

7.12 OTHER IMPACT CONSIDERATIONS

7.12.1 THE RELATIONSHIP BETWEEN SHORT-TERM USES OF MAN'S ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

The SAMP Study Area covers the San Juan Creek Watershed and those portions of the San Mateo Creek Watershed in the southern portion of Orange County. The San Juan Creek Watershed is approximately 177 square miles (113,000 acres) extending from the Cleveland National Forest in the Santa Ana Mountains to the Pacific Ocean at Doheny State Beach near Dana Point Harbor. Caspers Wilderness Park and San Mateo Wilderness Area lands are located adjacent to the Cleveland National Forest along the eastern boundary. The western area is highly urbanized encompassing portions of the cities of Mission Viejo and San Juan Capistrano and the planned community of Ladera Ranch. Urbanized areas in the northern portion of the San Juan Creek Watershed include the City of Rancho Santa Margarita. The southern portion of the San Juan Creek Watershed is bound by the cities of Dana Point and San Clemente.

The entire San Mateo Creek Watershed is located in the southern portion of Orange County, the northern portion of San Diego County, and the western portion of Riverside County. The total San Mateo Creek Watershed is approximately 139 square miles (88,960 acres) and lies mostly within the Cleveland National Forest, the northern portion of the U.S. Marine Corps Base at Camp Pendleton (MCB Camp Pendleton), and ranch lands in south Orange County (Lang et al., 1998). The SAMP Study Area includes the 23.6 square mile portion of the San Mateo Creek Watershed within Orange County (approximately 17 percent of the watershed). Rancho Mission Viejo owns the majority of the remaining undeveloped land in the central portion of the San Juan Watershed, as well as almost all of the undeveloped land within the western portion of the San Mateo Creek Watershed just north of the City of San Clemente. The unincorporated, undeveloped RMV Planning Area is approximately 22,815 acres.

The RMV Proposed Project allows for the development of 5,873 acres of the 22,815-acre RMV Planning Area with up to 14,000 residential dwelling units, urban activity center uses, business park uses, neighborhood retail uses, and golf course uses. Approximately 16,942 acres would be retained in open space. Ranching activities would also be retained within a portion of the proposed open space area. Infrastructure would be constructed to support all of the proposed uses, including road improvements, utility improvements, and schools. Existing agriculture uses may also be expanded within defined areas subject to certain restrictions concerning the protection of biological resources. The project is expected to be implemented over 20 to 25 years.

SMWD's long-term planning for the water district has identified the potential need for three seasonal storage facilities, two for domestic and one for recycled non-domestic water. SMWD is considering two sites each for the domestic and non-domestic storage: the Upper Chiquita Site and San Juan Creek East 3 Site for domestic water storage and the San Juan Creek East 3 Site and Trampas Canyon Pit Site for non-domestic water storage. All but the Upper Chiquita Site are within the development boundaries of the RMV Proposed Project.

Additional areas where development may occur in the future within the SAMP Study Area are portions of the Foothill/Trabuco Specific Plan area (encompasses approximately 3,666 acres) and a further approximately 494 acres of land scattered throughout both unincorporated County jurisdiction and incorporated cities. Landowners within these areas may identify potential projects in the future. It should be noted that these 494 acres do not represent all potentially

available land within the SAMP Study Area, only those areas where development may affect natural resources.

With implementation of land uses on these identified development areas, existing land uses, including agricultural operations, would be phased out. On-site grading and subsequent development of proposed uses, given the costs of developing urban infrastructure, would likely preclude any return of a site to a natural state. All projects within the SAMP Study area affecting jurisdictional waters would be subject to the proposed permitting procedures.

The short-term costs of project development include the commitment of substantial financial and natural resources and some adverse construction-related impacts such as noise and air quality. In the short-term, there would be benefits derived from the creation of construction-related jobs and increased long-term employment opportunities for the residents of Orange County.

Future development would contribute air emissions to a non-attainment area. The impact from vehicular emissions cannot be completely mitigated and would have a long-term impact on air quality. Many projects within the SAMP Study would contribute to the cumulative loss of non-aquatic biological habitat and non-aquatic biological species. However, with respect to wetlands, federal policy requires that there be no net loss of wetlands.. Therefore, if a Section 404 permit has been or can be issued for a project, it can be assumed that the project would not result in a loss to wetlands. Development within the SAMP Study Area would remove Important Farmlands which is considered a long-term impact. Development within the SAMP Study Area would irrevocably alter viewsheds by altering natural features, removing natural vegetation, and building urban uses.

7.12.2 IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES

The environmental effects related to the implementation of the project are addressed in the prior chapters of this EIS. Implementation of the currently proposed (RMV Proposed Project and SMWD Proposed Project) and future proposed projects would require the long-term commitment of natural resources and land. Development would result in the commitment of land resources for residential, commercial, institutional, recreational, open space uses, infrastructure facilities, etc.

Environmental changes associated with development would result in alterations to the physical environment. In order to implement the currently proposed projects, extensive grading would be required and nature habitat would be removed to irrevocably commit sites to urban uses. New structures and streets would be built, and additional utilities would be constructed.

Implementation of the development would require the commitment and reduction of nonrenewable and slowly renewable resources. These resources include, but are not limited to, petrochemical construction material; lumber; sand and gravel; asphalt; steel; copper; lead; and other metals, etc.

Approval and implementation of development would also result in the loss of other resources. These resources would be for the heating and cooling of homes; potable and non-potable water for sanitary purposes, drinking, irrigation, etc.; transportation of people and goods to and from the site; as well as lighting and other associated energy needs.

7.12.3 EFFECTS OF SAMP ON APPLICANTS

This section summarizes the effects of the alternate permitting system of the SAMP on the regulated community compared to the existing permitting system. The existing permitting system uses NWPs for permanent impacts (generally ≤ 0.5 acre of permanent impacts to Waters of the U.S.) and Standard Individual Permits (SIPs) for projects with greater permanent impacts to Waters of the U.S., regardless of the project location. The alternate permitting system consists of revocation of specific NWPs followed by establishment of an RGP for maintenance activities, LOP procedures for all other activities, and a long-term individual permit/LOP procedures for the Ranch Mission Viejo with implementation depending on the location of the proposed activity within the SAMP Study Area. Projects within areas eligible for abbreviated permitting are able to fully take advantage of the alternate permitting systems using the RGP for projects with temporary impacts to Waters of the U.S. (most maintenance activities) and LOPs for projects with permanent impacts to Waters of the U.S. Projects within areas ineligible for abbreviated permitting would be processed as LOPs for projects with either temporary impacts or small permanent impacts (≤ 0.1 acre of impact) and individual permits for all other impacts.

The concept that aquatic areas of different condition warrant different considerations in the Section 404 permitting program is suggested in the Section 404(b)(1) Guidelines, the substantive regulations that govern the Section 404 permitting program. The Section 404(b)(1) Guidelines state, "Although all requirements in [the Guidelines] must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities" (40 CFR 230.10 introduction). The Section 404(b)(1) Guidelines further this point by emphasizing that evaluation "must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation" and that "the level of documentation should reflect the significance and complexity of the discharge activity" (40 CFR 230.6(b)).

A major determinant of whether an activity will have a high level of impact is the location of the site within the watershed. Projects that propose to impact Waters of the U.S. in areas ineligible for abbreviated permitting would impact higher quality aquatic resources and warrant the appropriate level of permitting review commensurate with the level of impacts. Likewise, projects that propose to impact Waters of the U.S. in areas eligible for abbreviated permitting would impact lower quality aquatic resources and warrant the appropriate level of permitting review commensurate with the level of impacts. The analysis in this section differentiates permitting processes within areas eligible for abbreviated permitting from permitting processes in areas ineligible for abbreviated permitting.

7.12.3.1 Revocation of Selected Nationwide General Permits

An important step in implementing the alternate permitting program is the revocation of specific NWPs, including NWP 14, NWP39, NWP40, and others. Many NWPs have a threshold of 0.5 acre of permanent impacts. Under the current permitting framework, projects impacting greater than 0.5 acre of Waters of the U.S. must undergo processing as an SIP. Projects impacting 0.5 acre or less of Waters of the U.S. would undergo processing as a NWP. This 0.5-acre threshold is applied regardless of the type or quality of aquatic resource involved.

USACE believes that the current NWP framework provides an inappropriate level of protection for aquatic resources within the SAMP Study Area. In some areas where riparian condition is poor, the thresholds required by the NWP program result in greater delays and more uncertainty for projects proposing impacts to greater than 0.5 acre of these lower quality aquatic resources.

These types of aquatic resources have a low level of hydrologic, water quality, and habitat integrity with little strategic ecosystem value in the landscape context. The additional procedures including the public notice and environmental assessment required under the SIP program tend to elicit little input from the public and other resource agencies or provide little additional insight on aquatic resource condition above what was obtained by the formal functional assessment methods used for the SAMPs.¹ The NWP thresholds are overly restrictive in light of the poor condition of the aquatic resources in question.

Conversely, in other areas where riparian condition is better, the NWP framework provides an insufficient amount of review for those projects proposing to impact these higher quality aquatic resources. These types of aquatic resources possess a high level of hydrologic, water quality, and habitat integrity with important strategic value in a landscape context with respect to endangered aquatic species habitat and riparian movement corridors. The NWP thresholds do not provide the public with a suitable opportunity for permit review in light of the condition of the aquatic resources in question. Additional public input and review is needed to ensure higher quality resources receive the appropriate amount of review and regulatory attention.

After receiving input from the regulated community in working sessions through the course of developing the SAMP, consideration was given to retaining the NWPs for use within the lower quality aquatic resource areas. Whereas there was generally an understanding of the need for additional permit review for projects affecting higher value aquatic resources, some comments expressed a concern over the need to revoke NWPs in the lower value aquatic areas. In particular, there were concerns about potential time delays in using an LOP system instead of a nationwide general permit system. After evaluating the concerns and changing specific program elements to address those concerns, the USACE has determined that retaining the NWPs is not needed after establishment of the LOP procedures for several reasons.

First, the use of the alternate permitting program by itself would be simpler than establishing the alternate permitting process and retaining the existing NWP framework. With multiple thresholds and activity-specific conditions for multiple NWPs, the existing NWP framework combined with the alternate permitting processes results in a complex system that may be difficult for the regulated public and future regulators to understand and implement. Instead, the proposed revocation of selected NWPs and the establishment of the RGP and the LOP procedures would simplify the process. The alternate permitting process would be similar to the Section 1600 streambed alteration agreements by the CDFG, which do not have multiple thresholds for multiple activity types. Applicants for a CDFG Streambed Alteration Agreement face a simpler application process that does not have the multiple thresholds of the varying NWPs. Future permit applicants with projects affecting lower quality aquatic resources have to consider only two options: an option for maintenance actions (the RGP) and an option for other actions (the LOP procedures).

¹ A review of the USACE permit database was performed to identify those projects permitted to impact lower quality aquatic resources within Orange County using standard individual permits. The focus of the review was on channelization projects converting undersized riprap-lined channels to larger riprap-lined channels or concrete-lined channels. The riprap-lined channels were considered lower ecological quality. The review indicated that there were 7 permits issued for such projects. Six of the seven permits during the public notice phase elicited 0 to 3 comments from individuals or organizations outside of the federal and state agencies. One permit elicited 12 comments from individuals or organizations outside of the federal and state agencies. Most of the comments were focused on ensuring the construction did not infringe on people's property with some concerns over the loss of wildlife habitat within the channels. A few comments expressed concern over people using the larger channels to trespass onto people's property. In general, the comments did not express appreciable opposition to these projects, and comments were addressed by requiring the work to stay within public right-of-way and through compensation of impacts to any low quality habitat.

Second, the alternate permitting strategies would allow for the processing of permits on similar timelines as the existing NWP framework. Table 3-2 in Chapter 3.0 shows that for all actions that could be permitted by the revoked NWPs, there would be no time delays due to the strict timeframes established for the proposed RGP or the proposed LOP procedures. For the proposed LOP procedures, actions would be completed within 45 days. The timeframe is possible due to the advanced analysis undertaken in terms of baseline aquatic resource characterization in support of any potential decision-making and the required pre-application consultation. If there had not been any detailed upfront analysis performed in the context of the SAMP, the relatively quick review times would not have been possible. For the maintenance activities eligible under the proposed RGP, the actual processing time is substantially faster, resulting in authorizations within 15 days. When combined with a pre-approved Section 401 certification, the time savings for the RGPs would be substantially greater overall for these types of activities compared to the current framework.

Third, the increased pre-application coordination required of the LOPs would not need an excessive amount of coordination between the regulated community and the USACE compared to the existing NWP framework. Most routine maintenance activities eligible under the proposed RGP would not require pre-application consultation. For other activities, the pre-application coordination would only be required of those projects that permanently impact greater than 0.1 acre of Waters of the U.S. or temporarily impact greater than 0.25 acre of native riparian vegetation. Also, given the amount of coordination most applicants in southern California already undertake with other state and federal resource agencies, additional coordination with the USACE in the context of the LOP procedures would not result in delays. In fact, the upfront coordination would actually defuse potentially disruptive conflicts.

Fourth, the use of the alternate permitting program provides the appropriate amount of review that ensures projects have the supporting environmental analysis to make informed decisions compared to the existing NWP framework. Providing a fuller amount of review required by the LOP process ensures permit decision are defensible. Although such a review process may be perceived as burdensome, the USACE is able to improve the environmental decision-making process and avoid the pitfalls of projects with faulty environmental analysis. For the alternate permitting programs, the additional environmental analysis has been performed upfront to ensure that review was proactively considered on the watershed level.

Overall, the use of the alternate permitting program includes program-level safeguards to ensure that advantages provided by the NWPs are not lost. The alternate permitting program allows for a simpler process akin to the Section 1600 Streambed Alteration Agreement, a process that does not rely on the multitude of NWPs for different categories of activities. Combined with program-level considerations with respect to timing and coordination, the alternate permitting procedures in the context of California's regulatory climate do not adversely affect the regulated community. There is no need for most NWPs in the SAMP Study Area.

7.12.3.2 Permitting Outcomes Before and After the SAMP

To provide some sense of the effects of the SAMP permitting procedures on the regulated public, the outcome of permit actions from the last five years were re-examined in light of the alternative permitting processes. This analysis involved final NWP and SIP actions initiated within the last six years (October 1999 to current) within the Orange County SAMP permitting areas for the San Juan Creek/San Mateo Creek Watersheds and the San Diego Creek Watershed. These actions were re-evaluated using the 0.5-acre thresholds of the 2002 NWP, where permanent impacts greater than 0.5 acre would involve processing as SIPs and impacts at the threshold or less would involve processing as NWPs. Any instances of pre-application

coordination were noted. These actions were also re-evaluated using the SAMP alternate permitting program in terms of which permitting process would be undertaken after factoring in its location with respect to the areas ineligible for abbreviated permitting and the size of the permanent impact.

Using the 2002 NWP thresholds, the 103 actions in the review timeframe were processed or would have been processed as 18 SIPs and 85 NWPs, involving 17 pre-application meetings. Under the alternate permitting system, these actions would have been processed as 6 SIPs, 8 NWPs, 12 RGPs, and 77 LOPs, involving 40 pre-application meetings. The alternate system would have resulted in a marked decrease in the number of SIPs processed in the SAMP areas. The NWPs issued would have been for boat docks, single-family homes, and geotechnical surveys, actions with minimal impacts to the aquatic environment and quickly processed. For 12 projects, the RGP for maintenance would have been used, resulting in a quick review and authorization of these activities. The main difference would have been the issuance of 77 LOPs under the alternate permitting system. Of these, 15 LOPs would have been issued in place of a SIP (resulting in time savings for the applicant) and 62 LOPs would have been issued in place of a NWP. Of the 62 LOPs, there would have been 25 pre-application meetings required because the permanent impacts would have been greater than 0.1 acre of Waters of the U.S. with the remainder applying directly to the USACE. As stated above, the use of LOPs instead of NWPs would not adversely affect applicants because of built-in timelines that would allow the LOPs to be processed in the same timeframes. Although the LOPs involve a greater level of review, much of the analysis has been performed in the course of developing the SAMP, allowing for minimization of review times.

7.12.3.3 Effects of Implementing the RGP

In California, actions involving maintenance of structures, requires authorizations from the USACE, CDFG, and RWQCB. Although some maintenance activities do not require pre-construction notification to the USACE, it is still a requirement for those actions to obtain approvals from the CDFG for the Section 1600 Streambed Alteration Agreement and the RWQCB for Section 401 certifications. Nevertheless, many applicants also request from the USACE verification that an activity would be covered by a NWP.

For the SAMP Study Area, there will be expected time savings due to the maintenance RGP for Section 404 actions. It is expected that the CDFG will issue a similar permitting system resulting in quicker review times in the context of their proposed MSAA. In terms of the Section 404 action and the associated Section 401 certification, applicants would only have to contact the USACE for individual actions. The USACE would apply for a Section 401 certification for the RGP, obviating the need for obtaining a Section 401 certification for individual maintenance actions. As a result, the RGP would allow for more predictability by the regulated community and less consternation over the perceived difficulties of obtaining permits from two different agencies. The proposed 15-day timeframe would ensure that the regulated public can undertake their maintenance activities for roads, flood control channels, weir structures, pipelines, bank protection structures, and other projects in the eligible areas with less regulatory hindrances.

7.12.3.4 Effects of Implementing the LOP Procedures

The effects of implementing the LOP procedures depend on the location of a proposed project within the SAMP Study Area. The effects would depend on whether those projects are located within areas ineligible for abbreviated permitting or whether they are located in areas eligible for abbreviated permitting. Areas ineligible for abbreviated permitting tend to have higher quality

aquatic resources and would result in restrictions on the use of LOPs for authorizing impacts to Waters of the U.S. by requiring SIPs for permanent impacts greater than 0.1 acre of Waters of the U.S. Areas eligible for abbreviated permitting tend to have lower quality aquatic resources and would not have any thresholds governing their use, except in instances involving proposals to substantially modify compensatory mitigation sites or involving proposals to undertake capital improvements of major stream courses.

Within areas ineligible for abbreviated permitting, there will be a threshold of 0.1 acre. Impacts greater than 0.1 acre to Waters of the U.S. may be authorized with a SIP, and impacts at or less than 0.1 acre of Waters of the U.S. may be authorized with a LOP. These higher value aquatic resources would require the appropriate amount of review to minimize impacts to the maximum extent practicable. Through the review of most of these actions through the SIP process, opportunities would be given to other resource agencies and to the public to review and comment on the proposed action. In addition, a full environmental assessment and public interest review would allow for the USACE to conduct an appropriate level of evaluation within the decision-making process. Although actions with impacts at or less than 0.1 acre of Waters of the U.S. would be processed as LOPs rather than SIPs, review of these actions by other agencies through the inter-agency notification process would help minimize adverse impacts that may result. Within the Los Angeles District of the USACE, this action of requiring SIPs for impacts greater than 0.1 acre to Waters of the U.S. has precedence, having been required within the upper Santa Margarita River Watershed in Riverside County due to the concern about impacts to Waters of the U.S.

Overall, there would be additional restrictions on permit applicants in areas ineligible for abbreviated permitting. Actions that could have been processed within 45 days as a NWP would now be processed within 120 days as a SIP. Although an extended review period is being proposed, the SAMP permitting process recognizes the need to protect higher value aquatic resources is important in the context of implementing regulations supportive of the goal of the Clean Water Act, which is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” The requirement of processing most actions through SIPs would ensure that all impacts to Waters of the U.S. are unavoidable.

Within areas eligible for abbreviated permitting, there will be no threshold for impacts. Activities not involving maintenance would be processed as LOPs instead of NWPs or SIPs. Only those actions that propose to line major streams with concrete or completely fill such streams or those actions that propose to impact compensatory mitigation sites would require SIPs. As a result, SIPs would be very rare within areas eligible for abbreviated permitting. Due to the lower quality of these aquatic resources, additional review would not result in any substantial differences. Public notices disseminated for these proposed projects tend to elicit no appreciable opposition from other regulatory agencies or the public. Nevertheless, the review of all non-maintenance actions through LOPs would involve inter-agency coordination to ensure that other regulatory agencies can provide appropriate comments.

Overall, a net benefit to permit applicants would be realized in areas eligible for abbreviated permitting. For projects that propose impacts to greater than 0.5 acre of Waters of the U.S., the LOP process would allow for shortened resolution time for permit actions, resulting in a permit within 45 days rather than the 120 days under the current SIP process. Comments on the aquatic resources would still be provided by the resource agencies under LOP procedures, but a public notice and full environmental assessment would not be needed. Savings to the applicant in terms of time and resources would result. For projects that propose impacts at or less than 0.5 acre of Waters of the U.S., the LOP process would not result in adverse consequences as discussed above in the discussion on revoking the NWPs. There would not be

time delays due to the strict timelines required. The requirements for pre-application coordination would not be burdensome due to the coordination many applicants already undertake with the other California resource agencies as part of their normal course of business.

7.12.3.5 Summary

Overall, the benefit of the alternate permitting system to the applicant depends on the location of a proposed project within the San Juan Creek and Western San Mateo Creek Watersheds. Excessive delays would be minimized for permit applications proposing to impact lower quality aquatic resources. Increased review of permit and consequent duration it takes to receive permits would increase for permit applications proposing to impact higher quality aquatic resources. The SAMP permitting process results in a common sense approach allowed by the Section 404(b)(1) Guidelines, which emphasizes providing the appropriate amount of documentation commensurate with the level of impact to the aquatic environment.