

NEPA Assignment

Frequently Asked Questions

The answers to these questions are accurate based on OEM's understanding as of December 14, 2016 but are subject to change as the process of NEPA Assignment continues. Should further clarification be needed, contact your Project Delivery Coordinator.

I. DISTRICT COORDINATION WITH OEM AND OGC

- 1. Will Project Delivery Coordinators schedule regular face to face visits at their assigned Districts?**
 - a. Project Delivery Coordinators will schedule face to face visits as needed. Regular monthly teleconferences are anticipated and encouraged.
- 2. Will Kick-off Meetings be required for Type 1 Categorical Exclusion (CE) or Non Major State Action (NMSA) projects?**
 - a. Type 1 CE and NMSA projects are under the purview of the District. OEM should be consulted for those projects that undergo the Minor Categorical Exclusion (MiCE) process and result in a recommendation for a Type 2 CE Class of Action.
- 3. Who should the District contact when they need support from the Office of General Counsel (OGC)?**
 - a. Project Delivery Coordinators will be the main point of contact for Districts and will involve OGC as needed throughout the process. Contact your Project Delivery Coordinator if you need OGC support on a specific issue.
- 4. Will the Office of General Counsel (OGC) assist in responding to stakeholder inquiries?**
 - a. Yes, please contact your Project Delivery Coordinator to request assistance.
- 5. What will be OEM's role in the scope of services development?**
 - a. OEM will not be involved in the development of the scope of services. This process will remain unchanged. There is a new scope of services tool which will be available under the StateWide Environmental Project Tracker (SWEPT). OEM will have access to the scope via SWEPT to become familiar with the project.

II. **STATEWIDE ENVIRONMENTAL PROJECT TRACKER (SWEPT)**

1. **Once the MOU is executed, will current projects convert to the new system (SWEPT) or only new projects going forward?**

- a. Both current and future projects will use the new system (SWEPT). For current projects, work through your PDCs to discuss project status and specifics. We will work together to map out the best path to convert appropriate current projects (and documents). New projects should start out in SWEPT. Training on SWEPT can be found here:

<http://www.fdot.gov/environment/NEPAAssignment.shtm> and
<http://www.fdot.gov/environment/sched/train1.shtm>

2. **What training is available?**

- a. OEM provides SWEPT training through webinars and videos. The video library is available in SWEPT (located in the Help menu) and on the OEM web site at: <http://www.fdot.gov/environment/sched/train1.shtm>. Webinars are announced to applicable SWEPT users. Recordings of the webinars are available on the web sites.

3. **Is the Administrative Record (AR) maintained in SWEPT?**

- a. The agency compiles the AR once litigation has been initiated. The AR documents the agency's decision-making process and the basis for the agency's decision. It is easier to compile the AR if the process is started at the beginning of the project. SWEPT will be used to maintain the project file as well as the AR. Training on this topic is posted at the following location:

<http://www.fdot.gov/environment/NEPAAssignment.shtm>

4. **Is anything needed from consultants for the Project File or Administrative Record?**

- a. The FDOT Project Manager will be responsible for maintaining the Project File and Administrative Record, which occurs within SWEPT. The Project Manager should indicate in the project's scope of services if the consultant will assist in uploading documents in the SWEPT.

5. **Who has access to SWEPT?**

- a. OEM & District Environmental Leadership and staff, including Environmental Administrators, Environmental Managers, PD&E Managers, PD&E Project Managers, Project Delivery Coordinators, Environmental Specialists, Engineering Specialists, Subject Matter Experts, Office of General Counsel Attorneys, and consultants.

6. How do I get access to SWEPT?

- a. SWEPT is a secure system. Access is provided to staff and consultants that have a role in the delivery of NEPA and PD&E services to the Department. District Environmental Leadership (Environmental Administrators, Environmental Managers, and PD&E Managers) authorize access to SWEPT.

7. How do projects show up on the SWEPT project dashboards?

- a. SWEPT imports the work program super file nightly. When the Environmental PSM codes are used on the project ([here for more details](#)) and an FM# is associated with a Type 2 CE Start (706), EA Start (707), NOI-EIS Start (708), or SEIR Start (709), the project is uploaded to the appropriate SWEPT project dashboard.

8. How often is information imported from the Work Program, PSM, and the Environmental Screening Tool?

- a. Information from the Work Program and PSM are imported into SWEPT nightly. Information from the Environmental Screening Tool is imported when the project is created in SWEPT.

9. Are documents uploaded into SWEPT accessible in other applications?

- a. Yes, documents uploaded into SWEPT are stored in the Department's official electronic document management system (EDMS). Applications capable of retrieving documents from the EDMS will have access to the documents stored by SWEPT.

III. EFFICIENT TRANSPORTATION DECISION MAKING (ETDM) PROCESS

1. How will OEM let the District know that the proposed Purpose and Need is acceptable?

- a. OEM will review the Project Description, Purpose and Need and Preliminary Environmental Discussion during a 14 day Pre-Screening review (prior to release for ETAT review). During the pre-screening review, the PDC will review and if needed provide comments. Once the comments are resolved, OEM approves the project to begin the screening event. OEM's official approval of the purpose and need is captured in ETDM during the project screening event once the screening is released to the ETAT. If the AN is distributed separately, OEM will review the AN prior to release to ETAT.

2. Which approvals or concurrences are by OEM during the ETDM process?

- a. OEM PDCs will approve or provide concurrence on the following items during the ETDM Screenings:
 - i. Purpose and Need

- ii. Alternative Corridor Evaluation (ACE) Methodology Memorandums (MM) and ACE Reports (ACER)
- iii. Cooperating and Participating Agencies
- iv. Elimination of Alternatives
- v. Class of Action
- vi. Adoption of Planning Products for inclusion in PD&E

IV. ENVIRONMENTAL DOCUMENT REVIEW PROCESS

1. Which state funded projects will OEM review?

- a. OEM will not review state funded projects unless requested by a District to provide technical support.

2. Under the Section 106 process, will OEM sign the transmittal to the Florida Department of State that is currently signed by the Federal Highway Administration?

- a. 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. The 106 Programmatic Agreement (PA) will be amended to reflect this shift in responsibility. The District will continue to be responsible for activities stipulated in the 106 PA including submittal and coordination of the surveys.
- b. 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, OEM will request FHWA's participation. When a tribe has shown interest or requested a survey, the District must submit sufficient copies to OEM for distribution to the tribes.

3. What is the process for state funded re-evaluations?

- a. OEM will not review state funded re-evaluations unless requested by a District to provide technical support.

4. What will be the process for federal re-evaluations?

- a. The process will be similar to the current process with OEM approval when required. When a district is ready to begin a re-evaluation, they should contact their Project Delivery Coordinator to discuss if the re-evaluation will require approval from OEM (OEM signs re-evaluation) or whether the District can proceed with a consultative re-evaluation (District signs after consulting with OEM). As a reminder, re-evaluations should provide an update on the commitment status.

5. Who will be OEM's point of contact for re-evaluations sent to OEM?

- a. Project Delivery Coordinator assigned to each District

6. Will OEM be involved in Design Build Alternative Technical Concept (ATC) Meetings?

- a. Districts should invite their OEM Engineering Lead to ATC meetings to keep them informed. Attendance will be determined on a case by case basis by the Engineering Lead. Since design changes have the potential to require re-evaluations, it is important to keep OEM involved throughout the Alternative Project Delivery process.

7. Who is responsible for completing the Environmental Document Submittal form and ensuring documents have been reviewed and are ready for submittal?

- a. The Environmental Manager and Project Development Manager should review documents for accuracy and completeness. Both sign the form certifying that the documents are complete and ready for review.

8. Will all projects require a Legal Sufficiency Review and Administrative Record (AR)?

- a. Legal Sufficiency Reviews are only required for Environmental Impact Statements (FEIS, FEIS/RODs) and Individual Section 4(f) evaluations. However, a legal review can be completed at any time throughout the process. Reasons to conduct legal reviews include: preempt risk, review the draft document prior to it being released for public availability, identify potential problems at key decision points, ensure compliance early, avoid schedule delays and expedite comment review. Legal reviews will be completed on Environmental Assessments, Environmental Impact Statements and on some Type 2 Categorical Exclusions as determined on a case by case basis.

The AR is prepared when a decision is challenged. However, it is easier to compile the AR if the process is started at the beginning of the project. The StateWide Environmental Project Tracker (SWEPT) will be used to maintain the project file as well as the AR for all projects. Once a decision is challenged, the AR will be prepared using information stored in SWEPT throughout the study process. Additional information on project file storage and preparation of the AR is forthcoming.

9. Is there a standard set of criteria to ensure consistent documents statewide?

- a. Districts should follow the PD&E Manual. OEM will develop standard outlines for technical reports to provide statewide consistency.

10. Which supporting environmental reports require OEM review before submittal of the Environmental Document?

- a. Environmental technical reports which must be submitted to an external agency for coordination or consultation must be submitted to OEM for

concurrent review as follows: Natural Resources Evaluation (NRE), and if controversial or of concern the Cultural Resources Assessment Study (CRAS). The District must submit these reports into the ERC for review. The District must assign their PDC and Lead engineer for the review of these reports. Subject Matter Experts will be determined and added in the ERC by the primary PDC, secondary PDC, or Lead Engineer. An Environmental Document Submittal Form will NOT be necessary as the OEM review team will review the reports concurrently with the District. The OEM team will adhere to the same review period as District reviewers and provide comments (if any) back to the District using the ERC.

OEM is also available to review other technical reports upon request. Please coordinate reviews with your Project Delivery Coordinator.

11. Which supporting engineering reports require OEM review prior to submittal of the Environmental Document?

- a. Engineering reports that must be submitted to OEM for review after the District completes QC reviews are the Preliminary Engineering Report (PER) and Project Traffic Analysis Report (PTAR). The OEM review team will need 30 days to review and comment using ERC. The District can continue to prepare the Environmental Document while OEM reviews these reports. Other reports can be reviewed by the OEM upon request or where there are issues of particular concern for the project. The District must complete and submit the Environmental Document Submittal Form in the ERC and assign their primary PDC, secondary PDC, and Lead engineer for the review. Subject Matter Experts will be determined and added in the ERC by the primary PDC, secondary PDC, or Lead Engineer.

12. Who should be assigned as lead reviewers for the Environmental Document in the Electronic Review Comment (ERC) system?

- a. Primary and secondary Project Delivery Coordinators, Engineering Lead, Xavier Pagan, Marjorie Kirby and Victor Muchuruza. The primary Project Delivery Coordinator and Engineering Lead will assign all other reviewers.

13. Who should be assigned as lead reviewers for engineering and environmental technical reports in the Electronic Review Comment (ERC) system?

- a. Primary and secondary Project Delivery Coordinators and Engineering Lead.

V. LOCAL AGENCY PROGRAM

1. Which Local Agency Program (LAP) projects will OEM review?

- a. OEM will review the following LAP projects: Type 2 Categorical Exclusions, Environmental Assessment and Environmental Impact Statements following the same Environmental Document Review process applied to District led federal projects.

2. Can local governments lose their LAP certification for poor performance?

- a. Yes, this has always been the case. Refer to the LAP Manual and coordinate with the LAP Office if a concern arises. The only difference under the NEPA Assignment Program is that FDOT is legally liable for environmental decisions made which will include decisions made under LAP projects.

VI. FEDERAL HIGHWAY ADMINISTRATION (FHWA) INVOLVEMENT

1. When will existing agreements be amended to reflect the new process under NEPA Assignment?

- a. Within six months of the execution of the NEPA Assignment Program Memorandum of Understanding (MOU), the EDTM Agency Operating and Funding Agreements will be amended to reflect FDOT assuming lead agency responsibilities. The Programmatic Agreement (PA) for Section 106 will be amended to reflect FDOT assuming FHWA's role. The PA for Interchange Access Request is not affected by NEPA Assignment.

On the effective date of the NEPA Assignment program, the Programmatic Agreement for Categorical Exclusions is suspended as FDOT assumes authority for CE approvals.

2. Can FHWA select projects for oversight? How do they make selection decisions? Projects of Division Interest (PoDIs)? Projects of Corporate Interest (PoCIs)?

- a. **Summary Response:** FDOT will be solely responsible for the environmental review of projects assigned as described in the MOU (with exceptions as noted in detailed response below). Under the Stewardship and Oversight agreement, FDOT has certain approval authorities, contracting decisions, and self-certifications from FHWA. This is not a component of NEPA Assignment. The existing process used for approvals of Interchange Access Requests (as described in the Programmatic Agreement), typical section packages, design exceptions and other engineering reports will be followed. Guidance on how FHWA makes oversight decisions for engineering components is described in the Stewardship and Oversight Agreement (Procedure 700-000-005). Once the NEPA Assignment MOU is executed, environmental decisions will be handled in accordance with the provisions of the MOU.

Additional information on PoDIs and PoCIs can be found on <https://www.fhwa.dot.gov/federalaid/stewardship/> and on <https://www.fhwa.dot.gov/federalaid/stewardship/150504podi.pdf>

Detailed Response: Under the NEPA Assignment Program, FDOT will assume the U.S. Secretary of Transportation's and FHWA's responsibilities for environmental review, interagency coordination and other regulatory compliance-related actions pertaining to the review or approval of highway and roadway projects in Florida as described in the Memorandum of Understanding (MOU).

The MOU lists the projects that will be excluded from the program. In general, these include:

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

Assignment does not include the environmental review associated with the development and approval of the Draft EIS, FEIS, and ROD for the following projects:

- I-4 Beyond the Ultimate (BTU) which consists of the three following project segments: Segment 2 FM # 242484-7 SR 400 (I-4) west of SR 528 (Beachline) to west of SR 435 Kirkman Rd; Segment 3 FM # 242592-4 SR 400 (I-4) 1 mile east of SR 434 to east of SR 15/600/US 17/92 Seminole/Volusia C/L; Segment 4 FM # 408464-2 SR 400 (I-4) east of SR 15/600/US 17/92 to ½ mile east of SR 472; and I-4 Ultimate Segment FM # 242703-1 SR 400 (I-4) west of SR 435 (Kirkman Rd) to east of SR 434.
- Tampa Interstate Study (TIS) which consists of the three following project sections: Section 4 FM # 412531-1 (Note Sections 4 and 5 have same Design FM #) I-275/SR 60 and Northwest/Veterans; Section 5 FM # 412531-1 (Note Sections 4 and 5 have same Design FM #) I-275 Lois to Hillsborough River; and Section 6 FM # 433821-1 I-275/I-4 Downtown Interchange.

Additionally, FHWA has retained the following responsibilities related to federal environmental reviews: Section 4f constructive use; project-level air

quality conformity determination; government to government tribal consultation and USDOT responsibilities for statewide and metropolitan planning.

3. Does the NEPA Assignment Program include Interchange Access Request (IJR/IMR)?

- a. Interchange Access Requests are an engineering and operational determination and therefore are not part of the NEPA Assignment Program. FHWA will continue to be involved in the IJR/IMR process as stated in the Programmatic Agreement for Interchange Access Request. The District should continue to work with their Interchange Coordinators and Central Office Systems Planning office. The District Interchange Coordinator must include OEM Engineering Leads in interchange coordination meetings.

4. If a project is funded with FHWA funds (using FHWA flex funding for transit project without using FTA fund), would this project fall under the NEPA Assignment Program?

- a. Yes this project would be considered an “assigned” project under the Program.

5. If a project is funded with FTA funds or if FTA is the lead agency, would this project fall under the NEPA Assignment Program?

- a. No, this project is not considered “assigned”

6. What if FHWA calls the Districts?

- a. In accordance with the MOU, FHWA is not allowed to contact the Districts or get involved in any NEPA project related matter. FHWA may provide FDOT (specifically OEM) assistance on programs and interpretations of policy and guidance. However, Districts should contact their Project Delivery Coordinator to request FHWA assistance. If the Districts receive a call from FHWA on a project related matter, please refer the call to OEM and let your PDC know.

For projects where FHWA is involved in engineering approvals, Districts should include OEM Engineering Leads in all coordination with FHWA. FHWA can comment on the engineering aspect of the project but not on the environmental project decision.

7. Will trail projects fall under the NEPA Assignment Program?

- a. Trail projects are FHWA funded and therefore are assigned to FDOT under the NEPA Assignment program.

8. Is FDOT allowed to contact Native American Tribes to initiate tribal consultation?

- a. Yes, Districts can coordinate project activities with the tribes on a project by project basis but keep Project Delivery Coordinators in the loop. If a tribe expresses an interest in a project or if a project may be of interest, then OEM will lead the coordination. This includes correspondence, submittal of CRAS, or other documents.
- b. No, if the Tribe has requested government-to-government consultation, the Districts must coordinate with their Project Delivery Coordinators who in turn will reach out to FHWA to initiate the government-to-government consultation.

VII. COORDINATION WITH RESOURCE AGENCIES

1. During the PD&E Phase, will OEM consider delaying species surveys until the Design Phase, if warranted?

- a. OEM will consider this on a case by case basis. Appropriate consultation, justification and disclosure would be needed. Contact your Project Delivery Coordinator to initiate discussion.

2. Clarify the involvement of participating and cooperating agencies?

- a. Generally, Districts will recommend participating and cooperating agencies on each project. The U.S. Army Corps of Engineers must be invited as a cooperating agency when the project will have an individual Corps permit. The U.S. Coast Guard must be invited as a cooperating agency when there is a bridge permit.

OEM will invite agencies to be participating or cooperating agencies via the Environmental Screening Tool (EST) which satisfies the noticing requirements stipulated in the Fixing America's Surface Transportation (FAST) Act.

Cooperating Agencies have a higher degree of authority, responsibility, and involvement in the environmental review process and participate in developing the environmental document. They may, upon request by the Lead Federal Agency, assume responsibility for developing information and preparing environmental analyses, including portions of the environmental document (40 CFR § 1501.6). They may also review pre-draft environmental documents.

Participating Agency – Other agencies with an interest in the project that are invited by the Lead Federal Agency (pursuant to 23 U.S.C. § 139, as amended) to respond to requests for technical assistance, attend scoping and coordination meetings, attend joint field reviews, provide substantive and early input on issues of concern, scope agreements for issues and required technical studies, review Lead Federal Agency-approved draft/final

environmental documents. Designation as a Participating Agency does not indicate project support and does not provide an agency with increased oversight or approval authority above its statutory limits.

Additional guidance on involvement of participating and cooperating agencies is included in Chapter 4 of the ETDM Manual and in the Part 1, Chapter 4 of the PD&E Manual.

3. Will there be a new process required for agency coordination on federal projects?

- a. Districts can continue to coordinate with agencies as they do currently.

Contact your Project Delivery Coordinator to request formal Section 7 consultation. The District should consult with the SHPO as necessary to address documentation of project effects. When necessary, OEM will fulfill FHWA's role on coordination with the State Historic Preservation Officer (SHPO) as described in the 106 PA. Project Delivery Coordinators will also ensure the appropriate subject matter experts are involved. For formal Tribal government to government, see question number 8 under the **FHWA Involvement section**.

4. Will there be a new process required for agency coordination on state funded projects?

- a. Districts can continue to coordinate with agencies as they do currently.

VIII. SELF-ASSESSMENTS

1. What is a self-assessment?

- a. A self-assessment is similar to a quality assurance review and is intended to assess FDOT compliance with the requirements of NEPA Assignment MOU, FDOT procedures (e.g. PD&E Manual), and federal environmental policies, regulations, and laws. The self-assessment focus changes annually, but will report on performance results per the MOU and examine the Quality Control and Quality Assurance process for a sample of NEPA decisions and approvals. FDOT is required to provide a summary of the self-assessment report to FHWA 30 days before the on-site interview portion of their audit.

2. What are the performance measures?

- a. Compliance with NEPA, FHWA NEPA regulations and other federal environmental statutes and regulations
b. QA/QC for NEPA Decisions
c. Relationship with agencies and the general public
d. Increased efficiency and timeliness in completion of the NEPA process

3. Will districts be involved with self-assessments?

- a. Yes. While the NEPA documents will be obtained from SWEPT at OEM offices in Tallahassee, Districts will be included in a pre-assessment survey and may participate in coordination meetings to clarify any questions. If self-assessment identifies any issues, the District and OEM will work together to develop and implement solutions.

IX. FHWA AUDITS

1. Why is FHWA conducting audits of FDOT's NEPA Assignment Program, and how often will the audits be administered?

- a. Federal Code requires FHWA to conduct annual audits of FDOT for 4 years to ensure FDOT's compliance with applicable federal laws and policies, and to evaluate FDOT's progress toward achieving NEPA performance measures as listed above under self-assessments. According to our MOU, the audits will stop after 4 years.

2. What will be the focus of FHWA audits?

- a. Staffing
- b. Technical competency and organizational capacity
- c. Adequacy of financial resources
- d. Quality assurance and quality control
- e. Performance measures
- f. Compliance with the MOU
- g. Compliance with federal laws and policies

3. Will FHWA evaluate project-related decisions?

- a. No. Project decisions are the sole responsibility of FDOT. The FHWA audit is looking at our processes and systems that assure we are examining our decisions for completeness and correctness.

4. Will audits impact the Districts?

- a. Yes. A FHWA audit team will conduct the audit in person, review files and records, interview OEM and District management, staff, consultants, and interview agencies, as needed. District staff and consultants will need to be available for FHWA interviews during the audit visit.