



U.S. Department
of Transportation

**Federal Highway
Administration**

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November 12, 2020

HDA-WA/WAP3441S1123

Roger Millar
Secretary of Transportation
Washington State Department of Transportation
310 Maple Park Avenue SE
Olympia, Washington 98504

FFY 2020 Performance Letter

Dear Mr. Millar:

Based on the inspections, reviews, program evaluations, and specific project and program involvement conducted by the Washington Division of the Federal Highway Administration (FHWA) in Federal Fiscal Year (FFY) 2020, I find:

The Washington State Department of Transportation (WSDOT) has complied with Federal laws and regulations in expending the Federal-aid highway funds allocated to the State of Washington on state and local public agency (LPA) projects.

Our office is responsible for stewardship and oversight of the Federal-aid highway funds allocated to the state of Washington. Your agency is the state agency responsible for delivering these Federal-aid funds. Annually, hundreds of millions of dollars of Federal highway funds flow into Washington State. In FFY 2020 (October 1, 2019 - September 30, 2020), Washington State obligated \$710,659,893.34 in formula and discretionary Federal-aid funds. These funds were used to improve mobility and safety, and reduce congestion through the construction of new roads and bridges, as well as the enhancement and preservation of existing infrastructure. Approximately 61 percent (\$433,502,535) of those Federal highway funds were obligated for state projects and 39 percent (\$277,157,358) were obligated by LPAs (Local Public Agencies) (cities and counties) for road projects during FFY 2020. In total, Washington State's FFY 2020 Federal-aid apportionment was over \$746 million. Transfer of Federal-aid funds to the Federal Transit Administration (FTA) for projects such as the Colman Dock project account for most of the difference between the amount apportioned and the amount obligated

Annually, we conduct project inspections, program evaluations, systematic reviews, and financial audits of WSDOT and LPAs. We also review and approve standard plans, special provisions, manuals, and other program documents. For FFY 2020, we conducted numerous reviews of WSDOT's procedures and practices in project development and implementation.

Following are the reviews conducted and a brief synopsis of the findings. The full reports are available in our office.

National Bridge Inspection Standards (NBIS) Annual Review - The 2020 NBIS review incorporating an oversight process that is risk-based, data-driven, and evaluates 23 metrics is fully underway. Our office has worked in cooperation with WSDOT to gather bridge data, review bridge files, and conduct field visits to assist in the compliance determinations for the calendar year (CY) 2019 NBIS review and the current CY 2020 review. The results of the CY 2019 NBIS compliance review for Washington included 20 metrics in full compliance, two metrics in substantial compliance with improvement plans developed to resolve minor discrepancies, one metric in conditional compliance with a Plan of Corrective Action (PCA) developed to correct the issue that could result in noncompliance if not addressed in a timely manner, and no metrics in noncompliance. The results continue to show significant progress by both WSDOT and LPAs to improve their bridge inspection programs. The current CY 2020 NBIS compliance determinations on all 23 metrics are scheduled to be completed by December 31, 2020.

FHWA/WSDOT Load-Rating Program Review Final Report - In October 2019, we approved WSDOT's Parametric Study for Special Haul Vehicle (SHV) Load Ratings for State-owned structures. From June to October 2019 we worked with WSDOT to determine how they intended to implement the SHV load ratings based on their analysis and the parametric study. The utilization of a parametric study was discussed as part of the 2018 bridge load rating program procedures review as a possible opportunity for WSDOT to consider. The technical proposal that WSDOT submitted outlined their analysis of structures to be considered, updating of the Bridge Design Manual, and a description on how the process will be implemented in order to assist WSDOT in meeting the SHV Group 2 load rating deadlines.

In December 2019, WSDOT provided information that all of the State-owned structures that required an Emergency Vehicle (EV) load rating had been completed within the timeframe outlined in the FHWA Memo on Load Rating for the FAST Act's EVs dated November 3, 2016. Washington's LPAs had approximately 50 structures that were identified as meeting the criteria for needing an EV load rating. WSDOT's Local Programs Bridge Engineer was following up with the local owners with identified structures to ensure that the EV load ratings were completed.

In July 2020, we were able to close out the NBIS Performance Year (PY) 2019 PCA for Metric#13: Inspection Procedures – SHV Group 1 Load Ratings. WSDOT completed the five action items within the applicable timeframes that were described in the PCA that was signed in March 2019. The PCA included the load rating of over 120 State-owned structures and over 180 LPA structures.

Preliminary Engineering (PE) 10-Year Limitation Review - Our Finance Team conducted the PE 10-Year Limitation review in which projects were reviewed for the valid obligation of Federal-aid funding. The review disclosed that all samples selected were valid obligations. After reviewing the list, several were quickly identified as "Studies" with the incorrect improvement type that should have been authorized with an "Other Phase" authorization date. One of the

projects to follow up from previous years was a repayment determination and our follow-up concluded the agency did in fact repay the Federal funds per the agreed upon terms. All other projects on the follow-up spreadsheet have an approved extension until 2024. There were no projects that were in non-compliance. Minor improvements were noted and passed on to WSDOT staff. No follow up items were identified. The process WSDOT uses to monitor PE authorizations is working well and no issues have been identified.

Inactive Obligations - FHWA's FIRE Order also requires a quarterly review of inactive projects that fall into two tiers, 1) inactive projects \$150,000 or greater and 2) inactive projects less than \$150,000. Each quarter, our office requires WSDOT to review projects that fit into the inactive status and request justification for the inactivity. We began FFY 2020 with local and state projects at a total inactive balance of \$9.3 million (1.3 percent of FFY 2020 apportionment). These figures fluctuated through the year and ended FFY 2020 with \$12.8 million (1.7 percent of total fiscal year apportionment). This is below our agency's goal of 2 percent. Keeping inactive obligations low helps make Federal funds available for use on more projects.

PY 2020 Improper Payment Transaction Testing - Our office has completed the annual transaction testing for PY 2020. The transaction testing is part of FHWA's Financial Integrity Review & Evaluation (FIRE) Program. This year the review focused on payments to State DOTs that occurred after the project agreement end date (PAED). There were five samples selected for our testing. The testing resulted in one improper payment. This was an Emergency Relief (ER) project where additional work occurred eight months after PAED, making the work-related charges ineligible for Federal-aid reimbursement. Prior to the sample being selected for review, WSDOT realized these charges were ineligible and paid back the funds on June 4, 2019. Because funds have been repaid prior to testing no further action was required from us to recoup these ineligible charges.

FY 2020 Payment Integrity Information Act (PIIA) Transaction Testing (Improper Payments) - During PY 2020 our Finance Team conducted the PIIA transaction testing review. The review consisted of two State-administered projects. Between the two projects, four transaction line items were randomly selected and reviewed for accuracy, completeness, and adequate supporting documentation. The review disclosed that all samples selected were fair, reasonable, and properly supported and no major non-compliances were identified.

FY 2020 Review of Federal Share - Our Finance Team conducted a review on the accuracy of the federal share on WSDOT's Federal-aid projects. The purpose of the review was to determine if WSDOT was billing Federal-aid projects at the correct federal share. The sample included 20 State-administered projects and 34 LPA-administered projects. For the State-administered projects, transactions were pulled from WSDOT's accounting system for a selected pay estimate to verify the project's billing amount didn't exceed the federal share established on the project agreement. For LPA-administered projects, a Local Programs Progress Billing was selected for each project to verify the project's billing amount didn't exceed the federal share established on the local federal project agreement. The review found that all 54 projects selected were billing at the correct federal share.

MPO Unified Planning Work Program (UPWP) Reviews, Statewide Transportation Improvement Program (STIP) Review, Air Quality (AQ) Conformity Analysis, and State Planning Finding - Our Division and FTA's Region 10 Office conducted program reviews of WSDOT and 12 Metropolitan Planning Organizations (MPOs), along with their statewide and metropolitan transportation planning processes during FFY 2020. These included the annual reviews and approvals of 12 MPOs' UPWPs, the 2020-2023 STIP, and monthly STIP amendments. Division Planning and Freight Program staff participated with the statewide MPO/WSDOT Coordinating Committee meetings throughout the year to stay current with and provide feedback on statewide and metropolitan planning topics and discussions.

The Federal team also assured MPO Transportation Improvement Plans (TIPs) met the requirements of the Federal Clean Air Act (CAA [Amendment, 1990]), to confirm that the state transportation system will not contribute to violations of the National Ambient Air Quality Standards (NAAQS). The AQ Conformity Reviews and review of the STIP, resulted in our office and FTA issuing a joint state planning finding in January 2020, indicating the transportation planning process in CY 2019 substantially met the requirements of 23 U.S.C. Sections 134 and 135 and 49 U.S.C. Sections 5303-5305.

Heavy Vehicle Use Tax (HVUT) Compliance Review - Our office, on behalf of the United States Department of Transportation (USDOT), conducts an HVUT Compliance Review at least every three years, as required by 23 CFR 669 and 26 CFR 41.6001. In September-December 2019, our office conducted an HVUT Compliance Review, covering CYs 2016-2019, to ensure that the State of Washington is exercising due diligence in obtaining and retaining proof of payment as a condition of the registration of trucks subject to HVUT collection. We found that the annual certification statements were submitted by the Washington State Department of Licensing (DOL) to FHWA on time during the four years covered by the review (2016-2019). We also found that DOL has made significant efforts to improve their HVUT registration process over the past several years. While the 2016 HVUT compliance review did find regulatory compliance issues, DOL has made significant progress over the past three years by implementing an action plan to correct previous compliance issues and improve HVUT collection in Washington. As a result of this outstanding effort by DOL, the 2019 HVUT Compliance Review, published in January 2020, found no regulatory compliance issues.

Guardrail Program Review - In CY 2019 our office, in cooperation with WSDOT, conducted a program review of guardrail and terminal installations. The review found inconsistencies in the installation of guardrail and terminals and observed opportunities for improvement with existing design practices. Recommendations included improved training practices, completion of manufacturer checklists for every terminal, and adoption of expiration dates for manufacturers' training certifications. WSDOT has been very responsive to the recommendations and has already updated plans, specifications, and manuals providing clear direction to staff while continuing to develop an action plan addressing all of the recommendations resulting from the review.

Evaluation of WSDOT Right-of-Way (ROW) Project Scheduling - In FFY2020 our office completed a process review begun in FFY2019 to evaluate WSDOT's scheduling of project ROW activities in an effort to respond to anecdotal comments that project management often

compresses the ROW schedule when pre-ROW activities including National Environmental Policy Act (NEPA) and PE do not meet their scheduled date. Our review confirmed this happens frequently and that schedule compression of ROW can jeopardize project compliance with the Uniform Relocation Act and other applicable Federal and State laws and regulations. Following this review an action plan was created which will entail annual project and parcel file reviews to confirm that subsequent projects are in full compliance. We completed our review of Eastern Region project files in FFY2020 and found no issues of noncompliance. We are continuing our project and parcel file reviews into FFY2021.

Stewardship and Oversight on Project Development and Construction Activities During

FFY 2020 - Our office uses a risk-based approach to stewardship and oversight on WSDOT's project development and construction programs. The goal of risk-based stewardship and oversight is to optimize the successful delivery of programs and projects and to help ensure compliance with Federal requirements. Our risk-based approach involves three main avenues of project involvement: 1) **Project Approval Actions**; 2) Data-Driven Compliance Assurance, i.e., the **Compliance Assessment Program (CAP)**; and 3) Risk-Based Stewardship & Oversight involvement in **Projects of Division Interest (PoDI)**.

- 1) **Project Approval Actions:** In FFY 2020 our office performed at least 100 approval actions related to projects. Approximately 24 were related to the environment phase and include documents such as Section 4(f), Endangered Species Act (ESA) determinations, NEPA Categorical Exclusions and Re-evaluations. We completed 55 design-related approvals and eight approvals related to access. We conducted one site visit, processed six construction approvals, and approved seven change orders on projects throughout the state. We are currently reviewing the annual financial plan for the State Route (SR) 520 I-5 to Medina High Occupancy Vehicle (HOV) and Bridge Replacement Program. We are also currently working with the Gateway Program (SR 509 / SR 167) team to develop an initial financial plan and project management plan. In addition, we attended several interdisciplinary team meetings for the I-90 Snoqualmie Pass East project.
- 2) **CAP Reviews:** The purpose of the CAP is to help provide reasonable assurance that Federal-aid highway projects comply with key Federal requirements. The CAP helps provide this assurance by assessing a statistically valid sample of projects such that the results inform FHWA nationwide, with an acceptable level of certainty, of the degree of compliance. CAP reviews commonly take the place of construction inspections or document reviews. CAP reviews start at the beginning of the FFY (October 1) and must be completed before the end of that FFY (September 30). CAP uses a random sample of projects authorized for the construction phase during the previous CY and makes statistical estimates about overall levels of National and State compliance. Each state uses the same set of core CAP questions for conducting their review. After the end of the FFY a quality assurance review is done by our headquarters (HQ) to validate data fields and compare comments to responses from the CAP reviews completed in the previous FFY, then our HQ releases a nationwide report.

Division CAP Review Results: Our office recently completed the FFY 2020 CAP reviews consisting of a total of 54 projects (20 WSDOT and 34 LPA) authorized for

construction during CY 2018. We have not compiled our findings yet, but early results show that WSDOT had inconsistencies pertaining to the PS&E being approved prior to advertisement on at least eight projects. WSDOT also had inconsistencies pertaining to certified payrolls on at least four projects. Although it is likely WSDOT results will not be as favorable as in FY19, our office is confident that construction projects are in reasonable compliance with Federal regulations.

- 3) **PoDIs** are those projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting program or project objectives. Our offices work together to identify PoDI projects. In FFY 2020 we identified 10 projects as PoDIs: 1) I-90 Snoqualmie East; 2) Spokane Valley's Barker Road/Burlington Northern-Santa Fe Railroad Grade Separation; 3) Spokane County's Geiger Boulevard Infrastructure Improvements; 4) SR 432/433 Industrial Way/Oregon Way Intersection; 5) SR 520 Rest of the West; 6) US 101 Coastal 29 Progressive Design Build Project; 7) City of Union Gap Beltway Project; 8) US 101 Coffee Creek Fish Barrier Removal; 9) SR 520 Trafton & Schoolyard Creek Fish Passage; and 10) the Bellevue-Redmond (BELRED) Street Network (Transportation Infrastructure Financing and Innovation Act (TIFIA)-funded). We continued to consider fish passage projects procured as Design-Build prior to NEPA (DBpN) clearance as PoDIs. Since DBpN is a new process, we identified these projects as PoDIs and have been working with WSDOT to ensure the process was completed in accordance with Federal regulations. There are also several other larger projects that have significant FHWA involvement, but no formal PoDI plan -- the US 395 North Spokane Corridor and the I-405 Express Toll Lanes and Congestion Relief Projects.

Summarizing all these activities, we are confident WSDOT provides quality oversight and administration of its project development and construction program.

In addition to the project inspections, program evaluations, systematic reviews, and financial reviews, we receive from WSDOT an annual **Stewardship Indicators Report** as part of the "Stewardship & Oversight Agreement" between our two offices. This agreement to report annually on stewardship indicators for various areas within the Federal-aid Highway Program provides an assessment of the overall health of the program and indicates how several of the responsibilities we have delegated to WSDOT are being performed.

Overall, the health of the Federal-aid program in Washington State is very good. There are currently 20 indicators which WSDOT reports to the Division. WSDOT also provides a variety of performance indicators in their "Gray Notebook" which also indicates the overall health of the transportation program in Washington State. Of the 20 indicators, none showed major compliance violations. Most showed favorable signs that WSDOT is efficiently and effectively spending Federal-aid funding while following the regulations. Thirteen of the 20 indicators were considered "green" or in great health and four were considered "yellow" or average health. The yellow health indicators typically show there is some room for improvement, or some items that need work but are overall trending in the right direction. Three of the indicators were reflected as "gray" as the data was not submitted for review.

As part of our annual review of the stewardship indicators we will work with your staff to revise, replace, and delete indicators as needed. These changes will be identified in this and future reports. Since signing the Stewardship and Oversight Agreement in 2015, there have been several minor changes. In FFY 2021 we will be proposing a memo to address these changes.

The following reviews were also completed with assistance and involvement of your staff:

2020 Spokane Regional Transportation Council (SRTC) Transportation Management Area (TMA) Certification Review - On January 10, 2020, our office and FTA jointly certified the planning process for the SRTC in the Spokane, WA Urbanized Area (UZA). The TMA Certification Review, which occurs once every four years, was completed through several work sessions and one on-site review meeting, which included WSDOT HQ and Region planning staff, SRTC staff, the SRTC Policy Board, and SRTC Technical Advisory Committee (TAC). During the review process, we and FTA met with SRTC staff, the Policy Board, and TAC, to discuss various Federal regulations and requirements, along with SRTC's planning process, ahead of completing the TMA Certification Report. While we and FTA documented several recommendations for SRTC, we are pleased that no corrective actions were identified.

2020 Benton-Franklin Council of Governments (BFCG) TMA Certification Review - On July 10, 2020, our office and FTA jointly certified the planning process for the BFCG in the Kennewick-Richland-Pasco, WA Urbanized Area (UZA). The TMA Certification Review, which occurs once every four years, was completed through virtual meetings and in coordination with BFCG staff, along with the BFCG Policy Board and BFCG TAC. During the review process, our office and FTA met with BFCG staff, the Policy Board, and TAC, to discuss various Federal regulations and requirements, along with BFCG's planning process, ahead of completing the TMA Certification Report. While we and FTA documented several recommendations for BFCG, we are pleased that no corrective actions were identified. It should also be noted this MPO TMA Certification was the first fully virtual review process for our office. Due to the increased involvement from external partners at the MPO and WSDOT, and the positive feedback about the review process, we will likely use this virtual approach for future TMA Certification Reviews.

We congratulate and commend Washington State and WSDOT for:

Washington State Conciliation Agreement Closed - On October 27, 2020, WSDOT received formal notification from the FHWA Administrator's Office of the closure of the Disadvantage Business Enterprise (DBE) Program and Project Conciliation Agreement. In 2012, in response to several complaints from DBEs in the Seattle area, FHWA conducted an investigation of WSDOT's DBE Program and the sufficiency of its DBE oversight of design-builder Seattle Tunnel Partners' (STP) good faith efforts to achieve DBE participation on the \$1.5 billion Alaskan Way Viaduct Bored Tunnel Project (AWV Project). After a lengthy investigation, FHWA found WSDOT in noncompliance with DBE Program requirements in administration of its DBE Program in general, and as applied to the AWV Project. This finding resulted in a March

20, 2014, Conciliation Agreement (between FHWA and WSDOT) containing 18 action items that WSDOT was required to address. From 2014 through 2019, our office worked closely with WSDOT and the Office of Civil Rights to ensure completion of the Conciliation Agreement's action items. The results have been positive for the DBE community in Washington State and it has made WSDOT a better and more supportive DOT.

WSDOT Submits Highway Performance Monitoring System (HPMS) Data - As of June 15, 2020, WSDOT submitted all required non-Interstate and Interstate pavement data to FHWA HQ for data collection in CY 2019, accurately and on time. Over the past year, our office worked closely with HQ and your staff to ensure this on-time submittal. The collaboration process involved weekly and monthly check-in meetings, HQ provided an in-person HPMS workshop in Washington, WSDOT attended the FHWA HQ Highway Information Seminar (HIS) in 2019, and our office provided additional technical assistance to various WSDOT Divisions and Offices to merge the necessary functions that produce a successful HPMS submittal. We will continue to work closely with WSDOT staff and FHWA HQ to build on this collaboration and momentum.

The Washington State Transportation Innovation Council (STIC) is the recipient of an FHWA/AASHTO 2019 STIC Excellence Award for building a culture of innovation through collaboration to update the WSDOT Hydraulics Manual and for developing a programmatic biological assessment with the U.S. Fish and Wildlife Service (USFWS). These efforts brought local, Federal, and private sector partners to the table to look at how to institutionalize innovations statewide. With STIC Incentive funds, WSDOT revised its Hydraulics Manual to incorporate two-dimensional (2D) hydraulic modeling, fish passage and stream restoration design guidance, and bridge scour methodology to assist State and local hydraulic and design engineers. WSDOT collaborated with USFWS on a programmatic biological assessment that allows local agencies to streamline ESA consultations. This approach reduces the ESA consultation timeline on LPA projects from a year to a few months and is expected to be used on at least seven projects in the next year.

In addition to the above-mentioned program oversight and review activities, my staff have specific project involvement responsibilities as well. As noted in the Stewardship Agreement, we had project-specific environmental, design, ROW, and construction involvement on many Interstate and major/unique projects under development and construction in Washington State. Therefore, I am confident in the finding made at the beginning of this letter.

We wish to thank you and your staff for their professionalism, integrity, and innovation in carrying out the obligation of the \$710.6 million in Federal-aid funds during FFY 2020.

This is the 19th annual Performance Report. Performance Reports for FFYs 2002 through 2020 can be found on our website at <http://www.fhwa.dot.gov/wadiv/preports/>.

If you have any questions or need further information, please feel free to contact me via phone at (360) 753-9480 or via e-mail at Daniel.Mathis@dot.gov.

Sincerely,

Original /s/ Daniel M. Mathis, P.E.

DANIEL M. MATHIS, P.E.
Division Administrator

cc electronically:

Governor Jay Inslee
Jerry Litt, Chair, Washington State Transportation Commission
Steve Hobbs, Chair, Senate Transportation Committee
Curtis King, Ranking Minority Member of Senate Transportation Committee
Jake Fey, Chair, House Transportation Committee
Andrew Barkis, Ranking Minority Member of House Transportation Committee
Keith Metcalf, Deputy Secretary, WSDOT
Marshall Elizer, Assistant Secretary Multimodal Development & Delivery, WSDOT
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