

**STEWARDSHIP AND OVERSIGHT PLAN
FOR THE
RECREATIONAL TRAILS PROGRAM (RTP)**

**TENNESSEE DEPARTMENT OF ENVIRONMENT AND
CONSERVATION
AND
THE FEDERAL HIGHWAY ADMINISTRATION
TENNESSEE DIVISION**

Section 1: Introduction

1. Overview

This Stewardship and Oversight Plan outlines the roles and responsibilities of both the Federal Highway Administration (FHWA) and the Tennessee Department of Environment and Conservation (TDEC) in the accomplishment of oversight and administration of the Recreational Trails Program, an assistance program of the FHWA.

The purpose of the Plan is to provide guidance in clarifying actions, preventing misinterpretations, and avoiding time delays. The Stewardship and Oversight Plan is intended to be a living document that can be modified when needed to incorporate additional legislation, additional processes, or other changes to improve program and project delivery in the State of Tennessee.

While TDEC can assume the responsibility for FHWA in many Title 23 U.S.C. actions, some Title 23 U.S.C. requirements remain FHWA responsibilities. These program elements include, but are not limited to:

- Waivers to Buy America requirements
- Environmental approvals
- Tribal consultation
- Federal air quality conformity determinations required by the Clean Air Act
- Obligation of funds
- Final vouchers

2. Delegation of Authority to Local Agencies

The TDEC may, pursuant to 23 CFR 1.11 and 635.105, delegate certain Federal-aid project authorities to a well-qualified and suitably equipped local public agency. The TDEC is responsible for ensuring that appropriate procedures and guidelines are in place to facilitate the compliance of local public agency administered Federal-aid projects. FHWA will review and approve these practices and procedures for Federal-aid projects.

The TDEC will determine if the local agency is well qualified and adequately staffed to administer projects before delegation of any activities. The TDEC will review the local

agency's ability to administer Federal-aid projects or specific activities on a case-by-case basis, and the extent of delegation will be dependent on their current staffing level and experience, and past performance. An Agency Agreement will be executed between TDEC and the local agency to outline the responsibilities of both TDEC and the local agency.

The TDEC retains responsibility under Federal law and regulations for all delegated activities. The TDEC will have written procedures established for the local agency that provide the necessary processes, approvals, oversight, and review that ensures the delegated projects receive adequate supervision and inspection, and are completed in conformance with approved plans and specifications and applicable federal requirements. While TDEC will offer any training, advice, or other assistance as may be needed by a local agency to aid it in successfully completing its Federal-aid project, it is understood that the project is implemented by the local agency, with TDEC oversight. As such, if the local agency is not following prescribed requirements, TDEC's recourse would be, in consultation with FHWA, to remove Federal-aid funds from the project. FHWA will approve all TDEC processes, training materials, and any other activity that uses Recreational Trails Program funds.

The following program elements will not be delegated to local agencies:

- NEPA approval
- Sole Source Approval
- Design Exception approval
- Approval of Right of Way certification
- Approval of Engineering Plans
- Approval and Audit of Labor compliance
- Final Inspection
- Project Acceptance

3. Overview of the Recreational Trails Program (From the FHWA web site and guidance and TDEC guidance)

The Recreational Trails Program (RTP) provides funds to the States to develop and maintain recreational trails and trail-related facilities for both nonmotorized and motorized recreational trail uses. Examples of trail uses include hiking, bicycling, in-line skating, equestrian use, cross-country skiing, snowmobiling, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles.

The RTP is an assistance program of the U.S. Department of Transportation's Federal Highway Administration (FHWA). Each State administers its own program, usually through a State resource or park agency. In Tennessee, the Tennessee Department of Environment and Conservation administers the program, and has developed procedures to solicit and select projects for funding. We also have a State Recreational Trail Advisory Committee to assist with the program.

Recreational Trails Program funds may be used for:

- Maintenance and restoration of existing trails
- Development and rehabilitation of trailside and trailhead facilities and trail linkages
- Purchase and lease of trail construction and maintenance equipment
- Construction of new trails (with restrictions for new trails on Federal lands)
- Acquisition of easements or property for trails
- Assessment of trail conditions for accessibility and maintenance
- Development and dissemination of publications and operation of educational programs to promote safety and environmental protection related to trails (including supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training) (limited to 5 percent of a State's funds)
- State administrative costs related to this program (limited to 7 percent of a State's funds)

Types of trail projects that are eligible for funding include:

- Multi-Use trails
- Hiking Trails
- Water Trails
- Equestrian Trails
- Bicycle/Mountain Bike Trails
- Off-Road Motorcycle Trails
- Off-Road All-Terrain Vehicle (ATV) Trails
- Off-Highway Four-Wheel Drive Trails
- Walking and Interpretive Trails

FHWA encourages States to enter into contracts and cooperative agreements with qualified youth conservation or service corps.

States must use 30 percent of their funds for motorized trail uses, 30 percent for nonmotorized trail uses, and 40 percent for diverse trail uses. Diverse motorized projects (such as snowmobile and motorcycle) or diverse nonmotorized projects (such as pedestrian and equestrian) may satisfy two of these categories at the same time. States are encouraged to consider projects that benefit both motorized and nonmotorized users, such as common trailhead facilities. Tennessee gives extra credit in their selection criteria to projects that benefit multiple trail uses.

Recreational Trails Program funds may not be used for:

- Property condemnation (eminent domain)
- Constructing new trails for motorized use on National Forest or Bureau of Land Management lands unless the project is consistent with resource management plans
- Facilitating motorized access on otherwise nonmotorized trails

- Costs associated with patrol vehicles
- Equipment used only to construct trails in the short term then used for non-trail uses. Equipment should be rented if not used of ongoing maintenance specific to the proposed trail
- Park pavilions and amenities unrelated to trail use
- Brochure printing, environmental education buildings, or classrooms, unless the use is predominantly intended for educational programs to promote safety and environmental protection related to trails

These funds are intended for recreation trails; they may not be used to improve roads for general passenger vehicle use or to provide shoulders or sidewalks along roads unless the shoulders or sidewalks are necessary to complete a trail link.

A project proposal solely for trail planning would not be eligible (except a State may use its administrative funds for statewide trail planning). However, some project development costs may be allowable if they are a relatively small part of a particular trail maintenance, facility development, or construction project. States may allow some project development costs to be credited toward the non-Federal share.

Tennessee makes grants to municipal, county, State, and Federal government agencies. Tennessee also makes grants to private organizations that have 501(c)(3) status, but these projects must take place on publicly held land.

In Tennessee, the governor has appointed TDEC to be the agency responsible for administering apportionments under the Recreational Trails Program, and is responsible for assuring that all Federal-aid projects with RTP funds administered by local agencies comply with all Federal and State requirements (23 U.S.C. 206(c)).

In compliance with the Tennessee Off-Highway Vehicle Act, all federal funds distributed to the State to develop trail projects for motorized recreation are credited to the Tennessee Wildlife Resources Agency. This State agency then uses the funds to develop motorized trails and to administer and enforce the provisions of the Act.

4. Regulations and Guidance

- 23 U.S.C. 104(h), Recreational Trails Program Apportionments
- 23 U.S.C. 106, Project Approval and Oversight
- 23 U.S.C. 113, Prevailing Wage Rates (Davis-Bacon Act)
- 23 U.S.C. 114, Convict Labor
- 23 U.S.C. 206, Recreational Trails Program
- 23 CFR 1.36, Compliance with other Federal Laws and Regulations
- 23 CFR 771, Environmental Requirements
- 49 CFR 18, Procurement of Professional Services
- SAFETEA-LU, Sections 1101 (funding) and 1109 (revisions to 23 U.S.C. 104(h) and 206)
- SAFETEA-LU Section 1101(b), Disadvantaged Business Enterprise
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

- Tennessee Code, Title 70, Chapter 9, Tennessee Off-Highway Vehicle Act
- Recreational Trails Program Interim Guidance (FHWA)
- Recreational Trails Program Manual (2006 Mandatory Workshop), TDEC RES
- 2006 RTP Grant Application and Scoring Criteria (TDEC)
- Tennessee Greenways and Trails Plan
- Tennessee State Recreation Plan, 2003 – 2008 (TDEC)
- RTP Educational Funds – Standard Operating Procedure, July, 2006

Note that the provisions of the Davis-Bacon Act, rules on the procurement of professional services, and the convict labor provisions of 23 U.S.C. 114 are only applicable on projects that are within the right-of-way of a Federal-aid highway, and not to non-highway projects or to projects outside of a Federal-aid highway. A Federal-aid highway is defined as a highway on the Federal-aid highway system (the National Highway System (NHS) and interstates) and all other public roads not classified as local roads or rural minor collectors.

5. Required Contract Provisions

The Federal Highway Administration's form FHWA-1273 lists contract provisions that are required to be included in all Federal-aid highway contracts. Of the provisions listed, the following are applicable to projects funded under the Recreational Trails Program, and shall be included in all construction contracts:

- a. Nondiscrimination – this provision ensures fair treatment of all persons regardless of race, religion, sex, color, national origin, age, or disability. The authority for this provision is Title VI of the Civil Rights Act. The nondiscrimination provision is applicable to all Federal-aid contracts, and to all related subcontracts of \$10,000 or more.
- b. Non-segregated facilities – this provision prevents the use of segregated facilities, and is applicable to all Federal-aid contracts, and to all related subcontracts of \$10,000 or more.
- c. Payment of Predetermined Wage – this provision enforces the Davis-Bacon Act (payment of fair wages) and the Copeland Act (prevention of kickbacks required from employees). This provision is applicable on all Federal-aid projects that are constructed within the right-of-way of a Federal-aid highway.
- d. Statements and Payrolls – this provision was prompted by the Copeland Act, and protects workers from having to pay kickbacks for the “privilege” of being employed. This provision is applicable on all Federal-aid projects that are constructed within the right-of-way of a Federal-aid highway.
- e. Safety – Accident Prevention – this provision ensures compliance with construction safety standard.
- f. False Statements Concerning Highway Projects – this provision derives from an anti-fraud statute contained in the Federal-aid Road Act of 1916.
- g. Implementation of Clean Air Act and Federal Water Pollution Control Act – this provision prevents the use of facilities (such as asphalt or concrete plants) that do not meet air and water quality standards. It is only applicable to Federal-aid projects of \$100,000 or more.

- h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - this provision requires the contractor to certify as to their current eligibility status. This provision is applicable to all Federal-aid projects of \$25,000 or more.
- i. Certification Regarding Use of Contract Funds for Lobbying – this provision carries out a law which prohibits Federal funds from being expended to influence, or attempt to influence, a Federal agency or Congress in connection with the awarding of any Federal contract or grant. It is only applicable to Federal-aid projects of \$100,000 or more.

6. Other Federal Requirements

These Federal requirements are in addition to those listed on form FHWA-1273:

- a. Buy America – The FHWA's regulations implementing the Buy America provisions require domestic manufacturing processes for steel and iron products that are permanently incorporated in a Federal-aid project. The regulations include a minimal use criteria and waiver provisions where appropriate (see 23 CFR 635.410). Generally, the Buy America provisions will not apply to most RTP or TE projects. See the RTP Guidance at <http://www.fhwa.dot.gov/environment/rectrails/guidance.htm>.
- b. Disadvantaged Business Enterprise – this requirement sets goals for the use of disadvantaged businesses. The lead State Agency (Tennessee Department of Transportation) has the responsibility for meeting the 10% goal. This requirement does apply to the RTP, and TDEC agrees to cooperate with TDOT in meeting the goal.
- c. Suspension and Debarment – refer to 49 CFR 29.
- d. Audits – refer to 23 USC 112, 49 CFR, 48 CFR 31, and OMB Circular A-133.
- e. Records Retention – refer to 49 CFR 18.
- f. Section 4(f) – The RTP Legislation in 23 U.S.C. 206(h)(2) exempts the RTP from the requirements of Section 4(f) of the Department of Transportation Act of 1966 (23 U.S.C. 138; 49 U.S.C. 303). This allows the USDOT/FHWA to approve RTP projects which are located on land within publicly owned parks or recreation areas without requiring a waiver or other Section 4(f) documentation. Section 206(h)(2) does not exempt the RTP from requirements under Section 106 of the National Historic Preservation Act. It also does not exempt the RTP from requirements under Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965.

7. Major Changes under SAFETEA-LU

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), enacted August 10, 2005, provides \$370 million nationally in contract authority funding for the Recreational Trails Program. The funding amounts for Tennessee are as follows:

- FY 2005: \$60 million; TN \$1,083,283
- FY 2006: \$70 million; TN \$1,264,946
- FY 2007: \$75 million; TN \$1,355,864

- FY 2008: \$80 million; TN \$1,421,543
- FY 2009: \$85 million; TN \$1,511,333, estimate based on FY 2008

Other changes brought about by SAFETEA-LU include:

- a. The Federal share is revised to be the same as the Federal-aid highway program (80 percent plus sliding scale, which is 80% in Tennessee). The RTP continues to allow other Federal program funds to provide the non-Federal share, and RTP funds now may be used to match other Federal funds.
- b. Planning and environmental assessment costs incurred less than 18 months prior to project approval may be counted toward the non-Federal share.
- c. The provision allowing a State Trail Advisory Committee to waive the 30 percent motorized or 30 percent nonmotorized requirements was eliminated.
- d. States are encouraged to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform construction and maintenance of recreational trails. This provision was enacted in the Transportation Equity Act of the 21st Century (TEA-21) and repeated in SAFETEA-LU.

8. Rescissions of Federal-aid Funds:

Several Federal legislative acts have rescinded Federal-aid highway program funds. FHWA issues Notices to the States to comply with these acts (see <http://www.fhwa.dot.gov/legsregs/directives/notices.htm>; go to the N4510 series). The Tennessee Department of Transportation (TDOT) is responsible for complying with these rescissions, which may affect the RTP. TDEC will coordinate rescissions of RTP funds with TDOT.

Section 2: Responsibilities

1. FHWA Responsibilities

The FHWA is ultimately accountable for all Federal-aid highway projects. The FHWA Tennessee Division will fulfill its stewardship role at a project level as follows:

- a. Involvement on RTP Projects – At its discretion, the FHWA may become involved with any Federal-aid project, including those administered under the Recreational Trails Program. Additionally TDEC may request FHWA involvement. The FHWA will provide engineering support for project development activities and technical assistance as requested.
- b. Non-Title 23 Responsibility – FHWA will continue to be responsible for the oversight of applicable non-Title 23 requirements. Such oversight will be conducted through a combination of both project and program level activities. Applicable non-Title 23 requirements include, but are not limited to:
 - National Environmental Policy Act (NEPA) of 1969
 - National Historic Preservation Act
 - Clean Water Act
 - Endangered Species Act

- Civil Rights Act of 1964
- Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970
- Disadvantaged Business Enterprise Program (DBE)
- Clean Air Act Amendments of 1990

The FHWA will manage and provide oversight of Tennessee's Federal-Aid programs in various ways. The methods used will be:

- Routine day-to-day program actions and other interaction
- TDEC from time to time may ask for Division participation on TDEC teams, committees, reviews, attendance at TDEC meetings and conferences, etc.
- The division office may assess the financial aspects of programs and projects

2. TDEC Responsibilities

According to 23 U.S.C. 206(c)(1), the governor has designated the Tennessee Department of Environment and Conservation (TDEC) as the agency responsible for administering apportionments made to the State. The Recreation Educational Services (RES) division manages the grants for TDEC.

TDEC hereby advises FHWA that it wishes to assume project oversight responsibilities in accordance with the following:

- a. Recreational Trails Projects – TDEC assumes oversight responsibility for the right-of-way approval, utility approval, design approval, plans, specifications, estimates, contract award, and inspection of projects. RTP projects are required to be designed, constructed, operated, and maintained in accordance with State law, regulations, directives, safety standards, design standards, and construction standards, in lieu of many Title 23 U.S.C. requirements. Title 23 U.S.C. requirements that are applicable to all Federal-aid projects include, but are not limited to, procurement of professional services, Davis-Bacon wage rates, advertising for bids, award of contracts, use of convict produced materials, Buy America Act provisions and other requirements. All RTP projects must also comply with Federal requirements not found in Title 23 U.S.C.
- b. Local Agency Projects – TDEC is responsible for assuring that all Federal-aid projects administered by local agencies comply with all applicable Federal and State requirements. TDEC is not relieved of this responsibility even though the project may be delegated to the local agency. In accordance with 23 CFR 1.11 and 635.105, TDEC is responsible for ensuring that the local agency is qualified and equipped to administer the project and has processes in place to ensure compliance with Federal requirements.

For those projects that TDEC has agreed to assume oversight responsibility, TDEC will follow all applicable FHWA policies, regulations, Title 23, and non-Title 23 requirements as if FHWA were involved.

Section 3: Stewardship roles and responsibilities for specific program areas

1. Advisory Committee

TDEC agrees to continue the State Recreational Trails Advisory Committee that represents both motorized and nonmotorized recreational trail users, and agrees to certify each year that the Committee shall meet not less often than once per fiscal year. The Tennessee RTP advisory committee is the TDEC Commissioner's Council on Greenways and Trails (the Council). TDEC agrees to invite the FHWA Recreational Trails program manager to attend the meetings as an Ex-Officio member, and agrees to supply meeting information to the program manager by handouts, mail or electronically.

The major functions provided by the Council include setting goals and priorities for projects and providing direction and review for the RTP grant process.

2. Tennessee Department of Transportation Involvement

As with FHWA, TDEC agrees to invite a representative of the Tennessee Department of Transportation (TDOT) to be an Ex-Officio member on the Commissioner's Council on Greenways and Trails and to supply that person with all Council information via handouts, mail or electronically. TDOT has received quarterly reports concerning greenway and trail activities and accomplishments. TDEC agrees to meet monthly with TDOT to discuss and resolve bicycle and pedestrian issues that impact greenways and trails.

3. Project Eligibility

TDEC determines project eligibility by referencing the most currently available Recreational Trails Program guidance provided by FHWA. TDEC uses this guidance in the creation of each grant cycle application. TDEC also references Title 23 United States Code (23 U.S.C.), Section 206 - Recreational Trails Program. FHWA has the final authority to make determinations of project eligibility, and will reject authorization of funds to any project it deems ineligible. On projects for which eligibility is unclear, TDEC agrees to collaborate early in the process with the FHWA RTP program manager to determine eligibility.

4. Diverse, Motorized, and Nonmotorized Minimum Requirements

For the apportionments made to a State for a fiscal year to carry out the RTP;

- 40% shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use, or to accommodate both motorized and nonmotorized recreational trail use
- 30% shall be used for uses relating to motorized recreation; and
- 30% shall be used for uses relating to nonmotorized recreation

TDEC agrees to provide documentation to FHWA demonstrating that the 40-30-30 requirements are met or that the State has set aside, for future obligation, the amount of

funds necessary to meet the requirements. This will be done every two years, with the new grant cycle.

5. State Recreational Plan

23 U.S.C. 206(d)(1)(B) notes that funds apportioned to a State to carry out the Recreational Trails Program shall be obligated for recreational trails and related projects that are identified in, or further a specific goal of, a recreational trail plan. TDEC agrees to develop and maintain this plan. Currently, this is the “Tennessee Greenways and Trails Plan”, which may be found on line at http://www.tennessee.gov/environment/recreation/pdf/5_Greenways_Plan.pdf.

6. Project Applications

State, Federal, and local government agencies are eligible to apply for funding through the Recreational Trails Program. Private organizations may apply in partnership with a government agency. These partnerships must be official and in writing. Private applicants may be considered without a public partner if there are insufficient applications submitted within a specific category.

TDEC agrees to maintain applications for RTP funds on the TDEC – RES web site.

Once the applications are received by TDEC, a committee chooses the recipients by reviewing the applications received against an established criteria listed in the open project selection process.

7. Grant Contract

Once the grantees are chosen, they will contract with TDEC in order to receive the allocated grant funds. These contracts are developed by the RES Grants Administrator. Any change to any part of a grant requires a contract amendment.

The grantee will have no more than three years from the approval date of the grant contract to complete the scope of a development project. The State has the right to extend this contract length by one year. Construction must begin within 180 days of the signing of the contract.

A mandatory workshop is required for all grant recipients.

8. Matching Requirements

An RTP grant provides 80% of the total project cost, requiring a 20% matching share from the applicant. Eligible matching sources are as follows:

- cash
- in-kind services (force account, volunteers), materials, and equipment use costs
- legislative line item appropriations and other State/Federal grants
- the appraised value of a land acquisition or permanent conservation easement acquired by the grantee no earlier than the first day of the grant term
- the appraised value of donated real property

Only planning and environmental assessment costs incurred less than 18 months prior to project approval may be counted toward the non-Federal share. Other costs incurred prior to project approval may not be used as a match. The value of donations for a match is determined by the nature of the donation. If it is land, for example, it is determined by an appraisal. If it is materials, the value is determined by the normal rate for the particular material in that area. If it is routine (non-professional) labor, it is valued at minimum wage.

9. Environmental Process

In accordance with Section 1309 of TEA-21, the FHWA is the lead federal agency in integrating the full range of environmental requirements under a single, unified process that results in effective and sound transportation decisions. These laws and regulations include NEPA and implementing regulations of the Council on Environmental Quality (CEQ) 40 CFR 1500 and FHWA 23 CFR 771; Section 4(f) of the Department of Transportation Act and implementing regulations 23 CFR 771; Section 106 of the National Historic Preservation Act and implementing regulations 36 CFR 800; Section 404 of the Clean Water Act; and Section 7 of the Endangered Species Act, as well as others.

For all projects that require an action be taken by FHWA, the Tennessee Division and TDEC will work together to ensure compliance with NEPA and other applicable laws. The level of involvement is commensurate with the level of the environmental impacts or project complexity and will depend on the project environmental documentation class. The majority of Recreational Trails projects are processed as Categorical Exclusions. Recreational Trail projects must document compliance with the National Environmental Policy Act (NEPA) and other Federal environmental laws and executive orders. Each project is reviewed individually to ensure it does not have a significant impact on the environment.

Many RTP projects are exempt from air quality conformity requirements under the Clean Air Act Amendments of 1990. New parking areas or motorized trails within air quality nonattainment or maintenance areas may be subject to the air quality conformity rule, and must be identified in a conforming transportation plan and Transportation Improvement Program. All projects in a PM 2.5 nonattainment or maintenance area must undergo a PM 2.5 hot-spot analysis, which includes an interagency consultation.

Grantees generally choose consultants to prepare the required environmental documentation. TDEC requires that grantees use their own locally adopted consultant procurement process. If there is not a locally adopted procurement process, the State's process must be used. Per state law, professional services do not have to be bid.

Environmental documentation for recreational trails projects are generally in the form of Categorical Exclusions (CE), and are most often included in 23 CFR 771.117(c)(3). The actions described in this section normally do not require approval by FHWA. The CE's are submitted to TDEC by the grantees, who then review and approve them. The CE's are stored in TDEC's project files, and are subject to FHWA review at any time.

10. Public Input

TDEC requires the applicants to hold public input meetings as part of the grant application process. Public meetings are to be held as part of the schematic design process as well as after project completion.

11. Project Authorization

The TDEC grant cycle occurs every other year, and TDEC agrees to forward a funding list to FHWA. Once the environmental process is completed and approved for projects on the funding list, TDEC will send an RTP obligation form for project authorization to the FHWA Division Office. Authorization is completed by the Financial and Administrative Team, and the project is entered into the Fiscal Management Information System (FMIS). Projects will not be advertised nor will force account work begin prior to FHWA project authorization.

12. Right-of-Way Issues

The majority of projects involving RTP funds do not require the acquisition of right-of-way. Most projects are on land that is already publicly owned, or are in easement situations.

TDEC agrees to ensure that for projects that do involve the Uniform Act, the procedures are being followed. TDEC agrees that a yellow book appraisal is required, and that a certified state appraiser reviews the appraisal. TDEC agrees to provide the landowner with written documentation stating that their property cannot be taken by condemnation and written documentation that they can receive fair market value for the land.

To protect property acquired or developed with RTP funds, the grantee will record the Notice of Limitation of Use (NLU) against the deed prior to requesting reimbursement. This protects the property for public outdoor recreation use. A 25 year commitment is required if the project is located on private lands that includes an easement or lease.

13. Grant Management and the use of Force Account

RTP projects not located within a public highway right-of-way must use procurement procedures under 49 CFR 18.36. Procurement for an RTP project within a public highway right-of-way must use procedures under 23 CFR Parts 635 and 636, including projects that are administered by an agency other than the TDOT. Where Parts 635 and 636 mention State, State Transportation Department, or STD, this may be interpreted as meaning the State agency administering the RTP.

14. Design Issues

Design standards for most projects conform to the agency specifications for the specific type of trail development or maintenance project being undertaken. Agencies with design standards include the U.S. Forest Service, National Park Service, Tennessee State Parks and the Tennessee Division of Forestry. TDOT bicycle and pedestrian trail standards are used for greenway trails. The TDOT Bicycle Path and Walking Path Standards is a one-page document that only specifies pavement thicknesses and path widths. FHWA refers to several manuals and guides at www.fhwa.dot.gov/environment/rectrails/manuals.htm.

RES also references design guidelines developed by other organizations such as equestrian guidelines from Clemson University, the International Mountain Bicycling Association (IMBA), Appalachian Trail Conservancy (ATC), and the Student Conservation Association (SCA) when those types of trail projects are developed.

All designs are submitted to TDEC for approval. Prior to beginning construction, there is a preconstruction meeting between the grant recipient and the principal Parks and Recreation Technical Assistance Service (PARTAS) consultant for the project. Design and construction issues are discussed at this meeting. Progress inspections are performed throughout the process. If any changes are made to the design, a request for a project scope change has to be submitted and approved. No final reimbursement or closeout will occur until the project passes a final inspection conducted by the principal PARTAS consultant.

15. Trail Accessibility

RES stipulates that all grantees have their facilities comply with Americans with Disabilities Act (ADA) standards and specifications. If non-compliance is found through project inspections, the grantee is contacted and required to bring the item in question into compliance. Some trails, particularly backcountry trails, are not possible to construct to ADA compliance. TDEC agrees to seek opportunities to construct trails that can be used by the disabled, and agrees that barriers should not be erected.

TDEC includes representative ADA specification drawings for restrooms and trailhead support facilities in the grant application manual. TDEC references the Department of Justice – Americans with Disabilities Act Accessibility Guidelines (DOJ – ADAAG) specifications when questions concerning accessibility are asked.

FHWA recognizes the need for the transportation system to be accessible to all users, and has issued a memorandum entitled “Clarification of FHWA’s Oversight Role in Accessibility”, located at www.fhwa.dot.gov/civilrights/ada_memo_clarificationa.htm. In addition, questions and answers associated with this memorandum can be found at www.fhwa.dot.gov/civilrights/ada_qa.htm.

16. Permits

The grant applicant requests all environmental clearances and permits as part of the application process. Permits are not often required; however, when they are, the project cannot proceed until they are acquired.

17. Construction Monitoring and Inspection

TDEC reviews the contracts, gives written concurrence on the contracts and concurs in the award of the projects.

Project inspections are performed by the PARTAS consultant. All projects receive project inspections. The consultant prepares written inspection reports, and these reports are included in the project file. Types and frequency of inspections are as follows:

- a. There is an on site inspection that occurs during the grant selection process.

- b. During the construction phase there is one, sometimes more, progress inspections. These are performed on an as-needed basis.
- c. When the project is complete there is a final inspection conducted. The PARTAS consultant inspects all items in place, including signs.
- d. Post Completion Inspections are conducted every five years after project completion.

Upon completion of the project, the grantee submits a Project Completion Certification Form (PCC), which triggers the final inspection.

A computer reminder alerts the Grants Administrator that the 5-year inspections are due, and he/she arranges for the inspections to be carried out.

18. Other Construction Issues

Materials are discussed at the pre-design conference. TDEC uses the latest requirements in the selection of materials for trails projects. TDEC also reviews the materials selection when they develop the grant contract. Also, the grantee's contract states that the grantee shall comply with the applicable Federal statutes, including the Buy America provision.

It is uncommon for an RTP project to be in a Federal-aid highway right-of-way, but Davis Bacon Act rates will be checked when this occurs.

Recreational trail projects are closed out in accordance with 49 CFR 18.50 and 19.70.

FHWA encourages States to use the Youth Conservation Corps program to assist with construction of projects.

19. Civil Rights

TDOT is responsible for the State's oversight of the Disadvantaged Business Enterprise (DBE) program for all Federal-aid transportation funds received in the State. There is no need for special DBE compliance under the RTP as a separate program. TDEC places an emphasis on contacting and contracting with DBE's at the grant workshops and in the grant manual. Small business participation is also an item of discussion in the pre-design conference.

The RTP is a small program, and its DBE numbers would likely be quite small as compared to the overall TDOT budget. Generally on RTP projects, there is only one contractor, with no sub-contractors, or the project is constructed with local city or county employees by force account construction.

20. Financial Issues

Under 23 U.S.C. 118(b)(2), the "period of availability" for obligation of apportioned funds is four fiscal years: the current year, plus 3 years. The funds are treated in a "first in, first out" manner; older year funds are considered obligated before newer year funds. The unobligated balance of funds will be withdrawn if the unobligated balance exceeds the sum of the apportionments issued for the current fiscal year and the three prior fiscal years.

A State may use up to 7% of its RTP apportionments for administrative costs, and up to 5% for educational programs. Administrative costs include costs to administer the program, including staff time, meetings of the advisory committee, attendance at meetings or conferences, newsletters and websites, and statewide trail planning. Educational costs include educational programs that promote safety and environmental protection as they relate to the use of recreational trails. This includes development and operation of trail safety and environmental education programs, and the production of trail-related educational materials. TDEC agrees to provide a summary of educational and administrative expenditures to FHWA each year by December 1st, for the previous fiscal year ending September 30th. TDEC also agrees to provide FHWA with a funding list near the beginning of each two-year grant cycle.

TDEC submits a Federal-Aid Project Approval and/or Authorization form to FHWA for authorization of funds. Financial transactions are processed directly thru the Financial and Administrative Team at the Tennessee Division Office of FHWA. TDOT is not involved in the financial transactions with this program. At TDEC, the Grants Administrator tracks the available funds.

All funds for motorized trails are credited to the Tennessee Wildlife Resources Agency (TWRA). This agency administers and enforces the provisions of the Tennessee Off-Highway Vehicle Act (TCA Section 70-9-101 to Section 70-9-107).

Cost principals are obtained from OMB Circular A-87, "Cost Principals for State, Local, and Indian Tribal Governments".

TDEC's Division of Internal Audit conducts audits on grantees.

The grantee is responsible for maintaining an accounting of the project according to the "Accounting Manual for the Recipients of Grant Funds in the State of Tennessee". Upon inspection of project files at TDEC RES, copies of all receipts are maintained in the permanent file for each project.

21. Records

Each RTP project has a binder located in the TDEC RES office that contains the applications, inspection reports, receipts, Notice of Limitation of Use (NLU), scoring, maps and correspondence associated with the grant. When the grant is closed it goes into permanent files and/or is placed on microfilm. Invoices are disposed of 3 years after project close-out. These project files are subject to FHWA inspection at any time.

Each project requires a Maintenance Plan to assure that projects are managed in a safe and attractive manner. Maintenance Plans are turned in as part of the grant application.

22. Communication

TDEC and FHWA agree to meet quarterly to discuss any issues related to the RTP. Phone calls, US mail, email, and face to face meetings are all acceptable forms of communication.

Section 4: Implementation of Oversight Agreement:

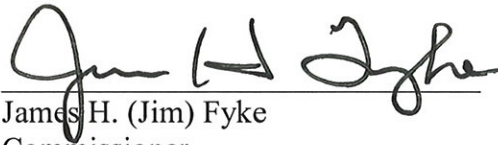
FHWA and TDEC enter into this agreement to conduct project oversight activities for the Recreational Trails Program in accordance with the above stipulated agreement elements and parameters.

The Stewardship and Oversight Plan outlines responsibilities and accountability for FHWA and TDEC. The purpose of the Plan is to clarify actions, prevent misinterpretations, and avoid time delays. The Stewardship and Oversight Plan is intended to be a living document that can be modified when needed to incorporate additional legislation, additional processes, or other changes to improve program and project delivery in the State of Tennessee. The Stewardship and Oversight Plan will be reviewed annually by TDEC and FHWA on or around the second week of August to determine if any changes need to be made.

The Division Administrator of FHWA Tennessee Division or the Commissioner of TDEC may initiate amendments to this Agreement and/or changes to the Stewardship and Oversight Plan should essential modifications become apparent to either party.



Bobby W. Blackmon
Division Administrator
Tennessee Division
Federal Highway Administration



James H. (Jim) Fyke
Commissioner
Tennessee Department of
Environment and Conservation

6/19/08
Date

6/25/08
Date