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# Categorical Exclusion (CE) Checklist Manual

## For Federal-aid Highway Projects



ADOT Environmental Planning



## CONTENTS

OVERVIEW .....	1
REGULATORY FRAMEWORK.....	3
DEFINITION OF A CE .....	3
23 CFR 771.117(a) .....	3
23 CFR 771.117(b) .....	5
TYPES OF CATEGORICAL EXCLUSIONS .....	6
“C-list” Categorical Exclusions .....	6
“D-list” Categorical Exclusions .....	9
CATEGORICAL EXCLUSION DETERMINATIONS.....	9
Planning and Programming Phase .....	9
Preliminary Engineering and Design Phase .....	10
CE and NEPA ASSIGNMENT PROGRAM MOUs .....	12
AUTHORITY .....	12
Approval for Assigned Actions under the 326 MOU (CE Assignment) .....	12
Approval for Assigned Actions under the 327 MOU (NEPA Assignment) .....	12
CE DETERMINATIONS (TYPE OF CE TO APPLY).....	13
23 CFR 771.117(c) .....	13
23 CFR 771.117(d) .....	14
CE Type and Approval Matrix .....	14
CE Checklist .....	15
CATEGORICAL EXCLUSION TYPES - SELECTION EXAMPLES.....	16
EXAMPLE 1: .....	16
EXAMPLE 2: .....	16
EXAMPLE 3: .....	17
EXAMPLE 4: .....	17
EXAMPLE 5: .....	17
PROCESSING THE CE CHECKLIST .....	18
HOW TO INITIATE THE CE CHECKLIST .....	18
PROJECT INFORMATION .....	18
Project Data .....	18
Planning Requirements - Fiscal Constraint .....	19

Planning Requirements - Design Concept and Scope .....	19
CE RE-EVALUATION .....	20
LOCATION AND LIMITS .....	21
PURPOSE AND DESCRIPTION (SCOPE OF WORK) .....	22
TYPE OF CE .....	23
How to Select the CE Type .....	24
ENVIRONMENTAL REVIEW AND CHECKLIST .....	24
Public Coordination.....	28
Federal Agency and Tribal Coordination .....	29
OTHER ENVIRONMENTAL CONSIDERATIONS .....	30
I. VISUAL IMPACTS .....	30
II. PRIME AND UNIQUE FARMLAND .....	30
Type of Farmland .....	31
Farmlands Impacted by Project .....	31
III. SOLE SOURCE AQUIFER .....	31
IV. SECTION 6(F) PROPERTY.....	31
V. Other Technical Considerations .....	31
CE CHECKLIST CONSTRAINTS [23 CFR 771.117(e)] .....	33
Constraints Evaluation .....	33
23 CFR 771.117(e) – Constraints Exceeded .....	38
CE CERTIFICATION AND DETERMINATION:.....	39
Approval Authority.....	40
Certification.....	40
“Other” Environmental Review Laws .....	41
ENVIRONMENTAL COMMITMENTS .....	41
APPROVAL SIGNATURES .....	41
APPENDIX .....	42
ENVIRONMENTAL COMMITMENTS .....	43
ENVIRONMENTAL CLEARANCE, PS&E AND CE VALIDATION .....	46
THE PROJECT FILE.....	47
RE-EVALUATIONS .....	48
Introduction .....	48

Informal Re-evaluations for Minor Changes to Project Scope .....	48
Formal Re-evaluations for Major Changes to Project Scope .....	50
Environmental Assessments and Environmental Impact Statements.....	51
SUMMARY .....	51
FHWA Emergency Relief Program .....	53
General ER Procedures for Immediate Repairs .....	55
AIR QUALITY CONSIDERATIONS .....	58
NOISE CONSIDERATIONS .....	60
BIOLOGY - OTHER CONSIDERATIONS:.....	62
Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act .....	62
SECTION 4(f) PROPERTY IDENTIFICATION.....	63
SECTION 4(f) PROPERTY .....	63
SECTION 4(f) APPLICABILITY.....	63
THREE TYPES OF USE OF A SECTION 4(f) PROPERTY.....	63
SECTION 4(f) APPROVAL OPTIONS.....	64
<i>De Minimis</i> Impact .....	64
Programmatic Section 4(f) .....	64
Individual Section 4(f) .....	64
SECTION 6(f) OF THE LAND AND WATER CONSERVATION ACT .....	65
Use of Section 6(f) Resource.....	65
CLEAN WATER ACT .....	66
Section 404 Permit.....	66
Waters not Impacted .....	66
Impacts to Waters.....	66
Regional General Permit (RGP) .....	66
Nationwide Section 404 Permit .....	66
Individual Section 404 Permit.....	66
Type of Impacted Water .....	67
Section 401 Water Quality Certification .....	67
Guidance When There is an NWP without A PCN .....	67
Guidance When There Is a Section 404 Permit with PCN .....	67
Guidance When There is a Section 404 Individual Permit .....	67

NAVIGABLE WATERS .....	68
Section 9 United States Coast Guard (USCG) Permit.....	68
Section 10 United States Corps of Engineers Permit.....	68
Section 408 Permit.....	68
Section 402 Compliance.....	69
Permits .....	69
HAZARDOUS MATERIALS CONSIDERATIONS .....	70
National Emission Standards for Hazardous Air Pollutants (NESHAP) .....	70
Resource Conservation and Recovery Act (RCRA) Metals.....	70
Phase I Site Assessment.....	70
FARMLAND PROTECTION ACT .....	71
FARMLAND ANALYSIS PROCESS:.....	71
ENVIRONMENTAL JUSTICE.....	73
Sample Demographic Data .....	73
ROW-ONLY CLEARANCES FOR FEDERAL-AID PROJECTS .....	74
General Early Acquisition Procedures .....	77
AMENDMENTS TO CE CHECKLIST MANUAL.....	79



## OVERVIEW

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The *Categorical Exclusions (CE) Manual* [CE Manual] will assist the Arizona Department of Transportation (ADOT) staff, Local Public Agencies (LPA), and consultants in documenting and processing projects and actions that require approval under the National Environmental Policy Act (NEPA). NEPA approval is required for Federal Highway Administration (FHWA) funded projects through the Federal-aid Highway Program (FAHP). These can be construction projects as well as other actions that require federal approval such as right-of-way (ROW) grants by Federal Land Management agencies, permitting actions, design exceptions on the National Highway System (NHS) and a Change in Access of an Interstate Highway. CEs are utilized to demonstrate NEPA compliance for the vast majority of FAHP projects.

The *CE Manual* implements the ADOT CE process as outlined in a Memorandum of Understanding (MOU) between FHWA and ADOT for the State Assumption of Responsibility for Categorical Exclusions codified in 23 U.S.C. 326 (CE Assignment) and an MOU between FHWA and ADOT for the Surface Transportation Project Delivery Program codified in 23 U.S.C. 327 (NEPA Assignment). Because exceptions to the application of CEs may apply ADOT verifies the appropriateness of every CE utilized on a FAHP project. The *CE Manual* defines the types of CEs and outlines the specific CE documentation requirements for project approvals. Approval authority is assigned to ADOT for CEs listed in 23 CFR 771.117 (c) and (d) under the “326 MOU” and for CEs that are individually documented but not specifically listed in paragraph (d) under the “327 MOU.” ADOT also has all federal environmental review responsibility for other environmental laws included in the MOUs such as Section 106, Section 4(f) and Section (7). No approval authority for NEPA is delegated to LPAs, including Certification Acceptance (CA) Agencies which have delegated authority for design and construction oversight. Therefore, ADOT Environmental Planning is responsible for the approval of all NEPA documentation prepared by the LPAs for FAHP projects. The Assignment Program MOUs section of this manual describes ADOT’s responsibility for CE approvals.

The *CE Manual* outlines requirements for CEs including documentation requirements, proper CE determination under 23 CFR 771.117(c) and (d), environmental analysis, re-evaluation under 23 CFR 771.129, evaluation of “unusual circumstances,” inclusion of environmental commitments, exercise of proper approval authority, and proper Project File management. Other guidance to be utilized in the processing of CEs includes the ADOT *Section 4(f) Manual*, the Environmental Planning QA/QC Plan, the Environmental Planning *Project Development Procedures*, the Environmental Planning *Guidelines for Agency and Public Scoping for Projects with Categorical Exclusions*, and the ADOT *Public Involvement Plan*.

The *CE Manual* is “how to” instructions and is not an all-inclusive source for all environmental technical analysis and regulatory requirements. Detailed technical guidance for environmental requirements and analysis that may be required in preparing technical documents in support of a CE is located on the ADOT [Environmental Planning website](#). Additional guidance can be found in the [FHWA Environmental Review Toolkit](#). The *CE Manual* is intended to be utilized in electronic format with the aid of hyperlinks and bookmarks embedded throughout the document.

Congress has declared in 23 U.S.C 101 that “it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process.” Under 23 U.S.C 101(b)(4)(B)(v) it is declared that “the Secretary shall identify opportunities for project sponsors to assume responsibilities of the Secretary where such responsibilities can be assumed in a manner that protects public health, the environment, and public participation.” 23 U.S.C 326 (CE Assignment) and 23 U.S.C. 327 (NEPA Assignment) allow for States to be assigned federal environmental review responsibility to meet these federal requirements. ADOT has been assigned FHWA’s environmental review responsibility through an approved MOU for both CE Assignment and NEPA Assignment.

## REGULATORY FRAMEWORK

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### DEFINITION OF A CE

NEPA requires federal agencies such as FHWA to consider the environmental impacts of their proposed major federal actions. The level of NEPA documentation required for FAHP projects is prescribed in three classes of action: Class I-Environmental Impact Statement (EIS), Class II-Categorical Exclusion (CE) and Class III-Environmental Assessment (EA). NEPA requires that federal agencies “include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on...the environmental impact of the proposed action.” [42 U.S.C. 4332\(C\)](#). The “detailed statement” is the EIS. Not all projects have significant impacts and therefore not all projects require that an EIS be prepared. The EA was created for projects in which the level of impacts is not clearly known. [40 CFR Part 1500-1508](#) contains the Council of Environmental Quality (CEQ) defines implementing NEPA regulations for all federal agencies. Under [40 CFR § 1500.5\(a\)](#) agencies shall improve efficiency of their NEPA process by establishing categorical exclusions to define categories of actions that normally do not have a significant effect on the human environment and therefore do not require preparation of an environmental assessment or environmental impact statement. The CE was created to address projects that are in a category of actions that, based on FHWA experience, do not have significant impacts and therefore are exempt from the requirements to prepare an EIS or EA ([40 CFR § 1508.1\(e\)](#)). FHWA’s implementing regulations for NEPA are contained in [23 CFR 771](#) – “*Environmental Impact and Related Procedures*.”

The CEQ and NEPA regulations that describe specific requirements for EISs and EAs (NEPA scoping, purpose and need, range of reasonable alternatives, public hearings, etc.) do not apply by extension to CEs. CE projects are excluded from the requirements of an EIS/EA but require enough documentation to validate the determination of the CE.

Moving ahead for Progress in the 21<sup>st</sup> Century (MAP-21), signed into law in 2012, introduced several changes to 23 CFR 771 including the modification of existing CEs and the introduction of new CEs to the FHWA process for implementing NEPA. This guidance was developed in part to help explain those changes; the first substantial changes to FHWA CEs since 1987.

### **23 CFR 771.117(a)**

As described in [23 CFR § 771.117](#), federal “actions,” i.e. FAHP projects can be classified as a CE if they: do not cause significant adverse environmental effects, they meet the definition contained in [40 CFR § 1508.1\(d\)](#) and are excluded from the requirements to prepare either an EIS or EA.

Environmental Planners overseeing NEPA in project development must fully understand the CE requirements of 23 CFR 771.117 in order to understand what NEPA ‘class of action’ is



appropriate for each project. 23 CFR 771.117(a) outlines the requirements of a project designated as a CE as actions which:

- Do not induce significant impacts to planned growth or land use.
- Do not require the relocation of significant numbers of people.
- Do not have a significant impact on any natural, cultural, recreational, historic, or other resource.
- Do not involve significant air, noise, or water quality impacts.
- Do not have significant impacts on travel patterns.
- Do not otherwise, either individually or cumulatively, have any significant environmental impacts.

23 CFR 771.117(a) addresses potential significant impacts from cumulative CE actions. The last bullet means that under typical circumstances for a project in which a CE is applied the cumulative effects of several small projects using the same CE would normally not cause sufficient environmental impact to make the CE not applicable for a project.

Significance is defined for NEPA under [40 CFR § 1502.3](#). The level of significance of an impact is determined by the *context* and *intensity* of an impact. Context relates to impacts in their setting and intensity relates to the severity of impacts. For example, the difference between three acres of wetlands impact in the arid Southwest as opposed to three acres of wetland impact in the Northeastern United States. Or a project with three acres of wetlands lost on a small-scale project vs. a large-scale project.



NEPA's focus is projects with significant impacts

The context and intensity of both scenarios are different. In other words, significance can be relative. NEPA, as well as several other substantial federal environmental laws, have at least part of their roots in the significant impacts that resulted from the major post World War II freeway building and the Interstate Highway Era. The NEPA requirements were devised for these types of projects to prepare an EIS. During the early 1970s FHWA originally made a “negative declaration” citing that a project did not have the level of impacts requiring the preparation of an EIS. The CE was created by the CEQ in 1978 for those actions that fell below such impact levels as to be *categorically excluded* from the same NEPA requirements as those that had significant impacts.

Most of the FAHP projects developed by ADOT normally qualify for a CE. By definition all CEs meet the requirements of 23 CFR 771.117(a). For these projects Environmental Planners confirm the appropriateness of applying a CE to an action by reviewing the project’s description and determining which of the CEs developed by FHWA under 23 CFR 771.117 applies. Qualifying FAHP projects, or “actions,” are matched to defined CEs that have been developed through experience of the FHWA and through federal rulemaking to normally meet the requirements outlined in 23 CFR 771.117(a). Information on the types of CEs and the additional steps to verify the

appropriateness of applying a CE to a FAHP project are outlined below along with prescribed steps to document the determination for each type of CE.

### 23 CFR 771.117(b)

In addition to the conditions outlined in 23 CFR 771.117(a) which define a CE classification, a CE may require additional environmental analysis and coordination to confirm the appropriateness of the designation. 23 CFR 771.117(b) cites that any action which normally would be classified as a CE but could involve “unusual circumstances” (defined in CEQ 1501.4 as “extraordinary circumstances”) will require appropriate environmental studies to determine if the CE determination is proper. Extraordinary circumstances are appropriately understood as those factors or circumstances that help a federal agency identify situations or environmental settings that may require an otherwise categorically excludable action to be further analyzed in an EA or EIS).

An unusual circumstance defined by FHWA refers to an instance in which a normally excluded action *may* have substantial environmental effects ([23 CFR § 771.117\(b\)](#)) and, therefore, require an EA or EIS. Such unusual circumstances include:

1. Significant environmental impacts;
2. Substantial controversy on environmental grounds;
3. Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or
4. Inconsistencies with any federal, state, or local law, requirement or administrative determination relating to the environmental aspects of the action.

Environmental Planners, in conjunction with Environmental Planning Technical Specialists, review projects for “unusual circumstances” and apply due diligence to assess other applicable laws and regulations on projects to validate the appropriateness of a CE determination.

ADOT utilizes the approach outlined by FHWA in federal rulemaking for 23 CFR 771 in relying on the project description to guide this process:

“Projects approved through the new CEs subject to this rule normally would not require further NEPA approvals, though the Agencies expect **documentation exhibiting that the project fits the CE and that no unusual circumstances are present. This may be achieved with a complete project description.** However, if the project has the potential to result in impacts to resources protected under other environmental laws, additional documentation and review time could be needed for that project.”

If an unusual circumstance exists, additional environmental studies or analysis should be conducted to determine if a significant impact would result. If such an impact may occur, then an EA should be prepared and in rare cases an EIS would be prepared if significant impacts result. For a more typical example, it may be determined through evaluation and coordination that the need to acquire new ROW from a park, though an unusual circumstance as described under 23 CFR 771.117(b)(3), will not result in a significant impact on a property protected by Section 4(f)

but results in a Section 4(f) use with a *de minimis* impact as defined under 23 CFR 774. In such a case, the CE classification for that project can be validated.

Supporting documentation, such as Section 4(f) evaluations, and archaeological surveys or historic structure inventories may be required to support evaluation of unusual circumstances under 23 CFR 771.117(b). Keep in mind that impacts such as demolition, roadway excavation, embankment construction and structures placement do not normally have significant impacts under NEPA for those projects that are actions listed under 23 CFR 771.117. Projects with unusual circumstances require review and a determination that the action does not result in significant impacts and therefore can be approved as a CE.

## TYPES OF CATEGORICAL EXCLUSIONS

23 CFR 771.117 defines two lists of actions (“c-list” and “d-list”) which normally qualify as CEs and each list contains specific project types or examples of actions that meet the criteria for CEs in the CEQ regulations (40 CFR 1508.1(e)) and 23 CFR 771.117(a). “Listed” CEs are actions that normally do not require preparation of an EA or EIS. The Categorical Exclusion (CE) Checklist is used to document compliance with NEPA as well as other applicable environmental laws and the Project File will contain documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. The type of CE and required supporting documentation, if applicable, are based on project-type and site-specific factors.

### “C-list” Categorical Exclusions

A specific list of actions that typically qualify under this category are described in 23 CFR 771.117(c) and are therefore known as “c-list” CEs. Per 23 CFR 771.117(c) these projects require limited documentation to demonstrate NEPA compliance. These projects are generally actions that are within the ROW of an existing roadway or require only minor amounts of new ROW. For example, bicycle paths and sidewalk projects are specifically listed under 23 CFR 771.117(c)(3) – “Construction of bicycle and pedestrian lanes, paths, and facilities.” Such projects are by definition a CE by way of matching the action to the description in the regulations.



Paths and sidewalks are listed as qualifying for CEs in 23 CFR 771.117(c)

MAP-21 expanded the types of projects that qualify as CEs under this category and the degree of impacts for c-list CE projects can vary greatly from a non-construction action such as a funding approval for a Safe Routes to School Program to a large-scale highway expansion construction project.

C-list CEs are sometimes referred to by FHWA as CEs not requiring documentation (see Categorical Exclusions in FHWA Technical Advisory T 6640.8A). Because MAP-21 expanded the list of actions typically qualifying as a CE under 23 CFR 771.117(c), there are now more c-listed (“undocumented”) CEs that must be reviewed for unusual circumstances and for impacts under other applicable environmental laws and regulations (Section 4(f), Section 106, the Endangered Species Act (ESA), the Clean Water Act, the Clean Air Act, FHWA noise regulations, etc.). “Undocumented” in a general sense means there is no stand-alone “Environmental Document” (as defined by [CEQ 40 CFR 1508.1\(k\)](#)). However, some level of documentation is necessary to ensure the appropriate level of analysis has been conducted and is contained in the Project File. The Environmental Planner is required to certify that the project’s CE determination is consistent with all legal requirements.

“Activities that do not involve or lead directly to construction” such as procurement and installation with no potential to impact the environment may be approved with a (c)(1) CE Checklist prepared without additional technical review. These are activities which do not result in physical construction in the traditional sense of the word. Examples of actions that qualify for a (c)(1) CE include funding authorizations, such as those for materials procurement and equipment purchase, design exceptions\*, vehicle purchases such as street sweepers, as well as software and control equipment for existing hardware or sign purchase and installation on existing infrastructure such as signposts and federally-funded early right-of-way acquisition. A decision that a project qualifies for a (c)(1) is made at the senior planning manager level. A Section 106 “no potential” memo may be needed as applicable.

\*Note: Design exceptions for projects on the National Highway System (NHS) require a NEPA approval regardless of project funding. Approval of design exceptions is considered by FHWA to be a federal administrative action as specified in 23 CFR 771.107(c) and therefore requires compliance with NEPA. FHWA guidance specifies that for design exceptions “the Federal Action is the approval of the design exception and not the project.” See questions 12 through 14 of the [FHWA Guidance on NHS Design Standards and Design Exceptions](#).

MAP-21 created new CEs under 23 CFR 771.117 paragraph (c) including (c)(22) *for projects within the existing operational ROW* and (c)(23) *for projects receiving less than \$5,000,000 of federal funds; or with a total estimated cost of not more than \$30,000,000 and federal funds comprising less than 15 percent of the total estimated project cost*. In 2015 the FAST Act provided for annual inflation adjustments. In 2021 the Infrastructure Investment and Jobs Act reset the dollar amounts to \$6,546,000 and \$38,185,000. These dollar amounts continue to be annually adjusted for inflation by FHWA. An arterial street widening that adds lanes could qualify for a (c)(23) CE if the total project cost met the criteria. A project such as HOV lanes in a highway median or general-purpose lanes within an existing



HOV lanes in an existing operational ROW

transportation ROW are examples of projects that could qualify under (c)(22). The “existing operational ROW” is defined in regulation to mean all real property interests acquired for the construction, operation, or mitigation of a project. Per final rule “this CE also covers temporary easements and temporary work needed for the project even if this work is outside an operational right-of-way.” These two CEs must also be considered in conformance with FHWA requirements for connected actions and “segmentation” so that corridor projects are not inappropriately implemented in small segments. From the MAP-21 Final Rule on implementing the (c)(22) and (c)(23) CEs: “The requirement that the projects demonstrate independent utility, connect logical termini, and not restrict consideration of alternatives reflects the Agencies’ test for determining the full scope of a project for NEPA review purposes and avoiding impermissible segmentation.” This means projects cannot be improperly split and analyzed as multiple separate projects and independently cleared but then bid and built as one project if their combined impacts are substantial. This requirement is outlined in 23 CFR 771.111(f). See FHWA guidance under [“Development and Evaluations of Alternatives.”](#) These actions may also need to be analyzed as one action under laws such as the Endangered Species Act if the cumulative effects are substantial.

MAP-21 also introduced (c)(24) as a new CE for geotechnical and other preliminary investigations which provide information for preliminary design and for environmental analyses. The (c)(24) CE is only used (rarely) when a federal approval is needed before such activities can occur such as a needed federal permit. Note: a technical evaluation is prepared for geotechnical work done that is performed in advance of a project CE.

MAP-21 CE revisions included the former top three d-list CEs being moved to the c-list as: (c)(26) – *highway restoration*, (c)(27) – *safety improvements* and (c)(28) – *bridge projects*. However, if those actions do not meet the “constraints” listed under 23 CFR 771.117(e), the action will need to be classified as a CE under paragraph (d)(13). The “constraints” listed under paragraph (e) of 23 CFR 771.117 are a set of conditions applied for the purpose of determining whether or not a project requires additional documentation and consideration as to whether or not a CE is the appropriate class of action. A project listed under (c)(26), (c)(27) or (c)(28) must meet the constraints in order to qualify as a c-list CE. This process was established in federal rulemaking when the top three d-listed CEs under 23 CFR 771.117(d) were moved to the c-list. Only these three CEs [(c)(26), (c)(27) and (c)(28)] may start out as c-listed but then become d-listed under (d)(13) if the project impacts exceed any of the paragraph (e) constraints.

Special attention to evaluation and documentation of potential Environmental Justice (EJ) issues should be given if the project involves any residential or non-residential relocations (displacements). See Environmental Justice on page 28 and in the Appendix.

As stated above the CE Checklist is used for all c-list projects. In order to make a seamless transition for the projects that may start out on the c-list, but ultimately be classified on the d-list as (d)(13), all c-listed CEs utilize the same CE Checklist as is required for specifically listed d-list CEs and thereby eliminate the need for two different CE forms: one for the c-list CEs and one for the d-list CEs.



### **“D-list” Categorical Exclusions**

23 CFR 771.117(d) lists examples of actions that qualify to be processed as a CE. Projects that qualify under this list are therefore known as “d-list” projects. Paragraph (d)(13) includes those projects that may start out as initially listed under (c)(26), (c)(27) and (c)(28) of 23 CFR 771.117 but are later determined through environmental analysis to not meet the constraints of 23 CFR 771.117(e). Also, as previously stated, these three CEs are the former (d)(1), (d)(2) and (d)(3) actions which are now listed as “reserved” in 23 CFR 771.117(d).



**Some projects are individually approved as a CE though not specifically listed under 23 CFR 771.117(d)**

CE’s under (d)(4) through (d)(12) are not utilized very often. Besides (d)(13), the d-list CE that is most likely to be used on an ADOT project is (d)(12) – Acquisition of land for hardship or protective purposes. From [23 CFR § 710.203\(a\)\(3\)](#) preliminary ROW activities may commence in advance of NEPA. Other work involving contact with affected property owners for purposes of negotiation and relocation assistance must normally be deferred until after NEPA approval, except as provided in [§710.501, early acquisition](#); and in [§710.503 for protective buying and hardship acquisition](#). See [Appendix - Early Acquisition of ROW](#).

Certain projects not specifically listed under paragraph (d) may still qualify as a CE under paragraph (d) as an individually documented and approved CE. FHWA guidance 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). These projects must be approved under the 327 MOU. Adding highway capacity (through-lanes outside of an existing operational ROW), reconstruction of an existing system interchange and construction of a new service traffic interchange are examples of projects that, though not specifically listed on the d-list, may still qualify under paragraph (d) as an individually documented and approved CE. These types of projects usually require more detailed traffic studies for air quality and noise analysis as well as additional public involvement efforts.

## **CATEGORICAL EXCLUSION DETERMINATIONS**

### **Planning and Programming Phase**

An initial determination of a project NEPA class of action may be made during the Planning and Programming phase of a project and documented in the project scoping document. The level of significance of project impacts is the determinant of the level of NEPA documentation required. The level of significance of project impacts is determined by the *context* and *intensity* of the impacts. Projects that will require an EIS or EA are typically identified at the Planning and Programming stage because a



substantial amount of funding must be programmed to develop an EIS or EA. The CEQ regulations also outline decision-making for whether or not to prepare an EIS ([40 CFR § 1502](#)). Any large-scale project that anticipates the preparation of an EIS or EA is included in the FHWA-approved Statewide Transportation Improvement Program (STIP) by inclusion of PE funds for the project's development. 23 CFR 771.115 lists new access-controlled and multi-lane highways as actions normally requiring an EIS. These types of projects are included in long-range planning and programming and their anticipated development costs are included in the Five-year Construction Program or a Metropolitan Transportation Plan. Expanding a two-lane highway to a four-lane divided highway or a new bridge in a sensitive environmental area and a new grade separation in an urban area are examples of projects that may need to be documented with an EA. A preliminary class of action determination for projects cleared with a CE may be prepared in advance of the CE approval on a case-by-case basis if there are questions as to whether or not a CE is appropriate or if an EA should be prepared. The ENV Planner prepares a memorandum for the preliminary class of action determination and the ADOT Environmental Planning Administrator makes the final decision on the appropriate class of action if such questions arise. See ***Environmental Planning Bulletin: 2020-3 - NEPA Probable Class of Action***.

For the vast majority of projects, the initial determination of the NEPA classification will be that the project qualifies as a "listed" CE. This preliminary class of action determination helps define project development costs and the scope of work for inclusion in project budgets and Joint Project Agreements (for LPA projects). An estimation of the appropriate environmental studies that need to be conducted should be part of the project early scoping work.

### **Preliminary Engineering and Design Phase**

At the start of project design any previously made preliminary scoping decisions are reviewed. The Environmental Planner, in cooperation with the NEPA Assignment Manager, reviews any previously made class of action determination of the appropriate type of CE to be utilized or makes a determination if one has not previously been made. For ADOT projects the initial class of action determination is made based on preliminary project descriptions and the professional judgment of the Environmental Planner. As mentioned previously, EIS or EA screening will have been completed during the Planning and Programming Phase and therefore the primary question at the start of design of 'routine projects' is the type of CE to be prepared. By definition the projects that are listed as qualifying as a CE in 23 CFR 771.117 are not likely to result in significant impacts. Therefore, the focus of analysis is in determining which type of CE in relation to the c-list and d-list the project may qualify under and whether or not there are unusual circumstances.

The Environmental Planner and Environmental Planning Technical Sections must review the project scope in relation to other environmental laws and regulations and determine what has the potential to impact the projects under: Section 4(f), Section 106, Section 404, Section 7, 23 CFR 772 (noise), etc. Familiarity with the project and an understanding of the interactive nature of all relevant environmental laws and regulations will allow the Environmental Planner, in conjunction with the Environmental Planning Technical Sections, to confirm the appropriate type of CE that should be prepared and whether or not the project can be approved by ADOT under the CE Assignment MOU or the NEPA Assignment MOU.

Unusual circumstances need to be considered for both listed CEs and individually documented CEs. For example, impacting a bridge that is eligible under the National Register of Historic Places and Section 4(f) is an example of “unusual circumstances” for a project that would normally be considered qualifying for a c-listed CE. The need to review for “unusual circumstances” may result in a Section 106 determination of “adverse effect” but the project can still be approved as a CE if the totality of project impacts does not rise to the level of significant impacts. The evaluation of “unusual circumstances” is *highly unlikely* to change the classification of a project from a CE to an EA or EIS after the initial project NEPA classification has been determined as a qualified CE.

Understanding environmental impacts early in the design process helps determine if alternatives analysis may be needed in relation to evaluating unusual circumstances. For example, impacts to historic properties and projects with impacts to wetlands require alternatives to be evaluated early in the design before determining the type of CE as well as determining when the final design can advance.

## CE and NEPA ASSIGNMENT PROGRAM MOUs

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### AUTHORITY

Pursuant to 23 U.S.C. 326 and 23 U.S.C. 327 the FHWA Arizona Division and ADOT have entered into two separate MOUs for ADOT to assume the FHWA's NEPA and environmental review responsibilities for FAHP Projects. The CE Assignment MOU (326 MOU) was originally signed by FHWA and ADOT on January 3, 2018, and renewed for a second time on December 20, 2023. The NEPA Assignment MOU (327 MOU) was signed by FHWA and ADOT on April 16, 2019.

### Approval for Assigned Actions under the 326 MOU (CE Assignment)

CEs listed under 23 CFR 771.117 paragraphs (c) and (d) are approved by ADOT under the 326 MOU. All CE determinations are documented utilizing a CE Checklist.

On each CE determination made by ADOT under the authority granted by the CE Assignment MOU ADOT shall insert the following language:

*The State has determined that this project has no significant impact(s) on the environment and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under NEPA. The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to 23 U.S.C. § 326 and a Memorandum of Understanding dated December 20, 2023, executed between FHWA and the State.*

### Approval for Assigned Actions under the 327 MOU (NEPA Assignment)

Certain actions not specifically listed under 23 CFR 771.117(d) may be designated as CEs upon the appropriate level of environmental review. Actions consistent with but not specifically listed under (d) will be documented as an "Individual CE" for approval under the 327 MOU. ADOT conducts any additional environmental analysis that demonstrates the criterion for a CE is satisfied as outlined in this manual.

On each Individual CE determination made by ADOT under the authority granted by the NEPA Assignment MOU ADOT shall insert the following language:

*The State has determined that this project has no significant impact(s) on the environment and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under NEPA. The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by ADOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated April 16, 2019, and executed by FHWA and ADOT.*

## CE DETERMINATIONS (TYPE OF CE TO APPLY)

The type of CE to be applied to a project may have been preliminarily determined during the scoping phase, the programming phase or the task order development phase. The two main types of CE are the “listed” CEs and the CEs that still qualify under 23 CFR 771.117(d) but are not specifically listed. The CE Checklist is used to document all CE determinations. The CE Checklist is prepared by the Environmental Planner.

The specific type of CE to be applied (“c” or “d” list or individually documented) will be dependent on the project-specific scope of work (Project Description) and the context of the project as described previously in this manual. The CE determination should be based on the description of the project (Type of Work) that matches one of the listed CEs starting with (c)(1) and matching the list of CEs through (c)(21). For example, a project whose primary scope of work is to build a bike trail would use (c)(3) – “*Construction of bicycle and pedestrian lanes, paths, and facilities.*”

If a project description does not match a CE listed from (c)(1) through (c)(21) then (c)(22) and (c)(23) are considered. Many projects, including capacity projects, may qualify for a CE using (c)(22) – a project within existing operational ROW with careful consideration given that no new ROW is required, or (c)(23)(i) – a project receiving less than \$6,546,000 million in total federal funds with careful consideration to the total project cost being less than the regulation limit.

If a project does not match the description of a (c)(1) through (c)(21) CE or fit within the description and limitations of a (c)(22) or (c)(23) CE then consideration is given to using a (c)(26), (c)(27) or (c)(28) CE.

For emergency repair projects utilizing a (c)(9) CE there is additional guidance provided in the [appendix](#).

The most utilized c-list and d-list CEs from 23 CFR 771.117 are listed below:

### 23 CFR 771.117(c)

(c)(1) Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed.
(c)(3) Construction of bicycle and pedestrian lanes, paths, and facilities.
(c)(7) Landscaping.
(c)(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
(c)(9) Emergency repairs under 23 U.S.C. 125 damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President.

(c)(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system.
(c)(22) Projects, as defined in 23 U.S.C. 101 that would take place entirely within the existing operational ROW. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project.
(c)(23) Federally funded projects: (i) That receive less than \$6,546,000* of federal funds; or (ii) With a total estimated cost of not more than \$38,185,000 and federal funds comprising less than 15 percent of the total estimated project cost. * Note: the latest FHWA annual inflation adjusted figures are applicable
(c)(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations.
(c)(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes if the action meets the constraints in paragraph (e) of this section.
(c)(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.
(c)(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.

## 23 CFR 771.117(d)

<p>(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.</p> <p>(i) Hardship acquisition.</p> <p>(ii) Protective acquisition.</p>
(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e).

## CE Type and Approval Matrix

The matrix below outlines the combinations of MOU approval authority, type of CE, and documentation format for the c-list and d-list CEs defined in 23 CFR 771.117(c) and (d) and outlined in this manual.

Approval Authority	Type of Categorical Exclusion	Documentation
326 MOU Approved	c-list or d-list	CE Checklist
327 MOU Approved	Unlisted/Individually approved under (d)	CE Checklist

### CE Checklist

As noted previously, all *specifically listed* c-list CEs and d-list CEs utilize the CE Checklist and are approved by ADOT under the 326 MOU. The CE Checklist also documents the information needed to make a CE determination for a project that qualifies for a project not specifically listed in 23 CFR 771.117(d) and are approved by ADOT under the 327 MOU.

The CE Checklist contains a Project Description that allows the specifically listed type of CE to be established. Projects not specifically listed contain enough information and impact analysis for a determination to be made that the project qualifies for a CE determination with appropriate technical studies and evaluation. General guidance for the completion of each major section of the CE Checklist is provided in this manual.

Per Section 3.3.2 of the NEPA Assignment MOU the following projects are excluded from ADOT CE approval authority:

- A. Any Federal Lands Highway projects authorized under 23 U.S.C. 202, 203, 204, and FAST Act Section 1123, unless such projects will be designed and constructed by ADOT.
- B. Any project that crosses or is adjacent to international boundaries. For purposes of this MOU, a project is considered "adjacent to international boundaries" if it requires the issuance of a new or the modification of an existing, Presidential Permit by the U.S. Department of State.
- C. Any highway project that crosses State boundaries



## CATEGORICAL EXCLUSION TYPES - SELECTION EXAMPLES

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### EXAMPLE 1:

- A bridge replacement project costs \$17 million and requires new permanent easements and needs a Section 404 Individual Permit. The project does not match any CE listed between (c)(1) and (c)(23). Per 23 CFR 771.117(c)(28) a bridge replacement qualifies as a c-list CE – *“Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.”*



Bridge projects normally are processed with a CE.

All actions that qualify for a CE must be reviewed for unusual circumstances related to Section 106 and Section 4(f) [23 CFR 771.117(b)]. A preliminary review of the project scope identifies that the bridge is historic. One would make an initial determination that a CE under (c)(28) will likely be appropriate with additional environmental analysis required. Assuming the Section 106 process concludes that there is an “adverse effect” a *Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges* would be completed. Since two of the 23 CFR 771.117(e) constraints would be exceeded the project would then be changed from a (c)(28) and documented as a (d)(13) CE and approved under the 326 MOU.

### EXAMPLE 2:

- A Local Public Agency project will construct a new pathway as well as other minor ancillary work including drainage and landscaping. Construction of bicycle paths and sidewalk projects are specifically listed under 23 CFR 771.117(c)(3) – *“Construction of bicycle and pedestrian lanes, paths, and facilities.”* This type of CE would **best match** the project description and therefore would be the logical first choice in selecting a type of CE to apply. But it is also possible that certain projects *could* involve pathway construction in conjunction with other more substantial improvements and qualify for more than one type of listed CE. If the project is not clearly described as a new pathway alone then multiple categories of listed actions on the c-list can be considered. A project with a new pathway and a range of improvements could also possibly qualify for another listed CE such as (c)(22) or (c)(23) depending on whether or not the project meets the conditions of those two CEs. The CE would be approved under the 326 MOU.

### EXAMPLE 3:

- A highway modernization project that includes shoulder widening, construction of a passing lane and culvert extensions costs \$17 million dollars and requires new permanent easements and a Section 404 Individual Permit. For CE type consideration:
  - Does the project description fit under (c)(22)
    - No. The project is not fully contained within the “existing operational ROW.”
  - Does the project description fit under (c)(23)
    - No. The total project cost is greater than \$6 million in total federal funds.
  - Does the project description fit under (c)(26)
    - Yes. But the project requires a 404 Individual Permit which means it does not meet the constraints of 23 CFR 771.117(e)
      - The project can be processed as a CE using (d)(13)
        - ADOT would approve the CE under the 326 MOU

### EXAMPLE 4:

- A \$50 million expansion project within an urban highway corridor will widen the highway from three lanes in each direction to four lanes in each direction:
  - Does the project description fit under (c)(22)?
    - If the project is fully contained within the “existing operational ROW” then:
      - A (c)(22) can be applied and approved under the 326 MOU.
    - If the project does not match the description of any listed CE [(c)(22), (c)(23) or (c)(26)] then, barring any unusual circumstances, it would be considered as an individually approved CE under 23 CFR 771.117(d)
      - ADOT would approve the CE under the 327 MOU

### EXAMPLE 5:

- A \$15 million arterial expansion project will require new ROW to widen the roadway from two lanes in each direction to three lanes in each direction for a distance greater than one-half mile thereby meeting the definition of a capacity project:
  - Does the project description fit under (c)(22)
    - No. The project is not fully contained within the “existing operational ROW.”
  - Does the project description fit under (c)(23)
    - No. The total project cost is greater than \$6 million.
  - Does the project description fit under (c)(26)
    - No. Expansion of the roadway from two lanes in each direction to three lanes in each direction (capacity project) does not match the description of (c)(26)
    - The project must be considered as an individually approved CE under 23 CFR 771.117(d)
      - ADOT would approve the CE under the 327 MOU

## PROCESSING THE CE CHECKLIST

### HOW TO INITIATE THE CE CHECKLIST

The CE Checklist has been developed as a Microsoft Word form. Changes to the format or text on the forms are not allowed other than the fillable spaces. Download a copy of the CE Checklist from the ADOT Environmental Planning G-Drive (*ADOT internal only*) **each time** one is utilized as minor changes to the template may occur over time.

Once a copy of the template is downloaded, the user will be able to click on and fill in the white boxes. No edits, however, should be made to the fixed text areas. For the check boxes, a single click will check or uncheck the box. For text boxes, click on the box and input the project-specific information. The boxes will expand as needed. Check the spacing and locations of the header boxes and see that they are properly arranged vertically after all of the text boxes have been completed. Complete the Checklist including selection of each drop-down choice.

### PROJECT INFORMATION

Project Information:	
Project Name:	Construction Project Administration
ADOT Project Number:	ADOT <input type="checkbox"/> CA Agency <input type="checkbox"/>
Federal-Aid Number:	Categorical Exclusion Approval for FMIS
Estimated Project Construction Cost:	2A - (c) Listed <input type="checkbox"/>
Planning Requirements:	2B - (d) Listed <input type="checkbox"/>
<input type="checkbox"/> STIP/Line Item	2C - (d) Unlisted <input type="checkbox"/>
<input type="checkbox"/> ADOT Sub-program	
CE Start Date: <a href="#">Click here to enter a date.</a>	

### Project Data

Project programming data and descriptions are developed from MPD and PMG. Various sources including the [Statewide Transportation Improvement Program/Transportation Improvement Program \(STIP/TIP\)](#) and the Project Framework Form (generated by PMG) can be referenced for the **Project Name**, **ADOT Project Number** (TRACS), **Federal-aid Number**, and **Estimated Project Construction Cost**. The Environmental Planner may also utilize the [eSTIP](#), Project Information Retrieval Tool (PIRT), and the LPA Project Initiation Letter or a Joint Project Agreement (JPA) for attaining project information. The Environmental Planner confirms any questions about project data or a funding with the Project Manager.

The **Categorical Exclusion Approval for FMIS** indicates the approval of the CE for FHWA federal authorization purposes in the FHWA Financial Management Information System (FMIS). ADOT Contracts and Specifications (C&S), and ADOT Project Managers for LPA CA Agency projects, utilize this information in making federal authorization requests for construction funding.

Environmental Planning participates in reviewing scoping documents. However, the development timeline for the preparation of CEs should reflect the *actual time to prepare the CE* which is typically less than the project development process. Therefore, the CE preparation time should be based on actual start and completion dates of the environmental work versus a project initiation date. The distribution date of Agency and Public Scoping Letters is typically used for the **CE Start Date**. A Kickoff Meeting date can also be used if scoping letters were not prepared for the project. Environmental Planner's judgement shall be applied in all cases to ensure an actual CE preparation timeline.

### Planning Requirements - Fiscal Constraint

The FHWA's [Transportation Planning Requirements and Their Relationship to NEPA Approvals](#) outlines the FHWA-defined relationship between the planning requirements of 23 CFR 450 and NEPA. NEPA law and regulations contain no requirements in regard to fiscal constraint, however, FHWA formal policy does. In order for a CE to be approved the project must be fiscally constrained and a "reasonably available" construction funding source must be identified. This means project funds are programmed and identified in a STIP/TIP and an MPO metropolitan transportation plan (long-range plan) as needed. Fiscal constraint can be demonstrated if the project is identified in a fiscally constrained STIP [23 CFR Part 450] either as a programmed project identified as a "line item" or by identification of a sub-program funding source. The STIP includes all ADOT programmed projects and sub-program funds as well as all projects in MPO TIPs. Sub-programs are blocks of funds that are used to fund individual projects in the Five-year Program. When a project is not yet identified as a line-item sub-program funding may be identified as the project funding source. Sub-program funding is included and can be found also in the ADOT Five-Year Construction Program. If necessary, the Planner can check with the Project Manager for the funding source of a project that is not yet programmed. An email or a note to the file can be used to document that a line item or sub-program funding is being identified. Though not common, some larger projects approved with a CE may be phased. In such cases the project needs to be in the metropolitan transportation plan if within an MPO boundary and at least one phase of the project needs to be in the approved TIP.

All projects document fiscal constraint by checking either "**STIP/Line Item**" or "**ADOT Sub-Program**" on the CE Checklist. LPA projects are typically included in a TIP before the ADOT LPA Section will initiate project development. Therefore, most LPA projects approved with a CE are fiscally constrained at the time project development is initiated.

**Project file:** An eSTIP, or other means of funding verification, is included in the [Final Certification](#) project folder before the CE is approved. For an LPA project not included in the eSTIP the LPA Project Initiation Letter or other documentation may be used as appropriate.

### Planning Requirements - Design Concept and Scope

FHWA planning regulations require that a project level conformity determination shall be made for all projects that are subject to transportation conformity. Project level conformity can be demonstrated if the project is part of a conforming regional transportation plan and TIP and

meets all project level conformity requirements (see 40 CFR 93.104(d); 40 CFR 93.109). The Air Quality Program Manager is responsible for ensuring these requirements are met.

Projects in the metropolitan areas should be confirmed as being included in the metropolitan transportation plan and at least one phase included in the TIP before a CE is approved. For all CE projects that add capacity, in addition to fiscal constraint, the ‘design concept and scope’ of the project is verified before approval of the CE. ‘Design concept’ and ‘design scope’ are defined in the planning requirements ([23 CFR § 450.104](#)) and the need to confirm is related to Clean Air Act requirements. ‘Design concept’ is defined as the type of facility such as a freeway or arterial. ‘Design scope’ is defined as the design aspects of the project such as the number of lanes. This is demonstrated by matching the description of the project in the CE with the programming (TIP/STIP) information. For capacity projects in nonattainment and maintenance areas this information is documented in the *Air Quality Clearance Form*. The Air Quality Section completes this form for all projects in nonattainment and maintenance areas. Projects in attainment areas are documented by the Air Quality Program Manager with an Air Quality Clearance Form. The Air Quality Clearance Form is sent to the ENV Planner to indicate the CE is ready for approval.

## CE RE-EVALUATION

Re-evaluation:	
<input type="checkbox"/>	This project has been re-evaluated pursuant to 23 CFR 771.129 due to a change in the project scope, location, or termini that results in the need to evaluate new impacts not previously considered, or because more than five years have passed since the date of the CE Approval. The information on this form reflects all updates to the project information.

This box is *only* checked if a project CE has previously been approved but the project is being formally re-evaluated pursuant to 23 CFR 771.129. A CE Re-evaluation is not a new CE determination so there is no change to the CE Start Date.

Additional guidance on re-evaluating CE determinations as well as validating minor changes after a CE has been approved (without a formal re-evaluation utilizing the CE Checklist) is contained in the [appendix](#) of this manual.

A re-evaluation is an analysis of *substantive* changes in the scope of a proposed action, environmental impacts, or certain mitigation measures after a CE has been approved. All CE determinations will remain valid for at least five years if there are no changes to the project or laws or regulations affecting the determination. Any CE approval that has not been subject to a federal approval action after five years must be considered for a formal re-evaluation. The purpose of a re-evaluation is to determine whether an approved CE remains valid (i.e., the specific CE is appropriate). Minor changes such as the deletion or deferment of a project scope of work item, a design modification within a previously cleared footprint or other minor actions such as a minor extension of paving limits, beyond the original clearance, which result in a change order during construction are documented with a Note to File Form. See CE Re-Evaluation

guidance in the appendix for more guidance on processing and communicating changes during construction.

The CE Re-evaluation will note in the **Location and Limits** and/or the **Purpose and Description** any pertinent changes that required the CE Re-evaluation. The original CE approval should be referenced. This information should be added in bold font to the top of the relevant section. Specific mitigation measure changes can be noted here but the full list of mitigation measures is contained only in the Environmental Commitments Form.

The CE Re-evaluation must consider the appropriateness of the original CE determination. If the CE was determined as a (c)(26), (c)(27) or (c)(28) CE and through re-evaluation it is determined that constraint criteria under 23 CFR 771.117(e) are now exceeded then the re-evaluated CE must reflect the change from a c-list CE to a (d)(13). If new ROW is added to a project or the amount of federal funds has changed then the CE designation could change accordingly with a (c)(22) or (c)(23) CE respectfully. A CE validation, note below, also documents that the CE type is still appropriate.

**CE Validation:** A valid CE (NEPA approval) must be on file when an ADOT authorization request is sent to FHWA for construction funding. An acknowledgement that NEPA is approved is included in the request for authorization from ADOT to FHWA. The C&S Specialist/ADOT Project Manager will include the Environmental Planner in the federal funding authorization request letter (DocuSign) to FHWA for his or her signature. MPD includes the CE validation text in Recreational Trail Program (RTP) project requests for federal authorization.

With these steps the Environmental Planner ensures that the CE is still valid when the request for funding is sent to FHWA. Ensuring that a valid CE is on file is a requirement of the CE MOU (reference Stipulation II.C.3. of the 326 MOU). Any updating of environmental analysis and re-evaluation of the CE needs to be conducted prior to the federal-aid funding request letter being developed and sent. Coordination and verification of the environmental documentation and the project design are conducted as outlined under Plans Review in the *Project Development Procedures*.

## LOCATION AND LIMITS

### Location and Limits:

Note: Describe ROW, in general, as the project being located on “ADOT owned right-of-way” and/or “ADOT easements on [landowner] lands.”

Provide adequate information to locate the project and define the limits. Describe *existing* ROW, including land ownership, in this section. “ROW” includes permanent easement as well as ownership of land. For Advanced ROW Acquisitions, include the County Assessor Parcel #, ADOT Parcel #, and Lot # as applicable for all.



For ADOT Projects: The project is located on [reference the primary route] from milepost (MP) to MP within [reference the city/town and/or county name as applicable], Arizona. For LPA Projects: The project is located at the [primary cross street] and [secondary cross street] intersection or between [name crossroads] within [reference the city/town and/or county name as applicable], Arizona.

A Project Map/plan may be prepared for construction projects based on need. Proposed work and new ROW information may be shown on the same map/plan. Utilize maps/plans that have already been created and avoid duplication of maps and plans. Maps prepared for Federal-aid authorizations of Preliminary Engineering funds may also have already been prepared. Avoid duplicate mapping efforts.

## PURPOSE AND DESCRIPTION (SCOPE OF WORK)

Purpose and Description (scope of work):

The Project description/scope of work in the CE should be consistent throughout all technical reports and consultation letters. Briefly describe the project and the problem being solved. As noted by FHWA in the Proposed Rule for MAP-21 Section 1318 (78 FR page 57588): “The project description typically contains all the information necessary to determine if the action fits the description of the CE and that no unusual circumstances exist that would require further environmental studies.” The need, or problem being solved, is typically a deficiency of an existing facility or a demand for something new. The purpose is typically what the project will accomplish. Basic descriptions are included in the Planning and Programming phase of a project. If available, the programming description of the Type of Work may be included. Examples include *Widen Shoulders* or *Construct Turn-Lane*.

Include all major scope of work items associated with the project. This includes activities such as milling and paving, bridge deck repair and. staging/stockpiling areas (if designated). Closures lasting the duration of construction, detours and temporary access routes should be described if known. Detours may require additional environmental review. Maintenance of traffic is included in project special provisions and is an engineering responsibility. The ADOT District and Communications are responsible for notifications during construction. Note if any new ROW and/or Temporary Construction Easement (TCE) are needed. More detailed ROW information can be documented in the Project File as needed or shown on plans. Do not provide design level detail such as “seven traffic signs will be included” or “five culverts will be replaced” or “eight feet of culvert will be extended.” Bullet-format or paragraph descriptive formats may be used. References to mitigation measures should not be included here unless to call out specific changes to mitigation measures as part of a CE re-evaluation. The mitigation measures are included with the Environmental Commitments Form.

In order to assist in the evaluation of air quality and noise impacts for projects that add capacity the description should include: the number and length of travel, turn-lanes and auxiliary lanes; and state if speeds and/or vertical or horizontal alignments are expected to change as a result of the project.

As noted above under Location and Limits, avoid duplication of maps and plans. Generally, a State and Vicinity map may have been created for agency scoping letters and/or technical reports. No new location vicinity maps/plans are needed for the CE.

A Project Map/Plan may be prepared for construction projects based on need and to aid in the description of the project and scope of work. They may be omitted for non-construction and limited construction projects as determined by the Environmental Planner. Project Vicinity Maps/Plans could be stand-alone maps or plans that show proposed work and new ROW information. Plans could be as provided by the Project Manager or consultant preparer.

**Project map/plan typically includes:**

1. *North Arrow, Scale, Key/Legend and reference point if available.*
2. *Labels of major adjacent land use or land management agency land and new ROW.*
3. *Defined project limits.*
4. *Project Name, TRACS and Federal-aid Number*

## TYPE OF CE

Type of CE - Choose <u>one</u> from (c) <u>or</u> (d) of the drop-down lists:	
(c) - list:	(d) - list:
If the project qualifies for a (c)(1) or a (c)(9) immediate emergency repair CE then no technical review is required and the CE Checklist is complete. Proceed to <b>Certification and Determination</b> and <b>Categorical Exclusion Approval</b> .	

A project's specific scope of work and impacts will determine the type of CE an action can be cleared with. Environmental planners preparing CEs must have a full understanding of the CE process in order to make the appropriate CE selection. The category of CE for which the project qualifies is selected from the drop-down menu on the CE Checklist. The specific c-list or d-list CE determined applicable for the project shall be selected. All CEs as listed in 23 CFR 771.117(c) and (d) are included in the drop-down lists. A selection for a CE determination that is individually documented and approved under paragraph (d) is also included in the drop-down list.

**Note:** the descriptions of the CEs have been slightly modified from the text in 23 CFR 771.117 in some cases on the drop-down list in order to fit the description within the character limitations allowed on the form.

Projects that qualify for a CE under **(c)(1)** need no further technical evaluation and can be approved without completing the evaluation sections of the CE Checklist. These are actions which do not result in physical construction such as design exception approval or are very limited (minor) in nature such as grant funded actions such as brochures funded by Safe Routes to School, ‘bike-share’ placed on existing sidewalks, procurement, replacement of traffic signs on existing posts, pavement markings, and upgrading and replacing traffic control equipment in existing infrastructure. Except for FHWA administrative action approval of design exceptions and certain procurement actions, the Historic Preservation Team (HPT) will document a Section 106 determination of “no potential” in the Project File when ADOT approves a (c)(1) CE.

### How to Select the CE Type

In making a preliminary CE determination, use the “c-list” before the “d-list.” Most CEs utilized will be from the “c-list.” In making a CE selection one can use a category that fits the description of the project. For example (c)(3) – “*Construction of bicycle and pedestrian lanes, paths and facilities*” should be used for such projects that match that description. A (c)(22) CE can be used for projects fully contained within the existing transportation ROW. If the project requires new ROW, then the Environmental Planner can look to first utilize (c)(23)(i) – “*Federally funded projects that receive less than \$6,546,000 of federal funds.*” When using (c)(23)(i) remember that in addition to the construction cost the **total** federal project cost also includes any federally funded design, ROW and utility costs, *and* must remain below \$6,546,000 in order to use the (c)(23)(i) CE. State, Local and ‘other’ funding is excluded from the \$6,546,000 cost figure. ADOT sees limited use of the (c)(23)(ii) CE. If the project exceeds the allowable cost, then look to utilize a (c)(26) CE.

## ENVIRONMENTAL REVIEW AND CHECKLIST

### Environmental Review Section

Each category below will be reviewed and a determination from a drop-down menu will be selected for each. The checkbox will indicate review has been completed and the appropriate documentation placed in the Project File as needed.

The Environmental Planner will coordinate with the appropriate Technical Sections for completing reviews as required for a given project based on the project description and scope of work and relevant consultation and technical evaluation. Each check box requires a drop-down menu selection be made in conjunction with the aforementioned technical evaluation and consultation. Drop-down menu selections are generally ordered from least to highest involvement and impact.

## Air Quality – Clean Air Act



Select a determination from the drop-down menu

All construction projects are reviewed for air quality compliance, although the vast majority of CE-level projects will not require an air quality technical analysis. The project **location** and **description** will determine the [applicability](#) of the Clean Air Act (CAA) requirements, if the project is exempt from the requirement to determine conformity or what level of analysis is required. Additional information on air quality considerations is contained in the appendix of this manual. The Environmental Planner reviews the project location and description and coordinates with the ADOT Air Quality Program Manager who is responsible for the Air Quality Clearance Form.

ADOT is responsible for conformity determinations for projects with listed CEs prepared under CE Assignment (326 MOU). For any project prepared under the NEPA Assignment (327 MOU) FHWA is responsible for conformity determinations and a copy of any air quality technical reports will be sent to FHWA for those projects.

## Noise – 23 CFR 772



Select a determination from the drop-down menu

Type I and II (if applicable) projects as defined in 23 CFR 772.5 require a noise analysis. Type III projects as defined in the regulations do not require a noise analysis. If a project is not a Type I project, then the review for noise compliance is complete as ADOT currently does not have a Type II program. The vast majority of projects prepared with a CE Checklist will not require a noise technical analysis. The Environmental Planner confers with the Noise Technical Specialists, as appropriate, to determine the Type of project as defined in 23 CFR 772.5. Always consult with the ADOT Environmental Planning Noise Specialist if there is a question of whether a noise analysis is needed and before proceeding with a technical noise analysis ([Noise Guidance](#)).

The appendix contains additional information on noise review procedures. Abatement for noise impacts is outlined in the ADOT Noise Abatement Requirements. Additional FHWA guidance can also be consulted.

## Biological Resources – Endangered Species Act



Select a determination from the drop-down menu

A qualified biologist reviews all projects to determine if there is any candidate, proposed, threatened and/or endangered species present within the project limits, or within close-enough proximity to be potentially impacted by the project. The ADOT Biologist will determine if a

biological evaluation (BE) or biological evaluation short form (BESF) or ‘in-house’ memo is used to make an ESA determination for the project. A determination of effect is made by the ADOT Biologist who is also responsible for consultation with the USFWS as necessary.

Cultural Resources – Section 106	
<input type="checkbox"/>	Select a determination from the drop-down menu

The ADOT Historic Preservation Team will complete the Section 106 process and recommend which consultation and effects determination should be selected from the drop-down menu. For projects with any determination other than “adverse effect” the CE can be approved after any notification period defined in the Section 106 Programmatic Agreement or 30-day consultation period defined in 36 CFR 800.4 as applicable. For projects with an “adverse effect” determination under Section 106 HPT must complete the Closeout Memo or execute a project-specific programmatic agreement or a memorandum of agreement prior to a CE being approved.

Avoidance, minimization or mitigation should be considered for projects with potential adverse effects under Section 106 of the NHPA. Data recovery, archaeological site monitoring, continued consultation, or avoidance measures (such as flagging) may be required to ensure compliance with the NHPA after the completion of the CE.

Section 4(f)	
<input type="checkbox"/>	Select a determination from the drop-down menuSelect a determination from the drop-down menu

The Environmental Planner, in cooperation with the Cultural Resources Professional for historic properties, determines whether or not there are Section 4(f) properties the project could impact. For parks and recreations facilities the Environmental Planner is responsible for assessing potential Section 4(f) properties in cooperation with the official with jurisdiction over the properties as applicable. If there are Section 4(f) properties within the vicinity then it is next determined whether or not there are possible impacts to each Section 4(f) property. If there is an impact to a Section 4(f) property the Environmental Planner, and in cooperation with the Cultural Resources Professional if there are historic properties, determines Section 4(f) applicability and/or if exceptions apply to each property. If there is a Section 4(f) use then what type of approval is needed (*de minimis*, programmatic or individual) is determined. Multiple determinations may be made on any one project.

The *CE Manual* appendix contains supplemental information on Section 4(f) for quick reference. Forms and full guidance for conducting Section 4(f) reviews and documentation are contained in the ADOT *Section 4(f) Manual*. Additional information on Section 4(f) is also located on the [ADOT Environmental Planning website](#) and contained in the [FHWA 4\(f\) Policy Paper](#) and [FHWA Section 4\(f\) Tutorial](#).

## Section 404 – Clean Water Act



Select a determination from the drop-down menu

If the project is located within Waters of the U.S. (Waters) or near Waters that could be impacted under the jurisdiction of the U.S. Army Corps of Engineers (Corps)—or if the project is moving forward under the assumption that a watercourse in the project area is considered Waters coordinate with the Wetland Biologist. Include Impaired/outstanding Arizona waters. Determine Section 404 applicability [no involvement, Corps Regional General Permit (RGP), Corps Nationwide Permit (NWP), or Corps Individual Permit (Corps IP) required].

Compliance with 23 CFR 777 – Mitigation of Impacts to Wetlands and Natural Habitat is considered under Section 404 permitting requirements.

Additional guidance can be found in the appendix of the *CE Manual* as well as the:

*Clean Water Act Section 404/401 Guidance Manual*

[ADOT Sections 404 and 401 Procedures](#) website

## Section 401 – Clean Water Act



Select a determination from the drop-down menu

Does the Arizona Department of Environmental Quality (ADEQ), United States Environmental Protection Agency (EPA), or any Tribal entity require an Individual Section 401 Certification? Coordinate with the Wetland Biologist.

## Hazardous Materials



Select a determination from the drop-down menu

Hazardous waste sites are regulated primarily by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Projects that are located in the area of known hazardous waste, such as a Superfund site, require additional investigations and documentation. Contaminated sites are normally an issue in terms of NEPA (class of action) only for projects on new location. The Preliminary Initial Site Assessment (PISA) is used as a screening tool for hazardous waste consideration. For the vast majority of CE-level projects the review for compliance of hazardous materials related to the project is routine and not a NEPA concern in terms of significant impacts and therefore not every project requires preparation of a PISA. A PISA, when applicable, must be



approved within twelve months of the CE approval date. It needs to be confirmed whether or not any proposed new ROW is located in a contaminated site. Projects requiring new ROW will be assessed as outlined in the [ADOT Right-of-Way Procedures Manual – Project Management Manual, Section 2.12.](#)

The appendix contains supplemental information on hazardous materials for quick reference.

Environmental Justice	
<input type="checkbox"/>	Select a determination from the drop-down menu

“[Executive Order 12898](#)” on Environmental Justice, dated February 11, 1994, directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law.

All projects should be reviewed for EJ considerations by applying the ADOT *Environmental Justice Analysis Procedures*. Projects that meet the conditions of a screened action in conformance with the EJ Procedures are designated with the drop-down menu as a screened project. Projects for which EJ data and additional consideration are evaluated are designated as not being screened projects on the drop-down list.

Disproportionately high and adverse effects to minority and low income populations are not normally expected for CE level projects but if encountered they would be addressed to lower the project impacts to a level consistent with the definition of a CE and in accordance with the [FHWA Memorandum - Guidance on Environmental Justice and NEPA \(2011\)](#) or the project would be reclassified as an EA if needed. For such projects there should be additional coordination with the ADOT Civil Rights Office and ADOT Communications. See the [Environmental Planning website](#) for additional information.

Public Involvement	
<input type="checkbox"/>	Select a determination from the drop-down menu

### Public Coordination

Per FHWA; “Although a CE does not include any formal public involvement requirements, in certain situations, public involvement can accompany a CE, if appropriate” ([83 FR 54485](#)). However, ADOT conducts scoping and public outreach beyond the requirements of 23 CFR 771. Scoping procedures are described in the Environmental Planning Guidelines for Agency and Public Scoping for Projects with Categorical Exclusions. This document provides direction on sending letters to local, state and federal agencies, stakeholders and affected landowners to solicit project input. CE scoping in this context is not to be confused with EIS scoping as required and defined

under CEQ regulations ([40 CFR 1502.4](#)). The ADOT Communications Public Involvement Plan (PIP) outlines procedures for coordinating public involvement materials and conducting public meetings if the Project Team decides a public meeting is appropriate for a particular project.

For scoping letters, or if a public meeting is held, a response to each comment received is not a requirement under 23 CFR 771.111. However, for ADOT projects the Project Team should assess if comments are substantive and should receive a response. Responses can also be provided as part of good public relations for a project.

Documenting Public Involvement in the file is the responsibility of the Environmental Planner. For LPA projects the Environmental Planner will acknowledge the public involvement efforts of the LPA who is responsible for public involvement efforts including any responses to comments. It is recommended that LPAs utilize the ADOT Public Involvement Plan but it is not a requirement. Agency and Public Scoping Letters are typically all that are prepared for projects processed with a CE. Public involvement in terms of NEPA requirements, i.e., consistency with the definition of a CE, should not be confused with public relations and construction information sharing.

Section 106, Section 4(f) use with a *de minimis* impact determinations, and federal noise requirements under 23 CFR 772 also have public involvement components and the requirements are outlined under their respective areas.

### **Federal Agency and Tribal Coordination**

ADOT will closely coordinate project development with any Federal Land Management Agency and/or Native American Tribe for projects within an easement over those lands. Consideration for the underlying land ownership should be given to all projects. Certain projects such as pathways or trail projects along canals need special consideration in determining the underlying landowner. Such projects could require coordination with the Bureau of Reclamation or have an operating agency that is different from the underlying landowner. All Federal Land Management Agencies and Native American Tribes are scoped as part of the project development process for projects on their lands. Environmental Planners should follow up any non-responses.

Land management agencies typically rely on the “Federal-aid project NEPA” for their own NEPA requirements for actions such as new ROW. However, for projects requiring new ROW the scoping, or in the case of the BLM the Cooperating Agency letter, should request of any Federal Land Management Agency if they anticipate needing to undertake their own “federal action” (NEPA approval) on the project. For example, the Bureau of Land Management (BLM) may require their own NEPA approval for projects on ROW granted under Title V of the Federal Land Policy and Management Act. These are “non-Title 23” actions as outlined in the ADOT-FHWA-BLM Operating Agreement (MOU appendix) and therefore BLM requires their own NEPA action.

The Environmental Planner should discuss at the Field Review/Kickoff meeting the level of NEPA documentation with any relevant federal agencies or tribes on a project. Environmental Planners should follow the “Guidelines for Highways on BLM and U.S. Forest Lands” and the Memorandums of Understanding (MOU) with the BLM and the U.S. Forest Service. In accordance with the BLM MOU the BLM is sent a copy of the CE before it is approved if new ROW is being

acquired from the BLM. Other federal agencies may also be sent a copy of the CE as needed and identified during the project development process.

## OTHER ENVIRONMENTAL CONSIDERATIONS

Other Environmental Considerations:	
<input type="checkbox"/>	Other potential environmental impacts such as Prime and Unique Farmlands, Sole Source Aquifers, Section 6(f) property, visual resources, etc. have been considered for this project and additional documentation as applicable is contained in the Project File.
Briefly cite other applicable considerations and reference the appropriate file documentation if necessary. If no other considerations apply cite "n/a"	
n/a	

Environmental planners that prepare CEs utilize the questions outlined below, in conjunction with the project scope of work and project setting and context, to assess other potential environmental impacts. Judgement must be used in determining what additional environmental analysis or documentation may be required based on the scope of the work and the context of the project. The box should be checked to note other environmental impacts have been considered. If there are other applicable environmental considerations the "n/a" should be deleted and the other relevant considerations briefly documented.

The questions provided below help ensure that "unusual circumstances" are considered as described under paragraph (b), and that "other" relevant environmental laws are considered.

### I. VISUAL IMPACTS

- Does the project involve *substantial* changes to a roadway, cut slope, or a bridge on U.S. Forest Service or BLM lands? If so, has proper coordination with the land management agency taken place to ensure the project is consistent with the land management agency's visual objectives?
- Are there major design features such as a new bridge that may require coordination of visual impacts? Agreement on what color to stain a concrete spillway on federal lands is an example of a mitigation measure.



Example of mitigation for visual impacts.

### II. PRIME AND UNIQUE FARMLAND

- Does the project involve new ROW that includes taking existing farmlands that are not slated for development? If so, review the project for impacts to Prime and Unique farmlands.

### Type of Farmland

- Determine if the farmland in the project area is prime, unique, or of statewide or local importance, by using the NRCS online GIS tool and applicable State/Local agencies as needed. If the farmland within the project area has not been designated as either prime, unique, or of statewide or local importance, no other impact analysis is required.

### Farmlands Impacted by Project

- If the project impacts farmland that is not on land zoned for more intense development, determine if the project is considered a “corridor-type” project, check the applicable box, and complete either the Farmland Conversion Impact Rating form (AD-1006) or the Farmland Conversion Impact Rating, Corridors form (NRCS-CPA-106). Insert information regarding the area removed from farming (in acres) and the number of farms that will be impacted by the conversion as applicable. Additional guidance is provided in the appendix.

## III. SOLE SOURCE AQUIFER

- Major highway improvements may require EPA review under the Sole Source Aquifer Protection Program pursuant to the Safe Drinking Water Act Section (SDWA) 1424(e) if located within a Sole Source Aquifer (SSA) area (Upper Santa Cruz & Avra Basin or Bisbee-Naco). To determine whether the project area is located in a sole source aquifer, refer to the EPA, Region 9, designated sole source aquifer maps, located on the EPA Sole Source Aquifer website. Projects for which a listed CE applies are not considered major by the EPA. If an individually approved CE is being prepared consult with ADOT Environmental Planning Water Resources Section. If it is determined that an EPA review is required then a request for review is sent to the EPA Sole Source Aquifer Protection Program pursuant to the SDWA 1424(e).
- If the project requires a SDWA review indicate under Other Considerations why the review was required and the results of the review.

## IV. SECTION 6(F) PROPERTY

- If the project is incorporating land from a park, then consideration needs to be given for Section 6(f) property. If so, verify with Arizona State Parks whether or not Land Water Conservation Funds (LWCF) have been utilized by the park in the area of impact. LWCF may have been used to buy the park land or to make specific site improvements. If LWCF-funded lands are to be taken or if park amenities purchased with LWCF funds are impacted then Section 6(f) applies and compensation provided (land). Check the *CE Manual* appendix for additional information.

## V. Other Technical Considerations

- The [FHWA Technical Advisory T6640.8A](#) lists areas of potential impact to be considered in an EIS. CEs are “applied” and are not “environmental documents” as defined by CEQ

however CEs must match the definition under 23 CFR 771.117(a) so consideration under other environmental laws and regulations for unusual circumstances could trigger additional evaluation.

- Consistent with CEQ and FHWA regulations and the normally expected non-significant level of impacts for projects approved with a CE, ADOT considers listed CE projects as actions that do not induce significant impacts to planned growth or land use for the area or have significant impacts on travel patterns and for local and regional planning to account for these effects when projects approved with a CE that add capacity to an existing facility are locally and regionally considered by way of inclusion in local planning, in a TIP and/or in a Metropolitan Plan.
- ADOT considers possible case-by-case evaluations to be for projects not already considered by federal rulemaking and incorporated in the list CEs under 23 CFR 771.117(c) and the examples under 23 CFR 771.117(d).
- If there is a need to evaluate potential impacts to other resources, including those listed in the Technical Advisory T6640.8A, the ADOT Environmental Planning *EA/EIS Guidance* should be followed for conducting such evaluation.

## CE CHECKLIST CONSTRAINTS [23 CFR 771.117(e)]

### Constraints Evaluation

There are eleven constraints that are included in the Checklist. These eleven constraints are the same six that are identified in 23 CFR 771.117(e). The six constraints have been expanded to eleven in this CE simply as an aid to the Environmental Planner preparing the Checklist. The constraints of paragraph (e) are similar in concept to the constraints first outlined in the 1989 FHWA Memorandum - *Categorical Exclusion (CE) Documentation and Approval*. The federal rulemaking for MAP-21 Section 1318 gives a full explanation of the constraints and how they were developed. The constraints concept was developed by FHWA with the intention of having the (d)-list CEs receive a higher level of review based on having a slightly higher potential for impacts than the c-list CEs. The constraints review will in effect screen c-listed CEs and determine that they should be categorized as a d-listed CE as explained in the paragraph below.

The intended purpose of the CE moving from the c-list to the d-list is to trigger additional FHWA review for those projects which do not meet all the constraint criteria. However, under CE and NEPA Assignment the additional FHWA review is retained by ADOT. CE approval is not “delegated down” and all CE projects already receive a review by a senior level planner and approval by a manager or the ENV Administrator who, through collective reviews, ensure the CE determination is appropriate and that the project does not require an EA or an EIS.

For each of the constraints the question of ‘yes’ or ‘no’ must be answered in relation to the project meeting the constraint criteria. In accordance with 23 CFR 771.117(e) any project that has *any one* of the constraints not met (constraint exceeded) will require modification to the CE type. For projects anticipated to be processed under (c)(26), (c)(27) and (c)(28), any constraints exceeded on a project will require the final CE determination to be made as a (d)(13) CE. For these (d)(13) projects the same CE Checklist is used as was initiated under the c-list by changing the CE Type on the drop-down menu on the CE from (c)(26), (c)(27) or (c)(28) to (d)(13). This change may be later in the project where a c-listed CE was anticipated but the final CE type selection is made as a (d)(13) after environmental analysis of the project is completed.

Complete this section <u>only</u> for CEs determined under 23 CFR 771.117(c)(26), (c)(27) and (c)(28) for evaluation of the constraints under 23 CFR 771.117(e):		
If the answer to all questions 1 through 11 below is <b>No</b> then the project can be approved as a (c)(26), (c)(27) or (c)(28) CE.		
If the answer to any question 1 through 11 for a project listed under (c)(26), (c)(27) or (c)(28) is <b>Yes</b> then the project exceeds the constraints listed under 23 CFR 771.117(e) and must be processed under (d)(13). Additional information regarding any constraint exceeded is included below.		
Constraints:	Yes	No
Does the project involve the permanent acquisition of more than a minor amount of ROW?	<input type="radio"/>	<input type="radio"/>
Does the project involve any residential or non-residential displacements?	<input type="radio"/>	<input type="radio"/>



Complete this section <i>only</i> for CEs determined under 23 CFR 771.117(c)(26), (c)(27) and (c)(28) for evaluation of the constraints under 23 CFR 771.117(e):		
<p>If the answer to all questions 1 through 11 below is <b>No</b> then the project can be approved as a (c)(26), (c)(27) or (c)(28) CE.</p> <p>If the answer to any question 1 through 11 for a project listed under (c)(26), (c)(27) or (c)(28) is <b>Yes</b> then the project exceeds the constraints listed under 23 CFR 771.117(e) and must be processed under (d)(13). Additional information regarding any constraint exceeded is included below.</p>		
Constraints:	Yes	No
Does the project require a bridge permit from the U.S. Coast Guard?	<input type="radio"/>	<input type="radio"/>
Does the project require an Individual Permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act?	<input type="radio"/>	<input type="radio"/>
Does the project have a finding of "Adverse Effect" on historic properties protected by Section 106 of the NHPA by FHWA?	<input type="radio"/>	<input type="radio"/>
Does the project involve the use of a resource protected under Section 4(f) except for actions resulting in <i>de minimis</i> impacts?	<input type="radio"/>	<input type="radio"/>
Does the project have a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act?	<input type="radio"/>	<input type="radio"/>
Does the project involve construction of temporary access, or the closure of an existing road, bridge, or ramp, that would result in major traffic disruptions?	<input type="radio"/>	<input type="radio"/>
Does the project involve a change in access control on a controlled access highway?	<input type="radio"/>	<input type="radio"/>
Does the project involve a floodplain encroachment for other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths)?	<input type="radio"/>	<input type="radio"/>
Does the project involve construction activities in, across, or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers?	<input type="radio"/>	<input type="radio"/>

**Note:** The **six** constraints as defined in 23 CFR 771.117(e) are numbered as **eleven** when specifically listed in the CE Checklist as an aid to the preparer. There is no difference between the constraints in the regulations and the constraints in the CE Checklist or this guidance. The constraints are listed again below with general guidance for answering the question as either 'yes' or 'no' for each of the constraints.

#### I. Does the project involve the permanent acquisition of more than a minor amount of ROW?

This *CE Manual* defines what constitutes more than a minor amount of ROW. The intent of the determination of a minor amount of ROW is to distinguish between projects involving minor use of additional land (e.g., rehabilitation, renovation) from projects involving substantial land use changes and the associated potential for adverse impacts. This constraint will not be exceeded for the vast majority of projects to which this constraint is applied. Projects that involve substantial land use changes would likely involve the addition of capacity

that requires large amounts of new ROW and would need to be documented in an EA. Typical examples of minor amounts of ROW acquisition include low-cost strip acquisitions and corner acquisitions.

For determining if the project falls below the constraint of paragraph (e) the Project File will include information that demonstrates the following:

- Acquisition of new ROW beyond strip takings, corner takings or that constitutes more than a minor amount in the judgment of the ENV Planner given the context of the project and the information above related to land use changes.

**Note:** No separate stand-alone calculations and documentation are needed. A review of the design plans, ROW plans and/or project description will provide sufficient information to make the determination related to a minor amount of ROW. TCEs are not calculated as a constraint under paragraph (e).

For projects in which a new permanent ROW is acquired the Project File will contain plans that show any ROW for the project. A vicinity map or project plan depicting the needed ROW can be used for documentation purposes. At the Environmental Planner's discretion for projects involving numerous parcels of new ROW an optional table like the one suggested below can be utilized to assist in defining new ROW:

ADOT/LPA ROW, or TCE?	Land Managing Agency's Name (Type "Private" if privately owned)	County Assessor Parcel # /BLM Serial # (as applicable)	Other method to identify locations on tribal land or that does not have a parcel #	Total Acreage to be Acquired	Project/ footprint acreage

Any new TCEs to be acquired should be documented in the Project File. Project plans (or vicinity maps) from engineering or preliminary ROW Plans may be used for the information.

## II. Does the project involve any residential or non-residential displacements?

Does the project involve the acquisition of an occupied house or a business even though the entire property may not be acquired? Coordinate with ADOT ROW Group as needed.

These projects should not require the relocation of a substantial number of residential or non-residential relocations. In determining whether the number of relocations is significant or if there are unusual circumstances, a project sponsor should consider whether there is substantial controversy (do the people who would be relocated object), is there a history of controversial relocations in the area, and do the relocations involve environmental justice communities, among other considerations. The appropriateness of proceeding with the action as a CE, given the relocations, must be documented.

## III. Does the project require a bridge permit from the U.S. Coast Guard?

Does the project involve construction of a bridge over a navigable waterway (Colorado River)? If so, a permit is required pursuant to 23 CFR 650.807. The need for a permit should be determined through agency scoping early in the process. The need for a Coast Guard construction permit will occur very infrequently. A new bridge over the Colorado River would likely be processed with an EA. There are only nine ADOT bridges across the Colorado River.

#### **IV. Does the project require an Individual Permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act?**

If a Corps IP is required, the alternatives analysis must demonstrate the Least Environmentally Damaging Practicable Alternative (LEDPA). The Corps IP does not need to be approved before a CE determination can be made only the need for the Corps IP must be identified. Coordination with the Corps must be demonstrated before the CE can be approved.

#### **V. Does the project have a finding of “Adverse Effect” on historic properties protected by Section 106 of the NHPA?**

The Section 106 finding of effect will dictate whether or not this constraint is met.

#### **VI. Does the project involve the use of a resource protected under Section 4(f) except for actions resulting in *de minimis* impacts?**

If the impact is determined to be *de minimis* the constraint it met. If the constraint is not met the Section 4(f) documentation, the Programmatic or Individual 4(f) evaluation, shall be referenced under Constraint(s) Not Met.

#### **VII. Does the project have a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act?**

Was there a Section 7 formal consultation completed and was there a “may affect, likely to adversely affect” finding, thus requiring a Biological Opinion (BO)? A BO is the Section 7 reply from the US Fish & Wildlife Service (USFWS). If so, then the constraint is not met. Reference the BO under Constraint(s) Not Met.

#### **VIII. Does the project involve construction of temporary access, or the closure of an existing road, bridge, or ramp, that would result in major traffic disruptions?**

Project scoping and preliminary design may be needed to evaluate this constraint. The answer to this will be “no” if the following are true of the project:

- a. Provisions are made for access by local traffic and are so posted.
- b. Through-traffic dependent business will not be adversely affected (maintained excluding minor shutdowns)

- c. The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.
- d. The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action.
- e. There is no substantial controversy associated with the use of temporary road, detour, or ramp closure.

Projects that require a full Traffic Management Plan (TMP) for traffic control purposes in a Transportation Management Area may need additional consideration as to whether or not the project will result in *major* traffic disruptions. If closures and detours are involved the Environmental Planner should discuss the potential for traffic disruptions with the Project Team.

#### **IX. Does the project involve a change in access control on a controlled access highway?**

Access control changes apply to the Interstate Highway System only because FHWA requires NEPA approval before approving changes in access on an Interstate highway. Does the project add a new interchange to the Interstate system (I-8, I-10, I-17, I-19 or I-40) or substantially modify an existing interchange on an Interstate highway? The Environmental Planner through the ADOT Project Manager will coordinate with the FHWA Area Engineer to determine if interchange modifications require a change in access control.

#### **X. Does the project involve a floodplain encroachment for other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths)?**

If the project involves construction in a floodplain for other than functionally dependent (“water dependent”) uses or the open space uses described above then the CE will need to be documented under (d)(13) and a statement that “no significant encroachment is involved” included in the box below explaining any constraints exceeded. If there is a significant encroachment then the project cannot be completed with a CE.

A significant encroachment, as defined by FHWA, is a federal action within the base floodplain that would involve:

1. significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or which provides a community’s only evacuation route,
2. a significant risk, or
3. a significant adverse impact on natural and beneficial floodplain values

Item (1) above refers to the overtopping of highways and items (2) and (3) relate to impacts within the floodplain. Projects with a significant encroachment require preparation of an Environmental Impact Statement (EIS). A highway location project (new highway) within a floodplain encroachment would trigger the decision-making process required by Executive Order 11988, *Floodplain Management*, and established in 23 CFR

part 650 Subpart A, which requires evaluation of practicable alternatives and assessment of impacts. These are projects which typically require a Location Hydraulic Study prepared as part of a Design Concept Study in conjunction with an EA or EIS.

CEs processed under (c)(26), (c)(27) or (c)(28) must meet the constraints of 23 CFR 771.117(e) or be processed as a CE under paragraph (d)(13). By definition under 23 CFR 771.117(e) this constraint does not apply to bridge (water-dependent) or trail/pathway projects for CEs designated by (c)(26), (c)(27) or (c)(28). Keep in mind that the federal regulations and guidance are based on the impacts of new facilities (“location”) inside a floodplain that could result in the elevation of the base flood level changing. Highway widening and embankment construction in a floodplain could result in some encroachment in a floodplain but it is unlikely to be “significant.” Rehabilitation projects such as pavement preservation, traffic signs, Intelligent Transportation Systems (ITS), etc., will not affect base floodplains.

If the project has a potential to impact a 100-Year Floodplain the respective County’s Floodplain Manager should be scoped. If there is a question of encroachment impacts there could be a requirement to conduct hydraulic analysis as referenced above. The hydraulic studies and alternatives analysis cited in Executive Order 11988 and 23 CFR 650 are called out in Section 602.4 of the ADOT *Roadway Design Guidelines* as engineering responsibilities.

**XI. Does the project involve construction activities in, across, or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers?**

The National System of Wild and Scenic Rivers is published by the U.S. Department of the Interior/U.S. Department of Agriculture (USDA). Projects as described by this constraint require coordination with the USDA and documentation of any possible impacts. There are only two qualifying segments of rivers in AZ: the Verde River and Fossil Creek. The river locations are shown on the NPS website: <https://rivers.gov/>

There are no State highways or local roads crossing either river within those limits so this constraint will likely never be an issue for an ADOT approved CE.

**23 CFR 771.117(e) – Constraints Exceeded**

**23 CFR 771.117(e) - Constraints Exceeded (“Yes” on Checklist):**

If the answer is ‘Yes’ to any of the constraint questions provide a brief and concise explanation of the reason the constraint is exceeded in this box. For example, if constraint 3 (residential displacement) is exceeded a brief explanation that the project will require the acquisition of a residential property is included in the CE. Or, for example if constraint 6 {Section 4(f)} is exceeded it may be because a historic bridge is to be replaced and therefore requires a Programmatic Section 4(f) Evaluation. A brief explanation of the Section 4(f) determination is included in the text box.

## CE CERTIFICATION AND DETERMINATION:

Certification and Determination by ADOT	
<input type="checkbox"/>	The State has determined that this project has no significant impact(s) on the environment and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under NEPA. The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to <b>23 U.S.C. 326</b> and a Memorandum of Understanding dated December 2023, executed between FHWA and the State.
<input type="checkbox"/>	The State has determined that this project has no significant impact(s) on the environment and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under NEPA. The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by ADOT pursuant to <b>23 U.S.C. 327</b> and a Memorandum of Understanding dated April 16, 2019, and executed by FHWA and ADOT.



## Approval Authority

For any project only **one** of the boxes above is checked. ADOT and FHWA have entered into two separate MOUs that allow ADOT to make CE determinations for those actions that qualify for a CE. Actions listed in 23 CFR 771.117(c) or (d) are approved under the 326 MOU. An action that qualifies for a CE but is not specifically listed in paragraph (d) is approved under the 327 MOU.

## Certification

ADOT certifies that the project NEPA determination meets the definition of a CE under 23 CFR 771.117 (a) and (b). ADOT certifies that the CE meets all applicable requirements.

### Definition of a CE – 23 CFR 771.117(a)

A CE under 23 CFR 771.117(a) includes actions that: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

### Unusual Circumstances – 23 CFR 771.117(b)

Under 23 CFR 771.117(b), any action that normally would be classified as a CE but could involve “unusual circumstances” will require appropriate environmental studies to determine if the CE classification is appropriate. Such unusual circumstances include: (1) Significant environmental impacts; (2) Substantial controversy on environmental grounds; (3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or (4) Inconsistencies with any Federal, State, or local law, requirements or administrative determination relating to the environmental aspects of the action.

Pursuant to 23 CFR 771.117(b)(2) “substantial controversy on environmental grounds” must be considered in the review of “unusual circumstances.” Substantial controversy is not equated with the inconvenience caused by temporary impacts such as temporary access restrictions during construction or a comment letter received that is critical of a project. Substantial controversy relates to a substantial amount of public or agency opposition to the permanent impacts of a project on *environmental grounds* (“...related to a substantial dispute as to the size, nature or effect...” – [CEQ](#)). If there is substantial controversy on environmental grounds then additional documentation would be required to document that the project still qualifies for a CE.



**Unusual circumstances and other environmental laws are always considered.**

### “Other” Environmental Review Laws

Environmental Planners and ADOT Project Managers need to maintain awareness that environmental analysis and technical documents under other applicable laws are typically the critical path elements in the environmental component of the project schedule. Early coordination is especially important with regard to the NHPA (Section 106), Section 4(f), the Clean Water Act (Section 404), and the Endangered Species Act (Section 7). Coordination and completion of environmental analysis and consultation under the other applicable key transportation related environmental laws will usually dictate the schedule for completing a project’s NEPA requirements.

### ENVIRONMENTAL COMMITMENTS

Environmental Commitments	
<input type="checkbox"/>	Environmental commitments are included with this project and will be incorporated into the project plans, specifications and estimates as required.
<input type="checkbox"/>	Environmental Permits Issues and Commitments (EPIC) sheet to be included.

If the box regarding environmental commitments is checked then an Environmental Commitments Form must be included with the project. Check the box if the Environmental Permits Issues and Commitments (EPIC) sheet is to be included in project plans. Certain projects may have no environmental commitments and the box would remain unchecked.

### APPROVAL SIGNATURES

Categorical Exclusion Approval	
<div>Prepared By: _____ Click here to enter text. Environmental Planner</div> <div>Date: _____</div>	<div>Approved By: _____ Administrator, Environmental Planning</div> <div>Date: _____</div>

The CE Checklist is signed by the Environmental Planner and the approval manager. CE review and approval procedures are defined in the Environmental Planning QA/QC Plan.

## APPENDIX

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Environmental Commitments  
Environmental Clearance, PS&E and CE Validation  
The Project File  
Re-evaluations  
Emergency Project Procedures  
Air Quality  
Noise  
Biology  
Section 4(f) and Section 6(f) Property  
Water Resources  
Hazardous Materials  
Farmland Procedures  
Environmental Justice  
Early Acquisition of ROW  
CE Checklist Manual Updates

## ENVIRONMENTAL COMMITMENTS

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### ENVIRONMENTAL COMMITMENTS

Environmental Commitments include project-specific mitigation measures as well as identifying permits and contractor-implemented materials such as species handling guidelines to be included in the final contract documents, also known as the Plans, Specifications and Estimate (PS&E). Project-specific mitigations are measures that do not reside elsewhere in standard specifications, stored or supplemental specifications or other requirements necessary to mitigate potential environmental impacts and must be “reasonable” per FHWA requirements. 23 CFR 771.105(e) outlines that; mitigation measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

- (1) The impacts for which the mitigation is proposed actually result from the Administration action; and
- (2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a federal statute, executive order, or Administration regulation or policy.

Project-specific mitigation measures should be limited to those impact mitigations that are not included in ADOT (or CA Agency as appropriate); standard specifications, stored or supplemental specifications, or other requirements that reside elsewhere in special provisions or project permit conditions. Project-specific mitigation measures are direct impact-related mitigations as derived from regulation and developed through environmental analysis or agreed upon with other agencies through consultation such as Section 7, Section 106 or Section 4(f) (*de minimis* determinations or avoidance commitments). An example would be that access, construction notifications and maintenance of traffic are located elsewhere in project special provisions and/or standard specifications. However, a project-specific mitigation may be made that ADOT will fund a fire department’s request for additional fire-fighting support due to access limitations of existing fire-fighting services in a project area. Additional examples of project-specific mitigations could include; maintained access to a Section 4(f) property, archaeological data recovery prior to construction, archaeological avoidance areas, planting for a habitat impact, seasonal cutting restrictions, construction monitoring or use of in lieu fees for a wetland impact.



Environmental commitments come in many forms.

A project design feature that is incorporated specifically to mitigate or avoid an environmental impact could be included in the environmental commitments as a design mitigation measure. The Environmental Planner will ensure that the information is conveyed to the design team and check the project plans to ensure that the project-specific design mitigation measures are incorporated into the project and reflected in the PS&E.

The Environmental Commitments can include copies of permits or identify anticipated permits. All permitting actions may not be complete at the time of the CE approval. The Environmental Planner ensures C&S receives a copy of completed permits for inclusion in the PS&E.

The Environmental Planner normally prepares the Environmental Commitments Form and the EPIC sheet as needed for projects and coordinates with LPAs on projects in which the LPA administers design. The EPIC plan sheet is a summary plan sheet that is incorporated into the project's final plans that identifies environmental permits and mitigation measures necessary for the project to address, offset, or compensate for project impacts. The EPIC plan sheet applies to all ADOT construction administered projects as applicable and will be used concurrently with the Environmental Commitment document. The Contractor mitigation measures are to be incorporated in the Special Provisions and final plans through the EPIC (for ADOT administered construction projects), and documents are provided to C&S (or the LPA CA Agency if self-administering) in a Word document along with PDF files of the other commitments to be included in the contract. The Environmental Commitments Form includes the following which is incorporated into the special provisions:

## ENVIRONMENTAL COMMITMENTS

The following shall be included in the project special provisions:

- I. **[Chose paragraph 1 below for ADOT administered construction projects including non-CAA LPA projects. Delete paragraph 2]**

**“The project mitigation measures are not subject to change without written approval from ADOT Environmental Planning. The Contractor shall follow all the requirements of the permits specified herein and comply with the project specifications.”**

**[Chose paragraph 2 below for LPA CAA administered projects. Choose region MAG or PAG and delete the other. Delete paragraph 1 above]**

**“The project mitigation measures are not subject to change without written approval from ADOT Environmental Planning. The Contractor shall follow all the requirements of the permits specified herein and comply with the project special provisions as well as the MAG Uniform Standard Specifications for Public Works, PAG Standard**

**Specifications for Public Improvements**, as well as all applicable local environmental requirements.”

The Environmental Planner, in coordination with the technical disciplines within Environmental Planning as applicable, can approve changes in text of the mitigation measures after NEPA approval. Based on 23 CFR 771.109(d), a project must incorporate all committed environmental impact mitigation measures listed in approved environmental review documents unless ADOT officially modifies or approves the deletion of such mitigations. This means *substantive* changes to mitigation measures are conducted under the process outlined for Re-Evaluations.



## ENVIRONMENTAL CLEARANCE, PS&E AND CE VALIDATION

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### ENVIRONMENTAL CLEARANCE, PS&E AND CE VALIDATION

An ADOT Environmental Clearance is an approval sent from Environmental Planning to C&S to certify that the environmental process and documentation is complete and that the project is ready for advertisement by ADOT. This is a distinct step in the ADOT Project Development Process, separate from NEPA Approval. The Environmental Clearance is emailed to C&S with the packet of ADOT Environmental Commitments to be included in the Special Provisions. The Contractor mitigation measures are included verbatim in the Special Provisions. Neither the ADOT Environmental Clearance itself, nor the CE, is included in the final bid package, only the applicable Environmental Commitments. There is no “ADOT Environmental Clearance” for LPA CA Agency projects, only the NEPA Approval. The CA Agency certifies to the ADOT Project Manager that the PS&E is consistent with the environmental commitments in the CE. For ADOT administered projects the Environmental Planner must check that the PS&E is in conformance with the approved project CE. The ADOT PM (CA Agency administered) or C&S Specialist (ADOT administered) will check with the Environmental Planner that the CE is still valid by including the Environmental Planner in the letter requesting a federal authorization for construction funding. As part of this process the ADOT PM must continue to send all plan submittals to the ADOT Environmental Planner as the project advances after a CE is completed. If projects are reviewed in a timely manner, typically as plan submittals are made, then the validation step is quick and straight-forward. For RTP projects a notice of the approved CE is sent to MPD Finance for processing the authorization. Since these projects are authorized shortly after completion of the CE approval no additional validation steps are required outside of MPD including the validation text in the authorization request sent to FHWA.

Depending on the timing of the construction project the ADOT Environmental Clearance may be issued at the time the CE is approved or well after the CE approval. Normally the Environmental Clearance is sent at the same time that the CE is approved. **For all intents and purposes, the Project Team can use “NEPA Approval” and “Environmental Clearance” synonymously for the vast majority of projects approved with a CE.** If the project is not programmed but is being prepared as “shelf-ready” with the intent of advancing the project in the program then the ADOT Environmental Clearance should be issued later in time closer to PS&E. A project that requires new ROW, including TCEs, or data recovery may need the CE to be approved early in the process. Larger projects that utilize a two-step federal authorization process for Preliminary Engineering (PE) funds require the CE approval well in advance of construction as the project is designed during Step-Two and NEPA approval is needed in advance of the design funds authorization. For such projects the Environmental Clearance is issued closer to PS&E. CEs approved in advance of final design for Two-Step projects may need to be re-evaluated in accordance with 23 CFR 771.129 prior to a FHWA funding authorization request.

## THE PROJECT FILE

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### THE PROJECT FILE

The Project File contains “administrative” files as well as “environmental review” documentation of importance for documenting NEPA “decision-making.” Performance reviews by FHWA in accordance with the CE Assignment MOU and audits under the 327 MOU will rely on all relevant decision-making data, analysis and correspondence being in the electronic Project File for easy access and review. “Administrative” files are related to project and program management and are **not** considered environmental review documents related to NEPA decision-making.

Depending on the nature of any specific project, the ADOT Project File may contain any of the following:

- Task Order Scope of Work and Project Determination [Administrative]
- Framework Form [Administrative]
- LPA Initiation Letter [Administrative]
- Project Environmental Data Sheet (PEDS) [Administrative]
- Field Review Minutes
- Project scoping document (Project Assessment/Design Concept Report)
- Public and agency scoping letters and responses
- Cooperating Agency letters
- Section 106 Consultation Letters
- Section 106 Closeout Memo from ADOT HPT
- Biological Document from ADOT Biologist
- Preliminary Initial Site Assessment (PISA)
- Asbestos and lead-based paint reports
- Section 4(f) Documentation
- Section 6(f) Documentation (AZ State Parks/National Parks Service)
- Coordination letters and emails from ADOT specialists and other agencies that contain decision-making/determinations
- Arizona Game and Fish Department (AGFD) correspondence and Online Review Tool Receipt
- USFWS letter(s) of concurrence
- Air Quality Report and Conformity Documentation
- Technical Noise Memo/Analysis/Report
- Section 404 Permitting
- Prime and Unique Farmland documentation
- New ROW/TCE documentation
- Coordination letters and emails between Environmental Planner and LPA that contain decision-making/determinations
- Environmental Commitments Form including Section 404 Permitting

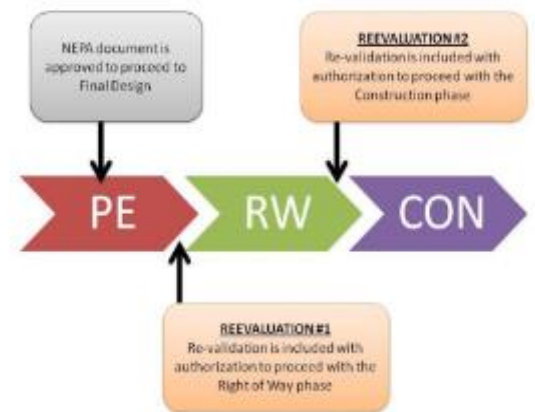
## RE-EVALUATIONS

### RE-EVALUATIONS

#### Introduction

This guidance outlines requirements for properly documenting formal and informal project CE re-evaluations, addressing environmental coordination for project changes after a CE determination has been made and to differentiate minor changes vs. major approvals of changes in project scope. Re-evaluations are required under 23 CFR 771.129(c) prior to “major” federal actions, i.e., authorizations for Design, ROW or Construction. Re-evaluations can be formal or informal as described in this guidance and the [FHWA Guidance Memo: “Project Development and Documentation Overview” \(1992\)](#).

At the time of a request for federal authorization ADOT acknowledges the CE is still valid. A CE re-evaluation is conducted, as needed, *prior* to the CE validation which accompanies (DocuSign letter) the request for federal authorization. From this FHWA guidance: “The FHWA must assure that the environmental documentation for the proposed action (CE, EA/FONSI, EIS/ROD) is still valid, prior to proceeding with major project approvals or authorizations. This is accomplished through a re-evaluation, which is an assessment of any changes which may have occurred in either the project's concept or the affected environment, and a determination of what effects these changes might have on the validity of the environmental documentation. Informal consultation between FHWA\* and the State DOT may be acceptable, with appropriate documentation (e.g., a ‘note to the file’).” \*ADOT has assumed responsibility for CEs under 23 U.S.C. 326 (CE Assignment) and 23 U.S.C. 327 (NEPA Assignment).



Re-evaluations related to federal actions (Caltrans)

Informal and formal re-evaluations are defined in detail below. Formal re-evaluations are in essence an updated CE with the Re-evaluation box on the CE Checklist checked. The vast majority of re-evaluations, if needed, are informal and review only the matter relevant with minimal documentation. ADOT’s process in this regard is consistent with FHWA formal guidance on re-evaluations. FHWA’s [NEPA Re-Evaluation Joint Guidance](#) states documentation may be simple such as an email between agency and project sponsor or a memorandum to the project file.

#### Informal Re-evaluations for Minor Changes to Project Scope

Prior to a validity check at the time of the request for federal authorization there may be informal re-evaluations conducted as needed. Per the [Joint Guidance](#): “The analysis and documentation should focus on and be commensurate with the situation triggering the re-evaluation. For example, if no substantial changes to surrounding circumstances or analysis have occurred the

approval of the environmental document or decision, then the analysis and documentation should be minimal (for example, verbal exchange with memo to the file, e-mail, etc. Technical reviews of minor changes to a project scope of work do not require a formal CE Re-evaluation. For minor changes to projects approved with a CE, ADOT Environmental Planning undertakes any needed technical reviews and provide technical assistance and direction to ADOT Project Managers, District Environmental Coordinators (DEC), Resident Engineers (RE) and LPA Project Managers/Engineers as needed. The Environmental Planner is the lead for evaluating any change in scope to the project and coordinating with the Technical Sections as well as others outside of Environmental Planning as needed. The Environmental Planner will document in the Project File whatever technical guidance is given. A Note to File Form is typically used to document minor changes in the project but other documentation such as emails and letters may suffice.

Minor changes during construction (change orders) may not amount to a change in scope requiring environmental review. The RE determines what is a change in scope that requires it to be sent to Environmental Planning. A change in scope requiring environmental review typically involves work added outside of the original project description and cleared project limits and footprint. The RE or DEC may want to discuss the changes with Environmental Planning to help determine whether or not there is a change in scope requiring environmental review by Environmental Planning. These circumstances, with no change in impacts or environmental analysis, are considered amounting to advice, and may be addressed through phone calls or emails between project parties.

If requested during construction, changes in scope that require environmental review or any change to mitigation measures are typically documented with a Note to File Form and recorded in the Project File. The Environmental Planner provides a copy of the Note to File Form to the Project Manager, RE, DEC, and the CA Agency, if applicable, for issues sent to Environmental Planning for review during construction.

Minor changes in scope are not documented as a formal re-evaluation because no “major approvals” as described under 23 CFR 771.129(c) are being requested of FHWA and there is no question as to whether or not the “CE designation remains valid” as defined in 23 CFR 771.117(c). Typically, the last FHWA major approval is for Construction funds, therefore the need for formal re-evaluations of a CE during construction should be minimal and a technical review is usually sufficient for minor scope changes during construction.

The ADOT Project Manager, DEC, the RE or CA Agency will contact ADOT Environmental Planning if there are *changes in the project scope or limits*. As noted above, not every change in construction resulting in a change order is a change in scope requiring environmental review by Environmental Planning. For example, adding “over-excavation” and changing the depth in excavation from a design depth of 12 inches to 18 inches may be a change order but is not a “change in scope” as requiring environmental review. Certain change orders may require an environmental review by Environmental Planning and be documented with a Note to File.

The Environmental Planner is responsible for coordinating with the appropriate Technical Sections within Environmental Planning as needed. Coordination with the Technical Sections is

important in maintaining compliance with the “other” environmental laws. The Environmental Planner, working in cooperation with the Project Team during construction, will help ensure that changes in scope are reviewed to ensure compliance when an environmental review is requested by the RE.

The following is a non-inclusive list of sample actions that may occur during construction and require an informal re-evaluation.

Examples of minor changes in scope (informal re-evaluations)
Shoulder millings added
Paint striping obliteration added
Bridge railing removal added
Drainage pipes replaced and/or drainage outlet extended beyond the cleared limits
Guardrail added/modified beyond the design limits
Amenity/fence modifications beyond the design limits
Detour added/route changed
Adding tree/vegetation removal with no species concerns
Culvert cleanout added
Adding Rip rap added new locations
Removal of utility pipe within the APE added
Paving added beyond cleared limits
Modification to a contract mitigation measure (that does not involve a resource agency)
New TCE
Staging area outside of the project area added

The way projects are combined or phased for bid may also be informally evaluated after a CE(s) has been approved but could require a CE Re-evaluation depending on input from the Technical Specialists.

### Formal Re-evaluations for Major Changes to Project Scope

Major changes that may require a formal re-evaluation should be considered to be any major project development steps that have to be revisited due to scope change during design or construction. The decision on whether or not a formal CE Re-evaluation is necessary will be made by the Environmental Planner in consultation with ADOT Environmental Planning management as necessary. Certain changes to the project scope for example those that require new environmental review under regulations, a new Individual 404 permit or require new ROW may need to be documented with a formal re-evaluation of the CE. If the project design concept and scope or the project limits have substantially changed since the CE approval CE Re-evaluation will most likely be required. Procedures for documenting CE Re-evaluations are contained in the [Processing the CE Checklist](#) section of this manual.

Realigning a highway from the approved design and CE would be a change in scope that would require consideration of a formal CE Re-evaluation. This is consistent with and keeping in mind that CEs are a clearance for the overall “action” as described in regulation and the scope change would have to call the applicability of the CE into question in order to trigger a formal re-evaluation. For such projects, reviewing such substantial scope change to ensure it is consistent with the definition of a CE would require the formal re-evaluation of the CE determination. A formal re-evaluation of a CE during construction (change order) is possible but unlikely and most change order reviews that come to Environmental Planning are addressed with a Note to File.

The ADOT Project Manager or CA Agency could initiate contact with ADOT Environmental Planning during design, or the RE could make a request during construction, for an environmental review of project changes. The Environmental Planner is responsible for coordinating with the appropriate Technical Sections within Environmental Planning. Changes that warrant a formal re-evaluation will be documented with a CE Checklist with the Re-Evaluation box checked. The approval of the CE Checklist Re-evaluation is the same as the approval authority for a CE. The following table is a non-inclusive list of sample project changes that may require a formal CE Re-evaluation during construction.

Examples of major scope changes ( <i>possible</i> formal re-evaluations)	
Project Change	Potential Environmental Analysis
Auxiliary lanes added	New Section 106 and Section 7
Work in wetlands added	New Section 7 consultation and Section 404 IP
Substantial rock cut added	New Section 7 consultation
Additional substantial new ROW	New Section 106 and Section 7
Travel lanes extended (capacity)	New Section 106 and Section 7. Possible conformity.

### Environmental Assessments and Environmental Impact Statements

A CE Checklist should not be used for re-evaluations of projects originally cleared with an EA or an EIS. Projects originally cleared as part of an EA or EIS should be individually reviewed and individually documented if a formal Re-evaluation is deemed necessary. However, consistent with [FHWA’s 1992 Project Development and Documentation Overview](#) guidance and the [FHWA’s NEPA Re-Evaluation Joint Guidance](#) the Note to File Form or an email may be utilized as part of an informal re-evaluation for a project, or component of a project, originally cleared with an EA or EIS. An example of an informal re-evaluation of an EA project component would be completing a Note to File Form for geotechnical activities within a previously cleared “EA footprint” if more than three years have elapsed since the approval of the EA. For EAs there is an ADOT Environmental Planning template for written formal EA Re-Evaluations.

### SUMMARY

Re-evaluations are required on all federal-aid projects prior to a request for federal action (Design/ROW/Construction) when there has been a long-time lag or changes in; project scope, resource identification, impacts or mitigation. Re-evaluations may be needed during project



development after the CE has been approved but prior to construction. For changes after a CE is approved the nature of the changes are documented and the Environmental Planner, in consultation with ADOT Environmental Planning management as needed, decides whether or not documentation of the re-evaluation is to utilize a Note to File or complete a CE Re-evaluation.

Minor changes that meet the threshold of a change in scope or project limits during construction are coordinated by the Environmental Planner with the technical specialists for the appropriate level of documentation. The level of documentation is commensurate with the minor nature of the change and what is appropriate is determined by ADOT under CE and NEPA Assignment. Construction change orders for minor changes in scope are an example of evaluations that may be documented with a Note to File Form. Once a project receives federal authorization for construction, it has moved beyond the project development stage unless substantial changes are introduced to the project and components of the project development process have to be revisited. Once construction funds have been authorized a formal documented re-evaluation of a CE is only triggered by substantial changes that result in the need to conduct additional analysis and consultation under an environmental law or regulation [Section 106, Section 7, Section 404, Section 4(f), etc.]. Environmental reviews for construction change orders are typically documented with a Note to File Form.

If a Note to File Form or CE Re-evaluation is completed after a CE is approved but before construction the form is emailed to the Project Team that received the original CE/Environmental Clearance. If the change happens during construction the Note to File Form or CE Re-evaluation is emailed to the Project Manager, RE, DEC, and the LPA CA Agency if applicable.

#### Additional FHWA Information:

[FHWA NEPA Implementation - Project Development and Documentation Overview](#)

[NEPA Re-Evaluation Joint Guidance for Federal Highway Administration \(FHWA\), Federal Railroad Administration \(FRA\), & Federal Transit Administration \(FTA\)](#)

[FHWA - FAQs about NEPA Reevaluations Part 1](#)

[FHWA - FAQs about NEPA Reevaluations Part 2](#)

## Emergency Project Procedures

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### FHWA Emergency Relief Program

Congress authorized in 23 U.S.C. 125, a special program from the Highway Trust Fund for the repair or reconstruction of Federal-aid highways and roads on Federal lands which have suffered considerable damage as a result of (1) natural disasters or (2) catastrophic failures from an external cause. This program is commonly referred to as the Emergency Relief (ER) program. Applicability of ER to a catastrophic failure due to an external cause is based on the criteria that the failure was not the result of an inherent flaw in the facility but was sudden, caused a disastrous impact on transportation services, and resulted in unusually high expenses to the highway agency.

The Emergency Relief Program funds projects which restore essential travel, minimize the extent of damage, or protect remaining facilities are normally classified as categorical exclusions under 23 CFR 771.117(c)(9) for repairs that occur within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original and for which the State submits an application to FHWA within a 2-year period beginning on the date of the declaration.

To be considered for ER funding a disaster declaration/proclamation is required. Either of the following fulfill this requirement:

- The President makes a major disaster declaration under the Stafford Act (42 U.S.C. 5121 et seq.), or
- The Governor of the State issues an emergency or disaster proclamation and FHWA concurs on the declaration.

If impacts to protected or otherwise sensitive or high-value resources are possible, advance coordination with the appropriate local, State, and Federal resource agencies should be closely considered to avoid or minimize project delays or shutdowns.

The [\*FHWA Emergency Relief Manual\*](#) defines two categories of emergency relief: 1) emergency repairs and 2) permanent repairs. Emergency repairs are repairs undertaken during or immediately after a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. State and local transportation agencies may start emergency repairs without prior FHWA authorization or environmental clearance though environmental coordination should begin as outlined below. Permanent repairs, while still qualifying for ER funds, are those repairs undertaken later in time to restore the highway to its pre-disaster condition.

These two categories of emergency relief (emergency repairs and permanent repairs) are aligned with FHWA funding requirements based on a timeline of 270 days to two years. Costs incurred in the first 270 days of the emergency receive 100 percent of Federal share reimbursement. All permanent repair costs incurred after the first 270 days are reimbursed at the normal pro rata share (State contribution).

Local agencies also may apply for ER funding as outlined in the FHWA ER Manual. The local agency anticipating the use of ER funding should contact the ADOT LPA Section immediately after the emergency event in order for ADOT to initiate a project agreement and to conduct initial agency coordination and environmental review.

The following levels of environmental review are based on timing and have been developed in alignment with the two FHWA categories of Emergency Repair and their time-based funding guidelines.

### **1. Emergency Repairs:**

Emergency repair is immediate action that must be taken by restoring essential traffic, minimizing the extent of damage, or protecting the remaining facility. In general, emergency repair work is conducted within 30 days of an emergency declaration.

Emergency repair work may be done immediately after the event with District personnel or the work may be contracted. The former situation does not allow time for outside coordination or environmental clearance before the work is undertaken. The latter situation may allow time for agency coordination and expedited environmental clearance. For all Emergency Relief Program emergency repairs to be reimbursed by FHWA, a (c)(9) CE with limited environmental review is completed either before the work or after depending on the timing constraints. Limited environmental review means evaluation that can be completed quickly in coordination with NHPA, ESA and CWA emergency provisions. Other environmental review steps such as scoping and air quality, noise and hazmat reviews are generally not applicable.

Emergency repair work that is completed 30 days or more after an emergency declaration cannot apply emergency provisions of other environmental laws and the environmental clearance follows essentially a normal project development process.

### **2. Permanent Repairs:**

Permanent repair projects are developed following the normal project development process and environmental review procedures. These environmental procedures are outside of the other environmental laws emergency procedures. Depending on the start time and scope of the work, the project may still be given priority and expedited coordination due to the ER funding timing constraints. Permanent Repair must be completed within 270 days to be 100% ER eligible and within 2 years of the emergency declaration to be ER eligible at the normal state match.

ER work done under this category will qualify for a (c)(9) CE. In the unlikely event of a permanent repair is not able to be replaced in-kind on its existing location a different class of action may need to be considered.

### **Consideration of Other Environmental Law's**

Emergency repair is immediate repair work typically undertaken in advance of environmental review to preserve life or property and to restore traffic. An 'after the fact' CE is the extent of

environmental documentation completed if ADOT seeks ER funding for work that is completed shortly after an emergency event, typically within 30 days of a declared emergency.

The other environmental laws' emergency procedures are time dependent. Emergency repair that is immediate can happen right away without an approved CE or other completed environmental review. Work may be needed immediately or repair within 30 days of a formal emergency declaration.

Emergency procedures for the National Historic Preservation Act are outlined in regulation (36 CFR 800.12 – Emergency Situations), and ADOT's Section 106 Programmatic Agreement Section XVI. As outlined in ACHP guidance "Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 ." For other actions that may not be immediate there should be notification and some manner of consultation. Time allowing, ADOT will utilize information that is available and shall determine whether the emergency undertaking has the potential to affect historic properties and then consult with the appropriate officials with a five-business day comment period.

For the Endangered Species Act the timing for emergency action is defined by USFWS procedures (50 CFR 402.05 – Emergencies and the Endangered Species Consultation Handbook). An ADOT biologist should make initial contact with the FWS if there is endangered species present within the project area that may be adversely affected. The FWS may make recommendations to minimize the effects of the emergency response action on listed species or their critical habitat. If endangered species are present and adversely affected then Section 7 consultation is initiated 'after the fact.'

Emergency procedures for Clean Water Act 404 permitting are covered under 33 CFR 325.2(e)(4). For the Corps, as defined under 33 CFR 325.3(e)(4), an emergency is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a period less than the normal time needed to process the application under standard procedures.

## **General ER Procedures for Immediate Repairs**

### **Scenario One: Repair work completed within approximately 48 Hours**

1. ADOT identifies an emergency repair situation.
2. District undertakes response actions to prevent imminent loss of human life or property.
3. Environmental Planning is contacted, if possible, by the District. An ENV Planner is assigned and Technical Teams determine if resource agencies need to be contacted and coordinate with resource agencies as needed. No emergency declaration is needed.
4. The District and/or Project Manager provides declaration documents, photos and/or descriptions of the event that occurred and repairs undertaken, maps, Detailed Damage

Inspection Reports (DDIR), and other reports such as ADOT Performance Control Systems (PECOS) reports to Environmental Planning.

5. Environmental Planning prepares a (c)(9) CE after completion of the repair work. The CE should be completed as soon as possible after the emergency repair work is completed.

## Scenario Two: Repair Work Generally Within 30 Days

### Phase One

1. ADOT identifies an emergency repair situation.
2. Environmental Planning is contacted and Technical Teams determine if resource agencies need to be contacted. ADOT requests and eventually receives declaration of emergency confirmation.
3. ADOT ENV Planning attends the ER Scoping/Kick-off (KO) meeting, if one is held, to discuss the scope of work.
4. ADOT ENV Planning establishes the landowner(s) and agencies to coordinated with.
5. If arranged by the District or ADOT PM the ENV Planning may visit the project location (time permitting/optional) and review for any relevant environmental considerations.
6. The District and/or Project Manager provides declaration documents, photos and/or descriptions of the event that occurred and repairs undertaken, maps, Detailed Damage Inspection Reports (DDIR), and other reports such as ADOT Performance Control Systems (PECOS) reports to Environmental Planning.
7. ADOT ENV Planner develops an environmental scope of work (SOW) with the District Resident Engineer (RE) and others assigned to the project as needed.
8. ADOT ENV Planner emails the applicable Technical Teams the scope of work

### Phase Two

1. ADOT ENV Planning technical submits their initial review based on the SOW provided.
2. ADOT ENV Planner confirms with the District RE and project team any changes to the SOW.
3. ADOT Technical Teams identify, if possible, relevant environmental commitments to include:
  - i Biology coordinates with FWS if the action area includes an endangered species or habitat
    - o \*Note, if Endangered Species present time for consultation will be a factor
  - ii Reviews for relevant CWA 404 permitting.
  - iii Cultural Resources concludes informational consultation with relevant parties.
4. ADOT ENV Planner drafts CE and Environmental Commitments is any
5. A QAQC review is done if time allows.

6. Environmental Clearance should be issued as soon as possible in order for ER reimbursement to be authorized.
7. ADOT ENV Planner follows up with technical disciplines to discuss the plan to implement any longer-term needs identified in the environmental clearance.

## AIR QUALITY

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### AIR QUALITY CONSIDERATIONS

ADOT is responsible for conformity determinations for projects prepared under CE Assignment (326 MOU). For any project with a CE prepared under the 327 MOU (NEPA Assignment) FHWA is responsible for conformity determinations. A copy of any air quality technical reports is sent to FHWA for NEPA Assignment projects. The Air Quality Program Manager coordinates any conformity determination needed from FHWA.

If the project **location** is in an attainment area, then the project meets all the air quality requirements (40 CFR 93.102) and the review for air quality under transportation conformity is complete. If a project's location is within a nonattainment or maintenance area for the National Ambient Air Quality Standards (NAAQS), the project requires review under transportation conformity.

For projects in nonattainment and maintenance areas, if the project **description** is one of the types listed in table 2 of 40 CFR 93.126 then the project is exempt from the requirement to determine conformity. The Air Quality Program Manager will document the exemption on the AQ Checklist and confirm the project does not interfere with Transportation Control Measures.

The key question for determining if a project is a non-exempt project is whether or not the project adds capacity, i.e., through-lanes, or alters existing traffic patterns. The vast majority of listed CEs are exempt under 40 CFR 93.126 and 40 CFR 93.128. Certain capacity projects may be prepared with a CE under (c)(22) or (c)(23). Capacity projects, for air quality purposes, are projects that add general purpose lanes that are greater than one half-mile in length or as determined by the Metropolitan Planning Organization and confirmed by the Air Quality Program Manager. Capacity projects are exclusive of auxiliary lanes less than one mile, ramp metering, road diets, projects that correct, improve, or eliminate a hazardous location or feature, or projects implemented through the highway safety improvement program.

If the project is a non-exempt project, then additional consultation and analysis may be required as determined by the Air Quality Team. Quantitative or qualitative air quality hotspot analysis may be required for non-exempt projects depending on the scope and location of the project. The Air Quality Program Manager, through interagency consultation determines whether a project is a project of air quality concern and if a project requires a hot-spot analysis. Per FHWA formal guidance a Mobile Source Air Toxics (MSAT) analysis is not required for CE projects. Consult with the Air Quality Team before beginning any air quality analysis.

The **Air Quality Clearance Form** is used for most projects in nonattainment areas as follows:

For 326 CE projects the Air Quality Clearance Form is the approval for documenting that the project is exempt or documenting the conformity finding. The Air Quality Clearance Form documents the exempt or non-exempt status, interagency consultation, supporting hot-spot analysis, and public involvement (as applicable). The Form also documents conformance to the



MPO's plan and program and verifies that the project will not interfere with implementation of control measures in the respective State Implementation Plan (SIP).

The 327 projects use the same Form as the 326 projects with FHWA approval attained as needed. Planners will be notified by the Air Quality Program Manager when the project obtains an FHWA conformity determination and that the project is deemed formally approved for air quality.

## NOISE

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### NOISE CONSIDERATIONS

The vast majority of projects prepared with a CE Checklist will not require a noise technical analysis. However, there are some projects that may require technical screening by the ADOT Environmental Planning Noise Section to determine whether a full noise technical analysis and report is required.

The Federal noise regulation at 23 CFR 772 constitutes the official Federal noise standards, and in its entirety represents the Noise Standard. It recognizes three types of projects:

- a) Type I (as defined in 23 CFR 772.5 projects require a noise analysis). If a project is determined to be a Type I project, then the entire project area as defined in the environmental document is a Type I project.
- b) Type II is defined as a federal or Federal-aid highway project for noise abatement on an existing highway and requires noise analysis. ADOT currently does not have a Type II program.
- c) Type III, a project that does not meet the classifications of a Type I or Type II project, and does not require noise analysis, although it may require additional analysis of potential traffic noise adverse effects on wildlife or historic properties.

Noise analysis is necessary for Type I and Type II projects, and in very few Type III projects, and the extent of analysis is commensurate to the type of activity and presence of noise sensitive areas – receptors, such as residences, schools, hospitals, places of worship, parks, wildlife etc. In the absence of noise sensitive areas there is no need for comprehensive noise analysis.

Meeting the requirements of 23 CFR 772 satisfies requirements under NEPA. Certain Type III projects may require additional analysis of traffic and construction noise adverse effects on wildlife or historic properties [36 CFR 800.5(a)(1) and (2)].

The 2017 ADOT Noise Abatement Requirements fully complies with FHWA 23 CFR 772 and NEPA requirements. A major difference between NEPA and 23 CFR 772 requirements for determining traffic noise impacts is that NEPA requires comparison of a proposed alternative with a baseline (the no-build alternative or no action alternative, in the project year, which is not a requirement of 23 CFR 772) to determine whether traffic noise impacts will occur, and the proposed project itself must create the traffic noise impact. 23 CFR 772 considers mitigating current as well as future noise problems, namely, if the predicted noise level approaches or exceeds the [Noise Abatement Criteria](#) (NAC), there is a traffic noise impact regardless of whether or not the proposed project is the cause. As an example, even if noise levels ( $L_{eq}$ ) decrease in the future, e.g., from 72 dBA to 69 dBA, at Activity Category B site (residences), there is still a traffic noise impact (NAC is 67 dBA for residences), and noise abatement measures must be considered.

The Environmental Planner will confer with the Environmental Planning Noise Technical Specialist for the Type of project as defined in 23 CFR 772.5 and the applicability of noise analysis.

To assist with the project-type determination the ADOT Environmental Planning Noise Section maintains [Noise Guidance](#), which includes a [list of projects exempt](#) from noise analysis. The Noise Section also maintains technical guidance on the ADOT Environmental Planning website including *Noise Analysis Screening Tool* and other relevant material.

It is an essential requirement to document in the Project File only *if* there is a question of whether a noise analysis is needed, and the determination is not to prepare a noise analysis. This means that “negative declarations” are not required for every project that does not have a noise analysis such as a paving project or bike path (exempt projects).

The following questions help in assessing whether the project is Type I or not:

1. Is this a new highway on new location? (typically, not applicable to CE projects)
2. Does the project add capacity, by adding HOV lane, general-purpose lane, or auxiliary lane longer than 2,500', excluding a turn-lane?
3. Does the realignment of a roadway reduce by half the distance between roadway and noise sensitive land use categories (residences, schools, parks or other sensitive land uses)? This is considered a substantial horizontal alteration.
4. Does the project break the line-of-sight between the roadway and noise sensitive land use categories? If one can see the top of truck, at 12 feet above the roadway, looking from a location of noise receptors, at 5 feet above the ground, this is considered a substantial vertical alteration.

Always consult with the ADOT Environmental Planning Noise Specialist before proceeding with a technical noise analysis. Abatement for noise impacts, as well as public involvement requirements, is outlined in the 2017 ADOT Noise Abatement Requirement.

## BIOLOGY

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### BIOLOGY - OTHER CONSIDERATIONS:

#### **Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act**

Are there any active eagle nests within ½ mile of the project limits? Are there any active cliff swallow nests within the project limits? Is there potential for burrowing owls within the project limits?

Is there potential habitat for any migratory birds or protected birds to nest within the project limits that will be impacted? Were any active nests observed in the project area?

The Biologist will determine if there are any invasive species/noxious weeds concerns within the project limits.

Invasive species and noxious weed control are Federal-aid eligible if identified during the environmental review process. Consult the *Invasive Plant Species and Noxious Weeds* section of the [Biological Resources Guidance](#) for more information.

## SECTION 4(f) AND SECTION 6(f) PROPERTY

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### SECTION 4(f) PROPERTY IDENTIFICATION

#### SECTION 4(f) PROPERTY

Are there any historic properties (public or private) or publicly owned parks, recreation areas, wildlife refuges or waterfowl refuges within the project area? Does the project description and surrounding land use provide enough information to determine if there are potential impacts to resources afforded protection under Section 4(f)? The description of the project and scope of the work will help determine the area of potential Section 4(f) properties of concern.

Include, as necessary, a separate map showing the Section 4(f) properties (if needed) if they cannot be shown on the Project Vicinity Map or other plans. Section 4(f) resources that are prehistoric sites or Traditional Cultural Properties should not be listed or included on any maps or plans. On the map or plan include the official with jurisdiction of the Section 4(f) resource.

#### SECTION 4(f) APPLICABILITY

If there is an impact to a potential Section 4(f) resource does an exemption (such as the “Joint Planning”) outlined under 23 CFR 774.11 applicability criteria or an exception under 23 CFR 774.13 apply? Analysis and documentation must be completed if there is an impact to a Section 4(f) property.

If there is a question of whether there is a use of a Section 4(f) property the determination of that decision should be documented in the Project File. There are additional resources available to assist in the evaluation of Section 4(f) including the ADOT *Section 4(f) Manual* and the FHWA Section 4(f) Tutorial and FHWA Policy Paper.

Like many aspects of a discovery process there are questions that can be answered to help with the Section 4(f) process. Is there a determination of ‘adverse effect’ or ‘no adverse effect’ to a historic property under Section 106 of the NHPA? Is there an impact to a publicly owned park, recreation area, wildlife refuge or waterfowl refuge that constitutes a Section 4(f) use?

### THREE TYPES OF USE OF A SECTION 4(f) PROPERTY

#### Permanent Incorporation

Based on the definitions of “use” cited in 23 CFR § 774.17, determine if the project will result in an actual (direct) use of the Section 4(f) property by incorporation of land. This includes historic properties with an adverse effect under Section 106 due to the loss of attributes that make the property eligible for the National Register of Historic Places.

#### Temporary

Temporary occupancy occurs if the project will require a temporary easement of a Section 4(f) property or for a contractor to temporarily occupy a Section 4(f) property such that the

conditions set forth under 23 CFR 774.13(d) cannot be met and it results in a Section 4(f) use. Note: An “exception” to a temporary occupancy use may be applied if the conditions set forth under 23 CFR 774.13(d) are met and in such a case no Section 4(f) use will occur.

### Constructive

A constructive use involves an indirect impact, usually noise or visual, to the Section 4(f) property of such magnitude as to effectively function as a permanent incorporation. A constructive use does not physically incorporate the resource but is close enough to it to severely impact key features, activities or attributes associated with it, and to substantially impair it. Section 4(f) use due to proximity impacts is **extremely** rare and so much so that a constructive use determination must be reviewed and approved by FHWA Headquarters. This is likely to never occur on a project cleared with a CE because a constructive use results in a “substantial impairment.”

## SECTION 4(f) APPROVAL OPTIONS

### *De Minimis* Impact

A Section 4(f) use with a *de minimis* impact applies if the project impacts to the Section 4(f) property meet the criteria *de minimis* as defined in 23 CFR 774.3(b). The required coordination outlined in 23 CFR 774.5(b) must be completed before a *de minimis* impact determination can be made. A Section 4(f) use with a *de minimis* impact is considered when taking a minor amount of ROW from a Section 4(f) property.

### Programmatic Section 4(f)

As applicable, one of the following programmatic Section 4(f) evaluations may be applied for the project as defined in 23 CFR 774.3(d)(1):

- Independent Walkways and Bikeways Construction Projects [apply 23 CFR 774.13(g)]
- Historic Bridges
- Minor Involvement with Parks, Recreation Areas and Wildlife and Waterfowl Refuges
- Minor Involvement with Historic Sites
- Net Benefit to a Section 4(f) Property

For Independent Walkways and Bikeways, the exception is applied and documented. For historic bridges and projects with a Net Benefit the FHWA template programmatic document is completed. The “Minor Involvement” programmatic templates may be utilized in lieu of a *de minimis* impact determination.

### Individual Section 4(f)

If a project results in a greater than *de minimis* impact and a programmatic Section 4(f) evaluation cannot be applied an individual Section 4(f) evaluation must be prepared. For projects with a CE this would always be a separate document.

## SECTION 6(f) OF THE LAND AND WATER CONSERVATION ACT

### Use of Section 6(f) Resource

If a project has a Section 4(f) use from acquisition of park property, then check for Section 6(f) impacts for the same acquisition. Determine if the acquisition involves outdoor recreation lands acquired or developed with Land Water Conservation Funds (LWCF). This impact occurs if the project will result in the conversion of lands acquired or developed with Section 6(f) funding to non-recreational (transportation) purposes.

Document the Section 6(f) resource impacted. Include the name, type, location (MP or intersection), and ownership/administration for the Section 6(f) resource.

If the project will require the conversion of property acquired or developed with Section 6(f) funding to a non-recreational purpose, replacement land must be identified for transfer to the land managing agency. The Environmental Planner must coordinate with applicable officials having jurisdiction over the resource. Include in the Project File the written concurrence from the land-managing agency and the National Park Service (NPS) that the replacement lands are of equal value, location, and usefulness as the impacted lands. Arizona State Parks maintains a record of LWCF recipients in Arizona and should be contacted if impacts to such properties are considered possible.



## WATER RESOURCES

### CLEAN WATER ACT

Determine Section 404 applicability [no involvement, Regional General Permit (RGP), NWP, or Corps 404 IP required]. If Waters are involved with the project, refer to ADOT's *Clean Water Act Section 404/401 Procedures Manual*, Applications and Permits.

#### Section 404 Permit

##### Waters not Impacted

Waters may be present within or near the project area, but will not be impacted (e.g., will be avoided by construction).

##### Impacts to Waters

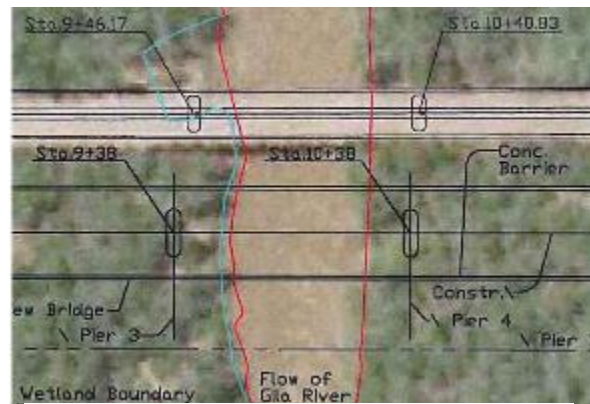
If the project will impact Waters, then the Wetland Biologist will lead the technical review.

##### Regional General Permit (RGP)

If the ADOT RGP #96 is applicable, ensure that the permit and Corps verification and conditions are included if notification to the Corps was required. Include the Corps file number and special conditions from the Corps verification with the Environmental Commitments Form. The RGP includes a 401 Certification, but may require notification to ADEQ, per conditions of the certification.

##### Nationwide Section 404 Permit

If a Corps NWP is required determine if a Preconstruction Notification (PCN) is required. If a PCN is required, include the Corps File Number, and ensure that the bolded Special Conditions from the Corps permit verification letter are included with the Environmental Commitments. For all NWPs, include all the pages of the Corps permit verification. Either an Individual or Conditional Section 401 Water Quality Certification is mandatory for any activity that requires a Section 404 permit. A Section 401 Certification is required prior to discharging any dredged or fill materials into a Waters.



**Avoidance and minimization to wetlands are integral with the design process.**

##### Individual Section 404 Permit

If a Section 404 Corps IP is required include the Corps File Number. Ensure that the bolded Special Conditions from the Corps IP letter are included with the Environmental Commitments. Include all the pages of the Corps IP with the Environmental Commitments Form. If the CE is approved in advance of an IP, then an updated Environmental Commitments Form is prepared and distributed

once the IP is approved. An Individual Section 401 Water Quality Certification is mandatory for any activity that requires a Corps IP. A Section 401 Certification is required prior to discharging any dredged or fill materials into a Waters.

### **Type of Impacted Water**

Identify whether the Waters to be impacted by the project are considered “Tribal,” “Outstanding Arizona Waters,” “impaired,” or “other” waters. “Tribal waters” are any Waters occurring on tribal lands. “Outstanding Arizona Waters” and “Impaired waters” are located on non-tribal land and designated by ADEQ. “Other Waters” are all Waters on non-tribal lands for which Section 401 Certification has not been specifically denied.

### **Section 401 Water Quality Certification**

Determine the requirements for the Section 401 Certification (i.e., conditionally certified, individually certified). Based on the land jurisdiction of the Waters include file numbers. Include all the pages of Section 401 Certification conditions or Individual Section 401 Certification with the CE and the Environmental Commitments Form.

For projects requiring Individual Section 401 Certifications on non-tribal lands, submit the Section 401 application, including Best Management Practices or other measures that are proposed to minimize watercourse impacts, to the Wetland Biologist for review. The Wetland Biologist sends it to the District for signature and then to the respective agency for permit/certification approval.

Environmental Planner will send the application to the ADOT District for their signature. The Environmental Planner will send the signed application along with the transmittal letter to Surface Water Permits Unit at ADEQ, 1110 West Washington Street, Phoenix, Arizona, 85007. The documentation should be in the form of a list of conditions. The application is submitted to [EPA Region 9 or the appropriate tribal government](#). For projects on the Gila River Indian Community, Fort Apache Reservation, Navajo Nation, Hopi Reservation and Hualapai Tribe, contact the tribal representative for 401 Certification.

### **Guidance When There is an NWP without A PCN**

Insert the NWP number (e.g., 14) in the environmental commitments. Include the NWP and Section 401 conditions with the Environmental Commitments Form.

### **Guidance When There Is a Section 404 Permit with PCN**

Add the bolded Special Conditions from the Corps permit verification with the Environmental Commitments Form. Include the NWP and Section 401 Water Quality Certification, general, regional (as applicable), and special conditions with the Environmental Commitments Form.

### **Guidance When There is a Section 404 Individual Permit**

Include the Corps IP, Section 401 Water Quality Certification, and the Corps impact sheet(s) with the Environmental Commitments Form.

## NAVIGABLE WATERS

Determine if the project involves a “navigable water” (i.e., the Colorado River). The Corps maintains a list of waterways for which the navigable status has been determined, but the list only includes waterways where a jurisdictional determination has been requested.

### Section 9 United States Coast Guard (USCG) Permit

Section 9 of the Rivers and Harbors Act (33 U.S.C. 491) prohibits the construction of any bridge, dam, dike or causeway over or in navigable waterways of the U.S. without Congressional approval. The USCG administers Section 9 and issues Bridge permits over navigable waters. Regulations for administering the law are in Navigable Waterway regulations 33 CFR 114.

Anyone proposing to build a bridge over navigable waters must obtain a bridge permit from the USCG. Bridge permit regulations are found under 23 CFR 650. However, the definition of “navigable waters” that require a USCG bridge permit, found in Highway regulation 23 CFR 650.807, is slightly different from the Corps definition found at 33 CFR 329.4. Navigable waters that require a USCG bridge permit are defined as “(1) tidal and used by recreational boating, fishing, and other small vessels 21 feet or greater in length or (2) used or susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.” USCG advises that if the navigability of a waterway is in question that a request for a jurisdictional finding be submitted to them. The size of a waterway does not determine whether it is considered navigable by the USCG.

Contact District 11 of the USCG as part of the project agency scoping. Include USCG scoping/response letter. Environmental commitments must be developed in cooperation with ADOT, USCG, and the Corps—as applicable—prior to submittal of the CE. List any environmental commitments on the Environmental Commitments Form. In consultation with the USCG, determine if a USCG permit is required and include permit information if required.

### Section 10 United States Corps of Engineers Permit

Section 10 of the Rivers and Harbors Act requires that regulated activities conducted below the Ordinary High-Water Mark (OHWM) elevation of navigable waters of the United States be approved/permitted by the Corps. Section 10 of the River and Harbors Act (33 U.S.C. 403) regulates dredging and filling in “Navigable Waters”. Regulations for administering the law are in 33 CFR 322 and 23 CFR 650. Navigable waters are defined in 33 CFR 329.4 as “those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.” The Corps administers the program.

If the project involves navigable water, in consultation with the Corps, determine if a Corps permit is required and include permit information if required.

### Section 408 Permit

Any project that may modify, alter, or occupy an existing US Army Corps of Engineers-construction public works project is subject to review and approval by the Corps under 33 U.S.C.

408. Public works projects include dams, basins, levees, channels, navigational channels, and any other local flood protection works constructed by the Corps. If the project involves flood protection structures, coordinate with the operator of the facility (such as the local flood control district) and the Corps to determine if a 408 review and permit will be needed.

If the project requires a 404 permit, the 404 permit will not be issued by the Corps until the 408 permit is issued.

### **Section 402 Compliance**

If a project has one acre or more of construction activity (ground disturbance) and does not qualify for exemptions or a waiver, compliance with the appropriate Construction General Permit (CGP) will be required. The Roadside Development Section determines if CGP coverage is required.

If the project is on non-tribal lands, the Arizona Pollutant Discharge Elimination System (AZPDES) CGP issued by ADEQ applies. If the project is on tribal lands, the National Pollutant Discharge Elimination System (NPDES) CGP issued by the EPA applies. The Environmental Commitments call out the appropriate stored specification to be included with the project when applicable; 104.09 SWEPA on Tribal lands and stored spec 104.09 SWDEQ on non-Tribal lands.

As needed per the project setting have the project reviewed by the Stormwater Program Coordinator to see if the project is within a ¼ mile of an Impaired or Outstanding Arizona Waters. If CGP coverage is required for the project, proximity to these waters may require additional sampling and analysis and/or pollution controls.

### **Permits**

As part of the ADOT Environmental Clearance submit any required Section 404 permits and Section 401 Water Quality Certifications, to C&S as part of the ADOT Environmental Clearance and Environmental Commitments. Include on the Environmental Commitments if CGP coverage (AZPDES or NPDES) is required for the project.

For ADOT Administered LPA projects in an existing MS4 ADOT notifies the local MS4 per the CGP requirement and NOI process.

The Environmental Planner ensures that the correct and current permit is included in the Environmental Commitments.

## HAZARDOUS MATERIALS

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### HAZARDOUS MATERIALS CONSIDERATIONS

The CE Checklist confirms there are no substantial issues with hazardous materials in terms of compliance with the laws under the “NEPA Umbrella” that could affect a CE determination.

In addition to NEPA review there are compliance requirements that are addressed and documented in the Project File as required. Questions that may need answers could include: Is striping obliteration included in the project? Has lead-based paint been identified within the project limits? Is there work on load-bearing structures? Has asbestos-containing material been identified within the project limits?

Per the 2010 EPA/ADOT Asbestos Consent Decree, an asbestos assessment will be required for any load-bearing structures (e.g., bridges, buildings) that will be modified or altered as a result of the project. If the project involves any work on an existing structure that has been previously painted, a test for RCRA metals will be required.

Note: If a project occurs within Maricopa County, the asbestos survey assessment must be conducted within (or no more than) 60 months before the start of construction. For these projects in Maricopa County approved more than 6 months before the start of construction an environmental commitment should be included to notify the contractor that an asbestos survey must be on file at the start of construction. For LPA CA Agency projects, the CA Agency is responsible for ensuring this compliance.

[Maricopa County Rule 370, Sec 301.9 Subpart M - National Emission Standard for Asbestos](#)

### National Emission Standards for Hazardous Air Pollutants (NESHAP)

Check if load-bearing structures will be modified or altered by the project. Determine need for asbestos survey. Determine if a NESHAP permit is required.

### Resource Conservation and Recovery Act (RCRA) Metals

Check if work will occur on existing structures that have been previously painted. Determine need for RCRA metals (e.g., lead) survey.

### Phase I Site Assessment

In conformance with the ADOT [Right-of-Way Procedures Manual – Project Management Section](#) a Phase I site assessment *may* be required when there is an acquisition of new ROW. A project-level determination is made by the ADOT Hazmat Coordinator on a case-by-case basis.

## FARMLAND PROCEDURES

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### FARMLAND PROTECTION ACT

*A. What is the federal regulation meant to address this concern?*

Farmland Protection Policy Act (FPPA) regulations (7 CFR 658). The Natural Resources Conservation Service (NRCS), part of the USDA, administers the FPPA as it relates to protection of farmland. Under the FPPA, federal agencies are required to submit a Farmland Conversion Impact Rating (Form NRCS-CPA-106 for corridor-type projects) to the NRCS. The NRCS uses this information to evaluate whether there are farmlands subject to the FPPA requiring protection in a project area. Farmlands that score 160 points or less do not need to be given further consideration for protection by the federal agency (7 CFR 658.4).

*B. What is the definition of farmland?*

Farmland, as defined in the FPPA, includes prime farmland, unique farmland, and land of statewide or local importance. Farmland subject to FPPA requirements does not have to be currently used for cropland. It can be forest land, pastureland, cropland, or other land, but the land must also not be in or committed to urban development or water storage.

### FARMLAND ANALYSIS PROCESS:

1. Determine if a project may convert farmland.
  - a. No conversion if no new ROW or permanent easements
  - b. No conversion if area requiring new ROW is developed or zoned for development.
2. Complete NRCS AD-1006 form (Farmland Conversion Impact Rating), Part 1 and Part 3. Linear highway (i.e., corridor type) projects require Form NRCS-CPA-106. ADOT (and/or consultant) completes Section I, III, VI & VII, indicated to be completed by Federal Agency. Accompany form with:
  - a. Vicinity map – preferably a shape file of the project footprint in lieu of a shape file, you can send an aerial photo with the project area drawn to scale on it showing length and width.
  - b. Project description or Project Assessment/Design Concept Report
  - c. Soil Survey Area number: For producing the soils map of a project site use the first link in this bulletin and then the link to the NRCS Webs Soil Survey. However, NRCS can complete the Web Soil Survey Area of Interest (AOI) if you provide how many acres of farmland will be affected and how many total acres in the project and information above.
  - d. The name and address and email of the person who will receive the FPPA Determination Letter
3. Email NRCS AD-1006 form to NRCS contact: Dino De Simone, Resource Conservationist - NRCS, Phoenix, AZ [Dino.DeSimone@az.usda.gov](mailto:Dino.DeSimone@az.usda.gov)

- a. NRCS will determine if there is prime or unique farmland depending on the information provided.
  - b. NRCS will use phone and emails to request additional information/clarification.
  - c. The official instructions indicate to send requesting return receipt mail, but Mr. De Sione will take email submissions.
  - d. NRCS has 45 days from receipt to complete evaluation. CFR 658.4(a) states that if 45 days have passed without an evaluation proceed as if no farmland is being converted.
4. NRCS will return by email a scan of the signed FPPA positive determination letter, Custom Soils Report and AD1006 for our records. This completes this FPPA determination, since we had already filled out much of the form and returned it and Mr. Yancey has filled in the NRCS parts.



## ENVIRONMENTAL JUSTICE

### ENVIRONMENTAL JUSTICE

The *Environmental Justice Analysis Procedures* is used to assist in evaluating projects for EJ compliance.

#### Sample Demographic Data

**Table 1 – Minority Population**

Characteristic	Arizona	Maricopa County	Tolleson	Avondale	Phoenix	Study Area
Total Population	7,151,502	4,412,779	7,340	85,967	1,641,073	40,174
White	5,270,657 73.7%	3,256,087 93%	5,240 71%	53,699 62%	1,124,254 69%	23,219 58%
African American	443,393 6.2%	249,691 6%	722 10%	8,840 10%	113,680 7%	4,349 11%
American Indian/Alaskan Native	450,545 6.3%	85,061 2%	216 3%	1,579 2%	33,000 2%	1,358 3%
Asian	350,424 4.9%	187,298 4%	0 0%	2,480 3%	63,229 4%	1,586 4%
Native Hawaiian/Pacific Islander	35,757 0.5%	9,696 <1%	0 0%	574 1%	3,132 <1%	214 1%
Other Race	1,644,845 23%	313,146 7%	815 11%	10,056 12%	167,907 10%	7,721 19%
Two or More Races	994,059 13.9%	311,800 7%	347 5%	8,740 10%	135,870 8%	1,726 4%
Hispanic or Latino*	2,195,511 30.7%	1,374,312 31%	5,621 77%	46,227 54%	695,615 42%	24,151 60%

\*Persons of Hispanic or Latino origin may be of any race

Source: U.S. Census Bureau 2020.

The study area's population also has a higher percentage of low-income residents and unemployment rate compared to the City of Phoenix, Town of Tolleson, City of Avondale, Maricopa County, and the State of Arizona (Table 2).

**Table 2 – Low-Income Population**

Characteristic	Arizona	Maricopa County	Tolleson	Avondale	Phoenix	Study Area
Low Income	33%	35%	39%	31%	32%	44%
Unemployment Rate	6%	3%	7%	4%	4%	7%

Source: U.S. Census Bureau 2020.

## EARLY ACQUISITION of ROW

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### ROW-ONLY CLEARANCES FOR FEDERAL-AID PROJECTS

Early acquisition can be utilized to secure new ROW in advance of the NEPA clearance of a project when such an early acquisition is necessary based on the timing of the overall project environmental clearance. An early acquisition can be prepared upon approval of the Environmental Planning Administrator in coordination with the ADOT ROW Group and the ADOT Project Manager. ROW activities, as outlined in 23 CFR 710.203, that do not require NEPA approval should advance as far as possible prior to utilizing an early acquisition clearance for ROW. ADOT may undertake Early Acquisition Projects before the completion of the environmental review process for a proposed transportation project for corridor preservation, access management, or other purposes after careful consideration of the circumstances. Early Acquisition expands on Protective Buying and Hardship Acquisitions under additional authorities provided by MAP-21.

ADOT may fund Early Acquisition Project costs in three ways: 1) entirely with State funds with no title 23 (FHWA) participation; 2) with State funds initially but seek title 23 credit when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or 3) use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project with title 23 participation. FHWA regulations regarding early acquisition requirements are outlined in 23 CFR 710.501 Early Acquisition. Early acquisition using State funds as outlined under 23 CFR 710.501(d) is **not** eligible for future federal reimbursement because the stipulation 23 CFR 710.501(d)(3) *cannot* be met [a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law].

Non-federal Early Acquisition is approved with a State Clearance Memo. Federally funded or federal or Tribal Lands actions are approved with a CE for Right-of-Way Only Early Acquisition. Protective Buying and Hardship Acquisition as defined under 23 CFR 710.503 and 23 CFR 771.117(d)(12) are approved with a CE Checklist. LPA projects are also eligible to use early acquisition based on need and approved by the ADOT Environmental Planning Administrator in coordination with the ADOT Right-of-Way Group and the ADOT Project Manager. The level of documentation required on federal lands must be coordinated with the land management agencies and determined on a project-by-project basis to see if early acquisition is necessary and feasible.

#### **Non-Federally funded early acquisition:**

ADOT may conduct early acquisition entirely with non-federal funds and later incorporate the acquired real property into a transportation project for which ADOT may choose to receive future federal financial assistance. Early Acquisition Project costs incurred by ADOT at its own expense prior to completion of the environmental review process for a proposed transportation project

are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds.

### ***State-funded early acquisition without Federal credit or reimbursement***

For State funded early acquisition without future credit of the federal share of a Federal-aid project ADOT Environmental Planning certifies in the environmental clearance that early acquisition activities funded entirely without Federal participation comply with the following requirements of **23 CFR § 710.501(b)** as follows:

- (1) The property will be lawfully obtained by ADOT; [adjust accordingly for LPA projects]
- (2) The property is not land described in 23 U.S.C. 138 [Section 4(f)];
- (3) The property will be acquired, and any relocations carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;
- (4) ADOT [LPA] shall comply with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);
- (5) ADOT has determined, under the 326/327 MOU, the early acquisition will not influence the environmental review process for the proposed transportation project, including:
  - (i) The decision on need to construct the proposed transportation project;
  - (ii) The consideration of any alternatives for the proposed transportation project required by applicable law; and
  - (iii) The selection of the design or location for the proposed transportation project

### ***State-funded early acquisition eligible for future credit***

To qualify for future credit of the federal share of a Federal-aid project ADOT Environmental Planning certifies in the environmental clearance that early acquisition activities funded entirely without Federal participation comply with the following requirements of **23 CFR § 710.501(c)** as follows:

- (1) The property will be lawfully obtained by ADOT; [adjust accordingly for LPA projects]
- (2) The property is not land described in 23 U.S.C. 138 [Section 4(f)];
- (3) The property will be acquired, and any relocations carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;
- (4) ADOT [LPA] shall comply with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);
- (5) ADOT has determined, under the 326/327 MOU, the early acquisition will not influence the environmental review process for the proposed transportation project, including:
  - (i) The decision on need to construct the proposed transportation project;
  - (ii) The consideration of any alternatives for the proposed transportation project required by applicable law; and
  - (iii) The selection of the design or location for the proposed transportation project; and
- (6) The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

**Federally Funded Early Acquisition:**

The FHWA may authorize the use of funds apportioned to a State under title 23 for an Early Acquisition Project if all of the following requirements of 23 CFR § 710.501(e) have been met for an Early Acquisition and documented appropriately in a (c)(1) CE:

- (1) The State has authority to acquire the real property interest under State law; and
- (2) The acquisition of the real property interest—
  - (i) Is for a transportation project or program eligible for funding under title 23 that will not require FHWA approval under 23 CFR 774.3 [Section 4(f)];
  - (ii) Will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under this section in connection with a proposed transportation project;
  - (iii) Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence ADOT’s environmental review decisions on any approval required for a proposed transportation project;
  - (iv) Will not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;
  - (v) Is consistent with the State transportation planning process under 23 U.S.C. 135;
  - (vi) Complies with other applicable Federal laws (including regulations);
  - (vii) Will be acquired through negotiation, without the threat of, or use of, condemnation; and
  - (viii) Will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).
- (3) The Early Acquisition Project is included as a project in an applicable transportation improvement program under 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304.
- (4) The environmental review process for the Early Acquisition Project is complete and ADOT, under CE/NEPA Assignment, has approved the Early Acquisition Project. Pursuant to 23 U.S.C. 108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the proposed transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27 [40 CFR 1508.1(mm)], including a

significant adverse impact within the meaning of paragraph (e)(2)(ii) of this section. The Early Acquisition Project must comply with all applicable environmental laws.

Except as provided in this paragraph, real property interests acquired with federal funds and pursuant to 23 U.S.C. 108(d) cannot be developed in anticipation of a transportation project until all required environmental reviews for the transportation project have been completed. For the purpose of this paragraph, “development in anticipation of a transportation project” means any activity related to demolition, site preparation, or construction that is not necessary to protect public health or safety. With prior FHWA Area Engineer approval, ADOT may carry out limited activities necessary for securing real property interests acquired as part of an Early Acquisition Project, such as limited clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project in coordination with the ADOT Right-of-Way Group.

Note a federal CE is also prepared if an early acquisition of an easement on federal or Tribal lands is approved using federal or state funds.

### General Early Acquisition Procedures

1. The need and feasibility of early acquisition is cooperatively determined between ENV Planning, the PM and ADOT ROW Group. For early acquisition during project development the need must be demonstrated in a project schedule showing that the timing of offers will be impacted unless early acquisition is utilized.
2. Federally funded stand-alone early acquisition must be programmed in order to move past step 2.
3. The identification of land ownership and ROW plans adequate for acquisition must be developed.
4. The funding to be used for the early acquisition must be identified and the type of non-federal funded acquisition determined.
5. The requirements of 23 CFR 710.501 for the specific type of acquisition are reviewed.
6. Confirm the acquisition does not include Section 4(f) property.
7. A State Clearance Memo or Federal CE is completed depending on the type of early acquisition identified.
8. The project NEPA approval, completed sometime after the early ROW acquisition, incorporates a statement for compliance with the regulation requirements outlined in 23 CFR 710.501 for any non-federal or federally funded early acquisition. The following statement is included in the approved **project CE** as applicable.

**For non-federal acquisition:**

“Non-federal funds were used to purchase right-of-way in advance of the project NEPA approval. These acquisitions were considered minor in nature and involved no significant environmental or Environmental Justice impacts. The acquisitions were carried out in compliance with 23 CFR 710.501(c). The acquisitions involved no Section 4(f) properties and were acquired in accordance with the provisions of the Uniform Act. The acquisitions have not influenced the decision to construct the project or the consideration of any alternatives under applicable law.”

**For early acquisition on federal or Tribal lands with non-federal funds:**

“A ROW-only CE was approved for an easement(s) on [federal/Tribal] lands in advance of the project NEPA approval. These acquisitions were considered minor in nature and involved no significant environmental or Environmental Justice impacts. The acquisitions were carried out in compliance with 23 CFR 710.501(e). The acquisitions involved no Section 4(f) properties and were acquired in accordance with the provisions of the Uniform Act. The acquisitions have not influenced the decision to construct the project or the consideration of any alternatives under applicable law.”

**For federally funded early acquisition:**

“Federal funds were used to purchase right-of-way in advance of the project NEPA approval. These acquisitions were considered minor in nature and involved no significant environmental or Environmental Justice impacts. The acquisitions were carried out in compliance with 23 CFR 710.501(e). The acquisitions involved no Section 4(f) properties and were acquired in accordance with the provisions of the Uniform Act. The acquisitions have not influenced the decision to construct the project or the consideration of any alternatives under applicable law.”

## CE CHECKLIST MANUAL UPDATES

### AMENDMENTS TO CE CHECKLIST MANUAL

#### *Description of Modification*

Change	Date	By
Start of 326 MOU 1/3/2018	1/3/18	PAO
“Validation Form” changed to “Note-to-File Form” ‘n/a’ added under Other Considerations as default	1/26/18	PAO
“Title VI” removed from header in Checklist drop-down. Minor correction under Hazmat drop-down (spelling)	2/16/18	PAO
<b>Reset</b> versions for start of 327 MOU	4/16/19	PAO
Clarifications regarding the definition of a CE under 23 CFR 771.117(a) and (b) were made on pages 4 through 6. Clarifications regarding secondary and cumulative impacts added under “Other Technical Considerations” on pages 30 and 31. Environmental Commitments text on page 43 modified to reflect CA Agency template language.	5/24/19	PAO
Clarifications regarding the use of (c)(22) CE and that temporary construction easements are allowed with the application of this CE. Bottom of page 7.	9/3/19	PAO
Description of closures and detours modified on page 22.	9/3/19	PAO
Re-evaluation guidance updated in Appendix to reflect August 14, 2019, FHWA NEPA Re-evaluation Guidance.	9/3/19	PAO
Re-evaluation guidance clarified that CE type must be checked for appropriateness but can change (page 21).	10/01/19	PAO
Text added to clarify that MPD submits federal authorization requests, for RTP projects, which includes the valid CE language (page 21 and 44).	11/08/19	PAO
What constitutes “administrative” files which are for program and project management and are not considered NEPA documentation was clarified (page 45).	11/08/19	PAO
New appendix section added for Early Acquisition of ROW consistent with MAP-21 updates (page 9 and 72).	11/08/19	PAO
Minor edits to description of how sub-program funding may be used to meet fiscal constraint (page 19).	11/08/19	PAO
Minor edits to fiscal constraint – clarified that some CE projects in an MPO area may be phased which would require inclusion of the project in the MPO plan as well as at least one phase in the approved TIP. (pages 19 and 20).	11/26/19	PAO
Minor edits to note not every project requires a PISA (page 28).	11/26/19	PAO
(c)(23) inflation adjustment per FHWA annual adjustment	01/03/20	PAO
Page 53 Air Quality adjustments	01/03/20	BC



Change	Date	By
<ul style="list-style-type: none"> <li>Reference to Geotechnical CE deleted (pg. 21)</li> <li>Updated CEQ regulations reflected regarding indirect and cumulative effects (pg. 33)</li> <li>Clarification PISA approvals and timing is within 12 months of the CE approval (pages 27 &amp; 28). Added an environmental commitment can be used for asbestos survey updates in Maricopa County (pg. 65).</li> <li>PDS changed to PEDS – Preliminary Environmental Data Sheet (pg. 45).</li> <li>A note that a preliminary class of action memorandum may be prepared on an as needed basis (pg. 10).</li> <li>Changes to AQ text (pg. 24 and pages 53 &amp; 54).</li> <li>Environmental commitments language adjusted to reflect tailoring the commitments to ADOT or LPA Certification Acceptance Agency projects (pg. 43).</li> <li>Re-evaluations section text updated throughout (pages 46 – 50)</li> <li>Clarified the Stormwater Program Coordinator verifies Impaired or Outstanding AZ Waters (pg. 64)</li> </ul>	10/15/20	PAO
<ul style="list-style-type: none"> <li>Text change on pg. 25 and 55 to clarify documentation of applicability, exempt projects and conformity determinations under the CAA as documented on the CE Checklist and in the AQ project file.</li> <li>Text change on pages 51 -54 to update and expand ER procedures.</li> <li>401 certification text adjusted pg. 64.</li> <li>Additional descriptions of ROW Early Acquisition options added to pages 73 – 76.</li> <li>(c)(23) inflation adjustment per FHWA annual adjustment</li> <li>Hyperlinks updated to reflect updated CEQ NEPA regulations</li> </ul>	01/21/21	PAO
<ul style="list-style-type: none"> <li>Adjustment of Minor Amount of ROW text (pg. 34)</li> <li>Re-evaluations section text updated throughout (pages 46 – 50) to align with ADOT Construction Group terminology.</li> <li>Additional minor text edits on pages 51 -54 to ER procedures</li> </ul>	02/08/21	PAO
<ul style="list-style-type: none"> <li>Clarification on page 73 that we cannot use 23 CFR 710.501(d) - <i>State-funded early acquisition eligible for future reimbursement</i> because the State does not have a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law.</li> </ul>	05/19/21	PAO
<ul style="list-style-type: none"> <li>ADOT logo on cover updated.</li> <li>Stored specifications for Section 402 added to the text.</li> <li>Table 3, pg. 72 LEP definition updated to “very well”</li> </ul>	08/05/21	PAO
<ul style="list-style-type: none"> <li>(c)(23) Infrastructure Investment &amp; Jobs Act cost adjustment pg. 7</li> <li>Additional procedures for ROW Early Acquisition added on pages. 74 &amp; 77</li> </ul>	08/16/22	PAO

Change	Date	By
<ul style="list-style-type: none"> <li>Change to CE selection (type) on pages 8 and 24 regarding EJ and property relocations and (c)(23) costs.</li> <li>Clarified on page 24 no Section 106 memo for design exceptions-only (c)(1) CEs</li> <li>EJ text on page 8, 29, and 72 updated for references to new EJ screening memo and EJ procedures.</li> <li>Minor change to ER procedures on page 54 (permit work deleted from immediate repairs).</li> <li>Environmental commitment used for asbestos survey in Maricopa County updated County Rule 370 (pg. 68).</li> <li>Reference to CE statement for early acquisition ROW added to pg. 77.</li> <li>AQ changes for maintenance areas no longer requiring conformity</li> </ul>	01/19/23	PAO
<ul style="list-style-type: none"> <li>(c)(23) inflation adjustment per FHWA annual adjustment</li> <li>(c)(1) CE description on pg. 7 modified to clarify activities not considered to be construction.</li> <li>ROW descriptive text added to the Locations and Limits CE Checklist box on pg. 22.</li> <li>EPIC added to pg.41 and pg. 44</li> </ul>	04/11/23	PAO
<ul style="list-style-type: none"> <li>Emergency Relief immediate repair CE added to CE Checklist as shown on page 23. Emergency Relief section in the appendix revised. ER funding change to update 100% ER funding change from 180 days to 270 days.</li> </ul>	6/28/23	PAO
<ul style="list-style-type: none"> <li>Environmental Justice text of drop-down menu choice 1 modified (“no other impacts”) on pg. 73</li> </ul>	7/31/23	PAO
<ul style="list-style-type: none"> <li>Air quality updated on pages 20, 24, 25, 58 and 59 to reflect the switch to a single Air Quality Clearance Form</li> <li>EJ updated pages 28, 73 and 74</li> <li>Re-evaluation timing text modified pg. 21</li> </ul>	11/03/23	PAO
<ul style="list-style-type: none"> <li>Page 12 and 39 modified to reflect MOU renewal #2 - 12/20/23</li> </ul>	12/26/23	PAO
<ul style="list-style-type: none"> <li>Environmental Justice updates pages 28 and 73</li> </ul>	02/29/24	PAO
<ul style="list-style-type: none"> <li>Clarifying FHWA Design Exception guidance pages 7</li> </ul>	04/24/24	PAO
<ul style="list-style-type: none"> <li>CEQ NEPA regulations final rule updates (40 CFR 1500 to 1508).</li> </ul>	07/02/24	PAO