ODOT’S NEPA ASSIGNMENT TOUR
MAASTO CONFERENCE, CLEVELAND, OH, JULY 2017

Ohio Department of Transportation
FEDERAL HIGHWAY ADMINISTRATION
OHIO DIVISION
HOW TO “ROCK” NEPA ASSIGNMENT

Timothy M. Hill, Ohio Department of Transportation
Jeff Blanton, Federal Highway Administration Ohio Division
What is the NEPA Assignment Program?

- Section 1313 of MAP-21 amended 23 U.S.C. 327 to establish a permanent Surface Transportation Project Delivery Program.
- Began in SAFETEA-LU as the Surface Transportation Project Delivery Pilot Program.
- FHWA NEPA project approval responsibilities are assigned through a MOU that expires after 5 years, but is renewable.
- FHWA initially reviews the SHA’s MOU compliance through audits and then through monitoring.
EVERYBODY WANTS SOME

NEPA Assignment Program Background

- California was the only state to request Assignment under the pilot program. California was grandfathered into the permanent program.
- After permanent establishment in MAP-21, Texas became the first state to apply and receive MOU approval (12/17/14).
- In addition to California & Texas: Ohio, Florida, Alaska, and Utah have approved MOUs.
- Arizona & Nebraska waived sovereign immunity and are preparing applications.
- Other states are evaluating.
What is FHWA’s Project-level Role?

FHWA does:
- Retain approval for projects crossing state boundaries
- Retain Government to Government Tribal consultations
- Retain coordination for projects led by other Federal Agencies
- Retain approval of project-level air quality conformity determinations

FHWA does not:
- Provide or participate in NEPA project-level decisions
- Provide any project-level assistance.
- Provide any NEPA project-level conflict resolution.
What are FHWA’s Program Responsibilities?

• Oversight of the environmental component of the highway program in Ohio, including:
  • Providing technical assistance
  • Communicating law and policy changes
  • Conducting audits
  • Program monitoring
  • Development/Approval of required documents & program level agreements
  • Providing input on ODOT manuals and guidance
  • Providing input and assistance on training

• Other FHWA roles and responsibilities outside of NEPA remain unchanged
Why participate in NEPA Assignment?

- Estimated 20-25% time savings to program
- Estimated savings of up to $23 Million from reduced project inflation and project user delay costs
- Low risk - maybe 1 lawsuit every 8-10 years

- 1st Quarter Actual Savings was $4.6 Million
- 1st Full Year- Actual Savings was $13.1 Million
Why participate in NEPA Assignment? (Cont’d)

- Projects < $20 Million
  - FHWA review 4(f) and other support docs - 15-30 days
  - 40 per year = 1,000 review days per year
  - 35% performed concurrently = 650 project review days
  - Out of the 650, only 15% results in critical path reviews
  - = 98 days of delay
  - 3.9% inflation and delay cost = $500,000 per year
Why participate in NEPA Assignment? (Cont’d)

- Projects $20 Million to $149 Million
  - FHWA performs reviews on:
    - Purpose and Need = 30 days
    - Feasibility Study = 30 days
    - Alternative Evaluation Report = 30 days
    - Section 4(f) actions = 45 days
    - Review and approval of the CE = 60 days
    - ...plus multiple reviews (drafts, etc.)
Why participate in NEPA Assignment? (Cont’d)

- Projects $20 Million to $149 Million
  - FHWA review for a medium sized project - 390 days
  - 30% performed concurrently = 273 project review days
  - ODOT averages 12 projects per year = 3,276 review days
  - Out of this, 25% results in critical path reviews = 819 days of delay
  - 3.9% inflation and delay cost = $5.7 million per year
  - User costs/crash reduction benefits = $13.2 million per year

Even more savings on our largest projects!
Why participate in NEPA Assignment? (Cont’d)

- You control your program...
- Opportunity to “refresh”
  - Updated manuals and guidance
  - Updated process improvements Department-wide
  - Updated training

NEPA Assignment removes “personal preferences”
Why participate in NEPA Assignment? (Cont’d)

- Low risk - maybe 1 lawsuit every 8-10 years
- ODOT’s savings so far is $17.7 Million
  - 1 year and 4 months.... Imagine after 10 years!
  - How could you not enter into this program?
COMFORTABLY NUMB

I can see no way in which this carefully laid plan could ever fail.
Steps and requirements to participate in NEPA Assignment

- Three phases (laid out in 23 CFR 773):
  - Pre-Application
  - Application
  - MOU
ANOTHER BRICK IN THE WALL

- Pre-Application
  - Coordination meeting with FHWA
  - Public Notice of Application
  - Limited Sovereign Immunity Waiver
  - Comparable State laws
    - Sun-shine laws
Policies and guidelines needed beforehand

- ODOT’s Programmatic Agreements prior to NEPA Assignment
  - Farmlands
  - Coastal
  - Ecological
  - Indiana & Northern Long-Eared Bat
  - Cultural Resources
  - Categorical Exclusion (CE)
  - Scenic River
  - Section 6(f)
  - Section 4(f)
  - Environmental Justice (guidance approved by FHWA- similar to an MOA)

- Future Programmatic Agreements
  - Emergency Projects
  - Endangered Species
Updated Agreements

- Section 106 Programmatic Agreement
- Ecological Memorandum of Agreement
- Categorical Exclusion Programmatic Agreement
- Indiana Bat Programmatic Agreement
- Tribal Letter Agreement
- Sole Source Aquifer Agreement
- Section 106 Consulting Party Guidance
- Section 4(f) Manual
- Section 6(f) Manual
- Farmlands Letter Agreement
- Federal National Scenic River Agreement
- Cover Letter for Other Agreements
New Guidance Documents

- Escalation Procedures
- 4(f) Guidance
- CE Guidance
- Emergency Projects Guidance
- File Management & Documentation Guidance
- Internal Communication Guidance
- Legal Sufficiency Review Guidance
- QC/QA Guidance
- Records Retention Guidance
- Self-Assessment Guidance
- Self-Assessment Checklists
- Signature Authority Guidance
- Statute of Limitations Guidance

OTHER

- Performance Measures Data
- Training Plan
Timeline

- Review and Comment Process
  - FHWA Ohio Division Comment and Review
  - FHWA HQ Comment and Review
    - FHWA HQ
    - DOJ
    - DOI
    - CEQ
    - OSC
    - Rapid Response Team
    - Administrator
DON’T STOP BELIEVIN’

Lessons Learned

- Good team is important
- Dedicate time
- Push FHWA
  - Bi-Weekly Conference Calls with detailed agenda to keep everyone on task
  - Elevate issues quickly and push for resolution
- Proactive outreach is important
  - Agencies
  - Environmental groups
  - Contractors
  - Locals
  - ACEC
  - Etc.
HIGHWAY TO HELL

What to expect upon execution of MOU

- 12/15/15 - Begin district visits
- 12/18/15 - NEPA Assignment Webinar
- 02/26/16 - FHWA-ODOT Audit #1 Pre-Kick-Off Meeting
- 03/31/16 - FHWA-ODOT Audit #1 Kick-Off Meeting
- 04/01/16 - Begin Self-Assessment project file review
- 04/02/16 - Begin FHWA desktop review
- 04/25/16 - Begin Self-Assessment Interviews
- 05/02/16 - Pre-Audit Information Request received from FHWA
- 05/27/17 - Pre-Audit Information Request response submitted to FHWA
- 07/01/16 - Self-Assessment Report Submitted to FHWA
What to expect upon execution of MOU (Cont’d)

- 07/01/16 - Audit #1 On-Site Interview List/Schedule received from FHWA (Revised List/Schedule received 07/20/17)
- 08/01/16 - Begin Audit #1 On-Site Interviews
- 08/05/16 - Audit #1 Close-Out Meeting
- 08/15/16 - FHWA-ODOT Project file review discussion
- 09/08/16 - Draft Audit Report received from FHWA
- 09/12/16 - Comments on draft Audit Report submitted to FHWA (Due 09/22/16)
- 10/05/16 - Final Audit Report due to FHWA HQ
- 07/07/17 - Audit Report Published in Federal Register
What are audits?

- Audits are prescribed in the regulations and MOU.
- FHWA is responsible for:
  - Evaluating ODOT compliance with the MOU
  - Reviewing project documents and conduct interviews with ODOT staff & Resource Agencies
  - Conducting 1 audit per year for the first four years of the agreement period.
  - Engaging in monitoring activities thereafter
Ohio Audit #1

- Began shortly after MOU was signed
- Audit team consisted of FHWA staff from Headquarters, Resource Center, Ohio, Florida & Texas divisions
- Reviewed ODOT project approvals
- Conducted interviews with OES and Resource Agencies (USFWS & COE)
- Conducted interviews with ODOT environmental staff in Districts 4, 5, & 9
Audit 1 Report Opinion

- ODOT carried out the responsibilities assumed under Assignment
- ODOT was found to be in substantial compliance with the MOU
- ODOT made reasonable progress in implementing the program
- ODOT had zero compliance findings
- The Review Team identified 11 observations including both best practices and opportunities for improvement
Audit 1 Report Observation Highlights

- ODOT proactively adjusted their policies, manuals, and guidance to deliver the program.

- ODOT’s comprehensive EnviroNet Program was found to be a key factor in ODOT’s successful assumption of the program but the team recommended ODOT consider improvements for handling of EAs & EISs.

- ODOT needs to improve consistency between Districts regarding documentation in seven resource areas including Public Involvement, EJ, Environmental Commitments, Section 4(f), and Floodplains.
Audit 1 Report Observation Highlights

- ODOT needs to continue to improve in Quality Control
- ODOT was commended for development of legal sufficiency guidance and for retaining in-house legal counsel for environmental matters
- ODOT has a robust overall Environmental Training program, however, ODOT needs to improve training related to EJ
Final Thoughts

- ODOT was well-positioned to take on NEPA Assignment
  - EnviroNet system
  - Well established manuals and procedures
  - Experienced staff at Districts & Central Office
  - Many project actions had previously been delegated to ODOT through programmatic agreements and via the FHWA/ODOT Stewardship & Oversight Agreement

- Strong relationship between Ohio Division and OES helped facilitate the successful transition into NEPA Assignment
Audits!
  - FHWA has done a great job of helping us...
  - Audits have identified areas of improvement...

Audits take a large amount of time...
  - States are averaging 1,500-2,000 hours each year on self-assessments/audits
  - Working w/FHWA nationally for changes and improvements to the process
Long-Term Monitoring

- “Monitoring” instead of Audits
- Every 3 years (expected)
- Will be reduced hours involved... still have to track and maintain performance measures.
OUR NEXT ALBUM

Free Fallin’
Live and Let Die
Barracuda
Born to Run
Crazy Train
Like a Rolling Stone
Slow Ride

You Ain’t Seen Nothin’ Yet
Burning Down the House
Born to be Wild
Low Rider
Hold On Loosely
Carry On Wayward Son
BECOME A MEMBER OF OUR FAN CLUB...

Timothy M. Hill  
Environmental Administrator  
Ohio Department of Transportation  
1980 West Broad Street, Mail Stop 4170  
Columbus, OH 43223  
Tim.Hill@dot.ohio.gov  
(614) 644-0377

Jeffrey Blanton  
Director of Program Development  
Federal Highway Administration - Ohio Division  
200 North High Street  
Columbus, OH 43215  
Jeffrey.Blanton@dot.gov  
(614) 280-6824