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December 1, 2015

Ms. Brigitte Mandel, Assistant Division Administrator  
Federal Highway Administration  
Utah Division  
2520 West 4700 South, Suite 9A  
Salt Lake City, UT 84129

Dear Ms. Mandel:

*Brigitte*

SUBJECT: UDOT's Application to assume FHWA's NEPA Responsibilities Pursuant to 23 U.S.C. 327

The Utah Department of Transportation (UDOT) appreciates the opportunity to submit its application to assume the Federal Highway Administration's (FHWA) environmental review authority and responsibility for compliance with the National Environmental Policy Act (NEPA) under 23 U.S.C. 327- Surface Transportation Project Delivery Program (NEPA Assignment Program).

UDOT is requesting assignment for Class I, Environmental Impact Statement projects and Class III, Environmental Assessment projects. UDOT previously assumed responsibility for Class II, Categorically Excluded projects, under 23 U.S.C. 326 (6004 Program) in July of 2008. UDOT will apply experience gained from the 6004 Program to build efficiency and consistency into the full NEPA process while ensuring the necessary level of protection and accountability for the natural and human environment is preserved.

Since notifying FHWA of its interest in the NEPA Assignment Program in June of this year, UDOT has examined its current program to identify its strengths and deficiencies and have developed strategies that will further secure the success of the NEPA Assignment Program. UDOT has also participated in discussions, workshops and trainings with FHWA Division and Headquarters personnel in order to facilitate a fluid transition to assignment. We look forward to continuing these exchanges as we enter into the NEPA Assignment Program.

Sincerely,

Carlos M. Braceras, P.E.  
Executive Director

CMB/BW/dej

Cc: Ivan Marrero, FHWA Utah Division Administrator  
Shane Marshall, UDOT Deputy Director  
Randy Park, UDOT Project Development Director  
Brandon Weston, UDOT Environmental Program Manager



The Utah Department of Transportation

# Application to Assume FHWA's NEPA Responsibilities

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Pursuant to 23 U.S.C. 327

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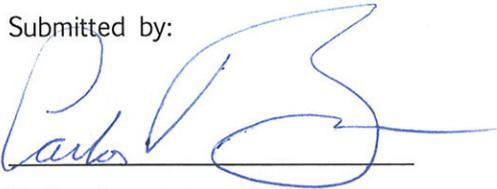
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## Signature Page

This document is the Utah Department of Transportation's (UDOT's) application to assume the Federal Highway Administration's (FHWA) responsibilities under an Assignment Program authorized by the Surface Transportation Project Delivery Program, 23 United States Code (U.S.C.) 327.

On July 1, 2008, UDOT and FHWA executed a Memorandum of Understanding (MOU) to assume responsibility for categorically excluded projects under 23 U.S.C. 326. The State intends to maintain its current MOU for categorically excluded projects as specified in Stipulation 1(B) of the MOU for categorically excluded projects. Submittal of this application does not constitute notice of intent to terminate the current MOU.

Submitted by:



Carlos Braceras  
Executive Director  
Utah Department of Transportation

Date: 12/1/15

For questions regarding this application, please contact Brandon Weston, UDOT's Director of Environmental Services, at 801-965-4603.

## Executive Summary

The Utah Department of Transportation (UDOT) appreciates the opportunity afforded by Congress to allow States to assume the responsibilities of the Federal Highway Administration (FHWA) for the National Environmental Policy Act (NEPA) and related laws through applying to participate in the Surface Transportation Project Delivery Program (NEPA Assignment Program) pursuant to 23 United States Code (U.S.C.) 327. UDOT hereby submits the enclosed application. In submitting its application, UDOT expresses its strong commitment to successful implementation of the responsibilities requested to be assigned to UDOT under the NEPA Assignment Program. This application follows the requirements established in the Final Rule for the NEPA Assignment Program application issued in the Federal Register (Vol. 79, No. 179) on September 16, 2014.

As required by rule, UDOT's draft application is being publicly noticed for a 30-day comment period. Summaries of all comments received and of changes made to the application in response to the comments received will be provided in the final application, which will be submitted to FHWA.

UDOT is applying to assume all of FHWA's responsibilities under NEPA for state highway system projects (includes interstates, U.S. highways, and state routes) and local government projects off the state highway system in Utah, with specific exclusions as described below in Section 773.109(a)(1) of this application. UDOT is also applying to assume all of FHWA's responsibilities for environmental review, resource agency consultation, and other environmental regulatory compliance-related actions pertaining to the review or approval of projects. This application identifies the scope of highway projects UDOT would assume and projects that would be excluded from assignment. UDOT currently has assumed NEPA responsibilities for Categorical Exclusion (CE) projects under a 23 U.S.C. 326 MOU, and plans to retain those responsibilities independently from the responsibilities proposed it would assume under the NEPA Assignment Program. Section 773.109 (a)(1) of this application identifies the criteria by which projects will be excluded from the NEPA Assignment Program; this list is subject to change until the NEPA Assignment Program MOU is signed.

NEPA directs federal agencies to consider the environmental effects of their actions using a systematic, interdisciplinary approach. In Utah, as the agency responsible for providing safe and reliable transportation solutions, UDOT is also responsible for environmental compliance. UDOT integrates environmental considerations into its activities to achieve compliance with applicable laws, regulations, and standards. UDOT delivers safe, efficient transportation projects and makes sound decisions based on a balanced consideration of transportation needs and of the social, economic, and environmental impacts of proposed transportation improvements. UDOT's policy of balanced decision-making is similar to the philosophy underlying NEPA and FHWA's NEPA policy expressed in 23 Code of Federal Regulations (CFR) 771.105.

As required by NEPA and FHWA's NEPA regulations at 23 CFR 771, UDOT examines and discloses the environmental effects of its proposed activities; identifies the ways that environmental impacts can be avoided or minimized; prevents significant, avoidable environmental impacts by modifying its projects and/or implementing mitigation when appropriate; and publicly discloses the impacts of its projects and its project decisions, emphasizing balanced decision-making. As part of this process, UDOT undertakes timely and consistent outreach with the public, local jurisdictions, regional transportation planning agencies, resource and regulatory agencies, and tribal governments. UDOT will continue to work cooperatively with its agency partners, communities, and the general public under the NEPA Assignment Program.

Based on the capabilities of UDOT's environmental staff, FHWA has previously entrusted to UDOT certain aspects of its responsibilities, including consultation responsibilities with its federal resource agency partners. For example, since July 1, 2008, UDOT has been responsible for making CE determinations and environmental review of projects meeting the criteria of 23 CFR 771.117 (c) and (d) under the 326 MOU. Under the provisions of a programmatic agreement, FHWA has authorized UDOT to act on its behalf to perform many of the requirements of Section 106 of the National Historic Preservation Act. UDOT has also been entrusted with responsibilities for informal consultation under the Endangered Species Act.

UDOT has worked with FHWA for over 40 years to meet NEPA requirements; UDOT also works cooperatively with federal and state agency partners and tribal governments and has developed extensive procedures and tools to support this work. Because of UDOT's experience, expertise, and current level of involvement in consultations, its resources will be adequate to assume FHWA's responsibilities for resolving issues with external agencies. UDOT's extensive staff capabilities and well-developed environmental compliance program, together with the steps that UDOT has taken and will continue to take to strengthen its program under the NEPA Assignment Program, are summarized in this application.

Under the NEPA Assignment Program, UDOT will continue to comply with all applicable federal environmental laws and FHWA environmental regulations, policies, and formal guidance. The NEPA Assignment Program will not change or weaken federal environmental protection standards. Under NEPA, FHWA regulation, and state statute and rule, UDOT currently makes decisions on its transportation projects that protect the environment and will apply these same rigorous environmental protection standards to projects under the NEPA Assignment Program.

To ensure the success of the NEPA Assignment Program, UDOT will regularly conduct formal self-assessment to gauge the effectiveness of its environmental procedures under the program and to identify the need for any program corrections. In addition, FHWA will audit UDOT twice a year for the first two years of the NEPA Assignment Program and once a year in years three and four to ensure that UDOT is meeting NEPA and other federal environmental requirements consistent with FHWA's goals of environmental stewardship and streamlining.

The NEPA Assignment Program will streamline Utah's environmental review process and reduce project delivery time. Once FHWA and UDOT execute an MOU that assigns NEPA responsibilities, UDOT will be solely responsible and solely liable for NEPA decisions on assigned highway and local roadway projects in the state, without any involvement by FHWA.

This application contains the following components, as required by 23 CFR 773:

- §773.109 (a)(1): Classes of highway projects for which UDOT is requesting NEPA responsibility
- §773.109 (a)(2): Federal environmental laws other than NEPA for which UDOT is requesting responsibility
- §773.109 (a)(3)(i): Existing organization and procedures
- §773.109 (a)(3)(ii): Changes to be made for assumption of responsibilities
- §773.109 (a)(3)(iii): Legal sufficiency
- §773.109 (a)(3)(iv): Prior concurrence
- §773.109 (a)(3)(v): Project-delivery methods
- §773.109 (a)(4)(i): Staff dedicated to additional functions
- §773.109 (a)(4)(ii): Changes to the organizational structure
- §773.109 (a)(4)(iii): Use of outside consultants for the Assignment Program
- §773.109 (a)(5): Financial resources under the Assignment Program
- §773.109 (a)(6): Certification for consent to exclusive federal court jurisdiction and waiver of sovereign immunity
- §773.109 (a)(7): Certification that the State of Utah's Government Records Access and Management Act is comparable to the Federal Freedom of Information Act

This application also contains the following appendices:

- A. Federal Environmental Laws Other than NEPA for Which UDOT Is Requesting Responsibility
- B. Certifications for Consent to Exclusive Federal Court Jurisdiction, Waiver of Sovereign Immunity, and the State of Utah Government Records Access and Management Act (GRAMA) Is Comparable to the Federal Freedom of Information Act

## §773.109 (a)(1): Classes of Highway Projects for Which UDOT is Requesting NEPA Responsibility

UDOT is requesting to assume FHWA's responsibilities under NEPA for the following classes of projects upon execution of the NEPA Assignment Program MOU with FHWA. In general, this includes all highway and roadway projects in Utah whose source of federal funding comes from FHWA or that require FHWA approvals; these projects can include funding from other federal sources as well. For these projects, UDOT requests to assume only FHWA's NEPA responsibilities; the request does not include assuming the NEPA responsibilities of other federal agencies.

1. All Class I, or Environmental Impact Statement (EIS), projects that are funded by FHWA or require FHWA approvals. The following projects will not be assigned under this MOU. This list is subject to change and will be finalized in the NEPA Assignment Program MOU:
  - Any document on-going in the NEPA process for which a Draft EIS has been signed prior to the effective date of the MOU:
    - 1800 North (SR-37)
    - West Davis Corridor
2. All Class II, or Categorically Excluded (CE), projects that do not qualify for assignment under the provisions of the CE Assignment MOU.
3. All Class III, or Environmental Assessment (EA), projects that are funded by FHWA or require FHWA approvals. The following projects will not be assigned under this MOU. This list is subject to change until the Assignment Program MOU is signed:
  - Any project for which an EA has been published prior to the effective date of the MOU.

Lastly, UDOT would establish appropriate relationships with other operating administration(s) involved in a multimodal project, including cooperating agency, participating agency, and lead or co-lead agency relationships under NEPA. In addition, UDOT may use or adopt other federal agencies' NEPA analyses consistent with 40 CFR 1500-1508 and U.S. Department of Transportation (USDOT) and FHWA regulations, policies, and guidance.

Projects meeting the following criteria will be excluded from the assignment:

- Priority projects designated under Executive Order 13274
- Federal Lands Highway projects, unless designed and constructed by UDOT
- Projects that cross state boundaries

UDOT's assumption of these responsibilities program-wide will provide for the highest degree of consistency and efficiency in document review and agency coordination. It will also provide the greatest opportunity for streamlining benefits.

## §773.109 (a)(2): Federal Environmental Laws Other than NEPA for Which UDOT Is Requesting Responsibility

UDOT requests to assume all of FHWA's responsibilities for environmental review, interagency consultation, and other regulatory compliance-related actions pertaining to the review or approval of projects for which UDOT is requesting assumption of responsibilities under NEPA. UDOT requests to assume these responsibilities under all applicable federal environmental laws and executive orders including, but not limited to, the federal laws, regulations, and Executive Orders listed in Appendix A of 23 CFR 773 (also listed in Appendix A of this application). UDOT requests immediate assumption of these responsibilities upon execution of the NEPA Assignment Program MOU with FHWA. UDOT's approach and practice in working with federal resource agencies and their regulations are described in further detail in this application.

## §773.109 (a)(3)(i): Existing Organization and Procedures

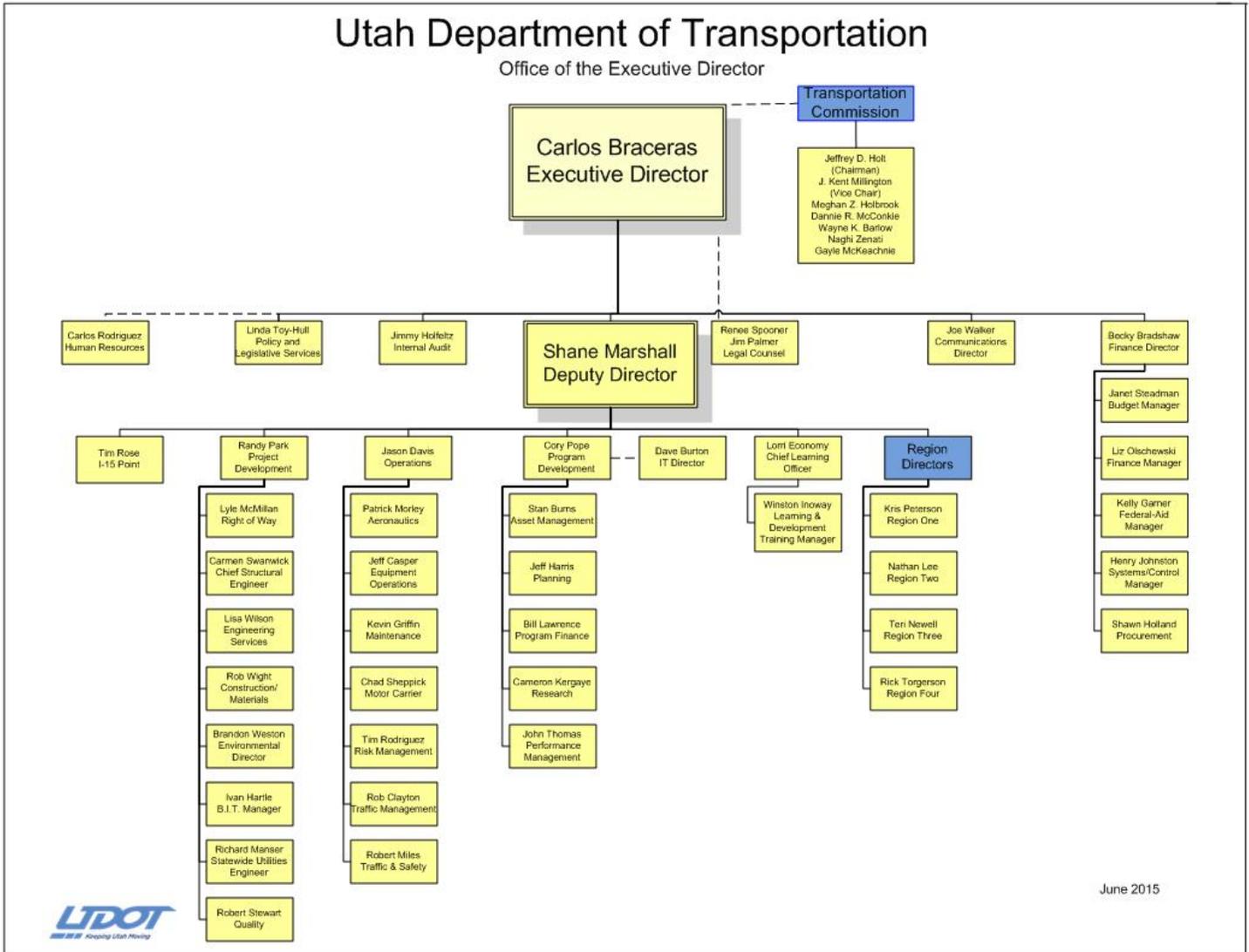
### Organization

UDOT is the legally authorized transportation department for the state of Utah with responsibility for roadways and general aviation. For certain public transportation projects, UDOT might share responsibility with the Utah Transit Authority (UTA). UDOT is led by the UDOT Executive Director, who is appointed by the governor.

UDOT comprises four regions and a central office that is divided into divisions and groups (see the organization chart in Figure 1). Under this organizational structure, the central office provides a statewide framework, performs statewide planning, and develops policy and guidance consistent with UDOT's mission; the regions provide the specialization necessary to successfully deliver projects within the region and address varying regional needs. The regions also develop or oversee development and construction of all transportation projects within the region and operate and maintain the state highway system within their region boundaries. UDOT employs approximately 1600 people, including part-time and seasonal employees.

The four UDOT Region Directors report to the Deputy Director. UDOT divisions and offices report to three executive-level organizational units: Operations, Program Development, and Project Development. These units in turn report to the Deputy Director. The Deputy Director reports directly to the Executive Director.

Figure 1. UDOT Organization Chart



The central office of UDOT contains the Operations, Program Development, and Project Development groups. The Program Development group supports UDOT through monitoring transportation system conditions, identifying transportation needs, establishing transportation plans, and determining program and project schedules. The Program Development group also manages the Statewide Transportation Improvement Program (STIP) and UDOT's Public Involvement Plan.

The Project Development group, comprised of approximately 140 employees, is responsible for providing statewide support and technical expertise for the environmental components of

projects. In addition to the Central Environmental Services Division, the Project Development group includes the Structures Design and Bridge Management Division, the Right of Way (ROW) Division, the Construction Division, the Materials Division, the Quality Division, and the Utilities and Railroads Division. Together, these divisions assist the regions and ensure the successful delivery of projects.

UDOT's Environmental Services Division consists of a total of 19 employees located at both the central office (Central Environmental) and at the four regions (Region Environmental). Central Environmental is responsible for developing and implementing the environmental program for the department as a whole. In this capacity, Central Environmental develops, administers, and distributes environmental policies, procedures, manuals, and guidance. Central Environmental also provides training and technical support to Region Environmental as well as project-specific technical expertise, agency coordination, and project management oversight.

The Utah Office of the Attorney General assists UDOT with legal needs by assigning two attorneys from their office to serve as legal counsel to UDOT and who maintain offices within UDOT's central office. Legal expertise related to administrative and environmental law, including NEPA compliance for EISs and the broader environmental review process, is provided by UDOT's representatives from the Utah Office of the Attorney General or legal consultants they have under contract. These attorneys play an important role in the environmental compliance process by assisting UDOT with litigation, legal issues relating to NEPA compliance, and conducting legal reviews of memoranda of understanding, programmatic agreements, and other agreements.

## Organization of the Environmental Services Division

UDOT's Environmental Services Division provides expertise to the department by integrating environmental considerations into UDOT activities to achieve environmental compliance. Central Environmental develops environmental policies and procedures, including those for preparing and processing environmental documents; tracks environmental compliance activities using UDOT's project management systems; provides oversight of UDOT's environmental documentation; helps manage NEPA actions and projects; conducts agency coordination; and works on a variety of environmental streamlining initiatives.

Central Environmental provides policy, procedure, training, guidance, and technical assistance to other organizational units of the department on environmental technical subjects such as air quality, archaeology, biology, historic preservation, indirect and cumulative impacts, NEPA, noise, socioeconomics, Section 4(f) determinations, and water resources. Central Environmental also manages environmental programs and monitors changes in laws and regulations.

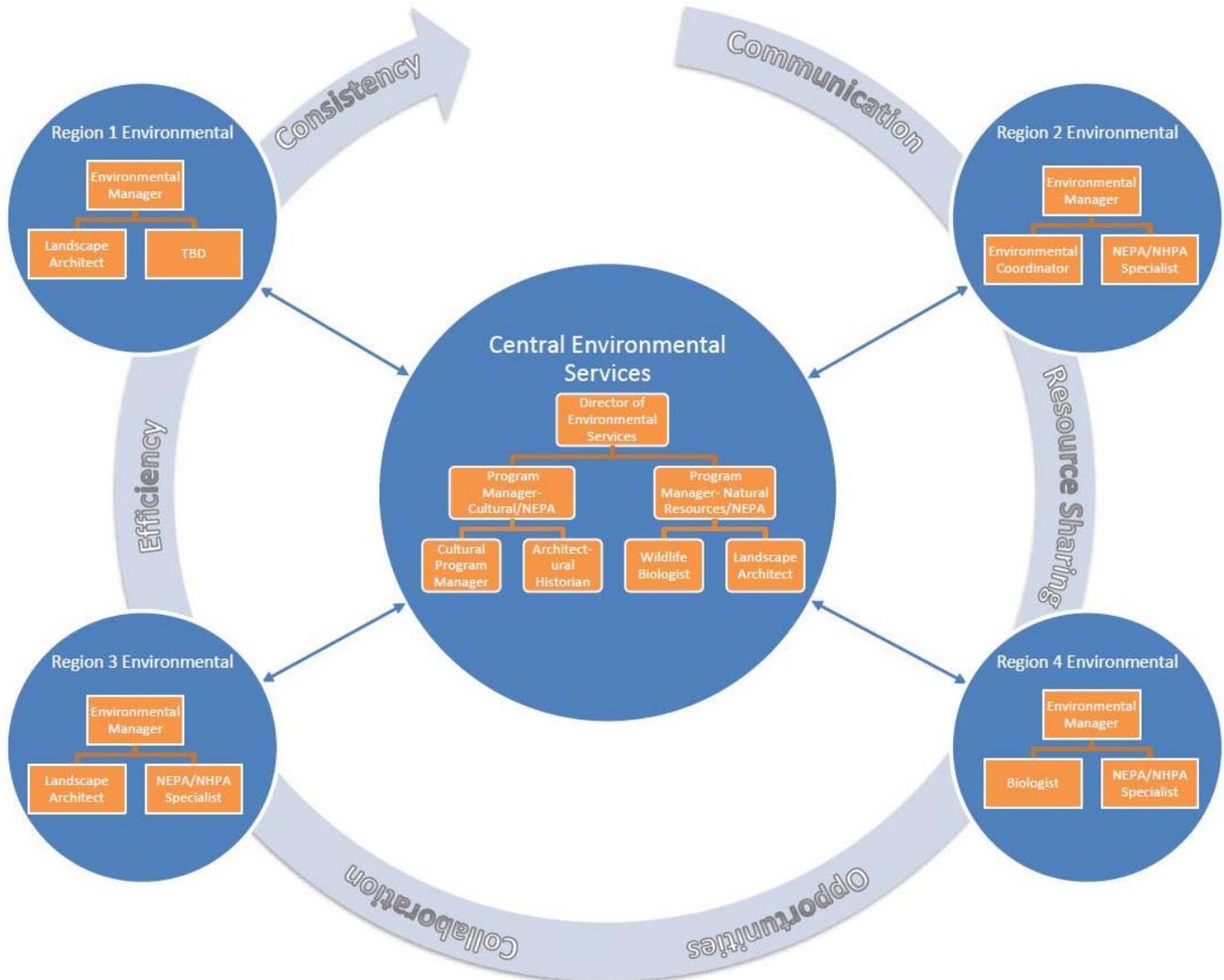
Central Environmental works with Region Environmental to ensure environmental compliance and appropriate consideration of environmental issues on all UDOT projects. Central Environmental is the lead for consultation and coordination with state and federal resource agencies and with Native American tribes, for projects as well as for the UDOT

environmental program as a whole. For projects, Central Environmental reviews all EAs and EISs as well as all Section 4(f) evaluations and recommends their approval to FHWA. Central Environmental also develops environmental compliance quality assurance (QA) standards and defines quality control (QC) requirements for environmental document approval.

Central Environmental carries out a semi-annual assessment of approved CEs under the 23 U.S.C. 326 CE Assignment MOU. In addition to its responsibilities for reviewing and approving UDOT environmental documents, Central Environmental reviews and recommends approval of EAs and EISs for local government projects and other alternative-delivery projects.

As shown in the Environmental Services organization chart (Figure 2), Central Environmental is divided into two groups: Cultural Resources and Natural Resources. Within their respective disciplines, subject-matter experts provide technical expertise, as requested, throughout the project-development process. When requested by region environmental staff, subject-matter experts prepare documentation for resource agency consultation, documentation such as biological assessments under Section 7 of the Endangered Species Act and determinations of eligibility and findings of effect under Section 106 of the National Historic Preservation Act; conduct technical studies; and review technical studies and reports prepared in support of projects.

Figure 2. Environmental Services Organization Chart



Central Environmental staff assist Region Environmental staff with developing, reviewing, and approving environmental documents and provide overall support for the regions. They provide NEPA expertise to facilitate the efficient development, review, and approval of environmental documents and to effectively meet the requirements of NEPA and other federal and state laws. Central Environmental is charged with confirming that EAs and EISs are NEPA compliant and that project files contain a complete project record. They also coordinate with legal counsel for reviewing certain NEPA documents.

Central Environmental contracts with a variety of consultants on environmental issues, from cultural resources to hazardous materials. Consultants are used for project-specific environmental surveys, technical studies, reviews, and environmental document preparation.

Central Environmental and Region Environmental staff work with many other UDOT divisions and offices on an ongoing basis on various issues of mutual interest.

- Central and Region Environmental staff work with the Division of Local Government Assistance to communicate environmental policies, procedures, and guidance to local governments and to coordinate training for local governments.
- Central Environmental staff work with the Division of Planning to develop rules, policies, procedures, training, and other matters related to public participation requirements during the environmental process.
- Central and Region Environmental staff participate in the Project Delivery Network (see Figure 6) to integrate scheduling and resource commitments into the project management system so that environmental considerations are incorporated into overall project scheduling and development. The Project Delivery Network includes QC checkpoints when a project transitions between project-delivery phases.
- Central and Region Environmental staff work with the Right of Way Division on projects involving early right of way acquisition, and when projects require continuing coordination regarding specific resource issues during the acquisition process.
- Central Environmental staff work with the Structures Design and Bridge Management Division to deliver historic bridge projects, maintain the Historic Bridge Inventory, and implement the historic bridge management plan.
- Central Environmental works with the Systems Planning and Programming Division on planning and environmental linkages so that work accomplished through the planning process can be used to streamline environmental project development. The Systems Planning and Programming Division also maintains a critical link with metropolitan planning organizations (MPOs) to help ensure that NEPA documents are consistent with MPO long-range plans prior to NEPA approvals being issued by Central Environmental.
- Central and Region Environmental staff provide technical support to other UDOT units for transportation conformity, transportation-control measures, speed limit changes, corridor planning, and Congestion Mitigation Air Quality (CMAQ) Program programming.
- Central Environmental works with UDOT's Policy and Legislative Services Office and with its representatives from the Utah Attorney General's Office to monitor, and when necessary review and comment, on legislation that could affect UDOT's environmental program.

## Region Organization

UDOT has four regions, as shown in Figure 3. Regions develop or oversee development and construction of projects and operate and maintain the highway network within the region boundaries. Each region is led by a Region Director and has an Environmental Manager with overall responsibility for project environmental compliance in the region as well as coordination with Central Environmental on NEPA compliance. Region Environmental staff are responsible for supporting project delivery for their region and providing guidance to region Project Managers on environmental issues.

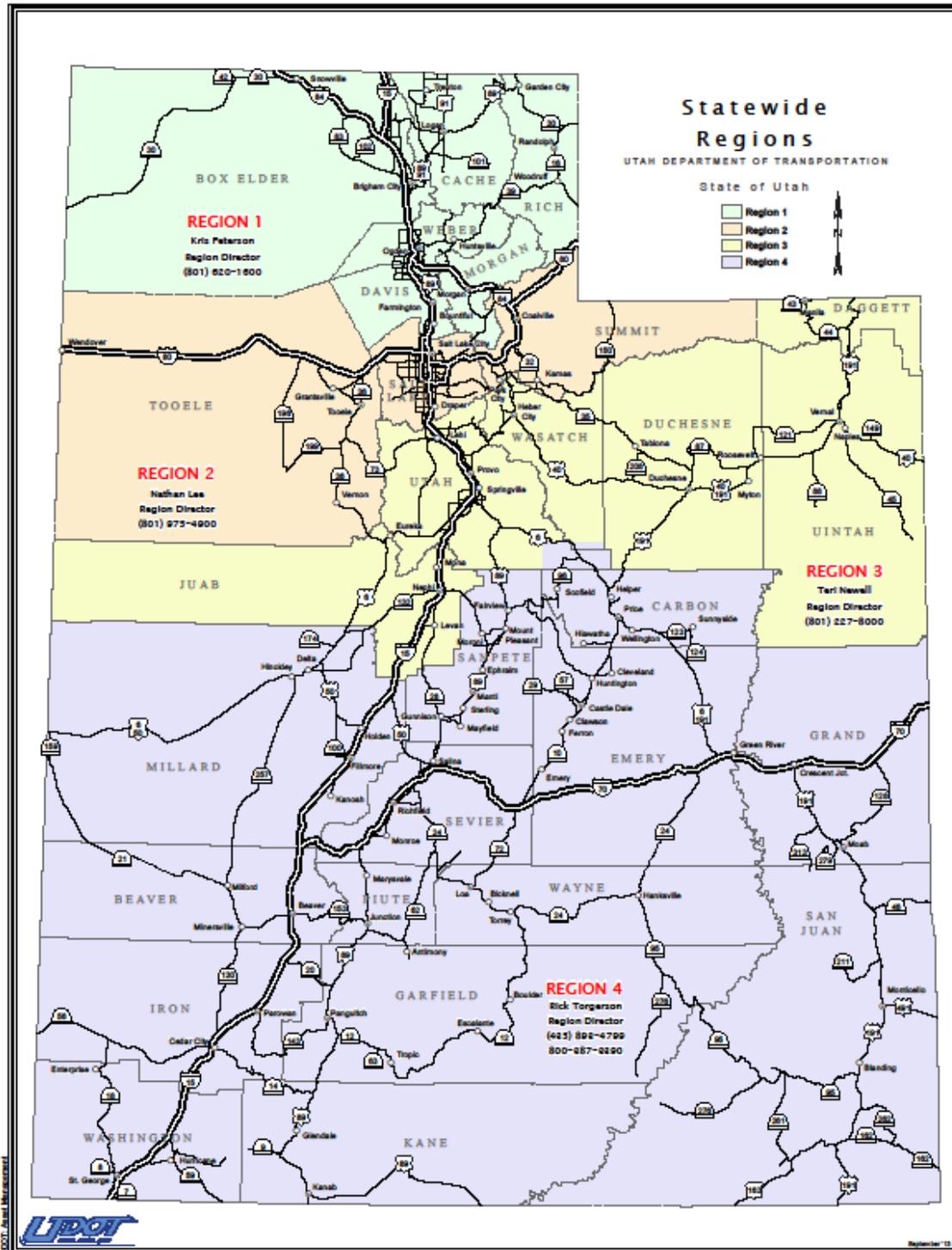
Regions also have environmental specialists that provide professional expertise in various disciplines. Region Environmental Managers and environmental specialists have a variety of responsibilities including preparing and/or reviewing technical studies such as noise analyses, cultural resource studies, habitat assessments, and wetland delineations. In general, Region Environmental staff conduct initial environmental surveys, prepare or oversee preparation of environmental documents, approve assigned CEs, perform local interagency coordination, and implement public involvement, as well as other activities related to NEPA compliance. In addition to their general environmental experience, Region Environmental personnel have education and training in specialty areas such as biology, cultural resources, historic preservation, landscape architecture, and wetland and water resources and serve as subject-matter experts in these areas.

Organizationally, Region Environmental staff is within the region's Preconstruction Division, which implements the region planning, design, and environmental program for the STIP. For each project, Region Environmental staff work with region planning staff and design engineers throughout the project-design and -development process. This coordination supports appropriate consideration of environmental resources, avoidance and minimization of environmental impacts, and environmental compliance as projects are developed. Regions also use consultant contracts, either as part of contracts on individual projects or by accessing Central Environmental's consultant contracts, to prepare environmental documents or to provide specific technical resource studies (such as archaeological surveys/testing and wetland delineations).

Regions also collaborate with MPOs and local governments to identify, develop, and design transportation projects. Local government projects follow UDOT's local government project procedures and UDOT provides project oversight for these projects. Under the NEPA Assignment MOU, UDOT would serve as the NEPA lead agency for local government projects following an environmental review process parallel to the state highway system NEPA process. The primary point of contact for local government projects is the local UDOT region office. Local governments work with UDOT region staff to identify and prioritize funding for projects. The region staff coordinates with the Preconstruction Division regarding fiscal constraint and design concept and scope and with the central Program Finance Office regarding funding agreements.

UDOT APPLICATION TO ASSUME FHWA'S NEPA RESPONSIBILITIES  
§773.109 (a)(3)(i): Existing Organization and Procedures

Figure 3. UDOT Region Boundaries Map



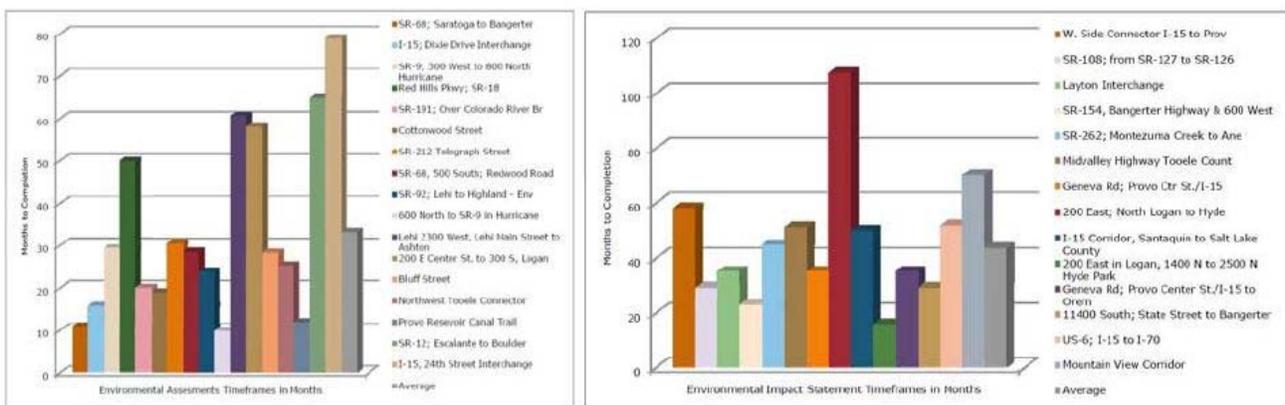
## Existing Environmental Staff

UDOT currently has a staff of 19 full-time employees (FTEs) across the state assigned to environmental functions: 12 working in the four regions and 7 working at Central Environmental. UDOT's environmental staff includes experienced NEPA practitioners and subject matter experts in both natural and cultural resources, as discussed below. Statewide, UDOT's environmental staff are augmented by the flexible use of environmental consultants for preparing complete environmental documents or providing specific environmental technical services. For more complex NEPA documents or for those projects needing legal reviews, UDOT's representatives from the Utah Attorney General's Office provide legal counsel or contract with specialized outside environmental counsel on an as-needed basis to provide legal counsel.

With this staff, UDOT completes about 130 to 150 CEs per year and oversees the development of 5 to 7 EA and EIS documents. Approximately 80% of CEs are completed entirely by UDOT staff, including preparing resource clearances and conducting field surveys as needed. For local government projects or more complex CEs, consultants will prepare CEs for UDOT's review and approval. In a typical year, UDOT also completes one programmatic Section 4(f) evaluation, one individual Section 4(f) evaluation, and several additional considerations of Section 4(f) uses. UDOT completed one EA/FONSI in calendar year 2013 and one in 2015. Over the past 10 years, UDOT has completed 17 EAs and 14 EISs, with an average time to complete of 29 months and 42 months, respectively, as shown in Figure 4.

EA and EIS teams consist of UDOT staff and consultants, with UDOT in an oversight role. UDOT staff includes an environmental lead from Central Environmental to oversee NEPA reviews and compliance, and a Region Project Manager to oversee design, schedule and budget. The consultants provide daily project administration, complete technical studies, and prepare draft and final documents. Currently, UDOT has 1 active EA and 4 active EISs (see Table 1).

Figure 4. Completed EAs and EISs



UDOT APPLICATION TO ASSUME FHWA'S NEPA RESPONSIBILITIES

§773.109 (a)(3)(i): Existing Organization and Procedures

Table 1. Active Environmental Documents

Project	Class of Action
1800 North (SR-37)	EIS
I-80 & State Street Interchange	EIS
I-15 & Payson Main Street Interchange	EIS
West Davis Corridor	EIS
Purgatory Road	EA

Table 1 presents the range of environmental expertise at UDOT within the four regions and Central Environmental. Staff consist of experienced NEPA practitioners, environmental managers, specialists, and a variety of subject-matter experts including air quality and noise experts, biologists, cultural resources specialists, water resource experts, and an architectural historian. All cultural resources staff meet the Secretary of the Interior’s standards as qualified professionals. Three cultural resources staff and three additional environmental staff are certified by the Utah Public Lands Policy Coordinating Office to conduct archaeological surveys. Two landscape architects are licensed landscape architects with the State of Utah. Subject-matter experts on staff with UDOT both conduct resource assessments, field surveys, and technical reports and review those conducted by consultants.

Collectively, UDOT’s environmental staff has many years of experience in environmental analyses and/or strong technical knowledge in one or more environmental specialty areas. Regions with a small range of staff expertise work with experienced staff from Central Environmental or another region to provide technical assistance and expertise to the region. The combined capability of all personnel provides the expertise required to meet the responsibilities that UDOT would assume under this application. UDOT will also continue the practice of engaging with consultant technical expertise to meet the demands of a fluctuating work load, and variety of technical assistance needed.

Table 2. UDOT's Range of Technical Expertise

Resource		Endangered Species/ Biology	Archaeological/ Cultural Resources	Historic Preservation	Section 4(f)	Noise	Air Quality	Water Quality / Stormwater	Wetlands / Section 404	Environmental Justice/ Socioeconomic Impacts	Indirect and Cumulative Impacts
Environmental Staff	Central Environmental	X	X	X	X	X	X	X	X	X	X
	Region One		X					X	X		
	Region Two	X	X					X	X		
	Region Three		X					X	X		
	Region Four	X	X								

## Approach to Consideration of the Environment and NEPA Compliance for Highway Projects

UDOT integrates environmental considerations into its activities to achieve compliance with applicable laws, regulations, and standards. UDOT values the delivery of safe, efficient transportation projects and makes sound decisions based on the balanced consideration of transportation needs and of the social, economic, and environmental impacts of proposed transportation improvements. UDOT complies with NEPA and all other federal environmental requirements on its projects that require federal funding or approval. Projects that have only state funding comply with [state environmental requirements](#).

Guidelines for producing successful projects and the environmental responsibilities associated with each project phase are provided through the UDOT Environmental Delivery Network: the Environmental Document Process, the Project Delivery Network and supporting documents, and the UDOT Environmental Process Manual of Instruction. Guidelines specific to environmental document preparation are presented in the [Environmental Document \(EA/EIS\) Process Manual](#), which provides a framework for the activities, tasks, and deliverables necessary to complete an environmental document; this framework is shown in Figure 5.

Environmental Services utilizes a work-sharing approach to the environmental review process which provides the flexibility to assign environmental staff to projects in any of the four regions based on environmental resource needs, required subject-matter expertise, and personnel workload and schedules. This allows for more efficient project delivery not limited by region boundaries. As a result of Environmental Services' work-sharing approach and distribution of staff resources between Central Environmental and the four regions, environmental staff have a thorough understanding of FHWA's and UDOT's environmental compliance requirements. This includes requirements and standards for project environmental documents and decisions, expectations for proactive resource agency engagement, and approach to environmental commitments. State highway system projects and local government projects off the state highway system follow the same procedures for environmental review and approval and are developed following the same standards.

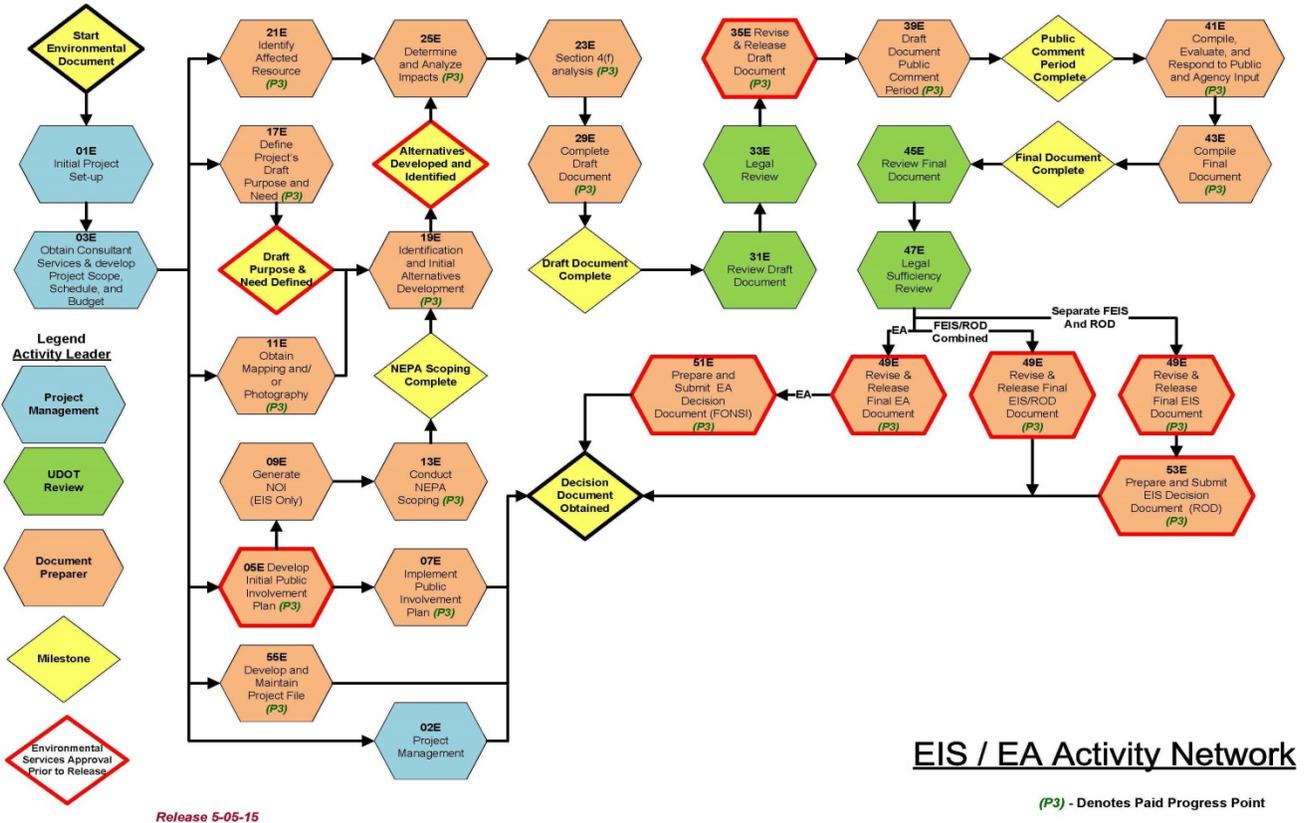
Each project is assigned a Region Project Manager, who has overall responsibility for successfully delivering the project. The Project Manager procures a qualified consultant to prepare the environmental document (EA or EIS) and any required technical studies. A Region Environmental lead and a Central Environmental lead are identified for the project, who jointly manage development of the environmental document, with Central Environmental in the leadership role.

The project team determines the scope of environmental studies required for the project and which studies will require technical reports or memoranda as well as those studies that will be reported directly into the environmental document. Environmental documents are reviewed and internally approved at UDOT before they are submitted to FHWA for approval. As needed, EISs and other environmental documents might receive a UDOT legal review before being submitted to FHWA.

### Class-of-Action Determination

UDOT Project Managers consult with Region and Central Environmental staff on the appropriate class of action for a project. Existing project and environmental resource information is reviewed and additional information is gathered as needed; this often includes a field review. The project team coordinates with FHWA once initial information is gathered and UDOT has proposed a class of action. Central Environmental then prepares a class-of-action determination identifying the class of action and environmental document type and submits it to FHWA. In the case of an EIS, UDOT submits a Letter of Initiation (LOI) to FHWA.

Figure 5. Environmental Document Process



## Public Involvement Procedures

UDOT implements a robust public involvement program for its projects, based on 23 U.S.C. 139, 23 CFR 450.316, 23 CFR 771.111(h), and Utah Administrative Code R930-2, which encourage opportunities and provide guidance for interagency coordination and public participation. UDOT conducts open houses, roundtables, and workshops; engages with individual stakeholders and property owners; holds neighborhood meetings; briefs elected officials; and holds public meetings, as necessary, during the environmental process. A public hearing or the opportunity for a public hearing is offered for some CE projects and for all EA projects. NEPA scoping, public meetings, and public hearings are held for all EIS projects.

For EIS projects, UDOT follows the requirements of the 23 U.S.C. 139 Environmental Review Process for efficient environmental review. These requirements emphasize collaboration between federal, state, local, and tribal entities and the public when preparing an EIS. As required by 23 U.S.C. 139, UDOT develops a Coordination Plan early in the environmental review process that identifies the lead agencies for the project (federal, state, and local) along with the cooperating and participating agencies and describes the expectations for

each of these roles. The Coordination Plan describes how the lead agencies have divided the responsibilities for complying with the various aspects of the environmental review process, including issuing invitations to participating agencies, and how the lead agencies will provide the public and other agencies with opportunities for input.

During scoping, UDOT determines the type of public involvement needed for the project based on the context and intensity of the project and its potential impacts. For an EIS, that plan is formalized as a component of the 23 U.S.C. 139 Coordination Plan. The public outreach plan describes how the project team will establish and maintain communication with the public, ensure that the public remains informed about the proposed project, and ensure that the public has an opportunity to provide input, as appropriate given the nature of the project. The public outreach plan might also describe details regarding stakeholder identification (stakeholder database), strategies that will be used to convey information to the public (social media, newsletters, flyers, websites, newspapers, radio, TV, message boards, and the like), and anticipated face-to-face involvement (meetings, virtual open houses, etc.).

## Tools and Guidance

UDOT works with FHWA to implement NEPA on state highway system and local government projects that require FHWA's approval. As the state highway agency, UDOT routinely prepares EAs and EISs, as well as CEs not addressed by the CE Assignment MOU, for FHWA's independent evaluation and approval. Local agencies and their consultants also prepare NEPA documents for local government projects and for locally sponsored projects on the state highway system under UDOT's the guidance and oversight. These documents are reviewed by UDOT prior to their submittal to FHWA following the same procedures and standards as state highway system projects. In addition, through the CE Assignment MOU, UDOT makes CE determinations for most types of CEs.

To implement NEPA effectively, UDOT uses a broad assortment of policy and guidance materials that guide environmental document development and identify specific requirements for individual technical subject areas. These tools and guidance ensure that environmental documents and technical reports meet quality standards and are consistent with federal and state requirements. Together with other federal agencies, UDOT has also participated in the development of, and is a signatory to, a number of programmatic agreements and MOUs that streamline the environmental review and project-delivery process.

UDOT's policy and guidance resources address the environmental requirements associated with planning and delivering highway projects. The policies and guidance are a compilation of environmental procedures and processes related to environmental, cultural, historic, and social resources. These online reference materials are intended for use by project sponsors and environmental practitioners who conduct environmental work on behalf of UDOT, as well as UDOT environmental staff. Policies and guidance are dynamic documents that are updated as the need arises in response to changing environmental requirements, standards, and policies.

Guidance documents, policies, procedures, and other related items are available on the Environmental Services page of UDOT's website at [www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:241](http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:241). The site contains standard operating procedures, MOUs, memoranda of agreement, methodologies, documentation standards, review standards, and guidance covering technical aspects of each resource category in the UDOT Environmental Process Manual of Instruction. This manual includes guidance on all the resource categories considered in the preparation of NEPA documents.

### Additional Guidance

In addition to UDOT's own guidance, UDOT and its consultants use FHWA's NEPA guidance to develop environmental documents and studies. FHWA provides a rich online set of guidance ([www.fhwa.dot.gov/environment](http://www.fhwa.dot.gov/environment) and [www.environment.fhwa.dot.gov/guidebook](http://www.environment.fhwa.dot.gov/guidebook)) that covers a comprehensive set of environmental topics. Each topic is covered in depth with direction and methodologies for performing studies ranging from community impact assessments to air quality analyses. FHWA's Environmental Review Toolkit ([www.environment.fhwa.dot.gov](http://www.environment.fhwa.dot.gov)) includes comprehensive guidance on a wide variety of topics such as historic preservation, environmental justice, water resources, wetlands, wildlife, and Section 4(f) resources, to name a few.

### Document Quality Control Procedures

The process for writing and approving environmental documents for projects begins during the scoping stage of the Project Delivery Network (see Figure 6). This process is managed by Central Environmental, which works with Region Environmental staff and qualified consultants to provide QC review of the draft environmental document and, later in the process, of the final environmental document.

### Resource Specialist Review

As determined by the project team, key environmental technical reports and consultation documents are developed by qualified consultants and managed and reviewed by qualified environmental staff in the central or regional offices. The findings of the technical reports and consultation are then incorporated into the draft environmental document. Some technical specialty information is incorporated directly into the environmental document without a stand-alone technical report. Sections of the environmental document that address environmental technical specialty areas are reviewed by qualified staff within UDOT Environmental Services. Resource-specific and environmental technical information in the draft environmental document is assessed for adequacy, accuracy, and consistency with the underlying technical report. Various guidance documents serve as QA materials that help guide the development of adequate and supported technical reports that support the environmental document.

## NEPA Review

The complete environmental document is reviewed by the Region Environmental lead and Central Environmental lead assigned to the project, with the Central Environmental lead in charge of the review. This review is performed to ensure that the environmental document complies with NEPA and FHWA regulations, policies, and standards and is satisfactory for public disclosure. The reviewers assess the adequacy of the project's description, purpose and need statement, logical termini, and independent utility. Documentation of coordination with other agencies is also reviewed. The alternatives analysis is assessed for completeness, and the proposed avoidance, minimization, and mitigation measures are evaluated.

If issues are identified that must be addressed, generally a comment/response matrix is developed to record comments for the document author(s) to use in document revision. The comment/response matrix is used as a formal record of the comment and response progression and is intended to ensure clarity and efficiency in the QC process.

The review process continues until Central Environmental determines that the document is ready for FHWA's review and approval. Central Environmental then transmits the environmental document to FHWA.

## Legal Counsel Review

For EAs, draft EISs, and individual Section 4(f) evaluations, at the discretion of Environmental Services, an internal legal review is completed by attorneys from the Utah Attorney General's office assigned to UDOT or contract with specialized outside environmental counsel on an as-needed basis to provide legal counsel. The level and frequency of legal assistance varies by project complexity, and could occur prior to NEPA scoping or only during final review. The primary goal of this review is to assess the document from the perspective of legal standards, litigation risk, and legal defensibility. Once the legal review is completed and legal comments are appropriately addressed, the environmental document is forwarded to FHWA by Central Environmental.

## Environmental Commitments

After environmental document is completed and the environmental decision is made, the environmental commitments made by UDOT are integrated into the project-delivery process. UDOT uses its Project Delivery Network, shown in Figure 6 below, in combination with its Quality Control/Quality Assurance (QC/QA) Process to help the project team verify that all work has been produced with due diligence using acceptable industry standard techniques, and supports reasonable decisions. The Project Delivery Network is a system that guides, outlines, and describes the activities, deliverables, and tasks typically required to successfully deliver a project. Environmental considerations are integrated in the Project Delivery Network and QC/QA process as part of overall project delivery.

Environmental commitments are key components of each stage of the Project Delivery Network; UDOT requires that environmental commitments are communicated explicitly



## Project Management Systems

UDOT uses a document management system as a repository for all documents and design files related to a specific project. The system facilitates work-sharing and dynamic feedback between project team members and supports integrating various project elements into a centralized location.

UDOT's project management systems are used to manage projects, including cost, scope, schedule, milestones, deliverables, and commitments. They also contain the official project environmental file of record.

The project management systems also contain forms that serve as workspaces for producing CE documents. There are fields in which to record the start and end dates of various activities, including the dates from which to calculate the duration of the environmental process from the beginning to the end.

For EAs and EISs, UDOT uses scheduling software in combination with a document management system to manage daily project activities. The document management system serves as a tracking and filing system for all project-specific environmental technical studies, analyses, agency coordination, environmental documents, and decision documents. Lastly, the project management systems have capabilities for analyzing the performance of UDOT's environmental program. Database reports are used to summarize performance metrics. This system will be used for UDOT's self-assessment as well as to assist in FHWA's audits under NEPA Assignment.

## Programmatic Agreements, Memoranda, and Agency Consultation

### Programmatic Agreements

A programmatic agreement (PA) is a document that spells out the terms of a formal, legally binding agreement between UDOT and another state or federal agency. A programmatic agreement can establish a process for consultation, review, and/or compliance with one or more federal laws. It can also function as an expression of collaborative intent between agencies. UDOT has many PAs, as described below. Collectively, these agreements evidence the strong relationships between UDOT and various partner agencies and groups.

- **UCA 9-8-404 PA.** In 2004, the Utah State Historic Preservation Officer (SHPO) and UDOT entered into a Utah Code Annotated (UCA) 9-8-404 "State Programmatic Agreement for State Funded Transportation Projects in Utah". This PA was replaced in March 2008. The UCA 9-8-404 agreement entrusts UDOT to take into account the effect of the expenditure of state funds on historic properties and, unless exempt by agreement between the agency and the SHPO, to provide written evaluation of the expenditure's or undertaking's effect on the historic property.
- **Section 106 PA.** In 2007, FHWA, the Advisory Council on Historic Preservation (ACHP), the SHPO, and UDOT entered into a Section 106 PA to streamline compliance under the National Historic Preservation Act. A second amended PA,

which also included the U.S. Army Corps of Engineers (USACE), Sacramento District, was entered into in June 2013. Under the provisions of the current Section 106 PA, FHWA authorizes UDOT to perform many of the federal lead agency Section 106 steps. The Section 106 PA entrusts to UDOT responsibility for consulting with the SHPO on all eligibility determinations and effect findings, notifying ACHP of adverse effects to historic properties, and negotiating agreement documents with consulting parties for the resolution of adverse effects. For CEs processed under the CE Assignment MOU, UDOT has assumed the responsibilities of FHWA for complying with Section 106 and completes all Section 106 consultation activities for these projects.

- **Utah Prairie Dog Programmatic Biological Assessment.** As of September 2012, UDOT also maintains a Programmatic Biological Assessment (PBA) with the U.S. Fish and Wildlife Service (USFWS) for the Utah prairie dog (*Cynomys parvidens*). The PBA addresses projects under UDOT's Pavement Preservation Program. It establishes compensatory mitigation commitments; outlines conservation measures, including pre-construction surveys and onsite monitoring and documentation of incidental take; and establishes actions areas where the state highway system and associated right-of-way bisect areas that might have habitat for Utah prairie dogs. The final Programmatic Biological Opinion, including an Incidental Take Statement, was issued in January 2013.

UDOT also maintains several PAs between FHWA and tribal governments.

- **Confederated Goshute PA.** "Programmatic Agreement among the Federal Highway Administration, the Utah Department of Transportation, and the Confederated Tribes of the Goshute Indian Reservation Regarding Coordination and Consultation on Federal-Aid Highway Projects in Utah in Accordance with the National Historic Preservation Act Section 106 Process and 36 CFR Part 800" (July 29, 2008)
- **Cedar Band PA.** "Programmatic Agreement among the Federal Highway Administration, the Utah Department of Transportation, the Paiute Indian Tribe of Utah, and the Cedar Band of Paiute Indians Regarding Coordination and Consultation on Federal-Aid Highway Projects in Utah in Accordance with the National Historic Preservation Act Section 106 Process and 36 CFR Part 800" (September 29, 2008)
- **Indian Peaks Band PA.** "Programmatic Agreement among the Federal Highway Administration, the Utah Department of Transportation, the Paiute Indian Tribe of Utah, and the Indian Peaks Band of Paiute Indians Regarding Coordination and Consultation on Federal-Aid Highway Projects in Utah in Accordance with the National Historic Preservation Act Section 106 Process and 36 CFR Part 800" (September 29, 2008)
- **Shivwits Band PA.** "Programmatic Agreement among the Federal Highway Administration, the Utah Department of Transportation, and the Shivwits Band of the Paiute Indian Tribe of Utah Regarding Coordination and Consultation on Federal-Aid

Highway Projects in Utah in Accordance with the National Historic Preservation Act Section 106 Process and 36 CFR Part 800” (March 15, 2011)

## Memoranda of Understanding and Memorandum of Agreement

UDOT maintains MOUs with several state agencies and maintains a Memorandum of Agreement (MOA) with USFWS and FHWA.

- **Greater Sage-Grouse MOU.** UDOT recently entered into an MOU with the Utah Division of Wildlife Resources (UDWR) for the greater sage-grouse (*Centrocercus urophasianus*). The MOU, entered into on April 21, 2015, establishes UDOT’s responsibility to coordinate with UDWR on any projects involving expansion or addition to the state highway system in designated sage-grouse management areas. UDOT is also responsible for maintaining records of these consultations and for submitting annual reports detailing compliance actions to UDWR and the Utah Public Lands Policy Coordinating Office.
- **Human Remains MOU.** UDOT entered into an “Interlocal Cooperation Agreement” on October 11, 2011, with the Utah Division of State History for assistance with human remains discoveries. Under this agreement, the division advises and assists UDOT in meeting its obligations regarding the discovery of ancient human remains.
- **Paleontological Resources MOU.** UDOT maintains an “MOU with the Utah Geological Survey (UGS) Concerning Agency Responsibilities Pursuant to UCA 79-3-508”. Under this MOU, which was entered into on March 25, 2010, UDOT archaeological staff or its qualified consultant is responsible for evaluating and reporting potential effects on paleontological resources from UDOT projects.
- **CE Assignment MOU.** UDOT entered into an MOU developed under 23 U.S.C. 326 with FHWA to assign to UDOT all CE activities listed on the 23 CFR 771.117 (c) and (d) lists. This MOU was executed on July 1, 2008, and renewed on June 30, 2014.
- **Government Records MOU.** UDOT entered into an “Agreement To Share Protected Records between Agencies” with the Utah Division of State History on August 21, 2007. This agreement allows the division to share records with UDOT pursuant to the Utah Government Records Access and Management Act (GRAMA). UDOT is responsible for ensuring that the requested records are necessary and serve to benefit the public and for ensuring that the shared records retain their protected classification.
- **Section 7 MOA.** UDOT has an MOA with USFWS and FHWA that addresses protocols for Section 7 consultation under the Endangered Species Act. The MOA allows UDOT to make “no effect” determinations for certain types of projects, typically consistent with those types included under the CE Assignment MOU. The MOU also allows UDOT to perform informal consultation with USFWS for actions that result in a “may effect, but not likely to adversely affect” determination. Written concurrence from

USFWS for these determinations is required. Formal consultation is required for all other “may affect” determinations.

- **BLM Land Agreement.** UDOT entered into an interagency agreement with FHWA and the Bureau of Land Management, Utah Division, on May 3, 2013, regarding coordination of cultural resource requirements for projects on land under BLM and UDOT jurisdiction. This agreement identifies the roles and responsibilities of each agency and specifies communication and consultation procedures.

UDOT has a long history of working cooperatively with these and other federal agencies, as evidenced by the number of PAs, MOUs, and MOAs developed over the years with these agencies. Under the NEPA Assignment MOU, UDOT would continue and expand its collaborative efforts with other agencies.

## Internal Monitoring and Process Reviews

UDOT regularly assesses its environmental compliance program and identifies and implements actions designed to improve the program's effectiveness and timeliness. This assessment is completed on a semi-annual basis, and includes a review of decisions and documentations in the project file. The program's guidance tools are designed to help staff accurately develop and review project environmental documentation to meet federal and state standards and requirements. UDOT has also developed a Quality Assurance/Quality Control Plan to guide its Quality Program under NEPA Assignment. This plan is described below in the *Expanded Quality Assurance and Quality Control Procedures* section.

Since 2008, UDOT has conducted routine performance reviews for projects assigned under the CE Assignment MOU. CE projects are evaluated by the performance review team to determine whether findings were appropriate, decisions were made by authorized staff, project descriptions were complete, and required tasks were undertaken and appropriately documented in the file. The [performance review evaluations](#) are available on the UDOT website.

Under its Section 106 PA, UDOT prepares an [annual report](#) that summarizes UDOT's activities completed under the PA for the reporting year, including projects reviewed, training opportunities, tribal consultation, mitigation, discoveries, inadvertent effects, and recommendations for improvements. The report is made available for review by the public, agencies, and tribes. UDOT also holds an annual meeting with the PA signatories that includes discussion of the effectiveness of the PA and any concerns the signatories might have. The quarterly reports submitted to the SHPO are also an opportunity for self-assessment. They are prepared by the Cultural Resources Program Manager, who reviews all the documentation completed during each quarter as well as all other eligibility and effect determinations and MOAs.

## §773.109 (a)(3)(ii): Changes To Be Made for Assumption of Responsibilities

UDOT will expand and strengthen its well-developed environmental program and procedures to implement the NEPA Assignment Program. Environmental Services staff, both in the central and region offices, includes experienced NEPA practitioners and a variety of subject-matter experts in natural and cultural resources. Two new positions (Environmental Program Manager) were added to the central office to provide NEPA oversight and to prepare for the additional work load under NEPA Assignment. Additionally, environmental staff in the central and region offices were re-aligned in order to operate under a unified Environmental Services Division. UDOT will continue to implement its work-sharing approach to completing resource assessments and preparing documents and will continue to supplement technical expertise with consultants. Additional changes beyond those described in this application could occur as staff gain experience in using the new procedures and identify the need for clarity, adjustment, augmentation, or additional procedures. Procedural change would also result when UDOT self-assessments or FHWA audits identify the need for additional change. Currently environmental services has an annual budget personal services budget of approximately \$685,000. UDOT Environmental Services also has a budget of \$100,000 a year going forward to manage additional training and other administrative costs with regard to assignment. Many of the other increases in time and money (outside counsel, and technical support) will be treated as a project cost.

The major change that will occur with the NEPA Assignment Program is UDOT's assumption of FHWA's role as environmental decision-maker. The NEPA Assignment Program will enable UDOT to expand its tradition of environmental compliance by UDOT assuming federal responsibility and liability for making independent NEPA decisions on federal projects. The Assignment Program will also allow UDOT to deepen its strong, proactive working relationships with its federal and state resource agency partners and to continue its commitment to work collaboratively with its resource agency partners to develop and implement innovative environmental mitigation. UDOT's staff capabilities and mature environmental compliance program will ensure the success of the NEPA Assignment Program.

This section describes how UDOT's environmental compliance program will be modified to implement UDOT's new responsibilities under the NEPA Assignment Program. This section also describes the procedures that UDOT will implement to ensure that all NEPA documents meet quality standards and that NEPA decisions are compliant, sound, supportable, and made independently. As the need is identified, additional procedures will be developed to improve the program.

### Organization and Procedures under the Assignment Program

UDOT applies a continuous-improvement approach to all of its environmental standards and procedures. This ensures that UDOT's environmental analysis and decision-making under NEPA are up to date and reflect current best practices. These standards and procedures,

combined with UDOT's expert staff and consultant resources, will provide appropriate tools and expertise in areas where UDOT has requested assignment of FHWA's environmental responsibilities.

The program will rely on the professional judgment and expertise of UDOT's environmental staff in determining the necessary scope and environmental analyses for specific projects, supported by established standards for environmental documents and technical studies and a strong QA/QC program. This approach will strengthen the environmental process that UDOT uses for project environmental compliance. UDOT will continue its strict adherence to FHWA's public outreach requirements as defined in 23 CFR 771.111 and its EIS public and agency collaboration requirements defined in 23 U.S.C. 139 and will continue to conduct its robust public involvement program.

UDOT will use its procedures, guidance, manuals, and policies as well as FHWA regulations, policies, and guidance in undertaking UDOT's NEPA Assignment Program responsibilities with the expectation that statewide use of those procedures will result in a successful program. Internal self-assessment and FHWA audits will identify opportunities to improve UDOT's standards and procedures, or staff implementation of those standards and procedures. Problems that are identified will be accompanied by developing corrective actions and adopting recommendations for continuous improvement of UDOT's environmental program.

## Expanded Quality Assurance and Quality Control Procedures

UDOT believes that its approach to quality is sound and that its emphasis on internal collaboration among its professional Environmental Services staff, augmented by use of qualified environmental consultants, will result in quality environmental documents. Environmental Services' quality program consists of policies, activities and guidelines meant to assure it meets its quality requirements. Quality Assurance (QA) is achieved through the framework used to meet quality requirements. Quality Control (QC) is implemented to identify whether quality requirements have been met and determine measures needed to address any insufficiencies. UDOT's environmental Manual of Instruction (MOI) is currently the primary source of QA/QC guidelines and activities related to environmental documents.

Under the NEPA Assignment Program, UDOT will continue to strengthen its reliance on a strong quality program that will further support development of NEPA-compliant environmental documents and decisions with quality built in. In preparation for its responsibilities under the NEPA Assignment Program, UDOT has developed a Quality Assurance/Quality Control Plan to guide its quality program. This plan outlines the procedures and tools UDOT environmental staff and local agencies will use to meet the requirements of the NEPA Assignment Program for both individual projects and at the program level. At the project level, the QA process begins with forming a project team that has the appropriate experience and knowledge. Through collaboration and coordination, this team ensures that the QA/QC is properly implemented throughout the environmental document process. QA/QC activities are identified for three key stages: Project Development; Draft Document Development; and Final Document Evaluation, Preparation and

Approval. Tasks are assigned to each of these stages, and each task is assigned a responsible individual. QA and QC will occur at several steps during the development of all environmental documents. QC will begin when the project environmental team, led by one of the Environmental Program Managers, initially develops the class of action and collaborates with the Region Project Manager and other Environmental Services staff to determine the scope of studies to be undertaken, the technical reports to be prepared, and the public involvement required. Required technical reports will then be prepared following established standards. The first QC step will take place when those technical reports undergo a QC review by a UDOT or consultant subject-matter expert prior to the report being approved. A QA evaluation takes place after the document is considered complete and has been through all QC procedures. The QA evaluation is done by a thorough review of all proposed final documents before signing by the proper authority.

Review of the consultant-prepared environmental document will be led by the Environmental Program Manager assigned to the project, with support from technical specialists and members of the environmental team assigned to review specific elements of the environmental document. Environmental document review will follow established document standards and FHWA regulations, policies, and guidance. In many cases, individual elements or sections of the environmental document will be reviewed by the Environmental Program Manager, or staff assigned to review, as they are completed.

The QA/QC plan also outlines UDOT's program level commitments to conflict resolution, training and development, handling of project files and self-assessment and performance monitoring. The performance measures which will be evaluated under the self-assessment and performance monitoring program are categorized as those associated with *Compliance with NEPA and other federal environmental statutes and regulations* and those associated with *Quality control and assurance for NEPA decisions*. The QA/QC plan specifies the components of measurement, desired outcomes, means by which the outcomes will be measured, and the metric used to quantify performance achievement.

Updates, modifications, and expansions of its QA/QC procedures will occur as UDOT determines them to be necessary for successfully implementing the program.

## Environmental Document NEPA Review and Section 4(f) Evaluation

After the complete EA or EIS is compiled, NEPA review of the entire document will occur. NEPA review will be led by the Environmental Program Manager assigned by the project, who might assign additional reviewers as well. NEPA review is designed to ensure that the environmental document is NEPA compliant; internally consistent; consistent with the supporting technical studies; and meets the requirements of federal and state environmental statutes, regulations, and policies.

As with current procedures, a comment/response matrix will be developed to record comments for the document preparer to use in revising EAs or EISs. The comment/response matrix will be used as a formal record of the comment and response progression. The review process will continue until the Environmental Program Manager

determines that the document is ready for approval. The Environmental Program Manager will sign the Environmental Document QC form to indicate that the document is complete, meets all requirements, and is ready for approval. As a final QC measure on EAs and EIS, the Director of Environmental Services will review the document to ensure that it meets all standards and requirements and will provide a concurrence signature on the Environmental Document QC form once he or she confirms that the document meets all standards and requirements.

The Environmental Program Manager for Cultural Resources will manage the review of all Section 4(f) evaluations. This review will ensure that the Section 4(f) analysis meets regulatory requirements and FHWA policy. Once this review is complete, *de minimis* and programmatic Section 4(f) evaluations will be signed by the Environmental Program Manager. Individual Section 4(f) evaluations will be submitted to UDOT's legal counsel for legal sufficiency review and will be signed by the Director of Environmental Services after legal sufficiency is determined.

At the discretion of the Director of Environmental Services, draft EISs and EAs might receive legal review. Final EISs are required to undergo a legal sufficiency review that will be conducted by Utah Attorney General legal staff assigned to UDOT, other Utah Attorney General legal staff, outside environmental counsel, or a combination of these. The legal sufficiency determination will occur after completion of the NEPA review but before Environmental Services certifies that the Final EIS is ready for signature. The Final EIS will be signed only after the legal sufficiency review is complete. Following approval of the final environmental document, the decision document will be developed by staff responsible for the environmental document and submitted to the Signatory Official for decision.

Because of the size of UDOT's program, the Director of Environmental Services could become involved in developing and reviewing environmental documents. Given this involvement in specific projects and the need for independent environmental decisions, UDOT will assign a Signatory Official from outside Environmental Services. The Signatory Official will sign all FONSI, Draft and Final EISs, combined Final EIS/ROD, and RODs. The Signatory Official will be selected by UDOT Executive leadership in consultation with the Director of Environmental Services for that individual's broad understanding of UDOT's programs, policies, and procedures; knowledge of NEPA; and maturity of judgment. This will be officially established by a memorandum and posted to UDOT's website.

## CE Review

Project activities that qualify as CEs but do not meet the criteria for processing under the CE Assignment MOU will follow a different procedure. Pursuant to 23 CFR 771.117(a) and (b), the Director of Environmental Services will document the decision regarding the class of action and will confirm that the project meets the criteria for a CE.

The CE will then be prepared by either Region Environmental staff or a consultant. The UDOT Region Environmental Manager will sign (as reviewer), date the signature page, and send a digital copy of the complete CE document to the Environmental Program Manager

assigned to the project. The Environmental Program Manager will review and sign the CE and submit it to the Director of Environmental Services for final review and approval.

## Independent Environmental Decision-Making

UDOT's organization supports environmental decision-making independent of administrative, political, or performance-based pressure. Approval for all environmental documents prepared under the NEPA Assignment Program will be independent from project design decisions; however, the environmental team will collaborate with project designers throughout the project-development process to avoid and minimize impacts to environmental resources of concern.

Under the NEPA Assignment Program, all environmental staff will be part of the Environmental Services Division and will report to the Director of Environmental Services. Region Environmental staff will report to a Region Environmental Manager, who will report to the Director of Environmental Services. The Director of Environmental Services reports to the Project Development Director. Project design decisions are the responsibility of UDOT Regions under the authority of the Region Director. To further ensure independence of environmental decisions, a Signatory Official from outside Environmental Services will sign certain environmental documents and decision documents. The Signatory Official will be involved with Prior Concurrence determinations.

Projects qualifying as categorically excluded from the requirement to prepare an EA or EIS per the terms of the CE Assignment MOU will be confirmed as CEs and approved by the Region Environmental Manager, who will report to the Director of Environmental Services under NEPA Assignment. As described in the UDOT Environmental Process Manual of Instruction, CEs approved under the CE Assignment MOU have independent mechanisms built into the review and approval process. The CE review and approval process requires that the CE preparer is different from the CE reviewer and that the CE reviewer cannot also approve the CE.

## Determining the Class of Action

Class-of-action determinations made under the NEPA Assignment Program will be similar to the current approach. UDOT Project Managers will consult with the Environmental Program Manager and other Environmental Services staff, as assigned, who will work together to recommend the class of action. As is done currently, existing project and environmental resource information will be gathered (through reviews of GIS databases and other data sets) and additional information obtained as needed; this could include a field review. Class-of-action documentation that identifies the appropriate class of action and environmental document type will be prepared for the concurrence or final approval of the Director of Environmental Services.

## Consultation and Coordination with Resource Agencies

Coordination with resource agencies plays a vital role in project planning and environmental development of proposed projects. UDOT currently performs the primary role in interagency coordination through agreements with FHWA and various resource agencies. UDOT maintains a multidisciplinary staff that works effectively and proactively with state and federal environmental resource agencies. Under current UDOT procedures, both Region Environmental and Central Environmental staff are responsible for interagency coordination during project planning and development. Under the NEPA Assignment Program, UDOT is committed to continue working positively and collaboratively with its federal and state resource agency partners.

This positive, collaborative approach with agency partners will also be evident as UDOT assumes responsibility for NEPA scoping on EIS projects. UDOT will continue to meet the NEPA scoping requirements of the Council on Environmental Quality's NEPA regulations (40 CFR 1501.7) and of FHWA [23 CFR 771.123(b)] as well as the early consultation and coordination plan requirements in 23 U.S.C. 139. UDOT will continue to invite agencies, as appropriate, to become cooperating agencies and will identify agencies to serve as participating agencies. All federal, state, tribal, regional, and local government agencies that might have an interest in a project will continue to be invited to be participating agencies.

Participating agencies and the public will continue to be given an opportunity for input in developing the project's purpose and need statement and the range of alternatives, and throughout the environmental process, as appropriate. UDOT will also continue to collaborate with the cooperating and participating agencies during the environmental study process on the methodologies to be used and the level of detail required for analyzing project alternatives.

UDOT project teams currently lead the coordination efforts for EA and EIS projects. The only change anticipated as part of the NEPA Assignment Program is that UDOT will send all federal agency coordination letters instead of having those letters come from FHWA.

UDOT biologists or consultants assisting UDOT currently prepare Section 7 biological evaluations and biological assessments. Central Environmental performs informal consultation with USFWS on biological evaluations. Under the NEPA Assignment Program, Environmental Services will take on the FHWA role of formal consultation with USFWS under Section 7 of the Endangered Species Act. UDOT will assume responsibility for Biological Opinions (BOs) issued prior to the implementation of the NEPA Assignment Program and will continue to adhere to the current terms of BOs coordinated among FHWA, UDOT, and USFWS prior to NEPA Assignment. Under the NEPA Assignment Program, UDOT is requesting to assume responsibilities for BOs issued for NEPA Assignment Program projects for compliance oversight of BO terms and conditions. Formal consultation correspondence and documentation prepared under the NEPA Assignment Program will be submitted to USFWS by the Environmental Program Manager for Natural Resources and will specify that consultation is being requested pursuant to 23 U.S.C. 327.

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UDOT APPLICATION TO ASSUME FHWA'S NEPA RESPONSIBILITIES  
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In addition, Environmental Services will continue to work collaboratively with USFWS to develop mitigation strategies to ensure that projects will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. UDOT also consults with USFWS on projects that require review under the Fish and Wildlife Coordination Act (FWCA). Under the NEPA Assignment Program, UDOT is requesting to assume responsibility for Endangered Species Act compliance and will continue FWCA coordination, continue informal Endangered Species Act consultation responsibilities, and assume FHWA's responsibility for formal Section 7 consultation.

Under a PA with ACHP, USACE, and FHWA, UDOT is currently entrusted with responsibility for consulting with the SHPO on most Section 106 issues. The PA authorizes UDOT to consult with the SHPO on all eligibility determinations and effect findings, and complete the Section 106 process on behalf of FHWA. Under the NEPA Assignment Program, UDOT is requesting to assume the FHWA responsibility for compliance with Section 106 of the National Historic Preservation Act and will continue to consult with the SHPO through formal assumption of Section 106 responsibility.

UDOT is currently entrusted with responsibility for coordination with multiple tribal governments through PAs with tribal governments and FHWA. FHWA cannot assign its government-to-government tribal consultation responsibilities to UDOT under the NEPA Assignment Program, but UDOT would continue to use the procedures in the PAs to coordinate the meaningful input of Native American tribes with interests in Utah in the Section 106 process.

UDOT does not have a formal PA with USACE, but UDOT currently manages permit submittals when Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act permits are required. UDOT administers mitigation banking for use on projects that would affect waters of the U.S. and follows USACE's expedited coordination and permitting procedures for emergency situations. Projects requiring an individual Section 404 permit are required to comply with the Section 404(b)(1) guidelines (40 CFR 230). UDOT will continue to follow the Section 404(b)(1) guidelines in analyzing project alternatives and determining the least environmentally damaging practicable alternative while working with USACE to obtain individual permits. Under the NEPA Assignment Program, UDOT is requesting to assume FHWA's responsibility as the lead federal agency to coordinate with USACE and will continue to perform these coordination and permitting functions. UDOT will be considered the federal agency on actions under the NEPA Assignment Program.

UDOT also coordinates with the Utah Department of Environmental Quality (UDEQ) on stormwater quality issues and with the Utah Division of Water Rights for permits issued under the State of Utah Stream Alteration Program and USACE Programmatic General Permit 40.

Although Environmental Services reviews and approves air quality analyses, FHWA would retain project level transportation conformity determinations for NEPA Assignment Program projects. UDOT is actively involved in coordinating with the U.S. Department of the Interior, and, as appropriate, other federal agencies on Section 4(f) issues. Also, UDOT actively

coordinates with the Federal Emergency Management Agency regarding any amendments to National Flood Insurance Program floodplain maps. UDOT also is requesting to assume FHWA's responsibilities for compliance with these acts and would continue to perform these coordination functions under the Assignment Program.

## Issue Identification and Conflict Resolution Procedures

### Internal Process

Although UDOT rarely has internal disputes over technical or procedural environmental issues, if a project environmental dispute were to arise among the Environmental Services staff or between Environmental Services staff and other UDOT staff, the dispute would be resolved by escalation from staff to supervisor and through the UDOT chain of command. The Director of Environmental Services in collaboration with the Region Director would normally be the decision-maker for internal disputes, but it is possible that, in unusual circumstances, disputes could be elevated to the UDOT Executive Director.

### Process with External Agencies

UDOT's long history of working cooperatively with its federal and state partners and with tribal governments is evidenced by the PAs, MOUs, and MOAs it operates under. These agreements and memoranda have been developed over the years to entrust certain responsibilities to UDOT or to improve coordination between UDOT and federal and state resource agencies. UDOT strives to be transparent in identifying impacts, working with agencies on appropriate mitigation to offset the impacts of its projects, and following through on its commitments. UDOT seeks to understand the basis for resource agency requirements and to diligently meet those requirements. Following this forthright approach, UDOT is largely successful in avoiding conflicts with external agencies. UDOT expects to continue this general approach under the NEPA Assignment Program and will assume FHWA's role in resolving conflicts with external agencies without FHWA involvement.

### External Process Under NEPA Assignment

Under NEPA Assignment, UDOT would assume FHWA's role in the issue identification and resolution process under 23 U.S.C. 139(h). The regulation provides a formal process for resolving major issues that could delay or result in denial of a required approval or permit for a project. This process may be invoked by the project sponsor or the state governor and requires that the FHWA Division Administrator, the heads of the lead agencies and affected participating agencies, and the project sponsor meet to resolve issues. Under the NEPA Assignment Program, the Executive Director of UDOT would assume the FHWA Division Administrator role. Issues identified for resolution or elevation through 23 U.S.C. 139(h) would be logistically coordinated with the Office of the Secretary of Transportation at USDOT.

Because of UDOT's experience, expertise, and current level of involvement in consultations, its resources will be adequate to assume FHWA's responsibilities for resolving issues with external agencies. UDOT will continue to be diligent in resource agency engagement, particularly with cooperating agencies and those agencies designated as participating agencies, following the requirements and spirit of 23 U.S.C. 139. Where issues arise that create conflict between agencies, UDOT will be committed to forthright conflict resolution and good-faith efforts to address the concerns of the other party.

As part of its commitment to conflict resolution, UDOT has developed a dispute avoidance and resolution process to further strengthen its procedures under the NEPA Assignment Program. These procedures will be posted to UDOT's website following execution of the MOU. The intent of these procedures is to resolve any issues which may arise at the lowest level of the organization(s) through consensus. This is achieved through: identifying key points in the environmental review process where non-concurrence may trigger a dispute; outlining the steps which are to be taken to resolve the dispute; specifying actions required to complete each step; and identifying the party responsible for each action.

When needed, resource agency conflicts under would be resolved through implementation of a standard dispute-resolution ladder. Staff at UDOT and the resource agencies needing assistance in resolving disputes would refer the dispute to their supervisors. Resolution efforts would continue up the chain of command at each agency until the dispute can be resolved to the satisfaction of both parties.

## Record-Keeping and Retention

UDOT intends to use a combination of its Project Management and document management systems as the environmental file system of record for NEPA Assignment Program projects. Documents may be retained as either electronic copies, paper copies or both; UDOT's system complies with the State of [Utah General Records Retention Schedule](#). UDOT is currently updating its environmental file organization approach and will use its updated approach for organizing files for projects under the NEPA Assignment Program.

UDOT will maintain its project and administrative files pertaining to its NEPA Assignment responsibilities as required by the program. As required, files will be available for FHWA review at the location where the files are stored within 15 business days' notice. These files will include, but are not limited to, all letters and comments received from governmental agencies, the public, and other files relative to UDOT's NEPA Assignment Program responsibilities. Project files will include the NEPA document, QA/QC documentation, technical reports and studies, consultation and coordination correspondence with government agencies and other organizations, public comments and responses, and other files related to UDOT's NEPA Assignment Program responsibilities. Emails that support project decision-making, reflect deliberation, and demonstrate deliberate inquiry and the "hard look" under NEPA will be retained as part of the project file. Any attorney-client privileged documents will be kept in a separate file and will not be made available on request.

For documents pertaining to UDOT's discharge of responsibilities under the NEPA Assignment Program, UDOT will comply with the requirements of the *FHWA Records Disposition Manual (Field Offices)*, Chapter 4, FHWA Order No. 1324.1B, issued July 29, 2013.

## Expanded Internal Compliance and Self-Assessment Reviews

UDOT intends to expand the environmental performance review program it established under the CE Assignment MOU to evaluate its performance under the NEPA Assignment Program. Since the performance review team for the CE review program is already in place, it is well positioned to undertake the mandatory NEPA Assignment Program self-assessments. As required, UDOT will periodically conduct self-assessments to determine the effectiveness of its standards, guidance, and procedures under the NEPA Assignment Program and its staff's adherence to the NEPA Assignment MOU and to UDOT's established standards and procedures. Performance reviews will occur according to the requirements of the MOU with periodic self-assessment reports provided to FHWA.

In addition to problem identification, self-assessment will be used to evaluate root causes and to assess whether specific problems are systemic, are confined to specific areas of the state, or are specific to individuals. UDOT will use self-assessment to identify areas that are working well as well as areas that need improvement, make specific recommendations to improve adherence to standards and procedures, assess the need for corrective action as well as implement necessary corrective actions, evaluate the improvements achieved from previous corrective actions, and re-evaluate previous program areas where corrective actions have been implemented. Self-assessments will be conducted using a variety of monitoring tools such as reviews of files and the data management system, interviews of UDOT and resource agency staff, and distribution of questionnaires. These self-assessments will gauge the success of the NEPA Assignment Program.

UDOT anticipates that certain elements of the NEPA Assignment Program will be evaluated with each self-assessment (for example, record-keeping, documented compliance with federal requirements, and environmental approval timeframes), while other self-assessment components will be determined for each self-assessment based on input from the performance review team, Environmental Services management, and Region Environmental Managers.

The Director of Environmental Services will be responsible for overseeing UDOT's implementation of the NEPA Assignment Program, ensuring its success, and reporting on its performance to FHWA. The Director of Environmental Services is the highest-ranking environmental official at UDOT and is committed to the success of the NEPA Assignment Program, as is the entire UDOT administration and the Utah Transportation Commission. An Environmental Program Manager will be responsible for day-to-day management of the program and will serve as liaison to the FHWA NEPA Assignment Program audit team.

## Performance Measures To Assess the NEPA Assignment Program

UDOT will monitor a variety of performance measures as part of its self-assessment program to evaluate its performance in assuming NEPA Assignment Program responsibilities. Performance measures could include timeframes, budgets, and compliance with regulatory requirements. These measures will be identified in the NEPA Assignment MOU. For each measure, desired outcomes, tools and indicators, and metrics to be used will be identified in UDOT's NEPA Assignment Program QA/QC plan.

## Training To Be Provided to Implement the Assignment Program

UDOT is committed to maintaining a quality training program for its employees. Training is developed to meet the identified needs of staff and is modified over time as necessary to meet evolving staff needs. UDOT's existing environmental training program provides training courses that support developing the knowledge, skills, and abilities of its environmental staff necessary to meet state and federal environmental requirements. In addition, through UDOT's local assistance program liaison, information regarding processes and requirements are communicated to the local government partners.

To ensure that UDOT environmental staff have the knowledge and skills necessary to meet their new responsibilities under the NEPA Assignment Program, UDOT will hold training on the NEPA Assignment MOU and its key provisions for its environmental staff prior to the effective date of the MOU. Attendees will include all Environmental Services staff. Training topics will include the content of the MOU and application, environmental document review procedures, QA/QC protocols, the self-assessment process, FHWA regulations, and UDOT environmental policies. UDOT Environmental Program Managers and the Director of Environmental Services will also hold an informational session summarizing the NEPA Assignment Program for interested UDOT staff outside of Environmental Services, partnering agencies, local governments, and consultants.

UDOT will prepare a Training Plan for the NEPA Assignment Program and update it annually, as required by the MOU. As part of developing the annual Training Plan updates and during self-assessment, UDOT expects to evaluate its training to determine whether it is consistent with the NEPA Assignment Program and the current UDOT approach to the environmental process. UDOT will revise the training and develop new training to support the NEPA Assignment Program, as it determines necessary. UDOT is committed to augmenting its current training program in support of the NEPA Assignment Program.

UDOT has requested that FHWA legal staff provide legal sufficiency training to UDOT Legal Counsel staff, Attorney General staff, outside environmental counsel, Environmental Services managers, and key environmental technical staff prior to executing the NEPA Assignment MOU. Legal sufficiency training will include the fundamentals of legal sufficiency, key areas of concern in legal sufficiency review, and the content of the project file.

UDOT has also requested that FHWA provide training during the first year of the NEPA Assignment Program in the following areas:

- Indirect and cumulative impact analyses
- Section 7 of the Endangered Species Act
- Air quality
- Noise
- Administrative Record

These courses will be available to the Utah environmental consulting community as well as to UDOT environmental staff.

In anticipation of NEPA Assignment, UDOT recently hosted the following trainings:

- Advanced Seminar on Transportation Project Development: Navigating the NEPA Maze
- Section 4(f) Evaluation
- Beginning and Advanced Section 106

In addition to UDOT's in-house training program, UDOT sends its staff to environmental compliance courses offered by FHWA, the National Highway Institute, resource agencies, local universities, and private vendors on an as-available and as-needed basis.

Although not training per se, regular statewide discussions and updates will be held for the program to share important NEPA Assignment Program information, communicate Assignment Program issues and their resolution, and respond to questions.

## §773.109 (a)(3)(iii): Legal Sufficiency

UDOT will conduct legal sufficiency reviews of Final EISs and individual Section 4(f) evaluations, which are the only environmental document types for which FHWA is required to conduct legal sufficiency reviews under federal regulation [see 23 CFR 771.125(b) and 23 CFR 774.7(d)]. The Utah Office of the Attorney General assists UDOT with legal needs by assigning two attorneys from their office to serve as legal counsel to UDOT. Legal expertise related to NEPA compliance is provided by these attorneys or legal consultants they have under contract.

Legal sufficiency reviews will be conducted by attorneys from the Utah Attorney General's Office assigned to UDOT or by specialized outside environmental counsel contracted through the Utah Attorney General's office. The primary goal of this review will be to assess the environmental document from the perspective of legal standards, litigation risk, and legal defensibility. UDOT intends to use the following process:

1. The UDOT Environmental Lead (usually one of the Environmental Program Managers) will submit the preliminary Final EIS or individual Section 4(f) evaluation to UDOT's Legal Counsel.
2. UDOT's representative from the Utah Attorney General's Office will assign the document to an associate general counsel, assistant attorney general, or outside environmental counsel for review. Note that, for some projects, the UDOT Environmental Lead, with the permission of the Utah Attorney General's office, might be able to send documents directly to an outside environmental counsel who is under contract to work on the project.
3. The reviewing attorney will prepare and submit to the Environmental Lead written comments and/or suggestions to improve the document's legal defensibility (these comments would be protected by the attorney-client privilege and would not be shared outside UDOT).
4. The reviewing attorney will be available to discuss the resolution of comments and suggestions with Environmental Services staff and the project team.
5. Once the reviewing attorney is satisfied that the project team has addressed his or her comments and suggestions to the maximum extent reasonably practicable, the reviewing attorney will provide Environmental Services with written documentation that the legal sufficiency review is complete.
6. Environmental Services will not finalize a Final EIS or individual Section 4(f) evaluation before receiving written documentation that the legal sufficiency review is complete.

If issues of national precedent arise in legal sufficiency review, attorneys from the Utah Attorney General's Office assigned to UDOT will coordinate with FHWA Office of Chief Counsel on the underlying policy issue.

## §773.109 (a)(3)(iv): Prior Concurrence

For selected projects, “prior concurrence” pursuant to 23 CFR 771.125(c) will be obtained before proceeding with key approvals under NEPA. Prior concurrence will apply to projects as determined by the Director of Environmental Services after consulting with attorneys from the Utah Attorney General’s Office assigned to UDOT or outside legal counsel if necessary, to ensure that the project and environmental document in question are acceptable from a policy and program perspective. Prior concurrence might apply to UDOT approvals of Draft or Final EISs. Projects that require prior concurrence will be decided on a case-by-case basis based on input from Environmental Services managers, technical subject-matter experts, and legal counsel and could include projects that meet one or more of the following criteria:

- Impacts of unusual magnitude
- High level of controversy
- Major unresolved issues
- Emerging or national policy issues
- Issues for which the regions seek policy assistance

For projects that UDOT believes involve a constructive use under Section 4(f) of the U.S. Department of Transportation Act, UDOT will coordinate with FHWA on the underlying policy issue before making a final determination of a Section 4(f) constructive use. Section 4(f) constructive-use evaluations will undergo legal review before they are signed by the Director of Environmental Services.

## §773.109 (a)(3)(v): Project-Delivery Methods

UDOT's Environmental Services Division will ensure that all NEPA and permit elements are fully addressed for any project that uses alternative delivery methods. Per 23 CFR 771.113, NEPA must be completed prior to authorization for any construction activities. This requirement holds true even with alternative project-delivery methods. For projects using alternative delivery methods UDOT will ensure that the requirements in 23 CFR 636 are met, including the requirements imposed to protect the objectivity and integrity of the NEPA process.

## §773.109 (a)(4)(i): Staff Dedicated to Additional Functions

Environmental Services employs 19 staff who are responsible for implementing UDOT's environmental program and ensuring environmental compliance. This includes experienced NEPA practitioners and a variety of subject-matter experts in natural and cultural resources, located in both the central and region offices. In anticipation of the NEPA Assignment Program, UDOT has recently added two Environmental Program Managers to handle the NEPA Assignment Program and other increasing complexities of environmental compliance. One of these is responsible for UDOT's cultural resource program and the other for the natural resource program. In recognition of the importance of the NEPA Assignment Program, a significant portion of these Environmental Program Managers' time will be dedicated to managing the NEPA Assignment Program.

UDOT believes that the size of its existing environmental staff is sufficient to handle the responsibilities it would assume under the NEPA Assignment Program and the scale of projects it expects to oversee. UDOT will continue to review environmental staff roles and modify their use, as appropriate, based on the needs of the NEPA Assignment Program.

UDOT does not anticipate adding additional new environmental staff at this time to implement its NEPA Assignment responsibilities. UDOT will continue to augment staff and technical ability through the use of qualified consultants. In the future, additional staff might be added in the regions to handle additional the environmental workload that could develop from the NEPA Assignment Program and other sources. The experienced environmental staff who will contribute to assignment-related functions are distributed around the state (in both the regions and the central office) and will bring a wide range of perspectives and experience to the NEPA Assignment Program.

Although the addition of environmental staff is not immediately anticipated, UDOT has identified several key NEPA Assignment Program roles. UDOT's Environmental Program Managers will be responsible for day-to-day management of the program, acting as liaison to the FHWA audit team, coordinating training, and performing self-assessment and performance reviews with the UDOT Quality Division under the program.

The Environmental Program Manager for Natural Resources will also be responsible for Section 7 consultation, while the Environmental Program Manager for Cultural Resources will oversee Section 4(f) evaluations. The Director of Environmental Services will be responsible for overseeing UDOT's implementation of the NEPA Assignment Program, ensuring its success, and reporting on its performance to FHWA. As described above, the Signatory Official will sign all FONSI, Draft and Final EISs, and RODs. Legal sufficiency reviews will be conducted by attorneys from the Utah Attorney General's Office assigned to UDOT or by specialized outside environmental counsel contracted through the Utah Attorney General's office. §773.109 (a)(4)(ii): Changes to the Organizational Structure

The environmental organization at UDOT is currently being restructured in anticipation of the NEPA Assignment Program. The organizational structure described in this section is consistent with the proposed unified realigned structure described in §773.109 (a)(3)(ii).

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## UDOT APPLICATION TO ASSUME FHWA'S NEPA RESPONSIBILITIES

### §773.109 (a)(4)(i): Staff Dedicated to Additional Functions

Effective in August 2015, all environmental work done by Environmental Services staff will be performed under the direction of the Director of Environmental Services. Environmental Services staff at the central office report to the two Environmental Program Managers who, in turn, report to the Director of Environmental Services. Environmental staff in the region offices report to the Region Environmental Manager, who reports to the Director of Environmental Services.

UDOT does not anticipate further organizational changes, although roles and responsibilities could be shifted among Environmental Services staff for successful implementation of the NEPA Assignment Program or as identified through the Assignment Program's self-assessment and FHWA audit process.

UDOT will continue to use the existing organization for legal sufficiency review. This structure has been effective.

UDOT will use the NEPA Assignment Program's self-assessment and FHWA audit process to identify any changes that might be needed in its organizational structure.

## §773.109 (a)(4)(iii): Use of Outside Consultants for the Assignment Program

There will be no change in UDOT's general approach to using consultants as a result of the NEPA Assignment Program. Consultants could be used for environmental analysis, technical studies, environmental document preparation, environmental review services, administrative record development, and general staff support.

Currently, the use of consultant services fluctuates in proportion to the annual UDOT workload; consultants are used primarily to develop environmental documents for projects that require the most complex environmental approvals. The level of consultant services used to augment UDOT's environmental staff is based on project delivery needs, which vary from year to year. Approximately 80% of CEs are completed entirely by UDOT staff, including preparing resource clearances and conducting field surveys as needed. For local government projects or more complex CEs, consultants will prepare CEs for UDOT's review and approval. EA and EIS teams consist of UDOT staff and consultants, with UDOT in an oversight role. UDOT staff includes an environmental lead from Central Environmental to oversee NEPA reviews and compliance, and a Region Project Manager to oversee design, schedule and budget. The consultants provide daily project administration, complete technical studies, and prepare draft and final documents. The practice of using consultants to manage workload fluctuations and to prepare UDOT's complex environmental documents allows UDOT's workforce to remain stable.

UDOT uses consultant assistance on an as-needed basis by maintaining on-call environmental contracts. Under the NEPA Assignment Program, consultants will continue to be used as previously. This use of consultants to handle workload fluctuation and the preparation of environmental documents will also effectively serve to manage adjustments in workload that could occur with the NEPA Assignment Program. Consultants will not be permitted to make NEPA determinations under the NEPA Assignment Program.

Environmental consultants will be used for a variety of tasks under the NEPA Assignment Program, tasks including undertaking specific technical studies, implementing aspects of QC review, and preparing project-specific environmental documents. Consultant-prepared reports will be reviewed by Environmental Services staff and the Environmental Program Managers following UDOT's requirements for document review and approval.

## §773.109 (a)(5): Financial Resources under the Assignment Program

UDOT Environmental Services' current annual budget for fiscal year 2015 is \$685,000; UDOT's overall budget is over \$1 billion. The current Environmental Services budget represents just the seven positions in the central office. Environmental employees currently working in the various regions are part of their respective region. Under the new organization, region employees will be budgeted through the central office, and the budget will be adjusted accordingly.

The primary costs for operating the NEPA Assignment Program will come from the Environmental Services budget, while individual projects will pay for the costs of assignment from the project budget. The staff positions listed below are already on staff to perform activities related to the NEPA Assignment Program and are covered under current budget allocations:

- Director of Environmental Services: Program Management
- Environmental Program Manager for Cultural Resources
- Environmental Program Manager for Natural Resources

UDOT considers its budget sufficient to cover the costs of any and all additional environmental activities necessary to successfully meet its NEPA Assignment Program responsibilities, including consulting with state and federal environmental resource agencies, performing QC and QA reviews of NEPA documents and supporting technical studies, undertaking self-assessments, and preparing for and responding to FHWA audits. UDOT commits to making adequate financial resources available to meet the NEPA Assignment Program responsibilities it is assuming and the staff resources needed to successfully execute those responsibilities. UDOT will regularly assess financial and staffing resources available for the NEPA Assignment Program.

Any additional Environmental Services staff FTEs for NEPA Assignment work will be redirected from elsewhere in the environmental program. In future years, NEPA Assignment Program work on UDOT projects will become a routine part of performing project environmental compliance. The need for any additional future FTEs would be identified as part of the routine UDOT budgeting process.

## §773.109 (a)(6): Certification for Consent to Exclusive Federal Court Jurisdiction and Waiver of Sovereign Immunity

The certification is attached as Appendix B.

§773.109 (a)(7): Certification That the State of Utah's Government Records Access and Management Act Is Comparable to the Federal Freedom of Information Act

## **§773.109 (a)(7): Certification That the State of Utah's Government Records Access and Management Act Is Comparable to the Federal Freedom of Information Act**

The certification is attached as Appendix B.

## §773.109 (a)(8): Public Comments Received on the Assignment Program Application

### Outreach

UDOT developed an outreach plan that outlined public and agency outreach to be performed to help build awareness and guide the implementation of the NEPA Assignment Program. To date, UDOT has conducted a variety of public involvement activities. Between June and September 2015, UDOT met with the Paiute Indian Tribe of Utah, the Confederated Tribes of the Goshute Reservation, the Northwestern Band of the Shoshone Nation, the Utah Tribal Leaders Council, the state of Utah Resource Development Coordinating Committee, the Utah SHPO, EPA, USACE and USFWS to inform them of the NEPA Assignment Program and to solicit their input. UDOT also sent letters to 21 other state and federal agencies to inform them of UDOT's intent to apply for the Assignment Program. UDOT also developed a presentation regarding the NEPA Assignment Program which it has delivered as part of both internal and external outreach efforts.

### Notice of Draft Application

The availability of UDOT's NEPA Assignment application was publicly noticed October 7th, 2015, and again on October 23rd, 2015 in the Salt Lake Tribune and the Deseret News. The notice provided a 33-day comment period and invited those with comments to submit them to UDOT. The application was made available for online review and download and as a paper copy at the UDOT Central Administrative Office. The address of UDOT's Environmental Services Division, a dedicated email address and online comment form were made available for those wishing to comment, ask questions or request additional information.

### Summary of Comments Received and of Changes Made to the Application in Response to Comments

UDOT received one comment from an individual and one comment from a federal agency. No substantive changes to the Application were necessary based on comments received during the comment period. Appendix C contains copies of all comments received and UDOT's response. The name of the individual has been redacted as a privacy consideration.

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UDOT APPLICATION TO ASSUME FHWA'S NEPA RESPONSIBILITIES  
§773.109 (a)(8): Public Comments Received on the Assignment Program Application

Table 3. Summary of Comments Received on the Application

<b>Date of Comment Letter</b>	<b>Commenter</b>	<b>Summary of Comments</b>
October 13, 2015	Public- Individual	Believes there would be positive outcomes from NEPA assignment but questions in general the environmental policies of the State of Utah.
November 9, 2015	Philip Strobel, NEPA Compliance and Review Program Director, EPA Region 8	Emphasizes the importance of consultation and coordination with resource agencies and offers support in development of conflict resolution procedures.

## Appendix A. Federal Environmental Laws Other than NEPA for Which UDOT Is Requesting Responsibility

UDOT is requesting to assume all of FHWA's responsibilities for environmental review, interagency consultation, and other environmental-related actions pertaining to the review or approval of projects assumed under the NEPA Assignment Program under all applicable federal environmental laws and executive orders including, but not limited to, those listed below. UDOT will be responsible for complying with the requirements of any applicable federal environmental law regardless of its inclusion on this list (which is derived from Appendix A of 23 CFR 773).

### Air Quality

- Clean Air Act, 42 U.S.C. 7401–7671 q (any determinations that do not involve conformity)

### Noise

- Noise Control Act of 1972, 42 U.S.C. 4901–4918
- Compliance with the noise regulations at 23 CFR 772

### Wildlife

- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712

### Historic and Cultural Resources

- Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f et seq.<sup>1</sup>
- Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469–469(c)
- Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013<sup>1</sup>; 18 U.S.C. 1170

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<sup>1</sup> Under these laws, FHWA will retain responsibility for conducting formal government-to-government consultations with federally recognized Native American tribes. UDOT will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with FHWA on request. UDOT might also assist FHWA with formal consultations with the consent of a tribe, but FHWA remains responsible that this consultation occurs. FHWA's retention of formal consultation responsibilities under NAGPRA will not limit UDOT's existing activities under this law.

#### **Social and Economic Impacts**

- American Indian Religious Freedom Act, 42 U.S.C. 1996<sup>1</sup>
- Farmland Protection Policy Act, 7 U.S.C. 4201-4209

#### **Water Resources and Wetlands**

- Clean Water Act, 33 U.S.C. 1251-1387 (Sections 401, 402, 404, 408, and 319)
- Safe Drinking Water Act, 42 U.S.C. 300f-300(j)-(6)
- Section 10 of the 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. 3921
- Wetlands Mitigation, 23 U.S.C. 119(g) and 133 (b)(14)
- Flood Disaster Protection Act, 42 U.S.C. 4001-4130

#### **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 rules at 23 CFR 774
- Land and Water Conservation Fund Act, 16 U.S.C. 4601-4604

#### **FHWA-Specific**

- 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
- 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 Relating to Highway Projects**

- Executive Order 11990, Protection of Wetlands
- Executive Order 11988, Floodplain Management
- Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- Executive Order 13112, Invasive Species
- Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input

Appendix B. Certifications for Consent to Exclusive Federal Court Jurisdiction, Waiver of Sovereign Immunity, and the State of Utah Government Records Access and Management Act (GRAMA) Is Comparable to the Federal Freedom of Information Act

## Appendix B. Certifications for Consent to Exclusive Federal Court Jurisdiction, Waiver of Sovereign Immunity, and the State of Utah Government Records Access and Management Act (GRAMA) Is Comparable to the Federal Freedom of Information Act

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES  
ATTORNEY GENERAL

SPENCER E. AUSTIN  
Chief Criminal Deputy

PARKER DOUGLAS  
Federal Solicitor & Chief of Staff

TYLER R. GREEN  
Solicitor General

BRIDGET K. ROMANO  
Chief Civil Deputy

October 1, 2015

Mr. Gregory Nadeau  
Deputy Administrator  
Federal Highway Administration (HOA-2)  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

RE: Waiver of Immunity and Utah Department of  
Transportation's Application to Assume FHWA's NEPA Responsibilities  
23 USC §327

Dear Mr. Nadeau:

The Utah Department of Transportation (UDOT) is submitting an application to assume Federal Highway Administration's (FHWA) NEPA responsibilities. 23 C.F.R. §773.109(a)(6) &(7) requires that a State's application for NEPA delegation must include certain certifications by the State's Attorney General or other State official empowered by state law. The purpose of this letter is to provide the certifications required by FHWA to accompany UDOT's application for NEPA delegation.

The Utah Legislature has expressly determined that "the State waives its immunity under the 11<sup>th</sup> Amendment of the United States Constitution and consents to suit in a federal court for lawsuits arising out of the Department's compliance, discharge, or enforcement of responsibilities assumed pursuant to 23 USC Sec. 327." *See* UCA §72-1-207(5)(a).

This waiver of immunity is effective where: 1) the Department executes a MOU accepting federal court jurisdiction as required by 23 USC §327(c); 2) the act of omission that is the subject of the lawsuit arises out of the obligations imposed by 23 USC §327; 3) the MOU is in effect when the act of omission that is the subject of the federal lawsuit occurs; and 4) an opinion letter by the Attorney General certifies that the MOU and waiver of 11<sup>th</sup> Amendment Immunity are valid and binding upon the State. *See* UCA §72-1-207(5)(b).

In this instance, pursuant to the express language found in UCA §72-1-207(5), the State of Utah has waived its 11<sup>th</sup> Amendment protection because the State is acting pursuant to assumed responsibilities arising from 23 USC §327. In the opinion of the Utah Attorney General's

Office, under the circumstances presented in this case, this 11<sup>th</sup> Amendment waiver is valid, enforceable, and legally binding upon the State of Utah. Likewise, a MOU signed by UDOT's Executive Director or his designee constitutes a valid and legally binding obligation upon the State to assume the responsibilities of the United States Department of Transportation with respect to the duties under NEPA and other federal environmental laws.

The last certification addresses State of Utah's comparable law to the Federal Freedom of Information Act (FOIA), including the review of a document by a court of competent jurisdiction. Utah Government Records Access and Management Act (GRAMA), U.C.A. 63G-2-101 *et seq* is the State's version of FOIA. FOIA and GRAMA are structurally different but are comparable in addressing the interests sought to be protected and balanced. Under GRAMA, any decision regarding the public availability of a document is reviewable by a district court.

We believe this opinion meets the certification requirements necessary for the NEPA delegation to the State of Utah. We appreciate the opportunity to work together on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean D. Reyes". The signature is stylized and cursive.

Sean D. Reyes  
Utah Attorney General

## Appendix C. Copies of Comments Received on the Assignment Program Application and Responses

**Comment:**

11/19/2015 UDOT/FHWA NEPA Responsibilities assignment comment - Google Groups

**Google Groups**

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**UDOT/FHWA NEPA Responsibilities assignment comment**

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 Oct 13, 2015 5:55 PM

Posted in group: NEPA Assignment

Seems like a step in the right direction by UDOT to lighten the Federal work load and reduce federal government spending. It would be a positive move to balance the federal budget by giving more authority to the states for programs that can be more effectively administered on state, local, or regional levels. Many federal agencies are shackled to the point of paralysis. UDOT is organized, efficient, and effective. UDOT is also well funded by the state.

In general, Utah's state environmental laws and regulations are extremely lacking. It is time for the state's Department of Environmental Quality to get tough (and equally funded). The abundance of federal land blanketed with federal environmental protection has helped to dilute Utah's lack of regard for air quality, water quality, light pollution, noise pollution, natural ecosystems, habitat, preservation of open space, etc. In Utah, federal environmental laws and federal oversight are pretty much the only line of regulation. I find that it would be extremely difficult for UDOT's environmental division to make sound environmental decisions independent of political, economic, and administrative pressures.

**Response:**

Thank you for your comments, we appreciate your observations of UDOT as organized, efficient and effective and note your concern over Utah's state environmental laws.

Under the Assignment Program, UDOT is responsible for complying with all federal regulations, requirements and mandates for the implementation of NEPA. In addition to the requirement to comply with applicable federal environmental law, UDOT is also required to comply with the Federal Highway Administration's (FHWA) environmental regulations, policies and formal guidance. UDOT's performance and regulatory compliance will be subject to regular in-depth audits by FHWA during years 1 through 4 of assignment; FHWA will perform annual monitoring UDOT's performance beginning in year 5 and thereafter.

**Comment:**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
www.epa.gov/region08

NOV 09 2015

Ref: EPR-N

Carlos Braceras, Executive Director  
Utah Department of Transportation  
NEPA Assignment/UDOT  
4501 South 2700 West, Box 148450  
Salt Lake City, Utah 84114-8450

Re: Utah Department of Transportation (UDOT) Application to Assume FHWA's NEPA Responsibilities

Dear Mr. Braceras:

The U.S. Environmental Protection Agency Region 8 reviewed the UDOT Application to Assume FHWA's National Environmental Protection Act (NEPA) Responsibilities. Our comments are provided for your consideration pursuant to our responsibilities and authority under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act (CAA).

**Background**

Through the Surface Transportation Project Delivery Program (NEPA Assignment Program) Congress offers states the opportunity to assume the responsibilities of the FHWA for the NEPA. UDOT is applying to assume all of FHWA's responsibilities under NEPA for state highway systems projects (includes interstates, U.S. highways and state routes) and local government projects off the state highway system in Utah, with specific exclusions as described in the application. UDOT is also applying to assume all of FHWA's responsibilities for environmental review, resource agency consultation, and other environmental regulatory compliance related actions pertaining to the review or approval of projects. UDOT currently has assumed NEPA responsibilities for Categorical Exclusion projects under a 23 U.S.C. 326 Memorandum of Understanding (MOU), and plans to retain those responsibilities independently from the responsibilities it would assume under the NEPA Assignment Program.

**EPA Comments**

Based on our review of the application, the EPA is providing the following comments in regard to 1) consultation and coordination with resource agencies, and 2) the conflict resolution procedures.

*Consultation and Coordination with Resource Agencies*

The EPA agrees with UDOT that coordination with resource agencies plays a vital role in project planning and environmental development of proposed projects. The Executive Transportation and Environment Council (ETEC) has been a valuable asset over the years in building and strengthening relationships among transportation and resource agencies in Utah. In a letter to ETEC members dated

March 30, 2015, the FHWA and UDOT notified participants that scheduled ETEC meetings have been cancelled while they reassess how they plan to take this collaboration to the next level. The EPA recommends considering how the ETEC may contribute to our collaboration and continued excellent working relationships as UDOT takes on all of FHWA's responsibilities under NEPA.

*Issue Identification and Conflict Resolution Procedures*

The application identifies that as part of its commitment to conflict resolution, UDOT has developed a dispute avoidance and resolution process to further strengthen its procedures under the NEPA Assignment Program. We agree that this is an important component of UDOT's application. Similarly, the application commits to monitoring a variety of measures as part of the self-assessment program to evaluate its performance in assuming NEPA Assignment Program responsibilities, and that these measures will be identified in the NEPA Assignment MOU. The EPA would welcome the opportunity to assist UDOT by providing input into both the proposed conflict resolution process and self-assessment program performance measures prior to the MOU public review period.

**Closing**

Thank you for the opportunity to provide comments on the application. If you have any questions or would like to discuss our comments, please contact me at 303-312-6704 or the lead reviewer of this project, David Fronczak, at 303-312-6096.

Sincerely,

Philip S. Strobel  
Director, NEPA Compliance and Review Program  
Office of Ecosystems Protection and Remediation



**Response:**

Thank you for your comments regarding UDOT's application for NEPA assignment. We appreciate your consideration of the importance of coordination with resource agencies during project planning and development, along with the value you attribute to the Executive Transportation and Environment Council (ETEC). As discussed in section §773.109 (a)(3)(ii) of the application, UDOT will continue to work collaboratively with resource agencies and further develop constructive relationships. UDOT also appreciates your offer of assistance in further developing the conflict resolution process and self-assessment program performance measures and looks forward to working with you on future projects.