MOU No. AZ-931-0309

AMENDMENT #4

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE ARIZONA DEPARTMENT OF TRANSPORTATION,

THE FEDERAL HIGHWAY ADMINISTRATION, ARIZONA,

AND

THE BUREAU OF LAND MANAGEMENT, ARIZONA

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ARIZONA DEPARTMENT OF TRANSPORTATION, THE FEDERAL HIGHWAY ADMINISTRATION, ARIZONA, AND THE BUREAU OF LAND MANAGEMENT, ARIZONA

BACKGROUND

I. PURPOSE

This Memorandum of Understanding (MOU) outlines policies and procedures for the Arizona Department of Transportation (ADOT), Arizona Division of Federal Highway Administration (FHWA), and Arizona Bureau of Land Management (BLM) to establish and improve cooperative working relationships for implementing the BLM/FHWA Interagency Agreement Number AA-851-IA2-40 of July 27, 1982 (attached as Appendix A), specifically by:

A. Developing a mutual understanding of the missions, goals, constraints and responsibilities of the BLM, ADOT and FHWA as they relate to land and resource management practices on public lands under or contiguous to ADOT highways; ADOT development and operation practices on highways located on public lands; and public lands needed for transportation purposes;

B. Defining BLM, ADOT and FHWA organizational structures and identifying areas of cooperation to facilitate coordinated work efforts;

C. Developing procedures and standardized methods for communication and coordination; and

D. Minimizing duplication of work and streamlining work processes.

This MOU provides for a coordinated approach to accomplish land and resource management and transportation development and operation management in completing BLM, ADOT and FHWA goals and objectives. Such coordination is subject to the respective authorities of each agency, and is designed to reduce and, if possible, eliminate duplication of work; to establish procedures for streamlining work processes; to ensure each agency is provided sufficient lead time for proper sequential function; to make more efficient use of and share available resources; and to develop and execute action programs which maximize responsiveness to public needs and concerns.

II. AUTHORITY

The general authorities for this MOU include, but are not limited to, the following:

A. Federal Land Policy and Management Act of 1976 (Pub.L. 94-579; 90 Stat. 2744), as amended (43 U.S.C. 1701 et seq.).

B. Taylor Grazing Act of 1934 (Act of June 28, 1934; 48 Stat. 1269), as amended (43 U.S.C. 315).

C. Various Federal Aid Highway Acts codified in 23 U.S.C.

D. National Environmental Policy Act of 1969 (Pub.L. 91-190, 83 Stat. 852), as amended (42 U.S.C. 4321 et seq.).

E. Title IV of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577; 82 Stat. 1098), as amended (31 U.S.C. 6501 et seq.).

F. Federal Grants and Cooperative Agreement Act of 1977 (Pub.L. 95-224; 92 Stat. 3), as amended (31 U.S.C. 6301 et seq.).

G. Arizona Revised Statutes Sections 28-332 and 28-334.

Other authorities, and regulations for administering such authorities, if applicable, will be cited within the supplemental Operating Agreement attached as an Appendix to this MOU. This MOU provides an operating framework for the 1982 Interagency Agreement (AA 851-IA2-40) between BLM and FHWA, and all amendments, memoranda, and other supplements thereto; and such other State of Arizona and/or Federal legislation and regulations as may apply. This MOU supersedes former MOU No. "BLM-MOU-2800-AZ931-9702", dated May 2, 1997.

III. ORGANIZATION AND WORK FLOW

Refer to Appendix B for description of each agency's organizational structure and a map depicting the geographic boundaries of each agency's organization.

IV. AGENCY RESPONSIBILITIES

A. FHWA is responsible for administration and management of the Federal-aid highway program and application for right-of-way appropriation consistent with 23 C.F.R. 710.601 Subpart F.

B. ADOT is responsible for the design, construction and management of the highway system within Arizona for which it has responsibility.

C. BLM is responsible for administration and management of certain public lands and interests in lands within Arizona.

V. OBJECTIVES

It is the objective of each party to cooperatively design and implement projects that promote transportation efficiency and safety, minimize impacts to the environment and are integrated to BLM land management plans.

A. It is the objective of BLM, in collaboration with other Federal agencies, State Agencies, tribal governments and the public, to provide for a wide variety of public land uses without compromising the long-term health and diversity of the land and without sacrificing natural, cultural, and historical values.

B. It is the objective of ADOT to provide a safe and efficient transportation system, together with the means of revenue collection, licensing and safety programs, which meets the needs of the citizens of Arizona.

C. It is the objective of the FHWA to provide leadership, expertise, resources, and information to improve the quality and safety of Arizona's highway system and intermodal connectors in cooperation with their partners without sacrificing natural and cultural values.

AGREEMENT

VI. AREAS OF COOPERATION

The BLM, ADOT and FHWA recognize the need to work together to develop coordinated action plans; to establish procedures for timely disposition of issues or problems connected with the planning, scoping, environmental studies, design, construction and maintenance of public road systems on BLM-managed public lands in the State of Arizona; and to achieve maximum efficiency from their respective agency funds and personnel. Therefore the parties hereto agree to:

A. Develop a mutual understanding of each other's missions, goals and objectives.

B. Develop effective communication by: 1) taking advantage of existing and new forums for issue identification; 2) defining and eliminating communication barriers; and 3) sharing information using appropriate communication vehicles, such as E-mail, video conferencing, etc.

C. Achieve effective conflict resolution by: 1) developing and implementing a process for resolving conflicts (see Section VIII of this MOU); 2) maintaining a commitment to use the process developed; 3) honoring past commitments; 4) maintaining a solutions-oriented approach; and 5) recognizing the need for flexibility, especially to meet the public safety needs.

D. Streamline and improve timeliness of review processes by: 1) early involvement of all relevant parties through proactive participation; 2) pooling and sharing of expertise and resources; 3) striving for a single point of contact; 4) eliminating unnecessary paperwork and processing steps; and 5) removing, where feasible and appropriate, FHWA from routine right-of-way transactions.

E. Coordinate planning processes by: 1) holding, at a minimum, yearly coordination meetings; 2) integrating transportation needs with BLM land use plans; 3) using an interdisciplinary approach throughout all processes; and 4) developing consensus on the environmental review process.

F. Develop and maintain effective teamwork by: 1) undertaking additional training in team building and partnering; 2) striving for mutual respect; and 3) evaluating the resulting partnership on an annual basis.

G. Follow the established roles, responsibilities and operating procedures as outlined in the Operating Agreement attached hereto as Appendix C.

In addition, the BLM, ADOT and FHWA agree to develop a programmatic approach to streamline interagency coordination of the NEPA process and reduce repetitive documentation for low impact projects.

VII. COORDINATION MEETINGS

The BLM, ADOT and FHWA agree to hold coordination meetings as follows:

A. Local coordination meetings or contacts between each BLM Field Office and corresponding ADOT Districts will be held as often as needed, but not less frequently than annually. Attending these meetings will be the BLM Field Manager, FHWA and ADOT District Engineers, and appropriate staffs. The meetings will be scheduled by joint action of the BLM Field Managers and ADOT District Engineers. Other groups, agencies and individuals, as deemed necessary or beneficial to the intent of the meeting, may be invited to attend. The purpose of these local meetings is to:

1. Share information and keep each other informed of progress on ongoing projects and the partnering effort, including developing action items.

2. Review agency responsibilities, programs and priorities, including preliminary plans which may develop into future cooperative efforts.

3. Identify additional opportunities for improvement that may require the attention and/or support of the next level of management and/or should be included on the agenda for the State meeting.

4. Work out exchanges of materials, workers or equipment on a temporary basis and on specific case related work areas where such an arrangement would be to the mutual benefit of the BLM, ADOT and FHWA.

B. Statewide meetings as necessary, but not less frequently than annually, and preferably after concluding all the local meetings, will be scheduled by joint action of the BLM State Director, ADOT State Engineer, and FHWA Division Administrator or their respective designees. Agenda items and participants will be discussed as needed before the meeting. The purposes of the State meetings are to:

1. Discuss each agency's short and long range plans, annual work plans, and programming processes to provide adequate time for submission of budget requests to ensure simultaneous scheduling of programs and completion of scheduled work.

2. Develop and maintain procedures designed to coordinate BLM, ADOT and FHWA work on a statewide basis.

3. Review priorities and designate critical functional and/or geographical areas.

4. Conduct joint evaluations of the coordination efforts and review of plans and/or completed work.

VIII. CONFLICT RESOLUTION

All parties hereto agree to work cooperatively to minimize conflicts in implementation of this MOU. Where an impasse has been reached, each party agrees to involve relevant agency management as necessary to resolve the conflict as quickly as possible. Final resolution of any continuing impasse will be a matter for determination by the State Director, BLM, Arizona State Office; Director, ADOT; and Division Administrator, FHWA, or their respective designees.

A. If an impasse remains, it shall be escalated as follows:

BLM	**ADOT PROGRAM DEVELOPMENT**	**ADOT CONSTRUCTION**	**ADOT MAINTENANCE**	**FHWA**
Project Manager	Project Manager	Resident Engineer	District Maintenance Engineer/State Natural Resources Manager	Area Engineer or Right-of-Way Officer
Field Manager & District Manager	Group Manager	District Engineer	District Engineer/State Maintenance Engineer	Senior Engineering Manager--Operations
Deputy State Director, Resources	Deputy State Engineer, Development and/or Operations or Development or State Engineer	Deputy State Engineer, Operations or State Engineer	Deputy State Engineer, Operations and/or State Engineer	Assistant Division Administrator
State Director	Director	Director	Director	Division Administrator

B. When the representatives at the lowest level for each party have reached an impasse and have agreed to escalate an impasse, a meeting date will be established within a time acceptable to all parties. At that time, representatives from both levels will meet to discuss the issues related to the impasse and attempt resolution. If an agreement cannot be reached, then the issue will be escalated to the next level and a meeting date will be established within a time acceptable to all parties. At that time, representatives from all three levels will meet to discuss the issues related to the impasse and attempt resolution. If an agreement cannot be reached, the issue will be escalated to the highest organizational level and a meeting date will be established within a time acceptable to all parties. At that time, all parties at all levels will meet to resolve the issue. If resolution cannot be secured, then at the option of any of the parties hereto, and pursuant to section IX.F. herein, this MOU may be terminated.

C. The parties hereto agree that any resolution to an impasse secured through the

conflict resolution process set forth in this section shall be communicated in writing to all parties (with any communication including the technical, policy or business rationale for the resolution).

IX. ADMINISTRATION

A. Each party hereto shall fund any activities which it may undertake pursuant to this MOU, or may, on a voluntary basis, assist other parties in the implementation of this MOU. However, if the voluntary assistance identified herein involves a substantial commitment of personnel or other resources, the parties may enter into an appropriate interagency agreement. Nothing in this MOU shall be construed as obligating any of the parties to expend in excess of appropriations authorized by law and administratively allocated for the purposes set forth in this MOU.

B. BLM and FHWA agree to assume liability for any act or omission of its officers, employees or agents only to the extent legally permissible under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq.

C. No member of, or delegate to, Congress shall be admitted to any share or part of this MOU, or to any benefit that may arise there from, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

D. All parties to this MOU shall comply with all Federal Statutes, including but not limited to those relating to nondiscrimination, employments and civil rights.

E. This MOU is subject to all applicable Federal and State laws and regulations. Nothing in this MOU is intended to conflict with any Federal statute or regulation. If a conflict is determined to occur, applicable Federal statutes and regulations shall control.

F. This MOU shall become effective upon signature by all parties and shall continue in effect unless and until it is terminated by written request of at least one of the parties hereto. This MOU shall terminate following the expiration of 30 days after written notice to the other parties of intent to terminate by any party.

G. This MOU may be amended as necessary by mutual consent of all parties upon issuance of written notification of such modification, signed and dated by all parties.

X. SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused Amendment #4 to be executed by the Director, Arizona Department of Transportation; the Division Administrator, Federal Highway Administration, Arizona; and the State Director, Bureau of Land Management, Arizona, effective the 19th day of November, 2008.

ARIZONA DEPARTMENT OF TRANSPORTATION

BY: _____ 09/02/08
Victor Mendez
Director
Date

FEDERAL HIGHWAY ADMINISTRATION, ARIZONA

BY: Robert E. Hollis 8/25/08
Robert E. Hollis
Arizona Division Administrator
Date

BUREAU OF LAND MANAGEMENT, ARIZONA

BY: Elaine Y. Zielinski 8/28/08
Elaine Y. Zielinski
State Director
Date

AA 851-IA2-40
INTERAGENCY AGREEMENT

Bureau of Land Management
and
Federal Highway Administration

I. Purpose. This Interagency Agreement provides procedures by which the Secretary of Transportation acting through the Federal Highway Administration (FHWA) may appropriate public lands for highway rights-of-way and sources of materials for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.S.C. The lands appropriated are for use by the States for highways and/or highway material purposes. The appropriation is subject to conditions the Secretary of the Interior acting through the Bureau of Land Management (BLM) may deem necessary for adequate protection and utilization of the public land and protection of the public interest.

II. Authority.

A. The Federal Land Policy and Management Act of 1976, 90 Stat. 2766, 43 U.S.C. 1737.

B. The Act of August 27, 1958, as amended, 23 U.S.C., Sections 107(d) and 317.

III. Procedures. BLM and FHWA recognize the need for streamlined procedures by which the FHWA may appropriate BLM-administered public lands for highway and highway materials for the Federal-aid System and those classes of highways provided for in Chapter 2, 23 U.S.C. To accelerate the appropriation process, FHWA and BLM agree to the following procedures:

A. FHWA will notify BLM, as far in advance as possible, of any highway project being contemplated and arrange a meeting with the BLM authorized officer and the participating State agency to discuss the proposed project to ascertain whether or not the appropriation of the lands for highway or highway materials is consistent with BLM resource management programs and develop a plan of action to complete the appropriation within a reasonable time.

B. It will be the responsibility of FHWA to comply with the National Environmental Policy Act and other legal requirements in arriving at its determination that the lands are necessary for the project.

Encl. 1-1

C. FHWA shall submit to the authorized officer of BLM a written request for appropriation, accompanied by a map showing the location of lands it desires to appropriate, a statement of its determination that the lands are necessary for the project, a copy of the environmental assessment, and/or a copy of the environmental impact statement.

D. The authorized officer of the BLM, after receipt of the request and attachments, shall review the material and, within a period of four months, notify FHWA, in writing, either (a) that the appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed or (b) that BLM is in agreement with the appropriation subject to conditions of adequate protection and utilization of the public lands. If within a period of four months, the Bureau of Land Management has not responded, in writing, to the request for appropriation, such lands may be considered appropriated by FHWA and transferred to the State for right-of-way purposes as requested.

E. Disagreement to the appropriation will be in the form of a letter, from BLM to FHWA, clearly stating the reasons why such an appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed.

F. Agreement to the appropriation will be in the form of a "Letter of Consent" which clearly states the conditions under which the agreement is given. These conditions involve the following:

1. Resolution of existing valid claims and use authorizations.

2. Granting authority to FHWA within the appropriation is limited to rights-of-way for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.S.C.

3. BLM retains the authority to grant additional right-of-way uses within and across the appropriated highway or material site right-of-way. Such additional uses include, but are not limited to, transportation and utility systems for water, power, communications, oil and gas, or any other facilities which are in the public interest, are not directly associated with highway use, operation and related highway purposes, and are not inconsistent with Title 23 of the U.S. Code. The FHWA shall be consulted prior to the issuance of such authorizations.

Encl. 1-2

4. The appropriation will automatically terminate if construction is not started within ten (10) years or sooner if agreed upon.

5. Conditions providing for development and use of the adjacent public lands, such as, reasonable access and signing.

6. Conditions protecting the adjacent public lands from right-of-way construction and maintenance activities which may cause off right-of-way adverse effects, such as, wildfire, chemical control of vegetation and animals, runoff drainage and revegetation with non-native species.

G. FHWA, when transferring the highway right-of-way or highway material appropriation to the State will make it subject to BLM's conditions as contained in the "Letter of Consent". FHWA will administer these conditions. BLM will work with or through FHWA when they observe non-compliance to the appropriation "Letter of Consent" conditions.

H. When the need for the appropriation no longer exists and the State has reasonably rehabilitated the area to protect the public and environment, FHWA will notify BLM in writing. Upon receipt of this notice and acceptance of the rehabilitation, the lands appropriated shall revert to the BLM.

I. A copy of the right-of-way use document from FHWA to the respective State shall be furnished to the BLM authorized officer.

J. Amendments to or modifications of this Interagency Agreement may be initiated by either party, but shall not become effective or binding until agreed upon by both parties.

IV. Tenure. This document shall become effective upon the revocation of 43 CFR 2820-Roads and Highways and shall remain in effect unless terminated by mutual agreement or one agency after giving the other agency thirty (30) days prior written notice.

/s/ Robert F. Burford
Director, Bureau of Land Management

/s/ R.A. Barnhart
Administrator, Federal Highway Administration

7-1-82
Date

7-27-82
Date

ORGANIZATION AND WORK FLOW

A. Bureau of Land Management

1. Arizona BLM organizational structure consists of three levels of line management—Field Managers, District Managers and the State Director. Decision-making authority for most actions occurring on public lands has been delegated to the respective Field Managers within the following seven Field Offices administering BLM public lands in Arizona:

   a. Colorado River District
      (1) Yuma Field Office – Yuma, Arizona
      (2) Lake Havasu Field Office – Lake Havasu City, Arizona
      (3) Kingman Field Office – Kingman, Arizona
   b. Phoenix District
      (1) Phoenix Field Office – Phoenix, Arizona
   c. Arizona Strip District
      (1) Arizona Strip Field Office – St. George, Utah
   d. Gila District
      (1) Tucson Field Office – Tucson, Arizona
      (2) Safford Field Office – Safford, Arizona

2. Staff positions provide technical and administrative assistance and support to both levels of line management. One additional level of staff assistance is available at the BLM National applied Resource Science Center in Denver, Colorado.

3. BLM's customary internal workflow is from the technical staff specialist to the Field Manager and from the Field Manager to the State Director. Generally, on intergovernmental working relationships, the Field Managers and their staffs work with their local counterpart, and the State Director and his/her staff work with State and field offices.

B. Arizona Department of Transportation

1. ADOT operates under a centralized structure with the primary support offices in Phoenix. There are ten districts throughout the State as follows:

Kingman	Flagstaff
Globe	Holbrook
Yuma	Tucson
Safford	Phoenix Maintenance
Phoenix Construction	Prescott

2. Each District maintains the roadways within their District boundaries. Additionally, they support local customers by reviewing customer needs, concerns and opportunities. Each District has a support administration team, a construction team and a maintenance team.

3. The ADOT central office, located in Phoenix, provides the technical support for all of ADOT. This office provides engineering, right-of-way, environmental, project development, utility location and computer technical support.

C. Federal Highway Administration

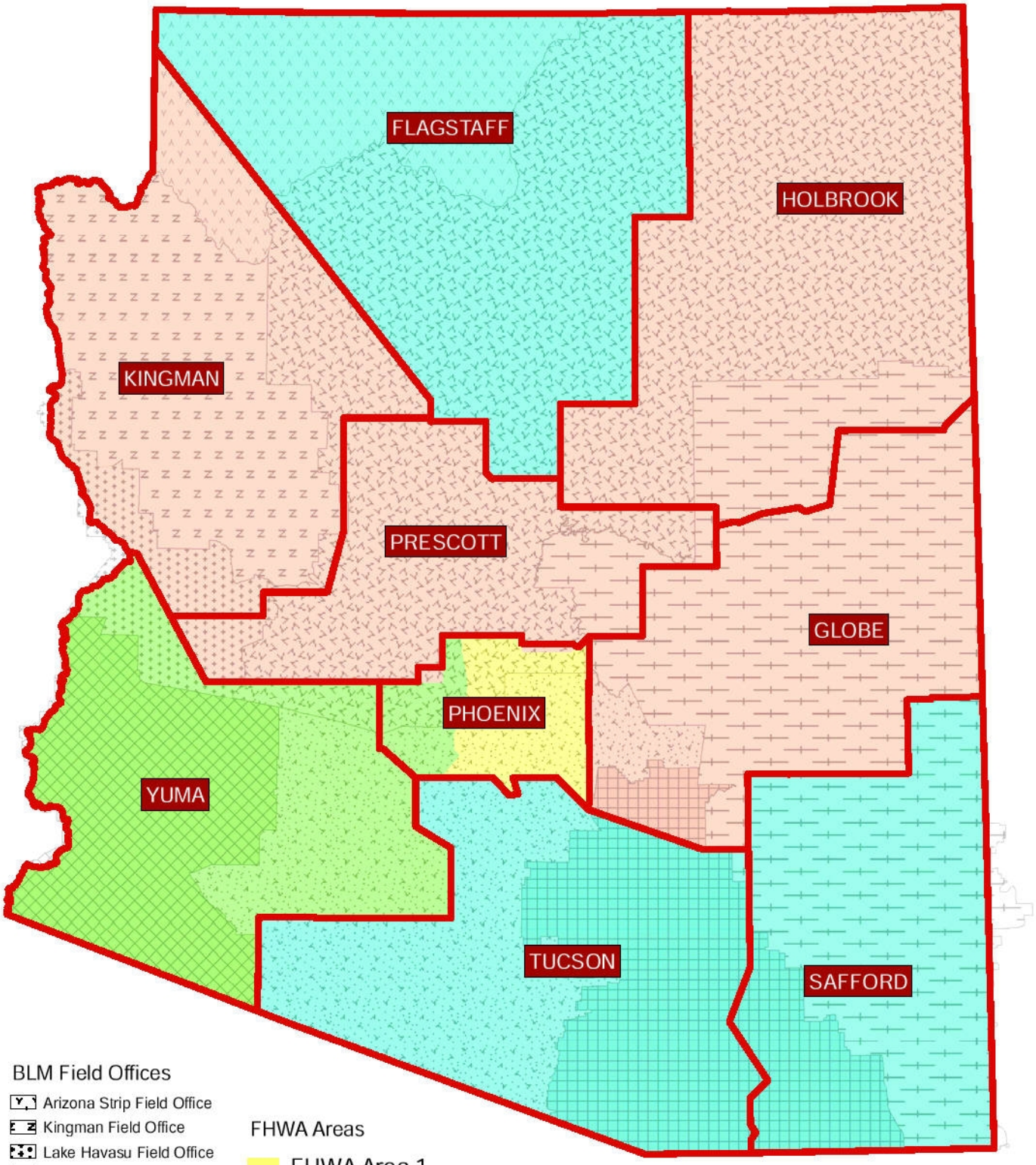
1. The Arizona Division organizational structure consists of three levels of line management: District Engineer, Assistant District Administrator, Division Administrator.

2. The Division Office uses an Operations Team organizational structure. The leadership of the Operations Team is led by a District Engineer who has administrative authority statewide. The Team includes an Environmental Specialist with oversight responsibilities on environmental issues for the entire State and five Area Engineers with responsibilities as delineated in Paragraph 3 below.

3. Each Area Engineer has oversight responsibilities for project development, environment and project approvals. The Area Engineer designated A-1 is responsible for activities in ADOT's Phoenix (East/Central) District. The Area Engineer designated A-2 is responsible for activities in ADOT's Tucson, Flagstaff and Safford Districts. The Area Engineer designated A-4 is responsible for ADOT's Prescott, Globe, Holbrook and Kingman Districts. The Area Engineer designated A-5 is responsible for activities in ADOT's Phoenix (West) and Yuma Districts.

4. In addition, the Arizona Division has a Right-of-Way Officer responsible for right-of-way actions and issues for the entire State.

ADOT Engineering Districts, BLM Field Offices, and FHWA Boundaries



BLM Field Offices
- Arizona Strip Field Office
- Kingman Field Office
- Lake Havasu Field Office
- Lower Sonoran Field Office
- Phoenix Field Office
- Safford Field Office
- Tucson Field Office
- Yuma Field Office

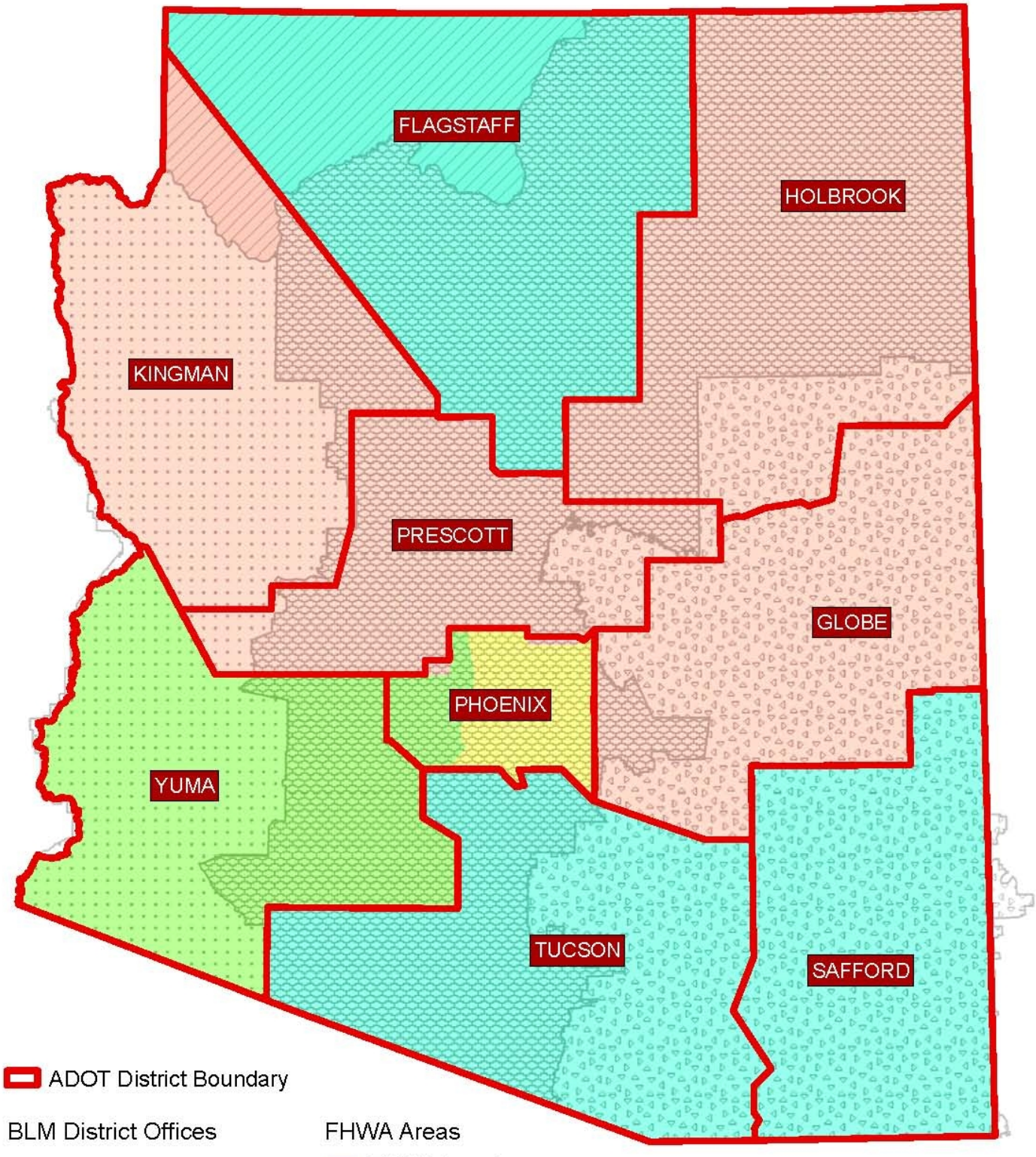
FHWA Areas
- FHWA Area 1
- FHWA Area 2
- FHWA Area 3
- FHWA Area 4

ADOT District Boundary

0 50 100
Miles

Prepared by:
Arizona Department of Transportation
Planning Division, Data Bureau GIS Section
(602) 712-7333 February, 2006

ADOT Engineering Districts, BLM District Offices, and FHWA Boundaries



ADOT District Boundary

BLM District Offices
- Arizona Strip District
- Colorado River District
- Gila District
- Phoenix District

FHWA Areas
- FHWA Area 1
- FHWA Area 2
- FHWA Area 3
- FHWA Area 4

0 50 100
Miles

Prepared by:
Arizona Department of Transportation
Planning Division, Data Bureau GIS Section
(602) 712-7333 February, 2006

APPENDIX C

OPERATING AGREEMENT

RELATED TO HIGHWAY PROJECTS

BETWEEN

THE BUREAU OF LAND MANAGEMENT, ARIZONA

THE ARIZONA DEPARTMENT OF TRANSPORTATION

AND

THE FEDERAL HIGHWAY ADMINISTRATION, ARIZONA

SUPPLEMENTING

MEMORANDUM OF UNDERSTANDING

NO. AZ-931-0309

→ Amendment #4

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OPERATING AGREEMENT
Related to Highway Projects

BACKGROUND

I. HISTORY

In January 1997, Arizona Department of Transportation (ADOT), Bureau of Land Management (BLM), and Federal Highway Administration (FHWA) held a two-day partnering workshop to begin enhancing and streamlining coordination among the three agencies. A Partnering Charter was developed, and on May 2, 1997, a Memorandum of Understanding (MOU) between the three agencies became effective. The MOU was purposely written as a general "umbrella" agreement with the intent that one or more Operating Agreements would be developed to supplement the MOU. The original MOU has been revised and replaced by MOU No. AZ-931-0309 dated April 23, 2003.

II. PURPOSE

The purpose of this Operating Agreement is to supplement MOU No. AZ-931-0309 dated April 23, 2003, as amended September 10, 2004 and March 21, 2006, to establish roles, responsibilities, and operating procedures between ADOT, BLM and FHWA relating to highway projects on lands administered by BLM.

III. AUTHORITY

MOU No. AZ-931-0309 and authorities cited therein. BLM policy for implementing these authorities is contained in BLM Manual 2805 – Federal Agencies.

AGREEMENT

IV. RESPONSIBILITIES

A. FHWA will be the lead federal agency with the responsibility to comply with the National Environmental Policy Act, as amended (NEPA), National Historic Preservation Act as amended (NHPA), Endangered Species Act as amended (ESA), and other legal requirements for all Title 23 transportation-related projects on land administered by BLM. FHWA will invite, in writing, BLM to be a cooperating agency.

B. BLM will be the lead federal agency with the responsibility to comply with NEPA, NHPA, ESA, and other legal requirements for the development of all BLM land management plans and amendments and on transportation-related projects without FHWA involvement. BLM will invite, in writing, FHWA and ADOT to be cooperating agencies in developing and amending its land use plans. In the event of a project using Federal-aid funds on a non-transportation related project (i.e. some Transportation Enhancement projects), the BLM Field Office will contact FHWA to discuss the specific roles of each agency.

C. ADOT will be co-lead agency and will serve as FHWA's agent in the project development process for Title 23 projects.

V. PLANNING AND IMPLEMENTATION

A. Introduction

It is the intent of the three agencies to coordinate early, consistently and throughout each agency's process. Agency processes and input points follow.

B. ADOT Process and BLM Input (*Illustration V-1)*

1. Long Range Planning

a. ADOT Long Range Planning typically occurs 20 or more years prior to construction.

b. ADOT Long Range Planning includes Regional Transportation Profiles, Small Area Transportation Studies, Multi-Modal Transportation Studies, Statewide Access Management Plan, Policy Issues, the Long Range Plan and the Five Year Program.

c. The ADOT contact for Long Range Planning (except for the Five Year Program) is its State and Regional Planning Section Manager.

d. The ADOT contact for the Five Year Program is its Priority Program Manager.

e. If there will be an impact to the BLM, ADOT will invite the BLM to be a Technical Advisory Committee (TAC) Member.

f. BLM input opportunities into the following ADOT Regional Transportation Profiles, Small Area Transportation Studies, Statewide Access Management Plan, Policy Issues and Long Range Plan include:

(1) Attend TAC Meetings.

(2) Attend Public Meetings.

(3) Review and comment on working papers.

(4) Review and comment on draft final report.

g. Activities that occur during ADOT's Five Year Program process include:

(1) Rank projects to be scoped based on requests received from engineering districts. (This is an in-house TAC function).

(2) Rank scoped projects received from engineering districts. (This is an in-house TAC function).

(3) Select projects to be included in the Tentative Five Year Program. (This is an in-house TAC function).

(4) The State Transportation Board approves the Tentative Five Year Program.

(5) ADOT holds Public Hearings on its Tentative Five Year Program.

(6) The State Transportation Board approves the Final Five Year Program.

(7) After the Final Five Year Program approval, the Three Year State Transportation Improvement Plan (STIP) is developed.

(8) Note: BLM's involvement in the Five Year Programming process is during the scoping and design phases of the project.

2. ADOT Project Development includes the following phases: Scoping, National Environmental Policy Act (NEPA) documentation, Design, Construction and Maintenance.

3. Scoping Phase

a. ADOT's Scoping Phase typically occurs five to seven or more years prior to construction.

b. The BLM may provide input into ADOT's scoping document. Types of scoping documents include: Scoping Letter, Project Assessment, Feasibility/Corridor Study and Location/Design Concept Report.

c. The scoping process for either the Feasibility/Corridor Study or Location/Design Concept Report includes: Kick Off/Agency/Field Review, Initial Document, Draft Environmental Document, Final Environmental Document and Engineering Document.

4. NEPA Documentation

a. ADOT's NEPA process begins during Scoping and continues through Stage V of Design.

b. The ADOT contact for NEPA is its Environmental and Enhancement Group Manager.

c. The BLM has the opportunity to:

(1) Be a Cooperating Agency during development of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) and participate as a member of an Interdisciplinary (ID) Team throughout the duration of the process.

(2) Provide input on issues during agency scoping meetings and/or field reviews.

(3) Review and comment on the predraft EA or EIS during its 30 day period.

(4) Review and comment on the initial Design Concept Report (DCR) during its 30 day period.

(5) Comment on the Draft EA or EIS during the 30 day public comment period.

(6) Review the Summary of Comments prepared for IDCR during its one week period.

(7) Review the prefinal EA or EIS; Provide a letter supporting findings for inclusion in final NEPA document during the 30 day period.

(8) Provide input during development and subsequent updates to NEPA documentation concurrent with all of V. B. 3, 4 and 5 herein.

5. Design Phase

a. ADOT's Design Phase typically occurs 1 to 3 years prior to construction.

b. The ADOT contact for the Design Phase is its Valley Group Manager (for Maricopa County) or its Statewide Manager (for other counties).

c. The BLM has the opportunity to:

(1) Participate in the Design Kick Off Partnering Meeting, Field Review and General Plan Development.

(2) Receive key project documents through the Project Reference document distribution system concurrent with V. B. 5 and 6 herein.

(3) Participate in monthly coordination meetings, review plans and special provisions and provide comments during Stage I of the design. These may occur during scoping or design. These take the design to 15%.

(4) Participate in monthly coordination meetings, review plans and special provisions and provide comments during Stage II of the design. These take the design to 30%.

(5) Participate in the constructability review.

(6) Participate in monthly coordination meetings, review plans and special provisions and provide comments during Stage III of the design and participate in the field review. These take the design to 60%.

(7) Participate in monthly coordination meetings, review plans and special provisions and provide comments during Stage IV of the design. These take the design to 95%. All clearances are completed by the end of Stage IV.

d. Following Stage IV of the design, the following occur:

(1) Stage V of the design produces Plans, Specifications and Estimate (PS&E).

(2) FHWA authorization.

(3) ADOT advertises the project.

(4) The State Transportation Board awards the project to the contractor.

6. Construction Phase

   a. The Construction Phase occurs subsequent to the award of contract by the State Transportation Board.

   b. The ADOT contact for the Construction Phase is its Construction State Engineer.

   c. The BLM has the opportunity to:

      (1) Participate in the Construction Kick Off Partnering Workshop.

      (2) Participate in creating the project Issue Resolution Ladder.

      (3) Communicate regarding mobilization/ancillary facilities.

      (4) Participate in the Field Inspection.

      (5) Participate in Weekly Construction Meetings.

      (6) Participate in Field Reviews.

      (7) Participate in Partnering Refresher Workshops.

      (8) Participate in Public Meetings.

      (9) Participate in the Walk Through.

      (10) Participate in the Partnering Close Out Workshop.

   d. Note: The permit process is ongoing throughout the entire ADOT process.

   e. Note: Paragraph V. B. outlines the process for ADOT's typical design-bid-build projects. In design-build projects and construction manager at risk projects, design and construction are intermingled.

7. Maintenance Phase

   a. The ADOT Maintenance Phase includes both natural resources and maintenance and is ongoing through the entire ADOT process.

   b. The ADOT contact for maintenance is its State Maintenance Engineer. The ADOT contact for natural resources is its Statewide Natural Resources Manager.

   c. The Maintenance Phase includes activities to operate and maintain the highway.

   d. Herbicide Use.

      (1) ADOT is responsible for providing the motoring public with safe and aesthetically pleasing highway corridors. Accordingly, ADOT uses a variety of vegetation management techniques - mechanical, chemical, manual and cultural, in an intergraded approach to control hazardous vegetation and

noxious weeds along Arizona highways.

(2) Herbicide use on lands managed by the BLM is regulated by NEPA guidelines for the BLM. Only those chemical herbicides approved for use on BLM managed lands will be considered by ADOT for use on roads crossing BLM managed lands.

(3) The FHWA's role is to facilitate agreement between ADOT and BLM as needed.

(4) ADOT, BLM and FHWA will meet once annually to coordinate herbicide vegetation management activities. The purpose of the meeting will be to identify issues and opportunities, plan vegetation control actions, and resolve potential difficulties and/or conflicts related to ADOT's vegetation management activities on roads crossing BLM managed lands. ADOT's Statewide Natural Resources Manager will contact BLM's State Invasive Species Coordinator and FHWA's Environmental Program Manager to schedule and plan this meeting.

8. Other Opportunities

The BLM also may provide input at State Transportation Board Meetings and at the Five Year Program Development/Public Hearings.

C. BLM Land Use Planning Process and ADOT/FHWA Input (*Illustration V-2)*

1. The BLM's Land Use Planning (LUP) process includes a Comprehensive Evaluation, development and approval of a Preparation Plan, issuance of a Notice of Intent (NOI) Federal Register (FR) Notice, Notice of Availability (NOA), Draft Resource Management Plan (RMP)/Draft Environmental Impact Statement (EIS) FR Notice, NOA Proposed RMP/Final EIS FR Notice and issuance of Approved RMP Record of Decision (ROD) FR Notice. The BLM will give ADOT and FHWA input into its LUP process as follows:

2. Comprehensive Land Use Plan Evaluation

a. The BLM conducts a Comprehensive LUP Evaluation every three years.

b. The BLM will notify its partners (including ADOT and FHWA) that the BLM is about to conduct a Comprehensive LUP Evaluation. This also will be shown on the BLM's approved LUP.

c. The BLM's contact is its State Planning and NEPA Lead.

d. ADOT contacts are ADOT District Engineers, State Engineer, Deputy State Engineers, Director of Transportation Planning Division and Environmental & Enhancement Group Manager.

e. The FHWA contact is its Environmental Program Manager.

f. If the BLM's evaluation indicates that the LUP needs to be either amended or revised, then it moves on to the next phase, which is to develop and approve the

Preparation Plan. Otherwise, no action is required.

3. Develop and Approve Preparation Plan

   ADOT, BLM and FHWA will follow their Agreement Number AZ-910-0417 (Memorandum of Understanding Between the Department of Interior, Bureau of Land Management, Arizona Office, All Arizona Field Offices and U.S. Department of Transportation, Federal Highway Administration, Arizona Division Office as a Cooperating Agency and The State of Arizona, Arizona Department of Transportation as a Cooperating Agency) in the development and approval of the Preparation Plan.

4. Issue Notice of Intent Federal Register Notice

   ADOT and FHWA have an opportunity to contribute issues and concerns to be addressed in the LUP related to the NOI FR Notice during the following activities:

   a. Develop Scoping Report.

   b. Planning Criteria.

   c. Formulate Alternatives and develop Preferred Alternative.

   d. Describe Affected Environment.

   e. Assess and describe Impacts.

5. Notice of Availability Draft Resource Management Plan/Draft Environmental Impact Statement Federal Register Notice

   ADOT and FHWA have an opportunity to contribute issues and concerns that need to be addressed in the LUP related to the NOA Draft RMP/Draft EIS during the following activities:

   a. Analyze Comments.

   b. Respond to Comments and Text Revisions.

6. Notice of Availability Proposed Resource Management Plan/Final Environmental Impact Statement Federal Register Notice

   ADOT and FHWA have an opportunity to contribute issues and concerns to be addressed in the LUP related to the NOA Proposed RMP/Final EIS during the following activities:

   a. 30 Day Protest Period.

   b. 60 Day Governor's Consistency Review.

7. Issue Approved Resource Management Plan/Record of Decision Federal Register Notice

   BLM will send ADOT and FHWA a copy of the approved RMP/ROD FR Notice. Then,

BLM's process moves to implementation.

D. BLM Project Implementation Process and ADOT/FHWA Input (*Illustration V-3)*

1. BLM's NEPA phases for project implementation are to determine the scope, conduct NEPA analysis, make the NEPA determination, document the decision and allow administrative review/appeal.

2. Phase 1: Determining the Scope

   a. Categorical Exclusion Process

      (1) ADOT and FHWA have an opportunity for input when the BLM fleshes out a brief description of the proposed project.

      (2) The BLM determines whether a project is on the BLM or Department of Interior Categorical Exclusion List.

   b. Determination of NEPA Adequacy

      (1) ADOT and FHWA have an opportunity for input when the BLM fleshes out a brief description of the proposed project and identifies and lists other related NEPA documents.

      (2) The BLM determines LUP conformance.

   c. EA Level Analysis Process

      (1) ADOT and FHWA have an opportunity for input when the BLM fleshes out a brief description of the proposed project, invites Cooperating Agencies and determines the scope of the EA level analysis.

      (2) The BLM determines LUP conformance.

   d. EIS Level Analysis Process

      (1) ADOT and FHWA have an opportunity for input when the BLM fleshes out a brief description of the proposed project, invites Cooperating Agencies and during the public review and comment period.

      (2) The BLM determines LUP conformance and publishes a NOI in the Federal Register. BLM allows a minimum 30 day public review and comment period.

3. Phase 2: Conducting NEPA Analysis

   a. Categorical Exclusion Process

      ADOT and FHWA have an opportunity for input when the BLM conducts an analysis to determine if any of the extraordinary circumstances apply to the project.

   b. Determination of NEPA Adequacy Process

ADOT and FHWA have an opportunity for input when the BLM conducts an analysis using seven criteria for determining NEPA adequacy.

c. EA Level Analysis Process

(1) ADOT and FHWA have an opportunity for input when the BLM prepares the EA.

(2) Preparing the EA includes preparing the Need for the Proposal, Alternatives including the Proposed Action, site specific affected environment and a list of agencies and individuals committed.

d. EIS Level Analysis Process

(1) ADOT and FHWA have an opportunity for input when the BLM prepares the draft EIS.

(2) Preparing the EIS includes preparing the Purpose and Need Statement, Proposed Action and Alternatives including No Action, affected environment, environmental consequences, list of agencies and individuals to whom copies are sent, appendices, glossary and references cited.

(3) The BLM publishes a Federal Register Notice of Availability for the draft EIS.

(4) The BLM provides and ADOT and FHWA have an opportunity for input into the 60 day Review and Comment Period.

4. Phase 3: Making the NEPA Determination

a. Categorical Exclusion Process

The BLM responsible official makes the determination whether the proposal is categorically excluded and whether any additional NEPA analysis is needed.

b. Determination of NEPA Adequacy Process

The BLM responsible official makes the determination whether the existing NEPA analysis is adequate to implement the proposal.

c. EA Level Analysis Process

The BLM prepares the Finding of No Significant Impact (FONSI).

d. EIS Level Analysis Process

(1) ADOT and FHWA have an opportunity for input when the BLM conducts analysis of public comments received, prepares responses to comments and prepares text changes.

(2) The BLM publishes a Federal Register NOA for the Final EIS. This is followed by a 30 cooling off period.

5. Phase 4: Documenting Decision

   a. Categorical Exclusion Process

      The BLM responsible official makes the decision whether to implement the proposal.

   b. Determination of NEPA Adequacy Process

      The BLM responsible official makes the decision whether to implement the proposal.

   c. EA Level Analysis Process

      (1) The BLM responsible official makes the decision whether to implement the proposal.

      (2) The BLM publishes a Decision Record (DR).

   d. EIS Level Analysis Process

      The BLM publishes a ROD.

6. Phase 5: Administrative Review/Appeal Process

   For Phases 1 through 4 above, an administrative review/appeal process is provided. ADOT and FHWA have an opportunity for input during Phase 5.

VI. TITLE 23 PROJECTS

In this Operating Agreement, unless the context otherwise requires, "necessary environmental clearances" shall be understood as including compliance with the National Environmental Policy Act, Section 7 of the ESA, Section 106 of the NHPA, and all other pertinent and applicable Federal and State environmental protection laws.

A. Agency Roles

1. As the lead Federal agency for highway projects eligible for funding pursuant to 23 U.S.C. (Title 23), FHWA is ultimately responsible for compliance with NEPA and other necessary environmental clearances. No NEPA decision is required by the BLM for a Title 23 U.S.C. funded highway project unless the proposed action does not conform to BLM's land use plan for the affected lands. BLM, as federal land manager on public lands, retains responsibility for enforcement of, and compliance with, the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). In situations where a land use plan amendment is required, the NEPA analysis and documentation must meet both FHWA and BLM regulatory standards.

2. Unless otherwise agreed, ADOT serves as agent for FHWA in meeting FHWA's responsibility for NEPA and other necessary environmental clearances.

3. ADOT Environmental and Enhancement Group (EEG), or its designated consultant, will coordinate with the appropriate BLM Field Office(s) where BLM-managed lands needed for highway purposes are located during the various stages of a highway project.

B. Early Project Coordination

1. Early in the planning and NEPA stages of a Federal-aid-eligible highway project on BLM-managed lands, FHWA will send written notification of the project to all affected BLM Field Offices, with a copy to ADOT EEG: (1) inviting BLM to participate as a cooperating agency, (2) requesting that BLM identify known issues and concerns relating to protection of valid existing rights and resources on BLM-managed lands potentially affected by the project, and (3) requesting a determination whether the proposed project is in conformance with BLM land use plans.

2. BLM will provide a written response to FHWA, with a copy to ADOT EEG, in a timely manner, usually within 30 days after receipt of the notification, which:

   a. acknowledges receipt of the notification;

   b. verifies whether or not the proposal is in conformance with BLM land use plans;

   c. states whether or not BLM will be a "cooperating agency with special expertise" or, in the case where a land use plan amendment is required, a "cooperating agency with jurisdiction;"

   d. provides readily available information on wildlife, wildlife habitat, areas where threatened or endangered plant or animal species are known to occur, information on special status or sensitive species of plants or animals, special fencing needs, grazing, cultural resources, valid existing rights, etc.;

   e. identifies any known unique or special conditions, based on knowledge of existing resources, including any anticipated special protective measures, which may be necessary;

   f. provides the name, phone number and email address of the designated point of contact (BLM Project Manager); and

   g. identifies the BLM Serial Number assigned to the project.

3. When more than one BLM Field Office will be affected by the proposed project, the BLM State Director will designate a Lead Office that will then assign a Project Manager. The BLM Project Manager will send written notification to FHWA, with a copy to ADOT, identifying which office is the BLM Lead Office.

4. The BLM Project Manager will coordinate with all other BLM Field Offices affected by the project and will provide consolidated responses to ADOT and FHWA on issues affecting BLM-managed lands throughout the life of the project.

5. The BLM Serial Number, the FHWA Project Number, and the ADOT TRACS Number(s) or Material Site Number will be referenced on all future correspondence relating to the project, whether correspondence is by formal letter, email, or fax transmittal.

C. Development of Environmental Document

1. Before any public/agency scoping meetings are held, BLM, FHWA, and ADOT will meet to identify the primary points of contact for each agency and determine members needed on the Inter-disciplinary (ID) Team. The ID Team will meet on a regular basis to discuss and resolve issues pertaining to (but not limited to) alternatives, methodology, potential mitigation, and levels of analysis. The ID Team will also develop a team partnering charter that identifies the roles and responsibilities of each member.

2. At the beginning of each ID Team meeting, the team will review, modify if necessary, and approve the minutes from the previous meeting. These minutes will serve as the documentation which demonstrates the issues on which the team has, or has not, reached consensus.

3. Every attempt will be made to resolve differences relating to measures BLM may feel are necessary for protection of adjacent BLM-managed lands and resources. If agreement cannot be reached at the lowest level of each organization, the dispute resolution process described in Section VIII of the MOU shall be followed.

4. BLM will have opportunity to formally review the NEPA and engineering documents and provide written comments to FHWA, with copies to ADOT EEG, within the following times (*Illustration V-1*):

   a. Administrative draft of the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) - 30 to 45 days after receipt.

   b. Initial Design Concept Report (DCR) - 30 to 45 days after receipt.

   c. Draft EA or EIS during the public comment period - 30 days after receipt for an EA, and 45 days after receipt for an EIS.

   d. Administrative final EA or EIS - 30 days after receipt.

5. The BLM Project Manager shall provide FHWA a letter, signed by the BLM Authorized Officer, supporting the findings for inclusion in the Final EA or EIS.

6. Field reviews may be scheduled by ADOT, their consultant, FHWA, or BLM. Review of project submissions, environmental documentation and participation in field reviews provides the opportunity for BLM to identify specific concerns relating to resource issues on BLM-managed lands throughout the entire NEPA process. This will ensure adequate time for all parties to discuss and come to resolution regarding specific mitigation measures to be implemented for the project.

7. ADOT and FHWA will mitigate highway construction impacts to resources on BLM-managed lands in a practical and reasonable manner. Proper highway design, including safety, is the responsibility of ADOT and FHWA. Where conflicts arise in selection of project design features, highway safety will be the overriding factor.

8. Special measures which BLM believes are necessary to protect BLM-managed lands adjacent to but outside the right-of-way will be discussed with the ID Team during the early consultation, environmental analysis, and throughout the design phases of the project. The BLM Project Manager will submit, in writing to ADOT with a copy to FHWA,

any special measures determined necessary for protection of BLM-managed lands or resources, along with a rationale for each measure identified. Upon agreement with such protective measures, ADOT will reply, in writing with a copy to FHWA, that such measures will be included in the project design. If ADOT disagrees with the identified measures, ADOT will provide a written response to BLM, with copy to FHWA, stating the rationale for not agreeing to inclusion of the measures in the project design. All such documentation will be included in the Project Reference (see Section D below).

D. Project Reference

Given increased environmental awareness, as well as federal and state government streamlining, the parties recognized the need for a new method of coordinating highway construction project activities. This resulted in the creation of the Project Reference *(Illustration VI-1)*, a cooperative effort of the Arizona Department of Transportation and the Arizona offices of the Bureau of Land Management and the Federal Highway Administration.

ADOT management embraced the Project Reference concept and encouraged the continuing development of this system. In 2005, the Project Reference Subgroup was established to refine what began in 2001 as a hardcopy "document ***distribution*** system." As a result of the efforts of this Subgroup, ADOT now has established an electronic, paperless Project Reference. This "document ***availability*** system" can be accessed directly through the ADOT Information Data Warehouse (AIDW). The Project Reference is "the way to do business" on all ADOT highway projects.

ADOT will create a Project Reference for all its highway projects which start design after July of 2007. Accordingly, each such project on BLM managed land will have a Project Reference.

The following information provides a brief overview of the Project Reference.

1. Definition:

   The Project Reference is designed to:

   a. Provide ready access to key documents and information applicable to an ADOT project;

   b. Ensure that timely information is available to ADOT personnel and project stakeholders throughout the life of the project;

   c. Enhance project organization and teamwork;

   d. Provide an historical file for an individual project.

2. Benefits:

   a. The public benefits from better informed government staff with regard to highway projects.

   b. The system makes the most current information available to all ADOT personnel and stakeholders in a timely manner.

c. Project documents are centrally located (in the AIDW) and easily accessible.

d. The system reduces delay, confusion, misunderstanding and conflict.

e. The system increases efficient use of time, contributes to clarity and understanding and engenders positive working relationships.

f. The system enhances the project team members' ability to successfully understand and contribute to the project.

3. Contents:

Not all project-related information will be available when the Project Reference is created, and information will change as the project progresses through the design and implementation phases, each of which occur over a period of several years. When presented at the design kick off meeting, the Project Reference will consist of, at a minimum:

a. Table of Contents;

b. Purpose (Section 1.1 of the Project Reference);

c. Project Design and Implementation (Section 1.2 of the Project Reference);

d. Project Summary (Section 1.3 of the Project Reference);

e. Available environmental information to include project specific mitigation measures;

f. Copy of current Operating Agreement.

4. Implementation:

a. Creating and contributing to the Project Reference will be a collective effort among the disciplines within ADOT and the project stakeholders. The system includes documents from all project phases ("cradle to grave"). These include Links to Planning and Long Range Plans, a Project Summary, Guiding Documents, Environmental Documents, Design Documents, Ancillary Permits and Agreements, Construction Documents and a Post-Construction Punch List.

b. Project Reference electronic document compilation begins at the time an ADOT project tracking (TRACS) number is requested.

c. Prior to construction, the ADOT Project Manager is responsible for overseeing the Project Reference.

d. For projects where a Pre-Negotiation Partnering Meeting is held prior to beginning design, the ADOT Project Manager educates workshop participants about the Project Reference availability system.

e. At the Design Kick Off Partnering Workshop, the ADOT Project Manager educates the participants about the value and use of the Project Reference and the importance of making the most current information available in a timely manner. The ADOT Project Manager identifies the ADOT disciplines responsible for system updates and assures that discipline representatives have received the proper training to check

documents into the AIDW. Project team members who wish to receive notification when new documents become available may indicate this on the workshop sign-in sheet or by a request to the Project Manager.

f. Where documents are provided by project stakeholders other than ADOT personnel, those stakeholders give their documents to the ADOT Project Manager who checks those documents into the Project Reference.

Example: ADOT Environmental Planning Group is responsible for checking documents generated through the NEPA process into the Project Reference.

Example: BLM Field Office Representative is responsible for providing baseline information, i.e. information related to valid existing rights such as mining claims, mineral leases and permits, rights-of-way, grazing leases, known locations of habitats for sensitive or T&E wildlife and plant species, big horn sheep lambing grounds, etc., and information pertaining to third party ancillary facilities.

Example: ADOT Right of Way Coordinator is responsible for providing copies of the Arizona State Trust Land approvals and "Special Conditions" information, i.e. cost-to-cure, salvage, right-of-way contracts on private parcels.

Example: ADOT Resident Engineer is responsible for providing copies of signed application for the Corps of Engineers permits and agreements reached throughout the development and construction phases of a project.

Example: ADOT Utilities is responsible for providing information regarding prior rights and any signed agreements resulting from their research.

g. All stakeholders are responsible for going online and viewing the documents on the Project Reference throughout the development process.

h. The ADOT Resident Engineer assumes responsibility for the Project Reference when the project moves from design to construction.

i. At the Construction Kick-Off Partnering Workshop, the ADOT Resident Engineer educates participants about the value and use of the Project Reference and the importance of having the most current information available in a timely manner. The ADOT Resident Engineer identifies additional ADOT disciplines responsible for system updates and assures that discipline representatives have received the proper training to check documents into the AIDW. Additional project team members who wish to receive notification when new documents become available may indicate this on the workshop sign-in sheet or by a request to the ADOT Resident Engineer.

j. During construction, where documents are provided by project stakeholders other than ADOT personnel, those stakeholders give their documents to the Resident Engineer who checks those documents into the Project Reference.

k. Upon completion of construction, the ADOT Resident Engineer creates the Post Construction Punch List. The ADOT District Maintenance Engineer assumes responsibility for overseeing the Project Reference, using the Post Construction Punch List as a resource.

l. Over time, the Project Reference remains as the historical project file for the document types it includes.

E. Project Design

In addition to the opportunities for formal review and comment during the NEPA process discussed above in Section VI.C.4, BLM will also have opportunity for review and comment during the design process as follows:

1. during the design kickoff meeting and/or field review;
2. at the monthly progress meetings;
3. during the 30%, 60%, and 95% plan reviews; and
4. on any subsequent NEPA re-evaluations or supplemental analysis.

BLM will provide all comments resulting from such reviews in writing to the ADOT Project Manager, with a copy to FHWA.

F. Appropriation Process

1. Request for Appropriation

a. After completion of NEPA and prior to sending the formal Request for Appropriation to BLM, ADOT will send notification to, preferably via email, the FHWA Realty Officer requesting concurrence that the BLM-managed lands are needed for the project. The notification and concurrence may include a request for more than one project. *(Illustration VI-2 or VI-3 for linear or material site rights-of-way, respectively)*.

b. The FHWA Realty Officer will reply to ADOT's request, preferably via email, either concurring or not concurring to the determination of public necessity for the project *(Illustration VI-4 or VI-5 for linear or material site rights-of-way, respectively)*.

c. ADOT will submit directly to the appropriate BLM Field Office, with a copy to FHWA, the formal Request for Appropriation consistent with 23 C.F.R. Section 710, Subpart F. ADOT will use the standard letter *(Illustration VI-6 or VI-7 for linear or material site rights-of-way, respectively)* for requesting appropriation of linear or material site rights-of-way and any associated haul/access roads. The Request for Appropriation will identify both the permanent easement and any temporary construction easements (TCE) necessary for the project.

d. A complete Request for Appropriation will consist of the appropriate letter *(Illustration VI-6 or VI-7 for linear or material site rights-of-way, respectively)* accompanied by the following:

(1) Reference to the final, approved NEPA document by name and date, for the project, a copy of which will have already been provided to the BLM Project Manager.

(2) Right-of-Way Plans for linear rights-of-way; plat maps and mining and reclamation plan for material site rights-of-way;

(3) Highway Easement Deed (HED) with legal description of the requested permanent right-of-way and separate description of temporary construction areas; and

(4) A copy of the email from FHWA to ADOT *(Illustration VI-4 or VI-5 for linear or material site rights-of-way, respectively)* concurring that the lands are necessary for the project.

e. The BLM Project Manager will acknowledge receipt of the formal Request for Appropriation within 30 days, as follows:

(1) If the package is incomplete, the BLM Project Manager will send notification, preferably via an email, to ADOT, with copy to FHWA, to state the package is incomplete and identify what is missing.

(2) If the package is complete, BLM will follow the procedures in VI.F.2 or 4 below.

2. Agreement to Appropriation

a. Agreement to the request for appropriation will be in the form of a Letter of Consent (LOC), signed by the BLM Authorized Officer *(Illustration VI-8 or VI-9 for linear or material site rights-of-way, respectively)* in accordance with Section VI.F.3 below.

b. The LOC will be addressed to FHWA but will be sent directly from BLM to ADOT, with a copy to FHWA. The LOC will cover both the permanent easement, any associated haul/access roads, and any identified TCEs.

→ c. After receipt of the LOC, ADOT will submit the appropriate Highway Easement Deed (HED) *(Illustration VI-10, VI-11, and VI-12 for the form deeds for linear, ,material site or temporary construction rights-of-way, respectively)* to FHWA for signature. The form deeds specified in Illustrations VI-10, VI-11, and VI-12 have been certified as legally sufficient by legal counsel for ADOT and FHWA and such certifications are on file at ADOT and the FHWA Arizona Division Office. These deeds may be augmented only by insertion of ADOT project and parcel information, BLM reference number, execution dates, 23 U.S.C. appropriation section reference, legal description, signatures and notarization information. Any other additions or modifications to these deeds will require separate certifications of legal sufficiency by legal counsel for ADOT and FHWA in accordance with 23 U.S.C. §§ 107 (d) and 317 and implementing regulations at 23 C.F.R. § 710.601.

d. After signature by FHWA, ADOT will have the easement deed recorded in the appropriate county or counties, and submit a copy of the recorded deed to the BLM Project Manager and to FHWA Realty Officer.

e. ADOT will notify BLM in writing, with a copy to FHWA, when TCEs lying outside the permanent right-of-way are no longer needed and request a joint inspection with BLM to coordinate rehabilitation of the TCEs. Upon determination that the TCEs have been rehabilitated to the satisfaction of BLM, a letter acknowledging that the TCEs are no longer part of the appropriation will be signed by the BLM Authorized Officer. The letter will be addressed to FHWA but will be sent directly to ADOT, with a copy to FHWA.

3. Conditions of Appropriation

All appropriations shall be subject to and conditioned upon compliance with the standard conditions of approval as stated below. Title 23 Material Site Rights-of-Way (MSROWs) are established for the purpose of extraction, processing, and storage of materials for the construction, operation, and maintenance of federal aid-eligible projects. ADOT will evaluate whether there is a continuing need for the MSROWs upon completion of the construction project. The following conditions will not be specifically elaborated in each LOC or HED. However, BLM's consent to the appropriation, and thus the LOC and HED, are wholly contingent upon ADOT and FHWA concurrence to, and conformance with, the following conditions:

a. All appropriations shall be subject to any additional conditions agreed to, in writing, in accordance with this Operating Agreement during the early coordination, environmental analysis, and design phases, whether or not those conditions are specifically carried forward in the request for appropriation or the LOC.

b. If outstanding valid rights exist on the date of the use authorization, ADOT shall obtain such permission as may be necessary on account of any such rights.

c. The use right authorized shall terminate 10 years, or sooner if agreed upon, from the date of execution of the HED by FHWA to ADOT in the event construction of a highway or use of the material site has not been started during such period.

d. The use right authorized is limited to the described right-of-way and the space above and below for federal highway purposes and does not include any rights for non-federal highway purposes.

e. BLM retains the right to use, or authorize use on, any portion of the right-of-way for non-highway purposes provided such uses would not interfere with ADOT's use of the right-of-way, impair the full use and safety of the highway, or be inconsistent with the provisions of Title 23 U.S.C. and the FHWA regulations issued pursuant thereto. Such use will be authorized only after consultation with, and written concurrence from, ADOT.

f. BLM may locate information signs conforming to the Manual on Uniform Traffic Control Devices (MUTCD) on portions of the right-of-way outside of clear zone limits, however, such signs shall not be located on the right-of-way of an Interstate System.

g. Consistent with highway safety standards, ADOT shall:

(1) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.

(2) Provide for the prevention and control of soil erosion within the right-of-way and on adjacent lands that might be affected by the construction, operation, maintenance, minor rehabilitation, and termination of the highway project.

(3) Vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for re-vegetation or other areas on which ground cover is destroyed where it is deemed necessary prior to completion of the highway and shall maintain terracing, water bars, leadoff ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to

slopes that are reshaped following slides which occur during or after construction.

h. No sites for highway operation and maintenance facilities, camps, supply depots, or disposal areas within the right-of-way may be established without obtaining written approval of the BLM authorized officer.

i. ADOT shall maintain the right-of-way clearing by means of chemicals only after consultation with the appropriate BLM Field Office, specifying the time, methods, chemicals and locations of the right-of-way to be treated.

j. The provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d-2000d-4) shall be complied with.

k. ADOT shall follow the standard procedures contained within the 1973 Department of Interior "Manual of Survey Instruction" in removing, resetting, referencing or otherwise perpetuating the position of any cadastral survey monuments which may be subject to disturbance during construction or maintenance of any highway project.

l. ADOT and BLM will cooperate in responding to and keeping each other informed of oil and gas and hazardous material spills of mutual concern. Contact for coordination shall be between the ADOT District Maintenance Engineer, the BLM Field Manager, and Arizona Department of Environmental Quality (ADEQ). Specific contingency plans shall be discussed annually at District and/or State coordination meetings or as needed to facilitate full cooperation. Unless otherwise agreed in writing by supplement to this Operating Agreement or other written instrument, ADOT will respond to emergency response/cleanup for oil and gas or hazardous materials spills **within** the highway right-of-way and will immediately notify BLM of any such incidents. BLM will respond to emergency response/cleanup for oil and gas or hazardous materials spills **outside of the right-of-way but which may impact** the highway project and immediately notify ADOT of such incidents.

4. <u>Disagreement to Appropriation</u>

As a result of the cooperative process developed by FHWA, ADOT and BLM as documented within the MOU No. AZ-931-0309 dated April 23, 2003, and amendments thereto, the parties believe it is highly unlikely BLM would issue a formal disagreement to an appropriation request. However, if such a unique situation were to arise, disagreement to a request for appropriation would be in the form of a letter, signed by the State Director, with supporting documentation clearly substantiating that:

a. appropriation would be contrary to the public interest;

b. appropriation would be inconsistent with the purposes for which the BLM-managed lands or minerals are managed; or

c. FHWA and ADOT will not accept the conditions BLM determines necessary for protection of the BLM-managed land or resources.

5. <u>Appropriation by Operation of Law</u>

If, within four months, BLM has not responded, in writing, to the Request for Appropriation, such land may be considered appropriated by FHWA and transferred to

ADOT for the purposes requested. Before exercising this authority, FHWA will notify BLM that it has appropriated the land.

G. Construction

1. During construction or during the use of a material source, ADOT, as agent for FHWA, will ensure compliance with all such terms and conditions identified in the NEPA document, the LOC, and any special conditions designed to protect the BLM-managed land and its resources to which all parties have agreed. If BLM identifies a situation where it appears there may be non-compliance with such terms and conditions, BLM will work directly with the ADOT Project Manager or Resident Engineer to resolve the issue. BLM will not initiate direct contact with any contractor working for ADOT.

2. If necessary, ADOT, FHWA and BLM will coordinate a joint meeting to resolve differences. Escalation procedures outlined in Section VIII of the MOU will be followed if differences cannot be resolved at the joint meeting between ADOT, BLM and FHWA.

3. The BLM Field Office staff will be given an opportunity to provide input on construction issues during the construction partnering meeting and the weekly construction meetings.

H. Operation, Maintenance, Minor Rehabilitation

1. Operation and maintenance **within a highway easement** includes standard highway-related preservation activities to ensure a continued safe and efficient highway for the public (23 CFR 460, 625, 635, 771). Such activities include, but are not limited to: emergency repair; restoration of surfacing, shoulders, roadsides; restoration or replacement of structures (including bridges); cleaning ditches and cross-drainage; minor (less than 100 feet in length) slope flattening for erosion mitigation, snow removal, sight distance or other safety reasons; controlling brush and roadside vegetation to maintain clear zones, sight distance and to remove hazard trees; slope stabilization and scaling; removal of hazards and other obstructions; preserving and adding traffic control measures to conform with the Manual on Uniform Traffic Control Devices (MUTCD), etc. These activities are approved in the easement and do not require an additional NEPA decision. However, compliance by FHWA, and thus ADOT acting as their agent, with all other applicable laws and regulations is required. BLM, as federal land manager, retains the responsibility for enforcement of, and compliance with NAGPRA and ARPA.

   a. If any BLM facilities will be impacted by operation or maintenance, ADOT will notify the affected BLM Field Office(s).

   b. If highway operation or maintenance will require use of BLM-managed lands outside the right-of-way, ADOT will notify the affected BLM Field Office to secure the appropriate authorization prior to commencing the work. If an emergency situation arises where public safety may be at risk, ADOT may proceed without specific BLM authorization and will notify BLM as soon as possible of the situation.

2. Minor rehabilitation **within a highway easement** includes non-standard highway-related operation and maintenance to provide minor upgrades to a highway (23 CFR 625, 635, 771). Such activities include but are not limited to: minor realignment (i.e., straightening dangerous curves); minor widening (adding lane and/or shoulder width); adding auxiliary lanes (passing, turning, climbing, parking, etc.); major (more than 100 feet in length) slope flattening for erosion mitigation, snow removal, sight distance or other safety reasons, etc. If federal funds will be used for any of these activities, additional NEPA by

FHWA would be required. A CE may be sufficient in most cases. No NEPA decision or additional authorization by BLM is needed for minor rehabilitation work **within** a highway easement, however BLM, as federal land manager, retains the responsibility for enforcement of, and compliance with NAGPRA and ARPA.

a. If any BLM facilities will be impacted by minor rehabilitation, ADOT will notify the affected BLM Field Office(s) before implementing such activities. BLM facilities may include, but are not limited to, such items as fences, cattle guards, signs, etc.

b. If minor rehabilitation will require use of BLM-managed lands outside the right-of-way, ADOT will notify the affected BLM Field Office to secure the appropriate authorization.

→ I. Assignment, Reversion and Termination of Title 23 Rights-of-Way

This section establishes procedures for assignment, reversion and termination of Title 23 rights-of-way on BLM-managed lands that ADOT, or, where appropriate, its assignee, determines are no longer appropriate or needed for state transportation purposes. This includes:

1. Assignments of state highways to local jurisdictions for continued use as specified in the Federal Land Transfer deed or for another public transportation use which FHWA determines is appropriate under Federal Land Transfer provisions. The assignee of ADOT can not further assign the right-of-way.
2. Reversions by ADOT to BLM of highway, material site or TCE right-of-way no longer needed for state transportation purposes and not appropriate for assignment or by an ADOT assignee to BLM if the highway or material site right-or-way is no longer needed for the approved transportation purpose.
3. Terminations of easements where construction is not started within 10 years from the date of execution of the highway easement deed by the United States of America or where the time period stated in a TCE has expired.

1. Assignment of Existing Title 23 Highway Rights-of-Way to Local Jurisdictions (Note: These procedures in this MOU are “alternative arrangements” to a reversion, as permitted by 23 CFR 710.601(h).)

a. When the ADOT Right of Way Titles Section receives a Recommendation for Disposal (Form 60-3311) from an ADOT District Office, a letter of “notification of intention to assign interest” will be provided to the FHWA, the affected BLM Field Office, the local jurisdiction and the ADOT District Engineer. [NOTE: FHWA must approve and BLM must concur with any assignment]. The letter will also request the concurrence of BLM and that FHWA approve the assignment, both subject to acknowledgement of the conditions of assignment by the local jurisdiction (Illustration VI-13). Such concurrence and approval will take into consideration the appropriateness of the local jurisdiction’s operation of the highway or highway segment and the adequacy of the terms and conditions of the original HED. If BLM concurs and FHWA approves the assignment, the ADOT Right of Way Titles Section continues the abandonment process (which is the process under which ADOT can “abandon” its interest in the land for state highway and “assign” its interest for continued use under the Federal Land Transfer deed to a local jurisdiction) as outlined in the ADOT Right of Way Manual. If the ADOT District has not already provided, the ADOT Right of Way Titles Section will obtain the approval from the local jurisdiction that states they agree to the terms and conditions of the original grant of

right of way to ADOT, and/or any amendments thereto (Illustration VI-14).

b. Prior to presenting the Resolution of Abandonment (Illustration VI-15) to the State Transportation Board (STB) for approval, a draft of this resolution, including plats and/or a legal description and a copy of the FHWA approval and BLM concurrence will be provided to the receiving local jurisdiction, FHWA, the affected BLM Field Office, and the ADOT District Engineer for review and comment.

c. Upon approval by the State Transportation Board, the Resolution of Abandonment (Illustration V-15) will be recorded in the appropriate County, thereby becoming effective. A copy of the recorded resolution will be provided by ADOT Right of Way Titles Section to the ADOT District Office, the receiving local jurisdiction, FHWA and the affected BLM Field Office. Said abandonment area will also be depicted on the Right of Way plans at this time.

d. In the event the local jurisdiction's need for the easement herein granted no longer exists, the provisions of paragraph 2 c below shall apply.

2. Reversion of Existing Title 23 Right-of-Way on BLM Lands No Longer Needed for Transportation Purposes

a. Prior to reversion of Title 23 rights-of-way on BLM-managed lands, ADOT District Office will send written notification to the affected BLM Field Office, with a copy to FHWA, indicating that ADOT no longer needs to use the land for transportation purposes and intends to return it to BLM.

b. ADOT will arrange a joint inspection of the facility with the appropriate staff from the BLM Field Office and ADOT District Office to finalize a plan for rehabilitation and reversion. The plan, and any supplemental agreements thereto, will be documented in writing and signed by ADOT and the BLM authorized officer.

NOTE: Should new construction eliminate the need for existing Title 23 rights-of-way, rehabilitation proposals will be developed during the design process.

c. Prior to reversion or termination of this easement, ADOT shall remove, within a reasonable time, any structures and improvements, and shall restore the site to a condition satisfactory to the BLM Field Manager, unless an alternative agreement is reached by both parties and documented in writing. If ADOT, within a reasonable period, fails to remove the structures or improvements and restore the area, or to implement the alternative agreement, the BLM Field Manager may order the removal and disposal of any improvements and restore the area at ADOT's expense.

d. Upon satisfactory completion of rehabilitation by ADOT and written acceptance by BLM authorized officer, ADOT District will initiate Recommendation for Disposal (Form 60-3311) and forward to the ADOT Right of Way Titles Section for processing. Note that ADOT handles Federal Land Transfer reversions under its disposal process.

e. When the ADOT Right of Way Titles Section receives a Recommendation for Disposal (Form 60-3311) from an ADOT District Office, a letter of notification of disposal commencement will be provided to FHWA, the affected BLM Field Office, and the ADOT District Engineer. The ADOT Right of Way Titles Section continues the disposal process as outlined in the ADOT Right of Way Manual, as appropriate for a

reversion under 23 CFR 710.601(h).

f. Prior to presenting the Resolution of Disposal to the State Transportation Board for approval, ADOT will provide a draft including plans and/or a legal description to FHWA, the affected BLM Field Office, and the ADOT District Engineer for review and comment.

g. Upon approval by the State Transportation Board, the Resolution of Disposal (Illustration VI-16) will be recorded in the appropriate County, thereby becoming effective. A copy of the recorded resolution will be provided by ADOT Right Way Titles Section to FHWA the affected BLM Field Office, and the ADOT District Engineer.

3. Termination of Easement for expiration of time limit

a. Federal Land Transfer deed contain the condition: "The easement herein granted shall terminate 10 years from the date of execution of the highway easement deed by the United States of America in the event construction of a highway on the right-of-way is not started during such period." TCEs contain language terminating the easement after a specified time period.

b. If ADOT identifies no further need for the right of way prior to the expiration date identified in 3 a above, ADOT shall notify BLM and FHWA of its desire to terminate the easement.

c. In the event ADOT has a continued need for the easement, ADOT will, prior to the expiration of the time limit, send the BLM Field Manager a letter so stating. If the BLM Field Manager agrees to the continued use, ADOT and the BLM Field Manager will prepare necessary documentation.

d. In the event ADOT no longer has a continued need for a TCE and lets the deed expire at the stated time limit, ADOT will rehabilitate the land as required in 2(c), above, and the easement will expire on its own accord. If the time 10-year period has expired with no use of the property or if an easement is extended without a new stated time limit, the provisions of paragraph 2 b, c, d, e, f and g above shall apply when ADOT no longer needs the easement.

VII. NON- TITLE 23 PROJECTS

In this Operating Agreement, "necessary environmental clearances" shall be understood to include the following: compliance with the National Environmental Policy Act (NEPA), Section 7 of the Endangered Species Act (ESA), Section 106 of the National Historic Preservation Act (NHPA), and all other pertinent and applicable federal and state environmental protection laws.

As it relates to this Operating Agreement, there are two basic types of uses for which ADOT could request authorization from BLM. One type of use would be a right-of-way (ROW) or temporary use permit (TUP) pursuant to Title V of the Federal Land Policy and Management Act (FLPMA), as amended (43 U.S.C. 1761-1771) and the implementing regulations at 43 C.F.R. Part 2800. The other type of use would be a Title 30 Free Use Permit (FUP) for materials pursuant to the Act of July 31, 1947, as amended (30 U.S.C. 601), and the implementing regulations at 43 C.F.R. Part 3600.

A. Agency Roles

1. As the lead federal agency for non-Title 23 projects, BLM is ultimately responsible for compliance with NEPA and other necessary environmental clearances. BLM is also responsible for enforcement of, and compliance with, the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). BLM is the lead federal agency for development of all BLM land use plans (LUP) and amendments to such plans.

2. FHWA typically has no role in non-Title 23 actions occurring on BLM-managed land.

3. ADOT's role in obtaining a non-Title 23 eligible use of BLM-managed lands is that of Applicant. In situations where a contractor is ADOT's authorized agent, ADOT would still be considered the Applicant.

B. NEPA Evaluation

As lead federal agency for compliance with NEPA, BLM must adhere to the following:

1. Council of Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, 40 C.F.R., Part 1500;

2. Department of the Interior Manual (DOI), 516 DM 1-15; and

3. BLM Manual Section 1790, National Environmental Policy Act and the accompanying handbook, H-1790-1, National Environmental Policy Act Handbook. This guidance emphasizes use of existing environmental analyses, when available, to avoid duplication.

C. Title V Rights-of-Way/Temporary Use Permits

Use of public land for highway-related purposes that are not eligible for Title 23 funding requires written authorization by BLM, unless the proposed use is determined by the BLM Authorized Officer (AO) to be casual use. Examples of casual use include driving vehicles over existing roads, surveying, marking routes, collecting data to prepare an application for a use authorization, and certain other activities that do not cause any appreciable disturbance or damage to the public lands, resources, or improvements.

It is anticipated that there will be few situations where ADOT will need to obtain a right-of-way (ROW) or temporary use permit (TUP) for use of public lands pursuant to Title V of the Federal Land Policy and Management Act (FLPMA) and the implementing regulations at 43 C.F.R. Part 2800. A contractor, on the other hand, is more likely to need a ROW or TUP for highway-related uses outside the highway ROW. The entire process is elaborated herein to ensure better understanding of the full process that BLM is required to follow in considering any application for a ROW or TUP on public lands, whether the application is filed by ADOT or by a contractor.

ADOT is exempt from paying cost recovery fees and rental when obtaining a ROW or TUP. A contractor, however, is required to pay cost recovery and rental for a ROW or TUP on public lands, unless the contractor is officially designated by ADOT to serve as ADOT's authorized agent. In such cases, ADOT would still be considered the Applicant and any authorization would be issued to ADOT, not the contractor. The following discussion is

written as though ADOT, or a contractor serving as ADOT's authorized agent, is requesting a ROW or TUP, and therefore, contains no references to payment of cost recovery or rent.

1. Early Project Coordination

   a. Early in the development of a project, ADOT will establish contact with the BLM Field Office responsible for managing the affected public lands to arrange a pre-application meeting so that potential constraints may be identified and processing of an application tentatively scheduled. The objective of the pre-application meeting, which may be held in the office or on site, is to expedite application processing by fostering a mutual understanding of the process and the needs of both ADOT and BLM.

   b. When more than one BLM Field Office will be affected by the proposed project, the BLM State Director will designate a Lead Office that will then assign a Project Manager. The BLM Project Manager will send written notification to ADOT identifying which office is the BLM Lead Office.

   c. The BLM Project Manager will coordinate with all other BLM Field Offices affected by the project and provide consolidated responses to ADOT on issues affecting BLM-managed land throughout the life of the project.

2. Application Filing

   a. ADOT will submit an application for ROW or TUP (SF-299, available by accessing BLM's internet website www.blm.gov, then selecting "What We Do", "Lands and Realty", "Right-of-Way Information") to the appropriate BLM Field Office. The application may be submitted by mail, fax transmission, or in person.

   b. The BLM Serial Number and ADOT project reference number will be referenced on all future correspondence relating to the project, whether correspondence is by formal letter, email or fax transmittal.

   c. The directions for completing the SF-299 application are contained on the form. Items 1, 3, 4, 5, 7, 8, 10, 12, 19, signature and date are required. Items 2, 6, 11 are required only if applicable. Items 9, 13, 14, 15, 16, 17, and 18 are optional. The Supplemental Page is only required if the project is an oil or gas pipeline.

3. Application Processing

   a. BLM will review the application to determine whether: (1) the form is complete; (2) the map is submitted and adequately shows the public lands and the proposed project in relationship to other on-the-ground uses; and (3) the application is properly signed and dated. BLM will notify ADOT if any deficiencies in the application are found and identify what is needed to correct such deficiencies.

   b. Upon acceptance of a complete application package, BLM will conduct an internal "administrative scoping" of the proposal to schedule, coordinate and determine the level of effort required to process the application.

4. NEPA Processing Time

   a. Proposals that are categorical exclusions (CX) for either BLM or DOI should be

processed within 30 days. Proposals requiring environmental assessments should be processed within 60 days. If processing the application and reaching a decision on whether or not a ROW or TUP may be authorized is expected to take longer than 60 days, BLM will notify ADOT in writing and provide an explanation for the delay and an estimate of when the processing of the application may be completed.

b. To expedite the NEPA analysis, ADOT may choose to assist BLM in processing the application by offering to prepare or contract preparation of all or part of any special study or environmental assessment (EA) to BLM standards. If it is determined that an Environmental Impact Statement (EIS) is required, BLM will immediately notify ADOT and request a meeting to discuss the anticipated schedule for complying with NEPA. BLM must select the NEPA contractor for an EIS level analysis.

5. Offer to Grant

a. An "offer-to-grant" (Illustration VII-1) is used to offer the ROW or TUP and obtain ADOT's written acceptance of the terms and conditions of authorization. The offer-to-grant package consists of:

(1) offer letter;

(2) ROW or TUP (BLM Form 2800-14) and other attachments, as appropriate.

b. ADOT signifies agreement with the terms and conditions of the ROW or TUP by signing and dating Form 2800-14 and returning it to BLM within 30 days of receipt.

c. Upon receipt of the signed Form 2800-14 from ADOT, the BLM AO will sign and date the form. The Grant becomes effective when signed by the BLM AO.

6. Decision

a. Decisions are used to take BLM's final and formal action on an application (Illustration VII-2). A final Decision of the BLM AO is subject to appeal to the Interior Board of Land Appeals (IBLA).

b. BLM is required to send a copy of its Decision and supporting analysis to any party who may be adversely affected by the Decision, otherwise they shall be made available upon request. Either ADOT or any party who may be adversely affected by BLM's Decision may file an appeal. If an appeal is filed, the Decision remains in full force and effect unless the appellant petitions for, and IBLA grants, a stay of the Decision pending IBLA's final ruling.

7. Term of Authorization

a. Term of the ROW shall be specific and is dependent upon a reasonable period of time needed to accomplish the purpose of the authorization. Most ROW grants are renewable.

b. Term of a TUP is 3 years or less and is not typically renewable.

8. Relinquishment/Termination of Right-of-Way

When the ROW or TUP is no longer needed, Holder will notify the affected BLM Field Office to arrange a joint inspection of the ROW or TUP to finalize a plan for rehabilitation. The rehabilitation plan will be documented in writing and concurred with, in writing, by both Holder and the BLM AO. Upon satisfactory completion of rehabilitation, the Holder will relinquish the ROW or TUP and BLM will accept the relinquishment, in writing, and close the case.

D. Title 30 Use Permits

Use of mineral materials from public land for highway-related purposes that are not eligible for Title 23 funding requires written authorization by BLM, unless the proposed use is determined by the BLM Authorized Officer (AO) to be casual use. Examples of casual use include driving vehicles over existing roads, surveying, marking routes, collecting data to prepare an application for a use authorization, and certain other activities that do not cause any appreciable disturbance or damage to the public lands, resources, or improvements.

ADOT may need to obtain a free use permit (FUP) for use of mineral materials from public lands pursuant to Title III of the Federal Land Policy and Management Act (FLPMA), 34 U.S.C. 1732(b), and the implementing regulations at 43 C.F.R. Part 3600. A contractor will need a mineral material sales contract (MMSC) for mineral materials for non-Title 23 highway-related uses, unless they use mineral materials as an ADOT agent from a FUP site. The entire process, here and below, is subject to applicable statutes and regulations, and is elaborated herein to ensure better understanding of the full process that BLM is required to follow in considering any application for a FUP or MMSC on public lands, whether an application is filed by ADOT or by a contractor.

ADOT is exempt from paying cost recovery and material purchase fees when obtaining a FUP. There may be mitigation costs or fees which are charges as part of the free use permit. A contractor, however, is required to pay cost recovery and material purchase fees for a MMSC on public lands, unless the contractor is officially designated by ADOT to serve as ADOT's authorized agent on a FUP. In such cases, ADOT would still be considered the applicant and any authorization would be issued to ADOT, not the contractor. The following discussion is written as though ADOT, or a contractor serving as ADOT's authorized agent, is requesting a FUP, and therefore, contains no references to payment of cost recovery or mineral material purchase. When a contractor acts as ADOT's agent, the contractor's role is solely as applicant and operator. In this instance ADOT should be involved in the NEPA review process so that ADOT understands and participates in the development of the terms and conditions of the FUP. ADOT must sign accepting the terms and conditions of the FUP and is responsible for ensuring that the contractor complies with the terms and conditions of the FUP.

1. Obtaining a FUP

a. Early Project Coordination

Early in the development of a project, ADOT will establish contact with the BLM Field Office responsible for managing the affected public lands to arrange a pre-application meeting so that potential constraints may be identified and processing of a request tentatively scheduled. The objective of the pre-application meeting, which may be held in the office or on site, is to expedite processing by fostering a mutual understanding of the process and the needs of both ADOT and BLM.

b. Application Filing

(1) ADOT will submit a request for a FUP to the appropriate BLM Field Office. There is no specific form for the request. At the pre-application meeting BLM will inform ADOT of the information needed in the request. The signed written request may be submitted by mail, email, fax transmission, or by personal delivery.

(2) The BLM Serial Number and ADOT project reference number will be referenced on all future correspondence relating to the project, whether correspondence is by formal letter, email or fax transmittal.

(3) At a minimum the request will contain a map or aerial photograph of the area of the proposed FUP, the type and approximate volume of materials needed, the depth of removal, access to the site, mining and reclamation plan, equipment used, fuel storage, maintenance area, hours of operation, and the approximate length of time required for removal of material, and equipment when material removal is complete.

(4) ADOT may apply for a FUP out of a designated BLM Community Pit. In that event, ADOT's use would not be exclusive. All other applications will be considered exclusive use.

c. Request Processing

(1) BLM will review the request to determine whether: (1) the request is complete; (2) the map is submitted and adequately shows the public lands and the proposed project in relationship to other on-the-ground uses; and (3) the request is properly signed and dated. BLM will notify ADOT if any deficiencies in the request are found and identify what is needed to correct such deficiencies.

(2) Upon acceptance of a complete request package, BLM will conduct an internal "administrative scoping" of the proposal to schedule, coordinate and determine the level of effort required to process the request.

d. NEPA Processing Time

(1) Proposals that are categorical exclusions (CX) would normally be processed by BLM within 30 days. Proposals requiring environmental assessments would normally be processed by BLM within 60 days. If processing the request and reaching a decision on whether or not a FUP may be authorized is expected to take longer than 60 days, BLM will notify ADOT in writing and provide an explanation for the delay and an estimate of when the processing of the request may be completed.

(2) To expedite the NEPA analysis, at any time ADOT may offer to assist BLM in processing the request by offering to prepare or contract preparation of all or part of any special study or environmental assessment (EA) to BLM standards. If it is determined that an Environmental Impact Statement (EIS) is required, BLM will immediately notify ADOT and request a meeting to

discuss the anticipated schedule for complying with NEPA. BLM must select the NEPA contractor for an EIS level analysis.

e. Use Authorization Decision

(1) If the BLM AO approves the request:

(a) BLM will send a decision letter, along with BLM form 5510-1 with the terms, conditions and approved mining plan of operations to ADOT. BLM may require a bond in accordance with 43 CFR 3604.25 if ADOT has not fulfilled its obligations under the terms of previous permits.

(b) ADOT signifies agreement with the terms and conditions of the FUP by signing and dating Form 5510-1 and returning it to BLM within 30 days of receipt. If a bond is requested by BLM, the bond or proof of the bond or other financial guarantee, will be returned with the executed Form 5510-1.

(c) Upon receipt of the signed Form 5510-1 from ADOT, and a bond if required, the BLM AO will sign and date the form. The FUP becomes effective when signed by the BLM AO.

(2) If the BLM AO denies the request, BLM will send a decision, which will include appeal instructions, to ADOT.

f. Decision

(1) Decisions are used to make BLM's final and formal action on a request. Pursuant to 43 C.F.R. Part 4(4.401 et seq.) a final Decision of the BLM AO is subject to appeal to the Interior Board of Land Appeals (IBLA).

(2) BLM is required to send a copy of its Decision and supporting analysis to any party who may be adversely affected by the Decision, otherwise they shall be made available upon request. Either ADOT or any party who may be adversely affected by BLM's Decision may file an appeal. If an appeal is filed, the Decision remains in full force and effect unless the appellant petitions for, and IBLA grants, a stay of the Decision pending IBLA's final ruling, pursuant to 43 C.F.R. 4.21 et seq.

g. Term of Authorization

(1) BLM will determine the term of the FUP. BLM will not grant FUPs to ADOT for terms exceeding 10 years.

(2) BLM may extend a FUP term for a single additional period not to exceed one year.

h. Annual Reporting

ADOT Materials must submit annual reports of production from the FUPs to the AO. This includes years where there is no production.

i. Relinquishment/Termination of FUP

Prior to the termination date, if the FUP is no longer needed, ADOT Materials will notify the affected BLM Field Office to report total production from the FUP and arrange a joint inspection of the FUP to finalize a reclamation and rehabilitation plan. This plan will be documented in writing and concurred with, in writing, by both ADOT and the BLM AO. Upon satisfactory completion of the reclamation, BLM will notify ADOT, in writing, and close the case.

2. Obtaining a MMSC

This discussion has been shortened to reflect time constraints placed on contractors bidding for an ADOT highway contract. Bids for ADOT contracts have a 30 day deadline and rarely is it possible for BLM to issue a contract, for volumes needed to fill an ADOT contract, in less than 30 days.

If a contractor chooses to apply for a MMSC, Nos. 1 – 6 above apply generally. Form 5510-1 does not apply. When requesting a MMSC outside of a community pit, the contractor will be required to pay cost recovery. The time required for BLM to process the request, unless the MMSC is for less than 5 acres and 50,000 cubic yards of material and qualifies for a categorical exclusion or is from a community pit, will normally take at least 30 days. If it is determined that there is competitive interest in the sale, BLM must hold a competitive sale. This would require a significantly longer time than 60 days.

(Note: If form numbers change in the future, the BLM can provide the current applicable forms).

VIII. Mineral Estate Ownership Issues

The purpose of this section is to (1) establish procedures for conducting preliminary title work for both Title 23 and non-Title 23 actions on BLM-managed lands and (2) clarify procedures for dealing with situations where mining claims and split federal estate may affect Title 23 linear and material site rights-of-way (MSROW).

A. Project Assessment & NEPA

1. Title 23 MSROWs may only be used for federal-aid eligible highways and FHWA will be the lead Federal agency for the purpose of NEPA compliance. Free use permits or material sales, both under Title 30, shall be used for non-federal-aid eligible highways, and BLM will be the lead Federal agency for the purpose of NEPA compliance.

2. ADOT may apply for a Title 30 free use permit through the local BLM Field Office for existing community pit material sources. Approval may be granted in a Letter of Approval for a Free Use Permit. BLM will be responsible for NEPA documentation for Title 30 community pit material sources. ADOT may utilize information from the BLM NEPA analysis to aid in preparation of any required environmental analysis. ADOT may allow a contractor to operate under the auspices of its Free Use Permit with the written approval of BLM.

3. The contractor will be responsible for compliance with BLM mitigation measures developed through the NEPA process and other required terms and conditions and ADOT environmental requirements when utilizing a material source on BLM-managed land. When contractors are obtaining material sources from non-BLM-land, the BLM will not be involved in the permitting process for the material source.

4. ADOT/FHWA will be responsible for compliance with BLM mitigation measures developed through the NEPA process and other required terms and conditions when utilizing an authorized material source on BLM-managed land. When ADOT is obtaining material sources from non-BLM-managed land, the BLM is not involved in the permitting process for the material source.

5. Prior to requesting a Title 23 appropriation on BLM-managed lands, ADOT shall take necessary steps to communicate and discuss with the BLM Field Office personnel the need for MSROWs in an area.

B. Land and Title Work

For both Title 23 and non-Title 23 actions, ADOT will conduct preliminary title work to identify ownership interests, possible valid existing rights and possible mitigation activities prior to submission of a Title 23 request for appropriation to FHWA or an application for a Title 30 materials permit or a Title V ROW or TUP to BLM.

1. In instances when full fee estate is in federal ownership and managed by BLM, ADOT will make application for Title 23 rights-of-way pursuant to Section VI and non-Title 23 uses pursuant to Section VII of this Operating Agreement.

2. In instances when BLM manages split federal estate, ADOT may seek to gain right of entry for a proposed Title 23 MSROW in the following manner:

   a. Federal mineral estate with private/State surface estate: ADOT will send a request to the affected BLM Field Office for a determination of whether mineral materials are administered by the BLM. If so, ADOT will seek to procure right of entry to the surface with the private/State surface estate owner. Once the right of entry is obtained, ADOT will make application for a Title 23 MSROW pursuant to the procedures of this Operating Agreement. If the mineral materials are not administered by the BLM, ADOT will determine ownership and seek agreement with the mineral materials owner.

   b. Federal surface estate with private/State mineral estate: ADOT will send a request to the affected BLM Field Office for a determination about the ownership of the mineral materials. ADOT will confer with the affected BLM Field Office for right of entry. Once the appropriate right of entry (if any is necessary) is obtained that satisfies the private/State mineral right, and BLM determines that it administers the mineral materials, ADOT will make application for a Title 23 MSROW pursuant to the procedures of Section VI of this Operating Agreement. If BLM does not administer the mineral materials, ADOT must seek agreement with the owner of the mineral materials.

C. Mining Claims

In instances when a mining claim exists, ADOT will request that BLM determine the rights of the mining claimant. In the interest of cooperation and ADOT/BLM timelines, BLM may require the assistance of ADOT to determine the nature and extent of such mining claims. In general the following types of mining claims exist and should be handled as follows:

1. Post July 23, 1955, Mining Claims: ADOT should attempt to obtain a waiver from the mining claimant for purposes of extracting the needed materials from the proposed MSROW or for use of the land for highway purposes. If ADOT experiences "deadlocked" negotiations with the mining claimant, then ADOT may request assistance from BLM in obtaining proper authority. Within 30 days, BLM will review the request and make a public interest determination whether it will exercise its authority under the general mining laws to pursue administrative remedies. Once the proper waiver is obtained or proper authority by BLM is granted, ADOT will make application for a Title 23 right-of-way for highway or MSROW purposes pursuant to the procedures of this Operating Agreement.

2. Pre July 23, 1955, Mining Claims: ADOT must obtain a waiver from the mining claimant for purposes of extracting the needed materials from a proposed MSROW or for use of the land for highway purposes. This waiver is required prior to BLM taking any action relating to issuance of a Letter of Consent (LOC) for use of such lands for Title 23 highway or MSROW purposes. ADOT may request assistance from BLM in obtaining the waiver. Within 30 days, BLM will review the request and make a public interest determination whether it will exercise its authority under the general mining laws to pursue administrative remedies.

3. Status of Title 23 Appropriated Lands

   a. Once appropriated, Title 23 mineral MSROWs are closed to (withdrawn from) location and entry under the general mining laws.

   b. Linear rights-of-way authorized pursuant to Title 23 are not closed to (segregated from) location and entry under the mining laws upon appropriation. Consent to the appropriation of a linear right-of-way under Title 23 does, however, establish a dominant right to which any later use of the land or filing of a mining claim is subordinate.

   c. A Title 23 MSROW will only be used for federal-aid eligible projects.

   d. There will be no subsequent use for non-Title 23 purposes of a MSROW allowed by BLM or ADOT.

IX. ACCESS TO STATE HIGHWAYS

This section establishes the procedures to be followed when BLM or a customer of BLM (referred to as a "third party") requests access pursuant to Title V of FLPMA and the implementing regulations at 43 C.F.R. Part 2800 between BLM-managed land and State highways. For highways not designated as controlled access highways, the procedures will be as in paragraphs A and B below. For highways designated as controlled access highways, the procedures will be as in paragraphs A, B and C below.

A. Third Party Access Roads

1. When BLM receives a request from a third party for an access road on BLM-managed lands that is proposed to connect to an ADOT highway, the affected BLM Field Office will send written notification to the affected ADOT District Office (with a copy to the ADOT Chief Right of Way Agent, and, if the highway is part of the National Highway System, a copy to the FHWA Realty Officer). The affected BLM Field Office will include a copy of the application, if appropriate, and a copy of a map showing the proposed access to the ADOT highway.

2. The ADOT District Office personnel will arrange a meeting with the affected BLM Field Office and/or the third party to discuss the requested access to the highway.

3. If ADOT is not agreeable to the request, ADOT will provide the affected BLM Field Office a written explanation of the reason(s). BLM will not grant a right-of-way that accesses an ADOT highway if ADOT states in writing that an access permit will not be issued.

4. If ADOT is agreeable to the request, ADOT will provide the affected BLM Field Office a written statement outlining the requirements for issuance of an access permit. BLM will include those requirements in the description of the proposed action for compliance with NEPA in processing the application.

5. If BLM's Decision is to approve the application, the right-of-way grant will be subject to the Holder complying with the terms and conditions of ADOT's access permit and any other terms and conditions BLM determines are necessary to protect the public land and its resources.

6. BLM's right-of-way grant, if authorized, will be up to the highway right-of-way line, but will not extend into the highway right-of-way.

B. <u>BLM Access Roads</u>

1. If BLM needs to construct a BLM road connecting to an ADOT highway, the affected BLM Field Office will file a written request with the affected ADOT District Office (with a copy to the ADOT Chief Right of Way Agent, and, if the highway is part of the National Highway System, a copy to the FHWA Realty Officer).

2. ADOT will determine whether the request for access to the highway will be approved and will notify the affected BLM Field Office in writing.

3. If ADOT is not agreeable to the request, ADOT will provide the affected BLM Field Office a written explanation of the reason(s).

4. If ADOT is agreeable to the request, ADOT will provide the affected BLM Field Office a written statement outlining the requirements for issuance of a permit. BLM will include those requirements in the description of its proposed action for compliance with NEPA for the project. BLM will comply with ADOT requirements for an access permit.

C. <u>Highway Segments Designated as Access Controlled</u>

1. Generally new access will not be approved on access-controlled segments except at locations designated in ADOT's Access Management Plan. Approval of access to a

highway will require more extensive engineering studies showing intersection and/or interchange types.

2. Proposals for new access points on controlled access facilities will require extensive early planning by both ADOT and BLM.

3. Approvals by ADOT will be necessary prior to issuance of any right-of-way grant by BLM.

4. When ADOT proposes to convert an existing non-access controlled highway to an access controlled highway, ADOT will advise and coordinate with BLM to discuss the anticipated impacts that more restricted access may have on BLM-managed lands. ADOT and BLM will coordinate in the development of an Access Management Plan, including the identification of existing access points on BLM-managed land used by the general public and other users such as right-of-way holders, grazing permitees, mining claimants, etc.

5. FHWA approval is required for changes in the control of access involving the Interstate Highway System.

X. ADMINISTRATION

A. This amended Operating Agreement, identified as Appendix C to MOU No. AZ-931-0309, becomes effective upon signature of all parties to Amendment #3 to MOU No. AZ-931-0309.

B. This amended Operating Agreement, identified as Appendix C to MOU No. AZ-931-0309, may be amended or modified as necessary by mutual consent of all parties upon written notification of such modification, signed and dated by all parties. Such amendment/ modification will supercede this amended Operating Agreement, identified as Appendix C, but will not necessarily require an amendment to MOU No. AZ-931-0309.

C. Nothing in this Operating Agreement is intended to conflict with any Federal statute or regulation. If a conflict is determined to occur, applicable Federal statutes and regulations shall control.

BLM INPUT OPPORTUNITIES INTO ADOT'S PROCESS

Long Range Planning

(20+ years prior to construction)

1a- Participate on a Technical Advisory Committee (TAC) for a plan/study
(Note: Every project in ADOT's Five Year Program has been through a TAC)

Long Range Planning includes:

- Regional Transportation Profiles
- Small Area Transportation Studies
- Multi-Modal Transportation Studies
- Statewide Access Management Plan
- Policy Issues
- Long Range Plan
- FiveYear Program

Note: If there will be an impact to BLM, ADOT will invite them to be a TAC Member
(Note: 1a through 1d below apply to Regional Transportation Profiles, Small Area Transportation Studies, Statewide Access Management Plan, Policy Issues and Long Range Plan)

ADOT CONTACT FOR LONG RANGE PLANNING (EXCEPT FIVE YEAR PROGRAM):
STATE AND REGIONAL PLANNING SECTION MANAGER

1b- Attend TAC meetings

1c- Attend Public meetings

1d- Review and comment on working papers

1e- Review and comment on draft final report

ADOT CONTACT FOR FIVE YEAR PROGRAM: PRIORITY PROGRAM MANAGER

5 Year Program

Rank projects to be scoped based on requests received from engineering districts (in house TAC function)

Rank scoped projects received engineering districts (in house TAC function)

Select projects to be included in the Tentative Five Year Program (in house TAC function)

State Transportation Board approves Tentative Program

Public hearings on Tentative program

State Transportation Board approves the Final Five Year Program

After Final Five Year Program approval, the Three Year STIP is developed

Note: BLM's involvement in the Five Year Programming process is during the Scoping and Design phases of the project.

Project Development

ADOT CONTACT FOR SCOPING PHASE: PREDESIGN SECTION MANAGER

Scoping Phase

(Typically 5-7+ years prior to construction)

2- Provide input into Scoping Document
(The scoping document will be one of the four below):

- Scoping Letter (6 months)
- Project Assessment (12 months)
- Feasibility/Corridor Study (18 months)
- Location/Design Concept Report (24+ months)

The Scoping process for either the Feasibility/Corridor Study or Location/Design Concept Report includes:

- Kick Off/Agency/Field Review (Stakeholders and Public) (technical analysis, engineering and literal research (environmental)
- Initial Document
- Draft Environmental Document
- Final Environmental Document
- Engineering Document

National Environmental Policy Act (NEPA) Documentation

(NEPA process begins during Scoping and continues through Stage V of Design)

ADOT CONTACT FOR NEPA: ENVIRONMENTAL & ENHANCEMENT GROUP MANAGER

3a- Opportunity to be a Cooperating Agency during development of EA or EIS and participate as member of Interdisciplinary (ID) Team (duration of process)

3b- Provide input on issues during agency scoping meeting and/ or field review (per meeting)

3c- Review and comment on predraft EA or EIS (30 days)

3d- Review and comment on Initial DCR (30 days)

3e- Comment on Draft EA or EIS during public comment period (30 days)

3f- Review Summary of Comments prepared for IDCR (One week)

3g- Review prefinal EA or EIS. Provide letter supporting findings for inclusion in final NEPA Document (30 days)

3h- Provide input during development/subsequent updates to NEPA documentation (varies) (Concurrent with all of # 2, 3 and 4)

Design Phase

(Occurs 1-3 years prior to construction)

ADOT CONTACT FOR DESIGN PHASE: VALLEY GROUP MANAGER (FOR MARICOPA COUNTY) OR STATEWIDE GROUP MANAGER (FOR OTHER COUNTIES)

4a- Participate in Design Kick Off Partnering Meeting and Field Review
General Plan Development

4b- Receive key project documents through Project Reference document distribution system (Concurrent with # 4 and 5)

4c- Participate in monthly coordination meetings, review plans and special provisions and provide comments during Stage I of design
(May occur during Scoping or Project Development. Takes the design to 15%)

4d- Participate in monthly coordination meetings, review plans and special provisions and provide comments during Stage II of design
(Takes the design to 30%)

4e- Participate in constructability review

4f- Participate in monthly coordination meetings, review plans and special provisions and provide comments during Stage III of design and participate in the Field Review
(Takes the design to 60%)

4g- Participate in monthly coordination meetings, review plans and special provisions and provide comments during Stage IV of design

(Takes the design to 95%. All clearances are completed by the end of Stage IV)

Stage V of design produces Plans, Specifications and Estimate (PS&E)
FHWA Authorization
ADOT advertises project
State Transportation Board awards project to contractor

Construction Phase

(Occurs subsequent to award of contract by State Transportation Board)

ADOT CONTACT FOR CONSTRUCTION PHASE: CONSTRUCTION STATE ENGINEER
ADOT CONTACT FOR PERMITS: DISTRICT ENGINEER

5a- Participate in Construction Kick Off Partnering Workshop

5b- Participate in creating project Issue Resolution Ladder

5c- Communicate regarding mobilization/ancillary facilities

5d- Participate in Field Inspection

5e- Participate in Weekly Construction Meetings

5f- Participate in Field Reviews

5g- Participate in Partnering Refresher Workshops

5h- Participate in Public Meetings

5i- Participate in Walk Through

5j- Participate in Partnering Close Out Workshop

Permit process is ongoing throughout the entire timeline.

[Note: The foregoing outlines the process for ADOT's typical design-bid-build projects. In design-build projects and construction manager at risk projects, design and construction are intermingled]

Maintenance Phase

ADOT CONTACT FOR MAINTENANCE: STATE MAINTENANCE ENGINEER
ADOT CONTACT FOR NATURAL RESOURCES: STATEWIDE NATURAL RESOURCES MANAGER

6-Operate and maintain highway

Other Opportunities

ADOT Transportation Board meetings

Five Year Program Development/Public Hearings

ADOT/FHWA INPUT OPPORTUNITIES INTO BLM'S LAND USE PLANNING (LUP) PROCESS

Comprehensive LUP Evaluation

(Conducted every 3-5 years)

1. BLM notifies all partners (including ADOT and FHWA) that BLM is about to conduct a Comprehensive LUP Evaluation. ADOT contacts are ADOT District Engineers, State Engineer, Deputy State Engineers, Director of Transportation Planning Division and Environmental & Enhancement Group Manager. FHWA contact is its Environmental Program Manager.

   If evaluation indicates that the LUP needs to be either amended or revised, then it moves on to the next phase. Otherwise, no action is required.

Develop and Approve Preparation Plan

2. During the time that BLM is developing and approving the Preparation Plan, the Cooperating Agency MOU between BLM, ADOT and FHWA should be reviewed for accuracy and appropriateness, and modified when needed.

Issue Notice of Intent (NOI) Federal Register (FR) Notice

3. During the "formal scoping period" ADOT and FHWA should identify issues and concerns that need to be addressed in the LUP (such as, "Are the transportation corridors accurately identified?" "Do we need to talk about mineral and material sales," etc)?

RMP/EIS Development Process Steps

a. Issue Identification and Development of the Scoping Report
b. Develop Planning Criteria and Announce Availability
c. Inventory and Data Collection
d. Analysis of the Management Situation
e. Alternative Formulation and Development of Preferred Alternative
f. Estimation of Effects

4. During each step of the RMP/EIS development process, ADOT and FHWA should participate in all cooperating agency meeting, provide information and analysis as agreed upon in the cooperating agency MOU.

Notice of Availability (NOA) for the Draft Resource Management Plan and Draft Environmental Impact Statement (DRMP/DEIS) (A Notice Published in the Federal Register (FR))

5. The 90-day public review and comment period begins the day that the Environmental Protection Agency's (EPA) publishes it's NOA for the DRMP/DEIS in the FR. During this step of the process, ADOT and FHWA may be involved in the public comment analysis process and asked to provide assistance in preparing responses to comments and text revisions.

NOA for the Proposed RMP and Final EIS (PRMP/FEIS) (FR Notice)

6. A 30-day protest period begins the day that EPA publishes it's NOA for the PRMP/FEIS in the FR. During this step of the process, ADOT and FHWA may be involved in the protest resolution process and asked to provide information or assistance in preparing responses. Also running concurrently at this time is the 60-day Governor Consistency Review.

Publish the Approved RMP and Record of Decision (ROD) (FR Notice)

7. ADOT and FHWA will receive copy of document.

Implementation and Monitoring of Approved RMP and ROD

8. ADOT, FHWA and BLM should continue to partner and collaborate during the implementation, monitoring and any needed modification of the approved RMP.

BLM PROJECT IMPLEMENTATION GRAPH

[Note: Asterisk * indicates opportunity for ADOT input]

BLM NEPA Process Phases	Categorical Exclusion Process	Determination of NEPA Adequacy Process	EA Level Analysis Process	EIS Level Analysis Process
Determining the Scope	*Flesh out brief description of proposed project BLM determines whether a project is on the BLM or DOI CX List.	*Flesh out brief description of proposed project. Determine LUP conformance *Identify & list other related NEPA documents	*Flesh out brief description of proposed project. Determine LUP conformance *Invite Cooperating Agencies. *Determine scope of EA Level Analysis	*Flesh out brief description of proposed project. Determine LUP conformance *Invite Cooperating Agencies Publish NOI in Federal Register (minimum 30 day *public review and comment period)

BLM PROJECT IMPLEMENTATION GRAPH

[Note: Asterisk * indicates opportunity for ADOT input]

BLM NEPA Process Phases	Categorical Exclusion Process	Determination of NEPA Adequacy Process	EA Level Analysis Process	EIS Level Analysis Process
Conducting NEPA Analysis	*Conduct Analysis to determine if any of the extraordinary circumstances apply to the project	*Conduct analysis using seven criteria for determining NEPA adequacy	*Prepare EA • Need for the proposal • Alternatives including the proposed action • Affected environment (site specific) • List of agencies and individuals committed	*Prepare draft EIS • Purpose & Need Statement • Proposed Action and Alternatives including No Action • Affected Environment • Environmental consequences • List of agencies & individuals to whom copies are sent • Appendices, Glossary, References cited Publish Federal Register Notice of Availability for draft EIS * Provide 60 day Public Review and Comment period

BLM PROJECT IMPLEMENTATION GRAPH

[Note: Asterisk * indicates opportunity for ADOT input]

BLM NEPA Process Phases	Categorical Exclusion Process	Determination of NEPA Adequacy Process	EA Level Analysis Process	EIS Level Analysis Process
Making NEPA Determination	BLM responsible official makes determination whether or not the proposal is categorically excluded and whether any additional NEPA analysis is needed.	BLM responsible official makes determination whether existing NEPA analysis is adequate to implement the proposal	Prepare and Sign FONSI	*Conduct analysis of public comments received *Prepare responses to comments *Prepare text changes Publish Federal Register NOA for Final EIS (30 day cooling off period)
Documenting Decision	BLM responsible official makes decision whether or not to implement the proposal	BLM responsible official makes decision whether or not to implement the proposal	BLM responsible official makes decision whether or not to implement the proposal Publish a Decision Record (DR)	Publish record of Decision (ROD)
*Administrative Review/ Appeal Process Provided	*Administrative Review/ Appeal Process Provided	*Administrative Review/ Appeal Process Provided	*Administrative Review/ Appeal Process Provided	*Administrative Review/ Appeal Process Provided

PROJECT

REFERENCE

for

Route

Highway

Section Name

Other Identifying Information

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NOTE: This Project Reference originally was developed as a cooperative effort among the Federal Highway Administration, the Bureau of Land Management (Arizona State Office) and the Arizona Department of Transportation. It now is intended to be used on all projects managed by ADOT. It is composed, in part, of copies of original documents stored elsewhere in official files. Copies of the documents are provided for inclusion in the Project Reference as they are created and made available to appropriate stakeholders. Where Agency "concurrence," "approval," or "consultation" is referenced, the discussion pertains to actions located on public lands under the jurisdiction of the Federal or State Agency

Section 1.1 – Purpose of Project Reference

The purpose of this reference document (Project Reference) is to provide a roadmap and compendium of documents and information applicable to the implementation of this project. Not all project-related information is available when the Project Reference is initially created and information changes as the project progresses through the design and implementation stages, each of which occur over a period of several years. It is therefore anticipated that there will be both change and growth of the contents included in the Project Reference over time.

The Project Reference will be initiated when a project begins (when an ADOT tracking "TRACS" number is assigned). Information will be included as it is generated, leading to a continuous change in the physical content as information becomes available and decisions are made during project development. New sections may be added to the basic list as the need arises.

The Project Reference has no specific status in or of itself and does not change or supercede any other document(s). As a roadmap, the Project Reference provides a convenient collection of data and information that was originally developed, approved and filed elsewhere for specific purposes. It does not attempt to repeat, interpret, clarify or modify information or direction existent elsewhere. It is simply a compilation of project-related information collected by and for the convenience of the holder. When continuously updated, it provides a collection of reference material for a specific project.

Section 1.2 - Project Design and Implementation

Project design and implementation are discovery processes that result in continuing adjustments and changes. As project knowledge increases and the design matures, the need for different solutions often becomes apparent and designs and mitigation measures change in response. Therefore, the design is not considered "final" until the project is placed under contract. Even then, some modification, consistent with the environmental documents and within the scope and parameters of the design guidelines, may be dictated by on-site conditions. Even though there is some flexibility for modification, ADOT must ensure that the final design meets both the approved environmental clearance and the design criteria.

Section 1.3 - Project Summary

Please enter project summary here, including breakdown of acres by ownership (private, federal, state) Refer to sample reference for guidance

Section 2 – Documents

2.1 GUIDING DOCUMENTS

	Document	Responsible Party	Comments
A.	**Land Management Agency Agreements Applicable to this Project**	**PM designated on TRACS**	
B.	**Interagency Agreements Applicable to this Project**	**PM designated on TRACS**	
C.	**Programmatic Agreements (such as cultural and weed control)**	**PM designated on TRACS**	
D.	**Joint Project Agreements**	**9170 or PM designated on TRACS**	
E.	**Stakeholder Lists (To be updated frequently)**	**PM designated on TRACS**	
F.	**Engineering Scoping Documents**	**PM designated on TRACS**	
	Scoping Letter		
	Project Assessment		
	Feasibility/Corridor Study		
	Location/Design Concept Report		
	Scoping/Other		
G.	**[Placeholder]**		
H.	**[Placeholder]**		
I.	**Other**		

2.2 ENVIRONMENTAL DOCUMENTS

	Document	Responsible Party	Comments
A.	**401 Certifications**	**Org 9151**	
B	**404**	**Org 9151**	
	Certification Application		
	Jurisdictional Delineation		
	Individual Permits		
	Nationwide Permits		
	Preconstruction Notice (PCN)		
C.	**Air Quality Report**	**Org 9152**	
D.	**Biology**	**Org 9152**	
	Survey Reports		
	Biological Evaluation		
	Biological Review		
	In-house evaluations		
	Invasive Species		
	Agency Scoping Letters		
	USFWS Concurrence		
	AGFD Concurrence		
	Biological Opinion		
	Agency Correspondence		
	Native Plants		
E.	**Clearance Documents**	**Org 9151**	
	Categorical Exclusions		
	Environmental Determination		
	Environmental Assessment		
	Environmental Impact Statement		
	Environmental Overview		
	Finding of No Significant Impact (FONSI)		
	Geotechnical Clearances		**See Section 2.3 (G)**

2.2 ENVIRONMENTAL DOCUMENTS (continued)

	Document	Responsible Party	Comments
E.	**Clearance Documents (continued)**	**Org 9151**	
	Reassessments		
	Record of Decision (ROD)		
	Re-evaluations		
	Supplemental EA		
	Supplemental EIS		
F.	**Clearance Memo**	**Org 9151**	
G	**Cultural**	**Org 9152**	
	Report		
	SHPO Letter		
	Agency Letter		
	Cultural Initiation Form (CIF)		
	Programmatic Agreements/Memorandums of Agreement		**See Section 2.1(C)**
H.	**Floodplains**	**Org 9151**	
I.	**Hazmat**	**Org 9152**	
	PISA		
	Report		
	Phase I		
	Phase II		
J.	**Noise Report**	**Org 9152**	
K.	**Riparian/Wetlands**	**Org 9151**	
L	**Tribal Information**	**Org 9152**	
M.	**Visual**	**Org 9151**	
N.	**Other**	**Org 9151**	

2.3 DESIGN

	Document	Responsible Party	Comments
A.	**Design Scope of Work /Dictionary of Standard Work Tasks**	**PM designated on TRACS**	
	Design Scope of Services		
	Responsibility Matrix		
	MC Task Order		
	Project Number Request		
B.	**Consultant Selection/Notification**	**PM designated on TRACS**	
C.	**[Placeholder**		
D.	**Design Kick Off Partnering Workshop Report**	**PM designated on TRACS**	
E.	**Design Progress Meeting Notes**	**PM designated on TRACS**	
F.	**Design Agreements**	**PM designated on TRACS**	
	(These are changes that are outside of, or a change to the scope of work or mitigation requirements)		
G.	**Geotechnical and Archaeological Testing and Recovery Approval**		
	Field Investigation Plan & Archaeological Testing and Recovery Plan	**9910 or 9152**	
	Temporary Right of Entry for ground disturbing activities	**9340**	
	Environmental Clearance/ground disturbing activities	**9151**	
	Storm Water Pollution Prevention Plan (SWPPP) for ground disturbing activities	**9910**	
	Geotechnical Design Report	**9908**	
H.	**Materials Final Design Memo**	**9912**	

2.3 DESIGN (continued)

	Document	Responsible Party	Comments
I.	**Design Submittals**	**PM designated on TRACS**	
	Stage II		
	Stage III		
	Stage IV		
	PS&E		
J.	**Utility and Railroad Coordination**	**9440**	
	Agreements with Utilities and Railroad companies		
	Railroad Clearance		
	Utility Clearance		
K.	**Right of Way Information**		
	Right of Way Contract	**9370 or 9380**	
	Right of Way Clearance	**9390**	
	Demo/Improvement Report	**9320**	
	Right of Entry / Ground Disturbing Activities		**See Section 2.3(G)**
	Right of Way Plans	**9340**	
	Right of Way Disposal	**9330**	
L.	**Drainage**	**9597**	
	Initial Drainage Report		
	Final Drainage Report		
	Flood Plain Coordination		
M.	**Roadside Development**	**9596**	
	Plant Inventory/Transplant Plans		
	Resource Protection Plan		
	Storm Water Pollution Prevention Plan (SWPPP)		
N.	**Project Changes**	**PM designated on TRACS**	
	Project Change Request		
	PPAC & Board Approval Documents		

2.3 DESIGN (continued)

	Document	Responsible Party	Comments
O.	**Contracts and Specifications**	**9460**	
	Bid Schedule and Summary		
	Addendums		
	Engineers & Agreement Estimates		
	Bid Advertisement		
	[Placeholder]		
	Award and Board Minutes		
P.	**Other**		

2.4 ANCILLARY PERMITS AND AGREEMENTS

	Document	Responsible Party	Comments
A.	**Site Agreements**	**PM designated on TRACS**	
	Nursery		
	Staging		
	Magazine		
B.	**Borrow-Material Pit Information (including environmental clearance)**	**9908**	
C.	**Weed Control**	**9596**	
D.	**Burn Permit**	**RE designated on Design Stakeholder List**	
E.	**Private Party Agreements**	**PM designated on TRACS or RE designated on Design Stakeholder List**	
F.	**Access Permits**	**PM designated on TRACS**	
G.	**Construction Water**	**PM designated on TRACS or RE designated on Design Stakeholder List**	
H.	**Other**		

2.5 CONSTRUCTION ACTIVITIES

	Document	Responsible Party	Comments
A.	**Mitigation/Monitoring Requirements**	**RE designated on Design Stakeholder List**	**See Section 2.2(B) and (F)**
B.	**Construction Kick Off Partnering Workshop Report**	**RE designated on Design Stakeholder List**	
C.	**Storm Water Pollution Prevention Plan (SWPPP) – Construction**	**RE designated on Design Stakeholder List**	
D.	**Notice of Intent (NOI)**	**RE designated on Design Stakeholder List**	
E.	**404 Extension**	**RE designated on Design Stakeholder List**	
F.	**Weed Control**	**9596**	
G.	**Notice of Termination (NOT) (Contractor)**	**RE designated on Design Stakeholder List**	
H.	**Schedule and Work Sequence Information**	**RE designated on Design Stakeholder List**	
I.	**Subcontractor List**	**RE designated on Design Stakeholder List**	
J.	**Public Notification**	**RE designated on Design Stakeholder List**	
K.	**Supplemental Agreement Tracking System (SATS)**	**RE designated on Design Stakeholder List**	
L.	**Meeting Notes**	**RE designated on Design Stakeholder List**	
M.	**Final Acceptance**	**RE designated on Design Stakeholder List**	
N.	**Initiate Right of Way Disposal if needed**		**See Section 2.3 (K)**

2.5 CONSTRUCTION ACTIVITIES (continued)

	Document	Responsible Party	Comments
O.	**Construction Partnering Close Out Workshop Report**	**RE designated on Design Stakeholder List**	
P.	**As-Built Plans/Final Costs**	**PM designated on TRACS or RE designated on Design Stakeholder List**	
Q.	**Other**		

2.6 POST CONSTRUCTION PUNCH LIST

	Document	Responsible Party	Comments
A.	**Vegetation Survivability**	**9596**	
B.	**Monitoring Commitments**	**RE designated on Design Stakeholder List**	
C.	**Fence Maintenance**	**RE designated on Design Stakeholder List**	
D.	**Erosion**	**9596**	
E.	**Notice of Termination (NOT) (ADOT)**	**RE designated on Design Stakeholder List**	
F.	**MOU/JPA Commitments**	**PM designated on TRACS or RE designated on Design Stakeholder List**	
G.	**Initiate Right of Way Disposal if needed**		**See Section 2.3 (K)**
H.	**Other**		

Section 3.1 – List of Known Agreements

Agreements Affecting ADOT			
List of Known Agreements with Land Management Agencies			
	BLM; FHWA	**Interagency Agreement, Bureau of Land Management and Federal Highway Administration** (AA 851-IA2-40) **July 27, 1982**	This National level MOU articulates the requirements and process to be used by FHWA to appropriate Public lands administered by the BLM for highway use.
	ADOT; FHWA (AZ); USDA FS (SW Region)	**Memorandum of Understanding Among The Arizona Department of Transportation, the Federal Highway Administration, Arizona Division and the USDA, Forest Service, Southwestern Region Regarding the Construction, Operation and Maintenance of Highways in Arizona Crossing National Forest System Lands** (06-MU-11031600-013) **October 20, 2005**	This MOU, among the Arizona office of FHWA, the Southwestern Region of USDA Forest Service and ADOT establishes the principles under which the agencies agree to collaborate in transportation construction and maintenance projects on National Forest System lands.
	ADOT; BLM (AZ); FHWA (AZ)	**Memorandum of Understanding between the Arizona Department of Transportation, The Federal Highway Administration, Arizona, and the Bureau of Land Management, Arizona** (AZ-931-0309 – Amendment #2) **March 21, 2006**	This MOU - among ADOT and the Arizona offices of the BLM and FHWA - establishes the principles under which the agencies agree to collaborate in Land Use and Project Planning. The document includes Appendices (Operating Agreement, Project Reference) that provide specific direction on agency roles, responsibilities and operating procedures.
	BLM (AZ); FHWA (AZ); ADOT	**Memorandum of Understanding between the Department of the Interior, Bureau of Land Management, Arizona State Office, All Arizona Field Offices and U.S. Department of Transportation, Federal Highway Administration, Arizona Division Office as a Cooperating Agency, and the State of Arizona, Arizona Department of Transportation as a Cooperating Agency** (AZ-910-0417) **September 10, 2004**	This MOU among BLM, FHWA and ADOT establishes the principles under which ADOT and FHWA will collaborate as cooperating agencies with the BLM on its Land and Resource Management planning efforts.
	ADOT; FHWA (AZ); USDA FS (SW Region)	**Memorandum of Understanding between the Arizona Department of Transportation, the Federal Highway Administration and USDA Forest Service, Southwestern Region** (03-MU-11030600-48)	This MOU among ADOT, FHWA and USDA Forest Service establishes a cooperative process and protocols for survey and control of invasive species and hazardous vegetation within ADOT easements that cross National Forest System lands within the Southwestern Region.

		May 27, 2003	
	USDA Forest Service; FHWA	**Memorandum of Understanding between United States Department of Agriculture, Forest Service and United States Department of Transportation, Federal Highway Administration Regarding the Appropriation and Transfer of National Forest System Lands for Highway Purposes** (no number assigned) **August 20, 1998**	This National level MOU articulates the requirements and process to be used by FHWA to appropriate National Forest System lands for highway use. Its language specifically amends and supersedes similar direction previously issued on May 11, 1981.
	ADOT USFS	**Memorandum of Understanding between the Arizona Department of Transportation, Highways Division and the United States Department Agriculture, Forest Service on procedures related to state highways over national forest lands.** (16-R3-92-0025) **April 14, 1992**	This MOU establishes procedures for coordinating the location, design, construction, management, operation, maintenance, signing, access, protection, conservation of environment, and other matters related to State highway development, use, and occupancy of National Forest Lands.

List of Known Agreements with Other Agencies			
	Corps (AZ); FHWA (AZ) ADOT	**Operating Agreement – The Integration Process Relative to the National Environmental Policy Act and Section 404 of the Clean Water Act for projects involving: US Army Corps of Engineers – Arizona Area Office, Arizona Division of the Federal Highway Administration, Arizona Department of Transportation** (No number assigned) **February 8, 2005**	This Operating Agreement describes the protocols used to meet NEPA requirements of both FHWA and COE with one document
	EPA (Region IX): FHWA (AZ)	**US Environmental Protection Agency, Region IX, US Department of Transportation Federal Highway Administration, Arizona Division, Memorandum of Understanding, Sole Source Aquifer Review Pursuant to Section 1424(e) of the Safe Drinking Water Act** (No MOU number assigned) **November 27, 2002**	This MOU outlines the coordination protocols to be used by the EPA and FHWA within the bounds of designated soul source aquifers within Arizona to verify that the potential impacts of projects will not cause health hazards or cause the installation of additional treatment facilities to meet National Primary Drinking Water Regulations.
	FHWA (AZ); SHPO (AZ);	**Programmatic Agreement among the Federal Highway Administration, The Arizona State Historic Preservation Office, the Advisory Council on Historic Preservation, and the Arizona Department of Transportation for Administration of the Federal Aid – Highway Program** (No number assigned) **December 21, 2001**	This Programmatic Agreement establishes agreed upon roles, responsibilities and activities the agencies will take to coordinate the protection of cultural sites that could be affected by highway projects
	FHWA; National Conference of SHPOs; Advisory Council	**Nationwide Programmatic Agreement Among the Federal Highway Administration (FHWA), the National Conference of State Historic Preservation Officers (National Conference of SHPOs), and the Advisory Council on Historic Preservation (ACHP), for Implementation of Transportation Enhancement Activities** (no number assigned) **April 29, 1997**	This National level Programmatic Agreement establishes agreed upon roles, responsibilities and activities the agencies will take to coordinate the protection of cultural sites that could be affected by highway projects. It provides the basic agreement that states agencies can tier to.
	FHWA (AZ); ADOT; SHPO (AZ)	**Interim Procedures for the Treatment of Historic Roads** (no number assigned) **November 15, 2002**	This document provides temporary guidance agreed upon among FHWA (AZ), ADOT and SHPO (AZ) for interim procedures for in-use and abandoned Historic Roads with ADOT project areas while a Historic Roads Programmatic

			Agreement is being prepared.
	FHWA (AZ); ADOT	**Arizona Programmatic Categorical Exclusion Approval** (no number assigned) **August 4, 2000**	FHWA issued this approval to provide ADOT with authority to make a determination that federally funded projects that meet FHWA's regulatory requirements under 23 CFR 771.117(c) (i.e., Group 1) are categorically excluded from detailed NEPA analysis and articulates the process to be used for actions which qualify under 23 CFR 771.117(d) (Group 2).
	ADOT; AZGFD	**Memorandum of Understanding between Arizona Highway Department and Arizona Game and Fish Department Regarding Highway Construction and Management of Wildlife Resources** (no number assigned) **December 31, 1963**	Establishes how ADOT and AZGFD will communicate about proposed highway projects and collaborate minimize impacts to wildlife resources within Arizona.
	FHWA (AZ); SHPO (AZ); ADOT	**Programmatic Agreement among the Federal Highway Administration, The Arizona State Historic Preservation and the Arizona Department of Transportation for Administration of the Transportation and Enhancement and Local Government Programs** (SHPO–2003-0979) **May 20, 2003**	This Programmatic Agreement establishes agreed upon roles, responsibilities and activities the agencies will take to coordinate the protection of cultural sites that could be affected by Local Government projects
	ADOT (AZ) SHPO (AZ)	**Programmatic Agreement between the Arizona Department of Transportation and the Arizona State Historic Preservation Officer regarding implementation of the cultural resources management program for the Arizona Department of Transportation** **July 16, 2001**	This Programmatic Agreement establishes agreed upon roles, responsibilities and activities the agencies will take to coordinate the protection of cultural sites that could be affected by state highway projects.
	ADOT FHWA	**Operating Partnership Agreement between the Arizona Department of Transportation and the Arizona Division of the Federal Highway Administration regarding the administration of Federal-aid transportation projects in the State of Arizona.** **November 4, 2004**	This ADOT-FHWA Operating Partnership defines the respective responsibilities of ADOT and establishes procedures and implementation in accordance with 23 USC 106(b) and applicable State laws and regulations.

Section 3.2 – Links to Planning and Long Range Plans

Section 3.3 – Project Reference Template

Section 4 – [Placeholder]

*(The following is sample text for an e-mail transmission initiated by ADOT R/W Acquisition Section requesting FHWA's concurrence of necessity for the appropriation for **Linear Rights of Way** and/or temporary construction easements on BLM land.)*

To: *(NAME – FHWA Realty Officer)*

Subject: *(R/W Parcel #)* BLM Lands Appropriation Concurrence

PROJECT: (Insert Federal project and tracs number for construction)
(Insert Federal project and tracs number for Right of Way)

HIGHWAY:
SECTION:
PARCEL #:
BLM SERIAL #:

The Arizona Department of Transportation has determined a public need to acquire lands for the above referenced highway project. The project consists of *(brief project description)* and requires the acquisition of _____ acres of new right of way; and _____ acres of temporary construction easement from lands under the jurisdiction of the Bureau of Land Management (BLM) *(Field Office Name)*.

We hereby request your concurrence that the land identified above is reasonably necessary for the stated highway purpose in order to proceed with application for appropriation of these federal lands as identified on the right of way and/or construction plans for this project. Upon receipt of your concurrence, we will submit an appropriation request directly to the BLM *(Field Office Name).* A copy of the submittal will be provided to you for your files.

(NAME) Acquisition Agent

(The following is sample text for an e-mail transmission initiated by ADOT Materials Geotechnical Design Section requesting FHWA's concurrence of public necessity for the appropriation on ***Material Site & Haul Road Rights of Way*** *from BLM.)*

To: *(NAME)* FHWA Realty Officer

Subject: *(MS #)* BLM Lands Appropriation Concurrence

HIGHWAY(s):
MS #:

The Arizona Department of Transportation has determined a public need to acquire lands for the above referenced material site and haul road. The material from this site will be used for *(brief description)* and requires the acquisition of _____ acres of new right of way lands under the jurisdiction of the Bureau of Land Management (BLM) *(Field Office Name)*.

We hereby request your concurrence of public necessity in order to proceed with application for appropriation of these federal lands as identified on the plat map and aerial photograph for this site. Upon receipt of your concurrence, we will submit an appropriation request directly to the BLM *(Field Office Name)* and a copy of the submittal will be provided to you for your files.

(NAME) Acquisition Agent

(The following is sample text for FHWA's e-mail response to ADOT R/W Acquisition Section.)

The Federal Highway Administration (FHWA), Arizona Division, has determined that the lands subject to this request are reasonably necessary for the stated highway purpose and concurs with this request pursuant to the provisions of Title 23 U.S.C. Section *(107(d) or 317)*.

(NAME) FHWA Realty Officer

Original Transmission from ADOT:

To: *(NAME – FHWA Realty Officer)*

Subject: *(R/W Parcel #)* BLM Lands Appropriation Concurrence

PROJECT: (Insert Federal project and tracs number for construction)
(Insert Federal project and tracs number for Right of Way)
HIGHWAY:
SECTION:
PARCEL #:
BLM SERIAL #:

The Arizona Department of Transportation has determined a public need to acquire lands for the above referenced highway project. The project consists of *(brief project description)* and requires the acquisition of _____ acres of new right of way; and _____ acres of temporary construction easement from lands under the jurisdiction of the Bureau of Land Management (BLM) *(Field Office Name)*.

We hereby request your concurrence of public necessity in order to proceed with application for appropriation of these federal lands as identified on the right of way and/or construction plans for this project. Upon receipt of your concurrence, we will submit an appropriation request directly to the BLM *(Field Office Name)* and a copy of the submittal will be provided to you for your files.

(NAME) Acquisition Agent

(The following is sample text for FHWA's e-mail response to ADOT Materials Geotechnical Design Section.)

The Federal Highway Administration has reviewed this request and concurs in the necessity of the lands for use on a Federal or Federally eligible project pursuant to the provisions of Title 23 U.S.C. Section *(107(d) or 317).*

(NAME) FHWA Realty Officer

Original Transmission from ADOT:

To: *(NAME)* FHWA Realty Officer

Subject: *(MS #)* BLM Lands Appropriation Concurrence

HIGHWAY(s):
MS #:

The Arizona Department of Transportation has determined a public need to acquire lands for the above referenced material site and haul road. The material from this site will be used for *(brief description)* and requires the acquisition of _____ acres of new right of way lands under the jurisdiction of the Bureau of Land Management (BLM) *(Field Office Name)*.

We hereby request your concurrence of public necessity in order to proceed with application for appropriation of these federal lands as identified on the plat map and aerial photograph for this site. Upon receipt of your concurrence, we will submit an appropriation request directly to the BLM *(Field Office Name)* and a copy of the submittal will be provided to you for your files.

(NAME) Acquisition Agent

Arizona Department of Transportation
Intermodal Transportation Division
206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano
Governor

Victor M. Mendez
Director

Floyd Roehrich
State Engineer

(DATE)

(Bureau of Land Management Field Office)
(Street Address)
(City, State, Zip Code)

RE: APPLICATION FOR HIGHWAY RIGHT OF WAY AND/OR TEMPORARY CONSTRUCTION EASEMENT

PROJECT: (Insert Federal project and tracs number for construction)
(Insert Federal project and tracs number for Right of Way)
HIGHWAY: *(ADOT Highway Designation)*
SECTION: *(ADOT Section Designation)*
PARCEL #: *(ADOT Parcel Number)*
BLM SERIAL #: *(BLM Serial Number)*

Dear *(Field Manager):*

Application is hereby made by the State of Arizona, acting by and through its Department of Transportation (ADOT), for a federal land transfer located within the jurisdiction of your Field Office in *(County)* County, pursuant to the provisions of Section *(107(d) or 317 of Title 23, U.S.C).*

This application requires *(# of acres)* of right of way for the construction, operation and maintenance of the above-referenced highway project and/or *(# of acres)* of temporary construction easements for temporary construction activities for the purpose of *(identify activities)* and is in the best interest of public safety, necessity and convenience. We further request immediate right of entry to avoid project delays.

Enclosed are the proposed Highway Easement Deed (HED) and appropriate plans that provide a graphic depiction of the right of way and/or temporary construction easements required on portions of public lands described as:

REFER TO ATTACHED EXHIBIT(S)

(Gila & Salt River Base and Meridian)

This project is being completed in accordance with the specific conditions as agreed to during the environmental and design phases, which will be incorporated into the ADOT Special Provisions for the above-referenced project

(BLM Field Office)
(R/W Parcel #)
(Date)
Page 2

The Federal Highway Administration (FHWA), Arizona Division, has determined that the lands shown are reasonably necessary for use on a Federal Highway administered project and has concurred with this request (see attached e-mail correspondence). If the appropriation of these lands is not contrary to public interests, or inconsistent with the purpose for which such lands have been acquired, please provide your Letter of Consent authorizing the transfer of this land and immediate right of entry, directly to ADOT, with a copy to FHWA. Upon receipt of your Letter of Consent, the enclosed Highway Easement Deed will be sent to FHWA for execution. You will be provided a copy of the executed deed upon recording.

If you have any questions, you may contact me in writing at Arizona Department of Transportation, Right of Way Acquisition Section, 205 South 17th Avenue – 612E, Phoenix, Arizona 85007-3213, via e-mail at *(e-mail address)* or call me at *(telephone number)*. Thank you for your consideration.

Sincerely,

(Agent Name)
Right of Way Agent

Enclosures
Cc: (w/enc.): *(Realty Officer Name)*, Realty Officer
FHWA, Arizona Division

Arizona Department of Transportation
Intermodal Transportation Division
206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano
Governor

Victor M. Mendez
Director

Floyd Roehrich
State Engineer

(Date)

(Bureau of Land Management Field Office)
(Street Address)
(City, State, Zip Code)

RE: APPLICATION FOR MATERIAL SOURCE & HAUL ROAD
HIGHWAY(s): *(ADOT Highway Designation)*
MATERIAL SITE #: *(Material Site Number Designation)*

Dear *(Field Office Manager)*

Application is hereby made by the State of Arizona, acting by and through its Department of Transportation (ADOT), for a federal land transfer located within the jurisdiction of your Field Office in *(County)* County, pursuant to the provisions of Section *(107(d) or 317)* of Title 23, U.S.C.

Right of way is needed for a material source and haul road for the construction, operation and maintenance of the above-referenced highway(s) and is in the best interest of public safety, necessity and convenience. We further request immediate right of entry to avoid project delays.

Enclosed is a proposed Highway Easement Deed and a description for the requested right of way, a plat map, mining and reclamation plan, and environmental documentation for the material source covering this application for right of way on portions of the following public lands (Gila & Salt River Base and Meridian):

(LEGAL DESCRIPTION)

Arizona Governor's Award for Quality
2001 Award Recipient

(BLM Field Office)
(Material Site #)
(Date)
Page 2

The Federal Highway Administration (FHWA), Arizona Division, has determined that the lands shown are reasonably necessary for use on a Federal Highway administered project and has concurred with this request (see attached e-mail correspondence). If the appropriation of these lands is not contrary to public interests, or inconsistent with the purpose for which such lands have been acquired, please provide your Letter of Consent authorizing the transfer of this land and immediate right of entry, directly to ADOT, with a copy to FHWA. Upon receipt of your Letter of Consent, the enclosed Highway Easement Deed will be sent to FHWA for execution. You will be provided a copy of the executed deed upon recording.

If you have any questions, you may contact me in writing at Arizona Department of Transportation, Materials Group – Geotechnical Design Section, 1221 North 21st Avenue – 068R, Phoenix, Arizona 85009-3740, via e-mail at (e-mail address), or call me at *(Phone Number)*. Thank you for your consideration.

Sincerely,

(Right of Way Agent Name)
Right of Way Agent

Enclosures
Cc: (w/enc.): *(NAME)*, Realty Officer
FHWA, Arizona Division

Illustration 8, Application for Material Source and Haul Road, Revised 1-25-06

Draft Letter of Consent for Linear Rights-of-Way
BLM LETTERHEAD

AZA-_____
Federal Project and tracs number for construction:_____
Federal Project and tracs number for right of way:_____
Highway:_____
Section:_____
Parcel:_____

Date

Division Administrator
Federal Highway Administration
One Arizona Center, Suite 410
400 E. Van Buren
Phoenix, AZ 85004

Dear _____:

A request has been received for the appropriation of, and immediate right of entry to, lands managed by the Bureau of Land Management (BLM) within the State of Arizona for use by the State of Arizona, acting by and through its Department of Transportation for____ (Project name.

(The request includes provisions for temporary access for construction activities as identified in the application). The request is
pursuant to U.S.C. Title 23: Highways, (Section 317 OR Section 107(d).

The area requested lies in the: [Legal description – if legal description is excessively long, it may be attached as an exhibit and referenced accordingly] as shown on the map(s) provided with the application. _____.

In accordance with the provisions of the Interagency Agreement No. AA-851-IA2-40, dated July 27, 1982, between the Bureau of Land Management (BLM) and the Federal Highway Administration (FHWA), the BLM agrees to the appropriation and transfer of the above-described lands for the foregoing purpose, together with immediate right of entry for construction purposes. This appropriation is subject to: the standard conditions of appropriation contained in the Memorandum of Understanding between Arizona Department of Transportation (ADOT), Federal Highway Administration (FHWA) and Bureau of Land Management (BLM) dated April 23, 2003, as amended November 20, 2008, and supplemented by the Operating Agreement (Appendix C), and all other specific conditions as agreed to during the environmental and design phases, which will be incorporated into ADOT's Special Provisions for the above-referenced project.

Sincerely,

[NAME]
Field Manager

cc: Realty Officer, FHWA, Arizona Division
Right of Way Agent, ADOT

Draft Letter of Consent for Material Site Rights-of-Way
BLM LETTERHEAD

AZA-_____
Highway(s):_____
MS#I:_____

Date

Division Administrator
Federal Highway Administration
One Arizona Center, Suite 410
400 E. Van Buren
Phoenix, AZ 85004

Dear _____:

Request has been received for the appropriation of and immediate right of entry to BLM-managed lands within the State of Arizona for use by the State of Arizona, acting by and through its Department of Transportation for_____(Material Site #)_____, pursuant to U.S.C. Title 23: Highways, Section 317 [OR] Section 107(d).

The area requested lies in the: [Legal description – if legal description is excessively long, it may be attached as an exhibit and referenced accordingly] as shown on the map titled _____ and marked _____.

In accordance with the provisions of the Interagency Agreement No. AA-851-IA2-40, dated July 27, 1982, between the Bureau of Land Management (BLM) and the Federal Highway Administration (FHWA), the BLM agrees to the appropriation and transfer of the above-described lands for the foregoing purpose, together with immediate right of entry for construction purposes. This appropriation is subject to: the standard conditions of appropriation contained in the Memorandum of Understanding between Arizona Department of Transportation (ADOT), Federal Highway Administration (FHWA) and Bureau of Land Management (BLM) dated April 23, 2003, as amended September 10, 2004 and March 21, 2006, and supplemented by the Operating Agreement (Appendix C), and the mining and reclamation plan and mitigation measures identified in the environmental document for the above-referenced project and all other specific conditions as agreed.

Sincerely,

[NAME]
Field Manager

cc: Realty Officer, FHWA, Arizona Division
Right of Way Agent, ADOT

Parcel: «Parcel»

WHEN RECORDED RETURN TO
ARIZONA DEPARTMENT OF TRANSPORTATION
R/W OPERATIONS SEC. (612E)
205 S. 17TH AVENUE
PHOENIX, AZ 85007-3212

PROJECT: « CONSTRUCTION PROJECT/TRACNO»
« ROW PROJECT/TRACNO»
SECTION: «SECTION»
PARCEL: «PARCEL»
BLM #:

EXEMPT PER A.R.S. 11-1134-A2

HIGHWAY EASEMENT DEED

THIS DEED made this _____ day of _____, 20 ____, by and between the **UNITED STATES OF AMERICA**, acting by and through the **Department of Transportation, Federal Highway Administration**, hereinafter referred to as **DEPARTMENT**, and the **STATE OF ARIZONA**, acting by and through its **Department of Transportation**, hereinafter referred to as the **GRANTEE**:

WITNESSETH:

WHEREAS, the **GRANTEE** has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (*23 U.S.C. Section 317 or Section 107(d) – if Interstate*), for the right-of-way of a highway over certain federal land under the jurisdiction of the Department of the Interior – Bureau of Land Management, hereinafter referred to as Bureau of Land Management, in the State of Arizona; and

WHEREAS, the Arizona Division Administrator of the Federal Highway Administration, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for right-of-way for construction, operation and maintenance of Project «Construction_No»; and

WHEREAS, the Department of the Interior, acting by and through the Bureau of Land Management, in its consent to the appropriation of the federal land, has agreed to the transfer by the **DEPARTMENT** of an easement over the land to the **GRANTEE**;

NOW THEREFORE, the **DEPARTMENT**, as authorized by law, does hereby grant to the **GRANTEE** an easement for right-of-way for the construction, operation, and maintenance of a highway (including control of access thereto from adjoining lands, if Interstate or other controlled access) and use of the space above and below the established grade line of the highway pavement for highway purposes on, over. across, in, and upon the following described federal land within the United States in the County of «County», State of Arizona, Gila and Salt River Meridian:

(continued)

Parcel: «Parcel»

TOWNSHIP	**RANGE**	**SECTION**	**SUBDIVISION**

As shown on the right of way plans for project «Project» / «CompleteTracNo» / «Section» on file in the office of the State Engineer at Phoenix, Arizona.

Subject, however, to the following terms and conditions:

1. This easement is subject to outstanding valid claims, if any, existing on the date of this deed, and the **GRANTEE** shall obtain such permission as may be necessary on account of any such claims;

2. Unless an alternative agreement is reached between the **GRANTEE** and **DEPARTMENT** and documented in writing and recorded in the office of the applicable County Recorder, the easement herein granted shall terminate 10 years from the date of execution of this deed by the United States of America in the event construction of a highway on the right-of-way is not started during such period;

3. The design, construction, operation and maintenance of highway projects situated on this right-of-way, will be in accordance with the provisions of Title 23, U.S.C. – Highways, and amendments; applicable State laws; the construction specifications of the Arizona Department of Transportation as approved by the Federal Highway Administration for use on Federal-aid projects; and the Memorandum of Understanding between the Arizona Department of Transportation and the Arizona Divisions of the Federal Highway Administration and the Bureau of Land Management, dated April 23, 2003, as amended .

4. The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of construction, operation, and maintenance of a highway in accordance with the approved plans and does not include the grant of any right for non-highway purposes or facilities: Provided, that the right of the Bureau of Land Management to use or authorize the use of any portion of the right-of-way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23, U.S.C., and amendments, and the Federal Highway Administration Regulations issued pursuant thereto; or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the Federal Highway Administration and **GRANTEE** shall be consulted prior to the exercise of such rights; and Provided further, that nothing herein shall preclude the Bureau of Land Management from locating Department of the Interior information signs on the portions of the right-of-way outside of construction clearing limits [except that such signs shall not be located on the right of way of an Interstate System];

(continued)

Parcel: «Parcel»

5. Grantee may not assign its rights hereunder without the prior written approval of the **DEPARTMENT** and the Bureau of Land Management in accordance with provisions of the Memorandum of Understanding between the Arizona Department of Transportation and the Arizona Divisions of the Federal Highway Administration and the Bureau of Land Management, dated April 23, 2003, as amended.

6. When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the **GRANTEE** shall give notice of that fact to the **DEPARTMENT** and, Bureau of Land Management and upon approval by the Arizona State Transportation Board, the rights herein granted shall terminate and land shall immediately revert to the Department of the Interior, or assigns.

7. Prior to reversion or termination of this easement, GRANTEE shall remove, within a reasonable time, any structures and improvements, and shall restore the site to a condition satisfactory to the BLM Field Manager, unless an alternative agreement is reached by both parties and documented in writing. If GRANTEE**,** within a reasonable period, fails to remove the structures or improvements and restore the area, or to implement the alternative agreement, the BLM Field Manager may order the removal and disposal of any improvements and restore the area at GRANTEE's expense.

The **GRANTEE**, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

a. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such land hereby conveyed;

b. The **GRANTEE**, shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above-mentioned nondiscrimination conditions, the **DEPARTMENT** shall have the right to re-enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to the Department of the Interior, or assigns, as such interest existed prior to this instrument.

(continued)

Parcel: «Parcel»

IN WITNESS WHEREOF, I, _____ , Arizona Division Administrator, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____
Arizona Division Administrator

STATE OF ARIZONA)
) ss
County of)

I, _____ , a Notary Public in and for the State of _____ , do hereby certify that on this the _____ day _____ , 20 ____ , before me personally appeared _____ , Arizona Division Administrator, Federal Highway Administration, and acknowledged that the foregoing instrument bearing date of _____ , 20 ____ , was executed by him/her in his/her official capacity and by authority in her/him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be her/his free act and deed as Arizona Division Administrator, Federal Highway Administration.

Witness my hand and seal this _____ day of _____, 20 ____

_____

_____
Notary Public

(SEAL)

My Commission Expires _____

(continued)

Parcel: «Parcel»

In compliance with the conditions set forth in the foregoing deed, the **STATE OF ARIZONA**, certifies, and by the acceptance of this deed, accepts the right-of-way over certain land herein described and agrees to abide by the conditions set forth in said deed.

Accepted this _____ day of _____, 20 _____.

By _____
Chief Right of Way Agent
Right of way Group

STATE OF ARIZONA)
) ss
County of)

I, _____ , a Notary Public in and for said County and State, hereby certify that _____ , whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she in his/her capacity as Chief Right of Way Agent, Right of Way Group, executed the same voluntarily on this day.

Given under my hand and seal of office this _____ day of _____ , 20 _____.

_____
Notary Public

(SEAL)

My Commission Expires _____

M.S. #:

WHEN RECORDED RETURN TO
ARIZONA DEPARTMENT OF TRANSPORTATION
MATERIALS GROUP (068R)
1221 N. 21ST AVENUE
PHOENIX, AZ 85009-3740

HIGHWAY(S):
M.S.#:
BLM #:

EXEMPT PER A.R.S. 11-1134-A2

HIGHWAY EASEMENT DEED

THIS DEED made this _____ day of _____ , 20_____, by and between the **UNITED STATES OF AMERICA**, acting by and through the **Department of Transportation, Federal Highway Administration**, hereinafter referred to as **DEPARTMENT (GRANTOR)**, and the **STATE OF ARIZONA,** acting by and through its **Department of Transportation**, hereinafter referred to as the **GRANTEE**:

WITNESSETH:

WHEREAS, the **GRANTEE** has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (*23 U.S.C. Section 317 and Section 107(d) - if Interstate*), for the right to excavate and remove and/ or store materials for construction, operation and maintenance of highways (material site) and a road to transport said materials (haul road) over certain federal land under the jurisdiction of the Department of Interior - Bureau of Land Management, in the State of Arizona, and

WHEREAS, the Arizona Division Administrator of the Federal Highway Administration, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for the construction and maintenance of highways on the Federal Aid Highway System; and

WHEREAS, the Department of Interior, acting by and through the Bureau of Land Management, in its consent to the appropriation of the federal land, has agreed to the transfer by the **DEPARTMENT** of an easement over the land to the **GRANTEE**;

NOW THEREFORE, the **DEPARTMENT**, as authorized by law, does hereby grant to the **GRANTEE** an easement for the construction, operation, and maintenance of a material site and haul road (including control of access thereto from adjoining lands), for highway purposes on, over, across, in, and upon the following described federal land within the United States in the County of «County», State of Arizona, Gila and Salt River Meridian:

(continued)

M.S. #:

TOWNSHIP **RANGE** **SECTION** **SUBDIVISION**

As more particularly shown on the plat for M.S.#_____ on file in the office of the Assistant State Engineer at Phoenix, Arizona.

Subject, however, to the following terms and conditions:

1. This easement is subject to outstanding valid claims, if any, existing on the date of this deed, and the **GRANTEE** shall obtain such permission as may be necessary on account of any such claims;

2. The easement herein granted shall terminate 10 years from the date of execution of this deed by the United States of America in the event use of the material site is not started during such period;

3. The design, construction and maintenance of material site and haul road situated on this right-of-way will be in accord with the provisions of Title 23, United States Code (U.S.C.) - Highways, and amendments; applicable State laws; the construction specifications of the Arizona Department of Transportation as approved by the Federal Highway Administration for use on Federal-aid projects; and the Memorandum of Understanding between the Arizona Department of Transportation and the Arizona Divisions of the Federal Highway Administration and the Bureau of Land Management, dated April 23, 2003, as amended.

4. The easement herein granted is limited to use of the described right-of-way for the purpose of construction, operation, and maintenance of a material site and haul road in accordance with the approved plans and does not include the grant of any rights for non-highway purposes or facilities: Provided, that the right of the Bureau of Land Management to use or authorize the use of any portion of the right-of-way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23, U.S.C., and amendments, and the Federal Highway Administration Regulations issued pursuant thereto, or would interfere with the free flow of traffic or impair the full use and safety of the material site and haul road, and in any case the Federal Highway Administration and **GRANTEE** shall be consulted prior to the exercise of such rights; and Provided further, that nothing herein shall preclude the Bureau of Land Management from locating Department of the Interior information signs on the portions of the right-of-way outside of construction clearing limits;

(continued)

M.S. #:

5. Grantee may not assign its rights hereunder without the prior written approval of the **DEPARTMENT** and the Bureau of Land Management in accordance with provisions of the Memorandum of Understanding between the Arizona Department of Transportation and the Arizona Divisions of the Federal Highway Administration and the Bureau of Land Management, dated April 23, 2003, as amended .

6. When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the **GRANTEE** shall give notice of that fact to the **GRANTOR** and, upon approval by the Arizona State Transportation Board, the rights herein granted shall terminate and land shall immediately revert to the Department of Interior, or assigns.

7. Prior to reversion or termination of this easement, GRANTEE shall remove, within a reasonable time, any structures and improvements, and shall restore the site to a condition satisfactory to the BLM Field Manager, unless an alternative agreement is reached by both parties and documented in writing. If GRANTEE**,** within a reasonable period, fails to remove the structures or improvements and restore the area, or to implement the alternative agreement, the BLM Field Manager may order the removal and disposal of any improvements and restore the area at GRANTEE's expense.

The **GRANTEE**, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

a. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such land hereby conveyed;

b. The **GRANTEE**, shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have the right to re-enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to the Department of Interior, or assigns, as such interest existed prior to this instrument.

(continued)

M.S. #:

IN WITNESS WHEREOF, I, _____, Arizona Division Administrator, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By_____
Arizona Division Administrator

STATE OF ARIZONA)
) ss
County of)

I, _____, a Notary Public in and for the State of _____, do hereby certify that on this the ____ day _____, 20____, before me personally appeared _____, Arizona Division Administrator, Federal Highway Administration, and acknowledged that the foregoing instrument bearing date of _____, 20____, was executed by him/her in his/her official capacity and by authority in her/him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be her/his free act and deed as Arizona Division Administrator, Federal Highway Administration.

Witness my hand and seal this ____ day of _____, 20_____

_____
Notary Public

(SEAL)

My Commission Expires _____

(continued)

M.S. #:

In compliance with the conditions set forth in the foregoing deed, the **STATE OF ARIZONA,** certifies, and by the acceptance of this deed, accepts the right-of-way over certain land herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

Accepted this _____ day of _____, 20____.

By _____
Assistant State Engineer
Materials Group

STATE OF ARIZONA)
) ss
County of)

I, _____, a Notary Public in and for said County and State, hereby certify that _____, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she in his/her capacity as Assistant State Engineer, Materials Group, executed the same voluntarily on this day.

Given under my hand and seal of office this ____ day of _____, 20 ____.

_____
Notary Public

(SEAL)

My Commission Expires _____

Parcel: «Parcel»

WHEN RECORDED RETURN TO
ARIZONA DEPARTMENT OF TRANSPORTATION
R/W OPERATIONS SEC. (612E)
205 S. 17TH AVENUE
PHOENIX, AZ 85007-3212

PROJECT: «CONSTRUCTION PROJECT/TRAC»
ROW PROJECT/TRAC
SECTION: «SECTION»
PARCEL: «PARCEL»
BLM #:

EXEMPT PER A.R.S. 11-1134-A2

HIGHWAY EASEMENT DEED
TEMPORARY CONSTRUCTION

THIS DEED made this _____ day of _____, 20 ____, by and between the **UNITED STATES OF AMERICA**, acting by and through the **Department of Transportation, Federal Highway Administration**, hereinafter referred to as **DEPARTMENT**, and the **STATE OF ARIZONA**, acting by and through its **Department of Transportation**, hereinafter referred to as the **GRANTEE**:

WITNESSETH:

WHEREAS, the **GRANTEE** has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (*23 U.S.C. Section 317 or Section 107(d) – if Interstate*), for a temporary construction easement over certain federal land under the jurisdiction of the Department of the Interior – Bureau of Land Management, in the State of Arizona; and

WHEREAS, the Arizona Division Administrator of the Federal Highway Administration, pursuant to delegation of authority from the Secretary of Transportation, has determined that a temporary construction easement over the land covered by the application is reasonably necessary for construction of Project <<Construction No.>> and

WHEREAS, the Department of the Interior, acting by and through the Bureau of Land Management, in its consent to the appropriation of the federal land, has agreed to the transfer by the **DEPARTMENT** of a temporary construction easement over the land to the **GRANTEE**;

NOW THEREFORE, the **DEPARTMENT**, as authorized by law, does hereby grant to the **GRANTEE** a temporary construction easement for the following activities marked with an "x":

[ ] Grading
[ ] Equipment Storage Areas
[ ] Plant Salvage Nurseries
[ ] Material Sites & Associated Haul Roads
[ ] Driveway / Turnout Connections
[ ] Material Storage / Stockpile Sites
[ ] Temporary Stock Tanks for Water
[ ] Temporary Detour Roads
[ ] Processing Areas
[ ] Magazine Sites
[ ] Batch / Hot Plants
[ ] Temporary Access Roads
[ ] Well Sites
[ ] Contractor Use Area (temporary Office / yards)

(continued)

Parcel: «Parcel»

associated with the construction and or maintenance of a highway upon the following described federal land within the United States in the County of «County», State of Arizona, Gila and Salt River Meridian

TOWNSHIP	**RANGE**	**SECTION**	**SUBDIVISION**

As shown on the design/construction plans for project «Project» / «Construction Project/TracNo» / «Section» on file in the office of the State Engineer at Phoenix, Arizona.

Subject, however, to the following terms and conditions:

1. This temporary construction easement is subject to outstanding valid claims, if any, existing on the date of this grant, and the **GRANTEE** shall obtain such permission as may be necessary on account of any such claims;

2. The temporary construction easement herein granted shall terminate 5 years from the date of execution of this deed by the United States of America unless terminated sooner;

3. The design and construction of highway projects situated within the temporary construction easement will be in accordance with the provisions of Title 23, U.S.C. – Highways, and amendments; applicable State laws; the construction specifications of the Arizona Department of Transportation as approved by the Federal Highway Administration for use on Federal-aid projects; and the Memorandum of Understanding between the Arizona Department of Transportation and the Arizona Divisions of the Federal Highway Administration and the Bureau of Land Management, dated April 23, 2003, as amended .

4. The temporary construction easement herein granted is limited to use in accordance with the approved construction plans and does not include the grant of any right for non-highway purposes or facilities: Provided, that the right of the Bureau of Land Management to use or authorize the use of any portion of the temporary construction easement for non-highway purposes shall not be exercised when such use would be inconsistent with the temporary construction easement herein granted.

5. Prior to reversion or termination of this easement, GRANTEE shall remove, within a reasonable time, any structures and improvements, and shall restore the site to a condition satisfactory to the BLM Field Manager, unless an alternative agreement is reached by both parties and documented in writing. If GRANTEE**,** within a reasonable period, fails to remove the structures or improvements and restore the area, or to implement the alternative agreement, the BLM Field

(continued)

Parcel: «Parcel»

Manager may order the removal and disposal of any improvements and restore the area at GRANTEE's expense.

6. When need for the temporary construction easement herein granted shall no longer exist and the area has been satisfactorily rehabilitated to protect the public and environment, the **GRANTEE** shall give notice of that fact to the **DEPARTMENT** and Bureau of Land Management and, the rights herein granted shall terminate and the land shall revert to the Department of the Interior or its assigns.

The **GRANTEE**, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land, that:

a. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such land hereby conveyed;

b. The **GRANTEE**, shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above-mentioned nondiscrimination conditions, the **DEPARTMENT** shall have the right to re-enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to the Department of Interior, or assigns, as such interest existed prior to this instrument.

(continued)

Parcel: «Parcel»

IN WITNESS WHEREOF, I, _____ , Arizona Division Administrator, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____
Arizona Division Administrator

STATE OF ARIZONA)
) ss
County of)

I, _____ , a Notary Public in and for the State of _____ , do hereby certify that on this the _____ day _____ , 20 ____ , before me personally appeared _____ , Arizona Division Administrator, Federal Highway Administration, and acknowledged that the foregoing instrument bearing date of _____ , 20 ____ , was executed by him/her in his/her official capacity and by authority in her/him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be her/his free act and deed as Arizona Division Administrator, Federal Highway Administration.

Witness my hand and seal this _____ day of _____, 20 ____

_____

_____
Notary Public

(SEAL)

My Commission Expires _____

(continued)

Parcel: «Parcel»

In compliance with the conditions set forth in the foregoing deed, the **STATE OF ARIZONA**, certifies, and by the acceptance of this deed, accepts the temporary construction easement over certain land herein described and agrees for itself, its successors and assigns, forever to abide by the conditions set forth in said deed.

Accepted this _____ day of _____, 20 _____.

By _____
Chief Right of Way Agent
Right of way Group

STATE OF ARIZONA)
) ss
County of)

I, _____ , a Notary Public in and for said County and State, hereby certify that _____ , whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she in his/her capacity as Chief Right of Way Agent, Right of Way Group, executed the same voluntarily on this day.

Given under my hand and seal of office this _____ day of _____ , 20 _____.

_____
Notary Public

(SEAL)

My Commission Expires _____

Arizona Department of Transportation
Intermodal Transportation Division
206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano
Governor

Victor M. Mendez
Director

Floyd Roehrich
State Engineer

Mr. Robert E. Hollis
Division Administrator
Federal Highway Administration
Department of Transportation
One Arizona Center
400 East Van Buren Street, Suite 410
Phoenix, Arizona 85004-2285

Re: Project:
Highway:
Section:
Disposal:

Dear Mr. Hollis:

Conforming with 23 CFR Part 620, Subpart B, we wish to advise you of the State's intent to relinquish portions of right of way to (Local Jurisdiction), for a continued public transportation use.

The right of way to be relinquished is located , and applicable Right of Way and As-Built plans are attached hereto, along with the Department's acquisition documents.

The (Local Jurisdiction) has agreed to comply with and be bound by all terms and conditions of the (right of way grants or highway easement deeds), as evidenced by the attached letter from said jurisdiction.

The State Engineer has requested this relinquishment action, which will alleviate the Department from liability and maintenance issues. Access control will not be altered by this proposal.

Our Roadside Development Services has determined that this area need not be retained for highway beautification purposes. A review of the Department's Five Year Highway Construction Program indicated that no projects or activity will affect the area of relinquishment.

Arizona Governor's Award for Quality
2001 Award Recipient

Mr. Robert E. Hollis

Page 2

In compliance with 23 CFR Part 620, Subpart B, and in accordance with Arizona Revised Statutes Section 28-7209, the right of way as depicted on the maps for this relinquishment will be removed from the State Highway System and placed under the jurisdiction of (Local Jurisdiction) for a continued public transportation use.

In accordance with 23 CFR Part 620, Subpart B, (Local Jurisdiction) is not required to compensate the State for the right of way.

We respectfully request your endorsement of this action.

Sincerely,

(Disposal Unit, Titles Section)

enclosure

cc: (BLM), (FHWA)

Arizona Department of Transportation

Intermodal Transportation Division

206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano
Governor

Victor M. Mendez
Director

Floyd Roehrich
State Engineer

Re:

Dear :

The Arizona Department of Transportation intends to abandon the above location to the should it be approved by the Arizona State Transportation Board.

The can immediately accept the proposed area of abandonment by waiving A.R.S. 28-7209, which is the Advance Four Year Notice of Abandonment.

In order to complete the transfer of right of way, please sign the acceptance waiver that is attached hereto and forward to me in the enclosed postage paid envelope at your earliest convenience.

Upon receipt, the Department will be in a position to submit a Resolution of Abandonment to the Arizona Transportation Board for review and approval. You will receive a recorded copy of the Resolution upon approval and recordation in the records of County.

Sincerely,

Lucy Mellema
Resolution / Disposal Unit Team Leader, Titles Section
Arizona Department of Transportation
205 S. 17th Avenue, Mail Drop 612E
Phoenix, Arizona 85007-3212
(602) 712-8757(ph) (602) 712-8756(fax)

Attachment
cc: (BLM) (FHWA)

Arizona Governor's Award for Quality
2001 Award Recipient

Date:

(Local Jurisdiction)
(address/Contact)

RE: Highway:
Section:
Project:
Resolution:

By signing below, (Local Jurisdiction) hereby waives the Advance Four-Year Notice of Abandonment and Pavement Quality Report in accordance with Arizona Revised Statutes Section 28-7209, which will allow ADOT to abandon right of way for continued public transportation use to said (Local Jurisdiction).

In addition, (Local Jurisdiction) does hereby acknowledge and agree to comply with and be bound by all terms and conditions of all Right of Way Grant(s) or Highway Easement Deeds as follows: (All R/W's issued from BLM/FHWA/Forest). It is understood that said right of way documents have been previously provided to (Local Jurisdiction) during the process and consideration of this abandonment request.

If Board or Council action is required to legally bind the abandonment action for the (Local Jurisdiction), said document is required to be attached hereto. Should no action be attached, it is considered acknowledgement by the (Local Jurisdiction) that said action is not required and that the person signing below has the proper delegate authority to act on behalf of the (Local Jurisdiction).

Signature	**Title**	**Date**

ARIZONA DEPARTMENT OF TRANSPORTATION
205 SOUTH 17TH AVENUE
R/W Operations, MD 612E
PHOENIX, AZ 85007-3213

RES. NO.
PROJECT:
HIGHWAY:
SECTION:
ROUTE NO.:
ENG. DIST.:
COUNTY:

RESOLUTION OF ABANDONMENT

VICTOR M. MENDEZ, Director, Arizona Department of Transportation, on , presented and filed with this Transportation Board his written report under Arizona Revised Statutes Section 28-7046, recommending the abandonment of within the above referenced project.

The portion of right of way to be abandoned is depicted in Appendix "A" and delineated on maps and plans on file in the office of the State Engineer, Intermodal Transportation Division, Phoenix, Arizona, entitled "Right of Way Plans, Highway, Project ."

WHEREAS said portion of right of way is no longer needed for state transportation purposes; and

WHEREAS this Board finds that public safety, necessity and convenience will be served by accepting the Director's report; therefore;

WHEREAS the has acknowledged and agreed to be bound by all terms and conditions of the (Insert: right of way grants & date and/or highway easement deeds and recording information); therefore, be it

RESOLVED that the recommendation of the Director is adopted and made part of this resolution; be it further

RES. NO.
PROJECT:
HIGHWAY:
SECTION:
ROUTE NO.:
ENG. DIST.:
COUNTY:

RESOLVED that the has acknowledged and agreed to be bound by all terms and conditions of the (Insert: right of way grants & date and/or highway easement deeds and recording information); be it further

RESOLVED that the portion of right of way depicted in Appendix "A" is hereby removed from the State Highway System and abandoned to as provided in Arizona Revised Statute Section 28-7207 and 28-7209, and effective upon recordation in the Office of the County Recorder in accordance with Arizona Revised Statute Section 28-7213; be it further

RESOLVED that the Director provide written notice to evidencing the abandonment of the State's interest.

RES. NO.
PROJECT:
HIGHWAY:
SECTION:
ROUTE NO.:
ENG. DIST.:
COUNTY:

REPORT AND RECOMMENDATION

TO THE HONORABLE ARIZONA TRANSPORTATION BOARD:

The Intermodal Transportation Division has made a thorough investigation concerning the abandonment of a portion of right of way acquired for within the above referenced project.

This portion was previously established by .

A portion of the previously acquired right of way is no longer needed for state transportation purposes. has agreed to accept jurisdiction of the right of way, and has acknowledged and agreed to be bound by all terms and conditions of the (Insert: right of way grants & date and/or highway easement deeds and recording information); Accordingly, I recommend that the State's interest in the portion of right of way be abandoned.

The portion of right of way to be abandoned is depicted in Appendix "A" and delineated on the maps and plans on file in the office of the State Engineer, Intermodal Transportation Division, Phoenix, Arizona, entitled "Right of Way Plans, Highway, Project ."

I further recommend that the portion of right of way depicted in Appendix "A" be removed from the State Highway System and abandoned to , for a continued public transportation use.

RES. NO.
PROJECT:
HIGHWAY:
SECTION:
ROUTE NO.:
ENG. DIST.:
COUNTY:

All other rights of way and easements and appurtenances thereto subject to the provisions of Arizona Revised Statutes Section 28-7210 shall continue as they existed prior to the disposal of right of way depicted in Appendix "A".

Pursuant to Arizona Revised Statutes Section 28-7046, I recommend that the Transportation Board adopt a resolution making this recommendation effective.

Respectfully submitted,

VICTOR M. MENDEZ, Director
Arizona Department of Transportation

RES. NO.
PROJECT:
HIGHWAY:
SECTION:
ROUTE NO.:
ENG. DIST.:
COUNTY:

CERTIFICATION

I, VICTOR M. MENDEZ, Director of the Arizona Department of Transportation, do hereby certify that the foregoing is a true and correct copy from the minutes of the Transportation Board made in official session on .

IN WITNESS WHEREOF I have hereunto set my hand and the official seal of the Transportation Board on .

VICTOR M. MENDEZ, Director
Arizona Department of Transportation

ARIZONA DEPARTMENT OF TRANSPORTATION
205 SOUTH 17TH AVENUE
R/W Operations, MD 612E
PHOENIX, AZ 85007-3213

RES. NO.
PROJECT:
HIGHWAY:
SECTION:
ROUTE NO.:
ENG. DIST.:
COUNTY:
PARCEL:

RESOLUTION OF DISPOSAL

VICTOR M. MENDEZ, Director, Arizona Department of Transportation, on , presented and filed with this Transportation Board his written report under Arizona Revised Statutes Section 28-7046, recommending the removal of easement right of way from the State Transportation System.

The easement right of way to be removed from the State Transportation System is depicted in Appendix "A" and delineated on maps and plans on file in the office of the State Engineer, Intermodal Transportation Division, Phoenix, Arizona, entitled "Right of Way Plans, Highway, Project ."

WHEREAS said easement right of way is no longer needed for State transportation purposes, nor will it be used for public highway purposes; and

WHEREAS because of these premises, this Board finds public convenience requires that said easement right of way be removed from the State Transportation System, extinguished and relinquished to ; therefore be it

RESOLVED that the recommendation of the Director is adopted and made a part of this resolution; be it further

RESOLVED that the easement right of way is removed from the State Transportation System, extinguished and relinquished to .

RES. NO.
PROJECT:
HIGHWAY:
SECTION:
ROUTE NO.:
ENG. DIST.:
COUNTY:

REPORT AND RECOMMENDATION

TO THE HONORABLE ARIZONA TRANSPORTATION BOARD:

The Intermodal Transportation Division has made a thorough investigation concerning the disposal of easement right of way originally acquired for use within the above referenced project.

This portion of was previously established as a state route and state highway by .

This easement for right of way is no longer required in the State Transportation System, nor will it be used for public highway purposes.

Accordingly, I recommend that said easement right of way be removed from the State Transportation System, extinguished and relinquished, to , according to law.

The easement right of way to be removed from the State Transportation System was acquired by and is depicted in Appendix "A" and delineated on maps and plans on file in the office of the State Engineer, Intermodal Transportation Division, Phoenix, Arizona, entitled "Right of Way Plans, Highway, Project ."

All other rights of way, easements and appurtenances thereto, subject to the provisions of Arizona Revised Statutes Section 28-7210, shall continue as they existed prior to the disposal by relinquishment of the easement right of way depicted in Appendix "A".

RES. NO.
PROJECT:
HIGHWAY:
SECTION:
ROUTE NO.:
ENG. DIST.:
COUNTY:

Pursuant to Arizona Revised Statutes Section 28-7046, I recommend the adoption of a resolution making this recommendation effective.

Respectfully submitted,

VICTOR M. MENDEZ, Director
Arizona Department of Transportation

RES. NO.
PROJECT:
HIGHWAY:
SECTION:
ROUTE NO.:
ENG. DIST.:
COUNTY:

CERTIFICATION

I, VICTOR M. MENDEZ, Director of the Arizona Department of Transportation, do hereby certify that the foregoing is a true and correct copy from the minutes of the Transportation Board made in official session on .

IN WITNESS WHEREOF I have hereunto set my hand and the official seal of the Transportation Board on .

VICTOR M. MENDEZ, Director
Arizona Department of Transportation

Disposal 3/21/06

Sample Offer Letter for BLM ROW Grant

BLM LETTERHEAD

AZA-_____ [BLM Office Code]

[date]

Arizona Department of Transportation

Dear _____:

Enclosed is a right-of-way (ROW) grant offer (BLM Form 2800-14) for your proposed _____, Serial Number AZA-_____. Please review the grant form, sign in the space provided, and return to the address shown above. Upon receipt of the signed grant offer on BLM Form 2800-14, the Bureau of Land Management (BLM) will be able to issue the ROW grant absent any unresolved issues.

This ROW grant, and the authority to use the public lands described in the document, becomes effective on the date it is signed by a BLM Authorized Officer (AO). A copy of the signed ROW grant will be returned to you when signed by the BLM AO.

You are allowed 30 days from receipt of this offer in which to submit the signed ROW grant. If we do not receive the signed grant within thirty days, the application may be denied.

If you have any questions, please contact _____ at _____.

Sincerely,

Field Manager

Enclosure

Offer Ltr 3-21-06

Sample Decision Letter Issuing ROW Grant)
BLM Letterhead

AZA-_____ [BLM Office Code]

[date]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Arizona Department of Transportation

DECISION

Right-of-Way Grant AZA-_____Issued

Enclosed is a copy of Right-of-Way (ROW) Grant (Serial Number AZA-_____) which was approved by the Bureau of Land Management on _____. The issuance of this ROW Grant constitutes a final decision by the BLM in this matter.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days of receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Lands Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Sincerely,

Field Manager

2 Enclosures
ROW Grant AZA-_____
Form 1842-1, Information on Taking Appeals to the Board of Land Appeals

Decision Ltr 3/21/06

COMMON ACRONYMS & ABBREVIATIONS AND GLOSSARY OF TERMS

PREAMBLE:

Between 2000 and 2004, Subgroups consisting of representatives from the Arizona Department of Transportation and the Arizona offices of the Bureau of Land Management and the Federal Highway Administration met to increase efficiency, effectiveness and standardization of processes in the following areas of interagency coordination: Right-of-Way, National Environmental Policy Act (NEPA), Access and Materials.

The three agencies found that they often used terms differently. Therefore, they determined that a joint understanding of commonly-used words would be beneficial. It is with this intent that the following *Common Acronyms & Abbreviations* and *Glossary of Terms* was developed. *NEPA Words That Have Caused Confusion* follow with additional discussion.

The definitions provided are not intended to be utilized as legal definitions, but rather to facilitate communications between these three agencies when discussing interagency issues.

ADDITIONAL REFERENCES:

Arizona Revised Statutes governing right-of-way issues primarily include §28-7091 - §28-7215.

United States Code.

Code of Federal Regulations, Title 23, Title 30 and Title 43.

Memorandum of Understanding between ADOT, BLM & FHWA, dated April 23, 2003.

Operating Agreement, dated April 23, 2003 (supplements MOU).

Amendment Number 1, dated September 10, 2004 modifying MOU and Operating Agreement dated April 23, 2003.

More detailed information regarding ADOT's environmental analysis processes can be found on the Environmental and Enhancement Group website which can be accessed either via the ADOT Net Homepage – select "About ADOT" – "by Section/Group" – "Environmental Planning"; or directly via the internet at http://adotenvironmental.com

ACRONYMS AND ABBREVIATIONS

AASHTO: American Association of State Highway Transportation Officials

ADEQ: Arizona Department of Environmental Quality

ADOT: Arizona Department of Transportation

AO: Authorized Officer (BLM Field Manager or delegate)

ARPA: Archaeological Resources Protection Act

ARS: Arizona Revised Statutes

AS: Archaeological Survey (relating to environmental analysis)

BE: Biological Evaluation (relating to environmental analysis)

BLM: Bureau of Land Management

C&S: ADOT Contracts & Specifications Section

CAA: Clean Air Act

CE: Categorical Exclusion, as used by ADOT/FHWA (relating to environmental analysis)

CEQ: Council on Environmental Quality

CFR: Code of Federal Regulations

CWA: Clean Water Act

CX: Categorical Exclusion, as used by BLM (relating to environmental analysis)

DCR: Design Concept Report

DOI: Department of Interior

DOT: Department of Transportation

EA: Environmental Assessment (relating to environmental analysis)

ED: Environmental Determination (relating to environmental analysis)

EEG: ADOT Environmental and Enhancement Group

EIS: Environmental Impact Statement (relating to environmental analysis)

EPG: ADOT previous Environmental Planning Group (renamed EEG)

ESA: Endangered Species Act

ESA: Environmental Site Assessment (Phase II – site specific HAZMAT identification) (Phase III – site specific HAZMAT remediation).
May also be used to refer to the "Endangered Species Act" (see NEPA Glossary)

FHWA: Federal Highway Administration

FLPMA: Federal Land Policy and Management Act

FLT: Federal Land Transfer

FONSI: Finding Of No Significant Impact (relating to environmental analysis)

FUP: Free Use Permit

H(#): Haul Road Number (for material sites)

HAZMAT: Hazardous Materials (part of environmental assessment)

HED: Highway Easement Deed

ID Team: Inter-disciplinary Team

ISA: Initial Site Assessment (Phase I) (parcel-specific assessment for HAZMAT)

LMP: Land Management Plan

LOC: Letter of Consent (issued by BLM)

LRMP: BLM Land and Resource Management Plan

LUP: Land Use Plan

MMA: Minerals Management Act

MOU: Memorandum of Understanding (specifically between ADOT/BLM/FHWA dated April 23, 2003)

MS: Material Site

MSEB: Material Site Excavation Boundaries (ADOT material site where material is approved for excavation or removal)

MSROW: Material Site Right-of-Way

MUTCD: Manual of Uniform Traffic Control Devices

MVD: Motor Vehicle Division

NAGPRA: Native American Graves Protection and Repatriation Act

NEPA: National Environmental Policy Act

NHPA: National Historic Preservation Act

NHS: National Highway System

NPDES: National Pollutant Discharge Elimination System

OA: Operating Agreement

PA: Project Assessment (relating to environmental analysis)

PISA: Preliminary Initial Site Assessment (project overview for HAZMAT)

PM: ADOT or BLM Project Manager; may also be used to refer to a material site “Plat Map” (ADOT map showing material site boundaries & haul road location)

PR: Project Reference

PRWB: Proposed Right-of-Way Boundaries (material site expansion area)

PS&E:	Plans, Specifications & Estimate (ADOT's bid package prepared for advertising and soliciting contractor bids for a highway project)
PS:	Pit Sketch (ADOT aerial photo showing location of material site & usually the haul road location)
R/W:	Right-of-way (also "ROW")
ROD:	Record of Decision (action by FHWA relating to environmental analysis)
ROW:	Right-of-Way
SHPO:	State Historic Preservation Officer
STB:	State Transportation Board
T & E:	Threatened and Endangered
TCE:	Temporary Construction Easement
Title 23:	Title 23 United States Code. Highways
Title 30:	Title 30 United States Code. Mineral Lands & Mining
Title 43	Title 43 United States Code, Public Lands: Interior
TUP:	Temporary Use Permit
VER:	Valid Existing Rights

GLOSSARY OF TERMS

ABANDONMENT: This term is used differently by ADOT, FHWA & BLM. ADOT uses this term to convey R/W to another governmental agency for continued use as a transportation facility. FHWA utilizes this term to mean the relinquishment of public interest in existing R/W, with no intent to reclaim or reuse for R/W purposes (an action which ADOT calls either "vacate and extinguishment" or "vacate and relinquishment", depending on whether the lands are public or private). BLM uses this term when the authorized user "walks away" or abandons the site without notification.

ACCESS CONTROL: The process of regulating ingress to or egress from the highway.

ACCESS RIGHTS: The right of ingress to and egress from a property that abuts an existing street or highway that is a private property right that cannot be taken without just compensation. However, this right is not unlimited, but subordinate to the public's safe use of the route. Thus, abutting owners are not entitled to access at any and all points along the public roadway, rather to reasonable and adequate access.

ACCESS: Regarding highways refers to the right to ingress (enter) or egress (leave) the highway facility by a vehicle, pedestrian, bicycle or other user.

ACQUISITION: The process and those activities required to obtain an interest in, and possession of, real property.

AGENCY: A governmental organization (Federal, State, or local) or a quasi-governmental organization (such as a utility company) that acquires real property. NOTE: BLM does not include quasi-governmental entities in their use of this term.

APPRAISAL: The act or process by which a qualified appraiser develops an independent opinion of defined value of a property as of a specific date, based on analysis of relevant market information. The term "appraisal" is also synonymous with the appraiser's report setting forth such opinions. NOTE: The transfer of land from BLM to ADOT does not require appraisal.

APPROPRIATION: The act of acquiring right-of-way on BLM lands for federal-aid highway purposes, issued by BLM to FHWA under Title 23.

AS-BUILTS: The final set of ADOT construction plans generated upon completion of a project showing improvements as ultimately constructed. These plans often differ from the plans generated at the time the contract for the project is awarded due to changes made "in the field" during the construction and landscaping phases of a project. BLM uses this term to define a survey or similar document that shows the alignment "footprint" after construction, to document the actual surface of the land occupied by the authorized user. NOTE: This information is contained in ADOT's final R/W plans.

→ ASSIGNMENT: The conveyance of right-of-way to another governmental agency for continued use as a public transportation facility. (This is also called “abandonment” by ADOT).

AUTHORIZED OFFICER: BLM Field Manager or delegate who is authorized to consent to FHWA appropriation of BLM lands.

COMMUNITY PIT: A relatively small, defined area from which BLM can make disposals

for mineral materials to many persons. The surface disturbance is usually extensive in a confined area.

CONSTRUCTION PLANS: A set of engineering design plans which define the improvements for a highway project. Construction plans differ from R/W plans in that they specifically define construction issues, including existing and proposed highway, profiles, typical sections, new slope limits, and all construction features, structures and items. Also called "Design Plans".

DESIGN PLANS: See "Construction Plans".

DISPOSAL: The conveyance of the State's interest in real property determined to be in excess of State transportation needs. Disposal by ADOT may be accomplished by sale or any of several formal processes, as outlined in §28-7095 and §28-7201-§28-7215. See also "Abandonment", "Extinguishment", "Relinquishment", and "Vacate" for definitions of various processes. NOTE: Any disposal of real property by ADOT (other than excess land sales) requires a resolution by the State Transportation Board in accordance with §28-7046.

EASEMENT: An interest in real property that conveys specific use, but not ownership rights in another's property. Easements can be permanent or temporary and required for such purposes as access, drainage, ponding, slopes, or perpetual easements for the roadway itself. The term is used to describe either the right itself or the document conveying the right. See "Highway Easement Deed" and "Temporary Construction Easement".

ENCROACHMENT: A physical feature (not placed by ADOT) within or extending into the right-of-way which could be authorized or unauthorized.

ENVIRONMENTAL ANALYSIS: An assessment of potential impacts for all highway-related projects. This analysis considers such factors as: existing land uses, hazardous materials, air quality, noise abatement, sensitive or endangered species whose habitat may be within the project area, historic sites, cultural resources and other socio-economic issues. Additional information regarding environmental issues can be found in the NEPA Glossary and on ADOT's Environmental Planning Group website, which is listed in the Additional References section.

EXTINGUISHMENT: ADOT utilizes this term to vacate the transportation facility and extinguish interests in existing R/W that is held via easement interest only from private individuals.

FEDERAL LAND TRANSFER: FHWA activities involved in the appropriation of lands from another Federal agency (such as BLM).

FEDERAL-AID HIGHWAY: Highway facilities on the Federal-Aid Highway System which involve or are eligible for federal-aid funding. Interstates, primary, secondary & urban roads and off-system bridge replacements are major components of the federal highway program.

HASH MARKS: The symbol used on plan sheet to visually represent the access control described in the deeds or legal documents.

HAUL ROADS: Access roads (which are not public roadways) leading to an ADOT material site.

HIGHWAY EASEMENT DEED: The conveying document issued by FHWA to ADOT for permanent right-of-way (both linear rights of way and material sites & haul roads).

LETTER OF CONSENT: The document issued by BLM authorizing FHWA to appropriate

the public lands and transfer to ADOT for highway purposes. Also grants ADOT immediate right of entry to commence construction activities in advance of actual HED conveyance.

LODE CLAIM: Claim for minerals, usually metallic minerals i.e. gold, lead, silver zinc, copper, lead, etc., that are in place and have not been moved by erosive forces - water, wind, ice, gravity. Maximum dimensions are 600 ft by 1500 ft and should be a parallelogram. The end lines - short dimension - must be parallel. Claimant has extra lateral rights, if holding apex of vein, to mine vein down dip.

MAINTENANCE: Includes, but is not limited to, grading, resurfacing, cleaning culverts, clearing roadside brush, pruning vegetation, surveying, striping, etc. If performed within existing right-of-way, no permit is needed.

MATERIAL SITES: Sites approved for excavation and removal of material to be used in the construction, maintenance and/or operation of an ADOT project.

MATERIALS: For purposes of this Operating Agreement, "materials" are borrow (including soil), sub base and base materials, mineral aggregates for concrete structures and mineral aggregates for surfacing materials specified for use from sources either designated on the project plans or in the Special Provisions.

MILL SITE CLAIM: A claim for non-mineral land. Maximum of 5 acres in size and usually located by legal subdivision. Should be used for processing and storage of minerals and waste products from the processing of those minerals.

MINERAL ESTATE: Anything that has value separate and distinct from the enjoyment and use of the surface estate. The "mineral estate" and the "subsurface estate" are the same as far as minerals are concerned.

MINING CLAIM: Any unpatented mining claim, mill site or tunnel site properly located and recorded under the mining laws. "Unpatented" means ownership of the land and minerals has not been granted by patent (deed) from the U.S. to another entity.

NATIONAL HIGHWAY SYSTEM: A system of highways as defined in 23 U.S.C. 103(b).

NEGOTIATIONS: The process used by acquiring agencies to reach amicable agreements with property owners for the acquisition of needed property.

NON-FEDERAL-AID HIGHWAY: State roads not eligible for federal-aid funding, which are the sole responsibility of the state.

OPERATING AGREEMENT: A documented agreement between ADOT, BLM and FHWA establishing procedures and supplementing the Memorandum of Understanding (dated April 23, 2003).

OVERSIGHT AGREEMENT: An agreement between ADOT and FHWA regarding project Administrative Procedures for Federal Projects (most recently dated December 12, 2002).

OWNERSHIP RECORD SHEET: A component of the R/W plans, which provides parcel specific information, i.e. R/W parcel number, owner name, legal description, total parcel size, existing R/W, and new R/W requirements (both fee & easement).

PARCEL: A piece of land in one ownership entity. ADOT assigns a R/W Parcel Number to each parcel to be acquired which is used throughout the acquisition process and also becomes a historical reference number.

PERSONAL PROPERTY: Property that is not permanently attached to, or a part of the real

property. Essentially, it is property that can be moved.

PLACER CLAIM: Claim for minerals that have been moved by erosive forces. Usually located by legal subdivision. Standard size is 20 acres. Association placers can take in more ground, up to a total of 160 acres, but must have additional locators (claimants) for each increment of 20 acres.

PRIOR RIGHTS: The identification that utilities, public and private, were in place prior to establishment of a public roadway. If the roadway is in place prior to the establishment of the utility, then the utilities are there "by permit" and must relocate at their expense. If the utility has "prior rights" then ADOT is responsible for utility relocations.

REAL PROPERTY: Land and any improvements affixed thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

REALTY PERMITS: A generic term used to refer collectively to the various types of land use authorizations (such as temporary use permits, rights-of-way, 2920 permits, etc.) issued by the BLM allowing use of BLM-managed surface estate.

RELINQUISHMENT: This term is used differently by ADOT & FHWA. ADOT uses this term to vacate the transportation facility and return lands acquired (typically via a perpetual easement type interest) from Federal or State agencies (such as BLM, BOR, BIA, FS, SLD) back to these agencies when the R/W is no longer to be utilized as a transportation facility. FHWA utilizes this term to mean the conveyance of the R/W to another governmental agency for continued use as a transportation facility (ADOT calls this action "abandonment"). BLM uses this term when the authorized user no longer needs the use authorization and voluntarily gives it up.

→ REVERSION:
The return to BLM of permanent highway and material site right-of-way or of temporary construction easements (where the period of the easement has not yet expired) no longer needed for state transportation purposes and not appropriate for assignment. (This is also called “relinquishment” by ADOT).

RIGHT-OF-WAY PLANS: R/W plans consist of engineering drawings, which delineate the right-of-way requirements (both existing and proposed) for a highway project. R/W Plans differ from construction plans in that they are primarily concerned with R/W issues and show such features as parcel ownership limits and existing improvements. R/W plans are developed concurrently with the construction/design plans at various stages of submittal.

RIGHT-OF-WAY: R/W consists of real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility. R/W is also the name of the Group within ADOT responsible for acquiring or disposing of such real property.

SCOPING: NEPA process wherein stakeholder agencies and the public are given the opportunity to express concerns and identify issues regarding proposed highway project.

SPLIT ESTATE: A condition of title where full fee estate is not owned by one entity, i.e., one entity owns the surface and another owns the full mineral estate, or one entity owns the oil and gas rights (estate) and another owns the surface and all other mineral rights (estate), etc. These estates/rights maybe split between/among two or more entities.

STATE HIGHWAY: State highways consist of the parts of the state routes designated and accepted as state highways by the State Transportation Board.

STATE ROUTE: State routes consist of corridor locations that have been designated by the State Transportation Board as a location for the construction of a state highway.

SURFACE ESTATE: Anything that is not included in the mineral estate.

TEMPORARY CONSTRUCTION EASEMENT: By definition, TCEs are temporary in nature and the areas involved revert back to the property owner at a specified time, typically upon completion of the construction project for which it was acquired. TCEs typically fall into two categories: (1) those benefiting the property owner for purposes of driveway or utility reconnection, fencing replacement, etc.; or (2) those required by the Department to facilitate construction of the project for purposes such as detour roads, slope flattening, drainage channelization, storage of materials, etc.

→ TERMINATION:
The return to BLM of highway and material site right-of-way due to the lapse of an easement resulting from construction activity not being initiated (i.e., non use) or when the time period set in a temporary construction easement has expired.

TUNNEL SITE CLAIM: Claim for land to construct mine workings for drainage of or access to mine workings. The claim is a maximum of 3000 feet in length. If minerals are encountered, claimant has possessory right to 1500 ft of any blind loads cut, discovered or intersected by such tunnel.

TYPES OF MATERIAL SITES: There are Title 23 material sites for use on federal aid eligible projects and Title 30 material sites for use on any project. Title 30 material sites include community pits and exclusive use pits.

TYPES OF MINING CLAIMS: Types of mining claims include *lode claims, placer claims, mill site claims and tunnel site claims.*

UTILITY FACILITY: Electric, gas, water, steam power, or materials transmission or distribution system; any communications system including cable television; and any fixtures, equipment, transportation system, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

UTILITY RELOCATION: The adjustment of a utility facility required by a highway improvement project, which may include the acquisition of additional R/W in order to remove and reinstall the displaced facility.

VACATE: The termination of ADOT's easement interest in existing rights of way, with no intent to reclaim or reuse for R/W by a public agency. This action typically accompanies a relinquishment or extinguishment action.

VALID EXISTING RIGHTS: The rights for use of BLM-managed lands, regardless of whether there is written documentation of such rights. These rights may have been granted by Congress (i.e. RS2477 rights-of-way), Executive or Presidential proclamation, BLM, a previous land owner, another federal agency when the land was under their jurisdiction, mining claims properly filed under the General Mining Laws, etc.

NEPA WORDS THAT HAVE CAUSED CONFUSION

The Arizona Department of Transportation (ADOT); the Bureau of Land Management (BLM), an agency within the Department of the Interior (DOI); and the Federal Highway Administration (FHWA), an agency within the Department of Transportation (DOT); have entered into a partnership to cooperate in planning efforts and to facilitate completion of projects affecting all three agencies. Each agency has its own mission, value structure and way of doing business, which have contributed to each agency's development of its own jargon. Often, the same word or phrase has different implications across the agencies. Since ADOT does much of the National Environmental Policy Act (NEPA) staff work for the FHWA, these agencies have developed relatively similar interpretations. Conversely, the BLM's NEPA regulations were promulgated within the DOI rather than the DOT where different processes and agency mission cause differing interpretations and results when compared to those in FHWA and ADOT. The following matrix has been assembled to summarize the variation in definition, innuendo, and implication where it occurs. The definitions provided are not intended to be utilized as legal definitions, but rather to display how the agencies have resolved to operate with the apparent conflicts.

TOPIC	JARGON	DEFINITION	DISCUSSION
Jurisdiction	Lead Agency	"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal. (40 Code of Federal Regulations (CFR) 1508.15) "Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement (40 CFR 1508.16	The lead federal agency has the responsibility to certify the adequacy of the NEPA process as part of its decision, therefore, the NEPA process follows the lead federal agency's regulation. As the lead federal agency for highway projects with a federal "trigger," the FHWA is the responsible federal agency for all NEPA within the ROW. As the federal agency holding the BLM easement for the highway, the FHWA is also the responsible agency for activities within the ROW. Both as a cooperating partner and as an agent of FHWA, ADOT is responsible for the planning, design, construction and maintenance of the State Highway System within Arizona. As the management agency for public lands, the BLM retains responsibility for non-highway activities (i.e., for actions not undertaken under Title 23). The BLM has an oversight responsibility within FHWA easements to monitor project implementation and maintenance activities to ensure environmental requirements (Clean Water Act, Clean Air Act, National Pollutant Discharge Elimination System, etc.) and BLM Land Management Plan (LUP) objectives are being met. The BLM discusses perceived shortcomings with FHWA as the ultimate authority for lands within roadway easements.
	Cooperating Agency	"Cooperating Agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in §1501.6. A state or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe may by agreement with the lead agency become a cooperating agency. (40 CFR 1508.5)	The Council on Environmental Quality (CEQ) regulation recognizes that overlapping federal jurisdictions have different missions and, hence, regulations. This creates a dilemma when the regulations don't fit together easily. The designated lead federal agency ordinarily is the agency responsible for the project, and therefore, its regulations have primacy. As a matter of course and per the CEQ regulations, other agencies are invited to participate in the decision process as cooperating agencies.

TOPIC	JARGON	DEFINITION	DISCUSSION
		Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it as a cooperating agency. (40 CFR 1501.7)	
	Conformance with the BLM Land Management Plan	Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it as a cooperating agency. (40 CFR 1501.7)	FHWA has a responsibility to ensure its project is not outside the LUP direction. For example, BLM's LUP provides for protection of the sonoran desert tortoise, which is not subject to the Endangered Species Act and therefore its protection is not a matter of law. As the lead agency, the FHWA ensures that the highway project designs provide for the protection of sonoran desert tortoise as prescribed in the BLM LUP. The CEQ regulation recognizes that there are overlapping federal jurisdictions and that each agency has a different mission and, hence, different regulations. This creates a dilemma when the regulations don't fit together easily. The designated lead federal agency ordinarily is the agency responsible for the project, and therefore, its regulations have primacy. Even so, the project must incorporate the needs of cooperating agencies. LUPs were developed by the BLM, after intensive public scoping, to provide a range of "zoning" options that describe appropriate uses of specific public lands. The BLM is required to manage the public lands as it committed to within its LUP – regardless the proponent - or it must amend the plan to provide consistency.
Decision	Decision	At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record … shall: a) state what the decision	The CEQ uses the term "decision" very specifically to refer to the document that formally approves a project made following consideration of the data assembled in the NEPA analysis for the project. The decision is required to include several specific elements. All three agencies adhere to the CEQ definition in discussions relative

TOPIC	JARGON	DEFINITION	DISCUSSION
		was. b) identify all alternatives considered … . c) state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not why they were not. A monitoring and enforcement program shall be adopted and summarized wherever applicable for any mitigation. 40 CFR 1505.2.	to NEPA. The BLM maintains formal use of the word "decision" by restricting its use to identified actions that can be appealed (where an authorizing signature is applied). The BLM grant through FHWA to ADOT of land needed for a project (i.e., ROW via Title 23) is not a BLM decision and is not appealable. Conversely, the FHWA uses the strict NEPA sense for "decision" within the context of NEPA documents, but uses the term informally to discuss resolutions of design issues resolved within the context of the NEPA decision. FHWA makes its NEPA decisions on corridors rather than on alignments. Therefore, unless the corridor changes (i.e., a design would exceed the ROW, there is a change in mitigation, etc.) the alignment may be modified without a new NEPA decision. For example, both bridges and box culverts can be designed to accommodate large game wildlife. Either could be substituted during design and remain within the scope of the NEPA decision. However, a culvert would likely not accommodate large game wildlife and could not be substituted for a bridge during design if the NEPA document prescribed a bridge to promote large game wildlife crossing at that location. A modified (new) NEPA decision would have to be made.
	Determination	A Determination of NEPA Adequacy (DNA) is a conclusion by BLM that NEPA documentation previously prepared by the BLM fully covers a proposed action (site specific) and no additional analysis is needed.	BLM's regulations also allow the use of a DNA, which is not a "new, formal NEPA decision." Rather, the DNA is a finding that a specific activity or action was disclosed and addressed within the original NEPA decision. As such, it is similar to FHWA's "Supplemental Information Report. "
	Mitigation /mitigating the proposal / pre-mitigation	"Mitigation" includes: (a) Avoiding the impact altogether by not taking a certain action or parts of an action. (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment. (d) Reducing or	FHWA and ADOT prefer to develop mitigation measures as an integral part of each alternative. This results in the disclosure of a "net impact to the environment" in a straightforward discussion. Conversely, another approach is to develop an unmitigated alternative, identify all impacts, identify mitigation measures, identify the degree the mitigation measures mitigate the impact, and finally disclose the "net impact to the environment." FHWA and ADOT consider the latter approach to be both confusing and an unrealistic portrayal of the

TOPIC	JARGON	DEFINITION	DISCUSSION
		eliminating the impact over time by preservation and maintenance operations during the life of the action. (e) Compensating for the impact by replacing or providing substitute resources or environments. (CFR 1508.20)	alternative being proposed.
Analysis Process	Corridor	A strip of land between two termini within which traffic, topography, environment, and other characteristics are evaluated for transportation purposes. (American Association of State Highway Transportation Officials (AASHTO))	Outside FHWA and ADOT, the terms "alignment" and "corridor" are often perceived as equivalent. This has caused some difficulty in communications. A corridor is a generalized location where road alignments are feasible. With some qualifications, the FHWA and ADOT NEPA process will provide an environmental clearance for the entire corridor. Corridors are wide enough to accommodate several different individual alignments. The design phase will establish the actual alignment through an iterative process that responds to the environmental clearance, AASHTO requirements, ADOT design criteria, district and Motor Vehicle Division requests, design team discussions, and other factors of varying influence.
	Alternative	e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment. (40 CFR 1500.2 (e)) Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall: a) rigorously	The NEPA regulations promulgated by FHWA recognize that the design phase for linear transportation projects have a very large cost. The regulations require the development of alternatives, but do not require the development of a "proposed action" against which to array alternatives. Therefore, in its NEPA documents the FHWA advocates the elimination of unreasonable alternatives as soon as feasible to concentrate emphasis on the best alternatives in design. One action alternative and one no-action alternative is considered normal. The NEPA regulations promulgated by BLM advocate the elimination of unreasonable alternatives as part of the alternative selection process, but advocates carrying all reasonable alternatives through the complete analysis. DOI regulations require the articulation of a "proposed action" to compare alternatives to. Therefore, two or more action alternatives and one no-action alternative is considered normal.

TOPIC	JARGON	DEFINITION	DISCUSSION
		explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. b) … … c) … … d) … … e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference. f) … . (40 CFR 1502.14) d) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives … (40 CFR 1505.1) It is the policy of the Administration that: … b) alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of social, economic, and environmental impacts of the proposed transportation improvement ; and of national, state, and local environmental protection goals. (23 CFR 771.105)	
	Significant	"Significantly" as used in NEPA requires consideration of both context and intensity: a) context. b) intensity 1) – 10). (40 CFR 1508.27) "Finding of no significant impact: means a document by a Federal agency briefly presenting the reasons why an action, not	Due to its specific meaning under NEPA, the word "significantly" is not used loosely by federal agencies.

TOPIC	JARGON	DEFINITION	DISCUSSION
		otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. (40 CFR 1508.13)	
Design Process	Alignment	Horizontal alignment – A combination of tangents, horizontal curves and spirals which defines the horizontal location of a roadway. Vertical Alignment – A combination of tangent grades and vertical curves which define the vertical location of a roadway. (ADOT)	Outside FHWA and ADOT, the terms "alignment" and "corridor" are often perceived as equivalent. This has caused some difficulty in communication. An alignment is a site-specific location for the road. FHWA and ADOT utilize NEPA regulations promulgated by the DOT, which were developed primarily to analyze linear transportation projects with consideration given to the planning and design processes these agencies use. These agencies consider the alignment to be an element that is created during the design phase, which occurs after the NEPA analysis phase. Therefore, in its NEPA documents the FHWA has adopted conventions that disclose project specifics less intricately than do BLM documents. NEPA implementation regulations promulgated by the Department of the Interior were developed primarily to analyze a wide variety of projects of BLM initiative as well as projects generated in the private sector which a proponent presents as an appropriate use of public lands under BLM regulation. The BLM regulations were developed to analyze a wide range of ground disturbing projects. It ordinarily has more site-specific information about the proposal and its effects. These regulation require the BLM to disclose "site-specific" impacts during the NEPA process. In its NEPA documents the BLM has adopted conventions that disclose project specifics more intricately than the FHWA's documents. The NEPA documents completed by the FHWA for highway projects crossing public lands under BLM jurisdiction look different from NEPA documents created by the BLM for the projects it implements elsewhere on the public land it administers.
	Refinements / refining the alignment	c) Agencies: 1) shall prepare supplements to either draft or final environmental impact statements if: i) The agency makes	The NEPA analysis identifies the right-of-way within which a generalized alignment will be placed and a facility designed. The actual design and cross section, as well as the construction plans, are developed through a

TOPIC	JARGON	DEFINITION	DISCUSSION
		substantial changes in the proposed action that are relevant to environmental concerns; or ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (40 CFR 1502.9)	series of iterations starting with the generalized alignment. The generalized alignment is refined to the final alignment as more site-specific survey data and agency input is acquired and design criteria, AASHTO requirements, etc. are incorporated in more detail than is feasible during the NEPA analysis. The iterations must implement the environmental clearance and remain within the scope of the analysis. If the iterations exceed the scope of the analysis - for instance, if the alignment were to go outside the ROW - additional NEPA analysis is required. In its NEPA documents the BLM has adopted conventions that disclose project specifics more intricately than the FHWA's documents. For example, the BLM would prefer that a more specific alignment be identified as part of the NEPA process than FHWA considers feasible for large highway projects. A fixed alignment would allow more intricate discussion of impacts during the analysis, similar to discussions done under the BLM regulation.
Requirement / Wants		Requirement – A requisite or essential condition. Want – To have or feel a need or desire.	A "requirement" is either regulatory or the official, written agency policy and is enforceable. A "want" is a desire and is permissive. The CEQ regulations promote cost control in numerous places. Some of the more well known relate to paperwork reduction by confining the analysis to the essential issues to sharply define the issues and provide a clear basis for choice among options. (40 CFR 1500.1; 40 CFR 1500.2 (f); 40 CFR 1500.4; 40 CFR 1502.14; etc.). FHWA and ADOT representatives have questioned whether some specific items introduced by some BLM representatives as being "required by the LUP" are actually necessary to meet the objectives of the LUP or are merely wants that are not necessary to achieve conditions targeted by the LUP. BLM representatives propose project design and mitigation measures similar to those required on similar projects generated internally or proposed by business or a private party.