

Arizona Department of Transportation

Draft Application for Assumption of
Federal Highway Administration
National Environmental Policy Act
Responsibilities

Pursuant to the Surface Transportation Project Delivery
Program,
23 U.S.C. § 327



June 29, 2018

State of Arizona, Department of Transportation

Application for Assumption of Federal Highway Administration
Responsibilities Pursuant to the
Surface Transportation Project Delivery Program,
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This is the Arizona Department of Transportation's (ADOT) application to assume the Federal Highway Administration's (FHWA) responsibilities under the Surface Transportation Project Delivery Program, 23 United States Code (U.S.C.) § 327.

John Halikowski, Director
Arizona Department of Transportation

Date

For questions regarding this application, please contact ADOT's Environmental
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List of Acronyms and Abbreviations

AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ADEQ	Arizona Department of Environmental Quality
ADOT	Arizona Department of Transportation
AGO	Attorney General's Office
CE	Categorical Exclusion
C.F.R.	Code of Federal Regulations
CMAR	Construction Manager at Risk
COA	Class of Action
DEC	District Environmental Coordinator
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
EP	Environmental Planning
ESA	Endangered Species Act
FHWA	Federal Highway Administration
FPPA	Farmland Protection Policy Act
FWCA	Fish and Wildlife Conservation Act
IDO	Infrastructure Delivery and Operations
LPA	Local Public Agency
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPD	Multimodal Planning Division
NEPA	National Environmental Policy Act
NHI	National Highway Institute
NHPA	National Historic Preservation Act
NRCS	National Resource Conservation Service
P3	Public Private Partnerships
PA	Programmatic Agreement
PCE	Programmatic Categorical Exclusion
PEL	Planning and Environmental Linkages
PIP	Public Involvement Plan
PM2.5	Particulate Matter of 2.5 microns

PM10	Particulate Matter 10 microns
SHPO	State Historic Preservation Office
QA	Quality Assurance
QC	Quality Control
RE	Resident Engineer
SIP	State Implementation Plan
STIP	State Transportation Improvement Program
TSMO	Transportation Systems Management and Operations
USACE	United States Army Corps of Engineers
U.S.C.	United States Code
USDOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service

Executive Summary

The Arizona Department of Transportation (ADOT) appreciates the opportunity afforded by Congress to allow States to assume the responsibilities of the Federal Highway Administration (FHWA) for the National Environmental Policy Act (NEPA) and related laws through applying to participate in the Surface Transportation Project Delivery Program (NEPA Assignment Program) pursuant to 23 United States Code (U.S.C.) 327. ADOT hereby submits the enclosed application. In submitting its application, ADOT expresses its strong commitment to successful implementation of the responsibilities requested to be assigned to ADOT under the NEPA Assignment Program. This application follows the requirements established in the Final Rule for the NEPA Assignment Program application (23 CFR 773) issued in the Federal Register (Vol. 79, No. 179) on September 16, 2014.

Per rule (§773.107 (b): Public comment), the ADOT's draft application was publicly noticed on June 29, 2018, for a 30-day comment period. Comments were due by the close of business on July 30, 2018. Summaries of all comments received and of changes made to the application in response to the comments received will be provided in the final application, which will be submitted to FHWA.

ADOT is applying to assume all of FHWA's project level responsibilities under NEPA for state highway system projects (includes Interstates, U.S. highways, and state routes) and Local Public Agency (LPA) projects that are not part of the state highway system in Arizona. ADOT is also applying to assume all of FHWA's responsibilities for environmental review, resource agency consultation, and other environmental regulatory compliance-related actions pertaining to the review or approval of projects in Arizona. This application identifies the scope of highway projects ADOT would assume and projects that would be excluded from assignment. ADOT has assumed NEPA responsibilities for some Categorical Exclusion (CE) projects under a 23 U.S.C. § 326 Memorandum of Understanding (MOU), and requests to retain those responsibilities independently from the responsibilities it proposes to assume under the NEPA Assignment Program. Section 773.109 (a)(1) of this application identifies the projects that Arizona requests to be excluded from the NEPA Assignment Program; this list is subject to change until the NEPA Assignment Program MOU is signed.

NEPA directs federal agencies to consider the environmental effects of their actions using a systematic, interdisciplinary approach. In Arizona, as the agency responsible for providing safe and reliable transportation solutions, ADOT is also responsible for environmental compliance. ADOT integrates environmental considerations into its activities to achieve compliance with applicable laws, regulations, and standards. ADOT delivers safe, efficient transportation projects and makes sound decisions based on a balanced consideration of transportation needs and of the social, economic, and environmental impacts of proposed transportation improvements. ADOT's culture of balanced decision-making is similar to the philosophy underlying NEPA and FHWA's NEPA policy expressed in 23 Code of Federal Regulations (C.F.R.) 771.105.

As required by NEPA and FHWA's NEPA regulations codified in 23 C.F.R. 771, ADOT examines and discloses the environmental effects of its proposed activities; identifies the ways that environmental impacts can be avoided or minimized; prevents significant, avoidable environmental impacts by modifying its projects and/or implementing mitigation when appropriate; and publicly discloses the impacts of its projects and its project decisions, emphasizing balanced decision-making. As part of this process, ADOT undertakes timely and consistent outreach with the public, local jurisdictions, regional transportation planning agencies, resource and regulatory agencies, and tribal governments. ADOT will continue to work cooperatively with its agency partners, communities, Tribes, and the general public under the NEPA Assignment Program.

Based on the capabilities of ADOT's environmental staff, FHWA has previously delegated to ADOT certain aspects of its responsibilities, including coordination responsibilities with its federal resource agency partners, within the framework of agreements with certain agencies. Prior to 2018 ADOT had been responsible under a programmatic agreement with FHWA for making CE determinations and undertaking environmental review of projects meeting the criteria of 23 C.F.R. § 771.117 (c) and (d). Under the provisions of the programmatic agreement, FHWA had authorized ADOT to act on its behalf to perform many of the requirements of federal environmental review. ADOT has also been entrusted by FHWA with responsibilities for informal consultation under the Endangered Species Act. Since January 3, 2018, ADOT has been responsible for making CE determinations and undertaking environmental review of future projects meeting the criteria of 23 C.F.R. § 771.117(c) and (d).

ADOT has worked cooperatively with FHWA on Federal-aid projects to successfully meet NEPA requirements. ADOT also works cooperatively with federal and state agency partners and tribal governments; has developed extensive procedures and tools to support this work; and will be developing additional tools and procedures for the NEPA Assignment Program. Based on ADOT's current experience, expertise, and current level of involvement in consultations, its resources will continue to be adequate to assume FHWA's responsibilities for resolving issues with external agencies. ADOT's extensive staff capabilities and well-developed environmental compliance program, together with the steps that ADOT has taken and will continue to take to strengthen its program under the NEPA Assignment Program, are summarized in this application.

Under the NEPA Assignment Program, ADOT will comply with all applicable federal environmental laws and FHWA environmental regulations, policies, and formal guidance. The NEPA Assignment Program will not modify or revise federal environmental protection standards. Under NEPA, FHWA regulations, other federal environmental regulations, executive orders, state statutes, and rules, ADOT currently conducts the studies and prepares the documentation for Federal-aid transportation projects that protect the environment. ADOT will continue to apply these same rigorous environmental protection standards to projects under the NEPA Assignment Program.

To ensure the success of the NEPA Assignment Program, ADOT will regularly conduct yearly self-assessment to gauge the effectiveness of its environmental procedures under the program and to identify the need for any program corrections. In addition, FHWA will audit ADOT annually for the first four years of the NEPA Assignment Program to ensure ADOT is meeting NEPA and other federal environmental requirements consistent with FHWA's goals of environmental stewardship and streamlining.

The NEPA Assignment Program will streamline Arizona's environmental review process and reduce project delivery time. Once FHWA and ADOT execute an MOU that assigns NEPA responsibilities, ADOT will be solely responsible and solely liable for NEPA decisions on assigned highway and LPA projects in the state.

This application contains the following components, as required by 23 C.F.R. § 773:

§ 773.107(a):	Coordination meeting
§ 773.107(b):	Public comment
§ 773.107(c) & (d):	Sovereign immunity waiver and comparable State laws
§773.109 (a)(1):	Classes of highway projects for which ADOT is requesting NEPA responsibility
§773.109 (a)(2):	Federal environmental laws other than NEPA for which ADOT is requesting responsibility
§773.109 (a)(3)(i):	Existing organization and procedures
§773.109 (a)(3)(ii):	Changes to be made for assumption of responsibilities
§773.109 (a)(3)(iii):	Legal sufficiency
§773.109 (a)(3)(iv):	Prior concurrence
§773.109 (a)(3)(v):	Project-delivery methods
§773.109 (a)(4)(i):	Staff dedicated to additional functions
§773.109 (a)(4)(ii):	Changes to the organizational structure
§773.109 (a)(4)(iii):	Use of outside consultants for the Assignment Program
§773.109 (a)(5):	Financial resources under the Assignment Program
§773.109 (a)(6):	Certification for consent to exclusive federal court jurisdiction and waiver of sovereign immunity
§773.109 (a)(7):	Certification that the State of Arizona's Public Records Law is comparable to the Federal Freedom of Information Act

This application also contains appendices A through D listed on page ii.

Pre-application requirements

§ 773.107(a): Coordination meeting

On April 3, 2017, ADOT met with FHWA Headquarters staff and FHWA Arizona Division staff to participate in an informal coordination meeting to discuss the NEPA Assignment Program. On May 17, 2017, ADOT met with FHWA Headquarters staff and FHWA Arizona Division staff to participate in a formal coordination meeting to discuss the NEPA Assignment Program. ADOT and FHWA staff formed an interagency workgroup that has been meeting approximately twice a month since that time to discuss matters relating to the forthcoming NEPA Assignment Program in Arizona. As required by rule (§773.107 (a): Coordination meeting), on September 20 - 21, 2017, ADOT and assigned legal counsel from the Arizona Attorney General's Office met with staff from FHWA Headquarters and FHWA Arizona Division to participate in a pre-application coordination meeting.

§ 773.107(b): Public comment

Per rule (§773.107 (b): Public comment), ADOT's draft application was publicly noticed on June 29, 2018 for a 30-day comment period. Comments were due by the close of business on July 30, 2018. A notice of the draft application's availability was sent via ADOT's GovDelivery notification system. A notice was also posted on ADOT's Environmental Planning and NEPA Assignment website:

<https://azdot.gov/business/environmental-planning/ce-assignment-and-nepa-assignment>.

ADOT also sent notice of the application with a request for comment to federal and state resource agencies and all federally recognized Tribes in Arizona. Lastly, ADOT posted the application and instructions on how to provide comments on ADOT's website. Appendix D is reserved to include all comments received and ADOT responses to each. Summaries of all comments received and of changes made to the application in response to these comments are provided in Appendix D.

§ 773.107(c) & (d): Sovereign immunity waiver and comparable State laws

Per § 773.107(c) & (d) Appendix C contains the following certifications:

- As stated in the Arizona Revised Statutes (A.R.S.), § 28-334 (C), ADOT is legally authorized by State law to assume the responsibilities of the United States Department of Transportation with respect to duties under NEPA and other federal environmental laws.
- As provided for by the recently enacted A.R.S. § 28-334 (C), which was signed into law by Governor Douglas A. Ducey on March 22, 2017, the State of Arizona expressly consents to exclusive federal court jurisdiction with respect to the compliance, discharge, and enforcement of any responsibility of the United States Department of Transportation that is to be assumed by ADOT.

- The Arizona Public Records Law (A.R.S. § 39-101 to 39-161) is comparable to 5 U.S.C. § 552 (Freedom of Information Act), including providing that any decision regarding the public availability of a document under that State law is reviewable by a court of competent jurisdiction.

Application Requirements

§ 773.109(a)(1): Classes of highway projects for which ADOT requests NEPA responsibility

ADOT is requesting to assume FHWA's responsibilities under NEPA for the following classes of highway projects upon execution of the NEPA Assignment Program MOU. In general, this includes all highway and roadway projects in Arizona whose source of federal funding comes from FHWA or that require FHWA approvals. Appendix A lists projects for which ADOT does not request FHWA's NEPA responsibilities. The assigned projects may include funding from other federal sources; for these projects ADOT requests to assume only FHWA's NEPA responsibilities and not the NEPA responsibilities of other federal agencies.

1. All Class I, or Environmental Impact Statement (EIS), projects that are funded by FHWA or that require FHWA approvals. The following project(s) will not be assigned. This list is subject to change until the NEPA Assignment Program MOU is signed (see Appendix A for more information on the projects listed below):
 - South Mountain Freeway
 - Interstate 11 (I-11) Corridor Tier 1 EIS, Nogales to Wickenburg
 - Sonoran Corridor Tier 1 Environmental Impact Statement
2. All Class II, or Categorically Excluded, projects that do not qualify for assignment under the provisions of the CE Assignment MOU.
 - None
3. All Class III, or Environmental Assessment (EA), projects that are funded by FHWA or that require FHWA approvals, except for the following project(s). This list is subject to change until the NEPA Assignment Program MOU is signed (see Appendix A for more information on the projects listed below):
 - State Route 303; I-10 to SR 30

ADOT intends to establish appropriate relationships with other operating administration(s) involved in a multimodal project, including cooperating agency, participating agency, and lead or

co-lead agency relationships under NEPA. In addition, ADOT may use or adopt other federal agencies' NEPA analyses consistent with 40 C.F.R. § 1500–1508 and U.S. Department of Transportation and FHWA regulations, policies, and guidance.

ADOT acknowledges that projects meeting the following criteria will be excluded from the assignment:

- Any highway project authorized under 23 U.S.C. §§ 202, 203, and 204 unless such project will be designed and constructed by ADOT
- Projects involving international border crossings and projects that cross state boundaries

ADOT's program-wide assumption of these responsibilities will provide for the highest degree of consistency and efficiency in document review and agency coordination. It will also provide the greatest opportunity for streamlining benefits.

§ 773.109(a)(2): Federal environmental laws other than NEPA for which ADOT requests responsibility

Upon execution of the NEPA Assignment Program MOU, ADOT requests to assume all of FHWA's responsibilities for environmental review, interagency consultation, and other regulatory compliance-related actions pertaining to the review or approval of projects for which ADOT is requesting assumption of responsibilities under NEPA. ADOT requests to assume these responsibilities under all applicable federal environmental laws and Executive Orders including, but not limited to, federal laws, regulations, and Executive Orders listed in Appendix A of 23 C.F.R. § 773 (also listed in Appendix B of the application). ADOT requests immediate assumption of these responsibilities upon execution of the NEPA Assignment Program MOU. These responsibilities are not planned to be phased in. ADOT's approach and practice in working with federal resource agencies and their regulations are described in further detail within this application.

§ 773.109(a)(3)(i): Existing organization and procedures

Existing State Organization

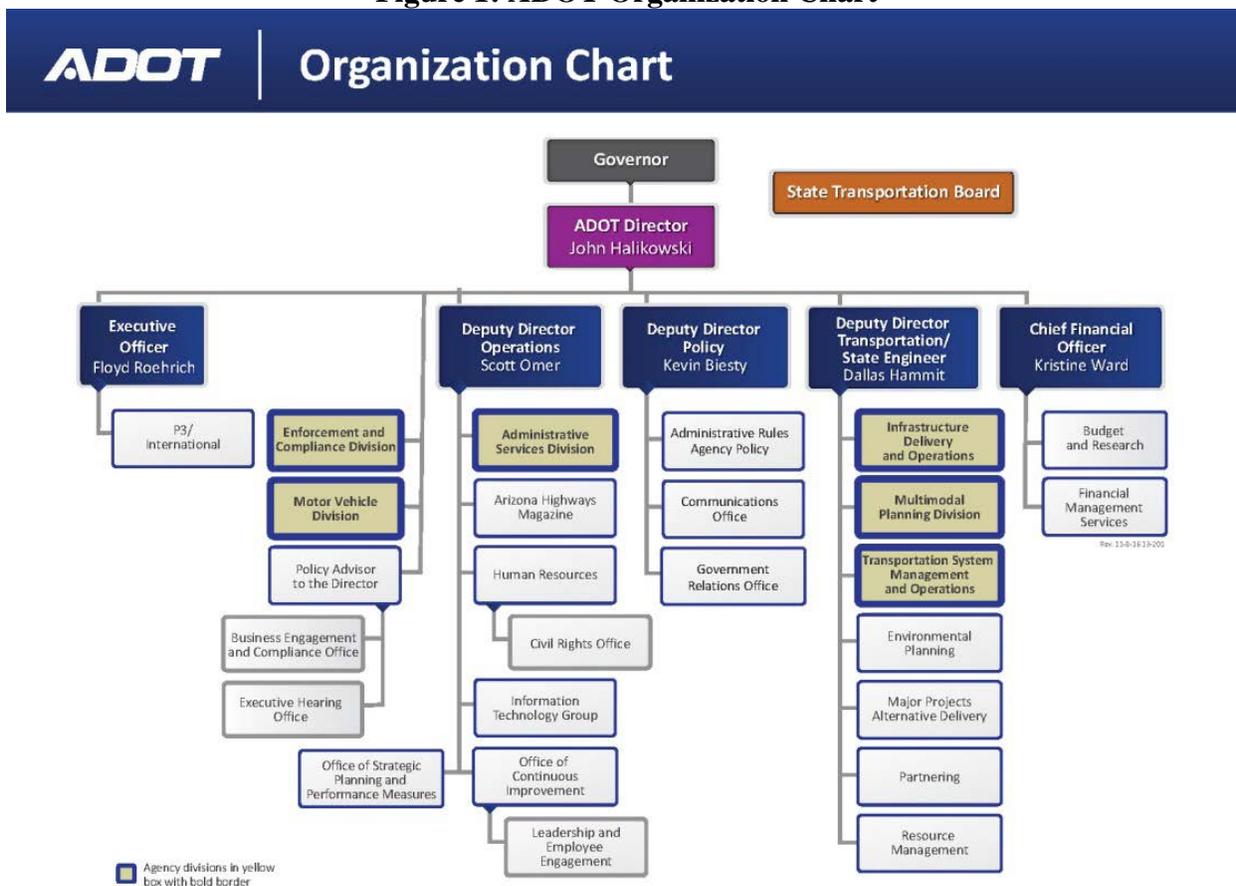
ADOT is the legally authorized transportation department for the State of Arizona with responsibility for planning, constructing, and operating a complex highway system in addition to building and maintaining bridges and the Grand Canyon Airport. ADOT is led by the Director, who is appointed by the Governor (see organization chart in Figure 1). The Director leads ADOT in implementing transportation policy mandated by state law. An independent seven-member [State Transportation Board](#) is the primary policy-making and governing body for ADOT. The State Transportation Board determines project priorities, awards construction contracts, presides over the state highway system, makes local airport grants, and advises the ADOT Director on transportation policy matters. The seven members are appointed by the Governor and represent geographical districts in Arizona.

Reporting directly to the ADOT Director are Executive Leaders, including the Deputy Directors of Operations, of Policy, and of Transportation. The Deputy Director of Transportation is also the State Engineer and is responsible for planning, constructing, and delivering transportation projects and maintaining the State's multimodal transportation system (see organization chart in Figure 1). Reporting to the Deputy Director of Transportation/State Engineer are three divisions: the Infrastructure Delivery and Operations Division (IDO), the Multimodal Planning Division (MPD), and the Transportation Systems Management and Operations Division (TSMO):

- IDO is responsible for statewide project delivery, of both ADOT and LPA projects, and for statewide operations and maintenance.
- MPD is responsible for planning an integrated transportation system for the state consisting of highways, rail, public transportation, and bicycle and pedestrian facilities. The types of studies managed by MPD include long-range transportation plans, regional transportation plans, transportation master plans, corridor location studies, corridor master plans, access management plans, pavement assessment plans, feasibility studies, transit plans, bicycle and pedestrian plans, trail plans, the state rail plan as well as Planning and Environmental Linkage (PEL) studies.
- TSMO is responsible for a variety of traffic safety and operational programs, including roadway safety improvements, traffic signal systems, pavement conditions, and crash response. The TSMO Division also is responsible for managing traffic congestion through technology, such as ADOT's growing network of highway traffic flow sensors, overhead dynamic message boards, and closed-circuit cameras operated from the agency's Traffic Operations Center in Phoenix.

Also reporting to the Deputy Director of Transportation/State Engineer are four groups: Major Projects, Resource Management (i.e. financial management), Environmental Planning, and the Partnering Office. The Partnering Office plays an important role for ADOT, since partnering is the way ADOT does business through its many formal partnerships with federal agencies and Tribes. The Partnering Office also supports Environmental Planning and its mission by supplying Lean Coaches (staff specially assigned to assist with the Arizona Management System for process improvement); student interns through the Intern Program; and engineers-in-training through the Engineer-in-Training (EIT) Program. The interns and EIT participants who cycle through Environmental Planning learn the intricacies and value of environmental planning in the ADOT project development process and construction.

Figure 1: ADOT Organization Chart



Environmental Planning Organization

Environmental Planning (EP) is responsible for developing and implementing the environmental program for ADOT as a whole by providing environmental reviews and clearances, technical assistance, and education to ADOT and its customers. ADOT EP staff are primarily located in the Central Office in Phoenix, but also have a presence in ADOT’s Northcentral (Flagstaff) and Southcentral (Tucson) District Offices. EP is led by the ADOT Environmental Planning Administrator, who reports directly to the Deputy Director of Transportation/State Engineer (Figure 2). All approvals of environmental documents are made by staff in the Central Office in Phoenix.

ADOT EP has five main sections: Project Delivery (staffed by Project Delivery Manager and two teams of Planners), NEPA Assignment (staffed by NEPA Assignment Manager, Program Development Manager, and two Planners), Cultural Resources Program (staffed by Cultural Resources Program Manager, Historic Preservation Team, and Senior Cultural Resources Project Manager), Environmental Programs (staffed by 17 positions among Air Quality and Noise, Biology Program, Hazardous Materials, Water Resources, and Standards and Training), and Administration (EP Administrator, Administrative Services Officer, Management Analyst, and

Procurement Technician) . Staff are shown on an organization chart in Figure 2 and in Table 1. The Environmental Programs Manager is included under Administration in Table 1.

In anticipation of the CE Assignment MOU, and subsequently of the NEPA Assignment MOU, what had been the Planning section (dedicated to NEPA planning) of EP was subdivided into the two sections of Project Delivery and NEPA Assignment. The primary purpose of this change was to create another Section Manager-level position to balance the workload at that level of management for the Five-Year Construction Program delivery and for NEPA Assignment Program oversight. Environmental planners in both the Project Delivery and the NEPA Assignment sections work on NEPA documents for ADOT and LPA projects. The Project Delivery Manager coordinates closely with the Project Management Group and the Project Resources Office, both part of IDO in the oversight and delivery of projects for the Five-Year Construction Program. Duties include monthly tracking and reporting, as well as attending monthly project delivery meetings with group managers and weekly project review board meetings.

The NEPA Assignment Manager ensures the processes and requirements of the CE Assignment MOU are carried out, and in the future, will do the same for the NEPA Assignment MOU, while serving as the lead contact point with FHWA in regard to the MOU. This section also works on special projects related to sustainability, resilience, and innovative programs, including FHWA programs such as INVEST.

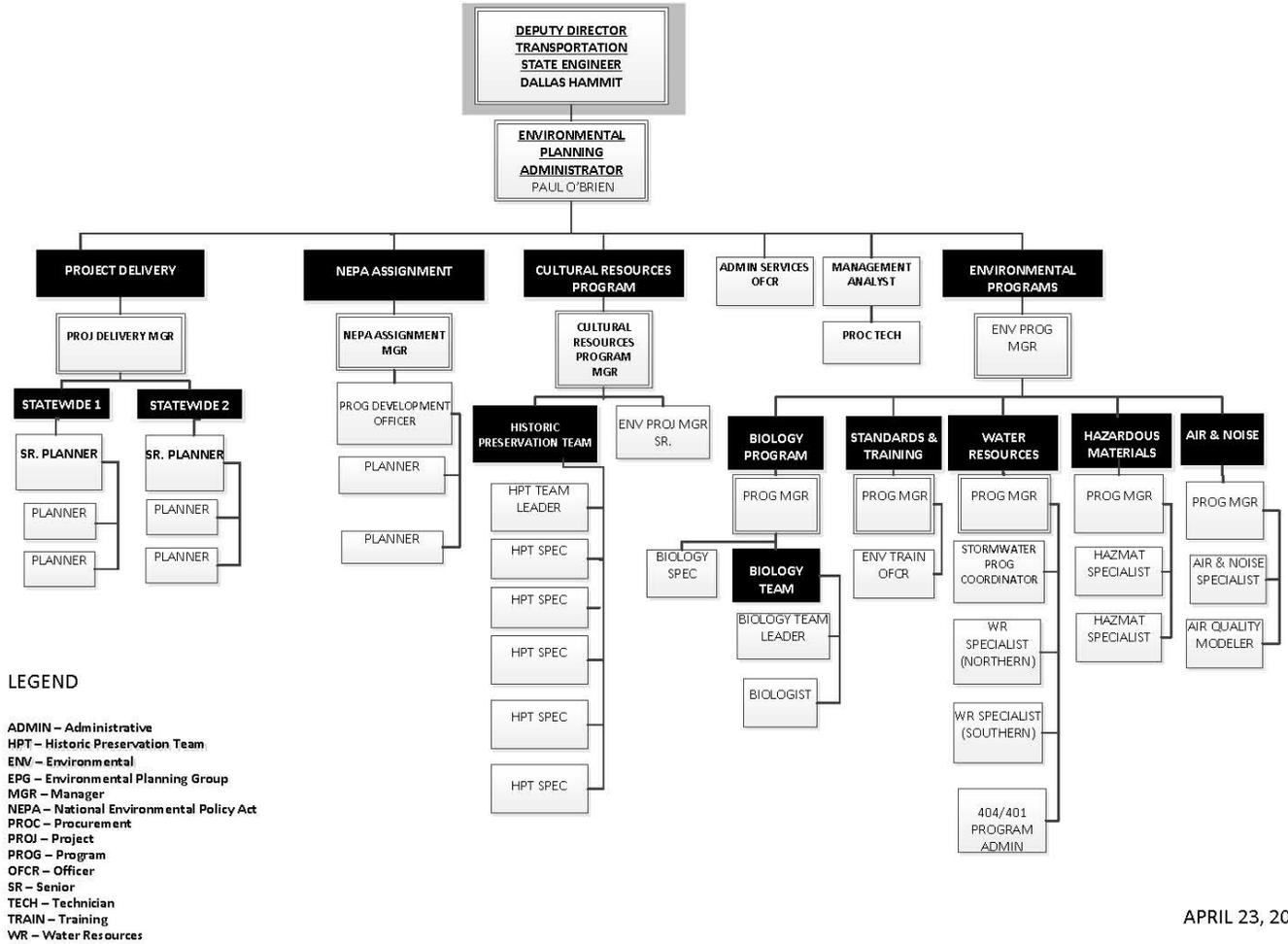
The Cultural Resources Program is responsible for archaeological and historic resources reviews and implementation of Section 106 of the National Historic Preservation Act. The Historic Preservation Team Lead, as well as a Senior Cultural Resources Project Manager, report to the Cultural Resources Program Manager.

The Environmental Programs section consists of all of ADOT EP's technical specialties (except Cultural Resources): the Biology Program, Water Resources, Hazardous Materials, Air Quality and Noise, and Standards and Training. Standards and Training is responsible for developing and disseminating environmental standards and training within ADOT and to ADOT's customers.

Under the EP Administrator is a Management Analyst who provides support for contracts, metrics and tracking related to project delivery. The analyst also oversees a Procurement Specialist who provides purchasing support for the entire EP group.

Figure 2: ADOT Environmental Planning Organization Chart

ENVIRONMENTAL PLANNING ORGANIZATIONAL CHART

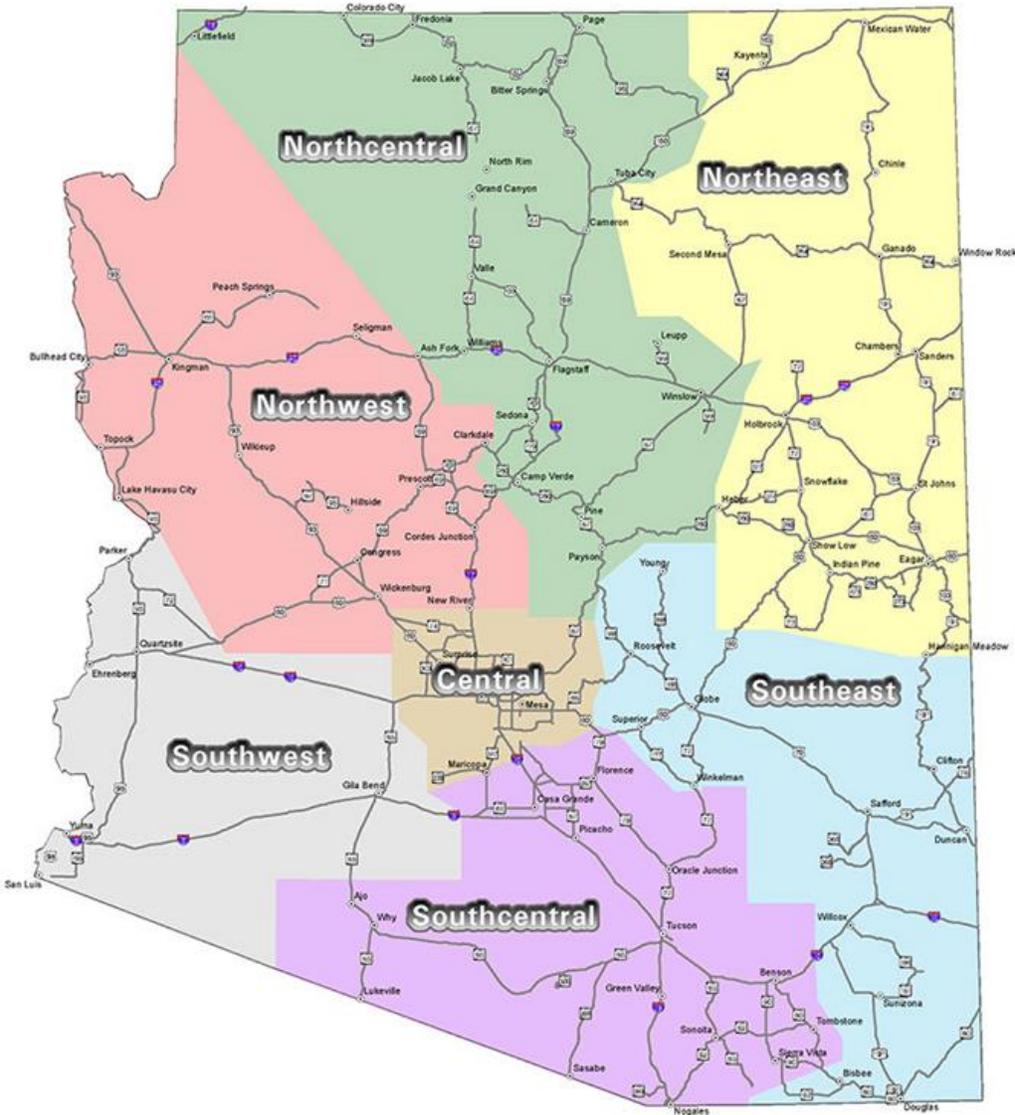


APRIL 23, 2018

ADOT District Organization

In addition to the organizational structures depicted in Figures 1 and 2, ADOT is divided into seven geographical districts (Figure 3) managed by District Engineers who report to the Division Director of IDO. The districts are primarily responsible for maintenance of the state highway system and for identifying and constructing improvement projects in their jurisdictions. Each district includes a District Environmental Coordinator (DEC) responsible for non-NEPA environmental screening for maintenance projects in the District and, in the case of NEPA projects, for ensuring mitigation measures are constructible and agreed upon during project development. The DEC's work with the Resident Engineers (REs) and the REs are responsible for ensuring mitigation measures are implemented. The REs report to the District Engineer.

Figure 3: ADOT Districts



Existing Environmental Planning Staff

ADOT EP currently has a qualified staff of approximately 41 full-time positions across the state assigned to environmental functions, working primarily in the central office in Phoenix, but some staff are located in the Northcentral and Southcentral District Offices (Table 1). However, all approval authority for signing environmental clearances is with the central office in Phoenix. The EP staff provides the expertise required to meet the responsibilities to be assumed under the NEPA Assignment Program. EP's existing organization and reporting structure has demonstrated sustainability in staffing quality and quantity, and EP is committed to making adjustments and filling vacancies as they arise through the normal attrition that any organization faces. ADOT EP has already instituted some changes to its structure and staff roles for CE Assignment and in

preparation for the NEPA Assignment Program as previously outlined with the NEPA Assignment Manager position.

ADOT EP staff is augmented by the discretionary use of environmental consultants who are contracted for larger projects and through on-call contracts maintained for routine projects.

Table 1: ADOT EP Staff Composition, by Functional Area

Functional Area	Number of Staff
Administration	5
Project Delivery and NEPA Assignment	11
Cultural Resources Program	8
Biology Program	4
Air Quality & Noise	3
Hazardous Materials	3
Water Resources	5
Standards and Training	2
Total	41

Approach to Environmental Document Preparation

State Equivalent Environmental Review Procedures

Arizona has no State Environmental Review Procedures (as defined under state statute to be a state-level “NEPA Equivalent”). The vast majority of ADOT projects are Federal-aid and follow the NEPA process. State-funded actions follow a state review process considering disparate state laws such as the State Historic Preservation Act for cultural resources, but that review excludes certain federal requirements such as the USDOT Act of 1966 – Section 4(f).

Class of Action Determinations

All projects originate with the planning and programming phase. The majority of preservation and modernization projects are identified on a needs and performance basis by MPD. Subprogram funds in the Five-Year Construction Program are used to fund most projects. Preservation projects normally qualify for a CE as funds for project development, including NEPA, are programmed during this phase. Larger projects that require an EA or EIS require specific funds to be programmed for project development, including NEPA. This means class of action identification for those projects happens early in project development and typically in the planning and programming process where, for example, a planning or feasibility study is conducted and will identify, with the assistance of ADOT EP, whether funds for an EA or EIS need to be programmed.

Class of action identification can occur at many points during the entire process from programming through to NEPA approval. Those points are captured in the table below:

<ul style="list-style-type: none"> ❑ Programming Phase – Early probable Class of Action identified <ul style="list-style-type: none"> ▪ Large Projects that require EA/EIS level funding are identified early ▪ Examples: \$6 million programmed for North South Freeway EIS and \$15 million programmed to conduct Interstate 11 Tier 1 EIS ▪ Preliminary Scoping for project inclusion in Transportation Improvement Programs identifies environmental level of effort for routine projects documented with CEs
<ul style="list-style-type: none"> ❑ Planning Phase – Probable Class of Action identified prior to or during planning <ul style="list-style-type: none"> ▪ Large Projects Study – (EIS-level projects managed by MPD) ▪ Preliminary Engineering and NEPA – (Design Concept Report and Documented CE and EA-level projects managed by IDO) <ul style="list-style-type: none"> ▪ If uncertain whether or not an EA is required, preliminary engineering and environmental technical analysis may advance to the point that a confirmation of Class of Action can be made
<ul style="list-style-type: none"> ❑ Design Phase <ul style="list-style-type: none"> ▪ Project/Engineering Scoping Document — Project Determination Form on the cover of the final scoping document identifies the Class of Action ▪ Project Design – Contracting documents that may identify Class of Action <ul style="list-style-type: none"> ▪ Framework Form – Confirm Preliminary Scoping Class of Action ▪ Task Order/Scope of Work – Environmental effort refined ▪ NEPA Decision – NEPA Approval

Environmental Document Preparation

ADOT values the delivery of safe, efficient transportation projects and makes sound decisions based on the balanced consideration of transportation needs and of the social, economic, and environmental impacts of proposed transportation improvements.

ADOT’s EP staff is qualified to manage FHWA and ADOT environmental compliance requirements. These requirements include requirements and standards for project environmental documents and decisions, expectations for proactive resource agency engagement, and approach to environmental commitments. ADOT EP works with ADOT staff through all phases of transportation project development, from planning through construction. Through EP’s coordination with MPD and IDO, ADOT employs a multi-phased project development process that integrates environmental requirements with planning and engineering design. Adhering to

the NEPA process, EP conducts environmental analyses to determine project impacts on the environment. This determination is used as a guide for how a project should be developed to avoid, minimize, or offset impacts on the environment.

As an integral part of ADOT, EP coordinates, prepares, and provides the environmental compliance for all ADOT projects. ADOT EP integrates environmental considerations and impact analyses into its activities to achieve compliance with applicable laws, regulations, and standards and oversees the preparation of environmental documents in accordance with the requirements of NEPA when FHWA approval is required. ADOT EP also extends its commitment to environmental compliance in the absence of federal actions that require NEPA by requiring a State-level clearance when no federal funds or approval actions are involved in a project.

ADOT EP staff guide an interdisciplinary approach to environmental document preparation, maintaining expertise in a broad variety of environmental disciplines statewide. EP NEPA staff on project teams is tasked with providing oversight, guidance, management, and delivery of the overall NEPA program and projects while EP technical staff is responsible for the guidance, expertise, and delivery of documentation in specialties including archaeology, architectural history, biology, noise, air quality, visual assessment, water resources, and hazardous materials. This interdisciplinary interaction ensures that project environmental impacts and mitigation measures are addressed and implemented appropriately up to and through the construction phase.

The EP NEPA staff work closely with the EP technical specialists to ensure that environmental documents comply with survey methodologies and protocols required by resource and regulatory agencies such as the U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), Arizona Department of Environmental Quality (ADEQ), and State Historic Preservation Office (SHPO). The EP technical staff works closely with state and federal agency staff to stay current with guidance and to encourage efficient and timely environmental agency reviews. ADOT EP funds staff positions at USACE (1 position), USFWS (1 position), and SHPO (1 position) and the U.S. Forest Service (on a staff time reimbursement basis) to help expedite resource agency reviews of ADOT environmental permitting and documentation.

For categorical exclusions (CEs), ADOT EP maintains detailed NEPA guidance that aids the planning, preparation, and submission of CEs in support of proposed transportation projects. This guidance provides information and technical direction to develop CE projects that are in compliance with applicable federal and state laws. Projects that require environmental impact statements (EISs) and environmental assessments (EAs) follow well-established NEPA guidance and procedures as outlined in FHWA guidance for the preparation of such documents located in the FHWA Environmental Review Toolkit. FHWA guidance for the preparation and processing of EISs is included in Technical Advisory T6640.8A - Guidance for Preparing and Processing of Environmental and Section 4(f) Documents. FHWA - ADOT Environmental Assessment Guidelines are located on the ADOT EP website under the NEPA Guidance tab of the Guidance for Federal-aid Projects. These EA guidelines are being updated in conjunction with new ADOT

guidance for preparing an EIS. Guidelines for producing successful technical documents, and the environmental responsibilities associated with each, are provided through detailed technical guidance documents developed by ADOT EP and located by technical discipline on the ADOT EP website. **More detailed information including hyperlinks on available guidance and procedures for preparing environmental analysis and documents is outlined below in this Application under Tools and Guidance.**

Projects that meet the criteria for (c)-list or (d)-list CEs are approved by ADOT under the 23 U.S.C. § 326 MOU ([CE Assignment](#)). These CEs are completed using a CE checklist, which is outlined in the ADOT CE Checklist Manual that was developed in conformance with 23 C.F.R. § 771.117. Projects that meet the CE criteria in 40 C.F.R. § 1508.4, or 23 C.F.R. § 771.117(a) and (b), and are actions listed at 23 C.F.R. § 771.177(c) and (d) do not require preparation of an EA or EIS and are documented using the CE checklist. The ADOT environmental planner prepares the CE checklist based on environmental analysis conducted during the environmental review process for the project. At the discretion of ADOT, a consultant may be requested to conduct technical studies to aid in the environmental review. CEs not specifically listed under 23 C.F.R. § 771.117(d) may still qualify as a CE under paragraph (d) as an individually documented CE. FHWA may sometimes refer to these as “unlisted” CEs. These are projects which meet the definition of a CE under paragraphs (a) and (b), but do not appear on the list of examples in Section 771.117(c) or (d). An individual CE, like a specifically listed CE under 23 § 771.117(c) and (d), is prepared to document that no significant environmental impacts are expected to result from the project. These CEs are not included in the CE Assignment MOU and therefore are processed as individually documented CEs that are approved by FHWA. Under NEPA Assignment these CEs would be approved under the 23 U.S.C. § 327 MOU.

The vast majority of projects are completed with CEs. Each ADOT project is assigned an environmental planner, who has overall responsibility for successfully directing and delivering the NEPA environmental document. In coordination with EP technical specialists, a determination on the specific type of CE to be applied is made by EP; the determination depends on the type of project, project scope, and potential impacts. A qualified consultant is typically assigned to research, investigate, and evaluate the project environmental conditions and impacts and confirm with EP the project issues and environmental requirements and then prepare environmental technical documents, the NEPA document, permits, and other documentation. Environmental documents, as well as consultation letters and technical reports submitted by consultants, are reviewed and internally approved by ADOT environmental staff before they are submitted, if required, to FHWA for approval.

The typical steps for preparing environmental documents [including CE’s that meet the criteria defined in 23 CFR 771.117(a) and (b) but are not (c) list or (d) list actions] are outlined as follows:

- ❑ NEPA (Environmental Document) led by environmental planner
 - Kick-off Meeting

- Agency and public scoping
- Surveys and technical analysis in conjunction with preliminary engineering
- Draft environmental document development and review (consultants/project team)
- Administrative draft environmental document
- FHWA review/approval of draft environmental document
- Public hearing (if required)
- Administrative draft final environmental document
- FHWA review/approval of draft final environmental document
- Final approval of environmental document

Process for Local Public Agency Projects

ADOT EP also provides guidelines specific to the oversight and administration for LPAs that receive federal transportation funding. However, the ADOT EP process is the same as for ADOT system projects and utilizes all of the same technical guidance, forms, and templates.

Recreational Trails Program

Recreational Trails Program projects are all completed under the CE Assignment MOU. Given the small dollar value of these projects no Class of Action other than a CE is anticipated for any Recreational Trails Program project.

Public Involvement Procedures

ADOT implements a robust public involvement program for its projects, based on 23 U.S.C. § 139, 23 C.F.R. § 771.111(h), and A.R.S. §41-1023, which outlines public participation, oral proceedings, and written statements related to agency rule making. In addition to these requirements, ADOT’s overall Public Involvement Plan includes provisions to address the public involvement requirements of the Americans with Disabilities Act of 1990, Executive Order 12898 Federal Actions to address Environmental Justice in Minority Populations and Low Income Populations, and Title VI and Executive Order 13166 to accommodate Limited English Proficiency individuals. ADOT’s [Public Involvement Plan \(PIP\)](#) has been approved by FHWA.

In addition to the PIP, ADOT has developed [Guidelines for Agency and Public Scoping for Projects with Categorical Exclusions](#), which is closely related to the PIP as these scoping guidelines help implement public involvement requirements for CE projects. As a point of clarification there are three uses of the word “scoping” at ADOT. (1) Engineering and project definition scoping, which outlines the basic engineering solution to a transportation need and is documented in an [engineering scoping](#) document; (2) agency and public scoping which is a

process to discover issues, concerns, and opportunities to be considered along with the engineering solution to a project need in the development of that project. This can be through letters or include agency and public scoping meetings documented in a Scoping Report; and (3) EIS scoping, which outlines the issues to be addressed in an EIS and identifies the significant issues related to a proposed action that is documented in an EIS as defined by the Council of Environmental Quality (CEQ) regulations [40 C.F.R. § 1501.7](#).

ADOT recognizes the extent of public involvement differs with each project and tailors public involvement to each individual project based on the needs and complexity of the project through the development of a project-specific approach as outlined in the previously mentioned ADOT PIP. ADOT undertakes the majority of its public involvement activities during the project development phase for projects that require an environmental review under the NEPA process.

If a project PIP is developed, it generally consists of three chapters: Project Development, Design, and Construction. These chapters outline the appropriate level of public involvement based on the nature and complexity of the project. Elements of the PIP may include: elected officials/agency kickoff meeting; public kickoff meeting; scoping meeting; corridor public meetings; alternatives public meetings; meetings with local agencies; meetings with special-interest groups; tribal meetings; public hearings; newsletters; and project website.

Consultants

On-call consultants submit a QA/QC plan to ADOT at the commencement of on-call contracts and are expected to review environmental documents in accordance with this plan. At a minimum, all documents submitted to ADOT EP by consultants, or written at ADOT EP, should be reviewed for format, structure, accurate content, spelling, and grammar prior to each submittal.

Environmental Commitments

Environmental commitments include project-specific mitigation measures to be included with the NEPA determination, as well as identifying permits and contractor-needed materials, such as species handling guidelines that are to be included in the final contract documents, also known as the Plans, Specifications and Estimate (PS&E). Project-specific mitigation measures are included in NEPA documents. Depending upon the nature of the commitment, environmental commitments may be implemented during final design or during construction. Environmental commitments are bound to the project from environmental approval through detailed design as part of the environmental clearance and through pre-bid conference, project letting and construction as part of the contract documents. Resident Engineers with assistance from District Environmental Coordinators (DECs), and from Environmental Planning staff as necessary, ensure the environmental commitments are implemented during construction.

Tools and Guidance

ADOT works with FHWA to implement NEPA requirements on state highway systems and on LPA projects that require FHWA approval. As the state highway agency for Arizona, ADOT routinely prepares NEPA documents for FHWA's independent evaluation and approval. Local agencies and their consultants also prepare NEPA documents for LPA projects under ADOT's guidance and oversight. These LPA project documents are reviewed by ADOT, prior to submittal to FHWA, following the same procedures and standards as state highway system projects.

To implement NEPA requirements effectively, ADOT has developed a broad array of policy and guidance materials and utilizes FHWA formal guidance documents that guide environmental document development and provide specific requirements for individual technical subject areas. As project sponsor and as the preparer of environmental documents for FHWA approval, ADOT has historically relied on FHWA's Technical Advisory T6640.8A – Guidance for Preparing and Processing Environmental and Section 4(f) Documents. That document was put in place in 1987, along with a final rule for the updating of the FHWA's implementing NEPA regulations, to provide sufficient guidance for FHWA to prepare CEs, EAs, EISs, and Section 4(f) evaluations. The Technical Advisory was developed by FHWA for the purpose of providing the best available guidance to its field offices and applicants regarding the types of information needed to comply with NEPA, section 4(f) of the DOT Act of 1966, and other environmental requirements. In addition the [FHWA Section 4\(f\) Policy Paper](#) and [FHWA Section 4\(f\) Tutorial](#) contain all the guidance material needed to conduct Section 4(f) analyses.

For environmental review responsibility of Section 4(f), the Policy Paper states: “In situations where a State has assumed the FHWA responsibility for Section 4(f) compliance, this guidance is intended to help the State fulfill its responsibilities. Such situations may arise when Section 4(f) responsibilities are assigned to the State in accordance with 23 U.S.C. §§ 325, 326, 327, or a similar applicable law. Unless otherwise noted, references to “FHWA” in this document include a State department of transportation (State DOT) acting in FHWA's capacity pursuant to an assumption of FHWA's responsibilities under such laws.”

These tools and guidance ensure that environmental documents and technical reports meet quality standards and are consistent with federal and state requirements. Together with other federal agencies, ADOT has also participated in the development of, and is a signatory to, a number of programmatic agreements (PAs) and MOUs that streamline the environmental review and project delivery processes.

ADOT's policy and guidance resources address the environmental requirements associated with planning and delivering highway projects. The policies and guidance are a compilation of environmental procedures and processes related to environmental, cultural, and social resources. These online reference materials are intended for use by project sponsors and environmental practitioners who conduct environmental work on behalf of ADOT, as well as by ADOT

environmental staff. Policies and guidance are dynamic documents that are updated as the need arises in response to changing environmental requirements, standards, and policies.

Guidance documents, policies, procedures, and other related items are available on the ADOT [Environmental Planning website](#). The site contains standard operating procedures, methodologies, documentation standards, review standards, and guidance covering technical aspects of each resource category, all of which can be accessed by hyperlinks on the main website page to areas such as: air quality, biology, cultural resources, hazardous materials, noise analysis, and water resources. As well as the technical areas identified on the main Environmental Planning website page, the [Guidance for Federal-aid Projects](#) provides a series of tabs that provide additional technical information for conducting environmental analysis, such as [farmlands](#), [socioeconomics](#), [visual resources](#) and [Title VI and Environmental Justice](#). In total the ADOT Environmental Planning website contains the information and guidance that could be found in one comprehensive environmental planning manual.

The [NEPA Guidance](#) tab of the [Guidance for Federal-aid Projects](#) provides specific NEPA document guidelines. Listed under this tab are the ADOT Categorical Exclusion (CE) Checklist Manual, Individual CE Checklist Guidelines, and the FHWA and ADOT Environmental Assessment Guidelines that provide guidance and outline documentation requirements. These manuals include guidance on the development of CEs and EAs for ADOT, as well as the assessment of resource categories considered in the preparation of these NEPA documents. Modifications to these documents are being made in preparation for when the NEPA Assignment MOU becomes effective.

In addition to existing FHWA standard guidance for preparing environmental documents ADOT is in the process of creating new ADOT EA/EIS Guidance and a new ADOT Section 4(f) Manual to supplement the existing available FHWA guidance material. These two new guidance documents will be in place at the time that the NEPA Assignment MOU becomes effective. Nearly all of the guidance documents on the Environmental Planning website recently underwent comprehensive updates in anticipation of the CE Assignment MOU becoming effective in January 2018 and are being upgraded again to include the provisions of the NEPA Assignment MOU. The “Technical areas” (Air Quality and Noise, Biology, Cultural Resources, Hazardous Materials and Water Resources) all updated their technical guidance including the development of some new tools such as checklists to aid planners and practitioners in developing technical analyses. Additional updates for NEPA Assignment to technical guidance documents include an update of the Historic Preservation Team’s Handbook for Cultural Resource Professionals and the Water Resources’ Clean Water Act Manual. Other new technical guidance documents are being developed, including an Ecological Resources Handbook and an Endangered Species Act Handbook, in anticipation of the NEPA Assignment MOU.

FHWA approval of ADOT manuals, procedures, and processes is not required except for the ADOT Public Involvement Plan and for the ADOT Noise Requirements defined under 23 C.F.R. 772.13(d).

Additional Guidance

As noted previously in addition to ADOT's own guidance, ADOT and its consultants use FHWA's NEPA guidance to develop environmental documents and studies. FHWA provides a set of rich online guidance (www.fhwa.dot.gov/environment) that covers a comprehensive variety of environmental topics. Each topic is covered in depth with direction and methodologies for performing studies ranging from community impact assessments to air quality analyses. [FHWA's Environmental Review Toolkit](#) includes comprehensive guidance on a wide variety of topics, such as historic preservation, environmental justice, water resources, wetlands, wildlife, and Section 4(f) resources, to name a few. The American Association of State Highway and Transportation Officials (AASHTO) maintain a series of [practitioner's handbooks](#) for a wide range of environmental topics that assist with environmental project development and NEPA documentation.

Current Quality Assurance / Quality Control Procedures

ADOT uses a systematic approach to quality assurance (QA) and quality control (QC) to monitor work processes to implement laws, rules, policies, procedures, and standards as established in its [QA/QC & Procedures Manual](#) which is located under Guidance on the Guidance for Federal-Aid Projects website. ADOT EP established the manual to support NEPA compliance and the overall quality of environmental documents. The manual provides guidance on producing quality documents, explains necessary procedures, identifies the staff responsible for performing activities and verifying compliance, and provides templates and tools for successful implementation. ADOT EP's extensive environmental guidance and training form the foundation for QA/QC. The guidance and procedures describe how ADOT complies with federal and state laws, rules, and regulations and contain ADOT policy and procedures to ensure quality documents.

ADOT's process is structured to include high levels of QC and QA throughout the project-specific environmental process as outlined below. Environmental planners work closely with environmental technical specialists, ADOT project managers, and consultants (as appropriate) to foster good communication and problem-solving in a climate that encourages cooperation between and among groups and individuals engaged in the project development process. Formal protocols are also included in the QA/QC & Procedures Manual. Consistent interaction between team members is intended to resolve most, if not all, problems before a document is completed and ready for review.

The environmental planner leads the NEPA approval and environmental clearance process, which includes managing the project's environmental schedule, budget, and end products that comply with NEPA regulations. The environmental planner is responsible for coordinating and communicating closely with the ADOT project manager, FHWA, technical specialists assigned to the project, and the ADOT Districts. The ADOT Districts play a key role in ensuring that mitigation measures are constructible and agreed upon before the NEPA process is completed. Either during the NEPA process or after NEPA approval, the environmental planners are

required to review final design plans to ensure the project scope of work has not changed and to ensure that mitigation measures are incorporated in the project special provisions.

Technical specialists manage and approve technical analyses, reports, technical work schedules, and budgets that conform to the environmental rules and regulations relevant to their expertise. The technical specialists are responsible for closely coordinating with the project environmental planner and recommending appropriate mitigation measures.

ADOT EP's environmental document QA/QC procedures require the following reviews:

- Technical specialists review stand-alone technical reports prepared in support of NEPA documents for accuracy and conformance to ADOT policy and to federal and state requirements. Technical specialists also review environmental clearance documents to ensure that information related to their technical specialty is accurately presented. For documents developed by ADOT EP, technical specialists also conduct peer reviews of technical studies in their area of expertise. In this capacity, biologists conduct peer reviews of biological resources reports and biological evaluations. Similarly, cultural resources specialists conduct peer reviews of Section 106 documents.
- NEPA documents are submitted to the environmental planner assigned to the project, who then distributes the document to the appropriate technical specialists for review. The environmental planner and technical specialists review the document concurrently. The first submittal document, along with all of the comments and a completed "Document Review Form," are provided to the appropriate senior project manager for a QA/QC review. After the environmental planner receives all of the comments and QA/QC checklist (for CEs), the environmental planner sends the compiled comments to the consultant or LPA to address the comments or, if the document was created internally, resolves the comments. The document review form, the QA/QC checklist, and all review comments are saved in the digital project folder (G-drive).

The second draft is submitted to the environmental planner, who ensures all comments have been appropriately addressed. If some comments were highly technical, then revisions addressing them may go back to the appropriate technical specialist for additional review. Additional draft reviews are conducted as necessary. Once the document is ready, the environmental planner will forward it to the EP Administrator for ADOT approval.

For CEs, EAs, and EISs requiring FHWA approval, once the document has been approved at ADOT, the environmental planner will then send a hard copy or electronic version of the NEPA document to FHWA for review and approval. For an EA and an EIS, once the document has been approved by FHWA, it is placed on the Environmental Planning website and agencies are informed by electronic notice that includes a hyperlink to the document.

Changes to be made to the current ADOT environmental review process are outlined in Section § 773.109(a)(3)(ii) of this application and include changes to QA/QC approach and guidance. The current QA/QC & Procedures Manual, which, in addition to QA/QC, outlines internal procedures

for developing projects, identifies staff responsible for performing activities and verifying compliance, and provides templates and tools for successfully implementing guidance and manuals in project development. This process and guidance is being significantly upgraded for NEPA Assignment. The current guidance will be separated into a Quality Assurance/Quality Control Plan and a separate Procedures Manual. The QA/QC plan will contain the distinct document review and approval steps as well as QA/QC requirements of the CE Assignment and NEPA Assignment MOUs. The Procedures Manual will contain the interdisciplinary staff procedures that, in conjunction with more detailed technical guidance documents, help staff coordinate the development of technical studies and environmental documents. Well-developed projects help to reduce quality issues later in the review and approval phase.

Agreements and Agency Consultation

Together with other federal agencies, ADOT has participated in the development of, and is a signatory to, a number of programmatic agreements (PAs) and Memoranda of Understanding (MOUs) that streamline the environmental review and project delivery process. MOUs and PAs spell out the terms of a formal, legally binding agreement between ADOT and other state or federal agencies. An MOU or PA may establish a process for consultation, review, and/or compliance with one or more state or federal laws. A Section 106 PA may establish alternative practices and resolution of adverse effects. It may also serve as an expression of collaborative intent between agencies. ADOT has several MOUs and PAs, as described below:

Programmatic Categorical Exclusion (PCE) Agreement

The Programmatic Agreement Between the Federal Highway Administration Arizona Division and the Arizona Department of Transportation Regarding the Determination and Approval of Categorical Exclusion Actions for Federal-Aid Highway Projects (July 2015) was in place until January 3, 2018. The PCE defined the types of CEs that could be approved by ADOT and those that required FHWA approval. Approval authority was delegated to ADOT for certain actions that qualify for a CE listed under 23 C.F.R. § 771.117(c) or (d). This was a delegation of approval authority as opposed to granting legal responsibility under assignment. The 2015 PCE Agreement was the latest of a series of such agreements that ADOT has successfully operated under for many years. These PCE agreements have given ample opportunity to assume the FHWA role in practice for environmental review of many CE projects.

Programmatic Section 106 Agreement

The Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act Regarding Implementation of Federal-Aid Transportation Projects in the State of Arizona (December 2015) The PA defines how FHWA conducts Section 106 consultation for ADOT projects and it addresses how to streamline the process by including a list of actions that can be exempted or addressed programmatically.

The Section 106 PA had 14 signatories: ADOT, SHPO, FHWA, the Advisory Council on Historic Preservation, Gila River Indian Community, Hualapai Tribe, Bureau of Indian Affairs' Western

Regional Office, Bureau of Land Management, Bureau of Reclamation, USACE, U.S. Forest Service's Southwest Regional Office, Arizona State Land Department, Arizona State Parks, and Arizona State Museum.

A new Section 106 PA is being developed that will assign Section 106 responsibilities to ADOT for all undertakings covered under the CE Assignment MOU and the NEPA Assignment MOU. This new PA is anticipated to be in effect at the time that the NEPA Assignment MOU becomes effective.

23 U.S.C § 326 - State Assumption of Responsibility for Categorical Exclusions Memorandum of Understanding (CE Assignment)

[23 U.S.C § 326 CE Assignment MOU](#)

ADOT has been assigned FHWA's responsibilities pursuant to the State Assumption of Responsibility for Categorical Exclusions Program, otherwise known as the CE Assignment Program. The environmental review, consultation, and other actions are being carried out by ADOT pursuant to 23 U.S.C. § 326 and a MOU executed by FHWA and ADOT on January 3, 2018. The MOU defines the types of CEs, outlines the specific requirements ADOT must follow in documenting CEs, and defines listed CEs as approved by ADOT and unlisted CEs as requiring FHWA approval. ADOT has environmental review responsibility for actions that qualify for a CE listed under 23 C.F.R. § 771.117(c) or (d). Approval authority is not further delegated to LPAs, including Certification Acceptance agencies that have design and construction oversight authority by other agreements. Therefore, ADOT EP approves CE documentation prepared by the LPAs for Federal-aid Highway Projects.

[Memorandum of Understanding for Projects on Forest Service, Southwestern Region, Lands](#)
***[Memorandum of Understanding among the Arizona Department of Transportation, the Federal Highway Administration, Arizona Division of the USDA, Forest Service, Southwestern Region Regarding the Construction, Operation and Maintenance of Highways in Arizona Crossing National Forest System Lands](#)* (2008) establishes the principles under which the agencies agree to collaborate in transportation construction and maintenance projects on National Forest land. The MOU provides for a coordinated approach that is designed to reduce and, where possible, eliminate duplication of work and to establish procedures for streamlining work processes. ADOT intends to pursue an update of the MOU upon agreement of the USFS.**

[Memorandum of Understanding for Projects on Bureau of Land Management Lands](#)
***[Memorandum of Understanding Between the Arizona Department of Transportation, the Federal Highway Administration, Arizona, and the Bureau of Land Management, Arizona](#)* (2008) establishes the principles under which the agencies agree to collaborate in land use and project planning. The document includes appendices (Operating Agreement, Project Reference) that provide specific direction on agency roles, responsibilities, and operating procedures. ADOT intends to pursue an update of the MOU upon obtaining agreement of the BLM.**

Memorandum of Agreement for Expedited Reviews of Priority Projects with the US Army Corps of Engineers (USACE) -

Second Amended and Superseded Memorandum of Agreement Between the Arizona Department of Transportation, Federal Highway Administration, Arizona Division Office and the United States Army Corps of Engineers' Los Angeles District Concerning the Funding for the Department of the Army Permit Process on Priority Federal-Aid Highway Projects (2017).

This amended memorandum of agreement (MOA) establishes the responsibilities of the parties relative to priority review of Federal-Aid Highway Program projects with the goal of achieving timely design and implementation of highway improvements while also assuring such design and implementation is sensitive to the protection of aquatic resources for which USACE is responsible under federal statute and regulation. The MOA is a vehicle by which ADOT may obtain expedited review of Federal-Aid Highway Program funded projects designated as priorities, outside of the ordinary USACE review process. The agreement has been updated and will need no further updates for the NEPA Assignment MOU.

Memorandum of Agreement for Expedited Reviews of Priority Projects with the US Fish and Wildlife Service (USFWS) -

Memorandum of Agreement between the Arizona Department of Transportation, Federal Highway Administration, Arizona Division Office and the United States Fish and Wildlife Service, Arizona Ecological Services Office Concerning Funding For Transportation Project Reviews by the United States Wildlife Service in Arizona (2015).

This MOA establishes the responsibilities of the parties relative to priority review of Federal-Aid Highway Program projects with the goal of achieving timely design and implementation of highway improvements while also assuring that such design and implementation are sensitive to the protection of listed or proposed species and critical habitat for which USFWS is responsible under federal statute and regulation. The MOA is a vehicle by which ADOT may obtain expedited review of Federal-Aid Highway Program funded projects designated as priorities, outside of the ordinary USFWS review process. The agreement will need to be updated for the NEPA Assignment MOU.

Internal Monitoring and Process Reviews

ADOT, through the administration of its NEPA program during the course of project management, identifies issues and implements actions designed to improve the program's effectiveness and timeliness. Developed over years of successful NEPA implementation, these tools, such as a Document Review Form, are designed to support staff in accurate development and review of project environmental documentation to meet federal and state standards and requirements.

Over time ADOT has assumed increasing program responsibility as in the past with the now superseded FHWA 2015 PCE and the PCE agreements that preceded it. During the implementation of the PCE and in anticipation of successful 326 Assignment, ADOT conducted

in-depth file quality reviews to assure compliance with the PCE requirements. These actions were undertaken independent of routine performance reviews of projects developed in the normal course of business. In routine practice, CE projects were evaluated at various stages by technical staff, planners, and management to determine if: findings were appropriate and suitably supported, decisions were made by authorized staff, project scopes were complete and accurate, project descriptions were valid, electronic documents were saved in project folders, and certain final documents were provided to FHWA. The success of the practice is evidenced by ADOT PCE compliance with its own internal expectations based on a self-assessment conducted in 2017.

Current practices will be the foundation upon which expanded QA/QC roles, guidance, policies, and practices will be developed to fully address NEPA responsibilities contemplated in this application.

§ 773.109(a)(3)(ii): Changes to be made for assumption of responsibilities

This section describes how ADOT intends to continue to utilize established and successful practices and to modify its environmental compliance program to implement its new responsibilities under the NEPA Assignment Program. This section also describes the procedures that ADOT will implement to support development of compliant NEPA documents that meet quality standards and of NEPA decisions that are sound, supportable, and made independently. As the need is identified, additional procedures will be developed to improve the program.

Organization and Procedures under the NEPA Assignment Program

ADOT intends to expand and strengthen its well-developed environmental program and procedures to implement the NEPA Assignment Program. ADOT EP staff includes experienced NEPA practitioners and a variety of subject-matter experts in air, noise, hazardous waste, water, and natural and cultural resources. As noted previously, a new position, the NEPA Assignment Manager, was added and the ADOT EP group was recently reorganized to effectively manage NEPA Assignment activities. ADOT will continue to implement its long-standing, successful approach to completing resource analyses and preparing environmental documents under the NEPA Assignment Program. This approach is rooted in following the sound professional judgment of ADOT's mature environmental staff to determine the necessary environmental analyses for specific projects and preparing quality environmental documents, supported by applying established standards for environmental documents and technical studies. ADOT will use its existing and to-be-developed policies, procedures, and guidance to implement the NEPA Assignment Program. ADOT will continue to use environmental consultants as appropriate to meet its environmental analysis, documentation, and management needs. Additional changes beyond those described in this application could occur as ADOT EP staff gain experience in using the new procedures and identify the need for clarifying, adjusting, augmenting, or adding

procedures. Procedural change would also result when ADOT self-assessments or FHWA audits identify the need for additional change.

The major change that will occur under the NEPA Assignment Program is ADOT's assumption of FHWA's role as environmental project decision-maker for the State of Arizona. The NEPA Assignment Program will allow ADOT to expand its tradition of appropriate environmental compliance by assuming federal responsibility and liability for independent NEPA decision-making on federal projects. The NEPA Assignment Program will also allow ADOT to deepen its strong, proactive working relationships with its federal and state resource agency partners and to continue its commitment to work collaboratively with these resource agency partners to develop and implement innovative environmental mitigation. ADOT's staff capabilities and mature environmental compliance program will support the success of the NEPA Assignment Program.

ADOT's standards and procedures, combined with its expert staff and consultant resources, will provide appropriate tools and expertise in all areas that ADOT has requested assignment of FHWA's environmental responsibilities. The NEPA Assignment program will rely on the professional experience, knowledge, and judgment of ADOT's environmental staff in determining the scope and appropriate environmental analyses for each specific project, supported by established standards for preparation of environmental documents and technical studies, and a strong QA/QC program. ADOT will continue its adherence to FHWA's public outreach requirements as defined in 23 C.F.R. § 771.111 and the ADOT PIP, as well as the EIS public and agency collaboration requirements in 23 U.S.C. §139(g).

ADOT will use its procedures, policies, and guidance in undertaking its NEPA Assignment Program responsibilities with the expectation that statewide use of those procedures, internal self-assessment, and FHWA audit will identify opportunities to improve those standards and procedures, or staff implementation of those standards and procedures. Problems that are identified will be accompanied by development of corrective actions and adoption of recommendations for continuous improvement of ADOT's environmental program.

Expanded Quality Assurance / Quality Control Procedures

ADOT believes that its approach to quality is sound, and that its emphasis on sound staff professional judgment, internal collaboration among its NEPA staff and environmental technical subject matter experts, and appropriate use of consultant expertise results in quality environmental documents. ADOT will continue to place its reliance on a strong quality assurance and quality control program under the NEPA Assignment Program that will further support development of NEPA-compliant environmental documents and decisions with quality built in.

As noted previously under the Current Quality Assurance / Quality Control Procedures Section of this application the existing QA/QC & Procedures Manual used for CE Assignment is being modified for the NEPA Assignment Program to reflect the changes resulting from transferring environmental review responsibility from FHWA to ADOT. The current manual will be

separated into a QA/QC Plan and a Procedures Manual. These two documents will be completed and in place at the time the NEPA Assignment MOU becomes effective. In the future, further updates, modifications, and expansions of QA/QC procedures may occur as ADOT determines them to be necessary based on experience under the NEPA Assignment Program and from feedback such as self-assessments and formal FHWA audits.

The QA component of the QA/QC Plan describes how having the proper guidance documents and processes in place for preparing environmental document helps prevent problems related to quality. Properly trained and competent staff also helps prevent problems related to quality at all stage of the process.

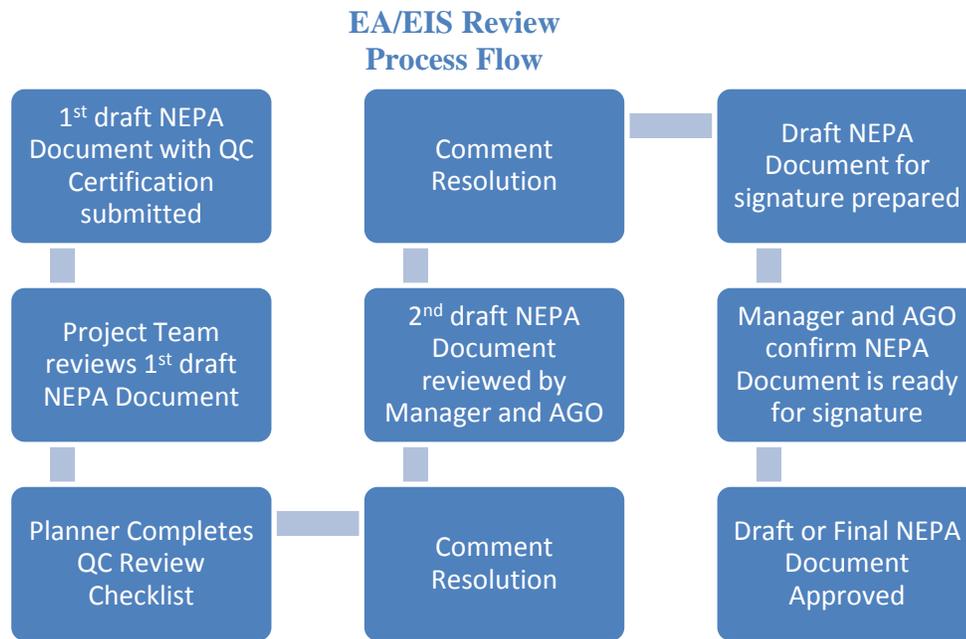
QA also includes the self-assessments outlined in the CE Assignment MOU that are utilized to assess the overall quality of documents and ensure that the processes and procedures are being followed. The QA component of the plan will be expanded to include the formal requirements outlined in the NEPA Assignment MOU which will include performance measures to keep track of overall success of the program and outline the need for formal FHWA audits as required under 23 U.S.C. 327.

Quality assurance and quality control will occur at several steps during the development of all NEPA Assignment Program environmental documents. Quality assurance begins when the project environmental team collaborates in the development of the project scope. The scope identifies expectations for the project class of action, environmental analysis and technical studies. Technical studies are then prepared following established standards. The first element of QC takes place when technical studies undergo QC by an ADOT technical expert prior to their approval. Once technical analyses and studies are completed, the project environmental team leads development of the environmental document following established document standards. The environmental document itself may briefly summarize studies and focus on the information necessary to support an informed decision.

The primary difference between the current QC process and the process to be used under the NEPA Assignment Program is that an ADOT “QC Review” replaces the FHWA reviews of the NEPA environmental document. The QC Review will utilize a new formalized QC review forms for EAs and EISs, similar to the Document Review Form and CE QAQC Form developed for CE Assignment. These documents will ensure proper technical reviews and QC review of the documents. Comment resolution, or verification that no comment resolution is needed, will be a required step. The NEPA Assignment Manager will review the document along with any requested legal advice, as needed or required. The NEPA Assignment Manager will verify that the QC review was performed before recommending that the environmental document is ready for signature by completing a QC Quality Control Form (the name of the form may change as the process is finalized) that indicates all required reviews have been conducted and the document is ready for public review or ADOT approval. The Project Delivery Manager can also make such approvals.

The QC reviews verify that the environmental document is: NEPA compliant, internally consistent and consistent with the supporting technical studies, and consistent with the project

design concept and scope as described in the local or statewide plan. The QC review also verifies that the environmental document meets the requirements of federal and state environmental statutes, regulations, and policy. The steps in the review process are outlined below:



In addition to the minimum federal requirements for finding legal sufficiency, a legal pre-review may be sought prior to circulation of any Draft EIS and Draft Individual Section 4(f) Evaluation. The 23 C.F.R. § 771.125 and 23 C.F.R. § 774.7 required legal sufficiency review will occur for the final EIS and Individual Section 4(f) evaluation prior to approval. Legal review in regards to EAs will take place at the request of the NEPA Assignment Manager or the Environmental Planning Administrator. The ADOT NEPA Assignment Manager will be responsible for any consultations with legal counsel on the final EIS and any individual Section 4(f) evaluation that goes through legal sufficiency review. Legal sufficiency reviews or consultation will be conducted by an attorney assigned by the Arizona Attorney General’s Office (“AGO”) or outside environmental counsel appointed by AGO and funded by ADOT through project budgets. The legal sufficiency review will occur after completion of QC review and after the NEPA Assignment Manager has determined that the document is ready for legal sufficiency review. The final EIS or individual Section 4(f) determination will only be signed after legal sufficiency has been determined.

The approval of the EA, the Finding of No Significant Impact (FONSI) or approval of the Environmental Impact Statement, the Record of Decision (ROD), is developed by EP staff and undergoes QC review that follows the same procedures as QC review for the environmental

document. Following the completion of QC review, the EP Administrator will approve the FONSI or ROD, signifying the final agency decision.

All Section 4(f) processing options (FHWA established procedures for how the process is documented) will involve QC review by appropriate ADOT technical experts. Once QC review has been successfully completed, the NEPA Assignment Manager, Project Delivery Manager or Historic Preservation Team Leader will approve the final document for a Section 4(f) use with a de minimis impact. Programmatic Section 4(f) determinations will be approved by the ADOT EP Administrator. Individual Section 4(f) evaluations will complete QC review, after comment resolution, and then be submitted to legal counsel for legal sufficiency review. Individual Section 4(f) evaluations will be approved by the ADOT EP Administrator after legal sufficiency is determined.

The ADOT EP Administrator will approve draft EAs and draft EISs for public and agency review. The EP Administrator will also approve all final EA/FONSIs and final EIS/RODs. After a trial period, the ADOT EP Administrator may elect to delegate signature authority for EAs and FONSIs to the NEPA Assignment Manager or the Project Delivery Manager. Signature authority for EISs and RODs will not be delegated. The State Engineer will sign any EIS/ROD in the absence of the EP Administrator. ADOT's planned delegation of authority is further outlined in Section § 773.109(a)(4)(i).

CE Review

Project activities that qualify as CEs but do not meet the criteria for processing under the CE Assignment MOU ("listed CEs") will follow the procedures for CEs outlined in the ADOT Environmental Planning CE Manual. The CE Manual will be revised to reflect the changes needed from operating under the CE Assignment MOU alone to operating under both the CE Assignment MOU and the NEPA Assignment MOU. These updated CE Manual will be in place at the time that the NEPA Assignment MOU becomes effective. CEs are prepared by either ADOT EP staff or by a consultant. ADOT already had rigorous review standards for CEs in place prior to CE Assignment and they will remain unchanged. A Senior Planner review or a Senior Planner peer review is conducted on all CEs. Pursuant to 23 C.F.R. § 771.117(a) and (b), the EP Administrator will approve the CE but may delegate to the NEPA Assignment Manager or the Project Delivery Manager. The approver also verifies that the CE determination (type of CE) is appropriate. This means three people are involved in determining/verifying that an appropriate type of CE is being applied to all projects.

CEs that do not meet the criteria for processing under the CE Assignment MOU will follow the same QC review and approval process as those outlined above. The CE review and approval process requires that the CE preparer is a different party from the CE reviewer and that the CE reviewer cannot also approve the CE.

Local Public Agency Projects

LPA projects will follow the same approval processes and be reviewed and approved following the same standards as ADOT-sponsored projects. When LPA environmental documents are submitted to ADOT, they will be subject to the same QA/QC reviews as performed on ADOT environment documents. LPA project environmental documents will also be subject to the same legal consultation and legal sufficiency reviews when applicable.

Independent Environmental Decision-Making

ADOT’s organization supports environmental decision-making independent of administrative, political, or performance-based pressure. Under the NEPA Assignment Program, ADOT will assume the role of project level Environmental Decision-Maker with the full legal responsibility for that role, which is in addition to the traditional role of being the project sponsor. Approval for all environmental documents prepared under the NEPA Assignment Program will be independent from project design decisions. However, the ADOT environmental team will collaborate with project designers throughout the project development process on possible avoidance and minimization strategies when there are potential impacts to environmental resources of concern.

Under the NEPA Assignment Program, the same as now, all environmental staff involved in preparation or review of NEPA documents will be part of the EP group and will report to the EP Administrator. Project managers for Tier 1 EISs report to the MPD Director, project managers under Major Projects report to the Major Projects Director, and staff involved in the Project Management Group report to the IDO Director. The EP Administrator, MPD Director, Major Projects Director, and IDO Director all report to the Deputy Director for Transportation/State Engineer.

There are many decisions and levels of decision-making in project development. The approvals under environmental review will be made by ADOT EP. These decisions are made by staff independent of those directly managing the project and those responsible for delivering the project for construction advertisement. The following table shows project development decisions in relation to independent environmental review decisions.

<ul style="list-style-type: none">❑ Decisions of Planning and Programming<ul style="list-style-type: none">▪ Multimodal Planning Division (MPD) [State Transportation Board]<ul style="list-style-type: none">▪ Pre-scoping, planning studies, and Five-Year Construction Program▪ Environmental Planning – Input on Class of Action identification
<ul style="list-style-type: none">❑ Decisions of Engineering and Project Management<ul style="list-style-type: none">▪ Infrastructure Delivery and Operations Division (IDO) – Project Sponsor<ul style="list-style-type: none">▪ Project Management Group/Districts/Engineering [Project Team]▪ Environmental Planning – Input on environmental requirements and Avoid/Minimize/Mitigate of resources

❑ Decisions of Environmental Review

- Environmental Planning – Makes the “**NEPA Decisions**” but not before there is consensus of the Project Team on design and engineering solutions and consideration of agency and stakeholder input on:
 - Determining Cooperating Agencies, Purpose and Need, Range of Reasonable Alternatives, Recommended Alternative
 - Consultations with Tribes and Resource and Land Management Agencies
 - Section 4(f) – Officials with Jurisdiction

Defining the Class of Action (COA)

The COA identification and determination has been defined under Section 773.109(a)(3)(i) of this application. Outside of the elimination of any concurrence needed from FHWA, there is no change to this process. If funds are programmed for preparation of an unlisted CE, EA, or EIS, then FHWA will be involved in approving the State Transportation Improvement Program (STIP), which will contain the funding to conduct the environmental review. ADOT would have the responsibility to define the Class of Action

Consultation and Coordination with Resource Agencies and Tribes

Coordination with resource agencies plays a vital role in project planning and environmental development of proposed projects. ADOT currently performs the role of documenting and preparing all of the technical information used in interagency coordination, with FHWA approving the letters. Under the NEPA Assignment Program, ADOT will assume the responsibility for signing consultation letters. ADOT maintains an inter-disciplinary staff that works effectively and proactively with state and federal environmental resource agencies. Under the NEPA Assignment Program, ADOT is committed to continue working positively and collaboratively with its federal and state resource agency partners and will be responsible for all interagency coordination. Tribal governments may still request and retain the right to Government-to-Government consultation with FHWA under the NEPA Assignment Program.

This positive, collaborative approach with agency partners will also be evident as ADOT assumes responsibility for NEPA scoping on EIS projects. ADOT will meet the NEPA scoping requirements of the Council on Environmental Quality NEPA regulations (40 C.F.R. § 1501.7) and of FHWA (23 C.F.R. § 771.123(b)), as well as the early consultation and coordination plan requirements articulated in 23 U.S.C. § 139. ADOT will request agencies, as appropriate, to become cooperating agencies, and will identify agencies to serve as participating agencies. All federal, state, Tribal, regional, and local government agencies that may have an interest in the project will continue to be invited to be participating agencies. For EIS projects, participating agencies and the public will continue to be given an opportunity for input in the development of the purpose and need and the range of alternatives, and throughout the environmental process as

appropriate. ADOT will also continue to collaborate with cooperating and participating agencies during the environmental study process on methodologies to be used and level of detail required for analyzing project alternatives.

ADOT project teams currently perform the routine procedures necessary for agency coordination efforts for EA and EIS projects with FHWA as the “lead federal agency.” Under the NEPA Assignment Program ADOT will assume the role of lead federal agency.

ADOT biologists, or consultants assisting ADOT, currently prepare Section 7 biological evaluations and biological assessments. An ADOT biologist will approve all consultant-prepared biological evaluations. Under the NEPA Assignment Program, ADOT will take on the FHWA role of formal consultation with USFWS under Section 7 of the Endangered Species Act (ESA). Under the NEPA Assignment Program, ADOT will be responsible for informal and formal ESA consultation and for compliance and ESA oversight in general. Formal consultation correspondence and documentation prepared under the NEPA Assignment Program will be submitted to the agencies by the ADOT Biology Program Manager or the Biology Team Leader and will specify that consultation is being requested pursuant to 23 U.S.C. § 327.

In addition, ADOT will continue to work collaboratively with USFWS to develop conservation strategies to ensure that projects will not jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of critical habitat or essential fish habitat. ADOT also consults with the USFWS on projects that require review under the Fish and Wildlife Coordination Act (FWCA). Under the NEPA Assignment Program, ADOT is requesting to assume responsibility for ESA compliance and will continue FWCA coordination and informal ESA consultation responsibilities and will assume responsibility for formal Section 7 consultation on behalf of FHWA.

Under a Section 106 PA with the Arizona Historic Preservation Office (SHPO), Advisory Council on Historic Preservation (ACHP), and FHWA, ADOT currently reviews and approves most projects not involving adverse effects to eligible resources under Section 106 on behalf of FHWA and in coordination with any landowning or managing agency or Tribe. For projects involving adverse effects to eligible resources, FHWA currently consults with the SHPO and other consulting parties to resolve adverse effects. Under the NEPA Assignment Program, ADOT is requesting to assume responsibility for compliance with Section 106 of the National Historic Preservation Act. In anticipation of full NEPA Assignment, ADOT is developing a new Section 106 PA, in consultation with all the signatories, to name ADOT as the responsible party for ensuring compliance with the PA. It is anticipated that the new PA will be implemented at the time the NEPA Assignment MOU is executed.

ADOT is currently entrusted with responsibility for coordination with the Hualapai Tribe and the Gila River Indian Community Tribal Governments through the Section 106 PA. FHWA cannot assign its Government-to-Government Tribal consultation responsibilities to ADOT under the NEPA Assignment Program, but ADOT would continue to use its current procedures to coordinate the meaningful input of all Native American Tribes with interests in Arizona in the

Section 106 process, regardless of whether any given tribe is a signatory to the PA. If, at any time, a tribe requests FHWA Government-to-Government consultation, then that request will be addressed by FHWA.

ADOT does not have a formal PA with the USACE (“404 Merger”) or the U.S. Environmental Protection Agency (EPA), but ADOT currently manages permit submittals when Section 10 and Section 404 permits are required. Projects requiring an individual Section 404 permit are required to comply with the Section 404(b)(1) guidelines (40 C.F.R. Part 230). ADOT will continue to follow Section 404(b)(1) guidelines in analyzing project alternatives and determining the least environmentally damaging practicable alternative while working with USACE and EPA to obtain individual permits. Under the NEPA Assignment Program, ADOT requests to assume FHWA’s responsibility as the lead federal agency to coordinate with USACE and EPA and will continue to perform these coordination and permitting functions. ADOT will be considered the "Federal Agency" on actions under the NEPA Assignment Program.

ADOT currently coordinates with the U.S. Coast Guard regarding projects within navigable waterways subject to the General Bridge Act of 1946, formerly known as Section 9 of the Rivers and Harbors Act of 1899. For projects needing bridge permits, ADOT will ensure coordination with the U.S. Coast Guard to conduct the environmental review.

ADOT is actively involved in coordinating with the U.S. Department of Interior, and, as appropriate, other federal agencies, on Section 4(f) issues. When necessary and to ensure compliance with the Farmland Protection Policy Act (FPPA), ADOT completes coordination with the Natural Resource Conservation Service (NRCS). ADOT also is requesting to assume responsibilities for compliance with these acts and would continue to perform these coordination functions under the NEPA Assignment Program.

Although ADOT’s air quality specialist reviews and approves air quality analyses and the required interagency consultation, FHWA would retain transportation conformity determinations for NEPA Assignment Program projects. The process for air quality conformity determinations is defined in [40 C.F.R 93 - Determining Conformity of Federal Actions to State or Federal Implementation Plans](#). The federal regulations discuss who is responsible for what. The roles and responsibilities are also defined in the state conformity rule. ADOT has also developed Standard Work Practices describing how to determine the level of air quality analysis, how to review air quality technical reports, and how to approve air quality projects.

Issue Identification and Conflict Resolution Procedures

Internal and Local Agency Process

Although ADOT rarely has internal disputes over technical or procedural environmental issues, if a project environmental dispute were to arise among EP staff or between EP staff and other ADOT staff, the dispute would be resolved by escalation from staff to supervisor and through the ADOT chain of command. The EP Administrator in collaboration with the State Engineer would

normally be the decision-maker for internal disputes, but it is possible that, in unusual circumstances, disputes could be elevated to the ADOT Director.

Process with External Agencies

ADOT's long history of working cooperatively with its federal and state partners and with Tribal governments is evidenced by the PAs, MOUs, and MOAs it operates under. These agreements and memoranda have been developed over the years to entrust certain responsibilities to ADOT or to improve coordination between ADOT and federal and state resource agencies. ADOT strives to be transparent in identifying impacts, working with agencies on appropriate mitigation to offset the impacts of its projects, and fulfilling its commitments. ADOT seeks to understand the basis for resource agency requirements and to diligently meet those requirements. Following this forthright approach, ADOT is largely successful in avoiding conflicts with external agencies. ADOT expects to continue this general approach under the NEPA Assignment Program and will assume FHWA's role in resolving conflicts with external agencies without FHWA involvement. Issue resolution with the public is outlined in the ADOT Public Involvement Plan.

External Process Under NEPA Assignment

Under the NEPA Assignment Program, ADOT would assume FHWA's role in implementing the issue identification and resolution process under 23 U.S.C. § 139(h). The statute provides a formal process for resolving major issues that could delay or result in denial of a required approval or permit for a project. By law, this process may be invoked by the project sponsor or the state governor and requires that the FHWA Division Administrator, as the lead agency, affected participating agencies, and the project sponsor meet to resolve issues. Under the NEPA Assignment Program, the Director of ADOT would assume the FHWA Division Administrator role. Issues identified for resolution or elevation through 23 U.S.C. § 139(h) would be coordinated with the Office of the Secretary of Transportation at USDOT.

Because of ADOT's experience, expertise, and current level of involvement in consultations, its resources already have been developed to a level that is adequate to assume FHWA's responsibilities for resolving issues with external agencies and Tribes. The QA/QC & Procedures Manual, Biology Procedures, and Scoping Guidelines for Agency and Public Scoping for Projects with Categorical Exclusions will all be updated to reflect the changes under the NEPA Assignment Program.

ADOT will continue to be diligent in resource agency engagement, particularly with cooperating agencies and those agencies designated as participating agencies, following the requirements and spirit of 23 U.S.C. § 139. Where issues arise that create conflict between agencies or with Tribes, ADOT will be committed to forthright conflict resolution and good-faith efforts to address the concerns of the other party.

When needed, resource agency or Tribal conflicts would be resolved through implementation of a standard dispute-resolution ladder. Staff at ADOT and the resource agencies or Tribes needing assistance in resolving disputes would refer the dispute to their supervisors. Resolution efforts

would continue up the chain of command at each agency until the dispute can be resolved to the satisfaction of all parties.

ADOT has its Partnering Office with staff who are trained and experienced in facilitation, issue resolution, and working with federally recognized Tribes in Arizona and with resource agencies. The services of the Partnering Office are available to assist with specific partnering goals or issue resolution and may be utilized by EP staff.

If it were determined that external services would be helpful in resolving any issues or disputes relating to NEPA, ADOT has the ability to engage the services of the U.S. Institute for Environmental Conflict Resolution (U.S. Institute), which is a part of the Udall Foundation; an independent federal agency. The U.S. Institute helps federal agencies and other stakeholders address environmental issues, disputes, or conflicts through facilitation, collaboration, and conflict resolution activities and services.

Recordkeeping and Retention

ADOT will maintain its digital project and administrative files pertaining to its NEPA Assignment Program responsibilities, as required by law, and by ADOT's record retention schedule, and as described in the QA/QC & Procedures Manual. These files will include, but are not limited to, letters and comments received from governmental agencies, the public, and others relative to the NEPA Assignment Program. Project files will include the NEPA document, technical reports and studies, consultation/coordination correspondence, and public comments and responses. E-mails and related documents that support project decision-making, reflect deliberation, and demonstrate a "hard look" under NEPA will be retained as part of the project file. Any attorney-client privileged records and attorney work product records will be kept in a separate file, and will not be made available to the public unless required by law.

Expanded Internal Compliance and Self-Assessment Reviews

As required, ADOT will conduct yearly self-assessments to determine the effectiveness of its standards, guidance, and procedures under the NEPA Assignment Program and its staff's adherence to the NEPA Assignment MOU and to ADOT's established standards and procedures. Self-assessments will occur according to the requirements of the MOU with periodic self-assessment reports provided to FHWA.

In addition to problem identification, self-assessment will be used to evaluate root causes and to assess whether discovered problems are systemic, are confined to specific NEPA document types, or are specific to individuals. ADOT will use self-assessment to identify those areas that are performing to expectation, as well as those areas that require improvement, and then make specific recommendations to improve adherence to standards and procedures. This self-assessment will determine the need for corrective action, as well as identify necessary corrective actions, evaluate the improvements achieved by previous corrective actions, and re-evaluate previous program areas where corrective actions have been implemented. Self-assessments will be conducted using a variety of monitoring tools, such as reviews of files and

data management systems, interviews of ADOT and resource agency staff, and distribution of questionnaires. Thus, such self-assessments will gauge the success of the ADOT NEPA Assignment Program.

ADOT anticipates that certain elements of the NEPA Assignment Program will be evaluated with each self-assessment (for example, performance measures, record-keeping, compliance with federal requirements, and environmental approval time frames), while other self-assessment components will be determined for each self-assessment based on input from the self-assessment team, the NEPA Assignment Manager, and the EP Administrator.

The EP Administrator will be responsible for overseeing ADOT's implementation of the NEPA Assignment Program, ensuring its success, and reporting on its performance to FHWA. The EP Administrator is the highest-ranking environmental official at ADOT and is committed to the success of the NEPA Assignment Program, as is the entire ADOT organization. The NEPA Assignment Manager will be responsible for day-to-day management of the program and will serve as liaison to the FHWA NEPA Assignment Program audit team.

Performance Measures to Assess the Assignment Program

ADOT will monitor a variety of performance measures as part of its NEPA Assignment self-assessment program to evaluate performance in assuming NEPA Assignment Program responsibilities. These measures will include the following:

- Compliance with NEPA requirements, FHWA NEPA regulations, and other Federal environmental statutes and regulations:
 - Maintain documentation regarding compliance with responsibilities assumed under the NEPA Assignment MOU.
- QA/QC for NEPA decisions
 - Maintain internal QA/QC measures and processes, including a record of:
 - Completion of legal sufficiency review
 - Compliance with ADOT's environmental document content standards and procedures, including those related to QA/QC
- Relationships with agencies, Tribes, and the general public:
 - Maintain communication considering timeliness and responsiveness among ADOT, federal and state resource agencies, Native American Tribes, and the public
 - Provide opportunities for public involvement and comment
 - Use NEPA issue-resolution process, as appropriate
- Increased efficiency and timeliness in completion of the NEPA process by comparing amount of time for environmental document approvals taken before and after assumption of responsibilities.

Training to Implement the NEPA Assignment Program

ADOT is committed to maintaining a quality training program for its employees. Training is developed to meet the identified needs of staff and is modified over time as necessary to meet evolving staff needs. ADOT's existing environmental training program provides training that

supports developing the knowledge, skills, and abilities of its environmental staff necessary to meet state and federal environmental requirements.

To ensure that ADOT environmental staff has the knowledge and skills necessary to meet their new responsibilities under the NEPA Assignment Program, the ADOT EP Administrator will hold training on the NEPA Assignment MOU and its key provisions for the EP group's environmental staff prior to the effective date of the MOU. Training topics will include the content of the MOU and ADOT's application, environmental document review procedures, QA/QC protocols, the self-assessment process, FHWA regulations, and ADOT environmental policies. ADOT Environmental Planning will also hold an informational session summarizing the NEPA Assignment Program for interested ADOT staff outside of EP, including partnering agencies, local governments, and consultants. Some of this outreach has already been conducted over the past year in preparation for the CE Assignment.

ADOT has prepared an internal staff Training Plan for the NEPA Assignment Program and will update it annually, as required by the MOU. As part of developing the annual Training Plan updates and during self-assessment, ADOT expects to evaluate its training to determine whether it is consistent with the NEPA Assignment Program and the current ADOT approach to the environmental process. ADOT will revise the training and develop new training to support the NEPA Assignment Program, as it determines necessary.

Arizona AGO, functioning as ADOT legal representation, is qualified to assume, and has received legal sufficiency training from FHWA to assume legal responsibility for assigned environmental actions. This training took place on February 7, 2018.

FHWA Headquarters and FHWA Research Center staff provided Section 4(f) training in May 2018. A one-day training on Section 106 under the NEPA Assignment Program was held in April 2018. ADOT may also request that FHWA provide program level training from their Headquarters and/or FHWA Resource Center during the NEPA Assignment Program in other areas of environmental review.

In addition to internal training, ADOT sends its staff to environmental compliance courses offered by FHWA, the National Highway Institute (NHI), resource agencies, local universities, and private vendors on an as-available and as-needed basis. In March 2018 ADOT EP staff and ADOT Communications and Civil Rights staff attended the three-day NHI Public Involvement training. ADOT is also demonstrating its commitment to having highly qualified staff by sending all four ADOT biologists out of state to intensive ESA Biological Assessment and Biological Opinion writing training (Interagency Consultation for Endangered Species) in June of 2018 conducted by the USFWS at its National Conservation Training Center. This is training that is conducted for a national audience of mainly federal government employees. ADOT EP also sent an environmental planner to Colorado to partake in the Collaboration in NEPA class conducted by the U.S. Institute for Environmental Conflict Resolution. In addition to training the environmental planner individually, this was done to help ADOT EP to better choose appropriate training from available options in the future. At a program-level, the ADOT Employee and

Business Development section funds agency-wide training, including funding training from outside the department through such sources as NHI and through private entities as appropriate.

Although not training per se, regular statewide discussions and updates will be held with EP staff for the NEPA Assignment section to share important NEPA Assignment Program information, communicate Assignment Program issues and their resolution, and respond to questions. These discussions and updates can happen at the quarterly meetings of all of EP staff and/or the regular meetings of the Project Delivery and NEPA Assignment Sections, Biology Team, Historic Preservation Team, and Environmental Programs. Additional training information can be found on the [Training](#) website.

§ 773.109(a)(3)(iii): Legal sufficiency

ADOT will conduct legal sufficiency reviews of Final EISs and individual Section 4(f) evaluations, which are the only environmental document types for which FHWA is required to conduct legal sufficiency reviews under federal regulation (see 23 C.F.R. § 771.125(b) and 23 C.F.R. § 774.7(d)). Legal sufficiency reviews will be conducted by an attorney or attorneys from the Arizona Attorney General's Office ("AGO") or by specialized outside environmental counsel appointed by the AGO and funded by ADOT. The AGO has assigned a lead attorney from its office to serve as legal counsel to ADOT under the NEPA Assignment Program.

The primary goal of legal sufficiency review will be to assess any environmental document from the perspective of legal standards, litigation risk, and legal defensibility. ADOT intends to use the following process:

1. ADOT EP will submit the preliminary Final EIS or individual Section 4(f) evaluation to ADOT's legal counsel at the AGO.
2. ADOT's legal counsel at the AGO will assign the document to an assistant attorney general or outside environmental counsel for review. Note that, for some projects, ADOT EP may send documents directly to an outside environmental counsel who is appointed by the AGO and funded by ADOT.
3. The reviewing attorney will prepare and submit to EP written comments and/or suggestions to improve the document's legal defensibility (these comments would be protected by the attorney-client privilege and would not be shared outside ADOT).
4. The reviewing attorney will be available to discuss the resolution of comments and suggestions with EP staff and the project team.
5. After EP addresses any comments, the reviewing attorney will provide EP with written documentation confirming that the reviewing attorney finds the document legally sufficient.
6. EP will not approve a Final EIS or individual Section 4(f) evaluation before receiving written documentation that the document is legally sufficient.

§ 773.109(a)(3)(iv): Prior concurrence

For selected projects, “prior concurrence” pursuant to 23 C.F.R. § 771.125(c) will be obtained before proceeding with key approvals under the NEPA Assignment Program. The prior concurrence decision will be made by the ADOT MPD Director, as advised by the EP Administrator, or as requested by legal counsel at the AGO or by AGO-appointed outside counsel, and will ensure that the project and document in question are acceptable from a policy and program perspective. The AGO would be notified of the start of any EIS. Prior concurrence may apply to ADOT approvals of draft and final EISs. Projects requiring prior concurrence will be identified on a case-by-case basis by the EP Administrator based on input from ADOT’s NEPA Assignment Manager or legal counsel and may include projects meeting one or more of the following criteria as defined in regulation:

- (1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines that (i) additional coordination with other Federal, State or local governmental agencies is needed; (ii) the social, economic, or environmental impacts of the action may need to be more fully explored; (iii) the impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or (v) the action involves national policy issues.
- (2) Any action to which a Federal, State or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

In completing the prior concurrence review, the ADOT MPD Director will examine the elements of the EIS at issue and seek advice and input, as appropriate, from ADOT’s EP Administrator, NEPA Assignment Manager, and/or legal counsel. The ADOT MPD Director will make the prior concurrence decision before the document is approved by the EP Administrator.

§ 773.109(a)(3)(v): Project delivery methods

ADOT will ensure that all NEPA and permit elements are fully addressed for any project that uses alternative delivery methods. Per 23 C.F.R. § 771.113, NEPA elements must be completed prior to authorization for any construction activities. This requirement holds true even with alternative project-delivery methods. For projects using alternative delivery methods ADOT will ensure that the requirements in 23 C.F.R. § 636 are met, including the requirements imposed to protect the objectivity and integrity of the NEPA process. ADOT has implemented traditional Design-Bid-Build, Design-Build, and Construction Manager at Risk contracting as well as Public Private Partnerships (P3). ADOT has a [Construction Manager at Risk \(CMAR\) Process Guide](#) that includes environmental considerations.

§ 773.109(a)(4)(i): Staff dedicated to additional functions

ADOT EP employs approximately 41 fulltime staff who are responsible for implementing ADOT's environmental program and ensuring environmental compliance. This includes experienced NEPA practitioners and a variety of technical specialists in air quality, noise, hazardous waste, water, and natural and cultural resources. In anticipation of the NEPA Assignment Program, ADOT recently modified its organizational structure, as described in § 773.109(a)(3)(i), above.

ADOT does not anticipate adding additional new environmental staff at this time to implement its NEPA Assignment responsibilities. ADOT will continue to augment its staff and technical capabilities through the use of qualified consultants. In the future, additional staff might be added to handle the additional environmental workload that could develop from the NEPA Assignment Program and other sources. The experienced environmental staff who will contribute to NEPA Assignment-related functions will bring a wide range of perspectives and experience to the NEPA Assignment Program.

Although the addition of environmental staff is not immediately anticipated, ADOT has identified and already put into place several key NEPA Assignment Program roles. ADOT's NEPA Assignment Manager will be responsible for day-to-day management of the program. The manager will serve as liaison to the FHWA audit team, coordinate training, and ensure that self-assessment and performance reviews under the NEPA Assignment Program are conducted. The Project Delivery Manager will be the central coordinator with ADOT project delivery technical areas. The Standards and Training Manager will conduct self-assessments. The Training Coordinator will maintain the training plan.

Approvals and oversight are all to be made by current staff already in place. The Roadside Resources Manager, with assistance from the Biology Team Leader, will be responsible for Section 7 consultation, while the Historic Preservation Team Leader will oversee Section 106 consultation. The Air and Noise Team Program Manager is responsible for air quality reports and consultations and the Noise Lead within that team approves noise technical reports. The 404/401 Water Resources Coordinator approves applicable permits. The NEPA Assignment Manager will oversee Section 4(f) evaluations with assistance from the Historic Preservation Team and the Cultural Resources Program Manager. The EP Administrator will be responsible for overseeing ADOT's implementation of the NEPA Assignment Program, ensuring its success, and reporting on its performance to FHWA. The EP Administrator will sign all programmatic and individual Section 4(f) determinations, EAs, FONSI, Draft and Final EISs, and RODs. The EP Administrator may delegate approval authority for Section 4(f), EAs and FONSI to the NEPA Assignment Manager or the Project Delivery Manager. Signature authority for EISs and RODs will not be delegated down. The State Engineer/Deputy Director for Transportation will approve EISs in the absence of the EP Administrator.

Legal sufficiency reviews will be conducted by attorneys from the AGO assigned to ADOT or by specialized outside environmental counsel appointed by the AGO and funded by ADOT.

Responsibilities for approvals that are currently “FHWA decisions” that will be made by ADOT are outlined in the following table:

Action	Responsible Agent		
	Preparer	Quality Control Reviewer	Approver
CE listed in (c) & (d)	ENV Planner ¹	ENV Planner Senior	ENV Section Manager ²
CE not listed under (d) (Individual)	ENV Planner ¹	ENV Planner Senior	ENV Administrator ³
Environmental Assessment	ENV Planner ¹	ENV Planner Senior	ENV Administrator ³
EIS – Draft and Final EIS/ROD	ENV Planner ¹	ENV Planner Senior	ENV Administrator ⁴
Section 4(f) - De minimis	ENV Planner	ENV Planner Senior	ENV Section Manager ^{2,5}
Programmatic & Individual Section 4(f)	ENV Planner	ENV Planner Senior	ENV Administrator
Legal Sufficiency – EIS & Individual Section 4(f)	-	-	Arizona Attorney General’s Office Assigned Counsel ^{6,7}

¹ ENV Planner ensures all reviews are completed from the Technical Teams as required per the scope of the project.
² The NEPA Assignment Manager and Project Delivery Manager are both the level of “Environmental Section Manager.” No delegation down from ENV Section Manager. ENV Administrator signs in absence of ENV Section Manager.
³ ENV Section Manager can sign in absence of the ENV Administrator with prior approval. ENV Program Manager can sign if Environmental Administrator Environmental Section Manager(s) unavailable.
⁴ No delegation down. State Engineer’s Office signs in absence of ENV Administrator.
⁵ Historic Preservation Team Leader concurs with Section 4(f) for Historic Properties or approves if de minimis finding is in Section 106 consultation.
⁶ NEPA Assignment Manager ensures Legal Sufficiency Review is prepared.
⁷ Or specialized outside environmental counsel appointed by AGO and funded by ADOT.

§773.109 (a)(4)(ii): Changes to the organizational structure

There are no major organizational changes proposed that are necessary to provide for efficient administration of the responsibilities to be assumed. ADOT will retain sufficient environmental staff, and will fill any vacancies as expeditiously as possible, to effectively administer the responsibilities of the NEPA Assignment Program. ADOT will continue to use consultants as needed.

As previously detailed in sections (a)(3)(i) and (a)(3)(ii), ADOT’s current overall organizational structure will not change under the NEPA Assignment Program. EP, with support of the ADOT Director’s Office, has already implemented the necessary organizational changes in anticipation of NEPA Assignment. The ADOT EP Administrator will oversee implementation of the NEPA

Assignment Program. The NEPA Assignment Manager will be responsible for day-to-day management of the program, and will serve as liaison to the FHWA for matters concerning the NEPA Assignment Program, including FHWA audits and any reporting required under the NEPA Assignment Program MOU. The NEPA Assignment Manager will also coordinate for internal self-assessments and quality assurance monitoring and performance measures. The NEPA Assignment Manager will be responsible for implementing recommended improvements, as well as taking corrective action where needs are identified.

§ 773.109(a)(4)(iii): Use of outside consultants for the NEPA Assignment Program

There will be no change in ADOT's general approach to using consultants as a result of the NEPA Assignment Program. ADOT employs consultants as needed to deliver its highway program. Consultants could be used for environmental analysis, technical studies, environmental document preparation, environmental review services, project file and administrative record development, and general staff support. The use of consultants in preparing NEPA documents is allowed under CEQ regulations and the full legal responsibility remains with ADOT.

The use of consultant services fluctuates in proportion to the annual ADOT workload. The level of consultant services used to augment ADOT's EP staff is based on annual appropriation funding levels and project delivery needs, which vary from year to year. ADOT uses consultant assistance on an as-needed basis through project-specific contracts and on-call contracts. In addition to providing services to manage workload fluctuations, consultants are used to develop environmental documents for projects that require the most complex environmental analysis and approvals. Consultants are also used to provide highly specialized environmental technical services in areas of expertise that may not be available internally or that require resources that are not available internally.

Consultants will continue to be used in this manner under the NEPA Assignment Program. Documents developed by consultants will be reviewed by ADOT EP staff or by another environmental consultant. Final review and approval of all environmental documents will occur at ADOT. Consultants will not make NEPA determinations under the NEPA Assignment Program.

The AGO also has the authority to appoint outside counsel. While there will be attorneys at the AGO assigned to advise ADOT with respect to the NEPA Assignment Program, outside counsel or other AGO attorneys may be used to assist in legal sufficiency reviews of Final EISs and final individual Section 4(f) evaluations, and to provide legal review of Draft individual Section 4(f) evaluations, Draft EISs, memoranda of understanding, programmatic agreements, and administrative records as deemed appropriate by ADOT. The AGO will supervise and monitor any outside counsel.

§ 773.109(a)(5): Financial resources under the NEPA Assignment Program

ADOT has been allocated funding to cover the costs of applying for and administering the NEPA Assignment Program, including funding for staff positions. The primary expenses for operating the NEPA Assignment Program will come from the ADOT EP budget and the Five-Year Construction Program, which includes budget for staff and consultant resources to provide for project environmental compliance needs.

The 2018 EP operating budget is \$2,962,000, a slight increase over the 2017 budget, is allocated by the Arizona Legislature, and includes full EP staff funding. Project work to develop CE, EA, and EIS documents will continue to be charged to project budgets. ADOT consultants are contracted for major projects, and ADOT maintains on-call contracts for routine projects. EP maintains an Engineering Consultant Services on-call contract for task orders and Procurement on-calls for supplemental environmental services.

The staff that will be assigned to the NEPA Assignment Program will conduct both project-related and program-related work. Additional project-related work will be necessary for EP staff to review and approve NEPA documents; this work will be project chargeable and staff time will be billed to the associated project. The additional program-level work required of EP staff, such as internal program reviews, audit preparation, and guidance development, will be paid out of the ADOT EP operating budget; this has been accounted for in the current operating budget, which includes existing staff positions such as Standards and Training that will support the NEPA Assignment section. A minor operating budget increase is programmed for NEPA Assignment for an anticipated modicum of expenses. ADOT will commit adequate financial and staff resources to successfully execute the responsibilities it is assuming. ADOT will regularly assess financial and staffing resources available for the NEPA Assignment Program as part of its self assessments.

The AGO provides staff for ADOT-related legal services. If supplemental legal services are needed to support the NEPA Assignment Program and are appointed by the AGO, they would be funded from ADOT project budgets.

§ 773.109(a)(6): Certification of consent to exclusive federal court jurisdiction and waiver of immunity

Certification is included in [Appendix C](#)

§ 773.109(a)(7): Certification that the State of Arizona’s Public Records Act is comparable to the Federal Freedom of Information Act

Certification is included in [Appendix C](#)

§ 773.109(a)(8): Public comments received on the NEPA Assignment Program application

{To be included in Appendix D with final application after public review and comment}

§ 773.109(a)(9): Point of contact

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Appendix A. Projects and Programs for Which ADOT Does Not Request NEPA Responsibility

With the exception of those ongoing projects to be identified in the NEPA Assignment Program MOU, ADOT is requesting to assume the U.S. Secretary of Transportation's and FHWA's responsibilities for all NEPA actions for all Class I (EIS) projects, all Class II (CE) projects, and all Class III (EA) projects, both state highway system projects and LPA projects off the state highway system. ADOT is requesting FHWA to continue as the Lead Federal Agency on projects that are still to be determined, because FHWA has had an active role in the environmental review process for these complex projects and/or because these projects are in the final phases of environmental review.

ADOT is not applying for assignment of the following projects under the NEPA Assignment Program. This list is subject to change until the NEPA Assignment Program MOU is signed. These projects, together with their current environmental document status are identified below:

South Mountain Freeway - EIS (Re-evaluation)

Federal ID Number NH-202-D(ADY)

ADOT Project Number 202 MA 054 H8827 01C

Description: South Mountain Freeway. On-going series of re-evaluations.

Interstate 11 (I-11) Tier 1 EIS

Federal ID Number 999-M(161)S

ADOT Project Number 999 SW 0 M5180 01P

Description: Long-range statewide transportation planning from Nogales to US 93 in the vicinity of Wickenburg. The Draft EIS is expected to be ready Fall 2018.

Sonoran Corridor - Tier 1 EIS

Federal ID Number 410-A(BFI)

ADOT Project Number 410 PM 0.0 P9101 01P

Description: Long-range transportation planning in metropolitan Tucson area between Interstate 19 (I-19) and Interstate 10 (I-10). The Draft EIS is expected to be ready Spring 2019.

State Route 303; I-10 to SR 30 - Environmental Assessment

Federal ID Number STP-303-A(ASO)T

ADOT Project Number 303 MA 100 H6870 01L

Description: Transportation corridor study in the metropolitan Phoenix area. This study has been ongoing for many years. The Final EA is expected to be ready in Summer/Fall 2018.

Appendix B. List of FHWA’s Environmental Review Responsibilities for Which ADOT Requests to be Assigned under 23 U.S.C. § 327

Air Quality

Clean Air Act (CAA), 42 U.S.C. § 7401–7671q, with the exception of any project level conformity determinations under 42 U.S. C. § 7506

Noise

Noise Control Act of 1972, 42 U.S.C. § 4901-4918

Compliance with the noise regulations in 23 C.F.R. part 772 (except for approval of the State noise policy in accordance with 23 CFR 772.7)

Wildlife

Section 7 of the Endangered Species Act of 1973, 16 U.S.C. § 1531–1544, and 1536

Fish and Wildlife Coordination Act, 16 U.S.C. § 661–667d

Migratory Bird Treaty Act, 16 U.S.C. § 703–712

Historic and Cultural Resources

Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306108¹

Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa, et seq.

Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. § 138 and 49 U.S.C. § 303; 23 CFR part 774 Preservation of Historical and Archeological Data, 54 U.S.C. § 312501-312508 Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001–3013¹; 18 U.S.C. § 1170

Social and Economic Impacts

American Indian Religious Freedom Act, 42 U.S.C. § 1996¹

Farmland Protection Policy Act (FPPA), 7 U.S.C. § 4201–4209

Water Resources and Wetlands

Clean Water Act, 33 U.S.C. § 1251–1377.

Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f–300j–6

Rivers and Harbors Act of 1899, 33 U.S.C. § 403

Wild and Scenic Rivers Act, 16 U.S.C. § 1271–1287

Emergency Wetlands Resources Act, 16 U.S.C. § 3921, 3931

Flood Disaster Protection Act, 42 U.S.C. §4001–4128

FHWA wetland and natural habitat mitigation regulations, 23 C.F.R. part 777

Wetland Mitigation, 23 U.S.C. § 119(g), 133 (b)(14)

General Bridge Act of 1946, 33 U.S.C. § 525-533

Parklands

Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. § 138 and 49 U.S.C. 303; and 23 C.F.R. part 774

Land and Water Conservation Fund (LWCF), 16 U.S.C. § 4601-4-4601-11

Hazardous Materials

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601–9675

Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. § 9671 – 9675

Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901–6992k

Land

Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. § 319

Executive Orders Relating to Highway Projects

E.O. 11990, Protection of Wetlands

E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 C.F.R. sections 650.113 and 650.115)

E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

E.O. 11593, Protection and Enhancement of Cultural Resources¹

E.O. 13007, Indian Sacred Sites¹

E.O. 13112, Invasive Species

E.O. 13690, Federal Flood Risk Management Standard (FFRMS)

E.O. 13175, Consultation and Coordination with Indian Tribal Governments¹

FHWA-Specific

Planning and Environmental Linkages, 23 U.S.C. § 168, except for those FHWA responsibilities associated with 23 U.S.C. § 134 and 135

Programmatic Mitigation Plans, 23 U.S.C. § 169 except for those FHWA responsibilities associated with 23 U.S.C. § 134 and 135

Environmental Impact and Related Procedures, 23 C.F.R § 771

Linking the Transportation Planning and NEPA processes, 23 C.F.R. § 450 Appendix A

Efficient Project Reviews for Environmental Decision Making 23 U.S.C § 139

NEPA, 42 U.S.C. 4321 et seq.

Regulations for Implementing the Procedural provisions of NEPA at 40 C.F.R. parts 1500-1508

Note:

¹Under these laws and Executive Orders, FHWA will retain responsibility for conducting formal government-to-government consultations with federally recognized Indian Tribes. The State will continue to handle routine consultations with the Tribes and understands that a tribe has the right to direct consultation with FHWA upon request. The State may also assist FHWA with formal consultations, with the consent of a tribe, but FHWA remains responsible that this consultation occurs. FHWA's retention of formal consultation responsibilities under NAGPRA will not limit ADOT's existing activities under this law.

**Appendix C. Certification of Consent to Exclusive Federal Court
Jurisdiction and Waiver of Immunity and that the State of Arizona's
Public Records Act is Comparable to the Federal Freedom of
Information Act**

**Appendix D. Copies of Comments Received on the NEPA Assignment
Program Application and Responses Provided to the Commenters**