

PRESIDENTIAL PERMIT 05-2

AUTHORIZING THE ARIZONA DEPARTMENT OF TRANSPORTATION
TO CONNECT, EXPAND AND MAINTAIN
TRAFFIC LANES AND RELATED TRANSPORTATION INFRASTRUCTURE
THROUGH THE LAND BORDER CROSSING
AT THE MARIPOSA PORT OF ENTRY,
IN THE VICINITY OF NOGALES, ARIZONA,
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND MEXICO

By virtue of the authority vested in me as Assistant Secretary of State for Economic and Business Affairs, pursuant to Department of State Delegation number 277 from the Secretary of State dated March 3, 2005, to exercise, to the extent authorized by law, all authorities vested in the Under Secretary of State for Economic, Business and Agricultural Affairs, including those authorities under Executive Order 11423, 33 Fed. Reg. 11741 (1968); as amended by Executive Order 12847 of May 17, 1993, 58 Fed. Reg. 29511 (1993), Executive Order 13284 of January 23, 2003, 68 Fed. Reg. 4075 (2003) and Executive Order 13337 of April 30, 2004, 69 Fed. Reg. 25299 (2004); the International Bridge Act of 1972 (86 Stat. 731; 33 U.S.C. § 535 *et seq.*); and Department of State Delegation of Authority number 118-1 of April 11, 1973; having considered the environmental effects of the proposed action in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. § 4321 *et seq.*) and other statutes relating to environmental concerns; having considered the proposed action in accordance with the National Historic Preservation Act (80 Stat. 917, 16 U.S.C. § 470f *et seq.*); and having requested and received the views of various of the federal departments and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to the Arizona Department of Transportation hereinafter referred to as "permittee"), to connect, expand and maintain traffic lanes and related transportation infrastructure at the land border crossing at the Mariposa Port of Entry, in the vicinity of Nogales, Arizona, at the international boundary between the United States and Mexico. The permittee, in conjunction with the Department of Homeland Security (DHS), the Department of the Interior (DOI), and the General Services Administration (GSA) will reconfigure the existing Mariposa Port of Entry by building additional traffic lanes and related transportation infrastructure so as to enhance the safety and security of our border

with Mexico while expediting the processing of commercial cargo at the Mariposa Port of Entry.

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The term "facilities" as used in this permit means the approaches and any land, structure or installations appurtenant to the existing land border crossing at the Mariposa Port of Entry, with the exception of the border inspection facilities, which are owned, operated and maintained by the United States of America.

The term "border inspection facilities" encompasses real property and the inspection processing areas and associated buildings under the exclusive control of the United States of America.

This permit is subject to the following conditions:

Article 1. The facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions and requirements of this permit and any amendment thereof. This permit may be terminated at the will of the Secretary of State or the Secretary's delegate or may be amended by the Secretary of State or the Secretary's delegate at will or upon proper application therefor. The permittee shall make no substantial change in the location of the facilities or in the operations authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate. This permit does not apply to the border inspection facilities that are owned by the United States of America and under the jurisdiction, custody and control of the Administrator of General Services, or as delegated to DHS.

Article 2. The expansion and maintenance of the facilities shall be in all material respects as described in the permittee's application for a Presidential permit under Executive Order 11423, as amended by any comments received from federal and state agencies, the response to those comments, the Final Environmental Assessment, and the Finding of No Significant Impact (FONSI) dated May 16, 2005.

Article 3. The standards for, and the manner of, the connection, expansion and maintenance of the facilities shall be subject to inspection and approval by the

representatives of appropriate federal and state agencies. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 4. The permittee shall comply with all applicable federal and state laws and regulations regarding the connection, expansion and maintenance of the United States facilities, and with all applicable industrial codes. The permittee shall obtain the requisite permits from state and local government entities and relevant federal agencies, as well as from the relevant Mexican authorities.

Article 5. Upon the termination, revocation or surrender of this permit, and unless otherwise agreed by the Secretary of State or the Secretary's delegate, the facilities in the immediate vicinity of the international boundary shall be removed by and at the expense of the permittee within such time as the Secretary of State or the Secretary's delegate may specify, and upon failure of the permittee to remove this portion of the facilities as ordered, the Secretary of State or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 6. This permit and the operations of the facilities hereunder shall be subject to the limitations, terms, and conditions issued by any competent agency of the United States Government, including but not limited to DHS, GSA, DOI and the United States Section of the International Boundary and Water Commission (USIBWC). This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in exact accordance with such limitations, terms and conditions.

Article 7. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the facilities or parts thereof; to retain possession, management or control thereof for such length of time as may appear to the President to be necessary; and thereafter to restore possession and control to the permittee.

Article 8. In the event of transfer of ownership or control of the facilities or any part thereof, this permit shall continue in effect temporarily for a reasonable time pending submission of a proper application by the transferee for a new and

permanent permit, providing that notice of such transfer is given promptly to the Department of State accompanied by a statement of the transferee under oath that the facilities and the connection, expansion and maintenance thereof authorized by this permit will remain substantially the same as before the transfer pending issuance to the transferee of a new and permanent permit.

Article 9. (1) The permittee shall acquire such right-of-way grants or easements, permits and other authorizations as may become necessary and appropriate.

(2) The permittee shall save harmless and indemnify the United States from any claimed or adjudged liability arising out of the connection, expansion or maintenance of the facilities.

(3) The permittee shall maintain the facilities and every part thereof in a condition of good repair for their safe operation.

Article 10. (1) The permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources related to the connection, expansion and maintenance of the facilities, including those mitigation measures set forth in the Final Environmental Assessment and in the FONSI.

(2) Before beginning construction, the permittee shall obtain the concurrence of the IBWC.

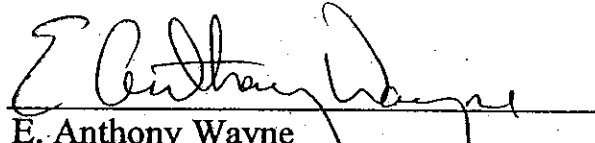
Article 11. The permittee shall comply with all agreed actions and obligations undertaken to be performed in the Application for a Presidential Permit, in the Final Environmental Assessment, and in the FONSI. The Final Environmental Assessment includes the "Environmental Determination" dated September 30, 2004, all comments submitted by agencies on that document, the responses to those comments, and all correspondence between agencies and the permittee addressing agencies' concerns.

Article 12. The permittee shall file with the appropriate agencies of the United States Government such statements or reports under oath with respect to the United States facilities, and/or permittee's actions in connection therewith, as are now or may hereafter be required under any laws, regulations or orders of the United States Government or its agencies.

Article 13. The permittee shall not begin construction until it has been notified by the Department of State that such construction has been authorized by an exchange of diplomatic notes between the Governments of the United States and Mexico. The permittee shall provide written notice to the Department of State at such time as the construction authorized by this permit is begun, and again at such time as construction is completed, interrupted or discontinued.

Article 14. The permittee shall notify the Department of State if before or during construction historic or archeological properties are located and, to the extent construction has already started, will cease construction immediately. The permittee acknowledges that historic and archeological properties are protected under 49 U.S.C. section 303 (section 4(f) of the Department of Transportation Act of 1966, as amended, and section 18(a) of the Federal-Aid Highway Act of 1968) and under 16 U.S.C. section 470f (section 106 of the National Historic Preservation Act) and the permittee shall prepare a Section 4(f) statement if the facilities will have an effect on any historic or archeological properties.

IN WITNESS WHEREOF, I, E. Anthony Wayne, Assistant Secretary of State for Economic and Business Affairs, have hereunto set my hand this 7th day of June, 2005 in the City of Washington, District of Columbia.


E. Anthony Wayne
Assistant Secretary of State
United States Department of State