



NEPA Assignment – Self-Assessment

February 2024

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, 2022 through December 9, 2023. 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, 2022 and December 9, 2023.

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 two 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. ENV's Program Review Section also fulfills other important functions including strategically

standing up ENV's education program; creating and producing GIS applications; facilitating and supporting ENV's Governance Committee; increasing data integrity and availability through system processes and dashboard production; and assisting on strategic projects to aid ENV with project development statewide. These additional functions ensure there is an ongoing opportunity for ENV's Program Review to collaborate with internal and external business partners and to focus on continual process improvement to the department's environmental program.

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, 2022 through December 9, 2023. 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 determined that it needed new Historic Bridge Section 4(f) Guidelines and Documentation Standards
- ENV's Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties needed to be updated
- ENV determined that it needed new emission rate lookup tables for conducting MSAT and CO TAQA analyses based on EPA's MOVES3 emissions model update
- ENV's guidance regarding Complying with Laws Protecting Birds and Managing Potential Violations needed to be updated to remove discussion of the December 2017 DOI Solicitor's Opinion, M-37050 on the scope of the MBTA
- ENV's Environmental Assessment Handbook needed to be updated
- ENV's Letter Template for Official with Jurisdiction Notification of Intent to Pursue De Minimis needed to be updated
- ENV's Template: Appendix A – Air Quality Statements for Environmental Review Documents needed to be revised
- ENV's Guidance: Preparing Air Quality Statements needed to be updated to incorporate new MSAT disclosure language based on the Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA documents, updated by FHWA in January 2023
- ENV's Environmental Guide Volume 1: Process, and Environmental Guide Volume 2: Activity Instructions needed various updates and revisions
- ENV's Species Analysis Form needed to be revised to include NMFS as a potential party to consultation under the ESA

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- ENV's Form: Documentation of Applicability of Programmatic Consultation with USFWS needed to be revised to add the ENV lead to the check-box list of programmatic consultations
- ENV determined that it needed a new Flow Chart – TCEQ Section 401 Certification Process for use with all U.S. Army Corps of Engineers Standard Permits and occasionally Nationwide Permit applications
- ENV's Guidance: Public Comment Response Matrix needed to be revised to strengthen the instructions regarding the required content of comment responses and add instructions regarding making the comment responses available to the commenters
- ENV's Environmental Guide Volume 2 instructions for the "Obtain Planning Consistency Documentation" Activity needed to be revised to improve readability and address projects that are not in the STIP and not in the "Rural Develop Authority Project List" but are fully funded in years 5-10 of the UTP
- ENV's Decision Form – Project of Local Air Quality Concern (POAQC) needed to be revised for clarity and easier usage of the form
- ENV's Transportation Conformity Report Form needed to be revised to update EPA links and provide additional clarifications including regarding projects exempt under 40 CFR 93.127
- ENV's Guidance: Frequently Asked Questions Regarding Virtual Public Involvement under NEPA and TxDOT's Environmental Review Rules needed to be revised to address issues pointed out by FHWA in Monitoring Event No. 2
- ENV determined that it needed Emergency Discovery Guidelines to provide tips to district staff and contractors to handle unanticipated finds of burials or archeological sites during construction and maintenance projects
- ENV's Species Analysis Spreadsheet needed to be revised to update the federal status for various species, update the county-level distributions for various species, and make other updates
- ENV's Letter Template for Request of Official with Jurisdiction's Concurrence on a Section 4(f) *De Minimis* Determination for a Park, Recreation Area, or Refuge needed to be revised for clarity and better alignment with regulatory requirements at 23 CFR 774
- ENV's Endangered Species Act Programmatic Consultation Agreement Covering Minor Projects for Eurycea Salamanders and Karst invertebrates needed to be renewed (WAC, AUS, SAT)
- ENV determined that it needed potential archeological liability maps (PALMs) for El Paso and Odessa to aid in transportation planning and cultural resource compliance
- ENV determined that it needed a Standard Operating Procedure: Entering into an Agreement with a Mitigation Provider for Section 7 Conservation Measures
- ENV determined that it needed a Standard Operating Procedure: Acquiring and/or Purchasing Section 404 Compensatory Mitigation Credits
- ENV's Environmental Handbook – Preparing an Environmental Assessment needed to be updated to add a hard 75-page limit (not including citations or appendices) to align with Federal debt ceiling bill (Pub. L. 118-5)

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- ENV's Guidance – EIS Process Roadmap for an FHWA project needed to be updated to add a hard 300-page limit (not including citations or appendices) to align with Federal debt ceiling bill (Pub. L. 118-5)
 - ENV's Template: Notice of Intent for an FHWA EIS Project needed to be updated to align with Federal debt ceiling bill (Pub. L. 118-5)
 - ENV's Documentation Standard for an Individual Section 4(f) Evaluation needed to be revised to be more concise and more closely track regulatory requirements
 - ENV determined that it needed a Project of Air Quality Concern Decision Sheet to use as a quick reference guide showing common types of projects that require a POAQC decision and common types of projects that are exempt from a POAQC decision
 - The section of ENV's Environmental Handbook – Water Resources regarding Section 9 authorizations needed to be revised to include instructions for when the project is within a Coastal Management Plan (CMP) area and to update CMP regulatory citations throughout
 - ENV's Guidance – Using the ENV Community Impacts Data Tool needed to be revised to provide an updated link to the TxDOT Census Data Tool, update screen shots to reflect new features, describe new data sets and how to visualize them both in the tool and report format
 - ENV's Environmental Assessment Outline needed to be revised to conform to changes previously made to the EA Handbook
 - ENV needed to renew its TxDOT-FHWA-ACHP-SHPO Section 106 Programmatic Agreement
 - ENV determined that it needed a Cultural Resources Frequently Asked Questions (FAQ) to share with members of the public interested in cultural resources management work
 - ENV's Environmental Handbook: Preparing an Environmental Assessment needed to be revised to add special instructions regarding the need for a Section 404 individual standard permit from the USACE
 - ENV's Surface Water Analysis Form needed to be revised to provide clarity for end users
 - ENV's Documentation of Applicability of Programmatic Consultation with USFWS Form needed to be updated to reflect the correct name of the programmatic consultation agreement for salamanders and invertebrates
 - ENV's Guidance: Indirect Impacts Analysis needed to be revised to focus on induced growth impacts as other types of indirect impacts are addressed under other, separate analyses (i.e., noise, air quality, community impacts, etc.)
 - ENV determined that it needed new Guidance: FHWA Direct Recipient Discretionary Grant Projects
 - ENV's Water Feature Delineation Report Template needed to be updated to include current USACE guidance
 - ENV's Environmental Handbook for Coastal Barrier Resources Act needed to be reviewed to verify and update all external links
 - ENV's Environmental Handbook for Farmland Protection Policy Act needed to be reviewed to verify and update all external links
- E. Discussion of corrective actions that have been or will be implemented

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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, 2022 through December 9, 2023. 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.

December 2022

- ENV developed and released new Historic Bridge Section 4(f) Guidelines and Documentation Standards

January 2023

- ENV updated its list of Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties
- ENV developed and released new emission rate lookup tables for conducting MSAT and CO TAQA analyses based on EPA's MOVES3 emissions model update
- ENV updated its guidance regarding Complying with Laws Protecting Birds and Managing Potential Violations to remove discussion of the December 2017 DOI Solicitor's Opinion, M-37050 on the scope of the MBTA
- ENV updated its Environmental Assessment Handbook
- ENV updated its Letter Template for Official with Jurisdiction Notification of Intent to Pursue De Minimis
- ENV revised its Template: Appendix A – Air Quality Statements for Environmental Review Documents
- ENV revised its Guidance: Preparing Air Quality Statements to incorporate new MSAT disclosure language based on the Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA documents, updated by FHWA in January 2023

February 2023

- ENV released a comprehensive update of its Environmental Guide Volume 1: Process, and Environmental Guide Volume 2: Activity Instructions. This included:
 - additional reviews of technical area deliverables by Project Delivery Staff on E/AEIS 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.
- ENV revised its Species Analysis Form to include NMFS as a potential party to consultation under the ESA
- ENV updated its Form: Documentation of Applicability of Programmatic Consultation with USFWS to add the ENV lead to the check-box list of programmatic consultations

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- ENV developed and issued a Flow Chart – TCEQ Section 401 Certification Process for use with all U.S. Army Corps of Engineers Standard Permits and occasionally Nationwide Permit applications

March 2023

- ENV revised its Guidance: Public Comment Response Matrix to strengthen the instructions regarding the required content of comment responses and add instructions regarding making the comment responses available to the commenters
- ENV updated its Texas Air Quality Nonattainment or Maintenance Areas and Counties to reflect re-designation of the 2008 ozone nonattainment areas of DFW and HGB from serious to severe and include specific designation of severe-15 nonattainment for the 2008 NAAQS as identified in EPA's Greenbook
- ENV revised its Environmental Guide Volume 2 instructions for the "Obtain Planning Consistency Documentation" Activity to improve readability and address projects that are not in the STIP and not in the "Rural Develop Authority Project List" but are fully funded in years 5-10 of the UTP

April 2023

- ENV revised its Decision Form – Project of Local Air Quality Concern (POAQC) for clarity and easier usage of the form
- ENV revised its Transportation Conformity Report Form to update EPA links and provide additional clarifications including regarding projects exempt under 40 CFR 93.127
- ENV revised its Guidance; Frequently Asked Questions Regarding Virtual Public Involvement under NEPA and TxDOT's Environmental Review Rules to address issues pointed out by FHWA in Monitoring Event No. 2

May 2023

- ENV developed and issued Emergency Discovery Guidelines to provide tips to district staff and contractors to handle unanticipated finds of burials or archeological sites during construction and maintenance projects
- ENV updated its Species Analysis Spreadsheet to update the federal status for various species, update the county-level distributions for various species, and make other updates
- ENV revised its Letter Template for Request of Official with Jurisdiction's Concurrence on a Section 4(f) *De Minimis* Determination for a Park, Recreation Area, or Refuge for clarity and better alignment with regulatory requirements at 23 CFR 774
- ENV renewed its Endangered Species Act Programmatic Consultation Agreement Covering Minor Projects for Eurycea Salamanders and Karst invertebrates (WAC, AUS, SAT)

June 2023

- ENV developed and issued potential archeological liability maps (PALMs) for El Paso and Odessa to aid in transportation planning and cultural resource compliance

July 2023

- ENV developed and issued a Standard Operating Procedure: Entering into an Agreement with a Mitigation Provider for Section 7 Conservation Measures

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- ENV developed and issued a Standard Operating Procedure: Acquiring and/or Purchasing Section 404 Compensatory Mitigation Credits
- ENV revised its Environmental Handbook – Preparing an Environmental Assessment to add a hard 75-page limit (not including citations or appendices) to align with Federal debt ceiling bill (Pub. L. 118-5)
- ENV revised its Guidance – EIS Process Roadmap for an FHWA project to add a hard 300-page limit (not including citations or appendices) to align with Federal debt ceiling bill (Pub. L. 118-5)
- ENV revised its Template: Notice of Intent for an FHWA EIS Project to align with Federal debt ceiling bill (Pub. L. 118-5)
- ENV revised its Documentation Standard for an Individual Section 4(f) Evaluation to be more concise and more closely track regulatory requirements

August 2023

- ENV updated its Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties
- ENV developed and issued a Project of Air Quality Concern Decision Sheet to use as a quick reference guide showing common types of projects that require a POAQC decision and common types of projects that are exempt from a POAQC decision
- ENV revised its Environmental Handbook – Water Resources regarding Section 9 authorizations to include instructions for when the project is within a Coastal Management Plan (CMP) area and to update CMP regulatory citations throughout

September 2023

- ENV revised its Guidance – Using the ENV Community Impacts Data Tool to provide an updated link to the TxDOT Census Data Tool, update screen shots to reflect new features, describe new data sets and how to visualize them both in the tool and report format
- ENV revised its Environmental Assessment Outline to conform to changes previously made to the EA Handbook
- ENV finalized a new TxDOT-FHWA-ACHP-SHPO Section 106 Programmatic Agreement

October 2023

- ENV developed and issued a Cultural Resources Frequently Asked Questions (FAQ) to share with members of the public interested in cultural resources management work

November 2023

- ENV updated its Texas Air Quality Nonattainment of Attainment-Maintenance Areas and Counties
- ENV revised its Environmental Handbook: Preparing an Environmental Assessment to add special instructions regarding the need for a Section 404 individual standard permit from the USACE
- ENV revised its Surface Water Analysis Form to provide clarity for end users

- ENV revised its Documentation of Applicability of Programmatic Consultation with USFWS Form to reflect the correct name of the programmatic consultation agreement for salamanders and invertebrates

December 2023

- ENV updated its Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties
- ENV revised its Guidance: Indirect Impacts Analysis to focus on induced growth impacts as other types of indirect impacts are addressed under other, separate analyses (i.e., noise, air quality, community impacts, etc.)
- ENV developed and issued new Guidance: FHWA Direct Recipient Discretionary Grant Projects
- ENV revised its Water Feature Delineation Report Template to include current USACE guidance
- ENV revised its Environmental Handbook for Coastal Barrier Resources Act to verify and update all external links
- ENV revised its Environmental Handbook for Farmland Protection Policy Act to verify and update all external links
- ECOS version 9.9 update (“due date” now required, new field for NOI date, other updates and revisions)

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, 2022 through December 9, 2023, TxDOT was not served with any such 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, 2022 through December 9, 2023, 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, 2022 through December 9, 2023, 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, 2022 through December 9, 2023, 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, 2022 through December 9, 2023, there were no such court decisions. 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, 2022 through December 9, 2023, 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 late 2023 and early 2024, 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 60 ECOS project files for projects that were environmentally cleared between December 9, 2022 through December 9, 2023 to determine whether TxDOT correctly complied with the respective business processes set forth in the Environmental Guide (i.e. full reviews).

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, September 2021, and February 2023. ENV intends to do its next round of revisions and updates to the Environmental Guide in early 2024.

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 ECOS project files for projects that were environmentally cleared between December 9, 2022 through December 9, 2023 and provided, where applicable, 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

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division staff on six occasions (December 12, 2022; February 16, 2023; April 20, 2023; July 7, 2023; September 28, 2023; and November 2, 2023). 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 did not issue any notices of intent during the period from December 9, 2022 through December 9, 2023.

TxDOT issued four FEISs during the period from December 9, 2022 through December 9, 2023. For all four of those FEISs, GCD's legal sufficiency determination was uploaded to ECOS.

TxDOT completed one individual Section 4(f) determination during the period from December 9, 2022 through December 9, 2023. For that project, GCD's legal sufficiency determination was uploaded to ECOS.

TxDOT issued five batch Section 139(l) notices, and four individual project-specific Section 139(l) notices during the period from December 9, 2022 through December 9, 2023. For all nine 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 ECOS project files for projects that were environmentally cleared between December 9, 2022 through December 9, 2023 to determine whether TxDOT correctly complied with the respective business processes set forth in the Environmental Guide based on the type of file review performed by ENV's Program Review Section. 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

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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 ECOS project files for projects that were environmentally cleared between December 9, 2022 through December 9, 2023 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. Additionally, in March 2023, ENV revised its Guidance: Public Comment Response Matrix to strengthen the instructions regarding the required content of comment responses and add instructions regarding making the comment responses available to the commenters.

- 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 20 EAs during the four-year period between when the renewal MOU was signed on December 9, 2019 and December 9, 2023:

#	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
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

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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
13	0326-01-061	Corpus Christi	SH 286	1/10/2020	1/2/2023	1088
14	3021-01-009	Tyler	FM 2964	11/4/2020	2/24/2023	842
15	1311-01-055	Dallas	FM 1171	8/30/2021	6/30/2023	669
16	0914-04-315	Austin	Braker Lane	12/16/2021	6/14/2023	545
17	0135-05-028	Dallas	US 380	4/8/2022	6/30/2023	448
18	0135-11-024	Dallas	US 380	4/14/2022	7/25/2023	467
19	1315-01-030	Dallas	FM 1385	10/7/2021	7/14/2023	645
20	0922-33-165	Laredo	Hachar-Reuthinger Rd	1/23/2020	9/21/2023	1337

The median start-to-finish duration for these 20 EAs was 591 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 20 EAs started and completed under the new MOU had a median start-to-finish duration (591 days) that was 58 days longer than the median start-to-finish duration for EAs started and completed under the original MOU (533 days). However, this is still a substantial improvement over the pre-assignment median start-to-finish duration of 772 days reported in the April 23, 2018 NEPA Assignment Self-Assessment (page 56 of 59).

- 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 23 formal Section 7 consultations during the four-year period between when the renewal MOU was signed on December 9, 2019 and December 9, 2023. The average time for completion was approximately 122 days (based on a start date of when TxDOT sent the consultation packet to USFWS). In addition, TxDOT started and completed four formal conference opinions under Section 7 for species proposed for listing where listing is anticipated during construction. The average time for completion for conference opinions was approximately 181 days.

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.