

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 33**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 33, 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 33:

Temporary Construction, Access and Dewatering. Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR Part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404).

Summary of changes to NWP 33 from 2007:

A separate Section 10 permit is now required if a structure is to be left in navigable waters after construction is completed.

1.0 Background

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

2.0 Consideration of Public Comments

2.1 General Comments

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

2.2 Comments on Proposed Regional Conditions

2.2.1 Proposed Regional Condition 1

Please see the attached response to comments document.

2.2.2 Proposed Regional Condition 2

Please see the attached response to comments document.

2.2.3 Proposed Regional Condition 3

Please see the attached response to comments document.

2.2.4 Proposed Regional Condition 4

Please see the attached response to comments document.

2.2.5 Proposed Regional Condition 5

Please see the attached response to comments document.

2.2.6 Proposed Regional Condition 6

Please see the attached response to comments document.

2.2.7 Proposed Regional Condition 7

Please see the attached response to comments document.

2.2.8 Proposed Regional Condition 8

Please see the attached response to comments document.

2.2.9 Proposed Regional Condition 9

Please see the attached response to comments document.

2.2.10 Proposed Regional Condition 10

Please see the attached response to comments document.

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

3.1 Waters excluded from use of this NWP

3.1.1 Jurisdictional Vernal Pools (Regional Condition 5)

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

activities.

The Los Angeles District Regulatory Branch previously determined that the 0.5-acre SIP threshold for vernal pool impacts (established by the District in 1997) would not adequately protect remaining vernal pool resources in the region. It is estimated that 95 to more than 97 percent of the vernal pools that historically existed in the region have been lost through urbanization or agricultural practices (USFWS 1998); in some counties the loss is virtually total. Under the new and modified NWP, a single and complete project could impact up to 0.5 acre of vernal pool habitat and be considered for NWP authorization. The District had previously been using a 0.5-acre SIP threshold for vernal pool impacts since 25 November 1997 (previous District Regional Condition 1). Despite the establishment of this earlier regional condition, the District experienced additional losses of vernal pool habitat, requiring the establishment of Regional Condition 5 as part of the 2000, 2002 and 2007 NWP Programs. Within the boundaries of the Los Angeles District, the sizes of jurisdictional vernal pools generally range from approximately 200 to 4,900 square feet (e.g. 0.00459 to 0.11248 acre). Therefore, 0.5 acre of vernal pools could include a large vernal pool complex or individual pools made up of 5 to 100 pools. Compounding this situation, mitigation for vernal pool impacts is not well developed, and often takes the form of preservation and enhancement of remaining pools, resulting in a continued net loss of vernal pool acreage, functions and services. The SIP review process includes an analysis of the propriety of the proposed fill in a special aquatic site pursuant to the 404(b)(1) Guidelines.

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

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

jurisdictional vernal pools (with the exception of activities associated with the restoration, enhancement, management or scientific study), would provide additional assurances that the activities permitted under the NWP's would result in minimal impacts on both an individual and cumulative basis in the Los Angeles District.

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

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

Reason for Exclusion: Regional Condition 8 would exclude the use of selected NWP authorizations within all jurisdictional waters of the San Diego Creek, San Juan Creek, and western San Mateo Creek and their tributaries within three watersheds. This decision to revoke selected NWP's 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 NWP's 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 NWP's 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 NWP's 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 NWP's 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 NWP's 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

Nationwide Permit 33 requires that the permittee submit a pre-construction notification to the district engineer prior to commencing the activity. This pre-construction notification is a requirement for all construction, access, and dewatering activities proposed within any water of the United States. Consequently, regional conditions requiring NWP pre-construction notification within specific watersheds and essential fish habitat in the Los Angeles District (Regional Condition 4a-d) would not provide additional protection under NWP 33.

4.0 Alternatives

4.1 No Regional Conditions

Although NWP 33 requires notification regardless of acreage of impacts, it could result in more than minimal impacts to special aquatic sites and vernal pools in the Los Angeles District without the proposed Regional Conditions 2 and 5 in place. Historically, there has been a 95 to more than 99 percent loss of vernal pool habitat in the southern California area and similar losses of special aquatic sites, including wetlands across the Los Angeles District as a whole. Without Regional Condition 3, there would be no database from which project managers could view all projects within a watershed to aid in cumulative effects determinations. Without these regional conditions, further losses would have more than minimal impacts both individually and cumulatively and therefore this alternative was not considered any further in this alternatives analysis. Without Regional Condition 8, special aquatic sites within SAMPs would not be afforded the extra protection provided by a 404(b)(1) analysis, as this regional condition requires impacts normally authorized under NWP 33 to be authorized under alternative permitting procedures.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

Discharges of dredged or fill material under NWP 33 are not limited to any specific acreage of waters of the U.S., but only temporary discharges of dredged or fill material are authorized. Notification is always required pursuant to the terms of NWP 33. The General and Regional Conditions place further limitations on the use of NWP 33.

In the past, the use of NW33 was prohibited in special aquatic sites within the State of Arizona and the desert regions of California. Since NWP 33 does not authorize the permanent impacts to waters of the U.S., there is no net loss of aquatic resources due to the use of NWP 33. Proposed regional condition 8 limits the use of NWP 33 within Special Area Management Plans (SAMPs).

Projects requiring activities that would be authorized under NWP 33 would be reviewed under the SIP process, which would include a 404 (b)(1) alternatives analysis. This alternative ensures the proposed project would have minimal impacts, both individually and cumulatively, to special aquatic sites in the desert regions of the Los Angeles District.

To further ensure NWP 33 would have minimal impacts to aquatic resources, both individually and cumulatively, the Los Angeles District could prohibit the use of NWP 33 in all special aquatic sites in the Los Angeles District. 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 indicates there could be a need for the review of any project that would discharge dredged or fill material in a special aquatic site under the 404(b)(1) Guidelines and the public interest factors to ensure no adverse impacts to special aquatic sites.

However, as discussed above, notification is always required for NWP 33, and the District Engineer has the ability to assert discretionary authority to require an individual permit in areas with high value aquatic resources such as SAMPs. In addition, activities authorized under NWP are by definition temporary and thus should not result in any “loss” of aquatic resources as defined in 40 CFR Part 230.40-45. When considering the inclusion of the constraints on NWP 33 from the General Conditions, a regional condition that precluded all discharges in special aquatic sites would unnecessarily increase our workload to review small-scale, temporary impacts. As a result, this proposed modification would not be practicable and would result in relatively minor environmental benefits to the aquatic ecosystem.

4.3 Alternative Regional Nationwide Permit Conditions

To further ensure NWP 33 would have minimal impacts to aquatic resources, both individually and cumulatively, the Los Angeles District could require agency coordination prior to issuing any NWP 33 verification to solicit comments from other resource agencies such as EPA, USFWS, and NMFS. Requiring notification to the Los Angeles District and resource agencies for all projects authorized under NWP 33 would substantially increase the workload for the Los Angeles District without any commensurate benefits to aquatic resources, particularly in light of the fact that use of NWP 33 generally results in very minor temporary impacts. As a result, the Los Angeles District has determined the above alternative notification requirement would not be practicable and would result in only minor additional benefits to aquatic resources. With the pre-construction notification requirements and the proposed regional conditions, the Los Angeles District would ensure that NWP 33 has minimal impacts on both sensitive resources and watersheds without a resulting in a substantial increase in workload or an unnecessary imposition on the regulated public.

5.0 Endangered Species Act

5.1 General Considerations

NWP 33 authorizes the discharge of fill material into waters of the United States for temporary construction, access, and dewatering activities. To avoid and minimize impacts to the aquatic

environment, the terms and conditions for NWP 33 contain several restrictions including requirements that the disturbance be only temporary in nature and the need for pre-construction notifications for all proposed projects. In addition, the new General and Regional Conditions would provide further limitations on the use of NWP 33 in sensitive aquatic ecosystems that may harbor endangered species, such as vernal pools. With these constraints, NWP 33 would result in minimal adverse impacts to threatened and endangered species, both individually and cumulatively, in the majority of the Los Angeles District. With no Regional Conditions for NWP 33, there would be a potential for more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The Regional Conditions for NWP 33 specify notification pursuant to General Condition 31 for all projects, including projects proposed within designated Essential Fish Habitat. Given the temporary nature of impacts authorized under NWP 33, coupled with the inclusion of these proposed notification requirements, the potential for any long-term minor impacts to endangered and threatened species in the Los Angeles District would be further reduced. In addition, given the large number of listed species in Los Angeles District, continued coordination with USFWS and NMFS is required to ensure minimal impacts to endangered species. With the continuation of the existing informal coordination procedures, the development and implementation of SLOPES, and the requirement for notification for all proposed actions, the use of NWP 33 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

In southern California and State of Arizona, the large number of listed species has made the public more aware of the need to contact the U.S. Fish and Wildlife Service (USFWS) and the national Marine Fisheries Service (NMFS) for many proposed projects. In addition, General Condition 18 requires the applicant to contact the Corps if their proposed project may affect a threatened or endangered species or critical habitat. The Los Angeles District has substantial information, including maps, previous studies and survey data that document areas that support endangered species. The Los Angeles District has also made substantive efforts to inform all prospective applicants of the need to comply with the ESA. If the Los Angeles District has no available data for a proposed project, the applicant will often be referred to the USFWS or NMFS for purposes of seeking additional information. When the Los Angeles District receives an application within the range of a listed species and/or the project area otherwise supports suitable habitat, the USFWS or NMFS is contacted early in the review process. To facilitate compliance with the Endangered Species Act (ESA), the Los Angeles District has coordinated with the USFWS to complete programmatic consultations for several threatened and endangered species in Ventura, Santa Barbara, and San Luis Obispo counties.

As proposed, the NWP general and regional conditions ensure that project compliance with other federal statutory requirements is achieved. 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. (It should be noted that the Los Angeles District has an obligation to ensure all federal project activities authorized

under the NWP's comply with the ESA and use of the NWP's shall be determined to have minimal impacts on threatened and endangered species in the Los Angeles District, pursuant to the ESA).

5.2 Local Operating Procedures for Endangered Species

The Los Angeles District has various procedures for ensuring compliance with the ESA. Special Local Operating Procedures (SLOPES) formalize additional procedures between agencies to enable the agencies to ensure better compliance with the ESA. With the implementation of SLOPES, these procedures could be formally documented, facilitating the compliance the NWP's with the ESA. It is anticipated there will be many situations that will not be addressed by SLOPES and a case-by-case determination will be made regarding consultation with the USFWS or NMFS pursuant to Section 7 of the ESA. In January 2003, the Corps, 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 NWP's that may adversely affect Essential Fish Habitat have been addressed by the General Concurrence dated August 5, 2003 and a Programmatic Consultation that was completed by the Corps of Engineers, Los Angeles District, Regulatory Branch and NMFS. The District has completed conducted several preliminary meetings with USFWS 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 Endangered Species Act (ESA). Per General Condition 18, if the Federal Action were determined to have a potential effect on a federally listed species, or its designated critical habitat, consultation would be required pursuant to Section 7 of the ESA. (It should be noted that the Los Angeles District would ensure all federal project activities authorized under the NWP's comply with the ESA and use of the NWP's shall be determined to have minimal impacts on threatened and endangered species in the Los Angeles District, pursuant to the ESA).

6.0 National Historic Preservation Act

6.1 General Considerations

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

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

6.2 Local Operating Procedures for National Historic Preservation Act

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

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

Prior to the issuance of the Los Angeles District's public notice announcing the proposed rule for the 2012 NWPs and our proposed regional conditions, all federally recognized tribes within 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 pre-construction notification and/or conducting consultation with Tribes for specific activities in a particular geographic area. If coordination with recognized tribes is required the District Engineer will obtain a list of recognized tribes from the Native American Heritage Commission. From that list provided the District Engineer will initiate a 30-day coordination period to obtain comments on the project. The District Engineer will review comments and address as appropriate.

8.0 Essential Fish Habitat

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

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

9.0 Supplement to National Impact Analysis

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: Only temporary discharges of dredged or fill material are allowed under NWP 33. Notification is always required for NWP 33, allowing the district engineer to require activity specific special conditions or an individual permit if the impacts would be more than minimal. The general conditions would provide further limitations on the use of NWP 33 in waters of the U.S. Due to the above constraints, NWP 33 would result in minimal impacts to conservation, both individually and cumulatively, in the majority of the Los Angeles District. Regional conditions for NWP 33 would preclude discharges of dredged or fill material in jurisdictional vernal pools. With the exclusion of NWP 33 in special aquatic sites and sensitive watersheds or other aquatic resources, the above long-term minor impacts to conservation in the Los Angeles District would be further reduced, resulting in minor cumulative impacts.

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

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

(d) General environmental concerns: In the Los Angeles District, numerous threatened or endangered species require extensive coordination with USFWS and NMFS. The semi-arid environment limits the extent of aquatic resources in the southern California/Arizona area. Regional conditions for NWP 33 would preclude discharges of dredged or fill material in jurisdictional vernal pools. With the exclusion of NWP 33 in certain special aquatic sites and sensitive watersheds or other rare, high value aquatic resources, long-term minor adverse impacts on general environmental concerns in the Los Angeles District would be further reduced, resulting in minor effects both individually and cumulatively.

(e) Wetlands: In the Los Angeles District, the semi-arid climate limits the extent and number of wetland resources. This scarcity of wetlands is especially evident in Arizona and in the desert regions of California. In these areas, annual precipitation is usually below 10 inches, which often precludes the development of wetlands. As a result, special aquatic sites, such as wetlands, are relatively rare in the Los Angeles District and warrant more substantial and rigorous protection. In addition, vernal pools are an extremely rare type of wetland within the Los Angeles District and for which even temporary impacts may be difficult to restore. To ensure that the Nationwide Permit Program will continue to result in only minor adverse impacts to the regional aquatic resources, the Los Angeles District would preclude the use of NWP 33 in vernal pools. With the inclusion of this regional condition and with the mandatory PCN requirement for all NWP 33 actions, the Los Angeles District is able to fully confirm that NWP 33 will have no long or short-term minor impacts, both individually and cumulatively, to wetland resources in the Los Angeles District.

(f) Historic properties: Known and unknown historic properties and cultural resources occur in many areas of throughout the Los Angeles District. Given the scarcity of permanent water sources, the aquatic resources in the region attracted many of the historic and prehistoric settlers in the region. The evidence left behind by these settlers is typically associated with these aquatic resources that are found within the landscape. As such, this historic and cultural evidence, may be affected by projects proposed for authorization under NWP 33. Section 106 of the NHPA requires any federal action agency to determine the eligibility of any known or discovered

cultural resources that may be affected by the agency's action, and coordinate with the SHPO/THPO for purposes of ascertaining the project affects on these properties. Because projects that may potentially be authorized under NWP 33 are brought to the attention of the Corps only when there is a specific need for a proposed project, and because the project's relationship to the cultural resource may not be known until appropriate surveys are conducted, the Los Angeles District is unable to state with any specificity which and to what extent any of these historic and/or cultural resources may be affected. The Los Angeles District can state with certainty that coordination with the SHPO/THPO and the implementation of all appropriate and necessary mitigation measures that all projects authorized under NWP 33 would result in only minor adverse impacts to historic properties.

(g) Fish and wildlife values: Only temporary discharges of dredged and/or fill material into waters of the United States are allowed under NWP 33. Notification is always required for NWP 33, allowing the district engineer to perform project specific reviews and in appropriate circumstances, require an individual permit if the expected impacts would be more than minimal either individually or cumulatively. In addition, the General Conditions would provide further limitations on the use of NWP 33 in waters of the U.S. Regional Condition 5 would preclude use of NWP 33 in any jurisdictional vernal pool, a rare and unique type of wetland. Regional Condition 8 would preclude use of NWP 33 in the San Diego Creek and San Juan Creek/Western San Mateo Creek SAMP areas and require alternative permitting procedures such as 404 LOPs or to be reviewed under the SIP process which includes a 404 (b)(1) alternatives analysis. With the inclusion of this regional condition there would be a reduction in, the long-term minor adverse impacts to fish and wildlife values in the Los Angeles District.

(h) Flood hazards: With the dynamic nature of the season weather patterns typically experienced in southern California and the State of Arizona, large, flashy 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 potentially larger for dryland basins than similar-sized basins found in more humid regions. NWP 33 authorizes no permanent impacts, therefore, projects authorized by NWP 33 should not increase flood hazards or flood potential within the Los Angeles District.

(i) Floodplain values NWP 33 authorizes no permanent impacts, therefore, projects authorized by NWP 33 should have limited affect on floodplain values associated with the various aquatic resources found within the Los Angeles District.

(j) Land use: Only temporary discharges of dredged and/or fill material into waters of the United States are authorized under NWP 33. Therefore, changes of land use cannot be attributed to activities authorized under this NWP.

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

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

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

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

(o) Water quality: In the heavily populated areas of southern California and the State of Arizona, existing water quality in most rivers is impaired by surface water runoff from upland agricultural, residential and industrial sources. Only temporary discharges of dredged or fill material into waters of the United States are authorized under NWP 33. Pre-construction is a specific requirement for all activities seeking verification under this NWP. Furthermore, the General Conditions would provide further limitations on the use of NWP 33 in waters of the U.S. Regional condition 5 would preclude discharges of dredged or fill material in jurisdictional vernal pools. Regional condition 8 requires revokes the issuance of NWP 33 in the San Diego Creek and San Juan Creek/Western San Mateo Creek SAMP areas. Instead, impacts to water quality which would normally be authorized under this NWP must now be reviewed under alternative permitting procedures including 404 LOPs or the SIP process.

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

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

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

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

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

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

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

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

(a) Substrate: With NWP 33, there would be short-term adverse impacts to channel substrate in the immediate vicinity of the temporary construction, access and/or dewatering activities. NWP 33 would only authorize temporary discharges of dredged or fill material into waters of the United States. All activities seeking verification under NWP 33 require notification to the Corps, allowing the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. Furthermore, the General Conditions place limitations on the use of NWP 33 in waters of the U.S. Due to the above constraints and requirements, NWP 33 would result in minimal adverse impacts to substrate, both individually and cumulatively, in the majority of the Los Angeles District.

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

activities often augment turbidity levels in waters of the United States. However, these activities would generally only result in short-term minor changes in baseline turbidity levels. NWP 33 would only authorize temporary discharges of dredged or fill material into waters of the United States. All activities seeking verification under NWP 33 require notification to the Corps, allowing the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. Furthermore, the General Conditions place limitations on the use of NWP 33 in waters of the U.S. Given the constraints and requirements of NWP 33 the resulting activities would cause only minor adverse impacts to turbidity levels, both individually and cumulatively, in the majority of the Los Angeles District.

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

(d) Current patterns and water circulation: Construction, access, and dewatering activities must often occur directly within the active channel of a given watercourse. Despite being temporary, construction access and dewatering can have a direct and tangible effect on riparian hydraulics, particularly attenuation of peak flows and selective metering of flows from the constructed basin. The pre-construction notification required under the terms of NWP 33 would provide the district engineer opportunity to review the merits of each proposed action and if necessary either develop appropriate special condition that would serve to mitigate expected project impacts to circulation patterns and water circulation, or subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. Given the constraints and requirements of NWP 33 the resulting activities would cause only minor adverse impacts both individually and cumulatively, to current patterns and circulation in waters of the United States.

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

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

(g) Threatened and endangered species: Only temporary discharges of dredged or fill material into waters of the United States are authorized under NWP 33. Pre-construction notification is required for projects seeking authorization under NWP 33. This pre-construction notification allows the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. Furthermore, the General Conditions place additional limitations on the use of NWP 33 in certain waters of the United States.

To further protect threatened and endangered species the Los Angeles District has developed and is implementing Standard Local Operating Procedures for Endangered Species (SLOPES) in southern California. The Los Angeles District completed three programmatic consultations for Red-legged frog (*Rana aurora draytonii*) (November 2007, June 2009, and August 2010) and one programmatic consultation the Coachella Valley fringe-toed lizard (*Uma inornata*) (November 2008) between fiscal year 2009 through 2011 in association with the issuance of

NWP33. The Los Angeles District completed 24 formal consultation actions from FY2009-FY2011 under section 7 of the Endangered Species Act for the following species: Steelhead (*Onchorynchus mykiss*), California red-legged frog (*Rana aurora draytonii*), Southwestern willow flycatcher (*Empidonax traillii extimus*), Least Bell's vireo (*Vireo bellii pusillus*), Arroyo toad (*Bufo microscaphus californicus*), Coastal California gnatcatcher (*Polioptila californica californica*), Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), Tidewater gobi (*Eucyclogobius newberryi*), and the Chiricahua leopard frog (*Rana chiricahuensis*). Informal consultations were initiated for the following species: San Bernardino kangaroo rat (*Dipodomys merriami parvus*), Santa Ana sucker (*Catostomus santaanae*), California desert tortoise (*Gopherus agassizii*), Mexican spotted owl (*Strix occidentalis lucida*), and the Western snowy plover (*Charadrius alexandrinus nivosus*). The Los Angeles District utilizes these three types of consultation to ensure that any project seeking authorization under NWP 33 would be in compliance with Endangered Species Act's requirements.

With the continuation of the existing agreements and procedures, the development and implementation of Standard Local Operating Procedures for Endangered Species (SLOPES), and the inclusion of additional PCN requirements, the Los Angeles District would ensure project activities authorized under NWP 33 comply with the ESA and use of this NWP would result in minimal impacts on threatened and endangered species in the Los Angeles District, as pursuant with the ESA.

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

(i) Other wildlife: In the semi-arid southern California climate, rivers and streams and their associated riparian habitat represent an important resource for wildlife. NWP 33 would only authorize temporary discharges of dredged or fill material waters of the U.S. Pre-construction notification is required for projects seeking authorization under NWP 33. This pre-construction notification allows the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. In addition, the General Conditions have limitations on the use of NWP 33 in waters of the United States. Given the constraints and requirements of NWP 33 the resulting activities would cause only minor adverse impacts to wildlife, both individually and cumulatively, in the majority of the Los Angeles District.

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

(1) Sanctuaries and refuges: The regional conditions for NWP 33 would preclude discharges of dredged or fill material in jurisdictional vernal pools. Pre-construction notification is required for projects seeking authorization under NWP 33. This pre-construction notification allows the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than

minor impacts. In addition, the General Conditions have limitations on the use of NWP 33 in waters of the United States. Given the constraints and requirements of NWP 33 the resulting activities would cause only minor adverse impacts to sanctuaries and refuges in the Los Angeles District.

(2) 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. Furthermore, approximately 90 percent of wetlands in California have been affected by historic conversion to agricultural uses, grading and filling activities. As a result, wetland areas are rare in the Los Angeles District and warrant more rigorous protection. The Los Angeles District has developed Regional Condition 5 which would preclude the use of NWP 33 to authorize discharges of dredged or fill material in any jurisdictional vernal pool—a unique type of wetland that has sustained substantial losses historically and is particularly susceptible to degradation from temporary impacts. Impacts to wetlands which would normally be authorized under this NWP must now be reviewed under the SIP process. Pre-construction notifications is required for all proposed discharges of dredged and/or fill material into wetland areas for temporary construction, access, and dewatering activities within balance of the Los Angeles District. The pre-construction notification process would allow the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. As a result of the inclusion of additional requirements for NWP 33 in wetlands there would be only minor adverse impacts to wetlands in the Los Angeles District.

(3) Mud flats: In the Los Angeles District, historic coastal development activities have greatly reduced the extent and number of mud flat resources. Approximately 90 percent of wetlands, including coastal wetlands and mud flats, in California have been affected by historic conversion to agricultural uses, grading and filling activities. As a result, mud flats are especially rare in the Los Angeles District and warrant more rigorous protection. Pre-construction notifications are required for NWP 33. The pre-construction notification process would allow the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. As a result of the inclusion of these modifications, NWP 33 would have minor adverse impacts, both individually and cumulatively, to all mud flats within the Los Angeles District.

(4) Vegetated shallows: In the Los Angeles District, historic agricultural and construction activities have reduced the extent and number of vegetated shallows. Approximately 90 percent of wetlands in California, including some vegetated shallows, have been affected by historic conversion to agricultural uses, grading, and filling activities, such as marina construction. As a result, vegetated shallows are especially rare

in the Los Angeles District and warrant more rigorous protection. Pre-construction notifications are required for NWP 33. The pre-construction notification process would allow the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. As a result of the inclusion of these modifications, NWP 33 would have minor adverse impacts, both individually and cumulatively, to all vegetated shallows within the Los Angeles District.

(5) Coral reefs: There are no coral reefs as defined at 40 CFR Part 230.40-45 within the geographical areas administered by the Los Angeles District. Therefore, construction, access, and dewatering activities authorized under NWP 33 would have no affect on any coral reefs.

(6) Riffle and pool complexes: In the semi-arid southern California and Arizona areas, limited water resources and the need for flood control have led to the construction of numerous dams in the mountains of southern California and Arizona, and on the Colorado River. With the construction of these large dams, many riffle-and-pool complexes have been eliminated by the large reservoirs. Furthermore, construction of the dams also modifies the hydrologic regime of the river, which can also degrade downstream riffle-and-pool complexes. As a result, riffle-and-pool complexes in the Los Angeles District are essentially confined to montane and foothill regions. They warrant more rigorous protection due to their relatively high production of invertebrate fauna and other contributions to riparian aquatic resources such as aeration of the water, provision of substrate for decomposers, and other factors. Pre-construction notifications are required for NWP 33. The pre-construction notification process would allow the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. As a result of the inclusion of these modifications, NWP 33 would have minor adverse impacts, both individually and cumulatively, to all riffle and pool complexes within the Los Angeles District.

(k) Municipal and private water supplies: Activities authorized under NWP 33 may have temporary adverse effects on municipal and private water supplies as a result of a result of short duration surface water disruptions. Activities authorized under this permit will not result in an increased demand for potable water. Pre-construction notifications would be required for all proposed discharges of dredged and/or fill material into waters of the United States for all proposed temporary construction, access, and dewatering activities. The Pre-construction notification process would allow the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. As a result of the inclusion of these modifications, NWP 33 would have minor adverse impacts, both individually and cumulatively, to all municipal and private water supplies.

(l) Recreational and commercial fisheries: The activities authorized under NWP have the potential to adversely affect waters of the United States that serve as habitat for populations of economically important fish and shellfish species. Wetland areas, vegetated shallows, riffle and pool complexes and mud flats are important aquatic resources for many species of fish and shellfish during various life stages. The Los Angeles District understands the importance of these resources as they relate to play on the aquatic wildlife. Pre-construction notifications would be required for all proposed discharges of dredged and/or fill material for temporary construction, access, and dewatering activities. The Pre-construction notification process would allow the district engineer an opportunity to review the merits of proposed action and if determined necessary, subject the proposed activities to the individual permit review process if the proposal has the potential to result in more than minor impacts. Regional condition 8 revokes issuance of NWP 33 in areas containing SAMPs and requires issuance of SIPs for any impacts to waters of the U.S. This provides for a more comprehensive review of impacts to recreational and commercial fisheries which would regularly be associated with NWP 33. As a result of the inclusion of these modifications, NWP 33 would have minor adverse impacts, both individually and cumulatively, to recreational and commercial fisheries.

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

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

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

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

The cumulative effects of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Impacts to aquatic resources authorized by the Los Angeles District's permit actions are tracked using the ORM (OMBIL Regulatory Module) database. This includes both temporary and permanent impacts, as well as any compensatory mitigation required. Impact and mitigation data was collected for the period of Fiscal Year 2009 through 2011 to provide a reasonable basis to examine the cumulative effects of each NWP as well as the NWP Program as a whole within the Los Angeles District. Based on an analysis of the types of activities authorized by the Los Angeles District during this period, the Los Angeles District estimates that this NWP will be used approximately 75 times per year, nearly always in combination with another NWP that may or may not authorize permanent impacts in waters of the United States, and resulting the temporary loss of approximately 91 acres of waters of the United States on an annual basis. The total area of temporary impact may be skewed somewhat as the majority of impacts associated with NWP 33 during this period (243 acres total) were for 1 action that involved the maintenance of a series of water percolation basins.

The mitigation data fields in the Corps' database has undergone several reiterations, so it is often difficult to ascertain the amount of mitigation attributed to temporary impacts from NWP 33 for a given project. On average, 12.54 acres of mitigation was required per year to compensate for the temporal losses of waters of the United States that resulted from the use of NWP 33. This

represents an impact to mitigation ratio of approximately 1:0.13. The trend for use and mitigation resulting from NWP 33 appears to be rather consistent from year to year. Cumulative adverse effects on the aquatic environment have historically been and are expected to continue to be minimal given the limited use and the temporary nature of the disturbances of this NWP authorized throughout the Los Angeles District.

The terms and conditions of the NWP, including the pre-construction notification requirements and the regional conditions listed in Section 10 of this document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in General Condition 22 the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Los Angeles District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to 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. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 33

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 project site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los Angeles District Regulatory Division* (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

- c. Numbered and dated pre-project color photographs showing all waters proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing as 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). The PCN shall also include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.
- c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
- d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.

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

10.6 Regional condition 10

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

11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

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

The Los Angeles District announced the proposal to reissue the Nationwide Permits and our proposed regional conditions in a Special Public Notice dated February 25, 2011. The Los Angeles District also send letters dated March 9, 2011 to the seven federally recognized tribes within the Los Angeles District (Big Pine Tribe, Bishop Paiute Tribe, Hopi Tribe, Hualapai Tribe, Navajo Nation, White Mountain Apache Tribe, and Twenty-nine Palms Band of Mission Indians) and the Arizona Department of Environmental Quality announcing the proposed rule and our proposed regional conditions, and requesting the State of Arizona and each tribe review the information for purposes of providing water quality certification pursuant to section 401 of

the Clean Water Act. Similarly, acting on behalf of the three Corps Districts in California the Sacramento District provided the same letter on February 23, 2011 to the California State Water Resources Control Board (SWRCB) and EPA requesting 401 certification in the State of California and tribal lands within EPA Region 9, respectively (excluding those tribes with delegated 401 authority). The San Francisco District provided a letter to the California Coastal Commission (CCC) on behalf of both coastal districts in California on March 3, 2011, requesting Coastal Zone Management Act (CZMA) consistency certification. Additional discussions were held among the three Corps Districts in California and the SWRCB in an effort to strategize options for certifying a broader range of NWP or NWP-eligible activities than under the 2007 NWPs.

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

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

12.0 Measures to Ensure Minimal Adverse Environmental Effects

The terms and conditions of the NWP, including the pre-construction notification requirements and the regional conditions listed in Section 10.0 of this document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Los Angeles District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to an NWP authorization to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise

discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

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.