

DECISION MEMORANDUM

Tombstone Free Use Permit – North, AZA - 36878

U.S. Department of the Interior
Bureau of Land Management
Tucson Field Office

Project Description

The City of Tombstone has submitted an application for a mineral material free use permit for the removal of common variety sand and gravel located on portions of Walnut Gulch in T. 20 S, R. 22 E, Section 01, SWNW and Lot 4. The City of Tombstone proposes to remove up to 49,000 tons of sand and gravel from the wash running across the subject parcel where the City owns the surface estate and the federal government retains the mineral estate.

Approval and Decision

Based on a review of the project described in the attached Categorical Exclusion documentation and field office staff recommendations, I have determined that the project is in conformance with the Safford Resource Management Plan (approved September 1992) and is categorically excluded from further environmental analysis. It is my decision to approve the action as proposed subject to the following stipulations:

1. Permittee must submit an annual production report summarizing the tonnage of material removed for the calendar year.
2. Any archaeological or historic artifacts or remains, or vertebrate fossils discovered during operations shall be left intact and undisturbed; all work in the area shall stop immediately; and the Authorized Officer shall be notified immediately. Commencement of operations shall be allowed upon clearance by the Authorized Officer.
3. An additional cultural and/or paleontological resource survey may be required in the event the project location is changed or additional surface disturbing operations are added to the project after the initial survey. Any such survey must be completed prior to commencement of such operations.
4. If in connection with operations under this authorization, any human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (P.L. 101-601; Stat. 3048; 25 U.S.C. 3001) are discovered, the permittee shall stop operations in the immediate area of the discovery, protect the remains and objects, and immediately notify the Authorized Officer of the discovery. The permittee shall continue to protect the immediate area of the discovery until notified by the Authorized Officer that operations may resume.

Administrative Review or Appeal Opportunities

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the attached Form 1842-1. If an appeal is taken, your notice of appeal must be filed at Tucson Field Office, 3201 E Universal Way, Tucson AZ 85756 within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the Office of the Solicitor (Department of the Interior, Office of the Field Solicitor, Sandra Day O'Connor U.S. Court House #404, 401 West Washington Street SPC44, Phoenix, AZ 85003-2151) (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

Standards for Obtaining a Stay

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

/s/ Melissa Warren
Melissa D. Warren, Tucson Field Manager

May 17, 2016
Date

Attachment: Form 1842-1