



NEPA Assignment Program Promotes Environmental Stewardship

The Federal Highway Administration's (FHWA) Office of Project Development and Environmental Review (HEPE) oversees the [NEPA assignment](#) program through which a State may assume all or part of the responsibilities of FHWA for "environmental review, consultation, or any other action required under Federal environmental law pertaining to the review or approval of a specific project." Through this process, HEPE has observed States taking more care and consideration in environmental and project decisionmaking, resulting in increased stewardship of the resources impacted by projects. This dedication to responsible stewardship begins with the State's preparation and application to enter the program and is reinforced each time a State, under assignment, conducts a project review and makes a NEPA decision.

Applying for and maintaining NEPA assignment is a collaborative process among State Departments of Transportation (DOTs), FHWA Division Offices, the FHWA Resource Center, and HEPE. Under NEPA assignment, the State assumes the process, decisionmaking, and legal responsibility for NEPA that FHWA typically carries out during project review and delivery. Once a State is granted NEPA assignment through a Memorandum of Understanding (MOU), it is subject to the same procedural and substantive requirements placed on FHWA per NEPA. Assigning these responsibilities to States has instilled in their staff a greater awareness, understanding, and opportunity for improving environmental outcomes. By committing to the program, DOT staff assumes responsibility for environmental reviews and can make project decisions. FHWA's expectation is that the State's NEPA decisions are comparable to or better than when FHWA makes such decisions. Florida, California, Ohio, Texas, and Utah have NEPA assignment, and this issue of *Successes in Stewardship* describes how to apply for and maintain NEPA assignment, featuring examples from Florida, Ohio, and Utah.

NEPA Assignment Application Improves State Processes And Coordination

A primary reason a State may apply for NEPA assignment is so the DOT may have complete control over and responsibility for environmental reviews and NEPA decisions on Federal-aid highway projects. The Florida DOT (FDOT) manages a project delivery program with an annual average budget of about \$10 billion, about one-fifth of which involves Federal funding. To improve the efficiency and cost of environmental review processes across its entire portfolio, FDOT applied for NEPA assignment on September 3, 2015.

To apply for [NEPA assignment](#) under 23 U.S.C. 327, a State must waive their sovereign immunity under the 11th Amendment to the U.S. Constitution. Doing so will subject their decisions to the authority of the Federal courts and is the way a State accepts legal responsibility and liability for its decisionmaking if granted assignment. The State then usually submits a letter of interest and must also demonstrate that existing State laws are comparable to the Freedom of Information Act requirements.

FDOT and FHWA collaborated for 16 months to prepare for NEPA assignment. After submitting its letter of interest, FDOT worked closely with HEPE and the FHWA Florida Division Office to share information and establish expectations about the program. The Division Office and HEPE staff reviewed FDOT environmental

NEPA Assignment Applications Must Include:

- Information on how the State DOT manages project delivery;
- Information on how the State DOT will manage project delivery with NEPA Assignment, including staffing and capital availability;
- Certifications from the Attorney General; and
- A record of public comment on the published NEPA assignment.

manuals and procedures for compliance with Federal requirements. Updated manuals and procedures are part of the body of information FDOT was required to present in its application. FDOT, Florida Division Office, FHWA Resource Center, and HEPE staff met on a bi-weekly basis until the MOU was executed. Staff from both FDOT and the Division Office contacted agencies they normally consult with to explain the changed roles and responsibilities for FDOT and FHWA under assignment. FDOT drafted its application before its legislature passed a waiver of sovereign immunity, but the application could not be submitted until the State's sovereign immunity statute was passed. Today, FDOT is still contacting the agencies it normally consults with to ensure NEPA requirements are met. FDOT is also working closely with the FHWA Division office to prepare for the first audit of its NEPA assignment program.

To address the increased demands on FDOT staff to meet NEPA project delivery requirements, the agency implemented specialized trainings across the DOT district offices. These trainings, and its commitment to maintaining the financial resources necessary to carry out its NEPA responsibilities, enhanced FDOT's stewardship of environmental resources.

Annual Audits Help State DOTs Identify Opportunities to Improve Project Delivery

To maintain NEPA assignment, States are subject to annual audits by FHWA for the first four years of the agreement. These audits focus on the commitments the State made in the MOU. These commitments include: processing projects according to procedures and manuals; documenting decisions; appropriately consulting with agencies and the public; and measuring performance. The FHWA audit team includes individuals from the State Division Office, FHWA Resource Center, and HEPE. They all collaborate closely with the State DOT to complete the audit. To ensure the State is successful in this program, audit results often lead the State to update the policies, procedures, and guidelines necessary to meet NEPA requirements.

FHWA recently completed its first audit of the Ohio DOT (ODOT) NEPA assignment program and is planning for its second audit in 2017. Like all NEPA assignment audits, the ODOT audit began with a pre-audit information request (PAIR) from the Division Office. The PAIR can feel overwhelming at first because States are asked to compile and present thorough documentation on their environmental review processes. States would have demonstrated their ability to successfully carry out proper environmental reviews and documentation in their applications for assignment, but instituting such activities in guidance and policies take time. FHWA worked with ODOT to address concerns about specific data requests and the agencies quickly learned that communicating often and recognizing the goals and needs of the audit are essential to completing a successful pre-audit.

NEPA Assignment Audit Steps Include:

1. FHWA Audit Team requests pre-audit information.
2. State DOT conducts a self-assessment.
3. FHWA Audit Team reviews projects.
4. FHWA Audit Team conducts interviews with State DOT staff and Resource Agencies.
5. State DOT and FHWA Audit Team meet in person to discuss audit results.

Following the PAIR, ODOT completed a self-assessment of its compliance and performance under NEPA assignment. Questions ODOT asked during the assessment included: "Is the program working?," "Are we saving resources?," "Are we making sound environmental decisions?," and "Is the public aware of what we are doing?" ODOT also developed performance measures related to stewardship (e.g., compliance, quality assurance/quality control, relationships with agencies and the public, efficiency, and timeliness) in its self-assessment report. The FHWA audit team focused on specific requirements of the MOU in the PAIR, project document review, and in interviews. The FHWA audit observations aligned with the issues identified in ODOT's self-assessment.

ODOT's first audit benefited from a close and strong relationship with the Ohio Division Office and a joint commitment with them to making this program successful. The PAIR analysis and the project document reviews helped the FHWA audit team develop focused questions about specific aspects of the program during in-person interviews with ODOT staff. These produced a clear picture of ODOT's environmental review procedures and NEPA decisionmaking. The Ohio Division Office plans to work with HEPE on an audit manual to formalize the process, helping HEPE, the Division Offices, and State DOTs understand their roles, responsibilities, and expectations during the audit.

As ODOT and the Division Office prepare for the next audit, they have recommendations that other States may want to consider as they apply for and seek to maintain NEPA assignment. These include the following:

- **Establish a strong relationship with the Division Office.** State DOTs that tend to work more independently from their State FHWA Division Office may want to consider implementing strategies to improve their relationship. Frequent and open communication during the application and audit processes is an important component of successful NEPA assignment. Setting expectations and establishing clear roles and responsibilities from the outset of the process can prevent problems.

- **Recognize the usefulness of Programmatic Agreements.** Programmatic Agreements have helped make environmental reviews more efficient and predictable in many States. Since 1990, ODOT has approved CEs on behalf of FHWA except the few in cases when projects have potentially high risks. PAs streamline repetitive processes and save resources. Over time they provide State DOTs with the technical expertise, tools, and processes necessary to eventually assume NEPA assignment responsibilities.
- **Build a robust electronic NEPA project documentation system.** ODOT tracks NEPA project files electronically using an intranet application called EnviroNet. This file-tracking system requires considerable time to plan and develop, but it demonstrates ODOT's commitment to documenting its compliance. Using EnviroNet has led to more carefully considered decisions and more detailed documentation. States that use electronic files significantly reduce the time and effort FHWA audits spend on document reviews. Putting such a system in place before applying for assignment is a best practice that has helped ODOT before, during, and after its audit.
- **Use the audits to continuously improve the program.** ODOT used the findings from the PAIR, self-assessment, and project review to make immediate changes to processes and protocols. ODOT organized specialized NEPA trainings for three of its districts and made organizational changes to shift staff into different roles where they could have greater impact.

Long-Lasting Programmatic Approaches Lay the Groundwork for a Successful Transition to NEPA Assignment

Programmatic Approaches such as Programmatic Agreements (PA), Memoranda of Understanding (MOU), and Memoranda of Agreements (MOA) make the environmental review process more efficient and predictable.

ODOT signed a CE agreement in 1990 through which the State could make CE approvals on behalf of FHWA for about 98 percent of all projects. Over the years, this PA improved State DOT expertise on CEs and enabled FHWA to be involved only on high risk projects. Many of these approaches delegated responsibility to the State to the fullest extent allowable under resource provisions (e.g., Section 7), which further solidified ODOT's technical expertise.

This PA and other programmatic approaches built in performance measures and process reviews that track success over time and identify areas for improvement. ODOT developed a robust training program in concert with these tools. Subsequently, these reviews and the tools put in place to manage the overall process enabled the environmental program to mature to the point where ODOT was positioned to smoothly transition to NEPA assignment.

After reviewing all the audit findings and tracking ODOT's progress, the FHWA audit team found ODOT to be in substantial compliance with the provisions of the MOU. By addressing the opportunities for improvement cited in the observations report, ODOT and FHWA will continue to move the program toward success.

Collaboration and a Solid Foundation between FHWA and the State Improves Audit Outcomes

Utah DOT (UDOT) built on its success implementing CE assignment (23 U.S.C. 326) since 2008 to apply for and execute a new MOU for NEPA assignment (23 U.S.C. 327) in January 2017. By first assuming NEPA responsibilities for CE projects, UDOT was able to assume FHWA's responsibilities for most of its program of highway projects. Under the CE assignment program, UDOT also developed environmental review and decisionmaking procedures for projects, in most cases, with minor or no environmental impacts. One of UDOT's goals for NEPA assignment was to accept responsibility for Environmental Assessment (EA) and Environmental Impact Statement (EIS) projects and decisionmaking. UDOT has become accustomed to FHWA monitoring its CE decisions and has experience preparing self-assessments of the CE program. Having prepared for and conducted monitoring reviews, UDOT and the Utah FHWA Division Office were already utilizing real-time file sharing and quarterly reports. For UDOT, their CE assignment resulted in established procedures for tracking projects throughout the entire project delivery process, including, but not limited to, NEPA requirements.

When a State is granted NEPA assignment the FHWA Division Office staff can no longer be involved with project NEPA decisions, but the FHWA Division Office and HEPE can provide assistance and input on how to improve documentation and complete reviews faster. After being assigned EA and EIS project reviews, UDOT defined training needs that the FHWA Resource Center and the Utah Division Office have been collaborating to address. For example, HEPE and the FHWA Resource Center provided UDOT staff with training on cumulative and indirect impacts and Endangered Species Act consultations.

FHWA Remains Committed to the Success of the NEPA Assignment Program

The success of this program is the result of commitment from the State DOTs, as well as the support and dedication of FHWA State Division Offices, the FHWA Resource Center, and HEPE staff in completing oversight tasks and providing training. State DOTs in this program have improved their environmental review processes by making more effective and efficient decisions. To continue the success of this program, FHWA and the State DOTs must coordinate regularly and dedicate time, funding, and expertise to successfully maintaining NEPA assignment.

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Look What's New!

- The Office of Project Development and Environmental Review recently released [eNEPA 2.0](#), the latest version of the free, web-based interagency collaboration tool for developing environmental documentation, such as an environmental impact statement or environmental assessment, needed for projects. Utilizing feedback received from users, the updated tool includes customizable workflows, improved document review functions, and a dashboard.

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