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DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

[Docket No. FHWA-2016-0026]

Application from the State of Florida to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed MOU and request for comments.

SUMMARY: This notice announces that FHWA has received and reviewed an application from the Florida Department of Transportation (FDOT) requesting participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act of 1969 (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal-aid highway projects within the State. The FHWA has determined that the application is complete, and developed a draft MOU with FDOT outlining how the State would implement the program with FHWA oversight. The FHWA invites the public to comment on FDOT's request, including its application, and the proposed MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Please submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Facsimile (Fax): 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Benito Cunill, Team Leader
Environmental Program, Federal Highway Administration Florida Division, 3500
Financial Plaza, Suite 400, Tallahassee, FL 32312, 8:00 a.m. – 4:00 p.m. e.t., (850) 553-
2224, Benito.Cunill@dot.gov.

Ken Morefield, Director, Office of Environmental Management, Florida
Department of Transportation, 605 Suwannee Street, MS 37, Tallahassee, FL 32399-
0450, 8:00 a.m. – 4:00 p.m. e.t, (850) 414-4316, ken.morefield@dot.state.fl.us.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Federal Register's home page at <http://www.archives.gov>. An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at <http://www.regulations.gov/>.

Background

Section 327 of title 23, United States Code (23 U.S.C. 327), allows the Secretary of the Department of Transportation (Secretary), to assign, and a State to assume, responsibility for all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal-aid highway projects within the State pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

Under the proposed MOU, FHWA would assign to the State, through FDOT, the responsibility for making decisions on the following types of highway projects:

1. All Class I, or Environmental Impact Statement (EIS) projects, both on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS that are funded by FHWA or require FHWA approvals.

2. All Class II, or Categorically Excluded (CE), projects, both on the SHS and LAP projects off the SHS, that are funded by FHWA or require FHWA approvals.

3. All Class III, or Environmental Assessment (EA) projects, both on the SHS and LAP projects off the SHS, that are funded by FHWA or require FHWA approvals.

4. The FDOT will not assume the NEPA responsibilities of other Federal agencies. However, FDOT may use or adopt other Federal agencies' NEPA analyses or documents consistent with 40 CFR parts 1500-1508, current law, and DOT and FHWA regulations, policies, and guidance.

Excluded from assignment are highway projects authorized under 23 U.S.C. 202, 203, and 204 unless the project will be designed and/or constructed by FDOT, projects that cross State boundaries, and projects that cross or are adjacent to international boundaries. This assignment also does not include the environmental review associated with the development and approval of the Draft EIS, FEIS, and ROD for the following projects.

- a. I-4 Beyond the Ultimate (BTU) which consists of the three following project segments: Segment 2 FM # 242484-7 SR 400 (I-4) west of SR 528 (Beachline) to west of SR 435 Kirkman Rd; Segment 3 FM # 242592-4 SR 400 (I-4) 1 mile east of SR 434 to east of SR 15/600/US 17/92 Seminole/Volusia C/L; Segment 4 FM # 408464-2 SR 400 (I-4) east of SR 15/600/US 17/92 to ½ mile east of SR 472; and I-4 Ultimate Segment FM # 242703-1 SR 400 (I-4) west of SR 435 (Kirkman Rd) to east of SR 434.
- b. Tampa Interstate Study (TIS) which consists of the three following project sections: Section 4 FM # 412531-1 (Note Sections 4 and 5 have same Design FM #) I-275/SR 60 and Northwest/Veterans; Section 5 FM # 412531-1 (Note Sections 4 and 5 have same Design FM #) I-275 Lois to Hillsborough River; and Section 6 FM # 433821-1 I-275/I-4 Downtown Interchange.

The assignment also would give the State the responsibility to conduct the following environmental review, consultation, and other related activities for project delivery:

Air Quality

- Clean Air Act, 42 U.S.C. 7401-7671q, with the exception of project level conformity determinations (42 U.S.C. 7506)

Noise

- Noise Control Act of 1972, 42 U.S.C. 4901-4918
- FHWA noise regulations at 23 CFR part 772
- Airport Noise and Capacity Act of 1990, 49 U.S.C. 47521-47534

Wildlife

- Endangered Species Act of 1973, 16 U.S.C. 1531-1544
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a-757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d
- Migratory Bird Treaty Act, 16 U.S.C. 703-712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d, with Essential Fish Habitat requirements at 16 U.S.C. 1855(b)(2)

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675

- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 et seq.
- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303, and implementing regulations at 23 CFR part 774
- Preservation of Historical and Archaeological Data, 54 U.S.C. 312501-312508
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)-(mm)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-3013; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201-4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251-1387 (Sections 319, 401, and 404)
- Coastal Barrier Resources Act, 16 U.S.C. 3501-3510
- Coastal Zone Management Act, 16 U.S.C. 1451-1466

- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f-300j-26
- Rivers and Harbors Act of 1899, 33 U.S.C. 401-406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)(14)
- Flood Disaster Protection Act, 42 U.S.C. 4001-4130
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777

Parklands and Other Special Land Uses

- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303, and implementing regulations at 23 CFR part 774
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302-200310

FHWA-Specific

- Environmental Impact and Related Procedures, 23 CFR part 771
- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Efficient Project Reviews for Environmental Decision Making 23 U.S.C. 139
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Executive Orders (E.O.) Relating to Highway Projects

- E.O. 11988, Floodplain Management, (*except design matters and determinations that significant encroachment is the only practicable alternative under 23 CFR parts 625 and 650*)
- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species

The MOU would allow FDOT to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the listed laws and executive orders. The FDOT will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with the FHWA upon request. The FDOT also may assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the consultation. The FDOT also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the Clean Air Act (42 U.S.C. 7506), or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

A copy of the proposed MOU may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses

provided above. A copy also may be viewed on FDOT's Web site at:

<http://www.dot.state.fl.us/emo/NEPAAssignment.shtm>.

The FHWA Florida Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final MOU approved by FHWA may include changes based on comments and consultations relating to the proposed MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.101-139; 23 CFR 773.109; and 40 CFR 1507.3.

Issued on: October 24, 2016.

Gregory G. Nadeau
Administrator
Federal Highway Administration

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