



Program Compliance Issues - Summary and Action Plan

September 28, 2007

Each Division had the opportunity to discuss the various programs in terms of what works well (possible best-practice) and what doesn't work well (opportunity for improvement). The opportunities for improvement were listed and a multi-vote exercise helped identify the top priorities for action.

SUMMARY

Forest Highways

EFL - The program is relatively small (roughly 10%). Most projects are CEs. Most challenges are regarding cultural resources and property access.

WFL – The program is about \$100 million/yr. More CEs are being done than in the past because there are more 3R type projects. Delivery costs and timelines are substantially reduced and avoidance of sensitive resources is emphasized, but current FHWA performance measures that just track durations for EA and EIS projects don't capture these types of streamlining actions.

Recent meetings between Environment and Planning/Programming have started to identify needed changes in the project selection practices and processes as well as the roles and responsibilities between the units. The primary goal is to program projects that have a sound purpose and need that FLH, FS, and DOT/County can agree upon and stand behind.

Questions regarding the FS NEPA responsibility in FH projects are increasing. This is partially due to the FS becoming a public road agency and serving as the facility owner/operator in some situations. The 1998 MOU between the FS and FHWA states that the FS does not incur a NEPA responsibility when they consent to an easement or land transfer associated with a FH project but conditions are changing and the MOU is being questioned. Of greater concern is the increasing perception by the FS that the Forest LMP needs to be amended to allow a project to proceed and the FS wants to use the project NEPA document to address changes to their LMP. This is very problematic.

Programmatic agreements between the FS and other agencies such as the SHPO, FWS, or NOAA Fisheries can be very helpful and should be used on FH projects.

There continues to be a communication problem between the FS Region/Forest HQ offices and the local FS District offices. Too often we show up to a District for an early coordination meeting and the local FS staff know nothing of the project or don't want the project.

Through WFL Planning efforts, a Long Range Transportation Plan is being developed for the FH program in each State. Pete Field is the lead. Oregon will be first.

CFL – NEPA work for FH projects has been completed for all projects planned in the next 4-5 years. CFL has done some NEPA work for EFL and has the in-house capacity to do more.

Engaging local FS staff (especially resource staff) very early in the project is critical. Failure to do so often generates problems. Hiring FS staff to perform some environmental work is effective when there are ongoing projects in the Forest and there are established practices and expectations. But there is always the risk that staff will be diverted for other Forest needs such as fire fighting.

Projects typically have a weak purpose and need. Better linking Planning and NEPA may help. Some projects have no cooperator to assume responsibility for the facility and project agreements are not always created early in the process.

The FH network in any given state is not a system that can be addressed from a management perspective. The road miles are high and the funding is low. May need to consider reauthorization to limit network, create a manageable system, and fund the system accordingly.

Park Roads

WFL – The program size is \$50-80 million/yr. WFL has been jointly engaged with the NPS in NEPA compliance since 2000. (Examples of decisions documents were provided.) Options for documenting FHWA decisions were discussed. NPS was initially resistant to WFL involvement but some Parks have since expressed appreciation and mentioned that WFL did add value to the process. The NPS has been particularly pleased with the Environmental Commitment Summary prepared for each project to ensure that all commitments are being addressed. Relationships are good in the big parks that have a regular program of projects.

The 3R Template for coordination is working. Not sure it has been implemented program-wide. Need to complete the 4R template.

The NPS is moving towards an adaptive management approach to NEPA. WFL needs training on adaptive management.

CFL – CFL Environment doesn't get involved in Park Roads projects. PMs track the status of NEPA activities but the activities are not included in the PMIS software. There has only been one legal challenge in the past 18 yrs. However, we seem to be designing past 70%. Sometimes hear that advertisement is delayed until NEPA is complete. Legal counsel has questioned whether all environmental commitments are being addressed. A signed NEPA document may not be available with the final PS&E.

Need to determine Environment's role in CFL Park Roads projects. A consistent approach across the Divisions is desired.

EFL – The majority of the program in EFL is Park Roads. EFL prepares the NEPA document for a good portion of the projects. Joint signatures on documents are becoming more common.

EFL operates under a mandate that EAs be completed at 30% design and CEs be completed at 70% design. FWS and SHPO often want more design detail to complete their evaluations. (Mary Gray added that the Fed-aid program strives to complete ESA consultation at 15% design using the best data available at the time.)

EFL is working to improve relationships with DSC. Cross training opportunities have been conducted. Worked on how to be partners rather than competitors. Building personal relationships made it easier to pick up the phone and address tough issues instead of escalating them.

Is NPS our partner or customer? Views vary across the Divisions. Can the NPS take the \$'s and go elsewhere? Need answers to these questions to better understand the relationship.

Refuge Roads

CFL – The PM oversees environmental process and runs Refuge Roads projects. Most are low-impact CEs. Projects are not included in PMIS. FWS CEs come to CFL very late in the process.

CFL engaged in doing 4(f) exercise. Don't use de-minimus option because of public involvement requirement. Better information on scope is needed to better assess the need for a 4(f) evaluation. Exemption like that for Park Roads is needed. CFL is not signing an FHWA CE. Does request statement from FWS to confirm compliance with other laws.

EFL – Refuge Roads are about 15% of the program. Mostly CE projects. 4(f) hasn't been addressed. Cultural resource surveys have been very costly in comparison to the overall project costs. FWS sometimes commits to due surveys, fails to complete the work, and consultants are hired to do the work leading to delays. Inter-service Section 7 consultation is problematic at times and creates delays. Has co-signed CEs with FWS. What is our role on RRP projects delivered by FWS?

WFL – Continuous scope changes and program changes create problems. Need to start with a sound purpose and need. It can be very difficult to get support documentation for FLH CE. Some refuge managers can make Section 7 determinations. Use this option where available. Have used 4(f) de-minimus for Refuge projects. Public involvement requirement was satisfied by posting notice to the Refuge website.

ERFO

EFL – Most ERFO work is on refuges. EFL signs most NEPA documents unless project is in a park that typically does their own NEPA work. Only real problems are on projects in Puerto Rico where there are language and cultural barriers.

WFL – The work has been delivered differently over time. Sometimes delivered by a new ERFO team and other times assigned to existing teams. The (c) list CE is often used for projects delivered as real emergencies (during the first construction season). WFL does have one project that is an EIS. A WFL supplement to the PDDM (available on the web) provides detailed information on environmental work for ERFO projects including the use of emergency provisions.

CFL – Projects just seem to show up and often show up late in the 2 year window for funding eligibility. Projects need to come to PD earlier, preferably early enough to use emergency provisions and processes. Not typically informed of other agencies performing the environment work. Environment should participate in the DSR work or at least provide some guidance to ensure that environmental costs are included. The ERFO “replacement in kind” policy is often in conflict with environmental requirements such as those for fish passage. This conflict needs to be addressed. Maybe reauthorization could clarify eligibility for environmental requirements that are currently seen as non-eligible betterments.

Earmarks and Miscellaneous Projects

These types of projects are becoming a larger part of our program every year. We want the work but need to make good decisions early in the planning process for these projects.

IRR projects are a growing concern. FLH is entering into agreements to work directly with Tribes. Tribes are beginning to “shop” the Divisions for environmental services including the Federal lead agency role for NEPA. Many issues need to be sorted out including access to IRR funds for “000” employees in the Divisions. Bob Sparrow is beginning to meet with the Divisions and discuss these issues. He will be in WFL on October 10, 2007.

Project agreements are needed for every project and Environment should be included in the discussion of roles and responsibilities.

Project Managers should be assigned to every job even if the Division is only providing environmental services. Proper project initiations and more timely funding transfers are needed.

Short timelines and insufficient funds are typical of these types of projects. Adequate time for NEPA is often a problem especially with PLD projects.

EFL has several very large and politically complex projects.

MULTI-VOTE RESULTS & ACTION PLAN

Opportunities for improvement that were common to all three Divisions were captured and summarized in the table below. A multi-vote exercise was then used to identify the priority action items listed in the right column.

OPPORTUNITIES FOR IMPROVEMENT		
<u>Forest Highways</u>	<u>Votes</u>	<u>Action</u>
1. Clarify when FS has a NEPA role.	3	
2. Provide guidance and examples on obtaining property access.	0	
3. Define and share emerging ideas, roles and responsibilities for better linking Planning and NEPA.	19	Define and share emerging ideas, roles and responsibilities for better linking Planning and NEPA. (WFL and CFL have each conducted meetings between Planning and Environment and have started to modify process and redefine roles and responsibilities.)
<u>Park Roads</u>	<u>Votes</u>	<u>Action</u>
1. Promote program-wide use of the 3R template within the FLH Divisions and	1	

within the NPS.		
2. Finish the 4R template.	2	
3. Provide guidance/training on Adaptive Management.	2	
<u>Refuge Roads</u>	<u>Votes</u>	<u>Action</u>
1. Actively pursue 4(f) exemption in next reauthorization.	10	Actively pursue 4(f) exemption in next reauthorization. (The request for an exemption has already been submitted to FLH HQ through the reauthorization listening sessions. Brian A. will continue to coordinate and support this effort.)
2. Revise planning and programming processes to better define project scope and limit program changes.	1	
3. Define and communicate support documentation needed from FWS to support an FHWA CE.	11	Define and communicate support documentation needed from FWS to support an FHWA CE.
<u>ERFO</u>	<u>Votes</u>	<u>Action</u>
1. Resolve funding eligibility issues for environmental requirements that are currently being categorized as betterments. Include cost of environmental requirements in DSRs.	12	Resolve funding eligibility issues for environmental requirements that are currently being categorized as betterments. Include cost of environmental requirements in DSRs.
2. Research and provide additional guidance on emergency provisions applicable to the delivery of ERFO projects.	1	
<u>Earmarks and Miscellaneous Projects</u>	<u>Votes</u>	<u>Action</u>
1. Resolve issues associated with Division participation in IRR projects.	3	<i>(This issue is currently be addressed by others. Environment will have a voice as decisions are made.)</i>
2. Improve the project initiation process to include Environment and define roles and responsibilities for environmental work early in the process.	2	