



MEMORANDUM

Date: December 5, 2018

To: Cooperating and Participating Agencies

From: Jay Van Echo, Arizona Department of Transportation (ADOT)
Rebecca Yedlin, Federal Highways Administration (FHWA)
Aryan Lirange, FHWA

cc: Document Control

SUBJECT: **Addendum 2 to the I-11 Public Outreach and Agency Coordination Plan dated January 2017**

The *I-11 Public Outreach and Agency Coordination Plan*, dated January 2017, identifies the outreach efforts that FHWA and ADOT will undertake during the I-11 Corridor Tier 1 Environmental Impact Statement (EIS). An addendum in September 2017 was published to revise the overall project schedule. The purpose of this addendum is to change the United States Army Corps of Engineers (USACE) to Cooperating Agency status, as well as provide further updates on schedule information.

During the initial scoping process for the I-11 Tier 1 EIS, the USACE anticipated a low level of participation due to the lack of an associated Section 404 permit action. At their request, the USACE was designated a Participating Agency on June 20, 2016. The USACE has since developed a more defined process to merge Section 404 permitting with tiered National Environmental Policy Act (NEPA) analyses. In order to provide a greater level of input throughout the remainder of the study, the USACE has requested Cooperating Agency status in a letter dated October 25, 2018. FHWA has accepted this request, and the USACE is now a Cooperating Agency.

An updated version of **Table 5-1: Cooperating Agencies** and **Table 5-3: Major Deliverables and Review Schedule** are provided below. Changes from the original version of the tables are shown in red. The USACE letter requesting Cooperating Agency status is attached.

I-11 CORRIDOR TIER 1 EIS



Table 5-1 Cooperating Agencies

Agency	Response to Invitation
Federal	
Bureau of Land Management (BLM)	Accepted
Federal Aviation Administration	Accepted
Federal Railroad Administration	Accepted
National Park Service	Accepted
United States (US) Army Corps of Engineers (USACE)	Requested to be a Cooperating Agency on 10/25/2018; Accepted by FHWA
US Bureau of Reclamation	Accepted
US Environmental Protection Agency (USEPA)	Accepted
US Fish and Wildlife Service	Accepted
US Forest Service, Coronado National Forest	Accepted
Western Area Power Administration (Western)	Opted to be Participating Agency
State	
Arizona Game and Fish Department (AGFD)	Invited as Participating Agency; accepted as Cooperating Agency upon request

Table 5-3: Major Deliverables and Review Schedule

Major Deliverable	Schedule for Agency Receipt		Review Period
	Cooperating	Participating	
Public Outreach and Agency Coordination Plan	August 2016	August 2016	30 days
Scoping Summary Report	September 2016	September 2016	30 days
Purpose and Need	November 2016	December 2016	30 days
Alternatives Selection Report Methodology	February 2017	February 2017	30 days
Alternatives Selection Report	October 2017	October 2017	30 days
Tier 1 EIS Annotated Outline and Methodology	July 2017	July 2017	30 days
Administrative Draft Tier 1 EIS	July 2018	Not Applicable	30 days
Draft Tier 1 EIS	January 2019	January 2019	45 day minimum
Administrative Draft Final Tier 1 EIS	Fall 2019	Not Applicable	30 days
Final Tier 1 EIS	Winter 2020	Winter 2020	30 day minimum
Record of Decision	Summer 2020	Summer 2020	Not Applicable



**Attachment 1.
USACE Cooperating Agency Status Request
Letter**



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, LOS ANGELES DISTRICT
3636 NORTH CENTRAL AVENUE SUITE 900
PHOENIX, AZ 85012-1939

October 25, 2018

SUBJECT: Participating Agency Status and Process for Determining the Least Environmentally Damaging Practicable Alternative

Karla S. Petty
Division Administrator
Federal Highway Administration, Arizona Division
4000 North Central Avenue Suite 1500
Phoenix, Arizona 850012-3500

Dear Ms. Petty:

I am responding to a September 20, 2018 meeting between the Federal Highway Administration (FHWA), the Arizona Department of Transportation ADOT), and my staff relating to the Tier 1 Environmental Impact Study (EIS) being prepared under the National Environmental Policy Act (NEPA) for the Interstate 11 Corridor (I-11) between Nogales and Wickenburg, Arizona. The Corps of Engineers (Corps) is currently a participating agency in this study (Corps file number SPL-2016-00483). The purpose of letter is to address project-specific issues that were discussed during the meeting and to provide a general outline of the process that will be followed by the Corps for tiered environmental analyses that are prepared for transportation projects in Arizona.

LEDPA Determination and NEPA

As a follow-up to our meeting and the questions that were raised regarding the process for determining the Least Environmentally Damaging Practicable Alternative (LEDPA), I would like to outline the general process that will be followed by the Corps when it is a Cooperating Agency on FHWA and ADOT NEPA analyses. This process ensures that an efficient and consistent environmental review process will occur and reduces the potential for any unseen issues to arise.

The 404(b)(1) Guidelines, which were established by the Environmental Protection Agency under the Clean Water Act and promulgated at 40 CFR Part 230, establish the considerations that must be made by the Corps when reviewing a Section 404 permit application. The Guidelines require that the Corps determine the potential effects that a proposed discharge of dredged or fill material may have on the physical, chemical, and biological aspects of the aquatic environment. 40 CFR 230.10(a) states that "...no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." The Guidelines further state that "An alternative is practicable if

it is available and capable of being done after considering cost, existing technology, and logistics in light of the overall project purposes.” Practicable alternatives may also include those which do not result in a discharge into waters of the U.S. or would result in a discharge at other locations in waters of the U.S., so long as the area can be reasonably obtained or managed by the applicant.

In many cases, the alternatives analysis completed under NEPA will provide the information needed for the Corps to make a LEDPA determination. However, there can be times where the NEPA analysis did not fully consider an alternative which may be the LEDPA, or may not have considered the alternatives in sufficient detail to respond to all of the 404(b)(1) Guidelines. In these cases, it may be necessary to supplement these NEPA documents with additional information if an individual permit is required, which can delay the Section 404 permitting process. In rare circumstances, it is also possible that a preferred alternative selected during NEPA analysis cannot be permitted under Section 404 of the Clean Water Act if there is another practicable alternative which causes less harm to the aquatic environment and does not cause other significant adverse environmental impacts.

Several Corps districts and transportation agencies eliminate this risk by completing the Section 404 and NEPA processes concurrently through a programmatic or project-specific merger agreement. These agreements establish concurrence points throughout the NEPA process where both the Corps and the lead NEPA agency must agree on such items as the purpose and need, range of alternatives, LEDPA determination, and mitigation plans. If there is enough information available to satisfy the 404(b)(1) Guidelines, the transportation agency can submit an application for a 404 permit around the time that a draft EIS is issued in order to synchronize the Corps’ public outreach period with the draft EIS’s comment period. The end result is a 404 permit which can potentially be issued near the time that the final EIS and Record of Decision is issued.

While no such agreement is currently in place for Arizona projects, the Corps has informally worked to implement this concurrence process in ongoing EIS studies where the Corps is a cooperating agency. We feel that this permitting approach will be critical on future projects which may be identified as a ‘major infrastructure project’ under Executive Order 13807 (commonly known as “One Federal Decision”) and therefore subject to shortened environmental review times.

Tiered NEPA Analyses

As you are aware, Tier 1 analyses for linear transportation project generally consider various corridor alternatives, which are wide strips of land where a much narrower alignment (or several alignments) may be located. Specific alignment locations within the preferred Tier 1 corridor and potential facility designs are later analyzed during the Tier 2 analysis, which may occur on a segment-by-segment basis over several years as funding becomes available for projects or the demand for such a facility is realized. Due to the lack of detail, likelihood for changes, and unclear timelines at the Tier 1 phase, transportation agencies generally wait until the Tier 2 phase

of analysis before submitting a permit application to the Corps. However, the 404/NEPA merger process described above can easily be modified to accommodate a tiered NEPA analysis to ensure that Section 404 permitting requirements are considered throughout the entire environmental review process.

Because there is no Section 404 permit action at the Tier 1 level of analysis, the Corps does not make LEDPA determinations for those studies. However, if sufficient information is provided, the Corps can provide a concurrence on whether the preferred alternative is most likely to contain or result in the LEDPA at the Tier 2 level of analysis. The Tier 1 analysis should contain information regarding the overall project purpose, the general type and quantity of potential waters of the United States (U.S.) in the study area, the efforts made to avoid potential waters of the U.S. and/or the potential impacts likely to occur, and a draft or outline of potential mitigation which may be used to minimize adverse impacts. In some situations, it may be appropriate to commit to certain crossing design types or other design features that would reduce impacts to the aquatic environment if it would result in a particular alternative being identified as the LEDPA over another.

Cooperating Agency Request

In 2016, the Corps had initially requested to be involved in the I-11 Tier 1 study as a participating agency during the initial scoping for the I-11 Tier 1 EIS due to the lack of an associated permit action and low level of participation that was anticipated for our agency. However, at this time we would like to request that we continue forward in the study as a Cooperating Agency. This status will allow the Corps to provide a greater level of input in the remainder of the study and would be more consistent with the approach outlined in this letter. We expect to review and provide comments on the draft EIS, identify any issues of concern regarding impacts, and provide input concerning waters of the United States. In the future, we intend to participate in most studies as a Cooperating Agency and scale our level of participation based on the potential Section 404 permitting needs as well as the potential for impacts to Waters of the U.S.

I hope this general outline has provided better clarification on the LEDPA determination process in relation to NEPA. If you accept our cooperating agency request or have any questions, please contact Jesse Rice at (602) 230-6854 or via e-mail at Jesse.M.Rice@usace.army.mil.

Sincerely,



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Chief, Arizona Branch
Regulatory Division

cc: next page

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