



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS ALBUQUERQUE DISTRICT
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109-3435

Regulatory Division

PUBLIC NOTICE
REQUEST FOR PERMISSION TO ALTER A U.S. ARMY CORPS OF ENGINEERS
PROJECT UNDER SECTION 408

TITLE: Los Lunas Blvd. Corridor Project (408 SPA-2024-001)

PUBLIC NOTICE COMMENT PERIOD:

Begins: October 28, 2024

Ends: November 27, 2024

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the Village of Los Lunas (requester) has requested permission through the Middle Rio Grande Conservancy District (non-federal sponsor of the federally authorized project) from the U.S. Army Corps of Engineers (USACE) to alter the *Middle Rio Grande Flood Protection Bernalillo to Belin New Mexico* project, a proposed federal flood risk management project, authorized by the Water Resources Development Act of 1986.

LOCATION: The proposed project is located along the Rio Grande, within the Village of Los Lunas, Valencia County, New Mexico, approximate latitude 34.783833, longitude - 106.727505.

REQUESTER'S PROPOSED ACTION: The project involves the construction of a new bridge across the Rio Grande and crossing structures for the Lower Peralta Riverside Drain (east side) and the Upper Belen Riverside Drain (west side) to provide a second access point to Interstate 25 (I-25) in Los Lunas, New Mexico and to extend a new roadway across the Rio Grande to New Mexico Highway (NM) 47. The purpose of the project is to improve traffic flow on NM 6 and other facilities and to accommodate regional growth.

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION:

The project area consists of riparian vegetation and the Rio Grande. Both the east and west banks of the river support a mixture of coyote willow (*Salix exigua*), Russian olive (*Elaeagnus angustifolia*) and occasionally salt cedar (*Tamarix spp.*). The project involves the construction of four piers within the ordinary high-water mark of the Rio Grande, and one pier, with a small portion of another pier, located within adjacent wetlands. According to the project proponent, the project may result in permanent impacts to waterway functions, including surface flow conveyance, infiltration, wildlife habitat, filtration, sediment and organism transport, and organic chemical processes.

Section 7 of the Endangered Species Act

To comply with Section 7 of the Endangered Species Act (ESA), the Federal Highway Administration (FHWA), who is the lead Federal agency for the project, initiated consultation with the United States Fish and Wildlife Service (USFWS) under Section 7 of the ESA for effects to the federally listed as endangered southwestern willow flycatcher (*Empidonax traillii extimus*), the endangered Rio Grande silvery minnow (*Hybognathus amarus*), and the threatened western yellow-billed cuckoo (*Coccyzus americanus*). The USFWS issued a Biological Opinion on June 7, 2024, determining that the proposed project will not jeopardize the silvery minnow, flycatcher, or cuckoo.

Section 106 of the National Historic Preservation Act

Potentially eligible cultural resources may be affected by the proposed project. FHWA initiated consultation with the State Historic Preservation Officer and received concurrence.

AUTHORITY: The authority to grant permission for temporary or permanent use, occupation or alteration of any USACE civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 ("Section 408"). Section 408 authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Secretary of Army's authority under Section 408 has been delegated to the USACE, Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE, Directorate of Civil Works and Division and District Engineers, depending upon the nature of the activity.

LIMITS OF SECTION 408 AUTHORITY: A requester has the responsibility to acquire all other permissions or authorizations required by federal, state, and local laws or regulations, including any required permits from the USACE Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. Section 1344). In addition, an approval under Section 408 does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

EVALUATION FACTORS: The decision whether to grant the requested permission for project alteration under Section 408 will be based on several factors. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. Review of requests for alteration will be reviewed by a USACE technical review team considering the following factors:

1) Impair the Usefulness of the Project Determination. The review team will determine if the proposed alteration would limit the ability of the USACE project to function as authorized, or would compromise or change any authorized project conditions, purposes or outputs. In order for an alteration to be approved, the requester must demonstrate that the alteration does not impair the usefulness of the federally authorized project.

2) Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest evaluation depend upon the type of USACE project being altered and the nature of the proposed alteration and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. This evaluation will consider information received from the interested parties, including tribes, agencies, and the public. The benefits that reasonably may be expected to accrue from the proposal must be compared against its reasonably foreseeable detriments. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks and by the net impact of the alteration on the public interest using the public interest factors.

3) Environmental Compliance. A decision on a Section 408 request is a federal action, and therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements. While USACE is responsible for ensuring environmental compliance, the requester is responsible for providing all information that the Sacramento District identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and procedures. NEPA and other analysis completed to comply with other environmental statutes (e.g. Endangered Species Act) should be commensurate with the scale and potential effects of the activity that would alter the USACE project. The Sacramento District will work with the requester to determine the requirements, which will be scaled to the likely impacts of the proposed alteration and should convey the relevant considerations and impacts in a concise and effective manner.

PUBLIC INVOLVEMENT: The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding the Los Lunas Blvd. Corridor Project, a proposed alteration to a proposed federally authorized project. Comments received within 30 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources and in the evaluation of whether the proposed alteration would be injurious to the public interest and/or would impair the usefulness of the authorized project. Only the specific activities that have the potential to occupy, use or alter the Middle Rio Grande Flood Protection Bernalillo to Belin New Mexico Project will be

evaluated. Please limit comments to the area of the alteration and those adjacent areas that would be directly or indirectly affected by the alteration to the Middle Rio Grande Flood Protection Bernalillo to Belin New Mexico Project. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act.

SUBMITTING COMMENTS: Written comments, referencing Identification Number 408 SPA-2024-001 must be submitted to the office listed below on or before **November 27, 2024**.

Kara Hellige, Section 408 Coordinator, Regulatory Division, Albuquerque District
Email: CESPA-408@usace.army.mil

Attachments:

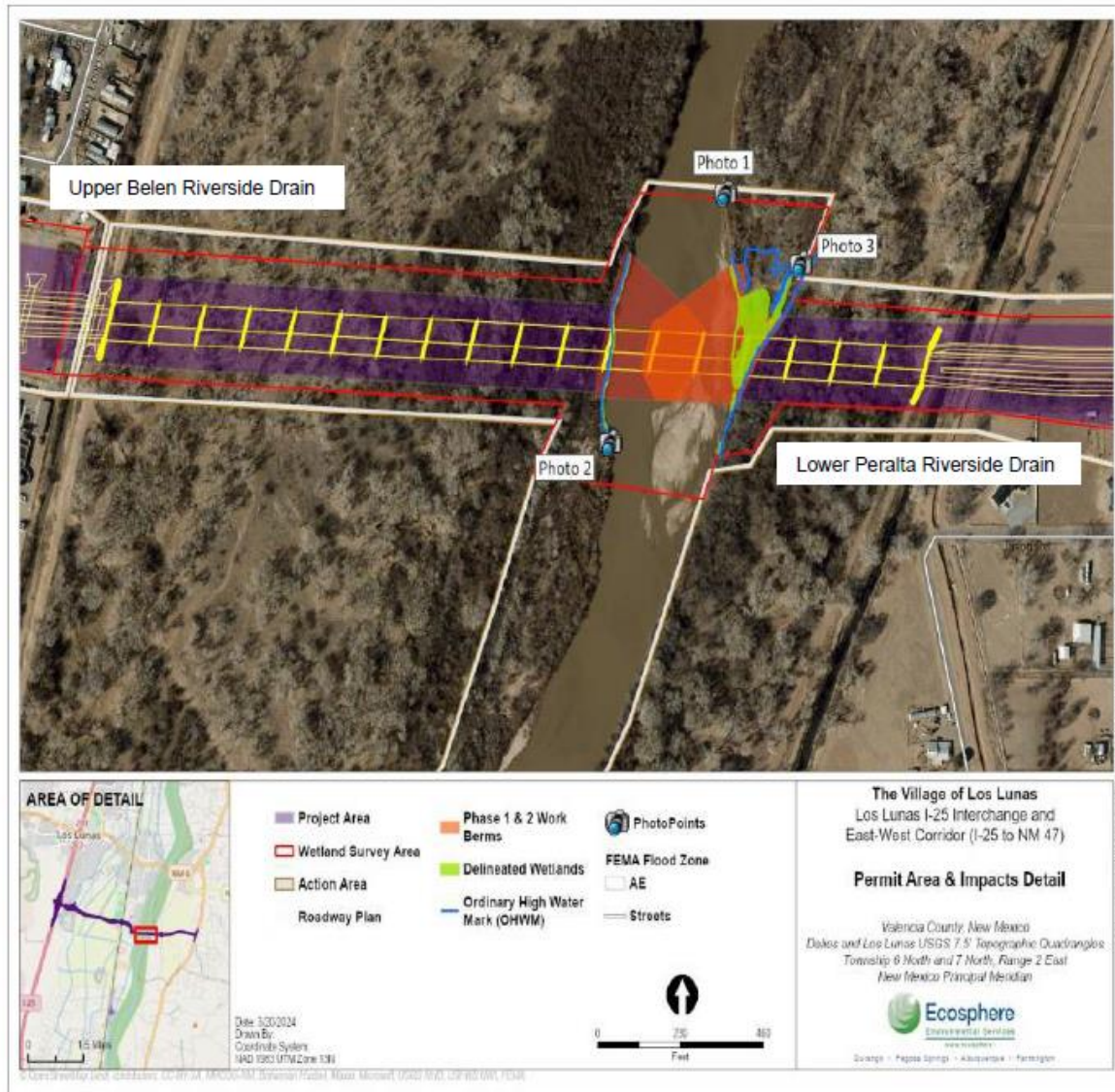
- 1) Proposed project location map
- 2) Approximate project footprint map

ATTACHMENT 1



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ATTACHMENT 2



Map 2. Permit Area and Impacts Detail