

## **PART 2, CHAPTER 32**

### **COMMITMENTS**

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## PART 2, CHAPTER 32

# COMMITMENTS

### 32.1 OVERVIEW

Commitments are a critical component of a transportation project as they provide assurance to agencies and other stakeholders that identified issues will be appropriately addressed in a future phase of project delivery. The primary purpose of this chapter is to provide guidance to Florida Department of Transportation (FDOT) Districts on how to prepare the commitments section of an Environmental Document during the Project Development and Environment (PD&E) phase. This chapter also details how PD&E phase commitments are developed and the necessary coordination, tracking, and documentation required to ensure these obligations are transferred to future project phases and subsequently fulfilled. Because commitments made during the PD&E phase are implemented during future project phases, it is important to have coordination between staff from PD&E through Operation and Maintenance phases to ensure the appropriate documentation and tracking of commitments are accomplished until commitments are completed.

FDOT requires that all commitments are tracked through [Procedure No. 700-011-035, FDOT Commitment Tracking](#) and reviewed and documented in subsequent reevaluations. This procedure provides guidance on tracking and documenting project commitments throughout Project Development, Design, Right of Way, Construction, and Operation and Maintenance phases. Commitments must be recorded on the [Project Commitment Record \(PCR\), Form No. 700-011-35](#). See **Section 32.2.3.1** for guidance on how to document and track commitments.

Commitments established as a result of the PD&E Study and/or agency coordination must be documented in the Environmental Document [Categorical Exclusion (CE), Environmental Assessment (EA), Environmental Impact Statement (EIS), or State Environmental Impact Report (SEIR)], and included in the project file.

#### 32.1.1 Project Commitments

An FDOT commitment is an obligation to an external stakeholder to provide a feature, or perform an action, related to a project. Examples of commitments include:

- Design features meant to minimize adverse effects on identified environmental resources
- Actions during Design/Permitting phase meant to define in greater detail the presence/absence or potential impact on a resource

- Actions during the Construction phase, such as implementation of best management practices (BMPs), to minimize potential impacts on resources

Project commitments may be established at any time during the PD&E, Design, Right of Way, Construction, and Operation and Maintenance phases of a project. Commitments are rarely established during the Planning phase of a project, due to inherent uncertainties in the evolution of a given project.

A PD&E phase commitment can be made as a result of coordination/consultation with agencies, the local community, or other stakeholders on social, cultural, physical, natural or engineering issues. These commitments may also help satisfy **National Environmental Policy Act (NEPA)** requirements. A **NEPA** commitment is an obligation identified and documented in the PD&E phase and subsequent Reevaluations, and is a binding commitment to avoid, minimize or mitigate project impacts.

FDOT may make commitments to the local community during PD&E, which could include context-sensitive solutions or design features like lighting, benches, bicycle or pedestrian facilities, aesthetic treatments, landscaping. Commitments may also be made during PD&E to support federal and/or state permitting. During the Design/Permitting phase, these commitments may become permit conditions at the discretion of the applicable regulatory agency. For example, commitments regarding wetland and other surface water or protected species impacts are included in the permit at the discretion of the Florida Department of Environmental Protection (DEP), Water Management District (WMD) or the U.S. Army Corps of Engineers (USACE). **Section 32.1.1.2** provides additional information on commitments and permitting.

The Project Manager for each project phase is responsible for establishing commitments (as appropriate) and ensuring that the commitments are properly documented. Each Project Manager is responsible for coordinating with others who may be tasked with implementing actions based on the project commitments, such as the District Environmental Office [District Environmental Management Office (DEMO), Planning and Environmental Management Office (PLEMO)], Design Office, Construction Office, District Permit Coordinator, Right of Way Office, or Maintenance Office.

Before making a commitment, the action involved must be coordinated between each of the project phases. The project manager for each phase ensures that the action involved is feasible in terms of necessity, practicality, cost, and timing. Continuous coordination is vital to ensure that all commitments are appropriate and once agreed to by FDOT, are implemented. All project commitments must be properly coordinated, documented, tracked, and implemented for the project to successfully advance to completion.

When making commitments the Project Manager must:

1. Ensure that commitments are clear and concise;
2. Ensure commitment language is coordinated with the appropriate subject matter expert;
3. Ensure that commitments do not contradict other commitments;
4. Consider the practical impact of the commitments on future project phases; and
5. Ensure the source of and reason for the commitment is fully documented in the project file.

Project managers should be mindful of whether statewide precedence is being created when employing new or unique commitments, as well as making any long term obligations, procedural mechanisms or dedication of state resources needed to uphold commitments. For example, proposed preservation of FDOT Right of Way for a non-transportation related purpose, or monitoring in perpetuity should prompt further discussion within the District and Central Office prior to making the commitment. The approval of a commitment is at the discretion of each District and is evaluated based upon the magnitude of impact it has on FDOT resources.

Project Managers must coordinate with appropriate District personnel prior to agreeing to a commitment that would obligate significant FDOT resources. For example, during the PD&E phase a Project Manager can make a commitment to a resource agency to continue coordination with that agency during the Design phase, where environmental permits are typically obtained. This type of commitment does not typically require vetting within other project phases or by the District chain of command. However, a commitment to include a wildlife crossing during PD&E should prompt the Project Manager to coordinate with staff from other offices and obtain approval. A wildlife crossing could potentially obligate a significant amount of cost, time and effort from multiple offices and therefore should be thoroughly vetted before making such a commitment.

It is important to recognize that FDOT is required to follow the requirements detailed in its standard specifications, manuals and handbooks. For example, it is not necessary for FDOT to make a commitment to follow the [Standard Specifications for Road and Bridge Construction](#).

### **32.1.1.1 Local Agency Program Commitments**

The FDOT is statutorily empowered to contract with other Local Agencies to plan, develop, design, acquire right of way, and construct transportation facilities through the Local Agency Program (LAP). The FDOT reimburses these Local Agencies for services provided to the public. When the FDOT contracts with any Local Agency for reimbursement using federal funds administered by the FHWA, the FDOT must ensure Local Agencies comply with all applicable federal statutes, rules, and regulations.

When applicable, the Local Agency should maintain a commitment file with a summary of commitments made during the development of the project. The Local Agency should review the file to ensure that the commitments are incorporated into the Plans Specifications and Estimates.

The FDOT Project manager must ensure that any commitments made by an implementing LAP Agency are discussed with FDOT, to ensure that commitments are documented clearly stating LAP Agency responsibility and that FDOT is not obligated to fulfill those commitments. FDOT should not make commitments on behalf of a LAP Agency. See [Local Agency Program Manual, Topic No. 525-010-300](#) for more information on LAP projects and LAP commitments.

### 32.1.1.2 Permitting and Commitments

Commitments regarding wetland and other surface water impacts, listed species, and/or habitat that were identified during the PD&E phase may later be included as permit conditions. Permit conditions are those commitments that must be met in order to comply with an environmental permit. Permit conditions are developed in coordination with the applicable regulatory agency. These are typically developed during the Design phase when projects are typically permitted; however, in some instances, permitting may take place during the PD&E phase. Commitments that are included in project permits must be tracked as part of permit compliance. Failure to comply with permit conditions is a violation of the permit and may result in enforcement action against FDOT. It is critical that permit conditions are met, and appropriate documentation demonstrating the permit condition has been satisfied is submitted to the appropriate regulatory agency and included in the project file. See [Part 1, Chapter 12, Environmental Permits](#), for more information on environmental permitting.

An example of a project commitment made during the PD&E phase that may be included as a permit condition is when FDOT makes a commitment to provide compensatory mitigation to offset unavoidable wetland and surface water impacts. This commitment is typically included in a federal permit from the USACE or a state permit from the DEP or WMD.

Commitments made in coordination with regulatory agencies for species Conservation Measures may also become permit conditions. Examples of species-specific commitments made during PD&E include:

- Re-initiate consultation with the commenting wildlife agencies during permitting to better define potential species impacts
- Conduct species-specific pre-construction surveys (such as for the bald eagle) to verify nest presence/absence/activity

- Conduct species-specific pre-construction surveys (such as for the gopher tortoise) since the species protection would not result from federal permitting and the species is not wetland-dependent and automatically included in the state Environmental Resource Permit review
- Protect a species during construction (such as the Florida manatee, eastern indigo snake, and small-tooth sawfish)

Commitments may also be made to avoid cultural or historical resources. For example, a commitment may be made to have an archaeological monitor on site during construction activities near a known historical archaeological site. This type of commitment would be made during the PD&E phase and coordinated with the appropriate regulatory agency. The commitment would then be made into a permit condition, at the discretion of the lead permitting agency during Design/permitting.

### 32.1.2 FDOT Commitment Tracking

Guidance and procedures for documenting and tracking project commitments are in [Procedure No. 700-011-035, Project Commitment Tracking](#). As noted in the procedure, “It is imperative that any commitments made by the Department are sufficiently documented so they can be tracked throughout the life of the project, fulfilled during the appropriate time, and reviewed and documented for their completeness prior to final acceptance of the project.”

Commitments made by FDOT over the course of the project must be documented on the [Project Commitment Record \(PCR\), Form No. 700-011-035](#) included in **Figure 32.1**. The **PCR** is the standard form for documenting, transmitting, and tracking project commitments. Commitments identified in the PD&E phase must be recorded in the **PCR** for transmittal to the Project Manager during the Design phase, as well as documented in the Commitments section of the Environmental Document (**Section 32.2.3.1**).

## 32.2 PROCEDURE

Some projects may qualify for Efficient Transportation Decision Making (ETDM) screening in the Environmental Screening Tool (EST). [Part 1, Chapter 2, Federal Highway Administration Class of Action Determination](#) and Chapter 2 of the [ETDM Manual, Topic No. 650-000-002](#) list the qualifications for ETDM screening. Regardless of whether a project is screened, commitments must be documented in the Environmental Document.

### 32.2.1 Projects Not Qualifying for Screening

For transportation projects not qualifying for EST screening, commitments are documented as a part of discussions and coordination with resource agencies, the public, and other stakeholders. Decisions and commitments must be documented in the

Environmental Document and/or project file, and appropriately addressed through incorporation into the final design/construction plans. Documentation in the Environmental Document is as follows:

1. **Type 1 Categorical Exclusions**– For these projects, complete a [Type 1 Categorical Exclusion Checklist, Form No. 650-050-12](#) according to [Part 1, Chapter 2, Federal Highway Administration Class of Action Determination](#). Include project commitments in the project file.
2. **Non-Major State Actions (NMSA)** – Complete a [Non-Major State Action Checklist \(Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery\)](#). For these projects include project commitments in the project file.
3. **Type 2 Categorical Exclusions**– Some Type 2 CEs may not require screening through the EST. For these projects, commitments are documented on the [Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11](#) as if the project was screened. See **Sections 32.2.3.1** for guidance on documenting Type 2 CEs.

### 32.2.2 Projects Qualifying for Screening

For projects qualifying for EST screening, the proposed project is entered into a Planning or Programming Screen Event according to the [ETDM Manual, Topic No. 650-000-002](#). This screening initiates project-level coordination with the regulatory agencies and includes a Preliminary Environmental Discussion (PED) ([Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification](#)).

Environmental Technical Advisory Team (ETAT) members review the proposed project and respond with comments. The ETAT members may provide recommendations to FDOT for minimizing potential environmental impacts. It is recommended that commitments not be made during ETDM Screening since the project is preliminary and many changes may occur as the project advances to the PD&E phase.

### 32.2.3 Project Development and Environment Phase

During PD&E, FDOT should review the **Programming Screen Summary Report** to consider any ETAT member recommendations. The Project Manager is responsible for collecting and maintaining correspondence with agencies/organizations (e.g., letters, emails), documenting coordination on project commitments as part of the project file, and adding commitments to the **PCR**. This documentation provides information for the next project phase.

Any recommendations made during ETDM screening should have been entered into the “General Project Recommendations” section of the **Programming Screen Summary**

**Report.** If recommendations were made, the District reviews the recommendations during the PD&E phase to determine whether they continue to be applicable to the project. This may require contacting the ETAT member that made the recommendation, and discussing whether it is still applicable. If, through coordination, it is determined that a recommendation is no longer applicable, the Environmental Document should include a thorough discussion of the coordination with the ETAT member that led to this decision.

During the PD&E Study, FDOT may need to make project commitments to stakeholders in order to address social, cultural, physical natural or engineering issues and advance the project. See **Section 32.1.1** for guidance on preparing a project commitment. Once a Project Manager has identified a necessary commitment, they are responsible for coordinating with the District Design Office, Construction Office, District Permit Coordinator, Right of Way Office, or Maintenance Office to ensure the feasibility/viability of the commitment, and for obtaining approval on the commitment.

### 32.2.3.1 Documenting Commitments

Commitments established as a result of the PD&E Study and/or agency coordination must be documented in the **PCR**, the Environmental Document, and the project file. Commitments are documented in the **PCR** in accordance with **Section 32.1.2** and are transmitted to the Design and Construction Offices according to [Procedure No. 700-011-035, Project Commitment Tracking](#). The PD&E phase Project Manager must provide the **PCR** to the Design phase Project Manager.

Project commitments are documented in the Environmental Document and/or project file depending on the Class of Action. Project commitments are documented in the Commitments section of the [Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11](#), Environmental Assessment (EA), Environmental Impact Statement (EIS), or State Environmental Impact Report (SEIR). This section of the Environmental Document addresses all commitments which FDOT has entered into over the course of the PD&E Study. All commitments are listed verbatim as found in the body of the Environmental Document, accompanying technical reports, and as recorded on the **PCR**. Appropriate sections of the Environmental Document should be referenced in the Commitments section to provide context in which each commitment was made.

The Commitments section should include a list of commitments made, the agreed upon language, and the stakeholder(s) involved. It should include any commitments made through coordination with agencies/organizations during the PD&E phase, as well as any validated recommendations identified in the ETDM screening events.

Commitments may also be listed in associated technical reports (e.g., **Natural Resource Evaluation, Noise Study Report, Memorandum of Agreement**). These commitments should be included verbatim in the Commitments section of the Environmental Document and recorded on the **PCR**.

The project file should include additional information elaborating upon the commitment such as how it was arrived at, who the commitment is made to, and why it is necessary.

### 32.2.4 Reevaluation

Any changes after approval of the Environmental Document must be documented in a Reevaluation as per [Part 1, Chapter 13, Reevaluations](#). Reevaluations prepared through this process should provide a status update of the project commitments in the “Mitigation Status and Commitment Compliance” section of the **Reevaluation Form** ([Part 1, Chapter 13, Reevaluations](#)). Any new commitments arising from subsequent agency negotiations or permit requirements, along with any other commitments or considerations arising from public involvement activities, etc., are also listed, updated, and discussed.

### 32.2.5 Design Phase

During Design, the Design Project Manager is responsible for reviewing the **PCR** for project commitments made during the PD&E phase. The Design Project Manager should consult with the PD&E Project Manager, District Environmental Office and the Permit Coordinator as appropriate to ensure that project commitments are understood. The Design Project Manager should ensure that those commitments impacting a project’s design are accurately incorporated in the project plan, contract documents and/or determine if special provisions will be required. The Design Project Manager should also coordinate with the Permit Coordinator to ensure commitments related to permit conditions (e.g., wetland mitigation) are addressed.

Some examples of PD&E commitments that can be included in the project plan or contract documents during Design phase include:

- Additional design features and details
- Renewed consultation with state and/or federal regulatory agencies
- Pre-construction species-specific wildlife surveys
- Construction requirements and/or restrictions
- Design changes
- Project specific plan notes

The Design Project Manager must update the **PCR** to document that PD&E project commitments were reviewed and included in the project design plans and/or contract documents as appropriate. The Design Project Manager should ensure that the updated **PCR** is transmitted to the Right of Way or Construction Project Manager, as appropriate.

Prior to advancing the project to Right of Way or Construction phases, the Environmental Administrator completes the appropriate Status of Environmental Certification Form, [\*\*Status of Environmental Certification for Federal Project, Form No. 650-050-13\*\*](#) or [\*\*Status of Environmental Certification for State Funded Project, Form No. 650-050-14\*\*](#).

### **32.2.6 Right of Way Phase**

During the Right of Way phase, the Project Manager is responsible for reviewing the **PCR** for PD&E project commitments that may impact project right of way. It is the Project Manager's responsibility to coordinate with previous phase managers as appropriate to ensure that project commitments are understood. An example of a PD&E commitment that may be implemented during Right of Way phase is a commitment to have an archaeological monitor on site during right of way demolition activities.

### **32.2.7 Construction Phase**

The Project Manager in the Construction phase is responsible for reviewing the **PCR** for project commitments made during the PD&E phase, to ensure that they have been included in the project's contract documents and/or plan set and will be constructed. During Construction, it is the Project Manager's responsibility to ensure that the project is constructed according to the project design plans and that all of the project commitments found in the **PCR** are met and documented prior to final acceptance.

The District should have a clearly established protocol in place to re-engage the Environmental Office or others to address PD&E commitments as needed during construction. The District should establish a commitment tracking and monitoring protocol such as the use of a commitment compliance tracking consultant or in-house staff specifically assigned for this purpose.

During Construction Final Acceptance, the Project Manager is responsible for ensuring that the commitments were addressed including commitments specified in the contract plans, permit conditions and any commitments made during construction. This is handled by the Construction Office but may require Environmental Office involvement ([\*\*Chapter 8 of the Construction Project Administration Manual, Topic No. 700-000-000\*\*](#)).

### **32.2.8 Operation and Maintenance Phase**

During the Operation and Maintenance phase, the Project Manager is responsible for reviewing the **PCR** for project commitments that may impact maintenance of the project. It is the Project Manager's responsibility to coordinate with previous phase managers as appropriate to ensure that project commitments are understood. An example of a PD&E commitment that could impact the Operation and Maintenance phase is a commitment to maintain landscaping at a higher standard than FDOT Maintenance requirements.

## 32.3 REFERENCES

American Association of State Highway and Transportation Officials. 2006. Practitioner's Handbook. Tracking Compliance with Environmental Commitments/ Use of Environmental Monitors.

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FDOT. Current Version. Local Agency Program Manual, Topic No. 525-010-300. Accessed at [http://www.dot.state.fl.us/programmanagement/LAP/LAP\\_TOC.shtml](http://www.dot.state.fl.us/programmanagement/LAP/LAP_TOC.shtml) on 9/8/15.

## 32.4 HISTORY

1/12/2000, 1/5/2009

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION Project Commitments Record							700-011-35 Construction 11/12
Document information:			Project Limits:		FM#:		
Date:			Original PD&E FAP#:		ETDM #:		
Project Name:			Document Type:		Document Status:		
Project Segment #	Description	To	Approval	Implementation Phase	Status	Comments	Completion Date
<i>Project Development &amp; Environment Commitments</i>							
<i>Design Commitments</i>							
<i>Right-of-Way Commitments</i>							
<i>Construction Commitments</i>							
<i>Operations &amp; Maintenance Commitments</i>							

**Figure 32-1 Project Commitment Record**