

Local Public Agency Training

Environmental Clearance

Paul O'Brien, P.E.
Environmental Planning Administrator

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Environmental Clearance

- ❑ Environmental clearance means the project impacts to the natural, built and human environments have been reviewed under all applicable environmental requirements and the project is “cleared” for construction
- ❑ ADOT Environmental Clearance
 - Required to advertise for construction
- ❑ Federal Environmental Clearance
 - Required for Federal Highway Administration (FHWA) funding for Design, Right-of-Way and Construction



Environmental Requirements

Environmental Laws and Regulations

- ❑ The over-arching environmental law
 - **National Environmental Policy Act (NEPA)**
- ❑ “Environmental review” includes all *other applicable environmental laws* that are considered under the NEPA umbrella



The Council of Environmental Quality (CEQ) NEPA regulations and FHWA Title 23 Code of Federal Regulations

Title VI of Civil Rights Act of 1964

Executive Order 12898 (Environmental Justice)

23 USC Section 109 (Standards)

Clean Water Act (CWA)

Clean Air Act (CAA)

National Historic Preservation Act (NHPA)

Endangered Species Act (ESA)

US DOT Act – Section 4(f)

23 CFR 772 (Noise)

Comprehensive Environmental Response, Compensation and Liability Act (CERLA)

Safe Water Drinking Act (SWDA)

Public Hearing Requirements

Archaeological and Historic Preservation Act (AHPA)

Determine the Type of NEPA Approval Needed

Class of Action

- ☐ **Environmental Impact Statement (EIS)**
 - Impacts are significant (South Mountain)
- ☐ **Environmental Assessment (EA)**
 - Significance of impacts not clearly known (Expansion projects)
- ☐ **Categorical Exclusion (CE) – Focus of this training**
 - Impacts not significant (majority of projects)
 - Types of projects are listed CE in the regulations. Match the project description to the description of the CE in the regulations
 - CEs do not require formal requirements of an EIS or an EA
 - CEs are “applied” and are not “Environmental Documents”

“CE and NEPA Assignment”

- ❑ FHWA’s environmental responsibilities have been assigned to ADOT by agreement
 - An assignment of legal responsibility
 - ADOT acts as the “lead federal agency” and is the “decision-maker” in the federal environmental review process
- ❑ CE Assignment and NEPA Assignment
 - CE Assignment – “326 MOU”
 - NEPA Assignment – “327 MOU”

Categorical Exclusions

- ❑ Match the general project description to the type of project and descriptions in the FHWA regulations to determine the applicable CE

Pathways



Preservation



Bridges



Capacity

Safety



Categorical Exclusions

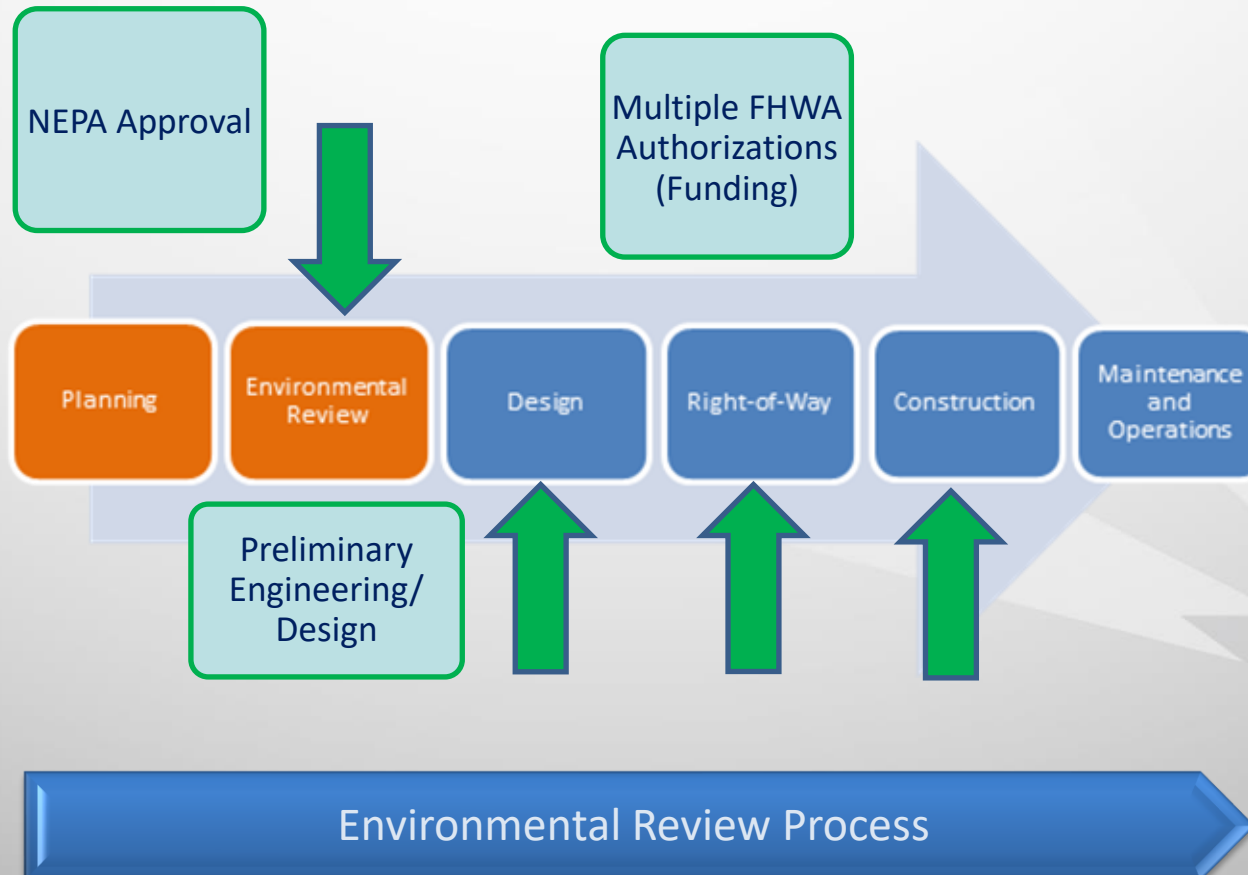
- ❑ By regulation, CEs require the consideration “unusual circumstances.”
- ❑ Projects are also reviewed for other applicable environmental laws and regulations that may apply to the project



The “Other” Environmental Laws

- ❑ The “other” environmental laws under the “NEPA umbrella” are not directly related to the class of action for NEPA.
 - ❑ Section 4(f) – Parks, Historic Properties, Wildlife Refuges
 - ❑ National Historic Preservation Act – Cultural Resources
 - ❑ Endangered Species Act – Biology
 - ❑ Clean Water Act – Army Corps Permits
 - ❑ Clean Air Act – Conformity Determinations
 - ❑ Noise Requirements – FHWA regulations
- ❑ Note that for nearly all projects, consideration for one of the “other” environmental laws under the “NEPA umbrella” is most likely to be the critical path in the preparation of a CE.

Environmental in the Project Development Process



Continuum

Begin Environmental Studies



- ❑ Site visit and/kick-off meeting
- ❑ Project “footprint” defined
 - ❑ Identify environmental constraints; areas that need to be avoided or will require mitigation if impacted
- ❑ Land owners and right-of-way
- ❑ Environmental surveys – biological, archaeological, historic properties, hazardous materials, noise

Biological Resources



❖ Biological Review Process

- ❑ Review all available databases (AZGFD Online Project Review Tool, US FWS IPaC, ADOT Data, other Federal or local agencies).
- ❑ Field review, biological surveys, Biological Evaluation (BE)
- ❑ ESA Determination(s)
 1. “No Effect”- Biology complete
 2. “May affect, not likely to adversely affect”- Informal consultation with USFWS
 - USFWS has **60 days** to review these requests and provide a “concurrence”
 3. “May affect, likely to adversely affect” - Formal consultation with USFWS
 - USFWS has **135 days** to review and issue a Biological Opinion
- ❑ Construction Considerations – Tree cutting, timing, avoidance



Cultural Resources



- ❖ Assessing impacts to cultural resources (historic properties)
 - ❑ Section 106 - National Historic Preservation Act
 - “Section 106” -impacts to historic properties
 - Conduct ground surveys as needed
 - Identify historic sites in the project area
 - Identify project impacts to any historic sites
 - Identify consultation parties on the project
 - ❑ Agreement Document – Legally Binding
 - Memorandum of Agreement (MOA), Programmatic Agreement (PA) or Attachment 6 of Statewide PA
 - ❑ Data recovery – Treatment Plan
 - Implementation, fieldwork, post-fieldwork artifact processing and final report preparation

Section 4(f) - Requirements

- ❖ “Section 4(f)” is preservation law created for the protection of parks, recreational areas, wildlife refuges and historic properties
- ❑ ADOT must approve what is called a “use” of Section 4(f) property (“land of”).
- ❑ There can be no “use” unless a determination is made
 - 1) There is no **feasible and prudent avoidance alternative** to the use of the Section 4(f) resource or;
 - 2)the use of the property....will have a “de minimis” impact on the Section 4(f) resource
- ❑ There exceptions that may have to be documented approved (consultation/forms)
- ❑ *De minimis* impact most likely on an LPA project.
- ❑ Evaluations are time consuming and costly but less likely on an LPA project.

Section 6(f) – Land Water Conservation Act

❑ Taking of park property purchased with LWCA funds

- National Park Service oversees the federal program
- AZ State Parks - database of 6(f) properties [LWCA funds]
- Review Section 6(f) if taking right-of-way from a park
- Review AZ State Parks database of 6(f) properties
- 6(f) property can be park land or just specific attributes purchased with 6(f) funds
- Land must be replaced before approval of NEPA (look at Early Acquisition)
- Coordination with the official with Jurisdiction over the park
- Document 'no 6(f)' if improvements are within a park but do not involve a land transfer (conversion)

Air Quality



❖ The Clean Air Act and Conformity Determinations

- ❑ Clean Air Act Transportation Conformity – All projects must ‘conform’ in nonattainment and maintenance areas to the National Ambient Air Quality Standards of the Clean Air Act
- ❑ “Nonattainment” and “Maintenance” Areas in Arizona subject to the Clean Air Act Transportation Conformity Requirements (mainly urbanized)
- ❑ Planning requirements (Metropolitan Plans and TIPS)
- ❑ Prepare a traffic study for all horizon years
- ❑ Determine if it requires “Hot-spot” analysis (modeling & analytics) modeling through Interagency consultation
- ❑ Public review if hot-spot analysis is required
- ❑ ADOT approves for 326 projects/FHWA for 327

Noise Requirements

Noise regulations are contained in 23 CFR 772 and ADOT Noise Abatement Requirements (2017). Projects that increase capacity by adding a travel or other lane(s) in excess of 2,500 ft , or substantially alter vertical or horizontal alignment would require:

- ☐ Prepare a Traffic Study with the project and without the project for the Design Year
- ☐ Field investigations of noise sensitive areas (homes, parks, schools, other)
- ☐ Determination of “impacts” and Noise report prepared
- ☐ Evaluated for identification of noise abatement measures (noise walls) that are feasible and reasonable (if not, justification why they are not)
- ☐ Public involvement process (viewpoints of residents on noise walls)



Hazardous Materials Review

- ❑ Location and scope of work - triggers
 - Preliminary Site Assessment (PISA)
 - New right-of-way must be cleared (ADOT Right-of-Way Manual)
 - Excavation in the right-of-way
 - Higher level site assessments may be recommended
 - Asbestos
 - Load bearing structures
 - Maricopa County Rule 310 requires survey within one year prior to the start of construction
 - Lead-Based Paint
 - Bridges – May require containment/removal



Clean Water Act – Section 404

❖ Regional General Permit 96 (RGP 96) and Nationwide Permits

- ☐ Regional General Permit 96 (RGP 96) and Nationwide Permits
 - Non-notifying (No documentation to the corps)
 - Pre-Construction Notification (Documentation to the corps to receive permit concurrence)
 - Up to 30 day wait time for the permit
- ☐ Individual Section 404 Permit – More costly and time-consuming
 - 60% plans needed
 - ESA and NHPA issues must be resolved
 - Must demonstrate Least Environmentally Damaging Practicable Alternative (LEDPA)
 - Mitigation may be required by the corps depending on impacts
- ☐ Timing
 - NW and RGP are relatively quick to employ
 - Individual permit must be factored in the project schedule

“Other” Environmental Considerations That *May but usually do not* Apply on Project Approved with a CE

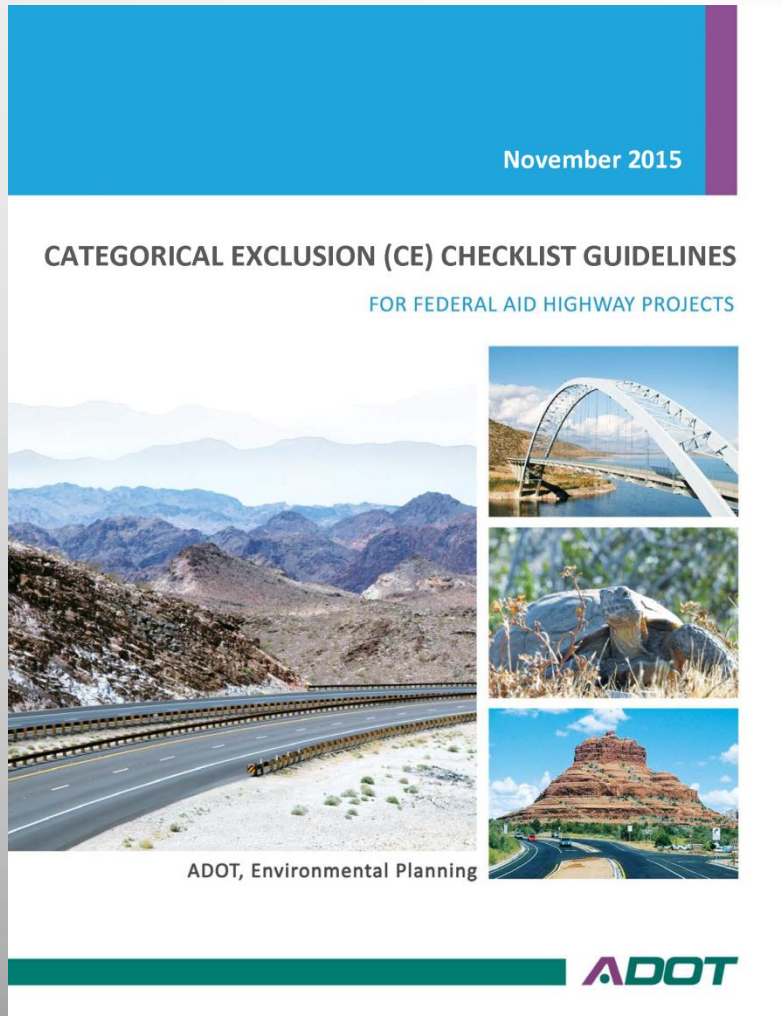
- ☐ Visual Impacts
 - Typically for major projects on US Forest or BLM lands
 - Could be appearance of slopes or the look of structures
- ☐ Farmlands
 - Review farmlands (not slated for urbanization)
- ☐ Environmental Justice
 - Assess for “disproportionate impacts” if there are minority and low income populations present *and* impacted
- ☐ Floodplains
 - “Significant encroachment” (unlikely for a CE project)

Public Involvement



- ❑ ADOT's implementation of public involvement is guided by the ADOT Public Involvement Plan
- ❑ Environmental Planning and ADOT Communications work together to implement public involvement at ADOT
- ❑ For projects, the level of public involvement is scaled to the scope and impacts of the project
- ❑ CEs do not have a public review requirement – available upon request
- ❑ Public involvement is usually included on most projects to some degree, project website.
- ❑ Public Meetings – larger expansion projects (CEs)

Categorical Exclusions



❖ CE Checklist

- ☐ The “CE” is environmental review documentation and approval for NEPA compliance
- ☐ The ADOT CE Checklist Manual provides step-by-step instruction on completing the CE checklist
- ☐ The CE Checklist itself is a streamlined documentation format but how long it takes to complete is dependent on how long it takes to develop the project and the entire environmental review
- ☐ It acknowledges compliance with all environmental review requirements for a project

Categorical Exclusions

- ☐ LPA Defines the project (TIP/Scoping)
- ☐ ADOT Project Manager - provide the Project Information (Data, location, limits and description)
- ☐ ADOT ENV Planner completes the CE Checklist based on all Project Information and technical reviews completed
- ☐ CE type selection

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

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

Location and Limits:

Purpose and Description (scope of work):

Type of CE - Choose <u>one</u> from (c) <u>or</u> (d) <u>or</u> Appendix A drop-down lists:	
(c) - list:	(d) - list:
<input type="checkbox"/> (c)(1) Non-Construction If the project qualifies for a (c)(1) CE then no Technical Sections review is required and the CE is complete. Proceed to NEPA Compliance Certification and Categorical Exclusion Approval	

Categorical Exclusions

- ❖ “How long does it take to prepare a CE?”
- ❖ The real question is “How long does it take to develop a project?”
- ❑ The CE is a summary of the totality of surveys, studies, consultations, analysis and “other law” compliance *as applicable* (“it depends”)
- ❑ Some projects such as procurement or technical equipment can be cleared with a (c)(1) CE with limited technical review very quickly
- ❑ “Individually documented and approved” CEs for projects such as adding a travel lane to a roadway can take 9 to 12 months
 - ❑ Keep in mind all the previous technical review (i.e. Biological Opinion)
 - ❑ For example if a project requires a conformity determination but the “planning requirements” are not up to date the CE approval could be delayed for months

Categorical Exclusions

- ❑ A series of drop-down menu selections are used to document relevant environmental concerns
- ❑ The responsible technical areas of Environmental Planning verify the appropriate selections on the checklist are made
- ❑ An additional space exists for “Other Considerations” not included in a drop-down menu

Environmental Review Section	
Each category below will be reviewed and a determination from a drop-down menu will be selected for each. The checkbox will indicate review has been completed and the appropriate documentation placed in the Project File as applicable.	
Air Quality – Clean Air Act	
<input checked="" type="checkbox"/>	326 conformity documentation is located in the project file
Noise – 23 CFR 772	
<input checked="" type="checkbox"/>	This project requires a noise analysis. The report is complete and located in the project file
Biological Resources – Endangered Species Act	
<input checked="" type="checkbox"/>	Project Determination: May Affect, not Likely to Adversely Effect under Section 7 of the Endangered Species Act with USFWS Concurrence
Cultural Resources – Section 106	
<input checked="" type="checkbox"/>	Section 106 Determination: Screened Undertaking - Attachment 3

Categorical Exclusions

- ☐ The authority under which MOU the project is approved is noted
- ☐ Whether or not there are environmental commitments bound to the project is acknowledged
- ☐ ADOT Environmental Planner signs and ADOT Admin or Senior Planning Manager approves

Certification and Determination by ADOT	
<input type="checkbox"/>	The State has determined that this project has no significant impact(s) on the environment and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under NEPA. The action complies with NEPA requirements relating to connected actions and segmentation [23 CFR 771.111(f)]. The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to 23 U.S.C. 326 and a Memorandum of Understanding dated January 4, 2021, executed between FHWA and the State.
<input checked="" type="checkbox"/>	The State has determined that this project has no significant impact(s) on the environment and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under NEPA. The action complies with NEPA requirements relating to connected actions and segmentation [23 CFR 771.111(f)]. The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by ADOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated April 16, 2019 and executed by FHWA and ADOT.

Environmental Commitments	
<input checked="" type="checkbox"/>	Environmental commitments are included with this project and will be incorporated into the project plans, specifications and estimates as required.

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

Environmental Commitments



❖ Environmental Commitments

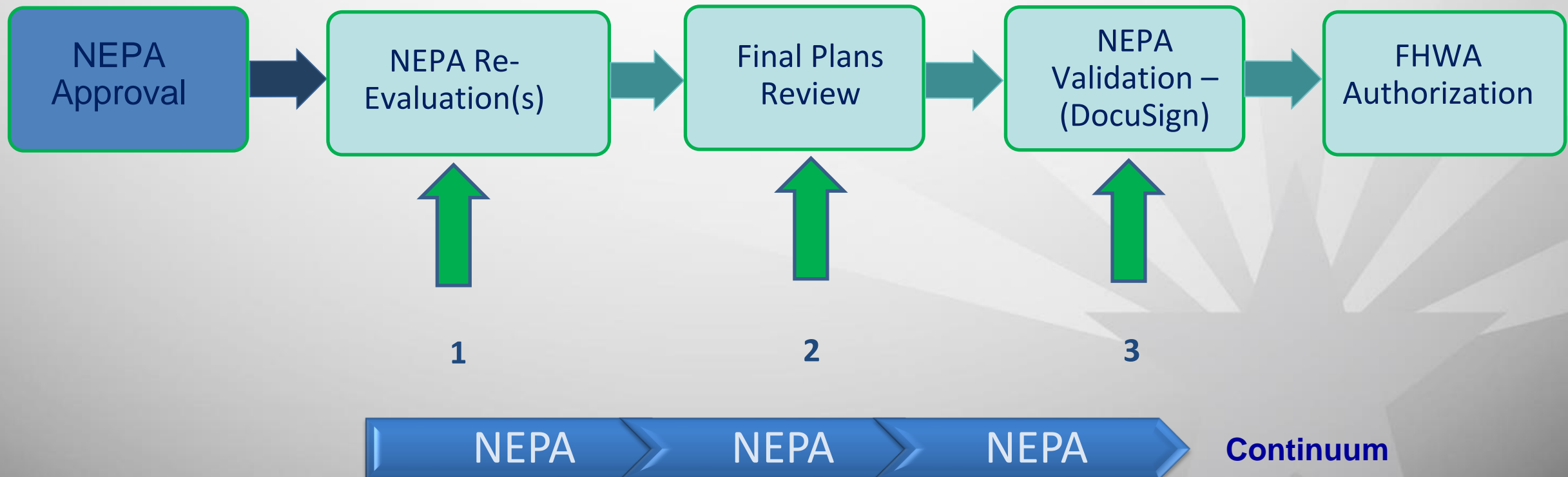
- ❑ Developed over the course of the project
 - ❑ Avoidance, minimization and compensation
 - ❑ Reviewed and agreed-upon by the Project Team
- ❑ Part of the CE/NEPA by incorporation
- ❑ Contractor commitments included in the contract
- ❑ The Environmental Issues Permits and Commitments plan sheet (EPIC) - *New*
 - ❑ Helps implement environmental commitments in construction
 - ❑ Resident Engineer approves upon completion

Quality Assurance and Quality Control



- ❑ ADOT Quality Assurance and Quality Control (QAQC) Plan
 - ❑ Outlines review procedures
 - ❑ Quality Control review of CE
 - ❑ Record of reviews required for the project file
 - ❑ Individual CE has an additional Senior Manager sign-off
- ❑ Approval of a Project CE
 - ❑ CE Checklist signed by Environmental Planner and sent by DocuSign for manager approval
 - ❑ Approval of CE by Environmental Planning Administrator or delegate (Senior Manager)
 - ❑ Approvals are usually done within one day

Final Steps on the way to Federal Authorization



NEPA Re-
Evaluation(s)

1

Re-Evaluations of NEPA

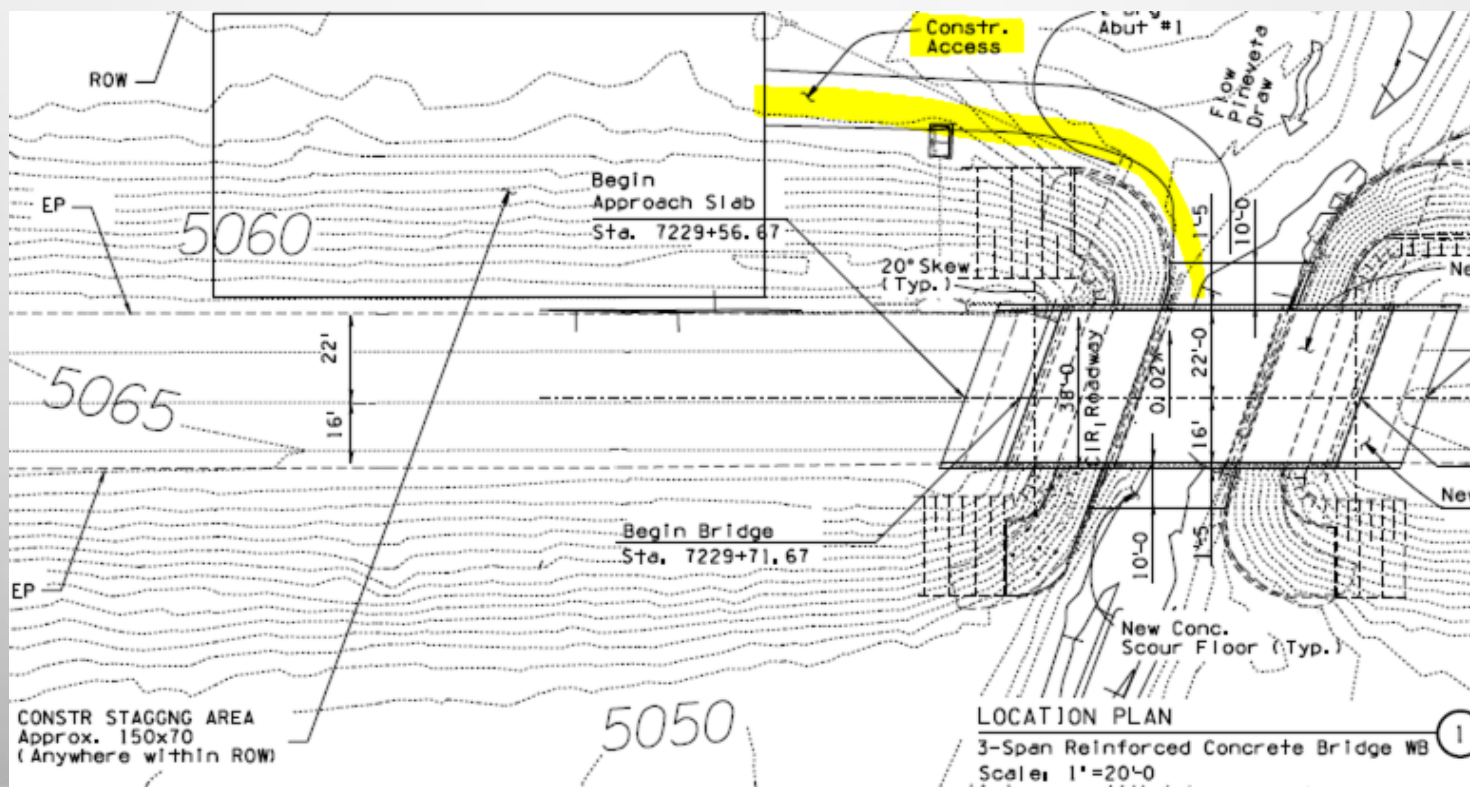
- ☐ NEPA re-evaluation may come any time after NEPA Approval
- ☐ **Formal** - (More complex project, scope change, time elapsed)
 - ☐ Updated CE or Environmental Document (NEPA approved)
 - ☐ EA Re-Evaluation (template) or;
 - ☐ CE Re-Evaluation (Re-Evaluation box on CE Checklist)
- ☐ **Informal** – (no substantial changes, circumstances or analysis)
 - ☐ For review of changes after NEPA
 - ☐ Note to File, Email, Phone Memo, etc.

Final Plans
Review

2

Final Plans Review

- ENV is responsible for checking the final plans prior to ADOT validating NEPA
- Confirmation of no change in project scope, right-of-way and/or project limits
- Confirm environmental commitments are complete and provided to Contracts and Specifications



NEPA Validation at the Request for Federal Authorization

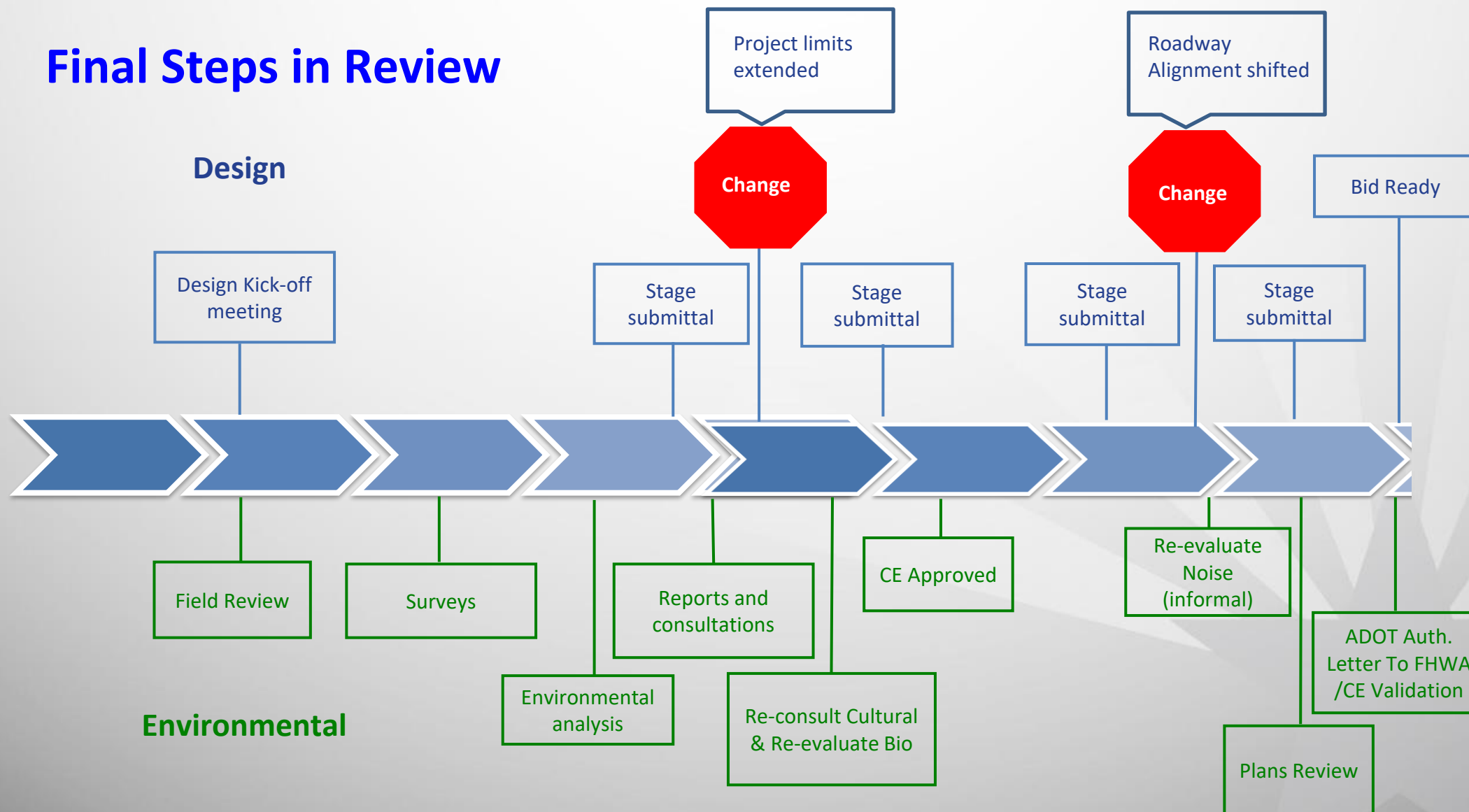
NEPA
Validation –
(DocuSign)

3

Federal-aid Authorization Request

- ☐ ADOT Project Manager submits authorization request to FHWA
 - ☐ ADOT ENV Planner signs the letter and confirms the project meets ADOT's "Assignment" MOU requirements including:
 - ☐ NEPA approval date
 - ☐ Date of a formal re-evaluation (if applicable)
 - ☐ Project incorporates all environmental commitments per 23 CFR 771.109(d)

Final Steps in Review



Changes During Construction



- ❑ Changes During Construction
 - ❑ New scope of work
 - ❑ Work in areas not previously cleared
- ❑ Resident Engineer (RE)
 - ❑ Identifies changes through change order process
 - ❑ Sends requests to Environmental Planning for review as needed
 - ❑ Example; change in noise barrier design
 - ❑ Typically informal with a note-to-file review

Thank You

Paul O'Brien, P.E. (480) 256 - 2893
Environmental Planning Administrator
pobrien@azdot.gov