Chapter 9: Environmental Clearance

Introduction

If a project receives federal-aid funds, the environmental clearance process must be completed to fulfill the LPA's requirements needed to receive federal-aid highway funds.

This chapter provides guidance for the environmental clearance process of federally funded transportation projects, including compliance with NEPA, FHWA regulations, ADOT Categorical Exclusion (CE) and NEPA Assignment Program policies and procedures, and other related regulations and laws. Through studies and documentation, this process identifies the potential environmental impacts of federally funded projects and any project-specific mitigation measures that may be required to address these impacts. The environmental regulations and requirements discussed in this chapter apply to LPA projects that have a federal nexus, such as the use of federal-aid funds or actions on federal or Tribal lands. If federal-aid funds are used for any part of an LPA project, whether or not federal-aid funds are used for environmental documentation activities, the LPA must follow the procedures included in this chapter.

Federally funded projects must comply with various federal environmental regulations including but not limited to:

- National Environmental Policy Act (NEPA)
- FHWA NEPA regulations (23 CFR 771 – Environmental Impact and Related Procedures)
- Clean Water Act (CWA), Rivers and Harbors Act, Safe Drinking Water Act (SDWA)
- Clean Air Act (CAA),
- Endangered Species Act (ESA), Bald and Golden Eagle Protection Act, Migratory Bird Treaty Act
- Section 106 of the National Historic Preservation Act (NHPA)
- Section 4(f) of the U.S. Department of Transportation Act of 1966
- Procedures for Abatement of Highway Traffic Noise and Construction Noise
- Resource Conservation and Recovery Act, Toxic Substances Control Act
- Title VI of the 1964 Civil Rights Act

- Wild and Scenic Rivers Act

Coordination between federal agencies applicable to a project's environmental clearance process will need to occur early in the project development process in order to define each agency's NEPA responsibilities. Thus, it is recommended that the LPA identify and notify known and potential federal agencies during the scoping phase of the project development process. Federal agencies other than FHWA could include FAA, FTA, the U.S. Environmental Protection Agency (EPA), BLM, BIA, the U.S. Bureau of Reclamation, the Corps, USFWS, and USFS.

National Environmental Policy Act - NEPA

Overview

Transportation projects vary in type, size, and complexity and have the potential to affect the environment in varying ways and degrees. These environmental impacts can be adverse or beneficial, can be short or long term, and can range from minor to significant. With the passage of NEPA in 1971, Congress recognized "man's profound activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances" and further recognized "the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man" (42 USC 4331[a]). It declared that the federal government, in cooperation with state and local governments and other concerned public and private organizations, "use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans" (42 USC 4331[a]). In addition to NEPA, a number of other environmental laws have been passed that support these ideas.

NEPA (42 USC 4321 et seq.) was signed into law on January 1, 1970. The act establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment. NEPA was amended with the Fiscal Responsibility Act of 2023. For proposed actions with a federal nexus, NEPA provides a mechanism for meeting many environmental reviews and approvals. With the enacting of NEPA, CEQ was established within the Executive Office of the President of the United States to advise the President on NEPA implementation. Each federal agency is granted authority to implement NEPA procedures that adapt the guidance established by CEQ and address agency-specific missions and decision-making authority. FHWA's implementing regulations for NEPA are in 23 CFR 771, "Environmental Impact and Related Procedures."

Roles and Responsibilities

NEPA Assignment MOU and Approvals for CEs

The federal government created two programs that allow states to assume partial or full responsibility for environmental decisions made under NEPA. ADOT has agreements in place for both programs:

- FHWA and ADOT entered into a CE Assignment MOU, pursuant to 23 United States Code (U.S.C.) 326, that assigned FHWA's environmental review responsibilities for determining whether certain projects are categorically excluded from the NEPA requirement to prepare an environmental assessment (EA) or an environmental impact statement (EIS) to ADOT. The exception is for Individually Documented CEs that require approval under the NEPA Assignment MOU.
- FHWA and ADOT entered into a NEPA Assignment MOU, pursuant to 23 U.S.C. 327, that assigned FHWA's environmental review responsibilities, including the preparation and approval of EAs and EISs, as well as the preparation of all CEs not assigned under the CE Assignment MOU (unlisted CEs), to ADOT.

In accordance with these MOUs, ADOT assumes all of FHWA's project level responsibilities under NEPA for federally funded highway projects and federal LPA projects in Arizona. ADOT also assumes all of FHWA's responsibilities for environmental review, resource agency consultation, and other environmental regulatory compliance–related actions pertaining to the review or approval of projects in Arizona.

These assignments are meant to streamline the process and reduce the time to obtain environmental clearances for federally funded highway projects in Arizona by allowing ADOT to assume full responsibility for NEPA compliance for most projects. With these assignments, ADOT is responsible for complying with all applicable federal environmental laws, regulations, Executive Orders, and policies, and is solely responsible for environmental decisions made on most ADOT projects. Pursuant to each MOU, FHWA no longer provides project-level assistance to ADOT in carrying out any of the responsibilities assumed under the NEPA Assignment Program.

The CE and NEPA Assignment MOUs include the following ADOT responsibilities:

- ADOT acts as the lead federal agency for environmental review and consulting with agencies and Tribes
- Applies to all FHWA federally-funded projects
- Applies to all NEPA classes of action:
  - Class I: EISs
  - Class II: CEs

  - Class III: EAs

- NEPA Assignment does not change federal environmental protection standards, and ADOT continues to be responsible for complying with all federal environmental laws, rules, and orders under the "NEPA Umbrella."
- ADOT is solely legally responsible for environmental decisions under these programs, and Arizona Revised Statues (A.R.S.) § 28-334(C) has been amended to reflect this.

FHWA retains a monitoring role and the following responsibilities:

- NEPA Assignment program-level oversight, but no project-level assistance
- Clean Air Act conformity determinations for EAs and EISs and CEs approved under the 327 MOU
- Government-to-government consultation with Tribes, as requested by Tribes
- Statewide and metropolitan planning
- Excluded projects (327 MOU projects that cross international or state lines)

ADOT NEPA Assignment and LPA Projects

ADOT EP provides guidelines specific to the oversight and administration for LPAs that receive federal transportation funding. The ADOT EP process is the same for ADOT system projects and LPA projects under ADOT NEPA Assignment. LPA projects follow the same approval processes and are reviewed and approved following the same standards as ADOT-sponsored projects. When LPA environmental documents are submitted to ADOT, they utilize all of the same technical guidance, forms, and templates and are subject to the same QA/QC reviews as performed on ADOT environment documents. LPA project environmental documents are also subject to the same legal consultation and legal sufficiency reviews when such reviews are applicable.

LPAs continue to be responsible for obtaining all information and data needed to prepare reports for compliance with NEPA requirements and other environmental regulations in accordance with the NEPA Assignment policies, procedures, and practices. ADOT EP will fully oversee the environmental clearance process and is responsible for ensuring that the process is applied correctly to LPA projects and for reviewing environmental documents to ensure that they comply with environmental statutes, regulations, and related requirements.

LPAs should become familiar with the information and documentation requirements that are necessary to complete the environmental clearance process in accordance with the ADOT CE Assignment and NEPA Assignment Programs. Environmental issues should be considered as early as possible in the project development process in order to allow sufficient time to obtain the necessary environmental clearances. LPAs should also be aware of the often lengthy timelines associated with the environmental clearance process, ranging from 3 months to several years.

CALENDAR WATCH

The environmental clearance process can take as little as 3 months or may take several years depending on the complexity of the project. The typical environmental clearance process takes 10 to 12 months from the initiation of studies to environmental clearance, but the time needed to achieve environmental clearance varies from project to project, depending on the potential for environmental impacts and the level of documentation needed.

ADOT EP maintains the Environmental Planning website that provides current guidance on ADOT's various environmental clearance requirements and processes. This website is an excellent resource for obtaining current NEPA and technical-resource-specific guidelines, document formats, and pre-approved mitigation measures applicable to LPA projects, as well as all checklists and forms referenced in this chapter. The ADOT EP website provides a comprehensive set of links to both federal and state agency guidelines and useful tools applicable to environmental clearances, including additional information and status of the CE Assignment and NEPA Assignment Programs.

Before the environmental clearance process begins, the ADOT EP NEPA planner assigned to the project will notify the ADOT project manager of information needs as well as the level of environmental clearance documentation that is expected. The type of environmental clearance issued will vary with the type of project, its complexity and level of environmental impacts. The environmental requirements are the same for all LPA projects, whether they are ADOT administered, self-administered, or administered by a certified LPA.

Because of the complexity of the environmental clearance process, LPAs should consider using consultants who specialize in environmental planning to prepare clearances. LPAs that have been granted approval in advance by their ADOT project manager to use an environmental consultant may opt to have ADOT select a consultant from ADOT's approved on-call list or may use their own consultant selection process if approved by ADOT ECS to do so. The LPA's consultant selection process must be approved by ECS. Following approval of the consultant selection process, the LPA can advertise, select a consultant, and negotiate a contract. **ADOT strongly encourages LPAs to coordinate the consultant's technical work and scope with ADOT technical staff to ensure adequacy and appropriate funding in the contract.** A copy of the executed contract should be submitted to the ADOT project manager. An ADOT Project Environmental Data Sheet (PEDS) may be prepared by the consultant and reviewed by ADOT EP to assist in the preparation of a consultant scope of work for proving a project environmental clearance. Ground disturbing projects such as expansion projects that add lanes/capacity and may involve cultural resource and biological impacts as well as air quality and noise analysis may benefit from the preparation of a PEDS.

ADOT will then initiate an IGA with the LPA for the reimbursement of federal-aid funds. Once the funds are authorized and the IGA has been executed (if required), ADOT will issue a Notice to Proceed to the LPA. Federal-aid funds cannot be used for any work that occurs before the authorization to proceed. Table 9-1 outlines the roles and responsibilities of LPAs, ADOT, and FHWA during the environmental clearance process. The LPA should coordinate with ADOT before a consultant begins any technical evaluations.

Table 9-1 Roles and Responsibilities for Environmental Clearances

Task	LPA	ADOT	FHWA	Other
Study area	Determine area of potential effect	Define area of potential effect	N/A	N/A
Project scoping	Coordinate with MPO/COG to define project scope	Review environmental scoping	N/A	N/A
Level of NEPA documentation	Coordinate with ADOT prior to initiating project	Review project information to determine documentation level required (class of action)	N/A	N/A
Categorical Exclusion (CE), if required	Provide project information and conduct technical studies	Prepare and approve CEs	N/A	N/A
Draft EA, if required	Prepare draft EA, including results from technical resource studies; facilitate circulation of draft EA for public and agency review and comment	Review and approve draft EA	N/A	Public entities and applicable agencies: review and comment on draft EA
Final EA, if required	Prepare final EA, incorporating comments from public review period	Review and approve final EA	N/A	N/A
Biological resource report	Prepare appropriate biological report	Review and approve findings and approve biological report	N/A	USFWS: review for concurrence with “may affect” findings or provide Biological Opinion; coordinate regarding conservation measures

Task	LPA	ADOT	FHWA	Other
Cultural resource report	Prepare appropriate cultural resource report; coordinate with the ADOT Historic Preservation Team	Review and approve cultural resource report; ADOT's Historic Preservation Team will review and approve the consultation letters drafted by consultant	N/A	SHPO or THPO and applicable consulting agencies and Tribes: review report and consultation letter for concurrence on adequacy of report, eligibility, and effect determinations
Air	Conduct air quality technical analysis in coordination with ADOT Air Quality Team	Lead for interagency consultation in nonattainment areas. Review and approve analysis during the environmental clearance process. Make project conformity determination for CEs under the 326 MOU	Issue CAA conformity determinations for Individual CEs and EAs under the 327 MOU	EPA, State and Local Air Quality Agencies, COGs, and MPOs are potential interagency consulting parties for hot-spot analyses
Noise	Conduct traffic noise technical analysis, coordinate with ADOT Noise Team for any Type I projects.	Review and approve analysis during the environmental clearance process	N/A	N/A
Sections 4(f) and 6(f)	Complete and document all research/ investigation information and determinations	Make determination regarding applicability and use of Section 4(f) or 6(f) resources	Section 4(f) constructive use approval	N/A
Water resources	Coordinate with ADOT to determine need for coverage under Section 402 Construction General Permit	Coordinate with ADOT to determine need for coverage under Section 402 Construction General Permits	N/A	N/A
Hazardous materials	Prepare PISA; coordinate with ADOT to determine need for asbestos or lead-based-paint testing; prepare Phase I, II, or III ESA, if required	Review and approve PISA and/or Phase I, II, or III ESA and mitigation measures, as applicable	N/A	N/A
Socioeconomics	Analyze and document level of socioeconomic impacts	Review analysis during the environmental clearance process	N/A	N/A
Land use	Assess and document land-use impacts	Review analysis during the environmental clearance process	N/A	N/A

Task	LPA	ADOT	FHWA	Other
Visual resources	Analyze and document visual resources, as appropriate	Review analysis during the environmental clearance process; coordinate with USFS and BLM to determine appropriate level of analysis, as applicable	N/A	USFS and BLM: ensure compliance with resource management plans
Public involvement	Coordinate with ADOT to conduct appropriate level of public involvement and notification; document as necessary; facilitate circulation of draft EA for public and agency review and comment; backup public involvement process and result records for future use	Determine appropriate level of public involvement based on project details (e.g., informal conversations, notification letters, public meetings), inquire if LPA is in need of a public meeting effort courtesy review from ADOT Community Relations project manager	N/A	Public entities and applicable agencies: review and comment on the project, including draft EA
Clean Water Act and Rivers and Harbors Act	Coordinate with the ADOT; prepare appropriate Section 404 and 401 permitting application documents and submit to ADOT; submit to Corps, ADEQ, and EPA, as applicable **Note: For Certification Acceptance and self-administered projects, the LPA is responsible for submitting permit application documents to Corps, ADEQ, and EPA, as applicable*	Review and submit permitting application documents to Corps, ADEQ, and EPA, as applicable	N/A	Corps and ADEQ (or EPA, if necessary): review and approve permit and certification applications
Floodplains	Assess and document impacts on base floodplains and regulatory floodways; procure necessary federal and county floodplain permits	Review analysis during the environmental clearance process	Approval if there is significant encroachment resulting in the need to prepare an EIS	Coconino, Cochise, Gila, Maricopa, Mohave, Pima, Santa Cruz, Yavapai, and Yuma Counties: ensure compliance with county flood-control programs

Task	LPA	ADOT	FHWA	Other
Materials source clearances, if required	Complete appropriate materials source clearance documentation and submit to ADOT	Review and approve materials source clearance documentation	N/A	N/A
Geotechnical investigation clearance	Provide project information and complete surveys and technical evaluation for geotechnical activities	Provide Geotechnical clearance	N/A	N/A
Environmental Commitments (mitigation measures, permits, species handling guidelines)	Incorporate all appropriate environmental commitments into CE or EA for any impacts discovered during the environmental clearance process *Note*: For Certification Acceptance and self-administered projects, LPA must ensure implementation all environmental commitments	Review and approve proposed environmental commitments during the environmental clearance process. Ensure environmental commitments are included in PS&E. *Note*: For ADOT-administered projects, ADOT negotiates with the applicable agencies to determine appropriate environmental commitments and ensures implementation during construction	N/A	N/A

Table Key: ADEQ = Arizona Department of Environmental Quality; ESA = environmental site assessment; PISA = preliminary initial site assessment; SHPO = State Historic Preservation Office; THPO = Tribal Historic Preservation Office.

ADOT-Administered Projects

The LPA is responsible for preparing the environmental documentation and meeting NEPA and other federal, state, and local environmental requirements for all LPA ADOT-administered projects. ADOT EP is responsible for determining the level of NEPA documentation required and fore reviewing and approving the documentation completed for environmental clearance. LPAs are expected to participate in the environmental process when ADOT administers the project on behalf of the LPA. Participation could include attendance at regular project meetings and field reviews, participation in project decision making, and coordination with the ADOT project manager. MPOs and COGs do not have a significant role or responsibilities during the environmental process for LPA projects.

Certification Acceptance and Self-Administered Projects

Certified and self-administering LPAs are responsible for preparing the environmental documentation and meeting all NEPA and other federal, state, and local environmental requirements for their projects in accordance with the same processes and procedures used for ADOT-administered projects.

Funding (Authorization)

To ensure LPAs are fully reimbursed for all costs incurred, if using federal-aid funds for project development, LPAs should begin design or environmental investigations only after receiving federal-aid authorization. The design process for federally funded projects should not proceed beyond Stage III design (60% plans or Certification Acceptance Agency equivalent) without final NEPA clearance or approval from the ADOT EP Planner. Project work proceeding beyond Stage III design before obtaining NEPA clearance, without prior approval by ADOT, is considered "at risk" and potentially may not be reimbursed for additional design work if a project has to be redesigned for environmental reasons. Non-federally funded project development should still develop the project design consistent with the NEPA documentation (i.e. do not advance design past 30% if preparing an EA).

The environmental review process often identifies potential effects of a project that should be avoided or minimized to avoid environmental impacts on resources. Early identification of these impacts can help LPAs avoid expenditures of money and time in the long run. The use of allocated project funding to analyze potential environmental concerns or clearance requirements during the planning/programming phase may yield benefits. The early identification of environmental concerns or clearance requirements, such as those necessary to document or to mitigate impacts on existing resources (e.g., archeological sites), will provide useful information regarding project scope and schedule that may not otherwise be discovered until the preliminary engineering phase. See Scoping during Planning and Programming.

If a project receives federal-aid funds, the environmental clearance process must be completed to fulfill the LPA's requirements needed to receive federal-aid highway funds.

Any work expected to use federal-aid Preliminary Engineering (PE) funds conducted before the federal authorization effective date will not be eligible for reimbursement of federal-aid funds.

To ensure your project is fully reimbursed for all eligible incurred costs:

- Complete all required paperwork and submittals by specified deadlines
- Do not begin any federally-funded environmental clearance work before receiving required federal-aid funding authorization
- Do not proceed beyond Stage III (60% design plans) before obtaining ADOT EP concurrence
- Include environmental commitments in final PS&Es and bid documents, in accordance with 23 CFR 635.309(j)
- Be aware of and comply with other requirements, such as the requirement to follow consultant selection procedures or to complete projects within required time frames
- Understand and follow the invoicing and closeout timelines for self-administered and Certification Acceptance projects

It is important that LPAs understand the decisions made during the environmental clearance process, since LPAs are responsible for project costs beyond federal-aid authorization amounts.

Environmental Clearance Process

LPAs are required to comply with NEPA and all other transportation environmental requirements and permitting to ensure that projects are properly evaluated, the necessary environmental commitments are identified, and the appropriate documentation necessary to obtain environmental clearance is completed. The ADOT project manager provides valuable assistance in this process by coordinating with ADOT EP. In addition to NEPA.other federal, state, or local requirements may be applicable.

NEPA *should* be attained by 60% design completion. But, this may not always be possible. Proceed cautiously past 60% only with ADOT EP approval. Discussions with ADOT EP should be ongoing throughout the project. ADOT EP can make a "risk assessment" for proceeding past 60% based on the impacts and relevant environmental issues. 95% plans can be distributed only with ADOT Environmental concurrence prior to NEPA approval.

Approval of the environmental clearance documents does not commit FHWA to approve any future federal-aid request to fund the project.

Defining the Study Area

Upon initiating the environmental clearance process, an LPA, in coordination with ADOT EP, should define the project environmental study area. A project environmental study area should expand beyond the actual footprint of a project and include anticipated detours, equipment staging areas (only if to be designated by the project), new ROW, and easements. A clearly defined environmental study area that incorporates all aspects of the project can minimize project delays and additional costs. An environmental study area is typically determined during the preliminary design phase through the completion of a DCR or design scoping document. The environmental study area should be large enough in order to provide some flexibility through the design phase to account for design modifications that may be analyzed. Technical assessment documents developed to support an environmental clearance document will ultimately incorporate a clearly defined project area that is relevant to the actual project footprint and specific to the resource being analyzed.

The LPA may conduct *only* the proposed project-related scope items within an environmental study area that are outlined in the environmental clearance documents. Scope of work that is not outlined in the clearance documents are not authorized.

Scoping

Scoping during the planning/programming phase should define a project's basic scope/description, budget, schedule, and any anticipated issues and opportunities. During the planning/programming phase, the scope of the project should be clearly defined and designed to achieve the following objectives:

- Determine which aspects of the proposed action have potential for social, economic, or environmental impacts
- Identify alternatives (including a no-build alternative for projects requiring an EA) and measures that might avoid, minimize, or otherwise mitigate adverse environmental impacts

- Identify other environmental review and consultation requirements that should be performed concurrently with environmental assessments or evaluations

LPAs should accomplish these objectives through early coordination with their local COG or MPO and later refine them during NEPA and the project development process.

The term *scoping* is applied differently throughout the project development process:

- During the planning/programming phase, a project is "scoped" to identify major project elements and a description and cost estimate for programming the project in a TIP. The importance of scoping during planning/programming is to produce an accurate and complete project description that leads to a realistic estimated cost for programming purposes. If a project is inadequately scoped during this phase, unanticipated costs will likely be incurred and borne solely by the LPA.
- During the design and environmental clearance process, project scoping is expanded to define the project engineering and footprint and to weigh project effects against known or identified environmental parameters, including public input from those who will be affected by or have an interest in the project.

Levels of NEPA Documentation (Class of Action)

Consideration of environmental effects is necessary for any project that uses federal funds. Different levels of environmental documentation and processing are available to satisfy the project development and NEPA compliance process for a particular project. The level of documentation or process selected depends on the potential significance of the environmental impacts that are directly, or indirectly, the result of a project. Documentation and processing options are referred to as "classes of actions" and include EISs – Class I, CEs – Class II, and EAs - Class III. The criteria for each level of NEPA documentation is outlined in 23 CFR 771.115 and summarized as follows:

- **EISs** are prepared when a project is anticipated to have a significant impact on the human and natural environment. These are typically very large-scale projects and not discussed in detail in these guidelines.
- **CEs** are prepared for projects that, based on previous experience, normally do not involve significant impacts on the human and natural environment and, therefore, are exempt from requirements to prepare an EIS or EA.
- **EAs** are prepared for projects when the significance of the impacts is not known or clearly established.

Environmental analysis is conducted by the Technical Sections of ADOT EP to identify and address potential environmental impacts that a proposed action may have on the human and natural environment. Environmental analysis is discussed in greater detail in the Technical Resource Studies section of this chapter. For all levels of NEPA documentation, environmental commitments must be properly documented and included in the project's PS&Es and bid documents. The ADOT EP website provides comprehensive guidance that can help LPAs to anticipate the appropriate level of NEPA documentation and to prepare the required documentation. For all projects, ADOT will make the final determination regarding the appropriate level of NEPA documentation.

During the environmental analysis process, it may be discovered that new, potentially significant impacts may occur or it may be concluded that previously identified significant impacts will not occur. In the case of such discoveries or conclusions, ADOT may determine that the level of required NEPA documentation must be adjusted.

Categorical Exclusions

Projects that are federally funded or necessitate federal approval and that do not have a significant social, economic, or environmental effect can comply with NEPA regulations by qualifying for a CE. 23 CFR 771.117 defines CEs used in the Federal-aid highway program. The majority of federally funded LPA projects will meet the qualifications for a CE.

For a CE to be approved, the project must be fully funded and developed in accordance with the FHWA Transportation Planning Requirements outlined in 23 CFR 450. For more information on air conformance policy and guidance, see the FHWA Transportation Conformity website.

ADOT EP maintains the *Categorical Exclusions (CE) Manual for Federal-Aid Highway Projects*, for preparing and documenting CEs. The purpose of this manual is to assist ADOT staff, LPAs, and consultants in documenting and processing projects and actions that require compliance and approval under NEPA. This manual may be accessed on the EP website under .

ADOT has environmental review responsibility for actions that qualify for a CE listed under 23 C.F.R. § 771.117(c) or (d). Approval authority is not further delegated to LPAs, including Certification Acceptance agencies that have design and construction oversight authority by other agreements. Therefore, ADOT EP approves CE documentation prepared by the LPAs for Federal-aid Highway Projects.

It is very important for the LPA to become very familiar with the policies, procedures, subject matter, and approval requirements in the ADOT CE Manual to adequately understand the process of how CEs are categorized, prepared, and approved, along with the coordination efforts required with ADOT EP Planners.

23 CFR 771.177(a) and (b) Requirements

23 CFR 771.117(a) outlines the requirements (definition) of a project designated as a CE as actions that **do not** involve significant environmental impacts. They are actions that do not induce *significant* impacts to planned growth or land use; require the relocation of *significant* numbers of people; have a *significant* impact on any natural, cultural, recreational, historic, or other resource; involve *significant* air, noise, or water quality impacts; have *significant* impacts on travel patterns; or do not otherwise, have any *significant* environmental impacts. In other words, a CE is a determination that a project would have no reasonably foreseeable significant environmental impacts and environmental analysis is undertaken to support that the CE determination is proper.

In addition to the conditions outlined in 23 CFR 771.117(a), which define a CE, 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 that normally would be classified as a CE but could involve "unusual circumstances" will require ADOT, in certain circumstances described below, in cooperation with the LPA sponsor, to conduct appropriate environmental studies to determine whether the CE determination is proper. Examples of unusual circumstances include:

- Significant environmental impacts (e.g., impacts on biological, cultural, water resources)
- Substantial controversy on environmental issues or impacts
- Significant impact on properties protected by Section 4(f) of the Department of Transportation Act or Section 106 of the National Historic Preservation Act
- Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action

23 CFR 771.117(c) and (d): Types of CEs

23 CFR 771.117 defines two lists of actions [the "c-list" contained in paragraph (c) and the "d-list" because it's contained in paragraph (d)] that normally qualify as CEs, and each list contains specific project types or examples of actions that meet the criteria for CEs.

Actions that typically qualify under this category are projects that normally 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.

23 CFR 771.117(d) lists examples of actions that qualify to be processed as a CE. Projects that qualify under this list are known as "d-list" projects. CE's under (d)(4) through (d)(12) are not utilized very often. The two d-list CEs that are most likely to be used on an ADOT approved CE are: (d)(12) – Acquisition of land for hardship or protective purposes and (d)(13). Certain projects not specifically listed under paragraph (d) may still qualify as a CE under paragraph (d) as an individually documented CE.

CEs determined under the ADOT CE Assignment are categorized as either qualifying from the c-list or the d-list in 23 CFR 771.117 and are approved by ADOT under the "326 MOU." The type of CE employed is based on project-type and site-specific factors. The required supporting documentation, if applicable, for CEs is dependent of the extent of other applicable environmental laws for any particular project.

Approved CEs

The appropriate CE category for a project, and the level of documentation and environmental studies required, will be determined and approved by ADOT EP. The ADOT CE Checklist documents a CE determination as well as the other applicable environmental laws. The project file will contain documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects would not result.

It is important to note that projects that may start out on the c-list, but could ultimately be classified on the d-list as (d)(13): "Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section." Therefore, *all c-listed CEs will use the same CE Checklist as is required for specifically listed d-list CEs* and thereby eliminate the need for two different

CE forms. In addition to the CE Checklist, supplemental information may be required, including technical analysis for impacts that require additional documentation.

Completing the CE Checklist also ensures that the CE determination will be consistent with paragraphs (a) and (b) of 23 CFR 771.117. The specific CE determination will be made by ADOT.

The CE Checklist for c-list and d-list projects will be prepared by the ADOT EP Planner in coordination with the LPA. Depending on the type, size, complexity, and potential public response of the project, ADOT EP will determine the impact evaluations that need to be undertaken, such as air and noise, Section 106, Section 4(f), ESA, CWA Section 404, etc. to support the CE finding. The LPA will be required to undertake any such environmental evaluations with oversight from ADOT.

The ADOT Environmental Clearance is the ADOT approval to Contracts and Specifications that the project is ready to be advertised for bid and describes the project limits and scope, summarizes the potential effects of the action, and details all required environmental commitments. Certification Acceptance Agencies are provided a copy of the approved CE and an ADOT Environmental Clearance is provided by email.

Both c-list and d-list CEs use the same CE Checklist in order to streamline and consolidate document formats. Because of the changes introduced by MAP-21, more projects qualify as a c-list CE, including some projects that were previously processed under the d-list. A single form also allows projects that start out assumed to qualify under (c) but later change to qualifying under (d) to seamlessly make this transition while using the same form.

All specifically listed c-list CEs and d-list CEs use the same ADOT CE Checklist and will be prepared by the ADOT EP Planner. The LPA will be responsible for conducting any technical evaluations to support the CE determination.

Individually Documented CEs

Types of projects not specifically listed under paragraph (d) may still qualify for a CE under paragraph (d) as an individually approved CE (ICE). These are projects that 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) yet are consistent with the definition of a CE and would not result in a significant impact on the natural or human environment. These are sometimes referred to by FHWA as “unlisted” CEs. Adding highway capacity—such as through-lanes outside of an existing operational ROW and construction of a new service traffic interchange—are examples of projects that, although not specifically listed on the d-list, may still qualify under paragraph (d) as an individually approved CE. These types of projects usually

require more detailed traffic studies for air quality and noise analysis as well as additional public involvement requirements. An individually approved CE is documented utilizing the CE Checklist.

For individually documented and approved CEs, the LPA will be responsible for preparing any technical evaluations that need to be undertaken in support of the CE finding. ADOT, in cooperation with the LPA and their consultant, will determine which impact evaluations need to be undertaken. The CE Manual may be accessed at the ADOT EP website.

CEs that do not qualify under the c-list or d-list by way of the project description matching one of the CEs in regulation may still qualify as an individually documented and approved CE under paragraph (d). Individually documented CEs also use the CE Checklist and will be prepared by ADOT. Technical evaluations specific to each type of CE will be determined by ADOT in cooperation with the LPA.

Projects that add new through lanes or a service interchange to a freeway are examples of projects that may still qualify as an individually documented and approved CE under paragraph (d). However, there is no category in the regulations for “new roads” that qualify for a CE.

As previously discussed, documentation required for CEs depends on project-specific details, including the level, severity, and intensity of environmental impacts. Table 9-2 summarizes the level of CE documentation required for typical LPA projects.

Table 9-2 Type of CE and MOU Approval

CE Type	Type of Action	MOU
c-list or d-list	Matches description under c-list or d-list	326
d-list	An action not specifically listed but qualifying for a CE under paragraph (d)	327

Environmental Assessments

An EA should be prepared for a proposed action that does not meet the criteria for a CE. EAs summarize the environmental scoping process and analyze reasonable project alternatives, including a no-build alternative. An EA may also evaluate the environmental impacts of one build alternative and the no-build alternative. Any other build alternatives that were considered but dismissed from further evaluation need to be identified and discussed as to why they were dismissed in the alternatives chapter of the draft EA.

For projects not anticipated to meet the criteria for a CE, the LPA should consult with the ADOT ***prior to programming a project in a TIP*** to develop an understanding of the project's level of impact and the corresponding environmental documentation and associated budgetary needs.

Draft EAs, including the results of technical resource surveys, must be submitted to the ADOT project manager. ADOT EP will review and approve the draft EA. The draft EA will then be sent to interested agencies for review and then back to ADOT for final review and approval for public review. The draft EA must be approved by ADOT before it can be circulated for a 30-day public comment period and scheduled for a public hearing.

Following the public comment period, the LPA will make appropriate corrections based on any substantive comments and then will submit the final EA to ADOT. The final EA should document compliance with all applicable federal, state, and local environmental laws, Executive orders, and regulations or provide reasonable assurance that those requirements can be met.

Finding of No Significant Impact

ADOT will make a final determination of environmental impact following review of the final EA after coordination with interested agencies. FHWA will make the final conformity finding for any projects subject to transportation conformity requirements. If the EA concludes that a project will not result in significant impacts, and ADOT concurs with this finding, then ADOT will prepare a separate document called a Finding of No Significant Impact (FONSI). ADOT will provide a copy of the signed FONSI to the LPA. The LPA will then send the FONSI to affected federal, state, and local agencies.

Before ADOT will sign a FONSI, the preferred alternative for the project must be fiscally constrained and developed in accordance with the FHWA Transportation Planning Requirements outlined in 23 CFR 450.

It is ***highly unlikely*** that an EIS would be required for an LPA project. However, if, at any point in the EA process, it is determined that the action is likely to have a significant impact on the environment, the preparation of an EIS document may be required.

Re-evaluations of Environmental Documents

A re-evaluation is an analysis of changes in a proposed project action, affected environment, anticipated impacts, and environmental commitments at specific times in the project development process. The purpose of a re-evaluation is to determine whether an approved environmental document remains valid and to determine whether changes require preparation of a supplemental or new environmental document. Re-evaluation of a CE or EA is required if *any one* of the following conditions is identified:

- There are changes in the proposed action that are relevant to the environmental concerns.
- There are new circumstances that are relevant to the proposed action or its impacts.
- There is new information that is relevant to the proposed action or its impacts.
- A significant amount of time has passed since the original clearance or decision document.
- A federal law that is relevant to the project is updated or newly implemented.

Scope changes could result in unanticipated monetary and schedule requirements and can occur at any point during the project. If changes to project scope or funding occur, the LPA should contact ADOT EP as soon as possible to determine whether re-evaluation is necessary. Additional guidance on re-evaluating CE determinations as well as validating minor CE changes after a CE has been approved are outlined in the ADOT Environmental Planning Categorical Exclusions (CE) Checklist Manual.

For more detailed information and guidance for the preparation, processing, review, and approval process for EAs refer to the NEPA EA EIS Guidance in the NEPA Guidance section of the EP website.

Public Involvement

Public involvement, a component of environmental scoping, is a critical activity during the environmental clearance process. The goal of public involvement is to promote an exchange of information between the public and the project team. The level of public involvement will depend on the nature and complexity of the project. For projects that can be cleared through CEs, public involvement is usually limited; for those requiring clearance through an EA, public involvement is more in depth and must meet regulatory requirements. Public involvement activities may be as simple as informal conversations with the affected public, notification letters to property owners, or project websites. Involvement activities may also include direct mailings, posters, door hangers, or public service ads. More complex projects may require multiple public involvement meetings, hearings, or both. More detailed information and guidance for LPAs regarding ADOT public involvement planning may be accessed on the ADOT website at Transportation Planning Transportation Planning/Public Involvement Plan.

ADOT provides specific direction for coordinating the initial public involvement scoping effort to determine the level of public involvement. Refer to the *Guidelines for* Agency and Public Scoping for Projects with Categorical Exclusions, which is available online and may be accessed at the Environmental Planning Guidance for Federal-Aid Projects/NEPA Guidance. These guidelines are intended to promote consistent, positive initial contact with agencies and the public. All public involvement should be tailored to meet the needs of each individual project. Care should be taken to ensure that information presented is consistent and applicable to the project. Good documentation of public involvement activities can be beneficial to an LPA if the project is challenged.

Additional public involvement may be required based on other environmental laws and review requirements such as the Clean Air Act, National Historic Preservation Act, Section 4(f), or the Clean Water Act.

Technical Resource Studies

Technical resource studies, also known as Environmental Analyses, are the evaluative tools commonly used as the basis of decisions rendered in environmental documents. These resources are usually identified as being sensitive to project impacts and include natural resources, heritage resources (historic and cultural), social resources, recreational resources, and the like. Technical studies generally have established measurable criteria for evaluating potential project impacts. The methodologies, conclusions, and environmental commitments are coordinated with oversight agencies and regulatory bodies—such as the USFWS, which has jurisdiction over endangered species; EPA, which sets and enforces air quality regulations; and the Corps, which enforces CWA requirements. Environmental documents usually include summaries of the technical analyses and reference the technical study. Discussions of typical technical resource studies are presented in the following sections.

More detailed information and guidance for LPAs on the preparation of technical resource studies may be accessed on the ADOT EP website.

Changes in project disturbance or area may require the re-evaluation of a CE or EA. Existing technical resource studies may need to be revised or new technical resource studies may be required if changes in project scope occur or if changes in the environment or regulations occur.

Biological Resources

During the analysis phase, the LPA must assess a project's potential impacts on natural resources, including threatened and endangered species, state and federal-protected species, and migratory birds. Coordination with the ADOT biologist will help the LPA determine what level of biological resource analysis is required. There are two levels of documentation: a Short Form Biological Evaluation, and a Long Form Biological Evaluation. The ADOT EP website offers detailed instructions on formats and guidance for each report type. The biological resource report must be completed by a qualified biologist (as determined by ADOT); qualification standards are provided in the Biological Resources section of the ADOT EP website.

Projects that partially occur on lands managed by a federal agency, such as USFS or BLM, or on lands under the jurisdiction of a Tribal government may need to address impacts on additional sensitive species and to complete further coordination.

The LPA is responsible for conducting the analysis and completing the appropriate reporting format. Once the biological report is completed, the findings are approved by the ADOT biologist. Consultation with USFWS must occur for "may affect" findings that have been approved by ADOT. ADOT serves as the lead federal agency for Section 7 Endangered Species Act consultation with USFWS, although the LPA will be required to supply any additional information that may be needed to complete consultation.

Cultural Resources

The LPA must assess a project's potential impacts on cultural resources. Cultural resources refer to prehistoric and historic archaeological sites, buildings, structures, objects, and districts that are generally 50 years or older. Cultural resources that are listed on or have been determined eligible for listing in the National Register of Historic Places are termed "historic properties." ADOT EP's Historic Preservation Team (HPT) is responsible for cultural-resource-related agency and Tribal coordination and documentation reviews on LPA projects. For federally funded projects, ADOT serves as the lead agency for consultation and ADOT review and approval is also required. It is the responsibility of the LPA to

coordinate with HPT to determine the necessary investigation and reporting requirements on a project-by-project basis. For more information on HPT's coordination and documentation requirements, refer to the Cultural Resources section of the ADOT EP website.

Section 106 of the NHPA, as amended, requires all federal agencies to consider the effects of their undertakings on historic properties. The regulations implementing the NHPA (36 CFR 800) require consultation with the State Historic Preservation Office (SHPO), the Tribal Historic Preservation Office (THPO), or both, as well as with Tribal communities and other interested parties. If a project is on Tribal land or land managed by a federal or state agency, the landowner or land manager must be included in consultation. The role of SHPO is defined in both state law (Arizona Historic Preservation Act) and federal law (NHPA). Through its Review and Compliance Program, SHPO assists federal, state, county, and local agencies in meeting their preservation responsibilities as defined by federal and state law.

Every project requires cultural background research that usually begins with a records search of the project area to determine whether all or portions of the project area were previously inventoried, to identify known cultural resources, and to make recommendations for additional investigations.

A key task is to define the area of potential effects (APE) for the project. The APE is the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if such properties exist [36 Code of Federal Regulations Part 800.16(d)]. The APE is influenced by the scale and nature of the undertaking and may be different for different kinds of effects caused by the undertaking. The APE is typically defined as the construction footprint where ground-disturbing activities would take place. Consideration of the effects of alterations of the visual setting and auditory and seismic influences could potentially affect historic properties and must also be considered.

If the APE, or a portion of the APE has not been previously investigated or for which previous survey reports are inadequate new Class III survey generally will be required, which typically takes place during environmental review for major projects approved with an EA and during design for projects approved with a CE. A Class III survey is a systematic pedestrian survey designed to identify all cultural resources, both prehistoric and historic, within the project area. The resultant report typically describes identified cultural resources, National Register of Historic Places eligibility recommendations, potential impacts on identified resources, and management recommendations for the avoidance or treatment of those resources. For projects that are located adjacent to or within areas with historic-age buildings, an architectural inventory involving preparation of State of Arizona Historic Property inventory forms may be necessary. HPT will determine whether an architectural inventory is needed and whether a single report covering both archaeology and architecture or separate reports would be appropriate.

Any cultural survey report generated by the LPA will be reviewed by ADOT, and ADOT will make determinations of eligibility recommendations for any cultural resources identified. ADOT also will make a determination of the project's potential effect on historic properties.

Depending on the finding of effect, ADOT may carry out Section 106 consultation under its *Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act Regarding Implementation of Federal-Aid Transportation Projects in the State of Arizona* (PA), in which PA signatories and LPAs receive and agree, or disagree, with survey report adequacy, determination of cultural resource eligibility, and findings of project effect informally, typically via email. Under the PA, the actual consultation takes place in quarterly batches.

Some findings of effect require standard Section 106 letters to be distributed. Additionally, not all consulting parties are signatories to the PA; and they also will receive standard Section 106 letters.

Standard consultation typically takes 35 days; response time for coordination under the PA varies, but is typically less. For projects that result in an "adverse effect" and require mitigation, an agreement document (typically attachment 6 of the PA in lieu of a project-specific memorandum of agreement (MOA) or a project-specific PA) between ADOT and the LPA, as well as any other affected agencies or Tribes, may be necessary. LPAs should consult HPT if a Section 106 agreement document is required.

Projects with "adverse effects" on cultural resources will require a consultation period, which typically takes 35 days. However, there may be multiple consultation periods for projects with adverse effects. These projects require a Section 106 agreement document, such as attachment 6 of the PA or a project specific MOA or PA. Resolving adverse effects can significantly affect the project schedule.

Air Quality

Potential project impacts on air quality must be assessed as required by the CAA. During the preliminary design phase of a federally funded project, a qualified air quality specialist must coordinate with ADOT Air Quality staff to determine the appropriate level of analysis required for the environmental clearance. The type of air quality analysis will depend on the scope of project activities, the current air quality conditions and attainment status of the project area, and the presence of significant truck traffic in the project area.

National Ambient Air Quality Standards

The CAA requires EPA to establish National Ambient Air Quality Standards (NAAQS) to regulate pollutants considered harmful to public health or welfare. Currently, there are NAAQS for six primary, or criteria, pollutants: sulfur dioxide, carbon monoxide, ozone, lead, particulate matter, and nitrogen oxides. Additional details regarding the NAAQS are available on EPA's website.

An area is classified as an "attainment" or "nonattainment" area according to its compliance with the NAAQS. A map of attainment, nonattainment, and maintenance areas in Arizona is available on the Arizona Department of Environmental Quality (ADEQ) or ADOT's Air Quality website. LPAs should consult the map to determine the status of air quality within their project area.

If the project is within a designated nonattainment/maintenance area for one or more of the six criteria pollutants, then an analysis may be required to ensure that the project conforms to the overall air quality goals of the area. These air quality goals for nonattainment areas are outlined in the State Implementation Plan (SIP), which is an enforceable plan developed at the state and local level that explains how the area will comply with the NAAQS according to the CAA. A federally funded transportation project must not create new violations of the NAAQS, increase existing violations, or delay the process of reaching attainment status to demonstrate conformity to the SIP. No additional criteria air pollutant analysis is required for CE projects within attainment areas. Some projects are exempt from transportation conformity and therefore do not require an air quality analysis (see 40 CFR 93.126 for a list of exempt projects). The LPA should coordinate with the ADOT EP Air Quality Team to determine the potential for air quality impacts and whether or not air quality analysis is required.

Project Level Hot-Spot Analysis

Project-level conformity determinations are required in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas. To demonstrate project-level transportation conformity the following apply:

- A project must come from a conforming S/TIP and MPO Plan.
- The project's design concept and scope must not have changes significantly from that in the S/TIP or MPO Plan.
- The analysis must have used the applicable latest planning assumptions and emissions model.
- In $PM_{2.5}$/PM_{10} areas, there must be a demonstration of compliance with any control measures in the applicable SIP.

Additional analysis may be necessary to determine if a project has localized air quality impacts. This localized air analysis is referred to as a "hot-spot" analysis. A hot-spot analysis is defined as an estimation

of likely future localized CO, PM_{10}, and/or $PM_{2.5}$ pollutant concentrations and a comparison of those concentrations to the NAAQS.

The interagency consultation process plays an important role in evaluating which projects require quantitative hot-spot analysis and determining the methods and procedures for such analyses. ADOT develops interagency consultation documents that are used to document the project-level conformity requirements. Please contact ADOT Air Quality Staff at AdotAirNoise@azdot.gov prior to conducting air quality studies in nonattainment areas. Refer to the Guidance section of the EP Air Quality website for project-level transportation conformity processes.

Mobile Source Air Toxics

In addition to regulating criteria pollutants, EPA regulates air toxics called mobile source air toxics (MSATs). One of three levels of documentation and analysis is required for MSATs:

1. Level 1 No analysis for projects with for projects with no potential for meaningful MSAT effects
2. Level 2 Qualitative MSAT Analysis for projects with low potential MSAT effects
3. Level 3 Quantitative MSAT Analysis to differentiate alternatives for projects with high potential MSAT effects

The LPA should coordinate with the ADOT EP Air and Noise Team to determine the level of required MSAT analysis on any particular project. LPAs should refer to FHWA's *Memorandum: Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents - January 2023.* Refer to the Project Development section of the EP website for detailed MSAT guidance.

Construction Impacts Construction activities may result in temporary and short-term increases in emissions of criteria pollutants and MSATs. Construction impacts need to be considered during design and construction phases including, examining land-use features adjacent to the proposed project that may be sensitive or notable impacted. Any mitigation measures used to minimize temporary construction emissions should be documented as Environmental commitments during NEPA. If mitigation is required for transportation conformity the LPA shall provide written commitments prior to a positive conformity determination, and that project sponsors must comply with such commitments.. Refer to the Air Quality section of the EP Air Quality website for additional resources.

Compliance with State, county and/or Tribal dust control regulations and conditions may be required.

Noise

During the preliminary design phase of a project, LPAs should review proposed alterations in roadway, traffic capacity, and distance to sensitive noise receptors in close coordination with the ADOT EP Noise Staff to determine whether a qualitative or quantitative noise analysis is required. According to 23 CFR 772, a noise analysis is required for Type I federally funded highway projects. A Type I project is one that involves either the construction of a highway on a new location, an increase in the capacity of an existing roadway, or a substantial alteration in the vertical or horizontal alignment of an existing transportation facility. A noise analysis documents both the existing and future noise environments, and it predicts traffic noise impacts by comparing the predicted future build noise levels at each activity area to both the noise impacts threshold for that type of receptor and the existing noise levels at that location. If the noise levels exceed levels, as a result of the project (build scenario) as determined by the ADOT *Noise Abatement Requirements*, then project specific mitigation measures should be considered to reduce or eliminate the noise impact. These mitigation measures can take the form of noise barriers, traffic-control measures, or other approved methods of reducing the impact of traffic noise, and they must meet the criteria for feasibility and reasonableness listed in the ADOT *Noise Abatement Requirements, including viewpoints of the affected property owners and residents*. Refer to the Noise section of the EP website for additional guidance.

Vibration and Construction Impacts

Potential impacts of highway construction noise should be addressed in a general manner for traffic noise analyses. The temporary nature of the impacts should be noted. An indication of the types of construction activities that can be anticipated and the noise levels typically associated with these activities can be obtained from existing literature and presented in the noise analysis.

Major urban projects with unusually severe highway construction noise impacts require more extensive analyses. Ground vibration and ground-borne noise can also be a source of annoyance to individuals who live or work close to vibration-generating activities. It is recommended to apply methods that may be practical and appropriate in specific situations, to reduce construction noise and vibration to an acceptable level.

If there is any possibility that a project will qualify as a Type I project, LPAs should contact the ADOT EP Air and Noise Team as early as possible in the planning process to determine the level of analysis that may be required.

Section 4(f) and Section 6(f)

Section 4(f) of the USDOT Act of 1966 and Section 6(f) of the Land Water Conservation Act (LWCF) of 1965 are two distinct environmental laws but are directly related in terms of potential impacts to parks. Section 4(f) is a protection law for the taking of land from parks, recreational areas, wildlife and waterfowl refuges and historic sites. Section 6(f) established funding for parks and recreational areas. Federal transportation policy supports the preservation and integrity of publicly owned parks and recreation areas.

Section 4(f) prohibits FHWA from approving a transportation program or project requiring the use of any Section 4(f) property unless a determination is made that:

- There is no feasible and prudent alternative to using the property, and,
- The program or project includes all possible planning to minimize harm to the property resulting from the use
- Or, the use will have no more than a *de minimis* impact on the area

A "use" of a Section 4(f) resource, as defined in 23 CFR 774.17, occurs "(1) when land is permanently incorporated into a transportation facility; (2) when there is a temporary occupancy of land that is adverse in terms of the statute's preservation purpose as determined by the criteria in 23 CFR 774.13(d); or (3) when there is a constructive use of a Section 4(f) property as determined by the criteria in 23 CFR 774.15." As defined in 23 CFR 774.15(a), a "constructive use" of a Section 4(f) resource occurs "when the transportation project does not incorporate land from a Section 4(f) property, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired." The following are examples of a constructive use (23 CFR 774.15[e][1–3]):

- The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a property protected by Section 4(f).
- The proximity of the proposed project substantially impairs esthetic features or attributes of a property protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the property.
- The project results in a restriction on access, which substantially diminishes the utility of a significant publicly owned park, recreation area, or historic site.

Note: A constructive use approval is extremely rare and highly unlikely to be encountered with an LPA project. A constructive use cannot be approved with a project cleared with a CE.

Section 6(f) of the LWCF is administered by the National Park Service (NPS) and pertains to transportation projects that propose to convert outdoor recreation property that was acquired or developed with LWCF grant money. Section 6(f) requires NPS approval before any property acquired or

developed through the LWCF can be converted to a non-recreational purpose. NPS is not authorized to approve a Section 6(f) land conversion for a federal-aid highway project unless replacement land of equal value, location, and usefulness is provided as a condition (mitigation) of the conversion.

Section 4(f) and Section 6(f) are typically reviewed in the same context of a proposed federal-aid transportation project because potentially affected Section 4(f) properties (parks and recreational areas) may have potential 6(f) resources which received funding through the LWCF. Arizona State Parks maintains records of LWCF grants that have been administered under the program.

The LPA is responsible for completing and documenting all relevant background research and investigation information pertaining to Section 4(f) and 6(f) resources and determinations. ADOT EP will provide the LPA assistance with determining the required information necessary to document any Section 4(f) and Section 6(f) resources. The Section 4(f) and Section 6(f) section of the ADOT EP website provides Section 4(f) policy guidance and the ADOT Section 4(f) Manual.

Water Resources

Water resources include surface waters, groundwater, floodplains, impaired waterbodies, and waterbodies regulated by the CWA. The presence or absence of these resources should be assessed so that a project's anticipated impact on water resources can be evaluated by ADOT during the environmental clearance process. The NEPA document should identify the locations, quantities, and sizes of water resources and provide an initial recommendation on the severity of project impacts on these resources.

While specific permits or authorizations may be required to impact or alter water resources, approvals from various federal, state, and local agencies are not considered a prerequisite for NEPA approval but Section 404 and 401 permits are required to be in place for the issuance of an environmental clearance by ADOT. Securing CWA permits and authorizations can be time consuming, typically taking 3 to 9 months to acquire. Therefore, LPAs should begin coordination with ADOT Environmental Planning and applicable agencies as soon as a project's extent of interaction with any water resource is known, and should obtain the necessary permits or approvals before construction. Requirements for LPA projects may include any or all of the following: a CWA Section 401 water quality certification, a CWA Section 402 Arizona Pollutant Discharge Elimination System (AZPDES) or National Pollution Discharge Elimination (NPDES) permit, a CWA Section 404 permit for dredge and fill material, a Rivers and Harbors Act Section 10 permit for structures in or over navigable waters, a Section 408 approval for impacts to flood control structures, or a county floodplain permit. The necessity of these certifications, permits, and clearances depends on the project site and specific project details.

CALENDAR WATCH

CWA certifications and authorizations can take 3 to 9 months to secure. LPAs should begin coordination with applicable agencies, including ADOT, as soon as a project's interaction with water resources is known in order to avoid disruption to the schedule. Permits and approvals should be secured before construction.

Compliance with the CWA will be required for projects that involve the presence of or potential discharge to water resources. The goal of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waterways. It prescribes the policies, practices, and procedures to be used in determining the extent of EPA and Corps jurisdiction over the waterbodies on a given project site. Waterbodies under EPA and Corps jurisdiction are known as Waters of the United States (Waters), which are defined under 33 CFR 328.3. Projects that result in the discharge of any material, including stormwater, within Waters are subject to CWA regulations and may require the LPA to obtain permits or certification before construction. Sections 401, 402, and 404 of the CWA are commonly applicable to construction and maintenance projects, and action by the LPA may be required during the early stages of project planning. Authority to oversee Section 401 certifications and Section 402 permits is delegated by EPA to ADEQ on non-tribal lands; Section 404 permits are managed by the Corps with oversight from EPA.

Complying with the CWA, including obtaining the necessary approvals and certifications from the Corps, EPA, ADEQ, and Tribes is the responsibility of the Certification Acceptance Agencies. For LPA projects in which the construction is administered by ADOT, it is the responsibility of the LPA and ADOT; ADOT is the 404/401 permittee of these types of projects. It is recommended that the applicability of the various CWA requirements for a given project be reviewed early in the project life cycle (i.e., during scoping) and frequently monitored during the design process to determine the appropriate CWA requirements so that sufficient time is allotted to obtain the necessary approvals and certifications.

ADOT EP does not request coordination with the LPA or the review of documentation during the CWA process. The LPA is responsible for initiating applicable surveys, preparing documentation, and coordinating with the applicable agencies for the various CWA authorizations that may be required.

Clean Water Act Section 404

Section 404 requires Corps authorization for all discharges of dredged or fill material in Waters, including jurisdictional wetlands. Transportation-related activities such as road and bridge improvements,

multiuse-path construction, and drainage maintenance, may be subject to regulation under Section 404. The Arizona Branch of the Corps Los Angeles District Regulatory Division is responsible for issuing CWA Section 404 guidance for Arizona.

Coordination with the Corps for reviews and approvals related to Section 404 will typically be limited to the Corps project manager assigned to the county/region/project type in which the project occurs; however, agency scoping on LPA projects should also include the Corps Arizona Branch chief. In addition, the ADOT Corps Liaison can be utilized. The standard process is ADOT provides a review and can submit to ADOT's liaison, or the municipality can submit to the Corps. Either is appropriate. ADOT typically reviews and approves prior to going to the Corps.

Technical information on the Corps' Section 404 permit process, including Corps guidance manuals and resource publications that assist in determining a project's permitting requirements, are maintained by the Corps and are available on the Corps Headquarters Regulatory Program and Permits website. Also available are document templates, submittal instructions, and graphic standards that LPAs should use when preparing Section 404 reports and applications. LPA submittals are held to ADOT submittal qualities and standards. The ADOT EP Section 4041/40 Procedures website is a resource for obtaining general, relevant information on the Corps' Section 404 and 408 programs, including applicable policies, regulations, and permits common to transportation projects. The Corps and ADOT EP Section 404 and 408 Procedures websites include the reference materials that are further discussed in this Water Resources section.

Jurisdictional Determinations

The LPA's initial step in the CWA process is to determine the presence of Waters on a given project site by conducting a jurisdictional delineation (JD) of the project area. This information is needed before determining the project's requirements for CWA Section 404 permitting. JDs evaluate the potential for the existence of Waters by assessing the presence or absence of an ordinary high-water mark and other specific physical characteristics associated with Waters according to Corps guidance. Typical Waters affected by LPA projects include lakes, rivers, creeks, ephemeral washes, and wetlands. Swales and erosional features are generally not considered Waters, as they typically lack the physical characteristics of a jurisdictional waterbody. Currently, the Corps offers the following reference manuals for conducting JDs:

- *Guidelines for Jurisdictional Determinations for Waters of the United States in the Arid Southwest*, June 2001

- *A Field Guide to the Identification of the Ordinary High Water Mark in the Arid West Region of the Western United States*, August 2008
- *Jurisdictional Determination Form Instructional Guidebook*, May 2007
- *Regulatory Guidance Letter No. 08-02*, June 26, 2008
- *Corps of Engineers Wetland Delineation Manual,* January 1987
- *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*, September 2008
- *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region***,** April 2008

Before performing JDs, LPAs should check the Corps website for guidance updates. For complex projects, LPAs should also contact the Corps Arizona Branch for project-specific guidance early in the process.

According to the Corps Regulatory Guidance Letter 08-02, there are two JD options: preliminary and approved. A preliminary Jurisdictional Delineation (PJD) is a quicker process and therefore is the most commonly used option; it is also preferred by FHWA, according to its May 6, 2009, guidance memo regarding PJDs and approved JDs. A PJD assumes that all potential Waters identified are hydrologically connected to navigable Waters and are therefore jurisdictional. An approved JD is only required for a determination that the waterbodies on the project site are not jurisdictional because they are not hydrologically connected to navigable Waters, or for when a legally defensible statement regarding the jurisdictional status of the Waters on the site is desired. Currently, the Corps does not have the authority to issue approved JDs, so the Corps forwards approved JD reports to EPA for review and approval, which can add significant time to the approval process.

A preliminary JD does not expire, but it is nonbinding. An approved JD is valid for 5 years, and the project must be in construction before the expiration of the approved JD or an extension from the Corps will be needed. For both types of JDs, if the characteristics of the Waters on the site change significantly before construction, the updated information should be sent to the Corps for its review, and a revised preliminary or approved JD may be issued.

Nationwide Permits

Certain activities involving the discharge of dredged or fill material into Waters are authorized under the Corps 2017 Nationwide Permit (NWP) Program (Federal Register Notice Vol. 82, No. 4, 1860-2008, effective until March 18, 2022). NWPs authorize discharges to Waters that occur due to a variety of specific activities, provided that the project meets the conditions for the applicable NWP, including the NWP General Conditions and the Regional Conditions for Arizona. Depending on the conditions for a given NWP and interaction with surrounding resources (e.g., cultural and biological resources), the LPA may be required to notify the Corps of the project specifications. NWPs common to transportation-related projects include NWP No. 3 (Maintenance), No. 6 (Survey Activities), No. 12 (Utility Line Activities), No. 14 (Linear Transportation Projects), and No. 33 (Temporary Construction, Access, and Dewatering).

Projects that involve impacts on Waters but that do not require notification based on the conditions of the applicable NWP (referred to as "non-notifying") are authorized to proceed under the conditions of that applicable NWP with no required application submittal to the Corps . However, due diligence and documentation to the file should be utilized to ensure non-notifying permitting is applicable. If notification is required due to project design and the conditions of the applicable NWP, the LPA must complete a Pre-Construction Notification application and submit it to the Corps for review and approval before construction. A full listing of current NWPs and submittal requirements are available on the Corps Headquarters' website.

CALENDAR WATCH

Corps review and approval of a Pre-Construction Notification typically takes 3 to 4 months. Once approved, the NWPs are valid until the date listed on the verification letter. If an NWP expires before project construction, an extension from the Corps will be required, or a new permit may be required.

Regional General Permit

In May 2021, the Corps reissued the Regional General Permit No. 96 (RGP 96) for Routine Transportation Activities in Arizona. The RGP 96 applies to Arizona statewide Waters of the US, occurring within ADOT ROW or easement (including TCEs) through non-tribal lands and LPA projects federally funded by FHWA that are bid and administered by ADOT. A total of nine (9) activity categories are authorized under RGP 96. Refer to RGP 96 for detailed descriptions of the activities that are authorized under this Section 404 permit.

Individual Permits

For projects with impacts to Waters that do not meet the conditions of the RGP 96 or any NWP or that exceed the threshold of the applicable NWP, the LPA must prepare an individual permit (IP). An IP necessitates greater input on project purpose and need as compared to an NWP and must identify a least environmentally damaging practicable alternative through the completion of a decision document that constitutes the Corps' Environmental Assessment, 404(b)(1) Guidelines Evaluation, Public Interest Review, and Statement of Findings. IPs also carry mandatory mitigation requirements and a 30-day comment period intended to provide an opportunity for agency and public input on the project. More details on required IP documentation are available on the Permit Process and Technical Information page of the Corps website.

CALENDAR WATCH

It typically takes 4 to 6 months for the Corps to review and approve an IP. Once approved, IPs are valid for a specified time period, which is typically 2 years.

CAUTION

The project's biological and cultural resource information, including the managing resource agency's concurrences, is required for the approval of Concurrence Notification, Pre-Construction Notifications, and IPs.

Clean Water Act Section 401

CWA Section 401 requires the State to certify that proposed discharges associated with a project are in compliance with applicable effluent limits, Arizona's water quality standards, and any other appropriate requirements of state law. EPA has delegated authority to ADEQ to grant, deny, or waive Section 401 water quality certification for both IPs and NWPs. The Corps cannot issue a permit for a project if ADEQ has not approved or waived certification or has denied Section 401 certification for that project. Certain activities have been pre-certified by ADEQ if they meet the Section 401 certification requirements of the applicable NWP, so the requirements should be reviewed to determine whether individual certification is necessary. If individual certification is required, the Application for Coverage under the CWA Section 401 Certification Form must be completed and submitted to ADEQ. To obtain a Letter of Certification from ADEQ, the LPA must demonstrate that the proposed project will not cause or contribute to the violation of state water quality standards or conditions established by the Water Quality Control Council.

Clean Water Act Section 401 Permits for Projects on Tribal Land

If the project is located on Tribal land, individual water quality certification may be required. Since the State does not have authority over Tribal land, certification for those projects is obtained from EPA or from the appropriate Tribal EPA, as applicable. The February 17, 2022, letter, S*pecial Public Notice: Nationwide Permits Reissuance and Final Regional Conditions for the State of Arizona*, including general conditions describing EPA's process and submittal requirements for Section 401 certification on Tribal land. The *Special Public Notice* and Section 401 Certification with conditions can be found on the Corps Regulatory Division website.

Clean Water Act Section 402

The National Pollutant Discharge Elimination System (NPDES) Program is authorized under Section 402 of the CWA and provides the statutory basis and structure for regulating the discharge of pollutants from any point sources into Waters. However, in 2002, ADEQ was delegated the authority to implement the AZPDES Program, under the primacy of the NPDES Program, for non-Tribal lands. If the project has the potential to cause any discharge of pollutants to PSW, including sediment or other pollutants, an AZPDES permit is required. On Tribal lands, the EPA retains authority over NPDES and the various permitting programs.

Construction projects that disturb one or more acres of soil on non-tribal lands require coverage under the AZPDES Construction General Permit (CGP) (AZG2020-001). For projects that disturb one or more acres of soil on Tribal lands, the NPDES CGP is applicable. Projects that require CGP coverage with disturbance on both Tribal and non-Tribal lands require coverage under both AZPDES and NPDES. Note that projects with less than one acre of disturbance do not require coverage under the CGP, however, BMPs are required to be implemented as appropriate to prevent discharge of pollutants into stormwater resulting from the project construction activities.

Coverage under the AZPDES MS4 program is required for publicly-owned municipal separate storm sewer systems located in an urbanized area with a population of at least 50,000 as defined by the U.S. Census Bureau, and as designated by ADEQ. Public agencies requiring MS4 permits are either permitted under a Phase I (Individual) or Phase II General permit (Permit AZG2021-002). MS4 permits specifically exclude coverage for construction activities, thus agencies with MS4 permits must apply for coverage as owners or operators under the applicable CGP for projects that disturb over an acre of ground. The regulated MS4 agency (ADOT and/or LPA) may have additional requirements and/or control measures for construction projects as stipulated in their permit and/or Stormwater Management Plan. ADOT's MS4 Permit (no. AZS0000018-2021) and Stormwater Management Plan are available on www.azdot.gov/stormwater.

Stormwater Pollution Prevention Plans

To obtain coverage under he AZPDES or NPDES CGP, the owner and/or operators (as defined in the respective permits) of the LPA construction project will be required to prepare and implement a SWPPP and submit an NOI with applicable fee payment before beginning ground disturbance activities. A SWPPP is a project-specific, detailed document that describes how a contractor will address, control, and maintain structural controls and nonstructural practices designed to reduce pollution and restore conditions of natural surroundings before, during, and after construction phases. The SWPPP is a living document that must be updated frequently with dated records of construction activity, inspections, monitoring, maintenance of best management practices, and stabilization activities. Commonly, a contractor is hired to prepare the SWPPP.

Some smaller projects meet the criteria for a waiver of CGP coverage with what is called an Erosivity Waiver. Typically, these projects are small in area (5 acres maximum) and scheduled during an anticipated dry period. For specific criteria, reference the Construction General Permit information for the respective permitting agency. For ADOT-administered projects, the ADOT RE must review and approve the waiver application prior to submittal to ADEQ or EPA.

A SWPPP must be prepared before filing an NOI with ADEQ. For ADOT-administered projects, the SWPPP and NOI must be reviewed and approved by the ADOT resident engineer before the NOI may be submitted. ADOT has developed a standard SWPPP template and inspection report, available at https://azdot.gov/business/environmental-planning/water-resources/construction-swppp-forms. For ADOT-administered projects, the ADOT SWPPP template must be used. For these projects, ADOT and the construction contractor are required to submit separate NOIs with matching information on the project, and they share responsibility for implementing the SWPPPt For approved self-administration projects and Certification Acceptance projects, the NOI can be submitted upon LPA approval of the SWPPP. For LPA administered projects, the ADOT SWPPP template is not required but may be used if desired.

Following submittal of the NOI to ADEQ with the applicable fee payment, an eligible operator is authorized to discharge stormwater from a construction site when the authorization certificate is issued (i.e., after the NOI information is entered and certified in myDEQ). For projects that have outfalls within ¼ mile of and upstream of impaired, non-attaining or Outstanding Arizona Waters (OAW), the SWPPP and Sampling Analysis Plan must be submitted to ADEQ for review. Coverage for a construction site that has one or more outfalls within 1/4 mile upstream of an impaired or not-attaining water or an OAW is not authorized for 30 calendar days following submission of their NOI, SWPPP, SAP and initial application fees in myDEQ. ADEQ may notify operators within this time frame that the NOI is approved, or there is cause for a SWPPP amendment, or denial of coverage. If notification is not received in the 30-calendar day time period, the operator is deemed covered under this. Following submittal of the NOI to EPA, the

EPA has a 14-day review period. Coverage is granted once EPA issues an authorization certificate, or 14 calendar days have passed since submission of the NOI with no response from EPA..

Once construction disturbance activities are complete, the NPDES and AZPDES CGP requires that ground surfaces disturbed by construction be stabilized or that permit coverage be transferred to another operator before submittal of a Notice of Termination (NOT). If final stabilization requirements based on vegetative cover have not been met at the time of construction completion, stabilization alternatives described in the ADEQ and EPA CGPs that apply to arid, semi-arid and drought-stricken areas may be applied to terminate coverage if the permit criteria are met. If the stabilization alternatives are not available in the area, permit coverage can be transferred to the LPA while the site is awaiting final stabilization. For ADOT-administered projects, any NOTs must be reviewed and approved by the RE prior to submission to ADEQ or EPA .

ADEQ typically authorizes coverage within a business day unless the project is within ¼ mile of an impaired, non-attaining or OAW. . EPA has a 14-day review period for NOI submittals, and typically authorizes coverage at the end of the 14 calendar days if no further information is required.

Rivers and Harbors Act Section 10

Under Section 10 of the Rivers and Harbors Act of 1899, a Corps permit is required to do work within, over, or under “navigable waters” (33 CFR 329.4). Waters that have been previously determined by the Corps to be navigable waters are designated as “traditional navigable waters” (TNWs). Currently the Colorado River reaches the Santa Cruz River and Gila River and is considered TNWs. LPAs must apply for a Section 10 permit to work within the jurisdictional limits of these waterbodies. The LPA should consult the Jurisdictional Determinations page of the Corps Regulatory Division website for a list of TNW decisions, which includes information on the locations of the Corps-designated TNW reaches of the Santa Cruz River and Gila River. The permit application required for Section 10 approval is the same application used for NWP or IP notification.

Section 408 Permit

Under Section 14 of the Rivers and Harbors Act of 1899, a Corps permit is required for impacts to flood control structures (33 U.S.C 408).These reviews must be funded by the LPA through an IGA with ADOT and the Corps. These reviews can be time-consuming and must be coordinated early in the development process.

Floodplains

Protection of floodplains and floodways is required under the following: FHWA's *Federal-Aid Policy Guide*, *Location and Hydraulic Design of Encroachments on Flood Plains* (23 CFR 650A); FEMA Executive Order 11988, *Floodplain Management*; and U.S. Department of Transportation Order 5650.2, *Floodplain Management and Protection*.

LPAs are responsible for assessing and avoiding or minimizing project impacts on base floodplains and regulatory floodways. A preliminary assessment is necessary to determine whether a project alternative will encroach on any base floodplain or regulatory floodway, and the results should be incorporated into the NEPA document. The Flood Insurance Rate Maps page of the FEMA website provides a delineation of special hazard areas and the risk premium zones applicable to a project area.

The LPA must procure the necessary federal and county floodplain permits before construction. Any work in a floodplain must be based on accepted hydrologic and engineering studies. In association with the previously mentioned federal orders, the LPA should consult the following ADOT guidelines and manuals for further information related to hydrologic and engineering design within floodplains:

- *ADOT Highway Drainage Design Manual: Hydraulics*
- *ADOT Bridge Hydraulics Guidelines*

As of 2025, Coconino, Cochise, Gila, Maricopa, Mohave, Pima, Santa Cruz, Yavapai, and Yuma Counties administer countywide programs designed to provide comprehensive flood-control protection. During the scoping phase, the LPA should contact the applicable county floodplain administrator to determine the local policies and design standards that may also apply.

Hazardous Materials

During the environmental clearance process, LPAs must identify any hazardous materials which may be present in potential project areas. Hazardous materials assessments are conducted early in the project development process to minimize the risk of unexpected project costs and risks to health and safety. The LPA should have a qualified hazardous materials specialist review the project area to assess the potential for hazardous materials. A complete list of required professional and educational qualifications is available in the Hazardous Materials section of the EP website.

CALENDAR WATCH

Hazardous materials assessment documents approved by ADOT EP are valid for 180 days from date of completion. If the document is older than 180 days, the ADOT EP planner must be contacted to determine whether additional assessment is necessary.

ADOT EP requires a preliminary initial site assessment (PISA) for hazardous materials clearance on most projects. The PISA involves a records check to review EPA and ADEQ records of known hazardous materials sites or incidents (leaking underground storage tanks, landfills, spills, etc.) within a given area within or near the project site. The PISA summarizes the results of the records check, as well as observations made during field verification. Data for the records check is available from online EPA and ADEQ databases and from commercial sources. If the PISA identifies hazardous materials at a project site, Phase I, Phase II, and Phase III environmental site assessments may be required.

For projects involving renovation or demolition activities of a load-bearing structure, asbestos testing and National Emission Standards for Hazardous Air Pollutants notification is required for compliance with 40 CFR 61. Abatement may also be required if asbestos or air pollutants are identified. If paint will be obliterated as part of a project, lead-based-paint testing will also be required. The LPA should contact the ADOT Hazardous Materials Team to confirm the need for asbestos and lead-based paint testing.

CALENDAR WATCH

Maricopa Country requires the asbestos test to be less than 5 years old.

CAUTION

If any paint will be obliterated as part of a project, lead-based-paint testing will be required.

These hazardous materials investigations must be current at the time the NEPA determination is made.

Socioeconomics Considerations

Socioeconomic considerations are primarily required for projects with more than a minor amount of right-of-way acquisition and displacements of residences and business. According to 23 USC 109(h) federally funded projects should make final decisions that consider adverse economic, social, and environmental effects, including:

- Air, noise, and water pollution
- Destruction or disruption of human-made and natural resources
- Aesthetic values, community cohesion, and the availability of public facilities and services
- Adverse employment effects and tax and property value losses
- Injurious displacement of people, businesses, and farms
- Disruption of desirable community and regional growth

Where there are foreseeable impacts on a community or group of people, the LPA should analyze and document the level of impacts, including:

- Changes in the neighborhoods or community cohesion for various social groups
- Changes in travel patterns and accessibility to vehicular traffic, bicycles, or pedestrians
- Direct impacts on school districts, churches, police, and fire protection
- Impacts on overall public safety
- Specific impacts on general social groups, such as the elderly, people with disabilities, transit-dependent people, and minority/ethnic groups

Documentation prepared during the environmental clearance process should address the severity of possible impacts and identify the mitigation measures necessary to avoid or minimize any adverse effects. See also Section 3 of the Environmental Consequences of the FHWA Technical Advisory T 6640.8A – Guidance for Preparing and Processing Environmental and Section 4(f) Documents.

Relocation Impacts

If relocations are required, the LPA should provide relocation information for all proposed alternatives to adequately explain the relocation situation, including anticipated problems and proposed solutions. Typical factors to consider include the number of potentially displaced households or businesses, the number of comparable available replacement dwellings or sites, and the LPA's policy on relocation and displacement.

Visual Resources

Visual resources must be analyzed as an integral part of the environmental clearance process for transportation projects when there is a potential for visual quality impacts. A visual resource analysis is an explanation of the existing visual character of the subject landscape, with a discussion regarding the impacts that a proposed project would have on the existing visual character. The analysis then discloses whether or not the proposed project would be in compliance with existing visual management objectives, if any. LPAs should refer to the *Visual Impact Assessment for Highway Projects* (Publication No. FHWA-HI-888-054 – 1981) and the updated *Guidelines for the Visual Impact Assessment of Highway Projects* (2015) for guidance on highway planning and assessment.

USFS and BLM have established specific resource management plans for the lands they manage that require the analysis of visual resources. Visual analysis performed on USFS land should be consistent with the *Visual Management System* manual (Agricultural Handbook No. 462) or the *Landscape Aesthetics* manual (Agricultural Handbook No. 701). Visual analysis performed on BLM land should be consistent with the *Visual Resource Contrast Rating* manual (BLM Handbook 8431-1). LPAs should contact ADOT EP to coordinate with USFS and BLM in order to determine the full scope of visual analysis that would be required for a particular project.

Other Environmental Clearances

Materials Source Clearances

NEPA analyses completed for an LPA project must include the evaluation of potential materials sources *only if* the source is predesignated during the planning/programming phase or before construction. However, if a potential materials source is not predesignated, the LPA's contractor will be responsible for obtaining environmental clearance from the ADOT Materials Group, independent of the project's overall NEPA clearance.

ADOT EP oversees the preparation of environmental documents for all materials sources, and offers separate environmental clearance processes for both ADOT-licensed materials sources and contractor-furnished materials sources. The Material Source Guidance section of the ADOT EP website provides guidance on each of these processes and the required documentation. Materials source clearances are separate from the materials report clearance that may also be required during the development/design phase of an LPA project.

ADOT-Licensed Materials Sources

For projects that propose to use an existing ADOT-licensed materials source, rather than developing or stockpiling materials at a new location, LPAs should refer to the *Environmental Checklist and Clearance Memos for ADOT Material Sources*, which can be found on the Materials Source website. The checklist requires project information, including results from environmental resource studies (e.g., cultural resources). Once approved by EP, the LPA may use the selected ADOT-licensed materials source as conditioned.

Contractor-Furnished Materials Sources

To use a materials source from the list of contractor-furnished materials sources, the LPA must submit the *Material Source Environmental Analysis Update* form to ADOT EP. Through this form, the contractor agrees to the compliance measures, including any and all mitigation measures stipulated in the accepted environmental analysis application. The update form must also be submitted for any subsequent use of the materials source for other projects, but the *Material Source Environmental Analysis Application* form does not need to be submitted again for that source.

ADOT EP's list of contractor-furnished materials sources that have previously completed an environmental analysis is available on the Contractor-Furnished Material Sources section of the website. Inclusion on the list does not guarantee that the materials source will be available for all projects. The LPA should consult with the assigned ADOT resident engineer for approval of any listed materials source.

Material from a non-ADOT-licensed materials source cannot be used on a federally funded project until the source has successfully completed the ADOT EP environmental analysis process. To initiate the ADOT EP environmental analysis process, the LPA must have the materials source owner or operator complete the *Material Source Environmental Analysis Application* form and submit it to ADOT EP (refer to the Contractor-Furnished Material Sources section of the website). This form, which includes a cultural survey and report, allows ADOT EP to adequately evaluate the listed material source for compliance with NEPA and ADOT standards. Once ADOT EP has received a completed application, HPT will initiate the cultural consultation process. Following completion of consultation, the materials source will receive a tracking number and will be included on ADOT EP's list of contractor-furnished materials sources.

ADOT EP review, with any required Tribal or SHPO cultural consultation, takes approximately 45 days from the receipt of a completed materials source application.

The identification and extent of any haul road (defined as a road leading from a government-maintained road to the materials source) is required with any materials source evaluation so that CWA permitting requirements and biological and cultural resources can be adequately evaluated. Regardless of the status of a materials source, the expansion of boundaries or haul roads used at any site may require additional cultural resources consultation and additional review by ADOT EP. For contractor-furnished materials sources, changes in ownership will require that a new application be completed.

Geotechnical Investigation Clearances

For federally funded projects that require geotechnical investigation, ADOT EP's geotechnical clearance process should be followed to obtain environmental clearance and to establish any necessary environmental commitments. LPAs should coordinate with their designated ADOT EP Planner to obtain clearance for the investigation plan and any associated temporary features (e.g. access roads, staging areas) before initiating on-site activities. Geotechnical investigation plans do not need to include detailed boring locations but can clear areas in which geotechnical investigations would be conducted. This should be the maximum possible footprint within which geotechnical activities would be conducted.

Geotechnical activities may be included in the project environmental clearance or cleared separately in advance if necessary. To obtain geotechnical clearance in advance of a project clearance, the LPA must evaluate biological and cultural resources within the area to be cleared. Following completed technical evaluations ADOT EP will issue a geotechnical clearance, which permits the geotechnical investigation plan to proceed. The LPA should coordinate with the ADOT EP NEPA planner upon the initiation of the geotechnical clearance process.

Environmental Commitments

Environmental Commitments include project-specific mitigation measures to be included with a NEPA determination as well as identifying permits and contractor-needed materials such as species handling guidelines that are to be included in the final contract documents, also known as the Plans,

Specifications and Estimate (PS&E).Project-specific mitigation measures are agreements on compensation made during the environmental evaluation and study process that serve to moderate or lessen negative impacts of the project on the human and natural environment. The NEPA Guidance section of the EP website provides additional information on Environmental commitments and has a downloadable list of pre-approved mitigation measures for ADOT highway and LPA projects. These standard measures are to be used as appropriate during preparation of environmental documents, and they cannot be modified. Proposed mitigation measures that are not included on the list must be reviewed and approved by ADOT EP (if applicable); the ADOT District Engineer for ADOT administered projects; the ADOT project manager, and the LPA (as appropriate) to ensure that they are constructible. Approved mitigation measures must be adhered to and cannot be changed unless additional coordination with ADOT is conducted. All mitigation measures that are identified and agreed upon appear in the environmental clearance document and the associated clearance memo. FHWA will not authorize federal-aid funds for construction without verification that mitigation measures are included in the PS&Es and bid documents (23 CFR 635). Mitigation measures identified for a contractor must be included in the contract specifications. Failure to implement the mitigation measures could result in the revocation of permits, funding, or ADOT environmental approval—thus resulting in the inability of the LPA to complete the project.

Roles and Responsibilities

ADOT-Administered Projects

For ADOT-administered projects, ADOT, in cooperation with the LPA, determines the applicable agencies to determine appropriate mitigation measures for impacts identified in the environmental clearance document. Additionally, ADOT ensures that those mitigation measures are implemented properly during the construction phase. The implementation of some mitigation measures may be assigned at the contractor level. However, LPAs are financially responsible for their local portion of the mitigation implementation, unless determined otherwise in an IGA.

Certification Acceptance and Self-Administered Projects

Certified and self-administering LPAs are solely responsible for ensuring that the mitigation measures in the environmental clearance document are successfully implemented and documented as per the Certification Acceptance Agency's defined procedures. LPAs are financially responsible for their local portion of the mitigation implementation, unless determined otherwise in an IGA or other contract document.

Projects on Federal, State, and Tribal Lands

Projects that involve Tribal, federal, or state land require additional coordination and, sometimes, additional studies or approvals. In Arizona, Tribal, federal, or state land includes Indian reservations, national wildlife refuges, national forests, national monuments, State Trust land, and military reservations or bases.

In some cases, the federal, state, or Tribal agency may participate as a cooperating agency for the NEPA review (EAs). A *cooperating agency* is an organization, other than FHWA, that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed action. ADOT will determine whether any federal, state, or Tribal agency should be invited to be a cooperating agency, as outlined in 23 CFR 771.107. Applicable Tribal, federal, and state agencies, regardless of cooperating-agency status, should still be included in interdisciplinary teams engaged in the environmental clearance process.

Federal Land

For LPA projects on federal land, it is strongly recommended that LPAs begin coordinating with ADOT, and applicable federal agencies as early in the process as possible. In some cases, the technical resource evaluations may be prepared using the federal agency's preferred format to expedite the review and determination of project impacts. For example, USFS maintains a document template for evaluating biological resources, a Biological Assessment and Evaluation. During early consultation, ADOT and the affected federal agencies determine whether special analysis or templates may be needed for review and approval. If a project is on BLM- or USFS-administered land, the protocol listed in the current memorandum of understanding between ADOT, FHWA, and BLM or USFS, as appropriate, applies (see the Guidelines for Highways on Bureau of Land Management and U.S. Forest Service Lands 2008).

State Parks and State Land Department

The State of Arizona has jurisdiction over numerous state parks and land parcels. LPAs should consult state officials if a proposed project may impact State Park property or State Lands.

Tribal Land

Arizona is home to 22 federally recognized Tribes. FHWA has a government-to-government relationship with Indian tribal governments that is affirmed in treaties, Supreme Court decisions, and Executive orders. ADOT and federal agencies are required to consult with Tribes regarding policy and regulatory matters in Arizona. Additionally, 23 USC 134 and 23 USC 135 establish consultation requirements with Tribes through the statewide and metropolitan planning and programming processes.

The level of environmental studies required for a project may change depending on whether the project is located partially or wholly on Tribal land. Contact ADOT EP to determine the correct level of NEPA compliance. ADOT will coordinate with the Tribes for issues related to biology and cultural resources. FHWA may find it necessary to become involved if a Tribe(s) requests government-to-government consultation in accordance with its authority under the CE and NEPA Assignment MOUs.

LPAs should defer to ADOT HPT for all Tribal consultation and communication, unless a Tribe(s) requests government-to-government consultation with FHWA, in which case FHWA will also be involved. Surveyors should not conduct field reviews on Tribal land without prior Tribal authorization and HPT coordination.

Issue Resolution

Escalation Process

If conflicts arise during the environmental clearance process that cannot be resolved through coordination with the ADOT EP NEPA planner, the LPA senior manager and ADOT project manager should be contacted.

Recordkeeping and Reporting

In accordance with ARS 35-214, all environmental records and documents generated during the project must be retained by the LPA for a minimum of 5 years following ADOT closeout of the project in the FMIS.

LPAs should be aware of the importance of maintaining complete and accurate project files during the environmental clearance process. If a lawsuit is filed against the project that challenges the decisions made in the environmental clearance process, an administrative record must be compiled. An administrative record must contain all materials that were considered by ADOT in reaching its decision under NEPA, and is used by the administrative review court during its review of ADOT's decision in accordance with A.R.S. § 28-334(C), as amended, whereby ADOT assumes sole legal responsibility for environmental decisions under the CE and NEPA Assignment MOUs. For more information on requirements for compiling an administrative record, see the *AASHTO Practitioner's Handbook, Maintaining a Project File and Preparing an Administrative Record for a NEPA Study*.

Resources

ADOT Environmental Planning Guidance Sites

https://www.azdot.gov/business/environmental-planning

- Environmental Planning CE Assignment and NEPA Assignment
- Guidance for Federal-aid Projects
- LPA Quick Reference Guide
- Water Resources
- Air Quality
- Noise
- Biology and Clean Water Act Section 404/401
- Cultural Resources
- Hazardous Materials
- Material Source Guidance
- Operations
- Training
- Programs