NEPA -- Dept. of Transportation

Number: INFORMAL

Date: April 06, 2016

Subject:
NEPA -- Dept. of Transportation

Mr. Gregory G. Nadeau
Administrator
Federal Highway Administration
1200 New Jersey Avenue Southeast
Washington, DC 20590-9898

Re: Certification required by FHWA for delegation of NEPA and other responsibilities to FDOT

Dear Mr. Nadeau:

Pursuant to the authority provided by the Moving Ahead for Progress in the 21st Century Act or "MAP-21," and, more specifically, 23 U.S.C. s. 327 as amended by MAP-21, the Florida Department of Transportation ("FDOT") has advised this office that it is submitting an application to FHWA for delegation of responsibility for compliance with the National Environmental Policy Act ("NEPA") and other Federal environmental laws ("NEPA delegation") for Federal highway projects. On September 16, 2014, FHWA published rules setting forth the requirements for such applications.[1] FHWA's rules specify that a State's application for NEPA assignment must include certain certifications by the State's Attorney General or other State official legally empowered to do so by State law.[2] The purpose of this letter is to provide the certifications required by FHWA to accompany FDOT's application for NEPA delegation.

Florida's Attorney General is statutorily authorized to "perform the duties prescribed by the Constitution of this state and also perform such other duties appropriate to his or her office as may . . . be . . . required . . by law or by resolution of the Legislature."[3] It is the responsibility of the Florida Attorney General to give her "official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer."[4] Further, it is the responsibility of the Department of Legal Affairs to provide "all legal services required by any department" of state government.[5] As a Senior Assistant Attorney General representing the Florida Department of Legal Affairs, I certify the following:

· As stated in section 334.044(34), Florida Statutes, as created by Chapter 16-181, Laws of Florida (2016), the Florida Department of Transportation is legally authorized by State law "[t]o assume the responsibilities of the United States Department of Transportation with respect to highway projects within the state under the National Environmental Policy Act of 1969, 42 U.S.C. ss. 4321 et seq., and with respect to related responsibilities for environmental review, consultation, or other action required under any federal environmental law pertaining to review or approval of a highway project within the state."

· Section 334.044(34), Florida Statutes, as created by Chapter 16-181, Laws of Florida (2016), provides a limited waiver of sovereign immunity to civil suit in federal court for the State of Florida consistent with 23 U.S.C. s. 327. The waiver is limited to only those actions delegated to the FDOT and related to carrying out its NEPA duties on state highway projects.

· The Florida Public Records Act, codified in Chapter 119, Florida Statutes, is comparable to 5 U.S.C. 552 (Freedom of Information Act), and provides that any decision regarding the availability of public records under State law is reviewable by a court of competent jurisdiction.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General
Florida Department of Legal Affairs

GH/tsh

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[1] *See* 79 FR 55381, Sept. 16, 2014.

[2] *See* 23 CFR s. 773.109(a)(6)-(7).

[3] Section 16.01(2), Fla. Stat. *See also* Art. IV, s. 4, Fla. Const.

[4] Section 16.01(3), Fla. Stat.

[5] Section 16.015, Fla. Stat.