

HEADING: Environmental Planning

SUBJECT: Questions and Answers

From: Paul O'Brien

Q - What are the general timelines for the NEPA process?

A - Categorical Exclusion Group One - 1 to 4 months

May still require some due-diligence

Categorical Exclusion Group Two - 4 to 12 months

Environmental Assessment - 1 to 3 years

Q - Peer reviews in Phoenix are seen as a bottle-neck. Can anything be done about that?

A - Yes. We will change the process so that the LPA Team Leader in Phoenix is not the primary contact point/reviewer for LPA projects out of Tucson. Documents for Planner III peer review will go to the NEPA Planning Section Manager for distribution to a Planner III for review. This will allow other Planner IIIs to assist the LPA Team Leader in performing peer reviews.

Q - Are there many vacancies in ADOT's Environmental Planning Group?

A - There are some vacancies but they are relative in number with the rest of the Department areas in terms of vacancies. There is a vacant biologist position that has forced one of the LPA Team Planners to do "double-duty" between planning and biology. Our Air Quality position has been vacant for six months but that has not impacted LPA projects. There are also two vacant planner positions out of a total of sixteen. The current staff has been fairly stable over the last year and has gained a fairly high level of experience during that time which will aid in providing future project planning.

Q - Can the District Environmental staff or Arizona Game and Fish Department help?

A - The ADOT District environmental staff are primarily focused on maintenance and construction. They provide assistance on mitigation measures related to construction but they do not conduct environmental review under NEPA. The Arizona Game and Fish Department is a State agency whose mission focuses on

biological resources and they do not conduct environmental reviews of Federal projects prepared under NEPA.

Q - Is the CE Checklist the main environmental reason projects are delayed?

A - In general, no. There can be many reasons if there is an actual delay. Some delay can be attributed to the 'back and forth' of document reviews. The critical path frequently lies elsewhere though. Starting the environmental process early and defining the scope of the project early without major changes are two ways to expedite the process. The three main reasons for delay of CEs according to an AASHTO survey are:

- Section 4(f)
- Section 106
- Section 404

Q - But the EPG Checklist is still a lot of documentation. Can't it be simplified?

A - Yes. ADOT is reviewing the Group Two CE Checklist. We are planning, in cooperation with FHWA, to streamline the documentation component while still providing the full legal coverage and consideration under NEPA and all other applicable laws. With more projects being completed as Group One CEs and with an eventual streamlined checklist we can look to eliminate the Condensed Clearance Memo, which will further simplify the process.

Q - What will MAP-21 do for CEs?

A - MAP-21 makes more projects eligible to be classified as a CE under 23 CFR 771.117(c). These are known as Group One CEs in Arizona. Per the regulation they do not require a 'CE Document' and therefore there is some reduction in the level of effort and cost. EPG must still ensure that the project meets all applicable laws and regulations as defined in 771.117(c).

Q - Whose responsibility is quality?

A - Everyone's. Quality work and submittals saves everyone time and money. Consultant preparation, consultant senior QAQC, LPA oversight and review, ADOT and FHWA reviews. EPG is looking to simplify reviews and comments on our end. Consultants and LPAs must to do their part. (see attached Bob Hollis document)

Q - Is EPG looking at improving the process?

A - Yes. EPG is in the later stages of completing a formal 2014 Process Improvement. The existing document review process was assessed and numerous other process improvement suggestions have been created and will be implemented going as the process is completed.

Q - Are there other areas of the process ADOT and FHWA are looking to improve the LPA program?

A - Yes. ADOT received grant funds under the Strategic Highway Research Program - Second Round (SHRP2 - known as "Sharp 2"). This assessment will take a systematic look at improving environmental review within the Local Public Agency Federal-Aid Program including a look at improving internal and external communication. An end product may something like a procedures and protocol handbook to aid all in the LPA project development process.

Q - Are there other areas of the process LPAs can look at to streamline and save development costs?

A - Yes. LPAs should follow the guidance on scoping and look to pre-scope as much as possible and to re-verify the project scope *commensurate with the effort* after project authorization. (see attached on Scoping). Minimizing scoping efforts can save on overall project development costs. For example a project replacing traffic control equipment in an existing cabinet Consult with ADOT at any time.

Q - Does design have to stop if NEPA is not completed by 30% plans?

A - Projects in which significant impacts are a question and require alternatives analysis must have NEPA Approval to advance past 30% design. For all other projects, CE-level projects, the design is able to advance past 30% prior to NEPA Approval. FHWA's Every Days Counts directive emphasized advancing design for projects without significant environmental impacts. The LPA Manual states that NEPA Approval should be attained by 60%. If enough environmental work has been performed to determine that there are no significant impacts, and alternatives are not a question, then the design can continue past 60% with EPG and FHWA approval.

Q - Are there training opportunities?

A - Yes. The LPA Team Leader, in cooperation with the ADOT LPA Section, is conducting two hour workshops with CA communities. Other opportunities can be discussed. Last year several National Highway Institute (NHI) training courses were brought to ADOT. Each course offers seven seats to LPAs through LTAP but they are rarely taken advantage of. NHI also offers free online training.

Q - Is there any way to get help with pre-scoping since we don't have federal funds authorized until the project is programmed?

A - Yes. ADOT has created a way for LPAs to get assistance with pre-scoping. Through the Multimodal Planning Division there are Federal planning funds available to rural communities through the Planning and Rural Assistance Program (PARA). No process has been determined for non-rural communities. EPG staff is available to discuss project scoping in advance through phone calls or reviewing pre-scoping documentation for programming.

HEADING: Environmental Planning

SUBJECT: MAP-21; CE Changes (Section 1315 through 1318)

From: Paul O'Brien

- "Moving Ahead for Progress in the 21st Century"
 - "...it is in the national interest to accelerate project delivery and reduce costs...and to ensure that transportation project development is done in an efficient and effective manner..."
 - Map-21 introduced changes to existing laws and regulations.
 - 23 CFR 771 "Environmental Impact and Related Procedures"; FHWA's implementing regulations under the National Environmental Policy Act (NEPA)
 - Only the funding expires if MAP-21 expires without a new Transportation Bill or continuing resolution

- Categorical Exclusions (CE)
 - Impacts not significant (under the law)
 - For action categorically excluded from having to prepare an EIS if it meets certain criteria previously determined as having no significant environmental impact
 - A number of federal agencies have developed lists of actions which are normally categorically excluded from having to prepare an EIS under their NEPA regulations
 - Two Types:
 - 23 CFR 771.117(c)
 - "Undocumented CE"
 - Also called "Group One" in Arizona
 - One page memo with coordination/consultations noted
 - 23 CFR 771.117(d)
 - "Documented CE"
 - Also called a "Group Two" in Arizona
 - Condensed Clearance Memo or CE Checklist

- Other Major Laws in Transportation Project Development:
 - National Historic Preservation Act of 1966 (Section 106)
 - USDOT Act of 1966 [4(f) Properties]
 - Clean Air Act of 1963 & 1970 Amendments
 - Clean Water Act of 1972 (404 Permits)
 - Endangered Species Act of 1973 (Section 7 Consultation)
 - Migratory Bird Treaty Act of 1918
 - 23 USC 109(h) & 23 CFR 772 - FHWA Noise Regulations

- MAP-21 changes to Categorical Exclusions defined in 23 CFR 771.117
 - (a) Definition of CEs - **No Changes**
 - “Categorical exclusions (CEs) are actions which..... do not involve significant environmental impacts....do not otherwise, either individually or cumulatively, have any significant environmental impacts.”
 - (b) Limitations of CEs - **No Changes**
 - Any action which normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper*. Such unusual circumstances include:
 - (1) Significant environmental impacts;
 - (2) Substantial controversy on environmental grounds;
 - (3) Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or
 - (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.
 - (c) “c-listed” actions - **Modified and New CEs**
 - (d) “d-listed” actions - **CEs moved to c-list**
 - Note; 23 CFR 771.117 has remained largely unchanged since 1987.

- Did all these new CEs become effective when MAP-21 was signed into law?

- No. Map-21 required the Secretary of Transportation to propose Federal Rulemaking
- Rulemaking is how federal agencies (FHWA) prepare regulations (23 CFR 771) under their authority
- **Section 1315:** Modified Categorical Exclusion for Emergency Projects under 771.117(c)(9) [February 19, 2013]
 - Previously only referenced Title 23:
 - “Emergency repairs under 23 U.S.C. 125”
 - Section 1107 of MAP-21 amended 23 U.S.C. 125:
 - (d)(1)A Definition of comparable facility.—In this paragraph, the term “comparable facility” means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry **over its design life**
 - Amended 771.117(c)(9) by adding section (ii)
- This means repair work can be done in a manner that substantially conforms to the preexisting design, function, and location as the original but, may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction)
- **Section 1316:** New Categorical Exclusions for projects within the “operational right-of-way” [February 12, 2014]
 - Added 771.117(c)(22)
 - Makes projects within the ‘operational right-of-way’ of a transportation facility “c-list” CEs
 - Operational ROW “has been disturbed” and “regularly maintained” within the ROW (footprint)
 - Clear Zones
 - Landscaping
 - Temporary Construction Easements (TCEs)
- **Section 1317:** New Categorical Exclusions for projects with limited Federal assistance [February 12, 2014]
 - Added 771.117(c)(23)
 - Makes projects with limited Federal funds a “c-listed” CE

- \$5 million or less total project cost with all Federal funds
- \$30 million or less total project cost with no more than 15% Federal funds contribution

➤ Section 1318:

- Proposed rule published September 19, 2013
- Currently still in rulemaking
 - Four provisions:
 - 1) Survey use of CEs on transportation projects
 - 2) Adds new CEs requested by State DOTs, MPOs and LPAs
 - 3) Reclassifies the first three categories of actions currently under 23 CFR 771.117(d) to being listed under paragraph(c)
 - 4) Expansion of DOT/State programmatic agreements (PCE)
- New CEs based on survey and request of MPO/COG/LPA:
 - v. Geotechnical and other investigations
 - vi. Environmental restoration, and pollution abatement including stormwater facility retrofits
 - vii. Ferry vessel purchase, replacement and rehabilitation
 - viii. Ferry terminal facility rehabilitation and reconstruction
- Moves the top three “d-list” CEs to the “c-list” *to an extent* for projects that meet a proposed set of *constraints* to be included in the regulations.
 - Proposed three “d-list” CEs moved to the “c-list”
 1. Modernization of a highway including shoulders and auxiliary lanes
 2. Highway safety & traffic operational improvements
 3. Bridge reconstruction, rehabilitation & replacement and RR grade separations
- Three “d-list” CEs moved to “c-list” with six *constraints*:
 1. Minor amounts of ROW
 2. Level of 404 permit (Nationwide or General)

3. No "adverse effect" under the NHPA, no 4(f) use except "de minimis" and no "likely to adversely affect" T & E species or critical habitat under the Endangered Species Act
4. No adverse temporary closure or access impacts
5. No change in access control (Interstate highways)
6. No floodplain encroachment or construction in, across or adjacent to a river of the National System of Wild and Scenic Rivers

- Nationally consistent criteria for all PCE agreements
 - ADOT has a PCE with FHWA that will be updated
 - Look for opportunities to simplify and streamline the process

➤ Summary

- Good news:
 - *Some* types of projects previously prepared as CE's with a full CE Checklist *may* be prepared without one in the future ("d-list" CEs now classified as "c-list" CEs)
 - Time and cost savings for developing Federal-Aid Highway Projects with *some* reduction in documentation
 - Many LPA Projects will qualify as "c-listed" CEs
- Remember the 'unusual circumstances' and 'other laws':
 - The critical path in project development still needs to be managed! "c-listed" CE does not mean delay the environmental work needed
 - Surveys, Section 106 consultation, Section 7 consultation, 404 permits, etc. (unusual circumstances/other laws and regulations)
 - The three environmental compliance requirements that contribute the most to delays in preparation of CEs (AASHTO survey):
 - Section 4(f)
 - Section 106
 - Section 404
 - Consult with ADOT EPG as early as possible and confirm anticipated NEPA classification with FHWA

HEADING: Environmental Planning

SUBJECT: Project Scoping – LPA Manual and Project Scoping Document Guidelines

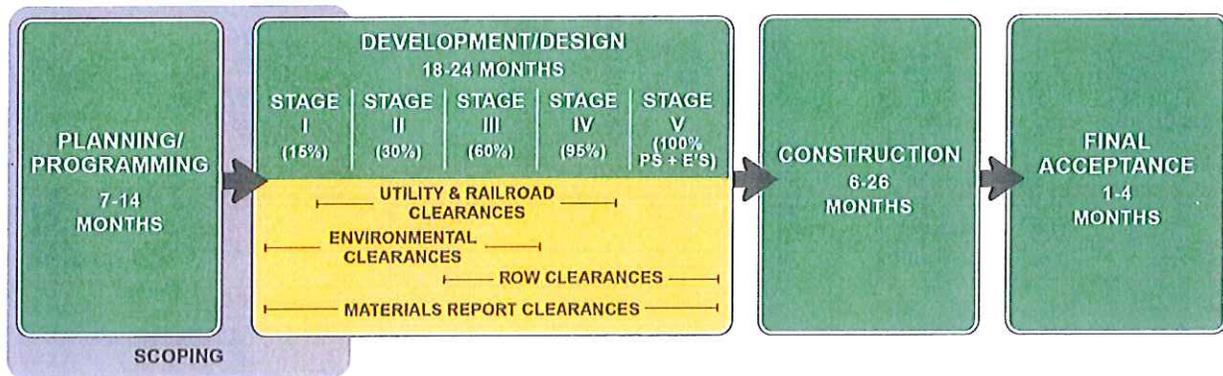
From: Paul O'Brien

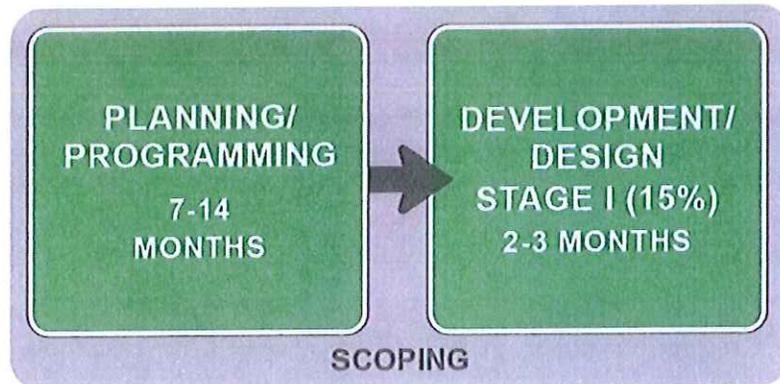
[ADOT Local Public Agencies Manual](#)

Timeline (page 1-3)

LPAs should coordinate with their ADOT project manager to determine a realistic anticipated timeline for each project.

Some procedural requirements can significantly affect the project's schedule and cost. For instance, the environmental clearance process can take as little as a few months or may take more than 3 years depending on the complexity of the project. The typical environmental clearance process takes 10 to 12 months from initial submittal to environmental clearance, but the time needed to achieve environmental clearance varies from project to project, depending on the potential for environmental impacts and the level of documentation needed.





Scoping (Chapter 7)

ADOT encourages LPAs to *scope projects as thoroughly as possible* and to evaluate cost estimates during planning *before projects are included in regional TIPs* to ensure adequate funding is obtained.

During programming, scoping focuses on defining the details of a specific project that will be proposed for inclusion in a TIP and the STIP. The level of scoping during the programming phase should:

- Be commensurate with the complexity of the proposed project;
- Identify any fatal flaws;
- Define project cost and budget sufficiently to allow the project to be programmed;
- Be sufficient to support an analysis of the level of environmental investigations, right-of-way (ROW) clearances, utility/railroad coordination, and materials report clearances that will be required during the design phase.

Scoping during Planning and Programming

The level of scoping should be commensurate with the complexity of the proposed project; should identify any fatal flaws; should define project cost and budget sufficiently to allow the project to be programmed; and should be sufficient to support an analysis of the level of environmental investigations, ROW clearances, and utility/railroad coordination that will be required during the design phase. This degree of scoping should be done for all projects.

MPO/COG staff, ADOT district engineers, and the ADOT project manager assigned to the project can provide valuable assistance to LPAs in developing an accurate, complete scope during the planning/programming phase. (I would add EPG staff to this list – O'Brien)

Scoping during the Design Phase

Preliminary Engineering

During preliminary engineering activities early in the design phase, scoping is conducted to refine and further evaluate project costs, schedule, and potential design and project alternatives, including an assessment of the clearances and permitting needs identified during the

planning/programming phase. Typically, scoping is completed through the preparation of a PA or DCR in which project-specific evaluations can be made. The complexity of the project determines whether a PA or DCR will be required.

An environmental overview—an initial assessment of potential environmental resource conflicts—is also performed at this time. LPAs should note that project-related information generated in the planning/programming phase may be sufficient for preliminary engineering purposes, such as 30% design plans. Following a review of the documentation for ADOT-administered and self-administered projects, the ADOT project manager, in consultation with ADOT Environmental Planning Group (EPG) staff, will determine the adequacy of environmental information (see Chapter 7, Scoping, for additional information about the scoping process).

ADOT Project Scoping Document Guidelines

Projects require a level of scoping commensurate with the type of proposed work.

Scoping Letter (SL) - A Scoping Letter is a document that describes the scope, schedule and cost of a project. This is the simplest form of project scoping documentation. There is no Initial document distributed for comment to the full Project Team but a Draft is distributed to the relevant technical reviewers for comment and approval of the proposed solution. Therefore, there is no formal Summary of Comments (SOC). The Scoping Letter usually attains consensus on the project solution at the Field Review Meeting. The Scoping Letter format is similar to the Project Assessment Format though it usually contains less information overall. A Scoping Letter is approved with a Project Determination Form. Examples of projects that could be scoped with a Scoping Letter include simple pavement overlay projects, installation of a roadside barrier or a turn-lane.

Project Assessment (PA) - A Project Assessment is a document that describes the scope, schedule and cost of a project. A Project Assessment is utilized to document projects more complex than those addressed with a Scoping Letter. Projects scoped with a Project Assessment usually involve a single or limited number of project alternatives. The initial document is distributed to all the project stakeholders for review and comment. A Summary of Comments is prepared to assure consensus on scope, schedule and cost. The SOC includes initial comment responses and final disposition of all comments received on the Initial PA. A Final Project Assessment is approved with a Project Determination Form. Examples of projects that could be scoped with a Project Assessment include standard pavement preservation projects, passing/climbing lanes and certain capacity improvement projects (limited widening).

Design Concept Report (DCR) and Location/Design Concept Report (L/DCR) - A DCR or L/DCR is prepared for major projects where location and the design concept need to be defined at a higher level than a Project Assessment. A DCR documents the project parameters such as design criteria, project location, design concept (15% plans) and construction cost. A DCR is typically prepared in conjunction with an environmental document which is prepared in conformance with the National Environmental Policy Act (NEPA). After completion of a DCR a project can be programmed for design and construction.

HEADING: Environmental Planning

SUBJECT: Quality Document Review Example

From: Paul O'Brien

The attached is a sample of a document that did not get a Quality Review. The FHWA Administrator Bob Hollis had been retired for 39 months when the attached comments were made by EPG.

ARIZONA DEPARTMENT OF TRANSPORTATION

Intermodal Transportation Division
Environmental Planning Group
1611 West Jackson Street
Phoenix, Arizona 85007

Need 2 pages

Categorical Exclusion

For

Pendleton Drive and Palo Parado Road Intersection Improvements in Santa Cruz
County, Arizona

STP-SSC-0(207)T

0000 SC SSC SZ026 01C

Approved by: _____ Date: _____

PAUL O'BRIEN P.E.
Manager
Environmental Planning Group

Approved by: _____ Date: _____

~~ROBERT E. HOLLIS~~ KARLA S. PETTY
Division Administrator
Federal Highway Administration

This categorical exclusion has been prepared in accordance with provisions and requirements of Chapter 1, Title 23 USC and 23CFR771.117(d) relating to the implementation of the National Environmental Policy Act of 1969.

and 774

Hollis left a couple of years ago. Please follow current guidance. This page must be on a Word document. It needs to be formatted for the current ADOT letterhead and font type and size.

~~Mr. Robert E. Hollis~~ Ms. Karla S. Petty
Division Administrator
Federal Highway Administration
4000 North Central Ave., #1500
Phoenix, AZ 85012-1906

The project requires more than a minor amount of new right-of-way. The National Environmental Policy Act (NEPA) clearance process started with receipt of the project scoping document on May 29, 2012.

← Attn: David Cremer, Environmental Coordinator

RE: STP-SSC-0(207)T
0000 SC SSC SZ026 01C
Pendleton Drive and Palo Parado Road Intersection Improvements

Dear ~~Mr. Hollis~~: Ms. Petty

In accordance with Chapter 1, Title 23 USC and 23CFR771.117(d), the enclosed Categorical Exclusion for the referenced project is submitted for your approval. This project features construction of intersection improvements near Rio Rico in Santa Cruz County, Arizona. ~~The proposed staging area is near the Juan Bautista de Anza National Historic Trail, a Section 4(f) property; therefore, this project is considered non-programmatic.~~

Based upon environmental studies and early coordination, it has been determined that: 1) the proposed project will not create any significant impacts to the environment; and 2) the action is classified as non-programmatic Categorical Exclusion, which is the appropriate environmental document for the proposed project.

Your approval of the Categorical Exclusion will constitute concurrence in this determination.

Sincerely,

Paul O'Brien, P.E.
Manager

Enclosures

c: Patricia Hunter, ADOT Environmental Planning Group
Jesus J. Valdez, Santa Cruz County Flood Control
~~Jonathan Rigg, SWCA Environmental Consultants~~