Public and private road crossings, including bridges, culverts, lengthening, widening, and maintenance;
4. Public and private land development, including residential, commercial, institutional, and recreational uses;
5. Storm water treatment and management facilities (construction and/or maintenance of new and existing facilities);
6. Habitat restoration and enhancement projects (construction and/or maintenance of new and existing projects); and
7. Fire abatement and vegetative fuel management activities²

Within otherwise eligible areas outside the aquatic resource integrity areas, certain activities would be excluded from obtaining authorization by LOP procedures and would require evaluation under a standard individual permit process:

1. Activities that would substantially alter a compensatory mitigation site;
2. Capital improvement flood control projects involving conversion of a soft-bottom channel to a concrete-lined channel; and
3. Capital improvement flood control projects within the major stream systems, including Borrego Canyon Wash, Hicks Canyon Wash, Peters Canyon Wash, San Diego Creek, and Serrano Creek.

Within the aquatic resource integrity areas (Figure 2), regulated activities with minor, permanent impacts up to 0.1 acre of waters of the U.S., except capital improvement flood control projects excluded above, would be eligible for LOP procedures. In addition,

² This activity may include vegetation removal, thinning of vegetation, as well as temporary access roads and staging areas. In many cases, as the Corps does not regulate removal of vegetation with hand tools, this activity may not be a Corps-jurisdictional activity; the activity would then be solely under the jurisdiction of the Department.

covered under the LOP procedures is the discharge of dredged or fill material into waters of the U.S. associated with the following activities:

1. Maintenance and repair of public and private utilities, including utility lines;
2. 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 baseline³), flood control basins (consistent with an established Corps-approved maintenance baseline), and landfill concrete channels and sedimentation basins (consistent with an established maintenance baseline);
3. Maintenance and repair of public and private road crossings, including bridges and culverts;
4. Habitat restoration and enhancement projects, including wetland restoration and creation;
5. Maintenance of storm water treatment and management facilities; and
6. Fire abatement and vegetative fuel management activities.

Pre-Application Coordination for LOPs

_____ Pre-application coordination is required for projects with permanent losses of 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. For projects permanently impacting 0.1 acre or less of waters of the U.S. and temporarily impacting 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 an application directly to the agencies. Pre-application coordination must involve the Corps, CDFG, the Santa Ana RWQCB, and the USFWS. 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 held bi-monthly at the Corps office.

³ 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 (72 FR 11186) applies here. The district engineer will approve the maintenance baseline of flood control channels and flood control basins based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance). Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this RGP. This RGP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

A written record of the proceedings must be provided afterwards to the Corps, documenting substantive issues discussed, agency recommendations, and any pertinent conclusions. In preparation for the pre-application meeting, the following information should be provided to the agencies at least two weeks prior to the meeting:

1. A delineation of waters of the U.S. for the project area;
2. A site location and plan view of the project areas and acreage to be impacted showing permanent and temporary impacts to waters of the U.S.;
3. A draft statement addressing the section 404(b)(1) Guidelines;
4. A draft mitigation plan, if unavoidable impacts occur to riparian habitat and/or wetlands; and
5. When appropriate, a cultural resources inventory and results from an endangered or threatened species survey for the project area.

The Corps will make an initial determination that the project may qualify for the LOP procedures based on a preliminary determination that the project meets the 404(b)(1) guidelines, that the project is consistent with the SAMP, and that standard individual permit processing with Public Notice review would not result in a substantive change in the proposed project or mitigation. If the Corps makes an initial determination that the project may not qualify for the LOP procedures, the Corps will provide recommendations to enable the project to qualify for the LOP procedures.

Applicants that participated fully in the SAMP formulation process and whose planned activities have undergone extensive pre-project review by the Corps, the Department, USFWS, EPA, and the Santa Ana RWQCB to avoid and minimize impacts to the aquatic ecosystem to the maximum extent practicable have satisfied some of the proposed requirements for eligibility under the LOP procedures, such as extensive pre-project coordination with the resource agencies. The participating applicants shall provide a written statement demonstrating compliance with the SAMP and section 404(b)(1) Guidelines through avoidance and initial minimization measures. Additional pre-application coordination is not required of those participating applicants for projects that already have satisfied the pre-application coordination requirement through extensive pre-application coordination during the SAMP formulation process. The remaining requirements for eligibility for future permitting under LOPs for participating applicants are reviewed extensively in the SAMP EIS/EIR. Future projects by applicants will need to undergo review in order to be eligible for LOPs by undertaking procedures outlined in this Special Public Notice.

Information Needed for Application

The following items are needed for a complete application for the LOP procedures:

1. A completed Department of the Army application form Eng Form 4345, or a Joint Corps/Department application for the Watershed, including the list of names and addresses for adjacent property owners.
2. A complete project description, which includes:
 - a. Pre-project photographs of the project site;
 - b. A site location map and view of the project showing areas and acreage to be impacted on 8.5" x 11" sheets;

- c. Location coordinates: latitude/longitude or UTM;
 - d. Volume, type and source of material to be placed into waters of the U.S.;
 - e. Total area of waters of the U.S. to be directly and indirectly affected;
 - f. A verified delineation of waters of the U.S. located in the project area including a wetland delineation map on 8.5" x 11" sheets;
 - g. A description of habitat, including plant communities, located in the project area;
 - h. 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;
 - i. Any other information pertinent to the wetlands, stream, or water body involved; and
 - j. Proposed project schedule.
3. A record of pre-application coordination with the Corps, the Department, RWQCB, USFWS, and EPA. If coordination was not accomplished with any of the agencies, the applicant must show that a concerted effort was made to meet with the agency and explain why such coordination was not achieved. 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.
 4. 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.
 5. 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..
 6. A statement explaining how avoidance and minimization of discharges to jurisdictional waters were achieved on the project site.
 7. A compensatory mitigation plan consistent with the SAMP mitigation framework to address any unavoidable impacts to jurisdictional waters and the program goal of no net loss of wetlands.
 8. 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.
 9. 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 ESA or evidence of incidental take authorizations under ESA.
 10. Evidence of compliance with section 106 of the National Historic Preservation Act (NHPA).

LOP Application Processing Procedures

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

1. The applicant will provide the Corps and the review agencies complete applications, using a San Diego Creek Watershed Joint Agency

- Notification/Application form, if available. The Corps will review the applicant's submission and assign an action ID number.
2. Within seven (7) calendar days, the Corps will determine if the application is complete. If an application is incomplete, within seven (7) calendar days the Corps will notify the applicant of the needed information items and the applicant will be required to resubmit.
 3. Within 10 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 FAX or email and request the agencies provide comments. 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 FAX or letter. When the LOP pre-project notification is transmitted to the other resource agencies, the Corps will consider the following subjects:
 - a. Conformity of the proposed project with the SAMP;
 - b. Accuracy of the wetland delineation and the resource assessment;
 - c. Minimization of impacts to the maximum extent practicable;
 - d. Consistency of the proposed project-specific compensatory mitigation with the SAMP Aquatic Resource Conservation Program;
 - e. Whether federally listed species issues have been resolved in a manner consistent with the local NCCP/HCP program;
 4. Resolution or status of compliance with the NHPA;
 5. Resolution or status of the 401 certification;
 6. Resolution of ESA section 7, if applicable.
 7. Resolution or status of compliance with CZMA, if applicable.
 8. 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 is required, which would likely extend the processing time for a final permit decision. 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 to the resource agencies will be resolved before an LOP is issued. If the project meets the criteria for LOP authorization, an LOP will be issued. 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.

Proposed General Conditions

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

Table 2. Proposed General Conditions for the San Diego Creek Watershed Letter of Permission Procedures.

LOP Procedures General Condition	Description
1. Avoidance and Minimization	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. Ineligible Impacts	Projects ineligible for LOP procedures include activities not evaluated for LOP procedures, projects that substantially alter a 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 evaluated using an individual permit. See Figures 3-2 and 3-3.
3. Mitigation Policy	The permit must comply with the SAMP mitigation framework, including the Strategic Mitigation Plan, established in conjunction with the proposed permitting procedures.
4. Soil Erosion and Siltation Controls	Appropriate erosion and siltation controls such as siltation or turbidity curtains, sedimentation basins, and/or hay bales or other means designed to minimize turbidity in the watercourse to prevent exceedences of background levels existing at the time of project implementation, shall be used and maintained in effective operating condition during project implementation. Projects are exempted from implementing controls if site conditions preclude their use, or if site conditions are such that the proposed work would not increase turbidity levels above the 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. 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.
6. Suitable Material	No discharge of dredged or fill material into jurisdictional waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).

LOP Procedures General Condition	Description
7. Management of Water Flows	To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. To the maximum extent practicable, the activity must provide for the retention of excess flows from the site and for the maintenance of surface flow rates from the site similar to pre-project conditions, while not increasing water flows from the project site, relocating water, or redirecting water flow beyond pre-project conditions unless it benefits the aquatic environment (e.g., stream restoration or relocation activities).
8. 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 re-establish 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 Condition #13).
9. 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.
10. 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.
11. Fencing of Project Limits	Prior to initiation of the project, the boundaries of the project's impact area must be delimited by the placement of temporary construction fencing, staking, and/or signage. Any additional jurisdictional acreage impacted outside of the approved project footprint shall be mitigated at a 5:1 ratio. In the event that additional mitigation is required, the type of mitigation shall be determined by the Corps in accordance with the SAMP mitigation framework and may include wetland enhancement, restoration, creation, or preservation.
12. Avoidance of Breeding Season	With regard to federally listed avian species, avoidance of breeding season requirements shall be those specified in the section 7 consultation for the LOP procedures. For all other species, initial vegetation clearing in waters of the U.S. must occur between September 15 and March 15, which is outside the breeding season. Work in waters may occur during the breeding season between March 15 and September 15 if bird surveys indicate the absence of any nesting birds within a 50-foot radius.
13. Exotic Species Management	All giant reed (<i>Arundo donax</i>), salt cedar (<i>Tamarix spp.</i>), and castor bean (<i>Ricinus communis</i>) 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.

LOP Procedures General Condition	Description
14. Site Inspections	The Corps shall be allowed to inspect the site at any time during and immediately after project implementation. In addition, compliance inspections of all mitigation sites shall be allowed at any time.
15. Posting of Conditions	A copy of the LOP 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. Post-Project Report	Within 60 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 CFR 330.4(c)).
18. Coastal Zone Management	An individual California state coastal zone management consistency concurrence must be obtained or waived where the project may affect the Coastal Zone (see 33 CFR 330.4(d)).
19. Endangered Species	<p>(a) No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the ESA or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall not begin work on the activity until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is authorized. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until section 7 consultation has been completed. (d) As a result of formal or informal consultation with the USFWS or NMFS, the district engineer may add species-specific regional endangered species conditions to the 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</p>

LOP Procedures General Condition	Description
	<p>separate authorization (e.g., an ESA section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. USFWS and NMFS or their World Wide Web pages at http://www.USFWS.gov/carlsbad and http://www.noaa.gov/fisheries.html respectively.</p>
<p>20. Historic Properties</p>	<p>(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of section 106 of the NHPA have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the NHPA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit with their application information on historic properties that may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the SHPO or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties that the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under section 106 of the NHPA has been completed. (d) Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until section 106 consultation is completed. (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is</p>

LOP Procedures General Condition	Description
	required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.
21. 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 <i>de minimis</i> emissions thresholds for any criteria air pollutant or its precursors.

_____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 \$11,000 per violation of a permit Special Condition, to a maximum of \$27,000.

Activity-Specific Conditions

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

MITIGATION FRAMEWORK:

For the San Diego Creek Watershed, the Corps proposes to implement the following mitigation policies. These policies would apply to LOPs and standard individual permits issued within the Watershed, as well as general permits as appropriate.

General Mitigation Policies

1. **Mitigation Sequencing.** Under the SAMP, the mitigation sequencing required pursuant to the section 404(b)(1) Guidelines (40 CFR Part 230 and the Memorandum of Agreement (MOA) between EPA and the Department of the Army, dated February 6, 1990), whereby the discharge of dredged or fill material 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 evaluated in the SAMP EIS/EIR is deemed to have undertaken the requisite avoidance measures by avoiding aquatic resources identified as part of the aquatic resource integrity areas. Minimization measures are met by demonstrating consistency with the LOP conditions. Compensatory mitigation will 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 and Corps' Regulatory Guidance (RGL 02-2), overall values and functions should not be reduced within the Watershed on a program level. In addition, all permanent impacts to aquatic resources (wetland and non-wetland) should be mitigated at a minimum of 1:1 ratio (acreage created and restored to acreage permanently impacted).
3. **Preparation of a Compensatory Mitigation Plan.** All mitigation plans should conform with the "Los Angeles District's Final Mitigation Guidelines and Monitoring Requirements," dated April 19, 2004. A copy is available at http://www.spl.usace.army.mil/regulatory/mmg_2004.pdf.
4. **Prioritization of Mitigation Sites.** The selection of compensatory mitigation sites should be prioritized to support implementation of the Strategic Mitigation Plan identified in the SAMP (2007) which is informed by the "San Diego Creek Watershed Riparian Ecosystem Restoration Plan: Site Selection and General Design Criteria" by the U.S. Army Engineering Research and Development Center (ERDC) (Smith and Klimas, 2004). (Available as an appendix to the EIS/EIR for the San Diego Creek Watershed SAMP/WSAA Process, 2007 and online at: http://www.spl.usace.army.mil/samp/sdc_rest.pdf).
5. **Recommended Restoration.** Restoration design should be in accordance with the "San Diego Creek Watershed Riparian Ecosystem Restoration Plan: Site Selection and General Design Criteria" by ERDC. (Available as an appendix to the EIS/EIR for the San Diego Creek Watershed SAMP/WSAA Process and online at: http://www.spl.usace.army.mil/samp/sdc_rest.pdf). The ERDC restoration plan provides recommended restoration goals in consideration of landscape setting.
6. **Delays in Implementation of Compensatory Mitigation.** Implementation of compensatory mitigation should begin according to a Corps-approved 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. Delays in implementation of compensatory mitigation beyond the Corps-approved final construction schedule that extends installation into the next year's growing season will be penalized by a 25% increase above the initial compensatory mitigation acreage for every 3-month delay beyond the expected season. If the permittee anticipates delays, the permittee should notify the Corps to provide explanations for the delay and the new expected start date. The Corps will advise the permittee of each 3-month delay and re-calculate the compensatory mitigation acreage. The Corps will give due consideration to special circumstances and may waive the penalty in cases 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 that any action undertaken during emergency conditions must receive prior authorization from the Corps if the action involves a discharge of dredged or fill material into aquatic resources within the Corps jurisdiction.

Compensatory Mitigation for Temporary Impacts

1. **Restoration On-Site.** After a temporary impact, an area should be restored to pre-construction elevations within one month. If the impacts are beyond what is allowed for a specified maintenance baseline, re-vegetation should 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 should not be re-vegetated until seasonal conditions are conducive to re-vegetation), exposed earth surfaces should be stabilized immediately with jute-netting, straw matting, or other applicable best management practice to minimize any erosion from wind or water.
2. **Offsets for Temporal Loss.** Temporary impacts to riparian habitat from LOPs and standard individual permits will be compensated through consideration of the time needed to recover the temporarily impacted functions. Temporal loss 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, impacts to unvegetated aquatic resources will not require additional compensatory mitigation, impacts to herbaceous vegetation will require an additional 0.5:1 ratio of compensatory mitigation, impacts to shrubby vegetation will require an additional 1:1 ratio of compensatory mitigation, tree vegetation will require an additional 2:1 ratio of compensatory mitigation, and tree vegetation with dense understory vegetation will require an additional 3:1 ratio of compensatory mitigation. 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- and Department-approved third-party mitigation program operating within the Watershed.
3. **Preparation of Compensatory Mitigation Plan.** All on-site revegetation efforts require a mitigation and monitoring plan approved by the Corps.

Compensatory Mitigation for Permanent Impacts

1. **Mitigation Ratios.** The Corps will determine mitigation ratios in consultation with the Department and the applicant in a manner to achieve a no net loss of aquatic resource function and acreage in the Watershed. Specifically, ratios will be determined based on area-weighted gain in functions at the compensatory mitigation site with respect to area-weighted loss of functions at the impact site. Functions will be measured in terms of functional units with respect to hydrology, water quality, and habitat indices. ERDC calculated these three indices for all major reaches in the San Diego Creek Watershed based on baseline conditions and after achievement of restoration goals. The ratios will essentially be:

$$\text{AREA}_{\text{MIT}} / \text{AREA}_{\text{IMP}} = \text{FuLOSS}_{\text{IMP}} / \text{FuGAIN}_{\text{MIT}} \quad \text{where}$$

$\text{AREA}_{\text{MIT}} / \text{AREA}_{\text{IMP}}$ = mitigation ratio

AREA_{MIT} = area of mitigation

AREA_{IMP} = area of impact

$\text{FuLOSS}_{\text{IMP}}$ = loss in functional index at the impact site

$\text{FuGAIN}_{\text{MIT}}$ = gain in functional index at the mitigation site

The applicant will supply the AREA_{IMP} and the Corps will use the data available from ERDC for $\text{FuLOSS}_{\text{IMP}}$. The applicant will work in consultation with the Corps and the Department to identify an appropriate mitigation site to offset impacts. AREA_{MIT} will depend on the capacity for $\text{FuGAIN}_{\text{MIT}}$. Final site selection will take into account the available hydrology to support the proposed mitigation, site access, and other relevant parameters. As a reminder, implemented ratios shall always be greater or equal to 1:1 even if the actual calculated ratios are less than 1:1. However, if the calculated ratio is less than 1:1, mitigation at 1:1 will generate excess credits above the calculated ratio to reduce additional mitigation requirements for temporal loss (see 3 below).

2. **No Loss in Any Functional Type.** Compensatory mitigation will ensure that losses to any function of the aquatic resources as calculated using the metric developed by the Corps for use in this Watershed. Specifically, mitigation shall ensure against loss of any function as characterized by all three area-weighted indices (i.e., for hydrology, water quality, and habitat). Even if there is a gain in one or two of the indices, the overall mitigation must ensure that there is not a loss in any of the three indices. Losses can be offset by increasing the mitigation ratio.
3. **Temporal Loss.** Temporal loss for permanent impacts will use the same guidelines as for temporary impacts.
4. **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 and the Department. Legal assurances include, but are not limited to implementing agreements, restrictive covenants, conservation easements, and land dedications. In-perpetuity maintenance of the mitigation site shall be required and will include, but may not be limited to the following activities: (a) annual removal of trash or in-organic debris; (b) repair and remediation of damage or refuse by removing or trimming of vegetation downed or damaged due to natural disaster, removal of man-made debris, removal of parasitic (as it relates to the health of the host plant) and exotic plant or animal species; and (c) annual maintenance of signage and other notification features saying "Natural Area Open Space," "Protected Natural Area," or similar descriptions that inform persons of the nature and restrictions on the Restricted Property. Such actions that will be taken to manage biological resources shall be defined in a monitoring/management plan, to be prepared by the grantor (permittee) or its designees in coordination with the Department and the Corps (and the USFWS, if ESA section 7 consultation is involved). The permittee shall be responsible for plan implementation and should identify an appropriate natural lands management organization (subject to approval by the Department and the Corps) to ensure conservation of biological resources in perpetuity. A PAR or

equivalent analysis should be used to estimate initial start-up costs, and ongoing annual cost, of management activities outlined in the plan. A financial mechanism (e.g., a non-wasting endowment) should be established to ensure that the funding is available to the natural lands management organization for implementation of the management plan. This plan, including funding, should be implemented prior to, or concurrent with, the initiation of construction. If compensatory mitigation sites, including preserved areas identified as within the aquatic resource integrity areas are to be transferred to another land manager for long-term management, a non-wasting endowment is to be provided to monitor and manage the transferred lands in perpetuity. The endowment is to be based on a comprehensive PAR or equivalent.

5. **Third-Party Mitigation.** Consistent with the SAMP mitigation framework, an alternative method to satisfy compensatory mitigation requirements is the purchase of credits or payment of fees to a Corps- and Department-approved third-party mitigation program⁴ within the Watershed, including a mitigation bank, conservation bank, or for the enhancement, establishment, or restoration of identified offsite aquatic resources. The Department requires that a SAA identify the specific location(s) of the compensatory mitigation, so the third-party mitigation program sponsor would be required to link the mitigation actions with the SAA. Use of an approved third-party mitigation program conducting preservation and enhancement efforts of identified sites would be available to offset temporal loss or 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 offset by contribution to a Corps- and Department-approved third-party mitigation bank conducting establishment (creation) and/or restoration efforts in the Watershed.

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

⁴ The Corps and EPA published for public review and comment a proposed mitigation rule to address mitigation banking and in-lieu fee programs (71 FR 15520; USACE, 2006). Any future mitigation bank or third-party mitigation program will need to conform to final, approved operating procedures (Department of the Army et al, 2000; or as revised) in order to be used for compensatory mitigation under the Section 404 permitting and SAA programs.

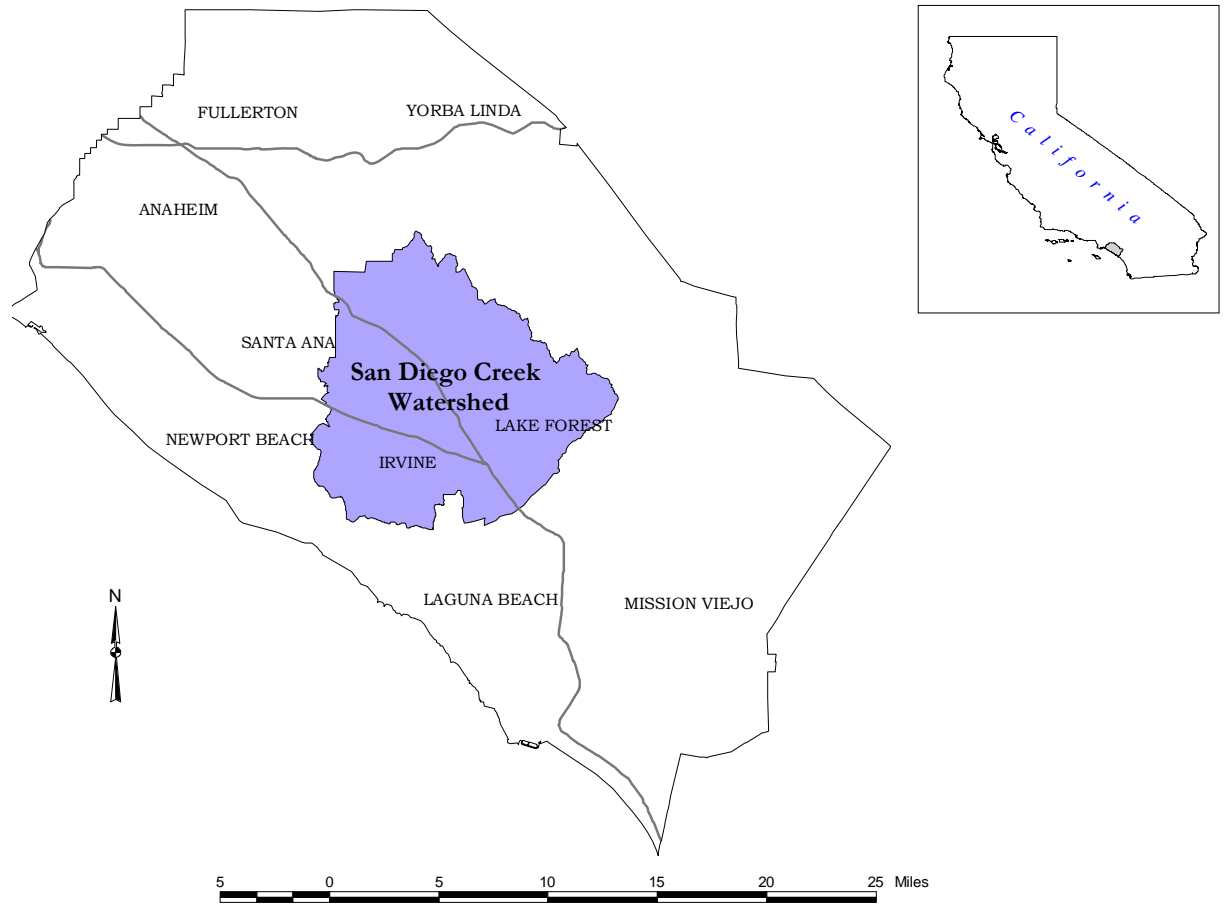


Figure 1. The San Diego Creek Watershed Special Area Management Plan study area in Orange County, California.

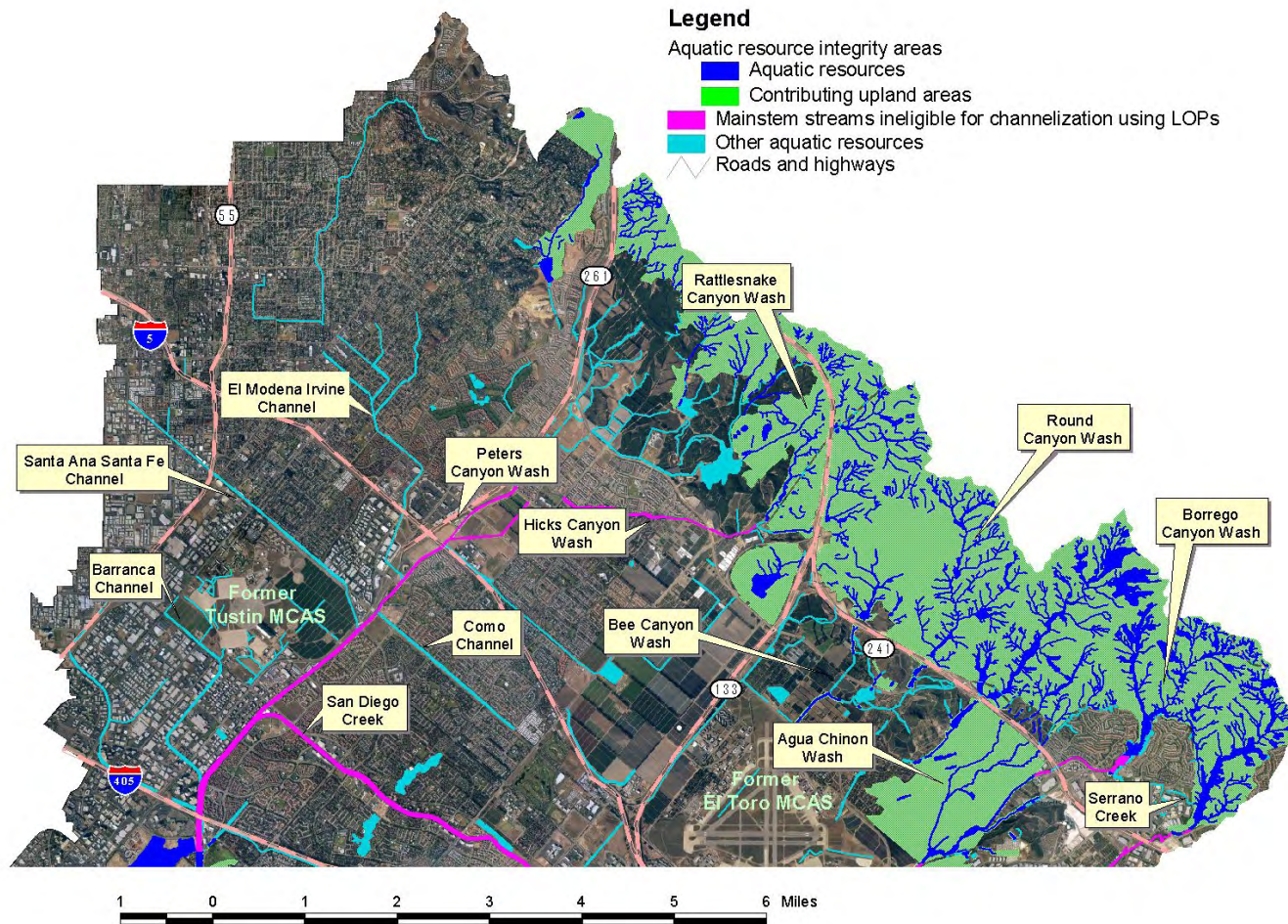
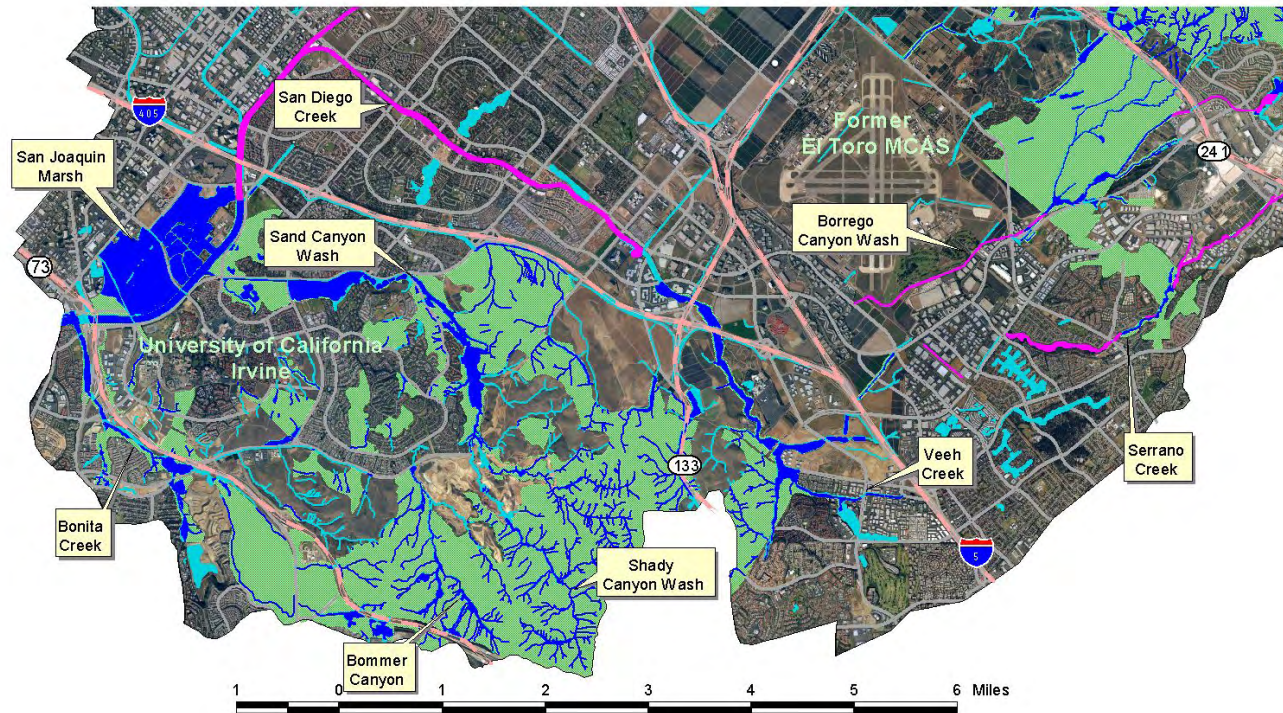


Figure 2. Depiction of the northern portion of the San Diego Creek Watershed with the SAMP permitting framework overlaid. Aquatic resource integrity areas and mainstem streams ineligible for channelization using LOP procedures are shown.



Legend

- Aquatic resource integrity areas
 - Aquatic resources
 - Contributing upland areas
 - Mainstem streams ineligible for channelization using LOPs
 - Other aquatic resources
- Roads and highways

Figure 3. 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.

Legend
△ Roads and Highways
■ Aquatic Resource Integrity Areas

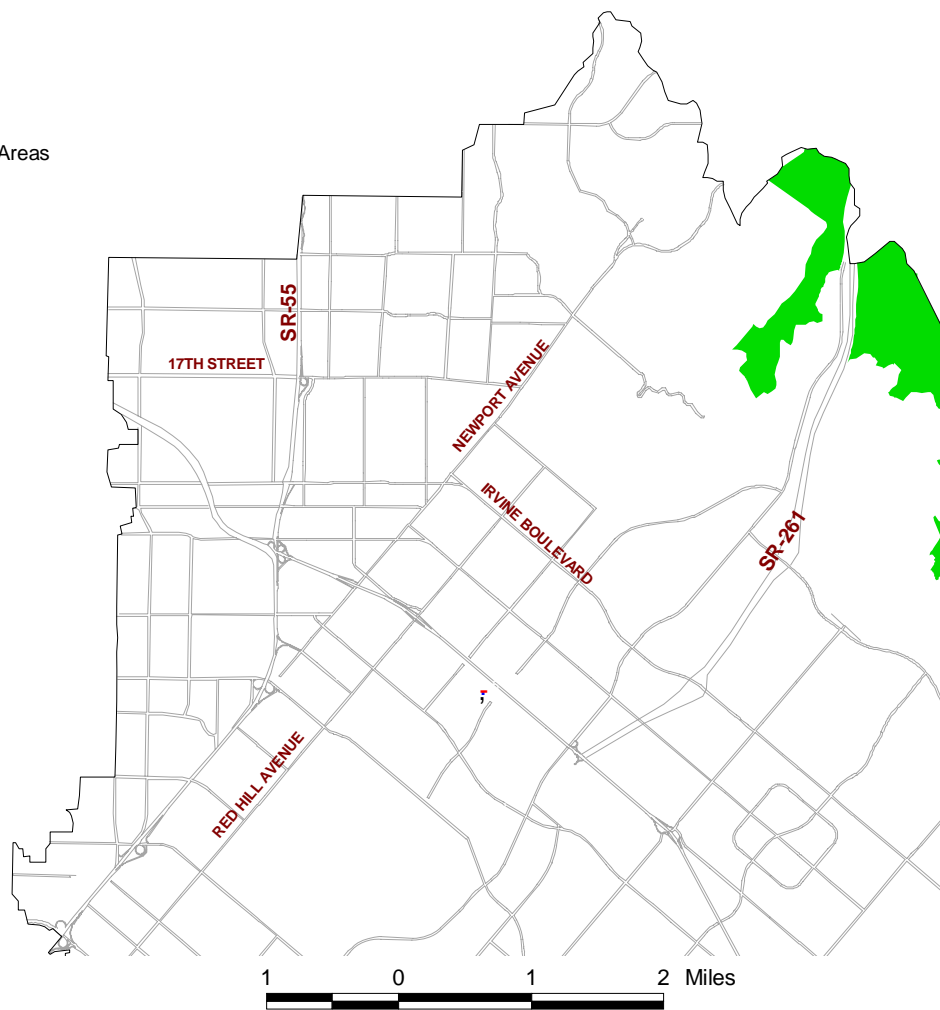


Figure 4. Detail of the aquatic resource integrity areas in the northwestern portion of the San Diego Creek Watershed.

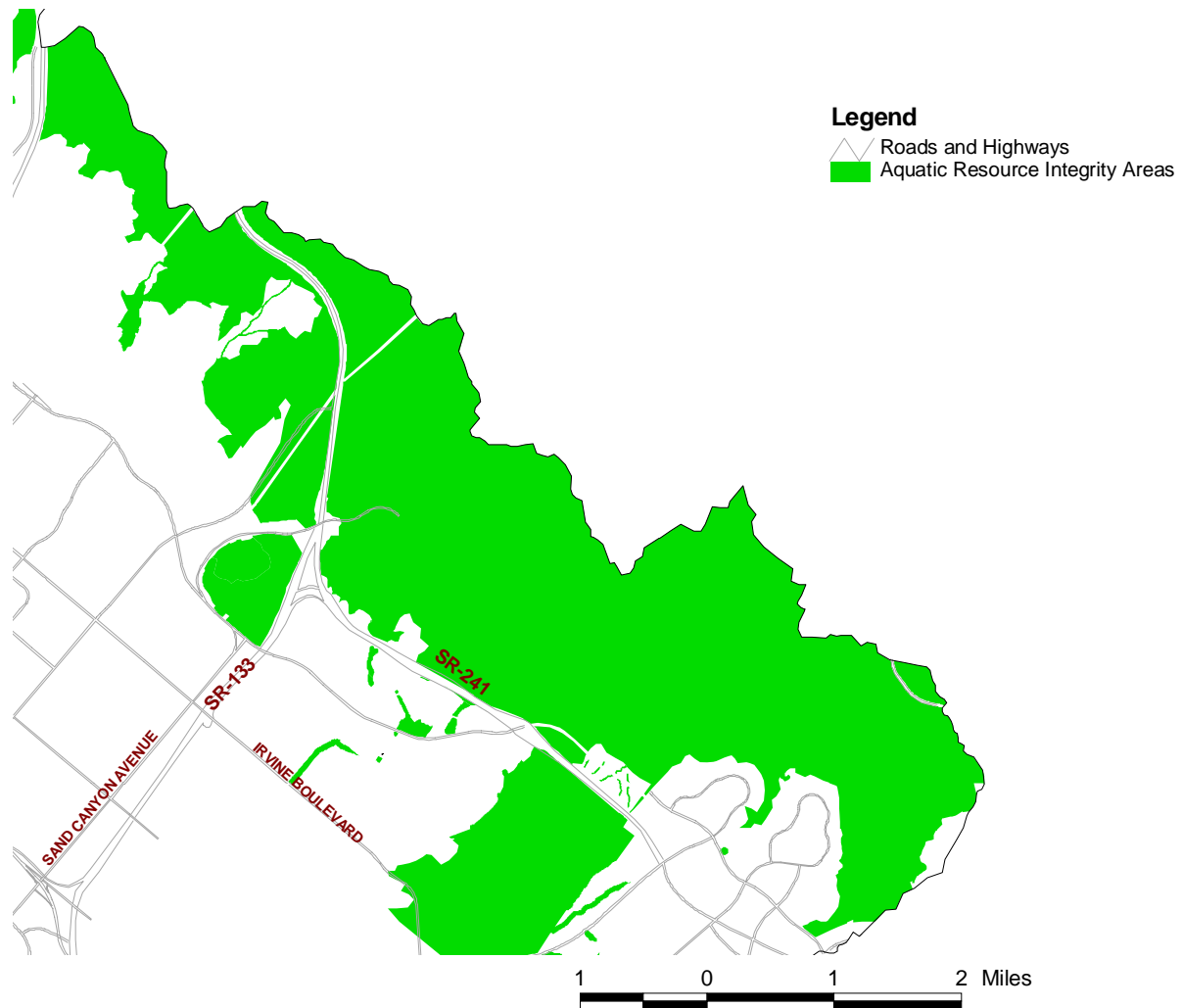


Figure 5. Detail of the aquatic resource integrity areas in the northeastern portion of the San Diego Creek Watershed.



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

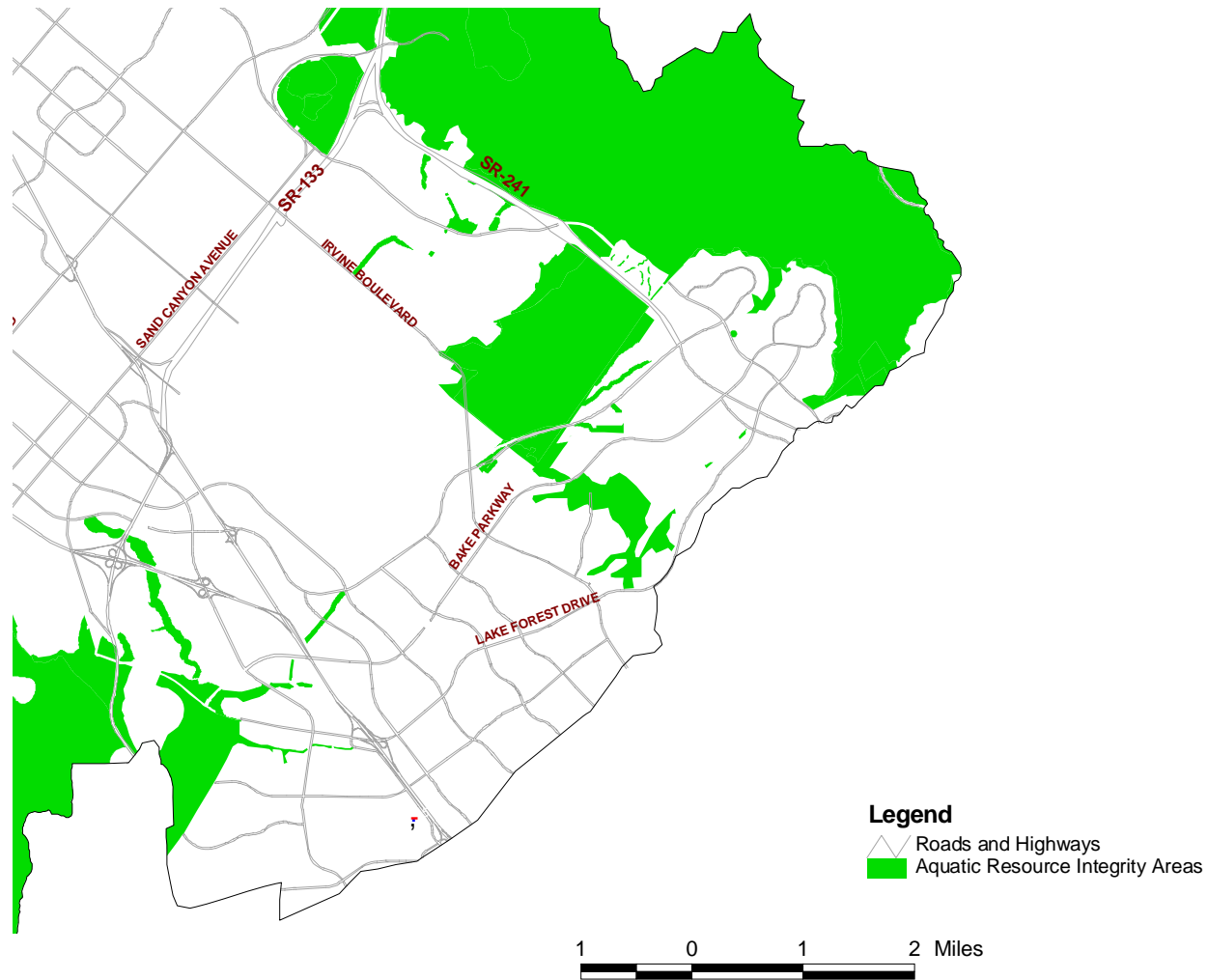
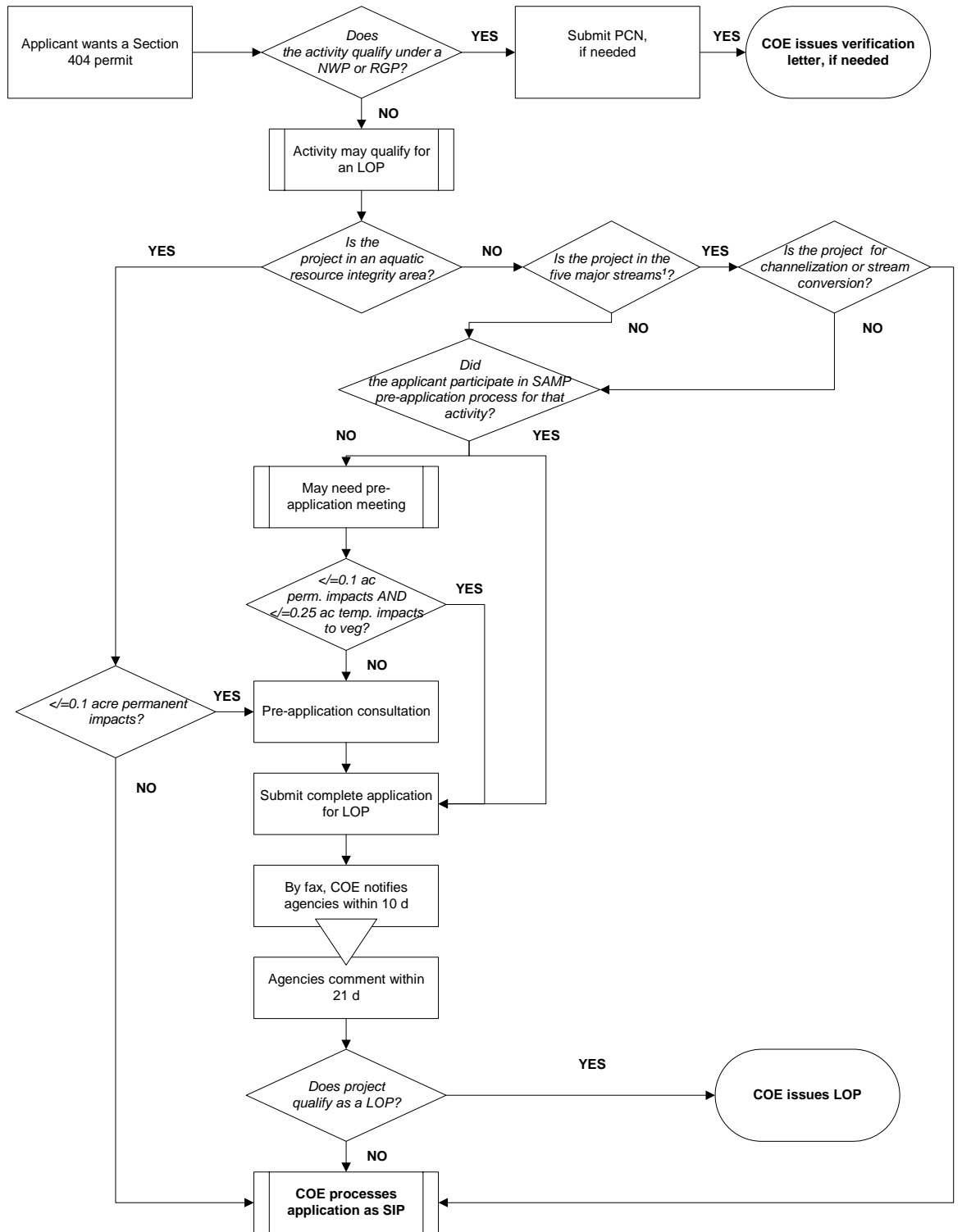


Figure 7. Detail of the aquatic resource integrity areas in the southeastern portion of the San Diego Creek Watershed.



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

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