

NEPA Assignment

Federal Highway's (FHWA) Transfer of Environmental Review Responsibilities to the Arizona Department of Transportation (ADOT)

Presenters: Alan Hansen (FHWA) & Paul O'Brien (ADOT)

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Presentation Overview

- ❑ What is NEPA Assignment?
- ❑ Why is ADOT seeking NEPA Assignment?
- ❑ What Does Assignment Mean?
- ❑ History and Background
- ❑ States Under Assignment
- ❑ NEPA Assignment Responsibilities
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- ❑ Is Arizona Ready?
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What is NEPA Assignment?

- ❑ Complete or partial transfer of FHWA's environmental responsibilities under the National Environmental Policy Act (NEPA) to a State who would assume the legal responsibility.
 - An assignment of legal responsibility vs. delegation of approval authority
 - FHWA - ADOT Programmatic Categorical Exclusion Agreement
 - An effective way to quicken project review while preserving environmental quality
 - Makes ADOT the decision-maker with the potential for quicker turnaround and greater certainty in project planning



NEPA Assignment Programs

- ❑ Categorical Exclusion (CE) Assignment Program (23 USC 326)
 - Generally 6 month-long process to assume CE responsibilities
 - Covers listed CEs under 23 CFR 771.117 [paragraphs (c) and (d)]
 - FHWA and ADOT enter into a Memorandum of Understanding (MOU)

- ❑ Surface Transportation Project Delivery Program (NEPA Assignment Program) (23 USC 327)
 - Generally 1 year-long process to assume NEPA responsibilities - MOU
 - Covers unlisted CEs, Environmental Assessments (EA), & Environmental Impact Statements (EIS)



Why is ADOT seeking Assignment?

- ❑ Deliver safety and highway improvement projects faster to the public while preserving environmental quality
 - Arizona Management System – “Increase efficiency of service delivery”
 - Multiple “decision-makers” and consultation layers are inefficient
 - Provides time and cost savings by eliminating a layer of review
 - Simplifies approval structure
 - Provides for direct consultation between ADOT and Others
 - Provides opportunity to enhance already established good working relationships



What does Assignment mean?

- ❑ ADOT acts as the Lead Federal Agency for environmental review and consulting with agencies
- ❑ Applies to Federal-aid highway projects
- ❑ Applies to all NEPA classes of action:
 - Categorical Exclusions (CE)
 - Environmental Assessments (EA)
 - Environmental Impact Statements (EIS)
- ❑ ADOT continues to be responsible for complying with all environmental laws, rules and orders under the “NEPA Umbrella”
- ❑ FHWA retains an auditing and monitoring role of Assignment



How Does This Affect You?

- You will see minimal change in environmental review process/compliance
- ADOT will take the lead on all consultation
- The Tribes retain the ability to request Government-to-Government consultation (23 USC 326/327)
- No change in the Project Development Process (ADOT approval)



History and Background

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

- ❑ Section 1309 - Environmental Streamlining
 - Coordinated Environmental Review Process
 - Environmental review delegation pilot demonstration program in House Bill

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

- ❑ Section 6003 - Created a pilot program for five states to assume full NEPA responsibility (AK, CA, OH, OK, TX)
 - Only California entered the pilot program to assume NEPA responsibility in 2007
- ❑ Section 6004 - allowed the USDOT Secretary to assign, and a State to assume responsibility for determining whether activities qualify as a CE
 - Alaska, Texas and Utah as well as California have entered into the program under Section 6004



History and Background

MAP-21 – 2012 (Highway Act):

❑ MAP-21 Section 1301

- “It is in the national interest to ...**accelerate** project delivery and reduce costs.....
...an efficient and effective manner...*while protecting the environment*.....”
- “Implement provisions of law designed to **accelerate** project delivery”

❑ MAP-21 Section 1313

- Amended 23 U.S.C. 327, by: Converting the pilot program into a permanent program (Surface Transportation Project Delivery Program - NEPA Assignment Program)



States Under Assignment

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



NEPA Assignment Responsibilities

- ❑ ADOT will assume:
 - Section 106 Consultation (Historic - NHPA)
 - Section 7 Consultation (Biology - ESA)
 - Section 4(f) Determinations (Parks, recreation lands, wildlife refuges and historic sites) – USDOT Act of 1966
 - Section 404 (Water Resources - CWA)
 - 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-level help on 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
 - Report CE determinations and NEPA decisions
 - Manage MOU changes or renewal
 - Perform QA/QC and self-assessment
 - Document all decisions
 - Maintain records
 - Coordinate with FHWA monitoring and audits



NEPA Assignment Responsibilities

- ❑ FHWA retains:
 - Engineering decisions (per Stewardship Agreement)
 - Project level air quality conformity determinations (EA/EIS)
 - State can make a conformity determination for CE projects
 - Government-to-Government Tribal consultation if requested
 - USDOT responsibilities for statewide and metropolitan planning (23 CFR 450)
 - Provision to exclude certain projects –those that cross international or State lines
 - Auditing and monitoring role of Assignment program not NEPA process



Path to NEPA Assignment



Legal Requirements

- ❑ In order for the State DOT to be able to enter into NEPA Assignment the State DOT must ensure it meets the legal requirements
 - Consent to accept the jurisdiction of the Federal courts - Limited waiver of sovereign immunity (Arizona Revised Statutes: 28-334 amended March 22, 2017)
 - Authority to enter into the Memorandum of Understanding (MOU) for each program (ARS 28-334)
 - Only the Governor or the top-ranking transportation official in the State can enter into the agreement (ADOT Director)
 - Certify that Freedom of Information Act (FOIA) equivalents are in place



Is ADOT Ready?

- ❑ FHWA & ADOT performed a Gap/Readiness Assessment
 - FHWA conducted Agency, Tribe, and ADOT staff interviews, & project file reviews
 - ADOT performed a self-assessment on guidance and procedures
- ❑ ADOT process improvements underway
 - Gap Assessment showed we can build on a proven track record of performing technical analysis, approving CEs, conducting public & agency outreach & consultation
 - Updates to internal procedures, guidance, etc.
- ❑ Agency, Tribal and Public's assistance
 - We want your feedback on where we can improve our process and customer service
 - Opportunity to provide comments on the Application and MOUs



Next Steps

1. Draft CE MOU is in process
 - Coming soon! Agency and Public review (30 days in the Federal Register)
2. NEPA Assignment Application (23 CFR 773)
 - Agency and Public review (30 days - ADOT Website)
3. NEPA Assignment MOU
 - Agency and Public review (30 days in the Federal Register)
4. Complete any updates to processes, procedures and agreements that are not yet completed
5. Provide training/informational meetings with agencies, tribes, consultants, etc.





Anticipated Schedule

Fall 2017 - CE Assignment

Spring 2018 – NEPA Assignment



Help Make NEPA Assignment Successful

- ❑ Share any thoughts or concerns you have (via phone, email, mail, one-on-one meetings, etc.)
- ❑ Help us schedule follow-up one-on-one meetings with you
- ❑ Provide comments during the Application and MOU public review periods
- ❑ Help us update any guidance or agreements involving your agency or community that need updating
- ❑ Help us continue to improve and excel in delivering transportation projects to the citizens of Arizona



Contact Information

Federal Highway Administration

Owen Lindauer (202) 366-2655

HQ – Senior NEPA PD Specialist

Owen.lindauer@dot.gov

Alan Hansen (602) 382-8964

AZ Div – PEAR Team Lead

alan.hansen@dot.gov

Arizona Department of Transportation

Paul O'Brien (602) 712-8669

Environmental Planning Administrator

pobrien@azdot.gov

Joanie Cady (602) 712-8633

NEPA Assign. & Major Proj. Manager

jcady@azdot.gov





More Information

Federal Highway Administration

https://www.environment.fhwa.dot.gov/strmlng/nepa_assignment.asp

Arizona Department of Transportation

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

