

## **CHAPTER 3.0**

### **PURPOSE AND NEED FOR PROPOSED FEDERAL ACTIONS**

#### **3.1 PURPOSE AND NEED**

The SAMP involves an evaluation of the extent and condition of existing aquatic resources and provides for an analysis of the direct, indirect, and cumulative impacts to aquatic resources from a reasonable range of development and management alternatives within the SAMP Study Area. At the end of the SAMP process, aquatic resources will be identified for preservation, enhancement, and restoration, while allowing economic activities and development within the SAMP Study Area through advanced planning. The permitting of economic activities and development would occur through comprehensive permitting procedures based on the analysis of opportunities for avoidance, minimization, and compensation for impacts to aquatic resources at both the watershed scale and project level. Through the avoidance of priority aquatic resources using local restrictions on undesirable activities and the requirements for compensatory mitigation, the objective of the SAMP is to accommodate conservation efforts within the watershed in a coordinated, comprehensive fashion. A goal of this process is to facilitate the establishment of a comprehensive reserve and adaptive management program in coordination with the Southern Subregion Natural Communities Conservation Plan/Master Streamed Alteration Agreement/Habitat Conservation Plan (NCCP/MSAA/HCP) that would provide for the protection of aquatic resources and upland natural resources. Finally, approval of the SAMP EIS would allow for specific actions within the SAMP Study Area requiring NEPA compliance to tier off the SAMP EIS.

#### **3.1.1 PROJECT NEED AS PRESENTED BY SAMP PARTICIPANTS**

##### **3.1.1.1 SAMP Program Needs and Goals**

The San Juan Creek and Western San Mateo Creek Watersheds in Orange County, California, are experiencing disparate needs for aquatic resource protection and for reasonable economic development. The San Juan Creek and Western San Mateo Creek Watersheds have over 9,000 acres of aquatic resources, including wetlands, open water areas, and riparian systems, all of which provide ecosystem functions related to hydrology, water quality, and habitat. These watersheds are also among the fastest growing areas in the nation with numerous proposed commercial and residential development projects and many supporting infrastructure projects. Oftentimes, the need for aquatic resource protection and the need for economic development have been opposing forces. This conflict has presented difficulties for the local stakeholders in both the environmental and the development communities as well as for the USACE, the principal federal regulatory agency addressing impacts to aquatic resources through Section 404 of the Clean Water Act.

Recognizing the need for a more comprehensive planning approach in 1998, a resolution by the United States House of Representative's Committee on Public Works authorized the USACE to initiate a SAMP within the San Juan Creek/Western San Mateo Creek Watersheds. A SAMP is an evaluation and management tool to achieve a balance between aquatic resource protection and economic development. The broad goals of the SAMP are to allow for comprehensive management and protection of aquatic resources and to increase regulatory predictability for development and infrastructure projects that would impact aquatic resources. Advanced planning would allow for more effective consideration of aquatic resource conservation and those development and infrastructure projects affecting aquatic resources. The development

and infrastructure projects include those addressing the needs of the Rancho Mission Viejo, County of Orange, and the SMWD.

### **3.1.1.2 Rancho Mission Viejo/County of Orange Needs and Goals**

Rancho Mission Viejo's primary need is to provide an economically viable mix of residential, commercial, and other urban and natural open space lands capable of addressing the growth projections of an ever-expanding population of southern Orange County. In doing so, Rancho Mission Viejo has stated their purpose is to provide an economically viable mix of residential, commercial, and other urban and natural open space lands capable of addressing the societal needs and goals of southern Orange County as reflected in the plans and policies of the Orange County General Plan and the Orange County Projections (OCP).

Rancho Mission Viejo's primary SAMP goal is to participate in and help implement a coordinated, comprehensive land use, conservation planning, and state/federal/local regulatory and entitlement process, instead of an incremental project-by-project review and approval process, in order to provide land areas compatible with SAMP goals within the Rancho Mission Viejo portions of the San Juan Creek Watershed and the western portion of the San Mateo Creek Watershed. Given the scale of planning and economic commitments required to provide for comprehensive resource protection and management within the 22,815-acre RMV Planning Area, Rancho Mission Viejo has stated that its central economic goal is to have a development/open space plan approved that has the capability of providing the financial return necessary for the landowner to offset the level of risk inherent in long-term master plan development, the loss of investment opportunities, and the commitment of land and financial resources necessary to provide for the large-scale protection of many valuable resources, including required dedications for the SAMP.

As noted, growth projections are made in consideration of the Orange County General Plan and the OCP. In fulfilling this need, Rancho Mission Viejo must address a broad range of different environmental, economic, and technological goals that include, but are not limited to, aquatic resource and watershed protection goals of the San Juan Creek and Western San Mateo Creek Watersheds SAMP; habitat protection considerations of sensitive upland and aquatic species, including species listed as threatened and/or endangered under the federal Endangered Species Act in the context of the pending NCCP/MsAA/HCP for the Southern Subregion; and the air quality objectives of the South Coast Air Quality Management Plan.

In managing the ever-expanding population of southern Orange County, the County of Orange approved the Rancho Mission Viejo General Plan Amendment/Zone Change (GPA/ZC), which was done within the environmental planning framework established by County/SCAG planning programs to address a combination of environmental and other societal goals regarding housing and economic development. With regard to housing, transportation, and air quality goals, growth projections were adopted by Orange County (Orange County Projections-2004, "OCP-2004") for incorporation into SCAG's five-county growth forecast for the 2004 Regional Transportation Improvement Plan (RTIP) and the South Coast Air Quality Management District's Air Quality Management Plan (AQMP). OCP-2004 identifies approximately 20,000 housing units on the RMV Planning Area by 2025.

The GPA/ZC originally proposed by Rancho Mission Viejo (the B-4 Alternative) would have provided for 14,000 dwelling units, substantially more housing than allowed under the prior zoning but 6,000 fewer units than the OCP-2000M assumptions. In the course of formulating alternatives for review in the GPA/ZC EIR 589, the County of Orange developed two alternatives, one of which (the B-10 Alternative) provided for housing units comparable to the

B-4 Alternative but with different assumptions for housing and open space and a second alternative (the B-11 Alternative) which included housing units approximating the OCP-2000 projection. In adopting a County Preferred Alternative for the GPA/ZC Final EIR, the County of Orange summarized the elements of its balancing process as follows:

*“The General Plan provides the goals, objectives, and policies for new developments including goals for affordable housing, habitat preservation, highway and infrastructure construction, recreation, and other general plan topics. Each of these goals is given equal weight in the General Plan; however, to fully attain one goal may preclude attainment of another, competing goal. For example, preserving habitat competes with providing land for housing and jobs, or meeting regional housing projections competes with meeting highway level of service standards.*

*In analyzing which alternative is preferred, the County staff considered the need to balance the competing goals of the General Plan so the preferred plan attains important objectives of each goal without precluding attainment of competing goals. In particular, the County staff sought to balance project objectives relating to the protection of habitats, aquatic resources, and watersheds with the needs and goals of southern Orange County as reflected in the plans and policies of the Orange County General Plan, particularly those related to housing, land use, and transportation.”*

The County’s preferred alternative, Alternative B-10 Modified, was approved by the County on November 8, 2004. Subsequently, based on further input from the USACE, CDFG, USFWS, environmental community, and the general public, yet another alternative (referred to as Alternative B-12) was formulated. Alternative B-12 (RMV Proposed Project) focuses on further protection of resources by concentrating development in the areas with lower resource values while continuing to protect high resource values, including the vast majority of the western portion of the San Mateo Creek Watershed within the RMV Planning Area. At the same time, Alternative B-12 would provide the same level of housing as the originally proposed B-4 Alternative and the B-10 Modified Alternative.

Rancho Mission Viejo’s goals and objectives therefore reflect a balancing of the County goals and objectives in relation to the goals and objectives set forth under the SAMP and the NCCP/MSAA/HCP components of the “coordinated planning process.” This balance also considers the County’s review of development to dedication ratios in other comparable large-area planning programs (source: GPA/ZC EIR 589; see the analysis of the B-8 Alternative in Chapter 6.0). As such, Rancho Mission Viejo’s statement of purpose and need are substantial considerations under the NEPA and Section 404(b)(1) analyses for the proposed permitting procedures and the other SAMP elements set forth in this EIS.

### **3.1.1.3 Santa Margarita Water District (SMWD) Needs and Goals**

SMWD is responsible for providing water and wastewater service for a portion of the San Juan Creek and San Mateo Creek Watersheds. SMWD periodically adopts plans of works and capital improvement programs identifying facilities to be constructed and operated in response to the existing and proposed land uses. SMWD’s goal is to plan, design, construct, operate, and maintain those facilities in conjunction with the applicable goals of the SAMP for the watersheds.

### 3.1.2 PURPOSE

This proposed SAMP is being coordinated with the NCCP/MCAA/HCP environmental review program for the Southern Subregion NCCP.

The broad objectives of the SAMP are to allow for comprehensive management of aquatic resources and to increase regulatory predictability for development and infrastructure projects that would impact aquatic resources. The more specific SAMP Tenets, as set forth in Chapter 6.0, provide a framework for aquatic resource conservation planning and the assessment of avoidance and minimization of impacts to aquatic resources.

The USACE's mandate under the Clean Water Act is to maintain and restore the physical, chemical, and biological integrity of the nation's waters. The Section 404 (b)(1) Guidelines (40 CFR 230) stipulate that the USACE only authorize the least environmentally damaging practicable alternative. According to 40 CFR Part 230.10 Subpart B, an alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. The Section 404(b)(1) Guidelines make a specific distinction between the basic and overall project purpose (40 CFR Part 230.10[a]).

#### 3.1.2.1 Basic Project Purpose and Water Dependency: Proposed Permitting Procedures

The basic project purpose is used to determine whether a proposed project is water dependent (i.e., whether it requires being located in or in close proximity to a special aquatic site). "Basic project purpose" is a term used in the USACE's regulatory program. As reviewed above, the basic project purpose is to develop a SAMP. The SAMP includes comprehensive permitting procedures for specific economic and development activities. As addressed in Chapter 1.0, three proposed permitting procedures for development within areas containing aquatic resources are proposed for the SAMP.

Proposed development projects to be evaluated under the proposed SAMP permitting procedures would not be water dependent activities. Therefore, it is presumed that practicable alternatives are available that would result in less adverse impacts to special aquatic sites, including wetlands (40 CFR 230.10[a]). Specifically, because under the proposed permitting procedures for a long-term Individual Permit, the placement of fill materials is proposed in wetlands and the activity or action is not water dependent, the Section 404(b)(1) Guidelines require that practicable alternatives are presumed to exist that have less adverse impacts on the special aquatic site, unless demonstrated otherwise (a rebuttable presumption test), provided that the alternative does not have other adverse environmental impacts. Therefore, no discharge of dredged or fill material would be permitted within a special aquatic site if there is a practicable alternative to the proposed discharge, which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

#### 3.1.2.2 Overall SAMP Study Area Project Purpose for 404(b)(1) Analysis: Proposed Permitting Procedures and Identification of a Comprehensive Aquatic Resources Conservation Program

The overall project purpose is the basic project purpose in consideration of general objectives of the applicant, cost, logistics, and existing technology. An alternative is practicable if it is capable of being accomplished in consideration of cost, existing technology, and logistics in light of the

overall project purpose. The Section 404 (b)(1) Guidelines require that if the overall purpose of a project is practicably met through several alternatives, the USACE can only authorize the Least Environmentally Damaging Practicable Alternative (LEDPA).

The overall project purpose involves two products. First, the SAMP involves allowing reasonable economic activities and development by identifying areas and/or activities suitable for coverage under a comprehensive, abbreviated permitting process for residential, commercial, industrial, recreational, infrastructure, and maintenance needs within the SAMP Study Area. The term “reasonable” is evaluated in consideration of the no federal action alternative, project needs of SAMP participants, and the SAMP tenets. Second, the SAMP involves establishment of an Aquatic Resources Conservation Program (ARCP) consisting of preservation, restoration, and management as mitigation for impacts authorized by the proposed permitting procedures. The Aquatic Resources Conservation Program involves coordination of components of mitigation including avoidance, minimization, and restoration. The Aquatic Resources Conservation Program would be developed in coordination with the Southern Subregion NCCP/MSAA/HCP habitat reserve.

### **3.2 PROPOSED FEDERAL ACTIONS AND ALTERNATIVES**

#### **3.2.1 MAJOR FEDERAL ACTION**

As reviewed in Chapter 1.0, the following is the major federal action that is the subject of this SAMP EIS:

Adoption of three permitting procedures for residential, commercial, industrial, recreational, infrastructure, and maintenance needs within the SAMP Study Area. The Aquatic Resources Conservation Program is an outcome of the mitigation associated with the proposed permitting procedures.

#### **3.2.2 FORMULATION AND REVIEW OF PROPOSED PERMITTING PROCEDURES**

As a result of comprehensive studies on the location and quality of aquatic resources within the San Juan Creek and Western San Mateo Creek Watersheds, this SAMP would provide 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 USACE has identified geographic areas with higher quality aquatic resources.

Several criteria were used to identify these areas with higher quality aquatic resources. First, the USACE used the USACE Engineer Research and Development Center landscape-level functional assessment to identify those aquatic areas with medium to high integrity with respect to hydrology, water quality, and habitat. The USACE Engineer Research and Development Center landscape-level functional assessment evaluates each riparian reach in the watershed using a suite of indicators to assess the hydrologic, water quality, and habitat integrity in relationship to historical baselines. Second, the USACE considered critical habitat designations for federally listed threatened and/or endangered species. For the SAMP Study Area, officially designated critical habitat exists for the California gnatcatcher, Riverside fairy shrimp, and southern steelhead. These critical habitats were added to the map of the higher quality aquatic resources and their contributing uplands. Third, the USACE removed areas that have already been impacted by residential, commercial, and industrial development. Many of these areas do not provide important aquatic resource ecosystem functions and were excluded from the mapping effort.

In addition to these initial steps, areas within the RMV Planning Area were given additional review and consideration. Through the course of the SAMP process, various development alternatives within RMV Planning Area were prepared in consideration of riparian corridors, adequate buffers of protected riparian corridors, threatened and/or endangered species habitat, and equilibrium sediment processes. The ultimate configuration of open space and development within the RMV Planning Area recognizes important areas that contribute to long-term overall riparian integrity for hydrology, water quality, and habitat.

Based on the findings of the resource assessments and mapping, the USACE identified different geographic areas that warrant different permitting considerations that reflect the quality of the aquatic resources in question. For higher quality resources, these areas warrant either complete protection of the aquatic resource through upfront preservation in accordance with the local land use authorities, or full review of projects proposing to impact these aquatic resources by the USACE to ensure all impacts have been avoided, minimized, and compensated through full engagement with the applicant and other regulatory resource agencies. Conversely, for lower quality aquatic resources, projects in these areas warrant a more abbreviated review to provide the regulatory public with certainty in permitting outcomes to allow for better long-term planning, while freeing the regulatory agencies to devote more time towards evaluating potential projects that may have more considerable impacts to the aquatic ecosystem. This new permitting process that explicitly considers the quality of the aquatic resources on an aggregate level which is an improvement compared to the existing permitting process, which cannot make strategic considerations in the context of the watershed landscape.

In order to implement the alternate permitting process that considers the condition of the aquatic resources being affected, the USACE proposes to revoke several Nationwide Permit (NWP) authorizations within the San Juan Creek Watershed and the western portion of the San Mateo Creek Watershed consistent with 33 CFR 330.5(c). The revoked Nationwide Permits are listed in Table 3-1, 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 Nationwide Permits may provide an inappropriate level of protection to aquatic resources. For instance, in some situations, the Nationwide Permits may be insufficiently protective of the higher aquatic resource value areas in the context of watershed-level protection. In other situations, some of the Nationwide Permits may be overly restrictive for projects with minor impacts to the aquatic environment. In place of the revoked Nationwide Permits, the alternative permitting process 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 USACE 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 Watershed and the western portion of the San Mateo Creek Watershed is provided in Table 3-1. The permitting process applies to only the San Juan Creek Watershed and the western portion of the San Mateo Creek Watershed.

**TABLE 3-1  
COMPARISONS BETWEEN CURRENT AND PROPOSED ALTERNATIVE  
PERMITTING SYSTEM FOR THE SAN JUAN CREEK AND  
WESTERN SAN MATEO CREEK WATERSHEDS**

	Current System	Proposed System		
		NWPs	LOPs	LOPs
Use Areas	All areas	All areas	Inside areas eligible for abbreviated permitting	Outside those areas eligible for abbreviated permitting
NWPs Revoked in the San Juan Creek and Western San Mateo Creek Watersheds	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
NWPs Retained in the San Juan Creek and Western San Mateo Creek Watersheds	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
Permanent Impacts to Waters of the U.S. Authorized	Generally $\leq$ 0.5 acre	Generally $\leq$ 0.5 acre	No limit <sup>a</sup>	$\leq$ 0.1 acre
Temporary Impacts to Waters of the U.S. Authorized	No limit	No limit	No limit <sup>a</sup>	No limit <sup>a</sup>
Review Time	$\leq$ 45 days	$\leq$ 45 days	$\leq$ 45 days	$\leq$ 45 days
Pre-application Coordination	Encouraged	Encouraged	Required <sup>b</sup>	Required <sup>b</sup>
Inter-agency Review	Generally $>$ 0.5 acre	None	All actions	All actions
NWP: Nationwide Permit LOP: Letters of Permission  a. Provided full compliance with all LOP procedures b. For $>$ 0.1 acre of permanent impacts to Waters of the U.S. or $>$ 0.25 acre of temporary impacts to Waters of the U.S. with native riparian and/or wetland vegetation				

In the place of some of the revoked Nationwide Permits, the USACE proposes a Regional General Permit for maintenance activities and Letters of Permission for all other activities. The applicability of a permit system depends on the location of the proposed activity with respect to the RMV Planning Area and with respect to the areas identified as ineligible for abbreviated permitting (see Figure 1-3, Letter of Permission and Regional General Permit Map).

Comparisons between the existing permitting system and the proposed system in terms of response times by the USACE are summarized in Table 3-2. Determining factors are whether a proposed project is located within the RMV Planning Area, whether a proposed project is located in areas eligible for abbreviated permitting pursuant to the analysis in Chapter 8.0, whether there are temporary or permanent impacts, and the size of the impact to USACE; jurisdictional areas. For most projects, there will be savings in time, allowing for better predictability by the regulated community.

**TABLE 3-2  
COMPARISONS BETWEEN CURRENT AND PROPOSED ALTERNATIVE  
PERMITTING SYSTEM IN TERMS OF PROCESSING TIMES FOR THE  
SAN JUAN CREEK AND WESTERN SAN MATEO CREEK WATERSHEDS**

Location	Area Eligible for Abbreviated Permitting?	Situation	Current permitting system	Proposed permitting system
Outside RMV Planning Area	Yes	≤ 0.5 acre temp impact	NWP Response in ≤ 45 days	RGP Response in ≤ 15 days
	Yes	> 0.5 acre temp impact	NWP Response in ≤ 45 days	LOP Response in ≤ 45 days
	Yes	≤ 0.5 acre perm impact	NWP Response in ≤ 45 days	LOP Response in ≤ 45 days
	Yes	> 0.5 acre perm impact	IP Response in ≤ 120 days	LOP Response in ≤ 45 days
	No	All temp impact	NWP or IP Response in 45-120 days	LOP Response in ≤ 45 days
	No	≤ 0.1 acre perm impact	NWP Response in ≤ 45 days	LOP Response in ≤ 45 days
	No	≤ 0.5 acre perm impact	NWP Response in ≤ 45 days	IP Response in ≤ 120 days
	No	> 0.5 acre perm impact	IP Response in ≤ 120 days	IP Response in ≤ 120 days
Inside RMV Planning Area	Yes	Pre-approved development and infrastructure	NWP or IP Response in ≤ 120 days	LOP Response in ≤ 45 days
	No	Pre-approved facility	NWP or IP Response in ≤ 120 days	LOP Response in ≤ 45 days
	No	Other facility	NWP or IP Response in ≤ 120 days	Not allowed
NWP: Nationwide Permit IP: Individual Permit RGP: Regional General Permit LOP: Letters of Permission				

**3.2.2.1 Regional General Permit Procedures for Maintenance Activities Outside of the RMV Planning Area**

In consideration of the comprehensive studies that characterized the functional integrity of riparian resources within the San Juan Creek Watershed and western portion of the San Mateo Creek Watershed and in accordance with USACE’s regulations in 33 CFR §325.2(e)(2), the USACE proposes to establish a Regional General Permit to authorize temporary impacts up to 0.5 acre in lower quality aquatic resource areas outside of RMV Planning Area within the San Juan Creek Watershed and the western portion of the San Mateo Creek Watershed of which only 0.1 acre may be vegetated with native riparian and/or wetland vegetation. The Regional General Permit would allow for such discharges to be authorized in an abbreviated timeframe (within 15 days of notification) and with no compensatory mitigation requirements because of the lower quality of the aquatic resources, the temporary nature of the impacts, and the limited extent of disturbance. Regional General Permits are issued for activities substantially similar in nature and with minimal impacts to the environment on a regional basis. Areas eligible for the use of this Regional General Permit (Figure 1-3) are limited to aquatic resources within areas



designated as having lower riparian integrity. Details of the Regional General Permit are provided with the Special Public Notice in Appendix A of this EIS.

This proposed Regional General Permit would only cover temporary impacts from the discharge of dredged and/or fill materials. Permanent losses of Waters of the U.S., including impacts from fills, flooding, excavation (beyond a maintenance baseline), or drainage are not permitted under this Regional General Permit. Eligible activities include:

1. Repair, rehabilitation, and replacement of currently serviceable outfall structures, utility lines, pump stations, bank stabilization structures, concrete flood control structures, weirs, drop structures, grade stabilizers, at-grade road crossings, culverts, bridges, pilings, and piers;
2. Temporary construction activities and installation of temporary cofferdams, water diversion structures, and access roads; and
3. Removal of accumulated sediment in flood control channels and basins (debris, retention, and detention) to restore the facility to maintenance baselines and within its design capacity.

As mentioned previously, this Regional General Permit would allow a permittee to commence work in eligible areas 15 days after the USACE receives complete written notification. Upon receipt of a complete notification and within the 15-day notification period, the USACE may verify the activity with a letter. If a notification is not complete, the USACE would, within seven days, notify the applicant of the needed information items and the applicant would be required to resubmit. If the USACE provides no response within 15 days after complete notification, the project proponent may assume USACE approval of the work.

The USACE is seeking a Section 401 certification from the San Diego RWQCB. Section 401 requires that any applicant for an individual Section 404 authorization provide proof of water quality certification to the USACE prior to permit issuance. For the Regional General Permit, the USACE is applying directly to the San Diego RWQCB for Section 401 certification of the Regional General Permit. If the San Diego RWQCB provides a water quality certification for the Regional General Permit, individual water quality certifications would not be required for individual projects. The USACE is submitting all relevant documents to the San Diego RWQCB with respect to the development of the SAMP. In the event the San Diego RWQCB does not provide water quality certification for the Regional General Permit, the USACE would require that an applicant provide proof of water quality certification for each activity.

The USACE also proposes a set of general conditions that would be added to the permit authorization to help ensure that any direct and indirect impacts are minimized. These conditions relate to issues such as implementation of best management practices to control erosion, management of flow conditions, and avoidance of bird breeding season. A complete list of the general conditions is provided in the Special Public Notice (Appendix A). In addition to the general conditions, the USACE reserves the right to require additional special conditions based on more detailed project review.

### **3.2.2.2 Letter of Permission Procedures For Future Qualifying Applicants Subject to Future Section 404 (b)(1) Guidelines Review Outside the RMV Planning Area**

In consideration of the comprehensive studies that characterized the functional integrity of riparian resources within the San Juan Creek Watershed and western portion of the San Mateo

Creek Watershed and in accordance with USACE's regulations in 33 CFR §325.2(e)(1), the USACE proposes to issue Letters of Permission (LOP) for activities outside of the RMV Planning Area that are determined in the future to be consistent with the purposes and goals of the SAMP. Such activities would need to undergo future effective pre-application coordination, include NEPA review, comply with the Section 404 (b)(1) Guidelines, and include effective compensatory mitigation for unavoidable impacts prior to consideration for LOP authorization. The LOP authorization is an abbreviated method for issuing an Individual Permit where a decision to issue permit authorization is made after coordination with federal and state fish and wildlife agencies, a public interest evaluation, and a concise environmental review. In addition, review involving other resource agencies would ensure adverse impacts are minimized to the maximum extent practicable. Details of the LOP process outside of the RMV Planning Area are provided with the Special Public Notice (Appendix A).

The LOP procedures apply to eligible projects that otherwise do not qualify for a Nationwide Permit or a Regional General Permit. Unlike Regional General Permits, LOPs are not limited to certain classes of activities. Generally, the USACE would issue LOPs within 45 days of receipt of a complete application. Within areas eligible for abbreviated permitting, the San Juan Creek and Western San Mateo Creek Watersheds SAMP LOPs would not have acreage thresholds. Despite the higher acreages of permanent impacts that would be allowed, adverse impacts would be avoided because of the more detailed review by the resource agencies as compared to the Nationwide Permit process. Except as authorized pursuant to a future environmental review process and compliance with the Section 404 (b)(1) Guidelines, for areas outside of the RMV Planning Area, 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 Watershed and the western portion of the San Mateo Creek Watershed. Within areas ineligible for abbreviated permitting, LOPs would authorize temporary impacts for the purpose of maintenance of established structures and would authorize permanent impacts up to 0.1 acre of Waters of the U.S., including projects such as utility substations, small bank protection structures, a single-family home, and recreational trails.

As noted, the proposed LOPs would be subject to future NEPA review and evaluation under the Section 404 (b)(1) Guidelines in order to determine the extent of impacts to riparian and wetland habitats. Given future NEPA and 404(b)(1) review and the provisions of the LOP procedures (including General Conditions and any future Special Conditions) future use of the LOPs would not likely have extensive impacts to higher quality aquatic resources. Subject to NEPA review and the maximum allowable impact allowed under the proposed LOPs for these areas, large amounts of impacts to higher quality USACE jurisdictional habitats including streams, wetlands, and riparian areas are not expected under the future LOP procedures. Within areas proposed to be eligible for abbreviated permitting, there would be no limits on acreage of impacts. Impacts to native habitats within these areas proposed to be eligible for abbreviated permitting would be expected to be lower due to past degradation that had decreased the riparian integrity of such areas. In conjunction with future NEPA review, impacts would be expected to be minimized to the same degree as standard individual permits due to the requirement for upfront coordination with the agencies through the USACE, followed by the USACE formal notification to the other agencies for their comments.

Within eligible areas, numerous activities would be eligible for LOPs (Figure 1-3). Eligible activities include, and not limited to:

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.

However, certain activities would be ineligible for the LOP process within these lower value resource areas. 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 Oso Creek and Arroyo Trabuco, outside the RMV Planning Area, 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, some activities would still be eligible for LOPs. These activities would either involve temporary impacts or involve projects with a small permanent impact footprint to waters of the U.S. 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 Waters of the U.S.

Pre-application coordination is required for projects with permanent losses of Waters of the U.S. greater than 0.1 acre or for projects with temporary impacts greater than 0.25 acre of Waters of the U.S. with native wetland and/or riparian vegetation. For projects permanently impacting 0.1 acre of Waters of the U.S. or less and temporarily impacting 0.25 acre of vegetated Waters of the U.S. or less, pre-application coordination would not be required; the applicant would only need to submit an application directly to the applicable agencies. Pre-application coordination must involve the USACE, the CDFG, the San Diego RWQCB, and the USFWS. For the pre-

application meetings, the applicant may meet with the agencies separately or in small groups, consult by telephone, or schedule a pre-application meeting held bi-monthly at the USACE office. A written record of the proceedings must be provided afterwards to the USACE, documenting substantive issues discussed, agency recommendations, and any pertinent conclusions.

During the pre-application meetings, the USACE would make an initial determination whether or not the project may qualify for the LOP permitting process. The project may qualify based on a preliminary determination that the project meets the Section 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 USACE makes an initial determination that the project may not qualify for the LOP permitting process, the USACE would provide recommendations that would enable the project to qualify for the LOP permitting process.

The LOP procedures outside of the RMV Planning Area involve explicit requirements for a complete application and the permitting process. The complete application includes items such as a project description, location map, a wetland delineation, impact acreage to Waters of the U.S. including wetlands, project schedule, a statement addressing Section 404 (b)(1) Guidelines, a compensatory mitigation plan, and documentation to help support compliance with the federal Endangered Species Act and the National Historic Preservation Act. Upon provision of a complete application, specific timelines are provided that would result in a permit decision within 45 days of receiving a complete application. In contrast, a standard Individual Permit typically is issued within 120 days of receiving a complete application. Because much of the resource evaluation was performed upfront, many of the issues related to analysis of impact sites in the context of Section 404 of the Clean Water Act were addressed in the beginning. Details of the complete LOP procedure are provided in the Special Public Notice (Appendix A).

The USACE also proposes a set of general conditions that would be added to the permit authorization to help ensure that any direct and indirect impacts are minimized. These conditions relate to issues such as compensatory mitigation policy, management of flow conditions, avoidance of bird breeding season, exotics species removal, and fish passage. A complete list of the general conditions is provided in the Special Public Notice (Appendix A). In addition to the general conditions, the USACE reserves the right to require additional special conditions based on more detailed project review.

### **3.2.2.3 Long-Term Individual Permits/Letters of Permission for Dredge and Fill Activities within the RMV Planning Area Including Santa Margarita Water District Activities**

Through the SAMP process, two potential applicants, Rancho Mission Viejo and the Santa Margarita Water District (SMWD), have undergone extensive pre-project review with the USACE to avoid and minimize impacts to the aquatic ecosystem to the maximum extent practicable. Consistent with the LOP procedures for projects outside of the RMV Planning Area, 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 ensure compliance with the Section 404 (b)(1) Guidelines through avoidance, initial minimization measures and a comprehensive aquatic resource compensatory mitigation program.

As stated before, a goal of a SAMP is to allow reasonable economic activities and development within the SAMP Study Area. Through the SAMP development process, the two applicants have

allowed their projects to be reviewed by the USACE, resulting in preservation of about 90 percent of probable jurisdictional features in the RMV Planning Area along with appropriate setbacks to minimize indirect impacts to jurisdictional features and to allow for wildlife movement. In exchange for assurances of being able to implement permitted activities over the long-term, proposed permittees would be 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 USACE is proposing to issue an Individual Permit of extended duration to specify allowable impacts to Waters of the U.S. over the life of the RMV Proposed Project. The RMV Proposed Project's long-term Individual Permit would identify, on a geographic-specific basis, aquatic resource conservation areas to be conserved and areas where impacts to Waters of the U.S. would be allowed (Figure 1-3). However, the RMV Proposed Project's 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 project details are developed and in accordance with the terms and conditions of this long-term Individual Permit. Subsequent to the issuance of the RMV Proposed Project's long-term Individual Permit, the USACE 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 long-term Individual Permit and as an avenue for more detailed site-specific review of indirect impacts to Waters of the U.S. adjacent to the development areas within the RMV Planning Area and infrastructure minimization outside of the development areas within the RMV Planning Area consistent with the Special Conditions for the proposed permitting procedures. 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 this EIS. Specific permitting policies have been developed to address the proposed activities that would be subject to the RMV Proposed Project long-term Individual Permit. These permitting policies that apply to the RMV Planning Area 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.

The jurisdictional delineation for the RMV Planning Area was approved by the USACE on May 20, 2004. Both RMV and SMWD activities are proposed to occur within the RMV Planning Area, with the exception of SMWD ongoing maintenance activities, trails, and the construction and maintenance of the proposed Upper Chiquita domestic storage reservoir. Although future delineations are possible as specified herein, the jurisdictional delineation approved on May 20, 2004 would be used as the baseline for all subsequent discussions on avoidance, minimization, and compensation. Future projects proposing to impact Waters of the U.S. would only need a re-verification of the 2004 jurisdictional delineation. A re-delineation is required at the time of a project application if a storm with a return interval greater than 10 years has occurred for the purpose of tracking impacts.

In terms of avoidance of aquatic resources, the final project impact limits within RMV Planning Area are identified in Chapter 8.0 and depicted on Figures 2-1, 8-1, 8-2, 8-3a, 8-3b, 8-3c, 8-4, and 8-5. The final limits would be based on the USACE-approved jurisdictional delineation of 2004. The boundaries of the proposed RMV Planning Area's 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 development 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 and 7. Given that 90 percent 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 would be based on verification that a proposed project does not exceed the limits of the impact boundaries authorized under the RMV Proposed Project's long-term Individual Permit.

In terms of minimization of impacts to aquatic resources, 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 USACE 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 development within 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.

In terms of compensation for impacts to aquatic resources, draft compensation measures are identified and reviewed in this EIS. The proposed compensatory mitigation measures are summarized in this EIS and include: (1) a proposed Aquatic Resources Restoration Plan (ARRP) 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 this EIS, for the purpose of determining compensatory mitigation, is based on the jurisdictional delineation of 2004.

Once the RMV Proposed Project's long-term Individual Permit has been issued, subsequent authorizations for future projects would be processed similar to the LOP procedure for projects

outside the RMV Planning Area. The USACE would issue LOPs within 45 days of receipt of a complete application. The LOP would not have acreage thresholds. Within areas eligible for the LOPs (Figure 1-3), activities eligible for LOPs 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 resources, most of which would be protected in perpetuity, 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;
  - b. Crossings of any stream using complete spans or partial spans with in-channel piers/piles;

Unlike the LOPs that would be issued outside of the RMV Planning Area, projects within the RMV Planning Area would not need formal pre-application consultations. Within the RMV Planning Area, Rancho Mission Viejo has already undergone extensive pre-application coordination with the USACE, obviating the requirement of additional formal pre-application coordination.

Like the LOP procedures outside the RMV Planning Area, the LOP procedures inside the RMV Planning Area involve explicit requirements for a complete application and the permitting process. The complete application includes items such as a project description, location map,

wetland delineation, impact acreage to Waters of the U.S. including wetlands, project schedule, a statement relating compliance with the Section 404 (b)(1) Guidelines that were discussed in the EIS, a compensatory mitigation plan pursuant to the Aquatic Resources Restoration Program reviewed in Chapter 8.0 and documentation to help support compliance with the Endangered Species Act and the National Historic Preservation Act. Upon provision of a complete application, specific timelines are provided that would result in a permit decision within 45 days of receiving a complete application. In contrast, a standard Individual Permit typically is issued within 120 days of receiving a complete application. Because much of the resource evaluation was performed upfront, many of the issues related to analysis of impact sites in the context of Section 404 of the Clean Water Act were addressed in the beginning. Details of the complete LOP procedure are provided in the Special Public Notice (Appendix A).

The USACE also proposes a set of Special Conditions that would be added to the permit authorization to help ensure that any direct and indirect impacts are minimized. The Special Conditions relate to issues such as management of flow conditions, the avoidance of bird breeding season, exotics species removal, fish passage, protecting channel geomorphology, minimizing indirect impacts to large mammals, ensuring long-term viability of the arroyo toad, making culverts more hospitable to potentially migrating southern steelhead, etc. A complete list of the Special Conditions is provided in the Special Public Notice (Appendix A).

The decision to adopt the three regulatory procedures for the proposed activities in the San Juan Creek and Western San Mateo Creek Watersheds (including the proposal to suspend use of selected Nationwide Permits for the RGP procedures) would be based on the probable impacts, including cumulative impacts, of the proposed activity on the public interest. In accordance with 33 CFR 235.3(c)(1), the decisions regarding each of the three proposed regulatory procedures would 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 would be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water quality, safety, food production and, in general, the needs and welfare of the people. In addition, if a proposed activity(ies) would result in the discharge of dredged or fill material, the evaluation of the activity in conjunction with the review of the SAMP EIS must include the application of the EPA Guidelines (40 CFR 230) as required by Section 404(b)(1) of the Clean Water Act with respect to the proposed long-term framework Individual Permit. The USACE believes that the SAMP comprehensive planning process would provide a thorough basis for the review of avoidance, minimization, and potential impacts/mitigation regarding permits proposed to be authorized in conjunction with the review provided through this EIS. With respect to future qualifying permit applicants for LOP Procedures, the SAMP would provide a basis for required Section 404(b)(1) Guidelines analyses.

### **3.2.3 FORMULATION AND REVIEW OF ALTERNATIVES**

The initial phase of the SAMP process involved an extensive series of technical analyses prepared by the USACE and other planning participants. On the part of the USACE, the Cold Regions Research and Engineering Laboratory (CRREL) and the Engineer Research and Development Center (ERDC) prepared a comprehensive assessment of existing conditions within the SAMP Study Area including assessments of hydrologic, habitat, and water quality functions. Specific functional ratings were compiled under each of the three sets of functions at a riparian reach scale of analysis and a simplified mapping representation has been prepared illustrating the results of these assessments at a watershed scale. Other planning participants



sponsored comprehensive studies including (1) a Baseline Conditions Report reviewing important hydrologic and geomorphic planning considerations on both a watershed and sub-basin basis, (2) an analysis of the Hydrologic and Geomorphic Needs of Aquatic Listed Species, (3) a Slope Wetlands report, (4) a vernal pools report, and (5) a comprehensive assessment of stormwater hydrology in the SAMP Study Area. Vegetation mapping of aquatic resources was also conducted through the creation of the NCCP vegetation database and through a site-specific delineation of areas subject to USACE Section 404 jurisdiction and CDFG streambed alteration agreement jurisdiction (California Fish and Game Code Section 1600 et seq.) (Appendix E3).

Preparatory planning activities also involved the preparation of a set of SAMP Tenets by the USACE for the purpose of guiding SAMP planning and the review of alternatives, as well as any proposed permitting procedures. The USACE and other planning participants also participated in the preparation of the Watershed Planning Principles intended to complement the SAMP Tenets by providing additional planning considerations at a watershed and sub-basin scale; the Watershed Planning Principles were prepared as an integral part of the “coordinated planning process” summarized in Chapter 1.0 and reviewed more extensively in Chapter 4.0.

Another important planning activity was the formulation of open space/development alternatives through the coordinated planning process that would avoid impacts to important natural habitats, including aquatic resources. The SAMP and the NCCP/MSAA/HCP working group formulated a broad range of alternatives that accommodated different conservation strategies for protecting the major vegetation communities addressed, including aquatic resources, within the coordinated planning process. The SAMP EIS alternatives analysis evaluates whether one or more of these alternatives with associated management measures would avoid sufficient amounts of aquatic resources without conflicting with the Clean Water Act anti-degradation policy. Specifically, the SAMP EIS alternatives analysis assesses the aquatic resource protection, restoration, and management attributes of each of the alternatives in relation to the following three elements of the SAMP process:

1. **Aquatic Resources Protection.** The SAMP process will examine the development/open space alternatives in order to determine the extent to which these alternatives, in conjunction with already protected open space, would protect significant aquatic resources (identified in connection with USACE and NCCP/MSAA/HCP studies) within the SAMP Study Area. (Avoidance/minimization of impacts to aquatic resources will also be examined in conjunction with Section 404(b)(1) Guidelines review of proposed permitting procedures.) At the completion of the SAMP process, areas recommended for permanent protection would be identified.
2. **Aquatic Resources Restoration.** ERDC has prepared a *Riparian Ecosystem Restoration Plan for San Juan and Western San Mateo Creek Watersheds* to provide a broad-scale restoration template. Environmental review in this document will focus on the consistency of alternative habitat reserve designs with the Aquatic Resources Restoration Program element of the SAMP process and the extent to which specific habitat restoration measures can provide mitigation for impacts to aquatic resources that could potentially occur in connection with the proposed permitting procedures.
3. **Aquatic Resource Management.** Where applicable, management of aquatic resources would be carried out in accordance with the SAMP Aquatic Resources Management Plan. Management applied to the Aquatic Resources Conservation Areas (ARCAs) would be comprised of adaptive management and monitoring activities that would be conducted primarily in areas proposed to be protected in conjunction with proposed

permitting procedures as mitigation for impacts to aquatic resources subject to USACE jurisdiction (these management and monitoring activities are described in the Aquatic Resources Adaptive Management Program reviewed in this EIS). The NEPA alternatives analysis will review the extent to which the different development/open space alternatives are consistent with habitat management recommendations set forth in the Watershed Planning Principles at both a watershed- and sub-basin-scale.