

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 13**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 13, 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 13:

Bank Stabilization. Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

(g) The activity is not a stream channelization activity.

This NWP also authorizes temporary structures, fills, and work necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Invasive plant species shall not be used for bioengineering or vegetative bank stabilization.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 31.) (Sections 10 and 404)

Summary of changes to NWP 13 from 2007:

The proposed NWP 13 is modified slightly from the 2007 terms and conditions. The discussion of waivers is clarified to include a requirement that waivers must evaluate the severity of effects on the aquatic environment consistent with the minimal impact findings required of all Nationwide Permits. In addition, the proposed NWP 13 would authorize temporary fills associated with the construction access and dewatering as described in NWP 33; this change is consistent with other NWPs, namely the NWP 3, 12, and 14.

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 13, or Subject to Additional Pre-Construction Notification Requirements

The following waters of the United States are excluded from NWP 13:

- Special Aquatic Sites in the State of Arizona, and Mojave and Sonoran Deserts of California (when a loss of waters would result).
- San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County, California.
- Gaviota Creek, Mission Creek, and Carpinteria Creek in Santa Barbara County.
- Jurisdictional vernal pools
- The San Diego Creek and San Juan Creek/Western San Mateo Creek Special Area Management Plan (SAMP) areas.

Please refer to Section 3.1.1 below for a discussion of excluded waters of the United States for NWP 13.

The following waters of the United States require Pre-Construction Notification requirements for NWP 13:

- All Perennial Waters and Special Aquatic Sites in the State of Arizona and Desert Regions of California.
- All designated Essential Fish Habitat
- All waters of the Santa Monica Mountains
- All waters in the Santa Clara River Watershed

Please refer to Section 3.2 below for a discussion of Pre-Construction Notification requirements of NWP 13.

3.1 Waters excluded from use of this NWP

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, NWPs 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 NWP's 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 NWP's (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: 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 NWP's 5, 6, and 27. NWP's 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 NWP's 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 NWP's, 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's, 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 NWP's 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.

3.1.3 Bank Stabilization Projects in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County and Bank Stabilization and Grade Control Projects in Gaviota Creek, Mission Creek, and Carpinteria Creek in Santa Barbara County (Regional Condition 7)

Reason for Exclusion: Regional Condition 7 would exclude bank stabilization from NWP authorization in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County, and bank stabilization and grade control projects in Gaviota Creek, Mission Creek, and Carpinteria Creek in Santa Barbara County. This exclusion would require any project that would stabilize a stream bank and/or grade control in these particular watersheds receive greater review and scrutiny through the SIP process, which includes a 404(b)(1) alternatives analysis. This regional condition has been modified from the version adopted in 2007 (Regional Condition 9) to include Section 404 Letters of Permission (LOP) as an SIP that may be used following a final Environmental Impact Statement (2009) which evaluated cumulative impacts of bank stabilization in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County, California. While NWP 12, 14, 18, 25, 29, 39, 42 and 43 address utility lines, linear transportation crossings, minor discharges, structural discharges, residential development, commercial/institutional development, recreational facilities and stormwater management facilities respectively, these types of projects could include stream bank stabilization or grade control. These watercourses were identified as vulnerable to adverse effects on endangered species and designated critical habitat associated with additional bank stabilization and grade control activities. In San Luis Obispo Creek and Santa Rosa Creek, a substantial number of bank stabilization projects have resulted in cumulative adverse impacts to flow velocity and water surface elevations during storm events. With the augmented flow velocity, channel substrate can be scoured during large storm events causing loss of vegetation and long-term channel incision. Although the existing bank stabilization projects have not resulted in the loss of a large amount of waters of the United States, the cumulative hydrogeomorphic effects of the bank stabilization have reduced the amount suitable of habitat for the threatened southern steelhead that utilizes these streams.

At present, the Los Angeles District has identified more than minimal cumulative impacts directly resulting from the use of NWP 13, and other NWPs in these stream channels. By taking discretionary authority over new bank stabilization projects in these two stream channels, the Los Angeles District will ensure future impacts are appropriately mitigated. In Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County, bank stabilization and grade control structures have resulted in more than minimal cumulative impacts to flow velocity and water surface elevations during storm events. With the augmented flow velocity, channel substrate can be scoured during large storm events causing loss of vegetation and long-term channel incision. Although the bank stabilization projects have not resulted in large losses of waters of the United States, the cumulative hydrogeomorphic effects of the bank stabilization have reduced the amount suitable of habitat for the endangered California red-legged frog (*Rana draytonii*) and southern and central coast steelhead (*Oncorhynchus mykiss*) that utilize these streams and have had adverse affects on designated critical habitat.

At present, there has been a cumulative adverse impact as a result of use of NWP 13, as well as other NWPs that may authorize bank stabilization and grade control structures in these stream channels. By taking discretionary authority over new bank stabilization and grade control structure projects in these three stream channels, the Los Angeles District will ensure future impacts are appropriately evaluated and mitigated. This regional condition will allow the Corps of Engineers to review bank stabilization activities in these waterways on a case-by-case basis, ensuring that only the least environmentally damaging practicable alternative is permitted. If, at a later time, there is clear unequivocal evidence that the above regional conditions do not produce the intended results, the Los Angeles District may further modify them, as warranted.

For additional information please see the supplemental decision document for Regional Condition 7.

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

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

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

The decision to revoke selected 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 SAMP's' 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

Under NWP 13, notification requirements are required for all waters of the United States similar to the 2007 NWP 13, under the following conditions. In summary, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. The Regional Conditions would expand the notification requirements for NWP 13 as described below.

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

Reason for Pre-Construction Notification Requirement: It is the position of the Los Angeles District that any discharges of dredged or fill material in a special aquatic site or a perennial water body in a desert area (excluding two reaches in the Colorado River) warrants the review of Regulatory Division. The loss of approximately 90% of wetland resources in southern California

and the general scarcity of special aquatic sites in this semi-arid region indicate the need for compensatory mitigation to ensure adverse impacts to special aquatic sites are no more than minimal individually and cumulatively. Special aquatic sites in Los Angeles District support substantial aquatic resources exhibiting relatively high physical and biological functions. Furthermore, these aquatic areas can provide important and unique habitat for endangered species, migratory birds, and other wildlife. In addition, past construction activities in and adjacent to these special aquatic sites have degraded portions of these high value systems.

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

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

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

Reason for Pre-Construction Notification Requirement: The EFH regional condition has been developed to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended. The 2007 NWPs included Regional Condition 5, which required notification for any project located in EFH. Regional Condition 4b would replace Regional Condition 5 and include the additional requirement to include an EFH assessment as part of the notification package. The EFH mandates of the MSFCMA are to integrate fisheries management and habitat management by stressing the ecological relationships between fishery resources and the environments upon which they depend, and ensure a consultation process by

which federal agencies explicitly consider the effects of their actions on important habitats, with the goal of supporting the sustainable management of marine fisheries. The consultation process for any Federal project or action that may adversely affect EFH requires submission of an EFH assessment to the National Marine Fisheries Service (NMFS). The inclusion of the requirement for applications to provide an EFH assessment places the burden of preparing the assessment on the permit applicant rather than the Corps, however, the Corps has generally relied on permit applicants to provide this information to meet the requirements of the consultation process associated with the permit action. Therefore, the Los Angeles District does not believe this will create an unduly burdensome requirement on permit applicants relative to current procedures. Regional Condition 4b also includes a link to sample EFH assessments provided by NMFS.

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

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

Reason for Pre-Construction Notification Requirement: The Santa Monica Mountains represent an important cultural and natural resource. The region contains a variety of protected areas, and serves as a recreation destination for Los Angeles area residents. Aquatic resources in the Santa Monica Mountains are important in the regional context and are also a center of native biodiversity. Despite their ecological importance, aquatic resources in the Santa Monica Mountains have experienced heavy losses. The Corps' ongoing study of cumulative impacts in the Malibu Creek watershed, the region's largest drainage basin, indicates that most of these impacts have occurred without Corps authorization (Lilien 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.

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

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

Reason for Pre-Construction Notification Requirement: The entire Santa Clara River watershed encompasses approximately 1,634 square miles in Los Angeles and Ventura Counties (the upper watershed, which includes 45 miles of the river between its headwaters and the Ventura County line, is 680 square miles, while the lower watershed, between the county line and the ocean is 954 square miles). The river flows approximately 84 miles from its headwaters east of Acton to

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

its delta located between the cities of Ventura and Oxnard. Recent estimates (as of 2005) for the total amount of urbanization, including residential, industrial, and commercial areas, in the entire Santa Clara River watershed vary between 4 and 4.5 percent (approximately 4.5%, with most of the development located in the Santa Clarita area). Between 1988 and 2006, the Corps has issued approximately 228 permits that have resulted in actual impacts to waters of the U.S. (this number excludes permit actions where the same permit was issued multiple times, permits that were never utilized by the applicant, and permits that authorized an activity in the same location multiple times). Of these actions, more were associated with emergency repairs and maintenance than any other type of activity (approximately 25%, more than half of which were for emergency actions). The above 228 permit actions resulted in temporary impacts to approximately 480 acres and permanent impacts to approximately 149 acres of waters of the U.S., including approximately 15 acres of wetlands in the Santa Clara River watershed (temporary impacts are usually addressed with on-site restoration as opposed to compensatory mitigation requirements). As compensatory mitigation for the above permanent impacts to waters of the U.S., the Corps required a total of approximately 518 acres of preservation, creation, enhancement, and restoration of aquatic and riparian habitat in the Santa Clara River watershed.

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

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

4.0 Alternatives

4.1 No Regional Conditions

Without the regional conditions requiring pre-construction notification and individual permits in certain waterways, as well as a prohibition of use in certain desert regions, the use of NWP 13 could result in greater than minimal impacts within the Los Angeles District. Specifically, the regions and habitat types identified in the regional conditions have been determined to be sensitive because they are rare, have experienced substantial impacts in the past, or both.

Notification is necessary in these instances because the Corps of Engineers needs to verify that the proposed project meets the terms and conditions of NWP 13. Most importantly, the Corps of

Engineers need to ensure the bank stabilization structure would be the minimum size necessary and thus avoid adverse direct, as well as indirect, impacts to the aquatic environment (i.e., General Condition 31). Unlike other types of fill activities, bank stabilization structures have the potential to cause significant adverse indirect impacts to the aquatic environment by modifying sediment transport and flow dynamics. While the size of the structure is usually the most important factor, the Corps of Engineers also need to ensure the structure is constructed properly and with the appropriate materials in order to avoid potentially adverse impacts. Poorly designed and constructed structures have a greater potential to cause adverse effects to private property and public interests – such as increased streambank erosion – that are located downstream of the project site.

Without requiring an individual permit for bank stabilization activities in certain special aquatic sites located in the State of Arizona or the desert regions of California, San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County, and Gaviota Creek, Mission Creek, and Carpinteria Creek in Santa Barbara County there will likely be greater than minimal impacts, both individually and cumulatively, in these waterways. The Corps of Engineers identified these waters as being sensitive resources whereby use of NWP 13 would likely exceed the cumulative impacts threshold and thus could cause significant impacts to the aquatic environment.

Based on the analysis above, the “No Regional Conditions” alternative has been dismissed from further consideration.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As an alternative to the proposed regional conditions, the Los Angeles District could set new lower limits on bank stabilization activities authorized under NWP 13. An alternative limit that may better ensure minimal impacts both individually and cumulatively, could be to reduce by half the two most restrictive components of the NWP: (1) restrict the structure to 250 feet in length, and (2) to not allow more than ½ cubic yard of material per running foot placed along the bank per running foot. As with the current NWP these criteria could be waived in writing by the district engineer. These lower limits would have smaller direct impacts, and arguably have fewer adverse indirect impacts to the aquatic environment. However, these lower limits are arbitrary and have no clear benefit over the existing limits. This limit would also be impractical because many bank stabilization activities exceed 250 feet in length and require more than ½ cubic yard of material per running foot to be constructed. In the arid and semi-arid southwest many of the regions waterways are large alluvial braided channel systems and require larger bank stabilization structures with substantial toe-down depths to protect private or public property. Furthermore, the actual benefit provided by lowering the limit would be minor because the limit could be waived in writing by the district engineer.

As an alternative to the proposed regional conditions, the Los Angeles District could require pre-construction notification for all bank stabilization activities authorized under NWP 13. This requirement would add to the Districts workload while not having a corresponding benefit to the aquatic environment. More precisely, pre-construction notification requirements are already in place for the regions more sensitive resources (i.e., special aquatic sites, essential fish habitat,

waterways with listed-species or historic properties, etc.).

Finally, the Los Angeles District could propose a condition that prohibits the use of NWP 13 in all special aquatic sites. By requiring an individual permit for all bank stabilization projects proposed in special aquatic sites, there would be a thorough case-by-case evaluation of bank stabilization activities. This evaluation would include an alternatives analysis and public interest review to ensure only minimal adverse impacts. Yet, for the majority of bank stabilization activities the alternatives are usually limited and defined by the site conditions and the property that needs to be protected from further erosion. For the public interest review, most bank stabilization activities that meet the minimal impacts threshold also serve the public interest (primarily to prevent excessive erosion that can impair water quality and to protect private property). In addition, most special aquatic sites located along the toe of an eroding bank would generally not be considered high value sites because they would have formed recently. Furthermore, NWP 13 prohibits (without waiver) placing a structure that would impair water flow into or out of a water of the United States (e.g., an adjacent wetland that may be considered high value). Considering all of these factors, it is reasonable to allow a written waiver from the district engineer when – after a review – it is determined that the effects would be minimal. This process is more efficient than requiring a standard individual permit for all bank stabilization and still affords the greatest protection to the more valuable resources through a case-by-case review.

Based on the analysis above, these alternative regional nationwide permit conditions have been dismissed from further consideration.

4.3 Alternative Regional Nationwide Permit Conditions

As an alternative to the proposed regional conditions, the Los Angeles District could create a limit by not having the district engineer issue waivers to the limits set in NWP 13. Without issuing waivers, NWP 13 could not authorize any bank stabilization activity over 500 feet in length, not allow more than one (1) cubic yard of fill material per running foot placed along the bank, or be located in any special aquatic site. This limit is impracticable because in the past the Los Angeles District has issued bank stabilization permits for structures greater than these limits, and those projects have had only minimal impacts, both individually and cumulatively. The ability to issue written waivers allows the district engineer to review on a case-by-case basis the larger proposed bank stabilization activities, and authorize those projects under NWP 13 when they demonstrate only minimal impacts. If the district engineer had to process standard individual permits for all bank stabilization activities over those limits there would likely be a dramatic increase in workload without a commensurate benefit to the aquatic environment. Therefore this alternative regional condition has been dismissed from further consideration.

5.0 Endangered Species Act

5.1 General Considerations

NWP 13 authorizes the discharge of fill material for bank stabilization activities. To avoid and minimize impacts to the aquatic environment, the terms and conditions for NWP 13 contains

several restrictions including a prohibition of discharges into special aquatic sites, a 500-foot-long limit, and a limit of no more than one cubic yard of fill per running foot along the bank below the plane of the ordinary water mark, unless these criteria are waived in writing by the district engineer. In addition, the new General and Regional Conditions would provide further limitations on the use of NWP 13 in sensitive aquatic ecosystems. With these constraints, NWP 13 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 13, 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 13 specify notification pursuant to General Condition 31 for all projects in special aquatic sites and perennial waters in the State of Arizona and desert regions of California, as well as for projects located in designated Essential Fish Habitat. With the inclusion of these proposed notification requirements for NWP 13, 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 13 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 and designated critical habitat 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 for additional information. When the District receives an application within the range of a listed species and/or the project area otherwise supports suitable habitat, the 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, in accordance with 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 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 of Engineers, Los Angeles District, Regulatory Branch and the U.S. Fish and Wildlife Service, Ventura Office finalized SLOPES for informal and formal ESA consultations. In addition, some the activities authorized by the NWP's that may adversely affect Essential Fish Habitat (EFH) have been addressed by the General Concurrence dated August 5, 2003 and a Programmatic Consultation that was completed by the Corps of Engineers, Los Angeles District, Regulatory Branch and NOAA's National Marine Fisheries Service (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, as pursuant with 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 LAD were contacted via letter dated December 13, 2010 to provide advance notification of the Corps' intent to issue the 2012 NWPs and upcoming opportunity to engage in government-to-government consultation. Follow-up letters were sent to the same set of federally recognized tribes February 11, 2011 announcing the issuance of the proposed rule and formally requesting government-to-government consultation. An advance copy of the proposed rule was also included. One tribe provided a response, indicating they did not foresee a need to utilize the NWPs. No requests for government-to-government consultation were received.

7.2 Local Operating Procedures for Protecting Tribal Resources

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

8.0 Essential Fish Habitat

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

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

9.0 Supplement to National Impact Analysis

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: Same as discussed in national document.
- (b) Economics: Same as discussed in national document.
- (c) Aesthetics: Same as discussed in national document.
- (d) General environmental concerns: Same as discussed in national document.
- (e) Wetlands: In the arid and semi-arid southwest, wetlands are relatively rare. The historic losses of wetlands in the region are approximately 90%. Preserving and restoring the remaining wetlands of the region are vital to achieving the goal of the Clean Water Act. Impacts to wetlands from bank stabilization activities are potentially adverse. Mitigation sequencing can avoid, minimize, and compensate these impacts but it must be done with a proper understanding of the hydrologic system. Specifically, impacts can be avoided by reducing the size of the structure, while minimization typically involves incorporating riparian vegetation into the design of the structure. Compensation for the destruction of wetlands can typically be achieved on-site through enhancement of the existing plant communities.
- (f) Historic properties: Same as discussed in national document.
- (g) Fish and wildlife values: The construction of new bank stabilization structures has been shown to be associated with other existing in-stream infrastructure (Vandersande 2006). While NWP 13 does not authorize the channelization of waterways, many bank stabilization activities occurring in a small area could have a potentially adverse impact on fish and wildlife values. Specifically, a progressive hardening of a waterway will reduce the functional capacity of the aquatic environment, including destruction of important riparian habitat. The proposed regional conditions will prohibit the use of NWP 13 in the region's most sensitive areas and require pre-construction notification for most other areas. With notification and mitigation sequencing, NWP 13 should have only minimal impacts individually and cumulatively on fish and wildlife values.
- (h) Flood hazards: Same as discussed in national document.
- (i) Floodplain values: In the arid and semi-arid southwest, floodplains offer a unique and valuable aquatic resource in the dry landscape. In general, waterways and undeveloped floodplains mitigate large flood events and also provide habitat for many federally threatened and endangered species. The stochastic nature of the region's rainfall and runoff events help to shape this complex landscape feature, but are also responsible for the severe erosion events that require bank stabilization. Bank stabilization activities are often completed in response to floodplain encroachment (i.e., development) and the resultant destruction of riparian vegetation. In a study of authorized bank stabilization structures in the District, Vandersande (2006) found that less riparian vegetation was observed at the toe of the existing structures than undisturbed sections of streambank. Bank stabilization activities have the potential to adversely affect floodplains by modifying the sediment transport dynamics and disconnecting the floodplain from the active channel (i.e., preventing overbank flows). Mitigation sequencing can avoid, minimize, and

compensate these impacts but it must be done with a proper understanding of the hydrologic system. Specifically, impacts can be avoided by reducing the size of the structure, while minimization typically involves incorporating riparian vegetation into the design of the structure. Compensation for the destruction of floodplain resources can typically be achieved on-site through enhancement of the existing plant communities.

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

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

(l) Shore erosion and accretion: In inland waters, streambank erosion is a natural process that balances the forces of water flows and sediment delivery. In the arid and semi-arid southwest, the region's large braided bedload-dominated alluvial waterways are highly erosive. In general, erosion and the associated downstream accretion of sediment is vital to a healthy waterway, especially for riparian tree species such as cottonwoods and willows. However, excessive erosion can have adverse impacts on water quality and aquatic species habitat (e.g., spawning areas for steelhead can be degraded by the deposition of an excess amount of fine sediment). Bank stabilization activities that harden extended lengths of streambank can adversely affect this dynamic process. Moreover, poorly designed bank stabilization activities may cause additional erosion on the opposite bank or downstream of the structure resulting in a "domino effect" of streambank erosion followed by stabilization. In ocean waters, shoreline erosion is also a natural process and responsible for beach development (i.e., accounting for approximately half of the sediment source). Hardening of the shoreline could adversely affect sediment transport dynamics, but the regional conditions and prohibitions should ensure that NWP 13 results in only minimal impacts individually and cumulatively.

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

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

(o) Water quality: Same as discussed in national document.

(p) Energy needs: In the arid and semi-arid southwest there are many energy pipelines and associated infrastructure located along or across waterways. Bank stabilization activities are necessary to protect these pipelines from excessive streambank erosion. NWP 13 will ensure that the energy needs of the public are protected.

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

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

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

(t) Considerations of property ownership: Same as discussed in 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: Same as discussed in national document.
- (b) Suspended particulates/turbidity: Same as discussed in national document.
- (c) Water: Same as discussed in national document.
- (d) Current patterns and water circulation: Same as discussed in national document.
- (e) Normal water level fluctuations: Same as discussed in national document.
- (f) Salinity gradients: Same as discussed in national document.
- (g) Threatened and endangered species: Based on a review of ORM data from the period of fiscal year 2009 through 2011, the Los Angeles District Conducted 22 consultations with the U.S. Fish and Wildlife Service or National Marine Fisheries Service for effects to federally listed threatened and endangered species associated with the verification of projects under NWP 13. Of this total, 6 were formal consultations addressing potential adverse effects to federally listed threatened and endangered species. Based on this data, the Los Angeles District conducts approximately 2 formal consultations per year for actions authorized under NWP 13.
- (h) Fish, crustaceans, molluscs, and other aquatic organisms in the food web: Same as discussed in national document.
- (i) Other wildlife: Same as discussed in national document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below: To ensure that NWP 13 does not result in more than minimal impacts in special aquatic sites located in the desert regions of the Los Angeles District, the Division Engineer has prohibited the use of NWP 13 in these aquatic resources.
 - (1) Sanctuaries and refuges: Same as discussed in 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 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. Based on NWP 13 data from Fiscal Year 2009 to 2011, of the approximately 3 acres of waters of the United States that were permanently impacted in the Los Angeles District area of responsibility, approximately 0.4 acre consisted of wetlands. A total of 16 acres of waters were restored, created, enhanced and/or preserved to offset the authorized losses, in addition to purchases of in-lieu fee and mitigation bank credits of varying compensatory value. To ensure minimal impacts to wetland resources, the Los Angeles District would require a PCN for any activity discharging dredged or fill material in any special aquatic site, including wetlands. The regional conditions would preclude the use of NWP 13 for discharges of dredged or fill material in jurisdictional vernal pools in specific geographic regions, wetlands and riffle and pool complexes in the State of Arizona and the desert regions of California, San Diego Creek, San Juan Creek and Western San Mateo Creek watersheds, and bank stabilization from NWP authorization in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County, and bank stabilization and grade control projects in Gaviota Creek, Mission Creek, and Carpinteria Creek in Santa Barbara County. With the inclusion of additional requirements for NWP 14 in special aquatic sites and sensitive watersheds and other aquatic resources, there would be only long-term minor 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 mudflat resources. Approximately 90 percent of wetlands, including coastal wetlands and mudflats, in California have been affected by historic conversion to agricultural uses, grading and filling activities. As a result, mudflats are especially rare in the Los Angeles District and warrant more rigorous protection. To ensure minimal impacts to mudflats, the Los Angeles District would require a PCN for any activity discharging dredged or fill material in any special aquatic site, including mudflats, in the State of Arizona and desert regions of California. In addition, the Los Angeles District would require a PCN for any discharge of dredged or fill material in essential fish habitat, such as within coastal estuaries. With the inclusion of these modifications, NWP 13 would have only long-term minor impacts to mudflats in 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. To ensure minimal impacts to vegetated shallows, the Los Angeles District would require a PCN for any activity discharging dredged or fill material in any special aquatic site, including vegetated shallows, in the State of Arizona and desert regions of California. Regional Condition 1 requires that all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species must employ road designs to ensure the passage and/or spawning of fish is not hindered. In these areas, designs that span the river or stream, or designs based on a bottomless arch culvert

simulating the natural stream bed must be used unless determined by the Corps to be impracticable. With the inclusion of these modifications, NWP 13 would have minimal impacts on vegetated shallows in the Los Angeles District.

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

(6) Riffle and pool complexes: In the semi-arid southern California and Arizona areas, limited water resources and the need for flood control have led to the construction of numerous dams in the mountains of southern California and Arizona, and on the Colorado River. With the construction of these large dams, many riffle-and-pool complexes have been eliminated by the large reservoirs. Furthermore, construction of the dams also modifies the hydrologic regime of the river, which can also degrade downstream riffle-and-pool complexes. As a result, riffle-and-pool complexes in the Los Angeles District are essentially confined to mountain and foothill regions. They warrant more rigorous protection due to their relatively high production of invertebrate fauna and other contributions to riparian aquatic resources such as aeration of the water, provision of substrate for decomposers, and other factors. To ensure minimal impacts to riffle-and-pool complexes, the Los Angeles District would require a PCN for any activity discharging dredged or fill material in any special aquatic site, including riffle-and-pool complexes, in the State of Arizona and desert regions of California. With the inclusion of these notification requirements, NWP 13 would have minimal impacts to riffle-and-pool complexes in the Los Angeles District.

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

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

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

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

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: Same as discussed in 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 previous three years, the Los Angeles District estimates that this NWP will be used approximately 30 times per year, resulting the loss of approximately 1 acre of waters of the United States on an annual basis. The majority of impacts authorized under NWP 13 during this period were for temporary impacts (approximately 6 acres on an annual basis), which is to be expected as construction of bank stabilization in waters prone to short-duration, high-energy flood events requires extensive toe-down depths for bank stabilization projects to withstand the scour depths associated with these systems. Installation therefore requires a relatively wide construction impact in relation to the bank protection project itself in order to accommodate these toe-down depths.

As bank stabilization projects are linear in nature, the impacts associated with losses of linear feet of streambank and associated functions may be more substantial than when considered solely on an acreage basis. During this same three-year period, approximately 3,600 linear feet of permanent impacts were authorized on an annual basis (this is not in addition to the acreage cited above).

To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Los Angeles District estimates that approximately 5 acres of compensatory mitigation will be required on an annual basis to offset the authorized losses of waters of the United States and ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

In the 2007 regional decision document, it was estimated that NWP 13 would be used on average 41 times per year – a reasonable estimate based on existing data. The calculated average area of impact authorized under NWP 13 between 2003 through 2006 was 0.23 acre, and an average permanent loss of approximately 0.14 acre of waters of the United States per authorization. To compensate for these activities, the Los Angeles District required an average of approximately 0.18 acre of compensatory mitigation per project to offset the authorized losses of waters of the United States. After reviewing the data, it appears that the impact average estimated for the 2007 NWP 13 was largely accurate and based on correct data and did not substantially under- or over-estimate the impact of NWP 13 on waters of the United States in the Los Angeles District. NWP 13 may impact special aquatic sites with a written waiver, and therefore it is estimated that 20% of all impacts will occur in wetland waters of the United States. Research conducted by Vandersande (2006) showed that between 1994 and 2004 there was a positive linear correlation between the number of bank stabilization permits issued in the Los Angeles District and annual rainfall in the region. Therefore, the estimated use of NWP 13 will likely vary with changes in rainfall amounts, especially during El Nino events, which result in extreme runoff and greater streambank erosion. Vandersande (2006) also demonstrated the majority of bank stabilization permits issued during that period were located in coastal southern California, but estimated that in the future a greater proportion of permits will be issued in Arizona and inland California because of large populations. From a cumulative impact perspective, this would suggest that more attention needs to be placed on these regions.

Indirect effects on aquatic functions and services are more difficult to estimate, but are anticipated to be less than in previous years given the increased understanding of such effects on the aquatic environment and new lower impact stabilization techniques. Pre-construction notification should result in fewer impacts as proposed projects are reviewed in conjunction with the mitigation sequencing described in general conditions 23 and 31. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Los Angeles District estimates that approximately 5 acres of compensatory mitigation will be required annually to offset the authorized losses of waters of the United States and ensure NWP 13 authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

The terms and conditions of NWP 13, including the pre-construction notification requirements and the regional conditions listed in Section 10 of this document, will ensure NWP 13 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 NWP 13. 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 NWP 13 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 NWP 13 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 13

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 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).

10.3 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.

10.4 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.

10.5 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.

10.6 Regional condition 7

Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.

10.7 Regional condition 8

In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has revoked the use of the following 24 selected NWPs within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49 and 50. Consequently, these NWPs are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.

10.8 Regional condition 9

Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWP 29, 39, 40, 42, 51 and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:

- a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characters observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.
- b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 30 and Regional Condition 3;
- c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
- d. A mitigation plan describing how the unavoidable losses are proposed to be compensated.

10.9 Regional condition 10

Any compensatory mitigation required by special conditions of the NWP verification shall be completed 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, proof of payment shall be submitted to the appropriate Corps district 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 of 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 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.

In accordance with General Condition 31 (notification), and General Condition 18 (endangered species) and 33 CFR 332, the Corps of Engineers requires project designs and mitigation plans for bank stabilization projects resulting in loss of waters of the United States to demonstrate impacts would be minimal. Minimization measures may include seasonal restrictions on construction periods, bio-engineered designs, implementation of Best Management Practices during construction to address water quality impacts, and endangered species protective measures to avoid or reduce incidental take. Compensatory mitigation may take the form of mitigation bank credits purchased by the applicant from an approved mitigation bank, in-lieu fee payment to an approved in-lieu fee program, or permittee responsible mitigation with approved financial assurances.

If, at a later time, there is clear, unequivocal evidence that use of NWP 13 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 NWP 13, 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.