

DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT NUMBER 90

Permittee: Orange County Water District

Project Name: Orange County Water District Regional Maintenance Program for Santa Ana River Basin Recharge Facilities

Permit Number: SPL-2012-00066

Issuing Office: Los Angeles District

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.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

This RGP authorizes OCWD to discharge dredged and/or fill material resulting in temporary impacts to waters of the United States associated with conducting various routine maintenance activities throughout its 32 existing groundwater recharge facilities, as shown in Figures 2-34. Specifically, OCWD is authorized to conduct the following types of maintenance activities on a recurring, as-needed basis within OCWD's ground water recharge facilities. Maintenance activities shall be conducted in accordance with OCWD's Groundwater Management Facilities Maintenance Plan, dated August 2020.

- 1) **Sediment/Disturbance Removal:** The Maintenance Plan authorizes the disturbance and removal of sediment from OCWD recharge facilities. The sediment disturbance and removal routine maintenance activity is permitted under a dry condition or wet condition. Under the dry condition, the recharge facilities are drained and dried out, and sediment and silt on the bottom and side walls of the basins are broken-up and/or scraped and removed by heavy equipment. Under a wet condition, a submerged cleaning device vacuums silt from the basin bottom simultaneous with its accumulation. This type of system would operate while the basin remains full and is percolating water through its bottom. The silt removed from the wet system is transferred to a small pit located adjacent to the recharge basin.

- 2) **Vegetation Removal:** The Maintenance Plan authorizes native and non-native vegetation removal activities along the banks of existing recharge basin facilities and around existing water conveyance structures. A combination of herbicides, hand tools, mechanical vegetation cutters and heavy equipment are permitted to be used to remove vegetation.
- 3) **Maintenance and Repair of Existing Access Roads and Ramps:** The Maintenance Plan authorizes the maintenance and repair of existing dirt access roads and ramps that provide access into OCWD's recharge facilities. Heavy equipment such as dozers and scrapers are permitted to be used to regrade and repair access roads and ramps.
- 4) **Maintaining Existing Water Conveyance Structures:** The Maintenance Plan authorizes maintenance of existing water conveyance structures, including culverts, transfer tubes, inlet and outlet structures, weirs, flumes, sluice gates, trash racks, rubber dams, rip rap, grade stabilizers, sump pumps and valves. Maintenance activities would not include the construction of new water conveyance structures or the replacement of existing structures that would involve a larger construction footprint.
- 5) **Existing Earthen Dike and Levee Repair:** The Maintenance Plan authorizes the repair of existing earthen dikes and levees, including replacement after storm events. Heavy construction equipment would be permitted to replace and repair earthen dikes and levees.

This RGP only authorizes Corps-jurisdictional activities that would result in temporary impacts to waters of the United States and which would have minimal impacts, both individually and cumulatively, on the aquatic environment. No permanent impacts to waters of the United States, including impacts from fills, flooding, excavation beyond a Corps Regulatory Division-approved maintenance baseline, or drainage are permitted under this RGP.

Project Location: The RGP authorizes maintenance activities throughout OCWD's service area in Orange County, California, which includes segments of the Santa Ana River (five facilities) and Santiago Creek (three facilities) in addition to 24 other earthen recharge basins. The recharge basins range in size from 3.5 acres to 99 acres and range in depth from approximately 5 feet to 60 feet. The locations of recharge facilities covered by RGP 90 are shown in Figure 1 and listed in Table 1 below.

Table 1: OCWD Existing Groundwater Recharge Facilities

Facility	Size (Wetted Acres)	Latitude/Longitude (Degrees Minutes Seconds)
Anaheim Lake	74.0	33 51 58 / -117 50 51
Burris Basin	99.2	33 49 31 / -117 52 13
Conrock Basin	19.6	33 51 20 / -117 49 36
Five Coves Dam	32.2	33 50 27 / -117 51 38
Fletcher Basin	4.89	33 49 41 / -117 51 35
Huckleberry Basin	21.7	33 51 26 / -117 49 17
Kraemer Basin	29.0	33 51 37 / -117 51 27
La Jolla Basin	5.6	33 51 38 / -117 52 09
La Palma Basin	13.3	33 51 16 / -117 51 14
Lincoln Basin	8.3	33 55 02 / -117 51 55
Little Warner Basin	9.8	33 51 02 / -117 50 03
Miller Basin	20.9	33 51 52 / -117 51 21
Mini Anaheim Lake	5.5	33 51 59 / -117 50 35
Miraloma Basin	13.0	33 51 40 / -117 49 31
Off-River Basin	64.4	33 51 12 / -117 49 31
Olive Basin	4.6	33 50 59 / -117 50 25
Placentia Basin	6.9	33 51 28 / -117 53 10
Raymond Basin	13.3	33 50 55 / -117 54 29
Riverview Basin	3.5	33 49 26 / -117 51 58
Santa Ana River Reach 2	96.2	33 51 23 / -117 48 49
Santa Ana River Reach 3	73.2	33 50 38 / -117 51 08
Santa Ana River Reach 4	50.8	33 49 29 / -117 52 00
Santa Ana River Reach 5	52.6	33 47 59 / -117 52 38
Santa Ana River Reach 6	18.79	33 47 28 / -117 52 51
Santiago Basin	166.2	33 48 15 / -117 48 23
Santiago Creek Reach 1	2.7	33 47 22 / -117 49 41
Santiago Creek Reach 2	4.9	33 46 55 / -117 50 01
Santiago Creek Reach 3	2.6	33 46 44 / -117 50 49
Warner Basin	68.4	33 51 14 / -117 49 54
Weir Pond 1	5.4	33 51 24 / -117 48 11
Weir Pond 2	6.4	33 51 26 / -117 48 09
Weir Pond 3	15.7	33 51 24 / -117 48 56
Weir Pond 4	4.0	33 51 21 / -117 49 05

On September 19, 2022, the Corps notified the Santa Ana Regional Water Quality Control Board (SARWQCB) that the 401 certification requirement for the Maintenance Plan had been waived because SARWQCB had failed to act within one year of OCWD's certification request. Nevertheless, the Corps understands that OCWD will implement best management practices (BMPs) to minimize potential water quality impacts, i.e., measures to control erosion and the discharge of sediment into downstream receiving waterbodies, during regulated activities.

Permit Conditions:

General Conditions:

1. The time limit for completing the authorized activity ends on **October 18, 2027**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. 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 4 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 from this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall submit annual maintenance plans by April 1 of each year providing the following information for all maintenance activities proposed for the upcoming maintenance year. Supplemental plans may be submitted to address maintenance actions that are unforeseen at the time of the annual plan submission. Activities proposed in any supplemental plan(s) shall also require written verification from the Corps before work is authorized to begin. Annual maintenance plans and any supplements shall include the following information:

- a. List of proposed maintenance activities to be implemented during the upcoming maintenance year including the name of each facility where maintenance is proposed and the need for each maintenance activity;
 - b. Maps and drawings clearly depicting location, proposed work limits and impacts of each maintenance activity prepared in accordance with the Corps Los Angeles District Map and Drawing Standards;
 - c. Environmental BMPs to be implemented at each maintenance activity;
 - d. Total area of temporary impacts to waters of the United States and associated habitat types at each maintenance activity;
 - e. Approximate dates and duration of each maintenance activity;
 - f. Extent of any suitable habitat for federally listed threatened and endangered species in the project vicinity including but not limited to designated critical habitat;
 - g. Disposal sites for any sediment/debris excavated from a facility in excess of 25 cubic yards.
2. The permittee shall submit a compliance report of all maintenance activities authorized under the RGP during the previous maintenance year no later than April 1 following each maintenance year during which maintenance activities authorized under this RGP are conducted. The compliance report shall include the following information:
- a. Summary of all authorized maintenance activities completed under the RGP;
 - b. Summary of any authorized maintenance activities not completed and their status (postponed, in-progress, etc);
 - c. Compliance with BMPs applied to each completed maintenance activity;
 - d. Results of pre-project biological surveys and biological monitoring during construction;
 - e. Compliance with RGP special conditions;
 - f. Representative photographs of completed maintenance activities;
 - g. All instances of non-compliance with the terms and conditions of the RGP.
3. 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. 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.
4. The Corps permit does not authorize you to take any threatened or endangered species, in particular the California least tern (*Sternula antillarum browni*), least Bell's vireo (*Vireo bellii pusillus*), or coastal California gnatcatcher (*Polioptila californica californica*), or adversely modify any designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species

Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). Pursuant to the USFWS correspondence dated August 18, 2021 (FWS-OR-13B0009-13I0017-R001; Enclosure 1), including the required avoidance and minimization measures, the Corps Regulatory Division has determined and the USFWS has concurred that your activity is not likely to adversely affect the above species. Your authorization under this Corps permit is conditional upon your compliance with all of the required avoidance and minimization measures, which are incorporated by reference in this permit. Failure to comply with the required avoidance and minimization measures would constitute non-compliance with your Corps permit.

5. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction within waters within the Corps Permit Area of either human remains, archaeological deposits, or any other type of historic property, the Permittee shall notify the Corps Regulatory Project Manager (Eric Sweeney at 760-602-4837) and the Corps' Regulatory Archaeology Staff (Danielle Storey at 213-452-3855) within 24 hours. The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. Section 800.13.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

() 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).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

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.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

PERMITTEE 

DATE 10/20/2022

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

James E. Mace
Lead, Orange & Riverside Counties Team
South Coast Branch
Regulatory Division

DATE 10/20/2022

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

TRANSFEEE _____

DATE _____





Figure 3: Burris Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

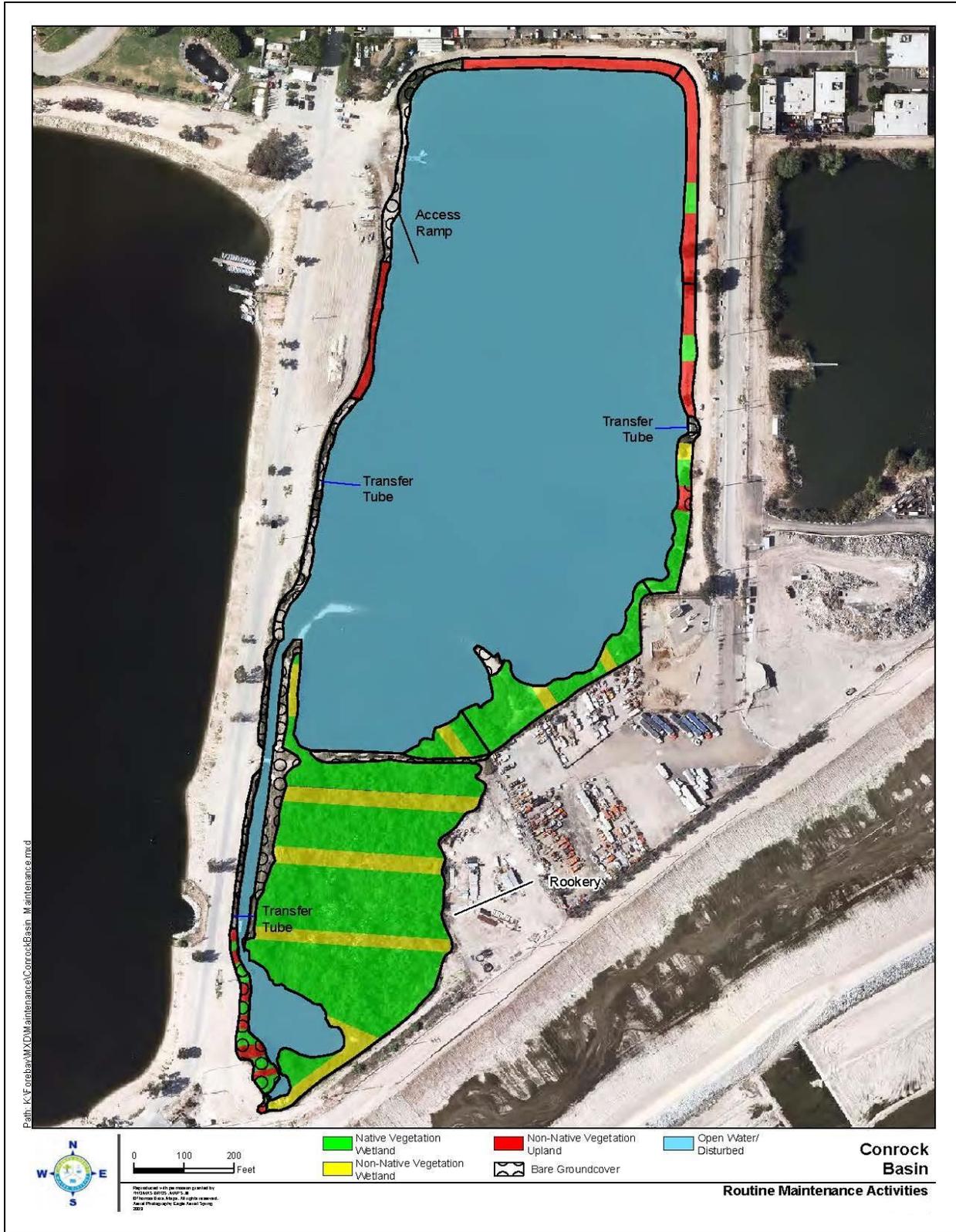


Figure 4: Conrock Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

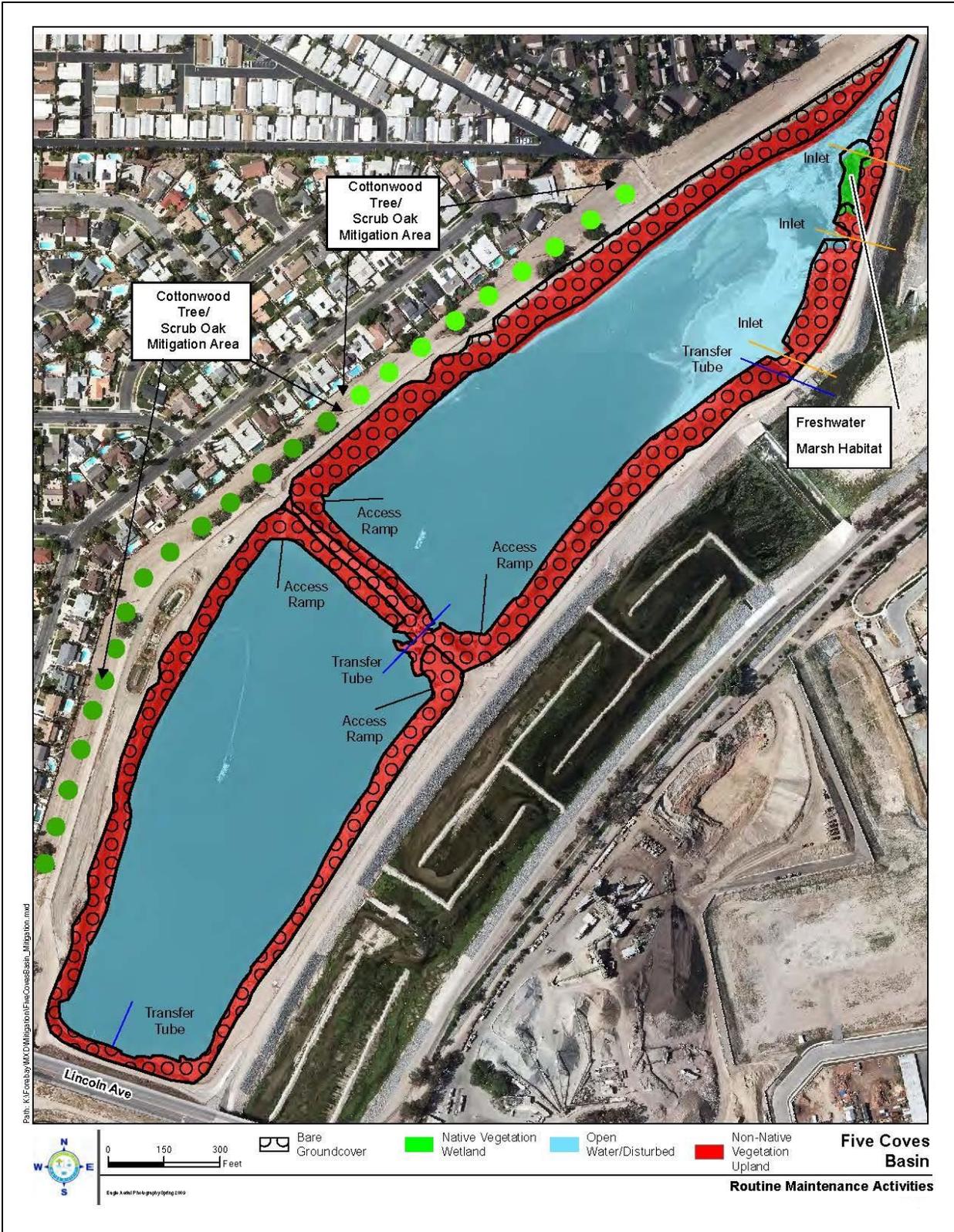


Figure 5: Five Coves Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

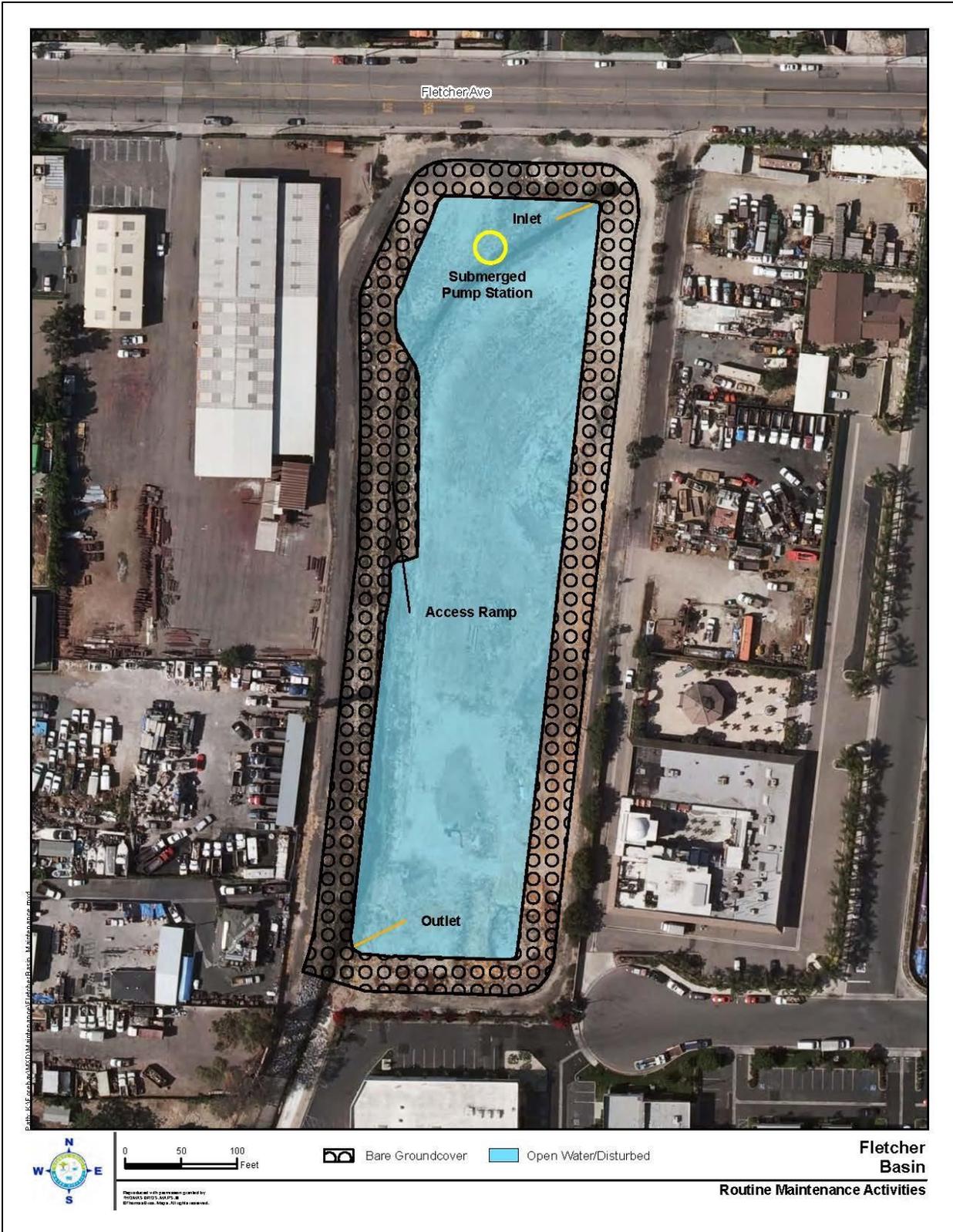


Figure 6: Fletcher Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

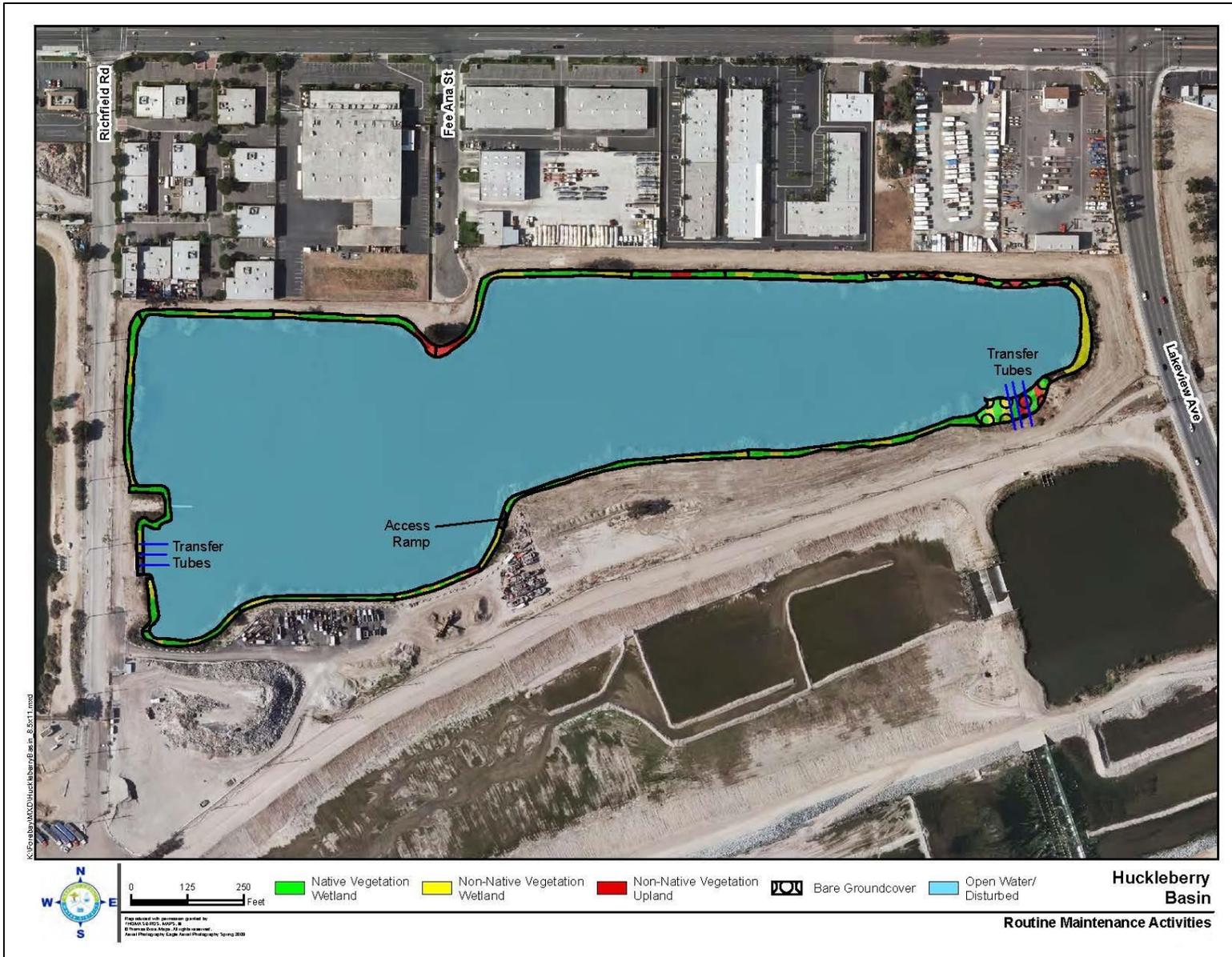


Figure 7: Huckleberry Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹



Figure 8: Kraemer Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹



Figure 9: La Jolla Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

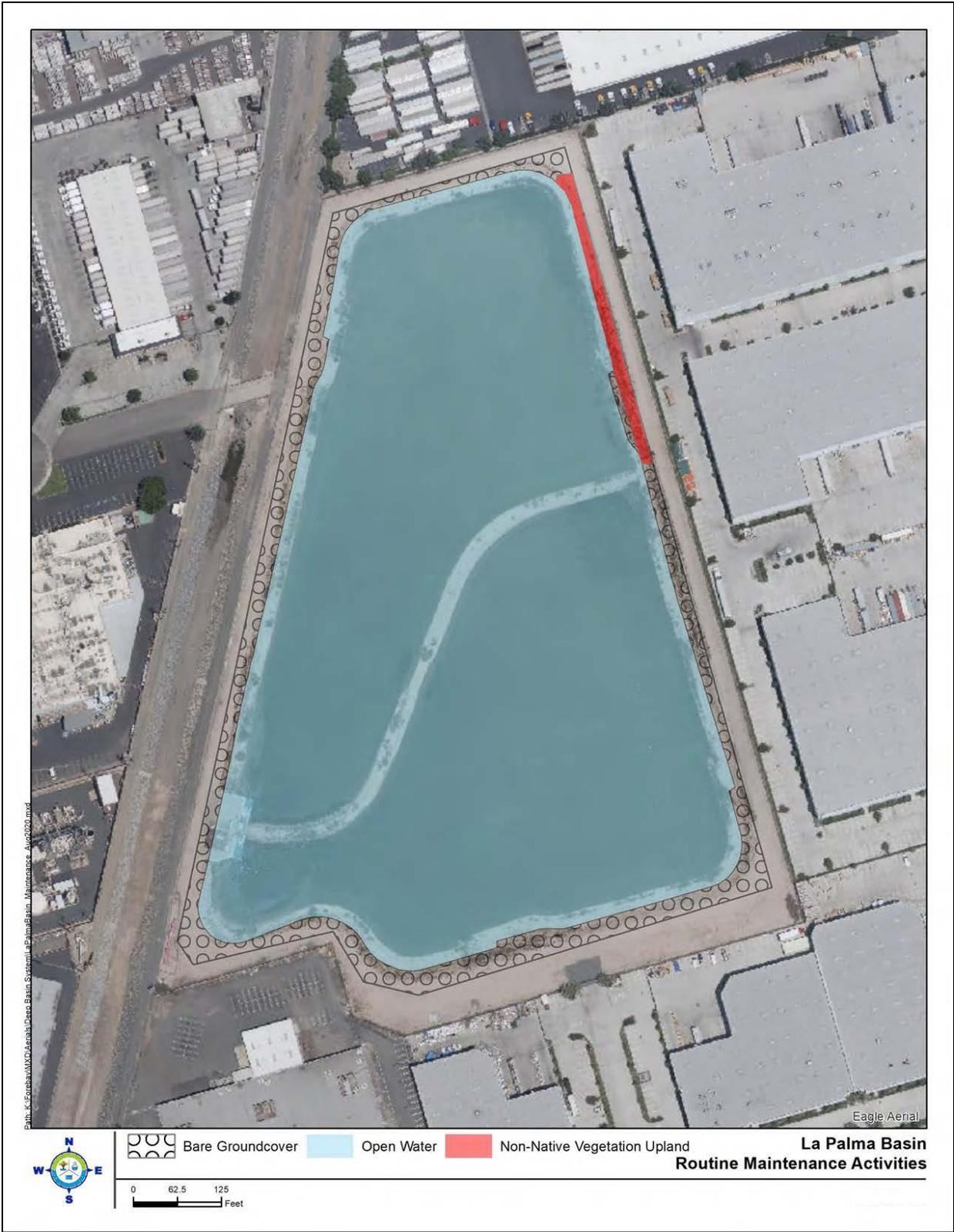


Figure 10: La Palma Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

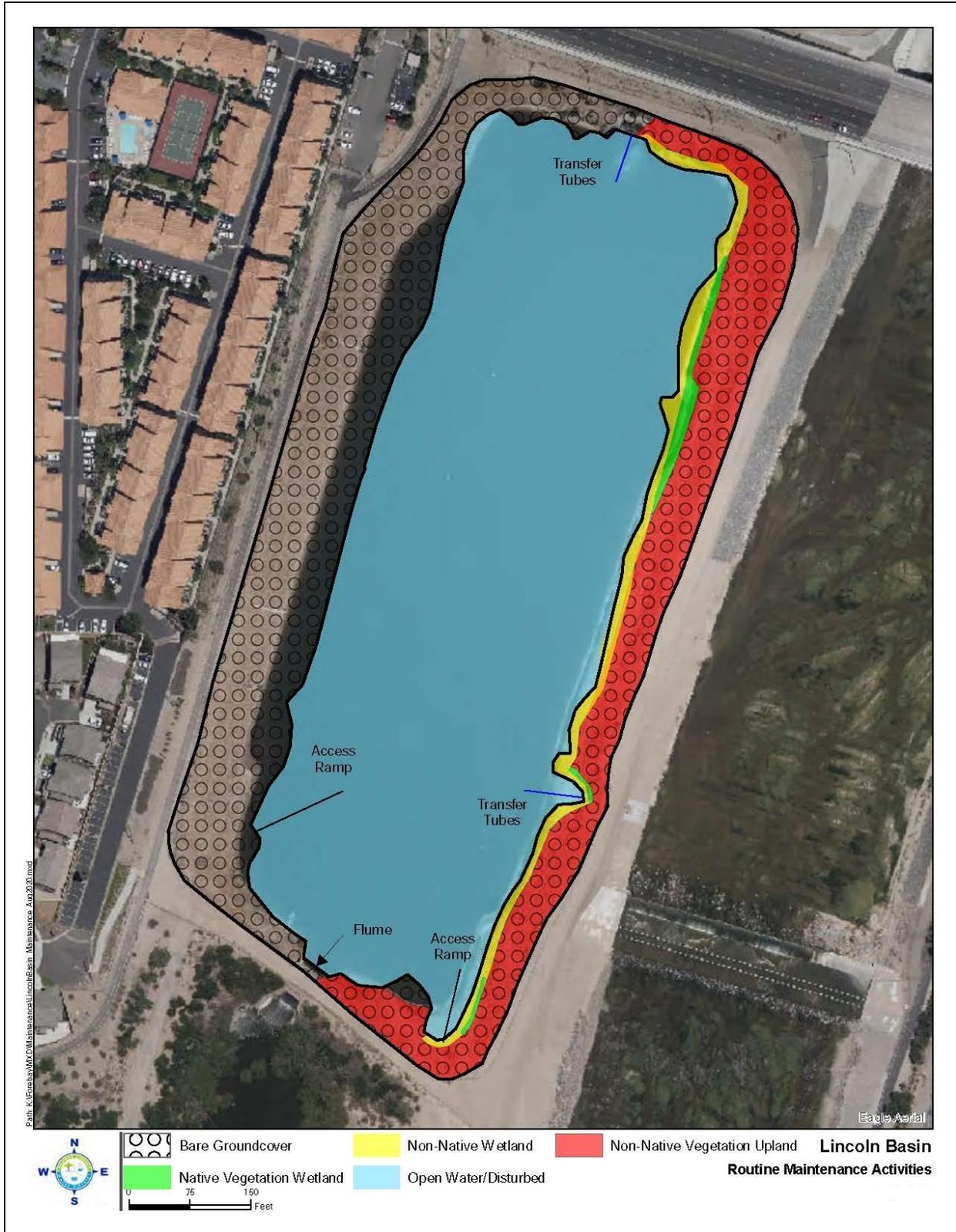


Figure 11: Lincoln Basin maintenance footprint for jurisdictional activities authorized under RGP 90.1

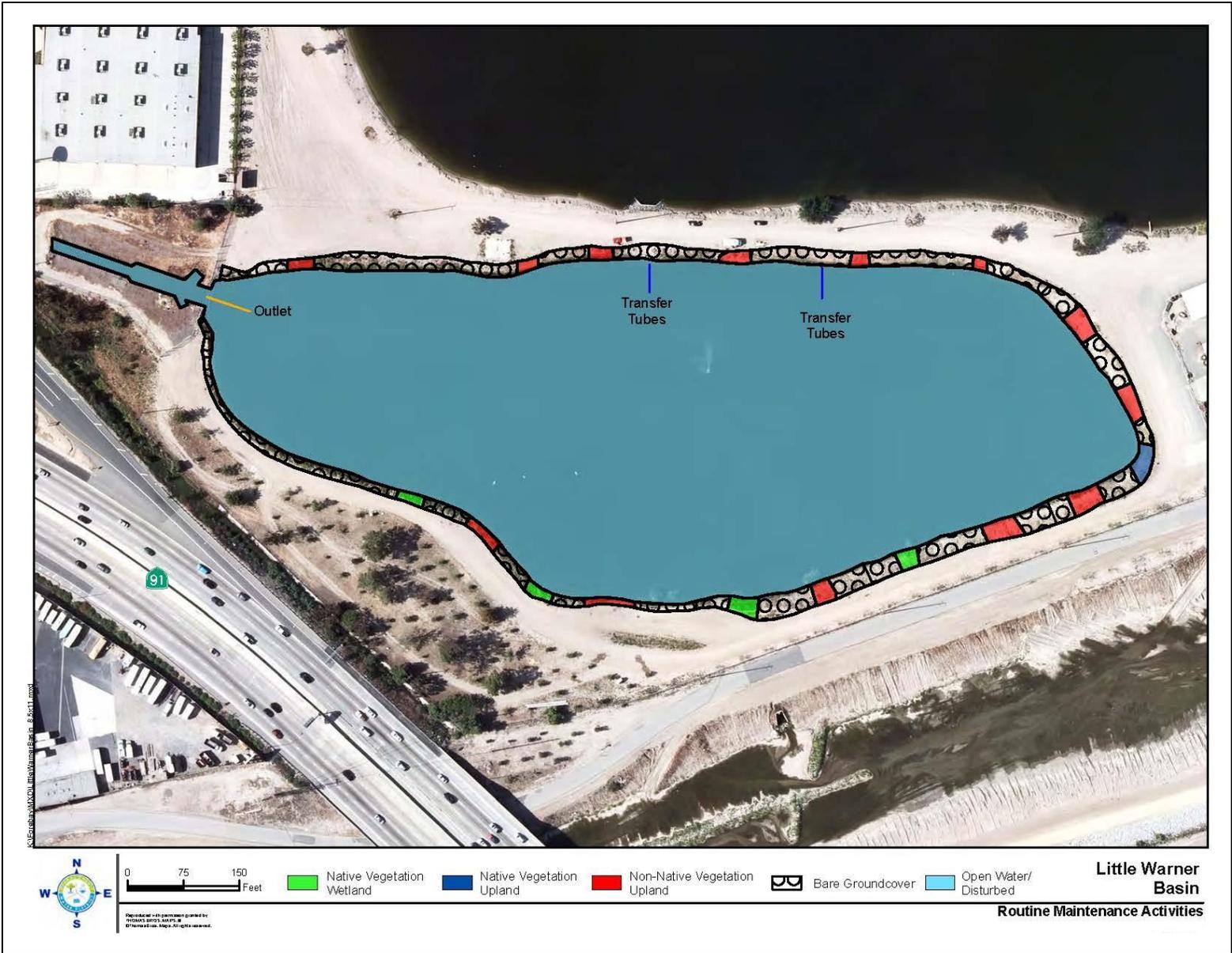


Figure 12: Little Warner Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

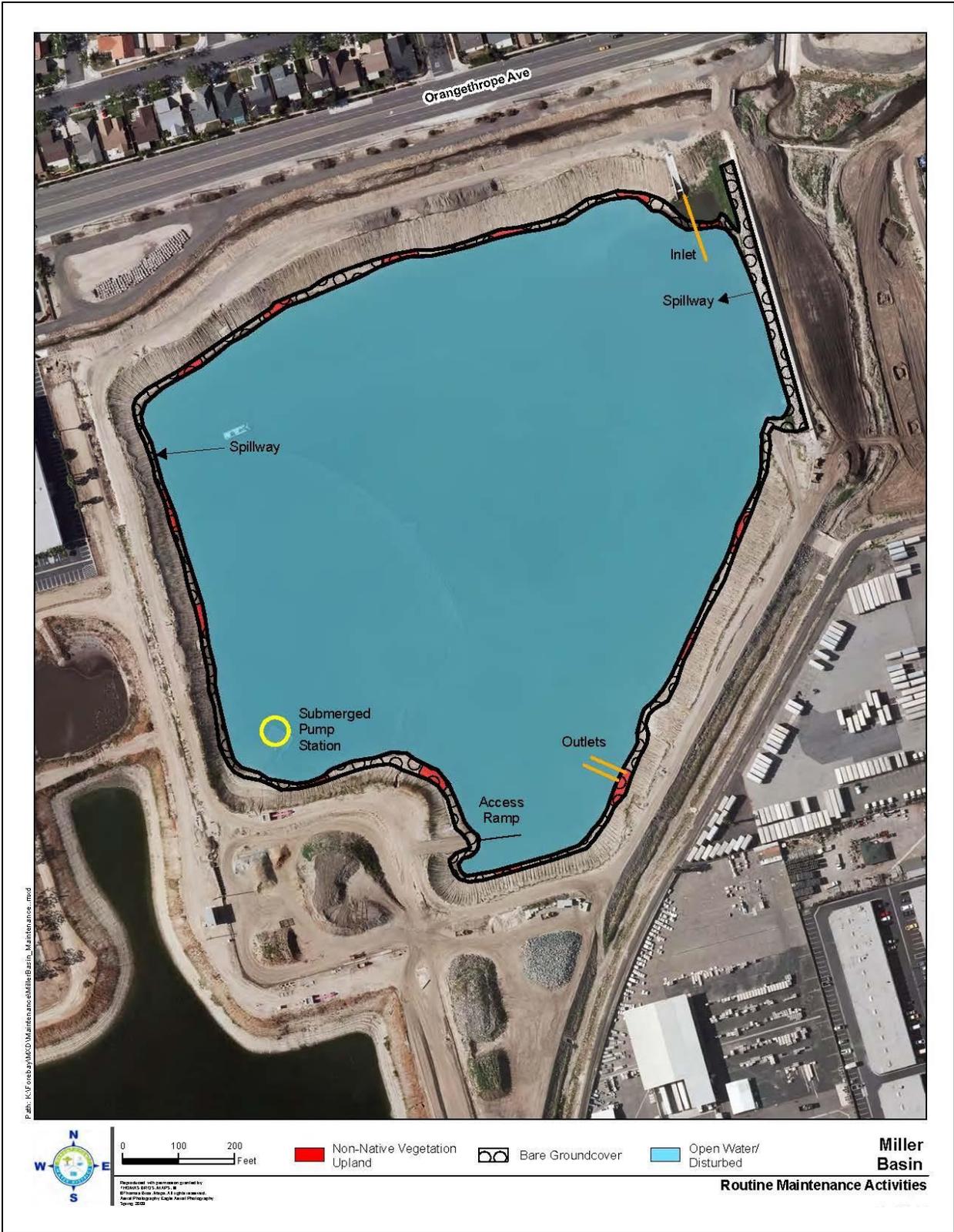


Figure 13: Miller Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹



Figure 14: Mini Anaheim Lake maintenance footprint for jurisdictional activities authorized under RGP 90.¹

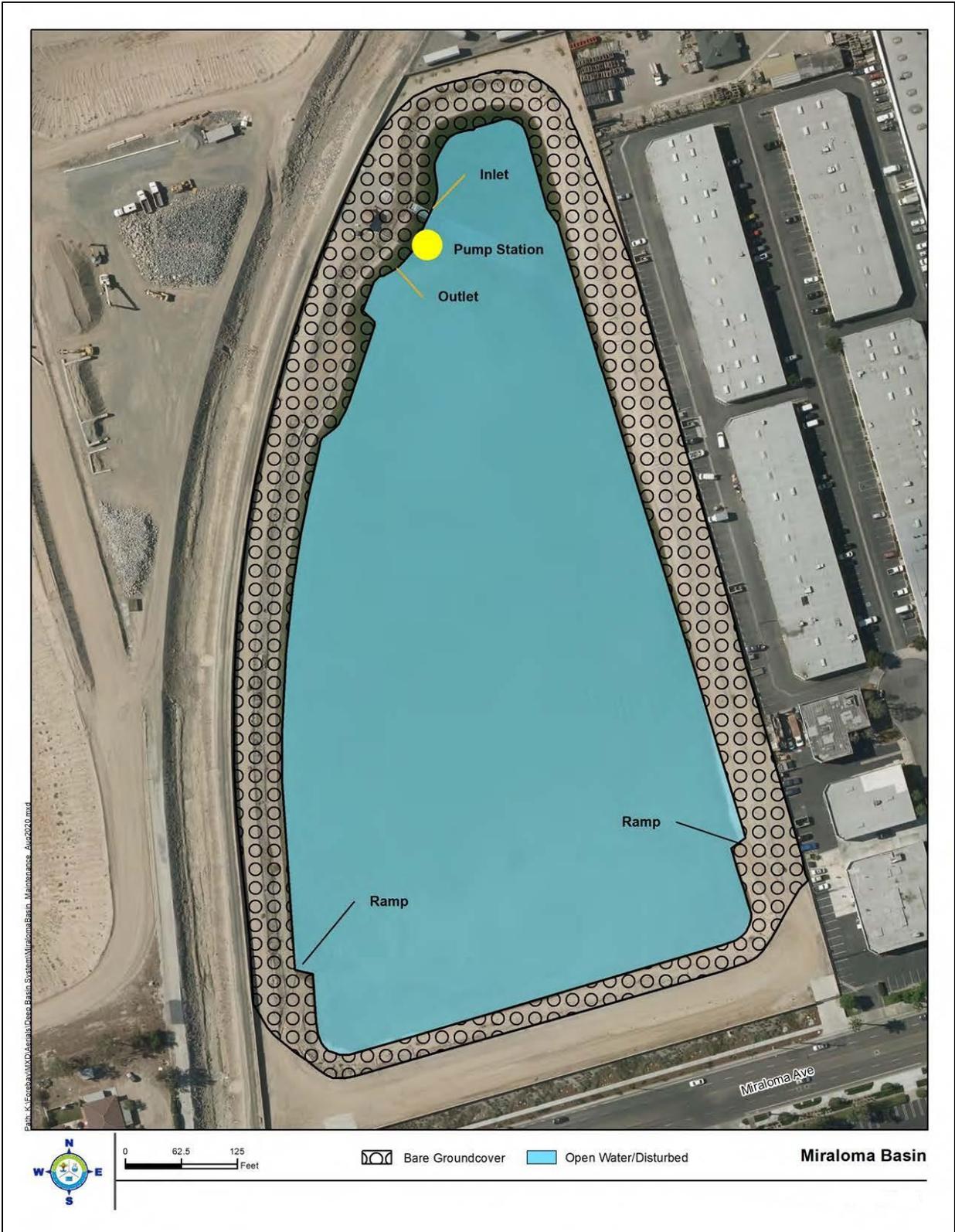


Figure 15: Miraloma Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

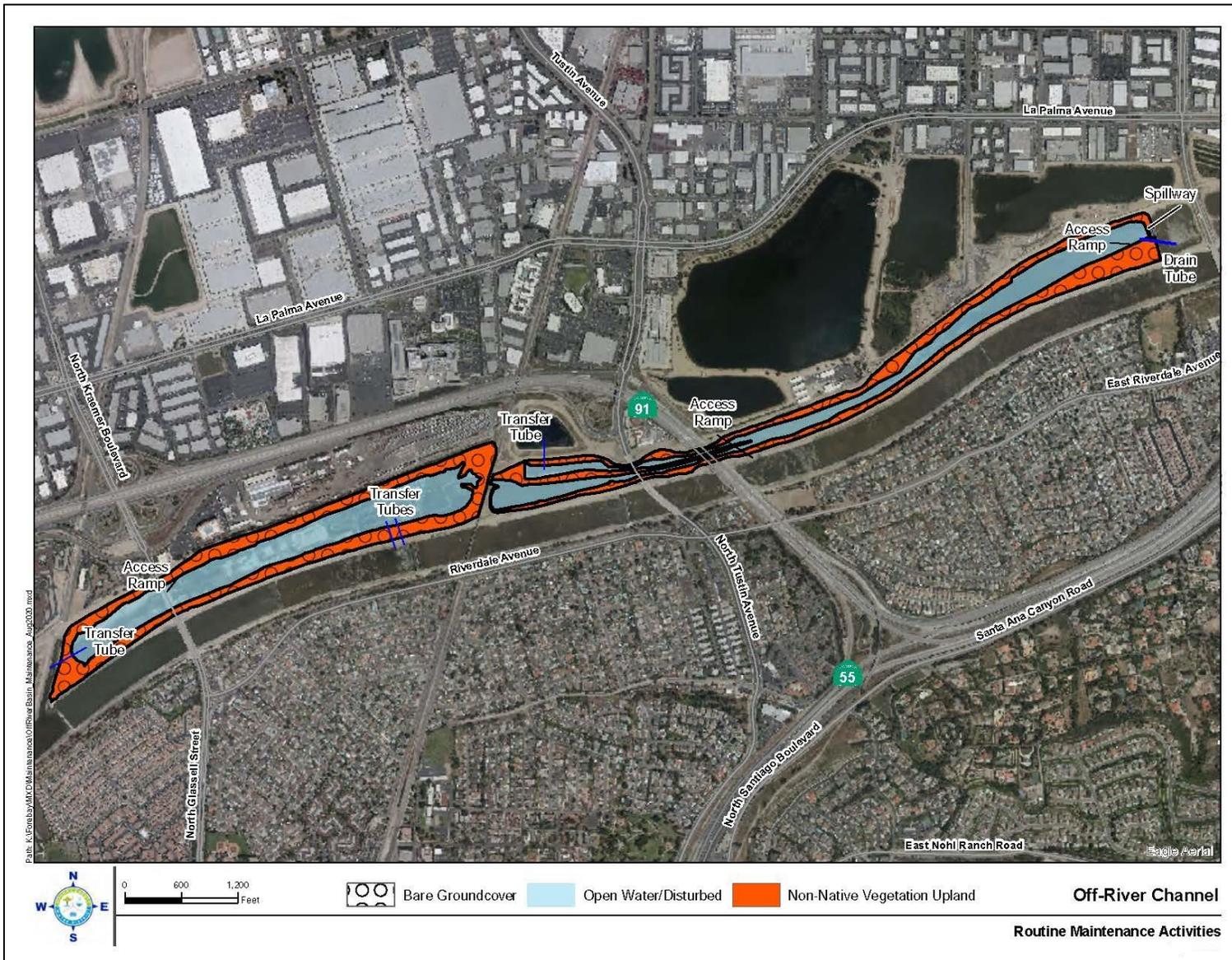


Figure 16: Off-River Channel maintenance footprint for jurisdictional activities authorized under RGP 90.¹

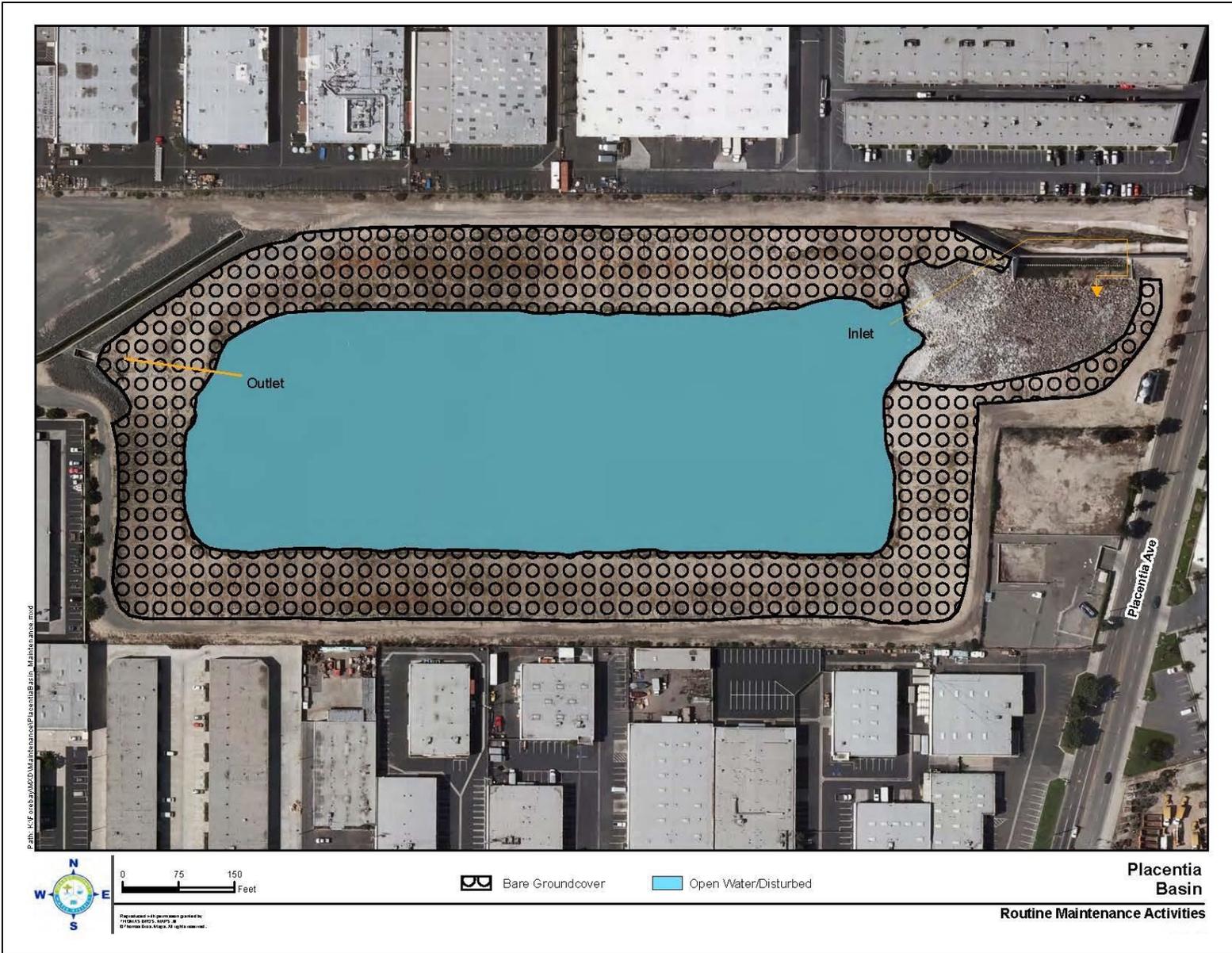


Figure 18: Placentia Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

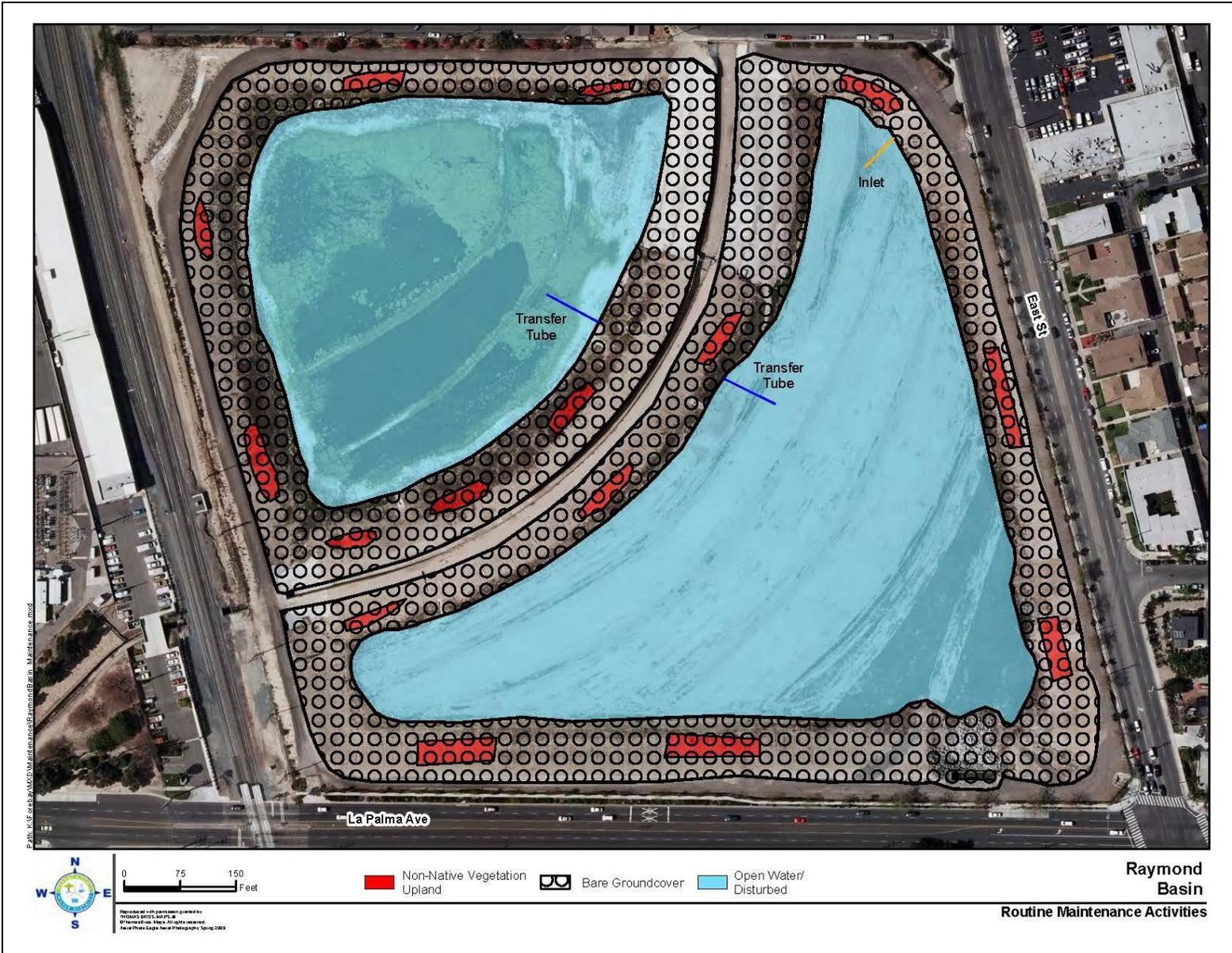


Figure 19: Raymond Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

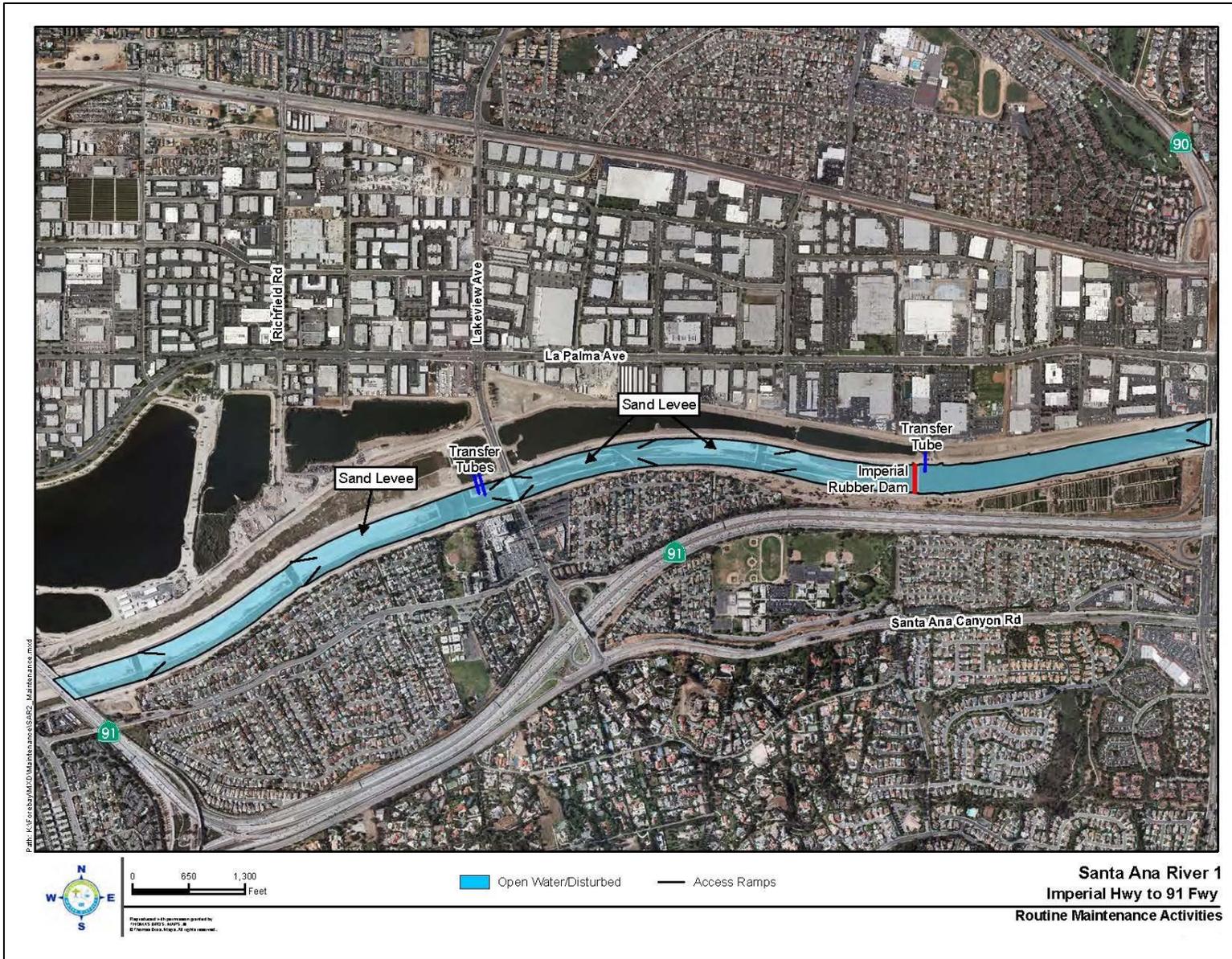


Figure 21: Santa Ana River 1 (Imperial Highway to 91 Freeway) maintenance footprint for jurisdictional activities authorized under RGP 90.1

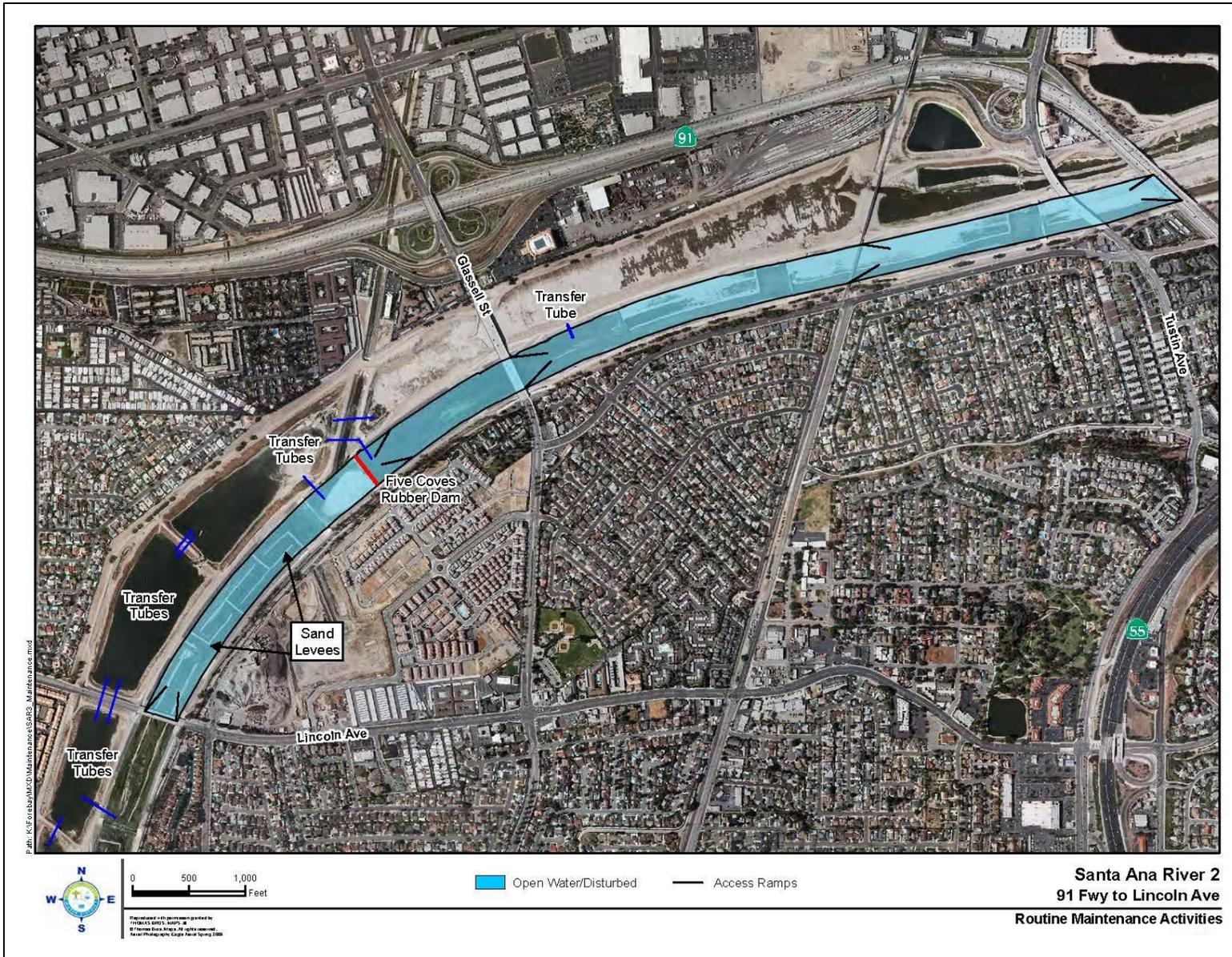


Figure 22: Santa Ana River 2 (91 Freeway to Lincoln Avenue) maintenance footprint for jurisdictional activities authorized under RGP 90.¹

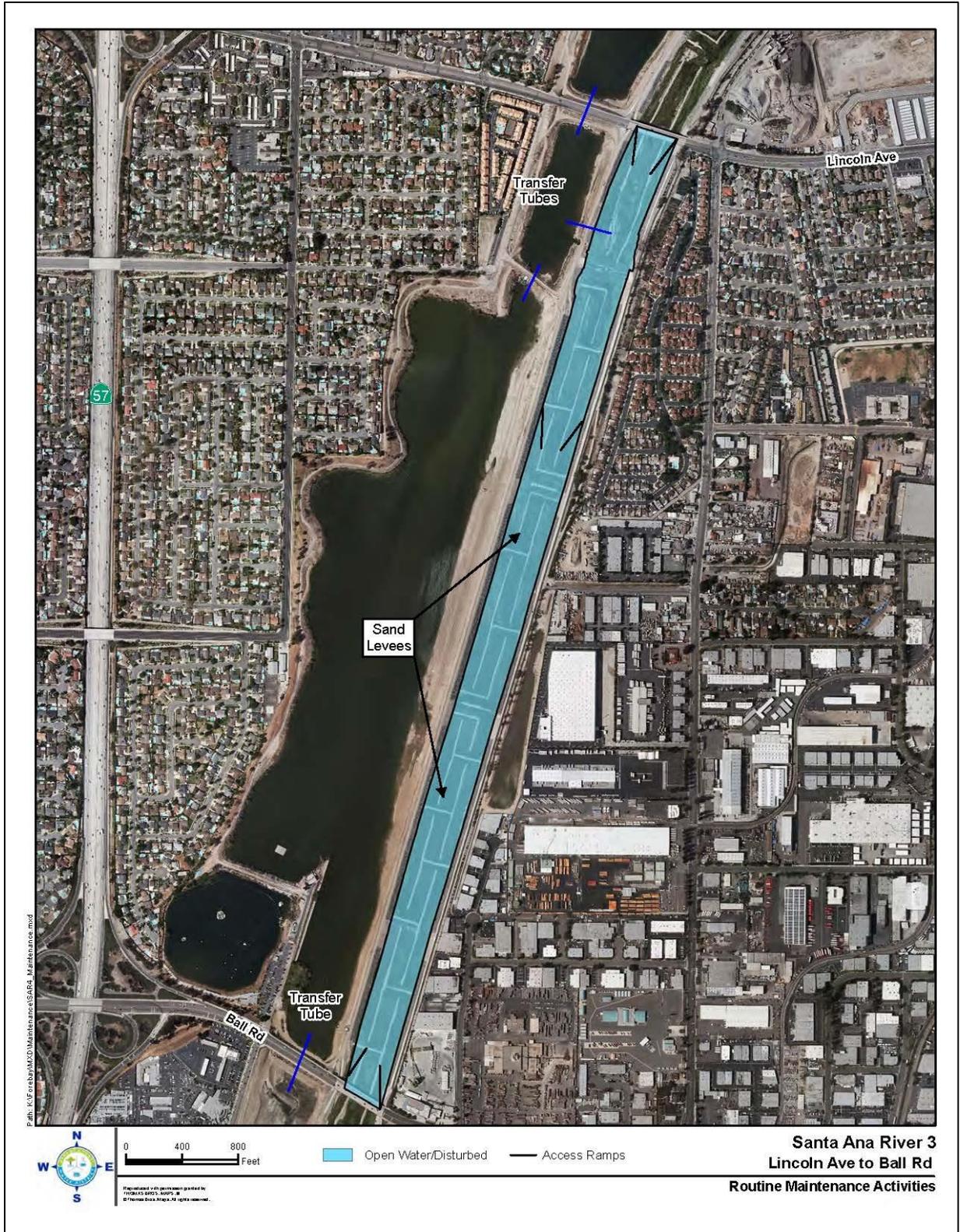


Figure 23: Santa Ana River 3 (Lincoln Avenue to Ball Road) maintenance footprint for jurisdictional activities authorized under RGP 90.¹

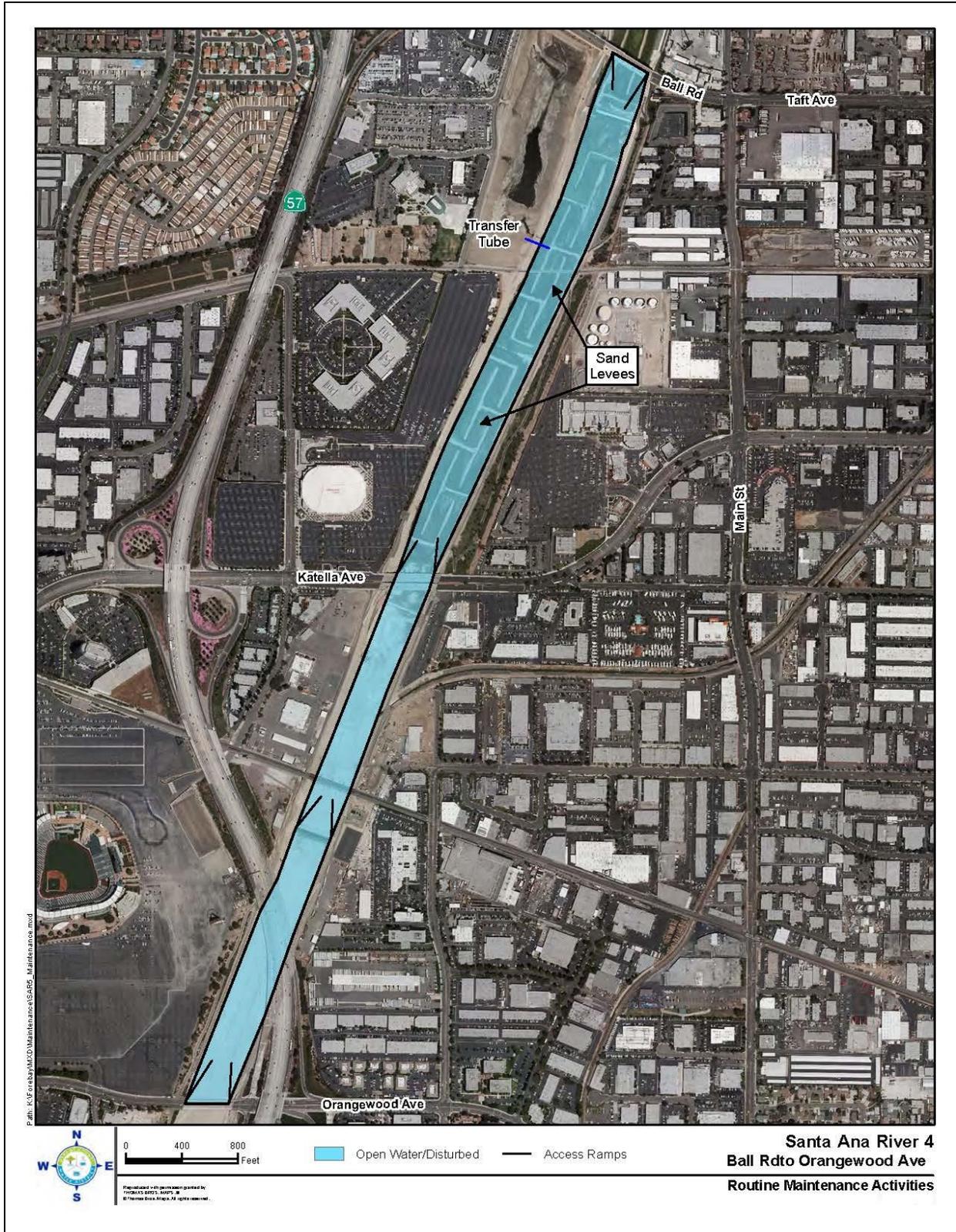


Figure 24: Santa Ana River 4 (Ball Road to Orangewood Avenue) maintenance footprint for jurisdictional activities authorized under RGP 90.¹

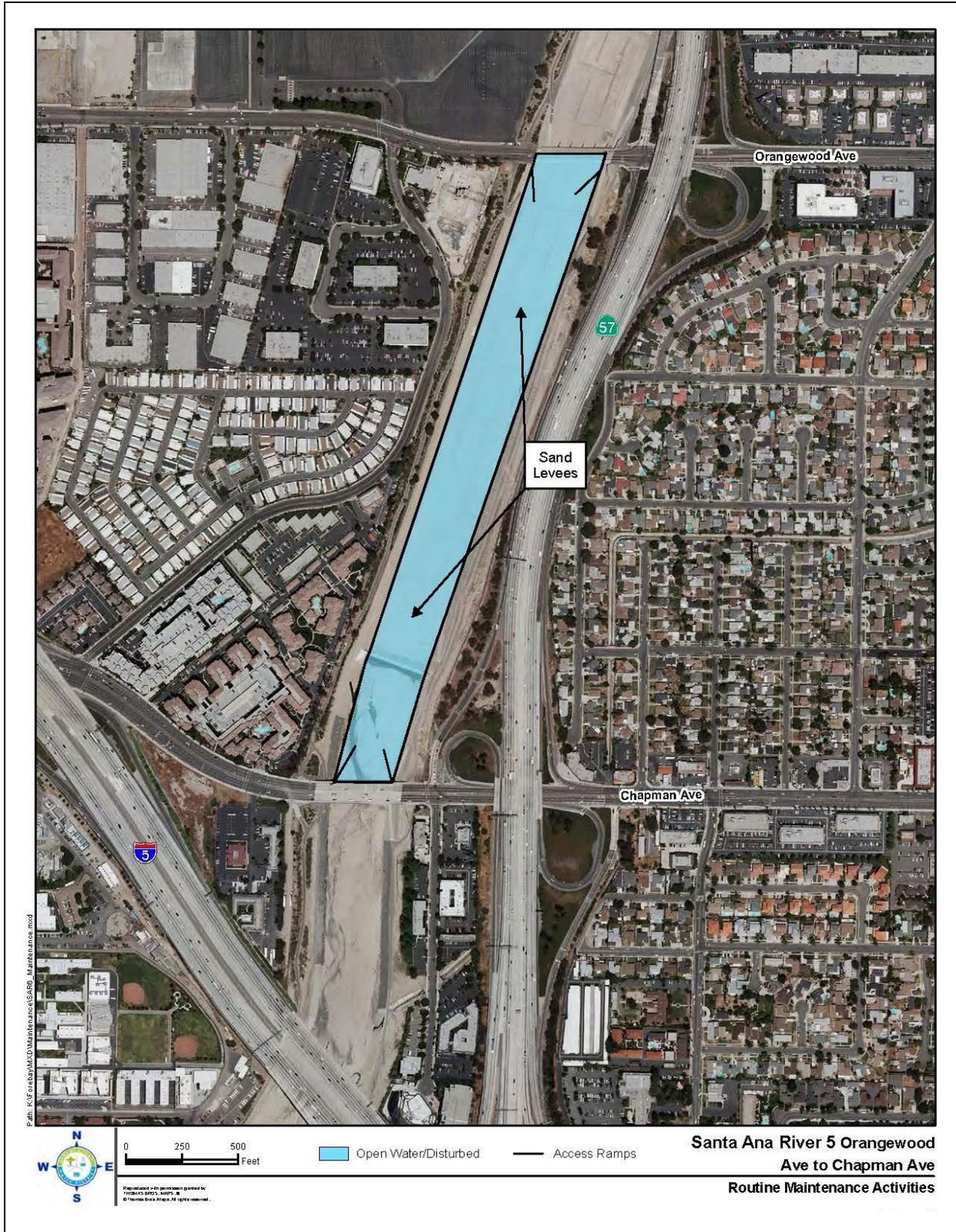


Figure 25: Santa Ana River 5 (Orangewood Avenue to Chapman Avenue) maintenance footprint for jurisdictional activities authorized under RGP 90.¹

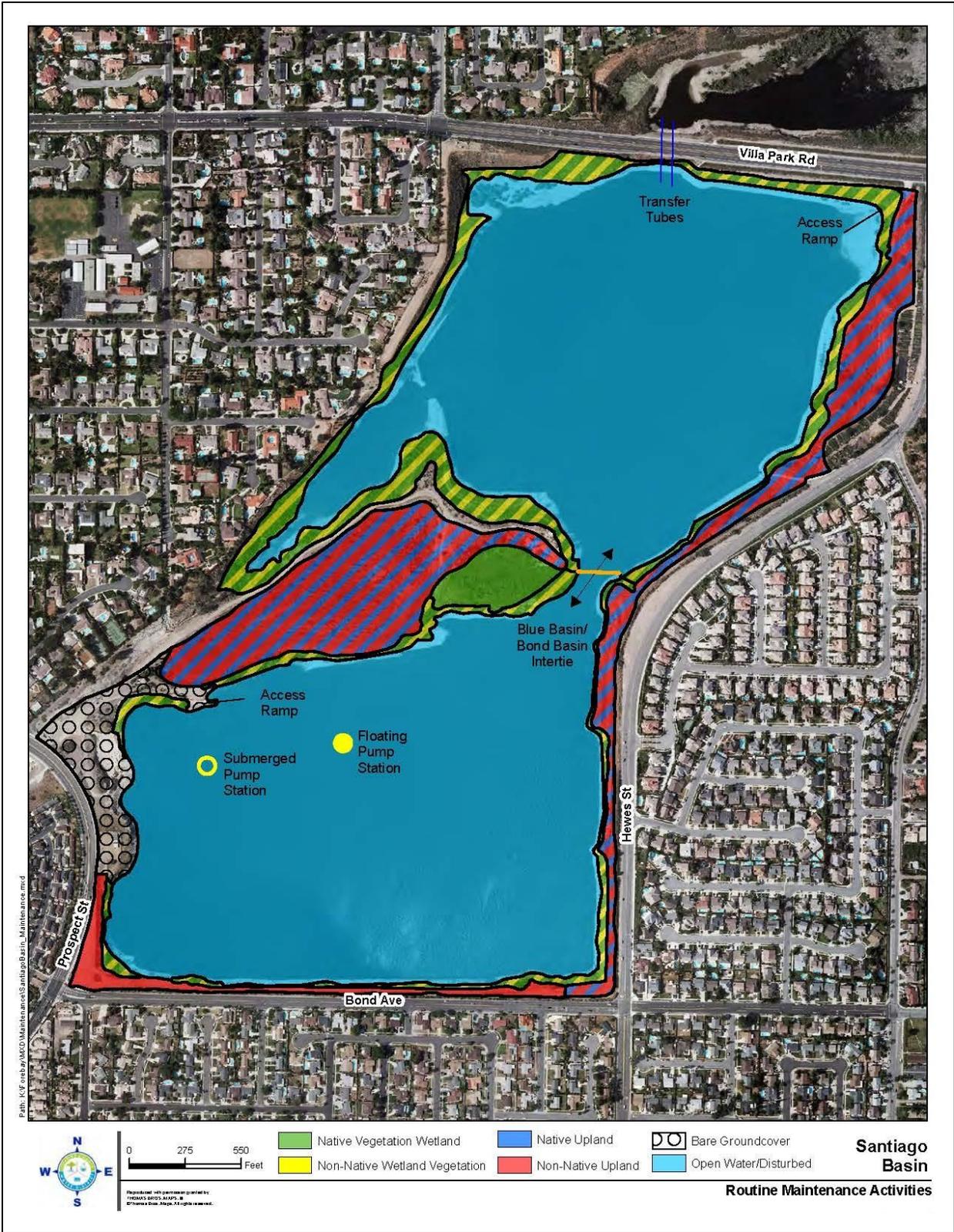


Figure 26: Santiago Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹



Figure 27: Santiago Creek Area 1 maintenance footprint for jurisdictional activities authorized under RGP 90.¹



Figure 28: Santiago Creek Area 2 maintenance footprint for jurisdictional activities authorized under RGP 90.¹



Figure 29: Santiago Creek Area 3 maintenance footprint for jurisdictional activities authorized under RGP 90.¹



Figure 30: Warner Basin maintenance footprint for jurisdictional activities authorized under RGP 90.¹

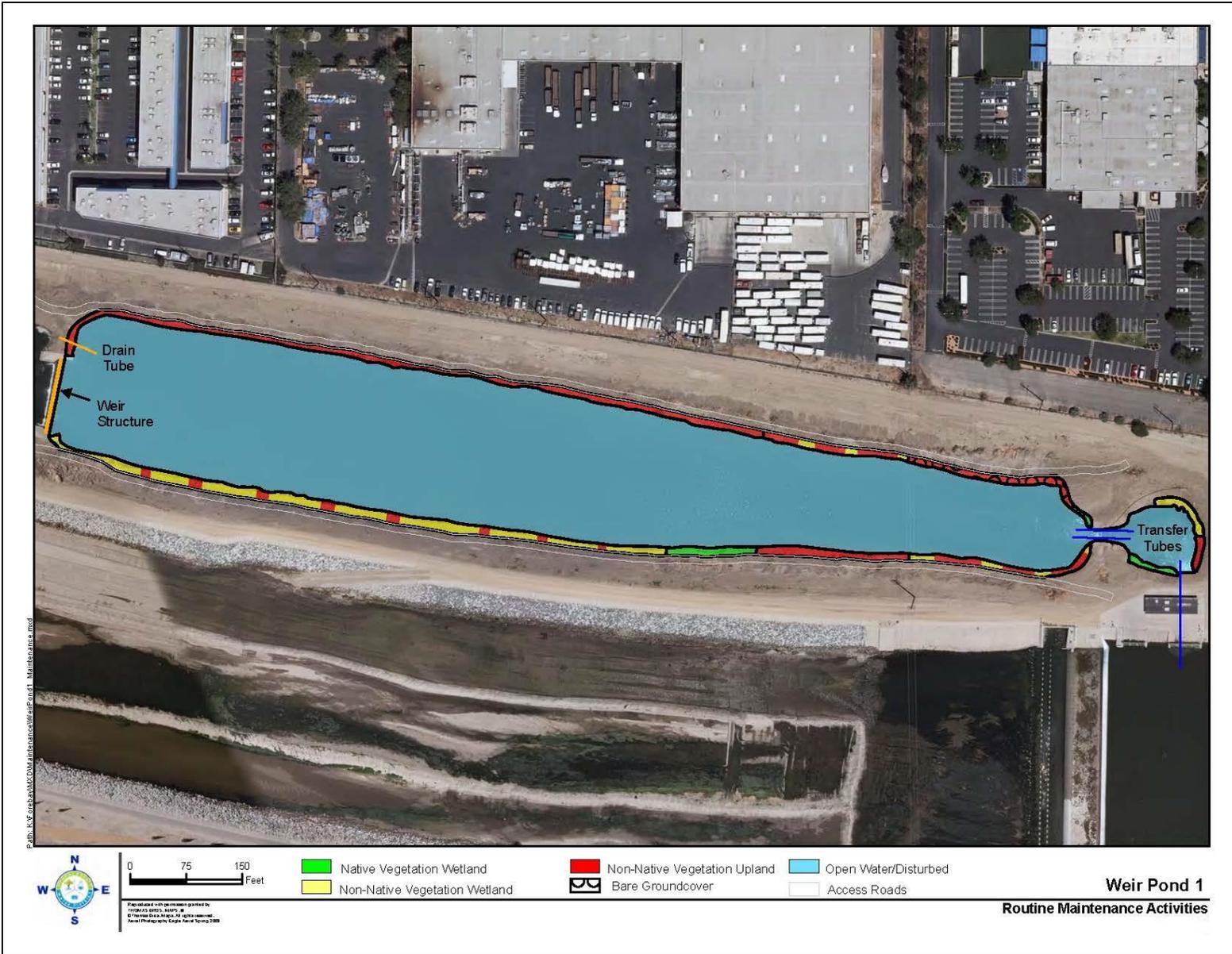


Figure 31: Weir Pond 1 maintenance footprint for jurisdictional activities authorized under RGP 90.¹

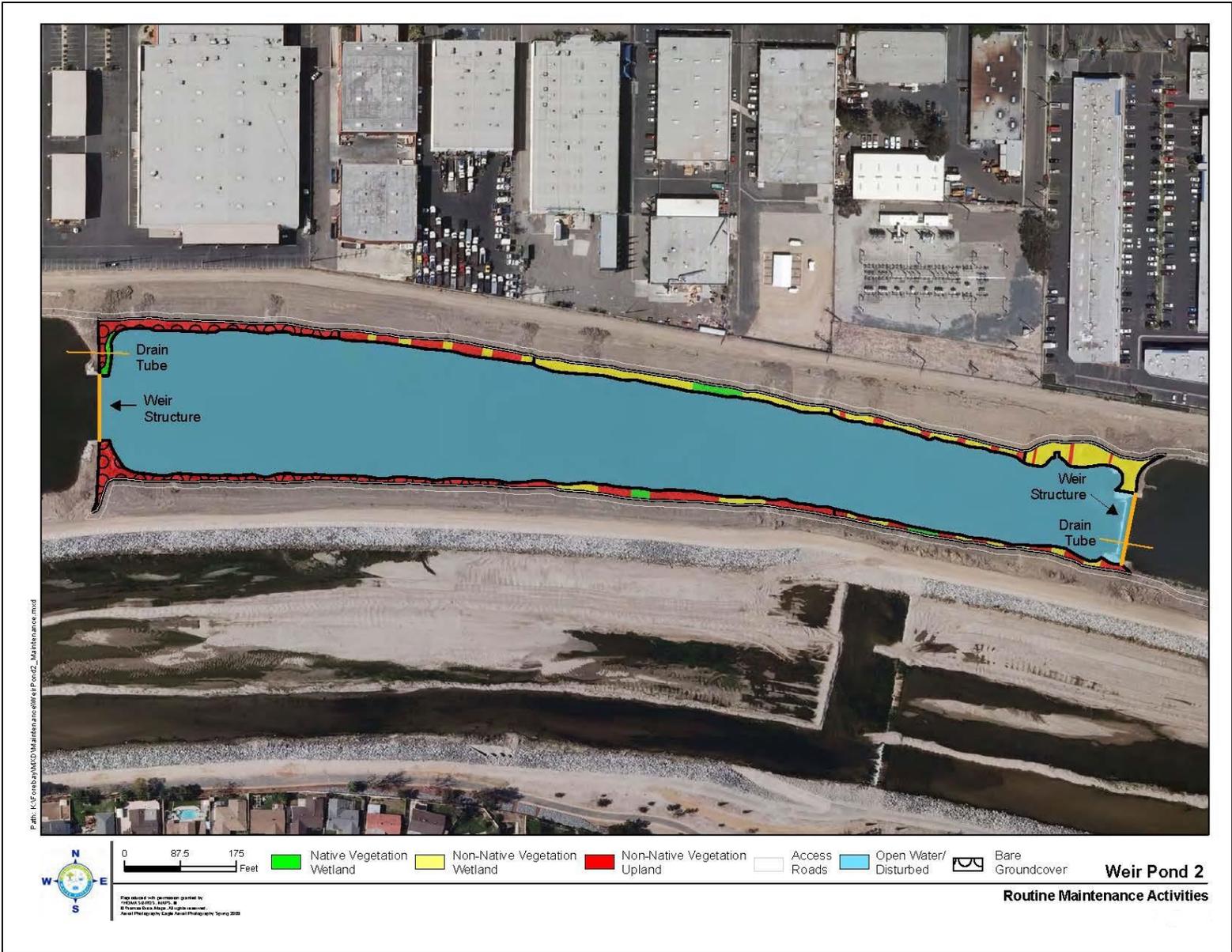


Figure 32: Weir Pond 2 maintenance footprint for jurisdictional activities authorized under RGP 90.¹

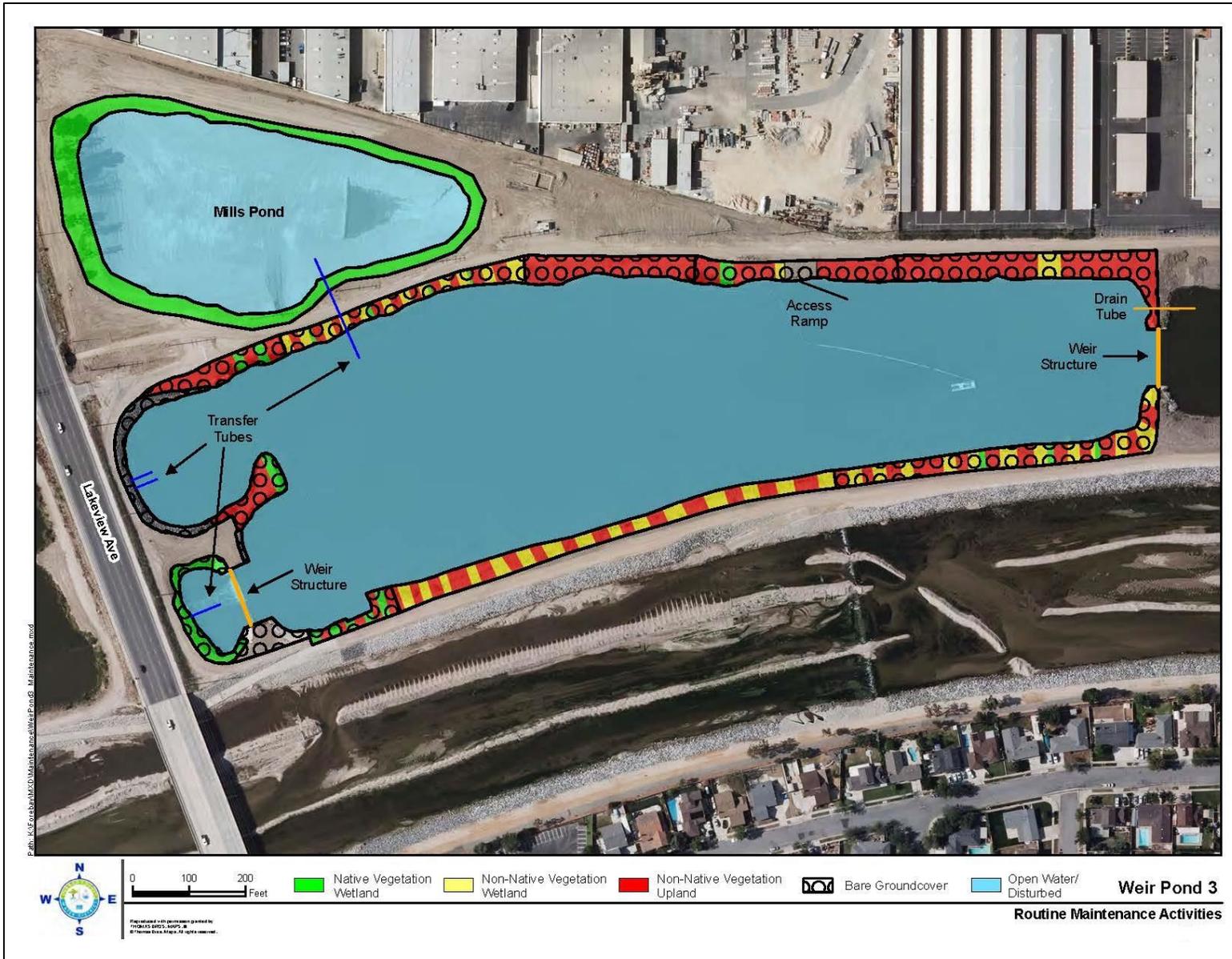


Figure 33: Weir Pond 3 maintenance footprint for jurisdictional activities authorized under RGP 90.¹

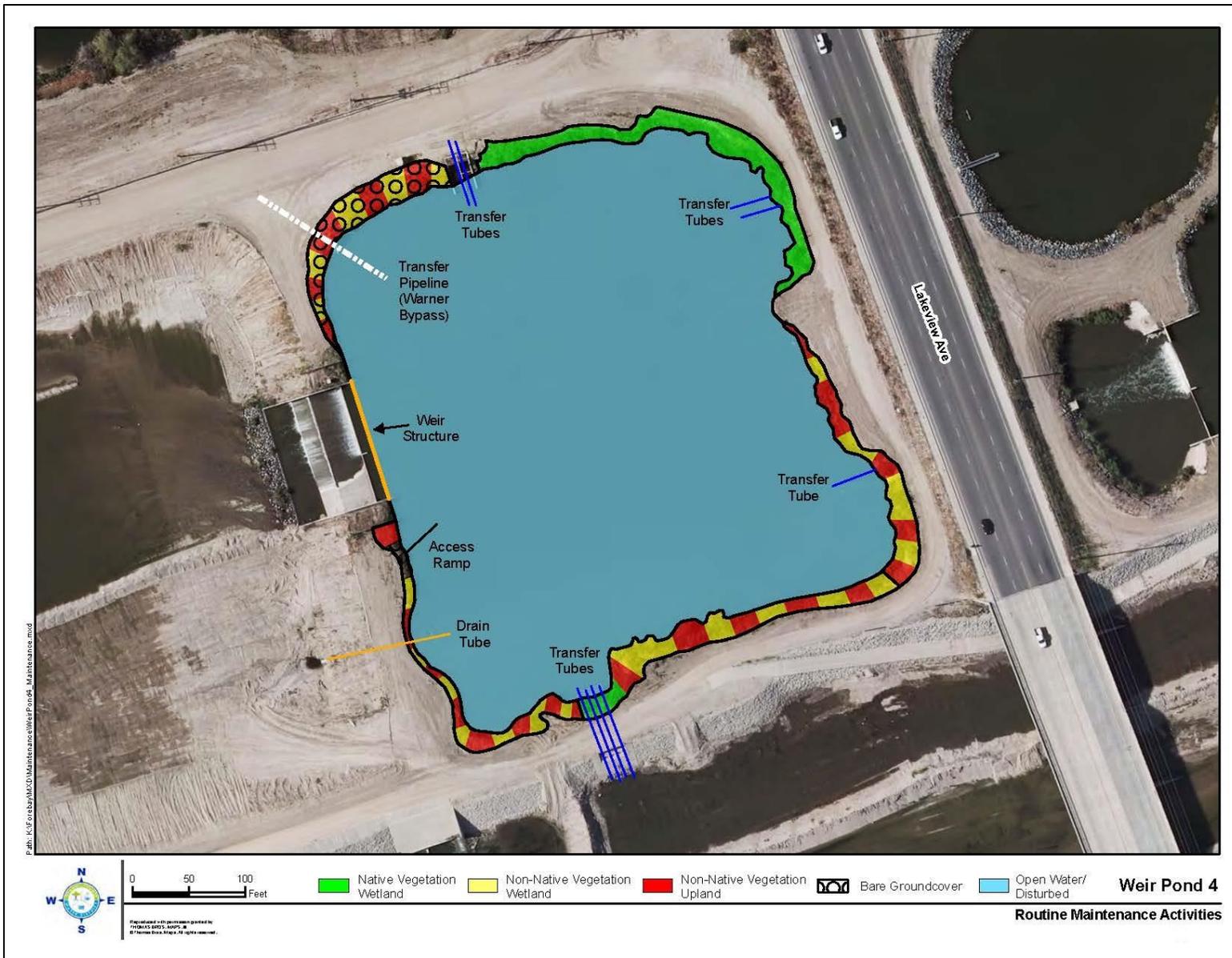


Figure 34: Weir Pond 4 maintenance footprint for jurisdictional activities authorized under RGP 90.¹

Enclosure 1



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



In Reply Refer to:
FWS-OR-13B0009-13I0017-R001

August 18, 2021
Sent Electronically

Eric R. Sweeney
Senior Project Manager, South Coast Branch
Regulatory Division
U.S. Army Corps of Engineers – Los Angeles District
5900 La Place Court, Suite 100
Carlsbad, California 92008

Subject: Reinitiation of Informal Section 7 Consultation for Orange County Water District
Groundwater Recharge Facilities Maintenance Plan, Orange County, California

Dear Eric Sweeney:

This letter responds to your March 22, 2021, request for concurrence that reissuance of Regional General Permit (RGP) 90 to Orange County Water District (OCWD), which includes implementation of the proposed Groundwater Recharge Facilities Maintenance Plan (Maintenance Plan), dated August 2020 in Orange County, California, is not likely to adversely affect the federally endangered California least tern [*Sternula antillarum browni* (*Sterna a. b.*); least tern], endangered least Bell's vireo (*Vireo bellii pusillus*; vireo), and threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher). We completed informal consultation on implementation of the Maintenance Plan, dated April 2012 and concurred with your determination that issuance of RGP 90 would not likely adversely affect the least tern, vireo, gnatcatcher and federally threatened Santa Ana sucker (*Catostomus santaanae*) on November 19, 2012 (Service 2012). Your request for concurrence is made in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). This consultation is based on information provided with your initial request and supplemental information provided by OCWD on May 21, June 15, and August 11, 2021.

The U.S. Army Corps of Engineers determined that reissuance of RGP 90 will not affect Santa Ana sucker. Habitat for Santa Ana sucker below Prado Dam, including the project area, has been degraded to the point that the species has not been observed in over 10 years. According to the Maintenance Plan (page 7–20), and consistent with the original issuance of RGP 90, OCWD will continue to assist with the identification and implementation of Santa Ana sucker habitat restoration programs above Prado Dam as a member of the Santa Ana Sucker Conservation Team. These actions will help to address the loss of marginal habitat for Santa Ana sucker within the Maintenance Plan area. Should habitat conditions for the Santa Ana sucker be improved to the point where a viable breeding population is established below Prado Dam, the potential effects of the proposed action on Santa Ana sucker may need to be reconsidered.

Modifications to the Project Description

The proposed RGP 90 includes a new recharge basin (La Palma Basin), constructed since our last consultation; however, no federally listed species are present in the basin. No other changes to the footprint of proposed maintenance activities are anticipated. OCWD will continue to implement habitat creation, restoration, and management as described in the updated Habitat Management Plan (HMP), dated August 2020, and the conservation measures identified in our previous consultation (Appendix).¹

Baseline Conditions

As part of ongoing maintenance of the groundwater recharge facilities, OCWD proposed to preserve and manage a total of 107.29 acres of native habitats within 7 basins, including 29.5 acres of native riparian and upland vegetation and freshwater marsh to be created and restored. No formal preservation instrument (e.g., conservation easement) is anticipated; however, the sites are designated as Open Space by the City of Anaheim and City of Orange General Plans and Zoning Codes (HMP, page 4-1). Native habitat restored and created through 2020 includes 17.57 acres across 5 sites (Table 1). All restoration is anticipated to be completed within a 12-year period (HMP, page 6-4).

Table 1. Summary of native habitat restoration/creation implemented through 2020.²

Basin	Vegetation Types	Acres	Year Planted
Santiago Site 1	coastal sage scrub community, mulefat (<i>Baccharis salicifolia</i>), coast live oak (<i>Quercus agrifolia</i>)	2.00	2017
Santiago Site 2	coastal sage scrub and chaparral communities	2.00	2018
Mills Pond	Cattails (<i>Typha</i> sp.), bulrush (<i>Schoenoplectus</i> sp.), sycamores (<i>Platanus racemosa</i>), chaparral dominated by toyon (<i>Heteromeles arbutifolia</i>)	5.30	2015 and 2016
Conrock	black willow (<i>Salix nigra</i>), arroyo willow (<i>Salix lasiolepis</i>), cottonwood (<i>Populus fremontii</i>)	4.27	2013 and 2019
Five Coves	Mixed riparian and upland shrubs	2.00	2012 and 2014
Huckleberry	Riparian with a band of transitional upland shrubs along perimeter	2.00	2020

The primary source of water supporting preserved, restored, and created habitats within the basins is the Santa Ana River. Santiago Basin is supported by both the Santa Ana River and

¹ Information received from S. Nevill (OCWD) on May 21, 2021.

² Information received from S. Nevill (OCWD) on August 11, 2021.

Santiago Creek. The Santa Ana River experienced a decline in flow since the issuance of RGP 90 from both lower than average rainfall and a reduction in discharge by water producers upstream. The long-term viability of the preserved native habitat is dependent on managing water levels within the basins to provide appropriate hydrology.

The status of vireo, tern and gnatcatcher within the basins was monitored annually after issuance of RGP 90. Vireo expanded their distribution from 2 basins to 4 (Santiago, Smith, Conrock and Burris) and a total of 10 vireo territories were documented in 2020. Gnatcatchers expanded their distribution from 1 to 2 basins (Santiago and Smith) and a total of 20 territories were documented in 2020. Least tern distribution is confined to a sand island and floating island within Burris Basin and did not change after issuance of RGP 90. A total of 12 least tern nesting pairs were documented in Burris Basin in 2020. Least tern numbers fluctuated annually as a result of predation, competition with Canada geese (*Branta canadensis*), and potentially low food availability. According to information provided with the request for consultation, no documented instances of a nest disturbance leading to an abandonment or physical damage to a nest that led to a nest failure were recorded during monitoring conducted for RGP 90. OCWD biological staff and Operations Department staff worked closely to ensure work areas were clearly defined and maintenance methods were discussed before work began.

Effects Analysis

No changes in effects to listed species are anticipated from proposed facilities maintenance based on our review of the updated Maintenance Plan and HMP because: (1) the footprint of maintenance within basins occupied by listed species remains the same, (2) conservation measures (Appendix) are applied to all basins where listed species are documented, and (3) monitoring demonstrated that implementation of the conservation measures resulted in avoidance of adverse effects to listed species. Habitat restoration/creation efforts are expanding habitat available to gnatcatcher and vireo and are considered a beneficial effect of Maintenance Plan implementation.

Based on the above analysis, and provided OCWD continues to implement facilities maintenance as described in the Maintenance Plan and associated HMP, we concur with your determination that reissuance of RGP 90 is not likely to adversely affect the least tern, gnatcatcher or vireo. With our concurrence, the interagency consultation requirements of section 7 of the Act have been satisfied. This determination should be reconsidered if: (1) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered, (2) this action is subsequently modified in a manner that was not considered in this assessment, or (3) a new species is listed or critical habitat designated that may be affected by the action.

With respect to (2) in the paragraph above, our effects analysis is based on maintenance of preserved, restored, and created habitat as identified in the HMP. If this habitat cannot be maintained due to insufficient water supply or if it must be impacted for another project (e.g., Santiago Creek component of the Santa Ana River Project), reinitiation of consultation

should be considered. If you have any questions about this consultation or the consultation process in general, please contact [Christine Medak](#)³ of my staff.

Sincerely,



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for Jonathan D. Snyder
Assistant Field Supervisor

LITERATURE CITED

[Service] U.S. Fish and Wildlife Service. 2012. Informal section 7 consultation for the Orange County Water District Groundwater Recharge Facilities Maintenance Plan, Cities of Anaheim, Orange and Unincorporated Orange County, California (FWS-OR-12B0009-13I0017). On file, U.S. Fish and Wildlife Service, Carlsbad, California.

³ christine_medak@fws.gov

APPENDIX

The OCWD has committed to implementing the following conservation measures (CM) to avoid and minimize potential effects to least tern, vireo, and gnatcatcher:

General

- CM 1. The OCWD will work with the U.S. Fish and Wildlife Service (Service) to ensure that restoration and management of habitats included in the HMP⁴ will be conducted in a manner that will avoid adverse effects to the least tern, vireo, and gnatcatcher.

Least Tern

- CM 2. To the maximum extent possible, operation of heavy equipment in Burris Basin will be avoided during the least tern nesting period (April 1 through August 31).
- CM 3. Maintenance activities that must occur during the nesting period will occur no closer than 900 feet from the sand island and 1,200 feet from the floating island in Burris Basin.
- CM 4. Provided adequate water supplies are available, water levels in Burris Basin will be maintained at sufficient elevation to discourage least terns from nesting along the bottom of Burris Basin (where sediment disturbance is required) and to encourage least terns to nest on the sand island and/or floating island.
- CM 5. Best Management Practices, as described in the Maintenance Plan (Section 3) will be implemented to control wind erosion, soil erosion, sediment transport, and to prevent fuel and/or other construction waste/pollutants from entering the water.
- CM 6. Nesting habitat, equivalent in area to the sand island and floating island will be maintained in Burris Basin in perpetuity in accordance with the HMP.

Vireo

- CM 7. To the maximum extent possible, the operation of heavy equipment in Conrock, Huckleberry, Burris, and Santiago Basins will be avoided during the vireo nesting period (March 15 to September 15).
- CM 8. Prior to conducting maintenance activities between March 15 and September 15, a survey for nesting birds will be conducted by a qualified biologist. No heavy equipment operations will occur within 300 feet of an active vireo nest without prior approval from the Service.

⁴ Orange County Water District Habitat Management Plan, dated August 20, 2020.

- CM 9. A qualified biologist will monitor all active vireo nests located within 500 feet of heavy equipment operations to determine if equipment operations and associated noise levels are resulting in disruption of vireo nesting behavior. The qualified biologist will have the authority to halt maintenance operations that appear to be disrupting nesting behavior and/or have the potential to result in nest abandonment.

Gnatcatcher

- CM 10. To the maximum extent possible, the operation of heavy equipment in Santiago Basin will be avoided during the gnatcatcher nesting period (February 15 to August 31).
- CM 11. Prior to conducting maintenance activities in Santiago Basin between February 15 and August 31, a survey for nesting gnatcatchers will be conducted by a qualified biologist. No heavy equipment operations will occur within 300 feet of an active gnatcatcher nest without prior approval from the Service.