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December 1, 2023

The Honorable Shailen Bhatt, Administrator
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Formal submittal of TxDOT's NEPA assignment renewal package

Dear Administrator Bhatt,

The purpose of this letter is to formally submit the Texas Department of Transportation's (TxDOT's) package for renewing our Memorandum of Understanding (MOU) with the Federal Highway Administration (FHWA) so that TxDOT may continue performing environmental review duties for highway projects under the Surface Transportation Project Delivery Program as defined in Title 23 of the Code of Federal Regulations (CFR) Part 773 (i.e., the "NEPA Assignment Program"). The current renewal MOU was executed on December 9, 2019, and expires on December 9, 2024. By letter dated September 7, 2023, TxDOT formally notified FHWA of our intention to renew. We also explained in the September 7, 2023 letter that TxDOT had coordinated with FHWA Texas Division staff on the need for statewide notice and opportunity to comment before submitting our official renewal package, and that such statewide notice was not required.

Our formal NEPA assignment renewal package consists of the following attachments to this letter:

Attachment A – Description of changes to our NEPA assignment program since the previous renewal (23 CFR 773.115(c)(1))

In our 2019 renewal package we included a list of changes to our NEPA assignment program compared to the original 2014 NEPA assignment application. Attachment A to this letter describes additional changes to our program since the previous renewal of our NEPA assignment MOU in 2019. Although there have been some organizational changes and other developments since 2019, TxDOT continues to maintain adequate staff and resources to fulfill its responsibilities under the NEPA assignment program.

Attachment B – Certification by the Office of the Attorney General that TxDOT has legal authority to assume NEPA assignment responsibilities, that Texas has waived sovereign immunity, and that Texas has laws comparable to FOIA (23 CFR 773.115(c)(2), 773.109(a)(6), and 773.109(a)(7))

This is the 2013 certification that was included in TxDOT's original 2014 NEPA assignment application. As was the case in 2019, this certification remains valid. The state statutes cited in the certification do not have any termination dates.

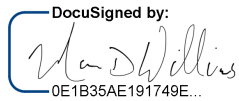
The Honorable Shailen Bhatt

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December 1, 2023

TxDOT looks forward to working with FHWA on a renewal MOU in 2024. If you or your staff has any questions, please feel free to contact Doug Booher, Director, Environmental Affairs Division, at Doug.Booher@txdot.gov or (512) 416-2663.

Sincerely,

DocuSigned by:

0E1B35AE191749E...

Marc D. Williams, P.E.
Executive Director

Cc: Doug Booher, Environmental Affairs Division Director, TxDOT (doug.booher@txdot.gov)
Melanie Alvord, Federal Affairs Section Director, TxDOT (melanie.alvord@txdot.gov)
Jeff Graham, General Counsel, TxDOT (jeff.graham@txdot.gov)
Al Alonzi, Texas Division Administrator, Federal Highway Administration (al.alonzi@dot.gov)
Michael Leary, Director, Planning and Program Development, Federal Highway Administration Texas Division (michael.leary@dot.gov)
Tom Bruechert, Programs Team Leader, Federal Highway Administration Texas Division (Tom.Bruechert@dot.gov)

Enclosures

Attachment A

**Description of changes to our NEPA assignment program
since the previous renewal (23 CFR 773.115(c)(1))**

ATTACHMENT A

Description of changes to our NEPA assignment program since previous renewal (23 CFR 773.115(c)(1))

TxDOT Organization

TxDOT's organizational structure has changed since 2019. TxDOT's current organizational chart is provided at the end of this Attachment. TxDOT now has two deputy directors: a Deputy Executive Director for Planning & Administration and a Deputy Executive Director for Program Delivery, both of whom report to the Executive Director. The Environmental Affairs Division (ENV) and several other divisions are under the Director of Project Development, who in turn reports to the Deputy Executive Director for Program Delivery.

TxDOT's 25 geographical districts are still under a Director of District Operations. The Director of District Operations continues to report to the Chief Engineer, who in turn continues to report to the Executive Director.

ENV Organization

ENV's organizational structure has also changed since 2019. ENV's most recent organizational chart is provided at the end of this Attachment. Notable changes include the following:

- There is now a single ENV Deputy Director instead of two.
- The Strategic Projects Section and Special Projects Section have been eliminated, with the functions previously performed by these sections being transferred to other sections.
- ENV no longer has a Rail Projects manager.
- There is a new Strategic Programs and Policy Analysis Section that reports to the ENV Director.

Existing Environmental Staff

ENV currently has a staff of 79 full time employees (FTEs), which is two more than the 77 FTEs employed by ENV in 2019.

Districts currently have environmental staff of 101 FTEs, which is ten more than the 91 FTEs employed by the districts in 2019.

Collectively, ENV staff and district environmental staff have a total 180 FTEs, which is 12 more than the 168 total ENV and district environmental staff in 2019. TxDOT continues to maintain adequate staff to meet the NEPA assignment program responsibilities.

Process for Local Government-Sponsored Projects

In our 2019 renewal package we explained that for local government-sponsored projects, administrative completeness review is documented as a distinct activity with a checklist form that is uploaded to ECOS. ENV no longer uses a checklist form for administrative completeness of an EA or EIS on local government-sponsored projects. Instead, administrative completeness of an EA or EIS for a local government-sponsored project is documented the same way as a TxDOT-sponsored

project, by documenting initiation of subject matter experts' technical review of the document in ECOS.

Additionally, our 2019 renewal package included a reference to a paper scope form used for local government-sponsored projects. ENV no longer uses the paper scope form, and instead documents project scoping for all projects using the work plan development process in ECOS.

Public Involvement Procedures

During the COVID pandemic, we transitioned to virtual public involvement activities (supplemented with in-person components as needed) with FHWA Texas Division's approval. It subsequently became apparent to TxDOT that virtual public involvement events offer many benefits to both the public and the agency in terms of ease of participation by the public and streamlined planning and logistics. Therefore, TxDOT determined to continue its virtual public involvement program on a going forward basis even if not necessitated by a public health emergency. By letter dated March 30, 2023, FHWA Texas Division approved our virtual public involvement program procedures. Our virtual public hearings on FHWA-funded projects continue to have an in-person component.

Environmental Compliance Oversight System (ECOS)

We have continued to release updates to ECOS to improve its functionality.

Programmatic Agreements and Agency Consultation

On January 12, 2021, the U.S. Fish and Wildlife Service (USFWS) approved an Endangered Species Act Programmatic Consultation with TxDOT regarding project effects to the Houston toad.

On July 20, 2021, TxDOT completed a rulemaking to codify a new Memorandum of Understanding with the Texas Parks and Wildlife Department (TPWD) with new procedures for coordinating TPWD's review of TxDOT projects. TxDOT is required to have an MOU with TPWD under a state statute, Texas Transportation Code §201.607. The new MOU is codified in state rules at Title 43 of the Texas Administrative Code, Part 1, Chapter 2, Subchapter G.

In October of 2021, TxDOT executed a new four-year agreement with the U.S. Army Corps of Engineers' Galveston District under Section 214 of the Water Resources Development Act for expedited reviews of permits and other regulatory actions.

In 2022, TxDOT amended its funding agreement with the USFWS to add a third TxDOT-funded USFWS position to expedite reviews of consultations and assistance with Endangered Species Act compliance, however that position has yet to be filled. TxDOT has been working with the USFWS on a new agreement for up to four TxDOT-funded USFWS positions. As of the time that this letter is being prepared, the new agreement with the USFWS is being coordinated for final signature.

On April 21, 2022, the USFWS approved an Endangered Species Act Programmatic Consultation with TxDOT regarding project effects to Eurycea salamanders and terrestrial karst invertebrates in WAC, AUS, and SAT Districts under the Endangered Species Act, for geotechnical boreholes, traffic signal, and ITS projects that "may affect, but are not likely to adversely affect" the species.

On March 23, 2022, the USFWS approved amendments to a 2016 Endangered Species Act Programmatic Consultation with TxDOT regarding project effects to the red-cockaded woodpecker.

On September 25, 2023, FHWA, TxDOT, the Texas Historic Preservation Officer, and the Advisory Council on Historic Preservation finalized a new programmatic agreement under Section 106 of the National Historic Preservation Act to replace the pre-existing programmatic agreement that was executed in 2015.

Expanded Internal Compliance and Self-Assessment Reviews

In our 2019 renewal package we explained that the Special Projects section will coordinate annual self-monitoring reports. However, the Special Projects section no longer exists, and now the annual self-monitoring reports are coordinated by the Strategic Programs and Policy Analysis and Program Review Sections.

TxDOT has prepared and submitted to FHWA three annual NEPA Assignment Self-Assessment reports since December 2019. They are available on-line at the following web address: <https://www.txdot.gov/about/programs/environmental/nepa-assignment-documentation.html>. In each annual report we provided to FHWA a summary of updates and changes to our internal guidance in response to the NEPA assignment MOU's call for a list of "corrective actions." However, that phrase is not a good descriptor as most of these updates and changes were improvements to our existing processes and guidance rather than actions needed to correct an actual deficiency in our program.

We continue to rely on our Environmental Guide Volumes 1 and 2 (first issued in August of 2019) as the primary internal guidance document for ENV's environmental review process including quality control/quality assurance for our environmental reviews. The Environmental Guide (and other guidance, templates, forms, checklists, etc.) continue to be posted on-line at the following web address: <https://www.txdot.gov/business/resources/environmental/compliance-toolkits.html>. Both Volumes 1 and 2 of the Environmental Guide contain appendices listing updates and changes we have made to improve our environmental review process.

Staff Dedicated to Additional Functions

In our 2019 renewal package we included a reference to there being a training manager under the Special Projects section. However, the Special Projects Section no longer exists. The training coordinator function is now being fulfilled by a new ENV Education Coordinator within the Program Review Section.

Additionally, our 2019 renewal package indicated that TxDOT has four staff attorneys assigned by TxDOT's General Counsel Division to provide legal counsel to ENV. There are currently three staff attorneys assigned by TxDOT's General Counsel Division to provide legal counsel to ENV.

Financial Resources Under the Assignment Program

In our 2019 renewal package we explained that ENV's budget for FY 2019 was \$16,356,679. ENV's budget for FY 2024 is \$22,768,610. TxDOT continues to maintain sufficient financial resources to meet the NEPA assignment program responsibilities.

Certification for Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity

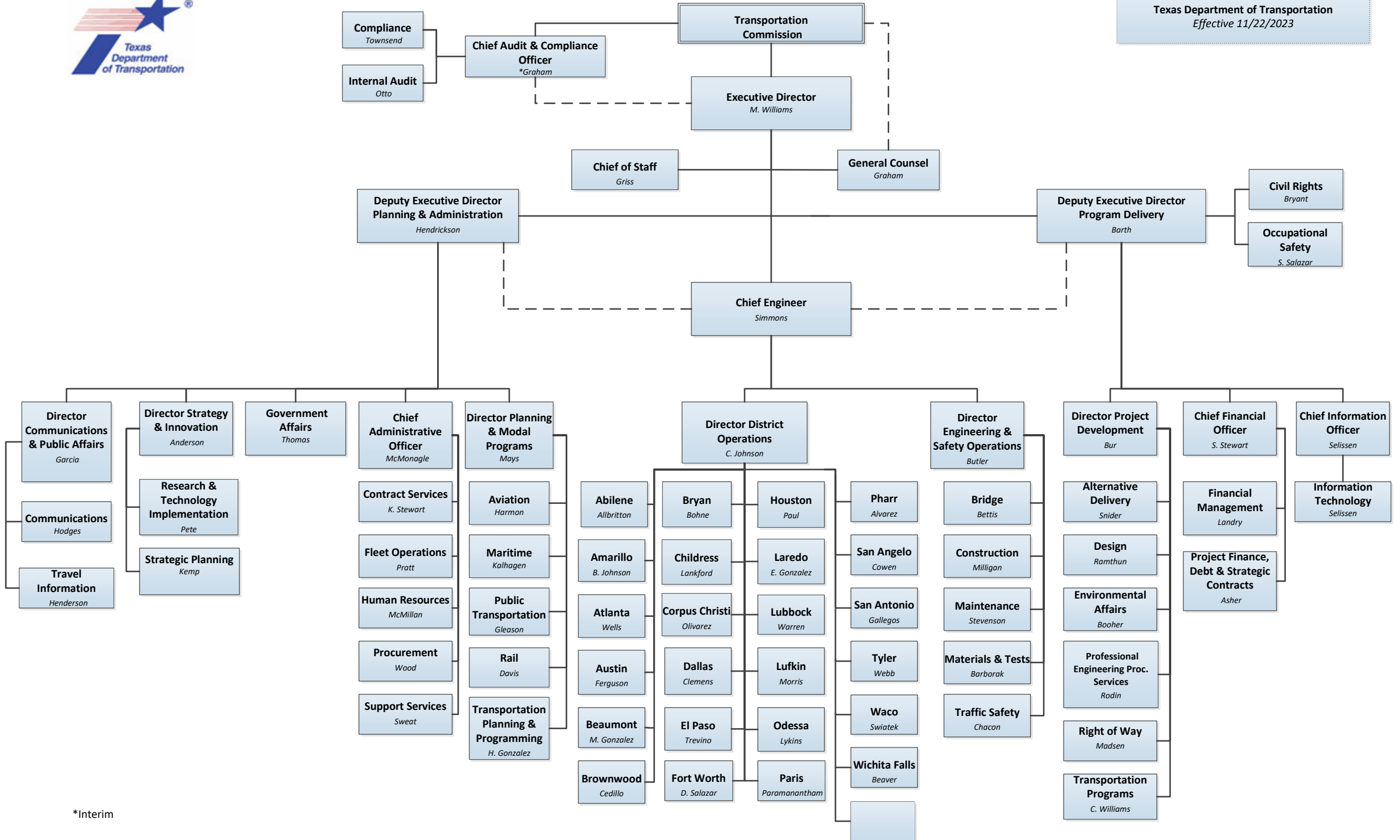
The certification by the First Assistant Attorney General of Texas in the Original Application remains correct.

Certification that the State of Texas's Public Information Act Is Comparable to the Federal Freedom of Information Act

The certification by the First Assistant Attorney General of Texas in the Original Application remains correct.



Texas Department of Transportation
Effective 11/22/2023



*Interim

Doug Booher

ENVIRONMENTAL AFFAIRS DIVISION

Doug Booher
Director of Environmental Affairs Division

Effective: 9/14/2023

FTE Allocation: 83

Actual: 80

Strategic Programs and
Policy Analysis
Patrick Lee
(570571) (1)

Division Director
Doug Booher
(570710) (1)

Program Review
Section Director
Karie Brown
(570710) (1)

Matthew (Chad) Davis
Jonathan (Chad) Putnam
Eric Agnew
Lauren Miller
Stacy Hargrove
Jason Kord
Dan Hudson
(570570) (7)

Deputy Division Director
Mike Chavez
(570710) (1)

Business Operations
Administrator
Bob Wortham
(570710) (1)

Cultural Resources
Management
Section Director
Rebekah Dobrasko
(570710) (1)

Environmental Resources
Management
Section Director
Rodney Conciene
(570710) (1)

Natural Resources
Management
Section Director
Clover Clamons
(570710) (1)

Project Delivery
Section Director
Sonya Hernandez
(570710) (1)

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(570571) (1)

Resource Mgmt
Russell Rule
Sarah Matthews
(570580) (2)

Historical Studies
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Renee Benn
Mark Brown
Jennifer Carpenter
Jason Rivas
Leah (Miranda) Garrison
(570576) (6)

Hazardous Materials
Doug Mack-PM
Mark Norman
Jeff Richardson
David Morley
George (Terry) Dempsey
Richard Peltier
(570578) (6)

Biology
Matt Buckingham*
John Maresh
John Young Jr.
Leslie Mirise
Becki Perkins
Lauren Young
Andrea Montalvo
(570577) (7)

District Support
Anita Bradley
Clay Churchill
Jubal Grubb
Lindsey Kimmitt
Michelle Lueck
Megan Hilscher
Elisa Garcia
(570575) (7)

Contracts
Samantha Serino
Summer Chandler
Laura Poldrack
Timothy Phillips
Patricia Matull
Tamika Collier
(570580) (6)

Archeological Studies
Scott Pletka*
Allen Bettis
John (Kevin) Hanselka
Eric Oksanen
Chris Ringstaff
Stephen (Waldo) Troell
Jennifer Anderson
Paul Matchen
Brittney Gregory
Melanie Johnson
Kaitly Ulewicz
(570574) (11)

Human Environment
Jackie Ploch-PM
Ray Umscheid
Meredith Worthen
Tim Wood
Spencer Ward
Glendora Lopez
(570578) (6)

Water
Susan Shuffield*
Mario Mata
Spencer Ward
Adam Fouts
(570577) (4)

Routine Services
Juan Valera Lema
(570575) (1)

Administrative Services
Daniel Harris
Amanda Burton
(570580) (2)

Operation Compliance/
Stormwater
Tracey Janus-PM
Larry (David) Nuckels
Heather Carman
Kyle Honnerlaw
(570578) (4)

Attachment B

Certification by the Office of the Attorney General that TxDOT has legal authority to assume NEPA assignment responsibilities, that Texas has waived sovereign immunity, and that Texas has laws comparable to FOIA

(23 CFR 773.115(c)(2), 773.109(a)(6), and 773.109(a)(7))



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2013

Mr. Victor M. Mendez
Federal Highway Administrator
1200 New Jersey Ave. S.E
Washington, DC 20590-9898

RE: Certification required by FHWA for delegation of NEPA and other responsibilities to
TxDOT

Dear Administrator Mendez,

Pursuant to the authority provided by the Moving Ahead for Progress in the 21st Century Act or "MAP-21," and specifically, 23 U.S.C. §327 as amended by MAP-21, the Texas Department of Transportation ("TxDOT") is submitting an application to FHWA for delegation of responsibility for compliance with the National Environmental Policy Act ("NEPA") and other Federal environmental laws ("NEPA delegation"). On August 30, 2013, FHWA published proposed rules setting forth the requirements for such applications (Docket No. FHWA-2013-0022). FHWA's proposed rules specify that a State's application for NEPA delegation must include certain certifications by the State's Attorney General or other State official legally empowered by State law (*see* proposed 23 C.F.R. §§773.109(a)(6) & (7)). The purpose of this letter is to provide the certifications required by FHWA to accompany TxDOT's application for NEPA delegation.

Under Texas Government Code §402.001, if the attorney general is absent or unable to act, the attorney general's first office assistant shall perform the duties of the attorney general that are prescribed by law. In my official capacity as the First Assistant Attorney General of the State of Texas, I certify the following:

- As stated in Texas Transportation Code, §201.6035(a), TxDOT is legally authorized by State law to assume the responsibilities of the United States Department of Transportation with respect to duties under NEPA and other Federal environmental laws.
- As provided for by Texas Transportation Code, §201.6035(c), the State of Texas expressly consents to exclusive Federal court jurisdiction with respect to the compliance, discharge, and enforcement of any responsibility of the United States Department of Transportation assumed by TxDOT.

Mr. Victor M. Mendez
October 30, 2013
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- The Texas Public Information Act (Texas Government Code, Chapter 552) is comparable to 5 U.S.C. 552 (Freedom of Information Act), including providing that any decision regarding the public availability of a document under that State law is reviewable by a court of competent jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hodge", with a stylized flourish at the end.

Daniel T. Hodge
First Assistant Attorney General

DTH/jlh