

# **Arizona Department of Transportation**

Final 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



October, 2018

State of Arizona, Department of Transportation

Application for Assumption of Federal Highway Administration  
Responsibilities Pursuant to the  
Surface Transportation Project Delivery Program,  
23 U.S.C. § 327



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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.

A handwritten signature in blue ink, reading 'John Halikowski'.

John Halikowski, Director  
Arizona Department of Transportation

A handwritten date in blue ink, reading '10-11-18'.

Date

For questions regarding this application, please contact ADOT's Environmental  
Planning Administrator, Paul O'Brien, at (602) 712-8669

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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 Federal-aid Highway Program 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 Federal-aid Highway Program 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. Arizona records law would govern records generated under ADOT's NEPA assignment.

## **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 to ADOT. 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. The following project(s) will *not* be assigned to ADOT. 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. The FHWA will use its best efforts to ensure that any new or revised Federal policy or guidance, which are final and applicable to FHWA's responsibilities under NEPA and other laws that will be assumed by ADOT under the MOU are communicated to ADOT within 10 business days of issuance.

### **§ 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 and maintaining a complex highway system in addition to building and maintaining bridges and the operating 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. A separately appointed 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

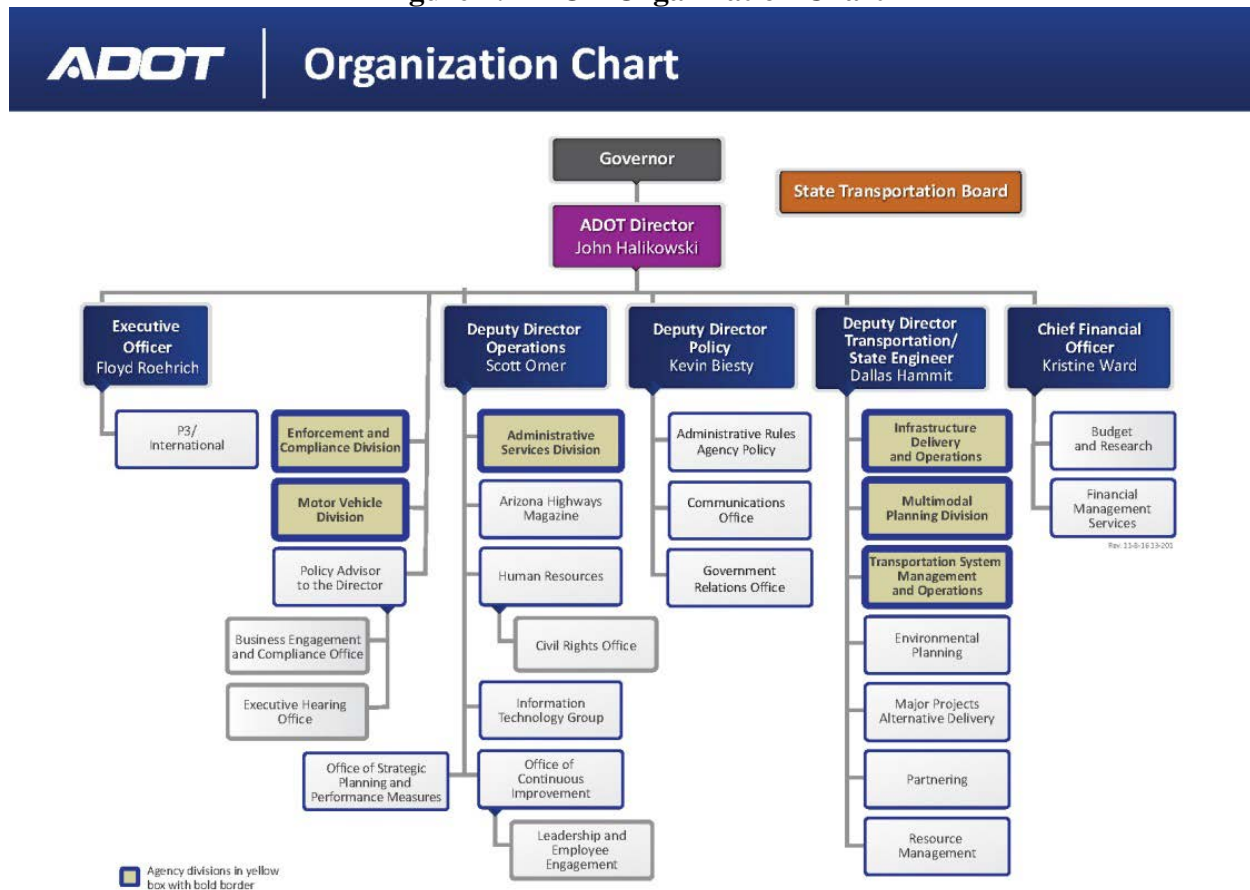
airport grants, transfers/turns back State routes, disposes of excess rights-of-way and advises the ADOT Director on transportation policy matters. The seven members are appointed by the Governor and represent geographical districts in Arizona.

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 Federal-aid Highway Program 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 Federal-aid Highway Program 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.

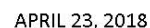
The NEPA Assignment Manager ensures the processes and requirements of the CE Assignment MOU are carried out, and in the future, will do the same for the NEPA Assignment MOU, while serving as the lead contact point with FHWA in regard to the MOU. This section also works on special projects related to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

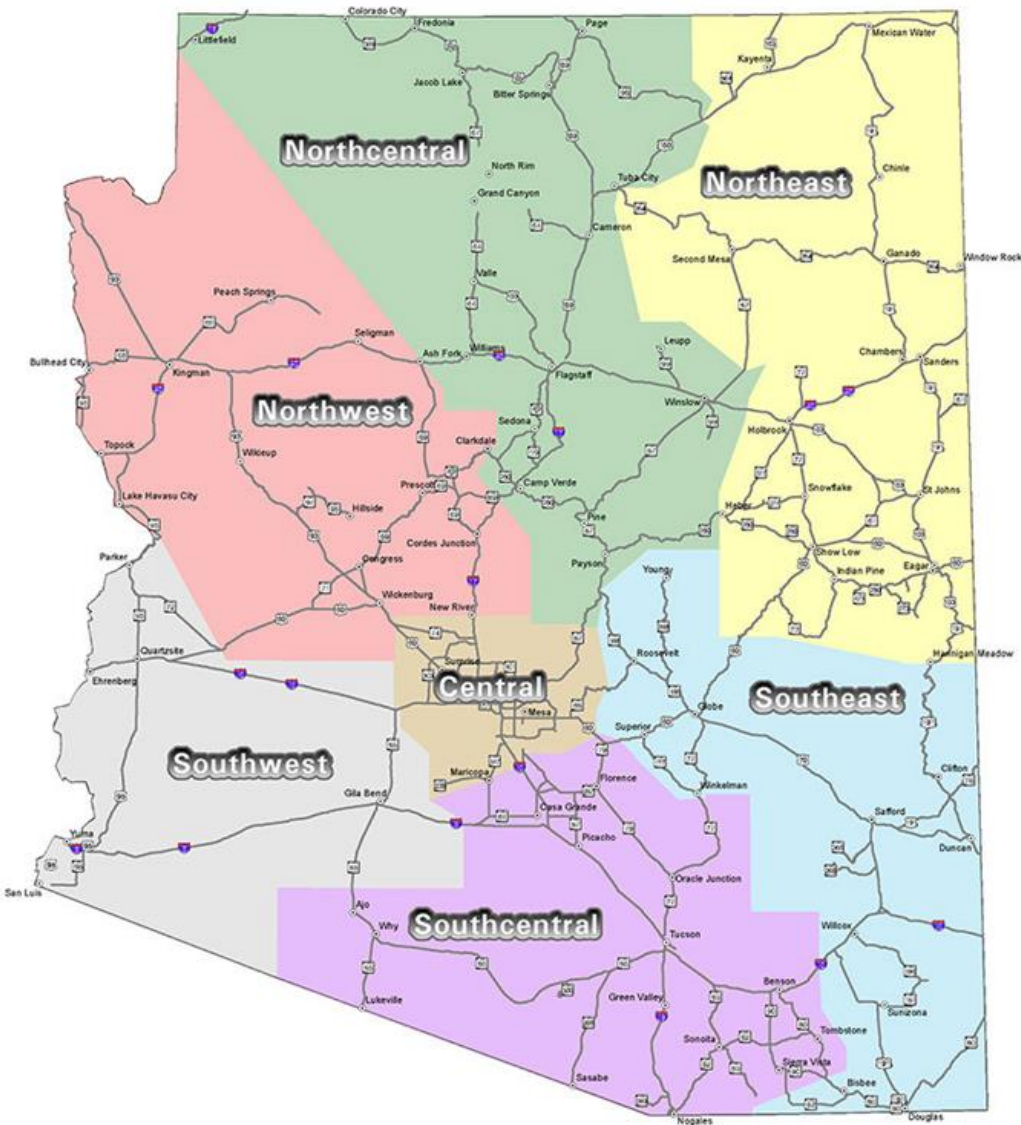
## ENVIRONMENTAL PLANNING ORGANIZATIONAL CHART



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               |
| <b>Total</b>                         | <b>41</b>       |

### 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. ADOT Environmental Planning staff participate in these feasibility and

“planning and environmental linkages (PEL)” studies which include consideration of environmental resources and constraints and the completion of an environmental overview.

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:

|   |
|---|
| <p><input type="checkbox"/> Programming Phase – Early probable Class of Action identified</p> <ul style="list-style-type: none"> <li>▪ Large Projects that require EA/EIS level funding are identified early</li> <li>▪ Examples: \$6 million programmed for North South Freeway EIS and \$15 million programmed to conduct Interstate 11 Tier 1 EIS</li> <li>▪ Preliminary Scoping for project inclusion in Transportation Improvement Programs identifies environmental level of effort for routine projects documented with CEs</li> </ul>   |
| <p><input type="checkbox"/> Planning Phase – Probable Class of Action identified prior to or during planning</p> <ul style="list-style-type: none"> <li>▪ Large Projects Study – (EIS-level projects managed by MPD)</li> <li>▪ Preliminary Engineering and NEPA – (Design Concept Report and Documented CE and EA-level projects managed by IDO) <ul style="list-style-type: none"> <li>▪ 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</li> </ul> </li> </ul> |
| <p><input type="checkbox"/> Design Phase</p> <ul style="list-style-type: none"> <li>▪ Project/Engineering Scoping Document — Project Determination Form on the cover of the final scoping document identifies the Class of Action</li> <li>▪ Project Design – Contracting documents that may identify Class of Action <ul style="list-style-type: none"> <li>▪ Framework Form – Confirm Preliminary Scoping Class of Action</li> <li>▪ Task Order/Scope of Work – Environmental effort refined</li> </ul> </li> <li>▪ NEPA Decision – NEPA Approval</li> </ul>  |

### 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/compensate for impacts on the environment.

As an integral part of ADOT, EP coordinates, prepares, and provides the environmental compliance for all ADOT projects. All construction projects, regardless of under which ADOT Division they are developed, receive and environmental clearance from ADOT Environmental Planning. 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. Environmental Planners are responsible for ‘other’ areas such as recreation and parks (US DOT Act of 1966). Environmental Planners also act as Environmental Project Managers, which is their actual personnel classification title, and coordinate other areas that may require specialized review. 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. Post-construction the maintenance of facilities, including any implemented project-specific mitigation measures, become the responsibility of the District maintenance staff.

### Tools and Guidance

ADOT works with FHWA to implement NEPA requirements on state highway systems and on Federal-aid Highway Program 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 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](http://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.

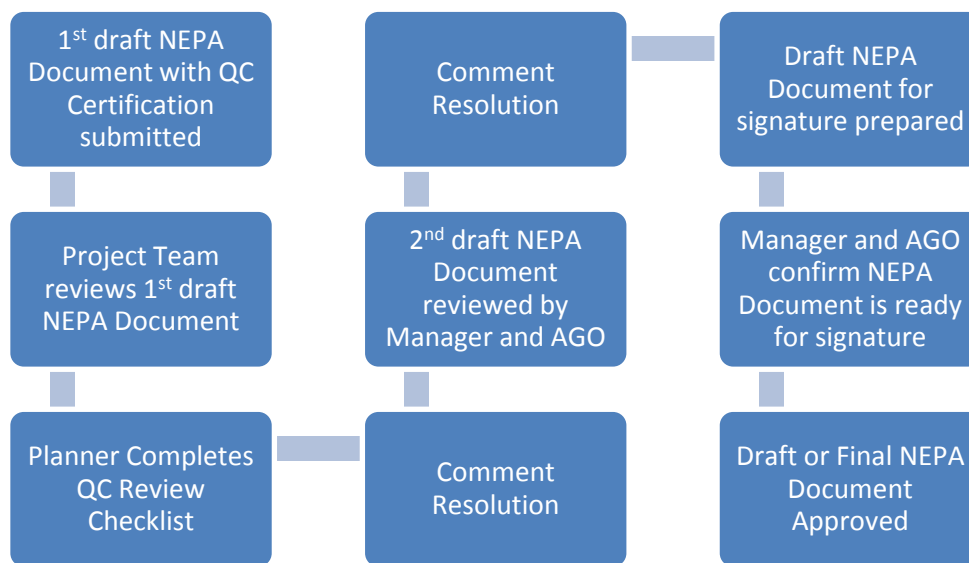
QA also includes the self-assessments outlined in the CE Assignment MOU that are utilized to assess the overall quality of documents and ensure that the processes and procedures are being followed. The QA component of the plan will be expanded to include the formal requirements outlined in the NEPA Assignment 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 environmental documents to be prepared under NEPA Assignment. The QC Review will utilize new formalized QC review checklists for EAs and EISs, similar to the CE QC checklist developed for CE Assignment. These checklists 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 environmental 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:



#### **EA/EIS Review Process Flow**

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

Federal-aid Highway Program Local Public Agency projects are local projects federally funded and therefore require NEPA approval. 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.

#### 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.

- ❑ Decisions of Planning and Programming
  - Multimodal Planning Division (MPD) [State Transportation Board]
    - Pre-scoping, planning studies, and Five-Year Construction Program
    - Environmental Planning – Input on Class of Action identification

|  |
|--|
| <p><input type="checkbox"/> Decisions of Engineering and Project Management</p> <ul style="list-style-type: none"> <li>▪ Infrastructure Delivery and Operations Division (IDO) – Project Sponsor <ul style="list-style-type: none"> <li>▪ Project Management Group/Districts/Engineering [Project Team]</li> <li>▪ Environmental Planning – Input on environmental requirements and Avoid/Minimize/Offset-compensate for impacts of resources</li> </ul> </li> </ul>   |
| <p><input type="checkbox"/> Decisions of Environmental Review</p> <ul style="list-style-type: none"> <li>▪ Environmental Planning – Makes the “<b>NEPA Decisions</b>” but not before there is consensus of the Project Team on design and engineering solutions and consideration of agency and stakeholder input on: <ul style="list-style-type: none"> <li>▪ Determining Cooperating Agencies, Purpose and Need, Range of Reasonable Alternatives, Recommended Alternative</li> <li>▪ Consultations with Tribes and Resource and Land Management Agencies</li> <li>▪ Section 4(f) – Officials with Jurisdiction</li> </ul> </li> </ul> |

### 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.



Consultation and coordination procedures can be found on the [ADOT Environmental Planning](#) website for the various technical areas related to the environmental review process.

## 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 <sup>1</sup> | ENV Planner Senior       | ENV Section Manager <sup>2</sup>                                  |
| CE not listed under (d) (Individual)   | ENV Planner <sup>1</sup> | ENV Planner Senior       | ENV Administrator <sup>3</sup>                                    |
| Environmental Assessment   | ENV Planner <sup>1</sup> | ENV Planner Senior       | ENV Administrator <sup>3</sup>                                    |
| EIS – Draft and Final EIS/ROD  | ENV Planner <sup>1</sup> | ENV Planner Senior       | ENV Administrator <sup>4</sup>                                    |
| Section 4(f) - De minimis  | ENV Planner              | ENV Planner Senior       | ENV Section Manager <sup>2,5</sup>                                |
| 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 <sup>6,7</sup> |
| <sup>1</sup> ENV Planner ensures all reviews are completed from the Technical Teams as required per the scope of the project.<br><sup>2</sup> 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.<br><sup>3</sup> 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.<br><sup>4</sup> No delegation down. State Engineer's Office signs in absence of ENV Administrator.<br><sup>5</sup> Historic Preservation Team Leader or Cultural Resources Manager concurs with Section 4(f) for Historic Properties or approves if de minimis finding is in Section 106 consultation.<br><sup>6</sup> NEPA Assignment Manager ensures Legal Sufficiency Review is prepared.<br><sup>7</sup> 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**

Paul O'Brien, PE

Environmental Planning Administrator

1611 W. Jackson Street, Phoenix AZ, 85007

(602) 712-8669

Email: [pobrien@azdot.gov](mailto:pobrien@azdot.gov)

## **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. § 306108<sup>1</sup>

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. § 3001–3013<sup>1</sup>; 18 U.S.C. § 1170

### Social and Economic Impacts

American Indian Religious Freedom Act, 42 U.S.C. § 1996<sup>1</sup>

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 Resources<sup>1</sup>

E.O. 13007, Indian Sacred Sites<sup>1</sup>

E.O. 13112, Invasive Species

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

E.O. 13175, Consultation and Coordination with Indian Tribal Governments<sup>1</sup>

### 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

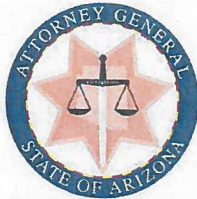
NEPA, 42 U.S.C. 4321 et seq.

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

Note:

<sup>1</sup>Under 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**



MARK BRNOVICH  
Attorney General

Office of the Attorney General  
State of Arizona

November 7, 2017

Brandye Hendrickson  
Acting Administrator  
Federal Highway Administration  
1200 New Jersey Ave., SE  
Washington, DC 20590

Subject: Certification from State Attorney General required by FHWA for assignment of NEPA and other responsibilities to ADOT (23 U.S.C. §§ 326 & 327)

Dear Ms. Hendrickson:

Pursuant to the authority provided by the Moving Ahead for Progress in the 21<sup>st</sup> Century Act or "MAP-21," and specifically 23 U.S.C. § 327 as amended by MAP-21, the Arizona Department of Transportation ("ADOT") has advised this Office that it is submitting an application to the Federal Highway Administration ("FHWA") for assignment of responsibilities for compliance with the National Environmental Policy Act ("NEPA") and other federal environmental laws for federal-aid highway projects ("NEPA Assignment"). On September 16, 2014, FHWA published rules setting forth the requirements for such applications.<sup>1</sup> FHWA's rules specify that a state's application for NEPA Assignment must include certain certifications by the State's Attorney General or other state official legally empowered by state law to issue legal opinions that bind the state.<sup>2</sup>

ADOT and FHWA plan to enter into a Memorandum of Understanding ("MOU") regarding the assignment of the federal environmental review responsibilities after a public review of the application. ADOT and FHWA also plan to enter into a separate MOU for the assignment of authority to make categorical exclusion determinations under 23 U.S.C. § 326 ("CE Assignment"). The purpose of this letter is to provide the certifications required by FHWA to accompany ADOT's application for NEPA Assignment as well as to enter into MOU's for both NEPA Assignment and CE Assignment.

The Attorney General serves as the chief legal officer of the state.<sup>3</sup> In my official capacity as Attorney General of the State of Arizona, I hereby certify the following:

- As stated in A.R.S. § 28-334(C)(1), ADOT is legally authorized by state law to assume the responsibilities of the United States Department of Transportation with respect to duties

<sup>1</sup> 79 Fed. Reg. 55,381 (Sept. 16, 2014).

<sup>2</sup> 23 C.F.R. § 773.109(a)(6)-(7)

<sup>3</sup> A.R.S. § 41-192



under NEPA and any other federal environmental law pertaining to review or approval of a highway project in this state.

- The Legislature enacted A.R.S. § 28-334(C)(2), providing, “[s]overeign immunity from civil suit in federal court is waived consistent with 23 United States Code §§ 326 and 327 and limited to the compliance, discharge or enforcement of a responsibility assumed by... [ADOT]... under this paragraph.” The State’s waiver is made consistent with 23 U.S.C. § 327, which states: “[t]he United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.”
- The Arizona Public Records Law (A.R.S. § 39-101 *et seq.*) is comparable to 5 U.S.C. § 552 (the Freedom of Information Act), including providing that any decision regarding the public availability of a document under state law is reviewable by a court of competent jurisdiction.

Sincerely,



Mark Brnovich  
Attorney General

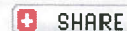
## **Appendix D. Copies of Comments Received on the NEPA Assignment Program Application and Responses Provided to the Commenters**

Per 23 CFR 107(b)(2) the State must submit copies of all comments received as a result of the publication of the respective application(s). The State must summarize the comments received, develop responses to substantive comments, and note any revisions or actions taken in response to the public comment.

ADOT's Draft Application was posted on the ADOT Environmental Planning website on June 29, 2018. A GovDelivery notice was sent to 43,743 recipients. Comments were due no later than July 30, 2018. ADOT also provided by email direct notice of availability of the application with request for comment to federal and state regulatory and resource agencies and Tribes.

**From:** Arizona Department of Transportation <adot@service.govdelivery.com>  
**Sent:** Friday, June 29, 2018 4:03 PM  
**To:** Paul O'Brien  
**Subject:** ADOT seeks approval to assume environmental review responsibility from FHWA

Having trouble viewing this email? <https://content.govdelivery.com/accounts/AZDOT/bulletins/1fb04a9>



## Public comments welcome on ADOT application to assume environmental review responsibility from Federal Highway Administration

The Arizona Department of Transportation has submitted an application to assume environmental authority and review responsibility required by the National Environmental Policy Act of 1969 for federally funded highway projects in Arizona and for local projects that are not part of the highway system but are also federally funded. This is part of a process to streamline environmental reviews for transportation projects while fulfilling all federal requirements.

A [draft application](#) outlining the program under which the Federal Highway Administration would assign its environmental review authority and responsibility to ADOT is now available for review and comment. ADOT encourages the public to review and comment on the Surface Transportation Project Delivery Program application, also known as NEPA Assignment, on [ADOT's Environmental Planning and NEPA Assignment website](#).

Comments can be submitted in the following ways:

- Visit [ADOT's Environmental Planning and NEPA Assignment website](#) or contact ADOT NEPA Assignment Manager [Paul O'Brien](#) at [pobrien@azdot.gov](mailto:pobrien@azdot.gov) or by calling 602.712.8669.
- Send written comments to ADOT c/o NEPA Assignment, 1611 W. Jackson St., MD EMO2 Phoenix, AZ, 85007.
- All comments must be received by **Monday, July 30, 2018**.

The draft NEPA Assignment application addresses ADOT's plan to assume environmental authority and review responsibility for federally funded state highway system projects, including interstates, U.S. highways and state routes and Local Public Agency 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.

For more information, visit [ADOT's Environmental Planning and NEPA Assignment website](#) or contact ADOT NEPA Assignment Manager [Paul O'Brien](#) at [pobrien@azdot.gov](mailto:pobrien@azdot.gov) or by calling 602.712.8669.

### ***Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA)***

*Pursuant to Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act (ADA), ADOT does not discriminate on the basis of race, color, national origin, or disability. Persons who require a reasonable accommodation based on language or disability should contact Steve Olmstead at 602.712.6421 or [SOlmsted@azdot.gov](mailto:SOlmsted@azdot.gov). Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.*

*De acuerdo con El Título VI de la Ley de Derechos Civiles de 1964 y la Ley de Estadounidenses con Discapacidades (ADA por sus siglas en inglés), el Departamento de Transporte de Arizona (ADOT por sus siglas en inglés) no discrimina por raza,*



## Paul O'Brien

---

**From:** Paul O'Brien  
**Sent:** Friday, June 29, 2018 2:56 PM  
**Subject:** ADOT Application for the Surface Transportation Project Delivery Program

Dear Stakeholder,

You are invited to review the Arizona Department of Transportation (ADOT) *Draft* Application for Assumption of Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Responsibilities pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. § 327. An application for NEPA Assignment is a required first step towards entering the program.

This application outlines the plan for ADOT to assume FHWA's environmental review responsibility under NEPA for Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS) for federal-aid highway projects in Arizona.

After a review period of the Draft Application ADOT will seek to enter into a Memorandum of Understanding (MOU) with FHWA for these responsibilities. In January of 2018 ADOT and FHWA signed a separate MOU for what are known in FHWA regulations as "listed CEs" under 23 CFR 771.117. The new MOU would include additional CEs as well as Environmental Assessments and Environmental Impact Statements.

The draft Application is now available for review and comment on the ADOT Environmental Planning website:

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

The comment period runs through **July 30, 2018**.

Comments can be submitted in the following ways:

- Email: Environmental Planning Administrator [Paul O'Brien](#) at [pobrien@azdot.gov](mailto:pobrien@azdot.gov)
- Send written comments to: Environmental Planning Administrator [Paul O'Brien](#), 1611 W. Jackson St, MD EM02, Phoenix, AZ 85007

Thank you,

**Paul O'Brien, P.E.**  
**Environmental Planning Administrator**  
**Arizona Department of Transportation**  
1611 W. Jackson St.  
Mail Drop EM02  
Phoenix, AZ 85007  
602.712.8669  
[www.azdot.gov](http://www.azdot.gov)

## Paul O'Brien

---

**From:** Ermalinda Gene  
**Sent:** Monday, July 02, 2018 8:03 AM  
**To:** Ermalinda Gene  
**Cc:** Paul O'Brien; Ruth Greenspan; Rosalinda Federico  
**Subject:** FW: ADOT Application for the Surface Transportation Project Delivery Program

Dear Tribal Transportation Colleagues,

If you have not already received this notice, I am forwarding the Draft Application for ADOT's NEPA assignment below for your review and comments.

Thank you for your time.

Respectfully,

**Ermalinda Gene**  
**Tribal Planning Program Manager**  
Multimodal Planning Division  
206 South 17th Avenue, MD 310B  
Phoenix, AZ 85007  
602.712.6736  
[azdot.gov](http://azdot.gov)

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**From:** Paul O'Brien  
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**Subject:** ADOT Application for the Surface Transportation Project Delivery Program

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You are invited to review the Arizona Department of Transportation (ADOT) *Draft Application* for Assumption of Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Responsibilities pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. § 327. An application for NEPA Assignment is a required first step towards entering the program.

This application outlines the plan for ADOT to assume FHWA's environmental review responsibility under NEPA for Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS) for federal-aid highway projects in Arizona.

After a review period of the Draft Application ADOT will seek to enter into a Memorandum of Understanding (MOU) with FHWA for these responsibilities. In January of 2018 ADOT and FHWA signed a separate MOU for what are known in FHWA regulations as "listed CEs" under 23 CFR 771.117. The new MOU would include additional CEs as well as Environmental Assessments and Environmental Impact Statements.

The draft Application is now available for review and comment on the ADOT Environmental Planning website:

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

The comment period runs through **July 30, 2018**.

## SUMMARY OF PUBLIC COMMENTS

| <b>Date Submitted</b> | <b>Commenter</b>                             | <b>Comment Number</b> | <b>Summary of Comment<br/>(Application changes noted in reply)</b>                     |
|-----------------------|--|-----------------------|--|
| Comment Period        | General (five comments)                      | 1-2, 4-6              | NEPA Assignment and ADOT capability to assume FHWA environmental review responsibility |
| 7/2/18                | Walt Gray                                    | 3                     | Public Involvement   |
| 7/24/18               | Phoenix Mountain Preserve Council            | 7                     | NEPA and Project Development   |
| 7/25/18               | Sally Davidson                               | 8                     | Wildlife Connectivity and Public Involvement   |
| 7/25/18               | City of Bullhead City                        | 9                     | Support Resolution   |
| 7/27/18               | Desert Tortoise Council                      | 10                    | NEPA and Project Development   |
| 7/30/18               | Environmental Protection Agency              | 11                    | Agency Coordination  |
| 7/30/18               | Arizona Game & Fish Department               | 12                    | Agency Coordination  |
| 7/30/18               | Maricopa County Department of Transportation | 13                    | Project Development  |

**Paul O'Brien**

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**From:** T Clark <telc2008@hotmail.com>  
**Sent:** Saturday, June 30, 2018 6:17 AM  
**To:** Paul O'Brien  
**Subject:** ENVIRONMENAL ASSIGNMENT TO ADOT

To whom it may concern:

After a 35 year career in business and government, there is no question that for proper review, control and optimization of administrative law and regulations, an outside "third party" is essential to insure compliance across a broad swathe of subjects. This is simply one of those immutable "laws of physics", so to speak, that serves to mitigate self-serving interests or expedencies that all too often lead to undesirable outcomes.

The Federal Government must maintain their oversight role in ADOT matters in order to maintain uniformity and compliance on a National level.

Respectfully submitted,  
t. clark

**Paul O'Brien**

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**From:** myers@math.arizona.edu  
**Sent:** Saturday, June 30, 2018 3:41 PM  
**To:** Steven Olmsted; Paul O'Brien  
**Subject:** Environmental oversight

Neither choice (state vs Federal) is a good choice. AZ government has shown in the past that it is not capable nor willing to really protect the environment and Pruitt has turned the EPA into the Environmental DESTRUCTION agency.

A pox on both of you.

Donald Myers



**Paul O'Brien**

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**From:** Kristine R <KristineR23@outlook.com>  
**Sent:** Tuesday, July 24, 2018 8:28 AM  
**To:** Paul O'Brien  
**Subject:** Application to assume environmental responsibility

Hi, I am writing to you re: the ADOT application to assume environmental review responsibility from the Federal Highway Administration. I'm concerned that if your agency assumes environmental responsibility that ADOT will fall short when it comes to complying with federal environmental laws that are in place. It would lend itself to corruption, especially when contracting out to private sources who will profit from the projects. I'm concerned ADOT will generate flawed environmental assessments(EA's) and flawed environmental impact statements in an effort to cut corners or push projects through the process. I don't think it will be in the best interests of our state long term. Thank you for your consideration.

Kristine Richter  
Tucson, AZ

**Paul O'Brien**

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**From:** Jenni And Paul <paulandjenni@hotmail.com>  
**Sent:** Tuesday, July 03, 2018 7:31 PM  
**To:** Paul O'Brien  
**Subject:** Official Public comment on Environmental review

Arizona should NOT get environmental review power from the Federal government.

Remember MachoB the jaguar? In that case, AZ fish and game took over environmental stewardship from the Federal government. Self interest and stupidity ensued and a jaguar died of neglect. I realize that the Department of Transportation is a sister agency of, and not the Department of Fish and Game. Still, the same fundamental problem exists with ceding oversight responsibilities into local control.

Oversight of an essential shared resource should be performed by a disinterested party. Federal Authority is more likely to be disconnected from local influence and opinion than is State Authority. Particularly in rural areas where environmental review is more likely to be necessary. Were I in a dispute, I would want my judge to be as neutral as possible. Keeping federal oversight as is, keeps the environmental judge in reviews more neutral. Without a compelling reason to change, we should not take a step that risks inserting local influence into the process. In short, We need not remove a firewall if we don't have to.

Thank you.

Paul Franckowiak  
10109 S.29th Drive  
Laveen AZ. 85339

**Paul O'Brien**

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**From:** Nick Kuminoff <kuminoff@gmail.com>  
**Sent:** Sunday, July 01, 2018 1:16 AM  
**To:** Paul O'Brien  
**Subject:** Public comment: FHA environmental review

Dear Paul,

Expanding ADOT's control over environmental impact analysis is a bad idea. I urge you to withdraw your application to assume environmental review responsibility from the FHA.

ADOT's recent environmental impact analysis of the 202 South Mountain Freeway project made it clear that ADOT cannot be trusted to deliver scientifically credible environmental impact analyses. I am concerned that ADOT will use its expanded powers to approve projects that harm public health and worsen quality of life for Arizona residents.

Sincerely,

Nick Kuminoff

| Individual Comment |                      |   |
|--------------------|----------------------|---|
| General            | Comment<br>#1-2, 4-6 | Comment Reply   |
|                    |                      | <p><u>NEPA Assignment Program</u></p> <p><i>Comment Summary:</i> General comment and questions related to the NEPA Assignment program and ADOT capability to successfully execute the program.</p> <p>ADOT understands the concerns and questions related to the NEPA Assignment Program and takes seriously the assumption of FHWA's environmental review responsibility.</p> <p>As stated in the draft Application the authority for the NEPA Assignment program is contained in 23 USC 327. There is no change to any existing federal environmental laws or regulations. Under Assignment all NEPA documents would be prepared, reviewed, approved and defended by the State of Arizona in federal court. The federal "environmental review process" as outlined under laws, regulations and formal FHWA policies remains the same except for being under the state's direction and all NEPA requirements must still be met. ADOT would still consult with outside third parties and be required to seek review and approvals, as applicable, from federal and state agencies such as the US Environmental Protection Agency, US Army Corps of Engineers, US Fish and Wildlife Service, Federal land management agencies, Tribal governments and others under applicable environmental laws and regulations. FHWA would maintain federal oversight at a program level including audits as defined in 23 USC 327. ADOT must maintain a demonstrated track record of compliance with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance as outlined in 23 USC 327.</p> <p>As described in ADOT's draft Application to assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 ADOT has had the Categorical Exclusion (CE) Assignment Program since January, 2018 under which ADOT assumed FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Prior to CE Assignment ADOT has been approving most categorical exclusion projects, albeit not legally responsible, on behalf of FHWA through programmatic agreements whereby FHWA delegated the responsibility for approval of most CEs to ADOT. This partnership and delegation of approvals has been in place nationally since 1989. More information on ADOT's CE Assignment can be found on the <a href="#">ADOT Environmental Planning website</a>.</p> <p>ADOT also currently prepares the environmental surveys, technical studies, consultations and environmental documents (EA/EIS) that FHWA reviews and approves. The "assignment" therefore is for ADOT to assume FHWA's "project-level" NEPA-related decision-making and legal responsibility. This decision-making is integral to the overall Federal-aid highway project development process for which ADOT has long been familiar with and successfully implementing in partnership with FHWA. In other words although the program to assign FHWA's review and approval authority to ADOT would be new, the environmental review process, the development</p> |

|  |  |   |
|--|--|---|
|  |  | <p>of NEPA and related environmental consultations and the preparation of all related technical studies and environmental analysis is not new to ADOT.</p> <p>Also, as outlined in the draft Application, ADOT, in cooperation with FHWA, has been updating existing manuals, guidance documents and procedures as well as developing new tools to aid in the development of environmental documents and to implement the FHWA environmental review and approval role. ADOT also participated in a 'readiness review' conducted by FHWA Headquarters and the FHWA Arizona Division to assist ADOT in the identification of procedures and guidance to update as well as documenting standardized operating procedures and training needs related to environmental review. This process started over a year ago and will be finalized at the time the NEPA Assignment MOU is signed. Upgrades and changes to ADOT's process and procedures to implement the CE Assignment program were completed and put in place in early 2018 with the signing of the CE Assignment MOU.</p> |
|--|--|---|

**Paul O'Brien**

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**From:** Walt Gray <walt1gray.1914@gmail.com>  
**Sent:** Monday, July 02, 2018 1:10 PM  
**To:** Paul O'Brien  
**Cc:** Pat Lawlis; Tim Lank  
**Subject:** Fwd: Will not make much difference

Paul  
 I realized that ADOT does contract with third parties for environmental assessments and public hearings  
 I will correct this on Facebook so you don't get emails or calls with the same suggestion  
 However, as you know, this system also is flawed because ADOT pays for the study and largely gets the result it wants  
 This has been true of all freeway projects except the west leg of Loop 101 (Agua Fria Freeway) in the 1980's  
 It may be better, staying within government structure, for FHWA to make block grants to state environmental agencies to conduct environmental assessments and public hearings  
 This is not a perfect solution, but with changes in the Chief Executive over the years, it may be a more fair system even if consultants (same as ADOT) are used  
 If this idea does not get adequate support, ADOT should at least change the way it holds environmental assessment public hearings to allow comments before an audience along with a summary video and exhibits.  
 I am concerned that we do not repeat the mistake of the South Mountain Freeway

Thanks & Best Wishes

Walt Gray  
 community activist, West Phoenix  
 ----- Forwarded message -----

**From:** **Walt Gray** <[walt1gray.1914@gmail.com](mailto:walt1gray.1914@gmail.com)>  
**Date:** Fri, Jun 29, 2018 at 4:20 PM  
**Subject:** Will not make much difference  
**To:** [pobrien@azdot.gov](mailto:pobrien@azdot.gov)

Paul  
 ADOT assuming responsibility for environmental reviews from FHWA will not make much difference. The FHWA funds state projects and always has had a pro build point of view  
 I expect the same from ADOT, which helps fund the projects while planning and administering them. The public hearing process for the FHWA and ADOT is grossly flawed by not allowing comments in public. To respect the public; promote transparency, and fulfill our belief in Democracy, ADOT should work with the FHWA to contract with independent third parties to conduct environmental assessments, including public hearings that allow for comments in public rather than written statements.

I will be contacting others to give them your email address and phone number so they can express their views to you.

Thanks for the consideration you give my comments.

Walt Gray  
 Community Activist, West Phoenix  
 ADOT PIO Office, 1977-2002

| Individual Comment |            |   |
|--------------------|------------|---|
| Walt Gray          | Comment #3 | Comment Reply   |
|                    |            | <p><u>Public Involvement</u></p> <p>ADOT's public hearing process allows for public comment in alignment with NEPA and ADOT's Public Involvement Plan. During formal public hearings, ADOT provides the opportunity for the public to comment verbally in two ways depending on the expected number of people attending and other factors:</p> <ol style="list-style-type: none"> <li>1. For some projects, ADOT uses the traditional method of having commenters stand in front of the room and speak to the crowd into a microphone.</li> <li>2. Other times ADOT provides for the public to make their verbal comments to a panel of at least three people at any time during the public hearing.</li> </ol> <p>ADOT has used the latter option twice for large projects; the South Mountain Freeway public hearing and, more recently, at the Loop 303 South of I-10 public hearing. Both of those public hearings were in a "deconstructed format" which enables members of the public to come and go over the course of several hours given the length of the meetings. These large-scale meeting may utilize different rooms in a facility to allow displays, videos and comment recording options to all take place simultaneously over a longer period of time for public convenience. This is more of an open-house style, but still satisfies all NEPA requirements by recording public comments. When ADOT utilizes the open-house format there is an option for the public to speak at a microphone and have their voices heard.</p> <p>Regardless of format, all public comments are captured and included in the public record. ADOT provides for public comments through comment forms or email (both of which also are included in the public record).</p> |





July 24, 2018

Mr. Paul O'Brien  
ADOT NEPA Assignment Manager  
1611 W. Jackson St.  
MD EMO2  
Phoenix, AZ, 85007

Dear Mr. O'Brien,

The Phoenix Mountains Preservation Council, Inc. (PMPC) is opposed to the assignment by the Federal Highway Administration (FHWA) for the Arizona Department of Transportation (ADOT) to assume the responsibilities for the National Environmental Policy Act (NEPA) and related laws through participation in the Surface Transportation Project Delivery Program (NEPA Assignment Program). The assignment provides too broad oversight to act on behalf of the FHWA over a multitude of NEPA issues including air quality, wildlife, historic and cultural resources, hazardous materials, parklands, water resources and wetlands, social and economic impacts. The proposed assignment does not provide the necessary checks and balances to ensure the affected U.S. Codes are properly reviewed and applied to ADOT projects.

PMPC is a grassroots organization, who for over 45 years has advocated for the protection and sustainable use of the City of Phoenix Mountain Preserves. In addition, PMPC collaborates with a variety of Arizona groups to ensure our state's open spaces and adjacent development is sensibly planned so that future generations can enjoy, recreate and access a healthy parks and preserves. Our organization has the following concerns with this Memorandum of Understanding (MOU).

**Arizona Has Not Had A NEPA-Equivalent State Environmental Review Procedure**

In its draft Application dated June 29, 2018, ADOT mentions that the State of Arizona does not have a State Environmental Review Procedure, which is statutorily recognized as a NEPA-equivalent procedure (p.12). Yet later in the application, ADOT claims to have a "long-standing" and "well-developed environmental program and procedures" and states that its staff includes "experienced NEPA practitioners" (p.25). At page 26 of the Application, ADOT refers to a "mature environmental compliance program." ADOT only acquired responsibility for Categorical Exclusions approximately six months ago, in January 2018. Surely these statements do not refer to ADOT's very brief possession of Categorical Exclusion responsibility.

These contradictory statements create uncertainty about exactly how much experience ADOT truly has with the NEPA work over which it hopes to acquire full control. The Application describes ADOT's existing environmental review processes with positive adjectives, but it does not address how technical and managerial expertise may need to be adjusted under full NEPA responsibility acquisition. How will this (seemingly quite large) learning curve be handled both by ADOT and by FHWA? Hopefully it is more robust than a proposed internal self-review process.



### **Arizona's Public Records Law is NOT Comparable to FOIA**

The Application asserts that Arizona's public records law is "comparable" to the requirements of the Freedom of Information Act (FOIA). This claim is untrue, particularly with respect to response timelines. Unlike Arizona's records law, FOIA places strict timelines on submitted requests and provides legal remedies to the requestor if the agency does not respond to their request within certain deadlines. Arizona's public records law at A.R.S. § 39-121.01(E) requires a "prompt" response but never defines what constitutes a prompt response. ADOT's application does not specify whether FOIA or Arizona records law would govern records generated under ADOT's NEPA assumption. This needs to be clarified.

### **ADOT can bypass certain designated activities within the geographic boundaries of the State**

These designated activities can be categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act. PMPC has been actively involved with providing comments to ADOT for past project Environmental Impact Statements (EIS) and Final Environmental Impact Statements (FEIS). It is through those interactions and ADOT's lack of attention and action to NEPA regulations that worry PMPC, especially in the area of ongoing project mitigation.

### **ADOT Proposes to Streamline Arizona's Environmental Review Process**

The Application (p.3) proposes that the NEPA Assignment Program will streamline Arizona's environmental review process and shorten project delivery timelines. Yet stated elsewhere, ADOT also assures that the assignment program will create minimal changes in environmental review processes and compliance (August 15, 2017 NEPA Assignment PowerPoint presentation). What exactly will these changes and streamlines consist of?

### **The Arizona Department of Transportation is not free from political influence.**

The list of U.S. Codes, The Clean Water Act, Clean Air Act, the National Historic Preservation Act, and the Archeological Resources Protection Act of 1979, are just a few of the laws created to protect a variety of resources for United States citizens. Under § 773.109(a)(3)(i): Existing organization and procedures (ADOT. Arizona Department of Transportation: Draft Application for Assumption of Federal Highway Administration National Environmental Policy Act Responsibilities. p. 6. June 29, 2018.

<https://azdot.gov/docs/default-source/planning/draft-adot-nepa-assignment-application.pdf?sfvrsn=2>)

ADOT is described as an Arizona state agency, "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." This organization is further described as "[a]n 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."

In the Application, ADOT states that it supports environmental decision making which has "independent of administrative, political, or performance-based pressure" (p. 30). Yet there is little description in the Application of how this is to be accomplished, other than a plan to keep environmental document approval decisions separate from project design decisions. In particular, ADOT proposes to conduct annual self-assessments to determine effectiveness, resolve problems, and gauge overall successes.

How will that self-assessment process be kept free of administrative, political and performance-based pressures? At the very minimum, ADOT's self-assessment should be noticed to and receive input from interested members of the public, Indian tribes, and local NGO's such as PMPC.

**Legal Sufficiency Reviews by Outside Counsel**

**ADOT proposes to conduct legal sufficiency reviews or consultation over final EIS documents using either assigned attorneys from the Arizona Attorney General's Office, or appointed outside counsel (p.28). How does ADOT propose to conduct conflict checks over any outside appointed counsel? Will this be done by the Attorney General's Office?**

Further, ADOT is applying to assume all FHWA project-level NEPA responsibilities over both state highway system projects, and local public agency projects not part of the state highway system (p. 1). The Application states that local public agency projects will be subject to the same legal consultation and legal sufficiency reviews "when applicable."

Why is this distinction being made? ADOT is applying for NEPA responsibility over both categories of projects, so why wouldn't all of those projects be subject to the same legal consultation and sufficiency reviews? Furthermore, who and what criteria would determine which projects are and are not subject to such reviews? How will affected members of the public be made aware of these determinations and have the ability to challenge these determinations?

It these political appointments by the governor that point to a process that has the potential to be fraught with undue intervention or influence by a Transportation Board who serves at the pleasure of the governor and not in the best interest of Arizona's environment. The conflict between Arizona natural resources and the economy is seen on Governor Ducey's official website (<https://azgovernor.gov/governor/priorities>) which states, "As our economy advances, our government and our laws need to modernize too". Governor Ducey provides no mention on how to balance economic needs with those of existing laws put into place to protect our environment. Based on past lack of engagement in communications between PMPC and Governor Ducey regarding PMPC concerns on ADOT projects, our group does not have faith that the 41 ADOT employees assigned to oversee these complex NEPA assignments will have the necessary autonomy from political influence.

For these reasons PMPC asks that the NEPA Assignment Program not be awarded to ADOT and the process and responsibilities for environmental review, resource agency consultation, and other environmental regulatory compliance-related actions pertaining to the review or approval of projects in Arizona stay in place.

Respectfully,

*Colin Stalhouse for Patrick McMullen*

Patrick McMullen, PhD

President

Phoenix Mountains Preservation Council, Inc.

| Individual Comment                    |               |   |
|---------------------------------------|---------------|---|
| Phoenix Mountain Preservation Council | Comment<br>#7 | Comment Reply<br>(Application changes noted in reply)   |
|                                       |               | <p><u>“NEPA Equivalent” State Environmental Review Requirements</u></p> <p>The section of the Application that discusses a “State Equivalent” is in regard to a State enacted law that that would be the equivalent to NEPA on the state-level such as the California Environmental Quality Act (CEQA) or the Massachusetts Environmental Policy Act (MEPA). Not every State has a State environmental review law. 23 USC 327 does not require a State equivalent law to be in place in order for a State DOT to assume FHWA environmental review responsibility under NEPA. No State equivalent law is needed as a forerunner to NEPA Assignment. ADOT has been developing federal environmental review documents for many years in partnership with FHWA albeit with FHWA responsible for the final review, approval and legal responsibility. 23 USC 327 includes no change to existing federal environmental law and allows for the State to assume FHWA’s approval responsibility and legal responsibility for the decision-making after certain conditions are met and an agreement is signed between the State and FHWA.</p> <p>A ‘State process’ therefore is not a precursor to assignment for conducting reviews under the Federal NEPA process. ADOT is already performing the work of the NEPA process in partnership with FHWA. Under the current process, ADOT is the agent that conducts the surveys, technical reports, and environmental analysis, and ADOT prepares the consultations and environmental documents in developing projects under NEPA. For example, a consultation letter from FHWA to another federal agency is prepared by ADOT staff or a consultant under ADOT supervision and then the letter is placed on FHWA letterhead for their review and approval. Under Assignment, a senior ADOT staff would take the place of FHWA staff in the review and approval roles.</p> <p>One reason for the reference regarding a State environmental review in 23 CFR 773 and in the draft Application is to make it clear that if a State has a “State equivalent” then the two separate processes must be clearly defined. Regulations dictating the development of the Application, 23 CFR 773.109(a)(3)(1) state: “For States that have comparable State environmental review procedures, the discussion should describe the differences, if any, between the State environmental review process and the Federal environmental review process, focusing on any standard that is mandated by State law, regulation, executive order, or policy that is not applicable to the Federal environmental review.” Arizona has no such State law in place and therefore we do not include any differences between a State process and the Federal environmental review process. Note: although there is no single Arizona “State environmental act” other state statues such as the State Historic Preservation Act are considered in non-federal State funded projects.</p> |

| Individual Comment                    |            |  |
|---------------------------------------|------------|--|
| Phoenix Mountain Preservation Council | Comment #7 | Comment Reply<br>(Application changes noted in reply)  |
|                                       |            | <p><u>Arizona Public Records Law and FOIA</u></p> <p>Arizona, like all other states that have undertaken NEPA assignment, has a public records or sunshine law. 23 CFR 773.107(d) requires the state laws for public records to be comparable to FOIA but not necessarily identical. The general scope of both Arizona public records law and FOIA is to make public records available for inspection. The overall accessibility of documents and the right to a court review are comparable. The Arizona Attorney General's Office has certified that Arizona public records law meets the requirements for assignment of responsibilities as provided in 23 CFR 773.109(a)(6). The certification is included in the Application Appendix. Both state and federal laws may apply to records generated under ADOT's NEPA assignment program.</p> <p><u>ADOT can bypass certain designated activities within the geographic boundaries of the State</u></p> <p>Actions that qualify for categorical exclusions (CEs) are defined by 40 CFR 1508.4 and FHWA's implementing regulations 23 CFR 771.117. However there is still a level of environmental review commensurate with the impacts of the project and many of these CEs contain mitigation measures.</p> <p><u>ADOT Proposes to Streamline Arizona's Environmental Review Process</u></p> <p>The NEPA Assignment program is listed as Expedited Project Delivery under a Declaration of Policy from Congress in 23 USC §101(b)(4)(B)(v) – "Congress declares that it is in the national interest to expedite the delivery of surface transportation <a href="#">projects</a> by substantially reducing the average length of the environmental review process" and "the <a href="#">Secretary</a> shall identify opportunities for project sponsors to assume responsibilities of the <a href="#">Secretary</a> where such responsibilities can be assumed in a manner that protects public health, the environment, and public participation."</p> <p>Only a minimal change in the process will result because there is no change to any environmental law - only the administrative procedures as defined under 23 USC 327 and 23 CFR 773. The streamlining comes by way of streamlined decision making and eliminating duplicative reviews between two agencies, ADOT and FHWA, for all of the consultations, technical report reviews and environmental documents. Slide 5 of the NEPA Assignment August 15, 2017 Presentation, referenced in the comment letter, outlines these streamlining steps in bullet format.</p> <ul style="list-style-type: none"> <li>Arizona Management System – "Increase efficiency of service delivery"</li> </ul> |



| Individual Comment                    |            |  |
|---------------------------------------|------------|--|
| Phoenix Mountain Preservation Council | Comment #7 | Comment Reply<br>(Application changes noted in reply)  |
|                                       |            | <ul style="list-style-type: none"> <li>▪ Multiple “decision-makers” and consultation layers are inefficient</li> <li>▪ Provides time and cost savings by eliminating a layer of review</li> <li>▪ Simplifies approval structure</li> <li>▪ Provides for direct consultation between ADOT and Others</li> <li>▪ Provides opportunity to enhance already established good working relationships</li> </ul> <p><u>The Arizona Department of Transportation is not free from political influence.</u></p> <p>FHWA remains involved in the program as ultimately the environmental reviews are conducted to attain approval of federal funds for highway projects as part of the Federal-aid Highway Program. Additionally, FHWA remains involved in the form of audits, outlined in 23 USC 327(g) including notice in the Federal Register. ADOT Environmental Planning staff will internally prepare self assessments. These assessments will be done in advance of FHWA formal audits which have a public review component.</p> <p><u>Legal Sufficiency Reviews by Outside Counsel</u></p> <p>The Arizona Attorney General’s Office would be responsible for conducting conflict of interest checks and procuring outside counsel if needed as allowed under NEPA Assignment program. Outside counsel may be utilized for special expertise needed in NEPA, other environmental laws or Federal environmental litigation. See IV.H.2 of the current <a href="#">CE Assignment MOU</a>.</p> <p><i>Local Public Agency Projects</i></p> <p>The same process and legal standards apply to ADOT and Local Public Agency projects that utilize Federal-aid Highway Program funding. Legal sufficiency reviews being applied to local projects “when applicable” is in reference to whether or not the project requires a legal sufficiency review, i.e. if the project involved an Environmental Impact Statement or Individual Section 4(f) Evaluation under the USDOT Act of 1966. The Application has been changed to clarify this by deletion of “when applicable.”</p> |

Paul O'Brien

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**From:** Sally Davidson <spiralwoman08@gmail.com>  
**Sent:** Wednesday, July 25, 2018 9:45 AM  
**To:** Paul O'Brien  
**Subject:** NEPA comments

Dear Mr O'Brien,

As a lifelong Arizona resident, I would love to see the runaway development occurring in this state be sustainable in the long term- not only for people, but for this great state's wildlife and ecosystems as well. I recently attended a CYMPO meeting on Ecosystem continuity. I would like to see awareness of this issue become more important in the planning process at ADOT. I would like to see public input become infinitely easier for the public. Perhaps the opinion of what is going on will help raise the needed funding.

The state's wildlife is on a fast track to extinction, if ADOT does not incorporate wildlife corridors and crossings into the planning process. The date I heard quoted was 2040. By then most ecosystems and their inhabitants won't exist any more.

I realize how complicated the issue is- Mr Budinger gave an example of corridors that are obstructed by a single landowner for example...so I realize how hard you are all working on this. But somehow we humans must accomplish the goal of sustainable ecosystems while they still exist. Once gone, they will be gone forever.

Sincerely,  
Sally Davidson

| Individual Comment |            |  |
|--------------------|------------|--|
| Sally Davidson     | Comment #8 | Comment Reply  |
|                    |            | <p><u>Wildlife Connectivity</u></p> <p>Long-range transportation planning such as that conducted by agencies like the Central Yavapai Metropolitan Planning Organization (CYMPO) is important to the integration of wildlife corridors into future planning. The ADOT <a href="#">planning and programming</a> process is also another area where the public can provide input to the importance of wildlife connectivity.</p> <p>Wildlife or habitat connectivity is important to ADOT and to the long-term health of our State. Wildlife connectivity is included in the guidelines for developing projects and ADOT considers wildlife connectivity as a standard part of project development (see <a href="#">Wildlife Connectivity</a> under Biological Resources). The ADOT Biology Team also maintains and utilizes a report on <a href="#">wildlife linkages</a> to assist and aid in consideration of these measures when evaluating projects throughout the State.</p> <p><u>Public involvement</u></p> <p>ADOT is always exploring ways to improve and expand options for public input so it is meaningful, easy and accessible. ADOT Communications is taking initiatives such as researching approaches to incorporate virtual public involvement. Technology affords new opportunities for outreach and ADOT strives to maximize the use of technology to reach even more people.</p> <p>ADOT concurs that public involvement and public input are critically important to the process and we continue to explore ways to improve and expand our efforts via technology, greater public awareness about the importance of participation and other means.</p> |

**RESOLUTION NO. 2018R-43**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BULLHEAD CITY, ARIZONA, EXPRESSING SUPPORT FOR THE ARIZONA DEPARTMENT OF TRANSPORTATION APPLICATION TO ASSUME ENVIRONMENTAL REVIEW RESPONSIBILITY FROM THE FEDERAL HIGHWAY ADMINISTRATION.**

WHEREAS, the City of Bullhead City supports the Arizona Department of Transportation's (ADOT) application to assume environmental authority and review responsibility required by the National Environmental Policy Act of 1969 for federally funded highway projects in Arizona and for local projects that are not part of the highway system but are also federally funded; and

WHEREAS, The draft National Environmental Policy Act (NEPA) Assignment application addresses ADOT's plan to assume environmental authority and review responsibility for federally funded state highway system projects, including interstates, U.S. highways and state routes and local public agency projects that are not part of the state highway system in Arizona; and

WHEREAS, ADOT is also applying to assume all of Federal Highway Administration (FHWA) responsibilities for environmental review, resource agency consultation, and other environmental regulatory compliance-related actions pertaining to the review or approval of projects in Arizona; and

WHEREAS, A draft application outlining the program under which the Federal Highway Administration would assign its environmental review authority and responsibility to ADOT is now available for review and comment.

THEREFORE BE IT RESOLVED THAT, the Mayor and the members of the Bullhead City Council hereby supports ADOT's application to assume environmental review responsibility from the Federal Highway Administration.

PASSED AND ADOPTED by the Mayor and City Council of the City of Bullhead City, Arizona, this 24<sup>th</sup> day of July, 2018.

Tom Brady  
Tom Brady, Mayor

Date: 7/25/18

ATTEST:

Susan Stein  
Susan Stein, City Clerk

APPROVED AS TO FORM:

Garnet K. Emery per G.E.  
Garnet K. Emery, City Attorney



| Individual Comment    |            |   |
|-----------------------|------------|---|
| City of Bullhead City | Comment #9 | Comment Reply   |
|                       |            | <u>Resolution of Support from Bullhead City Council for ADOT to Assume FHWA Environmental Review Responsibility</u> |
|                       |            | ADOT thanks the City of Bullhead for their resolution of support  |



## DESERT TORTOISE COUNCIL

4654 East Avenue S #257B

Palmdale, California 93552

[www.deserttortoise.org](http://www.deserttortoise.org)

[eac@deserttortoise.org](mailto:eac@deserttortoise.org)

**Via email only**

27 July 2018

Paul O'Brien

NEPA Assignment Manager

Arizona Department of Transportation c/o NEPA Assignment

1611 W. Jackson Street, MD EMO2

Phoenix, AZ, 85007, [pobrien@azdot.gov](mailto:pobrien@azdot.gov)

Dear Mr. O'Brien,

**Subject: Arizona Department of Transportation's Draft Application for Assumption of Federal Highway Administration's National Environmental Policy Act Responsibilities**

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

The Arizona Department of Transportation (ADOT) is applying to assume all of the Federal Highway Administration's (FHWA) project level responsibilities under the National Environmental Policy Act (NEPA) for state highway system projects (including Interstate highways, 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.

We appreciate this opportunity to provide comments on ADOT's above-referenced application and ask that you accept and consider those that follow. The purpose of our comments is to improve ADOT's application to FHWA by demonstrating ADOT's abilities to assume the complex world of complying with all applicable federal environmental laws, regulations, and executive orders especially with respect to the Agassiz's desert tortoise (*Gopherus agassizii* = Mojave desert tortoise) and Morafka's desert tortoise (*Gopherus morafkai* = Sonoran desert tortoise) and their habitats.

In the application, ADOT asserts, “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.” We do not believe that ADOT should be content with being “adequate” in its assumption of FHWA responsibilities, and we do not believe that ADOT has demonstrated in its application that it has the experience, expertise, and resources to assume FHWA’s responsibilities. We believe that ADOT could demonstrate its competency to FHWA by implementing the suggestions and approaches in our comments that follow.

1. Construction versus Maintenance Projects: We are concerned that the application focuses on construction projects and provides little information on how ADOT would implement responsibilities for the maintenance or improvements of existing projects. We note that federally-funded maintenance or improvement projects require NEPA compliance and may require compliance with other federal environmental laws, regulations, and executive orders (directives). We suggest that ADOT clarify its use of the term “construction” as its intended use may include maintenance and improvements to existing roadways. One suggestion is to add information (e.g., a table) on the types of projects for which ADOT receives federal funding and the processes it would implement to ensure compliance with appropriate federal environmental laws, regulations, and executive orders. We want to ensure that as roadways are maintained or improved, ADOT will implement the federal environmental review process and include new information on the biology and status of the Mojave and Sonoran desert tortoises, their habitats, threats, mitigation (including improvements to mitigation measures), and other relevant factors to best contribute to recovery and conservation. Also, see comment #5.

2. Regulatory Compliance beyond NEPA: We note that the focus of ADOT’s application is NEPA in the NEPA Assignment Program with little discussion of compliance with other environmental laws, implementing regulations, and executive orders that are applicable under NEPA. We note that ADOT has signed Memoranda of Agreement and Memoranda of Understanding with federal agencies to clarify its proposed new role of coordination/consultation with these agencies. These agencies include the U.S. Fish and Wildlife Service (USFWS), and ADOT provides a brief discussion of informal and formal consultation. Given the threatened status of the Mojave desert tortoise under the federal Endangered Species Act (ESA), we believe ADOT should be clear in its application as to how it will comply with the ESA. To accomplish this, we request that ADOT provide additional information in its application regarding when and how it will seamlessly coordinate and consult with USFWS and other relevant federal agencies on project for which it has NEPA responsibilities. We suggest a flow chart as one method to provide this information to FHWA. In addition, ADOT may find it helpful to incorporate it into a working manual to inform new ADOT employees and ADOT employees new to NEPA and related environmental laws/regulatory processes to assist ADOT meeting its commitment to the NEPA Assignment Program, which includes other federal environmental directives (e.g., ESA).

3. NEPA Assignment Program Evaluations: “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." We request that ADOT include in its application how this will be accomplished. We believe that coordination with regulatory partners should be included in this process as a minimum, and we advise adding interested non-governmental organizations if ADOT's goal (or FHWA's goal) is transparency (as stated in the application). Please note that the Desert Tortoise Council is an interested non-governmental organization in this evaluation and coordination process.

4. Existing versus Future Environmental Laws, Regulations, and Executive Orders: "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..." Please note that future environmental laws, regulations, and executive orders would also apply. There should be specific language in the application that recognizes the likelihood of future federal environmental directives and includes the adoption and implementation of these applicable directives when adopted by the federal government. If ADOT is unable or unwilling to make this commitment regarding the implementation of future applicable federal environmental laws, regulations, and executive orders, then language that excludes future environmental directives should be included in the application with language that makes it clear that FHWA will be responsible for implementation of future federal environmental directives.

5. Planning, Constructing, and Operating versus Maintaining: "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." Please add that ADOT has responsibility for maintaining (i.e., maintenance projects) this highway system and decommissioning parts of it when deemed appropriate. Please see comment #1.

6. Governor-appointed Director and Board: "ADOT is led by the Director, who is appointed by the Governor.... An independent seven-member State Transportation Board is the primary policy-making and governing body for ADOT.... The seven members are appointed by the Governor." We suggest changing "independent" to "separate" as both entities are appointed by and answer to the Governor. This arrangement does not give the appearance of the Director and the Board acting independently.

7. Centralized Review and Approval of Environmental Documents: "All approvals of environmental documents are made by staff in the Central Office in Phoenix." We consider this centralized organization as playing a key part in ensuring consistency in the consideration of biological resources such as the Mojave desert tortoise and Sonoran desert tortoise and implementation of appropriate mitigation and conservation actions to contribute to recovery and conservation of the Mojave and Sonoran desert tortoises and their habitats.

For the federally threatened Mojave desert tortoise, legal requirements include that federal agencies comply with section 7(a)(1) of the ESA by consulting with the Secretary (USFWS) on how to utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered species and threatened species. Thus, FHWA is obligated to consult with the USFWS (see comment #15 below) to contribute to recovery of listed species including the Mojave desert tortoise. In addition, FHWA is obligated to comply with 50 CFR 402, which describes the informal and formal consultation processes, including implementation of reasonable and prudent measures, terms and conditions, and conservation recommendations in biological opinions issued by the USFWS.

Regulatory requirements for the Sonoran desert tortoise are contained in the Candidate Conservation Agreement with the USFWS (USFWS et al. 2015). Its purpose is to ensure the long-term conservation of the Sonoran desert tortoise. When the conservation actions in this Agreement are implemented effectively, this should preclude the need to list the Sonoran desert tortoise under the ESA.

We urge ADOT to implement both mitigation measures to offset impacts and recovery/conservation measures to improve the population status and habitats of these two desert tortoise species.

Consistency is also important in complying with the federal Administrative Procedures Act.

8. Timing of Environmental Planning's Participation in Project Development: "The EP [Environmental Planning] staff provides the expertise required to meet the responsibilities to be assumed under the NEPA Assignment Program." While Environmental Planning staff may possess the expertise, is ADOT structured such as that Environmental Planning staff is involved when a transportation need is first identified? According to NEPA implementing regulations 40 CFR 1501.2, "Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts." 40 CFR 1502.14(a) further directs federal agencies to "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated" and to "Include reasonable alternatives not within the jurisdiction of the lead agency (40 CFR 1502.14(c))." 40 CFR 1506.1(a)(2) instructs federal agencies that "Until an agency issues a record of decision no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives."

We request that ADOT amend its application to include clear information on how it would comply with these and other relevant sections of NEPA's implementing regulations given its current organization and operation among ADOT's divisions. We suggest that an appropriate location for such information would be the section on "Changes to be made for assumption of responsibilities, Organization and Procedures under the NEPA Assignment Program." While this section contains language that says ADOT "will use ... to-be-developed policies, procedures, and guidance to implement the NEPA Assignment Program," we are identifying an area where policies and procedures need to be developed now to comply with the implementation of NEPA and its regulations and to demonstrate to FHWA and the public that ADOT has appropriate policies, procedures, and guidance in place and has implemented appropriate training for all its planning, design, construction, and maintenance employees (see Comment # 16 below).



Because many transportation projects take years to design, it is imperative that Environmental Planning be involved from the conceptual stage of each project idea (e.g., Purpose and Need) to the completion of the NEPA document and implementation of mitigation. This approach ensures that 1) all alternatives are explored, 2) viable ones move forward so that NEPA compliance is assured, and 3) projects are not halted because of failure to comply with environmental laws and regulations during pre-planning and planning. Sometimes state transportation agencies develop projects and the select route, then request environmental compliance documents to justify the type of project and location. Under the "Approach to Environmental Document Preparation" section, the application alludes to this process by stating, "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." This section does not mention whether EP is participating in the planning or feasibility study or whether resource categories that affect the human environment will be included in the planning or feasibility study. 40 CFR 1502.5 states that the NEPA document "shall be prepared early enough so that it can serve practically as an important contribution to the decision-making process and will not be used to rationalize or justify decisions already made."

Later in this application is one sentence that says, "Through EP's [Environmental Planning] coordination with the MPD [Multi-modal Planning] and IDO [Infrastructure Delivery and Operations], ADOT employs a multi-phased project development process that integrates environmental requirements with planning and engineering design." However, we are unclear as to when Environmental Planning's involvement begins, how it occurs, and with what frequency it occurs from pre-planning through project completion. If it does not begin at the pre-planning stage, then this approach would violate NEPA as CEQ 40 CFR 1500.2(e) states that federal agencies shall "Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment."

We were unable to tell from the description of ADOT's organization and the organization chart, if NEPA planners and Environmental Planning's specialized staff (e.g., biologists) are integrated into the operation of ADOT's Divisions of Infrastructure Delivery and Operations, Multi-modal Planning, Transportation System Management and Operations, and Major Projects Alternative Delivery that are under the Deputy Director of Transportation/State Engineer. Please provide additional information to show how ADOT will comply with these and other relevant section of NEPA's implementing regulations.

9. Scoping for Projects Identified for Categorical Exclusion: We commend ADOT on its Guidelines for Agency and Public Scoping for Projects with Categorical Exclusions (2018) and request to be included in the list of Scoping Contacts for proposed project that occur within the range of the Mojave desert tortoise or the Sonoran desert tortoise.

10. Mitigation beyond Construction Periods: The "Environmental Commitments" subsection under "Approach to Environmental Document Preparation" mentions the "Resident Engineers with assistance from District Environmental Coordinators (DECs), and from Environmental Planning staff as necessary, ensure the environmental commitments are implemented during construction." Sometimes environmental commitments are implemented during maintenance projects or are ongoing (e.g., maintenance of tortoise exclusion fencing). Please ensure that maintenance projects and maintenance activities are included in the implementation of environmental commitments including mitigation.

11. NEPA Resource Categories: In several areas of the application, ADOT mentions specific resource categories “such as: air quality, biology, cultural resources, hazardous materials, noise analysis, and water resources.” We presume that these are the most common resource categories affected by FHWA/ADOT projects, and other resource categories, such as soils, climate change, and recreation, would be analyzed when applicable. We suggest that ADOT add language to its application that clarifies its inclusion and analysis of other resource categories in NEPA documents so it is clear and not presumed.

12. Mitigation and Adaptive Management: We are unsure of ADOT's commitment to develop and implement appropriate mitigation as defined in 40 CFR 1508.20. It appears from ADOT's list of Commonly Used Mitigation Measures (<https://www.azdot.gov/docs/default-source/epgm--nepa-process-guidance-manual/mitigation-061217.pdf?sfvrsn=18>), that for biological resources, ADOT does not compensate for the degradation or loss of biological resources, and its other mitigation measures temporarily avoid or minimize adverse impacts. Thus, residual and long term impacts remain for the uses three of the five forms of mitigation in 40 CFR 1508.20 for wildlife and one for the Sonoran desert tortoise.

In addition, we found no commitment in the application to implement adaptive management to ensure that the mitigation was implemented effectively, no mention of qualifications and approaches to analyze cumulative impacts, and no discussion of developing /implementing mitigation for cumulative impacts (our specific concern being the Mojave desert tortoise and Sonoran desert tortoise and their habitats). These are key regulatory requirements that federal agencies often find themselves deficient in when challenged in federal court. We suggest that ADOT strengthen its discussion on how it is qualified or will become qualified to implement successfully these areas of NEPA's implementing regulations.

Because of these deficiencies, we are not sure that ADOT understands fully the meaning of mitigation as defined by the Council on Environmental Quality's regulations. In 40 CFR 1508.20, mitigation "includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.”

In ADOT's application, it uses the terms “Avoid/Minimize/Mitigate of resources” (p.30). “Avoid” and “minimize” are forms of mitigation. Thus, this line should say Avoid/Minimize/other forms of Mitigation.” The Council is concerned that ADOT's absence of experience in describing the federal regulatory definition of mitigation and practice of implementing a few forms of mitigation would continue in the future. Thus, we request that the application be amended to include language of ADOT's commitment to implement all forms of mitigation regarding adverse impacts to biological resources, and specifically those affecting the Mojave and Sonoran desert tortoises and their habitats.



In reviewing ADOT's Commonly Used Mitigation Measures, we note that there is one mitigation measure for the Sonoran Desert tortoise (a handling protocol) but no mitigation measures for the federally threatened Mojave desert tortoise. We request that you add appropriate mitigation measures to this list. To assist ADOT with this, the Council has developed "A Compilation of Frequently Implemented Best Management Practices to Protect Mojave Desert Tortoise during Implementation of Federal Actions" (DTC 2017) ([http://www.deserttortoise.org/BMP\\_factsheets/dtc\\_construction\\_BMPs\\_090517.pdf](http://www.deserttortoise.org/BMP_factsheets/dtc_construction_BMPs_090517.pdf)). Many of these measures would apply to the Sonoran desert tortoise.

One mitigation measure that should be implemented by ADOT is tortoise exclusion fencing along roadway and roadway-related facilities. We request that ADOT add to its Commonly Used Mitigation Measures the installation and maintenance of desert tortoise exclusion fencing along roadways and developments associated with FHWA/ADOT road improvements (e.g., rest areas, weigh stations, etc.) when these projects occur in desert tortoise habitat or in habitats that serve as linkages between desert tortoise populations. In addition, to facilitate safe passage from one side of a roadway to the other thereby minimizing mortality from vehicles and human collecting, the design, construction, and maintenance of culverts and bridges should be implemented to accommodate all sizes classes of desert tortoises.

Given the documented adverse effects of the road effect zone for wildlife species, especially those with certain behaviors or characteristics that include the Mojave and Sonoran desert tortoises (Boarman and Sazaki 2006, Brocke et al. 1988, Carr and Fahrig, 2001, Forman *et al.* 1997, (Forman 2002, as cited in van der Ree et al. 2011, Gibbs and Shriver, 2002, Gucinski et al. 2001, Jaeger 2002, Jaeger et al. 2005a, 2005b, Jalkotzy et al. 1997, Karraker and Gibbs, 2011, Lovich and Bainbridge 1999, Nafus et al. 2013, Noss 1993, Roedenbeck et al. 2007, Rytwinski and Fahrig, 2011, 2012, van der Ree et al. 2011, and Von Seckendorff Hoff and Marlow 2002), the Council strongly urges ADOT to add tortoise exclusion fencing and safe passages under roadways as a common and standard mitigation measure that is implemented and maintained for all roadway construction, maintenance, and improvement projects with a federal nexus that occur in habitats and linkages between populations.

This request is supported by ADOT's participation in the Candidate Conservation Agreement for the Sonoran Desert Tortoise (USFWS et al. 2015) in which ADOT has 1) committed to partner with Arizona Game and Fish Department and other partners to facilitate development of conservation approaches and research related to *increasing road permeability* for the Sonoran desert tortoise; 2) coordinate and partner with State and Federal agencies and other interested parties to *incorporate project design features where warranted to minimize Sonoran desert tortoise habitat fragmentation*; and 3) coordinate and partner with State and Federal agencies and other interested parties to *incorporate project design features where warranted to minimize Sonoran desert tortoise vehicle strikes*.

A second commonly used mitigation measure that ADOT should add to its list of Commonly Used Mitigation Measures is that ADOT compensates for occupied and unoccupied habitats of the Mojave and Sonoran desert tortoises and linkage habitats between tortoise populations that is degraded or lost from implementation of the proposed projects. We urge ADOT to secure compensation lands with a conservation easement in perpetuity and funded for their long-term management to comply with 40 CFR 1508.20.



We presume that as a participating agency in the Candidate Conservation Agreement for the Sonoran desert tortoise (USFWS et al. 2015), it is ADOT's intent, through its actions, to help ensure that the Sonoran desert tortoise is conserved in Arizona, and that its population status improves so there is no need to list it under the federal Endangered Species Act in the future. As such, we applaud ADOT for its proactive approach to contributing to the conservation of this species and request that ADOT's contributions include proactive measures such as constructing and maintaining exclusion fencing for desert tortoises now rather than waiting until population numbers decline.

13. Quality Assurance/Quality Control: ADOT mentions in their application a QA/QC Plan and that a Procedures Manual "... will be completed and in place at the time the NEPA Assignment MOU becomes effective" (p. 27). The application contains links to other referenced documents but we did not find documents on how ADOT will implement its new responsibilities under the NEPA Assignment Program. The application refers to a Document Review Form and CE QA/QC Form and says that these existing forms will be similar for the new QC review in the QA/QC Plan, but we were unable to find these forms in the application. The QA/QC Plan and Procedures Manual are an integral part of the application as they demonstrate the criteria, standards, and process ADOT would implement under the NEPA Assignment Program. We request that ADOT make draft copies of these two documents available for public review prior to the effective date of the MOU.

14. Independent Environmental Decision Making: Under the Independent Environmental Decision-Making section (p. 30), ADOT says, "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. If ADOT is both the environmental decision-maker and the project sponsor, and the State Engineer supervises the Environmental Planning division, three engineering divisions (Infrastructure Delivery and Operations Division, Major Projects Division, and Multimodal Planning Division) (see organization chart on p. 8 of the Application), we are not sure how the environmental decision-making is considered independent. With this organization, there is the likelihood of unintentional pressure on the Environmental Planning Division to act according to the State Engineer's wishes or beliefs as he/she supervises all these divisions. To ensure independent decision making, Environmental Planning and associated resources should be its own branch and its supervisor should have status commensurate with the State Engineer.

15. Questions on Section 7 of the ESA: On page 32 of the Application, ADOT discusses its involvement with the USFWS and assuming responsibilities from FHWA for informal and formal consultation under section 7(a)(2) of the Endangered Species Act. "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." However, we found no mention of whether FHWA would delegate section 7(a)(1) responsibilities to ADOT and if ADOT would accept them. To conserve or recover a species listed under the ESA, both sections 7(a)(1) and 7(a)(2) must be implemented. If only section 7(a)(2) is implemented, the listed species will continue to decline as this process only requires that adverse effects be minimized, and the eventual result will be a jeopardy opinion or extinction. Given the Council's interest in the conservation/recovery of the threatened Mojave desert tortoise and conservation of the Sonoran desert tortoise, we request that ADOT provide information in the application that clarifies if ADOT or FHWA will be responsible for implementation of section 7(a)(1) of the Endangered Species Act.

16. Training to Implement the NEPA Assignment Program: The application has a section on "Training to Implement the NEPA Assignment Program." While ADOT mentions some courses that staff has recently completed, we note that it takes many years to become experienced in the implementation of NEPA. The same statement can be made of the Endangered Species Act, Clean Water Act, and other federal environmental regulations. We presume and that for the next few years ADOT will rely on the expertise of and consult with the FHWA, USFWS, USEPA, and other federal agencies until it becomes experience in implementing NEPA and other federal environmental regulations and we encourage ADOT to do this.

For training on the Mojave and Sonoran desert tortoises, we refer ADOT to the Council's website <http://www.deserttortoise.org/training.html>. Currently the Council offers three courses, an introduction to desert tortoises and field techniques, an authorized biologist course, and a health assessment course. We are developing a desert tortoise handling course. The Council developed/is developing these courses in coordination with the USFWS. ADOT may want its employees or consultants to participate in these courses.

We appreciate this opportunity to provide input and trust that our comments will help ADOT with its application for implementation of ADOT's NEPA responsibilities, and will help ADOT with the implementation of processes and procedures to conserve Mojave and Sonoran desert tortoises and their habitats in Arizona. Herein, we ask that the Desert Tortoise Council be identified as an Affected Interest for this and all other ADOT NEPA projects that may affect species of desert tortoises, and that any subsequent environmental documentation for NEPA projects is provided to us at the contact information listed above. We also ask that ADOT consider the Council as an interested party to incorporate project design features to minimize Sonoran desert tortoise habitat fragmentation and to minimize Sonoran desert tortoise vehicle strikes and other forms of mortality directly or indirectly caused by roadway construction, use, or associated projects (e.g., rest areas, weigh station, etc.).

Regards,



Edward L. LaRue, Jr., M.S.

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

### **Literature Cited**

Boarman, W. I., and M. Sazaki. 2006. A highway's road-effect zone for desert tortoises (*Gopherus agassizii*). *Journal of Arid Environments* 65:94–101.

Brocke, R.H., J.P. O'Pezio, K.A. Gustafson. 1988 A forest management scheme mitigating impact of road networks on sensitive wildlife species. In: R.M. Degraaf and W.M. Healy (eds): *Is forest fragmentation a management issue in the northeast?* GTR-NE-140, U.S. Department of Agriculture, Forest Service, Northeastern Forest Experimental Station, Radnor, PA: 13-17.

- Carr, L. W., and L. Fahrig. 2001. Effect of road traffic on two amphibian species of different vagility. *Conservation Biology* 15(4):1071-1078.
- Forman, R.T.T. 2002. Foreword. Pages vii - x in K. J. Gutzwiller, editor. *Applying landscape ecology in biological conservation*. Springer, New York, NY.
- Forman, R.T.T., D.S. Friedman, D. Fitzhenry, J.D. Martin, A.S. Chen, and L.E. Alexander. 1997. Ecological effects of roads: toward three summary indices and an overview of North America. In: Canter, K. (ed) *Habitat fragmentation and infrastructure*. Minister of Transport and Public Works and Water Management, Delft, Netherlands, p 40-54.
- Gibbs, J.P., and W.G. Shriver. 2002. Estimating the effects of road mortality on turtle populations. *Conservation Biology* 16, 1647–1652.
- Gucinski, H., M. Furniss, R. Ziermer, and M. Brookes. 2001. Forest Service roads: a synthesis of scientific information. Gen Tech Rep PNW-GTR-509.1, U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station, Portland, OR.
- Jaeger, J. 2002. *Landscape fragmentation. A transdisciplinary study according to the concept of environmental threat*. Verlag Eugen Ulmer, Stuttgart, Germany.
- Jaeger, J.A.G., L. Fahrig, and K.C. Ewald. 2005a. Does the configuration of road networks influence the degree to which roads affect wildlife populations? International Conference on Ecology and Transportation 2005 Proceedings, Chapter 5 - Integrating Transportation and Resource Conservation Planning - Landscapes and Road Networks, pages 151-163. August 29, 2005.
- Jaeger, J.A.G., J. Bowman, J. Brennan, L. Fahrig, D. Bert, J. Bouchard, N. Charbonneau, K. Frank, B. Gruber, and K. Tluk von Toschanowitz. 2005b. Predicting when animal populations are at risk from roads: an interactive model of road avoidance behavior. *Ecological Modelling* 185 (2005) 329–348.
- Jalkotzy, M.G., P.I. Ross, and M.D. Nasserden. 1997. The effects of linear developments on wildlife: a review of selected scientific literature. Arc Wildlife Services Ltd, prepared for Canadian Association of Petroleum Producers, Calgary, Alberta.
- Karraker, N.E., and J.P. Gibbs. 2011. Contrasting road effect signals in reproduction of long-versus short-lived amphibians. *Hydrobiologia* 664, 213–218.
- Lovich, J.E., and D. Bainbridge. 1999. Anthropogenic degradation of the southern California desert ecosystem and prospects for natural recovery and restoration: *Environmental Management*, v. 24, p. 309–326.
- Nafus, M.G., T.D. Tuberville, K. A. Buhlmann, and B.D. Todd. 2013. Relative abundance and demographic structure of Agassiz's desert tortoise (*Gopherus agassizii*) along roads of varying size and traffic volume. *Biological Conservation* 162 (2013) 100–106.



- Noss, R.F. 1993. Wildlife corridors. D. S. Smith and P. C. Hellmund (eds). Ecology of greenways. University of Minnesota Press, Minneapolis.
- Roedenbeck, I.A., L. Fahrig, C. S. Findlay, J. E. Houlahan, J.A.G. Jaeger, N. Klar, S. Kramer-Schadt, and E. A. van der Grift. 2007. The Rauischholzhausen Agenda for Road Ecology. Ecology and Society 12(1): 11. [online]  
URL: <http://www.ecologyandsociety.org/vol12/iss1/art11/>
- Rytwinski, T., and L. Fahrig. 2011. Reproductive rate and body size predict road impacts on mammal abundance. Ecological Appl. 21, 589–600.
- Rytwinski, T., and L. Fahrig. 2012. Do species life history traits explain population responses to roads? A meta-analysis. Biol. Conserv. 147, 87–98.
- U.S. Fish and Wildlife Service and Cooperating Agencies. 2015. Candidate conservation agreement for the Sonoran desert tortoise (*Gopherus morafkai*) in Arizona. May 27, 2015.
- van der Ree R., J. A. G. Jaeger, E. A. van der Grift, and A. P. Clevenger. 2011. Effects of roads and traffic on wildlife populations and landscape function: Road ecology is moving toward larger scales. Ecology and Society 16(1): 48. [online] URL: <http://www.ecologyandsociety.org/vol16/iss1/art48>.
- Von Seckendorff Hoff, K. and R. Marlow. 2002. Impacts of vehicle road traffic on desert tortoise populations with consideration of conservation of tortoise habitat in southern Nevada. Chelonian Conservation and Biology 4:449-56.

| Individual Comment      |             |  |
|-------------------------|-------------|--|
| Desert Tortoise Council | Comment #10 | Comment Reply<br>(Application changes noted in reply)  |
|                         |             | <p>1. <u>Construction vs. Maintenance Projects</u></p> <p>"Maintenance" as defined as what is eligible for federal funding as part of the Federal-aid Highway Program is not included in the Application because the FHWA Environmental Review Responsibility does not apply unless there is a federal action. Certain activities such as a federal permit under the Clean Water Act could require NEPA regardless of funding of the activity. However most maintenance activity is State funded and does not require a NEPA decision. FHWA considers "<a href="#">routine maintenance</a>" as ineligible for Federal-aid funding and therefore does not require NEPA for these maintenance activities. Guidance on maintenance activities is included in this <a href="#">ADOT Environmental Review Guide for Operations</a> which has been added to the Application for reference. Maintenance is part of "operating" a highway system but to clarify the word "maintaining" has been added to the first sentence under "<a href="#">Existing State Organization</a>" in the Application.</p> <p>2. <u>Regulatory Compliance Beyond NEPA</u></p> <p>FHWA traditionally refers to NEPA as the "umbrella law" as the coordination and consultations required by the "other" environmental laws are included in the "NEPA process" and ultimate NEPA Document for a Federal-aid Highway Program project. Also, the MOU lists all of the other laws and Executive Orders to which the approval authority will apply. For the Endangered Species Act (ESA) ADOT has qualified staff biologists who are responsible for the environmental review and consultation requirements of the ESA. There are many components to the biological aspects of the process and the <a href="#">ADOT Environmental Planning Biology</a> website contains a vast amount of information that can be publically reviewed. Coordination with resource agencies and tribes is described on pages 31 through 33 of the Application. Additional information on all of the other technical areas of Environmental Planning that perform environmental consultation and analysis can be reviewed on the <a href="#">ADOT Environmental Planning</a> website. As noted in the Application additional guidance updates are ongoing in conformance with 23 CFR 773.109(a)(3)(ii) and will be in place at the time the MOU becomes effective. A hyperlink has been added at the end of the <a href="#">Consultation and Coordination with Resource Agencies and Tribes</a> section of the Application.</p> <p>3. <u>NEPA Assignment Program Evaluations</u></p> <p>ADOT self-assessments are described on page 35 of the Application. The current <a href="#">Quality Assurance/Quality Control Plan</a> (page 8) has information on self-assessments related to CEs and this guidance will be expanded for full NEPA</p> |

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| Desert Tortoise Council | Comment #10 | Comment Reply<br>(Application changes noted in reply)  |
|                         |             | <p>Assignment. A sample of an FHWA audit can be viewed on the <a href="#">Federal Register</a>.</p> <p>4. <u>Existing versus Future Environmental Laws, Regulations and Executive Orders</u></p> <p>ADOT will assume future environmental laws and changes as would be applicable to FHWA. A sentence has been added to § 773.109(a)(2) to clarify that FHWA will transmit new requirements to ADOT.</p> <p>5. <u>Planning, Constructing, and Operating versus Maintaining</u></p> <p>The application has been modified to add “maintaining” to the referenced section. Transfers/turn-back of State routes has been added under State Transportation Board responsibilities.</p> <p>6. <u>Governor-appointed Director and Board:</u></p> <p>Under <u>Existing State Organization</u> in the application, “independent” has been changed to “separately appointed.”</p> <p>7. <u>Centralized Review and Approval of Environmental Documents</u></p> <p>ADOT recognizes the importance of the desert tortoise and currently implements both mitigation measures and conservation actions to support desert tortoises. ADOT regularly provides education to staff and contractors ahead of work in suitable habitat for tortoises and includes additional commitments as warranted by the type of activities in each construction or maintenance project. As described below in the comments on ESA, ADOT also works to promote tortoise conservation by promoting connectivity and participating in the Sonoran Desert Candidate Conservation Agreement. ADOT has also pursued research funding for desert tortoise through the FHWA “pooled fund” research program. Applications that may include this research are currently being reviewed by ADOT Research.</p> <p>8. <u>Timing of Environmental Planning’s Participation in Project Development</u></p> <p>ADOT’s implementation of the environmental review process is integral with the project development process and consistent with 40 CFR §§ 1500.2 and 1501.2. The “planning” cited here is in reference to the environmental review process/project development process, including preliminary engineering, as opposed to urban and statewide transportation planning as defined under 23 USC §§ 134 - 135 and FHWA’s implementing regulations 23 CFR. § 450. NEPA is not required for pre-project development “planning decisions” per 23 CFR §§ 450.224 &amp; 450.338. However, ADOT Environmental Planning is involved in high-level</p> |

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| Desert Tortoise Council | Comment #10 | Comment Reply<br>(Application changes noted in reply)   |
|                         |             | <p>planning studies such as a tiered (or programmatic) EIS’ and studies performed consistent with 23 CFR 450 Appendix A – Linking the Transportation Planning and NEPA Processes. Though not conducted very often other ADOT planning studies such as feasibility studies include “environmental overviews” which take environmental resources and constraints into consideration in order to avoid fatal flaws and delay during the NEPA and project development phase. A sentence has been added to the Application under Class of Action Determinations to clarify this.</p> <p>40 CFR 1502.14(a) &amp; 1502.14 are followed by implementing environmental review in conformance with 23 USC 139 – Efficient Environmental Review, which implements NEPA’s requirement to evaluate alternatives in an Environmental Impact Statement. Page 14 of the Application includes a reference to FHWA guidance for the preparation and processing of EISs, Technical Advisory T6640.8A - Guidance for Preparing and Processing of Environmental and Section 4(f) Documents, which includes “purpose and need” and alternatives development. Pages 19 and 20 also reference the new EA/EIS Guidance that will outline alternatives development and those pages also list other guidance material used by FHWA and State DOTs to implement NEPA requirements in conformance with CEQ regulations and FHWA’s implementing regulations 23 CFR 771. The new guidance will be in place at the time the MOU becomes effective. Since this guidance is the State’s version of how to implement long-standing FHWA practice which State DOT’s have been implementing for decades as the preparer of environmental documents, staff training will consist of changes to the taking over “FHWA responsibility” which is the approval portion of environmental review and not the entire environmental document and project development process.</p> <p>The integration of Environmental Planning staff with other ADOT Divisions is included in the Application. The third paragraph under <u>Environmental Document Preparation</u> in the Application states that Environmental Planning is integrated with the other Divisions and “coordinates, prepares, and provides the environmental compliance for all ADOT projects.” To emphasize this, an additional sentence has been added: “All construction projects, regardless of under which ADOT Division they are developed, receive an environmental clearance from ADOT Environmental Planning.” See also the table on page 13 that lists Environmental Planning involvement during Programming and Planning.</p> <p>9. <u>Scoping for Projects Identified for Categorical Exclusion</u></p> <p>The Desert Tortoise Council can be scoped for major projects involving an Environmental Document. The CE Scoping Guidelines are tailored for scoping</p> |



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| Desert Tortoise Council | Comment #10 | Comment Reply<br>(Application changes noted in reply)  |
|                         |             | <p>commensurate with the level of impacts of the project.</p> <p>10. <u>Mitigation Beyond Construction Periods</u></p> <p>A sentence in the application has been added to the referenced section under “Approach to Environmental Document Preparation” to clarify the District is responsible for maintenance post-construction.</p> <p>11. <u>NEPA Resource Categories</u></p> <p>The technical specialists listed in the Application are the areas commonly needed for environmental review of highway projects. An additional sentence has been added under Environmental Document Preparation in the Application: “Environmental Planners are responsible for ‘other’ areas such as recreation and parks (US DOT Act of 1966). Environmental Planners also act as Environmental Project Managers, which is their actual personnel classification title, and coordinate other areas that may require specialized review.” As referenced in the Application the <a href="#">FHWA Technical Advisory T6640.8A</a> lists the Environmental Consequences that may have to be reviewed as part of an EIS. Consultants are used to augment ADOT staff as needed in conducting environmental review for additional areas of expertise. The use of consultants is noted under the section Existing Environmental Planning Staff in the Application. There is also a section of the Application that spells out the use of consultants as needed: <b>§ 773.109(a)(4)(iii): Use of outside consultants for the NEPA Assignment Program.</b> “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.”</p> <p>12. <u>Mitigation Measures</u></p> <p>There may be a misunderstanding of the "Commonly Used Mitigation Measures" referenced in this comment. These are only a list of 'often used' commitments that have historically been included in ADOT projects. These are not an all-encompassing list nor does it include any potential project specific mitigation measures such as wetlands compensation, tree plantings or wildlife passage accommodations. Desert tortoise mitigations are usually always unique as well. The Commonly Used list is usually not a reference for Desert Tortoise language. ADOT also has some standard specifications that address environmental commitments such as discovery during construction and a separate <a href="#">Commitment Matrix</a> for Biological Consultations. Additional supplemental environmental specifications are also being developed and will be phased into the process in part to</p> |

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| Desert Tortoise Council | Comment #10 | Comment Reply<br>(Application changes noted in reply)  |
|                         |             | <p>replace the “Commonly Used” list.</p> <p><i>"Avoid/minimize/mitigate"</i></p> <p>ADOT understands that avoidance and minimization can be considered types of mitigation. Under <u>Environmental Document Preparation</u> of the Application ADOT’s approach is defined as follows: “This determination is used as a guide for how a project should be developed to avoid, minimize, or offset impacts on the environment.” The table in the Application that used “avoid/minimize/mitigate” has been adjusted for consistency.</p> <p>The ADOT parlance is to use “environmental commitments” as an overarching term that could include measures to avoid or minimize impacts to a resource as well as what we call project specific mitigation measures that compensate for an impact. This is consistent with the American Association of State Highway and Transportation Officials (AASHTO) Handbook and FHWA terminology that is used in complying with Section 4(f) of the US DOT Act of 1966.</p> <p>AASHTO <a href="#">Practitioner’s Handbook</a></p> <p>See page 1 - ("As part of the environmental review process .....specific commitments to avoid, minimize, and mitigate environmental impacts.")</p> <p>See page 2 - <b>Types of Environmental Commitments.</b> “As used in this Handbook, the term environmental commitment includes any action that (1) is intended to avoid, minimize, and mitigate environmental impacts of a project...”</p> <p>Also see <a href="#">FHWA Section 4(f) Tutorial</a> as describing impacts to Section 4(f) properties:</p> <p>"After all minimization efforts have been explored, mitigation measures are typically pursued. Mitigation entails measures to compensate for a Section 4(f) impact that cannot be avoided and should be developed in consultation with the official(s) with jurisdiction."</p> <p>13. <u>Quality Assurance/Quality Control</u></p> <p>Under the <u>Current Quality Assurance / Quality Control Procedures</u> Section in the Application is a reference to the current QA/QC &amp; Procedures which contains a hyperlink to the document located on the Environmental Planning website under the <a href="#">NEPA Guidance</a> tab. The currently used Document Review Form and QC Checklist for reviewing CEs are included in the Appendix. Similar forms will be implemented for NEPA Assignment (EA/EIS review and approval). The updates are still in</p> |

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| Desert Tortoise Council | Comment #10 | Comment Reply<br>(Application changes noted in reply)   |
|                         |             | <p>progress and will not be made available for review before they are finalized. FHWA will review the draft updates.</p> <p>14. <u>Independent Decision Making</u></p> <p>The placement of Environmental Planning within ADOT's organization structure is comparable or more independent to the placement of those responsible for environmental reviews within other State DOT's that have assumed FHWA's environmental review responsibility under 23 USC §§ 326 – 327.</p> <p>15. <u>Questions on Section 7 of the ESA</u></p> <p>Under CE and NEPA Assignment ADOT assumes all of FHWA's "project level" responsibility for the relevant components of laws and regulations related to a Federal-aid Highway Program project including the Endangered Species Act. FHWA has established the Eco-Logical program to support partnering and planning to improve outcomes for ecosystems and listed species. Under this program, FHWA facilitates conservation planning for ecosystems and listed species. At a state level, ADOT participated in the Arizona Wildlife Linkages Workgroup to develop a statewide list of important wildlife linkages and continues to work with partners throughout the state to promote wildlife connectivity for both listed and game species. ADOT works to protect both Mohave and Sonoran desert tortoises by building tortoise exclusion fencing to prevent access to the road and providing tortoise friendly culverts to facilitate connectivity. ADOT has supported research by the Arizona Game and Fish Department to continue to improve designs to facilitate tortoise connectivity. ADOT is also a signatory to the Sonoran Desert Tortoise Candidate Conservation Agreement. As part of that agreement, ADOT has committed to educating staff and contractors about tortoise conservation, avoiding impacts to tortoises from construction and maintenance activities, managing invasive plants, and partnering with others to minimize habitat fragmentation. These efforts are consistent with the mandate in Section 7(a)(1) for efforts and programs for the conservation of threatened and endangered species.</p> <p>16. <u>Training to Implement the NEPA Assignment Program</u></p> <p>Though NEPA Assignment may be a new program for ADOT, implementing the environmental review process including NEPA, ESA and other relevant federal laws is not new. ADOT has trained and experienced biologists who regularly consult with the USFWS. ADOT either prepares or oversees the preparation of biology documents in project development and drafts the Section 7 consultation letters that are sent to FHWA for review and signature. ADOT has routinely served</p> |

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| Desert Tortoise Council | Comment #10 | Comment Reply<br>(Application changes noted in reply)   |
|                         |             | <p>as the designated non-federal representative for FHWA for informal consultation and closely manages formal consultation as well. NEPA Assignment will change the existing process mainly by allowing ADOT to initiate consultation directly rather than routing correspondence through FHWA.</p> <p>ADOT biologists attend species-specific trainings as time and resources allow. As outlined in the Application the biologists recently attended training with the USF&amp;WS. We look forward to participating in Desert Tortoise Council trainings as we are able and encourage consultants to take advantage of such opportunities as well. ADOT biologists are planning to attend the Desert Tortoise Council symposium in Tucson in 2019.</p> |



## Paul O'Brien

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**From:** meek, clifton <meek.clifton@epa.gov>  
**Sent:** Monday, July 30, 2018 5:15 PM  
**To:** Paul O'Brien  
**Cc:** Karla Petty (FHWA); Rice, Jesse M SPL; Cheri Boucher; Lehman, Robert; Dunning, Connell; Ziegler, Sam; Goforth, Kathleen; Wamsley, Jerry; Wampler, David; Johnson, Kathleen  
**Subject:** EPA Comments on the ADOT Draft NEPA Assignment Application  
**Attachments:** 2018-07-30\_ADOT\_NEPA\_ASSIGNMENT.PDF

Hi Paul-

Please find attached EPA's comments on the ADOT Draft Application for Assumption of Federal Highway Administration National Environmental Policy Act Responsibilities (NEPA Assignment). We appreciate the opportunity to provide recommendations on this Draft Application, and look forward to maintaining our strong working relationship with ADOT as you further develop your NEPA Assignment program. Should you have any questions or concerns regarding our comments please contact me at 415-972-3370 or [meek.clifton@epa.gov](mailto:meek.clifton@epa.gov).

Thanks,

Clifton

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Clifton Meek, Life Scientist  
U.S. EPA, Region 9  
Environmental Review Section - Transportation Team  
75 Hawthorne Street, ENF 4-2  
San Francisco, CA 94105

phone: 415-972-3370  
[meek.clifton@epa.gov](mailto:meek.clifton@epa.gov)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION IX**

**75 Hawthorne Street  
San Francisco, CA 94105**

July 30, 2018

Paul O'Brien, P.E.  
Environmental Planning Administrator  
Arizona Department of Transportation  
1611 W. Jackson St.  
Mail Drop EM02  
Phoenix, AZ 85007

Re: ADOT Draft Application for Assumption of Federal Highway Administration National Environmental Policy Act Responsibilities.

Dear Mr. O'Brien,

Thank you for the opportunity to review the ADOT Draft Application for Assumption of Federal Highway Administration National Environmental Policy Act Responsibilities (NEPA Assignment). EPA recognizes that, with appropriate procedures put in place, NEPA Assignment can be an effective tool to facilitate improved coordination and streamlining of environmental reviews. We provide the following recommendations for your consideration as you proceed with development of ADOT's NEPA Assignment program.

NEPA Assignment Manager

The NEPA Assignment Manager will play an integral role in ensuring the enduring success of the ADOT NEPA Assignment program through the relationships they build with external stakeholders involved in the NEPA process. EPA recommends that the NEPA Assignment Manager serve as a central point of contact for all environmental resource agencies involved in the review of ADOT transportation projects, and seek to provide up to date project information to interested parties. As such, it is important that they be knowledgeable about and aware of the status of all ADOT and Local Public Agency projects that are subject to Environmental Assessment (EA) and Environmental Impact Statement (EIS) level review under NEPA.

Interagency Coordination and Environmental Review Protocol

A critical element of the NEPA review process is robust and regular coordination with environmental resource agencies, including EPA. EPA has appreciated the monthly agency meetings, regular updates, and improved processes put in place on the Interstate 11 and Sonoran Corridor projects to ensure agencies are able to provide early feedback throughout project analysis. We recommend that a similarly structured "Interagency Coordination and Environmental Review Protocol" be developed for all projects requiring an EIS or complex EA,

whereby agencies are invited to actively participate throughout the NEPA review process to identify concerns and propose solutions. An Interagency Coordination and Environmental Review Protocol outlines how often resource agency meetings will take place during environmental review of a project, as well as the particular steps (milestones) during environmental review when agencies will be asked to provide formal comment on project documents. Importantly, an effective Interagency Coordination and Review Protocol should integrate a “feedback loop” so that agencies understand how, and in what manner, they will receive a response to comments they have provided. A commitment to meaningful coordination allows for resolution of issues early in a project timeline and fosters greater trust between agencies. Some examples of typical steps that form interagency coordination and review procedures can be found in the 2015 Red Book at <https://www.transportation.gov/sites/dot.gov/files/docs/mission/transportation-policy/permittingcenter/286606/redbook2015.pdf>

#### NEPA Assignment Meetings

In order to ensure continued effective coordination between ADOT and environmental resource agencies, we recommend that ADOT initiate a quarterly NEPA Assignment/Transportation Issues Meeting with all resource and regulatory agencies regularly involved in Arizona highway projects. These meetings present an opportunity for ADOT to provide state and federal agencies with updates on projects that are currently undergoing NEPA analysis, as well as provide information on any projects that may be initiating NEPA review in the near future. These meetings can also provide a forum to discuss interagency challenges, complex environmental issues that have surfaced in project review, or new legislation that is pertinent to interagency coordination and/or NEPA review. We believe the Transportation Environmental Resource Council (TERC) sponsored by Colorado DOT and FHWA for transportation projects in the state of Colorado provides an excellent example of a forum upon which these meetings could be based. Such a meeting could be initially kicked off with a goal of promoting a smooth transition to NEPA Assignment. Information on the TERC can be found at <https://www.codot.gov/programs/environmental/transportation-environmental-resources-council-terc>.

#### Indirect and Growth-Inducing Impacts

The Draft Application states that the NEPA Assignment Section at ADOT will work on special projects related to sustainability, resilience and innovative programs. EPA is encouraged that ADOT is making a commitment to proactively consider sustainability and resilience. While ADOT may not yet have identified special projects to focus on, one area for particular consideration is innovative approaches to addressing indirect and growth-inducing impacts. As an infrastructure agency that influences the timing and/or location of development that takes place in Arizona, it is important that ADOT play a key role in considering mitigation of a project's indirect impacts at the earliest possible stage in project planning, prior to the start of project-level NEPA analysis. This is one of the greatest opportunities provided by early corridor studies, Planning and Environmental Linkages approaches, and Programmatic NEPA analysis. This early consideration is particularly important in areas where critical wildlife movement corridors exist. Given the history of rapid development, and future projected growth in the state, it is crucial that early coordination take place with landowners and local stakeholders to ensure that preservation of these key corridors occurs prior to construction of future transportation facilities and development of the landscape surrounding those facilities. We understand that ADOT has partnered with other state and local stakeholders on the State Route 77 wildlife




corridor project outside of Tucson to secure connectivity on state and private lands between the Tortolita and Santa Catalina Mountains. A similar approach could be effective on other transportation projects throughout the state. We recommend that the ADOT NEPA Assignment team prioritize initiatives and partnering that proactively addresses the indirect and growth-inducing impacts of transportation projects in Arizona. This would allow ADOT to continue addressing the mobility and safety needs of the public, while also demonstrating their strong regard for the natural environment.

We appreciate the opportunity to provide recommendations on this Draft Application, and look forward to maintaining our strong working relationship with ADOT as you further develop your NEPA Assignment program. Should you have any questions or concerns regarding our comments please contact our NEPA lead for Arizona highway projects, Clifton Meek, at 415-972-3370 or meek.clifton@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Connell Dunning", is written over a horizontal line.

 Connell Dunning, Transportation Team Supervisor  
Environmental Review Section  
Enforcement Division

Cc via email: Karla Petty, Federal Highway Administration  
Jesse Rice, U.S. Army Corps of Engineers  
Cheri Boucher, Arizona Game and Fish Department  
Robert Lehman, U.S. Fish and Wildlife Service

| Individual Comment Summary |             |  |
|----------------------------|-------------|--|
| US EPA                     | Comment #11 | Comment Reply<br>(Application changes noted in reply)  |
|                            |             | <p><u>NEPA Assignment Manager</u></p> <p>ADOT and FHWA have procedures in place to meet the requirements needed to deliver the Federal-Aid Highway Program. ADOT standards and procedures will now additionally include a host of new and updated guidance as part of NEPA Assignment. Specific to this guidance for project and technical level discipline a “project-level point of contact” approach remains a focal point. The guidance will continue to provide direction for ADOT’s Environmental Planning on roles and responsibilities including agency and stakeholder coordination. The long-standing project-level communication practices allow the project Environmental Planner to be in the greatest position to provide project information to resource agencies.</p> <p>Having project leads allows the NEPA Assignment Manager to monitor the project activities programmatically. The NEPA Assignment Manager can therefore also act in a role for escalation of project-level issues. The NEPA Manager will retain a high-level awareness of the projects where escalation of issues may be more likely. Regular meetings between the NEPA Assignment Manager and Project Environmental Planners have already been established to monitor all ‘major projects’ (EA/EIS/certain CEs) in advance of NEPA Assignment.</p> <p><u>Interagency Coordination and Environmental Review Protocol</u></p> <p>The level of coordination with the Interstate 11 and Sonoran Corridor Tier 1 EISs are models of project coordination in connection with projects ADOT undertakes. ADOT has protocols in place covering the spectrum of correspondence and outreach - engage customers proactively, telephone and voicemail, email, letter inquiries, and face to face meetings. In addition, the overarching protocol drivers are the 23 USC 139 – Efficient Environmental Review requirements (including a formal Coordination Plan), EA/EIS Guidance, Quality Assurance and Quality Control requirements, resource agency programmatic agreements, as well as the ADOT Public Involvement Plan. Through these requirements a robust ‘feedback loop’ is created at the program and project level.</p> <p>ADOT welcomes and encourages robust resource agency participation that involves diverse groups statewide whose voices and viewpoints provide valuable insight during the decision-making process.</p> <p>The environmental process is a discovery process; therefore sufficient time is incorporated for agency reviews and other foreseeable tasks. During project development unforeseeable items such as changes in laws, regulation, newly listed species, a newly discovered cultural resource, or changes in scope of work may take</p> |

| Individual Comment Summary |             |  |
|----------------------------|-------------|--|
| US EPA                     | Comment #11 | Comment Reply<br>(Application changes noted in reply)  |
|                            |             | <p>place. Therefore, early and often communication with the ADOT Project Manager is critically important as well as frequent communication with the environmental consultant, environmental technical team, resource agencies and land management agencies (CEQ Memorandum: <a href="#">Preparing Efficient and Timely Reviews under NEPA</a> -The Importance of Collaboration and Cooperation)</p> <p><u>NEPA Assignment Meetings</u></p> <p>ADOT and FHWA Arizona Division have long recognized the need for resource agencies to have a format in which to discuss state transportation decisions and plan for environmental stewardship. Due to the importance of this issue ADOT believes there are sufficient elements of MOU 327 to continue quality coordination. In addition, and since FHWA will not have project level participation, ADOT already has in place resource agency programmatic efforts and project level context sensitive solutions that have been shown to be an excellent format to discuss interagency challenges, complex environmental issues at the program and project levels. The three Tier 1 EISs underway will continue the same coordination efforts whether under NEPA Assignment or FHWA lead. In addition to formal liaison agreements, with the USFWS and the Army Corps of Engineers, ADOT has several formal partnerships in place to continue robust resource and land management agency coordination. Based on these processes in place referenced above ADOT is not at this time planning to initiate new multi-agency meetings as the individual project and agency coordination model that FHWA Arizona Division has followed has been working well.</p> <p><u>Indirect and Growth-Inducing Impacts</u></p> <p>ADOT systematically addresses impacts throughout the planning, design, and environmental phases. As it pertains to major studies covered under MOU 327 these important attributes are additionally considered through the Secondary and Cumulative Impacts process. Secondary impacts may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. ADOT will identify the likely, foreseeable, secondary impacts that would result from construction of the proposed action. The purpose of <b>cumulative effects</b> analysis is to ensure that ADOT consider the full range of consequences of actions. ADOT's EA/EIS Guidance will also address secondary and cumulative impacts. Habitat/wildlife connectivity has evolved over the years but is now an embedded part of the project development process and is included in ADOT's <a href="#">guidelines for conceptual engineering studies</a> (See Project Scoping Document Guidelines - Section 5.15 on page 21).</p> |

**Paul O'Brien**

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**From:** Cheri Boucher <cboucher@azgfd.gov>  
**Sent:** Monday, July 30, 2018 4:36 PM  
**To:** Paul O'Brien; Steven Olmsted  
**Cc:** Karla Petty (FHWA); Project Evaluation Program - Game and Fish  
**Subject:** AGFD Comment on ADOT NEPA Assignment for EAs and EIS  
**Attachments:** M18-07061441 ADOT NEPA Asssignment for EA-EIS\_AGFD Comments.PDF

Greetings,  
The Arizona Game and Fish Department's comments on ADOT's NEPA Assignment for EAs and EISs is attached.

Please feel free to contact me with any questions.

Sincerely,





July 30, 2018

Ms. Karla S. Petty  
Arizona Division Administrator  
Federal Highway Administration  
4000 N. Central Ave., Suite 1500  
Phoenix, AZ 85012

Re: ADOT Seeking NEPA Assignment for Environmental Assessments and Environmental Impact Statements

Dear Ms. Petty:

The Arizona Game and Fish Department (Department; AGFD) understands the Arizona Department of Transportation (ADOT) is seeking authority to act as the lead for the National Environmental Policy Act (NEPA), in lieu of the Federal Highway Administration (FHWA), for authority to process Environmental Assessments (EAs) and Environmental Impact Statements (EISs). The Department recognizes this as an important step in streamlining transportation projects and the state's role in coordination of these projects. ADOT has a reliable system in place for coordinating with the Department at the initiation of EA and EIS projects via NEPA scoping letters and for these larger projects the Department requests coordination well in advance of the NEPA scoping process, in order to identify landscape connectivity/wildlife movement issues that could arise from the project. This early coordination is an opportunity to develop design features that not only achieve ADOT's goals and objectives, but that address environmental and safety concerns associated with roadways, including wildlife-vehicle collisions.

Since the Department is the state's authority to manage Arizona's wildlife resources, the Department has the data and expertise to support ADOT's preparation of EAs and EISs to ensure that evaluation of project effects to state Species of Greatest Conservation Need (SGCN) and Species of Economic and Recreation Importance (SERI) are considered. This includes collaboratively seeking ways to minimize fragmentation and loss of habitat for wildlife, and identifying important opportunities to maintain connectivity and wildlife linkages on the landscape. As a Cooperating Agency for EISs, the Department can provide expertise essential to well-informed, comprehensive, and defensible NEPA documents. The Department looks forward to continuing this mutually beneficial collaboration to ensure important wildlife and safety concerns are effectively addressed, including landscape connectivity and wildlife-vehicle collisions.

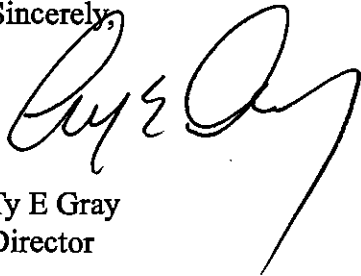
Ms. Karla S. Petty

July 30, 2018

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We look forward to continued collaboration with FHWA and ADOT to ensure effective and streamlined environmental review. If you have any questions or wish to further discuss our comments and concerns, please contact Cheri Boucher, Project Evaluation Program Specialist, at [cboucher@azgfd.gov](mailto:cboucher@azgfd.gov) (623-236-7615).

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty E Gray', with a long, sweeping underline.

Ty E Gray  
Director

cc: Steve Olmstead, ADOT NEPA Assignment Manager  
Paul O'Brien, ADOT Environmental Planning Administrator  
John S. Halikowski, ADOT Director

AGFD# M18-07061441

| Individual Comment                                    |                |   |
|---|----------------|---|
| Maricopa<br>County<br>Department of<br>Transportation | Comment<br>#13 | Comment Reply<br>(Application changes noted in reply)   |
|   |                | <p><u>Local Public Agency Projects</u></p> <p>“Federal-aid Highway Program” has been added in front of “LPA projects” in multiple locations in the Application to clarify that the references to “LPA” projects are to Federal-aid Highway Program projects and not all local projects.</p> <p><u>Assigned Projects</u></p> <p>The third bullet under § 773.109(a)(1) regarding classes of highway projects for which ADOT requests NEPA responsibility has been modified to match the first bullet to declare: “The following project(s) will <i>not</i> be assigned to ADOT.”</p> <p><u>Courtesy Review of an EIS</u></p> <p>There are no requirements in the US Code or federal regulations requiring a “courtesy review.” Multiple layers of review are built into the process including Cooperating and Participating agencies as defined under 23 USC 139 - Efficient Environmental Review. If MCDOT were to sponsor an EIS there are other means to get additional stakeholders involved such as citizens’ advisory teams.</p> |



**Paul O'Brien**

**From:** Marinela Papa Konomi - MCDOTX <MarinelaKonomi@mail.maricopa.gov>  
**Sent:** Monday, July 30, 2018 5:12 PM  
**To:** Paul O'Brien  
**Cc:** Joe Pinto - MCDOTX  
**Subject:** RE: ADOT Application for the Surface Transportation Project Delivery Program

Hello,

MCDOT supports ADOT efforts to increase the efficiency by providing the same level of NEPA compliance for transportation projects as currently under the FHWA responsibility and also the opportunity to introduce improvement to the current process.

Below are general comments to the "ADOTs Draft Application for Assumption of FHWA NEPA Responsibilities".

- The document seems to have different voices (The first part up to page 13, is somehow detached from the rest of the document).
- **Page 3 and 7 of 56 of the document.** A disclaimer is needed with respect to ADOT's responsibility for the LPA projects. IDO is responsible for statewide project delivery of only the LPA projects that request federal funding administered by ADOT.
- **Page 5 of 56 the document Sec 773.109(a)(1): Classes of highway projects for which ADOT requests NEPA responsibility.** It appears that ADOT's intention is to identify the COA for which is requesting NEPA responsibility under the NEPA Assignment Program and also identify the projects that are excluded from this responsibility for each COA. Suggest to re-write the section and clarify which projects are excluded.
- For future projects that need a Class I environmental document (EIS) or complex or controversial Class III environmental document (EA), it is suggested that an independent group of environmental professionals complete a courtesy review, before draft approval.

Thank you for the opportunity to comment.

**Marinela Papa-Konomi**  
*Environmental Planner*  
 Engineering Division  
 O: 602.506.3994  
[MarinelaKonomi@mail.maricopa.gov](mailto:MarinelaKonomi@mail.maricopa.gov)  
[Maricopa County Department of Transportation](http://www.maricopa.gov)  
 2901 W. Durango Street • Phoenix, AZ 85009



**Maricopa County**  
 Department of Transportation

| Individual Comment                                    |                |  |
|---|----------------|--|
| Maricopa<br>County<br>Department of<br>Transportation | Comment<br>#13 | Comment Reply<br>(Application changes noted in reply)  |
|   |                | <p><u>Local Public Agency Projects</u></p> <p>“Federal-aid Highway Program” has been added in front of “LPA projects” in multiple locations in the Application to clarify that the references to “LPA” projects are to Federal-aid Highway Program projects and not all local projects.</p> <p><u>Assigned Projects</u></p> <p>The third bullet under § 773.109(a)(1) regarding classes of highway projects for which ADOT requests NEPA responsibility has been modified to match the first bullet to declare: “The following project(s) will <i>not</i> be assigned to ADOT.”</p> <p><u>Courtesy Review of an EIS</u></p> <p>There are no requirements in the US Code or federal regulations requiring a “courtesy review.” Multiple layers of review are built into the process including Cooperating and Participating agencies as defined under 23 USC 139 - Efficient Environmental Review. If MCDOT were to sponsor an EIS there are other means to get additional stakeholders involved such as citizens advisory teams.</p> |