SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 27

This document is a supplement to the national decision document for Nationwide Permit (NWP) 27 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 27:

Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a U.S. Army Corps of Engineers (Corps) permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to re-establish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed;

mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer

and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification (PCN), the permittee must submit to the district engineer a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification. The permittee must submit a PCN to the district engineer prior to commencing any activity (see general condition 31), except for the following activities:

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;

(2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.
However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Sections 10 and 404)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Summary of changes to NWP 27 from 2007: The phrase “that has not been abandoned” has been removed where it modifies the term “prior converted cropland”. Ditch manipulations for restoring wetland hydrology has been modified by removing “and drainage ditches” after “the backfilling of artificial channels” by replacing it with “such as drainage tiles, and the filling,

blocking, or reshaping of drainage ditches to restoration wetland hydrology" after "the removal of existing drainage structures".

The "Notification" provisions under (1) and (2) have been modified so that certain stream restoration, rehabilitation, and enhancement activities would be subject to the reporting provision instead of requiring PCN. The "Notification" provision under (1) was modified by adding the U.S. Forest Service to the list of Federal agencies that can develop stream or wetland enhancement, restoration, or establishment agreements.

For tidal systems, the rehabilitation or enhancement of tidal streams has been included as an authorized activity. Minor additions of sediment to tidal marsh elevations to track sea level rise has been included as an authorized activity. And re-establishment of submerged aquatic vegetation or emergent tidal wetlands has been included as an authorized activity, as long as those shallow water habitat and wetland types previously existed in the project area.

The "Reporting" provision has been modified for those activities that do not require PCN to require the permittee to submit information on the baseline ecological conditions at the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats.

1.0 Background

In the February 16, 2011, issue of the Federal Register (76 FR 9174), the 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

3.1 Waters excluded from use of this NWP

3.1.1 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

All activities requesting authorization under NWP 27 must submit a PCN in accordance with General Condition 31 and Regional Condition 3 with the exception of three categories of activities that require only pre-construction reporting. The activities not requiring a PCN include: (1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies; (2) Voluntary

stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency. For the activities not required to submit a PCN, reporting to the district engineer is required to include a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

As discussed in the following sections, Regional Condition 4a through 4d would expand these notification requirements for activities affecting special aquatic sites in Arizona and desert regions of California, essential fish habitat, the Santa Monica Mountains, and within Santa Clara River watershed, respectively.

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 percent 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 PCN 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 NWPs 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 2001[1]). 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 NWPs would have minimal impacts, both individually and cumulatively, to aquatic and riparian habitat in various watersheds in the Santa Monica Mountains.

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

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

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 NWPs 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.

3.2.5 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 NWPs, 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.

4.0 Alternatives

4.1 No Regional Conditions

Activities authorized under NWP 27 would be associated with enhancement, restoration, or establishment of aquatic resource acreage, functions, and services and would result in minimal impacts both individually and cumulatively. It is required by NWP 27 that a net increase in aquatic resource functions and services results from authorized activities. In addition, NWP 27 requires PCN to the district engineer for all activities with the exception of restoration or enhancement in accordance with binding agreements with specific federal agencies or reclamation of surface coal mine lands in accordance with applicant state permits. Nonetheless, the Los Angeles District has historically experienced extensive losses in waters of the U.S., including both streams and special aquatic sites. Data for specific types of special aquatic sites and watersheds indicated that the use of NWPs could result in greater than minimal impacts without the proposed regional conditions. Regional Condition 4a through 4d affects NWP 27 by requiring a PCN in perennial waterbodies and most special aquatic sites within the State of Arizona and the Mojave and Sonoran (Colorado) desert region, all areas designated as Essential Fish Habitat, all watersheds within the Santa Monica Mountains, and for all activities within the Santa Clara River watershed. PCNs are required in these geographic regions regardless of the exceptions listed in NWP 27 under Notification. Several regional conditions require SIPs within the watersheds of Murrieta Creek and Temecula Creek (Regional Condition 6) and San Luis Obispo Creek and Santa Rosa Creek (Regional Condition 7). By requiring an SIP, the resources in these watersheds are afforded the maximum level of protection under the Section 404 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). Regional Condition 8 requires the use of established permitting procedures within SAMP watersheds of San Diego Creek and San Juan Creek/Western San Mateo Creek. There has been extensive analysis completed for the SAMP development that identified areas appropriate for specific activities including discharges of dredged and fill material and areas appropriate for long-term aquatic resource conservation.

Previously, Regional Condition 5 eliminated the use of all NWPs, including NWP27 in jurisdictional vernal pools due to the extensive losses in the region. It was the Districts opinion that any impacts resulting in the discharges of dredged or fill material into vernal pools would have more than minimal impacts both individually and cumulatively. More recently, public entities and land managers have made it apparent that voluntary vernal pool restoration and enhancement projects were being delayed or prevented by the SIP process due to increases time and costs. Grants and other public funding sources that facilitate these activities are limited and time sensitive. Detailed restoration plans for vernal pools are expensive prepare and implement due to the necessary details regarding soils, geology, microtopography, endangered and threatened species, and source materials for inoculums. The added timing and costs are multiplied when applicants are required to evaluate alternative sites that may not be suitable for

this very specific type of special aquatic site or available for purchase or use. In addition, the amount of grading and subsequent discharge of dredged and fill material in existing vernal pools is typically limited to smoothing tire tracks in basins, reducing pool basin slopes that had been artificially steepened, removing existing fill material, removing or treating weedy species, seeding or planting container plants, and in rare cases enlarging basin sizes. All of these activities may have temporary impacts, but are designed to result in long-term gains in vernal pool functions and services. Therefore, to promote and streamline vernal pool restoration and enhancement projects, Regional Condition 5 has been modified to allow for activities that qualify for NWPs 5, 6, and 27. The need to protect these sensitive resources remains and therefore a PCN is required and the district engineer retains the discretionary authority to require an SIP in those cases that the success of a proposed restoration or enhancement activity is uncertain, or when the subject vernal pool is of particularly high ecological value.

Without regional conditions requiring PCN in specific geographic areas, there could be greater than minimal impacts to waters of the U.S. that exhibit both high physical and biological functions, as well as contributing to substantial cumulative impacts in some portions of these areas. Without a regional condition requiring a PCN for projects potentially affecting special aquatic sites, impacts to these relatively rare resources could occur without compensatory mitigation, contributing to greater than minimal impacts, both individually and cumulatively in the District. With no regional conditions, activities could proceed without PCN and subsequent formal or informal Section 7 consultation pursuant to the Endangered Species Act (ESA) may not occur. Based on the analysis above, the "No Regional Conditions" alternative would result in greater than minimal impacts, and has been dismissed from further consideration.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

NWP 27 does not have an acreage limit. Under this alternative, the Los Angeles District could impose acreage or stream linear feet limitations on enhancement, restoration, and establishment activities authorized by NWP 27. Projects that would exceed the limit would be required to be processed as an SIP. However, limiting the use of the NWP would be counterproductive by restricting large-scale restoration projects that result in a substantial net gain in wetlands acreage, functions and services within the District. For example, based on a review of ORM data, 82authorizations for NWP 27 were issued between Fiscal Year 2009 and 2011. The majority of these authorizations were for minor temporary and permanent impacts to enhance or restore overall stream or wetland functions and services. Of the 82 authorizations, three large-scale restoration projects resulted in 95 percent of acreage (956 acres) of impacts authorized. These three projects were recorded as permanent impacts resulting from authorized fill and authorized removal (though not considered "losses" of waters as defined at 40 CFR Part 230.40-45). The fill in open water and degraded tidal and freshwater marsh for these three projects was authorized because the wetlands were historically deepened for the purposes of mining salt, other natural resources, or otherwise degraded. The fill material was used to restore a suite of topographic elevations supporting naturally functioning fresh water and tidal hydrologic regimes and specific wetland habitats, marsh channels, and open water. For the same purposes, excavation was authorized where fill material had been historically deposited or sediment had accumulated and wetland functions and services were degraded. In these three cases, a substantial net gain in

wetland acreage, functions and services was anticipated and are currently being realized.

ORM data for the remaining 79 authorizations totaled 156 acres or 35,571 linear feet of temporary and permanent impacts associated with wetland or stream restoration or enhancement projects. Of these 79 projects, 23 projects were recorded as effecting linear feet of stream and 15 of the 21 projects (74 percent) affected over 300 linear feet. Regional Condition 9 restricts the use of certain NWPs for activities affecting over 300 linear feet of stream without a waiver. If this restriction was applied to NWP 27, larger stream restoration or enhancement projects would have been required to obtain a waiver or complete the SIP process.

Currently, the Corps does not record the total area post-project nor functional assessment data for pre- and post-project conditions. Therefore, there is no way to efficiently estimate the increase in acreage or functions and services resulting from NWP 27 authorizations. It can be estimated that the majority of the acreage and linear feet restored, enhanced or established in the District as a result of NWP 27 is from large-scale restoration projects or projects that would exceed the 300 linear feet restriction in Regional Condition 9.

Most restoration and enhancement projects within the District are implemented by public entities using public funds, including grants. Grants and other public funding sources that facilitate these activities are limited, restricted to specific planning or implementation tasks, and time sensitive. Preparing detailed hydrology, engineering, and restoration plans are expensive and time consuming. The timing and costs are multiplied when applicants are required to evaluate alternative sites that may not be suitable or available for purchase or use. The added costs and timing associated with a detailed alternatives analysis could be prohibitive for publically-funded projects. Therefore, acreage limits on NWP 27 could reduce the overall number of restoration projects in the District. Further, Los Angeles District encourages private and public landowners to allow for restoration projects occur on their land or to voluntarily conduct these projects. Many of these landowners prefer to minimize their interaction with the federal government. Imposing acreage or linear feet constraints could discourage larger and perhaps more watershed-beneficial projects from being performed because the landowners would be faced with the more stringent and time-consuming SIP review process.

Another alternative would be to prohibit the use of NWP 27 within special aquatic sites such as those existing in Murrieta and Temecula Creek watersheds in Riverside County (Regional Condition 6). Given that this NWP rarely results in permanent impacts and that it usually results in environmental benefits, it would not be practicable in light of the workload of the Los Angeles District to include this restriction. This restriction would be expected to only provide marginal environmental benefits, and has therefore been eliminated from further consideration.

Another alternative regional condition would be to prohibit the use of NWP 27 in the Los Angeles District altogether. The loss of approximately 90 percent of wetland resources in southern California and the general scarcity of special aquatic sites in this semi-arid region demonstrates that there could be a need for the review of any project that would discharge dredged or fill material into waters of the U.S. under the 404(b)(1) Guidelines and the public interest factors to ensure no adverse impacts to special aquatic sites. However, as discussed

above, the use of NWP 27 would normally result in temporary impacts for the purpose of environmental restoration and establishment efforts. When considering the inclusion of the constraints on NWP 27 from the general conditions, a regional condition that precludes all discharges in special aquatic sites would unnecessarily increase the District's workload for the review of small-scale impacts in areas that exhibit low physical and biological functions. As a result, this proposed modification would not be practicable and would result in relatively minor environmental benefits to the aquatic ecosystem, and has therefore been eliminated from further consideration.

All activities authorized by NWP 27 are required to restore, enhance, or establish aquatic resources that result in a net gain of functions and services. Therefore, the District has determined that the proposed regional conditions and PCN requirements would ensure that impacts associated with NWP 27 would be minimal, both individually and cumulatively and has eliminated alternative regional limits and notification thresholds from further consideration.

4.3 Alternative Regional Nationwide Permit Conditions

To further ensure NWP 27 would have minimal impacts to aquatic resources, both individually and cumulatively, the Los Angeles District could augment the proposed PCN requirements for NWP 27 by requiring applicants to notify the Los Angeles District, the FWS, and the other resource agencies on all PCNs, by requiring PCNs on all projects in special aquatic sites, including jurisdictional wetlands, by requiring actions in all special aquatic sites to be evaluated for authorization under SIP, or by eliminating the use of NWP 27 altogether and requiring all actions to be evaluated for authorization under SIP.

Requiring notification to the Los Angeles District and resource agencies for all projects to be authorized under NWP 27 would substantially increase the workload for the Los Angeles District without commensurate benefit to aquatic resources. As a result, the Los Angeles District has determined that this alternative would not be practicable and would result in only minor additional benefits to the aquatic resources. With the proposed modifications to NWP 27, the Los Angeles District has identified the resources and watersheds that warrant additional scrutiny under NWP 27. As a result, the Los Angeles District's proposed modifications would result in a relatively minor increase in overall workload, but would provide potentially substantial benefit to the aquatic environment in the identified areas.

In the Los Angeles District, the semi-arid climate limits special aquatic sites throughout the region. In dryland areas, lack of vegetation and developed soils result in high peak discharges for large storm events. With a predominance of deep alluvial soils, dryland systems are dominated by overland flow, with groundwater recharge and throughflow only contributing a relatively small quantity to stream discharge. Over the past eighty years, agricultural and construction activities have resulted in a loss of approximately 90 percent of wetlands and 95 to more than 97 percent of the vernal pools in southern California. Further loss of special aquatic sites in southern California and Arizona could result in more than minimal cumulative impacts. To ensure that any impacts to special aquatic sites are offset by compensatory mitigation, the Los Angeles District would require PCN for any project that would impact a special aquatic site. The

Los Angeles District would not authorize the use of NWP 27 in special aquatic sites in Arizona and the desert regions of California. Certain watersheds and resources in the Los Angeles District support high physical and biological functions that are threatened by cumulative impacts at the watershed level. To ensure that NWP 27 would have minimal impacts to these resources, the Los Angeles District would require PCN for all projects in the Santa Monica Mountains, perennial watercourses and waterbodies in desert regions, and areas designated as Essential Fish Habitat. Given that this NWP rarely results in permanent impacts and that its required to result in environmental benefits, it would not be practicable in light of the workload of the Los Angeles District to further restrict its use. Including this restriction would only be expected to result in marginal environmental benefits, and the alternative has been dismissed from further consideration.

In conclusion, the majority of the projects that could be authorized under NWP 27 would result in minimal temporary impacts to the aquatic ecosystem, both individually and cumulatively. In fact, they would be expected to benefit aquatic resource functions and services over the long term. With the proposed regional conditions to NWP 27, the Los Angeles District would ensure that NWP 27 results in minimal impacts, both individually and cumulatively, on sensitive resources and watersheds, without a substantial increase in the District's workload. Based on the findings of the analyses above, the "Alternative Regional Nationwide Permit Conditions" have been eliminated from further consideration.

5.0 Endangered Species Act

5.1 General Considerations

NWP 27 authorizes the discharge of dredged or fill material for activities associated with the restoration, establishment, and enhancement of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net a increase in aquatic resource functions and services. To avoid and minimize impacts to the aquatic environment, the terms and conditions for NWP 27 contain several restrictions, including a PCN requirement (with a few exceptions). Additionally, this NWP does not authorize: stream channelization; the relocation of tidal waters or conversion of tidal waters to other aquatic uses; the conversion of a stream or natural wetlands to other aquatic habitat types or uplands, except for the relocation of non-tidal waters on the project site; or any future discharge of dredged or fill material associated with the reversion of the area to its prior condition, except per the reversion section of the NWP which requires a binding stream or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, USDA, FSA, NMFS, NOS, and USFS or in accordance with a Surface Mining Control and Reclamation Act permit issued by OSM, or an appropriate cooperating State agency. NWP 27 also requires the project proponent to submit a copy of the binding agreement between the landowner and the applicable agency or project description and location map; the NRCS or USDA Technical Service Provider documentation; or the SMCRA permit issued by OSM or applicable State agency to the Corps 30 days prior to commencing activities.

In southern California, many federally-listed species are residents or migratory users of wetlands and riparian areas. Because of this, activities authorized by NWP 27 could adversely affect federally listed as endangered or threatened species or designated critical habitat. These activities are likely to be short-term, occurring during construction and planting activities associated with the restoration, establishment, or enhancement of wetlands or riparian areas. These same projects are expected to have long-term benefits to federally listed species by improving the functions and services of the habitats that they utilize. In addition, these activities are often completed outside of the breeding season of most migratory species to take advantage of the dormancy of native species and the rainy season. Nonetheless, regional and general conditions are in place to ensure that impacts from the NWP program are minimal both individually and cumulatively, including those authorized by NWP 27.

General Condition 18 requires that the applicant submit to the Corps appropriate biological investigations and supporting documentation for an "effects determination" with respect to the 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. The District has substantial information, including maps, previous studies and survey data that document areas that support endangered species. The District is also very careful to inform all prospective applicants of the need to comply with the ESA. If the District has no available data for a proposed project, the applicant may be referred to the FWS or NMFS for additional information. When the District receives an application within the range of a listed species and/or the project area otherwise supports suitable habitat, the FWS or NMFS is contacted early in the review process. To facilitate compliance with the ESA, the District has coordinated with the FWS to complete programmatic consultations for several threatened and endangered species in Ventura, Santa Barbara, and San Luis Obispo counties.

Regional condition 4 requires a PCN for all projects in special aquatic sites as defined at 40 CFR Part 230.40-45, as well as for projects located in designated Essential Fish Habitat, the Santa Monica Mountains, and Santa Clara River watershed. The notification must be meet with General Condition 31 and Regional Condition 3, including appropriate biological investigations and supporting documentation for an "effects determination" with respect to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), under the Essential Fish Habitat (EFH) clause, for projects that may impact tidal waters. Such a requirement may trigger additional consultation with National Marine Fisheries Service pursuant to the MSFCMA.

The Corps ORM (OMBIL Regulatory Module) database shows that 32 of the 82 authorizations issued for NWP 27 (39 percent) between Fiscal Year 2009 through 2011 included the completion of formal, informal, or programmatic consultation with the USFWS pursuant Section 7 of the ESA or with NMFS pursuant to Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). Consultations often result in additional avoidance and minimization measure that reduce the potential for adverse effects on the species or designated critical habitat. The Corps works with the agencies and applicants to ensure that all practicable avoidance and minimization measures are agreed to and implemented appropriately. With the continuation of the existing agency coordination procedures, the development and implementation of Standard Local Operating Procedures for Endangered Species (SLOPES), and the inclusion of additional PCN

requirements, the use of NWP 27 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

5.2 Local Operating Procedures for Endangered Species

The Los Angeles District has various procedures for ensuring compliance with the ESA. In January 2003, the Corps, 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, Los Angeles District, Regulatory Branch and NOAA's National Marine Fisheries Service. 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 for 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 FWS or NMFS pursuant to Section 7 of the ESA. The District has completed several preliminary meetings with FWS and NMFS staff to determine the direction of further SLOPES discussions, and additional meetings will be conducted in the future.

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 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. As with the ESA requirements, per Regional Condition 4b, an applicant would be required to submit to the Corps the appropriate biological investigations and supporting documentation for an "effects determination" with respect to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), under the Essential Fish Habitat (EFH) clause, for projects that may impact tidal waters. Such a requirement may trigger additional consultation with National Marine Fisheries Service pursuant to the MSFCMA.

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.

6.0 National Historic Preservation Act

6.1 General Considerations

The Los Angeles District will ensure that activities authorized by NWP 27 will comply with the National Historic Preservation Act (NHPA). The District will review the latest version of the 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 Los

Angeles District 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 PCN 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 if 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

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 objective of projects authorized by NWP 27 must be to restore, establish and enhance aquatic habitat. Thus, these activities would be expected to increase the conservation value of aquatic resources. With the inclusion of the notification requirements in special aquatic sites and sensitive watersheds and resources, the temporary and minor impacts that generally result from these activities would be minimized and a net gain in functions and services should be realized.

(b) Economics: Same as discussed in the national document. Impacts would be minimal.

(c) Aesthetics: Same as discussed in the national document. Impacts would be minimal.

(d) General environmental concerns: In the Los Angeles District, a large number of federally listed threatened and endangered species require extensive coordination with the FWS and the NMFS. Furthermore, the semi-arid environment limits the number of special aquatic sites in the southern California and Arizona regions. With the continuation of the existing coordination procedures, the PCN requirements, and NWP exclusion areas, NWP 27 would have minimal adverse impacts on general environmental concerns in the Los Angeles District. The District expects activities that qualify for NWP 27 would benefit aquatic ecosystems over the long-term.

(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 precludes the development of wetlands in the majority of these desert regions. As a result, wetlands are especially rare in the District and warrant more rigorous protection. To ensure minimal impacts to wetland resources, PCN would be required for any activity discharging dredged or fill material into a special aquatic site, including wetlands in the State of Arizona and desert regions of California. The purpose of NWP 27 is to restore, establish, or enhance aquatic habitat functions and services and, in most cases, the activities authorized by this NWP benefit wetland resources immediately following project implementation. Therefore, activities authorized under NWP 27 may result in short-term impacts, but provide long-term gains in functions and services in wetlands and other aquatic habitats.

(f) Historic properties: Historic properties are common in the Los Angeles District because of the presence of extensive native-American and early settler archaeological resources and remains. Because a Corps permit constitutes a federal action, the Los Angeles District is mandated with ensuring that projects authorized comply with the NHPA. The Corps reviews each application for adequate historic property evaluations and reviews data to determine if

projects within the Corps action area "may affect" properties listed or eligible for listing in the NRHP. These determinations cannot be made until the Los Angeles District receives an application that clearly describes the baseline conditions of the project area, the proposed project, including its proposed impacts to aquatic and in some cases upland resources. Once historical information is received, the Los Angeles District contacts native-American tribes that may be affected and requests information that they are willing to share that may be affected by the proposed project. Once completed, the Los Angeles District consults with the SHPO and/or THPO. Due to the requirement for site-specific archeological and cultural resource data, the Corps must determine individual and cumulative effects on listed sites or sites eligible for listing during the processing of each application.

(g) Fish and wildlife values: In the arid Southwest, riparian habitat and wetlands represent a critically important resource for wildlife. In particular, streams offer linear oases in a typically xeric matrix of upland habitats. In the desert regions, streams support more densely vegetated areas with a higher diversity of plant species and provide food, water, and shelter for resident and migratory wildlife in these harsh environments. Streams and wetlands throughout the Los Angeles District provide critical feeding, nesting, and dispersal opportunities for wildlife in otherwise harsh or urbanized environments. Subsequently, these areas support a substantial number of rare and common species. NWP 27 is designed to authorize projects that would increase the functions and services of aquatic resources through restoration, establishment, or enhancement activities and thus indirectly improve conditions for wildlife after success project completion. These activities may have short-term adverse effects, but inherently NWP 27 provides long-term benefits to wildlife.

Stream, riparian and wetland habitat restoration or enhancement often requires some excavation, filling, and/or recontouring of the project area to achieve the appropriate patterns, depth, and duration of the hydrologic regime to support target habitats. Restoration activities could temporarily compromise the capacity of the existing habitats to perform their characteristic suite of functions and services, including support of wildlife. However, by definition restoration and enhancement projects are implemented in areas with some degree of degradation. In addition, these activities are typically short-term and ideally occur outside or at the end of breeding season (late summer or early fall) to take advantage plants entering dormancy (e.g. herbicide application is most effective when species are reabsorbing chlorophyll) or are fully dormant (i.e. for planting) and during the winter season for cooler soils and rain. Therefore, temporary impacts associated with NWP 27 authorizations would likely be minor and considered beneficial in light of the long-term benefits to aquatic habitat and the associated wildlife.

Establishment of aquatic habitat occurs as a result of the conversion of upland habitat. Upland conversions are typically not controversial, because aquatic habitat is scarcer, comprising approximately 2 percent of the southwestern landscape. Nevertheless, there are sensitive upland habitats, such as coastal sage scrub and native grasslands, which must be considered in evaluating potential establishment sites. While the activities associated with enhancement and restoration typically results in temporary displacement of wildlife until after the work is completed, establishment activities convert upland habitat in favor of aquatic habitat. Thus, the upland wildlife is forced to relocate to other upland habitat patches. Most establishment

activities utilizing upland habitats are relatively small projects proposed in disturbed areas and adjacent to existing wetland or riparian resources. Therefore, displacement of upland species is likely minimal and upland species often utilize adjacent riparian and wetland area for foraging, shelter, and dispersal as needed. This does not mean to ignore the fact that individuals of existing populations may experience some stress in the immediate vicinity of the project area, but those effects are difficult to quantify. It has been demonstrated in the Los Angeles District's that establishment sites have more difficulties meeting success criteria than restoration or enhancement projects. Therefore, establishment projects are expected to comprise a smaller percentage of activities receiving authorization under NWP 27. Considering these factors, the Los Angeles District expects that the impacts to wildlife from conversion of upland habitat to aquatic habitat would be minor.

To ensure authorization by NWP 27 have minimal impacts to wildlife species, Regional Condition 4 requires a PCN for all activities in special aquatic sites and perennial waters in the State of Arizona and desert regions of California, sensitive geographic areas (Santa Monica Mountains and the Santa Clara River watershed), and in all designated essential fish habitat. With implementation of the general and regional conditions, NWP 27 would result in minimal impacts to wildlife and fish.

(h) Flood hazards: With the dynamic storm season typical of southern California and parts of Arizona, large floods are a normal part of the hydrologic regime. Due to a general lack of soil development and vegetation coverage in semi-arid areas, peak discharges for very high-magnitude storm events are larger for dry land basins than similar-sized, humid basins. Wetlands and other aquatic habitats are capable of detaining storm flows, which can reduce peak discharges and diminish flood damages. Activities authorized under NWP 27 would restore, establish, or enhance wetlands and other aquatic habitats. Therefore, activities authorized by this NWP could provide additional long-term benefits of reducing flood hazards in the Los Angeles District.

(i) Floodplain values: Same as discussed in the national document. Impacts would be minimal.

(j) Land use: Same as discussed in the national document. Impacts would be minimal.

(k) Navigation: Same as discussed in the national document. Impacts would be minimal.

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

(m) Recreation: Same as discussed in the national document. Impacts would be minimal.

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

(o) Water quality: In the densely populated areas of southern California and Arizona, existing water quality in most streams and rivers are impaired by increased volume and velocity of urban

runoff from upland agricultural, residential, commercial, and industrial sources. Moreover, many of the riparian and wetland areas occurring along floodplains, which detain flows, reduce nutrient loading, and transform or fix contaminants, have been eliminated or severely degraded by anthropogenic activities. Recent estimates of riparian habitat losses in California range from 90 to over 95 percent. NWP 27 would authorize activities that restore, establish, and enhance stream and wetland habitat. While there could be short-term, adverse effects associated with effecting each restoration, establishment, and enhancement project, these projects would benefit water quality over the long-term. Furthermore, the short-term, adverse impacts on water quality associated with each project would be minimized through the Section 401 Water Quality Certification process (i.e., administered by the State Water Resources Control Board in California, and the Department of Environmental Quality in Arizona). The Los Angeles District also has authority to add special conditions to NWP authorizations to minimize short-term effects on water quality through implementation of best management practices, project phasing, design, or other appropriate measures.

(p) Energy needs: Same as discussed in the national document. Impacts would be minimal.

(q) Safety: With the dynamic storm season typical of southern California and parts of Arizona, large floods are a normal part of the hydrologic regime. Due to a general lack of soil development and vegetation coverage in semi-arid areas, peak discharges for very high-magnitude storm events are larger for dry land basins than similar-sized, humid basins. Wetlands and other aquatic habitats are capable of detaining storm flows, which can reduce peak discharges and diminish flood damages. Activities authorized under NWP 27 would restore, establish, or enhance wetlands and other aquatic habitats. Therefore, activities authorized by this NWP could provide additional long-term benefits of reducing flood hazards and improving safety during the storm season in the Los Angeles District.

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

(s) Mineral needs Same as discussed in the national document. Impacts would be minimal.

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

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: Depending on specific restoration activities authorized by NWP 27, excavation native or fill material, filling with imported material, and/or recontouring of existing substrate is often required. These physical changes to the landscape could be short-term or permanent. Many

of these activities would change the depth, duration, and timing of water on the project area, which could change the substrate composition over the long-term (i.e., in some cases, the hydrologic regime would be altered to detain water and foster the deposition of finer sediments). In areas that are already aquatic, these changes would likely be minor. In other cases, natural substrates would be stabilized with minimal amount rock and plantings to rectify unnatural erosion and sedimentation of streambeds and banks caused by increased volume and velocity of surface waters in the watershed due to urbanization or other factors. Stabilizing these substrates through restoration and bioengineering to mimic natural sediment transport is beneficial the aquatic environment, particularly to water quality where fine sediment is considered a pollutant. In upland areas where wetlands are being established, the substrate composition would become finer over time. Because upland habitat and the associated substrate is generally not a diminishing resource in the arid Southwest, these substrate alterations would result in minimal substrate effects. To ensure minimal impacts in special aquatic sites and perennial waters in the State of Arizona and desert regions of California, EFH and certain sensitive watershed areas, additional PCN requirements would be required for all NWPs, including NWP 27. With the inclusion of these PCN requirements and exclusions, NWP 27 would result in minimal impacts to substrate throughout the Los Angeles District, both individually and cumulatively.

(b) Suspended particulates/turbidity: In the densely populated areas of southern California and Arizona, existing turbidity levels in most streams and rivers are impaired by increased volume and velocity of urban runoff from upland agricultural, residential, commercial, and industrial sources. Moreover, many of the riparian and wetland areas occurring along floodplains, which detain flows and foster the deposition of particulates, have been eliminated or severely degraded by anthropogenic activities. Recent estimates of riparian habitat losses in California range from 90 to over 95 percent. NWP 27 would authorize activities that enhance, restore, and establish ne floodplain wetlands and riparian habitats. While there could be short-term, adverse effects associated with effecting each restoration, establishment, and enhancement project, these projects would benefit water quality over the long-term. Furthermore, the short-term, adverse impacts on water quality associated with each project would be minimized through the Section 401 Water Quality Certification process (i.e., administered by the State Water Resources Control Board in California, and the Department of Environmental Quality in Arizona). The Los Angeles District also has authority to add special conditions to NWP authorizations to minimize turbidity and other water quality impacts through implementation of best management practices, project phasing, design, or other appropriate measures.

(c) Water: Same as discussed in the national document. Impacts would be minimal.

(d) Current patterns and water circulation: In the coastal watersheds of the Los Angeles District, modifications to currents and water circulation could affect spawning of southern steelhead. As a result, activities authorized under NWP 27 should not adversely reduce the cross-sectional area of stream channels or adversely modify the existing gradient of stable stream channels. However, NWP 27 could authorize restoration of natural stream channel cross sections and gradients to facilitate or restore fish passage. Modifying stream cross sections could affect existing riparian resources and should, under the requirements of NWP 27, result in a net increase in functions and services through the restoration floodplain wetland and riparian habitats. Nonetheless, Los

Angeles District has established several regional conditions to minimize the possibility of adverse effects to sensitive watersheds, such as the Santa Clara River watershed, and resources that support southern steelhead (watersheds within the Santa Monica Mountains northward to the San Luis Obispo County/Monterey County boundary), essential fish habitat, and perennial waters and special aquatic sites in the State of Arizona and desert regions of California. NWP 27 has been used to restore tidal influence to degraded or impounded estuaries and lagoon along the coast of southern California for the purpose of restoring tidal, sub-tidal, and salt marsh habitats and fish usage. The limited activities authorized by NWP 27 coupled with the regional conditions restricting activities in sensitive geographic areas and aquatic sites, would ensure that the effect of authorizations on current patterns and circulation in waters of the U.S. are minimal individually and cumulatively.

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

(f) Salinity gradients: Same as discussed in the national document. Impacts would be minimal.

(g) Threatened and endangered species: By definition, restoration and enhancement activities that would be authorized under NWP 27 would take place in aquatic habitats with a reduced or lowered capacity to perform certain functions and services. These areas typically support habitat that is less suitable for most threatened and endangered species. Per NWP 27, these activities must result in a net gain in functions and services, which could be more capable of providing habitat to wildlife species, including threatened and endangered species. However, given the large number of federally-listed species in the Los Angeles District, restoration, enhancement, and establishment projects often take place adjacent to other habitat that may support, or be suitable to support, threatened and endangered species. The Corps ORM database shows that 32 of the 82 authorizations issued for NWP 27 (39 percent) between Fiscal Year 2009 through 2011 included the completion of formal, informal, or programmatic consultation with the USFWS pursuant Section 7 of the ESA. Consultations often result in additional avoidance and minimization measure that reduce the potential for adverse effects on the species or designated critical habitat. The Corps works with the agencies and applicants to ensure that all practicable avoidance and minimization measures are agreed to and implemented appropriately. The Corps would continue to coordinate with FWS and NMFS ensure minimal impacts to threatened and endangered species. With the continuation of the existing coordination procedures, the continued development and implementation of SLOPES, and the inclusion of additional PCN requirements, the Los Angeles District would ensure project activities authorized under NWP 27 comply with the ESA. Therefore, the use of NWP 27 would have minimal impacts on threatened and endangered species in the Los Angeles District pursuant with the ESA.

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

(i) Other wildlife: In the arid Southwest, riparian habitat and wetlands represent a critically important resource for wildlife. In particular, streams offer linear oases in a typically xeric matrix of upland habitats. In the desert regions, streams support more densely vegetated areas

with a higher diversity of plant species and provide food, water, and shelter for resident and migratory wildlife in these harsh environments. Streams and wetlands throughout the Los Angeles District provide critical feeding, nesting, and dispersal opportunities for wildlife in urbanized environments. Subsequently, these areas support a substantial number of rare and common species. NWP 27 is designed to authorize projects that would increase the functions and services of aquatic resources through restoration, establishment, or enhancement activities and thus indirectly improve conditions for wildlife after successful project completion. However, stream, riparian and wetland habitat restoration or enhancement often requires some excavation, filling, and/or recontouring of the project area to achieve the appropriate patterns, depth, and duration of the hydrologic regime to support target habitats. Restoration activities could temporarily compromise the capacity of the existing habitats to perform their characteristic suite of functions and services, including support of wildlife. These activities are typically short-term and ideally occur outside or at the end of breeding season (late summer or early fall) to take advantage plants entering dormancy (e.g. herbicide application is most effective when species are reabsorbing chlorophyll) or are fully dormant (i.e. for planting) and during the winter season for cooler soils and rain. Therefore, temporary impacts associated with NWP 27 authorizations would likely be minor and considered beneficial in light of the long-term increases in functions and services of aquatic habitat and the associated wildlife.

Establishment of aquatic habitat occurs as a result of the conversion of upland habitat. Upland conversions are typically not controversial, because aquatic habitat is scarcer, comprising approximately 2 percent of the southwestern landscape. Nevertheless, there are sensitive upland habitats, such as coastal sage scrub and native grasslands, which must be considered in evaluating potential establishment sites. While the activities associated with enhancement and restoration typically results in temporary displacement of wildlife until after the work is completed, establishment activities convert upland habitat in favor of aquatic habitat. Thus, the upland wildlife is forced to relocate to other upland habitat patches. Most establishment activities utilizing upland habitats are relatively small projects proposed in disturbed areas and adjacent to existing wetland or riparian resources. Therefore, displacement of upland species is likely minimal and upland species often utilize adjacent riparian and wetland areas for foraging, shelter, and dispersal as needed. This does not mean to ignore the fact that individuals of existing populations may experience some stress in the immediate vicinity of the project area, but those effects are difficult to quantify. It has been demonstrated in the Los Angeles District that establishment sites have more difficulties meeting success criteria than restoration or enhancement projects. Therefore, establishment projects are expected to comprise a smaller percentage of activities receiving authorization under NWP 27. Considering these factors, the Los Angeles District expects that the impacts to wildlife from conversion of upland habitat to aquatic habitat would be minor.

To ensure authorization by NWP 27 have minimal impacts to wildlife species, Regional Condition 4 requires a PCN for all activities in special aquatic sites and perennial waters in the State of Arizona and desert regions of California, sensitive geographic areas (Santa Monica Mountains and the Santa Clara River watershed), and in designated essential fish habitat. With implementation of the general and regional conditions, NWP 27 would result in minimal impacts to wildlife and fish.

(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. Impacts would be minimal.

(2) Wetlands: In the Los Angeles District, the existing 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 precludes the development of wetlands in the majority of these desert regions. Furthermore, more than 90 percent of wetlands in California have been lost or severely degraded by historic conversion to agricultural uses, grading and filling activities. As a result, wetland areas are especially rare and warrant more rigorous protection. To ensure minimal impacts to wetland resources, the District would require PCN for any activity discharging dredged or fill material in a special aquatic site, including wetlands in the State of Arizona and desert regions of California. In addition, if the success of a proposed vernal pool 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. With the inclusion of regional conditions, NWP 27 would have minimal impacts to wetlands in the Los Angeles District.

(3) Mud flats: In the Los Angeles District, historic coastal development activities, such as filling for harbor or marina development and land conversion to agriculture, have reduced the extent and number of mudflat resources, which are often associated with wetlands. More than 90 percent of wetlands, including coastal wetlands, in California have been lost or severely degraded by historic conversion to agricultural uses, grading, and filling activities. Mudflats are not typically classified as wetlands, because they are rarely vegetated, but they are recognized as a special aquatic site due to their high resource value. They have suffered from many of the same activities that have eliminated and severely degraded wetlands; therefore, they have become an especially rare in the Los Angeles District and warrant more rigorous protection. To ensure minimal impacts to mudflats, the Los Angeles District would require notification for an activity discharging dredged or fill material in a special aquatic site, including mudflats in the State of Arizona and desert regions of California. With the inclusion of this modification, NWP 27 would have minimal impacts to mudflats in the Los Angeles District.

(4) Vegetated shallows: Historic agricultural and construction activities have reduced the extent and number of vegetated shallows in the Los Angeles District. Vegetated shallows, such as eelgrass and *Spartina* marshes in estuarine areas, and *Typha/Carex/Juncus* marshes more commonly found in freshwater areas, have been lost and degraded in southern California through extensive conversion by agricultural and development interests. As a result, vegetated shallows are especially rare in the Los Angeles District and warrant more rigorous protection. To ensure minimal impacts to vegetated shallows, the Los Angeles District would require notification for any activity discharging dredged

or fill material in a special aquatic site, including vegetated shallows in the State of Arizona and desert regions of California. With the inclusion of this modification, NWP 27 would have minimal impacts to vegetated shallows in the Los Angeles District.

(5) Coral reefs: Same as discussed in the national document. Impacts would be minimal.

(6) Riffle and pool complexes: In the semi-arid environment of southern California and Arizona, limited water resources and the need for flood control have led to the construction of numerous dams in the mountains. With the construction of these large dams, many riffle-and-pool complexes have been eliminated by the large reservoirs. Construction of the dams also modifies the hydrologic regime of rivers, which can degrade downstream riffle-and-pool complexes. As a result, riffle-and-pool complexes are especially rare in the Los Angeles District and warrant more rigorous protection. To ensure minimal impacts to riffle-and-pool complexes, a PCN is required for any activity discharging dredged or fill material in a special aquatic site, including riffle-and-pool complexes in the State of Arizona and desert regions of California. With the inclusion of this modification, NWP 27 would have minimal impacts to riffle-and-pool complexes in the Los Angeles District.

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

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

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

(n) Aesthetics: Same as discussed in the national document. Impacts would be minimal.

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas:

Based on a review of the different public interest factors and resource categories above, the Los Angeles District has concluded that use of NWP 27 will result in no more than minimal individual and cumulative adverse effects on the aquatic environment, assuming the NWP program terms and conditions are met as well as the regional conditions. The regional conditions, though, are expected to ensure that projects within sensitive areas will not have more than minimal impacts. Again, it should be mentioned that, during the process, the district engineer may add special conditions on a case-by-case basis to ensure minimal adverse impacts or exercise discretionary authority by requiring an SIP for those activities resulting that may result in more than minimal individual and cumulative adverse effects on the aquatic environment. If, at a later time, there is clear, unequivocal evidence that NWP 27 would result in more than minimal adverse effects on the aquatic environment, individually and cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will

be used.

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

The cumulative effects of NWP 27 on the aquatic environment are dependent upon the number of times the NWP is used, the category of ecological restoration activities completed (e.g. restoration, establishment, or enhancement), and the quantity and quality of waters of the United States at baseline (pre-project) relative to post-project conditions. Impacts to aquatic resources authorized by the Los Angeles District's permit actions are tracked using the ORM database. This includes both temporary and permanent impacts. Impact 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 60 times per year based on 190 authorizations issued over the past three year period.

The majority of NWP 27 authorizations are for minor temporary and permanent impacts to enhance or restore overall stream or wetland functions and services. Of the 82 authorizations issued, three large-scale restoration projects resulted in 95 percent of acreage (956 acres) of impacts authorized. Impacts associated with the three large wetland restoration projects were recorded as permanent, resulting from authorized fill and authorized removal. The fill in open water and degraded tidal and freshwater marsh for these three projects was authorized because the wetlands were historically deepened for the purposes of mining salt, other natural resources, or otherwise degraded. The fill material was used to restore a suite of topographic elevations supporting naturally functioning fresh water and tidal hydrologic regimes and specific wetland habitats, marsh channels, and open water. For the same purposes, excavation was authorized where fill material had been historically deposited or sediment had accumulated and wetland functions and services were degraded. At this time, post-project acreages and functional assessment data are not captured by the ORM database. However, in these three cases a substantial net gain in wetland acreage, functions and services was anticipated.

ORM data for the remaining 79 authorizations totaled 156 acres or 35,571 linear feet of temporary and permanent impacts associated with wetland or stream restoration or enhancement projects. Of the 35,571 linear feet of streambed impacted by these authorizations, 83 percent (29,417 linear feet) were temporary as a result of restoration and enhancement activities. The net gain in overall stream functions and services of these activities is unknown. Tracking the net gain in functions and services would be useful to fully evaluate the benefits of NWP 27 on stream restoration and enhancement activities and provide future guidance on the effectiveness of specific ecological restoration techniques. However, per the requirements of NWP 27 it can be assumed that these 35,571 linear feet have improved functions and services post-project.

The Corps ORM database currently does not track functions and services of aquatic resources thus a comparison of baseline (pre-project) versus post-project conditions cannot be efficiently completed. In addition, the Corps ORM database does not allow for recording the categories of restoration activities authorized (i.e. rehabilitation, re-establishment, and enhancement) or the

acreage of establishment. These activities can result in a substantially different effect on the acreage, functions and services of aquatic resources. In enhancing, restoring, or establishing stream or wetland habitat, it is often necessary to perform some excavation, filling, and/or recontouring of the project area to achieve the appropriate patterns, depth, duration, and timing of water on the project site to ensure success. These types of activities temporarily compromise the capacity of these project areas to perform their characteristic suite of functions and services. In some of these projects, water control structures, water deflectors, rock riprap, or other structures or hardscape that permanently impact waters of the U.S., including wetlands, are required to control the project area's hydrology or physical conditions. Structures are common in ecological restoration projects in Los Angeles District as a result of the urbanized condition of many watersheds, resulting in an increase in the volume and velocities of surface waters and a decrease in natural sediments. Regardless of whether temporary or permanent impacts occur in a project area, the long-term goal is to restore, enhance, and in some cases establish aquatic functions and services provided by the project areas. This NWP requires a net gain in project area functions and services, with the exception of projects that meet with the reversion provision. Therefore, the Los Angeles District expects that activities authorized under this NWP have and would continue to result in minimal adverse effects on the aquatic environment, individually and cumulatively.

The terms and conditions of the NWP, including the PCN requirements, reporting requirements for activities on private and public land that would be conducted in accordance with a binding agreement between the landowner and the FWS, NRCS, USDA, FSA, NMFS, NOS, USFS or in accordance with a Surface Mining Control and Reclamation Act permit issued by OSM, or an appropriate State agency, and the regional conditions discussed in this document will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters are further protected by the restrictions in General Condition 22 and Los Angeles District regional conditions. 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 the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively.

If, at a later time, there is clear, unequivocal evidence that 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.

10.0 List of Final Corps Regional Conditions for NWP 27

10.1 Regional condition 1

For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river,

including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.

10.2 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 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 a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to 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.

10.3 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 - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall 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.

10.4 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 NWPs 5, 6, and 27 with the submission of a PCN in accordance with General Condition 31 and Regional Condition 3.

10.5 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 NWPs 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.

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 NWPs 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 PCN 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, and the PCN requirements of the NWP. Through the PCN 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 PCN process, the district engineer will exercise discretionary authority and require an SIP for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

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.