



NEPA Assignment – Self-Assessment

January 2023

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, 2021 through December 9, 2022. 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, 2021 and December 9, 2022.

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 five 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

In response to the NEPA assignment MOU's call for "areas identified as needing improvement," ENV identified the areas listed below for the period from December 9, 2021 through December 9, 2022. 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. 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's template for a Finding of No Significant Impact for State or FHWA Project needed to be revised for clarity
- ENV's Guidance – EIS Process Roadmap for an FHWA Project needed to be updated to implement Section 11301 of the Infrastructure Investment and Jobs Act of 2021
- ENV's Template – Documentation of Public Hearing Opportunity needed to be revised to account for the possibility of comments received and the need to prepare a comment/response matrix
- ENV needed a Flowchart: Water Process for Section 404 to provide a roadmap for Section 404 ECOS steps and required documentation
- ENV needed a QA/QC Cover Sheet for SWG Permit Applications for use in documenting TxDOT's QA/QC review of USACE-SWG permit applications prior to submittal
- ENV needed a QA/QC Cover Sheet for SWG Jurisdictional Determination and/or Delineation Verification Actions for use in documenting TxDOT's QA/QC review of USACE-SWG jurisdictional determinations and/or delineation verifications prior to submittal
- ENV's Endangered Species Act Programmatic Consultation Agreement: Red-cockaded Woodpecker with the USFWS needed to be updated to establish a five-year renewal term and to recognize the proposed scientific name change for the woodpecker
- ENV's Guidance: Texas Parks and Wildlife Department Coordination Under the 2021 Memorandum of Understanding needed to be revised to add clarifying language about triggers for re-coordination and make other revisions
- ENV's Form: Documentation of Texas Parks and Wildlife Department Best Management Practices needed to be revised to implement a new approach for indicating BMPs to be used on the project with check boxes
- ENV's Guidance: Addressing the Monarch Butterfly in a TxDOT Species Analysis needed to be revised to add standard language for certain situations when applicable

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- ENV needed a new Flow Chart: TxDOT Process for Species/Habitat Analysis and Endangered Species Act Consultation to outline the process for completing a species analysis and ensuring compliance with the ESA
- ENV needed a new Flow Chart: Texas Parks and Wildlife Coordination Process to outline the process for coordinating with TPWD and implementing species BMPs
- ENV's Environmental Assessment Handbook needed to be revised to be more specific and consistent with the National Park Service's 2021 Land and Water Conservation Fund Federal Financial Assistance Manual, and to update terminology regarding "water features"
- ENV's Environmental Handbook: Section 6(f) Land and Water Conservation Fund Act Compliance needed to be comprehensively re-written to more closely track the National Park Service's 2021 Land and Water Conservation Fund Federal Financial Assistance Manual
- ENV needed a new Endangered Species Act Programmatic Consultation Agreement for Geotechnical Boreholes, Traffic Signals, and ITS (WAC, AUS, SAT) with the USFWS to address project effects to Eurycea salamanders and terrestrial karst invertebrates in WAC, AUS, and SAT districts
- ENV needed Voluntary Conservation Measures for Karst Invertebrates, Aquifer Invertebrates, and Salamanders for Biological Assessments and Biological Evaluations to assist in preparing documents for consultation with the USFWS under Section 7 of the ESA
- ENV's Form: Documentation of Applicability of Programmatic Consultation with USFWS needed to be updated to reflect the new programmatic consultation agreement for geotechnical boreholes, traffic signals, and ITS
- ENV's Public Involvement Handbook needed to be revised to refer to TPP Public Involvement Section's new Public Involvement Materials Toolkit, clarify that a notice and opportunity to comment may be required in connection with a reevaluation under certain circumstances, and include a definition of "agency with jurisdiction"
- ENV's Instructions: Completing Project Coordination Request (PCR) for Historical Studies needed to be revised to coincide with changes made to research design and historical resources survey report documents on the toolkit
- ENV needed a new Guidance for Historical Studies Desktop Survey
- ENV's Documentation Standard: Historical Studies Research Design needed to be revised to eliminate schematics and other figures, make additions to address Desktop level surveys, and make other small changes
- ENV's Documentation Standard: Historical Studies Resources Survey Report needed to be revised to remove some sections that were not useful, add incorporation of project description and ROW information from ECOS, and add Desktop Survey as a type of report
- ENV's Template: Historical Studies Research Design needed to be revised to add "desktop survey" as a type of survey in addition to windshield, reconnaissance, and intensive
- ENV's Template: Historical Resources Survey Report needed to be revised to add "desktop survey" as a type of survey in addition to windshield, reconnaissance, and intensive
- ENV's Species Analysis Spreadsheet needed to be updated to reflect changes in species status and make other changes

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- ENV's Public Involvement Toolkit needed to be updated to include the Guidance: FAQ Regarding Virtual Public Involvement under NEPA and TxDOT's Environmental Review Rules that was previously posted on Crossroads at the beginning of the pandemic
- ENV needed a new Guidance: Reasonable Assurances for Water Resources Activities to assist with documenting reasonable assurances for ECOS water resources activities when changing milestones
- ENV 's Environmental Assessment Handbook needed to be revised to instruct not to include displacee's names, correct a regulatory reference, and revise standard language regarding migratory birds and climate change
- ENV needed a new Form: Documentation of Compliance with Historic Resource Monitoring Commitment for use in completing the "Perform Historical Studies Monitoring Commitments" Activity in ECOS
- ENV's Documentation Standard for USACE Pre-Construction Notification (PCN) needed to be updated to reflect new QA/QC Cover Sheet for SWG, FORM 6082 for SWG NWP applications, new language per GC 18 and RC 4b, and addition of the Section 404/10 Impacts Table and ORM table
- ENV needed a new Documentation Standard for Level 1 Stream Assessment
- ENV needed a new Documentation Standard for Interim Hydrogeomorphic Functional Assessment in accordance with guidance from USACE
- ENV needed new Instructions: Wetland and Stream Delineation Data for providing ENV with wetland and stream delineation data for inclusion in ENV's statewide database ("TxDOT Waters")
- ENV needed a new TxDOT Tribal Histories Project which included tribal reports providing a general history and identifying culturally sensitive locations to assist TxDOT when developing transportation projects
- ENV's Community Impact Assessment Technical Report Form needed to be revised to remove certain conditions in Section A and add details to Section F
- ENV's Form: Surface Water Analysis needed to be revised for clarity
- ENV needed a new Water Submittal Geodatabase Template for use when submitting delineated water features to TxDOT/ENV
- ENV's Instructions: Preparing a Species Analysis Spreadsheet needed to be revised to update links, update instructions on how to obtain a USFWS species list, and make other revisions and updates
- ENV's Form: Documenting (e)-Constraint Compliance on a (c)(26), (c)(27), or (c)(28) Categorical Exclusion needed to be removed from our toolkits because ENV simplified its CE process by instructing district staff to use (d)(13) instead of (c)(26), (c)(27), or (c)(28)
- ENV's Open-Ended (d) Categorical Exclusion Classification Request Form and its Amendment to Open-Ended (d) Categorical Exclusion Classification Request Form needed to be revised to establish new thresholds for needing ENV pre-approval
- ENV's Flowchart: Water Process for Section 404 needed to be updated to account for Section 401 Coordination with TCEQ per regulatory changes

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- ENV's Species Analysis Spreadsheet needed to be updated to reflect updated species status
- ENV's Environmental Assessment Handbook needed to be revised to require mention of the need for an interstate access justification request, if applicable, and make other revisions
- ENV's Guidance – Preparing a Purpose and Need Statement needed to be revised to emphasize that no aspect of the proposed build alternative(s) should be discussed in the Supporting Facts and/or Data section
- ENV's Texas Air Quality Nonattainment or Attainment Areas and Counties needed to be updated

Additionally, ENV identified the following areas which could be further improved as part of ENV's continuous improvement efforts:

- Improve ENV's guidance regarding responding to public comments and the procedure for approving the response to public comments on EA/EIS projects in order to better ensure that TxDOT is being appropriately responsive to public comments received.
- Make comprehensive revisions and updates to the Environmental Guide Volumes 1 and 2, including:
 - additional reviews of technical area deliverables by Project Delivery Staff on EA/EIS projects,
 - additional instructions regarding documenting "reasonable assurances" for activities that cannot be finalized as of the letter of authority date,
 - centralizing the authority to approve the changing of milestones for activities with a default milestone of "Prior to LOA" within ENV, and
 - other changes to ensure that our environmental review process is effectively and efficiently documenting compliance with all applicable environmental laws under the NEPA assignment program.
- Make further improvements to ECOS.

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

In response to the NEPA assignment MOU's call for a list of "corrective actions," ENV provides the below list of updates and changes for the period from December 9, 2021 through December 9, 2022. However, again, the phrase, "corrective actions" is not entirely accurate with respect to most of these 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.

January 2022

- ENV revised its template for a Finding of No Significant Impact for State or FHWA Project for clarity
- ENV updated its Guidance – EIS Process Roadmap for an FHWA Project to implement Section 11301 of the Infrastructure Investment and Jobs Act of 2021
- ENV updated its Template – Documentation of Public Hearing Opportunity to account for the possibility of comments received and the need to prepare a comment/response matrix
- ENV developed and issued a new Flowchart: Water Process for Section 404 to provide a roadmap for Section 404 ECOS steps and required documentation

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- ENV developed and issued a QA/QC Cover Sheet for SWG Permit Applications for use in documenting TxDOT's QA/QC review of USACE-SWG permit applications prior to submittal
- ENV developed and issued a QA/QC Cover Sheet for SWG Jurisdictional Determination and/or Delineation Verification Actions for use in documenting TxDOT's QA/QC review of USACE-SWG jurisdictional determinations and/or delineation verifications prior to submittal

March 2022

- ENV updated its Endangered Species Act Programmatic Consultation Agreement: Red-cockaded Woodpecker with the USFWS to establish a five-year renewal term and recognize the proposed scientific name change for the woodpecker

April 2022

- ENV revised its Guidance: Texas Parks and Wildlife Department Coordination Under the 2021 Memorandum of Understanding to add clarifying language about triggers for re-coordination and make other revisions
- ENV revised its Form: Documentation of Texas Parks and Wildlife Department Best Management Practices to implement a new approach for indicating BMPs to be used on the project with check boxes
- ENV revised its Guidance: Addressing the Monarch Butterfly in a TxDOT Species Analysis to add standard language for certain situations when applicable
- ENV developed and released a new Flow Chart: TxDOT Process for Species/Habitat Analysis and Endangered Species Act Consultation to outline the process for completing a species analysis and ensuring compliance with the ESA
- ENV developed and released a new Flow Chart: Texas Parks and Wildlife Coordination Process to outline the process for coordinating with TPWD and implementing species BMPs
- ENV revised its Environmental Assessment Handbook to be more specific and consistent with the National Park Service's 2021 Land and Water Conservation Fund Federal Financial Assistance Manual, and update terminology regarding "water features"
- ENV comprehensively re-wrote its Environmental Handbook: Section 6(f) Land and Water Conservation Fund Act Compliance to more closely track the National Park Service's 2021 Land and Water Conservation Fund Federal Financial Assistance Manual
- ENV entered into a new Endangered Species Act Programmatic Consultation Agreement for Geotechnical Boreholes, Traffic Signals, and ITS (WAC, AUS, SAT) with the USFWS to address project effects to Eurycea salamanders and terrestrial karst invertebrates in WAC, AUS, and SAT districts

May 2022

- ENV developed and issued Voluntary Conservation Measures for Karst Invertebrates, Aquifer Invertebrates, and Salamanders for Biological Assessments and Biological Evaluations to assist in preparing documents for consultation with the USFWS under Section 7 of the ESA
- ENV updated its Form: Documentation of Applicability of Programmatic Consultation with USFWS to reflect the new programmatic consultation agreement for geotechnical boreholes, traffic signals, and ITS

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- ENV revised its Public Involvement Handbook to refer to TPP Public Involvement Section's new Public Involvement Materials Toolkit, clarify that a notice and opportunity to comment may be required in connection with a reevaluation under certain circumstances, and include a definition of "agency with jurisdiction"
- ENV revised its Instructions: Completing Project Coordination Request (PCR) for Historical Studies to coincide with changes made to research design and historical resources survey report documents on the toolkit
- ENV developed and released a new Guidance for Historical Studies Desktop Survey
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- ENV revised its Documentation Standard: Historical Studies Resources Survey Report to remove some sections that were not useful, add incorporation of project description and ROW information from ECOS, and add Desktop Survey as a type of report
- ENV revised its Template: Historical Studies Research Design to add "desktop survey" as a type of survey in addition to windshield, reconnaissance, and intensive
- ENV revised its Template: Historical Resources Survey Report to add "desktop survey" as a type of survey in addition to windshield, reconnaissance, and intensive
- ENV updated its Species Analysis Spreadsheet to reflect changes in species status and make other changes
- ENV updated its Public Involvement Toolkit to include the Guidance: FAQ Regarding Virtual Public Involvement under NEPA and TxDOT's Environmental Review Rules that was previously posted on Crossroads at the beginning of the pandemic

June 2022

- ENV developed and released a new Guidance: Reasonable Assurances for Water Resources Activities to assist with documenting reasonable assurances for ECOS water resources activities when changing milestones
- ENV revised its Environmental Assessment Handbook to instruct not to include displacee's names, correct a regulatory reference, and revise standard language regarding migratory birds and climate change
- ENV developed and issued a new Documentation of Compliance with Historic Resource Monitoring Commitment for use in completing the "Perform Historical Studies Monitoring Commitments" Activity in ECOS

July 2022

- ENV updated its Documentation Standard for USACE Pre-Construction Notification (PCN) to reflect new QA/QC Cover Sheet for SWG, FORM 6082 for SWG NWP applications, new language per GC 18 and RC 4b, and addition of the Section 404/10 Impacts Table and ORM table
- ENV developed and issued a new Documentation Standard for Level 1 Stream Assessment
- ENV developed and issued a new Documentation Standard for Interim Hydrogeomorphic Functional Assessment in accordance with guidance from USACE

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- ENV developed and issued new Instructions: Wetland and Stream Delineation Data for providing ENV with wetland and stream delineation data for inclusion in ENV's statewide database ("TxDOT Waters")
- ENV developed and issued a new TxDOT Tribal Histories Project which included tribal reports providing a general history and identifying culturally sensitive locations to assist TxDOT when developing transportation projects

August 2022

- ENV revised its Community Impact Assessment Technical Report Form to remove certain conditions in Section A and add details to Section F
- ENV revised its Form: Surface Water Analysis for clarity
- ENV developed and issued a new Water Submittal Geodatabase Template for use when submitting delineated water features to TxDOT/ENV
- ENV updated its Instructions: Preparing a Species Analysis Spreadsheet to update links, update instructions on how to obtain a USFWS species list, and make other revisions and updates

September 2022

- ENV removed its Form: Documenting (e)-Constraint Compliance on a (c)(26), (c)(27), or (c)(28) Categorical Exclusion as ENV simplified its CE process by instructing district staff to use (d)(13) instead of (c)(26), (c)(27), or (c)(28)
- ENV revised its Open-Ended (d) Categorical Exclusion Classification Request Form and its Amendment to Open-Ended (d) Categorical Exclusion Classification Request Form to establish new thresholds for needing ENV pre-approval

October 2022

- ENV updated its Flowchart: Water Process for Section 404 to account for Section 401 Coordination with TCEQ per regulatory changes

November 2022

- ENV updated its Species Analysis Spreadsheet to reflect updated species status
- ENV revised its Environmental Assessment Handbook to require mention of the need for an interstate access justification request, if applicable, and make other revisions
- ENV revised its Guidance – Preparing a Purpose and Need Statement to emphasize that no aspect of the proposed build alternative(s) should be discussed in the Supporting Facts and/or Data section

December 2022

- ENV updated its Texas Air Quality Nonattainment or Attainment Areas and Counties

In addition to the above actions, ENV continued its efforts to provide better instruction to district environmental staff about the change control process after work plan acceptance in ECOS. Specifically, ENV included a detailed explanation of the change control process in its ENV207 – New District Environmental Staff Orientation training, which, as explained below, ENV provided on seven occasions during the period covered by this annual report.

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:

- Improve ENV’s guidance regarding responding to public comments and the procedure for approving the response to public comments on EA/EIS projects in order to better ensure that TxDOT is being appropriately responsive to public comments received.
- Make comprehensive revisions and updates to the Environmental Guide Volumes 1 and 2, including:
 - additional reviews of technical area deliverables by Project Delivery Staff on EA/EIS projects,
 - additional instructions regarding documenting “reasonable assurances” for activities that cannot be finalized as of the letter of authority date,
 - centralizing the authority to approve the changing of milestones for activities with a default milestone of “Prior to LOA” within ENV, and
 - other changes to ensure that our environmental review process is effectively and efficiently documenting compliance with all applicable environmental laws under the NEPA assignment program.
- 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:

- i. 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, 2021 through December 9, 2022, TxDOT was served with one such complaint. On July 5, 2022, TxDOT was served with a lawsuit filed by Rethink35, Texas Public Interest Research Group, and Environment Texas in the United States District Court for the Western District of Texas Austin Division challenging TxDOT’s December 17, 2021 FONSI for the I-35 North project in Austin and TxDOT’s December 21, 2021 FONSI for the I-35 South project in Austin (Case 1:22-cv-00620). 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, 2021 through December 9, 2022, 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, 2021 through December 9, 2022, 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, 2021 through December 9, 2022, 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, 2021 through December 9, 2022, there was one such court decision. On March 31, 2022, the United States District Court for the Western District of Texas Austin Division issued an order denying all relief requested by Save Our Springs Alliance, Inc. in its lawsuit challenging TxDOT's and the United States Fish and Wildlife Service's compliance with the Federal Endangered Species Act with regard to the Oak Hill Parkway project in Austin. TxDOT notified FHWA and DOJ within seven calendar days of the court's decision. The plaintiff did not file 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, 2021 through December 9, 2022, 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, 2021 through December 9, 2022, 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 2022, 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 approximately 350 ECOS project files for projects that were environmentally cleared between December 9, 2021 through December 9, 2022 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.

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, July 2021, and September 2021. In the latter part of the period covered by this annual self-assessment, ENV began discussing and drafting additional revisions and updates to the Environmental Guide that it intends to finalize and release in early 2023.

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 approximately 350 ECOS project files for projects that were environmentally cleared between December 9, 2021 through December 9, 2022 and provided feedback to district environmental staff regarding compliance with ENV's business processes.

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 and ENV division staff on seven occasions (January 26, 2022; February 23, 2022; April 26, 2022; June 23, 2022; July 27, 2022; October 06, 2022; December 07, 2022). ENV SMEs also provide technical training on various resource area-specific technical issues including air quality, hazardous materials, traffic noise, biology, water resources, and NEPA. ENV also regularly addresses any issues regarding interpretation of the Environmental Guide at monthly NEPA chats and other Teams 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 one notice of intent during the period from December 9, 2021 through December 9, 2022. For that project, ENV obtained a legal sufficiency determination from GCD for the notice of intent prior to publishing in the Federal Register.

TxDOT did not issue any FEISs during the period from December 9, 2021 through December 9, 2022.

TxDOT completed one individual Section 4(f) determination during the period from December 9, 2021 through December 9, 2022. For that project, GCD's legal sufficiency determination was uploaded to ECOS.

TxDOT issued four batch Section 139(l) notices during the period from December 9, 2021 through December 9, 2022. For all four 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

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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 approximately 350 ECOS project files for projects that were environmentally cleared between December 9, 2021 through December 9, 2022 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 approximately 350 ECOS project files for projects that were environmentally cleared between December 9, 2021 through December 9, 2022 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 12 EAs during the three-year period between when the renewal MOU was signed on December 9, 2019 and December 9, 2022:

#	ECOS Main CSJ	DISTRICT	HIGHWAY	START DATE	NEPA CLEARANCE DATE	START TO FINISH DURATION
1	2250-02-013	Dallas	SL 288	12/9/2019	9/25/2020	291
2	0081-06-040	Dallas	US 377	4/7/2020	2/17/2021	316
3	0425-01-021	Amarillo	US 87	9/22/2020	7/28/2021	310
4	0015-13-077	Austin	IH 35	12/23/2019	12/21/2021	729
5	0204-02-034	Austin	US 79	6/1/2021	1/6/2022	219

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6	0492-04-034	Tyler	FM 756	6/1/2021	1/7/2022	220
7	0211-06-059	Yoakum	US 77	10/30/2020	1/19/2022	446
8	0088-05-096	Yoakum	US 59	9/8/2020	2/11/2022	521
9	0535-08-072	Yoakum	IH 10	6/15/2020	3/15/2022	638
10	2452-03-111	San Antonio	SL 1604	3/20/2020	5/24/2022	795
11	0371-04-062	Corpus Christi	US 77	8/7/2020	7/8/2022	700
12	2094-01-062	Pharr	FM 2220	9/17/2020	10/14/2022	757

The median start-to-finish duration for these 12 EAs was 483.5 days.

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 of the April 23, 2018 self-assessment report).

Therefore, the first 12 EAs started and completed under the new MOU had a median start-to-finish duration (483.5 days) that was 49.5 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 16 formal Section 7 consultations during the three-year period between when the renewal MOU was signed on December 9, 2019 and December 9, 2022. The average time for completion was approximately 90 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.