

**US Army Corps  
of Engineers®**

# SPECIAL PUBLIC NOTICE

LETTER OF PERMISSION PROCEDURES FOR  
AREAS WITHIN 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>	199916236-3-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 with proposed long-term protection and management actions; and the revocation of selected Nationwide Permits (NWP).

This Special Public Notice concerns only the Corps' proposal to use LOPs within the Rancho Mission Viejo (RMV) Planning Area to authorize eligible activities. Additionally, the Corps proposes to revoke the use of selected NWPs within these areas 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 be made in consideration of long-term planning to balance reasonable economic development and aquatic resource protection.

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 outside the RMV Planning Area.

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Interested parties are invited to provide their views on the proposed LOP procedures for implementation on RMV lands in portions of 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-199916236-3-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 within 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. The draft EIS has a full description of the proposed activities within the RMV Planning Area and the analysis of the SAMP process and proposed long-term individual permit. 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-** . The species recently observed within the RMV Planning Area listed as threatened and/or endangered under the ESA 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*), and thread-leaved brodiaea (*Brodiaea filifolia*).

Of the seven listed species, only the California gnatcatcher has critical habitat designations that are in effect over portions of the RMV Planning Area. In addition, critical habitat designations within the SAMP Study Area have been proposed for the San Diego fairy shrimp and the thread-leaved brodiaea for areas within the RMV Planning Area. 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) 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 requirements of the ESA. The Corps will initiate formal consultation for the proposed permitting procedures in a forthcoming letter, pursuant to Section 7 of the ESA for effects to the above listed species and their critical habitat, where applicable.

**National Historic Preservation Act (NHPA) - Cultural Resources-** Within the urbanized portions of the San Juan Creek and the western San Mateo Creek Watersheds, 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-** The RMV Planning Area is located completely outside the coastal zone and implementation of the LOP procedures is not expected to affect the coastal zone. Consequently, the Corps will not obtain a concurrence that the proposed action is consistent with the State's Coastal Zone Management Plan.

**Magnuson-Stevens Fishery Conservation and Management Act (Act) - Essential Fish Habitat (EFH)-** The RMV Planning Area is located completely outside of tidal waters and implementation of the LOP procedures is not expected to affect essential fish habitat.

**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 within the RMV Planning Area within the San Juan Creek and the western San Mateo Creek Watersheds based on the RMV long-term individual permit 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). Implementation of the LOP procedures in the San Juan Creek and the western San Mateo Creek Watersheds, Orange County would be made in consideration of long-term planning to balance reasonable economic development and aquatic resource protection. The long-term planning was developed after extensive coordination, involving development of avoidance, minimization, and compensation measures for impacts to the aquatic environment.

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's within the RMV Planning Area. 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 NWPs. The aquatic resources conservation program for RMV lands involves establishing a program-level management structure and establishing priorities for implementing a riparian restoration plan on RMV lands. For areas within the RMV Planning Area, a key management element would involve preservation of important aquatic resource features through a phased dedication program. Overall, the SAMP assists applicants and the Corps in complying with the Section 404(b)(1) Guidelines through more effective and proactive long-term avoidance, minimization, and compensation of impacts to aquatic ecosystems.

This Special Public Notice addresses establishment of abbreviated permit procedures involving LOPs within the RMV Planning Area and the revocation of certain NWPs. 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. 199916236-2-YJC), dated November 21, 2005, the Corps proposes to use LOPs to authorize the discharge of dredged and/or fill materials for eligible activities outside of 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 RMV Planning Area, i.e., whether the activity would affect higher quality aquatic resources (Figure 2). Within such higher quality resource areas, other than activities within RMV development Planning Areas identified within the EIS, most classes of activities with permanent impacts to conserved aquatic resources would not be allowed. However, infrastructure activities at identified stream-crossings would be allowed subject to specified minimization measures in the special conditions for the proposed individual permit. Outside of these higher value aquatic resource areas, aquatic resources were identified as being of generally lower value on a watershed basis. For projects affecting aquatic resources located within RMV development Planning Areas for activities identified in

the draft EIS as eligible for the RMV permitting procedures, 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 watersheds' 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 and to provide a framework for comprehensive avoidance, minimization and mitigation of authorized impacts to areas subject to Corps jurisdiction, the SAMP seeks to develop an aquatic resources conservation program (ARCP) 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 Community 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

**Additional Permitting Policies within the RMV Planning Area**

Through the SAMP process, two potential applicants (Rancho Mission Viejo (RMV) and the Santa Margarita Water District (SMWD)) have undergone extensive pre-project review with the Corps to avoid and minimize impacts to the aquatic ecosystem to the maximum extent practicable. The RMV proposes to construct 14,000 homes and associated infrastructure in six planning areas over an

extended time frame, resulting in maximum permanent impacts to 55.46 acres of waters of the U.S., including 17.91 acres of wetlands, and maximum temporary impacts to 36.89 acres of waters of the U.S., including 15.82 acres of wetlands within the RMV Planning Area. Some of those activities to construct water and sewer infrastructure facilities would be performed in conjunction SMWD, resulting in maximum permanent impacts to 2.11 acres of waters of the U.S., including 1.19 acre of wetlands and maximum temporary impacts to 0.77 acre of waters of the U.S., including 0.57 acre of wetlands within the RMV Planning Area. In addition, SMWD proposes to conduct maintenance activities to existing sewer and water utility lines within the entire SAMP Study Area resulting in maximum temporary impacts to 17.88 acres of waters of the U.S., including 3.35 acres of wetlands. Details of their proposed actions are provided in the draft EIS. These applicants have satisfied some of the proposed requirements for eligibility under LOPs such as extensive pre-project coordination with the resource agencies and implementation of project modifications to insure compliance with the Section 404(b)(1) Guidelines through avoidance, initial minimization measures, and a comprehensive aquatic resource compensatory mitigation program. The remaining requirements for eligibility for future permitting under LOPs for these applications are summarized in this notice and reviewed extensively in the draft EIS.

The goal of a SAMP is to allow reasonable economic activities and development within the SAMP Study Area while developing and implementing landscape scale aquatic resources management plan and implementation programs including preservation, enhancement, and restoration of aquatic resources. Through the SAMP development process, the two potential applicants have allowed their projects to be reviewed by the Corps, resulting in preservation of about 90% of probable Corps jurisdictional features in the RMV Planning Area along with appropriate setbacks to minimize indirect impacts to jurisdictional features and to allow for animal movement. The draft EIS analyzes the potential impacts on waters of the U.S. of those projects. In exchange for assurances of being able to implement permitted activities over the long-term, proposed permittees are able to make long-term commitments to aquatic resource protection and management over a large geographic area with focus on protecting higher value aquatic resources. Commitments to long-term certainty provide resource protection benefits deriving from the assured protection and management of aquatic resources in contrast to the more limited protection and management that result from incremental project-by-project review.

Due to the long-range planning timelines involving potentially substantial commitments to aquatic resource protection and management in exchange for predictability in permitting, the Corps is proposing to issue an individual permit of extended duration specifying allowable impacts to waters of the U.S. over the life of the RMV developments. The RMV long-term individual permit identifies, on a geographic-specific basis, aquatic resource conservation areas to be protected (as indicated below under "Avoidance") and areas where impacts to WoUS would be allowed (see Figure 2). However, the RMV long-term individual permit by itself would not allow the discharge of dredged and/or fill materials into waters of the U.S., because additional review and analysis is needed to ensure minimization of impacts has occurred within areas identified for allowed impacts (as indicated below under "Minimization") as project details are developed and in accordance with the terms and conditions of the RMV long-term individual permit. Subsequent to the issuance of the RMV long-term individual permit, the Corps proposes to review specific activities under the LOP procedures within the geographic area covered by the individual permit as each activity is proposed for implementation. The LOP procedure is intended as a verification process for determining consistency with the RMV long-term individual permit and as an avenue for more detailed site-specific review of impacts to waters of the U.S. The process would lead to the issuance of LOPs as the actual Section 404 permit



authorization for activities determined to be consistent with the individual permit and any other relevant policies.

The SAMP process has provided a planning framework that has facilitated the preparation of the proposed permitting procedures to be reviewed in the EIS. Specific permitting policies have been developed to assist in the review of proposed activities and a range of alternatives involving ARCP/proposed development configurations to address the RMV projects that would be subject to the RMV long-term individual permit. These permitting policies, in conjunction with other policies such as the SAMP Tenets reviewed in the draft EIS, allow for long-range planning for development in exchange for the long-term protection of aquatic resources. These policies relate to jurisdictional determinations, avoidance of impacts to aquatic resources, minimization of impacts to aquatic resources, and compensation for unavoidable impacts as summarized below:

**Jurisdictional Determinations-** The jurisdictional determination for the RMV Planning Area was approved by the Corps on May 20, 2004. This approved jurisdictional determination was used for discussion of avoidance, minimization, and compensation in the draft EIS for both RMV and SMWD activities. Although future delineations are possible as specified herein, the jurisdictional determination approved on May 20, 2004 will be used as the baseline for all subsequent discussions on avoidance, minimization, and compensation. Future projects proposing to impact waters of the U.S. need to have only a re-verification of the 2004 jurisdictional delineation. A redelineation is required at the time of a project application only if a storm with a return interval greater than 10 years has occurred for the purpose of tracking impacts. Within the RMV Planning Area, there are about 857 acres of waters of the U.S.

**Avoidance-** The limits of proposed project impacts within RMV Planning Area are shown in Figure 2. The development and infrastructure would have permanent impacts to a maximum of 55.46 acres of waters of the U.S. for the RMV development and associated infrastructure (including 17.91 acres of wetlands) and temporary impacts to a maximum of 36.89 acres of waters of the U.S. for temporary impacts for construction of infrastructure (including 15.82 acres of wetlands). About 90% of the waters of the U.S. on the RMV Planning Area are avoided. As noted above, the final limits will be based on the Corps-approved jurisdictional delineation of 2004. The boundaries of the proposed RMV jurisdictional area impacts represent the considerations given to avoiding high quality aquatic resources in the context of determining the least environmentally damaging practicable alternatives in accordance with the Section 404(b)(1) Guidelines. For two development planning areas (Planning Areas 4 and 8), due to the need for future development planning, the draft EIS evaluated an overstated impact scenario assuming development of the entirety of each Planning Area even though the proposed permitting procedures would authorize considerably smaller impact areas. The maximum impact boundaries that are proposed for impacts comprise 500 acres of development for Planning Area 8, 550 acres of development and 175 acres for a water supply reservoir for Planning Area 4, and 50 acres of orchards within non-wetland areas of Planning Areas 6/7. Given that 90% of probable jurisdictional aquatic resources are avoided including sufficient buffers of these avoided areas even under the overstated impact scenario, no further avoidance will be required. Future authorizations will be based on verification that a proposed project does not exceed the limits of the impact boundaries authorized under the RMV long-term individual permit for development within development Planning Areas as shown in Figure 2 and for infrastructure as reviewed in the draft and final EIS and as discussed below under "Minimization."

**Minimization-** Initial project minimization measures will be conditioned as part of the RMV long-term individual permit based on the EIS analysis of project impacts. Within designated RMV development Planning Areas, environmental review analyses are sufficiently detailed to indicate that no additional minimization would be required beyond those set forth in the Individual Permit special conditions. However, for designated infrastructure facilities located on the periphery of and outside designated development area boundaries, details concerning infrastructure facilities have not been finalized. As these infrastructure facility design details become known, the Corps reserves the right to condition activity-specific authorizations through the issuance of conditioned LOPs for the infrastructure facilities on the periphery and outside development Planning Areas in order to ensure all practicable minimization measures addressing potential indirect effects of development would be implemented consistent with the RMV Proposed Project's long-term Individual Permit Special Conditions. Subsequent project-specific minimization measures would demonstrate compliance with measures for addressing indirect impacts to aquatic resources from approved footprints described in the RMV Proposed Project's long-term Individual Permit and associated Special Conditions. These subsequent minimization measures would not result in wholesale project redesign, would not modify project impact boundaries or require additional compensatory mitigation.

**Compensation-** Draft compensation measures are based on a functional approach and are outlined and reviewed in the draft EIS. The proposed compensatory mitigation measures are summarized in the draft EIS and include: (1) a proposed Aquatic Resources Restoration Plan formulated in accordance with the principles of the document entitled "Riparian Ecosystem Restoration Plan for San Juan Creek and Western San Mateo Creek Watersheds: Site Selection and General Design Criteria" referenced under General Mitigation Policies" and (2) an Aquatic Resources Adaptive Management Program designed to provide long-term management and monitoring of aquatic resources to maintain and enhance aquatic functions. The draft compensatory mitigation measures have been developed using a functional approach for assessing aquatic resources. Impact assessment in the EIS for the purpose of determining compensatory mitigation will be based on the jurisdictional delineation of 2004. Compensatory mitigation ratios will be 1:1 for all direct, permanent impacts to jurisdictional wetlands and vegetated non-wetland waters of the U.S. due to consideration of advance compensation and implementation of the ARCP.

### **Letter of Permission Procedures**

The Corps proposes to issue LOPs for activities within eligible areas within the RMV Planning Area that are consistent with the purposes and goals of the SAMP. 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 to activities authorized by the RMV individual permit. A summary of the procedures is provided in Figure 3.

**Eligible Activities-** Certain activities are eligible for LOPs, while other activities would require standard individual permits. Within eligible areas (Figure 2), numerous activities would be eligible for LOPs, including all RMV and SMWD activities addressed in the SAMP EIS. 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 the higher value aquatic resource areas that would otherwise be ineligible for abbreviated permitting (Figure 2), some activities would still be eligible for LOPs. These activities either would have mostly small, temporary impacts that could be restored after the project or would have been evaluated in the development of the SAMP resulting in upfront avoidance and minimization measures. Such activities include:

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 associated with reviewed infrastructure projects including:
  - a. Establishment of public and private utilities and
  - b. Crossings of any stream using complete spans or partial spans with in-channel piers/piles.

**Pre-Application Coordination for LOPs-** For areas outside the RMV Planning Area, the use of LOPs requires pre-application coordination. Within the RMV Planning Area, the Rancho Mission Viejo has already undergone extensive pre-application coordination with the Corps, obviating the requirement of additional formal pre-application coordination.

**Information Needed for Application-** The following items are needed for a complete application for the LOP permitting process within 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 based on the 2004 delineation unless otherwise specified by these permitting procedures;
  - 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 minimize 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 to ensure consistency with measures required in the final EIS and permit conditions;
  - i. Any other information pertinent to the wetlands, stream, or water body involved; and
  - j. Proposed project schedule.
3. A statement relating the project to authorized activities and associated ARCA dedication requirements as indicated in the Section 404(b)(1) Guidelines alternatives analysis completed as part of the SAMP EIS and the RMV individual permit special conditions.
4. A statement relating the particular project to minimization measures for indirect effects identified in the RMV individual permit special conditions.
5. A mitigation plan addressing unavoidable impacts to WoUS and the program goal of no net loss of wetlands consistent with the RMV individual permit special conditions.
6. A statement relating the project to the programmatic Section 7 consultation with USFWS for the SAMP, or with the local Natural Community Conservation Planning Program, as applicable.
7. 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. Minimization of impacts to the maximum extent practicable as specified in the “Minimization” section above (avoidance was addressed during formulation of the San Juan Creek and the western San Mateo Creek SAMP);
  - c. Consistency of the proposed project-specific compensatory mitigation with the RMV long-term individual compensatory mitigation requirements (see below);
  - d. 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 a programmatic Section 7 consultation with USFWS and/or NOAA Fisheries, as applicable, including potential coordination with the local Natural Community Conservation Planning program; and
  - e. 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 by the resource agencies regarding compliance with the programmatic Section 7 consultation requirements 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 Rancho Mission Viejo Individual Permit Special Conditions**

**I. Project Design**

**A. Project Footprint**

1. The permittee shall confine development and supporting infrastructure to the footprint (including infrastructure alignments and facilities within designated open space) shown on Exhibits 8-1, 8-2, 8-3a, 8-3b, 8-3c, and 8-4 in the draft EIS.
2. For the impact analysis areas, the permittee shall limit the size of the projects to 550 acres of development for Planning Area 4, 175 acres of reservoir for Planning Area 4, 500 acres of development for Planning Area 8, and 50 acres of orchards in Planning Areas 6 or 7.
3. The permittee shall avoid all impacts to the thread-leaved brodiaea (a threatened facultative wetland plant) in a major population in a key location (as described in Southern NCCP Planning Guidelines) on Chiquadora Ridge as part of construction for Planning Area 2.

**B. Hydrology**

1. Outside the footprint shown in Figure 2, the permittee shall insure post-project surface

water hydrology for any stream of Strahler 3rd order or greater shall not be substantially different from pre-project hydrology. Strahler order may be determined from the Glenn Lukos Association jurisdictional determination.

- a. For 24-hour precipitation events, flows in response to 100-year events shall not be substantially different between pre-project conditions and post-project conditions. The permittee shall use best management practices including and not limited to detention basins, retention basins, low-water irrigation, and increase in pervious surfaces to manage excessive storm runoff from developed areas. The runoff management plan required by Ranch Plan EIR Mitigation Measure 4.5-1(g) as amended by the Ranch Plan Development Agreement shall be submitted with each project application for review by the Corps.
  - b. For 24-hour precipitation events, flows in response to 10-year events shall not differ by more than 1% between pre-project conditions and post-project conditions. The permittee shall use best management practices including and not limited to detention basins, retention basins, low-water irrigation, and increase in pervious surfaces to manage excessive storm runoff from developed areas. The runoff management plan required by Ranch Plan EIR Mitigation Measure 4.5-1(g) as amended by the Ranch Plan Development Agreement shall be submitted with each project application for review by the Corps.
2. For any stream located outside the development footprint of Strahler 3rd order or greater receiving project discharges, the permittee shall undertake adaptive management measures to insure no change in channel geomorphology. Strahler order may be determined from the Glenn Lukos Associates jurisdictional determination. The permittee shall provide a monitoring plan to the Corps explaining the protocol, standards constituting adverse impacts, and remedial measures should thresholds for adverse impacts be reached. The stream stabilization program required by Ranch Plan EIR Mitigation Measure 4.5-7 and the stream monitoring program required by Ranch Plan EIR Mitigation Measure 4.5-8 shall be submitted as part of the monitoring plan for review and approval.
  3. The permittee shall not place water quality and/or water retention basins within the active channel of San Juan Creek, Chiquita Creek, Gobernadora Creek, Verdugo Creek, Cristianitos Creek, Gabino Creek, or Talega Creek.
  4. For any Corps jurisdictional feature vegetated with coast live oaks located outside of the development footprint that receive discharges, the permittee shall monitor the health of the oaks for five years after the start of the discharges. Any oaks greater than 6 feet in height that die of excessive inundation, shall be mitigated at a ratio of 1 10-gallon coast live oak for loss of 1 inch diameter at breast height. The permittee shall provide a monitoring plan to the Corps explaining the monitoring protocol and the standards constituting adverse impacts.

### **C. Water Quality**

1. The permittee shall abide by all the terms and conditions of the applicable Section 401

certification.

2. The permittee shall develop and implement master area and sub-area water quality management plans for each Planning Area (Ranch Plan EIR Mitigation Measures 4.5-3 and 4.5-4). A copy of the plan shall be submitted to the Corps for review and approval for consistency with the Conceptual Water Quality Management Plan approved as part of the SAMP EIS. The Corps shall have 30-days to review and approve any submitted plan. If the Corps does not provide comments within 30 days, the submitted plan shall be deemed approved. In the event of a disagreement between the Corps requirements and those of the County of Orange, the permittee, Corps and County shall agree on a resolution of said disagreement within 15 days. Copies of the annual reports shall be provided to the Corps within 30 days of completion.

**D. Habitat**

1. The permittee shall design new arterial roads or existing arterials upgraded to serve Ranch Mission Viejo projects along San Juan Creek, Chiquita Creek, and Gobernadora Creek, as follows in order to protect wildlife:
  - a. The bridge crossings shall provide a minimum of 20 feet of clearance from the stream bottom; and
  - b. Chain link fencing or functionally similar barrier of 10 feet in height (or as revised/determined through adaptive management) shall be installed on both sides of the approaches to the bridge for a distance of 100 feet away (or as revised/determined through adaptive management) from the stream to deter wildlife from entering the roadway.
2. The permittee shall provide wildlife movement corridors along San Juan Creek, Canada Chiquita, Canada Gobernadora, Cristianitos, Gabino, and Talega Creeks. Uses within these corridors shall be as follows:
  - a. The corridor along San Juan Creek upstream of Trampas Canyon to the edge of the RMV property shall provide a 400-meter wide corridor (200-meter setback off the centerline) except for the narrowing due to infrastructure facilities.
  - b. Residential or commercial structures shall not be constructed within the 400-meter corridor.
  - c. Limited fuel modification zones, trails, and related recreational facilities (i.e., interpretative signage, staging areas, picnic areas) are allowed within the 400-meter corridor.
  - d. Infrastructure facilities are allowed including:
    - i) natural treatment systems for water quality treatment and related drainage facilities;

- ii) outfalls that are located outside of the ordinary high water mark;
  - ii) approved bridge crossings;
  - iv) water, sewer, and power facilities as set forth in Exhibits 8-3a, 8-3b, and 8-3c.
3. The permittee shall retrofit the existing Cow Camp culvert crossing across San Juan Creek upon receiving authorization to discharge fill materials associated with Planning Area 3 to allow for fish passage. Alternatively, the crossing may be relocated to accomplish the same functional objectives as above and the current crossing may be removed and the disturbed area restored to provide a smooth, continuous longitudinal channel profile. The culverts shall comply with these following guidelines:
- a. The culvert shall be a minimum of 6 feet in width.
  - b. The bottoms of the culverted crossings shall not be less than 25% of the culvert height.
  - c. Retrofitted culverts shall be at grade.
4. The permittee shall use best management practices, including and not limited to detention basins, retention basins, low-water irrigation, increase in pervious surfaces, and/or diversion of runoff to a collection system for re-use for irrigation purposes to prevent dry season runoff from entering San Juan Creek (upstream of Trampas Canyon), Gabino Creek, and Talega Creek from September to mid-October.
5. The permittee shall eradicate bullfrogs from any water quality treatment basin within 0.5 km of streams known to have arroyo toads. The eradication shall occur at the very least from September to mid-October to interrupt the annual breeding cycle. Permittee may use a variety of approaches to ensure compliance with this condition. Eradication efforts shall be monitored annually as part of the Aquatic Resources Adaptive Management Plan. If eradication efforts are not successful, the permittee shall cause the water quality treatment basin to be dry from September to mid-October by diverting dry season runoff to a collection system for re-use for irrigation purposes.
6. The permittee shall minimize light-spillover associated with the development to minimize indirect impacts to wildlife. Lighting shall be directed away from habitat areas through the use of low-sodium or similar intensity lights, light shields, native shrubs, berms, placement low near the ground, or other shielding methods.
7. The permittee shall refrain from using invasive exotic vegetation within fuel modification zones. Invasive exotic vegetation are those rated as medium or high by the California Invasive Plant Council in terms of their invasiveness.
8. The permittee shall undertake telemetry monitoring studies for arroyo toad near Planning Area 8 for five years and submit the results to the Corps before submittal of an application for Planning Area 8. The results shall be used in designing appropriate



measures to minimize impacts to the arroyo toad in Planning Area 8.

9. [USFWS BO conditions].

## **II. Project Construction**

1. The permittee shall implement a contractor education program to provide an overview and understanding of the project construction special conditions. A copy of the Special 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.
2. The permittee shall perform initial vegetation clearing in waters of the U.S. between September 15 and March 15. Work in waters may occur between March 15 and September 15 if breeding bird surveys indicate the absence of any nesting birds within a 50-foot radius.
3. With each project LOP application, the permittee shall provide plans to the Corps showing the limits of grading, upland haul routes, fueling and storage areas for vehicles outside of waters of the U.S., temporary impact areas, dewatering areas, and temporary access roads within waters of the U.S. The permittee shall conform the grading to pre-identified impacts.
4. The permittee shall place, heavy equipment working in or crossing wetlands 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, when practicable and if personnel would not be put into any additional potential hazard. Temporary construction mats shall be removed promptly after construction.
5. The permittee shall only discharge dredged or fill materials into waters of the U.S. that is free from pollutants in toxic amounts (see Section 307 of the Clean Water Act). The permittee not place within waters of the U.S. unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.).
  - a. This condition is satisfied through the use of using on-site materials from balanced cut-and-fill grading operations for every Planning Area except for Planning Area 8.
  - b. For Planning Area 8, the permittee shall prepare an updated Phase I Environmental Site Assessment (GPA EIR Mitigation Measure 4.14-13), prepare a comprehensive closure plan (GPA EIS Mitigation Measure 4.14-15), prepare a Health and Safety Contingency Plan (GPA EIR Mitigation Measure 4.14.1), remove all underground storage tanks (GPA EIR Mitigation Measure 4.14-6), and in the event that toxic materials are discovered during construction, an in the field assessment (GPA EIR Mitigation Measure 4.14-2). Such assessments shall be provided to the Corps. The permittee shall not discharge fill materials associated with Planning Area 8 containing toxic amounts of pollutants.

6. The permittee shall identify the limits of impacts in the field with brightly-colored flags, tape, or other marking to prevent unauthorized grading outside approved footprints.
7. The permittee shall install toad exclusion fencing for any work within 300 feet of a known population of the arroyo toad adjacent to San Juan Creek, Verdugo Creek, Gabino Creek, Cristianitos Creek, and Talega Creek for activities occurring outside of the estivation period.
8. The permittee shall implement best management practices to prevent the movement of sediment into waters of U.S. Compliance with Ranch Plan EIR Standard Condition 4.5-11 (Erosion and Sediment Control Plan (ESCP)) would satisfy this condition. The ESCP must be designed to minimize the mobilization of fine sediments into downstream waters occupied by steelhead and arroyo toad. A copy of the current ESCP shall be provided to the Corps for each project application.
9. For each planning area within the San Juan Creek Watershed, the permittee shall survey streams 1000 feet downstream of each planning area for arroyo chub and three-spined stickleback prior to construction. If either species are found, downstream turbidity up to 300 feet from the planning area during construction shall not exceed more than 10 NTU over background when the background is less than 50 NTU or a 20 percent increase in turbidity when the background turbidity is more than 50 NTU. Background turbidity values can be obtained by measuring turbidity just upstream of the discharge point during construction. If the turbidity threshold is exceeded, the permittee shall implement additional turbidity control measures within 48 hours to reduce the turbidity to below threshold values.
10. The permittee shall restore all temporarily impacted areas to pre-construction elevations within one month following completion of work. If wetlands or non-wetland waters of the U.S. vegetated with native wetland species were impacted, re-vegetation should commence within three months after restoration of pre-construction elevations and be completed within 1 growing season. If re-vegetation cannot start due to seasonal conflicts (e.g., impacts occurring in late fall/early winter should not be re-vegetated until seasonal conditions are conducive to re-vegetation), exposed earth surfaces should be stabilized immediately with jute-netting, straw matting, or other applicable best management practice to minimize any erosion from wind or water.
11. The permittee shall comply with all the conditions of the historic properties treatment plan once the Corps in consultation with the State Historic Preservation Office approves the plan.
12. During construction of each Planning Area or associated infrastructure, the permittee shall provide weekly construction reports via e-mail, fax, and/or mail demonstrating status of compliance with all project construction special conditions. Appropriate photos shall be submitted to show establishment of project construction minimization features.
13. The permittee shall allow the Corps to inspect the site at any time during and

immediately after project implementation provided a 24-hour advance notice is given to the permittee.

14. [USFWS BO conditions].

### **III. Compensatory Mitigation**

1. The permittee shall protect avoided aquatic resources that are appropriately buffered (where feasible) by recording conservation easements. The conservation easements shall be recorded in phases in substantial conformance with the RMV Open Space and Phasing Plan shown as Exhibit B in the RMV Open Space Agreement, entered into by the permittee and County of Orange pursuant to the Ranch Plan Program EIR No. 589. The Corps acknowledges that the conservation easements will allow for passive recreation, agricultural uses by the O'Neill family and its successors in interest, if any, and for certain specified infrastructure facilities as illustrated in Figure 2. The conservation easement template or form shall be approved by the Corps before recordation. Following the recordation of each conservation easement, the permittee shall provide to the Corps a copy of the conservation easement.
2. The permittee shall compensate for all impacts to aquatic resources ensuring no net loss of functions and acres of naturally-vegetated waters of the U.S., including wetlands.
  - a. The permittee shall compensate for all impacts to wetlands and non-wetland waters of the U.S. vegetated with native wetland plant species at a 1:1 ratio on an area basis.
    - i. The permittee may use the 18 acres of credit already established at the Gobernadora Ecological Restoration Area to compensate for future impacts to any waters of the U.S.
    - ii. Compensatory mitigation for impacts to specified wetlands and non-wetland waters of the U.S. vegetated with native wetland plant species shall be initiated prior to impacts to the specified waters of the U.S. and achieve the success criteria prior to impacts to the specified waters of the U.S.
    - iii. The permittee shall provide the Corps, Department of Fish and Game, and the U.S. Fish and Wildlife Service with a habitat mitigation and monitoring plan consistent with the LAD Mitigation and Monitoring Guidelines for review and approval prior to implementation of the compensatory mitigation. The compensatory mitigation sites should be prioritized in consideration of the "San Juan Creek Watershed Riparian Ecosystem Restoration Plan: Site Selection and General Design Criteria" by Engineering Research and Development Center (ERDC) dated August 2004 and the Aquatic Resources Restoration Plan. Additional considerations include the proximity of impact site and mitigation site, impacts to other sensitive habits due to the potential mitigation site, site

ownership, and other factors. Restoration design shall follow the principles of the ERDC restoration plan (Appendix F4 of the SAMP EIS).

- b. The permittee shall compensate for all impacts to non-wetland waters that are vegetated by upland species or unvegetated through the eradication of all arundo on the RMV Planning Area (about 90 acres) consistent with the Invasive Species Control Plan.
  - c. Temporary impacts to wetlands or naturally vegetated non-wetland waters of the U.S. will be compensated through the existing habitat values and functions provided by 18 acres of already existing created/restored wetlands within GERA that is already providing temporal gain and the habitat value and functional enhancement provided through implementation of the ARAMP, including invasive species control such as the eradication of about 90 acres of giant reed on the RMV Planning Area. Temporary impacts to waters of the U.S. unvegetated or vegetated by upland species does not require compensatory mitigation.
3. The permittee shall compensate for the loss of mud nama, southern tarplant, and salt spring checkerbloom at a 2:1 ratio based on acreage.
    - a. The permittee shall provide the Corps, Department of Fish and Game, and the U.S. Fish and Wildlife Service with a habitat mitigation and monitoring plan consistent with the LAD Mitigation and Monitoring Guidelines and the Plant Species Translocation, Propagation, and Management Plan (Appendix J-1 to the GPA/ZC EIR) for all anticipated impacts to these sensitive wetland plants.
    - b. The permittee may elect to initiate replacement of sensitive plant acreage before impacts occur. If final performance criteria are achieved prior to impacts occurring, the Corps shall reduce the mitigation ratio to 1:1. Applicant may apply excess mitigation credits towards future impacts.
  4. The permittee shall finalize the Adaptive Resources Management Plan, including funding sources, for in perpetuity preservation of aquatic resource functions and values within one year of issuance of the long-term individual permit.
  5. The permittee shall conduct an exotic aquatic animal removal program to remove cowbirds, bullfrogs, non-native fishes, etc., as set forth in the Invasive Species Control Plan (Appendix F4 to the SAMP EIS).

#### **IV. Post-Project**

1. The permittee shall submit to the Corps and Department as-built drawings of the boundaries of each planning area within 12 months of their completion.
2. The permittee shall submit to the Corps and Department as-built drawings of each compensatory mitigation area within 12 months of their completion.

3. The permittee shall submit to the Corps and the Department of a final report demonstrating compliance with each of the special conditions.

### **Proposed SMWD Individual Permit Special Conditions**

#### **I. Project Design**

1. The permittee shall confine infrastructure facilities to the footprint (including infrastructure alignments and facilities within designated open space) shown on Exhibits 8-3a, 8-3b, and 8-3c in the draft EIS.
2. The permittee is authorized to conduct maintenance activities on all facilities shown in Exhibit 2-3 in the draft EIS.
3. The permittee shall abide by all the terms and conditions of the applicable Section 401 certification.

#### **II. Project Construction**

1. The permittee shall implement a contractor education program to provide an overview and understanding of the project construction special conditions. A copy of the Special 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.
2. The permittee shall perform initial vegetation clearing in waters of the U.S. between September 15 and March 15. Work in waters may occur between March 15 and September 15 if breeding bird surveys indicate the absence of any nesting birds within a 50-foot radius.
3. With each project LOP application, the permittee shall provide plans to the Corps showing the limits of grading, upland haul routes, fueling and storage areas for vehicles outside of waters of the U.S., temporary impact areas, dewatering areas, and temporary access roads within waters of the U.S. The permittee shall conform the grading to pre-identified impacts.
4. The permittee shall place, heavy equipment working in or crossing wetlands 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, when practicable and if personnel would not be put into any additional potential hazard. Temporary construction mats shall be removed promptly after construction.
5. The permittee shall only discharge dredged or fill materials into waters of the U.S. that is free from pollutants in toxic amounts (see Section 307 of the Clean Water Act). The permittee shall not place within waters of the U.S. unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.).

6. The permittee shall identify the limits of impacts in the field with brightly-colored flags, tape, or other marking to prevent unauthorized grading outside approved footprints.
7. The permittee shall install toad exclusion fencing for any work within 300 feet of a known population of the arroyo toad adjacent to San Juan Creek, Verdugo Creek, Gabino Creek, Cristianitos Creek, and Talega Creek for activities occurring outside of the estivation period.
8. The permittee shall implement best management practices to prevent the movement of sediment into waters of U.S. The permittee shall develop a program-level plan to minimize the mobilization of fine sediments into downstream waters. A copy of the plan shall be provided to the Corps before issuance of the final permit.
9. The permittee shall restore all temporarily impacted areas to pre-construction elevations within one month following completion of work. If wetlands or non-wetland waters of the U.S. vegetated with native wetland species were impacted, re-vegetation should commence within three months after restoration of pre-construction elevations and be completed within 1 growing season. If re-vegetation cannot start due to seasonal conflicts (e.g., impacts occurring in late fall/early winter should not be re-vegetated until seasonal conditions are conducive to re-vegetation), exposed earth surfaces should be stabilized immediately with jute-netting, straw matting, or other applicable best management practice to minimize any erosion from wind or water.
10. The permittee shall comply with all the conditions of the historic properties treatment plan once the Corps in consultation with the State Historic Preservation Office approves the plan.
11. During work on each infrastructure project, the permittee shall provide weekly construction reports via e-mail, fax, and/or mail demonstrating status of compliance with all project construction special conditions. Appropriate photos shall be submitted to show establishment of project construction minimization features.
12. The permittee shall allow the Corps to inspect the site at any time during and immediately after project implementation provided a 24-hour advance notice is given to the permittee.
13. [USFWS BO conditions].

### **III. Compensatory Mitigation**

1. The permittee shall compensate for all permanent and temporary impacts by contributing \$700,000 to the Adaptive Resources Management Plan. No further compensatory mitigation will be required for any impact as long as a proposed activity complies with the pre-identified impact footprint.
2. The permittee shall finalize the proposal for the monetary contribution to the Adaptive Resources Management Plan within one year of issuance of the long-term individual permit.

**IV. Post-Project**

1. The permittee shall submit to the Corps and Department as-built drawings of the boundaries of each permanent infrastructure impact within 12 months of their completion.
2. The permittee shall submit to the Corps and Department of a final report demonstrating compliance with each of the special conditions.

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

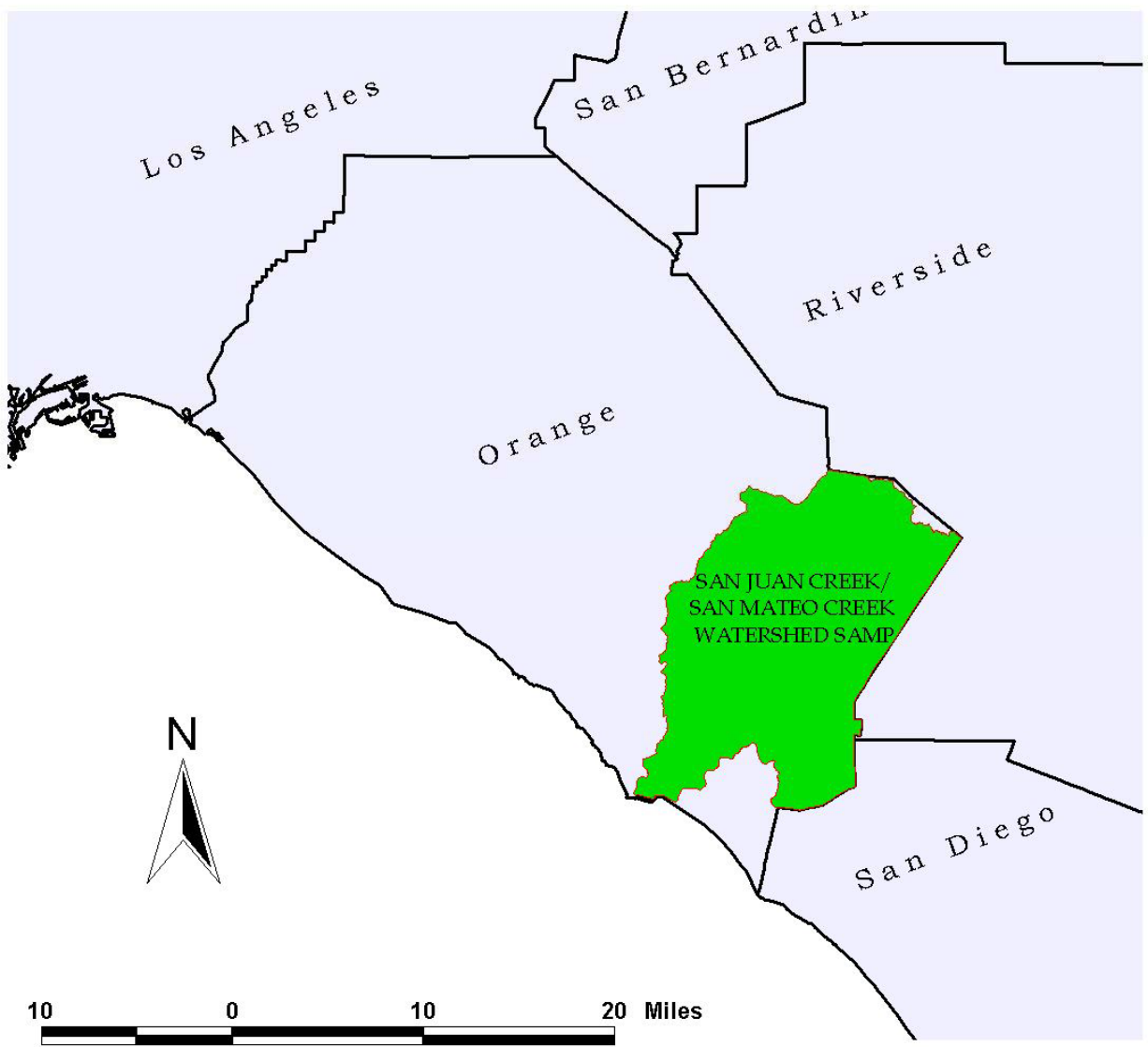


Figure 1. Location of the San Juan Creek watershed/western San Mateo Creek watershed SAMP in Orange County, California.



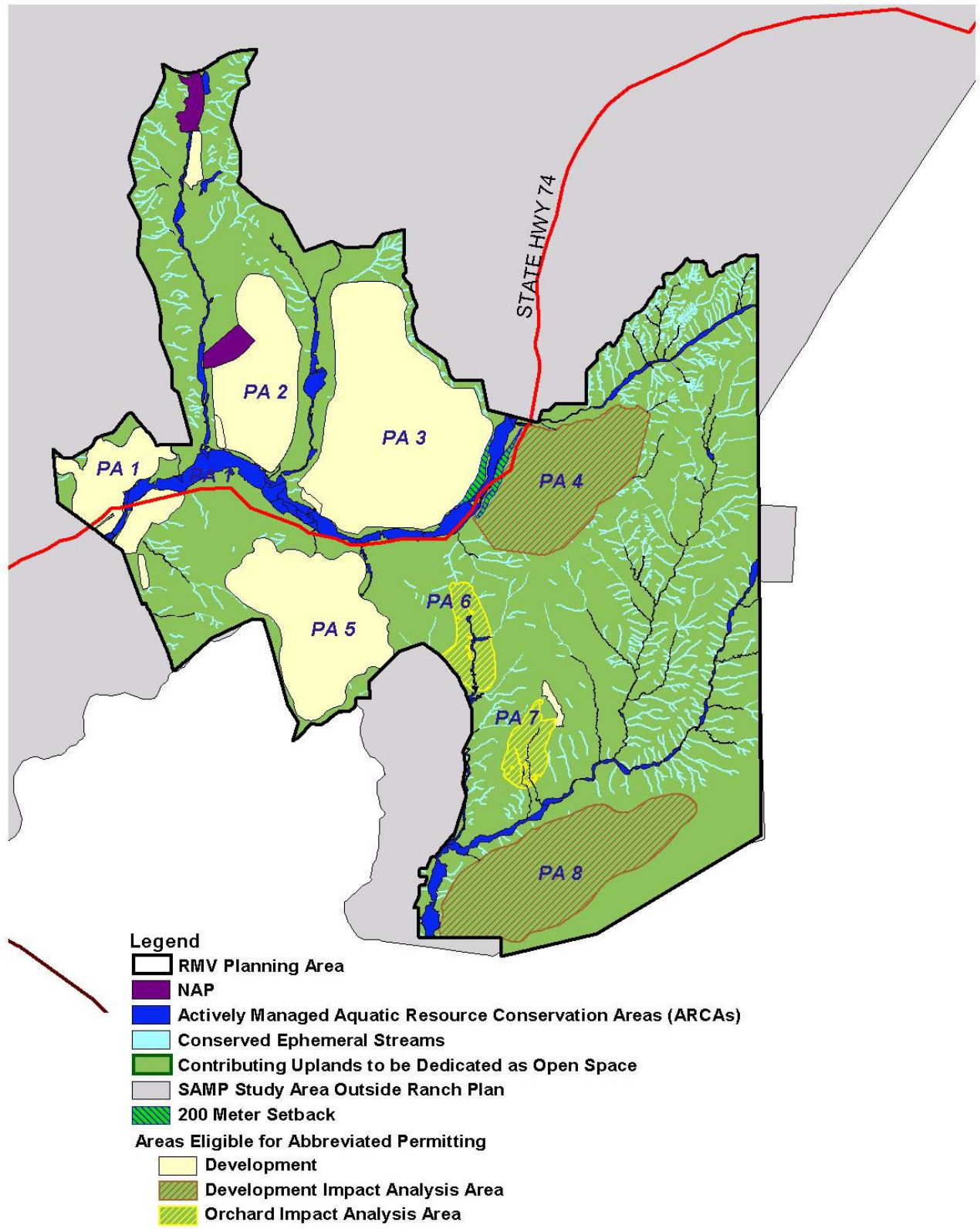


Figure 2. Areas inside the RMV Planning Area eligible for abbreviated permitting.

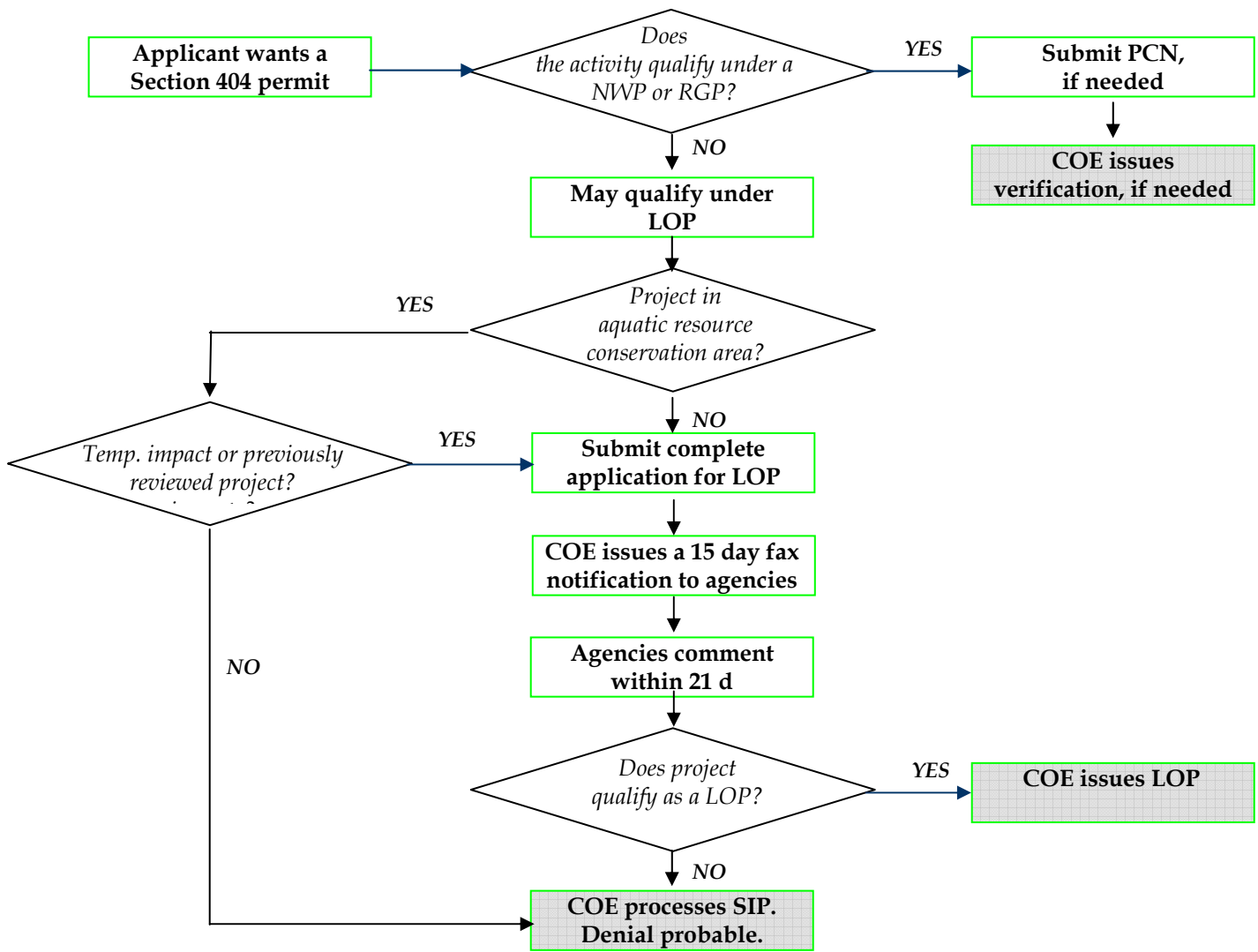


Figure 3. Generalized flow chart for the San Juan Creek and the western San Mateo Creek Watersheds permitting process in the RMV Planning Area.