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May 11, 2021

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Director
Office of Project Development & Environment
U. S. Department of Transportation
Federal Highway Administration
HEPE-1, Building SFC
1200 New Jersey Avenue, Southeast
Washington, D. C. 20590-9898

RE: NEPA Assignment Renewal Package for the State of Florida

Dear Ms. Biondi:

As previously noticed, the Florida Department of Transportation (FDOT) seeks to continue its successful implementation of the Surface Transportation Project Delivery Program authorized under 23 USC §327 and more familiarly referred to as "NEPA Assignment." Consistent with the existing Memorandum of Understanding (MOU) between FDOT and the Federal Highway Administration (FHWA), 23 USC §327 and 23 CFR §773.115, the FDOT has satisfied the necessary prerequisites for renewal and by this transmittal provides its formal Renewal Package to continue assumption of the FHWA's responsibilities for compliance with the National Environmental Policy Act (NEPA) for all classes of highway projects.

As part of its pre-renewal activities, FDOT timely notified FHWA of its intent to renew its participation in the NEPA Assignment Program, and further coordinated with FHWA to confirm there were no significant changes to its Program and that no new operating administration responsibilities were being sought. At that time, FHWA confirmed that public notice of renewal was not required prior to submittal of the renewal package. During this coordination, FHWA and FDOT also confirmed their mutual intention that responsibility for all projects would rest with FDOT and that FHWA would not retain any projects.¹

¹ Note, there is a pending Amendment to the MOU, which evinces FDOT's and FHWA's intent to remove the two retained projects identified in the initial MOU and transfer responsibility to FDOT.

As required by 23 CFR §773.115(c), the FDOT's Renewal Package contains the following:

- 1) Description of changes to FDOT's Program since filing the initial application (Appendix A),
- 2) Confirmation of certifications regarding the state's waiver of sovereign immunity and a state equivalent public records law (Appendix B),
- 3) Correspondence recognizing that the FDOT is not seeking any new administration responsibilities or making significant changes to its Program (Appendix C), and
- 4) Signature of State's top-ranking transportation official approving the renewal package (transmittal letter).

Further, as a matter of convenience and to assist the FHWA with the notice materials required of the operating administration under 23 CFR §773.115(f), the FDOT is including a Draft Renewal MOU (Appendix D), and links to FDOT's initial application and the FHWA's Audit Reports, as noticed in the Federal Register (Appendix E).

Finally, the initial MOU was fully executed and became effective on December 14, 2016 for a term of five years. In accordance with sub-part 13.5.1(D) of the MOU and 23 CFR §773.115(d), the FDOT is submitting its Renewal Package not later than 180 days prior to expiration of the MOU.

FDOT appreciates its relationship with FHWA and looks forward to continuing its participation in the NEPA Assignment Program. If any questions arise or supplemental information is needed, please direct your inquiries to Courtney Drummond, Assistant Secretary for Engineering and Operations, who can be reached at courtney.drummond@dot.state.fl.us or (850) 414-5258 or Pete McGilvray, State Environmental Quality and Performance Administrator, who can be reached at peter.mcgilvray@dot.state.fl.us or (850) 414-5330.

By my signature below, I am approving the State of Florida Department of Transportation's NEPA Assignment Renewal Package in conformance with 23 CFR §773.115(c)(4).

Sincerely,

Kevin J. Thibault, P. E.

Secretary, Florida Department of Transportation

Enclosures

Copies furnished electronically:

Jamie Christian, FHWA Florida Division Administrator Courtney Drummond, FDOT, Assistant Secretary for Engineering and Operations Susan Jones, FHWA Office of Project Development and Environmental Review Marisel Lopez-Cruz, FHWA Program and Policy Team Karen Brunelle, FHWA Director for the Florida Office of Project Development Jason Watts, FDOT, Director, Office of Environmental Management

APPENDIX A

Changes to FDOT's Program since Filing the Initial Application 23 CFR §773.115 (c)(1)

Changes to FDOT's Program since Filing the Initial Application

Consistent with the renewal provisions in the Initial MOU (Part 13.5) and 23 CFR §773.115(c)(1), FDOT is required to "describe changes to the information submitted in the initial Program application." The initial two-part application contained information relating to FDOT's then existing pre-assignment process and structure, as well as its proposed post-assignment process and structure. Following execution of the NEPA Assignment MOU, FDOT successfully transitioned to its new role and implemented its Program as described. The current Program remains largely as portrayed in the initial application, e.g., staffing, funding, consent to federal jurisdiction, etc. However, based on experience, best practices and Self-Assessments, FDOT has made process and program improvements. As documented in the FWHA's audits of Florida's program during the first four years of NEPA Assignment, FDOT not only successfully implemented its program, but continuously found ways to improve and refine its processes, organization, and programs.

Updates and refinements to the initial application are reflected in highlight and text as appropriate. To provide transparency, these updates are shown on a section-by-section basis within the initial application, so changes are in context. The attached version of the application indicates whether the information remains valid as submitted or reflects updates to the information.

The following legend is intended to assist in understanding changes to the initial application.

Legend for the NEPA Assignment Renewal Application

Black text is from the original NEPA Assignment Application.

Red text is new explanatory information created for the renewal application per 23 CFR §773.115(c)(1), which indicates the continued accuracy of the information or describes changes to the information initially submitted.

Highlighted portions throughout the document denote affected information and specific updates are included in the section or paragraph updates.

Green text throughout the document confirms the information (usually a process diagram or figure) remains as originally submitted in the 2016 NEPA Assignment Application

Paragraph Update: Updated information added to address a specific paragraph.

Section Update: Indicates section status and describes whether there are any updates.

Figure Update: Identifies Figure specific updates.

NOTE: The inclusion of status updates to the initial application may result in page numbering differences between this renewal application and the initial NEPA Assignment Application from 2016.

REDLINE SECTION VERSION UPDATING RENEWAL APPLICATION As of 5/3/2021

State of Florida, Department of Transportation

Application for Assumption of Federal Highway Administration Responsibilities

Pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. §327



May 31, 2016 (updated May 2021)

This is the Florida Department of Transportation's application to assume the U.S. Secretary of Transportation's and the Federal Highway Administration's responsibilities under an Assignment Program authorized by the Surface Transportation Project Delivery Program, 23 U.S.C. §327.
Submitted by:
Dated:
Jim Boxold Secretary Florida Department of Transportation
For questions regarding this application, please contact: Florida Department of Transportation's State Environmental Management Office's Manager, Mr. Ken Morefield, PE at (850) 414-4316 email: ken.morefield@dot.state.fl.us .

Section Update: Information will be updated in Renewal Package Transmittal to reflect current FDOT Secretary and Office of Environmental Management (OEM) Director and/or appropriate contact.

Executive Summary

The Florida Department of Transportation (FDOT) appreciates the opportunity afforded by Congress allowing states to assume the responsibilities of the U.S. Secretary of Transportation and the Federal Highway Administration (FHWA) for the National Environmental Policy Act (NEPA) and related laws by applying to participate in the Surface Transportation Project Delivery Assignment Program (NEPA Assignment Program) pursuant to 23 U.S.C. §327. Through submittal of its application, FDOT expresses its commitment to successfully implement the responsibilities requested to be assigned to FDOT under the NEPA Assignment Program. This application follows the requirements established in 23 C.F.R. §773.

As required by 23 C.F.R. §773.111, FDOT's application was publicly noticed for a 30-day comment period from April 15, 2016 to May 16, 2016. A notice was published in the Florida Administrative Register (FAR) and on FDOT's website. FDOT also provided direct notice of availability of the application with request for comment to federal and state resource agencies and Native American tribes. Copies of all comments received during the public comment period and FDOT's responses to the comments are included in Appendix D of this application. FDOT is applying to assume all of the U.S. Secretary of Transportation's and FHWA's responsibilities for all NEPA actions for highway projects on the state highway system (SHS) and Local Agency Program (LAP) projects off the SHS in Florida, with specific exclusions as described below. FDOT is also applying to assume all of FHWA's responsibilities for environmental review, resource agency consultation, and other environmental regulatory compliance-related actions pertaining to the review or approval of highway projects. This request for assignment excludes specific ongoing projects that will be identified in the NEPA Assignment Program Memorandum of Understanding (MOU) and project types excluded in 23 C.F.R. §773. Section 773.109 (a)(1) of this application lists the specific ongoing projects that will be excluded from the NEPA Assignment Program; this list is subject to change until the NEPA Assignment Program MOU is signed.

NEPA directs federal agencies to consider the environmental effects of its actions, using a systematic, interdisciplinary approach. In the State of Florida, as the agency responsible for providing safe and reliable transportation solutions for Florida, FDOT is also responsible for achieving environmental compliance.

FDOT integrates environmental considerations into its activities to attain compliance with applicable laws, regulations, and standards. FDOT is focused on delivering safe, efficient transportation projects and making sound decisions based on a balanced assessment of transportation needs and of the social, economic, and environmental impacts of proposed transportation improvements. FDOT's Environmental Policy, Topic Number 000-625-001 is similar to the philosophy underlying NEPA and FHWA's NEPA policy expressed in 23 C.F.R. §771.105.

As required by NEPA, 23 C.F.R. §771 and in compliance with FDOT's policies and procedures, FDOT examines and discloses the environmental effects of its proposed activities; identifies ways that environmental impacts can be avoided or minimized; prevents significant, avoidable environmental impacts by modifying its projects and/or implementing mitigation when appropriate; and publicly discloses the impacts of its projects and its project decisions, emphasizing balanced decision-making. As part of this process, FDOT undertakes timely and consistent outreach with the public, local jurisdictions, regional transportation planning agencies, resource and regulatory agencies, and tribal governments. FDOT will continue to work cooperatively with its agency partners, communities, and the general public under the NEPA Assignment Program.

In 2001, the U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Natural Resources Conservation Service (NRCS), U.S. Environmental Protection Agency (USEPA), U.S. Coast Guard (USCG), Federal Transit Administration (FTA), Advisory Council on Historic Preservation (ACHP), National Park Service (NPS), U.S. Forest Service (USFS), Florida Department of Environmental Protection (FDEP), several Water Management Districts (WMDs) including Northwest Florida (NWFWMD), Suwannee River (SRWMD), St. Johns River (SJWMD), Southwest Florida (SWFWMD), and South Florida (SFWMD), Florida Fish and Wildlife Conservation Commission (FFWCC), State Historic Preservation Office (SHPO), Metropolitan Planning Organization Advisory Council (MPOAC), Florida Department of Community Affairs (FDCA) [now Florida Department of Economic Opportunity], Florida Department of Agriculture and Consumer Services (FDACS), FDOT and FHWA, collectively referred to as the Environmental Technical Advisory Team (ETAT), signed a Master Agreement MOU to develop an Efficient Transportation Decision Making (ETDM) process in Florida. Subsequently individual agency agreements were executed with each respective agency. FDOT and FHWA. The ETDM process is Florida's procedure for early review of certain transportation projects to consider potential environmental effects linking planning and NEPA. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), included a process for conducting "Efficient Environmental Reviews for Project Decision Making" for highway projects under Section 6002 (b) of the bill. In December 2005, FHWA recognized the ETDM process as satisfying the statutory requirements of SAFETEA-LU Section 6002(b) and being acceptable for use on federal-aid projects.

The ETDM process creates linkages between land use, transportation, and environmental resource planning initiatives through early, interactive agency involvement, which is expected to improve transportation decisions and reduce the time and cost to implement transportation improvements. Program and project efficiency is gained by two environmental screening events that occur at the transportation planning and programming phases. This process provides stakeholders the opportunity for early input, involvement and coordination. It allows for the early identification of potential project effects and informs the development of scopes of services for projects advancing to the Project Development and Environment (PD&E) Study phase. The ETDM process is consistent with the streamlining objectives of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Fixing America's Surface Transportation (FAST) Act.

In October 2015, <u>FDOT and FHWA entered into a Programmatic Agreement for Categorical Exclusions (CE) under 23 C.F.R. §771.117</u>. This Agreement streamlines the environmental review process by making FDOT responsible for CE approvals on behalf of FHWA for certain projects. FDOT may review and make CE approvals on behalf of FHWA for project actions listed in 23 C.F.R. §771.117(c) and identified in 23 C.F.R. §771.117(d), which meet the criteria established in Section 6 of the Agreement. The October 2015 Agreement supersedes the previous agreement between FHWA and FDOT with regard to Type 1 CEs and former Floridaspecific Programmatic Categorical Exclusions (PCEs).

FHWA currently entrusts FDOT with certain aspects of its consultation responsibilities with NMFS and USFWS. Through memoranda entered pursuant to 50 C.F.R. §402.08, FHWA designated FDOT to conduct informal consultations and prepare biological assessments on behalf of FHWA. These memoranda are with the NMFS and USFWS respectively:

• <u>Designation of a Non-Federal Representative to Conduct Informal Consultation under Section 7 of the Endangered Species Act, dated February 28, 2003</u>

• <u>Designation of a Non-Federal Representative to Conduct Informal Consultation</u> under Section 7 of the Endangered Species Act, dated March 3, 2003

In April 2015, through the <u>Programmatic Agreement between the FHWA and FDOT regarding the review and approval of specific types of changes in interstate-system access.</u> FHWA authorized FDOT to make a determination of the engineering and operational acceptability for certain types of interstate system access changes to help expedite FHWA approval.

In March 2016, though the <u>Programmatic Agreement among the Federal Highway Administration</u>, the Advisory <u>Council on Historic Preservation</u>, the Florida <u>Division of Historic Resources</u>, <u>State Historic Preservation Officer</u>, and the Florida <u>Department of Transportation Regarding Implementation of the Federal-Aid Highway Program in Florida</u>, FHWA delegated certain decision-making tasks under the Section 106 process and authorized FDOT to consult with the SHPO and other consulting parties on its behalf.

FDOT has worked with FHWA for many years to meet NEPA requirements and to work cooperatively with its federal and state agency partners and with tribal governments; and has developed procedures and tools to support its work. Because of FDOT's experience, expertise, and current level of involvement in consultations, it is well positioned to assume FHWA's responsibilities for resolving issues with external agencies. FDOT's existing staff capabilities and well-developed environmental compliance program, together with the steps that FDOT has taken and will continue to take to strengthen its program under the NEPA Assignment Program, are summarized in this application.

Under the NEPA Assignment Program, FDOT will continue to comply with applicable federal environmental laws and FHWA environmental regulations, national policies and guidance. The program will not change or weaken federal environmental protection standards. Consistent with NEPA, FHWA regulation, state statutes and rules, FDOT currently makes decisions that consider and minimize impacts to the environment from its transportation projects and will apply these same rigorous environmental protection standards to projects under the NEPA Assignment Program.

To ensure success of the NEPA Assignment Program, FDOT will regularly conduct self-assessments to gauge its adherence under the NEPA Assignment Program. In addition, FHWA will audit FDOT annually during the first four years of the NEPA Assignment Program to ensure that FDOT is meeting its obligations, which will include the provisions in the NEPA Assignment Program Memorandum of Understanding (MOU).

The NEPA Assignment Program will streamline Florida's environmental review process and project delivery time. Once FHWA and FDOT execute the NEPA Assignment Program MOU that assigns NEPA responsibilities, FDOT will be solely responsible and liable for its NEPA decisions without any involvement by FHWA on assigned highway and LAP projects in the state. This application contains the following components, as required by 23 C.F.R. §773:

Section Update: Historic description remains valid and program implemented as described.

§773.107 Pre-application Requirements

§773.107 (a): Coordination Meeting

§773.107 (b)(1)(2): Public Comments

§773.107 (c) and §773.107 (d): Sovereign Immunity and Comparable State Laws

§773.109	Application Requirements
§773.109 (a)(1):	Classes of Highway Projects for which FDOT is Requesting NEPA Responsibility
§773.109 (a)(2):	Federal Environmental Laws other than NEPA for which FDOT is Requesting Responsibility
§773.109 (a)(3)(i):	Existing Organization and Procedures
§773.109 (a)(3)(ii):	Changes to be made for Assumption of Responsibilities
§773.109 (a)(3)(iii):	Legal Sufficiency
§773.109 (a)(3)(iv):	Prior Concurrence
§773.109 (a)(3)(v):	Project Delivery Methods
§773.109 (a)(4)(i):	Staff Dedicated to Additional Functions
§773.109 (a)(4)(ii):	Changes to the Organizational Structure
§773.109 (a)(4)(iii):	Use of Outside Consultants for the Assignment Program
§773.109 (a)(5):	Financial Resources under the Assignment Program
§773.109 (a)(6):	Certification for Consent to Exclusive Federal Court Jurisdiction and Waiver of Sovereign Immunity
§773.109 (a)(7):	Certification that the State of Florida's Public Records Act is comparable to the Federal Freedom of Information Act
§773.109 (a)(8):	Comments Received on the Assignment Program
§773.109 (a)(9):	Point of Contact
§773.109 (a)(10):	FDOT State Secretary Signature approving the application

This application also contains the following four appendices:

Appendix A	Projects for which FDOT does not request NEPA Responsibility
Appendix B	Federal Environmental Laws other than NEPA for which FDOT is Requesting Responsibility
Appendix C	State Certifications for Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity and that the Florida Public Records Act is comparable to the Federal Freedom of Information Act.
Appendix D	Copies of Public Comments Received on the Assignment Program Application and Responses Provided by FDOT

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§773.107 Pre-application Requirements

This is the Florida Department of Transportation's (FDOT's) application to assume the U.S. Secretary of Transportation's and the Federal Highway Administration's (FHWA) responsibilities for the National Environmental Policy Act (NEPA) and related laws under the Surface Transportation Project Delivery Program (NEPA Assignment Program), 23 U.S.C. §327.

Section Update: No updates to section.

§773.107(a): Coordination Meeting

As required by §773.107(a), FDOT [State Environmental Management Office (SEMO), Office of General Counsel (OGC) and several members of the Executive Team] met with FHWA (Division, Program, Legal and Resource Center Offices) on November 3 and 4, 2015 to participate in a preapplication coordination meeting. Additionally, FDOT and FHWA established regular bi-weekly coordination meetings, which began after the pre-application meeting and will continue through the coordination of the NEPA Assignment Program (MOU).

FDOT invited federal, state and tribal governments to participate in a webinar regarding the NEPA Assignment Program. On November 18, 2015, FDOT held the NEPA Assignment Coordination Webinar with state and federal agencies.

Section Update: No updates to section.

§773.107(b)(1)(2): Public Comments

Public notice of availability of FDOT's application was published on April 15, 2016 in the Florida Administrative Register (FAR) and on FDOT's website. Comments were due no later than May 16, 2016. FDOT also provided direct notice of availability of the application with request for comment to federal and state resource agencies and Native American tribes. In addition, FDOT posted the application and how to provide comments on FDOT's website.

Copies of all comments received during the public comment period and FDOT's responses to comments and any changes made to the application in response to the public comments are included in Appendix D of this application Additional information regarding FDOT's outreach efforts can be found in §773.109 (a)(8): Comments Received on the Assignment Program.

Section Update: No updates to section. As to the Renewal Application, coordination with FHWA during initial discussions resulted in the determination that public notice was not required by FDOT prior to submitting the NEPA Assignment Renewal Package.

§773.107(c) and §773.107(d): Sovereign Immunity and Comparable State Laws

Per §773.107(c)(d), <u>Appendix C</u> contains the following State of Florida Office of the Attorney General certifications:

- FDOT is legally authorized by state to assume the responsibilities being requested
- FDOT's limited waiver of sovereign immunity
- The Florida's Public Records Act is comparable to the Freedom of Information Act

Section Update: No updates to section. Waiver of Sovereign Immunity and authority of FDOT to implement NEPA Assignment remain authorized by the State at Section 334.044(34), Florida Statutes, and comparable public records laws remain authorized under Chapter 119, Florida Statutes. Confirmation was provided in letter seeking renewal and will also be included in the Renewal Package.

§773.109 Application Requirements

§773.109(a)(1): Classes of Highway Projects for which FDOT is Requesting NEPA Responsibility

FDOT is requesting to assume the U.S. Secretary of Transportation's and FHWA's responsibilities for all NEPA actions for highway projects upon execution of the NEPA Assignment Program MOU with FHWA. In general, FDOT's assumption includes all highway and roadway projects in Florida whose source of federal funding comes from FHWA or which require FHWA approvals. Some projects may include funding from other federal sources as well. For these projects, FDOT requests to assume only FHWA's NEPA responsibilities. This request does not include assuming the NEPA responsibilities of other federal agencies. On the effective date of the NEPA Assignment Program MOU, FHWA will remain liable for its previous decisions [e.g. NEPA, Section 4(f)] and FDOT will be responsible for its decisions under the NEPA Assignment Program.

FDOT is requesting FHWA's NEPA responsibilities for the following classes of projects:

1. All Class I, or Environmental Impact Statement (EIS) projects, both on the state highway system (SHS), which includes the National Highway System, and Local Agency Program (LAP) projects off the SHS that are funded by FHWA or require FHWA approvals.

FDOT is not applying for assignment of the following project under the NEPA Assignment Program. This list is subject to change until the NEPA Assignment Program MOU is signed (see Appendix A for more information on the project listed below):

District 4

 Crosstown Parkway from Manth Lane to US-1, Financial Management Number 410844-1

The following projects are on-going Class I (EIS) projects to be assumed under the NEPA Assignment Program for which a Draft EIS (DEIS) has already been issued or is expected to be issued to the public prior to execution of the NEPA Assignment Program MOU (this list is subject to change depending on the date that the MOU is signed):

District 3

- CR 388 West Bay Parkway, Financial Management Number 424464-1 (Walton County) and 424464-2 (Bay County)
- SR 87 Connector, Financial Management Number 416748-3 and 416748-3
- Gulf Coast Parkway from SR 30 in Gulf County to SR 30 and US 231 in Bay County, Financial Management Number 410981-2

District 5

I-4 Beyond the Ultimate, Financial Management Number 432100-1

- 2. All Class II, or Categorically Excluded, projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.
- 3. All Class III, or Environmental Assessment (EA) projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.

FDOT is not applying for assignment of the following EA project under the NEPA Assignment Program. This list is subject to change until the NEPA Assignment Program MOU is signed (see <u>Appendix A</u> for more information on the project listed below):

District 4

 SR 7 from SR 704 (Okeechobee Boulevard) to Northlake Boulevard; Financial Management Numbers 229664-3 and 229664-4

FDOT will establish relationships with other Operating Administration(s) involved in multimodal projects, including cooperating agency, participating agency and lead or co-lead agency relationships under NEPA. In addition, FDOT may adopt other federal agencies' NEPA analysis or documents consistent with 40 C.F.R. Parts 1500-1508 and the U.S. Department of Transportation (USDOT) and FHWA regulations, policies and guidance.

Projects meeting the following criteria will be excluded from the assignment:

- Transit projects funded, in whole or in part, by the Federal Transit Administration (FTA) under Chapter 53 of Title 49 of the United States Code, where FTA is the Lead Federal Agency
- 2. Railroad projects funded in whole or in part by the Federal Railroad Administration (FRA) under Subtitle V of Title 49 of the United States Code, where FRA is the Lead Federal Agency
- 3. Federal Lands Highway projects, unless designed and/or constructed by FDOT
- 4. Projects that cross state or international boundaries

FDOT's assumption of these responsibilities program-wide will provide for the highest degree of consistency and efficiency in document review and agency coordination. It will also provide the greatest opportunity for streamlining benefits.

Section Update: The excluded project list was superseded by the executed NEPA Assignment Program MOU and FHWA retained two projects. Portions of the I-4 Beyond the Ultimate (BTU) and the I-4 Ultimate projects in District 5 and the Tampa Interstate Study (TIS) project in District 7 were excluded from NEPA Assignment and responsibility remained with FHWA. Refer to executed MOU for project and segment specifics. Currently, FDOT and FHWA are actively in the signature process to amend the executed NEPA Assignment MOU to remove previously excluded projects. If execution of the amendment is delayed, FDOT will address project removal during negotiation of the Renewal NEPA Assignment MOU.

§773.109 (a)(2): Federal Environmental Laws other than NEPA for which FDOT is Requesting Responsibility

FDOT requests to assume all of the U.S. Secretary of Transportation's and FHWA's responsibilities for environmental review, interagency consultation and other regulatory compliance-related actions pertaining to the review or approval of projects for which FDOT is requesting assumption of responsibilities under NEPA. FDOT requests to assume these responsibilities under all applicable federal laws and Executive Orders, including, but not limited to the federal laws, regulations and Executive Orders listed in Appendix A of 23 C.F.R. Part 773 (also listed in Appendix B of the application). FDOT requests assumption of these responsibilities upon execution (no program phasing) of the NEPA Assignment Program MOU with FHWA. FDOT's approach and practice in working with federal resource agencies and their regulations are described in further detail within this application.

Section Update: No updates to section.

§773.109 (a)(3)(i): Existing Organization and Procedures

FDOT is the legally authorized transportation department of the State of Florida as described in Sections 20.23 and 334.044, Florida Statutes. FDOT is an executive agency and reports directly to the Governor. The head of FDOT is the Secretary of Transportation, who is located in Central Office in Tallahassee, Florida. The Secretary is appointed by the Governor.

FDOT's primary statutory responsibility is to coordinate the planning and development of a safe, viable and balanced state transportation system serving all regions of the state and to assure the compatibility of components, including multimodal facilities. Florida's transportation system includes roadway, air, rail, sea, spaceports, bus, transit, bicycle and pedestrian facilities.

FDOT is a decentralized agency. It is organized into seven (7) Districts, each headed by a District Secretary, and Florida's Turnpike Enterprise headed by an Executive Director (see **FDOT's Organizational Chart in Figure 1**), who are responsible for proposing and implementing their Work Program. FDOT Districts report to FDOT's Secretary. The Districts vary in organizational structure, but in general each has major divisions for administration, planning, production and operations. Also, each has a Public Information Office that reports to the District Secretary, and a District Chief Counsel who reports to FDOT's OGC in Tallahassee. For purposes of this application, the terms "Districts" or "District Offices" includes the District Offices and Florida's Turnpike Enterprise.

The Districts oversee development and implementation of District transportation projects and are responsible for maintenance and operation of the state highway network within their geographic boundaries. NEPA compliance during project development and final design is the responsibility of the District Environmental Management Office (EMO) or the Planning and Environmental Management Office (PL&EM) in some Districts. For simplicity, the PL&EM will be referred to as EMO in the remainder of this application. Commitment compliance during construction is the responsibility of the Construction Office, Drainage Office or EMO office depending on the District. In general, during planning and project development the District EMO Office conducts initial environmental surveys, prepares or oversees preparation of environmental documents, performs local interagency coordination, and coordinates public involvement (with the District Public Information Office) as well as other activities related to NEPA compliance. In addition to their general environmental experience, many District environmental staff have advanced degrees and

training in environmental, engineering and socio-cultural specialty areas such as biology, geology, socio-economics, and water quality. All Districts have environmental staff who are subject matter experts (SMEs) in various specialty areas such as: air quality, history and archeology, contamination, noise, biology, wetland sciences and other areas (see **Table 2**). FDOT has cultural resource management experts either on staff or consultants who meet the Secretary of Interior's standards as qualified professionals.

Paragraph Update: FDOT Commitment Tracking Procedure (<u>Topic Number 650-000-003b</u>) was updated on March 16, 2018 and is reflected in <u>Part 2, Chapter 22 of the PD&E Manual</u>. FDOT's procedure and companion chapter establish how to document and track commitments throughout the transportation project phases: Project Development & Environment (PD&E), Right of Way, Design, and Construction. These procedures also identify the use of Project Suite to generate a project commitment record.

Each District EMO office is led by a manager/engineer. A District Environmental Administrator and District Project Development Engineer support the manager/engineer. The Environmental Administrator, as the lead NEPA coordinator, is responsible for ensuring environmental compliance during the preparation of environmental studies. The District EMO manager/engineer is ultimately responsible for signing off and certifying to the (SEMO) that the environmental study documents are ready to be reviewed. SEMO reviews EAs and EISs and upon approval of the document, Districts transmit to the Lead Federal Agency [Type 2 Categorical Exclusions (CEs) are reviewed by SEMO only if requested by Districts]. Once comments are received from FHWA, SEMO, upon request by FHWA or the Districts, provides technical assistance to the Districts in addressing the comments. Final resolution of issues is the responsibility of FHWA and the District Office.

Paragraph Update: While historically accurate, changes proposed as part of NEPA Assignment have been implemented per Section §773.109 (a)(3)(ii). This includes renaming the State Environmental Management Office (SEMO) as the Office of Environmental Management (OEM).

SEMO is responsible for developing and implementing FDOT's statewide environmental program. In this capacity, SEMO develops and ensures the implementation of environmental policies, procedures and practices in the development of transportation improvements through each of FDOT's core processes: plan, produce, deliver and maintain/operate. SEMO provides training to ensure implementation of environmental programs and initiatives of FDOT. Additionally, SEMO coordinates with federal and state environmental resource and regulatory agencies in the development and implementation of environmental processes and procedures consistent with environmental laws and regulations to assist FDOT in achieving its mission. As shown in **Figure 1**, SEMO, the Office of Policy Planning, Systems Planning Office and the Transportation Statistics Office are grouped together and report to the State Transportation Development Administrator. The Rail Office, Transit Office, Aviation Office and Seaport Office are grouped together and report to the State Freight and Logistics Administrator. The two groups combined make up the Intermodal Systems Development office.

Paragraph Update: While historically accurate, changes proposed as part of NEPA Assignment have been implemented. Figure 1 below has been updated. OEM, now led by a Director level position, moved to the Engineering and Operations division of the agency and is a direct report to the Assistant Secretary of Engineering and Operations (E&O).

FDOT's OGC is the statewide legal office providing legal advice and representation to all of FDOT's programs and administrative staff throughout Florida. The lawyers of the OGC provide

counsel to the Secretary, Florida's Turnpike Enterprise, management and all FDOT employees through nine locations. The OGC also plays an important role in the environmental compliance process. OGC provides legal expertise to support SEMO and District environmental offices including NEPA compliance for EISs, EAs, Reevaluations, and to the broader environmental review process, including issues involving permitting, mitigation, litigation and consultation with other agencies. OGC also provides legal review of SEMO environmental manuals and processes; develops and reviews memoranda of understanding, programmatic agreements (PAs) and other agreements between FDOT and federal or other state agencies.

Paragraph Update: Legal review for NEPA compliance of various environmental documents also includes Florida specific Type II Categorical Exclusions.

Section Update: Specific paragraph updates provided throughout section, otherwise portion of section without any paragraph specific updates, remains unchanged.

Existing State Environmental Management Office Organization

SEMO leads FDOT's efforts to plan, develop and implement environmental programs for transportation projects and facilities in support of FDOT's mission to promote and preserve Florida's environmental quality, community values and economic prosperity. SEMO provides expertise to FDOT by integrating environmental considerations into FDOT activities to achieve environmental compliance. SEMO develops environmental policies and procedures, including those for preparing and processing environmental documents; and a variety of environmental streamlining initiatives. The office provides policy, procedure, training, guidance and technical assistance to other organizational units of FDOT. Subjects of technical support include air quality, archeology, biology (listed species and habitat), wetlands, contamination, public involvement, history, indirect and cumulative impacts, NEPA, noise, socio-economics, Section 4(f) determinations, permitting and water quality. SEMO also manages FDOT environmental programs, works to streamline state and federal environmental processes, and monitors changing laws and regulations.

FLORIDA DEPARTMENT OF TRANSPORTATION ORGANIZATION CHART **MARCH 2021** PEOPLE OF FLORIDA GOVERNOR RON DESANTIS TRANSPORTATION COMMISSION TRANSPORTATION SECRETARY EXECUTIVE DIRECTOR RALPH YOUER EXECUTIVE DIRECTOR DAVID DARM OFFICE OF CHIEF OF STAFF TOREY ALSTON GENERAL COUNSEL SEAN GELLIS OFFICE OF INSPECTOR GENERAL KRIS SULLIVAN LEGISLATIVE PROGRAMS VACANT COMMUNICATIONS OFFICE BETH FRADY EXTERNAL AFFAIRS FEDERAL PROGRAMS DOUG CALLAWAY AMANDA CARPENTER CHEF TECHNOLOGY OFFICER APRIL BLACKBURN CIVIL INTEGRATED OFFICE OF MANAGEMENT OFFICER JOHN KRAUSE GREGORY SMILEY RAL ENTERPRISE DIRECTOR VACANT ASST, SECRETARY ASST. SECRETARY ASST. SECRETARY ENGINEERING & OPERATIONS COURTNEY DRUMMOND FINANCE & ADMINISTRATION STACY MILLER STRATEGIC DEVELOPMENT BRAD THOBURN DISTRICT OFFICES ENVIRONMENTAL MANAGEMENT OFFICE JABON WATTS DISTRICT ONE SECRETARY BARTOW L. K. NANDAM OFFICE OF COMPTROLLER ROBIN NATOVE OFFICE OF FREIGHT, LOGISTICS & PASSENGER OPERATIONS OFFICE OF THE CHIEF PLANNER STATE SAFETY OFFICE LORAHOLLINGSWORTH KENYATTALEE DISTRICT TWO SECRETARY OFFICE OF ADMINISTRATION STEPHANE LIFF CHEF ENGINEER FREIGHT AND MULTIMODAL OPERATIONS OFFICE RICKEY FOXOERALD OFFICE OF POLICY LAKE CITY PLANNING ALISON STETTNER WILL WATTS SYSTEMS IMPLEMENTATION DISTRICT THREE SECRETARY CHIPLEY OFFICE OF WORK PROGRAM & BUDGET TRANSIT OFFICE OFFICE OFFICE OF DESIGN TIM LATTNER OFFICE OF RIGHT OF WAY SCOTT FOLTZ **ELIZABETH STUTTS** CHRISEDMONSTON PHILLIP GAINER VACANT FORECASTING AND TRENDS OFFICE STATE TRAFFIC ENGINEERING DISTRICT FOUR SECRETARY OFFICE OF CONSTRUCTION AARON SMITH & OPERATIONS OFFICE TREY TILLANDER JENNIFER FORTUNAS FT. LAUDERDALE GERRY O'RELLY DAN HURTADO SEAPORT OFFICE DANIEL FITZ-PATRICK OFFICE OF MAINTENANCE OFFICE OF MATERIALS DISTRICT FIVE SECRETARY RUDY POWELL TM RUELKE SPACEPORTS OFFICE WAYNE LAMBERT EMERGENCY MANAGEMENT OFFICE PROGRAM MANAGEMENT OFFICE STEFANE MAXWELL IRENE CABRAL DISTRICT SIX SECRETARY RESEARCH CENTER STACY MILLER INTERM DARRYLL DOCKSTADER DISTRICT SEVEN SECRETARY TAMPA DAVID GWYNN TURNPIKE ENTERPRISE DIRECTOR ORLANDO NICOLA LIGUORII

Figure 1 FDOT Organizational Chart As of March 2021

SEMO works with the Districts to ensure environmental compliance and appropriate consideration of environmental issues related to FDOT projects. SEMO has a major role in consultation and coordination with state and federal resource agencies and with Native American tribes, for projects as well as for FDOT's environmental program. SEMO reviews EAs, EISs and Section 4(f) evaluations and upon approval of these documents, Districts transmit them to the Lead Federal Agency (Type 2 CEs are reviewed only if requested by Districts).

Districts are responsible for reviewing and approving or coordinating FHWA approval for CEs. SEMO establishes quality control (QC) requirements and environmental compliance quality assurance (QA) standards for environmental document approval. In addition to responsibilities for review and approval of FDOT environmental documents, SEMO also provides the District with approval to transmit to the Lead Federal Agency, EAs and EISs for LAP projects, projects proposed by private entities and other alternative delivery projects.

Currently, SEMO has a staff of 18 full time employees, including a State Environmental Programs Administrator, a Natural and Community Resources Administrator, a State Environmental Development Engineer and a Project Screening and Technologies Administrator. SEMO staff consists of a variety of SMEs using a combination of in-house staff resources supplemented by consultant experts accessible through several on-going statewide support contracts. SEMO is comprised of the Project Screening and Technologies (PST) Section, Natural and Community Resources Section and Environmental Development and Engineering Support Section (see the **Existing State Environmental Management Office Organizational Chart in Figure 2**). Within their respective disciplines, SMEs within these sections provide technical expertise, as requested, throughout the project development process. When requested by a District Project Manager or District Environmental liaison, SEMO staff assists with resource agency consultation, such as Section 7 of the Endangered Species Act (ESA) and determinations of eligibility and effect under Section 106 of the National Historic Preservation Act. SEMO also supports District staff with the review of technical studies and reports prepared in support of projects.

FDOT's practice emphasizes collaboration between District and SEMO staff at key points during the environmental process to ensure that studies and documents are appropriately scoped and that finished products are acceptable prior to submittal to FHWA. Pursuant to section 334.048, Florida Statutes, Central Office is responsible for establishing policies, rules, procedures and standards which are necessary for FDOT to function properly including establishing accountability for all aspects of FDOT's operations. Central Office monitors the Districts and central office units that provide transportation programs to assess performance; determine compliance with applicable laws, rules and procedures; and provide information for FDOT managers to take corrective action when necessary.

The three sections of SEMO develop and maintain environmental policy, procedures, manuals and guidelines consistent with FDOT Efficient Transportation Decision Making (ETDM) and Project Development and Environment (PD&E) statewide planning initiatives and project delivery processes. Each section ensures quality processes are developed and implemented within its functional areas and are verified through performing Quality Assurance Reviews (QARs). Each section provides training and guidance to FDOT and consultant staff and coordinates with other states, federal agencies, FDOT Districts and other stakeholders. Additionally, the State Environmental Programs Administrator assists in special projects, supports FDOT environmental program functions and leads the State-Wide Acceleration and Transformation (SWAT) initiative to streamline the state project development and delivery process on non-federal projects.

The PST Section is responsible for the administrative and technology-based functions of the ETDM program and maintains the ETDM Manual, which outlines the ETDM process and implementation, as well as management of the agency operating and funding agreements between resource agencies, FHWA and FDOT. These agreements provide for expedited project review, technical support and development of PAs. PST provides general technology resource support for the office and is responsible for tracking office reviews of legislative proposals requested by the Legislative Programs Office. PST also tracks environmental milestones for projects by establishing Project Schedule Management (PSM) codes for environmental activities based on Class of Action (COA). Each District is required to use these PSM codes in production schedules for projects. Currently, a SWAT Dashboard tracks priority projects following the state process. A similar dashboard is being designed to track federal projects.

The Natural and Community Resources Section is largely responsible for the maintenance of the PD&E Manual, which outlines procedures for adherence to NEPA and its implementing regulations in addition to applicable state environmental laws. This section provides technical expertise to assist the Districts in areas related to natural and community resource considerations in association with transportation actions in all phases of project development. Natural and community considerations and program areas include wildlife and habitat, wetlands and mitigation, historic, archeological, tribal, socio-cultural and public involvement.

The Environmental Development and Engineering Support Section provides statewide technical and engineering expertise in areas related to physical environmental considerations associated with transportation actions in all phases of project development. Physical environmental considerations and program areas include air quality, highway noise, construction impacts, utilities, railroad, water quality and contamination.

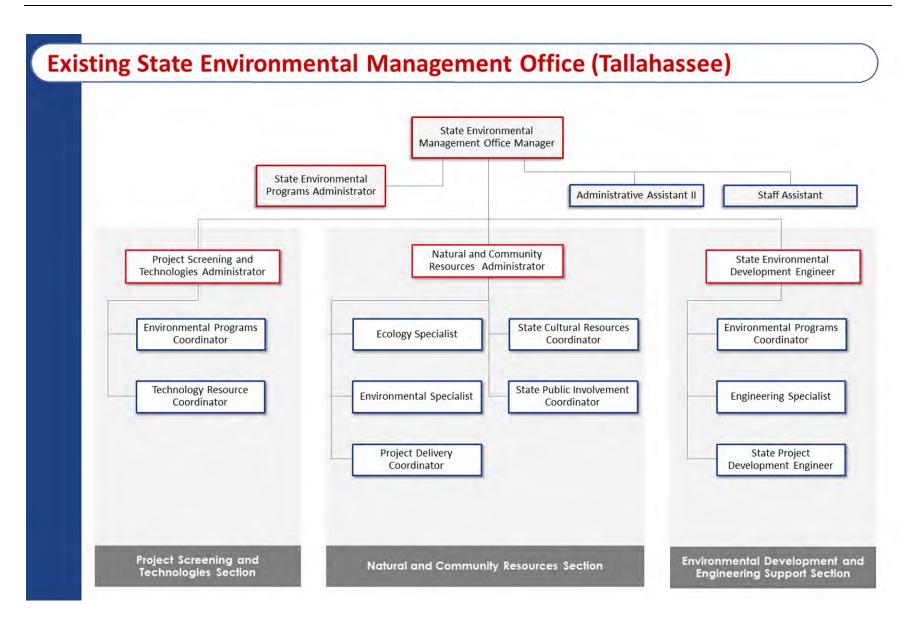


Figure 2 Existing State Environmental Management Office Organizational Chart: 2016

In addition to in-house staff, SEMO contracts with a variety of consultants on environmental issues, from cultural resources to contamination. Consultants are used for project-specific environmental surveys, technical studies, reviews, and environmental document preparation. Some consultants are located in-house to augment SEMO staff, providing environmental, engineering and programming expertise to support SEMO functions. SEMO staff work with many FDOT divisions and offices on a variety of programs or issues. The following are notable:

- LAP involves a process used by towns, cities and counties to develop, design and construct local transportation facilities with federal funds. FDOT is the steward of the federal funds and is responsible for oversight of funded projects on behalf of FHWA. LAP is administered in each District by a District LAP Administrator. SEMO works with the Statewide LAP Administrator and District LAP Administrators to communicate environmental policies, procedures, and guidance to local agencies, and to coordinate training for local agencies.
- SEMO coordinates with the District EMOs annually to determine in-house environmental support capacity, which includes an estimate of consultant needs.
- SEMO works with the Right of Way Office on projects involving early Right of Way (ROW)
 acquisition, and projects requiring continuing coordination regarding resource issues
 during the acquisition process.
- SEMO works with the Office of Policy Planning on planning and environmental linkages so that work accomplished through the planning process can be used to streamline environmental project development. The Office of Policy Planning also maintains a critical link with Metropolitan Planning Organizations (MPOs) to help ensure NEPA documents are consistent with MPO long range plans prior to NEPA approvals.
- SEMO works with FDOT's OGC to develop state policies/procedures and provide litigation support. SEMO coordinates with OGC to obtain legal review of draft environmental documents as needed. FDOT attorneys also provide legal support on project environmental issues as requested by Districts or SEMO.
- SEMO works with FDOT's OGC and the Legislative Program Office to monitor, and when necessary review and comment on, legislation that may affect FDOT's environmental program or project delivery.
- SEMO works with the Office of Design to ensure project alternatives are developed consistent with FDOT's roadway, structures and drainage design criteria and standards.
- SEMO works with the Production Support Office to streamline project management activities statewide including development of standard scopes of services and staff hour estimates guidelines.
- SEMO works with the Construction Office on establishing procedures and tools for documenting project commitments throughout the PD&E Study, design and construction phases.
- SEMO works with the Modal Office on projects involving transit by developing transit project delivery procedures consistent with FTA project development process.

Section Update: No changes to this section, which details what was in place at the time of the initial application submission. Changes to be made for Assumption of Responsibilities are found at Section §773.109 (a)(3)(ii) of this application and those changes were implemented. These pre-NEPA Assignment MOU activities remain relevant to OEM and intra-agency coordination remains on-going.

District Organization

FDOT is comprised of seven District Offices each headed by a District Secretary, and Florida's Turnpike Enterprise headed by an Executive Director (see **FDOT's District Boundaries Map in Figure 3**). All Districts have an EMO which is made up of an environmental lead (referred to as the Environmental Administrator) and environmental specialists. Districts also have a Project Development Engineer and Project Managers who participate in the environmental review process. The District EMO is responsible for reviewing and preparing environmental surveys and studies, completing environmental documents and certifying Type 1 CEs, implementing public involvement and interagency coordination, ensuring environmental commitment compliance and other activities related to NEPA compliance.

Generally, District environmental staff is located in the District EMO under Intermodal Systems Development. Regardless of the District organizational structure, environmental staff report to the District Director of Transportation Development. Districts are accountable for compliance with rules, policies and procedures adopted by Central Office.

Districts also use consultant contracts, either as part of individual project development contracts or general consultant contracts, to prepare environmental documents (e.g., Type 2 CEs, EAs and EISs) or to provide specific technical resource studies (such as archeological surveys/testing, wetland delineation). District environmental staff is responsible for reviewing consultant deliverables and ensuring that the proper interagency coordination and public involvement activities related to NEPA are conducted. District EMOs are responsible for document control, developing quality NEPA documents, maintaining the project files and providing recommendations within the NEPA document.

For each project, District environmental staff work with District planning staff, design engineers and consultant management staff throughout the project development and design process. As the engineers design the project, this coordination supports appropriate consideration of environmental resources, avoidance and minimization of environmental impacts, and environmental compliance. Districts also collaborate with MPOs and local agencies to identify, develop and prioritize transportation projects. LAP projects seeking federal funding follow FDOT's policies and procedures. The primary point of contact for LAP projects is the District Office. Prior to NEPA approval, District staff and as appropriate Central Office staff, coordinate with MPOs and local agencies to ensure fiscal constraint is reflected in their documents.

Florida Department of Transportation Central Office and **OEM Location** (Tallahassee) Florida's Tumpike Enterprise Headquarters (Orlando) **District Organization** District 1 - Southwest Florida (Bartow) District 2 - Northeast Florida (Lake City) District 3 - Northwest Florida (Chipley) District 4 – Southeast Florida (Ft. Lauderdale) District 5 - Central Florida (Deland) District 6 – South Florida (Miami) District 7 – West Central Florida (Tampa) ★ Florida's Turnpike Enterprise (Orlando) Legend Interstate Highway **Existing Turnpike System Facility** District Map

Figure 3 FDOT District Boundaries Map: Current as of May 2021

Figure Update: Updated State Environmental Management Office (SEMO) to Office of Environmental Management (OEM) in Tallahassee, Florida

Section Update: The District processes remain intact, as described throughout this section shifting their engagement from FHWA to OEM to review and approve documents as part of NEPA Assignment. Section §773.109 (a)(3)(ii): Changes to be made for Assumption of Responsibilities portion of this application have been implemented. Additional refinements to §773.109 (a)(3)(ii) are discussed throughout that section, as applicable.

Existing Environmental Staff

FDOT currently has a staff of 110 environmental professionals, 98 employees working in the seven Districts and Florida's Turnpike Enterprise located throughout the state and 12 SME/NEPA experts working in SEMO. In addition, SEMO has five staff positions that provide administrative and IT support functions. FDOT environmental staff is augmented by the flexible use of environmental consultants.

Based on work program analysis, FDOT completed approximately 577 environmental documents and determinations in fiscal year (FY) 2015. In FY 2016, approximately 600 environmental documents will be completed, are in progress or planned. In a typical year, FDOT also completes approximately 10 *de minimis*, 4 programmatic, and 3 Individual Section 4(f) evaluations. Currently there are 11 active EAs and 3 EISs. **Table 1** presents the number of staff responsible for environmental compliance and appropriate NEPA documentation statewide by functional role and location. **Table 2** shows the range of technical expertise of FDOT's existing environmental staff. The combined capability of SEMO and District environmental personnel provides the required expertise to meet the responsibilities of the NEPA Assignment Program.

		STAFF EXPERIENCE					
		TOTAL NUMBER OF STAFF	Environmental Policy / NEPA Specialist	Environmental Project Manager	Subject Matter Expert (SME)	Environmental Generalist	
	State Environmental Management Office	12	7	6	8	9	
State / District Environmental Staff	District 1	10	3	5	3	2	
	District 2	11	7	8	5	6	
	District 3	16	8	8	6	11	
nviro	District 4	12	10	6	11	8	
ict El	District 5	11	8	8	7	6	
Distr	District 6	20	14	15	8	9	
State / [District 7	10	9	4	7	7	
	Florida's Turnpike Enterprise	8	3	7	4	4	
	TOTALS	110	69	67	59	62	

Table 1 Staff by Location, Responsible for Environmental Compliance and Documentation¹

¹ Total number of staff identified per location, some staff experienced in multiple areas

Table 2 FDOT Range of Technical Expertise, by Location

		STATE / DISTRICT								
		State Environmental Management Office	District 1	District 2	District 3	District 4	District 5	District 6	District 7	Florida's Turnpike Enterprise
	Biological Resources / Endangered Species	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Archaeological Resources / Section 106	✓		✓	✓	✓	✓	✓	1	
	Historic Preservation	✓		✓	✓	✓	✓	✓	✓	
	Section 4(f)	1	1	✓	✓	✓	1	✓	1	
TISE	Noise	✓	✓	✓	✓	✓	✓	✓	✓	✓
XPER	Air Quality	1	1	✓	✓	✓	1	✓	1	✓
TECHNICAL EXPERTISE	HazMat / Contamination	✓	1	✓	✓	✓	✓	✓	1	✓
HNIC	Storm Water / Water Quality	✓	✓	✓	✓	✓	✓	✓	✓	✓
TEC	Wetlands /Section 404 Compliance	✓	1	✓	✓	✓	1	✓	✓	✓
	Floodplains / Hydraulics	✓	1	✓	1	1	1	✓	1	✓
	Environmental Justice / Social & Economic Impacts	✓	1	1	✓	✓	1	1	1	✓
	Indirect & Cumulative Impacts	✓	✓	✓	✓	1	✓	✓	✓	✓
	Environmental Permitting	✓	✓	✓	✓	✓	✓	✓	✓	✓

Most environmental personnel work for supervisors and managers with many years of experience and broad backgrounds in environmental analyses and/or strong technical knowledge in one or more environmental specialty areas. Experienced SEMO liaisons also work with and support the Districts. SEMO provides technical assistance and expertise to the Districts which may be supplemented by consultant resources under statewide contracts. The Districts contract with consultants for the preparation of the majority of environmental documents (e.g., CEs, EAs and EISs) as well as additional environmental technical services.

Section Update: Existing environmental staff and breakout across the Districts and disciplines remains static other than implemented changes described throughout Section §773.109 (a)(3)(ii): Changes to be made for Assumption of Responsibilities portion of this application have been implemented.

Approach to Environmental Document Preparation

FDOT integrates environmental considerations into its activities to achieve compliance with applicable laws, regulations, and standards. FDOT values the delivery of safe and efficient transportation projects and makes sound decisions based on the balanced consideration of transportation needs and of social, economic, and environmental impacts of proposed

transportation improvements. FDOT complies with NEPA and other federal environmental requirements on its projects requiring federal funding or approval. State-funded projects comply with FDOT-specific state environmental requirements. Where there are differences between federal and state requirements, FDOT follows federal requirements for projects requiring federal approval. FDOT projects are reviewed and environmental documents are prepared in accordance with the processes described in the ETDM Manual and the PD&E Manual.

Section Update: No changes to this section. Refinements to process under NEPA Assignment are discussed in §773.109 (a)(3)(ii), as applicable.

Efficient Transportation Decision Making (ETDM) Process

In December of 2005, FHWA recognized the ETDM process as satisfying the statutory requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 6002(b) and being acceptable for use on federal-aid projects. The ETDM Process has been nationally recognized as a best practice. ETDM is part of FDOT's approach for planning and environmental linkages (PEL).

The ETDM process facilitates early interaction among transportation planners, federal, state and local agencies, Native American tribes and affected communities [see the Efficient Transportation Decision Making (ETDM) Process in Figure 4]. ETDM provides a standard method for communicating and exchanging information that is flexible to the needs of stakeholders. Through this process, FDOT provides the opportunity for early stakeholder input on qualifying transportation projects in such areas as, purpose and need and range of alternatives to support planning decisions and develop the PD&E Study scope of services with a clearer understanding of the environmental setting and potential concerns. Intergovernmental coordination is accomplished through an Environmental Technical Advisory Team (ETAT) within each of the seven FDOT Districts. Each ETAT includes representatives from the Metropolitan Planning Organizations/Transportation Planning Organizations (MPOs/TPOs), federal and state resource and regulatory agencies and participating Native American tribes. ETAT members use the Environmental Screening Tool (EST) to review project information, identify potential project effects and submit comments to FDOT. This web-based Geographic Information System (GIS) database and mapping tool provides access to project information and data about natural, physical, cultural and community resources in the proposed project area. A District ETDM Coordinator leads the ETAT. Project information is also made available to the public through the ETDM Public Access Site.

ETAT members perform multidisciplinary reviews specific to their area of expertise (e.g., wetlands, land use). These reviews help to:

- Evaluate the feasibility of a proposed project
- Allow for early identification of potential avoidance, minimization and mitigation opportunities
- Focus the issues to be addressed during the PD&E Study phase
- Develop documentation and support information which may be carried forward into the PD&E Study phase

As shown in **Figure 4**, the ETDM process includes a Planning Screen and a Programming Screen. For additional details, see the **ETDM Manual**. The Planning Screen may occur when considering projects for inclusion or prioritization within a Cost Feasible Long Range Transportation Plan (LRTP). The Programming Screen supports development of FDOT's Five Year Work Program. The screening events link the transportation Planning phase and the PD&E Study phase. Each screening event centers on a project review and includes project preparation activities and follow-up tasks occurring before and after the review.

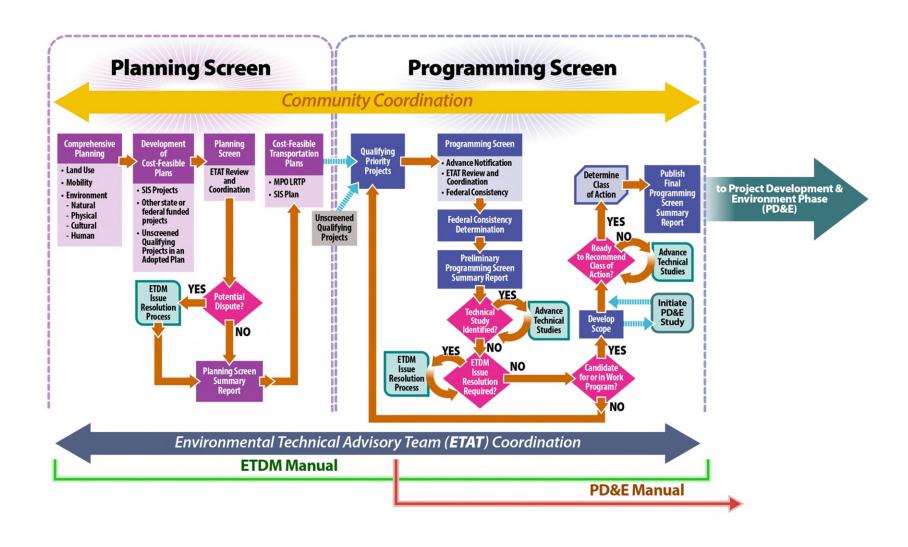


Figure 4 Efficient Transportation Decision Making (ETDM) Process 2016 (Remains Current)

At the end of the Programming Screen, FDOT summarizes the comments gathered from the reviews and uses this information to focus the issues that need to be addressed during the PD&E Study phase and develop the scope of services. The NEPA COA is typically determined during the ETDM process in coordination with and approved by FHWA. The COA can also be determined at a later date once additional studies have taken place and the PD&E Study phase has begun.

Section Update: No changes to this section. However, activities previously performed by FHWA, are now performed by OEM under the executed NEPA Assignment MOU.

Process for FDOT-Sponsored Federal Projects

The Existing NEPA Compliance Process is depicted in Figure 5. Typically, Type 2 CE, EA and EIS projects are screened in ETDM, the Advance Notification is distributed and the scope of services is finalized prior to the initiation of the PD&E phase. Type 1 CEs do not go through the ETDM process. The process for CEs is further documented in the subsequent section Approach to Categorical Exclusion Documentation Preparation of this application. For Type 2 CE, EA and EIS projects, a District Project Manager is designated to lead the coordination and completion of the PD&E Study phase. A District Environmental Liaison is assigned to each project. Other District liaisons are assigned to support the Project Manager in the applicable functional areas (e.g., design, drainage, permitting). A consultant team is selected and the project is initiated. The District Project Manager and District liaisons form the project's core team.

Technical studies are prepared, as needed, to address specific issues identified during the ETDM, scoping, or required consultation processes, or at any other point in project development. Public involvement and coordination are documented along with completion of technical studies. At the discretion of the project core team, technical studies may be reviewed by SEMO SMEs. If studies, public involvement, or agency coordination identify potential impacts, the project core team will discuss possible ways to avoid or minimize those identified potential impacts. Once project alternatives have been developed and any necessary technical studies and documentation are reviewed, the District uses the interdisciplinary approach to oversee and review the NEPA document.

The District core team completes QC review of the environmental document. The first stage of this review is to determine whether studies and other activities required and identified in the PD&E Study scope of services have been completed, and whether all sections of the environmental document are present. If the document is determined to be incomplete, it is returned to the consultant team to provide the missing information or revise the incomplete sections. The District certifies that the QC process has been completed and the documents are submitted for SEMO review. EAs and EISs require a mandatory SEMO review (see **Existing SEMO NEPA Review Process in Figure 7**) which is described in more detail in the section on **Current Quality Assurance / Quality Control Procedures** of this application.

FDOT's approach to environmental compliance emphasizes collaboration between District and SEMO staff, and respective OGC offices as needed, at key points during the environmental process to ensure studies and documents are appropriately scoped and finished products are acceptable prior to final review and decision. This streamlined approach reduces the level of effort of sequential production and review of studies and documents. Further, it facilitates project production and prevents delays through the early identification and resolution of issues.

Existing NEPA Compliance Process

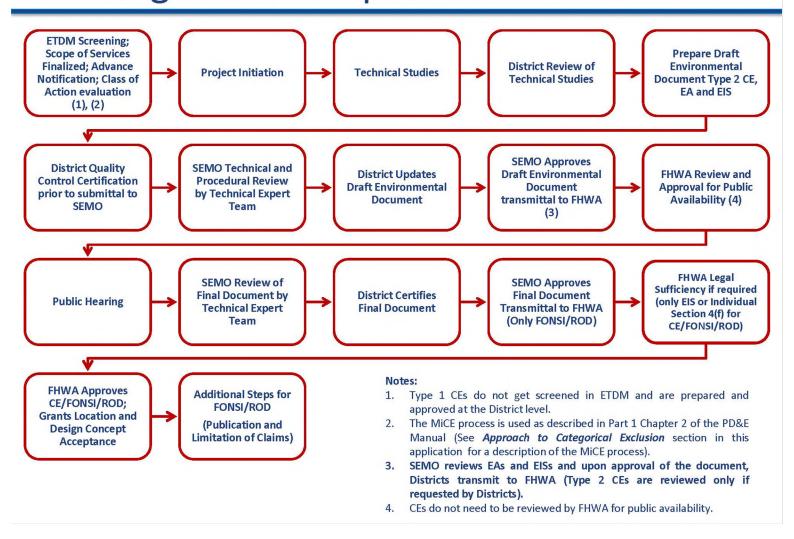


Figure 5 Existing NEPA Compliance Process 2016

FDOT has transitioned from a process where environmental documents contain large volumes of data and studies directly in the environmental document, to a process with more concise, focused documents with reference materials.

FDOT's approach is to disclose the evaluation and coordination which support recommendations and decisions reflected in EAs and EISs. To prevent sequential, iterative reviews, the process involves greater collaboration among environmental document producers and reviewers, with focused EAs and EISs that are centered on presenting the environmental and project information most important for public understanding and project decision-making. Technical studies are prepared separately and reviewed and then incorporated into the environmental document by reference, briefly summarized and/or included as appendices. These studies are evaluated before the environmental document is submitted for review, which reduces document review time.

Section Update: While historically accurate, changes proposed as part of NEPA Assignment have been implemented. Refinements to process under NEPA Assignment are discussed in §773.109 (a)(3)(ii), as applicable.

Process for Local Agency Program (LAP) Projects

FDOT contracts with local agencies to plan, develop, design and construct transportation facilities. Public Law 102-240 (Intermodal Surface Transportation Efficiency Act of 1991), called for FDOT to expand the LAP program to increase the number of funding categories available to local agencies. This increase of funds and categories has also increased the involvement of the FHWA in the contracts between FDOT and local agencies. When FDOT contracts with any local agency for reimbursement using federal funds administered by FHWA, FDOT must ensure local agencies comply with applicable federal statutes, rules, and regulations.

FDOT has assigned the responsibility of administration and oversight of the LAP to a State LAP Administrator in the Central Office. In each District, a District LAP Administrator oversees the program. The District LAP Administrator is designated by the District Secretary. Each District must provide project management and oversight through the Planning, Environmental Management, Design, Procurement, Program Management, Right of Way and Construction Offices.

FDOT uses the LAP Certification process, which can be found in the Local Agency Program Manual, to determine whether local agencies are qualified to perform the project responsibilities for federal-aid projects. FDOT is not relieved of oversight and monitoring responsibilities by certifying a local agency. FDOT serves as the prime recipient of federal transportation funds and in accordance with 23 C.F.R. Chapter I, FDOT acts as the supervising agency. FDOT ensures LAP projects receive adequate supervision and inspection and are developed according to approved plans and specifications. FDOT conducts final inspection and acceptance of LAP projects.

Full certification is reserved for those local agencies that possess qualifications, capabilities and resources to achieve performance expectations between certification cycles. Project-specific certification is reserved for those agencies with limited experience administering federal-aid projects, or which will not produce a consistent number of LAP projects to build experience and maintain consistent knowledge of the program.

The following areas of certification are available to local agencies: planning, design and construction / construction administration. Local agencies seeking certification in these areas must demonstrate their level of knowledge, skills, ability and project experience.

Under LAP, the local agency does not determine the NEPA COA or approve the Environmental Certification or ROW Certification. Consequently, NEPA COA determination, environmental and ROW phases are specifically excluded from the general certification discussion as these areas are addressed on a project-by-project basis. A District's Director of Transportation Development, in consultation with the District Environmental Administrator and the District Right of Way Manager will determine the method of delivering these phases and the local agency's level of involvement.

If a local agency decides to pursue environmental activities under LAP, it must meet the same minimum qualifications required of FDOT Consultants identified in *Rule 14-75.003, Florida Administrative Code (FAC)*. This rule requires PD&E Study teams to include a professional engineer, a natural scientist, and a social scientist. In addition, a member of the local agency oversight and/or project staff must complete FDOT's PD&E training. Additional information regarding the local agency certification process can be found in the Local Agency Program Manual.

LAP projects are managed in the same manner as FDOT-sponsored FHWA funded projects. Environmental documents and studies for LAP projects are reviewed like federally funded projects sponsored by FDOT. Each project undertaken by a local agency must be developed in agreement with the appropriate guidelines and with enough detail to accurately determine the economic and environmental impacts. This project development process must be in accordance 40 C.F.R. §1500, et seq. and 23 C.F.R. §771 as described in FDOT's PD&E Manual. These LAP projects also follow standard FDOT environmental document production, review and approval processes. FDOT will not approve LAP projects until such projects meet federal environmental requirements.

Section Update: While historically accurate, changes proposed as part of NEPA Assignment have been implemented. Refinements to process under NEPA Assignment are discussed in §773.109 (a)(3)(ii), as applicable. Updates to the LAP process are in the LAP Manual at: https://www.fdot.gov/programmanagement/lap/lap-toc.shtm

Approach to Categorical Exclusion Documentation Preparation

In October 2015, <u>FDOT and FHWA entered into a Programmatic Agreement for Categorical Exclusions under 23 C.F.R. §771.117</u>. This Agreement streamlines the environmental review process for Type 1 CE actions; giving FDOT the responsibility to make CE approvals on behalf of FHWA for certain projects. FDOT may review and make CE approvals on behalf of FHWA for actions listed in 23 C.F.R. §771.117(c) and identified in 23 C.F.R. §771.117(d), which meet the criteria established in Section 6 of the Agreement. The October 2015 Agreement, supersedes previous agreements between FHWA and FDOT with regard to Type 1 CEs and former PCEs.

In Florida, Type 2 CEs are actions not specifically listed or identified as CEs in 23 C.F.R. §771.117, but meet the requirements of a CE under 40 C.F.R. §1508.4 and 23 C.F.R. §771.117(a). For these types of projects, FDOT certifies that the action will not result in significant environmental impacts if FDOT concludes that the action qualifies for a CE under 23 C.F.R. §771.117(d) due to its scope and similar nature, and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS. FHWA approves Type 2 CE actions based on the project's scope, documentation and certifications submitted by FDOT.

The District documents its decision regarding the need for studies to confirm that the project meets the criteria for a Type 1 CE. If no studies are needed for projects falling within one or more of the activities listed in 23 C.F.R. §771.117(c) and 23 C.F.R. §771.117(d), the project is determined by the District Environmental Administrator to be a Type 1 CE with no further review. If studies are needed, those studies are identified in the scope of services and then undertaken. Documentation consists of an evaluation checklist prepared after environmental analysis has been completed. Documentation of the results of any analysis or coordination may be summarized on the checklist and is placed in the project file. In certain cases, when it is not clear whether the project is a Type 1 CE or Type 2 CE, the Minor Categorical Exclusion (MiCE) Process can be used. The MiCE process was developed by FDOT to assist Districts in making and validating CE determinations and providing specific findings and documentation to address potential impacts to relevant environmental issues or resources without causing the COA of the project to be elevated. The MiCE is not a new CE, but rather a process which can be used to support the determination that a project can be classified as a Type 1 CE and in some cases a Type 2 CE. Type 1 CEs are not typically screened in the EST; however the EST may be utilized to view GIS data layers applicable to the project without initiating ETAT review.

After completion of tasks identified in the scope of services, the District determines whether the results of studies support or invalidate the proposed classification. If the Type 1 CE classification is valid, the CE is approved by the Environmental Administrator. Approval is electronically documented in the project file. If the classification is invalid, the District reclassifies the project and proceeds with environmental approval as required under the new classification. Once the checklist is signed by the Environmental Administrator, the District prepares a Status of Environmental Certification Form. This form is then used by FDOT's Federal Aid Management Office to complete a federal-aid form.

For projects that are not in the Type 1 CE category, the District consults with the FHWA to determine whether the project should be developed through the MiCE process, classified as a Type 2 CE under 23 C.F.R. §771.117(d) or be screened through the EST to determine the COA. Type 2 CEs require completion of a Type 2 Categorical Exclusion Determination Form and a Preliminary Engineering Report (PER). Type 2 CEs are approved by FHWA who provides Location Design Concept Acceptance (LDCA) allowing the project to proceed to final design. For Type 2 CEs, the District follows a similar process as discussed in the previous section for EAs and EISs. The projects are typically screened using the ETDM process, a scope of services is prepared and a consultant brought on board to work with the core team through the PD&E Study phase. Districts are responsible for the review of Type 2 CEs and coordination with FHWA. SEMO review is not required but SMEs are available as needed to advise and support the Districts. FHWA signs the Type 2 CE Determination Form resulting in LDCA. Approval by FHWA is electronically documented in the project file. The process to determine the COA (in coordination with FHWA) and when the ETDM process is followed is shown in Class of Action Determination and EST Usage, Figure 6.

Section Update: While historically accurate, changes proposed as part of NEPA Assignment have been implemented. Refinements to process under NEPA Assignment are discussed in §773.109 (a)(3)(ii), as applicable.

Public Involvement Procedures

Public participation is the opportunity for active and meaningful involvement of the public in the development of transportation plans and improvement programs. Various federal and state laws and regulations require that state departments of transportation and MPOs proactively seek the involvement of interested parties, including those traditionally underserved by the current transportation system. FDOT's procedures for public involvement during the PD&E Study phase are documented in Part 1, Chapter 11 of the PD&E Manual. This guidance is based on 23 U.S.C. §139, 23 C.F.R. §771.111 and meets federal and state requirements.

Step 1 Does the project require FHWA action?



Step 2

Does the project qualify for screening in the Environmental Screening Tool (EST)?



Step 3

Class of Action Determination



Step 4 (FHWA only)

Coordinate Class of Action with FHWA if project type is not included in Type 1 CE list.

Does the project require a FHWA action?

- •PD&E Manual Part 1, Chapter 2
- Requires federal funds, maintenance of funding eligibility or federal approval (interstate access control) as well as Local Agency Program (LAP) projects (1)

What qualifies a project for screening in the EST?

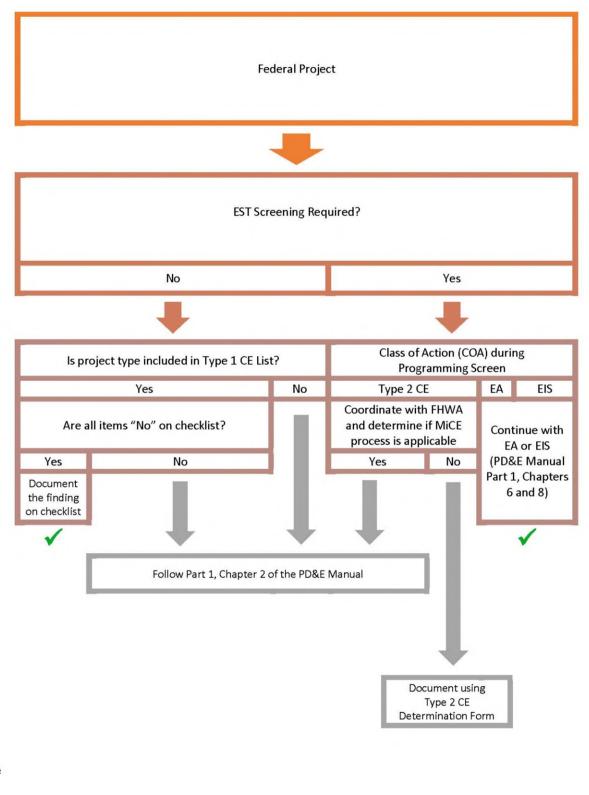
- •PD&E Manual Part 1, Chapter 2; ETDM Manual Chapter 2
- Roadway projects that qualify: capacity improvements, new roadway, reconstructed highway, major interchange modifications, and new bridge (bridge replacements)
- Public Transportation projects that qualify: requires major capital improvements, new rail, new facility, and new seaport or non-passenger rail project on SIS

What are the types of classifications?

- •PD&E Manual Part 1, Chapter 2
- Categorical Exclusions (Type 1), Environmental Assessments (EA), and Environmental Impact Statement (EIS)
- •Coordination with FHWA should determine whether a Type 2 CE, EA, or EIS is required

Type 1 CE Projects

- See list of Type 1 CE projects; these projects are NOT screened in EST and do not require coordination with FHWA
- •Follow the flow chart to determine when to follow the MiCE Process described in Part 1, Chapter 2 of the PD&E Manual



Notes

(1) For Federal permits, consult with federal permitting agency to determine if a DOT NEPA document is required to support the permit (i.e. US Coast Guard Bridge Permit, Army Corp of Engineers Section 404)

Figure 6 Class of Action Determination and EST Usage

FDOT's Public Involvement Policy, Topic Number 000-525-050, states the following:

The Department recognizes the importance of involving the public in information exchange when providing transportation facilities and services to best meet the state's transportation needs. Therefore, it is the policy of the Florida Department of Transportation to promote public involvement opportunities and information exchange activities in all functional areas using various techniques adapted to local area conditions and project requirements.

Section Update: No change to section. However, FDOT's Public Involvement Policy was last updated in March 2020 and can be found at: https://fdotwp1.dot.state.fl.us/ProceduresInformationManagementSystemInternet/FormsAndProcedures/ViewDocument?topicNum=000-525-050

FDOT's Environmental Policy, Topic Number 000-625-001 stresses the importance of preserving Florida's environmental quality, community values and economic prosperity in support of implementing FDOT's programs and projects. In carrying out this policy, FDOT develops and implements environmental processes and procedures consistent with environmental laws and regulations. Additionally, FDOT coordinates with and provides the opportunity for input between federal, state and local environmental resource and regulatory agencies, non-governmental organizations and the public to assist FDOT in achieving its mission.

The requirements for public involvement activities are related to the COA of a project and the level of effort is based on the context and intensity of the project's potential impacts. For Type 1 CEs, Districts prepare a Community Awareness Memorandum if the District determines that a sensitive community issue exists on or near the proposed project. For Type 2 CEs, EAs and EISs, a Public Involvement Plan (PIP) is required which describes how the project team will establish and maintain communication with the public, ensures the public remains informed about the proposed project, and ensures the public has an opportunity to provide input. Details regarding stakeholder identification (stakeholder database), strategies that will be used to convey information to the public (e.g., social media, newsletters, flyers, websites, newspapers, radio, TV, message boards), and anticipated face-to-face involvement (e.g., meetings, virtual open houses) are described in the PIP. For EISs the PIP is a component of the Coordination Plan required by 23 U.S.C. §139 (g).

FDOT follows the requirements of 23 U.S.C. §139 for efficient environmental review and applies it to projects for which EISs are prepared. These requirements emphasize collaboration between federal, state, local and tribal government entities and the public when preparing EISs. Title 23 U.S.C §139 requires lead agencies to provide, as early as practicable in the environmental review process, an opportunity for the public and participating agencies to provide input in the development of the purpose and need and the range of alternatives to be considered. It states that the Lead Federal Agency will also collaborate with the cooperating and participating agencies during the study process on study methodologies to be used, and level of detail required for the analysis of project alternatives. Following the requirements of 23 U.S.C. §139 (g), the Coordination Plan identifies the lead agencies for the project (federal, state and local) along with the cooperating and participating agencies and describes expectations for each of the roles. The plan also describes the agency coordination that will take place and includes guidance for interagency coordination and ways to encourage opportunities for agency and public participation during scoping, development of purpose and need and alternatives, and public review of the environmental document. In December 2005, FHWA recognized the ETDM process as satisfying

the statutory requirements of SAFETEA-LU Section 6002(b) and acceptable for use on federalaid projects which includes the Coordination Plan requirements.

The project's core team reviews the submitted public and agency comments from meetings and hearings and evaluates the comments received. Modifications to the alternatives or design concepts may occur based on the comments received. Responses to public comments are included in a public involvement summary report that is developed after each formal public meeting or hearing.

Section Update: No change in section. However, referenced <u>Public Involvement Policy</u> and <u>Part 1, Chapter 11, Public Involvement in the PD&E Manual have been updated.</u>

Current Quality Assurance / Quality Control Procedures

FDOT utilizes a flexible, systematic approach to QA and QC to monitor work processes to implement laws, rules, policies, procedures, and standards as established in the Quality Control Policy, Topic Number 001-260-001. This approach is intended to ensure compliance and quality performance by the Central Office and District staff responsible for the delivery of transportation products, services, and information. Environmental documents go through QA/QC at several stages during their development. Environmental procedures are contained within the ETDM Manual and PD&E Manual. These manuals, combined with training and other guidance documents, form the foundation for QA/QC. They describe how FDOT complies with federal and state laws, rules and regulations and contain FDOT policy and procedure to ensure quality documents.

The SEMO and District staff consists of professional engineers, natural scientists, and social scientists. The SEMO staff is responsible for the development and management of QA and the District is responsible for development of documents and QC. Together, these management activities ensure quality documents.

Consultants support SEMO and District staff and are important members of the project team, providing a wealth of expertise to supplement staffing needs. FDOT has a formal pre-qualification process, established in the Professional Services Consultant Qualification Procedure, Topic Number 375-030-001, in which consulting firms are evaluated and approved before they can begin work on PD&E studies. Professional service consultants conduct PD&E studies and prepare the environmental documents under the direction of an FDOT Project Manager. Consultants must meet the minimum technical qualification standards identified in *Rule 14-75.003*, *Florida Administrative Code (FAC)*. This rule requires PD&E Study teams to include a professional engineer, a natural scientist, and a social scientist meeting the following minimum qualifications:

- Professional Engineer must be registered with the Florida State Board of Professional Engineers and must have managed and completed at least one PD&E Study or similar study, including roadway design and environmental engineering. This experience must include conducting environmental studies for transportation projects involving highway projects and public involvement issues.
- Natural Scientist must have a four-year university or college degree and experience in a
 natural science such as ecology, biology, environmental science, or wildlife management
 and have completed at least one PD&E Study or similar study in a natural science area.

 Social Scientist - must have a four-year university or college degree and experience in a social science such as psychology, sociology, statistics, political science, geography, urban planning demographics, archeology, or economics and have completed at least one PD&E Study or similar study in a social science area.

Continued qualification requires annual submittal of a qualification application, and satisfactory work performance. FDOT periodically audits a sampling of qualified consultants to ensure compliance with qualification requirements. In addition, FDOT requires FDOT's Project Manager to evaluate professional services consultants for performance in meeting project requirements related to schedule, management, and quality as discussed in the Professional Services Consultant Work Performance Evaluation Procedure, Topic Number 375-030-007.

The scope of services for PD&E studies requires the consultant to have a QC Plan which follows FDOT standards and includes internal QA and QC processes. The plan includes checking, reviewing, and monitoring of work activities by objective and qualified individuals who are not directly responsible for performing the initial work.

At the project level, SEMO conducts QA and QC reviews for EAs and EISs, to ensure that the document is ready for submittal to FHWA. Districts are responsible for the QA and QC of CEs. SEMO SMEs are available for consultation and QC review of technical studies as requested by District Offices. FDOT's QA/QC procedures are incorporated in the **Existing NEPA Compliance Process shown in Figure 5**.

The Existing SEMO NEPA Review Process is shown in Figure 7. Districts are responsible for conducting a QC review of documents, prior to submitting the draft document to the SEMO. The District prepares a transmittal form certifying that the QC was completed and uploads the environmental document(s) to FDOT's Electronic Review and Comment (ERC) system for SEMO to review and provide comments within 30 calendar days. The Natural & Community Resources Administrator receives the District project information and provides it to the SEMO Project Delivery Coordinator who confirms that the document is ready for review and contains the expected elements, as described in the appropriate PD&E Manual chapter. Review for readiness is designed to ensure that the environmental document is NEPA compliant, consistent internally and with the supporting technical studies, and meets the requirements of federal and state environmental statutes, regulations and policies. If the document is not ready for review, it is returned to the District to provide the missing information or revise the incomplete sections.

If the submittals are determined to be satisfactory, the SEMO Project Delivery Coordinator schedules a briefing meeting between the District project team and SEMO Project Review Team. During this meeting, the following topics (among others) may be discussed: review schedule, project contacts, distribution of document to SEMO SMEs and presentation of the project by the District. This meeting begins the SEMO 30-day review period. SEMO provides comments and the Districts provide responses using the ERC system. The system allows District Project Managers to easily track comments and responses, including the status, the originator, deadlines and which comments are outstanding and still require responses at any time during the process. In addition, reviewers and consultant staff assigned to the project can see comments and responses. The design of the system mandates that comments require a response that can either be accepted by the reviewer that made the comment or rejected if unsatisfactory. Further responses are submitted to address rejected responses until the reviewer is satisfied.

The SEMO Project Review Team holds an internal coordination meeting to discuss the comments. During the review cycle, SEMO reviews and finalizes the comments, discussing them

with the District Project Manager, if necessary. Final comments are entered into the ERC system. After the comments are submitted, the District may request a comment resolution meeting to discuss or clarify the comments.

Each District responds to comments through the ERC system, updates the environmental document(s) and conducts their internal QC. The document(s) are re-submitted for final SEMO approval with a summary of how the District addressed the comments. The SEMO Project Review Team reviews the revised documents to ensure that comments have been addressed. Once the document meets requirements and is ready for final review and approval, SEMO provides the District with approval to transmit the environmental document to the Lead Federal Agency. The ERC system maintains a file with the technical documents that the SEMO Project Review Team reviewed.

FDOT's process is structured to include very high levels of QA throughout the project-specific environmental process. FDOT's projects are typically managed in a team format where the Project Manager and SMEs work closely together to foster communication and problem solving. The Project Review Team concept itself is a QA feature in that it ensures that the persons producing and approving documents communicate mutual expectations about what is needed for a project. Consistent interaction between the Project Review Team and the District project team is intended to resolve most, if not all, problems before a document is completed and ready for review. As a result, when a document begins review for readiness, it should be close to ready for approval.

When requested by District offices, in addition to the technical review described above, a legal review is completed by FDOT's OGC. The primary goal of this review is to assess the document from the perspective of legal standards, litigation risk and legal defensibility.

Section Update: While historically accurate, changes proposed as part of NEPA Assignment have been implemented. Review process and QA/QC updated for NEPA Assignment. Current Quality Assurance and Quality Control Procedures are described in detail in the <u>NEPA Assignment Quality Assurance and Quality Control Plan</u>.

Environmental Commitments

Consideration of environmental commitments begins at the earliest phases of project development, although completion of commitments may not occur until the operation and maintenance phase of a project. Depending upon the nature of the commitment, environmental commitments may be implemented during or prior to final design; during or after construction is completed; or during operation and maintenance.

During the development of a NEPA document, commitments are documented within the appropriate sections of each document (Type 1 CE, Type 2 CE, EA or EIS). The commitments are embodied in the NEPA decision document [CE determination, Finding of No Significant Impact (FONSI), Record of Decision (ROD)]. They are updated in subsequent phases and documented in Reevaluations.

FDOT also requires environmental commitments be internally communicated from environmental approval through detailed design, pre-bid conference, project letting, maintenance, and operation, using the Project Commitment Tracking Procedures, Topic Number 700-011-035 and the Project Commitment Record (PCR), Form Number 700-011-35. The PCR itself is an internal communication tool and is not appended to NEPA decision documents. This form is used to identify commitments made during the PD&E Study phase and track compliance through design

and construction. The PCR records each commitment; specifies how each commitment will be met; and identifies responsibility for the commitment. Commitment status is updated in the PCR as the project advances through the different phases, including noting when commitments have been completed.

Section Update: No change to this section. FDOT Commitment Tracking Procedure (<u>Topic Number 650-000-003b</u>) was updated on March 16, 2018 and <u>Part 2, Chapter 22 of the PD&E Manual</u> was updated to reflect current procedure. The PCR is stored in SWEPT and a part of the project file.

Existing SEMO NEPA Review Process

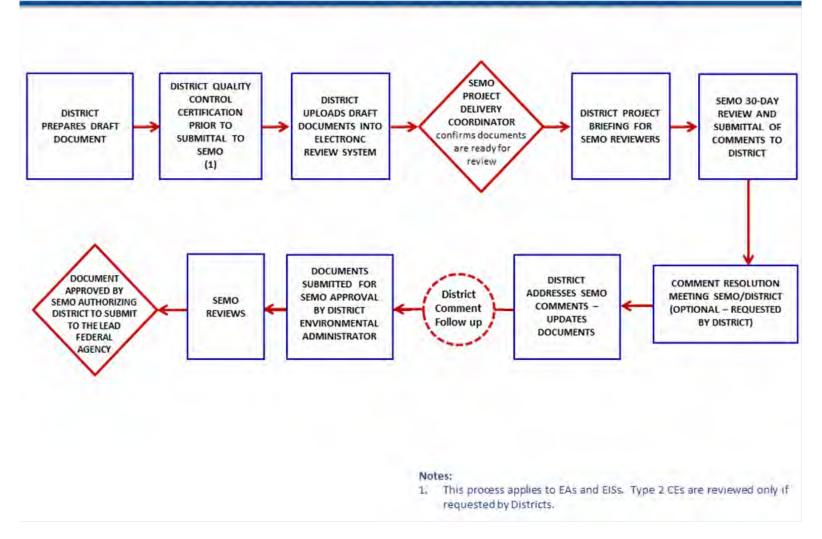


Figure 7 Existing SEMO NEPA Review Process: 2016

Tools and Guidance

For decades, FDOT has worked with FHWA to implement NEPA on the SHS and on LAP projects that require FHWA approval. As the state highway agency, FDOT routinely prepares NEPA documents for FHWA's independent evaluation and approval. Local agencies and their consultants also prepare NEPA documents for LAP projects under the guidance and oversight of FDOT. These documents are reviewed by FDOT prior to their submittal to FHWA. In addition, FDOT certifies that certain types of CEs meet regulatory and PA requirements as identified in the Programmatic Agreement for Categorical Exclusions under 23 C.F.R. §771.117.

To implement NEPA effectively, FDOT has developed a number of tools, PAs, manuals, standards and handbooks that provide guidance on the process for proper environmental document development and provide specific requirements for individual technical subject areas. These tools and guidance ensure that environmental documents and technical reports meet quality standards and satisfy the requirements of NEPA and other related state and federal laws, rules, regulations, and applicable environmental considerations regarding projects.

The PD&E Manual is the primary resource for addressing the environmental requirements associated with planning and delivering highway projects. The manual is a compilation of environmental procedures and processes related to environmental, cultural, historic, and social resources. The manual is developed by SEMO in collaboration with Districts. The PD&E Manual provides project analysts and Project Managers with information necessary to develop projects that comply with federal and state laws. It is used by FDOT as the standard measurement for QA in project development. This manual is intended for use by project sponsors and environmental practitioners who conduct environmental work on behalf of FDOT, as well as FDOT environmental staff. The manual is designed to work in conjunction with FDOT handbooks, guidance documents and Design Standards that are used in FDOT's pre-construction process. The manual and its supporting handbooks and Design Standards are intended to be "living" documents, which are regularly evaluated and updated in response to changing environmental requirements, standards and policies.

The <u>ETDM Manual</u> covers specifically the planning and programming phases of transportation projects through the EST. The purpose of this manual is to provide transportation planners, project analysts, project managers and other practitioners with sufficient information to consider as they review qualifying transportation projects during the ETDM Planning and Programming Screens. It sets the standard procedure by which qualifying projects are screened through the ETDM process. This manual also provides direction for the potentially affected community and stakeholder involvement in the transportation planning phase of project delivery and is used in conjunction with resources such as handbooks, the EST, and the PD&E Manual.

The <u>Design Standards</u> are a dated set of standard drawings, compiled into electronic book (e-Book) format. The Design Standards are prepared and maintained by the Office of Design. The Design Standards are intended to support the various engineering processes for construction and maintenance operations on the SHS. They are established to insure the application of uniform standards in the preparation of contract plans for construction of roadway and structures.

The <u>Plans Preparation Manual (PPM)</u> contains geometric and other design controls and criteria, as well as procedures which must be met for the design of FDOT projects. The information contained in the PPM applies to the preparation of contract plans for roadways and structures. The PPM is a two-volume manual prepared and maintained by the Office of Design. Volume 1

contains information concerning the design criteria and process and Volume 2 contains information concerning plans preparation and assembly.

Paragraph Update: PPM is now the FDOT Design Manual and is located here: https://www.fdot.gov/roadway/FDM

The <u>Interchange Access Request User's Guide</u> contains information concerning the preparation of Interchange Access Requests to support the request for new or modified access on the SHS. The Interchange Access Request User's Guide is prepared and maintained by the <u>Systems Planning Office (SPO)</u>.

Paragraph Update: SPO has been renamed to the Systems Implementation Office (SIO).

Additional resources for public involvement are provided under **Public Involvement Resources for the Practitioner**. This includes the **Public Involvement Handbook**, published by SEMO. This handbook provides proven techniques and methods to encourage public participation in the development of a transportation system that will meet the needs of Florida residents and visitors. It provides clear guidance for developing and implementing effective activities designed to get the public involved in the transportation decision-making process. It also includes a variety of methods and techniques to involve the public in the development of specific plans, programs or projects for those affected by the proposed transportation action.

Paragraph Update: Public Involvement Resources have been updated and are located at: https://www.fdot.gov/planning/policy/publicinvolvement/index and https://www.fdot.gov/environment/publinvolvement.shtm. The Public Involvement Resources for the Practitioner has been renamed to the https://www.fdot.gov/environment/publinvolvement.shtm. The Public Involvement Resources for PD&E. The Public Involvement Handbook is published by the Office of Policy Planning (OPP).

The <u>Construction Project Administration Manual (CPAM)</u> provides information for administering construction contracts and ensures consistency in carrying out FDOT policies. FDOT provides opportunities for the District Construction Offices to become involved in the design element of the project development process. By taking advantage of this opportunity, the construction offices can provide comments that will improve the design of the transportation facility, improve construction duration and address potential issues which may otherwise arise during the actual construction of the project. The manual provides guidance for conducting these plan reviews including relevant environmental and permit features or issues which should be addressed in the plans. Environmental Permit Compliance is addressed in Chapter 8, Section 8.2 of this manual and addresses compliance with areas of environmental concern (including permits and project commitments).

PAs are another important tool used by FDOT to establish a process for consultation, review and/or compliance with one or more federal laws. PAs may also function as an expression of collaborative intent between agencies. Please refer to the section on Programmatic Agreement and Agency Consultation of this application.

Other SEMO guidance documents and training materials are available on FDOT's website under **EMO Resources**. Additionally the various disciplines provide manuals and reference material for practitioners to utilize during final design (e.g., Drainage Manual, Structures Manual, Right of Way Mapping Handbook).

Links to these tools, including manuals and procedures are included in this application in order to provide more detail on FDOT's current processes that guide the development of documents, analyses and consultations required to fulfill the environmental review responsibilities being requested. FDOT is solely responsible for updating its manuals, procedures and processes. FHWA approval of FDOT Manuals, procedures and processes is not required except for Public Involvement, Part 1 Chapter 11, and Noise, Part 2 Chapter 17 of the PD&E Manual.

Paragraph Update: The PD&E Manual's Noise Chapter, previously located at Part 2, Chapter 17, was renamed as Highway Traffic Noise and relocated to Part 2, Chapter 18. The current chapter is found at: https://www.fdot.gov/environment/pubs/pdeman/pdeman-current

Additional Guidance

In addition to FDOT's own guidance, FDOT and its consultants use the wealth of FHWA NEPA guidance in developing environmental documents and studies. FHWA provides a rich online set of guidance (http://www.fhwa.dot.gov/pgc/), websites (http://www.fhwa.dot.gov/environment/) and tools covering a comprehensive listing of environmental topics.

The <u>Environmental Guidebook</u> covers many topics in depth with direction and methodologies for performance of studies and assessments ranging from community impact assessments to air analyses. FHWA's <u>Environmental Review Toolkit</u> includes comprehensive guidance on a wide variety of topics such as historic preservation, environmental justice, water, wetlands and wildlife and Section 4(f).

Programmatic Agreements and Agency Consultation

A PA documents the terms of a formal, binding agreement between FDOT and other state or federal agencies that streamline the environmental review and project delivery process. A PA may establish a process for consultation, review and/or compliance with one or more federal laws. It may also function as an expression of collaborative intent between agencies. FDOT has several PAs, as described below.

In October 2015, FDOT and FHWA entered into a <u>Programmatic Agreement for Categorical Exclusions (CE) under 23 C.F.R. §771.117</u>. This agreement authorizes FDOT to make CE determinations and provide approval on behalf of FHWA for CE activities listed in 23 C.F.R. §771.117 (c) and (d) and meeting specific criteria enumerated in the agreement. The PA regarding CEs will be suspended and FDOT will assume authority for CE approvals under the NEPA Assignment Program on the effective date of the NEPA Assignment Program MOU.

Paragraph Update: <u>The Programmatic Agreement for Categorical Exclusions under 23 C.F.R. §771.117</u> was superseded by the executed NEPA Assignment MOU.

In April 2015, through the <u>Programmatic Agreement between the FHWA and FDOT regarding the review and approval of specific types of changes in interstate-system access</u>, FHWA authorized FDOT to make a determination on the engineering and operational acceptability of certain types of interstate system access changes to expedite FHWA approval.

Since 2003, FHWA and FDOT have signed agreements with 17 different federal and state agencies to participate in the ETDM and environmental review processes. The agreements are currently established with five year terms (previously they had 3 to 4 year terms) and most are in the third or fourth generation, having been renegotiated and executed during the previous 12 years. The ETDM Agency Operating Agreement (AOA) between FHWA, FDOT, and the other federal or state agencies serves as a framework for agency participation in the ETDM process, providing agency requested technical expertise on projects and actively reviewing environmental documents and companion documents during the PD&E Study phase. Within six months of the execution of the NEPA Assignment Program MOU, the EDTM agreements will be amended to reflect FDOT assuming lead agency responsibilities. FDOT and each agency negotiate the terms and conditions of the agreement based on the agency's regulatory and statutory requirements and funding resource needs. The agreements not only establish work activities, but also review timeline expectations, performance measures, and issue resolution protocols. Agreements are reviewed and updated when they approach expiration, as needed. Table 3 provides a list of the current ETDM AOAs.

Section Update: Completed required amendments of ETDM Agreements to remove FHWA project-related review responsibilities. FHWA continues to review the agreements to verify eligibility for the expenditure of federal funds. Table 3 on the next page has been updated to show current agreement status.

Subsequent to NEPA Assignment, the Department collaborated with USFWS to develop a programmatic approach to ESA consultation for 14 freshwater mussel species on minor transportation activities. FDOT and USFWS recently completed a programmatic approach to address a range of other species (Audubon's crested caracara, Florida scrub-jay, piping plover, wood stork, green sea turtle, hawksbill sea turtle, Kemp's Ridley sea turtle, leatherback sea turtle, loggerhead sea turtle, blue-tailed mole skink, sand skink, eastern indigo snake, Florida panther, West Indian Manatee, and Gulf Sturgeon on minor transportation activities). These approaches are used for determinations of "no effect" or "not likely to adversely affect" the covered species based on the covered activities. In addition, USFWS confirmed FDOT's use of existing programmatic effect determination keys developed with other lead agencies.

Table 3 Current ETDM Agency Operating Agreements UPDATED May 2021

Agency Name	Agreement(s)	Dates
FHWA	Agency Operating Agreement	Pending -2/12 /03 - 8/11/09 Not Applicable
Florida Department of State, State Historic Preservation Officer (SHPO)	Agency Operating & Funding Agreement	4/15/18 – 4/14/23
Florida Department of Environmental Protection (FDEP)	Agency Operating Agreement	1/1/07 – 12/31/11 Actively participating without Agreement
Florida Department of Environmental Protection (FDEP) 404 Assumption	Agency Operating & Funding Agreement	In development
Florida Department of Economic Opportunity (FDEO)	Agency Operating Agreement Funding Agreement	11/27/12 – Indefinite 4/30/15 – 4/14/20 Actively participating without Funding Agreement
Florida Department of Agriculture and Consumer Services (FDACS)	Master Agreement	3/27/12 – Indefinite
Florida Fish and Wildlife Conservation Commission (FFWCC)	Master Agreement Agency Operating & Funding Agreement	11/1/11 – Indefinite 2/1/18-1/31/23
National Marine Fisheries Service (NMFS)	Agency Operating & Funding Agreement	7/25/18-7/24/23
National Park Service (NPS)	Agency Operating Agreement	8/11/05-Indefinite
Natural Resources Conservation Service (NRCS)	Agency Operating Agreement	1/15/03 - Indefinite
Northwest Florida Water Management District (NWFWMD)	Agency Operating Agreement Funding Agreement	7/1/09 – <mark>6/5/21</mark> 7/1/09 – <mark>6/5/21</mark>
Southwest Florida Water Management District (SWFWMD)	Agency Operating and Funding Agreement	6/1/15 – 6/30/21
South Florida Water Management District (SFWMD)	Funding Agreement	5/15/07 – <mark>5/31/21</mark>
Suwannee River Water Management District (SRWMD)	Funding Agreement	10/1/06 — 9/30/21
U.S. Army Corps of Engineers (USACE)	Agency Operating & Funding Agreement	6/30/15 – 6/15/21
U.S. Fish and Wildlife Service (USFWS)	Agency Operating & Funding Agreement	7/8/20 – 7/7/25

Agency Name	Agreement(s)	Dates
U.S. Environmental Protection Agency (USEPA)	Agency Operating & Funding Agreement	1/23/15 – 6/15/21
U.S. Forest Service (USFS)	Funding Agreement	5/24/04 – <mark>8/6/21</mark>
U.S. Coast Guard (USCG)	Agency Operating Agreement	6/8/2009 - Indefinite

Internal Monitoring and Process Reviews

As part of its regular business practices, FDOT has an integrated QA and QC program to assure and monitor work processes which implement state and federal laws, rules, procedures, policies and standards. This monitoring is necessary to ensure compliance and quality performance by the District units responsible for the delivery of transportation projects, services and information. FDOT's **Quality Assurance and Quality Control Policy, Topic Number 001-260-001** requires appropriate functional area units to submit Annual QA Monitoring Plans by July 1 of each year. In accordance with this policy, the SEMO developed its QA Plan through a collaborative process with the District EMO offices. In turn, the Districts prepare QC plans to ensure compliance with the SEMO QA Plan.

Consistent with FDOT policy and guidance, the SEMO QA Plan is based on critical core processes, process control system (PCS) maps, and monitoring plans developed with District participation. To develop the QA process, SEMO identified its core or primary processes consistent with FDOT defined core processes. FDOT's core processes are: plan, produce, deliver, maintain and operate. Out of these five core processes; SEMO identified two core processes and eight sub-processes as described below. These core processes were determined based on federal and state regulations and programs, and are consistent with existing SEMO functional program areas. These processes include:

Plan

ETDM Screening

Produce

- PD&E Studies
 - Noise Analysis
 - Wildlife and Habitat Considerations
 - Archeological and Historical Resources
 - Sociocultural Effects (SCE) Evaluation
 - Contamination
 - Environmental Permitting
 - Public Involvement

Section 4(f)

This QA Plan provides an opportunity to conduct a focused, program level review of processes identified. SEMO developed a ten-year plan to review one or two processes each year and reflect the upcoming process review for the following year. **Table 4** illustrates the SEMO process QA review schedule. After the plans have been developed and approved, evaluation and monitoring of the identified core processes begins with the QAR. A SEMO QAR team coordinates annually with the Districts to review and evaluate the core processes identified in the QA Plans. At least 30 days prior to the actual review, the QAR team reviews the District QC plans and contacts the appropriate District personnel to schedule a meeting and/or discuss the type and format of data and analysis necessary to evaluate the core process during that cycle.

SEMO Core Processes 2009/10 2010/11 2011/12 2013/14 2014/15 2015/16 2016/17 2017/18 2008/09 2012713 **ETDM** Screening **Process** 2.0 Project Development & Environment Studies 2.1 Noise Analysis х 2.2 Wildlife and Habitat Considerations 2.3 Archaeological and Historical Resources 2.4 Sociocultural **Effects Evaluation** 2.5 Contamination 2.6 Environmental × Permitting 2.7 Public Involvement 2.8 Section 4(f) X 2.9 Type 1 and Type 2 X

Table 4 SEMO Core Process Review

At the initiation of the QA process, there is a statewide kick-off meeting with Districts to discuss the plan, establish expectations and refine timelines. The QAR begins with the SEMO QAR Team developing, in consultation with the Districts, a performance measures matrix. The Districts in turn provide the data to populate the matrix. The SEMO QAR Team reviews the data and analyzes the results. The SEMO QAR team meets with the Districts to discuss findings and address questions. Following these meetings, the SEMO QAR team prepares the draft QAR Report and provides it to the District for review. The SEMO QAR Team updates the report based on feedback received from the District and continued coordination. The final QAR report is then posted on the SEMO SharePoint drive and incorporated into the next update of the QA Plan. Each QAR report includes the following:

Identification of QAR Team members and process reviewed

- Findings of the QAR Team
- Recommendations for process improvements, when identified
- Action items, when applicable
- Best Practices that can be shared with other Districts to enhance the program

After the District QAR reports are accepted, the SEMO QAR team compiles a statewide summary report highlighting best practices and planned improvements for the statewide process. This report is distributed to the Districts and posted on the SEMO SharePoint drive.

The reviewed processes may receive a rating of compliance, noncompliance, or best practice depending on whether the District is meeting, not meeting or exceeding the established targets. For those processes or activities that receive a rating of noncompliance, a follow-up Action Plan must be developed by the District and submitted to the SEMO Manager within 20 days from publication of the final report. The SEMO Manager will notify the District within ten days whether the Action Plan is acceptable. Should the Action Plan be deemed unacceptable, the QAR Team will coordinate with the District to draft an acceptable Action Plan.

The Action Plan must identify the process changes which will be implemented to resolve the noted issue, a timeframe for implementing the changes, and the feedback mechanism to measure the effectiveness of the solution. SEMO will monitor the implementation of an Action Plan until non-compliance activities, tasks or processes have been improved.

Section Update: While historically accurate, changes proposed as part of NEPA Assignment have been implemented. Refinements to process under NEPA Assignment are discussed in §773.109 (a)(3)(ii), as applicable. FDOT's internal Monitoring and Review processes are described in the current NEPA Assignment Quality Assurance and Quality Control Plan.

§773.109 (a)(3)(ii): Changes to be made for Assumption of Responsibilities

This section describes how FDOT's existing environmental compliance program has been and will continue to be modified to implement its new responsibilities under the NEPA Assignment Program. This section also describes the procedures FDOT will be implementing to ensure NEPA documents meet quality standards, and that NEPA decisions are compliant, sound, supportable, and made independently.

Under the NEPA Assignment Program, SEMO will be re-designated as the Office of Environmental Management (OEM) and the State Environmental Manager position will be upgraded from a manager to a Director. This change will occur prior to the effective date of the NEPA Assignment Program MOU. In general, when discussing new processes or procedures under the NEPA Assignment Program, the application will refer to OEM and the Director of OEM. When discussing existing processes and procedures, the application will refer to SEMO and the State Environmental Manager. Additional details on the changes to SEMO's organizational structure are included in the sections below.

Over the years, FDOT has conscientiously worked to ensure its PAs, MOUs, guidance, manuals and trainings are current and continuously reviewed for improvements and updates. SEMO is now in the process of reorganizing and amending its procedures in anticipation of the NEPA

Assignment Program. These changes are designed to further strengthen its well-developed environmental program. As the NEPA Assignment Program is implemented and staff gain experience in using the new procedures, additional changes may occur if needed to clarify, adjust, augment or add new procedures. Procedural modifications may also result if FDOT's self-assessment or FHWA's audit process identify areas that need clarification.

The primary change that will occur with the NEPA Assignment Program is FDOT's assumption of FHWA's role as environmental decision-maker. The NEPA Assignment Program will expand FDOT's traditional role of project sponsor to serve as Lead Federal Agency with responsibility and liability for making independent NEPA decisions on projects. The NEPA Assignment Program will also allow FDOT to deepen its strong proactive working relationships and continue its commitment to work collaboratively with its federal resource agency partners to develop and implement innovative solutions. FDOT's existing staff capabilities and mature environmental compliance program, together with the steps that have recently been taken to strengthen its program and staff, will ensure success of the NEPA Assignment Program.

Section Update: Implementation actions completed.

Organization and Procedures under the NEPA Assignment Program

FDOT conducts systematic updates of its ETDM and PD&E Manuals and procedures, as part of its regular update cycle, to support appropriate environmental analysis and decision-making under NEPA and associated laws and regulations. Within six months of the effective date of the NEPA Assignment Program MOU, FDOT anticipates completing updates to the ETDM Manual and PD&E Manual to recognize FDOT as the Lead Federal Agency for FHWA projects and to incorporate provisions of the FAST Act (e.g., National Dashboard, checklists). Within this timeframe, FDOT will also implement staffing and organizational changes and tools to support the NEPA Assignment Program as identified in this application. The ETDM Manual and PD&E Manual and procedures, combined with FDOT's staff and consultant resources, will provide appropriate tools and expertise in areas where FDOT has requested assignment of FHWA's environmental responsibilities.

Paragraph Update: Implementation actions completed. Program manual continues to be reviewed and updated.

The NEPA Assignment Program will rely on the professional judgment of FDOT's environmental staff in determining the necessary scope of services and environmental analyses for specific projects. The NEPA Assignment Program will be supported by use of FDOT's established standards contained in the PD&E Manual for development of environmental documents and technical studies, and a strong QA/QC program. FDOT will continue to adhere to FHWA's public outreach requirements as defined in 23 C.F.R. §771.111 and EIS public and agency collaboration requirements as defined in 23 U.S.C. §139. Additionally, FDOT will continue to conduct its robust public involvement program in concert with FDOT's Public Information Office.

The environmental responsibilities being assumed by FDOT will be administered by OEM. Type 2 CEs, EAs and EISs will be reviewed and approved by OEM. Districts will continue to administer and develop PD&E studies, prepare environmental documents and approve Type 1 CEs. They will also participate in and support the FHWA audits. On-going project-specific collaboration between District Offices and OEM will provide the foundation for an effective and efficient environmental project development process and will result in final environmental documents that comply with NEPA. This successful outcome will stem from District Offices and OEM

professionals developing mutual expectations and maintaining communication throughout the process, following established procedures supported by an effective QA/QC process and a rigorous training program.

In Florida's experience, one of the primary causes for the long duration of the NEPA process is iterative reviews of environmental documents. FDOT's Expanded Quality Assurance / Quality Control Procedures below are intended to ensure the quality of environmental documents and reduce the time in environmental review by eliminating the need for repetitious reviews. FDOT will use the organizational structure described in Section 773.109 (a)(4)(ii) and Section 773.109 (a)(4)(iii) of this application. This structure recognizes District responsibility for the project and provides OEM support for project environmental scoping, analysis, review and approval. This cooperative approach connects the appropriate resources and expertise to the project, continually building the knowledge and experience of team members.

Section Update: Implemented as described.

Expanded Quality Assurance / Quality Control Procedures

FDOT has a strong history of QA and QC. FDOT's environmental program focuses on internal and external collaboration, technical tools, and policies, establishing FDOT as a national leader in NEPA practices. As FDOT assumes responsibilities of the NEPA Assignment Program, it will be well positioned to expand and improve on these established processes and procedures. FDOT has the foundation, experience and infrastructure necessary to assume these responsibilities.

FDOT is enhancing its existing QA procedures and will integrate NEPA Assignment Program requirements to meet performance measures that will be defined in the NEPA Assignment Program MOU. FDOT will establish the performance measures for Section 106 with the State Historic Preservation Office (SHPO). FDOT is updating its QA plan to describe the new activities needed to support self-assessments and FHWA audits.

Following NEPA Assignment, FDOT will continue to implement QA and QC during the development of the environmental documents. QA/QC begins when the project core team develops the PD&E Study scope of services. The scope identifies environmental analysis and technical studies needed for the anticipated COA. ETDM project screening provides information from ETAT agencies that helps determine the COA and develop the PD&E Study scope of services. Technical studies are then prepared following established procedures in the PD&E Manual. QC review occurs when technical studies undergo QC by the District. Once technical analyses and studies are completed, the environmental document is developed following the PD&E Manual.

The **Proposed NEPA Environmental Compliance Process is shown in Figure 8**. OEM and OGC staff will be engaged much earlier in the process performing technical and procedural reviews. Legal sufficiency reviews will be performed by FDOT's OGC for Final EISs (FEISs), FEIS/RODs and Individual Section 4(f) evaluations before final document approval. QA occurs at the project level as well as the program level. While the established internal District controls for the environmental document development process will remain relatively unchanged, activities previously performed by the Florida Division of FHWA will be assumed by OEM.

Upon assignment, OEM will assume FHWA's role in the ETDM process. The OEM staff will perform reviews of the following items and will provide approval and/or concurrence at specific milestones:

- Purpose and need
- Methodology Memorandums for the Alternative Corridor Evaluation process
- Alternative Corridor Evaluation Reports
- Elimination of unreasonable alternatives
- Invitations for Participating and Cooperating agencies
- COA determinations
- Adoption of planning products to be used during PD&E Study phase

By performing these actions within the ETDM process, OEM will be familiar with the project details, coordinate and communicate with stakeholders, and have a clear understanding of the project context and any issues identified during the screening events. By partnering with the Districts and reviewing ETAT members, OEM can quickly verify and address issues in the resulting scope of services and related environmental document. As the project develops, QA/QC will occur during the preparation and review of environmental documents.

QC begins when the District project core team initially collaborates in the development of the PD&E Study scope of services. The District conducts the technical studies, develops the environmental document, and performs initial QA/QC following established procedures and supported as needed by OEM. Regular project coordination meetings will be scheduled between OEM and the Districts to provide technical support and guidance on specific project issues which may arise. This coordination will ensure that the NEPA analysis is being properly conducted. Environmental documents will be uploaded and included in a tracking system when ready for OEM review (see the **Proposed OEM NEPA Review Process in Figure 9**).

Section Update: Implementation actions completed. Figures 8 and 9 are updated to reflect current compliance and review processes. Additionally, updates were made to the NEPA Assignment Quality Assurance and Quality Control Plan.

Upon NEPA Assignment, OEM will expand its current reviews of EAs and EISs to include Type 2 CEs and Reevaluations. After submission of the environmental document to OEM, the document will be reviewed by OEM and OGC. This QA review concludes when the OEM and OGC team determine that the environmental document meets NEPA requirements. If a public hearing is conducted for the project, OEM will review the final document following the 10-day public comment period. Public hearing requirements vary by COA and are detailed in the PD&E Manual, Part 1, Chapter 11, Public Involvement. After the legal sufficiency determination is made by OGC for FEISs, FEISs/RODs, and Individual Section 4(f) evaluations, the District will certify the final document for approval. OEM will review and approve the final document, issue LDCA for environmental documents and approval status for Reevaluations, and complete any additional steps (such as publication, limitation of claims notice).

Paragraph Update: Clarification that Legal Sufficiency determination is made by OGC after the District certifies the document for approval and OEM has reviewed the documentation, but before final approval by the Director of OEM.

For project activities that qualify as CEs, the Districts will document their decision regarding the need for studies to confirm that the project meets the criteria for a CE. If the document is a Type 1 CE [actions listed in 23 C.F.R. §771.117(c) and identified in C.F.R. § 771.117(d)], the Districts will complete their review of the document and submit it for review and approval by the District Environmental Administrator, or designee. If an action does not satisfy the criteria in 23 CFR §771.117, the District will conduct environmental studies to determine if the CE classification is proper, or if the project should be coordinated with OEM to determine the appropriate COA.

In Florida, Type 2 CEs are actions not specifically listed or identified as CEs in 23 C.F.R. § 771.117, but which meet the requirements of a CE under 40 C.F.R. §1508.4 and 23 C.F.R. § 771.117(a). For these types of projects the Districts will certify that the action will not result in significant environmental impacts. If a District concludes that the action qualifies for a CE under 23 C.F.R. §771.117(d) due to its scope and similar nature, and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS, the District will submit this

documentation to OEM for approval. For Type 2 CEs, OEM will determine whether the project satisfies the criteria in 40 C.F.R. §1508.4 and 23 C.F.R. §771.117. The determination and approval will be documented electronically in the project file.

LAP projects will follow the same approval process as FDOT-sponsored projects. When environmental documents are submitted, they will be subject to QC reviews, legal reviews (if applicable), review for readiness prior to signature, and legal sufficiency review (if applicable).

Section Update: Implemented as described.

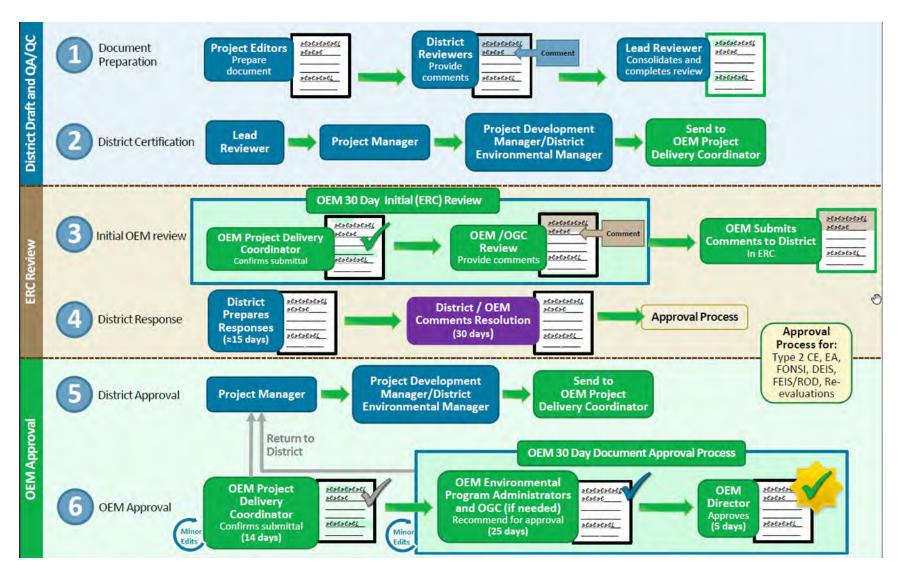


Figure 8 Proposed NEPA Environmental Compliance Process: Current as of May 2021

Independent Environmental Decision-Making

FDOT supports environmental decision-making independent of organizational, political or schedule-based pressure. Approval by OEM of environmental documents prepared under the NEPA Assignment Program will be independent from project design decisions. While the environmental team will collaborate with project designers throughout the project development process to avoid and minimize impacts to environmental resources, project design decisions are the responsibility of FDOT Districts under the authority of the District Secretary. The Districts report to the Assistant Secretary of Engineering and Operations, while OEM will report to the Assistant Secretary of Intermodal Systems Development (as SEMO does today). The Assistant Secretaries report directly to FDOT's Secretary. Project design decisions are the responsibility of FDOT Districts under the authority of the District Secretary.

Paragraph Update: As a clarification, the District Secretaries report to the FDOT Secretary. Due to restructuring, OEM is now a direct report to the Assistant Secretary of Engineering and Operations (E &O).

Projects qualifying as categorically excluded from the requirement to prepare an EA or EIS and that meet the criteria for a Type 1 CE will be confirmed as CEs and approved by the District Environmental Administrator (as described in the section on Approach to Categorical Exclusion Documentation Preparation of this application). Because these projects do not result in significant impacts, these decisions do not require independent review by OEM prior to District approval. Nevertheless, these CE decisions are subject to FDOT QA that will include performance review by OEM.

Type 2 CEs, EISs and EAs, which are prepared by the Districts, will be independently reviewed by OEM and OGC, as appropriate. OEM staff will provide QA throughout the environmental document development process. Responsibility for producing the environmental document remains with the District, while OEM has responsibility for final approval. The Type 2 CE review process is illustrated at Figure 9a.

FEISs, FEIS/RODs and Individual Section 4(f) evaluations will undergo legal sufficiency review. Legal sufficiency review will be performed by FDOT's OGC within a chain of command that reports to the administration separately from the Districts and OEM. The Director of OEM will sign Type 2 CEs, EAs, FONSIs, DEISs, FEISs or FEIS/RODs, RODs, and Individual Section 4(f) evaluations. At the written discretion of the Director of OEM, signature authority may be delegated as defined by the Delegation of Authority Memorandum as per FDOT procedures.

Section Update: Review process remains as described. A new figure (Figure 9a) illustrating the Type 2 CE review process was added.

Defining the Class of Action (COA)

The COA determination is described in the **ETDM Manual** and **PD&E Manual**. Under the NEPA Assignment Program, the existing process will be modified to replace FHWA with OEM as the Lead Federal Agency for highway and LAP projects. The COA for qualifying projects will be proposed in the EST. Type 1 CEs, will follow the procedures in the PD&E Manual, Part 1 Chapter 2, and not screened through the EST. The District environmental staff will provide a clear rationale for the COA determination to OEM for review. OEM will consider the ETDM screening results and

the District's recommendations prior to making the final COA determination. In situations where there are substantial project scope and/or impact changes, the Districts will coordinate with OEM to validate the COA.

For state funded transportation projects, FDOT prepares a State Environmental Impact Report (SEIR). In some instances, FDOT may seek to convert a state funded project to a federally funded project. In such cases, the Advanced Notification is updated and recirculated and an application for Federal Assistance Form SF-42 is completed.

Section Update: Implemented as described.

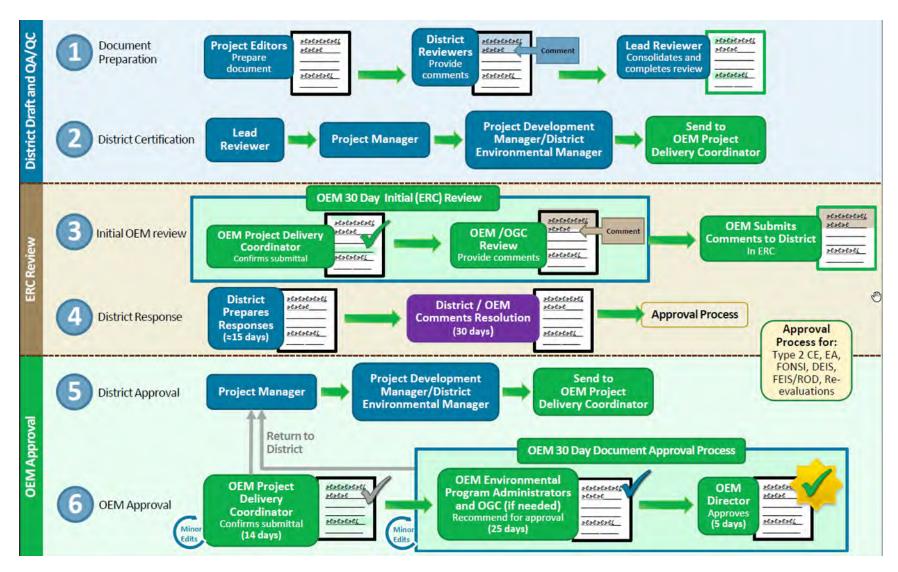


Figure 9 Proposed OEM NEPA Review Process: Current as of May 2021

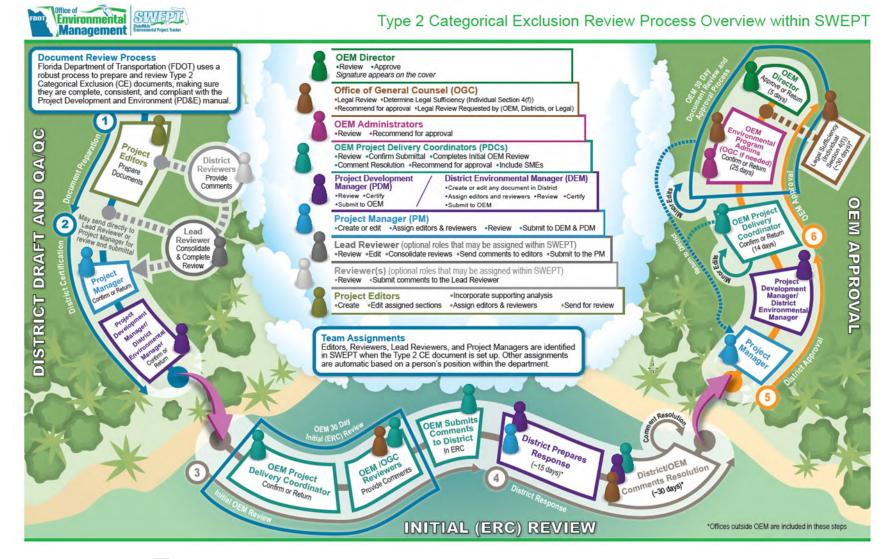


Figure 9a OEM NEPA Review Process Explained for Type 2 Categorical Exclusion: Current as of May 2021

Currently, the Districts coordinate with FHWA to determine the appropriate federal COA for conversion of a SEIR to a Type 2 CE, EA or EIS. Project consultation status and draft documents are updated as needed to address federal environmental review requirements and complete the NEPA document. Under NEPA Assignment, the Districts will coordinate with OEM to determine the appropriate federal COA.

Paragraph Update: Process implemented as described and addressed in Defining Class of Action section, page 49. Activities previously attributed to FHWA have shifted to OEM.

Consultation and Coordination with Resource Agencies

FDOT has historically performed the primary role for interagency coordination on its highway projects. In many cases, this role has been formalized through agreements with the FHWA and various resource and regulatory agencies. FDOT relies on multi-disciplinary staff that works effectively and proactively with state and federal environmental resource agencies. Under current FDOT procedures, the District environmental staff is responsible for interagency coordination during project planning and development. Upon request, SEMO staff provides technical support and/or assistance in issue resolution. Under the NEPA Assignment Program, FDOT is committed to continue working positively and collaboratively with its federal and state resource agency partners.

This positive, collaborative approach with agency partners will also be evidenced as FDOT continues to take the lead in NEPA scoping on EIS projects while assuming full responsibility as the Lead Federal Agency. FDOT will continue to meet the NEPA scoping requirements of the Council on Environmental Quality (CEQ) NEPA regulations (40 C.F.R. §1501.7) and of FHWA [23 C.F.R. §771.123 (b)], as well as the early consultation and coordination plan requirements set forth in 23 U.S.C. §139.FDOT will request agencies, as appropriate, to become cooperating agencies [40 CFR §1508.5, 23 CFR §771.111(d)], and will identify agencies to serve as participating agencies (23 U.S.C. §139). Federal, state, tribal, regional and local agencies that may have an interest in the project will be invited to be participating agencies. Participating agencies and the public will be given an opportunity for input in the development of the purpose and need and the range of alternatives, and at appropriate stages throughout the project development process. FDOT will also coordinate with the cooperating agencies and participating agencies during the environmental study process on methodology used and level of detail required for the analysis of project alternatives.

FDOT biologists or consultants supervised by FDOT currently prepare Section 7 biological evaluations under the ESA and biological assessments, and essential fish habitat assessments under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). FDOT District environmental staff and SEMO perform informal consultation responsibilities with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) on biological evaluations. Under the NEPA Assignment Program, FDOT will take on the FHWA role for informal and formal consultation under Section 7 with USFWS and NMFS. Formal consultation correspondence and documentation will be submitted to the agencies from OEM and will specify that consultation is being requested pursuant to 23 U.S.C. §327. Under the NEPA Assignment Program, FDOT assumes responsibility for Biological Opinions (BOs) and for compliance oversight of BO terms and conditions. Under the MSA, Districts would continue to coordinate and prepare essential fish habitat assessments, and OEM would assume the decision making role of the Lead Federal Agency.

Currently, Districts and SEMO work collaboratively with USFWS and NMFS to develop mitigation strategies to ensure that projects will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. FDOT also consults with the USFWS on projects which require review under the Fish and Wildlife Coordination Act (FWCA). Under the NEPA Assignment Program, FDOT will assume responsibility for ESA compliance and will continue FWCA coordination, informal ESA consultation responsibilities and assume responsibility for formal Section 7 consultation on behalf of the FHWA.

through the Programmatic Agreement among the Federal Highway In March 2016. Administration, the Advisory Council on Historic Preservation, the Florida Division of Historic Resources, State Historic Preservation Officer, and the Florida Department of Transportation Regarding Implementation of the Federal-Aid Highway Program in Florida, FDOT was entrusted with responsibility for formal consultation with the SHPO on Section 106 issues. The PA provides for internal FDOT review and approval for projects not involving adverse effects to eligible resources under Section 106. For projects involving adverse effects to eligible resources, FDOT consults with the SHPO and other consulting parties to resolve adverse effects. The PA provides for FHWA and ACHP participation at the request of the public, consulting parties as defined in 36 C.F.R. §800.2 and at the request of FHWA or the ACHP. Under the NEPA Assignment Program, FDOT assumes responsibility for compliance with Section 106 of the National Historic Preservation Act and will continue coordination with the SHPO on behalf of FHWA regarding cultural resource issues through formal assumption of Section 106 responsibility. Within six months of the effective date of the NEPA Assignment Program MOU, the 106 PA will be amended to reflect this shift in responsibility.

FDOT is entrusted with responsibility for coordination with multiple tribal governments as described on FDOT's **Native American Coordination website**. FDOT has extensive experience coordinating with the Native American tribes through the federal and state project development processes. Tribes participate as members of the ETAT. Additionally, both Central Office and District staff have developed a good working relationship by meeting with the tribes (including one-on-one meetings, field meetings and construction meetings) on project activities which may involve tribal resources.

While FHWA cannot assign its government-to-government tribal consultation responsibilities to FDOT under the NEPA Assignment Program, FDOT will continue to coordinate with the Native American tribes. If, at any time, a tribe requests FHWA government-to-government consultation, FDOT will request FHWA's participation.

FDOT has an interagency agreement with the U.S. Army Corps of Engineers (USACE). FDOT does not have a formal PA with the USACE for permit applications. However, as the permittee, FDOT has always managed permit application submittals under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA). Additionally, FDOT has a Regional General Permit (RGP) with the USACE Jacksonville District, SAJ-92, that prescribes conditions for projects on existing facilities with five acres or less of wetland impacts per mile of project up to ten miles in non-tidal areas. FDOT follows USACE expedited coordination and permitting procedures for emergency situations. Mitigation in the state of Florida is addressed through Section 373.4137, Florida Statutes. Mitigation requirements, for specified transportation projects, dictate that wetland impacts from transportation projects be mitigated through the use of mitigation banks, or any other option that satisfy federal and state requirements. In addition, FDOT currently coordinates with the U.S. Coast Guard (USCG) regarding projects within navigable waterways subject to the General Bridge Act of 1946, formerly known as Section 9 of the Rivers and Harbors Act of 1899. As part of the NEPA Assignment Program, FDOT assumes FHWA's responsibilities under the FHWA/USCG Memorandum of Agreement (MOA) and USDOT/USCG MOU. In advancing its projects, FDOT will continue its role and responsibilities as permittee.

At the state level, FDOT coordinates wetlands, stormwater and hazardous material issues directly with the Florida Department of Environmental Protection (FDEP), which implements the applicable federal program regulating those environmental matters and with the five Water Management Districts (WMDs) as applicable. This coordination will continue and not be affected by the NEPA Assignment Program.

OEM will review and approve project-level air quality analyses as part of its environmental document review. To the extent appropriate, FHWA would retain responsibility for transportation conformity determinations for NEPA Assignment Program projects. However, Florida is in attainment and therefore, conformity requirements do not apply at this time.

FDOT is actively involved in coordinating with the U.S. Department of Interior (USDOI) and other applicable federal agencies, on Section 4(f) and Section 6(f) issues. In addition, FDOT coordinates with the Federal Emergency Management Agency (FEMA) regarding any amendments to National Flood Insurance Program (NFIP) floodplain maps. When necessary and to ensure compliance with the Farmland Protection Policy Act (FPPA), FDOT coordinates with the National Resources Conservation Services (NRCS). Under the NEPA Assignment Program, FDOT will assume responsibilities for compliance with these acts and other laws related to NEPA and would continue to perform these coordination functions.

Section Update: Federal agency coordination and consultation responsibilities transitioned to OEM and were implemented as described. Additionally, the 106 PA was amended as required. Note also, the USCAE SAJ-92 renewed and expanded to include some tidal impacts. Additionally, FDEP assumed 404 responsibilities for certain waters and FDOT is actively developing an ETDM-funded position agreement to assist with expedited review of FDOT projects.

Issue Identification and Conflict Resolution Procedures

Internal and Local Agency Process

When a dispute arises regarding a project or document related decision, the project sponsor and OEM will attempt to informally resolve any dispute concerning environmental document review before relying on other methods of dispute resolution.

If there is a project-level dispute, the District and OEM will attempt to informally resolve such dispute. If a project-level dispute cannot be resolved informally, it will be elevated to the District Director of Transportation Development and either the State Transportation Development Administrator or the Chief Engineer as appropriate. If the matter remains unresolved, it will be elevated to the Assistant Secretary for Intermodal Systems Development or the Assistant Secretary for Engineering and Operations, as appropriate, for final resolution.

Paragraph Update: Due to agency re-organization, disputes requiring FDOT leadership would elevate through the Chief Engineer to the Assistant Secretary for Engineering and Operations, as appropriate.

*Note, the State Transportation Development Administrator position has been renamed and is now the Chief Planner; the Assistant Secretary for Intermodal Systems Development is now the Assistant Secretary for Strategic Development.

If a project sponsor is a local agency and a dispute cannot be resolved informally between the project sponsor and FDOT, the same process will be followed with representation from the local agency.

Process with External Agencies

FDOT has long had a practice of proactive engagement with its resource agency partners. FDOT strives to be transparent in identifying impacts, working with agencies on appropriate mitigation to avoid, minimize and offset the impacts of its projects, and following through on its commitments. FDOT is knowledgeable of resource agency requirements and seeks to diligently meet those requirements. Following this forthright approach, FDOT is largely successful in avoiding conflicts with external agencies. FDOT expects to continue this proven approach under the NEPA Assignment Program and will assume FHWA's role in resolving conflicts with external agencies without FHWA involvement. In this role, FDOT will continue to be diligent in resource agency engagement, particularly with cooperating agencies and those agencies designated as participating agencies, following the requirements and spirit of 23 C.F.R. §139(h). Where issues arise that create conflict between agencies, FDOT will continue to participate in good faith conflict resolution efforts to address identified concerns. Because of FDOT's experience, expertise, and current level of involvement in consultations, its existing resources are adequate to assume FHWA's responsibilities for resolving issues with external agencies.

FDOT's long history of working cooperatively with its federal, state and local partners is evidenced by the multiple MOUs, MOAs, Joint Participation Agreements (JPAs) and ETDM AOAs developed over the years to entrust certain responsibilities to FDOT or to improve coordination between FDOT and federal and state resource agencies. Additionally, FDOT has a long history of successfully working with the various tribal governments during project delivery.

FDOT has a robust State Environmental Program for state funded project delivery requiring engineering and environmental documentation that meets state and federal requirements. This program requires the preparation of a State Environmental Impact Report (SEIR) which is used by federal and state resource agencies as a supporting documentation for permit applications. This program is recognized in the USACE Regional General Permit SAJ-92.

The <u>Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Florida Division of Historic Resources, State Historic Preservation Officer, and the Florida Department of Transportation Regarding Implementation of the Federal-Aid Highway Program in Florida specifies procedures for resolving conflicts with external agencies. In coordination with FHWA as a partner, the PA includes the conflict resolution procedures highlighted below. Under the NEPA Assignment Program MOU process for handling PAs, FDOT will assume FHWA's role in the PA if acceptable to the resource agency involved.</u>

- Currently Stipulation XII (A) Dispute Resolution addresses procedures for any signatory
 of the Agreement regarding any undertaking of finding covered by the Agreement. These
 procedures generally stipulate that when FDOT and SHPO cannot concur on an eligibility
 or effect determination, then they will consult with FHWA to resolve the conflict. If FHWA
 is unable to resolve the conflict, FHWA will provide all relevant documentation to the ACHP
 for review and comment. The ACHP will provide FHWA with recommendations that FHWA
 may take into account to resolve the issue.
- Under the NEPA Assignment Program, if FDOT is not able to resolve the conflict with the SHPO, FDOT will provide all relevant documentation directly to ACHP to obtain recommendations for consideration for a final decision.

Endangered Species Act, Section 7 Determinations and Coordination: Under the NEPA Assignment Program:

- If a difference between staff arises at any point in the process, the issue will be referred to the next higher level for review and decision within 10 working days.
- If FDOT and USFWS or NMFS are unable to agree on an effect determination during informal consultation, FDOT will initiate formal consultation and will assume FHWA's role in the formal consultation process.

Native American Tribal Coordination: Under the NEPA Assignment Program:

- If the tribes object to FDOT findings, eligibility determinations, effect determinations, or treatment plans, OEM shall review the documentation provided by the tribe to support its objection and respond to the tribe.
- If the objection is in response to a finding of no historic properties, eligibility determination
 or effect determination, then OEM will review the documentation and will consult with the
 tribe or the Keeper of the National Register of Historic Places (NRHP) to resolve the
 objection and notify all consulting parties of the outcome
- If the objection is in response to a treatment plan, then OEM will review the documentation and will consult with the tribe or the ACHP to resolve the objection and notify all consulting parties of the outcome.
- For emergency discoveries, FDOT will follow appropriate emergency discovery guidelines, which include notifying the culturally associated tribe, and determine if any additional investigation of the site is needed. If the tribe objects to additional investigations, OEM shall respond to the tribe.
- If FDOT and a tribe are unable to agree, the parties will follow the dispute resolution processes of FDOT's PA with FHWA, ACHP, Florida Division of Historic Resources (DHR) and SHPO, unless the tribe requests government-to-government consultation with FHWA.

The <u>ETDM Agency Operating Agreements</u> between FHWA, FDOT, and the other state or federal agencies serve as a framework for agency participation in the ETDM process, providing agency requested technical expertise on projects and actively reviewing environmental documents and companion documents during the PD&E Study phase. FDOT and each agency negotiate the terms and conditions of their agreement based on the agency's regulatory and statutory requirements and funding resource needs. The agreements not only establish work activities, but also review timeline expectations, performance measures, and issue resolution protocols. Refer to **Table 3** for a list of existing ETDM AOAs.

Section Update: External agency coordination remains as described, with agreements having been updated. Clarified ESA bullet to include NMFS.

Issue Resolution Process

The Issue Resolution process in ETDM seeks to find solutions to issues between agencies that address a resource concern while meeting the transportation need. This issue resolution process is available during planning and remains available through future project delivery phases as

detailed analysis begins and more information becomes available. Participation in the ETDM process does not abrogate or limit an agency's authority or responsibility to protect its jurisdictional resources, nor does it require an agency to act in a way contrary to law, regulation, rules, policy or practice.

A strong commitment exists among participants in the ETDM process to resolve issues within the ETAT, prior to elevating them to higher level management (see the **Issue Resolution Process in Figure 10**). To facilitate meeting this goal, potential disputes are addressed as early as possible to make the best use of agency skills and resources. Projects with unresolved issues following the ETAT review and publication of the Preliminary Programming Screen Summary Report require commencement or continuation of the ETDM Issue Resolution process.

Under the NEPA Assignment Program, the informal issue resolution process will begin when the District ETDM Coordinator in consultation with OEM assigns a Potential Dispute Summary Degree of Effect (SDOE) in the Planning Screen or Issue Resolution Process Required SDOE during a Programming Screen review.

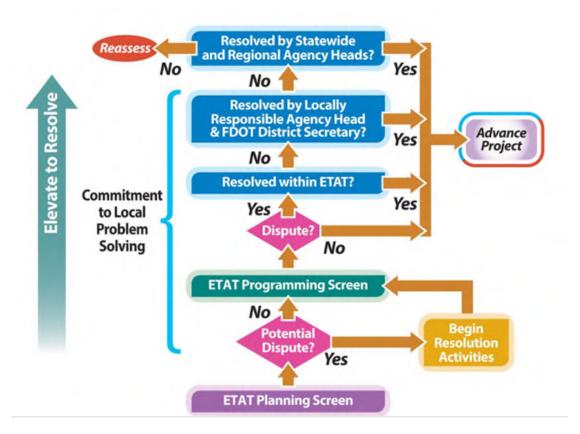


Figure 10 Issue Resolution Process

When assigning the SDOE, the District ETDM Coordinator uses known information including comments and Degree of Effects from ETAT members. The District ETDM Coordinator reviews the potential dispute commentary to determine its consistency with the definition of Potential Dispute or Issue Resolution process required (see the ETDM Manual) and in conjunction with the disputing agency's authority.

An ETAT representative may, based on its jurisdictional or regulatory authority, flag a project as potentially needing issue resolution based on the following triggers:

- Project is considered to be unpermittable (applicable to permitting agencies)
- Project is identified to be contrary to a state or federal resource agency's program, plan, or initiative (including Florida's Coastal Management Program or Local Agency Comprehensive Plans)
- Project has the potential for significant environmental cost (e.g., monetary, environmental effects, or quality of life)

Initially, the District ETDM Coordinator works with the appropriate ETAT representative(s) to informally resolve the disputed issue(s) at the agency staff level before elevating the discussion to the Formal Issue Resolution process. The agency heads (or governing board, as applicable), will make the final decision on how to address unresolved issues.

Any agreements, understandings, and/or recommendations resulting from the ETDM Issue Resolution process in the Planning or Programming Screens are documented and accompany the project as it advances into the PD&E Study phase.

For issues needing resolution that do not involve the ETDM AOAs described above or one of the regulatory processes in PD&E, FDOT will implement the Issue Identification and Resolution Process under 23 U.S.C. §139, assuming FHWA's role. This provision provides a formal process for resolving issues that may delay or result in denial of a required approval or permit for a project. This process may be invoked by the project sponsor or the Governor of the State and requires that the FHWA Division Administrator, heads of the lead agencies and affected participating agencies, and the project sponsor meet to resolve issues. Under the NEPA Assignment Program, the Director of OEM will assume the FHWA Division Administrator role. Issues identified for resolution or elevation through 23 U.S.C. §139(h) will be coordinated with the U.S. Secretary of Transportation.

Section Update: Implemented as described. Please review the current <u>ETDM Manual</u> for latest information on the described process.

Recordkeeping and Retention

FDOT will maintain its project and administrative files pertaining to its NEPA Assignment Program responsibilities, as required by law and FDOT's retention program. These files will include, but are not limited to, letters and comments received from governmental agencies, the public, and others relative to the program. Project files will include the NEPA document, technical reports and studies, consultation/coordination correspondence, and public comments and responses. E-mails and related documents that support project decision-making, reflect deliberation, and demonstrate a "hard look" under NEPA will be retained as part of the project file. Any attorney-client privileged and attorney work products will be kept in a separate file, and will not be made available upon request.

To support its recordkeeping and retention responsibilities, FDOT intends to use its electronic environmental document tracking system in conjunction with its Electronic Document Management System (EDMS), as defined in FDOT's <u>Information Technology Resource User's</u>

<u>Manual, Procedure, Topic Number 325-000-002</u> (Chapters 12 and 13) as the environmental file system of record for NEPA Assignment Program projects.

FDOT has a Records Management Procedure, Topic Number 050-020-025 established by FDOT's Office of Support Services. For documents pertaining to FDOT's discharge of responsibilities under the NEPA Assignment Program, FDOT will comply with the requirements of FHWA Records Disposition Manual (Field Offices) Chapter 4 and FHWA Order No. 1324.1B, issued July 29, 2013.

Section update: Implemented as described. FDOT developed the Statewide Environmental Project Tracker (SWEPT) system and added Part 1, Chapter 15 Project File and Records Management to the Project Development and Environmental Manual.

Expanded Internal Compliance and Self-Assessment Reviews

As required, FDOT will periodically conduct self-assessments to determine the effectiveness of its standards, guidance, and procedures under the NEPA Assignment Program and its staff's adherence to the NEPA Assignment Program MOU and FDOT's established standards and procedures. OEM performance reviews will be on-going, with self-assessment reports provided to FHWA as required by law. In addition to issue spotting, self-assessments will be used to evaluate root causes and to assess whether specific practices are systemic, confined to specific areas of the state or to specific individuals. FDOT will use self-assessments to identify areas that are working well, as well as areas that need improvement; make specific recommendations to improve adherence to standard and procedures; assess the need for corrective action as well as implement necessary corrective actions; evaluate the improvements achieved from previous corrective actions; and re-evaluate previous program areas where corrective actions have been implemented. Self-assessments will be conducted using a variety of monitoring tools, such as reviews of files and the data management system, interviews of FDOT and resource agency staff and distribution of questionnaires. These self-assessments will help track and monitor the implementation of the NEPA Assignment Program.

Section update: Implemented formal annual self-assessment protocol, as described.

Performance Measures to Assess the NEPA Assignment Program

FDOT will monitor a variety of performance measures to evaluate its NEPA Assignment Program responsibilities. These measures may include the following:

- Compliance with NEPA, FHWA NEPA regulations, and other federal environmental statutes and regulations:
 - Maintain documented compliance with requirements of applicable federal statutes and regulations for which responsibility is assumed
- QC and QA for NEPA decisions:
 - o Maintain internal QC and QA measures and processes, including a record of:
 - Completion of legal sufficiency reviews by OGC
 - Compliance with FDOT's environmental document content standards and procedures, including those related to QA/QC
- Communication with agencies and the general public:
 - Assess communication among FDOT, federal and state resource agencies
 - o Provide opportunities for public involvement and comment

- Increased efficiency in completion of the NEPA process:
 - Compare time for completion of environmental document approvals before and after assumption of responsibilities

Section update: Implemented monitoring of performance measures in accordance with the NEPA Assignment MOU.

Training to Implement the NEPA Assignment Program

FDOT is committed to maintaining a quality training program for its employees, consultants and agency partners. Training is developed to meet identified needs and is modified over time as necessary to meet evolving needs and requirements. FDOT's existing environmental training courses support development of the knowledge, skills and abilities of its environmental staff necessary to meet federal and state environmental requirements. During 2015, issue specific courses as well as PD&E Manual Process training opportunities were offered at multiple locations throughout the state. FDOT offers on demand training opportunities that include specific topic areas which vary from year to year based upon identified needs. In addition to live training sessions, FDOT provides online training courses in core areas, such as the ETDM process and the EST. In preparation for NEPA Assignment, SEMO, OGC and key District environmental personnel participated in Audit Training and Legal Sufficiency Training conducted by FHWA February 22 through February 24, 2016. In anticipation of the NEPA Assignment Program, OEM is already planning to conduct training on the NEPA Assignment Program MOU and program requirements as well as related topics to be included in the OEM annual training delivery plan within six months of the effective date of the NEPA Assignment Program MOU.

During self-assessments, FDOT expects to evaluate its existing training to determine if it is consistent with the NEPA Assignment Program and the existing environmental process, revise training as needed, and develop new training to support the program.

To ensure that FDOT environmental staff have the knowledge and skills necessary to meet their new responsibilities under the NEPA Assignment Program, FDOT will train appropriate staff on the NEPA Assignment Program MOU and its key provisions prior to the effective date of the MOU. Training topics will include: the content of the application and MOU, documentation requirements, environmental document review procedures, QA/QC protocols, the self-assessment process, the audit program, FHWA regulations, and FDOT's environmental procedures. In addition, FDOT will work with the LAP Administrators to provide training to local agencies and their consultants on changes to environmental procedures under the NEPA Assignment Program, including environmental document QC procedures and record keeping requirements. Finally, a general briefing will be developed to build awareness of NEPA Assignment for upper management and staff from other FDOT functional areas.

FDOT will continue to routinely schedule environmental management staff meetings to discuss environmental program, projects, issues and updates.

Section update: Implemented as described. Additionally, OEM continues to develop and refine the training program. The training program is accessible on-line at: https://www.fdot.gov/environment/sched/train1.shtm.

§773.109 (a)(3)(iii): Legal Sufficiency

FDOT will conduct legal sufficiency reviews of draft FEISs, draft FEISs/RODs, and Individual Section 4(f) evaluations which are the specified document types for which FHWA is required to conduct legal sufficiency reviews under Federal regulation [see 23 C.F.R. §771.125(b) and 23 C.F.R. §774.7(d)]. These reviews will be conducted by OGC or by FDOT's outside environmental counsel. The primary goal of this review will be to assess the document from the perspective of legal standards, litigation risk and legal defensibility. FDOT intends to use the following process:

- OEM will submit the applicable draft NEPA document evaluation to OGC
- OGC will assign the document to an FDOT environmental attorney or FDOT's outside environmental counsel for review
- The reviewing attorney will prepare and submit to OEM written comments/suggestions to improve the document's legal defensibility (attorney comments may be protected as attorney work product and will not be shared outside of FDOT's document preparation team)
- The reviewing attorney will be available to discuss with OEM and District staff the resolution of comments/suggestions
- Once the reviewing attorney is satisfied that OEM and District staff have addressed his or her comments/suggestions to the maximum extent reasonably practicable, the reviewing attorney will provide OEM with written documentation that the legal sufficiency review is complete
- OEM will not finalize the draft NEPA document before receiving written documentation from OGC that the document is legally sufficient

Section update: Implemented as described.

§773.109 (a)(3)(iv): Prior Concurrence

For selected projects, "prior concurrence" pursuant to 23 C.F.R. §771.125(c) will be obtained before proceeding with key approvals under NEPA. Prior concurrence will come from the State Transportation Development Administrator or designee, after consulting with OGC if desired, to ensure that the project and environmental document in question are acceptable from a policy and program perspective. Prior concurrence may apply to FDOT approvals of draft or FEISs. Projects that require prior concurrence will be decided on a case-by-case basis, based on input from the Districts and OEM managers, and may include projects that meet one or more of the following criteria:

- impacts of unusual magnitude
- high level of controversy
- major unresolved issues
- emerging or national policy issues

issues for which the Districts seek policy assistance

For projects that are anticipated by FDOT to involve a constructive use under Section 4(f) of the USDOT Act, FDOT will coordinate with FHWA on the underlying policy issue before making a final determination of a Section 4(f) constructive use. Section 4(f) constructive use evaluations will undergo legal review before they are signed by the Director of OEM.

Prior concurrence will apply to projects as determined by the State Transportation Development Administrator or designee. In completing the prior concurrence review, the State Environmental Programs Administrator or the State Environmental Process Administrator or designee will review the EIS at issue in the prior concurrence review and seek advice and input, as appropriate, from technical SMEs and OGC before the EIS that is the subject of prior concurrence is approved by the Director of OEM.

Section Update: Due to reorganization, responsibility for Prior Concurrence determinations rests with the Assistant Secretary for Engineering and Operations.

§773.109 (a) (3)(v): Project Delivery Methods

FDOT considers a variety of project delivery methods to streamline and improve project delivery and provide opportunities for innovation without compromising the environment, safety or quality. FDOT project delivery is a comprehensive process including planning, design and construction. The delivery methods for design and construction include but are not limited to:

- Design-Bid-Build or traditional delivery
- Design-Build
- Innovative Contracting Techniques
- Public-Private Partnership (P3) Concession Agreements

FDOT will consider the appropriate delivery mechanism on a case-by-case basis, considering the nature and status of the project, risk factors applicable to the project, the project schedule, available funding, project goals, and other project-specific factors. The type of contract will be specified in the procurement solicitation documents. For design-build projects, FDOT will ensure the requirements outlined in 23 C.F.R. Part 636 are met, which include those imposed to protect the objectivity and integrity of the NEPA process.

Per 23 C.F.R. §771.113, the NEPA document must be approved prior to authorization for any construction activities. FDOT's <u>Design-Build Procurement and Administration Procedure</u>, <u>Topic Number 625-020-010</u> states the requirement of obtaining NEPA approval before the managing District issues the notice to commence construction.

Section Update: Remains as described. To enhance project delivery, the Department is allowing overlap of PD&E and Design Phases under appropriate conditions. This allows preliminary design activities to be completed prior to NEPA Approval.

§773.109 (a)(4)(i): Staff Dedicated to Additional Functions

FDOT currently has a staff of 110 environmental professionals, 98 working in the seven Districts and Florida's Turnpike Enterprise located throughout the state and 12 SME/NEPA experts working in SEMO. In addition, SEMO has five staff positions that provide administrative and IT support functions. FDOT environmental staff is augmented by the use of environmental consultants. In anticipation of completing the application process, FDOT conducted a preparedness assessment of the District EMOs located across the state and environmental staff in other offices as appropriate, including an assessment of Florida's Turnpike Enterprise as well as SEMO.

Paragraph Update: Within OEM, there are 16 Positions considered as SME/NEPA experts, including the administrators and the current Director.

FDOT's existing environmental staff and organizational structure is sufficient to handle the responsibilities assumed under the NEPA Assignment Program and the scale of projects it expects to assume. Based on work program analysis, FDOT completed 577 environmental documents and determinations in FY 2015 and expects to complete approximately 600 in FY 2016. FDOT anticipates the number of environmental documents/determinations to remain steady in the coming years. If there are increases in funding or changes in work needs, FDOT's staff is well trained and most are able to address multiple disciplines within the environmental area. FDOT would be able to reassign staff to address areas that have a peak workload as needed. In addition, FDOT has many general contracts with environmental consultants at both the state and District level who can supplement existing resources as needed.

Paragraph Update: Remains as described. FDOT environmental documents and determinations have averaged between 505-650 federal documents/determinations each year since 2016.

Under the NEPA Assignment Program, SEMO will be re-designated as OEM (See <u>Section</u> <u>§773.109 (a)(3)(ii)</u>: <u>Changes to be Made for Assumption of Responsibilities</u>). FDOT is adding five new positions to OEM's staff. These will include:

- One Program Coordinator under the Quality Assurance and Performance Section
- Two Project Delivery Coordinators under the Environmental Review and Analysis Section
- Two Project Development Engineering Specialists under the Engineering Review and Analysis Section

Note that one of these positions will result from reclassification or reorganization of existing positions in SEMO.

In preparation for NEPA Assignment, FDOT has specially created a new dedicated position within OGC; i.e., Special Counsel for Environmental Affairs. In addition, OGC is adding two Assistant General Counsel positions dedicated to environmental issues, legal sufficiency reviews, and to support FDOT staff with the NEPA Assignment Program.

FDOT has identified several key NEPA Assignment Program roles. Notable among them are the Director of OEM, responsible for overseeing FDOT's implementation of the NEPA Assignment Program, ensuring its success, and reporting on its performance to FHWA. The Director will sign Type 2 CEs, EAs with FONSIs, DEISs and FEISs, RODs, FEISs/RODs and Individual Section

4(f) evaluations. At the written discretion of the Director of OEM, signature authority may be delegated as defined by the Delegation of Authority Memorandum as per FDOT procedures. The Director of OEM will be responsible for the day-to-day management of the program and liaison to the FHWA audit team.

The State Environmental Programs Administrator will be responsible for policy development and administrative and technical support of OEM's oversight role in project delivery and NEPA Assignment. In coordination with the State Environmental Process Administrator, this Administrator will provide NEPA document approval recommendation to the Director of OEM. This Administrator will also be responsible for the following functions:

- Participating in review and analysis of federal and state requirements to support and assure appropriate application and implementation at either the project or overall OEM Program level
- Providing leadership in innovative process development both internally and with external stakeholders
- Monitoring federal laws, regulations and guidance as it relates to FDOT's implementation of the NEPA Assignment Program
- Playing a lead role in coordinating innovative practices with resource/regulatory agencies, OEM SMEs, FDOT District staff, other functional areas within FDOT, other state DOT counterparts and with the American Association of State Highway and Transportation Officials (AASHTO)
- Actively engaging in FDOT legislative coordination through assigned agency legislative liaison staff to provide insight and review of proposed state legislation relative to FDOT Environmental Program areas and consistent with FDOT's roles and responsibilities under the NEPA Assignment Program
- Serving as an administrative delegate to the Director of OEM and functioning in a technical, policy development and coordination capacity and providing a NEPA advisory role to other OEM Administrators and other OEM and FDOT staff
- Providing independent review of NEPA documents

The State Environmental Process Administrator oversees the Environmental Review and Analysis Section which is responsible for coordinating and conducting review of natural, social and cultural evaluations and associated documentation supporting NEPA studies [these include but are not limited to ESA, CWA, NRHP and Section 4(f)]. This section will be responsible for the following functions:

- Coordinating and conducting review of environmental documents and technical studies submitted by District Offices or local agency sponsors
- Implementing agency agreements
- Developing and conducting NEPA training for District staff, OEM staff, local agency sponsors and consultants

- Providing technical support to District Offices
- Updating policies, procedures and the **PD&E Manual**
- Coordinating with state and federal resource agencies

The State Environmental Development Engineer oversees the Engineering Review and Analysis Section. This section will be responsible for the following functions:

- Coordinating and conducting review of engineering analyses supporting NEPA studies
- Providing statewide technical and engineering expertise in areas related to physical environmental considerations including: air quality, highway noise, construction impacts, utilities, railroad, water quality and contamination
- Updating procedures and the PD&E Manual for areas of expertise
- Developing and conducting training for District staff and consultants

The State Environmental Quality and Performance Administrator oversees the Quality Assurance and Performance Section. This section will be responsible for the following functions:

- Coordinating self-assessments and QARs under the program
- Administrative and technology-based functions of the ETDM Program
- Monitoring agency agreements
- Records retention, tracking and filing (supporting FHWA audits)
- Coordinating training program
- Tracking office reviews of legislative proposals

The Special Counsel for Environmental Affairs will oversee and direct work of OGC's assigned attorneys and/or OGC's outside environmental counsel. OGC will be responsible for the following:

- Legal sufficiency reviews
- Assisting with procedure and policy development
- Document review and project support
- Litigation support

FDOT will continue to review environmental staff roles and modify duties, as appropriate, based on the needs of the NEPA Assignment Program.

Section Update: Organizational structure implemented as described with the exception that the Environmental Process Administrator and Environmental Program Administrator both oversee the Environmental Review and Analysis Section with each leading a team of PDCs/SMEs and each

recommending NEPA Approvals on environmental documents to the Director of OEM. Duties described above may be assigned to either position. Updated OEM Organizational chart located: Figure 11.

§773.109 (a)(4)(ii): Changes to the Organizational Structure

FDOT does not anticipate any changes in the District organizational structure. District Project Managers are responsible for ensuring that the environmental process is completed. Environmental staff will continue to support project development with technical assistance from SEMO.

At the state level, minor modifications to the organizational structure of SEMO are proposed. Under the NEPA Assignment Program, SEMO will be re-designated as OEM. The State Environmental Manager position will be upgraded from a manager to a Director. The Director of OEM will be responsible for signing the NEPA documents under the NEPA Assignment Program. See the **Proposed Office of Environmental Management in Figure 11**.

The three sections that exist currently in SEMO would remain under OEM and be renamed as follows:

- Quality Assurance and Performance Section
- Environmental Review and Analysis Section
- Engineering Review and Analysis Section

FDOT does not anticipate any organizational changes within these three sections, although roles and responsibilities may be shifted among OEM sections for the successful implementation of the NEPA Assignment Program or as identified through the NEPA Assignment Program's self-assessment and FHWA's audit process. Responsibilities for these sections and notable positions are described in <u>Section 773.109 (a)(4)(i) Staff Dedicated to Additional Functions</u> of this application.

Section Update: Organizational Structure implemented as described. Updated OEM Organizational chart located: Figure 11.

§773.109 (a)(4)(iii): Use of Outside Consultants for the Assignment Program

FDOT will continue to contract with consultants to support the NEPA Assignment Program. The Districts are responsible for the review of consultant-prepared reports following FDOT's requirements for document review and approval and OEM will be responsible for the review of these documents. Following completion of this review, OEM will approve these documents following the process discussed in the section on **Expanded Quality Assurance / Quality Control Procedures**. Both Districts and OEM have the authority to hire consultants.

Consultants may be used for environmental analysis, technical studies, environmental document preparation, review services, administrative record development, and general staff support.

Consultants will provide NEPA review and support services; but are not authorized to make NEPA determinations under the NEPA Assignment Program. The decision-making responsibility under the NEPA Assignment Program is FDOT's.

Currently, consultant services fluctuate in proportion to the annual FDOT workload. The level of consultant services used to augment FDOT's project development staff is based on legislative authority and project delivery needs, which vary annually. Most Districts provide for consultant assistance on an as-needed basis by maintaining general environmental contracts.

Section Update: Implemented as described.

Office of Environmental Management

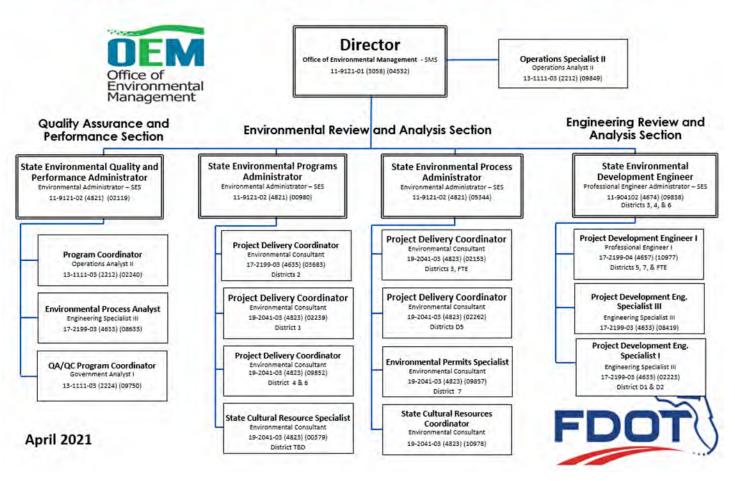


Figure 11 Proposed Office of Environmental Management - Current as of May 2021

§773.109 (a)(5): Financial Resources under the Assignment Program

FDOT's 5-Year Adopted Work Program (for FYs 2016-2020) is \$43 billion dollars. Over \$12 billion is projected in 2016 with an average of \$7 to \$8 billion per year thereafter. OEM's current annual budget for FY 2015/2016 is \$9 million dollars which includes a budget for consultant resources to provide FDOT flexibility in meeting its project and program environmental compliance needs. OEM typically maintains three general consultant contracts, each funded at \$5 million over five years to provide environmental/NEPA, engineering, and ETDM support. Other consultant support contracts provide OEM support in other areas including Public Involvement, Section 4(f) and Section 106 services.

The primary costs for operating the NEPA Assignment Program will come from the OEM budget. This budget does not include the 110 positions statewide. The staff positions listed below are already on staff to perform activities related to the NEPA Assignment Program, and are covered under current budget allocations:

- Director of OEM
- State Environmental Programs Administrator
- State Environmental Quality and Performance Administrator
- State Environmental Process Administrator
- State Environmental Development Engineer

FDOT considers its budget to be sufficient to cover the costs of additional environmental activities necessary to successfully meet its NEPA Assignment Program responsibilities, including: 1) consultation with state and federal environmental resource agencies, 2) QC and QA of NEPA documents and supporting technical studies, 3) self-assessments and 4) preparing for FHWA audits. FDOT commits to making adequate financial resources available to meet the NEPA Assignment Program responsibilities it is assuming and the staff resources needed to successfully execute those responsibilities. FDOT will regularly assess financial and staffing resources available for the NEPA Assignment Program as part of its self-assessments.

Other than the costs of hiring four new OEM positions and reclassifying an existing position as identified in <u>Section 773.109 (a)(4)(i)</u> of this application, there will be no new costs to FDOT for the initial year of the NEPA Assignment Program. The need for any future full time employees would be identified as part of the routine FDOT budgeting process.

Section Update: Financial resources remain available to support the NEPA Assignment Program. In FY2022, FDOT's Annual Budget is \$11 Billion.

§773.109 (a)(6): Certification for Consent to Exclusive Federal Court Jurisdiction and Waiver of Sovereign Immunity

The certification is included in **Appendix C**.

§773.109 (a)(7): Certification that the State of Florida' Public Records Act is Comparable to the Federal Freedom of Information Act

The certification is included in **Appendix C**.

Section Update: Waiver of Sovereign Immunity and authority of FDOT to implement NEPA Assignment remain authorized by the State at Section 334.044(34), Florida Statutes, and comparable public records laws remain authorized under Chapter 119, Florida Statutes. Confirmation was provided in letter seeking renewal and will also be included in the Renewal Package.

§773.109 (a)(8): Comments Received on the Assignment Program

Outreach

FDOT developed an outreach coordination plan that outlines the public and agency outreach to be conducted to build awareness and guide the implementation of the NEPA Assignment Program. To date, FDOT has conducted a variety of public involvement activities. In November 2015, FDOT and FHWA jointly hosted a NEPA Assignment Program Introductory Webinar to inform the resource agencies of the NEPA Assignment Program and solicit their input regarding the FHWA responsibilities that FDOT is applying to assume. Materials from that webinar have been uploaded to FDOT">FDOT">FDOT">FDOT">FDOT">FDOT NEPA Assignment Program Overview website. As a follow up to this webinar, FDOT provided resource agencies and Native American tribes with the opportunity to have individual meetings or teleconferences to discuss program specifics and implementation. To date, one-on-one meetings have been held with: USCG, NMFS, SHPO, ACHP, USACE, U.S. Environmental Protection Agency (USEPA), USFWS, Florida Fish and Wildlife Conservation Commission (FFWCC) and FDEP.

FDOT also provided the Metropolitan Planning Organization Advisory Council (MPOAC) with information regarding FDOT's intent to apply for the NEPA Assignment Program. FDOT will continue communication and outreach efforts with its stakeholders as FDOT prepares to implement the program.

Notice of Draft Application

Public notice of availability of FDOT's application was published on April 15, 2016 in the Florida Administrative Register (FAR) and on FDOT's website. Comments were due no later than May 16, 2016. FDOT also provided direct notice of availability of the application with request for comment to federal and state resource agencies and Native American tribes. In addition, FDOT posted the application and how to provide comments on FDOT's website.

Copies of all comments received during the public comment period and FDOT's responses to comments and any changes made to the application in response to the public comments are included in **Appendix D** of this application.

Section Update: Notice and Opportunity to Comment were completed as described above. Given that FDOT is not seeking assignment of additional administration responsibilities and there are no significant changes to its existing Program, the draft renewal package is not required to be

noticed by FDOT prior to submittal. Note, however, the FHWA must notice the renewal request in the Federal Register per 23 CFR §773.115(f) prior to approval.

§773.109 (a)(9): Point of Contact

Ken Morefield

Director, Office of Environmental Management 605 Suwannee Street, MS 37 Tallahassee, FL 32399-0450

Phone: 850-414-4316

Email: ken.morefield@dot.state.fl.us

Additional information on FDOT's NEPA Assignment Program can be found at **FDOT's NEPA Assignment Program Overview website**.

Section Update: OEM's current Director is Jason Watts, <u>Jason.watts@dot.state.fl.us</u>. Current information will be updated in the renewal MOU.

Appendix A

Projects for which FDOT does not request NEPA Responsibility

With the exception of those on-going projects to be identified in the NEPA Assignment Program MOU, FDOT is requesting to assume the U.S. Secretary of Transportation's and FHWA's responsibilities for all NEPA actions for all Class I (EIS) projects, all Class II (CE) Projects and all Class III (EA) projects, both on the SHS and LAP projects off the SHS. FDOT is requesting FHWA to continue as Lead Federal Agency on the projects listed below because FHWA has had an active role in the environmental review process for these complex projects and/or because these projects are in the final phases of environmental review.

FDOT is not applying for assignment of the following projects under the NEPA Assignment Program. This list is subject to change until the NEPA Assignment Program MOU is signed. These projects, together with their current environmental document status are identified below:

District 4

Crosstown Parkway from Manth Lane to US-1, Financial Management Number 410844-1; EIS. The Crosstown Parkway Extension Project will provide a new bridge crossing over the North Fork of the St. Lucie River in the City of Port of St. Lucie, connecting the existing Crosstown Parkway from Manth Lane to US-1. An EIS was completed for this project and the project is moving forward as a design-build project. Permits have not been issued.

SR 7 from SR 704 (Okeechobee Boulevard) to Northlake Boulevard; Financial Management Numbers 229664-3 and 229664-4 EA with FONSI. The proposed improvements include the widening of SR 7 from two to four lanes from Okeechobee Boulevard to 60th Street and construction of a new four lane divided facility from 60th Street to Northlake Boulevard. Bicycle lanes, sidewalks, and roundabouts are included as part of the improvements. This project has had a high level of involvement from FHWA and other federal agencies. This project is moving forward to the design phase in two segments. SR 7 from SR 704 to 60th Street (Financial Management Number 229664-4) is funded for construction in fiscal year 2016 and SR 7 from 60th Street to North Lake Boulevard (Financial Management Number 229664-3) is funded for construction in fiscal year 2017.

Section Update: Although initially identified for exclusion from NEPA Assignment, these two projects were subsequently assumed and are not included in the NEPA Assignment MOU. Portions of the I-4 Beyond the Ultimate (BTU) and the I-4 Ultimate projects in District 5 and the Tampa Interstate Study (TIS) project in District 7 were excluded from NEPA Assignment and responsibility remained with FHWA. Refer to executed NEPA Assignment MOU for specific projects and segments. At this time, FDOT and FHWA are actively in the signature process to amend the executed NEPA Assignment MOU to remove previously excluded projects. If execution of the amendment is delayed, FDOT will address project removal during negotiation of the Renewal NEPA Assignment MOU.

Appendix B

Federal Environmental Laws other than NEPA for which FDOT is Requesting Responsibility

FDOT is requesting to assume all of the USDOT and FHWA's responsibilities for environmental review, interagency consultation, and other environmental-related actions pertaining to the review or approval of projects assumed under the NEPA Assignment Program under all applicable federal environmental laws and Executive Orders, including, but not limited to, those listed below. FDOT will be responsible for complying with the requirements of any applicable federal environmental law regardless of its inclusion on this list (this list is primarily derived from Appendix A of 23 C.F.R. 773):

Air Quality

• Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any project level conformity determinations under 42 U.S.C. 7506

<u>Noise</u>

- Noise Control Act of 1972, 42 U.S.C. 4901-4918
- Airport Noise and Capacity Act of 1990, 49 U.S.C. 47521-47534
- Compliance with the noise regulations at 23 C.F.R. Part 772

Wildlife

- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d, with Essential Fish Habitat requirements at 16 U.S.C. 1855(b)(2)

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. 9601-9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k

Historic and Cultural Resources

- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 et seq.¹
- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and implementing regulations at 23 C.F.R. Part 774

- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)–(mm)
- Preservation of Historical and Archaeological Data, 54 U.S.C. 312501-312508
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013¹; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996¹
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387 (Sections 319, 401, 402 and 404)
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1466
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26
- General Bridge Act of 1946, 33 U.S.C. 525–533
- Rivers and Harbors Act of 1899, 33 U.S.C. 401–408
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Wetlands Mitigation, 23 U.S.C. 119(g), 133 (b)(14)
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130
- FHWA wetland and natural habitat mitigation regulations, 23 C.F.R. Part 777

Parklands and Other Special Uses

- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303 and implementing regulations at 23 C.F.R. Part 774
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302-200310

FHWA-Specific

- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Linking the Transportation Planning and NEPA Processes, 23 C.F.R. 450 Appendix A
- Efficient Project Reviews for Environmental Decision Making 23 U.S.C. 139
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- FHWA / USCG Memorandum of Agreement (MOA) and USDOT / USCG MOU

Executive Orders Relating to Highway Projects

E.O. 11990, Protection of Wetlands

- E.O. 11988, Floodplain Management
- E.O. 13690, Federal Flood Risk Management Standards (FFRMS)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species

Note:

1. Under these laws and Executive Orders, FHWA will retain responsibility for conducting formal government-to-government consultations with federally recognized Indian tribes. FDOT will continue to handle routine consultations with the tribe governments and understands that a tribal government has the right to direct consultation with FHWA upon request. FDOT may also assist FHWA with formal consultations, with the consent of a tribal government, but FHWA remains responsible that this consultation occurs. FHWA's retention of formal consultation responsibilities under NAGPRA will not limit FDOT's existing activities under this law.

Section Update: List will be updated in consultation with FHWA.

Appendix C

State Certifications for Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity and that the Florida Public Records Act is comparable to the Federal Freedom of Information Act

Section Update: Waiver of Sovereign Immunity and authority of FDOT to implement NEPA Assignment remain authorized by the State at Section 334.044(34), Florida Statutes, and comparable public records laws remain authorized under Chapter 119, Florida Statutes. Confirmation was provided in letter seeking renewal and will also be included in the Renewal Package.



OFFICE OF THE ATTORNEY GENERAL Opinions Division

PAM BONDI ATTORNEY GENERAL PL 01 The Capitol Tallahassee, Florida 32399-1050 Telephone (850) 245-0158 Fax (850) 922-3969

April 5, 2016

Mr. Gregory G. Nadeau Administrator Federal Highway Administration 1200 New Jersey Avenue Southeast Washington, DC 20590-9898

Re: Certification required by FHWA for delegation of NEPA and other responsibilities

Dear Mr. Nadeau:

Pursuant to the authority provided by the Moving Ahead for Progress in the 21st Century Act or "MAP-21," and, more specifically, 23 U.S.C. s. 327 as amended by MAP-21, the Florida Department of Transportation ("FDOT") has advised this office that it is submitting an application to FHWA for delegation of responsibility for compliance with the National Environmental Policy Act ("NEPA") and other Federal environmental laws ("NEPA delegation") for Federal highway projects. On September 16, 2014, FHWA published rules setting forth the requirements for such applications. FHWA's rules specify that a State's application for NEPA assignment must include certain certifications by the State's Attorney General or other State official legally empowered to do so by State law. The purpose of this letter is to provide the certifications required by FHWA to accompany FDOT's application for NEPA delegation.

Florida's Attorney General is statutorily authorized to "perform the duties prescribed by the Constitution of this state and also perform such other duties appropriate to his or her office as may . . . be . . . required . . by law or by resolution of the Legislature."

It is the responsibility of the Florida Attorney General to give her "official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer."

Further, it is the responsibility of the Department of Legal Affairs to provide "all legal services required by any department" of state

¹ See 79 FR 55381, Sept. 16, 2014.

² See 23 CFR s. 773.109(a)(6)-(7).

³ Section 16.01(2), Fla. Stat. See also Art. IV, s. 4, Fla. Const.

Section 16.01(3), Fla. Stat.

Mr. Gregory G. Nadeau Page Two

government.⁵ As a Senior Assistant Attorney General representing the Florida Department of Legal Affairs, I certify the following:

- As stated in section 334.044(34), Florida Statutes, as created by Chapter 16181, Laws of Florida (2016), the Florida Department of Transportation is legally
 authorized by State law "[t]o assume the responsibilities of the United States
 Department of Transportation with respect to highway projects within the state
 under the National Environmental Policy Act of 1969, 42 U.S.C. s. 4321 et seq.,
 and with respect to related responsibilities for environmental review,
 consultation, or other action required under any federal environmental law
 pertaining to review or approval of a highway project within the state."
- Section 334.044(34), Florida Statutes, as created by Chapter 16-181, Laws of Florida (2016), provides a limited waiver of sovereign immunity to civil suit in federal court for the State of Florida consistent with 23 U.S.C. s. 327. The waiver is limited to only those actions delegated to the FDOT and related to carrying out its NEPA duties on state highway projects.
- The Florida Public Records Act, codified in Chapter 119, Florida Statutes, is comparable to 5 U.S.C. 552 (Freedom of Information Act), and provides that any decision regarding the availability of public records under State law is reviewable by a court of competent jurisdiction.

Sincerely,

Gerry Hammond

Senior Assistant Attorney General Florida Department of Legal Affairs

GH/tsh

⁵ Section 16.015, Fla. Stat.

Appendix D Section Update: There are no changes to this Appendix, which is being included for purposes of completeness.

Copies of Public Comments Received on the Assignment Program Application and Responses Provided by FDOT

Public notice of availability of FDOT's application was published on April 15, 2016 in the Florida Administrative Register (FAR) and on FDOT's website. Comments were due no later than May 16, 2016. FDOT also provided direct notice of availability of the application with request for comment to federal and state regulatory and resource agencies and Native American tribes. In addition to the notice posted on the agency website, FDOT posted the application and directions on how to provide comments on FDOT's NEPA Assignment website. The table below reflects how FDOT's application was publicly noticed:

PUBLIC NOTICE OF APPLICATION				
Agency / Group / Organization	How was the Application Noticed?	Date		
Public Notice of Application:				
FDOT's Website	Notice of the Application was posted on FDOT's Agency Website with the ability to submit comments via a link provided to FDOT's NEPA Assignment Website.	April 15, 2016		
Florida Administrative Register	Application was noticed in the FAR	April 15, 2016		
Agencies Notified:				
U.S. Department of Transportation	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
Federal Highway Administration; Florida Division	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
Federal Transit Administration	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
Federal Railroad Administration	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
Federal Aviation Administration	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
U.S. Coast Guard	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
U.S. Coast Guard; Eighth Coast Guard District	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
U.S. Coast Guard; Seventh Coast Guard District	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
U.S. Army Corps of Engineers	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		

PUBLIC NOTICE OF APPLICATION				
Agency / Group / Organization	How was the Application Noticed?	Date		
U.S. Fish and Wildlife Service	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
U.S. Environmental Protection Agency	Letter with information regarding the availability of application on FDOT's Website	April 13, 2016		
U.S. Department of Agriculture	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Natural Resources Conservation Service	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
U.S. Department of the Interior	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Bureau of Indian Affairs	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
U.S. Department of Housing and Urban Development	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
U.S. Department of Health and Human Services	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
NOAA Fisheries Service	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
National Park Service	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Federal Emergency Management Agency	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Florida Department of Agriculture and Consumer Services	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Florida Department of Environmental Protection	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Florida Department of Economic Opportunity	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Florida Department of State	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Florida Fish and Wildlife Conservation Commission	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Suwannee River Water Management District	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Southwest Florida Water Management District	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Northwest Florida Water Management District	Letter with information regarding the availability of application on FDOT's Website	04/13/16		

PUBLIC NOTICE OF APPLICATION				
Agency / Group / Organization	How was the Application Noticed?	Date		
Saint Johns River Water Management District	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
South Florida Water Management District	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Florida Metropolitan Planning Organization Advisory Council	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Native American Tribes Notific	ed			
Miccosukee Tribe of Indians of Florida	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Mississippi Band of Choctaw Indians	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Muscogee (Creek) Nation	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Poarch Band of Creek Indians	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Seminole Tribe of Florida	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Seminole Nation of Oklahoma	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
Elected Officials Notified:	Elected Officials Notified:			
U.S. States Senate	Letter with information regarding the availability of application on FDOT's Website	04/13/16		
U.S. House of Representatives: -Transportation Appropriations Subcommittee; -Transportation and Infrastructure Committee	Letter with information regarding the availability of application on FDOT's Website	04/13/16		

The following is a summary of comments that were received and FDOT's response to those comments. Copies of the comments and responses directly follow the summary table.

SUMMARY OF PUBLIC COMMENTS AND FDOT RESPONSES ON APPLICATION				
Date Submitted	Commenter	Summary of Comment(s)	Summary of Response(s)	Date FDOT Responded
5/6/2016	Bart Vernace, P.E., Manager Federal Aviation Administration; Orlando Airports District Office	FAA's Southern Region Administrator's acknowledgement of FDOT's Application and request to be notified of highway projects being planned within the vicinity of any Florida airport.	Acknowledged	5/16/2016
5/4/2016	Jennifer D. Goff FFWCC; Land Use Planning Program Administrator	Letter of support	Acknowledged	5/5/2016
5/13/2016	Roy Crabtree NMFS; Division Administrator	Letter of support	Acknowledged	5/18/2016
5/12/2016	Josh Temples	I am wondering what FPID # the following public meeting is for? PUBLIC NOTICE: Federal Surface Transportation Project Delivery Program	Email clarification provided	5/12/2016
5/13/2016	Larry Williams; USFWS; Field Supervisor	Letter of support	Acknowledged	5/13/2016

	SUMMARY OF PUBLIC COMMENTS AND FDOT RESPONSES ON APPLICATION				
Date Submitted	Commenter	Summary of Comment(s)	Summary of Response(s)	Date FDOT Responded	
5/13/2016	Victoria Foster USFWS Chief of Staff to the State Supervisor	Categorical Exclusion Documentation, p. 20. It should be noted that Type 1 Categorical Exclusions (CE) should not apply to projects that required a Biological Opinion (BO) from the USFWS. Type 1 CEs do not have the necessary commitment tracking (Environmental Commitments, p. 26) to assure that all the conservation measures and terms-and-conditions from the BO are fully implemented.	RESPONSE: Part 1 Chapter 2 of the PD&E Manual contains information on how to complete the Type 1 CE checklist form. Question 7 addresses how consultation with USFWS is handled: "Will the action result in a determination other than, (1) "no involvement," (2) "no effect", or (3) with concurrence from US Fish and Wildlife Service or National Marine Fisheries Service, as appropriate, a "may affect but not likely to adversely affect" determination concerning impacts to endangered and threatened species and/or their critical habitat in accordance with Section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a)-(d)". With regards to commitments, the use of the FDOT commitment tracking procedure is not limited by class of action; thus it applies to Type 1 CEs as well. An edit will be added to the application referencing Type 1 CEs as well on page 26.	5/17/2016	

SUMMARY OF PUBLIC COMMENTS AND FDOT RESPONSES ON APPLICATION				
Date Submitted	Commenter	Summary of Comment(s)	Summary of Response(s)	Date FDOT Responded
5/13/2016	Victoria Foster USFWS Chief of Staff to the State Supervisor	Process with External Agencies, p. 43. There may be special circumstances where FHWA should have the opportunity to attend meetings and provide comments to the FDOT and other federal agencies. In these instances, FHWA participation should be mutually agreed upon between the parties, and occur only in limited circumstances, such as: when a party believes the MOU is not in compliance; there are emerging national policy issues that need to be addressed; and upon the request of FDOT or other federal agencies.	RESPONSE: As stated in the Application on page 41, FDOT has historically performed the primary role for interagency coordination on its highway projects. Under the NEPA Assignment Program, FDOT is committed to continue working positively and collaboratively with its federal and state resource agency partners as it assumes the role of FHWA as the NEPA federal lead agency for highway projects in the state. As provided at 23 U.S.C. 327(e), FDOT shall be solely responsible and solely liable for carrying out in lieu of and without further approval of the Secretary, all of the responsibilities it has assumed. The commenter lists examples of when FHWA may be offered opportunity to comment or attend a meeting. FDOT believes that such opportunities will be rare and indeed as stated by the commenter, "special circumstances". FDOT will take appropriate actions toward the success of the NEPA Assignment program to include consulting with agencies, and will include discussion of this topic in the Memorandum of Understanding between FDOT and FHWA.	5/17/2016

SUMMARY OF PUBLIC COMMENTS AND FDOT RESPONSES ON APPLICATION				
Date Submitted	Commenter	Summary of Comment(s)	Summary of Response(s)	Date FDOT Responded
5/13/2016	Victoria Foster USFWS Chief of Staff to the State Supervisor	Endangered Species Act, Section 7 Determinations and Coordination, p. 44. This section discusses effect determinations, and agrees to formal consultation if FDOT and USFWS are unable to agree. But other issues may arise, such as conflict over timelines, Reasonable and Prudent Measures (RPMs), Terms and Conditions (TCs), Reasonable and Prudent Alternatives (RPAs), as well as under our other regulatory responsibilities. A clear process to elevate and settle disputes for all projects should be identified in the application. FDOT has developed a dispute resolution process for projects reviewed under the Efficient Transportation Decision Making (ETDM) process, as outlined on p. 45. As ETDM applies to most, but not all FDOT projects, we recommend broadly adopting this process to address all potential disputes under NEPA.	RESPONSE: FDOT's NEPA Assignment application contains a discussion of the Issue Resolution Process in ETDM on pages 45 through 47. The Issue Resolution process in ETDM seeks to find solutions to issues between agencies that address a resource concern while meeting the transportation need. This issue resolution process is available during planning and remains available through future project delivery phases as detailed analysis begins and more information becomes available. The examples provided by the commenter can be addressed through the ETDM process. The Memorandum of Understanding between FDOT and FHWA will address Conflict Resolution that would cover other issues not handled through the EDTM process	5/17/2016
5/16/2016	Jason A Kirk, P.E. Colonel, US Army District Commander	Letter of support	Acknowledged	5/16/2016

	SUMMARY OF PUBLIC COMMENTS AND FDOT RESPONSES ON APPLICATION				
Date Submitted	Commenter	Summary of Comment(s)	Summary of Response(s)	Date FDOT Responded	
5/16/2016	Shelly Sugarman USCG Headquarters; Chief, Bridge Permits and Policy Division (CG-BRG-2); Coast Guard Bridge Program	Comment regarding responsibility to abide by the Memorandum of Agreement with FHWA to expedite the bridge permitting and NEPA processes (copy of Coast Guard-FHWA MOA dated January 14, 2014 provided with letter).	Acknowledged By accepting the USDOT Secretary's and FHWA's NEPA responsibilities, FDOT agrees to perform FHWA's obligations set forth in the 2014 MOU between the USDOT and the United States Coast Guard (USCG) and in the 2014 MOA between USCG and FHWA.	5/16/2016	

From: Bart.Vernace@FAA.GOV

Sent: Thursday, May 05, 2016 4:16 PM

To: Morefield, Ken

 Cc:
 Dennis.Roberts@faa.gov; Camille.Sprauve@faa.gov; Rebecca.Henry@faa.gov

 Subject:
 FDOT's Public Notice of its Application for the Federal Surface Transportation Project

Delivery Program

Attachments: image2016-04-26-123702.pdf

Dear Mr. Morefield:

This email responds to your April 13th letter to Mr. Dennis Roberts, FAA's Southern Region Administrator regarding FDOT's Public Notice of its Application for the Federal Surface Transportation Project Delivery Program.

We appreciate the FDOT's notice regarding the state agency's intent to participate in the FHWA's NEPA Assignment Program. The Federal Aviation Administration (FAA) Orlando Airports District Office oversees airport planning, environmental, compliance, design, and safety programs for airports located in the State of Florida. We would like to be notified by the FDOT of highway projects being planned within the vicinity of any Florida airport. Please send those notifications addressed to me at the address below, Thank you.

Sincerely,

Bart Vernace, P.E.
Manager
Federal Aviation Administration
Orlando Airports District Office
5950 Hazeltine National Drive, Suite 400
Orlando, Florida 32822
(407) 812-6331, 127

From: Morefield, Ken

Sent: Monday, May 16, 2016 7:18 AM
To: 'Bart.Vernace@FAA.GOV'

Cc: 'Dennis.Roberts@faa.gov'; 'Camille.Sprauve@faa.gov'; 'Rebecca.Henry@faa.gov'
Subject: RE: FDOT's Public Notice of its Application for the Federal Surface Transportation

Project Delivery Program

Thank you for your reply on our application. The notification that you requested for highway projects being planned within the vicinity of any Florida airport

(at the address at the bottom of your email), is included in our notification requirements in our Project Development Manual, Chapter 34.

Ken Morefield, PE

Manager, State Environmental Management Office 605 Suwannee Street, MS 37 Tallahassee, FL 32399-0450

Phone: 850-414-4316 Cell: 850-544-2527

Email; ken.morefield@dot.state.fl.us



From: Bart.Vernace@FAA.GOV [mailto:Bart.Vernace@FAA.GOV]

Sent: Thursday, May 05, 2016 4:16 PM

To: Morefield, Ken

Cc: Dennis.Roberts@faa.gov; Camille.Sprauve@faa.gov; Rebecca.Henry@faa.gov

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Sincerely,

Bart Vernace, P.E. Manager Federal Aviation Administration

1

From: Morefield, Ken

Sent: Monday, May 16, 2016 7:18 AM
To: 'Bart.Vernace@FAA.GOV'

Cc: 'Dennis.Roberts@faa.gov'; 'Camille.Sprauve@faa.gov'; 'Rebecca.Henry@faa.gov'
Subject: RE: FDOT's Public Notice of its Application for the Federal Surface Transportation

Project Delivery Program

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Ken Morefield, PE

Manager, State Environmental Management Office 605 Suwannee Street, MS 37 Tallahassee, FL 32399-0450

Phone: 850-414-4316 Cell: 850-544-2527

Email; ken.morefield@dot.state.fl.us



From: Bart.Vernace@FAA.GOV [mailto:Bart.Vernace@FAA.GOV]

Sent: Thursday, May 05, 2016 4:16 PM

To: Morefield, Ken

Cc: Dennis.Roberts@faa.gov; Camille.Sprauve@faa.gov; Rebecca.Henry@faa.gov

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Dear Mr. Morefield:

This email responds to your April 13th letter to Mr. Dennis Roberts, FAA's Southern Region Administrator regarding FDOT's Public Notice of its Application for the Federal Surface Transportation Project Delivery Program.

We appreciate the FDOT's notice regarding the state agency's intent to participate in the FHWA's NEPA Assignment Program. The Federal Aviation Administration (FAA) Orlando Airports District Office oversees airport planning, environmental, compliance, design, and safety programs for airports located in the State of Florida. We would like to be notified by the FDOT of highway projects being planned within the vicinity of any Florida airport. Please send those notifications addressed to me at the address below, Thank you.

Sincerely,

Bart Vernace, P.E. Manager Federal Aviation Administration

1



May 4, 2016

Re:

Florida Fish and Wildlife Conservation Commission Mr. Ken Morefield, P.E. Manager, State Environmental Management Office Florida Department of Transportation (FDOT) 605 Suwannee Street, MS 37 Tallahassee, FL 32399-0450 Ken.Morefield@DOT.state.fl.us

Commissioners Brian Yablonski Chairman

Tallahassee
Aliese P. "Liesa" Priddy
Vice Chairman
Immokalee

Ronald M. Bergeron Fort Lauderdale

Richard Hanas Oviedo

Bo Rivard Panama City

Charles W. Roberts III

Robert A. Spottswood Key West

Executive Staff
Nick Wiley
Executive Director

Eric Sutton Assistant Executive Director

Jennifer Fitzwater Chief of Staff

Office of the Executive Director Nick Wiley Executive Director

(850) 487-3796 (850) 921-5786 FAX

Managing fish and wildlife resources for their long-term well-being and the benefit of people.

620 South Meridian Street Tallahassee, Florida 32399-1600 Voice: (850) 488-4676

Hearing/speech-impaired: (800) 955-8771 (T) (800) 955-8770 (V)

MyFWC.com

Dear Mr. Morefield:

Project Delivery Program

The Florida Fish and Wildlife Conservation Commission (FWC) staff has reviewed FDOT's Public Notice of its Application for the Federal Surface Transportation Project Delivery Program published on April 15, 2016, in the Florida Administrative Register, and we provide the following comments.

FDOT's Public Notice of its Application for the Federal Surface Transportation

FDOT is applying to participate in the Surface Transportation Project Delivery Assignment Program (National Environmental Policy Act Assignment Program) pursuant to 23 U.S.C. §327. Under this program, FDOT will assume the responsibilities of the U.S. Secretary of Transportation and the Federal Highway Administration (FHWA) for compliance with the National Environmental Policy Act (NEPA) and all other federal environmental laws pertaining to the review or approval of FDOT's highway projects. FWC staff has attended the NEPA Assignment Program Introductory Webinar on November 18, 2015, and we have met with FDOT concerning this application on December 7, 2015.

As an active member of FDOT's Environmental Technical Advisory Team, the FWC participates in the Efficient Transportation Decision Making process for early input on transportation projects; provides technical assistance and review of fish and wildlife resource aspects of Project Development and Environment Studies, Environmental Assessments, and Environmental Impact Studies; issues applicable permits to FDOT, and reviews their applications for other state and federal environmental permits; and regularly provides collaboration on ways to avoid, minimize, and mitigate the effects of transportation projects on fish and wildlife resources. We have developed an excellent cooperative relationship with FDOT, where we are consistently confident that our concerns will be sincerely considered. Because of this, we support the application submitted by FDOT under the NEPA Assignment Program, and we believe their assumption of federal responsibilities will be a gain of efficiency with no loss of environmental protection.

Ken Morefield Page 2 May 4, 2016 Thank you for the opportunity to review the FDOT's Application for the Federal Surface Transportation Project Delivery Program. We look forward to continuing our cooperative role in delivering environmentally sound transportation projects. Sincerely, Junifu D. Soft Jennifer D. Goff Land Use Planning Program Administrator Office of Conservation Planning Services Federal Surface Transportation Project Delivery Program_30813_050416

From: Morefield, Ken

Sent: Wednesday, May 04, 2016 9:25 AM

To: 'Wallace, Traci'

Cc: Barnett, Brian; Goff, Jennifer; Hight, Jason

Subject: RE: FWC's Comments on FDOT's Public Notice of its Application for the Federal Surface

Transportation Project Delivery Program

Thank you.. appreciate your support and we will work diligently to maintain your confidence and support.

Ken Morefield, PE

Manager, State Environmental Management Office

605 Suwannee Street, MS 37 Tallahassee, FL 32399-0450 Phone: 850-414-4316 Cell: 850-544-2527

Email; ken.morefield@dot.state.fl.us



From: Wallace, Traci [mailto:traci.wallace@MyFWC.com]

Sent: Wednesday, May 04, 2016 9:16 AM

To: Morefield, Ken

Cc: Barnett, Brian; Goff, Jennifer; Hight, Jason

Subject: FWC's Comments on FDOT's Public Notice of its Application for the Federal Surface Transportation Project

Delivery Program

Please find attached FWC's comments on the above-referenced project. You will **not** receive a hard-copy version of this letter unless requested.

If you wish to reply to our comments, please send your reply to:

FWCConservationPlanningServices@myFWC.com

Traci Wallace, AA III Office of Conservation Planning Services 850-410-5272



UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration NATIONAL MARINE FISHERIES SERVICE Southeast Regional Office 263 13th Avenue South St. Petersburg, Florida 33701-5505 http://sero.mmfs.noaa.gov

F/SER46:DR

Ken Morefield, P.E. Manager, State Environmental Management Office Florida Department of Transportation 605 Suwannee Street, MS 37 Tallahassee, Florida 32399-0450

MAY 06 2016

Dear Mr. Morefield:

NOAA's National Marine Fisheries Service (NMFS) received a letter from the Florida Department of Transportation (FDOT) dated April 13, 2016, requesting comments regarding the proposed assignment of the Federal Highway Administration's (FHWA) National Environmental Policy Act (NEPA) responsibilities to FDOT. FDOT would assume the U.S. Secretary of Transportation's and FHWA's responsibilities for compliance with NEPA and all other federal environmental laws pertaining to the review or approval of FDOT's highway projects.

NMFS has coordinated with FDOT previously in regards to the proposed NEPA assignment and offers the following comments. NMFS has been involved with the review of FDOT projects, including NEPA coordination with FHWA, FDOT, and other state and federal agencies, under FDOT's Efficient Transportation Decision Making process since 2004. NMFS expects that this process would continue as before with the exception of FDOT handling the NEPA (and other federal environmental law) responsibilities that were previously managed by FHWA. Based on the information that has been provided, NMFS has no objections to the proposed transfer of NEPA responsibilities from FHWA to FDOT, and has confidence that FDOT will perform these new duties in an efficient, reasonable, and responsible manner. Please update us with any contact information for FDOT staff that will be assuming NEPA duties.

If you have questions regarding our views on this project, please contact Dr. Dave Rydene in our St. Petersburg, Florida office. Dr. Rydene may be reached at the letterhead address or by calling (727) 824-5379.

Sincerely,

Roy E. Crabtree, Ph.D. For Regional Administrator

cc: F/SER4

F/SER46 - Rydene



Morefield, Ken

From: Morefield, Ken

Sent: Wednesday, May 18, 2016 1:35 PM

To: 'David.Rydene@noaa.gov'

Subject: NMFS Letter on FDOT's NEPA Assignment Application

Attachments: NMFS response to proposed NEPA Assignment May 6 2016.pdf

Dave,

I would like to thank you for your agency's letter expressing confidence in FDOT's ability to perform the NEPA responsibilities requested in our NEPA Application. We look forward to continuing our excellent relationship under this program.

Ken Morefield, PE
Manager, State Environmental Management Office
605 Suwannee Street, MS 37
Tallahassee, FL 32399-0450

Phone: 850-414-4316 Cell: 850-544-2527

Email; ken.morefield@dot.state.fl.us



From: Sent: To: Subject:	Josh Temples <joshtemples2015@gmail.com> Thursday, May 12, 2016 11:52 AM Morefield, Ken PUBLIC NOTICE: Federal Surface Transportation Project Delivery Program</joshtemples2015@gmail.com>
Good morning,	
I am wondering what	FPID # the following public meeting is for?
PUBLIC NOTICE:	Federal Surface Transportation Project Delivery Program
Thank you in advance	e for your help,
Josh Temples	
joshtemples2015@gr	nail.com
Virus-free. w	ww.avast.com
	1

Morefield, Ken From: Morefield, Ken Sent: Thursday, May 12, 2016 8:01 PM Josh Temples To: Subject: Re: PUBLIC NOTICE: Federal Surface Transportation Project Delivery Program Mr. Temples The FDOT appreciate you taking the time to submit your question. The public notice you have referenced is not for a project, but rather it is an application the FDOT has publicly noticed for FDOT to participate in the US DOT's Transportation Project Delivery Program. It is not a notice of a public meeting. If there is a specific project you are looking for or anything else I can assist with please let me know. Thank you again for your inquiry. Sent from my iPad On May 12, 2016, at 11:51 AM, Josh Temples < joshtemples 2015@gmail.com > wrote: Good morning, I am wondering what FPID # the following public meeting is for? PUBLIC NOTICE: Federal Surface Transportation Project Delivery Program Thank you in advance for your help, Josh Temples joshtemples2015@gmail.com

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Morefield, Ken

From: Foster, Victoria < victoria_foster@fws.gov>

Sent: Friday, May 13, 2016 4:05 PM

To: Morefield, Ken

Cc: Boxold, Jim; Pagan, Xavier; Larry Williams; Bob Progulske; Roxanna Hinzman; Catherine

Phillips; Jay Herrington; Lourdes Mena; John Wrublik; John Tupy; Mary Mittiga

Subject: Re: Letter of Support for FDOT NEPA Assumption

Hi Ken.

Apologies for a small addendum, we had some time-crossed correspondence today.

We do generally support this program as we state in our letter. However, please also consider the following three items as comments on the draft agreement for inclusion/updating and/or when designing the implementing MOU (wherever they would be most appropriate):

- 1. Categorical Exclusion Documentation, p. 20. It should be noted that Type 1 Categorical Exclusions (CE) should not apply to projects that required a Biological Opinion (BO) from the USFWS. Type 1 CEs do not have the necessary commitment tracking (Environmental Commitments, p. 26) to assure that all the conservation measures and terms-and-conditions from the BO are fully implemented.
- 2. Process with External Agencies, p. 43. There may be special circumstances where FHWA should have the opportunity to attend meetings and provide comments to the FDOT and other federal agencies. In these instances, FHWA participation should be mutually agreed upon between the parties, and occur only in limited circumstances, such as: when a party believes the MOU is not in compliance; there are emerging national policy issues that need to be addressed; and upon the request of FDOT or other federal agencies.
- 3. Endangered Species Act, Section 7 Determinations and Coordination, p. 44. This section discusses effect determinations, and agrees to formal consultation if FDOT and USFWS are unable to agree. But other issues may arise, such as conflict over timelines, Reasonable and Prudent Measures (RPMs), Terms and Conditions (TCs), Reasonable and Prudent Alternatives (RPAs), as well as under our other regulatory responsibilities. A clear process to elevate and settle disputes for all projects should be identified in the application. FDOT has developed a dispute resolution process for projects reviewed under the Efficient Transportation Decision Making (ETDM) process, as outlined on p. 45. As ETDM applies to most, but not all FDOT projects, we recommend broadly adopting this process to address all potential disputes under NEPA.

Please let me know if you need this sent under separate cover as a letter, or if this email suffices as official comments.

Thank you! Tori

U.S. Fish and Wildlife Service 1339 20th Street, Vero Beach, FL 32960 Ph: 772-469-4269 Fax: 772-562-4288

E-mail: Victoria Foster@fws.gov

On Fri, May 13, 2016 at 10:31 AM, Kelso, LeeAnn < leeann kelso@fws.gov> wrote: Please find attached subject letter.



Morefield, Ken

From: Morefield, Ken

Sent: Tuesday, May 17, 2016 9:02 AM

To: 'Foster, Victoria'

Cc: Boxold, Jim; Pagan, Xavier; Larry Williams; Bob Progulske; Roxanna Hinzman; Catherine

Phillips; Jay Herrington; Lourdes Mena; John Wrublik; John Tupy; Mary Mittiga

Subject: RE: Letter of Support for FDOT NEPA Assumption

Victoria,

Thank you again for your agency's letter of support and we are looking forward to working even more closely with your agency as

we implement and assume NEPA Assignment.

Below you will find our response (in red) to your follow-up items. All are or will be addressed either in our current procedures, the application and/or the MOU.

1. Categorical Exclusion Documentation, p. 20. It should be noted that Type 1 Categorical Exclusions (CE) should not apply to projects that required a Biological Opinion (BO) from the USFWS. Type 1 CEs do not have the necessary commitment tracking (Environmental Commitments, p. 26) to assure that all the conservation measures and terms-and-conditions from the BO are fully implemented.

RESPONSE: Part 1 chapter 2 of the PD&E Manual contains information on how to complete the Type 1 CE checklist form. Question 7 addresses how consultation with USFWS is handled: "Will the action result in a determination other than, (1) "no involvement," (2) "no effect", or (3) with concurrence from US Fish and Wildlife Service or National Marine Fisheries Service, as appropriate, a "may affect but not likely to adversely affect" determination concerning impacts to endangered and threatened species and/or their critical habitat in accordance with Section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a)-(d)".

With regards to commitments, the use of the FDOT commitment tracking procedure is not limited by class of action; thus it applies to Type 1 CEs as well. An edit will be added to the application referencing Type 1 CEs as well on page 26.

2. Process with External Agencies, p. 43. There may be special circumstances where FHWA should have the opportunity to attend meetings and provide comments to the FDOT and other federal agencies. In these instances, FHWA participation should be mutually agreed upon between the parties, and occur only in limited circumstances, such as: when a party believes the MOU is not in compliance; there are emerging national policy issues that need to be addressed; and upon the request of FDOT or other federal agencies.

RESPONSE: As stated in the Application on page 41, FDOT has historically performed the primary role for interagency coordination on its highway projects. Under the NEPA Assignment Program, FDOT is committed to continue working positively and collaboratively with its federal and state resource agency partners as it assumes the role of FHWA as the NEPA federal lead agency for highway projects in the state. As provided at 23 U.S.C. 327(e), FDOT shall be solely responsible and solely liable for carrying out in lieu of and without further approval of the Secretary, all of the responsibilities it has assumed.

The commenter lists examples of when FHWA may be offered opportunity to comment or attend a meeting. FDOT believes that such opportunities will be rare and indeed as stated by the commenter, "special circumstances". FDOT will

take appropriate actions toward the success of the NEPA Assignment program to include consulting with agencies, and will include discussion of this topic in the Memorandum of Understanding between FDOT and FHWA.

3. Endangered Species Act, Section 7 Determinations and Coordination, p. 44. This section discusses effect determinations, and agrees to formal consultation if FDOT and USFWS are unable to agree. But other issues may arise, such as conflict over timelines, Reasonable and Prudent Measures (RPMs), Terms and Conditions (TCs), Reasonable and Prudent Alternatives (RPAs), as well as under our other regulatory responsibilities. A clear process to elevate and settle disputes for all projects should be identified in the application. FDOT has developed a dispute resolution process for projects reviewed under the Efficient Transportation Decision Making (ETDM) process, as outlined on p. 45. As ETDM applies to most, but not all FDOT projects, we recommend broadly adopting this process to address all potential disputes under NEPA.

RESPONSE: FDOT's NEPA Assignment application contains a discussion of the Issue Resolution Process in ETDM on pages 45 through 47. The Issue Resolution process in ETDM seeks to find solutions to issues between agencies that address a resource concern while meeting the transportation need. This issue resolution process is available during planning and remains available through future project delivery phases as detailed analysis begins and more information becomes available. The examples provided by the commenter can be addressed through the ETDM process.

The Memorandum of Understanding between FDOT and FHWA will address Conflict Resolution that would cover other issues not handled through the EDTM process.

Ken Morefield, PE
Manager, State Environmental Management Office
605 Suwannee Street, MS 37
Tallahassee, FL 32399-0450
Phone: 850-414-4316

Cell: 850-544-2527

Email; ken.morefield@dot.state.fl.us



From: Foster, Victoria [mailto:victoria_foster@fws.gov]

Sent: Friday, May 13, 2016 4:05 PM

To: Morefield, Ken

Cc: Boxold, Jim; Pagan, Xavier; Larry Williams; Bob Progulske; Roxanna Hinzman; Catherine Phillips; Jay Herrington;

Lourdes Mena; John Wrublik; John Tupy; Mary Mittiga Subject: Re: Letter of Support for FDOT NEPA Assumption

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Thank you! Tori

Victoria Foster
Chief of Staff to the State Supervisor
U.S. Fish and Wildlife Service
1339 20th Street, Vero Beach, FL 32960
Ph: 772-469-4269 Fax: 772-562-4288
E-mail: Victoria Foster@fws.gov

On Fri, May 13, 2016 at 10:31 AM, Kelso, LeeAnn < <u>leeann_kelso@fws.gov</u>> wrote: Please find attached subject letter.

Thank you,

LeeAnn Kelso
Executive Assistant to the State Supervisor
Florida Ecological Services
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, FL 32960
772-469-4251

Morefield, Ken

From:

Foster, Victoria < victoria_foster@fws.gov>

Sent:

Tuesday, May 17, 2016 1:33 PM

To:

Morefield, Ken

Subject:

Re: Letter of Support for FDOT NEPA Assumption

Thank you for your response and clarification, Ken!

Victoria Foster
Chief of Staff to the State Supervisor

U.S. Fish and Wildlife Service 1339 20th Street, Vero Beach, FL 32960 Ph: 772-469-4269 Fax: 772-562-4288

E-mail: Victoria Foster@fws.gov

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Ken Morefield, PE

Manager, State Environmental Management Office

605 Suwannee Street, MS 37

Tallahassee, FL 32399-0450

Phone: 850-414-4316

Cell: 850-544-2527

Email; ken.morefield@dot.state.fl.us



From: Foster, Victoria [mailto:victoria foster@fws.gov]

Sent: Friday, May 13, 2016 4:05 PM

To: Morefield, Ken

Cc: Boxold, Jim; Pagan, Xavier; Larry Williams; Bob Progulske; Roxanna Hinzman; Catherine Phillips; Jay Herrington;

Lourdes Mena; John Wrublik; John Tupy; Mary Mittiga **Subject:** Re: Letter of Support for FDOT NEPA Assumption

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under NEF	A.
Please le	me know if you need this sent under separate cover as a letter, or if this email suffices as official
commen	
Γhank y	u!
Гогі	
/ictoria	Egeter
	Staff to the State Supervisor and Wildlife Service
	th Street, Vero Beach, FL 32960
n: (/2	469-4269 Fax: 772-562-4288

On Fri, May 13, 2016 at	10:31 AM, Kelso, Lee	eAnn <leeann kelso@fv<="" th=""><th>vs.gov> wrote:</th><th></th></leeann>	vs.gov> wrote:	
Please find attached su				
Thank you,				
LeeAnn Kelso				
Executive Assistant to the State Supe	Trisor			
Florida Ecological Services				
U.S. Fish and Wildlife Service				
1339 20th Street				
Vero Beach, FL 32960				
772-469-4251				



DEPARTMENT OF THE ARMY

JACKSONVILLE DISTRICT CORPS OF ENGINEERS
POST OFFICE BOX 4970
JACKSONVILLE, FLORIDA 32232-0019
May 16, 2016

Mr. Ken Morefield, P.E. Manager State Environmental Management Office Florida Department of Transportation (FDOT) 605 Suwannee Street, MS 37 Tallahassee, FL 32399-0450

Dear Mr. Morefield:

This letter is in response to FDOT's Public Notice of its Application for the Federal Surface Transportation Project Delivery Program published on April 15, 2016. The Corps has reviewed the notice and offers the following comments:

FDOT is applying to participate in the Surface Transportation Project Delivery Assignment Program pursuant to 23 U.S.C., section 327. Under this program, FDOT will assume the responsibilities of the U.S. Secretary of Transportation and the Federal Highway Administration (FHWA) for compliance with the National Environmental Policy Act (NEPA) and other federal environmental laws pertaining to FDOT's proposed highway projects. Corps staff attended the NEPA Assignment Program Introductory Webinar conducted November 18, 2015 and have discussed the proposal with FDOT by conference call.

The Corps currently works closely with the FDOT through the Efficient Transportation Decision Making process. This process involves the Corps and other resource agencies in providing early input on proposed transportation projects. The Corps provides technical assistance related to the identification of wetlands and other waters under federal jurisdiction, avoidance and minimization measures, mitigation of project impacts and the evaluation of projects under the Clean Water Act and NEPA. The Corps currently enjoys an excellent working relationship with the FDOT and have found the FDOT to be sensitive to the Corps concerns regarding project planning and implementation. We support the application submitted by FDOT under the NEPA Assignment Program and believe assumption of federal responsibilities will result in the protection of environmental resources while providing additional efficiency.

Thank you for the opportunity to review and provide comment regarding the FDOT's Application for the Federal Surface Transportation Project Delivery Program. If you have any questions regarding the information in this letter, please feel free to contact Andrew Kizlauskas at (850) 763-0717 or by email at Andrew A.Kizlauskas@usace.army.mil.

Sincerely,

Jason A. Kirk, P.E. Colonel, US Army District Commander

Morefield, Ken

From:

Morefield, Ken

Sent: To: Monday, May 16, 2016 5:25 PM 'Bringhurst, Yolanda A SAJ' Wegmann, Deborah L SAJ

Cc: Subject:

RE: Scanned Document - Letter from USACE - Ref: FDOT Public Notice

Thank you and Debbie...

Ken Morefield, PE

Manager, State Environmental Management Office

605 Suwannee Street, MS 37 Tallahassee, FL 32399-0450 Phone: 850-414-4316

Cell: 850-544-2527

Email; ken.morefield@dot.state.fl.us

----Original Message-----

From: Bringhurst, Yolanda A SAJ [mailto:Yolanda.A.Bringhurst@usace.army.mil]

Sent: Monday, May 16, 2016 4:11 PM

To: Morefield, Ken

Subject: FW: Scanned Document - Letter from USACE - Ref: FDOT Public Notice

Mr. Morefield,

This email is on behalf of Debbie Wegmann, USACE, who is having problems with her computer.

Thanks

v/r

Yolanda Bringhurst

----Original Message-----

 $From: Yolanda. A. Bringhurst@usace.army.mil\ [mailto:Yolanda. A. Bringhurst@usace.army.mil]$

Sent: Monday, May 16, 2016 3:21 PM

To: Bringhurst, Yolanda A SAJ <Yolanda.A.Bringhurst@usace.army.mil>

Subject: Scanned Document

Please see the attached document.

U.S. Department of Homeland Security
United States
Coast Guard

Commandant United States Coast Guard 2703 Martin Luther King Jr. Ave Washington, DC 20593-7509 Staff Symbol: CG-BPG Phone: (202) 372-1521 Email: shelly.h.sugarman@uscg.mil

May 16, 2016

Ken Morefield, P.E. Manager, State Environmental Management Office 605 Suwannee Street, MS 37 Tallahassee, FL 32399-0450

RE: Coast Guard Comments on draft FDOT Application for Assumption of Federal Highway Administration Responsibilities Pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. §327

Dear Mr. Morefield,

Thank you for the opportunity to comment on the draft FDOT Application for Assumption of Federal Highway Administration Responsibilities Pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. §327. As you know, the Coast Guard issues permits for bridges affecting the navigable waters of the United States. In performing this function, the Coast Guard often works closely with the U.S. Department of Transportation (DOT) and its operating administrations, including the Federal Highway Administration. To ensure the Coast Guard's navigational concerns are addressed early in the planning phase for DOT projects, the Coast Guard entered into a Memorandum of Understanding with the several DOT operating administrations, and a separate Memorandum of Agreement (MOA) with the FHWA to expedite the bridge permitting and NEPA processes, and to specifically address the unique issues associated with Title 23-funded highway projects, including FHWA's authority under 23 U.S.C. § 144(c).

Enclosed for your reference, please find a copy of the Coast Guard-FHWA MOA dated January 14, 2014. The Coast Guard understands that States assuming FHWA's responsibilities pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. §327, will abide by the MOA, and as such, will notify the Coast Guard at the earliest phases of project planning to ensure that any potential navigation impacts are evaluated for NEPA scoping purposes. In addition, the Coast Guard understands that although State DOTs or Highway Agencies typically advise FHWA on navigation issues for projects crossing U.S. navigable waters, the FHWA retains the statutory authority under 23 U.S.C. § 144(c), even when a State has assumed the FHWA's NEPA responsibilities.

Please note the Coast Guard's bridge authorities are not environmental laws as indicated in Appendix B to the Application. Nonetheless, navigation should be evaluated as early as possible to eliminate unreasonably obstructive project alternatives. Should you have any questions, contact me or my FHWA liaison, Mr. Zachary Schulman at 202-372-2611.

Chief, Bridge Permits and Policy Division

Coast Guard Bridge Program

Morefield, Ken

From: Morefield, Ken

Sent: Tuesday, May 17, 2016 11:22 AM

To: 'Sugarman, Shelly CIV'

Cc: Pavilonis, Tim W CIV; Dunn, Brian; Schulman, Zachary N CIV

Subject: RE: FDOT Draft Application for Assumption of FHWA Responsibilities: Coast Guard

Comment

Thank you for your comments on our NEPA Assignment Application.

As noted in both our Application and draft MOU, by accepting the USDOT Secretary's and FHWA's NEPA responsibilities, FDOT agrees to perform FHWA's obligations set forth in the 2014 MOU between the USDOT and the United States Coast Guard (USCG) and in the 2014 MOA between USCG and FHWA.

Thank you again for your agency's comments and we are looking forward to working even more closely with your agency as we assume and implement NEPA Assignment.

Ken Morefield, PE

Manager, State Environmental Management Office

605 Suwannee Street, MS 37 Tallahassee, FL 32399-0450 Phone: 850-414-4316

Cell: 850-544-2527

Email; ken.morefield@dot.state.fl.us

----Original Message-----

From: Sugarman, Shelly CIV [mailto:Shelly.H.Sugarman@uscg.mil]

Sent: Tuesday, May 17, 2016 10:02 AM

To: CO-EMO Info

Cc: Pavilonis, Tim W CIV; Dunn, Brian; Schulman, Zachary N CIV

Subject: FDOT Draft Application for Assumption of FHWA Responsibilities: Coast Guard Comment

Coast Guard comments on the subject are attached.

Thank you for the opportunity to comment.

Shelly Sugarman

Chief, Bridge Permits and Policy Division (CG-BRG-2) Coast Guard Bridge Program USCG Headquarters

202.372.1521

APPENDIX B

FDOT Authority, Waiver of Sovereign Immunity and Public Access to Records

23 CFR §773.115(c)(2)



RON DESANTIS GOVERNOR

Florida Department of Transportation 605 Suwannee Street Tallahassee, FL 32399-0450

KEVIN J. THIBAULT, P.E. SECRETARY

Direct No: (850) 414-5292

E-Mail: Kathleen Toolan@dot.state.fl.us

May 4, 2021

Emily C. Biondi
Director
Office of Project Development & Environment
U. S. Department of Transportation
Federal Highway Administration
HEPE-1, Building SFC
1200 New Jersey Avenue, Southeast
Washington, D. C. 20590-9898

RE: FDOT's Renewal Package - 23 CFR §773.115(c)(2)

Dear Ms. Biondi:

In support of the Florida Department of Transportation's (FDOT's) request to continue its participation in the NEPA Assignment Program, I am confirming that the certification dated April 5, 2016 pertaining to the requirements imposed by 23 CFR§§773.109(a)(6) and (a)(7) as provided by the State of Florida's Office of the Attorney General remains valid. See attached.

Initially enacted as 2016-181, Laws of Florida, and codified at section 334.044(34), Florida Statutes (2020), the Florida Legislature passed and the Governor signed into law legislation authorizing the FDOT's participation in the NEPA Assignment Program without limitation or time constraint and further providing a limited waiver of sovereign immunity to be sued civilly in federal court as relates to the State of Florida's actions pursuant to 23 U.S.C. §327.

Additionally, Florida's robust public records law, Chapter 119, Florida Statutes (2020), continues to serve as one of the State's cornerstones providing public access and transparency to government actions and is comparable to the Freedom of Information Act, 5 U.S.C. §552.

Finally, this information is provided as part of FDOT's Renewal Package to address 23 C.F.R. §773.115(c)(2) verifying that no up-to-date certifications are needed.

Sincerely,

Kathleen P. Toolan

Special Counsel for Environmental Affairs

Enclosure



OFFICE OF THE ATTORNEY GENERAL Opinions Division

PAM BONDI ATTORNEY GENERAL PL 01 The Capitol Tallahassee, Florida 32399-1050 Telephone (850) 245-0158 Fax (850) 922-3969

April 5, 2016

Mr. Gregory G. Nadeau Administrator Federal Highway Administration 1200 New Jersey Avenue Southeast Washington, DC 20590-9898

Re: Certification required by FHWA for delegation of NEPA and other responsibilities

to FDOT

Dear Mr. Nadeau:

Pursuant to the authority provided by the Moving Ahead for Progress in the 21st Century Act or "MAP-21," and, more specifically, 23 U.S.C. s. 327 as amended by MAP-21, the Florida Department of Transportation ("FDOT") has advised this office that it is submitting an application to FHWA for delegation of responsibility for compliance with the National Environmental Policy Act ("NEPA") and other Federal environmental laws ("NEPA delegation") for Federal highway projects. On September 16, 2014, FHWA published rules setting forth the requirements for such applications. FHWA's rules specify that a State's application for NEPA assignment must include certain certifications by the State's Attorney General or other State official legally empowered to do so by State law. The purpose of this letter is to provide the certifications required by FHWA to accompany FDOT's application for NEPA delegation.

Florida's Attorney General is statutorily authorized to "perform the duties prescribed by the Constitution of this state and also perform such other duties appropriate to his or her office as may . . . be . . . required . . by law or by resolution of the Legislature."

It is the responsibility of the Florida Attorney General to give her "official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer."

Further, it is the responsibility of the Department of Legal Affairs to provide "all legal services required by any department" of state

¹ See 79 FR 55381, Sept. 16, 2014.

² See 23 CFR s. 773.109(a)(6)-(7).

Section 16.01(2), Fla. Stat. See also Art. IV, s. 4, Fla. Const.

⁴ Section 16.01(3), Fla. Stat.

Mr. Gregory G. Nadeau Page Two

government.⁵ As a Senior Assistant Attorney General representing the Florida Department of Legal Affairs, I certify the following:

- As stated in section 334.044(34), Florida Statutes, as created by Chapter 16-181, Laws of Florida (2016), the Florida Department of Transportation is legally authorized by State law "[t]o assume the responsibilities of the United States Department of Transportation with respect to highway projects within the state under the National Environmental Policy Act of 1969, 42 U.S.C. s. 4321 et seq., and with respect to related responsibilities for environmental review, consultation, or other action required under any federal environmental law pertaining to review or approval of a highway project within the state."
- Section 334.044(34), Florida Statutes, as created by Chapter 16-181, Laws of Florida (2016), provides a limited waiver of sovereign immunity to civil suit in federal court for the State of Florida consistent with 23 U.S.C. s. 327. The waiver is limited to only those actions delegated to the FDOT and related to carrying out its NEPA duties on state highway projects.
- The Florida Public Records Act, codified in Chapter 119, Florida Statutes, is comparable to 5 U.S.C. 552 (Freedom of Information Act), and provides that any decision regarding the availability of public records under State law is reviewable by a court of competent jurisdiction.

Sincerely,

Gerry Hammond

Senior Assistant Attorney General Florida Department of Legal Affairs

GH/tsh

⁵ Section 16.015, Fla. Stat.

APPENDIX C

Coordination with FHWA Regarding Program Status 23 CFR §773.115(b) 23 CFR §773.115(c)(3)



RON DESANTIS GOVERNOR 605 Suwannee Street Tallahassee, FL 32399-0450 KEVIN J. THIBAULT, P.E. SECRETARY

February 26, 2021

Emily C. Biondi
Director, Office of Project Development & Environmental Review
U.S. Department of Transportation
Federal Highway Administration
HEPE-1, Bldg. SFC
1200 New Jersey Ave., S.E.
Washington, DC 20590-9898

RE: Florida's Notice of Intent to Renew Participation in NEPA Assignment Program

Dear Ms. Biondi:

The Florida Department of Transportation (FDOT) having successfully completed its first four years of implementing the Surface Transportation Project Delivery Program for highway projects, pursuant to 23 U.S.C. 327 and the related Memorandum of Understanding (MOU) executed on December 14, 2016, is pleased to announce its intent to continue participating in the NEPA Assignment Program. This intention was previously discussed with the Federal Highway Administration (FHWA) Florida Division in late 2020.

Consistent with 23 U.S.C. 327(c)(6), 23 C.F.R. 773.115, Part 13.5 of the MOU, and agreement of FDOT and FHWA, FDOT provides the following per Part 13.5.1 of the MOU:

- a. FDOT confirms its intent to renew its participation in the NEPA Assignment Program.
- b. With respect to whether statewide public notice and opportunity for public comment are necessary for Florida's renewal package, FDOT coordinated with FHWA, during a NEPA Renewal kick off meeting held January 21, 2021, representing that additional noticing was unwarranted. This position was based on Florida's successful implementation of the Program as confirmed by the FHWA Audits; the fact that Florida already assumed authority for all classes of action of highway projects, and there was no intention to assume the responsibility of another administration. Based on the information provided, FHWA concurred with FDOT's determination.

In further support of its renewal, FDOT advises that it continues to have the authority to implement the NEPA Assignment Program as authorized by the Florida Legislature, section

Improve Safety, Enhance Mobility, Inspire Innovation www.fdot.gov Ms. Emily C. Biondi February 26, 2021 Page 2

334.044(34), Florida Statutes. Further, Florida's public records law as codified at Chapter 119, Florida Statutes, remains in place and continues to provide public accessibility to information in a manner similar to the Freedom of Information Act.

As required by the MOU, Florida will prepare its renewal package to meet the requirements of 23 C.F.R. 771.115(c) and submit same not less than 180 days prior to expiration of the present MOU. FDOT looks forward to working with FHWA to continue this successful relationship.

Should you have any questions or concerns, or wish to discuss this matter further, feel free to contact me at (850) 414-4316 or by email Jason.Watts@dot.state.fl.us

Sincerely,

Jason Watts

Director, Office of Environmental Management

JW: tc

cc: Kevin J. Thibault, P.E.
Jamie Christian, P.E.
Courtney Drummond, P.E.
Marisel Lopez-Cruz

Karen Brunelle, P.E.

APPENDIX D

Draft Renewal MOU

23 CFR §773.115(f)

FIRST RENEWAL OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND THE FLORIDA DEPARTMENT OF TRANSPORTATION CONCERNING THE STATE OF FLORIDA'S PARTICIPATION IN THE SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM PURSUANT TO 23 U.S.C. §327

THIS FIRST RENEWAL OF THE MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is entered into by and between the FEDERAL HIGHWAY ADMINISTRATION (hereinafter "FHWA"), an administration in the UNITED STATES DEPARTMENT OF TRANSPORTATION (hereinafter "USDOT"), and the STATE OF FLORIDA, acting by and through its FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter "FDOT"), to continue the State of Florida's participation in the Surface Transportation Project Delivery Program pursuant to 23 U.S.C. §327 and provides as follows:

WITNESSETH

Whereas, Section 327 of Title 23 of the United States Code (U.S.C.) establishes the Surface Transportation Project Delivery Program (hereinafter "Program") that allows the Secretary of the United States Department of Transportation (hereinafter "USDOT Secretary") to assign and States to assume the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, et seq. hereinafter "NEPA," and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other actions required by Federal environmental laws with respect to highway, public transportation, railroad, and multimodal projects within the state; and

Whereas, 23 U.S.C. § 327(b)(2) requires a State to submit an application in order to participate in the Program; and

Whereas, on April 15, 2016, prior to submittal of its application to FHWA seeking assignment of all classes highway projects, FDOT published notice of and solicited public comment on its draft application to participate in the Program as required by 23 U.S.C. § 327(b)(3), and addressed the comments received as appropriate; and

Whereas, in preparation for participation in the Program, the Florida Legislature passed House Bill 7027, which was signed it into law by the Governor on April 4, 2016 as Chapter 2016-181, Laws of Florida, authorizing the State to participate in the Program and providing a limited waiver of sovereign immunity to civil suit in federal court related to actions under the Program; and

Whereas, on May 31, 2016, the State of Florida, acting by and through FDOT, submitted an application to FHWA with respect to all classes of highway projects in the State of Florida; and

Whereas, on November 1, 2016, FHWA published a notice in the *Federal Register* inviting comment on its preliminary decision to approve FDOT's application and solicited the views of other appropriate Federal agencies concerning FDOT's application as required by 23 U.S.C. § 327(b)(5); and

Whereas, the USDOT Secretary, acting by and through FHWA pursuant to 49 CFR 1.85(a)(3), determined that FDOT's application met the requirements of 23 U.S.C. § 327 for participation in the Program with respect to FHWA's assignment of its NEPA responsibilities including related Federal environmental laws for all classes of highway projects; and.

Whereas, on December 14, 2016 (Amended insert date), FHWA and the State of Florida, acting by and through FDOT, jointly executed a Memorandum of Understanding (hereinafter "Initial MOU") under which FHWA assigned and FDOT assumed the duties and responsibilities of the USDOT Secretary under NEPA and other related Federal environmental laws for all classes of highway projects; and

Whereas, consistent with 23 U.S.C. § 327(c)(5) and sub-part 13.1.1 of the Initial MOU, a five-year term was established, with the applicable expiration date being December 14, 2021; and

Whereas, in implementing its Program, FDOT conducted self-assessments and generated annual reports with respect to its performance; and

Whereas, FHWA conducted audits, as required by Part 11 of the Initial MOU and 23 U.S.C. §327(g)(1)(B), during the first four years of the State's participation in the Program; and

Whereas, the FHWA audit reports were available to the public for comment through publication of notices in the Federal Register; and

Whereas, FDOT first notified FHWA of its intent to renew participation in the Program with respect to highway projects during the audit closeout meeting on September 25, 2020, and subsequently confirmed this intent with the FHWA Florida Division office on November 18, 2020; and

Whereas, the laws of the State of Florida, section 334.044(34), Florida Statutes (2020), continue to authorize the State, by and through FDOT, to participate in the Program; and

Whereas, pursuant to sub-part 13.5.1(B) of the Initial MOU and 23 CFR §773.115(b), FDOT coordinated with FHWA to determine if significant changes to the Program have occurred or new assignment responsibilities would be sought that would warrant a statewide notice and comment opportunity prior to the State's submission of its application for renewal and supplemental information (hereinafter "Renewal Package"); and

Whereas, on January 21,2021, during coordination between the agencies, FHWA determined that a statewide notice and comment opportunity was unnecessary prior to the State's submission of its Renewal Package; and

Whereas, pursuant to sub-part 13.5.1(D) of the Initial MOU and 23 CFR §773.115(d), FDOT timely submitted its Renewal Package to FHWA on (DATE), for approval to continue the assigned duties and responsibilities for highway projects pursuant to the Program; and

Whereas, on (DATE), FHWA published a Federal Register notice soliciting public comment on FDOT's renewal request as required by 23 CFR §773.115(f); and

Whereas, the USDOT Secretary, acting by and through FHWA, has considered the Renewal Package, comments received as a result of the Federal Register notice, auditing reports, and the State's overall performance in the Program, as required by 23 CFR 773.115(g), and has determined that FDOT's Renewal Package meets all of the necessary requirements of 23 CFR part 773 and 23 U.S.C. §327 to support FDOT's continued participation in the Program.

Now, therefore, FHWA and FDOT agree as follows:

PART 1. PURPOSE OF MEMORANDUM OF UNDERSTANDING

1.1 Purpose

- 1.1.1 This MOU officially approves FDOT's request to renew participation in the Program and is the written agreement required by 23 U.S.C. § 327(a)(2)(A) and (c) under which the USDOT Secretary may assign, and FDOT may assume, the responsibilities of the USDOT Secretary for Federal environmental laws with respect to one or more highway projects within the State of Florida. For purposes of this MOU, "highway project" is as defined in 23 C.F.R. §773.103.
- 1.1.2 The FHWA's decision to execute this MOU is based upon the information, representations, and commitments contained in FDOT's Renewal Package as required by 23 C.F.R. §773.114 and transmitted on DATE. As such, this MOU incorporates the Renewal Package. To the extent there is any conflict between this MOU and theRenewal Package, this MOU shall control.

- 1.1.3 This MOU is effective upon expiration of the Initial MOU or upon final execution by both parties, which ever occurs later (hereinafter the "Effective Date").
- 1.1.4 Upon the Effective Date of this MOU, the *Programmatic Agreement for Categorical Exclusions* entered between FDOT and FHWA on October 30, 2015, previously suspended by the Initial MOU, will terminate.
- 1.1.5 Pursuant to 23 U.S.C. §§ 327(c)(3)(B) and § 327(c)(3)(C), and subpart 4.3 of this MOU, third parties may challenge FDOT's action in carrying out environmental review responsibilities assigned under this MOU. Otherwise, this MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Florida, its departments, agencies, or entities, its officers, employees, or agents. This MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents.

PART 2. [RESERVED]

PART 3. ASSIGNMENTS AND ASSUMPTIONS OF RESPONSIBILITY

3.1 Assignments and Assumptions of NEPA Responsibilities

- 3.1.1 On the Effective Date of this MOU FHWA and FDOT renew their participation in the Program and pursuant to 23 U.S.C. § 327(a)(2)(A), FHWA assigns, and FDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. § 327 and this MOU, all of the USDOT Secretary's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq., with respect to the highway projects specified under subpart 3.3. This includes statutory provisions, regulations, policies and guidance related to the implementation of NEPA for highway projects, 23 U.S.C. § 139, 40 C.F.R. parts 1500-1508, DOT Order 5610.1C, and 23 C.F.R. part 771, as applicable.
- 3.1.2 On the cover page of each Environmental Assessment (EA), Finding of No Significant Impact (FONSI), Environmental Impact Statement (EIS), Record of Decision (ROD), and Final EIS (FEIS)/ROD prepared under the authority granted by this MOU, and for memoranda corresponding to any Categorical Exclusion (CE) determination it makes, FDOT shall insert the following language in a way that is conspicuous to the reader:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding executed by FHWA and FDOT.

3.1.3 FDOT shall disclose to the public and agencies as part of agency outreach and public involvement procedures, including any Notice of Intent or scoping meeting notice, the disclosure in subpart 3.1.2 above.

3.2 Assignments and Assumptions of Responsibilities to Comply with Federal Laws Other Than NEPA

3.2.1 Pursuant to 23 U.S.C. § 327(a)(2)(B), on the Effective Date of this MOU, FHWA assigns and FDOT assumes, subject to the terms and conditions set forth in this MOU, all of the USDOT Secretary's responsibilities for environmental review, reevaluation, consultation, or other action pertaining to the review or approval of highway projects specified under subpart 3.3 of this MOU, required under the following federal environmental laws:

Air Quality

 Clean Air Act, 42 U.S.C. §§ 7401-7671q, with the exception of project level conformity determinations (42 U.S.C. 7506)

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Noise

- Noise Control Act of 1972, 42 U.S.C. §§ 4901-4918
- FHWA noise regulations at 23 C.F.R. part 772
- Airport Noise and Capacity Act of 1990, 49 U.S.C. §§ 47521-47534

Wildlife

- Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544
- Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1423h
- Anadromous Fish Conservation Act, 16 U.S.C. §§ 757a-757f
- Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-667d
- Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. §§ 1801-1891d, with Essential Fish Habitat requirements at 16 U.S.C. § 1855(b)(2)

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. §§ 9671-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901-6992k

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306101 et seq.
- 23 U.S.C. § 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C.
 § 303 and implementing regulations at 23 C.F.R. part 774
- Preservation of Historical and Archaeological Data, 54 U.S.C. §§ 312501-312508
- Archeological Resources Protection Act of 1979, 16 U.S.C. §§ 470(aa)-(mm)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001-3013;
 18 U.S.C. § 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. § 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. §§ 4201-4209

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Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. §§ 1251-1387 (Sections 319, 401, and 404)
- Coastal Barrier Resources Act, 16 U.S.C. §§ 3501-3510
- Coastal Zone Management Act, 16 U.S.C. §§ 1451-1466
- Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-26
- Rivers and Harbors Act of 1899, 33 U.S.C. §§ 403
- Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287
- Emergency Wetlands Resources Act, 16 U.S.C. § 3901 and § 3921
- Wetlands Mitigation, 23 U.S.C. § 119(g) and § 133(b)(14)
- Flood Disaster Protection Act, 42 U.S.C. §§ 4001-4130
- FHWA wetland and natural habitat mitigation regulations, 23 C.F.R. part 777

Parklands and Other Special Land Uses

- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. § 138, 49 U.S.C. § 303 and implementing regulations at 23 C.F.R. part 774
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. §§ 200302-200310

FHWA-Specific

- Environmental Impact and Related Procedures, 23 C.F.R. § 771
- Planning and Environmental Linkages, 23 U.S.C. § 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135
- Efficient Project Reviews for Environmental Decision Making 23 U.S.C. § 139
- Programmatic Mitigation Plans, 23 U.S.C. § 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135

Executive Orders (E.O.) Relating to Highway Projects

- E.O. 11988, Floodplain Management, (except design matters and determinations that significant encroachment is the only practicable alternative under 23 C.F.R. parts 625 and 650)
- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species

- 3.2.2 In accordance with 23 U.S.C. 327(a)(2)(D), any FHWA environmental review responsibility not explicitly listed above and assumed by FDOT shall remain the responsibility of FHWA unless the responsibility is added by written agreement of the parties through the amendment process established in Part 14 of this MOU and pursuant to 23 C.F.R.§ 773.113(b). This provision shall not be interpreted to abrogate FDOT's responsibilities to comply with the requirements of any federal environmental laws that apply directly to FDOT independent of FHWA's involvement (through federal assistance or approval).
- 3.2.3 The USDOT Secretary's responsibilities for government-to-government consultation with Indian tribes, as defined in 36 C.F.R. § 800.16(m), are not assigned to or assumed by FDOT under this MOU per 23 C.F.R. § 773.105(b)(4). The FHWA remains responsible for government-to-government consultation, including initiation of government to government consultation, unless otherwise agreed as described below. A notice from FDOT to an Indian tribe advising the tribe of a proposed activity is not considered "government-to-government consultation" within the meaning of this MOU. If a project-related concern or issue is raised in a government-to-government consultation process with an Indian tribe, as defined in 36 C.F.R. § 800.16(m), and is related to NEPA or another federal law for which FDOT has assumed responsibilities under this MOU, and either the Indian tribe or FHWA determines that the issue or concern will not be satisfactorily resolved by FDOT, then FHWA may withdraw the assignment of all or that part of the responsibilities for processing the project. In this case, the provisions of subpart 9.1 of this MOU concerning FHWA initiated withdrawal of an assigned project or part of an assigned project will apply.

This MOU is not intended to abrogate or prevent future entry into an agreement among FDOT, FHWA, and a tribe under which the tribe agrees to allow FDOT to administer government-to-government consultation activities for FHWA. However, such agreements are administrative in nature and do not relieve the FHWA of its legal responsibility for government-to-government consultation.

- 3.2.4 In accordance with 23 U.S.C. 327(a)(2)(B)(iv), nothing in this MOU shall be construed to allow FDOT's assumption of the USDOT Secretary's responsibilities for conformity determinations required by Section 176 of the Clean Air Act (42 U.S.C. § 7506) or any responsibility under 23 U.S.C. § 134 or § 135, or under 49 U.S.C. § 5303 or § 5304.
- 3.2.5 On the cover page of each biological evaluation or assessment, historic properties or cultural resources report, Section 4(f) evaluation, or other analyses prepared under the authority granted by this MOU, FDOT shall insert the following language in a way that is conspicuous to the reader:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding executed by FHWA and FDOT.

- 3.2.6 FDOT shall disclose to the public and agencies, as part of agency outreach and public involvement procedures, the disclosure in subpart 3.2.5 of this MOU.
- 3.2.7 FDOT will continue to adhere to the original terms of Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Services (NMFS) or both prior to the Effective Date of this MOU, so long as the original BO terms are not amended or revised. Any revisions or amendments to a BO made after the effective date of this MOU would be FDOT's responsibility. FDOT agrees to assume FHWA's environmental review role and responsibilities as identified in existing interagency agreements among FDOT, USFWS, NMFS and FHWA, and/or negotiate new agreements with USFWS and NMFS, if needed. FDOT agrees to assume FHWA's Endangered Species Act Section 7 responsibilities of consultations (formal and informal) ongoing as of the Effective Date of this MOU and will be responsible for future consultations after the Effective Date of this MOU.
- 3.2.8 FDOT will not make any determination that an action constitutes a constructive use of a publicly owned park, public recreation area, wildlife refuge, waterfowl refuge, or historic site under 49 U.S.C. § 303 /23 U.S.C. § 138 [Section 4(f)] without first consulting with FHWA and obtaining FHWA's approval of such determination.

3.3 Highway Projects

3.3.1 Except as provided in subpart 3.3.2 of this MOU or otherwise specified in this subpart, the assignments and assumptions of the USDOT Secretary's responsibilities under subparts 3.1 and 3.2 of this MOU shall apply to the environmental review, consultation, or any other action pertaining to the environmental review or approval of the following classes of highway projects located within the State of Florida. The definition of "highway project" is found at 23 C.F.R. § 773.103, and for purposes of this MOU, "highway project" includes eligible preventative maintenance activities. FDOT shall conduct reevaluations required by 23 C.F.R. § 771.129 for projects for which construction was not completed prior to the date of the Initial MOU, in accordance with the provisions of this MOU and the Initial MOU. Prior to approving any CE determination, FONSI, FEIS, or FEIS/ROD, the State shall ensure and document that for any proposed project the design concept, scope, and funding are consistent with the current Transportation Improvement Plan (TIP), Regional Transportation Plan (RTP), or Metropolitan Transportation Plan (MTP) as applicable.

FDOT will be responsible for decisions on all classes of action for highway projects, upon the Effective Date of this MOU, as described below:

A. All Class I, or EIS projects, both on the State Highway System (SHS), which includes the National Highway System, and Local Agency Program (LAP) projects off the SHS that are funded by FHWA or require FHWA approvals.

Under the Initial MOU, the two projects identified below were excluded from assignment and FHWA retained responsibility for the environmental review associated with the development and approval of their environmental documents, Draft EIS, FEIS, SEIS and ROD, as applicable. Upon the Effective Date of this MOU, FHWA assigns and FDOT assumes responsibility for any future environmental review concerning the I-4 Beyond the Ultimate (BTU), the I-4 Ultimate, and the TIS project segments described below.

- a. I-4 Beyond the Ultimate (BTU) which consists of the three following project segments: Segment 2 FM # 242484-7 SR 400 (I-4) west of SR 528 (Beachline) to west of SR 435 Kirkman Rd; Segment 3 FM # 242592-4 SR 400 (I-4) 1 mile east of SR 434 to east of SR 15/600/US 17/92 Seminole/Volusia C/L; Segment 4 FM # 408464-2 SR 400 (I-4) east of SR 15/600/US 17/92 to ½ mile east of SR 472; and I-4 Ultimate Segment FM # 242703-1 SR 400 (I-4) west of SR 435 (Kirkman Rd) to east of SR 434.
- b. Tampa Interstate Study (TIS) which consists of the three following project sections: Section 4 FM # 412531-1 (Note Sections 4 and 5 have same Design FM #) I-275/SR 60 and Northwest/Veterans; Section 5 FM # 412531-1 (Note Sections 4 and 5 have same Design FM #) I-275 Lois to Hillsborough River; and Section 6 FM # 433821-1 I-275/I-4 Downtown Interchange.
- B. All Class II, or CE projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.
- C. All Class III, or EA projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.
- D. FDOT will not assume the NEPA responsibilities of other Federal agencies. However, FDOT may use or adopt other Federal agencies' NEPA analyses or documents consistent with 40 C.F.R. parts 1500-1508, current law, and USDOT and FHWA regulations, policies, and guidance.
- E. For projects where FDOT is assuming responsibility, FHWA shall allow FDOT access to its project files and arrange for copies as requested.
- F. In assuming responsibility for all classes of action for highway projects under 23 C.F.R. §773.103, FDOT is responsible for decisions for all classes of action for undertakings that are eligible for

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financial assistance under title 23 U.S.C. and for which FHWA has primary responsibility, including the Recreational Trails Program, 23 U.S.C. §206.

- 3.3.2 The following are specifically excluded from the list in subpart 3.3.1 of highway projects and classes of highway projects:
 - A. Any Federal Lands Highway projects authorized under 23 U.S.C. § 202 and § 203
 - B. Any highway projects authorized under 23 U.S.C.§ 204, unless such projects will be designed and/or constructed by FDOT.
 - C. Any project that crosses state boundaries and any project that crosses or is adjacent to international boundaries. For purposes of this MOU, a project is considered "adjacent to international boundaries" if it requires the issuance of a new, or the modification of an existing, Presidential Permit by the U.S. Department of State.

3.4 Limitations

- 3.4.1 As provided at 23 U.S.C. § 327(e), FDOT shall be solely responsible and solely liable for carrying out in lieu of and without further approval of FHWA, all of the responsibilities it has assumed under this MOU.
- 3.4.2 As provided at 23 U.S.C. § 327(a)(2)(D), any highway project or responsibility of the USDOT Secretary that is not explicitly assumed by FDOT under subpart 3.3.1 of this MOU remains the responsibility of the USDOT Secretary.

PART 4. CERTIFICATIONS AND ACCEPTANCE OF JURISDICTION

4.1 Certifications

- 4.1.1 FDOT makes the following certifications:
 - A. FDOT has the legal authority to accept all the assumptions of responsibility identified in Part 3 of this MOU:
 - B. FDOT has the legal authority to take all actions necessary to carry out all of the responsibilities it has assumed under this MOU;
 - C. FDOT has the legal authority to execute this MOU;
 - D. The State of Florida currently has laws in effect that are comparable to 5 U.S.C. § 552 [Freedom of Information Act (FOIA)] and those laws are found in Chapter 119, Florida Statutes (F.S.) (Public Records); and
 - E. Section 119.11, F.S., provides that any decision regarding the public availability of a document under the Public Records law is reviewable by a Florida court of competent jurisdiction.

4.2 State Commitment of Resources

4.2.1 As required by 23 U.S.C. § 327(c)(3)(D), FDOT will maintain the financial resources necessary to carry out the responsibilities it is assuming. FDOT's substantial compliance with the Initial MOU demonstrates, and FHWA agrees, that the summary of financial resources contained in FDOT's application, dated May 31, 2016, and as supplemented in FDOT's Renewal Package submitted DATE, are adequate for this purpose. Should FHWA determine, after consultation with FDOT, that FDOT's financial resources are inadequate to carry out the USDOT Secretary's responsibilities, FDOT will take appropriate action to obtain the additional financial resources needed to carry out these responsibilities. If FDOT is unable to obtain the necessary additional financial resources,

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FDOT shall inform FHWA, and this MOU will be amended to assign only the responsibilities that are commensurate with FDOT's financial resources.

- 4.2.2 Similarly, FDOT currently has and will maintain adequate organizational and staff capability, including competent and qualified consultants where necessary or desirable, to effectively carry out the responsibilities it has assumed under this MOU. This includes, without limitation:
 - A. Using appropriate environmental, technical, legal, and managerial expertise;
 - B. Devoting adequate staff resources; and
 - C. Demonstrating, in a consistent manner, the capacity to perform FDOT's assumed responsibilities under this MOU and applicable federal laws.

FDOT's substantial compliance with the Initial MOU demonstrates that FDOT maintains adequate organizational and staff capability for the purpose of fulfilling the terms of this MOU. Should FHWA determine, after consultation with FDOT, that FDOT organizational and staff capability is inadequate to carry out the USDOT Secretary's responsibilities, FDOT will take appropriate action to obtain adequate organizational and staff capability to carry out these responsibilities. If FDOT is unable to obtain adequate organizational and staff capability, FDOT shall inform FHWA and the MOU will be amended to assign only the responsibilities that are commensurate with FDOT's available organizational and staff capability. Should FDOT choose to meet these requirements, in whole or in part, with consultant services, including outside counsel, FDOT shall maintain on its staff an adequate number of trained and qualified personnel, including counsel, to oversee the consulting work.

- 4.2.3 When carrying out the requirements of Section 106 of the National Historic Preservation Act, as amended, FDOT staff (including consultants) shall comply with 36 C.F.R. § 800.2(a)(1). All actions that involve identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation (including 36 C.F.R. § 800.11) of such actions in the form of reports, forms, or other records, shall be carried out by or under the review or direct supervision of a person or persons who meet the Secretary of Interior's Professional Qualifications Standards (36 C.F.R. part 61, Appendix A). FDOT shall ensure that all documentation required under 36 C.F.R. 800.11 is reviewed and found adequate by a staff member or consultant who meets the Professional Qualifications Standards.
- 4.2.4 As part of its commitment of resources, FDOT will continue to develop, implement and update its Efficient Transportation Decision Making (ETDM) and Project Development and Environment (PD&E) Manuals and procedures, which are not subject to FHWA review or approval unless required by statute or regulation, to support appropriate environmental analysis and decision-making under NEPA and associated laws and regulations. FDOT recognizes it is solely responsible for the ETDM and the PD&E Manuals and procedures for compliance with responsibilities assigned in this MOU and for establishing policy and guidance to implement its program.

4.3 Federal Court Jurisdiction

4.3.1 As provided under 23 U.S.C. § 327(c)(3)(B), and authorized by Chapter 2016-181, Laws of Florida, codified as section 334.044(34), Florida Statutes, FDOT hereby expressly consents, on behalf of the State of Florida, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the USDOT Secretary assumed by FDOT under this MOU. This consent to Federal court jurisdiction shall remain valid after termination of this MOU or FHWA's withdrawal of assignment of the USDOT Secretary's responsibilities for any decision or approval made by FDOT pursuant to an assumption of responsibility under this MOU. FDOT understands and agrees that, in accordance with 23 U.S.C. § 327, this acceptance constitutes a waiver of the State of Florida's immunity under the Eleventh Amendment to the U.S. Constitution for the limited purposes of carrying out the USDOT Secretary's and FHWA's responsibilities that have been assumed under this MOU.

PART 5. APPLICABILITY OF FEDERAL LAW

5.1 Procedural and Substantive Requirements

- 5.1.1 As provided at 23 U.S.C. § 327(a)(2)(C), in assuming the USDOT Secretary's responsibilities under this MOU, FDOT shall be subject to the same procedural and substantive requirements that apply to the USDOT Secretary in carrying out these responsibilities. Such procedural and substantive requirements include Federal statutes and regulations; Executive Orders issued by the President of the United States; DOT Orders; Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 C.F.R. parts 1500-1508); FHWA Orders; formal guidance and policy issued by the CEQ, USDOT, or FHWA (e.g. Guidance Establishing Metrics for the Permitting and Environmental Review of Infrastructure Projects);, and any applicable federal court decisions; and, subject to subpart 5.1.4 of this MOU, interagency agreements and other similar documents that relate to the environmental review process (e.g., 2015 Red Book Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects). Official USDOT and FHWA guidance and policies relating to environmental review are posted on the FHWA's website, contained in the FHWA Environmental Guidebook, published in the Federal Register, or sent to FDOT electronically or hard copy.
- 5.1.2 By accepting the USDOT Secretary's and FHWA's NEPA responsibilities, FDOT agrees to perform FHWA's obligations set forth in the 2014 MOU between the USDOT and the USCG and in the 2014 MOA between USCG and FHWA.
- 5.1.3 Upon the Effective Date of this MOU, FHWA will use its best efforts to ensure that any new or revised federal policies and guidance that are final and applicable to FHWA's responsibilities under NEPA and other laws that are assumed by FDOT under this MOU are communicated to FDOT within ten (10) business days of issuance. Delivery may be accomplished by e-mail, web posting (with e-mail or mail to FDOT notifying of web posting), mail, or publication in the *Federal Register* (with e-mail or mail to FDOT notifying of publication). If communicated to FDOT by e-mail or mail, such material will be sent to FDOT's Director of the Office of Environmental Management and the following address: OEM@dot.state.fl.us.. In the event a new or revised FHWA policy or guidance is not made available to FDOT as described in this subpart, and if FDOT had no knowledge of such policy or guidance, then a failure by FDOT to comply with such federal policy or guidance will not be a basis for termination of this MOU.
- 5.1.4 FDOT will coordinate with federal agencies concerning applicable laws, guidance, and policies that such other federal agencies are responsible for administeringand which relate to FDOT's responsibilities under this MOU.
- 5.1.5 Upon termination of this MOU, FDOT and FHWA shall contact any agency which is a party to an affected agreement to determine whether the interagency agreement should be amended or reinstated as appropriate.

5.2 Rulemaking

5.2.1 As provided under 23 U.S.C. § 327(f), nothing in this MOU allows FDOT to assume any rulemaking authority of the USDOT Secretary. Additionally, FDOT may not establish policy and guidance on behalf of the USDOT Secretary or FHWA for highway projects covered in this MOU. FDOT's authority to establish state regulations, policy, and guidance concerning the state environmental review of State highway projects shall not supersede applicable Federal environmental review regulations, formal policy, or guidance established by or applicable to the USDOT Secretary or FHWA.

5.3 Effect of Assumption

5.3.1 For purposes of carrying out the responsibilities assumed under this MOU, and subject to the limitations contained in 23 U.S.C. § 327 and this MOU, FDOT shall be deemed to be acting as FHWA with respect to the environmental review, consultation, and other related actions required to implement those responsibilities.

5.4 Other Federal Agencies

5.4.1 As provided under 23 U.S.C. § 327(a)(2)(E), nothing in this MOU preempts or interferes with any power, jurisdiction, responsibility, or authority of any Federal agency other than the USDOT (including FHWA), under applicable statutes and regulations with respect to a highway project.

PART 6. LITIGATION

6.1 Responsibility and Liability

6.1.1 As provided in 23 U.S.C. 327(e), FDOT shall be solely responsible and solely liable for carrying out all of the USDOT Secretary's responsibilities it has assumed under this MOU, in lieu of and without further approval of the USDOT Secretary. The FHWA and USDOT shall have no responsibility or liability for the performance of the responsibilities assumed by FDOT, including any decision or approval made by FDOT while participating in the Program.

6.2 Litigation

- 6.2.1 Nothing in this MOU affects the United States Department of Justice's (hereinafter "USDOJ") authority to litigate claims, including the authority to approve a settlement on behalf of the United States if either FHWA or another agency of the United States is named in such litigation, or if the United States intervenes pursuant to 23 U.S.C. 327(d)(3). In the event FHWA or any other Federal agency is named in litigation related to matters under this MOU, or the United States intervenes in the litigation, FDOT agrees to coordinate with FHWA and any USDOJ or Federal agency attorneys in the defense of that action.
- 6.2.2 FDOT shall defend all claims brought in connection with its discharge of any responsibility assumed under this MOU. In the event of litigation, FDOT shall provide qualified and competent legal counsel, including outside counsel if necessary. FDOT shall provide the defense at its own expense, subject to 23 U.S.C. 327(a)(2)(G) concerning Federal-aid participation in attorney's fees for outside counsel hired by FDOT. FDOT shall be responsible for opposing party's attorney's fees and court costs if a court awards those costs to an opposing party, or in the event those costs are part of a settlement agreement.
- 6.2.3 FDOT will notify the FHWA's Florida Division Office and USDOJ's Assistant Attorney General for the Environment and Natural Resources Division, within seven (7) calendar days of FDOT's Office of General Counsel's receipt of service of process of any complaint, concerning its discharge of any responsibility assumed under this MOU. FDOT's notification to FHWA and USDOJ shall be made prior to its response to the complaint. In addition, FDOT shall notify the FHWA's Florida Division Office within seven (7) calendar days of receipt of any notice of intent to sue concerning its discharge of any responsibility assumed under this MOU.
- 6.2.4 FDOT will provide the FHWA's Florida Division Office and USDOJ copies of any complaint or notice of intent to the FHWA and USDOJ within seven (7) calendar days of receipt of service.
- 6.2.5 FDOT will notify the FHWA's Florida Division Office and USDOJ prior to settling any lawsuit, in whole or in part, and shall provide the FHWA and USDOJ with a reasonable amount of time of at least ten (10) calendar days, unless a shorter time is dictated by the Court or court proceedings, which may be extended, if feasible based on the context of the lawsuit, up to a maximum of thirty (30) total calendar days, to review and comment on the proposed settlement. FDOT will not execute any settlement agreement until: (1) FHWA and USDOJ have provided comments on the proposed settlement; (2) FHWA and USDOJ have indicated that they will not provide comments on the proposed settlement, or (3) the review period has expired, whichever occurs first.
- 6.2.6 Within seven (7) calendar days of receipt, FDOT will provide notice to FHWA's Division Office and USDOJ of any court decision on the merits, judgment, and notice of appeal arising out of or relating to the responsibilities FDOT has assumed under this MOU. FDOT shall notify FHWA's Division Office and USDOJ within five (5) days of filing a notice of appeal of a court decision. FDOT shall confer

with FHWA and USDOJ regarding the appeal at least forty-five (45) days before filing an appeal brief in the case.

6.2.7 FDOT's notifications to FHWA and USDOJ in subparts 6.2.3, 6.2.4, 6.2.5, and 6.2.6 shall be made by electronic mail to FHWA assignment <a href="https://likeline.com/likeline.co

For USDOJ: Assistant Attorney General for the Environment and Natural Resources Division at 950 Pennsylvania Avenue, NW, Room 2143, Washington, DC, 20530.

For FHWA: Division Administrator, FHWA Florida Division, 3500 Financial Plaza, Suite 400, Tallahassee, FL 32312

For FDOT: Special Counsel for Environmental Affairs, Office of General Counsel, 605 Suwannee Street Mail Station 58, Tallahassee, Florida 32399-0458

6.3 Conflict Resolution

- 6.3.1 In discharging any of the USDOT Secretary's responsibilities under this MOU, FDOT agrees to comply with any applicable requirements of USDOT and FHWA statute, regulation, guidance or policy regarding conflict resolution. This includes the USDOT Secretary's responsibilities for issue resolution under 23 U.S.C. § 139(h)(6), with the exception of the USDOT Secretary's responsibilities under 23 U.S.C. § 139(h)(7) regarding financial penalties.
- 6.3.2 FDOT agrees to follow 40 C.F.R. part 1504 in the event of pre-decision referrals to CEQ for Federal actions determined to be environmentally unsatisfactory. FDOT also agrees to coordinate and work with CEQ on matters brought to CEQ with regards to the environmental review responsibilities for Federal highway projects FDOT has assumed under this MOU.

PART 7. INVOLVEMENT WITH OTHER AGENCIES

7.1 Coordination

7.1.1 FDOT agrees to seek early and appropriate coordination with all applicable Federal, State, and local agencies in carrying out any of the responsibilities for highway projects assumed under this MOU.

7.2 Processes and Procedures

7.2.1 FDOT will ensure that it has appropriate processes and procedures in place that provide for proactive and timely consultation, coordination, and communication with appropriate Federal agencies in order to carry out the responsibilities assumed under this MOU, including the submission of all EISs together with comments and responses to the Environmental Protection Agency (EPA) as required by 40 C.F.R. § 1506.9 and for EPA's review as required by section 309 of the Clean Air Act, 42 U.S.C. § 7609. These processes and procedures shall be formally documented. Documentation may be a formally executed interagency agreement or other format as appropriate.

PART 8. INVOLVEMENT WITH FHWA

8.1 Generally

- 8.1.1 In discharging any of the USDOT Secretary's responsibilities under this MOU, FDOT and FHWA agree to work cooperatively to resolve substantive issues regarding the implementation or interpretation of this MOU. For projects reviewed by FHWA prior to the date of assignment that will be transferred to FDOT, FHWA will, upon request, provide FDOT access to or copies of the project files that are relevant to the ongoing environmental review (excluding protected and privileged information) within a reasonable timeframe that takes into account the complexity of the request.
- 8.1.2 Except as specifically provided otherwise in this MOU, FHWA will not provide project-level assistance to FDOT in carrying out the responsibilities it has assumed under this MOU. Project-level assistance includes advice, consultation, or document review with respect to the discharge of such responsibility for a particular highway project. However, project-level assistance does not include process or program-level assistance as provided in subpart 8.1.5 of this MOU, including discussions concerning issues addressed in prior projects, interpretations of applicable law contained in Title 23 U.S.C. or Title 49 U.S.C., interpretations of any FHWA or USDOT regulation, or interpretations of FHWA or USDOT policies or guidance. FHWA agrees that any discussions or coordination related to process or program level assistance, prior project decisions or issues, or interpretation of law, shall be directed to the Director of the Office of Environmental Management for resolution.
- 8.1.3 The FHWA will not intervene, broker, act as intermediary, or be otherwise involved in any issue involving FDOT's consultation or coordination with other Federal agencies with respect to FDOT's discharge of any of the responsibilities assumed under this MOU for any particular highway project. However, the FHWA may attend meetings between FDOT and other Federal agencies and submit comments to FDOT and the other Federal agency in the following extraordinary circumstances:
 - A. FHWA reasonably believes that FDOT is not in compliance with this MOU;
 - B. FHWA determines that an issue between FDOT and the other Federal agency concerns emerging national policy issues under development by the USDOT; or
 - C. Upon request by either FDOT's Director of the Office of Environmental Management or the other Federal agency and agreement by FHWA.

The FHWA will notify both FDOT and the relevant Federal agency prior to attending any meetings between FDOT and such other Federal agency. The notice shall be made in writing and include an explanation of extraordinary circumstances for attendance.

- 8.1.4 Other Federal agencies may raise concerns regarding the compliance with this MOU by FDOT and may communicate these concerns to the FHWA. The FHWA will review the program- or policy-level concerns and any other information provided to FHWA by such other Federal agency. If, after such review, the FHWA and such other Federal agency still have concerns regarding FDOT's compliance, the FHWA will notify the Director of the Office of Environmental Management in a timely manner of the potential compliance issue and will work with both FDOT and the relevant Federal agency to resolve the issue and, if necessary, take appropriate action to ensure compliance with this MOU.
- 8.1.5 At FDOT's request, FHWA may assist FDOT in evaluating its environmental program and developing or modifying any of its processes or procedures to carry out the responsibilities it has assumed under this MOU, including, but not limited to, emerging national policy issues, and those processes and procedures concerning FDOT's consultation, coordination, and communication with other Federal agencies.
- 8.1.6 FDOT's obligations and responsibilities under 23 C.F.R. § 1.5 are not altered in any way by executing this MOU.

8.2 MOU Monitoring and Oversight

- 8.2.1 Pursuant to 23 U.S.C. §327(h), the FHWA shall monitor FDOT's compliance with the MOU, including the provision by the State of financial resources to carry out the MOU. FHWA may also evaluate FDOT's attainment of the performance measures listed in Part 10 of this MOU. FHWA's monitoring program will consist of monitoring reviews, which will be coordinated with FDOT and take into account FDOT's self-assessments and the FHWA Florida Division's annual risk assessments. FHWA shall provide its draft and final annual risk assessments to FDOT for review and comment on matters pertaining to FDOT's performance under this MOU.
- 8.2.2 In order to minimize the impact of the monitoring reviews on FDOT's day-to-day project delivery workload, the FHWA and FDOT will coordinate when scheduling joint monitoring reviews. Normally, the FHWA expects to complete two monitoring reviews during the term of the MOU, although the FHWA may conduct additional reviews, if deemed necessary due to substantial non-compliance with responsibilities assumed under this MOU. The first monitoring review will be conducted within two years of publication of the last audit under the Initial MOU and the second monitoring review shall be within two years of the first monitoring review. FDOT and the FHWA Florida Division Office will each designate a point of contact, who will be responsible for coordinating monitoring review schedules, requests for information, and organizing meetings.8.2.3 Pursuant to 23 U.S.C. § 327(c)(4), FDOT is responsible for providing FHWA any information FHWA reasonably considers necessary to ensure that FDOT is adequately carrying out the responsibilities assigned. When requesting information subject to 23 U.S.C. 327(c)(4), FHWA will provide the request to FDOT in writing, and the request will identify with reasonable specificity the information required. FHWA will also indicate in the request a deadline for the information to be provided. FDOT will, in good faith, work to ensure the information requested is provided by the deadline. FDOT's response to an information request under this paragraph will include, where appropriate, making relevant employees and consultants available at their work location (including in-person meeting, teleconference, videoconference or other electronic means as may be available).
- 8.2.4 FDOT shall make project files and general administrative files pertaining to the discharge of the responsibilities it has assumed under this MOU reasonably available for inspection by FHWA at the files' locations upon reasonable notice, which is not less than five (5) business days. These files shall include, but are not limited to, letters and comments received from governmental agencies, the public, and others with respect to FDOT's discharge of the responsibilities assumed under this MOU.
- 8.2.5 Upon the Effective Date of this MOU, FDOT will maintain a list of NEPA approvals and decisions (Type 1 CE, Type 2 CEs, EA, FONSI, DEIS, FEIS, FEIS/ROD, ROD) and Section 4(f) Determinations it makes under this MOU. FDOT will provide this list to FHWA Florida Division every six (6) months.
- 8.2.6 In carrying out the responsibilities assumed under this MOU, FDOT agrees to carry out regular quality control and quality assurance (QA/QC) reviews to ensure that the assumed responsibilities are being conducted in accordance with applicable law and this MOU. At a minimum, FDOT's QA/QC process will include the review and monitoring of its processes and performance relating to project decisions, completion of environmental analysis, project file documentation, checking for errors and omissions, and legal sufficiency reviews, and taking appropriate corrective action as needed.
- 8.2.7 FDOT shall perform annual self-assessments of its QA/QC process and performance to determine if its process is working as intended. If any process areas are identified as needing improvement, FDOT will take appropriate and timely corrective actions to address such areas. At least one (1) month prior to the date of a scheduled FHWA monitoring revivew, FDOT will transmit a summary of its self-assessment to the FHWA Florida Division Office. The summary will include a description of the scope of the self-assessment conducted and the areas reviewed, a description of the process followed in conducting the self-assessment, a list of the areas identified as needing improvement, any corrective actions that have been or will be implemented and a statement from the Director of FDOT's Office of Environmental Management concerning whether the processes are ensuring that the responsibilities FDOT has assumed under this MOU are being carried-out in accordance with this MOU and all applicable Federal laws and policies, and a summary of FDOT's progress toward attaining the performance measures listed in Part 10 of this MOU.

- 8.2.8 Monitoring review reports, shall include a description of the scope of the monitoring reviews, the compliance areas reviewed, a description of the monitoring process, and a list of areas identified as best practices and areas needing improvement, and identifying corrective actions.
- 8.2.9 Prior to public availability of monitoring review reports, the FHWA and FDOT will transmit a draft of the report and allow at least 14 calendar days to review and provide written comments. Any reasonable request to extend this response period up to a total of 30 calendar days, unless such other time is agreed upon, will be provided. The comments will be considered and the draft monitoring report revised, as appropriate.
- 8.2.10 FDOT agrees to post all monitoring reports on the FDOT Office of Environmental Management NEPA Assignment website in order to make them available to the public.

8.3 Records Retention

- 8.3.1 FDOT will retain project files and files pertaining to the discharge of its responsibilities under this MOU in accordance with FDOT Records Management Policy (Topic Number 050-020-025) and Retention and Disposal Schedule GS1-SL(167), which meets or exceeds requirements established in the FHWA Records Disposition Manual (Field Offices) Chapter 4, FHWA Order No. 1324.1 B, issued July 29, 2013.
- 8.3.2 In accordance with FDOT Records Management Policy (Topic Number 050-020-025) and Retention and Disposal Schedule GS1-SL(167), records will be retained for five (5) fiscal years after the completion of the project, reporting requirement or other applicable activity.
 - To the extent that FHWA's Records Disposition Manual is amended to provide for a longer retention period, FDOT will meet such requirement.
 - FDOT will permanently store records for Significant Transportation Projects as they are defined in FHWA Order No. 1324.1B.
- 8.3.3 In the case of a conflict between FHWA Records Disposition Manual, FHWA Order M1324.1B, FDOT Records Management Policy, and Retention and Disposal Schedule the more stringent retention requirements shall control.
- 8.3.4 Nothing contained in this MOU is intended to relieve FDOT of its recordkeeping responsibilities under 2 C.F.R. §§ 200.333-200.337 (Record Retention and Access) or other applicable laws.

8.4 Federal Register

8.4.1 For any documents that are required to be published in the *Federal Register*, such as the Notice of Intent under 23 C.F.R. § 771.123(a) and Notice of Final Agency Action under 23 U.S.C. § 139(I)(2), FDOT shall transmit such document to FHWA's Florida Division Office, with a request for publication in the *Federal Register* on behalf of FDOT. FHWA's Florida Division Office will submit such document to the *Federal Register* within five (5) calendar days of receipt of FDOT's request for publication in the *Federal Register*. If requested, FDOT shall reimburse FHWA for the expenses associated with publishing such documents in the *Federal Register* (excluding FHWA's overhead). To the extent that the operating procedures of the *Federal Register* allow, FDOT will be responsible for publication in the *Federal Register*.

8.5 Participation in Resource Agency Reports

- 8.5.1 FDOT agrees to provide data and information requested by the FHWA and resource agencies for the preparation of national reports to the extent that the information relates to determinations, findings, and proceedings associated with projects processed under this MOU. Such reports include but are not limited to:
 - A. Information on the time to complete all NEPA classes of action (EIS, EA, CE);

- B. Archeology Reports requested by the National Park Service (NPS);
- C. Endangered Species Act Expenditure Reports requested by the USFWS and NMFS;
- D. Project status and information for EAs and EISs for use on the searchable website maintained under section 41003(b) of the FAST Act [Fixing America's Surface Transportation Act, 42 U.S.C. § 4370m-2(b); 23 U.S.C. § 139(o)] (Federal Permitting Dashboard)
- E. NEPA Litigation Reports requested by CEQ; and
- F. Environmental Conflict Resolution reports requested by the Office of Management and Budget and CEQ.

8.6 Conformity Determinations

8.6.1 Pursuant to 23 U.S.C. § 327(a)(2)(B)(iv)(II), for any project requiring a project-level conformity determination under the Clean Air Act and its implementing regulations, the FHWA's Florida Division Office will document the project level conformity determination within the timeframe identified in FDOT's project schedule. FHWA's Florida Division Office will restrict its review to only that data, analyses, applicable comments and responses, and other relevant documentation that enable FHWA to make the project-level conformity determination.

8.7 Certification of NEPA Compliance

8.7.1 For projects funded by FHWA, FDOT shall ensure that a certification is included with each request for funding specifying that FDOT has fully carried out all responsibilities assumed under this MOU in accordance with this MOU and all applicable Federal laws, regulations, Executive Orders, and policies. FDOT shall ensure that this certification is made prior to the execution of any future Federal-aid approval or action. FDOT agrees to provide FHWA access to NEPA approvals and certifications.

8.8 Enforcement

8.8.1 Should FHWA determine that FDOT is not in compliance with this MOU, then FHWA shall take appropriate action, including implementing appropriate remedies provided at 23 C.F.R. § 1.36 for violations of or failure to comply with Federal law or regulations at Title 23 C.F.R. with respect to a project, withdrawing assignment of any responsibilities that have been assumed as provided in Part 9 of this MOU, or terminating FDOT's participation in the Program as provided in Part 13 of this MOU.

PART 9. WITHDRAWAL OF ASSIGNED RESPONSIBILITIES

9.1 FHWA-Initiated Withdrawal of Assigned Projects

- 9.1.1 Subject to the process in subpart 9.1.2 FHWA may, at any time, withdraw the assignment of all or part of the USDOT Secretary's responsibilities that have been assumed by FDOT under this MOU for any highway project or highway projects upon FHWA's determination that:
 - A. With respect to such project, FDOT is not in compliance with a material term of this MOU or applicable Federal laws or policies, and FDOT has not taken corrective action to the satisfaction of the FHWA;
 - B. The highway project or highway projects involve significant or unique national policy interests for which FDOT's assumption of the USDOT Secretary's responsibilities would be inappropriate; or
 - C. FDOT cannot satisfactorily resolve an issue or concern raised in government-to-government consultation process, as provided in subpart 3.2.3.

- 9.1.2 Upon the FHWA's determination to withdraw assignment of the USDOT Secretary's responsibilities under subpart 9.1.1, FHWA will notify FDOT of FHWA's determination including the reasons for its determination. Upon receipt of this notice, FDOT may submit any comments that resolve the reasons for the determination or objections to the FHWA within thirty (30) calendar days, unless an extended period of time is agreed to by the FHWA. Upon receipt of FDOT's comments or objections, FHWA will make a final determination within thirty (30) calendar days, unless extended by FHWA for cause, and notify FDOT of its decision. In making its determination, FHWA will consider FDOT's comments or objections, the effect the withdrawal of assignment will have on the Program, the amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest.
- 9.1.3 The FHWA shall withdraw assignment of the responsibilities FDOT has assumed for any highway project when the preferred alternative that is identified in the CEs, EA, or FEIS is a highway project that is specifically excluded in subpart 3.3.2. In such case, subpart 9.1.2 of this MOU shall not apply.

9.2 FDOT-Initiated Withdrawal of Assignment of Projects

- 9.2.1 FDOT may, at any time, provide the FHWA with notice of its intent to withdraw all or part of its assumed responsibilities of the USDOT Secretary for an existing or future highway project or highway projects assumed under this MOU.
- 9.2.2 Upon FDOT's decision to request FHWA withdraw the assignment of the USDOT Secretary's responsibilities under subpart 9.2.1, FDOT shall informally notify FHWA of its desire for FHWA to withdraw assignment of its responsibilities. After informally notifying FHWA of itsintent, FDOT will provide FHWA written notice of its intent, including the reasons for wanting FHWA to withdraw assignment of the responsibilities for a highway project. Upon receipt of this notice, the FHWA will have thirty (30) calendar days, unless extended by FDOT for cause, to determine whether it will withdraw assignment of the responsibilities requested. In making its determination, FHWA will consider the reasons FDOT wants FHWA to withdraw assignment of the responsibilities, the effect the withdrawal of assignment will have on the Program, amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest.

PART 10. PERFORMANCE MEASURES

10.1 General

- 10.1.1 Both FHWA and FDOT have determined it is desirable to mutually establish a set of performance measures to evaluate FDOT's administration of the responsibilities assumed under this MOU.
- 10.1.2 FDOT's attainment of the performance measures established in this Part of the MOU will be considered as part of FHWA's monitoring of FDOT's Program, which is required by 23 U.S.C. § 327(h).
- 10.1.3 FDOT shall collect and maintain necessary and appropriate data related to the performance measures. In collecting this data, FDOT shall monitor its progress toward meeting the performance measures and include its progress in the self-assessment summary described in subpart 8.2.5 of this MOU. The summary shall be made available to the FHWA as provided in subpart 8.2.5.

10.2 Performance Measures

- 10.2.1 The performance measures applicable to FDOT in carrying out the responsibilities it has assumed under this MOU are as follows:
 - A. <u>Compliance with NEPA, FHWA NEPA regulations, and other Federal environmental statutes and regulations:</u>
 - i. Maintain documentation regarding compliance with responsibilities assumed under this MOU

B. QA/QC for NEPA decisions:

- Maintain internal QA/QC measures and processes, including a record of:
 - a. Completion of legal sufficiency reviews by FDOT's Office of General Counsel (OGC)
 - b. Compliance with FDOT's environmental document content standards and procedures, including those related to QA/QC

C. Relationships with agencies and the general public:

- i. Maintain communication considering timelness and responsiveness among FDOT, Federal and State resource agencies, Indian Tribes, and the public.
- ii. Provide opportunities for public involvement and comment
- iii. Use NEPA issue resolution process, as appropriate.

D. Increased efficiency and timeliness in completion of the NEPA process:

i. Compare time of completion of environmental document (e.g., NEPA documents and technical reports) approvals before and after assumption of responsibilities

PART 11. TRAINING

- 11.1 FDOT may request and subject to FHWA's resource availability, FHWA will provide training with respect to the responsibilities being assigned to FDOT under this MOU. Such training may be provided to FDOT by either FHWA or another Federal agency or other parties, as appropriate.
- 11.2 FDOT will continue to implement training necessary to meet its environmental obligations and provide training opportunities to FDOT staff and consultants. FDOT will periodically review its training program and update necessary to reflect the responsibilities assumed under the Program and this MOU and shall update its program as appropriate. FDOT will be solely responsible for the development and implementation of its training program.

PART 12. TERM, TERMINATION AND RENEWAL

12.1 Term

12.1.1 This MOU has a term of five (5) years from the Effective Date.

12.2 Termination by the FHWA

- 12.2.1 As provided by 23 U.S.C. § 327(j)(1), the FHWA may terminate FDOT's participation in the Program, in whole or in part, at any time subject to the procedural requirements in 23 U.S.C. § 327 and subpart 13.2.2 of this MOU. Termination may be based on FDOT's failure to adequately carry out its responsibilities including, but not limited to:
 - A. Persistent neglect of, or noncompliance with, federal laws, regulations, and policies;
 - B. Failure to address deficiencies identified during the monitoring process;
 - C. Failure to secure or maintain adequate personnel and/or financial resources to carry out the responsibilities assumed;

- D. Intentional non-compliance with this MOU; or
- E. Persistent failure to adequately consult, coordinate, and/or take into account the concerns of other Operating Administations, when applicable and appropriate federal, state, tribal, and local agencies with oversight, consulting, or coordination responsibilities under Federal environmental laws and regulations.
- 12.2.2 If the FHWA determines that FDOT is not adequately carrying out the responsibilities assigned, then prior to termination, the FHWA shall:
 - A. Provide FDOT written notification of its non-compliance determination detailing a description of each responsibility in need of corrective action regarding an inadequacy identified;
 - B. Provide FDOT a period of not less than 120 days to take such corrective action as the FHWA determines is necessary to comply with this MOU; and
- 12.2.3 If FDOT, after notification and the 120 day period, fails to take satisfactory corrective action, as determined by FHWA, FHWA shall provide notice to FDOT of its determination of termination. Any responsibilities identified to be terminated in the notice that have been assumed by FDOT under this MOU shall transfer to FHWA.

12.3 Termination by Florida

- 12.3.1 The Florida Legislature and Governor may, at any time, terminate FDOT's authority granted to participate in this Program. In such event, FDOT will work with FHWA to jointly develop a plan to transition the responsibilities that FDOT has assumed back to FHWA so as to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected federal, state, and local agencies.
- 12.3.2 FDOT may terminate its participation in the Program, in whole or in part, at any time by providing the FHWA notice of its intent at least ninety (90) calendar days prior to the date that FDOT seeks to terminate. In that event, FHWA and FDOT shall develop a plan to transition the responsibilities that FDOT has assumed back to FHWA so as to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected federal, state, and local agencies.
- 12.3.3 Any termination of assignment agreed to under a transition plan shall not be subject to the procedures or limitations provided for in Part 9 of this MOU and shall be valid as agreed to in the transition plan.

12.4 Validity of FDOT Actions

12.4.1 Any environmental approvals made by FDOT pursuant to the responsibilities FDOT has assumed under this MOU shall remain valid after termination of FDOT's participation in the Program or withdrawal of assignment by FHWA. As among the USDOT Secretary, FHWA and FDOT, FDOT shall remain solely liable and solely responsible for any environmental approvals it makes pursuant to any of the responsibilities it has assumed while participating in the Program.

12.5 Renewal

- 12.5.1 This MOU is renewable in accordance with 23 U.S.C. § 327(c)(6) and 23 C.F.R. 773.115.
 - A. FDOT shall notify FHWA at least twelve (12) months before the expiration of this MOU of its intent to renew its participation in the Program.
 - B. Prior to requesting renewal, FDOT shall coordinate with FHWA to determine if significant changes have occurred or if new assignment responsibilities are being sought that would warrant a statewide notice and opportunity for public comment prior to FDOT's submittal of the renewal package.

- C. FDOT's renewal package shall meet the requirements in 23 C.F.R. 771.115(c); and
- D. FDOT shall submit the renewal package no later than 180 days prior to the expiration date of the MOU.

PART 13. AMENDMENTS

13.1 Generally

13.1.1 This MOU may be amended at any time upon mutual written agreement by both the FHWA and FDOT pursuant to 23 C.F.R. § 773.113(b).

13.2 Additional Projects, Classes of Projects and Environmental Review Responsibilities

- 13.2.1 The FHWA may assign, and FDOT may assume, responsibility for additional projects, and additional environmental review responsibilities beyond those identified in Part 3 of this MOU, by executing an amendment to this MOU.
- 13.2.2 If FDOT decides to request amendment of this MOU to add or remove responsibility for projects or classes of projects, or environmental review responsibilities beyond those identified in Part 3 of this MOU, such request shall be treated as an amendment to FDOT's original application that was submitted to FHWA pursuant to 23 U.S.C. § 327(b) and 23 C.F.R. part 773. In developing the application supplement, FDOT shall identify the projects, classes of projects, and environmental review responsibilities it wishes to assume and make any appropriate adjustments to the information contained in FDOT's Renewal Package, including verification of personnel and financial resources.

IN WITNESS THEREOF, the parties hereto have caused this First Renewal of the Memorandum of Understanding Between the Federal Highway Administration and the Florida Department of Transportation Concerning the State of Florida's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. 327 to be duly executed in duplicate as of the date of the last signature written below.

FEDERAL HIGHWAY ADMINISTRATION	
Ву:	Dated:
Administrator Federal Highway Administration	
STATE OF FLORIDA	
Ву:	Dated:
Kevin J. Thibault, P.E. Secretary	
Florida Department of Transportation	

APPENDIX D (continued)

Draft Renewal MOU – Redline Version 23 CFR §773.115(f)

FIRST RENEWAL OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND THE FLORIDA DEPARTMENT OF TRANSPORTATION CONCERNING THE STATE OF FLORIDA'S PARTICIPATION IN THE SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM PURSUANT TO 23 U.S.C. §327

THIS FIRST RENEWAL OF THE MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is entered into by and between the FEDERAL HIGHWAY ADMINISTRATION (hereinafter "FHWA"), an administration in the UNITED STATES DEPARTMENT OF TRANSPORTATION (hereinafter "USDOT"), and the STATE OF FLORIDA, acting by and through its FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter "FDOT"), to continue the State of Florida's participation in the Surface Transportation Project Delivery Program pursuant to 23 U.S.C. §327 and hereby provides as follows:

WITNESSETH

Whereas, Section 327 of Title 23 of the United States Code (U.S.C.) establishes the Surface Transportation Project Delivery Program (hereinafter "Program") that allows the Secretary of the United States Department of Transportation (hereinafter "USDOT Secretary") to assign and States to assume the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, et seq. hereinafter "NEPA," and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other actions required by Federal environmental laws with respect to highway, public transportation, railroad, and multimodal projects within the state; and

Whereas, 23 U.S.C. § 327(b)(2) requires a State to submit an application in order to participate in the Program; and

Whereas, on April 15, 2016, prior to submittal of its application to FHWA seeking assignment of all classes highway projects, FDOT published notice of and solicited public comment on its draft application to participate in the Program as required by 23 U.S.C. § 327(b)(3), and addressed the comments received as appropriate; and

Whereas, in preparation for participation in the Program, the Florida Legislature passed House Bill 7027, which was and the Governor signed it into law by the Governor on April 4, 2016 as Chapter 2016-181, Laws of Florida, allowing authorizing the State to participate in the Program and providing a limited waiver of sovereign immunity to civil suit in federal court related to actions under the Program; and

Whereas, on May 31, 2016, the State of Florida, acting by and through FDOT, submitted an application to FHWA with respect to <u>all classes of</u> highway projects in the State of Florida; and

Whereas, on November 1, 2016, FHWA published a notice in the Federal Register and provided an opportunity for inviting comment on its preliminary decision to approve FDOT's application and solicited the views of other appropriate Federal agencies concerning FDOT's application as required by 23 U.S.C. § 327(b)(5); and

Whereas, the USDOT Secretary, acting by and through FHWA pursuant to 49 CFR 1.85(a)(3), has determined that FDOT's application meets met the requirements of 23 U.S.C. § 327 for participation in the Program with respect to FHWA's assignment of its NEPA responsibilities including related the Federal environmental laws and for all classes of highway projects; and identified in this MOU.

Whereas, on December 14, 2016 (Amended insert date), FHWA and the State of Florida, acting by and through FDOT, jointly executed a Memorandum of Understanding (hereinafter "Initial MOU") under which FHWA assigned and FDOT assumed the duties and responsibilities of the USDOT Secretary under NEPA and other related Federal environmental laws for all classes of highway projects; and

Whereas, consistent with 23 U.S.C. § 327(c)(5) and sub-part 13.1.1 of the Initial MOU, a five-year term was established, with the applicable expiration date being December 14, 2021; and

Whereas, in implementing its Program, FDOT conducted self-assessments and generated annual reports with respect to its performance; and

Whereas, FHWA conducted audits, as required by Part 11 of the Initial MOU and 23 U.S.C. §327(q)(1)(B), during the first four years of the State's participation in the Program; and

Whereas, the FHWA audit reports were available to the public for comment through publication of notices in the Federal Register; and

Whereas, FDOT first notified FHWA of its intent to renew participation in the Program with respect to highway projects during the audit closeout meeting on September 25, 2020, and subsequently confirmed this intent with the FHWA Florida Division office on November 18, 2020; and

Whereas, the laws of the State of Florida, section 334.044(34), Florida Statutes (2020), continue to authorize the State, by and through FDOT, to participate in the Program; and

Whereas, pursuant to sub-part 13.5.1(B) of the Initial MOU and 23 CFR §773.115(b), FDOT coordinated with FHWA to determine if significant changes to the Program have occurred or new assignment responsibilities would be sought that would warrant a statewide notice and comment opportunity prior to the State's submission of its application for renewal and supplemental information (hereinafter "Renewal Package"); and

Whereas, on January 21,2021, during coordination between the agencies, FHWA determined that a statewide notice and comment opportunity was unnecessary prior to the State's submission of its Renewal Package; and

Whereas, pursuant to sub-part 13.5.1(D) of the Initial MOU and 23 CFR §773.115(d), FDOT timely submitted its Renewal Package to FHWA on (DATE), for approval to continue the assigned duties and responsibilities for highway projects pursuant to the Program; and

Whereas, on (DATE), FHWA published a Federal Register notice soliciting public comment on FDOT's renewal request as required by 23 CFR §773.115(f); and

Whereas, the USDOT Secretary, acting by and through FHWA, has considered the Renewal Package, comments received as a result of the Federal Register notice, auditing reports, and the State's overall performance in the Program, as required by 23 CFR 773.115(g), and has determined that FDOT's Renewal Package meets all of the necessary requirements of 23 CFR part 773 and 23 U.S.C. §327 to support FDOT's continued participation in the Program.

Now, therefore, FHWA and FDOT agree as follows:

PART 1. PURPOSE OF MEMORANDUM OF UNDERSTANDING

1.1 Purpose

- 1.1.1 This MOU officially approves FDOT's application to request to renew participation participate in the Program and is the written agreement required by 23 U.S.C. § 327(a)(2)(A) and (c) under which the USDOT Secretary may assign, and FDOT may assume, the responsibilities of the USDOT Secretary for Federal environmental laws with respect to one or more highway projects within the State of Florida. For purposes of this MOU, "highway project" is as defined in 23 C.F.R. §773.103.
- 1.1.2 The FHWA's decision to execute this MOU is based upon the information, representations, and commitments contained in FDOT's Renewal Package as required by 23 C.F.R. §773.114 and transmitted

- on May 31, 2016, application DATE. As such, this MOU incorporates the application Renewal Package. To the extent there is any conflict between this MOU and the application Renewal Package, this MOU shall control.
- 1.1.3 This MOU is effective upon <u>expiration of the Initial MOU or upon</u> final execution by both parties, <u>which</u> ever occurs later (hereinafter the "Effective Date").
- 1.1.4 On October 30, 2015Upon the Effective Date of this MOU, FDOT and FHWA entered into athe Programmatic Agreement for Categorical Exclusions (hereinafter the "CE Programmatic Agreement") entered between FDOT and FHWA on October 30, 2015, under 23 C.F.R. §771.117 regarding the Processing of Actions Classified as Categorical Exclusions for Federal Aid Highway Projects. On the Effective Date of this MOU, the CE Programmatic Agreement will be previously suspended by and superceded by this the Initial MOU, will terminate for the duration of FDOT's participation in the Program. The CE Programmatic Agreement may be reinstated upon termination of FDOT's participation in the Program if FHWA and FDOT determine that the CE Programmatic Agreement continues to be valid pursuant to applicable statutory and regulatory authorities in effect at the time of the MOU termination.
- 1.1.5 Pursuant to 23 U.S.C. §§ 327(c)(3)(B) and § 327(c)(3)(C), and subpart 4.3 of this MOU, third parties may challenge FDOT's action in carrying out environmental review responsibilities assigned under this MOU. Otherwise, this MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Florida, its departments, agencies, or entities, its officers, employees, or agents. This MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents.

PART 2. [RESERVED]

PART 3. ASSIGNMENTS AND ASSUMPTIONS OF RESPONSIBILITY

- 3.1 Assignments and Assumptions of NEPA Responsibilities
- 3.1.1 Pursuant to 23 U.S.C. § 327(a)(2)(A), on On the Effective Date of this MOU, FHWA and FDOT renew their participation in the Program and pursuant to 23 U.S.C. § 327(a)(2)(A), FHWA assigns, and FDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. § 327 and this MOU, all of the USDOT Secretary's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq., with respect to the highway projects specified under subpart 3.3. This includes statutory provisions, regulations, and policies and guidance related to the implementation of NEPA for highway projects, 23 U.S.C. § 139, 40 C.F.R. parts 1500-1508, DOT Order 5610.1C, and 23 C.F.R. part 771, as applicable.
- 3.1.2 On the cover page of each Environmental Assessment (EA), Finding of No Significant Impact (FONSI), Environmental Impact Statement (EIS), Record of Decision (ROD), and Final EIS (FEIS)/ROD prepared under the authority granted by this MOU, and for memoranda corresponding to any Categorical Exclusion (CE) determination it makes, FDOT shall insert the following language in a way that is conspicuous to the reader or include it in a CE project record:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated [INSERT DATE], and executed by FHWA and FDOT.

- 3.1.3 FDOT shall disclose to the public and agencies as part of agency outreach and public involvement procedures, including any Notice of Intent or scoping meeting notice, the disclosure in subpart 3.1.2 above.
- 3.2 Assignments and Assumptions of Responsibilities to Comply with Federal Laws Other Than NEPA

3.2.1 Pursuant to 23 U.S.C. § 327(a)(2)(B), on the Effective Date of this MOU, FHWA assigns and FDOT assumes, subject to the terms and conditions set forth in this MOU, all of the USDOT Secretary's responsibilities for environmental review, reevaluation, consultation, or other action pertaining to the review or approval of highway projects specified under subpart 3.3 of this MOU, required under the following federal environmental laws:

Air Quality

 Clean Air Act, 42 U.S.C. §§ 7401-7671q, with the exception of project level conformity determinations (42 U.S.C. 7506)

Noise

- Noise Control Act of 1972, 42 U.S.C. §§ 4901-4918
- FHWA noise regulations at 23 C.F.R. part 772
- Airport Noise and Capacity Act of 1990, 49 U.S.C. §§ 47521-47534

Wildlife

- Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544
- Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1423h
- Anadromous Fish Conservation Act, 16 U.S.C. §§ 757a-757f
- Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-667d
- Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. §§ 1801-1891d, with Essential Fish Habitat requirements at 16 U.S.C. § 1855(b)(2)

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. §§ 9671-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901-6992k

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306101 et seq.
- 23 U.S.C. § 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C.
 § 303 and implementing regulations at 23 C.F.R. part 774
- Preservation of Historical and Archaeological Data, 54 U.S.C. §§ 312501-312508
- Archeological Resources Protection Act of 1979, 16 U.S.C. §§ 470(aa)-(mm)

 Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001-3013; 18 U.S.C. § 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. § 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. §§ 4201-4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. §§ 1251-1387 (Sections 319, 401, and 404)
- Coastal Barrier Resources Act, 16 U.S.C. §§ 3501-3510
- Coastal Zone Management Act, 16 U.S.C. §§ 1451-1466
- Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-26
- Rivers and Harbors Act of 1899, 33 U.S.C. §§ 403
- Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287
- Emergency Wetlands Resources Act, 16 U.S.C. § 3901 and § 3921
- Wetlands Mitigation, 23 U.S.C. § 119(g) and § 133(b)(14)
- Flood Disaster Protection Act, 42 U.S.C. §§ 4001-4130
- FHWA wetland and natural habitat mitigation regulations, 23 C.F.R. part 777

Parklands and Other Special Land Uses

- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. § 138, 49 U.S.C. § 303 and implementing regulations at 23 C.F.R. part 774
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. §§ 200302-200310

FHWA-Specific

- Environmental Impact and Related Procedures, 23 C.F.R. § 771
- Planning and Environmental Linkages, 23 U.S.C. § 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135
- Efficient Project Reviews for Environmental Decision Making 23 U.S.C. § 139
- Programmatic Mitigation Plans, 23 U.S.C. § 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135

Executive Orders (E.O.) Relating to Highway Projects

• E.O. 11988, Floodplain Management, (except design matters and determinations that significant encroachment is the only practicable alternative under 23 C.F.R. parts 625 and 650)

- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species
- 3.2.2 In accordance with 23 U.S.C. 327(a)(2)(D), any FHWA environmental review responsibility not explicitly listed above and assumed by FDOT shall remain the responsibility of FHWA unless the responsibility is added by written agreement of the parties through the amendment process established in Part 14 of this MOU and pursuant to 23 C.F.R.§ 773.113(b). This provision shall not be interpreted to abrogate FDOT's responsibilities to comply with the requirements of any federal environmental laws that apply directly to FDOT independent of FHWA's involvement (through federal assistance or approval).
- 3.2.3 The USDOT Secretary's responsibilities for government-to-government consultation with Indian tribes, as defined in 36 C.F.R. § 800.16(m), are not assigned to or assumed by FDOT under this MOU per 23 C.F.R. § 773.105(b)(4). The FHWA remains responsible for government-to-government consultation, including initiation of government to government consultation, unless otherwise agreed as described below. A notice from FDOT to an Indian tribe advising the tribe of a proposed activity is not considered "government-to-government consultation" within the meaning of this MOU. If a project-related concern or issue is raised in a government-to-government consultation process with an Indian tribe, as defined in 36 C.F.R. § 800.16(m), and is related to NEPA or another federal law for which FDOT has assumed responsibilities under this MOU, and either the Indian tribe or FHWA determines that the issue or concern will not be satisfactorily resolved by FDOT, then FHWA may withdraw the assignment of all or that part of the responsibilities for processing the project. In this case, the provisions of subpart 9.1 of this MOU concerning FHWA initiated withdrawal of an assigned project or part of an assigned project will apply.

This MOU is not intended to abrogate or prevent future entry into an agreement among FDOT, FHWA, and a tribe under which the tribe agrees to allow FDOT to administer government-to-government consultation activities for FHWA. However, such agreements are administrative in nature and do not relieve the FHWA of its legal responsibility for government-to-government consultation.

- 3.2.4 In accordance with 23 U.S.C. 327(a)(2)(B)(iv), nothing in this MOU shall be construed to allow FDOT's assumption of the USDOT Secretary's responsibilities for conformity determinations required by Section 176 of the Clean Air Act (42 U.S.C. § 7506) or any responsibility under 23 U.S.C. § 134 or § 135, or under 49 U.S.C. § 5303 or § 5304.
- 3.2.5 On the cover page of each biological evaluation or assessment, historic properties or cultural resources report, Section 4(f) evaluation, or other analyses prepared under the authority granted by this MOU, FDOT shall insert the following language in a way that is conspicuous to the reader-or include in a CE project record:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated [INSERT DATE] and executed by FHWA and FDOT.

- 3.2.6 FDOT shall disclose to the public and agencies, as part of agency outreach and public involvement procedures, the disclosure in subpart 3.2.5 of this MOU.
- 3.2.7 FDOT will continue to adhere to the original terms of Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Services (NMFS) or both prior to the Effective Date of this MOU, so long as the original BO terms are not amended or revised. Any revisions or amendments to a BO made after the effective date of this MOU would be FDOT's responsibility. FDOT agrees to assume FHWA's environmental review role and responsibilities as identified in existing interagency agreements among FDOT, USFWS, NMFS and FHWA, and/or negotiate new agreements with USFWS and NMFS, if needed. FDOT agrees to assume FHWA's Endangered Species Act Section

7 responsibilities of consultations (formal and informal) ongoing as of the Effective Date of this MOU and will be responsible for future consultations after the Effective Date of this MOU.

3.2.8 FDOT will not make any determination that an action constitutes a constructive use of a publicly owned park, public recreation area, wildlife refuge, waterfowl refuge, or historic site under 49 U.S.C. § 303 /23 U.S.C. § 138 [Section 4(f)] without first consulting with FHWA and obtaining FHWA's approval of such determination.

3.3 Highway Projects

3.3.1 Except as provided in subpart 3.3.2 of this MOU or otherwise specified in this subpart, the assignments and assumptions of the USDOT Secretary's responsibilities under subparts 3.1 and 3.2 of this MOU shall apply to the environmental review, consultation, or any other action pertaining to the environmental review or approval of the following classes of highway projects located within the State of Florida. The definition of "highway project" is found at 23 C.F.R. § 773.103, and for purposes of this MOU, "highway project" includes eligible preventative maintenance activities. FDOT shall conduct reevaluations required by 23 C.F.R. § 771.129 for projects for which construction is was not completed prior to the date of this the Initial MOU, in accordance with the provisions of this MOU and the Initial MOU. Prior to approving any CE determination, FONSI, FEIS, or FEIS/ROD, the State shall ensure and document that for any proposed project the design concept, scope, and funding are consistent with the current Transportation Improvement Plan (TIP), Regional Transportation Plan (RTP), or Metropolitan Transportation Plan (MTP) as applicable.

FDOT will be responsible for decisions for on all classes of action for highway projects, upon the Effective Date of this MOU, as described below:

All Class I, or EIS projects, both on the State Highway System (SHS), which includes the National Highway System, and Local Agency Program (LAP) projects off the SHS that are funded by FHWA or require FHWA approvals. This assignment does not include the environmental review associated with the development and approval of the Draft EIS, FEIS, and ROD for the following projects.

Under the Initial MOU, the two projects identified below were excluded from assignment and FHWA retained responsibility for the environmental review associated with the development and approval of their environmental documents, Draft EIS, FEIS, SEIS and ROD, as applicable. Upon the Effective Date of this MOU, FHWA assigns and FDOT assumes responsibility for any future environmental review concerning the I-4 Beyond the Ultimate (BTU), the I-4 Ultimate, and the TIS project segments described below.

- a. I-4 Beyond the Ultimate (BTU) which consists of the three following project segments: Segment 2 FM # 242484-7 SR 400 (I-4) west of SR 528 (Beachline) to west of SR 435 Kirkman Rd; Segment 3 FM # 242592-4 SR 400 (I-4) 1 mile east of SR 434 to east of SR 15/600/US 17/92 Seminole/Volusia C/L; Segment 4 FM # 408464-2 SR 400 (I-4) east of SR 15/600/US 17/92 to ½ mile east of SR 472; and I-4 Ultimate Segment FM # 242703-1 SR 400 (I-4) west of SR 435 (Kirkman Rd) to east of SR 434.
- b. Tampa Interstate Study (TIS) which consists of the three following project sections: Section 4 FM # 412531-1 (Note Sections 4 and 5 have same Design FM #) I-275/SR 60 and Northwest/Veterans; Section 5 FM # 412531-1 (Note Sections 4 and 5 have same Design FM #) I-275 Lois to Hillsborough River; and Section 6 FM # 433821-1 I-275/I-4 Downtown Interchange.
- B. All Class II, or CE projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.
- C. All Class III, or EA projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.

- D. FDOT will not assume the NEPA responsibilities of other Federal agencies. However, FDOT may use or adopt other Federal agencies' NEPA analyses or documents consistent with 40 C.F.R. parts 1500-1508, current law, and USDOT and FHWA regulations, policies, and guidance.
- E. For projects where FDOT is assuming responsibility, FHWA shall allow FDOT access to its project files and arrange for copies as requested.
- E.F.In assuming responsibility for all classes of action for highway projects under 23 C.F.R. §773.103, FDOT is responsible for decisions for all classes of action for undertakings that are eligible for financial assistance under title 23 U.S.C. and for which FHWA has primary responsibility, including the Recreational Trails Program, 23 U.S.C. §206.
- 3.3.2 The following are specifically excluded from the list in subpart 3.3.1 of highway projects and classes of highway projects:
 - A. Any Federal Lands Highway projects authorized under 23 U.S.C. § 202 and § 203
 - B. Any highway projects authorized under 23 U.S.C.§ 204, unless such projects will be designed and/or constructed by FDOT.
 - C. Any project that crosses state boundaries and any project that crosses or is adjacent to international boundaries. For purposes of this MOU, a project is considered "adjacent to international boundaries" if it requires the issuance of a new, or the modification of an existing, Presidential Permit by the U.S. Department of State.

3.4 Limitations

- 3.4.1 As provided at 23 U.S.C. § 327(e), FDOT shall be solely responsible and solely liable for carrying out in lieu of and without further approval of FHWA, all of the responsibilities it has assumed under this MOU.
- 3.4.2 As provided at 23 U.S.C. § 327(a)(2)(D), any highway project or responsibility of the USDOT Secretary that is not explicitly assumed by FDOT under subpart 3.3.1 of this MOU remains the responsibility of the USDOT Secretary.

PART 4. CERTIFICATIONS AND ACCEPTANCE OF JURISDICTION

4.1 Certifications

- 4.1.1 FDOT makes the following certifications:
 - A. FDOT has the legal authority to accept all the assumptions of responsibility identified in Part 3 of this MOU;
 - B. FDOT has the legal authority to take all actions necessary to carry out all of the responsibilities it has assumed under this MOU;
 - C. FDOT has the legal authority to execute this MOU;
 - D. The State of Florida currently has laws in effect that are comparable to 5 U.S.C. § 552 [Freedom of Information Act (FOIA)] and those laws are found in Chapter 119, Florida Statutes (F.S.) (Public Records); and
 - E. Section 119.11, F.S., provides that any decision regarding the public availability of a document under the Public Records law is reviewable by a Florida court of competent jurisdiction.

4.2 State Commitment of Resources

- 4.2.1 As required by 23 U.S.C. § 327(c)(3)(D), FDOT will maintain the financial resources necessary to carry out the responsibilities it is assuming. FDOT asserts, and FHWA agrees, that the summary of financial resources contained in FDOT's application, dated May 31, 2016, appears to be adequate for this purpose. FDOT's substantial compliance with the Initial MOU demonstrates, and FHWA agrees, that the summary of financial resources contained in FDOT's application, dated May 31, 2016, and as supplemented in FDOT's Renewal Package submitted DATE, are adequate for this purpose. Should FHWA determine, after consultation with FDOT, that FDOT's financial resources are inadequate to carry out the USDOT Secretary's responsibilities, FDOT will take appropriate action to obtain the additional financial resources needed to carry out these responsibilities. If FDOT is unable to obtain the necessary additional financial resources, FDOT shall inform FHWA, and this MOU will be amended to assign only the responsibilities that are commensurate with FDOT's financial resources.
- 4.2.2 Similarly, FDOT currently has and will maintain adequate organizational and staff capability, including competent and qualified consultants where necessary or desirable, to effectively carry out the responsibilities it has assumed under this MOU. This includes, without limitation:
 - A. Using appropriate environmental, technical, legal, and managerial expertise;
 - B. Devoting adequate staff resources; and
 - C. Demonstrating, in a consistent manner, the capacity to perform FDOT's assumed responsibilities under this MOU and applicable federal laws.

FDOT's substantial compliance with the Initial MOU demonstrates that FDOT maintains adequate organizational and staff capability for the purpose of fulfilling the terms of this MOU. Should FHWA determine, after consultation with FDOT, that FDOT organizational and staff capability is inadequate to carry out the USDOT Secretary's responsibilities, FDOT will take appropriate action to obtain adequate organizational and staff capability to carry out these responsibilities. If FDOT is unable to obtain adequate organizational and staff capability, FDOT shall inform FHWA and the MOU will be amended to assign only the responsibilities that are commensurate with FDOT's available organizational and staff capability. Should FDOT choose to meet these requirements, in whole or in part, with consultant services, including outside counsel, FDOT shall maintain on its staff an adequate number of trained and qualified personnel, including counsel, to oversee the consulting work.

- 4.2.3 When carrying out the requirements of Section 106 of the National Historic Preservation Act, as amended, FDOT staff (including consultants) shall comply with 36 C.F.R. § 800.2(a)(1). All actions that involve identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation (including 36 C.F.R. § 800.11) of such actions in the form of reports, forms, or other records, shall be carried out by or under the review or direct supervision of a person or persons who meet the Secretary of Interior's Professional Qualifications Standards (36 C.F.R. part 61, Appendix A). FDOT shall ensure that all documentation required under 36 C.F.R. 800.11 is reviewed and found adequate by a staff member or consultant who meets the Professional Qualifications Standards.
- 4.2.4 As part of its commitment of resources, FDOT will continue to develop, implement and update its Efficient Transportation Decision Making (ETDM) and Project Development and Environment (PD&E) Manuals and procedures, which are not subject to FHWA review or approval unless required by statute or regulation, to support appropriate environmental analysis and decision-making under NEPA and associated laws and regulations. FDOT recognizes it is solely responsible for the ETDM and the PD&E Manuals and procedures for compliance with responsibilities assigned in this MOU and for establishing policy and guidance to implement its program. Within six (6) months of the Effective Date of this MOU, FDOT will update the ETDM and PD&E manuals for the responsibilities assigned to FDOT in this MOU. FDOT will provide notification to FHWA when the ETDM and the PD&E Manuals are revised.

4.3 Federal Court Jurisdiction

4.3.1 As provided under 23 U.S.C. § 327(c)(3)(B), and authorized by Chapter 2016-181, Laws of Florida, codified as section 334.044(34), Florida Statutes, FDOT hereby expressly consents, on behalf of the State of Florida, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the USDOT Secretary assumed by FDOT under this MOU. This consent to Federal court jurisdiction shall remain valid after termination of this MOU_τ or FHWA's withdrawal of assignment of the USDOT Secretary's responsibilities for any decision or approval made by FDOT pursuant to an assumption of responsibility under this MOU. FDOT understands and agrees that, in accordance with 23 U.S.C. § 327, this acceptance constitutes a waiver of the State of Florida's immunity under the Eleventh Amendment to the U.S. Constitution for the limited purposes of carrying out the USDOT Secretary's and FHWA's responsibilities that have been assumed under this MOU.

PART 5. APPLICABILITY OF FEDERAL LAW

5.1 Procedural and Substantive Requirements

- 5.1.1 As provided at 23 U.S.C. § 327(a)(2)(C), in assuming the USDOT Secretary's responsibilities under this MOU, FDOT shall be subject to the same procedural and substantive requirements that apply to the USDOT Secretary in carrying out these responsibilities. Such procedural and substantive requirements include Federal statutes and regulations; Executive Orders issued by the President of the United States; DOT Orders; Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 C.F.R. parts 1500-1508); FHWA Orders; formal guidance and policy issued by the CEQ, USDOT, or FHWA (e.g. Guidance Establishing Metrics for the Permitting and Environmental Review of Infrastructure Projects);, and any applicable federal court decisions; and, subject to subpart 5.1.4 of this MOU, interagency agreements and other similar documents that relate to the environmental review process (e.g., 2015 Red Book Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects). Official USDOT and FHWA guidance and policies relating to environmental review are posted on the FHWA's website, contained in the FHWA Environmental Guidebook, published in the Federal Register, or sent to FDOT electronically or hard copy.
- 5.1.2 By accepting the USDOT Secretary's and FHWA's NEPA responsibilities, FDOT agrees to perform FHWA's obligations set forth in the 2014 MOU between the USDOT and the USCG and in the 2014 MOA between USCG and FHWA.
- 5.1.3 Upon the Effective Date of this MOU, FHWA will use its best efforts to ensure that any new or revised federal policies and guidance that are final and applicable to FHWA's responsibilities under NEPA and other laws that are assumed by FDOT under this MOU are communicated to FDOT within ten (10) business days of issuance. Delivery may be accomplished by e-mail, web posting (with e-mail or mail to FDOT notifying of web posting), mail, or publication in the *Federal Register* (with e-mail or mail to FDOT notifying of publication). If communicated to FDOT by e-mail or mail, such material will be sent to FDOT's Director of the Office of Environmental Management and the following address: OEM@dot.state.fl.us. In the event a new or revised FHWA policy or guidance is not made available to FDOT as described in this subpart, and if FDOT had no knowledge of such policy or guidance, then a failure by FDOT to comply with such federal policy or guidance will not be a basis for termination of this MOU or a negative audit finding under this MOU.
- 5.1.4 FDOT will coordinate with federal agencies concerning applicable laws, guidance, and policies that such other federal agencies are responsible for administering with respect to FDOT's assumption of and which relate to FDOT's responsibilities for highway projects under this MOU.

Within six (6) months of the Effective Date of this MOU, FDOT will work with FHWA and the agencies to modify existing interagency agreements. Such actions may include:

A. Obtaining written consent to the continuation of the interagency agreement in its existing form, but with the substitution of FDOT for FHWA; or

B. Amending the interagency agreement as needed so that the interagency agreement continues but that FDOT assumes FHWA's responsibilities.

If an affected agency does not agree to modify the interagency agreement, then to the extent permitted by applicable law and regulation, FDOT will carry out the assumed environmental review, consultation, or other related activity in accordance with applicable laws and regulations but without the benefit of the provisions of the interagency agreement.

5.1.5 Upon termination of this MOU, FDOT and FHWA shall contact the relevant any agency which is a party to an affected agreement to determine whether the interagency agreement should be amended or reinstated as appropriate.

5.2 Rulemaking

5.2.1 As provided under 23 U.S.C. § 327(f), nothing in this MOU allows FDOT to assume any rulemaking authority of the USDOT Secretary. Additionally, FDOT may not establish policy and guidance on behalf of the USDOT Secretary or FHWA for highway projects covered in this MOU. FDOT's authority to establish state regulations, policy, and guidance concerning the state environmental review of State highway projects shall not supersede applicable Federal environmental review regulations, formal policy, or guidance established by or applicable to the USDOT Secretary or FHWA.

5.3 Effect of Assumption

5.3.1 For purposes of carrying out the responsibilities assumed under this MOU, and subject to the limitations contained in 23 U.S.C. § 327 and this MOU, FDOT shall be deemed to be acting as FHWA with respect to the environmental review, consultation, and other related actions required under to implement those responsibilities.

5.4 Other Federal Agencies

5.4.1 As provided under 23 U.S.C. § 327(a)(2)(E), nothing in this MOU preempts or interferes with any power, jurisdiction, responsibility, or authority of any Federal agency other than the USDOT (including FHWA), under applicable statutes and regulations with respect to a highway project.

PART 6. LITIGATION

6.1 Responsibility and Liability

6.1.1 As provided in 23 U.S.C. 327(e), FDOT shall be solely responsible and solely liable for carrying out all of the USDOT Secretary's responsibilities it has assumed under this MOU, in lieu of and without further approval of the USDOT Secretary. The FHWA and USDOT shall have no responsibility or liability for the performance of the responsibilities assumed by FDOT, including any decision or approval made by FDOT while participating in the Program.

6.2 Litigation

- Nothing in this MOU affects the United States Department of Justice's (hereinafter "USDOJ") authority to litigate claims, including the authority to approve a settlement on behalf of the United States if either FHWA or another agency of the United States is named in such litigation, or if the United States intervenes pursuant to 23 U.S.C. 327(d)(3). In the event FHWA or any other Federal agency is named in litigation related to matters under this MOU, or the United States intervenes in the litigation, FDOT agrees to coordinate with FHWA and any USDOJ or Federal agency attorneys in the defense of that action.
- 6.2.2 FDOT shall defend all claims brought in connection with its discharge of any responsibility assumed under this MOU. In the event of litigation, FDOT shall provide qualified and competent legal counsel, including outside counsel if necessary. FDOT shall provide the defense at its own expense, subject to

23 U.S.C. 327(a)(2)(G) concerning Federal-aid participation in attorney's fees for outside counsel hired by FDOT. FDOT shall be responsible for opposing party's attorney's fees and court costs if a court awards those costs to an opposing party, or in the event those costs are part of a settlement agreement.

- 6.2.3 FDOT will notify the FHWA's Florida Division Office and USDOJ's Assistant Attorney General for the Environment and Natural Resources Division, within seven (7) calendar days of FDOT's Office of General Counsel's receipt of service of process of any complaint, concerning its discharge of any responsibility assumed under this MOU. FDOT's notification to FHWA and USDOJ shall be made prior to its response to the complaint. In addition, FDOT shall notify the FHWA's Florida Division Office within seven (7) calendar days of receipt of any notice of intent to sue concerning its discharge of any responsibility assumed under this MOU.
- 6.2.4 FDOT will provide the FHWA's Florida Division Office and USDOJ copies of any complaint or notice of intent to the FHWA and USDOJ within seven (7) calendar days of receipt of service.
- 6.2.5 FDOT will notify the FHWA's Florida Division Office and USDOJ prior to settling any lawsuit, in whole or in part, and shall provide the FHWA and USDOJ with a reasonable amount of time of at least ten (10) calendar days, unless a shorter time is dictated by the Court or court proceedings, which may be extended, if feasible based on the context of the lawsuit, up to a maximum of thirty (30) total calendar days, to review and comment on the proposed settlement. FDOT will not execute any settlement agreement until: (1) FHWA and USDOJ have provided comments on the proposed settlement; (2) FHWA and USDOJ have indicated that they will not provide comments on the proposed settlement, or (3) the review period has expired, whichever occurs first.
- 6.2.6 Within seven (7) calendar days of receipt by FDOT, FDOT will provide notice to FHWA's Division Office and USDOJ of any court decision on the merits, judgment, and notice of appeal arising out of or relating to the responsibilities FDOT has assumed under this MOU. FDOT shall notify FHWA's Division Office and USDOJ within five (5) days of filing a notice of appeal of a court decision. FDOT shall confer with FHWA and USDOJ regarding the appeal at least forty-five (45) days before filing an appeal brief in the case.
- 6.2.7 FDOT's notifications to FHWA and USDOJ in subparts 6.2.3, 6.2.4, 6.2.5, and 6.2.6 shall be made by electronic mail to FHWA assignment_lit@dot.gov and NRSDOT.enrd@usdoi.gov, unless otherwise specified by FHWA and USDOJ. For copies of motions, pleadings, briefs, and other documents filed in a case, FDOT will either send the materials to the email address identified above, send hardcopies to the mail address below, or add to the distribution list in the court's electronic filing system (e.g., PACER) the following two email addresses: FHWA and USDOJ's comments under subparts 6.2.5 and 6.2.6 shall be made by electronic mail to: NEPACounsel@dot.state.fl.us unless otherwise specified by FDOT. In the event that regular mail is determined necessary, mail should be sent to:

For USDOJ: Assistant Attorney General for the Environment and Natural Resources Division at 950 Pennsylvania Avenue, NW, Room 2143, Washington, DC, 20530.

For FHWA: Division Administrator, FHWA Florida Division, 3500 Financial Plaza, Suite 400, Tallahassee, FL 32312

For FDOT: Special Counsel for Environmental Affairs, Office of General Counsel, 605 Suwannee Street Mail Station 58, Tallahassee, Florida 32399-0458

6.3 Conflict Resolution

6.3.1 In discharging any of the USDOT Secretary's responsibilities under this MOU, FDOT agrees to comply with any applicable requirements of USDOT and FHWA statute, regulation, guidance or policy regarding conflict resolution. This includes the USDOT Secretary's responsibilities for issue resolution under 23 U.S.C. § 139(h)(6), with the exception of the USDOT Secretary's responsibilities under 23 U.S.C. § 139(h)(7) regarding financial penalties.

6.3.2 FDOT agrees to follow 40 C.F.R. part 1504 in the event of pre-decision referrals to CEQ for Federal actions determined to be environmentally unsatisfactory. FDOT also agrees to coordinate and work with CEQ on matters brought to CEQ with regards to the environmental review responsibilities for Federal highway projects FDOT has assumed under this MOU.

PART 7. INVOLVEMENT WITH OTHER AGENCIES

7.1 Coordination

7.1.1 FDOT agrees to seek early and appropriate coordination with all applicable Federal, State, and local agencies in carrying out any of the responsibilities for highway projects assumed under this MOU.

7.2 Processes and Procedures

7.2.1 FDOT will ensure that it has appropriate processes and procedures in place that provide for proactive and timely consultation, coordination, and communication with appropriate Federal agencies in order to carry out the responsibilities assumed under this MOU, including the submission of all EISs together with comments and responses to the Environmental Protection Agency (EPA) as required by 40 C.F.R. § 1506.9 and for EPA's review as required by section 309 of the Clean Air Act, 42 U.S.C. § 7609. These processes and procedures shall be formally documented. Documentation may be a formally executed interagency agreement or other format as appropriate.

PART 8. INVOLVEMENT WITH FHWA

8.1 Generally

- 8.1.1 In discharging any of the USDOT Secretary's <u>responsibilities</u> under this MOU, FDOT and FHWA agree to work cooperatively to resolve substantive issues regarding the implementation or interpretation of this MOU. For projects reviewed by FHWA prior to the date of assignment that will be transferred to FDOT, FHWA will, upon request, provide FDOT access to or copies of the project files that are relevant to the ongoing environmental review (excluding protected and privileged information) within a reasonable timeframe that takes into account the complexity of the request.
- 8.1.2 Except as specifically provided otherwise in this MOU, FHWA will not provide project-level assistance to FDOT in carrying out the responsibilities it has assumed under this MOU. Project-level assistance includes advice, consultation, or document review with respect to the discharge of such responsibility for a particular highway project. However, project-level assistance does not include process or program-level assistance as provided in subpart 8.1.5 of this MOU, including discussions concerning issues addressed in prior projects, interpretations of applicable law contained in Title 23 U.S.C. or Title 49 U.S.C., interpretations of any FHWA or USDOT regulation, or interpretations of FHWA or USDOT policies or guidance. FHWA agrees that any discussions or coordination related to process or program level assistance, prior project decisions or issues, or interpretation of law, shall be directed to the Director of the Office of Environmental Management for resolution.
- 8.1.3 The FHWA will not intervene, broker, act as intermediary, or be otherwise involved in any issue involving FDOT's consultation or coordination with other Federal agencies with respect to FDOT's discharge of any of the responsibilities assumed under this MOU for any particular highway project. However, the FHWA may attend meetings between FDOT and other Federal agencies and submit comments to FDOT and the other Federal agency in the following extraordinary circumstances:
 - A. FHWA reasonably believes that FDOT is not in compliance with this MOU;
 - B. FHWA determines that an issue between FDOT and the other Federal agency concerns emerging national policy issues under development by the USDOT; or
 - C. Upon request by either FDOT's Director of the Office of Environmental Management or the other Federal agency and agreement by FHWA.

The FHWA will notify both FDOT and the relevant Federal agency prior to attending any meetings between FDOT and such other Federal agency. The notice shall be made in writing and include an explanation of extraordinary circumstances for attendance.

- 8.1.4 Other Federal agencies may raise concerns regarding the compliance with this MOU by FDOT and may communicate these concerns to the FHWA. The FHWA will review the program- or policy-level concerns and any other information provided to FHWA by such other Federal agency. If, after such review, the FHWA and such other Federal agency still have concerns regarding FDOT's compliance, the FHWA will notify the Director of the Office of Environmental Management in a timely manner of the potential compliance issue and will work with both FDOT and the relevant Federal agency to resolve the issue and, if necessary, take appropriate action to ensure compliance with this MOU.
- 8.1.5 At FDOT's request, FHWA may assist FDOT in evaluating its environmental program and developing or modifying any of its processes or procedures to carry out the responsibilities it has assumed under this MOU, including, but not limited to, emerging national policy issues, and those processes and procedures concerning FDOT's consultation, coordination, and communication with other Federal agencies.
- 8.1.6 FDOT's obligations and responsibilities under 23 C.F.R. § 1.5 are not altered in any way by executing this MOU.

8.2 MOU Monitoring and Oversight

- 8.2.1 Pursuant to 23 U.S.C. §327(h), the FHWA shall monitor FDOT's compliance with the MOU, including the provision by the State of financial resources to carry out the MOU. FHWA may also evaluate FDOT's FHWA will provide necessary and appropriate monitoring and oversight of FDOT's compliance with this MOU. FHWA's monitoring and oversight activities in years one (1) through four (4) of this MOU's term will primarily consist of an annual audit as provided at 23 U.S.C. § 327(g) and Part 11 of this MOU, and evaluating attainment of the performance measures listed in Part 10 of this MOU. After the fourth year of FDOT's participation in the Program, FHWA will monitor FDOT's compliance with the Program. The FHWA's monitoring and oversight may also include submitting requests for information to FDOT and other relevant Federal agencies, verifying FDOT's financial and personnel resources dedicated to carrying out the responsibilities assumed, and reviewing documents and other information FHWA's monitoring program will consist of monitoring reviews, which will be coordinated with FDOT and take into account FDOT's self-assessments and the FHWA Florida Division's annual risk assessments. FHWA shall provide its draft and final annual risk assessments to FDOT for review and comment on matters pertaining to FDOT's performance under this MOU.
- 8.2.2 In order to minimize the impact of the monitoring reviews on FDOT's day-to-day project delivery workload, the FHWA and FDOT will coordinate when scheduling joint monitoring reviews. Normally, the FHWA expects to complete two monitoring reviews during the term of the MOU, although the FHWA may conduct additional reviews, if deemed necessary due to substantial non-compliance with responsibilities assumed under this MOU. The first monitoring review will be conducted within two years of publication of -the last audit under the Initial MOU and the second monitoring review shall be within two years of the first monitoring review. FDOT and the FHWA Florida Division Office will each designate a point of contact, who will be responsible for coordinating monitoring review schedules, requests for information, and organizing meetings.
- 8.2.23 Pursuant to 23 U.S.C. § 327(c)(4), FDOT is responsible for providing FHWA any information FHWA reasonably considers necessary to ensure that FDOT is adequately carrying out the responsibilities assigned. When requesting information subject to 23 U.S.C. 327(c)(4), FHWA will provide the request to FDOT in writing, and the request will identify with reasonable specificity the information required. FHWA will also indicate in the request a deadline for the information to be provided. FDOT will, in good faith, work to ensure the information requested is provided by the deadline. FDOT's response to an information request under this paragraph will include, where appropriate, making relevant employees and consultants available at their work location (including in-person meeting, teleconference, videoconference or other electronic means as may be available).

- 8.2.34 FDOT shall make project files and general administrative files pertaining to the discharge of the responsibilities it has assumed under this MOU reasonably available for inspection by FHWA at the files' locations upon reasonable notice, which is not less than five (5) business days. These files shall include, but are not limited to, letters and comments received from governmental agencies, the public, and others with respect to FDOT's discharge of the responsibilities assumed under this MOU.
- 8.2.5 Upon the Effective Date of this MOU, FDOT will maintain a list of NEPA approvals and decisions (Type 1 CE, Type 2 CEs, EA, FONSI, DEIS, FEIS, FEIS/ROD, ROD) and Section 4(f) Determinations it makes under this MOU. FDOT will provide this list to FHWA Florida Division every six (6) months.
- 8.2.6 In carrying out the responsibilities assumed under this MOU, FDOT agrees to carry out regular quality control and quality assurance (QA/QC) reviews to ensure that the assumed responsibilities are being conducted in accordance with applicable law and this MOU. At a minimum, FDOT's QA/QC process will include the review and monitoring of its processes and performance relating to project decisions, completion of environmental analysis, project file documentation, checking for errors and omissions, and legal sufficiency reviews, and taking appropriate corrective action as needed. Within six (6) months of the effective date of this MOU, FDOT shall finalize a QA/QC process that satisfies the requirements in this subpart. FDOT agrees to consider recommendations FHWA may have made with respect to its QA/QC process.
- 8.2.57 FDOT shall perform annual self-assessments of its QA/QC process and performance to determine if its process is working as intended. If any process areas are identified as needing improvement, FDOT will take appropriate and timely corrective actions to address such areas. At least one (1) month prior to the date of a scheduled on-site-FHWA audit monitoring revivew, FDOT will transmit a summary of its self-assessment to the FHWA Florida Division Office. The summary will include a description of the scope of the self-assessment conducted and the areas reviewed, a description of the process followed in conducting the self-assessment, a list of the areas identified as needing improvement, any corrective actions that have been or will be implemented and a statement from the Director of FDOT's Office of Environmental Management concerning whether the processes are ensuring that the responsibilities FDOT has assumed under this MOU are being carried-out in accordance with this MOU and all applicable Federal laws and policies, and a summary of FDOT's progress toward attaining the performance measures listed in Part 10 of this MOU.
- 8.2.8 Monitoring review reports, shall include a description of the scope of the monitoring reviews, the compliance areas reviewed, a description of the monitoring process, and a list of areas identified as best practices and areas needing improvement, and identifying corrective actions.
- 8.2.9 Prior to public availability of monitoring review reports, the FHWA and FDOT will transmit a draft of the report and allow at least 14 calendar days to review and provide written comments. Any reasonable request to extend this response period up to a total of 30 calendar days, unless such other time is agreed upon, will be provided. The comments will be considered and the draft monitoring report revised, as appropriate.
- 8.2.10 FDOT agrees to post all monitoring reports on the FDOT Office of Environmental Management NEPA Assignment website in order to make them available to the public.

8.2.6 8.3 Records Retention

- 8.3.1 FDOT will retain project files and files pertaining to the discharge of its responsibilities under this MOU in accordance with FDOT Records Management Policy (Topic Number 050-020-025) and Retention and Disposal Schedule GS1-SL(167), which meets or exceeds requirements established in the FHWA Records Disposition Manual (Field Offices) Chapter 4, FHWA Order No. 1324.1 B, issued July 29, 2013.
- 8.3.2 In accordance with FDOT Records Management Policy (Topic Number 050-020-025) and Retention and Disposal Schedule GS1-SL(167), records will be retained for five (5) fiscal years after the completion of the project, reporting requirement or other applicable activity.

To the extent that FHWA's Records Disposition Manual is amended to provide for a longer retention period, FDOT will meet such requirement.

FDOT will permanently store records for Significant Transportation Projects as they are defined in FHWA Order No. 1324.1B.

- 8.3.3 In the case of a conflict between FHWA Records Disposition Manual, FHWA Order M1324.1B, FDOT Records Management Policy, and Retention and Disposal Schedule the more stringent retention requirements shall control.
- 8.3.4 Nothing contained in this MOU is intended to relieve FDOT of its recordkeeping responsibilities under 2 C.F.R. §§ 200.333-200.337 (Record Retention and Access) or other applicable laws.

8.4 Federal Register

8.4.1 For any documents that are required to be published in the *Federal Register*, such as the Notice of Intent under 23 C.F.R. § 771.123(a) and Notice of Final Agency Action under 23 U.S.C. § 139(I)(2), FDOT shall transmit such document to FHWA's Florida Division Office, with a request for publication in the *Federal Register* on behalf of FDOT. FHWA's Florida Division Office will submit such document to the *Federal Register* within five (5) calendar days of receipt of FDOT's request for publication in the *Federal Register*. If requested, FDOT shall reimburse FHWA for the expenses associated with publishing such documents in the *Federal Register* (excluding FHWA's overhead). To the extent that the operating procedures of the *Federal Register* allow, FDOT will be responsible for publication in the *Federal Register*.

8.5 Participation in Resource Agency Reports

- 8.5.1 FDOT agrees to provide data and information requested by the FHWA and resource agencies for the preparation of national reports to the extent that the information relates to determinations, findings, and proceedings associated with projects processed under this MOU. Such reports include but are not limited to:
 - A. Information on the time to complete all NEPA classes of action (EIS, EA, CE);
 - B. Archeology Reports requested by the National Park Service (NPS);
 - C. Endangered Species Act Expenditure Reports requested by the USFWS and NMFS;
 - D. Project status and information for EAs and EISs for use on the searchable website maintained under section 41003(b) of the FAST Act [Fixing America's Surface Transportation Act, 42 U.S.C. § 4370m-2(b); 23 U.S.C. § 139(o)] (Federal Permitting Dashboard)
 - E. NEPA Litigation Reports requested by CEQ; and
 - F. Environmental Conflict Resolution reports requested by the Office of Management and Budget and CEQ.

8.6 Conformity Determinations

8.6.1 Pursuant to 23 U.S.C. § 327(a)(2)(B)(iv)(II), for any project requiring a project-level conformity determination under the Clean Air Act and its implementing regulations, the FHWA's Florida Division Office will document the project level conformity determination within the timeframe identified in FDOT's project schedule. FHWA's Florida Division Office will restrict its review to only that data, analyses, applicable comments and responses, and other relevant documentation that enable FHWA to make the project-level conformity determination.

8.7 Certification of NEPA Compliance

8.7.1 For projects funded by FHWA, FDOT shall ensure that a certification is included with each request for funding specifying that FDOT has fully carried out all responsibilities assumed under this MOU in accordance with this MOU and all applicable Federal laws, regulations, Executive Orders, and policies. FDOT shall ensure that this certification is made prior to the execution of any future Federal-aid approval or action. FDOT agrees to provide FHWA access to NEPA approvals and certifications.

8.8 Enforcement

8.8.1 Should FHWA determine that FDOT is not in compliance with this MOU, then FHWA shall take appropriate action, including implementing appropriate remedies provided at 23 C.F.R. § 1.36 for violations of or failure to comply with Federal law or regulations at Title 23 C.F.R. with respect to a project, withdrawing assignment of any responsibilities that have been assumed as provided in Part 9 of this MOU, or terminating FDOT's participation in the Program as provided in Part 13 of this MOU.

PART 9. WITHDRAWAL OF ASSIGNED RESPONSIBILITIES

9.1 FHWA-Initiated Withdrawal of Assigned Projects

- 9.1.1 Subject to the process in subpart 9.1.2 FHWA may, at any time, withdraw the assignment of all or part of the USDOT Secretary's responsibilities that have been assumed by FDOT under this MOU for any highway project or highway projects upon FHWA's determination that:
 - With respect to such project, FDOT is not in compliance with a material term of this MOU or applicable Federal laws or policies, and FDOT has not taken corrective action to the satisfaction of the FHWA;
 - B. The highway project or highway projects involve significant or unique national policy interests for which FDOT's assumption of the USDOT Secretary's responsibilities would be inappropriate; or
 - C. FDOT cannot satisfactorily resolve an issue or concern raised in government-to-government consultation process, as provided in subpart 3.2.3.
- 9.1.2 Upon the FHWA's determination to withdraw assignment of the USDOT Secretary's responsibilities under subpart 9.1.1, FHWA will notify FDOT of FHWA's determination including the reasons for its determination. Upon receipt of this notice, FDOT may submit any comments that resolve the reasons for the determination or objections to the FHWA within thirty (30) calendar days, unless an extended period of time is agreed to by the FHWA. Upon receipt of FDOT's comments or objections, FHWA will make a final determination within thirty (30) calendar days, unless extended by FHWA for cause, and notify FDOT of its decision. In making its determination, FHWA will consider FDOT's comments or objections, the effect the withdrawal of assignment will have on the Program, the amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest.
- 9.1.3 The FHWA shall withdraw assignment of the responsibilities FDOT has assumed for any highway project when the preferred alternative that is identified in the CEs, EA, or FEIS is a highway project that is specifically excluded in subpart 3.3.2. In such case, subpart 9.1.2 of this MOU shall not apply.

9.2 FDOT-Initiated Withdrawal of Assignment of Projects

9.2.1 FDOT may, at any time, provide the FHWA with notice of its intent to withdraw all or part of its assumed responsibilities of the USDOT Secretary for an existing or future—a highway project or highway projects assumed under this MOU.

9.2.2 Upon FDOT's decision to request FHWA withdraw the assignment of the USDOT Secretary's responsibilities under subpart 9.2.1, FDOT shall informally notify FHWA of its desire for FHWA to withdraw assignment of its responsibilities. After informally notifying FHWA of its desire intent, FDOT will provide FHWA written notice of its desire intent, including the reasons for wanting FHWA to withdraw assignment of the responsibilities for a highway project. Upon receipt of this notice, the FHWA will have thirty (30) calendar days, unless extended by FDOT for cause, to determine whether it will withdraw assignment of the responsibilities requested. In making its determination, FHWA will consider the reasons FDOT desires wants FHWA to withdraw assignment of the responsibilities, the effect the withdrawal of assignment will have on the Program, amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest.

PART 10. PERFORMANCE MEASURES

10.1 General

- 10.1.1 Both FHWA and FDOT have determined it is desirable to mutually establish a set of performance measures to evaluate FDOT's administration of the responsibilities assumed under this MOU.
- 10.1.2 FDOT's attainment of the performance measures established in this Part of the MOU will be considered during the as part of FHWA's monitoring audits of FDOT's Program, which are is required by 23 U.S.C. § 327(gh).
- 10.1.3 FDOT shall collect and maintain necessary and appropriate data related to the performance measures. In collecting this data, FDOT shall monitor its progress toward meeting the performance measures and include its progress in the self-assessment summary described in subpart 8.2.5 of this MOU. The summary shall be made available to the FHWA as provided in subpart 8.2.5.

10.2 Performance Measures

- 10.2.1 The performance measures applicable to FDOT in carrying out the responsibilities it has assumed under this MOU are as follows:
 - A. Compliance with NEPA, FHWA NEPA regulations, and other Federal environmental statutes and regulations:
 - i. Maintain documentation regarding compliance with responsibilities assumed under this MOU

B. QA/QC for NEPA decisions:

- i. Maintain internal QA/QC measures and processes, including a record of:
 - a. Completion of legal sufficiency reviews by FDOT's Office of General Counsel (OGC)
 - b. Compliance with FDOT's environmental document content standards and procedures, including those related to QA/QC
- C. Relationships with agencies and the general public:
 - i. Maintain communication considering timelness and responsiveness among FDOT, Federal and State resource agencies, Indian Tribes, and the public.
 - ii. Provide opportunities for public involvement and comment
 - iii. Use NEPA issue resolution process, as appropriate.
- D. Increased efficiency and timeliness in completion of the NEPA process:

i. Compare time of completion of environmental document (e.g., NEPA documents and technical reports) approvals before and after assumption of responsibilities

PART 11. AUDITS

11.1 General

11.1.1 As required by 23 U.S.C. § 327(g), the FHWA will conduct four (4) annual audits of FDOT's discharge of the responsibilities it has assumed under this MOU (an annual audit during each of the first four (4) years after the Effective Date). During the first four (4) years, audits will be the primary mechanism used by FHWA to oversee FDOT's compliance with this MOU, ensure compliance with applicable Federal laws and policies, evaluate FDOT's progress toward achieving the performance measures identified in Part 10, and collect information needed for the USDOT Secretary's annual report to Congress.

Pursuant to 23 U.S.C. § 327(g)(1)(A), FHWA and FDOT will meet, not later than 180 days after the date of execution of this MOU, to review implementation of the MOU and discuss plans for the first annual audit.

Pursuant to 23 U.S.C. § 327(g)(3), each audit carried out under this MOU shall be carried out by an audit team, consisting of members designated by FHWA in consultation with the State. Such consultation shall include a reasonable opportunity for FDOT to review and provide comments on the proposed members of the audit team.

- 11.1.2 Pursuant to 23 U.S.C. § 327(c)(4), FDOT is responsible for providing FHWA any information the FHWA reasonably considers necessary to ensure that FDOT is adequately carrying out the responsibilities assigned. In accordance with Part 8.2.2, FDOT will make documents and records available for review by FHWA in conducting audits and shall provide FHWA with access to, or copies of, any such documents and records as may be requested by FHWA.
- 11.1.3 FDOT agrees to cooperate with FHWA in conducting audits, including providing access to all necessary information, making all employees available to answer questions (including consultants hired by FDOT for the purpose of carrying out the USDOT Secretary's responsibilities), and providing all requested information (including making employees available) to FHWA in a timely manner. FDOT will make employees available either in-person at their normal place of business or by telephone, at the discretion of FHWA.
- 11.1.4 FDOT and FHWA Florida Division Office will each designate an audit coordinator who will be responsible for coordinating audit schedules, requests for information, and arranging audit meetings. The FDOT audit coordinator will be responsible for arranging access to necessary information and making employees available to answer questions.
- 11.1.5 The FHWA audits will include, but not be limited to, consideration of FDOT's staffing, technical competency and organizational capacity, adequacy of the financial resources committed by FDOT to administer the responsibilities assumed, quality control and quality assurance process, attainment of performance measures, compliance with this MOU's requirements, and compliance with applicable Federal laws and policies in administering the responsibilities assumed.

11.2 Scheduling

11.2.1 As provided at 23 U.S.C. 327(g), FHWA will conduct an annual audit during each of the first four (4) years after the Effective Date. After the fourth year of FDOT's participation in the Program, FHWA will monitor FDOT's compliance with the MOU, including the provision by FDOT of financial resources to carry-out the MOU, but will not conduct additional audits under this Part. In the event the frequency of the audits is modified by amendments to 23 U.S.C. § 327(g), the frequency established by the statutory amendments will control and apply to this subpart.

- 11.2.2 For each annual audit, the designated audit coordinators for FHWA and FDOT will work to establish a general audit schedule within 180 days of the Effective Date or anniversary date of this MOU. The general audit schedule will include the dates that FHWA will conduct the audit. To the maximum extent practicable, the general audit schedule will identify all employees (including consultants) and documents and other records that FDOT will make available, as requested by FHWA in support of the audit. With respect to documents and other records, FHWA agrees to be as specific as possible, although a general description of the types of documents will be acceptable. The general schedule will include the time period for completing an annual audit from initiation to completion (including public comment and responses to those comments) which shall not exceed 180 calendar days, pursuant to 23 U.S.C. 327 (g)(1)(C).
- 11.2.3 FDOT's audit coordinator shall make reasonable efforts to ensure all identified employees (including consultants) are available to FHWA during the specified dates on the general audit schedule. FDOT will also ensure necessary documents and records are made reasonably available to FHWA as needed during the general audit schedule.
- 11.2.4 After the general audit schedule is established, the audit coordinators shall work to establish specific audit schedules at least two weeks prior to the scheduled audit. The specific audit schedule shall include the dates, times, and place for which FHWA will talk to FDOT's employees (including consultants) and review documents and records.

11.3 Other Federal Agency Involvement

11.3.1 The FHWA may invite other Federal or State agencies as deemed appropriate, include State Historic Preservation Officers (SHPOs), to assist FHWA in conducting an audit under this MOU by sitting in on interviews, reviewing documents obtained by FHWA, and making recommendations to FHWA. FHWA's audit coordinator will advise FDOT's audit coordinator of its intent to include other federal or state agencies and the proposed role of such agencies in the audit team. If FHWA invites another Federal or State agency to participate in the audit team, the agency will be placed on the general and specific audit schedules and the provisions of 23 U.S.C. § 327(g)(3)(B) shall apply.

11.4 Audit Report and Findings

- 11.4.1 Upon completing each audit, FHWA will transmit to FDOT a draft of the audit report and allow FDOT a period of fourteen (14) calendar days within which to submit written comments to FHWA. The FHWA will grant any reasonable request by FDOT to extend its deadline to respond in writing to a draft audit report not to exceed a total review period of thirty (30) days. FHWA will review the comments provided by FDOT and revise the draft audit report as may be appropriate. FDOT and FHWA may also meet and discuss the draft report and FDOT's comments. If FDOT anticipates an additional meeting will be beneficial, FDOT will notify the FHWA audit coordinator prior to providing its written comments so that such meeting may be timely scheduled. FHWA will then prepare the draft audit report for public comment.
- 11.4.2 As required by 23 U.S.C. § 327(g)(2), FHWA will make the draft audit report available for public comment. In carrying out this requirement, FHWA will, after receipt and incorporation of FDOT comments as provided in subpart 11.4.1, publish the audit report in the *Federal Register* and allow a comment period of thirty (30) calendar days. FHWA will then address and respond to the public comments by incorporating the comments and response into the final audit report. The final audit report will be published in the *Federal Register* not later than sixty (60) calendar days after the comment period closes.

PART 112. TRAINING

- 112.1 FDOT may request and subject to FHWA's resource availability, FHWA will provide training with respect to the responsibilities being assigned to FDOT under this MOU. Such training may be provided to FDOT by either FHWA or another Federal agency or other parties, as appropriate. FDOT may also conduct its own training for staff and consultants.
- 112.2 FDOT will continue to implement training necessary to meet its environmental obligations and provide training opportunities to FDOT staff and consultants. Within six (6) months of the Effective

Date of the MOU, FDOT will <u>update periodically review</u> its training program and <u>update as necessary</u>- to reflect the responsibilities assumed under the Program and this MOU. FDOT will be solely responsible for the development and implementation of its training program.

PART 1312. TERM, TERMINATION AND RENEWAL

1312.1 Term

123.1.1 This MOU has a term of five (5) years from the Effective Date.

1312.2 Termination by the FHWA

- 123.2.1 As provided by 23 U.S.C. § 327(j)(1), the FHWA may terminate FDOT's participation in the Program, in whole or in part, at any time subject to the procedural requirements in 23 U.S.C. § 327 and subpart 13.2.2 of this MOU. Termination may be based on FDOT's failure to adequately carry out its responsibilities including, but not limited to:
 - A. Persistent neglect of, or noncompliance with, federal laws, regulations, and policies;
 - B. Failure to address deficiencies identified during the audit or monitoring process;
 - C. Failure to secure or maintain adequate personnel and/or financial resources to carry out the responsibilities assumed;
 - D. Intentional non-compliance with this MOU; or
 - E. Persistent failure to adequately consult, coordinate, and/or take into account the concerns of other Operating Administrations, when applicable and appropriate federal, state, tribal, and local agencies with oversight, consulting, or coordination responsibilities under Federal environmental laws and regulations.
- 123.2.2 If the FHWA determines that FDOT is not adequately carrying out the responsibilities assigned, then prior to termination, the FHWA shall:
 - A. Provide FDOT written notification of its non-compliance determination detailing a description of each responsibility in need of corrective action regarding an inadequacy identified;
 - Provide FDOT a period of not less than 120 days to take such corrective action as the FHWA determines is necessary to comply with this MOU; and
- <u>12.2.3</u> If FDOT, after notification and the 120 day period, fails to take satisfactory corrective action, as determined by FHWA, FHWA shall provide notice to FDOT of its determination of termination. Any responsibilities identified to be terminated in the notice that have been assumed by FDOT under this MOU shall transfer to FHWA.

4312.3 Termination by Florida

- 123.3.1 The Florida Legislature and Governor may, at any time, terminate FDOT's authority granted to participate in this Program. In such event, FDOT will work with FHWA to jointly develop a plan to transition the responsibilities that FDOT has assumed back to FHWA so as to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected federal, state, and local agencies.
- 123.3.2 FDOT may terminate its participation in the Program, in whole or in part, at any time by providing the FHWA notice of its intent at least ninety (90) calendar days prior to the date that FDOT seeks to terminate. In that event, FHWA and FDOT shall develop a plan to transition the responsibilities

- that FDOT has assumed back to FHWA so as to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected federal, state, and local agencies.
- 123.3.3 Any termination of assignment agreed to under a transition plan shall not be subject to the procedures or limitations provided for in Part 9 of this MOU and shall be valid as agreed to in the transition plan.

123.4 Validity of FDOT Actions

123.4.1 Any environmental approvals made by FDOT pursuant to the responsibilities FDOT has assumed under this MOU shall remain valid after termination of FDOT's participation in the Program or withdrawal of assignment by FHWA. As among the USDOT Secretary, FHWA and FDOT, FDOT shall remain solely liable and solely responsible for any environmental approvals it makes pursuant to any of the responsibilities it has assumed while participating in the Program.

1<u>2</u>3.5 Renewal

- 123.5.1 This MOU is renewable in accordance with 23 U.S.C. § 327(c)(6) and 23 C.F.R. 773.115.
 - A. FDOT shall notify FHWA at least twelve (12) months before the expiration of this MOU of its intent to renew its participation in the Program.
 - B. Prior to requesting renewal, FDOT shall coordinate with FHWA to determine if significant changes have occurred or if new assignment responsibilities are being sought that would warrant a statewide notice and opportunity for public comment prior to FDOT's submittal of the renewal package.
 - C. FDOT's renewal package shall meet the requirements in 23 C.F.R. 771.115(c); and
 - D. FDOT shall submit the renewal package no later than 180 days prior to the expiration date of the MOU.

PART 4413. AMENDMENTS

1413.1 Generally

134.1.1 This MOU may be amended at any time upon mutual <u>written</u> agreement by both the FHWA and FDOT pursuant to 23 C.F.R. § 773.113(b).

4413.2 Additional Projects, Classes of Projects and Environmental Review Responsibilities

- 134.2.1 The FHWA may assign, and FDOT may assume, responsibility for additional projects, and additional environmental review responsibilities beyond those identified in Part 3 of this MOU, by executing an amendment to this MOU.
- 134.2.2 If FDOT decides to request amendment of this MOU to add or remove responsibility for projects or classes of projects, or environmental review responsibilities beyond those identified in Part 3 of this MOU, such request shall be treated as an amendment to FDOT's original application that was submitted to FHWA pursuant to 23 U.S.C. § 327(b) and 23 C.F.R. part 773. In developing the application supplement, FDOT shall identify the projects, classes of projects, and environmental review responsibilities it wishes to assume and make any appropriate adjustments to the information contained in FDOT's original application Renewal Package, including verification of personnel and financial resources.

IN WITNESS THEREOF, the parties hereto have caused this <u>First Renewal of the Memorandum of Ounderstanding Between the Federal Highway Administration and the Florida Department of Transportation Concerning the State of Florida's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. 327 to be duly executed in duplicate as of the date of the last signature written below.</u>

FEDERAL HIGHWAY ADMINISTRATION	
Ву:	Dated:
Gregory G. Nadeau Administrator	
Federal Highway Administration	
STATE OF FLORIDA	
Ву:	Dated:
Jim BoxoldKevin J. Thibault, P.E.	
Secretary Florida Department of Transportation	

APPENDIX E

Materials in Support of 23 CFR §773.115(f)

FHWA Audit and Monitoring Reports / Initial NEPA Assignment Application

FHWA Audit Reports & Florida's Initial Application

FHWA Audit Reports for the Florida NEPA Assignment Program are published in the *Federal Register* at the links below.

First Audit:

Surface Transportation Project Delivery Program; Florida DOT Audit #1 Report, FHWA Docket No. FHWA–2018–0004, August 27, 2018 https://www.govinfo.gov/content/pkg/FR-2018-08-27/pdf/2018-18476.pdf

Second Audit:

Surface Transportation Project Delivery Program; Florida DOT Audit #2 Report, FHWA Docket No. FHWA–2019–0012, November 29, 2019 https://www.govinfo.gov/content/pkg/FR-2019-11-29/pdf/2019-25976.pdf

Third Audit:

Surface Transportation Project Delivery Program; Florida DOT Audit #3 Report, FHWA Docket No. FHWA–2019–0040, June 17, 2020 https://www.govinfo.gov/content/pkg/FR-2020-06-17/pdf/2020-13005.pdf

Fourth Audit:

As of the date of FDOT's submission of its Renewal Package, the fourth and final FHWA Audit report has not been published in the Federal Register.

Monitoring reports by FHWA or FDOT were not required under this MOU and are not produced.

Florida's Initial NEPA Assignment Application:

The initial application is included as part of Appendix A; however, that version has been modified to describe changes since submittal in May 2016. A clean, signed copy of Florida's Initial Application for Assumption of Federal Highway Administration Responsibilities pursuant to the Surface Transportation Project Delivery Program 23 USC §327 can be found at: Final FDOT Application for Assumption of Federal Highway Administration Responsibilities May 2016