

**US Army Corps
of Engineers®**

SPECIAL PUBLIC NOTICE

**MAINTENANCE REGIONAL GENERAL PERMIT
FOR THE SAN JUAN CREEK/WESTERN SAN
MATEO CREEK WATERSHED
SPECIAL AREA MANAGEMENT PLAN**

LOS ANGELES DISTRICT

Public Notice/Application No.:	199916236-1-YJC
Comment Period:	November 21, 2005 through January 16, 2005
Project Manager:	Jae Chung, (Telephone: 213-452-3292) Email: yong.j.chung@usace.army.mil

Location:

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

Activity:

As part of the effort to develop a Special Area Management Plan (SAMP) for the San Juan Creek and the western San Mateo Creek Watersheds, the U.S. Army Corps of Engineers (Corps), Los Angeles District proposes to establish an alternate permitting process involving the following features: a new Regional General Permit (RGP); two new Letter of Permission (LOP) procedures for activities that would not substantially affect aquatic resource functions and values; and the revocation of selected Nationwide Permits (NWP).

This Special Public Notice concerns only the Corps' proposal to establish an RGP 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 within areas eligible for abbreviated permitting outside of the Rancho Mission Viejo (RMV) Planning Area. This general permit would be issued under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and would apply to anyone wishing to conduct routine maintenance activities in a manner consistent with the terms and conditions of this RGP. Implementation of an RGP for the maintenance activities in the San Juan Creek and the western San Mateo Creek Watersheds, Orange County would allow permittees to conduct routine maintenance and operations activities in a timely manner.

In two separate Special Public Notice, both dated November 21, 2005, the Corps proposes to use LOPs to authorize the discharge of dredged and/or fill materials for eligible activities within the RMV

Planning Area (described in Special Public Notice No. 199916236-3-YJC) and for eligible activities for those applicants outside of the RMV Planning Area who performed effective pre-application coordination with the Corps, complied with the Section 404(b)(1) Guidelines, and included effective compensatory mitigation for unavoidable impacts (described in Special Public Notice No. 199916236-2-YJC). Additionally, the Corps proposes to revoke the use of selected NWRPs within the San Juan Creek and the western San Mateo Creek watershed 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.

Interested parties are invited to provide their views on the proposed RGP for implementation in the San Juan Creek and the western San Mateo Creek Watersheds. Comments will become a part of the administrative record and will be considered in the final decision. The proposed RGP 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-199916236-1-YJC
P.O. Box 532711
Los Angeles, California 90053-2325 or

Alternatively, comments may be submitted electronically to yong.j.chung@usace.army.mil

Evaluation Factors

The decision to adopt the proposed RGP for maintenance activities in the San Juan Creek and the western San Mateo Creek Watersheds 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. The Corps will consider all comments received on this notice in its decision of whether to adopt the RGP. 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 preliminary review of federal compliance, as it relates to the activity proposed and described herein.

NEPA - EIS- In compliance with the National Environmental Policy Act, the Corps has published a draft EIS concurrently with this Special Public Notice. More details of the draft EIS can be found at <http://www.spl.usace.army.mil/samp/sanjuancreeksamp.htm>.

Clean Water Act - Water Quality- In most situations, an applicant is required to obtain a water quality certification, under Section 401 of the Clean Water Act, from the San Diego Regional Water Quality Control Board (SDRWQCB). Section 401 requires that any applicant for an individual Section 404 authorization provide proof of water quality certification to the Corps of Engineers prior to permit issuance. For the RGP, the Corps is applying directly to the SDWQCB for Section 401 certification of the RGP. If the SDWQCB provides a water quality certification for the RGP, individual water quality certifications would not be required for individual projects. The Corps is submitting all relevant documents to the SDWQCB with respect to the development of the SAMP. In the event the SDWQCB does not provide water quality certification for the RGP, the Corps will require that an applicant provide proof of water quality certification for each activity.

Endangered Species Act (ESA) - Federal-Listed Species- Eight federally listed species are found or are potentially present in the SAMP Study Area. The listed species are: coastal California gnatcatcher (*Polioptila californica californica*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), arroyo toad (*Bufo microscaphus californicus*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), southern steelhead (*Oncorhynchus mykiss*), and thread-leaved brodiaea (*Brodiaea filifolia*).

Of the eight listed species, the California gnatcatcher, the Riverside fairy shrimp, and the southern steelhead have critical habitat designations that are in effect over portions of the SAMP Study Area. In addition, critical habitat designations within the SAMP Study Area have also been proposed for the San Diego fairy shrimp and for the thread-leaved brodiaea. Revised critical habitat for the California gnatcatcher has also been proposed. Recovery plans have been prepared for the arroyo toad, southwestern willow flycatcher, least Bell's vireo, Riverside fairy shrimp, and San Diego fairy shrimp. The fairy shrimp species are covered by the Recovery Plan for Southern California Vernal Pools.

The Corps has been informally consulting with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) to insure that any impacts to federally listed species or their critical habitat that would occur from the proposed RGP are avoided, minimized, and compensated consistent with the requirement so the ESA. The Corps will initiate formal consultation for the proposed permitting procedures in a forthcoming letter, pursuant to Section 7 of the ESA for effects to the above listed species and their critical habitat, where applicable.

National Historic Preservation Act (NHPA) - Cultural Resources- The RGP will be used mostly within portions of the San Juan Creek and the western San Mateo Creek Watershed for temporary impacts associated with existing structures, including bridges, outfall structures, debris

basins, and others facilities. These areas have been previously impacted and would not be expected to have cultural resources eligible for listing in the National Register of Historic Places. In the rare event that a proposed project may impact a cultural resource, the Corps will consult in accordance with the Programmatic Agreement for San Juan Creek and the western San Mateo Creek Watersheds. For the San Juan Creek and the western San Mateo Creek Watershed Study Area, the Corps is developing a Programmatic Agreement in accordance with Section 800 of the National Historic Preservation Act. For each discovered cultural resource on a particular project requiring a Corps authorization and within the Corps area of potential effect, the Corps, in coordination with the State Historic Preservation Office (SHPO), will evaluate the cultural resource for eligibility for listing in the National Register of Historic Places pursuant to the NHPA.

Coastal Zone Management Act (CZMA) - Coastal Resources- For those projects in or affecting the coastal zone, the federal Coastal Zone Management Act requires the applicant to obtain concurrence from the California Coastal Commission (CCC) that the project is consistent with the State's Coastal Zone Management Plan prior to issuing the Corps authorization for the project. Although the majority of the San Juan Creek and the western San Mateo Creek Watersheds is outside the coastal zone, certain areas around the entrances to the two creeks are within the coastal zone. In a forthcoming letter to the CCC, the Corps will request a consistency determination with the CZMA for the activities within the coastal zone potentially authorized under this RGP.

Magnuson-Stevens Fishery Conservation and Management Act (Act) - Essential Fish Habitat (EFH)- This notice initiates the EFH consultation requirements of the Act. Due to the inland location of most of the eligible activities and the limited extent of the predicted project activity impacts on EFH resources, our initial determination is that the proposed activity would not have a substantial adverse impact on EFH or federally managed fisheries in California waters. In a forthcoming letter to NOAA Fisheries, the Corps will request concurrence that the RGP would not affect EFH.

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

Proposed Activity for Which a Permit is Required

The proposed activity is to establish an alternate permitting process within eligible areas outside of the RMV Planning Area within the San Juan Creek and the western San Mateo Creek Watersheds using a Regional General Permit (RGP) to authorize the discharge of dredged and/or fill materials into WoUS pursuant to Section 404 of the Clean Water Act (33 USC 1344). This Special Public Notice concerns the Corps' proposal to establish an RGP in accordance with its regulations in 33 C.F.R. § 325.2(e)(2). RGPs are issued for activities substantially similar in nature and with minimal impacts to the environment on a regional basis.

The Corps proposes to establish the RGP to authorize temporary impacts up to 0.5 acre in lower quality aquatic resource areas within the San Juan Creek and the western San Mateo Creek Watersheds. The RGP will allow for such discharges to be authorized within 15 days of notification with no compensatory mitigation requirements due to the lower quality of the aquatic resources, the temporary nature of the impacts, and the limited extent of disturbance. 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

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 abbreviated 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.

In consideration of the comprehensive studies, the application of the RGP depends on the location of the proposed activity within the San Juan Creek and the western San Mateo Creek Watersheds, i.e., whether the activity would affect higher value aquatic resources. Projects affecting lower quality aquatic resources warrant appropriate abbreviated permitting procedures. The abbreviated permitting procedures would benefit project applicants by minimizing delays and providing certainty that certain types of activities would be processed expeditiously. The abbreviated permitting procedures would benefit aquatic resource protection by allowing Corps to apply the appropriate amount of review to actions with small impacts to lower value aquatic resources so that additional time and resources could be spent reviewing projects that may impact aquatic resources with more functions and values.

This Special Public Notice addresses the RGP. Additional details of the SAMP and the aquatic resources conservation program are provided in the draft EIS available for public review beginning in November 2005. Two other Special Public Notices dated November 21, 2005 are given for the proposed LOP permitting procedures (Special Public Notices No. 199916236-2-YJC and No. 199916236-3-YJC).

Regional General Permit Procedures-

The Corps proposes to establish the San Juan Creek and the western San Mateo Creek Watershed Maintenance RGP to authorize discharges of dredged or fill materials resulting in temporary impacts up to 0.5 acre of WoUS, of which only 0.1 acre may be vegetated with native riparian and/or wetland vegetation. Areas eligible for the use of this RGP are limited to aquatic resources shown in Figure 2. Permanent losses of WoUS, including impacts from fills, flooding, excavation (beyond a maintenance baseline), or drainage are not permitted under this RGP. Temporary impacts from the discharge of dredged and/or fill materials may be authorized under this RGP, including:

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.

This RGP would allow a permittee to commence work in eligible areas 15 days after the Corps receives proper written notification. Upon receipt of a complete notification and within the 15-day notification period, the Corps may verify the activity with a letter and add any special conditions. If a notification is not complete, the Corps would within 7 days notify the applicant of the needed information items and the applicant will be required to resubmit. If the Corps provides no response within 15 days after complete notification, the project proponent may assume Corps approval of the work.

The Corps proposes these following permit general conditions for the RGP:

1. **Expiration.** This RGP shall expire on five years after final issuance. Further reauthorizations of this permit will be contingent upon substantial compliance with permit conditions, including the provision of notifications. Failure to comply with these conditions could result in the suspension or revocation of this permit prior to its expiration date, or its non-renewal.
2. **Impact Limits.** This RGP authorizes up to 0.5 acre of temporary impacts, of which up to 0.1 acre may be vegetated by predominantly native wetland or jurisdictional riparian vegetation. Non-native wetland vegetation does not count towards the 0.1-acre threshold. For facilities with an established maintenance baseline, vegetation over 0.1 acre may be removed only if the work is consistent with the established maintenance baseline.
3. **Eligible Areas.** This RGP shall be available for use only in lower value aquatic resource areas (Figure 2).
4. **Notification.** The permittee must provide the Corps with a notification for each separate maintenance activity at each site. A complete notification includes the following information:
 - a. Name, address and telephone numbers of the applicant, and appropriate point of contact and their address and phone number;
 - b. Project description of proposed activities;
 - c. Pre-project photographs of the project site;
 - d. A site location map and view of the project showing areas and acreage to be impacted (including any areas with native riparian and/or wetland vegetation) on 8.5" x 11" sheets;
 - e. Location coordinates: latitude/longitude or UTM's;
 - f. Volume, type and source of material to be temporarily discharged into WoUS;
 - g. Total area of WoUS to be directly and indirectly affected; and
 - h. Proposed project schedule.
5. **Soil Erosion and Siltation Controls.** When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or hay bales or other means designed to minimize exacerbating turbidity in the watercourse above background levels existing at the time of project implementation, shall be used and maintained in effective

operating condition during project implementation unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation and no later than November of the year the work is conducted to avoid erosion from storm events.

6. **Equipment.** When practicable, and if personnel would not be put into any additional potential hazard, heavy equipment working in or crossing wetlands must be placed on temporary construction mats (timber, steel, geotextile, rubber, etc.), or other measures must be taken to minimize soil disturbance such as using low pressure equipment. Temporary construction mats shall be removed promptly after construction.
7. **Suitable Material.** No discharge of dredged or fill materials (even if temporary) may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from pollutants in toxic amounts (see Section 307 of the Clean Water Act).
8. **Management of Water Flows.** To the maximum extent practicable, the activity must be designed to maintain pre-project downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill materials must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to pre-project conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond pre-project conditions.
9. **Removal of Temporary Fills.** Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing conditions.
10. **Preventive Measures.** Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the project area in a manner as to prevent any runoff from entering jurisdictional areas.
11. **Staging of Equipment.** Staging, storage, fueling, and maintenance of equipment must be located outside of the waters in areas where potential spilled materials will not be able to enter any waterway or other body of water.
12. **Fencing of Project Limits.** Prior to initiation of the project, the boundaries of the project's impact area must be delimited by the placement of temporary construction fencing, staking and/or signage. Any additional acreage impacted outside of the approved project footprint shall be mitigated at a 5:1 ratio. In the event that additional mitigation is required, the type of mitigation shall be determined by the Corps and may include wetland enhancement, restoration, creation, or preservation.
13. **Avoidance of Breeding Season.** All work in waters must occur between September 15 and March 15. Work in waters may occur between March 15 and September 15 if bird surveys indicate the absence of any nesting birds within a 50-foot radius of the site.
14. **Site Inspections.** The Corps must be allowed to inspect the site at any time during and immediately after project implementation provided a 24-hour advance notice is given to the permittee.
15. **Posting of Conditions.** A copy of the RGP general 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.

16. **Water Quality.** An individual Section 401 water quality certification must be obtained unless a general Section 401 certification is issued or waived for this RGP (see 33 CFR 330.4(c)).
17. **Coastal Zone Management.** In California, an individual state coastal zone management consistency concurrence must be obtained or waived where the project may affect the Coastal Zone unless general concurrences are issued or waived for this RGP (see 33 CFR 330.4(d)).
18. **Endangered Species.** (a) No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittee shall not begin work on the activity until notified by the Corps that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
(b) Authorization of an activity under an RGP does not authorize the take of a threatened or endangered species as defined under the federal Endangered Species Act. In the absence of a separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with an incidental take provision, etc.) from the USFWS, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the Carlsbad office of the USFWS or their internet site at <http://carlsbad.usfws.gov>.
19. **Historic Properties.** No activity that may affect historic properties listed, or eligible for listing, in the National Historic Register of Historic Places is authorized, until the Corps has complied with the National Historic Preservation Act. If the proposed activity may affect any historic properties listed, determined to be eligible, or which the Corps has reason to believe may be eligible for listing on the National Register of Historic Places, the permittee shall not begin the activity until notified by the Corps that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the SHPO and the National Register of Historic Places.
20. **Compensatory Mitigation.** Compensatory mitigation will not be required unless required through general conditions 16, 17, 18, or 19.

Activity-Specific Conditions-

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

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

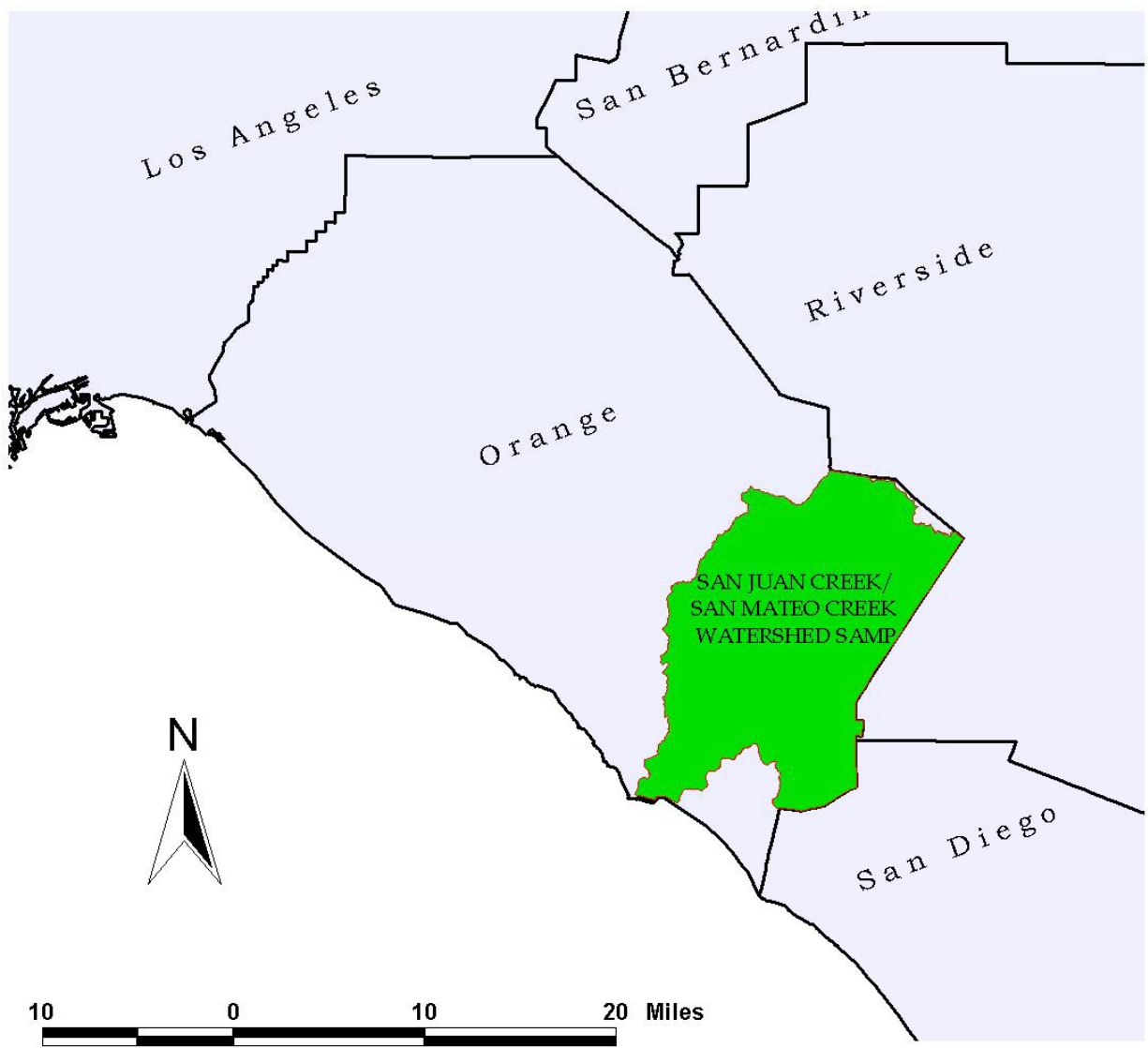


Figure 1. Location of the San Juan Creek/western San Mateo Creek watershed SAMP in Orange County, California.

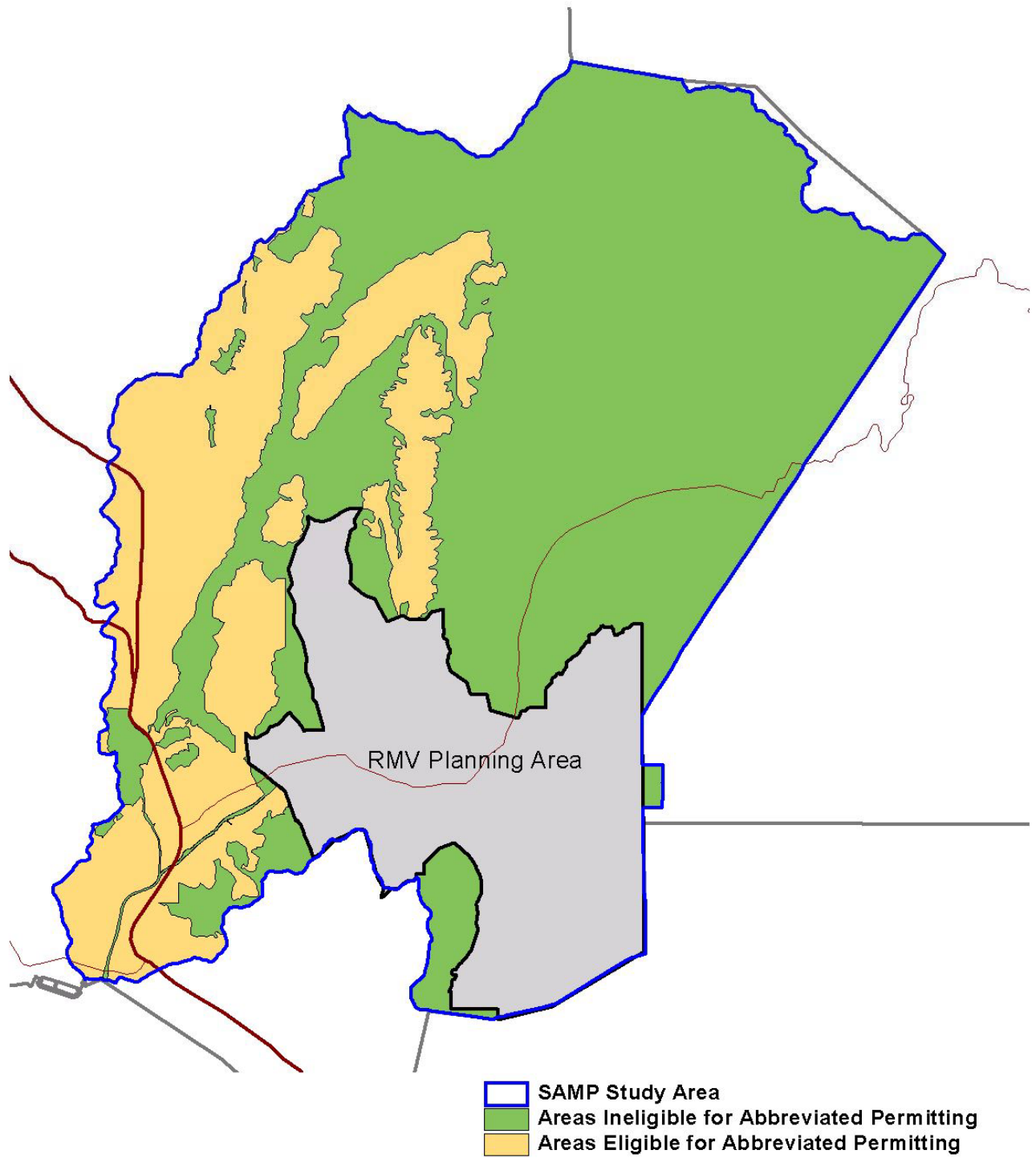


Figure 2. Areas eligible for the maintenance regional general permit.