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MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for Permit Identification Number NWP-2015-402 (Regional General Permit 9)

This is a Department of the Army (DA) permit decision document for a permit action being reviewed by the U.S. Army Corps of Engineers (Corps), Portland District. This document constitutes the Environmental Assessment, Clean Water Act (CWA) Section 404(b)(1) Evaluation and Determination, Statement of Findings, and Public Interest Determination for the proposed project described below. Review was conducted according to the procedures at 33 CFR Part 320 and 325, including Appendices B and C. This document also addresses the Environmental Protection Agency's Section 404(b)(1) Guidelines published at 40 CFR Part 230.

1. INTRODUCTORY INFORMATION:

a. Applicant: General Public

b. Waterway and Location: Along the South Coast of Oregon from the Siuslaw River in Lane County to the California border and within the limits of Oregon's designated coastal zone. The coastal zone is bound on the west by the extent of the state's territorial sea (generally 3 nautical miles offshore) and to the east by the crest of the Coast Range. Within this region, there are two exceptions to the eastern boundary: the Umpqua River, where the coastal zone extends to Scottsburg (approximate River Mile 28); and the Rogue River, where the coastal zone extends to Agness (River Mile 27.1).

c. Project Purpose and Need

(1) Basic Project Purpose: Maintenance.

(2) Overall Project Purpose: To conduct certain maintenance activities at existing port, public, and private facilities along the South Coast of Oregon.

(3) Need: To streamline the permit process for routine, minimal impact projects and provide applicants with known permit evaluation requirements.

d. Water Dependency Determination: Water dependency is described in the 404(b)(1) Guidelines at 40 CFR 230.10(a)(3). If a discharge is proposed for a special aquatic site and the associated project does not require "access or proximity to or siting within the special aquatic site...to fulfill its basic project purpose (i.e. is not "water dependent"), practicable alternatives that do not involve special aquatic sites are presumed to be available...". The Guidelines at 40 CFR 230.7(b)(1) further state "considerations of alternatives in § 230.10(a)

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are not directly applicable to General permits"; therefore, a determination of water dependency is not necessary.

A discussion of impacts to special aquatic sites resulting from projects authorized under this General Permit is found in section 12.j.

2. PROPOSED WORK: This RGP authorizes the following activities at Port, public, and private facilities.

a. Maintenance dredging of existing marina basins; access channels to marinas or boat slips; boat slips; launch ramps; travel lifts; and ship berths associated with port, public, and private facilities.

The following criteria must be met:

(1) The dredging shall not alter the character, scope, size, or location of the project area or previously authorized dredge prism (width, length, and depth).

(2) The project area must have previously been dredged within 10 years of the date of the application for authorization under this RGP.

(3) Dredging shall occur by hydraulic suction dredge and pipeline (to include submersible pump) or mechanical clamshell dredge, unless otherwise authorized by the Corps. Prop-wash dredging is not authorized by this RGP.

b. Disposal of dredged material associated with maintenance dredging. Dredged material proposed for unconfined, aquatic disposal (including upland disposal with return flows) must be determined to be suitable by the interagency Portland Sediment Evaluation Team (PSET). See section 5 for more information on the sediment evaluation process.

The following dredged material disposal options are covered by this permit:

(1) Upland sites, either confined or with return flows. This RGP does not authorize the removal of material from an upland disposal site and subsequent placement into waters of the U.S.

(2) In-water disposal at either the Port Orford Nearshore Placement Area or the Port Orford Breakwater Placement Area, not to exceed previously authorized limits, as shown on Figure 1.

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(3) Aquatic placement for the purpose of beach nourishment with the following restrictions:

(a) The grain size distribution of the material to be placed on a specific site is of a similar composition as the material existing at the receiving location;

(b) There is a demonstrated need for beach nourishment at the general placement area; and

(c) The placement height of the material does not exceed high tide.

This RGP does not authorize the placement of material in ocean waters subject to regulation under the Marine Protection, Research, and Sanctuaries Act (MPRSA) or at Corps-designated in-bay or flowlane sites.

c. Maintenance of currently serviceable structures or fill.

Authorized activities include, but are not limited to, piling replacement, dock repair, repair of existing riprap revetments, repair/replacement of utility lines, and replacement of structures within and spanning or protruding over navigable waters.

The following criteria must be met:

(1) The structure or fill shall not be put to a different use and the maintenance activity shall not change the character, scope, or size of the original design. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized.

(2) Structural maintenance of docks shall not encroach within 50 feet of a Federal navigation channel as measured from the edge of the authorized channel boundary.

(3) Utility lines located beneath a federal navigation channel shall be installed a minimum of -10 feet (or more) below the full channel depth (authorized depth + advanced maintenance + over depth).

d. Sediment sampling. This RGP authorizes conventional sampling methods (to the extent these methods are determined by the Corps to be jurisdictional) for the purposes of characterizing dredged material. Prior to sample collection, the proposed sediment sampling

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methods and locations must be approved by the interagency PSET.

### 3. COMPLIANCE WITH 404(b)(1) GUIDELINES:

a. Avoidance and Minimization Information: Overall, the RGP minimizes the loss of waters of the U.S. by limiting covered activities to maintenance of existing structures or, in the case of dredging, within existing footprints. Disposal of dredged material must occur within designated in-water sites or meet certain requirements if beach nourishment is proposed. Material disposed in upland sites cannot be subsequently removed and placed into waters of the U.S. under this RGP.

b. Compensatory Mitigation: Because the projects to be authorized by RGP-9 are maintenance activities and are required to remain within previous project footprints (i.e., not change the character, scope, size, or location of the original project design), compensatory mitigation will generally not be required to ensure minimal impacts. However, should project-specific review identify the need for compensatory mitigation, special conditions can be added to the RGP verification letter.

c. Jurisdiction: Project-specific jurisdictional determinations will be completed for each activity proposed to be authorized by this RGP.

d. Compliance with 404(b)(1) Guidelines conditions for the issuance of General permits:

(1) The 404(b)(1) Guidelines at 40 CFR 230.7(a) state: "A General permit for a category of activities involving the discharge of dredged or fill material complies with the Guidelines if it meets the applicable restrictions on the discharge in § 230.10 and if the permitting authority determines that:

(a) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment;

(b) The activities in such category will have only minimal adverse effects when performed separately; and

(c) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment."

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(2) 40 CFR 230.10 has three main requirements that must be met for all dredged or fill material discharge activities:

(a) No discharge shall be permitted if there is a practicable alternative that would have less impact on the aquatic ecosystem as long as the alternative does not have other significant adverse environmental consequences;

(b) No discharge shall be permitted that: (a) results in violations of state water quality standards, (b) violates toxic effluent standards, (c) jeopardizes the continued existence of species listed under the Endangered Species Act, or (d) violates the requirement to protect marine sanctuaries; and

(c) No discharge shall be permitted that results in significant degradation of waters of the U.S. Effects contributing to significant degradation include effects on municipal water supplies, special aquatic sites, life stages of aquatic life and other wildlife dependent on aquatic ecosystems, and effects on recreational, aesthetic, and economic values.

An evaluation of the prohibitions listed in 40 CFR 230.10(b) and the factors in 40 CFR 230.10(c) are addressed in sections 10, 11, and 12 of this document. The Guidelines at 40 CFR 230.7(b)(1) indicates that a consideration of alternatives as required by 40 CFR 230.10(a) is not directly applicable to General permits; however, the Corps provides a discussion of alternatives considered, under NEPA, in the development of this Regional General Permit in section 9.

All activities authorized under this RGP that result in a discharge into waters of the U.S. must receive individual 401 Water Quality Certification (WQC) from the Oregon Department of Environmental Quality. After obtaining a 401 WQC or a waiver from the certification, the permittee must submit a copy of the 401 WQC or waiver to the Corps. If a conditional RGP verification was previously issued by the Corps, it will only become effective upon receipt of the 401 WQC. The conditions of the 401 WQC will become conditions of the RGP verification.

Species covered under the ESA, as well as species covered by the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are known to occur within the RGP geographical boundary. As part of the project-specific authorization process, the Corps will determine the potential for actions covered by the RGP to have an effect on National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service (USFWS) trust species and will consult with the Services as appropriate. It is possible that some maintenance actions authorized by this RGP will be determined to have no effect on listed species and, therefore, not require consultation with the Services. However, those proposed activities that may affect

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a federally listed species will be required to comply with the terms and conditions of an existing programmatic or previously issued biological opinion, or will need to go through a project-specific consultation if the first two options do not apply. The Corps may request additional information to determine compliance with a programmatic or previously issued opinion, or to assist in initiating project-specific consultation.

(3) The following is a discussion regarding the activities proposed for authorization under RGP-9 as required by 40 CFR 230.7(a):

(a) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment.

The activities authorized by RGP-9 are sufficiently similar in nature and environmental impact to warrant authorization by a general permit. The terms of RGP-9 authorize a specific category of activity typically expected to occur at port, public, and private facilities (i.e., structures or work, including discharges of dredged or fill material, for maintenance purposes) in a specific category of waters (i.e., waters of the United States, including navigable waters). Within the overall maintenance category, the impacts of one specific activity type may differ from another (e.g. maintenance dredging has different impact considerations than piling replacement); however, to ensure impacts are minimal the Corps has identified a specific set of limitations, terms and conditions for each activity type. For example, the placement of dredged material for the purpose of beach nourishment (one of the disposal options associated with maintenance dredging) requires the grain size distribution of the material placed at a specific site to have a similar composition as the material existing at the receiving location.

If a situation arises in which a specific action requires further review, or is more appropriately reviewed under the individual permit process, provisions of this RGP allows the district engineer to take such action.

(b) The activities in such category will have only minimal adverse effects when performed separately.

Some of the activities proposed to be authorized by RGP-9 are similar to those authorized by the following Nationwide Permits (NWP): (NWP) 3 (Maintenance), NWP 6 (Survey Activities), NWP 16 (Return Water from Upland Contained Disposal Areas), and NWP 35 (Maintenance Dredging of Existing Basins). The Corps has previously determined, as part of the 2012 and 2017 NWP authorization process, that the activities authorized by these NWPs will have no more than minimal cumulative adverse effects. This determination was based on the evaluation of various public interest factors, an impact analysis as required by the 404(b)(1)

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Guidelines, and the incorporation of general conditions, regional conditions, and project-specific conditions as appropriate.

The activities proposed for authorization by RGP-9 would occur at existing facilities or involve currently serviceable structures or fill. In the case of the maintenance dredging category, the terms of the RGP do not allow the character, scope, size, or location of the previously authorized dredge prism to be altered. Similarly, where maintenance of currently serviceable structures or fill is proposed only minor deviations to the original design may be requested if necessary to meet current code or regulatory requirements. Where dredged material is proposed for unconfined aquatic disposal, the sediments must be determined to be suitable for such in-water disposal by an interagency review team. Material proposed to be placed for the purpose of beach nourishment must meet additional requirements (e.g., similar grain size composition and demonstrated need) to determine its suitability for such discharge.

To further ensure minimal adverse effects, the RGP requires the Corps be notified prior to project implementation through the submittal of a pre-construction notification (PCN). This PCN provides project-specific information that allows the Corps to verify whether the project is covered by the RGP and to determine if any portion of the project-specific activity warrants the addition of special conditions to achieve the minimal adverse effects threshold. If a situation arises in which a specific action requires further review, or is more appropriately reviewed under the individual permit process, provisions of this RGP allow the district engineer to take such action.

(c) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment.

Some of the activities proposed to be authorized by RGP-9 are similar to those authorized by the following Nationwide Permits (NWPs): (NWP) 3 (Maintenance), NWP 6 (Survey Activities), NWP 16 (Return Water from Upland Contained Disposal Areas), and NWP 35 (Maintenance Dredging of Existing Basins). The Corps has previously determined, as part of the 2012 and 2017 NWP authorization process, that the activities authorized by these NWPs will have no more than minimal cumulative adverse effects. This determination was based on the evaluation of various public interest factors, an impact analysis as required by the 404(b)(1) Guidelines, and the incorporation of general conditions, regional conditions, and project-specific conditions as appropriate.

To estimate the number of times these types of actions may be authorized by this RGP within its geographic boundary (Lane, Douglas, Coos, and Curry Counties), the Corps queried its ORM database for final verifications issued for the above NWPs. The period of time evaluated was March 19, 2012 to October 7, 2016; the maximum life of a RGP is five years. During this

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time, the above listed NWP's were issued a total of 122 times (NWP 3 = 109; NWP 6 = 2; NWP 16 = 7; NWP 35 = 4). Because the area of the four counties queried is larger than the geographic boundary of the proposed RGP, the actual usage of the RGP for these specific activity types may be less.

In addition to the activities represented by the listed nationwide permits, the in-water disposal of dredged material may be authorized for beach nourishment or into two existing in-water sites at Port Orford. These worktypes were not covered by the 2012 NWP's and are not currently covered by the 2017 NWP's. Four standard permits covering maintenance dredging with in-water disposal were issued within the counties represented by the proposed RGP during the period of March 19, 2012 to October 7, 2016.

Therefore, based on an evaluation of nationwide and standard permits authorizing similar maintenance and disposal activities (and rounded up to account for errors), the Corps estimates the proposed RGP could be used up to 130 times within its proposed boundaries over a five year period.

As part of the evaluation of project-specific actions requesting authorization under the proposed RGP, the Corps will ensure that no more than minimal impacts will occur either individually or cumulatively. Avoidance, minimization, restoration and/or compensatory mitigation will be required as necessary for individual actions to ensure cumulative adverse effects are minimal or aquatic functions lost or affected as a result of an action are replaced. If a situation arises in which a specific action requires further review, or is more appropriately reviewed under the individual permit process, provisions of the RGP allow the district engineer to take such action.

Based on the evaluation of the applicable restrictions on the discharge and the activities proposed for authorization under this General permit, as required by 40 CFR 230.7, the Corps has determined the reauthorization of RGP-4 complies with the 404(b)(1) Guidelines' conditions for the issuance of General permits.

**4. EXISTING CONDITIONS:** The project area is located within the Coast Range ecoregion and is closely bordered by the Klamath Mountain ecoregion near the southern boundary of the RGP geographical area. In general, the topography is characterized by steep mountain slopes and sharp ridges. Elevation varies from the ocean shoreline to Marys Peak, which is about 4,100 feet high; however, main ridge summits are approximately 1,400-2,500 feet. The Coast Range ecoregion is bordered by the Nearshore ecoregion on the ocean shores and intersects it in Oregon's estuaries. The Coast Range's climate is influenced by cool, moist air from the ocean, and is the wettest and mildest in the state. Most of the ecoregion is dominated by coniferous forests. Forestry remains the primary industry in the interior portion of the

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ecoregion. The Oregon coast offers excellent recreational opportunities, and tourism is important to local communities. Fishing, both commercial and recreational, and fish processing are significant components of the economy. People are increasingly moving to the coast to retire, so retirement services are growing in importance to coastal communities.

Much of the ecoregion is publicly owned and managed to balance recreation, tourism, and conservation. However, ownership in the northern part of the ecoregion is particularly fragmented. Restoration of watershed processes and functions, and restoration of habitat complexity (e.g., woody debris) to stream and riparian areas, are major concerns throughout the entire Coast Range ecoregion. Restoring flows to headwater streams maintains ecological connections important for many species.

In-water disposal of dredged material will occur at two previously authorized disposal sites in Port Orford identified as the Nearshore Placement Area and the Breakwater Placement Area. The sites were established in the 1990s.

## 5. AUTHORITY.

- Section 10 of the Rivers and Harbors Act of 1899.
- Section 404 of the Clean Water Act.
- Section 103 of the Marine Protection, Research and Sanctuaries Act.

## 6. SCOPE OF ANALYSIS.

### a. NEPA.

#### (1) Factors.

(a) Whether or not the regulated activity comprises "merely a link" in a corridor type project. *The RGP is limited to maintenance activities and does not authorize the construction of new linear or corridor type projects.*

(b) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity. *The RGP is limited to the maintenance of existing structures or fills, including maintenance dredging of marina basins and access channels. Repair or maintenance dredging activities must not deviate from the original footprint (length, width, depth) or change the original character, scope, size, or location of the previously authorized project.*

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(c) The extent to which the entire project will be within the Corps jurisdiction. *Projects authorized under the terms of this RGP are expected entirely with the Corps' jurisdiction. Aside from the regulatory permit authority, some pieces of the overall maintenance action may require review under the Corps' Section 408 (33 USC 408) responsibility.*

(d) The extent of cumulative Federal control and responsibility. *All activities completed under the terms of this RGP will be within the Corps' regulatory authority.*

(2) Determined scope.

Only within the footprint of the regulated activities within the delineated waters.

Over entire property. *Explain. The scope of analysis includes all activities necessary to complete the site-specific maintenance activity. All aspects of the projects are subject to federal control and responsibility.*

b. 33 CFR Part 325 Appendix C - "Permit Area".

(1) Three Part Test. Activities outside waters of the United States are/are not included because all of the following tests are satisfied:

(a) Such activity would/would not occur but for the authorization of the work or structures within the waters of the United States.

(b) Such activity is/is not integrally related to the work or structures to be authorized within waters of the United States (or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program).

(c) Such activity is/is not directly associated (first order impact) with the work or structures to be authorized.

(2) Scope of Analysis Determination. The permit area includes the maintenance activities occurring within waters of the U.S. and any associated work in uplands (e.g., disposal of dredged material with or without return waters).

c. ESA "Action Area".

(1) Action area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

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(2) Determined scope. Each project will be evaluated for the potential to affect protected species and/or their habitat including designated critical habitat. The effects determination and scope of analysis will be made for each project.

7. PUBLIC NOTICE COMMENTS. A Public Notice describing the proposal to issue a regional general permit for maintenance activities along the South Coast of Oregon was issued on August 16, 2016 and sent to all interested parties, including appropriate Federal and state agencies and Tribes. A second notice was issued on November 17, 2016, describing a proposal to extend the northern boundary of the RGP area to the Siuslaw River in Lane County, Oregon. Comments received on this action are summarized below, followed by the Corps response.

### **7.1 Federal Agencies.**

7.1.1. Environmental Protection Agency (EPA). No comments received.

7.1.2. U.S. Fish and Wildlife Service (FWS). No comments received.

7.1.3. National Marine Fisheries Service (NMFS). No comments received.

7.1.4. Other Federal Agencies. No other Federal Agencies commented.

### **7.2 State and Local Agencies.**

7.2.1. Oregon Department of Fish and Wildlife (ODFW). No comments received.

7.2.2. State Historic Preservation Officer (SHPO). The SHPO commented by letter dated August 26, 2016, with the following concerns:

a. Reliance on shipwreck data that is currently in the online SHPO database is insufficient given there is other data available at the SHPO that should also be referenced.

b. In addition to supplementary data on shipwrecks, SHPO also maintains data on paleo-shorelines and other submerged landforms that should also be referenced for offshore projects.

c. The SHPO can only approve of the Corps' review of offshore permits without consulting with SHPO on a case-by-case basis only if the abovementioned databases are reviewed by the Branch archeologist. Furthermore, if a given project is within an area marked as high potential within one of the abovementioned databases the SHPO will be consulted

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before new dredging or discharge activities occur.

d. In cases of extremely high potential for possessing submerged cultural resources further data may be needed prior to SHPO providing concurrence.

Corps response: The Corps responded to the SHPO by letter dated September 29, 2016, indicating that because a pre-construction notification is required, “the Regulatory Branch archeologist will review all actions submitted under this RGP per the Memorandum of Understanding between the Corps Regulatory Branch and SHPO.” In line with that protocol, all project components (e.g. dredge areas and disposal areas) will be reviewed by the Branch archeologist, and if there are known sites within or in close proximity to any project component, SHPO will be notified per current protocols. “Additionally, based on the best professional judgement of the Branch archeologist, surveys may be requested of the applicant if a project component is deemed to have a high potential to impact significant cultural resources.”

The Corps also outlined the activities that would be authorized by RGP-9 and provided an analysis of the potential to impact historic properties. This analysis is given in section 11.z.

7.2.3. Oregon Department of Environmental Quality (DEQ). DEQ provided comments via email dated September 15, 2016, based on preliminary review of the public notice. DEQ identified where to find the required elements for a complete application for 401 Water Quality certification, and the information the applicant must consider in describing potential water quality impacts. DEQ indicated there are several cleanup sites in southern Oregon estuaries that involve contaminated sediments. Most are associated with past or current shipyard/boatyard locations. Much of this contamination can be attributed to bottom paint that was/is applied to ship hulls to prevent biofouling. There are numerous sites in the Coos Bay/Umpqua River estuary, but sites exist in other areas too. DEQ would like to be notified of any planned dredging projects in this area, not just those that plan aquatic disposal and PSET reviews, so that coordination between the PSET, the Corps, DEQ’s 401 program, and DEQ’s cleanup program can occur prior to any authorized dredging activities.

Corps response: As part of the review process, the Corps will notify DEQ regarding all proposed actions seeking DA authorization under this RGP. This would inform DEQ’s cleanup program of potential actions in clean-up sites or areas with known contaminated sediments. Information regarding DEQ’s 401 certification can be found in section 12.a.

7.2.4. Other State Agencies. No other state agencies commented.

### **7.3 Organizations.**

7.3.1. The Northwest Environmental Defense Center (NEDC) submitted the following comments by letter dated September 15, 2016.

a. The notice fails to provide enough information (scope and size, frequency and timing, etc.) on projects that may be authorized under this permit to allow the public to determine 1) if the use of a regional general permit is warranted and 2) if the permit contains appropriate terms and conditions to ensure compliance with the law.

Corps response: PN issued in August 2016 included the draft RGP which described the proposed scope and size of activities that would be authorized by the general permit. The provisional determination that the activities comply with the 404(b)(1) Guidelines provided information regarding estimated frequency of the covered activities over the five year life of the RGP; this information was available to members of the public if requested. A second notice, issued in November 2016 regarding a proposed extension of the northern boundary, included this information directly in the notice itself.

b. The notice fails to provide sufficient information regarding the endangered species or designated critical habitat that may be affected. The potential cumulative impact on listed species must be assessed before the permit may be issued.

Corps response: Corps regulations at 33 CFR 325.2(b)(5) state the "...district engineer will include a statement in the public notice of his current knowledge of endangered species...If the district engineer determines the proposed activity would not affect listed species...he will include a statement to this effect..." ESA effects determinations are based on project-specific information. Because this RGP authorizes categories of actions and not specific projects, the effects to listed species are not known up-front. The determination of effects on listed species, including an assessment of potential cumulative impacts, will be completed by the Corps when an applicant submits a pre-construction notification for its proposal as stated in the public notice and required by the RGP. No activity is authorized by this RGP until the district engineer, or his or her designee, provides written verification that the proposal meets the requirements of the RGP, to include compliance with the ESA.

c. The public notice must include "either 'a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible' or 'a brief description of known dredged material discharges at the proposed disposal site' with the 'documented effects of other authorized disposals that have been made in the disposal area.'" 33 C.F.R. § 325.3(a)(17)(iii)-(v). The public notice also must include "[i]nformation on the characteristics and composition of the dredged material. Id. §

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325.3(a)(5).”

Corps response: The referenced regulations in this comment only applies to the discharge of dredged material regulated under the Marine Protection, Research and Sanctuaries Act (MPRSA) (also commonly referred to as the “Ocean Dumping Act”). The proposed RGP included with the August 2016 public notice did not propose (nor does the final proposal) to authorize the transportation of dredged material for the purposes of disposing in ocean waters under the MPRSA. The RGP did, however, propose to authorize disposal at nearshore sites under the authority of Section 404 of the CWA; these sites are not regulated under the MPRSA and, therefore, do not require approvals from EPA and do not require the level of detail within the public notice that is required in 33 CFR 325.3(a)(17).

d. The CWA allows the Corps to issue general permits for a category of activities only “if the [Corps] determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.” The Corps’ implementing regulations state precisely what the Corps must do to reach the “determinations” required by Section 404(e): “the permitting authority shall set forth in writing an evaluation of the potential individual and cumulative impacts of the category of activities to be regulated under the General permit.” 40 C.F.R. § 230.7(b). Such an “evaluation must be completed before any General permit is issued, and the results must be published with the final permit.”

Corps response: Portland District has prepared an evaluation of the proposed RGP’s compliance with the requirements specified in 40 CFR 230.7 (General Permits). See section 3(d).

e. The Corps must examine practicable alternatives. 40 C.F.R. § 230.10(a)(1). The Guidelines mandate that no discharge be permitted if there is a “practicable alternative” to discharging to waters of the United States. Id. § 230.10(a).

Corps response: 40 CFR 230.7(b)(1) specifically states that “...consideration of alternatives in §230.10(a) are not directly applicable to General permits...” However, pursuant to NEPA, the Corps has included a discussion of alternatives considered in the development of this RGP in section 9 of this EA/SOF.

f. The discharge will likely cause or contribute to significant degradation of the impacted watersheds due in large part to the re-suspension of sediment, direct and indirect impacts to the physical and chemical characteristics of the water and basin floors, and direct physical impacts to the aquatic ecosystem and the aquatic life that depends on it. The Corps’ assessment of whether the discharge will cause significant degradation of Oregon’s waters

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must be based on “appropriate factual determinations, evaluations, and tests . . . with special emphasis on the persistence and permanence of the effects” described in 40 C.F.R. § 230, subparts C through F. 40 C.F.R. § 230.10(c).

Corps response: The Corps has included such an assessment in this EA/SOF (specifically see sections 10 and 12).

g. Re-suspension of sediment during the dredging will dramatically affect turbidity levels in the water. EPA’s regulations state that elevated levels of suspended particulates in the water column “may reduce light penetration and lower the rate of photosynthesis and the primary productivity of an aquatic area.” 40 C.F.R. § 230.21(b).

Corps response: The potential for the re-suspension of sediment and increased turbidity levels as a result of activities authorized by this RGP have been addressed as part of its overall development for the purposes of adding specific criteria or conditions designed to bring any adverse environmental impacts below the minimal effects threshold. Project-specific evaluation will also occur as part of the pre-construction notification process to determine the need for additional protective measures. A specific discussion on suspended particulates and turbidity is provided in section 12.b.

h. Moreover, the dredging may bring long-dormant pollutants back into the water column and thereby add contaminants to the aquatic ecosystem. The public notice states that the material to be dredged from non-routinely dredged locations may require further sediment evaluation before dredging is authorized. If there are toxics present in the re-suspended sediment then they are likely to become biologically available to fish and other organisms in the region, see 40 C.F.R. § 230.21(b), and may subsequently move up the food chain. Re-suspension of contaminated sediment during the dredging process may therefore cause or contribute to violations of water quality standards. The Corps should ensure the dredged material from non-routinely dredged locations is acceptable for in-water placement before authorizing the proposed activities.

Corps response: As noted in the draft RGP attached to the August 2016 public notice, dredged material that is proposed for unconfined, aquatic disposal must be determined to be suitable for such disposal based on criteria specified in the *Sediment Evaluation Framework for the Pacific Northwest* (SEF). This criteria specifies when testing is required; how to prepare a sediment sampling and analysis plan if physical and/or chemical analysis is required; and, based on results of the chemical testing, whether biological testing may be needed. The final determination as to whether dredged material is suitable for unconfined aquatic disposal is made prior to authorizing the project to occur.

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A discussion regarding water quality is provided in section 11.o and a discussion on suspended particulates and turbidity is provided in section 12.b.

i. As part of the public interest review, the Corps must evaluate the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Id. § 320.4(a)(1). The regulations specify numerous elements to include in the public interest review, including: water quality, conservation, aesthetics, fish and wildlife values, navigation, shore erosion and accretion, recreation, general environmental concerns, and the needs and welfare of the people.

Corps response: See sections 11, 13 of this EA/SOF.

j. The Corps should impose special conditions and limit the duration of the authorization to reduce the negative impacts that are likely to result. See 33 C.F.R. § 325.4(a) (stating that “[d]istrict engineers will add special conditions to [Corps] permits when such conditions are necessary to satisfy the legal requirements or to otherwise satisfy the public interest requirement”). In addition to project modifications to minimize adverse project impacts and specific mitigation measures to ensure the project complies with the Guidelines, the Corps may require additional measures “to ensure that the project is not contrary to the public interest.” 33 C.F.R. § 320.4(r)(1)(iii).

Corps response: The RGP is limited to a duration of five years per 33 CFR 325.2(e)(2). General conditions, applicable to all actions authorized by the RGP, are contained in the main permit instrument and project-specific verification letters may contain special conditions. These conditions are put in place to ensure the activity will have only minimal individual and cumulative impacts, and is not contrary to the public interest.

k. The Corps must address the cumulative impacts of other activities in the region. Under NEPA, the cumulative impacts analysis must consider “past, present, and reasonably foreseeable future actions *regardless of what agency (Federal or non-Federal) or person undertakes such other actions.*” 40 C.F.R. §1508.7 (emphasis added).

Corps response: See section 13 for a discussion of cumulative impacts.

7.3.2. Port of Siuslaw. By letter dated September 12, 2016, the Port of Siuslaw renewed its request to be included within the geographic boundaries of the proposed South Coast RGP. The Port is now a member of the South Coasts Port Coalition (Coalition); the current draft of the RGP includes all other members of the coalition. Including the Port of Siuslaw in the RGP would be “recognition of the importance of the Coalition in maintaining local river and waterways and would be an immense help with dredging logistics...”

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Corps Response: The Port had previously (letter dated February 1, 2016) requested that the Siuslaw River be included in the geographical boundaries of the RGP indicating that it was only 20 miles north of the Umpqua River, and that the Port has an active commercial and recreational marina. The Portland District responded to this request by letter dated February 11, 2016, indicating the intention to stay with the proposed northern boundary of the Umpqua River. The rationale behind this decision was that, generally, RGPs with more expansive range of activities and/or geographical area of coverage need to have more restrictive permit conditions in order to comply with the minimal individual and cumulative impact criteria.

However, after receiving the Port's September 12 letter indicating they are now part of the Coalition, the District determined expansion of the northern boundary was appropriate. The Port conducts similar activities as other Coalition members and the Siuslaw River is within reasonable range of the other covered areas (approximately 20 miles from the Umpqua River). Therefore expanding to the Siuslaw River would not result in the need for additional activity categories and additional restrictions to meet the minimal impact criteria are not anticipated.

A second public notice requesting comments on the proposed boundary expansion was issued on November 17, 2016. No comments were received in response to that notice.

**7.4 Individuals.** No individuals provided comments in response to the public notice.

**7.5 Tribal.** The tribes were provided a copy of both the August 2016 and November 2016 public notices; no tribal comments were received in response to these notices.

8. PUBLIC HEARING (33 CFR Part 327). Public hearings are held if the Corps determines additional information from such a hearing is needed to make a final permit decision. Generally, public hearings are held if comments to the public notice raise substantial issues which cannot be resolved informally. Public hearings are conducted on an as needed basis at the discretion of the District Engineer. No public hearing was requested or held for this project.

9. ALTERNATIVES. [33 CFR 320.4(a)(2)(ii) and 40 CFR 230.10(a)]

The 404(b)(1) Guidelines at 40 CFR 230.7(b)(1) states "...considerations of alternatives in §230.10(a) are not directly applicable to General permits.."; however, the following is a discussion of alternatives considered in the development of this General permit. This evaluation includes an analysis of alternatives based on NEPA, which requires a more expansive review than the Clean Water Act Section 404(b)(1) Guidelines. The alternatives discussed below are based on an analysis of the potential environmental impacts and impacts to the Corps, Federal, and state resource agencies, Tribes, and the general public.

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a. No Action. Under the no-action alternative, the RGP-9 would not be issued and the Corps would need to rely on existing permitting processes (i.e., nationwide permits, other existing general permits, or standard permits) to evaluate requests for the discharge of dredged or fill material into regulated waters associated with maintenance activities along the South Coast of Oregon. While this option is a viable alternative, it does not achieve the overall objective of streamlining the permit process for routine, minimal impact projects and providing applicants with known permit evaluation requirements.

b. Other Project Designs.

(1) Smaller Project Designs. The initial draft proposal for RGP-9 authorized projects within a smaller geographic boundary (Umpqua River to the California border). This alternative was changed to the current geographic area for the reasons discussed in response to comments from the Port of Siuslaw (section 7.3.2)

(2) Larger Project Designs. Original project concepts for RGP-9 included the use of existing flowlane/in-bay sites and EPA designated ocean disposal sites as potential disposal options, and propwashing as a potential maintenance dredging option. These options were dropped from further consideration for the reasons discussed below.

(a) Existing flowlane/in-bay Disposal Sites. The Portland District has established several flowlane or in-bay disposal sites for the disposal of dredged material associated with the Corps' dredging of federally authorized navigation channels within the various river systems covered by this RGP. The original RGP concept would have authorized the use of these sites for the disposal of dredged material. However, use of these sites by the public would require a review under the Corps' Section 408 authority to determine if an alteration of a federal project would occur. It has been determined that authorization to use these Corps disposal sites would not likely be granted due, in part, to limited capacity. Therefore, these sites were dropped from the RGP.

(b) EPA-Designated Ocean Disposal Sites. The District coordinated with EPA regarding an initial proposal to authorize the disposal of dredged material at designated ocean disposal sites. The Corps' mechanism for providing such authorization would be by Section 103 of the MPRSA, which authorizes the transportation of dredged material for the purposes of ocean dumping. EPA can also designate specific ocean sites as disposal sites under Section 102 of the MPRSA.

EPA expressed concern with the initial proposal for including an ocean disposal option because it would: 1) result in issuing a permit prior to Section 103 concurrence, which would

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on its face be counter to what Corps regulations state at 33 CFR 324.4(c), and 2) not allow an opportunity for public comment on an individual project once the sediment testing results are known. The Corps' original process would have included most, but not all, of the information required by the regulations – the missing piece being the project-specific information such as sediment testing results. EPA suggested two paths forward: 1) move forward with the RGP without allowing for disposal of dredged material at EPA's ocean disposal sites. If an entity was interested in ocean disposal, the full process would need to occur; or 2) issue a public notice for the RGP describing the projects that would propose ocean dumping and including their sediment testing results. EPA would evaluate and potentially provide a Section 103 concurrence letter on that RGP for those projects.

The Corps offered a revised proposal to EPA whereby the RGP would require, as a project verification process step, a separate public notice be issued for every specific action proposing to use the ocean disposal option under the RGP. EPA reviewed this alternative, but did not believe this met the true intent of the regulations.

Based on EPA's concerns with the inclusion of an ocean disposal option, this alternative as proposed was dropped from further consideration in this RGP.

(c) Propwashing. In the conceptual design phases of this RGP, propwashing was considered as a potential dredging option. However, after further evaluation of the likely effects to the aquatic environment, this alternative was dropped from further consideration. Propwashing is not predictable as to its effects, therefore this form of dredging cannot be considered similar in its impact upon water quality and the aquatic environment as other types of dredging methods authorized under this RGP.

c. Alternative Sites. The scope of the RGP is limited to the South Coast of Oregon. Evaluation of alternative sites outside of this area is not reasonable.

10. EVALUATION OF 404(b)(1) GUIDELINES.

a. Factual determinations.

Physical Substrate. <input type="checkbox"/> See Existing Conditions <input checked="" type="checkbox"/> See section 12.a
Water circulation, fluctuation, and salinity. <input type="checkbox"/> Addressed in the Water Quality Certification. <input checked="" type="checkbox"/> See section 12.d
Suspended particulate/turbidity. <input type="checkbox"/> Turbidity controls in Water Quality Certification. <input checked="" type="checkbox"/> See section 12.b.
Contaminant availability (SEF). <input type="checkbox"/> General Condition requires clean fill. <input checked="" type="checkbox"/> See sections 11.o, 12.a, and 12.b.
Aquatic ecosystem and organism. <input type="checkbox"/> Wetland/wildlife evaluations <input checked="" type="checkbox"/> See sections 11.e, 12.h, and 12.j
Proposed disposal site. <input type="checkbox"/> Public interest <input checked="" type="checkbox"/> Demonstrated throughout this EA/SOF
Cumulative effects on the aquatic ecosystem. <input checked="" type="checkbox"/> See section 13.b. <input type="checkbox"/>
Secondary effects on the aquatic ecosystem. <input checked="" type="checkbox"/> See section 13.a. <input type="checkbox"/>

b. Restrictions on discharges (40 CFR 230.10).

(1) It has/has not been demonstrated in section 9 that there are no practicable or less damaging alternatives which could satisfy the project's basic purpose. The activity is/is not located in a special aquatic site (wetlands, sanctuaries, and refuges, mudflats, vegetated shallows, coral reefs, riffle & pool complexes). The activity does/does not need to be located in a special aquatic site to fulfill its basic purpose. (See the Water Dependency discussion in section 1 and the Special Aquatic Site discussion in section 12.j of this document for further information).

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(2) The proposed activity does/does not violate applicable State water quality standards or Section 307 prohibitions or effluent standards (based on information from the certifying agency that the Corps could proceed with a provisional determination). The proposed activity does/does not jeopardize the continued existence of federally listed threatened or endangered species or affects their critical habitat. The proposed activity does/does not violate the requirements of a federally designated marine sanctuary.

(3) The activity will/will not cause or contribute to significant degradation of waters of the United States, including adverse effects on human health; life stages of aquatic organisms' ecosystem diversity, productivity and stability; and recreation, esthetic, and economic values.

(4) Appropriate and practicable steps have/have not been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem. (see section 15.h for a description of mitigative actions incorporated into this RGP).

11. PUBLIC INTEREST REVIEW. [33 CFR 320.4]. The following paragraphs describe the potential beneficial and detrimental direct impacts of the activity on various public interest factors considering the parameters that are necessary to ensure minimal adverse effects. Direct impacts are the potential short and long-term effects of discharges on the chemical, physical, and biological components of the aquatic environment. Direct impacts are caused by the action and occur at the same time and place. The extent to which each factor is discussed is based on the value of the resource, the controversy surrounding it, the level of concern expressed by the commenting public, and the potential impact to the factor. Indirect and cumulative impacts of the proposed work are discussed section 13.

a. Conservation. Because the activities authorized by this RGP are primarily maintenance activities, negligible effects on the natural resource characteristics of the project area are anticipated. The adverse effects of sediment sampling activities on conservation will be minor.

b. Economics. The maintenance of currently serviceable structures or fills, as well as the maintenance dredging of existing marina basins, access channels, and boat slips, will have positive impacts on the local economy. During construction, these activities will generate jobs and revenue for local contractors as well as revenue to building supply companies that sell construction materials. The removal of accumulated sediments in the vicinity of existing structures will sustain effective functioning of those structures, and may help minimize operational costs. The operation of marinas enhances local economies, by providing employment, tax revenues, and recreational opportunities.

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c. Aesthetics. Both dredging and in-water disposal activities would result in increased turbidity levels and, thereby, negatively impact aesthetics at the project site. This impact would dissipate shortly after project completion and the area would return to pre-existing conditions. Maintenance activities authorized by this RGP can also temporarily modify other aesthetic characteristics, such as air quality and noise levels.

d. General Environmental Concerns. Implementation of the activities authorized by this RGP may temporarily disrupt some traffic during construction, but these disruptions will be limited to the construction window. The Corps does not anticipate long-term impacts to local and regional traffic/transportation patterns as a result of the implementation of these activities.

There may be short-term adverse impacts to air quality due to the potential for increased levels of exhaust emission and dust during maintenance related activities. However, the Corps does not anticipate long term increases to ambient air quality. The use of construction equipment may also augment noise levels during maintenance related activities. These increases would generally be limited to the in-water work window for the specific location; noise levels would be expected to return to normal levels following project completion. Specific environmental concerns are addressed in other sections of this document.

e. Wetlands. Repair, rehabilitation, and replacement activities may result in minor losses of wetlands because of minor deviations due to construction techniques or changes in materials. Wetlands located in temporary access roads or staging areas may be impacted by the activity, but these wetlands will be restored, unless the district engineer authorizes another use for the area. This RGP does not authorize the placement of dredged material in wetlands, including the subsequent removal of material from upland sites for placement elsewhere.

f. Historic Properties. Maintenance dredging activities must not alter character, scope, size, or location. As such, the potential for a shipwreck or other cultural resource to be present within an area that has been dredged in the past is very low and does not warrant significant analysis. In addition, to be considered a maintenance activity the last dredging episode must be within the last 15 years. While the Corps understands shipwreck locations can shift over time due to currents and other environmental factors, the likelihood that a shipwreck would migrate within a previously dredged location within 15 years seems unlikely.

In the disposal of material from maintenance dredging activities, the use of an existing upland disposal site does not have a significant potential to impact historic properties. If a new upland disposal site was proposed as part of this action there could be a potential to impact historic properties. However, given RGP-9 actions require a pre-construction notification, the Regulatory Branch archeologist would review these areas per normal protocol; if the location was deemed to have a high potential for historic properties a cultural resource survey may be

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required. Furthermore, if an archeological site was identified within or in close proximity to any proposed upland disposal site, SHPO would be consulted per normal protocols.

Placement of dredged material at flowlane or in-bay sites would only include placement in designated flowlane sites (i.e. they have been used for this purpose in the past). Furthermore, the intent of flowlane sites is to disperse the material and thus accumulation on the bed/floor is limited. As such, the potential to impact significant resources through this type of action appears to be low. Disposal for beach nourishment, however, does have some potential to encounter cultural resources. The Regulatory Branch archeologist would review any proposed beach nourishment sites per normal protocol, and if the location was deemed to have a high potential for historic properties a cultural resource survey may be required. Furthermore, if an archeological site was identified within or in close proximity to any proposed beach nourishment site, SHPO would be consulted per normal protocols.

For the category authorizing maintenance of currently serviceable structures and/or fill, the Branch archeologist would review any structures proposed for maintenance under this RGP to determine if they were over 50 years of age. If a structure was determined to be over 50 years of age, and the action may have a significant effect on its integrity, SHPO would be consulted. With respect to previously placed fill, this component of the RGP only allows for maintaining the existing scope of the fill and thus the area is 1) previously disturbed and 2) the applicant would only be able to add to the existing fill. As such the potential to impact historic properties by adding fill to existing fill appears to be low.

Sediment sampling is generally done over a large area using minimally invasive techniques. As such, the potential to impact historic properties using such methods is low.

g. Fish and Wildlife Values. This RGP authorizes activities in navigable waters of the U.S., including marine, estuarine, and riverine waters, which provide habitat to many species of fish and other aquatic organisms. Authorized activities may temporarily alter the habitat characteristics of navigable waters, decreasing the quantity and quality of fish. To minimize potential impacts to fish and aquatic species, the RGP is conditioned to require activities to occur during the preferred ODFW in-water work windows.

The repair of existing riprap revetments and the placement of dredged material at upland disposal sites may disrupt vegetation that has become established since the revetment was first constructed or the upland site last used. This would result in the affected wildlife species seeking other locations and habitats. Vegetation would be expected to reestablish over time following completion of the repair or disposal activities.

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h. Flood hazards. The activities authorized by this RGP will have negligible adverse effects the flood-holding capacity of the 100-year floodplain, since it is limited to maintenance activities or sediment sampling.

i. Floodplain values. Activities authorized by RGP 9 will have minor effects on the flood-holding capacity of the floodplain, as well as other floodplain values, since it is primarily limited to maintenance activities.

j. Land use. Activities authorized by this RGP are not expected to change land use classifications to areas within the Corps' regulatory review. The deposition of dredged material in uplands resulting from the maintenance dredging at existing marina basins and boat slips may cause changes in land use, but those changes in land use are outside of the Corps' scope of review. Since the primary responsibility for land use decisions is held by state and local governments, the Corps scope of review is limited to significant issues of overriding national importance, such as navigation and water quality (see 33 CFR 320.4(j)(2)). Reviews of compatibility with local land use regulations at the state level will occur through DEQ and DLCD.

k. Navigation. The requirement for a pre-construction notification for all actions requesting authorization under this RGP will allow the Corps to evaluation potential impacts to navigation. However, the Corps expects the maintenance activities authorized by RGP-9 will have negligible adverse effects on navigation.

l. Shore erosion and accretion. The activities authorized by this RGP are expected to have minor direct effects on shore erosion and accretion processes. The removal of sediments from navigable waters may affect shore erosion and accretion, but the adverse effects should be no more than minimal.

m. Recreation. Activities authorized by this RGP are not expected to change the recreational uses of project area. Periodic maintenance dredging of marina basins and access channels may actually improve recreational fishing opportunities by ensuring boats have access to and from docking sites.

n. Water supply and conservation. No effect. Projects are not likely to be located near existing or future water supplies.

o. Water quality. Maintenance activities in waters of the U.S. will have minor adverse effects on water quality. During maintenance activities, small amounts of oil and grease from construction equipment may be discharged into the waterway. Because most of these activities will occur during a relatively short period of time, the frequency and concentration of

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these discharges are not expected to have more than minimal adverse effects on overall water quality. Also, the removal of accumulated sediments in the vicinity of existing structures may result in temporary increases in turbidity. If the proposed activity involves a discharge into waters of the United States, Section 401 water quality certification will be required. The water quality certification will ensure that the authorized activity does not violate applicable water quality standards within the state of Oregon.

Where unconfined in-water disposal, or upland disposal with return flows, is proposed the material to be dredged must be evaluated following the requirements in the *Sediment Evaluation Framework for the Pacific Northwest* to show the material does not contain contaminants of concern that may be released into the aquatic environment.

p. Energy needs. No effect. Projects are not energy related nor will they affect energy related facilities.

q. Safety. Implementation of the activities authorized by this RGP may temporarily create the potential for unsafe conditions during construction. The activities authorized by this RGP will be subject to Federal, state, and local safety laws and regulations and, therefore, are not expected to adversely affect the safety of the project area.

r. Food and fiber production. The Corps does not anticipate any impacts to areas used for food and fiber production.

s. Mineral needs. The Corps does not anticipate impacts to areas are used for mineral extraction.

t. Consideration of property ownership. The Corps does not anticipate adverse effects on property ownership as a result of the maintenance activities authorized by this RGP.

## 12. SECTION 404(B)(1) GUIDELINES IMPACT ANALYSIS (SUBPARTS C-F)

a. Substrate. Overall, the activities authorized by this RGP are not expected to result in long-term adverse impacts to substrate at the project site. Disposal resulting from beach nourishment actions may disturb both motile and non-motile organisms, but they would be expected to reoccupy the site in time after the disposal action is completed. Beach nourishment proposals must go through the sediment testing process following the requirements in the *Sediment Evaluation Framework for the Pacific Northwest* (SEF) to show the material does not contain contaminants of concern that may be released into the aquatic environment, and the grain size distribution of the material to be placed on a specific site must have similar composition as the material existing at the receiving location.

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b. Suspended Particulates and Turbidity. The re-suspension of particulates and an increase in turbidity levels can be expected from maintenance dredging actions (both the dredging and in-water disposal activities), as well as other maintenance work occurring in the aquatic environment. This would be expected to be limited to the construction period and should return to background soon after operations stop (the timeframe being dependent on the sediment type). See also the discussion in 11.o.

c. Water. See the discussion in section 11.o.

d. Current patterns and water circulation. Overall, the maintenance activities authorized by this RGP are not expected to have more than minimal effects on currents, circulation or drainage patterns of the project area. Beach nourishment may temporarily change circulation patterns until the dredged material is leveled out by wave action.

e. Normal water level fluctuations. Because this RGP focuses on maintenance activities, the Corps anticipates the authorized activities will not adversely affect normal patterns of water level fluctuations due to tides and flooding.

f. Salinity gradients. The activities authorized by this RGP are unlikely to adversely affect salinity gradients, since it is restricted to maintenance or sediment sampling activities.

g. Threatened and endangered species. Proposed activities that may affect a species listed under the ESA, or that may adversely affect Essential Fish Habitat (EFH) under the MSA as amended, will be subject to consultation as required by those laws. The Corps may request additional information to determine compliance with a programmatic or previously issued opinion or to assist in initiating project-specific consultation. Where individual formal consultation is required, the applicant must provide a biological evaluation to assist the Corps in the consultation process.

Many of the activities authorized by this RGP, and which affect species under the management responsibility of the National Marine Fisheries Service (NMFS), may be covered by the SLOPES IV In-water Over-water Structures Programmatic Biological Opinion (issued April 5, 2012). Utility line repair/replacement activities may be covered by the SLOPES for Stormwater, Transportation or Utilities Programmatic Opinion (issued March 14, 2014). The complete text of these biological opinions are available for review at <http://www.nwp.usace.army.mil/Missions/Environment/SLOPES.aspx>.

h. Fish, crustaceans, molluscs, and other aquatic organisms in the food web. All activities authorized by this RGP require pre-construction notification to the district engineer, which will

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allow review of each proposal to ensure that adverse effects to fish and other aquatic organisms in the food web are no more than minimal. Fish and other motile animals will avoid the project sites during construction. Sessile or slow-moving animals in the path of discharges, equipment, and building materials will be destroyed; some aquatic animals may be smothered by the discharge of dredged material, especially where beach nourishment is proposed. Motile animals will return to those areas that are temporarily impacted by authorized activities. Benthic and sessile animals are expected to recolonize sites impacted by the discharge of dredged material.

i. Other wildlife. See the discussion in section 11.g.

j. Special aquatic sites.

(1) Sanctuaries and refuges. Activities authorized by this RGP are not expected to affect sanctuaries and refuges in the project area.

(2) Wetlands. See the discussion in section 11.e.

(3) Mud flats. The activities authorized by this NWP will have no more than minimal adverse effects on mud flats, since it is limited to maintenance activities.

(4) Vegetated shallows. The activities authorized by this RGP are expected to have no more than minimal adverse effects on vegetated shallows in tidal waters, since it is limited to maintenance activities. Activities involving the removal of accumulated sediments are authorized by this RGP, but district engineers will review those proposed activities to determine if they will result in only minimal adverse effects on the aquatic environment. If vegetated shallows existing at the project area are determined to have high value and the proposed activity will result in more than minimal adverse effects on the aquatic environment, the district engineer will exercise discretionary authority to require the project proponent to obtain an individual permit.

(5) Coral reefs. No effect; no coral reefs are located in Oregon.

(6) Riffle and pool complexes. The activities covered by this RGP would occur in larger river systems with deeper water than typically would support riffle and pool complexes.

k. Municipal and private water supplies. See the discussion in section 11.n.

l. Recreational and commercial fisheries. The activities authorized by this RGP should have no appreciable effect on recreational or commercial fisheries. The maintenance work

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would generally be conducted during specific in-water work periods. Periodic maintenance dredging of marina basins and access channels may actually improve recreational and commercial fishing opportunities by ensuring boats have access to and from docking sites.

m. Water-related recreation. See the discussion in section 11.m.

n. Aesthetics. See the discussion in section 11.c.

o. Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves. For any activity that may occur in a component of the National Wild and Scenic River System, or in an officially designated study river, the Corps must coordinate with and obtain a written determination from the Federal agency with direct management responsibility for such river that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Because this RGP authorizes maintenance activities, the resulting projects are not anticipated to affect parks or wild and scenic rivers within the RGP boundaries.

### 13. SECONDARY AND CUMULATIVE IMPACTS ANALYSIS.

a. Secondary Impacts. Secondary impacts are the effects on an aquatic ecosystem that are associated with a discharge of dredged or fill material, but do not result from the actual placement of the dredged or fill material. Secondary effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.

Secondary effects may occur from the in-water placement of dredged material into the Port Orford disposal sites. Material placed at these sites are known to flow back into the river system under certain circumstances resulting in the need to redredge this material. During maintenance activities, small amounts of oil and grease from construction equipment may be discharged into the waterway. Because most of these activities will occur during a relatively short period of time, the frequency and concentration of these discharges are not expected to have more than minimal adverse effects on overall water quality.

b. Cumulative Impacts. The Council on Environmental Quality's (CEQ's) NEPA regulations define cumulative effects as: "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 CFR 1508.7. Therefore, the NEPA cumulative effects analysis for an RGP is not limited to activities authorized by the RGP, other general permits, or other DA permits (individual permits). The NEPA cumulative

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effects analysis must also include other Federal and non-Federal activities that affect the Nation's wetlands, streams, and other aquatic resources, as well as other resources (e.g., terrestrial ecosystems, air) that may be directly or indirectly affected by the proposed action and other actions.

Cumulative effects also include environmental effects caused by reasonably foreseeable future actions that may take place after the permitted activity is completed. Such effects may include direct and indirect environmental effects caused by the operation and maintenance of the facility constructed on the discharge of dredged or fill material into waters of the United States or the structures or work in navigable waters of the United States. This includes activities associated with the operation and maintenance of the marina basins where maintenance dredging has occurred, or the operation and maintenance of the structures or fills repaired under this RGP. A variety of pollutants might be released into the environment during the operation and maintenance of these marina basins. Point-source discharges would likely require National Pollutant Discharge Elimination System Permits under Section 402 of the Clean Water Act, which is administered by EPA or by states with approved programs. Pollutants may also be discharged through spills and other accidents. Operations and maintenance activities may also have other direct and indirect effects on wetlands, streams, and other aquatic resources.

In a specific watershed, the district engineers may determine that the cumulative adverse environmental effects of activities authorized by this RGP are more than minimal and have the authority to require individual permits to allow more thorough review, or add conditions to the project-specific RGP verification to require additional mitigation measures to ensure that the cumulative adverse environmental effects of the activities authorized by this RGP are no more than minimal.

For the issuance of general permits, such as this RGP, the 404(b)(1) Guidelines require the permitting authority to "set forth in writing an evaluation of the potential individual and cumulative impacts of the categories of activities to be regulated under the general permit." [40 CFR 230.7(b)] If a situation arises in which cumulative effects are likely to be more than minimal and the proposed activity requires further review, or is more appropriately reviewed under the individual permit process, provisions of the RGP allow the district engineer to take such action. Based on an evaluation of nationwide and standard permits authorizing similar maintenance and disposal activities (and rounded up to account for errors), the Corps estimates the proposed RGP could be used up to 130 times within its proposed boundaries over a five year period.

c. Context. The activities covered by this RGP are typical of /a precedent /very large compared to other activities in the watershed.

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#### 14. COMPLIANCE WITH OTHER FEDERAL AND STATE LAWS (e.g. ESA, WQC, CZM)

a. Water Quality Certification. Oregon Department of Environmental Quality (DEQ). DEQ has not issued a 401 WQC for this RGP. Before proceeding with the work authorized by this RGP, the permittee must obtain an individual 401 WQC or certification waiver from the DEQ and submit a copy to the Corps. RGP verification issued by the Corps will become effective upon receipt of the 401 WQC and the permittee may then proceed with construction. The conditions of the 401 WQC will become conditions of the RGP verification.

b. State and/or Local Authorizations (if issued).

(1) Oregon Department of State Lands (DSL). The Department of State Lands developed a general permit that covers maintenance dredging on a statewide basis

(2) Oregon Water Resources Department (WRD). Not applicable.

c. Endangered Species Act (ESA). See the discussion in section 12.g.

d. Essential Fish Habitat (EFH). The MSA, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires Federal agencies to consult with NMFS on activities that may adversely affect EFH. Consultation will occur as necessary for proposed activities that may adversely affect EFH. The SLOPES programmatic biological opinions also provide coverage for actions that may adversely affect EFH.

e. Coastal Zone Management Consistency Determination. By letter dated July 20, 2017, the Oregon Department of Land Conservation and Development (DLCD) concurred with the Corps' determination that the actions covered by RGP-9 are, to the maximum extent practicable, consistent with the enforceable policies of Oregon's Coastal Management Program. All activities authorized under this RGP must comply with the conditions of the Coastal Zone Management Act consistency concurrence (Attachment 2 of the permit instrument).

f. Section 103 Evaluation. Section 103 of the MPRSA of 1972 requires that all actions involving the transportation of dredged material with the intent to dispose of the material into ocean waters be evaluated for environmental effects prior to making this disposal: Not applicable. The RGP does not authorize disposal in ocean waters as regulated under Section 103. Disposal at nearshore disposal sites would be regulated under Section 404 of the CWA as addressed in this EA/SOF.

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### 15. COMPENSATORY MITIGATION.

a. Is compensatory mitigation required?

yes  no  maybe Generally, mitigation will not be required for the maintenance activities authorized by this RGP. Where project-specific review indicates mitigation is necessary to ensure minimal affects to the aquatic environment, special conditions requiring mitigation can be added to the project-specific verification letter.

b. Is the impact in the service area of an approved mitigation bank?

yes  no

c. Does the mitigation bank have appropriate number and resource type of credits available?

yes  no

d. Is the impact in the service area of an approved in-lieu fee program?

yes  no

e. Does the in-lieu fee program have appropriate number and resource type of credits available?

yes  no

f. Check the selected compensatory mitigation option(s): N/A

- mitigation bank credits
- in-lieu fee program credits
- permittee-responsible mitigation under a watershed approach
- permittee-responsible mitigation, on-site and in-kind
- permittee-responsible mitigation, off-site and out-of-kind

g. If a selected compensatory mitigation option deviates from the order of the options presented in §332.3(b)(2)-(6), explain why the selected compensatory mitigation option is environmentally preferable. Address the criteria provided in §332.3(a)(1) (i.e., the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project): N/A

h. Other Mitigative Actions: Mitigative actions that have been incorporated into this RGP include:

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(1) Placing restrictions on any proposal for beach nourishment as a disposal option, including the requirement that the dredged material be of similar composition as material at the receiving location.

(2) Using previously authorized disposal sites at Port Orford where in-water disposal is proposed.

(3) Requiring sediment evaluation where dredged material is proposed for unconfined, aquatic disposal, including upland disposal with return flows to ensure the material is suitable for in-water disposal.

(4) Requiring that in-water work will occur during ODFW's preferred work window to minimize the potential for impacts to aquatic species and habitat.

(5) Restricting the dredging methods to minimize the potential for significant suspension of sediments into the water column.

16. GENERAL EVALUATION CRITERIA UNDER THE PUBLIC INTEREST REVIEW. We considered the following within this document:

a. The relative extent of the public and private need for the proposed structure or work. *Explain.* This RGP authorizes maintenance dredging (and associated dredged material disposal) of existing marinas, access channels, boat slips, launch ramps, travel lifts, and ship berths, maintenance of currently serviceable structures or fill, and sediment sampling, provided the activity has no more than minimal individual and cumulative adverse environmental effects. These activities satisfy public and private needs for mooring facilities and improving navigation. The need for this RGP is based upon the number of these activities that occur annually with no more than minimal individual and cumulative adverse environmental effects.

b.  There are no unresolved conflicts as to resource use. Refer to section 9.

c. The extent and permanence of the beneficial and/or detrimental effects, which the proposed work is likely to have on the public, and private uses to which the area is suited.  *Explain.* Detrimental impacts are expected to be minimal although they would be permanent in the construction area. The beneficial effects associated with the use of the property would be permanent.

17. DETERMINATIONS.

a. Public Hearing Request:  NA

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I have reviewed and evaluated the requests for a public hearing. There is sufficient information available to evaluate the proposed project; therefore, the requests for a public hearing are denied.

b. Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

c. Relevant Presidential Executive Orders.

(1) EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians.  
 This action has no substantial direct effect on one or more Indian tribes.

Coordination with the Tribes occurred as described in section 7a(5).

(2) EO 11988, Floodplain Management.  Not in a floodplain. ( Alternatives to location within the floodplain, minimization, and compensation of the effects were considered above.)

(3) EO 12898, Environmental Justice. In accordance with Title III of the Civil Right Act of 1964 and Executive Order 12898, it has been determined that the project would not directly or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin nor would it have a disproportionate effect on minority or low-income communities.

(4) EO 13112, Invasive Species.

There were no invasive species issues involved.

The evaluation above included invasive species concerns in the analysis of impacts at the project site and associated compensatory mitigation projects.

Through special conditions, the permittee will be required to control the introduction and spread of exotic species. Various conservation measures described in Appendix II include requirements to prevent the spread of invasive species.

(5) EO 13212 and 13302, Energy Supply and Availability.  The project was not one

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that will increase the production, transmission, or conservation of energy, or strengthen pipeline safety. (The review was expedited and/or other actions were taken to the extent permitted by law and regulation to accelerate completion of this energy-related (including pipeline safety) project while maintaining safety, public health, and environmental protections.)

d. Finding of No Significant Impact (FONSI). Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be required.

e. Compliance with 404(b)(1) guidelines. NA

Having completed the evaluation in paragraph 10, I have determined that the proposed discharge complies/does not comply with the 404(b)(1) guidelines.

The discharge complies/does not comply with the guidelines, with the inclusion of the appropriate and practicable conditions to minimize pollution or adverse effects to the affected ecosystem.

The discharge fails to comply with the requirements of these guidelines because:

There is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem and that alternative does not have other significant adverse environmental consequences.

The proposed discharge will result in significant degradation of the aquatic ecosystem under 40 CFR 230.10(b) or (c).

The discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem, <<Explain>>.

There is not sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with the guidelines.

f. Public Interest Determination: I find that issuance of a Department of the Army permit is not/is contrary to the public interest.

After a RGP is issued, individual activities falling within the categories of activities require verification for qualification under the RGP. Pre-construction notification to the Corps is required in all instances and applicants are required to provide specific information as described in the permit which may vary depending on the nature of the activity being conducted.

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18. GENERAL CONDITIONS. The following conditions will become requirements of any project authorized under RGP-4. Each permit condition was reviewed for enforceability.

a. Prior to starting the authorized activities, you shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch. Notification shall be provided by e-mail to [cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil) and the email subject line shall include: Corps project number and the project location by county.

b. The following special condition is a part of all Department of the Army permits that provide authorization under Section 10 of the Rivers and Harbors Act, regardless whether the permit provides such authorization under Section 10 alone, or in combination with authorization under other laws:

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

c. Cultural Resources and Human Burials-Inadvertent Discovery Plan: Permittees shall immediately cease all ground disturbing activities and notify the Portland District Regulatory Branch if at any time during the course of the work authorized, human burials, cultural items, or historic properties, as identified by the National Historic Preservation Act and Native American Graves Protection and Repatriation Act, are discovered and/or may be affected. The Permittee shall follow the procedures outlined below:

(1) Immediately cease all ground disturbing activities.

(2) Notify the Portland District Regulatory Branch. Notification shall be made as soon as possible following discovery but in no case later than 24 hours. Notification may be sent by fax (503-808-4375) or electronically ([cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil)) and shall identify the Corps project number and clearly specify the purpose is to report a cultural resource discovery. The permittee shall also notify the Corps representative (by email and telephone) identified in the verification letter.

(3) Notify the Oregon State Historic Preservation Office by telephone at (503-986-0690).

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Failure to stop work immediately and until such time as the Corps has coordinated with all appropriate agencies and complied with the provisions of 33 CFR Part 325, Appendix C, the National Historic Preservation Act, Native American Graves Protection and Repatriation Act and other pertinent regulations, could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.

d. In-Water Work: To minimize potential impacts to aquatic species and habitat, in-water work will be limited by the following timing considerations:

(1) Permittee shall complete all in-water work, to the maximum extent practicable, within the preferred time period (i.e., work window) specified in Oregon Department of Fish and Wildlife's (ODFW) "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources," June 2008, or most current version, available at: <http://www.dfw.state.or.us/lands/inwater/>.

(2) If work cannot be completed within the preferred timing window, despite every attempt to do so, permittee shall submit a written request to work outside of the preferred window to the District Engineer. The request can be made by means of the joint-agency In-water Work Period Variance Request for Previously Permitted Authorizations form which can be found at <http://www.oregon.gov/dsl/WW/Pages/WWforms.aspx>. Permittee shall not begin any in-water work outside of the preferred window until they have received written approval from the District Engineer.

Note: The final specified in-water work period will be based on a project-specific evaluation and may supersede these guidelines through special conditions of the permit verification.

e. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

f. Endangered Species:

(1) No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under this RGP which "may affect" a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.

(2) This RGP does not authorize you to take an endangered or threatened species. If take of listed species may occur, permittees must have separate authorization under the

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Endangered Species Act (ESA) from the U.S. Fish and Wildlife Services or National Marine Fisheries Services (e.g., an ESA Section 10 permit, or a biological opinion (BiOp) under ESA Section 7, with “incidental take” provisions with which the permittee must comply).

(3) Authorization under this RGP is conditional upon compliance with all of the mandatory terms and conditions associated with any incidental take statement, which become conditions of any RGP verification. Failure to comply with the terms and conditions associated with incidental take of the BiOp, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with the RGP.

g. Water Quality: All activities authorized under this RGP that result in a discharge into waters of the U.S. must receive individual 401 Water Quality Certification (WQC) from the Oregon Department of Environmental Quality. After obtaining a 401 WQC or a waiver from the certification, the permittee must submit a copy of the 401 WQC or waiver to the Corps. If a conditional RGP verification was previously issued by the Corps, it will only become effective upon receipt of the 401 WQC. The conditions of the 401 WQC will become conditions of the RGP verification.

h. Coastal Zone: All activities authorized under this RGP that affect any land uses, water uses, or natural resources of the coastal zone, must comply with the conditions of the Coastal Zone Management Act consistency concurrence dated July 20, 2017 (Attachment 2).

i. Hydraulic Pipeline Dredge: When using a hydraulic dredge, Permittee shall operate the dredge intake at or below the surface of the material being removed. The intake may be raised a maximum of three (3) feet above the dredge surface for brief periods of purging or flushing. At no time should the dredge be operated at a level higher than three (3) feet above the dredge surface.

j. Activities Conducted on the Corps' Property or Easements: Where the authorized activity occurs on Corps property or within a Corps easement, the permittee shall obtain necessary permissions or property rights from the Portland District Real Estate Division prior to conducting any work under this RGP.

k. Activities Affecting Structures or Works Built by the United States: An activity that may alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), is not authorized by this RGP until the prospective permittee receives written permission from the Portland District Corps of Engineers under Section 408 to alter, occupy, or use the USACE project, and the district engineer issues written RGP verification.

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I. Contractor Notification of Permit Requirements: Prior to the commencement of any work in waters of the U.S., the permittee must provide a copy of this permit and the Corps' verification letter to all contractors and any other parties performing the authorized work.

m. Inspection of the Project Site: The permittee shall allow representatives of the Corps to inspect the authorized activity to confirm compliance with the general permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.

PREPARED BY:

\_\_\_\_\_  
Judy Linton  
Project Manager, Special Studies

\_\_\_\_\_  
Date

REVIEWED BY:

\_\_\_\_\_  
Shawn Zinszer  
Chief, Regulatory Branch

\_\_\_\_\_  
Date

APPROVED BY:

\_\_\_\_\_  
Jose L. Aguilar, P.E.  
Colonel, Corps of Engineers  
District Commander

\_\_\_\_\_  
Date