

PART 2 CHAPTER 23

STATE-OWNED UPLAND CONSERVATION LAND COORDINATION

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PART 2 CHAPTER 23

STATE-OWNED UPLAND CONSERVATION LAND COORDINATION

23.1 OVERVIEW

Pursuant to **23 United States Code (U.S.C.) § 327** and the implementing Memorandum of Understanding (MOU) executed on May 26, 2022, 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 the 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).

This chapter provides guidance for projects requiring the use of state-owned upland conservation lands which are managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation. These lands are held by the Board of Trustees of the Internal Improvement Trust Fund (TIITF), which is also referred to as the Board of Trustees (BOT).

The TIITF is responsible for the acquisition, administration, management, control, supervision, conservation, protection and disposition of all land owned by the state or any of its agencies, departments, boards or commissions with specific exclusions provided in **Section 253.03, Florida Statutes (F.S.)**, such as land held for transportation facilities, transportation corridors, and canal rights of ways.

Administratively supported by the Florida Department of Environmental Protection (FDEP), the Acquisition and Restoration Council (ARC) administers the review and approval of management plans and land uses for all state-owned conservation lands, which includes overseeing the process of review of acquisition of interests (i.e., easements) on these lands and recommending approvals to the BOT. This includes acting on FDOT's applications for easements on such lands.

Additionally, the TIITF has delegated some of its authority to FDEP staff to handle other forms of authorization to allow local, state and federal governmental agencies to use state-owned uplands provided that the requested action does not prevent the intended use of the property.

To acquire an upland interest in state-owned conservation lands, the District will need to follow the procedure outlined in [Section 23.2](#). State-owned conservation lands may include uplands or sovereignty submerged lands. Sovereignty submerged lands, sometimes referred to as sovereign submerged lands, are those lands beneath navigable freshwater or tidally influenced waters for which Florida acquired title in 1845 by virtue of statehood and which have not been conveyed out of state ownership. This chapter only addresses use of upland state-owned conservation lands. For the FDEP Division of State Lands' (DSL) purposes, uplands are defined as those lands above the mean high water line (or ordinary high water line), title to which is vested in the TIITF of the State of Florida. Use of state-owned submerged lands are addressed in [Part 1, Chapter 12, Environmental Permits](#).

To request authorization to use state-owned uplands temporarily for construction, maintenance, or other purposes, the District will need to follow the procedure outlined in this chapter under [Section 23-15](#).

23.1.1 Programs, Statutes, and Policies

23.1.1.1 Land Acquisition Funds

In 1963, the State of Florida initiated land acquisition programs, which established funds to purchase land for both recreation and conservation use. The TIITF is responsible for purchasing these lands under the various acquisition programs.

23.1.1.2 Specific Programs

In addition to TIITF owned conservation land, the following programs were developed for land acquired either directly or with matching state lands conservation program funds, and are subject to the provisions described in this Chapter:

- Land Acquisition Trust Fund (LATF)
- Environmentally Endangered Lands (EEL)
- Conservation and Recreation Lands (CARL)
- Save our Coast (SOC)
- Save Our Rivers (SOR)
- Preservation 2000 (P-2000)
- Florida Communities Trust (FCT)
- Florida Forever (FF)

Lands acquired under these programs may be individually managed by one of several state resource agencies or their associated offices, or local governments with programs using state conservation land funds, such as the Miami-Dade County EEL Program, which have established conservation areas using state conservation funds; examples of State Land Management agencies include:

- FDEP
 - Office of Resilience and Coastal Protection
 - Division of Recreation and Parks
- Florida Department of State
 - Florida Division of Historical Resources (FDHR)
- Department of Agriculture and Consumer Services (DACS)
 - Florida Forest Service (FFS)
- Florida Fish and Wildlife Conservation Commission (FWC)
- Water Management Districts

23.1.1.3 Statutory Authority

- **Section 253.001, F.S.**, reaffirms the BOT's existence and its duty to hold lands in trust for the use and benefit of the people of the state pursuant to the ***Florida Constitution***.
- **Section 253.02, F.S.**, establishes a board of four trustees, consisting of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, to manage the lands and administer the funds associated with the sale and management of the lands. This statute authorizes the BOT to grant easements on state-owned conservation lands for electric transmission and distribution facilities, and to set up a provision for fee simple title exchange to manage impacts. This statute was the basis for BOT developing its policy for all linear facilities, which includes transportation projects.
- **Section 259.035, F.S.**, created the ARC, an entity that maintains review and advisory authority over lands designated as conservation land and/or land acquired under the land acquisition programs described above. The ARC is comprised of 10 voting members, as listed:

- Four (4) appointees from the Governor of which three (3) shall be from related scientific disciplines and one shall have specific land management experience;
- One (1) appointee from Executive Director of FWC;
- One (1) appointee from Commissioner of DACS;
- Secretary of the FDEP (or designee);
- Director of the FFS (or designee);
- Director of the FDHR (or designee);
- Executive Director of the FWC (or designee).

The statute also defines the FDEP staff as primary support. The ARC oversees the evaluation, selection and ranking of state land acquisition projects on the Florida Forever priority list. In addition, the ARC administers the review and approval of management plans and land uses for state-owned conservation lands.

- **Section 253.77, F.S.**, states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, the title to which is vested in the TIITF under this chapter, until the person has received the required lease, license, easement, or other form of consent authorizing proposed use.
- **BOT Delegation Reaffirmation/Deletions/Modifications**, approved by the TIITF on September 29, 2015, provides in DSL-24: wherein the BOT has granted FDEP delegations of authority to “approve, execute, and modify leases, subleases, easements, use agreements, permits, and management agreements, and other forms of authorization to use state-owned uplands to local, state, and federal governmental bodies, and public utilities provided that any such action not inhibit any intended use of the property. If the land is state-owned conservation or recreation lands, such approval may not be granted if the use is incompatible with or contrary to the purposes for which the land was purchased or would diminish the ecological, conservation, or recreational values of the lands.” **[ED-19; Section 253.034, F.S.]**
- **Chapter 18-2, Florida Administrative Code (F.A.C.)**, provides for the policies, standards and criteria for evaluating requests to use state-owned uplands through specific forms of consent such as use agreements or letters of authorization.

23.1.1.4 Policies

The following policies were established by the TIITF to provide criteria by which an easement can be granted to linear facilities (such as FDOT roadway corridors) as

authorized under **Section 253.02, F.S.**, and to address conditions in which the TIITF can impose minimization or mitigation of impacts to state-owned conservation lands originally established by land acquisition programs listed in **Section 23.1.1.2**. These policies have been further codified in **Chapter 18-2, F.A.C. – Management of Uplands Vested in the Board of Trustees**.

The **Policy for Incompatible Use of Natural Resource Lands** approved by the TIITF on August 9, 1988, applies to linear facilities including public transportation corridors. This policy describes considerations taken by the TIITF in authorizing use of state-owned conservation lands. It describes conditions the TIITF may impose to minimize or mitigate unavoidable adverse impacts to the use of the natural resource and public enjoyment of the use of such lands, including requiring the acquisition of mitigation lands adjacent to or within the boundaries of the affected natural resources. In exchange for such easements **Section 253.02(2)(b)4, F.S.**, provides that the applicant shall provide additional compensation by vesting fee simple title in the TIITF to other available uplands that are 1.5 times the size of the easement acquired by the applicant. Parcels acquired on behalf of TIITF must have an economic, ecological, and recreational value that is at least equivalent to the value of the lands under the proposed easement. Priority for replacement uplands shall be given to parcels identified as inholdings and additions to public lands and land on a Florida Forever land acquisition list by the Land Management Agency of the affected natural resource.

Also, if the use of the land is to be located on state forests, parks, EEL, CARL, LATF, or other state natural resource lands, it must provide a “net positive benefit” to the particular lands on which the use will be located; and if the use is to be located on EEL lands, it must be in strict accord with the public purpose for which the land was acquired. “Net positive benefit” is defined as follows:

...means any effective action or transaction which promotes the overall characteristics of a particular parcel of natural resource lands. It is compensation over and above the market value of the affected parcel to offset any requested use or activity which would preclude or affect, in whole or in part, current or future uses of the natural resource lands. Net positive benefit shall not be solely monetary compensation but shall include mitigation and other consideration related to environmental or management development or restoration that produces a new or modified environment that is more productive or is ecologically more valuable.

The policy, **Use of Natural Resource Lands by Linear Facilities As Approved by The Board of Trustees of the Internal Improvement Trust Fund on January 23, 1996** describes measures to be taken when there is no practicable alternative to the use of the land by minimizing adverse impacts to natural resource lands where applicable and providing mitigation.

For mitigation, the policy requires the applicant pay the TIITF an amount not to exceed fair market value of the interest acquired in the parcel on which the linear facility and

related appurtenances will be located. In addition to the amount for the land, the applicant must also provide the managing agency that measure of additional money, land, or services necessary to offset the actual adverse impacts reasonably expected to be caused by the construction, operation, and maintenance of the linear facility and related appurtenances. Such impact compensation will be calculated from the land managing agency's timely presentation of documented costs which will result from the impacts of the proposed project.

Generally, the lands purchased under the Incompatible Use policy do not substitute for additional compensation under the Linear Facilities policy, and FDOT will have to provide additional compensation to the Land Management Agency, as well as a “net positive benefit” as defined in **Rule 18-2.017(31), F.A.C.**, for an easement across state land which is managed for the conservation and protection of natural resources under the Incompatible Use policy. The amount paid by the FDOT for the additional compensation will be 1-2 times the appraised value of the impacted lands. Note however; avoidance and minimization of impacts is coordinated by the District with the Land Management Agency before application to the TIITF.

23.2 PROCEDURE

23.2.1 Identification of State-Owned Conservation Lands and Applicability

The District should identify potential use of state-owned conservation lands early in the development and environmental review of a project, regardless of the type of Environmental Document being prepared and regardless of whether it requires a federal or state Environmental Document.

Many of these lands are available within the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST) by searching for “ARC” in the Map Viewer. District coordination with the Land Management Agency or the FDEP Bureau of Public Land Administration (BPLA) is appropriate to confirm that the land in question has been acquired utilizing the acquisition program(s) listed in [Section 23.1.1.2](#) or is currently designated as TIITF-owned conservation land.

These lands typically function as conservation areas, recreation areas, parks, and wildlife refuges. Other environmental regulations may apply to the impacted state-owned conservation land, which must be addressed during the project study. These other laws/regulations are further discussed in [Section 23.4](#).

The District is expected to keep OEM informed of potential use of state-owned conservation lands and its intent to consult with the Land Management Agency at the local and headquarters levels and the ARC (through coordination with the FDEP). The District should conduct early coordination with the appropriate Land Management Agency to confirm that state-owned conservation land potentially impacted by a project was

originally acquired through the acquisition programs listed in [Section 23.1.1.2](#), or it is designated as a conservation land by the TIITF and document this coordination in the project file. If the lands are anticipated to be impacted, and are subject to review by the BOT, additional written coordination will be required and documented in the project file as described in [Section 23.2.2.1](#). Additionally, when these lands are within the project study area, the District should describe this in the Environmental Document, including the presence of these lands, the level of involvement and results of associated coordination.

23.2.2 Coordination

23.2.2.1 Coordination Between FDOT and the Land Management Agency

If during the early stages of the transportation project, it is determined that the FDOT will directly impact state-owned conservation lands, the District should coordinate further with the Land Management Agency throughout the Project Development and Environment (PD&E) and Design phases, and go through the process of evaluating and documenting avoidance, minimization, and mitigation considerations to achieve "no net harm" to the state-owned conservation land. This coordination process is provided in [Figure 23-1](#). Depending on the project and complexity of involvement with the state-owned conservation land, the time needed to coordinate with the Land Management Agency may vary significantly. Following initial communication with the Land Management Agency, if warranted, the District prepares correspondence with a detailed summary for consideration by the Land Management Agency, which includes a description of coordination conducted, a description of anticipated impacts and justification and a summary of the avoidance, minimization and mitigating considerations which the Land Management Agency may use in crafting a letter of no objection and/or determination of net positive benefit.

Ultimately, an official letter from the Land Management Agency to the District should be obtained which summarizes the steps taken to achieve "no objection" to the state-owned conservation land. Proposed mitigation measures to obtain a "net positive benefit" determination by the Land Management Agency will vary depending on the property, its use, and the potential unavoidable impact. These should be negotiated and may include financial contribution, additional right of way acquisition or physical enhancement of property features, appropriate to offset or restore the impacted portions of the land. The District should also coordinate with appropriate FDOT functional area representatives: for example, District Right of Way Office or Office of the General Counsel, in establishing appropriate proposed mitigation measures.

23.2.2.2 Coordination between FDOT, Land Management Agency, and Bureau of Public Lands Administration

The FDEP DSL, BPLA administers the application process for obtaining easements on state conservation lands. Upon initiation of coordination with the Land Management

Agency, the District should also contact the BPLA to coordinate additional steps needed to obtain an easement to utilize these lands.

Minimally, upon receipt of a letter from the appropriate Land Management Agency, the District will prepare an **Upland Easement Application** and include supplemental information ([Section 23.2.3.1.2](#)). The Land Management Agency or the BPLA provides the narrative required in the **Upland Easement Application**. In cases of larger impacts to state-owned conservation lands, additional information to the **Upland Easement Application** may be provided in a **State Lands Impact Report (SLIR)**. See [Section 23.2.3.1.3](#). The BPLA reviews the package for completeness and when complete, will prepare an item for presentation at a regularly scheduled ARC meeting. Contact information for the FDEP office which handles impacts to state-owned conservation lands and information on submitting the **Upland Easement Application** is provided in [Figure 23-2](#).

23.2.2.3 District Coordinates with OEM Director

The District should communicate with the OEM Director regarding the anticipated impact to state-owned conservation lands, and the need to fulfill **Upland Easement Application** requirements. This communication may be accomplished through the District's assigned OEM Project Delivery Coordinator (PDC). OEM will inform FDOT's Office of General Counsel (OGC) in Central Office as appropriate.

23.2.2.4 Mitigation

The District should coordinate with the Land Management Agency and BPLA as appropriate and determine potential impacts to the state-owned conservation land and measures to achieve "net positive benefit" through the avoidance, minimization, and/or development of any enhancement features that will minimize harm to state-owned conservation land ([Section 23.2.2.1](#)).

Based upon these proposed measures, as warranted, the District will coordinate with the Land Management Agency and begin early preparation of a MOA if necessary. The MOA would formalize FDOT's mitigation commitments for the proposed impact, and/or the necessary funds (or land donation) that provide mitigation.

23.2.3 Upland Easement Application, ARC Agenda Item Package and Memorandum of Agreement

The District prepares an **Upland Easement Application** for preliminary staff review and comment by the Land Management Agency and BPLA and submits it to the BPLA. See [Figure 23-2](#) for submittal information. Under **Rule 18-2.109(4), F.A.C.**, agencies do not have to pay a non-refundable application fee.

Once the **Upland Easement Application** is accepted, the BPLA assembles and submits an ARC Agenda Item Package to the ARC Staff Director. At this point, the ARC Staff

Director will be responsible for scheduling a project review at a regularly scheduled meeting of the ARC. The MOA, when warranted, is developed after the **Upland Easement Application** is completed and after the ARC approval of the impact to state-owned conservation lands.

23.2.3.1 ARC Agenda Item Package

In preparation of the ARC Agenda Item Package, the BPLA staff will consider the **Upland Easement Application** and the supplemental information provided by the Land Management Agency. Coordination, with the Land Management Agency having jurisdiction over the subject property, is summarized in the **Upland Easement Application** narrative or when extensive information is needed, it may be provided in a **SLIR** prepared by the District. Additionally, correspondence with the Land Management Agency regarding net positive benefit recommendations should be attached and described in the Upland Easement Application.

23.2.3.1.1 Upland Easement Application

The following items are incorporated into the **Upland Easement Application**. This list only includes items that are relevant to FDOT projects. The most recent BPLA application form can be found on the **FDEP Website** ([Section 23.5](#)):

1. Requested Action
2. Authorization Requested
3. Type of Entity Requesting Authorization
4. Contact and Property Information
5. Descriptive Narrative describing the intended use of the property. Narrative shall include the following:
 - a. The requested term, which shall not be greater than is necessary to provide for the reasonable use of the state land and shall not be greater than the parent lease term.
 - b. The need for the proposed use of state lands and written evidence that all other alternatives to the use of state lands have been denied.
 - c. Projected revenue to be generated from the use of state lands.
 - d. Whether the intended use is public or private and the extent of public access for such use.

- e. A statement describing the public benefits that will occur as a result of the proposed use of state lands.
6. A written statement from the managing agency approving the proposed action, along with a statement describing how the proposed easement conforms to the management plan or land use plan (when the easement application involves state land which is under lease or sublease).
7. Required Attachments- The following must be completed and attached for all types of authorization requests:
 - a. A recent aerial photograph with the boundaries of the proposed project.
 - b. A county tax map identifying the parcel(s).
 - c. A letter from the applicable local planning agency stating that the proposed use of state lands is consistent with the local government comprehensive plan.
 - d. A certified survey or sketch of description, which contains the boundaries, legal description(s), and acreage of the property.

23.2.3.1.2 Supplemental Information for the Upland Easement Application

There are recommended items to support and provide the narrative for the ***Upland Easement Application*** that are the responsibility of the BPLA and the Land Management Agency. The District should coordinate the preparation of the ***Upland Easement Application*** and the following supplemental information with the the Land Management Agency prior to submittal:

1. Description of when and under what program or fund the parcel under consideration was acquired (i.e., EEL, LATF), or donated.
2. Description of the purpose of the parcel's acquisition (P-2000 or FF goals and criteria or similar purpose descriptions) or donation and restrictions or conditions of use that apply to the parcel, if any.
3. Description of the current level of public recreational use or public access of the parcel.
4. Description of the natural resources, land cover, vegetation, habitat, or natural community, if any, that are currently present on the parcel.

5. Description and list of the imperiled and other wildlife species, if any, that occur or have use of the parcel. If appropriate, any species survey commitments by FDOT prior to construction.
6. Description and list of historical and/or archeological resources, if any, that occur or have the potential of occurring on the site.
7. Formal alternative siting analysis (i.e., the PD&E alternatives analysis) that includes a description and assessment of other potential alternative sites, and why they are not feasible or practicable alternatives.
8. Assessment of the impacts the proposed alternative use will have on the natural/historical/archeological/recreational resources, if any, as well as on the current public use, and purpose for the site or parcel.
9. Assessment of the potential impacts on the larger area of conservation lands the parcel is located within (park, wildlife management area, forest trail), and on any surrounding conservation lands, if any.
10. Assessment of how the proposed package of consideration and "net positive benefit" for the requested alternative use of the parcel [such as the general standard requirement for replacement land (depending on parcel's size)], will offset the impacts and benefit the larger area of conservation lands (e.g., park, forest, wildlife management area, trail system) that the parcel is within and particularly how it will offset the impacts or benefit the natural/historical/archeological resources, habitat, and public recreational uses of the public conservation area the parcel is located within.

23.2.3.1.3 State Lands Impact Report

The **SLIR** is a detailed report which is prepared utilizing similar information gathered from the PD&E Study documents. The report further addresses the supplemental information to the **Upland Easement Application** described in [Section 23.2.3.1.2](#). Projects with PD&E Studies may have the necessary information available; however, projects without a PD&E Study may require additional information-gathering or analysis and additional time to prepare such information.

23.2.3.2 Scheduling ARC Meeting Agenda Item

Once the BPLA provides the ARC Agenda Item Package to the ARC Staff Director, then the item will be scheduled for the next available ARC meeting. The District should work closely with the BPLA during scheduling of the ARC agenda and inform the OEM PDC of these activities.

The ARC typically meets six times a year (February, April, June, August, October, and December); therefore, review duration can extend for 3-4 months. The Districts should

make sure that the ARC Agenda Item documents are finalized with the BPLA at least one month prior to the ARC meeting so that the item can be timely placed on the ARC Agenda and check with BPLA for correct meeting dates.

23.2.3.3 ARC Review of ARC Agenda Item Package

The ARC meetings are public meetings. The District advises the OEM Director of scheduled ARC meetings when an ***Upland Easement Application*** submitted by FDOT is under consideration. At an ARC meeting, either the District presents its request for an easement to the ARC or the BPLA may present the District's request, other stakeholders may present, the public may comment, and then the Council is expected to act on the information provided. FDOT Central Office representatives may attend as needed.

Depending on the nature and extent of the required use of the lands, the District may need to present during the ARC meeting. The PowerPoint presentation outlines the proposed project, avoidance/minimization measures, development of enhancement features, use of state-owned conservation lands, final mitigation proposed for impact to these state lands, and other background information pertinent to the review and approval of the application package. Project location maps and other exhibits will be helpful in explaining the proposed impact to such lands.

23.2.3.4 ARC Determination and Development of the MOA

After review of the ARC Agenda Item Package, the ARC will make the Linear Facilities Policy Determination in regard to the impact to the state-owned conservation lands. If the ARC does not approve the impact, they may defer concurrence to a future meeting, for another review, or defer to the BOT for approval.

If the ARC approves the application package, then the application is revised and finalized. If an MOA is necessary to memorialize those measures which have been conceptually agreed to by the Land Management Agency in issuance of its official letter to FDOT outlining the steps to achieve "net positive benefit", the Land Management Agency, the FDOT, and the TIITF would be signatories.

Depending on the mitigation proposal, there may be a need for the District to program appropriate funds within the Work Program to cover mitigation costs. This step is key to ensuring that available funds will be administered to project mitigation for the impacts to state-owned conservation lands.

23.2.3.5 Agencies sign MOA; FDEP Prepares Easement Document for FDOT Approval

After the ARC meeting and easement approval, the MOA, if necessary, is finalized and signed off on by all agencies pertinent to the MOA.

In addition, BPLA will prepare an easement document for FDOT review and approval. Under **Rule 18-2.020(4)(d), F.A.C.**, public easements are not subject to an easement fee.

Once both agencies have signed the document, FDOT records the easement with the Clerk of Courts.

23.2.3.6 Other Upland Authorizations for Temporary Use of State-Owned Lands

For projects that require a **temporary use** of state-owned uplands for the purpose of construction or maintenance activities, **Chapter 18-2, F.A.C.**, provides for different types of authorizations that FDOT may apply for through the FDEP DSL. There are two types of approval that may be useful to FDOT that have been delegated to FDEP staff. These authorizations are:

1. The approval, execution and modification of use agreements and
2. letters of authorization to use state-owned uplands to local, state, and federal governmental bodies.

These authorizations are allowable as long as the use is not incompatible with or contrary to the purposes for which the land was purchased, or will diminish the ecological, conservation, or recreational value of the lands. These two types of authorization do not require appraisals or application fees.

23.2.3.6.1 Use Agreements

Use Agreements may be applicable when the use of management of uplands does not require a lease, sublease, easement, or other similar form of approval. This type of agreement is for a specific purpose and a specific time, and it does not create a title interest in those uplands. These agreements are limited to a term of five years.

Appraisals are not required for Use Agreements. The consideration for Use Agreements shall be negotiated with the FDEP DSL based on the type of activity.

23.2.3.6.2 Letters of Authorization

A Letter of Authorization allows the applicant the right to erect specific structures or conduct specific activities on state-owned uplands. This type of authorization is issued upon receipt by the FDEP DSL of a written request for an incidental, one-time use, and a determination that the requested activity will not result in a permanent alteration of the state-owned uplands and will not adversely affect the management of the land.

Letters of Authorization contain a condition that the applicant will accept all liability associated with the proposed use and shall be countersigned by the applicant. Appraisals

are not required for Letters of Authorization. Consideration for this type of authorization shall be negotiated based on the type of activity.

23.2.3.6.3 Procedures to Obtain

The District will prepare an FDEP **Supplemental Questionnaire for Land Use Application, FDEP Form DRP-081**, and include additional information as required by the application. This application is submitted to FDEP as provided in [Figure 23-2](#). This application requires information on identifying the property, proposed use, a location map, and information on avoidance, impacts, and minimization.

23.3 ENVIRONMENTAL DOCUMENTATION

The documentation required for each type of Environmental Document is outlined below:

Type 1 Categorical Exclusion (Type 1 CE) - Identify in the **Type 1 Categorical Exclusion Checklist** ([Part 1, Chapter 2, Class of Action Determination for Federal Projects](#)) if there are state-owned conservation lands being acquired in the project area that are subject to review and approval by the ARC. Include a summary of impacts and coordination (as appropriate) under the Right of Way issue header and include any correspondence in the project file. Final decisions by the ARC and a copy of the MOA if applicable, should be referenced and included in the project file.

Non-Major State Action (NMSA) - Identify in the **Non-Major State Action Checklist** if there are state-owned conservation lands being acquired in the project area that are subject to review and approval by the ARC. Include a summary of impacts and coordination (as appropriate) under the Right of Way issue header and include any correspondence in the project file. Final decisions by the Council and MOA if applicable, should be referenced and included in the project file.

Type 2 Categorical Exclusion (Type 2 CE) - The Cultural Resources/Recreational Areas and Protected Lands section of the **Type 2 Categorical Exclusion Determination Form** should specify if state-owned conservation lands are present in the project area. If present, describe the state-owned conservation land subject to review by ARC in the comment box and summarize the outcome of coordination. Include correspondence in the project file. If final decisions by the ARC are made and the MOA is signed prior to Location and Design Concept Acceptance (LDCA), they should be referenced and attached.

Environmental Assessment (EA) and Environmental Impact Statement (EIS) - The discussion of impacts to state-owned conservation land should be included in the Recreational Areas and Protected Lands subsection of the Environmental Analysis Section of the Environmental Document. It should include a summary of the identification and impact to state-owned conservation land and the ARC review process. Correspondence during this process should be referenced in the Environmental Analysis section, and added to the StateWide Environmental Project Tracker (SWEPT) project file.

If final decisions by the ARC and MOA are made prior to LDCA, they should be included in the Appendix.

State Environmental Impact Report (SEIR) - The discussion of impacts to state-owned conservation lands should be included in the Recreational Areas and Protected Lands Section of the SEIR. It should include a summary of the identification and impact to state-owned conservation land and the ARC review process. Correspondence during this process should be included in the SWEPT project file. If final decisions by the ARC are made and the MOA is completed prior to LDCA, they should be attached.

State-owned conservation land commitments, including commitments in the MOA, are documented in the Commitments section of a Type 2 CE, EA, EIS, or SEIR. See [Part 2, Chapter 22, Commitments](#) for more detail on how to prepare this section. Commitments should be documented according to [Procedure No. 650-000-003, Project Commitment Tracking](#).

Changes in impacts to state-owned conservation land after approval of the Environmental Document must be documented per [Part 1, Chapter 13, Re-evaluations](#).

23.4 OTHER APPLICABLE LAWS AND REGULATIONS

When transportation projects affect state-owned conservation lands, other state or federal provisions may apply. In addition to assessment of potential environmental impacts within the project area as further described through-out the [PD&E Manual](#), it should be noted that other, similarly-related federal laws may need to be considered, as applicable, concurrent with ARC coordination.

Because of *NEPA* Assignment, FDOT has assumed FHWA responsibilities for **Section 106** coordination, and has the authority to administer most of the anticipated **Section 4(f)** requirements. Examples of such additional requirements are listed below.

- **Section 4(f)** of the *U.S. Department of Transportation (USDOT) Act of 1966*. Most components are administered by FDOT, in coordination with the resource owner/manager. FHWA coordination is necessary for constructive use and certain other parameters. See [Part 2, Chapter 7, Section 4\(f\) Resources](#), for additional detail.
- **Section 6(f)** of the *Land and Water Conservation Fund Act*. This refers to a federal funding program which provides recreation and conservation funds to states for use in the purchase and development of parks, recreation areas, and refuges. See [Part 2, Chapter 7, Section 4\(f\) Resources](#), for additional detail.
- **Section 106** of the *National Historic Preservation Act of 1966*, which is now administered by FDOT and involves coordination with the State Historic Preservation Office (SHPO) and potentially with the Advisory Council on Historic

Preservation. See [Part 2, Chapter 8, Historical and Archeological Resources](#), for additional detail.

23.5 REFERENCES

BOT of IITF. Policy; Incompatible Use of Natural Resource Lands, August 9, 1988

BOT of IITF. Policy; Use of Natural Resource Lands by Linear Facilities, January 23, 1996

Chapter 18-2, F.A.C., Management of Uplands Vested in the Board of Trustees

Chapter 253, F.S., State Lands

Chapter 259, F.S., Land Acquisitions for Conservation or Recreation

First Renewal of the 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, May 26, 2022.
https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/nepa_assign/fdot-327-first-renewal-mou-for-comment.pdf?sfvrsn=202c70b4_2

FDEP. Acquisition and Restoration Council Website.
<https://floridadep.gov/lands/environmental-services/content/acquisition-and-restoration-council-arc>

FDEP. Memorandum. BOT Delegations Reaffirmation/Deletions/Modifications, September 29, 2015

FDEP. Supplemental Questionnaire for Land Use Applications, FDEP Form DRP-081 (Effective 06-20-2014, revised 06-28-2019).
https://floridadep.gov/sites/default/files/06.2019%20DRP_081_UPDATED_0.pdf

FDEP. Upland Easement Application (Land Lease Application).
<https://floridadep.gov/lands/bureau-public-land-administration/content/uplands-management>

FDOT. Project Commitment Tracking, Procedure No. 650-000-003. <https://pdl.fdot.gov/>

23.6 HISTORY

7/1/2020: New chapter

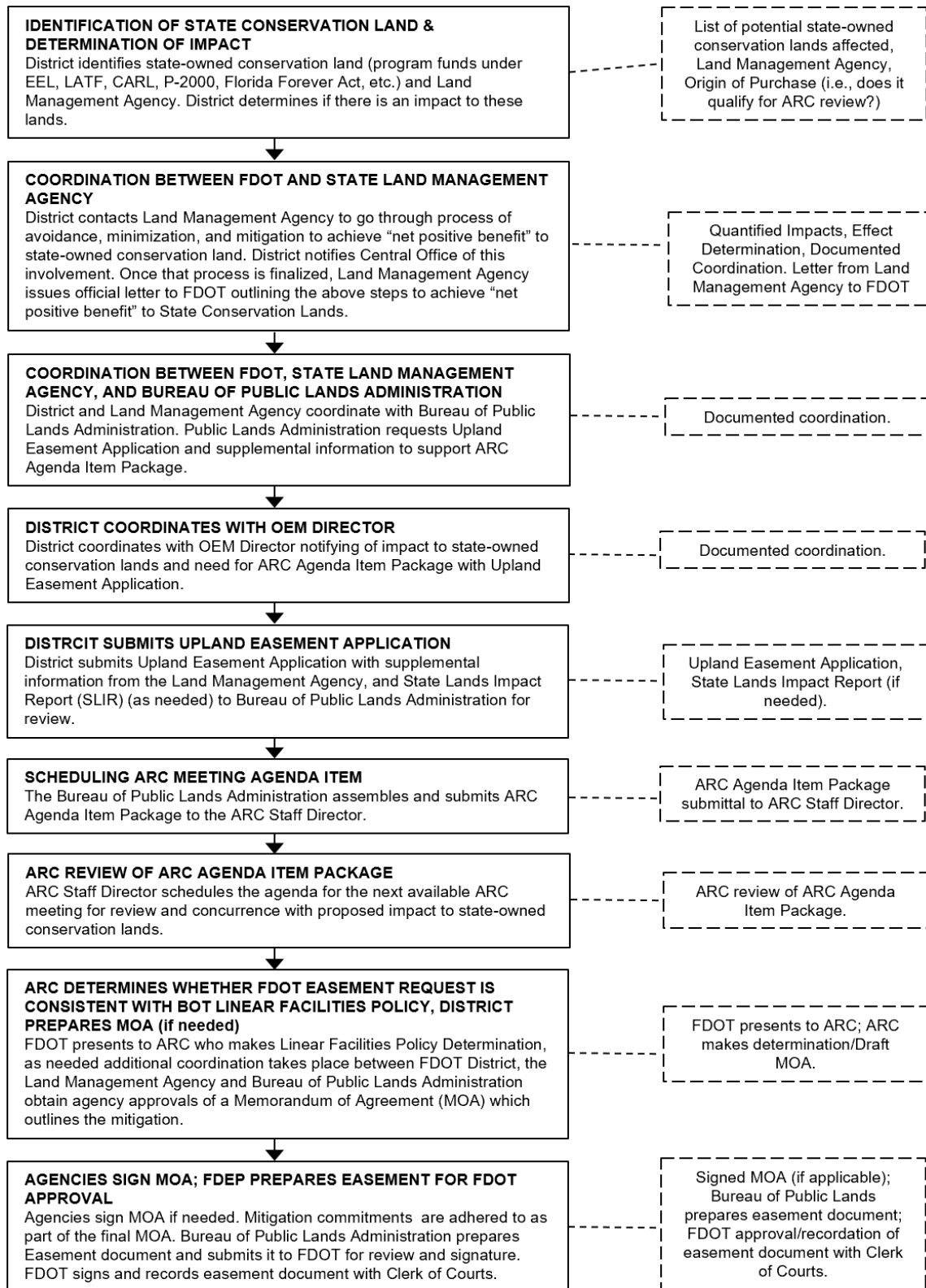


Figure 23-1 FDOT Coordination Process: Acquisition and Restoration Council

FDEP office which handles impacts to state-owned conservation lands:

Bureau Chief, Bureau of Public Lands Administration
Department of Environmental Protection
3900 Commonwealth Boulevard, MS 100
Tallahassee, Florida 32399-3000

Upland Easement Applications:

Completed applications including required attachments should be electronically submitted to: Upland.Applications@dep.state.fl.us

If unable to submit via email a hardcopy may be mailed to:

Department of Environmental Protection
Division of State Lands
Bureau of Public Land Administration
3800 Commonwealth Boulevard, MS 130
Tallahassee, Florida 32399-3000

Use Agreements and Letters of Authorization:

Completed applications including required attachments should be electronically submitted to: OPP.Applications@floridadep.gov

If unable to submit via email a hardcopy may be mailed to:

Department of Environmental Protection
Office of Park Planning
Land Administration Section
3800 Commonwealth Boulevard, MS 525
Tallahassee, Florida 32399-3000

Figure 23-2 Contact and Application Submittal Information