

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 16

This document is a supplement to the national decision document for Nationwide Permit (NWP) 16, and addresses the regional modifications and conditions for this NWP. The South Pacific Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications of this NWP by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions are necessary to address important regional issues relating to the aquatic environment. These regional issues are identified in this document. These regional conditions are being required to ensure that this NWP authorizes activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This document also identifies regionally important high-value waters and other geographic areas in which this NWP should be regionally conditioned or excluded from NWP eligibility, as described below, to further ensure that the NWP does not authorize activities that may exceed the minimal adverse effects threshold.

Text of NWP 16:

Return Water from Upland Contained Disposal Areas: Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States (Section 404).

Summary of changes to NWP 16 from 2007:

Language was added to NWP 16 to clarify that disposal of dredged material in an area that has no waters of the United States does not require a section 404 permit, because disposal of dredged material may occur in non-jurisdictional wetlands and waters, not just uplands.

1.0 Background

In the February 16, 2011, issue of the Federal Register (76 FR 9174), the Corps of Engineers (Corps) published its proposal to reissue 48 existing NWPs and issue two new NWPs. To solicit comments on its proposed regional conditions for these NWPs, the Los Angeles District issued a public notice on February 25, 2011. The issuance of the NWPs was announced in the February 21, 2012, Federal Register notice (77 FR 10184). After the publication of the final NWPs, the

Los Angeles District considered the need for regional conditions for this NWP. The Los Angeles District's findings are discussed below.

2.0 Consideration of Public Comments

2.1 General Comments

Please See the attached response to comments document (Section III)

2.2 Comments on Proposed Regional Conditions

2.2.1 Proposed Regional Condition 1

Please see the attached response to comments document.

2.2.2 Proposed Regional Condition 2

Please see the attached response to comments document.

2.2.3 Proposed Regional Condition 3

Please see the attached response to comments document.

2.2.4 Proposed Regional Condition 4

Please see the attached response to comments document.

2.2.5 Proposed Regional Condition 5

Please see the attached response to comments document.

2.2.6 Proposed Regional Condition 6

Please see the attached response to comments document.

2.2.7 Proposed Regional Condition 7

Please see the attached response to comments document.

2.2.8 Proposed Regional Condition 8

Please see the attached response to comments document.

2.2.9 Proposed Regional Condition 9

Please see the attached response to comments document.

2.2.10 Proposed Regional Condition 10

Please see the attached response to comments document.

3.0 Waters Excluded from NWP or Subject to Additional Pre-Construction Notification Requirements

NWP program general condition 19 prohibits the use of NWP 16 for discharges within designated critical resource waters (e.g., NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites). Reference the national decision document for additional information concerning designated critical resource waters.

3.1 Waters excluded from use of this NWP

3.1.1 Jurisdictional Vernal Pools (Regional Condition 5)

Reason for Exclusion: This regional condition would require any project proposing to discharge dredged or fill material into a jurisdictional vernal pool to be reviewed under the standard individual permit (SIP) process, which requires a more rigorous alternatives review. This regional condition has been amended from the 2007 version to include an exception for discharges associated with restoration, enhancement, management, or scientific study activities that qualify for NWPs 5, 6, and 27. NWPs 5 and 6 authorize temporary activities and structures that could be used to further the understanding of vernal pool functions and services or for monitoring the effectiveness of enhancement, restoration, and establishment projects. NWP 27 authorizes only activities that result in net increases in aquatic resource functions and services. Per this regional condition, authorization under other NWPs cannot be considered and a PCN must be submitted in accordance with General Condition 31 and Regional Condition 3. In discussions with local land managers, Regional Condition 5 has increased project costs and timelines in order to obtain an SIP for voluntary restoration and enhancement projects. This has also limited their ability to compete for grant and other public funding with restrictions on costs and timelines. Therefore, the Los Angeles District believes that by allowing the use of these three NWPs, the scientific community and open space land managers would benefit from the streamlined process and there may ultimately be a net increase in functions and services in vernal pool ecosystems through the implementation of restoration, enhancement, and management activities.

The Los Angeles District Regulatory Branch previously determined that the 0.5-acre SIP threshold for vernal pool impacts (established by the District in 1997) would not adequately protect remaining vernal pool resources in the region. It is estimated that 95 to more than 97 percent of the vernal pools that historically existed in the region have been lost through urbanization or agricultural practices (USFWS 1998); in some counties the loss is virtually total.

Under the new and modified NWP, a single and complete project could impact up to 0.5 acre of vernal pool habitat and be considered for NWP authorization. The District had previously been using a 0.5-acre SIP threshold for vernal pool impacts since 25 November 1997 (previous District Regional Condition 1). Despite the establishment of this earlier regional condition, the District experienced additional losses of vernal pool habitat, requiring the establishment of Regional Condition 5 as part of the 2000, 2002 and 2007 NWP Programs. Within the boundaries of the Los Angeles District, the sizes of jurisdictional vernal pools generally range from approximately 200 to 4,900 square feet (e.g. 0.00459 to 0.11248 acre). Therefore, 0.5 acre of vernal pools could include a large vernal pool complex or individual pools made up of 5 to 100 pools. Compounding this situation, mitigation for vernal pool impacts is not well developed, and often takes the form of preservation and enhancement of remaining pools, resulting in a continued net loss of vernal pool acreage, functions and services. The SIP review process includes an analysis of the propriety of the proposed fill in a special aquatic site pursuant to the 404(b)(1) Guidelines.

Vernal pools in the region comprise a severely diminished class of aquatic habitats and are fragile, easily disturbed ecosystems. Due to the decline of vernal pool habitat in the region, the District determined future impacts to vernal pools in the region would result in more than minimal adverse environmental effects both individually and cumulatively. With the proposed regional condition, any quantity of dredged or fill material discharged into a jurisdictional vernal pool that is not temporary in accordance with NWP 5 or 6 or does not result in a net increase in aquatic resources functions and services in accordance with NWP 27 would be subject to an SIP review. By requiring an SIP, the remaining jurisdictional vernal pools in the region would be afforded the maximum level of protection under the Regulatory Program which includes a 404(b)(1) analysis (i.e., under this more rigorous process, the Corps can only authorize the least environmentally damaging practicable alternative for a given project).

With the modification of Regional Condition 5, the District recognizes certain regulated activities involving restoration, enhancement, management, and scientific study of vernal pools would not contribute to the overall loss of vernal pool habitat and in such cases (with few exceptions) SIP review would not provide any additional protection or benefit to vernal pools. Therefore, this regional condition has been modified since the 2007 NWPs to include language excluding these four categories of activities from this requirement. If the success of a proposed restoration or enhancement activity is uncertain, or the subject vernal pool is of particularly high ecological value, the District would still retain the ability to review any such action as an SIP through our discretionary authority. In addition, the Corps has determined that issuance of Regional Condition 5 would not be contrary to the public interest. Overall, the implementation of Regional Condition 5, which requires an SIP for discharges of dredged or fill material in jurisdictional vernal pools (with the exception of activities associated with the restoration, enhancement, management or scientific study), would provide additional assurances that the activities permitted under the NWPs would result in minimal impacts on both an individual and cumulative basis in the Los Angeles District.

For additional information please see the supplemental decision document for Regional Condition 5.

3.1.2 San Diego Creek and San Juan Creek/Western San Mateo Creek SAMPs (Regional Condition 8).

Reason for Exclusion: Regional Condition 8 would exclude the use of selected NWP authorizations within all jurisdictional waters of the San Diego Creek, San Juan Creek, and western San Mateo Creek and their tributaries within three watersheds. This decision to revoke selected NWPs was made in accordance with two Special Area Management Plans (SAMPs) the Corps conducted in Orange County, and pursuant to the South Pacific Division (SPD) Commander's authority at 33 C.F.R. § 330.5(c).

Concurrent with establishing watershed-specific permitting frameworks, the following 24 NWPs are being revoked for use in these watersheds covered by the two SAMPs in Orange County: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. The remaining 26 NWPs would be retained for use in the watersheds covered by the two SAMPs in Orange County: 01, 02, 04, 05, 06, 08, 09, 10, 11, 15, 20, 22, 23, 24, 28, 30, 32, 34, 35, 36, 37, 38, 45, 48, 51 and 52.

The decision to revoke selected NWPs within these SAMP Watersheds involved establishing alternative permitting procedures determined to be more appropriate for the given aquatic resources in the watersheds, and promoting long-term aquatic resource conservation. This exclusion would require any project that involved a regulated activity within these particular watersheds to receive the level of permit review and evaluation in consideration of the applicable SAMP framework.

Specifically, the San Juan Creek/Western San Mateo Creek Watersheds SAMP incorporated alternative permitting procedures consisting of the establishment of a Regional General Permit (RGP) 74 for maintenance activities for use outside the targeted aquatic resource conservation areas, new LOP procedures, and a long-term Standard Individual Permit (SIP) and LOP procedures for the SAMP participants. Similarly, the San Diego Creek Watershed SAMP incorporated alternative permitting procedures consisting of new LOP procedures and RGP 74. Regulated activities ineligible for retained NWPs or the SAMPs' alternative permitting procedures would be reviewed under the SIP process, which would include a 404(b)(1) alternatives analysis.

The Corps conducted extensive analyses in its environmental impact statement (EIS) for the San Juan Creek/Western San Mateo Creek Watersheds SAMP and its joint EIS/environmental impact report (EIR) with the California Department of Fish and Game Habitat Conservation Branch, South Coast Region for the San Diego Creek Watershed SAMP/Watershed Streambed Alteration Agreement (WSAA) Process. The final decision to revoke selected NWPs was made by the SPD Commander in his record of decision signed July 19, 2010.

For additional information please see the supplemental decision document for Regional Condition 8.

3.2 Waters subjected to additional pre-construction notification requirements

3.2.1 All Perennial Waters and Special Aquatic Sites in Arizona and Desert Regions of California (Regional Condition 4a)

Reason for Pre-Construction Notification Requirement: It is the position of the Los Angeles District that any discharges of dredged or fill material in a special aquatic site or a perennial water body in a desert area (excluding two reaches in the Colorado River) warrants the review of Regulatory Division. The loss of approximately 90% of wetland resources in southern California and the general scarcity of special aquatic sites in this semi-arid region indicate the need for compensatory mitigation to ensure adverse impacts to special aquatic sites are no more than minimal individually and cumulatively. Special aquatic sites in Los Angeles District support substantial aquatic resources exhibiting relatively high physical and biological functions. Furthermore, these aquatic areas can provide important and unique habitat for endangered species, migratory birds, and other wildlife. In addition, past construction activities in and adjacent to these special aquatic sites have degraded portions of these high value systems.

Two relatively small reaches of the Colorado River have been excluded from this regional condition because these areas exhibit relatively low physical and biological functions; however, due to a large amount of existing infrastructure and ongoing recreational activities, there are a large number of small structures and minor projects that require authorization pursuant to Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act. As a result, requiring notification in the above two reaches of the Colorado River would increase the District's workload substantially while only providing minimal environmental benefits. With this notification requirement, the Los Angeles District can ensure that the use of the NWP for activities proposed within the special aquatic sites would have minimal impacts, both individually and cumulatively. Activities sited within special aquatic sites that are determined to have the potential to exceed the minor impact threshold would be subject to review under the SIP process that requires a rigorous alternatives analysis. As such, further impacts to the special aquatic sites and perennial water bodies in desert areas would be avoided and minimized to the maximum extent practicable. Through the mandatory pre-construction notification process, the Los Angeles District will review the proposed discharges of dredged or fill material into special aquatic sites and perennial streams in desert areas (excluding the above two reaches in the Colorado River) on a case-by-case basis to ensure that those activities would result in minimal adverse effects on the aquatic environment, individually and cumulatively. This regional condition has been amended from that included with the 2007 NWPs (Regional Condition 4) to clarify the definition of *desert regions of California* to include specific watersheds as defined by USGS Hydrologic Unit Code (HUC) accounting units. These include Lower Colorado (150301), Northern Mojave (180902), Southern Mojave (181001) and Salton Sea (181002).

For additional information please see the supplemental decision document for Regional Condition 4a.

3.2.2 All areas designated as Essential Fish Habitat (EFH) in the Los Angeles District (Regional Condition 4b)

Reason for Pre-Construction Notification Requirement: The EFH regional condition has been developed to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended. The 2007 NWP's included Regional Condition 5, which required notification for any project located in EFH. Regional Condition 4b would replace Regional Condition 5 and include the additional requirement to include an EFH assessment as part of the notification package. The EFH mandates of the MSFCMA are to integrate fisheries management and habitat management by stressing the ecological relationships between fishery resources and the environments upon which they depend, and ensure a consultation process by which federal agencies explicitly consider the effects of their actions on important habitats, with the goal of supporting the sustainable management of marine fisheries. The consultation process for any Federal project or action that may adversely affect EFH requires submission of an EFH assessment to the National Marine Fisheries Service (NMFS). The inclusion of the requirement for applications to provide an EFH assessment places the burden of preparing the assessment on the permit applicant rather than the Corps, however, the Corps has generally relied on permit applicants to provide this information to meet the requirements of the consultation process associated with the permit action. Therefore, the Los Angeles District does not believe this will create an unduly burdensome requirement on permit applicants relative to current procedures. Regional Condition 4b also includes a link to sample EFH assessments provided by NMFS.

For additional information please see the supplemental decision document for Regional Condition 4b.

3.2.3 Projects located in all watersheds in the Santa Monica Mountains (Regional Condition 4c)

Reason for Pre-Construction Notification Requirement: The Santa Monica Mountains represent an important cultural and natural resource. The region contains a variety of protected areas, and serves as a recreation destination for Los Angeles area residents. Aquatic resources in the Santa Monica Mountains are important in the regional context and are also a center of native biodiversity. Despite their ecological importance, aquatic resources in the Santa Monica Mountains have experienced heavy losses. The Corps' ongoing study of cumulative impacts in the Malibu Creek watershed, the region's largest drainage basin, indicates that most of these impacts have occurred without Corps authorization (Lilien 2001¹). The Santa Monica Mountains have high natural resource values that contain 1066 ha of aquatic habitat and support a number of federally listed threatened and endangered species. As documented in Lilien 2001, despite their importance, aquatic ecosystems in the Santa Monica Mountains, particularly Malibu Creek, have experienced loss and degradation of riparian habitat and, as a result, this regional condition is required to ensure that the NWP's would have minimal impacts, both individually and cumulatively, to aquatic and riparian habitat in various watersheds in the Santa Monica Mountains.

¹ Lilien, J.P. Cumulative Impacts to Riparian Habitat in the Malibu Creek Watershed. Dissertation, University of California, Los Angeles.

For additional information please see the supplemental decision document for Regional Condition 4c.

3.2.4 Projects located in the Santa Clara River watershed (Regional Condition 4d)

Reason for Pre-Construction Notification Requirement: The entire Santa Clara River watershed encompasses approximately 1,634 square miles in Los Angeles and Ventura Counties (the upper watershed, which includes 45 miles of the river between its headwaters and the Ventura County line, is 680 square miles, while the lower watershed, between the county line and the ocean is 954 square miles). The river flows approximately 84 miles from its headwaters east of Acton to its delta located between the cities of Ventura and Oxnard. Recent estimates (as of 2005) for the total amount of urbanization, including residential, industrial, and commercial areas, in the entire Santa Clara River watershed vary between 4 and 4.5 percent (approximately 4.5%, with most of the development located in the Santa Clarita area). Between 1988 and 2006, the Corps has issued approximately 228 permits that have resulted in actual impacts to waters of the U.S. (this number excludes permit actions where the same permit was issued multiple times, permits that were never utilized by the applicant, and permits that authorized an activity in the same location multiple times). Of these actions, more were associated with emergency repairs and maintenance than any other type of activity (approximately 25%, more than half of which were for emergency actions). The above 228 permit actions resulted in temporary impacts to approximately 480 acres and permanent impacts to approximately 149 acres of waters of the U.S., including approximately 15 acres of wetlands in the Santa Clara River watershed (temporary impacts are usually addressed with on-site restoration as opposed to compensatory mitigation requirements). As compensatory mitigation for the above permanent impacts to waters of the U.S., the Corps required a total of approximately 518 acres of preservation, creation, enhancement, and restoration of aquatic and riparian habitat in the Santa Clara River watershed.

To assess the current condition of the main stem of the Santa Clara River, an assessment was made to determine the condition for several reaches in the Santa Clara River downstream of the City of Santa Clarita. Based on the results of the fieldwork for the assessment, the main stem of the Santa Clara River exhibits relatively high physical and biological functions immediately downstream of the developed areas in Santa Clarita. The above assessment was completed in the summer of 2004 (and updated in 2007) and supports the results of past and present environmental assessments for Section 404 permit decisions in the Santa Clarita area that have determined that the Santa Clara River exhibits limited physical evidence of direct, indirect, and cumulative impacts from urbanization, agriculture and other land use changes in the watershed. The purpose of this regional condition is to ensure that the NWP's would continue to have minimal impacts, both individually and cumulatively, to aquatic and riparian habitat that exhibits relatively high physical and biological functions in the Santa Clara River watershed.

For additional information please see the supplemental decision documents for Regional Condition 4d.

4.0 Alternatives

4.1 No Regional Conditions

Without the exclusionary or notifying regional conditions discussed above, the use of non-notifying NWP 16 could result in greater than minimal impacts, individually and cumulatively, to special aquatic sites and perennial waters in the State of Arizona and desert regions of California, jurisdictional vernal pools, and watercourses within the Santa Monica Mountains and the Santa Clara River watershed. Projects impacting these resources may not demonstrate adequate avoidance and minimization measures, and may not be required to compensate for functional losses. It is possible to measure the jurisdictional impacts and environmental effects of activities authorized under a non-notifying NWP by referencing data gathered by other resource agencies (e.g., the Regional Water Quality Control Board and California Department of Fish and Game). However, this data is not readily available to the Corps and is a measure of the impacts after-the-fact. It may or may not be an accurate indicator of jurisdiction, or past or future trends. The notification provisions written into the Los Angeles District's regional conditions will ensure that impacts in specific sensitive geographic areas and resources are tracked and trends in frequency and intensity of use of a particular NWP will be measured periodically, and that additional NWP-specific restrictions will be developed if necessary. The exclusions written into Regional Conditions 5 and 8 are based in large part upon data collected through the notification process, and reflect the scarcity and/or biological productivity of specific resources. Based on the above information, the No Regional Condition alternative could result in more than minimal impacts to aquatic resources and has been dismissed from further consideration.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

The Los Angeles District could develop the following separate Regional Conditions to further protect aquatic resources: 1) require notification for all projects proposed for coverage under NWP 16, or 2) designate additional watersheds or aquatic resources to exclude or that would trigger notification. However, based upon the limited use of this NWP in the Los Angeles District, existing NWP safeguards (e.g., e.g., 401 requirement from the Regional Water Quality Control Board, exclusion from designated critical resource waters, mandatory notification for projects that may affect federally-listed species or historic properties), and the additional resource-specific restrictions written into the revised regional conditions, the Los Angeles District has determined that the consideration of alternative or additional regional conditions are unnecessary at this time to ensure minimal impacts and could adversely increase workload without commensurate benefits to the aquatic environment. Further, the implementation of alternative or additional regional conditions would be impracticable given the questionable benefit to the resource(s) and additional staff workload. With the proposed modifications to NWP 16, the Los Angeles District has identified the resources and watersheds that warrant additional scrutiny under NWP 16. As a result, the District's proposed modifications would result in a relatively minor increase in overall workload, but would provide potentially substantial benefits to the aquatic environment in the identified areas. As a result, the Los Angeles District has determined that there are no practicable alternative Regional Nationwide Permit Conditions and that the proposed regional condition would ensure minimal impacts to

aquatic resources in the Los Angeles District, both individually and cumulatively.

4.3 Alternative Regional Nationwide Permit Conditions

Based upon the limited use of this NWP in the Los Angeles District, existing NWP 16 safeguards (e.g., 401 requirement from the Regional Water Quality Control Board, exclusion from designated critical resource waters, mandatory notification for projects that may affect federally-listed species or historic properties), and the additional resource-specific restrictions written into the revised regional conditions, the Los Angeles District has determined that the consideration of alternative or additional regional limits are unnecessary at this time to ensure minimal impacts and could adversely increase workload without commensurate benefits to the aquatic environment. In addition, the regional conditions that require pre-construction notification and that are applicable to NWP 16 do not have thresholds, as their engagement is based upon the presence or absence of specific resources or species, an all or none principle. Therefore, there are no practicable alternative regional limits or pre-construction notification thresholds.

5.0 Endangered Species Act

5.1 General Considerations

This NWP does not deviate in substantive content from the previous 2007-2012 NWP16. The only changes consisted of a rearrangement of the sentences to make the sentence progression more logical, as well as to highlight the relevant statute that triggers the need for a Corps permit for this activity, i.e., 33 CFR 323.2(d).

NWP 16 authorizes the return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a section 404 permit.

The new general and regional conditions would provide sufficient limitations on the use of NWP 16 in sensitive aquatic ecosystems. With the implementation and enforcement of these conditions, NWP 16 would result in minimal adverse impacts to threatened and endangered species, special aquatic sites, and jurisdictional vernal pools, on an individual and cumulative basis within in the Los Angeles District.

In southern California, the large number of listed species has made the public more aware of the need to contact the USFWS and NMFS for many proposed projects. In addition, General Condition 18 requires the applicant to contact the Corps if their proposed project may affect a threatened or endangered species or critical habitat. The Los Angeles District has substantial information, including maps, previous studies and survey data that document areas that support endangered species. The Los Angeles District is also very careful to inform all prospective applicants of the need to comply with the ESA. If the Los Angeles District has no available data for a proposed project, the applicant may be referred to the USFWS or NMFS for additional information. When the Los Angeles District receives an application within the range of a listed

species and/or the project area otherwise supports suitable habitat, the USFWS or NMFS is contacted early in the review process. To facilitate compliance with the ESA, the Los Angeles District has coordinated with the USFWS to complete programmatic consultations for several threatened and endangered species in Ventura, Santa Barbara, and San Luis Obispo counties.

As proposed, the NWP general and regional conditions ensure that other federal statutory requirements are met. For example, in instances where a project may impact a federally listed species or its critical habitat, the applicant would be required to submit to the Corps appropriate biological investigations and supporting documentation for an “effects determination” with respect to the Endangered Species Act (ESA). Per General Condition 18, if the Federal Action were determined to have a potential effect on a federally listed species, or its designated critical habitat, consultation would be required pursuant to Section 7 of the ESA. (It should be noted that the Los Angeles District would ensure all federal project activities authorized under the NWPs comply with the ESA and use of the NWPs shall be determined to have minimal impacts on threatened and endangered species in the Los Angeles District, pursuant to the ESA).

5.2 Local Operating Procedures for Endangered Species

Standard local operating procedures for endangered species (SLOPES) formalize additional procedures between agencies to enable the agencies to ensure better compliance with the ESA. With the implementation of SLOPES, these procedures could be formally documented, facilitating the compliance the NWPs with the ESA. It is anticipated there will be many situations that will not be addressed by SLOPES and a case-by-case determination will be made regarding consultation with the USFWS or NMFS pursuant to Section 7 of the ESA. In January 2003, the Corps of Engineers, Los Angeles District, Regulatory Branch and the U.S. Fish and Wildlife Service, Ventura Office finalized SLOPES for informal and formal ESA consultations. In addition, some the activities authorized by the NWPs that may adversely affect Essential Fish Habitat have been addressed by the General Concurrence dated August 5, 2003 and a Programmatic Consultation that was completed by the Corps of Engineers, Los Angeles District, Regulatory Branch and NOAA’s National Marine Fisheries Service.

6.0 National Historic Preservation Act

6.1 General Considerations

The Los Angeles District would ensure that activities authorized by NWP 14 would comply with the National Historic Preservation Act (NHPA). The District would review the latest version of the National Register of Historic Places (NRHP) to make an effect determination that activities verified under NWP 14 would have on Historic Properties. Once an effects determination has been made the District will coordinate with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), recognized Tribes, and, if necessary, the Advisory Council on Historic Preservation (ACHP) as appropriate. The District has considered the requirement of pre-construction notification for NWP activities in geographic areas of high site potential, or known locations of cultural resources including prehistoric sites, historic sites, tribal lands, traditional cultural properties, state landmarks or National Historic Landmarks. In areas

where there is a high likelihood of cultural resources within the Corps' area of potential effect (APE), the district engineer may: (1) consult with SHPO, THPO, or Tribes during the NWP review process or (2) the district engineer may assert its discretionary authority to require an individual permit for the proposed activity and initiate consultation through the individual permit process. Option 2 would only be used if there is value added that compensates for the increase in workload due to processing more SIPs. If the consultation would be conducted under the NWP process without the district asserting discretionary authority to require an SIP, then the applicant would be notified that the activity could not be verified under the NWP until all Section 106 requirements have been satisfied.

6.2 Local Operating Procedures for National Historic Preservation Act

The district engineer would ensure that NWP 14 complies with section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulation 36 C.F.R. Part 800: Protection of Historic Properties (amended August 5, 2004), and Appendix C (33 U.S.C. 325): Procedures of Historic Properties. Under section 106, federal agencies are prohibited from approving any federal "undertaking" (e.g., the issuance of any license, permit, or approval) without taking into account the effects of the undertaking on the historic properties, and affording the ACHP a reasonable opportunity to comment on the undertaking. In order to comply with section 106, the Corps, if evaluating an undertaking, must go through the process outlined in the ACHP's regulations at 36 C.F.R. Part 800 and Appendix C. Pursuant to 36 C.F.R. § 800.4, 800.5, and 800.6, the Los Angeles District is required to consult with the SHPO, or tribal equivalent, THPO, if the undertaking would result in a "No Effect", "No Adverse Effect", or "Adverse Effect" to Historic Properties. The district engineer must (a) determine the permit area/APE; (b) identify historic properties within the permit area/APE; and (c) determine whether those properties are listed or eligible for listing in the NRHP. If the district engineer determines that NWP 14 would have no potential to cause effects to Historic Properties a memorandum for the record would be prepared and no further consultation with the SHPO/THPO or recognized tribes would need to occur.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

Prior to the issuance of the Los Angeles District's public notice announcing the proposed rule for the 2012 NWPs and our proposed regional conditions, all federally recognized tribes within LAD were contacted via letter dated December 13, 2010 to provide advance notification of the Corps' intent to issue the 2012 NWPs and upcoming opportunity to engage in government-to-government consultation. Follow-up letters were sent to the same set of federally recognized tribes February 11, 2011 announcing the issuance of the proposed rule and formally requesting government-to-government consultation. An advance copy of the proposed rule was also included. One tribe provided a response, indicating they did not foresee a need to utilize the NWPs. No requests for government-to-government consultation were received.

7.2 Local Operating Procedures for Protecting Tribal Resources

The Los Angeles District will avoid or minimize adverse effects to tribal lands, historic properties, sacred sites, or trust resources. This may involve identifying categories of activities that require pre-construction notification and/or conducting consultation with Tribes for specific activities in a particular geographic area. If coordination with recognized tribes is required the District Engineer will obtain a list of recognized tribes from the Native American Heritage Commission. From that list provided the District Engineer will initiate a 30-day coordination period to obtain comments on the project. The District Engineer will review comments and address as appropriate.

8.0 Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Management and Conservation Act, Federal agencies are required to consult with the National Marine Fisheries Service (NMFS) for actions that may adversely affect essential fish habitat (EFH). The marine and estuarine waters within the Los Angeles District contain designated EFH, which are administered by four fishery management plans (FMP): the Pacific Groundfish FMP, the Highly Migratory Species FMP, the Pacific Coast Salmon FMP, and the Coastal Pelagic Species FMP. The Los Angeles District's Regional Condition 4b requires submission of a PCN for any NWP authorization in EFH. A similar PCN requirement has been in place since the issuance of the 2002 NWPs. The current proposed regional condition includes the additional requirement that applicants include an EFH assessment with the PCN. By requiring a PCN with an EFH assessment for all activities within designated EFH, the Los Angeles District ensures the appropriate level of consultation with NMFS is conducted and effects to EFH are adequately addressed prior to verification.

To facilitate the consultation process, the Los Angeles District has developed an EFH general concurrence with Southwest Region of the NMFS. The general concurrence establishes a coordination procedure between NMFS and the Los Angeles District and covers a variety of Corps-regulated activities with minimal and/or temporary adverse effects to EFH. In addition, the Los Angeles District has developed a programmatic consultation with the Southwest Region of the NMFS that covers a broader range of activities that do not fit within the scope of the general concurrence. In summary, the inclusion of Regional Condition 4b, in conjunction with Los Angeles District's well-established set of procedures for addressing the effects of regulated activities within EFH (including conducting coordination with the NMFS as appropriate) will ensure the effects to EFH from the implementation of the 2012 NWPs will be minimal.

9.0 Supplement to National Impact Analysis

NWP 16 authorizes return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a section 404 permit. There is no volume limit or water sampling requirement(s) associated with NWP 16. In addition, there is no uniform notification provision or acreage threshold for notification. The absence of such limits/requirements is due in part to the

mandatory environmental review conducted by the Regional Water Quality Control Board through its 401 water quality certification process. Additional safeguards include mandatory notification for projects that: 1) have the potential to affect federally listed species (general condition 18) or historic properties (general condition 20), 3) are located within perennial water or special aquatic sites in the State of Arizona and desert regions of California (regional condition 4a), 4) are proposed within all watersheds of the Santa Monica Mountains (regional condition 4c), and, 5) are proposed in the Santa Clara River watershed (regional condition 4d). Further, the use of NWP 16 is prohibited within designated critical resource waters (general condition 22) and jurisdictional vernal pools (regional condition 5).

Additional national or regional restrictions may be developed if environmental impacts are more than minimal, on an individual or a cumulative basis. As referenced in the National Decision Document for NWP 16, the Corps expects that the convenience and time savings associated with the use of this NWP will encourage applicants to design their projects within the scope of the NWP rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

9.1 Public interest review factors (33 CFR 320.4(a)(1))

In addition to the discussion in the national decision document for this NWP, the Los Angeles District has considered the local impacts expected to result from the activities authorized by this NWP, including the reasonably foreseeable cumulative effects of those activities.

(a) Conservation: The discharge of return water has the potential to affect the rate of erosion and/or accretion within the affected watercourse. This disturbance may result in a temporary adverse effect upon benthic species, including invertebrates (food sources) and less motile larval stages of vertebrates, and may result in a longer term adverse effect upon channel capacity and morphology, depending upon the volume, frequency, and periodicity of sediment input. Conservation-related safeguards include mandatory notification for projects that: 1) have the potential to affect federally listed species (general condition 18) or historic properties (general condition 20), 3) are located within perennial waters or special aquatic sites in the State of Arizona and desert regions of California (regional condition 4a), 4) are proposed within all watersheds of the Santa Monica Mountains (regional condition 4c), and, 5) are proposed in the Santa Clara River watershed (regional condition 4d). In addition, Regional Condition 5 prohibits the use of NWP 16 for activities proposed in jurisdictional vernal pools. Taken together, these conditions demonstrate that the Corps is at a minimum notified prior to proposed impacts within areas demonstrating high resource (and conservation) value. Based upon this information, NWP 16 would result in minor impacts to conservation, both individually and cumulatively, in the Los Angeles District.

(b) Economics: Same as discussed in the national document.

(c) Aesthetics: Same as discussed in the national document.

(d) General environmental concerns: The internal safeguards referenced above in the

“Conservation” section have been developed in response to a wide array of environmental concerns, ranging from regionally-significant geographic areas to individual animal/plant species. As a result of the relatively limited use of NWP 16, as well as the abovementioned safeguards, this NWP is expected to result in minor impacts to the environment in general, both individually and cumulatively, in the Los Angeles District.

(e) Wetlands: In the Los Angeles District, the semi-arid climate limits the extent and number of wetland resources. This scarcity of wetlands is especially evident in Arizona and in the desert regions of California. In these areas, annual precipitation is usually below 10 inches, which often precludes the development of wetlands. In addition, approximately 90 percent of wetlands in California have been affected by historic conversion to agricultural uses, grading and filling activities. As a result, special aquatic sites, such as wetlands, are rare in the Los Angeles District and their preservation warrants special attention. As NWP 16 would generally be used for projects located adjacent to perennial waterbodies, it is probable that wetland impacts would be sustained. For example, the excavation of drainage ditches from the stockpiled dredge material to a larger, permanent watercourse, may inadvertently drain wetlands adjacent to the watercourse, altering the wetland hydrology on a semi-permanent basis and potentially compromising the functions provided by the affected wetland. Impacts associated with alteration of baseline erosion/accretion patterns within the receiving channel would be expected to be temporary in nature, as the volume of return water and associated sediment load would decrease as the dredged material dries. As the return water is an addition to baseflow, surface water elevation may lead to a limited, temporary expansion in wetland boundaries in the vicinity of the outfall, if they exist. If channel morphology/capacity is altered enough, e.g. through repeat discharges of sediment laden material over several months/years, the spatial arrangement of wetlands in the vicinity of the outfall (if they exist) may change, but is not expected to decrease in aerial coverage. If sediment is not removed/treated prior to discharge, a limited amount of channel dredging in the vicinity of the outfall may be necessary. The stockpiling of dredged material itself may impact wetlands if it is cited adjacent to the dredging operation. However, disposal locations generally exhibit high levels of previous disturbance (e.g., industrial uses), and therefore tend not to have high environmental resource value. It also should be recognized that, provided that the stockpiling occurs entirely on uplands, the Corps has relatively little control over the siting of the stockpiled material. The Corps is committed to a “no net loss” policy regarding wetland impacts, and therefore requires a minimum of 1:1 acreage replacement of lost wetland functions. To further ensure minimal impacts to wetland resources, the Los Angeles District would require notification for projects that: 1) are located within perennial waters and special aquatic sites in the State of Arizona and desert regions of California (regional condition 4a), 2) are proposed within all watersheds of the Santa Monica Mountains (regional condition 4c), and, 3) are proposed in the Santa Clara River watershed (regional condition 4d). In addition, Regional Condition 5 prohibits the use of NWP 16 for activities proposed in jurisdictional vernal pools. The new General Conditions would provide further limitations on the use of NWP 16 in waters of the U.S. Specifically, General Condition 22 prohibits the use of NWP 16 within designated critical resource waters, including wetlands adjacent to those waters. Based upon these internal safeguards, NWP 16 would result in minor impacts to wetlands, both individually and cumulatively, in the Los Angeles District.

(f) Historic properties: Due to the favorable climate and relative abundance of food sources, southern California is rich in cultural history. Over the last several decades, however, these resources have been at a greater risk due to intense developmental pressure and/or vandalism. Section 106 of the National Historic Preservation Act requires any federal action agency to determine the eligibility of any known or discovered cultural resources that may be affected by the agency's action, and coordinate with the SHPO or THPO as appropriate. Specifically, general condition 20 requires an applicant to notify the Corps prior to project initiation if the proposed activity has the potential to cause effects to listed historic properties, eligible historic properties, and potentially eligible historic properties. The return water and its conveyance system(s) are not expected to result in adverse effects to historic properties, as they are temporary in nature and have a small footprint. The stockpiling of dredged material itself may impact historic properties if it is cited in a culturally sensitive area (e.g., a lagoon). However, disposal locations generally exhibit high levels of previous disturbance (e.g., industrial uses), and therefore tend not to have high cultural or environmental resource value. It also should be recognized that, provided that the stockpiling occurs entirely on uplands, the Corps has relatively little control over the siting of the stockpiled material. Based on the above information, we expect NWP 16 would result in negligible impacts to historic properties, both individually and cumulatively, in the Los Angeles District.

(g) Fish and wildlife values: NWP 16 has a relatively limited geographic scope, in that the authorized activity (return water from upland contained dredged material) generally occurs in close proximity to larger dredging operations (i.e., adjacent to harbors, ports, and lakes) and has a relatively small footprint. The discharge of return water has the potential to affect the rate of erosion and/or accretion within the affected watercourse. This disturbance may result in a temporary adverse effect upon benthic species, including invertebrates (food sources) and less motile larval stages of vertebrates, and may result in a longer term adverse effect upon channel capacity and morphology, depending upon the volume, frequency, and periodicity of sediment input. These changes would likely occur only in the vicinity of the return water outfall(s), therefore limiting the overall impact to fish and wildlife. The excavation of drainage ditches from the stockpiled dredge material to a larger, permanent watercourse, may inadvertently drain wetlands adjacent to the watercourse, altering the wetland hydrology on a semi-permanent basis. This action could have deleterious effects upon wildlife (e.g., amphibians, birds) that rely upon wetlands for refuge and/or forage. NWP 16 has several safeguards that protect sensitive resources from such disturbances. Reference is made to the discussion under "Conservation" section for details regarding internal safeguards for increased environmental protection, particularly for fish and wildlife resources. The quality of the leachate water is also of concern to fish and wildlife, as dredged material has the potential to contain high levels of metals, hydrocarbons, halogenated organics (e.g., pesticides, herbicides), and other toxic compounds.

For NWP 16, the Corps relies heavily upon the Regional Water Quality Control Board for effective implementation of the CWA Section 401 certification and associated Sections of the CWA under their purview (e.g., Section 402 for National Pollutant Discharge Elimination Systems and Waste Discharge Requirements). The stockpiling of dredged material itself may impact wildlife if it is cited near an environmentally sensitive area (e.g., a lagoon). However, disposal locations generally exhibit high levels of previous disturbance (e.g., industrial uses), and

therefore tend not to have high environmental resource value. It also should be recognized that, provided that the stockpiling occurs entirely on uplands, the Corps has relatively little control over the siting of the stockpiled material. Based upon this information, NWP 16 would result in minor impacts to fish and wildlife, both individually and cumulatively, in the Los Angeles District.

(h) Flood hazards: Impacts associated with alteration of baseline accretion patterns would be expected to be temporary in nature, as the volume of return water and associated sediment load would decrease as the dredged material dries. As the return water is an addition to baseflow, increased surface water volumes may slightly increase the likelihood for flooding within the receiving watercourse. If channel morphology/capacity is altered enough (e.g. through repeat discharges of sediment laden material over several months/years), the likelihood for overbank flooding may increase. However, the volume of the return water is expected to be a fraction of the pre-existing baseflow within the receiving watercourse. If the return water is not filtered for sediment prior to discharge, a limited amount of channel dredging may be necessary in the vicinity of the outfall to restore pre-existing contours. The authorized activity (return water from upland contained dredged material) generally occurs in close proximity to larger dredging operations, i.e., adjacent to harbors, ports, and lakes. Such areas are prone to tidal fluctuations, storm surges, and/or wind-induced waves. Floods could affect the disposal site and/or return water operations, but the likelihood of this occurring is extremely low.

(i) Floodplain values: Same as discussed in the national document.

(j) Land use: Same as discussed in the national document.

(k) Navigation: Same as discussed in the national document.

(l) Shore erosion and accretion: Same as discussed in the national document.

(m) Recreation: Same as discussed in the national document.

(n) Water supply and conservation: Same as discussed in the national document.

(o) Water quality: In the heavily populated areas of southern California and Arizona, existing water quality in most watercourses is impaired by runoff from upland agricultural, residential and industrial sources, as well as from floodplain encroachment. NWP 16 authorizes the return water from an upland contained dredged material disposal area, and is separate from the dredging and disposal operations. The dredging component is generally authorized by the Corps through Section 10 of the Rivers and Harbors Act. If the project is to qualify for NWP 16, the disposal site must be contained and located in uplands. The constituents of the return water have the potential to contain high levels of metals, hydrocarbons, halogenated organics (e.g., pesticides, herbicides), and other toxic compounds. If sediment is not removed/treated prior to discharge, return water may also contain a heavy sediment load. For NWP 16, the Corps relies upon the Regional Water Quality Control Board for effective implementation of the CWA Section 401 certification and associated Sections of the CWA under their purview (e.g., Section 402 for

National Pollutant Discharge Elimination Systems and Waste Discharge Requirements). As referenced in NWP 16, the quality of the return water is controlled by the state through Section 401 certification procedures. General and regional conditions directed towards preservation of high-value wetland functions would also assist in the preservation and recovery of baseline water quality. Overall, we expect NWP 16 would result in minor impacts to water quality, both individually and cumulatively, in the Los Angeles District.

(p) Energy needs: Same as discussed in the national document.

(q) Safety: Same as discussed in the national document.

(r) Food and fiber production: Same as discussed in the national document.

(s) Mineral needs: Same as discussed in the national document.

(t) Considerations of property ownership: Same as discussed in the national document.

9.2 National Environmental Policy Act Cumulative Effects Analysis (40 CFR 1508.7)

Please see the attached supplemental analysis (Section I), and the 404(b)(1) guidelines cumulative effects analysis (Section 9.4), below.

9.3 Section 404(b)(1) Guidelines Impact Analysis (Subparts C-F)

(a) Substrate: The discharge of return water has the potential to affect the rate of erosion and/or accretion within the affected watercourse. Impacts associated with alteration of baseline erosion/accretion patterns within the receiving channel would be expected to be temporary in nature, as the volume of return water and associated sediment load would decrease as the dredged material dries. If channel morphology/capacity is altered enough (e.g. through repeat discharges of sediment laden material over several months/years), the channel contours in the vicinity of the outfall may be altered. If sediment is not removed/treated prior to discharge, a limited amount of channel dredging in the vicinity of the outfall may be necessary. Several NWP general conditions and Los Angeles District regional conditions have been developed to preserve channel substrate and morphology. These safeguards include mandatory notification for the following: 1) any activity in a special aquatic site or perennial watercourse in the State of Arizona and desert regions of California; 2) projects in the Santa Monica Mountains, 3) projects in the Santa Clara River watershed, and, 4) projects that may affect designated critical resource waters, including wetlands adjacent to those waters (general condition 19). In addition, Regional Condition 5 prohibits the use of NWP 16 for activities proposed to be sited within vernal pools. Based upon this information, NWP 16 would result in minor impacts to substrate, both individually and cumulatively, in the Los Angeles District.

(b) Suspended particulates/turbidity: In heavily populated areas of southern California and Arizona, existing turbidity levels in most rivers has been exacerbated by runoff from upland agricultural, residential and industrial sources. Short-term construction activities often augment

turbidity levels in waters of the U.S. The dramatic seasonal and annual variability in precipitation levels within southern California often lead to flashy conditions that result in a natural elevation in turbidity levels. NWP 16 authorizes discharges of return water from upland, contained dredged material disposal areas. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), and the quality of the water is controlled by the state through the Section 401 certification process. If sediment is not removed/treated prior to discharge, return water may also contain a heavy sediment load. For NWP 16, the Corps relies upon the Regional Water Quality Control Board for effective implementation of the CWA Section 401 certification and associated Sections of the CWA under their purview (e.g., Section 402 for National Pollutant Discharge Elimination Systems and Waste Discharge Requirements). As referenced in NWP 16, the quality of the return water is controlled by the state through Section 401 certification procedures. General and regional conditions directed towards preservation of high-value wetland functions would also assist in the preservation and recovery of baseline water quality. Overall, we expect NWP 16 would result in minor impacts to suspended particulates/turbidity, both individually and cumulatively, in the Los Angeles District.

(c) Water: Same as discussed in the national document.

(d) Current patterns and water circulation: Same as discussed in the national document.

(e) Normal water level fluctuations: Same as discussed in the national document.

(f) Salinity gradients: Same as discussed in the national document.

(g) Threatened and endangered species: NWP 16 has a relatively limited geographic scope, in that the authorized activity (return water from upland contained dredged material) generally occurs in close proximity to larger dredging operations (i.e., adjacent to harbors, ports, and lakes) and has a relatively small footprint. Due to the perennial water source and availability of habitat, these activities may be located within or adjacent to environmentally sensitive areas that may harbor federally listed species. The discharge of return water has the potential to affect the rate of erosion and/or accretion within the affected watercourse. This disturbance may result in a temporary adverse effect upon benthic species, including invertebrates (food sources) and less motile larval stages of vertebrates, and may result in a longer term adverse effect upon channel capacity and morphology, depending upon the volume, frequency, and periodicity of sediment input. These changes would likely occur only in the vicinity of the return water outfall(s), therefore limiting the overall impact to fish and wildlife. The excavation of drainage conveyance features extending from the stockpiled dredge material to a larger, permanent watercourse, may inadvertently drain wetlands adjacent to the watercourse, altering the wetland hydrology on a semi-permanent basis. This action could have deleterious effects upon wildlife (e.g., amphibians, birds) that rely upon wetlands for refuge and/or forage. NWP 16 has several safeguards that protect sensitive resources from such disturbances. Reference is made to the discussion under “Conservation” section for details regarding internal safeguards for environmental protection, particularly for fish and wildlife.

The quality of the leachate water is also of concern to fish and wildlife, as dredged material has the potential to contain high levels of metals, hydrocarbons, halogenated organics (e.g., pesticides, herbicides), and other toxic compounds. For NWP 16, the Corps relies heavily upon the Regional Water Quality Control Board for effective implementation of the CWA Section 401 certification and associated Sections of the CWA under their purview (e.g., Section 402 for National Pollutant Discharge Elimination Systems and Waste Discharge Requirements). The stockpiling of dredged material itself may impact wildlife if it is cited in an environmentally sensitive area (e.g., a lagoon). However, disposal locations generally exhibit high levels of previous disturbance (e.g., industrial uses), and therefore tend not to have high environmental resource value. It also should be recognized that, provided that the stockpiling occurs entirely on uplands, the Corps has relatively little control over the disposal site for the stockpiled material. Lastly, general condition 18 requires Corps' notification for projects that may affect federally listed species or their designated critical habitat. In such circumstances, the Corps will coordinate with the appropriate resource agency (e.g., USFWS or NMFS) in order to ensure that the applicant's activities will avoid and minimize adverse impacts to listed species and/or their designated critical habitat.

Based on average of 2 NWP 16 verifications issued annually with two informal consultations and no adverse impacts for the period between 2009 and 2011 the Los Angeles District anticipates approximately the same level of impacts to endangered species for the period 2012 through 2017. Given these provisions, NWP 16 would result in minor impacts to threatened and endangered species, both individually and cumulatively, in the Los Angeles District.

(h) Fish, crustaceans, molluscs, and other aquatic organisms in the food web: Same as discussed in the national document.

(i) Other wildlife: See section under "Fish and Wildlife Values" and "Threatened and Endangered Species" for discussion of potential impacts to wildlife as well as for mitigation measures developed to reduce adverse impacts. NWP 16 would result in minor impacts to wildlife in general, both individually and cumulatively, in the Los Angeles District.

(j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:

(1) Sanctuaries and refuges: Same as discussed in the national document.

(2) Wetlands: See above section under "Wetlands" for discussion of potential impacts to wetlands as well as mitigation measures developed to reduce adverse impacts, including resource-based restrictions and notification provisions (Regional Conditions 2, 4, and 5). NWP 16 would result in minor impacts to wetlands, both individually and cumulatively, in the Los Angeles District.

(3) Mud flats: NWP 16 has a relatively limited geographic scope, in that the authorized activity (return water from upland contained dredged material) generally occurs in close proximity to larger dredging operations (i.e., adjacent to harbors, ports, and lakes) and has

a relatively small footprint. Due to the perennial water source and availability of habitat, these activities may be sited near environmentally sensitive areas. Mudflats are generally listed as a subset of coastal wetlands under tidal influence. When compared with interior aquatic resources, coastal wetlands have been disproportionately affected by agriculture and development in southern California. Of a total of approximately 45,000-55,000 acres of coastal wetlands in the southern California bight (from Point Conception to the Mexico border), approximately 10-20% remains (Southern California Wetlands Inventory). See above section under “Wetlands” for discussion of potential impacts to tidal wetlands as well as mitigation measures developed to reduce adverse impacts, including resource-based restrictions and notification provisions (Regional Conditions 4, 5 and 8). It is expected that NWP 16 would result in minor impacts to mudflats, both individually and cumulatively, in the Los Angeles District.

(4) Vegetated shallows: As NWP 16 is often used for projects located in or adjacent to tidal waters, it is possible that impacts to vegetated shallows may be sustained as a result of erosion/accretion and/or changes in bottom contours in the vicinity of the return water outfall(s). Use of NWP 16 in vegetated shallows in any designated EFH, which includes most vegetated shallows within the Los Angeles District, would require notification. It is expected that NWP 16 would result in minor impacts to vegetated shallows, both individually and cumulatively, in the Los Angeles District.

(5) Coral reefs: Same as discussed in the national document.

(6) Riffle and pool complexes: In the semi-arid southern California and Arizona areas, limited water resources and the need for flood control have led to the construction of numerous dams in the mountains of southern California and Arizona, and on the Colorado River. With the construction of these large dams, many riffle and pool complexes have been eliminated by the large reservoirs. Furthermore, construction of the dams also modifies the hydrologic regime of the river, which can also degrade downstream riffle and pool complexes. As a result, riffle-and-pool complexes in the Los Angeles District are essentially confined to montane and foothill regions. They warrant more rigorous protection due to their relatively high production of invertebrate fauna and other contributions to riparian aquatic resources such as aeration of the water, provision of substrate for decomposers, and other factors. To ensure minimal impacts to riffle and pool complexes, the Los Angeles District would require notification for use of NWP 16 in the State of Arizona and the desert regions of southern California for activities in any riffle-and-pool complexes. With the inclusion of these modifications, NWP 16 would have minimal individual and cumulative impacts to riffle and pool complexes in the Los Angeles District.

(k) Municipal and private water supplies: Same as discussed in the national document.

(l) Recreational and commercial fisheries: Same as discussed in the national document.

(m) Water-related recreation: Same as discussed in the national document.

(n) Aesthetics: Same as discussed in the national document.

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: Same as discussed in the national document.

9.4 Section 404(b)(1) Guidelines Cumulative Effects Analysis (40 CFR 230.7(b)(3))

The cumulative effects of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Impacts to aquatic resources authorized by the Los Angeles District's permit actions are tracked using the ORM (OMBIL Regulatory Module) database. This includes both temporary and permanent impacts, as well as any compensatory mitigation required. Impact and mitigation data was collected for the period of Fiscal Year 2009 through 2011 to provide a reasonable basis to examine the cumulative effects of each NWP as well as the NWP Program as a whole within the Los Angeles District. Based on an analysis of the types of activities authorized by the Los Angeles District during this period, the Los Angeles District estimates that this NWP will be used approximately 2 times per year, resulting no loss of waters of the United States. Given that the use of NWP does not typically result in a loss of waters of the United States, the Los Angeles District estimates that no compensatory mitigation will be required and that the NWP would only authorize activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 16

10.1 Regional condition 3

When a pre-construction notification (PCN) is required, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified in accordance with General Condition 31 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at:

<http://www.spl.usace.army.mil/regulatory>. In addition, the PCN shall include:

- a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
- b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the project site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los Angeles District*

Regulatory Division (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

- c. Numbered and dated pre-project color photographs showing all waters proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.

10.2 Regional condition 4

Submission of a PCN pursuant to General Condition 31 and Regional Condition 3 shall be required for all regulated activities in the following locations:

- a. All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).
- b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas). The PCN shall also include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.
- c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
- d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.

10.3 Regional condition 5

Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under NWP 5, 6, and 27 with the submission of a PCN in accordance with General Condition 31 and Regional Condition 3.

10.4 Regional condition 8

In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has

revoked the use of the following 24 selected NWP within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49 and 50. Consequently, these NWPs are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.

10.5 Regional condition 10

The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

Pursuant to Section 401 of the Clean Water Act (CWA), tribal or state Water Quality Certification, or waiver thereof, is required for activities authorized by NWPs that may result in a discharge of fill material into waters the U.S. In addition, any state with a federally-approved Coastal Zone Management (CZM) plan must concur with the Corps determination that activities authorized by NWPs that are either within the state's coastal zone, or will affect any land or water uses, or natural resources within the state's coastal zone, are consistent with the CZM plan. In accordance with Corps regulations at 33 CFR 330.5 (c) and (d), any state 401/CZM conditions for a particular NWP become regional conditions for that NWP. The Corps recognizes that in some tribes or states there will be a need to add regional conditions, or for individual tribal or state review for some activities to ensure compliance with water quality standards or consistency with CZM plans.

The Los Angeles District announced the proposal to reissue the Nationwide Permits and our proposed regional conditions in a Special Public Notice dated February 25, 2011. The Los Angeles District also send letters dated March 9, 2011 to the seven federally recognized tribes within the Los Angeles District (Big Pine Tribe, Bishop Paiute Tribe, Hopi Tribe, Hualapai Tribe, Navajo Nation, White Mountain Apache Tribe, and Twenty-nine Palms Band of Mission Indians) and the Arizona Department of Environmental Quality announcing the proposed rule and our proposed regional conditions, and requesting the State of Arizona and each tribe review the information for purposes of providing water quality certification pursuant to section 401 of the Clean Water Act. Similarly, acting on behalf of the three Corps Districts in California the Sacramento District provided the same letter on February 23, 2011 to the California State Water Resources Control Board (SWRCB) and EPA requesting 401 certification in the State of California and tribal lands within EPA Region 9, respectively (excluding those tribes with delegated 401 authority). The San Francisco District provided a letter to the California Coastal Commission (CCC) on behalf of both coastal districts in California on March 3, 2011, requesting Coastal Zone Management Act (CZMA) consistency certification. Additional discussions were

held among the three Corps Districts in California and the SWRCB in an effort to strategize options for certifying a broader range of NWP or NWP-eligible activities than under the 2007 NWPs.

Upon publication of the final rule in the February 21, 2012, issue of the Federal Register (77 FR 10184), the Los Angeles District again provided letters to each of the seven tribes with 401 authority, and the State of Arizona requesting final 401 certification of the 2012 NWPs within their respective geographic areas of responsibility. Copies of the final regional conditions for the Los Angeles District were also provided. Similarly, the Los Angeles District provided a letter to the CCC on behalf of both coastal districts in California requesting final CZMA consistency certification of the 2012 NWPs and the respective regional conditions (copies of the letters are provided in Section IV). Each tribe and the State of Arizona have 60 days to issue, waive or deny certification for any or all of the 2012 NWPs. The CCC has 90 days to make their final determination. Due to the fact that the final rule was published on February 21, 2012, there is not sufficient time to allow the full 60- or 90-day review period before the 2012 NWPs are scheduled to go into effect on March 19, 2012. Therefore, the final outcome of 401 and CZMA certification within in the Los Angeles District is uncertain. Individual certifications will be required for any action authorized under the 2012 NWPs where applicable (i.e. projects within or affecting the Coastal Zone and/or projects that may affect water quality) until final determinations are provided by the respective state/tribal authorities.

The Los Angeles District believes, in general, that these NWPs and our regional conditions comply with State Water Quality Certification standards and are consistent with the Coastal Zone Management Plans.

12.0 Measures to Ensure Minimal Adverse Environmental Effects

The terms and conditions of the NWP, including the pre-construction notification requirements and the regional conditions listed in Section 10.0 of this document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP.

Through the pre-construction notification process, the Los Angeles District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to an NWP authorization to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

Activities under Nationwide Permit 16, Return water from Upland Contained Disposal Areas, should not result in a loss of waters; therefore, compensatory mitigation is generally not required.

If, at a later time, there is clear, unequivocal evidence that use of the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

13.0 Final Determination

Based on the considerations discussed above, and in accordance with 33 CFR 330.4(e)(1) and 330.5(c), I have determined that this NWP, including its terms and conditions, all regional conditions, and limitations, will authorize only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively.