



SPECIAL PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

BUILDING STRONG®

PROPOSED REISSUANCE
OF REGIONAL GENERAL PERMIT 96
FOR ROUTINE TRANSPORTATION
ACTIVITIES IN ARIZONA

Public Notice/Application No.: SPL-2014-00625

Project: RGP 96: Routine Transportation Activities - Arizona

Comment Period: December 28, 2020 through January 27, 2021

Project Manager: Jesse Rice; (602) 230-6854; Jesse.M.Rice@usace.army.mil

Applicant

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Location

Waters of the United States (U.S.) within the state of Arizona, occurring within Arizona Department of Transportation (ADOT) right-of-way or easement (including temporary construction easements) through non-tribal lands and Local Public Agency (LPA) projects federally funded by Federal Highway Administration (FHWA) that are bid and administered by ADOT. See the attached map.

Activity

This Special Public Notice concerns the U.S. Army Corps of Engineers (Corps), Los Angeles District's proposal, pursuant to 33 Code of Federal Regulations (C.F.R.) Section 325.2(e), to reissue alternative permitting procedures to address anticipated discharges of dredged and fill materials into waters of the U.S. associated with ADOT's routine transportation activities over the next 5 years. Specifically, this Regional General Permit (RGP) is proposed to more efficiently evaluate and, if determined eligible by the Corps in coordination with other federal and state agencies, reauthorize program activities that would discharge dredged or fill material into waters of the U.S., as regulated under section 404 of the Clean Water Act (CWA).

For more information, see Additional Project Information section below.

Submittal of Public Comments

Interested parties are hereby notified an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawings. We invite you to

review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under Section 404 of the Clean Water Act.

During the Coronavirus Health Emergency, Regulatory Program staff are teleworking. Please do not mail hard copy documents, including comments to any Regulatory staff. Instead, your comments should be submitted electronically to: Jesse.M.Rice@usace.army.mil. Should you have any questions or concerns about the Corps' proposed action or our comment period, you may contact Jesse Rice directly at (602) 230-6854.

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made an environmental impact statement is not required for the proposed work.

Water Quality- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the Arizona Department of Environmental Quality. Section 401 requires any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance.

Coastal Zone Management- Not applicable within the State of Arizona.

Essential Fish Habitat- No Essential Fish Habitat (EFH), as defined by the Magnuson-Stevens Fishery Conservation and Management Act, occurs within the project area and no EFH is affected by the proposed project.

Cultural Resources- The Corps of Engineers has preliminarily determined that reissuance of RGP 96 will have no potential to effect historic properties or cultural resources for those activities which occur in Waters of the U.S. where there is no potential for such resources to exist. If such resources are present or have potential to be present, the Corps, in coordination with ADOT and/or FHWA, will review the activities on a case-by-case basis and make a project-specific determination of effect. Consultation with the Arizona State Historic Preservation Office (AZ SHPO), appropriate Tribes and Tribal Historic Preservation Offices (THPO) under Section 106 of the National Historic Preservation Act (Section 106) will occur either programmatically or on a project-specific basis for any activities which may affect historic properties or cultural resources.

Endangered Species- The Corps of Engineers has preliminarily determined that reissuance of RGP 96 will have “no effect” on any proposed or listed, threatened or endangered species or its critical habitat for those activities which occur in Waters of the U.S. where there is no potential for a proposed or listed, threatened or endangered species or its critical habitat to occur. In areas where there is a potential for a proposed or listed, threatened or endangered species or its critical habitat to occur or where a proposed or listed, threatened or endangered species or its critical habitat does occur, the Corps in coordination with ADOT, will review the activities on a case-by-case basis and make a project-specific determination of effect in accordance with Section 7 of the Endangered Species Act (ESA). This may result in informal or formal consultation with the U.S. Fish and Wildlife Service under Section 7 prior to commencement of any proposed activities.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material into a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). The basic project purpose for the proposed project is transportation. The project is not water dependent.

Overall Project Purpose- The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to conduct routine transportation construction and maintenance activities within Waters of the U.S. occurring within ADOT right-of-way or easement (including temporary construction easement) through non-tribal lands in an effort to further implement and achieve ADOT's mission and goals to create safe transportation infrastructure, increase efficiency, and maximize existing agency resources.

Additional Project Information

Baseline information- The proposed activities would occur within ADOT or LPA right-of-way on non-tribal lands within the state of Arizona. Most of state experiences an arid desert climate typical of the southwestern United States with low precipitation and high summer temperatures. However, there are several high-elevation areas in the state that experience cooler temperatures and high annual precipitation which may support grasslands, oak woodlands, scrub-shrub forest, and coniferous forests. The eastern two thirds of the state typically experiences monsoonal activity during the late summer months, which provides a majority of the annual precipitation in many areas. However, this storm activity can also result in severe flooding that can damage transportation infrastructure, particularly when tropical storm activity influences weather conditions in the state. The vast majority of aquatic features in the state are ephemeral drainages which have a wide range of functionality and value within the watershed. Many of these features play an important role in sediment transport, groundwater recharge, and habitat connectivity. There are also several intermittent and perennial rivers in the state that are important resources due to the scarcity of surface water within the state. Habitat and vegetation along all of these aquatic features can vary widely, ranging from low density upland vegetation communities to mature riparian forests that provide important habitat to sensitive or rare species. Wetlands in the state are extremely infrequent and are typically found along the fringes of perennial springs, streams and rivers. Wetlands may also be found in urban areas where effluent and urban runoff provide a perennial source of water in what would normally be an ephemeral stream channel. The most substantial wetlands are typically found in the mountainous areas in the central and eastern portion of the state and within the Phoenix metropolitan area.

There are approximately 7,000 miles of ADOT-owned transportation infrastructure throughout the state of Arizona which requires periodic maintenance and upgrades to maintain a safe and efficient

transportation system for the travelling public. Prior to the issuance of the Regional General Permit 96, in 2014, ADOT submitted more than thirty Section 404 permits to the Corps for various routine transportation construction and maintenance activities, many of which were in heavily disturbed or modified locations. ADOT incurs costs to prepare Section 404 compliance documentation for routine transportation activities in waters of the US. The approximate cost savings due to reduced and streamlined compliance documentation ranged between \$12,000 and \$30,000 per project that is authorized by the Regional General Permit 96. ADOT estimates that the Regional General Permit 96 generates a savings of up to \$150,000 per year in reduced compliance paperwork. In 2019, ADOT used the Regional General Permit 96 19 times for construction projects. During Fiscal Year 2019 there were approximately 3,752 maintenance activity projects that would be covered under the Regional General Permit 96. The vast majority of these maintenance projects resulted in impacts of less than 0.10 of an acre and occurred in ephemeral aquatic features.

Project description- The applicant proposes to perform routine transportation construction and maintenance activities in waters of the US located within ADOT right-of-way/easement (including temporary construction easement) or LPA right-of-way/easement through non-tribal lands across the state of Arizona. Proposed construction activities are those that ADOT regularly conducts, such as culvert extensions due to roadway widening, scour protection, and new bank stabilization. Proposed maintenance activities are on currently serviceable structures, facilities, or fill, provided that the structures, facilities, or fill are not to be put to uses differing from their previously permitted uses. Proposed maintenance activities also include sediment removal or repair of existing structures for adequate drainage, flood hazard reduction, and overall public safety. Activities covered by this Regional General Permit 96 would include discharge of dredged or fill material for temporary construction access, construction activities, water diversion, and dewatering.

ADOT has requested that the Corps reissues Regional General Permit 96 to authorize routine transportation construction and maintenance with minor revisions to the impact and discharge notification thresholds and permit special conditions from those identified in the current Regional General Permit 96. Furthermore, ADOT requests the reissued Regional General Permit 96 include an outline and definitions of two levels of notification for Section 404 compliance documentation for the various routine transportation activities addressed in the permit. ADOT proposes that the reissued Regional General Permit 96 include the following:

Non-notification:

The activities identified below do not have acreage threshold requirements for notification and would be able to proceed without submittal of a preconstruction notification to the Corps. These activities would remain unchanged from the current RGP. For all of the activities described below, no work would be authorized at this notification level in the following situations:

- If the activity would permanently or temporarily impact a perennial water or special aquatic site.
- If the project is state-funded and may affect a threatened or endangered species or critical habitat protected under the Endangered Species Act (ESA).
- If the project is state-funded and may affect historic properties (Section 106).

Under the current RGP, no activity is authorized at the non-notification level if ESA or Section 106 consultation is required. However, since the issuance of the current RGP in 2016, ADOT has assumed responsibility for the environmental review and compliance on federally funded projects pursuant to 23 USC 326-327 and a Memorandum of Understanding (MOU) between ADOT and FHWA. For these projects, ADOT is considered the lead agency and is fully liable for compliance with such requirements as the National Environmental Policy Act, the ESA, and Section 106. Under the proposed reissuance of the RGP, the federally funded activities covered at this

notification level would now be authorized without submittal of a preconstruction notification if they are subject to the MOU and the only reason for notification is ESA or Section 106.

Non-Notification Activities:

1. **Maintain Structure** - Activities include the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill to maintain the structural integrity and operational capacity of the previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, for adequate drainage, flood hazard reduction, and overall public safety.
2. **Sediment/Debris Removal** - Activities include removal of sediment, debris, woody and herbaceous vegetation and other obstructions in the vicinity of existing structures which compromise the integrity of the structure and/or impede flows. The activity shall no greater than 200 linear feet upstream or downstream of the existing structure.
3. **Erosion Repair** - Activities include the removal of accumulated sediment (i.e. fill material) from eroded uplands and/or bank to be utilized for repairing erosion cuts in the banks or bed of Waters. Accumulated sediments used to repair erosion damage in Waters, must be placed within 100 feet from where the accumulated sediment is originally removed within Waters.
4. **Emergency Activity** - Activities include the emergency repair, rehabilitation, or replacement of those currently serviceable structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within three years of the date of their destruction or damage.

Tiered Notification:

The applicant requests that definitions for tiered notification include two levels of notification: non-notification and pre-construction notification. The activities listed below would require a preconstruction notification if certain thresholds are met.

Non-Notification: If a routine transportation maintenance or construction activity meets the requirements under a non-notification scenario, no advance notification to the Corps is necessary prior to commencement of the activity. However, similar to the Non-Notification level, no activity would be authorized in Waters of the U.S. without a preconstruction notification in the following situations:

- The activity would impact a perennial water or special aquatic site.
- The project is state funded and may affect a threatened or endangered species or critical habitat (ESA).
- The project is state funded and may affect historic properties (Section 106).

Preconstruction Notification (PCN): When a routine transportation construction or maintenance activity meets the requirements for advance notification, a preconstruction notification package would be prepared according to a template form agreed upon between ADOT and the Corps. The project activity may commence once the Corps has issued a verification letter or 30 days after the Corps has received the documentation and, if the project is state funded, there are no unresolved issues with regards to the ESA or Section 106. If federally funded, ADOT would be the lead agency and would resolve any issues with ESA or Section 106 prior to submitting the preconstruction notification. For all notifying activities, ESA and Section 106 documentation must be submitted with the preconstruction notification to demonstrate compliance with the

ESA and Section 106 or facilitate consultation by the Corps.

In the current RGP, three tiers of notification are identified (non-notification, concurrence, and full preconstruction notification). For the reissuance, ADOT is proposing to eliminate Concurrence Notifications and those activities would be combined into a single notification type (PCN).

Tiered Notification Activities:

1. Geotechnical Activities - Activities include core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, test pits, potholing and sampling. Material may be removed offsite or used as backfill if no other state or federal regulation would prohibit that activity. Temporary access, and construction of temporary pads is authorized under this activity. Waters must be restored to its pre-construction elevation upon completion of the work and must not drain Waters. Thresholds for notification would include:
 - Non-notification: less than 4 samples in each Waters and sampling holes less than 3-feet in diameter.
 - PCN: greater than 4 samples in each Waters and sampling holes greater than 3-feet in diameter up to 1 acre of temporary impact to each Waters and 0.025 temporary impact to special aquatic sites, such as wetlands.
2. Bed Stabilization – Streambed stabilization of an existing structure or fill. Activities for bed stabilization include construction of new bed stabilization to an existing structures/fill to maintain the structural integrity and operational capacity of the structures/fill for adequate drainage, flood hazard reduction, and overall public safety. Examples of bed stabilization include stabilized piers, scour pad and cutoff walls. Temporary access, and temporary fill associated with the construction of bed stabilization is authorized under this activity. Thresholds for notification would include:
 - Non-notification: less than 0.10 acre of permanent impact to each Waters
 - PCN: all impacts to perennial waters; permanent impacts greater than 0.10 acre and up to 1 acre to each waters; Cumulative impacts (i.e. temporary and permanent impacts) up of to 0.025 acre to special aquatic sites.
3. Bank Stabilization - Activities would include construction of new bank stabilization. Bank stabilization may be constructed of permeable materials such as riprap, gabion mattresses, and bioengineered techniques (or equivalent) or impermeable materials such as shotcrete, concrete, or cement stabilized alluvium (or equivalent). Thresholds for notification would include:
 - a. Permeable Bank Stabilization Methods
 - Non-notification: equal to and less than 1,000 linear feet total impact and up to an average of 2 cubic yards of material per running foot below the OHWM
 - PCN: greater than 1,000 linear feet up to 3,000 linear feet total impact or greater than 2 cubic yards of material per running foot below the OHWM
 - b. Impermeable Bank Stabilization Methods
 - Non-notification: equal to and less than 600 linear feet total impact and up to an average of 2 cubic yards of material per running foot below the OHWM
 - PCN: greater than 600 linear feet up to 2400 linear feet total impact or greater than 2 cubic yards of material per running foot below the OHWM
4. Routine Linear Transportation Projects - Activities would include the construction of new

transportation facilities or modifications to existing facilities within existing ADOT right-of-way/easement and/or LPA right-of-way/easement. Examples include new construction, replacement, or modifications of bridge piers and shafts, culverts, ditches, erosion protection measures, bridge scour retrofit, or roadway fill. Bridge scour retrofit activities would include stockpiling of native material to be backfilled below the OHWM, without impeding flows. Thresholds for notification would include:

- Non-notification: less than 0.10 acre permanent impact to each Waters
- PCN: greater than 0.10 acre up to 1 acre permanent impact to each Waters and 0.025 permanent or temporary impact to special aquatic sites, such as wetlands.

Proposed Mitigation– The proposed mitigation may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence (avoidance/minimization/compensation), as applied to the proposed project is summarized below:

Avoidance: The alternatives analysis for this project indicated that avoidance of waters of the US is not practicable because the entire ADOT infrastructure requires periodic maintenance, upgrades, and expansions to maintain a safe and reliable transportation network. After reviewing the alternatives analysis and independently evaluating opportunities for avoidance, the Corps has concurred that avoidance of waters of the US is not practicable for this project.

Minimization: Impacts to waters of the US would vary on a project-by-project basis. However, similar steps and actions would be taken for each project to be authorized under Regional General Permit 96 in an effort to minimize impacts to waters of the US. During the maintenance project identification and construction scoping and design phases, project team members such as the ADOT District, design engineers, environmental staff, and others would collaborate to identify efficient project design and construction methods that would minimize impacts to waters of the US, so that impacts do not exceed the minimum necessary to achieve each project. Example efforts to minimize impacts through design and construction methods may include but are not limited to:

- Reducing the permanent impact footprint due to structures, excavation, roadway fill, or vegetation removal
- Designating avoidance areas to preserve waters of the US or other environmental resources within the project limits
- Designating access areas and recommending the use of existing roads when present
- Designating stockpiles in uplands, disturbed areas, and/or outside of the main thalweg(s)
- Designating staging areas in uplands
- Developing containment plans to avoid discharges due to work on structures spanning above waters of the US
- Avoiding and/or minimizing vegetation removal to the maximum extent practicable
- Preserving native trees with a diameter breast height (dbh) of 6 inches or greater unless they are down or obstruct flows
- Developing temporary and/or permanent measures to maintain flows through the project limits
- Implementing control measures and Stormwater Pollutant Prevention Plans (SWPPP) when applicable to prevent erosion
- Adhering to various ADOT standards and manuals including the *Standards for Road and Bridge Construction, Erosion and Pollution Control Manual, Maintenance and Facilities Best Management Practices Manual, Stormwater Enforcement Response Plan, Clean Water Act Section 404/401 Guidance Manual*, and other ADOT manuals as applicable.

Upon completion of the project, waters of the US would be recontoured to pre-construction conditions to the maximum extent practicable. Native plant reseeding and/or revegetation in uplands would be evaluated for each project, and would be implemented, as necessary. In some instances, waters of the US would receive post-maintenance or post-construction treatment such as reseeding or revegetation, though the primary practice would be to avoid reseeding in active channels due to the high potential of seeds being washed downstream. More typically, impacted areas retaining a natural ground surface within waters of the US would be expected, over time, to regain vegetation through repropagation and regeneration of the vegetation communities present.

Impacts to waters of the US would further be minimized due to expedited and increased ability to conduct maintenance activities which would improve the conditions of waters of the US due to restoration of flows and reduced erosion.

Compensation: The applicant did not propose compensatory mitigation based on the following rationale:

- Impacts to waters of the US would be minimized through design and construction methods for intermittent waters (less than 1 acre of impact), perennial waters (less 0.10 acre of impact), and special aquatic sites such as wetlands (less than 0.025 acre of impact)
- Long-term impacts to vegetation are not anticipated due to project-by-project applicable reseeding, plantings, and the likelihood of natural re-propagation and vegetation regeneration
- All of the statewide project waters of the US would occur within the disturbed ADOT transportation corridor
- No threatened or endangered species would be adversely affected by this project
- Rich functions and values of habitat sufficient for a diverse assemblage of species generally are not present within the disturbed ADOT transportation corridor
- Frequent maintenance would improve the conditions of waters of the US through restoration of flows and reduced erosion.

For activities which require preconstruction notification, the Corps would determine compensatory mitigation requirements on a case-by-case determination to ensure that individual and cumulative impacts to the aquatic environment are minimal. For the majority of projects, mitigation would occur through the purchase of credits from an approved in-lieu fee program that services the project area. For other projects, the type and location of mitigation will be considered in the order identified at 33 CFR 332.3(b). The amount of mitigation required to offset proposed impacts would be determined by following the South Pacific Division's *Regulatory Program Standard Operating Procedures for Determination of Mitigation Ratios*.

Proposed Special Conditions

The following list is comprised of proposed Permit Special Conditions, which are required of similar types of projects:

1. Permittee must undertake the activities authorized by this permit in conformance with the terms and conditions of this permit. The Permittee is not relieved of this requirement if the existing structure/facility/fill in Waters is abandoned. Should the Permittee wish to cease to maintain the existing structure/facility/fill or should Permittee desire to abandon it without a good faith transfer, a modification must be obtained from this permit from this office, which may require restoration of the area.

2. When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, the new permittee shall sign on the Transferee block located on the signature page of this permit. By signing the signature block, the Transferee acknowledges being provided a complete copy of this permit and agrees to comply with all terms and conditions of this permit.
3. If on the expiration date of this permit, you have commenced or are under contract to commence the permitted activity you will have an additional twelve (12) months to complete the activity under the present RGP 96 terms and conditions. However, if the Corps discovers noncompliance or unauthorized activities associated with the permitted activity the Corps may request the use of discretionary authority in accordance with procedures in 33 CFR § 330.4(e) and 33 CFR § 330.5(c) or (d) to modify, suspend, or revoke this specific verification at an earlier date.
4. Sediment removal activities authorized under **Re-Establish Design Flow Carrying Capacities** of this RGP 96 for Notifications shall not occur more than once annually per location unless severe flow events result in a public safety issue. The applicant shall provide a written justification to the Corps with the appropriate notification due to acreage impacts, if public safety issues exceed this condition. All sediment removal activities shall be completed within 90 calendar days of onset of the activity at a specific location.
5. Prior to submittal of a PCN for use of this RGP 96, the applicant shall conduct a Phase I (Class III) Survey of the project site in accordance with Section 106 of the NHPA. This survey shall be provided as an attachment to the required PCN. Applicants should request approval via email, of their scope of work prior to initiation of the survey. If, based on the review of this information by the Corps, it is determined that the project has the potential to impact a property that is listed or eligible for listing on the NRHP, the Corps will complete all coordination required by Section 106 of the NHPA prior to making a decision as to whether the project can proceed under this RGP 96, except in the case of federally funded projects, then FHWA/ADOT will be the lead and conduct Section 106 consultation in coordination with the Corps.
6. Pursuant to 36 C.F.R. Section 800.13, if previously unidentified archaeological or architectural properties are discovered, or unanticipated effects to known properties occur during construction, the Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume work in the area surrounding the potential cultural resources until the Corps re-authorizes project activities. In addition, the following procedures shall be followed:
 - If the discovery is on state, county, municipal, or private lands, and does not include human remains, the Permittee shall notify the State Historic Preservation Office at 602-542-7120 and the Corps of Engineers' Archaeology Staff (Danielle Storey (213) 452-3855) within 24 hours. If the discovery is on state, county, or municipal land, ADOT shall also notify the Director of the Arizona State Museum (ASM) per ARS § 41-844.
 - If the discovery is on state, county, municipal, or private lands, and does include human remains or objects of national or Tribal patrimony, the Permittee shall notify the State Historic Preservation Office at 602-542-7120, the Director of ASM, and the Corps of Engineers' Archaeology Staff (Danielle Storey (213) 452-3855) within 24 hours, and shall follow the requirements of ARS § 41-844. The Permittee shall also notify the state agency or local government with jurisdiction, if any.

- If the discovery is on federal land and does not include human remains, the Permittee shall notify the State Historic Preservation Office at 602-542-7120, the federal land manager, and the Corps of Engineers' Archaeology Staff (Danielle Storey (213) 452-3855) within 24 hours.
 - If the discovery is on federal land and includes human remains or objects of national or Tribal patrimony, the Permittee shall notify the State Historic Preservation Office at 602-542-7120, the federal land manager, and the Corps of Engineers' Archaeology Staff (Danielle Storey (213) 452-3855), and shall follow the provisions of any Native American Graves and Repatriation Act (NAGPRA) Plan of Action (POA) that is in effect.
7. The Permittee shall allow representatives from this office to inspect the authorized activities at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of this permit.
8. This RGP 96 cannot be combined with other Section 404 authorizations including Nationwide Permits, other RGPs, or individual permits to increase scope of work, the area of impacts to Waters, or the limits to the discharge of fill material at a specific or proximal location for a single and complete project. Geotechnical activities (i.e. survey activities) when required for project design are considered a single and complete project.
9. The permittee shall comply with all requirements and conditions in the letter of Clean Water Act Section 401 Certification (ADEQ LTF No. 62686) from the Arizona Department of Environmental Quality issued on (PENDING). These certifications demonstrate that the permittee has complied with Section 401(a) of the Clean Water Act. A copy of the letter is enclosed.

Administration

10. The Permittee shall provide a copy of this permit to all field staff, contractors, subcontractors, and equipment operators. Copies of this permit shall be readily available at the work site at all times during periods of active work and shall be presented to any Corps Regulatory Division personnel upon request.

Notification and Reporting

11. Activities described above that require notification, shall be submitted to the Corps Regulatory Division at least 30 days prior to initiation of construction or maintenance activity. Verification from the Corps must be received prior to initiation of the activity. The notification shall include the following for the Corps Regulatory Division to determine if the proposed activities comply with the terms and conditions of this permit:
- a. A complete Jurisdictional Determination Request or delineation including: project location (i.e., latitude/longitude coordinates of the approximate center point of the project in degrees/minutes/seconds format), U.S.G.S. 7.5 minute quadrangle name, and datum. For linear projects the upstream and downstream coordinates shall be reported; for all others, the approximate center of the project location shall be reported.
 - b. The RGP 96 Notification Form shall be used and include the following:
 - i. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characters observed associated with an OHWM (e.g. bed and bank, wrack line, or scour marks); a description of the adjacent vegetation

community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.

- ii. An analysis of the proposed impacts to the waterbody which would include a written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to Waters; drawings and/or plans (when available) clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated Waters on the site.
 - iii. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
 - iv. A mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.
 - v. A description of compliance with applicable federal regulations which protect these resources.
 - vi. A statement of the proposed activities potential to affect federally listed endangered or threatened species or designated critical habitat, and a description of compliance with applicable federal regulations which protect these resources.
12. Maintenance activities that include only the cutting and removal of vegetation above the ground (e.g., mowing, rotary cutting, chain sawing, etc.), where the activity does not substantially disturb the root system and does not involve mechanized pushing dragging or similar activity that would redeposit soil, are not regulated activities under Section 404 of the Clean Water Act; therefore notification to the Corps Regulatory Division for these activities is not required.
13. ADOT shall develop and maintain an internal tracking system that includes all completed non-notification construction and maintenance activities in Waters, or special aquatic sites, covered by this permit. Maintenance project documentation shall include activity description, the start and end dates of the work, and project coordinates. Construction project documentation shall include that listed above for maintenance plus site restoration/revegetation activities and date installed, if applicable, at least one before and one after photo of the construction and revegetation area, and a brief discussion of any problems and corrective measures taken. Beginning in 2021, ADOT shall provide a copy of the tracking system report to Corps Regulatory Division once per year, by September 30 for the period July 1 through June 30.

Resource Protection

14. Native trees with a diameter at breast height (dbh) of six inches or greater shall not be removed unless they are no longer upright, present a significant flow obstruction or a safety hazard.
15. Prior to submittal of a PCN for use of this RGP 96, Permittee shall utilize the Arizona Game and Fish Online Environmental Review Tool to research the project area and determine impacted fish and wildlife species and their habitat.
16. This permit does not authorize you to take any threatened or endangered species or adversely modify designated critical habitat. In order to legally take a listed species, separate authorization under the Endangered Species Act (e.g. Section 10 permit, or a Biological

Opinion under Section 7, with "incidental take" provisions with which you must comply) is required.

17. This permit does not authorize you to take any migratory birds pursuant to the Migratory Bird Treaty Act. Vegetation shall not be removed from 1 March to 31 August to avoid impacts to nesting birds unless the results of a pre-project bird survey by a qualified biologist indicates no nesting birds are present in the project area. If vegetation clearing will occur during the migratory bird breeding season (1 March – 31 August), Pre-project surveys shall be conducted within two weeks of the proposed vegetation removal. If nesting birds are present, no work shall occur until the young have fledged and would no longer be impacted by the project or the nest is relocated by a permitted individual holding a US Fish and Wildlife Service Migratory Bird Treaty Act Special Purpose permit.
18. Prior to initiating construction activities in Waters, the Permittee shall clearly mark the work area limits by at a minimum marking the four corners of the OHWM with flagging or similar measures to ensure mechanized equipment and personnel do not enter Waters, special aquatic sites and adjacent riparian areas outside of permitted work area for the duration of routine transportation activities in or adjacent to Waters. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial compensatory mitigation requirements.
19. Appropriate measures, including but not limited to temporary dewatering practices and temporary diversion dams, must be taken to maintain near normal downstream flows and to minimize flooding **only during project activities in Waters**. Flows shall not be diverted outside of the OHWM of any Waters. Fill materials must be of a type, and be placed in a manner, that will not result in erosion by high flows.
20. No debris, soil, sand, bark, slash, sawdust, rubbish, cement or washings thereof, asphalt, oil or petroleum products, or any other material that may be harmful to fish or wildlife, that results from routine transportation activities and associated activities shall be allowed to enter or be placed where it may be washed by rainfall or runoff into Waters. Secured features and structures that are intended for shoring or control of erosion and sediment may remain in Waters for the necessary duration of project activities. When project activities are completed, all excess materials, and/or debris shall be removed from the work area to an approved off-site disposal area, outside of Waters.

Site Restoration

21. Invasive and noxious plant species removed during routine transportation activities shall be disposed at an approved off-site location, outside Waters. Plants to be controlled shall include those listed in the State and Federal Noxious Weed and the State Invasive Species list in accordance with State and Federal Laws and Executive Orders.
22. Routine transportation activities authorized under this permit are expected to involve temporary impacts to Waters, including special aquatic sites, and adjacent riparian areas, and permanent impacts may occur. Temporary and permanent impacts to Waters and special aquatic sites, if not avoided or minimized, shall be mitigated in accordance with the Corps Mitigation Rule (33 CFR 332, April 2008). Temporary and permanent mitigation proposals shall be approved by the Corps Regulatory Division prior to routine transportation activities in Waters

Restrictions on the Discharge

23. Staging and storage areas for equipment and construction materials shall be located in uplands and where possible, a minimum of 100 feet from Waters. Storage areas located less than 100 feet from Waters shall be approved by the Corps Regulatory Division, and these areas shall be shown on construction plans. Temporary stockpiling is authorized only where it is specifically stated in the covered activities (i.e. erosion repair and bridge scour retrofits); all temporary stockpiling shall be removed within two weeks of completion of the activity.
24. Temporary fills in special aquatic sites are not allowed unless specifically authorized by the Corps Regulatory Division. Following completion of the routine transportation activity, temporary fills must be entirely removed to an upland location, outside Waters, and the affected area must be restored to the pre-project condition in accordance with the provision of the Corps Mitigation Rule (33 CFR 332).
25. The Permittee is authorized perform the work described in this RGP 96 provided that upstream and downstream Waters are not degraded by such activities. Routine transportation activities may include, but are not limited to, the repair of bridge piers, bridge abutments, and repair or replacement of inlet and outlet structures. Where temporary water diversion, grading, filling or excavation occurs as part of the repair or replacement, the Permittee shall ensure standard Best Management Practices are in place to minimize turbidity within the affected waterbody. Standard BMPs are provided in the *ADOT Erosion and Pollution Control Manual for Highway Design and Construction*, available on the ADOT website.
26. Work in streams or rivers with ephemeral or intermittent flows shall be performed during periods when the channel is dry or flows are absent or minimal. Work within waterways with perennial flow shall be performed during the driest period of the year and during low flow conditions, generally April through June. When work in flowing or standing water is unavoidable, standard best management practices shall be implemented to minimize turbidity within the affected waterbody, and appropriate measures must be taken to minimize flooding and erosion on adjacent properties. Equipment working in wetlands shall be placed on mats (or equivalent) to minimize soil disturbance and compaction.
27. Any work undertaken by this project shall not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding on adjacent properties or downstream of the proposed routine transportation activity. Any work undertaken shall not excavate, fill, or grade in the watercourse outside of the minimum area needed to accomplish the activity and shall not exceed the limits provided by this RGP 96.
28. The Corps Regulatory Division project manager shall be notified within 12 hours of detection of any accidental spill of hazardous materials to Waters. Notification may be in the form of an electronic mail message, telephone, or facsimile. Notification shall include the reason for the spill, the exact location of the spill, the type and approximate quantity of the materials spilled, and the extent of measures taken to control and clean up the spilled materials. The permittee shall perform immediate scoop and remove of any accidental spill of hazardous materials to Waters without prior permit authorization

For additional information please call Jesse Rice of my staff at (602) 230-6854 or via e-mail at Jesse.M.Rice@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

**DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
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