

Appendix B

Memorandum of Agreement

117940

MEMORANDUM OF AGREEMENT
BETWEEN THE
FEDERAL AVIATION ADMINISTRATION,
ARIZONA STATE HISTORIC PRESERVATION OFFICER,
BUREAU OF RECLAMATION, SALT RIVER PROJECT
AND THE CITY OF PHOENIX
REGARDING THE
CITY OF PHOENIX AIRPORT DEVELOPMENT PROGRAM
AT PHOENIX SKY HARBOR INTERNATIONAL AIRPORT

WHEREAS, the City of Phoenix has requested that the Federal Aviation Administration (FAA), as the lead Federal agency, approve the City of Phoenix Aviation Department's (City) proposed Airport Development Program (ADP) and associated Airport Layout Plan (ALP) for Phoenix Sky Harbor International Airport; and

WHEREAS, the ADP consists of the demolition of Terminal 2 and other ancillary facilities, construction of a new 33-gate West Terminal and its associated facilities, modifications to the Terminal 4 N4 Concourse International gates, construction of crossfield Taxiways Uniform "U" and Victor "V", modifications to Sky Harbor Boulevard and construction of Stage 2 of the Automated People Mover (APM) consisting of Stage 2-East and Stage 2-West. (See **Attachment 1**); and

WHEREAS, the FAA is responsible for completing the requirements of Section 106 of the National Historic Preservation Act, 16 USC § 470 (NHPA) for this undertaking; and

WHEREAS, the FAA has consulted with the Arizona State Historic Preservation Officer (SHPO) and other interested parties pursuant to 36 CFR 800; and

WHEREAS, the FAA, in consultation with the SHPO, has established the Areas of Potential Effects (APE) for construction and visual impacts, as depicted on **Attachment 2**; and

WHEREAS, the FAA has consulted with the Advisory Council on Historic Preservation and provided the Council its adverse effect determination with specified documentation pursuant to the regulations for *Protection of Historic Properties*, Title 36, Code of Federal Regulations (CFR), Part 800.6(a)(1), which implement Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470), and the Council chose not to participate in the consultations pursuant to 36 CFR 800.6(a)(1)(iii); and

WHEREAS, the proposed development may occur in several separate phases over a decade or longer; and

WHEREAS, the FAA, in consultation with the SHPO, determined that the implementation of the proposed undertaking could potentially affect eight historic properties listed in or eligible for listing in the National Register of Historic Places (National Register) (**Attachment 3**), as well as other historical and archaeological resources that might be discovered during project implementation; and

WHEREAS, the SHPO is authorized to advise and assist federal and state agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under Arizona Revised Statutes § 41-511.04(D)(4); and

WHEREAS, the SHPO is authorized to enter into this Agreement in order to fulfill its role of advising and assisting federal agencies in carrying out their Section 106 responsibilities under the following federal statutes: Sections 101 and 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. Section 470f and pursuant to 36 CFR 800, regulations implementing Section 106, at 36 CFR 800.2(c)(1)(i) and 800.6(b); and

WHEREAS, the APM Stage 2-East would cross the Grand Canal which would require an easement. The Grand Canal is owned by the Bureau of Reclamation and managed by the Salt River Project. The FAA has invited the Bureau of Reclamation and the Salt River Project to be signatories to this Agreement; and

WHEREAS, the City is the project proponent and has primary responsibility for funding and implementing many provisions of this Agreement and ensures the City's archaeological contractor holds an Archaeological Resources Protection Act (ARPA) permit from the Bureau of Reclamation for data recovery on federal land and therefore is a signatory to this Agreement; and

WHEREAS, the archaeological data recovery necessitated by the undertaking must be permitted by the Arizona State Museum pursuant to A.R.S. § 41-842; and

WHEREAS, the City of Phoenix Historic Preservation Officer and the City of Phoenix Archaeologist participated in the consultation process; and

WHEREAS, the FAA consulted with the National Park Service pursuant to 36 CFR 800.10(c) and invited that agency to be a participant in this Agreement as a representative of the Department of the Interior, but the National Park Service chose not to participate; and

WHEREAS, the Salt River Pima-Maricopa Indian Community (SRPMIC), Gila River Indian Community (GRIC), Fort McDowell Yavapai Nation, Hopi Tribe, Ak-Chin Indian Community, Yavapai-Prescott Indian Tribe and Tohono O'Odham Nation participated in the consultation process and have been invited to concur with this Agreement; and

NOW, THEREFORE, the FAA, the Bureau of Reclamation, Salt River Project, SHPO and City agree that upon signing this MOA, the FAA's issuance of a Record of Decision approving the proposed ADP, and the City's decision to proceed with the ADP, the FAA shall ensure that the following stipulations are implemented in order to take into account the effects of the undertaking on historic properties and archaeological resources.

STIPULATIONS

The FAA shall ensure that the following stipulations are implemented:

Stipulation 1. Treatment of Archaeological Properties

The FAA shall ensure that the City prepares an Archaeological Treatment Plan (ATP) to address potential adverse effects on archaeological resources. These areas include and will take into account that the development will occur over time in phased construction build-out.

The ATP will address known archaeological resources and potential unrecorded sites within the APE. Known archaeological resources within the APE include Dutch Canal Ruin [AZ T:12:62(ASM)], Pueblo Salado [AZ T:12:47(ASM)], Pueblo Grande [AZ U:9:1(ASM)] and sites AZ U:9:2(ASM) and AZ U:9:28(ASM) depicted within **Attachment 4**.

The proposed 33-gate West Terminal, crossfield taxiways, APM Stage 2 West, and reconfiguration of Sky Harbor Boulevard may affect the resources known as Dutch Canal Ruin [AZ T:12:62(ASM)] and Pueblo Salado [AZ T:12:47(ASM)]. The proposed APM Stage 2 East and

APM Maintenance, Control, and Storage Facility may affect the resource known as Pueblo Grande [AZ U:9:1(ASM)] and sites AZ U:9:2(ASM) and AZ U:9:28(ASM).

Attachments 5 and 6 identify areas where there is a potential that other unrecorded Hohokam sites, canals and other historic-era sites could be found.

The ATP shall include a strategy for archaeological testing and/or archaeological monitoring to identify buried archaeological resources within areas that could be affected by ground-disturbing demolition or construction activities. The ATP shall define a process for evaluating the National Register eligibility of any identified archaeological resources, assessing project effects, and designing and implementing mitigation measures, which are most likely to entail excavations and studies to recover and preserve archaeological data. The ATP shall also include a strategy for addressing unanticipated discoveries.

Because full development of the ADP will take several years to complete, treatment of archaeological resources may need to be phased to mesh with the implementation schedule. Once archaeological investigations are completed for each identified phase, the FAA shall authorize construction to proceed based on review and acceptance of preliminary reports documenting the accomplishment of each phase of the ATP.

The ATP shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation*, as amended and annotated (http://www.cr.nps.gov/local-law/arch_stnds_0.htm); and the *City of Phoenix Guidelines for Archaeology*, 2004. The Archaeological Treatment Plan shall specify, at a minimum:

- a) The property, properties, or portions of properties that are to be investigated;
- b) Any property, properties, or portions of properties that will be destroyed without data recovery;
- c) The research questions to be addressed, with an explanation of their relevance and importance;
- d) The fieldwork and analytical methods to be used, with an explanation of their relevance to the research questions;
- e) The methods to be used in data management and dissemination of data including a schedule;
- f) The proposed disposition of recovered materials and records;
- g) A proposed schedule for the submittal of preliminary, draft, and final plans and reports to FAA and consulting parties.
- h) The FAA shall ensure that archaeological investigations are conducted under the direction of individuals who meet the Secretary of the Interior's professional qualification standards, and the ATP shall include the names and a summary of the professional experience of the individuals who will supervise such work.
- i) The FAA shall ensure that all archaeological investigations are conducted in accordance with a permit issued by the Arizona State Museum pursuant to the Arizona Antiquities Act (Arizona Revised Statutes § 41-841 et seq.) and data recovery is conducted under terms of an ARPA permit from the Bureau of Reclamation.
- j) The FAA shall ensure that all archaeological materials collected in accordance with the ATP (excluding any human remains and cultural objects that are discovered and repatriated in accordance with Stipulation 5) and associated documentation are curated

in accordance with regulations for *Curation of Federally-Owned and Administered Archaeological Collections*, 36 CFR 79. The FAA shall ensure that all archaeological materials discovered on federal land managed by the Bureau of Reclamation shall be curated at the Huhugam Heritage Center on the Gila River Indian Reservation. If human remains are discovered on federal land managed by the Bureau of Reclamation, that agency shall treat the human remains in accordance with the Native American Graves Protection and Repatriation Act and the Bureau of Reclamation Treatment Plan (**Attachment 7**).

- k) The ATP or phases of the plan shall be reviewed and revised in accordance with Stipulation 5.

Stipulation 2. Paul Coze Mural, *The Phoenix*

The FAA, in consultation with the SHPO, has determined that implementation of the proposed undertaking would have no adverse effect upon **The Phoenix**, a three-panel, multimedia mural by Paul Coze. The City shall move the mural prior to demolition of Terminal 2 and display the three panels of the mural together in an appropriate public location on the Airport. The FAA shall ensure the City prepares a plan for moving the mural. The plan shall include provisions for photo-documenting the mural in place in Terminal 2, measures to minimize damage to the mural when it is moved, selection of a suitable public space on the airport for displaying the mural, a timely schedule for reinstalling the mural, documentation of the history of the mural, and public interpretation of the mural when it is again displayed. The plan shall be reviewed and revised in accordance with Stipulation 5.

Stipulation 3. Pueblo Grande Ruin and Irrigation Sites National Historic Landmark

The FAA, in consultation with the SHPO, has determined that implementation of the proposed undertaking would have no adverse effect on the Pueblo Grande Ruin and Irrigation Sites National Historic Landmark within the Pueblo Grande Museum and Archaeological Park. The FAA shall consult with the Director of the Pueblo Grande Museum and Archaeological Park, City of Phoenix Archaeologist, City of Phoenix City Historic Preservation Officer, SHPO, and National Park Service throughout the design process to ensure that a sensitive and compatible design will avoid adverse visual effect to Pueblo Grande Museum and Archaeological Park. The FAA shall review construction plans for the APM Stage 2-East and APM Maintenance Control and Storage Facility to determine whether there is potential for construction-induced ground vibration to damage the archaeological ruins of the Pueblo Grande Ruin and Irrigation Sites National Historic Landmark within the Pueblo Grande Museum and Archaeological Park. If warranted, a vibration-abatement and monitoring plan shall be prepared and implemented in accordance with Stipulation 5.

Stipulation 4. Treatment of Human Remains and Cultural Objects

The treatment of human remains and any cultural objects found on non-federal land shall follow the requirements and specifications contained in the City Burial Agreement. The FAA shall ensure that all archaeological materials discovered on federal land managed by the Bureau of Reclamation shall be curated at the Huhugam Heritage Center on the Gila River Indian Reservation. If human remains are discovered on federal land managed by the Bureau of Reclamation, that agency shall treat the human remains in accordance with the Native American Graves Protection and Repatriation Act and the Bureau of Reclamation Treatment Plan (**Attachment 7**).

Stipulation 5. Review, Comment, and Consultation

Plans and reports prepared in accordance with this Agreement shall be consistent with guidelines of the Arizona State Museum, SHPO, City Historic Preservation Officer, and City Archaeologist. As appropriate, the FAA shall coordinate preparation of draft documents prepared pursuant to this Agreement with the City Historic Preservation Officer, City Archaeologist, and Director of the Pueblo Grande Museum and Archaeological Park. The FAA shall submit draft documents to the SHPO and other participants in this Agreement for a thirty-day review period. The FAA in consultation with the signatories to this agreement shall consider any comments provided within thirty days, and request the City to revise reports as appropriate. The FAA shall provide the consulting parties with a copy of final reports.

Stipulation 6. Airport Development Program Modifications

As final designs of the various components of the ADP are prepared by the City, the FAA will review the results of the assessment of effects in consultation with the City Archaeologist and City Historic Preservation Officer. If design modifications expand the APE, the FAA shall ensure the City undertakes supplemental inventory to identify any historic properties in the expanded area of potential effects. The City shall provide the results of the review of final designs to the FAA. The FAA shall consult with the SHPO about the National Register-eligibility of those newly identified properties, about the effect of the ADP on any eligible properties, and about treatment to avoid, reduce, or mitigate any identified adverse effects.

Stipulation 7. Professional Qualifications

The FAA shall ensure that all historic preservation work carried out pursuant to this Agreement is carried out by or under the supervision of a person or persons meeting at a minimum the Secretary of the Interior's *Professional Qualifications Standards* (36 CFR Part 61).

Stipulation 8. Arbitration

The parties agree to utilize any arbitration that is required under applicable court rules.

Stipulation 9. Conflict of Interest

This Agreement is subject to cancellation by the State under ARS § 38-511 if a person significantly involved in the Agreement on behalf of the State is an employee or consultant of any other party in the Agreement at any time while the Agreement or any extension of the Agreement is in effect, but no later than three years after its execution.

The SHPO may terminate this Agreement upon finding that an Arizona State Parks employee was significantly involved in the creation of this Agreement is, at any time the Agreement is in effect but no later than three years after its execution, an employee or consultant of any other party in the Agreement.

Stipulation 10. Equal Opportunity/Non-Discrimination

The Consulting Parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

Stipulation 11. Non-Availability of Funding

This Agreement shall be subject to available funding and nothing in this Agreement shall bind the City, State or Federal agencies to expenditures in excess of funds authorized and appropriated for the purposes outlined in the Agreement.

Stipulation 12. Confidentiality

Maintaining confidentiality of certain historic information is allowed under Section 304 of the National Historic Preservation Act and A.R.S.39-125. Therefore, the nature and location of certain historic properties discussed in the Agreement shall be maintained per 36 CFR 800.11(c).

Stipulation 13. Dispute Resolution

Should any party to this Agreement or member of the public object within thirty-days to any actions proposed or carried out pursuant to this Agreement, the FAA shall consult with the objecting party to resolve the objection. The FAA shall notify the SHPO of any objection. If the FAA determines that the objection cannot be resolved, the FAA shall forward all documentation relevant to the dispute to the Council. Within thirty-days after receipt of all pertinent documentation, the Council will either:

- a) Provide the FAA with recommendations, which the FAA will take into account in reaching a final decision regarding the dispute; or
- b) Notify the FAA that it will comment pursuant to 36 CFR Part 800.7(c), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the FAA in accordance with 36 Part CFR 800.7(c)(4) with reference to the subject of the dispute.
- c) Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the FAA responsibility to carry out all actions under this Agreement that are not subject of the dispute will remain unchanged.

Stipulation 14. Amendment

Any of the signatories may request that MOA be amended according to 36 CFR 800.6(c)(7). Any amendment will be effective on the date an amended Agreement is signed by all signatories. The FAA will ensure a copy of any executed amended Agreement is filed with the Advisory Council.

Stipulation 15. Duration

The FAA, SHPO and the City shall review this Agreement in January every five years from the year of the Agreement's execution to determine whether the Agreement needs to continue and whether any changes may be needed. The review and determinations may take place on a conference call or in a physical meeting as needed. Reviews of this MOA shall occur until the completion of the ADP.

Stipulation 16. Termination

In the event the terms of the MOA cannot be or are not being carried out, the signatories shall consult to seek amendment of the Agreement. If an agreement cannot be reached on an amendment, the FAA or the SHPO may terminate it pursuant to 36 CFR 800.6(c)(8). The FAA will either execute a new Memorandum of Agreement under 36 CFR 800.6(c)(1) or request and consider the comments of the Advisory Council for Historic Preservation pursuant to 36 CFR 800.7(a).

Execution of this Agreement, filing of the Agreement with the Council pursuant to 36 CFR 800.6(b)(1)(iv), and implementation of its terms is evidence that the FAA has taken into account the effects of the undertaking on historic properties protected under Section 106 of the National Historic Preservation Act and afforded the Council an opportunity to comment on the undertaking pursuant to that Act.

FEDERAL AVIATION ADMINISTRATION

By *Mal Ann* Date 1/13/06

Manager, Airports Division, Western-Pacific Region

ARIZONA STATE HISTORIC PRESERVATION OFFICE

By *James Garrison* Date 1/23/06

Arizona State Historic Preservation Officer

BUREAU OF RECLAMATION

By *Ray N. Miller* Date 1/23/06

Manager, Phoenix Area Office

CITY CLERK
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SALT RIVER PROJECT

By *John Heane* Date 1/23/06

Senior Principal Scientist

CITY OF PHOENIX, A MUNICIPAL CORPORATION

By *David Krietor* Date 1/27/06

David Krietor, Aviation Director



ATTEST:

Vicky Miel
City Clerk

APPROVED AS TO FORM:

Nancy Kesteloot
ACTING City Attorney

CONCUR:

FORT McDOWELL YAVAPAI NATION

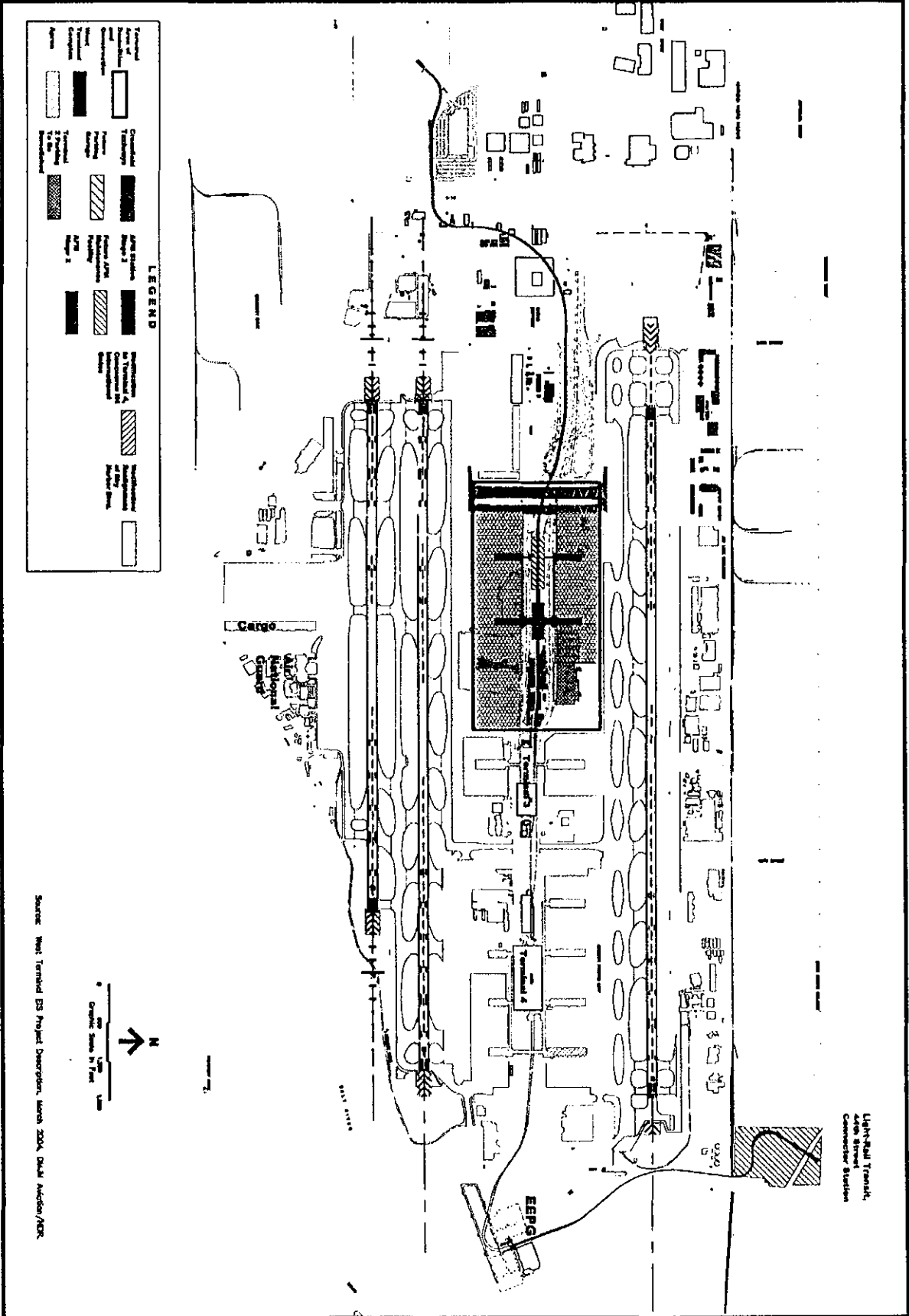
By R. R. B. Date 1-31-06
Title PRESIDENT

CONCUR:

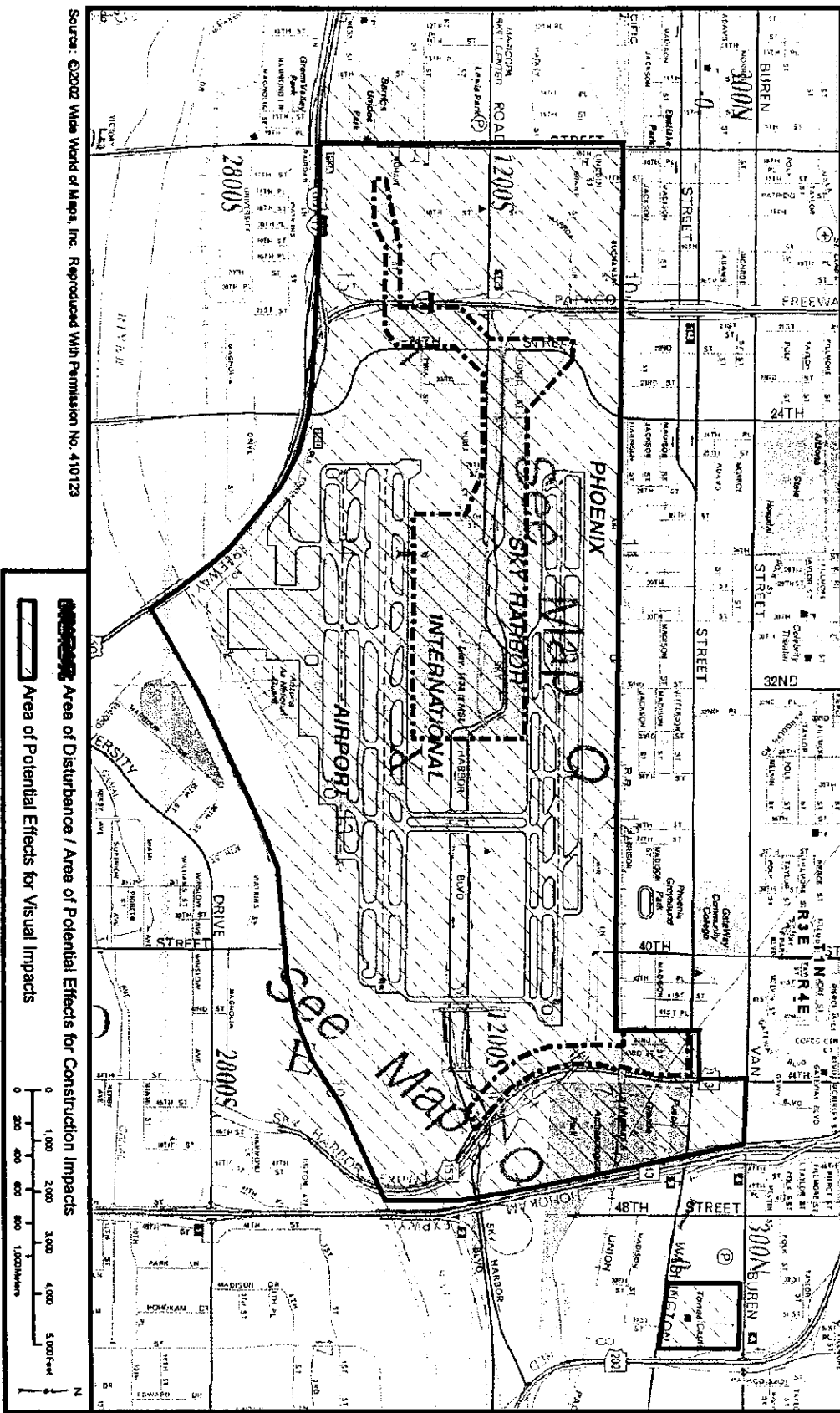
YAVAPAI-PRESCOTT INDIAN TRIBE

Title Director, Cultural Resource Dept.

By Gregory J. Glasco Date 2-13-06



Source: West Terminal ES Project Description, March 2004, OAGL Aviation/KOR



Source: ©2002 Wide World of Maps, Inc. Reproduced With Permission No. 410123

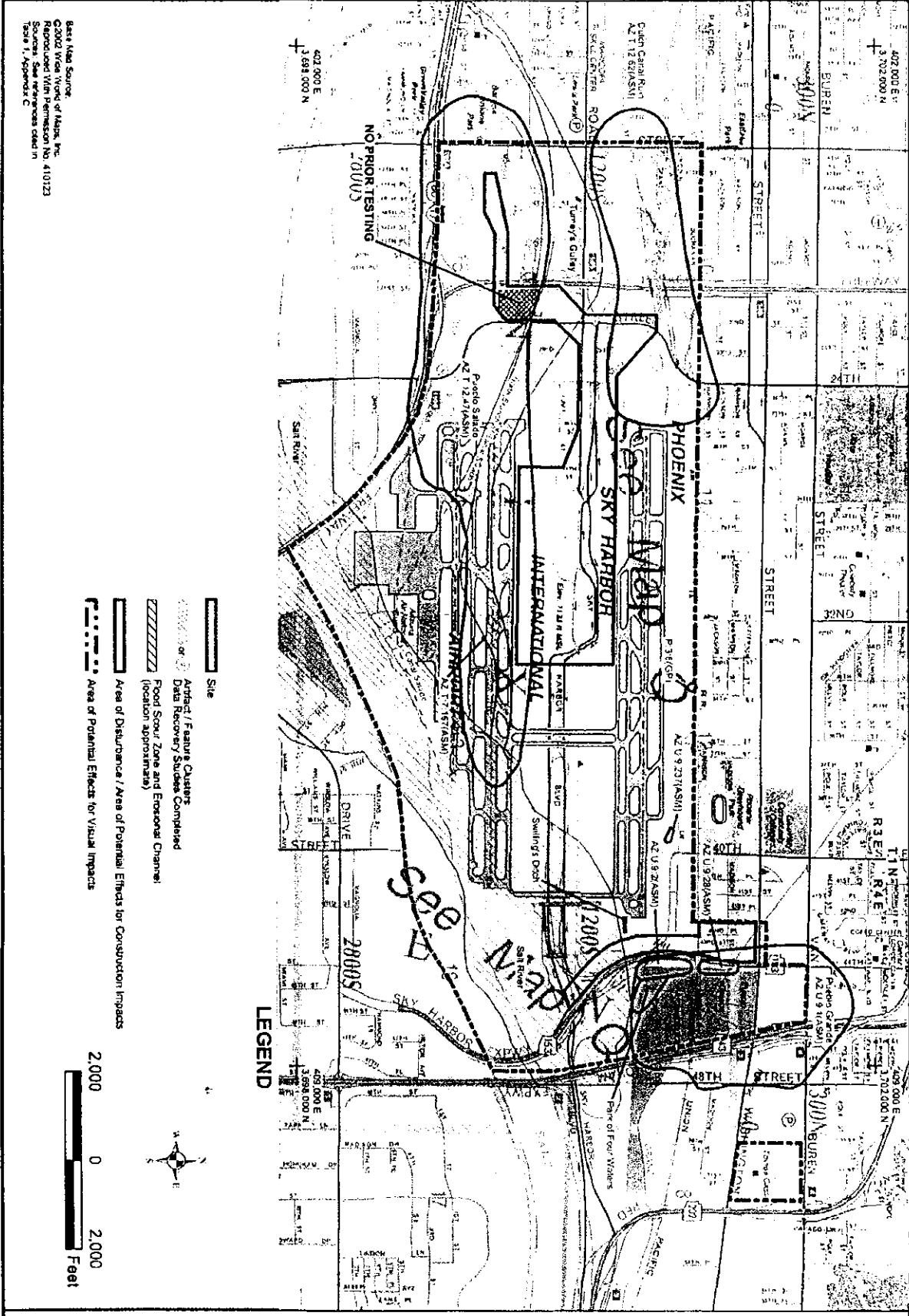
Attachment 2 Area of Potential Effects

Attachment 3

HISTORIC PROPERTIES SUBJECT TO POTENTIAL ADVERSE EFFECTS				
Site Name / Number	Location	Description	National Register Status	Section 106 Effect
1 Pueblo Salado AZ T:12:47(ASM)	Southwest part of Airport	Hohokam habitation site, Classic period, pit houses, adobe compounds, field houses, canals, pits, burials	Eligible, Criterion D	Stage 2-West APM may disturb unstudied part of site, adverse effect ¹
2 Dutch Canal Ruin AZ T:12:62(ASM)	Northwest part of Airport	Hohokam (mostly seasonal) habitation site, pre-Classic and Classic periods, pit houses, canals, pits, burials	Eligible, Criterion D	Sky Harbor Boulevard realignment may disturb unstudied part of site, adverse effect ¹
3 Pueblo Grande AZ U:9:1(ASM) (outside park)	Northeast of Airport	Primary Hohokam village with many habitation and burial areas, canals, pits	Eligible, Criterion D	Stage 2-East APM may disturb unstudied part of site, adverse effect ¹
4 Pueblo Grande Museum and Archaeological Park AZ U:9:1(ASM)	4619 E. Washington St.	Museum and park to interpret platform and ballcourt of Pueblo Grande site	Listed, Criteria A and D; National Historic Landmark	Elevated section of Stage 2-East APM and APM maintenance and control facility would be within 300 to 800 feet of park boundary, potential adverse visual effect ²
5 AZ U:9:2(ASM)	Northeast of Airport	11 Hohokam canals, Sedentary and Classic periods, 1884 Joint Head Canal	Eligible, Criterion D	Stage 2-East APM may disturb buried canal remnants that extend west of site, adverse effect ¹
6 AZ U:9:28(ASM)	Northeast of Airport	8 Hohokam canals, Sedentary and Classic periods, 2 activity areas, 3 historical trash pits	Data recovery studies completed	Stage 2-East may disturb buried canal remnants that extend west of site, adverse effect
7 Hohokam Canal Systems 2 and 10	Airport and vicinity	Hohokam irrigation canals	Intact segments eligible, Criterion D	Construction may disturb buried canal remnants, adverse effect ¹
8 Paul Coze Mural, <i>The Phoenix</i>	2908 East Sky Harbor Blvd	Mural by Paul Coze installed in Terminal 2 when it was built	Eligible, Criterion C	To be relocated, no adverse effect if photo documented, moved carefully, and publicly displayed and interpreted

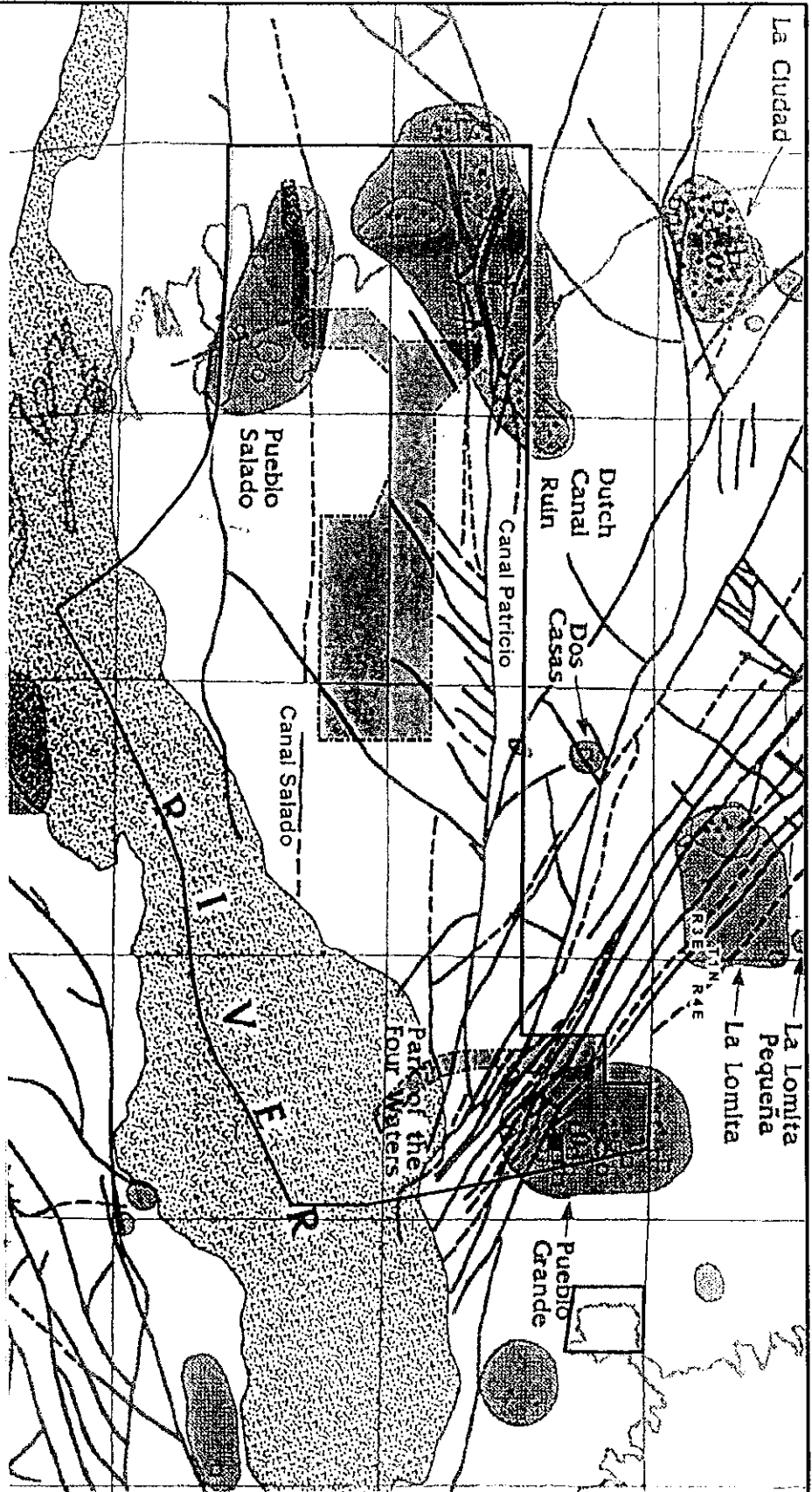
¹ Traditional cultural concerns about any human remains, funerary objects, sacred objects, and objects of cultural patrimony will be addressed in accordance with The City Burial Agreement, if remains are found on non-Federal land, or in accordance with Attachment 7 if found on Federal land managed by the Bureau of Reclamation.



² Phoenix Aviation Department will work to avoid adverse visual effects through sensitive design of APM facilities. No potential for damage from construction vibrations was identified, but will be reassessed after construction techniques are determined.



Sheet Head Source:
 4/20/02 Title: Visual Impacts, Inc.
 4/20/02 Project: Visual Impacts, Inc.
 4/20/02 Source: See reference No. 410223
 4/20/02 Date: See reference No. 410223
 4/20/02 Scale: See reference No. 410223
 4/20/02 Sheet: See reference No. 410223

Base Map Source: Howard 1991



 Area of Potential Effects for Visual Impacts
 Area of Disturbance / Area of Potential Effects for Construction Impacts

LEGEND



Attachment 5

Hohokam Canals in the Project Vicinity



Base Map Source: 1923 U.S. Reclamation Service, Salt River Project, Salt River Valley, Arizona, Topographic and Inflation Map

Area of Potential Effects for Visual Impacts
Area of Disturbance / Area of Potential Effects for Construction Impacts

LEGEND



Attachment
8

Historical Canals in the Project Vicinity

 **Phoenix Sky Harbor**
INTERNATIONAL AIRPORT
Environmental Impact Statement



Attachment 7

The following burial treatment plan will be used in the unlikely event that prehistoric Native American burials are found on Federal land managed by the Bureau of Reclamation:

1. All excavations will be conducted by professional archaeologists and executed with respect.
2. Photographs will be taken but only for archival purposes. They will not be published or for public use.
3. Human remains and associated cultural objects will be transported to an approved laboratory and analyzed in that location.
4. The laboratory will have appropriate security equipment and procedures.
5. Analysis will be nondestructive – skeletal material will be dry brushed, and objects will be cleaned using agents that will not deteriorate or harm them.
6. Analysis will be completed within 60 days after completion of fieldwork.
7. A complete inventory of Native American human remains and cultural objects will be prepared.
8. A final report will be completed within 90 days after fieldwork has ended.
9. Disposition of Native American human remains and associated cultural objects will be completed within 30 days after completion of the final report.

Before any burial is removed, Reclamation archaeologists will be notified, and the above treatment plan implemented. Disposition of the human remains and associated funerary items will be treated in accordance with the Native American Graves Protection and Repatriation Act.