

Arizona Department of Transportation Clean Water Act Section 404/401 Guidance Manual





**Arizona Department of Transportation
Clean Water Act 404/401 Guidance Manual**

Submitted to:

**Arizona Department of Transportation
1611 West Jackson Street
Phoenix, Arizona 85007**

Submitted by:

**AMEC Environment & Infrastructure, Inc.
4600 East Washington Street, Suite 600
Phoenix, Arizona 85034**

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FOREWORD

This manual provides an overview of Sections 404 and 401 of the Clean Water Act, as they apply to Arizona Department of Transportation activities.

Compliance with Sections 404 and 401 is necessary for Arizona Department of Transportation activities that involve the discharge of dredged or fill material into waters of the United States.

The manual also provides general guidance on the preparation of jurisdictional delineations, Nationwide Permit Pre-Construction Notification submittals, and Individual Permit applications. The intended audience includes all Arizona Department of Transportation design/construction/maintenance and environmental planning staff, consultants, Arizona Department of Transportation Districts, and others as applicable.

Applicable regulations, guidance documents, forms, and checklists are cited and/or included in this manual, with document dates, print dates, and sources identified in the References section as appropriate. Although this manual will be periodically updated by the Arizona Department of Transportation Office of Environmental Services to address regulatory and guidance modifications, as well as changes in Arizona Department of Transportation policy, it is the responsibility of the user to identify and comply with current standards.

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ABBREVIATIONS, ACRONYMS, AND DEFINITIONS OF TERMS

ADEQ – Arizona Department of Environmental Quality

ADOT – Arizona Department of Transportation

C&S – Contracts and Specifications Section

CFR – Code of Federal Regulations

Corps – US Army Corps of Engineers

CWA (Clean Water Act) – Establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

Decision document – Demonstrates compliance with the Section 404(b)(1) guidelines, as well as NEPA and other applicable federal laws and policies. The document is constituted by an environmental assessment, NEPA/404 Memorandum of Agreement compliance, review and compliance determination, alternatives analysis, mitigation plan, statement of findings public interest review, and a finding of no significant impact.

Dredged materials – Material that is excavated or dredged from waters of the United States.

Discharge of dredged material – Any addition of dredged material into the waters of the United States.

Discharge of fill material – The addition of fill material into waters of the United States.

EPA – Environmental Protection Agency

EPG (Environmental Planning Group) - Oversees the preparation of environmental documents for all highway construction projects and maintenance actions. These documents ensure that all relevant environmental factors are appropriately addressed and mitigated, in accordance with state and federal laws, including the National Environmental Policy Act.

FHWA – Federal Highway Administration

Fill materials – Any material used for the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of a waterbody.

HPT – Historic Preservation Team (of EPG)

Impaired Waters – Surface waters that do not meet surface water quality standards and therefore receive special consideration. Impaired waters are listed in section 303(d) of CWA Section 401, which in Arizona, is maintained by ADEQ.

IP (Individual Permit) – Intended to authorize activities with greater than minimal adverse environmental impacts. Individual permits are needed for an activity that will result in the discharge of dredged or fill material into waters of the United States, but does not qualify for any Nationwide Permit.

JD (Jurisdictional delineation) – The process through which the boundaries and other physical characteristics of a potential water of the United States are evaluated for the activity area.

Jurisdictional determination – Used to describe the resulting report, ultimately submitted by ADOT EPG to the Corps for their consideration and approval.

MOA - Memorandum of Agreement

NEPA – National Environmental Policy Act

NWP (Nationwide permit) – Intended to authorize activities with minimal adverse environmental impacts and are designed to regulate such activities with little, if any, delay or paperwork. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether an activity may qualify for a nationwide permit. Waters of the US temporarily filled, flooded, 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.

Non-tribal lands – Requires ADEQ to issue 401 certification.

OAW (Outstanding Arizona Waters) – Surface waters in Arizona classified by ADEQ as outstanding due to their exceptional water quality.

OES (Environmental Services) - Oversees the environmental programs within the agency. OES ensures compliance with local, state, and federal environmental laws during the construction and operation of ADOT facilities.

OHWM (Ordinary High Water Mark) – A line on the bank or shore established by the fluctuations of water and indicated by the following physical characteristics: a clear, natural line imposed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; and the presence of litter and debris.

PCN (Pre-Construction Notice) – Notification to the Corps based on specific conditions as identified in each Nationwide permit, General Conditions, and Regional Conditions.

Preliminary JD (Preliminary Jurisdiction Determination) - Preliminary JDs are non-binding, written indications that there may be waters of the United States, including wetlands, on a parcel or indications of the approximate location(s) of waters of the United States or wetlands on a parcel. Preliminary JDs are advisory in nature and may not be appealed.

Permanent losses of waters of the United States – Waters of the US that are permanently adversely affected by filling, flooding, excavation of native soils/vegetation, or drainage because of the regulated activity.

Qualified Professional – Individual performing a initial evaluation of a site for the presence/absence of potential waters of the United States under Section 404 of the CWA. A qualified professional must have the ability to recognize water features on aerial and topographic mapping.

RGL – Regulatory Guidance Letter

Routine Maintenance - Routine maintenance is simply maintenance of a structure to return it to a functioning as-built condition.

River – A large natural stream of water emptying into an ocean, lake, or other body of water and usually fed along its course by converging tributaries.

Section 401 of CWA – Requires that the State provide certification that any activity authorized under Section 404 is in compliance with effluent limits, the state's water quality standards, and any other appropriate requirements of state law. Section 401 is administered by ADEQ in Arizona on non-tribal lands. On tribal lands, Section 401 is administered by EPA or the tribe.

Section 404 of CWA – Regulates the discharge of dredged or fill material into waters of the United States. Section 404 is regulated by the Army Corps of Engineers.

Special Aquatic Site - Geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted functions and values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. The following have been identified as special aquatic sites: sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes.

Small wash – Wash that is typically low volume and has infrequent or short duration flow. Small washes are generally considered non-jurisdictional under CWA Section 404.

Temporary losses of waters of the United States – Short term losses typically attributes to project activity discharges that will be mitigated such that preconstruction conditions, including contours and elevations, and/or uses are restored.

Tribal lands – Requires EPA to issue a 401 certification except where EPA has delegated 401 certification authority.

USGS – United States Geological Survey

Wash – The dry bed of a stream common in the arid western US.

Waters of the US (waters of the United States) – Denotes the Corps' jurisdictional limits under CWA Section 404 as outlined in Title 33 Code of Federal Regulations Chapter II, Part 328. Navigable waters, interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, and natural ponds are considered "Waters of the US."

Wetlands – Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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INTRODUCTION

A. Manual Content, Format, and Update Process

1. Manual Content

This manual focuses on the Clean Water Act (CWA) Section 404/401 process as it relates to Arizona Department of Transportation (ADOT) activities. As such, the manual discusses some documentation components and coordination guidelines desired by ADOT, in an effort to implement CWA regulations as they apply to the agency. Therefore, it is essential that ADOT activity proponents follow specific Section 404/401 guidelines and related standards established by ADOT.

Arizona Department of Environmental Quality (ADEQ) issues Section 401 certification on non-tribal lands and US Environmental Protection Agency (EPA) or the tribe issues Section 401 certification on tribal lands.

2. Manual Format

The manual describes the Section 404 and 401 processes as a series of six consecutive steps. At each step, users are prompted to evaluate their activity to determine regulatory applicability and compliance requirements. Many regulatory excerpts, guidance documents, and forms are included as Appendices to this manual and also found on ADOT Environmental Services and Planning website

(http://www.azdot.gov/highways/EPG/EPG_Common/Services_Water_Quality.asp).

Online sources for the following documents are identified in this manual. Due to their size, hard copies of these documents are not included in the manual.

- 1987 Corps of Engineers Wetlands Delineation Manual
- Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0) (Corps 2008a)
- Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0) (Corps 2010a)
- Corps and EPA Final Rule: Compensatory Mitigation for Losses of Aquatic Resources (Corps 2008b)

*Please refer to the references section for the links to these documents.

3. Manual Update Process

ADOT will periodically update this manual to ensure consistency with regulatory and guidance modifications and ADOT policy changes. However, it is the responsibility of the user to identify and comply with current standards.

B. Overview of this Manual

The federal CWA requires a permit for all construction and maintenance activities that impact jurisdictional waters of the United States (Waters of the US) through the discharge of dredge or fill materials. The permit is issued by the US Army Corps of Engineers (Corps).

A Section 404 Permit requires a Section 401 Water Certification

Section 404 of the CWA regulates the discharge of dredged or fill material into waters of the US. Section 404 is regulated by the Corps; the EPA reviews regulated fill activities in conjunction with Corps.

Section 401 of the CWA allows for state certification of the federal Section 404 permitted activity. The Section 401 certification is necessary for all activities that may result in a discharge to Waters of the US and ensures that an activity will not violate applicable water quality standards.

ADOT activities that involve the discharge of dredged or fill material into Waters of the US require compliance with Sections 404 and 401. This manual was developed to provide general guidance on the preparation of jurisdictional delineation (JD) submittals, Nationwide Permit (NWP) preconstruction notification (PCN) submittals, application for Individual Permit (IP), and the associated decision processes. There are six basic steps to ADOT's CWA Section 404/401 process.

The following table and flowchart provide a brief overview of the 404 permit application, approval and compliance process. They also identify key terms and documentation pertaining to each step. This process is covered in detail in Steps 1 through 6 of this manual.

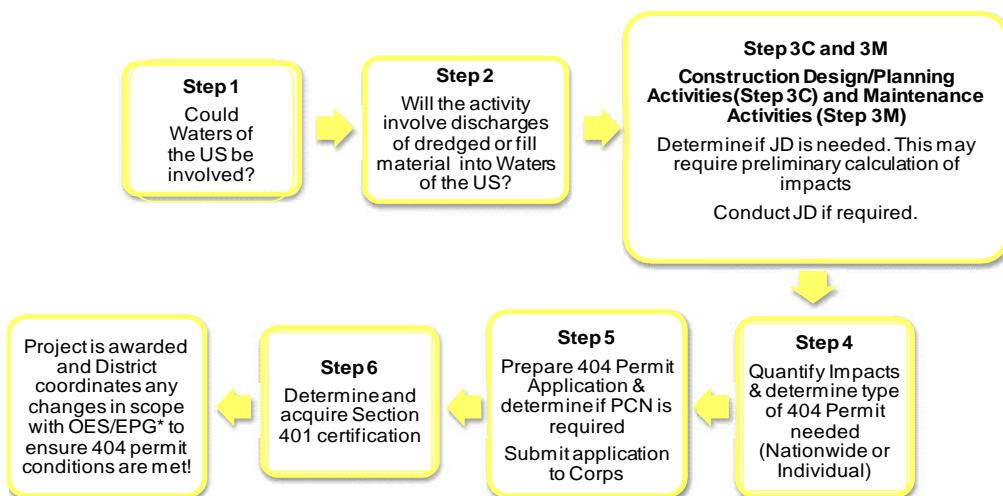
Table 1. Overview of the Necessary Steps to Complete the Section 401/404 Process

Step 1 (Page Step 1-1)	Initial review of surface waters within the boundaries of the activity <ul style="list-style-type: none"> Identify types of drainages typically excluded from Corps' 404 jurisdiction
Step 2 (Page Step 2-1)	Will the activity involve the discharge of dredged or fill material into surface waters? Have you confirmed the activity will not discharge into Waters of the US?
Step 3M (Maintenance Activities) (Page Step 3M-1)	Is a JD of Waters of the US within the activity area necessary? <ul style="list-style-type: none"> If the activity will impact less than 1/10 acre of potential Waters of the US and does not involve work in a wetland, a JD may not be needed. If there are potential biological or cultural impacts, a JD may be necessary. Please refer to Step 3M-1. Key components: aerial photograph and/or as-builts or activity design plans
Step 3C (Construction Design/Planning) (Page Step 3C-1)	Are Waters of the US present within the boundaries of the activity? <ul style="list-style-type: none"> Is a JD necessary? Complete a JD Key components: aerial photograph, topographic map, ground photographs, text and/or table describing activity area conditions, wetland field equipment (soil auger, shovel, etc.), <i>Corps Jurisdictional Delineation Form</i>
Step 4 (Page Step 4-1)	Would the impact on Waters of the US be a temporary disturbance or a permanent loss? Would there be discharges to Waters of the US from the activity? What quantity of impacts (permanent and temporary) on Waters of the US will result from the activity and will the impacts be mitigated? <ul style="list-style-type: none"> Most commonly quantified in surface area/acreage, cubic yards, or linear feet What mitigation measures would be feasible and prudent? <ul style="list-style-type: none"> Mitigation includes avoidance and minimization of impacts, and may include compensation when impacts can't be avoided.

Table 1. Overview of the Necessary Steps to Complete the Section 401/404 Process (Cont.)

<p>Step 5 (Page Step 5-1)</p>	<p>Can the activity be authorized under a NWP or is an IP necessary?</p> <p>NWP</p> <p>What type of permit is needed?</p> <ul style="list-style-type: none"> • Commonly used NWPs for regulated ADOT activities • Select from current NWPs <p>Is PCN necessary?</p> <ul style="list-style-type: none"> • No – Complete the Checklist for Section 404 NWP Limits and Conditions Compliance and PCN Decision Process • Yes – key components: topographic map, ENG Form 4345, plan sheets depicting impacts, General Conditions Compliance, Work Order (for maintenance activities), and mitigation plan if applicable. <i>Additional guidance can be found on the ADOT Environmental Services and Planning website.</i> <p>IP</p> <ul style="list-style-type: none"> • In-lieu fee mitigation • Key components: topographic map, ENG Form 4345, plan sheets depicting impacts, Section 404(b)(1) draft decision document, mitigation plan (if applicable), copy of Section 401 Individual Certification application
<p>Step 6 (Page Step 6-1)</p>	<p>Determine the certification under Section 401?</p> <ul style="list-style-type: none"> • Conditionally certified • Individual certification <ul style="list-style-type: none"> ○ Key components: vary depending on agency/tribe oversight

Flow Chart I-1: Overview



* EPG – Environmental Planning Group
OES – Office of Environmental Services

Important things to Remember!

- If determined in Step 1 or 2 that there is no activity in Waters of the US, document this in the project file and you are done!
- If unsure about decisions for Steps 3 and 4, consult your EPG Planner or the OES Water Quality Analyst.
- After Step 5, the Permit Application is reviewed by OES and the District concurrently. The District signs the application and EPG sends application to the Corps.
- EPG gives the complete 404 package to Contracts and Specifications Section (C&S) for inclusion in Bid Package Special Provisions.

C. Quick Facts

1. Regulation and Administration

The 1972 Federal Water Pollution Control Act was amended and became commonly known as the CWA in 1977. The CWA "...established the basic structure for regulating discharges of pollutants into the waters of the United States" (EPA 2013). The objective of the CWA "...is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S. Code 1251-1387).

Section 401 allows that the State provide certification that any activity authorized under Section 404 is in compliance with effluent limits, the state's water quality standards, and any other appropriate requirements of state law.

Section 404 of the CWA regulates the discharge of fill material into Waters of the US.

The Corps administers the day-to-day CWA Section 404 program, develops policy and guidance, and enforces Section 404 provisions. The EPA develops and interprets environmental criteria used in evaluating Section 404 permit applications, identifies activities that are exempt

from Section 404 regulation, and assists the Corps in enforcing Section 404 provisions (EPA 2013).

In Arizona, the CWA Section 401 water quality certification program is administered by the ADEQ, certain federally recognized tribes, or EPA, depending on the type and location of the activity.

2. Examples of Regulated Arizona Department of Transportation Activities

Common ADOT activities that require Section 404 and Section 401 compliance, if conducted within Waters of the US, include but are not limited to:

Construction activities:

- Culvert extensions and installations
- New bridge construction
- Bridge scour countermeasures and bridge pier construction
- Roadway and utility crossings
- Geotechnical borings

Maintenance activities:

- Channel bank protection
- Wash realignment and channelization
- Removal of sediment buildup from culverts (hydrovacuuming)

3. Examples of Key Terms

Waters of the US commonly found in Arizona include but are not limited to:

- Washes
- Rivers and streams
- Natural ponds
- Wetlands
- Certain canals

4. Roles and Responsibilities and Coordination Guidelines

Coordination for all ADOT Activities requiring a Section 404 permit and/or Section 401 certification must comply with the ADOT Environmental Communication Policy.

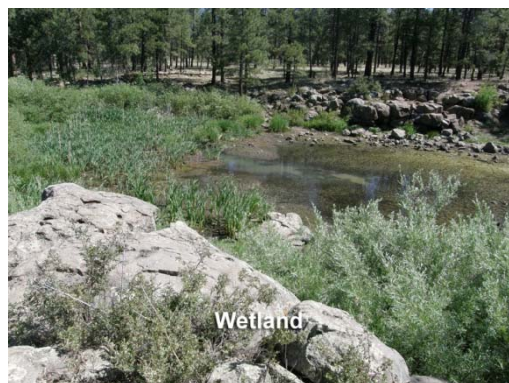
Communication with the Corps regarding Section 404 permitting should begin at the start of design.

Most common dredged (excavated) materials from ADOT activities:

- Sand, soil, and gravel

Most common fill materials from ADOT activities:

- Soil, concrete and asphalt, riprap, and steel

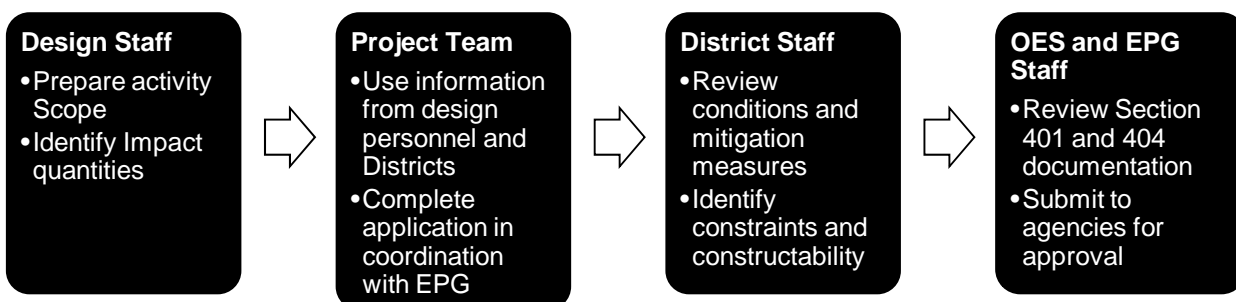


Close coordination between EPG Planners/Consultants and design personnel for construction design/planning activities, or between Districts, EPG, and maintenance personnel for maintenance activities, ensures Section 404 and Section 401 calculations and documentation are accurate. Typically, design personnel provide important activity scope and impact information to EPG for inclusion in the Section 404 and Section 401 documentation. Maintenance personnel work with their District to evaluate activity scope and impact information, with coordination with EPG through a Work Order process. For maintenance

projects, the District typically prepares Section 404 and Section 401 documentation and sends to EPG for their review; EPG then submits to the Corps. The OES water quality analyst is available to assist the EPG or District with the Section 404 and 401 processes and to provide review of documents prior to submittal to the Corps.

Design personnel and District staff must be given the opportunity to review all Section 404 or Section 401 conditions and mitigation measures applicable to an activity in order to identify construction constraints as early as possible. Conditions and mitigation measures are ultimately included in the environmental clearance and project specifications.

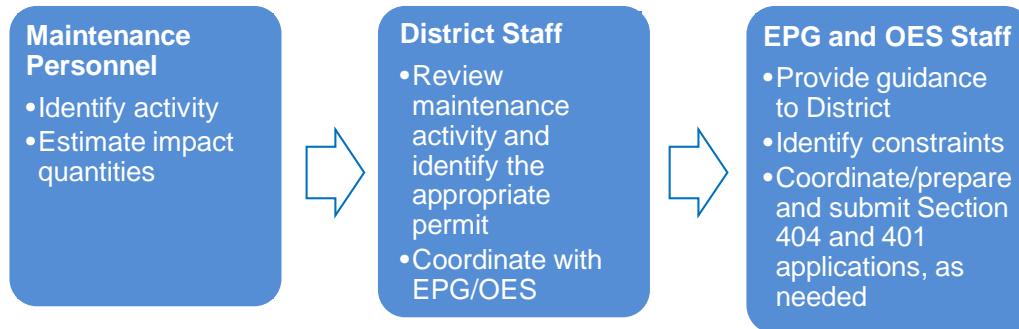
Flow Chart I-2: Construction Activities – Coordination Process



Throughout this manual, the following color codes apply:

- Black color indicates information related to Construction/Design Planning activities.
- Blue color indicates information related to Maintenance activities.
- Yellow color indicates general information (e.g., ADOT or Corps-related).

Flow Chart I-3: Maintenance Activities – Coordination Process



5. Contact Information (As of 2/13)

Internal ADOT communication must comply with the ADOT Environmental Communication Policy and the ADOT Memorandum of Agreement with the Corps. Refer to ADOT Environmental Services and Planning website for submittal information.

(http://www.azdot.gov/highways/EPG/EPG_Common/Documents/Technical_Section_404_Procedures.asp)

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STEP 1. INITIAL REVIEW OF SURFACE WATERS WITHIN THE BOUNDARIES OF THE ACTIVITY

The first step of the Section 404 compliance process is to perform a initial evaluation of the area for the presence/absence of potential Waters of the US. A qualified professional will perform this initial evaluation. EPG, in coordination with OES, is available to review the results of the initial review to determine follow-up actions.

A. Definitions and Examples of Waters of the US

In general, Waters of the US is a term used to denote the Corps' jurisdictional limits under CWA Section 404. The full definition of the term is provided in Title 33 Code of Federal Regulations (CFR) Chapter II, Part 328—Definition of Waters of the United States (available online: <http://www.wetlands.com/coe/coe328p0.htm>).

Categories of Waters of the US:

- Territorial seas
- Tidal waters
- Non-tidal waters

Arizona Waters of the US (tribal, unique and other) include:

- Washes
- Rivers and streams
- Natural ponds
- Wetlands
- Certain canals

Waters of the US may be categorized as tribal waters (occurring on tribal lands), unique waters (a.k.a. Outstanding Arizona Water [OAW] [classification designated by ADEQ]), impaired waters or other waters (all non-tribal and non-unique waters). Waters of the US can also include lakes (wet or dry, including playa lakes), special aquatic sites (including wetlands), mud and sandflats, sloughs, and wet meadows. Because wetlands are

typically the special aquatic site potentially impacted by ADOT activities, the term “wetlands” is referenced throughout this manual.

In Arizona, the Colorado River is a Water of the US and is considered a navigable water. Projects involving navigable waters, such as the Colorado River, are also protected under Section 10 of the Rivers and Harbors Act. Under Section 10, the Corps regulates any work in, over, or under navigable Waters of the US. ADOT OES and EPG must be contacted for guidance on any projects involving the Colorado River.

Features Generally Considered Non-jurisdictional

OES and EPG must be contacted for guidance on any projects involving the Colorado River.

Surface waters generally considered non-jurisdictional under CWA Section 404 include:

- Swales and erosional features such as gullies and small washes that typically are low volume and have infrequent or short duration flow
- Ditches (including roadside ditches) excavated wholly in and draining only uplands that do not carry a relatively permanent flow of water

The Corps and EPA have provided additional guidance on how they will identify jurisdictional Waters of the US protected by Section 404 – *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States, December 2008* (EPA and Corps 2008) (available online:

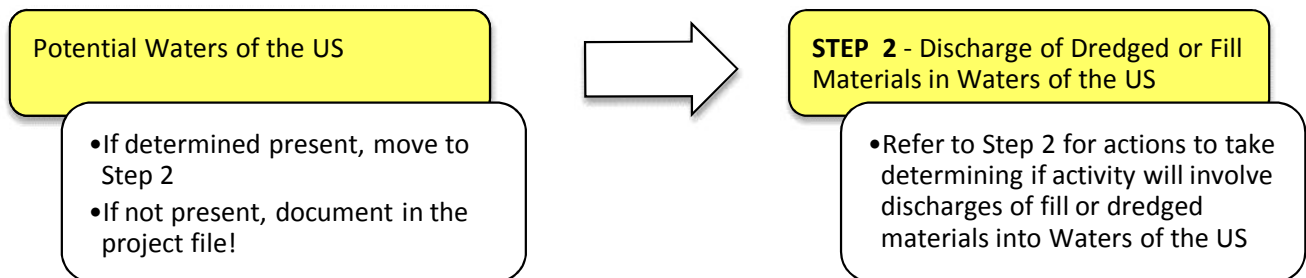
http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/cwa_guide/cwa_juris_2dec08.pdf)

B. Initial Review of Activity Area

An initial review of the activity area must be performed by a qualified professional to determine the presence or absence of potential Waters of the US. This initial review should include the use of aerial imagery or ground photographs and topographic mapping of the activity area if a site visit is not performed. The review will evaluate what type of, if any, surface waters occur within the area (e.g., streams, roadside ditches, potential wetlands).

Key Decisions for Step 1:

Flowchart 1-1: Step 1 Process Overview



Additional Assistance Documents for Step 1:

- Title 33 CFR Chapter II, Part 328—Definition of Waters of the United States. *Available online:* <http://www.wetlands.com/coe/coe328p0.htm>.
- Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States*, December 2008 (EPA and Corps 2008). *Available online:* http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/cwa_guide/cwa_juris_2dec08.pdf

STEP 2. WILL THE ACTIVITY INVOLVE THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO WATERS OF THE US?

The second step is to determine whether the activity will involve the discharge of dredged or fill material into potential Waters of the US, as addressed in 33 CFR 323 – *Permits for Discharges of Dredged or Fill Materials into Waters of the United States* (available online: http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title33/33cfr323_main_02.tpl).

A. Definitions and Examples

As defined in 33 CFR 323, within the context of Section 404:

- Dredged material is defined as “...material that is excavated or dredged from waters of the United States”
- Discharge of dredged material is defined as “...any addition of dredged material into the waters of the United States”
- Fill material is defined as “...any material used for the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of...[a] waterbody”
- Discharge of fill material is defined as “...the addition of fill material into waters of the United States”

Common dredged (excavated) materials resulting from ADOT activities are:

- Sand, soil, and gravel

Common fill material discharged into Waters of the US from ADOT activities include:

- Soil, concrete and pavement, riprap, steel, and gravel

B. Regulated Activities

ADOT activities that commonly result in the discharge of dredged and/or fill material into Waters of the US include but are not limited to:

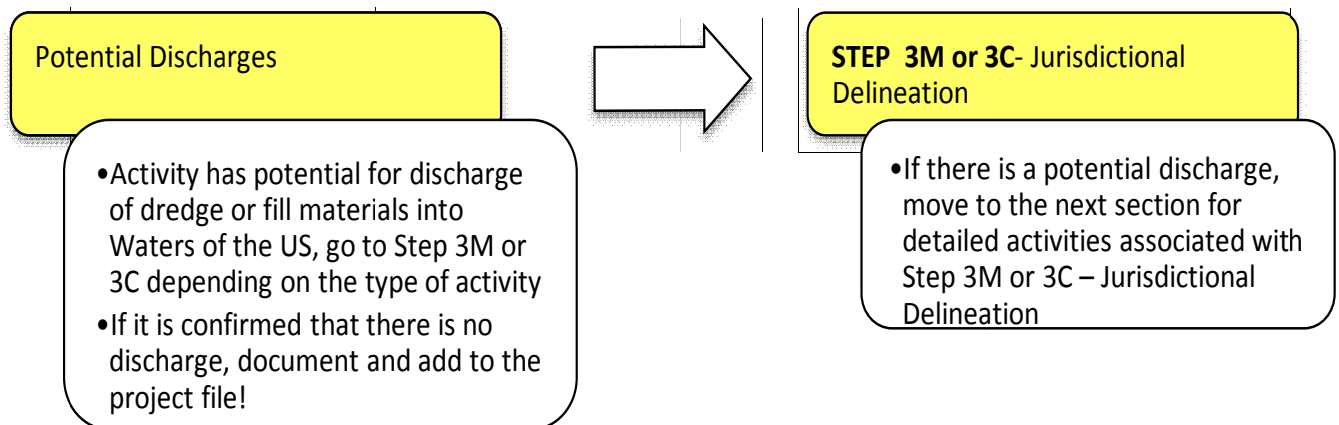
- *Construction Activities*
 - Culvert extensions and installations
 - Bridge scour countermeasures
 - Roadway and utility crossings
 - Geotechnical borings
- *Maintenance Activities*
 - Channel bank protection
 - Erosion repair
 - The removal of sediment buildup from culverts (activity must have discharge of material [i.e. hydrovacuuming])

It is important to note that activity components such as access routes, staging areas, and stockpile areas may result in discharges to Waters of the US. These areas should be identified during the design process if possible. 33 CFR 323 provides additional description of specific activities regulated under Section 404, as well as activities that are exempt from regulation.

Activity components such as access routes, staging areas, and stockpile areas should be evaluated for 404 impacts.

Key Decisions for Step 2:

Flow Chart 2-1: Step 2 Process Overview



Please note that Step 3 has been divided into two sub-sections. One sub-section (Step 3M) is dedicated for maintenance activities and the other sub-section (Step 3C) addresses construction activities. Please choose the appropriate sub-section based on the type of activity associated with your project.

Additional Assistance Documents for Step 2:

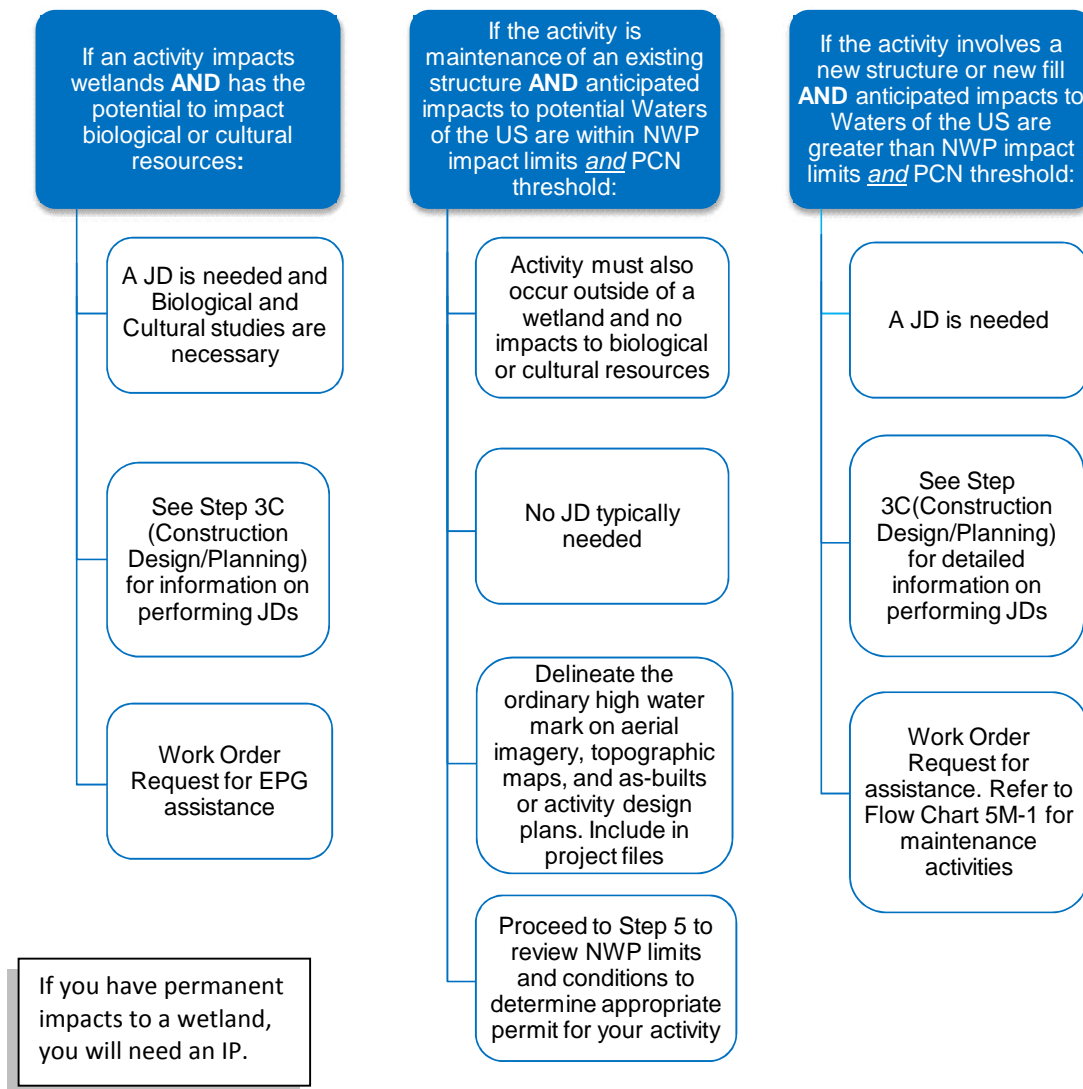
- 33 CFR 323 – Permits for Discharges of Dredged or Fill Materials into Waters of the United States. *Available online:*
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title33/33cfr323_main_02.tpl

STEP 3M (MAINTENANCE ACTIVITIES) - IS A JURISDICTIONAL DELINEATION OF WATERS OF THE US WITHIN THE ACTIVITY AREA NECESSARY?

Prior to this step, an initial area review of the project area has been performed and it has been determined that a surface water potentially considered jurisdictional under Section 404 occurs within the activity area (Step 1). In addition, the activity is expected to result in discharges of dredged or fill materials (Step 2).

Now the activity and anticipated impacts must be evaluated to determine if a JD is necessary. Many ADOT maintenance activities can be performed within the conditions of Section 404 NWP that do not require PCN, in which case jurisdiction is often assumed and a JD may not be necessary. Also, many common ADOT maintenance activities can be performed in a manner such that impacts to Waters of the US are within the limits of a NWP.

Flow Chart 3M-1: Is a Jurisdictional Delineation Required?



If the activity is maintenance of an existing structure and anticipated impacts to Waters of the US are less than the impact limits for a NWP (typically under a 1/10 acre) or meet the conditions of the NWP for maintenance, instead of a JD, the ordinary high water mark (OHWM) of all washes must be identified and depicted on aerial imagery and activity design plans or as-built drawings, if available. If not available, a hand drawn line of the OHWM on a Google map (or similar) will suffice and should be included in the project files. Several photographs representative of the activity area should be taken as well to document the current activity area conditions. Topographic maps may also be helpful in evaluating the activity area and confirming field observations.

Please refer to Step 3C (Construction Design/ Planning) for a definition of ordinary high water mark

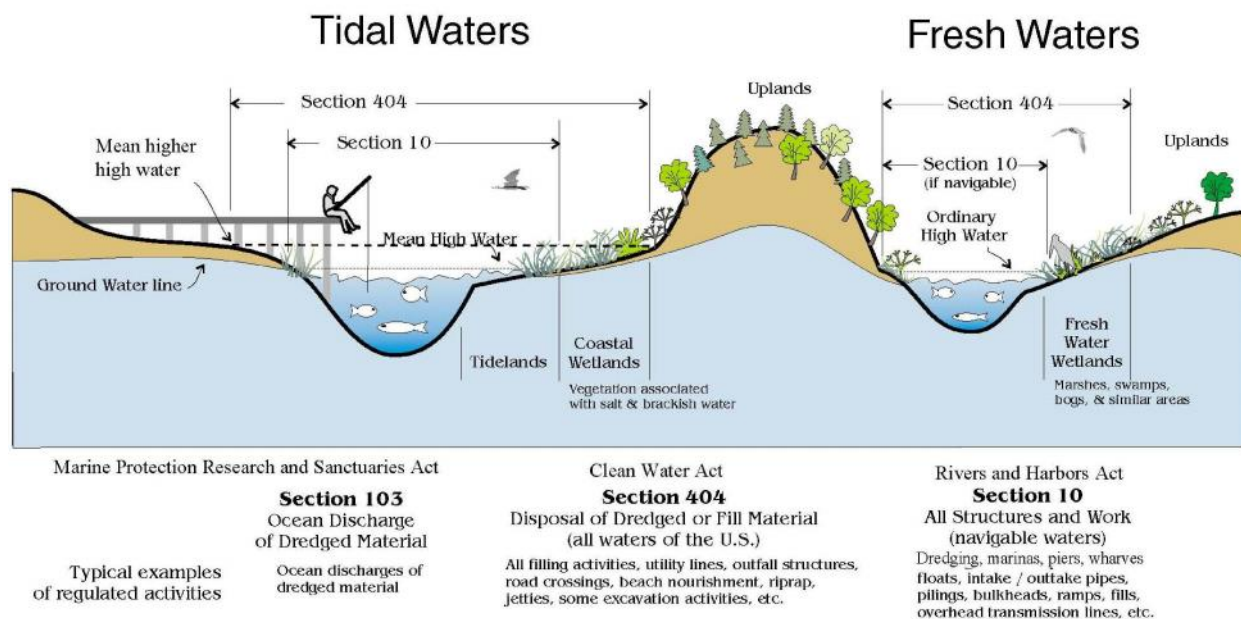
ADOT maintenance activities typically resulting in impacts to Waters of the US within NWP limits (typically less than 1/10 acre):

- Repair of existing culverts
- Removal of debris from existing culverts
- Replacement of storm-damaged culverts or water intake structure
- Temporary cofferdams or culverts to perform maintenance activities

Once the OHWM has been evaluated and indicated on pertinent documentation, Step 4 provides detailed information on how to quantify impacts to Waters of the US as a result of the activity and is needed to ensure the activity is covered by the appropriate Section 404 permit. After quantifying impacts, proceed

to Step 5 to review permitted activities and permit conditions to ensure the appropriate Section 404 permit is selected for the activity. If uncertain, please contact your District for assistance. If District staff is unavailable, please consult EPG or OES.

CORPS OF ENGINEERS REGULATORY JURISDICTION



Source: <http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory/PermitGuidebook/CorpsPermit/LimitsofJurisdiction.aspx>

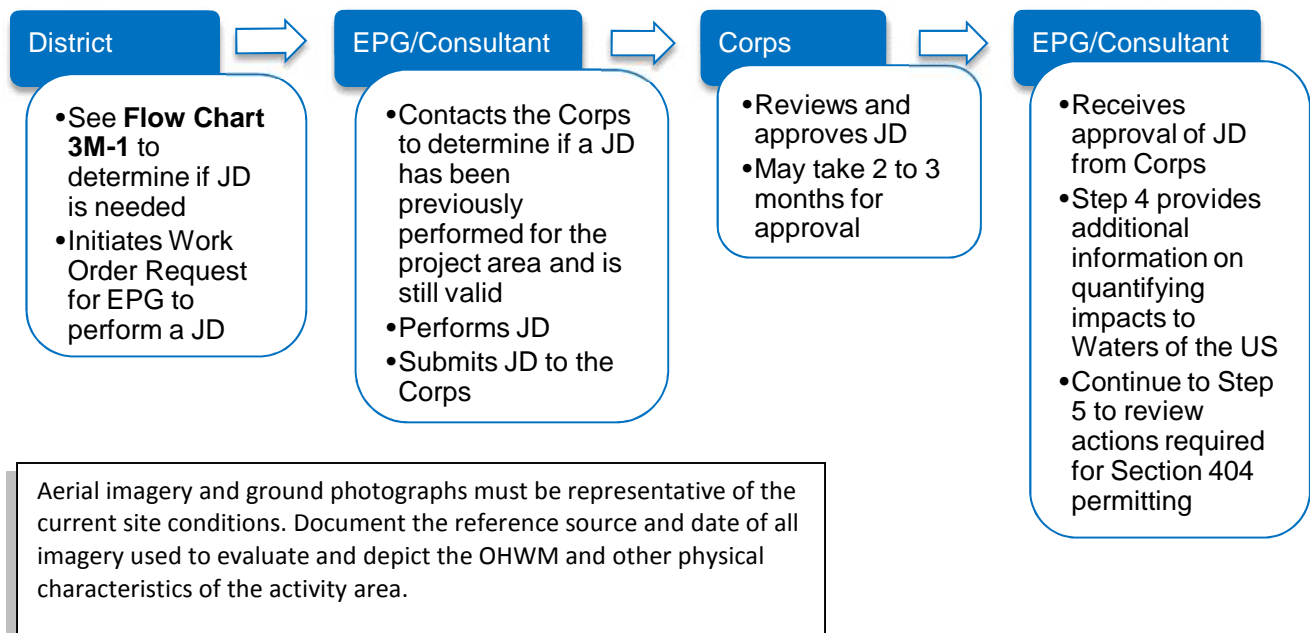
For larger activity areas or more complex maintenance activities, a JD will likely be needed to determine potential Waters of the US within the activity area

Activities that will result in the use of a NWP that requires PCN will typically require a JD to be performed. Refer to Step 5 for the Notification process.

boundaries. A JD is the process through which the boundaries and other physical characteristics of a potential Water of the US are evaluated for the activity area.

Please refer to Step 3C (Construction Design/Planning) for a complete description of the process to perform a JD.

Flow Chart 3M-2: Jurisdictional Delineation Process for Maintenance Activities



Key Documents for Step 3M (Maintenance Activities):

- 33 CFR 328 – Definitions of Waters of United States. *Available online:* <http://www.nap.usace.army.mil/Portals/39/docs/regulatory/regs/33cfr328.pdf>
- RGL 05-05 – Ordinary High Water Mark (OHWM) Identification. *Available online:* <http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-05.pdf>

Additional Assistance Documents for Step 3M (Maintenance Activities):

- Step 3C (Construction Design/Planning).

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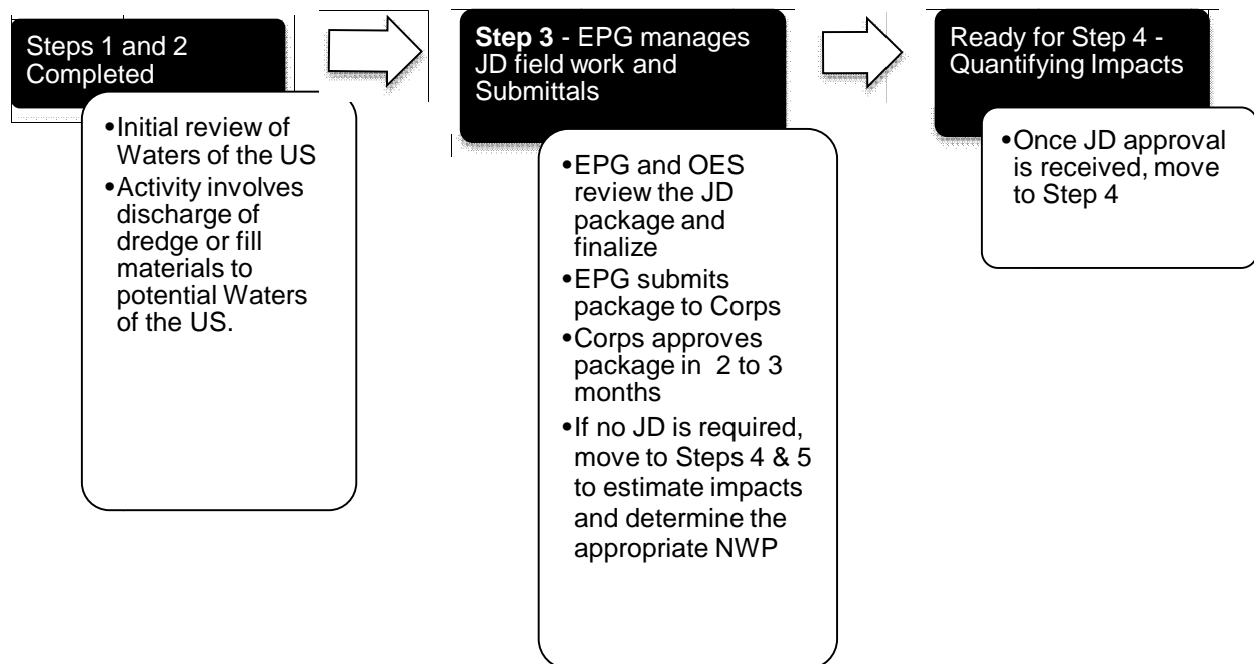
STEP 3C (CONSTRUCTION DESIGN/PLANNING) - ARE WATERS OF THE US PRESENT WITHIN THE BOUNDARIES OF THE ACTIVITY?

Prior to this step, a initial activity area review has been performed and it has been determined that a surface water potentially considered jurisdictional under CWA Section 404 occurs within the activity area (Step 1). In addition, the activity will or most likely will result in discharges of dredged or fill materials to surface waters (Step 2).

Now the activity area must be evaluated for the presence or absence of Waters of the US through completion of a JD. General features of waterbodies that are typically considered Waters of the US were discussed in Step 1. Before moving forward with a JD, coordinate with EPG to identify whether a JD has already been performed for the activity area in question and is still valid.

If the activity would result in less than NWP impact limits to Waters of the US and would not result in impacts to biological or cultural resources, delineate the OHWM without a JD submittal to the Corps. Document the work and include in project file and proceed to Step 5.

Flow Chart 3C-1: Is a Jurisdictional Delineation Required?



A. Jurisdictional Delineation

A jurisdictional delineation is the process through which the boundaries and other physical characteristics of a potential Water of the US are evaluated for the activity area. The term jurisdictional determination is used to describe the resulting report, ultimately submitted by ADOT EPG to the Corps for their consideration and approval.

It is important to note that specific regulatory requirements apply to wetlands; therefore, jurisdictional delineations of potential Waters of the US must clearly differentiate between non-wetland water features and wetlands.

1. Non-Wetland Water Features

An ordinary high water mark (OHWM) represents the Corps' jurisdictional limit in a non-wetland water feature. The Corps defines the OHWM at 33 CFR 328.3(e) as a line on the bank or shore established by the fluctuations of water and indicated by the following physical characteristics (refer to Page 3M-2 for illustration of OHWM):

- A clear, natural line imposed on the bank
- Shelving
- Changes in the character of soil
- Destruction of terrestrial vegetation
- The presence of litter and debris

The Corps has developed *A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States* (Corps 2008c) and RGL 05-05 – Ordinary High Water Mark (OHWM) Identification (Corps 2005) to further assist in determining the OHWM in the Arid West, including Arizona, and is available online:

http://www.spl.usace.army.mil/Portals/17/docs/regulatory/JD/RegionalSupplements/Ordinary_High_Watermark_Manual_Aug_2008.pdf.

The presence or absence of the following features must also be evaluated when conducting a jurisdictional delineation of a non-wetland water feature:

- Sediment deposits
- Water stains
- Exposed roots
- Width and depth (cross-sectional area) of the OHWM

Please refer to the *Jurisdictional Determination Forms and Checklists* Appendix for data forms and checklists.

Wetlands are defined by the Corps as: "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas" (Corps 1987).

2. Wetlands

The Corps' jurisdictional limit of a wetland is considered to be the wetland boundary, defined as "the point on the ground at which a shift from wetlands to non-wetlands or aquatic habitats occurs. These boundaries usually follow contours" (Corps 1987). The *Corps of Engineers Wetlands Delineation Manual* (1987) provides guidance in evaluating the jurisdictional limits of wetlands and is available online at:

<http://el.erdc.usace.army.mil/elpubs/pdf/wlman87.pdf>.

JDs of wetlands must be prepared in accordance with the 1987 Corps manual and the appropriate Regional Supplement. If a situation occurs in which guidance in the Regional Supplement conflicts with that of the 1987 Manual, the 1987 Manual guidance supersedes. The Regional Supplement is found here:

http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/trel08-28.pdf

The ADOT Environmental Services and Planning website provides a template for jurisdictional delineations containing wetlands areas:

http://www.azdot.gov/highways/EPG/EPG_Common/Documents/Technical_Section_404_Procedures.asp.

B. Jurisdictional Determinations Submittals

ADOT has developed jurisdictional determination submittal guidance and a submittal checklist for preliminary and approved jurisdictional determinations in order to facilitate the Corps Regulatory Division's review and processing of jurisdictional determinations. These lists were compiled in coordination with the Corps, are provided in the *JD Forms and Checklists* Appendix, and can also be found on the ADOT Environmental Services and Planning website for Section 404 Guidance website.

Please refer to the *JD Forms and Checklists* Appendix for jurisdictional determination submittal guidance and checklists.

The Corps also provides guidelines for the processing of jurisdictional determinations and describes the differences between preliminary and approved jurisdictional determinations in *Regulatory Guidance Letter (RGL) 08-02 – Jurisdictional Determinations* (Corps 2008d).

It is important to identify the source and date of all documentation and references used to prepare a jurisdictional determination, including aerial photographs, ground photographs, and applicable mapping. In addition, the Corps and ADOT have developed labels to be used on preliminary and approved jurisdictional determination aerial photographs for all ADOT activities and are provided in the *JD Forms and Checklists* Appendix.

Aerial imagery and ground photographs must be representative of the current project area conditions

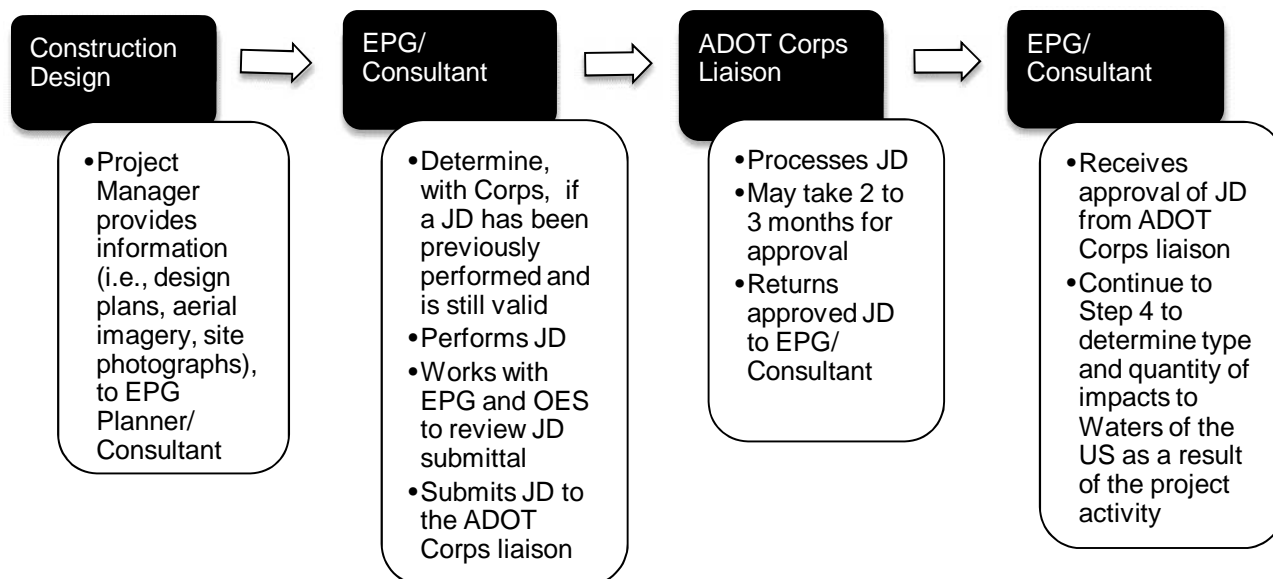
Key Documents for Step 3C and Step 3M:

- 33 CFR 328 – Definitions of Waters of United States. *Available online:* <http://www.nap.usace.army.mil/Portals/39/docs/regulatory/regs/33cfr328.pdf>
- RGL 05-05 – Ordinary High Water Mark (OHWM) Identification. *Available online:* <http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-05.pdf>

Jurisdictional Determination Forms and Checklist Appendix

- Preliminary Jurisdictional Delineation Submittal Guidance (EPG 2013)
- Approved Jurisdictional Delineation Submittal Guidance (EPG 2013)
- Checklist for Submitting a Section 404 Jurisdictional Delineation (EPG 2013)
- Table 1 – Jurisdictional Determination Physical Characteristics & Other Information (EPG 2013)
- Corps Preliminary Jurisdictional Determination Form
- Corps labels for Jurisdictional Determinations

Flow Chart 3C-2: Jurisdictional Delineations for Construction Design/Planning Activities



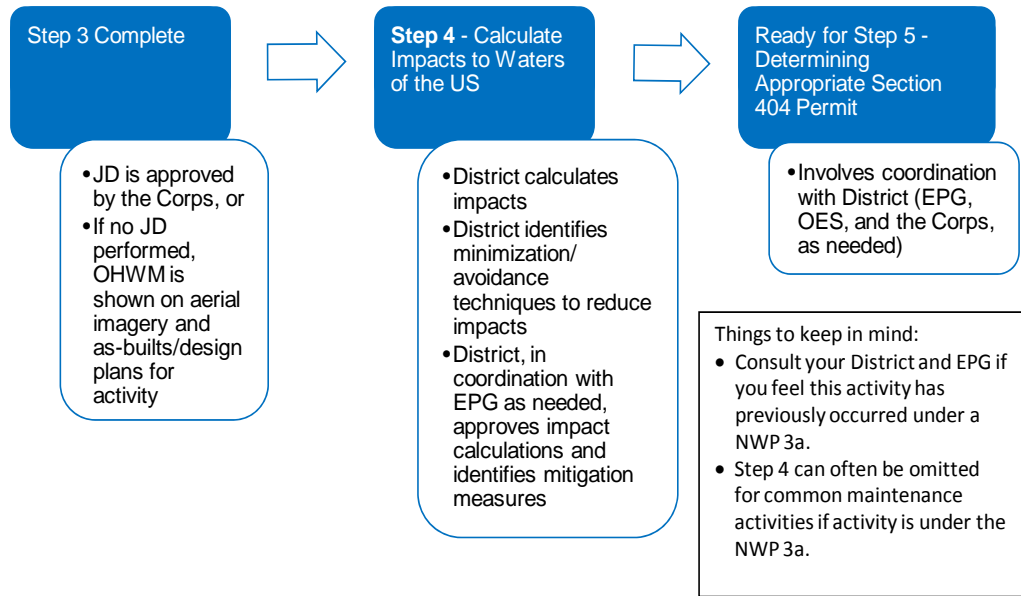
Additional Assistance Documents for Step 3C (Construction Design/Planning):

- Regulatory Guidance Letter (RGL 08-02) Jurisdictional Determinations (Corps 2008d). Available online: <http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl08-02.pdf>
- Final Summary Report: *Guidelines for Jurisdictional Determinations for Waters of the United States in the Arid Southwest* (Corps 2001). Available online: http://www.azdot.gov/highways/EPG/EPG_Common/PDF/Technical/Section_404/JD_Guidelines_for_JD_Arid_Southwest.pdf
- A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States (Corps 2008c). Available online:
 - http://www.spl.usace.army.mil/Portals/17/docs/regulatory/JD/RegionalSupplements/Ordinary_High_Watermark_Manual_Aug_2008.pdf
- 1987 Corps of Engineers Wetlands Delineation Manual. Available online:
 - <http://el.erdc.usace.army.mil/elpubs/pdf/wlman87.pdf>
- Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0; Corps 2008a). Available online:
 - http://www.usace.army.mil/missions/civilworks/regulatoryprogramandpermits/reg_supp.aspx
- Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0; Corps 2010a). Available online:
 - http://www.usace.army.mil/missions/civilworks/regulatoryprogramandpermits/reg_supp.aspx
- National Wetlands Plants List. Available online:
 - <http://rsgisias.crrel.usace.army.mil/apex/f?p=703:23:0::NO::>
- ADOT Environmental Services and Planning Section 404 Procedures website:
 - http://www.azdot.gov/highways/EPG/EPG_Common/Documents_Technical_Section_404_Procedures.asp

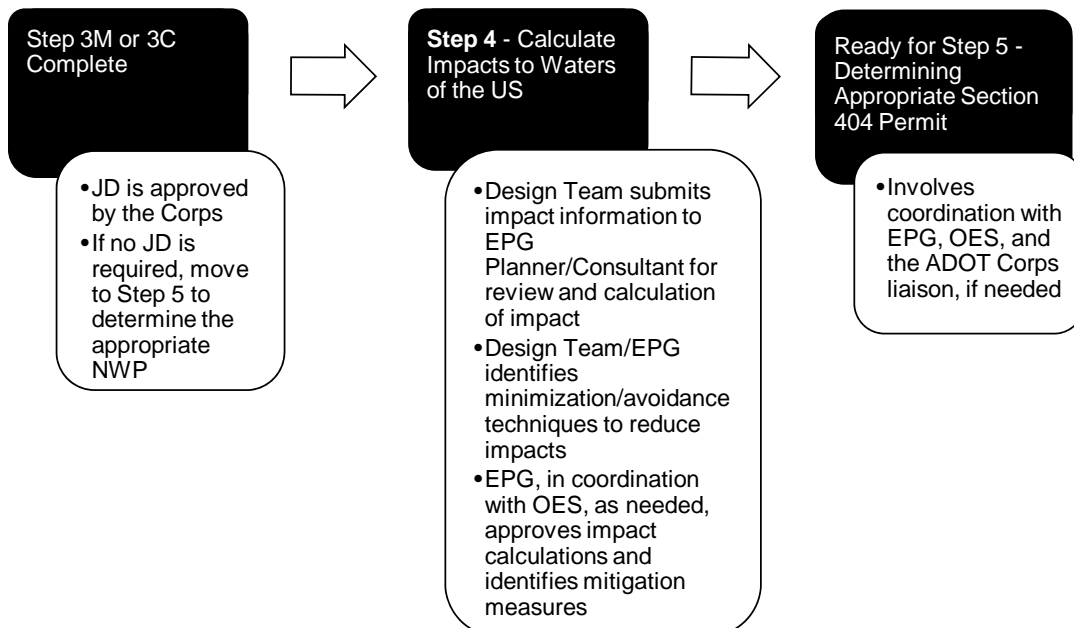
STEP 4: WHAT TYPE AND QUANTITY OF IMPACTS ON WATERS OF THE US WILL RESULT FROM THE ACTIVITY AND HOW WILL IMPACTS BE MITIGATED?

In the fourth step the activity proponent (e.g. EPG, environmental consultant, design team, District) will identify the anticipated type (permanent or temporary) and quantity of impacts on Waters of the US resulting from the construction/planning or maintenance activity, and evaluate how to avoid or minimize those impacts.

Flow Chart 4M-1: Step 4 for Maintenance Activities



Flow Chart 4C-1: Step 4 for Construction Design/Planning Projects



A. Definitions and Examples

Permanent losses of Waters of the US may result from:

- Placement of concrete to extend a culvert
- Channelization of a wash to reduce roadway flooding
- Placement of pavement to construct an at-grade roadway crossing
- Placement of riprap
- Moving material within a channel (for example, utilization of a backhoe to move material within a channel) for maintenance purposes
- Placement of bridge piers

In general, anticipated project activity impacts on Waters of the US can be categorized as permanent (long-term) losses or temporary (short-term) disturbances. The Corps defines the permanent loss of Waters of the US as “Waters of the US that are permanently adversely affected by filling, flooding, excavation, or drainage 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” (Corps 2012a).

Temporary disturbances of Waters of the US may result from:

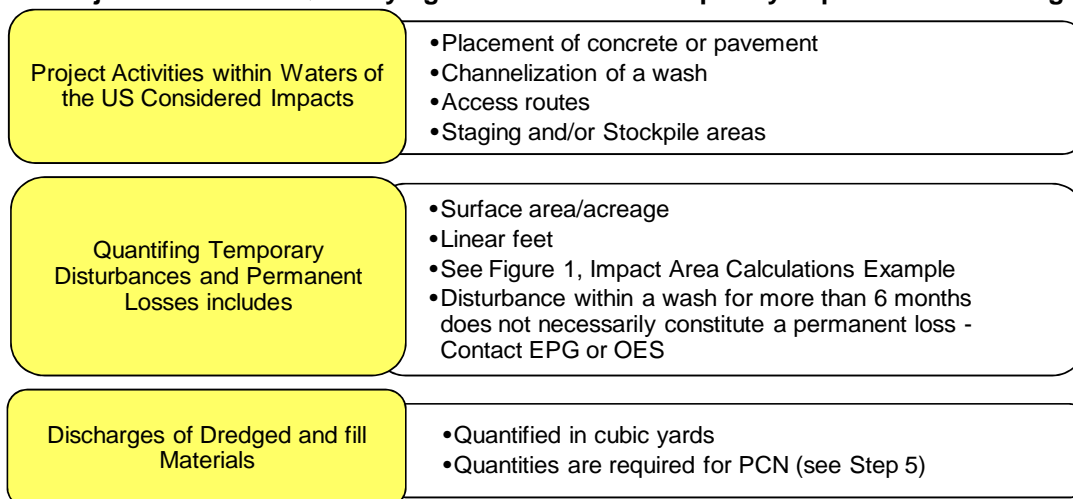
- Temporary stream diversion to accommodate construction or maintenance activities
- Installation and removal of a temporary culvert as part of a construction detour
- Construction of a temporary construction access road

Temporary disturbances of Waters of the US are typically attributes to project activity discharges that will be mitigated such that pre-construction conditions, including contours and elevations, and/or uses are restored.

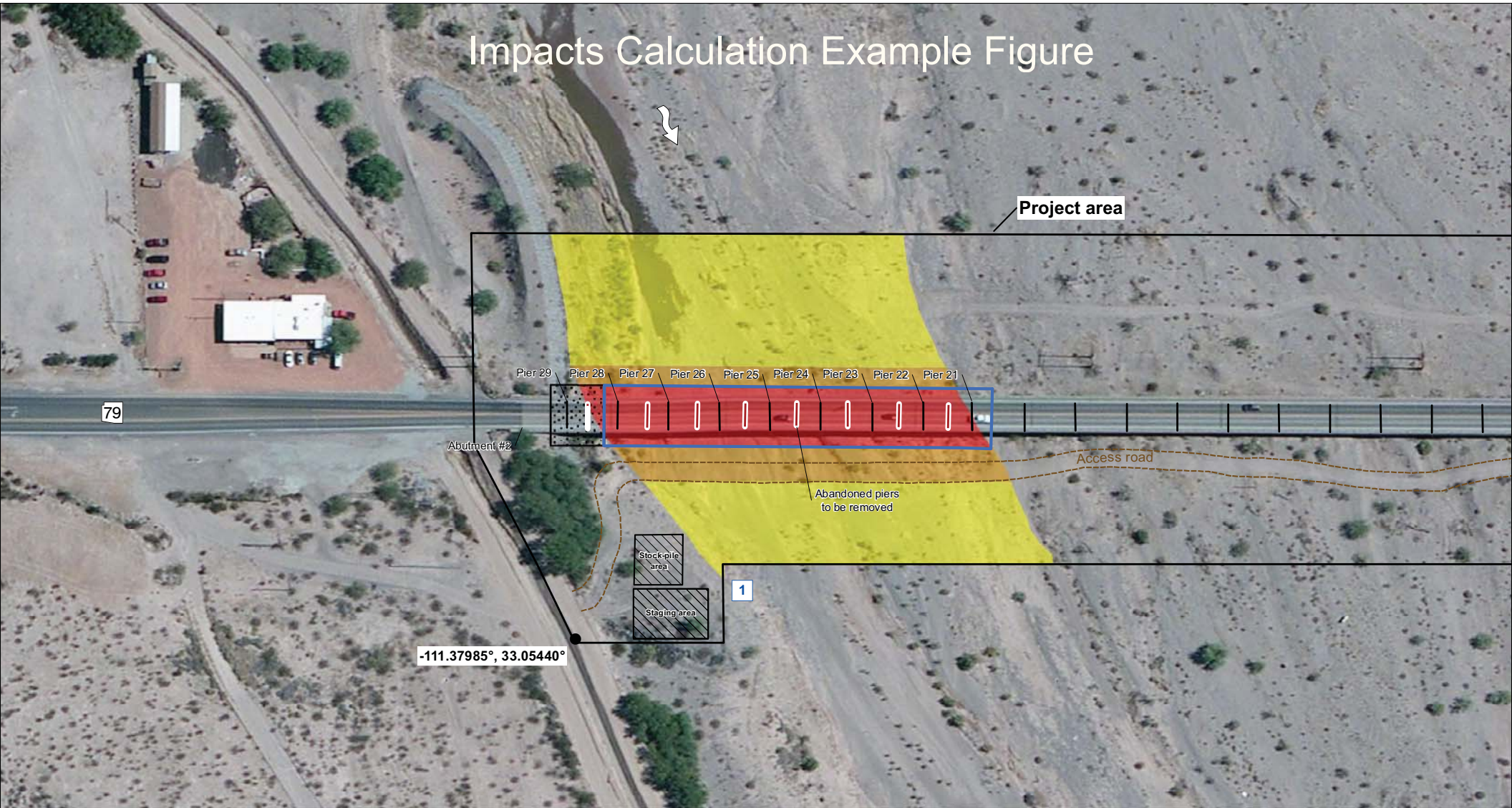
B. Methodology – Quantifying Impacts

The type and quantity of anticipated project activity impacts on Waters of the US are identified through review of design plans (Construction Design/Planning) or maintenance activity plans or as-builts (Maintenance). If maintenance activity plans or as-builts are unavailable for the activity, activity impacts must be documented in detail in coordination with the District and EPG. Close coordination between the Design Team and EPG /Consultant (Construction Design/Planning) or between the Maintenance Team, District, and EPG (Maintenance) is needed to ensure accurate and realistic quantification of impacts.

Project Activities – Quantifying Permanent and Temporary Impacts and Discharges

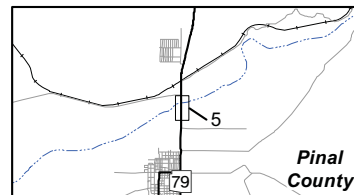


Impacts Calculation Example Figure



Aerial Date: ca. 2010

#	Wash number	Proposed concrete scour apron
↗	Flow direction	Proposed shotcrete slope
—	Existing pier	Staging/stock-pile area
—	Abandoned pier to be removed	Waters of the U.S. (Waters)
- - -	Access road	Temporary disturbance to Waters
		Permanent impacts of Waters



Section 404 Individual Permit SR79 Gila River Bridge 079 PN 135 H7891 01C		
Source: USGS 7.5' Quadrangle Florence Ariz. (1981) Township 4S, Range 9E, Section 25 UTM 1983 Zone 12N 464,609mE, 3,657,199mN Federal Project No. 079-A(206)A	Feet 0 100 1" = 100'	January 2012 Figure 5

C. Mitigation Measures

Mitigation measures are intended to ensure that adverse project activity effects to the aquatic environment are avoided or minimal (Corps 2012a). Mitigation measures can be implemented prior to, during, and/or following construction, depending on the measure.

Identifying mitigation measures and quantifying impacts:

- Construction Design/Planning - Typically the EPG Planner/ Consultant works with the Design Team.
- Maintenance activities - Typically the District works with EPG through a Work Order Request.

Mitigation measures are actions taken in sequence to avoid, minimize, or compensate for permanent losses or temporary disturbances of Waters of the US.

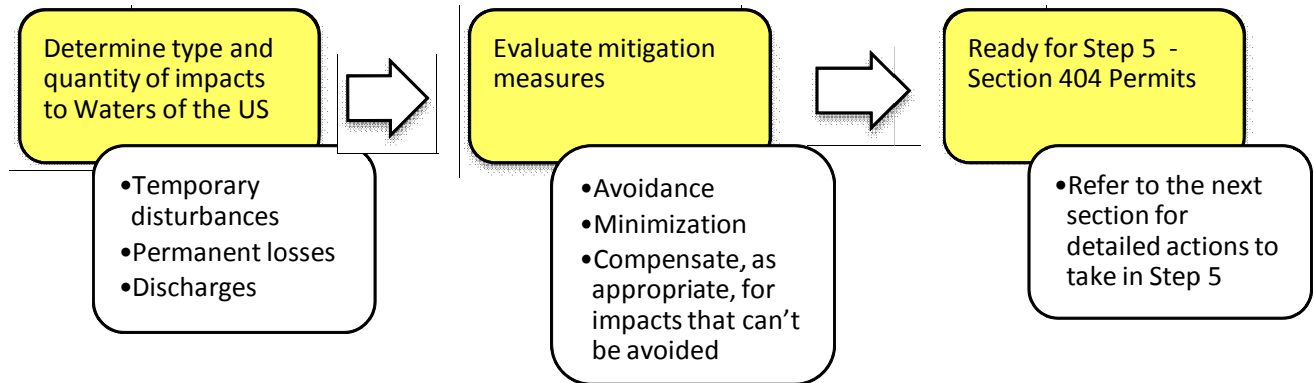
Example mitigation measures:

- Avoid – siting the activity away from Waters of the US
- Minimize – reducing the size of the activity
- Compensate – In-Lieu fee payment

The following are project specific examples of mitigation measures:

- Avoidance – Keeping roadway bank stabilization and equipment out of Waters of the US
- Minimize – Modify slope stabilization measures to reduce impacts to Waters of the US
- Compensation – Paying \$10,000 in in-lieu fee compensation for impacts to wetland from culvert extension

Flow Chart 4-1: Key Decision for Step 4



Key Documents for Step 4:

- Construction Design/Planning activities:
 - Design plans
 - JD approved by the Corps
- Maintenance activities:
 - Maintenance activity plans or as-builts
 - Delineated ordinary high water mark when jurisdiction is assumed
 - JD (if one was performed for larger or more complex maintenance activities)

Additional Assistance Documents for Step 4:

- Pre-Construction Notification – Nationwide/Individual Permit Submittal Guidance (*404 Permit and PCN Templates, Checklists, and Instructions Appendix*)

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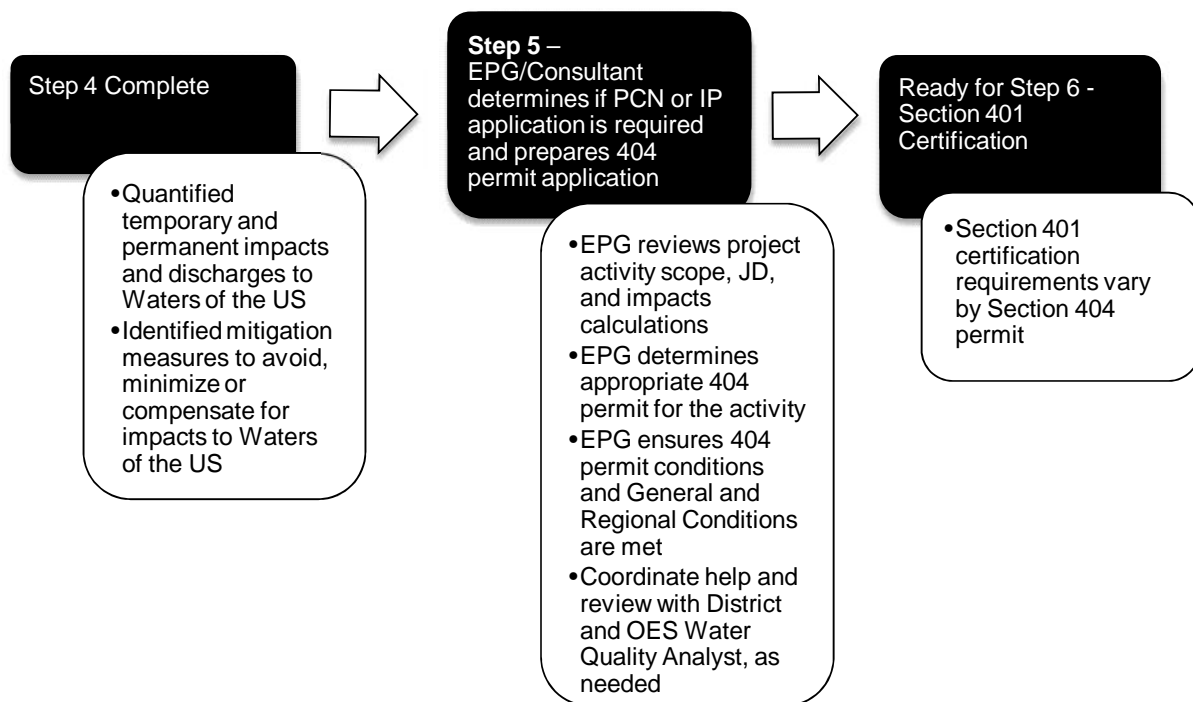
STEP 5 : WHAT TYPE OF SECTION 404 PERMIT IS NECESSARY FOR THE ACTIVITY?

The fifth step is to identify the type of Section 404 permit needed for the activity, determine if a notification or permit application is needed, and prepare the necessary documentation as identified. The two types of Section 404 permits are the NWP and IP. The NWP is intended to authorize activities with minimal impacts to Waters of the US and are designed to regulate such activities with little, if any, delay or paperwork. IPs are intended to authorize activities with greater than minimal impacts to Waters of the US. IPs are necessary if an activity and/or associated impacts does not qualify for any NWP.

Construction Design/Planning Activities Permit Determination Process

Construction design/planning activities can require a number of different types of Section 404 permits and documentation, depending on the scope of the activity. The following flowchart identifies the process and responsible parties involved with determining the correct Section 404 permit and documentation for ADOT construction design/planning activities.

Flow Chart 5C-1: Step 5 for Construction Design/Planning Activities.



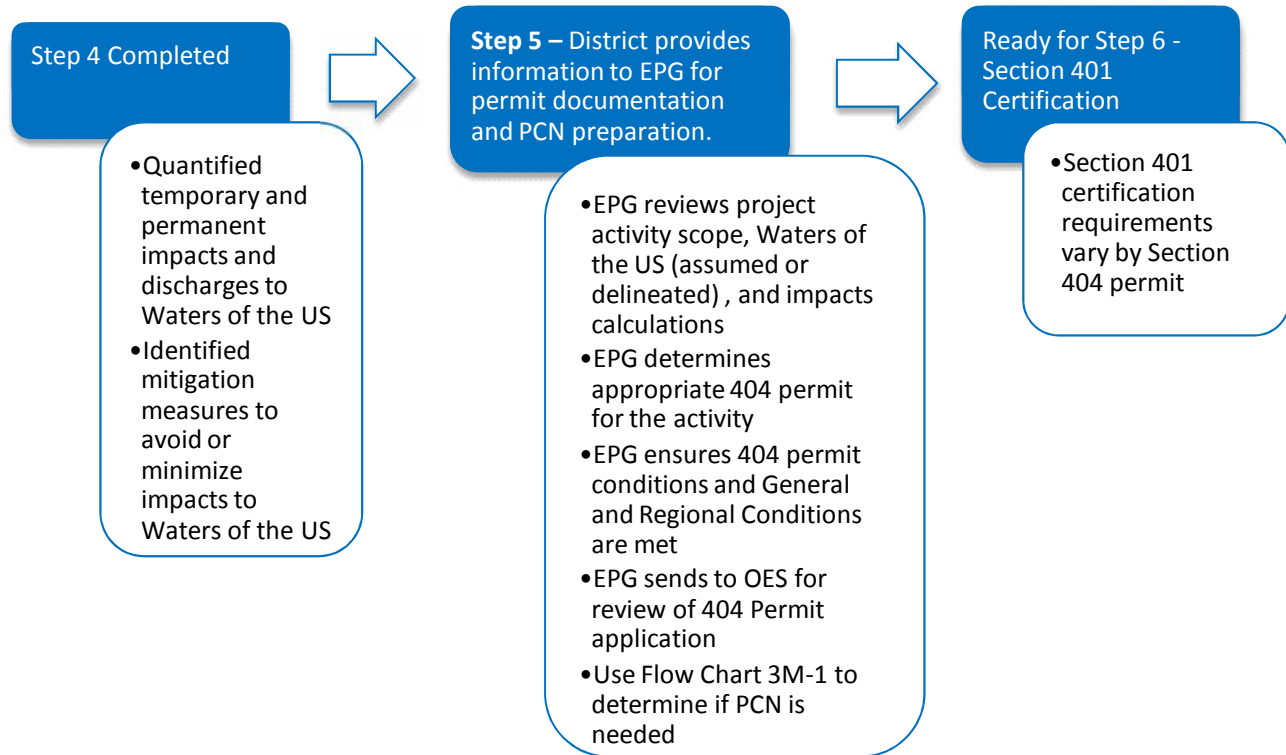
Things to remember for construction design/planning activities before proceeding through Step 5:

- Has the Corps approved the JD?
- Are the impacts temporary and/or permanent discharges into Waters of the US?
- Have the impacts to Waters of the US been quantified?

Maintenance Activities Permit Determination Process

Maintenance activities typically occur under NWP 3a and 14, depending on the scope of the activity. The following flow chart identifies the standard process and responsible parties involved with determining the correct Section 404 permit and documentation for ADOT maintenance activities.

Flow Chart 5M-1: Step 5 for Maintenance Activities



Things to Remember for Maintenance Activities:

- Are the impacts to Waters of the US temporary, permanent and/or discharges?
- Have the impacts to Waters of the US been quantified?
- For the majority of ADOT maintenance activities, NWP 3a or 14 is used.
- A decision chart for commonly used NWPs is provided later in this section.
- Coordinate with the District, and EPG as needed, to ensure that a given NWP is acceptable.

A. Nationwide Permits

The Corps has developed and periodically updates (approximately every five years) a set of NWPs intended to authorize activities with minimal adverse environmental impacts and are designed to regulate such activities with little, if any, delay or paperwork. As of March 2012, a total of 50 NWPs are available for use (Corps 2012a). Each NWP is classified by a permit number and a type of activity within Waters of

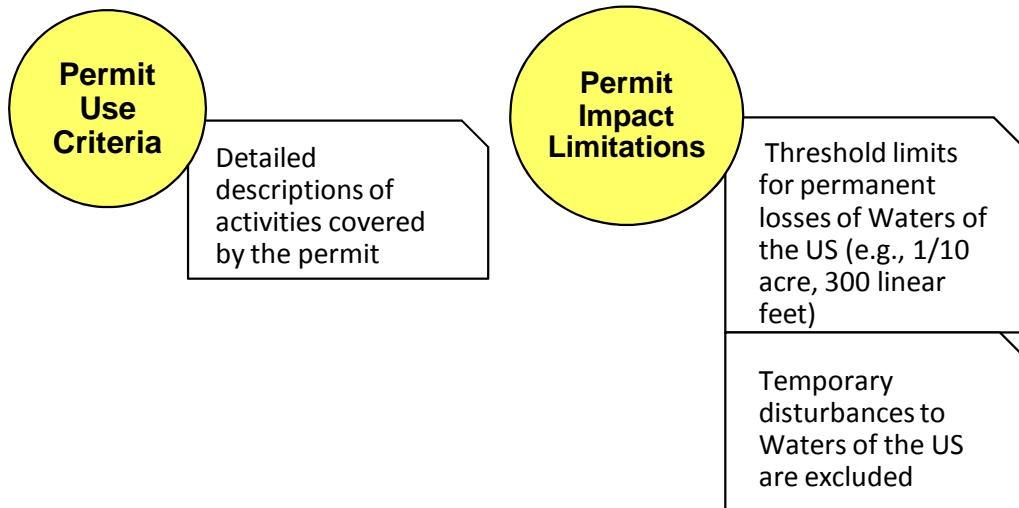
NWPs are intended to authorize activities with minimal adverse environmental impacts!

the US (Corps 2012a and 2012b). An activity may qualify for one or more NWPs. In some cases, as activity can be covered without notifying the Corps, provided the decision is included in the project files.

1. Nationwide Permit Use Criteria and Impact Limitations

The Corps has established use criteria and impact limitations for each NWP.

“The acreage of loss of Waters of the US is a threshold measurement of the impact to jurisdictional waters for determining whether an activity may qualify for a [NWP];... Waters of the US 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” (Corps 2012a).



Maintenance Activities:

- Common ADOT maintenance activities in Waters of the US often qualify for either NWP 3 or 14.
- Please see Flow Chart 5M-2 on the following page for a list of common maintenance activities under each of these two permits.
- The District should coordinate with EPG for assistance through a Work Order Request.

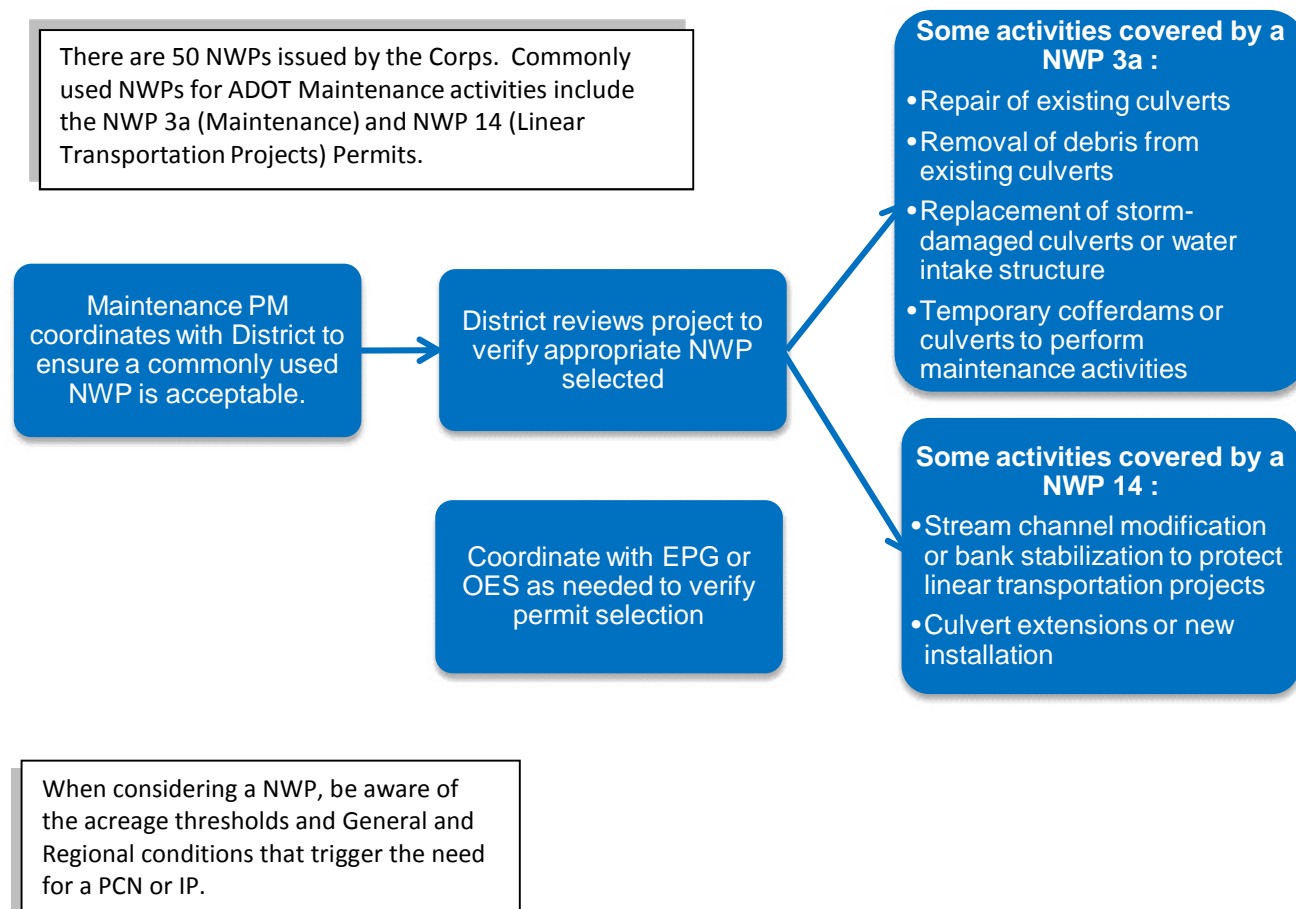
Construction Design/Planning Activities:

- Common activities may be regulated under NWP 14 or may require the use of a different NWP.
- Coordinate with the EPG / Consultant or OES for help in determining the appropriate permit for the activity.

It is important to evaluate the activity against all use criteria, impact limitations, permit application requirements, and conditions associated with a given NWP to confirm applicability. Temporary disturbances of Waters of the US are provided to the Corps in permit applications (if a PCN or IP is required), but are not factored into NWP impact limitations.

The *Nationwide Permits* Appendix includes a table (*A Summary of 2012 Nationwide Permits* [Corps 2012b]) developed by the Corps listing key use criteria and impact limitations for each NWP.

Flow Chart 5M-2: Nationwide Permits for Common ADOT Maintenance Activities



2. Conditions

Nationwide Permit General Conditions

The Corps has developed and periodically updates (approximately every five years) a set of NWP General Conditions, including General Conditions 18, 20, and 21 (refer to chart of page Step 5-5). As of March 2012, a total of **31 General Conditions** are in effect (Corps 2012a).

Nationwide Permit Regional Conditions

Like the NWP general conditions, the Corps periodically reviews and develops a set of NWP Regional Conditions. As of March 2012, six of the regional conditions in effect apply to activities in Arizona (Corps 2012a). NWPs 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, 39-46, or 48-52 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45.

Section 401 Certification Requirements

As detailed in Step 6, Section 401 certification requirements vary by NWP. Each NWP specifies Section 401 certification status (certified, conditional, or individual) based on the types of Waters of the US (tribal, unique, impaired, or other) to be impacted by an activity.

For a given NWP, activities must be evaluated for compliance with ALL applicable NWP General and Regional conditions and Section 401 certification requirements.

Nationwide Permit General Conditions Requiring Pre-Construction Notification

If the activity has the potential to affect federally listed species or designated critical habitat (General Condition 18).

- Construction Design/Planning Activities: EPG Planner/Consultant must be contacted to provide a review of federally listed species and critical habitat.
- Maintenance Activities: District coordinates with EPG through the Work Order process for a review of federally listed species and critical habitat.

If the activity has the potential to affect historical properties eligible for listing on the National Register of Historic Places (General Conditions 20 and 21).

- The EPG/Consultant, in coordination with the ADOT Project Manager, must coordinate with the ADOT Historic Preservation Team.
- Only the ADOT Historic Preservation Team can determine the "potential to affect historical properties."

All Section 404 Permits are required to adhere with the General and Regional Conditions.

3. Notification Requirements

All activities resulting in discharge of dredged or fill material into Waters of the US require compliance with Section 404 and Section 401 of CWA. However, some activities that qualify for a NWP do not require PCN to the Corps based on the permit conditions.

PCN requirements are indicated by specific conditions as identified in each NWP, General Conditions, and Regional Conditions.

For example, the specific limits for NWP 14 – Linear Transportation Projects require notification to the Corps if:

- The discharge of dredged or fill material causes the permanent loss of greater than 1/10 acre of Waters of the US.
- The activity would involve the discharge of dredged or fill material in special aquatic site, including wetlands.
- The activity would involve the discharge of dredged or fill material into a perennial wash.

In Arizona, Regional Conditions require notification for all activities that would discharge to a perennial watercourse or waterbody.

An IP is required for activities that result in impacts to a special aquatic site (e.g., wetlands).

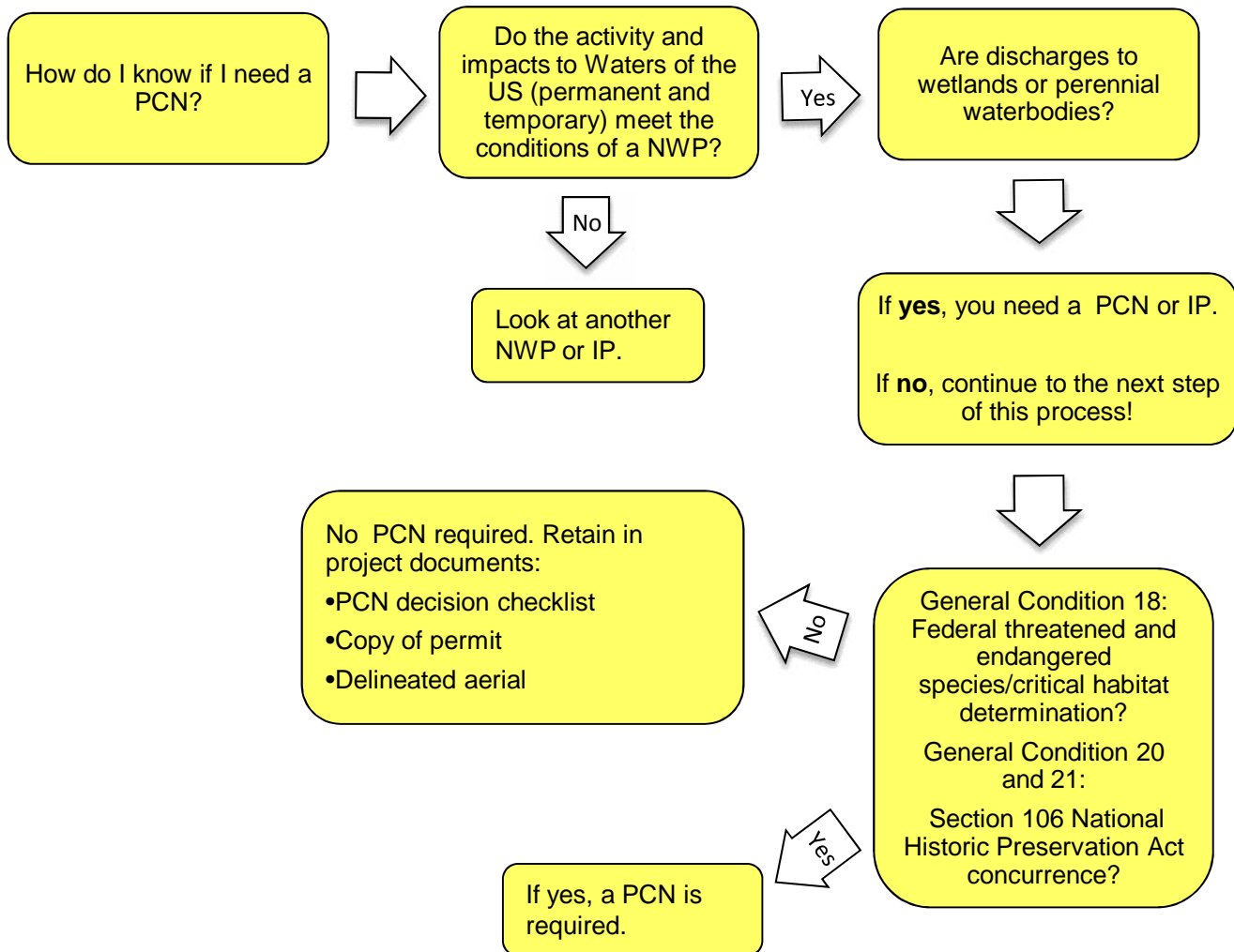
Another example would be the permit conditions for “NWP 3a – Maintenance” do not require notification to the Corps. However, the activity must be checked for compliance with all General and Regional Conditions because some General and Regional Conditions require PCN.

If PCN is required, a NWP PCN submittal is prepared in accordance with General Condition #31 (see *Special Public Notice – Nationwide Permits for Arizona* [Corps 2012a]).

4. ADOT Internal Documentation Process for Compliance with Permit Limits, Conditions, and PCN Decision

ADOT has developed a *Checklist for Section 404 Nationwide Permit Limits and Conditions Compliance and Pre-Construction Notification Decision Process* to document the decision process undertaken to determine whether a given activity complies with certain General and Regional Conditions and if it will require PCN. This checklist must be completed and included in project files and is provided in the *404 Permit and Pre-Construction Notification Templates, Checklists, and Instructions* Appendix.

Flow Chart 5-1: ADOT Permit Limits and Conditions Compliance and PCN Decision Documentation



If the activity does not require a PCN:

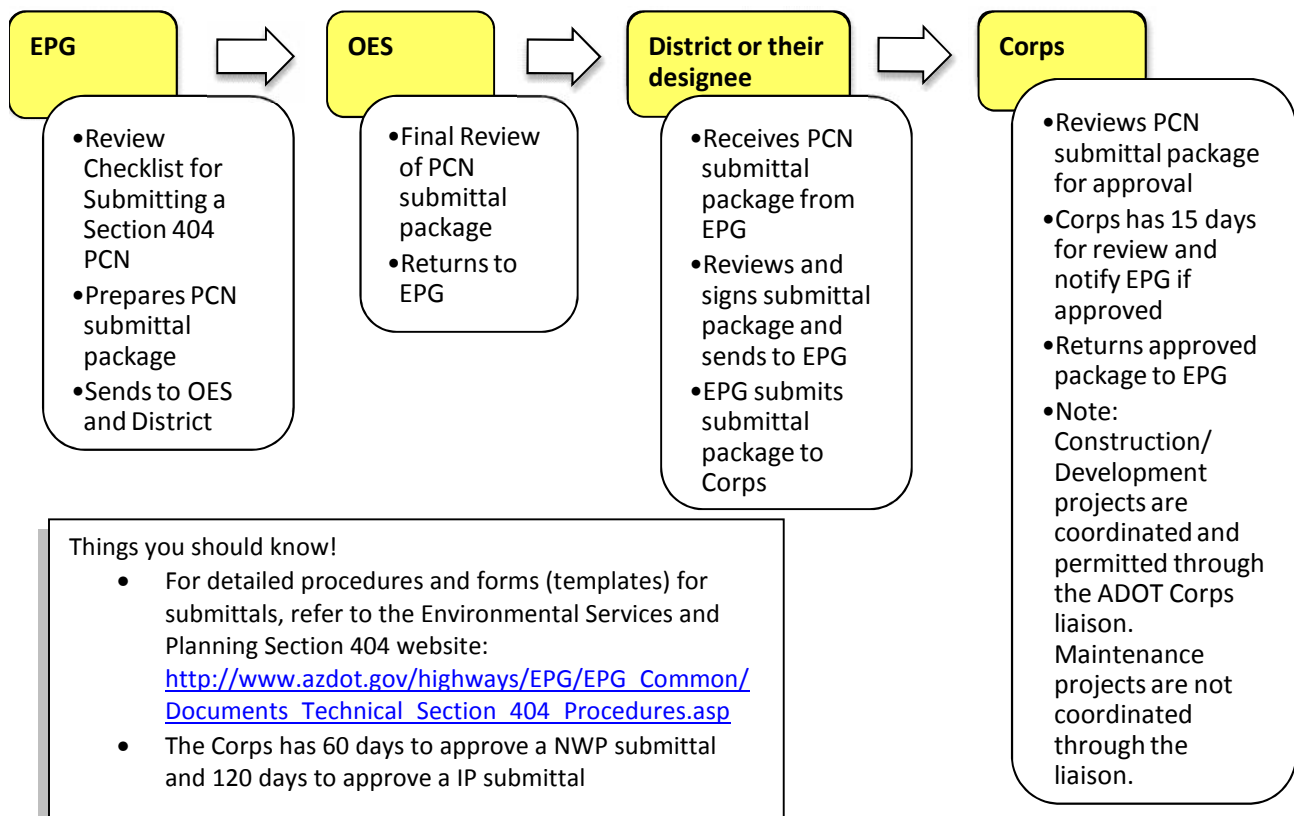
- You must complete a *Checklist for Section 404 Nationwide Permit Limits and Conditions Compliance and Pre-Construction Notification Decision Process* and include in project files.
- You must continue to Step 6 to evaluate for Section 401 certification compliance.
- Following completion of Step 6, the completed and approved *Checklist for Section 404 NWP Notification Decision Process* should be attached to a copy of the selected NWP and final JD (or delineated ordinary high water mark if jurisdiction was assumed).
 - This becomes the complete Section 404 Permit Package.

If the activity does require a PCN, you must continue reading for the requirements of a Pre-Construction Notification submittal.

5. Components of a Nationwide Permit Pre-construction Notification Submittal

If an activity requires Corps Notification, a PCN must be submitted to the Corps. EPG has provided *Pre-Construction Notification – Nationwide Permit/Individual Permit Submittal Guidance* and a *Checklist for Submitting a Section 404 Pre-Construction Notification* that provides a complete list of all components that must be included in PCN submittals for ADOT activities. These documents were developed in accordance with NWP General Condition 31 and in coordination with the Corps and are provided in the *404 Permit and Pre-Construction Notification Templates, Checklists, and Instructions Appendix*.

Flow Chart 5-2: Pre-Construction Notification Process



As noted on the checklist, key components of a PCN submittal include (Refer to the *Checklist for Submitting a Section 404 Notification* in the *404 Permit and Pre-Construction Notification Templates, Checklists, and Instructions* Appendix for the complete list of all necessary PCN submittal components):

- Application for Department of the Army Permit (ENG Form 4345 [Corps 2012 c]; provided in *Nationwide Permits* Appendix)
- Table 1 – Wash Summary (EPG; provided in *Jurisdictional Delineation Forms and Checklists* Appendix)
- General Conditions compliance

Table 1 – Wash Summary is coded to identify information to be included in NWP PCN submittals, IP applications, and information necessary for jurisdictional delineations. The activity proponent should modify Table 1 as appropriate when preparing a PCN submittal.

A completed *Checklist for Submitting a Section 404 Pre-Construction Notification* must be provided to EPG with the PCN submittal.

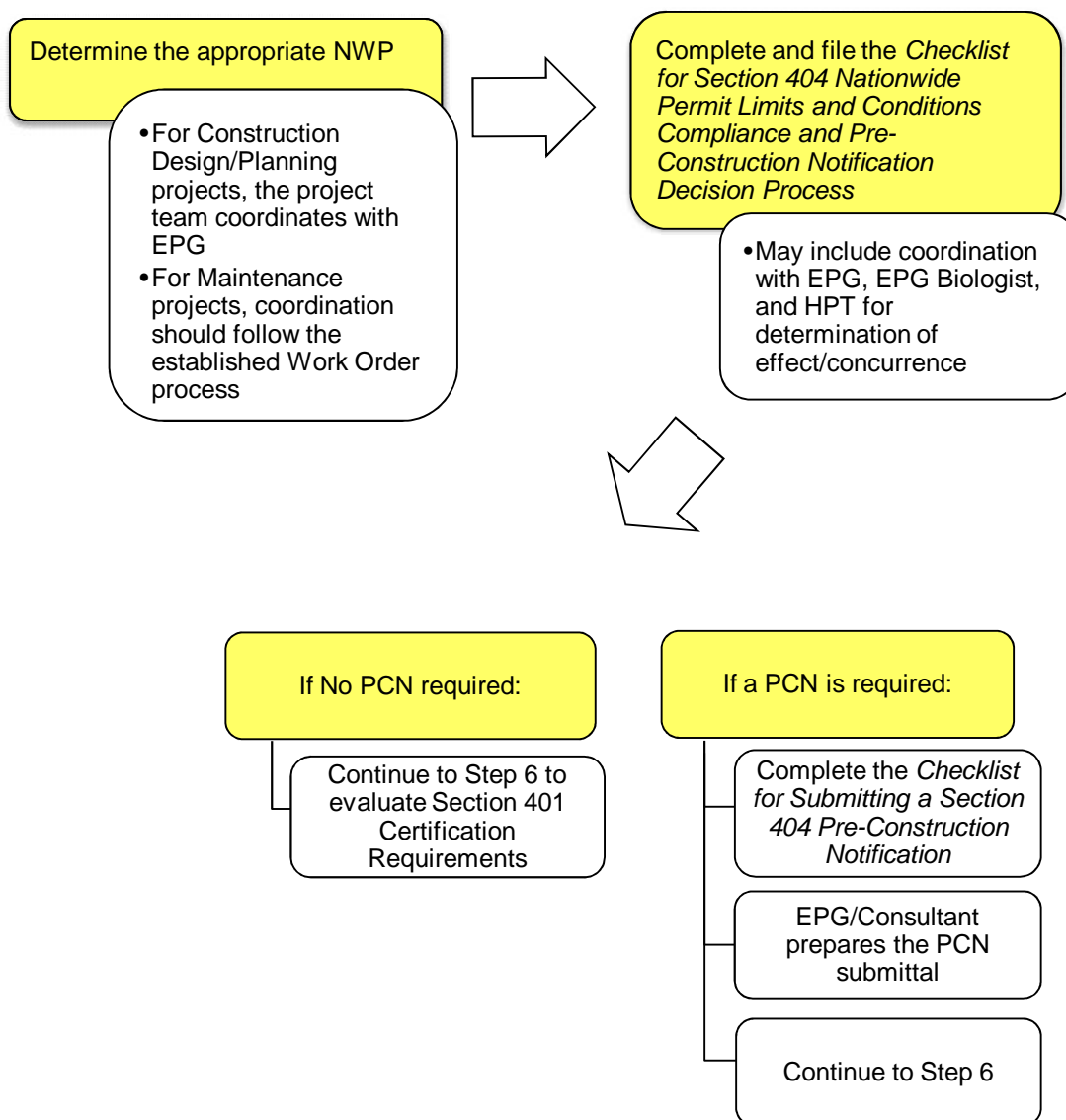
Step-by-step instructions developed by the Corps for completing ENG Form 4345 (Corps 2012d) are provided in the *404 Permit and Pre-Construction Notification Templates, Checklists, and Instructions* Appendix.

All mitigation measures and conditions (Block 23 of ENG Form 4345) applicable to an activity must be reviewed by Design personnel and District staff and will be included in the environmental clearance and/or project specifications, as appropriate.

It is important to note that Block 25 of ENG Form 4345, pertaining to addresses of adjoining property owners and lessees, is not required for NWP PCN submittals; this information is only required for IP applications. For NWP PCN submittals, this block should state “not applicable.”

Note: For maintenance activities the District coordinates with EPG through the Work Order process!

Flow Chart 5-3: Key Actions for Nationwide Permits



Key Documents for Nationwide Permits:

Special Public Notice – *Nationwide Permits for Arizona* (Corps 2012a). Available online: <http://www.azdeq.gov/envIRON/water/permits/download/nwp.pdf>

Nationwide Permits Appendix:

- A Summary of 2012 Nationwide Permits (Corps 2012b)

404 Permit and PCN Templates, Checklists, and Instructions Appendix:

- Checklist for Section 404 Nationwide Permit Limits and Conditions Compliance and Pre-Construction Notification Decision Process (EPG)
- Checklist for Submitting a Section 404 Pre-Construction Notification (PCN) (EPG)
- Pre-Construction Notification – NWP/IP Submittal Guidance (EPG)
- Application for Department of the Army Permit ENG Form 4345 (Corps 2012c)
- Instructions for Preparing a Department of the Army Permit Application (Corps 2012d)
- Pre-Construction Notification/ Individual Permit Cover Letter Template (EPG)

B. Individual Permits

If an activity will result in the discharge of dredged or fill material into Waters of the US, but does not qualify for any NWP (i.e., would not comply with one or more criteria/limitations or conditions), an IP application shall be prepared. IPs are intended to authorize activities with greater than minimal adverse environmental impacts.

All IPs require completion of a permit application.

IPs for ADOT activities must also follow tasks and guidelines set forth by the following Memorandum of Agreement (MOA) and Section 404(b)(1) Guidelines. These tasks and guidelines in part define the components of an IP application for ADOT activities.

1. Federal Highway Administration Funded Transportation Activities

If a transportation activity will use Federal Highway Administration (FHWA) funding (in whole or part) and requires an IP, the *Section 404 of the Clean Water Act* (NEPA/404 MOA) must be implemented (FHWA 2012). The intent of the NEPA/404 MOA is to integrate NEPA and Section 404.

The NEPA/404 MOA identifies specific tasks for applicable agencies to ensure integration of the two processes. The NEPA/404 MOA also includes a list of jurisdictional delineation components and a list of IP application components. These components are also listed in EPG's *Jurisdictional Delineation Submittal Guidance (Jurisdictional Delineation Forms and Checklists Appendix)* and *Pre-Construction Notification – Nationwide Permit/Individual Permit Submittal Guidance* (provided in *404 Permit and Pre-Construction Notification Templates, Checklists, and Instructions Appendix*). The NEPA/404 MOA also includes a copy of a Notification of Commencement and Completion of Work form, typically provided to the ADOT activity proponent by EPG.

2. Section 404(b)(1) Guidelines

The Section 404(b)(1) *Guidelines for Specification of Disposal Sites for Dredged or Fill Material* (40 CFR 230; Corps 2010b) were developed by the Corps and EPA to assist in implementation of the CWA, and state that

“...dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probably impacts of other activities affecting the ecosystems of concern” (40 CFR 230).

The Section 404(b)(1) guidelines (provided in the *Regulations Appendix*) outline the Corps review standards for IP applications, above and beyond NWP review standards.

3. Components of an Individual Permit Application

Components Common to Nationwide Preconstruction Notification Submittals and Individual Permit Applications:

IP applications for ADOT activities must include all pertinent components identified in the EPG *Pre-Construction Notification – NWP/IP Submittal Guidance*. The NWP/IP Submittal Guidance is provided in the *404 Permit and PCN Templates, Checklists, and Instructions Appendix*.

Additional Individual Permit Application Components – Draft Decision Document:

Before approving an IP application, the Corps must demonstrate that the activity will comply with all provisions of the Section 404(b)(1) guidelines, as well as NEPA and other applicable federal laws and policies. To demonstrate compliance with the Section 404(b)(1) guidelines, as well as NEPA and other applicable federal laws and policies, a Decision Document is prepared as part of the IP application. The Decision Document constitutes the following:

- Environmental Assessment
 - Prepared to meet NEPA requirements and demonstrate compliance with other applicable federal regulations.
- NEPA/404 MOA Compliance
 - For federally funded transportation activities, documentation of compliance with the NEPA/404 MOA must be provided.
- Review and Compliance Determination
 - Demonstrates compliance with all provisions of the Section 404(b)(1) guidelines.
- Alternatives Analysis
 - Describes the activity sites and designs considered during the planning process, and explains why the activity area and design is the least environmentally damaging and practicable means of satisfying the purpose of the activity.
- Mitigation Plan (as applicable)
 - Describes all mitigation measures to avoid or minimize impacts to Waters of the US.
- Statement of Findings
 - Summarizes compliance with other applicable federal regulations and results of public notice and comment process.
- Public Interest Review
 - Demonstrates that the activity is not contrary to the public interest. It addresses the public and private need for the activity, anticipated impacts on public and private uses of the activity area, etc.
- Finding of No Significant Impact
 - Demonstrates that an Environmental Impact Statement is not necessary for the activity.

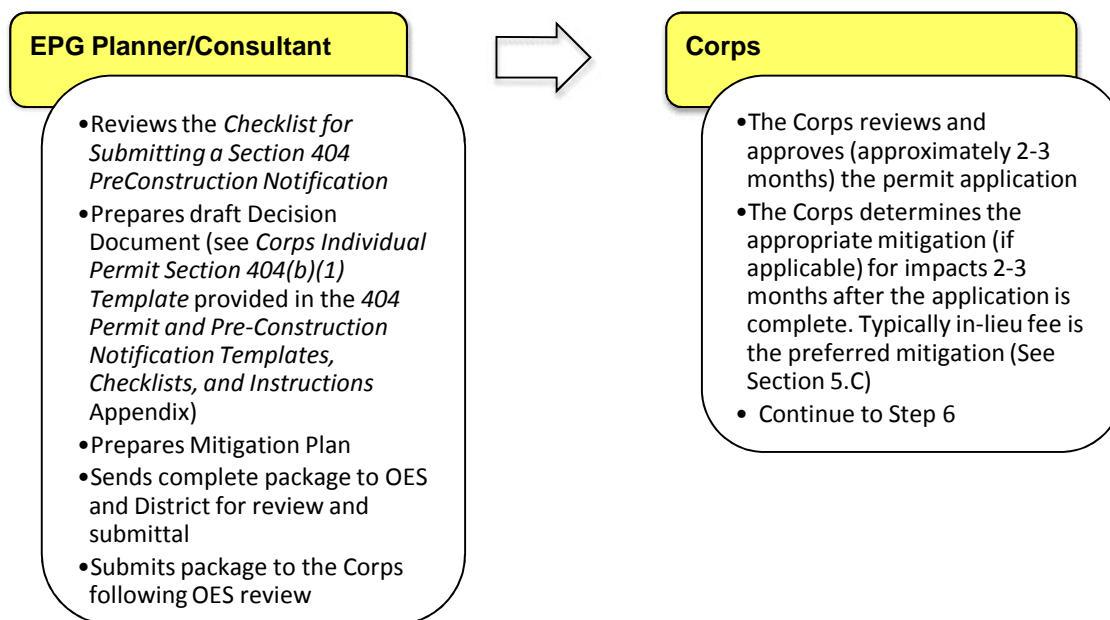
The Corps cannot authorize an activity if a practicable alternative would result in less adverse impacts on the aquatic ecosystem, provided that the alternative would not result in other significant adverse environmental consequences.

For most ADOT activities, a draft Decision Document is prepared by the ADOT EPG Planner/Consultant using the Corps' preferred format (*IP Section 404(b)(1) Template [EPG]*, provided in the *404 Permit and Pre-Construction Notification Templates, Checklists, and Instructions Appendix*) and encompasses the components listed above. The document is revised and finalized by the Corps. During review, the Corps will provide input on proposed mitigation measures, which may include compensatory mitigation (in-lieu fees; see **Step 5.C.** for additional information on in-lieu fee mitigation).

All mitigation measures and conditions applicable to an activity must be reviewed by Design personnel and District staff and will be included in the environmental clearance and/or project specifications as appropriate.

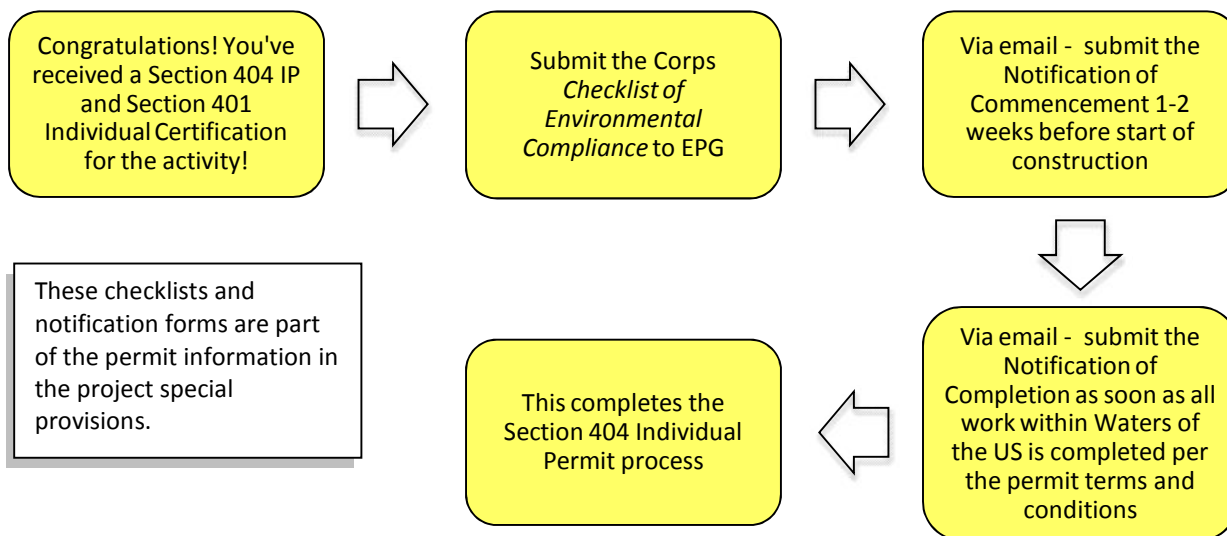
A completed *Checklist for Submitting a Section 404 Pre-Construction Notification* must be provided to EPG with the IP application (see *404 Permit and PCN Templates, Checklists, and Instructions Appendix*). EPG staff use the checklist when reviewing IP applications. The IP application is ultimately forwarded by EPG to the Corps for their consideration and approval.

Flow Chart 5-4: Individual Permit Submittal Process



After you have gone through the Section 404 process, the following actions remain to ensure use of the Section 404 IP in compliance with Corps regulations:

Flow Chart 5-5: Steps to take after receiving the Individual Permit and Section 401 Individual Certification



Key Documents for Individual Permits:

404 Permit and PCN Templates, Checklists, and Instructions Appendix

- Pre-Construction Notification – NWP/IP Submittal Guidance (EPG 2013).
- Checklist for Submitting a Section 404 Pre-Construction Notification (EPG 2013)
- Corps Individual Permit Section 404(b)(1) Template (EPG 2013)
- Pre-Construction Notification/ Individual Permit Cover Letter Template (EPG 2013)

Additional Assistance Documents for Individual Permits:

Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR 230; Corps 2010b). Available online:

<http://www.wetlands.com/regs/tlpge03g.htm>

C. In-Lieu Fee Mitigation

In-lieu fee mitigation is the preferred method for ADOT activities requiring compensatory mitigation. In-lieu fee mitigation is a type of compensatory mitigation in which the permittee provides funds to an in-lieu fee sponsor for off-site compensation.

For project activities that will be authorized under Section 404, compensatory mitigation is not considered until all appropriate and practicable steps have been taken to first avoid and then minimize adverse impacts to the aquatic ecosystem (Corps 2008b, EPA 1990). Compensatory mitigation is essential for all activities in which the impacts to the aquatic resources have been avoided and minimized to the maximum extent practicable, but would still result in unavoidable adverse effects (Corps 2013).

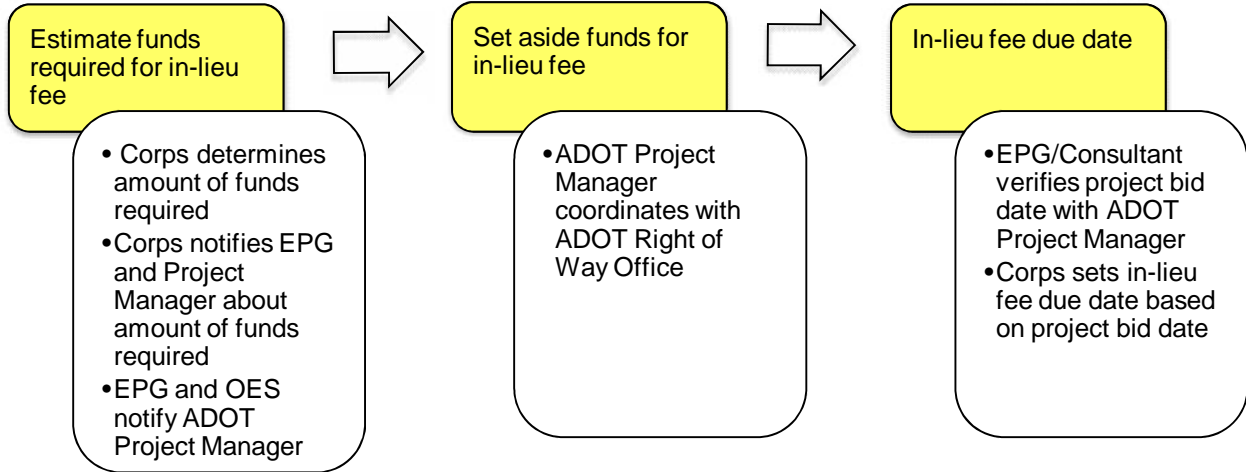
The Corps has developed numerous guidance documents on identification of applicable and practicable mitigation measures as well as information on compensatory mitigation process for federal aid highway projects. Online links to these documents are provided at the end of this section.

In-lieu fee mitigation is not typically used unless an IP is required for an activity.

The Corps has the discretion to approve or reject the mitigation measures identified by an activity proponent, and can identify additional activity-specific mitigation measures that must be implemented in order for a permit to be valid. After approval by the Corps, mitigation measures identified for the activity are included in the environmental clearance for the project specifications.

ADOT has a process by which in-lieu fees are set aside for activities requiring them. This process was developed to assist the ADOT Project Managers manage budget for in-lieu fees for activities and to facilitate coordination between the ADOT groups involved in the in-lieu fee process.

Flow Chart 5-6: ADOT In-Lieu Fee Fund Process



Additional Assistance Documents for In-Lieu Fee Mitigation:

- Compensatory Mitigation for Losses of Aquatic Resources, Final Rule (Corps 2008b). Available online:
 - http://water.epa.gov/lawsregs/guidance/wetlands/upload/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf
- RGL 08-03 Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources (Corps 2008e). Available online:
 - http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl08_03.pdf
- Federal Guidance on the Use of the TEA-21 Preference for Mitigation Banking to fulfill Mitigation Requirements under Section 404 of the Clean Water Act (EPA, Corps, and FHWA 2003). Available online:
 - http://water.epa.gov/lawsregs/guidance/wetlands/upload/2003_07_11_wetlands_TEA-21Guidance.pdf

STEP 6: WHAT TYPE OF SECTION 401 CERTIFICATION IS ESSENTIAL FOR THE ACTIVITY?

The sixth step is to identify the type of Section 401 water quality certification necessary for the activity, and prepare a certification application if needed. Section 401 certification requirements vary by NWP and this information is needed for NWP PCN and IP applications (Step 5). Section 404 permits (Nationwide or Individual) will not be issued by the Corps without a Section 401 certification.

A. Definitions

Section 401 of CWA states that

“Any applicant for a [f]ederal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into...[Waters of the US], shall provide the licensing or permitting agency a certification from the [s]tate in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the...waters [of the US] at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title” (pertaining to effluent standards [33 U.S. Code 1341])

Section 401 jurisdiction is primarily determined by the geographic location of activities:

- Tribal Lands – EPA is responsible for issuing 401 certification except where EPA has delegated 401 certification authority¹
- Non-Tribal Lands – ADEQ is the lead agency responsible for issuing 401 certification on lands that are not part of a federally recognized Indian Reservation

As part of Section 401 certification, discharges to several types of surface waters are considered.

- 303(d)-listed Impaired Waters – surface waters that do not meet surface water quality standards and therefore receive special consideration. The current 303(d) list of Impaired Waters is available on the ADEQ website (ADEQ 2008): (<http://www.azdeq.gov/environ/water/assessment/assess.html>)
- Outstanding Arizona Waters (OAWs) – surface waters classified as outstanding due to their exceptional water quality. *Note: these were formerly referred to as “Unique Waters.”* The current list of OAW is also available on the ADEQ website (ADEQ 2013): (<http://www.azdeq.gov/environ/water/permits/download/oaw.pdf>)

B. Certification for Activities that Qualify for a Section 404 Nationwide Permit

There are two types of Section 401 certifications: conditional and individual. As discussed in earlier sections, Section 401 certification requirements vary by NWP. Refer to the *ADEQ Clean Water Act 401 Certification for Nationwide Permits* at <http://www.azdeq.gov/environ/water/permits/cwa401.html>

¹ To date, the White Mountain Apache, Hopi, Hualapai, and Navajo Indian Reservations are the only Arizona Indian Reservations that have been granted authority by EPA over Section 401 compliance for Waters of the US within its Reservation boundaries.

Certification requirements example: NWP 14, Linear Transportation Projects, carries the following Section 401 certification requirements in Arizona:

- 303(d) Impaired Waters — Individual Certification
- OAWs — Individual Certification
- Lakes — Individual Certification
- Other Waters — Conditional Certification

1. Conditional Certification

Conditionally certified projects do not require notification or submittal of a Section 401 application. Activity impacts may be conditionally certified under pre-determined limits established by CWA Section 404 NWPs.

Continuing with the NWP 14 example, if a linear transportation activity was located on non-tribal land, activities were located in an ephemeral

stream (“other waters”) that was not listed as either a 303(d) Impaired Water or an OAW, and the activity met all NWP 14 limits, conditions, and applicable General and Regional conditions, the activity would be Conditionally Certified under Section 401. No certification application would be necessary, but the activity proponent would be needed to comply with the 30 Section 401 General Conditions (defined and enforced by ADEQ), applicable to the activity scope, in order for the Conditional Certification to be valid.

The Section 401 General Conditions are listed in *ADEQ Clean Water Act 401 Certification for Nationwide Permits (provided in 401 Forms and Guidance Appendix)* and at the end of the *Special Public Notice – Nationwide Permits for Arizona in the Nationwide Permits Appendix.*)

2. Individual Certification

If the Section 401 General Conditions cannot be met, an Individual Certification would be necessary.

Continuing with the example of NWP 14, if the linear transportation activity was located on a Reservation other than White Mountain Apache, Hopi, Hualapai, or Navajo Nation, or would impact a Section 303(d) water or Unique Arizona Water, a Section 401 Individual Certification would be needed for the activity.

An Individual 401 Certification is required if an activity has the potential to impact any designated OAW or 303(d) Impaired Water.

- On tribal lands (other than White Mountain Apache, Hopi, Hualapai Reservations, or Navajo Nation) an Individual Certification is obtained through application to EPA (application components defined in later sections) and activity-specific Section 401 conditions are defined and enforced by EPA
- On non-tribal lands—an Individual Certification is obtained through application to ADEQ (application components defined in later sections) and activity-specific Section 401 conditions are defined and enforced by ADEQ

C. Section 401 Certification for Activities that Require a Section 404 Individual Permit

A Section 401 Individual Certification is necessary for all activities that require a Section 404 IP from the Corps. As with activities that qualify for NWPs, a Section 401 Individual Certification for Section 404 IP activities on tribal lands (other than those that have been granted authority by EPA over Section 401 compliance) is obtained through application to EPA, and activity-specific conditions are defined and enforced by EPA. A Section 401 Individual Certification for Section 404 IP activities on non-tribal lands is obtained through application to ADEQ, and activity-specific conditions are defined and enforced by ADEQ.

D. Components of a Section 401 Individual Certification Application

1. Individual Certification Application to the Environmental Protection Agency

EPA has not developed a standard Individual Certification application format. However, all applications must include the components identified by EPA (1999; see *EPA facsimile listing required components of an Individual Certification application to EPA in 401 Forms and Guidance* Appendix). Typically, an Individual Certification application to EPA is prepared as a stand-alone document paraphrasing and/or attaching the data provided in the NWP PCN or Section 404 IP application.

For a non-notifying NWP, an Individual 401 Certification is still required for projects on Tribal land.

2. Individual Certification Application to authorized Indian Reservations

The activity proponent must contact the appropriate tribe to confirm the vital application components. Typically, a Section 401 Individual Certification application to a Tribe is prepared as a stand-alone document paraphrasing and/or attaching the data provided in the NWP PCN or Section 404 IP application.

3. Individual Certification Application to the Arizona Department of Environmental Quality

ADEQ requires the following documents to be considered a complete Individual 401 Certification application:

- ADEQ Application for Certification under CWA Section 401 (ADEQ 2013; provided in *401 Forms and Guidance* Appendix)
- A US Geological Survey (USGS) topographic map or other contour map of activity area
- A map delineating the ordinary high water mark of Waters of the US to be affected by the activity to be certified
- A copy of the application for the federal NWP or IP
- A description of the measures to be applied to the activities in order to control the discharge of pollutants into Waters of the US to:
 - Minimize potential pollution of surface waters
 - Demonstrate compliance with state surface water quality standards

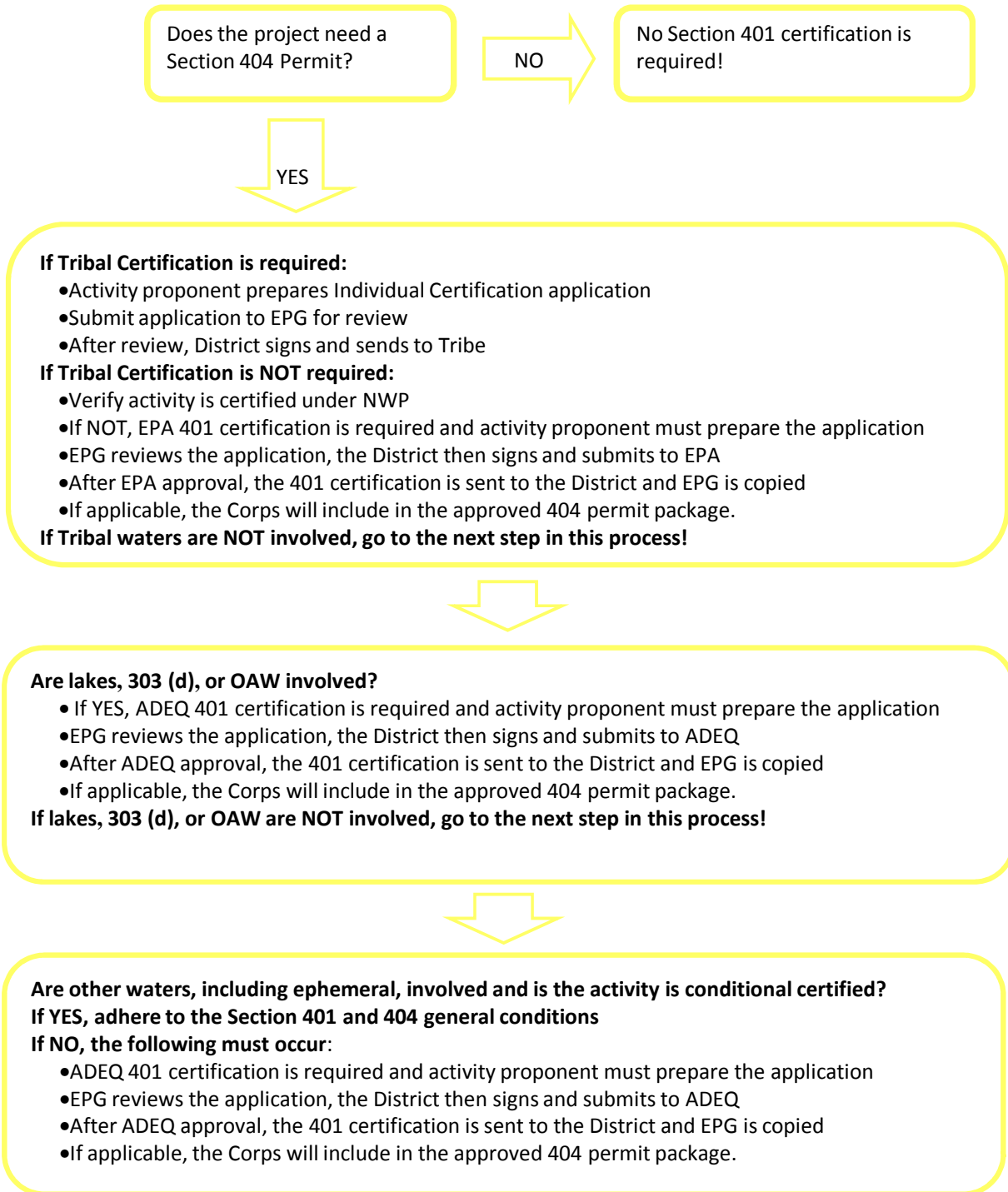
Typically, the ADEQ Section 401 Application form paraphrases and/or attaches the data provided in a Section 404 NWP or IP application and the activity-specific conditions and mitigation measures included in a NWP PCN or Section 404 IP application, as well as specifications from the ADOT Standard Specifications for Road and Bridge Construction.

Section 401 Individual Certification applications are ultimately forwarded by EPG to the EPA, ADEQ, or Tribe for their consideration and approval. Approval is typically in the form of an approval letter.

Refer to Flow Chart 6-1 of this section for the key decisions associated with the Section 401 Certification

A copy of the EPA, ADEQ, or Tribal (as appropriate) Section 401 Individual Certification approval letter must be forwarded to the Corps. The Corps will not approve a Section 404 permit until Section 401 certification has been received.

Flow Chart 6-1: Key Decisions to Determine Section 401 Certification



Remember!

For an IP, submit Individual 401 Certification application to ADEQ after the 404 permit public notice has posted.

Key Documents for Step 6:

401 Forms and Guidance Appendix:

- ADEQ Application for Certification under the Clean Water Act Section 401 (ADEQ 2013)
- EPA facsimile listing required components of an Individual Certification application to EPA (reproduced for printing; EPA 1999)

Additional Assistance Documents for Step 6:

- Certification Requirements under Section 401 of the Clean Water Act (33 U.S. Code 1341; available online: <http://www.gpo.gov/fdsys/granule/USCODE-2000-title33/USCODE-2000-title33-chap26-subchapIV-sec1341/content-detail.html>)
- Section 303(d) Impaired Waters. (ADEQ, 2008); (available online: <http://www.azdeq.gov/environ/water/assessment/assess.html>)
- Outstanding Arizona Waters (OAWs). (ADEQ, 2013); (available online: <http://www.azdeq.gov/environ/water/permits/download/oaw.pdf>)
- ADEQ Clean Water Act 401 Certification for Nationwide Permits (ADEQ 2012) (available online: <http://www.azdeq.gov/environ/water/permits/cwa401.html>)

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REFERENCES

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- Corps. 2001. Final Summary Report: Guidelines for Jurisdictional Determinations for Waters of the United States in the Arid Southwest
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- Corps. 2008e. Regulatory Guidance Letter (RGL) 08-03. Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl08_03.pdf
- Corps. 2010a. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0). May. Available online: http://www.usace.army.mil/missions/civilworks/regulatoryprogramandpermits/reg_supp.aspx
- Corps. 2010b. July. Part 230- Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material. <http://www.wetlands.com/epa/epa230ph.htm>
- Corps. 2012a. Special Public Notice – Nationwide Permits for Arizona. Dated: May 18, 2012. <http://www.azdeq.gov/environ/water/permits/download/nwp.pdf> Accessed on 02/04/2013.
OR
[http://www.spl.usace.army.mil/Portals/17/docs/regulatory/Permit_Process/SPN_AZ_NWP\(wit hAppendix\).pdf](http://www.spl.usace.army.mil/Portals/17/docs/regulatory/Permit_Process/SPN_AZ_NWP(wit hAppendix).pdf)
- Corps. 2012b. A Summary of 2012 Nationwide Permits. Available online: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>

- Corps. 2012c. ENG Form 4345 – Application for Department of the Army Permit.
http://www.spl.usace.army.mil/Portals/17/docs/regulatory/Permit_Process/Eng4345_2012OCT.pdf OR
<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/ObtainaPermit.aspx> OR
http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/engform_4345_2012oct.pdf
- Corps. 2012d. ENG Form 4345 Instructions:
http://www.spl.usace.army.mil/Portals/17/docs/regulatory/Permit_Process/ENG%204345%20Instructions.pdf
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http://water.epa.gov/lawsregs/guidance/wetlands/upload/2003_07_11_wetlands_TEA-21Guidance.pdf
- FHWA. 2012. *Section 404 of the Clean Water Act* (NEPA/404 Memorandum of Agreement). Available online:
http://www.spl.usace.army.mil/Portals/17/docs/regulatory/WRDA/ADOT_MOA.pdf

LIST OF APPENDICES

A. JD Forms and Checklists:

- A.1** Preliminary Jurisdictional Delineation Submittal Guidance (includes Tables 1&2) (EPG)
- A.2** Approved Jurisdictional Delineation Submittal Guidance (includes Tables 1&2) (EPG)
- A.3** Corps Preliminary Jurisdiction Form
- A.4** Corps Approved Jurisdiction Form
- A.5** Corps Labels
- A.6** Table 1 - JD Physical Characteristics
- A.7** ADOT Cover Letter
- A.8** Checklist for Submitting a Section 404 Jurisdictional Delineation (EPG)

B. 404 Permit and PCN Templates, Checklists, and Instructions:

- B.1** Checklist for Section 404 Nationwide Permit Limits and Conditions Compliance and Pre-Construction Notification Decision Process
- B.2** Pre-Construction Notification – Nationwide/Individual Permit Submittal Guidance
- B.3** Pre-Construction Notification / Individual Permit Cover Letter Template
- B.4** Application for Department of the Army Permit (ENG Form 4345)
- B.5** Instructions for Preparing Department of the Army Permit (ENG Form 4345) Application
- B.6** Corps Individual Permit Section 404(b)(1) Template
- B.7** Pre-Construction Notification / Individual Permit Submittal Checklist

C. Nationwide Permits:

- C.1** A Summary of 2012 Nationwide Permits (Corps 2012b)
- C.2** Link to Environmental Planning and Services Website with all Nationwide Permits relevant to ADOT Activities

D. 401 Forms and Guidance:

- D.1** ADEQ Application for Certification under the Clean Water Action Section 401 (ADEQ 2013)
- D.2** EPA facsimile listing required components of an Individual Certification application to EPA (reproduced for printing; EPA 1999)

E. In-Lieu Fee Procedures

- E.1** Procedures for Processing In-Lieu Payments for 404 Impacts

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APPENDIX A

JD Forms and Checklists

(Please go to the Environmental Services and Planning website for all fill able versions of the forms:

<http://www.azdot.gov/business/environmental-services-and-planning/environmental-guidance-documents/section-404-401-procedures>

A1

**PRELIMINARY JURISDICTIONAL DELINEATION SUBMITTAL GUIDANCE
(INCLUDES TABLES 1&2) (EPG)**






Preliminary Jurisdictional Delineation Submittal Guidance

U.S. Army Corps of Engineers ~ Arizona Branch









To facilitate the Regulatory Division's review and processing of your requests please observe the following guidelines. Corps guidelines for the processing of JD's are described in Regulatory Guidance Letter (RGL 08-02).

Submit only information which will assist in the evaluation for the JD. Concise and organized information is much easier to review. If your submittal lacks any of the requested information listed below, it may be returned to you for additional information. If deviating from the recommended submittal items please coordinate with the Corps regulator prior to submittal.

Before beginning, please note:

-  Only one (1) complete electronic document is required for submittal.
-  All Jurisdictional Delineation (JD) requests will be considered to be for a Preliminary JD (PJD), unless otherwise specifically requested as an Approved "Rapanos" Jurisdictional Delineation.
-  Cultural resource reports or biological reports should not be submitted for the JD submittal. These reports are required for permits.
-  Submit only one copy of the aerial photograph. Provide a blank aerial photograph upon request from the Corps.
-  Map figures should follow the requirements from the Corps Final Map and Drawing Standards for the South Pacific Division Regulatory Program, dated August 6, 2012.

The following items are required for JD processing:

1. Cover letter
 -  Include a short description of the project area and scope of work.
 -  Include latitude and longitude in decimal degrees form (i.e. 32.123456N and -110.123456W) of the midpoint of the project area, the datum should be NAD 83. Include, Township, and Range, Section (1/4 section) if applicable, of project area (e.g. T4N, R3E, Sec. 4, (NE1/4)).
 -  Refer to sample cover letter on the [Environmental Services and Planning website](#)
2. State, vicinity, and floodplain maps
3. USGS quadrangle map
 -  Survey area must be outlined in thick black line and clearly labeled.
 -  An 8 1/2 x 11" section showing the project area is sufficient. (Do not send the entire quad map).
 -  Multiple maps can be used if needed.
 -  USGS quadrangle name and date should be referenced.
4. Table 1. JD Physical Characteristics
 -  Must include jurisdictional and non-jurisdictional washes.

5. Preliminary JD form

- Must contain signature of the EPG planner.
- Must include electronic excel file of Corps water data sheet for JD with 5 or more washes.

6. OHWM in the Arid West form and documentation, if used

- Must include if following the OHWM in the Arid West Field Guide from 2008.

7. Aerial photo

- Must have clear resolution.
- Must be taken within last two years, be no smaller than 1"=200' scale, and be legible (full color images and 11" x 17" minimum are preferred). If recent aerial photographs are unattainable, please coordinate with the EPG planner to obtain an aerial from ADOT Photogrammetry as early as possible.
- Do not make the aerial photo "transparent."
- Do not overlay the proposed project on the aerial.
- Overlay DTM/contours.
- Submit one aerial set with proposed delineation for the survey area.
- Provide a title block to include ADOT project info, "N" arrow, scale (bar and text), and date of photo (date photo taken, not date aerial produced), Name and year of USGS map that corresponds to aerial. If multiple maps, include a Map KEY for the whole project area here or on a separate sheet.
- Provide a clear map legend to include wash width, wash name, flow direction arrow, photo point number/direction, and survey area/OHWM/waters (may be placed here if not illustrated on Corps label).
- Label features such as roads, trails, etc that appear to be potential waters.
- If wash meanders in and out of the survey area, illustrate delineation continuously.
- The survey area should be outlined in black, the OHWM indicated in red, and the waters of the U.S. (dry washes) in transparent yellow. Use a transparent green for wetlands and transparent blue for open water (e.g. Salt River, Colorado River).

8. Color photographs

- Must be high quality and clear.
- Must be recent and taken at ground level.
- Clearly key locations into the aerial to indicate location and direction. Do not place any text or graphics over the delineated portion of the wash except what is described below.
- Provide sufficient photos (generally 4 photos/wash) to accurately represent the characteristics of the site features (i.e. whether or not the drainage shows jurisdictional characteristics) . Please use a rod or other items for scale in the photos and note the size of the item.



9. Delineations of wetlands (if applicable)

- Consult the EPG planner first before proceeding.
- Submit a detailed wetland delineation report (use the template available on the [Environmental Services and Planning website](#)) with the most current arid or mountain region delineation sheets. Be sure to include methods of how the boundary was established and transects were selected.
- Include location of sample plot for soil and vegetation sampling on the aerial.
- Verify presence or absence of any other special aquatic sites that may be applicable in AZ (sanctuary or refuge, vegetated shallows, riffle and pool complexes).

10. Current drainage report or USGS gauge data (if available)

- Include project plan view showing 10-year, 5-year and 2-year event surface area.

11. Electronic Submittal of the JD

-  Be sure to separate 8 ½ x 11 and 11 x 17 into two files. Do not submit a combined file.
-  Submittals under 10 MB can be emailed to Kathleen.A.Tucker@usace.army.mil (multiple emails can be used). Files over 10 MB should be uploaded to the Corps FTP site at <https://safe.amrdec.army.mil/safe2/Welcome.aspx>

12. A bibliography sheet


-  Include if referencing other information.
-

Table 1. J.D. Physical Characteristics & Other Information

Project Name and No.	Date
----------------------	------

[illegible]

Waters_Name	Cowadin_Code	HGM_Code	Measurement_Type	Amount	Units	Waters_Types	Latitude	Longitude	Local_Waterway
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A2

**APPROVED JURISDICTIONAL DELINEATION SUBMITTAL GUIDANCE (INCLUDES
TABLES 1&2) (EPG)**

Approved Jurisdictional Delineation Submittal Guidance

U.S. Army Corps of Engineers ~ Arizona Branch

To facilitate the Regulatory Division's review and processing of your requests please observe the following guidelines. Corps guidelines for the processing of JD's are described in Section IV of the U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook dated, 5.30.2007.

Submit only information which will assist in the evaluation for the JD. Concise and organized information is much easier to review. If your submittal lacks any of the requested information listed below, it may be returned to you for additional information. If deviating from the recommended submittal items please coordinate with the Corps regulator prior to submittal.

Before beginning, please note:

- Confirm the Approved JD approach through the EPG planner and the Corps.
- Only one (1) complete electronic document is required for submittal.
- All Jurisdictional Delineation (JD) requests will be considered to be for a Preliminary JD (PJD), unless otherwise specifically requested as an Approved "Rapanos" Jurisdictional Delineation.
- Cultural resource reports or biological reports should not be submitted for the JD submittal. These reports are required for permits.
- Submit only one copy of the aerial photograph. Provide a blank aerial photograph upon request from the Corps.
- Map figures should follow the requirements from the Corps Final Map and Drawing Standards for the South Pacific Division Regulatory Program, dated August 6, 2012.

The following items are required for JD processing:

1. Cover letter
 - Include a short description of the project area and scope of work.
 - Include latitude and longitude in decimal degrees form (i.e. 32.123456N and -110.123456W) of the midpoint of the project area, the datum should be NAD 83. Include, Township, and Range, Section (1/4 section) if applicable, of project area (e.g. T4N, R3E, Sec. 4, (NE1/4)).
 - Refer to sample cover letter on the [Environmental Services and Planning website](#).
2. State, vicinity, and floodplain maps
3. USGS quadrangle map
 - Survey area must be outlined in thick black line and clearly labeled.
 - An 8 1/2 x 11" section showing the project area is sufficient. (Do not send the entire quad map).
 - Multiple maps can be used if needed.
 - USGS quadrangle name and date should be referenced.

4. Table 1. JD Physical Characteristics

- Must include jurisdictional and non-jurisdictional washes.

5. Approved JD form

- Must include appropriate documentation (consult with EPG planner and the Corps) describing whether a wash has a significant nexus or not.
- Include a detailed description in Section C and any backup data such as HEC or USGS gauge data.
- GRAPHIC: Include a watershed map depicting the watershed of the wash outlined on a topo map. Include acreage of area.
- Include an electronic version of the Corps water data sheet if the JD is for 5 or more washes.

6. OHWM in the Arid West form and documentation, if used

- Must include if following the OHWM in the Arid Field Guide from 2008.

7. Aerial photo

- Must have clear resolution.
- Must be taken within last two years, be no smaller than 1"=200' scale, and be legible (full color images and 11" x 17" minimum are preferred). If recent aerial photographs are unattainable, please coordinate with the EPG planner to obtain an aerial from ADOT Photogrammetry as early as possible.
- Do not make the aerial photo "transparent."
- Do not overlay the proposed project on the aerial.
- Overlay DTM/contours.
- Submit one aerial set with proposed delineation for the survey area.
- Provide a title block to include ADOT project info, "N" arrow, scale (bar and text), and date of photo (date photo taken, not date aerial produced), Name and year of USGS map that corresponds to aerial. If multiple maps, include a Map KEY for the whole project area here or on a separate sheet.
- Provide a clear map legend to include wash width, wash name, flow direction arrow, photo point number/direction, and survey area/OHWM/waters (may be placed here if not illustrated on Corps label).
- Label features such as roads, trails, etc. that appear to be potential waters.
- If wash meanders in and out of the survey area, illustrate delineation continuously.
- The survey area should be outlined in black, the OHWM indicated in red, and the waters of the U.S. (dry washes) in transparent yellow. Use a transparent green for wetlands and transparent blue for open water (Salt River, Colorado River).

8. Color photographs

- Must be high quality and clear.
- Must be recent and taken at ground level.
- Clearly key locations into the aerial to indicate location and direction. Do not place any text or graphics over the delineated portion of the wash except what is described below.
- Provide sufficient photos (generally 4 photos/wash) to accurately represent the characteristics of the site features (i.e. whether or not the drainage shows jurisdictional characteristics). Please use a rod or other items for scale in the photos and note the size of the item.

9. Delineations of wetlands (if applicable)

- Consult the EPG planner first before proceeding.

- Submit a detailed wetland delineation report (use the template available on the [Environmental Services and Planning website](#)) with the most current arid or mountain region delineation sheets. Be sure to include methods of how the boundary was established and transects were selected.
- Include location of sample plot for soil and vegetation sampling on the aerial.
- Verify presence or absence of any other special aquatic sites that may be applicable in AZ (sanctuary or refuge, vegetated shallows, riffle and pool complexes).

10. Current drainage report or USGS gauge data (if available)

- Include project plan view showing 10-year, 5-year and 2-year event surface area.

11. Electronic Submittal of the JD

- Be sure to separate 8 ½ x 11 and 11 x 17 into two files. Do not submit a combined file.
- Submittals under 10 MB can be emailed to Kathleen.A.Tucker@usace.army.mil (multiple emails can be used). Files over 10 MB should be uploaded to the Corps FTP site at <https://safe.amrdec.army.mil/safe2/Welcome.aspx>

12. A bibliography sheet

- Include if referencing other information.
-

Table 1. J.D. Physical Characteristics & Other Information

Project Name and No.	Date
----------------------	------

[illegible]

Waters_Name	Cowadin_Code	HGM_Code	Measurement_Type	Amount	Units	Waters_Types	Latitude	Longitude	Local_Waterway
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A3

CORPS PRELIMINARY JURISDICTION FORM

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there “*may be*” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

District Office

File/ORM #

PJD Date:

State

City/County

Nearest Waterbody:

Location: TRS,
LatLong or UTM:

Name/
Address of
Person
Requesting
PJD

Identify (Estimate) Amount of Waters in the Review Area:

Non-Wetland Waters:

Stream Flow:

linear ft width acres

Wetlands: acre(s) Cowardin
Class:

Name of Any Water Bodies
on the Site Identified as

Tidal:

Section 10 Waters:

Non-Tidal:

☐ Office (Desk) Determination

☐ Field Determination:

Date of Field Trip:

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☐ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps

☐ Corps navigable waters' study:

☐ U.S. Geological Survey Hydrologic Atlas:

☐ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☐ U.S. Geological Survey map(s). Cite quad name:

☐ USDA Natural Resources Conservation Service Soil Survey. Citation:

☐ National wetlands inventory map(s). Cite name:

☐ State/Local wetland inventory map(s):

☐ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation is:

☐ Photographs: ☐ Aerial (Name & Date):

☐ Other (Name & Date):

☐ Previous determination(s). File no. and date of response letter:

☐ Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and Date of Regulatory Project Manager
(REQUIRED)

Signature and Date of Person Requesting Preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring “preconstruction notification” (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there "*may be*" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Appendix A - Sites

District Office File/ORM # PJD Date:
State City/County Person Requesting PJD

Site Number	Latitude	Longitude	Cowardin Class	Est. Amount of Aquatic Resource in Review Area	Class of Aquatic Resource
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Notes:

A4

CORPS APPROVED JURISDICTION FORM

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: _____ County/parish/borough: _____ City: _____
Center coordinates of site (lat/long in degree decimal format): Lat. _____ ° **Pick List**, Long. _____ ° **Pick List**.
Universal Transverse Mercator: _____

Name of nearest waterbody: _____

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: _____

Name of watershed or Hydrologic Unit Code (HUC): _____

- ☐ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- ☐ Office (Desk) Determination. Date: _____
☐ Field Determination. Date(s): _____

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Pick List** “navigable waters of the U.S.” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- ☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: _____

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Pick List** “waters of the U.S.” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
☐ Non-RPWs that flow directly or indirectly into TNWs
☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
☐ Impoundments of jurisdictional waters
☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: _____ linear feet: _____ width (ft) and/or _____ acres.
Wetlands: _____ acres.

c. Limits (boundaries) of jurisdiction based on: **Pick List**

Elevation of established OHWM (if known): _____

2. Non-regulated waters/wetlands (check if applicable):³

- ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: _____

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least “seasonally” (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: .

Tributary stream order, if known: .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

<input type="checkbox"/> Silts	<input type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input type="checkbox"/> Cobbles	<input type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

<input type="checkbox"/> Bed and banks	
<input type="checkbox"/> OHWM ⁶ (check all indicators that apply):	
<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: .	

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

<input checked="" type="checkbox"/> High Tide Line indicated by:	<input checked="" type="checkbox"/> Mean High Water Mark indicated by:
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;
<input type="checkbox"/> fine shell or debris deposits (foreshore)	<input type="checkbox"/> physical markings;
<input type="checkbox"/> physical markings/characteristics	<input type="checkbox"/> vegetation lines/changes in vegetation types.
<input type="checkbox"/> tidal gauges	
<input type="checkbox"/> other (list):	

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: .

Identify specific pollutants, if known: .

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings: .
 - ☐ Fish/spawn areas. Explain findings: .
 - ☐ Other environmentally-sensitive species. Explain findings: .
 - ☐ Aquatic/wildlife diversity. Explain findings: .

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings: .
 - ☐ Fish/spawn areas. Explain findings: .
 - ☐ Other environmentally-sensitive species. Explain findings: .
 - ☐ Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☐ TNWs: linear feet width (ft), Or, acres.
- ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
- ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
- ☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - ☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- ☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: .
- ☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☐ Office concurs with data sheets/delineation report.
 - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters’ study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
 - ☐ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite scale & quad name: .
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☐ National wetlands inventory map(s). Cite name: .
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): .
or ☐ Other (Name & Date): .
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

A5

CORPS LABELS

Preliminary JD Labels:

***** PRELIMINARY (RGL 08-02) *****
SECTION 404 JURISDICTIONAL DELINEATION
U.S. Army Corps of Engineers, Los Angeles District
Application No. SPL - _____ - _____ - _____
-----Boundary of area surveyed for
jurisdictional waters of the United States
-----Approximate Ordinary High Water Mark

-----Potential Waters of the United States

-----Potential Wetlands (If legend is blank no
wetlands occur with survey area.)
_____ Scale _____ Date of Photograph
_____ Site Visit by Corps(Y/N) Date: _____
_____ Date Delineation issued by Corps
_____ Corps Project Manager
Sheet _____ of _____
***** PRELIMINARY (RGL 08-02) *****

***** PRELIMINARY (RGL 08-02) *****
SECTION 404 JURISDICTIONAL DELINEATION
U.S. Army Corps of Engineers, Los Angeles District
Application No. SPL - _____ - _____ - _____
-----Boundary of area surveyed for
jurisdictional waters of the United States
-----Approximate Ordinary High Water Mark

-----Potential Waters of the United States

-----Potential Wetlands (If legend is blank no
wetlands occur with survey area.)
_____ Scale _____ Date of Photograph
_____ Site Visit by Corps(Y/N) Date: _____
_____ Date Delineation issued by Corps
_____ Corps Project Manager
Sheet _____ of _____
***** PRELIMINARY (RGL 08-02) *****

Approved JD Labels:

SECTION 404 JURISDICTIONAL DELINEATION
U.S. Army Corps of Engineers, Los Angeles District
Application No. SPL - _____ - _____ - _____
-----Boundary of area surveyed for
jurisdictional waters of the United States
-----Ordinary High Water Mark

-----Waters of the United States

-----Wetlands (If legend is blank no
wetlands occur with survey area.)
_____ Scale _____ Date of Photograph
_____ Site Visit by Corps(Y/N) Date: _____
_____ Date Delineation issued by Corps
_____ Corps Project Manager
Sheet _____ of _____

SECTION 404 JURISDICTIONAL DELINEATION
U.S. Army Corps of Engineers, Los Angeles District
Application No. SPL - _____ - _____ - _____
-----Boundary of area surveyed for
jurisdictional waters of the United States
-----Ordinary High Water Mark

-----Waters of the United States

-----Wetlands (If legend is blank no
wetlands occur with survey area.)
_____ Scale _____ Date of Photograph
_____ Site Visit by Corps(Y/N) Date: _____
_____ Date Delineation issued by Corps
_____ Corps Project Manager
Sheet _____ of _____

A6

TABLE 1 - JD PHYSICAL CHARACTERISTICS

Table 1. J.D. Physical Characteristics & Other Information
Project Name and No. _____
Date _____

[illegible]

A7

ADOT COVER LETTER

(Place letter on current ADOT letterhead)

Ms. Sallie Diebolt, Chief
Arizona Section Regulatory Branch
US Army Corps of Engineers
3636 North Central Avenue, Suite 900
Phoenix, AZ 85012

Attention: Kathleen Tucker

Re: [\[Purpose of the package, JD, PCN, etc.\]](#)
Preliminary Jurisdictional Delineation
040 AP 316 H6924 01C
Dead River EB Structure No. 565, Scour Repair
USACE File No.: [if available](#)

Dear Ms. Diebolt:

[Provide brief project description including: type of project \(scour protection, drainage improvement, widening, etc.\), location such as highway, milepost, geographic reference point, Township, Range, Section, LAT/LONG NAD83, and USGS maps reference.](#)

The Arizona Department of Transportation (ADOT) is planning to install concrete scour protection at the Eastbound (EB) Dead River bridge Structure No. 565 on Interstate 40 (I-40) from milepost (MP) 315.87 to MP 316.17 located approximately 30 miles northeast of Holbrook, Apache County, Arizona (Figures 1 and 2). The project occurs within and adjacent to an ADOT easement through undeveloped New Lands under the jurisdiction of the Navajo Nation. The cadastral location for the project area is SE ¼ of Section 32, Township 20N, Range 25E (Gila and Salt River Baseline and Meridian). The Dead River EB bridge crosses the Dead Wash at UTM 618010mE, 3883003mN, NAD 83, Zone 12N.

[Provide any other pertinent information that is not documented in any attached document](#)

A ground survey to identify waters of the US in the project area was completed on October 25, 2007 by [consultant name, firm's name](#). The aerial photograph used during the ground survey was taken on an unknown date in 2005. Although the aerial photograph is more than 2 years old, it still accurately depicts waters of the US. Within the survey area, approximately 2.42 acres of the Dead Wash is proposed as waters of the US.

[Provide a list of attachments, if necessary.](#)

This letter serves as a request for review and issue of the preliminary jurisdictional delineation. Included for your review are the following items:

- State Location (Figure 1) and Project Vicinity (Figure 2) Maps
- Topographic and Floodplain Map (Figure 3)
- Drainage Area Map (Figure 4)
- Proposed Jurisdictional Delineation with Photo Points (Figure 5)
- Ground Photos
- JD Tables with Physical Characteristics and Other Information

If you have any questions or require additional information, please feel free to call me at 602.712.8633. Thank you for your assistance.

Sincerely,

EPG Planner
Environmental Planner
ADOT Environmental Planning Group

A8

**CHECKLIST FOR SUBMITTING A SECTION 404 JURISDICTIONAL DELINEATION
(EPG)**

Checklist for Submitting a Section 404 Jurisdictional Delineation (JD)

Instructions: The Consultant and the ADOT EPG planner will check the appropriate box to verify that the JD package meets Corps' requirements. If any of the items are not complete, the EPG planner will return the JD package to the consultant for correction. Refer to ADOT's [Environmental Services and Planning](#) website for guidance and templates.

Consultant	EPG Planner	QC Checklist Items
<hr/>	<hr/>	Signed cover letter from EPG Planner.
<hr/>	<hr/>	Project location maps, including USGS map and FEMA floodplain map.
<hr/>	<hr/>	Table 1: JD Physical Characteristics and Other Information
<hr/>	<hr/>	Correct JD form with signature of planner (<i>additional graphics per guidance should accompany an approved JD form</i>). Include electronic version of Corps water data sheet if JD is for 5 or more washes.
<hr/>	<hr/>	Delineated aerial photographs (per the Corps drawing standards) of high resolution and medium to high contrast, taken within the last two years, show overlapping adjacent properties, be 11" x 17" minimum size, have a scale of 1"= 100' or 1" = 200', and include index map.
<hr/>	<hr/>	Ground photographs that clearly illustrate whether or not a drainageway is jurisdictional.
<hr/>	<hr/>	Electronic copy of all documents (8 ½ x 11 separated from 11 x 17) that are correctly scaled and submitted via email or FTP site
<hr/>	<hr/>	Additional items (if appropriate):
<hr/>	<hr/>	Wetlands documentation per current Corps guidance and template on Environmental Services and Planning website .
<hr/>	<hr/>	Correct form and documentation if following the current OHWM Field Guide from August 2008
<hr/>	<hr/>	Current drainage report and USGS gauge date (<i>if available</i>), Project Plan view showing 10-year, 5-year and 2-year event surface area, one to two foot contour intervals overlaid onto aerial at the same scale.
<hr/>	<hr/>	Documentation that substantiates conditions have not changed for reapproving an expired JD (<i>that was approved by the Corps</i>).
<hr/>		Consultant signature and date
<hr/>		ADOT EPG Planner signature and date

APPENDIX B

404 PERMIT AND PCN TEMPLATES, CHECKLISTS, AND INSTRUCTIONS

(For all fill able versions of the forms, please go to the
<http://www.azdot.gov/business/environmental-services-and-planning>)

B1

**CHECKLIST FOR SECTION 404 NATIONWIDE PERMIT LIMITS AND CONDITIONS
COMPLIANCE AND PRE-CONSTRUCTION NOTIFICATION DECISION PROCESS**

Checklist for Section 404 Nationwide Permit Limits and Conditions Compliance and Pre-Construction Notification Decision Process

Instructions: The Consultant and the ADOT EPG planner will check the appropriate box and/or provide additional information to document the decision process for determining whether or not a given activity complies with permit, regional, and general conditions or requires Pre-Construction Notification. If any of the items are not complete, the EPG planner will return the Checklist to the consultant for correction. Refer to ADOT's [Section 404 Procedures website](#) for current Section 404 information.

Consultant

ADOT EP

Nationwide Permit Number:

Notification Required by Permit Yes / No

Conditions?

Loss of waters of the US limits (e.g., less than ½ acre, 500 linear feet):

Proposed activity impacts

Permanent (acres/linear feet)

Wetlands:

Waters of the US:

Temporary (acres/linear feet)

Wetlands:

Waters of the US:

Will discharges to any of the following aquatic resources result from the activity?

Wetlands:

Perennial river:

Other perennial waterbody (e.g., lake):

Federal Threatened and Endangered Species / Critical Habitat

Project-specific species list attached? Yes / No

Determination: No effect
Not likely to adversely effect
May effect

Comments:

Section 106 National Historic Preservation Act Concurrence

Concurrence granted? Yes. Date:

No. Date:

Date Concurrence anticipated (month/year):

Comments:

Is a Pre-Construction Notification Required?

Yes / No

Consultant signature and date:

ADOT EPG signature and date:

B2

**PRE-CONSTRUCTION NOTIFICATION – NATIONWIDE/INDIVIDUAL PERMIT
SUBMITTAL GUIDANCE**

Pre-Construction Notification – NWP/IP Submittal Guidance

U.S. Army Corps of Engineers ~ Arizona Branch

To facilitate the Regulatory Division's review and processing of your requests please observe the following guidelines. Corps guidelines for the processing of Department of the Army Permits are described in 33 CFR Part 325 and in 40 CFR Part 230.

Submit only information which will assist in the evaluation for the PCN. Concise and organized information is much easier to review. If your submittal lacks any of the requested information listed below, it may be returned to you for additional information.

Before beginning, please note:

- Only one (1) complete document is required for submittal.
- Cultural resource concurrence letters (SHPO and Tribal, and related MOA or PA, as applicable) and biological reports (BR or BE) are required for all PCN submittals. If the Corps is the lead federal agency additional documentation may be required for consultation. Biological reports must be current or within 6 months. USFWS evaluation must be per the current list.
- Do not duplicate information in the submittal package.
- Reference mile post locations (not stationing) in the submittal package.

Minimum information required for processing:

1. Cover letter (*see [Environmental Services and Planning website](#) for template*)
2. Current Eng Form 4345
 - Application MUST be signed by District Engineer and EPG planner. Original signatures must be included in submittal to the Corps.
 - Fill out each block completely per the instructions.
3. Preliminary/Approved JD Aerial /Impact Sheets
 - Overlay both temporary and permanent impacts of the proposed project on the prelim/approved JD aerial.
 - Include relevant construction plan sheets and details to scale.
 - All of these documents must be to a standard engineering scale and have required mapping information. This includes a legend, appropriate label, and the requirements from the Corps Final Map and Drawing Standards for the South Pacific Division Regulatory Program, dated August 6, 2012.
4. Floodplain map
 - Do not need to duplicate state, vicinity, and floodplain maps if the PCN is for a project related to a previously accepted approved JD or PJD.

5. General and Regional Conditions

- Document describing how the project is in compliance with all 31 General Conditions including Regional Conditions (General Condition 27).
- Include all supporting documentation for General Condition 18 and 20.

6. Copy of 401 Individual Certification, if applicable

- If applying for an IP and 401 certification will be issued by ADEQ, do not submit an Individual 401 Certification application to ADEQ until the 404 Individual Permit Public Notice has posted.

7. Electronic Submittal:

- Be sure to separate 8 ½ x 11 and 11 x 17 into two files. Do not submit a combined file. Biology and Cultural documentation should be separate files.
- Submittals under 10MB can be emailed to Kathleen.A.Tucker@usace.army.mil (multiple emails can be used). Files over 10MB should be uploaded to the Corps FTP site at <https://safe.amrdec.army.mil/safe2/Welcome.aspx>

8. A bibliography sheet

- Include if referencing other information.

Additional items for IP submittal:

9. 404(b)(1) document

- Use the template available on the [Environmental Services and Planning website](#).
- Include completed applicable sections.
- Submit electronic Word version.

10. Mitigation Plan

11. Electronic versions of aerials, plans and details for Public Notice

12. Labels for all adjacent landowners (MS Word file in Avery 5164 format is preferred)

13. Any comment(s) the Corps provides on a submittal needs to be addressed within 30 days from receipt

B3

**PRE-CONSTRUCTION NOTIFICATION / INDIVIDUAL PERMIT COVER LETTER
TEMPLATE**

Ms. Sallie Diebolt, Chief
Arizona Section Regulatory Branch
US Army Corps of Engineers
3636 North Central Avenue, Suite 900
Phoenix, AZ 85012

Attention: Kathleen Tucker

Re: [\[Purpose of the package, JD, PCN, etc.\]](#)

Preconstruction Notification Nationwide Permit NWP 14 and NWP 33

040 AP 316 H6924 01C

Dead River EB Structure No. 565, Scour Repair

USACE File No.: [if available](#)

Dear Ms. Diebolt:

[Provide brief project description including: type of project \(scour protection, drainage improvement, widening, etc.\), location such as highway, milepost, geographic reference point, Township, Range, Section, LAT/LONG NAD83, and USGS maps reference.](#)

The Arizona Department of Transportation (ADOT) is planning to install concrete scour protection at the Eastbound (EB) Dead River bridge Structure No. 565 on Interstate 40 (I-40) from milepost (MP) 315.87 to MP 316.17 located approximately 30 miles northeast of Holbrook, Apache County, Arizona (Figures 1 and 2). The project occurs within and adjacent to an ADOT easement through undeveloped New Lands under the jurisdiction of the Navajo Nation. The cadastral location for the project area is SE ¼ of Section 32, Township 20N, Range 25E (Gila and Salt River Baseline and Meridian). The Dead River EB bridge crosses the Dead Wash at UTM 618010mE, 3883003mN, NAD 83, Zone 12N.

[Provide any other pertinent information that is not documented in any attached document and a brief summary of the impacts](#)

The Preliminary jurisdictional delineation for this project was approved on July 16, 2008 (Corp File No. if available). The project will result in xx acres of permanent impact to Waters of the US due to the installation of the concrete floor and xx acres of temporary impact due to temporary construction access.

This letter serves as a request for review and approval of the PCN package for this project. Included for your review are the following items:

- Engineer Form 4345
- State Location (Figure 1) and Project Vicinity (Figure 2) Maps
- Topographic and Floodplain Map (Figure 3)
- Impacts to Waters of the US (Figure 4)
- Profile Sheets, and Access Plan Sheets
- Documentation of Compliance with NWP General and Regional Conditions
- Biological Evaluation
- Cultural Concurrence

If you have any questions or require additional information, please feel free to call me at 602.712.8633. Thank you for your assistance.

Sincerely,

EPG Planner Name
Environmental Planner
ADOT Environmental Planning Group

B4

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT (ENG FORM 4345)

U.S. ARMY CORPS OF ENGINEERS
APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
33 CFR 325. The proponent agency is CECW-CO-R.

OMB APPROVAL NO. 0710-0003
EXPIRES: 28 FEBRUARY 2013

Public reporting for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters, Executive Services and Communications Directorate, Information Management Division and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and/or instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
--------------------	----------------------	------------------	------------------------------

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME First - Middle - Last - Company - E-mail Address -		8. AUTHORIZED AGENT'S NAME AND TITLE (agent is not required) First - Middle - Last - Company - E-mail Address -	
6. APPLICANT'S ADDRESS: Address- City - State - Zip - Country -		9. AGENT'S ADDRESS: Address- City - State - Zip - Country -	
7. APPLICANT'S PHONE NOS. w/AREA CODE a. Residence b. Business c. Fax		10. AGENTS PHONE NOS. w/AREA CODE a. Residence b. Business c. Fax	

STATEMENT OF AUTHORIZATION

11. I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

SIGNATURE OF APPLICANT

DATE

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)			
13. NAME OF WATERBODY, IF KNOWN (if applicable)		14. PROJECT STREET ADDRESS (if applicable) Address	
15. LOCATION OF PROJECT Latitude: °N Longitude: °W		City - State- Zip-	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) State Tax Parcel ID Municipality Section - Township - Range -			

17. DIRECTIONS TO THE SITE

18. Nature of Activity (Description of project, include all features)

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

USE BLOCKS 20-23 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type	Type	Type
Amount in Cubic Yards	Amount in Cubic Yards	Amount in Cubic Yards

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

Acres
or
Linear Feet

23. Description of Avoidance, Minimization, and Compensation (see instructions)

24. Is Any Portion of the Work Already Complete? ☐ Yes ☐ No IF YES, DESCRIBE THE COMPLETED WORK

25. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

a. Address-

City -

State -

Zip -

b. Address-

City -

State -

Zip -

c. Address-

City -

State -

Zip -

d. Address-

City -

State -

Zip -

e. Address-

City -

State -

Zip -

26. List of Other Certificates or Approvals/Denials received from other Federal, State, or Local Agencies for Work Described in This Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED

* Would include but is not restricted to zoning, building, and flood plain permits

27. Application is hereby made for permit or permits to authorize the work described in this application. I certify that this information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

The Application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

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**INSTRUCTIONS FOR PREPARING DEPARTMENT OF THE ARMY PERMIT (ENG
FORM 4345) APPLICATION**

**Instructions for Preparing a
Department of the Army Permit Application**

Blocks 1 through 4. To be completed by Corps of Engineers.

Block 5. Applicant's Name. Enter the name and the E-mail address of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the name of the organization and responsible officer and title. If more than one party is associated with the application, please attach a sheet with the necessary information marked Block 5.

Block 6. Address of Applicant. Please provide the full address of the party or parties responsible for the application. If more space is needed, attach an extra sheet of paper marked Block 6.

Block 7. Applicant Telephone Number(s). Please provide the number where you can usually be reached during normal business hours.

Blocks 8 through 11. To be completed, if you choose to have an agent.

Block 8. Authorized Agent's Name and Title. Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, or any other person or organization. Note: An agent is not required.

Blocks 9 and 10. Agent's Address and Telephone Number. Please provide the complete mailing address of the agent, along with the telephone number where he / she can be reached during normal business hours.

Block 11. Statement of Authorization. To be completed by applicant, if an agent is to be employed.

Block 12. Proposed Project Name or Title. Please provide name identifying the proposed project, e.g., Landmark Plaza, Burned Hills Subdivision, or Edsall Commercial Center.

Block 13. Name of Waterbody. Please provide the name of any stream, lake, marsh, or other waterway to be directly impacted by the activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

Block 14. Proposed Project Street Address. If the proposed project is located at a site having a street address (not a box number), please enter it here.

Block 15. Location of Proposed Project. Enter the latitude and longitude of where the proposed project is located. If more space is required, please attach a sheet with the necessary information marked Block 15.

Block 16. Other Location Descriptions. If available, provide the Tax Parcel Identification number of the site, Section, Township, and Range of the site (if known), and / or local Municipality that the site is located in.

Block 17. Directions to the Site. Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site. You may also provide description of the proposed project location, such as lot numbers, tract numbers, or you may choose to locate the proposed project site from a known point (such as the right descending bank of Smith Creek, one mile downstream from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed project site if known

Block 18. Nature of Activity. Describe the overall activity or project. Give appropriate dimensions of structures such as wing walls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platforms.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked Block 18.

Block 19. Proposed Project Purpose. Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project. Give the approximate dates you plan to both begin and complete all work.

Block 20. Reasons for Discharge. If the activity involves the discharge of dredged and/or fill material into a wetland or other waterbody, including the temporary placement of material, explain the specific purpose of the placement of the material (such as erosion control).

Block 21. Types of Material Being Discharged and the Amount of Each Type in Cubic Yards. Describe the material to be discharged and amount of each material to be discharged within Corps jurisdiction. Please be sure this description will agree with your illustrations. Discharge material includes: rock, sand, clay, concrete, etc.

Block 22. Surface Areas of Wetlands or Other Waters Filled. Describe the area to be filled at each location. Specifically identify the surface areas, or part thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a waterbody. If more space is needed, attach an extra sheet of paper marked Block 22.

Block 23. Description of Avoidance, Minimization, and Compensation. Provide a brief explanation describing how impacts to waters of the United States are being avoided and minimized on the project site. Also provide a brief description of how impacts to waters of the United States will be compensated for, or a brief statement explaining why compensatory mitigation should not be required for those impacts.

Block 24. Is Any Portion of the Work Already Complete? Provide any background on any part of the proposed project already completed. Describe the area already developed, structures completed, any dredged or fill material already discharged, the type of material, volume in cubic yards, acres filled, if a wetland or other waterbody (in acres or square feet). If the work was done under an existing Corps permit, identify the authorization, if possible.

Block 25. Names and Addresses of Adjoining Property Owners, Lessees, etc., Whose Property Adjoins the Project Site. List complete names and full mailing addresses of the adjacent property owners (public and private) lessees, etc., whose property adjoins the waterbody or aquatic site where the work is being proposed so that they may be notified of the proposed activity (usually by public notice). If more space is needed, attach an extra sheet of paper marked Block 24.

Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be developed.

Block 26. Information about Approvals or Denials by Other Agencies. You may need the approval of other federal, state, or local agencies for your project. Identify any applications you have submitted and the status, if any (approved or denied) of each application. You need not have obtained all other permits before applying for a Corps permit.

Block 27. Signature of Applicant or Agent. The application must be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

DRAWINGS AND ILLUSTRATIONS

General Information.

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number.

Please submit one original, or good quality copy, of all drawings on 8½ x11 inch plain white paper (electronic media may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations.

Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). **While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.**

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CORPS INDIVIDUAL PERMIT SECTION 404(B)(1) TEMPLATE

CESPL-CO-RA

Application XXX-XXXX-XXXXX (*ORM number*)

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Environmental Assessment and Statement of Finding for Above-Numbered Permit Application

This document constitutes the Environmental Assessment, 404(b)(1) Guidelines Evaluation, Public Interest Review, and Statement of Findings.

1. Application as described in the public notice.

APPLICANT:

WATERWAY & LOCATION:

LATITUDE & LONGITUDE: Latitude North:

Longitude West:

PROJECT PURPOSE

Basic:

Overall:

Water Dependency Determination:

PROPOSED WORK:

Avoidance and Minimization Information:

Compensatory Mitigation:

EXISTING CONDITIONS:

2. Authority.

☐ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403).

☐ Section 404 of the Clean Water Act (33 U.S.C. §1344).

☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

3. Scope of Analysis.

a. NEPA. (*Write an explanation of rationale in each section, as appropriate*)

(1) Factors.

(i) Whether or not the regulated activity comprises "merely a link" in a corridor type project.

- (ii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity.
- (iii) The extent to which the entire project will be within the Corps jurisdiction.
- (iv) The extent of cumulative Federal control and responsibility.
- (2) Determined scope.
 - ☐ Only within the footprint of the regulated activity within the delineated water.
 - ☐ Over entire property. *Explain.*

b. NHPA "Permit Area".

- (1) Tests. Activities outside the waters of the United States ☐are/☐are not included because all of the following tests ☐are/☐are not satisfied: Such activity ☐would/☐would not occur but for the authorization of the work or structures within the waters of the United States; Such activity ☐is/☐is not integrally related to the work or structures to be authorized within waters of the United States (or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program); and Such activity ☐is/☐is not directly associated(first order impact) with the work or structures to be authorized. *Explain.*
- (2) Determined scope. *Describe.*

c. ESA "Action Area".

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

d. Public notice comments. ☐ NA

- (1) The public also provided comments at ☐public hearing, ☐public meeting, and/or ☐ *Explain.*
- (2) Commentors and issues raised.
- (3) Site ☐was/☐was not visited by the Corps to obtain information in addition to delineating jurisdiction. *Include dates and synopsis of information gathered if site was visited.*
- (4) Issues identified by the Corps. *Describe.*

(5) Issues/comments forwarded to the applicant. ☐NA/☐Yes.

(6) Applicant replied/provided views. ☐NA/☐Yes.

(7) The following comments are not discussed further in this document as they are outside the Corps purview. ☐ NA/☐ Yes *Explain*.

4. Alternatives Analysis.

a. Basic and Overall Project Purpose (as stated by applicant and independent definition by Corps).

☐ Same as Project Purpose in Paragraph 1.

☐ Revised: *Insert revised project purpose here and explain why it was revised.*

b. Water Dependency Determination:

☐ Same as in Paragraph 1.

☐ Revised: *Insert revised water dependency determination here if it has changed due to changing project purpose or new information.*

c. Applicant preferred alternative site and site configuration.

☐ Same as Project Description in Paragraph 1.

☐ Revised: *Explain any difference from Paragraph 1*

Criteria. *Include issue and measurement and/or constraint.*

d. Off-site locations and configuration(s) for each. (e.g. alternatives located on property not currently owned by the applicant are not practicable under the Section 404(b)(1) Guidelines as this project is the construction or expansion of a single family home and attendant features, such as a driveway, garage, storage shed, or septic field; or the construction or expansion of a barn or other farm building; or the expansion of a small business facility; and involves discharges of dredged or fill material less than two acres into jurisdictional wetlands.)

Off-site locations and configurations – *description and comparison to criteria*

e. (☐ NA) Site selected for further analysis and why.

f. On-site configurations. *Description and comparison to criteria*

g. Other alternatives not requiring a permit, including No Action. *Description and comparison to criteria*

h. Alternatives not practicable or reasonable. *Describe/explain*

i. Least environmentally damaging practicable alternative. *Describe/explain*

5. Evaluation of the 404(b)(1) Guidelines. (☐NA)

a. Factual determinations.

Physical Substrate. <input type="checkbox"/> See Existing Conditions, paragraph 1 <input type="checkbox"/>
Water circulation, fluctuation, and salinity. <input type="checkbox"/> Addressed in the Water Quality Certification. <input type="checkbox"/>
Suspended particulate/turbidity. <input type="checkbox"/> Turbidity controls in Water Quality Certification. <input type="checkbox"/>
Contaminant availability. <input type="checkbox"/> General Condition requires clean fill. <input type="checkbox"/>
Aquatic ecosystem and organism. <input type="checkbox"/> Wetland/wildlife evaluations, paragraphs 5, 6, 7 & 8. <input type="checkbox"/>
Proposed disposal site. <input type="checkbox"/> Public interest, paragraph 7. <input type="checkbox"/>
Cumulative effects on the aquatic ecosystem. <input type="checkbox"/> See Paragraph 7.e. <input type="checkbox"/>
Secondary effects on the aquatic ecosystem. <input type="checkbox"/> See Paragraph 7.e. <input type="checkbox"/>

b. Restrictions on discharges (230.10).

- (1) It ☐has/☐has not been demonstrated in paragraph 5 that there are no practicable nor less damaging alternatives which could satisfy the project's basic purpose. The activity ☐is/☐is not located in a special aquatic site (wetlands, sanctuaries, and refuges, mudflats, vegetated shallows, coral reefs, riffle & pool complexes). The activity ☐does/☐does not need to be located in a special aquatic site to fulfill its basic purpose.
- (2) The proposed activity ☐does/☐does not violate applicable State water quality standards or Section 307 prohibitions or effluent standards (☐based on information from the certifying agency that the Corps could proceed with a provisional determination). The proposed activity ☐does/☐does not jeopardize the continued existence of federally listed threatened or endangered species or affects their critical habitat. The proposed activity ☐does/☐does

not violate the requirements of a federally designate marine sanctuary.

- (3) The activity ☐will/☐will not cause or contribute to significant degradation of waters of the United States, including adverse effects on human health; life stages of aquatic organisms' ecosystem diversity, productivity and stability; and recreation, esthetic, and economic values.
- (4) Appropriate and practicable steps ☐have/☐have not been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem (see Paragraph 8 for description of mitigative actions).
6. Public Interest Review: All public interest factors have been reviewed as summarized here. Both cumulative and secondary impacts on the public interest were considered. Public interest factors that have had additional information relevant to the decision are discussed in number 7.

				+ Beneficial effect
				0 Negligible effect
				- Adverse effect
				M Neutral as result of mitigative action
+	0	-	M	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Conservation.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Economics.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Aesthetics.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	General environmental concerns.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wetlands.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Historic properties.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Fish and wildlife values
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Flood hazards.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Floodplain values.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Land use.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Navigation.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shore erosion and accretion.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Recreation.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Water supply and conservation.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Water quality.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Energy needs.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Safety.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Food and fiber production.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mineral needs.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Considerations of property ownership.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Needs and welfare of the people.

7. Effects, policies and other laws.

a. ☐ NA

Public Interest Factors. (add factors that are relevant to specific project that you checked in number 6 above and add a discussion of that factor)

Factor	Discussion

b. Endangered Species Act. ☐ NA

The proposed project:

(1) Will not affect these threatened or endangered species:

☐ Any/☐ . Explain.

(2) May affect, but is not likely to adversely affect:

Species: . Explain.

(3) ☐ Will/☐ Will not adversely modify designated critical habitat for the .
Explain.

(4) ☐ Is/☐ Is not likely to jeopardize the continued existence of the .
Explain.

(5) The Services ☐ concurred/☐ provided a Biological Opinion(s). Explain.

c. Historic Properties. The proposed project ☐ will/☐ will not have any affect on any sites listed, or eligible for listing, in the National Register of Historic Places, or otherwise of national, state, or local significance based on ☐ letter from SHPO/☐ . Explain.

d. Cumulative & Secondary Impacts. The geographic area for this assessment is the watershed.

(1) Baseline. Approximately % of the watershed area is wetland. There are also approximately stream miles contained within the watershed comprised of % perennial, % intermittent, and % ephemeral tributaries. Corps permits for the period has authorized the

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for the Above-Numbered Permit Application

fill of _____ acres and _____ linear feet of stream. The projection is that authorizations will continue ☐ at the current rate/☐ increase/☐ because _____. Natural resource issues of particular concern [from Corps & non-Corps activities] are _____.

- (2) Context. The proposed project is ☐ typical of /☐ a precedent /☐ very large compared to /☐ other activities in the watershed. Development similar to the proposal have occurred since _____. Future conditions are expected to be.. _____. Besides Corps authorized projects, other activities include. _____. Resulting natural resource changes and stresses include _____. These resources are also being affected by _____. A key issue(s) of concern in this watershed is/are the _____ resulting from wetland loss.
- (3) Mitigation and Monitoring. The project affects the following key issue(s):
_____. The magnitude of the proposed effect is _____ within the watershed. Avoidance and minimization methods include _____ that will result in _____. Compensatory mitigation, namely _____ and monitoring described in herein will result in _____.

Expand this section commensurate with the level of impact and appropriate level of existing and reasonably foreseeable watershed stress to aquatic resources.

- e. Corps Wetland Policy. Based on the public interest review herein, the beneficial effects of the project outweigh the detrimental impacts of the project.
- f. (☐NA) Water Quality Certification under Section 401 of the Clean Water Act ☐ has/☐has not yet been issued by ☐ /☐State/☐Commonwealth.
- g. Other authorizations.
- h. (☐NA) Significant Issues of Overriding National Importance. *Explain.*
8. Compensation and other mitigation actions.
- a. Compensatory Mitigation
- (1) Is compensatory mitigation required? ☐ yes ☐ no [If “no,” do not complete the rest of this section]
- (2) Is the impact in the service area of an approved mitigation bank? ☐ yes ☐ no
- (i) Does the mitigation bank have appropriate number and resource type of credits available? ☐ yes ☐ no
- (3) Is the impact in the service area of an approved in-lieu fee program?
☐ yes ☐no

- (i) Does the in-lieu fee program have appropriate number and resource type of credits available? ☐ yes ☐ no

- (4) Check the selected compensatory mitigation option(s):

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

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

- (6) Other Mitigative Actions

9. General evaluation criteria under the public interest review. We considered the following within this document:

- a. The relative extent of the public and private need for the proposed structure or work. (e.g. Public benefits include employment opportunities and a potential increase in the local tax base. Private benefits include land use and economic return on the property; for transportation projects benefits include safety, capacity and congestion issues.) *Explain.*
- b. ☐ There are no unresolved conflicts as to resource use. (☐ There are unresolved conflicts as to resource use. One or more of the alternative locations and methods described above are reasonable or practicable to accomplish the objectives of the proposed structure or work but are not being accepted by the applicant.) (☐ There are unresolved conflicts as to resource use however there are no practicable reasonable alternative locations and methods to accomplish the objective of the purposed work.) *Check the appropriate box, delete the statements that do not apply and explain.*
- c. The extent and permanence of the beneficial and/or detrimental effects, which the proposed work is likely to have on the public, and private uses to which the area is suited. ☐ Detrimental impacts are expected to be minimal although they would be permanent in the construction area. The beneficial effects associated with utilization of the property would be permanent. *Explain.*

10. Determinations.

- a. Public Hearing Request: ☐ NA

- ☐ I have reviewed and evaluated the requests for a public hearing. There is sufficient information available to evaluate the proposed project; therefore, the requests for a public hearing are denied.
- b. Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.
- c. Relevant Presidential Executive Orders.
- (1) EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians. ☐ This action has no substantial direct effect on one or more Indian tribes. *Explain, if appropriate.*
 - (2) EO 11988, Floodplain Management. ☐ Not in a floodplain. (☐ Alternatives to location within the floodplain, minimization, and compensation of the effects were considered above.)
 - (3) EO 12898, Environmental Justice. In accordance with Title III of the Civil Right Act of 1964 and Executive Order 12898, it has been determined that the project would not directly or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin nor would it have a disproportionate effect on minority or low-income communities.
 - (4) EO 13112, Invasive Species.
☐ There were no invasive species issues involved.
☐ The evaluation above included invasive species concerns in the analysis of impacts at the project site and associated compensatory mitigation projects.
☐ Through special conditions, the permittee will be required to control the introduction and spread of exotic species.
 - (5) EO 13212 and 13302, Energy Supply and Availability. ☐ The project was not one that will increase the production, transmission, or conservation of energy, or strengthen pipeline safety. (☐ The review was expedited and/or other actions were taken to the extent permitted by law and regulation to accelerate completion of this energy-related (including pipeline safety) project while maintaining safety, public health, and environmental protections.)

CESPL-CO-RA (Application XXX-XXXX-XXXXX (*ORM number*))

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for the Above-Numbered Permit Application

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

c. Compliance with 404(b)(1) guidelines. ☐NA

Having completed the evaluation in paragraph 5, I have determined that the proposed discharge ☐complies/☐does not comply with the 404(b)(1) guidelines.

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

CESPL-CO-RA (Application XXX-XXXX-XXXXX (*ORM number*))

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for the
Above-Numbered Permit Application

PREPARED BY:

Date:

Kathleen Tucker
Project Manager

REVIEWED BY:

Date

Sallie Diebolt
Chief, Arizona Section
Regulatory Division

B7

**PRE-CONSTRUCTION NOTIFICATION / INDIVIDUAL PERMIT SUBMITTAL
CHECKLIST**

Checklist for Submitting a Section 404 PreConstruction Notification (PCN) or Individual Permit (IP) Application

Instructions: The Consultant and the ADOT EPG planner will check the appropriate box to verify that the PCN package meets Corps' requirements. If any of the items are not complete, the EPG planner will return the PCN package to the consultant for correction. Refer to ADOT's [Environmental Services and Planning](#) website for guidance and templates.

Consultant	EPG Planner	QC Checklist Items
_____	_____	Signed cover letter from EPG Planner.
_____	_____	Project location maps, including USGS map and FEMA floodplain map.
_____	_____	Completed 4345 signed by District Engineer and EPG Planner.
_____	_____	Impact Sheets that are a minimum size of 11 x 17 inches (<i>HAND DRAWN GRAPHICS WILL NOT BE ACCEPTED</i>).
_____	_____	Documentation of compliance with General Conditions (including Regional Conditions) and supporting documentation (<i>i.e. BR, BE, concurrence letters</i>) for General Condition 18 and 20.
_____	_____	Current site photographs if conditions on the ground have changed since the JD photographs (<i>and noted in cover letter</i>).
_____	_____	Copy of 401 Individual Certification that will be sent to the appropriate agency (<i>if a 401 Individual Certification is required</i>). <i>Note: If submitting a 401 certification application for a 404 IP to ADEQ, do not submit it until the 404 permit public notice has posted.</i>
_____	_____	Mitigation Plan (<i>if applicable</i>).
_____	_____	Electronic copy of all documents (8 ½ x 11 separated from 11 x 17) that are correctly scaled and submitted via email or FTP site
_____	_____	ADDITIONAL ITEMS FOR INDIVIDUAL PERMITS:
_____	_____	Electronic copy of 404(b)(1) evaluation. Use template on Environmental Services and Planning website .
_____	_____	Electronic copy of aerials, details, and plans for public notice.
_____	_____	Mailing labels for adjacent landowners (MS Word file in Avery 5164 format is preferred).
Consultant signature and date _____		
ADOT EPG Planner signature and date _____		

APPENDIX C

NATIONWIDE PERMITS

(Refer to [here](#) for a complete list of all the Nationwide Permits)

C1

A SUMMARY OF 2012 NATIONWIDE PERMITS (CORPS 2012B)

Summary of the 2012 Nationwide Permits

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Changes in 2012	Other Information
NWP 1 – Aids to Navigation	10	None	PCN not required	None	
NWP 2 – Structures in Artificial Canals	10	None	PCN not required	None	
NWP 3 – Maintenance	10/404				Does not authorize: maintenance dredging for the primary purpose of navigation; beach restoration; or new stream channelization or stream relocation projects.
(a) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills		Authorizes only minor deviations for maintenance	PCN not required	Added “requirements of other regulatory agencies” to allow minor deviation changes. Limit stream channel modification to the minimum necessary for the maintenance activity.	
(b) Discharges associated with removal of accumulated sediments and debris in the vicinity of existing structures, including intake and outfall structures and associated canals		200 feet from structure; minimum necessary to restore capacity intake or outfall or associated canal	all activities	Removed “and within” and “immediate” from removal of accumulated sediments and debris in the vicinity of existing structures. Clarifies that the activity can include the placement of new or additional riprap in order to qualify for the NWP.	
(c) Temporary structures, fills, and work necessary to conduct maintenance activity			PCN not required	None	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations
NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	10/404	None	PCN not required	Added fish aggregating devices to list of examples of authorized structures or activities.	Does not authorize impoundments or artificial reefs. Does not authorize covered oyster trays or clam racks.
NWP 5 – Scientific Measurement Devices	10/404	25 cubic yards for weirs and flumes	PCN not required	Added meteorological stations, current gages, and biological observation devices to the list of examples. Added requirement that devices and any associated structures or fills be removed upon completion of the use and restored to pre-construction elevations to maximum extent practicable.	
NWP 6 – Survey Activities	10/404	1/10-acre for temporary pads	PCN not required	Added language stating the backfilling of exploratory trenches must not drain a water of the U.S. Added sample plots or transects for wetland delineations to list of examples. Replaced the 25 cubic yard limit for temporary work pads with a 1/10-acre limit.	Does not authorize fills for roads. Does not authorize permanent structures. Does not authorize fill associated with recovery of historic properties.
NWP 7 – Outfall Structures and Associated Intake Structures	10/404	None	all activities	None	Activity must comply with National Pollutant Discharge Elimination System Program.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Changes in 2012	Other Information
NWP 8 – Oil and Gas Structures on the Outer Continental Shelf	10	None	all activities	Changed Mineral Management Service to Bureau of Ocean Energy Management	Limited to facilities in areas leased by the Bureau of Ocean Energy Management of the Department of the Interior.
NWP 9 – Structures in Fleeting and Anchorage Areas	10	None	PCN not required	None	Applies to structures, buoys, and other devices placed in anchorage or fleeting areas established by the U.S. Coast Guard.
NWP 10 – Mooring Buoys	10	None	PCN not required	None	Non-commercial, single boat mooring buoys
NWP 11 – Temporary Recreational Structures	10	None	PCN not required	None	Structures must be removed within 30 days after use discontinued.
NWP 12 – Utility Line Activities	10/404	1/2 acre of waters of the U.S. for each single and complete project	PCN required if: <ul style="list-style-type: none"> • A section 10 permit is required • Mechanized land clearing in forested wetlands for the right-of-way • Discharge results in the loss of >1/10 acre 	Clarified locations when copies of PCN would be sent by Corps to NOAA National Ocean Service for charting (coastal United States; Great Lakes, and U.S. territories). For overhead utility lines, added requirement for DE to send PCN and verification letter to Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations.
Utility lines			PCN required if: <ul style="list-style-type: none"> • utility line exceeds 500 linear feet in waters of the U.S. • utility line runs parallel to a stream bed within jurisdictional area 		Must restore area to pre-construction contours.
Utility line substations			PCN required if: <ul style="list-style-type: none"> • Discharge results in the loss of >1/10 acre 		
Foundations for overhead utility line towers, poles, and anchors			PCN required if: <ul style="list-style-type: none"> • Discharge results in the loss of >1/10 acre 		Separate footings for each tower leg should be used where feasible.
Access roads			PCN required if: <ul style="list-style-type: none"> • above-grade permanent access roads exceeding 500 feet; • permanent access roads constructed with impervious materials 	Clarify that access road is included with other utility line activities that comprise a single and complete project, including the 1/2-acre that applies to each single and complete project.	Access roads must be constructed to minimize adverse effects to waters of the U.S.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Changes in 2012	Other Information
NWP 13 – Bank Stabilization	10/404	<ul style="list-style-type: none"> 500 feet along the bank (unless waived by DE) 1 cubic yard per running foot (unless waived by DE) 	PCN required if: <ul style="list-style-type: none"> >500 linear feet in length >1 cubic yard per running foot along bank below OHWM or HTL discharges into special aquatic sites 	Added language authorizing temporary structures, fills and work necessary to construct the activity. Invasive plant species may not be used for bioengineering or vegetative bank stabilization.	Activity cannot impair surface water flow into or out of waters of the U.S. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations.
NWP 14 – Linear Transportation Projects	10/404	<ul style="list-style-type: none"> 1/2 acre in non-tidal waters of the U.S. 1/3 acre in tidal waters of the U.S. 	PCN required if: <ul style="list-style-type: none"> >1/10 acre discharges into special aquatic sites 	None	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. Does not authorize storage buildings, parking lots, train stations, aircraft hangars, or other non-linear transportation features.
NWP 15 – U.S. Coast Guard Approved Bridges	404	None	PCN not required	Clarified that the construction of the bridge structure must be authorized by the U.S. Coast Guard under Section 9 of the Rivers and Harbors Act of 1899 and other applicable laws.	Causeways and approach fills for bridges are not authorized by this NWP; those activities require separate section 404 authorization.
NWP 16 – Return Water From Upland Contained Disposal Areas	404	None	PCN not required	Clarified that disposal site may be in an area that has no waters of the United States.	
NWP 17 – Hydropower Projects	404	None	all activities	None	Applies to activities licensed by the Federal Energy Regulatory Commission or activities exempt from licensing requirements.
NWP 18 – Minor Discharges	10/404	<ul style="list-style-type: none"> 25 cubic yards discharged below plane of OHWM/HTL 1/10-acre of waters of the U.S. 	PCN required if: <ul style="list-style-type: none"> >10 cubic yards discharged below plane of OHWM/HTL discharges into special aquatic sites 	None	Does not authorize discharges for stream diversions.
NWP 19 – Minor Dredging	10/404	25 cubic yards below plane of OHWM/ MHWM	PCN not required	None	Does not authorize dredging or degradation through siltation of coral reefs, submerged aquatic vegetation beds, anadromous fish spawning areas, or wetlands.
NWP 20 – Response Operations for Oil and Hazardous Substances	10/404	None	PCN not required	Changed title. Also authorizes approved regional or local contingency plans, as well as temporary structures and fills for spill response training exercises.	Authorizes activities subject to the National Oil and Hazardous Substances Pollution Contingency Plan.
NWP 21 – Surface Coal Mining Activities	10/404	<ul style="list-style-type: none"> 1/2 acre of non-tidal waters of U.S. 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) 	all activities	Added 1/2-acre limit and limits losses of stream beds to 300 linear feet unless district engineers waives in writing for intermittent and ephemeral streams. Agency coordination required for proposed waivers of the 300 linear foot limit. Does not authorize valley fills. Added definition of “valley fill.”	Activities that were verified under the 2007 NWP 21 may be reauthorized without the limits, if the permittee submits a written request to the DE for reauthorization by February 1, 2013. Expansions in waters of the U.S. are not eligible for reauthorization. To be reauthorized, the district engineer must issue a written verification.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Changes in 2012	Other Information
NWP 22 – Removal of Vessels	10/404	None	PCN required if: <ul style="list-style-type: none"> if vessel listed or eligible for National Register of Historic Places activities in special aquatic sites 	None	Does not authorize maintenance dredging, shoal removal, or river bank snagging. Disposal of removed vessel in waters of the U.S. may require separate authorizations from EPA and Corps
NWP 23 – Approved Categorical Exclusions	10/404	None	PCN required for certain activities listed in RGL 05-07	None	Categorical exclusions must be approved by the Office of the Chief of Engineers. See RGL 05-07 for list of agencies and their activities that are currently eligible for NWP 23.
NWP 24 – Indian Tribe or State Administered Section 404 Program	10	None	PCN not required	None	Does not authorize activities in navigable waters that require only a section 10 permit.
NWP 25 – Structural Discharges	404	None	PCN not required	None	Structure may require section 10 permit if located in navigable waters of the U.S. Does not authorize structures that support buildings or similar structures.
NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities	10/404	None	PCN required for most activities, except for those activities that require reporting and a 30-day review period (e.g., activities under a binding agreement between the landowner and an agency)	Added rehabilitation or enhancement of tidal streams and tidal wetlands. Authorize discharges to restore stream channels after removing water control structures or fills. Clarified activities that may be authorized to re-establish wetland or stream hydrology. Authorize the re-establishment of submerged aquatic vegetation and tidal wetlands in areas where those habitats previously existed. Clarified that changes in wetland plant communities that occur after restoring wetland hydrology are not considered conversions. Clarified that compensatory mitigation is not required for NWP 27 activities. Included stream restoration or enhancement in the types of activities authorized, as long as they are included in the agreements. Activities subject to the reporting provision must include information on baseline ecological conditions, such as a delineation of wetlands, streams, and other aquatic habitats. Added U.S. Forest Service to the list of agencies in the notification provision.	Does not authorize stream channelization. Does not authorize relocation or conversion of tidal waters. Does not authorize conversion of natural wetlands or streams, except for relocation activities.
NWP 28 – Modifications of Existing Marinas	10	Previously authorized marina area	PCN not required	None	Does not authorize dredging, additional slips, dock spaces, or expansion in waters of the U.S.
NWP 29 – Residential Developments	10/404	<ul style="list-style-type: none"> 1/2 acre of non-tidal waters of U.S. 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) 	all activities	Clarified that district engineers must make written determinations of minimal effects when waiving the 300 linear foot limit for losses of intermittent or ephemeral stream bed. Agency coordination required for proposed waivers of the 300 linear foot limit.	For residential subdivisions, the aggregate total loss of waters of the U.S. cannot exceed 1/2-acre.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Changes in 2012	Other Information
NWP 30 – Moist Soil Management for Wildlife	404	None	PCN not required	None	Authorizes only on-going activities. Does not authorize construction of new dikes, roads, water control structures, etc. Does not authorize conversion of wetlands to uplands. Does not authorize impoundments. Does not authorize net loss of aquatic functions and services.
NWP 31 – Maintenance of Existing Flood Control Facilities	10/404	Maintenance baseline approved by DE	all activities	Added that the NWP authorizes the removal of vegetation from levees associated with a flood control project, in those cases where a Corps permit is required. Clarified that disposal site may be in an area that has no waters of the United States.	PCN must indicate location of dredged material disposal sites and baseline information.
NWP 32 – Completed Enforcement Actions	10/404	<ul style="list-style-type: none"> 5 acres of non-tidal waters 1 acre of tidal waters also see text of NWP 	Notification through non-judicial settlement agreement with Corps, court decision, consent decree, or settlement agreement	None	
NWP 33 – Temporary Construction, Access, and Dewatering	10/404	None	all activities	Clarified that temporary fills must be deposited in an area that has no waters of the United States.	Associated primary activity must be authorized by Corps or U.S. Coast Guard, or be exempt from permit requirements. PCN must include restoration plan.
NWP 34 – Cranberry Production Activities	404	10 acres, and activity cannot result in net loss of wetland acreage	all activities	None	Does not authorize discharges in waters of the U.S. for attendant features, such as warehouses, processing facilities, or parking areas.
NWP 35 – Maintenance Dredging of Existing Basins	10	Dredging to previously authorized depths or controlling depths, whichever is less	PCN not required	None	Dredged material must be deposited at upland site.
NWP 36 – Boat Ramps	10/404	<ul style="list-style-type: none"> 50 cubic yards, unless waived by DE 20 foot width, unless waived by DE 	PCN required if: <ul style="list-style-type: none"> >50 cubic yards >20 feet wide 	Clarified that district engineers must make written determinations of minimal effects when waiving the limits of 50 cubic yard and/or the 20 feet in width. Clarified that excavated materials must be removed to an area that has no waters of the United States.	Section 10 permit required if dredging navigable water is necessary for access to boat ramp. No material in special aquatic sites.
NWP 37 – Emergency Watershed Protection and Rehabilitation	10/404	None	all activities	Updated reference to the U.S. Forest Service Burned Area Emergency Rehabilitation Handbook (FSH 2509.13). Also clarified the permittee should wait 45 calendar days before proceeding with the activity if the DE has not yet issued a verification letter.	In general, permittee should wait until District Engineer issues verification, but may proceed immediately if there is an unacceptable hazard to life or significant loss of property or economic hardship will occur.
NWP 38 – Cleanup of Hazardous and Toxic Waste	10/404	None	all activities	None	Does not authorize the establishment of new disposal sites or the expansion of existing disposal sites.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Changes in 2012	Other Information
NWP 39 – Commercial and Institutional Developments	10/404	<ul style="list-style-type: none"> 1/2 acre of non-tidal waters of U.S. 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) 	all activities	Clarified that district engineers must make written determinations of minimal effects when waiving the 300 linear foot limit for losses of intermittent or ephemeral stream bed. Agency coordination required for proposed waivers of the 300 linear foot limit. Added requirement for DE to send PCN and verification letter to Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities. Removed prohibition against constructing oil or gas wells.	Does not authorize construction of new golf courses or new ski areas.
NWP 40 – Agricultural Activities	404	<ul style="list-style-type: none"> 1/2 acre of non-tidal waters of U.S. 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) 	all activities	Clarified that district engineers must make written determinations of minimal effects when waiving the 300 linear foot limit for losses of intermittent or ephemeral stream bed. Agency coordination required for proposed waivers of the 300 linear foot limit. Modified 300 linear foot limit so that it applies to all streams, not just drainage ditches constructed in streams.	NWP can be used for agricultural activities, regardless of whether applicant is USDA participant. Does not authorize aquaculture ponds.
NWP 41 – Reshaping Existing Drainage Ditches	404	None	PCN required if: <ul style="list-style-type: none"> Reshaping greater than 500 linear feet of drainage ditch 	None	Reshaping drainage ditch cannot increase capacity of ditch or drain additional waters of the U.S. Does not authorize relocation of drainage ditches constructed in waters of the U.S.
NWP 42 – Recreational Facilities	404	<ul style="list-style-type: none"> 1/2 acre of non-tidal waters of U.S. 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) 	all activities	Clarified that district engineers must make written determinations of minimal effects when waiving the 300 linear foot limit for losses of intermittent or ephemeral stream bed. Agency coordination required for proposed waivers of the 300 linear foot limit.	Authorizes variety of recreational facilities, except for hotels, restaurants, racetracks, stadiums, arenas, or similar facilities (these may be authorized by NWP 39).
NWP 43 – Stormwater Management Facilities	404	<ul style="list-style-type: none"> 1/2 acre of non-tidal waters of U.S. 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) 	PCN required if: <ul style="list-style-type: none"> Construction or expansion of stormwater management facilities 	Clarified that district engineers must make written determinations of minimal effects when waiving the 300 linear foot limit for losses of intermittent or ephemeral stream bed. Agency coordination required for proposed waivers of the 300 linear foot limit. Clarified that stormwater management facilities determined to be waste treatment systems under 33 CFR 328.3(a)(8) are not waters of the United States and generally §404 permits are not required for maintenance activities. Added low impact development integrated management features to the examples of facilities authorized.	Does not authorize construction of new stormwater management facilities in perennial streams. Maintenance does not require PCN if limited to restoring original design capacities.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Changes in 2012	Other Information
NWP 44 – Mining Activities	10/404	<ul style="list-style-type: none"> 1/2 acre of non-tidal waters of U.S. 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) 	all activities	Added 300 linear foot limit for any activity causing the loss of stream bed, unless waived for intermittent and ephemeral stream. Agency coordination required for proposed waivers of the 300 linear foot limit.	PCN must include reclamation plan if reclamation is required by other statutes.
NWP 45 – Repair of Uplands Damaged by Discrete Events	10/404	Restore uplands to pre-event ordinary high water mark	all activities	Clarified beach restoration or nourishment is not authorized by this NWP. Clarified that the NWP authorizes discharges of dredged or fill material associated with the restoration of uplands.	PCN must be submitted to district engineer within one year of date of damage. Work must start or be under contract within two years of date of damage.
NWP 46 – Discharges in Ditches	404	1 acre of non-tidal waters of U.S.	all activities	None	NWP does not authorize discharges into ditches constructed in streams or other waters of the U.S., or in streams that have been relocated in uplands. Does not authorize discharges that increase the ditch capacity and drain additional jurisdictional waters.
NWP 48 – Existing Commercial Shellfish Aquaculture Activities	10/404	1/2-acre limit for impacts to submerged aquatic vegetation in new project areas	PCN required if: <ul style="list-style-type: none"> activity includes species not previously cultivated in waterbody change from bottom culture to floating or suspended dredge harvesting, tilling, or harrowing in submerged aquatic vegetation activity is in a new project area 	Project area clarified as lease or permit area approved by state or local agency or an area identified through a treaty, easement, lease, deed, or contract. Removed the reporting requirement for activities that do not require a PCN. Added new activities, with a 1/2-acre limit in areas with submerged aquatic vegetation. Defines “aquatic nuisance species.” Aquatic nuisance species not allowed and nonindigenous species not allowed unless currently cultivated. Changed PCN thresholds. Identifies information required for PCN.	Does not authorize nonindigenous species not previously cultivated in the waterbody, aquatic nuisance species, or attendant features such as docks or staging areas. Does not authorize the deposition of shell material back into waters of the U.S. as waste.
NWP 49 – Coal Remining Activities	10/404	Limited to sites that were previously mined for coal, but new mining may be conducted in adjacent areas if the newly mined area is less than 40 percent of the area being remined plus any unmined area needed for reclamation	all activities	Clarified how the 40% of newly mined area is determined. Corps will review the SMCRA determination regarding the amount of previously unmined area necessary for the reclamation and make an independent determination of the amount needed.	Permittee must demonstrate net increase in aquatic resource functions through reclamation; activities must be authorized by the Department of Interior, Office of Surface Mining , or by states with approved programs under Title IV and V of the Surface Mining Control and Reclamation Act of 1977 or are currently being processed as part of an integrated permit processing procedure; prospective permittee must receive written authorization prior to commencing the activity

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Changes in 2012	Other Information
NWP 50 – Underground Coal Mining Activities	10/404	<ul style="list-style-type: none"> 1/2 acre of non-tidal waters of U.S. 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) 	all activities	Added 1/2-acre limit and a 300 linear foot limit for any activity causing the loss of stream bed. The 300 linear foot limit may be waived for intermittent and ephemeral streams through a written determination made by the DE. Agency coordination required for proposed waivers of the 300 linear foot limit.	Activities must be authorized by the Department of Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or are currently being processed as part of an integrated permit processing procedure. If reclamation required, a copy of the plan must be submitted with PCN. Does not authorize coal preparation and processing activities outside of the mine site. Prospective permittee must receive written authorization prior to commencing the activity
NWP 51 – Land-Based Renewable Energy Generation Facilities	10/404	<ul style="list-style-type: none"> 1/2 acre of non-tidal waters of U.S. 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) 	all activities	new NWP	Authorizes construction, expansion or modification of land-based renewable energy production facilities, including attendant features. If only activity requiring DA authorization is utility line, then NWP 12 shall be used. Utility lines transferring energy to a distribution system, regional grid, or other facility are generally considered to be separate single and complete linear projects. Requirement for DE to send PCN and verification letter to Department of Defense Siting Clearinghouse, and the Clearinghouse will evaluate potential effects on military activities. Agency coordination required for proposed waivers of the 300 linear foot limit.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Changes in 2012	Other Information
NWP 52 – Water-Based Renewable Energy Generation Pilot Projects	10/404	<ul style="list-style-type: none"> • 1/2 acre of waters of U.S. • 300 linear feet of stream bed (DE can waive for intermittent and ephemeral streams) • No more than 10 generation units 	all activities	new NWP	<p>Authorizes construction, expansion, modification, or removal of water-based wind or hydrokinetic renewable energy generation pilot projects and their attendant features. Limited to "pilot projects." Placement of a transmission line on bed of a navigable water of U.S. from generation unit to land-based collection facility is considered a structure under Section 10 and is not considered a loss of waters of the U.S. Prohibits activities in coral reefs. Structures in anchorage areas must comply with U.S. Coast Guard requirements. Does not authorize structures in established danger zones, restricted areas, etc. Upon completion of pilot project, associated structures and/or fills must be removed unless authorized by separate DA permit. Utility lines transferring energy to a distribution system, regional grid, or other facility are generally considered to be separate single and complete linear projects. Requirement for DE to send PCN and verification letter to Department of Defense Siting Clearinghouse, and the Clearinghouse will evaluate potential effects on military activities. An activity located on existing maintained Corps project requires separate approval under 33 USC 408. Agency coordination required for proposed waivers of the 300 linear foot limit.</p>



US Army Corps
of Engineers®

REGULATORY GUIDANCE LETTER

No. 05-07

Date: 8 December 2005

SUBJECT: Approved NEPA Categorical Exclusions for Nationwide Permit 23

1. Purpose and Applicability

a. **Purpose.** To issue guidance regarding the Categorical Exclusions of other Federal agencies approved for inclusion under Nationwide Permit 23 (NWP23). This guidance consolidates expired Regulatory Guidance Letters 86-02, 87-10 and 96-01.

b. **Applicability.** This applies to activities that may qualify for authorization under NWP23.

2. General Considerations

a. **Background.** Nationwide Permit 23 (NWP23) was first issued in 1982 to authorize certain actions by other federal agencies that are categorically excluded under NEPA, in accordance with 40 CFR Parts 1500 to 1508. After receiving a request from an agency to include its Categorical Exclusions (CEs) under NWP23, the Headquarters of the Army Corps of Engineers (HQUSACE) may approve CEs for use with NWP23 after conducting a public interest review. A Regulatory Guidance Letter (RGL) is issued to the field with the approved list of agency CEs.

To date, HQUSACE has concurred with the CEs of three federal agencies for inclusion under NWP23. CEs were approved for the Bureau of Reclamation (BOR) in RGL 86-02 dated January 17, 1986, the Federal Highway Administration (FHWA) in RGL 87-10 dated December 9, 1987, and the U.S. Coast Guard (USCG) in RGL 96-01 dated November 5, 1996.

b. **Practice.** While RGLs 86-02, 87-10 and 96-01 have expired, HQUSACE has instructed districts that the guidance provided therein remains generally valid since the RGLs have not been superseded by regulations or other RGLs. Districts currently use these expired RGLs in determining whether activities qualifying for approved categorical exclusions may be authorized under NWP23.

3. Guidance.

a. The CE actions approved by HQUSACE for BOR, FHWA, and USCG for inclusion under NWP23 (see Attachments 1 through 3) continue to be in effect. Please note the lists include many actions that do not require Department of the Army authorization. However, to be

consistent with past RGLs and reduce confusion when referencing the CE number, we have included all agency CEs.

b. Notification to the district engineer is required for some CE activities to be authorized under NWP23. In such cases, the prospective permittee must contact the appropriate district, so that the district can review the project proposal and ensure the activity would have only minimal individual and cumulative impacts on the aquatic environment. Notification is required for the following:

- BOR: CE activities that involve more than a small amount of fill, activities with the potential to cause more than minor water quality impacts, and activities involving the use of explosives near waters with significant fisheries resources;
- FHWA: CE activities occurring under paragraphs (c)(3), (c)(7), (c)(9) and (c)(12), and all activities under paragraph (d); and
- USCG: CE activities under number (6) for projects where wetland impacts are proposed, and number (8) to address potential impacts/encroachment on Federal navigation projects.


Districts will review each notification and verify whether the activity meets the terms and conditions of NWP23. Special conditions may be added to the NWP verification to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. If the district believes that concerns for the aquatic environment or any public interest factor warrant further review, discretionary authority may be exercised on a case-by-case basis to require an individual permit.

c. Districts will provide a response to the prospective permittee, verifying whether the activity meets the terms and conditions of NWP23 within the designated response period for the most recently issued nationwide permits (as provided in the “Notification” general condition for the nationwide permits) or the appropriate regional condition. If the district does not respond within the designated time, the activity qualifies for NWP23 authorization.

d. Unless a district or division has regional conditions that require notification for additional CE activities, all other CE activities do not require pre-construction notification to the district. BOR, FHWA, and USCG may however voluntarily seek written verification from districts for CE actions that do not require notification.

e. This guidance rescinds and replaces RGLs 86-02, 87-10 and 96-01.

4. Duration. This guidance remains in effect unless revised or rescinded.


for DON T. RILEY
Major General, US Army
Director of Civil Works

ATTACHMENT 1
RGL 05-07
Bureau of Reclamation
Approved Categorical Exclusions for NWP23

The following BOR Categorical Exclusions were approved for inclusion under NWP23 on January 17, 1986.

A. General Activities.

(2) Training activities of enrollees assigned to the various youth programs. Such training may include minor construction activities for other entities.

(3) Research activities, such as nondestructive data collection and analysis, monitoring, modeling, laboratory testing, calibration, and testing of instruments or procedures and nonmanipulative field studies.

B. Planning Activities.

(3) Data collection studies that involve test excavations for cultural resources investigations or test pitting, drilling, or seismic investigations for geologic exploration purposes where the impacts will be localized.

C. Project Implementation Activities.

(3) Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities.

(4) Approval of land management plans where implementation will only result in minor construction activities and resultant increased operation and maintenance activities.

D. Operation and Maintenance Activities.

(1) Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation.

(9) Issuance of permits for removal of gravel or sand by an established process from existing quarries.

(11) Implementation of improved appearance and soil and moisture conservation programs where the impacts are localized.

(12) Conduct of programs of demonstration, educational, and technical assistance to water user organizations for improvement of project and on-farm irrigation water use and management.

(17) Minor safety of dams construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.

E. Grant and Loan Activities.

(1) Rehabilitation and Betterment Act loans and contracts which involve repair, replacement, or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities.

(2) Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.

(3) Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.

ATTACHMENT 2
RGL 05-07
Federal Highway Administration
Approved Categorical Exclusions for NWP23

The following FHWA Categorical Exclusions were approved for inclusion under NWP23 on December 9, 1987.

(c) The following actions meet the criteria for CEs in the CEQ regulation (section 1508.4) and §771.117 of this regulation and normally do not require any further NEPA approvals by the Administration:

(1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's *highway safety plan* under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) Emergency repairs under 23 U.S.C. 125.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) may be designated as CEs only after cases specific FHWA approval. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

(2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

- (7) Approvals for changes in access control.
- (8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
- (9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
- (10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
- (11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
- (12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act.

ATTACHMENT 3
RGL 05-07
U.S. Coast Guard
Approved Categorical Exclusions for NWP23

The following USCG Categorical Exclusions were approved for inclusion under NWP23 on November 5, 1996.

1. Routine personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have any environmental impacts, such as military and civilian personnel recruiting, processing, paying, and record keeping.
2. Routine procurement activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance.
3. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an existing approved disposal site.
4. Routine repair, renovation, and maintenance actions on aircraft and vessels.
5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, or an impact on a historically significant element or settings.
6. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, a historically significant element, or historically significant setting.
7. Routine repair and maintenance to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables.
8. Minor renovations and additions to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables, which do not require special, site-specific regulatory permits.
9. Routine grounds maintenance and activities at units and facilities. Examples include localized pest management actions and actions to maintain improved grounds (such as landscaping, lawn care, and minor erosion control measures) that are conducted in accordance with applicable Federal, State, and local directives.
10. Installation of devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, and fencing and grating to prevent accidental entry to hazardous areas.
11. New construction on heavily developed portions of Coast Guard property, when construction, use, and operation will comply with regulatory requirements and constraints.
12. Decisions to decommission equipment or temporarily discontinue use of facilities or equipment. This does not preclude the need to review decommissioning under Section 106 of the National Historic Preservation Act.
13. Demolition or disposal actions that involve buildings or structures when conducted in accordance with regulations applying to removal of asbestos, PCB's, and other hazardous materials, or disposal actions mandated by Congress. In addition, if the building or structure is listed, or eligible for listing, in the National Register of Historic Places, then compliance with Section 106 of the National Historic Preservation Act is required.
14. Outleasing of historic lighthouse properties as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.
15. Transfer of real property from the Coast Guard to the General Services Administration, Department of the Interior, and other Federal departments and agencies, or as mandated by Congress; and the granting of leases, permits, and easements where there is no substantial change in use of the property.
16. Renewals and minor amendments of existing real estate licenses or grants for use of government-owned real property where prior environmental review has determined that no significant environmental effects would occur.
17. New grants or renewal of existing grants of license, easements, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles; for such existing rights-of-way as electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and irrigation facilities; and for similar utility and transportation uses.
18. Defense preparedness training and exercises conducted on other than Coast Guard property, where the lead agency or department is not Coast Guard or Department of Transportation and the lead agency or department has completed its NEPA analysis and documentation requirements.

19. Defense preparedness training and exercise conducted on Coast Guard property that do not involve undeveloped property or increase noise levels over adjacent property and that involve a limited number of personnel, such as exercises involving primarily electric simulation or command post personnel.

20. Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel.

21. Training of an administrative or classroom nature.

22. Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

23. Actions performed as a part of Coast Guard operations and the Aids to Navigation Program to carry out statutory authority in the area of establishment of floating and minor fixed aids to navigation, except electronic sound signals.

24. Routine movement of personnel and equipment, and the routine movement, handling, and distribution of nonhazardous materials and wastes in accordance with applicable regulations.

25. Coast Guard participation in disaster relief efforts under the guidance or leadership of another Federal agency that has taken responsibility for NEPA compliance.

26. Data gathering, information gathering, and studies that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping, and other inventories.

27. Natural and cultural resource management and research activities that are in accordance with interagency agreements and which are designed to improve or upgrade the Coast Guard's ability to manage those resources.

28. Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on Coast Guard-owned property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

29. Approval of recreational activities (such as Coast Guard unit picnic) which do not involve significant physical alteration of the environment, increase disturbance by humans of sensitive natural habitats, or disturbance of historic properties, and which do not occur in, or adjacent to, areas inhabited by threatened or endangered species.

30. Review of documents, such as studies, reports, and analyses, prepared for legislative proposals that did not originate in DOT and that relate to matters that are not the primary responsibility of the Coast Guard.

31. Planning and technical studies which do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies.

32. Bridge Administration Program actions which can be described as one of the following: (a) Modification or replacement of an existing bridge on essentially the same alignment or location. Excluded are bridges with historic significance or bridges providing access to undeveloped barrier islands and beaches. (b) Construction of pipeline bridges for transporting potable water. (c) Construction of pedestrian, bicycle, or equestrian bridges and stream gauging cableways used to transport people. (d) Temporary replacement of a bridge immediately after a natural disaster or a catastrophic failure for reasons of public safety, health, or welfare. (e) Promulgation of operating regulations or procedures for drawbridges. (f) Identification of advance approval waterways under 33 CFR 115.70. (g) Any Bridge Program action which is classified as a CE by another Department of Transportation agency acting as lead agency for such action.

33. (blank)

34. Preparation of guidance documents that implement, without substantive change, the applicable Commandant Instruction or other Federal agency regulations, procedures, manuals, and other guidance documents.

(a) Regulations which are editorial or procedural, such as those updating addresses or establishing application procedures. (b) Regulations concerning internal agency functions or organization or personnel administration, such as funding, establishing Captain of the Port boundaries, or delegating authority. (c) Regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel. (d) Regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels. (e) Regulations concerning equipment approval and carriage requirements. (f) Regulations establishing, disestablishing, or changing the size of Special Anchorage Areas or anchorage grounds. (g) Regulations establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. (h) Special local regulations issued in conjunction with a regatta or marine parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations. (i) Regulations in aid of navigation, such as those concerning rules of the road, International Regulations for the Prevention of Collisions at Sea (COLREGS), bridge-to-bridge communication, vessel traffic services, and marking of navigation systems.

35. Approvals of regatta and marine event permits for the following events: (a) Events that are not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas. (b) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the Coast Guard determines, based on consultation with the Government agency, that the event will not significantly affect the environmentally sensitive area.

C2

**Please go to the Environmental Services and Planning website for all applicable
Nationwide Permits:**

<http://www.azdot.gov/business/environmental-services-and-planning/environmental-guidance-documents/section-404-401-procedures>

APPENDIX D

401 FORMS AND GUIDANCE

D1

**ADEQ APPLICATION FOR CERTIFICATION UNDER THE CLEAN WATER ACTION
SECTION 401 (ADEQ 2013)**



APPLICATION

FOR CERTIFICATION UNDER
THE CLEAN WATER ACT SECTION 401

For ADEQ Use Only

LTF No.: _____ Date Application Rec'd: _____
Place No.: _____ Customer No.: _____ AFIS No.: _____
Lat/Long OK: _____ Zip OK: _____ Orig. Signatures: _____ Date Rec'd: _____

Project Name:

404 Permit Type (Select one): _____ Nationwide Permit or Regional General Permit (**Number:** _____)
_____ Individual Permit

U.S. Army Corps of Engineers Project/File Number (if available):

Except for the signature page, an electronic (scanned copy) submittal of this application including maps/drawings may be acceptable after making arrangements with the ADEQ 401 Certifications project manager.

Signatures must be original; i.e., no copies, faxes or electronic versions.

Mailing Address For Completed Form: Arizona Department Of Environmental Quality
Surface Water Section, 401 Certification, 5415A-1
Attn.: Robert Scalamera
1110 West Washington
Phoenix, Arizona 85007

Questions or requests for an application in another format may be directed to Robert Scalamera at the above address or: email: rs3@azdeq.gov Voice: (602) 771-4502

All submitted maps, drawings and other attachments must be either 8½ x 11" or 11 x 17" in size unless other arrangements have been made with the ADEQ project manager.

The sizing or spacing of the application form may be adjusted as needed to fit the required information (attach additional pages as necessary). Signatures should be on one page. Typeface should be an easily readable font (Times New Roman or Arial are preferred) and type size should be 10 point or greater (12 point is preferred). No other changes are acceptable; altered applications will be rejected.

Provide all information. Failure to do so may result in delay in processing or rejection of the application.

Project Name:**Notes:**

- **Waters of the U.S. (WUS)** as defined by the Corps of Engineers and U.S. Environmental Protection Agency under the Clean Water Act. This certification applies only to activities in any potentially impacted WUS.
- **303[d]-listed Impaired Waters** are surface waters that are identified pursuant to Clean Water Act (CWA) Section 303[d] as impaired (e.g., not meeting surface water quality standards) and as a result merit special consideration. The current 303[d] list of Impaired Waters is available on the ADEQ website via: <http://www.azdeq.gov/index.html>
- **Outstanding Arizona Waters (OAW)** are surface waters classified as an outstanding state resource water by the ADEQ Director pursuant to the Arizona Administrative Code (A.A.C.) R18-11-112. These waters are of exceptional quality and therefore merit special consideration. The current list of OAW is available on the ADEQ website via: <http://www.azdeq.gov/index.html>
- **Temporary means** not longer than the time required to complete the subject activities.
- **Native material/fill** is defined as pollutant-free soil, sand, gravel, etc. that constitutes the streambed or adjacent banks in the immediate area of the permitted work.

Project Site Location Information

Street Address (If available. For projects encompassing multiple addresses, either “n/a” or on-site office address acceptable.):

City/town (indicate if near rather than within municipal boundaries):

County:

Site Zip code:

Site telephone (if available):

Approximate Center of Project (In degrees, minutes, seconds):

Latitude: _____° _____' _____"

Longitude: _____° _____' _____"

Directions to project location (from nearest intersection of major streets/highways). Include maps or drawings displaying location relative to state boundaries and nearby cities, highways, waterbodies, etc.

Impacted and downstream waterbody(ies) (from Water Quality Standards for Surface Waters [18 A.A.C. 11, Article 1], otherwise use “unnamed” or “unnamed tributary to”). Include flow regime (ephemeral, intermittent or perennial), name of downstream waterbody(ies) and name of watershed (from 18 A.A.C. 11, Article 1).

Example: *Deluge Wash (ephemeral) and several unnamed ephemeral washes, all tributary to the Big Sandy River, in the Bill Williams River Watershed:*

Project Name:

Area Of Disturbance (label units; e.g., acres, linear feet, square feet, square miles, etc.)

1. The total jurisdictional waters within the project boundaries: .
2. The impacted jurisdictional waters: .
3. The project size:

PROJECT DESCRIPTION

Project Purpose:

Describe Work To Be Performed (e.g., pad fill, utility crossings, bridges, channel modification, detention pond, etc.), including fill material to be used, armor material, structure material and revegetation / reclamation plan.

Describe the measures to be taken in order to control the discharge of pollutants into waters of the U.S. (WUS).

These measures may be procedural or physical in nature, temporary or permanent and must be functional prior to beginning any construction activity other than the creation of the measures themselves.

If, in lieu of entering the information here, a reference is made to another document; e.g., Stormwater Pollution Prevention Plan, the applicable portions of the referenced document must be included with this application.

Attach only the maps or drawings (either 8½ x 11” or 11 x 17” in size) necessary to provide an overview of the project. If details are needed, the ADEQ project manager will contact the applicant or agent requesting additional material.

The following are required:

U.S.G.S. 7.5 min. Topographic map or other contour map of project area.

Map delineating the ordinary high water mark of jurisdictional waters affected by activity to be certified.

Project Name:

APPLICANT INFORMATION (Complete all that apply. Use "N/A" for not applicable)

Applicant Name: Title:
Company, Agency, etc:
Phone Number: email address:
Mailing Address:
City: State: Zip Code:

I have reviewed the Arizona Water Quality Standards for Surface Waters (18 A.A.C. 11, Article 1) (available through www.azdeq.gov).

Application is hereby made for Arizona certification under CWA section 401 for the above-named project. I certify that I am familiar with the information contained or referenced in this application and that the information is true, accurate and complete.

Applicant's Signature: _____ Date: _____.

(delete this section if not applicable)

I hereby authorize (agent) _____ to act in my behalf in the processing of this application and to furnish any supplemental information in support of this application. I understand that I am bound by the actions of my agent.

Applicant's Signature: _____ Date: _____.

Agent Name: Title:
Company, Agency, etc:
Phone Number: email address:
Mailing Address:
City: State: Zip Code:

Agent's Signature: _____ Date: _____.

(delete this section if applicant is property owner)

Property Owner Name: Title:
Company, Agency, etc:
Phone Number: email address:
Mailing Address:
City: State: Zip Code:

Property Owner's Signature: _____ Date: _____.

D2

**EPA FACSIMILE LISTING REQUIRED COMPONENTS OF AN INDIVIDUAL
CERTIFICATION APPLICATION TO EPA (REPRODUCED FOR PRINTING; EPA
1999)**

Reproduction of EPA facsimile listing required components of an Individual Certification application to EPA

January 1999

Dear Applicant:

EPA Region 9 has instituted specific informational requirements for applications for 401 Certifications. There is no specific format or application form that must be used, however the following information must be included in a request for a 401 Certification:

- Applicant's name, address, and telephone number
- For non-Tribal applicants, the name, address and phone number of the Tribal contact person
- Complete written description of the activity (or activities) to be permitted
- Other permits needed for project and status of those permits (include contacts)
- Complete written description of the overall project
- Purpose and need for the overall project
- Purpose of proposed fill/activity (or activities)
- Location and name of the watercourse (site location map)
- Vicinity map of site (sites)
- Scale plan-view diagram of existing (pre-project) project conditions
- Scale plan-view diagram of conditions following construction of project
- Cross-sections of the two above cited plan-views
- Area of 404 CWA jurisdictional delineation juxtaposed on project plans
- Estimated acres of waters of the U.S. (404 CWA jurisdiction) that will be impacted by each activity and by the entire project overall
- Quantities of material to be dredged or used as fill (per activity, and total)
- Source and composition of fill material (per activity)
- Preliminary plan to compensate for the anticipated loss of aquatic ecosystem

This material should be mailed to USEPA, Region 9, WTR-8, 75 Hawthorne St., San Francisco, 94105.

APPENDIX E

IN-LIEU FEE PROCEDURES

PROCEDURE: Processing In-Lieu Payments for 404 Impacts

January 11, 2010

PROCESS:

ADOT EPG planner works with the PM and the USACE ADOT liaison to determine acreage of permanent impact to WUS, dollar value of in-lieu payment, and organization to which the payment will be made. **Note: Nationwide (NWP) 404 permits typically do not include in-lieu fees. Individual 404 Permits will generally include in-lieu fee (ILF) payments. When processing an in-lieu fee payment for an Individual or a Nationwide 404 permit, please notify the ADOT Project Manager to follow the ADOT/FHWA/USACE Operating Agreement which addresses in-lieu fee mitigation.**

1. ADOT EPG planner drafts Transmittal letter (sample attached)
2. Deliver transmittal letter to PM with a copy of the Section 404 permit that shows the special conditions to pay ILF
3. PM signs transmittal letter.
4. PM sends transmittal letter and attachments to R/W Group (or which ever group that has access to \$ or can write a check) for payment of ILF. Either a transfer form for state ILF recipients or a check for non-state ILF recipients.
5. PM receives ADOT check or transfer documents for the named receiving agency.
6. PM arranges for mailing or delivery of the check or transfer documents to USACE ADOT Liaison. USACE will have the ILF recipient sign the transfer documents.
7. The USACE ADOT liaison prepares a USACE transmittal to send to the receiving agency.
8. Receiving agency receives the package, signs the transmittal letter, acknowledging receipt of the package and letter, mails or couriers the signed transmittal back to USACE.
9. USACE ADOT liaison sends to the ADOT PM a signed copy of the transmittals signed by the receiving agency, acknowledging payment in full.
10. ADOT PM scans the fully signed and executed transmittal letters and emails a copy of the letter to ADOT Accounting, and to ADOT EPG environmental planner.
11. ADOT EPG planner forwards the email to the ADOT EPG statewide biologist and on-call consultant, prints the signed transmittal letter, places it in the project file, updates the PTS database 404 section, and the details section, and saves the email.

TIMEFRAMES:

The in-lieu fee payment must be made by the date indicated by the USACE in the NWP authorization letter or Individual 404 Permit.

ASSOCIATED REGULATIONS:

ADOT /FHWA/USACE Operating Agreement
USACE 404 Individual Permit

QUICK LINKS:

N/A