

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 36**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 36, 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 36:

Boat Ramps. Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge will result in minimal adverse effects;

(b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging must be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 31.) (Sections 10 and 404)

Summary of changes to NWP 36 from 2007:

The waiver provisions in subparts (a) and (b) were amended to specify that the District Engineer must make a written determination that the discharge will have minimal adverse effects. Subpart (d) was amended to clarify that dredged material must be placed in an area that has no waters of the United States (as opposed to “uplands”), since the disposal of dredged material into non-jurisdictional waters and wetlands, as well as uplands, does not require DA authorization. Finally, subpart (e) was amended to state that if dredging in navigable waters is necessary it must (as opposed to “may”) be authorized by another NWP, a regional general permit, or an individual permit.

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

Please see the attached response to comments document (Section III).

2.1 General Comments

Please see the attached response to comments document.

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

The terms and conditions of NWP 36 prohibit its use in any special aquatic site as defined in 40 CFR Part 230.40-45. Regional conditions in the Los Angeles District have been developed to preclude use of certain NWPs in particularly sensitive or unique aquatic resources, including some special aquatic site. The discussion below will only address those regional conditions that expand the limitations on the use of NWP 36 within the Los Angeles District beyond the terms and conditions that apply nationally

3.1.1 Special Aquatic Sites in Arizona and Mojave and Sonoran Deserts of California (Regional Condition 2)

Reason for Exclusion: With this regional condition, NWP 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, 39-46, and 48-52 may **not** be used to authorize the discharge of dredged or fill material into a jurisdictional special aquatic site in the State of Arizona and the Mojave and Sonoran desert regions in California, including wetlands, mudflats, vegetated shallows, and sanctuaries and refuges as defined in 40 CFR Part 230.40-45. The regional condition would require applicants to submit an application for a Standard Individual Permit subject to authorization under section 10 of the Rivers and Harbors Act, section 103 of the Marine Protection, Resource and Sanctuaries Act, and/or section 404 of the Clean Water Act (CWA). Special aquatic sites in the desert regions of the Los Angeles District support substantial aquatic resources that exhibit relatively high physical and biological functions. Furthermore, these aquatic areas can provide important and unique habitat for endangered species, neotropical migratory birds, and other indigenous wildlife. Past construction activities in and adjacent to these special aquatic sites have degraded portions of these high value systems. Regional Condition 2 would ensure compliance with the 404(b)(1) guidelines and evaluation and mitigation, if warranted, of activities that may have an adverse effect on special aquatic sites in the otherwise arid regions of the Los Angeles District.

In the Los Angeles District, the semi-arid climate limits the extent and number of special aquatic sites. This scarcity of special aquatic sites 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. Regional Condition 2 would serve to better protect special aquatic sites in desert regions of the Los Angeles District by requiring the additional scrutiny inherent in the Standard Individual Permit (SIP) process for most permanent discharges of dredged or fill material in these areas. The permit applicant would have to perform a 404(b)(1) alternatives analysis that would include careful examination of the purpose and need for the project and alternatives that avoid or reduce impacts to special aquatic sites. Regional Condition 2 would help ensure that discharges of dredged or fill material that would otherwise be authorized by NWPs would have minimal impacts, both individually cumulatively, to special aquatic sites in the Los Angeles District.

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). In addition, coral reefs and sanctuaries and refuges were removed from the list of special aquatic sites for which this regional condition would apply. Coral reefs were removed as they do not exist within the subject geographic area. Sanctuaries and refuges were removed as there are circumstances where a predominantly upland sanctuary or refuge may contain aquatic resources that exhibit relatively low physical and biological functions (such as a disturbed ephemeral drainage) yet nevertheless would be considered a special aquatic site. In those cases,

mandatory notification (per regional condition 4a) would be sufficient to ensure a given project would have no more than minimal impacts by ensuring Corps review.

For additional information please see the supplemental decision document for Regional Condition 2.

3.1.2 Jurisdictional Vernal Pools (Regional Condition 5)

Reason for Exclusion: Regional Condition 5 would exclude NWP 36 in jurisdictional vernal pools in Los Angeles District. Eliminating the use of NWPs in jurisdictional vernal pool areas that have experienced close to 100 percent loss of vernal pool habitat would ensure minimal impacts to these sensitive wetland areas. However, none of the vernal pools in the region are utilized by watercraft because they are typically very shallow and of very small area (with the exception of Skunk Hollow in western Riverside County), and therefore the need for boat ramps is highly unlikely. Therefore this regional condition, though applicable to NWP 36, would have no practical effect on its use in the Los Angeles District.

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

3.2 Waters subjected to additional pre-construction notification requirements

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

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

Two relatively small reaches of the Colorado River have been excluded from this regional condition because these areas exhibit relatively low physical and biological functions; however, due to a large amount of existing infrastructure and ongoing recreational activities, there are a large number of small structures and minor projects that require authorization pursuant to Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act. As a result, requiring notification in the above two reaches of the Colorado River would increase the District's workload substantially while only providing minimal environmental benefits. With this notification requirement, the Los Angeles District can ensure that the use of the NWP for

activities proposed within the special aquatic sites would have minimal impacts, both individually and cumulatively. Activities sited within special aquatic sites that are determined to have the potential to exceed the minor impact threshold would be subject to review under the SIP process that requires a rigorous alternatives analysis. As such, further impacts to the special aquatic sites and perennial water bodies in desert areas would be avoided and minimized to the maximum extent practicable. Through the mandatory pre-construction notification process, the Los Angeles District will review the proposed discharges of dredged or fill material into special aquatic sites and perennial streams in desert areas (excluding the above two reaches in the Colorado River) on a case-by-case basis to ensure that those activities would result in minimal adverse effects on the aquatic environment, individually and cumulatively. This regional condition has been amended from that included with the 2007 NWP (Regional Condition 4) to clarify the definition of *desert regions of California* to include specific watersheds as defined by USGS Hydrologic Unit Code (HUC) accounting units. These include Lower Colorado (150301), Northern Mojave (180902), Southern Mojave (181001) and Salton Sea (181002).

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

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

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

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

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

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

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

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

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

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.

4.0 Alternatives

4.1 No Regional Conditions

Without Regional Conditions requiring notification in the Santa Monica Mountains watersheds, special aquatic sites, and essential fish habitat, there could be more 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 Regional Condition 2, which precludes the use of NWP 36 for projects in most types of special aquatic sites in the State of Arizona and desert regions of California, impacts to these relatively rare resources could occur without compensatory mitigation, contributing to more than minimal impacts, both individually and cumulatively, to special aquatic sites in the Los Angeles District. Overall, with no Regional Conditions, NWP 36 could be utilized in sensitive special aquatic sites in some areas with no review by the Corps. There for the “no regional conditions” alternative has been dismissed from further consideration.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

Discharges of dredged or fill material authorized under NWP 36 are limited to 50 cubic yards of concrete, rock, crushed stone, or gravel into forms. The NWP general conditions impose additional limitations on the use of NWP 36. As a result of these constraints, NWP 36 would generally result in minimal impacts, both individually and cumulatively, in the majority of the Los Angeles District.

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 through flow only contributing a relatively small quantity to stream discharge. Over the past fifty years, agricultural and construction

activities have resulted in a loss of approximately 90 percent of wetlands. Further loss of special aquatic sites in southern California and Arizona could result in more than minimal cumulative impacts. To ensure any impact to special aquatic sites is offset by compensatory mitigation, the Los Angeles District would preclude use of NWP 36 for any project that impacts jurisdictional vernal pools and/or wetlands, mudflat, vegetated shallows and riffle and pool complexes in Arizona and the desert regions of California. With the inclusion of these restrictions on the use of NWP 36, the Los Angeles District would ensure minimal impacts to special aquatic sites through additional review. Lastly, 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 36 would have minimal impacts to these resources, the Los Angeles District would require notification for all projects in the Santa Monica Mountains and the Santa Clara River watershed, special aquatic sites and perennial watercourses and water bodies in Arizona and the desert regions of California, and tidally influenced areas designated as Essential Fish Habitat.

Review of the ORM database of NWP 36 on the Colorado River indicates the few areas where NWP 36 could be used on this perennial water without notification being required under a general condition or prohibited from use by a regional condition are low resource areas with a great deal of boat traffic. Therefore notification for use of this NWP on the Colorado River in the absence of special aquatic sites or designated critical habitat would result in an increase in workload that is not offset by enhanced protection of aquatic resources. Notifications under General Condition 31 and elimination of use in Arizona in special aquatic sites provide the most necessary protection for impacts under NWP 36 for the Colorado River. Therefore, the notification requirement under Regional Condition 4 for certain portions of the Colorado River, as a perennial waterway, could be removed with more than adequate protection of the resource still in place. With the inclusion of the new General and Regional Conditions, the Los Angeles District would ensure minimal impacts, both individually and cumulatively, for projects authorized under NWP 36.

Alternative Regional Nationwide Permit Conditions

Based on identifiable or predictable impacts that may result from the use of this NWP, as discussed above, the Division Engineer will consider the use of additional regional conditions as a means of further ensuring that the NWP does not authorize activities with more than minimal adverse effects on the aquatic environment. To further ensure NWP 36 would have minimal impacts to aquatic resources, both individually and cumulatively, the Los Angeles District could augment the proposed notification requirements for NWP 36 by including all coastal watersheds and/or could require notification for all projects that require authorization under NWP 36; however, requiring notification for all boat ramps, not just those proposed for construction in special aquatic sites in Arizona and the deserts of California and in waters with relatively high physical and biological functions, would substantially increase the workload for the Los Angeles District without any commensurate benefits to aquatic resources. As a result, the Los Angeles District has determined that the alternative notification requirements described above would not be practicable and would result in no additional protection of aquatic resources. With the proposed modifications to NWP 36, the Los Angeles District has identified the resources and

watersheds that warrant additional scrutiny under NWP 36. As a result, the District's proposed modifications would result in a relatively minor increase in overall workload, but would provide potentially substantial benefits to the aquatic environment in the identified areas.

In conclusion, the majority of the projects that could be authorized under NWP 36 would likely have minimal impacts to the aquatic ecosystem. With the proposed regional conditions, the Los Angeles District would ensure that NWP 36 has minimal impacts on both sensitive resources and watersheds without a substantial increase in workload; however, more restrictive regional conditions could adversely impact workload without commensurate benefits to the aquatic environment and, therefore, would not be practicable.

5.0 Endangered Species Act

5.1 General Considerations

NWP 36 authorizes the discharge of fill material for construction of boat ramps. To avoid and minimize impacts to the aquatic environment, the terms and conditions of NWP 36 impose restrictions including limiting boat ramps to twenty feet in width with a maximum discharge of 50 cubic yards of concrete, rock, crushed stone, or gravel into forms or placement of pre-cast planks or slabs and further allows for excavation provided it is limited to the area necessary for site preparation and all excavated material is moved to an upland disposal site. In addition, the new NWP general and Los Angeles District regional conditions would provide further limitations on the use of NWP 36 in sensitive aquatic ecosystems. With these constraints, NWP 36 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 36, there would be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The regional conditions applicable to NWP 36 require notification pursuant to General Condition 31 for all projects located in designated EFH. Additionally, NWP 36 cannot be used to authorize losses of wetlands, mudflats, vegetated shallows, and riffle and pool complexes in the State of Arizona and desert regions of California. With the inclusion of these proposed notification requirements for NWP 36, the above 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 standard local operating procedures for endangered species (SLOPES), and the inclusion of additional notification requirements, the use of NWP 36 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

In southern California, the large number of listed species has made the public more aware of the need to contact the USFWS and NMFS for many proposed projects. In addition, General Condition 18 requires the applicant to contact the Corps if their proposed project may affect a threatened or endangered species or critical habitat. The 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 USFWS or NMFS to obtain 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 USFWS or NMFS is contacted early in the review process. To facilitate compliance with the ESA, the District has coordinated with the USFWS to complete programmatic consultations for several threatened and endangered species in Ventura, Santa Barbara, and San Luis Obispo counties.

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

5.2 Local Operating Procedures for Endangered Species

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

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 NWP's and our proposed regional conditions, all federally recognized tribes within LAD were contacted via letter dated December 13, 2010 to provide advance notification of the Corps' intent to issue the 2012 NWP's 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 NWP's. 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 NWP's. 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 NWP's 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: NWP 36 would only authorize discharges of specific types of fill material into waters of the U.S. and further limits the width of the boat ramp to 20 feet and excavation to the minimum required for site preparation. The new general conditions would provide further limitations on the use of NWP 36 in waters of the United States. Due to these constraints, NWP 36 would result in minimal impacts to conservation, both individually and cumulatively, in the majority of the Los Angeles District. Regional Conditions for NWP 36 would preclude discharges of dredged or fill material in jurisdictional vernal pools in the Los Angeles District and most types of special aquatic sites in Arizona and the desert regions of California if a loss of waters would result. With the inclusion of notification requirements for NWP 36 in special aquatic sites and perennial waters in desert areas, as well as in other regions and sensitive watersheds or other aquatic resources in the Los Angeles District, long-term minor impacts to conservation in the Los Angeles District would be further reduced.

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

(c) Aesthetics: The size of boat ramps authorized under NWP 36 is extremely limited; the general and regional conditions further limit construction of boat ramps in special aquatic sites in Arizona and the desert regions of California. Therefore, the impacts to aesthetics, individually and cumulatively, is expected to be no more than minimal.

(d) General environmental concerns: 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 protection. To ensure minimal impacts to wetland resources, the Los Angeles District would preclude use of NWP 36 to authorize losses in most types of special aquatic sites, including wetlands, in Arizona and the desert regions of California. With the inclusion of this

modification, NWP 36 would have no more than minimal impacts to wetland resources in the Los Angeles District.

(e) Wetlands: In the Los Angeles District, the semi-arid climate limits the extent and number of wetland resources. This scarcity of wetlands is especially evident in Arizona and in the desert regions of California. In these areas, annual precipitation is usually below 10 inches, which often precludes the development of wetlands. As a result, special aquatic sites, such as wetlands, are relatively rare in the Los Angeles District and warrant more substantial protection. To ensure minimal impacts to wetland resources, the Los Angeles District would preclude use of NWP 36 in any special aquatic site, including wetlands, in Arizona and the desert regions of California. With the inclusion of this modification, NWP 36 would have no more than minimal impacts to wetland resources in the Los Angeles District.

(f) Historic properties: Many known and unknown historic properties and cultural resources occur in many areas of the Los Angeles District. Many of them are adjacent to watercourses or other aquatic resources, and as such, may be affected by projects proposed for authorization under NWP 36. Section 106 of the National Historic Preservation Act requires any federal action agency to determine the eligibility of any known or discovered cultural resources that may be affected by the agency's action, and coordinate with the SHPO/THPO as appropriate. Because projects that may potentially be authorized under NWP 36 are brought to the attention of the Corps only when there is a specific project proposed, and because the project's relationship to the cultural resource may not be known until appropriate surveys are conducted, greater specificity cannot be determined at this time; however, through coordination with the SHPO/THPO and the implementation of mitigation measures, the Corps would ensure that NWP 36 would result in minimal impacts to historic properties.

(g) Fish and wildlife values: NWP 36 would only authorize discharges of specific types of fill material into forms and extremely minor excavation in conjunction with site preparation for the ramp. The NWP general conditions would provide further limitations on the use of NWP 36 in waters of the U.S. As a result of these constraints, NWP 36 would result in minimal impacts to fish and wildlife values, both individually and cumulatively, in the majority of the Los Angeles District. Regional conditions for NWP 36 would preclude discharges of dredged or fill material in jurisdictional vernal pools, as well as in most types of special aquatic sites in Arizona and the desert regions of California if a loss of such resources would occur. With the inclusion of the proposed notification requirements for NWP 36 in special aquatic sites in other regions of the Los Angeles District and sensitive watersheds and other aquatic resources, long-term minor impacts to fish and wildlife values in the Los Angeles District would be further reduced, resulting in minimal cumulative impacts in the Los Angeles District. In the past three years ESA consultations were not required.

(h) Flood hazards: Same as discussed in the national document.

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

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

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

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

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

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

(o) Water quality: In the heavily populated areas of southern California and Arizona, existing water quality in most waterways is impaired by runoff from upland agricultural, residential and industrial sources. NWP 36 would authorize a maximum discharge of fill material of 50 cubic yards of certain types of fill and would limit the ramp width to 20 feet. Furthermore, the NWP general conditions would impose additional limitations on the use of NWP 36 in waters of the United States. As a result of these constraints, NWP 36 would result in minimal adverse impacts to water quality, both individually and cumulatively, in the majority of the Los Angeles District. Regional Conditions for NWP 36 would preclude discharges of dredged and fill material in jurisdictional vernal pools and in most types of special aquatic sites in Arizona and the desert regions of California where a loss of waters would occur. With the inclusion of notification requirements for NWP 36 in special aquatic sites in other regions of the Los Angeles District and in sensitive watersheds and other aquatic resources, any long-term minor impacts to water quality in the Los Angeles District would be further reduced, resulting in minimal individual and cumulative impacts in the Los Angeles District.

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

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

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

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

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

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

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

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

(a) Substrate: With the use of NWP 36, there would short-term adverse impacts to channel substrate in the immediate vicinity of the ramp during construction and limited permanent loss of natural substrate. NWP 36 would only authorize a maximum of 50 cubic yards of inert material such as crushed stone, rock, and concrete in forms. Furthermore, the NWP general conditions impose additional limitations on the use of NWP 36 in waters of the United States. Due to these

constraints, NWP 36 would result in minimal adverse impacts to substrate, both individually and cumulatively, in the majority of the Los Angeles District.

With no Regional Conditions for NWP 36, there would be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The regional conditions applicable to NWP 36 would preclude discharges of dredged or fill material in jurisdictional vernal pools and in wetlands, mudflats, vegetated shallows, and riffle and pool complexes in Arizona and the desert regions of California if a loss would occur (with the exception of a section of the Colorado River as discussed above). With the inclusion of the proposed notification requirements for NWP 36 in in other sensitive watersheds and resources, the impacts to channel substrate in the Los Angeles District described above would be further reduced and would result in no more than minimal impacts to channel substrate individually and cumulatively.

(b) Suspended particulates/turbidity: In heavily populated areas of southern California and Arizona, existing turbidity levels in most rivers have been exacerbated by 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 turbidity levels. NWP 36 would only authorize a maximum discharge of inert material such as rock, crushed stone, and concrete in forms and a maximum boat ramp width of 20 feet in waters of the United States. Furthermore, the NWP general conditions impose additional limitations on the use of NWP 36 in waters of the United States. Due to the above constraints, NWP 36 would result in minimal adverse impacts to turbidity levels, both individually and cumulatively, in the majority of the Los Angeles District.

With no Regional Conditions for NWP 36, there would be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The regional conditions applicable to NWP 36 would preclude discharges of dredged or fill material in jurisdictional vernal pools and to authorize any losses of wetlands, mudflats, vegetated shallows, and riffle and pool complexes in Arizona and the desert regions of California (with the exception of a section of the Colorado River as discussed above). With the inclusion of the proposed notification requirements for NWP 36 sensitive watersheds and other aquatic resources, the above long-term minor impacts to suspended sediment levels in the Los Angeles District would be further reduced. In addition, the required 401 certification would also address short-term and long-term minimal impacts to turbidity and suspended sediment loads in the rivers and streams in the Los Angeles District. With the implementation of the above conditions, NWP 36 would have no more than minimal impacts to turbidity levels in waters of the United States within the Los Angeles District.

(c) Water: Activities authorized under NWP 36 will have minimal impacts on water particularly in the State of Arizona where requirements of the Section 401 water quality certification include the installation of pre-cast concrete planks and do not allow for ramps that are poured in place. The new General Conditions and the Regional Conditions will further ensure that impacts to water are minimized.

(d) Current patterns and water circulation: Boat ramps constructed in accordance with NWP 36 should have extremely minor impacts on current patterns and water circulation. Boat ramps are typically constructed at or slightly above grade and as such may pose a very minor impediment to flow. However, with the inclusion of the NWP general conditions, NWP 36 would have miniscule impacts to current patterns and circulation in waters of the United States. With no regional conditions for NWP 36, there would be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The regional conditions applicable to NWP 36 would preclude discharges of dredged or fill material in jurisdictional vernal pools and for authorizing losses of specific special aquatic sites in Arizona and the desert regions of California. With the inclusion of the proposed notification requirements for NWP 36 in special sensitive watersheds and other aquatic resources, long-term minor impacts to current patterns and water circulation in the Los Angeles District would be further reduced, resulting in minimal individual and cumulative impacts.

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

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

(g) Threatened and endangered species: NWP 36 would only authorize a maximum discharge of 50 cubic yards of inert fill material into forms and a maximum boat ramp width of 20 feet. Furthermore, the new General Conditions have additional limitations on the use of NWP 36 in waters of the U.S particularly in regard to impacts on threatened and endangered species. Due to the above constraints, the future use of NWP 36 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 the use of NWP 36, there would be 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 36 would preclude discharges of dredged and fill material in jurisdictional vernal pools in Los Angeles District and to authorize losses of most types of special aquatic sites in Arizona and the desert regions of California. With the inclusion of the proposed notification requirements for NWP 36 in sensitive watersheds and resources, the above 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 standard local operating procedures for endangered species (SLOPES), and the inclusion of additional notification requirements, the use of NWP 36 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

(h) Fish, crustaceans, molluscs, and other aquatic organisms in the food web: The construction of boat ramps under NWP 36 would result in very limited impacts to fish, crustaceans, mollusks, and other aquatic organisms. Impacts would represent a no more than minimal loss of habitat and spawning areas, particularly for fish. However, due to the limitations imposed by the terms of NWP 36 for the amount of fill material to be discharged and width of the ramp as well as the requirement to immediately remove all excavated material to an upland disposal site, impacts are

anticipated to be no more than minimal. In addition, the NWP general conditions impose additional limitations on the use of NWP 36 in waters of the U.S. Due to these constraints, NWP 36 would result in minimal adverse impacts to fish, crustaceans, mollusks, and other aquatic organisms in the majority of the Los Angeles District. With no regional conditions for NWP 36, there could be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The regional conditions applicable to NWP 36 preclude discharges of dredged or fill material in jurisdictional vernal pools, and to authorize losses of most types of special aquatic sites in Arizona and the desert regions of California. With the inclusion of additional notification requirements for NWP 36 in sensitive watersheds and other aquatic resources, impacts to aquatic organisms in the Los Angeles District would be further reduced, resulting in minimal individual and cumulative impacts.

(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 36 authorizes a maximum discharge of 50 cubic yards of inert fill material into forms and a maximum boat ramp width of 20 feet. In addition, the NWP general conditions impose additional limitations on the use of NWP 36 in waters of the United States. Due to these constraints, NWP 36 would result in minimal adverse impacts to wildlife, both individually and cumulatively, in the majority of the Los Angeles District. With no regional conditions for NWP 36, there could be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The regional conditions applicable to NWP 36 preclude discharges of dredged or fill material in jurisdictional vernal pools and to authorize losses of most types of special aquatic sites in Arizona and the desert regions of California. With the inclusion of additional notification requirements for NWP 36 in sensitive watersheds and other aquatic resources, the impacts to wildlife in the Los Angeles District would be further reduced, resulting in no more than minimal individual and cumulative impacts.

(j) Special aquatic sites: NWP 36 is expected to have no more than minimal effects on all special aquatic sites because the terms of the NWP prohibit discharge of material into any special aquatic site.

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

(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 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 protection. To ensure minimal impacts to wetland resources, the Los Angeles District would preclude use of NWP 36 to authorize losses of wetlands, in Arizona and the desert regions of California. With the inclusion of this modification, NWP 36 would have no more than minimal impacts to wetland resources in the Los Angeles District.

(3) Mud flats: Same as discussed in the national document

(4) Vegetated shallows: Same as discussed in the national document

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

(6) Riffle and pool complexes: Same as discussed in the national document

(k) Municipal and private water supplies: Activities authorized under NWP 36 would not impact municipal and private water supplies.

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

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

(n) Aesthetics: The size of boat ramps authorized under NWP 36 is extremely limited; the NWP general and Los Angeles District regional conditions further limit construction of boat ramps in special aquatic sites in Arizona and the desert regions of California. Therefore, the impacts to aesthetics, individually and cumulatively, is expected to be no more than minimal.

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: Due to the constraints in amount of discharge of fill material and width of boat ramps authorized under NWP 36, the impacts to parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas will be extremely minor. Most of these areas are managed by a federal or state resource agency and installation of a boat ramp in high resource areas within these types of sites is typically for small, non-wake producing boats such as canoes. In other areas of these sites, recreation is a normal feature and boat ramps might be installed by the management agency to enhance access to the waterway. In addition, the NWP general conditions have additional limitations on the use of NWP 36 in waters of the United States. As a result of the above constraints, NWP 36 would result in minimal adverse impacts to these resource areas in the majority of the Los Angeles District. With no regional conditions for NWP 36, there could be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The regional conditions applicable to NWP 36 preclude discharges of dredged or fill material in jurisdictional vernal pools, and to authorize losses in certain special aquatic sites in Arizona and the desert regions of California. With the inclusion of additional notification requirements for NWP 36 in sensitive watersheds and other aquatic resources, the impacts to wildlife in the Los Angeles District would be further reduced.

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

The cumulative impacts 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. Based on an analysis of the types of activities authorized by the Los Angeles District during previous years, the Los Angeles District estimates that this

NWP will be used approximately 6 times per year, resulting in approximately 0.08 acre of permanent impacts to non-wetland waters of the United States per year. The majority of project authorized under NWP 36 result in less than 0.05 acre of permanent impacts to waters of the U.S. and occur in areas with high recreational use and relatively low biological and physical functions. In addition, many of these projects are for the replacement of a existing boat ramp facility. Given the limitations contained in the terms and conditions of NWP 36, and the context of its use, comensatory mitigation is generally not required to ensure impacts to the aquatic environment are minimal, both individually and cumulatively, within the Los Angeles District. This trend is expected to continue, however, to ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Los Angeles District could require compensatory mitigation to offset the authorized losses of waters of the U.S. and to ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. Based on an analysis of the types of activities authorized by the Los Angeles District during previous years, the Los Angeles District estimates that this NWP will be used to authorize a similar number of future projects annually, with a similar area of impact and only minimal impacts to waters of the U.S., both individually and cumulatively.

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 21, 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.

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 36

10.1 Regional condition 2

Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-52 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the

same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).

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

10.10 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.

Based on a review of the different public interest factors and resource categories above, the Los Angeles District has concluded that use of this NWP will result in no more than minimal individual and cumulative adverse effects on the aquatic environment, assuming the terms and conditions of the NWP are met as well as the regional conditions described above. The regional conditions are expected to ensure that projects within sensitive areas will have no more than minimal impacts.

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.