



Florida Department of
TRANSPORTATION



U.S. Department
of Transportation
**Federal Highway
Administration**

NEPA Assignment Program

Introductory Webinar

Florida



November 18, 2015

What is NEPA Assignment?

Moving Ahead for Progress in the 21st Century Act (Map-21)

The Surface Transportation Project Delivery Program (Program) originated as a pilot program under SAFETEA-LU⁽¹⁾. Under MAP-21, the Program was made permanent and is open to any state (Source: 23 USC § 327). MAP-21 allows states to assume responsibility for highway projects that have to undergo NEPA review and meet consultation responsibilities of other federal laws.

(1) SAFETEA-LU: Safe, Accountable Flexible, Efficient Transportation Equity Act: A Legacy for Users)

MAP-21

Formal Assignment of FHWA's NEPA project decision responsibilities to a State who would assume:

- All NEPA classes of action: Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS)
- All environmental laws, rules and orders
- Under this program, FDOT would be deemed to be FHWA on all projects for environmental matters.

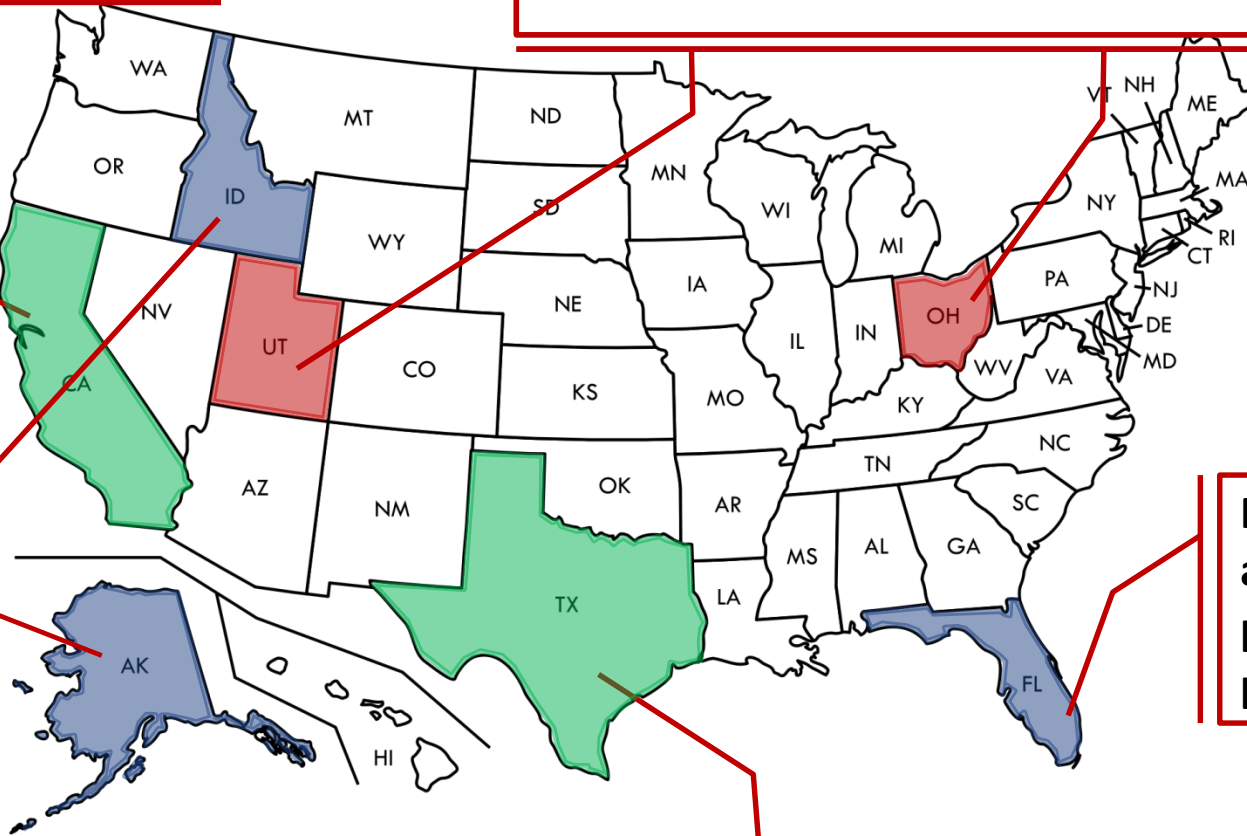
What is NEPA Assignment?

- Application by FDOT
- Memorandum of Understanding (MOU) executed by FDOT and FHWA defining project level responsibilities that FDOT will assume
- FHWA retains the following:
 - Engineering decisions
 - Project level air quality conformity determinations (Florida is in attainment; conformity is not an issue)
 - Government to government Tribal consultation
 - USDOT responsibilities for statewide and metropolitan planning
 - Projects that cross state lines
 - Stewardship and Oversight

NEPA Assignment Nationwide Status

CALTRANS since 2007...

Utah DOT posted their application;
Ohio MOU posted in Federal Register



Idaho and
Alaska
evaluating
program

**Florida is
actively
pursuing
program**

Texas MOU executed Dec. 16, 2014...

NEPA Assignment Program - FLORIDA

Responsibilities Being Sought (23 USC 327)

- All responsibilities cited in 23 USC 327 for highway projects (project level)
- NEPA, all eligible Federal Environmental Laws and Executive Orders as provided in Appendix A to Part 773
- All classes of highway projects
 - Class I: Environmental Impact Statement (EIS) projects
 - Class II: Categorically Excluded (CE) projects
 - Class III: Environmental Assessment (EA) projects
 - Local Agency Program (LAP) projects
- List of on-going projects to be excluded under evaluation

How Does This Benefit Florida?

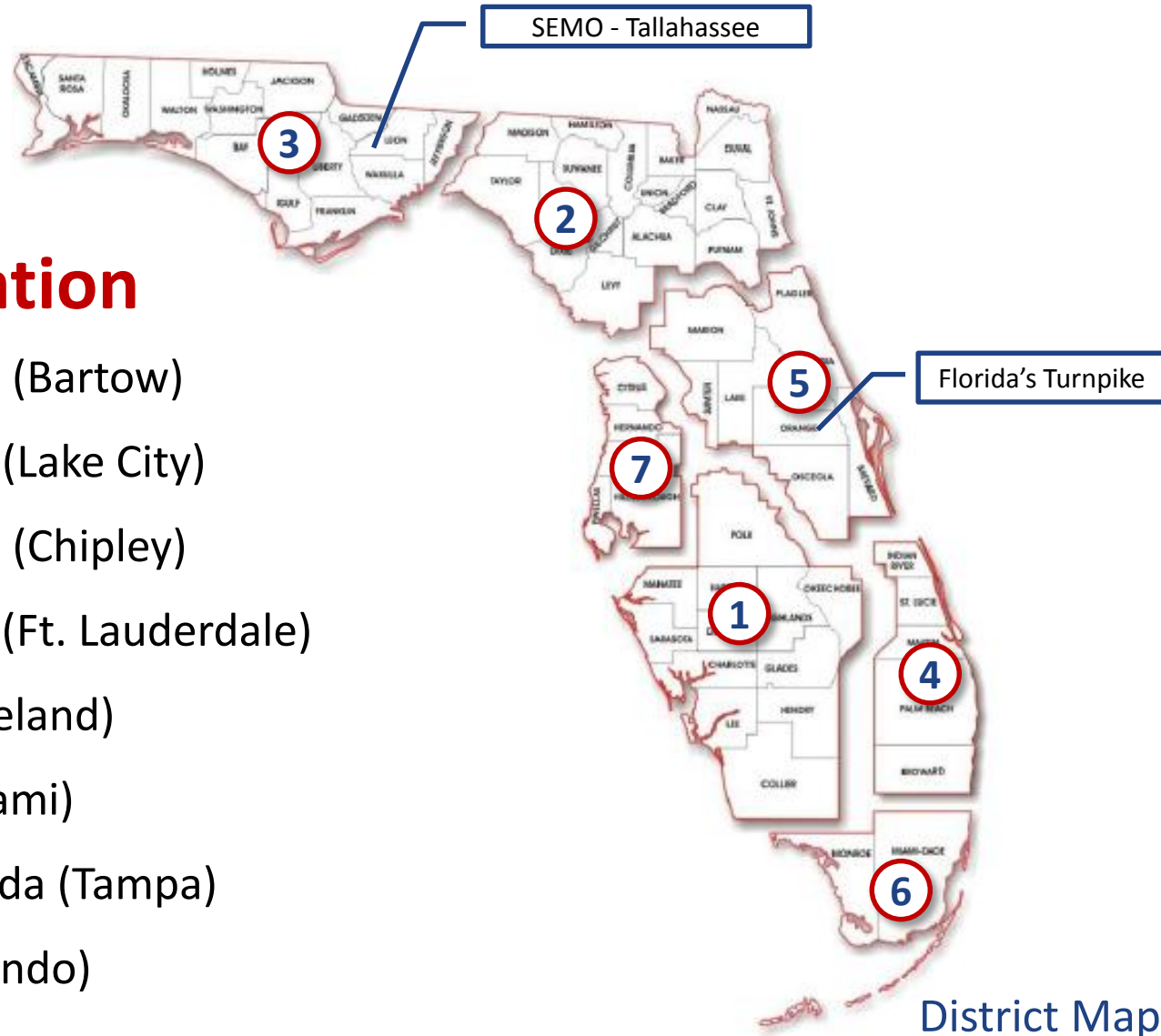
Streamline Florida's environmental review process and project delivery time.

- Florida would be responsible for the fate of its own projects
- Florida would have decision making authority assuming FHWA project level NEPA responsibilities and liabilities
- No reduction of environmental considerations
- Time and cost savings
- Eliminates one layer of governmental review
- Allows direct consultation between FDOT and federal regulatory agencies
- Consolidates all NEPA reviews under FDOT
- More timely delivery of transportation projects to Florida's citizens
- More efficient use of FDOT staff and resources
- Realized cost savings can be applied to other FDOT projects

Florida Department of Transportation

District Organization

- D1 – Southwest Florida (Bartow)
- D2 – Northeast Florida (Lake City)
- D3 – Northwest Florida (Chipley)
- D4 – Southeast Florida (Ft. Lauderdale)
- D5 – Central Florida (Deland)
- D6 – South Florida (Miami)
- D7 – West Central Florida (Tampa)
- Florida's Turnpike (Orlando)



District Map

NEPA Assignment Program - FLORIDA

- FDOT assumes legal responsibility and liabilities to ensure compliance with all environmental requirements
 - Limited Waiver of Sovereign Immunity
 - FDOT agrees to be sued in Federal court
- FDOT's Assignment does not change any current legal requirements
 - FDOT replaces FHWA as the Lead Federal Agency for highway projects
- **Savings result from a more efficient review process - not shortcutting process or legal requirements**

Florida Department of Transportation: SEMO

Role

- NEPA Assignment Program Management and Oversight
- Documentation and Records Management
- Quality Assurance / Quality Control
- Legal Sufficiency / Legal Reviews / Prior Concurrence
- Support FHWA audits
- Training (includes manual updates)
- Agency and Stakeholder Coordination
- Communication with Districts on changes in laws or executive orders affecting the program

Responsibilities

- Comply as outlined in the MOU
- Review and Approval of all documented CEs (Type 2 in Florida), EAs and EISs (including LAP projects). C and D listed CEs will be delegated to the Districts.
- Consent to and accept federal court jurisdiction (FDOT attorneys will defend actions and decisions in federal court)

How will this change the process?

- Resource Agencies will work directly with FDOT
- Through this program, FDOT solely becomes responsible and legally liable for its decisions
- Processes will be changed to reflect that FDOT is now the Lead Federal Agency for highway projects
- All federal and state requirements will be addressed, just as FDOT has always done

How will this impact FHWA?

FHWA Division retains Stewardship and Oversight responsibilities, and will provide the following:

- Training
- Program Technical assistance and policy interpretation
 - No project assistance
- Audits of FDOT NEPA Assignment processes
 - Twice yearly for first 2 years, once a year in Year 3 and Year 4
 - Process and Program reviews
 - Reports back to Congress – 23 USC 327 – is assignment working

FDOT Readiness

- ✓ SEMO currently reviews and approves all EAs and EISs prior to submittal to FHWA since 2008 for EISs and 2012 for EAs
- ✓ For over **20 years** Districts have been completing minor categorical exclusion determinations (C & D list Type 1 CEs and Programmatic CEs)
- ✓ Environmental and legal staff will be added in Central Office
- ✓ Team of Subject Matter Experts (SME) and Reviewers
- ✓ Consultant support contracts in place
- ✓ Established state procedures to meet local, state and federal requirements
- ✓ Established relationships with state and federal agencies
- ✓ Enhancing tools in place to support quality assurance, tracking, reporting and monitoring
- ✓ Established records retention program is being enhanced
- ✓ Established cross functional teams statewide
- ✓ Existing District role to remain unchanged
- ✓ Districts have been briefed and will continue to be trained

Next Steps

Application Process

- Statement of Interest to participate in program; submitted September 3, 2015
- Engage the public and agencies to explain the Program
- Make application publicly available for 30 days
- Address and respond to comments
- Submit application to FHWA
- The Application identifies:
 - Scope of Assignment
 - Current & Proposed Organization
 - Current & Proposed Environmental Review Procedures, Tools
 - Roles and Responsibilities
 - Training
 - Resources
- Draft NEPA Assignment MOU will be made available in the Federal Register for public review with a 30 calendar day comment period

SCHEDULE

Application

- Statement of Interest 09/03/15
- Begin NEPA Bi-weekly Team Meetings On-going
- NEPA Assignment Workshop Completed
- **Coordination Webinar** **11/18/15**
- Coordination One-On-Ones TBD
- Complete Initial Draft Application 12/30/15
- Florida Legislature Limited Waiver of Sovereign Immunity 01/29/16 (anticipated) *
- AG Certifies Limited Waiver of Sovereign Immunity TBD
- AG Certifies Public Records Law Comparable to FOIA 01/29/16 (anticipated) *
- Public Notice of Application 02/1/16 to 03/01/16 **
- Final Application 03/02/16 to 03/29/16
- Submit Final Application to FHWA 03/30/16
- **Audit Training** **Requested for January 2016**
- **Legal Sufficiency Training** **Requested for January 2016**

* Florida Legislative Session begins 01/12/16, Attorney General briefed in 2014

** Attorney General to confirm application can be released once sovereign immunity bill is signed

SCHEDULE

Memorandum of Understanding (MOU)

- Final Application and Draft MOU submitted to FHWA 03/30/16
- Negotiate MOU 04/27/16 to 06/21/16
- Review by FHWA 06/22/16 to 08/16/16
- Public Notice and Comment Period 08/17/16 to 09/14/16
- Address Comments 09/15/16 to 10/12/16
- MOU (sent for signature) 10/11/16 to 10/25/16
- Estimated Effective Date 11/28/16
- Finalize PAs / MOUs that support agreement 11/29/16 to 05/29/17

Why We Will Succeed

- ✓ Experienced environmental team
- ✓ Excellent training, manuals, processes already in place
- ✓ Focus on QA/QC
- ✓ Committed to working with our partners to make it succeed
- ✓ Commitment to continue to improve and adapt

Working in Partnership

- Need to understand and address any concerns you may have
- One-on-one meetings scheduled after the webinar at your request
- Amendments to existing agreements will occur after execution of MOU



Florida Department of TRANSPORTATION

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FDOT NEPA Assignment Website:

<http://www.dot.state.fl.us/emo/NEPAAssignment.shtm>



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THANK YOU