

**US Army Corps  
of Engineers®**

# SPECIAL PUBLIC NOTICE

LETTER OF PERMISSION PROCEDURES  
FOR AREAS OUTSIDE OF THE RMV PLANNING AREA  
IN THE SAN JUAN CREEK/WESTERN  
SAN MATEO CREEK WATERSHED  
SPECIAL AREA MANAGEMENT PLAN

*LOS ANGELES DISTRICT*

<b>Public Notice/Application No.:</b>	199916236-2-YJC
<b>Comment Period:</b>	November 21, 2005 through January 16, 2006
<b>Project Manager:</b>	Jae Chung, (Telephone: 213-452-3292) Email: yong.j.chung@usace.army.mil

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**Location:**

The affected area includes portions of the San Juan Creek and the western San Mateo Creek Watersheds in Orange County, California. These two watersheds encompass portions of the Cities of Mission Viejo, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Dana Point, Laguna Hills, and Laguna Niguel and unincorporated Orange County (see Figure 1).

**Activity:**

As part of the effort to develop a Special Area Management Plan (SAMP) for the San Juan Creek and the western San Mateo Creek Watersheds, the U.S. Army Corps of Engineers (Corps), Los Angeles District proposes to establish an alternate permitting process involving the following features: a new Regional General Permit (RGP); two 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).

This Special Public Notice concerns only the Corps' proposal to use LOPs outside of the Rancho Mission Viejo (RMV) Planning Area to authorize eligible activities for those applicants who performed effective pre-application coordination with the Corps, complied with the Section 404(b)(1) Guidelines, and included effective compensatory mitigation for unavoidable impacts. Additionally, the Corps proposes to revoke the use of selected NWP within the San Juan Creek and the western San Mateo Creek Watersheds pursuant to 33 C.F.R. § 330.4(e) and 33 C.F.R. § 330.5(c) associated with the establishment of those LOP procedures. Implementation of the LOP procedures in the San Juan Creek and the western San Mateo Creek Watersheds, Orange County would allow the Corps to undertake the appropriate level of permit review in consideration of the quality of the aquatic resource proposed to be affected.

In a separate Special Public Notice (No. 199916236-1-YJC), dated November 21, 2005, the Corps proposes to use RGPs outside the RMV Planning Area to authorize discharge of dredged and/or fill materials that temporarily impacts waters of the United States (WoUS) with little or no native riparian or wetland vegetation located in lower value aquatic resource areas. In addition, in another Special Public Notice (No. 199916236-3-YJC), dated November 21, 2005, the Corps proposes to use LOPs to authorize the discharge of dredged and/or fill materials for eligible activities within the RMV Planning Area.

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Interested parties are invited to provide their views on the proposed LOP procedures for implementation in the San Juan Creek and the western San Mateo Creek Watersheds. Comments will become a part of the administrative record and will be considered in the final decision. The proposed LOP procedures will be adopted pursuant to Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344).

Comments should be mailed to:

U.S. Army Corps of Engineers, Los Angeles District  
Regulatory Branch  
ATTN: CESPL-CO-R-199916236-2-YJC  
P.O. Box 532711  
Los Angeles, California 90053-2325 or

Alternatively, comments may be submitted electronically to [yong.j.chung@usace.army.mil](mailto:yong.j.chung@usace.army.mil)

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### **Evaluation Factors**

The decision to adopt the proposed LOP procedures for the proposed activities outside of the RMV Planning Area in the San Juan Creek and the western San Mateo Creek Watersheds and revoke the use of selected NWP's 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 230) as required by Section 404 (b)(1) of the Clean Water Act.

To consider and evaluate public interest, the Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties. All comments received on this notice will be considered by the Corps in adopting the LOP procedures. 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 these comments with the public review of the draft Environmental Impact Statement (EIS) for the SAMP.

### **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 draft EIS concurrently with this Special Public Notice. More details of the draft EIS can be found at <http://www.spl.usace.army.mil/samp/sanjuancreeksamp.htm>.

**Clean Water Act - Water Quality-** The Corps is submitting all relevant documents to and coordinating with the San Diego Regional Water Quality Control Board (SDWQCB) 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) - Federal-Listed Species-** Eight federally listed species are found or are potentially present in the SAMP Study Area. The listed species are: coastal California gnatcatcher (*Polioptila californica californica*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), arroyo toad (*Bufo microscaphus californicus*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), southern steelhead (*Oncorhynchus mykiss*), and thread-leaved brodiaea (*Brodiaea filifolia*).

Of the eight listed species, the California gnatcatcher, the Riverside fairy shrimp, and the southern steelhead have critical habitat designations that are in effect over portions of the SAMP Study Area. In addition, critical habitat designations within the SAMP Study Area have also been proposed for the San Diego fairy shrimp and for the thread-leaved brodiaea. Revised critical habitat for the California gnatcatcher has also been proposed. Recovery plans have been prepared for the arroyo toad, southwestern willow flycatcher, least Bell's vireo, Riverside fairy shrimp, and San Diego fairy shrimp. The fairy shrimp species are 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) and the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) to insure that 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 requirement so 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 Juan Creek and the western San Mateo Creek Watershed, preliminary determinations indicate most areas of the watershed do not have sites eligible for listing in the National Register of Historic Places. However, in natural areas, many cultural resources are known to occur. Consequently, the Corps is developing a Programmatic Agreement in accordance with Section

800 of the National Historic Preservation Act. For each discovered cultural resource on a particular project requiring a Corps authorization and within the Corps area of potential effect, the Corps, in coordination with the State Historic Preservation Office (SHPO), will evaluate the cultural resource for eligibility for listing in the National Register of Historic Places pursuant to the NHPA.

**Coastal Zone Management Act (CZMA) - Coastal Resources-** For those projects in or affecting the coastal zone, the federal Coastal Zone Management Act requires the 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 Juan Creek and the western San Mateo Creek Watersheds is outside the coastal zone, certain areas around the entrances to the two creeks are within the coastal zone. In a forthcoming letter to the CCC, the Corps will request a consistency determination with the CZMA for the 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, 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 forthcoming letter to NOAA Fisheries, the Corps will request concurrence that LOPs would not affect EFH.

**Public Hearing-** The Corps will hold a public hearing on December 6, 2005 at 6 pm at the City of San Juan Capistrano Center Community Center at 25925 Camino del Avion, San Juan Capistrano. Interested parties should e-mail the Corps at yong.j.chung@usace.army.mil in order to be placed on our San Juan Creek and the western San Mateo Creek SAMP electronic mailing list.

### **Proposed Activity for Which a Permit is Required**

The proposed activity is to establish an alternate permitting process outside of the RMV Planning Area within the San Juan Creek and the western San Mateo Creek Watersheds using Letters of Permission (LOPs) to authorize the discharge of dredged and/or fill materials into waters of the U.S. (WoUS) pursuant to Section 404 of the Clean Water Act (33 USC 1344). This Special Public Notice concerns the Corps' proposal to issue LOPs in accordance with its regulations in 33 C.F.R. § 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 effective compensatory mitigation for unavoidable impacts.

The LOP authorization is an abbreviated method for issuing an individual permit, whereby a decision to issue permit authorization is made after coordination with federal and state fish and wildlife agencies and a public interest evaluation. Additionally, the Corps would revoke the use of selected NWP within the San Juan Creek and the western San Mateo Creek Watersheds. 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.

### **Additional Project Information**

In response to developmental pressures within the San Juan Creek and the western San Mateo Creek Watersheds on the aquatic ecosystem including streams, wetlands, and riparian vegetation, the

Regulatory Branch of the Los Angeles District of the Corps of Engineers is developing a Special Area Management Plan (SAMP). The Corps has undertaken a long-term, joint process with local participating applicants, including private landowners and local public agencies, to develop a comprehensive, 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 Juan Creek and the western San Mateo Creek Watersheds. This process allows for better balancing of aquatic resource protection and reasonable development not attainable by traditional project-by-project review, which is limited by its inability to have a true watershed-wide, landscape-based perspective.

As a result of comprehensive studies on the location and quality of aquatic resources within the San Juan Creek and the western San Mateo Creek Watersheds, the SAMP provides a contextual framework to implement a more effective permitting system that provides additional protections to higher value resources while minimizing delays for projects impacting lower value resources. Through the comprehensive studies, the Corps has 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 and/or endangered species; and include aquatic areas with wildlife connectivity value. Conversely, specific areas have been identified as having less valuable resource areas, suitable for an alternate permitting process for certain classes of activities. These areas include aquatic resources with generally low hydrologic, water quality, and habitat integrity; with less habitat value for threatened and/or endangered species; and with low wildlife connectivity value.

The SAMP cooperative process will result in two products: an alternate permitting system to authorize the discharge of dredged and/or fill materials into WoUS while protecting higher value aquatic resources and a comprehensive aquatic resources conservation program. The alternate permitting system involves the establishment of abbreviated permit procedures in the form of an RGP and LOPs in combination with the use of certain NWP. The aquatic resources conservation program involves establishing priorities for implementing a watershed-wide riparian 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.

This Special Public Notice addresses establishment of abbreviated permit procedures involving LOPs outside of the RMV Planning Area and the revocation of certain NWPs. In a separate Special Public Notice, dated November 21, 2005, the Corps proposes to use RGPs outside of the RMV Planning Area to authorize discharge of dredged and/or fill materials that temporarily impacts waters of the United States (WoUS) with little or no native riparian or wetland vegetation located in lower value aquatic resource areas. In addition, in another Special Public Notice, dated November 21, 2005, the Corps proposes to use LOPs to authorize the discharge of dredged and/or fill materials for eligible activities within the RMV Planning Area. Additional details of the SAMP are provided in the draft EIS available for public review beginning in November 2005.

The implementation of the alternate permitting system depends on the location of the proposed activity within the San Juan Creek and the western San Mateo Creek Watersheds, i.e., whether the activity would affect higher quality aquatic resources (Figure 2). Within such higher quality resource areas, most classes of activities with permanent impacts to aquatic resources would be ineligible for abbreviated permit processing. Specifically, eligibility for an LOP within prospective these areas

would be limited to activities which would result in a maximum permanent impact of 0.1 acre of WoUS. Thus, in areas of high resource value, standard individual permits likely would be required, allowing for the appropriate amount of review by resource agencies. Outside of these higher value aquatic resource areas, aquatic resources were identified as being of lower value on a watershed basis. For projects affecting aquatic resources located in these less sensitive resource areas, an abbreviated permitting process through LOPs would be available to minimize delays and to provide certainty to the applicant, while providing appropriate aquatic resource protection.

In order to implement the alternate permitting process that considers the condition of the aquatic resources being affected, the Corps proposes to revoke several NWP authorizations within the San Juan Creek and the western San Mateo Creek Watersheds consistent with 33 CFR 330.5(c) as part of the alternate permitting strategy. The revoked NWP are listed in Table 1, including NWP 03, NWP 07, NWP 12, NWP 13, NWP 14, NWP 16, NWP 17, NWP 18, NWP 19, NWP 25, NWP 27, NWP 31, NWP 33, NWP 39, NWP 40, NWP 41, NWP 42, NWP 43, and NWP 44. In consideration of the SAMP watershed-wide assessment, these NWPs may provide an inappropriate level of protection to aquatic resources. For instance, in some situations, the NWPs may be insufficiently protective of the higher aquatic resource value areas 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 LOPs would minimize delays for projects with minimal impacts on the aquatic environment and provide greater efficacy in protecting the aquatic environment by strengthening the review 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 in 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 Juan Creek and the western San Mateo Creek Watersheds is provided in Table 1. The permitting process outlined in Table 1 applies to only the San Juan Creek and the western San Mateo Creek Watersheds.

To complement the alternate permitting process, the SAMP seeks to develop an aquatic resources conservation program within the RMV Planning Area. The draft EIS addresses key components of the aquatic resources conservation program. The aquatic resources conservation program relies on coordination with the Southern Subregion Natural Communities Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (NCCP/MsAA/HCP) and the Rancho Mission Viejo General Plan Amendments and Zone change. Due to the many overlaps with the two other processes especially with respect to long-term management of natural communities including aquatic resources, coordination with these two other planning processes helps reduce redundancies and builds upon similarities in goals and objectives as they relate to a functioning aquatic resource conservation program. In the process, the Corps has worked with local participating applicants, as well as with state and federal wildlife agencies, particularly the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS). Consequently, the Corps was involved in the coordination of planning efforts to prepare a conservation plan for an overall habitat reserve that would provide long-term protection for higher-value aquatic resources and establish management programs to promote aquatic resource functions and values within the San Juan Creek and the western San Mateo Creek Watersheds.

**Table 1. Comparisons between current and proposed alternative permitting system for the San Juan Creek and the western San Mateo Creek Watersheds.**

	Current System	Proposed System		
		NWPs	LOPs	LOPs
<b>Use Areas</b>	All areas	All areas	Inside Areas Eligible for Abbreviated Permitting	Outside Areas Eligible for Abbreviated Permitting
<b>NWPs Revoked in the San Juan Creek and San Mateo Creek Watersheds</b>	None	NWP 03, NWP 07, NWP 12, NWP 13, NWP 14, NWP 16, NWP 17, NWP 18, NWP 19, NWP 25, NWP 27, NWP 31, NWP 33, NWP 39, NWP 40, NWP 41, NWP 42, NWP 43, NWP 44	Not applicable	Not applicable
<b>NWPs Retained in the San Juan Creek and San Mateo Creek Watersheds</b>	All NWPs	NWP 01, NWP 02, NWP 04, NWP 05, NWP 06, NWP 08, NWP 09, NWP 10, NWP 11, NWP 15, NWP 20, NWP 21, NWP 22, NWP 23, NWP 24, NWP 28, NWP 29, NWP 30, NWP 32, NWP 34, NWP 35, NWP 36, NWP 37, NWP 38	Not applicable	Not applicable
<b>Permanent Impacts to WoUS Authorized</b>	Generally ≤ 0.5 acre	Generally ≤ 0.5 acre	No limit <sup>1</sup>	≤ 0.1 acre
<b>Temporary Impacts to WoUS Authorized</b>	No limit	No limit	No limit <sup>1</sup>	No limit <sup>1</sup>
<b>Review Time</b>	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days
<b>Pre-Application Coordination</b>	Encouraged	Encouraged	Required <sup>2</sup>	Required <sup>2</sup>
<b>Inter-Agency Review</b>	Generally >0.5 acre	None	All actions	All actions

<sup>1</sup> Provided full compliance with all LOP procedures

<sup>2</sup> For >0.1 acre of permanent impacts to WoUS or >0.25 acre of temporary impacts to WoUS with native riparian and/or wetland vegetation

**Letter of Permission Procedures**

The Corps proposes to issue LOPs for activities outside of the RMV Planning Area 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 effective compensatory mitigation for unavoidable impacts. The LOP authorization is an abbreviated

method for issuing an individual permit, where a decision to issue a final permit authorization for particular activities is made after coordination with federal and state fish and wildlife agencies, a public interest evaluation, and a concise environmental review. In addition, review involving other resource agencies will insure 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. 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 Juan Creek and the western San Mateo Creek SAMP LOPs would not have acreage thresholds. Despite the higher acreages of permanent impacts that would be allowed, adverse impacts would be avoided 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 and/or fill materials would be restricted primarily to the lower value aquatic resource areas within the San Juan Creek and the western San Mateo Creek Watersheds. Within areas ineligible for abbreviated permitting, LOPs would authorize temporary impacts for the purpose of maintenance of established structures or would authorize permanent impacts up to 0.1 acre of WoUS., including projects such as utility substations, small bank protection structures, a single-family home, and recreational trails. A summary of the procedures is provided in Figure 3.

**Eligible Activities-** Certain activities may be eligible for LOPs, while other activities would require standard individual permits. Within eligible areas (Figure 2), numerous activities would be eligible for LOPs. Many of the activities otherwise eligible under the revoked NWPs would be eligible for LOPs, if they are consistent with the SAMP goals and objectives. Eligible activities 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 roads and bridges, including lengthening, widening, and maintenance;
4. Public and private land development, including residential, commercial, institutional, and recreational uses;
5. Habitat restoration and water quality improvement projects, including wetland restoration and creation and construction of stormwater management facilities; and
6. Public and private water storage facilities and impoundments,

Within otherwise eligible areas, certain activities would be ineligible for the LOP process. Such activities still may be permitted under the standard individual permit process. The first class of activities ineligible for the LOP process are those substantially altering a compensatory mitigation site. Impacts to aquatic resources created or restored for the purpose of providing compensatory mitigation credits are not eligible to be processed as an LOP. The second class of activities ineligible for the LOP process are capital improvement flood control projects involving conversion of a soft-bottom channel to a concrete-lined channel. Capital improvement projects within the major stream systems such as San Juan Creek, Oso Creek, Arroyo Trabuco, Chiquita Creek, Canada Gobernadora, San Mateo Creek, Gabino Creek, and Cristianitos Creek are ineligible for the LOP process and would require a standard individual permit in order to be permitted.



Within the higher value aquatic resource areas that would otherwise be ineligible for abbreviated permitting (Figure 2), some activities would still be eligible for LOPs. Such activities include, and not limited to:

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 maintenance baseline), and flood control basins (consistent with an established maintenance baseline);
3. Maintenance and repair of public and private roads and bridges;
4. Habitat restoration improvement projects, including wetland restoration and creation; and
5. Permanent impacts up to 0.1 acre of WoUS..

**Pre-Application Coordination for LOPs-** Pre-application coordination is required for projects with permanent losses of WoUS greater than 0.1 acre or for projects with temporary impacts greater than 0.25 acre of WoUS with native wetland and/or riparian vegetation. For projects permanently impacting 0.1 acre of WoUS or less and temporarily impacting 0.25 acre of vegetated WoUS or less, pre-application coordination is not required; the applicant only needs to submit an application directly to the applicable agencies. Pre-application coordination must involve the Corps, CDFG, the SDWQCB, 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. 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 WoUS 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 WoUS;
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 permitting process 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 permitting process, the Corps would provide recommendations that would enable the project to qualify for the LOP permitting process.

**Information Needed for Application-** The following items are needed for a complete application for the LOP permitting process outside the RMV Planning Area:

1. A completed Department of the Army application form Eng Form 4345.

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's;
  - d. Volume, type and source of material to be placed into WoUS;
  - e. Total area of WoUS to be directly and indirectly affected;
  - f. A verified delineation of WoUS 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, or mitigate 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, CDFG, SDWQCB, and USFWS. 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.
4. A discussion of how each agency comment/concern was addressed.
5. A statement addressing the Section 404(b)(1) Guidelines alternatives analysis, with explicit discussion on why a mainstem stream as mapped by ERDC cannot be avoided.
6. A mitigation plan addressing unavoidable impacts to WoUS and the program goal of no net loss of wetlands.
7. 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.
8. 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 Endangered Species Act or evidence of incidental take authorizations under the ESA.
9. Evidence of compliance with the National Historic Preservation Act.

**Processing Procedures-** When the applicant has assembled the information required for a complete application, the applicant shall undertake these following steps:

1. The applicant will provide the Corps and the review agencies a complete application. The Corps will review the applicant's submission and assign an action ID number.
2. Within 7 calendar days, the Corps will determine if the application is complete. If an application is incomplete, the Corps would within 7 calendar days 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 (CDFG, RWQCB, USFWS, EPA, NOAA Fisheries, and SHPO) via fax 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 objections" comments may be provided by phone, but substantive comments should be provided and confirmed by fax or letter. When the LOP

fax 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 compensatory mitigation policy framework (see below);
  - e. Whether threatened or endangered species issues have been resolved in a manner consistent the Endangered Species Act through the issuance of an individual incidental take statement or through reference to the local Natural Communities Conservation Planning program; and
  - f. Status of compliance with the National Historic Preservation Act.
4. The Corps will review the comments received and make a final determination within 45 calendar days of receiving the complete application. 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 the need for review through a standard individual permit process.
5. Section 401 Water Quality Certification or waiver must be obtained from RWQCB. An LOP will not be issued until Section 401 certification or a waiver is obtained. If no Section 401 Water Quality Certification has been issued within 45 days after submittal of a complete application, the Corps will issue a provisional LOP.

**Proposed General Conditions-** The Corps proposes these following general conditions for all LOPs:

1. **Mitigation Policy.** The permit must comply with the SAMP compensatory mitigation framework established in conjunction with the proposed permitting procedures (see below).
2. **Ineligible Impacts.** Projects not eligible for this LOP process include projects that substantially alter a compensatory mitigation site and projects that involve the conversion of a soft-bottom channel to a concrete-lined channel within San Juan Creek, Oso Creek, Arroyo Trabuco, Chiquita Creek, Canada Gobernadora, San Mateo Creek, Gabino Creek, and Cristianitos Creek. Those proposed projects must be evaluated using an individual permit.
3. **Soil Erosion and Siltation Controls.** When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or hay bales or other means designed to minimize exacerbating turbidity in the watercourse above background levels existing at the time of project implementation, shall be used and maintained in effective operating condition during project implementation unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation and no later than November of the year the work is conducted to avoid erosion from storm events.

4. **Equipment.** When practicable, and if personnel would not be put into any additional potential hazard, heavy equipment working in or crossing wetlands must be placed on temporary construction mats (timber, steel, geotextile, rubber, etc.), or other measures must be taken to minimize soil disturbance such as using low pressure equipment. Temporary construction mats shall be removed promptly after construction.
5. **Suitable Material.** No discharge of dredged or fill materials (even if temporary) may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from pollutants in toxic amounts (see Section 307 of the Clean Water Act).
6. **Management of Water Flows.** To the maximum extent practicable, the activity must be designed to maintain pre-project downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill materials must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to pre-project conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond pre-project conditions.
7. **Removal of Temporary Fills.** Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing conditions, including any native riparian and/or wetland vegetation. If an area impacted by such temporary fill is considered likely to naturally reestablish native riparian and/or wetland vegetation within two years to a level similar to pre-project or pre-event conditions, the permittee will not be required to do restore the riparian and/or wetland vegetation.
8. **Preventive Measures.** Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the project area in a manner as to prevent any runoff from entering jurisdictional areas.
9. **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.
10. **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 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 and may include wetland enhancement, restoration, creation, or preservation.
11. **Avoidance of Breeding Season.** With regard to federally listed avian species, avoidance of breeding season requirements shall be those specified in the programmatic 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. Work in waters may occur between March 15 and September 15 if bird surveys indicate the absence of any nesting birds within a 50-foot radius.
12. **Exotic Species Management.** All giant reed (*Arundo donax*), salt cedar (*Tamarix* spp.), and castor bean (*Ricinus communis*) must be removed from the project site and ensure that the site remains free from these non-native species for a period of five years from completion of the project.
13. **Site Inspections.** The Corps must be allowed to inspect the site at any time during and

immediately after project implementation provided a 24-hour advance notice is given to the permittee. In addition, compliance inspections of all mitigation sites must be allowed at any time.

14. **Posting of Conditions.** A copy of the LOP conditions must 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.
15. **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 must also be provided which document compliance with permit conditions.
16. **Water Quality.** An individual Section 401 water quality certification must be obtained (see 33 CFR 325.2(b)(1)).
17. **Coastal Zone Management.** In California, an individual state coastal zone management consistency concurrence must be obtained or waived where the project may affect the Coastal Zone (see 33 CFR 325.2(b)(2)).
18. **Endangered Species.** (a) No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittee shall not begin work on the activity until notified by the Corps that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.  
(b) Authorization of an activity under an LOP does not authorize the take of a threatened or endangered species as defined under the federal Endangered Species Act. In the absence of a separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with an incidental take provision, etc.) from the USFWS or NOAA Fisheries, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the office of the U.S. Fish and Wildlife Service or their internet site at <http://carslbad.usfws.gov> or from NOAA Fisheries or their internet site at <http://www.noaa.gov>.
19. **Fish Passage.** For projects resulting in construction or replacement of stream crossings in Arroyo Trabuco or San Juan Creek, the resulting structure must comply with NOAA-Fisheries and CDFG requirements for fish passage.
20. **Historic Properties.** No activity that may affect historic properties listed, or eligible for listing, in the National Historic Register of Historic Places is authorized, until the Corps has complied with the National Historic Preservation Act. If the proposed activity may affect any historic properties listed, determined to be eligible, or which the Corps has reason to believe may be eligible for listing on the National Register of Historic Places, the permittee shall not begin the activity until notified by the Corps that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the SHPO and the National Register of Historic Places.

### Activity-Specific Conditions-

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

## Mitigation Policy Framework

For the San Juan Creek and the western San Mateo Creek Watersheds, the Corps proposes to implement the following mitigation policies. These policies would apply to LOPs and standard individual permits.

### General Mitigation Policies-

1. **Mitigation Sequencing.** The discharge of dredged or fill materials into waters of the U.S. must first be avoided and/or minimized to the maximum extent practicable. Compensatory mitigation should be determined after avoidance and minimization measures have been implemented in accordance with the Section 404(b)(1) Guidelines (40 CFR 230 and the Memorandum of Agreement (MOA) between EPA and the Department of the Army dated February 6, 1990).
2. **No Net Loss in Acreage and Functions.** Consistent with the Corps-EPA MOA, overall values and functions should not be reduced within the watershed on a program level. In addition, all permanent impacts should be mitigated at a minimum of 1:1 ratio (acreage created and restored/acreage permanently impacted).
3. **Preparation of a Compensatory Mitigation Plan.** All mitigation 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](http://www.spl.usace.army.mil/regulatory/mmg_2004.pdf).
4. **Recommended Restoration.** Restoration design should be in accordance with the "Riparian Ecosystem Restoration Plan for San Juan Creek and San Mateo Creek Watershed: Site Selection and General Design Criteria" by U.S. Army Corps Engineer Research Development Center (ERDC) dated 2005 (Available as an appendix to the Joint Draft EIS/EIR for the San Juan Creek and the western San Mateo Creek Watershed SAMP, xxxx). The ERDC restoration plan provides recommended restoration goals in consideration of landscape setting.
5. **Delays in Implementation of Compensatory Mitigation.** Compensatory mitigation should begin concurrently with project impacts or prior to project impacts. Any delays in implementation of compensatory mitigation will be penalized by an increase in 25% of the initial compensatory mitigation acreage for every 3-month delay. If a delay is expected to occur, the permittee should notify the Corps to provide explanations for the delay and the new expected start date. The Corps will notify the permittee of each 3-month delay and re-calculate the compensatory mitigation acreage. The Corps will give due consideration and may waive the penalty in cases where delayed compensatory mitigation occurred as a result of any natural cause 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 (through abbreviated procedures, if appropriate) if the action involves a discharge of dredged or fill material into waters of the United States.

### 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 1 growing season of the impacts. 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 in the interim 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 fully recover temporarily impacted functions. 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.
3. **Preparation of Compensatory Mitigation Plan.** All on-site revegetation efforts require a mitigation and monitoring plan approved by the resource agencies.

#### **Compensatory Mitigation for Permanent Impacts-**

1. **Mitigation Ratios.** The Corps will determine mitigation ratios based on area-weighted gain in functions at the compensatory mitigation site with respect to area-weighted loss of functions at the impact site using the landscape level functional assessment developed by the Corps' Engineer Research and Development Center. Functions will be measured in terms of functional units with respect to hydrology, water quality, and habitat indices. 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 below).
2. **No Loss in Any Functional Type.** Compensatory mitigation will insure that losses to functions and values of aquatic resources do not result as calculated by the methodology 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 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. Functional losses can be avoided by increasing the mitigation ratio.
3. **Temporal Loss.** Temporal loss for permanent impacts will use the same guidelines as for temporary impacts. However, temporal loss will only apply to the habitat index, since the other two indices should not have a temporal lag.

For additional information, please call Jae Chung of my staff at (213) 452-3292. This public notice is issued by the Chief, Regulatory Branch.

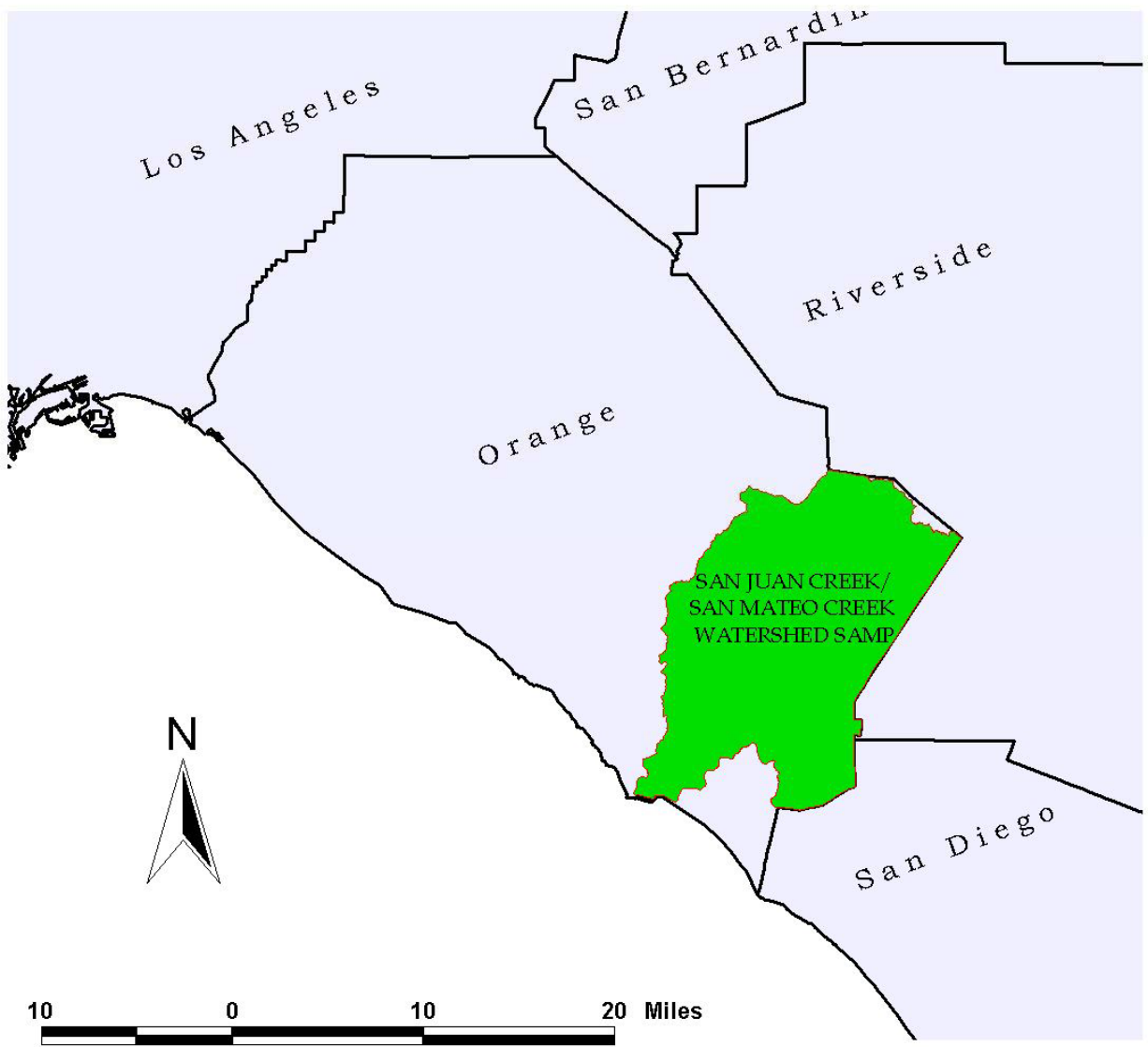


Figure 1. Location of the San Juan Creek/western San Mateo Creek watershed SAMP in Orange County, California.



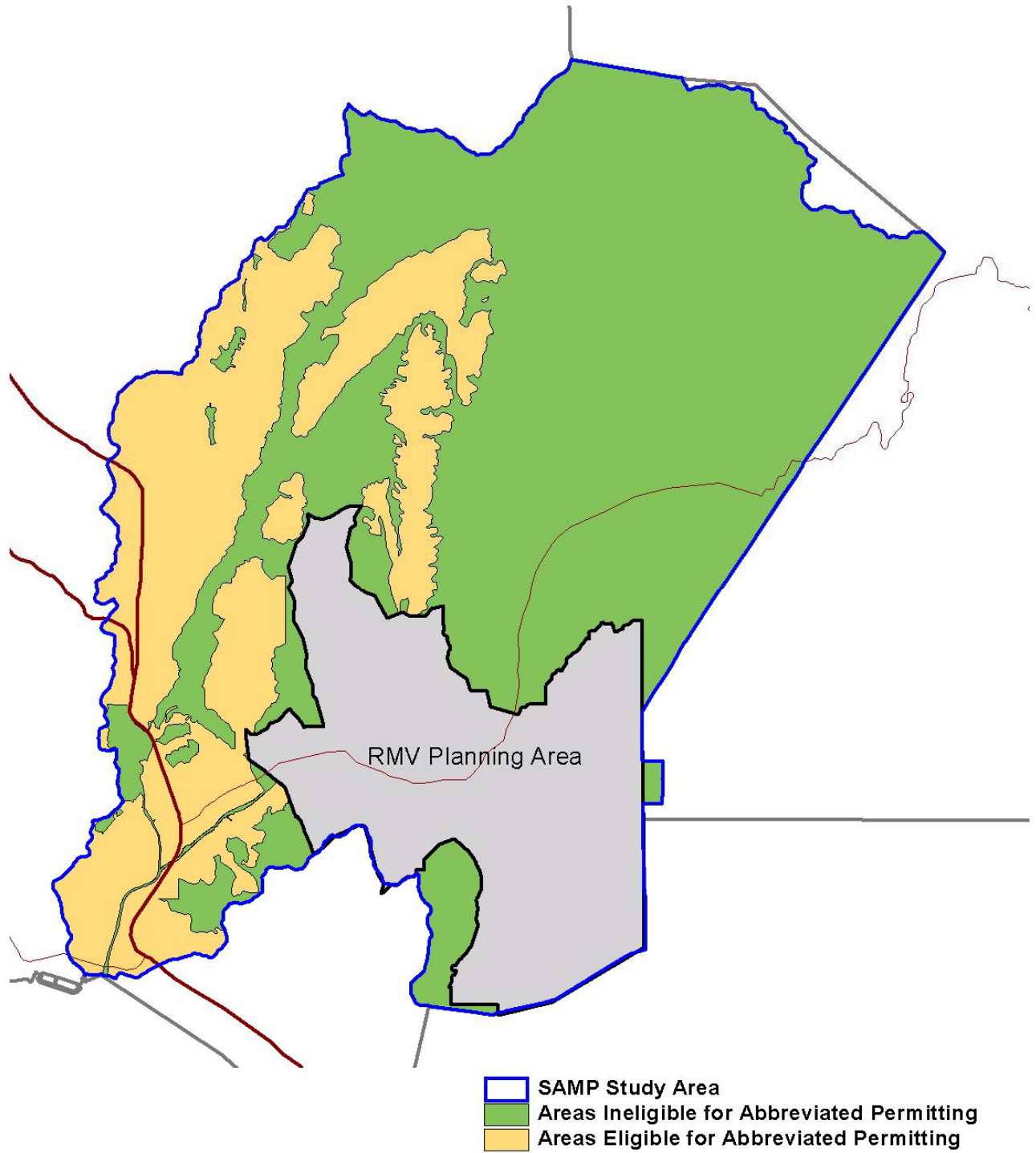


Figure 2. Areas outside of the RMV Planning Area eligible for abbreviated permitting.

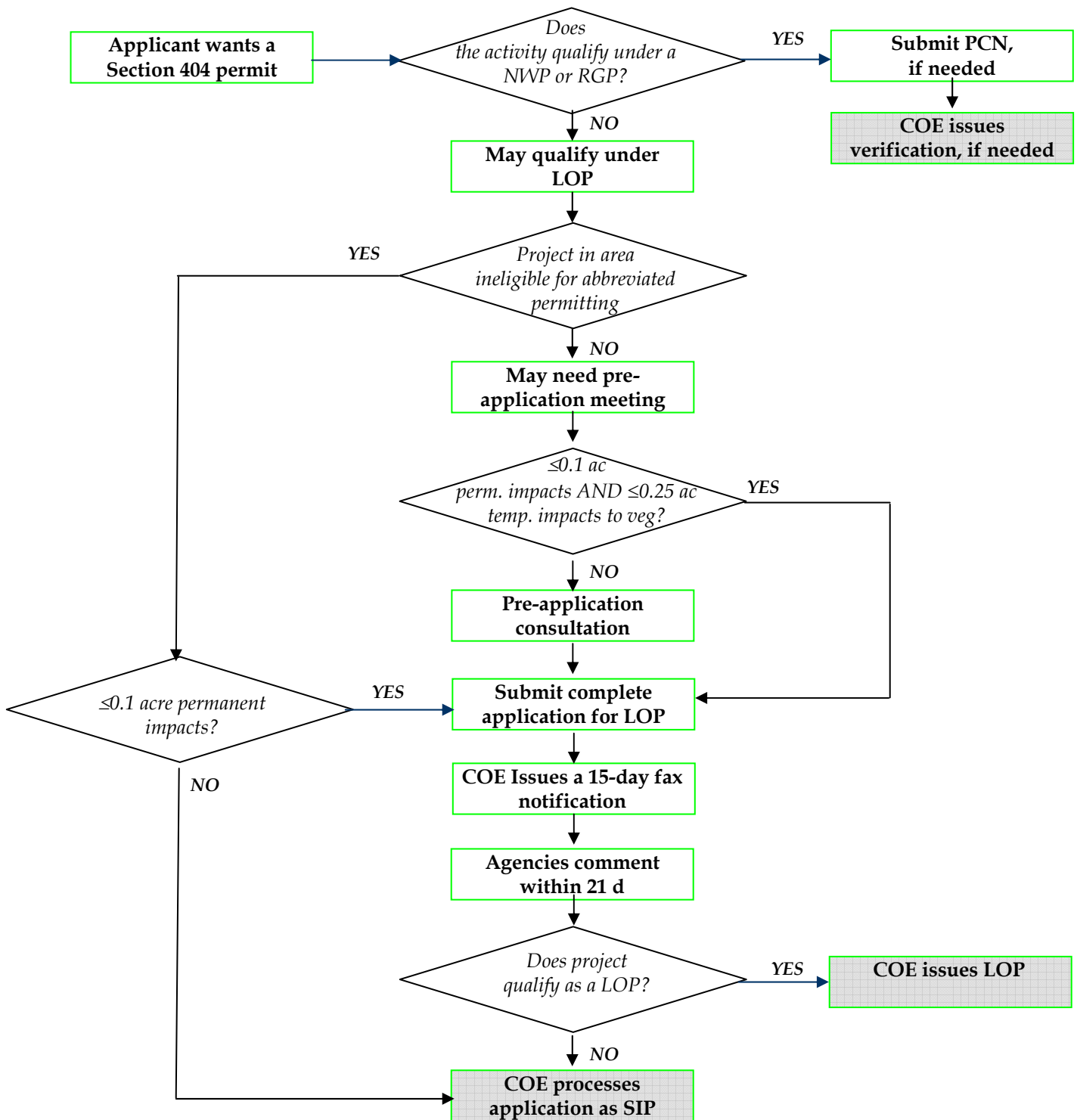


Figure 3. Generalized flow chart for the San Juan Creek and the western San Mateo Creek Watersheds permitting process.