DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

RECORD OF DECISION

ACTION ID: SPK-2007-02159

APPLICANT: City of Folsom

PROJECT NAME: Folsom South of U.S. Highway 50 Specific Plan Project – City of Folsom Backbone Infrastructure

I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning the permit application for the City of Folsom Backbone Infrastructure Project, as well as the stated views of interested agencies and the public. In doing so, I have considered the possible consequences of the proposed action in accordance with regulations published in 33 Code of Federal Regulations (CFR) Parts 320 through 332 and 40 CFR Part 230.

An Environmental Impact Report/Environmental Impact Statement (EIR/EIS) was prepared by the U.S. Army Corps of Engineers, Sacramento District (Corps) and the City of Folsom (City) for the Folsom South of U.S. Highway 50 Specific Plan Area (SPA) for compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The EIR/EIS evaluated the environmental impacts of the proposed SPA, as well as 5 on-site, and 11 off-site water supply alternatives. A Notice of Availability of the Draft EIR/EIS was published in the Federal Register on July 2, 2010 (Federal Register, Vol. 75, No. 127, 38500). Each of the 5 on-site alternatives included the Original Backbone Infrastructure Alternative as described in Section III.a.2 below. A public notice for the Draft EIR/EIS was issued on July 9, 2010. A public meeting was held with the City of Folsom on August 2, 2010 at the Folsom Community Center. During the Draft EIR/EIS public review period, 79 comment letters were received.

In May 2011 the Final EIR/EIS was released by the Corps and the City. A Notice of Availability was published in the Federal Register on May 26, 2011 (Federal Register, Vol. 76, no. 102, 30679). A public notice announcing the Final EIR/EIS was issued May 26, 2011.

On August 12, 2011, a Record of Decision (ROD) was issued, addressing each of the 9 properties located within the SPA, as well as the on-site and off-site infrastructure. The ROD did not include any decision regarding the backbone infrastructure. In accordance with Finding B of Section IX of the ROD, on February 12, 2013, a public notice was issued on February 12, 2013, for the Originally Proposed Backbone Infrastructure Project, which is the focus of this document, and the Carpenter Ranch and Folsom South sites, which will be evaluated in future RODs or supplemental decision documents for those projects.

This document is a ROD specifically for the backbone infrastructure portion of the SPA as described in the EIR/EIS, and addresses only those impacts associated with the construction of the on-site and off-site infrastructure within and adjacent to the SPA. Impacts to waters of the U.S. would be further avoided and minimized as a result of the Amended Proposed Backbone

Infrastructure Alternative (as described in Section III.a.3 below), and there is no substantial change in environmental impacts that warrant the preparation of a supplemental Environmental Assessment or EIS. Separate RODs or supplemental decision documents will be completed in the future for the 9 properties proposed for development within the SPA. The Originally Proposed Backbone Infrastructure Alternative involves the discharge of fill material into 14.97 acres of on-site and off-site waters of the U.S. As such, a Department of the Army permit under the Regulatory Program is required.

I. **Background:** See Section I of the August 12, 2011, ROD for a complete background of the SPA, including the proposed Backbone Infrastructure Project.

II. **Project Purpose and Need**

a. **Purpose:** Construct on-site and off-site backbone infrastructure, consisting of roads, utility lines, and water supply infrastructure, to serve the future needs of a large-scale, mixed-use development on the SPA.

b. **Need:** Sacramento County has been undergoing continuous growth, and increased housing needs have been identified within eastern Sacramento County. In addition, the City of Folsom is near build-out within its existing limits and believes that additional lands for its future growth would be required. In accordance with the planned growth in south-eastern Sacramento County, developers purchased property in the Folsom Sphere of Influence area, and the City of Folsom signed an MOU with the Sacramento LAFCo for future development of the proposed project area, to meet identified and expected housing demands. Backbone infrastructure (e.g. roads, trails, water and sewer infrastructure, and storm drain infrastructure) is needed to accommodate the mixed-use development with the SPA.

III. Alternatives: A reasonable range of alternatives were considered in the EIR/EIS for both land-use and water-supply, including backbone infrastructure. The August 12, 2011, ROD for the SPA evaluated the practicability of the on-site alternatives for the SPA, but did not make any decisions regarding the backbone infrastructure. On September 9, 2012, the applicant submitted Alternatives Information for 6 backbone infrastructure alternatives, which could further refine the Originally Proposed Backbone Infrastructure Alternative as analyzed in the EIR/EIS by avoiding and minimizing waters of the U.S. The applicant's Alternatives Information also serves to provide information necessary to determine compliance with the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines (Guidelines). These alternatives were not evaluated in the EIR/EIS or ROD for the SPA. Any one of the applicant's alternatives for the backbone infrastructure, except for one, appear to be practicable based on cost, logistics, and existing technology. However, four of the six alternatives would result in avoidance of less than 1/3 acre of waters of the U.S. In order to maximize the avoidance of waters of the U.S. and to determine which combination of these alternatives is practicable, the 6 alternatives provided by the applicant have been combined into 4 alternatives, based on location and maximizing avoidance of waters of the U.S. and include: the Amended Proposed Backbone Infrastructure Alternative (Easton Valley Parkway (West) and Scott Road Alternative); Easton Valley Parkway (East) and Empire Ranch Road Alternative; Street "A" and Oak Avenue Alternative; and Easton Valley Parkway (West), Easton Valley Parkway (East), Scott Road, Empire Ranch Road, Street "A" and Oak Avenue Alternative. The following backbone alternatives are being evaluated for compliance with the Guidelines.

a. **Alternatives Considered:**

1. **Alternative 1: No Action Alternative:** This alternative would result in no impacts to waters of the U.S. as a result of the construction of on-site and off-site infrastructure. This alternative would be accomplished through the construction of bridges over all waters of the U.S. for roads and trails, and directional drilling beneath all waters of the U.S. for the installation of utility lines. Because of the location of the waters of the U.S. within the proposed Backbone Infrastructure area, a minimum of 30 additional bridges would need to be constructed to fulfill this alternative. The Corps has determined that this alternative is not practicable, due to the cost for the construction of additional bridges and directional drilling for utility lines.

2. **Alternative 2: Original Proposed Backbone Infrastructure Alternative:** This alternative was analyzed in the EIR/EIS and would allow for phased implementation of the SPA to serve the comprehensive needs of the entire plan area in a segmented, phased manner. The proposed Backbone Infrastructure project includes major roads and trails, water and sewer infrastructure, and storm drain infrastructure. Because of the uncertainty of adjacent development, this alternative incorporates the phased implementation of the proposed backbone infrastructure. The impacts for each specific phase would be determined prior to initiation of construction activities in waters of the U.S. This alternative would result in impacts to 14.97 acres of waters of the U.S., including 12.62 acres on-site and 2.349 acres off-site.

Roads: This alternative would include major circulation roads that would serve the entire SPA and region.

Pedestrian/Bicycle Trails: This alternative would include a network of Class I and II bicycle trails that would provide connectivity to trails in Sacramento and El Dorado Counties. A multi-use trail system would provide pedestrian and bicycle linkage throughout the SPA area. The proposed trails would typically consist of 8- to 12-foot wide paved trails. Only those trails occurring within open space areas have been incorporated within the proposed Backbone Infrastructure application. Proposed trails located within specific project areas (e.g. the Carpenter Ranch or Folsom South site) have been incorporated into those applications.

Sanitary Sewer: This alternative includes main sanitary sewer system planned for the SPA, those sewers located in major roadways as well as separate sewer lines and off-site connections under Highway 50.

Drainage and Flood Control: This alternative includes detention and water quality basins that serve areas greater than the individual properties on which they are located, including one basin located off-site, just west of the SPA, on the west side of the existing Prairie City Road.

Water Supply: This alternative would include the construction of water lines and a water treatment plant, which would be located in the southwest portion of the SPA.

According to information submitted by the applicant, this alternative would result in construction costs of approximately $15,781,000.

3. **Alternative 3: Amended Proposed Backbone Infrastructure Alternative (Easton Valley Parkway (West) and Scott Road Alternative):** This alternative would incorporate the majority of the features of Alternative 2, but would result in additional avoidance of waters of the U.S. through the realignment of the proposed Easton Valley Parkway on the Carpenter Ranch site on the western side of the SPA, and realignment of the existing Scott Road on the Folsom South Site, and would avoid impacts to an additional 1.06 acres of a

seasonal wetland located north of the proposed Easton Valley Parkway, and 0.26 acres of intermittent drainage on the Folsom South site. Realignment of Easton Valley Parkway (West) would result in the loss of 2.20 acres of developable land proposed on the Carpenter Ranch site, and realignment of Scott Road would result in the loss of 1.50 acres of developable land proposed on the Folsom South Site. This alternative would be accomplished through the construction of slope embankments and two retaining walls along the proposed Easton Valley Parkway (West), and shifting the centerline of the existing Scott Road 80-feet to the east so the proposed edge of pavement matches the existing edge of pavement, replacement of existing undersized culverts, and the construction of a large retaining wall. Similar as Alternative 2, because of the uncertainty of adjacent development, this alternative incorporates the phased implementation of the proposed backbone infrastructure. The impacts for each specific phase would be determined prior to initiation of construction activities in waters of the U.S. Based on information submitted by the applicant, this alternative would result in additional construction costs of $1,254,000 (approximately 7.9% greater than the Original Proposed Backbone Infrastructure Project).

4. **Alternative 4: Easton Valley Parkway (East) and Empire Ranch Road Alternative:** This alternative would incorporate the majority of the features of Alternative 2, but would result in additional avoidance of waters of the U.S. through the realignment of the proposed Easton Valley Parkway on the Folsom South site, and realignment of the proposed Empire Ranch Road site, on the Folsom Heights property, on the eastern side of the SPA, and would result in the avoidance of an additional 0.0.21 acre of seep, vernal pool, and intermittent drainage on the south side of the proposed Easton Valley Parkway, and 0.07 acre of seasonal wetland to the east of the proposed Empire Ranch Road. This alternative would result in the loss of 0.40 acres of developable land proposed on the Folsom South site. Realignment of Easton Valley Parkway (East) would be accomplished through adjusting the horizontal and vertical alignment of Easton Valley Parkway, and constructing a retaining wall and slope embankments near the wetland feature, and realignment of the proposed Empire Ranch Road would occur through the construction of a retaining wall. Based on information submitted by the applicant, this alternative would result in additional construction costs of up to $750,000 (approximately 4.75% greater than the Original Proposed Backbone Infrastructure Project).

5. **Alternative 5: Street "A" and Oak Avenue Alternative:** This alternative would incorporate the majority of the features of Alternative 2, but would result in additional avoidance of waters of the U.S. through the realignment of the proposed Street "A" on the northern border of the proposed Sacramento Country Day School site, in the south-western portion of the SPA, and realignment of the proposed Oak Avenue located near the eastern boundary of the proposed Folsom 560 site, in the south-western portion of the SPA. This alternative would avoid an additional 0.07 acre of seasonal wetland and intermittent drainage south of the proposed Street "A," and 0.78 acre of seasonal wetland swales west of the proposed Oak Avenue. This alternative would result in the loss 1.10 acres of developable land proposed on the Folsom South and Sacramento Country Day School sites, and the loss of 36.7 acres of developable land proposed on the Folsom 560 site. Realignment of Street "A" would avoid portions of a seasonal wetland swale and intermittent drainage through the construction a retaining wall, which would impact a portion of the intermittent drainage, and realignment of Oak Avenue to the east involve the construction of a bridge and an additional water quality detention basin.. Based on information submitted by the applicant, this alternative would result in additional construction costs of $5,830,000 (approximately 36.9% greater than the Original Proposed Backbone Infrastructure Project).

6. Alternative 6: Easton Valley Parkway (West), Scott Road, Easton Valley Parkway (East), Empire Ranch Road, Street (A) and Oak Avenue Alternative: This alternative is a combination of all of the alternative described in III(a)(3) – (5) above, and would avoid an additional 2.45 acres of waters of the U.S. over the Original Proposed Backbone Infrastructure Alternative through realignment of six existing and proposed roads throughout the SPA. This alternative would result in the loss of 41.9 acres of development proposed on the Folsom South, Carpenter Ranch, Sacramento Country Day School, and Folsom 560 sites. This alternative would result in additional construction costs of approximately $7,834,000 (approximately 49.6% greater than the Original Proposed Backbone Infrastructure Project).

b. Determination of Practicable Alternatives: The Corps has determined that Alternatives 1, 5, and 6 are not practicable due to the costs associated with the construction of additional bridges, directional drilling of utility lines, and the construction of an additional storm water quality detention basin. In addition, the Corps has determined that alternatives 2, 3, and 4 meet the purpose and need of the proposed action, and are practicable based on costs, logistics, and existing technology.

c. Environmentally Preferred Alternative: The environmentally preferred alternative is Alternative 3, the Amended Backbone Infrastructure Alternative, which consists of the original proposed project, with the incorporation of avoidance of waters of the U.S. included in the Easton Valley Parkway (West) Alternative and the Scott Road Alternative. This alternative would result in fewer impacts to aquatic resources than practicable alternatives 2 and 4. Impacts to waters of the U.S. from the environmentally preferred alternative would be as follows:

Wetlands/Waters	On-Site Waters (ac)	Off-Site Waters (ac)	Total Waters (ac)
Vernal Pool	0.624	0.316	0.940
Seasonal Wetland	1.231	0.061	1.292
Seasonal Wetland Swale	4.930	0.055	4.985
Seep	0.617	0.000	0.617
Marsh	0.017	1.440	1.457
Creek/Channel	1.181	0.426	1.607
Intermittent Drainage	1.494	0.044	1.538
Ditch	0.356	0.007	0.363
Pond	0.852	0	0.852
Total:	11.302	2.349	13.651

IV. Comments on the February 12, 2013, Public Notice for the Proposed Backbone Infrastructure, Carpenter Ranch, and Folsom South Projects and Corps Response

a. Public Notice Comments

1. U.S. Environmental Protection Agency (EPA): On March 11, 2013, EPA provided the comments via emal on the February 12, 2013, public notice for the proposed Backbone Infrastructure, Carpenter Ranch, and Folsom South Projects. EPA's comments related to development of each of the 3 projects in the public notice, and the entire SPA, but were not related to specifically the proposed Backbone Infrastructure Project being evaluated in

this ROD. EPA expressed concerns about the "challenges the applicants face in finding appropriate kinds and quantities of wetland habitat to offset the nearly 30 acres of impact." EPA stated that they believe that there is a lack of suitable compensatory mitigation available for impacts in the SPA. EPA also expressed concern that there is "inadequate inventory [of aquatic resources] in existing banks to meet the demands" of all of the projects currently proposed within eastern Sacramento County (e.g. SunCreek, Cordova Hills, Mather Specific Plan). In addition, EPA expressed their belief that a mitigation ratio of 1:1 in California is inadequate, and after applying the Corps mitigation ratio setting checklist, they believe that the ratio would be "well over 1:1." EPA also stated that it is unacceptable to offset the loss of the types of waters on the SPA site with "distinctively different" waters types such as those found at the Cosumnes River Mitigation Bank. EPA's comments further stated that while it "might be reasonable to offset some of the project impacts (e.g. some of the "riverine wetlands"), the resources at the Cosumnes River mitigation bank are functionally and structurally different from the low gradient grassland habitats of the Folsom area."

In addition, EPA attached their comments on the Final EIR/EIS for the SPA, which contained the following comments:

(a) EPA expressed concern that the applicants and the City of Folsom have not shown a need for the proposed project in light of changes in regional housing markets, and recommended that the Corps more thoroughly examine the basis for the City of Folsom's predictions regarding population growth and development needs.

(b) EPA expressed their belief that the No USACE Permit Alternative and the Resource Impact Minimization Alternative evaluated in the EIR/EIS provide significantly reduced adverse environmental impacts and recommended that these two alternatives be refined to meet the Sacramento Area Council of Governments (SACOG) density and smart growth goals, and that with these design modification, the less damaging alternatives may prove to be practicable.

(c) EPA stated that project-level alternatives may be inconsistent with the programmatic nature of the EIR/EIS in that "more avoidance and minimization may be necessary at the project level to make a finding that the proposed project is the LEDPA." In addition, EPA expressed concern that "once the larger avoidance and minimization steps have been taken through the NEPA process, the scope of change that could occur at the project level may be limited." EPA also continued to express the objection they raised in the Draft EIR/EIS, stating that the cost criteria used within the Draft EIR/EIS to eliminate some alternatives for the Carpenter Ranch site were inappropriate.

(d) EPA stated that, given the information provided in the Final EIR/EIS, that it has not yet been demonstrated that additional avoidance and minimization is impracticable, and until the determination of the LEDPA is made, discussion of compensatory mitigation is premature. EPA further commented that the Final EIR/EIS was deficient in that it did not contain a discussion of the competing needs on mitigation bank credits in the region. EPA expressed the belief that the South Sacramento County Habitat Conservation Plan (SSHCP) would require as many, if not more, of the credits that are available at the approved mitigation banks in the area, EPA asserted that the statement within the Final EIR/EIS that ample credits are available to compensate for the impacts of the proposed project, without taking into account additional future demand is not adequate. In addition, EPA commented that the proposed mitigation ratio of 1:1 is inadequate, citing studies that have found that there are few mitigation projects with constructed vernal pools that compare favorably to natural plant communities. Therefore, EPA

stated that a compensatory mitigation ratio of greater than 1:1 is needed to realistically offset losses and meet the no-net-loss of functions threshold. EPA also asserted that several of the listed mitigation banks are located far from the project area and out of the immediate watershed, and many of the available credits are out-of-kind.

Corps Response: With regards to EPA's comments regarding suitable compensatory mitigation for impacts associated with the proposed project, the applicant has offered to compensate for impacts to waters of the U.S. through the purchase of credits from the Cosumnes River Floodplain Mitigation Bank for impacts to seasonal wetlands, seasonal wetland swales, seeps, marshes, creeks, intermittent drainages, ditches, and ponds, and through the purchase of credits from the Toad Hill Ranch mitigation bank for impacts to vernal pools. Both Cosumnes River Floodplain Mitigation Bank and Toad Hill Ranch contain the proposed project on-site and off-site infrastructure within their service area. In order to determine the appropriate amount of compensatory mitigation required, the Corps has utilized the South Pacific Division Mitigation Ratio Setting Checklist for each type of water proposed to be impacted, which is located in Appendix A.

We concur with the EPA's comment that in some cases compensatory mitigation would be out-of-kind, particularly for impacted seeps, ditches, and ponds. In accordance with 33 CFR 332.3(b)(6), the Corps has determined that on-site, in-kind mitigation is not practicable or is unlikely to compensate for the proposed impacts. The purchase of floodplain mosaic credits to compensate for impacts to jurisdictional ditches and ponds would result in conversion from a relatively common water type to a rarer water type, and is therefore appropriate. In addition, because seeps cannot be replaced through permittee responsible construction or mitigation bank purchase, the Corps has determined that it is appropriate to allow out-of-kind compensatory mitigation through the purchase of floodplain mosaic credits at an increased ratio. The Corps has determined that in-kind compensatory mitigation can occur for seasonal wetlands, seasonal wetland swales, marshes, creek, and intermittent drainage impacts with the purchase of floodplain mosaic and floodplain riparian credits at the Cosumnes Floodplain Mitigation Bank, and for vernal pools at the Toad Hill Ranch Mitigation Bank. Because the proposed on-site and off-site Backbone Infrastructure would occur within two different 8-digit HUC watershed, different mitigation ratios were determined for the waters of the U.S. within each of these watersheds.

The Corps has determined that the following compensatory mitigation is required In order to compensate for impacts to waters of the U.S. as a result of the proposed backbone infrastructure permit:

a. To compensate for the loss of jurisdictional ditches, ponds, and marshes, the applicant would be required to purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 1:1.

b. Creeks/channels and intermittent drainages:

1. To compensate for the loss of creeks/channels and intermittent drainages located in the Lower American River 8-digit hydrologic unit code (HUC) watershed (018020111), the applicant would be required tol purchase floodplain riparian re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 2:1.

2. To compensate for the loss of creeks/channels and intermittent drainages located in the Upper Cosumnes River 8-digit HUC watershed (18040013), the applicant would be

required to purchase floodplain riparian re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 1:1

c. Seasonal wetlands and seasonal wetland swales:

1. To compensate for the loss of seasonal wetlands and seasonal wetland swales located in the Lower American River 8-digit HUC watershed, the applicant would be required to purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 1.3:1

2. To compensate for the loss of seasonal wetlands and seasonal wetland swales located in the Upper Cosumnes River 8-digit HUC watershed, the applicant would be required to purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 1:1

d. Seeps

1. To compensate for the loss of seeps located in the Lower American River 8-digit HUC watershed, the applicant would be required to purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 4:1

2. To compensate for the loss of seeps located in the Upper Cosumnes River 8-digit HUC watershed, the applicant would be required to purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 3:1

e. To compensate for the loss of vernal pools, the applicant would be required purchase vernal pool creation credits from the Toad Hill Mitigation Bank at a ratio of 1:1

Based on the above mitigation ratios, the applicant would be required to purchase the following credits to compensate for impacts associated with the proposed Backbone Infrastructure Project:

Wetlands/Waters	Impacted Amount (ac)	Required Credits	Credit Type	Bank
Vernal Pool	0.940	0.940	Vernal Pool	Toad Hill
Seasonal Wetland	1.292	1.668	Floodplain Mosaic	Cosumnes
Seasonal Wetland Swale	4.985	6.319	Floodplain Mosaic	Cosumnes
Seep	0.617	2.432	Floodplain Mosaic	Cosumnes
Marsh	1.457	1.464	Floodplain Mosaic	Cosumnes
Creek/Channel	1.610	3.178	Floodplain Riparian	Cosumnes
Intermittent Drainage	1.538	2.971	Floodplain Riparian	Cosumnes
Ditch	0.363	0.363	Floodplain Mosaic	Cosumnes
Pond	0.852	0.852	Floodplain Mosaic	Cosumnes
Total:	13.654	20.187		

Based on an April 24, 2014, review of the Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS), the Cosumnes Floodplain Mitigation Bank has 113.98 available floodplain mosaic credits, and 19.465 available floodplain riparian credits, and the Toad Hill Ranch Mitigation Bank has 8.97 available vernal pool establishment credits. Therefore, the Corps has determined that the impacts of the proposed Backbone Infrastructure permit can be appropriately mitigated through the purchase of mitigation bank credits as described above, and that both the Cosumnes River Floodplain Mitigation Bank and the Toad Hill Ranch Mitigation Bank have sufficient credits available to compensate for these impacts.

In response to EPA's comment (a) on the Final EIR/EIS, based on future growth projections, the City of Folsom and the applicant have determined that there is a need for housing and commercial development within south-eastern Sacramento County. In addition, on January 18, 2012, the Local Agency Formation Commission (LAFCo), approved the application by the City of Folsom to annex the proposed SPA area into the City of Folsom. In addition, the certification of the EIR and approval of the Specific Plan and zoning entitlements by the City of Folsom indicate a future need for residential and commercial uses in the SPA. EPA has not provided information to indicate that there is not a future need for development in south-eastern Sacramento County. Therefore, based on available information, the Corps has determined that there is a need for residential and commercial development within south-eastern Sacramento County in order to meet future growth projections.

In response to EPA's comment (b) on the Final EIR/EIS, the project under consideration is not the residential and commercial development evaluated in the EIR/EIS, but is the proposed backbone infrastructure to support these proposed developments. The backbone infrastructure was included as part of each of the development alternatives evaluated in the EIR/EIS. As stated above, the Corps has determined that the No Action Alternative for the backbone infrastructure, which is the same as the No USACE Permit Alternative evaluated in the EIR/EIS, is not practicable, due to the number of bridges that would be required, and the directional drilling required for the installation of utility lines. With regards to the Resource Impact Minimization Alternative evaluated in the EIR/EIS, the backbone infrastructure associated with this alternative would result in the same impacts to waters of the U.S. as the Originally Proposed Backbone Infrastructure Alternative. The currently proposed Backbone Infrastructure Project would result in fewer impacts to waters of the U.S. than the backbone infrastructure would for the Resource Impact Minimization Alternative evaluated in the EIR/EIS, as the Resource Impact Minimization Alternative included the same impacts to waters of the U.S. for backbone infrastructure as the Originally Proposed Backbone Infrastructure Alternative.

With regards to EPA's comment (c) on the Final EIR/EIS, the applicant has incorporated additional avoidance of waters as a result of additional evaluation of alternatives. The Corps has determined that while these additional alternatives were not evaluated in the EIR/EIS, they still fall within the reasonable range of alternatives evaluated in the EIR/EIS, and do not represent an increase in environmental impacts beyond those addressed in the EIR/EIS. Therefore, a supplemental decision document is not required to analyze these effects. EPA's comment regarding the proposed Carpenter Ranch site is noted, and will be addressed within the ROD or supplemental decision document for that project.

With regards to EPA's comment (d) on the Final EIR/EIS, we concur with EPA's statement that at the time the Final EIR/EIS was published, the applicant's for the SPA had not demonstrated that additional avoidance and minimization is impracticable, and therefore discussions of compensatory mitigation were premature. The February 12, 2013, Public Notice for the proposed Backbone Infrastructure project included alternatives information prepared by

the applicant for review and approval by EPA. EPA did not provide any specific comments regarding this alternatives information. With regards to EPA's comment that the Final EIR/EIS is deficient in that it did not discuss competing needs on mitigation bank credits in the region, as stated above, sufficient compensatory mitigation credits are available at the Cosumnes River Mitigation Bank and Toad Hill Ranch Mitigation bank to compensate for impacts of the proposed project on waters of the U.S. We acknowledge that if all proposed actions in the region are approved, there are not sufficient credits available at the existing mitigation banks. However, it is not our responsibility to ensure that sufficient credits are available for all projects that are currently proposed, nor is it feasible for us to make this determination, as there may be additional mitigation banks approved in the future, and we do not yet know whether all proposed projects would be approved or what the required compensatory mitigation would be for those projects. If there are not sufficient credits available for future projects that are permitted within the region, the applicant for those projects would need to either propose and have approved permittee-responsible compensatory mitigation, or would not be able to commence construction until sufficient credits are available.

2. **Ms. Karri Smith, President, K.A. Smith Consulting, Inc; Sandy, Utah:** On February 13, 2013, Ms. Smith commented that "(f)illing almost 30 acres of wetlands in the year 2013 is absurd regardless of how good a compensatory mitigation plan is." In addition, Ms. Smith stated that "simple purchase of mitigation credits from wetland mitigation banks is only making mitigation bank developers and residential/industrial developers rich while the wildlife continues to lose critical habitat necessary to sustain their continued survival." Ms. Smith also provided her belief that only a small percentage of wetland mitigation projects are successful in the long-term, especially following the 5-year monitoring program required as part of a 404 permit. Finally, Ms. Smith commented that "vernal pool sensitive and endangered species and migratory birds need their natural habitat in their original areas of historic flyways and other areas to be preserved for their continued survival."

Corps Response: Ms. Smith's comment objecting to the placement of fill material into "almost 30 acres of wetlands," is noted. In accordance with the Section 404(b)(1) Guidelines, no permit will be issued for a project unless it is shown to be the least environmentally damaging practicable alternative. With regards to Ms. Smith's comment regarding wetland mitigation projects, both the Cosumnes Floodplain Mitigation Bank and the Toad Hill Mitigation Bank have gone through the mitigation bank review process required under 33 CFR Part 332, which included extensive review by the Interagency Review Team, requirements for short-term and long-term monitoring, and requirements for financial assurances to ensure success. Therefore, the Corps has determined that there is a likelihood that the established and re-established habitat on these sites will be successful, and that the use of these banks is appropriate for compensatory mitigation for the proposed Backbone Infrastructure project.

V. Consideration of Applicable Laws and Policies

a. National Environmental Policy Act (NEPA): The EIR/EIS was completed to evaluate a reasonable range of land-use (including backbone infrastructure) and water-supply alternatives and the cumulative impacts associated with nine projects in the SPA. Each of the land use alternatives included the Originally Proposed Backbone Infrastructure Alternative, as described in Section III.a.2 above. The Corps followed the NEPA process, including noticing and timeline requirements, to produce a document that discloses to the public the probable impacts of the Proposed Action, taking into account mitigation. The EIR/EIS was used in the preparation of this ROD for the on-site and off-site Backbone Infrastructure project.

b. Section 401 of the Clean Water Act Section 401 of the CWA: A Section 401 Water Quality Certification (WQC) was issued by the Central Valley Regional Water Quality Control Board on October 18, 2013, for the proposed Backbone Infrastructure project. The WQC will be a condition of the permit.

c. Endangered Species Act of 1973: On December 6, 2010, we initiated consultation with the United States Fish and Wildlife Service (USFWS) for potential impacts of the proposed project on the Federally-listed vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (Lepidurus packardi), conservancy fairy shrimp (*Branchinecta conservatio*), Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), Sacramento Orcutt grass (*Orcuttia viscida*), and Slender Orcutt grass (*Orcuttia tenuis*). USFWS determined in the April 2, 2014, Biological Opinion (BO, File Number 81420-2010-F-0620-1) that habitat for conservancy fairy shrimp, Sacramento Orcutt grass, and Slender Orcutt grass does not occur in the on-site or off-site infrastructure area, and authorized the take of 0.294 acres of habitat for vernal pool fairy shrimp and vernal pool tadpole shrimp, and six elderberry shrubs. A special condition will be added to the permit, requiring compliance with the issued BO.

d. Fish and Wildlife Coordination Act: The Corps has worked with the USFWS on the proposed project, including meetings to obtain input. During EIR/EIS preparation, the Corps requested USFWS be a cooperating agency. Although it declined, the USFWS reviewed the draft of the EIR/EIS and provided comments.

e. Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act): The proposed project is in compliance with the Magnuson-Stevens Act. The proposed project and other land-use and water-supply alternatives would not result in any impacts to essential fish habitat.

f. Section 106 of the National Historic Preservation Act: The Corps has consulted with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP). Through consultation with the SHPO, a Programmatic Agreement (PA) between the Corps and the California Office of Historic Preservation was prepared and was executed on July 6, 2011. In addition, on October 3, 2013, an amended PA was executed by the Corps and SHPO. A special condition will be added to the permit, requiring compliance with the PA.

g. Section 176(C) of the Clean Air Act (CAA) General Conformity Rule Review: The proposed action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. The Corps has determined that direct emissions from the proposed activities that require a DA permit will not exceed de minimis levels 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 action.

h. Executive Order 11998 (Floodplain Management): The area along Alder Creek which flows through the SPA has been identified by the California Department of Water Resources as lying within a 100-year floodplain. While the proposed mixed-use development would avoid the 100-year floodplain of Alder Creek, there is some backbone infrastructure that would need to be located within the floodplain, particularly roads and bridges. As explained in Section 3A.9 of the Draft EIR/EIS, these impacts would be reduced to less-than-significant, provided Mitigation Measure 3A.9-2 is implemented. The proposed Backbone Infrastructure

project would result in minimal impacts to the floodplain of Alder Creek, and has been approved by the City of Folsom.

i. Executive Order 13175 (Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians): During the development of the PA, and the amended PA, the Corps has consulted with the two tribes that may have an interest in the area, the Shingle Springs Band of Miwok Indians, and the United Auburn Indian Community. Both tribes are concurring parties on the PA, and, per the PA, will be consulted during the development of any Memoranda of Agreement (MOAs) required for individual compliance with Section 106 of the NHPA.

j. Environmental Justice (Title VI of the Civil Rights Act and Executive Order 12898): No low-income or minority populations are identified within or adjacent to the SPA or within or adjacent to any of the proposed water-supply alternatives. The proposed action is not expected to negatively impact any community, and therefore is not expected to cause disproportionately high and adverse impacts to minority or low-income communities.

VI. Consideration of Mitigation Measures for the Amended Proposed Backbone Infrastructure Project:

The EIR/EIS included a number of mitigation measures to reduce or offset impacts that fall outside of the Corps responsibility and generally cannot be practicably controlled by the Corps, like traffic, air quality, and noise. Many of the mitigation measures are requirements of the local land use agency (City of Folsom) and were addressed in the EIR/EIS for compliance with CEQA and would be approved through grading and construction permits by the City of Folsom. As such, enforcement of these mitigation measures is the responsibility of the City of Folsom and not the Corps.

The Corps requires mitigation measures to reduce or offset impacts to waters of the U.S. as special conditions of each DA permit issued. These special conditions are identified in Section VIII, and take into account mitigation measures 3A.3-1a, 3A.3-1b, 3B.3-1a, 3B.3-1b and 3B.3-1c, as described in Chapters 3A.3 and 3B.3 of the Draft EIR/EIS, and also include additional conditions that avoid, minimize and compensate for impacts to waters of the U.S. and those that ensure compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

VII: Compliance with 404(b)(1) Guidelines for the Amended Proposed Backbone Infrastructure Project:

Based on the discussion in Section III, are there available, practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into "waters of the U.S." or at other locations within these waters? Yes __ No _X_
If the project is in a special aquatic site and is not water dependent, has the applicant clearly demonstrated that there are no practicable alternative sites available? Yes _X_ No ___

Will the discharge:

Violate state water quality standards? Yes ___ No _X_

Violate toxic effluent standards under Section 307 of the Clean Water Act? Yes __ No _X_

Jeopardize endangered or threatened species or their critical habitat? Yes ___ No_X_

Violate standards set by the Department of Commerce to protect marine sanctuaries? Yes ___ No _X_

Evaluation of the information in the EIR/EIS indicates that the proposed discharge material meets testing exclusion criteria for the following reason(s):

(X) based on the above information, the material is not a carrier of contaminants.

( ) the levels of contaminants are substantially similar at the extraction and disposal sites and the discharge is not likely to result in degradation of the disposal site and pollutants will not be transported to less contaminated areas.

( ) acceptable constraints are available and will be implemented to reduce contamination to acceptable levels within the disposal site and prevent contaminants from being transported beyond the boundaries of the disposal site.

Will the discharge contribute to significant degradation of "waters of the U.S." through adverse impacts to:

Human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife and/or special aquatic sites? Yes ___ No _X_

Life stages of aquatic life and/or wildlife? Yes ___ No _X_

Diversity, productivity, and stability of the aquatic life and other wildlife? Or wildlife habitat or loss of the capacity of wetlands to assimilate nutrients, purify water or reduce wave energy? Yes ___ No _X_

Recreational, aesthetic and economic values? Yes ___ No_X_

Will all appropriate and practicable steps be taken to minimize adverse impacts of the discharge on the aquatic ecosystem? Does the proposal include satisfactory compensatory mitigation for losses of aquatic resources? Yes _X_ No __

VIII. Special Conditions

The following special conditions will be included in the permit to ensure the project is not contrary to the public interest and complies with the 404 (b)(1) Guidelines and other applicable laws:

1. Prior to the initiation of construction activities in waters of the U.S. associated with each phase of construction of the backbone infrastructure, you shall submit to the Corps, for review and approval, a plan-view drawing of the work proposed to be conducted within that phase, and cross-section view drawings of all crossings of waters of the U.S., as well as pre-construction color photographs of the upstream and downstream area of each crossing. The compass angle and location of each photograph shall be identified on the plan-view drawing. In addition, you shall include a description of any deviations (including changes in phasing sequence or boundaries of phases) from the authorized work, including the amount and type of waters that would be impacted, and the amount and type of compensatory mitigation that would

be required. You shall ensure that the description provided includes information regarding any temporary impacts to waters of the U.S.

Rationale: *This condition is necessary to ensure compliance with the permit and applicable conditions and to ensure that no changes have occurred to the proposed project prior to each phase.. (33 USC 1344(a), 33 USC 401 et. seq., 33 CFR 320.4(r)(1), 33 CFR 325.4(a)(3); 33 CFR 326).*

2. Prior to the initiation of each phase of development, you shall compensate for the loss of waters of the U.S. within that phase through the purchase of mitigation credits from the Cosumnes Floodplain Mitigation Bank and/or the Toad Hill Mitigation Bank at the following compensation to impact ratios for aquatic resources identified on the *Figure 20. Current Backbone Impact Plan (3/1/12)* drawing, prepared by ECORP Consulting, Inc.:

a. To compensate for the loss of jurisdictional ditches, ponds, and marshes, you shall purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 1:1;

b. Creeks/channels and intermittent drainages:

(1) To compensate for the loss of creeks/channels and intermittent drainages located in the Lower American River 8-digit hydrologic unit code (HUC) watershed (018020111), you shall purchase floodplain riparian re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 2:1.

(2) To compensate for the loss of creeks/channels and intermittent drainages located in the Upper Cosumnes River 8-digit HUC watershed (18040013), you shall purchase floodplain riparian re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 1:1

c. Seasonal wetlands and seasonal wetland swales:

(1) To compensate for the loss of seasonal wetlands and seasonal wetland swales located in the Lower American River 8-digit HUC watershed, you shall purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 1.3:1

(2) To compensate for the loss of seasonal wetlands and seasonal wetland swales located in the Upper Cosumnes River 8-digit HUC watershed, you shall purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 1:1

d. Seeps

(1) To compensate for the loss of seeps located in the Lower American River 8-digit HUC watershed, you shall purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 4:1

(2) To compensate for the loss of seeps located in the Upper Cosumnes River 8-digit HUC watershed, you shall purchase floodplain mosaic re-establishment credits from the Cosumnes Floodplain Mitigation Bank at a ratio of 3:1

e. To compensate for the loss of vernal pools, you shall purchase vernal pool creation credits from the Toad Hill Mitigation Bank at a ratio of 1:1

Rationale: *This special condition is necessary to ensure compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3; 33 CFR 332).*

3. You shall ensure that impacts associated with all crossings of Alder Creek are temporary in nature and do not result in the permanent loss of waters in Alder Creek. You shall design road crossings of Alder Creek to maintain the pre-construction bankfull width of the creek, as well as accommodate reasonably foreseeable wildlife passage and expected high flows. This shall be accomplished by (1) employing bridge designs that span Alder Creek; (2) utilizing pier or pile supported structures; (3) uitilzing large bottomless culverts that do not impact the natural stream bed; and/or (4) utilizing a large box culvert which spans the width of Alder Creek, and is installed beneath the natural bed of Alder Creek. For the installation of any proposed box culverts in Alder Creek, you shall restore the natural streambed to ensure that substrate and streamflow conditions approximate original channel conditions, in accordance with Special Condition 3. All crossings of waters of the U.S., including Alder Creek, shall be reviewed and approved by the Corps prior to initiation of construction activities in waters of the U.S., as identified in Special Condition 1.

Rationale: *This special condition is necessary to ensure minimization of impacts to Alder Creek, and to ensure that the functions of the aquatic environment are protected. In addition, this condition ensures that the Corps is provided specific information regarding crossings of all waters of the U.S. prior to the initiation of construction activities.. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3; 33 CFR 332, 40 CFR 230).*

4. Within 30 days following completion of each crossing of Alder Creek, you shall restore areas of the creek temporarily impacted, as well as all disturbed adjacent upland areas, to pre-project contours and conditions. In order to ensure compliance with this condition, you shall:

a. Prior to the initiation of any construction of crossings of Alder Creek, submit to the Corps, for review and approval, a plan for the restoration of temporary impact areas. You shall include the following information in this plan:

(1) A description of and drawings showing the existing contours (elevation) and existing vegetation of each crossing of Alder Creek and the adjacent upland areas. This information shall also include site photographs taken upstream and downstream of each temporary impact area.

(2) The methods used to restore Alder Creek and the adjacent upland at each crossing to the original contour and condition, as well as a plan for the re-vegetation of the site following construction activities, if applicable.

(3) The proposed schedule for the restoration activities, and;

(4) A monitoring plan, to be approved by the Corps, for restoration of the temporary impact area to ensure success of the restoration. Monitoring shall be conducted for a minimum of three growing seasons after completion of restoration activities. The plan shall be

presented in the format of the Sacramento District's *Habitat Mitigation and Monitoring Proposal Guidelines*, dated December 30, 2004, or appropriate updates.

b. Within 30 days following completion of restoration activities, submit to the Corps a report describing the restoration activities including color photographs of the restored area. The compass angle and position of all photographs shall be similar to the pre-construction photographs required in Special Condition 1.

c. Submit to the Corps a Monitoring Report by October 1 of each year of the required monitoring period. This report shall be submitted in the format shown on the enclosed *Contents of Monitoring Reports*. Reports may be submitted in hard copy or electronically.

Rationale: *This special condition is necessary to ensure successful restoration of all temporary impacts authorized (33 CFR 320.4(r)(1), 33 CFR 325.4(a)(3), 33 CFR 332, 40 CFR 230).*

5. You shall ensure that trenching activities in waters of the U.S. associated with the installation of utility lines does not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by the Corps) to seal the trench. For utility line trenches, during construction, you shall remove and stockpile, separately, the top 6 – 12 inches of topsoil. Following installation of the utility line(s), you shall replace the stockpiled topsoil on top and seed the area with native vegetation. All utility lines in waters of the U.S. shall be reviewed and approved by the Corps prior to initiation of construction activities in waters of the U.S., as identified in Special Condition 1.

Rationale: *This special condition is necessary to ensure minimization of impacts due to trenching for the installation of utility lines, and to ensure restoration of these areas (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3; 33 CFR 332, 40 CFR 230).*

6. Prior to initiation any phase of construction activities within waters of the U.S., you shall employ construction best management practices (BMPs) within 50-feet of all on-site and off-site waters of the U.S. to be avoided. Methods shall include the use of appropriate measures to intercept and capture sediment prior to entering waters of the U.S., as well as erosion control measures along the perimeter of all work areas to prevent the displacement of fill material. All BMPs shall be in place prior to initiation of any construction activities (or prior to the initiation of each phase of the project) and shall remain until construction activities are completed. You shall maintain erosion control methods until all on-site soils are stabilized. You shall submit a description of and photo-documentation of your BMPs to our office with information required in Special Condition 1.

Rationale: *This condition is necessary to minimize adverse impacts to water quality, from construction activities, to the maximum extent practicable (33 CFR 320.3(a), 33 CFR 320.4(d), 33 CFR 325.4(a)(3)).*

7. You shall implement the attached Programmatic Agreement (PA), entitled *First Amended Programmatic Agreement Between the U.S. Army Corps of Engineers and the California Office of Historic Preservation Regarding the Folsom Plan Area Specific Plan, Sacramento County, California*, and signed by these entities, in its entirety. The Corps has been designated the lead federal agency responsible for implementing and enforcing the PA as signed. If you fail to comply with the implementation and associated enforcement of the PA the

Corps may determine that you are out of compliance with the conditions of the Department of the Army permit and suspend the permit. Suspension may result in modification or revocation of the authorized work.

***Rationale**: This condition is necessary to ensure compliance with Section 106 of the National Historic Preservation Act (16 USC 470, 33 CFR 320.3(g); 33 CFR 325.2(b)(3); 33 CFR 325, Appendix C; 36 CFR 800).*

8. This Corps permit does not authorize you to take an endangered species, in particular vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardi*), and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Biological Opinion (Number 81420-2010-F-0620-1, dated April 2, 2014), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached Biological Opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The U. S. Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of its/their Biological Opinion, and with the Endangered Species Act. You must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.

***Rationale**: This condition is necessary to ensure compliance with Section 7 of the Endangered Species Act (16 USC 1531 et seq; 50 CFR 402; 33 CFR 320.4(j)(4); 33 CFR 325.2(b)(5); 33 CFR 325.4(a)(1)).*

9. You shall notify the Corps of the start and completion dates for each phase of the authorized work within 10 calendar days prior to the initiation of construction activities within waters of the U.S., and 10 calendar days following completion of construction activities.

***Rationale:** This condition is necessary to assist the Corps in scheduling compliance inspections to ensure compliance with the permit and applicable conditions (33 CFR 325.4; 33 CFR 326).*

10. You are responsible for all work authorized herein and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of this permit authorization. You shall ensure that a hard copy of the permit authorization and associated drawings are available for quick reference at the project site until all construction activities are completed.

***Rationale:** This condition is necessary to ensure that all workers on site are aware of the terms and conditions of the permit in order to ensure compliance with the permit and applicable conditions (33 CFR 325.4; 33 CFR 326).*

11. You shall clearly identify the limits of all construction areas located within 100 feet of avoided waters of the U.S. with highly visible markers (e.g. construction fencing, flagging, silt

barriers, etc.) prior to commencement of each phase of construction activities in waters of the U.S. You shall maintain such identification properly until construction areas and soils have been stabilized. You are prohibited from undertaking any activity (e.g. equipment usage or materials storage) that impacts waters of the U.S. outside of the permit limits.

Rationale: *This condition is necessary to ensure the construction activities do not occur outside of the project area, which could cause adverse impacts to the aquatic ecosystem (33 CFR 325.4(a)(3)).*

12. You shall use only clean and non-toxic fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

Rationale: *This condition is necessary to ensure that contaminated material in not placed within waters of the U.S. (33 CFR 325.4(a)(3); 40 CFR 230).*

13. All crossings of creeks, seasonal wetland swales, intermittent or ephemeral drainage, where the upstream or downstream portions of the feature are intended to be avoided, shall be conducted when the project area is naturally dewatered, or is dewatered in accordance with a Corps approved dewatering plan. No work shall be conducted in flowing waters.

Rationale: *This condition is necessary to minimize downstream impacts to the aquatic environment from suspended sediments and turbidity to the maximum extent practicable. (33 CFR 320.3(a), 33 CFR 320.4(d); 33 CFR 325.4(a)(3); 40 CFR 230).*

IX. Public Interest Review

a. The relative extent of the public and private need for the proposed work has been considered: The proposed Backbone Infrastructure Project is intended to meet a private need for infrastructure associated with mixed-use development.

b. The practicability of using reasonable alternative locations and/or methods to accomplish the objective of the proposed structure or work has been evaluated: The Corps has determined that there are no practicable alternate locations that would accomplish the purpose of the proposed work. The Corps has also determined that there is no practicable alternative method to accomplish the purpose of the proposed work that would have fewer direct or indirect impacts than the proposed project. The applicant's Amended Proposed Backbone Infrastructure project represents the LEDPA, as described in Section II(a).

c. The extent and permanence of the beneficial and/or detrimental effects that the proposed structures or work may have on the public and private uses which the area is suited has been reviewed: The Amended Proposed Backbone Infrastructure alternative would result in the placement of fill material into, and the permanent loss of 13.65 acres of waters of the U.S., including wetlands, for the construction of a backbone infrastructure in the SPA. The loss of 13.65 acres of waters of the U.S would cause a permanent detrimental effect. The loss of waters of the U.S as a result of the proposed Backbone Infrastructure would be offset by the required mitigation. The proposed backbone infrastructure, consisting of roads, utility lines, and trails would provide a permanent beneficial effect to residents in and near the proposed project site.

X. Findings

a. The determinations made within this ROD are consistent with those made in the August 12, 2011, ROD for the SPA.

b. The evaluation of the proposed action and alternatives was done in accordance with all applicable laws, executive orders, and regulations. The EIR/EIS and supporting documents are adequate and contain sufficient information to make a reasoned permit decision.

c. The selected alternative is the applicant's Amended Proposed Backbone Infrastructure Alternative, with appropriate and practicable mitigation measures to minimize environmental harm and potential adverse impacts of the discharges on the aquatic ecosystem and the human environment, as identified in Section VIII. The applicant's Amended Proposed Backbone Infrastructure Alternative, as mitigated by these conditions, is considered the environmentally preferred alternative under NEPA.

d. The discharge complies with the Section 404(b)(1) guidelines and is considered the least environmentally damaging practicable alternative, with the inclusion of appropriate and practicable general and special conditions in the permit to minimize pollution or adverse effects to the affected ecosystem.

e. Issuance of a Department of the Army permit is not contrary to the public interest, with the inclusion of the special conditions identified in Section VIII.

f. The compensatory mitigation identified in the special conditions, was determined using the *South Pacific Division Mitigation Ratio Setting Checklist*, and is sufficient to ensure no-net loss of aquatic resources functions and services for impacts to 13.65 acres of waters of the U.S.

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