

DATE: November 28, 2018

TO: C. H. Huckelberry
County Administrator

FROM: Suzanne Shields, P.E.
Director 

SUBJECT: Facility Impact Permit Ordinance – Notice of Final Draft

The Regional Flood Control District (District) is proposing new regulations that create a process for the District to authorize impacts to District facilities. District facilities is defined as lands that are owned or managed by the District, flood control structures owned by the District, and lands, drainageways or structures for which the District has maintenance responsibility, either through an Intergovernmental Agreement (IGA) or easement.

A few years ago, the Arizona Legislature revised provisions of Title 48 of the Arizona Revised Statutes (A.R.S) to better define the District's responsibilities to manage its facilities. These revisions establish that it is a violation for any person to impact a District facility without written authorization, which resulted in the need for a process to authorize impacts to District facilities.

Historically, authorization of impacts to District facilities occur using the Department of Transportation's (DOT) Right-of-Way Use Permit process. Even though this process provided some oversight of the construction activities impacting District facilities, it was insufficient to address proposed impacts in other jurisdictions. In addition, in most cases, District facilities are not, and should not be, considered; rights-of-way and property rights entitlements should be required from applicants prior to the construction of permanent impacts such as utilities and storm drains. The requirement for the appropriate property rights has not historically been consistently applied.

The creation of a process administered by the District would provide a better and more effective permitting, inspection, and compliance outcome. This process would ensure that the District's interests are met with respect to inspections, the receipt of as-built plans, and ensuring compliance with other permitting programs such as sections 402 and 404 of the Clean Water Act and Section 408 of the River and Harbors Act.

The attached proposed draft Facility Impact Permit Ordinance (Ordinance) is the result of significant stakeholder involvement and review, including the District, DOT, Regional Wastewater and Reclamation Department, Pima County Attorney's Office, and Real Property Services staff as well as Southern Arizona Homebuilders Association, Metropolitan Pima Alliance and Tucson Water, Tucson Electric Power and Trico Electric Cooperative. The draft has been modified to reflect the comments provided by stakeholders during this process. Attached are the comments and the District's responses. In addition, pursuant to §48-3609.02.B.1, the District is required to provide at least a two-week meeting notice for a meeting where the public is able to provide comments on the draft language. This meeting occurred on July 10, 2018 at 10 a.m. We did not receive any comments.

Please let me know if you have any questions.

SS/tj

Attachments

c: Carmine DeBonis, Deputy County Administrator – Public Works
Eric Shepp, P.E., Deputy Director – Regional Flood Control District
Andy Dinauer, P.E., Deputy Director – Regional Flood Control District