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
- Legal Requirements
- Is Arizona Ready?
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- Help Make NEPA Assignment Successful
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, \textbf{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
In order for the State DOT to be able to enter into NEPA Assignment the State DOT must ensure it meets the legal requirements:

- 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