

**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



April 15, 2016

**DRAFT APPLICATION**

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 under an Assignment Program authorized by the Surface Transportation Project Delivery Program, 23 U.S.C. §327.

Submitted by:

\_\_\_\_\_ Dated: \_\_\_\_\_

Jim Boxold  
State Secretary  
Florida Department of Transportation

For questions regarding this application, please contact: FDOT's State Environmental Management Office's Manager, Mr. Ken Morefield, PE at (850) 414-4316.

Additional information on the Assignment Program can be found at [FDOT's NEPA Assignment Program Overview website](#).

## 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 is being publicly noticed for a 30-day comment period. 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 will be included in [Appendix D](#) of the final application when it is submitted to FHWA. Appendix D will also include FDOT's responses to comments and any changes made to the application in response to public comments. FDOT is applying to assume all of 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 (NFWFMD), 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, [FDOT and FHWA entered into a Programmatic Agreement for Categorical Exclusions \(CE\) under 23 C.F.R. §771.117](#). 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 Florida-specific 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:

- [Designation of a Non-Federal Representative to Conduct Informal Consultation under Section 7 of the Endangered Species Act, dated February 28, 2003](#)
- [Designation of a Non-Federal Representative to Conduct Informal Consultation under Section 7 of the Endangered Species Act, dated March 3, 2003](#)

In April 2015, through the [Programmatic Agreement between the FHWA and FDOT regarding the review and approval of specific types of changes in interstate-system access](#), 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 [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](#), 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:

**§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.

### **§773.107(a): Coordination Meeting**

As required by §773.107(a), FDOT [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 pre-application 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.

### **§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 are 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 will be included in [Appendix D](#) of the final application when it is submitted to FHWA. Appendix D will also note responses to comments and any changes made to the application in response to public comments. Additional information regarding FDOT's outreach efforts can be found in [§773.109 \(a\)\(8\): Comments Received on the Assignment Program](#).

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

Per §773.107(c)(d), [Appendix C](#) 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

## **§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 [Appendix A](#) 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:

1. 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 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.

### **§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.

### **§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.

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 State Environmental Management Office (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.

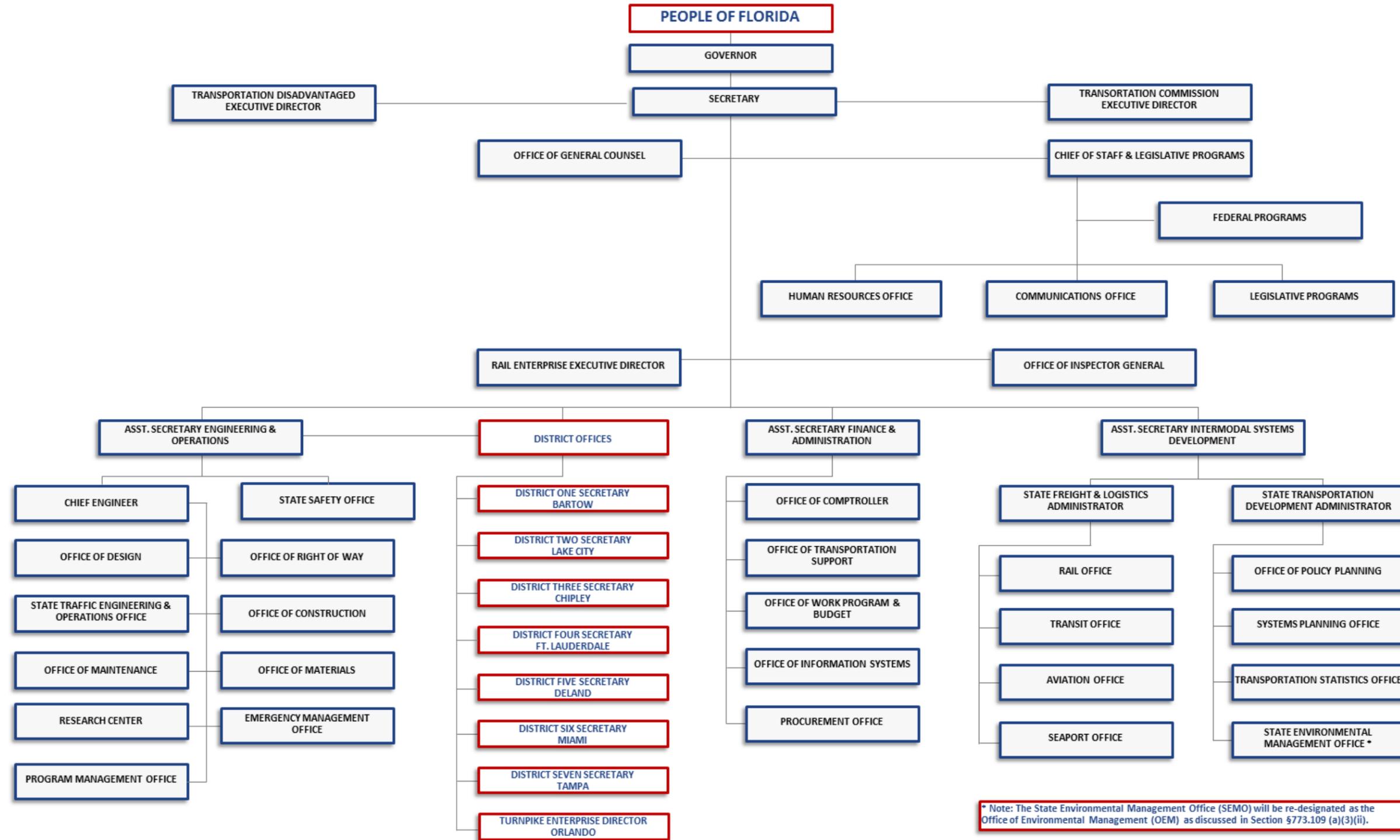
SEMO is responsible for developing and implementing FDOT's statewide environmental program. In this capacity, SEMO develops and ensures the implementation of environmental policies, procedures and practices in the development of transportation improvements through each of FDOT's core processes: plan, 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.

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.

## **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



\* Note: The State Environmental Management Office (SEMO) will be re-designated as the Office of Environmental Management (OEM) as discussed in Section §773.109 (a)(3)(ii).

Figure 1 FDOT Organizational Chart

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.

## Existing State Environmental Management Office (Tallahassee)

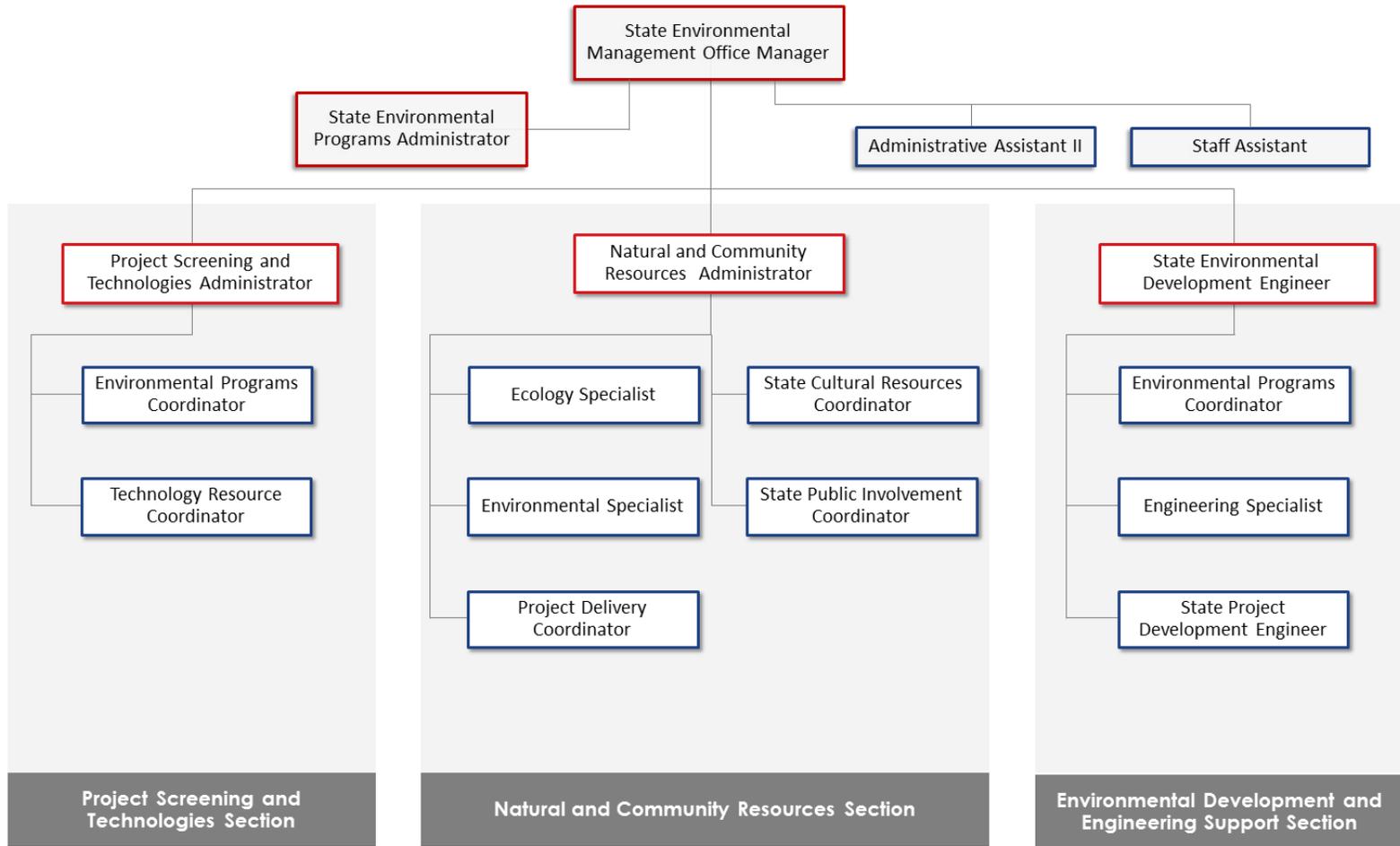


Figure 2 Existing State Environmental Management Office Organizational Chart

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.

## 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

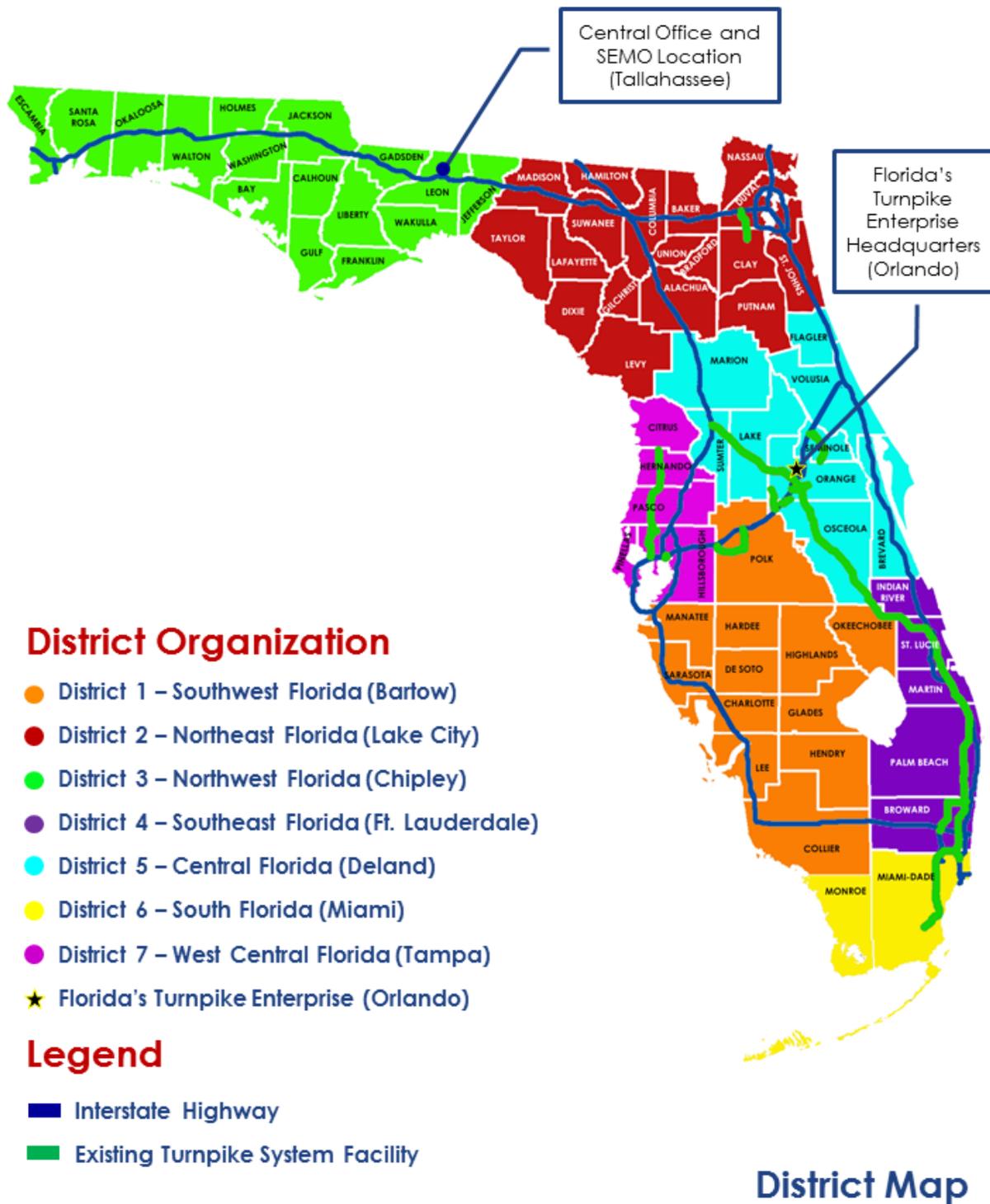


Figure 3 FDOT District Boundaries Map

## 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 / District Environmental Staff | State Environmental Management Office | 12                    | 7                                      | 6                             | 8                           | 9                        |
|                                      | District 1                            | 10                    | 3                                      | 5                             | 3                           | 2                        |
|                                      | District 2                            | 11                    | 7                                      | 8                             | 5                           | 6                        |
|                                      | District 3                            | 16                    | 8                                      | 8                             | 6                           | 11                       |
|                                      | District 4                            | 12                    | 10                                     | 6                             | 11                          | 8                        |
|                                      | District 5                            | 11                    | 8                                      | 8                             | 7                           | 6                        |
|                                      | District 6                            | 20                    | 14                                     | 15                            | 8                           | 9                        |
|                                      | District 7                            | 10                    | 9                                      | 4                             | 7                           | 7                        |
|                                      | Florida's Turnpike Enterprise         | 8                     | 3                                      | 7                             | 4                           | 4                        |
|                                      | <b>TOTALS</b>                         | <b>110</b>            | <b>69</b>                              | <b>67</b>                     | <b>59</b>                   | <b>62</b>                |

**Table 1 Staff by Location, Responsible for Environmental Compliance and Documentation<sup>1</sup>**

<sup>1</sup> Total number of staff identified per location, some staff experienced in multiple areas

**Table 2 FDOT Range of Technical Expertise, by Location**

| TECHNICAL EXPERTISE                               | 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            | ✓                                     |            | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          |                               |
| Historic Preservation                             | ✓                                     |            | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          |                               |
| Section 4(f)                                      | ✓                                     | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          |                               |
| Noise   | ✓                                     | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓                             |
| Air Quality                                       | ✓                                     | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓                             |
| HazMat / Contamination                            | ✓                                     | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓                             |
| Storm Water / Water Quality                       | ✓                                     | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓                             |
| Wetlands /Section 404 Compliance                  | ✓                                     | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓                             |
| Floodplains / Hydraulics                          | ✓                                     | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓                             |
| Environmental Justice / Social & Economic Impacts | ✓                                     | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓                             |
| Indirect & Cumulative Impacts                     | ✓                                     | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓          | ✓                             |
| 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., CE, EAs and EISs) as well as additional environmental technical services.

### 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](#).

## 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.

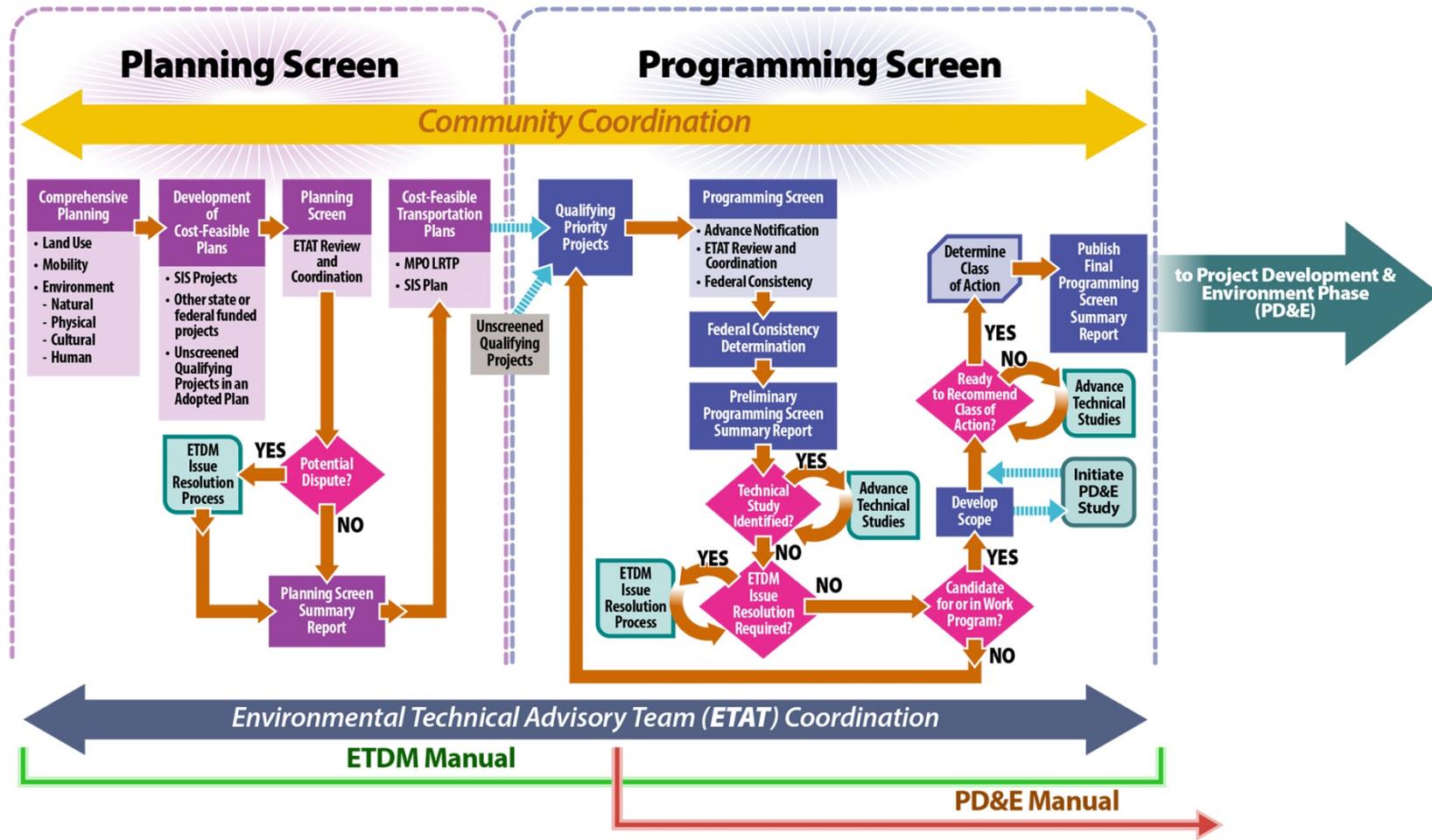


Figure 4 Efficient Transportation Decision Making (ETDM) Process

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.

## 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

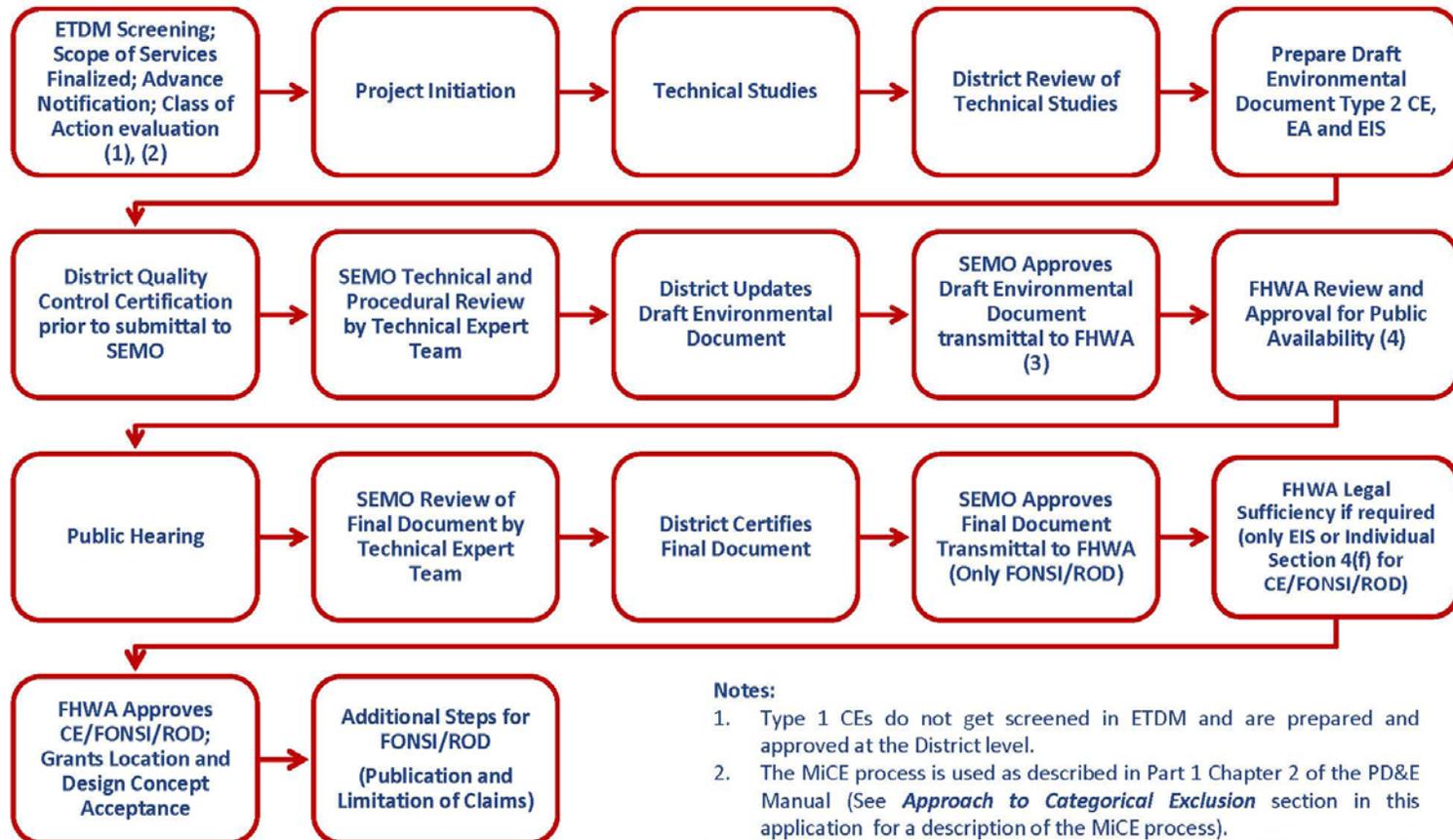


Figure 5 Existing NEPA Compliance Process

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.

## **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.

## Approach to Categorical Exclusion Documentation Preparation

In October 2015, [FDOT and FHWA entered into a Programmatic Agreement for Categorical Exclusions under 23 C.F.R. §771.117](#). 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

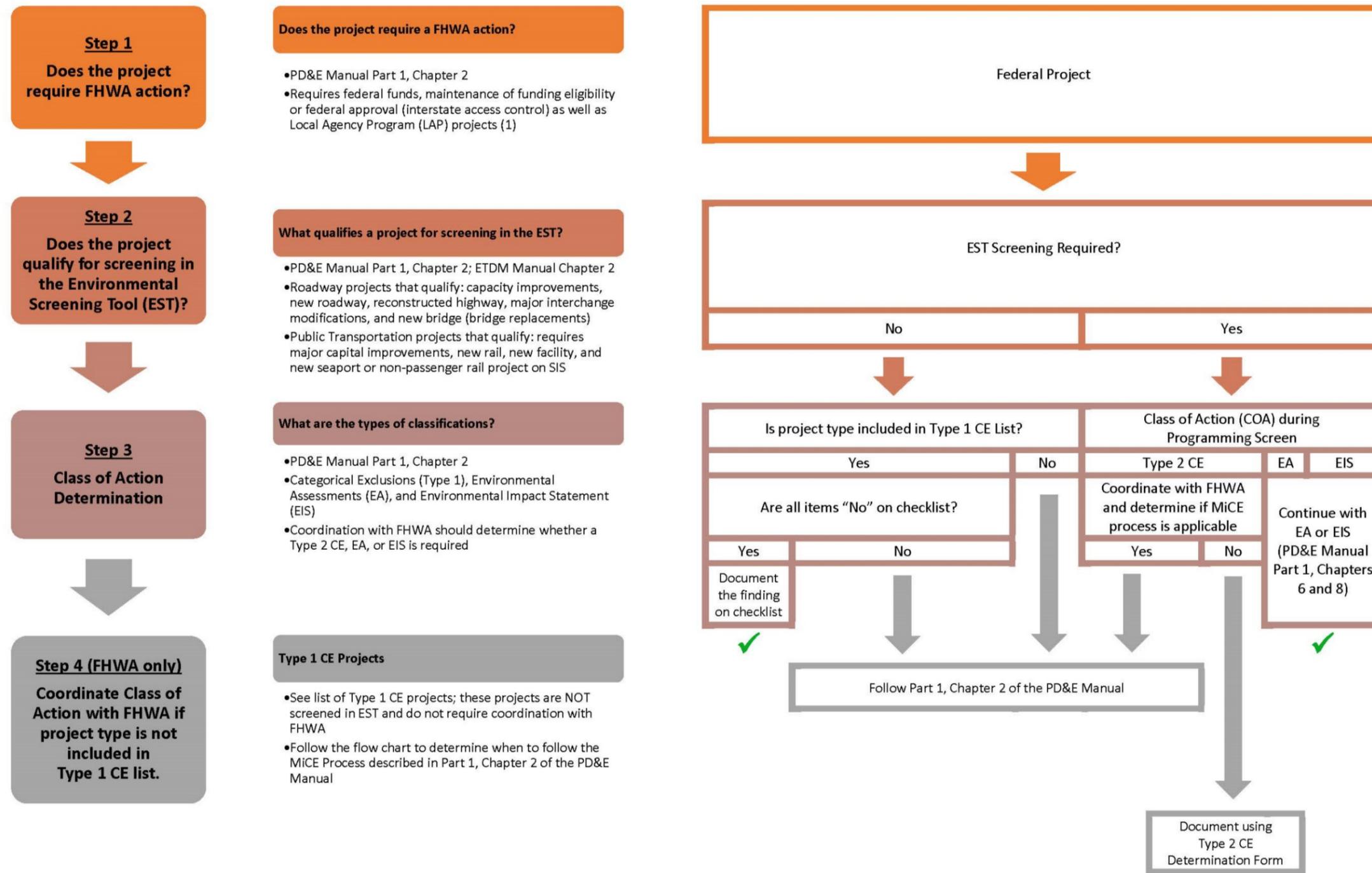
be summarized on the checklist and is placed in the project file. In certain cases, when it is not clear whether the project is a Type 1 CE or Type 2 CE, the Minor Categorical Exclusion (MiCE) Process can be used. The MiCE process was developed by FDOT to assist Districts in making and validating CE 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 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**.

## 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.



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.

**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 inter-agency 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 federal-aid 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.

## 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 Assurance and 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.

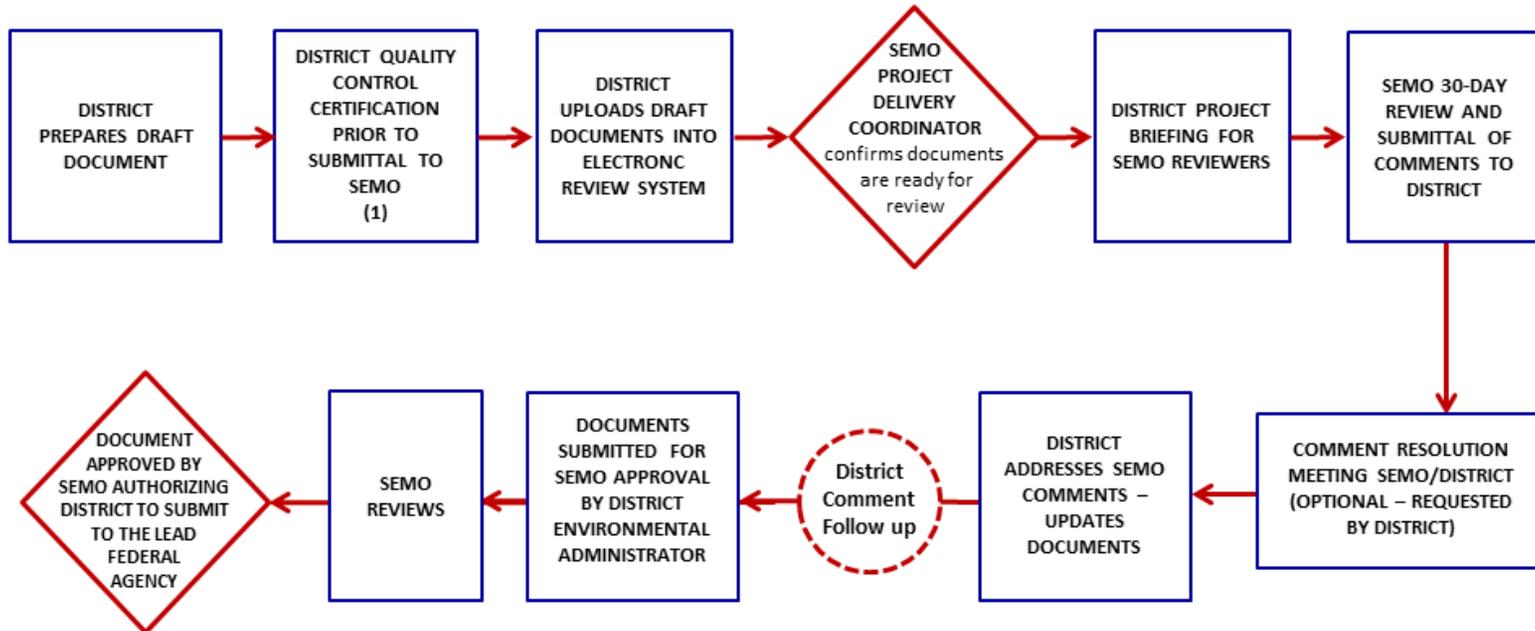
## Environmental Commitments

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 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.

# Existing SEMO NEPA Review Process



**Notes:**

1. This process applies to EAs and EISs. Type 2 CEs are reviewed only if requested by Districts.

**Figure 7 Existing SEMO NEPA Review Process**

## 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 [ETDM Manual](#) 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 [Design Standards](#) 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 [Plans Preparation Manual \(PPM\)](#) 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.

The [Interchange Access Request User's Guide](#) 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 Systems Planning Office (SPO).

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.

The [Construction Project Administration Manual \(CPAM\)](#) 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.

## 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 [Environmental Guidebook](#) 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 [Environmental Review Toolkit](#) 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 [Programmatic Agreement for Categorical Exclusions \(CE\) under 23 C.F.R. §771.117](#). 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.

In April 2015, through the [Programmatic Agreement between the FHWA and FDOT regarding the review and approval of specific types of changes in interstate-system access](#), 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.

**Table 3 Current ETDM Agency Operating Agreements**

| <b>Agency Name</b>   | <b>Agreement(s)</b>                             | <b>Dates</b>   |
|--|---|--|
| FHWA   | Agency Operating Agreement                      | Pending<br>2/12 /03 – 8/11/09                                    |
| Florida Department of State,<br>State Historic Preservation<br>Office (SHPO) | Funding Agreement                               | 12/1/12 – 11/30/17   |
| Florida Department of<br>Environmental Protection<br>(FDEP)                  | Agency Operating Agreement                      | 1/1/07 – 12/31/11<br>Actively participating<br>without Agreement |
| Florida Department of<br>Economic Opportunity (FDEO)                         | Agency Operating Agreement<br>Funding Agreement | 11/27/12 – Indefinite<br>4/30/15 – 4/14/20                       |
| Florida Department of<br>Agriculture and Consumer<br>Services (FDACS)        | Master Agreement                                | 3/27/12 – Indefinite   |
| Florida Fish and Wildlife<br>Conservation Commission<br>(FFWCC)              | Agency Operating Agreement<br>Funding Agreement | 11/1/11 – Indefinite<br>1/1/12 – 12/31/16                        |
| National Marine Fisheries<br>Service (NMFS)                                  | Agency Operating Agreement<br>Funding Agreement | 7/25/11 – 7/24/16<br>7/25/11 – 7/24/16                           |
| National Park Service (NPS)  | Agency Operating Agreement                      | 8/11/05-Indefinite   |
| Natural Resources<br>Conservation Service (NRCS)                             | Agency Operating Agreement                      | 1/15/03 - Indefinite   |
| Northwest Florida Water<br>Management District<br>(NFWMD)                    | Agency Operating Agreement<br>Funding Agreement | 7/1/09 – 7/5/16<br>7/1/09 – 7/5/16                               |
| Southwest Florida Water<br>Management District<br>(SWFWMD)                   | Agency Operating and Funding<br>Agreement       | 6/1/15 – 5/31/20   |
| South Florida Water<br>Management District (SFWMD)                           | Funding Agreement                               | 5/15/07 – 5/14/16  |
| Suwannee River Water<br>Management District<br>(SRWMD)                       | Funding Agreement                               | 10/1/06 – 9/30/16  |
| U.S. Army Corps of Engineers<br>(USACE)                                      | Agency Operating and Funding<br>Agreement       | 6/30/15 – 6/30/20  |
| U.S. Fish and Wildlife Service<br>(USFWS)                                    | Agency Operating and Funding<br>Agreement       | 5/1/15 – 4/30/20   |
| U.S. Environmental Protection<br>Agency (USEPA)                              | Agency Operating and Funding<br>Agreement       | 1/23/15 – 1/22/20  |
| U.S. Forest Service (USFS)   | Funding Agreement                               | 5/24/04 – 8/7/16   |
| 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.

**Table 4 SEMO Core Process Review**

| SEMO Core Processes                           | Year 1<br>2008/09 | Year 2<br>2009/10 | Year 3<br>2010/11 | Year 4<br>2011/12 | Year 5<br>2012/13 | Year 6<br>2013/14 | Year 7<br>2014/15 | Year 8<br>2015/16 | Year 9<br>2016/17 | Year 10<br>2017/18 |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
| 1.0 ETDM Screening Process                    | X                 |                   |                   |                   |                   |                   |                   |                   |                   |                    |
| 2.0 Project Development & Environment Studies |                   | X                 |                   |                   |                   |                   |                   |                   |                   |                    |
| 2.1 Noise Analysis                            |                   |                   | X                 |                   |                   |                   |                   |                   |                   |                    |
| 2.2 Wildlife and Habitat Considerations       |                   |                   |                   | X                 |                   |                   |                   |                   |                   |                    |
| 2.3 Archaeological and Historical Resources   |                   |                   |                   |                   | X                 |                   |                   |                   |                   |                    |
| 2.4 Sociocultural Effects Evaluation          |                   |                   |                   |                   | X                 |                   |                   |                   |                   |                    |
| 2.5 Contamination                             |                   |                   |                   |                   |                   | X                 |                   |                   |                   |                    |
| 2.6 Environmental Permitting                  |                   |                   |                   |                   |                   |                   | X                 |                   |                   |                    |
| 2.7 Public Involvement                        |                   |                   |                   |                   |                   |                   |                   | X                 |                   |                    |
| 2.8 Section 4(f)                              |                   |                   |                   |                   |                   |                   |                   |                   | X                 |                    |
| 2.9 Type 1 and Type 2 CEs                     |                   |                   |                   |                   |                   |                   |                   |                   | X                 |                    |

Green = Complete

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.

### **§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.

## 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.

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 \(a\)\(4\)\(i\)](#) and [Section 773.109 \(a\)\(4\)\(ii\)](#) 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.

## 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**).

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).

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).

# Proposed NEPA Compliance Process

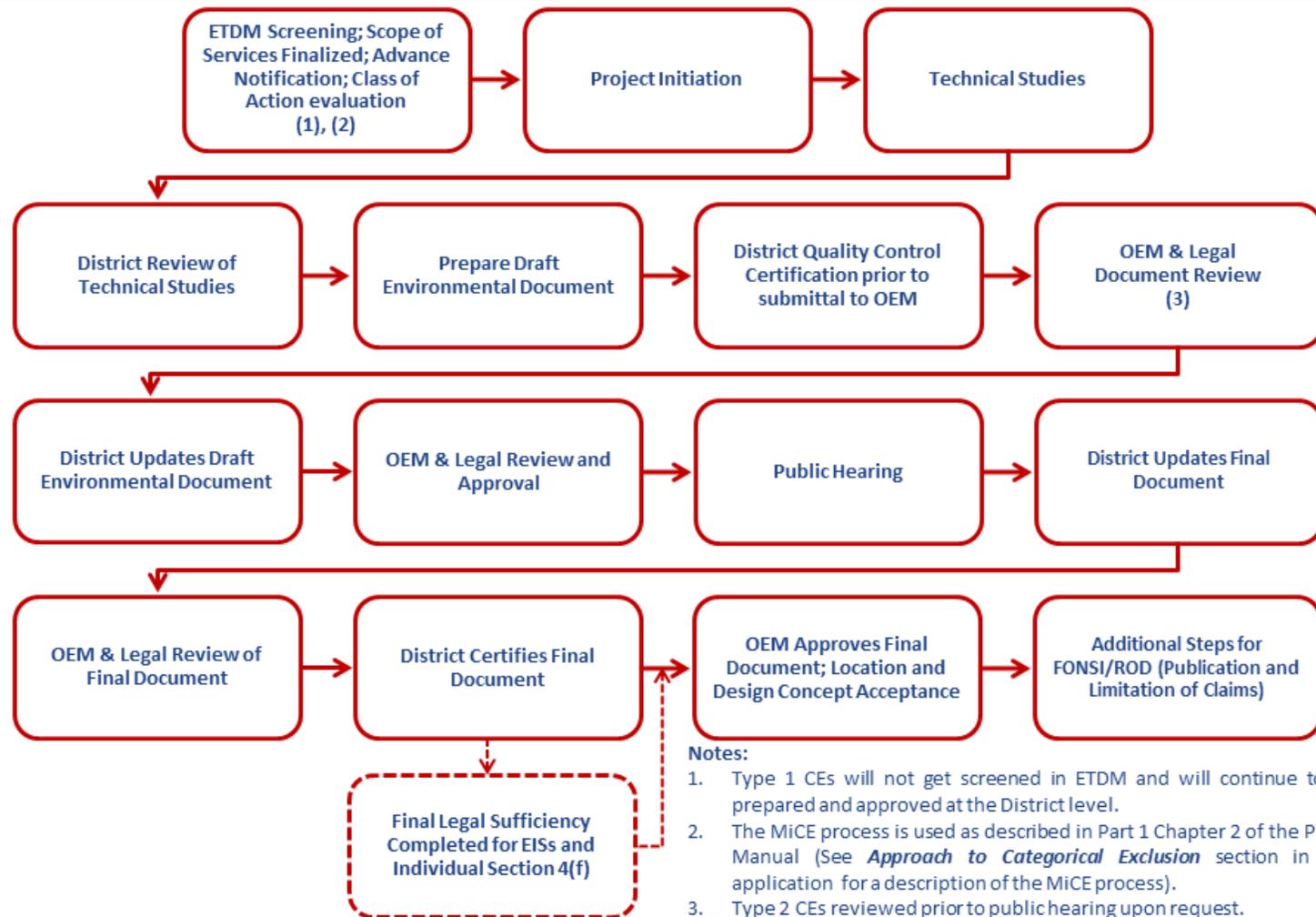


Figure 8 Proposed NEPA Environmental Compliance Process

## 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.

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.

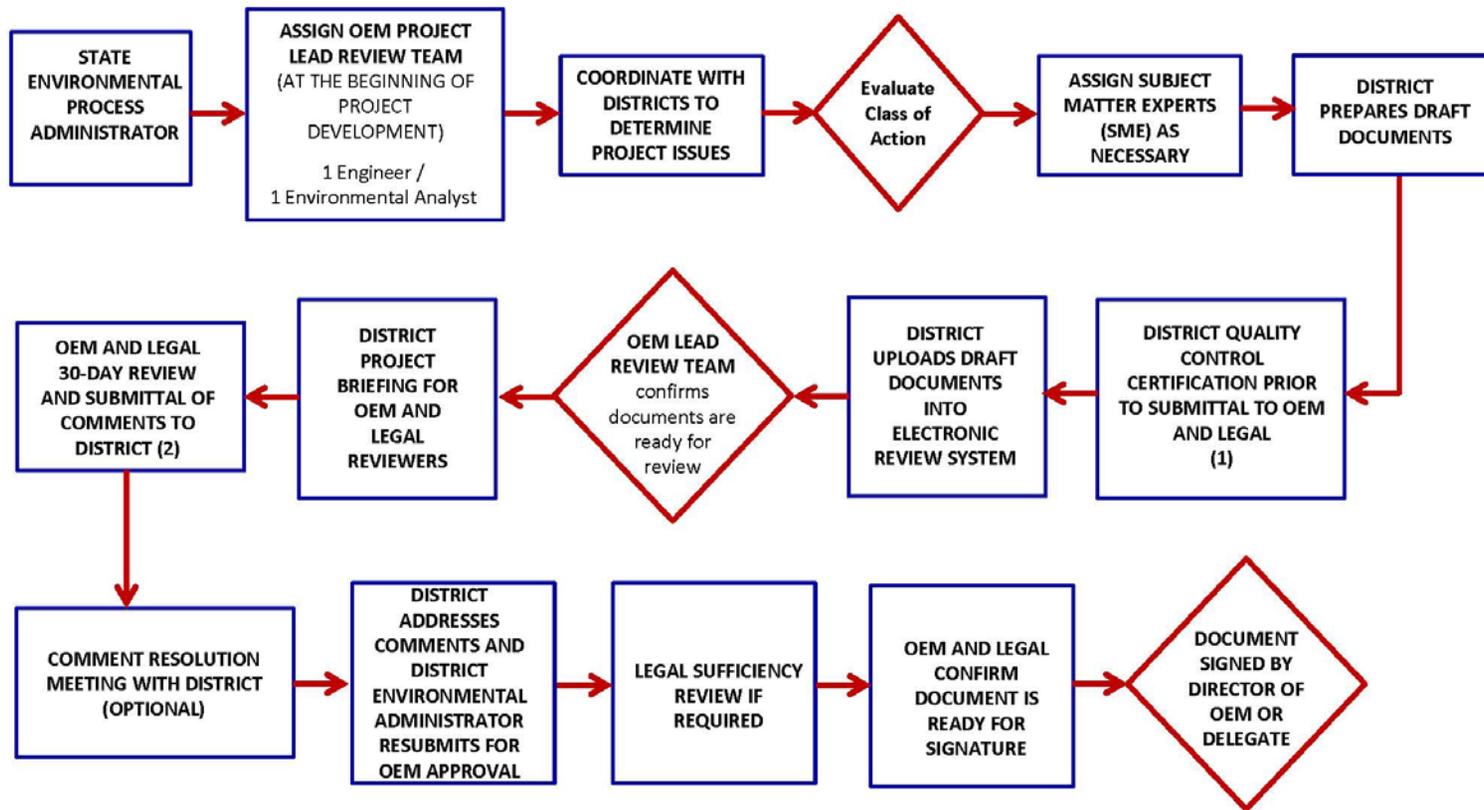
FEISs, FEIS/RODs and Individual Section 4(f) evaluations will undergo legal sufficiency review. Legal sufficiency review will be performed by FDOT's OGC within a chain of command that reports to the administration separately from the Districts and OEM. The Director of OEM will sign Type 2 CEs, EAs, FONSI, 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.

## 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.

# Proposed OEM NEPA Review Process



**Notes:**

1. This process applies to Type 2 CEs (after public hearing), EAs and EISs.
2. Legal Review of Type 2 CEs as appropriate.

**Figure 9 Proposed OEM NEPA Review Process**

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.

## **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.

In March 2016, through the [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](#), 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 (USDO I) 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.

## **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.

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 AOs 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 [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.

- 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 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 [ETDM Agency Operating Agreements](#) 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 AOs.

## 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.

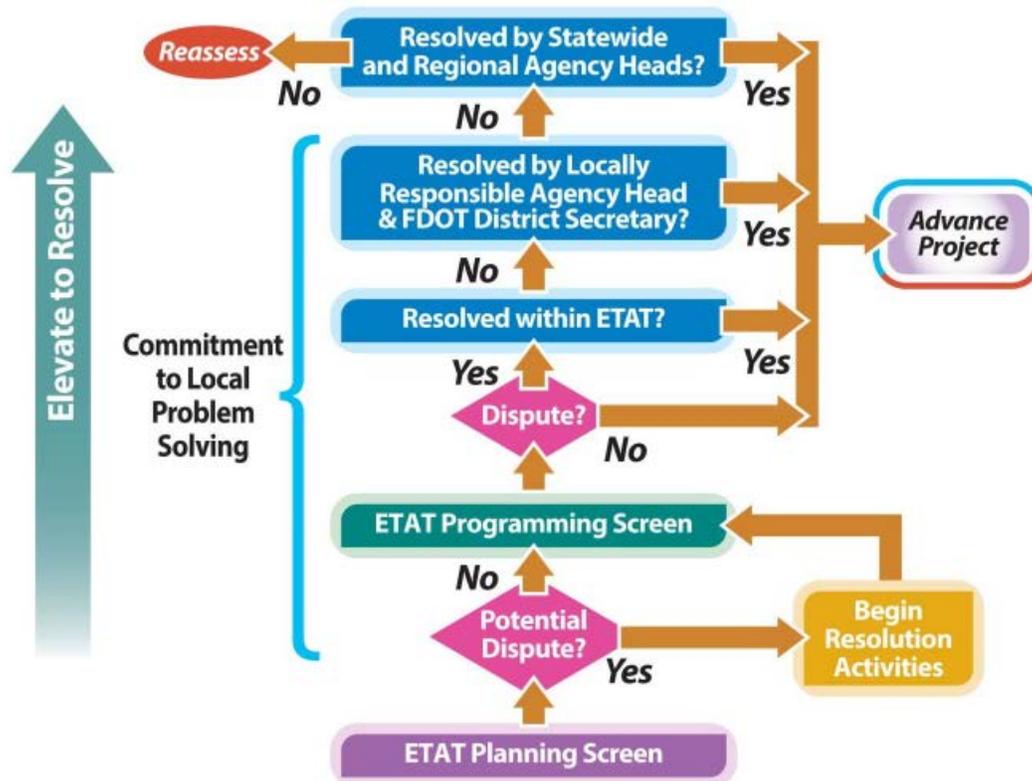


Figure 10 Issue Resolution Process

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 AOA's 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.

## 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 [Information Technology Resource User's Manual, Procedure, Topic Number 325-000-002](#) (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.

## 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.

## **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 all applicable federal statutes and regulations for which responsibility is assumed
- QC and QA for NEPA decisions:
  - 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
  - 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

## **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.

### **§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

### **§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.

### **§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 [Design-Build Procurement and Administration Procedure, Topic Number 625-020-010](#) states the requirement of obtaining NEPA approval before the managing District issues the notice to commence construction.

### **§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.

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.

Under the NEPA Assignment Program, SEMO will be re-designated as OEM (See [Section §773.109 \(a\)\(3\)\(ii\): Changes to be Made for Assumption of Responsibilities](#)). 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 FONSI, 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.

## **§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 [Section 773.109 \(a\)\(4\)\(i\) Staff Dedicated to Additional Functions](#) of this application.

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

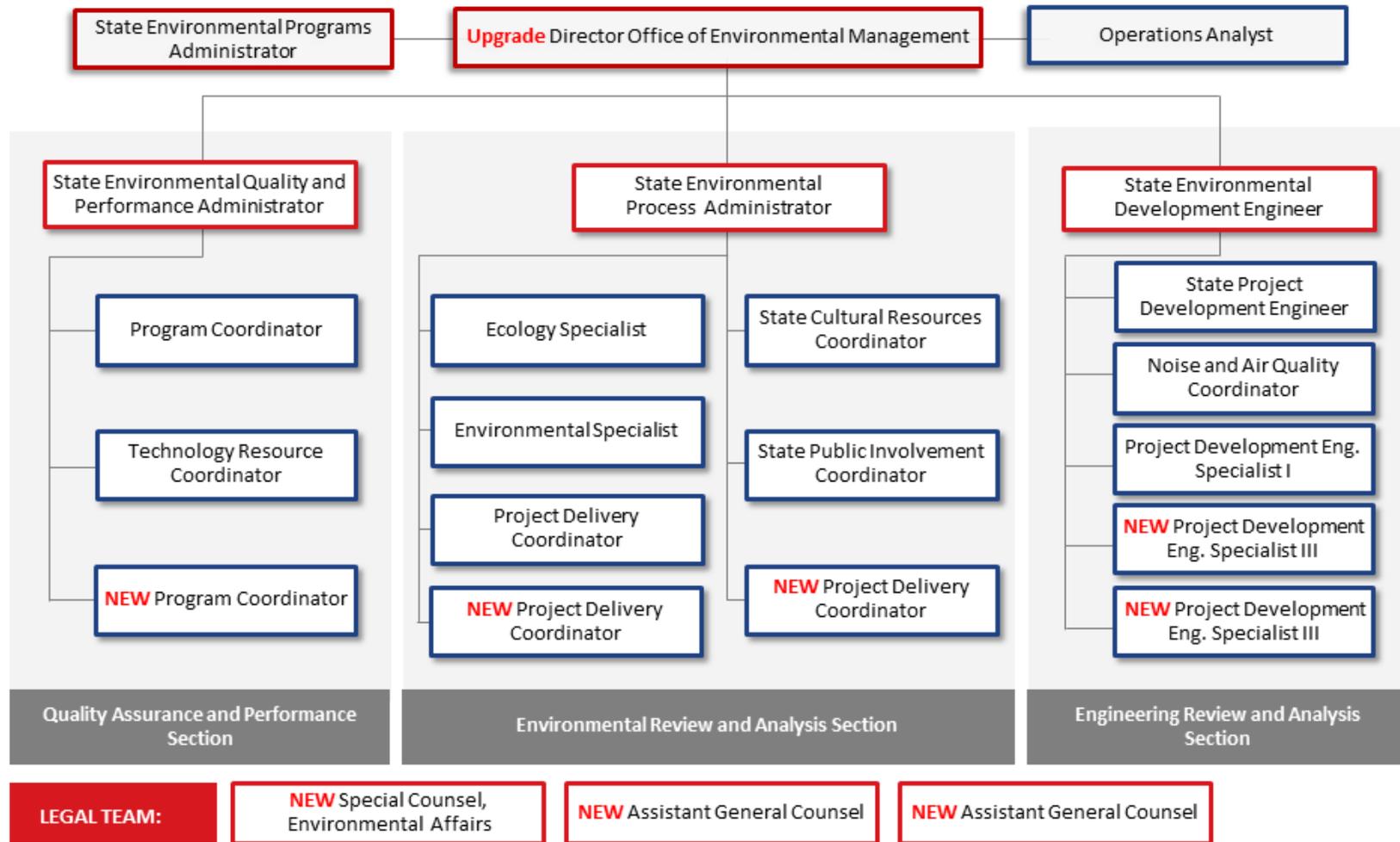
FDOT will continue to contract with consultants to support the NEPA Assignment Program. The Districts are responsible for the review of consultant-prepared reports following FDOT's requirements for document review and approval and OEM will be responsible for the review of these documents. Following completion 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.

# Proposed Office of Environmental Management (OEM)

Located In Tallahassee



**Figure 11 Proposed Office of Environmental Management**

### **§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 [Section 773.109 \(a\)\(4\)\(i\)](#) 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.

### **§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's Public Records Act is Comparable to the Federal Freedom of Information Act**

The certification is included in [Appendix C](#).

## **§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's 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 are 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 will be included in [Appendix D](#) of the final application when it is submitted to FHWA. Appendix D will also note responses to comments and any changes made to the application in response to public comments.

*Additional information will be provided after the public notice period has ended.*

### **§773.109 (a)(9): Point of Contact**

Ken Morefield, P.E.  
Manager, State Environmental Management Office  
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](#).

## 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.

## Appendix B

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

FDOT is requesting to assume all of 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.*

#### Noise

- 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 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.<sup>1</sup>
- 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. 470aa–470mm

- Title 54, Chapter 3125 – Preservation of Historical and Archaeological Data, 54 U.S.C. 312501-312508.
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013<sup>1</sup>; 18 U.S.C. 1170

### **Social and Economic Impacts**

- American Indian Religious Freedom Act, 42 U.S.C. 1996<sup>1</sup>
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

### **Water Resources and Wetlands**

- Clean Water Act, 33 U.S.C. 1251–1387
  - Section 404, 33 U.S.C. 1344
  - Section 401, 33 U.S.C. 1341
  - Section 319, 33 U.S.C. 1329
- 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. 401–406
- 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

### **Parklands**

- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303 and implementing rules at 23 C.F.R. 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, 135 and 139.
- 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.

### **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.

## **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**



STATE OF FLORIDA

PAM BONDI  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
Opinions Division

PL 01 The Capitol  
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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 21<sup>st</sup> 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.<sup>1</sup> 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.<sup>2</sup> 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."<sup>3</sup> 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."<sup>4</sup> Further, it is the responsibility of the Department of Legal Affairs to provide "all legal services required by any department" of state

<sup>1</sup> See 79 FR 55381, Sept. 16, 2014.

<sup>2</sup> See 23 CFR s. 773.109(a)(6)-(7).

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

<sup>4</sup> Section 16.01(3), Fla. Stat.

Mr. Gregory G. Nadeau  
Page Two

government.<sup>5</sup> 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

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<sup>5</sup> Section 16.015, Fla. Stat.

## **Appendix D**

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