



# OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223  
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

November 1, 2018

Ms. Laura S. Leffler, Division Administrator  
Federal Highway Administration - Ohio Division  
200 North High Street, Room 328  
Columbus, Ohio 43215

**RE: Statement of Interest - New Special Experimental Project (SEP-16) to Evaluate Proposals for Delegation of Certain Program-wide FHWA Responsibilities to States**

## **Type 3 Right of Way Certifications**

Dear Ms. Leffler:

In accordance with 23 U.S.C 101, the Ohio Department of Transportation (ODOT) hereby notifies the Federal Highway Administration (FHWA) of our interest in participating in the New Experimental Project (SEP-16) to Evaluate Proposals for Delegation of Certain Program-wide FHWA Responsibilities to States. This project, announced by FHWA on September 19, 2018, document number 2018-20347, is to test and evaluate the delegation of program-level responsibilities of the Federal-Aid Highway Program (FAHP) to States, including the appropriate steps States should take to request to exercise delegated authority.

### *Summary of Proposal*

ODOT proposes to seek authority under 23 CFR §635.309(c)(3) *et. seq.* for the review, approval, certification, and issuance of conditional right of way certifications (also known as a Type 3 Right of Way Certification).

Type 3 Right of Way Certification allows ODOT to proceed to advertising the sale of a project despite not having complete control of the project's necessary right of way. The authority to grant conditional right of way certifications is reserved to FHWA under existing law. ODOT anticipates that this would give ODOT more flexibility to manage risk within the project delivery process.

### *Reasoning for Proposal*

ODOT currently, and for the better part of the last decade, has had very few, if any, Type 3 Right of Way Certifications because the conditional right of way certifications would not be accepted by FHWA. As a result, ODOT has had to make other choices to be able to certify projects as per the requirements for one of the other two types. One such solution is to push

out a sale date, which can delay project completion and likely result in an increase to the cost of the entire project. Having the option to make a risk-based management decision to move forward with a Type 3 Right of Way Certification has the very real possibility of saving overall project costs as real estate costs are orders of magnitude smaller than construction delay costs or inflation costs. ODOT understands and acknowledges that Type 3 Right of Way Certifications would still be subject to the requirements in 23 CFR 635.309(c)(3)(i)-(v). ODOT anticipates that this would provide more flexibility for managing risk within the project delivery process.

### *Anticipated Resulting Improvement to ODOT's Project Delivery*

ODOT anticipates time and cost savings if Type 3 Right of Way Certification conditional approvals were to be approved at the state level. If this proposal is accepted and a concept paper requested, ODOT will perform an audit of Type 3 Right of Way Certification requests considered and/or submitted to FHWA during the last five years. This data will provide an accurate representation of the potential time and cost savings to ODOT's Project Delivery Program.

### *Experience with Project-Level Delegation*

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ODOT has had no prior collaboration with FHWA Ohio Division on this proposal. However, since being accepted into the FHWA NEPA Assignment Program, ODOT has successfully completed three audits. ODOT and FHWA have a long history of working together collaboratively to expedite the environmental process for transportation projects in Ohio and we have continued that tradition with this project. The success of the NEPA Assignment Program in Ohio has been accomplished by building efficiency and consistency into the process while ensuring the required level of protection and accountability for environmental resources is maintained. ODOT and FHWA will continue this partnership to ensure the success of the NEPA Assignment Program moving forward and would follow this same practice if accepted for participation in the SEP-16 project.

ODOT looks forward to working closely with FHWA during the application process for this exciting experimental project.

Respectfully,

A handwritten signature in blue ink that reads "Jerry Wray" followed by a stylized flourish.

Jerry Wray, Director

Copies - Director, L. Macadam, J. Townley, T. Hill