



# NEPA Assignment – Self-Assessment

---

January 2022

Environmental Affairs Division

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## I. INTRODUCTION

This report presents the results of TxDOT's self-monitoring of its QA/QC process under NEPA assignment, as required by Section 8.2.7 of the December 9, 2019 NEPA assignment MOU between TxDOT and FHWA. Section 8.2.7 requires TxDOT to perform annual monitoring of its QA/QC process to determine whether the process is working as intended, to identify any areas needing improvements in the process, and to timely take any corrective actions necessary to address the areas needing improvement. Section 8.2.7 further requires TxDOT to transmit a report on the results of this self-monitoring to the FHWA Texas Division office and make the report available for public inspection.

Section 8.2.8 of the NEPA assignment MOU requires the following to be included in an annual self-monitoring report:

- Scope of monitoring review
- Compliance areas reviewed
- Description of the monitoring process
- List of areas identified as needing improvement
- Discussion of corrective actions that have been or will be implemented

Additionally, Section 10.1.3 of the NEPA assignment MOU requires TxDOT to monitor its progress toward meeting the performance measures set forth at Section 10.2, and to include its progress in the self-monitoring report provided under Section 8.2.7. Those performance measures are as follows:

A. Compliance with NEPA and other Federal environmental statutes and regulations:

- i. Maintain documented compliance with procedures and processes set forth in this MOU for the environmental responsibilities assumed under the Program.
- ii. Maintain documented compliance with requirements of all applicable Federal statutes and regulations for which responsibility is assumed (Section 106, Section 7, etc.).
- iii. Maintain and apply internal quality control and assurance measures and processes.
- iv. Maintain documented legal sufficiency determinations made by counsel; this shall include the legal sufficiency reviews of Notices of Intent and Notices of Final Agency Action as required by law, policy, or guidance.
- v. Completeness and adequacy of documentation of project records for projects done under the Program.

B. Relationships with agencies and the general public:

- i. Assess change in communication among TxDOT, Federal and State resource agencies, and the public resulting from assumption of responsibilities under this MOU.
- ii. Maintain effective responsiveness to substantive comments received from the public, agencies, and interest groups on NEPA documents and environmental concerns.
- iii. Maintain effective NEPA conflict resolution processes whenever appropriate.

C. Efficiency and timeliness in completion of NEPA process:

- i. Monitor time of completion for NEPA approvals under this MOU and the Original MOU.

- ii. Monitor time to completion for key interagency consultation formerly requiring FHWA participation (e.g., Section 7 biological opinions, Section 106 resolution of adverse effects) under this MOU and the Original MOU.

This report was prepared to comply with the MOU requirements outlined above, and covers the period from December 9, 2020 through December 9, 2021. This report begins by providing the information called-for by Section 8.2.8 regarding TxDOT's self-monitoring, and then provides the information called-for by Section 10.1.3 regarding progress toward meeting the performance measures set forth at Section 10.2.

## II. TxDOT'S SELF-MONITORING PROGRAM

The information called-for by Section 8.2.8 regarding TxDOT's self-monitoring is set forth below.

### A. Scope of monitoring review

ENV's self-monitoring is a year-round effort, not just an annual one-time event. This report describes self-monitoring that occurred between December 9, 2020 and December 9, 2021.

### B. Compliance areas reviewed

TxDOT's QA/QC process is primarily contained in Environmental Guide Volume 1: Process, and Environmental Guide Volume 2: Activity Instructions. These volumes provide business processes and instructions for determining when certain analyses are required under various environmental laws; conducting and documenting those analyses using various forms, checklists, templates, and other guidance developed by ENV subject matter experts (SMEs); and assuring that the documentation is complete and correct. ENV relies on compliance with the business processes and instructions in the Environmental Guide Volumes 1 and 2 to ensure compliance with all applicable Federal statutes and regulations. Therefore, compliance with those business processes and instructions is an appropriate measure of compliance with applicable Federal statutes and regulations. However, it is important to note that a failure to comply with a specific business process or instruction does not always mean that compliance with a Federal statute or regulation is lacking, as they contain some elements not specifically required by any statute or regulation, but needed for proper management of the environmental review process.

ENV's self-monitoring covers compliance with all of the various businesses processes and instructions set forth in our Environmental Guide Volumes 1 and 2, and therefore covers all environmental laws applicable to FHWA projects in Texas, including NEPA, Section 4(f) of the Department of Transportation Act of 1966, Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, Section 404 of the Clean Water Act, and many other Federal environmental laws.

### C. Description of monitoring process

ENV's Program Review Section consists of four employees dedicated to constant reviewing of project files, guidance documents, and other materials to assess the adequacy of our QA/QC process. The Program Review Section performs targeted reviews of ECOS files shortly after environmental clearance, records any deviations from the business processes and instructions in the Environmental Guide, and provides direct feedback to district environmental staff and ENV SMEs regarding any such deviations, including instructions on how to correct the file. They also identify parts of the Environmental Guide that are not clear or not correct and recommend edits as needed, as well as issues that require further instruction or explanation during monthly NEPA chats or other statewide meetings.

Additionally, environmental staff and/or external consultants raise issues with ENV managers when they observe any instructions, guidance, etc. that they believe may not be in-line with requirements under current environmental laws or regulations. ENV managers also routinely review existing guidance documents and make changes or develop additional guidance as needed. ENV staff also monitor federal rulemaking changes (e.g., CEQ rules and DOT procedures) and make adjustments to our instructions, guidance, etc. as needed.

### **D. List of areas identified as needing improvement**

For the period from December 9, 2020 through December 9, 2021, ENV identified the areas listed below in response to the NEPA assignment MOU's call for "areas identified as needing improvement." However, the phrase, "needing improvement," is not entirely accurate with respect to many of the areas listed below. For example, for some of these areas, the "need for an improvement" was not related to a pre-existing deficiency in ENV's guidance or business processes, but rather was in response to an external change such as a change in a species' status or an area's NAAQS attainment status. Additionally, for many of these areas, ENV's existing guidance or businesses processes were not necessarily inadequate but were determined to be areas which could be further improved as part of ENV's continuous improvement efforts.

- ENV needed a new template for a biological assessment (BA) for formal consultation or a biological evaluation (BE) for informal consultation with the USFWS
- ENV's documentation standard for a biological assessment or biological evaluation needed to be updated to reflect the August 27, 2019 revisions to USFWS regulations
- ENV's brochure regarding Section 4(f) exceptions needed revision to more accurately explain the exceptions pertaining to trails, paths, bikeways, and sidewalks at 23 CFR 774.13(f)
- ENV was lacking a brochure explaining Section 4(f) *de minimis* determinations
- ENV's letter template for Section 4(f) exceptions pertaining to trails, paths, bikeways, and sidewalks needed revisions regarding interpretation of the exceptions pertaining to trails, paths, bikeways, and sidewalks at 23 CFR 774.13(f)
- ENV was lacking a template for a letter requesting a CE determination from FHWA for a non-NEPA assigned project
- ENV needed guidance for understanding potential pollutants and pollution sources at construction sites.
- ENV needed guidance regarding assessment of historic roads in Texas.
- ENV's Project Coordination Request (PCR) form and instructions needed to be clarified regarding right-of-way parcels and plans, and was lacking a question about historic roads.
- ENV's processes could benefit from a programmatic consultation agreement for the Houston toad.
- ENV's Environmental Assessment Handbook needed to be revised to reflect new standard language regarding Clean Water Act Section 401 and a new process for projects that require an Individual Permit under Section 404 or Section 10.
- ENV determined that noise contour information for undeveloped land should be communicated to local officials by separate letter, instead of being embedded in the public notice.

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- ENV's Species Analysis Spreadsheet needed to be updated to reflect changes in species statuses and to make other improvements.
- ENV's public involvement notice templates needed to be updated to reflect the March 2021 TxDOT Playbook for Safe Operations (COVID-19) and to conform to Associated Press (AP) style.
- ENV's Species Analysis Spreadsheet needed to be updated to correct an oversight in the language for Piping Plover and Red Knot.
- ENV's FAQ regarding the State Infrastructure Bank and Environmental Review needed to be updated to reflect a 2020 rulemaking limiting applicability of environmental review process to FHWA projects and projects on the state highway system or other real property owned by TxDOT, and to include instructions regarding how to handle the "ENV Division SIB Application Review Form."
- ENV's Environmental Assessment Outline and Handbook needed to be updated to include a section on "Greenhouse Gas and Climate Change," and to reflect TxDOT's April 2021 Bicycle Accommodation Design Guidance.
- ENV needed new guidance regarding emission rate lookup tables (ERLTs)
- ENV's historic bridge adoption flyer and information packet needed to be revised and improved
- ENV's Statewide On-Road Greenhouse Gas Emissions Analysis and Climate Change Assessment Technical Report needed to be updated to address recent changes, new or revised GHG data and public comment.
- ENV's guidance regarding compliance with the Farmland Protection Policy Act needed updated information on how to find prime unique, statewide important, or locally important farmland soils using NRCS Web Soil Survey, and updated coordination submission information.
- ENV's public involvement notice templates needed to be revised to clarify introductory language regarding the virtual meeting/hearing, and remove the requirement of an appointment for in-person options.
- ENV's air quality handbook and flowcharts needed to be updated.
- ENV determined that its Project Coordination Request (PCR) for Historic Studies form needed to include a print-out of the project description from the WPD I screen in ECOS to ensure consistency.
- Various parts of ENV's Environmental Guide Volumes 1 and 2 needed updates and revisions
- ENV's WPD II screen in ECOS and Surface Water Analysis form needed to be improved to require a project-specific determination for floodplains under certain circumstances.
- ENV's Surface Water Analysis form and Section 404/10 Impacts Table template needed to be revised to be consistent with revised regulatory guidance for sections 401 and 404 of the Clean Water Act.
- ENV needed a new guidance document about how to address the monarch butterfly in a TxDOT species analysis.

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- ENV's Environmental Assessment Handbook needed various revisions, including a reminder that the source of funding must remain consistent throughout the EA, and an instruction that any voluntary conservation measures or other commitments resulting from coordination under various resource-protection laws must be noted in the EA.
- ENV determined that it needed to release potential archeological liability maps for Pharr, Childress, Amarillo, and Lubbock.
- ENV's Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties needed to be updated to reflect FHWA/FTA joint approval of the 2021-2024 STIP on July 22, 2021, and reflect updated SO2 nonattainment designations as identified in EPA's Greenbook.
- ENV needed new guidance and forms to reflect the new coordination process under the new TPWD MOU.
- ENV needed new guidance and instructions for conducting habitat assessments and present/absence surveys, and for preparing a Species Analysis Spreadsheet.
- Environmental Guide Volumes 1 and 2 needed various revisions and clarifications.
- A list of TPWD BMPs was needed to implement the new TxDOT-TPWD MOU.
- A quick guide was needed to implement the pre-2015 practice following the Navigable Waters Protection Rule (NWPR) vacatur
- ENV's Surface Water Analysis form needed to be updated to make the Section 404 and 401 sections consistent with the "Perform Surface Water Analysis" activity instructions and the EA Handbook.
- ENV's Environmental Assessment handbook needed to be clarified regarding when and how the ENV Division Director needs to approve a timeline longer than one year, among other needed revisions.
- There was a need to reinforce in ENV's Public Involvement Handbook the procedure for conducting and documenting coordination of EAs and EISs with TPWD.
- There was a need for an FHWA-approved noise wall removal policy.
- The "report version" selection on the cover page of the Community Impacts Assessment Technical Report form needed to be removed.
- Various revisions to ENV's Environmental Handbook and Outline were needed to improve the quality of TxDOT's EAs.
- ENV's Species Analysis Spreadsheet needed various revisions, including updates needed to reflect federal status and ranges of various species.
- ENV's Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties needed to be updated to reflect El Paso County as marginal nonattainment for the 2015 ozone standard.
- Various clarifications to ENV's Public Involvement handbook were needed.

### **E. Discussion of corrective actions that have been or will be implemented**

For the period from December 9, 2020 through December 9, 2021, ENV implemented the corrective actions listed below in response to the NEPA assignment MOU's call for a list of "corrective actions." However, again, the phrase, "corrective actions" is not entirely accurate with respect to most of these

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updates and changes, as most were improvements to our existing processes and guidance, rather than actions needed to correct an actual deficiency in our program.

### December 2020

- ENV developed and issued a new template for a biological assessment (BA) for formal consultation or a biological evaluation (BE) for informal consultation with the USFWS
- ENV revised its documentation standard for a biological assessment or biological evaluation to reflect the August 27, 2019 revisions to USFWS regulations
- ENV's revised its brochure regarding Section 4(f) exceptions to more accurately explain the exceptions pertaining to trails, paths, bikeways, and sidewalks at 23 CFR 774.13(f)
- ENV developed and issued a new a brochure explaining Section 4(f) *de minimis* determinations
- ENV revised its letter template for Section 4(f) exceptions pertaining to trails, paths, bikeways, and sidewalks to more accurately explain the exceptions pertaining to trails, paths, bikeways, and sidewalks at 23 CFR 774.13(f)
- ENV developed a template for a letter requesting a CE determination from FHWA for a non-NEPA assigned project

### January 2021

- ENV issued a new Stormwater Pollutants Guidebook.

### February 2021

- ENV developed and issued a new Guide to Assessment of Historic Roads in Texas.
- ENV revised its Project Coordination Request (PCR) form and instructions to provide clarification regarding right-of-way parcels and plans, and to include a new question about historic roads.
- ENV executed a programmatic consultation agreement for the Houston toad and updated its programmatic consultation form to reflect the new Houston toad agreement.
- ENV revised its Environmental Assessment Handbook to reflect new standard language regarding Clean Water Act Section 401 and a new process for projects that require an Individual Permit under Section 404 or Section 10.
- ENV determined that noise contour information for undeveloped land should be communicated to local officials by separate letter, instead of being embedded in the public notice.
- ENV revised its FONSI and ROD notice of availability templates to remove noise contour information for undeveloped lands, and instructed districts to instead communicate this information to local officials via separate letter for all classes of projects, CEs, EAs, and EISs.

### March 2021

- ENV's updated its Species Analysis Spreadsheet to reflect changes in species statuses and to make other improvements.
- ENV updated its public involvement notice templates to reflect the March 2021 TxDOT Playbook for Safe Operations (COVID-19) and to conform to Associated Press (AP) style.



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### April 2021

- ENV updated its Species Analysis Spreadsheet to correct an oversight in the language for Piping Plover and Red Knot.
- ENV prepared a draft EIS outline and handbook consistent with the 2020 CEQ rulemaking for use on all new EIS projects

### May 2021

- ENV's updated its FAQ regarding the State Infrastructure Bank and Environmental Review to reflect a 2020 rulemaking limiting applicability of environmental review process to FHWA projects and projects on the state highway system or other real property owned by TxDOT, and to include instructions regarding how to handle the "ENV Division SIB Application Review Form."
- ENV updated its Environmental Assessment Outline and Handbook to include a section on "Greenhouse Gas and Climate Change," and to reflect TxDOT's April 2021 Bicycle Accommodation Design Guidance.

### June 2021

- ENV issued new guidance regarding emission rate lookup tables (ERLTs)
- ENV released revised versions of its historic bridge adoption flyer and information packet
- ENV updated its Statewide On-Road Greenhouse Gas Emissions Analysis and Climate Change Assessment Technical Report to address recent changes, new or revised GHG data and public comment, and could be improved with a GHG analysis for a typical example added capacity project. Also added a GHG analysis for a typical example added capacity project.
- ENV updated its guidance regarding compliance with the Farmland Protection Policy Act with new information on how to find prime unique, statewide important, or locally important farmland soils using NRCS Web Soil Survey, and updated coordination submission information.
- ENV updated its public involvement notice templates to clarify introductory language regarding the virtual meeting/hearing, and remove the requirement of an appointment for in-person options.

### July 2021

- ENV updated its air quality handbook and flowcharts, and added a Frequently Asked Questions section to the handbook.
- ENV revised its Project Coordination Request (PCR) for Historic Studies form and instructions to require a print-out of the project description from the WPD I screen in ECOS to ensure consistency.
- ENV updated and revised various parts of its Environmental Guide Volumes 1 and 2
- ENV revised the WPD II screen in ECOS and the Surface Water Analysis form to require a project-specific determination for floodplains under certain circumstances.
- ENV revised its Surface Water Analysis form and Section 404/10 Impacts Table to be consistent with revised regulatory guidance for sections 401 and 404 of the Clean Water Act.

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- ENV issued a new guidance document about how to address the monarch butterfly in a TxDOT species analysis.
- ENV made various revisions to its Environmental Assessment Handbook, including adding a reminder that the source of funding must remain consistent throughout the EA, and an instruction that any voluntary conservation measures or other commitments resulting from coordination under various resource-protection laws must be noted in the EA.
- ENV determined that it needed to release potential archeological liability maps for Pharr, Childress, Amarillo, and Lubbock.

### August 2021

- ENV updated its Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties to reflect FHWA/FTA joint approval of the 2021-2024 STIP on July 22, 2021, and to reflect updated SO<sub>2</sub> nonattainment designations as identified in EPA's Greenbook.

### September 2021

- ENV issued new guidance and forms to reflect the new coordination process under the new TPWD MOU.
- ENV issued new guidance and instructions for conducting habitat assessments and present/absence surveys, and for preparing a Species Analysis Spreadsheet.
- ENV updated and revised various parts of its Environmental Guide Volumes 1 and 2.
- TxDOT and TPWD issued a list of BMPs to implement the new TxDOT-TPWD MOU.
- ENV issued a quick guide to implement the pre-2015 practice following the Navigable Waters Protection Rule (NWPR) vacatur
- ENV updated its Surface Water Analysis form to make the Section 404 and 401 sections consistent with the "Perform Surface Water Analysis" activity instructions and the EA Handbook.
- ENV revised its Environmental Assessment handbook to clarify when and how the ENV Division Director needs to approve a timeline longer than one year, among other needed revisions.
- ENV revised its Public Involvement Handbook to reinforce the procedure for conducting and documenting coordination of EAs and EISs with TPWD.
- ENV issued an FHWA-approved noise wall removal policy.

### October 2021

- ENV removed the "report version" selection on the cover page of the Community Impacts Assessment Technical Report form.

### November 2021

- ENV made various revisions to its Environmental Handbook and Outline to improve the quality of TxDOT's EAs.
- ENV made various revisions to its Species Analysis Spreadsheet, including updates needed to reflect federal status and ranges of various species.

### December 2021

- ENV updated its Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties to reflect El Paso County as marginal nonattainment for the 2015 ozone standard.
- ENV made various clarifying revisions to its Public Involvement handbook.

Below is a list of “corrective actions” that we intend to implement in the future, although again, these are better described as areas in which we intend to strive for continuous improvements rather than areas that are fundamentally deficient:

- Continue focusing on providing instruction to district environmental staff about the change control process after work plan acceptance in ECOS. During the period covered by this self-assessment report, ENV made revisions to the Environmental Guide to better instruct specifically how to document changes to WPD I and II. Additionally, ENV’s Program Review Section conducted outreach to the districts on the subject of change control and how to properly document how a change in design did or did not affect analyses conducted. However, ENV believes that this is an area in which ENV should continue to strive for improvement.
- Make further improvements to ECOS.

### III. PROGRESS TOWARD MEETING THE PERFORMANCE MEASURES IN SECTION 10.2 OF THE NEPA ASSIGNMENT MOU

TxDOT’s progress toward meeting the performance measures in Section 10.2 of the NEPA assignment MOU is discussed under the subheadings below, which correspond with the performance measures in Section 10.2.

#### A. Compliance with NEPA and other Federal environmental statutes and regulations:

- Maintain documented compliance with procedures and processes set forth in this MOU for the environmental responsibilities assumed under the Program.*

TxDOT has maintained documented compliance with the procedures and processes set forth in the MOU. Specific procedures and processes are highlighted below.

Section 6.2, regarding Litigation, sets forth multiple specific procedures and processes.

First, Section 6.2.3 requires TxDOT to notify FHWA and DOJ within seven calendar days of TxDOT’s receipt of service of process of any complaint concerning discharge of any responsibility assumed under the MOU. During the period of December 9, 2020 through December 9, 2021, TxDOT was served with one such complaint. On March 11, 2021, TxDOT was served with a lawsuit filed by Harris County, Texas in the United States District Court for the Southern District of Texas Houston Division challenging TxDOT’s February 3, 2021 record of decision for the North Houston Highway Improvement Project (Case 4:21-cv-00805). TxDOT notified FHWA and DOJ within seven calendar days of TxDOT’s receipt of service of process of that complaint. Section 6.2.3 also requires TxDOT to notify FHWA within seven calendar days of TxDOT’s receipt of any notice of intent to sue concerning its discharge of any responsibility assumed under this MOU. During the period of December 9, 2020 through December 9, 2021, TxDOT did not receive any such notice.

Section 6.2.4 requires TxDOT to provide FHWA and DOJ with copies of any motions, pleadings, briefs, or other such documents filed in any case concerning its discharge of any responsibility assumed under the MOU within seven days of service, or in the case of documents filed by TxDOT, with seven days of the date of filing. Section 6.2.7 provides multiple ways of providing such documents. During the period of December 9, 2020 through December 9, 2021, TxDOT ensured that

FHWA and DOJ email addresses were included in the document service distribution list for all active court cases relating to responsibilities assumed under the MOU.

Section 6.2.5 requires TxDOT to notify FHWA and DOJ prior to settling any lawsuit. During the period of December 9, 2020 through December 9, 2021, TxDOT did not settle any lawsuit regarding responsibilities assumed under the MOU.

Section 6.2.6 requires TxDOT to notify FHWA and DOJ of any court decision on the merits, judgment, and notice of appeal arising out of or relating to the responsibilities TxDOT has assumed under this MOU within seven calendar days. During the period of December 9, 2020 through December 9, 2021, there was one such court decision. On September 13, 2021, the United States District Court for the Western District of Texas Austin Division issued an order denying all relief requested by Save Barton Creek Association, et al.'s in their lawsuit challenging the record of decision for the Oak Hill Parkway project in Austin. TxDOT notified FHWA and DOJ within seven calendar days of the court's decision. None of the plaintiffs filed an appeal. Section 6.2.6 also requires TxDOT to notify FHWA and DOJ within five days of filing a notice of appeal of a court decision. During the period of December 9, 2020 through December 9, 2021, TxDOT did not file any such appeal.

Other non-litigation-related procedures and processes specified by the MOU include Section 8.2.5, which requires TxDOT to provide a monthly report to FHWA listing any approvals and decisions TxDOT has made with respect to the responsibilities TxDOT has assumed under the MOU. During the period of December 9, 2020 through December 9, 2021, TxDOT has provided all such monthly reports.

Section 11.1 specifies that FHWA, and/or other Federal agencies as appropriate, will provide TxDOT available training to the extent FHWA and TxDOT deem necessary; and Section 11.2 specifies that TxDOT, in consultation with FHWA and other Federal agencies as appropriate, will update its training plan annually during the term of this MOU. TxDOT discussed training needs with FHWA and other Federal agencies in October and November of 2021, and continues to work with FHWA on determining any training needs under Section 11 of the MOU.

*ii. Maintain documented compliance with requirements of all applicable Federal statutes and regulations for which responsibility is assumed (Section 106, Section 7, etc.).*

As stated above, ENV relies on compliance with the business processes and instructions in the Environmental Guide Volumes 1 and 2 to ensure compliance with all applicable Federal statutes and regulations. Therefore, compliance with those business processes and instructions is an appropriate measure of compliance with applicable Federal statutes and regulations.

For determining progress towards meeting this performance measure, ENV focused on the following four areas:

- Section 4(f)
- Section 7 consultation under the Endangered Species Act
- Section 106 of the National Historic Preservation Act
- The requirement to make conformity determinations under the Clean Air Act

ENV's Program Review Section reviewed over 325 ECOS project files for projects that were environmentally cleared between October 2020 and August 2021 to determine whether TxDOT correctly complied with the respective business processes set forth in the Environmental Guide.

For Section 4(f), the Program Review Section found the ECOS file demonstrated or was corrected to demonstrate compliance with ENV's Section 4(f) business process for all projects for which Section 4(f) was triggered.

For Section 7, the Program Review Section found the ECOS file demonstrated or was corrected to demonstrate compliance with ENV's Section 7 business process for all projects for which Section 7 was triggered.

For Section 106, the Program Review Section found the ECOS file demonstrated or was corrected to demonstrate compliance with ENV's Section 106 business process for all projects for which Section 106 was triggered.

For air conformity, the Program Review Section found the ECOS file demonstrated or was corrected to demonstrate compliance with ENV's air conformity business process for all projects for which air conformity was triggered.

*iii. Maintain and apply internal quality control and assurance measures and processes.*

In August 2019, ENV issued an Environmental Guide. This was the result of many months' worth of internal meetings with subject matter experts and district environmental specialists. It consists of two volumes:

- Environmental Guide Volume 1: Process explains how to use ECOS to environmentally approve transportation projects.
- Environmental Guide Volume 2: Activity Instructions, contains individual instructions for completing each of the Activities Reviews and Coordinations generated in ECOS that may be required to environmentally approve a given transportation project.

Taken together, Environmental Guide Volumes 1 and 2 are over 500 pages long. They set forth comprehensive business processes, documentation requirements, and instructions for complying with environmental laws applicable to FHWA transportation projects in Texas. They also direct users to the appropriate resource area-specific templates, checklists, forms, and guidance documents developed by ENV SMEs and contained in the various resource area-specific toolkits on [txdot.gov](http://txdot.gov).

The Environmental Guide is a "living document," in that it is updated on a regular basis as improvements to business processes and instructions are identified by subject matter experts and district environmental staff. It was first updated in January 2020, and again in July 2020. During the period covered by this self-assessment report, ENV undertook two updates of the Environmental Guide, one in July 2021 and another in September 2021.

Additionally, ENV's Program Review Section performs regular monitoring of compliance with the business processes and instructions in the Environmental Guide. As explained above, Program Review performs targeted reviews of ECOS files shortly after environmental clearance, records any deviations from the business processes and instructions in the Environmental Guide, and provides direct feedback to district environmental staff and ENV subject matters regarding any such deviations, including instructions on how to correct the file.

The Program Review Section conducts its reviews of project files throughout the year. For the period covered by this report, ENV's Program Review Section reviewed over 325 ECOS project files for projects that were environmentally cleared between October 2020 and August 2021 and provided feedback to district environmental staff regarding compliance with ENV's business processes. Projects environmentally cleared in September, October, November, and December of 2021 will be reviewed by the Program Review Section in early 2022. At this time, the Program Review Section

anticipates focusing exclusively on open-ended (d)-list CEs or FONSIIs for this review period to allow for transition to a new Program Review Section file review process.

ENV continues to provide training to external users of ECOS, such as environmental consultants and local government representatives, on a monthly basis (ENV211). ENV also provides training to newly hired district environmental staff on the overall NEPA process, ECOS, and the business processes and instructions in the Environmental Guide (ENV207). During the period covered by this self-assessment report, ENV provided ENV207 training to new district environmental staff on six occasions (January 7, 2021; March 26, 2021; May 12, 2021; June 17, 2021; October 18, 2021; and November 12, 2021). ENV also provides training on ECOS and the business processes and instruction in the Environmental Guide to new ENV staff (e.g., training for new Cultural Resources Management staff on March 31, 2021), and to existing ENV staff on an as-needed basis (e.g., ECOS refresher training for ENV Project Delivery staff on February 25, 2021). ENV SMEs also provide technical training on various resource area-specific technical issues. ENV also regularly addresses any issues regarding interpretation of the Environmental Guide at monthly NEPA chats and other Webex meetings as needed.

- iv. *Maintain documented legal sufficiency determinations made by counsel; this shall include the legal sufficiency reviews of Notices of Intent and Notices of Final Agency Action as required by law, policy, or guidance.*

Legal sufficiency determinations are required for the following four actions:

- Notice of intent for an EIS project
- FEIS
- Individual Section 4(f) determination
- Section 139(l) notice

The Environmental Guide Volume 2 Activity Instructions for each of these actions contain instructions regarding obtaining and documenting GCD's legal sufficiency review for that action.

TxDOT issued two notices of intent during the period from December 9, 2020 through December 9, 2021. For both of those projects, ECOS contained documentation of the legal sufficiency determination for the notice of intent.

TxDOT did not issue any FEISs during the period from December 9, 2020 through December 9, 2021.

TxDOT did not complete any individual Section 4(f) determinations during the period from December 9, 2020 through December 9, 2021.

TxDOT issued four batch Section 139(l) notices, and one project-specific Section 139(l) notice, during the period from December 9, 2020 through December 9, 2021. For all five of those Section 139(l) notices, TxDOT maintained documentation of the legal sufficiency determination for the Section 139(l) notice.

- v. *Completeness and adequacy of documentation of project records for projects done under the Program.*

See the discussion above under III.A.ii, regarding maintenance of documented compliance with requirements of Federal statutes and regulations. Additionally, as explained above, ENV has detailed instructions for uploading appropriate documentation for various activities in ECOS, and the Program Review Section performs targeted reviews of ECOS files shortly after environmental clearance,

records any deviations from the business processes and instructions in the Environmental Guide, and provides direct feedback to district environmental staff and ENV SMEs regarding any such deviations, including instructions on how to correct the file. As also explained above, ENV's Program Review Section reviewed over 325 ECOS project files for projects that were environmentally cleared between October 2020 and August 2021 to determine whether TxDOT correctly complied with the respective business processes set forth in the Environmental Guide. Some of this feedback related to incomplete documentation. Where documentation has been noted as missing, the Program Review Section provides instructions regarding how to address the issue and complete the file. ENV believes this QA/QC process is properly functioning to minimize the potential for incomplete or inadequate documentation.

### **B. Relationships with agencies and the general public:**

- i. Assess change in communication among TxDOT, Federal and State resource agencies, and the public resulting from assumption of responsibilities under this MOU.*

TxDOT places a strong emphasis on having a high level of communication with resource agencies and the public. TxDOT has not received any complaints regarding changes in communication resulting from TxDOT's participation in the NEPA assignment program. NEPA assignment has only improved TxDOT's ability to be responsive to resource agencies and the public by allowing TxDOT to be solely responsible for compliance.

- ii. Maintain effective responsiveness to substantive comments received from the public, agencies, and interest groups on NEPA documents and environmental concerns.*

Our Environmental Guide Vol. 2 Activity Instructions for various public involvement activities require preparation of a comment/response matrix, in which TxDOT documents its responses to comments it receives as part of the environmental review process. Additionally, instructions for activities that involve coordination with outside agencies require exchanges of information appropriate for that activity.

ENV's Program Review Section reviewed over 325 ECOS project files for projects that were environmentally cleared between October 2020 and August 2021 to determine whether they contained comment/responses matrices as required our Environmental Guide Volume 2 Activity Instructions. All required comment/response matrices had been properly uploaded.

- iii. Maintain effective NEPA conflict resolution processes whenever appropriate.*

TxDOT has not had to enter into conflict resolution as part of any NEPA review.

### **C. Efficiency and timeliness in completion of NEPA process:**

- i. Monitor time of completion for NEPA approvals under this MOU and the Original MOU.*

TxDOT has started and completed three EAs during the two-year period between when the renewal MOU was signed on December 9, 2019 and December 9, 2021:

- SL 288 in the Dallas District (CSJ 2250-02-013), started December 9, 2019, FONSI issued September 25, 2020, start-to-finish duration = 291 days
- US 377 in the Dallas District (CSJ 0081-06-040), started April 7, 2020, FONSI issued February 17, 2021, start-to-finish duration = 316 days
- US 87 in the Amarillo District (CSJ 0425-01-021), started September 22, 2020, FONSI issued July 28, 2021, start-to-finish duration = 310 days

The median start-to-finish duration for these three EAs was 310 days.

## NEPA Assignment Self-Assessment – January 2022

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The last NEPA Assignment Self-Assessment submitted under the original MOU was dated April 23, 2018 and reported a median start-to-finish duration for EAs started and completed under the original MOU of 533 days (see page 56 of 59).

Therefore, the first three EAs started and completed under the new MOU had a median start-to-finish duration (310 days) that was 223 days shorter than the median start-to-finish duration for EAs started and completed under the original MOU (533 days).

- ii. *Monitor time to completion for key interagency consultation formerly requiring FHWA participation (e.g., Section 7 biological opinions, Section 106 resolution of adverse effects) under this MOU and the Original MOU.*

TxDOT started and completed 13 formal Section 7 consultations during the two-year period between when the renewal MOU was signed on December 9, 2019 and December 9, 2021. The average time for completion was approximately 78 days (based on a start date of when TxDOT sent the consultation packet to USFWS).

As for the original NEPA assignment MOU, the April 23, 2018 self-assessment report (at page 56 of 59) contained a table showing the average time of completion for formal Section 7 consultations in the years 2011 through 2017. As explained in that report, in 2015 the average time for formal consultation was 137 days, in 2016 the time for formal consultation was 34 days, and in 2017 the average time for formal consultation was 154 days.