



Environmental Impact Statement Re-evaluation

SR 260 Lion Springs

Gila County, Arizona

Federal Aid No. 260-B(226)T

ADOT Project No. 260 GI 256 F0139 01C

October 2023



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ARIZONA DEPARTMENT OF TRANSPORTATION

Environmental Planning

205 South 17th Ave.

Phoenix, Arizona 85007

Environmental Impact Statement Re-evaluation

for

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Approved by:  _____
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Date: 10/30/2023

Paul O'Brien, P.E.
Administrator, Environmental Planning

This Environmental Impact Statement Re-evaluation has been prepared in accordance with provisions and requirements of Chapter 1, Title 23 USC; 23 CFR 771.129(c) relating to the implementation of the National Environmental Policy Act of 1969. The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by ADOT pursuant to 23 USC 327 and a Memorandum of Understanding dated April 16, 2019, and executed by FHWA and ADOT.

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1. Project Information

1.1. Introduction

The Arizona Department of Transportation (ADOT) has prepared this formal project re-evaluation consistent with [ADOT EA and EIS Guidance](#) (2022) and [Federal Highway Administration \(FHWA\) Re-evaluations Guidance](#) (2019) for the Lions Springs segment of State Route (SR) 260.

The Lion Springs segment of SR 260 was part of an ADOT study that was initiated in the early 1990s to evaluate growing traffic volumes, safety considerations, and overall improvements to approximately 40 miles of SR 260 between Payson and Heber, Arizona. The full limits of the original SR 260 project, as identified in the Location/Design Concept Report (LDCR) (2000), extended from approximately Milepost (MP) 251.9 to MP 302.0. The Lion Springs segment, MP 256.1 to MP 260.1, located in Gila County, Arizona, is the last section of the original LDCR to be built.

1.2. Approved Environmental Impact Statement

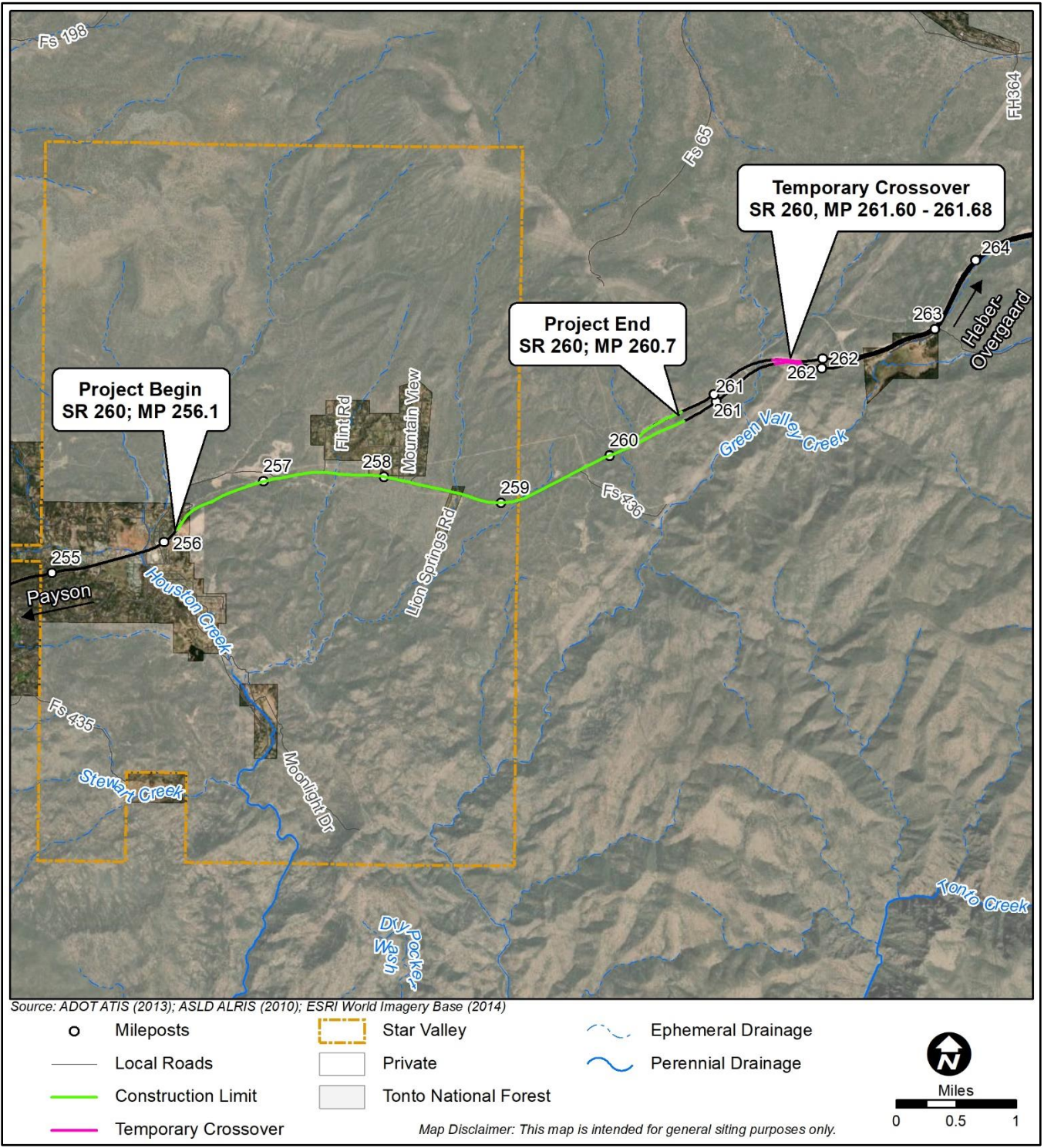
The final recommendations for the SR 260 Lion Springs project were documented in the 2000 LDCR and an environmental impact statement (EIS) for which a record of decision (ROD) was signed on April 28, 2000 [under FHWA No. AZ-EIS-94-01-D]. The current project limits generally fall within the original April 2000 EIS limits. Since that time, the project has undergone changes to design and its existing conditions, as well as having been subjected to multiple regulatory changes that have occurred over the years. All of which has necessitated updates to the original studies. Therefore, pursuant to 23 United States Code (USC) 327 and a memorandum of understanding (MOU) dated April 16, 2019, the purpose of this EIS Re-evaluation is to account for project changes that have occurred since the approval of the original EIS and ROD, as well as those effects on the current social, economic, and environmental conditions.

1.3. Project Description

1.3.1. Location

The project is located on SR 260 within the town of Star Valley, Gila County, Arizona (Figure 1). The project construction limits would extend between MP 256.1 to MP 260.7 with traffic control extending between MP 254.2 to MP 262.4. Three temporary crossovers will be constructed in conjunction with the traffic control activities; two of those locations would be within the construction limits, while another is located just east of the construction footprint between MP 261.6 and MP 261.68. The cadastral location for this project is Township 11 North, Range 11 East, within portions of Sections 26, 27, 28, 29, and 32. The project would occur within and adjacent to the existing ADOT right-of-way (ROW) through private land and an existing easement through Tonto National Forest (TNF) lands.

Figure 1. Project Location



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1.3.2. Scope of Work

The existing Lion Springs section is a two-lane rural highway with standard 12-foot travel lanes and 2-to 4-foot shoulders. The planned improvements would provide a transition from the existing 5-lane urban section at the eastern end of Star Valley at approximately MP 256.1 to a four-lane divided section with a variable-width median until it connects to the previously constructed Preacher Canyon segment of SR 260 just east of MP 260.

The scope of work consists of the following:

- Conducting subsurface utility and other minor preconstruction excavations and investigations prior to overall construction
- Widening to a five-lane cross section (four travel lanes and a continuous center left-turn lane) from MP 256.20 to MP 258.00
- Widening to four-lane divided highway with variable median width from MP 258.00 to MP 260.10
- Constructing a new frontage road for the Diamond Point Shadows subdivision
- Potentially installing an acceleration lane for eastbound traffic within the median between MP 257.00 and MP 257.51
- Excavating slopes and installing retaining walls, as necessary
- Excavating, hauling, and constructing embankments
- Improving and/or installing drainageways, including culverts, pipes, and ditches
- Adding erosion-control measures (both temporary and permanent), for example, riprap and/or energy dissipators, to drainages
- Removing, replacing, installing, and extending guardrails, as necessary
- Removing and replacing pavement on the existing SR 260 roadway where necessary
- Removing existing SR 260 roadway, including substructure, where it will no longer be used in new alignment
- Upgrading traffic signs, removing/replacing rumble strip, and restriping the roadway
- Installing wildlife crossings (crossings over or under SR260), game fencing, and wildlife jumpouts
- Installing, removing, and replacing cattleguards
- Relocating utilities, as necessary
- Constructing two temporary crossovers between MP 258.30 and MP 258.70 and between MP 256.70 and MP 257.02, and a third crossover between MP 261.60 and MP 261.68
- Removing temporary crossovers and recontouring areas
- Staging and stockpiling within the project limits
- Salvaging tree species and topsoil to enhance aesthetics and revegetation of constructed slopes. Tree species salvaged would include specifically oak tree species as a part of the effort to minimize harm to important resources recognized by the Native American Tribes
- Seeding all disturbed areas with a native vegetation mix
- Control of noxious and invasive weeds using chemical or mechanical methods

1.3.3. Schedule

Project construction is planned for fiscal year 2026 in ADOT's 5-year transportation plan; however, a finalized construction schedule has not yet been issued and no bid advertise date has been officially designated. Design is currently ongoing, with Stage IV (95%) plans completed. Once the project is under

construction, it would occur in five phases, building the mainline from east to west. Construction activities are estimated to last approximately 18 months, with a total project duration of 24 months that includes an anticipated winter shutdown.

1.3.4. Fiscal Constraint

Funding for this project is identified in ADOT's Five-Year Construction Program (2023–2027) and is identified as ADOT ID# 21301. Funding is a combination of federal aid money through the National Highway Performance Program (NHPP) and state match.

2. Environmental Considerations

Since the publication of the original EIS and ROD over 20 years ago, several updates to the LDCR were necessary to reflect the current existing conditions. The Final Scoping Update Report amends the LDCR to reflect changes in traffic data and volumes, level of service (LOS) analysis, design criteria, access points and regulatory standards. Additionally, changes to environmental practices and procedures have taken place at both the federal and state levels, rendering some of the environmental considerations obsolete or outdated. Therefore, a reexamination of the project's impacts is required to ensure that the determination of the original EIS and ROD remain valid, as well as to provide updated mitigation measures that meet current standards.

Resources have been re-evaluated based on elapsed time and design, ROW, or regulatory changes since the previously approved finding of no significant impact (FONSI).

2.1. Changes

The Final Scoping Update Report was drafted in August 2020 to document changes in the current conditions and to update the recommendations identified in the LDCR. At the time of the original EIS, project design was focused on meeting the LOS requirement of the 2015 Design Year, for which this segment of SR 260 was expected to operate at LOS D by 2015 under the no build and LOS A under the preferred alternative. The current design was developed with 2040 design conditions in mind. Calculations completed in support of the 2020 Final Scoping Update Report found the LOS for the existing corridor is D/E and is expected to operate at LOS E by 2040 under the no build. Widening the roadway from 2 lanes to 4 is expected to improve the corridors operational functions to LOS B by 2040. Based on the recent 2020 LOS analysis, refinements were made to the corridor improvements outlined in the LDCR to meet 2040 operational requirements. Furthermore, minor adjustments were made to the vertical and horizontal alignment to adhere to current ADOT and FHWA guidelines, as well as to accommodate wildlife crossings and reduce impacts to environmentally sensitive area(s). Since the original LDCR, and in collaboration with the U.S. Forest Service and Arizona Game and Fish Department (AGFD), three wildlife crossings are proposed, rather than one, due to the increase in wildlife-vehicle crashes. Given the adjustments made to the current SR 260 Lion Springs project from the original design, it still remains in line with the projects original purpose and need of improving safety along the corridor, maintaining adequate capacity, and improving wildlife linkages. A detailed account of the project changes, updates, and current design can be found in the 2020 Final Scoping Update Report and 95% plans.

2.1.1. Right-of-Way Changes

The current project is anticipated to acquire approximately 104.91 acres of new ROW or permanent easement and 3.35 acres of new temporary construction easement (TCE). A breakdown of these acquisitions is presented in Section 2.3.1, *Land, Ownership, Jurisdiction, and Land Use*. While a full appraisal of the original Lion Springs segment's ROW needs was not available, the LDCR did note that approximately 3.2 acres of land would have been needed from private property owners, which is less than what is noted today. As such, it gives credence that changes made from the original design also prompted changes in ROW.

2.1.2. Regulatory Changes

Several federal and state regulatory changes to procedures, guidelines, and requirements applicable to ADOT projects have occurred since approval of the original EIS for this project. This EIS Re-evaluation was prepared using the current standards and therefore may differ in certain respects from the methods and outline of the original EIS. Table 1 summarizes those regulatory, procedural, and methodological changes that have been implemented since the approval of the original EIS.

Table 1. Regulatory and Procedural Updates

Regulation/Guidance	Year	Summary
General		
Memorandum of Understanding (MOU) for Surface Transportation Project Delivery Program (National Environmental Policy Act [NEPA] Assignment)	2018	ADOT assumes federal environmental review responsibility and waives sovereign immunity under the 11th Amendment to the U.S. Constitution for the limited purposes of addressing legal matters in carrying out federal environmental review responsibilities pursuant to 23 USC 326 and 327.
Draft NEPA EA and EIS guidance	2019 and 2022	Guidance provides direction for preparing environmental assessments and environmental impact statements for projects falling under the full NEPA Assignment MOU between FHWA and ADOT.
ADOT preapproved mitigation measures	2022	Environmental mitigation measures were created to streamline the most current ADOT standards and specifications, as well as federal requirements. These standards were developed to the latest state and federal guidelines.
ADOT Standard Specifications for Road and Bridge Construction	2021	These boilerplate construction guidelines contain general best management practices, provisions, and applicable state and federal regulations, including some that relate to environmental requirements.
Air Quality		
PM ₁₀ Maintenance area redesignation	2022	Letter received from the Environmental Protection Agency to the Arizona Department of Environmental Quality that PM ₁₀ maintenance area designation has ended for Payson, AZ and has been redesignated to attainment.

Regulation/Guidance	Year	Summary
Land Ownership, Jurisdiction, and Land Use		
Gila County Land Use Resource and Policy Plan	2010	This plan outlines Gila County’s policy statements on land use and natural, cultural, recreational, and other resources. The plan and its statements are specific to federally and state-managed lands and emphasize that agencies coordinate with Gila County regarding resource planning.
Social and Economic Considerations		
Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency	2000	This order requires federal agencies to examine whether any of their services are needed by people with limited English proficiency and, if so, to develop and implement a system to provide meaningful access to those services.
Census-tract and block-group delineation updates	Every 10 years	Because of changes in population and growth, the U.S. Census Bureau reviews and may adjust census tract and block group boundaries every 10 years, resulting in changes to the unit of analysis for socioeconomic reviews.
Cultural Resources		
ADOT Section 106 Programmatic Agreement	2020	Agreement between ADOT, the Arizona State Historic Preservation Office, the Advisory Council on Historic Preservation, and other parties providing ADOT customized Section 106 compliance processes
Noise		
ADOT Noise Abatement Requirements	2017	These guidelines, developed in coordination with FHWA, outline requirements for highway traffic noise and construction noise and describe ADOT’s implementation of the requirements for 23 Code of Federal Regulations Part 722, replacing all previous policy/guidance on the assessment of traffic noise impacts and abatement measures.
Water Resources		
Pre-2015 (Rapanos) regulatory regime and 2023 final Revised Definitions of “Waters of the United States” rule (2023 Final Rule)	2023	Since the issuance of the original EIS, the definition of waters of the United States (WOTUS) has gone through several iterations and amendments. The most current definition of WOTUS came into effect in March 2023 by way of the 2023 Final Rule, which harkens back to the pre-2015 regulatory framework as its foundation. A more detailed account of the 2023 Final Rule can be found at https://www.epa.gov/wotus/revising-definition-waters-united-states . Since its adoption, the 2023 Final Rule has now replaced the Navigable Waters Protection Rule issued in 2020. The permitting efforts for this project would follow the latest guidance.
Nationwide Permit 14 – Linear Transportation Projects	2022	This permit is designed to streamline Section 404 of the Clean Water Act permitting. The U.S. Army Corps of Engineers renews these permits every 5 years, often with

Regulation/Guidance	Year	Summary
		changes to permits regional general conditions and stipulations.
Biological Resources		
Updates to the U.S. Fish and Wildlife Service List of Endangered and Threatened Wildlife and Plants and the AGFD Special Status Species list	Recurring	Species records are regularly maintained and updated as species of concern and their habitats are added, removed, or changed.

2.2. Environmental Resources Requiring No Further Analysis

The following resources were included in the 2000 Final EIS; however, they were *not* affected by changes in design, ROW, or regulation since the time of the FONSI:

- Air Quality*
- Farmland
- Energy
- Secondary and Cumulative

* It should be noted that the original EIS identified the project area as being designated as a maintenance area for PM₁₀, however, the project would have been in conformity under the Clean Air Act. Since that time, the US Environmental Protection Agency has redesignated the project area to attainment for PM₁₀ and no additional non-attainment or maintenance areas were identified.

2.3. Affected Environmental Resources

Due to numerous project and regulatory changes, several resource studies were revisited to ensure that they adhere to current standards. Each resource area re-evaluated in this EIS includes a brief description of current existing conditions (since changes have likely occurred), an updated discussion of environmental consequences, and updated mitigation measures. The updated mitigation measures reflect current standards of operation and are meant to replace the original measures outlined in the 2000 EIS and ROD. A summary detailing the most current measures is attached (see Section 5).

The project review identified the following resource areas that warranted evaluation as part of this EIS Re-evaluation.

2.3.1. Land, Ownership, Jurisdiction, and Land Use

Existing Conditions

The original EIS identified the SR 260 corridor as primarily comprising of residential and commercial properties within the Payson-Star Valley area, with enclaves of development along the existing highway. The majority of the land outside of the developed areas were national forest managed by U.S. Forest service.

When reviewing the land use as of the time of this document, we find a similar pattern to the original description. The project is located within and adjacent to the town of Star Valley in Gila County, mostly on ADOT easement through TNF land. Private, commercial and residential properties are clustered throughout Star Valley, often separated by large swaths of forest land. The more populated areas are in the town center

and in the Diamond Point Shadows subdivision. Gila County owns a parcel located at 5320 E. Highway 260, which serves as the County's Star Valley Maintenance Yard.

Land use information has been obtained through the *Land Use and Resource Policy Plan for Federal Lands Situated in the County of Gila, State of Arizona* (Gila County 2010), which generally describes land ownership, use, and the treatment of lands within Gila County. The primary land uses within the project area include forest land, primary and temporary residences, commercial, and transportation.

Most of the project area falls within TNF land managed by the U.S. Forest Service. These federal lands are popular for outdoor recreational uses such as camping, hiking, fishing, hunting, and bird watching. The TNF Payson Ranger District also administers grazing, mining, timber, and wildlife management programs.

Environmental Consequences

The widening of SR 260 would require new ROW and/or easements. Therefore, existing forest, residential, and commercial land uses would be converted to transportation use. All new ROW and/or easements identified for the project would result in the partial take of existing parcels; no full takes are anticipated. Table 2 provides a breakdown of the new ROW and/or TCEs needed.

The majority of new land required for widening the highway consists of forest land that would be converted to permanent roadway easements. Additional new ROW would be acquired from private landowners and are currently being used for either residential and commercial purposes or are vacant. The improved access to and visibility created by a new facility could have the potential to enhance development potential or desirability for certain uses.

Table 2. New Right-of-Way and Temporary Construction Easement Acquisitions in Acres

Land Jurisdiction	New ROW/Permanent Easement	New TCE
Tonto National Forest	98.37	2.02
Private vacant	3.64	0
County	1.75	0.08
Residential	1.07	1.18
Commercial	0.08	0.07
Total	104.91	3.35

Mitigation Measures

Much land use analysis indicated similar conditions during the original EIS and new ROW was minimized as much as possible. Therefore, no additional mitigation measures would be needed.

2.3.2. Social and Economic Considerations

Existing Conditions

Population and Demographic Characteristics

Data on age, disability, female head-of-household, and limited English proficient (LEP) populations was collected, as directed by ADOT and FHWA guidance. The results of which can be found in Table 3. The data shows that these populations are generally consistent with the existing demographic makeup of the project area at the county and/or city/town level. The data also shows that LEP individuals are present within all block groups, with Spanish speakers being the most prevalent; Spanish was identified as meeting the Safe Harbor Threshold. See Table 4 for a breakdown of LEP individuals.

Community Facilities and Services

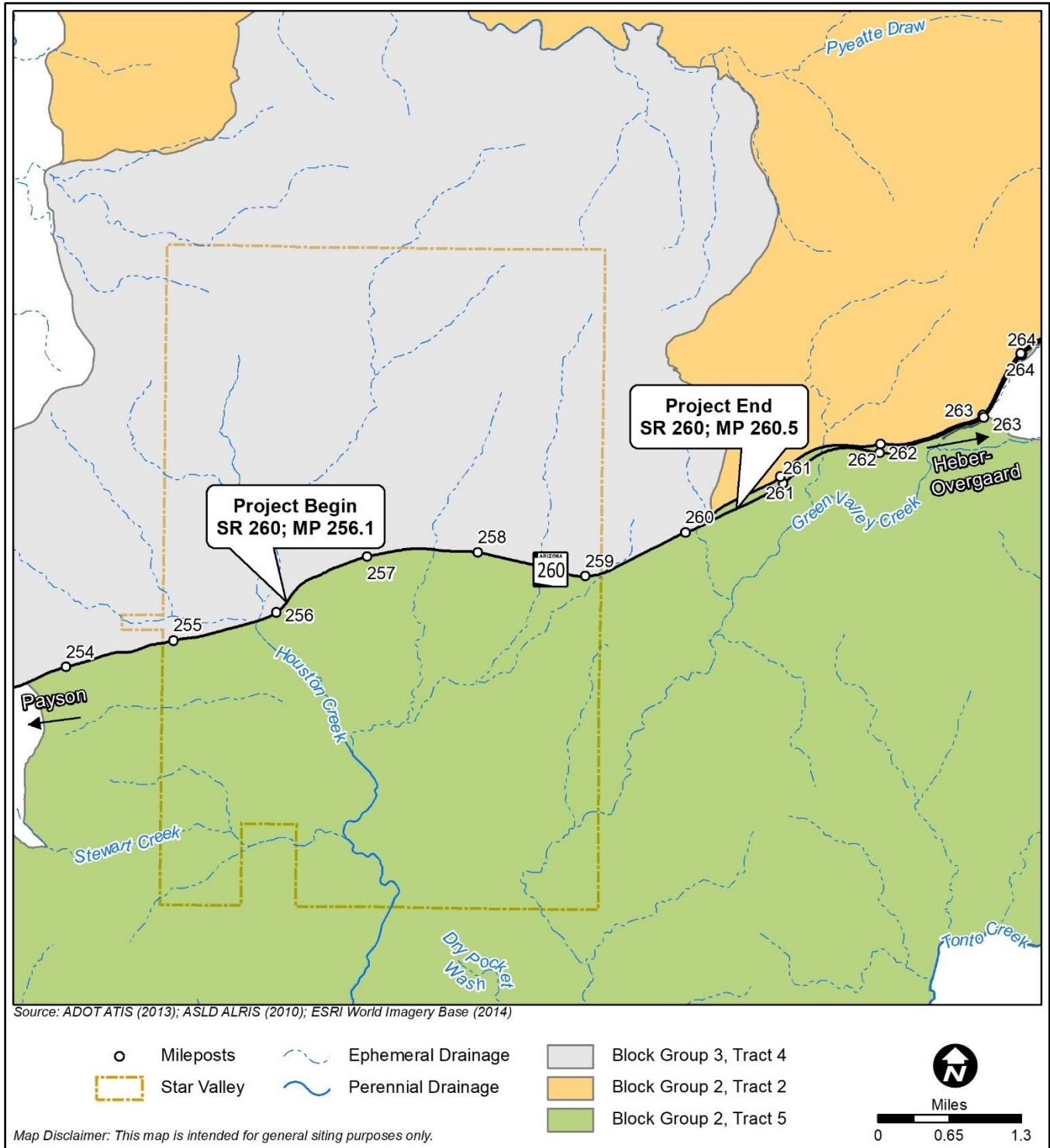
Public schools within the project area are part of the Payson Unified School District, some of which existed at the time of the original EIS, such as Julia Randall Elementary School, Payson Elementary School, and Payson High School. Two new schools were added to the district since that time: Payson Center for Success which is an online school, and Rim Country Middle School located just behind Payson High School at 304 S. Meadows Street. Due to the online format of the Payson Center of Success, any impacts to the school would be negligible. Rim County Middle School is located over 5 miles away from the project in a the more populated area of Payson. School attendance is largely west of the project limits and would therefore be minimally affected by the project.

Since the original EIS, one community park, B. Diane McDaniel Community Park, was identified adjacent to the roadway at 3615 E. Highway 260 in the town of Star Valley. The approximately 5-acre pocket park was built in 2016 and is equipped with ramadas, play areas, benches, and other amenities. No additional parks were identified within the project area, but more are present in the nearby town of Payson. The TNF also lies on both sides of SR 260 for recreational use by the surrounding community and beyond.

No medical facilities were identified directly within the project area. However, as documented in the original EIS, the Lewis R. Pyle Memorial Hospital, now known as the Payson Regional Medical Center, serves the town of Payson. Additional medical facilities, including Banner Payson Medical Center, Payson VA Clinic, Payson Regional Senior Circle, and several other small private medical practices, also now serve the town of Payson. Hellsgate Fire District, the Payson Police Department, and Gila County also provide emergency services within the project vicinity.

The Diamond Point Shadows Steakhouse, located at 63222 E. Highway 260, is partially within the existing ADOT ROW and has been using a portion of that ROW for restaurant parking. Based on the project's current design, a new paved driveway will be constructed for restaurant access. Construction activities would not overlap into areas which have been utilized for parking and would not reduce or limit the business's long-term viability. During construction, access to the restaurant would remain open, however, short-term delays and traffic congestion could create delays in customers accessing the restaurant.

Figure 2. U.S. Census Bureau Block Groups within Project Limits



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Area	Total Population	Age 60 Years and Over		Median Income*	Disabled**		Female head of household	
		#	%	\$	#	%	#	%
BG 2, Tract 2	581	336	57.8	41,149	481	20.5	8	2.6
BG 3, Tract 4	4,065	1,992	49.0	75,969	930	15.5	40	2.1
BG 2, Tract 5	3,137	1,373	43.8	67,569	1212	22.4	92	6.1
All Block Groups	7,783	3,701	47.6	61,562	2,623	19.1	140	3.8
Gila County	53,211	20,218	38.0	51,406	10,760	20.6	2,432	10.9
Payson	16,229	7,854	48.4	58,109	3,228	20.2	486	6.5
Star Valley	2,474	1,578	63.8	48,600	554	22.4	27	2.0

¹Source: U.S. Census Bureau, 2017- 2021 ACS 5-Year Estimates

** Data was collected at the Tract level due to unavailability of BG level data

Area	Total Population for whom LEP was Determined	Language	#	%
Tract 2	2,207	All	34	1.5
		Spanish	28	1.3
		Tagalog	6	0.3
Tract 4	5,858	All	103	1.8
		Spanish	42	0.7
		Germanic	17	0.3
		Korean	22	0.4
		Other Unspecified	22	0.4
Tract 5	5,387	All	73	1.4
		Spanish	46	0.9
		Other Unspecified	27	0.5

¹Source: U.S. Census Bureau, 2017- 2021 ACS 5-Year Estimates

2.3.3. Environmental Justice

Executive Order (EO) 12898, *Federal Actions to Address Environmental Justice in Minority and Low-income Populations* directs Federal agencies to take the necessary steps to identify and address adverse effects of Federal projects on minority and low-income populations to the greatest extent practicable by law. In the context of transportation, USDOT Order 5610.2(a) requires USDOT programs to consider Environmental Justice (EJ) policies, with a focus on three fundamental principles:

- 1) To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority and low-income populations.
- 2) To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- 3) To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

Minority populations includes those persons who self-identify as either one or a combination of the following:

- 1) Black, a person having origins in any of the black racial groups of Africa,
- 2) Hispanic or Latin, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race,
- 3) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent,
- 4) American Indian and Alaskan Native, a person having origins in any of the original people of North America, South America, including Central America, and who maintains cultural identification through tribal affiliation or community recognition, or
- 5) Native Hawaiian or Other Pacific Islander, people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Low-income populations are persons living in households with an income at or below the U.S. Department of Health and Human Services poverty guidelines for a family of four.

Existing Conditions

Analysis in the original EIS determined that the study area contained minority and low-income populations. Since that time, population migration and settlement has occurred, rendering the previous demographic information obsolete. Updated population data for the project area was obtained from the U.S. Census Bureau's 5-year 2017–2021 American Community Survey at the county, city/town, and block-group levels. The population's demographic breakdowns can be found in Tables 5 - 6. According to the updated data, minority populations are still within the project vicinity comprising of approximately 11.3% of the total block groups.

The prevalence of low-income populations was determined through the use of median income data at the block group level in comparison to that of the 2021 Department of Health and Human Services Poverty guidelines, which states those households that fall below an average annual income of \$26,500 would fall within the poverty threshold. By this standard, no block groups within the project vicinity were determined to qualify as low-income. See Table 6 for a general overview of median income by block group.

Table 5. 2021 Population and Racial Demographics¹

Area	Total Population	White alone		Black or African American alone		American Indian and Alaska Native alone		Asian alone		Native Hawaiian and Other Pacific Islander alone		Some other race alone		Two or more races		Hispanic or Latin*		Total Minority	
		#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
BG 2, Tract 2	581	451	77.6	0	0.0	0	0.0	0	0.0	0	0.0	14	2.4	116	20.0	156	26.9	165	28.4
BG 3, Tract 4	4,065	3,878	95.4	1	0.0	0	0.0	0	0.0	0	0.0	38	0.9	148	3.6	184	4.5	184	4.5
BG 2, Tract 5	3,137	2,909	92.7	3	0.1	174	5.5	0	0.0	0	0.0	13	0.4	38	1.2	316	10.1	530	16.9
All Block Groups	7,783	7,238	93.0	4	0.1	174	2.2	0	0.0	0	0.0	65	0.8	302	3.9	656	8.4	879	11.3
Gila County	53,211	37,699	70.8	406	0.8	8,838	16.6	408	0.8	23	0.0	2,041	3.8	3,796	7.1	10,192	19.2	20,712	38.9
Payson	16,229	14,529	89.5	130	0.8	274	1.7	164	1.0	0	0.0	585	3.6	547	3.4	1,931	11.9	2,580	15.9
Star Valley	2,474	2,304	93.1	1	0.0	37	1.5	0	0.0	0	0.0	1	0.0	131	5.3	101	4.1	170	6.9

¹Source: U.S. Census Bureau, 2017- 2021 ACS 5-Year Estimates

* Hispanic or Latin refers to ethnicity and is derived from the total population separately from race. An individual can simultaneously belong to both an ethnic group and a racial group. As such it is calculated differently from other columns in this table.

Table 6. 2021 Total Minority and Low-Income Populations

Area	Total Population	Minority		Low-Income		
		#	%	#	%	Median HH** \$
BG 2, Tract 2	581	165	28.4	21	3.6	\$ 41,149
BG 3, Tract 4	4,065	184	4.5	123	3.0	\$ 75,969
BG 2, Tract 5	3,137	530	16.9	382	12.5	\$ 67,569
All Block Groups	7,783	879	11.3	526	6.8	\$ 61,562
Gila County	53,211	20,712	38.9	7419	17.3	\$ 51,406
Payson	16,229	2,580	15.9	1319	9.5	\$ 58,109
Star Valley	2,474	170	6.9	329	14.0	\$ 48,600

¹Source: U.S. Census Bureau, 2017- 2021 ACS 5-Year Estimates

** 2021 Department of Health and Human Services Poverty guidelines poverty threshold for a household of four is \$26,500 per year

Environmental Consequences

Once built, the project is expected to improve travel and provide increased capacity due to the expansion of the number of lanes, which would positively contribute to the surrounding community. However, new ROW and/or easements would be required, which would result in direct impacts to adjacent businesses, landowners, and forest land. No full parcel takes or displacements are anticipated at this time; however, due to the potential impact of an agricultural structure on the residential property at APN 302-532-18B, the homeowner may opt for a full take. Partial parcel takes would be necessary to accommodate the roadway and associated features. As shown in Table 7, partial ROW would be needed from various business and residential properties, given the current project design.

Table 7. Breakdown of New Rights-of-Way and Temporary Construction Easements by Residential and Commercial Properties

Property	APN	Area	Type
Residential	302-47-002B	0.05	TCE
Residential	302-47-002B	0.06	ROW
Residential	302-47-002C	0.03	TCE
Residential	302-47-002C	0.04	ROW
Commercial	302-53-015G	0.04	ROW
Residential	302-53-018B	1.06	TCE
Residential	302-53-018B	0.82	ROW
Commercial	302-59-006T	0.07	TCE
Residential	302-59-006U	0.04	TCE
Residential	302-59-006Z	0.16	ROW
Commercial	302-59-009G	0.04	ROW

TCEs are also anticipated to be needed for various project features, such as driveway tie-ins and access. Though some permanent impacts to the TCE locations may be necessary from grading and paving, these impacts would not result in negative outcomes for the property owners or surrounding community. Temporary construction impacts, such as noise and lane closures, would also be felt by the surrounding community during construction; however, these would be limited in duration. Project construction and traffic control will consist of 5 phases with no work expected on the weekends or holidays. Temporary crossovers will be built to allow at least one lane of traffic to remain open in both directions. Short term roadway closures will be required during blasting and bridge construction and will be completed with flagging operators to direct traffic. Roadway closure due to blasting will be limited to short 30-minute durations, while bridge work will be limited to night work. In addition, the project would be constructed in compliance with ADOT's 2009 *Manual on Uniform Traffic Control Devices for Streets and Highways* (2009 MUTCD), the 2012 *Arizona Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways* (2012 Arizona Supplement to the MUTCD), and all applicable state regulations, which would reduce temporary construction impacts.

No minority or low-income populations have been identified that would be adversely impacted by the proposed project as determined above. Therefore, in accordance with the provisions of EO 12898 and FHWA Order 6640.23, no further EJ analysis is required.

Mitigation Measures

All ROW acquisitions would be subject to the provisions set forth in the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, Uniform Relocation Act Amendments of 1987, ADOT's Right of Way Procedures Manual, Title VI of the Civil Rights Act of 1964, and ADOT's Public Involvement Plan. Therefore, no additional mitigation measures would be needed.

2.3.4. Cultural Resources

Existing Conditions

Since the execution of the original ROD, the Lion Springs segment has been subject to an updated Class III pedestrian survey, the results of which are documented in the Cultural Resources Survey of 367.76 Acres of New and Existing Right-of-Way and Easements along State Route 260 between MP 256.2 and 260.1, near Star Valley, Gila County, Arizona (Franck et al. 2020). The survey was conducted prior to completion of 95% design plans, however, which resulted in a reduction of the area of potential effects (APE) and the number of properties affected.

The APE, which is based on 95% design, is defined as the existing and proposed SR 260 corridor, being a combination of ADOT-owned right-of-way (ROW) (26.71 acres), ADOT easement across the Tonto National Forest (TNF) (243.36 acres), TNF administered land not currently ADOT easement (99.31 acres); property owned by Gila County (1.81 acres), and private land (4.35 acres) between milepost (MP) 256.2 and MP 260.1.

A total of 27 archaeological sites are within the APE. Of those, 13 sites—2 prehistoric habitations, 7 artifact scatters (prehistoric and/or historic), 2 artifact scatters with an associated feature, 1 historic highway, and 1 historic telephone line—are either listed in or eligible for listing in the National Register of Historic Places (NRHP). Another four sites, all artifact scatters, are unevaluated and will require archaeological testing to ascertain their NRHP eligibility. The remaining 10 sites are either NRHP-ineligible (n = 7), or portions within the APE have been determined non-contributing (n = 3).

Environmental Consequences

Archaeological Resources

Archaeological sites that cannot be avoided could be subject to construction-related disturbance, including permanent disturbance or displacement due to earthwork, machinery operation, stockpiling, and other construction activities.

The proposed action would likely involve such disturbance to 16 archaeological sites that have been determined eligible for the NRHP, or for which eligibility has not been evaluated, resulting in *adverse effects* as defined in 36 Code of Federal Regulations (CFR) Part 800.16. Through prior consultation it was determined the proposed project would not adversely affect the Payson-Indian Gardens-Heber Telephone Tree Line, and components or associated artifacts will be avoided, flagged, and monitored during construction.

ADOT has engaged in Section 106 consultation with the Advisory Council on Historic Preservation, the Arizona State Historic Preservation Office, the Arizona State Museum, FHWA, TNF, and 13 Native American tribes. To date, five rounds of consultation letters have been distributed. This consultation effort is ongoing and would continue throughout all stages of the project.

A monitoring and treatment plan was developed to mitigate impacts to sites during geotechnical investigations. Furthermore, a Memorandum of Agreement (MOA) is being developed to create a project specific cultural program to define and describe the ways in which historic properties will be addressed, resolve any adverse effects to those properties during construction and communication protocols. As a provision of the MOA, a Historic Properties Treatment Plan will also be developed prior to any ground disturbance. Tribal engagement via site visits in addition to regular communications will also be undertaken.

Historic Buildings and Structures

Under the proposed action, the original two-lane configuration of SR 260 would be widened to a four- or five-lane prism; avoidance of the historic highway would not be feasible. As part of the Historic State Highway System (HSHS), the road is considered eligible for the NRHP only under Criterion D for its information potential. In accordance with the *Interim Procedures for the Treatment of Historic Roads*, the increase in capacity and removal of roadway segments proposed by the project would result in an *adverse effect* on this historic property. HSHS elements that could be affected by the project include culverts and other historical features of the road. In consultation with Section 106 parties, ADOT would develop a plan to resolve these adverse effects by documenting HSHS elements that would be affected by the project.

Additionally, one historic structure, the previously mentioned Payson-Indian Gardens-Heber Telephone Tree Line, is within the APE. Through prior Section 106 consultation, this property was determined eligible for NRHP listing under Criteria A, C and D. Only one pole associated with this site is known to be present in the APE and it will be avoided by construction. So long as any newly discovered components are adequately documented, the proposed project will not result in adverse effects to this property.

Traditional Cultural Properties

No traditional cultural properties (TCPs) have been identified or designated within or in proximity to the APE; however, the surrounding area is known to be culturally important to multiple Native American tribes. ADOT completed a tribal field visit with Gila River Indian Community took place on June 23, 2023, and no TCP properties were identified. A general site visit with the Yavapai-Apache Nation was completed on April 13, 2023 to discuss overall project impacts with existing sites. Additional email communication between Yavapai-Apache Nation members identified a Dance Ground in the area but determined that it does not rise to the level of a TCP.

Mitigation Measures

The following mitigation measures would minimize harm to cultural resources and ensure the proper treatment of historic properties in accordance with 36 CFR 800:

Contractor Responsibilities

- The Contractor shall contact the ADOT Environmental Planning Historic Preservation Team (480) 486-0049) or the Environmental Commitments Coordinator (928.522.3349) at least 30 (thirty) business days prior to construction to ensure that the terms and stipulations of the project Section 106 Memorandum of Agreement (MOA) have been fulfilled.
- The contractor shall contact ADOT Environmental Planning Historic Preservation Team project lead (480.486.0049) or the Environmental Commitments Coordinator (928.522.3349) at least 20 (twenty)

business days prior to the start of ground-disturbing activities to arrange for a qualified archaeologist to flag any identified avoidance areas.

- The contractor shall contact ADOT Environmental Planning Historic Preservation Team project lead (480.486.0049) or the Environmental Commitments Coordinator (928.522.3349) at least 20 (twenty) business days prior to the start of ground-disturbing activities at areas requiring monitoring to ensure that a qualified archaeological monitor is present during all ground-disturbing activities. ADOT's Environmental Planning Historic Preservation Team will provide contact information on the qualified archaeological consultant to the Contractor for their records. ADOT's Environmental Planning Historic Preservation Team will contact the qualified archaeological consultant regarding the project start date and provide Contractor information.
- The contractor shall avoid all flagged or otherwise designated sensitive resources within or adjacent to the project. Any work taking place in a flagged or otherwise designated sensitive area without a monitor present will result in an immediate stop work order until impacts are assessed and resolved. No work can continue at these locations until permissions are received from the ADOT Resident Engineer.

2.3.5. Section 4(f) and Section 6(f) Resources

Section 4(f) of the Department of Transportation Act of 1966 protects publicly owned parks, recreational areas, wildlife/waterfowl refuges, and historic sites of local, state, or national significance. Section 4(f) applies to all projects that receive funding or require approval by an agency of the U.S. Department of Transportation (DOT) and requires federal agencies to include all possible actions to minimize harm to those eligible Section 4(f) properties or demonstrate there is no feasible and prudent alternative to avoid harm.

A "use" of a Section 4(f) resource is considered when one of three conditions occur: 1) when land is permanently incorporated into a transportation facility; 2) when there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes; or 3) when there is a constructive use of land. A *de minimis* impact involves the project incorporating a small portion of a Section 4(f) property but does not affect the overall use of the property. For historic properties, this impact can only be used with a Section 106 determination of "no adverse effect" or "no historic properties affected."

Existing Conditions

Most of the project traverses the TNF, an area often used for recreation. However, because much of the TNF lands are intended for multiple uses and not primarily for recreation, Section 4(f) would not apply to those lands. However, Section 4(f) would apply to lands that are primarily used for recreation, such as trails and campgrounds, as well as public parks and significant archaeological and historic resources.

Environmental Consequences

A review of the project area did not identify any publicly owned trails, campgrounds, or parks within or 0.25 mile from the project limits. The closest campsite, Ponderosa Campground, which was also identified in the original EIS, is further east, at approximate MP 265.4, and would not be impacted by the project.

Since the approval of the original EIS, a new Section 4(f) resource facility was built in the vicinity of the project. The B. Diane McDaniel Community Park, located at 3615 E. Highway 260, was built in 2016 and is Star Valley's first community park. The 5-acre pocket park features a fitness trail, playground equipment, ramadas, picnic

benches, and a pickleball court. The park is open to the public generally from 7 a.m. to 7 p.m., with automatic entrance gates. The park is more than 0.25 mile away and would not be affected by project activities. No permanent or temporary encroachment on the park would be undertaken, nor would there be a constructive use. Access to the park would remain open during construction, and the project would not result in loss or impaired function of the facility.

As discussed previously, 13 properties within the project limits have been determined eligible for listing in the NRHP, while an additional 4 properties require archaeological testing to determine their NRHP eligibility. All 17 historic properties are eligible under Criterion D only, with the exception of one: the historic Payson–Heber Telephone Tree Line (AZ O:12:34 [ASM]), which is also eligible under Criteria A and C. The original EIS identified this historic property as a Section 4(f) resource. Mitigation in the form of intensive documentation was completed in support of associated investigations along other segments of SR 260.

Based on current design, one of the tree line’s telephone poles is known to be present within the APE and would be avoided by construction. The pole will be flagged for avoidance as well as documented in the field. The historic line has been included in the MOA currently under development and will continue to be taken into consideration to mitigate any adverse effects.

Mitigation Measures

Mitigation measures for potential impacts to the Payson–Heber telephone line were included in the original EIS and additional measures were outlined in a recent round of Section 106 consultation. The mitigation measures for this property include avoidance flagging prior to and monitoring during construction to ensure avoidance of the one pole known to be present within the project limits (see Mitigation Measures under Section 2.3.4).

2.3.6. Noise

Existing Conditions

During the course of the original EIS, fewer noise receivers were in existence, and as such resulted in only three receptors identified within the Lion Springs segment. All three receptors were in association with the Diamond Point Shadows community, for which it was determined that noise abatement measures would not be required because noise level, present and future (year 2015), would not exceed the noise abatement criterion as identified in 23 CFR Part 772 at that time. Since that time, land use and development within the project vicinity have evolved, increasing the presence of sensitive noise receptors.

Land use within the study area includes mainly private land and the TNF; however, residential and commercial land uses are also present. The existing land uses that are considered Activity Category B include existing single-family homes in Star Valley, the Diamond Point Shadows subdivision, and the Lion Springs subdivision. Existing land uses within Activity Category C include the Sky Run RV Resort, the Rim View Community Church, and the Greater Payson Moose Lodge. Existing land uses within Activity Category E include the Diamond Point Shadows Steakhouse.

Seven different sites were selected for noise monitoring within the project area to document existing traffic noise levels. Noise monitoring was conducted on September 1, 2020, by Newton Environmental Consulting. The monitored noise levels ranged from 49 to 61 A-weighted decibels (dBA), which represents the existing noise conditions within the project area.

Environmental Consequences

The noise impact determination used in this analysis is based on ADOT's latest Noise Abatement Requirements, dated May 4, 2017. In total, 161 noise receivers were evaluated in the noise model for different land use categories and activities. The modeled noise receivers represent different activity categories, such as residential (Category B), church (Category C), and restaurant (Category E), as discussed above. The No Build and Build conditions were evaluated according to predicted noise levels within the existing and proposed roadway configurations for design year 2040. The noise impact determination shows that predicted noise levels in the No Build condition would be 34 to 70 dBA, and noise levels in the Build condition would be 37 to 71 dBA in 2040.

Mitigation Measure

The noise analysis indicated that noise barriers are not recommended in the Build condition for this project because none of the evaluated barriers met ADOT Noise Abatement Requirements criteria. Therefore, no additional mitigation measures would be needed.

2.3.7. Utilities

Existing Conditions

Utility providers have a variety of facilities located throughout the corridor. Table 8 lists the utilities that have been identified within the project limits. Services providers and their facilities consist of both overhead (OH) and underground (UG) power, cable and telephone lines, as well as an 8-inch water line operated by the town of Payson.

Environmental Consequences

Utility relocations are anticipated for this project; therefore, affected utility facilities would be relocated by the corresponding utility companies. Responsibility for relocating those utilities fall to the individual utility companies. ADOT has coordinated with these entities regarding the relocation of utilities and will continue coordination throughout design and construction. Possible disruption to utility services may occur dependent on each utility company; however, disruptions would likely be less than a few hours and localized to the facility being relocated. The utility companies would provide notice to the residences and businesses before any short-term shutdowns to minimize the temporary inconvenience. Ongoing coordination would occur during the design phase and project construction to identify additional conflicts and provide opportunities for resolution before any proposed action.

Mitigation Measures

ADOT and the project design team will continue to coordinate with the utility companies for relocation efforts. A utility clearance outlining any additional special provisions required will be issued by ADOT before construction. Therefore, no additional mitigation measures would be required.

Table 8. Identified Utilities and Conflicts

Owner	Facility Type	Begin Station	End Station	Conflict
APS	OH power	230+13, 178' LT	455+69, 630' LT	Five utility poles from 256+76 to 269+94 LT in conflict with proposed cut slopes. Relocation of poles possibly required.
APS	UG power	230+13, 109' LT	232+15, 341' RT	Depth unknown, no conflict anticipated.
APS	UG power	236+59, 109' LT	238+17, 329' LT	Depth unknown, in conflict with proposed cut slopes. Relocation of pole possibly required.
APS	OH power	266+75, 153' LT	268+06, 224' LT	No conflict anticipated.
APS	UG power	274+43, 109' LT	277+60, 184' LT	No conflict anticipated.
APS	UG power	327+58, 401' LT	328+07, 177' LT	No conflict anticipated.
APS	OH power	353+24, 466' LT	359+17, 263' RT	Utility pole at 354+84 LT impacted by roadway construction. Relocation of pole required.
APS	UG power	407+72, 293' LT	419+65, 90' LT	Depth unknown, in conflict with proposed cut slopes. Relocation of pole possibly required.
APS	OH power	419+50, 510' RT	420+92, 510' LT	Roadway profile affects vertical clearance of OH power lines. Conflict anticipated.
CenturyLink	OH telephone	230+13, 178' LT	455+69, 630' LT	Five utility poles from 256+76 to 269+94 LT in conflict with proposed cut slopes. Relocation of poles possibly required.
CenturyLink	OH telephone	231+83, 189' LT	232+19, 328' LT	No conflict anticipated.
CenturyLink	OH telephone	353+24, 466' LT	359+17, 263' RT	Utility pole at 354+84, 95' LT impacted by roadway construction. Relocation of pole required.
Suddenlink	UG telephone	235+93, 407' LT	240+00, 182' LT	Depth unknown, in conflict with proposed cut slopes. Relocation of pole possibly required.
Payson	8-inch water main	230+13, 43' LT	232+14, 365' RT	No conflict anticipated.

2.3.8. Visual Resources

Existing Conditions

The TNF uses the U.S. Forest Service Visual Management System and assessment methodology revised from the *National Forest Landscape Management, Volume 2, Chapter 4 (Roads)* (1977). In this system, visual impacts of the project are evaluated according to expected changes in visual quality, an assessment of the change in visual character, and the sensitivity of the viewers to changes in the visual landscape within the project area. The magnitude of the changes is qualitatively expressed as high, moderate, moderate to low, or low impact. The magnitude also relates to the position of the traveler to the changes. The distance zones include foreground (0.25–0.5), middle ground (foreground to 3–5 miles from viewer), and background (middle ground to limit of visibility).

Environmental Consequences

The visual resource analysis completed for the original EIS determined that the widening of the roadway to four lanes with a median in the Lion Springs segment would result in a noticeable visual impact due to its transformation towards a freeway-like aesthetic and further away from the natural dense forested character. The limited landscape modifications that would be able to occur within the median would likely be noticeably different from the existing vegetation patterns and would occur in the foreground of the travel lanes attracting the traveler's attention. Alternatives which decreased the amount of cut slopes and areas of landscape modifications were found to have fewer visual impacts than their counterparts.

The Lion Springs segment of SR 260 is divided into three segments from a visual assessment perspective. Segment 1 is the westernmost segment that begins in the town of Star Valley and proceeds east to just west of the Dealers Choice subdivision, from approximately MP 256.1 to MP 257.4. This segment is presently characterized by steep cuts through granitic hillsides vegetated by pinyon-juniper woodlands with oak and manzanita shrub understory. The terrain moderates upon approaching the Gila County Maintenance Yard and the Dealers Choice subdivision. In this area, access roads to the yard and subdivision become visible. Views of middle and background landscapes are brief.

Segment 2 parallels the Gila County Maintenance Yard and the Dealers Choice subdivision to the north, from approximately MP 356.7 to MP 258.6. This segment is relatively flat and straight. Access roads to private lands in the subdivision are common. Again, mature pinyon-juniper woodlands occur on both sides of the existing highway. Foreground views are the most notable, with occasional middle and background views.

Segment 3 is the easternmost segment from approximately MP 258.7 to MP 260.5 and runs through mature pinyon-juniper woodlands; large Emory oak trees can also be found along its middle section. This segment runs through more hilly terrain as it approaches its terminus, with the Preacher Canyon four-lane segment to the east.

The current two-lane highway would be reconstructed to a five-lane section at the beginning of Segment 1 at the west end of the project and would transition to a divided four-lane section in Segments 2 and 3 for the remainder of the project to the east. Three bridge structures would be constructed to span drainage areas and provide safe wildlife crossings for migratory elk and other species present within the project area. Segment 3 would be the only segment where patches of native vegetation would be preserved in the median.

The visual quality changes have been identified as low in the completed Visual Resource Impact Assessment. However, at the start of the project in Segment 1 and through the middle of Segment 2, moderate changes have been identified.

Mitigation Measures

Coordination with the TNF to discuss visual impact treatments for this project has occurred and have been identified in the 95% design plans and special provision. Those treatments include the following: staining of rock cut slopes; salvage and replanting of native species; topsoil salvage; boulder placements; contouring of slopes; rustication and painting on bridge concrete surfaces; weathered steel on elk fencing, guardrails, and bridge railings; and seeding of all disturbed areas with native shrub, grass, and forb species.

In addition, a registered landscape architect would be assigned to the project during construction to ensure that the treatments and landscaping needs are met. TNF has confirmed this project will meet visual quality objectives. Because these treatments are incorporated into the design plans and special provisions, additional mitigation measures would not be required.

2.3.9. Water Resources

Existing Conditions

A ground survey to identify potential waters of the United States (WOTUS) within the project area was completed by AZTEC Engineering Group in July 2020. A total of 19 ephemeral drainages possessing the characteristics of an ordinary high-water mark were identified within the project area. Of the 19 drainages, only one drainage, located at MP 258.62, contained riparian vegetation in the form of broadleaf riparian trees, such as Arizona black walnut (*Juglans major*) and Arizona sycamore (*Platanus wrightii*). Vegetation along the remaining drainages did not differ from the uplands. No wetlands or perennial waters were observed during the July 2020 ground survey.

Environmental Consequences

A preliminary jurisdictional determination received from the U.S. Army Corps of Engineers on November 1, 2021, confirmed that the 19 drainages identified during the ground survey are considered WOTUS. Thus, project activities would discharge to and/or dredge in WOTUS. This project would result in a total of 1.203 acres of permanent and temporary impacts to WOTUS. Permanent impacts from roadway widening; construction of new lanes and new frontage roads; and installation of new culverts, pipes, and ditches would affect 0.855 acres of WOTUS. Temporary impacts from vehicle and equipment access and maneuvering would affect 0.348 acre of WOTUS. Temporary impacts would not result in a loss of WOTUS, and the impacted areas would be restored to preconstruction contours after construction is complete. Since the drainages are ephemeral, and no wetlands or perennial waters are present, impacts to aquatic life forms are not anticipated. Because the project would involve construction activities greater than 1 acre, a stormwater pollution prevention plan (SWPPP) and ADOT standard best management practices (BMPs) would be implemented to prevent downstream impacts to the watershed.

Floodplain

The project location is depicted on Federal Emergency Management Agency Flood Insurance Rate Map Panels 04007C0244D, 04007C0265D, and 04007C0270D. These areas are defined as undetermined.

Sections 404 and 401

Since a preliminary jurisdictional determination was completed for the project, recorded drainages are considered WOTUS. Over 0.10 acre of permanent impacts are anticipated; therefore, the project would qualify for Pre-Construction Notification authorization under the Nationwide Permit 14. Additionally, communication between the Los Angeles District of the US Army Corps of Engineers and ADOT verified that compensatory mitigation at a 1:1 ratio would be required to offset the project's permanent impacts to WOTUS. The project would provide in-lieu fee payments to the US Army Corps of Engineers to satisfy the required compensatory mitigation. Payments would be provided prior to the start of construction or by a due date provided by the US Army Corps of Engineers.

An Arizona Department of Environmental Quality conditional Section 401 water quality certification is anticipated, which would also require measures to reduce impacts to water quality.

Section 402 – Arizona Pollutant Discharge Elimination System

The project would disturb more than 1 acre of land; therefore, an Arizona Pollutant Discharge Elimination System permit and a SWPPP would be required. The project does not occur within 0.25 mile of an impaired or unique water.

Mitigation Measures

No work would occur until a Section 404 permit and a Section 401 water quality certification are issued. The project would also require a SWPPP and ADOT standard BMPs, which would reduce impacts to water quality. Measures outlined in the SWPPP and all associated documents will be adhered to. The following mitigation measures would be required:

Contractor Responsibilities

- No activities are to occur within Waters of the United States until the appropriate Clean Water Act Section 404 Permit and 401 Certification have been obtained/issued.
- The contractor shall comply with all terms and conditions of the Clean Water Act Section 404/401 permit and certification.
- If water supply wells are proposed for construction water, they will be tested to evaluate impacts on water-dependent resources, including wells on private lands. Testing will be conducted under a plan approved by the U.S. Forest Service, and may include observation wells, surface water monitoring sites, and water quality analyses. If adverse effects are detected, specific mitigation measures will be implemented including, but not limited to, not using the affected well, restricting well usage to specific times of the year, releasing well water to the affected resource, and pumping at reduced rates.

2.3.10. Biological Resources

Existing Conditions

A biological evaluation (BE) was completed on February 25, 2021, with a full detailed report of its findings, to evaluate the project's impacts on federally listed species under the Endangered Species Act (ESA). The BE describes relevant biotic resources that have the potential to be impacted by the project. A letter describing the project and soliciting for comment was sent to the AGFD and the TNF as a part of the environmental review process. A request for consultation under Section 7 of the ESA was submitted to U.S. Fish and Wildlife Service (USFWS) due to the BE's conclusion that the project "may affect but is not likely to adversely affect" the Chiricahua leopard frog (*Lithobates chiricahuaensis*), which is listed as threatened under the ESA. The USFWS concurred with the BE's findings on April 1, 2022.

Environmental Consequences

Currently, construction of the project would result in a permanent loss of up to 34.18 acres of terrestrial upland habitat from new roadway pavement, drainage structures, and wildlife crossings. Up to 149.96 acres of the upland forested habitat would be temporarily impacted by cut and fill of slopes, staging and stockpiling, a geotechnical investigation, temporary crossover construction, and vehicle and equipment maneuvering off pavement. Vegetation removal and clearing would occur in areas immediately adjacent to SR 260 where road widening is proposed, as well as north and south of SR 260 where construction of new lanes is proposed. Terrestrial wildlife, which use the uplands and associated vegetation for life functions, could be impacted if they are present within the construction footprint during construction activities. Noise impacts to terrestrial and avian wildlife from construction activities were also considered and it was determined that construction related noise would attenuate to slightly above ambient noise levels at approximately 800 feet from the construction footprint. Suitable habitat for protected species is not present within 800 feet of the construction footprint, thus protected species would not be impacted by elevated noise levels from project construction.

Ground-disturbing work and permanent ground disturbance would occur in ephemeral drainages within the construction footprint when surface water is not present. No impacts to perennial drainages or drainages outside the construction footprint are anticipated, given the implementation of BMPs and control measures, as discussed in Section 2.3.9, *Water Resources*. Therefore, impacts to aquatic wildlife within the construction footprint and downstream are not anticipated from this project.

A wildlife crossing, game fencing, and wildlife jumpouts would also be constructed as part of this project. Therefore, terrestrial movements through the construction footprint would return to or improve from existing conditions.

Vegetation

Vegetation removal would occur along SR 260 and include removal of trees, shrubs, forbs, and grasses. Degree and quantity of vegetation removal may vary between project activities. Primary activities likely to result in vegetation removal within the project action area include roadway widening, slope excavation, retaining wall installation, erosion-control additions, drainage improvements, wildlife crossing and jumpout installation, utility relocation, and staging and stockpiling activities.

The following protected native plants could be impacted by project activities: Engelmann's prickly pear (*Opuntia engelmannii*), narrowleaf yucca (*Yucca angustissima*), and banana yucca (*Yucca baccata*). Mitigation measures would be implemented to reduce impacts to protected native plants (see *Mitigation Measures* section below).

Noxious and/or invasive plants, including species such as field bindweed (*Convolvulus arvensis*) and lovegrass (*Eragrostis* spp.), were observed within the construction footprint and surrounding ROW. A noxious species control plan would also be required for the project (see *Mitigation Measures* section below).

Endangered Species Act Species

The BE concluded that the project "may affect but is not likely to adversely affect" the Chiricahua leopard frog (*Rana chiricahuensis*). No other ESA listed species are anticipated to be affected by the project.

Migratory Bird Treaty Act

The original EIS determined that no impacts would occur to migratory birds within the project area. However, the existing project area contains suitable habitat for a large number of nesting migratory birds (e.g., patches of trees, dense patches of shrubs). Potential project impacts may occur to nesting birds due to a loss of nesting habitat from vegetation removal and increased noise levels from project equipment, which would deter nesting birds from nesting in the project area during construction. Construction is anticipated to begin in fall 2026 and last 2 to 3 years; therefore, work would occur during migratory bird nesting season (March 1–August 31). Mitigation measures such as surveying ahead of vegetation removal and avoidance of active bird nests, would be implemented to prevent impacts to nesting birds.

Bald and Golden Eagle Protection Act

The original EIS did not discuss the Bald and Golden Eagle Protection Act. At the time of the original EIS, the bald eagle (*Haliaeetus leucocphalus*) was listed as a threatened species under the ESA. The original EIS concluded that the proposed improvements would have no direct effect on wintering bald eagles. Currently, the bald eagle is not listed under the ESA and is not known to occur within the project area. However, the golden eagle (*Aquila chrysaetos*) has been documented within 3 miles of the project area. Overall, it was determined that the project would not result in take or cause disturbance to bald eagles or golden eagles. In addition, the project would comply with the 2007 *National Bald Eagle Management Guidelines*.

Wildlife Crossing

The project area occurs within Potential Linkage Zone 41, as identified in *Arizona's Wildlife Linkages Assessment* (Arizona Wildlife Linkages Workgroup 2006). Some of the target species that are identified for this linkage zone include Allen's big-eared bat (*Idionycteris phyllotis*), American peregrine falcon (*Falco peregrinus anatum*), Arizona myotis (*Myotis occultus*), Arizona toad (*Bufo microscaphus*), bighorn sheep (*Ovis canadensis*), black bear (*Ursus americanus*), common black-hawk (*Buteogallus anthracinus*), desert sucker (*Catostomus clarkii*), elk (*Cervus elaphus*), and fringed myotis (*Myotis thysanodes*). The planned wildlife crossings, jumpouts, and fencing would improve habitat connectivity within the linkage zone.

Tonto National Forest Sensitive Species

The TNF keeps a list of sensitive species and migratory bird species of concern. The project is not anticipated to impact any TNF sensitive species.

Mitigation Measures

The following mitigation measures would be implemented to prevent the spread and introduction of invasive plant species, to avoid impacts on plants protected by the Arizona Native Plant Law, and to avoid impacts on nesting birds protected by the Migratory Bird Treaty Act.

ADOT Responsibilities

- Protected native plants within the construction footprint will be impacted by this project; therefore, the ADOT Roadside Development Section will determine if Arizona Department of Agriculture notification is needed. If notification is needed, the ADOT Roadside Development Section will send the notification at least 60 (sixty) calendar days prior to the start of construction.
- The ADOT Roadside Development Section will provide special provisions for the control of noxious and invasive plant species during construction that may require treatment and control within the construction footprint.
- Prior to project completion, ADOT will partner with the Tonto National Forest and contribute funding to help purchase artificial bat roosting barks. The Tonto National Forest will be responsible for hanging the artificial bat roosting barks.
- If active bird nests are identified within the construction footprint, construction activities will avoid disturbing any active nest. Avoidance areas, if necessary, will be marked in the field with temporary fencing or t-posts with flagging by the approved biologist. The engineer will confer with approved biologists to determine the appropriate avoidance strategies until the nestlings have fledged from the nest and the nest is no longer active.
- If any active bird nests cannot be avoided by vegetation clearing or construction activities, the Engineer will contact the Environmental Planning Biologist (602.712.7134 or 602.341.9331) to evaluate the situation.

Contractor Responsibilities

- If clearing, grubbing, or tree/limb removal will occur between March 1 and August 31, the contractor shall employ a qualified biologist to conduct a migratory bird nest search of all vegetation within the 10 (ten) days prior to removal. Vegetation may be removed if it has been surveyed and no active bird nests are present. If active nests cannot be avoided, the contractor shall notify the Engineer to evaluate the situation. During the non-breeding season (September 1 – February 28), vegetation removal is not subject to this restriction.
- The contractor shall develop a Noxious and Invasive Plant Species Treatment and Control Plan in accordance with the requirements in the contract documents. Plants to be controlled shall include those listed in the state and federal noxious weed and the state invasive species lists in accordance with state and federal laws and executive orders. The plan and associated treatments shall include all areas within the project right-of-way and easements as shown on the project plans. The treatment and control plan

shall be submitted to the Engineer for the ADOT Construction Professional Landscape Architect for review and approval prior to implementation by the contractor.

- Prior to the start of ground-disturbing activities and throughout the duration of construction and any landscape establishment period, the contractor shall arrange for and perform the control of noxious and invasive species in the project area.
- The contractor shall review the sensitive species handout provided by ADOT Environmental Planning prior to the start of project construction.
- The contractor shall follow all herbicide label requirements.
- The contractor shall use the lowest pressure, largest droplet size, and the largest volume of water permitted by the label to obtain adequate treatment success of herbicides.
- The contractor shall not perform broadcast applications of glyphosate and other broad-spectrum herbicides within the project limits.
- Within 200 feet of the ordinary high-water mark of any drainage, the contractor shall apply herbicide using hand-wand backpack equipment using liquid streams or relatively coarse sprays to minimize spray drift.
- No open water sources shall be installed without prior review and approval by ADOT Environmental Planning Biologist (602.712.7134622.9622 or 602.341.9331399.3233). If the contractor proceeds with installing open water sources without prior approval, they shall be held responsible for obtaining all environmental approvals and clearances associated with that work.

2.3.11. Hazardous Materials

Existing Conditions

An updated Preliminary Initial Site Assessment (PISA), as well as a hazardous materials survey, was conducted for this project. The PISA consists of a site reconnaissance and an environmental records review to identify potential hazardous materials and environmental concerns within the project limits. A total of 73 federal, state, and tribal databases were accessed through GeoSearch, a comprehensive environmental database reporting service, which generally meets and exceeds the guideline standards outlined in American Society for Testing and Materials (ASTM) E1527-13. GeoSearch provides standard ASTM listings, as well as nonstandard listings.

Since the original EIS, site assessments to identify the presence of asbestos-containing materials (ACM), lead-based paint (LBP), and/or lead-containing paint (LCP) have become an ADOT standard procedure. A hazardous materials survey was undertaken with the purpose of identifying and evaluating the potential presence of ACM, LBP, and LCP in areas anticipated to be affected by the project. Field samples were collected from suspect ACM and painted surfaces and were laboratory tested. A detailed account of the site assessment and findings can be found in the project's Hazardous Materials Evaluation Report.

Environmental Consequences

The GeoSearch results identified three potential hazardous materials occurrences from the standard ASTM federal databases, including one Resource Conservation and Recovery Act (RCRA) generator, one RCRA

nongenerator, and one Superfund site, all of which were also identified in the original EIS. Ten records were identified from state databases, including two aboveground storage tanks, one Fire Marshal aboveground storage tank, four underground storage tanks, one leaking underground storage tank, one closed solid waste facility, and one state hazardous waste site. A detailed breakdown of the findings can be found in the PISA. Nearly all the findings were within Star Valley and outside the project area. No records were identified that would adversely affect the project area.

A visual reconnaissance and site survey was conducted from November 16 to 18, 2020, during which a total of 59 suspect ACM samples and 37 LBP samples were collected. Asbestos was not detected in any of the 59 bulk samples collected. However, LBP was detected in two samples and LCP was identified in one sample. Table 9 summarizes the findings. Overall, no visual environmental concerns were identified during the field reconnaissance.

Table 9. Summary of Reportable Paint Chip Laboratory Analyses for Lead

Sample Name	General Location	Paint Description	Lead Concentration (% by weight)	Classification
10	Culvert at MP 261.3	Beige paint on rail	0.043	NLC
23	Cattleguard at Lion Springs Road	Orange cattleguard paint	39.8	LBP
24	Gila County Maintenance Yard	Yellow stripe	0.428	LCP
35	Mayfield Canyon Rd/Sky Run Lane	Yellow stripe	0.586	LBP

Notes: NLC = nonlead containing

Mitigation Measures

At the time of the original EIS, no physical sampling for the identification of ACM, LBP, or LCP took place. Therefore, these elements were not considered in the hazardous materials analysis. Since that time, ACM, LBP, and LCP testing has become standard protocol for ADOT. The new hazardous materials analysis includes the identification of LBP, as well as additional mitigation measures that were not previously required.

ADOT Responsibility

- No work will be conducted that will disturb the yellow roadway paint striping at Mayfield Canyon Road/Sky Run Lane and State Route 260 until a Lead-based Paint Removal and Abatement Plan is approved and implemented.

Contractor Responsibilities

- An approved contractor shall develop and implement a Lead-based Paint Removal and Abatement Plan for the removal of the yellow roadway paint striping at Mayfield Canyon Road/Sky Run Lane and State Route 260. The Lead-based Paint Removal and Abatement Plan shall include Toxicity Characteristic Leaching Procedure testing of the generated waste stream (as necessary), and proper disposal of the waste stream derived from

the planned improvements. The contractor shall select a lead abatement contractor that meets the qualification requirements specified within the special provisions, as approved by the Engineer. The contractor shall follow all applicable federal, state, and local codes and regulations, including ADOT's Standard Specifications for Road and Bridge Construction (2008 Edition) related to the treatment and handling of lead-based paint.

- The contractor shall submit the Lead-based Paint Removal and Abatement Plan to the Engineer and the ADOT Environmental Planning Hazardous Materials Coordinator (602.920.3882) for review and approval at least 10 working days prior to project improvements.
- No work is to be conducted at these locations until the Lead-based Paint Removal and Abatement Plan is approved and implemented by the ADOT Environmental Planning Hazardous Materials Coordinator.
- No milling or other disturbance activities shall occur until the Lead-based Paint Removal and Abatement Plan is approved by the ADOT Environmental Hazardous Materials Coordinator and implemented by the contractor.
- Visible fugitive dust emissions from paint removal shall be controlled through wet or dry (e.g., vacuum) means during the removal process. If the liquid waste stream generated by a water-blasting obliteration method passes the Toxicity Characteristic Leaching Procedure analysis, it may be used as a dust palliative or for compaction on the project. If the water is not used on the project, it shall be properly disposed of in accordance with all applicable federal, state, and local regulations.
- For milling activities, the roadway surface preceding the milling machine shall be kept sufficiently wet so as to prevent the generation of any visible fugitive dust particles, but not so wet as to cause excess runoff from the roadway surface onto the roadway shoulder.
- The contractor shall not utilize any abrasive tools or methods for the removal of the cattle guards that would disturb the lead-based paint. This includes, but is not limited to, sawing, grinding, sanding, or heating. Woven straps (not linked chains) may be used to lift the cattle guard grate from the frame. Cattle guard or drainage grates that contain lead-based paint will be removed.

2.3.12. Temporary Construction Impacts

Existing Conditions

Short-term uses of the project area may produce environmental impacts. These impacts are often associated with activities related to the physical construction of the roadway, which would have a temporary impact on adjacent commercial and residential land uses. Vehicles and people living and/or working in the surrounding area could experience inconveniences associated with travel delays, as well as dust and noise during construction activities.

Environmental Consequences

Construction-related impacts to the traveling public and surrounding communities should be anticipated. The project would be constructed in five phases, and temporary traffic control measures would be implemented during each phase. This includes activities such as a shift in traffic, lane restrictions, short-term lane closures during

blasting operations, and the construction of temporary crossovers and temporary concrete barriers. Two-way traffic is anticipated to be maintained at all times; however, when completing construction of the temporary crossovers, only one lane would be open with the use of a two-way traffic control device. Nighttime work is anticipated during bridge work, which would require the need for short-term lane closures. Advance signage would be placed approximately 1 mile ahead of construction activities in both directions. Traffic delays should be anticipated. Construction is not anticipated to take place on weekends or holidays to prevent major traffic delays. All traffic plans would be developed in conformance with the 2009 MUTCD and the 2012 Arizona Supplement to the MUTCD.

Access to local businesses and residential driveways would be maintained; however, if temporary closures are unavoidable, notifications would occur at least 5 calendar days before the temporary closure. One business in particular, the Diamond Point Shadows Steakhouse, would experience higher impacts during construction due to loss to a portion of its existing parking area within the ADOT ROW. Use of the ROW would likely be needed during construction, which would result in the elimination of some restaurant parking spaces. ADOT would coordinate with the property owner before construction to minimize impacts to the business, as necessary.

During construction, disturbance of the soil and concrete by construction equipment would increase fugitive dust and could potentially affect local air quality. Applicable county and local dust permits would be acquired and implemented to reduce the amount of fugitive dust released into the air. In addition, exhaust emissions from automobiles in construction-related traffic delays and from construction equipment may also affect air quality. Such impacts to air quality would be temporary and would subside once construction is complete. Traffic control measures have been developed and would be included in the final design to help reduce traffic congestion and associated emissions.

As identified in Section 2.3.9, Water Resources, a SWPPP would be required during construction and BMPs would be followed to prevent temporary impacts to water quality.

Mitigation Measures

Much of the construction-related impacts would be mitigated through the implementation of the guidelines in ADOT's standard specifications for construction, adherence to the 2009 MUTCD, the 2012 Arizona Supplement to the MUTCD, and Arizona Department of Environmental Quality permitting requirements. Therefore, no additional mitigation measures would be required.

3. Agency and Public Involvement

During preparation of the original EIS, extensive agency scoping and public meetings were held to obtain information from area residents, businesses, and public agency representatives in order to determine important issues that needed to be addressed in preparing the project's LDCR and EIS. Based on input received from agency and public input, several alternative corridors were recommended for further evaluation. A detailed account of the public and agency coordination undertaken and considered during project design is documented in the original EIS.

As part of this EIS Re-evaluation, agency scoping occurred in July 2020 and included representatives from Gila County, the Town of Star Valley, the Town of Payson, TNF, the Arizona Department of Public Safety, AGFD, Central Arizona Government, and applicable local emergency services providers. Comments were received from the Arizona Department of Public Safety, AGFD, the Payson Police Department, and the TNF—many of whom expressed support for the project and the improved safety conditions that would result.

In accordance with Section 106 of the National Historic Preservation Act, consultation regarding the project's effects on cultural resources, as well as treatment of cultural sites, has been initiated and would continue for the duration of the project. Parties that have been consulted to date are the Advisory Council on Historic Preservation, Ak-Chin Indian Community, FHWA, Gila River Indian Community, the Hopi Tribe, Navajo Nation, San Carlos Apache Tribe, Arizona State Historic Preservation Office, Salt River Pima-Maricopa Indian Community, Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai Apache Nation, Yavapai-Prescott Indian Tribe, and Pueblo of Zuni.

As the project nears construction, ADOT Communications will inform the surrounding public of the project through GovDelivery notifications and the project's website: <https://azdot.gov/projects/northcentral-district-projects/sr-260-lion-springs-improvement-project>. In addition, this EIS Re-Evaluation will be posted to the project's website for public information purposes. ADOT is also planning for a future public information and update meeting in April of 2024 prior to construction.

4. Conclusion

ADOT, pursuant to 23 USC 327 and an MOU dated April 16, 2019, and executed by FHWA and ADOT, reviewed the SR 260, Lion Springs, MP 256.2 to 260.1 Widening from 2 Lanes to 4 Lanes Divided Highway project and has determined that this EIS Re-evaluation has been prepared in accordance with the provisions and requirements of 23 USC Chapter 1 and 23 CFR 771.129(c) relating to the implementation of the National Environmental Policy Act of 1969. Since the approval of the ROD on January 31, 2000, ADOT has determined that no substantial changes have occurred in the social, economic, or environmental impacts of the proposed action. Therefore, a supplemental final EIS is not warranted.

This re-evaluation considers the environmental review of the original EIS and concludes that impacts to socioeconomic and environmental resources resulting from the project would remain similar to the impacts identified in the original EIS. The social and environmental setting along the re-evaluation segment of SR 260 has remained relatively unchanged, and the minor modifications to the preferred alternative would not result in significantly greater impacts than those identified in the original EIS. While the project may result in biological, visual, hazardous materials, cultural, land use, social, and economic impacts, the impacts would be permitted and/or mitigated and would be consistent with impact findings for the segment of SR 260 evaluated in the original EIS.

This re-evaluation demonstrates that the original EIS and ROD for the project remain valid. Therefore, with the implementation of mitigation, a supplemental study of the original EIS is not recommended for the project.

5. Attachments

- Attachment A - Updated Environmental Commitments
- Attachment B - Nationwide Permit 14 – Linear Transportation Projects

EIS Re-evaluation
SR 260, Lion Springs
Federal Aid No. 260-B(226)T
ADOT Project No. F0139 01C

Attachment A: Updated Environmental Commitments

**260 GI 256 F0139 01C
260-B(226)T
SR 260 LION SPRINGS**

UPDATED ENVIRONMENTAL COMMITMENTS

The following shall be included in the project special provisions:

- I. "The project mitigation measures are not subject to change without written approval from ADOT Environmental Planning. The Contractor shall follow all the requirements of the permits specified herein and comply with the project specifications."

The following mitigation measures, permits and guidelines (as applicable) shall be included in the project special provisions:

II. Project Mitigation Measures

ADOT Responsibilities

- Protected native plants within the construction footprint will be impacted by this project; therefore, the ADOT Roadside Development Section will determine if Arizona Department of Agriculture notification is needed. If notification is needed, the ADOT Roadside Development Section will send the notification at least 60 (sixty) calendar days prior to the start of construction.
- The ADOT Roadside Development Section will provide special provisions for the control of noxious and invasive plant species during construction that may require treatment and control within the construction footprint.
- Prior to project completion, ADOT will partner with the Tonto National Forest and contribute funding to help purchase artificial bat roosting barks. The Tonto National Forest will be responsible for hanging the artificial bat roosting barks.
- If active bird nests are identified within the construction footprint, construction activities will avoid disturbing any active nest. Avoidance areas, if necessary, will be marked in the field with temporary fencing or t-posts with flagging by the approved biologist. The engineer will confer with an approved biologist to determine the appropriate avoidance strategies until the nestlings have fledged from the nest and the nest is no longer active.
- If any active bird nests cannot be avoided by vegetation clearing or construction activities, the Engineer will contact the Environmental Planning Biologist (602.622.9622 or 602.399.3222) to evaluate the situation.
- No work will be conducted that will disturb the yellow roadway paint striping at Mayfield Canyon Road/Sky Run Lane and State Route 260 until a Lead-based Paint Removal and Abatement Plan is approved and implemented.

Contractor Responsibilities

- The Contractor shall contact the ADOT Environmental Planning Historic Preservation Team (480) 486-0049) or the Environmental Commitments Coordinator (928.522.3349) at least 30 (thirty) business days prior to construction to ensure that the terms and stipulations of the project Section 106 Memorandum of Agreement (MOA) have been fulfilled.
- The contractor shall contact ADOT Environmental Planning Historic Preservation Team project lead (480.486.0049) or the Environmental Commitments Coordinator (928.522.3349) at least 20 (twenty) business days prior to the start of ground-disturbing activities to arrange for a qualified archaeologist to flag any identified avoidance areas.
- The contractor shall contact ADOT Environmental Planning Historic Preservation Team project lead (480.486.0049) or the Environmental Commitments Coordinator (928.522.3349) at least 20 (twenty) business days prior to the start of ground-disturbing activities at areas requiring monitoring to ensure that a qualified archaeological monitor is present during all ground-disturbing activities. ADOT's Environmental Planning Historic Preservation Team will provide contact information on the qualified archaeological consultant to the Contractor for their records. ADOT's Environmental Planning Historic Preservation Team will contact the qualified archaeological consultant regarding the project start date and provide Contractor information.
- The contractor shall avoid all flagged or otherwise designated sensitive resources within or adjacent to the project. Any work taking place in a flagged or otherwise designated sensitive area without a monitor present will result in an immediate stop work order until impacts are assessed and resolved. No work can continue at these locations until permissions are received from the ADOT Resident Engineer.
- No activities are to occur within Waters of the United States until the appropriate Clean Water Act Section 404 Permit and 401 Certification have been obtained/issued.
- The contractor shall comply with all terms and conditions of the Clean Water Act Section 404/401 permit and certification.
- If water supply wells are proposed for construction water, they will be tested to evaluate impacts on water-dependent resources, including wells on private lands. Testing will be conducted under a plan approved by the U.S. Forest Service, and may include observation wells, surface water monitoring sites, and water quality analyses. If adverse effects are detected, specific mitigation measures will be implemented including, but not limited to, not using the affected well, restricting well usage to specific times of the year, releasing well water to the affected resource, and pumping at reduced rates.
- If clearing, grubbing, or tree/limb removal will occur between March 1 and August 31, the contractor shall employ a qualified biologist to conduct a migratory bird nest search of all vegetation within the 10 (ten) days prior to removal. Vegetation may be removed if it has been surveyed and no active bird nests are present. If active nests cannot be avoided, the contractor shall notify the Engineer to evaluate the situation. During the non-breeding season (September 1 – February 28), vegetation removal is not subject to this restriction.
- The contractor shall develop a Noxious and Invasive Plant Species Treatment and Control Plan in accordance with the requirements in the contract documents. Plants to be controlled shall include those listed in the state and federal noxious weed and the state invasive species lists

in accordance with state and federal laws and executive orders. The plan and associated treatments shall include all areas within the project right-of-way and easements as shown on the project plans. The treatment and control plan shall be submitted to the Engineer for the ADOT Construction Professional Landscape Architect for review and approval prior to implementation by the contractor.

- Prior to the start of ground-disturbing activities and throughout the duration of construction and any landscape establishment period, the contractor shall arrange for and perform the control of noxious and invasive species in the project area.
- The contractor shall review the sensitive species handout provided by ADOT Environmental Planning prior to the start of project construction.
- The contractor shall follow all herbicide label requirements.
- The contractor shall use the lowest pressure, largest droplet size, and the largest volume of water permitted by the label to obtain adequate treatment success of herbicides.
- The contractor shall not perform broadcast applications of glyphosate and other broad-spectrum herbicides within the project limits.
- Within 200 feet of the ordinary high-water mark of any drainage, the contractor shall apply herbicide using hand-wand backpack equipment using liquid streams or relatively coarse sprays to minimize spray drift.
- No open water sources shall be installed without prior review and approval by ADOT Environmental Planning Biologist (602.622.9622 or 602.399.3233). If the contractor proceeds with installing open water sources without prior approval, they shall be held responsible for obtaining all environmental approvals and clearances associated with that work.
- An approved contractor shall develop and implement a Lead-based Paint Removal and Abatement Plan for the removal of the yellow roadway paint striping at Mayfield Canyon Road/Sky Run Lane and State Route 260. The Lead-based Paint Removal and Abatement Plan shall include Toxicity Characteristic Leaching Procedure testing of the generated waste stream (as necessary), and proper disposal of the waste stream derived from the planned improvements. The contractor shall select a lead abatement contractor that meets the qualification requirements specified within the special provisions, as approved by the Engineer. The contractor shall follow all applicable federal, state, and local codes and regulations, including ADOT's *Standard Specifications for Road and Bridge Construction* (2008 Edition) related to the treatment and handling of lead-based paint.
- The contractor shall submit the Lead-based Paint Removal and Abatement Plan to the Engineer and the ADOT Environmental Planning Hazardous Materials Coordinator (602.920.3882) for review and approval at least 10 working days prior to project improvements.
- No work is to be conducted at these locations until the Lead-based Paint Removal and Abatement Plan is approved and implemented by the ADOT Environmental Planning Hazardous Materials Coordinator.
- No milling or other disturbance activities shall occur until the Lead-based Paint Removal and Abatement Plan is approved by the ADOT Environmental Hazardous Materials Coordinator and implemented by the contractor.

- Visible fugitive dust emissions from paint removal shall be controlled through wet or dry (e.g., vacuum) means during the removal process. If the liquid waste stream generated by a water-blasting obliteration method passes the Toxicity Characteristic Leaching Procedure analysis, it may be used as a dust palliative or for compaction on the project. If the water is not used on the project, it shall be properly disposed of in accordance with all applicable federal, state, and local regulations.
- For milling activities, the roadway surface preceding the milling machine shall be kept sufficiently wet so as to prevent the generation of any visible fugitive dust particles, but not so wet as to cause excess runoff from the roadway surface onto the roadway shoulder.
- The contractor shall not utilize any abrasive tools or methods for the removal of the cattle guards that would disturb the lead-based paint. This includes, but is not limited to, sawing, grinding, sanding, or heating. Woven straps (not linked chains) may be used to lift the cattle guard grate from the frame. Cattle guard or drainage grates that contain lead-based paint will be removed.

III. Permits:

- Us Army Corps of Engineers Clean Water Act Section 404 Nationwide Permit 14 and Arizona Department of Environmental Quality Clean Water Act Section 401 Water Quality Certification.

Attachment B:
Nationwide Permit 14 – Linear Transportation Projects



NATIONWIDE PERMIT NUMBER 14

Linear Transportation Projects

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT
Arizona Regulatory Branch

BUILDING STRONG®

A. General Information

This document provides the terms and conditions of the nationwide permit (NWP) by combining information from (1) the terms and conditions of the NWP (<https://www.federalregister.gov/documents/2021/12/27/2021-27441/reissuance-and-modification-of-nationwide-permits>), (2) Regional conditions, and (3) the Clean Water Act Section 401 water quality certification decisions (401 WQCs). The NWP is in effect from February 25, 2022 through March 14, 2026 unless modified, reissued, or revoked before that time. It is incumbent upon the permittee to remain informed of changes to the NWPs.

Links to documents related to the NWP program may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

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B. Nationwide Permit Terms

14. Linear Transportation Projects. Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

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

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge of dredged or

fill material in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

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

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify

the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after

consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through

stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWP's used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWP's cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review

process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation

requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for

authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar

document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of

time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

G. Nationwide Permit Regional Conditions (Arizona)

1. The permittee shall submit a pre-construction notification (PCN) for all 2021 NWPs, in accordance with General Condition 32, in the following circumstances:
 - a. Activities that would result in a loss* of waters of the United States within all perennial and intermittent waterbodies and special aquatic sites. (Refer to Regional Condition 2 for restrictions in special aquatic sites within the state of Arizona.)
 - b. Activities resulting in a discharge of dredged or fill material in waters of the U.S. on Tribal Lands**;
 - c. All waterbodies designated by the Arizona Department of Environmental Quality as Outstanding Arizona Waters (OAWs), within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated OAW, and on tributaries to OAWs within 1600 meters of the OAW (see <http://www.azdeq.gov/index.html>).
 - d. All waterbodies designated by the Arizona Department of Environmental Quality as 303(d)-impaired surface waters, within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated impaired surface water, and on tributaries to impaired waters within 1600 meters of the impaired water (see <http://www.azdeq.gov/index.html>).

- 2. All 2021 NWP's are revoked in the state of Arizona for activities in wetlands, mudflats, vegetated shallows, or riffle and pool complexes, as defined at 40 CFR Part 230.40-45, resulting in a loss* of waters of the United States greater than 0.10 acre.

* "Loss" means waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity.

**"Tribal Lands" refers to any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

NOTE: Regional Conditions on the Navajo Nation may be found at https://www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/publicnotices/Navajo%20Nation/2021%20NWP%20Reissuance_Final%20Public%20Notice_Navajo%20Nation.pdf?ver=Y05br0lh59RLEwptpfmJOA%3d%3d.

H. 401 Water Quality Certification (401 WQC)

A 401 WQC is mandatory for any activity that requires a Clean Water Act Section 404 permit. A 401 WQC is required prior to discharging any dredged or fill material into a water of the United States. Only one of the following 401 WQCs listed below will apply to your project. The geographical location of your project will determine which 401 WQC is applicable. The 401 WQCs issued for this NWP will remain in effect through March 14, 2026.

On all "Non-Tribal Lands", lands that are not part of federally recognized Indian Reservation, the Arizona Department of Environmental Quality (ADEQ) is the agency responsible for issuing the 401 WQC.

On all "Tribal Lands", lands that are part of a federally recognized Indian Reservation, the U.S. Environmental Protection Agency (EPA) is responsible for issuing the 401 WQC except where EPA has delegated the 401 WQC authority.

If "Individual Certification" is required you must apply for, receive, and comply with the 401 WQC issued by ADEQ, EPA, or the appropriate Tribe.

Non-tribal Lands - 401 ADEQ WQCs*

Arizona Department of Environmental Quality Certified for all projects, except ADEQ requires that a project proponent submit an application to the department for a State WQC if the proposed activity will occur within the ordinary high water mark of any of the following waters: An outstanding Arizona water; an impaired water; a water that is listed as not-attaining; or a lake. This conditional certification, authorized under A.R.S. 49-202(C), is necessary to ensure the proposed activities will not cause or contribute to an exceedance in a surface water quality standard under Arizona Administrative Code R18-11.

Tribal Lands - 401 WQCs

- Fort Apache Indian Reservation (White Mountain Apache Tribe): Individual Certification waived for all projects.
- Gila River Indian Community: Individual Certification required for all projects.
- Hopi Indian Reservation (Hopi Tribe): Individual Certification required for all projects.
- Hualapai Indian Reservation (Hualapai Tribe): Individual Certification waived for all projects.
- San Carlos Apache Tribe: Individual Certification waived for all projects.
- Navajo Indian Reservation (Navajo Nation): Individual Certification required for all projects.
- All other Indian Reservations (EPA): Conditionally Certified.

401 WQC Contact Information

Arizona Department of Environmental Quality
Water Quality Division
110 West Washington Street
Phoenix, Arizona 85007
Phone: (602) 771-4409
401WQC@azdeq.gov
<https://azdeq.gov/cwa401>

White Mountain Apache Tribe (Fort Apache Indian
Reservation)
Environmental Protection Office
P.O. Box 816
Fort Apache, AZ 85926
Phone: (928) 338-4325
<https://whitemountainapache.org/resources/>

Gila River Indian Community
Department of Environmental Quality
P.O. Box 97
Sacaton, AZ 85147
Phone: (520) 562-2234
www.gricdeq.org

Hopi Tribe
Water Resources Program
P.O. Box 123
Kykotsmovi, Arizona 86039
Phone: (928) 734-3712
<https://www.hopi-nsn.gov/tribal-services/department-natural-resources-2/water-resources/>

Hualapai Tribe
Hualapai Department of Natural Resources
P.O. Box 300
Peach Springs, AZ 86434
Phone: (928) 769-2254 x2255
<http://hualapai-nsn.gov/services/natural-resources/>

Navajo Nation
Navajo Nation Environmental Protection Agency
PO Box 339
Window Rock, AZ 86515
Phone: (928) 871-7692
<https://www.navajoepa.org/>

San Carlos Apache Tribe.
Apache Gem Rd. Marker 2
San Carlos, Arizona 85550
www.SanCarlosApache.com

U.S. Environmental Protection Agency
Pacific Southwest, Region IX
75 Hawthorne Street
San Francisco, California 94105
R9cwa401@epa.gov
<https://www.epa.gov/>