Welcome and Introductions
Housekeeping
• Breaks
• Bathroom
• Safety Message
• Sign-in Sheet
• The Learning Curve
• Question and Answer

Quizdom Remote
• Press Menu for 2 seconds to turn it on
• Press the correct letter to answer multiple choice questions
• Press T/F keys to answer Yes/No questions
• Press   to submit your answer
• Press Menu for 2 seconds to turn it off
What office are you from?

a. Environmental Management  
b. Design / Permits  
c. Consultant Management  
d. Planning  
e. Consultant  
f. Other

How familiar are you with NEPA Assignment?

a. Not at all  
b. Somewhat  
c. Very
Today’s Agenda

• Moving Forward with FDOT in the Driver’s Seat
• OEM NEPA Review Process for District Practitioners
• Legal Sufficiency Reviews and Certification
• Preparing the Administrative Record
• Future Training

Moving Forward with FDOT in the Driver’s Seat
Introductory Video
Why NEPA Assignment is Important

Benefits the State of Florida, FDOT and Citizens

- Moving forward with FDOT in the Driver’s Seat
  - FDOT assumes FHWA’s NEPA decision-making responsibilities
  - FDOT will make most environmental determinations
- Anticipated to accelerate project delivery schedules by 25%
- Reduces costs in several key areas
- Improves process efficiency
- Benefits extended to local governments through new efficiencies in the Local Agency Program (LAP)

Secretary’s Challenge

How do we make FDOT even better?

**BE INNOVATIVE**
- Public Private Partnerships (P3s) allows advancing major transportation projects
- Combining multiple projects can speed project delivery
- Leveraging the resources of the private sector

**BE EFFICIENT**
- More productivity with less funding
- FDOT had the highest number of Productivity Awards winners of any state agency
- Creating innovative solutions that increase productivity and save money

**BE EXCEPTIONAL**
- Live the dream of America
- Florida exceptionalism
- Against other states, Florida ranks near the top in nearly every measure of road transportation
Outline and Overview

• Overview of the National Environmental Policy Act
• What is NEPA Assignment?
• Benefits of NEPA Assignment
• Memorandum of Understanding between FDOT and Federal Highway Administration
• OEM District Support Role
• Summary

Overview of the National Environmental Policy Act (NEPA)
Major Components of NEPA

- Outlines national environmental policy and goals
- Establishes the **Council on Environmental Quality** in the Executive Office of the President
- Establishes provisions for federal agencies to enforce such policies and goals

What is a Federal Action?

- **Project meets one of the following conditions:**
  - Maintain federal funding eligibility
  - Federal funds
  - Federal permit
  - FHWA approval required (i.e., impacts to interstate right of way)
- **PD&E Manual Part 1, Chapter 2**
NEPA Framework

- NEPA defines a process
- Provides the framework to evaluate a project’s environmental impacts, and seek to avoid, minimize, or mitigate
- Tells the “project story”
- Quality analysis and decision-making provides a legally-defensible decision

NEPA – Classes of Action

Class I: Environmental Impact Statement (EIS)
- Projects anticipated to have significant impacts
- Draft EIS, Final EIS, Record of Decision
- Final EIS and ROD should be combined

Class II: Categorical Exclusions (CE)
- Projects without significant impacts, excluded from requirement to prepare EA or EIS
- Type 1: Fits within a low-impact threshold checklist of project types
- Type 2: Non-significant impacts that need further explanation

Class III: Environmental Assessment (EA)
- Projects where significance of impacts is unknown
- Results in either a Finding of No Significant Impact (FONSI) or EIS
Local Agency Program (LAP) Projects

- Local governments/agencies seek federal funds through FHWA’s Locally-Administered Federal-Aid Projects program
  - In Florida, we call it the Local Agency Program (LAP)
- LAP Projects must comply with NEPA
  - Will follow same procedures as District projects under NEPA Assignment
- Local governments/agencies develop projects
- FDOT is responsible for...
  - Administering Florida’s LAP
  - Project oversight
  - Disbursement of federal-aid funds

State Funded Projects and No Federal Action

- No federal actions needed
  - Some exceptions with federal permits
- Environmental Document
  - State Environmental Impact Report (SEIR)
  - Non-Major State Action (NMSA)
- Approved by FDOT Districts and Florida’s Turnpike Enterprise (FTE)
- PD&E Manual Part 1, Chapter 10
**Local or Privately Funded Projects (Non-Federal Actions)**

- **No federal actions**
  - Some exceptions with federal permits
- **Environmental Document**
  - Project Environmental Impact Report (PEIR)
  - **NOT** a state document
  - Only reviewed by FDOT for impacts to state facilities
  - Approved by local agencies
- **PD&E Manual Part 1, Chapter 10**

---

**Summary of Environmental Documentation**

<table>
<thead>
<tr>
<th>Federal Projects (NEPA) – Class of Action (COA)</th>
<th>State Funded Projects (Non-Federal Actions)</th>
<th>Local or Privately Funded Projects</th>
<th>LAP Projects (local projects with federal funding)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• EISs, CEs, EAs</td>
<td>• SEIR, NMSA</td>
<td>• PEIR</td>
<td>• Processed as Federal Projects</td>
</tr>
</tbody>
</table>


## How is Significance Determined?

### CONTEXT
- Society as a whole (human, national)
- Affected region
- Affected interests
- Locality
- Short Term & Long Term effects

### EVALUATE

<table>
<thead>
<tr>
<th>CONTEXT</th>
<th>EVALUATE</th>
<th>INTENSITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity of Impacts</td>
<td>Magnitude</td>
<td>Factors for Consideration</td>
</tr>
<tr>
<td>Duration</td>
<td>Frequency of Effect</td>
<td>Beneficial / Adverse Impacts</td>
</tr>
<tr>
<td>Magnitude</td>
<td>Duration</td>
<td>Affect on Public Health / Safety</td>
</tr>
<tr>
<td>Duration</td>
<td>Frequency of Effect</td>
<td>Unique Geographic Area &amp; Resources</td>
</tr>
<tr>
<td>Frequency of Effect</td>
<td></td>
<td>Controversy / Uncertainty / Risk</td>
</tr>
</tbody>
</table>

### INTENSITY
- Magnitude
- Duration
- Frequency of Effect

### Planning to inform NEPA

#### Efficient Transportation Decision Making (ETDM) process

- **Planning and Programming Screening Events**
  - Early agency involvement
  - Define Purpose and Need
  - Develop project scope
  - Determine Class of Action
  - Information available to the public
- **Alternative Corridor Evaluation (ACE) process**
  - Corridor review and elimination prior to PD&E
FDOT Documents satisfy NEPA requirements

Project Development & Environment (PD&E) Phase
• PD&E Manual describes FDOT’s compliance process during PD&E phase
• PD&E Manual - Part I
  ▪ Process and Documentation
• PD&E Manual - Part II
  ▪ Topics and Analysis

FDOT Documents satisfy NEPA requirements

• Purpose and Need is finalized
• Proposed actions are fully described
• Existing study area environment is fully evaluated
• Stakeholders are provided opportunities for input
• An appropriate range of alternatives is studied
• Impacts to the environment are identified, studied, and considered in decision-making
• Federal findings are documented
Endangered Species
A Video Break

https://www.youtube.com/watch?v=O0OMOPCaREE
Survey
What conditions are needed for a project to be considered a federal action?

a. Project uses partial state funding and partial federal funding
b. Project involves interstate right of way
c. Permit is required from the U.S. Army Corps of Engineers and the permit requires NEPA documentation
d. All of the above
What is NEPA Assignment?

Responsibilities Assigned

FDOT REPLACES FHWA AS THE LEAD AGENCY FOR HIGHWAY PROJECTS IN FLORIDA
(with certain exceptions)

Project-level responsibilities cited in 23 U.S.C. § 327 for highway projects
• Certain exceptions

Administer all assigned Federal Environmental
Laws and Executive Orders (as provided in
Appendix A of 23 C.F.R. Part 773)

FHWA and FDOT execute Memorandum of Understanding assigning
NEPA responsibilities to the State
• All NEPA Classes of Action:
  • Class I: Environmental Impact Statements (EIS)
  • Class II: Categorical Exclusions (CE)
  • Class III: Environmental Assessments (EA)
  • Administration of Local Agency Program (LAP) projects
Authorization for NEPA Assignment

- NEPA Assignment was first-authorized as a pilot program in the Surface Transportation Project Deliver Program under SAFETEA-LU
  - Authorized five states to apply for NEPA Assignment
  - NEPA Assignment under SAFETEA-LU: California, 2007

2012 MAP-21 legislation approved a permanent program that is open to any state: NEPA Assignment under Map-21: Texas, 2014

Fixing America’s Surface Transportation (FAST) Act

- FAST further opened the door for assignment of federal responsibility to the states by allowing all states to assume federal responsibility for project design, plans, specifications, estimates, contract awards, and inspection of projects
- NEPA Assignment under the FAST Act: Ohio, 2015

The Road to NEPA Assignment

- Passed Waiver of Sovereign Immunity in Florida Legislature; April 5, 2016
- FDOT submitted an application to the USDOT Secretary requesting NEPA Assignment; May 2016
- Finalizing a Memorandum of Understanding (MOU) with FHWA
  - MOU Public Notice in the Federal Register anticipated October 2016
  - MOU Effective Date anticipated December 2016
FHWA Responsibilities Not Assigned

FHWA retains specific authorities

- Section 4(f) Constructive Use
- Projects that cross state lines
- Specific projects listed in the MOU
- Project-level air quality conformity determinations
- Government to Government Tribal consultation
- USDOT responsibilities for statewide and metropolitan planning
- Oversight of FDOT Program and Stewardship

What NEPA Assignment is Not

Engineering and Operation

- Approval of Typical Section Package
- Design Exception
- Interchange Access Request (more on this later)

Note: Under the Stewardship and Oversight agreement, FDOT has certain engineering approval authorities, contracting decisions and self-certifications from FHWA. This is not a component of NEPA Assignment.
### Environmental Responsibilities: Before and After NEPA Assignment

<table>
<thead>
<tr>
<th>Environmental Review and Approval Responsibilities</th>
<th>Prior to NEPA Assignment</th>
<th>After NEPA Assignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determine Class of Action (CE, EA, or EIS)</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
<tr>
<td>Approve Purpose and Need</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
<tr>
<td>Approve/transmit technical reports to federal agencies</td>
<td>FDOT</td>
<td>FDOT</td>
</tr>
<tr>
<td>Prepare the NEPA document</td>
<td>FDOT</td>
<td>FDOT</td>
</tr>
<tr>
<td>Approve and file all NEPA documents</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
<tr>
<td>Reevaluations and other Supplemental Documentation</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
<tr>
<td>Direct consultation with other federal resource agencies</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
<tr>
<td>Government-to-government Tribal Consultation</td>
<td>FHWA</td>
<td>FHWA retains</td>
</tr>
<tr>
<td>Project Level Air Conformity</td>
<td>FHWA</td>
<td>FHWA retains</td>
</tr>
<tr>
<td>Projects that cross state lines</td>
<td>FHWA</td>
<td>FHWA retains</td>
</tr>
<tr>
<td>Defend the NEPA document in court</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
<tr>
<td>Decisions / Findings on Federal laws &amp; Executive Orders. Examples:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 7 of the Endangered Species Act</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
<tr>
<td>Section 106 of the Historic Preservation Act</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
<tr>
<td>Section 4(f) of USDOT Act (except constructive use)</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
<tr>
<td>Executive Order 12898, Environmental Justice</td>
<td>FHWA</td>
<td>FDOT</td>
</tr>
</tbody>
</table>

### Benefits of NEPA Assignment
NEPA Assignment Savings

- Removes one layer of governmental review – FHWA
- California, Texas and Ohio report a 25% to 30% overall time reduction
- FDOT anticipates similar time savings
- FDOT anticipates 25% cost savings in the PD&E phase

Project Development & Environment (PD&E) Studies

Eliminates duplicate layer of review:
- Purpose and Need
- Environmental Document
- Technical Studies
- Findings on laws and Executive Orders
- Legal Sufficiency Reviews
- Direct Consultation with Federal Regulatory Agencies
NEPA Assignment Saves Cost

A shorter PD&E Phase saves project costs and staff time

- Time = money
- Less potential for changes in environmental conditions or laws
- Fewer document revisions
- A shorter PD&E phase reduces the probability of environmental or regulatory changes which can alter your design
- Fewer design changes reduce the number of reevaluations

MOU between FDOT and Federal Highway Administration
The Memorandum of Understanding

- Written agreement whereby FDOT assumes responsibilities of the USDOT Secretary for federal environmental laws with respect to highway projects within the State of Florida
- The MOU identifies
  - Responsibilities assigned to FDOT
  - Responsibilities retained by FHWA
  - Legal liability
  - Training Plan
  - Audit process
- FDOT to provide FHWA with quarterly listings of project approvals

Memorandum of Understanding

FHWA will not have any NEPA project level involvement
- However, FHWA may provide assistance on programs and interpretations of policy and guidance
  - Staff should contact their OEM Project Delivery Coordinator to request FHWA assistance on programs and policy interpretation
  - Staff should **not** contact FHWA for NEPA project-level discussions
- Under FHWA Oversight projects, Districts should coordinate engineering decisions through their OEM Engineering Leads
  - Districts should follow existing procedures for engineering decisions
  - During PD&E or PD&E/Design overlap, if FHWA coordination or approval is required for engineering decisions, OEM Engineering Leads should be involved with all coordination efforts
Memorandum of Understanding

Identifies projects that are not being assigned to FDOT

FDOT assumes legal responsibility and legal liabilities for ensuring compliance with all environmental requirements

- FDOT is solely responsible and liable for its decisions and for ensuring compliance with all environmental requirements
- FDOT has a limited waiver of Sovereign Immunity
- FDOT attorneys will defend a lawsuit challenging the NEPA review

Agency coordination

- FDOT to evaluate existing interagency agreements and/or execute new agreements

Establishes FDOT Performance Measures

A. Compliance with NEPA, FHWA NEPA regulations and other federal environmental statutes and regulations
B. Quality Assurance / Quality Control for NEPA decisions
C. Relationships with agencies and the general public
D. Increased efficiency and timeliness in completion of the NEPA process

NEPA Assignment Program Audits

- Annual FHWA Audits during each of the first 4 years
- FDOT Self-Assessments annually, to precede FHWA audit
Memorandum of Understanding

FDOT Resource Commitments

• Maintain financial resources necessary to carry out responsibilities assumed
• Maintain adequate staff and consultant capability
• Provide appropriate training
• Maintain updated ETDM and PD&E Manuals and procedures

Inform the Reader

• Standard Statement

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

Implementation Schedule

• Publically noticed in the Federal Register anticipated October 2016
• Effective Date of the MOU (anticipated December, 2016)
• Within 6 months of the Effective Date
  ▪ Amend or execute new interagency agreements
  ▪ Update ETDM and PD&E Manual for NEPA Assignment
  ▪ Staff training
    ◆ FDOT in-person briefings and Computer-Based Training
FDOT Responsible for more than just NEPA

Wildlife
Endangered Species Act of 1973; Marine Mammal Protection Act; Anadromous Fish Conservation Act; Fish and Wildlife Coordination Act; Migratory Bird Treaty Act; Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, with Essential Fish Habitat requirements at 16 U.S.C. § 1855(b)(2)

Historic and Cultural Resources
National Historic Preservation Act of 1966, as amended; 23 U.S.C. § 433 and Section 4(f) of the Department of Transportation Act of 1966; Preservation of Historical and Archaeological Data; Archeological Resources Protection Act of 1980; Native American Graves Protection andRepatriation Act (NAGPRA)

Air Quality
Clean Air Act, with the exception of project level conformity determinations

Hazardous Material Management
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Superfund Amendments and Reauthorization Act (SARA); Resource Conservation and Recovery Act (RCRA)

Social and Economic Impacts
American Indian Religious Freedom Act; Farmland Protection Policy Act (FPPA)

Water Resources and Wetlands
Clean Water Act; Coastal Barrier Resources Act; Coastal Zone Management Act; Safe Drinking Water Act (SDWA); Rivers and Harbors Act of 1899; Wild and Scenic Rivers Act; Emergency Wetlands Resources Act; Wetlands Mitigation; Flood Disaster Protection Act; FHWA wetland and natural habitat mitigation regulations, 23 C.F.R. Part 777

Survey
The MOU between FDOT and FHWA for NEPA Assignment is a written agreement whereby FDOT assumes responsibilities of the USDOT Secretary for federal environmental laws with respect to multimodal projects with the State of Florida.

a. True
b. False

c. It depends
What responsibilities does FHWA retain under NEPA Assignment?

a. Approval of Section 4(f) constructive use  
b. Government-to-Government Tribal consultation  
c. Approval of projects that cross state lines  
d. All of the above  
e. Only a and b
OEM District Support Role

Operate with FDOT Values in Mind

One FDOT

Integrity

Customer Driven

Respect

Trust

Commitment
Tools to ensure our Success

Support Districts

- Provide project and program guidance
- Update procedures and manuals
- Develop and deliver training
- Develop tools for efficiency of our processes (NEPA Assignment, SWAT, SWEPT)

Project Review Teams

ENVIROMENTAL

- Katasha Cornwell
  Thu-Huong Clark
- Erika Thompson
- Sherreen Yee Fong
  Erika Thompson
- Thu-Huong Clark
  Katasha Cornwell
- Sherreen Yee Fong
  Erika Thompson
- Erika Thompson
  Sherreen Yee Fong

D1
- Martha Hodgson
- Jenna Bowman

D2
- Jenna Bowman

D3
- Jenna Bowman

D4
- Michael Sykes

D5
- TBD

D6
- TBD

D7
- TBD

FTE
- Martha Hodgson

NOTES:
* Primary Contact
** Permits & Additional District Support

ENGINEERING

- Administrator Support to all Districts
  - Marjorie Kirby
  - Victor Mushurusa
  - Xavier Pagan

- Office of General Counsel
  - Kathleen Toolan

FTE
- OEM Director
  - Ken Morefield

- Office of General Counsel
  - Kathleen Toolan
Follow up Webinar Training to Cover

1. Changes in the Efficient Transportation Decision Making (ETDM) Process
2. Self-Assessment and Audit Process
3. Data Management and Document Retention
4. Update on SWEPT

SWEPT Phased Implementation Schedule

- **September**
  - Project Dashboards & Type 1 CEs

- **November**
  - Type 2 CE, Scope of Service Tool, Basic Project Setup, & OEM Team Management Tools

- **December**
  - Project Document Management, Reviews, Approvals (EAs and EISs), Reevaluations, Environmental Certifications, Legal Sufficiency Review and Administrative Record

- **January**
  - Self-Assessment and Audit support
Summary

FDOT is positioned to Succeed

• Capable and experienced staff statewide
• Resources and tools
• Agency resolve to be innovative, efficient, and exceptional
NEPA Assignment: Moving Forward with FDOT in the Driver’s Seat

FDOT is positioned to Succeed

**Programmatic Agreements in place**
- Categorical Exclusions
- Section 4(f) and Section 6(f) of the Land and Water Conservation Fund Act

**Interagency Agreements in place**

**Lessons Learned from State Partners**
(California, Texas, Ohio)

NEPA Assignment is good for us

**Puts FDOT in the Driver’s Seat**, responsible for the fate of its own projects

- Federal decision-making authority within FDOT
- No reduction of environmental considerations
- Saving staff time & effort by eliminating a layer of review and approval
- Direct consultation between FDOT and federal regulatory agencies
- More timely delivery of transportation projects to Florida’s citizens
- Efficient use of FDOT staff and resources
- Realized cost savings can be applied to other FDOT projects
Questions

10 Minute Break!