

## **PART 2, CHAPTER 22**

### **COMMITMENTS**

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## PART 2, CHAPTER 22

### COMMITMENTS

#### 22.1 OVERVIEW

Pursuant to **23 United States Code (U.S.C.) § 327** and the implementing Memorandum of Understanding (MOU) executed on December 14, 2016, the Florida Department of Transportation (FDOT) has assumed and Federal Highway Administration (FHWA) has assigned its responsibilities under the **National Environmental Policy Act (NEPA)** for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS (**NEPA** Assignment). In general, FDOT's assumption includes all highway projects in Florida which source of federal funding comes from FHWA or which constitute a federal action through FHWA. **NEPA** Assignment includes responsibility for environmental review, interagency consultation and other activities pertaining to the review or approval of **NEPA** actions. Consistent with law and the MOU, FDOT will be the Lead Federal Agency for highway projects with approval authority resting in the Office of Environmental Management (OEM).

Commitments are an important component of a transportation project as they provide assurance to resource agencies and other stakeholders that identified issues will be addressed in future phases of project delivery. The primary purpose of this chapter is to provide guidance to 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 ensure the appropriate documentation and tracking of commitments through all phases of project development. Coordination among appropriate District staff from the PD&E phase through the Operation and Maintenance phase is critical to ensure commitments are tracked and completed. Commitments established as a result of the PD&E Study and/or agency coordination/consultation must be documented as described in [Section 22.2](#).

FDOT requires that commitments be tracked through [Procedure No. 650-000-003, FDOT Commitment Tracking](#) and reviewed and documented in subsequent re-evaluations. This procedure provides guidance on tracking and documenting project commitments throughout Project Development, Design, Right of Way (ROW), and Construction phases. Commitments must be tracked using Project Suite Enterprise Edition (PSEE) Commitments Module. PSEE can be used to generate the **Project Commitment Record (PCR), Form No. 650-000-001**. See [Section 22.2.3.1](#) for guidance on how to document and track commitments.

## 22.1.1 Project Commitments

A FDOT commitment is an obligation to an external stakeholder to provide a feature, or perform an action, related to a project that will be implemented in a future project phase. 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 construction to avoid impacts to protected resources

Project commitments may be established during the PD&E, Design, ROW, and Construction phases of a project. Commitments are rarely established during the Planning phase of a project, due to uncertainties of project impacts during this early project phase.

A commitment made during the PD&E phase as a result of coordination/consultation with agencies, the local community, or other stakeholders on social, cultural, physical, natural or engineering issues/resources is an environmental commitment. FDOT may make a commitment to the local community which could include context-sensitive solutions or design features like lighting, benches, bicycle or pedestrian facilities, aesthetic treatments, or landscaping.

A commitment may also be made to support federal and/or state permitting. During Permitting, these commitments may become permit conditions at the discretion of the applicable regulatory agency, and their status should be updated appropriately. For example, commitments regarding protected species or habitat impacts may be included in the permit at the discretion of the Florida Department of Environmental Protection (FDEP), Water Management District (WMD), or the U.S. Army Corps of Engineers (USACE). [Section 22.1.1.2](#) provides additional information on environmental 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, ROW Office, or Maintenance Office.

Before making a commitment, the project manager must coordinate with staff from the other project phases to ensure the action involved is feasible. The commitment must be

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 consider the practical impact a commitment may impose on future project phases and ensure that:

1. Commitments are clear and concise;
2. The commitment language is coordinated with the appropriate District subject matter expert(s);
3. Commitments do not contradict other commitments or requirements;
4. The source of and reason for the commitment is fully documented in the project file; and
5. Commitments are the result of agency consultation rather than regulatory requirements.

Project managers should be mindful of whether statewide precedence is being created when making 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 ROW for a non-transportation related purpose, or monitoring in perpetuity should prompt further discussion within the District and OEM 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 substantial 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 substantial funds, 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, a commitment should not be made to follow the [Standard Specifications for Road and Bridge Construction \(Standard Specifications\)](#). The [Standard Specifications](#) also note that FDOT follow

federal and state laws, rules, and regulations. Those should not be listed as commitments. For example, wetland mitigation is required as part of federal dredge and fill permits and state environmental resource permits. Therefore, wetland mitigation should not be listed as a commitment.

### **22.1.1.1 Local Agency Program Commitments**

FDOT is statutorily empowered to contract with other Local Agencies to plan, develop, design, acquire ROW, and construct transportation facilities through LAP. FDOT reimburses these Local Agencies for services provided to the public. When FDOT contracts with any Local Agency for reimbursement using federal funds administered by the FHWA, 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 contract documents.

FDOT's 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.

### **22.1.1.2 Permitting and Commitments**

Commitments regarding listed species and/or habitat that were identified during the PD&E phase may later be included as a specific condition in an environmental permit. Permit conditions are developed in coordination with the applicable regulatory agency and must be met to comply with an environmental permit. These conditions are normally 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 commitment made during the PD&E phase that may be included as a permit condition includes a commitment for species protection made in coordination with a regulatory agency, such as:

- Re-initiate or continue 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; or
- Protect a species during construction (such as the West Indian manatee, eastern indigo snake, and small-tooth sawfish).

Another commitment that may be included in an environmental permit is a commitment 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 archaeological site. This type of commitment is typically made during the PD&E phase and coordinated with the appropriate regulatory agency, such as the State Historic Preservation Officer (SHPO). The commitment would then be included as a permit condition at the discretion of the permitting agency during Design/permitting. When a commitment made in PD&E subsequently becomes a permit condition, its status should be updated appropriately.

### 22.1.2 FDOT Commitment Tracking

FDOT's procedure for documenting and tracking project commitments is in [Procedure No. 650-000-003, Project Commitment Tracking](#).

Project commitments made by FDOT must be included in the PSEE Commitment Module which is the standard system for documenting, transmitting, and tracking project commitments. For projects with a PD&E Study, the PD&E Project Manager uses PSEE to transmit commitments to the Project Manager during the Design phase (see [Section 22.2.3.1](#)). The **Project Commitment Record (PCR), Form No. 650-000-001** is generated using PSEE.

## 22.2 PROCEDURE

Some projects may qualify for Efficient Transportation Decision Making (ETDM) screening in the Environmental Screening Tool (EST). [Part 1, Chapter 2, Class of Action Determination for Highway Projects](#) 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.

## 22.2.1 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. The commitments are entered in PSEE and a **PCR** can be generated as necessary:

1. **Type 1 Categorical Exclusion (CE)** - For these projects, complete a **Type 1 Categorical Exclusion Checklist, Form No. 650-050-12** according [Part 1, Chapter 2, Class of Action Determination for Highway Projects](#). Include project commitments in the project file, and generate a **PCR** as detailed in [Section 22.1.2](#).
2. **Non-Major State Actions (NMSA)** - Complete a **Non-Major State Action Checklist, Form No. 650-050-30** ([Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery](#)). For these projects include project commitments in the project file, and generate a **PCR** as detailed in [Section 22.1.2](#).
3. **Type 2 CE** - 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 [Section 22.2.3.1](#) for guidance on documenting Type 2 CEs.

## 22.2.2 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 and through the PD&E phase.

## 22.2.3 Project Development and Environment Phase

During PD&E, FDOT should review the **Programming Screen Summary Report** to consider 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. The

Project Manager adds commitments to PSEE after approval of the Environmental Document.

Agency or stakeholder recommendations, if any, made during ETDM screening are in the “General Project Recommendations” section of the **Programming Screen Summary Report**. 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 resource agencies or other stakeholders to address social, cultural, physical natural or engineering issues and advance the project. See [Section 22.1.1](#) 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, ROW Office, or Maintenance Office to ensure the feasibility/viability of the commitment, and for obtaining approval on the commitment.

### 22.2.3.1 Documenting Commitments

All commitments established as a result of the PD&E Study and/or agency coordination must be documented in the Commitments section of the Environmental Document (Type 2 CE, Environmental Assessment, Environmental Impact Statement, or State Environmental Impact Report). 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. Commitments may also be listed in associated technical reports (e.g., **Natural Resource Evaluation, Noise Study Report, Memorandum of Agreement**). The PD&E phase Project Manager should include these commitments in the “Commitments” section of the final Environmental Document and enter them into the PSEE Commitment Module in accordance with [Section 22.1.2](#), so they can be transmitted to the Design and Construction Offices according to [Procedure No. 650-000-003, Project Commitment Tracking](#).

### 22.2.4 Re-evaluation

The status and/or changes to an environmental commitment after approval of the Environmental Document must be documented in a re-evaluation as per [Part 1, Chapter 13, Re-evaluations](#). Re-evaluations prepared through this process should provide a status update of the commitments by attaching the **PCR** in the “Commitment Status” section of the **Re-evaluation Form, Form No. 650-050-29**. Commitments can be made after an Environmental Document has been approved. These new commitments typically arise from subsequent agency negotiations, public involvement activities. They should be discussed in the appropriate resource section of the **Re-evaluation Form, Form No. 650-**



**050-29** and listed as a new commitment in the Commitments section. The new commitments are also added to the **PCR** using PSEE. The District Environmental Office uses the PSEE Commitment Module to generate the **PCR** to attach to the Re-evaluation.

### **22.2.5 Design Phase**

During Design, the Design Project Manager is responsible for reviewing PSEE for project commitments made during the PD&E phase. The Design Project Manager should coordinate 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 commitments impacting a project's design are completed or accurately incorporated in the contract documents. The Design Project Manager should also coordinate with the Permit Coordinator to ensure commitments related to permit conditions (e.g., species protection measures) are addressed.

The Design Project Manager is responsible for providing an update to the status of commitments during Design phase. The status update of the commitment in the PSEE Commitment Module is typically handled by the Design Project Manager but in some Districts, this may be completed by the Environmental Management Office. The Design Project Manager should ensure that the updated **PCR** is transmitted to the ROW or Construction Project Manager, as appropriate.

The District should have a clearly established protocol in place to re-engage the Environmental Office or others to address project commitments including any new commitments as needed during Design phase. It is helpful to discuss commitments during project coordination meetings or hand off meetings, and prior to Construction phase to ensure commitments are addressed.

### **22.2.6 Right of Way Phase**

During the ROW phase, the District Right of Way Office is responsible for coordinating with the Design Project Manager for potential new commitments identified in the ROW phase. Once Commitments are determined to be appropriate, the Right of Way Office enters the Commitments in the Right of Way Management System (RWMS) for tracking with PSEE.

The District should have a clearly established protocol in place to re-engage the Environmental Office or others to address project commitments including any new commitments as needed during the ROW phase. It is helpful to discuss commitments during project coordination meetings or hand off meetings, and prior to the Construction phase to ensure commitments are addressed.

## 22.2.7 Construction Phase

The Project Manager in the Construction phase is responsible for reviewing the **PCR** for project commitments to ensure that they have been included in the project's contract documents to be addressed during construction. 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 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 project commitments as needed during construction.

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 new 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](#)).

## 22.2.8 Operation and Maintenance Phase

Most commitments are addressed during Design or Construction phases. Commitments are rarely fulfilled during the Operation and Maintenance phase. However, in the rare instance when a commitment is transmitted to the Operation and Maintenance phase, the Project Manager is responsible for reviewing the **PCR** for project commitments to ensure that project commitments are understood and fulfilled. An example of a PD&E commitment that could impact the Operation and Maintenance phase is a commitment to maintain landscaping in a specific manner which may differ from standard FDOT Maintenance requirements.

## 22.3 REFERENCES

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

FDOT. Construction Project Administration Manual, Topic No. 700-000-000.  
<http://www.dot.state.fl.us/construction/manuals/cpam/CPAMManual.shtm>

FDOT. Efficient Transportation Decision Making Manual, Topic No. 650-000-002.  
<http://www.fdot.gov/environment/pubs/etdm/etdmmanual.shtm>

FDOT. Local Agency Program Manual, Topic No. 525-010-300.  
[http://www.dot.state.fl.us/programmanagement/LAP/LAP\\_TOC.shtm](http://www.dot.state.fl.us/programmanagement/LAP/LAP_TOC.shtm)

FDOT. Project Commitment Tracking, Topic No. 650-000-003.

<http://fdotwp1.dot.state.fl.us/ProceduresInformationManagementSystemInternet/FormsAndProcedures/ViewDocument?topicNum=650-000-003>

FDOT. Standard Specifications for Road and Bridge Construction.

<http://www.dot.state.fl.us/programmanagement/Specs.shtm>

Memorandum of Understanding Between FHWA and FDOT Concerning the State of Florida's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. 327, December 14, 2016.

[https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/executed-fdot-nepa-assignment-mou-2016-1214.pdf?sfvrsn=fe9a018f\\_0](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/executed-fdot-nepa-assignment-mou-2016-1214.pdf?sfvrsn=fe9a018f_0)

## 22.4 FORMS

Non-Major State Action Checklist, Form No. 650-050-30\*

[Project Commitment Record Form, Topic No. 650-000-001](#)\*\*

Re-evaluation Form, Topic No. 650-050-29\*

Type 1 Categorical Exclusion Checklist, Form No. 650-050-12\*

Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11\*

\*To be completed in the [StateWide Environmental Project Tracker](#)

\*\*To be completed in PSEE Commitments Module

## 22.5 HISTORY

1/12/2000, 1/5/2009, 2/23/2016, 6/14/2017: NEPA Assignment and re-numbering from Part 2 Chapter 32