



# NEPA Assignment Self-Assessment

January 2025

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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, 2023 through December 9, 2024. 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, 2023 and December 9, 2024.

### 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 eight employees, performs reviews 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 and other tools 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 providing strategic enhancements and continuation of 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 Section 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, 2023 through December 9, 2024. 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 Species Analysis Spreadsheet needed to be revised on multiple occasions to update the federal status, range, and habitat description for multiple species.
- ENV's Template – Water Features Delineation Report needed to be revised to reflect a more appropriate number of decimal places when describing the areas of water bodies.

- ENV determined that it needed to develop new guidance for the review of design changes for potential impacts to archeological sites and cemeteries.
- ENV's List of Projects that Do Not Require Review or Coordination for Archeological Compliance needed to be updated to reflect changes made to the list in the new Section 106 programmatic agreement.
- ENV determined that it needed to develop a new Job Aid to assist in completing the Hazardous Materials Initial Site Assessment form.
- ENV's Hazardous Materials Initial Site Assessment form needed to be revised to make it easier to use and to adjust some of the information collected on the form.
- ENV's SOP for Acquiring and/or Purchasing Section 404 Compensatory Mitigation Credits needed to be revised to add a Best Value Mitigation Table Template and DocuSign capability to gather signatures for the mitigation memo packet.
- ENV's SOP for Entering into an Agreement with a Mitigation Provider for Section 7 Conservation Measures to add DocuSign capability to gather signatures and move documents through the approval process.
- ENV determined that it needed a Spanish translation version of its Cultural Resources FAQ.
- ENV's EA Handbook and Outline needed to be revised to better organize and improve instructions for preparing the "Community Impacts" section of an EA.
- ENV's Environmental Guide: Volume 1 Process and Environmental Guide: Volume 2 Activity Instructions needed to be comprehensively updated to revise processes, clarify instructions, and make other improvements.
- ENV determined that it needed to incorporate its FAQ regarding virtual public involvement into its Public Involvement Handbook and make various revisions and updates to the Public Involvement Handbook and various associated notice templates.
- ENV's Surface Water Analysis form needed to be revised to clarify U.S. Coast Guard coordination options and add instructions regarding maintenance work plans.
- ENV's Flowchart: Water Process for Section 404 needed to be revised to require USACE concurrence with the "no practicable alternative" finding.
- ENV's Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties needed to be updated on multiple occasions to reflect changes in attainment status and STIP approval dates.
- ENV's Species Analysis Form needed to be updated to provide options and directions for addressing species that are proposed to be listed as threatened or endangered under the Endangered Species Act.
- ENV's Instructions for Preparing a Species Analysis Spreadsheet needed to be updated to provide updated instructions for addressing impacts to proposed or designated critical habitat, references to new and revised guidance documents, and a new requirement for Review of all species analysis spreadsheets in ECOS by ENV NRM where a "may affect" call is reached, or the project is an EA or EIS project.
- ENV's Guidance - Addressing the Monarch Butterfly needed to be updated.

- ENV’s Guidance – FHWA Direct Recipient Discretionary Grant Projects needed to be updated on multiple occasions to address “planning only” grants and improve the process for communicating clearances to FHWA.
- Various guidance documents, forms, etc. needed to be revised to reflect CEQ’s Phase 2 rulemaking. This included the Handbook - Community Impacts, Environmental Justice, Limited English Proficiency, and Title VI Compliance, Form – Community Impacts Assessment Technical Report, Template – Contractor Disclosure Statement Email, Reevaluation Form, Guidance – EIS Process Roadmap, EA Handbook and Outline, Template – Finding of No Significant Impact, Public Involvement Handbook, and Template – Notice of Intent for an FHWA EIS Project.
- ENV determined that it needed new guidance on how to conduct surveys for the Texas Kangaroo Rat.
- ENV’s traffic noise guidance needed to be updated and revised for various reasons, including adding a new section on conducting a constructability assessment for a noise barrier.
- ENV determined that it needed a new form for conducting a constructability assessment for a proposed noise barrier.

## **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, 2023 through December 9, 2024. 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 2024

- ENV revised its Species Analysis Spreadsheet to update the federal status, range, and habitat description for multiple species.

February 2024

- ENV updated its Template – Water Features Delineation Report to use two instead of three decimal places in describing the area of water features.

March 2024

- ENV developed and released new guidance for review of design changes for potential impacts to archeological sites and cemeteries.
- ENV updated its List of Projects that Do Not Require Review or Coordination for Archeological Compliance to reflect changes made to the list in the new Section 106 programmatic agreement.

- ENV developed and released a new Job Aid to assist in completing the Hazardous Materials Initial Site Assessment form.
- ENV updated its Hazardous Materials Initial Site Assessment form to make it easier to use and make adjustments to some of the information collected on the form.
- ENV revised its SOP for Acquiring and/or Purchasing Section 404 Compensatory Mitigation Credits to add a Best Value Mitigation Table Template and DocuSign capability to gather signatures for the mitigation memo packet.
- ENV revised its SOP for Entering into an Agreement with a Mitigation Provider for Section 7 Conservation Measures to add DocuSign capability to gather signatures and move documents through the approval process.

#### April 2024

- ENV developed and published a Spanish translation version of its Cultural Resources FAQ.
- ENV revised its Environmental Handbook for Preparing an Environmental Assessment and Environmental Assessment Outline to provide better organized and improved instructions for preparing the “Community Impacts” section of an EA, and make other needed revisions to the Handbook and Outline.
- ENV completed a comprehensive update of its Environmental Guide: Volume 1 Process and Environmental Guide: Volume 2 Activity Instructions to revise processes, clarify instructions, and make other improvements.
- ENV incorporated its FAQ Regarding Virtual Public Involvement under NEPA and TxDOT’s Environmental Review Rules into its Public Involvement Handbook and removed the FAQ from the Public Involvement Toolkit.
- ENV revised its Public Involvement Handbook to make various updates including:
  - Remove traditional, in-person meetings/hearings with no virtual component as TxDOT has transitioned to (1) virtual online-only public meetings/hearings and (2) virtual public meetings/hearings with in-person option.
  - Add reference to the Transportation Planning and Programming Division’s Public Involvement Section’s Strategic Public Engagement Guidance.
  - Provide an example of when “additional public outreach” may be appropriate design changes that affect certain property owners after the final public meeting/hearing on the project but prior to environmental clearance.
  - Add new Section 2.2, “Use of Web-based Public Engagement Tools such as MetroQuest, Social PinPoint, etc.”
  - Add cross-references to ENV’s Guidance – Public Comment Response Matrix for further instructions on preparing the comment/response matrix.
  - Add a requirement to include Spanish translation version of the interpreter/accommodation paragraph in all public meeting and hearing notices.
  - Regarding the preparation of documentation for a public involvement event, explain that when there are large numbers of identical comments, it may be appropriate to



include only a single copy in the documentation – consult with ENV’s Project Delivery Section to discuss the best approach.

- Revise throughout to refer to “LEP populations and/or EJ populations” instead of “underserved and LEP populations” or just “LEP populations”.
- Various other revisions and updates.
- Revise the following notice templates for clarity, accuracy, and consistency with the updated Public Involvement Handbook:
  - Template: Spanish Versions of Translator/ADA Accommodation Request Statement and NEPA Assignment MOU Disclaimer
  - Template: Notice and Opportunity to Comment
  - Template: Notice of a Virtual Public Meeting
  - Template: Notice of a Virtual Public Meeting with In-Person Option
  - Template: Notice of Opportunity for Public Hearing
  - Template: Notice of Opportunity for Public Hearing and Draft EA
  - Template: Notice of Virtual Public Hearing
  - Template: Notice of Virtual Public Hearing with In-Person Option
  - Template: Notice of Draft EA and Virtual Public Hearing
  - Template: Notice of Draft EA and Virtual Public Hearing with In-Person Option
  - Template: Notice of Draft EIS and Virtual Public Hearing
  - Template: Notice of Draft EIS and Virtual Public Hearing with In-Person Option
  - Template: Final EA Notice of Availability
  - Template: FONSI Notice of Availability
  - Template: Notice of Intent for an FHWA EIS Project
  - Template: Notice of Intent for a State EIS Project
  - Template: FEIS/ROD Notice of Availability

#### May 2024

- ENV revised its Surface Water Analysis Form to clarify U.S. Coast Guard coordination options and add instructions regarding maintenance work plans.
- ENV revised its Flowchart: Water Process for Section 404 to require USACE concurrence with the “no practicable alternative” finding to be uploaded to ECOS and make other revisions for clarity and accuracy.

#### July 2024

- ENV revised its Species Analysis Spreadsheet to update the listing status and ranges for various species.
- ENV revised its Template – Notice of Intent for an FHWA EIS Project to remove the Spanish-translated accommodation/translation paragraph from the version of the NOI that is submitted for publication in the Federal Register. The instructions will continue to require the Spanish language version of that paragraph in the newspaper and any other publication of the NOI.

- ENV updated its Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties to reflect reclassification of DFW, HGB, and SAT 2015 ozone nonattainment areas.
- ENV updates its EIS to EA classification request memo to update the name of the ENV Division Director to Doug Booher.

#### August 2024

- ENV updated its Species Analysis Form to provide options and directions for addressing species that are proposed to be listed under the Endangered Species Act.
- ENV updated its Instructions for Preparing a Species Analysis Spreadsheet to provide updated instructions to address impacts to proposed or designated critical habitat, references to new and revised guidance documents, and the requirement for Review of all species analysis spreadsheets in ECOS by ENV NRM where a “may affect” call is reached, or the project is an EA or EIS project.
- ENV updated its Guidance – Addressing the Monarch Butterfly in a TxDOT Species Analysis to include additional guidance for projects not covered by the Agreement and address the extension of the proposed listing to FY25.
- ENV revised its Guidance – FHWA Direct Recipient Discretionary Grant Projects to add separate instructions for “planning only” grants and add instruction for ENV Project Delivery Section Staff to fill-in information in the “FHWA NEPA Conveyance List\_Master.xlsx” spreadsheet on the SharePoint site.
- ENV revised its Template – Notice of Intent for an FHWA EIS Project to update the required public comment deadline from 30 days to 15 days after the public scoping meeting.

#### September 2024

- ENV revised its Handbook – Community Impacts, Environmental Justice, Limited English Proficiency, and Title VI Compliance for consistency with CEQ Phase 2 rulemaking (revise to “disproportionate and adverse human health and environmental effects on communities with environmental justice concerns” and reference new definition of “environmental justice”).
- ENV revised its Form – Community Impacts assessment Technical Report for consistency with CEQ Phase 2 rulemaking (revise to “disproportionate and adverse human health and environmental effects on communities with environmental justice concerns”).
- ENV revised its Guidance – Historical Studies Review Procedures to fix typos, add appendices, and improve accessibility.
- ENV revised its Template – Contractor Disclosure Statement Email for an FHWA Project Requiring an Environmental Assessment or Environmental Impact Statement for consistency with CEQ Phase 2 rulemaking (revised to require contractor to state “no” financial or other interest in the outcome of the action instead of just disclosing “any” financial or other interest).

- ENV revised its Reevaluation Form for consistency with CEQ Phase 2 rulemaking (revised to reflect that for an EA, a reevaluation is done not just to determine if the FONSI is invalid, but also to determine whether a supplemental EA is needed).
- ENV revised its Guidance – EIS Process Roadmap for an FHWA Project for consistency with CEQ Phase 2 rulemaking:
  - Slightly adjusted the end date for the 2-year timeline.
  - Added details about the required milestones in the project schedule.
  - Revise definition of cooperating agencies.
- ENV revised its Environmental Handbook – Preparing an Environmental Assessment for consistency with CEQ Phase 2 rulemaking:
  - Required “monitoring and compliance plan for mitigation.”
  - Slightly adjusted the end date for the 1-year timeline.
  - Added an instruction that whenever the EA/EIS preparer refers to or relies on information from some external source, the external source must be immediately referenced in the body of the text or in a footnote so that the relevance of the material being cited is clear to the reader.
  - Added boilerplate statement to EA Handbook (Introduction) and EIS Handbook (Summary) about how TxDOT performed an independent evaluation of those parts of this document that were prepared by a contractor(s) and has determined that the document meets NEPA standards, regulations, etc.
  - Required contractor to state “no” financial or other interest in the outcome of the action (instead of just disclosing “any” financial or other interest).
  - Designated commenters on draft EAs as “participating agencies” and require invitation of federal agencies that will need to issue NEPA approval (i.e., USACE and USCG) as “cooperating agencies.”
  - Added instruction that if there are “cooperating agencies,” then informally notify the cooperating agencies of the project schedule.
- ENV revised its EA Outline for consistency with CEQ Phase 2 rulemaking (added Section 8.3, “Monitoring and Compliance Plan for Mitigation”).
- ENV revised its Template – Finding of No Significant Impact for consistency with CEQ Phase 2 rulemaking (added reference to the “monitoring and compliance plan for mitigation”).
- ENV developed and released a new Guidance – Texas Kangaroo Rat Survey Methodology Recommendations.
- ENV revised its Environmental Handbook – Public Involvement for consistency with CEQ Phase 2 rulemaking:
  - Added instruction to say that if anybody requests “regular notification from the agency on its actions” we should email them the link to the “hearings, meetings and notices schedule” website. Also, specifically instruct to post certain notices to the “hearings, meetings, and notices schedule” website (not just a project website on TxDOT.gov).

- Designated the TPP PI Section Director as the “Chief Public Engagement Officer to be responsible for facilitating community engagement in environmental reviews across the agency.”
- ENV revised its Template – Notice of Intent for an FHWA EIS Project for consistency with CEQ Phase 2 rulemaking (added CSJ and participating/cooperating agency information to the NOI template).
- ENV revised its Guidance – FHWA Direct Recipient Discretionary Grant Projects so that for (c)(1) “planning only” grants, ENV will transmit a copy of the spreadsheet to FHWA along with the monthly list of approvals and decisions as a workaround due to technical issues with FHWA-TX directly accessing the spreadsheet on SharePoint.
- ENV revised its Guidance – Traffic Noise Policy Implementation to make various changes and updates including the following:
  - Added guidance on cemeteries (page 21) and waiting areas (page 22).
  - Added Constructability Assessment section (Section 9.0).
  - Added new Abatement Decision Process flow chart (p. 47) and Constructability Assessment process chart (p. 49).
  - Revised workshop timing (Section 11.1).
  - Added Notification of Workshop Results (Section 11.9).
  - Added Special Considerations for Phased Projects (Section 12.4).
  - Added Noise Wall Removal Policy (Section 12.5) (and removed this as a separate document on the toolkit).
- ENV developed and released a new Form – Constructability Assessment for Proposed Noise Barrier.
- ENV revised its Memo – Noise Barrier Reasonable Cost Proposal Updated to provide the FHWA-approved wall-only cost per square foot value for cost reasonableness.
- ENV revised its Alternative Barrier Cost Assessment Worksheet to update the barrier cost per sqft, cost per benefiter, and alternate barrier cost per benefiter.
- ENV revised its Standard Language for Documenting Traffic Noise Analyses for accuracy and consistency with EA Outline.

#### November 2024

- ENV updated its Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties to reflect that FHWA had approved the Southeast Texas Regional Planning Commission Metropolitan Planning Organization’s TIP.
- ENV updated its Environmental Handbook – Ecological Resources to reflect that Executive Order 13112 on Invasive Species had been amended by Executive Order 13751 on Safeguarding the Nation from the Impacts of Invasive Species.

### **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, 2023 through December 9, 2024, TxDOT was served with one such complaint. On January 26, 2024, Rethink35 and other environmental groups filed a lawsuit challenging TxDOT's compliance with NEPA on the I-35 Capital Express Central Project in Austin. 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, 2023 through December 9, 2024, 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, 2023 through December 9, 2024, 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, 2023 through December 9, 2024, 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, 2023 through December 9, 2024, 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, 2023 through December 9, 2024, 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, 2023 through December 9, 2024, 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 early 2024 and early 2025, 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 165 ECOS project files for projects that were environmentally cleared between December 9, 2023 through December 9, 2024 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](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, July 2021, September 2021, February 2023, and April 2024. ENV intends to do its next round of revisions and updates to the Environmental Guide in early 2025.

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, 2023 and December 9, 2024 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 (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). ENV also offers training to engineers, planners, and others to provide an overview of TxDOT's environmental review process for non-environmental staff (ENV216). ENV delivered multiple sessions of each of these training classes between December 9, 2023 and December 9, 2024. 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 (NOI)
- 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 four NOIs during the period from December 9, 2023 through December 9, 2024. For all four NOIs, TxDOT maintained documentation of the legal sufficiency determination for the NOI.

TxDOT did not issue any FEISs during the period from December 9, 2023 through December 9, 2024.

TxDOT made one individual Section 4(f) determination during the period from December 9, 2023 through December 9, 2024. For that individual Section 4(f) determination, TxDOT maintained documentation of the legal sufficiency determination.



TxDOT issued four batch Section 139(l) notices during the period from December 9, 2023 through December 9, 2024. 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 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, 2023 through December 9, 2024 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 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. 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, 2023 through December 9, 2024 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 28 EAs during the four-year period between when the renewal MOU was signed on December 9, 2019 and December 9, 2024:

#	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
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
21	0921-02-395	PHARR	CS	1/19/2021	1/4/2024	1080
22	0186-06-082	Bryan	US 290	3/21/2022	3/5/2024	715
23	1158-05-002	El Paso	FM 2185	11/16/2021	3/5/2024	840
24	0917-31-030	Bryan	VA	6/16/2022	4/15/2024	657
25	1149-01-023	Austin	FM 812	3/25/2021	6/27/2024	1184
26	0915-12-617	San Antonio	S Zarzamora St	9/8/2022	6/21/2024	658
27	0619-01-027	Dallas	FM 6	2/13/2023	10/16/2024	611
28	1394-02-027	Dallas	FM 1387	7/19/2023	11/13/2024	483

The median start-to-finish duration for these 28 EAs was 651 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 28 EAs started and completed under the new MOU had a median start-to-finish duration (651 days) that was 118 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 28 formal Section 7 consultations during the five-year period between when the renewal MOU was signed on December 9, 2019 and December 9, 2024. The average time for completion was approximately 126 days (based on a start date of when TxDOT sent the consultation packet to USFWS). In addition, TxDOT started and completed eight 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 248 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.