

ADOT's Assignment of FHWA's Environmental Review Responsibilities

ADOT Environmental Planning **Paul O'Brien & Julia Manfredi**

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U.S. Department of Transportation
Federal Highway Administration



Terminology

- ❑ National Environmental Policy Act (NEPA)
 - ❑ Compliance required for Federal-aid highway funds
 - ❑ FHWA approval of a Change in Access to the Interstate
 - ❑ NEPA is known as the environmental “umbrella law”
- ❑ Environmental Review – FHWA approval of NEPA (Document/Decision)
 - ❑ Includes the process for and completion of any environmental permit, approval, review, or study required for a project under any other federal law
- ❑ Assignment – “The Secretary may assign, and a State may assume, responsibility for determining....” (US Code)



Terminology

- ❑ NEPA or Environmental Documents (defined in federal regulations)
 - ❑ Categorical Exclusions (CE)
 - ❑ Environmental Assessments (EA)
 - ❑ Environmental Impact Statements (EIS)



Terminology

- ❑ State Assumption of Responsibility for Categorical Exclusions (listed CEs)
[23 U.S. Code § 326]
 - ❑ Known as **CE Assignment**
 - ❑ “326 MOU” [Memorandum of Understanding]
 - ❑ ADOT and FHWA entered into an MOU on January 3, 2018
- ❑ Surface Transportation Project Delivery Program (all NEPA - CE/EA/EIS)
[23 U.S. Code § 327]
 - ❑ Known as **NEPA Assignment**
 - ❑ “327 MOU”



What is NEPA Assignment?

- ❑ Complete or partial transfer of FHWA's environmental review responsibilities under NEPA to ADOT
- ❑ ADOT acts as the *Lead Federal Agency* for environmental review and consulting with agencies for Federal-aid highway projects
 - An assignment of legal responsibility vs. delegation of approval authority from FHWA to ADOT
 - Previous Programmatic Agreement(s) for CEs
 - Makes ADOT the “decision-maker” (environmental review decisions)
 - *No change* to any existing environmental laws



What is NEPA Assignment?

❑ CE Assignment Program (326)

- Covers “listed” CEs (listed in the regulations by description)
- Limited Impacts - Preservation/modernization/rehabilitation type projects

❑ NEPA Assignment Program (327)

- Covers unlisted CEs, Environmental Assessments (EA), & Environmental Impact Statements (EIS)
- More complex & greater impacts - expansion type projects



Why is ADOT seeking Assignment?

- ❑ Deliver safety and highway improvement projects faster to the public while preserving environmental quality
 - Arizona Management System – Governor Ducey’s plan to increase efficiency of State government (also known as LEAN Management)
 - Multiple “decision-makers” can be inefficient
 - Provides time and cost savings by eliminating a layer of review
 - Provides for direct consultation between ADOT and Others
 - Streamlining of numerous project decisions that go into the one project NEPA Decision
 - Numerous non-delegated “decisions” (ex. Minor amount of right-of-way)



Is This a New Program?

TEA-21 signed into law in 1998 (Highway Act)

- ❑ Section 1309 - Environmental review delegation pilot program in House Bill

SAFETEA-LU signed into law in 2005 (Highway Act)

- ❑ Section 6003 - Pilot program for full NEPA responsibility (AK, **CA**, OH, OK, TX)
- ❑ Section 6004 - allowed States to assume responsibility for CEs
 - Alaska, Texas, Utah and California

MAP-21 – 2012 (Highway Act)

- ❑ Section 1313 : Pilot program made permanent program (NEPA Assignment Program)



Other States and NEPA Assignment

- Alaska (327)
- California (326 & 327)
- Florida (327)
- Nebraska (in process 326 & 327)
- Ohio (327)
- Texas (327)
- Utah (326 & 327)



☐ Benefits Achieved

- Caltrans – 25% time savings in Environmental Assessments
- Time = Money



NEPA Assignment Responsibilities

❑ ADOT will assume:

- Section 106 Consultation (Historic – National Historic Preservation Act)
- Section 7 Consultation (Biology – Endangered Species Act)
- Section 4(f) Determinations (Parks, recreation lands, wildlife refuges and historic sites) – USDOT Act of 1966
- Section 404 (Water Resources – Clean Water Act)
- All other environmental regulations, Executive Orders, etc. covered by the “NEPA Umbrella”

❑ ADOT acts as the lead agency for environmental review

- Cannot ask the FHWA for project-specific help with NEPA issues
- Interagency coordination without Federal participation



NEPA Assignment Responsibilities

❑ ADOT must:

- Maintain appropriate technical and managerial expertise
- Maintain adequate financial and staff resources
- Demonstrate the capacity to perform the responsibilities
- Document all decisions and maintain records
- Report CE determinations and NEPA decisions to FHWA
- Perform QA/QC and self-assessments
- Coordinate with FHWA monitoring and audits



NEPA Assignment Responsibilities

❑ FHWA retains:

- Project level air quality conformity determinations (unlisted CE/EA/EIS)
 - State can make a conformity determination for listed CE projects under the 326 MOU
- Government-to-Government Tribal consultation (if requested)
- USDOT responsibilities for statewide and metropolitan planning (23 CFR 450)
 - ADOT Multimodal Planning Division responsibilities
- Projects that cross international or State lines
- Projects excluded from Assignment in the MOU
- Auditing and monitoring role for Assignment program



Path to NEPA Assignment



U.S. Department of Transportation
Federal Highway Administration

ADOT

Legal Requirements

- ❑ In order for the State DOT to be able to enter into CE or NEPA Assignment the State must ensure it meets the three main legal requirements
 - Consent to accept the jurisdiction of the Federal courts - Limited waiver of sovereign immunity (ARS 28-334 amended March 22, 2017)
 - Authority to enter into a Memorandum of Understanding (MOU) for the 326 and/or 327 programs (ARS 28-334)
 - Certify that Freedom of Information Act (FOIA) equivalents are in place
 - Arizona State Attorney General's Office (certification letter)



Legal Requirements

❑ Approvals of MOU(s)

- CE Assignment
 - FHWA, Arizona Division Administrator; Karla Petty
 - ADOT, Deputy Director for Transportation; Dallas Hammit
 - MOU signed January 3, 2018
- NEPA Assignment
 - FHWA, Administrator (Headquarters)
 - ADOT, Director (Governor or highest ranking transportation official)
- Arizona Attorney General's Office Certification



Along the Road to NEPA Assignment

- ❑ ADOT has reviewed guidance, procedures, practices, agreements, etc.
 - Made organization change (NEPA Assignment Manager)
 - Held regular coordination meetings with FHWA
 - Held a webinar August 2017 for agencies and tribes
 - Two-day workshop with FHWA to review the process in September 2017
 - FHWA audit and legal sufficiency training in February
 - Completed and scheduled additional training
 - Continue to update/modify internal procedures, guidance, etc. for Assignment



Next Steps

1. Initial NEPA Assignment Application submitted to FHWA March 9th
 - Prepared in conformance with 23 CFR 773 (other States)
 - Agency and Public review (30 days on the ADOT website)
 - Responses to any comments (include in Final Application)
2. NEPA Assignment MOU
 - Agency and Public review of draft MOU (30 days in the Federal Register)
 - Includes NEPA Assignment Final Application
3. Route the MOU for signatures
4. Continue any training and finalize any procedures and agreements after the MOU approval



Next Steps

❑ Schedule

- NEPA Assignment MOU – September 2018

❑ Ongoing Projects

- “Listed” CEs are already the responsibility of ADOT under the 326 MOU
- Under the 327 MOU all “unlisted” CEs, EA and EIS projects become the responsibility of ADOT unless specifically excluded in the MOU
 - Consideration used by some other Assignment states: Excluded some projects from assignment if past Draft EA/EIS upon execution of the MOU



Ongoing.....

Julia Manfredi - Environmental Programs Manager



U.S. Department of Transportation
Federal Highway Administration

ADOT

Arizona Management System

Modernized and Streamlined State Government



Environmental Planning

NEPA

- Updated CE Manual
 - CE Checklist revised for CE Assignment
- New Section 4(f) Manual for NEPA Assignment
- New EA/EIS Guidance for NEPA Assignment
- Updated QA/QC & Procedures Manual
- Updated Scoping Guidelines for CEs
- And more....



Environmental Planning Website

Overview - Microsoft Internet Explorer provided by ADOT

https://azdot.gov/business/environmental-planning Our Agency | ADOTNet Overview

File Edit View Favorites Tools Help

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Environmental Planning

Guidance for Federal-Aid Projects

Overview	NEPA Guidance	Air Quality	Biological Resources	Cultural Resources
Geotechnical	Hazardous Materials	Material Sources	Noise	Farmlands
Section 4(F) and Section 6(F)			Socioeconomics	
Title VI and Environmental Justice		Visual Resources	Water Resources	

As an integral part of the Arizona Department of Transportation (ADOT), Environmental Planning (EP) coordinates, prepares, and provides the environmental compliance for ADOT projects. The EP oversees the preparation of environmental documents in accordance with the requirements of the [National Environmental Policy Act \(NEPA\)](#). These interdisciplinary documents ensure that project associated environmental impacts and subsequent mitigation measures are addressed and implemented appropriately through construction.

In the absence of a federal action that would require NEPA, ADOT projects require a similar, state-level environmental evaluation process. Unless otherwise noted, this guidance refers to the federal NEPA process for projects that are funded or permitted by FHWA, but many steps are applicable to the state-level

ADOT Business Coach On Demand

Engineering and Construction

Contracts and Specifications

Project Management Services

Highway Maintenance

Procurement

Engineering Consultants

Programs and Partnerships

Permits

Environmental Planning

Air Quality

- **NEPA Federal Projects***
requirements and updates for
Federal Projects
- **NEPA Air Quality Resources**
 - Mobile Source Air Toxics (MSAT)
for **327 ONLY**
 - NEPA Screening Checklist
 - See ASSHTO Practitioner's
Handbook #18, requirements

*Please contact Environmental
Planning Air Quality staff for
Interagency Consultation
requirements and to discuss
**Appropriate Level of Analysis for
Air Quality and/or NOISE at:***

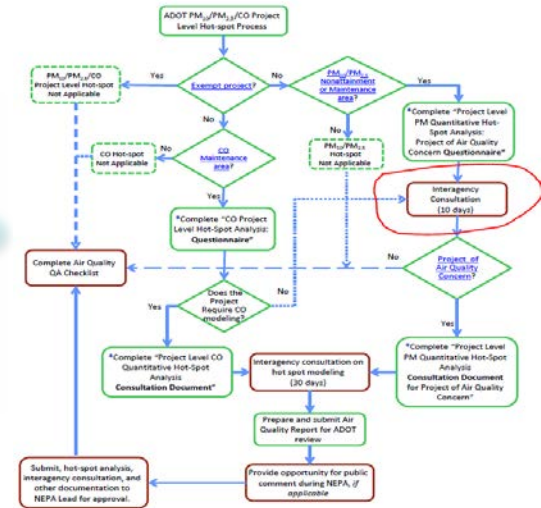
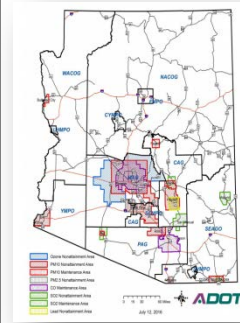
AdotAirNoise@azdot.gov

* <https://www.azdot.gov/business/environmental-planning/air-quality/project-development>

Environmental Planning

Air Quality

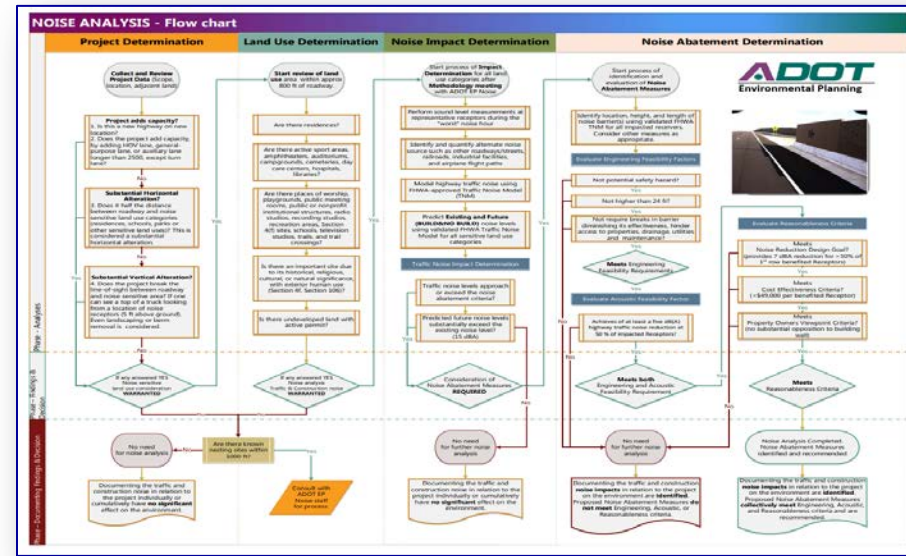
- Updated Guidance for Nonattainment Areas *
- Transportation Conformity** – see Updated Memorandum for Project level hot-spot consultation in CO/PM10/PM2.5 nonattainment or maintenance areas
 - ADOT approval of project level conformity for **326 MOU ONLY**



* <https://www.azdot.gov/business/environmental-planning/air-quality/reports-and-guidance>

Environmental Planning Noise

- ADOT Noise Abatement Requirements – update 5/2017
- Noise Workshop and Online Training (*in progress*)
- Noise Analysis Instructions*



* <https://www.azdot.gov/business/environmental-planning/noise/project-development>

Environmental Planning

Biology

- Two New Handbooks
 - Endangered Species Act Handbook – Endangered Species Act Section 7 consultations
 - Ecological Resources Handbook - **Migratory Bird Treaty Act , Executive Order 13112 on Invasive Species, Fish and Wildlife Coordination Act, Bald and Golden Eagle Protection Act, and the Arizona Native Plant Law**



Photo Credit: Shaula Hedwall, USFWS

Environmental Planning

Biology

- **Biological Evaluation Guidance Update**
 - Major changes to the format, new definitions and sections such as “Action Area” and “Environmental Baseline.”
 - Brings the ADOT biological evaluation more closely in line with the federal “Biological Assessment” (BA)
- **Consultant Biological Procedures Update**
 - Updates for consistency with the new handbooks, new guidance on document naming conventions and scoping guidelines.
- **Internal ADOT Biological Procedures**
 - Document created specifically for NEPA assignment to demonstrate biology process and procedures. Will not be posted on ADOT EP website, will be submitted to FHWA.

Environmental Planning

Cultural Resources

- Historic Preservation Handbook to be updated and expanded
- New Section 106 Programmatic Agreement (PA) will be executed to reflect ADOT's status as lead agency
- Existing Section 106 PA will remain in effect for projects where FHWA is the lead agency



Desert Archaeology, Inc. excavations at Las Capas Archaeological site, Interstate 10, Tucson; Photo by Adriel Heisey

Environmental Planning

Hazardous Materials

- Hazardous Material Section Review of NEPA Documentation
 - Outlines the process steps that the Hazardous Material Team takes during Environmental Clearance.
- Procedures for the Assessment of Asbestos and Lead Based Paint
 - Outlines the process steps that the Hazardous Material Team takes to address the Asbestos and Lead Based Paint concerns during the Environmental Clearance.
- Preliminary Initial Site Assessment Procedures
 - Outlines the ADOT Hazardous Materials Team Process to identify, investigate, and address hazardous material concerns as part of the ADOT Environmental Planning Environmental Clearance.

Environmental Planning

Water Resources

- Clean Water Act Manual Update
 - Addition of information regarding ADOT's 404 Regional General Permit
 - General clarifications regarding procedures and forms
 - Adding electronic submittal guidance
 - Clarification of procedures for no permit and non-notifying permit scenarios
 - Adding guidance for CWA Section 408 and 402
 - Reference to municipal stormwater permit management
 - Additional guidance on determining whether coverage under the Construction General Permit should be obtained

Environmental Planning Website

<https://azdot.gov/business/environmental-planning>

The screenshot shows the AZDOT Environmental Planning website. The browser address bar displays <https://azdot.gov/business/environmental-planning>. The page layout includes a left sidebar with a navigation menu, a main content area with four sections, and a background image of a highway interchange.

Environmental Planning

- Approved Environmental Documents
- CE Assignment and NEPA Assignment
- Water Resources
- Air Quality
- Noise
- Biology
- Cultural Resources
- Guidance for Federal Aid Projects
- Hazardous Materials
- Material Source Guidance
- Operations
- Programs
- Training
- Additional Resources
- Contact Us
- Public Notice of Section 4(f) Parks and historic Sites
- Right of Way / Properties
- Civil Rights
- ADOT Innovation
- District Contacts

Water Resources

The ADOT Water Resources Group oversees regulatory requirements on surface and groundwater for ADOT activities and is responsible for improving water quality in by promoting innovative best management practices, providing effective water quality education, and facilitating cooperation among ADOT and affected stakeholders.

Air Quality

The ADOT Air Quality Planning Group works to enhance air quality through congestion mitigation, air quality programs, and National Environmental Policy Act (NEPA) planning activities to implement provisions required in the Clean Air Act to meet National Ambient Air Quality Standards throughout Arizona.

Noise

The ADOT Noise Team works to provide procedures for noise studies and noise abatement measures, supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning and design of highways approved pursuant to Title 23, United States Code (U.S.C.).

Biology

The ADOT Biology Program is comprised of biologists and specialists focused on evaluating sensitive species, developing appropriate conservation measures and coordinating the biological components of ADOT projects and operations with land managing and resource agencies and Arizona tribes.

Cultural Resources

The ADOT Historic Preservation Team members are responsible for the inventory and evaluation of cultural resources within ADOT's right-of-way, and for ensuring that ADOT construction, maintenance, and operations activities are in compliance with Section 106 of the National Historic Preservation Act, the Arizona Historic Preservation Act, and other relevant state and federal regulations.

Hazardous Materials

ADOT projects that entail subsurface excavation, structure demolition or renovation, property acquisition, and other significant actions with potential impacts to the environment, must have an assessment performed to determine the potential liabilities, health and safety concerns, and other consequences related to the presence of hazardous material impacts. These assessments are generally...

Well, that was exciting...

- Lots of technical guidance updates and standardizing of work
- Check the Environmental Planning Website for the latest guidance and forms



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