FLORIDA DEPARTMENT OF TRANSPORTATION

PROJECT DEVELOPMENT & ENVIRONMENT MANUAL

Part 1: Process and Documentation

Office of Environmental Management

FDOT

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PART 1, CHAPTER 1

INTRODUCTION

1.1 PURPOSE

The process outlined in the ***Project Development and Environment (PD&E) Manual*** is the Florida Department of Transportation's (FDOT's) procedure for complying with the ***National Environmental Policy Act (NEPA) of 1969***, ***Title 42 United States Code (U.S.C.) § 4321, et seq.***, and other federal and state laws and regulations. This ***Manual*** provides project analysts and Project Managers (users) a framework for the consistent development of environmental and engineering analysis, technical reports, and Environmental Documents for transportation projects.

For transportation projects that require funding or other Federal Highway Administration (FHWA) action, FDOT has assumed, and FHWA has assigned its responsibilities under ***NEPA***. This includes all State Highway System (SHS) and Local Agency Program (LAP) projects. This assumption is referred to as ***NEPA*** Assignment throughout this ***Manual***.

Pursuant to ***23 U.S.C. § 327*** and the implementing Memorandum of Understanding (MOU) executed on December 14, 2016, and renewed on May 26, 2022, ***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 is the Lead Federal Agency for highway projects with approval authority residing in the Office of Environmental Management (OEM).

1.2 AUTHORITY

Sections 20.23(3)(a) and ***334.048(3), Florida Statutes (F.S.)***

1.3 REFERENCES

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/florida-327-mou---signed_.pdf?sfvrsn=dbb7bb2b_1

National Environmental Policy Act of 1969 (Title 42 U.S.C. § 4321, et seq.). https://www.govinfo.gov/content/pkg/COMPS-10352/pdf/COMPS-10352.pdf

Title 23 CFR Part 771, Environmental Impact and Related Procedures. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771

Title 23 U.S.C. § 327, Surface transportation project delivery program.
https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title23-section327&num=0&edition=prelim

1.4 SCOPE

The principal users of this ***Manual*** are FDOT personnel and consultants who prepare and review technical reports and Environmental Documents for FDOT.

1.5 GENERAL

This ***Manual*** is designed to work in conjunction with FDOT handbooks, guidance documents and design criteria that are used in FDOT's project delivery process. This ***Manual*** contains the process for environmental review which occurs throughout the Planning, PD&E, Design, and Construction phases. This ***Manual*** also provides support and direction in various technical areas, including engineering analysis and environmental documentation, permitting, and public involvement.

1.6 DISTRIBUTION

The ***PD&E Manual*** is available online through the ***OEM Website:*** ***https://www.fdot.gov/environment/pde-manual/pdeman-current***.

PD&E Manual users can register to receive notification of manual updates, revisions and OEM Bulletins online through the FDOT Contact Management at:

https://fdotewp1.dot.state.fl.us/ContactManagement/Utilities/login.aspx?ReturnUrl=%2fContactManagement.

1.7 REVISIONS

OEM is responsible for maintaining this ***Manual***. On behalf of FDOT, OEM regularly evaluates and updates this ***Manual*** consistent with the procedures established by FDOT's Policy and Process Management Unit.

Revisions may be the result of District-identified issues or suggested modifications, changes in other FDOT manuals or procedures, updated standards, or changes in federal or state law, rule, policy or guidance.

Updates that require immediate implementation are made with an OEM Bulletin. ***Bulletins*** affecting this ***Manual*** remain valid until the ***Manual*** is revised.

1.8 TRAINING

Information on training courses pertaining to topics in this ***Manual*** is provided on OEM's ***Training Program Website***. It is recommended that staff preparing technical reports or Environmental Documents or performing environmental review tasks take these training

courses. PD&E Process Training is required for local agencies pursuing delivery of environmental or right of way activities under LAP. See the ***Local Programs Manual, Topic No. 525-010-300*** for more information.

1.9 FORMS

Forms required by this ***Manual*** are identified in applicable chapters. Links are provided in manual chapters where applicable, for electronic forms that are available in FDOT's ***Procedural Document Library***.

PART 1, CHAPTER 2

CLASS OF ACTION DETERMINATION FOR FEDERAL PROJECTS

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PART 1, CHAPTER 2

CLASS OF ACTION DETERMINATION FOR FEDERAL PROJECTS

2.1 OVERVIEW

The Class of Action (COA) Determination identifies the type of Environmental Document to be prepared for a Federal Project. The Office of Environmental Management (OEM) has assumed the role and responsibility of the Federal Highway Administration (FHWA) in determining the COA for Florida Department of Transportation (FDOT) Federal Projects and serves as the Lead Federal Agency, through ***National Environmental Policy Act (NEPA)*** Assignment (***Part 1, Chapter 1, Introduction***).

OEM has also assumed the role of FHWA for Local Agency Program (LAP) projects. The District Environmental Offices provide oversight during the environmental review process. LAP projects must follow the process in this Manual for the preparation of FDOT Federal Projects. Funding for LAP projects must be programmed in the State Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP). LAP projects are developed by a local agency that has received federal funds and is certified by FDOT to administer FHWA federal-aid projects (per FDOT's ***Local Programs Manual, Topic No. 525-010-300***). LAP agencies cannot make COA Determinations.

This chapter outlines the COA Determination for these projects. The process for FDOT State Projects such as a State Environmental Impact Report (SEIRs) or Non-Major State Action (NMSA) is provided in ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***.

2.1.1 Definitions

Categorical Exclusion (CE) - Actions that normally do not have a significant environmental effect and are excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Class of Action (COA) - Prescribes the level of documentation required in the ***NEPA*** process. There are three COAs described in ***23 Code of Federal Regulations (CFR) § 771.115, Classes of actions***, and discussed in ***Section 2.1.2***.

District- Term generally referring to an FDOT District. This includes FDOT Districts 1-7 and the Florida Turnpike Enterprise.

District Environmental Office – General term used for either the District Environmental Management Office (DEMO) or Planning and Environmental Management Offices (PLEMO), depending on the District's organizational structure.

Environmental Assessment (EA) – The Environmental Document (or document type) prepared for actions in which the significance of the environmental impact is not clearly established.

Environmental Document- The document prepared by FDOT for a Type 1 CE, Type 2 CE, EA, EIS, SEIR or NMSA. This term is broader than the definition provided in ***NEPA*** and does not include re-evaluations.

Environmental Impact Statement (EIS)- The Environmental Document (or document type) prepared for actions that have a reasonably foreseeable significant effect on the environment.

Environmental Impacts- (***U.S. Department of Transportation (USDOT) Order 5610.1D, 26.e.***) changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives. Impacts include ecological (such as the impacts on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the impacts on employment), social, or health impacts. Impacts appropriate for analysis under ***NEPA*** may be either beneficial or adverse, or both, with respect to these values.

FDOT Federal Project- A Federal Project with FDOT as the Lead Agency due to ***NEPA*** Assignment. These projects involve FHWA funds and/or affect the interstate during any phase of project development or implementation.

FDOT State Project- A project advanced through the FDOT Work Program using only state funding and/or does not affect the interstate during any phase of project development or implementation. See ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***.

Federal Action –Federal funding or other assistance, federal permit, or other federal approval [e.g., change in Interstate access control, use of Interstate Right of Way (ROW)]

Federal Project - A project with a Federal Action and therefore must comply with ***NEPA***.

Local Agency Program (LAP) – Federal-aid subrecipient project delivery program and procedure established by FDOT in the ***FDOT/FHWA Stewardship and Oversight Agreement, Topic No. 700-000-005***. LAP is administered by the State and District Local Program Administrators.

NEPA document- The environmental document prepared for Federal Projects to comply with ***NEPA***.

Project Development and Environment (PD&E) Study- The FDOT process of preparing an Environmental Document, including a Type 2 CE, EA, EIS, or SEIR once the Class of Action Form is approved. Type 1 CEs and NMSAs are not PD&E Studies, as they do not have a PD&E phase and are prepared during the Design phase.

Type 1 Categorical Exclusion- A checklist prepared as the Environmental Document (or document type) for FDOT Federal Projects with actions listed in ***23 CFR § 771.117(c)*** or specifically identified as an example in ***23 CFR § 771.117(d)*** that do not have a significant environmental effect.

Type 2 Categorical Exclusion- The Environmental Document (or document type) prepared for FDOT Federal Projects that do not have significant environmental effects but are **not** listed in ***23 CFR § 771.117(c)*** or specifically identified as an example in ***23 CFR § 771.117(d)***.

2.1.2 Legislative and Regulatory Framework

Title 23 Code of Federal Regulations (CFR) § 771 sets forth U.S. Department of Transportation (USDOT) requirements under ***NEPA*** for the processing of highway, public transportation, and railroad actions. This regulation prescribes the policies and procedures of the FHWA, the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA), for implementing ***NEPA***. The necessary review and analysis are contained in a ***NEPA*** document.

The three COAs are described in ***23 CFR § 771.115***:

1. Environmental Impact Statement (EIS) - The types of actions which normally require an EIS are:

    a. A new controlled-access freeway (limited access highway);

    b. A highway project of four or more lanes on a new location;

    c. Construction or extension of a fixed rail transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located primarily within an existing transportation ROW; or

    d. New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing transportation ROW.

2. Categorical Exclusion (CE)- This COA applies to actions that normally do not have a significant environmental effect and are excluded from the requirement to prepare an Environmental Assessment (EA) or EIS. FHWA actions that are normally CEs are listed ***in 23 CFR § 771.117(c) (Section 2.2.1.1.1)***. When appropriately documented, additional projects may also qualify as CEs pursuant to ***23 CFR § 771.117(d) (Section 2.2.1.1.2)***.

3. Environmental Assessment (EA) - All actions that are not an EIS or CE require the preparation of an EA to determine the appropriate environmental documentation required.

When considering whether the reasonably foreseeable impacts of the proposed action are significant, FDOT analyzes the potentially affected environment and degree of the impacts of the proposed action according to ***USDOT Order 5610.1D, Procedures for Considering Environmental Impacts***.

1. The potentially affected environment should encompass the geographic scale, the physical resources and the socioeconomic characteristics appropriate for the specific action.

2. Level of significance is determined by examining the difference between the impacts of the proposed action compared to the no action alternative. Whether an impact rises to the level of "significant" is a matter of FDOTs expert judgment. FDOT considers the degree of impacts for each of the following, as appropriate, with respect to the difference between the no action alternative and the proposed action:

    a. Both short- and long-term environmental impacts

    b. Both beneficial and adverse environmental impacts

    c. Impacts on public health and safety

    d. Economic impacts

    e. Impacts on the quality of life of the American people

2.2 PROCEDURE

Early communication and collaboration within District offices is beneficial when projects are evaluated for inclusion in the Tentative Work Program, prior to development of the Scope of Services, to ensure that project decisions get broad input and early support. See ***Part 1, Chapter 4, Project Development Process*** for more details. During this coordination it is determined if the project may have a Federal Action, and if so, it is then determined if it proceeds as an FDOT Federal Project or an FDOT State Project.

COA considerations are also facilitated through early internal coordination, with the review of Efficient Transportation Decision Making (ETDM) Screening results (if applicable) and other information, as available. The potential significance of project effects (***Section 2.1.2***) is considered in consultation with District environmental staff, specific resource agencies, and OEM, as appropriate.

Qualifying projects are screened through FDOT's ETDM process according to the ***ETDM Manual, Topic No. 650-000-002*** to engage other agencies and the public early in project development and facilitate project scoping. The decision of whether a project is entered into the ETDM Environmental Screening Tool (EST) is based on a qualifying project type and the conditions illustrated in the ETDM Screening Matrix for Qualifying Projects in ***Figure 2-1***.

Project types qualifying for EST screening include:

1. Additional through lanes which add capacity to an existing road;
2. A new roadway, freeway, or expressway;
3. A highway which provides new access to an area;
4. A new or reconstructed arterial highway (e.g., realignment);
5. A new circumferential or belt highway that bypasses a community;
6. Addition of interchanges or major interchange modifications to a completed freeway or expressway (based on coordination with OEM); or
7. A new bridge which provides new access to an area or bridge replacements (i.e., non-Type 1 CE).

These project types are further analyzed and reviewed through the ETDM process to help identify the COA. For information on determining the COA for projects that qualify for EST screening see ***Section 2.2.2***.

If the project does not qualify for screening in the EST, see ***Section 2.2.1.1*** for more information on determining if a project is a Type 1 CE.

2.2.1 Categorical Exclusions

According to ***23 CFR § 771.117(a)***, ***FHWA categorical exclusions***, CEs are based on FHWA's past experience with similar actions, and do not normally involve significant environmental impacts.

They are actions that:

- Do not induce significant impacts to planned growth or land use for the area;
- Do not require the relocation of significant numbers of people;
- Do not have a significant impact on any natural, cultural, recreational, historic, or other resource;
- Do not involve significant air, noise, or water quality impacts;
- Do not have significant impacts on travel patterns; or
- Do not otherwise have any significant environmental impacts.

As provided in ***23 CFR § 771.117(b)***, a project normally classified as a CE may require coordination with OEM to determine if the CE classification is appropriate. FDOT may

decide or OEM may require additional analysis or agency coordination take place prior to approval of a CE in circumstances that include:

1. Significant environmental impacts;

2. Substantial controversy on environmental grounds;

3. Significant impact on properties protected by ***Section 4(f)*** of the ***USDOT Act*** or ***Section 106*** of the ***National Historic Preservation Act (NHPA)***; or

4. Inconsistency with any federal, state, or local law, requirement, or administrative determination relating to environmental aspects of the action.

Dependent on the scope of the CE action, the level of documentation will vary based on amount of coordination and information needed to support the determination that an EA or EIS is not needed. The level of detail required to support the determination depends upon the specific action and the magnitude of environmental impacts.

FDOT prepares two types of CEs, Type 1 CEs (***Section 2.2.1.1***) and Type 2 CEs (***Section 2.2.1.2***).

2.2.1.1 Type 1 Categorical Exclusions

The District is authorized to determine whether an FDOT Federal Project is a Type 1 CE. OEM may assist with this determination, but it is typically made by the District without OEM assistance.

The District looks at the actions listed in ***23 CFR § 771.117(c)(Section 2.2.1.1.1)*** to see if project activities fall under one of these numbered actions. These are called C-list projects. If the project does not match an action on the C-list, the District looks at the actions specifically identified as examples in ***23 CFR § 771.117(d) (Section 2.2.1.1.2)*** to see if project activities fall under one of these numbered examples. These are called D-list projects. C-list and D-list projects are both assumed to be Type 1 CEs, so if an action is on either of these lists a ***Type 1 Categorical Exclusion Checklist*** is prepared in the StateWide Environmental Project Tracker (SWEPT).

As the checklist is completed, certain selections may trigger pop ups that identify when coordination with OEM is required. This occurs for actions listed in ***23 CFR § 771.117(c)(26), (c)(27) and (c)(28)***, because they must also meet the constraints in ***23 CFR § 771.117(e) (Section 2.2.1.1.3)*** to be considered a C-list action. Through OEM coordination it is determined if the project remains a Type 1 CE and is documented as CE number ***(d)(13)*** or if a Type 2 CE is needed. This is further explained in ***Part 1, Chapter 5, Categorical Exclusion***.

If the project can be verified to meet the criteria of a CE by completing the checklist, the project is documented as a Type 1 CE and the checklist serves as the ***NEPA*** document. The checklist demonstrates that the specific conditions or criteria for these CEs are

satisfied and it is signed by the District Environmental Manager or designee. Details on Type 1 CEs and guidance on preparing them is provided in ***Part 1, Chapter 5, Categorical Exclusion***.

2.2.1.1.1 Actions listed in 23 CFR § 771.117(c) - C-List

The following actions are listed in ***23 CFR § 771.117(c)*** and meet the criteria for CEs in ***23 CFR § 771.117(a)*** and normally do not require any further ***NEPA*** approvals by OEM. This list includes additional clarification and flexibility in the use of CEs under ***23 CFR § 771.117(c)*** as provided in ***FHWA Informational Memos: Additional Flexibilities in Categorical Exclusions***, dated May 22, 2017 and June 12, 2018.

1. Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and federal-aid system revisions establishing classes of highways on the federal-aid highway system.

2. Approval of utility installations along or across a transportation facility. The replacement of existing utility powerline poles for overhead utilities and installation of new poles are considered approval of utility installation projects.

3. Construction of bicycle and pedestrian lanes, paths, and facilities.

4. Activities included in the ***State's Highway Safety Plan*** under ***23 United States Code (U.S.C.) § 402***.

5. Transfer of federal lands pursuant to ***23 U.S.C. § 107(d)*** and/or ***23 U.S.C. § 317*** when the land transfer is in support of an action not otherwise subject to FHWA (OEM as Assigned) review under ***NEPA***.
6. The installation of noise barriers, or alterations, to existing publicly owned buildings to provide for noise reduction.

7. Landscaping.

8. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

9. The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the ***Robert T. Stafford Act (42 U.S.C. § 5121)***:

    a. Emergency repairs under ***23 U.S.C. § 125***; and

b. The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), in operation or under construction when damaged and the action:

    i. Occurs within the existing Right of Way (ROW) and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

    ii. Is commenced within a two-year period beginning on the date of the declaration.

Note, the procedure for documenting emergency relief efforts is outlined in ***Part 1, Chapter 4, Project Development Process***. Guidance on emergency relief projects can also be found in the ***FDOT Environmental Review Guidance for Emergency Relief Projects***.

10. Acquisition of scenic easements.

11. Determination of payback under ***23 U.S.C. § 156*** for property previously acquired with federal-aid participation.

12. Improvements to existing rest areas and truck weigh stations.

13. Ride-sharing activities.

14. Bus and rail car rehabilitation.

15. Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

16. Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

17. The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

18. Track and railbed maintenance and improvements when carried out within the existing ROW.

19. Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

20. Promulgation of rules, regulations, and directives.

21. Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

22. Projects, as defined in ***23 U.S.C. § 101***, that would take place entirely within the existing operational ROW. Existing operational ROW means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities. Bridge removal may be a component of a bridge replacement project under this CE if the bridge is not replaced. This CE includes widening and improving existing transportation facilities by adding through lanes that add capacity within the existing operational ROW. It should be noted that if adding capacity, a public hearing is required by ***Section 339.155, Florida Statutes (F.S.)***. Refer to ***Part 1, Chapter 11, Public Involvement***. This CE can also include restoration, rehabilitation, or replacement of retaining walls within the existing operational ROW. Restoration, rehabilitation, or replacement of culverts, inlets, drainage pipes, and systems can be under this CE when done within an existing operational ROW. Clarification on other actions [listed under (d)] that may be considered under this CE when the project is located within the existing operational ROW include 1) Transportation corridor fringe parking facilities; 2) Construction of new truck weigh stations or rest areas; and 3) Approvals for joint or limited use of ROW, when the use is within the existing operational ROW.

23. Federally-funded projects:

    a. Receiving less than $5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor. See ***FHWA's Environmental Review Toolkit*** for the current figures) of Federal funds. This includes highway project actions, regardless of location within or outside a highway ROW. Clarification on other actions [listed under (d)] that may be considered under this CE include

1) Transportation corridor fringe parking facilities; 2) Construction of new truck weigh stations or rest areas; and 3) Approvals for joint or limited use of ROW, when the use is within the existing operational ROW; or

b. With a total estimated cost of not more than $30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor. See ***FHWA's Environmental Review Toolkit*** for the current figures) and Federal funds comprising less than 15 percent of the total estimated project cost.

24. Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

25. Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet federal and state requirements under ***Sections 401 and 402 of the Federal Water Pollution Control Act*** (***33 U.S.C. § 1341; § 1342***) carried out to address water pollution or environmental degradation). Bank repairs to protect against stream erosion are considered environmental restoration and pollution abatement actions under this CE.

26. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in ***23 CFR § 771.117(e)***. Restoration, rehabilitation, or replacement of culverts, inlets, drainage pipes, and systems can be under this CE when done as highway modernization.

27. Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in ***23 CFR § 771.117(e)***. Construction of new roundabouts or traffic circles are considered traffic operations improvement projects under this CE.

28. Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in ***23 CFR § 771.117(e)***. Bridge removal may be a component of a bridge replacement project under this CE.

29. Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) not requiring a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.

30. Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

2.2.1.1.2 Actions listed in 23 CFR § 771.117(d) - D-List

Title ***23 CFR § 771.117(d)*** includes additional actions that meet the criteria for a CE in ***23 CFR § 771.117(a)***. Several examples of these actions are included below, but they are not limited to those on this list. They require documentation that demonstrates the specific conditions or criteria for these CEs are satisfied, and that significant environmental effects will not result.

1-3. [Reserved]

4. Transportation corridor fringe parking facilities.

5. Construction of new truck weigh stations or rest areas.

6. Approvals for disposal of excess ROW or for joint or limited use of ROW, where the proposed use does not have significant adverse impacts. This CE requires FHWA approval.

7. Approvals for changes in access control.

8. Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

9. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

10. Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

11. Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

12. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of

parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the ***NEPA*** process. No project development on such land may proceed until the ***NEPA*** process has been completed.

a. Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

b. Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

When an early acquisition project qualifies for a Type 1 CE, the environmental review is accomplished through completion of the ***Type 1 Categorical Exclusion Checklist***. It is important to note that ***23 CFR § 710.501(e)(2)(i)*** does not allow early acquisition of any real property interests that would involve a ***Section 4(f)*** property. The environmental review for the acquisition project requires coordination with multiple agencies, other stakeholders, and OEM. Coordination with OEM is necessary to verify that the acquisition project:

- Will not limit the choice of reasonable alternatives for the project or otherwise influence the decision on any approval required for the transportation project

- Does not prevent OEM from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for the transportation project

13. Actions described in ***23 CFR § 771.117(c)(26), (27), and (28)*** that do not meet the constraints in ***23 CFR § 771.117(e)***. Use of this CE requires consultation with OEM.

2.2.1.1.3 Actions listed in 23 CFR § 771.117(e)

According to ***23 CFR § 771.117(e)***, actions described in ***23 CFR § 771.117(c)(26), (c)(27), and (c)(28)*** may **not** be processed as CEs under ***23 CFR § 771.117(c)*** if they involve:

1. An acquisition of more than a minor amount of ROW or would result in any residential or non-residential displacements;

2. An action that needs a bridge permit from the U.S. Coast Guard (USCG), or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers (USACE) nationwide or general permit under ***Section 404*** of the ***Clean Water Act (CWA)*** and/or ***Section 10*** of the ***Rivers and Harbors Act of 1899***;

3. A finding of "Adverse Effect" to historic properties under the ***NHPA***, the use of a resource protected under ***23 U.S.C. § 138*** or ***49 U.S.C. § 303 [Section 4(f)]*** except for actions resulting in *de minimis* impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the ***Endangered Species Act (ESA)***;

4. Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;

5. Changes in access control; or

6. A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions facilitating open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

2.2.1.1.4 Categorical Exclusions Adopted from other Agencies

The Department of Energy's (DOE's) Electric Vehicle Charging Stations CE [codified in DOE's ***NEPA*** procedures as CE B5.23 of ***10 CFR § 1021(D), Appendix B***] was adopted by the USDOT to use in programs and funding opportunities administered by USDOT and its modal administrations ***[88 Federal Register (FR) 64972]***.

FDOT may also utilize CEs identified in FTA's ***NEPA*** regulations ***(23 CFR § 771.118)*** or FRA's ***NEPA*** regulations ***(23 CFR § 771.116)***. Coordination with OEM is needed before using another agency's CE.

2.2.1.2 Type 2 Categorical Exclusions

Type 2 CEs fall under ***23 CFR § 771.117(d)*** (***Section 2.2.1.1.2***) but are not specifically listed as examples in the regulation. As discussed in ***Section 2.2.1.1***, if the project is an activity listed in ***23 CFR § 771.117(c)26, (c)(27) and (c)28***, that does not satisfy the criteria of ***23 CFR § 771.117(e)*** (listed in ***Section 2.2.2.1.3***) consultation is required with OEM and the project may proceed as a ***d(13)*** using the Type 1 CE Checklist or may be prepared as a Type 2 CE.

Projects that are anticipated to become Type 2 CEs are typically screened in the EST in the early stages of project development. See ***Section 2.2.2*** for further guidance on

determining the COA for these projects. On occasion, projects screened in the EST may result in a Type 1 CE based on the screening results and consultation with OEM.

Later, in the PD&E phase, the Type 2 CE is prepared using the ***Type 2 Categorical Exclusion Determination Form*** in SWEPT. Details on Type 2 CEs and guidance on preparing them is provided in ***Part 1, Chapter 5, Categorical Exclusion***. Type 2 CEs must be approved by OEM.

2.2.2 Projects Qualifying for Efficient Transportation Decision Screening

Projects that qualify for ETDM screening (***Section 2.2***) undergo a Programming Screen review in which each qualifying project is reviewed by appropriate FDOT personnel (i.e., Project Manager, environmental specialist, design and drainage staff), Environmental Technical Advisory Team (ETAT), and OEM (see FDOT's ***ETDM Manual, Topic No. 650-000-002***). During the screening, ETAT members use the EST to review project information, identify potential project effects, and submit comments to FDOT. The EST provides access to project information and data about social, cultural, natural, and physical topics/resources in the project area. After reviewing this information, the ETAT members provide input about potential project effects specific to their area of expertise. The results of the screening are published in a ***Preliminary Programming Screen Summary Report*** and reviewed by the District to assist in determining appropriate topics/resources for additional information-gathering and analysis.

Based upon the ***Preliminary Programming Screen Summary Report*** and other known information, the District develops an "assumed COA" that guides the District in performing additional studies and other efforts to analyze the potential impacts of the project per topic/resource. Once sufficient analysis has occurred, the District completes the ***Class of Action Form*** in the EST to recommend a COA to OEM for acceptance. If it is anticipated that a project may be an EA or EIS, the District reviews the project with OEM before proceeding with the recommendation.

The ***Class of Action Form*** is submitted to OEM for review and acceptance before the scheduled public hearing. If there is no public hearing scheduled, the ***Class of Action Form*** is submitted to OEM for review and acceptance before the notice of opportunity to request a public hearing is published in the ***Florida Administrative Register (FAR)***. For more information on the public hearing, or opportunity to request a public hearing see ***Part 1, Chapter 11, Public Involvement***.

Instructions on completing the ***Class of Action Form*** and a sample form are provided in the ***Guidance for Part 1, Chapter 2***. After completing the form, the District submits it to the Project Delivery Coordinator (PDC). When the District submits the form, the lead and backup PDC and Engineers are copied on the notification and may use the link in the notification to view the form. Either the PDC or OEM Director uses the EST to respond, depending on the assumed COA. OEM responds to the recommendation in the EST as Accepted, Not Accepted, or Returned to the District to Revise and Resubmit.

After OEM and the District have agreed on the COA, OEM accepts it in the EST. The accepted form documents the COA Determination for the project, and it becomes part of the project record, and is published in the ***Final Programming Screen Summary Report***. The resulting COA Determination for an FDOT Federal Project will be a Type 2 CE (see ***Part 1, Chapter 5, Categorical Exclusion***), an EA (see ***Part 1, Chapter 6, Environmental Assessment***), or an EIS (see ***Part 1, Chapter 8, Draft Environmental Impact Statement***). If it is an FDOT State Project, the Environmental Document will be a SEIR see ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***.

2.2.3 Change of Class of Action

At any time during the PD&E Study, changes in the COA could arise if there are changes in the project's scope or changes in impact status of topics/resources. If a project is an EA changing to an EIS, a ***Notice of Intent (NOI)*** in the ***FR*** is required.

The decision to downgrade from an EIS requires thorough analysis and consideration. Notification was previously provided to the public and stakeholders that significant impacts were anticipated. Documentation is required to substantiate the downgrade. Approval by OEM is required for the reclassification. If an EIS is cancelled it is announced in the ***FR***. See ***Part 1, Chapter 8, Draft Environmental Impact Statement*** for information on the ***NOI***. In all cases, OEM must be consulted if FDOT seeks modifications to a project's COA Determination to obtain approval for the proposed change.

2.3 REFERENCES

FDOT, Efficient Transportation Decision Making Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, FDOT Environmental Review Guidance for Emergency Relief Projects. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/2023-fdot-environmental-emergency-guidance.pdf?sfvrsn=b2f81969_2

FDOT, Local Programs Manual, Topic No. 525-010-300. https://pdl.fdot.gov/

FDOT/FHWA Stewardship and Oversight Agreement, Topic No. 700-000-005. https://pdl.fdot.gov/

FHWA, Environmental Review Toolkit. https://www.environment.fhwa.dot.gov/

FHWA, Guidance for Preparing and Processing Environmental and Section 4(f) Documents, FHWA Technical Advisory T6640.8A. October 30, 1987. https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx

FHWA, Memorandum: Additional Flexibilities In Categorical Exclusions, May 22, 2017. https://www.environment.fhwa.dot.gov/legislation/nepa/memo_additional-flex.aspx

FHWA, Memorandum: Additional Flexibilities In Categorical Exclusions, June 12, 2018. https://environment.fhwa.dot.gov/legislation/nepa/memo_additional-flex_6-2018.aspx

National Environmental Policy Act of 1969 (NEPA) as amended (42 U.S.C. § 4321 et seq.), https://www.govinfo.gov/content/pkg/COMPS-10352/pdf/COMPS-10352.pdf

Title 10 CFR § 1021(D), Appendix B. https://www.ecfr.gov/current/title-10/chapter-X/part-1021

Title 23 CFR § 771, Environmental Impact and Related Procedures. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771

USDOT, Notice of Adoption of Electric Vehicle Charging Stations Categorical Exclusion Under the National Environmental Policy Act. Federal Register, Volume 88, Number 181, Pages 64972-64973 (September 20, 2023). https://www.federalregister.gov/documents/2023/09/20/2023-20238/notice-of-adoption-of-electric-vehicle-charging-stations-categorical-exclusion-under-the-national

USDOT, Order 5610.1D, Procedures for Considering Environmental Impacts. https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts

ETDM Screening Matrix for Qualifying Projects						
	Federal Dollars (any FHWA, FTA or FRA funds or federal authorization)		**State Dollars (TRIP, Transit/ Intermodal System Grants, etc) No Federal Dollars Involved**		**Local Dollars Only**	
	Responsible Agency	ETDM Screening	Responsible Agency	ETDM Screening	Responsible Agency	ETDM Screening
System						
Highways on the State Highway System (SHS) and on the Strategic Intermodal System (SIS)	FDOT	YES FDOT Lead	FDOT	YES	FDOT	YES
	Local		Local and FDOT	Local Option	Local and FDOT	Local Option
Highways on the SHS but not on the SIS	FDOT	YES FDOT Lead	FDOT	YES	FDOT	YES
	Local		Local and FDOT	Local Option	Local and FDOT	Local Option
Highways not on SHS but on the SIS	FDOT	YES FDOT Lead	FDOT	YES	FDOT	YES
	Local		Local and FDOT	Local Option	Local and FDOT	Local Option
Highways not on SHS nor on the SIS	FDOT	YES FDOT Lead	FDOT	YES	Local	N/A
	Local		Local	Local Option		
Major Transit Projects (new fixed guideway, New Starts) or Major Freight Projects	FDOT	YES	FDOT	YES	Local	N/A
	Local	Local Option	Local	Local Option		
NOTE: Local applies to any local government agency, other state agency, expressway authority, bridge authority or private entity						

Figure 2-1 ETDM Screening Matrix for Qualifying Projects

PART 1, CHAPTER 3

PRELIMINARY ENVIRONMENTAL DISCUSSION AND ADVANCE NOTIFICATION

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PART 1, CHAPTER 3

PRELIMINARY ENVIRONMENTAL DISCUSSION AND ADVANCE NOTIFICATION

3.1 OVERVIEW

The Florida Department of Transportation (FDOT) develops a Preliminary Environmental Discussion (PED) as a means to communicate project context and potential project effects to the public and local, state, federal, and tribal partners, known as the Environmental Technical Advisory Team (ETAT), during the Efficient Transportation Decision Making (ETDM) project screenings (see ***ETDM Manual, Topic No. 650-000-002***) and through the Advance Notification (AN) package. A PED addresses each of the ETDM topics reviewed by the ETAT during an ETDM screening event and is required for each screened project. These topics are identified in ***Section 3.2.2.3***.

The PED is consistent with ***Title 23 United States Code (U.S.C.), Highways*** which allows the project sponsor to provide information about the project context, potential project alternatives, analysis methodology, and agency involvement as it provides an opportunity for input from stakeholders.

The PED is the District's initial examination of a project's potential involvement with environmental subject matters [within the Environmental Screening Tool (EST) these evaluation groups are identified as topics] and the District's plans to address environmental considerations as the project advances to further study. This could include identification of avoidance, minimization, or mitigation options. The District should develop alternative specific PEDs when multiple alternatives are screened. The PED, used in combination with ETAT comments, will assist the District in understanding the potential project effects and support preparation of the scope of the Project Development and Environment (PD&E) phase. At the end of an ETDM project screening event, a Summary Degree of Effect (SDOE) is determined by the District documenting the results of the screening event. SDOEs are published in the ETDM Summary Report and reflect a refined understanding of the project.

FDOT informs agencies, tribal representatives, elected officials, and other interested stakeholders of a proposed transportation action through the AN. The AN also provides stakeholders an opportunity to provide input and become involved in a project. PEDs developed for a combined ETDM Programming Screening event and delivery of the AN package both use the same PEDs.

The AN fulfills the project initiation notification as required by ***Title 23 U.S.C., Highways***, the President's ***Executive Order 12372 (Intergovernmental Review of Federal Programs)***, and the Governor's ***Executive Order 95-359 (Florida State Clearinghouse)***. In addition, the AN may also provide notice of FDOT's intent to apply for federal-aid through the Federal Highway Administration (FHWA) on a project, by

including the ***Application for Federal Assistance (SF-424)*** form requesting federal assistance.

The AN is also used by FDOT to address consistency with the Florida Coastal Management Program (FCMP). The Florida Department of Environmental Protection (FDEP) is responsible for coordinating the State of Florida's review of federal activities for consistency with the FCMP. FDEP uses the State Clearinghouse (SCH) as a means to facilitate and document the coordination process and makes a Federal Consistency Determination after receiving comments from appropriate state and local agencies, also known as consistency reviewers. For detailed information on FCMP and Federal Consistency Determination see ***Part 2, Chapter 14, Coastal Zone Consistency***. Additionally, the AN alerts the Florida Department of Commerce to provide comments regarding a project's compatibility with the Local Government Comprehensive Plans [***Chapter 163, Florida Statutes (F.S.)***].

FDOT uses the EST to distribute the AN package electronically. The AN may be completed during the Programming Screen or delayed until approximately one year prior to the start of the PD&E Study. This decision to join or separate the Programming Screen and AN is made at the District's discretion based on when the PD&E phase is scheduled in the Work Program to start. The AN process should be completed early enough to inform PD&E Scope of Services development, and near enough to the beginning of PD&E to provide timely notification to relevant public officials, and other stakeholders (see ***ETDM Manual, Topic No. 650-000-002***). See ***Figure 3-1*** for an outline of the AN process.

Qualifying transportation projects should be entered into the EST as described in the ***ETDM Manual, Topic No. 650-000-002***. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for a list of qualifying project types. The EST also contains Geographic Information System (GIS) project and environmental information, which agencies, tribal representatives, and others can use during the Programming Screen to support their comments on a proposed project's potential involvement of an environmental topic, identify potential technical studies, and document the need for resource agency or tribal involvement. GIS data should not be the only source used to provide this information. Agency reviews and comments are provided within a 45-day timeframe (60 days if an extension is granted) and are documented in the EST. The SCH has an additional 15 days after the end of the screening event to complete its Federal Consistency Review.

Comments from consistency reviewers are reviewed by the SCH, which makes a Federal Consistency Determination as required by ***Section 380.23, F.S.***, and ***15 Code of Federal Regulations (CFR) Part 930***. The final Federal Consistency Determination is made during the permitting process.

The comments are documented in the ***Preliminary Programming Screen Summary Report***. The input received is evaluated and used to advance or focus analysis, as appropriate, prior to the PD&E Study, develop the scope of services of the PD&E phase, and to assist in determining the appropriate Class of Action (COA) (***Part 1, Chapter 2,***

Class of Action Determination for Federal Projects). The AN initiates the funding request from FDOT's Federal-Aid Management Office, as appropriate.

3.2 PROCEDURE

The PED and AN convey the District's understanding of a project area to support the ETDM screening events, stemming from a multi-disciplinary review based on local knowledge, FDOT analysis, and possible field review of the project.

3.2.1 Preliminary Environmental Discussion

FDOT uses the PED during the ETDM process to inform ETAT and other agencies, as appropriate, of the District's initial understanding of the natural, physical, cultural, and community topics in a project study area. The PED also discusses the process FDOT plans to use to address or evaluate topics as the project advances through project development. The PED is based on local knowledge, planning studies, GIS Data and any other evaluations relevant to the project area. For instructions on how to develop the PED, follow Number 3, in ***Section 3.2.2.3***.

The PED is required for projects completing a Planning or Programming Screening event in ETDM. The PED is part of the standard text entered in the fact sheet of the AN package providing environmental setting information. When a PED is prepared, the information gathered from ETAT commentary (if prior screening event occurred), early studies, and early stakeholder coordination should be used for early scoping efforts, advancing technical studies or focusing on relevant project activities for the next phase. Products resulting from previous studies that were used to develop the PED should be uploaded in the EST. The ETDM Coordinator or Project Manager is responsible for checking the data for completeness and accuracy. Coordination and review by other District representatives prior to PED release and/or response is strongly encouraged. Other District representatives may include the Environmental Manager, District Project Development Engineer and District Permits Coordinator. The District Environmental Office staff should review and provide comments on the language in the PED prior to submission to the Office of Environmental Management (OEM) for the official OEM Pre-Screening Review. During the OEM Pre-Screening Review, the OEM Project Delivery Coordinator (PDC) and Engineer Lead review and provide comments about the project description, purpose and need, and PED before the screening event notification is distributed, or before the AN is distributed separate from the screening event. PDCs and Engineer Leads have up to 14 days to provide comments and may also include subject matter experts. OEM must provide an approval of the pre-screening in order to proceed with the release of the AN.

3.2.2 Advance Notification Package

For projects that qualify for EST screening, the AN process may be initiated with the Programming Screen review or separately prior to start of the PD&E Study. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for a list of qualifying project types. The only FDOT State Projects which may require an AN and qualify for

screening through the EST are prepared as a State Environmental Impact Report (SEIR) (***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***).

FDOT Federal Projects that qualify for screening will receive a Federal Consistency Determination through the AN package distribution. Federal Consistency Reviews take place when the AN Package is distributed. SEIRs may require a Federal Consistency Determination because they often involve a federal permit. For projects requiring a federal permit, coordination with the permitting agency may be needed to determine whether the Environmental Document prepared by the state will provide sufficient information to serve as the agency's ***National Environmental Policy Act (NEPA)*** document [e.g., U.S. Coast Guard (USCG) bridge permits, U.S. Army Corps of Engineers (USACE) ***Section 404*** and ***Section 10*** permits].

The AN package is prepared through the EST. See FDOT's ***EST User Handbook*** for guidance about using the EST. The AN package consists of a cover letter (***Section 3.2.2.1***), location map(s) (***Section 3.2.2.2***), Fact Sheet (***Section 3.2.2.3***), ***Application for Federal Assistance (SF-424)*** (if appropriate) (***Section 3.2.2.4***), and a transmittal list (***Section 3.2.2.5***).

3.2.2.1 Cover Letter

The AN package includes a cover letter addressed to the SCH but it is distributed to all recipients of the AN package (see ***Figure 3-2***). The cover letter should be dated consistent with the project release date in the EST and include the project name, ETDM number, Financial Management Number if available, and Federal Aid Project Number if one has been assigned. The cover letter, once signed by the District designee, is uploaded to the EST as part of an electronic AN package. If the project has been previously screened this should be noted in the cover letter (see ***Figure 3-2***).

3.2.2.2 Location Maps

The AN package contains a project location map (***Figure 3-3***) and may also include a project aerial map. These maps (and others if needed) can be uploaded to or generated by the EST. Maps should include the state road number (if applicable), the project's common name, City and/or County of location, project boundary/limits and any alternatives. The maps are combined with the rest of the information and distributed as a part of the AN package.

3.2.2.3 Fact Sheet

The Fact Sheet, developed by the analyst using project knowledge from a variety of sources, provides an overview of the project and includes the project purpose and need, project description, PED, and other details as listed below. The PED identifies the project's potential involvement with environmental topics. To the extent practicable, GIS information referenced below should be analyzed and interpreted by the preparer of the PED to provide a clear understanding of potential topic involvement within the context of the project. For projects with more than one alternative, the PED reflects differences

between alternatives; for example, one option may not impact wetlands, when another will. The Fact Sheet enables reviewing agencies to have project information for field and desktop reviews.

The EST contains project-related GIS information that can be used in the preparation of the Fact Sheet. The GIS summaries can also aid ETAT members during their review. For previously screened projects, the District may use the information from the most recent summary report to assist in preparing the Fact Sheet. This information is transmitted electronically to the ETAT and SCH through the EST.

The Fact Sheet should include the following:

1. **Purpose and Need** - The project's purpose and need is derived from information obtained through coordination with the District Planning Office and other agency partners, such as the Metropolitan Planning Organization (MPO) or local government agency. This information should be consistent with information entered into the EST by the ETDM Coordinator or Project Manager. ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency*** provides guidance on preparing the project's purpose and need.

   The status of planning consistency should be summarized in this section and state whether the proposed project is consistent with the Local Government Comprehensive Plan(s) through the Florida Department of Commerce's review of FDOT's Five Year Work Program pursuant to ***Section 339.135(4)(f), F.S.*** Consistency with the adopted Long Range Transportation Plan (LRTP) should be identified for projects within MPO areas. This section identifies that the project is documented in the adopted Transportation Improvement Program (TIP) and the Current State Transportation Improvement Program (STIP). For projects in non-MPO areas, identify consistency with the Local Government Comprehensive Plan(s), Current STIP and describe steps (such as funding for future phases) toward implementation of the project. It should be noted that in the EST, more detailed information can be entered specifically documenting the current status of planning requirements (see FDOT's ***EST User Handbook***). The requested information should follow guidance provided in ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency***, ***FDOT/FHWA Consistency Guidance***, and ***Planning Consistency for NEPA Practitioners***.

2. **Project Description** - This section includes a summary of project information, including a brief description of the existing facility, limits of the proposed project (such as its length and logical termini), the names of the City and County where the project is located, and a brief description of the proposed improvements (such as mode, typical section features, facility type, multi-modal features, and any major structures). The description should list other planned or ongoing projects, either in close proximity or that would directly affect the project being developed. It should include previous coordination efforts, proposed alternatives (if applicable), and a summary of public involvement. The project description should be consistent with information entered into the EST by the ETDM Coordinator or Project Manager.

See ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency***.

3. **Preliminary Environmental Discussion** - The PED is part of the text associated with the AN during the Programming Screen. This section is prepared by the District and includes the identification of environmental topics including community features, a description of potential involvement, and a discussion of anticipated technical reports and permits. Please consult the appropriate chapters in ***Part 2*** of this ***Manual*** for guidance on identifying and analyzing potential impacts associated with the topics below.

    a. **Community Effects**

        1. **Social** - Consider the community demographics (e.g., age, income, minority populations), various users (such as older residents, people with disabilities, and children), community cohesion, safety/emergency response, community character and features, community goals, and describe the project's potential involvement with them as appropriate. Reference whether a ***Sociocultural Data Report*** has been run and if so, describe pertinent results if available. See ***Part 2, Chapter 4, Community Impact Assessment***.

        2. **Economic** - Describe the known economic condition of the area (e.g., major employers, tax base, business access), ongoing or planned economic development efforts, and the project's potential involvement. See ***Part 2, Chapter 4, Community Impact Assessment***.

        3. **Land Use Changes** - Describe existing and future land uses in the project area and how the project may affect these uses. See ***Part 2, Chapter 4, Community Impact Assessment***.

        4. **Mobility** - Describe existing traffic conditions/traffic circulation/connectivity, travel modes, existing and planned transit routes as well as pedestrian and bicycle facilities in the area, transportation services, and the movement of people, goods (e.g., freight), and services. Describe the project's involvement with these mobility aspects. See ***Part 2, Chapter 4, Community Impact Assessment***.

        5. **Aesthetic Effects** - Describe the area's existing aesthetic features (including vistas/viewsheds) and summarize the project's potential involvement. Identify, by formal name, designated or candidate Scenic Highways in the project vicinity and potential for involvement with these features. See ***Part 2, Chapter 5, Aesthetic Effects***.

6. **Relocation Potential** - Discuss potential Right of Way (ROW) acquisition needs for the project and whether relocations may be needed. See ***Part 2, Chapter 4, Community Impact Assessment***.

7. **Farmland** - Describe any prime and/or unique farmlands in the project area and summarize the project's potential involvement with these resources. See ***Part 2, Chapter 6, Farmland***.

b. **Cultural and Tribal** - see ***Part 2*** of this ***Manual***

1. **Section 4(f) Potential** - Identify those properties or features potentially protected by ***Section 4(f) of the U.S. Department of Transportation Act of 1966, as amended***. Identify any public parks, publicly-owned recreation areas, wildlife or waterfowl refuges, and ***National Register of Historic Places (NRHP)*** eligible resources located within the vicinity of the proposed project. Describe the project's potential involvement and how these resources may be evaluated in the PD&E phase. See ***Part 2, Chapter 7, Section 4(f) Resources***.

2. **Historic and Archaeological Sites** - Within the vicinity of the proposed project, identify any known sites, including those listed or eligible for listing on the ***NRHP***. This includes, but is not limited to historic districts, objects, archaeological remains, and historic standing structures, including bridges (or other ***Section 106*** resources). Describe the project's potential involvement and how cultural resources will be evaluated. See ***Part 2, Chapter 8, Archaeological and Historical Resources***.

3. **Recreational and Protected Lands** - Identify any recreation areas, the project's potential involvement, and how they may be evaluated. It should be noted that for FDOT Federal Projects these properties may be potentially protected by ***Section 4(f)***. Identify a project's potential ***Section 6(f)*** involvement according to ***Part 2, Chapter 7, Section 4(f) Resources***. Identify any state-owned conservation lands subject to review and approval by the Acquisition and Restoration Council (ARC). See ***Part 2, Chapter 23, State-owned Upland Conservation Land Coordination***.

c. **Natural** - see ***Part 2*** of this ***Manual***

1. **Wetlands and Surface Waters** - Discuss the project's potential involvement with wetland and other surface water resources. If known, identify the location of potential jurisdictional wetlands and other surface waters as determined by the FDEP, Florida Water Management Districts (WMDs), and/or the USACE. Describe how wetlands and other surface waters may be evaluated. (The PED must not draw any conclusions regarding the significance of the wetland involvement since that would

constitute a Wetland Finding.) See ***Part 2, Chapter 9, Wetlands and Other Surface Waters***.

2. **Water Resources** - Provide a brief description of existing water features and stormwater treatment including the possible options for treatment and describe the project's potential involvement with these elements, as well as how they will be evaluated. See ***Part 2, Chapter 11, Water Resources***.

3. **Floodplains** - State whether the project is in the base floodplain or involves a regulated floodway, the project's potential involvement, and how potential floodplain impacts will be evaluated. See ***Part 2, Chapter 13, Floodplains***.

4. **Protected Species and Habitat** - Identify threatened and endangered species that may inhabit or migrate through the project corridor, designated critical habitat involved with the project, wildlife habitat for listed species, and describe the project's potential involvement with these species/species' habitat and how they may be evaluated. Identify areas where reduction in wildlife vehicle collisions, or improved wildlife connectivity using wildlife crossings may be considered. See ***Part 2, Chapter 16, Protected Species and Habitat***.

5. **Coastal and Marine** - Identify any Essential Fish Habitat (EFH) in the project vicinity and potential for involvement with managed species inhabiting or migrating through the project vicinity as required by the ***Magnuson-Stevens Fishery Conservation Management Act (MSA)***. Identify possible involvement with Habitat Areas of Particular Concern (HAPCs). Describe the project's potential involvement, and how it may be evaluated. See ***Part 2, Chapter 17, Essential Fish Habitat***. Identify whether the project is located in the vicinity of, or is located within, a coastal barrier resource as defined by the ***Coastal Barrier Resources Act (CBRA)***. See ***Part 2, Chapter 15, Coastal Barrier Resources***.

d. **Physical** - see ***Part 2*** of this ***Manual***

1. **Noise** - Identify any potential noise sensitive sites within the vicinity of the project. Identify the likelihood of traffic noise impacts and performance of a noise study during PD&E. See ***Part 2, Chapter 18, Highway Traffic Noise***.

2. **Air Quality** - Describe the air quality conformity designation of the project area. State if an air quality screening will occur. See ***Part 2, Chapter 19, Air Quality***.

3. **Contamination** - Identify by industry or commercial type any known Hazardous Material Generators and/or potentially contaminated sites

(e.g., petroleum) within the vicinity of the project. State how the project will be evaluated for contamination. See ***Part 2, Chapter 20, Contamination***.

4. **Infrastructure** - Provide a brief description of existing infrastructure (e.g., utilities, railroads, transit), the project's potential involvement, and how it may be evaluated. See ***Part 2, Chapter 21, Utilities and Railroads***.

5. **Navigation** - Identify whether the project intersects a potentially navigable waterway, the project's potential involvement, and how it may be evaluated. Describe the anticipated level of USCG involvement. See ***Part 1, Chapter 16, Navigation***.

e. **Special Designations**

1. **Outstanding Florida Waters** - Identify potential involvement with Outstanding Florida Waters. See ***Part 2, Chapter 11, Water Resources***.

2. **Aquatic Preserves** - Identify potential involvement with Aquatic Preserves. See ***Part 2, Chapter 11, Water Resources***.

3. **Wild and Scenic Rivers** - Identify potential involvement with rivers listed in the Nationwide Rivers Inventory and those designated as Wild and Scenic Rivers or Study Rivers. See ***Part 2, Chapter 12, Wild and Scenic Rivers***.

4. **Sole Source Aquifers** - Identify potential involvement with Sole Source Aquifers as defined by the Environmental Protection Agency (EPA). Recharge zones should also be identified. See ***Part 2, Chapter 11, Water Resources***.

4. **Coastal Zone Consistency** - Identify if Coastal Zone Consistency is required. See ***Part 2, Chapter 14, Coastal Zone Consistency***.

5. **Anticipated Permits** - Identify any anticipated permits.

6. **Anticipated Technical Studies** - Identify any anticipated technical studies.

3.2.2.4 Application for Federal Assistance

An ***Application for Federal Assistance (SF-424)*** is included as part of the AN package for those projects involving federal funding. An example of the federal form is provided in ***Figure 3-4***.

3.2.2.5 Transmittal List

A transmittal list is a record of the recipients of the AN, and must be provided in the AN package. Recipients of the AN include: ETAT members, consistency reviewers, elected officials, Federally Recognized Native American Tribes (Tribes), and other local, state, and federal agencies that need, or have requested, to be notified. An example list of agencies and organizations that the AN package is typically distributed to is included in ***Figure 3-5***. All contacts listed are not applicable for all projects. The OEM maintains contact information in the EST database for mandatory AN contacts. Districts should verify contacts in that list and communicate any updates or discrepancies to OEM. The District is responsible for adding additional project-specific contacts to the list. The EST provides a tool for adding new contacts. For guidance on adding and managing contacts see FDOT's ***EST User Handbook***.

3.2.3 Distribution of the Advance Notification Package

After the District performs a final quality review of project data, the completed AN package is transmitted to OEM using the EST for review. PDCs and Engineer Leads have up to 14 days to provide comments. OEM comments are accompanied by three options; approved to screen without edits, approved to screen with edits, or revise and resubmit to OEM for another review. Upon receiving OEM approval, the District uses the EST to transmit the AN package. An email notification is automatically customized according to the type of review the recipient conducts and may be tailored further to include project-specific review instructions. See ***Figure 3-6*** for a sample ***Programming Screen Notification*** with an AN package. The email includes a link to the AN package. The email is sent to the following recipients:

1. ETAT Members
2. FDOT Community Liaison Coordinator (CLC)
3. Interested parties who may set up notification preference through the ***ETDM Public Access Site***
4. Florida SCH
5. Agencies on the SCH contact list when the consistency reviewer of the agency is not the same as the ETAT reviewer (if the project requires a Federal Consistency Review)

6. Other AN package recipients not included in the above, such as regional planning council and local government officials

Tribes that are not ETAT members receive an email initiating cultural resources identification and the evaluation process for the project (***Figure 3-7***) with a link to the AN package through the EST and consistent with FDOT's ***Native American Tribal Consultation Website***.

Regardless of how the AN package is distributed, the transmittal list should be documented in the EST. Other interested parties may include federal, state, or local agencies such as police and fire departments, and schools that are not part of the ETAT or a consistency reviewer. Additional recipients may be identified and entered in the EST as necessary by the District. ***Figure 3-8*** provides addresses for organizations and/or agencies that may not be represented by an ETAT member or a consistency reviewer, but are required to receive a copy of the AN package. This list is maintained in the EST by OEM. If a correction is needed, please notify OEM.

3.2.4 Comments and Responses

Recipients have 45 days from the date of transmittal of the AN package to provide comments to FDOT. A 15-day extension may be granted by the District upon request by the reviewing party. Requests can be verbal (e.g., in person or phone call) or written (e.g., letter, email, or interacting with the EST). Agencies failing to respond by the end of the review period, but which have jurisdiction by law or are anticipated to have an interest in the proposed action, may be contacted at the District's discretion to solicit their comments.

At the end of the comment period, the SCH has an additional 15 days to review the consistency reviewer's comments and provide a determination that the requirements pursuant to ***Chapter 163, F.S.***, are met. The SCH uses comments received from consistency reviewers as the basis for its Federal Consistency Determination. When a project is determined to be inconsistent with the FCMP, a notice of inconsistency is issued by FDEP pursuant to ***15 CFR Part 930*** and ***Section 380.23, F.S.*** The determination must cite the section of the relevant statute under the agency's authority with which the project is inconsistent, and must identify actions that can be taken to resolve the inconsistency. See ***Section 3.2.6*** for guidance on the ETDM Issue Resolution process for inconsistency determinations.

The District reviews and addresses ETAT comments prior to the publication of the ***Preliminary Programming Screen Summary Report***. When the AN process is completed after the Programming Screen review, FDOT responds to AN comments in the EST and then re-publishes the ***Preliminary Programming Screen Summary Report***. Once published, the ***Preliminary Programming Screen Summary Report*** documents the screening event (ETAT comments), the Federal Consistency Determination, and the AN comments, as well as the District's responses to comments received, as appropriate.

Once the report is published, an email notification is automatically distributed informing the ETAT and those who received the AN package electronically of the updated status. Copies of the ***Preliminary Programming Screen Summary Report*** can be sent by the District to other interested parties, if requested. Information from the summary report is then used to advance or focus analyses prior to the PD&E Study, develop the scope of services of the PD&E Phase, and assist with the ***Class of Action Form*** as discussed in ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***. The ***Preliminary Programming Screen Summary Report*** is followed by a ***Final Programming Screen Summary Report*** that contains the same information as the ***Preliminary Programming Screening Summary Report*** with the addition of an OEM approved ***Class of Action Form***.

3.2.5 Agency Roles

During the comment period, agencies may request, or be invited, to serve as Cooperating or Participating Agencies on a project. These designations describe various levels of involvement in the environmental review process.

1. **Lead Agency** - The Lead Agency is the agency proposing the action and having primary responsibility for the Environmental Document, determining the preferred alternative in the PD&E phase, and inviting Cooperating and Participating Agencies. The District is the Lead Agency for FDOT State Projects. OEM is the Lead Agency for federal highway transportation projects. Otherwise, a federal agency will be the Lead Agency and under ***Title 23 U.S.C. § 139(c)(3)***, FDOT serves as the joint lead agency. FDOT identifies whether a project will be processed as an FDOT Federal Project or FDOT State Project prior to the ETDM screening events (see ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***).

2. **Cooperating Agency** - According to ***42 U.S.C. § 4336a(a)(3)*** a cooperating agency is any federal, state, tribal, or local agency with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal that has been designated by the lead agency.

   During the Programming Screen, an agency can request to be a Cooperating Agency or during project review, FDOT Districts can recommend Cooperating Agencies; however, the Lead Agency is responsible for officially inviting and approving the Cooperating Agencies.

   Cooperating Agencies have a higher degree of authority, responsibility, and involvement in the environmental review process. The Cooperating Agencies have legal/jurisdiction requirements tied to the preparation of the Environmental Document. Cooperating Agencies must be included when establishing the schedule, determining the purpose and need, and determining alternatives. Cooperating agencies consult with the lead agency in developing and updating the schedule, meet the schedule, and elevate, as soon as practicable, to the Director

of OEM issues relating to purpose and need, alternatives, or other issues that may affect the ability to meet the schedule.

The ***23 CFR § 771.113*** and ***42 U.S.C. § 4336a*** allow a Cooperating Agency by request of the Lead Agency, assume responsibility for developing information and preparing environmental analyses, including portions of the environmental impact statement or environmental assessment concerning which the cooperating agency has special expertise. Cooperating Agencies may be determined during the Programming Screen or during the PD&E phase.

3. **Participating Agency** - Other agencies that are invited by the Lead Agency [pursuant to ***23 U.S.C. § 139(d)***] to serve as a Participating Agency respond to requests for technical assistance, attend scoping and coordination meetings, attend joint field reviews, provide substantive and early input on topics of concern, scope agreements to address concerns and required technical studies, review Lead Agency-approved draft/final Environmental Documents. Designation as a Participating Agency does not indicate project support and does not provide an agency with increased oversight or approval authority above its statutory limits. It is not necessary to invite agencies as Participating Agencies that have only a tangential, speculative, or remote interest in the project. Examples of a Participating Agency include: federal, state, tribal, regional, and local government agencies. Nongovernmental organizations and private entities cannot serve as Participating Agencies.

   Per ***23 U.S.C. § 139(d)*** the Lead Agency is responsible for inviting and approving Participating Agencies for ***NEPA*** documents. An agency may request to serve as a Participating Agency. The Lead Agency may invite agencies that are not ETAT members to be involved as Participating Agencies.

   Per ***23 U.S.C. § 139***, responsibilities of the Participating Agencies include:

   a. Participating in the ***NEPA*** process at the earliest possible time, especially with regard to the development of the purpose and need, range of alternatives, methodologies, and the level of detail for the analysis of alternatives.

   b. Identifying, as early as practicable, any concerns regarding the project's potential environmental, socioeconomic, community, or other impacts.

   c. Participating in the issue resolution process.

   d. Providing meaningful and timely input on unresolved issues.

   e. Participating in the scoping process. The scoping process should be designed so that interested agencies are invited to participate and have an opportunity for involvement in the process.

f. Reviewing ancillary project documentation as a means of providing expert review and providing commentary or concurrence as appropriate.

g. Reviewing at the discretion of the lead agency, the Environmental Document before it is approved for public availability.

3.2.6 Issue Resolution

If the SCH finds the project to be inconsistent with the FCMP and issues an inconsistency determination during the AN review, the project will go through the ETDM Issue Resolution process (see the ***ETDM Manual, Topic No. 650-000-002***). The ETDM Issue Resolution process seeks to find solutions to complex issues among agencies by identifying mutually agreeable activities or conditions that will address a concern on a topic (natural, physical, social, or cultural) while meeting the transportation need. Issue resolution activities may continue through future project delivery phases as detailed analysis begins and more information becomes available. Once the issue has been resolved, the entire ETDM Issue Resolution process will be documented in the EST and the Environmental Document. FDOT's ***EST User Handbook*** provides additional guidance on tracking and documenting the issue resolution process. Should a federal agency disagree with the decision, the Federal Dispute Resolution process may be initiated. If there are unresolved issues for FDOT Federal Projects undergoing ***NEPA*** review, then the "issue resolution" process set out in ***23 U.S.C. § 139(h)(6)*** will apply.

3.2.7 Project Status Update

Recipients of the Programming Screen Notification and/or AN must be notified when one or more of the following conditions occur:

1. It has been four years or longer and no project activities have occurred since the distribution of the AN;

2. There is a change in project logical termini (expanded); and/or

3. There is a change in project concept(s) (e.g., new or revised alignments, addition of a new interchange, addition of managed lanes, change in Purpose and Need).

If the project **has not** entered the PD&E phase, the AN must be reprocessed and will include an updated Programming Screen.

An updated AN package is prepared in accordance with ***Section 3.2.2***. For FDOT Federal Projects, the District must coordinate with OEM.

The Project Manager in coordination with the ETDM Coordinator updates project information in the AN package in the EST, and sends the updated package to the recipients of the original AN. The cover letter (***Figure 3-2***) should reference the earlier AN (including the State Application Identifier number) and include the reason(s) the new AN is being transmitted.

If the project **has entered** the PD&E phase, the project is not required to go back through the Programming Screen. Instead, coordination with OEM is needed to determine whether the District should prepare a project status fact sheet which includes the following information:

1. Details about the project [project title, ETDM number, Financial Management Number, Draft Environmental Impact Statement (DEIS) number if it applies]

2. Brief project description including the COA

3. Brief statement regarding current status of project, including any changes which have occurred since the original submittal

4. Current schedule of the project

5. Contact Information

The project status fact sheet is sent to the same recipients of the Programming Screen notification and/or AN.

3.3 REFERENCES

Chapter 163, F.S.
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0163/0163ContentsIndex.html

FDOT, EST User Handbook. https://etdmpub.fla-etat.org/est/pub/EstHandbook.do

FDEP, Florida Coastal Management Program website. https://floridadep.gov/rcp/fcmp

FDEP, Florida State Clearinghouse website.
https://floridadep.gov/oip/oip/content/clearinghouse

FDOT, Efficient Transportation Decision Making Manual Topic No. 650-000-002.
https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Planning Consistency for NEPA Practitioners.
https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pdeman/planning-consistency-for-nepa-practitioners.pdf?sfvrsn=895090ea_1

Federal Register, 1982, Presidential Executive Order 12372. FR Vol. 47, No. 137

Section 380.23, F.S.
https://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=380.23&URL=0300-0399/0380/Sections/0380.23.html

State of Florida, Office of the Governor, September 29, 1997, Executive Order 95-359

Title 15 CFR § 930, Federal Consistency with Approved Coastal Management Programs (Subpart F). https://www.ecfr.gov/current/title-15/subtitle-B/chapter-IX/subchapter-B/part-930

Title 23 U.S.C. Highways https://www.ecfr.gov/current/title-23

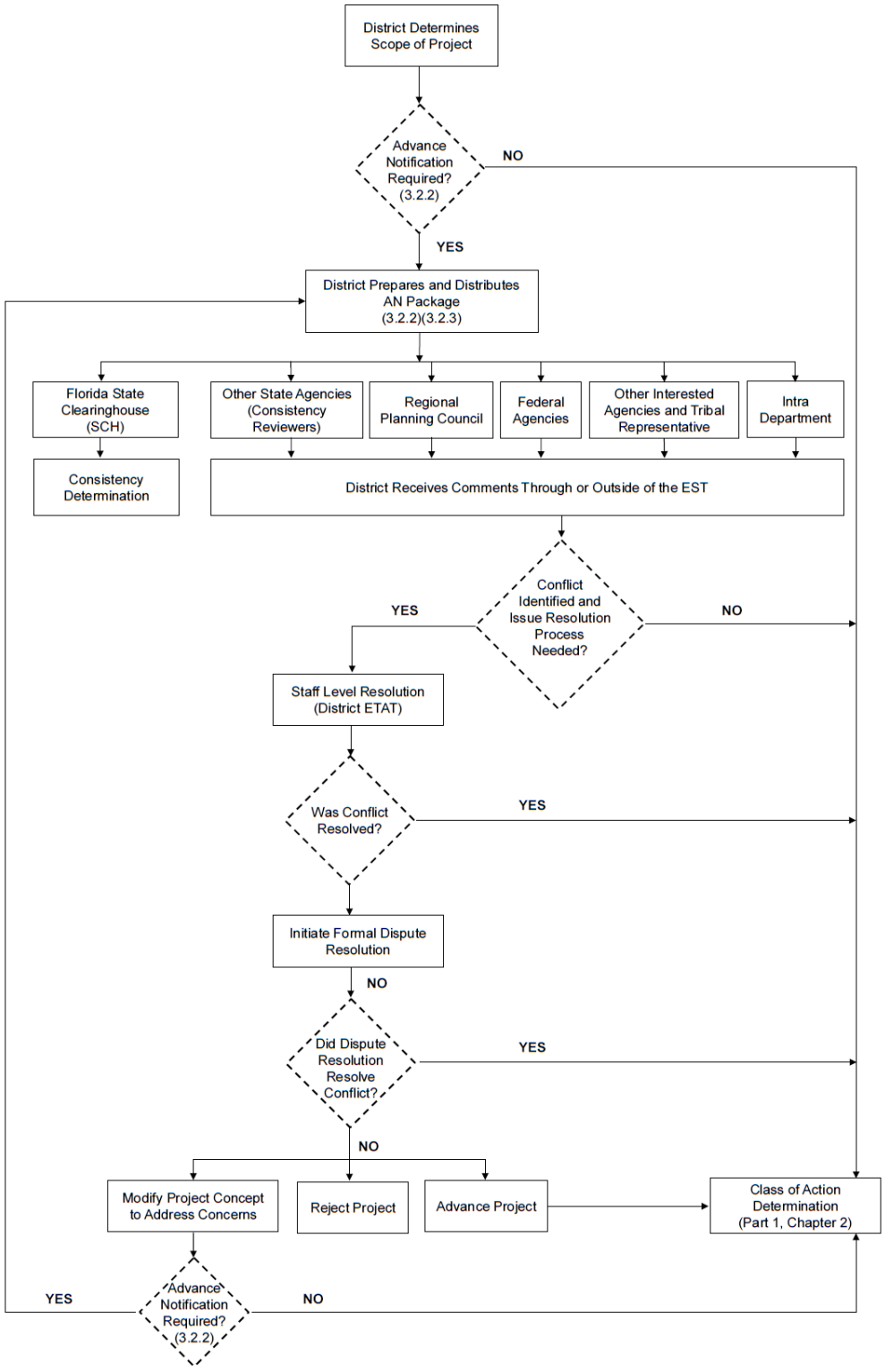


Figure 3-1 Advance Notification Process

(DATE)

Florida State Clearinghouse

Department of Environmental Protection

3900 Commonwealth Boulevard

Mail Station 47

Tallahassee, Florida 32399-3000

SUBJECT: Advance Notification

Project Name

ETDM Number

Federal Aid Project Number X-XXX(X)-X

Financial Management Number XXXXXXXXXXX

_____ County, Florida

Dear Name:

This Advance Notification (AN) package is being sent to your office for distribution to State agencies that conduct federal consistency reviews (consistency reviewers) in accordance with the Coastal Zone Management Act and Presidential Executive Order 12372. Although we will request specific comments during the permitting process, we are asking that consistency reviewers examine the attached information and provide us with their comments.

Consistency reviewers have 45 days from the Programming Screening Notification to provide their comments. Once you have received their comments, please submit a consistency determination for the State of Florida within 60 days of the Programming Screen Notification. If you need more review time, send a written request for an extension to our office within the initial 60 day comment period.

(FDOT Federal Projects that qualify for screening in the EST require a Federal Consistency Determination and should include the following statement):

> *"This is a federal action. The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022 and executed by the Federal Highway Administration and FDOT.*
>
> *FDOT may adopt this planning product into the environmental review process, pursuant to 23 U.S.C. § 168(d) or the state project development process.*

Figure 3-2 Cover Letter to the State Clearinghouse

(DATE)
Page 2

FDOT will determine what type of environmental documentation will be necessary. The determination will be based upon in-house environmental evaluations and comments received through coordination with other agencies. Please provide a consistency review for this project in accordance with the State's Coastal Zone Management Program.

In addition, please review this project's consistency, to the maximum extent feasible, with the requirements of Chapter 163 of the Florida Statutes."

(If a project is non-federal, then include the following statement):

"This is a non-federal action and the Florida Department of Transportation will determine what type of environmental documentation will be necessary. The determination will be based upon in-house environmental evaluations and comments from other agencies. A consistency review for this project is not required by 15 CFR Part 930 because no federal actions are involved.

In addition, please review this project's consistency, to the maximum extent feasible, with the requirements of Chapter 163 of the Florida Statutes."

(Conditional if previously screened – insert the following paragraph):

The project was previously reviewed through the Environmental Screening Tool as part of the Efficient Transportation Decision Making (ETDM) Programming Screen. The project is listed as _____. The Programming Screen Summary Report was published on _____. The Environmental Technical Advisory Team (ETAT) members may review this report on the ETDM website. Non-ETAT agencies may review this report on the public access website located at: http://etdmpub.fla-etat.org/.

Your comments should be submitted via the EST if you are an ETAT representative, or emailed or mailed to the District contact:

District Environmental Office
Florida Department of Transportation
Street address XXXX
District / City, Florida XXXXX
Email address

Sincerely,

Manager of District office in charge of PD&E studies as appropriate based on District organizational structure

Attachment

Figure 3-2 Cover Letter to the State Clearinghouse (Page 2 of 2)

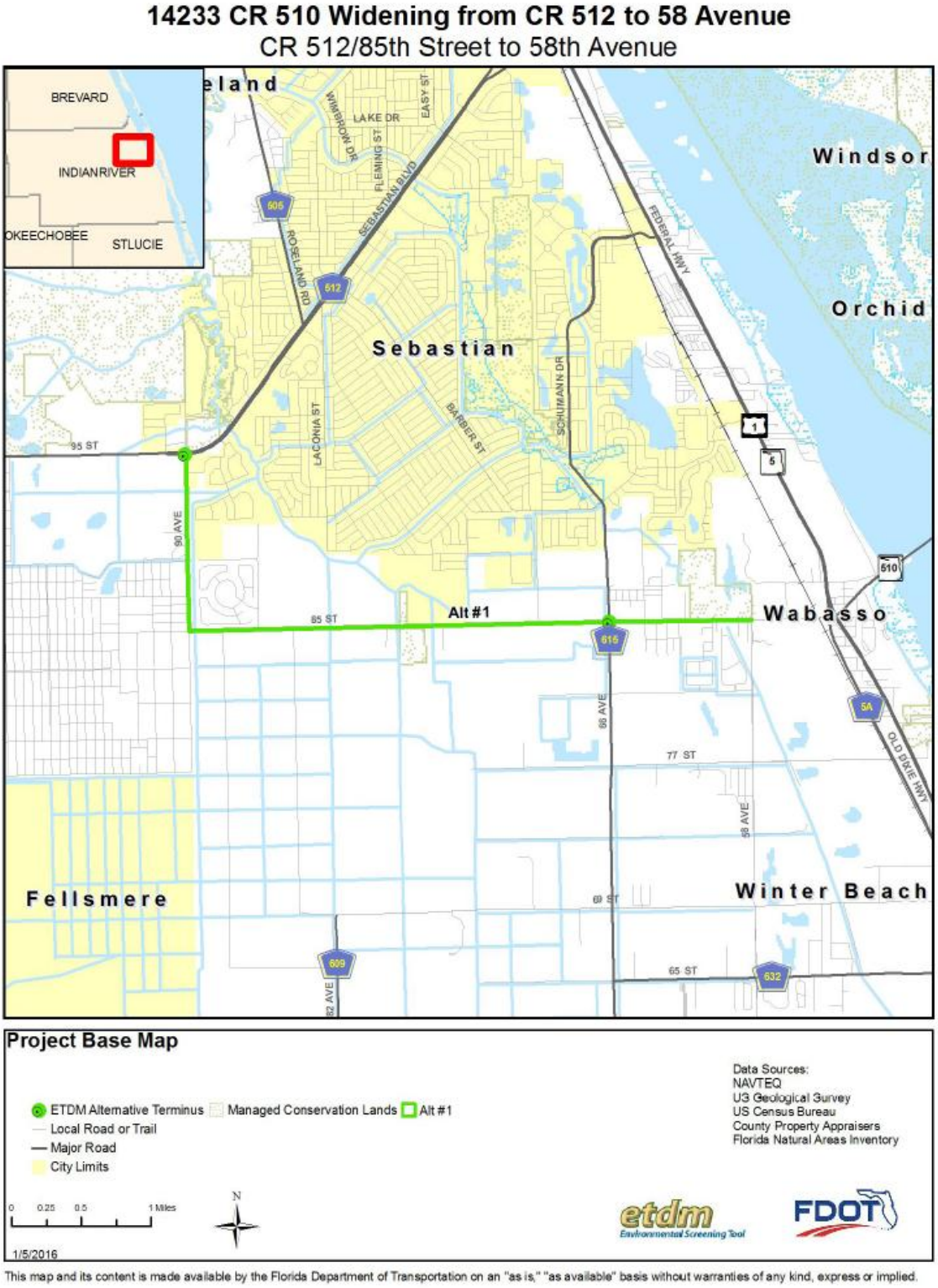


Figure 3-3 Example of Project Location Map

View Burden Statement

OMB Number: 4040-0004
Expiration Date: 03/31/2029

Application for Federal Assistance SF-424

* 1. Type of Submission:	* 2. Type of Application:	* If Revision, select appropriate letter(s):
Preapplication	New	
Application	Continuation	* Other (Specify):
Changed/Corrected Application	Revision	

* 3. Date Received:	4. Applicant Identifier:

5a. Federal Entity Identifier:	5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:	7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:	

* b. Employer/Taxpayer Identification Number (EIN/TIN):	* c. UEI:

d. Address:

* Street1:	
Street2:	
* City:	
County/Parish:	
* State:	
Province:	
* Country:	USA: UNITED STATES
* Zip / Postal Code:	

e. Organizational Unit:

Department Name:	Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:		* First Name:	
Middle Name:			
* Last Name:			
Suffix:			

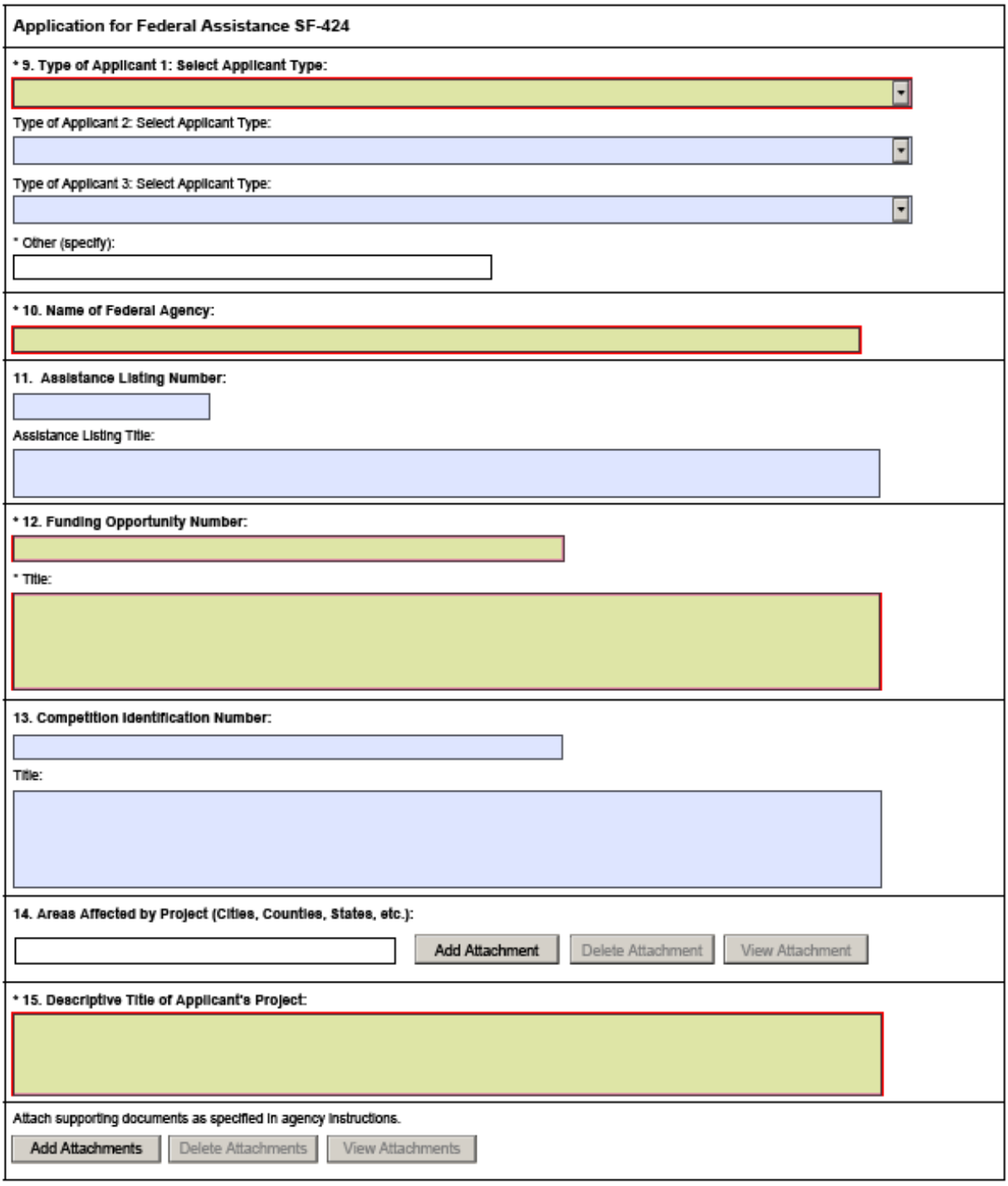
Title:	

Organizational Affiliation:

* Telephone Number:	Fax Number:

* Email:	

Figure 3-4 Application for Federal Assistance



Application for Federal Assistance SF-424

* 9. Type of Applicant 1: Select Applicant Type:

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

* 10. Name of Federal Agency:

11. Assistance Listing Number:

Assistance Listing Title:

* 12. Funding Opportunity Number:

* Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment | Delete Attachment | View Attachment

* 15. Descriptive Title of Applicant's Project:

Attach supporting documents as specified in agency instructions.

Add Attachments | Delete Attachments | View Attachments

Figure 3-4 Application for Federal Assistance (Page 2 of 3)

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant * b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment | Delete Attachment | View Attachment

17. Proposed Project:

* a. Start Date: * b. End Date:

18. Estimated Funding ($):

* a. Federal
* b. Applicant
* c. State
* d. Local
* e. Other
* f. Program Income
* g. TOTAL

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

a. This application was made available to the State under the Executive Order 12372 Process for review on .

b. Program is subject to E.O. 12372 but has not been selected by the State for review.

c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

Yes No

If "Yes", provide explanation and attach

Add Attachment | Delete Attachment | View Attachment

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 18, Section 1001)**

** I AGREE

** The list of certifications and assurances, or an Internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:
Middle Name:
* Last Name:
Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative: * Date Signed:

Figure 3-4 Application for Federal Assistance (Page 3 of 3)

Federal Emergency Management Agency - Mitigation Division, Chief
Federal Railroad Administration – Director
Federal Railroad Administration
U.S. Department of Interior - Bureau of Land Management, Southeastern States Office
U.S. Department of Housing and Urban Development, Regional Environmental Officer
U.S. Department of Interior - U.S. Geological Survey Chief
U.S. Environmental Protection Agency **- ETAT Representative**
U.S. Department of Interior – U.S. Fish and Wildlife Service **- ETAT Representative**
U.S. Army Corps of Engineers - Regulatory Branch **- ETAT Representative**
U.S. Department of Commerce - National Marine Fisheries Service – Southeast Regional Administrator or Southeast Regional Director
U.S. Department of Commerce - National Marine Fisheries Service - Habitat Conservation Division **- ETAT Representative**
U.S. Department of Agriculture - Southern Region
U.S. Department of Interior - National Park Service - Southeast Regional Office **- ETAT Representative**
Federal Aviation Administration – Orlando Airports District Office
U.S. Department of Health and Human Services – National Center for Environmental Health
U.S. Department of Interior - Bureau of Indian Affairs - Office of Trust Responsibilities
U.S. Coast Guard - Commander (obr) - Eighth District **- ETAT Representative** (District 3 only)
U.S. Coast Guard - Commander (oan) - Seventh District **- ETAT Representative**
Florida Inland Navigation District
Poarch Band of Creek Indians of Alabama
Muscogee (Creek) Nation of Oklahoma
Seminole Tribe of Florida **- ETAT Representative**
Miccosukee Tribe of Indians of Florida
Seminole Nation of Oklahoma
Mississippi Band of Choctaw Indians
Florida Fish and Wildlife Conservation Commission **- ETAT Representative**
U.S. Forest Service **- ETAT Representative**
Florida Department of Environmental Protection **- ETAT Representative**
Florida Department of Environmental Protection- State Clearinghouse
Florida Department of State **- ETAT Representative**
Florida Department of Commerce **– ETAT Representative**
Florida Department of Agriculture and Consumer Services **- ETAT Representative**
Federal Transit Administrator **- ETAT Representative**
Regional Planning Council
Water Management District **- ETAT Representative**
Engineer/Manager, Environmental Office
Local Government Officials

Figure 3-5 Example Transmittal List

FROM: [FDOT ETDM Coordinator]

TO: [ETAT Member, ETDM Coordinator Management Team, FDOT CLC, FDOT CLC Primary, FDOT ETDM Coordinator Primary, MPO CLC Primary, MPO CLC, MPO ETDM Coordinator Primary, MPO ETDM Coordinator, Advance Notification – Commenting Interested Parties, Consistency Reviewers, Project Managers, District Environmental Manager, State Clearinghouse Coordinator, Federal Consistency – Commenting Interested Party]

Subject: Notice: ETDM Programming Screen and Federal Consistency Review has begun for ETDM Project #xxxxx (Project Name) - Project Sponsor: FDOT District x

The ETDM Programming Screen and the Florida State Clearinghouse Federal Consistency Review period have begun for the following project. This notice also constitutes the Advance Notification in accordance with Presidential Executive Order 12372. Please review instructions below and then proceed to the Environmental Screening Tool to submit your comments at:

https://www.fla-etat.org/est/secure/
ETDM #: _____
PROJECT NAME: _____
FINANCIAL #:
FEDERAL INVOLVEMENT:
ALTERNATIVE: _____
MODES: _____
SIS:
DISTRICT: _____
COUNTY: _____
PLANNING ORGANIZATION: _____
SCREEN:
REVIEW START:
REVIEW END:
ETDM COORDINATOR: _____
Phone:_____ Email: _____
PROJECT MANAGER: _____
POTENTIAL LEAD AGENCIES: _____
ANTICIPATED CLASS OF ACTION (COA);
<Click to view the Advance Notification Package> Link: http://etdmpub.fla-etat.org/est/AN_Package.jsp?pkg=2085

Figure 3-6 Sample Programming Screen Notification

The review period starts today XX-XXX-XX, and will end in 45 days, on XX-XXX-XX.

==========

The following Water Management District(s) should review this project:

_____

==========

INSTRUCTIONS FOR ETDM PROGRAMMING SCREEN REVIEW

ETAT reviewers are asked to proceed with their Programming Screen review of the above-referenced project. Those ETAT reviewers who also serve as Consistency Reviewers for their agency should reference the "Federal Consistency Review" instructions below. Those agencies that use different personnel to perform the ETDM and Federal Consistency Review should coordinate internally to ensure that the Federal Consistency Review and the ETDM comments are not in conflict.

Your review of this project should include:

* Review and Acknowledge Project Description and Purpose and Need

* Review and comment on potential project effects (direct, indirect and secondary effect considerations). Consider:

- Preliminary Environmental Discussions (PEDs)
- Your professional knowledge about potential effects in the area
- Standardized GIS analyses provided in the EST or other accessible systems
- Studies and other data about the area

* Assign potential of degree of effect

* Provide scoping recommendations for future project development phase:

  - Suggest technical studies necessary to evaluate potential project effects
  - Identify critical topics for analysis during PD&E

Your input will be used to assist in determining the Class of Action for the NEPA document.

If you have any technical questions, need assistance, or require additional training with the EST, contact the ETDM Help Desk at 850-414-5334 or help@fla-etat.org

If you have any project-specific questions contact xxx at xxxx (ETDM Coordinator or Contact Project Manager

Figure 3-6 Sample Programming Screen Notification (Page 2 of 3)

NOTICE TO MPO ETDM Coordinators and CLCs: Some projects may not fall within your geographic jurisdiction; however, the Department would not want to prevent you from commenting on a project if you believe that it may impact your organization. Therefore, you are being notified of any project entering a review cycle within your FDOT District.

==========

Thank you,

ETDM Coordinator and CLC

The Florida Department of Transportation may adopt this planning product into the environmental review process, pursuant to Title 23 USC § 168(d) or the state project development process.

Figure 3-6 Sample Programming Screen Notification (Page 3 of 3)

FROM: (FDOT ETDM Coordinator)

TO: Title and name of preservation official (generated in the EST)

SUBJECT: Advance Notification

Project Name

ETDM Number

Federal Aid Project Number X-XXX(X)-X

Financial Management Number XXXXXXXXXXX

_____ County, Florida

Dear Name:

This Advance Notification (AN) package is being sent to your office as an initial notification that FDOT is initiating its cultural resources identification and evaluation process for the above referenced project. Please note the AN package provides the reader with an overview of a proposed transportation project.

(Projects that qualify for screening and involve a federal action, federal funds, or are maintaining federal eligibility, require a Federal Consistency Determination. If any of these conditions are anticipated for any phase through construction, then add the following statement):

> *"This is a federal action. The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022 and executed by the Federal Highway Administration and FDOT.*
>
> *FDOT may adopt this planning product into the environmental review process, pursuant to 23 U.S.C. § 168(d) or the state project development process.*
>
> *FDOT will determine what type of environmental documentation will be necessary based upon environmental evaluations and comments received through coordination with other agencies. FDOT is presenting an opportunity for early coordination in compliance with Section 106 of the National Historic Preservation Act of 1966 (as amended) and 36 CFR Part 800."*

(If a project is non-federal, then include the following statement):

> *"This is a non-federal action and the Florida Department of Transportation will determine what type of environmental documentation will be necessary based upon in-house environmental evaluations and comments from other agencies. FDOT is presenting an opportunity for early coordination in compliance with Chapter 267.031(5)(d), Florida Statues."*

Figure 3-7 Sample Email to the Preservation Officials

(Conditional if previously screened – insert the following paragraph):

> *"The project was previously reviewed through the Environmental Screening Tool as part of the Efficient Transportation Decision Making (ETDM) Programming Screen. The project is listed as _____. The Programming Screen Summary Report was published on _____. This report may be reviewed at: http://etdmpub.fla-etat.org/."*

An initial desktop evaluation of previously recorded archaeological and historic cultural resources in and proximate to the project area is included in the AN package for your consideration. Please take this opportunity to inform FDOT if you have any concerns related to historic or archaeological resources of importance to you.

Furthermore, if there are any traditional religious and/or culturally important places in or near the project area which you want FDOT to consider in the development of this project, you may contact FDOT to identify your concern. The information regarding any such properties will be kept confidential.

Should you wish to inform FDOT on how to proceed to address the Tribe's concerns, you may provide this as well. Requests and comments should be submitted to the District contact:

District Environmental Office

Florida Department of Transportation

Street address XXXX

District / City, Florida XXXXX

Email address

Thank you,

ETDM Coordinator

Figure 3-7 Sample Email to the Preservation Officials (Page 2 of 2)

FEDERAL AND STATE AGENCIES

Orlando Airports District Office Federal Aviation Administration 8427 South Park Circle, Suite 524 Orlando, FL 32819	Southeast Regional Office National Park Service U.S. Department of Interior 75 Spring Street, SW, Suite 1130 Atlanta, GA 30303
Director Region IV Mitigation Division Federal Emergency Management Agency 3003 Chamblee Tucker Road Atlanta, GA 30341-4148	National Center for Environmental Health Centers for Disease Control and Prevention U.S. Department of Health and Human Services 1600 Clifton Road Atlanta, GA 30329-4027
Regional Administrator Federal Railroad Administration 61 Forsyth Street SW, Suite 16T20 Atlanta, GA 30303-3104 Director Office of Public Engagement Federal Railroad Administration 1200 New Jersey Avenue SE, Mail Stop 10 Washington DC, 20590	Director U.S. Geological Survey U.S. Department of Interior Florida Water Science Center 12703 Research Parkway Orlando, FL 32826
(FDOT District 3) Commander U.S. Coast Guard Eighth District 500 Poydras Street New Orleans, LA 70130-3310	Chief Division of Natural Resources Office of Trust Services Bureau of Indian Affairs U.S. Department of Interior 1849 C Street, NW MS-4620-MIB Washington, D.C. 20240 (Only when a project may potentially involve Indians)
Field Manager Southeastern States Field Office Bureau of Land Management U.S. Department of Interior 411 Briarwood Drive, Suite 404 Jackson, MS 39206	Regional Environmental Officer U.S. Dept. of Housing and Urban Development Five Points Plaza 40 Marietta Street Atlanta, GA 30303-2086
Southeast Regional Administrator National Marine Fisheries Service National Oceanic and Atmospheric Administration 263 13th Avenue, South St Petersburg, FL 33701 In addition, for actions involving the Florida Keys: Southeast Regional Director National Marine Sanctuaries Program National Oceanic and Atmospheric Administration 33 East Quay Road Key West, FL 33040	Chief Office of Parks Planning Division of Recreation and Parks Department of Environmental Protection 3900 Commonwealth Boulevard Tallahassee, Florida 32399 (850) 245-3051 (for projects in the vicinity of Florida State Parks)
Florida Inland Navigation District 1314 Marcinski Road Jupiter, FL 33477	

Figure 3-8 Contact Information

PART 1, CHAPTER 4

PROJECT DEVELOPMENT PROCESS

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PART 1, CHAPTER 4

PROJECT DEVELOPMENT PROCESS

4.1 OVERVIEW

This chapter provides an overview of the project development process for transportation projects prepared by Florida Department of Transportation (FDOT). This chapter focuses primarily on projects with a Project Development and Environment (PD&E) phase.

4.1.1 Project Development Process

It is important to understand the sequence and interrelation between Planning, PD&E, Design, Right of Way (ROW), and Construction phases in the project development process to successfully deliver a project.

During the PD&E process, projects are evaluated for potential environmental impacts, to ensure compliance with applicable federal and state laws and regulations. For FDOT Federal Projects this process is followed to comply with the ***National Environmental Policy Act (NEPA)***, state laws and regulations, and the environmental review process required by ***23 United States Code (U.S.C.) § 139***. FDOT State Projects require similar environmental review for preparation of a State Environmental Impact Report (SEIR) (see ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***). Environmental review continues, through project Re-evaluation and permitting, during the Design and Construction phases.

Type 1 Categorical Exclusions (CEs) or Non-Major State Actions (NMSAs) (and occasional Type 2 CEs) do not have a PD&E phase. Environmental evaluations for Type 1 CEs and NMSAs are prepared and approved by the District Environmental Office during the Design phase. See ***Part 1, Chapter 5, Categorical Exclusion*** and ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery*** for more information.

Communication among the various offices involved in the project development and delivery process and coordination between project phases is critical to a project's success. Project Managers are responsible for establishing and maintaining communication and coordination throughout the different phases. ***Figure 4–1*** shows the typical project development process, along with the building blocks of each phase and how the phases connect with the PD&E process. To deliver transportation projects, FDOT uses a variety of project delivery methods, which range from the traditional Design-Bid-Build to alternative contracting methods such as Design-Build and Public Private Partnership (P3) Concessionaire Agreements. The choice of delivery method depends on a variety of factors such as project context, status, schedule, risk factors, funding availability, level of complexity, and other project-specific factors.

A project begins with the identification of transportation needs or deficiencies through a planning process that prioritizes short and long-range transportation improvements. For

projects that qualify, see the ***Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002***. FDOT uses the ETDM Environmental Screening Tool (EST) to gather project information and coordinate with resource agencies, public, and other project stakeholders about the project's potential effect on social, cultural, natural, and physical resources. This information is used to develop the scope of services for a planning study or PD&E Study. During the PD&E phase, FDOT performs alternatives analyses, conducts environmental and engineering studies, and prepares various technical studies and reports necessary to obtain the project's Location and Design Concept Acceptance (LDCA) for ***NEPA*** documents or approval by the Lead Agency. Information obtained during the PD&E phase is used to develop the scope of work for the Design phase. The scope of the Design phase also depends on the delivery method chosen for the project. The Design phase includes preparation of final construction plans, specifications, permitting, and final estimates. However, the Design phase does not include final construction plans for projects that use alternative contracting methods. Typically, acquisition of ROW occurs concurrently with the Design phase before the project moves into the Construction phase.

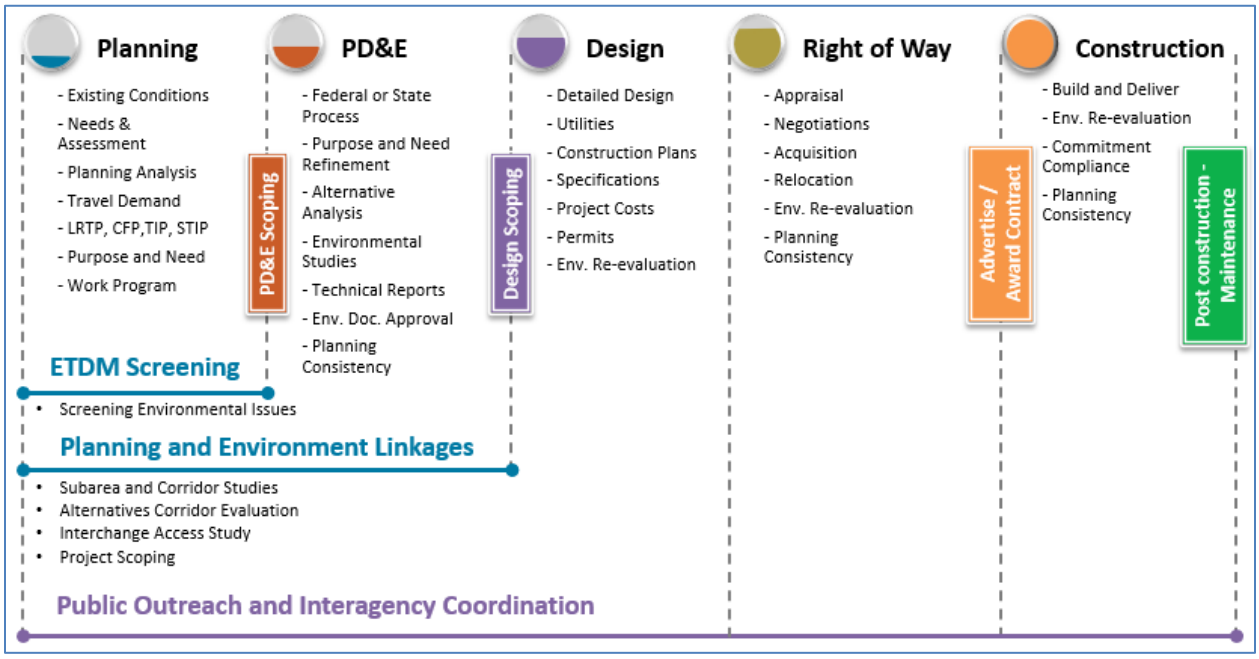

Figure 4-1 Project Development Process

4.1.2 Definitions

Administrative Record – The set of documents that the decision-maker considered in making the final decision that are submitted by the Lead Agency to the court for a ***NEPA*** project involving litigation. The Administrative Record is prepared using the project file in StateWide Environmental Project Tracker (SWEPT).

Build Alternative – A proposed alternative that involves constructing or implementing a project to address the project's purpose and need.

Cost Feasible Plan (CFP) – A plan that consists of projects identified in a long-range transportation plan that are capable of being funded within the 20-year planning horizon.

FDOT Federal Project- A Federal Project with FDOT as the Lead Agency due to ***NEPA*** Assignment. These projects involve FHWA funds and/or affect the interstate during any phase of project development or implementation.

FDOT State Project- A project advanced through the FDOT Work Program using only state funding and/or does not affect the interstate during any phase of project development or implementation.

Final Design – Any design activities following preliminary design and expressly leading to the preparation of final construction plans, detailed specifications for the performance of construction work as defined by ***23 Code of Federal Regulations (CFR) § 636.103***.

Lead Agency – The agency that oversees the preparation of and approves an Environmental Document.

Location and Design Concept Acceptance (LDCA)- The approval of the preferred alternative by the Lead Agency.

Long Range Transportation Plan (LRTP) – A 20-year transportation plan that identifies current and future transportation needs based on population and employment growth, travel demand, and other considerations for a region.

Major Project – A project with a total estimated cost of $500 million or more that is receiving (federal) financial assistance as defined by ***23 U.S.C. § 106***. At its discretion, Federal Highway Administration (FHWA) can designate a project with a total cost of less than $500 million as a major project in situations where the project requires a substantial portion of the State Transportation Agency program resources, has a high level of public or congressional interest, is unusually complex, or has extraordinary implications for the national transportation system. This is not related to the environmental impacts of a project.

Metropolitan Planning Organization (MPO) – A policy board of an organization created and designated to carry out the metropolitan transportation planning process. MPOs are required to represent localities in all urbanized areas with populations over 50,000, as determined by the U.S. Census Bureau. Such boards may also be referred to as Transportation Planning Organizations (TPOs).

NEPA Process – The process for Federal Projects to comply with the procedures and achieve the goals of ***NEPA***.

No-Action (No-Build) Alternative - The option in which the proposed project activity would not take place. The no-action (no-build) alternative provides the baseline for establishing impacts of the build alternatives. The terms no-action and no-build are used interchangeably.

Planning and Environment Linkages (PEL) – A collaborative and integrated approach to transportation decision-making that 1) considers environmental, community, and economic goals early in the transportation planning process, and 2) uses the information, analysis, and products developed during planning to inform the PD&E process.

Planning Product – A decision, analysis, study, or other documented information that is the result of an evaluation or decision-making process carried out by an MPO or a State, as appropriate, during metropolitan or statewide transportation planning under ***23 U.S.C. § 134, § 135***, or ***§ 168*** respectively.

Preferred Alternative - The alternative identified in the Environmental Document that will be advanced to the Design phase.

Preliminary Design – Activities that define the general project location and design concept. These include, but are not limited to, preliminary engineering and other activities and analysis, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, utility investigation/coordination, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design. Prior to completion of the ***NEPA*** process, any such preliminary engineering and other activities and analyses must not materially affect the objective consideration of alternatives in the ***NEPA*** process as defined by ***23 CFR § 636.103*** and ***FHWA Order 6640.1A Policy on Permissible Project Related Activities During the NEPA Process***.

Project Development and Environment (PD&E) Phase or PD&E Process- The phase of the project development process that supports the Class of Action Determination. Entering the PD&E phase does not start the PD&E Study. The terms PD&E phase and PD&E process are used interchangeably.

PD&E Activities- Activities included in the ***Work Program Instructions, Part III, Chapter 23.A.*** that support ETDM, the PD&E phase, and ultimately the PD&E Study.

Project Development and Environment (PD&E) Study- The FDOT process of preparing an Environmental Document, including a Type 2 CE, Environmental Assessment (EA), Environmental Impact Statement (EIS), or SEIR once the ***Class of Action Form*** is approved. Type 1 CEs and NMSAs are not PD&E studies, as they do not have a PD&E phase and are prepared during the Design phase.

Project Development Process – A comprehensive process involving multiple project phases including Planning, PD&E, Design, Right of Way (ROW), and Construction.

Project File – A file that documents the decision-making process and technical support during the PD&E phase and serves as the basis for the Administrative Record. The project file is maintained in SWEPT.

Project Scoping – A project development activity that involves determining and documenting the tasks, responsibilities, deliverables, schedule, cost, and delivery method

to meet project goals and objectives. Project scoping is used to build the PD&E scope of services and starts towards the end of the planning process as the project transitions to the PD&E phase.

Rail System Plan (RSP) – A plan that establishes a vision for passenger and freight rail transportation systems. It identifies an inventory of needs, establishes priorities for investments, and sets forth future action steps necessary to implement the plan.

Reasonable Alternatives [Term used in the EIS only] – A reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.

Scope of Services – An attachment to the contractual agreement between FDOT and the procured consultant that outlines project tasks to be performed by the consultant. Development of a scope of services requires input and coordination with several District offices. FDOT has developed Standard Scopes of Services for procuring PD&E phase and Design services, and guidelines for estimating and negotiating staff hours.

State Funds Only (SFO) project – A project that is funded by state funds only. If it is determined that the project will be SFO, then this funding method must be maintained throughout all the work program phases, and the District must use the SFO item group identifier in the work program.

State Highway System (SHS) – The interstate system and all other roads within the state which were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the SHS, plus roads transferred to the state's jurisdiction after that date by mutual consent with another governmental entity, but not including roads so transferred from the state's jurisdiction. These facilities are facilities to which access is regulated. See ***Subsection 334.03(24), Florida Statutes (F.S.)***.

State Transportation Improvement Program (STIP) – A federally mandated document prepared by FDOT which must include a listing of projects planned with federal participation in the next four fiscal years.

Strategic Intermodal System (SIS) Plan – A plan that sets policies to guide decisions about which facilities are designated as part of the SIS (a high-priority network of transportation facilities critical to Florida's economic competitiveness and quality of life), where future SIS investments should occur, and how to set priorities among these investments based on funding.

Transit Development Plan (TDP) – A 10-year transit plan which is prepared by a transit agency to present the agency's planning, development, and operation of public transit facilities (service or infrastructure). TDPs are required for grant program recipients of Public Transit Block Grant Program under ***Section 341.052, F.S***.

Transportation Improvement Program (TIP) – The staged multiyear program of transportation improvement projects developed by an MPO consistent with the LRTP.

4.2 PROCEDURE

4.2.1 Planning Process

The project planning process begins when Metropolitan Planning Organizations (MPOs), FDOT, and other authorities identify transportation needs and projects that would meet those needs. The following planning products assist in documenting transportation needs: Long Range Transportation Plan (LRTP), Cost Feasible Plans (CFP), Strategic Intermodal System (SIS) Plans, Transit Development Plans (TDPs), Local Government Comprehensive Plans (LGCP), Municipal or Citywide Transportation Master Plans, and corridor planning studies. At the MPO level, project needs are matched and prioritized to available funding for projects in the MPO/Transportation Planning Organizations (TPOs) LRTPs. At the state level, FDOT develops CFPs for the State Highway System (SHS) and Florida Rail System Plan (RSP). Priority projects are selected annually from CFPs and are presented to the Florida Legislature as a ***Tentative Work Program***.

FDOT coordinates with the various MPOs/TPOs and local stakeholders throughout the state to develop a vision for the State's transportation system. This includes the establishment of goals, objectives and policies to sustain and support the growth of the State's population and economy.

During the Planning phase, the purpose and need for the project is established based on identified transportation problems, or deficiencies. Travel demand, land use, safety, public and agency involvement, and other planning data are primary sources of information used to establish or define the purpose and need for the project and alternatives to analyze.

Technical studies for a project can be performed within the Planning phase to define or refine project parameters; establish the purpose and need for the project; determine funding needs; identify alternatives, including alternative mode(s); and define the concept and scope for transportation improvements, including general location of the proposed improvement. These technical studies inform the development of the scope of work for the PD&E phase. Alternatives development typically begins during the Planning phase. Project alternatives developed (including those eliminated from further consideration) during the Planning phase may be incorporated directly or by reference into the Environmental Document provided certain conditions are met (see ***Section 4.2.2***).

4.2.2 Linking Planning and Environmental Review

Linking Planning and ***NEPA***, also known as Planning and Environment Linkages (PEL), provides a connection between planning-level and environmental review decisions. Planning decisions and the ***NEPA*** process should be integrated to eliminate duplication of analysis and minimize delays in project delivery. The benefit of linking planning decisions and the PD&E phase is the ability to reuse data gathered, methodology developed, results obtained, and decisions made during the Planning phase to streamline the project delivery. Other benefits include the ability to identify environmental issues before developing the scope of the PD&E phase and focus the analyses and technical

studies conducted during the PD&E phase on those issues with potential to impact the project's delivery and recommendations. See the ***Linking Planning and Environmental Review Guidebook***.

Pursuant to ***23 U.S.C. § 168***, ***23 Code of Federal Regulations (CFR) § 450.212***, ***23 CFR § 450.318***, and ***23 U.S.C. § 139(f)(4)(E)***, results or decisions from a system-level corridor or subarea planning study may be used in the ***NEPA*** analysis if they meet certain conditions. ***Appendix A*** of ***23 CFR Part 450 - Linking the Transportation Planning and NEPA Processes*** details how to adopt or incorporate by reference information from transportation planning into ***NEPA*** documents under existing laws. ***Appendix A*** of ***23 CFR Part 450*** is intended to be non-binding and voluntary. ***23 U.S.C. § 139(f)(4)(E)*** allows elimination of alternatives from detailed evaluation in an Environmental Impact Statement (EIS) for alternatives evaluated during planning.

The following decisions from a planning product for a transportation project, codified in ***23 U.S.C. § 168(c)(1)***, may be adopted or incorporated by reference into the ***NEPA*** process:

1. Whether tolling, private financial assistance, or other special financial measures are necessary to implement the project;

2. A decision with respect to general travel corridor or modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;

3. The purpose and need for the proposed action;

4. Preliminary screening of alternatives and elimination of unreasonable alternatives;

5. A basic description of the environmental setting;

6. A decision with respect to methodologies for analysis; and/or,

7. An identification of programmatic level mitigation for potential impacts of a project, including a programmatic mitigation plan developed in accordance with ***23 U.S.C. § 169***, that the relevant agency determines are more effectively addressed on a national or regional scale, including:

    a. Measures to avoid, minimize, and mitigate impacts at a national or regional scale of proposed transportation investments on environmental resources, including regional ecosystem and water resources; and

    b. Potential mitigation activities, locations, and investments.

The following planning analyses from a planning product for a transportation project, codified in ***23 U.S.C. § 168(c)(2)***, may be adopted or incorporated by reference into the ***NEPA*** process:

1. Travel demands;

2. Regional development and growth;

3. Local land use, growth management, and development;

4. Population and employment;

5. Natural and built environmental conditions;

6. Environmental resources and environmentally sensitive areas;

7. Potential environmental effects, including the identification of resources of concern and potential direct, indirect, and cumulative effects on those resources; and,

8. Mitigation needs for a proposed project, or for programmatic level mitigation, for potential effects that the Lead Agency determines are most effectively addressed at a regional or national program level.

The degree to which information, analyses, or decisions from the planning process can be adopted or incorporated by reference into the ***NEPA*** process depends upon how well the planning products meet standards applicable under ***NEPA*** and the associated implementing regulations (***23 CFR Part 771*** and ***23 U.S.C. Part 139***). The relevant agency in the ***NEPA*** process may adopt or incorporate by reference decisions from a planning product when the Lead Federal Agency determines that the conditions set forth in ***23 U.S.C. § 168(d)*** and restated below are met:

1. The planning product was developed through a planning process conducted pursuant to applicable federal law.

2. The planning product was developed in consultation with appropriate federal and State resource agencies and Indian Tribes.

3. The planning process included broad multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects, including effects on the human and natural environment.

4. The planning process included public notice that the planning products produced in the planning process may be adopted during a subsequent environmental review process in accordance with this section.

5. During the environmental review process, the relevant agency has:

    a. Made the planning documents available for public review and comment by members of the general public and federal, state, local, and tribal governments that may have an interest in the proposed project;

b. Provided notice of the intention of the relevant agency to adopt or incorporate by reference the planning product; and,

c. Considered any resulting comments.

6. There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.

7. The planning product has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.

8. The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the environmental review process.

9. The planning product is appropriate for adoption or incorporation by reference and use in the environmental review process for the project and is incorporated in accordance with, and is sufficient to meet the requirements of ***NEPA***.

10. The planning product was approved within the 5-year period ending on the date on which the information is adopted or incorporated by reference.

In accordance with ***23 U.S.C. § 139(f)(4)(E)(ii)***, the Lead Agency may eliminate from detailed consideration an alternative proposed in an EIS if:

- The alternative was considered in a metropolitan planning process or a state environmental review process by a MPO or a state or local transportation agency, as applicable;

- The Lead Agency provided guidance to the MPO or state or local transportation agency, as applicable, regarding analysis of alternatives in the metropolitan planning process or state environmental review process, including guidance on the requirements of ***NEPA*** and any other federal law necessary for approval of the project;

- The applicable metropolitan planning process or state environmental review process included an opportunity for public review and comment;

- The applicable MPO or state or local transportation agency rejected the alternative after considering public comments;

- Office of Environmental Management (OEM) independently reviewed the alternative evaluation approved by the applicable MPO or state or local transportation agency; and

- OEM determined, in consultation with federal Participating or Cooperating Agencies, that the alternative to be eliminated from consideration is not necessary

for compliance with ***NEPA***; or with the concurrence of federal agencies with jurisdiction over a permit or approval required for a project, that the alternative to be eliminated from consideration is not necessary for any permit or approval under any other federal law.

Linking planning and ***NEPA*** does not necessitate that planning products be prepared to a level comparable to a ***NEPA*** analysis. Pursuant to ***23 U.S.C § 134(q)***, ***23 U.S.C. § 135(k)*** and ***49 U.S.C. § 5303(q)***, and ***49 U.S.C. § 5304(j)***, transportation plans and programs are actions which are subject to public comment but exempt from ***NEPA*** review. Because individual projects will be subject to a more comprehensive review, analysis of transportation plans or programs is not required to consider all regulatory or procedural requirements that should be addressed by the ***NEPA*** analysis. To ensure the public is provided an opportunity for input, proper disclosure that FDOT may adopt a planning product must be made. The following notice must be inserted on the cover page of the planning products that are to be adopted in a subsequent environmental review process:

> *The Florida Department of Transportation may adopt this planning product into the environmental review process, pursuant to Title 23 U.S.C. § 168 (d) or the state project development process.*

If the planning product being adopted into the ***NEPA*** analysis is older than five years (from the date the product was approved), the information used to prepare the planning product must be reviewed to determine whether conditions or planning context have changed since its approval. If the conditions or planning context have not changed, the PD&E Study may use the information from the planning product and explain why that information is valid to the ***NEPA*** process. OEM must be consulted when making this decision.

Planning studies adopted for consideration in the ***NEPA*** process should be uploaded in the StateWide Environmental Project Tracker (SWEPT). The ***Preliminary Engineering Report (PER)*** should include a summary of the alternatives considered in the planning study and the reason for eliminating them or carrying them forward for further consideration in the PD&E Study (see ***Part 2, Chapter 3, Engineering Analysis***).

The Alternatives Considered but Eliminated section of an EA or EIS should include documentation explaining why an eliminated alternative did not meet the purpose and need or was otherwise unreasonable or not feasible (see ***Part 2, Chapter 3A, Alternatives Analysis***).

4.2.3 Interagency Coordination and Public Involvement

Public involvement, which provides opportunity for input from interested and affected members of the public, local governments, and environmental resource agencies, is required by both federal and state laws, as well as FDOT procedure (see ***Community Engagement, Policy No. 000-525-050***). Public involvement is required in all phases of a transportation project. The public involvement effort should be scaled to match the magnitude or complexity of the project and should consider the potential for project issues

or challenges, ROW acquisition, relocations, and access modifications. See the ***Public Involvement Handbook*** for guidance on developing and implementing effective public involvement for transportation projects.

During the ETDM Planning and Programming screens, resource agencies interested project stakeholders, and the public review and comment on a project's potential effects on the natural and human environment. MPOs can input public comments from LRTP outreach activities into the EST during the ETDM Planning or Programming Screen. PD&E Project Managers use information from the EDTM ***Planning*** or ***Programming Screen Summary Report*** to plan and implement public involvement activities during the PD&E phase.

Public involvement during the PD&E phase begins with the preparation of a ***Public Involvement Plan (PIP)*** to identify the potentially affected people in a community, identify special community needs to support the Community Impact Assessment (CIA), and define the outreach methods and schedule to involve and gain community input. Depending on the Environmental Document prepared for the project, different public involvement actions are used to meet federal and state requirements. See ***Part 1, Chapter 11, Public Involvement*** and ***Part 2, Chapter 4, Community Impact Assessment*** for more information.

Public involvement activities during the Design phase typically begin by preparing a ***Community Awareness Plan (CAP)*** and may involve activities such as public information meetings or a design public hearing. See ***FDM, Part 1, Chapter 104, Public Involvement*** for more information. For projects that have completed a PD&E phase, the Design phase public involvement is built upon the public involvement activities conducted during the PD&E phase.

Public involvement during construction involves responding to public requests for information regarding construction activities and informing the public about construction activities such as lane closures, median changes, business access impacts, work hours, work zones, detours, temporary access, and grand openings. Through public involvement, FDOT provides up-to-date information and solicits public input related to the project.

4.2.4 Efficient Transportation Decision Making Screening

The purpose of the ETDM process is to provide early identification of potential environmental considerations in transportation planning to streamline project delivery. This process supports FDOT's environmental policy to "protect and preserve the quality of life, and the natural, physical, social and cultural resources of the state, while expeditiously developing safe, cost effective, and efficient transportation systems" (***Environmental Policy, Topic No. 000-625-001***). The ETDM process provides agencies and other stakeholders the opportunity for early input on proposed transportation projects. The objectives of the ETDM process are:

1. Early identification of potential issues for project scope development;

2. Early consideration of environmental issues in the planning process;

3. Early considerations of the project's purpose and need.

4. Early considerations of alternatives to be eliminated;

5. Full and early public and Environmental Technical Advisory Team (ETAT) member participation;

6. Linkage between Planning and PD&E (including ***NEPA***); and,

7. Incorporation of appropriate issue resolution mechanisms during the planning process.

These objectives are accomplished through stakeholder involvement, early consideration of environmental effects, integrating processes which were previously conducted sequentially, and using interactive techniques.

The ETDM process facilitates early interaction among transportation planners; federal, state, and local agencies; Federally Recognized Native American Tribes (Tribes); and affected communities. Through this process, FDOT provides the opportunity for early stakeholder input on qualifying transportation projects, which helps support planning decisions and develop the PD&E project scope with a clearer understanding of the environmental setting and potential concerns. The types of transportation projects that qualify for screening are listed in the ***ETDM Manual, Topic No. 650-000-002***.

Intergovernmental coordination is accomplished through an ETAT assigned to each of the seven FDOT Districts and Florida's Turnpike Enterprise. The ETAT includes representatives from MPOs/TPOs, federal and state agencies, and participating Tribes. Agency agreements between the FDOT and other state and federal agencies document the interagency understandings and agency-specific requirements for participating as an ETAT member in the ETDM process.

ETAT members use the EST to review project information, identify potential project effects, and submit comments to FDOT. This web-based Geographic Information system (GIS) database and mapping tool provides access to project information and data about natural, physical, cultural, and community resources in the project area. The comments and other information are made available to the public on the ***ETDM Public Access Site***. See the ***ETDM Manual, Topic No. 650-000-002*** for more information about the EST.

The ETDM process consists of the Planning Screen and the Programming Screen. The Planning Screen should occur when considering projects for inclusion or prioritization within a CFP, or when seeking ETAT and public input on a planning study. The Programming Screen should occur to support development of the FDOT's Five Year Work Program. The Programming Screen also should inform development of a scope of services for the PD&E phase. The results of the screening events link the Planning phase and the PD&E phase. Each screening event centers on a project review and includes project preparation activities and follow-up tasks occurring before and after the review.

The ETDM Coordinator for the project sponsor (i.e., FDOT District, Florida's Turnpike Enterprise, or MPO/TPO) uses the EST to notify the ETAT when a project is ready for review. At the same time, the information is published on the ***ETDM Public Access Site***. During the review period, FDOT affords an opportunity for ETAT members and the public to provide input about potential project effects. The project sponsor also begins to identify potential effects on surrounding communities and seeks to receive information on community preferences and concerns, as well as identify potential controversies related to the project. ETAT members perform multidisciplinary reviews specific to their area of expertise within their jurisdictions (e.g., wetlands, land use). These reviews help to:

1. Evaluate the feasibility of a proposed project.

2. Allow for early identification of potential avoidance, minimization, and mitigation opportunities.

3. Identify environmental issues that need focused attention during the PD&E phase.

4. Create documentation and analyses in the PD&E phase. The ETDM process meets the requirements set forth in ***23 U.S.C. § 168(d)***, for the adoption of planning products into the PD&E phase.

The Programming Screen provides opportunities for ETAT members and the public to review and comment on qualifying priority projects being considered for inclusion in the Transportation Improvement Program (TIP), Five Year Work Program or being advanced to the PD&E phase. ETAT members' comments assist with project scoping, and identification of opportunities for avoidance, minimization, and mitigation of potential project impacts. The ***Programming Screen Summary Report*** summarizes recommendations and results from the ETAT reviews. FDOT uses the report to advance or focus analyses and studies conducted prior to the PD&E phase (as appropriate), develop the scope of services for the PD&E phase, and assist in determining the appropriate Class of Action (COA) for the project.

Within the ETDM process, the Environmental Scoping Process [as required by ***23 CFR § 771.123(b)(1)***, for EISs only] begins with ETAT reviews during the EST screening events. This process continues throughout the Planning phase and early stages in the preparation of an EIS. Details on the Environmental Scoping Process is in ***Part 1, Chapter 8, Draft Environmental Impact Statement*** and the process to conduct a Scoping meeting is in ***Part 1, Chapter 11, Public Involvement***.

4.2.5 Environmental Review for Early Acquisition Projects

Section 108 of Title 23 U.S.C. provides that, subject to the terms and conditions set forth therein, acquisition of ROW acquired in advance of any federal approval or authorization, including ***NEPA*** approval, may receive federal aid participation. Early acquisition of property interests for transportation projects may be for purposes such as corridor preservation and access management.

Pursuant to ***23 U.S.C. § 108*** and ***23 CFR § 710.501***, FDOT may:

- Fund early acquisition project costs entirely with State funds with no ***Title 23*** participation;

- Use state funds initially but seek ***Title 23*** credit or reimbursement when the acquired property is incorporated into a transportation project eligible for federal surface transportation program funds; or

- Use the normal federal-aid project agreement and reimbursement process to fund an early acquisition project. (Note: any early acquisition of ***Section 4(f)*** property would require coordination with OEM to confirm federal eligibility.)

The early acquisition of a real property interest must be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects. For additional information review the early acquisition process described in ***Chapter 7.1***, of the ***Right of Way Procedures Manual, Topic No. 575-000-000***.

An early acquisition project can consist of the acquisition of a specific parcel(s), a portion of a transportation corridor, or an entire transportation corridor. In pursuing early acquisition of real property interests, the selection of preferred alternatives cannot be impacted. Additionally, once the real property interests have been acquired no activities related to demolition, site preparation, or construction of the related transportation project that is not necessary to protect public health or safety can occur until the ***NEPA*** process is completed on that project.

Since the acquisition of real property interests cannot impact future decisions regarding the selection of alternatives of the future transportation project, the District should consider areas for acquisition in common to all the proposed alternatives of the future transportation project. Regardless of the funding that will ultimately be used, the area of acquisition will have to be evaluated through the environmental review process, which will have to be completed prior to the acquisition. For additional information, see ***Section 4.2.5.3***.

4.2.5.1 State Funded Early Acquisition of Real Property Interests

As stated in ***23 U.S.C. § 108(c)(1)***, a state may carry out, at the expense of the state, acquisitions of interests in real property before completion of the ***NEPA*** process without affecting subsequent approvals required for the transportation project by the state or any federal agency. Although early acquisition can occur prior to the ***NEPA*** decision on the transportation project, these property interests cannot influence the selection of the preferred alternative.

FDOT must comply with ***NEPA*** procedures, and the terms and conditions described in ***23 U.S.C. § 108(c)(2)*** and ***23 CFR § 710.501*** to maintain eligibility for federal aid reimbursement. The request for federal reimbursement of early acquisition costs to the

Federal-Aid Office may be approved by FHWA, if the acquisition is consistent with the terms and conditions per ***23 U.S.C. § 108(c)(3)*** and ***23 CFR § 710.501(d)***. For additional information, see ***Section 7.1.4, Early Acquisition*** in the ***Right of Way Procedures Manual, Topic No. 575-000-000***.

4.2.5.2 Federally Funded Early Acquisition of Real Property Interests

FHWA may authorize the use of federal funds by the FDOT for the acquisition of a real property interest per ***23 U.S.C. § 108(d)*** and ***23 CFR § 710.501(e)***. When planning to perform early acquisition of real property interests with federal funds, FDOT must document that:

1. The FDOT has the authority to acquire the real property interest under state law; and,

2. The acquisition of the real property interest

    a. is for a transportation purpose;

    b. will not cause any significant adverse environmental impact;

    c. will not limit the choice of reasonable alternatives for the project or otherwise influence decisions on any approvals required for the project;

    d. does not prevent OEM from making an impartial decision to accept an alternative that is being considered in the environmental review process;

    e. is consistent with the state transportation planning process under ***23 U.S.C. § 135***;

    f. complies with other applicable federal laws and regulations;

    g. will be acquired through negotiation, without the threat of condemnation; and,

    h. will not result in a reduction or elimination of benefits or assistance to a displaced person required to move by the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.)*** and ***Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.)***.

3. The early acquisition project is included as a project in an applicable transportation improvement program under ***23 U.S.C. § 134 and § 135*** and ***49 U.S.C. § 5303 and § 5304***.

4. The environmental review process for the early acquisition project is complete and the project is treated as having an independent utility pursuant to ***23 U.S.C. § 108(d)(4)(B)***.

4.2.5.3 Documentation of Early Acquisition Projects

Typically, the environmental review for early acquisition projects can be accomplished by completing a ***Type 1 Categorical Exclusion Checklist***. This activity meets the criteria of ***23 CFR § 771.117(d)(12)***. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***, for more details. Coordination with OEM is needed before District approval of a Type 1 CE to verify that the acquisition project:

- Will not limit the choice of reasonable alternatives for the project or otherwise influence the decision on any approval required for the transportation project, and
- Does not prevent OEM from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for the transportation project.

4.2.6 Approval of Interchange Access Requests

The approval of an Interchange Access Request (IAR) on interstate highways is a two-part process. The first part is the determination of safety, operational, and engineering (SO&E) acceptability for the request met by satisfying and documenting the requirements of ***23 CFR Part 624, Interstate System Access***, FDOT's ***Procedure No. 525-030-160, New or Modified Interchanges***, and the ***Programmatic Agreement Between the FHWA Florida Division and the FDOT Regarding the Review and Approval of Specific Types of Changes in Interstate-System Access***.

The first part (SO&E acceptability) may precede or occur concurrently with the PD&E phase. The SO&E acceptability must be approved prior to LDCA. The second part is the approval of the ***NEPA*** document (completion of the PD&E Study or Type 1 CE). The affirmative determination constitutes the final approval of an IAR by FHWA and cannot proceed until the completion of the ***NEPA*** document. The IAR process is discussed in detail in the ***Interchange Access Request User's Guide***. IAR documentation is included in SWEPT.

23 CFR Part 624, Interstate System Access focuses on the technical feasibility of access request proposals to support the FHWA's determination of SO&E acceptability. To streamline project reviews, ***23 CFR Part 624*** requires environmental impacts evaluation and planning considerations of IAR proposals be addressed through the ***NEPA*** process. FDOT addresses and documents environmental impacts evaluation and planning considerations in the PD&E Study.

The FDOT State Interchange Review Coordinator requests final approval of an IAR by submitting a letter to FHWA notifying that the SO&E and LDCA (or completion of the Type 1 CE) are complete. The letter also confirms that the preferred alternative concept is the same in the SO&E and the ***NEPA*** documents

An IAR reevaluation is performed to document compliance with state and federal requirements due to a change in the approved IAR design concept, change in traffic

condition or failure of an IAR to progress to construction within three years of approval (See the ***FDOT Interchange Access Request User's Guide***). If a re-evaluation of the IAR is required, it should be completed and documented before the approval of the Re-evaluation of a ***NEPA*** document.

4.2.7 PD&E Phase Scoping

The process for scoping a PD&E phase builds on the information obtained from the ETDM screening and planning product. Project scoping is a project development activity that identifies and considers various project related issues which may affect cost and schedule; determines work activities to be performed for the project; and develops or refines key project parameters and requirements sufficient to define the project. The process for scoping the PD&E phase, outlined in this chapter, is applicable to FDOT Federal Projects and FDOT State Projects.

The project scoping discussed in this section is not the Environmental Scoping Process required by ***23 CFR Part 771*** for preparation of an EIS. For the Environmental Scoping Process, see ***Part 1, Chapter 8, Draft Environmental Impact Statement***.

The PD&E scope of services documents the project parameters and the level of engineering and environmental analyses required to develop a project solution that will meet the purpose and need. The level of engineering and environmental analyses is commensurate with the project type and its context, the significance of potential project impacts, and the timing and future phases of the project. A well-prepared PD&E scope produces a foundation upon which the project development occurs. Additionally, a well-prepared scope sets expectations for project management and performance, supports development of a realistic project delivery schedule, and provides a basis for managing project change and risk.

The PD&E Project Manager is responsible for scoping the PD&E phase. The PD&E Project Manager should use the guidance in this section to identify work activities and deliverables, and then prepare the preliminary schedule to deliver the project in accordance with the ***Project Development Policy, Topic No. 000-525-055***. During project scoping the Project Manager should work collaboratively with District staff from relevant functional offices to identify or verify project needs and potential issues that will be addressed by the PD&E Study. Early input from the various District offices and subject matter experts is essential to develop effective project scopes that focus on project issues. The PD&E scope of services is prepared using SWEPT.

4.2.7.1 Early Internal Coordination

To ensure that project decisions get broad input and early support, communication and collaboration within District offices is beneficial when projects are evaluated for inclusion in the ***Tentative Work Program***, prior to development of the PD&E Scope of Services. It is recommended that the Project Manager coordinate with staff from:

- Work Program

- Production/Scheduling
- Intermodal Systems Development (ISD)/Planning
- Safety
- Design
- Structures
- ROW
- Traffic Operations
- Maintenance
- Environmental Management
- Environmental Permitting
- Program Management
- Professional Services Unit
- Other offices as needed

This should include the SIS Coordinator, MPO Liaisons, subject matter experts, and ETDM Coordinator.

Before the start of the PD&E phase, Districts should consider holding inter-disciplinary team meetings to evaluate the preliminary project scope by:

- Understanding the project objectives and purpose and need
- Discussing, confirming or refining the project limits
- Discussing the anticipated Class of Action (COA)/Environmental Document type
- Reviewing context classification
- Evaluating a cost estimate and baseline schedule to determine if adequate time and funding are available to address the project objectives
- Reviewing and verifying the status of project planning activities (e.g., ETDM planning and programming screens or planning product) that are performed to support the PD&E phase
- Recommending project activities that may start ahead of the PD&E Study
- Reviewing and discussing environmental issues and special designs or standards that may affect the project delivery schedule
- Determining how the Design phase can be advanced concurrent with PD&E, if appropriate
- Discussing and recommending the delivery method for the project—Design-Bid-Build, Design-Build, or other innovative delivery methods

- Evaluating identified potential risks (including threats and opportunities) and developing a risk mitigation plan
- Discussing schedule effects of any adjacent on-going (or planned) projects and required coordination
- Reviewing initial (Stage I) project's scope of services
- Preparing for field review and scheduling additional project scope meetings
- Discussing and refining the initial project schedule to ensure appropriate critical tasks (with planned durations) for the project development are included

An State Funds Only (SFO) identifier is assigned to projects that are recommended to use only state funds.

4.2.7.2 Start Ahead of a PD&E Study

The District should explore options to collect data and conduct technical studies and surveys ahead of the PD&E Study to assist in determining the COA. Advancing project activities ahead of the PD&E Study can be accomplished using District staff, districtwide or continuing services consultant contracts, Phase 12 (Planning) funds, or Phase 22 (PD&E phase) funds. Phase 22 funds can be used for PD&E activities prior to initiation of the PD&E Study, as per the ***Work Program Instructions***.

Examples of project activities that may start ahead of a PD&E Study include:

1. Design survey;
2. Traffic data collection and traffic forecast;
3. Preliminary geotechnical investigation;
4. Existing condition analysis;
5. ***PIP***, including public outreach;
6. Cultural Resources Assessment Survey;
7. Contamination screening; and,
8. Other technical studies or coordination as project characteristics allow.

4.2.7.3 Project Schedule

To streamline development of PD&E schedules, FDOT has developed project schedule templates for the PD&E phase (by anticipated Environmental Document type) to support sequencing, implementation and execution of the Work Breakdown Structure or task list. The project schedule templates provide consistent activity names at the deliverable level. The templates can be customized to meet the complexity and context of the project. The

Work Breakdown Structure provides an activity/task coding structure that is used in the Production Schedule and Management (PSM) system. It also identifies the project milestones, activities and activity durations to successfully deliver the project according to the ***Project Development Policy, Topic No. 000-525-055***. Environmental PSM codes can be downloaded from FDOT's ***PD&E Manual Website*** under PSM Codes and Schedule Templates. Entering the PD&E phase supports the PD&E Study and COA determination. For a Type 2 CE, EA, or SEIR the official start date is the date the ***Class of Action Form*** is approved. For an EIS, the ***Notice of Intent (NOI)*** serves as the official start date.

The responsibility for developing the schedule typically lies with the Project Manager. The PD&E Project Manager should work with the District Program Management Office to create a detailed schedule that uses PSM codes. The Project Manager should develop a project schedule and convey the project schedule to the District Program Management Office Scheduler. The Scheduler should enter identified schedule milestones in the PSM with corresponding codes prior to advertisement for consultant acquisition. Importantly, the Project Manager and Scheduler should ensure the project schedule has realistic timeframes and project work activities proceed in a logical order. The project schedule should include time required for document reviews and comment resolution by the District, OEM and Cooperating Agencies, as appropriate. When a consultant is under contract for the project, the Project Manager should also communicate the expectation of the project schedule to ensure the consultant meets the schedule demands. Scheduling guidance and recommended practices for both FDOT and consultant project managers can be found at FDOT's ***Project Management Resource Page***.

4.2.7.4 Level of Engineering Detail

The level of engineering detail should be contingent upon the future phases of the project and is determined based on early internal coordination as discussed in ***Section 4.2.7.1***. At a minimum, engineering activities for a PD&E Study are performed to a level of detail necessary to analyze and compare the effects of the project alternatives on the social, natural, cultural, and physical environment. The level of engineering detail required for a PD&E Study should be sufficient to establish preliminary geometry (i.e., typical section, preliminary horizontal and vertical alignments, and ROW needs) for the preferred alternative. Depending on the context and schedule of an FDOT Federal Project, the PD&E phase and Design phase can begin concurrently provided that the preliminary design activities comply with ***23 CFR Part 771***. Essentially, if the project is anticipated to be an EIS, the preliminary engineering activities must not limit the choice of reasonable alternatives. FDOT State Projects have more flexibility in advancing Design phase activities concurrent with the PD&E phase (see ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***).

4.2.7.4.1 Permissible Project Related Activities for FDOT Federal Projects

FHWA Order 6640.1A, Policy on Permissible Project Related Activities during the NEPA Process, clarifies the level of design detail allowed in PD&E studies for FDOT

Federal Projects. To comply with and utilize the flexibility provided in the FHWA directive, the Districts may perform preliminary design activities prior to a ***NEPA*** decision regardless of the project delivery method used. However, final design activities may not be advanced until a ***NEPA*** decision has been issued [***23 CFR § 771.113(a)***]. Preliminary design activities to be completed by FDOT in the PD&E process are listed as "preliminary" (or "P") in the ***FDOT Design Manual (FDM), Part 9, Chapter 901, Sequence of Plans Preparation, Topic No. 625-000-002***. Most items are in the preliminary status through Phase II Plans (60%) of the Design phase. Design items that are not listed in the Sequence of Plans Preparation chapter, but are identified in Appendix A of the ***FHWA Order 6640.1A***, such as noise wall justification, can be advanced to preliminary design levels. Preliminary design is further discussed in ***FDM, Part 1, Chapter 110, Initial Engineering Design Process***. The District must coordinate with OEM to determine whether advancing preliminary design activities (that are not listed in the definition of preliminary design or ***Appendix A of FHWA Order 6640.1A***), is appropriate. Concurrence from OEM must be obtained in writing. In accordance with the ***Guidance on Preliminary Engineering Authorizations in Fiscal Management Information System (FMIS)***, the activities are eligible for Federal-Aid reimbursement once they are approved by FHWA, but until a project is authorized in the FMIS and federal funds obligated, there is no guarantee of federal funding for any pre-authorization preliminary work.

For Design-Build Projects, other activities necessary to establish the final design parameters, (as defined at ***23 CFR § 636.103***) may proceed as preliminary design so long as those activities do not materially affect the objective consideration of alternatives in the ***NEPA*** process or have an adverse environmental impact.

4.2.7.4.2 Overlapping PD&E and Design Phases

The Project Manager should consider the benefits and risks associated with overlapping preliminary design activities with PD&E. First, there is always the possibility the No-Action (No-Build) Alternative could be chosen as the preferred alternative. Second, preliminary design activities must be equally performed for all Build Alternatives. These risks include performing additional engineering analysis that would not be needed for alternatives which do not move forward. Third, the District should refrain from performing any preliminary design activity that will materially affect the objective consideration of alternatives or cause an adverse environmental impact. See ***Section 4.2.7.4.1*** for the level of preliminary design detail allowed in PD&E studies. To mitigate the risk, some select PD&E studies may be procured concurrently with the Design phase. Projects with complex scopes that may require evaluation of multiple alternatives should not be procured concurrently with the Design phase.

There are three contracting options for dual procurement of PD&E and Design phases that the District may consider. These options are:

1. One contract for both PD&E and Design funded together;

2. One contract for PD&E with an option for Design; and,

3. Two overlapping contracts procured simultaneously or separately.

The Project Manager should work closely with the District Environmental Office, District Design Office, and District Professional Services Unit when deciding the appropriate dual procurement option such that the consultant procurement process is vetted for issues that may prevent the project from moving forward.

Final design activities for FDOT Federal Projects should proceed beyond Phase II Plans only after OEM approval of the Environmental Document. Contract agreement, scope of services and schedules for projects with overlapping PD&E and Design phases should include this requirement. There is no limitation to the level of design plans which may be completed concurrently with a SEIR. However, the Project Manager should be mindful of alternatives analysis considerations and other risks associated with advancing final design activities with a SEIR.

4.2.7.5 Scope of Services

The Project Manager reviews the ***Programming Screen Summary Report*** before advancing the project to the PD&E phase. The report helps the Project Manager to become familiar with the existing environmental setting and helps with the understanding of the environmental topics/resources that may be impacted by the project. By reviewing the ***Programming Screen Summary Report***, the Project Manager will also understand project needs and objectives as well as the level of analysis and documentation required to accomplish the project objectives. The Project Manager gathers other technical information needed to scope the project in addition to the ***Programming Screen Summary Report***. This may include field visits and results of technical studies that were conducted prior to project scoping.

When technical studies and surveys were completed prior to PD&E phase, the Project Manager should review the reports and adjust the scope of work by eliminating the activities or tasks that were previously completed and are still current or valid. Additionally, the Project Manager should explore opportunities to adopt or incorporate by reference planning analyses (such as interchange access request studies, traffic models, corridor studies, multimodal corridor studies, transit alternatives analysis, bicycle plans, feasibility studies, freight corridor studies) for the PD&E Study. See ***Section 4.2.2*** for guidance on how to use planning products in the PD&E process.

The Project Manager consults with the District Environmental Office staff for input regarding project activities and/or impacts. The Project Manager works with an interdisciplinary project team, composed of members from Planning, Environmental Management, Design, ROW, and Construction offices to complete the PD&E phase scope of services. The Project Manager can use the ***PD&E Phase Standard Scope of Services*** development tool. For overlapping PD&E and Design, the ***Combined PD&E Study and Design Standard Scope of Services*** can be used to prepare the scope of services for the project. The Project Manager must have a SWEPT account to access the scope of services development tool.

4.2.7.6 Alternative Project Delivery Methods

The procurement process for alternative project delivery methods such as Design-Build and contract administration processes follow standard FDOT practices as specified in the ***Design-Build Procurement and Administration, Procedure No. 625-020-010***. Districts are responsible for conducting the Design-Build procurement and contract administration processes for projects within their jurisdictions. The Project Finance Office in the Office of Comptroller provides support, coordination, and oversight for P3 projects that involve Design-Build-Finance or Design-Build-Finance-Operate-Maintain. Florida's Turnpike Enterprise is responsible for conducting traffic and revenue studies for District projects that involve tolling.

For Design-Build projects and other projects that follow the alternative delivery methods, FDOT ensures that the requirements set by ***23 CFR Part 636*** are met, which include those imposed to protect the objectivity and integrity of the ***NEPA*** process. The ***Design-Build Procurement and Administration, Procedure No. 625-020-010*** provides flexibility by allowing projects to be advertised and selected while the ***NEPA*** process is being concluded. This means the Design-Build firm may proceed with certain preliminary engineering activities while the ***NEPA*** process is being concluded. This procedure recognizes the requirement for obtaining ***NEPA*** approval pursuant to ***23 CFR § 771.113***, before a District can issue the notice to commence construction. Additionally, the procedure requires a Design-Build contract to have a termination clause if the No-Build Alternative is selected when the preliminary design phases are authorized in the Design-Build contract prior to completion of the ***NEPA*** document. Pursuant to ***23 CFR § 636.109(b)(6)***, the Design-Build firm must not prepare the ***NEPA*** document or have decision-making responsibility with respect to the ***NEPA*** process but can assist in preparation of information to support ***NEPA*** activities under the supervision of the District Environmental Office.

4.2.7.7 Project Management Plan and Financial Plan for Major Projects

Pursuant to ***23 U.S.C. § 106(h)***, Major Projects, estimated at $500 million or more, are required to have an FHWA approved Project Management Plan (PMP) and an annual Financial Plan, including a phasing plan when applicable. The PMP for Major Projects must document procedures and processes in effect to provide timely information to the project decision makers to successfully manage the scope, costs, schedules, and quality of and the federal requirements applicable to the project. The PMP also includes the role of the agency leadership and management team in the delivery of the project. The PMP is prepared in accordance with ***FHWA Project Management Plan Guidance for Major Projects***. The Project Manager should work with the District Production Office to prepare the draft PMP prior to submitting to FHWA.

Projects that are determined to be a major project should have a ***Cost and Schedule Risk Assessment (CSRA)*** and a ***Project Management Plan*** drafted prior to the PD&E phase. See the ***FHWA Project Management Plan Guidance for Major Projects*** for direction.

The Financial Plan for a Major Project is coordinated by the Project Finance Office in the Office of Comptroller and should be based on detailed estimates of project costs and the programmed funding for the project. The Initial Financial Plan and subsequent annual updates are prepared in accordance with FHWA guidance. The Financial Plans include an assessment of the appropriateness of the project delivery method. Visit the Project Finance Office SharePoint site on Major Project Financial Plans for more information.

4.2.7.8 Quality Control

The Project Manager is responsible for the quality and technical accuracy of the Environmental Document and supporting technical studies. To achieve quality objectives, each project should establish and follow Quality Assurance (QA) and Quality Control (QC) protocols. The Project Manager should make a conscious effort to maximize quality for every project.

All work associated with a PD&E Study should adhere to a project specific QC Plan to ensure project deliverables conform to applicable laws, regulations, and FDOT procedures. The QC Plan should address the internal QC process performed by the PD&E Study team. The Plan should ensure quality is achieved through checking, reviewing, and oversight of work activities and deliverables by objective and qualified individuals who were not directly responsible for performing the initial work. The QC Plan should also include processes and procedures for QA measures to evaluate and document compliance of the QC process. OEM has prepared a QC plan template and associated QA/QC checklists for PD&E studies and Re-evaluations. The template and the QA/QC checklists can be downloaded from FDOT's ***Documents & Resources Website***. Additional information on the development of QC plans can be found on FDOT's ***Project Management Resource Page***.

4.2.7.9 Risk Management

Project risk management is the systematic process of identifying, analyzing, planning for, responding to, and monitoring project risk. It involves processes, tools, and techniques that help the Project Manager minimize the probability and consequences of adverse events by developing and following a risk management plan, which should identify the risks that need to be managed (the highest priority risks and possibly some or all intermediate priority risks) and the selected risk response strategy for each. The risk management plan should address technical, external (i.e., funding and political risks), environmental, and organizational resources that may prevent the project from reaching its objectives.

A ***CSRA*** is required if the total project costs exceed $100 million. For projects with costs of $100-500 million, coordination with the District Consultant Project Management Engineer is needed. If total project costs exceed $500 million, then coordination with the FDOT Central Office and FHWA is required. Risk management is most effective when performed early in the project and assessed continuously throughout the project. ETDM screening events (***Section 4.2.3***) and early internal coordination are used to manage risk for PD&E projects.

When a formal risk analysis is performed for the project, its outcome is documented in a risk register. The risk register is a document that identifies and quantifies risks and is tracked and passed from one phase of the project development process to another. Risk analysis can be qualitative or quantitative depending on the complexity of the project and information that is known at the time of analysis. In many situations, risk analysis performed during the PD&E phase is qualitative where risk trigger features are identified and their impact to the scope, schedule, budget, or quality are analyzed and prioritized for further action.

Since risk management and analysis is an on-going process throughout the life of the project, Project Managers should continuously monitor and control, and identify and analyze new risks for their projects. This can be achieved by adding project risk to the agenda of project meetings. Additional information for identifying and managing project risks can be found in FDOT's ***Project Management Resource Page***.

4.2.8 PD&E Phase

The PD&E phase builds on the outcome of the ETDM screening, early internal coordination, and prior planning products, as applicable, to further refine the project's purpose and need. The PD&E phase may also identify project alternatives that satisfy the purpose and need for the project. Alternatives may include alignments, alternative modes, and typical sections that avoid or minimize environmental impacts. See ***Part 2, Chapter 3, Engineering Analysis*** and ***Part 2, Chapter 3A, Alternatives Analysis*** for more information on alternatives analysis. Environmental analyses performed for the PD&E Study evaluate the project's effect on social, cultural, natural, and physical topics/resources. During the environmental analysis, potential mitigation options may be developed based on unavoidable impacts. See ***Part 2 of this Manual***, for procedures on how to perform and document analyses for environmental topics/resources. Technical reports documenting the results of this analysis are discussed in ***Section 4.2.8.2***. For an interactive document to aid in the navigation of the PD&E process, see the ***PD&E Roadmap***.

For FDOT Federal Projects, each Environmental Document and technical report should include the ***NEPA*** Assignment Standard Statement on the cover page:

> *The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022, and executed by the Federal Highway Administration and FDOT*.

The cover page of technical reports is prepared using either ***Technical Report Cover Sheet, Form No. 650-050-38b*** for technical reports requiring an engineer signature and seal (e.g., ***PER, Typical Section Package***), or ***Technical Report Cover Sheet, Form No. 650-050-38a*** for those that do not [e.g., ***Cultural Resource Assessment Survey (CRAS) Report, Natural Resources Evaluation (NRE)***].

Throughout the PD&E process, interagency coordination is conducted to consider project impacts, permitting requirements, project commitments, and funding sources. Commitments established as a result of the PD&E Study and/or agency coordination/consultation must be documented as described in ***Procedure No. 650-000-003, Project Commitment Tracking***. See ***Part 2, Chapter 22, Commitments*** for more information on commitments during the PD&E phase.

4.2.8.1 Environmental Documents

The COA for FDOT Federal Projects is typically determined once sufficient analysis has occurred before the public hearing (if applicable) (see ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***). FDOT Federal Projects may proceed as a CE, EA, or EIS. If the project is an FDOT State Project, it may proceed as a SEIR.

Standard statements may be used to document coordination and findings in the Environmental Document. These standard statements have been developed to document compliance with ***NEPA***, FHWA policy, ***23 CFR Part 771***, and other federal laws and requirements. Standard statements are in italics for easy reference and are found in applicable chapters in ***Part 2 of this Manual***.

FDOT Federal Projects should meet planning consistency requirements outlined in ***23 CFR Part 450*** prior to OEM approval for LDCA. Environmental Documents submitted to OEM for approval must include the appropriate planning consistency documentation. See ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency*** for guidance on meeting planning consistency requirements.

Type 2 Categorical Exclusions

Type 2 CEs are projects without significant impacts, but which may require more detailed analysis of relevant issues and public involvement than Type 1 CEs. These projects typically go through a PD&E phase before advancing into the Design phase. The ***Type 2 Categorical Exclusion Determination Form*** is prepared using SWEPT. The technical reports or documents prepared to support Type 2 CE projects must be uploaded into the SWEPT project file and appropriately summarized or referenced in the Type 2 CE. The processing and documentation of Type 2 CEs is discussed in ***Part 1, Chapter 5, Categorical Exclusion***. The document of record for LDCA is the signed ***Type 2 Categorical Exclusion Determination Form***.

Environmental Assessments

An EA is prepared for actions in which the significance of the environmental impact is unknown. Depending on the significance of the impacts, an EA may result in a Finding of No Significant Impact (FONSI) where the analysis of the technical studies indicates that no significant environmental impact will result from the proposed project. A Draft Environmental Impact Statement (DEIS) is required if the analysis indicates significant environmental impacts will result. In either case, these projects will require environmental technical studies to comply with ***NEPA***, address agency comments, or investigate potential impacts as necessary. The processing, review, and approval of an EA and a

FONSI are discussed in ***Part 1, Chapter 6, Environmental Assessment*** and ***Part 1, Chapter 7, Finding of No Significant Impact***.

Environmental Impact Statements

All projects with a significant environmental impact require an EIS and should address environmental issues identified during the Programming Screen and PD&E phase. An EIS receives LDCA once the Record of Decision (ROD) is approved by OEM. The processing, review, and approval of the DEIS is described in ***Part 1, Chapter 8, Draft Environmental Impact Statement*** and the FEIS and FEIS/ROD in ***Part 1, Chapter 9, Final Environmental Impact Statement***.

State, Local, or Privately Funded Projects

FDOT State Projects that qualify for EST screening require a SEIR, which could have comparable levels of impact and analysis equivalent to a federal Type 2 CE, EA, or EIS. For Local Agency or Private Entity Managed Projects, a Project Environmental Impact Report (PEIR) may be prepared. PEIRs are typically used by non-FDOT entities when state funds are used or a project advanced through other unique funding mechanisms. The processing, review, and approval of FDOT State Projects and Local Agency or Private Entity Managed Projects are described in ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***.

4.2.8.2 Project Reports and Documentation

Documentation for a PD&E Study includes the Environmental Document, technical reports, as well as other data, memoranda, maps, meeting summaries, comment/response matrices and other materials developed to support the study. The PD&E Project Manager is responsible for collecting, maintaining, and filing documentation for a PD&E Study in the SWEPT project file. SWEPT maintains the official project file for PD&E studies. It is recommended that documents be placed within the applicable folder in SWEPT according to FDOT's ***SWEPT Project File Organization Guide*** on FDOT's ***PD&E Manual Website*** and SWEPT. The project file provides the technical documentation supporting the PD&E Study's decision-making process. The Project Manager should begin compiling the project file at the start of the PD&E phase, continue to add documents throughout the phase, and complete the file when a final decision is made. Complete and accurate documentation of the project file is needed to ensure decisions made during the PD&E phase are available for the next phase of the project development process. Additionally, a complete project file is essential to preparing and compiling an adequate Administrative Record for the project when required.

All project documents are filed/stored in accordance with ***Records Management, Procedure No. 050-020-025*** utilizing the process outlined in ***Part 1, Chapter 15, Project File and Records Management***. See

Table 4-1 for a list of reports and design information the Project Manager should maintain in the project file if completed in the PD&E phase. Additional environmental and technical

reports (including planning products), which are the basis of PD&E decisions, must also be kept in the project file.

4.2.9 Design Phase

The purpose of the Design phase is to prepare the detailed engineering design, ROW limits, contract plans, specifications, and estimates for the project. FDOT's design process follows the design criteria and procedures established in the ***FDM, Part 2*** and the requirements for preparation and assembly of contract plans established in ***FDM, Part 9***.

The review of design and construction plans for Design-Bid-Build projects (conventional projects) typically follows a standard four-phase submittal approach to facilitate review of the projects. The four submittal phases are Phase I, Phase II, Phase III, and Phase IV. Some projects that are Type 1 CE or NMSA can have two phase reviews. The appropriate number of submittal phases for projects is determined when developing the scope of services. Design-Build projects have three standard submittal phases, namely Technical Proposal, 90% Component Plans and Final Component Plans. The Technical Proposal is submitted to FDOT during the procurement of the contract. The 90% and Final submittal phases occur after the award. The 60% submittal phase is required for complex or Category 2 structures (structure with greater design difficulty and complexity) ***(FDM, Part 1, Chapter 121, Bridge Project Development)***. ***FDM, Part 9, Chapter 901, Sequence of Plans Preparation*** identifies phase submittal requirements for both conventional and non-conventional projects.

Phase I plans submittal allows for the establishment and review of preliminary geometry and grades, drainage design, traffic control, and ROW. All projects with an estimated total cost of $50 million or more, or $40 million for a bridge project, must have a Value Engineering (VE) study performed during the development of the project and prior to the final design. A VE study may occur after the alternative analysis is complete. If the VE is performed during the PD&E phase, it must be completed prior to the public hearing so the public can be aware of the related enhancements. See ***Procedure No 625-030-002, Value Engineering Program*** for further details on VE requirements.

Phase II plans submittal includes the proposed plan and profile with complete drainage design. Preliminary design of the plans themselves is complete at the completion of Phase II. Typically, with completion of Phase II plans, sufficient information exists for permit application submittal and ROW acquisition to start. Throughout the remainder of the Design phase continued agency coordination should take place to address permitting requirements, address additional avoidance and minimization measures that can be taken, and develop mitigation plans.

Phase III plans submittal includes completion of all plan sheets and quantity calculations. Phase IV is the final submittal of the project contract plans where specifications are complete, and all corrections noted in the previous plan submittals are addressed.

During the Design phase, new or updated surveys may be needed to confirm impacts. Additionally, mitigation requirements should be reconciled with actual impacts based on the final design features of the project. Changes in design, environment, or laws which may have occurred since the approval of the final Environmental Document or any previous Re-evaluations are addressed. ***Part 1, Chapter 13, Re-evaluations*** explains the Re-evaluation process.

4.3 EMERGENCY RELIEF

The FHWA Emergency Relief Program and the Federal Emergency Relief Program's (FEMA's) Emergency Management Assistance Program are activated when a Governor's Proclamation of a State of Emergency or a Presidential Declaration of a State Emergency is issued. They provide federal assistance for debris removal and the repair of disaster-damaged federal-aid highways and bridges. There are two types of repairs under the FHWA Emergency Relief Program, emergency repairs and permanent repairs. Emergency repairs are those performed to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. Repairs that go beyond these three objectives are permanent repairs.

For information on the eligible activities and the preparation of documents necessary for reimbursement, see ***FDOT Environmental Review Guidance for Emergency Relief Projects***.

4.4 REFERENCES

AASHTO Practitioner's Handbook 10: Using the Transportation Planning Process to Support the NEPA Process

FDOT, Efficient Transportation Decision Making Manual, Topic No. 650-000-002.https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Environmental Review Guidance for Emergency Relief Projects. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/2025-fdot-environmental-emergency-guidance_final.pdf?sfvrsn=6847e36c_1

FDOT, FDOT Design Manual, Topic No. 625-000-002. https://www.fdot.gov/roadway/fdm/2023-FDM

FDOT, Florida's Strategic Intermodal Systems (SIS) Plan. http://www.dot.state.fl.us/planning/sis/

FDOT, Interchange Access Request User's Guide. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/systems/systems-management/document-repository/iar/fdot-iaurg_final9f627242-aad3-4beb-861c-2ab1cdcd2352.pdf?sfvrsn=49d1416c_1

FDOT, Manual on Intersection Control Evaluation, Topic No. 750-010-003. https://pdl.fdot.gov/

FDOT, New or Modified Interchanges, Topic No. 525-030-160. https://pdl.fdot.gov/

FDOT, Project Development Policy, Topic No. 000-525-055. https://pdl.fdot.gov/api/procedures/downloadProcedure/000-525-055

FDOT, PD&E Roadmap. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pdeman/pde_roadmap_interactive_final20250506.pdf?sfvrsn=b91af4f_1

FDOT, Project Management Resource Page. https://www.fdot.gov/designsupport/pm/resourcepage

FDOT, Public Involvement Handbook. https://www.fdot.gov/planning/policy/community-engagement/resource-guide.shtm

FDOT, Records Management, Procedure No. 050-020-025. https://pdl.fdot.gov/

FDOT, Right of Way Procedures Manual, Topic No. 575-000-000. https://www.fdot.gov/rightofway/ProceduresManual.shtm

FDOT, SWEPT Project File Organization Guide. https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Ffdotwww.blob.core.windows.net%2Fsitefinity%2Fdocs%2Fdefault-source%2Fenvironment%2Fpubs%2Fswept-file-quick-guidance.xlsx%3Fsfvrsn%3D39a0be74_6&wdOrigin=BROWSELINK

FDOT, Value Engineering Program. Topic No. 625-030-002. https://pdl.fdot.gov/

FDOT, Work Program Instructions. https://www.fdot.gov/workprogram/development/wp-instructions.shtm

FHWA, 2011. Guidance on Using Corridor and Subarea Planning to Inform NEPA

FHWA, 2015. Guidance on Preliminary Engineering Authorizations in FMIS. http://www.fhwa.dot.gov/federalaid/150311.cfm

FHWA, 2017. Project Management Plan Guidance for Major Projects. https://www.fhwa.dot.gov/majorprojects/pmp/guidance17.cfm

FHWA, Linking the Transportation Planning and National Environmental Policy Act(NEPA) Processes. http://www.fhwa.dot.gov/hep/plannepa050222.pdf

FHWA, ORDER Classification Code 6640.1A. Policy on Permissible Project Related Activities during the NEPA Process, October 1, 2010

National Environmental Policy Act of 1969 (NEPA) as amended (42 U.S.C. § 4321 et seq.). https://www.govinfo.gov/content/pkg/COMPS-10352/pdf/COMPS-10352.pdf

Programmatic Agreement Between the FHWA Florida Division and the FDOT Regarding the Review and Approval of Specific Types of Changes in Interstate-System Access, April 2, 2025. 2025-fhwa-fdot-interstate-programmatic-agreement_executed.pdf

Title 23 CFR Part 624, Interstate System Access. https://www.fhwa.dot.gov/programadmin/fraccess.cfm

Title 23 CFR § 636, Design-Build Contracting. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-636

Title 23 CFR § 771, Environmental Impact and Related Procedures. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.)

4.5 FORMS

Technical Report Cover Sheet, Form No. 650-050-38a

Technical Report Cover Sheet Requiring PE Signature, Form No. 650-050-38b

FDOT forms are found in the Procedural Document Library

Table 4-1 Reports and Design Information Maintained in Project File if Completed in the PD&E Phase

Documentation	If Applicable
Scope of Services	
Draft Environmental Document (Type 2 CE, EA, DEIS, SEIR)	
Approved Final Environmental Document (Type 2 CE, EA with FONSI, FEIS/ROD, FEIS, ROD, or SEIR)	
Summary of Public Involvement (SPI)	✓
Public Involvement Plan (PIP) (for Type 2 CEs without a PD&E phase, include ***CAP*** instead of ***PIP***)	
Navigation Impact Report	✓
United States Coast Guard (USCG) Bridge Project Questionnaire	✓
Project Traffic Analysis Report (PTAR)	✓
Bridge Development Report (BDR)	✓
Bridge Replacement Report (BRR)	✓
Bridge Hydraulic Report (BHR) for the preferred alternative	✓
Bridge analysis with supporting location and design recommendations for each viable structure alternative	✓
Preliminary scour analysis	✓
Conceptual Transportation Management Plan (TMP)	✓
Design Exceptions/Variation package	✓
Financial Plan	✓
Geotechnical report (PE signature required)	
Interchange Access Request (IAR) and associated documents (***Methodology Letter of Understanding*** and FHWA's SO&E Affirmative Determination Letter)	✓
Intersection Control Evaluation (ICE) Forms	✓
Location Hydraulics Report (LHR)	✓
Preliminary Engineering Report (PER) (PE signature required)	✓
Preliminary plans for preferred alternative with ROW dimensions	

Table 4-1 Reports and Design Information Maintained in the Project File if Completed in the PD&E Phase (Page 2 of 2)

Documentation	If Applicable
Preliminary stormwater design (including any drainage reports, preliminary drainage design, ***Pond Siting Report (PSR)***, ***Stormwater Management Alternatives Report (SMARt)***, and/or ***Conceptual Drainage Design Report***	✓
Preliminary System Engineering Management Plan (PSEMP)	✓
Project Management Plan	✓
Risk Management Plan	✓
Typical Section Package (PE signature required)	
Value Engineering Study Report (PE signature required)	✓
CIA Technical Memorandum	✓
Conceptual Stage Relocation Plan (CSRP)	✓
Farmland Conversion Impact Rating Form	✓
Section 4(f) Evaluation	✓
Cultural Resource Assessment Survey (CRAS) Report	
Case Study Report	✓
Natural Resources Evaluation (NRE) (wetlands, protected species and habitat, Essential Fish Habitat) or technical memo	
Sea Level Impact Projection (SLIP) Study	✓
Sea Level Rise Analysis	✓
Noise Study Report (NSR)	✓
Air Quality Technical Memorandum	✓
Contamination Screening Evaluation Report (CSER) or Contamination Screening Technical Memorandum	
Utility Assessment Package	✓

Note: Additional environmental and technical reports (including planning products), which are the basis of PD&E Study decisions, must also be kept in the project file.

PART 1, CHAPTER 5

CATEGORICAL EXCLUSION

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PART 1, CHAPTER 5

CATEGORICAL EXCLUSION

5.1 OVERVIEW

This chapter focuses on the preparation of the Environmental Document as a Type 1 or Type 2 Categorical Exclusion (CE) after the Class of Action (COA) has been determined. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for information on determining the COA. For guidance on preparing a Type 1 CE see ***Section 5.2.1.*** For guidance on preparing a Type 2 CE see ***Section 5.2.2***.

5.2 PROCEDURE

5.2.1 Type 1 Categorial Exclusions

Type 1 CEs are prepared using a ***Type 1 Categorical Exclusion Checklist*** in the StateWide Environmental Project Tracker (SWEPT) after environmental analysis has been completed. This checklist is typically prepared in the Design phase and is approved by the Florida Department of Transportation (FDOT) District.

5.2.1.1 Analysis and Coordination

Environmental analysis is completed and impacts are determined to verify that the COA Determination is a Type 1 CE. The level of detail required to support this determination depends upon the specific project and the magnitude of environmental impacts. Social, cultural, natural, and physical topics/resources are evaluated using the pertinent chapters in ***Part 2*** of this ***Manual*** to satisfy applicable federal and state environmental laws, regulations, and executive orders. Since Type 1 CEs are generally minor in nature, indirect and cumulative impacts assessments are generally not warranted. There may be exceptions, which can be evaluated on a case-by-case basis.

Analysis may include desktop and/or field review, local knowledge of the project area, agency coordination/consultation, and preparation of supporting documents. Type 1 CEs are not typically screened in the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST); however, the EST Area of Interest (AOI) tool may be used to look at the project location and view GIS data layers applicable to the project without initiating Environmental Technical Advisory Team (ETAT) review. On occasion, an EST screened project may become a Type 1 CE based on the screening results and consultation with the Office of Environmental Management (OEM). In this case information from the screening can be used to assist with the impact analysis. See the ***ETDM Manual, Topic No. 650-000-002*** for guidance on using the EST AOI tool and information on the ETDM screening events.

Coordination or consultation with appropriate resource agencies may be needed to verify the finding that there is no potential to significantly impact environmental resources (e.g.,

historic resources, listed species). Coordination and documentation are also important because they may affect environmental permitting [e.g., State Historic Preservation Officer (SHPO) coordination in a Water Management District (WMD) permit].

Projects that would normally qualify as a Type 1 CE may require additional analysis, documentation, or coordination with OEM to assure the COA is valid. This process is built into the ***Type 1 Categorical Exclusion Checklist*** with pop ups identifying when coordination is needed with OEM, along with other functionality that limits certain selections.

The following actions apply to CEs listed in ***23 Code of Federal Regulations (CFR) § 771.117(c)*** (C-list projects):

- If the project will involve a designated Wild and Scenic or Study River, coordination is required with the OEM.

- If the project will have an adverse effect on the natural, cultural, or recreational values of an Nationwide Rivers Inventory (NRI) River segment, coordination with the National Parks Service (NPS) is required and the project cannot be a Type 1 CE ***(Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory and Guide for Identifying Potential Adverse Effects)***.

- If the project involves a relocation, the project should be coordinated with OEM as C-list projects should not have any residential or non-residential relocations. Instead, it may be processed as a D-list project to ensure that the action meets the legal criteria for a CE (***Federal Highway Administration [FHWA] Project Involving Residential or Non-Residential Displacements Memo***).

For actions listed ***in 23 CFR § 771.117(c)26, (c)(27) and (c)28***, pop ups identify when coordination is needed with OEM because they must also meet the constraints in ***23 CFR § 771.117(e) (Part 1, Chapter 2, Class of Action Determination for Federal Projects) to*** be considered a C-list project. Through OEM coordination it is determined if the project remains a Type 1 CE and is documented as CE number (d)(13) or if a Type 2 CE is needed. For these actions if any of the following are identified on the checklist, coordination with OEM is required:

- Any acquisitions of more than a minor amount of Right of Way (ROW) or would result in any residential or non-residential displacements

- Standard Permit under the ***Clean Water Act Section 404***, ***33 United States Code (U.S.C.) § 1344***, and/or Section 10 of the ***Rivers and Harbors Act***

- United States Coast Guard (USCG) bridge permit

- A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths)

- Involvement with a Wild and Scenic River or Study River (project activities are located within the river corridor, across, or adjacent to the designated river segment).

- "May Affect, Likely to Adversely Affect" determination for threatened or endangered species or critical habitat under the ***Endangered Species Act (ESA)***

- Properties protected by ***Section 4(f)*** pursuant to ***23 CFR Part 774*** requiring a Programmatic or Individual ***Section 4(f) Evaluation***

- Finding of Adverse Effect for Historic and/or Archaeological Resources protected under ***Section 106*** of the ***National Historic Preservation Act (NHPA)*** and ***36 CFR Part 800***

If during the preparation of the ***Type 1 Categorical Exclusion Checklist***, an answer requires coordination with OEM, the OEM Project Delivery Coordinator (PDC) is contacted. Coordination with OEM does not necessarily mean that the project will need to be elevated to a Type 2 CE. Any coordination with OEM is documented in the project file in SWEPT.

If it is determined that a Type 2 CE is required after working through the checklist and/or coordination with OEM, the project would not normally need to be screened in the EST. In addition, an alternatives analysis may not be needed. The Type 2 CE is then focused on the topics which triggered the Type 2 CE COA Determination. A ***Class of Action Form*** is not needed for these projects. In this scenario, not all items on the ***Type 2 Categorical Exclusion Quality Assurance (QA)/Quality Control (QC) Checklist*** are applicable. See ***Section 5.2.2*** for more information on Type 2 CEs.

5.2.1.2 Public Involvement

A ***Community Awareness Plan*** (***CAP***) is typically prepared to identify appropriate outreach activities based on the specific project and potential community concerns. For guidance on preparing a ***CAP*** see the ***FDOT Design Manual, Part 1, Chapter 104, Public Involvement, Topic No. 625-000-002***. A public hearing is typically not required for Type 1 CEs, unless the project is considered a major transportation improvement under ***Section 339.155(5)(b), Florida Statute (F.S.)*** (see ***Part 1, Chapter 11, Public Involvement***).

5.2.1.3 Preparing a Type 1 Categorial Exclusion Checklist

A sample ***Type 1 Categorical Exclusion Checklist*** is provided as a visual in ***Guidance for Part 1, Chapter 5***. This checklist is only prepared using SWEPT. There may be multiple Type 1 CEs prepared using the same Financial Management number such as emergency or push-button projects. SWEPT provides functionality to prepare these types of documents.

The CE number/activity type from ***23 CFR § 771.117(c)***, ***23 CFR § 771.117(d)***, or Other (for other federal agency CE Number) is selected at the beginning of the checklist (see ***Guidance for Part 1, Chapter 5***). For projects that may fall under two or more actions, the CE designation that is most appropriate is identified.

When completing the checklist, selection of certain items may require consultation with OEM and during this coordination it may be determined that the project cannot be completed as a Type 1 CE. When these items are selected on the checklist a notice appears stating that by checking this box, coordination with OEM is required. For these instances see ***Section 5.2.1.1***.

Documentation of analysis, coordination, and results should be uploaded to SWEPT for the project file. This documentation should include the results of any desktop and/or field review, agency consultation, and any supporting documents and/or technical reports required to justify the responses on the checklist. It is important to document that the project will not have significant impacts and that environmental issues have been addressed.

Planning consistency for Type 1 CEs is met when the project is in the State Transportation Improvement Program (STIP). The Current STIP page is attached and included in the project file to document that the project has met planning requirements in ***23 CFR Part 450***. If the project is not in the STIP, a simple explanation of why the project is not in the STIP is attached. More information on FHWA's planning consistency requirements can be found in the ***FDOT/FHWA Consistency Guidance*** and FDOT's ***Planning Consistency for National Environmental Policy Act (NEPA) Practitioners***.

The ***Type 1 Categorical Exclusion Checklist*** is approved by the District Environmental Manager or designee using SWEPT.

5.2.1.4 Actions Taken After Approval

Once the final ***Type 1 Categorical Exclusion Checklist*** is approved in SWEPT, the District Environmental Office will complete and provide the date of the determination on the ***Environmental Certification for FDOT Federal Project*** form, located in SWEPT. A sample form is provided in the ***Guidance for Part 1, Chapter 5***. This form is required as part of the contract documents for federal-aid construction projects and is used when submitting all projects, including Local Agency Program (LAP) projects, for approval to the Federal Aid Office. As specified by the ***Local Programs Manual, Topic No. 525-010-300***, LAP agencies do not have signature authority for environmental certifications;

therefore, the ***Environmental Certification For FDOT Federal Project*** form should be signed by appropriate FDOT personnel as noted on the form.

The District Federal Aid coordinator or the Federal Aid Management Office utilizes information from the ***Environmental Certification for FDOT Federal Project*** form to complete the ***Federal-Aid Project Authorization/Agreement Form (PR-1240 Form)***.

Re-evaluations may be needed for Type 1 CEs as the project progresses per ***Part 1, Chapter 13, Re-evaluations***.

5.2.2 Type 2 Categorical Exclusions

Type 2 CE COA Determinations are documented in the ***Class of Action Form (Part 1, Chapter 2, Class of Action Determination for Federal Projects)***. As a Project Development and Environment (PD&E) Study, Type 2 CE projects follow the project development process outlined in ***Part 1, Chapter 4, Project Development Process***. During the PD&E phase, the District prepares a ***Type 2 Categorical Exclusion Determination Form*** in SWEPT. The resulting Environmental Document is commonly referred to as a Type 2 CE. Type 2 CEs summarize the results of the engineering and environmental analysis and input received from stakeholders [e.g., agencies, Federally Recognized Native American Tribes (Tribes), the public] and require review and approval by OEM ***(Section 5.2.2.5)***. See ***Figure 5-1*** for a flowchart of the Type 2 CE process.

5.2.2.1 Engineering and Environmental Analysis and Coordination

The results of the ETDM screening events are used for project scoping and to prepare the Type 2 CE. For Type 2 CEs which were not screened through the EST, the District is responsible for gathering enough information to scope the project. The District is also responsible for coordinating with OEM and applicable agencies, when appropriate.

If project conditions change, and a project that was screened in the EST can now be completed as a Type 1 CE, a ***Type 1 Categorical Exclusion Checklist*** is prepared, coordination takes place with OEM, and the change is documented (see ***Section 5.2.1***).

A Type 2 CE does not typically require consideration of multiple build alternatives. However, in some situations, the impacts to topics/resources may result in the need to consider additional alternatives during the PD&E phase. This should not preclude a District from considering minor shifts in the alignment during the PD&E phase. A preferred alternative is typically chosen prior to the public hearing. For projects with an accelerated schedule, Districts are encouraged to prepare up to 60 percent preliminary design during PD&E as described in ***Part 1, Chapter 4, Project Development Process***. The ***Preliminary Engineering Report (PER)*** is referenced in the Type 2 CE and uploaded to the SWEPT project file with the other Technical Materials. For bridge projects, a ***PER*** can be substituted with a ***Bridge Development Report (BDR)*** or ***Bridge Replacement Report (BRR)***. A summary of the engineering considerations and alternatives evaluation (if applicable) is included in the Project Description section of the Type 2 CE. Guidance

on completing a ***PER*** is provided in ***Part 2, Chapter 3, Engineering Analysis*** and ***Part 2, Chapter 3A, Alternatives Analysis***.

During the PD&E phase, impacts are evaluated and environmental analysis is completed to verify that the COA determination is a Type 2 CE. The level of detail required to support the Type 2 CE determination depends upon the complexity of the project and the magnitude of environmental impacts. Social, cultural, natural, and physical topics/resources are evaluated using the pertinent chapters in ***Part 2*** of this ***Manual*** to satisfy applicable federal and state environmental laws, regulations, and executive orders. Since Type 2 CEs are generally minor in nature and have less than significant impacts, cumulative impacts assessments are generally not warranted. There may be exceptions, which can be evaluated on a case-by-case basis. Indirect impact assessments may be needed for some resources.

Analysis typically includes desktop and field review, local knowledge of the project area, agency coordination/consultation, and preparation of supporting documents and technical reports.

The analysis should document that the project has no significant impacts and address mitigation, if applicable. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for guidance on determining significance. Information to substantiate the impact determination of not significant, or enhancement must be discussed in the Type 2 CE, uploaded as Technical Materials or attached and included in the Appendix, as appropriate. If, during this effort, a significant impact is identified, coordination will need to occur with OEM to revise the COA Determination for the project ***(Part 1, Chapter 2, Class of Action Determination for Federal Projects)***. A project with a significant impact to any topic/resource cannot be processed as a Type 2 CE.

Coordination or consultation with appropriate resource agency personnel (typically an ETAT representative) is necessary for some topics/resources. The Type 2 CE must include documentation of interagency coordination on respective jurisdictional issues to adequately support the Type 2 CE determination. A summary of coordination and/or consultation efforts and results, which support the findings, should be included in the Type 2 CE and findings or concurrence documentation should be attached. In addition, it must list commitments made throughout the PD&E Study.

5.2.2.2 Public Involvement

The Type 2 CE includes preparation of a public engagement plan, typically a ***Public Involvement Plan (PIP)*** or in some cases a ***CAP***.

Type 2 CEs typically require a public hearing. If the project is a major transportation improvement as described in ***Section 339.155(5), F.S.***, a public hearing is required. See ***Part 1, Chapter 11, Public Involvement*** for information on holding a public hearing and notification requirements.

The public hearing is certified when the Project Manager prepares a ***Public Hearing Certification Form***. This form may be completed in SWEPT or by using the ***Public Hearing Certification, Form No. 650-050-56***. If completed in SWEPT, the ***Public Hearing Transcript*** is uploaded to SWEPT and a link to it is provided in the certification form. If completed outside of SWEPT, the certification form and the ***Public Hearing Transcript*** are uploaded to SWEPT for the project file. These two documents are included in the Appendix of the Type 2 CE. Written statements from the public, both submitted at the public hearing or during the public hearing comment period, are included in the ***Summary of Public Involvement (SPI)***. See ***Part 1, Chapter 11, Public Involvement*** for information on the ***SPI***.

Under limited circumstances, when a Type 2 CE does not constitute a major transportation improvement as described in ***Section 339.155(5), F.S.***, the District must obtain OEM approval in order to offer the public an opportunity to request a public hearing in lieu of holding it without a public request. A notice of opportunity to request a public hearing is then published, see (***Part 1, Chapter 11, Public Involvement***) for publication requirements.

It is normally expected that a preferred alternative is chosen prior to the public hearing. If in unusual circumstances a preferred alternative cannot be selected before the public hearing the District should coordinate with OEM. For these situations, additional public involvement after the hearing could be necessary and could range from another public hearing to a meeting, or a flyer/mailer. The documents should also be posted on the project website.

5.2.2.3 Supporting Information

Supporting information such as agency coordination/consultation letters, technical memos, technical reports, and other supporting documents are saved in the SWEPT project file and are identified as either Technical Materials or Attachments. The ***Type 2 Categorical Exclusion QA/QC Checklist*** includes a list of these documents and clarifies which should be Technical Materials and which are attachments.

Technical Materials are documents contained under a separate cover that are incorporated by reference, meaning they should be referenced in the Type 2 CE. Technical Materials includes technical reports [e.g., ***Project Traffic Analysis Report (PTAR)***, ***Conceptual Stage Relocation Plan (CSRP)***, ***Natural Resource Evaluation (NRE), PER***], technical memorandums, and studies. For a list of reports and design information typically completed in the PD&E phase that should be in the project file see ***Part 1, Chapter 4, Project Development Process***.

Documents added as attachments are included in the Appendix and are considered to be a part of the Type 2 CE. This may include concurrence letters, determinations of effect, and Memorandum of Understanding (MOUs). Items that are to be included as attachments are specifically identified in the ***Type 2 Categorical Exclusion QA/QC Checklist***.

5.2.2.4 Preparing a Type 2 Categorical Exclusion Determination Form

The Type 2 CE is prepared using the ***Type 2 Categorical Exclusion Determination Form*** in SWEPT. Guidance on content to include in the ***Type 2 Categorical Exclusion Determination Form*** is provided in the ***Guidance for Part 1, Chapter 5***. An outline of the Type 2 CE is provided in ***Figure 5-2***. Once the form is completed, it is saved as a PDF which becomes the Type 2 CE Environmental Document.

Once completed, the form is approved and electronically signed by the Director of OEM or designee. Signing the Type 2 CE constitutes Location and Design Concept Acceptance (LDCA).

5.2.2.5 FDOT Document Review Process

Type 2 CEs are required to go through a QA/QC check at the District level before the public hearing, if held (see OEM's ***QA/QC Tools for PD&E Studies Website***). During this process the ***Type 2 Categorical Exclusion QA/QC Checklist*** is completed.

Typically, OEM Initial and Final reviews are completed after the public hearing. A diagram of FDOT's Document Review Process for Type 2 CEs is available on the ***OEM Website***. The timeframes identified in this process are calendar days.

After the public hearing, if held, the District certifies the public hearing (***Section 5.2.2.2***) and updates the Environmental Document. The District also confirms the project file in SWEPT is complete. Districts should maintain the project file according to ***Part 1, Chapter 15, Project File and Records Management***.

After updating the Type 2 CE, using the ***Type 2 Categorical Exclusion Determination Form***, the District conducts a quality control review and uses the SWEPT application to complete the ***Environmental Document Submittal Form*** for Initial OEM review. The District uploads the ***Type 2 Categorical Exclusion QA/QC Checklist*** and supporting information into SWEPT.

The PDC receives email notification and acknowledges the document is ready for review by confirming the ***Environmental Document Submittal Form*** in SWEPT. If necessary, the District schedules a project briefing for OEM reviewers and the Office of General Counsel (OGC) reviewers, as needed. The OEM and OGC review team has 30 days to review the draft documents. The District addresses OEM comments and provides responses. The OEM project review team has a 15-day period to confirm that comments have been addressed. If the comments have not been addressed, additional comment resolution time may be needed. If necessary, the District schedules a meeting with the project review team to discuss comments.

If there are Cooperating Agencies, the District shares the Type 2 CE with the Cooperating Agencies. This review may be concurrent with OEM review. The District then addresses any Cooperating Agency comments.

Once comments have been addressed, the District submits the revised Type 2 CE along with the ***Environmental Document Submittal Form*** for Final review and approval in SWEPT. The PDC receives email notification and has 14 days to confirm that the submittal is complete. Following confirmation by the PDC, the document can advance to OEM Environmental Administrators for review, who have 25 days to recommend the Type 2 CE for approval. The Director of OEM, or designee, then has five days to approve the Type 2 CE. This approval grants LDCA.

5.2.2.6 Actions Taken After Approval

Once the Type 2 CE is approved, the District must provide notification that LDCA has been granted. For projects with a ***Noise Study Report (NSR)***, see ***Part 2, Chapter 18, Highway Traffic Noise*** on how to coordinate the ***NSR*** with the local government after LDCA.

Distribution to Agencies and Stakeholders

Announcement of LDCA is sent to Cooperating Agencies and Participating Agencies through the EST, or by other electronic means. The District should also send the announcement to other interested state and federal agencies and other stakeholders. The announcement should be sent to Tribes according to their requested method as reflected on FDOT's ***Native American Tribal Consultation Website***. Others should be sent an electronic link to the document, unless a paper copy is requested. The approved Type 2 CE may be sent to a permitting agency if a permit is required [e.g., USCG for a bridge permit or the USACE for a ***Section 404*** or ***Section 408*** permit).

Public Announcement of LDCA

The District publishes an announcement of LDCA in the same local newspaper(s) used for the public hearing notification, if one was held, informing the public that the project has received LDCA and is being advanced. If the Type 2 CE includes an ***Individual Section 4(f) Evaluation***, then the LDCA notice should also notice that the Final ***Section 4(f)*** Evaluation was approved by OEM. See ***Part 1, Chapter 11, Public Information*** for details on preparing an Announcement of LDCA. Proof of publication or an ***Affidavit of Publication*** is saved in the ***Final Notifications Package***.

If a ***Limitations on Claims Notice*** is anticipated see ***Part 1, Chapter 11, Public Involvement*** for more information on this process. If applicable a copy of the notice in the ***Federal Register (FR)*** is saved in the ***Final Notifications Package***.

Re-evaluations may be needed for a Type 2 CE as the project progresses per ***Part 1, Chapter 13, Re-evaluations***.

5.3 REFERENCES

FHWA, 1987, Technical Advisory T6640.8A. Guidance for Preparing and Processing Environmental and Section 4(f) Documents. https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx

FHWA, 2011, Supplement to the Transportation Planning Requirements and Their Relationship to NEPA Process Completion. http://www.fhwa.dot.gov/planning/tpr_and_nepa/supplementmemo.cfm

FHWA, Projects Involving Residential or Non-Residential Displacements Memo, October 13, 2022.

FDOT, 2014, Section 2. Meeting Planning Requirements for NEPA Approval. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/metrosupport/resources/section2.pdf?sfvrsn=9567358f_0

FDOT, Planning Consistency for NEPA Practitioners. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pdeman/planning-consistency-for-nepa-practitioners.pdf?sfvrsn=895090ea_1

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

FDOT, Efficient Transportation Decision Making Manual. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

National Environmental Policy Act of 1969 (NEPA) as amended (42 U.S.C. § 4321 et seq.), https://www.govinfo.gov/content/pkg/COMPS-10352/pdf/COMPS-10352.pdf

Title 23 CFR 450, Planning Assistance and Standards

Title 23 CFR 650(h), Navigational Clearances for Bridges

Title 23 CFR 771, Environmental Impact and Related Procedures

Title 23 U.S.C. § 139(l), Efficient Environmental Reviews for Project Decision Making

5.4 FORMS

Public Hearing Certification, Form No. 650-050-56

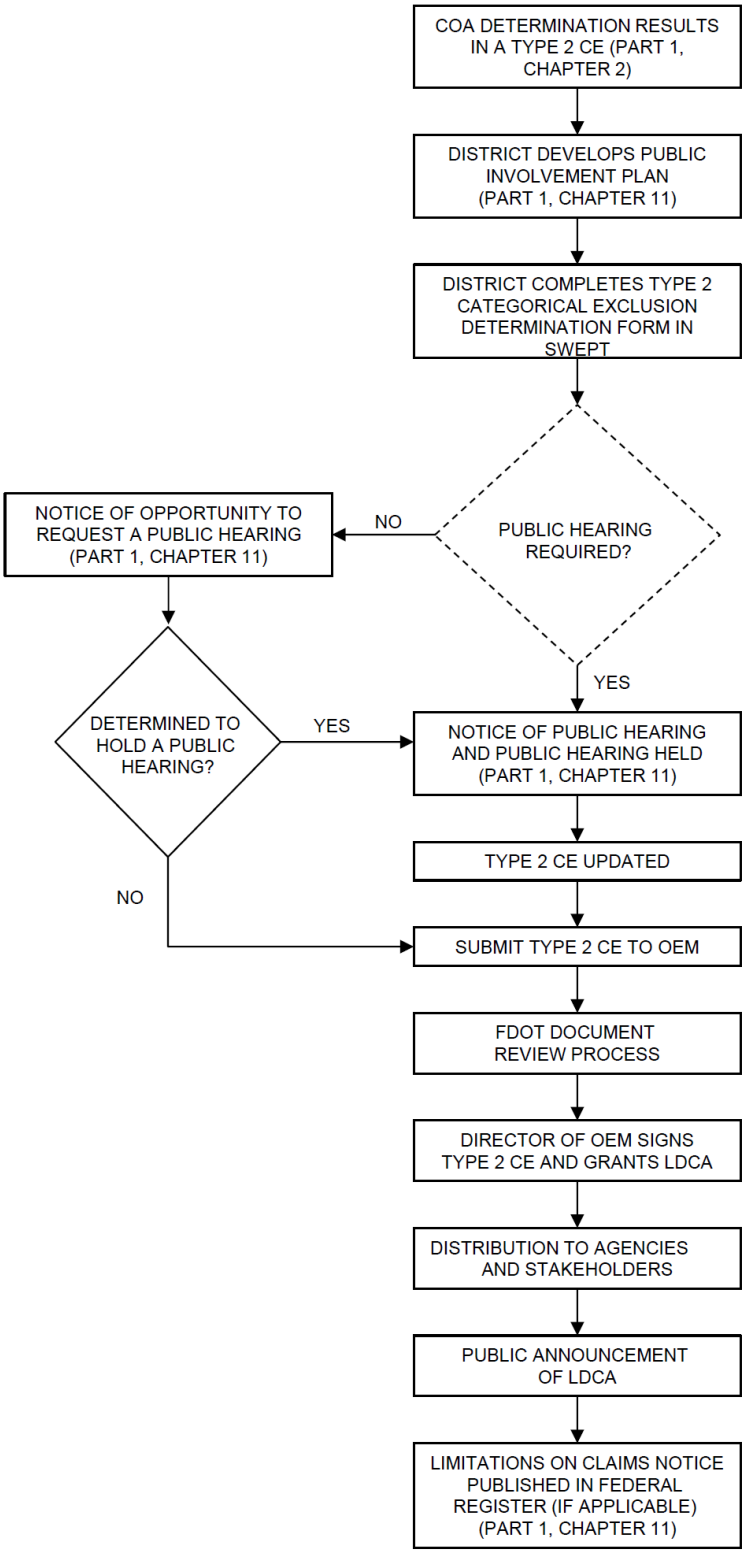

Figure 5-1 Type 2 Categorical Exclusion Process

Cover Page
Second Cover Page
Table of Contents

Section 1: Project Information
- 1.1 Project Description
- 1.2 Purpose and Need
- 1.3 Planning Consistency

Section 2: Environmental Analysis Summary

Section 3: Community Effects
- 3.1 Social
- 3.2 Economic
- 3.3 Land Use Changes
- 3.4 Mobility
- 3.5 Aesthetic Effects
- 3.6 Farmland

Section 4: Cultural Resources
- 4.1 Section 106 of the National Historic Preservation Act
- 4.2 Section 4(f) of the USDOT Act of 1966, as amended
- 4.3 Section 6(f) of the Land and Water Conservation Fund Act of 1965
- 4.4 Recreational Areas and Protected Lands

Section 5: Natural Resources
- 5.1 Protected Species and Habitat
- 5.2 Wetlands and Other Surface Waters
- 5.3 Essential Fish Habitat
- 5.4 Floodplains
- 5.5 Sole Source Aquifer
- 5.6 Water Resources
- 5.7 Aquatic Preserves
- 5.8 Outstanding Florida Waters
- 5.9 Wild and Scenic Rivers
- 5.10 Coastal Barrier Resources

Section 6: Physical Resources
- 6.1 Highway Traffic Noise
- 6.2 Air Quality
- 6.3 Contamination
- 6.4 Utilities and Railroads
- 6.5 Construction

Section 7: Engineering Analysis Support
Section 8: Permits
Section 9: Public Involvement
Section 10: Commitments
Section 11 Technical Materials
Appendix

Figure 5-2 Type 2 Categorical Exclusion Outline

PART 1, CHAPTER 6

ENVIRONMENTAL ASSESSMENT

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PART 1 CHAPTER 6

ENVIRONMENTAL ASSESSMENT

6.1 OVERVIEW

This chapter provides guidance for the development of an Environmental Assessment (EA). See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for guidance on determining if a project is an EA.

In accordance with ***U.S. Department of Transportation (USDOT) Order 5610.1D,10.b.***, in order to provide evidence and analysis to determine whether to prepare a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS), the EA should briefly discuss the following:

- The purpose and need for the project
- Alternatives analysis to a degree commensurate with the nature of the proposed project and indicate a preferred alternative, if identified
- The reasonably foreseeable impacts of the proposed project and the alternatives considered, including the no action alternative

All projects subject to ***23 United States Code (U.S.C.) § 139*** are required to be tracked on the Permitting Dashboard established under ***42 U.S.C. § 4370m-2(b)***. Under ***National Environmental Policy Act (NEPA)*** Assignment, the Office of Environmental Management (OEM) enters project schedules for EAs into the Permitting Dashboard. The District is responsible for providing specific project schedule information to OEM as requested. The Permitting Dashboard is updated in accordance with USDOT tracking requirements.

6.2 PROCEDURE

Environmental and engineering analysis is used to prepare the EA. The level of analysis for topics/resources should be sufficient to adequately identify the impacts and address comments provided by the Environmental Technical Advisory Team (ETAT), other agencies, interested parties, or the public during the Efficient Transportation Decision Making (ETDM) Programming Screen and/or the Advance Notification (AN) process. The analysis should also support the resource agency consultation processes, address opportunities and approaches to mitigation when needed, and aid in coordination with the public or other interested stakeholders.

At the beginning of the Project Development and Environment (PD&E) phase a ***Public Involvement Plan (PIP)*** is developed and administered in accordance with procedures

in ***Part 1, Chapter 11, Public Involvement***. Public involvement activities take place throughout the PD&E phase and are documented in a ***Summary of Public Involvement (SPI)***. See ***Part 1, Chapter 11 Public Involvement*** for more information on public involvement during the PD&E phase.

According to ***USDOT Order 5610.1D***, EAs are required to be completed within 1 year, which is measured from the date the OEM Director approves the ***Class of Action Form*** to the signature of an EA with FONSI. This form is typically approved prior to the public hearing, if held. The District must coordinate with OEM if a longer time limit is necessary.

The EA is prepared by the District in consultation with OEM and includes the results of the environmental and engineering analysis, agency coordination, and public involvement ***(Section 6.2.1)***. It is important for the PD&E scope of services to recognize the result of the PD&E Study could be either a FONSI or an EIS. ***Figure 6-1*** outlines the EA process.

6.2.1 Environmental Assessment Preparation

The EA should be clear, concise, and focused on the relevant issues or resources where the significance of the impacts is in question. To support the concise discussion of relevant issues or resources, the EA may incorporate technical reports by reference (see ***Section 6.2.1.8***). Comments submitted from the ETAT during the Environmental Screening Tool (EST) screening should be used to focus the content of the EA. The ***Environmental Assessment QA/QC Checklist*** may be used as a tool to facilitate preparation of the EA and ensure that applicable information is included.

According to ***23 Code of Federal Regulations (CFR) § 771.138(b)(2)***, the text of an EA must not exceed 75 pages, not including any citations or appendices. If the page limit is exceeded, the District must coordinate with OEM.

USDOT Order 5610.1D, 10.h.(3), provides that an EA should "be as concise as possible while proportional to the magnitude of the proposed action and anticipated impacts". EAs must be formatted for an 8.5"x11" page with one-inch margins using 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. These size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each item counts as one page.

6.2.1.1 Cover Page and Table of Contents

EA cover pages are only prepared as electronic forms in the StateWide Environmental Project Tracker (SWEPT). Sample cover pages for EAs, both with and without a Draft ***Section 4(f)*** Evaluation, are provided as a visual in ***Guidance for Part 1, Chapter 6***. The draft cover page is removed prior to the final submittal of the EA in SWEPT.

The layout of a sample Table of Contents is provided in ***Figure 6-2***. This layout is flexible depending on the specifics of the project.

6.2.1.2 Project Information

The Project Information section of an EA should be developed in accordance with ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency***.

In the Planning Consistency subsection information is needed to verify that a project meets the planning requirements in ***23 CFR § 450***. The intent is to advance projects derived from transportation plans and clearly describe the steps toward implementation as described in those plans. The EA must include information reflecting the status of planning consistency [Cost Feasible Plan of the Long Range Transportation Plan (CFP LRTP), Transportation Improvement Program (TIP), and Current State Transportation Improvement Program (STIP)] and include documentation of planning consistency pages. Documentation of snapshots of the Work Program is not adequate documentation to demonstrate planning consistency. More information on planning consistency is in ***Florida Department of Transportation (FDOT)/Federal Highway Administration (FHWA) Consistency Guidance***, and ***Planning Consistency for NEPA Practitioners***. Planning consistency should be met prior to Location and Design Concept Acceptance (LDCA).

6.2.1.3 Alternatives

The EA should describe the alternatives in accordance with ***Part 2, Chapter 3, Engineering Analysis*** and ***Part 2, Chapter 3A, Alternatives Analysis***. This section summarizes the engineering analysis and considerations concerning evaluation of existing conditions, selection of design parameters, development of alternatives, analysis of alternatives, and selection of a preferred alternative.

An EA must evaluate at least one Build Alternative, a No-Build Alternative, and a Transportation Systems Management and Operations (TSM&O) alternative. When consistent with the purpose and need, a multi-modal alternative(s) should also be included. Additionally, any alternative considered but eliminated prior to preparation of the EA should be discussed and the reasons for its elimination documented in the EA according to ***Part 2, Chapter 3, Engineering Analysis*** and ***Part 2, Chapter 3A, Alternatives Analysis***.

A preferred alternative is typically chosen prior to the public hearing. If in unusual circumstances a preferred alternative cannot be selected before the public hearing the District should coordinate with OEM. For these situations, additional public involvement after the hearing could be necessary and could range from another public hearing to a meeting, or a flyer/mailer. See ***Part 1, Chapter 11, Public Involvement*** for details on public involvement activities.

6.2.1.4 Environmental Analysis

The Environmental Analysis section includes discussion of existing conditions of the project area and potential impacts the project may have on applicable topics/resources.

The Table of Contents in ***Figure 6-2*** provides a layout of subsections that are typically included in the Environmental Analysis section. ***Table 6-1*** provides references to chapters in ***Part 2*** of this ***Manual*** which provide guidance on addressing each topic/resource. The EA should focus on those resources where there is a question of significance. If there is no involvement with, or impact to the topic/resource, some of the chapters listed in ***Table 6-1*** provide standard statements to include in these subsections. Topics/resources without involvement/impacts may be summarized in an introductory paragraph in the Environmental Analysis section and separate, individual sections for those topics are not required.

The Environmental Analysis section should provide sufficient detail to support the conclusions and provide the scientific and analytic basis for the comparison of project alternatives. Each topic/resource subheading should describe the potential impacts of the proposed project and the alternatives evaluated. It should also include discussion of enhancements and identify potential benefits to the topic/resource. The document should make full use of charts, tables, maps, and other graphics illustrating comparisons between the alternatives and their respective impacts (i.e., costs, residential displacements, noise impacts). Impacts that can be mitigated should be discussed. This section should not duplicate discussions in the Alternatives section.

6.2.1.4.1 Anticipated Permits

The Environmental Analysis section should include a subsection on anticipated permits identified during the PD&E phase. This list includes the name of the permit, the name of the permitting agency, and the permit status. Documentation of regulatory agency coordination should be added to the project file and included in the Appendix of the EA. Coordination with the District Environmental Permits Coordinator should occur when preparing this section of the document. See ***Part 1, Chapter 12, Environmental Permits*** for more information on documenting permits in the EA.

6.2.1.5 Comments and Coordination

A Comments and Coordination section is included in an EA to summarize the public and agency comments and coordination involved in developing the EA. This includes documentation of early coordination and comments received during the AN, or if combined, the ETDM Programming Screen, as well as documentation of meetings and coordination with government officials, government agencies, community groups, and individual citizens during the PD&E phase.

This section is divided up into five subsections:

1. Discussion of ETDM Programming Screen and Advance Notification
2. Agency Coordination and Consultation
3. Public Meeting/Workshop(s)
4. Other Coordination (included only when needed)
5. Concluding Statement

6.2.1.5.1 Discussion of Efficient Transportation Decision Making Programming Screen and Advance Notification

The comments received by the District during the AN, or if combined, the ETDM Programming Screen, should be referenced, or summarized in a subsection of the Comments and Coordination section of the EA. This subsection includes the following information:

1. The date of the AN distribution, or if combined with the ETDM Programming Screen, the screening date;
2. A list of federal, state, local agencies and other interested parties that provided comments;
3. A reference to relevant comments on the project and District responses. Reference the appropriate section where comments/District responses can be located.

6.2.1.5.2 Agency Coordination and Consultation

This subsection summarizes the coordination and consultation which occurred with agencies during preparation of the EA. This should include a chronology of meetings, events, attendees, comments received, and District responses. This information can be exhibited as a table. This summary is in addition to discussion of consultation in other sections of the EA. The detailed results of coordination are included in the applicable topic/resource section and the actual coordination documents (e.g., emails, letters, meeting notes) are added to the Appendix of the EA.

6.2.1.5.3 Public Meetings/Workshops

A summary of the information provided in the ***SPI*** for the public kick-off meeting, any public meeting or workshops, or public involvement activities held before the public hearing may be included here, or this section may reference the ***SPI***. Coordination documents (e.g., agenda, meeting notes) are included in the Appendix of the EA (see ***Section 6.2.1.7***).

6.2.1.5.4 Other Coordination

If other coordination has occurred, it is summarized in this subsection with the actual coordination documents (e.g., correspondence) included in the Appendix of the EA. If there is no other coordination, then this subsection is not to be included in the EA.

6.2.1.5.5 Concluding Statement

Since the EA may be modified after the public hearing/public notice, the following statement is included as the concluding statement for the Comments and Coordination section:

> *FDOT will not make a final decision on the proposed action or any alternative until a public hearing or the opportunity for a public hearing has been provided for this project and comments received have been taken into consideration.*

6.2.1.6 Commitments

This section contains all commitments made during the PD&E process, including those identified in associated technical reports (***Part 2, Chapter 22, Commitments***). All commitments should be transmitted to the next phase of project development in accordance with ***Procedure No. 650-000-003, Project Commitment Tracking***.

6.2.1.7 Appendix of the Environmental Assessment

USDOT Order 5610.1D, 10.h(2), provides that appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, which substantiate the analysis provided in the EA. Appendices are not to be used to provide additional substantive analysis.

The appendices include documents which support the significance findings of the EA. This may include concurrence letters, determinations of effect, Memorandums of Understanding (MOUs), and Referendums.

The Appendices also include correspondence with agencies, officials, cooperating agencies, and citizens or private interest groups. It also may include lists (i.e., meetings), resolutions, Letters of Agreement, Memoranda of Agreement (i.e., ***Section 106 - Historic Preservation Act***).

The Appendices should **not** contain materials that do not support the significance findings such as internal FDOT memos, correspondence between FDOT and its consultant, comments on draft documents, or ETDM Planning or Programming Screen Summary Reports.

The Appendix of the EA contains a series of appendices divided up by topic/resource (e.g., Community Effects, Cultural Resources, Natural Resources) with each appendix

including a divider page that lists the documents provided in that Appendix. For example, the divider page of the Natural Resources Appendix would list items such as the USFWS Species Concurrence Letter.

6.2.1.8 Material Incorporated by Reference

Material incorporated by reference (contained under separate cover) should be cited in the EA and included in the project file in SWEPT. See the ***SWEPT Project File Organization Guide*** on FDOT's ***PD&E Manual Website*** for information on organizing the project file. Districts should maintain the project file according to ***Part 1, Chapter 15, Project File and Records Management***.

These materials include technical reports (e.g., ***Project Traffic Analysis Report***, ***Conceptual Stage Relocation Plan***, ***Natural Resource Evaluation***), technical memorandums, and studies. For a list of potential technical reports see ***Part 1, Chapter 4, Project Development Process***.

6.2.2 FDOT Document Review Process

A diagram of the FDOT Document Review Process is available on the ***OEM Website***. The timeframes identified in this process are calendar days. EAs are required to go through a Quality Assurance (QA)/Quality Control (QC) check at the District level before submittal for OEM Initial review (see OEM's ***Documents and Resources Webpage***). During this process the ***Environmental Assessment QA/QC Checklist*** is completed and then submitted to OEM with the EA for Initial review.

The District uses the SWEPT application to complete the ***Environmental Document Submittal Form*** for Initial OEM review. The District uploads the EA into the FDOT's Electronic Review and Comment (ERC) application.

The Project Delivery Coordinator (PDC) receives email notification and acknowledges the document is complete and ready for review by confirming the ***Environmental Document Submittal Form*** in SWEPT. If necessary, the District schedules a project briefing for OEM reviewers and the Office of General Counsel (OGC) reviewers. The OEM and OGC review team have 30 days to review the draft documents. OEM provides comments in the ERC.

The District addresses OEM comments and provides responses in the ERC. The OEM project review team has a 15-day period to confirm that comments have been addressed. If the comments have not been addressed, additional comment resolution time may be needed. If necessary, the District schedules a meeting with the project review team to discuss comments.

If there are Cooperating Agencies, the District uploads the EA to the EST and initiates the Cooperating Agency review. This review may be concurrent with OEM review. The District may address Cooperating Agency comments in the EST.

Once comments have been addressed, the District submits the revised EA along with the ***Environmental Document Submittal Form*** for Final review and approval in SWEPT. The PDC receives email notification and has 14 days to confirm that the submittal is complete. Following confirmation from the PDC, the document can advance to OEM Environmental Administrators review.

The OEM Environmental Administrators have 25 days to recommend the EA for approval. The Director of OEM, or designee, then has 5 days to approve the EA in SWEPT. This approval is for public notice of the EA.

6.2.3 Actions Taken After Approval of the Environmental Assessment

Distribution to Agencies and Stakeholders

The approved EA is sent electronically to the Florida State Clearinghouse (SCH) and ETAT agencies, which includes Cooperating Agencies and Participating Agencies, through the EST. The District should also send the document to other interested state and federal agencies and other stakeholders listed in ***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***, including contacts to which the AN was originally sent. The document should be sent to Federally Recognized Native American Tribes according to their requested method of communication as established on FDOT's ***Native American Tribal Consultation Website***. Others should be sent an electronic link to the document, unless a paper copy is requested. See ***Guidance for Part 1, Chapter 6*** for a sample transmittal letter.

Making the EA Available for Public Inspection

The EA is made available:

- For a minimum of 15 days in advance of the public hearing (if applicable)
- At the District office for 30 days
- At the public hearing (if applicable)
- On project websites or using other publicly accessible electronic means.

Materials incorporated by reference may also be made available on the project website.

Public Notice of Availability and Public Hearing

A public hearing is required if the project is a major transportation improvement as described in ***Section 339.155(5), Florida Statutes (F.S.)*** (see ***Part 1, Chapter 11, Public Involvement***). When a public hearing is required, the District places a notice in the local newspaper(s) which:

- Advertises the public hearing

- Announces the availability of the EA for public review for 30 days (start date being the newspaper ad publication date)
- Provides locations where the EA can be obtained or reviewed by the public
- Requests comments during the 30-day availability period of the EA

Proof of publication or an ***Affidavit of Publication*** is included in the ***SPI*** for these notices. See ***Part 1, Chapter 11, Public Involvement*** for details on other notification requirements for public hearings and guidance on holding a public hearing.

After the public hearing, it must be certified by the Project Manager using a ***Public Hearing Certification, Form***. This form may be completed in SWEPT or by using the ***Public Hearing Certification, Form No. 650-050-56***. If completed in SWEPT, the ***Public Hearing Transcript*** is uploaded to SWEPT and a link to it is provided in the certification form. If completed outside of SWEPT, the certification form and the ***Public Hearing Transcript*** are uploaded to SWEPT for the project file.

Written statements from the public, both submitted at the public hearing or during the public hearing comment period, are added to the ***SPI***.

Public Notice of Availability Without a Public Hearing

Under limited circumstances, a project requiring an EA may not constitute a major transportation improvement as described in ***Section 339.155(5), F.S.***, and a public hearing is not required. The District must obtain OEM approval in order to offer the public an opportunity to request a public hearing in lieu of holding it without a public request.

In accordance with ***23 CFR § 771. 119(f)***, the District places a public notice of availability in a newspaper(s) similar to a public hearing notice and at a similar stage of development. This notice:

- Mentions the public of the availability of the EA for public review for 30 days
- Provides the locations where the EA can be obtained or reviewed by the public
- Requests comments during the 30-day availability period of the EA

This notice is typically combined with a notice of opportunity to request a public hearing. See ***Part 1, Chapter 11, Public Involvement*** for guidance on preparing this notice and publication requirements. Proof of publication or an ***Affidavit of Publication*** is included in the ***SPI*** for these notices.

Decision of FONSI or Draft Environmental Impact Statement (DEIS)

After the public hearing has been held (if applicable), the 30-day comment period has closed, comments have been addressed and the project will have **no** significant impacts, the District updates the EA and prepares a FONSI according to procedures in ***Part 1, Chapter 7, Finding of No Significant Impact***. If significant impacts are anticipated at any point, consultation with OEM is required to determine if a DEIS should be prepared in accordance with ***Part 1, Chapter 8, Draft Environmental Impact Statement***. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for guidance on significance.

6.3 REFERENCES

FHWA, 1987. Technical Advisory T6640.8A. Guidance for Preparing and Processing Environmental and Section 4(f) Documents. https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx

FHWA, Guidance on NEPA Documentation. https://www.environment.fhwa.dot.gov/nepa/classes_of_action.aspx#ea

FDOT, Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Planning Consistency for NEPA Practitioners. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pdeman/planning-consistency-for-nepa-practitioners.pdf?sfvrsn=895090ea_1

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

FDOT, SWEPT Project File Organization Guide. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/swept-file-quick-guidance.xlsx?sfvrsn=39a0be74_6

Title 23 CFR Part 771, Environmental Impact and Related Procedures. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771

Title 23 U.S.C. § 327, Surface Transportation Project Delivery Program. http://uscode.house.gov/view.xhtml?req=(title:23%20section:327%20edition:prelim)%20OR%20(granuleid:USC-prelim-title23-section327)&f=treesort&edition=prelim&num=0&jumpTo=true

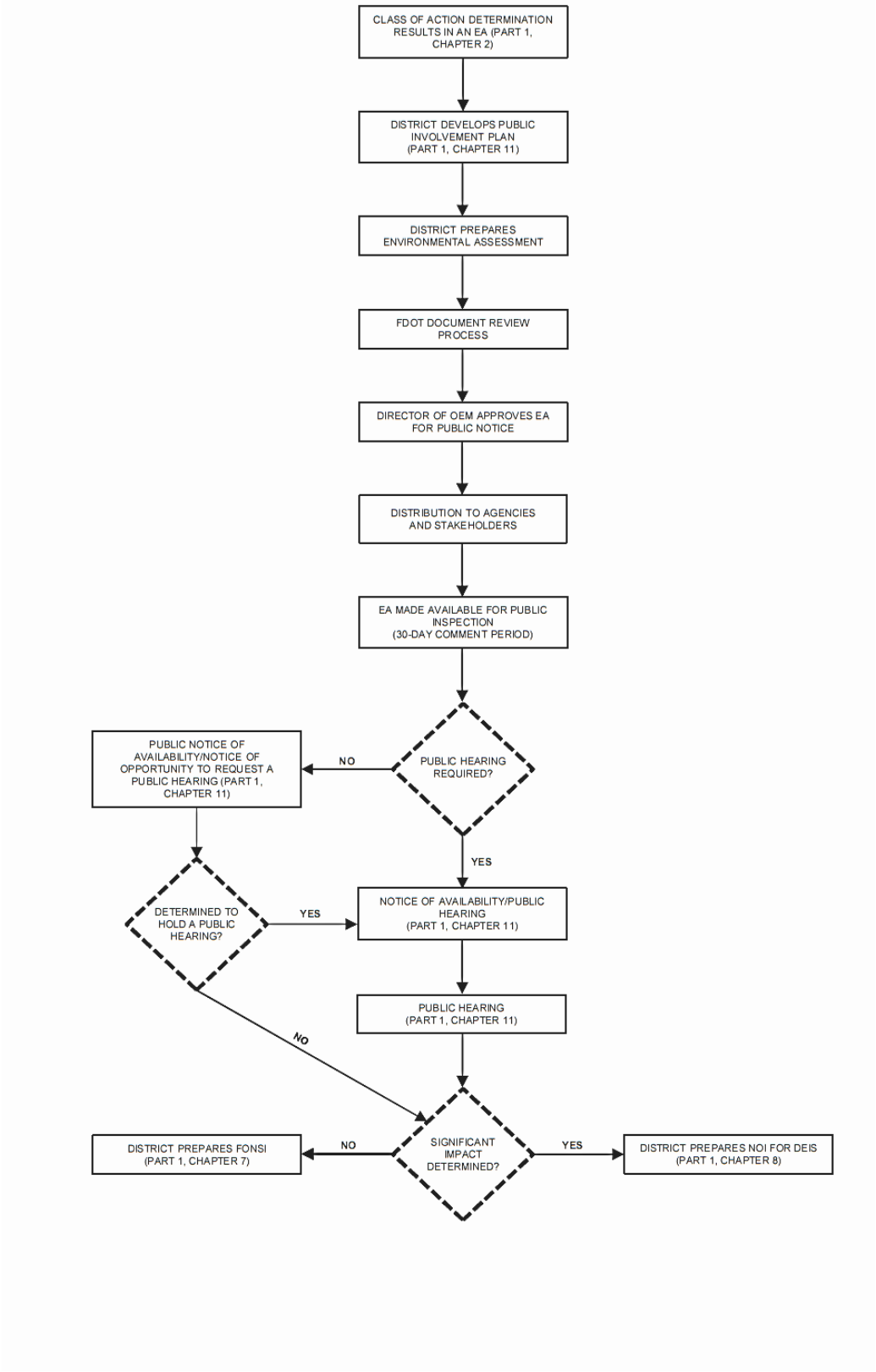
USDOT, Order 5610.1D, Procedures for Considering Environmental Impacts. https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts

6.4 FORMS

Public Hearing Certification, Form No. 650-050-56

Table 6-1 Chapter References for Topics/Resources

Topic/Resource	Part	Chapter
Community Effects		
Social	2	4
Economic	2	4
Land Use Changes	2	4
Mobility	2	4
Aesthetic Effects	2	5
Relocation Potential	2	4
Farmland	2	6
Cultural		
Historic Sites/Districts	2	8
Archaeological Sites	2	8
Section 4(f) of the USDOT Act of 1966, as amended	2	7
Section 6(f) of the Land and Water Conservation Fund Act of 1965	2	7
Recreational Areas and Protected Lands	2	7 and 23
Natural		
Protected Species and Habitat	2	16
Wetlands and Other Surface Waters	2	9
Essential Fish Habitat	2	17
Floodplains	2	13
Sole Source Aquifer	2	11
Water Resources	2	11
Aquatic Preserves	2	11
Outstanding Florida Waters	2	11
Wild and Scenic Rivers	2	12
Coastal Zone Consistency	2	14
Coastal Barrier Resources	2	15
Physical		
Highway Traffic Noise	2	18
Air Quality	2	19
Contamination	2	20
Utilities and Railroads	2	21
Bicycles and Pedestrians	2	3
Navigation	1	16
Construction	2	3
Anticipated Permits	1	12



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PART 1, CHAPTER 7

FINDING OF NO SIGNIFICANT IMPACT

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PART 1, CHAPTER 7

FINDING OF NO SIGNIFICANT IMPACT

7.1 OVERVIEW

This chapter provides guidance on preparation and review of a Finding of No Significant Impact (FONSI) and updating the accompanying Environmental Assessment (EA). A FONSI is the ***National Environmental Policy Act*** (***NEPA)*** decision document which states that the project will not have any significant environmental effect, and therefore does not require an Environmental Impact Statement (EIS). This determination is based on the analysis contained in an EA (***Part 1, Chapter 6, Environmental Assessment***).

Since a FONSI is attached to an updated EA, the term "EA with FONSI" is used for the Environmental Document throughout this ***Manual***. The EA with FONSI should document compliance with ***NEPA*** and other applicable environmental laws, Executive Orders, and related requirements ***[23 Code of Federal Regulations (CFR) § 771.133]***. If full compliance is not possible by the time the FONSI is prepared, the FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met.

The EA with FONSI documents the decisions reached by the Florida Department of Transportation (FDOT) regarding a project and details the rationale behind the decision and the selection of the preferred alternative.

7.2 PROCEDURE

7.2.1 Preparation of the Environmental Assessment with Finding of No Significant Impact

After the public hearing (if held) and the end of the 30-day public inspection period for an EA, the District updates the EA (keeping within the 75 page limit) to address any changes that have occurred since the document became publicly available ***(Section 7.2.1.2)*** and prepares a FONSI (see ***Section 7.2.1.1***). This process is shown in ***Figure 7-1***.

7.2.1.1 Preparation of the Finding of No Significant Impact

The FONSI is prepared by the District and briefly identifies the preferred alternative, incorporates the updated EA by reference, and identifies any other related environmental documents, if applicable. The FONSI states that an EIS is not required, thus concluding the ***NEPA*** process for that action.

See ***Guidance for Part 1, Chapter 7*** for a FONSI template. If applicable, the FONSI also includes the final ***Section 4(f)*** approval.

7.2.1.2 Updating the Environmental Assessment

Appropriate sections of the EA are modified to reflect changes in environmental impact(s), cost, design, or other changes since approval of the EA. It incorporates any new coordination and comments submitted on the EA.

7.2.1.2.1 Updating the Planning Consistency and the Alternatives Sections

In the Planning Consistency section, the applicable Planning Consistency Table should be updated as necessary and include information demonstrating the project's fulfillment of planning consistency requirements in ***23 CFR § 450***. The relevant pages of the Cost Feasible Plan of the Long Range Transportation Plan (CFP LRTP), Transportation Improvement Program (TIP), and Current State Transportation Improvement Program (STIP) should be included in the Appendix of the EA with FONSI if not already included in the Appendix of the EA . Documentation of snapshots of the Work Program are not adequate documentation to demonstrate planning consistency. Planning consistency should be met prior to Location and Design Concept Acceptance (LDCA). See ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency*** for guidance on updating this section and the ***FDOT/FHWA Consistency Guidance*** and ***Planning Consistency for NEPA Practitioners*** for additional planning consistency guidance.

In the Alternatives section, the Preferred Alternative subsection is updated if needed. See ***Part 2, Chapter 3, Engineering Analysis*** and ***Part 2, Chapter 3A, Alternatives Analysis*** for more information on updating the Preferred Alternative subsection of the EA.

7.2.1.2.2 Updating the Environmental Analysis Section

The Environmental Analysis section should provide sufficient information to support the conclusions reached regarding the preferred alternative and the project impacts. This section should be updated to include the results of any additional coordination with resource agencies or project changes since the EA was signed. Mitigation measures should be identified for the preferred alternative, if applicable.

7.2.1.2.3 Updating the Comments and Coordination Section

The Comments and Coordination section of the EA is updated to incorporate comments received or coordination that occurred since the EA was approved for public availability. This section should include a summary of comments received during the 30-day public inspection period along with a response to each substantive comment.

The Agency Coordination and Consultation subsection is updated to include any new coordination/consultation or comments from agencies. Concurrence and/or coordination letters should be referenced and added to the Appendix of the EA with FONSI.

The Concluding Statement subsection should be deleted.

A new subsection should be added titled “Public Hearing”, if a public hearing was held. This new subsection should include the date, time, and place of the hearing, describe the format of the public hearing and include the start and end time. It should also provide a summary of the comments received at public hearing (written and oral) as well as written comments received during the public hearing comment period. This includes summarizing both positive and negative comments, the District's response to those comments, and including a reference to the comments and responses that are included in the updated ***Summary of Public Involvement (SPI)***.

7.2.1.2.4 Updating the Commitments Section

The Commitments section is updated to include new commitments made by FDOT since the EA was signed. Any new commitments require internal coordination and once coordinated with the appropriate District offices are updated in the EA and transmitted to the next phase of project development in accordance with ***Procedure No. 650-000-003, Project Commitment Tracking***. See ***Part 2, Chapter 22, Commitments*** for more information.

7.2.1.2.5 Preparing the Appendix of the EA with FONSI

A new Appendix of the EA with FONSI is created and is added after the Appendix of the EA. This Appendix should include only new materials since the EA was approved.

7.2.1.3 Combining the Environmental Assessment and Finding of No Significant Impact

The EA and FONSI are combined into an EA with FONSI. The EA cover page is removed and replaced with a divider page between the FONSI and the updated EA, which contains the words "Environmental Assessment" in the center of the page. It also includes “and Individual Section 4(f) Evaluation” if applicable.

7.2.2 FDOT Document Review Process

A diagram of the FDOT Document Review Process is available on the ***Office of Environmental Management (OEM) Website***. The timeframes identified in this process are calendar days. After preparing the EA with FONSI, the District conducts a quality control review and uses the StateWide Environmental Project Tracker (SWEPT) application to complete the ***Environmental Document Submittal Form*** for Initial OEM review. The District uploads the EA with FONSI into the FDOT’s Electronic Review and Comment (ERC) application. The District ensures the ***Public Hearing Transcript*** and ***Public Hearing Certification*** (if applicable) and new materials are incorporated by reference and uploaded into SWEPT. Districts should maintain the project file according to ***Part 1, Chapter 15, Project File and Records Management***.

The Project Delivery Coordinator (PDC) receives email notification and acknowledges the document is complete and ready for review by confirming the ***Environmental Document Submittal Form*** in SWEPT. If necessary, the District schedules a project briefing for OEM and the Office of General Counsel (OGC) reviewers. The OEM and OGC review team have 30 days to review the documents. OEM provides comments in the ERC.

The District addresses OEM comments and provides responses in the ERC. The OEM project review team has a 15-day period to confirm that comments have been addressed. If the comments have not been addressed, additional comment resolution time may be needed. If necessary, the District schedules a meeting with the project review team to discuss comments.

If there are Cooperating Agencies, the District uploads the EA with FONSI to the Environmental Screening Tool (EST) and initiates the Cooperating Agency review. This review may be concurrent with OEM review. The District may address Cooperating Agency comments in the EST.

Once comments have been addressed, the District submits the revised EA with FONSI along with the ***Environmental Document Submittal Form*** for Final review and approval in SWEPT. The PDC receives email notification and has 14 days to confirm that the submittal is complete. Following confirmation from the PDC, the document can advance to OEM Environmental Administrators' review.

The OEM Environmental Administrators have 25 days to recommend the EA with FONSI for approval. The Director of OEM, or designee, then has five days to approve the EA with FONSI, granting LDCA using SWEPT. When a project requires a legal sufficiency review for an ***Individual Section 4(f)***, OGC will review the EA with FONSI after the Environmental Administrators recommend the document for approval prior to OEM Director approval.

7.2.3 Actions Taken After Approval

Once the EA with FONSI is approved, the District must provide notification that LDCA has been granted. For projects with a ***Noise Study Report (NSR)***, see ***Part 2, Chapter 18, Highway Traffic Noise*** on how to coordinate the ***NSR*** with the local government after LDCA.

Distribution to Agencies and Stakeholders

The District shares the approved document with the recipients of the EA. An electronic copy of the document is sent to the Florida State Clearinghouse and the Environmental Technical Advisory Team (ETAT) agencies, which includes the Cooperating Agencies and Participating Agencies through the EST. The District should also send the document to other interested state and federal agencies, other stakeholders, and those who submitted substantive comments on the EA. The document should be sent to Federally Recognized Native American Tribes according to their requested method of

communication as established on FDOT's ***Native American Tribal Consultation Website***. Others should be sent an electronic link to the document, unless a paper copy is requested.

Making the EA with FONSI Available to the Public

The EA with FONSI is made available:

- Upon request by the public
- On project websites or other publicly accessible electronic means

Public Announcement of LDCA

In accordance with ***U.S. Department of Transportation (USDOT) Order 5610.1D***, FDOT must notify the public of the availability of an EA and accompanying FONSI, therefore the District publishes an Announcement of LDCA in the same local newspaper(s) used to provide notice of the availability of the original EA, informing the public that the project has received LDCA and is being advanced. Proof of publication or an ***Affidavit of Publication*** is included in the ***Final Notifications Package***. Other recommended notifications and information on the ***Final Notifications Package*** is included in ***Part 1, Chapter 11, Public Involvement***.

Re-evaluations may be needed as the project progresses per ***Part 1, Chapter 13, Re-evaluations***.

Limitations on Claims Notice

Title 23 United States Code (U.S.C.) § 139(l) includes a provision for limiting the time period for filing claims and seeking judicial review of permits, licenses, or approvals issued by federal agencies for a highway or public transportation capital project. The provision establishes a statute of limitations period of 150 days for filing a challenge following publication of the notice in the ***Federal Register (FR)*** of the agency action(s). See ***Part 1, Chapter 11, Public Involvement*** for guidance on preparing a ***Limitations on Claims Notice***. A copy of the notice is included in the ***Final Notifications Package***.

7.3 REFERENCES

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

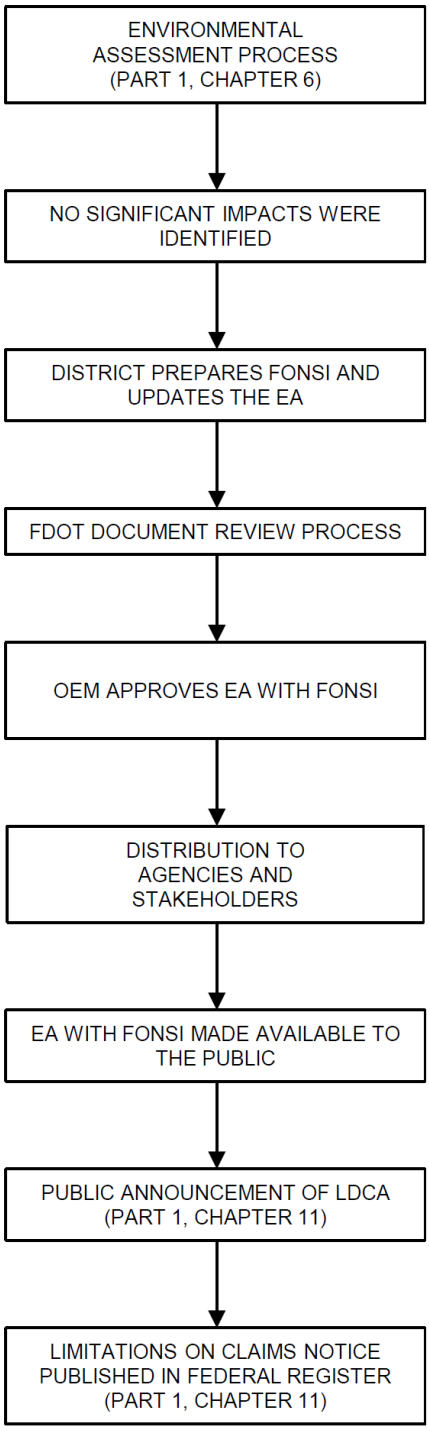
NEPA of 1969, as amended (42 U.S.C. § 4321 et seq.).
https://www.govinfo.gov/content/pkg/COMPS-10352/pdf/COMPS-10352.pdfhttp://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Reg-NEPA.pdf

Title 23 CFR Part 771, Environmental Impact and Related Procedures.
http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=3f0e8ae65ee76fc13c0bc7a240e9fc59&mc=true&r=PART&n=pt23.1.771

Title 23 U.S.C. § 139(l), Efficient environmental reviews for project decision making.
http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title23-section139&num=0&saved=%7CKHRpdGxlOjIzIHNlY3Rpb246MTM3IGVkaXRpb246cHJlbGltKQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim

Title 23 U.S.C. § 327, Surface Transportation Project Delivery Program.
http://uscode.house.gov/view.xhtml?req=(title:23%20section:327%20edition:prelim)%20OR%20(granuleid:USC-prelim-title23-section327)&f=treesort&edition=prelim&num=0&jumpTo=true

USDOT, Order 5610.1D, Procedures for Considering Environmental Impacts.
https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts



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PART 1, CHAPTER 8

DRAFT ENVIRONMENTAL IMPACT STATEMENT

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PART 1, CHAPTER 8

DRAFT ENVIRONMENTAL IMPACT STATEMENT

8.1 OVERVIEW

Environmental Impact Statements (EISs) should provide full and fair discussion of significant environmental impacts and inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. This chapter provides guidance for the development of a Draft Environmental Impact Statement (DEIS). See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for guidance on determining if a project requires the preparation of an EIS.

All projects subject to ***23 United States Code (U.S.C.) § 139*** are required to be tracked on the Permitting Dashboard established under ***42 U.S.C. § 4370m-2(b)***. Under ***National Environmental Policy Act (NEPA)*** Assignment, the Office of Environmental Management (OEM) enters project schedules for EISs into the Permitting Dashboard. The District is responsible for providing specific project schedule information to OEM as requested. The Permitting Dashboard is updated in accordance with the U.S. Department of Transportation (USDOT) tracking requirements.

8.2 PROCEDURE

The results of the environmental and engineering analyses are used to prepare the EIS. The level of analysis for topics/resources should be sufficient to adequately identify the impacts and address comments provided by the Environmental Technical Advisory Team (ETAT), other agencies, interested parties, or the public during the Programming Screen and/or Advance Notification (AN) process. The analysis should also fulfill the resource agency consultation process, address opportunities and/or approaches to mitigation when needed, and aid in coordination with the public or other interested stakeholders.

At the beginning of the Project Development and Environment (PD&E) phase a ***Public Involvement Plan (PIP)*** is developed and administered in accordance with procedures in ***Part 1, Chapter 11, Public Involvement***. Public involvement activities take place throughout the PD&E phase and are documented in a ***Summary of Public Involvement (SPI)***. See ***Part 1, Chapter 11, Public Involvement*** for more information on public involvement during the PD&E phase.

According to ***23 Code of Federal Regulations (CFR) § 771.138(a)***, EISs are required to be completed no later than two years from publication of the ***Notice of Intent (NOI)*** to the signature date of the Final Environmental Impact Statement (FEIS)/Record of Decision (ROD) or separate ROD. The District must coordinate with OEM if a longer time limit is necessary.

The District coordinates with OEM to determine the timing of the ***NOI***. OEM then coordinates with the Federal Highway Administration (FHWA) Division Office for publication of the ***NOI*** in the ***Federal Register (FR)*** (see ***Section 8.2.2***).

A DEIS is prepared by the District in consultation with OEM and includes the results of the environmental and engineering analysis, agency coordination, and public involvement. ***Figure 8-1*** shows the DEIS process.

The following activities are required for EISs, and are conducted by the District in consultation with the Cooperating and Participating agencies before the ***NOI*** is issued.

1. During project screening through the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST).

    a. Identify Participating and Cooperating agencies ***(Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification)***.

    b. Identify purpose and need ***(Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency)***.

    c. Identify potential alternatives (***Part 2, Chapter 3, Engineering Analysis*** and ***Part 2, Chapter 3A, Alternatives Analysis***).

    d. Conduct the Programming Screen and/or prepare the AN ***(ETDM Manual, Topic No. 650-000-002)***.

        1. Begins the coordination process and provides notification to agencies that the project is beginning.

        2. Provides a status of the project as it relates to inclusion in the Cost Feasible Plan of the Long Range Transportation Plan (CFP LRTP), Transportation Improvement Program (TIP), and Current State Transportation Improvement Program (STIP).

    e. Provide opportunity for public and agency input ***(Part 1, Chapter 11, Public Involvement)***.

    f. Identify potentially significant environmental issues.

    g. Identify potential mitigation strategies [Preliminary Environmental Discussions (PEDs) and Agency Comments].

    h. Develop Coordination Plan.

        1. Fulfilled through agency agreements, project screening, preparation of preliminary project schedule, and permitting timetable.

i. Develop Project Schedule.

1. Developed in consultation with OEM, Cooperating, and Participating agencies.

2. Cooperating and Participating agencies concurrence should be no later than 90 days after publication of the ***NOI***.

2. After EST screening and to support the PD&E phase.

a. Develop the PD&E Scope of Services based on early internal coordination, ETAT commentary and Environmental Scoping ***(Section 8.2.1)***. This determines the extent of analysis needed for each resource.

b. If a formal scoping meeting is held, it must be announced in the ***NOI*** (***Section 8.2.1***).

c. Prepare the ***PIP*** consistent with ***Part 1, Chapter 11, Public Involvement***.

d. Initiate applicable resource surveys/studies ***(Section 8.2.4)***.

e. Initiate permit activities as soon as possible, such as pre-application processes ***(Part 1, Chapter 12, Environmental Permits)***.

8.2.1 Environmental Scoping Process

The Environmental Scoping Process is a formal process that is required for an EIS, per ***23 CFR § 771.123(b)(1)***, and is used to identify the purpose and need, the range of alternatives, reasonably foreseeable impacts, and the significant issues to be addressed in the DEIS. The Environmental Scoping Process begins with ETAT reviews during the ETDM screening events ***(ETDM Manual, Topic No. 650-000-002)***. Pursuant to ***49 U.S.C. § 310***, concurrence, or issue resolution (between the Lead Agency and Cooperating Agencies) on the purpose and need statement must be achieved during the Environmental Scoping Process of an EIS, and during development of the EIS on the range of alternatives for analysis. For Florida Department of Transportation (FDOT) projects this occurs during the ETDM screening.

The District may hold a formal scoping meeting(s), publish scoping information, or use other means to communicate with those persons or agencies who may be interested or affected. To determine whether a formal scoping meeting should be held, the District should consider information from the ETDM screening process and input from the agencies, as well as coordinate with OEM. Details on how to conduct a scoping meeting are included in ***Part 1, Chapter 11, Public Involvement***. According to ***23 CFR § 771.123(b)(1)***, if a scoping meeting is to be held, it should be announced in the ***NOI*** and by appropriate means at the state or local level (see ***Section 8.2.2***).

The results of the ETDM Programming Screen and Environmental Scoping Process are used to identify the affected environment and to focus the environmental analysis in the EIS on the relevant issues. The information gathered is used to develop the Scope of Services for the PD&E phase. The Scope of Services is not the same as the Environmental Scoping Process. See ***Part 1, Chapter 4, Project Development Process*** for guidance on developing a project's Scope of Services.

The EIS must discuss the Environmental Scoping Process, including all meetings held, coordination with participating and cooperating agencies, issues raised, and the District's response and, as appropriate, any commitments. The Environmental Scoping Process is summarized in the Comments and Coordination Appendix (***Section 8.2.4.8.1***).

8.2.1.1 Prior Concurrence

For selected projects, "prior concurrence" pursuant to ***23 CFR § 771.125(c)*** is necessary before proceeding with key approvals under ***NEPA***. This process is initiated when either a District or OEM identifies a particular project as being appropriate for prior concurrence to ensure that the project and Environmental Document in question are acceptable from a policy and program perspective. Prior concurrence may apply to the FDOT approvals of a DEIS, FEIS, or a FEIS/ROD. Projects that require prior concurrence will be decided on a case-by-case basis with the prior concurrence determination being made by the Chief Operations Officer, Assistant Secretary for Engineering and Operations or designee, after consulting with the Office of General Counsel (OGC), OEM and the District. Projects appropriate for prior concurrence consideration must meet one or more of the following criteria:

- Impacts of unusual magnitude
- High levels of controversy
- Emerging or national policy issues under development
- Issues for which the District seeks assistance

This identification should occur at the earliest possible time in the project development process, but always before OEM makes its final ***NEPA*** decision. When the need for prior concurrence is determined, it will be documented through an e-mail initiated by either the District or OEM. The e-mail should identify:

1. The key issues that are involved in the project
2. Any project-specific coordination needs that are to be addressed
3. OEM's role in the pending ***NEPA***/project development approvals

4. General time frames for communications between and needed actions by the District and OEM

8.2.2 Preparation of the Notice of Intent

The ***NOI*** informs stakeholders that an EIS is being prepared for the proposed project and is issued once OEM determines the project proposal is sufficiently developed to allow for meaningful public comment. The District coordinates with OEM on the format and content of the ***NOI***. A sample ***NOI*** is shown in ***Guidance for Part 1, Chapter 8***.

After the District drafts the ***NOI***, OEM coordinates with the FHWA Division Office on publication in the ***FR***. The ***NOI*** will not be published in the ***FR*** until the project schedule has been approved by OEM.

OEM transmits a draft cover letter (see ***Guidance for Part 1, Chapter 8***) and the ***NOI*** to FHWA for signature. After obtaining FHWA signatures, FHWA submits to the ***FR***. Documents submitted to the ***FR*** must follow guidance from the Office of the Federal Register's ***Document Drafting Handbook***. Publication of the ***NOI*** begins the ***NEPA*** process for an EIS. Proof of publication or an ***Affidavit of Publication*** of the ***NOI*** must be included in the project file and in the Appendix of the DEIS.

8.2.3 Project Status Fact Sheet

Once the ***NOI*** is published (EIS start), the project **is not** required to go back through the Programming Screen. Instead, the District will prepare a project status fact sheet, if any of the following events have occurred:

1. The project termini have changed (expanded); or

2. The project concepts have changed resulting in a change in anticipated impact(s).

The project status fact sheet is sent to the same recipients as the Programming Screen Notification and/or AN (whichever is most recent) and includes:

1. Details about the project (project title, ETDM number, Financial Management Number, DEIS number if available)

2. Brief project description including the Class of Action (COA)

3. Brief statement regarding current status of the project, including any changes which have occurred since the original submittal

4. Current project schedule

5. Contact Information

8.2.4 Draft Environmental Impact Statement Preparation

The DEIS should meet legal sufficiency, as well as be analytic, concise, and no longer than necessary to comply with ***NEPA***.

The DEIS should include only enough data and technical detail necessary to allow for a reasoned decision to be made, while referencing supplemental materials or placing other technical information in the appendices or project file. Technical reports should be briefly described in the DEIS and included as standalone documents that are incorporated by reference (see ***Section 8.2.4.9***).

According to ***USDOT Order 5610.1D, 13.h*** the text of an EIS will not exceed 150 pages, not including citations or appendices. Before the page limit is exceeded, the District must coordinate with OEM.

USDOT Order 5610.1D, 13.h.(4) provides that an EIS must be prepared using an 8.5”x11” format with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. These size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information. When an item of graphical material is larger than 8.5”x11”, each such item counts as one page.

8.2.4.1 Cover Page and Table of Contents

DEIS cover pages are only prepared as electronic forms in the StateWide Environmental Project Tracker (SWEPT). Sample cover pages for DEISs, both with and without a Draft ***Section 4(f)*** Evaluation, and a sample cover page for a Supplemental DEIS is provided in ***Guidance for Part 1, Chapter 8***.

An EIS number is assigned to the proposed project and included on the DEIS cover page. It is simply a combination of Agency-State-EIS-Year-Document Number-D (for Draft) for example: FHWA-FLA-EIS-17-01-D would be the first DEIS in Florida for the calendar year 2017. The District should contact OEM for assistance when assigning the document number.

The layout of a sample Table of Contents is provided in ***Figure 8-2***.

8.2.4.2 Executive Summary

The Executive Summary describes the proposed action and the conclusions of topic/resource analysis for a project and identifies avoidance, minimization, and/or mitigation measures. The Executive Summary normally will not exceed 15 pages, adequately and accurately summarize the DEIS, and highlight the major conclusions, areas of disputed issues raised by agencies and the public, and the issues to be resolved. Charts, tables, and graphics are an effective and efficient way to summarize alternatives, impacts, and explain mitigation measures. The information in the summary needs to be

verifiable and should not present conclusions, ideas, or information that are not included in the full DEIS. The sections of an Executive Summary for a DEIS include:

Proposed Action: This section describes the proposed project and includes, at a minimum, the ETDM number, Financial Management number, name of the roadway, the project length and termini, a brief description of the existing facility, the type of proposed project including the number of lanes, any special features, and the name of the city, county, and state in which the project is located.

Other Major Government Actions: This section addresses any major local, state, or federal actions proposed by other government entities in the same geographical area as the project. If such actions exist then the authorizing agency is identified, the project described, and the potential for coordination or conflict discussed. Any related correspondence or documentation is referenced.

Alternatives Considered: This section contains a brief discussion of the reasonable alternatives considered, including the No-Build alternative. Each alternative is discussed, including the number of lanes, project limits, and any special features.

Preferred Alternative: This section contains a brief discussion of the preferred alternative.

Major Environmental Impacts: This section provides a brief overview of the major environmental issues addressed in the DEIS. This includes beneficial as well as adverse impacts. Appropriate sections of the DEIS are referenced where additional information is provided.

Areas of Controversy: This section is included when agencies and/or the public raise issues that are considered controversial. Describe and disclose areas of controversy and the steps taken to resolve them to date. Major unresolved issues should also be discussed.

List of Other Government Actions Required: This section describes a list of Federal Actions required for the proposed project. This may include federal permits, land transfers, and ***Section 106*** agreements.

Irretrievable and Irreversible Commitment of Resources: This section briefly discusses the proposed action's irretrievable and irreversible commitment of resources. This general discussion should broadly describe that the build alternatives would require a similar commitment of natural, physical, human, and fiscal resources.

Measures to Avoid or Minimize Potential Adverse Impact: This section briefly discusses those measures taken to minimize or avoid adverse impacts to the environment. Appropriate sections of the DEIS are referenced and any mitigation measures proposed for the project are briefly outlined.

Short-Term Impacts Versus Long-Term Benefits: This section addresses the short-term effects of the project on the human environment as weighed against the overall long-term benefits of the project. Appropriate sections of the DEIS are referenced.

8.2.4.3 Project Information

The Project Information section of a DEIS should be developed in accordance with ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency***.

In the Planning Consistency subsection, information is needed to verify that a project meets the planning requirements in ***23 CFR § 450***. The intent is to advance projects derived from transportation plans and clearly describe the steps toward implementation as described in those plans. The DEIS must include information reflecting the status of planning consistency (CFP LRTP, TIP, and Current STIP) and include documentation of planning consistency pages. Documentation of snapshots of the Work Program is not adequate documentation to demonstrate planning consistency. See ***FDOT/FHWA Consistency Guidance*** and ***Planning Consistency for NEPA Practitioners*** for additional planning consistency guidance. Planning consistency should be met prior to Location and Design Concept Acceptance (LDCA).

8.2.4.4 Alternatives

For a DEIS, a reasonable range of alternatives, including the preferred alternative and the No-Build alternative are evaluated according to ***USDOT Order 5610.1D, 13.e***. This range includes a Transportation Systems Management and Operations (TSM&O) alternative, and when consistent with the purpose and need, a multi-modal alternative(s).

The Alternatives section of the DEIS includes impacts on the environment from the preferred alternative and other alternatives in a comparative form based on the information and analysis presented in the Environmental Analysis section. The DEIS should identify the preferred alternative to the extent practicable. ***Part 2, Chapter 3A, Alternatives Analysis*** provides guidance on preparing this section of the DEIS using the following subsections, as applicable:

1. Alternatives Development;
2. Alternatives Considered but Eliminated;
3. Alternatives Considered for Additional Study;
4. Comparative Alternatives Evaluation; and
5. Preferred Alternative.

The preferred alternative (or portion thereof) for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the

development of mitigation measures or compliance with requirements for permitting. The development of such higher level of detail must not prevent FDOT from making an impartial decision as to whether to accept another alternative that is being considered in the environmental review process. Coordination with the State Environmental Development Engineer is needed prior to developing a preferred alternative to a higher level of detail than other alternatives.

A preferred alternative is typically chosen prior to the public hearing. If in unusual circumstances a preferred alternative cannot be selected before the public hearing the District should coordinate with OEM. For these situations, additional public involvement after the hearing could be necessary and could range from another public hearing to a meeting, or a flyer/mailer. See ***Part 1, Chapter 11, Public Involvement*** for details on public involvement activities.

8.2.4.5 Environmental Analysis

The Environmental Analysis section includes discussion of existing conditions of the project area and potential impacts and/or enhancements the project may have on applicable topics/resources. The Table of Contents in ***Figure 8-2*** provides a layout of subsections that should be included in the Environmental Analysis section. ***Table 8-1*** provides references to chapters in ***Part 2 of this Manual*** which provide guidance on addressing each topic/resource. If there are potential impacts, each subsection should include 1) a discussion on the affected environment (***Section 8.2.4.5.1***) and 2) a discussion on the environmental consequences for the topic/resource (***Section 8.2.4.5.2***). If there is no involvement with, or impact to the topic/resource, some of the chapters listed in ***Table 8-1*** provide standard statements to include in these subsections.

8.2.4.5.1 Affected Environment

Each topic/resource subsection should provide a concise description of the existing social, economic, and environmental setting for the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s). It should contain a general description for the entire project area rather than a separate description for each proposed alternative. Discussion should be in proportion to the significance of the impacts and no longer than is necessary to understand the effects of the alternatives.

Socially, economically, and environmentally sensitive locations or features in the proposed project impact area (e.g., neighborhoods, parks, hazardous material sites, historic resources, wetlands) should be identified on exhibits and briefly described in the text. Certain sensitive resource locations should be protected from being specifically identified (e.g., archeological sites, threatened or endangered species locations).

The discussion should be focused on issues, data, and values which will have a bearing on possible impacts, mitigation measures, and on the selection of an alternative.

Photographs, illustrations, and other graphics should be used with text to provide a clear understanding of the area and the important issues. Information can come from various sources including but not limited to previous studies (planning, feasibility, or corridor studies), ETDM Programming Screen, AN, local knowledge, the Environmental Scoping Process, field reviews, technical documents, and public involvement. This information is typically collected and drafted before the PD&E Study begins.

8.2.4.5.2 Environmental Consequences

The Environmental Analysis section should include a discussion of potential impacts and benefits to topics/resources for each reasonable alternative and describe measures proposed to mitigate adverse impacts. Consistent with FHWA's policy as set forth in ***23 CFR § 771.105(c)***, the evaluation of alternatives should include consideration "the reasonably foreseeable social, economic, and environmental impacts of the proposed transportation improvement."

The Environmental Analysis section should provide sufficient detail to support the conclusions and provide the scientific and analytic basis for the comparison of project alternatives. Each topic/resource subheading should describe the potential impacts of the proposed project and the alternatives evaluated. It should also include discussion of enhancements and identify any benefits to the topic/resource. The document should make full use of charts, tables, maps, and other graphics illustrating comparisons between the alternatives and their respective impacts (i.e., costs, residential displacements, noise impacts). Impacts that can be mitigated should be discussed. This section should not duplicate discussions in the Alternatives section.

This section includes:

- The reasonably foreseeable environmental impacts of the proposed action
- Any reasonably foreseeable adverse environmental impacts that cannot be avoided should the proposal be implemented
- The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity
- Any irreversible or irretrievable commitments of federal resources which would be involved in the proposal should it be implemented
- Any means identified to mitigate adverse environmental impacts of the proposed action

It is recommended in ***FHWA Technical Advisory T6640.8A*** that the following are included for each reasonable alternative:

1. Sufficient information on the environmental studies and technical reports, major assumptions made, and supporting information on the validity of the methodology;

2. Sufficient information (results of analysis) to establish the reasonableness of the conclusions on project impacts;

3. A description of mitigation measures, where applicable. Associated commitments may be needed to address mitigation.

Once the analysis is completed, a determination of significance is made for relevant topic/resources in coordination with OEM.

8.2.4.5.3 Anticipated Permits

The Environmental Analysis section should include a subsection on anticipated permits that lists permits identified during the PD&E Study. This list includes the name of the permit, the name of the permitting agency, and the permit status. Documentation of regulatory agency coordination should be added to the project file and included in the Appendix. Coordination with the District Environmental Permits Coordinator should occur during the preparation of this section of the document. See ***Part 1, Chapter 12, Environmental Permits*** for more information on documenting permits in the DEIS.

8.2.4.5.4 Cumulative Impacts

Because actions requiring a DEIS will have significant environmental impacts, a Cumulative Effects Evaluation (CEE) may be required for resources determined to be of concern based on coordination and context. This is determined in coordination with OEM. If applicable, this subsection should include a summary of the results of the CEE.

8.2.4.6 Commitments

This section should contain all commitments made during the PD&E process, including those identified in associated technical reports (***Part 2, Chapter 22, Commitments***). All commitments should be transmitted to the next phase of project development in accordance with ***Procedure No. 650-000-003, Project Commitment Tracking***.

8.2.4.7 Concluding Statement

Since the DEIS may be modified after the public hearing, the following statement is included as the concluding statement.

> *FDOT will not make a final decision on the proposed action or any alternative until a public hearing has been held on this project and comments received have been taken into consideration.*

8.2.4.8 Appendix

USDOT Order 5610.1D, 13.h.(3) provides that appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the DEIS. Appendices are not to be used to provide additional substantive analysis.

The Appendix of a DEIS consists of the following, as appropriate:

- Material prepared in connection with the DEIS, that is not incorporated by reference (not contained under separate cover)
- Material substantiating any analysis fundamental to the DEIS
- Material relevant to the decision to be made that supports the significance findings. This may include concurrence letters, determinations of effect, Memorandums of Understanding (MOUs), and Referendums.
- Comments (or summaries in which the response is exceptionally voluminous) received during the scoping process (See ***Section 8.2.1***)
- Correspondence with agencies, officials, cooperating agencies, and citizens or private interest groups throughout the PD&E Study. Appendix should be limited to materials necessary to support FDOT's analysis and decision-making.
- Lists (e.g., meetings), resolutions, Letters of Agreement, Memoranda of Agreement (e.g., ***Section 106 - Historic Preservation Act***),
- Material which, due to its nature, should be circulated with the DEIS

The Appendices should **not** contain materials that do not support the significance finding such as internal FDOT memos, correspondence between FDOT and its consultant, comments on draft documents, or ETDM Planning or Programming Screen Summary Reports.

The Appendix contains a series of appendices, including the Comments and Coordination Appendix (see ***Section 8.2.4.8.1***), the List of Preparers Appendix (see ***Section 8.2.4.8.2***), and other appendices divided up by topic/resource (e.g., Community Effects, Cultural Resources, Natural Resources, Physical Resources). See ***Figure 8-2*** for the layout of the Appendix in the Table of Contents.

Each Appendix should include a divider page that lists the documents provided in that Appendix. For example, the divider page of the Natural Resources Appendix would list items such as the USFWS Species Concurrence Letter. A sample of a divider page is provided in ***Guidance for Part 1, Chapter 8***.

8.2.4.8.1 Comments and Coordination Appendix

The Comments and Coordination Appendix includes a summary of the public, stakeholder, and agency comments and coordination involved in developing the DEIS. This includes documentation of early coordination and comments received during the AN, or if combined, the ETDM Programming Screen, as well as documentation of meetings and coordination with government officials, government agencies, community groups, and individual citizens during the Environmental Scoping Process and PD&E phase.

This Appendix is divided up into subsections:

1. Summary of the Environmental Scoping Process
2. Agency Coordination and Consultation
3. Public Meeting/Workshop(s)
4. Other Coordination (included only when needed)

Summary of the Environmental Scoping Process

This subsection describes the Environmental Scoping Process (including ETDM and AN processes) for the DEIS and includes the following information:

1. Dates and locations of DEIS scoping meeting(s) (if held);
2. Agencies participating in the Environmental Scoping Process;
    a. Including federal, state, local agencies and other interested parties that provided comments in the EST or AN;
3. A summary of meetings, discussions, and correspondence pertinent to the Environmental Scoping Process.

The comments received by the District during the AN, or if combined, the ETDM Programming Screen must be referenced, and include the following information:

1. The date of the AN distribution, or if combined with the ETDM Programming Screen, the screening date;
2. A reference to relevant comments on the project and District responses. Reference the appropriate section where comments/District responses can be located.

Agency Coordination and Consultation

This subsection summarizes the coordination and consultation which occurred with agencies during preparation of the DEIS. This should include a chronology of meetings,

events, attendees, comments received, and District responses. This information may be exhibited as a table. This summary is in addition to discussion of consultation in other sections of the DEIS. The results of the coordination is discussed in the applicable topic/resource section and the actual coordination documents (e.g., emails, letters, meeting notes) are added to the applicable topic/resource Appendix.

Public Meetings/Workshops

A summary of the information provided in the ***SPI*** for the public kick-off meeting, any public meeting or workshops, or public involvement activities held before the public hearing may be included here, or this section may reference the ***SPI***. Coordination documents (e.g., agenda, meeting notes) are included in the Appendix.

The final statement should be that a public hearing will be taking place, including the date and location if known.

Other Coordination

If other coordination has occurred, it is summarized in this subsection with the actual coordination documents (e.g., correspondence) included in the Appendix. If there is no other coordination, then this subsection is not to be included in the DEIS.

8.2.4.8.2 List of Preparers Appendix

The Appendix includes a list of preparers. The list includes federal, state, or local agency personnel, including consultants, who were primarily responsible for preparing the EIS or associated technical studies. To make it easy to locate a specific individual, the list should be organized in order of federal, state, consultant, or other participants and describe the educational and professional experience of each preparer. It is also suggested that individuals listed for each organization be listed in alphabetical order.

In preparing the list of preparers each person should be contacted to verify educational and professional experience and the number of years employed in their field. An example of the List of Preparers Appendix is shown in ***Guidance for Part 1, Chapter 8***.

8.2.4.9 Material Incorporated by Reference

Material incorporated by reference (contained under separate cover) should be cited in the DEIS and included in the project file in SWEPT. See the ***SWEPT Project File Organization Guide*** on FDOT's ***PD&E Manual Website*** for information on organizing the project file. Districts should maintain the project file according to ***Part 1, Chapter 15, Project File and Records Management***.

These materials include technical reports (e.g., ***Project Traffic Report Analysis***, ***Conceptual Stage Relocation Plan***, ***Natural Resource Evaluation***), technical

memorandums, and studies. For a list of potential technical documents see ***Part 1, Chapter 4, Project Development Process***.

8.2.5 FDOT Document Review Process

A diagram of the FDOT Document Review Process is available on the ***OEM Website***. The timeframes identified in this process are calendar days. DEISs are required to go through a Quality Assurance (QA)/Quality Control (QC) check at the District level before submittal for OEM Initial review (see OEM's ***Documents and Resources Webpage***).

The District uses the SWEPT application to complete the ***Environmental Document Submittal Form*** for Initial OEM and OGC review. The District uploads the DEIS into FDOT's Electronic Review and Comment (ERC) application.

The Project Delivery Coordinator (PDC) receives email notification and acknowledges the document is complete and ready for review by confirming the ***Environmental Document Submittal Form*** in SWEPT. If necessary, the District schedules a project briefing for OEM and OGC reviewers. The OEM and OGC review team have 30 days to review the draft documents. OEM provides comments in the ERC.

The District addresses OEM comments and provides responses in the ERC. The OEM project review team has a 15-day period to confirm that comments have been addressed. If the comments have not been addressed, additional comment resolution time may be needed. If necessary, the District schedules a meeting with the project review team to discuss comments.

If there are Cooperating Agencies, the District uploads the DEIS to the EST and initiates the Cooperating Agency review. This review may be concurrent with OEM review. The District may address Cooperating Agency comments in the EST.

Once comments have been addressed, the District submits the revised DEIS along with the ***Environmental Document Submittal Form*** for Final review and approval in SWEPT. The PDC receives email notification and has 14 days to confirm that the submittal is complete. Following confirmation from the PDC the document can advance to OEM Environmental Administrators review.

The OEM Environmental Administrators have 25 days to recommend the DEIS for approval. The Director of OEM, or designee, then has five days to approve the DEIS in SWEPT.

When the DEIS is approved by OEM for circulation, OEM enters the deadline for formal comment submittal on the cover page established by calculating 45 calendar days after posting on the Environmental Protection Agency (EPA's) e-NEPA website indicating publication of the ***Notice of Availability*** in the ***FR***. See ***Section 8.2.6*** for information on the ***Notice of Availability***.

8.2.6 Actions After Approval

The DEIS is distributed and made available **before** the e-NEPA request for publication of the ***Notice of Availability*** in the ***FR*** is sent to EPA. This is to ensure FDOT meets the distribution requirements in ***23 CFR § 771.123(i)*** to make the DEIS available to the public and transmitted to agencies for comment no later than the time the document is filed with EPA.

Distribution to Agencies and Stakeholders

The approved DEIS is sent electronically to the State Clearinghouse (SCH) and the ETAT agencies, which includes Cooperating Agencies and Participating Agencies, through the EST. The District should also send the document to other interested state and federal agencies and other stakeholders listed in ***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***, including contacts to which the AN was originally sent. The document should be sent to Tribes according to their requested method of communication as established on FDOT's ***Native American Tribal Consultation Website***. Others should be sent an electronic link to the document, unless a paper copy is requested. See ***Guidance for Part 1, Chapter 8*** for a sample transmittal letter.

Making the DEIS Available for Public Inspection

The DEIS is made available:

- For a minimum of 15 days in advance of the public hearing
- For a 45-day comment period after publication of the NOA in the FR
- At the public hearing
- In other formats when reasonably necessary and hard copies on request
- On project websites or using other publicly accessible electronic means

Materials incorporated by reference may also be made available on the project website.

Public Notice of Availability and Public Hearing

The District places a notice in the local newspaper(s) which:

- Advertises the public hearing
- Mentions the availability of the DEIS
- Provides the locations where the DEIS can be obtained and reviewed by the public

- Requests comments submitted on the DEIS during the 45-day comment period (45 days from ***NOA*** publication)

See ***Part 1, Chapter 11, Public Involvement*** for details on the public hearing and notification requirements for public hearings. Proof of publication or an ***Affidavit of Publication*** is included in the ***SPI*** for these notices.

After the public hearing, the ***Public Hearing Transcript*** must be certified by the Project Manager using a ***Public Hearing Certification Form***. This form may be completed in SWEPT or by using the ***Public Hearing Certification, Form No. 650-050-56***. If completed in SWEPT, the ***Public Hearing Transcript*** is uploaded to SWEPT and a link to it is provided in the certification form. If completed outside of SWEPT, the certification form and the ***Public Hearing Transcript*** are uploaded to SWEPT for the project file.

Written statements from the public, both submitted at the public hearing or during the public hearing comment period, are added to the ***SPI*** (see ***Part 1, Chapter 11, Public Involvement***).

Notice of Availability in the FR

The ***Notice of Availability*** is initiated when the DEIS is filed with EPA. DEISs must be electronically submitted to EPA as PDF Documents using its e-NEPA online tool. Only the Environmental Document is submitted, as technical reports are included only by reference. The District should coordinate with OEM on the content of the ***Notice of Availability***.

The PDF documents must meet specific requirements for submittal to EPA. These are available on EPA's ***Environmental Impact Statement Filing Guidance Website***. After the District formats the document for e-NEPA, the District sends it to OEM. The District also provides a link to the project website where readers can find the DEIS. OEM then coordinates with FHWA on publication.

EPA publishes the ***Notice of Availability*** of the DEIS in the ***FR*** for a 45-day comment period ***(23 CFR § 771.123)***. The District must monitor the ***FR*** for publication and proof of publication or an ***Affidavit of Publication*** is uploaded to the project file.

After the circulation of the DEIS, the public hearing, and consideration of comments received, the District prepares a FEIS/ROD or FEIS and separate ROD according to procedures in ***Part 1, Chapter 9, Final Environmental Impact Statement***.

Future Project Phases

Pursuant to ***23 CFR § 771.123(c)***, the range of alternatives considered for further study must be used for all federal environmental reviews and permit processes, to the maximum extent practicable and consistent with federal law, unless the lead and participating agencies agree to modify the alternatives in order to address significant new information

and circumstances or to fulfil ***NEPA*** responsibilities in a timely manner. If the range of alternatives is modified after the DEIS is advanced, coordination with cooperating and participating agencies is required.

8.3 REFERENCES

American Association of State Highway and Transportation Officials (AASHTO), May 2006, Improving the Quality of Environmental Documents: A Report of the Joint AASHTO/ACEC Committee in Cooperation with the Federal Highway Administration

EPA, Environmental Impact Statement Filing Guidance Website. https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance

FHWA, 1987, Technical Advisory T6640.8A. Guidance for Preparing and Processing Environmental and Section 4(f) Documents. October 30, 1987. https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx

Federal Permitting Dashboard, https://www.permits.performance.gov/

FDOT, 2003, Federal Highway Administration and Federal Transit Administration Agency Operating Agreement Florida Department of Transportation

FDOT, Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Planning Consistency for NEPA Practitioners. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pdeman/planning-consistency-for-nepa-practitioners.pdf?sfvrsn=895090ea_1

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

FDOT, SWEPT Project File Organization Guide. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/swept-file-quick-guidance.xlsx?sfvrsn=39a0be74_6

Office of the Federal Register, National Archives and Records Administration, 2018, Document Drafting Handbook, Revision 2.1, dated October 2023. https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf

Title 23 CFR Part 771, Environmental Impact and Related Procedures. http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=3f0e8ae65ee76fc13c0bc7a240e9fc59&mc=true&r=PART&n=pt23.1.771

Title 23 U.S.C. § 139, Efficient Environmental Reviews for Project Decision Making.
http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title23-section139&num=0&saved=%7CKHRpdGxlOjIzIHNlY3Rpb246MTM3IGVkaXRpb246cHJlbGltKQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim

Title 23 U.S.C. § 327, Surface Transportation Project Delivery Program.
http://uscode.house.gov/view.xhtml?req=(title:23%20section:327%20edition:prelim)%20OR%20(granuleid:USC-prelim-title23-section327)&f=treesort&edition=prelim&num=0&jumpTo=true

Title 49 U.S.C. § 310, Aligning Federal Environmental Reviews.
https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title49-section310&num=0&edition=prelim

USDOT, Order 5610.1D, Procedures for Considering Environmental Impacts.
https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts

8.4 FORMS

Public Hearing Certification, Form No. 650-050-56

Table 8-1 Chapter References for Topics/Resources

Topic/Resource	Part	Chapter
Community Effects		
Social	2	4
Economic	2	4
Land Use Changes	2	4
Mobility	2	4
Aesthetic Effects	2	5
Relocation Potential	2	4
Farmland	2	6
Cultural		
Historic Sites/Districts	2	8
Archaeological Sites	2	8
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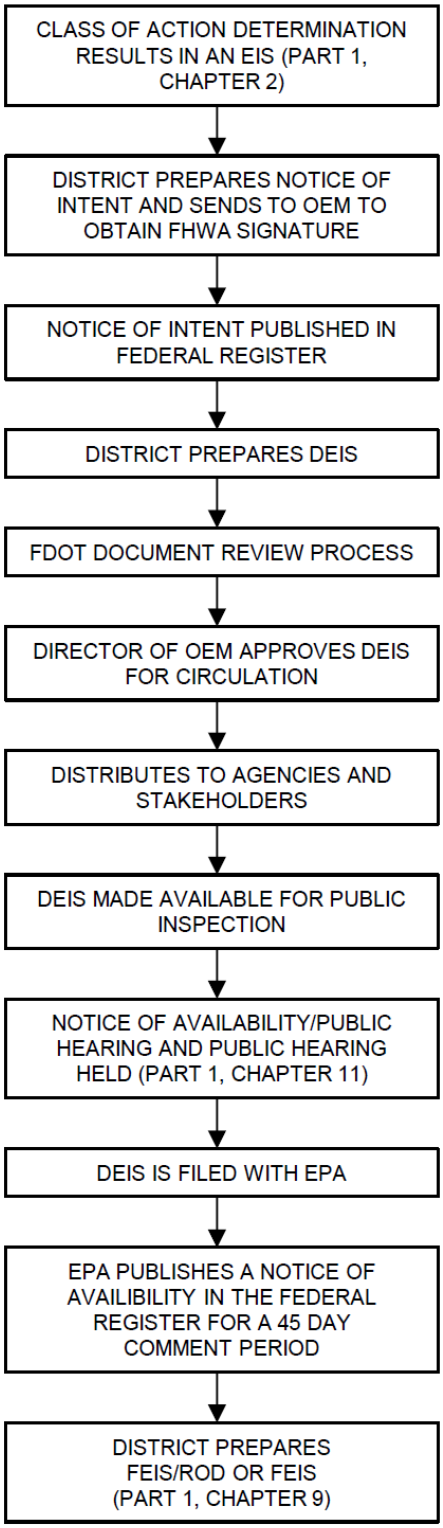

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PART 1, CHAPTER 9

FINAL ENVIRONMENTAL IMPACT STATEMENT

9.1 OVERVIEW

This chapter provides guidance on preparation and review of a Final Environmental Impact Statement (FEIS) and a Record of Decision (ROD). An FEIS is prepared after a Draft Environmental Impact Statement (DEIS) is circulated, published in the ***Federal Register (FR)***, and comments received have been considered (see ***Section 9.2.1***). A ROD is the ***National Environmental Policy Act*** (***NEPA)*** decision document. See ***Section 9.2.2*** for guidance on preparing a ROD.

Title 23 United States Code (U.S.C.) § 139 and ***23 Code of Federal Regulations (CFR) § 771.124*** direct the use of a combined FEIS and ROD (FEIS/ROD) as the final project decision to the maximum extent practicable (see ***Section 9.2.2.1***). The FEIS/ROD identifies the selected alternative and the FEIS identifies the preferred alternative. Both document the reasonable alternatives considered, discuss substantive comments received on the DEIS and responses, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. To the extent practical, the FEIS/ROD or FEIS also documents compliance with all applicable environmental laws and Executive Orders or provides reasonable assurance (***23 CFR § 771.133***) that their requirements can be met.

According to ***23 CFR § 771.138(a)***, Environmental Impact Statements (EISs) are required to be completed no later than two years from publication of the ***Notice of Intent (NOI)*** to the signature date of the FEIS/ROD or separate ROD. The District must coordinate with the Office of Environmental Management (OEM) if a longer time limit is necessary.

9.2 PROCEDURE

9.2.1 Preparation of the Final Environmental Impact Statement

After the public hearing and end of the 45-day public comment period for the DEIS (based on the publication of the ***Notice of Availability*** in the ***FR***), the District considers the comments received and prepares the FEIS. Comments received at the public hearing, and other changes occurring since the approval of the DEIS are documented in the FEIS.

The FEIS may be prepared by completing an FEIS Errata Sheet ***(Section 9.2.1.1)*** or updating the DEIS ***(Section 9.2.1.2)***. Errata sheets may be prepared to describe the outcome of the public hearing, comments received, and Florida Department of Transportation (FDOT) responses, including preliminary design changes since the approval of the DEIS.

The document submitted to OEM is a FEIS/ROD or if conditions warrant, a FEIS. If the District is submitting a FEIS, a Draft Record of Decision (DROD) should be prepared and

submitted to OEM with the FEIS. The FEIS process is shown in ***Figure 9-1*** and the FEIS/ROD process in ***Figure 9-2***.

9.2.1.1 Errata Sheets

Title 23 U.S.C. § 139 allows for the preparation of a FEIS by attaching errata sheets to the DEIS in lieu of rewriting the DEIS if certain conditions are met. The use of errata sheets is appropriate when comments received on a DEIS are minor, and the lead agency's responses to those comments are limited to factual corrections or explanations of why the comments do not warrant further response.

The errata sheets and the information required in a FEIS are attached to the DEIS for submittal to OEM as the FEIS/ROD or FEIS; this documentation will undergo the legal sufficiency review required by ***23 CFR § 771.124*** and ***23 CFR § 771.125***.

The errata sheets should include, at a minimum, the following information:

1. A list and explanation of factual corrections made to the DEIS with references to the relevant page numbers in the DEIS, citing the sources, authorities or reasons that support the position of FDOT; and

2. A list and explanation of the DEIS comments and the reasoning why the comments do not warrant additional response by FDOT, citing the sources, authorities, or reasons that support FDOT's position; and

3. If appropriate, an indication of the specific circumstances that would trigger a re-evaluation or a Supplemental Environmental Impact Statement (SEIS); and

4. A web address or other indication of where a copy of the DEIS may be obtained.

In addition, the errata sheets should contain a separate section that includes the following, as referenced in ***Section VI(C)*** of the ***Federal Highway Administration (FHWA) Technical Advisory T6640.8A*** and ***U.S. Department of Transportation (USDOT) Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act Reviews***:

1. Identification of the preferred alternative and the reasons why it was selected;

2. Final ***Section 4(f)*** evaluation or *de minimis* finding ***[23 U.S.C. § 138/49 U.S.C. § 303 (23 CFR Part 774)]***, if applicable;

3. Findings, including any on wetlands, floodplains, and ***Section 106*** effects, as applicable;

4. A list of commitments including mitigation measures for the preferred alternative;

5. A summary of comments received on the DEIS and in the public hearing and related responses.

6. Coordination activities that have taken place since issuance of the DEIS; and,

7. Identification of any other findings to comply with applicable environmental laws, regulations, Executive Orders, and related requirements (with associated agency consultation documentation) where there is reasonable assurance that full compliance will occur after issuance of the FEIS.

If using errata sheets, a cover page will need to be prepared following instructions in ***Section 9.2.1.2.1***. The errata sheets must be made publicly available to the same extent as the DEIS and the District must ensure continued availability of the DEIS.

9.2.1.2 Updating the Draft Environmental Impact Statement

If the conditions required for preparing errata sheets cannot be met or if the District, in coordination with OEM, chooses not to use errata sheets, the DEIS is updated to become the FEIS. Appropriate sections of the document are modified to reflect changes in environmental impact(s), cost, design, or other changes since approval of the DEIS. The FEIS should be concise while meeting legal sufficiency and contain the information needed for Cooperating Agencies to utilize the document for their environmental review to support their authorization decisions.

According to ***USDOT Order 5610.1D, 13.h***, the text of an EIS will not exceed 150 pages, not including citations or appendices. As soon as possible before the page limit is exceeded, the District must coordinate with OEM.

9.2.1.2.1 Final Environmental Impact Statement Cover Page

FEIS cover pages are only prepared as electronic forms in the StateWide Environmental Project Tracker (SWEPT). Sample cover pages for FEIS/RODs, both with and without ***Section 4(f)*** approvals are provided as a visual in ***Guidance for Part 1, Chapter 9*** as well as sample cover pages for FEISs, both with and without ***Section 4(f)*** evaluations. A sample cover page for a FEIS is also provided as a visual in the ***Guidance for Part 1, Chapter 9***. The EIS document number is updated with the new year, if applicable, and "D" is changed to "F".

9.2.1.2.2 Executive Summary

An Executive Summary is prepared for a FEIS **only** when it is not combined with a ROD. The Executive Summary of a FEIS is different than that of a DEIS. Specific findings are documented as standard statements, as are commitments made during the course of project development. The Executive Summary normally will not exceed 15 pages. It should adequately and accurately summarize the FEIS, and highlight the major conclusions, areas of disputed issues raised by agencies and the public, and the issues to be resolved. Charts, tables, and graphics are an effective and efficient way to summarize alternatives, impacts, and explain mitigation measures. The information in the summary needs to be verifiable and should not present conclusions, ideas, or information

that are not included in the FEIS. The Executive Summary of a FEIS should include the following sections:

Proposed Action: This section describes the proposed project and includes, at a minimum, the project's Efficient Transportation Decision Making (ETDM) number, Financial Management number, name of the roadway, the project length and termini, a brief description of the existing facility, the type of proposed project including the number of lanes, any special features, and the name of the city, county, and state in which the project is located. This section may remain the same as the DEIS.

Other Government Actions and Permits Required: This section describes any local, state, or federal action proposed by other government entities in the same geographical area as the proposed project. The potential for conflict between those actions is discussed, and any coordination required is referenced. State and federal permits required for the project are identified.

Alternatives Considered: This section contains a brief discussion of the alternatives studied for the project including the No-Action (No-Build) alternative.

Unresolved Issues and Areas of Controversy: This section should only be included if there are major unresolved issues or areas of controversy. Unresolved issues and areas of controversy and the steps taken to resolve them to date are described and disclosed.

Preferred Alternative: This section identifies the preferred alternative for Location and Design Concept Acceptance (LDCA) and summarizes the rationale for the decision. This section may remain the same as the DEIS.

Environmental Impacts: This section summarizes major environmental impacts, both beneficial and adverse, that may result from the project. For example, air quality, noise, relocations, or cultural resources.

Wetlands Finding: This section addresses wetland impacts and any proposed wetland mitigation. When there is no practicable alternative to proposed impacts to wetlands, the FEIS must contain the Wetlands Finding required by ***Executive Order 11990*** and by ***USDOT Order 5660.1A***. If there is no wetlands involvement on a project, a finding is still provided. The finding simply states that there is no wetland involvement and cites ***Executive Order 11990***. See ***Part 2, Chapter 9, Wetlands and Other Surface Waters*** for guidance on preparing the Wetland Finding and for the applicable standard statement to include in this section.

Floodplain Finding: This section addresses project impacts on floodplains as required by ***Executive Order 11988*** and regulatory floodway involvement as required by ***The Federal Aid Policy Guide, 23 CFR § 650A***. If the project has no involvement with or is not located within a floodplain, a finding is still provided. See ***Part 2, Chapter 13, Floodplains*** for guidance on preparing the Floodplain Finding and for the applicable standard statement to include in this section.

Coastal Zone Consistency (CZC): This section documents compliance with the ***Coastal Zone Management Act of 1972***, ***15 CFR Part 930***, and the ***Coastal Zone Management Plan (CZMP)*** for the State of Florida which is called the ***Florida Coastal Management Program (FCMP)***. See ***Part 2, Chapter 14, Coastal Zone Consistency*** for the applicable standard statement.

Cultural Resources: This section summarizes the analysis under ***Section 4(f)***, ***Section 106***, and associated findings. Where there is involvement with ***Section 4(f)*** or ***Section 106*** resources, the property must be identified and the impact on the resource(s) addressed, all proposed mitigation outlined and referenced, and a conclusion statement provided regarding the project's effect on the resource. Standard statements can be found in ***Part 2, Chapter 8, Archaeological and Historical Resources*** and ***Part 2, Chapter 7, Section 4(f) Resources***.

Federally Listed Species and Habitat: This section summarizes the analysis of the project's involvement with federally threatened and endangered species or their critical habitat protected under the ***Endangered Species Act*** and associated effect determination(s). If federally listed species are involved then they are identified, and any proposed mitigation is referenced. See ***Part 2, Chapter 16, Protected Species and Habitat*** for the applicable standard statement to include in this section.

Farmland: This section documents consultation and coordination with the Natural Resources Conservation Service (NRCS) regarding a project's impact on farmland. See ***Part 2, Chapter 6, Farmland*** for the applicable standard statement to include in this section.

Irretrievable and Irreversible Commitment of Resources: This section briefly discusses the preferred alternative's irretrievable and irreversible commitment of resources including natural, physical, human, and fiscal resources.

Measures to Avoid or Minimize Potential Adverse Impact: This section briefly discusses measures taken to minimize or avoid adverse impacts on the environment. Appropriate sections of the document are referenced, and any mitigation measures proposed for the project are briefly outlined.

Short-Term Impacts Versus Long-Term Benefits: This section addresses the short-term effects of the project on the human environment as weighed against the overall long-term benefits of the project. Appropriate sections of the FEIS are referenced.

9.2.1.2.3 Updating the Planning Consistency and Alternatives Sections

In the Planning Consistency section, the applicable Planning Consistency Table should be updated and include information demonstrating the project's fulfillment of planning consistency requirements in ***23 CFR § 450***. The relevant pages of the Cost Feasible Plan of the Long Range Transportation Plan (CFP LRTP), Transportation Improvement Program (TIP), and Current State Transportation Improvement Program (STIP) should

be included in the Appendix. Documentation of snapshots of the Work Program is not adequate documentation to demonstrate planning consistency. Planning consistency should be met prior to LDCA. See ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency*** for guidance on updating this section and the ***FDOT/FHWA Consistency Guidance*** and ***Planning Consistency for NEPA Practitioners*** for additional planning consistency guidance.

In the Alternatives section, the Preferred Alternative subsection is updated if needed. See ***Part 2, Chapter 3, Engineering Analysis*** and ***Part 2, Chapter 3A, Alternatives Analysis*** for more information on updating the Preferred Alternative section of the FEIS. The preferred alternative is not identified as the selected alternative until the ROD.

9.2.1.2.4 Updating the Environmental Analysis Section

The Environmental Analysis section should provide sufficient information to support the conclusions reached regarding the preferred alternative and the project impacts. This section should be updated to include the results of any additional coordination with resource agencies, or project changes since the approval of the DEIS. Mitigation measures should be identified for the preferred alternative, if applicable.

9.2.1.2.5 Updating the Commitments Section

The Commitments section is updated to include any commitments made by FDOT since the DEIS was signed. Any new commitments require internal coordination and once coordinated with the appropriate District offices, are included in the FEIS and transmitted to the next phase of project development in accordance with ***Procedure No. 650-000-003, Project Commitment Tracking***. See ***Part 2, Chapter 22, Commitments*** for more information.

9.2.1.2.6 Removing the Concluding Statement

The concluding statement section is deleted.

9.2.1.2.7 Post Public Hearing Appendix

A new Post Public Hearing Appendix is created and is added after the original DEIS Appendix. This Appendix should include any new materials since the DEIS was approved.

9.2.1.2.7.1 Comments and Coordination Appendix

The Comments and Coordination Appendix includes a summary of the public and agency comments and coordination since the DEIS was signed. This Appendix is divided up into subsections:

1. Agency Coordination and Consultation
2. Public Hearing

3. Other Coordination (included only when needed)

Agency Coordination and Consultation

This subsection summarizes coordination and consultation which occurred with agencies after the DEIS was signed and should incorporate any comments received that occurred with agencies (outside of the public hearing). It includes a summary of comments received during the 45-day public review period along with a response to each substantive comment. This includes documentation of additional resource agency coordination and consultation, if applicable. Any new concurrence and coordination letters should be included this Appendix.

Public Hearing

This subsection should include the date, time, and place of the public hearing; describe the format and include the start and end time; provide a summary of the comments received at the public hearing (written and oral) as well as written comments received during the public hearing comment period. This includes summarizing both positive and negative comments, the District's response to those comments, and including a reference to the comments and responses that are included in the updated ***Summary of Public Involvement (SPI)***.

Other Coordination

If other coordination has occurred, it is summarized in this subsection with the actual coordination documents (e.g., correspondence) included in the Post Public Hearing Appendix. If there is no other coordination, then this subsection is not to be included in the FEIS.

9.2.2 Preparation of the Record of Decision

The ROD is a concise public decision document that documents OEM's final decision. It presents the basis for the selected alternative, identifies the mitigation measures that will be incorporated in the project, and documents any required ***Section 4(f)*** approvals.

See ***Guidance Sheet*** for a sample ROD. This format is used for preparing a combined FEIS/ROD (see ***Section 9.2.2.1***) or a separate ROD (see ***Section 9.2.2.2***).

9.2.2.1 Combined Final Environmental Impact Statement/Record of Decision

A combined FEIS/ROD must meet the requirements of ***23 U.S.C. § 139*** and be consistent with FEIS and ROD guidance in the ***FHWA Technical Advisory T6640.8A***. For instance, the project must meet planning consistency requirements, and, in air quality nonattainment and maintenance areas, comply with conformity regulations under the ***Clean Air Act (CAA)*** and Environmental Protection Agency (EPA) requirements [***42 U.S.C. § 7506(c)*** and ***40 CFR Part 93***].

FDOT must combine the FEIS and ROD, to the maximum extent practicable, unless:

1. The FEIS makes substantial changes to the proposed action relevant to environmental or safety concerns; or

2. There are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or the reasonably foreseeable impacts of the proposed action.

More guidance on determining whether combining the FEIS and ROD is practicable is provided in ***USDOT Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act Reviews***.

When using a combined FEIS/ROD, it is important to consider possible effects on the timing of required coordination under other laws and the need for additional documentation to finalize determinations or findings. Through interagency coordination, agencies should be notified as early as possible that OEM is combining the FEIS and ROD, thereby providing them the opportunity to express their views about the use of a combined FEIS/ROD for the specific proposed action.

When combined, the document must include the content of a FEIS and present the basis for the decision, summarize any mitigation measures that will be incorporated in the project, and document any required ***Section 4(f)*** approval. A legal sufficiency review is required for a combined FEIS/ROD.

The format of the FEIS/ROD should be coordinated with OEM and created as follows:

1. A combined FEIS/ROD document which attaches a ROD to an FEIS, or

2. A combined FEIS/ROD document which includes the ROD in place of the FEIS Executive Summary.

Errata sheets and the combined FEIS/ROD provisions (***Title 23 U.S.C. § 139***) can be used together, as long as the conditions of both are met. When both provisions are used, the FEIS/ROD will consist of a DEIS, errata sheets, responses to DEIS comments, information required in an FEIS, and a ROD.

See ***Section 9.2.3*** for details on OEM review and approval of a FEIS/ROD.

9.2.2.2 Separate Record of Decision

If a project does not meet the conditions for a combined FEIS/ROD, then the District prepares a DROD using the ***Record of Decision Cover Page*** in SWEPT. A sample cover page is provided in ***Guidance for Part 1, Chapter 9***.

The DROD is prepared and is generally submitted to OEM for review at the same time the FEIS is submitted for approval. See ***Section 9.2.3*** for guidance on the review and approval of the FEIS. The FEIS is approved first and the ROD can only be approved

following a 30-day public ***Notice of Availability*** of the FEIS in the ***Federal Register (FR)*** (see ***Section 9.2.4.2.1***)

9.2.3 FDOT Document Review Process

A diagram of the FDOT Document Review Process is available on the ***OEM Website***. The timeframes identified in this process are calendar days. After preparing the FEIS/ROD or FEIS, the District conducts a quality control review and ensures the ***Public Hearing Transcript*** and ***Public Hearing Certification*** and new materials are incorporated by reference and uploaded into SWEPT. The District should maintain the project file according to ***Part 1, Chapter 15, Project File and Records Management***.

The District uses the SWEPT application to complete the ***Environmental Document Submittal Form*** for Initial OEM review and uploads the FEIS/ROD or FEIS with DROD into the FDOT's Electronic Review and Comment (ERC) application. Upon submittal, the District should also discuss timing of publication of a ***Limitations on Claims Notice*** with OEM (See ***Section 9.2.5***).

The Project Delivery Coordinator (PDC) receives email notification and acknowledges the document is complete and ready for review by confirming the ***Environmental Document Submittal Form*** in SWEPT. If necessary, the District schedules a project briefing for OEM and the Office of General Counsel (OGC) reviewers. The OEM and OGC review team have 30 days to review the documents. OEM provides comments in the ERC.

The District addresses OEM comments and provides responses in the ERC. The OEM project review team has a 15-day period to confirm that comments have been addressed. If the comments have not been addressed, additional comment resolution time may be needed. If necessary, the District schedules a meeting with the project review team to discuss comments.

If there are Cooperating Agencies, the District uploads the FEIS/ROD or FEIS to the Environmental Screening Tool (EST) and initiates the Cooperating Agency review. This review may be concurrent with OEM review. The District may address Cooperating Agency comments in the EST.

Once comments have been addressed, the District submits the revised document along with the ***Environmental Document Submittal Form*** for Final review and approval in SWEPT. The PDC receives email notification and has 14 days to confirm that the submittal is complete. Following confirmation from the PDC, the document can advance to OEM Environmental Administrators review.

The OEM Environmental Administrators have 25 days to recommend the FEIS/ROD or FEIS for approval, which advances the document for Legal Sufficiency review by OGC. Legal Sufficiency Review is required for all FEIS/RODs and FEISs. The Director of OEM or designee approves the FEIS/ROD or FEIS once the ***Legal Sufficiency Finding Memo*** is received.

9.2.4 Actions Taken After Approval of the FEIS/ROD or FEIS

9.2.4.1 Final Environmental Impact Statement/Record of Decision

Once the FEIS/ROD is approved by OEM, the District provides notification that LDCA has been granted. By practice the FEIS/ROD is distributed to agencies, stakeholders, and the public before the request for publication of the ***Notice of Availability*** in the ***FR*** is sent to EPA. This is to ensure FDOT meets the distribution requirements in ***23 CFR § 771.125(f)***. For projects with a ***Noise Study Report (NSR)***, see ***Part 2, Chapter 18, Highway Traffic Noise*** on how to coordinate the ***NSR*** with the local government after LDCA.

Distribution to Agencies and Stakeholders

The District shares the approved document with the recipients of the DEIS. An electronic copy of the document is sent to the Florida State Clearinghouse and the Environmental Technical Advisory Team (ETAT) agencies, which include the Cooperating Agencies and Participating Agencies through the EST. The District should also send the document to other interested state and federal agencies, other stakeholders, and those who submitted substantive comments on the DEIS. The document should be sent to Tribes according to their requested method of communication as established on FDOT's ***Native American Tribal Consultation Website***. Others should be sent an electronic link to the document, unless a paper copy is requested.

Making the FEIS/ROD Available to the Public

The FEIS/ROD is made available:

- At the District office
- At institutions such as local government offices, libraries, and schools, as appropriate
- On project websites or other publicly accessible electronic means

Public Announcement of LDCA

The District must publish an Announcement of LDCA in the same local newspaper(s) used to advertise the public hearing(or a newspaper of general circulation), informing the public that the project has received LDCA and is being advanced. The announcement must also notify the public of the availability of the FEIS/ROD. Proof of publication or an ***Affidavit of Publication*** is included in the ***Final Notifications Package***. Other recommended notifications and information on the ***Final Notifications Package*** is provided in ***Part 1, Chapter 11, Public Involvement***.

Notice of Availability in the FR

The ***Notice of Availability*** is initiated when the FEIS/ROD is filed with EPA. FEIS/RODs must be electronically submitted to EPA as PDF documents using its e-NEPA online tool.

Only the Environmental Document is submitted, as technical reports are included only by reference. The District should coordinate with OEM on the content of the ***Notice of Availability***.

The ***Notice of Availability*** may be combined with a ***Limitations on Claims Notice*** or it may be published separately in the ***FR***. See ***Section 9.2.5*** for guidance on the ***Limitations on Claims Notice***.

The PDF documents must meet specific requirements for submittal to EPA. These are available on EPA's ***Environmental Impact Statement Filing Guidance Website***.

The ***FR*** public availability notice will not establish a waiting period or period of time for the return of comments on a FEIS/ROD. When a FEIS/ROD is submitted in e-NEPA, the EIS Comment Due/Review Period Date is left blank and the following statement is included as Supplemental Information:

> *Per 23 U.S.C. § 139, FHWA has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.*

After the District formats the document for e-NEPA, the District sends it to OEM. The District also provides a link to the project website where readers can find the FEIS/ROD. OEM coordinates with FHWA on publication.

EPA publishes the ***Notice of Availability*** of the FEIS/ROD in the ***FR***. The District must monitor the ***FR*** for publication and proof of publication or an ***Affidavit of Publication*** is uploaded to the project file.

Re-evaluations may be needed as the project progresses per ***Part 1, Chapter 13, Re-evaluations***.

9.2.4.2 Final Environmental Impact Statement with Separate Record of Decision

9.2.4.2.1 Final Environmental Impact Statement

By practice the FEIS is distributed to agencies, stakeholders, and the public before the request for publication of the ***Notice of Availability*** in the ***FR*** is sent to EPA. This is to ensure FDOT meets the distribution requirements in ***23 CFR § 771.125(f)*** to make the FEIS available to the public and transmitted to agencies for comment no later than the time the document is filed with EPA.

Distribution to Agencies and Stakeholders

After OEM approval of the FEIS, the document is sent through the EST to the Florida State Clearinghouse and the ETAT, which includes the Cooperating Agencies and Participating Agencies. The District should also send the document to other interested state and federal agencies, other stakeholders, and those who submitted substantive comments on the DEIS. The document should be sent to Tribes according to their

requested method of communication as established on FDOT's the ***Native American Tribal Consultation Website***. Others should be sent an electronic link to the document, unless a paper copy is needed. A sample transmittal letter is provided in ***Guidance for Part 1, Chapter 9***.

Making the FEIS Available to the Public

The FEIS is made available:

- At the District office
- At institutions such as local government offices, libraries, and schools, as appropriate
- On project websites or other publicly accessible electronic means

Public Notice of Availability

The District places a notice in the same local newspaper(s) used to advertise the public hearing. This notice advises the public of the availability of the FEIS for public review. Proof of publication or an ***Affidavit of Publication*** is included in the ***Final Notifications Package*** (see ***Part 1, Chapter 11, Public Involvement***).

Notice of Availability in the FR

The ***Notice of Availability*** is initiated when the FEIS is filed with EPA. All FEISs must be electronically submitted to EPA as PDF documents using its e-NEPA online tool. Only the Environmental Document should be submitted, as technical reports are included only by reference. The District should coordinate with OEM on the content of the ***Notice of Availability***.

The PDF documents must meet specific requirements for submittal to EPA. These are available on EPA's ***Environmental Impact Statement Filing Guidance Website***. After the District formats the document for e-NEPA, the District sends it to OEM. The District also provides the link to the project website where readers can find the FEIS. OEM submits the document to FHWA to submit to EPA.

EPA then publishes the ***Notice of Availability*** of the FEIS in the ***FR*** for a 30-day comment period (***23 CFR § 771.125***). The District must monitor the ***FR*** for publication and proof of publication or an ***Affidavit of Publication*** is uploaded to the project file.

9.2.4.2.2 Record of Decision

Approval of the ROD

OEM may approve the ROD no sooner than 30 days after publication of the FEIS ***Notice of Availability*** in the ***FR*** or 90 days after publication of a notice for the DEIS, whichever is later. The District submits the ROD along with the ***Environmental Document***

Submittal Form for OEM approval in SWEPT. By approving the ROD, the Director of OEM grants LDCA. For projects with a ***NSR***, see ***Part 2, Chapter 18, Highway Traffic Noise*** on how to coordinate the ***NSR*** with the local government after LDCA.

Distribution to Agencies and Stakeholders

The District shares the ROD with the recipients of the FEIS. An electronic copy of the document is sent to the Florida State Clearinghouse and ETAT agencies, which includes the Cooperating Agencies and Participating Agencies through the EST. The District should also send the ROD to other interested state and federal agencies, other stakeholders, and those who submitted substantive comments on the FEIS. The document should be sent to Tribes according to their requested method of communication as established on FDOT's ***Native American Tribal Consultation Website***. Others should be sent an electronic link to the document, unless a paper copy is requested.

Making the ROD Available to the Public

The ROD is made available:

- Upon request by the public
- On project websites or other publicly accessible electronic means

Public Announcement of LDCA

The District must publish an Announcement of LDCA in the same local newspaper(s) used to advertise the public hearing (or a newspaper of general circulation), informing the public that the project has received LDCA and is being advanced. The announcement must also notify the public of the availability of the ROD. Proof of publication or an ***Affidavit of Publication*** is included in the ***Final Notifications Package***. Other recommended notifications and information on the ***Final Notifications Package*** is included in ***Part 1, Chapter 11, Public Involvement***.

The District submits a ***Limitations on Claims Notice*** to OEM to coordinate publication in the ***FR*** (see ***Section 9.2.5***).

Re-evaluations may be needed per ***Part 1, Chapter 13, Re-evaluations***.

9.2.5 Limitations on Claims Notice

Title 23 U.S.C. § 139(l), includes a provision for limiting the time period for filing claims and seeking judicial review of permits, licenses, or approvals issued by federal agencies for a highway or public transportation capital project. The provision establishes a statute of limitations period of 150 days for filing a challenge following publication of the notice in the ***FR*** of the agency action(s).

FEIS/ROD and ROD documents require preparation of a ***Limitations on Claims Notice***. This notice may be combined with the ***Notice of Availability*** of a FEIS/ROD. See ***Part***

1, Chapter 11, Public Involvement for guidance on preparing ***Limitations on Claims Notice***. A copy of the notice is included in the ***Final Notifications Package***.

9.3 REFERENCES

EPA, Environmental Impact Statement Filing Guidance Website. https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance

FHWA, Memorandum, Information Publication of Documents in the Federal Register. June 1, 2017

FHWA, Technical Advisory T6640.8A. Guidance for Preparing and Processing Environmental and Section 4(f) Documents. October 30, 1987. https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx

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

Title 23 CFR Part 771, Environmental Impact and Related Procedures

Title 23 U.S.C. § 139(l), Efficient Environmental Reviews for Project Decision Making. http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title23-section139&num=0&saved=%7CKHRpdGxlOjIzIHNlY3Rpb246MTM3IGVkaXRpb246cHJlbGltKQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim

Title 23 U.S.C. § 327, Surface Transportation Project Delivery Program. http://uscode.house.gov/view.xhtml?req=(title:23%20section:327%20edition:prelim)%20OR%20(granuleid:USC-prelim-title23-section327)&f=treesort&edition=prelim&num=0&jumpTo=true

USDOT, 2019. Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act Reviews. https://www.transportation.gov/sites/dot.gov/files/docs/mission/transportation-policy/permittingcenter/337371/feis-rod-guidance-final-04302019.pdf

USDOT, Order 5610.1D, Procedures for Considering Environmental Impacts. https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts

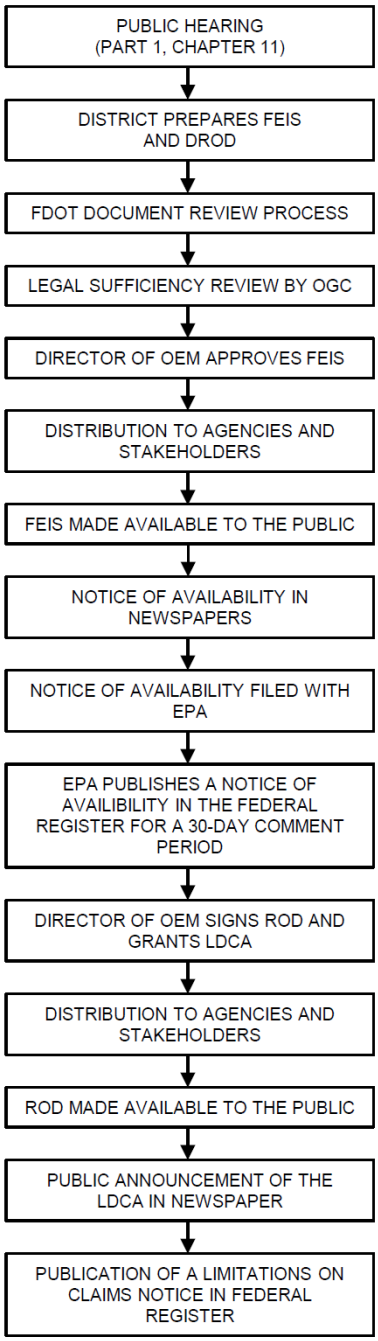

Figure 9-1 Final Environmental Impact Statement Process

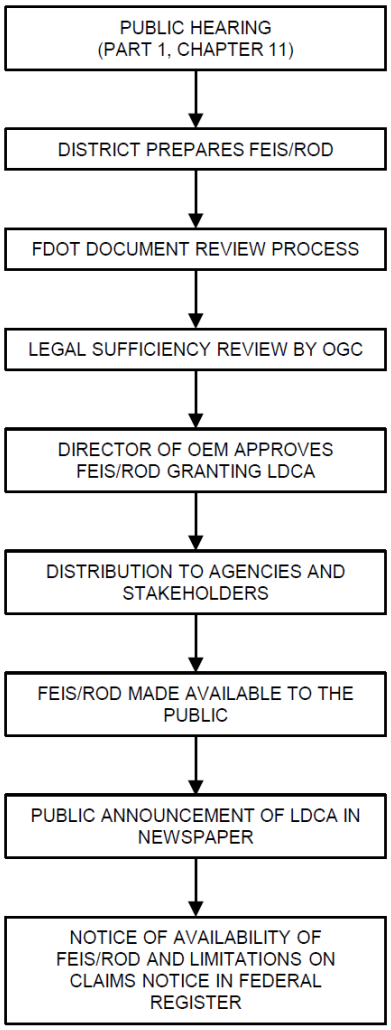

Figure 9-2 FEIS/ROD Process

PART 1, CHAPTER 10

STATE, LOCAL, OR PRIVATELY FUNDED PROJECT DELIVERY

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PART 1 CHAPTER 10

STATE, LOCAL, OR PRIVATELY FUNDED PROJECT DELIVERY

10.1 OVERVIEW

Environmental evaluations are required for state funded projects to comply with state and federal laws and Florida Department of Transportation (FDOT) policy. The level of assessment and documentation depends on the nature of the project, the potential for impacts, and the level of FDOT involvement. The type of environmental documentation depends upon the Lead Agency and the actions being taken. FDOT is the Lead Agency for FDOT State Projects, and the District has responsibility for the preparation, review, and approval of the Environmental Document as either a State Environmental Impact Report (SEIR) or Non-Major State Action (NMSA). Some FDOT State Projects may require Federal Actions (see ***Section 10.2.1.4***).

This chapter primarily focuses on FDOT State Projects; however, projects on state facilities may also be conducted by a local agency (e.g., county, city), Expressway Authority, or private entity (e.g., developer). When a local agency or private entity is the Lead Agency, FDOT involvement may be required under certain conditions (see ***Section 10.2.2***).

10.1.1 Definitions

FDOT Federal Project- A Federal Project with FDOT as the Lead Agency due to NEPA Assignment. These projects involve FHWA funds and/or affect the interstate during any phase of project development or implementation.

FDOT State Project – A project advanced through the FDOT Work Program using only state funding and/or does not affect the interstate during any phase of project development or implementation.

Lead Agency - the agency that is responsible for the project and thus has signature authority on the Environmental Document. The Lead Agency is not necessarily the funding agency. This definition is specific to this chapter.

Local Agency Managed Project – a project where a local agency is the Lead Agency

Non-Major State Action (NMSA) – A checklist prepared as the Environmental Document (or document type) for FDOT State Projects that do **not** qualify for screening in the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST).

Private Entity Managed Project- a project where a private entity is the Lead Agency.

Project Environmental Impact Report (PEIR) – A document (or document type) prepared and approved by a local agency or private entity.

State Environmental Impact Report (SEIR) - The Environmental Document (or document type) prepared for FDOT State Projects that qualify for screening in the ETDM EST and are approved by the District.

10.2 PROCEDURE

10.2.1 Florida Department of Transportation State Projects

See ***Figure 10-1*** for a flowchart of the FDOT State Project Process discussed throughout this chapter.

Early communication and collaboration within District offices is beneficial when projects are evaluated for inclusion in the FDOT Tentative Work Program, prior to development of the Scope of Services, to ensure that project decisions get broad input and early support. See ***Part 1, Chapter 4, Project Development Process*** for more details. During this coordination it is determined if the project proceeds as an FDOT State Project or an FDOT Federal Project. A State Funded Only (SFO) identifier is assigned to projects that are recommended to use only state funds and they proceed as an FDOT State Project.

Qualifying projects are screened through FDOT's Efficient Transportation Decision Making (ETDM) process according to the ***ETDM Manual, Topic No. 650-000-002*** to engage other agencies and the public early in project development and facilitate project scoping. The decision of whether a project is entered into the ETDM Environmental Screening Tool (EST) is based on a qualifying project type and the conditions.

A Project Development and Environment (PD&E) Study is prepared for projects that qualify for screening in the EST and a SEIR is prepared (***Section 10.2.1.2***). An NMSA is prepared for FDOT State Projects not qualifying for EST screening (See ***Section 10.2.1.1***).

10.2.1.1 Non-Major State Action

Projects that are to proceed as NMSA's are typically identified during early internal coordination (***Part 1, Chapter 4, Project Development Process***). NMSAs are prepared using a ***Non-Major State Action Checklist*** in the StateWide Environmental Project Tracker (SWEPT) after environmental analysis has been completed. This checklist is typically prepared in the Design phase at the end of the Plans, Specifications, and Estimates (PS&E) development or Final plans.

10.2.1.1.1 Analysis, Coordination, and Public Involvement

Impacts are evaluated and environmental analysis is completed to verify that there are no substantial environmental impacts. The level of detail required to support the NMSA determination depends upon the specific project and the magnitude of environmental impacts. Social, cultural, natural, and physical topics/resources are evaluated using the pertinent chapters in ***Part 2 of the PD&E Manual, Topic No. 650-000-001*** to satisfy applicable federal and state environmental laws, regulations, and executive orders.

Analysis may include desktop and/or field review, local knowledge of the project area, agency coordination, and preparation of supporting documents. Even though NMSAs are not screened in the ETDM EST, the EST Area of Interest (AOI) tool may be used to review the project location and view Geographic Information System (GIS) data layers applicable to the project without initiating Environmental Technical Advisory Team (ETAT) review. See the ***ETDM Manual, Topic No. 650-000-002*** for guidance on using the AOI tool and information on the ETDM screening events. Supporting documents or technical reports may need to be prepared for some topics. Coordination with agencies may be needed as well to ensure there are no substantial impacts to environmental resources.

An NMSA may necessitate public involvement activities as determined by the District. A ***Community Awareness Plan (CAP)*** is typically prepared for these projects. See the ***FDOT Design Manual, Part 1, Chapter 104, Public Involvement, Topic No. 625-000-002*** for more information on preparing a ***CAP***.

A public hearing is typically not required for NMSAs, unless the project is considered a major transportation improvement under ***Section 339.155(5)(b), Florida Statutes (F.S.)*** (see ***Part 1, Chapter 11, Public Involvement***). See the ***Public Involvement Handbook*** for public involvement activities during the Design phase.

If the NMSA project needs a federal permit from an agency such as the U.S. Army Corps of Engineers (USACE), U.S. Coast Guard (USCG), U.S. Fish and Wildlife Service (USFWS), or National Marine Fisheries Service (NMFS), follow the federal provisions ***(Section 10.2.1.4)***.

10.2.1.1.2 Non-Major State Action Checklist

Guidance on preparing the ***Non-Major State Action Checklist*** is provided in ***Guidance for Part 1, Chapter 10***. A sample checklist is also provided as a visual in the guidance. During preparation, documentation of analysis, coordination, and results should be uploaded to the SWEPT project file. This documentation should include the results of desktop and/or field review, agency coordination, and any supporting documents and/or technical reports required to substantiate the responses on the checklist. It is important to document that the project will not have substantial impacts and that environmental issues have been addressed.

Approval of the ***Non-Major State Action Checklist*** is granted by the District Environmental Manager or designee using SWEPT. The District Environmental Manager's electronic signature on this checklist certifies that environmental analysis has been completed and provides environmental clearance to advance to the next phase.

10.2.1.1.3 Actions Taken After Approval

Once the ***Non-Major State Action Checklist*** is approved, the District Environmental Manager or designee completes and provides the date of the determination on the ***Environmental Certification for FDOT State Project*** form, in SWEPT. A sample form is provided as a visual in the ***Guidance for Part 1, Chapter 10***.

When an NMSA is completed before the conclusion of the Design phase, the District should confirm whether a Re-evaluation of the NMSA is necessary before completing the ***Environmental Certification for FDOT State Project*** form in SWEPT.

NMSA updates or changes are documented as a Re-evaluation through re-submittal of the ***Non-Major State Action Checklist*** in SWEPT. The Re-evaluation process for NMSAs is shown in ***Figure 10-2***.

Re-evaluations should be completed when changes have been made to the project, or existing conditions have changed since the completion and approval of the last ***Non-Major State Action Checklist***. The completion of the checklist is then documented in the ***Environmental Certification for FDOT State Project*** form in SWEPT which provides the District Environmental Office's clearance for the project to advance to the next phase. The ***Status of Environmental Certification for FDOT State Project*** form is distributed/sent to appropriate offices.

10.2.1.2 State Environmental Impact Report

10.2.1.2.1 Efficient Transportation Decision Making Screenings

When a project is anticipated to be a SEIR, the District decides whether to initiate an ETDM Planning Screen or Programming Screen event in the EST, based on project complexity, intended outcome of the event, as well as funding considerations and project implementation schedule. ETDM Planning Screen events may have been previously completed when considering projects during Long Range Transportation Plan (LRTP) process. It is recommended that the ETDM Programming Screen be completed one year before the year in which PD&E phase funds are programmed. When entering information into the EST, there is an option to select state or federal funding.

An Advance Notification (AN) is circulated for qualifying projects (***ETDM Manual, Topic No. 650-000-002***) prior to PD&E Study initiation either with or subsequent to the ETDM Programming Screen event. FDOT State Projects do not require a Federal Consistency Review with the State Clearinghouse as part of the AN (***Part 1, Chapter 3, Preliminary Environmental Documentation and Advance Notification***). If a federal permit is needed for the project, the Federal Consistency Review is typically provided as part of the permitting process.

During the Programming Screen review the project is reviewed by appropriate FDOT personnel (i.e., Project Manager, environmental specialist, design and drainage staff) and the ETAT (see ***FDOT's ETDM Manual, Topic No. 650-000-002***). During the screening, ETAT members use the EST to review project information, identify potential project effects, and submit comments to FDOT. The EST provides access to project information and data about social, cultural, natural, and physical topics/resources in the project area. After reviewing this information, the ETAT members provide input about potential project effects specific to their area of expertise. The results of the screening are published in a Preliminary ***Programming Screen Summary Report*** and reviewed by the District to

assist in determining appropriate topics/resources for additional information-gathering and analysis.

ETDM Screening event results may be used to inform project planning, project scoping and other activities prior to initiation of the PD&E phase. The District should explore options to collect data and conduct technical studies and surveys ahead of the PD&E Study, see ***Part 1, Chapter 4, Project Development Process***. Based upon the Preliminary ***Programming Screen Summary Report*** and other known information, the District completes a ***Class of Action Form*** in the EST. The Environmental Document selected should be a SEIR. Even though FDOT State Projects do not have a Class of Action, the ***Class of Action Form*** is still completed for a SEIR (see ***Guidance for Part 1, Chapter 10***).

10.2.1.2.2 State Environmental Impact Report Preparation

As a PD&E Study, SEIR projects follow the project development and delivery process outlined in ***Part 1, Chapter 4, Project Development Process***. During the PD&E phase, the District prepares a ***SEIR Form*** in SWEPT. The resulting Environmental Document is commonly referred to as a SEIR. SEIRs are concise, focused documents that summarize the results of the engineering and environmental analysis and input received from stakeholders (e.g., agencies, Federally Recognized Native American Tribes, the public). The level of detail needed can vary and depends on project specific circumstances.

The SEIR includes preparation of a public engagement plan, typically a ***Public Involvement Plan (PIP)*** or in some cases a ***CAP***, early in project development.

The results of the ETDM screening events are used for project scoping and to prepare the SEIR. The SEIR should address comments provided by the ETAT, other stakeholders during the ETDM screening and the AN.

The analysis to support the SEIR should facilitate coordination with stakeholders, include opportunities and approaches to mitigation when needed and provide sufficient detail to support the conclusions and scientific and analytical basis for the comparison of alternatives, if applicable. Chapters in ***Part 2 of the PD&E Manual*** detail how to conduct the engineering and environmental analysis, provide guidance on coordination with agencies and stakeholders, and provide specifics on what should be included in the SEIR depending on the level of impact. The level of analysis should be sufficient to adequately identify the impacts. Social, cultural, natural, and physical topics/resources are evaluated to satisfy applicable federal and state environmental laws, regulations and executive orders.

Project commitment coordination is accomplished prior to and during the PD&E phase consistent with ***Part 2, Chapter 22, Commitments*** and ***Procedure No. 650-000-003, Project Commitment Tracking***. Commitments are coordinated and agreed upon by appropriate FDOT functional area representatives.

Supporting information such as agency coordination letters, technical memorandums, technical reports, and other supporting documents are saved in the SWEPT project file

and are identified as either Technical Materials or Attachments. The ***State Environmental Impact Report QA/QC Checklist*** lists these documents and specifies which are to be categorized as Technical Materials and which as Attachments.

Technical Materials are documents contained under separate cover that are incorporated by reference, meaning they should be referenced in the SEIR. Technical Materials include technical reports [e.g., ***Project Traffic Analysis Report (PTAR)***, ***Conceptual Stage Relocation Plan (CSRP), Natural Resource Evaluation (NRE)***, ***Preliminary Engineering Report (PER)***], technical memorandums, and studies. For a list of reports and design information typically completed in the PD&E phase that should be in the SWEPT project file see ***Part 1, Chapter 4, Project Development Process***.

Documents added as Attachments are included in the Appendix and are considered to be a part of the SEIR. This may include coordination letters, determinations of effect, and Memorandum of Understanding (MOUs).

Guidance on preparing the SEIR in SWEPT is provided in the ***Guidance for Part 1, Chapter 10***. An outline is provided in ***Figure 10-3*** to show the layout of the SEIR. Once the form is approved, it is saved as a PDF which becomes the SEIR Environmental Document.

Other considerations for completing a SEIR are as follows:

1. **Historic Resources:** If no federal permit is required, consultation with the Florida Division of Historical Resources (FDHR) is required per ***Chapter 267, F.S.***, to address historic or archaeological resources. However, if a federal permit is required then the project must comply with ***Section 106*** of the ***National Historic Preservation Act (NHPA)***. See ***Part 2, Chapter 8, Historic and Archeological Resources*** and ***Section 10.2.1.4*** for additional guidance.

2. **Protected Species and Habitat:** If a federal permit will be required, then technical assistance from the USFWS or NMFS should occur and be documented in the SEIR. See ***Part 2, Chapter 16, Protected Species and Habitat*** and ***Section 10.2.1.4*** for additional guidance. If no federal permit is required, any required consultation with USFWS or NMFS regarding federally listed species occurs under ***Section 10*** of the ***Endangered Species Act (ESA)***.

3. **Section 4(f):** ***Section 4(f)*** does not apply to FDOT State Projects since there is no United States Department of Transportation (USDOT) action; however, coordination with the public entity of jurisdiction of the public recreation area should still occur (***Part 2, Chapter 7, Section 4(f) Resources***). For example, coordination with the Florida Department of Environmental Protection (FDEP) is necessary on projects affecting state owned parks or other program areas such as the Florida Forever land acquisition program (***Part 2, Chapter 23, State-owned Upland Conservation Land Coordination***).

4. **Water Resources:** SEIRs are not subject to Environmental Protection Agency (EPA) review for sole source aquifers since they do not receive federal financial assistance (***Part 2, Chapter 11, Water Resources***).

5. **Farmlands and Coastal Barrier Resources:** Unique and Prime Farmland and Coastal Barrier Resources are not analyzed for SEIR projects since analysis of these resources is only required for Federal Projects. Agricultural lands that are not subject to the ***Farmland Protection Policy Act (FPPA)*** are considered in the Land Use Changes subsection.

6. **Planning Consistency:** Planning consistency information is not required for the approval of the SEIR; however, to the extent planning consistency information is available it should be provided as it serves to inform stakeholders and assists in the timely advancement of project funds for the next phase. If planning consistency information is not available, a description of actions required for obtaining planning consistency may be provided.

7. **Alternatives Analysis:** There is no requirement for the analysis of multiple build alternatives, although there may be multiple alternatives if warranted by specific project considerations. There can be just one build alternative in addition to the no-build alternative, if determined appropriate.

As a best practice SEIRs go through a Quality Assurance (QA)/Quality Control (QC) check before the public hearing, if held (see QA/QC Tools for PD&E Studies on OEM's ***Documents and Resources Website***). During this process the applicable ***State Environmental Impact Report QA/QC Checklist*** is completed.

The SEIR is then signed by the Environmental or Project Development Manager confirming that the document has completed the QA/QC review and approving it for public availability. This signature is obtained electronically during preparation of the form in SWEPT.

SEIRs require a public hearing if the project is a major transportation improvement as described in ***Section 339.155, F.S.*** This includes the following types of projects:

1. increasing capacity through the addition of new lanes;

2. providing new access to a limited or controlled access facility (new interchanges); and

3. construction of a facility in a new location.

See ***Part 1, Chapter 11, Public Involvement*** for information on holding a public hearing and publication requirements.

Under limited circumstances, when a SEIR does not constitute a major transportation improvement as described in ***Section 339.155(5), F.S.***, the District offers the public an opportunity to request a public hearing in lieu of holding it without a public request. A

notice of opportunity to request a public hearing is then published, see (***Part 1, Chapter 11, Public Involvement***) for publication requirements.

It is normally expected that a preferred alternative is chosen prior to the public hearing. If in unusual circumstances a preferred alternative cannot be selected before the public hearing, additional public involvement after the hearing could be necessary and could range from another public hearing to a meeting, or a flyer/mailer. The SEIR should also be posted on the project website.

After the public hearing, if held, the District updates the SEIR and written statements from the public, both submitted at the public hearing or during the public hearing comment period, are included in the ***Summary of Public Involvement (SPI)***. See ***Part 1, Chapter 11, Public Involvement*** for information on the ***SPI***.

The public hearing is certified when the Project Manager prepares a ***Public Hearing Certification Form***. This form may be completed in SWEPT or by using the ***Public Hearing Certification, Form No. 650-050-56***. If completed in SWEPT, the ***Public Hearing Transcript*** is uploaded to SWEPT and a link to it is provided in the certification form. If completed outside of SWEPT, the certification form and the ***Public Hearing Transcript*** are uploaded to SWEPT for the project file. These two documents are included in the Appendix of the SEIR.

The District confirms the project file in SWEPT is complete. Districts should maintain the project file according to ***Part 1, Chapter 15, Project File and Records Management***.

OEM may review the SEIR at the District's request. The District Secretary or designee signs and approves the SEIR within SWEPT and may post it on the project website.

The District Environmental Office also completes and provides the date of the approval on the ***Environmental Certification for FDOT State Project*** form. A sample form is provided as a visual in ***Guidance for Part 1, Chapter 10***.

10.2.1.3 Re-evaluation

A Re-evaluation is needed to document changes that may have occurred in the project since approval of the Environmental Document or prior Re-evaluation(s). Sometimes there are changes to the proposed project, new information or circumstances, or there is a lapse of time between preparation of the Environmental Document and implementation of the project. This might include changes in the design, project limits, or project scope, new or modified laws, circumstances or project area changes, or any other new information affecting the project. Re-evaluations also update the status of commitments. Documenting these changes helps ensure compliance with applicable federal and state regulations.

Re-evaluations are conducted when:

1. Design changes result in new or additional impacts, possibly requiring agency consultation or public involvement

2. Changes in laws, passage of time, or changes in topic/resource need to be documented

3. Advancing to Right of Way (ROW) or Construction phase, more than three years since approval of the SEIR or last Re-evaluation. Often there may be an overlap of phases, such as ROW and design phases. In this case a Re-evaluation could cover both.

A Re-evaluation of a SEIR is prepared by using the ***State Environmental Impact Report Re-evaluation Form*** in SWEPT. An outline of this form is provided in ***Figure 10-4***. See ***Guidance for Part 1, Chapter 10*** for detailed information to assist with preparing this form and a sample SEIR Re-evaluation. Information supporting the SEIR Re-evaluation is submitted with the form and uploaded to the project file in SWEPT.

Approval is granted by the District approving authority or designee electronically. The approved Re-evaluation is maintained in the project file and the District notifies other phase managers e.g., Design, ROW, and Construction, and others as appropriate.

The District Environmental Office also provides the date of the signed Re-evaluation on the ***Environmental Certification for FDOT State Project***, as shown in ***Guidance for Part 1, Chapter 10***, which is required as part of the contract file.

10.2.1.4 FDOT State Projects with Federal Actions

Federal permits, such as those from a federal agency (e.g., USCG, USACE, USFWS, NMFS), may be required for FDOT State Projects and require a ***National Environmental Policy Act (NEPA)*** document be prepared by the lead federal permitting agency. In such cases, consultation or technical assistance with the appropriate federal agency(ies) should be performed early. OEM should be contacted with any questions regarding federal coordination on FDOT State Projects. The lead federal permitting agency may adopt or modify the FDOT Environmental Document to use as their ***NEPA*** document.

If a federal permit is required, ***Section 106*** of the ***NHPA*** is followed to address historic or archaeological resources (see ***Part 2, Chapter 8, Archaeological and Historical Resources***) and ***Section 7*** of the ***ESA*** is followed for federally listed species involvement (see ***Part 2, Chapter 16, Protected Species and Habitat***).

10.2.2 Local or Privately Funded Projects

A thorough understanding of funding sources, system designation, proposed work activity and existing or proposed agreements, such as a Joint Participation Agreement (JPA) or MOA, assists in determining if the project should advance as a Project Environmental Impact Report (PEIR), a SEIR or an FDOT Federal Project.

Local Agency or Private Entity Managed Projects

FDOT may enter into comprehensive agreements with private entities for the building, operation, ownership or financing of transportation facilities through the process provided

in ***Section 334.30, F.S., Public-private transportation facilities***.

Section 334.30(3), F.S., provides that "[e]ach private transportation facility constructed pursuant to this section shall comply with all requirements of federal, state, and local laws; state, regional and local comprehensive plans; department rules, policies, procedures and standards for transportation facilities; and any other conditions which the department determines to be in the public's best interest." Unsolicited public-private transportation projects must also comply with ***Chapter 14-107, Florida Administrative Code (F.A.C.)***.

Construction of permanent features in FDOT ROW, performed and fully funded by others (with no Federal Highway Administration [FHWA] funding or involvement), requires execution of an ***FDOT Construction Agreement, Form No. 850-040-89***. The local agency or private entity must apply for this Construction Agreement through FDOT's District Maintenance Office. The Construction Agreement application package should include evidence of acquisition of all applicable federal and state environmental permits. For Local Agency or Private Entity Managed Projects, the role of the District's Environmental Office is to provide support in an advisory capacity as necessary to assist in advancing the project.

Completion of environmental analysis and documentation, by the local agency or private entity prior to environmental permit application, may be documented as a PEIR. The PEIR analysis may include both environmental and engineering analyses as described in ***this Manual***, as applicable. PEIRs are not FDOT documents, as they are not prepared or approved by FDOT and therefore not prepared in SWEPT. A PEIR is prepared and approved by the local agency or private entity to document environmental analysis. The ***Guidance for Part 1, Chapter 10*** provides a PEIR outline.

Local or Privately Funded Projects with Potential Transfer of Jurisdiction

In cases where a privately or locally funded project is developed under ***Chapter 14-107, F.A.C.*** and, where jurisdiction will be transferred to FDOT at any time during project development, the District should work with the local agency or private entity to determine whether a PEIR or SEIR is required. If the project is to be transferred to the FDOT, a SEIR is likely the appropriate document. In such cases, the FDOT may coordinate, review and approve a document prepared by a local or private entity as a SEIR within SWEPT. The District should coordinate with the local agency or private entity to determine the level of analysis to satisfy documentation requirements. Prior to commencement of the study, the project sponsor should consult with the District to consider the following:

1. How the PEIR (or SEIR) will be processed
2. How it will be coordinated with FDOT
3. Project schedule
4. How public involvement and public hearing activities will be conducted

5. How the project Re-evaluation will be coordinated with FDOT (see ***Section 10.2.1.3***)

These decisions should be documented in the project file.

Local Agency Managed Projects with Only State Funding

A local agency may advance a project through any one of several state funding programs described in ***Chapter 339, F.S.***, and FDOT's Work Program Instructions; examples include: County Incentive Grant Program (CIGP), Small County Outreach Program (SCOP), Transportation Regional Incentive Program (TRIP), and Small County Road Assistance Program (SCRAP). For these projects, if state funds only are being used, the local agency may prepare a PEIR to support its acquisition of appropriate environmental permits and satisfy other agreements with the FDOT. The local agency should follow the procedures outlined in this chapter and the ***Guidance for Part 1, Chapter 10*** to prepare a PEIR.

Local Agency Using Federal Funds

There may be instances when a local agency seeks to advance a project with FHWA funds in addition to state program funds and/or local funds. In such cases the project will become a Local Agency Program (LAP) project, and therefore an FDOT Federal Project. The ***NEPA*** document would generally be prepared by the local agency with FDOT support as deemed appropriate through early project coordination (per ***FDOT Local Programs Manual, Topic No. 525-010-300***).

Environmental Certification

A local agency or private entity may **not** provide FDOT Environmental Certification to advance a project in the FDOT Work Program, and FDOT **should not** provide a certification to a local agency or private entity.

10.3 REFERENCES

Chapter 267, Florida Statutes (F.S.), Historical Resources.
http://www.leg.state.fl.us/Statutes/

FDOT, Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Local Programs Manual, Topic No. 525-010-300
http://www.fdot.gov/programmanagement/LAP/LAP_TOC.shtm

FDOT, Planning Consistency for NEPA Practitioners.
https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pdeman/planning-consistency-for-nepa-practitioners.pdf?sfvrsn=895090ea_1

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

FDOT, Public Involvement Handbook. https://www.fdot.gov/planning/policy/community-engagement/resource-guide.shtm

FDOT, Re-evaluation Guidance for Section 3 - Changes in Applicable Law or Regulation. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/reeval-regs-laws-checklist_2025-0916.pdf?sfvrsn=52041e4e_1

FDOT, State Environmental Impact Report QA/QC Checklist

Chapter 14-107, F.A.C. Public-Private Transportation Facilities

Section 334.30, F.S., Public-private Transportation Facilities. http://www.leg.state.fl.us/Statutes/

Section 338.223, F.S., Proposed Turnpike Projects. http://www.leg.state.fl.us/Statutes/

Section 339.125, F.S., Covenants to complete on revenue-producing projects. http://www.leg.state.fl.us/Statutes/

Section 339.155(5), F.S., Procedures for Public Participation in Planning. http://www.leg.state.fl.us/Statutes/

Section 339.61, F.S., Florida Strategic Intermodal System (SIS); legislative findings, declaration, and intent. http://www.leg.state.fl.us/Statutes/

10.4 FORMS

FDOT Construction Agreement, Form No. 850-040-89

Public Hearing Certification, Form 650-050-56

FDOT Forms are found in the Procedural Document Library

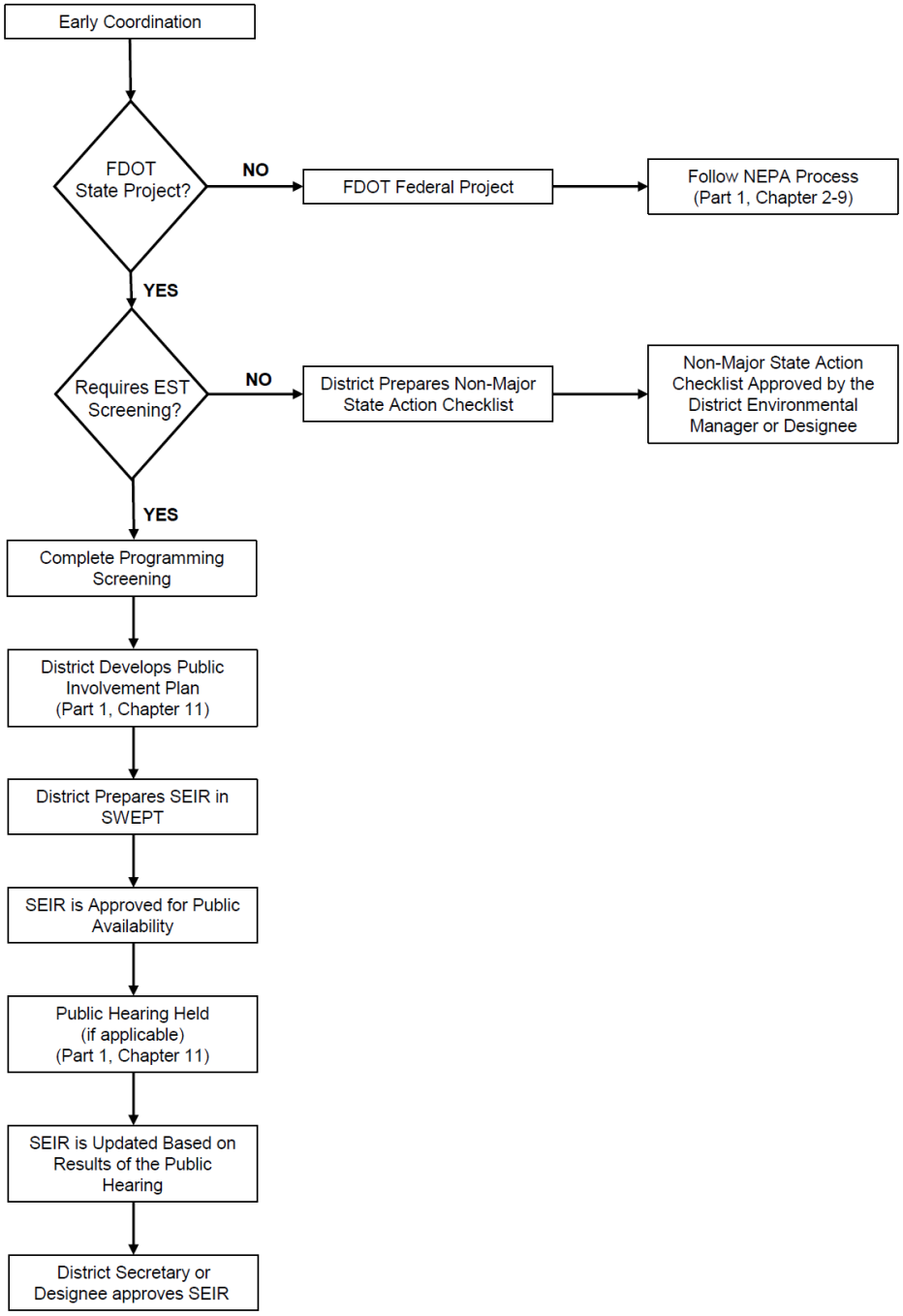
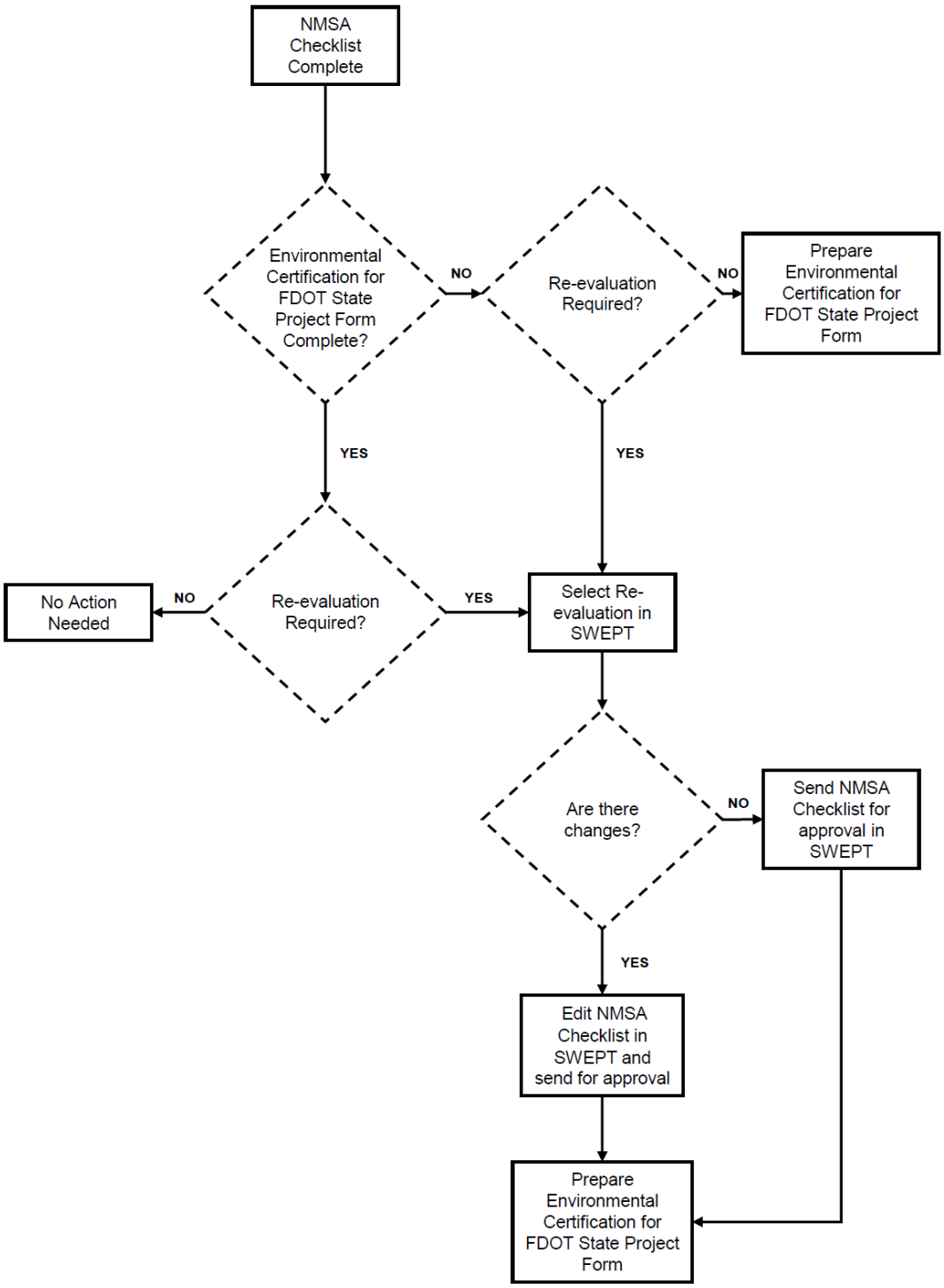


Figure 10-1 FDOT State Project Process



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- 3.2 Economic
- 3.3 Land Use Changes
- 3.4 Mobility
- 3.5 Aesthetic Effects
- 3.6 Relocation Potential

Section 4: Cultural Resources
- 4.1 Florida Historical Resources Act, Chapter 267, Florida Statutes (F.S.)
- 4.2 Section 6(f) of the Land and Water Conservation Fund Act of 1965
- 4.3 Recreational Areas and Protected Lands

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Section 10: Approved for Public Availability
Section 11: Public Involvement
Section 12: Technical Materials
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Figure 10-3 State Environmental Impact Report Outline

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B. Original approved Environmental Document
C. Prior Re-evaluation(s)
D. Project or project segment(s) being evaluated

Section 2- PROJECT DESCRIPTION

Section 3 – CHANGES IN APPLICABLE LAW OR REGULATION

Section 4 – EVALUATION OF DESIGN CHANGES

Section 5 – PUBLIC INVOLVEMENT

Section 6 – PROJECT OR SEGMENT(S) PLANNING CONSISTENCY

Section 7 – EVALUATION OF CHANGES IN IMPACTS

Section 8 – COMMITMENT STATUS

Section 9 – STATUS OF PERMITS

Section 10 - CONCLUSION

Section 11 – DISTRICT REVIEW AND APPROVAL

Section 12 – LINKS TO SUPPORTING DOCUMENTATION

Figure 10-4 State Environmental Impact Report Re-evaluation Outline

PART 1, CHAPTER 11

PUBLIC INVOLVEMENT

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PART 1 CHAPTER 11

PUBLIC INVOLVEMENT

11.1 OVERVIEW

This chapter contains the Florida Department of Transportation (FDOT) procedure for public involvement during the Project Development and Environment (PD&E) phase of a transportation project and also provides some guidance on other phases of project development.

11.1.1 Definition of Public Involvement

Public involvement is the active solicitation of public participation in the development of transportation plans, programs and projects. The process offers the public a chance not only to be informed, but to participate in agency decision-making to address public needs and preferences. Various federal and state regulations require that state departments of transportation and Metropolitan Planning Organizations (MPOs)/Transportation Planning Organizations (TPOs) proactively seek the involvement of all interested parties (see ***Section 11.1.3***). Public input can be received via various forms of media or through participation in a public forum.

11.1.2 Intent of Public Involvement

The intent of public involvement is to engage the public, including property owners, tenants, business owners and operators, public officials and agencies, facility users, interested individuals, and special interest groups, during the development of transportation projects. Early and continuous public involvement provides FDOT an opportunity to understand potential topics/impacts early in the project development process so solutions can be considered prior to the completion of the Design phase.

FDOT has established procedures and agreements for coordinating public and agency participation in and comment on the environmental review process for transportation projects consistent with ***23 United States Code (U.S.C.) § 139(g)***. This consists of FDOT's ***Community Engagement, Policy No. 000-525-050-j***; ***PD&E Manual, Topic No. 650-000-001***; ***Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002***; ETDM interagency agreements; and project screening through the ETDM Environmental Screening Tool (EST).

Public involvement should:

1. Be inclusive of stakeholders, especially those who will be most affected.
2. Emphasize partnering and consensus.
3. Begin early in the project process, be proactive and ongoing.

4. Be defined, structured, transparent, and clearly delineated at the beginning of the project. Use the most appropriate tools for each audience, by identifying the audience and needs for each project and any potential barriers to communication.

While public involvement is an on-going process throughout project development, activities are most prevalent during the PD&E phase. Coordination during this phase allows the public the opportunity to provide input in transportation decisions resulting in the development of transportation systems that support community needs and desires. Through public involvement, FDOT can gain insight into an affected community and use this knowledge to evaluate the community effects of the project alternatives (see ***Part 2, Chapter 4, Community Impact Assessment***). Public involvement, in conjunction with other sources of data, plays an essential role in the assessment of the social, cultural, natural and physical effects of transportation projects.

11.1.3 Federal and State Public Involvement Requirements

The public involvement procedure in this chapter is in compliance with federal and state requirements. This chapter was reviewed and approved by the Federal Highway Administration (FHWA) for compliance with ***23 Code of Federal Regulations (CFR) § 771.111*** on June15, 2026.

There are many laws and regulations that apply to the ***National Environmental Policy Act (NEPA)*** process. Specifics on how regulations pertaining to public involvement are implemented during the PD&E phase are discussed within individual sections as they apply. The most relevant to public involvement activities include:

Title VI / Nondiscrimination

All FDOT project activities must comply with ***Title VI of the 1964 Civil Rights Act*** and related statutes, as referenced in ***Title VI/Non-Discrimination Program, Policy Number 001-275-006*** and implementing procedure ***Title VI Program and Related Statutes-Implementation and Review Procedure, Topic No. 275-010-010***. This includes all federal and state programs administered by FDOT and its sub-recipients. All public meeting or hearing notifications must include the ***Civil Rights Act of 1964*** standard statement (see ***Section 11.6.2***). At all public meetings and hearings, regardless of project phase, a board with the ***Civil Rights Act of 1964*** standard statement, along with the contact information for the District Title VI Coordinator and State Title VI Coordinator, must be displayed in the physical location and on a slide for the virtual component (see ***Section 11.6.7***).

Americans with Disabilities Act of 1990 (ADA)

All FDOT project activities must comply with the ***Americans with Disabilities Act of 1990 (ADA)***. This Act prohibits the exclusion of persons with disabilities from participation

in services, programs, or activities of a public entity and requires public accommodations to provide equivalent access to individuals with disabilities. This is important for public involvement activities, as the locations of public meetings, workshops, and hearings should be accessible.

Other federal regulations that are applicable to public involvement activities are listed in ***Table 11-1***. State regulations that are applicable to public involvement activities are listed in ***Table 11-2***.

11.2 PUBLIC INVOLVEMENT DURING THE EFFICENT TRANSPORATION DECISION MAKING PROCESS

For FDOT projects that qualify for screening in the ETDM EST, project information is available to the public on the ***ETDM Public Access Site***. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for a list of qualifying project types.

Through the ***ETDM Public Access Site*** the public is able to submit comments on the project through the EST to the project contact (i.e., ETDM Coordinator or Project Manager) providing the public an early opportunity to be involved in the identification of potential project impacts as well as defining the purpose and need and reasonable range of alternatives as required by ***23 CFR § 771.111***.

Additional information regarding the ETDM process and access to the ***ETDM Public Access Site*** is available at FDOT's ***Office of Environmental Management (OEM) Website*** and in the ***ETDM Manual, Topic No. 650-000-002***.

11.3 PUBLIC INVOLVEMENT BASED ON ENVIRONMENTAL DOCUMENT TYPE

For projects with a PD&E phase, information from the Planning phase may be utilized to continue or enhance public involvement activities. For projects screened in the ETDM EST, information from the EST can be used to plan and implement ***Public Involvement Plans (PIPs)*** and public outreach activities. The ETDM Coordinator and Community Liaison Coordinator (CLC) can provide an understanding of the project's background, issues that were identified, and any public comments received during the EST screening events to help develop the ***PIP***. The CLC can also assist with identifying audiences for PD&E outreach activities and provide any public feedback received during the screening events.

Public involvement activities vary by Environmental Document type.

11.3.1 Type 1 Categorical Exclusion and Non-Major State Action

Type 1 Categorical Exclusions (CEs) and Non-Major State Actions (NMSAs) do not typically require a public hearing, but may necessitate public involvement activities as determined by the District. A ***Community Awareness Plan (CAP)*** is typically prepared for these projects. See the ***FDOT Design Manual, Part 1, Chapter 104, Public Involvement, Topic No. 625-000-002*** for more information on preparing a ***CAP***.

11.3.2 Type 2 Categorical Exclusion

Notification and public involvement activities for a Type 2 CE are outlined below:

- The District initiates a ***PIP*** or in some cases a ***CAP***. See ***Section 11.4*** for guidance on determining which plan to prepare.
- The District **may** conduct a kick-off meeting for public engagement with elected officials/agencies and/or the public. A formal letter/email may be used in place of a meeting. See ***Section 11.6.3*** for more details.
- A public meeting/workshop **may** be held. See ***Section 11.6*** for more details.
- A public hearing may be required by ***Section 339.155(5), Florida Statutes (F.S.)*** (see ***Section 11.6.9***).
- If a public hearing **is** required:
    - A notice of the public hearing is placed as a newspaper advertisement (newspaper ad) twice in the local newspaper(s) (see ***Section 11.6.9.2.3***). The District obtains proof of publication or an ***Affidavit of Publication***.
    - A similar notice is placed on the FDOT ***Public Meeting Notices Website*** (***Section 11.6.9.2.5***) and the ***Florida Administrative Register (FAR)*** (***Section 11.6.9.2.4***).
    - The public hearing is held. See ***Section 11.6.9*** for public hearing requirements.
- If a public hearing is **not** required by ***Section 339.155(5), F.S.***, see ***Section 11.6.10*** for guidance on offering the public an opportunity to request a public hearing.
    - If it is determined to hold a public hearing after requests are received, see ***Section 11.6.9*** for details.

- After the Type 2 CE is approved, an Announcement of Location and Design Concept Acceptance (LDCA) is distributed as outlined in ***Part 1, Chapter 5, Categorical Exclusion***).

- The Announcement of LDCA is also published as a newspaper ad. See ***Section 11.7.2*** for details.

- A ***Limitations on Claims Notice*** **may** be published in the ***Federal Register (FR)***. See ***Section 11.7.3*** for more details.

11.3.3 Environmental Assessment

Notification and public involvement activities for an Environmental Assessment (EA) are included in ***Figure 11-1*** and outlined below:

- The District initiates a ***PIP***. See ***Section 11.5*** for guidance on preparing a ***PIP***.

- The District **may** conduct a kick-off meeting for public engagement with elected officials/agencies and/or the public. A formal letter/email may be used in place of a meeting. See ***Section 11.6.3*** for details.

- A local advisory group **may** be established. See ***FDOT Public Involvement Handbook*** for details.

- A public meeting/workshop **may** be held. See ***Section 11.6*** for details.

- After the EA is approved by OEM for public notice it is distributed as outlined in ***Part 1, Chapter 6, Environmental Assessment***.

- The EA is made available for public inspection. See ***Section 11.6.9.1*** for details.

- A public hearing may be required by ***Section 339.155(5), F.S.***, (see ***Section 11.6.9***).

- If a public hearing **is** required:

    - The District places a notice of availability in the local newspaper(s) twice which includes advertisement of the public hearing. See ***Section 11.6.9.2*** for notification requirements. The District obtains proof of publication or an ***Affidavit of Publication***.

    - A similar notice is placed on the FDOT ***Public Meeting Notices Website*** (***Section 11.6.9.2.5***) and the ***FAR*** (***Section 11.6.9.2.4***).

  - The public hearing is held. See ***Section 11.6.9*** for public hearing requirements.

- If a public hearing is **not required** by ***Section 339.155(5), F.S.***, see ***Section 11.6.10*** for guidance on a notice of opportunity to request a public hearing.

  - If it is determined to hold a public hearing after requests are received, see ***Section 11.6.9***.

11.3.4 Environmental Assessment with Finding of No Significant Impact

Final notification activities for an EA with Finding of No Significant Impact (FONSI) are included in ***Figure 11-1*** and outlined below:

- After the EA with FONSI is approved by OEM, it is distributed as outlined in ***Part 1, Chapter 7, Finding of No Significant Impact***.

- The EA with FONSI is made available to the public. See ***Section 11.7.2*** for details.

- An Announcement of LDCA is published as a newspaper ad. See ***Section 11.7.2*** for details.

- A ***Limitations on Claims Notice*** **is** published in the ***FR***. See ***Section 11.7.3*** for details.

11.3.5 Draft Environmental Impact Statement

Notification and public involvement activities for a Draft Environmental Impact Statement (DEIS) are included in ***Figure 11-2*** and outlined below:

- The District initiates a ***PIP***. See ***Section 11.5*** for guidance on preparing a ***PIP***.

- The District **may** conduct a kick-off meeting for public engagement with elected officials/agencies and/or the public. A formal letter/email may be used in place of a meeting. See ***Section 11.6.3*** for details.

- A local advisory group **may** be established. See the ***FDOT Public Involvement Handbook*** for details.

- Public meetings/workshops **may** be held. See ***Section 11.6*** for details.

- The District submits a ***Notice of Intent (NOI)*** to OEM to coordinate publication in the ***FR***. See ***Part 1, Chapter 8, Draft Environmental Impact Statement*** for additional information on the ***NOI***.

- The District **may** hold a formal scoping meeting with government agencies and other parties with an interest in or jurisdiction over the project area. For additional guidance, see ***Figure 11-3***.

- After the DEIS is approved by OEM for circulation, it is distributed as outlined in ***Part 1, Chapter 8, Draft Environmental Impact Statement***.

- The DEIS is made available to the public, see ***Section 11.6.9.1*** for details.

- A notice of public hearing is placed as a newspaper ad twice in the local newspaper(s) which mentions the availability of the DEIS for comment. See ***Section 11.6.9.2*** for notification requirements. The District obtains proof of publication or an ***Affidavit of Publication***.

- A similar notice is placed on FDOT ***Public Meeting Notices Website (Section 11.6.9.2.5)*** and the ***FAR (Section 11.6.9.2.4)***.

- After distribution and public notice, the District submits a ***Notice of Availability*** of the DEIS to OEM to coordinate publication in the ***FR***. The ***Notice of Availability*** establishes a 45-day comment period. See ***Part 1, Chapter 8, Draft Environmental Impact Statement*** for details on preparing and publishing the ***Notice of Availability***.

- A public hearing is held to comply with ***Section 339.155(5), F.S.***, see ***Section 11.6.9*** for public hearing requirements.

11.3.6 Final Environmental Impact Statement/Record of Decision or Final Environmental Impact Statement

Final notification activities for a Final Environmental Impact Statement/Record of Decision (FEIS/ROD) are included in ***Figure 11-2***. Notification activities for a separate FEIS, and final notification activities for a ROD are included in ***Figure 11-4***. Both are outlined below:

- If a FEIS/ROD:

    - After the FEIS/ROD is approved by OEM, it is distributed as outlined in ***Part 1, Chapter 9, Final Environmental Impact Statement***.

    - The FEIS/ROD is made available to the public (see ***Section 11.7.2*** for requirements).

- An announcement of LDCA is published as a newspaper ad. See ***Section 11.7.2*** for details.

- After the announcement of LDCA is published, the District submits a ***Notice of Availability*** of the FEIS/ROD to OEM to coordinate publication in the ***FR*** (see ***Part 1, Chapter 9 Final Environmental Impact Statement***). The ***Notice of Availability*** may be combined with a ***Limitations on Claims Notice*** or it may be published separately in the ***FR***. See ***Section 11.7.3*** for details.

- If the FEIS is approved separately from the ROD:

  - After the FEIS is approved by OEM, it is distributed as outlined in ***Part 1, Chapter 9, Final Environmental Impact Statement***.

  - The FEIS is made available to the public. See ***Section 11.7.1*** for details.

  - The District places a notice of availability as a newspaper ad and obtains proof of publication or an ***Affidavit of Publication***. See ***Section 11.7.1*** for details.

  - After distribution and public notice, the District submits a ***Notice of Availability*** of the FEIS to OEM to coordinate publication in the ***FR***. The ***Notice of Availability*** establishes a 30-day comment period (see ***Part 1, Chapter 9, Final Environmental Impact Statement***).

  - The ROD is prepared and signed by OEM no sooner than 30 days after publication of the ***Notice of Availability*** in the ***FR.***

  - After the ROD is approved by OEM, it is distributed as outlined in ***Part 1, Chapter 9, Final Environmental Impact Statement***.

  - The ROD is made available to the public. See ***Section 11.7.2*** for details.

  - An announcement of LDCA is published as a newspaper ad. See ***Section 11.7.2*** for details.

  - The District submits a ***Limitations on Claims Notice*** to OEM to coordinate publication in the ***FR***. See ***Section 11.7.3*** for details.

11.3.7 State Environmental Impact Report

Public involvement activities for a State Environmental Impact Report (SEIR) are outlined below:

- The District initiates a ***PIP***. See ***Section 11.5*** for guidance on preparing a ***PIP***.
- The District **may** conduct a kick-off meeting for public engagement with elected officials/agencies and/or the public. A formal letter/email may be used in place of a meeting. See ***Section 11.6.3*** for more details.
- A local advisory group **may** be established. See the ***FDOT Public Involvement Handbook*** for details.
- A public information meeting/workshop **may** be held. See ***Section 11.6*** for more details.
- After the SEIR is approved for public availability, a notice of the public hearing is placed as a newspaper ad twice in the local newspaper(s). See ***Section 11.6.9*** for public hearing notification requirements. The District obtains proof of publication or an ***Affidavit of Publication***.
- A similar notice is placed in the ***FAR*** (***Section 11.6.9.2.4***) and on the FDOT ***Public Meeting Notices Website*** (***Section 11.6.9.2.5***).
- The public hearing is held. See ***Section 11.6.9*** for public hearing requirements.

11.4 TYPES OF PUBLIC ENGAGEMENT PLANS

There are three types of plans for public engagement that are prepared in specific scenarios. As appropriate, these plans should be developed and implemented at the start of the applicable project phase.

A ***Communication Plan*** may be developed to provide the public engagement strategy during the Planning phase (work prior to the PD&E phase). This plan outlines the methods and timelines for engaging with the public, local agencies, and stakeholders.

A ***Public Involvement Plan (PIP)*** is the primary public engagement plan outlined in this Chapter. A ***PIP*** is prepared for transportation projects during the PD&E phase (typically a Type 2 CE, EA, EIS, or SEIR). The ***PIP*** defines affected communities and potential stakeholders, as well as details of the outreach methods and required notification timeframes to involve and gain their input. It may include any other public involvement strategies used to support a ***NEPA*** decision for an FDOT Federal Project. See ***Section 11.5*** for information on creating a ***PIP***.

Planning activities and design projects with minor activities may follow a ***PIP*** outline. For example, a planning project may have a more fluid plan, focused on stakeholders, rather than a standard ***PIP***.

A ***Community Awareness Plan (CAP)*** is developed for the design and construction phases of a project. It identifies appropriate outreach activities based on the type of project and potential community concerns about proposed construction impacts. For additional information, see the ***FDOT Design Manual, Part 1, Topic No. 625-000-002***. A ***CAP*** is typically prepared for Type 1 CEs, NMSAs, and sometimes Type 2 CEs that are not screened in EST. For format and content of the ***CAP*** see the ***FDOT Design Manual, Part 1, Chapter 104, Public Involvement, Topic No. 625-000-002*** and FDOT's ***Project Management Guide, Section 245***. In the case of overlapping PD&E and Design phases; either a ***PIP*** or a ***CAP*** is prepared depending on the needs of the project.

11.5 PUBLIC INVOLVEMENT PLAN

This section outlines the contents of the ***PIP***. For additional information on strategies and best practices, see the ***FDOT Public Involvement Handbook***. A sample of the ***PIP*** is included in the FDOT ***Public Engagement Resource Kit (PERK)***.

The ***PIP*** is considered final after District-level review and approval and it is uploaded in the StateWide Environmental Project Tracker (SWEPT). This typically takes place before the kick-off of public engagement. As the PD&E phase continues, adjustments may be made to the public engagement strategies. Any changes to the approach as outlined in the ***PIP***, along with the reasoning behind the changes, should be documented within a technical report called a ***Summary of Public Involvement (SPI)***, see ***Section 11.8***.

A ***PIP*** should only be rewritten or updated under unusual circumstances as determined by FDOT. For example, if there is a substantial change in project scope or purpose and need or the project has been on hold for an extended period of time.

11.5.1 Project Overview

This section of the ***PIP*** includes a description of the project, its location, the history of any previous studies/engagement, and a discussion of what the project is trying to achieve.

11.5.2 Identification of Elected Officials and Local Agencies

This section of the ***PIP*** involves identification of elected officials and local agency representatives. These are city, county, state, and federal representatives, whose jurisdictional/political boundary intersects the project area. Local constitutional offices are a part of this group. A contact list of elected officials and local agencies is included as an Appendix. Elected official information is updated after every election cycle, and the local

agency representatives list is updated as appropriate. Any subsequent updates to these lists are included in the ***SPI***.

Resource agency representatives, including local, state, regional, and federal agencies that were sent the Advance Notification (AN) (see ***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***), are referenced, but are not included in the ***PIP*** contact lists. Native American Tribes involved in coordination are also referenced but not included in the contact lists. Tribes must be contacted as specified on FDOT's ***Native American Tribal Consultation Website***. The District coordinates with OEM prior to any direct communication with a Tribe.

The ***PIP*** should include the following language to address this:

> *Federal and State agencies, as well as Native American Tribes, having an interest in this project due to jurisdictional review or expressed interest have been identified. These contacts can be found in the Advance Notification (AN) package in the Environmental Screening Tool, ETDM# (add ETDM number here). Visit https://etdmpub.fla-etat.org to view the official transmittal list in the AN Package. Subsequent contact list updates can be obtained through the District Environmental Office.*

Coordination with resource agencies and Native American Tribes should be documented in the SWEPT project file.

11.5.3 Identification of Affected Communities and Stakeholders

This section of the ***PIP*** involves identification of affected communities, property owners/tenants, business owners, community leaders, and other parties that may have a potential direct or expressed interest in the project. These affected stakeholders may be defined by geographic and political boundaries. They may or may not be self-identified as a community, meaning they may or may not have a shared cultural identity. The stakeholder contact list should include a wide cross-section of the project area and may be included as an Appendix in the ***PIP***.

Adjacent property owners whose property lies, in whole or part, within at least 300 feet on either side of the centerline [or Right of Way (ROW) line for interstates] of each project alternative (***Section 339.155, F.S.***), as well as tenants of these properties, are considered stakeholders. An initial property owner contact list or map of the mailing area may be included as an Appendix in the ***PIP***.

Interested parties are those who request placement on the project mailing list as the project progresses. This list may be included as an Appendix in the ***PIP***.

11.5.4 Outreach Accommodations

A ***Sociocultural Data Report (SDR)*** provides a snapshot of the project area population, race, age, income, educational attainment, housing types, and language over the last three censuses and most recent American Community Survey. ***SDRs*** for projects screened in the EST are available on the ***ETDM Public Access Site***. If an ***SDR*** is not available, the ETDM Coordinator or Project Manager may be contacted to provide this information.

The ***SDR*** is reviewed and analyzed in coordination with the person overseeing the Community Impact Assessment (CIA). This analysis may be used to make preliminary determinations, such as when/where in-person versus virtual meetings may be appropriate, if meeting accommodations for an aging or transit-dependent population are needed, or if there are potential language barriers. This section of the ***PIP*** should include any identified public involvement opportunities to reach specific communities (i.e., relationships with community leaders within local health clinics, community centers, places of worship, advocacy groups, and schools). Additional information can be found in ***Part 2, Chapter 4, Community Impact Assessment***; ***FDOT's Public Involvement Handbook***; and the ***ETDM Manual, Topic No. 650-000-002***. The ***SDR*** should be added as an Appendix to the ***PIP***.

11.5.5 Outreach Activities

This section of the ***PIP*** defines the type and frequency of outreach that occurs during the PD&E phase, how the outreach will be conducted, how the public will be notified, whether newsletters will be distributed and when, and the overall public outreach schedule.

Public engagement activities should use appropriate approaches evaluated on a project-by-project basis, making sure that strategies are inclusive of all affected stakeholders. Non-traditional approaches should be considered to provide the opportunity for involvement of all parties. For more information about non-traditional approaches, as well as additional guidance on public involvement approach and optional activities (such as small group meetings or local advisory groups), see the ***FDOT Public Involvement Handbook***. For public meeting and public hearing requirements that are included in this section of a ***PIP***, see ***Section 11.6***.

11.5.6 Public Involvement Summary

This section of the ***PIP*** defines how public involvement documentation will be organized in the ***SPI***. For details on preparing a ***SPI***, see ***Section 11.8***.

11.5.7 Final Notifications and Project Approval

This last section of the ***PIP*** defines how the final notification of project approval will occur as well as any final outreach to inform the public of the conclusion of the PD&E phase. For more details on project approval notification requirements, see ***Section 11.7***.

11.6 PUBLIC MEETING AND PUBLIC HEARING PROCEDURE

This section describes FDOT requirements for various types of public meetings and public hearings as they relate to state and federal law (including advertisement and logistical requirements). For samples, see the ***PERK*** and for best practices see the ***FDOT Public Involvement Handbook***.

11.6.1 Selecting Dates and Locations

PD&E phase public meetings and public hearings (where the general public is invited to participate and alternatives are being presented) must include both an in-person and virtual component. The two components can be separate events, but should be within 7 calendar days of each other. Small group and one-on-one meetings can be held in-person, virtually, or using both components.

In-Person Location

In-person meeting facilities are selected based on the anticipated number of attendees, proximity to the project, easy accessibility, safety, and public transportation availability. Justification for the facility selected should be included in the ***SPI***. When choosing between multiple locations, publicly-owned facilities should take precedence over privately-owned facilities. However, privately-owned facilities can be considered if there are no other reasonable options.

Per the ***ADA***, all public meeting facilities must be ***ADA***-compliant and provide access for disabled persons wishing to attend. FDOT does not provide transportation for disabled persons or pay for transportation of disabled persons to attend public meetings.

Per the ***Jessica Lunsford Act***, public school facilities, grades K-12, should not be used for public meetings while students are present.

A meeting facility should be approved by the FDOT Project Manager and reserved prior to advertising for a public meeting.

Virtual Component

For live broadcasts, there is no preferred virtual platform. The platform chosen should be consistent with FDOT current practice. PD&E phase public meetings and public hearings that require a virtual component should include a live broadcast component. Static

website updates are not considered a virtual component of a PD&E public meeting or public hearing, but can be used as additional outreach.

Times

Both meeting and hearing times for the in-person and virtual components should be held during the work week, Monday through Friday, and at a time most accessible for the community. For additional information on recommendations and best practices, see the ***FDOT Public Involvement Handbook***.

Coordination with the District Environmental Office is needed if considering atypical times/days for a public meeting/hearing or for approval of any alternative virtual meeting platforms.

11.6.2 Standard Language for Notifications

To aid in demonstrating compliance with state and federal requirements, the following ***Civil Rights Act of 1964*** standard statement is included for all outreach and public involvement notification methods:

> *Public participation is solicited without regard to race, color, national origin, age, sex, religion, disability, or family status.*

This is listed along with the District and State Title VI Coordinator contact information.

Event notifications also include the following statement:

> *Any person requiring special accommodations under the Americans with Disabilities Act or requiring translation services (free of charge) should contact _____ at _____ at least seven days prior to the public meeting.*

Similarly, the ***NEPA*** Assignment standard statement is included for outreach and public involvement notification for FDOT Federal Projects.

> *The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022, and executed by the Federal Highway Administration and FDOT.*

If the project involves any wetland impacts, the following statement at a minimum must be included in the ***FAR***, FDOT ***Public Meeting Notices Website***, and newspaper ad per ***Executive Order (EO) 11990, Protection of Wetlands***:

> *FDOT evaluated wetlands within the project limits in accordance with Executive Order 11990, Protection of Wetlands. The proposed project will affect approximately __ acres of wetlands. [include 'other surface waters' and acreage, if applicable]*

If the project includes significant encroachment of floodplains, per ***EO 11988, Floodplain Management***, the following language must at a minimum be included in ***FAR***, FDOT ***Public Meeting Notices Website***, and newspaper ad:

> *The project has been evaluated for potential floodplain involvement in accordance with Executive Order 11988 Floodplain Management and involves encroachments on base floodplains [include regulatory floodway, if applicable].*

If the project includes *de minimis* impacts to ***Section 4(f)*** properties, per ***Part 2, Chapter 7, Section 4(f) Resources***, the following statements are included in the ***FAR***, FDOT ***Public Meeting Notices Website***, and newspaper ad:

> *The proposed project is subject to the requirements of Section 4(f) of the US Department of Transportation Act, and the project may result in a use within the meaning of Section 4(f). FDOT is seeking public review and comment on potential effects to protected activities, features, or attributes of Section 4(f) properties.*

If the project includes impacts to ***Section 106***, per ***Part 2, Chapter 8, Archaeological and Historical Resources***, the following statements are included in the ***FAR***, FDOT ***Public Meeting Notices Website***, and newspaper ad:

> *The proposed project is subject to the requirements of Section 106 of the National Historic Preservation Act, and may result in effects to properties that are listed on, eligible, or potentially eligible for the National Register of Historic Places. FDOT is seeking comments from the public on resource identification and evaluation, effect determinations, and resolution of adverse effects, if applicable.*

If the project includes an access class change, per ***Rule 14-97 of the Florida Administrative Code (F.A.C.)***, the following statement is included in the ***FAR***, FDOT ***Public Meeting Notices Website***, and newspaper ad:

Per Rule 14-97, Florida Administrative Code, FDOT is soliciting comments on the proposed access management classification changes for the_____[name of project].

11.6.3 Types of Meetings

Scoping Meeting for Environmental Impact Statements

The Environmental Scoping Process is a required, formal process for projects requiring an Environmental Impact Statement (EIS) (see ***Part 1, Chapter 8, Draft Environmental Impact Statement***). A scoping meeting **may** be held as a part of the Environmental Scoping Process. For guidelines on holding a scoping meeting for an EIS, see ***Figure 11-3***.

Kick-off Meeting

At the beginning of the PD&E phase, a meeting may be scheduled to acquaint the public and local officials with staff and the proposed project. The format is typically an informal, open house with staff members available for discussion. Items usually covered at the meeting include purpose and need, project priority in local and regional plans, potential environmental and/or engineering issues, project schedule, and a request for comments and concerns. For other alternatives and best practices in place of a kick-off meeting, see the ***FDOT Public Involvement Handbook***.

Public Meetings/Workshops

For the purposes of this Chapter, the term ‘public meeting’ can be defined as a milestone meeting that invites the public at large (i.e., public workshop, public information meeting, public alternatives information meeting, alternatives public workshop, public alternatives workshop). A public meeting is an effective tool to provide and receive information, create an exchange of ideas, present multiple transportation alternatives, and build consensus. In the PD&E process, public meetings are held to inform the public of alternative designs and potential impacts, and to receive input. Access management components may require a public meeting, see ***Section 11.6.8***. Meetings are different than public hearings. For public hearing requirements, see ***Section 11.6.9***.

Small Group Meetings/Project Advisory Groups

Stakeholder or ‘small group’ meetings and Project Advisory Groups (PAGs) are considered meetings with a targeted invitation list and can include a statement inviting the public to observe. For notification requirements for stakeholder, small group, or PAG meetings, see ***Section 11.6.6***. For additional best practices, see the ***FDOT Public Involvement Handbook***.

11.6.4 Required Meeting Notices

The following notices are required for public meetings:

- Notification to Elected Officials and Agencies (***Section 339.155, F.S.***)
- Notification to Property Owners/Tenants (***Section 339.155, F.S.***)
- Florida Administrative Register (***Section 120.525, F.S.***)
- FDOT ***Public Meeting Notices Website*** (***Section 120.525, F.S.)***

Compliance with ***Florida's Government in the Sunshine Law, Section 286.011, F.S.***, and ***Section 120.525, F.S.***, requires any public meeting or hearing to be noticed in the ***FAR*** and on the FDOT ***Public Meeting Notices Website***.

Public notices should be drafted using plain language, per ***EO 07-01*** and should include the standard statements in ***Section 11.6.2***.

The public comment period for the meeting is listed in all notices. The comment period begins one calendar day after the last event and continues for at least 7 calendar days.

The ***PERK*** provides sample notifications and materials for use in preparing a public meeting.

11.6.4.1 Notification to Elected Officials and Agencies

Before holding a public meeting, an invitation is sent to the local governments and agencies **at least 25** but **no more than 30 calendar days prior to the first public meeting event date**. The invitation should be distributed to the local governments and agencies before the public is notified. Invitations can be sent by first class mail or by email from a District designee. At minimum, the invitation should include the following, either in the body of the letter or in an attachment:

1. The purpose of the meeting
2. A description of the project
3. The in-person date, time, and location; and virtual broadcast date, time, and registration
4. Standard statements (e.g., ***NEPA*** Assignment standard statement, ***Civil Rights Act of 1964*** standard statement), Title VI contact information, and information for ***ADA*** requests as provided in ***Section 11.6.2***

5. A copy of the invitation sent to property owners and tenants, if available

11.6.4.2 Notification to Property Owners and Tenants

Property owners, tenants, and leaseholders in whole or in part, within at least 300 feet of the centerline (or ROW line for interstates) of each proposed project alternative must be notified of an upcoming meeting (***Section 339.155, F.S.***). The names and addresses of property owners are obtained from the property appraiser's office. Notification must be sent to all affected property owners by mail **at least 20 days prior to the first meeting event**. They are notified through the use of invitational letters, newsletters, or flyers and at a minimum should include the same elements as described in ***Section 11.6.4.1***.

11.6.4.3 Florida Administrative Register Notice

Section 120.525, F.S., requires that **notices for all public meetings, workshops, and hearings must be published in the *FAR* at least 7 calendar days before the first meeting event**. All notices to be published in the ***FAR*** must be submitted electronically through the Florida Department of State's e-rulemaking website at ***www.flrules.org***.

See the ***PERK*** for sample ***FAR*** notices.

11.6.4.4 FDOT Public Meeting Notices Website

To comply with ***Section 120.525, F.S.***, **notice of all public meetings, workshops, and hearings must be published on the FDOT *Public Meeting Notices Website* at least 7 calendar days before the first meeting event**.

The public notices submittal form is located on the ***FDOT Employee Portal*** under E-Forms. Once the form is submitted online by the appropriate FDOT employee, the District Communications Office will complete the review and approval, and publish it to the website.

11.6.5 Optional Meeting Notifications

The following notices are optional for public meetings:

- Newspaper Advertisement
- Press Release
- Website and Social Media Advertisements

These notices are described in the following sections, but for additional notification methods and best practices, please see the ***FDOT Public Involvement Handbook***.

11.6.5.1 Newspaper Advertisement

A newspaper advertisement (newspaper ad) for a public meeting is not required but may be used at the discretion of the project team. When used, newspaper ads should be published in the local newspaper(s) with general circulation in the vicinity of the project. The ad should include the same information as the required notices (specifically the standard statements in ***Section 11.6.2***), but arranged in a format that suits the visual medium and the ad size.

It is suggested that the ad be published a minimum of one time, 10 to 14 days prior to the first meeting event.

11.6.5.2 Press Release

Press releases may be used in appropriate circumstances and should be approved by the Communications Office. Coordination with the District Communications Office is recommended to receive current standards and letterhead, as well as preferred distribution and review timeframes.

11.6.5.3 Websites and Social Media

Project websites are cost effective means of reaching a broad cross section of the public. Website addresses should be included in printed and digital invitations. Project websites may contain information such as meeting announcements, presentations, project information, and updates. For public hearings, project websites or other publicly accessible electronic means are typically used to make the Environmental Document and supporting information available (see ***Section 11.6.9.1***).

The established FDOT-managed website for each District is used to house individual project webpages. For rare cases, information for creating a project website compatible with FDOT standards is found on FDOT's ***Consultant Managed Web Sites*** page.

District Communications Specialists can place notifications about project events and activities on FDOT social media accounts for team members and the public to reshare. Special interest groups may be willing to share updates and notifications about the project on their social media sites. The District Communications Office can provide current standards and preferred review and distribution procedures for FDOT social media.

11.6.6 Small Group Meetings and Project Advisory Group Notification Requirements

If the project includes small group meetings or the formation of a Project Advisory Group (PAG), certain notification requirements must be met when the public is invited to attend a meeting (including invitation as an observer).

Small Group/Stakeholder Meetings: If the project team/FDOT representatives are invited to attend a standing meeting (i.e., Homeowners Association, Civic Club) to discuss a project, then FDOT is not responsible for advertisement of the meeting. If FDOT hosts a group to meet for discussion including two or more members of the same board or commission, per the ***Florida's Government in the Sunshine Law, Section 286.011, F.S.***, the meeting must be noticed in the ***FAR*** and on the FDOT ***Public Meeting Notices Website*** at least 7 days prior to the meeting.

Project Advisory Group Meetings: Other names for a PAG may include local advisory group or project advisory team. Since these meetings are organized and run by the project team, they must be noticed in the ***FAR*** and on the FDOT ***Public Meeting Notices Website*** at least 7 days prior to each meeting. If applicable, a statement that the public is invited to attend as observers may be included.

11.6.7 Public Meeting Layout and Format

For the in-person location, the layout of the meeting room is generally divided into three areas.

- Registration Area: Attendee names and preferred contact method are requested as part of the public record.
- Exhibit Area: This includes maps, exhibits to convey information about the project, and comment tables to allow participants an opportunity to sit and write their comments.
- Presentation Area: This area includes seating for presentation viewing, if a live or pre-recorded presentation is presented.

For the virtual broadcast, the same information is presented to online attendees. An FDOT project representative should open the meeting, then allow for any project presentations and opportunity to ask questions directly to the project team. For more information on how to conduct the virtual component of the meeting, see the ***FDOT Public Involvement Handbook***.

A board with the ***Civil Rights Act of 1964*** standard statement (see ***Section 11.6.2***), along with the contact information for the District Title VI Coordinator and State Title VI Coordinator, must be displayed in the physical location and that board must be referenced in the virtual presentation. ***FDOT Title VI Forms*** should be available, if requested. The ***PERK*** includes a sample Title VI board.

11.6.8 Access Management

Access Management is the process used to plan the location, design, and operation of driveways, median openings, interchanges, and street connections. Per ***Section***

335.199, F.S., FDOT must notify all affected property owners, municipalities, and counties of a proposed project that will divide a state highway, erect median barriers, or close/modify an existing access to an abutting property owner at least 180 days before the Design phase of the project is completed. At least one public meeting must be held in the jurisdiction where the project is located and receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community. Proposed access management changes that are included in the public hearing during the PD&E phase do not require a separate meeting during the Design phase. Additional information is available in ***Median Openings and Access Management, Topic No. 625-010-021***. Although access management meetings are a state requirement as opposed to a ***NEPA*** requirement, these meetings should still follow public meeting requirements detailed in ***Section 11.6***.

11.6.9 Public Hearings

While public involvement and participation is encouraged for all projects, public hearings are not required for all projects. Per ***Section 339.155(5), F.S.,*** a public hearing **is required** for a "Major Transportation Improvement". This is defined in the Statute as projects:

a. Increasing capacity through the addition of new lanes;

b. Providing new access to a limited or controlled access facility (new interchanges); and

c. Construction of a facility in a new location.

The primary difference between a public meeting and a public hearing is that a public hearing must meet formal requirements for the way it is conducted (including verbal testimony and formal transcription). Additionally, it has specific time frames associated with advertising, hearing notice, and a specific comment period.

Public hearings for Type 2 CEs are usually held prior to the submittal of the Environmental Document to OEM. EAs require OEM approval for public notice and DEISs require OEM signature before the public hearing.

11.6.9.1 Documents for Public Review

The Environmental Document (including Appendices) is typically made available for public review **within 21 calendar days prior to the first public hearing event**. This is to ensure that the documents are ready and available to the public when all notices are published. For an EA or a DEIS, the Environmental Document **must be** made available for a **minimum of 15 days in advance of the public hearing**.

Technical documents or supporting documents may be available in draft form. For a list of reports and design information typically completed during the PD&E phase, see ***Part 1, Chapter 4, Project Development Process***. Technical documents **may** be made available at the public hearing.

When preparing a ***Cultural Resources Assessment Survey (CRAS) Report*** or similar document for public review, particular care must be taken to comply with the confidentiality provisions of ***Section 304 of the National Historic Preservation Act (NHPA)*** and ***Section 267.135, F.S.***, regarding the protection of archaeological site locations within the project documentation, as applicable. It is the District's responsibility to ensure that sensitivities for these properties are fully respected in the public involvement efforts. The Environmental Manager and/or Cultural Resource Coordinator (CRC) reviews all site information to ensure that FDOT does not inadvertently release information on sites that should remain confidential.

The ***Conceptual Stage Relocation Plan***, if available, should **not** be placed on display due to sensitive information.

Locations where hard copies of the Environmental Document are displayed should be in proximity to the project, easily accessed, and with public transportation availability, if possible. All locations must be ***ADA*** compliant and provide reasonable accommodation and access to physically handicapped and disabled persons wishing to review the documents. Suggested locations may include public libraries, local MPO offices, local agency offices, and District offices. In addition, the District may provide other options including by mail or by appointment. Documents for public review should also be posted on the project website, or made available by other electronic means.

EAs and DEISs have specific federal requirements for making the Environmental Document available for public review.

An EA is made available for public inspection after OEM approves it for public notice:

- For a minimum of 15 days in advance of the public hearing (if applicable)
- At the District office for 30 days
- At the public hearing (if applicable)
- On the project website or using other publicly accessible electronic means

A DEIS is made available for public comment after OEM approves it for circulation:

- For a minimum of 15 days in advance of the public hearing

- For a 45-day comment period after publication of the ***Notice of Availability*** in the ***FR*** (see ***Part 1, Chapter 6, Draft Environmental Impact Statement***)
- At the public hearing
- In other formats when reasonably necessary and hard copies on request
- On the project website or using other publicly accessible electronic means

11.6.9.2 Public Hearing Notice Requirements

The following notices are **required** for public hearings:

- Notification to Elected Officials and Agencies
- Notification to Property Owners/Tenants (***Section 339.155, F.S.***)
- Two Newspaper Ads (***Section 339.155, F.S.***)
- ***Florida Administrative Register*** (***Section 120.525, F.S.***)
- FDOT ***Public Meeting Notices Website*** (***Section 120.525, F.S.)***

The public comment period should be included in all notifications announcing the hearing. The public hearing comment period remains open for **a minimum of 10 calendar days after the date of the last hearing event**. After the comment period, the public hearing is officially closed. All written comments received during that period become part of the public record associated with the hearing.

All notices should be drafted using plain language, per ***EO 07-01*** and all notices should include the standard statements in ***Section 11.6.2***.

When preparing a public hearing for an EA or DEIS, public notice of the availability of the Environmental Document is typically combined with the first public hearing notification.

Notifications for an EA must additionally:

- Announce the availability of the EA for public review for 30 days (start date being the newspaper ad publication date). Provide locations where the EA can be obtained or reviewed by the public (see ***Section 11.6.9.1***)
- Request comments during the 30-day availability period of the EA

Notifications for a DEIS must additionally:

- Mention of the availability of the DEIS
- Provide locations where the DEIS can be obtained and reviewed by the public (see ***Section 11.6.9.1***)
- Request comments submitted on the DEIS during the 45-day comment period (45 days from ***Notice of Availability*** publication)

For additional information, see ***Part 1, Chapter 6, Environmental Assessment*** or ***Part 1, Chapter 8, Draft Environmental Impact Statement***.

The ***PERK*** provides sample notifications and materials for use in preparing a public hearing.

11.6.9.2.1 Notification to Elected Officials and Agencies

Before holding a public hearing, a letter (or email) of invitation is sent to the local governments and agencies at least 25 but **no more than 30 calendar days prior to the first public hearing event**. The letter of invitation should be distributed to the public officials and agency representatives before the public is notified by letter or advertisement.

At a minimum, this notification should include the following, either in the body of the letter or in an attachment:

1. The purpose of the public hearing
2. An explanation of the format of the public hearing
3. The project description (the use of a project location map is suggested)
4. The date, in-person location, start times (in-person open house and in-person formal presentation), and how to participate in the virtual broadcast
5. A list of places, dates, and times where the Environmental Document and other materials will be available for public inspection
6. Standard statements (as provided in ***Section 11.6.2***)
7. Contact information for where written comments are to be sent
8. A copy of the invitation sent to property owners and tenants, if available

11.6.9.2.2 Notification to Property Owners

Section 339.155(5), F.S., directs FDOT to notify certain affected property owners prior to holding a public hearing. Specifically, all real property owners of record, in whole or in part, within 300 feet of the centerline of the proposed facility must be notified of the upcoming hearing. For interstates, within 300 feet of the ROW is used instead of the centerline. The names and addresses of property owners are obtained from the property appraiser's office. Notification must be sent to all affected property owners by mail **at least 20 calendar days prior to the first public hearing event**. Invitational letters are sent using the same elements as described in ***Section 11.6.4.1***.

Reasonable efforts are also made to notify and inform tenants and leaseholders.

11.6.9.2.3 Public Hearing Newspaper Ads

Per ***Section 339.155(5), F.S.***, FDOT must publish the public hearing notice according to a specified schedule for public hearings, i.e., a minimum of two times with the first ad appearing **at least 15 days but no more than 30 days prior to the first public hearing event**. **The second ad should run 7-12 days prior to the first public hearing event**.

The content of advertisements should at a minimum include the same items in ***Section 11.6.4.1***.

An ***Affidavit of Publication*** or proof of publication should be obtained from the newspaper and included in the ***SPI***.

11.6.9.2.4 Florida Administrative Register Notice

To comply with ***Section 120.525, F.S.***, **notice of all public hearings must be published in the *FAR* at least 7 calendar days prior to the first hearing event**. See ***Section 11.6.4.3*** for additional information.

11.6.9.2.5 FDOT Public Meeting Notices Website

To comply with ***Section 120.525, F.S.***, **notice of all public hearings must be published on the FDOT *Public Meeting Notices Website* at least 7 days before the first hearing event**. See ***Section 11.6.4.4*** for additional information.

11.6.9.3 Public Hearing Format

Public hearings should include an in-person and virtual component. These components may occur concurrently or separately (no more than 7 days apart).

A formal script should be followed to present the project and explain the ROW acquisition process to the public at public hearings. Required elements are discussed in ***Section 11.6.9.4***, and a sample script can be found in the ***PERK***.

In-Person Component

For the in-person component, there is generally an 'open house' period so that the public may review all information on display. Another part of the hearing is the formal presentation, moderated by an FDOT staff member. The third portion of the hearing is always the formal comment period where verbal statements can be recorded for the hearing record/transcription.

The venue is typically divided into three areas:

- Registration and sign-in: Attendee names and preferred contact method are requested as part of the public record. Attendees should be provided with a project handout, comment forms, and speaker cards, and instructed on how verbal and written comments may become part of the official public record.

- Hearing exhibits: The second area includes maps, exhibits, tables for special interests (such as ROW acquisition, noise, access management), and a printed copy of the Environmental Document, with appendices. The FDOT District Title VI Coordinator or designee should also be available to address questions on ***Title VI Compliance*** under the ***Civil Rights Act of 1964*** and related statutes. ***FDOT Title VI Forms*** should be available, if requested.

- Formal presentation: The third area includes seating for the formal presentation where the public can sit and watch a live or pre-recorded presentation.

Virtual Component

For the virtual broadcast, the same information is presented from the in-person component. Virtual participants must be given an opportunity to submit formal comments during the public testimony portion of the hearing, if they desire. Copies of the display boards and other materials should be posted to the project website prior to the start of the public hearing for virtual attendees to access and review. For more information on best practices and how to conduct the virtual component of the hearing, see the ***FDOT Public Involvement Handbook***.

Providing Comment

For participants interested in providing verbal comments, an opportunity to speak is provided. The length of time for the public comment period is at the District's discretion but is usually dependent on the anticipated number of people who wish to speak. The public also has the opportunity to provide their comments in writing (during the in-person component or after the in-person and virtual components via email or mail) or directly to a court reporter. Information on the comment process should be included in the project handout.

Laws and regulations applicable to the public hearing process should be placed on a display board or presentation slide. A sample statutes board is provided in the ***PERK***.

11.6.9.4 Public Hearing Presentation and Script

The public hearing is officiated by a moderator and includes a presentation followed by the public comment portion of the hearing. The moderator is typically the FDOT Project Manager. The following information is included in the public hearing presentation. The information shown in *italics,* and modified as applicable, **must** be contained in the public hearing presentation. A hearing moderator script sample is provided in the ***PERK***.

1. Introduction by Moderator

The FDOT moderator should introduce themselves, the project, and briefly introduce/identify the project team, as well as thank public officials for attending. This introduction should be done live.

After the live introduction by the moderator, the rest of the presentation can be conducted by the moderator, other FDOT staff, consultant representative, or can be pre-recorded.

2. Presentation Script

This portion of the script should contain the following sections.

a. Purpose of the public hearing and federal and state compliance

This public hearing is for project name, Financial Management Project Number ____and Federal Aid Project Number [if an FDOT Federal Project]. This project has been conducted by FDOT in compliance with applicable federal environmental laws and pursuant to 23 United States Code Section 327 [only state next part of sentence if an FDOT Federal Project] and the implementing memorandum of understanding between FDOT and the Federal Highway Administration signed on May 26, 2022.

The public hearing also serves as an official forum providing an opportunity for members of the public to express their opinions regarding the project. Public participation at this hearing is encouraged and solicited without regard to race, color, national origin, age, sex, religion, disability, or family status.

This public hearing is being conducted consistent with federal and state requirements. [If the laws are displayed on a slide, then the script could be changed as follows: "This public hearing is being conducted consistent with the federal and state requirements shown on the slide."] Persons wishing to express their concerns about Title VI may do so by contacting either the Florida Department of Transportation, District ____ office, or the Tallahassee office of the Florida Department of Transportation. This contact information is also provided in the project handout and on a sign displayed at this hearing.

b. Purpose and need and project's consistency with local and regional plans

Provide a brief summary of the project's purpose and need and status of planning consistency.

c. Discussion of alternatives

All alternatives studied, including the No-Build option, must be briefly discussed; with additional information provided on the alternatives that have been studied in further detail and documented in the Environmental Document. The advantages and disadvantages of each alternative should be provided, including major design features and estimated costs. The preferred alternative should be identified. If the preferred alternative is not chosen prior to the public hearing, see ***Section 11.6.14***.

d. Discussion of the reasonably foreseeable environmental and other impacts of the project

The potential reasonably foreseeable environmental impacts of the project must be briefly outlined. Key factors to be discussed include impacts on air quality, noise, floodplain impacts (required if encroachments per ***EO 11988***), wetlands (required if impacts per ***EO 11990***), protected species, archaeological or historical resources, ***Section 4(f)*** resources, residential and business displacements or relocations, ROW requirements, and any other pertinent topics/resources.

e. Explanation of the FDOT Right of Way acquisition and relocation process

During a public hearing, the following information must be provided to explain the ROW acquisition process and describe the compensation requirements to be followed by FDOT.

If both ROW acquisition and relocation will take place:

> *This project could include the relocation of families and businesses. For this project, we expect approximately __ families and __ businesses may need to be relocated.*
>
> *All Right of Way activities will follow Sections 339.09 and 421.55, Florida Statutes, as well as the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 —commonly known as the Uniform Act.*
>
> *If you are required to move, you can expect to be treated fairly and in full compliance with these laws. An appraiser will inspect your property, and you are encouraged to be there during the inspection. This is an opportunity to share any information that might help establish the value of your property with the appraiser.*
>
> *You may also be eligible for relocation assistance and payment benefits. If you disagree with the decision regarding your eligibility or the amount offered, you do have the right to appeal. FDOT will ensure you have the forms and assistance needed to complete an appeal.*
>
> *If you move before receiving official notice of your relocation benefits may be jeopardized. The relocation specialists for this project are available and can answer your questions and provide more information regarding Relocation Assistance.*

If the project requires only ROW:

> *This project will not cause any relocation of families or businesses. All right of way acquisition will be conducted in accordance with Sections 339.09 and 421.55, Florida Statutes, and also the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly known as the Uniform Act. The right of way specialists who are supervising this program are here tonight and will be happy to answer your questions.*

f. Explanation of how the public can provide their comments

Information is provided on all ways the public can comment during the live event and following the live event during the comment period.

g. Next steps and concluding statement

The next steps for the PD&E Study are explained including how to be notified about a project decision/approval.

3. Moderator script for public comment portion

The comment procedure for in-person and virtual attendees is explained and other ways to submit comments and the closing date of the public hearing comment period are reiterated.

11.6.9.5 Public Hearing Transcript and Certification

The in-person hearing proceedings are recorded by a court reporter and transcribed into a written transcript. Verbal and written comments are a formal part of the public record. The transcript of hearing proceedings includes the FDOT presentation (including portions that are voiced-over or pre-recorded) and all verbal public comment/testimony received at the hearing. If holding the virtual hearing component as a separate event, the hearing recording or transcript from the platform, along with any additional written comments submitted during the event, must be provided to a court reporting service for transcription if a court reporter is not in attendance. An online moderator may read aloud any comments received through the chat function for ease of adding into the hearing record.

Per ***23 U.S.C. § 128***, public hearings must be certified. For FDOT projects, this is accomplished by the Project Manager preparing a ***Public Hearing Certification Form***. This form may be completed in SWEPT or by using the ***Public Hearing Certification, Form No. 650-050-56***. If completed in SWEPT, the ***Public Hearing Transcript*** is uploaded to SWEPT and a link to it is provided in the form. If completed outside of SWEPT, the certification form and ***Public Hearing Transcript*** are uploaded to SWEPT for the project file.

For a Type 2 CE, these two documents are included in the Appendix of the Environmental Document. For an EA with FONSI, FEIS/ROD or FEIS, they are incorporated by reference. Written statements from the public, both submitted at the public hearing or during the public comment period, are included in the ***SPI***.

11.6.10 Notice of Opportunity to Request a Public Hearing

Under limited circumstances, when a Type 2 CE or an EA does not constitute a Major Transportation Improvement pursuant to ***Section 339.155(5)***, ***F.S.***, the District must obtain OEM approval in order to offer the public an opportunity to request a public hearing in lieu of holding it without a public request.

A notice of opportunity to request a public hearing is published in a local newspaper having general circulation in the project area. **A newspaper ad should be published at least 15 calendar days prior to the deadline** established by the District for receipt of requests. After the notice period has lapsed, the District requests proof of publication or an ***Affidavit of Publication*** from the newspaper that the publication was made. The proof of publication is included in the ***SPI***.

A notice of opportunity to request a public hearing is typically placed in the ***FAR*** and the FDOT ***Public Meeting Notices Website***.

The content of the notice of opportunity to request a public hearing (newspaper ad, ***FAR*** and FDOT ***Public Meeting Notices Website***) must include, as a minimum, the following information.

1. An explanation of the opportunity notice
2. A project description
3. A statement on the type of studies accomplished and a list of places where study documents are available for public inspection
4. A statement that the request for a public hearing must be submitted in writing, and the date by which the request must be received
5. The name of the District contact person
6. The address where the request for a public hearing is to be sent

When preparing an EA that does not require a public hearing, public notice of the availability of the EA is typically combined with the notice of opportunity to request a public hearing. The notice must include the additional requirements for notification of an EA listed in ***Section 11.6.9.2***. It also must be made available for public inspection as discussed in ***Section 11.6.9.1***.

If the District only receives a minimal number of requests from individuals for a public hearing, the District may contact the individuals and attempt to rectify the concern. If the request is not withdrawn, OEM is contacted to discuss next steps. If it is determined a public hearing is to be held, then notification and hearing procedures described in ***Section 11.6*** must be followed. In this case the notice of the availability of an EA would not need to be repeated in the public hearing notice.

For a sample of a notice of opportunity to request a public hearing, see the ***PERK***.

11.6.11 Joint Public Hearings

Joint public hearings can be held with other agencies if appropriate and if the project meets the public hearing criteria of both agencies. If an agency agrees to hold a public hearing jointly with FDOT, the District should establish in writing the guidelines by which the public hearing is to be held. Preparation of acceptable joint procedures ensures that the requirements of both agencies will be satisfied. This includes the format of the hearing, presentations, and all elements of the public hearing process. If the newspaper ad

notification period of the agency is different from FDOT's, then the longer period for hearing notification should be used.

11.6.12 Toll Rate Workshops and Public Hearings

Toll rate rulemaking is required in accordance with ***Chapter 120, F.S.***, Florida's Turnpike Enterprise (FTE) conducts the toll rate rule development and rulemaking for the Turnpike System and other FDOT toll facilities. Toll rate rule development and rulemaking is required before new toll projects are opened, new tolled access on existing toll facilities is opened, and to also notify the public of proposed toll rate changes.

A toll rate rule development workshop may be conducted as part of the PD&E phase. A toll rate rulemaking public hearing may be conducted following the 60 percent design of project development. However, the scheduling of any rule-related workshop or hearing is at the discretion of FDOT executive management.

11.6.13 Local Agency Managed Projects

Public meetings or public hearings may be held by a local agency (i.e., county, city) for Local Agency Managed Projects before they are transferred to FDOT. They should follow the same procedures and requirements as provided in ***Section 11.6***. The public notice requirement in ***Section 120.525, F.S.***, may be met by posting on the local agency's website. For example, if the project is anticipated to be a Local Agency Program (LAP) project, but not officially a LAP project yet, the local agency may post the public notices on their website to meet the requirements.

11.6.14 Potential Public Involvement Following a Public Hearing

If a "use" within the meaning of ***Section 4(f)*** or an adverse effect under ***Section 106*** are identified after a public hearing, the public must be provided with the opportunity to review and comment (see ***Part 2, Chapter 7, Section 4(f) Resources***).

It is normally expected that a preferred alternative is chosen prior to the public hearing. If in unusual circumstances a preferred alternative cannot be selected before the public hearing, the District should coordinate with OEM. For these situations, additional public involvement after the public hearing could be necessary and could range from another public hearing to a meeting, or a flyer/mailer. The documents should also be posted on the project website.

11.7 FINAL NOTIFICATIONS

Final notifications are published after the Environmental Document has been approved by OEM. They are not required for a Type 1 CE, NMSA, or a SEIR. The types of final

notifications include a public notice of availability of an FEIS, an Announcement of LDCA, and a ***Limitations on Claims Notice***.

11.7.1 Public Notice of Availability of a Final Environmental Impact Statement

If an FEIS is prepared separately from a ROD, after OEM approval, the FEIS is made available for public review:

- At the District office
- At institutions such as local government offices, libraries, and schools, as appropriate
- On project websites or other publicly accessible electronic means

The District places a notice of availability as a newspaper ad which advises the public of the availability of the FEIS for public review. The ad is published in the same local newspaper(s) used to advertise the public hearing. The District obtains proof of publication or an ***Affidavit of Publication*** and includes it in the ***Final Notifications Package*** (see ***Section 11.9***).

The FEIS remains available for a 30-day comment period after publication of the ***Notice of Availability*** in the ***FR*** (see ***Part 1, Chapter 9, Final Environmental Impact Statement***).

11.7.2 Announcement of Location and Design Concept Acceptance

When a Type 2 CE, EA with FONSI, FEIS/ROD, or ROD is signed by OEM it receives LDCA. An Announcement of LDCA is then published informing the public that the project has received LDCA and is being advanced.

It must be published as a newspaper ad in the same local newspaper(s) used to advertise the public hearing, if one was held (or a newspaper of general circulation).

If the project is a Type 2 CE with an ***Individual Section 4(f) Evaluation***, then the newspaper ad should also include that the ***Final Section 4(f) Evaluation*** was approved by OEM.

Once the Announcement of LDCA is published, the District obtains proof of publication or an ***Affidavit of Publication*** which is included in the ***Final Notifications Package*** (see ***Section 11.9***).

Other notifications are recommended, but not required including:

- Emailing a notice of project approval to public officials, local agencies, and interested parties
- Mailing a notice of project approval via a newsletter/flyer to property owners
- Uploading the approved Environmental Document to the project website, stating that it received approval from OEM with the approval date

Additionally, EA with FONSIs, FEIS/RODs, and RODs have specific requirements for making the Environmental Document available in conjunction with the Announcement of LDCA.

An EA with FONSI is made available to the public after OEM approval/LCDA:

- Upon request by the public
- On the project website or using other publicly accessible electronic means

An FEIS/ROD is made available after OEM approval/LDCA:

- At the District office
- At institutions such as local government offices, libraries, and schools, as appropriate
- On project websites or other publicly accessible electronic means

A ROD, if separate from the FEIS, is made available after OEM approval/LDCA:

- Upon request by the public
- On project websites or using other publicly accessible electronic means

The Announcement of LDCA for an EA with FONSI, FEIS/ROD, or ROD must also notify the public of the availability of these Environmental Documents.

11.7.3 Limitations on Claims Notice

Title 23 U.S.C. § 139(l) includes a provision for limiting the time period for filing claims and seeking judicial review of permits, licenses, or approvals issued by federal agencies for a highway or public transportation capital project. The provision establishes a statute of limitations period of 150 days for filing a challenge following publication of the notice in the ***FR*** of the agency action(s).

A ***Limitations on Claims Notice*** may be prepared for a Type 2 CE at the District's discretion or upon discussion with OEM and the Office of General Counsel (OGC).

EA with FONSIs, FEIS/RODs and RODs require preparation of a ***Limitations on Claims Notice***. For a FEIS/ROD, the ***Limitations on Claims Notice*** may be combined with the ***Notice of Availability*** published in the ***FR***. See ***Part 1, Chapter 9, Final Environmental Impact Statement*** for guidance on the ***Notice of Availability***.

The District provides the ***Limitations on Claims Notice*** to OEM. See the OEM ***Guidance for Processing Limitations on Claims*** for a sample and more information. OEM provides the ***Limitations on Claims Notice*** to FHWA for signature and electronic submittal to the ***FR***. A copy of the notice is included in the ***Final Notifications Package*** (see ***Section 11.9***).

11.8 SUMMARY OF PUBLIC INVOLVEMENT

A Summary of Public Involvement (SPI) is a technical document compiled to confirm engagement previously outlined in the ***PIP*** and contains documentation of the public involvement activities that occurred during the PD&E phase. The ***SPI*** is uploaded to the SWEPT project file and incorporated into the Environmental Document by reference.

The ***SPI*** includes the following items in order to provide documentation of compliance with state and federal public involvement requirements:

- The notification process
    - The contact lists for officials, local agencies, property owners, and interested parties, for any outreach
    - Copies of all published notifications used to invite the public to activities (i.e., letters, newsletters, ads, press releases, news media)
- A summary of all public involvement outreach events
    - Summary text for public meetings and hearings, as well as any other activities completed in the PD&E phase (i.e., small group meetings, stakeholder meetings, MPO presentations, Project Advisory Group meetings, local agency coordination, pop-up events)
    - Documentation of major milestones, including photographs, sign-in sheets, maps, graphs, handouts, display boards and/or exhibits, scans of any comment forms, comment summaries, surveys, presentations, and meeting minutes, as applicable

- Reference to the ***Public Hearing Transcript*** and certification (included in the SWEPT project file), if applicable.

- Acknowledgement and explanation of public involvement strategy changes since the ***PIP*** was finalized.

  Periodic evaluation of public involvement strategy included in the ***PIP*** is needed to determine the effectiveness of planned engagement. It is expected that tailored strategies may need to be adjusted/supplemented as more communication with the local community takes place. i.e.:

  The project team anticipated reaching out to Group X and Group Y, but during the alternatives meeting, we were notified about Group Z's interest in the project. So, the team also reached out to Group Z.

  Or:

  The project team documented anticipated coordination in the PIP with Group Y, but upon reaching out, Group Y declined participation and suggested contacting Group X. The project team coordinated with Group X through the following events:

Resource agency coordination may be mentioned in the ***SPI***, however, this coordination is discussed in detail in the applicable technical documents and the Environmental Document, and correspondence is included in the project file.

Final notifications may be referenced in the ***SPI***, but only to note that publication copies of any approval notices will be included in the ***Final Notifications Package*** (see ***Section 11.9***). A sample ***SPI*** is included in the ***PERK***.

11.9 FINAL NOTIFICATIONS PACKAGE

A ***Final Notifications Package*** confirms publication of final notifications of project approvals. It includes any ***Affidavits of Publication***, along with copies/scans of any other published notices. The package should be uploaded to the project file in SWEPT. See ***Section 11.7*** for information on final notification preparation. For a sample ***Final Notifications Package***, see the ***PERK***.

11.10 PUBLIC INVOLVEMENT AFTER THE PD&E PHASE

Public meetings or public hearings held after PD&E project approval should follow the same procedures and requirements as provided within ***Section 11.6***.

11.10.1 Median Openings

A public meeting must be held for any projects on the State Highway System which will divide a state highway, erect median barriers modifying currently available vehicle turn movements, or have the effect of closing or modifying an existing access to an abutting property owner, per ***Section 335.199 F.S.*** This meeting must be held a minimum of 180 days before the design of the project is completed. This may apply to all types of projects including resurfacing, reconstruction, standalone safety projects, and design-build regardless of the type of Environmental Document prepared.

11.10.2 Re-evaluations

During a Re-evaluation, the District determines whether changes in the project or new information warrant additional public involvement. OEM may be consulted, as needed. Any public involvement activities since the project approval or the previous Re-evaluation, should be included in the ***Re-evaluation Form***. For more information on preparing a Re-evaluation, see ***Part 1, Chapter 13, Re-evaluations***.

11.10.3 Noise Barriers and Outdoor Advertising

During the Design phase of the project, a noise abatement workshop and/or a public survey is used to determine the wishes of the benefited receptors. Each benefited receptor (owner or resident) is given the opportunity to provide input to FDOT regarding their desire to have the proposed noise abatement measure constructed. They may also be given the opportunity (at the discretion of the District) to provide input regarding their aesthetic preferences from a list of pre-selected options.

For more information, see ***Part 2, Chapter 18, Highway Traffic Noise***. Coordination with the District Noise Specialist in obtaining input during the final design of the noise barrier is suggested.

The construction of noise barriers could impact outdoor advertising signs. ***Section 479.25, F.S.,*** allows permitted, conforming, lawfully erected outdoor advertising signs to be increased in height if visibility is blocked due to construction of “noise attenuation” barriers. In addition, the Statute requires FDOT to notify a local government or local jurisdiction before erecting a noise barrier that will block a lawfully permitted sign.

The Statute also requires that FDOT hold a public hearing within the boundaries of the affected local government or local jurisdiction to receive input on proposed noise barriers that may conflict with local ordinances or land development regulations. The public hearing allows suggestions, consideration of alternatives, and modification to the proposed noise barriers to be heard in order to alleviate or minimize conflict with local ordinances and minimize any costs associated with relocating, reconstructing, or paying for the affected outdoor advertising sign (see ***FDOT Design Manual, Topic No. 625-000-***

002, Part 2). For all other considerations, see ***Part 2, Chapter 18, Highway Traffic Noise***.

11.10.4 Overlapping PD&E and Design Phases

Public meetings and public hearings held for projects with overlapping PD&E and Design phases should follow the same procedures and requirements as provided in ***Section 11.6***. A ***CAP*** is typically prepared for these projects, however a ***PIP*** may be prepared instead, depending on the needs of the project. For more information about developing a ***CAP***, see the ***FDOT Design Manual, Part 1, Chapter 104, Public Involvement, Topic No. 625-000-002***.

11.10.5 Design-Build

Once a project begins construction in a Design-Build process, it may switch to a construction public information approach (see the ***FDOT Public Involvement Handbook***). A ***CAP*** may be prepared in this instance. To support ***NEPA*** in the Design phase, see the meeting requirements outlined in ***Section 11.6***.

11.11 REFERENCES

AASHTO/ACEC and FHWA, Improving the Quality of Environmental Documents, May 2006. https://environment.transportation.org/resources/aashto-publications/improving-the-quality-of-environmental-documents/

Americans with Disabilities Act (ADA) of 1990

Chapter 120, F.S., Administrative Procedures Act

Civil Rights Act of 1964, Title VI, and Related Statutes

EO 07-01, State of Florida, Governor's Plain Language Initiative

EO 11988, Floodplain Management as amended by Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, 80 FR 6425 (Jan. 30, 2015)

EO 11990, Protection of Wetlands

FDOT, Community Engagement, Policy No. 000-525-050-j. https://pdl.fdot.gov/api/procedures/downloadProcedure/000-525-050

FDOT, Community Engagement Website: https://www.fdot.gov/planning/policy/community-engagement/index

FDOT, Efficient Transportation Decision Making Manual, Topic No. 650-000-002

FDOT, ETDM Public Access Site: https://etdmpub.fla-etat.org/est/pub/

FDOT Employee Portal: https://fldot.sharepoint.com/sites/FDOT-Portal

FDOT, FDOT Design Manual, Topic No. 625-000-002.
https://www.fdot.gov/roadway/fdm/default.shtm

FDOT, Median Openings and Access Management, Procedure No. 625-010-021

FDOT, OEM Website: http://www.fdot.gov/environment/

FDOT, Project Management Guide.
https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/designsupport/pmresources/pmg-pdf-v147c217041-a4d0-4e7a-918c-8de2c63dcded.pdf?sfvrsn=509669d4_1

FDOT, Public Engagement Resource Kit. https://www.fdot.gov/environment/oem-divisions/env/public-involvement

FDOT, Public Involvement Handbook. https://www.fdot.gov/planning/policy/community-engagement/resource-guide.shtm

FDOT, Public Meeting Notices Website:
https://www.fdot.gov/planning/policy/community-engagement/public-meeting-notices

FDOT, Title VI Forms: https://www.fdot.gov/equalopportunity/titlevi.shtm

FHWA, Public Involvement Website:
http://www.fhwa.dot.gov/planning/public_involvement/index.cfm

FHWA, Technical Advisory T6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents, October 30, 1987

FHWA, Visualization in Planning Website:
http://www.fhwa.dot.gov/planning/scenario_and_visualization/visualization_in_planning/index.cfm

Florida Administrative Register, Bureau of Administrative Code 1S-1.003(1)

Florida Administrative Register, Website: www.flrules.org

Florida Department of State’s e-rulemaking Website: www.flrules.org

National Environmental Policy Act of 1969 as amended (42 U.S.C. § 4321 et seq.). https://www.govinfo.gov/content/pkg/COMPS-10352/pdf/COMPS-10352.pdf

Section 120.525, F.S., Meetings, Hearings, and Workshops

Section 286.011, F.S., Florida's Government in the Sunshine Law

Section 335.02, F.S., State Highway System

Section 335.199, F.S., Transportation projects modifying access to adjacent property

Chapter 339, F.S., Transportation Finance and Planning

Section 339.135, F.S., Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.

Section 339.155, F.S., Transportation Planning

Section 479.25, F.S., Outdoor Advertising Signs – Noise Attenuation Barrier, as Amended by House Bill 273

Title 23 CFR Part 771, Environmental Impact and Related Procedures

Title 23 U.S.C. § 109(h) Highways – Economic, Social, and Environmental Effects

Title 23 U.S.C. § 128, Public Hearings

Title 23 U.S.C. § Part 135, Statewide and nonmetropolitan transportation planning

Title 42, Chapter 126, Section 12101: Equal Opportunity for Individuals with Disabilities

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

U.S. Department of Transportation, Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient Persons, Federal Register Volume 70, Number 239, Pages 74087-74100, December 2005 https://www.transportation.gov/civil-rights/civil-rights-library/policy-guidance-concerning-recipients-responsibilities-limited

U.S. Department of Transportation, Federal Highway Administration, Public Involvement Techniques for Transportation Decision-Making, September 1996

11.12 FORMS

Public Hearing Certification Form, Form No. 650-050-56

Table 11-1 Federal Regulations Applicable to Public Involvement Activities

Citation	Title	Purpose
42 United States Code (U.S.C.) § 2000d	Title VI of the Civil Rights Act of 1964	Prohibiting discrimination in federally-assisted programs based on race, color, or national origin
29 U.S.C. §794	Americans with Disabilities Act (ADA)	Prohibiting discrimination and ensuring equal opportunity for persons with disabilities
42 U.S.C. §§ 6101-6107	Age Discrimination Act of 1975	Prohibiting federally-assisted program from discrimination based on age
42 U.S.C. § 4321	National Environmental Policy Act (NEPA) of 1969	Requiring the consideration of potential impacts on the environment during transportation decision-making
23 U.S.C. §109(h)	Highway, Standards	Requiring that potential economic, social, and environmental impacts of proposed transportation projects are addressed
23 U.S.C. §128	Highways, Public Hearings	Requiring the opportunity for public hearings for federal-aid highway projects, and consideration of potential economic, social, and environmental effects of the implementation of the project
23 U.S.C. §135	Statewide Transportation Planning	Requiring that during development of statewide transportation plans there are sufficient opportunities for public comment
23 U.S.C. §139	Efficient environmental reviews for project decision-making	Requiring that as early as practicable there is an opportunity for public involvement in the purpose and need and range of alternatives for a project
23 Code of Federal Regulations (CFR) §450.210	Federal Highway Administration (FHWA), Department of Transportation (DOT): Interested Parties, Public Involvement, and Consultation	Requiring states carrying out the statewide transportation planning process to develop and use a documented public involvement process that provides opportunities for public review and comment at key decision points, and providing minimum criteria for the public involvement process

Table 11-1 Federal Regulations Applicable to Public Involvement Activities (Page 2 of 2)

Citation	Title	Purpose
23 CFR §771.111	Early coordination, public involvement, and project development	Requiring each state to have procedures approved by the FHWA to carry out a public involvement/public hearing program
40 CFR §6.200	Protection of the Environment	Establishes public involvement requirements as per the Environmental Protection Agency (EPA)
49 CFR Part 24	Uniform Relocation Assistance and Real Property Acquisition (Uniform Act) for Federal and Federally Assisted Programs	Ensuring that property owners displaced by federally-assisted projects receive fair treatment and entitlement
FHWA Technical Advisory 6640.8A	Guidance for Preparing and processing Environmental and Section 4(f) documents.	Guidance (not regulatory) emphasizing early coordination with agencies and the public in the preparation and processing of environmental documents and Section 4(f) documents

Table 11-2 State Regulations Applicable to Public Involvement Activities

Citation	Title	Purpose
S. 120.525, Florida Statutes (F.S.)	Meetings, hearings, and workshops	Notice publication and agenda requirements for public meetings, hearings, and workshops
S. 286.011, F.S.	Government in the Sunshine Law	All meetings of public boards and commissions should be open to the public, with no discrimination, and with sufficient notice. Meeting minutes should also be publicly accessible.
S. 335.02(1), F.S.	Authority to designate transportation facilities	Notice requirements for a public hearing prior to redesignating or relocating transportation facilities which are part of the State Highway System
S. 335.199, F.S.	Transportation projects modifying vehicle movements and access to adjacent property	Requiring a public meeting within the jurisdiction (city/county) of the project when the Florida Department of Transportation (FDOT) proposes to divide a state highway, erect median barriers, or close or modify existing access to abutting commercial business properties
S. 339.135, F.S.	Work program; legislative budget request; definitions; preparation, adoption, execution and amendment	Requiring a public hearing prior to submittal of the District Work Program
S. 339.155, F.S.	Transportation planning	Requiring public involvement procedures for the transportation planning process. In the event of a major transportation improvement, a public hearing should be held prior to selecting the project site and the improvement alternative.
House Bill (HB) 1877	Jessica Lunsford Act	FDOT policy prohibits holding any public meetings at public school facilities (K-12). For exceptions, approval from the FDOT's Assistant Secretary of Engineering and Operations is required. Alternate venues include colleges, universities, and private schools.
Executive Order 07-01	Plain Language Initiative	Requiring the use of clear plain language in communication with the public to ensure an understandable format

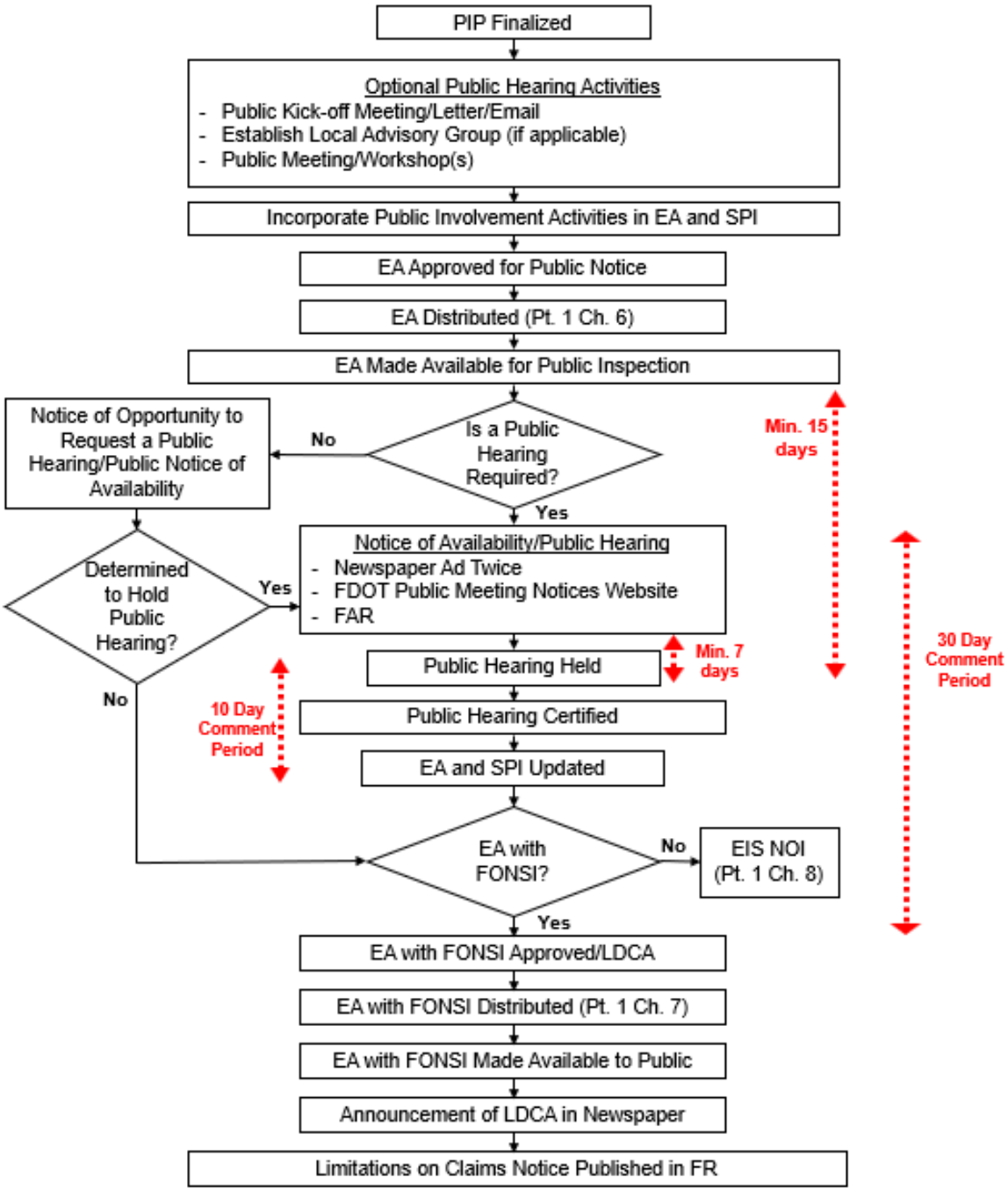

Figure 11-1 Typical Public Involvement and Notice Activities for an EA and EA with FONSI

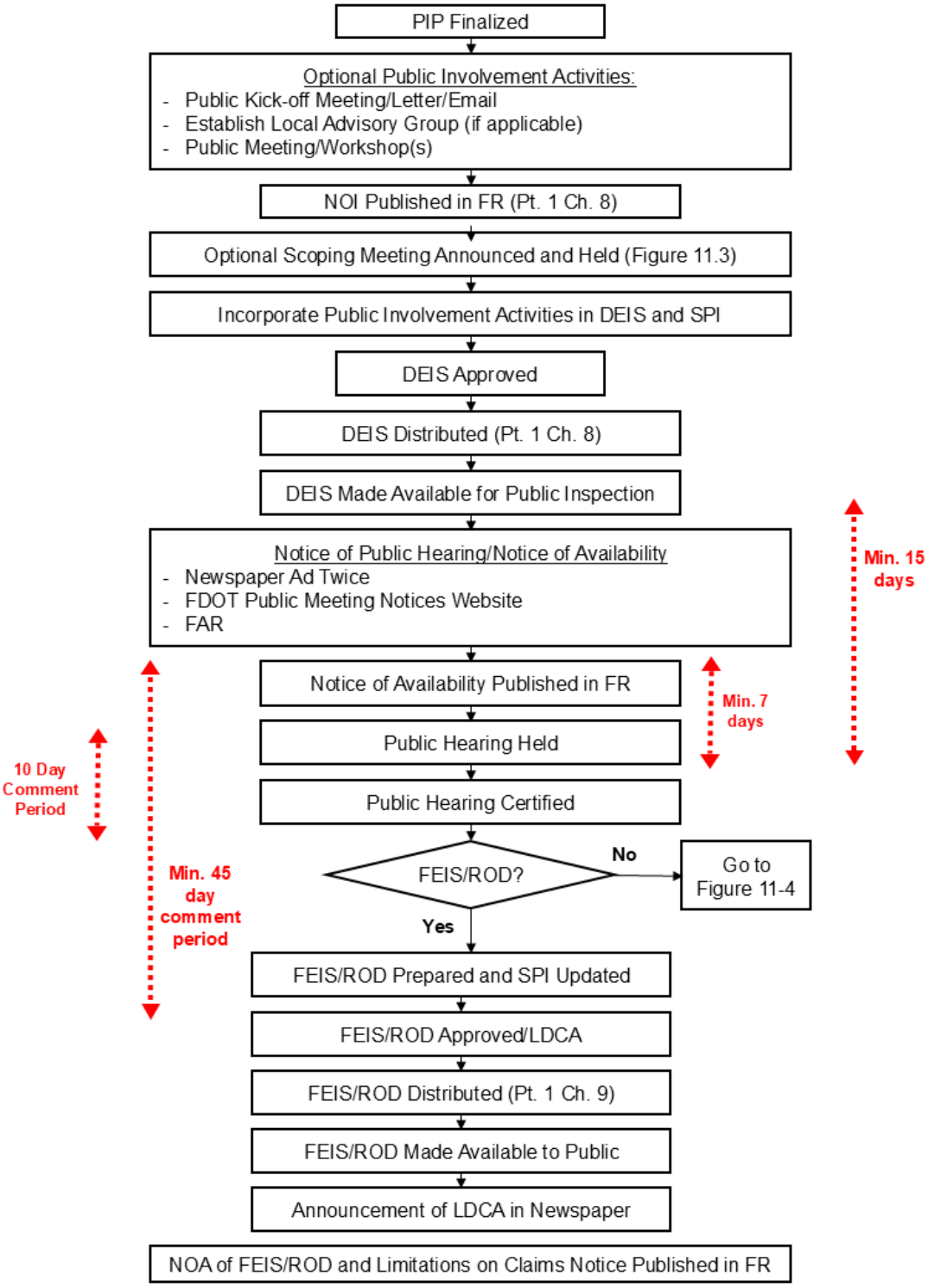

Figure 11-2 Typical Public Involvement and Notice Activities for a DEIS and FEIS/ROD

If a formal scoping meeting is to be held for an EIS, guidance is provided below:

Invitation

A scoping meeting is initiated by an invitational letter or email sent by the District to relevant government agencies, public interest groups, and others with an interest in or knowledge about the project. The public is permitted to attend and listen to the proceedings. The invitation should:

- Give notice that a scoping meeting is being held. Notice is provided in the FAR and FDOT Public Meeting Notices Website.
- Describe why the meeting is being held (FDOT expected outcome of the meeting; roles of participants)
- Provide information about the project and potential alternatives (including project location map)
- Provide information on the date, time, physical location of the scoping meeting, directions on how to get to the physical location, how to participate virtually, and meeting agenda
- Provide contact information for the project representative

Meeting Format

The format of a scoping meeting entails a formal presentation to fully acquaint attendees with the project. While a formal agenda should be followed, the setting and tone of the meeting should be relaxed and conducive to good interaction among attendees.

A field visit or virtual field review may be scheduled. After the field visit/review, participants would then reconvene and further discuss potential project issues. Before adjourning, each agency is asked to state its position on the identified issues. Each agency's position is then included in a meeting summary (minutes) for use by FDOT.

Agenda

The activities below may take place or be discussed at the meeting.

Discuss the scope and significance of issues and the degree of analysis required in the EIS. This includes identification of the range of alternatives and potential impacts.

Figure 11-3 Guidelines for an Environmental Impact Statement Scoping Meeting

- Discuss the elimination from detailed study those issues that are not significant or have been covered by prior environmental studies, thereby narrowing discussion in the EIS to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

- Allocate assignments for preparation of the EIS among FDOT and cooperating agencies, with FDOT retaining responsibility for the EIS.

- Discuss any adjacent or nearby projects that are being prepared and are related to, but are not part of, the scope of the EIS under consideration.

- Discuss other environmental review and consultation requirements so that FDOT and cooperating agencies may prepare, if possible, other required analyses and studies concurrently with, and integrated with, the EIS.

- Discuss any permits, licenses, or entitlements that are necessary.

- Determine whether a joint public hearing can be held and outline the coordination required.

- Determine the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decision-making schedule.

Meeting Follow-up

The meeting summary/meeting minutes are forwarded to all attendees, agencies that showed interested in participating but could not attend the scoping meeting, and those on the invitation mailing list. The minutes of all events are included in the SWEPT project file.

Figure 11-3 Guidelines for an Environmental Impact Statement Scoping Meeting (Page 2 of 2)

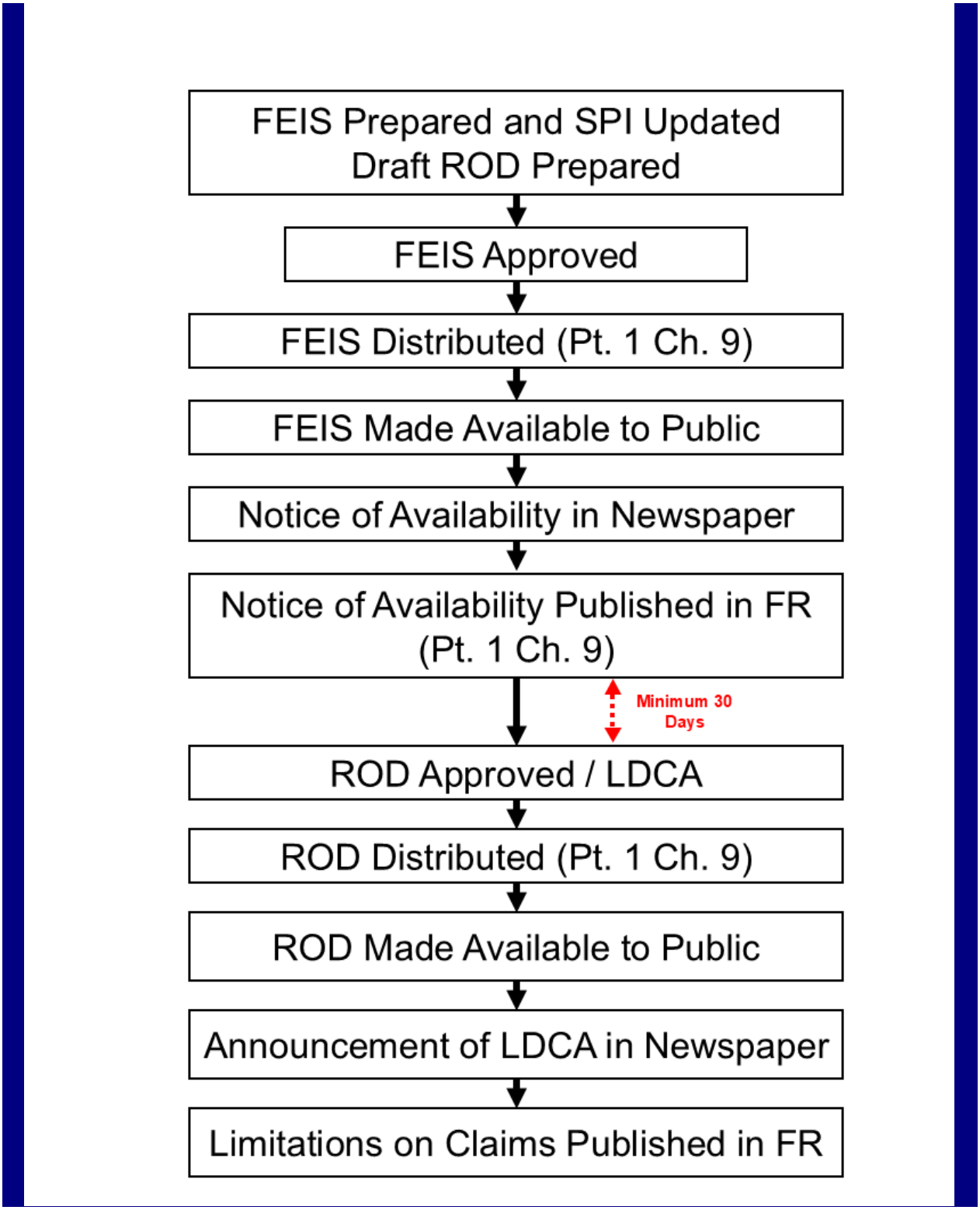

Figure 11-4 Typical Notice Activities for a FEIS and Separate ROD

PART 1, CHAPTER 12

ENVIRONMENTAL PERMITS

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PART 1, CHAPTER 12

ENVIRONMENTAL PERMITS

12.1 OVERVIEW

This chapter details the environmental permits that may be required for Florida Department of Transportation (FDOT) projects as well as coordination required from project planning through construction and maintenance. The need to obtain an environmental permit for a transportation project is determined by the project's impact on a protected resource. ***Table 12-1*** identifies the most common federal and state laws, and agency rules and policies associated with environmental permits for transportation projects.

For qualifying projects, FDOT's Efficient Transportation Decision Making (ETDM) process is initiated during the Planning phase where resource agencies review projects to identify potentially affected resources and permits that FDOT may need to obtain. See ***Section 12.3.2*** for guidance on projects that qualify for ETDM screening.

In the Project Development and Environment (PD&E) phase, FDOT develops technical reports as needed, completes environmental analyses, and prepares an Environmental Document that identifies the preferred alternative to be designed. Resource impacts are evaluated, mitigation options are identified, and commitments may be made with regulatory/resource agencies. Information gathered during PD&E can support environmental permit applications. More guidance on preparing for permitting during PD&E is provided in ***Section 12.3.3***.

Permitting is generally initiated during the Design phase (i.e., typically after Phase II design plans or 60% plans), but can be advanced in the PD&E phase if enough detailed information regarding project and resource impacts is available. Efforts to avoid and minimize impacts to protected resources will assist in efficiently navigating the permitting process to assure regulatory agencies that the project will not result in unacceptable impacts. After FDOT meets the regulatory agency's permitting criteria, the permit is issued. Guidance on the permitting process in the Design phase is provided in ***Section 12.3.5***.

During Construction, FDOT ensures environmental permit compliance and confirms that permit conditions are addressed as specified in the contract documents. Environmental permit compliance is handled by the Construction Office. Guidance on environmental permitting issues during Construction is provided in ***Section 12.3.6***.

An additional resource for environmental permitting is FDOT's ***Permit Handbook***.

12.1.1 District Roles and Responsibilities

The District ETDM Coordinator screens qualifying projects in the Environmental Screening Tool (EST) and transmits agency comments to the PD&E Project Manager and Environmental Permits Coordinator. See the ***ETDM Manual, Topic No. 650-000-002*** for details on ETDM Coordinator and Environmental Permits Coordinator responsibilities during ETDM.

The District prepares the appropriate Environmental Document and supporting technical reports for the project.

The Environmental Permits Coordinator is responsible for obtaining the necessary project permits. They also coordinate with Environmental Office staff during PD&E, review the Environmental Document and applicable technical reports, coordinate with resource agencies during project permitting, and coordinate with Construction staff as necessary. The responsibilities of the Environmental Permits Coordinator may also be handled by other District staff, such as District Environmental Permitting Engineer, Environmental Permits Coordinator, or Drainage Engineer. Throughout the remainder of this chapter this position will be referred to as the Environmental Permits Coordinator.

Design Project Managers in coordination with the District Drainage Engineer and Environmental Permits Coordinator ensure that permits are obtained in accordance with the project schedule and the project design incorporates environmental commitments, as appropriate.

The Construction Project Administrator is responsible for compliance during the Construction phase. For more information on the responsibilities of the Construction Project Administrator, see ***Section 8.2*** of the ***Construction Project Administration Manual (CPAM), Topic No. 700-000-000***.

12.1.2 Definitions

The definitions below are used throughout this chapter.

Compensatory Mitigation (federal definition) - The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances of preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization have been achieved. See ***33 Code of Federal Regulations (CFR) § 332.2***.

Critical Habitat - For federally listed species, critical habitat consists of: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of ***Section 4*** of the ***Endangered Species Act (ESA)***, on which are found those physical or biological features (constituent elements) (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area

occupied by the species at the time it is listed in accordance with the provisions of ***Section 4*** of the ***Act***, upon a determination by the Secretary that such areas are essential for the conservation of the species [***ESA Section 3 at (5)(A)***]. Designated critical habitats are described in ***50 CFR §§ 17 and 226***.

Design-Build (DB) - A project delivery contracting method whereby one entity performs both design and construction under one single contract.

Design-Bid-Build - A project delivery method whereby the contracting agency either performs the design work in-house or negotiates with an engineering design firm to prepare drawings and specifications under a design services contract, and then separately contracts for at-risk construction by engaging a contractor through competitive solicitation.

Direct Effects - Effects that are caused by the activity and occur at the same time and place. The terms “impacts” and “effects” are used interchangeably in this chapter. See ***86 Federal Register (FR) 2744***.

Discharge of Dredged Material - Any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. See ***33 CFR § 323.2(d)***.

Discharge of Fill Material - The addition of fill material into waters of the United States. See ***33 CFR § 323.2(f)***.

Dredging - Excavation, by any means, in surface waters or wetlands. It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated in ***Section 373.421(1), Florida Statutes (F.S.)***, directly or via an excavated water body or series of water bodies. See ***Section 373.403(13), F.S***.

Essential Fish Habitat (EFH) - Those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of Essential Fish Habitat (EFH): "waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle. See ***50 CFR § 600.10***.

Fill - Material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States. Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. The term fill material does not include trash or garbage. See ***33 CFR § 323.2(e)***.

Filling - The deposition, by any means, of materials in wetlands or other surface waters, as delineated in ***Section 373.421(1), F.S***. See ***Section 373.403(14), F.S***.

Incidental Fallback - The redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal. Examples of incidental fallback include soil that is disturbed when dirt is shoveled and the back-spill that comes off a bucket when such small volume of soil or dirt falls into substantially the same place from which it was initially removed. See ***33 CFR § 323.2(d)(2)(ii)***.

Incidental Take (federal definition, ***ESA***) - Take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a federal agency or applicant, or contractors working on behalf of the applicant. See ***50 CFR § 402.02***.

Incidental Take (state definition) - Any taking otherwise prohibited, if such taking is incidental to, and not the purpose of the carrying out of an otherwise lawful activity. See ***Rule 68A-27.001(5), Florida Administrative Code (F.A.C.)***.

Indirect Effects - Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. See ***86 FR 2744***. The terms “indirect’ and “secondary” are used interchangeably in this chapter.

Mitigation (state definition) - An action to off-set the adverse impacts caused by an activity typically consisting of restoration, enhancement, creation, or preservation of wetland resources, or a combination thereof. Measures proposed by or acceptable to the applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under ***Section 373.4136, F.S.*** See ***Section 373.414(1)(b), F.S***.

Mitigation Sequence - A federal process by which proposed wetland impacts must be avoided to the maximum extent practicable; the remaining unavoidable impacts must then be minimized, and finally compensated for, to the extent appropriate and practicable.

Navigable Waters of the United States - Those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water line and/or those waters that are presently used, or have been used in the past or may be susceptible to use for interstate or foreign commerce. These are waters that are navigable in the traditional sense. Permits are required in these waters pursuant to ***Section 10*** of the ***Rivers and Harbors Act of 1899***. See ***33 CFR § 329.4***.

Non-tidal wetland - A wetland that is not subject to the ebb and flow of tidal waters. Nontidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line). See ***86 FR 2744***.

Ordinary High Water Line (state definition) - For the regulatory purposes of ***Chapter 62-330, F.A.C.***, means that point on the slope or bank where the surface water from the water body ceases to exert a dominant influence on the character of the surrounding vegetation and soils. The ordinary high water line frequently encompasses areas dominated by non-listed vegetation and non-hydric (i.e., upland) soils. See the ***Environmental Resource Permit (ERP) Applicant's Handbook, Volume I***.

Ordinary High Water Mark (with respect to non-tidal waters) - The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed upon the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. See ***33 CFR § 328.3(e)***.

Sovereignty Submerged Lands - Those lands by which the State of Florida acquired title on March 3, 1845, by virtue of statehood. Sovereignty submerged lands include all submerged lands, title to which is held by the Board of Trustees (Governor and Cabinet) of the Internal Improvement Trust Fund (TIITF). Sovereignty submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters.

Stormwater - The surface flow of water that results from, and that occurs immediately following, a rainfall event.

Stormwater Management System - A surface water management system that is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system [***Sections 373.403(10)*** and ***403.031(16), F.S.***].

Surface Water (state definition) - Means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface [***Section 373.019(21), F.S.***]. ***Rule 62-340.600, F.A.C.***, further defines surface waters as waters on the surface of the earth, contained in bounds created naturally or artificially, including, the Atlantic Ocean, the gulf, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, and other watercourses.

Take (federal definition, ***ESA***) - "The term 'take' means to **harass**, **harm**, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct **[*16 United States Code (U.S.C.) § 1532(19)*]**."

- **Harm** - Significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding or sheltering.

- **Harass** - Intentional or negligent acts or omissions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include but are not limited to breeding, feeding, or sheltering (***50 CFR § 17.3***).

Take (state definition) - To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct (***Rule 68A-27.001(4), F.A.C.***).

- **Harm** - An act which actually kills or injures fish or wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

- **Harass** - An intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

Take (as related to state and federal bald and golden eagle permitting) - To "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb" an eagle.

- **Disturb** - To "agitate or bother a bald or golden eagle to the degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior" (***Title 50 CFR § 22.3)***. The ***Florida Fish and Wildlife Conservation Commission (FWC)*** **Bald Eagle Mana*gement Plan*** adopts the federal definition of "disturb" in ***50 CFR § 22.3*** and Florida's definition of "take" in ***Rule 68A-1.004(79), F.A.C***.

Tidal wetland - A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line. See ***86 FR 2744***.

Waters of the United States - Waters of the United States is defined in ***33 CFR Part 328*** and ***40 CFR § 122.2*** and is the jurisdictional boundary of a water that is regulated by the United States Army Corps of Engineers (USACE) or the United States Environmental Protection Agency (EPA) under the ***Clean Water Act (CWA)***.

Wetlands (federal definition) - Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. (***40 CFR § 232.2***)

Wetlands (state definition) - Those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. See ***Section 373.019(27), F.S***.

12.2 PERMITTING AGENCIES AND ENVIRONMENTAL REGULATIONS

Environmental permits are required from one or more regulatory agencies for most land alterations, including the addition of impervious surfaces; construction, alteration, or abandonment of stormwater management facilities; impacts to wetland or surface waters (including navigable waters); and actions that could adversely affect protected wildlife species and/or their habitat.

Permit applications are reviewed by the regulatory agencies for their consistency with regulatory criteria and/or the effect of the project on the environmental resources (e.g., wetlands, water quality, protected species and their habitats). Through the application process, the regulatory agencies may request other agencies to review transportation projects to ensure that they are not adversely impacting the resources (i.e., wildlife, habitat, cultural) under their purview. Certain protected species impacts may also require a specific species permit.

FDOT typically coordinates with the agencies listed below throughout the permitting process. More details on the permitting agencies can be found in ***Section 12.2.1***.

Federal Agencies

The USACE has the authority to issue permits under ***Section 10 of the Rivers and Harbors Act*** and ***Section 404 of the Clean Water Act (CWA)*** for activities involving the discharge of dredge and fill materials into waters of the United States, including wetlands. The USACE may grant permission to alter a civil works project in accordance with ***Section 14 of the Rivers and Harbors Act [33 United States Code (U.S.C.) § 408]***, commonly referred to as ***Section 408***.

The U.S. Coast Guard (USCG) has the authority to issue permits under ***Section 9 of the Rivers and Harbors Act*** and ***General Bridge Act***. The USCG issues permits for bridges or causeways in or over navigable waters of the United States, and for causeway construction in all tidal waters of the United States.

The U.S. Environmental Protection Agency (EPA) develops and interprets policy, guidance and environmental criteria used in evaluating federal permit applications. The

agency also serves as the water resource commenting body during the federal permitting process and has veto authority over the issuance of a USACE permit.

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) serve as the federal wildlife commenting agencies during the USCG and USACE federal permitting processes. The USFWS and/or NMFS act as lead permitting agencies for ***Section 10*** permitting under the ***Endangered Species Act (ESA)***.

The Advisory Council on Historic Preservation (ACHP) serves as a review agency on permit applications where any district, site, building, structure, or object, that is included in or eligible for inclusion in the ***National Register of Historic Places (NRHP)*** may be affected. The day-to-day responsibilities for project reviews are carried out by the State Historic Preservation Officer (SHPO), or the Tribal Historic Preservation Officer (THPO) of the Seminole Tribe of Florida for projects occurring on Seminole tribal lands. When projects occur on tribal lands of the Miccosukee Tribe of Indians of Florida, the SHPO serves as the THPO but the Tribe must be included in the consultations. For significant sites occurring on non-tribal lands that may have cultural or religious importance to the Tribes having cultural affiliation with Florida, the Tribes must be provided an opportunity to comment on the effects of the project on the site. These Tribes include: the Seminole Tribe of Florida, the Miccosukee, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Nation of Oklahoma and, for projects west of the Apalachicola River, the Mississippi Band of Choctaw Indians.

State Agencies

The Florida Department of Environmental Protection (FDEP) is the State's primary environmental regulatory agency. FDEP has delegated much of the permitting responsibility for Environmental Resource Permits (ERPs) to four of the five Water Management Districts (WMDs) and specified local governments. The Northwest Florida Water Management District (NWFWMD) does not have full ERP authority from FDEP. FDEP implements the National Pollution Discharge Elimination System (NPDES) and Coastal Construction Control Line (CCCL) permitting programs throughout the State. The permitting responsibilities of each agency are detailed in the FDEP and WMD agency operating agreements.

The five WMDs are: NWFWMD, Suwannee River (SRWMD), St. Johns River (SJRWMD), South Florida (SFWMD), and Southwest Florida (SWFWMD). WMDs have been delegated permitting authority by FDEP for discharges, including stormwater discharges; dredge and fill activities in, on, or over waters of the State; construction activities which discharge to waters of the State; and, state-owned submerged lands which include all tidal lands and submerged lands under navigable waters owned by the State of Florida. The NWFWMD does not have full permitting authority from FDEP; the FDEP processes permit applications for projects with submerged lands and actions on military bases within the geographic area of the NWFWMD. Right of Way (ROW) Occupancy permits may be required for projects impacting WMD property.

The Florida Fish and Wildlife Conservation Commission (FWC) serves as the state wildlife commenting agency on state environmental permits and issue certain protected species permits.

The Director of the Florida Division of Historical Resources (FDHR) at the Department of State serves as the SHPO for the State of Florida. The FDHR is a commenting agency on certain state environmental permits and the SHPO is the commenter on federal permits that may impact historical resources. The SHPO assists the regulatory agency in determining whether a proposed activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of ***Section 267.061, Florida Statutes (F.S.)***.

The Bureau of Archaeological Research (BAR) within the Department of State issues permits for archaeological testing and research occurring on state-owned or controlled lands, including sovereign submerged lands under ***Chapter 1A-32***, ***Florida Administrative Code (F.A.C)***.

Section 335.02(4), F.S., provides that FDOT is not subject to county, municipal, or special district regulations for projects on the State Highway System (SHS) and therefore is not required to obtain local permits. Notwithstanding, if an FDOT project has a direct impact on property or water control district structures, FDOT shall coordinate with the District legal counsel and may need to coordinate with the appropriate county, municipality, or special district based on counsel direction.

Both the state and federal permitting programs have established various permit types based on specific impact thresholds and/or activity types. The permit types and threshold criteria are described in detail in the USACE's ***Source Book*** and in the ***ERP Applicants Handbook, Volume I***, referenced in ***Figure 12-1*** and ***Figure 12-2***. Additionally, both the state, via delegated authority for federal programmatic permits, and the Lead Federal Agency may use certain species-specific "effect" determination keys in order to assess the effect a given project may have on a federally protected species. These keys, FDOT programmatic approaches, and supplemental protected species information, can be found on FDOT's ***Protected Species and Habitat Website***.

Additionally, there are state and federal species–specific wildlife permitting requirements unrelated to the dredge and fill permitting process. These requirements are typically implemented shortly in advance of the commencement of construction. Refer to ***Section 12.2.3*** for a discussion of these permits. See ***Part 2, Chapter 16, Protected Species and Habitat*** for more information.

12.2.1 Federal Permitting

Federal permits are issued by multiple federal agencies under various regulatory authorities. Permits are typically required for proposed impacts to jurisdictional wetlands and other surface waters, impacts to civil works projects, and for bridge or causeway construction over navigable waters of the United States. For these types of impacts, the

USACE and USCG are the primary federal permitting agencies for FDOT projects. ***Table 12-2*** lists the main federal authorizations needed from these regulatory agencies. Impacts to protected federal species may need to be permitted by either USFWS or NMFS. See ***Section 12.2.3*** for federal species permit information.

The USACE issues dredge and fill permits in Waters of the United States in accordance with ***Section 404*** of the ***CWA*** and ***Section 10*** and ***Section 14*** of the ***Rivers and Harbors Act of 1899***.

Additionally, ***Section 10*** of the ***Rivers and Harbors Act of 1899*** grants the USACE the permitting authority for "structures or works in or affecting a navigable water of the United States." Such structures or works include boat ramps, piers, breakwaters, jetties, docks, bridge abutments, and aids to navigation. ***Section 14*** of the ***Rivers and Harbors Act*** allows the USACE to grant permission to alter civil works projects.

If a project involves a bridge over navigable waters of the United States, the USCG issues bridge permits under the ***Rivers and Harbors Act of 1899*** and the ***General Bridge Act of 1946***. These ***Acts*** placed the navigable waters of the United States under the exclusive control of the USCG to prevent any interference with their navigability by bridges or other obstructions except by express permission of the United States Government.

As federal permitting authorities, either the USACE or USCG must prepare a ***National Environmental Policy Act (NEPA)*** document in support of their ***NEPA*** action (permit). If either agency participates as a Cooperating Agency in an FDOT Federal Project, they may adopt the FDOT's ***NEPA*** document as their own, or they may use it to develop their own ***NEPA*** document. It is important to coordinate early with the USACE or USCG to confirm that the FDOT ***NEPA*** document, or a State Environmental Impact Report (SEIR), will address the Cooperating Agency's ***NEPA*** requirements so as to expedite project delivery.

FDOT typically invites the USACE to be a Cooperating Agency when a Standard permit is anticipated for a project. The USACE may be invited to be a Participating Agency when FDOT anticipates a General Permit (includes Regional General and Nationwide permits) is needed. Cooperating or Participating Agency invitations should not be sent until FDOT has determined the appropriate permit type for a project. The USACE may instead request to be a Cooperating or Participating Agency. The District should consider the USACE's request on a case by case basis. FDOT will continue to coordinate with the USACE and share information relevant to the permitting process when warranted regardless of the agencies status as a Cooperating or Participating Agency for a PD&E Study. The USCG will automatically be invited to be a Cooperating Agency for projects requiring a USCG bridge permit.

The USFWS and the NMFS serve as the federal wildlife commenting agencies during the USACE's or USCG's federal permitting process. Which agency provides comment depends upon which protected species (terrestrial and/or marine) or critical habitat are potentially affected. If FDOT has completed consultation with USFWS and NMFS under

the ***ESA*** or ***Magnuson-Stevens Fishery Management Act***, the USACE or USCG can rely on the results of such consultation. The EPA serves as the water resource commenting body during the federal permitting process and has veto authority over the issuance of a USACE permit.

In the absence of a Federal Action when an action has the potential to adversely affect a federally listed species or its habitat, the listed species will be addressed via ***Section 10*** of the ***ESA***. In these situations, the USFWS or NMFS serves as the Lead Federal Agency and would have to prepare a ***NEPA*** document in support of their permit action. This process also requires the development of a ***Habitat Conservation Plan (HCP)***. See ***Part 2, Chapter 16, Protected Species and Habitat*** for more information on ***Section 10*** of the ***ESA***. For protected species permitting, see ***Section 12.2.3***.

Regardless of whether the USACE and/or USCG function as the permitting agency or serve as lead or cooperating agencies for a Federal Action, the issuance of federal permits requires coordination with resource agencies. If a project is determined to have the potential to affect federally listed species or their habitats, the USACE or USCG will solicit comment from NMFS and/or the USFWS following the ***ESA Section 7*** consultation process outlined in ***Part 2, Chapter 16, Protected Species and Habitat***. If a project is determined to have the potential to affect Essential Fish Habitat (EFH), the USACE or USCG will solicit comment from the NMFS (***Part 2, Chapter 17, Essential Fish Habitat***). For projects that require public notification of the Federal Action, the EPA may provide comment. For projects where FDOT has completed ***ESA Section 7*** and/or EFH consultation or technical assistance, the results of the consultation or coordination will be provided to the applicable permit issuing agency.

Additionally, the USACE, USCG, or USFWS are required to comply with ***Section 106*** of the ***National Historic Preservation Act of 1966 (NHPA)***. ***Section 106*** of the ***NHPA*** requires federal agencies to take into account the effects of their undertakings on historic properties, and afford the ACHP a reasonable opportunity to comment. The review process mandated by ***Section 106*** to assess a project's effects on historic properties is outlined in regulations issued by ACHP (see ***Part 2, Chapter 8, Archaeological and Historic Resources***). For projects where FDOT has completed ***Section 106*** consultation, the results will be provided to the applicable permit issuing agency.

12.2.1.1 United States Army Corps of Engineers

Activities in waters of the United States regulated under ***Section 404*** of the ***CWA*** include (but are not limited to) fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), and mining projects. ***Section 404*** requires issuance of a permit before dredged or fill material may be discharged into jurisdictional waters, unless the activity is exempt from ***Section 404*** regulation (e.g., certain farming and forestry activities).

As described by the EPA ***(EPA, 2015)***, the basic premise of the ***Section 404*** program is that no discharge of dredged or fill material may be permitted if:

1. A practicable alternative exists that is less damaging to the aquatic environment; or

2. The nation's waters would be significantly degraded.

   Therefore, a proposed activity must first show that steps have been taken to:

   a. Avoid impacts to wetlands, streams and other aquatic resources;

   b. Minimize adverse effects on the resource, if impacts are unavoidable; and

   c. Compensate for all remaining unavoidable impacts (i.e., wetland or listed wildlife mitigation) such that there is no net loss of wetland function from the proposed project.

There are several federal dredge and fill permit types that are distinguished by their limits of impact. In increasing magnitude/complexity, they include Nationwide Permits, Regional General Permits, State Programmatic General Permits, Letter of Permission, and Standard Permits. Additionally, it is possible to obtain a determination from the USACE of "no permit required" if a project is anticipated to have no impact on wetlands or surface waters under the jurisdiction of USACE. This determination by the USACE does not supersede the requirement to obtain any other federal or state permits which may be necessary for a project, nor does it constitute a federal evaluation of possible impacts to species protected under the ***ESA***, or impacts to historic resources protected under ***Section 106*** of the ***NHPA***.

1. **General Permit** - This refers to a USACE authorization that is issued on a nationwide or regional basis (District-wide or more limited geographic scope) for a category of activities when those activities are substantially similar in nature and cause only minimal individual and cumulative impacts ***(USACE, 2014)***. They are reviewed every five years and may be renewed, modified or suspended. The USACE's ***Source Book***, included by reference in ***Figure 12-1*** should be reviewed for an entire listing of thresholds for a project to qualify under a general permit. Coordination with the USACE will ensure the project impacts meet the requirements for general permit authorizations. It is important to note that "consideration of alternatives in ***40 CFR § 230.10(a)*** are not directly applicable to General Permits" ***[40 Code of Federal Regulations (CFR) § 230.7]***.

   a. **Nationwide Permits (NWP)** - There are more than 50 established NWPs. These are essentially automatic permits for qualifying activities that result in only minimal adverse environmental effect. Each NWP includes a series of impact thresholds, such that if a project's anticipated impacts fall below the specified thresholds, the project would qualify for the NWP without review by or approval of the USACE. However, it is recommended to submit an application package to the USACE and request that the USACE concur with the determination that the project

is consistent with the thresholds associated with a given NWP. With concurrence from USACE, the applicant will have a level of comfort that their project is consistent with the federal intent of the NWP. Without USACE concurrence, an applicant may run the risk of being in violation of the ***CWA*** during construction if there is a disagreement with a USACE representative as to whether their project is consistent with NWP intent.

There are certain NWPs that require Pre-Construction Notification (PCN) prior to project construction due to variability in the degree of potential impacts for a given type of work. In accordance with ***33 CFR § 330.1*** for NWPs requiring advance notification, the notification must be provided in writing as early as possible prior to commencing the proposed activity, but must be received no less than 45 days prior to commencing construction. The permittee may presume that the project qualifies for the NWP unless the permittee is otherwise notified by the USACE within a 45-day period. The 45-day period starts on the date of receipt of the notification in the USACE district office and ends 45 calendar days later. If the USACE notifies the prospective permittee that the notification is incomplete, a new 45-day period will commence upon receipt of the revised notification. The prospective permittee may not proceed with the proposed activity before expiration of the 45-day period unless otherwise notified by the USACE. If the USACE fails to act within the 45-day period, the USACE must use the procedures of ***33 CFR § 330.5*** to modify, suspend, or revoke the NWP authorization.

Both the NWPs, and the General Conditions required in PCN, are itemized in the ***FR*** and on the USACE web site (See ***Figure 12-1***). It is important to be aware of general conditions associated with NWP. For example, general condition 18 requires consultation with the NMFS or USFWS if the project activity may affect a listed species or critical habitat protected under the ***ESA***.

NWPs are reviewed and generally renewed every five years, so it is important to keep abreast of current NWP listings. Coordination with the USACE will ensure the applicant meets the requirements under NWP authorizations. NWP that are typically relevant to FDOT projects include: NWP No. 3 Maintenance, No. 14 Linear Transportation Projects, No. 15 USCG Approved Bridges, and No. 23 Approved Categorical Exclusions.

b. **Regional General Permits** that may apply to FDOT projects.

Regional General Permit **SAJ-92** is applicable for projects with identified impact thresholds [i.e., where dredge and fill impacts do not result in the loss of greater than a total of 0.5 acre of tidal impacts to waters of the United States (wetlands, surface waters and navigable waters) for the entire project, and 5.0 acres of non-tidal impacts to waters of the United

States (wetlands, surface waters and navigable waters) for any 1-mile segment of roadway length as measured from the beginning of the project, up to a maximum loss of 50 acres of waters of the United States per project]. This regional general permit is limited to projects that have been reviewed through the FDOT's ETDM and/or PD&E processes. To be current, the Environmental Document must have been evaluated, re-evaluated, or confirmed within 5 years of submitting an application. This regional general permit may not authorize construction of a new alignment (non-existing roadway).

Regional General Permit **SAJ-46**, Shoreline Stabilization Activities in Florida, may also be applicable to FDOT projects. This permit authorizes new work and maintenance associated with shoreline stabilization activities including bulkheads and seawalls with backfill, seawall footers, and shoreline stabilization materials.

c. **State Programmatic General Permits (SPGP)** - The purpose of the SPGP is to avoid duplication of permitting between the USACE and the FDEP for minor work located in waters of the United States, including navigable waters. These agencies have a coordination agreement detailing the procedures and process on how to avoid duplication of regulatory review. A link to the FDEP website on the SPGP is included in ***Figure 12-2***.

2. **Letter of Permission (LOP)** - ***LOPs*** are used when project impacts are minor or would not have significant individual or cumulative effect. The process required to obtain a ***LOP*** approval is more detailed than the NWP process; however, it is typically less rigorous than that for a Standard Permit. The USACE is not required to publish an individual public notice, but they must coordinate with federal and state wildlife agencies and complete a public interest evaluation as outlined in ***33 CFR § 325.2 (e)(1)***. A determination as to whether a ***LOP*** is the appropriate instrument for a given action is at the discretion of the USACE.

3. **Standard Permit** - This permit is also referred to as an Individual Permit and is required for larger, more complex projects when a proposed project does not meet the criteria to qualify for a General Permit, Nationwide Permit, or ***LOP***. See ***33 CFR § 325.5*** for more information on the Standard Permit requirements.

Figure 12-1 provides the locations and contact information of regional USACE offices.

There are exemptions for very narrowly-defined activities that result in incidental impacts to wetlands or surface waters in accordance with ***Section 404(f)(1)*** of the ***CWA***. For instance, one exemption for FDOT is for the maintenance of transportation structures, so long as the structures are in non-tidal waters and the character, slope, and size of the original fill design is not proposed to change. ***Figure 12-1*** provides links to sources that identify these exemptions.

FDOT is required to obtain USACE authorization when an FDOT project is proposed to alter existing federal flood control projects (i.e., levees, dams, and canals). The USACE provides guidance for this process in ***Section 408 – Interim Changes for Immediate and Future Policy Revisions (2018)***. ***Section 14*** of the ***Rivers and Harbors Act of 1899*** and codified in ***33 U.S.C. § 408*** (commonly referred to as "***Section 408***") authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers of the USACE, to grant permission for the alteration or occupation or use of a USACE civil works project if the Department of the Army's Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The granting or denial of permission pursuant to ***Section 408*** is made formal through a ***Section 408*** Decision Letter.

A decision on a ***Section 408*** request is a Federal Action, and therefore subject to ***NEPA*** and other environmental requirements. While ensuring compliance is the responsibility of USACE, the requester is responsible for providing all information that the District identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and guidance. Insufficient supporting documentation may result in requests for additional information until the file is deemed complete by USACE. The USACE civil works ***NEPA*** implementing regulations are found in ***33 CFR Part 230***. Because proposed alterations vary in size, level of complexity, and potential impacts, the procedures and required information to make such a determination are intended to be scalable. Early coordination with USACE is suggested to determine the appropriate level of required support to navigate the ***Section 408*** review process.

Typically, when a ROW Occupancy Permit application is submitted to a WMD, the WMD reviews it and determines if the WMD needs to send it to USACE (***Section 12.2.2.5***). If sent to USACE, they will evaluate whether ***Section 408*** applies. If it is determined that ***Section 408*** applies, the ***Section 408*** review is conducted at the District level in Jacksonville. In general, review at the District level would be for projects that adjust features around a canal, dam, or levee that would not result in changes to authorized structural geometry or hydraulic capacity. These reviews take approximately 30 to 90 days for decisions to be rendered. For more complicated projects that may propose changes to structural geometry or hydraulic capacity of an existing facility, the review may be elevated to USACE Headquarters. These reviews can take between 18 to 24 months. Generally, proposed alterations that would result in substantial adverse changes in water surface profiles will not be approved. There are no statutory time limits on ***Section 408*** review.

In situations where USACE is also evaluating a ***Section 10/404*** permit application, the USACE may forward the ***Section 408*** decision letter with the ***Section 10/404*** permit decision. Under no circumstances will ***Section 10/404*** actions be rendered in advance of a decision on a ***Section 408*** request. For cases involving a categorical permission, the written approval will be validation that the categorical permission is applicable.

12.2.1.2 United States Coast Guard

The USCG approves the location and plans of bridges and causeways and imposes conditions relating to the construction, maintenance, and operation of these bridges in the interest of public navigation. The USCG is also required by law to ensure environmental considerations are given careful attention and importance in each bridge permitting decision. See ***Part 1, Chapter 16, Navigation*** for more details.

12.2.2 State Permitting

State permits are required for proposed impacts to jurisdictional wetlands and other surface waters as well as for flood protection and water quality, and to ensure compliance with coastal zone management criteria. The FDEP and WMDs are the primary state wetland permitting agencies. WMDs issue ERPs for most FDOT projects; whereas, FDEP issues NPDES and CCCL permits (***Sections 12.2.2.2*** and ***12.2.2.5*** respectively).

Table 12-3 provides the state permit types that are often needed from these regulatory agencies. For state protected species permit requirements, see ***Section 12.2.3***.

The FDEP and the WMDs are required to consider the effects of their agency action (issuance or denial of a permit) on historic resources in accordance with ***Section 373.414(1)(a)(6), F.S.*** These requirements are set forth in ***Chapter 267, F.S.***, or the ***Florida Historical Resources Act***, specifically ***Section 267.061, F.S***. The statute requires state agencies of the executive branch to consider an array of possible adverse effects of state undertakings over which they have direct or indirect jurisdiction upon historic resources. In addition, these agencies must also afford the FDHR a reasonable opportunity to comment on the proposed action or actions and to initiate measures to minimize harm to the historic resources prior to the approval or initiation of such action. In these cases, the consideration, treatments, and permitted activity in relation to impacts to historic resources and archaeological sites are detailed in the ***ERP Applicant's Handbook, Volume I***. These requirements include consultation and findings letters from the FDHR. See ***Part 2, Chapter 8, Archaeological and Historical Resources*** for more information. In instances where FDOT has completed consultation under ***Section 106*** of the ***NHPA***, documentation of the consultation can be used to satisfy requirements under ***Chapter 267, F.S.***

12.2.2.1 Environmental Resource Permitting

Under the authority of ***Section 373.4131, F.S.***, FDEP and Florida's five WMDs implemented ***Chapter 62-330, F.A.C.***, Environmental Resource Permitting (ERP). The ERP program was adopted to provide consistent permitting thresholds, requirements, and processes throughout the state. The ERP program governs the following activities: construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling) located in, on or over wetlands or other surface waters, as defined and delineated in ***Chapter 62-340, F.A.C.***

ERP permitting is performed under the guidance of ***Chapter 62-330, F.A.C.*** and the ***ERP Applicant's Handbook, Volume I***. The ***ERP Applicant's Handbook*** is incorporated by reference as part of ***Rule 62-330.010(4), F.A.C.***, and carries the same authority as the rule itself. ***Chapter 62-330, F.A.C.,*** and the ***ERP Applicant's Handbook, Volume I*** apply statewide.

The ***ERP Applicant's Handbook, Volume I*** provides general background information on the ERP program, including agency contact information, a summary of the statutes and rules used to authorize and implement the ERP program, and the forms used to notice or apply to the agencies for an ERP authorization. This volume of the ***ERP Applicant's Handbook*** also provides discussion on:

1. Activities regulated under ***Chapter 62-330, F.A.C.***, and ***Part IV of Chapter 373, F.S.***;

2. Types of permits, permit thresholds, and exemptions;

3. Procedures used to review exemptions and permits;

4. Conditions for issuance of an ERP, including the environmental criteria used for activities located in wetlands and other surface waters;

5. Erosion and sediment control practices to prevent water quality violations; and,

6. Operation and maintenance requirements.

There are also handbooks ***(ERP Applicant's Handbook, Volume II)*** for each of the WMDs. ***Volume II*** primarily applies to activities that require the services of a registered professional to design a stormwater management system. Links to the ***ERP Applicant's Handbook, Volume I*** (identical for all WMDs) and ***Volume II*** (unique to each of the five WMDs to address regional differences) are provided in ***Figure 12-2***.

Each WMD incorporates a provision in the ***ERP Applicant's Handbook, Volume II*** referencing ***Section 373.413(6), F.S.***, and providing for flexibility for state transportation projects and facilities. This statutory language provides the WMDs and FDEP with additional flexibility when permitting stormwater management facilities for state transportation projects, such as regional treatment facilities. FDOT is also only required to treat stormwater generated by its transportation projects, not water entering its treatment systems from offsite areas.

Depending on the size, location and nature of proposed project, a project may be exempt from permitting, or may require either a General or Individual Permit. General Permits are required for activities which can be conducted with minimal environmental impact, provided the applicant adheres to certain conditions (specifically listed in ***Chapter 62-330, F.A.C.***). An Individual Permit is required for projects which do not fall under permitting size and impact thresholds (***Rule 62-330.020, F.A.C.***) and is not covered by a

General Permit. See ***Table 12-3*** for a list of permits that may be required by state agencies.

A conceptual approval permit is also available, but not required, for activities occurring in phases or over a large land area. A conceptual approval permit does not authorize construction, maintenance, removal, or alteration (a separate individual permit is required for those activities). However, the first phase of construction can be authorized at the same time the conceptual approval permit is issued. A conceptual approval permit provides the permit holder with a rebuttable presumption that, during the duration of the conceptual approval permit, the design and environmental concepts upon which the conceptual approval permit is based (within the detail provided in the application) will meet applicable rule criteria for issuance of permits for subsequent phases of the project. This presumption is rebuttable at the time of receipt of a complete application to construct or operate future phases, dependent on the factors in subsection ***Rule 62-330.056(7), F.A.C.*** This type of permit is not typically applicable to FDOT projects, but may prove useful for complicated, controversial, and/or long-term projects where FDOT wants to establish its expectations in the way the ERP will be administered during future phases of a given project. It also has the potential to save time with agency reviews when applying for construction permits for individual phases especially if the elimination and reduction of impacts criteria has been addressed at the conceptual stage.

Exempt activities do not typically require notice be given to the FDEP or WMDs. If agency notice is required, it will be stipulated in the rule for the specific exemption. If verification that the activity is exempt, an on-line self-certification can be obtained, or the appropriate regulatory agency can perform the certification for a fee. An agency determination that an activity qualifies for an exemption is subject to ***Chapter 120, F.S.*** Although some projects may be exempt from the need to obtain an ERP, the project may still require coordination with wildlife agencies. For example, a project may have a bridge or culvert inhabited by bat species. This may require coordination with the FWC or USFWS.

A list of exempt activities is contained in ***Rule 62-330.051, F.A.C.*** Two exemptions of interest to FDOT include:

1. ***Rule 62-330.051(4), F.A.C., Bridge, Driveways, and Roadways*** - Exempts work in other Surface Waters (water conveyances that are not wetlands as defined by ***Chapter 62-340, F.A.C.*** (such as some roadside ditches) for road shoulder and turn lane improvements, or paving of dirt roads owned by county or local governments. Subsection (c) Minor roadway safety construction, alteration, or maintenance and operation can be applicable for FDOT sidewalk and milling and resurfacing projects.

2. ***Rule 62-330.051(9), F.A.C., Pipes or Culverts*** - Exempts up to 0.03 acres of work in wetlands as delineated under ***Chapter 62-340, F.A.C.***, including Outstanding Florida Waters (OFW) for culvert outfall and headwall construction.

12.2.2.2 State-owned Submerged Lands Authorizations

Activities located on sovereignty submerged lands also referred to as “state-owned submerged lands” (as described in ***Section 12.1.2***) require a proprietary authorization from the Board of Trustees of the Internal Improvement Trust Fund (BOT) to use such lands according to ***Chapter 18-21, F.A.C.*** Proprietary authorization is required for essentially all FDOT activities on state-owned submerged lands. FDOT fee simple ownership of an area does not preclude the determination of state owned sovereign submerged lands by FDEP.

FDEP and the WMDs act as staff to the BOT and, in accordance with the Operating Agreement between their agencies, will process all applications involving proposed work on state-owned submerged lands. These agencies have delegated authority from the Board to approve or deny most projects, but for some types of projects (such as submerged land leases), the final decision to approve or deny the authorization rests with the Governor and Cabinet of the state of Florida, who serve as the BOT. Leases are typically required for revenue-generating uses and are, therefore, not required for FDOT projects. FDOT projects proposed on state-owned submerged lands typically need a letter of consent or an easement. The determination for the proprietary authorization is part of the ERP permitting process. However, the final easement or letter of consent is provided by the FDEP after issuance of the ERP.

12.2.2.3 National Pollutant Discharge Elimination System

As authorized by the ***CWA***, the NPDES permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The EPA delegated to the FDEP the authority to implement the NPDES stormwater permitting program in the State of Florida (in all areas except Indian Country lands). FDEP's authority to administer the NPDES program is contained in ***Section 403.0885, F.S.*** If a project will disturb one acre or more of soil, and if the stormwater run-off from the site will discharge to waters of the state (even if the discharge is conveyed through the municipal storm sewer system), a NPDES Construction Generic Permit (CGP) will be required prior to commencement of construction as a means of protecting down-stream water quality. A ***Notice of Intent (NOI)*** (application) is filed with FDEP at least two days prior to the commencement of construction. Due to the proximal timing of this permit to the commencement of construction, it is the contractor’s responsibility to apply for and obtain the NPDES CGP permit. FDOT’s Construction Engineering and Inspection (CEI) ensures that the Contractor has obtained the permit by verifying proof of permit coverage (e.g., FDEP coverage letter or ***NOI***). More details on the NPDES permitting process can be found at the web link provided in ***Figure 12-2***.

Part of the NPDES permit program is the Municipal Separate Storm Sewer System (MS4). An MS4 is a publicly-owned conveyance or system of conveyances (i.e., ditches, curbs, catch basins, underground pipes, etc.) designed or used for collecting or conveying stormwater that discharges to surface waters of the State. An MS4 can be operated by entities such as municipalities, counties, drainage districts, colleges, military bases, or

prisons. FDOT is a regulated MS4 operator under federal and state rules. Regulated MS4 operators must obtain an NPDES stormwater permit and implement a comprehensive ***Stormwater Management Program (SWMP)*** to reduce the contamination of stormwater runoff and eliminate illicit discharges to the MS4.

As implemented by ***Chapter 62-624, F.A.C.***, Phase I of the MS4 program addresses discharges of stormwater runoff from "medium" and "large" MS4s (i.e., those MS4s located in areas with populations of 100,000 or greater). A Phase I MS4 is defined in ***Rule 62-624.200(10), F.A.C.***, as “a municipal separate storm sewer system identified under ***Section 402(p)(2)*** of the ***CWA*** and subject to regulation under ***Section 402(p)(3)(B)*** of the ***CWA*** as implemented as part of FDEP’s federally approved NPDES stormwater program pursuant to ***Section 403.0885, F.S***.” Generally, Phase I MS4s are covered by individual permits and are effective for no more than five years. There are individual MS4 permits issued to several counties in Florida, and FDOT is a co-permittee in each of those permits.

FDOT has an approved ***Statewide Stormwater Management Plan (SSWMP)*** that describes the activities to be conducted, methods to be used, and procedures to be followed by FDOT to reduce the discharge of pollutants to and from the Phase I MS4s throughout the State of Florida. This plan supports FDOT’s documentation and procedures for annual reporting as a co-permittee under the MS4 Phase 1 permits. As stated in Section II of the Phase 1 permit, the ***SSWMP*** is incorporated into the permit by reference once approved by FDEP and serves as the guiding document for FDOT compliance as a co-permittee under Florida’s Phase 1 MS4 program. More information can be found in the ***FDOT SSWMP***.

Phase II of the program regulates discharges from certain MS4s not regulated under Phase I, that meet designation criteria set forth in ***Chapter 62-624, F.A.C***. A Phase II MS4 is defined in ***Rule 62-624.200(11), F.A.C.***, as “a municipal separate storm sewer system subject to regulation under ***Section 402(p)(6)*** of the ***CWA***, as implemented as part of FDEP’s federally approved NPDES stormwater program pursuant to ***Section 403.0885, F.S.***, this chapter (***Chapter 62-624, F.A.C.***), and ***Rule 62-621.300(7)(a), F.A.C.***, which incorporates by reference FDEP’s Generic Permit for Discharge of Stormwater from Phase II MS4, and includes MS4 facilities owned or operated by the United States and MS4 facilities operated by the FDOT that are not covered by an existing Phase I MS4 permit.” Phase II MS4s are covered by a general permit. There are numerous general permits issued to FDOT for various Phase II designated areas.

Each regulated MS4 is required to develop and implement a ***SSWMP*** to reduce the contamination of stormwater runoff and prohibit illicit discharges.

12.2.2.4 Coastal Zone Management Act Consistency

Per the Operating Agreement between USACE, FDEP, and the WMDs, the ERP review process includes an assessment of whether an action proposed in Florida is consistent with the ***Coastal Zone Management Act (CZMA)***. Issuance of an ERP constitutes a

finding of consistency with, or waiver from, the ***Florida Coastal Management Program (FCMP)*** that implements the ***CZMA***. A Federal Consistency Determination is made by FDEP in coordination with other agencies early in the planning process for FDOT Federal Projects (see ***Part 2, Chapter 14, Coastal Zone Consistency***) and again in the ERP review process. More details on the ***FCMP*** can be found at the web link provided in ***Figure 12-2***.

12.2.2.5 Right of Way Occupancy Permit

A ROW Occupancy Permit is issued by a WMD or local water control district, if applicable, allowing for a compatible public or private use while protecting the WMD's or local water control district's ability to use the canal and levee rights of way of the USACE's Central and Southern Florida Flood Control Project, the related water conservation areas, and certain other canals and works or lands of a WMD. A ROW Occupancy Permit is a proprietary revocable license and does not convey property rights to the permittee. The WMD coordinates with the USACE through the ***Section 408*** process. In some instances, FDOT must coordinate directly with the USACE for ***Section 408*** permission. See ***Section 12.2.1.1*** for more information.

12.2.2.6 Coastal Construction Control Line

FDEP manages a CCCL Program to protect the coastal system from improperly sited and designed structures which can destabilize or destroy the beach and dune system. As defined in ***Rule 62B-33.002(6), F.A.C.***, the CCCL is "the line established pursuant to the provisions of ***Section 161.053, F.S.***, and recorded in the official records of the county, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions." A CCCL permit is required for construction activities seaward of the CCCL and fifty-foot setback. For projects within the CCCL, FDOT must coordinate with FDEP to ensure FDOT projects adhere to the special siting and design criteria established to eliminate or reduce impacts to the beach dune system, adjacent properties, native salt resistant vegetation, and marine turtles. Rules and procedures for obtaining this permit can be found in ***Chapter 62B-33, F.A.C***. More information on the CCCL permitting can be found in ***Figure 12-2***.

12.2.2.7 Consumptive Water Use Permits

Consumptive use of water is broadly defined as any use of water which reduces the supply from which it is withdrawn or diverted. The consumptive use of water is managed by the WMDs as prescribed in ***Part II of Chapter 373, F.S***. Each WMD regulates the use of water within its jurisdictional boundaries to ensure that permitted water uses are reasonable-beneficial, will not interfere with any presently existing legal uses of water, and are consistent with the public interest, as required by ***Section 373.223, F.S***. This authority applies to public water supplies, agricultural and landscape irrigation, contamination clean-up, commercial/industrial uses, and dewatering/mining activities. The WMDs issue general and individual consumptive water use permits. FDOT should

coordinate with the appropriate WMD to determine whether a water use permit will be required for a project.

12.2.2.8 Class V Stormwater Well Permits

FDEP's Aquifer Protection program protects Florida's underground sources of drinking water while maintaining the lawful option of disposal of appropriately treated fluids via underground injection wells. An underground source of drinking water is defined as an aquifer that contains a total dissolved solids concentration of less than 10,000 milligrams per liter. The program implements the Underground Injection Control regulations (***Chapter 62-528, F.A.C.***) and is dedicated to preventing degradation of the quality of other aquifers adjacent to the injection zone. Subsurface injection, the practice of emplacing fluids in a permeable underground aquifer by gravity flow or under pressure through an injection well, is one of a variety of wastewater disposal or reuse methods used in Florida.

Class V injection wells are used for storage or disposal of fluids into or above an underground source of drinking water. In locations where the available area for pond siting(s) is limited (e.g., urbanized coastal areas), FDOT may direct stormwater into shallow wells. These wells are considered non-major Class V wells that are permitted through FDEP District offices. More information on the permitting process for Class V stormwater well permitting can be found in ***Figure 12-2***.

12.2.3 Federal and State Protected Species Permits

Federal and state permits may be required for unavoidable impacts to or take of listed species. ***Table 12-4*** provides wildlife permit types that may be needed for FDOT projects. Wildlife within Florida is protected under federal regulation through USFWS and NMFS and state regulation through FWC. This section discusses the most common types of protected species permits required for transportation projects, but other species permits may be required. See ***Part 2, Chapter 16, Protected Species and Habitat***.

Species protected by the federal ***ESA*** may require an Incidental Take permit from the USFWS or NMFS. The ***ESA*** is designed to regulate a wide range of activities affecting plants and animals designated as endangered or threatened, and the habitats upon which they depend. With some exceptions, the ***ESA*** prohibits activities affecting these protected species and their habitats unless authorized by a permit from the USFWS or NMFS. Permitted activities are designed to be consistent with the conservation of the species. Incidental Take permits are required when activities will result in take of threatened or endangered species. A ***Habitat Conservation Plan (HCP)*** must accompany an application for an Incidental Take permit. The ***HCP*** associated with the permit ensures that the effects of the authorized incidental take are adequately minimized and mitigated. More information on this process can be found at the USFWS webpage (***Figure 12-3***).

In 2016, FWC developed ***Florida's Imperiled Species Management Plan (ISMP)*** to identify species-specific conservation actions for 57 state listed species. This plan

includes species action plans addressing individual species needs and conservation strategies that benefit multiple species. FWC is in the process of developing species conservation measures and permitting guidelines for all species in the ***ISMP***. Where required, the FWC issues Incidental Take permits for activities that may result in take of species listed only by the state. Incidental Take permits for federally listed species would be issued by USFWS or NMFS. Additional information on the ***ISMP***, ***HCPs***, and Incidental Take permits is available on the FWC and USFWS/NMFS websites (***Figure 12-3***).

Three avian species found in Florida, American bald eagle, Florida burrowing owl, and osprey, are not subject to ***ESA*** review, but receive federal protection under the ***Migratory Bird Treaty Act (MBTA)*** and/or the ***Bald and Golden Eagle Protection Act***. Pursuant to the ***MBTA***, it is unlawful to take, possess, buy, sell, purchase, or barter any migratory bird including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations. All non-exotic birds in the state of Florida are protected by the ***MBTA***. However, except as specifically discussed below for the bald eagle, burrowing owl, and osprey, the presence of other non-exotic avian species that could be affected by proposed FDOT projects are generally not addressed under the ***MBTA*** unless FDOT is specifically required to do so by USFWS on a project-by-project basis during project permitting.

The gopher tortoise receives state protection under ***Rule 68A-27.003, F.A.C.*** See ***Section 12.2.3.4*** for more information on gopher tortoise protections.

Permits may require pre-construction species-specific surveys prior to the initiation of construction activities, depending upon the species and habitats present within or near the project ROW.

12.2.3.1 American Bald Eagle

The American bald eagle (*Haliaeetus leucocephalus*) was removed from the federal endangered species list in August 2007 because its population recovered sufficiently. However, bald eagles and their nests remain protected under the federal ***MBTA*** and the ***Bald and Golden Eagle Protection Act***, and they are managed under FWC's ***A Species Action Plan for the Bald Eagle***.

On April 20, 2017, the FWC approved revisions to ***Rule 68A-16.002, F.A.C.***, which eliminated the need for applicants to obtain both a state and federal permit for activities with the potential to take or disturb bald eagles or their nests. Under the approved revisions, only a federal permit is required. The rule revisions became effective June 22, 2017. The ***A Species Action Plan for the Bald Eagle*** is a non-regulatory conservation plan to maintain a stable or increasing population of bald eagles in the state.

The federal ***Bald and Golden Eagle Protection Act*** prohibits anyone from taking, possessing, or transporting a bald eagle or golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds without prior authorization. This includes inactive nests as well as active nests. Rules promulgated under the ***MBTA (50 CFR Part 21)*** prohibit the

destruction of active (i.e., nests which contain eggs or flightless young) nests without a federal permit. The USFWS has ***Bald Eagle Monitoring Guidelines (USFWS, September 2007)*** that provides information for applicants proposing construction activities occurring within 660 feet of an active bald eagle nest during the nesting season (see ***Figure 12-3***).

Per the noted federal regulations, there are two permits that may be applicable to FDOT projects:

1. A permit to remove or relocate an eagle nest, called an Eagle Nest Take Permit, authorizes the removal or relocation of:

    a. An active or inactive nest where it is necessary to alleviate a safety emergency to humans or eagles (or both);

    b. An inactive nest to ensure public health and safety;

    c. An inactive nest to restore operation of a man-made structure that has been rendered inoperable by the presence of the nest; or

    d. An inactive nest in certain other instances where the removal or relocation of that nest (or the mitigation for its removal) will provide a clear and substantial benefit to eagles.

    The federal definition of inactive per ***50 CFR § 22.3*** is a bald eagle or golden eagle nest that is not currently being used by eagles as determined by the continuing absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days immediately prior to, and including, at present. This differs from the state definition of inactive, referenced at ***Rule 68A-16.003(3), F.A.C.***, as meaning “a nest that does not contain eggs or flightless young.” See also web links included in ***Figure 12-3***.

2. There is also a General Permit for disturbing bald eagles at the nest location, provided there is no practicable alternative to avoid or minimize the disturbance. This type of take is referred to as "non-purposeful take" and is allowed under a General Permit for Bald Eagle Disturbance. Authorization is also subject to permit conditions to minimize impacts. The regulation authorizing Eagle Disturbance Permits for bald and golden eagles is found at ***50 CFR § 22.26***. The USFWS recommends that FDOT contact the USFWS eagle biologist in their area before submitting an application. A link to the application form is included in ***Figure 12-3***. Take of eagle nests, including by substantively modifying nesting substrate sufficient to render the substrate unsuitable for eagle nesting, is not authorized under a General Permit.

12.2.3.2 Florida Burrowing Owl

The Florida burrowing owl (*Athene cunicularia floridana*) is listed by the State of Florida, FWC as Threatened ***(Rule 68A-27.005, F.A.C.)***. It is illegal to take (pursue, hunt, capture, molest, or kill) burrowing owls and their nest burrows and eggs without a permit issued by FWC ***(Rules 68A-9.002 and 68A-27.005, F.A.C.)***. FWC's policy is to issue permits to destroy burrowing owl nest burrows only as a last resort, after all reasonable alternatives (such as realigning development to avoid the nest) have been shown to be impractical. When such permits are issued, they apply to inactive nest burrows (i.e., burrows containing no eggs or flightless young). Burrowing owl nest burrows can generally be considered inactive from July 10th to February 15th, although some nesting occurs as early as October each year. Between February 15th and July 10th, nest burrows attended by one or more burrowing owls are considered active unless information is available to suggest otherwise (i.e., proof that young fledged from the nest prior to July 10th). State burrowing owl nest burrow removal permits are applied for online. See ***Figure 12-3*** for a link to the FWC webpage.

Burrowing owls and their nest burrows are also afforded protection under the federal ***MBTA***. Rules promulgated under this act ***(50 CFR Part 21)*** prohibit the destruction of active (i.e., nests which contain eggs or flightless young) nests without a federal permit, which is issued by the USFWS Regional Office in Atlanta, Georgia. Federal permits are required only if the nest is active (i.e., has flightless young or eggs present). In practice, these permits are seldom issued by USFWS. Instead, activities that could adversely affect burrowing owl nests are typically scheduled strategically to avoid the burrowing owl nesting season when active nests may be present, so as to avoid the need for a ***MBTA*** permit. See ***Figure 12-3*** for a link to the USFWS web site describing the ***MBTA*** permitting process.

12.2.3.3 Osprey

The osprey (*Pandion haliaetus*) is no longer listed in Florida, but is part of the ***ISMP***. ***Rule 68A-16.003, F.A.C.*** eliminates the need for a FWC permit for on-site destruction of an inactive nest (a nest that does not contain eggs or flightless young) of non-listed birds which are protected by the ***MBTA***. The rule does not provide authorization for birds listed in ***Chapter 68A-27, F.A.C.*** (federal and state listed species) or ***Rule 68A-16.002, F.A.C.*** (bald eagles).

The osprey is federally protected by the ***MBTA (16 U.S.C. §§ 703 – 712)***. Coordinate with the USFWS Region 4 Migratory Bird Permit Office to determine what federal authorization or permits are required for any activity involving non-listed and listed migratory bird species, their nests, and any part thereof. See ***Figure 12-3*** for guidance on contacting the USFWS regarding osprey nests.

12.2.3.4 Gopher Tortoise

Gopher tortoises (*Gopherus polyphemus*) are protected by state law, ***Rule 68A - 27.003, F.A.C.*** . The FWC established a multi-tiered approach to permitting actions involving gopher tortoises.

These permits are divided into three main types:

1. **Authorized Agent Permits**, which authorize persons to capture, transport, and release tortoises;

2. **Site-Specific Relocation Permits**, which authorize capturing and relocating tortoises either within the boundaries of an area being impacted (on-site) or from an area being impacted to a permitted recipient site (off-site); and

3. **Recipient Site Permits**, which authorize the use of designated sites meeting specific criteria as recipient areas for tortoises.

Site-Specific Relocation permits are primarily applicable to FDOT projects, although knowledge of the overall permitting structure may be important to effective project management. Emergency Take Permits, Disturbed Site Permits, and Burrow or Structure Protection Permits are three additional permit types, which are only issued under unusual circumstances. The FWC gopher tortoise permitting program, including online permitting, is described on the FWC web site referenced in ***Figure 12-3***. For FDOT guidance on gopher tortoises, see FDOT's ***Protected Species and Habitat Website***.

In general, a permit is required for any activity that causes a take, harassment, molestation, damage, or destruction to gopher tortoises or their burrows (See ***Rule 68A-27.003, F.A.C.***). An exception that applies to roadway projects is that certain linear highway ROW vegetation maintenance activities, that may impact gopher tortoises or gopher tortoise burrows, do not require a permit. These activities include mowing and tree cutting.

Relocation permits vary depending upon the quantity of burrows and the condition of the site. The permit types include:

1. **10 or Fewer Burrows Relocation Permit** - for projects, which require the relocation of five or fewer tortoises (i.e., 10 burrows or less). Registered agents may obtain no more than two 10 or Fewer Burrows permits in a 12-month period.

2. **Conservation Permit** - for development projects which require the relocation of gopher tortoises when more than 10 burrows are proposed to be impacted on a development site. This permit allows for relocation either to an on-site preserve or off-site to a FWC-certified Recipient Site.

3. **Disturbed Site Permit** - May be required for development projects where premature disturbance to the ground has occurred before gopher tortoise burrow

surveys are complete or before gopher tortoise capture and relocation activities have been completed at the development site.

4. **Burrow or Structure Protection Permits** - Are available when the integrity or utility of an existing structure is jeopardized by one or two burrows and therefore poses a public safety concern (e.g., burrow under a propane tank, road, or other such structure), or if the safety of the resident tortoise is compromised (e.g., burrows in a grass parking lot, dirt driveway, etc.). This permit type may be applicable to FDOT projects. Application requirements and tortoise capture and handling procedures are similar to those for 10 or Fewer Burrows permits; however, tortoises relocated under a Burrow or Structure Protection permit shall only be relocated on-site. An after action report is not required for this permit type.

5. **Emergency Take without Relocation Permit** - Will be issued only under limited and specific circumstances, in cases where there is an immediate danger to the public's health and/or safety or in direct response (e.g., storm debris disposal) to an official declaration of a state of emergency by the Governor of Florida or a local governmental entity. Applications submitted for this permit must include all information that is required when seeking a conservation permit, along with a copy of the official declaration of a state of emergency, if applicable.

Due to the limited duration that gopher tortoise surveys are valid as well as the tendency for gopher tortoises to repopulate an area where relocation of the original population has occurred, FDOT typically does not conduct relocation until just prior to construction commencement. However, knowledge of the existing gopher tortoise population during the permitting process may be necessary to support the application review (i.e., with regard to indigo snake involvement/effects determination). In these cases, the Environmental Permits Coordinator may need to have at least 15% surveys of the potential gopher tortoise habitat conducted.

12.3 PROCEDURE

During the Planning phase, some projects may qualify for ETDM screening in the EST. ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** and the ***ETDM Manual, Topic No.650-000-002*** list the qualifications for ETDM screening. ***Figure 12-4*** provides a flow chart of the typical permitting process.

12.3.1 Projects Not Qualifying for Screening

Regardless of whether a project is screened in the EST, environmental permits may be needed. For transportation projects not qualifying for EST screening, anticipated environmental permits are documented as a part of discussion and coordination with the resource agency charged with regulating the activity. Identified permits should be documented in the Environmental Document and the StateWide Environmental Project Tracker (SWEPT) project file, and appropriately addressed through incorporation into the

final design contract documents. Documentation in the Environmental Document is as follows:

1. **Type 1 Categorical Exclusions (CEs)** - Type 1 CEs may occasionally need environmental permits. For these projects, a summary of anticipated permits is included in the ***Type 1 Categorical Exclusion Checklist (Part 1, Chapter 5, Categorical Exclusion)***. Documentation of permitting agency coordination and mitigation for impacts (as appropriate) is included in the project file.

2. **Non-Major State Actions (NMSAs)** - For a NMSA, a summary of anticipated permits and documentation of permitting agency coordination and mitigation for impacts (as appropriate) is included in the project file.

3. **Type 2 Categorical Exclusions (CEs)** Some Type 2 CEs may not require screening through the EST. For these projects, anticipated environmental permits are listed on the ***Type 2 Categorical Exclusion Determination Form*** and in the project file. See ***Section 12.3.3.1.2*** for guidance on documenting Type 2 CEs.

12.3.2 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 the project-level coordination with the regulatory agencies and includes a Preliminary Environmental Discussion (PED) (***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***). The District's initial assessment of the environmental permits that may be needed for the project is included in the Anticipated Permits section of the PED.

As Environmental Technical Advisory Team (ETAT) members, the agency representatives review the proposed project and provide comments identifying potential permits, mitigation opportunities, and technical studies. The ETAT should also provide recommendations and suggestions for minimizing potential environmental impacts to facilitate the permitting process. The EST documents and stores the ETAT review in the ***Planning or Programming Screen Summary Report***. This information supports development of the PD&E scope.

Coordination with the regulatory and resource agencies should be continuous throughout the ETDM process. The ETDM Coordinator and Project Manager should also coordinate internally with FDOT Environmental Permits Coordinators, District Environmental Offices, and others who may be involved in the PD&E process that follows the project screening.

12.3.2.1 Planning Screen

The Planning Screen may be used for the early identification of project permits. Regulatory agency ETAT members should identify the types of permits that may be

needed for the project, or they may agree with those already listed in the PED. Permits that may be needed for the project are listed in the "Anticipated Permits" section of the ***Planning Screen Summary Report***.

12.3.2.2 Programming Screen

In accordance with ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***, qualifying projects must complete the ETDM Programming Screen regardless of whether they have completed the Planning Screen. If a Planning Screen was completed, the Programming Screen will build upon information from the Planning Screen.

12.3.2.2.1 Identification of Potential Permitting Needs

If the project completed a Planning Screen, the ETAT may confirm potential permits that were identified. If the project did not complete a Planning Screen, the PED created during the Programming Screen is the first record of potential permits that may be needed for the project. The regulatory agency ETAT members may identify additional permits, or confirm the potential permits identified in the PED. Potential permits identified by the regulatory agency ETAT are recorded in the "Anticipated Permits" section of the ***Programming Screen Summary Report***.

The District should coordinate with the USCG to determine if a bridge permit is required for the project during ETDM screening. The USCG representative can make the determination when the District provides the location of the project activity. See ***Part 1, Chapter 16, Navigation*** for detailed information on the USCG permitting process.

12.3.2.2.2 Opportunities for Mitigation

Through early coordination, a regulatory or resource agency may identify opportunities for mitigation to offset potential project impacts. If mitigation options are identified during the Programming Screen, they are recorded in the applicable section of the ***Programming Screen Summary Report***. Depending on the topic/resources and the agency providing the comments, the discussion of mitigation opportunities may be in the Wetlands and Surface Waters, Wildlife and Habitat, or Water Resources sections of the report. Mitigation opportunities are discussed in later in the Environmental Document and should be referred to during the permitting process.

12.3.3 Project Development and Environment Phase

Typically, information from ETDM screening should be used to prepare the PD&E scope of services and to focus the analysis/impact assessment. During PD&E, FDOT should use regulatory and resource agency comments from the ***Programming Screen Summary Report*** to anticipate a project's permitting needs.

It is recommended that District staff hold regular meetings or teleconferences with USFWS, NMFS, USACE, FDEP, FWC, or WMDs to discuss current project issues, mitigation needs, the status of ongoing PD&E Studies and mitigation projects, and review project status to see if there is anything the agencies may require to support their ongoing reviews. Other resource agencies (e.g., SHPO/FDHR) may need to be coordinated with based on project impacts to their resources which would have to be addressed in the anticipated permits. The frequency of the meetings is at the discretion of each District.

The District's Project Manager is responsible for collecting and maintaining correspondence with resource agencies (e.g., letters, emails), documenting coordination, and maintaining the project file. The documentation provides information for the next project phase.

12.3.3.1 Preparation for Permitting during PD&E

Information gathered during PD&E should inform project permitting. Early in PD&E, FDOT identifies the project's anticipated permitting needs from knowledge of regulations, agency comments and information included in the ***Programming Screen Summary Report*** (if the project was screened in the EST). The District should review ETAT comments for the "Coastal and Marine," "Wetlands and Surface Waters," "Water Resources," "Navigation," "Cultural Resources," and "Protected Species and Habitat" issues in the ***Programming Screen Summary Report***. FDOT should focus on the comments from the regulatory agencies in developing and conducting analysis. The ***Programming Screen Summary Report*** may specifically identify the types of permits that may be needed in the "Anticipated Permits" section of the report.

During PD&E, an impact assessment is conducted for direct and indirect/secondary impacts to wetlands/surface waters and impacts to protected species and their habitats according to ***Part 2, Chapter 9, Wetlands and Other Surface Waters*** and ***Part 2, Chapter 16, Protected Species and Habitat***. During this impact assessment, the District coordinates with the regulatory agencies to determine what permit types will be needed for the project based on anticipated project impacts. This coordination should involve the Environmental Permits Coordinator and compare the list of anticipated permits identified during the ETDM screening to those permits identified as necessary for the project from the analysis/impact assessment. Coordination may include a field review with appropriate resource agencies.

The impact assessment typically requires the preparation of a ***Natural Resources Evaluation (NRE)*** or a technical memorandum. Coordination between the Environmental Permits Coordinator and the Environmental Office during development of the ***NRE*** or technical memorandum will ensure the resulting report contains information sufficient to support subsequent permitting. Anticipated environmental permits that may be required for the project are listed in the ***NRE***. The ***NRE*** is sent to the resource agencies for review so they have an opportunity to review the project impacts and provide concurrence, as applicable, in advance of finalization of the Environmental Document. The District reviews the draft ***NRE*** prior to agency submittal. For FDOT Federal Projects, the Office of

Environmental Management (OEM) also reviews the draft ***NRE*** prior to agency submittal. See the ***Natural Resources Evaluation Outline and Guidance*** on FDOT's ***Protected Species and Habitat Website*** for guidance on preparing an ***NRE*** or technical memorandum.

During the PD&E process, the ***NRE*** is summarized in the Environmental Document. This includes any permits for unavoidable impacts to or take of listed species as well as any wetland permits listed in the ***NRE***.

It is important for the PD&E Project Manager to coordinate with the Environmental Permits Coordinator to discuss project schedules and timing of environmental permit applications. Several factors that may be discussed include:

- Information obtained during PD&E to support the permit application
- Environmental issues including agency consultation that may require additional time to obtain the environmental permit (i.e., protected species consultation)
- Timing of protected species surveys needed to support environmental permit applications
- The anticipated date of project construction
- If the project will need a State-Owned Submerged Lands authorization requiring a decision by the BOT
- Whether project funding is available to support the permitting effort, including mitigation

12.3.3.1.1 Consideration of Mitigation Options

During the PD&E phase, project design is developed in sufficient detail to quantify impacts to environmental resources such as wetlands and protected species. To the extent practicable, FDOT must demonstrate avoidance (elimination) and minimization (reduction) of impacts prior to the consideration of compensatory mitigation options. For those projects that have unavoidable wetland and species impacts, compensatory mitigation may be required. In accordance with the USACE's federal mitigation sequencing [***Compensatory Mitigation for Losses of Aquatic Resources (33 CFR §§ 325 and 332)***], wetland impacts must be addressed through: 1) avoidance, 2) minimization, and finally 3) compensatory mitigation. Environmental Resource Permits (ERPs) under state jurisdiction must follow criteria established under ***Chapter 62-330, F.A.C.*** and in the ***ERP Applicant's Handbook Volume I***, which is to reduce or eliminate wetland or other surface water impacts prior to mitigation. Additionally, impacts to certain protected species or their habitat may result in the need to mitigate potential impacts. FDOT mitigation options are further described in ***Section 373.4137, F.S***.

To validate the feasibility of a project design in PD&E (i.e., that it is reasonably anticipated to be permittable), the Environmental Document should include consideration of mitigation options to address anticipated unavoidable direct and indirect/secondary wetland impacts and impacts to listed species. Coordination is needed with the regulatory agencies when developing the mitigation plan to determine if proposed mitigation for wetland impacts may also satisfy mitigation needs for wetland dependent listed species. This helps to ensure FDOT provides the appropriate mitigation to offset project impacts and that mitigation used to satisfy one agency does not conflict with the mitigation recommendations of another agency. Mitigation options should be available and/or technologically feasible such that projects do not get advanced to Final Design without known viable means to adequately address unavoidable impacts.

The impact assessment may include a Uniform Mitigation Assessment Method (UMAM) in accordance with ***Chapter 62-345, F.A.C.***, conducted at a broader level than is needed for permitting. If a modified UMAM is being considered during PD&E, it should be coordinated with the applicable permitting agencies. Other suitable wetland assessment methods (e.g., Wetland Rapid Assessment Procedure) may be used depending on the available mitigation options in the service area of the proposed impacts. See ***Part 2, Chapter 9, Wetlands and Other Surface Waters*** for guidance on using UMAM during PD&E.

For wetland impacts, a conceptual mitigation plan may need to be prepared to identify compensatory mitigation opportunities. See ***Part 2, Chapter 9, Wetlands and Other Surface Waters***. The level of detail for the conceptual mitigation plan is determined through coordination with the appropriate regulatory agency(s) and is dependent upon the magnitude of mitigation required. The conceptual mitigation plan must demonstrate that mitigation is available to offset impacts to wetlands. In accordance with ***Section 373.4137, F.S.***, mitigation options may include “the use of mitigation banks and any other mitigation options that satisfy state and federal requirements” (e.g., mitigation bank credit purchases, funding to WMD for mitigation services and FDOT- responsible mitigation projects). These options are included in the Environmental Document. Mitigation options identified during PD&E are those available at that time; however, final mitigation is determined at the time the permit is obtained.

It is recommended that the Environmental Permits Coordinator assist with preparation, or review of the conceptual mitigation plan and mitigation discussion included in the Environmental Document. The Environmental Permits Coordinator may provide input on mitigation banks and credit availability in the project area, mitigation services available from FDEP or the WMDs, and other mitigation opportunities available for the project.

12.3.3.1.2 Environmental Commitments

FDOT may make environmental commitments to minimize potential adverse project effects. These commitments provide assurance to the reviewing agencies that the identified issues will be appropriately addressed during design and permitting – paving the way for a more efficient permit review process. Additionally, commitments provide

predictability to FDOT and to designers/consultants for the level of effort (cost) that will ensue during design and permitting. Project commitments must be documented in the Environmental Document and tracked in accordance with the ***Project Commitment Tracking, Procedure No. 650-000-003***. Some commitments made during PD&E may become permit conditions at the discretion of the regulatory agency. See ***Part 2, Chapter 22, Commitments*** and FDOT's ***Standard Environmental Commitments Guidance*** document for more information on project commitments.

12.3.3.1.3 Documenting Permits

Permits identified during the PD&E Study, including those permits identified as no longer being applicable to the project, must be documented in the Environmental Document. Permits that were identified as anticipated during the ETDM process that are no longer applicable to the project should be identified with an explanation as to why they are no longer needed. Documentation of regulatory agency coordination is uploaded to the project file.

Permits are documented in the Environmental Document as described below:

1. **Type 2 CE and SEIR –** For Type 2 CEs and SEIRs, environmental permits needed for the project are listed in the "Anticipated Permits" section. They are also discussed in the applicable Environmental Analysis section (Wetlands and Other Surface Waters, Protected Species and Habitat, Navigation) as part of the coordination with the resource agency requiring the permit. The Environmental Document should identify whether the USCG has determined if a bridge permit is required. See ***Part 1, Chapter 5, Categorical Exclusion***, or ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery*** for more detail on how to prepare these sections of the Type 2 CE or SEIR.

2. **Environmental Assessment (EA) –** Permits are documented in the Anticipated Permits section, as well as the applicable Environmental Analysis section (Wetlands and Other Surface Waters, Protected Species and Habitat, Navigation) as part of the coordination with the resource agency requesting the permit. See ***Part 1, Chapter 6, Environmental Assessment*** for more detail on how to prepare these sections of the EA.

3. **Environmental Impact Statement (EIS) –** Permits are documented in the Anticipated Permits section, as well as the applicable Environmental Analysis section (Wetlands and Other Surface Waters, Protected Species and Habitat, Navigation) as a part of the coordination with the resource agency requesting the permit. See ***Part 1, Chapter 8, Draft Environmental Impact Statement*** for more detail on how to prepare these sections of the EIS.

Permits that will be needed for the project are also listed in the Executive Summary of the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) when it is to be submitted without a Record of Decision (ROD). In the

DEIS this section is titled “List of Other Government Actions Required” and in the FEIS it is titled “Other Government Actions and Permits Required”. See ***Part 1, Chapter 8, Draft Environmental Impact Statement*** and ***Part 1, Chapter 9, Final Environmental Impact Statement*** for more detail on how to prepare these sections of the EIS Executive Summary.

There may be occasions when associated federal agency approvals (e.g., USACE permit, USCG permit) will be received at or around the same time as the final ***NEPA*** approval. On those occasions, as part of the notice publication discussion, OEM and the District will confer as to whether one combined ***Limitations on Claims Notice*** should be published for the ***NEPA*** document and any associated federal agency actions. If other federal agency permits, licenses or approvals will be obtained at a later phase of the project, notice of limitations on claims would be published at that time for the subsequent approval. See ***Part 1, Chapter 11, Public Involvement*** for guidance on preparing a ***Limitations on Claims Notice***.

12.3.4 Re-evaluation

Changes after approval of the Environmental Document must be documented in a Re-evaluation per ***Part 1, Chapter 13, Re-evaluations***. Specific to permitting, the Re-evaluation should address any changes in laws, rules, or regulations that may impact project permitting, and provide a status of environmental permits required on the project. If a project’s design has changed, the Re-evaluation should also address whether the design changes impact permitting and associated mitigation. Permitting information should be included in the “Status of Permits” section of the ***Re-evaluation Form*** (***Part 1, Chapter 13, Re-evaluations***) or ***State Environmental Impact Report Re-evaluation Form (Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery).***

12.3.5 Design and Permitting

During the Design phase, the project design initiated in PD&E is refined and applications are prepared for federal and/or state environmental permits authorizing the construction of the proposed project. During this phase, it is important for the Environmental Permits Coordinator and Project Designer(s) to refer to information prepared during the PD&E phase or subsequent Re-evaluation, including the Environmental Document, technical reports, and agency coordination/consultation to appropriately incorporate agency input, design considerations, and project commitments into the project design and related permit application packages. Some project commitments made earlier in the project life-cycle may become permit conditions.

From the PD&E phase to the Design and Construction phases, projects generally follow one of two project delivery methods: Design-Bid-Build or Design-Build (DB). The Design-Bid-Build method is where FDOT obtains separate contractors for the Design phase and the Construction phase. The first contractor handles the project Design, including permitting. Once Design is complete, FDOT solicits a bid for another contractor to construct the project based upon the approved plans and specifications of which the

issued permits are a part. Alternatively, projects could proceed using the DB method where the design and construction are combined in a single contract. If the environmental permits have not been obtained prior to procurement of DB firm, then FDOT must work closely with the selected DB firm on obtaining or modifying permits, following the steps described in ***Section 12.3.5.2***. The DB firm is required to coordinate any permit modifications with FDOT. FDOT is responsible for maintaining oversight/review of the contractor throughout the permitting process. Whether Design-Bid-Build or DB, the District as the permittee is responsible for reviewing, approving, and signing permit applications.

For Local Agency Program (LAP) projects not on the SHS (off-system), the LAP agency is responsible for obtaining necessary permits and conducting regulatory agency coordination. This includes signature of permit applications and fulfillment of required mitigation, as applicable. FDOT may provide oversight of the LAP agency to assure completeness. FDOT Districts have LAP Coordinators to assist the LAP agencies. See ***Local Programs Manual, Topic No. 525-010-300***.

12.3.5.1 Finalize Mitigation

As the project design is refined and permitting is initiated, the impacts and mitigation options identified during PD&E are refined in consultation with the appropriate regulatory agency. The intent is to identify the appropriate mitigation, how much mitigation will be required to off-set unavoidable wetland impacts, and which mitigation option(s) will be incorporated into the respective state and federal permits. Since the state and federal permitting processes are independent in relation to quantifying wetland impacts and mitigation, it is possible that the quantities of compensatory mitigation required may differ between the state and federal permits.

In accordance with ***Section 373.4137, F.S.***, FDOT must consider any mitigation options that meet state and federal requirements. Mitigation for wetland impacts may also provide conservation benefit for listed species. When finalizing mitigation, coordination with regulatory agencies can help to determine whether identified mitigation may satisfy mitigation needs of multiple permits. The final mitigation plan is included in the permit application and becomes a condition of the environmental permits, as appropriate.

12.3.5.2 Permitting Process

Permits must be obtained before construction begins. For traditional Design-Bid-Build projects, dredge and fill permits (i.e., ERP and ***Section 404/10*** permits) are typically issued during the Design phase, in advance of letting. Ideally, the District should obtain the environmental permits prior to production and no later than the project letting date. For DB projects, permits may be obtained during procurement (in advance of project letting) or by the DB firm once the project is let. A project's contract letting date is the date the FDOT opens bid proposals from potential contractors.

It is important for the Environmental Permits Coordinator, environmental staff, and the Design Project Manager to coordinate during permitting to ensure that information gathered during the PD&E Study or subsequent Re-evaluation is utilized during permitting. The PD&E Project Manager should transmit the Environmental Document and relevant technical reports, such as the ***NRE***, ***Cultural Resource Assessment Survey (CRAS) Report***, and resource agency correspondence/concurrence, to the Environmental Permits Coordinator. In some cases, the Environmental Document or Re-evaluation may include agency concurrence documentation, which when submitted with the permit applications, may expedite agency review and identify important commitments which need to be addressed during the Design phase. It is the responsibility of the Environmental Permits Coordinator to review the documents and ensure that applicable information is used when preparing environmental permit applications.

In the Design phase, exact project alignment and the extent of resource impacts become known. During the permitting process alignment-specific or updated environmental analysis may be conducted to identify the presence or absence of state or federally listed or otherwise protected species, establish jurisdictional wetland and surface water boundaries, quantify wetland impacts and mitigation needs (using appropriate functional assessment method), determine seasonal high and average wet season water table elevations, delineate/document cultural resources, and identify other environmentally sensitive resources (such as seagrasses, mangroves, coral and associated benthic resources). Appropriate drainage requirements focusing on the development of, or improvement to the stormwater management system, and how the project meets state water quality and quantity criteria should be addressed. See ***Part 2, Chapter 11, Water Resources***, ***Part 2, Chapter 13, Floodplains***, and FDOT ***Drainage Manual, Topic No. 625-040-002*** for more information. This information provides the “facts on the ground” that complement or update the PD&E Study results and support pre-application communication with the regulatory agencies and permit application submittal(s). These activities should be done in coordination with the Environmental Office so these items/updates can be documented in Re-evaluations. ***Figure 12-1*** and ***Figure 12-2*** include links to web sites that itemize typical permit types and application content for FDEP, WMD, USCG, and USACE; links to digital application forms for these agencies; and descriptions of typical state and federal permit review processes.

12.3.5.2.1 Pre-application Conference

To facilitate project permitting, a pre-application conference can be scheduled to discuss the project and related requirements with the appropriate state or federal agency. These conferences are in addition to resource agency coordination during ETDM and PD&E. They are meant to:

1. Notify agency personnel of the pending application,
2. Establish agency expectations of application content, and
3. Identify project-specific issues that should be addressed in the application.

It is recommended that the Environmental Permits Coordinator or District designee attend this meeting, along with appropriate consultant staff and/or contractors. Other FDOT staff may also attend such as the Project Manager or Lead Designer. FDOT participation in these meetings help to ensure the agency coordination is in FDOT's interest. Such coordination typically facilitates a more complete application submittal and a more efficient permit application review process.

12.3.5.2.2 Application Preparation/Submittal

The state and federal "dredge and fill" permit applications, in general, describe who, what, when, where, and how through forms, narrative, tables, and graphics. The application for a state wetland permit also includes a section to request authorization to use state-owned submerged lands. Applicants are not required to submit a separate application for sovereign submerged lands authorization. The federal and state application packages are typically initiated when project design approaches Phase II design plans (60% design plans). At this point, the major components of the project (i.e., the project impact footprint) have been designed and environmental impacts and mitigation can be computed with relative certainty.

Initiation of the application process is directed by the Environmental Permits Coordinator, in coordination with the Design Project Manager and the Program Management Office. This coordination ensures that design, permitting, and construction are appropriately scheduled and funded to avoid extended periods between permit issuance and construction funding. When permit application packages are prepared by consultants, they are reviewed, approved, and signed by the Environmental Permits Coordinator, or their designee, since FDOT is responsible for the project. The use of an appropriate application checklist is recommended to ensure the application packages are complete.

Permit application packages are submitted to the applicable WMD or FDEP to initiate the state ERP permitting process. FDOT Districts can submit the ***NRE*** as supporting data along with any updated information. Upon receipt of the application, or of a notice to use a general permit or a determination of an exemption, FDEP or WMD staff will examine the application or notice to determine whether the activity appears to be located, in whole or in part, on state-owned submerged lands. The applicant may also indicate in the application the need for a proprietary authorization (e.g., a letter of consent, easement or lease) in addition to the regulatory authorization being requested. Where necessary, FDEP or WMD staff will request a title determination from FDEP's Division of State Lands as confirmation whether state lands would be affected by a proposed project. Activities located in one of the state's Aquatic Preserves must receive a separate written authorization prior to initiating any work.

If applicable, an application is submitted to the USACE for a federal dredge and fill permit. The FDOT uses ***Form ENG 4345*** to initiate the federal permitting process. The form and related instructions are available on the USACE web site ***(USACE, 2015)***. The Environmental Permits Coordinator with assistance from the Environmental Manager should coordinate with the USACE.

Application packages for USCG permits are submitted directly to the USCG. Typical contents of a USCG application package are described in detail in the ***Bridge Permit Application Guide (USCG, 2016)*** and the application review process is described in the ***Bridge Permit Processing Procedure (USCG, 2014)***. It is recommended that the Environmental Permits Coordinator work with the Design Project Manager to ensure permits are timed to avoid the need for a permit extension.

For CCCL permits, FDOT submits an ***Application for a Permit for Construction Seaward of the Coastal Construction Control Line or Fifty-Foot Setback*** to FDEP Office of Resilience and Coastal Protection according to ***Rule 62B-33.008, F.A.C., Permit Application Requirements and Procedures***.

Application fees are associated with state permit review. Refer to the rate schedule on either the FDEP or WMD web sites for current permit-specific rates (***Figure 12-2***). The federal review process does not exact an application fee when the applicant is a government agency.

Erosion and Sediment Control Plan

FDOT develops and submits an erosion and sediment control plan as part of the ERP application. This plan provides reasonable assurance that water quality standards will not be violated during the construction phase of a project. The plan must identify the location, relative timing, and specifications for all erosion and sediment control and stabilization measures that will be implemented as part of the project's construction. The plan must provide for compliance with the terms and schedule of implementing the proposed project, beginning with the initiation of construction activities. The plan may be submitted as a separate document, or may be contained as part of the plans and specifications of the construction documents. For more information on the development of an erosion and sediment control plan, refer to the ***ERP Applicant's Handbook, Volume I*** or ***Part 1 of the State of Florida Erosion and Sediment Control Designer and Reviewer Manual***.

Stormwater Pollution Prevention Plan for NPDES Requirements

A ***Stormwater Pollution Prevention Plan (SWPPP)*** is required to be developed and implemented for each FDOT construction project that disturbs one or more acres of total land area and discharges to waters of the United States. The objectives of a ***SWPPP*** are to:

1. Prevent erosion where construction activities are occurring,

2. Prevent pollutants from mixing with stormwater, and

3. Prevent pollutants from being discharged by trapping them on-site, before they can affect the receiving waters.

A complete ***SWPPP*** consists of: ***SWPPP*** sheets, other plan sheets and documents referenced in the ***SWPPP*** sheets, the contractor's approved Erosion Control Plan in

accordance with ***Standard Specifications, Section 104***, inspection reports, and documentation of field changes that were made to better address the objectives and is prepared in consultation with Drainage, Construction, and Environmental personnel. To comply with this requirement, FDOT develops a ***Stormwater Runoff Control Concept (SRCC)***. The ***FDOT Design Manual, Part 2, Section 251, Topic No. 625-000-002*** describes the purpose, objective, and signing and noticing requirements of the ***SRCC*** The ***SRCC*** developed as part of the ERP application package may not be of sufficient detail for a contractor to obtain an NPDES permit. The contractor is responsible for developing a project specific ***SWPPP*** to meet regulatory requirements to obtain an NPDES permit prior to construction.

12.3.5.2.3 Application Processing/Review

The duration of the state permitting process depends on the complexity of the construction and the environmental sensitivity of the project area, unless the project qualifies for a general permit, which takes approximately 30 days. ***Section 373.4141, F.S.***, provides FDEP or the WMD 30 days to request additional information on an application or in any subsequent submittal within 30 days after receipt of an application for permit or receipt of additional information. An application is considered complete by a regulatory agency when the applicant has provided sufficient information for the regulatory agency to make a final agency action. A permit is issued or denied within 60 days after the application has been deemed complete, or upon written request by an applicant for the regulatory agency to begin processing the application. The 60-day statutory deadline for permit issuance can be formally waived by the applicant, for a period of time identified by the applicant, using the ***Waiver of the 60 Day Review Time Limit Form*** available from FDEP or WMD.

The approval or denial of an ERP application is linked with the approval or denial of any required state-owned submerged lands application. Activities that require an ERP cannot become complete until all required state-owned submerged lands information has been submitted as part of the permit application. In addition, the ERP permit cannot be issued unless a determination has been made that the related state-owned submerged lands application can be issued. If an activity meets all the requirements for issuance of an ERP, but does not meet all the requirements for issuance of the state-owned submerged lands authorization, the ERP must be denied. Conversely, if the activity meets all the state-owned submerged lands requirements, but does not meet the conditions for issuance of the ERP, the state-owned submerged lands application and the ERP permit will be denied.

Activities that qualify for a general permit, or an exemption from the state, are not linked to a sovereign submerged lands authorization. In such cases, even though an activity may be authorized by the general permit or exemption, construction, alteration, modification, maintenance, operation, abandonment, or removal of the project may not commence until the required state-owned submerged lands authorization has also been granted.

The federal permitting process does not have a statutory timeframe for permit issuance. The USACE and USCG will notify an applicant of apparent errors or omissions in application materials and request additional information needed to clarify the information in an application. Concurrence for a Nationwide Permit typically takes 3 to 6 months from the date of application. For more complicated Standard Permits, the USACE may need 12 to 18 months from the date of application. The USCG permitting process for a minor deviation takes approximately 3 to 4 months. A bridge permit is typically issued or denied by the USCG within 180 days after an application has been deemed complete. More information on the USCG permitting process can be found in ***Part 1, Chapter 16, Navigation***.

When required, FDEP, USACE, or the USCG, solicit comments from the public and resource agencies (e.g., FWC, USFWS, NMFS, SHPO, EPA) by publishing a public notice during the permitting process. The period for the public to submit comments is identified in the public notice (i.e., typically between 15 and 30 days). Once the public comment period closes, the permit issuing agency consolidates the public comments with merit and conveys them to the applicant. The applicant then responds to the comments in the same manner as the typical request for additional information process.

As commenting agencies for federal permits, the USFWS and/or NMFS may request additional data, including recent species-specific field surveys, confirmation of habitat mapping and characterization, and data on any observed listed species occurrences. Issuance of federal permits from USACE and/or USCG is contingent upon approval from USFWS and/or NMFS as appropriate that the project "may affect, is not likely to adversely affect" federally listed species, or that the action "may affect, likely to adversely affect" one or more listed species and incidental take is authorized. A review by wildlife agencies for listed species may take 180 days or longer, depending on the level of impact proposed.

For ERPs, the WMD or FDEP may solicit comment from FWC regarding a proposed project's potential effect on listed wildlife. In turn, FWC may request additional data, including recent species-specific field surveys, confirmation of habitat mapping and characterization, and data on any observed listed species occurrences to support the state permitting process. The WMD or FDEP may solicit comment from SHPO regarding a proposed project's potential effect on historic resources. The applicant then responds to the comments in the same manner as the typical request for additional information process described previously.

Issuance of a state general, individual, or conceptual ERP from a WMD or FDEP requires that the activity "will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters." (e.g., ***Rule 62-330.301(1)(d), F.A.C.***). Additionally, the applicant must provide reasonable assurance that the project will not be contrary to the public interest for activities located in, on, or over wetlands or other surface waters - or in the case where impacts are proposed in an Outstanding Florida Water, the applicant must provide reasonable assurance that the project is clearly in the public interest; that the project will not adversely affect navigation; and that the project will not result in harm to listed wildlife species ***Rule 62-330.302(1),***

F.A.C. The Project Manager and Environmental Permits Coordinator should facilitate the communication of FWC decisions and commitments (if any) to the WMD or FDEP as part of the ERP application process, and should obtain documentation from the WMD that the wildlife and habitat commitments sufficiently meet the conditions for permit issuance.

Incidental Take permits are issued for activities that may result in take of federal or state protected species. Applications for take of federally listed species are contingent upon a USFWS ***HCP*** which defines the full impact on the species, describes methods proposed to minimize take, and outlines mitigation which may be implemented to offset the take. Additional information on ***HCPs*** and Incidental Take permits is available on the USFWS ***Ecological Services*** site. The NMFS website has information on permits related to protected marine resources. The USFWS and NMFS have a ***Habitat Conservation Planning and Incidental Take Permitting Processing Handbook*** that provides guidance on this permitting process. See ***Figure 12-3*** for links to these resources.

FWC will approve or deny a complete Incidental Take permit application for state listed species within 90 days of receipt. A complete application includes all relevant information as attachments (e.g. scientific project proposals, educational plans and brochures, site plans, photographs, etc.). Additional information on state Incidental Take permits can be found online in FWC's ***Florida Wildlife Conservation Guide***. See ***Figure 12-3***.

12.3.5.2.4 Noticing Permits

Noticing requirements vary between federal and state agencies. The information in this section provides an overview of permit noticing requirements. The District should coordinate with the appropriate regulatory agency to ensure proper noticing of permits.

In accordance with ***33 CFR § 325.2(a)(8)***, for USACE standard permits, the USACE's District Engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. This list will be distributed to all persons who may have an interest in any of the public notices listed. USACE general permits do not typically require noticing upon receipt (verification or authorization is the term used in the letter to FDOT). The USACE provides a public notice in the ***FR*** announcing the availability of general permits.

For USCG bridge permits, the applicant may publish a public notice to known navigation and other interested parties, news media, adjacent property owners, public officials and local government agencies. The public notice contains a description of the proposed bridge project and includes location maps and bridge drawings with navigational clearances. FDOT should coordinate with the USCG for details on the information to include in the public notice.

For ERPs, it is recommended that the FDOT District publish a notice of agency action in a newspaper of general circulation in the county where the proposed activity is to occur. Publication of notice informs third parties of their right to challenge the regulatory agency's

action. If proper notice is provided by publication, third parties have 21 days in which to file a petition opposing the agency's action. A shorter 14-day time limit applies to an agency action regarding ERPs linked with an authorization to use State Owned Submerged Lands. Agency actions regarding issuance or denial of a permit, petition or qualification for exemption, only become closed to future legal challenges if third parties have been properly notified and no third-party objects within a specific period. Upon request FDEP or WMD staff will provide the applicant (FDOT) with the information for publishing such a notice. The District can also contact the Office of General Counsel for assistance.

12.3.5.2.5 Permit Distribution and Tracking

Upon issuance of environmental permit(s), the Environmental Permits Coordinator utilizes a ***Permit Transmittal Memorandum, Form No. 650-040-01*** or the form in SWEPT to transfer the permit(s) to the District Construction Engineer and posts the permit(s) to ***FDOT's File Transfer Protocol (FTP) site***. A sample of the ***Permit Transmittal Memorandum, Form No. 650-040-01*** is provided in ***Figure 12.5***. Posting to the FTP site is part of the official contract package. Potential contractors use the FTP site to obtain copies of the permits when preparing their bids. The Construction Office, CEI team, winning contractor, and Maintenance Office review the environmental permits to ensure permit compliance.

Each District must implement a means to track execution of the various conditions associated with each permit issued to FDOT – including but not limited to pre-construction wildlife surveys/permitting, mitigation implementation/purchase, ***ESA*** consultation, resource protection during construction, permit expiration dates, monitoring and inspection schedules, and post-construction notification and reporting. They may be tracked using SWEPT, SharePoint, Excel spreadsheets or permit tracking databases. Tools that automatically notify the user of approaching permit expiration dates are especially helpful.

For LAP agency projects, the LAP agency must provide documentation to FDOT demonstrating that the appropriate environmental permits have been obtained. More information on LAP projects can be found in the ***Local Programs Manual, Topic No. 525-010-300***.

12.3.6 Construction

The Environmental Permits Coordinator should participate in the pre-construction meeting to brief Construction staff and Contractor on permitting and environmental issues. The Environmental Permits Coordinator should also send a pre-construction environmental permit briefing memorandum that includes the ***FDOT Contractor Requirements for Unanticipated Interaction with Protected Species*** to the Construction Project Administrator. ***Section 8.2*** of the ***Construction Project Administration Manual, Topic No. 700-000-000*** provides guidance on:

1. Providing a comprehensive review of all permits at the preconstruction conference

2. Monitoring regulated activities to assure they are conducted in accordance with permits

3. Special requirements of NPDES

4. Reporting and Enforcement

In addition, the Construction Office should coordinate with the Environmental Office and Environmental Permits Coordinator to ensure permit condition familiarity and to ensure that the intent and timeline of the environmental permit conditions are being met.

During the Construction phase, a contractor may request modification of existing permits. FDOT may authorize the contractor's request to proceed with a permit modification, if it is in compliance with FDOT design criteria and state and federal regulatory requirements and is not anticipated to adversely affect project schedule or cost. FDOT will review and approve of the modification prior to submittal, as described in ***Section 12.3.5.2.2***.

12.3.6.1 Permit Compliance

FDOT, as the permittee, is responsible for compliance with the permit prior to, during, and, after Construction. Failure to comply with issued permits may result in enforcement action by the regulatory agencies. Therefore, it is important for FDOT to inform construction contractors and/or DB firms of their contractual obligation to follow approved commitments, permit conditions and project design in order that the project remains compliant with permit requirements. While FDOT may face liability for non-compliance due to its status as permittee, a contractor or DB firm may also be liable to regulatory agencies as a responsible party.

In accordance with ***Section 8.2*** of the ***Construction Project Administration Manual, Topic No. 700-000-000***, the Project Administrator is responsible for overseeing permit compliance during Construction. The Project Administrator should meet with the Environmental Permits Coordinator and Environmental Manager prior to construction to be briefed on the content of project permits and design plan notes (if any) as they relate to protection of environmental resources. The Project Administrator should continue to coordinate with the Environmental Permits Coordinator and the Environmental Manager throughout the Construction phase to assure the Project Administrator's full knowledge of the regulatory requirements included in the permits, sediment erosion plan, ***SWPPP***, and design plans and to provide awareness of project progress to the Environmental Office, particularly if environmental issues arise.

Once construction is complete, the Project Administrator is responsible for addressing post-construction permit conditions. Post-construction activities may include, but are not limited to:

1. Notifying the USACE of project completion via written correspondence

2. Notifying FDEP or WMD of construction completion and requesting conversion of the project to the operation phase via submittal of the electronic form ***Form 62-330.310(1) - As-Built Certification and Request for Conversion to Operation Phase, Rule 62-330.310(4)(a)1, F.A.C.***

3. Submitting an as-built certification form to the USACE (typically an attachment to the permit)

4. Submitting as-built drawings to FDEP/WMD and USACE showing how project construction either complied with, or deviated from, permitted project design

5. Notifying wildlife agencies about completion of species permit activities (e.g., After Action reports for Gopher Tortoise permits)

Permit conditions typically define the required submittal information to assist FDOT in completing the forms and compiling required information. Species permits may also include conditions requiring documentation that must be submitted to the wildlife agencies. For project continuity, the Construction Office should additionally notify the Environmental Office of construction completion.

The Project Administrator is also responsible for monitoring all permit expiration dates and advising the Environmental Permits Coordinator at least 6 months prior to a permit expiring. For projects requiring USFWS or NMFS consultation, notification of permit expiration should be up to twelve 12 months in advance of permit expiration, to allow ample time for coordination/consultation with the agencies. The Environmental Permits Coordinator is responsible for acquiring necessary permit extensions and/or renewals from the appropriate regulatory agency in the event work is not anticipated to be completed within the time authorized by the permit.

12.4 REFERENCES

86 FR 2744, https://www.federalregister.gov/documents/2021/01/13/2021-00102/reissuance-and-modification-of-nationwide-permits

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Chapter 62B-33, F.A.C., Rules and Procedures for Coastal Construction and Excavation (Permits for Construction Seaward of the Coastal Construction Control Line and Fifty Foot Setback)

Chapter 62-113, F.A.C., Listing of regulatory delegation agreements

Chapter 62-330, F.A.C., Implements the comprehensive statewide environmental resource permit (ERP) program

Chapter 62-340, F.A.C., Method for delineating the landward extent of wetlands and surface waters

Chapter 62-621, F.A.C., Generic Permits

Chapter 62-624, F.A.C., Municipal Separate Storm Sewer Systems

Chapter 68A-1, et seq. F.A.C., Establishes wildlife code of the state of Florida

Chapter 373, Part IV, F.S., Water Resources. Management and Storage of Surface Waters. http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/0373PARTIVContentsIndex.html

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https://www.fdot.gov/roadway/fdm

FDOT, Efficient Transportation Decision Making Manual, Topic No. 650-000-002.
https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

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https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/final-mitigation-payment-handbook2025.pdf?sfvrsn=cf429d13_1

FDOT, Construction Project Administration Manual, Topic No. 700-000-000.
https://www.fdot.gov/construction/manuals/cpam/cpammanual.shtm

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http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.0885.html

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http://www.ecfr.gov/cgi-bin/text-idx?SID=30ea9056a7eb08f3f433ac58b032b795&mc=true&node=pt33.3.230&rgn=div5

Title 33 CFR Part 323, Permits for Discharges of Dredged or Fill Material into Waters of the United States. https://www.ecfr.gov/current/title-33/chapter-II/part-323?toc=1

Title 33 CFR Part 325, Processing of Department of the Army Permits. https://www.ecfr.gov/current/title-33/chapter-II/part-325?toc=1

Title 33 CFR Part 328, Definition of Waters of the United States. http://www.ecfr.gov/cgi-bin/text-idx?SID=30ea9056a7eb08f3f433ac58b032b795&mc=true&node=pt33.3.328&rgn=div5

Title 33 CFR Part 329, Definition of Navigational Waters of the United States. https://www.ecfr.gov/current/title-33/chapter-II/part-329

Title 33 CFR Part 330, Nationwide Permit Program. https://www.ecfr.gov/current/title-33/chapter-II/part-330?toc=1

Title 33 CFR Part 332, Compensatory Mitigation for Losses of Aquatic Resources. https://www.ecfr.gov/current/title-33/chapter-II/part-332

Title 40 CFR Part 230, Section 404(B)(1) Guidelines for Specification of Disposal Sites for Dredged and Fill Material. https://www.ecfr.gov/current/title-40/chapter-I/subchapter-H/part-230

Title 50 CFR Part 17, Endangered and Threatened Wildlife and Plants. https://www.gpo.gov/fdsys/search/pagedetails.action?collectionCode=CFR&searchPath=Title+50%2FChapter+I%2FSubchapter+B%2FPart+17&granuleId=CFR-2010-title50-vol2-part17&packageId=CFR-2010-title50-vol2&oldPath=Title+50%2FChapter+I%2FSubchapter+B%2FPart+17&fromPageDetails=true&collapse=false&ycord=2772

Title 50 CFR Part 21, Migratory Bird Permits. http://www.ecfr.gov/cgi-bin/text-idx?SID=d0a52e9cdad29c73a89c0c47797eb296&mc=true&node=pt50.9.21&rgn=div5

Title 50 CFR § 22.3, Definitions. http://www.ecfr.gov/cgi-bin/text-idx?SID=d0a52e9cdad29c73a89c0c47797eb296&mc=true&node=pt50.9.22&rgn=div5#se50.9.22_11

Title 50 CFR § 22.26, Permits for Eagle Take that is associated with, but not the purpose of, an activity. http://www.ecfr.gov/cgi-bin/text-idx?SID=d0a52e9cdad29c73a89c0c47797eb296&mc=true&node=pt50.9.22&rgn=div5#se50.9.22_126

Title 50 CFR Part 226, Designated Critical Habitat. http://www.ecfr.gov/cgi-bin/text-idx?SID=d0a52e9cdad29c73a89c0c47797eb296&mc=true&node=pt50.10.226&rgn=div5

Title 50 CFR § 600.10, Definitions. http://www.ecfr.gov/cgi-bin/text-idx?SID=d0a52e9cdad29c73a89c0c47797eb296&mc=true&node=pt50.12.600&rgn=div5

USACE, 2014. Department of the Army Jacksonville District Source. http://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/

USACE, 2015. Obtain a Permit. USACE FORM 4345. http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/

USACE, 2018. USACE Section 408. http://www.usace.army.mil/Missions/Civil-Works/Section408/

United States Code, Title 16 U.S.C. Sections 703-712, Migratory Bird Treaty Act. https://www.fws.gov/laws/lawsdigest/migtrea.html

United States Coast Guard (USCG), 2016. Office of Bridge Programs, Bridge Permit Application Guide. https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5pw/Office%20of%20Bridge%20Programs/BPAG%20COMDTPUB%20P16591%203D_Sequential%20Clearance%20Final(July2016).pdf

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United States Department of Transportation (USDOT), 2013. Memorandum of Understanding between the U.S. Coast Guard and Federal Highway Administration and Federal Transit Administration and Federal Railroad Administration to Coordinate and Improve Bridge Planning and Permitting

12.5 FORMS

Permit Transmittal Memorandum, Form No. 650-040-01

Table 12-1 Legislation Related to Environmental Permitting

Title and Citation	Relevance to Permitting	Lead Agency/ Required Commenters
Federal Legislation		
Clean Water Act (Federal Water Pollution Control Act) of 1972, Section 404, (33 U.S.C. §1344) as amended; (40 CFR Part 230)	The Clean Water Act (CWA) is the primary federal law related to protection of surface waters and wetlands. Section 404 regulates the discharge of dredged and fill material into waters of the United States, including wetlands. Dredge and fill activities are regulated by a permit process administered by the U.S. Army Corps of Engineers (USACE) and overseen by the U.S. Environmental Protection Agency (EPA). This process most commonly creates a "federal nexus" for wildlife consultations under the Endangered Species Act. USACE functions as the lead agency, while U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) serve as cooperating agencies for Section 404 federal actions. Under Section 401, states are provided authority to ensure that federal permits do not violate state water quality standards.	USACE / EPA, USFWS, and/or NMFS.
Rivers and Harbors Act of 1899, Section 10	Section 10 of the Rivers and Harbors Act prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavating from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been permitted by the USACE.	USACE
General Bridge Act of 1946	Under the General Bridge Act of 1946 (33 U.S.C. *§§* 525-533), construction of a bridge over a navigable U.S. waterway requires the Coast Guard to grant a bridge permit	USCG
National Pollutant Discharge Elimination System (NPDES) (*40 CFR Part 122*) and Section *403.0885, F.S*,	NPDES requires the development of a Stormwater Pollution Prevention Plan (SWPPP) for construction project sites greater than 1 acre in size, if stormwater from the activity has the potential to enter a surface water of the State or a municipal separate storm sewer system.	FDEP (delegated from EPA)
Section 106 of the National Historic Preservation Act of 1966, as amended, *16 U.S.C. § 470f*	The Act requires the federal agency to take into account the effects that activities authorized by federal permits are likely to have on historical properties listed in, or eligible for listing in, the National Register of Historic Places.	USACE / State Historic Preservation Officer (SHPO)

Table 12-1 Legislation Related to Environmental Permitting (Page 2 of 3)

Title and Citation	Relevance to Permitting	Lead Agency/ Required Commenters
Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. §§ 1531-1541); 50 CFR Part 402	Section 7 of the ESA requires federal agencies, in consultation with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS), to ensure that effects of actions that they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of designated critical habitat of such species. This congressional policy states that "All Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of the Act". In the absence of a federal nexus, Section 10 of the ESA allows for the "incidental take" of listed species when a Habitat Conservation Plan (HCP) is developed and approved. 50 CFR § 402.08 allows FDOT to conduct informal ESA consultations with USFWS on behalf of FHWA.	USFWS or NMFS
Federal Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), as amended	The Act states that "it shall be unlawful at any time…..to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess…..any migratory bird, any part, nest, or egg of any such bird…". This governs avian species such as the Florida burrowing owl, osprey, and American bald eagle.	USFWS
The Federal Bald and Golden Eagle Protection Act, (16 U.S.C. §§ 668-668c), as amended	The Act prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."	USFWS
State Legislation		
Chapter 62-330, F.A.C.	Establishes the SWERP program to provide more consistency throughout Florida in state permitting thresholds, requirements and processes. The SWERP program governs the following: construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on or over wetlands or other surface waters.	FDEP or WMD / FWC and SHPO

Table 12-1 Legislation Related to Environmental Permitting (Page 3 of 3)

Title and Citation	Relevance to Permitting	Lead Agency/ Required Commenters
State Legislation		
Chapter 68A-27, F.A.C.	Rules Relating to Threatened or Endangered Species. This chapter provides the purpose, definitions, species designations, permitting requirements, and other rules associated with the regulation of potential impacts to state listed species in Florida.	FWC
Gopher Tortoise (68A - 27.003 F.A.C.)	As a Threatened species, a permit is required for any activity that causes a take, harassment, molestation, damage, or destruction to gopher tortoises or their burrows.	FWC

*In accordance with Section 335.02(4), F.S., FDOT is not bound by county, municipal, or special district regulations for projects on the State Highway System; however, Broward and Hillsborough Counties have been delegated regulatory authority to administer the state wetland permitting program.

Table 12-1 Federal Permit Types

Lead Agency	Action/Permit Type	Permit Number/Name or Activity Description	Commenting Agency	Remarks
U.S. Army Corps of Engineers	No Section 404 Permit Required	N/A	N/A	Utilize Permit Involvement Form or other checklist to ensure correct determination.
	Section 404 Nationwide Permit (NWP)	54 NWPs exist as of March 2017	N/A	NWPs are reviewed every 5 years, and changes are made, as appropriate. Some NWPs subject to Pre-Construction Notice (PCN). Special conditions apply to some NWPs. Refer to USACE Source Book
	Section 404 Regional General Permit (RGP)	SAJ-92, FDOT and Florida's Turnpike Enterprise	USFWS (SAJ-92, p. 4), SHPO	Capacity improvement projects. RGPs are reviewed every 5 years, and changes are made, as appropriate.
	Section 404 Letter of Permission	Letter of Permission	USFWS, NMFS, SHPO	Refer to USACE Source Book
	Section 404 Standard Permit	Standard Permit	USFWS, NMFS, EPA, SHPO	Refer to USACE Source Book
	408 Permit	Permission	WMDs	Refer to USACE Section 408 Guidance
U.S. Coast Guard	Bridge Permit	Bridge Permit	NMFS, USFWS, EPA, SHPO	Refer to USCG Bridge Permit Application Guide

Table 12-2 State Permit Types

Lead Agency	Action/Permit Type	Permit Number/Name or Activity Description	Commenting Agency	Remarks
Florida Department of Environmental Protection or Water Management District	Conceptual Permit	Conceptual Permit	FWC, SHPO	Conceptual permit may also authorize the first phase of project. Refer to Rule 62-330.056, F.A.C.
	General Permit	General Permit	N/A	Refer to Rules 62-330.401 through 62-330.635, F.A.C.
	Individual Permit	Individual Permit	FWC, SHPO	Refer to Rule 62-330.054, F.A.C.
FDEP	National Pollutant Discharge Elimination System (NPDES)	NPDES Permit	N/A	Typically acquired by construction contractor

Table 12-3 Listed Wildlife Permit Types

Lead Agency	Species	Permit Type/Name	Remarks
Florida Fish and Wildlife Conservation Commission (FWC)	Gopher Tortoise	10 of Fewer Burrows Relocation Permit	All named permits require the involvement of and Authorized Gopher Tortoise Agent permitted by FWC – except for on-site relocation of 10 or fewer burrows IF all of the tortoises are captured via live or bucket trapping or by hand shovel excavation
		Conservation Permit	
		Disturbed Site Permit	
		Burrow or Structure Protection Permit	
		Emergency Take without Relocation Permit	
	Florida Burrowing Owl	Migratory Bird Nest Removal Permit	Only allowed during non-nesting season (July 11 through February 14)
	ISMP	Species Specific	Species specific
U.S. Fish and Wildlife Service (USFWS)	American Bald Eagle	Nest Take Permit	Only for inactive eagle nests, unless necessary to alleviate safety emergency to humans or eagles (then can include active nest removal)
		General Permit for Bald Eagle Disturbance	The take (disturbance) must be necessary for the project purpose, despite implementation of all practicable measures to avoid and minimize the impact to eagles

Federal permitting information can be obtained from the following sources:

United States Coast Guard

See Part 1, Chapter 16, Navigation for information sources.

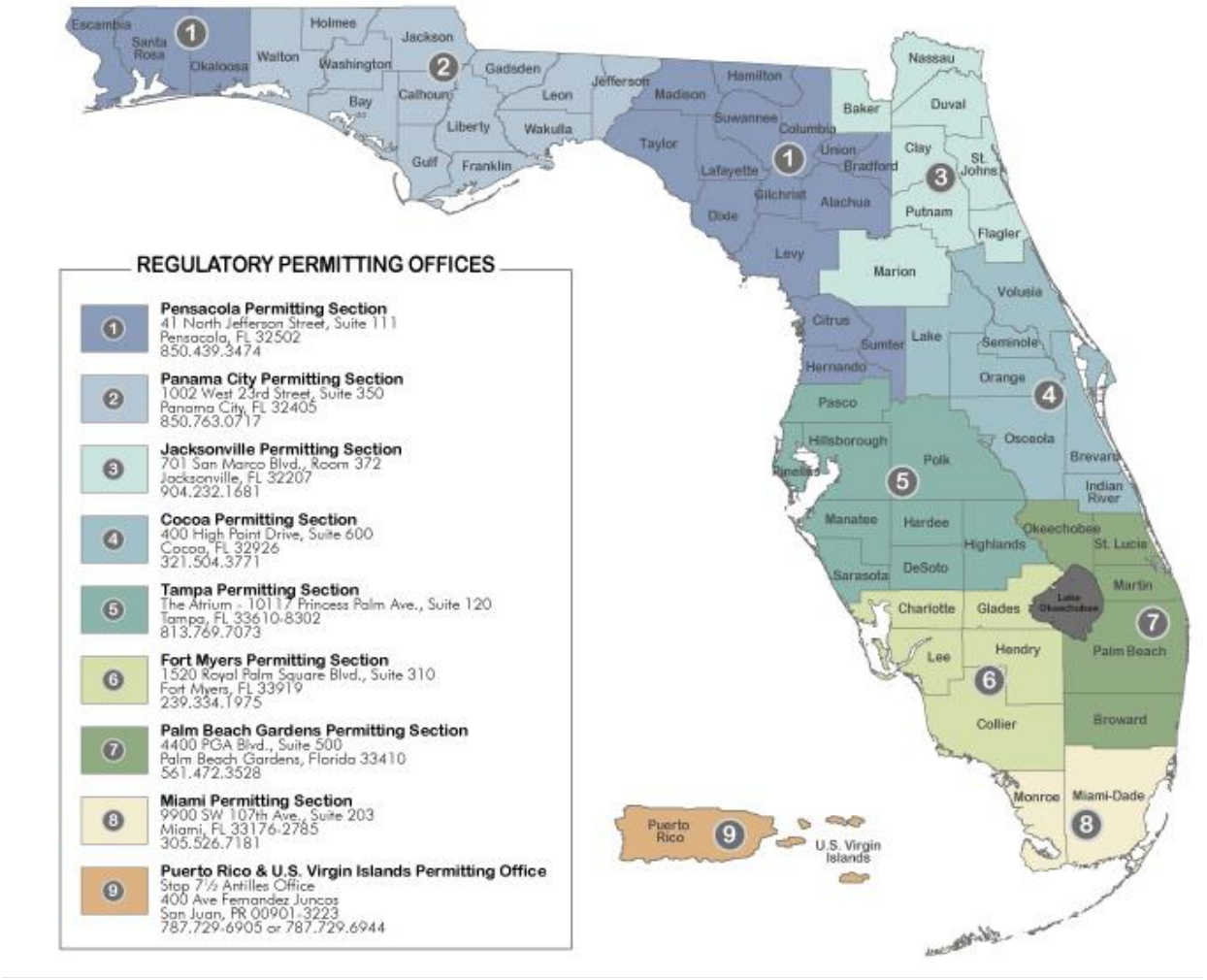
United States Army Corps of Engineers

1) A comprehensive and detailed listing of USACE permit types, application forms, wetland data forms, wetland mitigation requirements, endangered species requirements, and an overall description of the permitting process, can be found at http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx

2) Information on exemptions for very narrowly-defined activities that result in incidental impacts to wetlands or surface waters in accordance with ***Section 404(f)(1)*** of the ***CWA*** are provided at https://www.epa.gov/cwa-404/exemptions-permit-requirements

3) USACE regions of responsibility and office addresses: See next page.

Figure 12-1 Federal Permitting Information Sources



*The Corps office location map in the figure is located at:
http://www.saj.usace.army.mil/Missions/Regulatory/OfficeLocations.aspx

Figure 12-1 Federal Permitting Information Sources (Page 2 of 2)

State permitting information can be obtained from the following sources:

FDEP's Permitting Portal is the umbrella web link that provides access to following links as well as other state water resource regulation: http://flwaterpermits.com/

Statewide Environmental Resource Permitting (SWERP)

1) The state (all five WMDs and FDEP) has consolidated its environmental permitting process and has described it in a two-volume set of the Environmental Resource Permit Applicant's Handbook.

2) Volume I applies state-wide and includes a comprehensive and detailed listing of WMD permit types, application forms, wetland delineation process, criteria for project evaluation, and an overall description of the permitting process. It can be found at https://www.sfwmd.gov/sites/default/files/documents/swerp_applicants_handbook_vol_i.pdf

3) Five versions of Volume II, one specifically tailored to the unique soil and water conditions of each of the five WMDs, include design and performance standards for water quality, water quantify, and flood control within the respective WMD generally, and within special basins within the respective WMD. The individual region-specific Volume II handbooks can be found at:

- Northwest Florida WMD: https://www.nwfwater.com/Permits/Environmental-Resource-Permits/Applications-Forms
- St. Johns River WMD: https://www.sjrwmd.com/static/permitting/PIM-20180601.pdf
- Suwannee River WMD: http://www.srwmd.state.fl.us/DocumentCenter/View/8654
- Southwest Florida WMD: https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/06-04-18%20FINAL%20AH%20II%20%28materials%20incorporated%20by%20reference%29.pdf
- South Florida WMD: http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/swerp_applicants_handbook_vol_ii.pdf

4) Water Management District regions of responsibility and office addresses: See next page

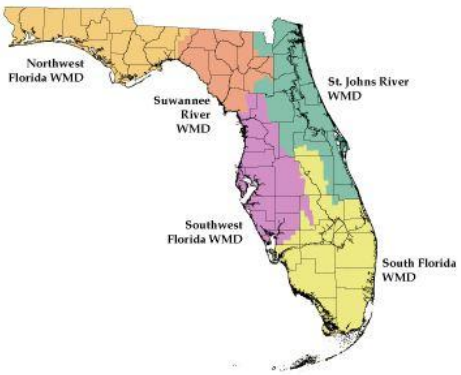
Figure 12-2 State Permitting Information Sources

Water Management Districts

The Department of Environmental Protection is involved in managing the quality and quantity of water through its relationship with the state's five water management districts: Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District and Southwest Florida Water Management District.

The water management districts administer flood protection programs and perform technical investigations into water resources. The districts also develop water management plans for water shortages in times of drought and to acquire and manage lands for water management purposes under the Save Our Rivers program. Regulatory programs delegated to the districts include programs to manage the consumptive use of water, aquifer recharge, well construction and surface water management.

As part of their surface water management programs, the districts administer the Department's stormwater management program. This increases the districts' contacts with local governments by directing the districts to help with the development of the water elements in local government comprehensive plans.



WMD	JURISDICTION	OFFICE
Northwest Florida WMD	Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson (western half), Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, & Washington	81 Water Management Drive Havana, FL 32333 850/539-5999
Suwannee River WMD	Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Madison, Suwannee, Taylor, Union and portions of Alachua, Baker, Bradford, Jefferson & Levy	9225 CR 49 Live Oak, FL 32060 386/362-1001 800/226-1066 (Florida only)
St. Johns River WMD	Brevard, Clay, Duval, Flagler, Indian River, Nassau, Seminole, St. Johns, Volusia, and portions of Alachua, Baker, Bradford, Lake, Marion, Okeechobee, Orange, Osceola & Putnam	P.O. Box 1429 Palatka, FL 32178-1429 386/329-4500 800/451-7106
Southwest Florida WMD	Citrus, DeSoto, Hardee, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Sarasota, Sumter, and portions of Charlotte, Highlands, Lake, Levy, Marion & Polk	2379 Broad Street Brooksville, FL 34604-6899 352/796-7211 800/423-1476 (Florida only)
South Florida WMD	Broward, Collier, Dade, Glades, Hendry, Lee, Martin, Monroe, Palm Beach, St. Lucie, and portions of Charlotte, Highlands, Okeechobee, Orange, Osceola & Polk	3301 GunClub Road West Palm Beach, FL 33406-3089 561/686-8800 800/432-2045 (Florida only)

*The WMD district map is located at: http://www.dep.state.fl.us/secretary/watman/

Figure 12-2 State Permitting Information Sources (Page 2 of 3)

5) Section 373.413(6), F.S., describes flexibility for FDOT stormwater permitting. The statute can be found within: http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=373.413&URL=0300-0399/0373/Sections/0373.413.html

6) More information on SWERP is available on the FDEP website, including links to applicable rules and application forms:

http://www.dep.state.fl.us/water/wetlands/swerp

National Pollutant Discharge Elimination System (NPDES)

The NPDES Construction Generic Permit (CGP), administered by FDEP, can be found at: http://www.dep.state.fl.us/water/stormwater/npdes/construction1.htm

Florida Coastal Management Program

Florida Coastal Management Program Guide at: https://www.dep.state.fl.us/cmp/publications/FCMP_Program_Guide_2014.pdf

Class V Stormwater Well Permits

Class V Stormwater Well Permits are regulated under FDEP's Aquifer Protection program. More information about Class V Stormwater permits can be found at: http://dep.state.fl.us/water/uic/forms.htm

State Programmatic General Permit

http://www.dep.state.fl.us/water/wetlands/erp/spgp.htm

Coastal Construction Control Line (CCCL)

General information on the CCCL Program can be found at https://floridadep.gov/CCCL

To locate the CCCL, use Map Direct. A link to the tool can be found at https://floridadep.gov/rcp/coastal-construction-control-line/content/locate-coastal-construction-control-line-cccl

Figure 12-2 State Permitting Information Sources (Page 3 of 3)

Wildlife permitting information can be obtained from the following sources:

Animal species regulated by **Florida Fish and Wildlife Conservation Commission (FWC),** plant species regulated by the **Florida Department of Agriculture & Consumer Services (FDACS)**, and further species specific information, expert interviews, habitat or GIS data can be found in Part 2, Chapter 16, Protected Species and Habitat, of the PD&E Manual.

Osprey Permitting:

1) Contact USFWS for Osprey nest permitting information by phone at (404) 679-7070 or email permitsR4MB@fws.gov

2) No federal Incidental Take permits are currently available for the take of active osprey nests. USFWS should be contacted to discuss permitting potential/strategy. Refer to the appropriate link for contact information:

North Florida Ecological Services Field Office
http://www.fws.gov/northflorida/

Panama City Ecological Services Field Office
http://www.fws.gov/PanamaCity/

South Florida Ecological Services Field Office
http://www.fws.gov/verobeach/

Burrowing Owl Permitting:

1) State burrowing owl permits are issued only for the removal of inactive owl nests (burrows). Applications are submitted on line at a link included at the bottom of the following link: https://myfwc.com/media/11362/burrowingowlsupplementalapplication.pdf

2) No federal Incidental Take permits are currently available for the take of active burrowing owl nests (burrows). USFWS should be contacted at the appropriate link to discuss permitting potential/strategy:

North Florida Ecological Services Field Office
http://www.fws.gov/northflorida/

Figure 12-3 Protected Wildlife Permitting Information Sources

Panama City Ecological Services Field Office
http://www.fws.gov/PanamaCity/

South Florida Ecological Services Field Office
http://www.fws.gov/verobeach/

Bald Eagle Permitting:

1) On April 20, 2017, the Florida Fish and Wildlife Conservation Commission approved revisions to the state's bald eagle rule (68A-16.002, F.A.C.). The approved rule revisions eliminate the need for applicants to obtain both a state and federal permit for activities with the potential to take or disturb bald eagles or their nests. Under the approved revisions, only a federal permit is required. The rule revisions became effective June 22, 2017.

http://myfwc.com/license/wildlife/protected-wildlife/eagle-permits/

2) Federal bald eagle permit application for eagle depredation permits (this includes disturbance, harassment, and/or trap-relocate) can be found at http://www.fws.gov/forms/3-200-16.pdf. The web site includes a list of the USFWS regional permitting offices that are available to provide assistance in the permitting process.

3) The application for a General Permit for Bald Eagle Disturbance, including a fact sheet of the most commonly asked questions about this permit type, can be found at http://www.fws.gov/forms/3-200-71.pdf. The web site includes a list of the USFWS regional permitting offices that are available to provide assistance in the permitting process. Also see the General Permit Standard Conditions for Bale Eagle Nest Disturbance at https://www.fws.gov/media/general-permit-standard-conditions-bald-eagle-nest-disturbance.

Gopher Tortoise Permitting:

Gopher tortoises are protected by Florida state law. The Gopher Tortoise Permitting Guidelines, which include links to specific permit types, can be found at: http://myfwc.com/license/wildlife/gopher-tortoise-permits/

Incidental Take Permitting:

Additional information on Habitat Conservation Plans and Incidental Take permits is available on the USFWS Ecological Services site: https://www.fws.gov/service/habitat-conservation-plans and in the online FWC Florida Wildlife Conservation Guide: http://myfwc.com/conservation/value/fwcg/

Figure 12-3 Protected Wildlife Permitting Information Sources (Page 2 of 2)

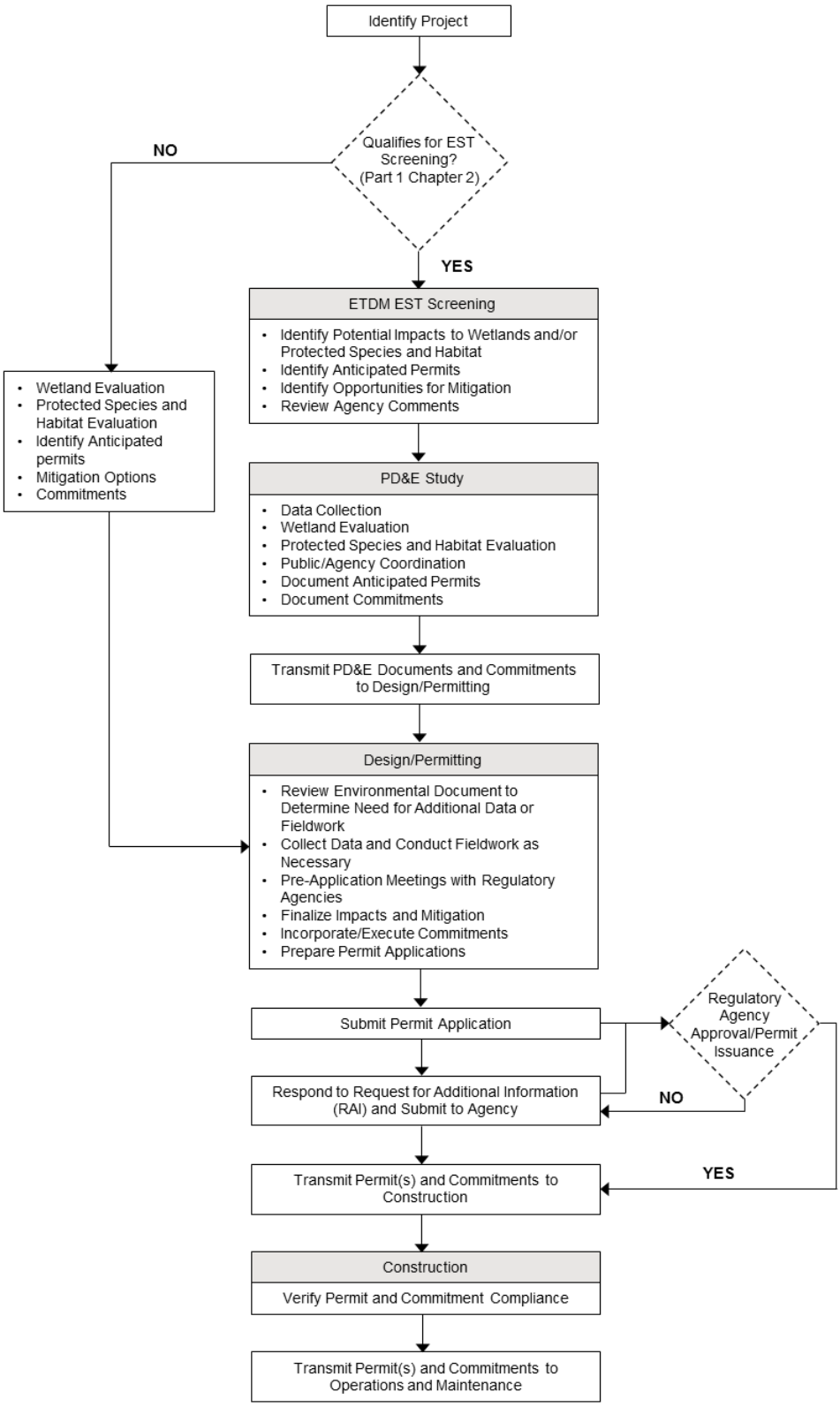


Figure 12-4 Typical Permitting Process

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PERMIT TRANSMITTAL MEMORANDUM

650-040-01
CONSTRUCTION
02/12

DATE: _____

TO: DISTRICT CONSTRUCTION ENGINEER

FROM: _____
District Permit Coordinator

PERMITS ATTACHED FOR:

Financial Project No.: _____

Federal Aid No.: _____

County: _____

Description: _____

THE FOLLOWING PERMITS ARE REQUIRED FOR THIS PROJECT:

FDEP ☐; USACE ☐; USCG ☐; WMD ☐;

LOCAL ☐; _____ ☐;

_____ ☐; _____ ☐.

The valid permits are attached. Please note the "particular and specific conditions" and the expiration dates. Construction Engineer: Please comply with all permit conditions. Please provide me with copies of all permitted work started and permitted work completed notices you send to regulatory agencies. Please notify me six (6) months before the permit expiration date if it will occur prior to completion of the permitted work.

TOTAL STATUS OF PERMITS: ☐ CLEAR ☐ PENDING ☐ MODIFIED ☐ EXTENDED

Remarks: _____

For each permit, indicate below AGENCY and permit TYPE (NW, GP, IND, etc.):

_____ Permit No. _____ ; Type: _____ ; Expiration Date: _____
☐ Permit Pending ☐ Permit in hand
Remarks: _____

_____ Permit No. _____ ; Type: _____ ; Expiration Date: _____
☐ Permit Pending ☐ Permit in hand
Remarks: _____

_____ Permit No. _____ ; Type: _____ ; Expiration Date: _____
☐ Permit Pending ☐ Permit in hand
Remarks: _____

_____ Permit No. _____ ; Type: _____ ; Expiration Date: _____
☐ Permit Pending ☐ Permit in hand
Remarks: _____

_____ Permit No. _____ ; Type: _____ ; Expiration Date: _____
☐ Permit Pending ☐ Permit in hand
Remarks: _____

CC: DISTRICT OFFICE NO. _____

- ☐ District Drainage Engineer
- ☐ District Central File
- ☐ District Design Engineer
- ☐ District Project Manager
  (Legible permit in contract file)
- ☐ District Maintenance Engineer
- ☐ District Production Mgmt (copy this memo only)
- ☐ District ROW - State Lands Acq.
- ☐ District Specifications Engineer
- ☐ Other _____
- ☐ Other _____

CENTRAL OFFICE

- ☐ FHWA (by separate letter)
- ☐ Other _____

Figure 12-5 Permit Transmittal Memorandum

PART 1, CHAPTER 13

RE-EVALUATIONS

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PART 1, CHAPTER 13

RE-EVALUATIONS

13.1 OVERVIEW

The ***National Environmental Policy Act (NEPA)*** requires federal agencies to consider and disclose the environmental impacts of their proposed projects prior to making decisions. Sometimes there are changes to the proposed project, new information or circumstances, or there is a lapse of time between preparation of the Environmental Document and implementation of the project. These factors may trigger the need to revisit the ***NEPA*** analysis by preparing a Re-evaluation. The purpose of a Re-evaluation is to determine whether an Environmental Document or decision remains valid for Agency decision making. A Re-evaluation is a continuation of the project development process, though it does not re-open the ***NEPA*** decision. Therefore, Re-evaluations are not ***NEPA*** documents. The Florida Department of Transportation (FDOT) performs Re-evaluations on both FDOT Federal Projects and FDOT State Projects.

This chapter outlines the Re-evaluation process for FDOT Federal Projects, establishes the framework to meet consultation requirements in ***23 Code of Federal Regulations (CFR) § 771.129,*** and provides guidance to ensure compliance with applicable federal and state laws prior to federal aid authorizations needed to advance a project. Re-evaluations for FDOT Federal Projects are documented on a ***Re-evaluation Form*** (see ***Section 3.2.1.2***). FDOT documents Re-evaluations for FDOT State Projects similarly as detailed in ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***.

It is important that in phases subsequent to the Project Development and Environment (PD&E) phase [e.g., Design, Right of Way (ROW), and Construction] Project Managers be aware that major changes to the project scope can impact production schedules, as these changes may require additional environmental analysis. This is particularly important for Design-Build projects where design and construction advance concurrently. The effects of major design changes on the project schedule should be considered prior to approving such changes since this can lead to project delays if not identified and addressed appropriately. Whenever possible, Design Project Managers should minimize project changes that could impact previously coordinated avoidance, minimization, and mitigation of impacts, or commitments made during the PD&E phase. Project changes may require additional interagency coordination/consultation or public involvement, as well as the identification of new impacts requiring additional evaluation.

13.1.1 Definitions

Re-evaluation - A Re-evaluation is a review of proposed change(s) in action, affected environment, anticipated impact, applicable requirements, or mitigation measures as they relate to an approved Environmental Document.

Consultative Re-evaluation - A Re-evaluation not requiring Office of Environmental Management (OEM) approval because changes to the project or project circumstances are minor.

13.1.2 Legislative and Regulatory Framework

Title 23 CFR § 771.129 requires a determination of whether an approved Environmental Document remains valid, prior to granting any new approval related to the action or amending any previously approved aspect of the action, including mitigation commitments. ***Title 23 CFR § 771.129(a)*** specifies a written Re-evaluation is required for a Draft Environmental Impact Statement (DEIS) if a Final Environmental Impact Statement (FEIS) is not submitted within three years from the date of the DEIS circulation. Per ***23 CFR § 771.129(b)***, a written Re-evaluation of the FEIS is required before any further approvals, if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the ROW, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the FEIS, or the last major approval. ***Title 23 CFR § 771.129(c)*** provides consultation and documentation requirements for Re-evaluations of Final Environmental Impact Statement/Record of Decisions (FEIS/RODs), RODs, Finding of No Significant Impacts (FONSIs), or Categorical Exclusions (CEs) prior to requesting any major approvals or grants to establish whether or not the approved Environmental Document or CE designation remains valid for the action.

13.2 PROCEDURE

A Re-evaluation documents changes since the originally approved Environmental Document Location Design Concept Approval (LDCA) or prior Re-evaluation(s), including changes in the design, project limits, project scope, new or modified laws and regulations, circumstances or project area changes, any other new information affecting the project, and consultation with the Office of Environmental Management (OEM) pursuant to ***23 CFR § 771.129***. Re-evaluations also update the status of environmental project commitments.

The LDCA date authorizes the Design phase and may authorize ROW or Construction phases if funded within three years and no changes require a Re-evaluation.

Re-evaluations are required when:

1. Design changes result in new or additional impacts, possibly requiring agency coordination or public involvement.

2. Federal-aid authorization is requested for ROW or Construction phase, more than three years after LDCA. (phase change)

3. Changes in laws, passage of time, or changes in topic/resource need to be documented.

4. A project with a previously approved ***NEPA*** document changes to state funded only and federal project funds were not previously expended.

Re-evaluations for phase changes may cover one or more segments, but must consider the limits of the approved Environmental Document. The entire project limits and the specific segments being advanced should be detailed on the ***Re-evaluation Form*** ***(Section 13.2.1.2)***.

If there is a design change or changes in law, they can be incorporated into a Re-evaluation conducted for a phase change. Consideration of the project limits, when advancing segments, does not require re-analysis of all impacts for the entire project, only those within that segment(s). The analyst should consider if there are overall design changes, inter-relationships between the segment(s) being advanced, or new issues or changes in requirements that may have an effect on the entirety or remaining segments of the project. If project limits are extended or reduced subsequent to approval of the final Environmental Document or previous Re-evaluation, then those changed limits are also considered in the Re-evaluation. If changes in the project may result in new significant impacts to topics/resources, early coordination with OEM is necessary.

A Design-Build Firm (DBF) cannot prepare a Re-evaluation, make findings, or make ***NEPA*** or ***NEPA***-related decisions for the project. A DBF is; however, authorized to prepare information to support the preparation of the Re-evaluation by the District. The Procurement Office may be contacted to obtain a copy of the Design-Build Request for Proposals boilerplate.

13.2.1 Re-evaluation Preparation for Type 2 CE, EA with FONSI, and EIS Projects

The Re-evaluation process for Type 2 CE, Environmental Assessment (EA) with FONSI, and Environmental Impact Statement (EIS) projects is shown in

Figure 13-. The Re-evaluation process is initiated by the District through coordination with OEM. Coordination with OEM helps determine whether a Consultative Re-evaluation is appropriate ***(Section 13.2.1.1)***, or whether the ***Re-evaluation Form*** will require OEM's review and approval.

The Re-evaluation process should be initiated early enough to provide sufficient time for completion prior to the need for federal-aid authorization. The District determines the level of analysis necessary and whether additional public involvement is needed. The extent of Re-evaluation documentation is contingent upon the changes in impact, and the reason for the Re-evaluation. If FDOT determines, based on the Re-evaluation, that there are changes which make the Environmental Document or decision no longer valid, FDOT decides the nature and scope of the supplemental analysis and documentation needed. If the project is an EIS (draft or final), a Supplemental Environmental Impact Statement (SEIS) may need to be prepared if a Re-evaluation results in new significant impacts, see ***Section 13.2.1.4***.

13.2.1.1 Consultative Re-evaluations

The potential for project changes to be documented in a Consultative Re-evaluation is typically discussed during monthly District/OEM meetings or a project meeting. The District prepares the ***Re-evaluation Form*** in the StateWide Environmental Project Tracker (SWEPT) up to Section 11. See the ***Guidance for Part 1, Chapter 13*** for a visual of the ***Re-evaluation Form***. The District coordinates with OEM to discuss the project. As a result of the coordination, OEM may provide concurrence and the District adds the consultation date to Section 11 of the ***Re-evaluation Form***. The meeting minutes or concurrence email from OEM are included in the project file. See ***Guidance for Part 1, Chapter 13*** for types of projects that may be appropriate for a Consultative Re-evaluation.

13.2.1.2 Re-evaluation Form

The ***Re-evaluation Form*** is prepared in SWEPT, and a visual is provided in the ***Guidance for Part 1, Chapter 13***. An outline of the ***Re-evaluation Form*** is included as ***Figure 13-2***. Information supporting the Re-evaluation is submitted with the ***Re-evaluation Form*** and uploaded to the project file in SWEPT. The ***Re-evaluation Quality Assurance (QA)/Quality Control (QC) Checklist*** is used as guidance when preparing the ***Re-evaluation Form***.

13.2.1.3 Processing of Re-evaluations

The District prepares the Re-evaluation and conducts a quality control review using the ***Re-evaluation QA/QC Checklist***. When OEM approval is required, the District uploads the ***Re-evaluation Form***, and any supporting information (including the ***Re-evaluation QA/QC Checklist***) for OEM Initial review to the Electronic Review and Comment (ERC) application and prepares the ***Environmental Document Submittal Form*** in SWEPT. The District should confirm that the original Environmental Document, technical documents, and any supporting information have been uploaded into the SWEPT file.

The OEM Project Delivery Coordinator (PDC) receives email notification and acknowledges the ***Re-evaluation Form*** is complete and ready for review by confirming the ***Environmental Document Submittal Form*** in SWEPT. OEM has 30 days (timeframes identified in this section are calendar days) to review the draft documents and provide comments in the ERC. The District addresses OEM comments and provides responses in the ERC. The OEM project review team then has 15 days to confirm that comments have been addressed. If the comments have not been addressed, additional comment resolution time may be needed. If necessary, the District schedules a meeting with the project review team to discuss comments.

Once comments have been addressed, the District submits the revised document along with the ***Environmental Document Submittal Form*** for final approval in SWEPT. The PDC receives email notification and has 14 days to confirm that the submittal is complete. Following confirmation from the PDC, the document advances to OEM Environmental Process Administrators review.

The OEM Environmental Process Administrators have 25 days to recommend the Re-evaluation for approval. The Director of OEM, or designee, then has five days to approve the ***Re-evaluation Form***.

Upon receipt of the signed ***Re-evaluation Form*** from OEM, or if OEM signature was not needed, the District Environmental Office notifies other phase managers e.g., Design, ROW, and Construction, Cooperating Agencies, and others as appropriate. The District Environmental Office also provides the date of the signed Re-evaluation on the ***Environmental Certification for FDOT Federal Project***, as shown in the ***Guidance for Part 1, Chapter 5***, which is required as part of the contract file for federal oversight projects.

13.2.1.4 Supplemental Environmental Impact Statements

A SEIS may be necessary when changes, new information, or other project developments result in new significant environmental impacts which were not identified in the Environmental Document or a prior Re-evaluation. In this situation, the District needs to coordinate with OEM to define the scope of additional analysis necessary to allow the project to progress and prepare a SEIS using the same procedures for preparing EISs as described in ***Part 1, Chapter 8, Draft Environmental Impact Statement*** and ***Part 1, Chapter 9, Final Environmental Impact Statement***, respectively.

According to ***23 CFR § 771.130(a)***, OEM may determine that a SEIS is needed when:

(1) Changes to the proposed action would result in significant environmental impacts not evaluated in the EIS; or

(2) New information or circumstances relevant to environmental concerns and bearings on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

A SEIS is not necessary under ***23 CFR § 771.130(b)*** when:

(1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other reasonably foreseeable environmental impacts that are significant and were not evaluated in the EIS; or

(2) The Administration (OEM) decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD shall be prepared and circulated in accordance with ***23 CFR § 771.127(b)***.

A Re-evaluation may need to be prepared for an SEIS. In this case, it is important to coordinate closely with OEM.

13.2.2 Type 1 Categorical Exclusion Projects

Type 1 CE updates or changes are not documented on the ***Re-evaluation Form***, but rather through re-submittal of the ***Type 1 Categorical Exclusion Checklist*** in SWEPT. The ***Type 1 Categorical Exclusion Checklist*** is provided as a visual in the ***Guidance for Part 1, Chapter 5***. The Re-evaluation process for Type 1 CEs is shown in ***Figure 13-3***.

Re-evaluations for Type 1 CEs should be completed when changes have been made to the project, or existing conditions have changed since the completion and approval of the last ***Type 1 Categorical Exclusion Checklist***. They also should be completed if subsequent release of federal funds is required after a year has passed since the previous ***Environmental Certification for FDOT Federal Project*** form was submitted. The completion of the checklist is documented in the ***Environmental Certification for FDOT Federal Project*** form in SWEPT which provides the District Environmental Office's clearance for the project to advance to the next. The ***Environmental Certification for FDOT Federal Project*** form is sent to the District Federal-Aid Coordinator.

13.3 REFERENCES

FHWA, NEPA Re-Evaluation Joint Guidance for Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), & Federal Transit Administration (FTA). August 14, 2019. https://www.environment.fhwa.dot.gov/legislation/nepa/Reevaluation_guidance_08142019.aspx

FDOT, FDOT Design Manual, Topic No. 625-000-002. https://www.fdot.gov/roadway/fdm

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

FDOT, Re-evaluation Guidance for Section 3 - Changes in Applicable Law or Regulation. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/reeval-regs-laws-checklist_2025-0916.pdf?sfvrsn=52041e4e_1

Title 23 CFR § 636, Design-Build Contracting

Title 23 CFR § 771, Environmental Impact and Related Procedures

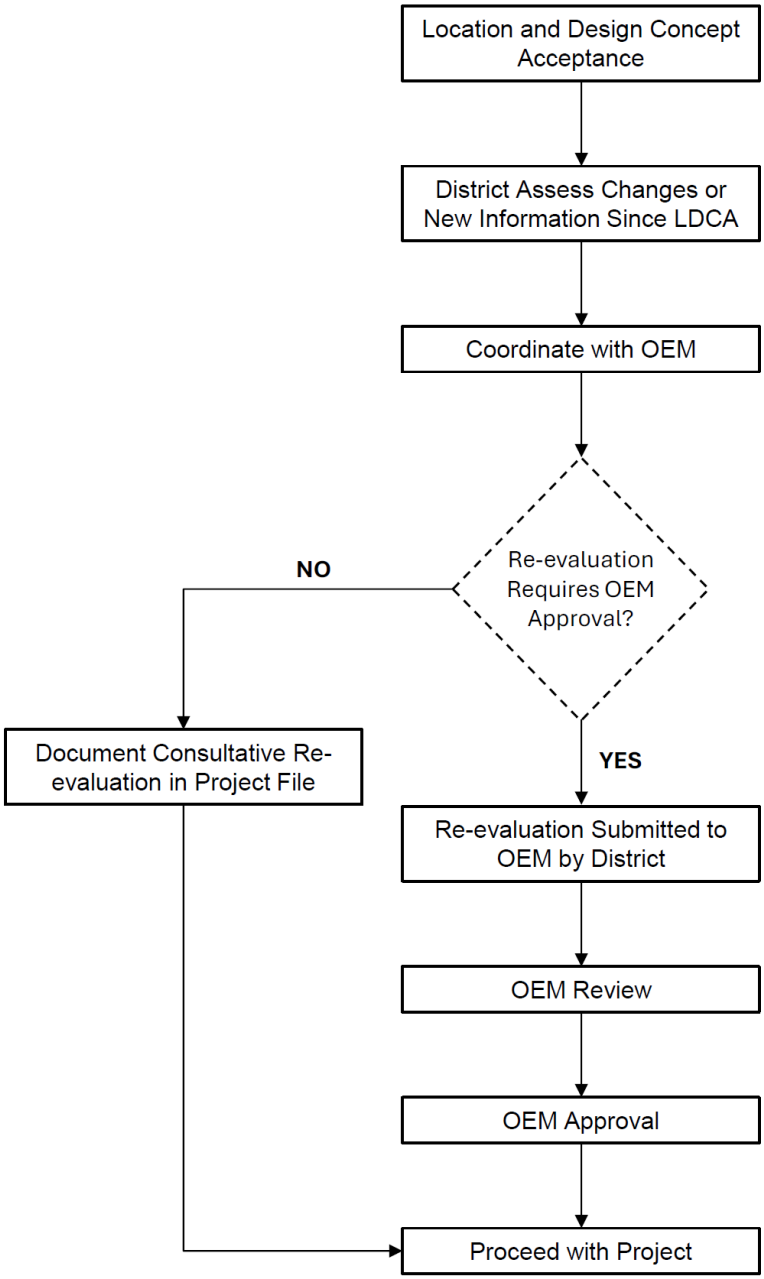

Figure 13-1 Re-evaluation Process for Type 2 Categorical Exclusions, Environmental Assessments, and Environmental Impact Statements

RE-EVALUATION FORM

1. **GENERAL PROJECT INFORMATION**
   - A. Re-evaluation Type(s)
   - B. Original approved Environmental Document
   - C. Prior Re-evaluation
   - D. Project or project segment(s) being evaluated
2. **PROJECT DESCRIPTION**
3. **CHANGES IN APPLICABLE LAW OR REGULATION**
4. **EVALUATION OF DESIGN CHANGES**
5. **PUBLIC INVOLVEMENT**
6. **PROJECT or SEGMENT(S) PLANNING CONSISTENCY**
7. **EVALUATION OF CHANGES IN IMPACTS**
   - a. COMMUNITY EFFECTS
   - b. CULTURAL
   - c. NATURAL
   - d. PHYSICAL
8. **COMMITMENT STATUS**
9. **STATUS OF PERMITS**
10. **CONCLUSION**
11. **DISTRICT REVIEW AND APPROVAL**
12. **OEM APPROVAL**
13. **LINKS TO SUPPORTING DOCUMENTATION**

Figure 13-2 Re-evaluation Form Outline

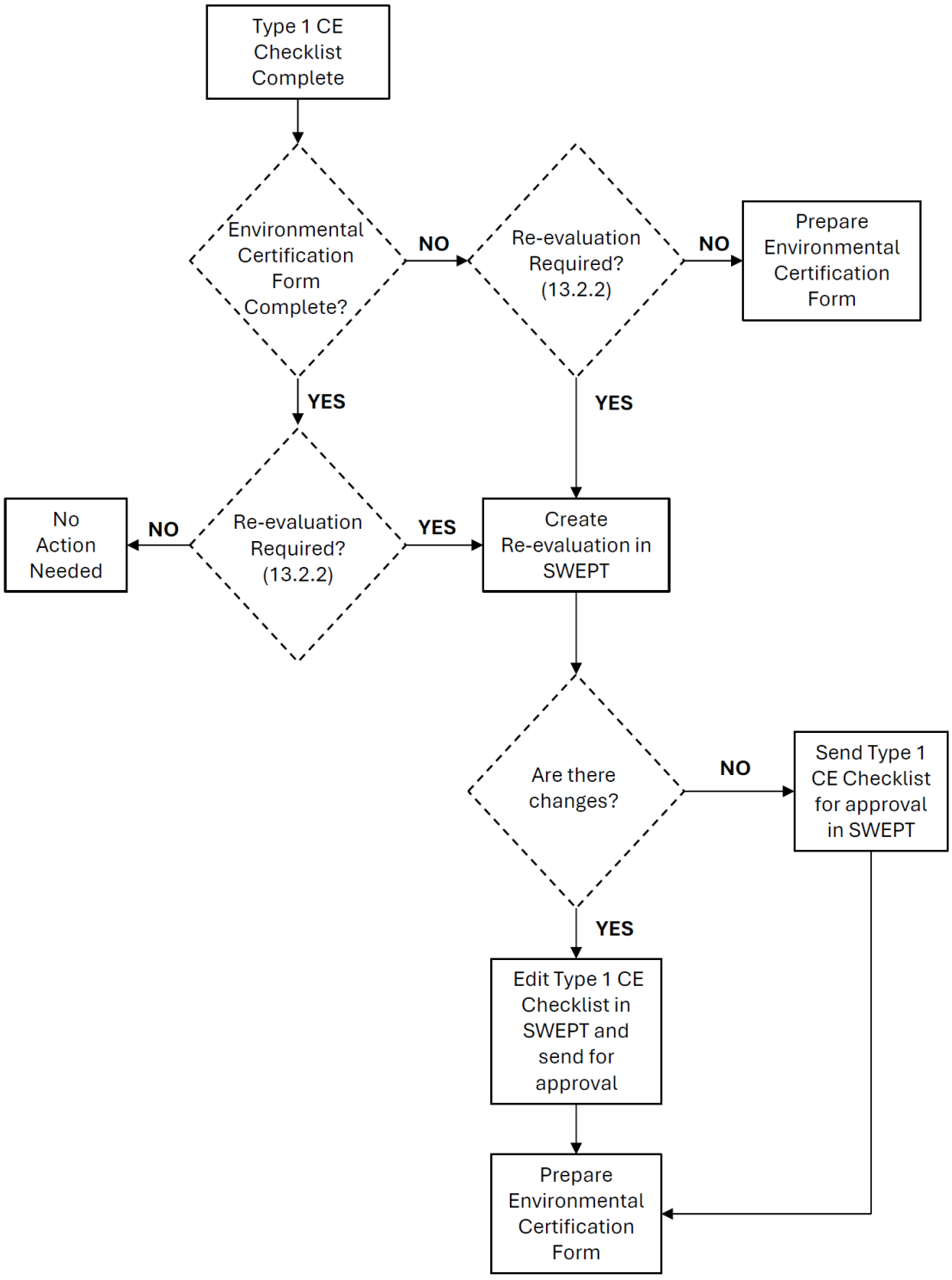

Figure 13-3 Re-evaluation Process for Type 1 Categorical Exclusions

PART 1, CHAPTER 15

PROJECT FILE AND RECORDS MANAGEMENT

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PART 1, CHAPTER 15

PROJECT FILE AND RECORDS MANAGEMENT

15.1 OVERVIEW

The Florida Department of Transportation (FDOT) maintains its Environmental Document files in accordance with FDOT's ***Procedure No. 050-020-025, Records Management***. For FDOT Federal Projects, FDOT complies with the requirements of ***Federal Highway Administration (FHWA) Records Disposition Manual (Field Offices) Chapter 4*** and ***FHWA Order No. 1324.1B, issued July 29, 2013***, and retains appropriate files mapped to the Department of State ***Retention and Disposal Schedule GS1-SL(167)***.

FDOT's Electronic Document Management System (EDMS), as defined in ***Chapter 13*** of FDOT's ***Office of Information Technology Manual, Topic No. 325-000-002*** serves as the environmental file of record for Environmental Documents. The EDMS stores and archives files and provides backup and disaster recovery while maintaining document access and managing records to appropriate retention and disposal schedules. When the files are imported into the EDMS, they are published to the archive and made available to other FDOT computer applications.

To support record-keeping and retention responsibilities, the StateWide Environmental Project Tracker (SWEPT) application is used in conjunction with EDMS. SWEPT is an interactive website that supports activities during FDOT's Environmental Document Review Process. SWEPT provides an interface to the EDMS that is integrated with the document review workflow. This gives easy access to the environmental project record throughout the environmental review process. When files are uploaded to SWEPT, they are attributed according to EDMS standards, placed in the appropriate group and type and associated with the required retention and disposal schedule. When an Environmental Document is approved in SWEPT, it is imported into the EDMS with associated supporting documentation.

15.2 PROCEDURE

15.2.1 Project File

In preparing an Environmental Document, FDOT determines how to manage its project files, as long as the procedures satisfy FDOT record-keeping and retention requirements and meet or exceed FHWA record-keeping and retention requirements for Federal Projects. FDOT project files are also available consistent with Florida and federal public records laws.

A project file refers to the files maintained by the project team to support development of the Environmental Document. Documents maintained in the project file for each project include, but are not limited to, letters, technical reports, correspondence, emails,

comments, responses, meeting minutes, studies, and computer modeling reports. The project file should include information FDOT considered or presented which was reasonably available during the process, including documentation of contrary opinions or conflicting data and resolution of issues or concerns raised and any resolution made in response.

15.2.2 Administrative Record

The Administrative Record (AR) is FDOT's official record of the ***National Environmental Policy Act (NEPA)*** decision making process and refers to documents from the project file that are submitted to the court during ***NEPA*** litigation. The AR is established when a lawsuit is filed, and the court requests the records. The AR includes documents and materials directly or indirectly considered or relied upon by FDOT when making decisions in the environmental review process. This includes decision documents, as well as documents generated or received by FDOT during the environmental review.

The AR, if needed, is created from the project files, which are uploaded and stored in SWEPT. When files are initially uploaded in SWEPT, they are categorized as: AR, project file only, or attorney work product (considered privileged). When an AR is required, the Project Manager uses the Administrative Record tool in SWEPT to identify and confirm which documents comprise the AR. The Project Manager also uses the Administrative Record tool to request approval from the Office of General Counsel (OGC) to create and distribute the record.

For more information on ARs, please see the ***American Association of State Highway Transportation Officials (AASHTO) Practitioner's Handbook, Maintaining a Project File and Preparing an Administrative Record for a NEPA Study***.

15.2.3 Records Management

The project file is maintained electronically within SWEPT. The Project Development and Environment (PD&E) Project Manager is responsible for maintaining an accurate and up-to-date project file in SWEPT. The PD&E project team members may assist by uploading files and managing files. It is recommended that documents be placed within the applicable folder in SWEPT according to the SWEPT Project File Organization Guidance on FDOT's ***PD&E Manual Website*** under the Supporting Resources section. When files are uploaded to SWEPT, they are attributed according to EDMS standards, mapped to the appropriate group and type and retention and disposal schedule (***Section 15.2.4***).

Environmental Documents and their supporting files are imported into the EDMS with associated project file records upon final document approval. When the files are imported into EDMS, they are made available according to the Environmental EDMS protocols established in the ***Enterprise Electronic Document Management System (EEDMS) QA/QC Process for the Office of Environmental Management***.

15.2.4 File Naming Convention

All documents uploaded into SWEPT and imported into the EDMS follow an established naming convention. The document name is formed by concatenating project and document information, as follows:

a. FM#-COA-District-Document Type Abbreviation-Document subtype Abbreviation-Date;

   Example: *43257425201-CE1-D4-Approved_Type_1_Categorical_Exclusion_Checklist-2016-0802.pdf*

   or

b. FM#-COA-District-Document name-Date

   Example: *43257425201-CE1-D4-USFWSSection7InformalConsultationLetter-2015-0619.pdf*

Naming convention specifications are:

a. FM# = The full Financial Management Number (FM#) (at least item number and item segment, and phase type, phase group and sequence number if provided, with dashes removed.)

   COA = Abbreviated Class of Action:

   - CE1 = Type 1 Categorical Exclusion
   - CE2 = Type 2 Categorical Exclusion
   - EA = Environmental Assessment
   - EIS = Environmental Impact Statement
   - NMSA = Non-Major State Action
   - SEIR = State Environmental Impact Report

b. District = Abbreviated District number or Florida's Turnpike Enterprise (FTE) for Turnpike: D1, D2,…FTE

c. Document Type (and subtype) = can relate to higher level group of information to support a project. For instance, a ***Natural Resources Evaluation (NRE)*** is a technical report to support a particular Environmental Document. And a subtype of that report could be data, correspondence, concurrence request, or concurrence.

d. Document_Name = The original file name, minus extension (apply this before the date), with spaces replaced by underscores

e. Date = Date the document was created or represents (or in the case of correspondence, the date when it was sent), formatted as YYYY-MMDD. If the document being uploaded was published or made available on March 10, 2016, but not uploaded until May 15, 2016, the March 10, 2016 date is the correct date to represent the document in SWEPT naming convention. SWEPT provides a date picker to select that date on upload.

15.2.5 Retention

For FDOT Federal Projects, records are retained in accordance with ***Procedure No. 050-020-025, Records Management*** and ***Retention and Disposal Schedule GS1-SL(167)***. For Significant Transportation Projects, as defined in ***FHWA Order No. 1324B***, records will be stored permanently. For other projects, records are retained in SWEPT and EDMS for at least five fiscal years following completion of construction of the last project segment or last project action if the project stops before construction. Project completion is tracked and the records archived as follows:

a. Work Program tracks completion through a “Closed Financial Projects” report.

b. Financial Project Identification (FPID) Status 100 indicates the books have been reconciled between parties and the financial project is closed.

   FPID or FM# is a unique 11-digit number assigned to track funding, schedule, and activities on a project. These 11 digits are defined as follows:

   Item (6) Segment(1)Phase Group(1)-Phase Type(1)-Sequence(2)

   Example: 407085-1-32-04

c. Work program tracks projects (parent record) with subordinate FPIDs (other item segment FMs for design or construction phases) through a “Related Items” report. SWEPT obtains this information from the Work Program through a web service.

d. SWEPT maintains list of FM#s and related FM#s (through users and/or through the related items report provided by Work Program).

e. Once all associated FMs (related items) have reached status 100, based on the related items report provided by Work Program, SWEPT begins a 5-year countdown to meet data management requirements (projects identified as Significant Highway Projects will be retained permanently).

f. After 5 years of related FMs reaching status 100, SWEPT provides notification to the SWEPT helpdesk that records have reached their retention schedule and updates EDMS export records to purge the project records.

g. SWEPT sends information to EDMS marking the documents obsolete and indicating records are to be purged.

h. EDMS sends a confirmation email to the SWEPT helpdesk that the identified records have been updated to obsolete.

Information associated with draft Environmental Documents (not approved) are retained until obsolete, superseded, or administrative value is lost as determined by the FDOT Project Manager, in consultation with the OGC.

15.3 REFERENCES

AASHTO, 2016. Maintaining a Project File and Preparing an Administrative Record for A NEPA Study. https://environment.transportation.org/resources/practitioners-handbooks/maintaining-a-project-file-and-preparing-an-administrative-record-for-a-nepa-study/

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FDOT, Records Management, Procedure No. 050-020-025. https://pdl.fdot.gov/

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FDOT, 2025, StateWide Environmental Project Tracking website. https://www.fla-etat.org/est/swept/

FDOT, SWEPT Project File Organization Guide. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/swept-file-quick-guidance.xlsx?sfvrsn=39a0be74_6

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PART 1 CHAPTER 16
NAVIGATION

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PART 1, CHAPTER 16

NAVIGATION

16.1 OVERVIEW

This chapter outlines the environmental review process, coordination, and documentation for projects in which a United States Coast Guard (USCG) permit is required.

16.1.1 Legislative Authority

Laws relating to the protection, preservation and safety of navigable waterways are found in ***Section 9 of the Rivers and Harbors Appropriation Act of 1899***, as amended, ***33 United States Code (U.S.C.) § 401 and § 403***; the Act of March 23, 1906, as amended, ***33 U.S.C. § 491***; the Act of June 21, 1940, as amended, ***(Truman-Hobbs Act) 33 U.S.C. §§ 511-523***; the ***General Bridge Act of 1946***, as amended, ***33 U.S.C. § 525***; the ***International Bridge Act of 1972***, ***33 U.S.C. § 535***; and the ***Ports and Waterways Safety Act of 1972***, as amended by the ***Port and Tanker Safety Act of 1978***, ***33 U.S.C. §§ 1221-1225 (USCG, 2004)***.

Under the authorities delegated to the Commandant of the USCG by the Secretary of the U.S. Department of Homeland Security (USDHS), it is the USCG's duty and responsibility to ensure that navigable waters of the United States are preserved, while balancing competing needs of land and waterborne modes of transportation. The USCG has an obligation to ensure a bridge's final permitted design does not impinge upon the "reasonable needs of navigation" for that specific waterway, while serving the needs of land transportation. This obligation is met by the issuance of bridge permits.

Bridge permits and permit amendments are the USCG documents approving the location and design plans of bridges. A USCG bridge permit is commonly referred to as a ***Section 9*** permit because permitting authority historically relied on ***Section 9 of the Rivers and Harbors Appropriation Act of 1899***. Currently, the authority primarily relies upon the ***General Bridge Act of 1946***. Consistent with the ***Rivers and Harbors Appropriation Act***, the ***General Bridge Act*** requires USCG approval to construct a new bridge or reconstruct/modify an existing bridge over navigable waters.

The USCG has jurisdiction over "navigable waters" of the United States, as defined in ***33 Code of Federal Regulations (CFR) § 2.36*** as well as by specific congressional and judicial designations. There are two USCG Districts with jurisdiction in Florida. The USCG Southeast District, located in Miami, issues bridge permits for projects in FDOT Districts 1, 2, 4, 5, 6 and 7. The USCG Heartland District, located in New Orleans, issues bridge permits for projects in FDOT District 3. For Turnpike projects, the applicable USCG District is based upon the location of the project within the USCG District boundaries.

All bridges across waterways that support nighttime navigation are required to display navigational lights in accordance with ***33 CFR Part 118***. The approval of navigational lights and other required signals must be obtained prior to any construction from the

USCG District Commander (Bridge Office). The USCG may exempt bridges over waterways with no significant nighttime navigation from the lighting or other signal requirements. Design plans for navigational lighting should be separate from the design plans for the bridge when submitting a USCG bridge permit application. The bridge navigational lighting plan requires a separate application from the bridge permit application.

16.1.2 Permit Eligibility

USCG bridge permits are required for construction of a new bridge or modification of an existing bridge over navigable waters. A USCG bridge permit is necessary if a bridge project includes any of the following:

1. The construction of a new bridge over navigable waters;

2. The modification of an existing bridge that increases the travel capacity of the bridge (i.e., adding a travel lane); or,

3. The modification of an existing bridge that would result in changes to navigation (i.e., changes to the horizontal or vertical clearances, fender systems)

Unless specifically declared otherwise by Congress, navigable waters are defined in ***33 CFR § 2.36*** to include the following:

a. Territorial seas of the United States;

b. Internal waters of the United States subject to tidal influence; and;

c. Internal waters of the United States not subject to tidal influence:

    1) which are or have been used, or are or have been susceptible for use, by themselves or in connection with others, as highways for substantial interstate or foreign commerce, notwithstanding obstructions that require portages; or

    2) which a governmental or non-governmental body with expertise in waterway improvement determines, or has determined to be, capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with others, highways for substantial interstate or foreign commerce.

16.1.3 Bridge Permit Exceptions and Exemptions

Several types of projects involving bridges do not require a USCG permit but may still require USCG authorization or notification. This may include 1) bridge removal (USCG notification required), 2) retaining all or part of a bridge over navigable water for purposes other than transportation [U.S. Army Corps of Engineers (USACE)] notification required), and 3) repairing or replacing worn or obsolete parts on an existing bridge where the

modification would not result in changes to navigation (e.g., projects involving bridge maintenance, painting, pile jackets, spall repairs).

The ***Coast Guard Bridge Permitting*** document states that most infrastructure repairs do not require a USCG permit as long as they do not affect navigation clearances or bridge configuration. In addition, emergency repairs or replacement of severely deteriorated or damaged bridges or construction of new temporary bridges to meet emergency land transportation requirements may be authorized by the USCG without formal permit action. Authorization under these circumstances is limited to the minimum period required to return the bridge to normal operation.

There are three types of exemptions from a USCG bridge permit, these include ***1982 Coast Guard Authorization Act (CGAA) (PL 97-322, Title 1, Oct. 15, 1982, 96 Stat. 1581)***, Advance Approval Waterways, and ***Title 23 U.S.C. 144(c)***.

16.1.3.1 1982 Coast Guard Authorization Act

Section 107 of the CGAA of 1982, 33 U.S.C. § 525(b), exempts bridge projects from bridge permits when the bridge project crosses non-tidal waters which are not used, and susceptible to use in their natural condition, or susceptible to use by reasonable improvement as a means to transport interstate or foreign commerce.

16.1.3.2 Advance Approval Waterways

There may be instances where bridges are proposed to be built across waterways which are deemed navigable in law but not traversed by any vessel larger than small motorboats (e.g., logs, log rafts, kayaks, canoes, rowboats, and outboard johnboats). The term “small motorboats” does not include sailing or cabin cruiser crafts. In these cases, the clearances provided for high water stages will be considered adequate to meet the reasonable needs of navigation.

In these circumstances, the USCG can issue an Advance Approval Authorization in accordance with ***33 CFR § 115.70***. Each potential candidate bridge/waterway crossing is evaluated by the USCG on a case-by-case basis to determine if an Advance Approval may be appropriate.

16.1.3.3 Title 23 U.S.C. § 144(c)

The ***Surface Transportation Assistance (STA) Act of 1978*** amended ***23 U.S.C. § 144*** and was enacted to reduce paperwork and related costs in the execution of the USCGs bridge permit programs. For Federal Highway Administration (FHWA) funded or eligible projects, FHWA has the responsibility under ***23 U.S.C § 144*** and ***23 CFR § 650.805*** to determine whether a bridge project receiving federal assistance under ***Title 23, U.S.C.***, meets the exemption criteria for USCG Administration purposes. Though FHWA maintains authority for ***23 U.S.C § 144(c)***, such waterways fall under USCG jurisdiction and are covered in the ***2014 Memorandum of Agreement (MOA) between USCG and FHWA***. FHWA agreed that USCG will have an informative and effectual role in the

determination process. The FHWA determination is preliminary and USCG input on navigability and commerce is influential to FHWA's determination. Therefore, before such FHWA determinations are made, FHWA consults with the USCG to obtain concurrence with the determination. Upon consultation by the FHWA, the USCG will timely concur or not concur so as to not delay project advancement.

A USCG permit is not required if FHWA determines that the proposed construction, reconstruction, rehabilitation, or replacement of the federally aided or assisted bridge is over waters:

1) Which are not used or are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce and

2) Which are

(i) not tidal, or

(ii) if tidal, used only by recreational boating, fishing, and other small vessels less than 21 feet in length.

FDOT assesses the need for a USCG permit, or navigation lights or signals for proposed bridges. If uncertain whether the waterway is susceptible to improvement for navigation, is tidal, or is considered navigable, or if the types of vessels using the waterway are unknown, FDOT consults with the appropriate USCG or FHWA depending on project location.

Early coordination takes place between FDOT and the USCG (without FHWA) for FDOT Federal Projects under jurisdiction of the USCG Southeast District, with USCG making the decision through the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST) for projects that qualify for screening. For FDOT Federal Projects in the USCG Heartland District, FHWA makes this preliminary determination in coordination with USCG.

For bridge crossings of waterways with navigational traffic where FDOT believes that a USCG permit may not be required, the FDOT provides supporting information early to enable the USCG/FHWA to make a determination that a permit is not required and that proposed navigational clearances are reasonable.

Since construction in waters exempt from a USCG permit may be subject to other USCG authorizations, such as approval of navigation lights and signals and timely notice to local mariners of waterway changes, the USCG should be notified whenever the proposed action may substantially affect local navigation.

Since the ***Title 23 U.S.C. § 144(c)*** exemption is only applicable to FHWA funded or eligible projects, it can only be used for FDOT Federal Projects.

16.1.4 Synchronizing Federal Agency Reviews

The USCG, through their bridge permitting process, is required to ensure that all environmental considerations are given careful attention. As such, these considerations, including ***National Environmental Policy Act (NEPA)*** documents [Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS)] and any related ***Clean Water Act- Section 401 Water Quality Certification*** and ***Section 404*** permits must be submitted to USCG.

Actions taken by federal agencies require an evaluation under ***NEPA***, as set forth in ***42 U.S.C. § 4336a***, ***U.S. Department of Transportation (USDOT) Order 5610.1C***, applicable parts of the operating agencies' directives (e.g., ***Federal-Aid Highway Program Manual (FHPM) 7-7-2*** and ***Commandant Instruction 5090.1***), and other federal environmental statutes and orders. Regulations strongly encourage that a single agency (lead agency) be designated to handle the ***NEPA*** responsibility where related actions by several federal agencies are to be taken. The lead agency, in such instances, assumes the responsibility for consultation with other agencies, coordinating necessary environmental study evaluations, and preparation of any ***NEPA***-related determination or document for review by the cooperating federal agencies prior to making it available for public review.

In accordance with the ***1986 MOU between the USCG and FHWA***, when a highway section requires an action by both FHWA and USCG, the FHWA will normally serve as the Lead Federal Agency for the preparation and processing of environmental documents ***(FHWA, 1986)***. In this instance, FDOT will serve as the Lead Federal Agency pursuant to the ***NEPA Assignment MOU*** as discussed in ***Section 16.2.1***.

Early and ongoing coordination with the USCG is vital to an integrated permitting and ***NEPA*** process. The bridge permit application and approval process are very much connected to other environmental reviews. Section 1 of the ***Coast Guard Bridge Permit Application Guide (BPAG)*** details how the USCG permitting process and ***NEPA*** compliance can be coordinated, including project initiation, navigational clearance determination, ***NEPA*** decision-making, and permitting decision. Enclosure 2 of the ***Bridge Administration Manual*** includes a table that details procedures for projects which require a bridge permit. The table in Enclosure 2 shows the timing of FHWA/State activities along with USCG activities and is helpful in identifying where coordination with the USCG falls within the ***NEPA*** process.

In addition to the ***Bridge Administration Manual*** and ***BPAG***, the ***2015 Red Book (Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects)*** was developed by FHWA in cooperation with USACE, USCG, Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Environmental Protection Agency (EPA), United States Fish and Wildlife Service (USFWS), and National Oceanic and Atmospheric Administration (NOAA). This guidance was crafted to function as a how-to for synchronizing federal regulatory reviews.

In 2014, USCG and FHWA entered into an MOA to coordinate and improve bridge planning and permitting. The purpose of the ***2014 MOA between USCG and FHWA*** is to

"expedite and coordinate the planning, environmental review, and decision-making" for bridge permits primarily by:

1. Determining which bridge design concepts unreasonably obstruct navigation as soon as practicable and prior to or concurrent with the ***NEPA*** scoping process (in the Planning phase) in order to inform project alternatives to be evaluated;

2. Preparing a coordinated Environmental Document that satisfies both USCG and FHWA (FDOT) ***NEPA*** requirements and results in a shared, or joint environmental impact decision documents where practicable and concurrent environmental impact decision documents at all other times; and

3. Concurrently conducting the environmental evaluation and processing of the bridge permit application materials, wherever possible.

The MOA also details actions that can be taken by each agency at each stage in the planning process and guidance for issue resolution. In addition, the USCG, FHWA, Federal Transit Administration (FTA), and Federal Railroad Administration (FRA) entered into a MOU in 2014 with the same goal of improving the bridge permitting process.

According to ***23 U.S.C. § 139 (c) 5***, an agency may adopt a draft or final EIS or a portion of the document if it meets the standards for an EIS. A Cooperating Agency may adopt an EIS without recirculating it. The ***2014 MOA between USCG and FHWA*** states that the USCG will adopt an FHWA ***NEPA*** document if the bridge's environmental impacts are adequately addressed. Therefore, through ***NEPA*** Assignment, USCG may adopt an FDOT ***NEPA*** document for a Federal Action.

16.1.5 Process Overview

The USCG bridge permit application and approval process (detailed in the ***BPAG)*** is very much connected to other environmental reviews. The process is initiated when FDOT contacts the USCG to discuss the proposed bridge project.

The first step, regardless of the Environmental Document type, is determining whether the project may require a USCG permit. First, the project is reviewed to determine if it is going to cross a waterbody. Then, the determination that the water body is navigable is made. This process is different depending on which USCG District jurisdiction the project falls under. During project initiation, the USCG also reviews the proposed project purpose and need statement, if applicable.

Navigation Impact Reports are typically required for the construction of new bridges on waterways without any existing bridges downstream, and for replacement of a movable bridge with a fixed bridge structure. The information needed to complete the report includes navigation data on the subject waterway, as well as information on the types of vessels using the waterway, clearances, information on obstructions, and information on properties adjacent to the bridge and waterway in the project location.

Throughout the Project Development and Environment (PD&E) phase, coordination with the USCG is continued. The USCG is invited to scoping meetings and provides guidance on USCG requirements for the Environmental Document, as applicable. After the Environmental Document is drafted, the USCG cross-checks the document against the requirements identified in the project plan/***BPAG***; evaluates design alternatives for consistency with the preliminary navigation determination; and provides comments. When the Environmental Document is finalized, the USCG prepares a ***NEPA*** decision document for approval in conjunction with FDOT's ***NEPA*** document. The USCG completes ***NEPA*** to support issuance of their federal permit.

The permit is typically applied for during the Design phase, with FDOT as the applicant. At the time of permit application, the USCG determines if additional information is required to complete the review. If so, the USCG will notify the FDOT in writing of application deficiencies. After the FDOT submits the required information, the USCG will notify the FDOT that the application is complete. An application is considered complete when all required documents are received and are found sufficient to make a decision on the application.

The USCG issues a ***Public Notice (PN)*** for the proposed project when sufficient information has been received. The application does not need to be complete for the USCG to issue a ***PN***. The USCG responds to navigation-related public comments and sends non-navigation related comments to FDOT to be addressed. The USCG consults with and obtains comments from state and federal agencies with jurisdiction or special expertise concerning environmental or navigational impacts. Such agencies include but are not limited to the National Marine Fisheries Service (NMFS), USFWS, State Historic Preservation Officer (SHPO), and EPA. FDOT conducts this consultation with the USFWS for FDOT Federal Projects per agreement with ***ESA Lead Agency Consultation Correspondence***. Comments are generally obtained through direct coordination with affected agencies, responses to the ***PN***, and the ***Local Notice to Mariners***. For more information on the public notices required for USCG projects see the ***Bridge Administration Manual***.

After it has been determined that consultations under all applicable environmental laws have been completed, the USCG makes a permit recommendation and if appropriate, issues the bridge permit. If the project is considered a 'headquarters action' (typically an EA or EIS requiring a bridge permit), the application is sent to USCG headquarters for decision where the District Commander's recommendation may be accepted or rejected, and a bridge permit may be issued or denied. USCG headquarters review typically adds at least two weeks to the USCG bridge permit review process.

USCG bridge permits specify that the permit becomes null and void unless construction of the bridge is commenced and completed by certain dates. This time period is usually three to five years, respectively, from the date of the permit issuance. Longer construction times can be requested and substantiated with good reasons.

References listed in ***Section 16.3*** include hyperlinks to information sources that identify details regarding the USCG permit review process, required components of permit applications, and the locations and contact information of regional USCG offices.

16.2 PROCEDURE

16.2.1 Florida Department of Transportation Federal Projects

The navigation process for FDOT Federal Projects is outlined in ***Figure 16-1***.

16.2.1.1 Projects Not Qualifying for Efficient Transportation Decision Making Screening

Detailed evaluations are generally not warranted for transportation projects not qualifying for screening in the EST. These projects advance straight to the Design phase. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for clarification on projects that qualify for screening. Projects that do not require screening, based on analysis, have no significant effects.

For these types of projects, if it is uncertain whether the waterway is susceptible to improvement for navigation, is tidal, or is considered navigable, or if the types of vessels using the waterway are unknown, FDOT coordinates with the USCG or FHWA depending on project location. For projects located in the USCG Southeast District, this coordination may take place by directly contacting the USCG. For projects located in the USCG Heartland District, the District follows the coordination process with FHWA outlined in ***Section 16.2.1.2***.

For projects that do not require EST screening, decisions and conditions should be documented in the project file, summarized in the Environmental Document, and addressed through incorporation into the final design plans. Documentation in the Environmental Document is as follows:

Type 1 Categorical Exclusion - Minimal documentation on navigational effects is required for a Type 1 CE. In the ***Type 1 Categorical Exclusion Checklist***, “no waterway crossing”, “No USCG bridge permit required”, or “USCG bridge permit” is selected. If a USCG bridge permit is not needed, the rationale on how this determination was made is documented. If it is identified that a USCG bridge permit is needed, the District must contact the Office of Environmental Management (OEM). Further guidance on preparing a ***Type 1 Categorical Exclusion Checklist*** is found in ***Part 1, Chapter 5, Categorical Exclusion***.

Type 2 Categorical Exclusion - Some Type 2 CEs may not require screening through the EST. See ***Section 16.2.1.3.2*** for guidance on documenting Type 2 CEs.

16.2.1.2 Projects Qualifying for Efficient Transportation Decision Making Screening

As discussed in ***Section 16.1.4***, the USCG has entered into an MOU with FHWA, FTA, and FRA, as well as an MOA with FHWA to coordinate and improve bridge planning and permitting. For FDOT Federal Projects that qualify for screening in the EST, the conditions in the ***2014 MOA between USCG and FHWA*** are met in the following process.

During the Planning screenings, a preliminary permitting exemption determination may be made. The USCG may also request a ***Navigation Impact Report*** for the project.

USCG Southeast District

For FDOT projects under the jurisdiction of the USCG Southeast District, this preliminary determination is conducted through ETDM screening events for qualifying projects. The USCG has designated Environmental Technical Advisory Team (ETAT) members that participate in the ETDM screening events. The ETAT are involved in early coordination meetings and may attend site visits if necessary.

During the planning or programming screen, a separate Notice of Waterway Crossing email is sent through the EST to USCG Southeast District ETAT members that includes project information and an interactive list of places where the project intersects with bridges (which is linked to map and street views of each intersection). Through these links the ETAT access the EST and can select whether the intersection with a bridge is within their jurisdiction or not. The USCG may request a ***Bridge Project Questionnaire*** to help them determine whether a bridge permit is required. A sample questionnaire is provided in the ***Guidance for Part 1, Chapter 16***.

If the USCG selects no in the EST, it is documented as “not in USCG Jurisdiction” and further coordination with USCG is not needed, unless new unassigned crossings are later included in the project.

If the USCG selects yes, they are then given the opportunity to identify if a permit and/or lighting plan is required or add additional comments. If no permit is required, the USCG is able to choose the type of exemption that is applicable (***Section 16.1.3***). This exemption is documented in the EST and no further coordination with USCG is needed unless new unassigned crossings are later included in the project. If a permit is not needed, but a lighting plan is, it is documented in the EST.

If it is in the USCG’s jurisdiction and a permit is required, it is documented that a permit is required and the USCG is automatically added as a Cooperating Agency. If a lighting plan is required, this will also be documented in the EST.

The results of this input are included with the general project information in the planning or programming screen summary report. USCG comments may be included in the Navigation section of the report as well as a summary by the District. The designation of USCG as a Cooperating Agency is also documented in the summary report. For more information on how this takes place in the EST see the ***ETDM USCG Resources Enhancements in the EST***.

USCG Heartland District

District 3 documents any coordination with FHWA and the USCG by uploading coordination letters to the EST and may add a summary in the Navigation section of the planning or programming screen summary report. If available, the letter from the USCG should include the USCG's determination of jurisdiction, determination that a permit is or is not needed, and/or if a lighting plan is required. If a USCG permit is required, the USCG is added as a Cooperating Agency.

The designation of USCG as a Cooperating Agency is also documented in the summary report.

16.2.1.2.1 Project Development and Environment

During the PD&E phase, coordination with the USCG is continued, regardless of the Class of Action (COA), as applicable. FDOT should coordinate with USCG as necessary to resolve issues and avoid unnecessary project delays.

If it has been determined that a USCG permit may be needed for a project in the USCG Heartland District, District 3 prepares a navigation package that includes a completed ***Bridge Project Questionnaire*** and submits it to the OEM Project Delivery Coordinator (PDC). The PDC submits it to FHWA. FHWA makes a navigability determination and then submits it and the ***Bridge Project Questionnaire*** and coordinates with USCG. The questionnaire is prepared for bridge replacements or new bridges, but is not required for bridge repairs. If the project is for bridge repairs, the District follows the guidance in the ***USCG October 17, 2017 letter*** (see ***Guidance for Part 1, Chapter 16***).

If the USCG requested a ***Navigation Impact Report***, coordination with USCG is necessary to obtain preliminary minimum navigation clearances prior to the development/selection of viable alternatives in order to prevent advancement and study of alternatives which USCG would not be able to permit.

FDOT prepares a coordinated ***NEPA*** document that satisfies both USCG and FHWA ***NEPA*** requirements and issues a shared or joint environmental impact determination. The ***NEPA*** document must include information that is acceptable for adoption by the USCG.

FDOT coordinates with USCG during preparation of the ***NEPA*** document and prepares necessary environmental documentation based on project analysis (***Section 16.2.1.3.1***). The ***NEPA*** document includes discussion of potential bridge impacts to the environment and the results of ongoing coordination with USCG. In the ***NEPA*** document, USCG is provided with the documentation of navigational impacts and compliance with ***NEPA*** and other applicable federal environmental statutes, regulations, and executive orders, including coordination/consultation letters from federal and state resource and regulatory agencies.

During the preparation of the ***NEPA*** document for coastal bridge replacement projects, consideration may be given to using clean material for use as an artificial reef. This should be included in the coordination process with the regulatory and resource agencies as well

as other stakeholders once it has been determined that demolition is the preferred alternative. Consideration will include, but will not be limited to, management, testing, storage, cost and/or transport of the material as well as permitting and agreements that may be necessary.

The draft Environmental Document is submitted to USCG for review, and as appropriate, FDOT responds to comments received on environmental aspects of highway bridges. To ensure the USCG can adopt the ***NEPA*** document for its bridge permit action, the ***NEPA*** document should adequately address all comments received from the USCG as a Cooperating Agency.

The ***NEPA*** document should include appropriate commitments per ***Part 2, Chapter 22, Commitments***.

Part 2, Chapter 8, Archaeological and Historical Resources, provides guidance on which bridge projects require ***Section 106 of the National Historic Preservation Act (NHPA)*** compliance. For historic bridges requiring ***Section 106 NHPA*** compliance, FDOT copies USCG on SHPO concurrence letters or MOAs with SHPO and consulting parties.

FDOT also coordinates with USCG to determine if joint efforts for public notices, meetings and hearings would be appropriate. Where a combined Final Environmental Impact/Record of Decision (FEIS/ROD) is anticipated, FDOT notifies USCG and adjusts the review process of the FEIS/ROD accordingly.

The USCG will provide comment on the sufficiency of an Environmental Document (i.e., stating that the document satisfies USCG requirements to process a permit) and will provide preliminary navigation clearance determinations (e.g., stating that minimum navigation clearance for a particular location is XX vertical and XX horizontal) based on information on-hand from a navigation impact study or user input. See ***Guidance for Part 1, Chapter 16***. for a sample letter from USCG. If a letter is received it should be referenced in the Environmental Document and uploaded into the StateWide Environmental Project Tracker (SWEPT).

Also, during the PD&E phase, FDOT may compile applicable environmental information for the bridge permit application. Permitting may be conducted during the PD&E phase, or later during the Design phase.

16.2.1.2.1.1 Navigation Analysis

The navigation analysis should consider any potential impacts to navigation for proposed construction, reconstruction, rehabilitation, or replacement of federally-aided or assisted projects located over waters.

At the beginning of the PD&E phase, the District looks at the results of coordination with USCG documented in the ***Final Programming Screen Summary Report*** and reviews the project to make sure there are no additional crossings not identified in the screening.

Information from the ETDM screening should be used to focus the analysis/impact assessment. The ***Programming Screen Summary Report*** should identify if the project is within USCG jurisdiction, if a permit and/or lighting plan is needed, or if an exemption and the exemption type (***Section 16.1.3***) has been identified. During PD&E, the District should also utilize USCG comments from the ***Programming Screen Summary Report*** to anticipate permitting needs.

If additional crossings have been identified since the ETDM screening, coordination with USCG is necessary to determine if a USCG permit is needed. Coordination with FHWA may be necessary for projects under the jurisdiction of the USCG Heartland District.

Pursuant to ***23 CFR § 650.807(d)***, FDOT should accomplish sufficient preliminary design and consultation during PD&E to investigate bridge concepts, including the feasibility of any proposed movable bridges, the horizontal and vertical clearances that may be required, and other location considerations which may affect navigation. At least one fixed bridge alternative shall be included with any proposal for a movable bridge to provide a comparative analysis of engineering, social, economic and environmental benefit and impacts. Engineering decisions resulting from consultation with the USCG during PD&E are incorporated into the Environmental Document.

According to the ***Bridge Administration Manual***, each alternative described in the Environmental Document should summarize the navigational impacts. This should include a description of the bridge alignment in relation to the current flow, the vertical and horizontal clearances, the design vessel length, the beam and draft, the navigation traffic patterns (one-way or two-way vessel traffic), the wind and wave effect, the current speed and the direction, visibility, and quality and spacing of aids to navigation near the bridge. The navigational information should be sufficiently complete so that the USCG can take final action without supplementing the Environmental Document.

16.2.1.2.1.2 Documentation

The results of FDOT's navigation analysis and USCG coordination is documented in the Environmental Document. If a ***Navigation Impact Report*** or ***Bridge Project Questionnaire*** is prepared it should be saved in the SWEPT project file. The documentation for each type of Environmental Document is outlined below:

Type 2 CE – If the project is not in USCG jurisdiction, "not applicable" is selected for the USCG Bridge Permit in the Permits section of the ***Type 2 Categorical Exclusion Determination Form*** in SWEPT.

If the project is in USCG jurisdiction, the appropriate status (to be acquired, application submitted, or permit received) is selected for the USCG Bridge Permit in the Permits section of the ***Type 2 Categorical Exclusion Determination Form*** in SWEPT. Any analysis or coordination to determine USCG jurisdiction should be briefly summarized in the project description. Additional information can also be documented in the comments box in the Permit section. The correspondence, letter for preliminary determination of navigational clearance (if applicable), and other documents developed should be added

to the project file (***Part 1, Chapter 5, Categorical Exclusion***) in SWEPT. It is recommended that these documents be placed in the Navigation folder within SWEPT.

EAs and EISs –If there is no involvement with navigation, include any relevant coordination documents in the project file and state why there is no involvement. Discuss how this determination was made.

For projects within jurisdiction, and no USCG permit is needed, the Navigation section of the EA or EIS should discuss the navigation analysis and coordination with USCG and/or FHWA (USCG Heartland District).

For projects where a USCG permit is needed, coordination with the USCG and/or FHWA (USCG Heartland District) should be discussed in the Navigation section of the EA or EIS and the permit listed in the Anticipated Permits section.

Coordination emails, letters, letter for preliminary determination of navigational clearance, or other supporting information should be included in the Appendix.

There may be occasions when associated federal agency approvals (e.g., USACE permit, USCG permit) will be received at or around the same time as the final ***NEPA*** approval. On those occasions, as part of the notice publication discussion, OEM and the District will confer as to whether one combined ***Limitations on Claims Notice*** should be published for the ***NEPA*** document and any associated federal agency actions. If other federal agency permits, licenses or approvals will be obtained at a later phase of the project, notice of limitations on claims would be published at that time for the subsequent approval. See ***Part 1, Chapter 11, Public Involvement*** for guidance on preparing a ***Limitations on Claims Notice***.

16.2.1.3 Design and Permitting

During permitting, the District's role is as an applicant. Coordination with USCG during permitting takes place to determine the requirements for a complete bridge permit application. FDOT submits the application for the USCG bridge permit as early as practicable and ensures that the documentation submitted to USCG with the permit application is complete, addresses navigational impacts, and is in compliance with ***NEPA*** and other required federal environmental statutes, regulations, and executive orders. This is to assist USCG in processing the permit application as quickly as possible. This should include coordination/concurrence letters from federal and state resource agencies, as appropriate. See ***Part 1, Chapter 12, Environmental Permitting***, and the ***Permit Handbook*** for guidance on preparing a USCG bridge permit application.

16.2.2 Florida Department of Transportation State Projects

For FDOT State Projects FDOT prepares a State Environmental Impact Report (SEIR) or Non-Major State Action (NMSA) according to ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***. FDOT ensures that adequate information is included

in the Environmental Document for the USCG to use in preparation of their ***NEPA*** document. See ***Figure 16-*** for a process flowchart.

16.2.2.1 Projects Not Qualifying for Efficient Transportation Decision Making Screening

If the project does not qualify for screening through the EST, navigation issues and/or coordination with USCG is documented in an NMSA. Minimal documentation on navigational effects is required for NMSAs. The navigation results are recorded on the ***Non-Major State Action Checklist***. The question that asks "Will the project cause adverse impacts to navigation requiring a federal permit?" is answered. The answer should be no. If a USCG bridge permit is not needed, the rationale on how this determination was made is documented. If the answer is yes, a SEIR is typically necessary as often these projects have other impacts that will not meet the NMSA criteria. Guidance on preparing the ***Non-Major State Action Checklist*** is found in ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***.

For these types of projects, if it is uncertain whether the waterway is susceptible to improvement for navigation, is tidal, or is considered navigable, or if the types of vessels using the waterway are unknown, FDOT coordinates directly with the USCG.

16.2.2.2 Projects Qualifying for Efficient Transportation Decision Making Screening

If the project qualifies for screening through the EST, the process discussed in ***Section 16.2.1.1*** is followed for projects located in the USCG Southeast District.

If it has been determined that a USCG permit may be needed for a project in the USCG Heartland District, District 3 prepares a navigation package that includes a completed ***Bridge Project Questionnaire*** and submits it to the USCG. A sample questionnaire is provided in the ***Guidance for Part 1, Chapter 16***. The questionnaire is prepared for bridge replacements but is not required for bridge repairs. If the project is for bridge repairs, District 3 follows the guidance in the ***USCG October 17, 2017 Letter*** (see ***Guidance for Part 1, Chapter 16***). If the USCG Heartland District determines the project is in their jurisdiction and a permit is required, District 3 documents it in the EST and the USCG is automatically added as a Cooperating Agency. If a lighting plan is required, this will also be documented in the EST by District 3.

The results of this input are included in the Navigation section of the planning or programming screen summary report. The designation of USCG as a Cooperating Agency is also documented in the summary report.

16.2.2.2.1 Project Development and Environment, Design, and Permitting

During the PD&E phase, coordination with the USCG is continued. FDOT should coordinate with USCG as necessary to resolve issues and avoid unnecessary project delays.

If the USCG requested a ***Navigation Impact Report***, coordination with USCG is necessary to obtain preliminary minimum navigation clearances, prior to the development/selection of viable alternatives in order to prevent advancement and study of alternatives which USCG would not be able to permit.

FDOT prepares a SEIR and includes information that is acceptable for adoption by the USCG. FDOT consults with USCG during preparation of the SEIR and prepares necessary environmental documentation based on project analysis. See ***Section 16.2.1.2.1.1*** for guidance on conducting navigation analysis. The SEIR includes discussion of potential bridge impacts to the environment and a discussion of results of ongoing coordination with USCG. In the SEIR, USCG is provided with the documentation of navigational impacts and information they can use to comply with ***NEPA*** and other applicable federal environmental statutes, regulations, and executive orders, including coordination/consultation letters from federal and state resource and regulatory agencies.

During the preparation of SEIR coastal bridge replacement projects, consideration may be given to using clean material for use as an artificial reef. This should be included in the coordination process with the regulatory and resource agencies as well as other stakeholders once it has been determined that demolition is the preferred alternative. Consideration will include, but will not be limited to, management, testing, storage, cost and/or transport of the material as well as permitting and agreements that may be necessary.

Preliminary environmental documentation is submitted to USCG for review, and as appropriate, FDOT responds to comments received on environmental aspects of highway bridges. To ensure the USCG can use the SEIR for its bridge permit action, the SEIR should adequately address all comments received from the USCG.

The SEIR should include appropriate commitments per ***Part 2, Chapter 22, Commitments***. For historic bridges requiring ***Section 106 of the NHPA*** compliance, FDOT copies USCG on SHPO concurrence letters or MOAs with SHPO and consulting parties.

FDOT also coordinates with USCG to determine if joint efforts for public notices, meetings and hearings would be appropriate. The USCG will provide comment on the sufficiency of the SEIR (i.e., stating that the document satisfies USCG requirements to process a permit) and will provide preliminary navigation clearance determinations (e.g., stating that minimum navigation clearance for a particular location is XX vertical and XX horizontal) based on information on-hand from a navigation impact study or user input. See ***Guidance for Part 1, Chapter 16*** for a sample letter from the USCG. If a letter is received it should be referenced in the SEIR and uploaded into SWEPT.

Also, during the PD&E phase, FDOT may compile applicable environmental information for the bridge permit application. Permitting may be conducted during the PD&E phase or later during the Design phase.

During permitting, the District's role is an applicant. Coordination with USCG during permitting takes place to determine the requirements for a complete bridge permit application. FDOT submits the application for the USCG bridge permit as early as practicable and ensures that the documentation submitted to USCG with the permit application is complete, addresses navigational impacts, and is in compliance with other required environmental statutes, regulations, and orders. This is to assist USCG in processing the permit application as quickly as possible. This should include coordination/consultation letters from federal and state resource agencies, as appropriate. See ***Part 1, Chapter 12, Environmental Permitting***, and the ***Permit Handbook*** for guidance on preparing a USCG bridge permit application.

16.2.2.2.1.1 Documentation of State Environmental Impact Reports

If the project is not within USCG's jurisdiction, "Not present" is selected in the Navigation section of the ***State Environmental Impact Report Form***.

If the project is within USCG's jurisdiction (based on the outcome of analysis and coordination) "Present" is selected and it is identified if there will be a substantial impact.

Any analysis or coordination to determine USCG jurisdiction should be briefly summarized and included in the SEIR. The summary box should also include a reference to attachments containing supporting information. The correspondence, letter for preliminary determination of navigational clearance (if applicable), and other applicable documents (e.g., ***Navigation Impact Report, Bridge Project Questionnaire***) should be contained in the project file in SWEPT and referenced in the SEIR. The SEIR should include items needed for permitting, if available, and be prepared so that USCG can use the information to prepare their own ***NEPA*** document.

In the Permits section of the form, the applicable status next to the USCG bridge permit (not applicable, to be acquired, application submitted, permit received) is selected. If needed, this determination can be explained in the Permit Comments box and coordination emails or letters can be included in the project file. See ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery*** for more information on preparing a SEIR.

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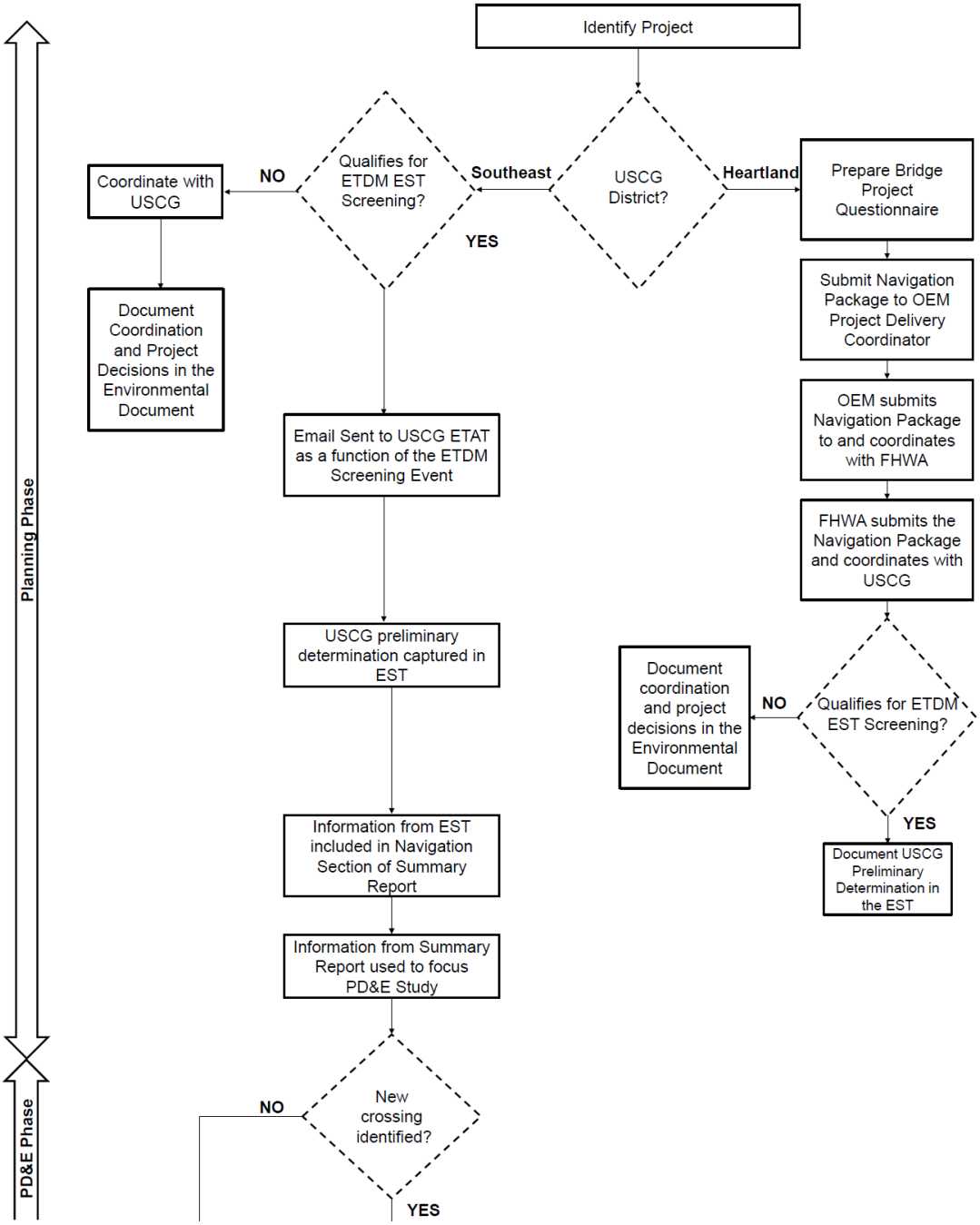
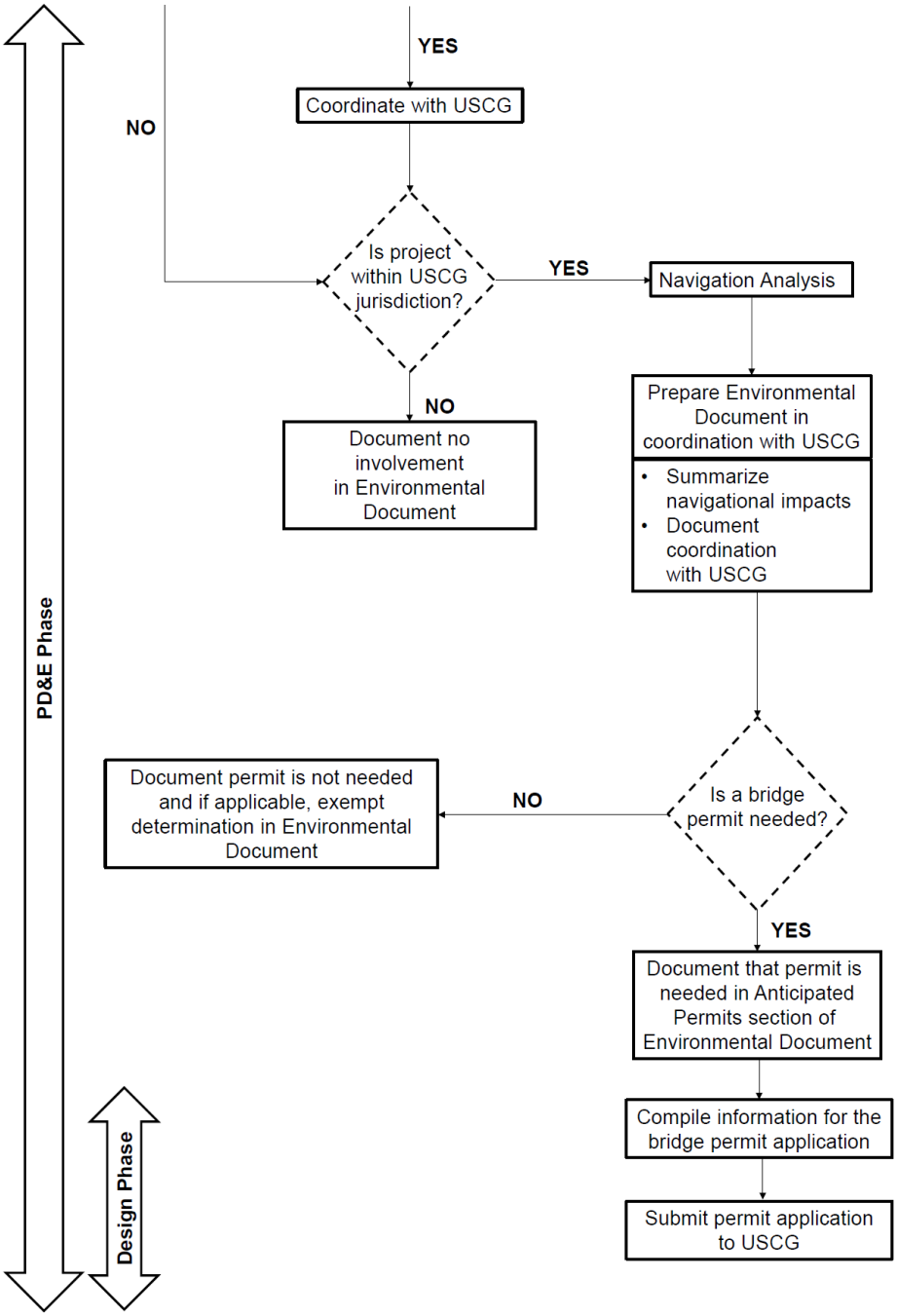


Figure 16-1 FDOT Federal Project Navigation Process



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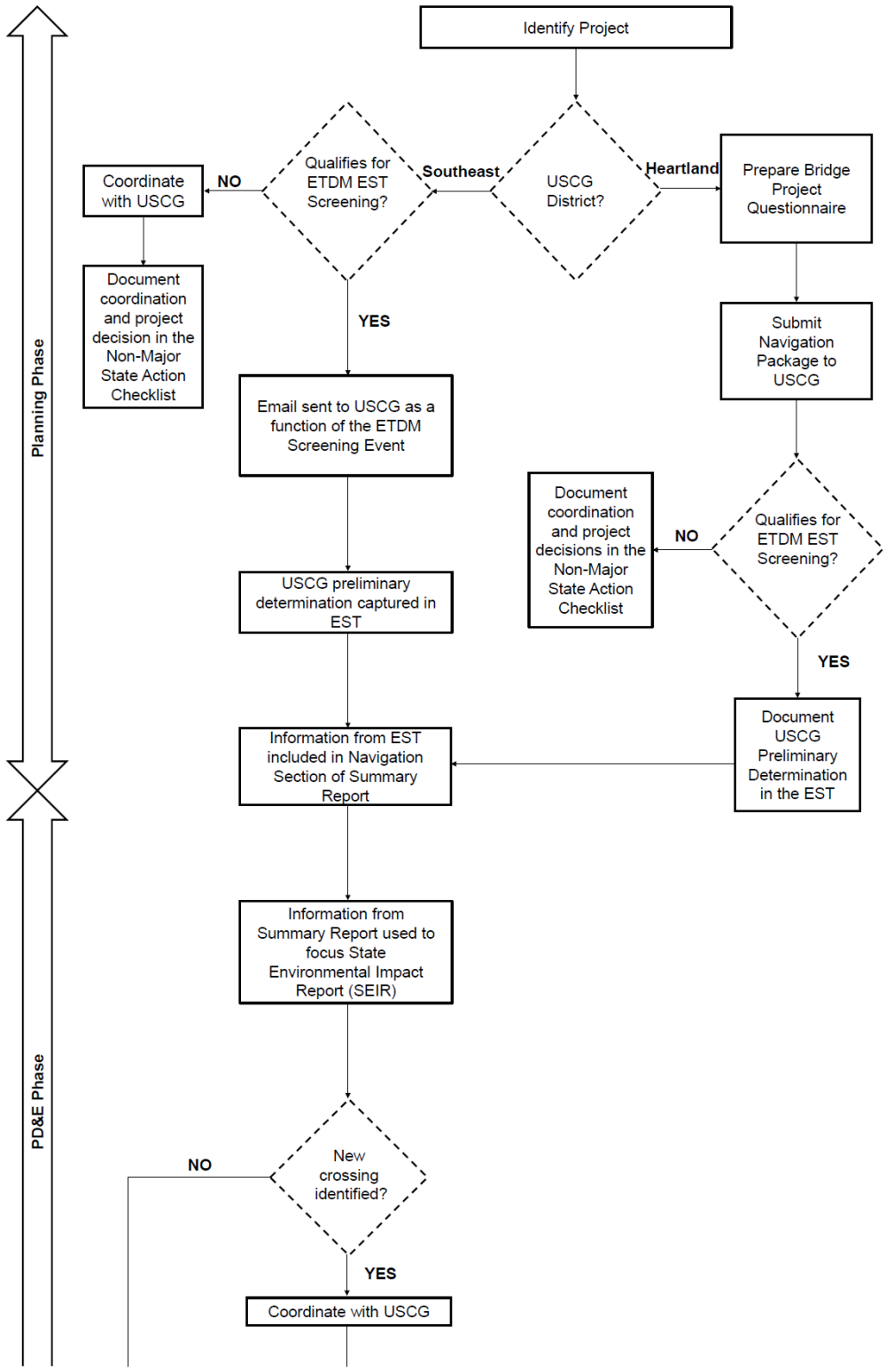

Figure 16-2 FDOT State Project Navigation Process

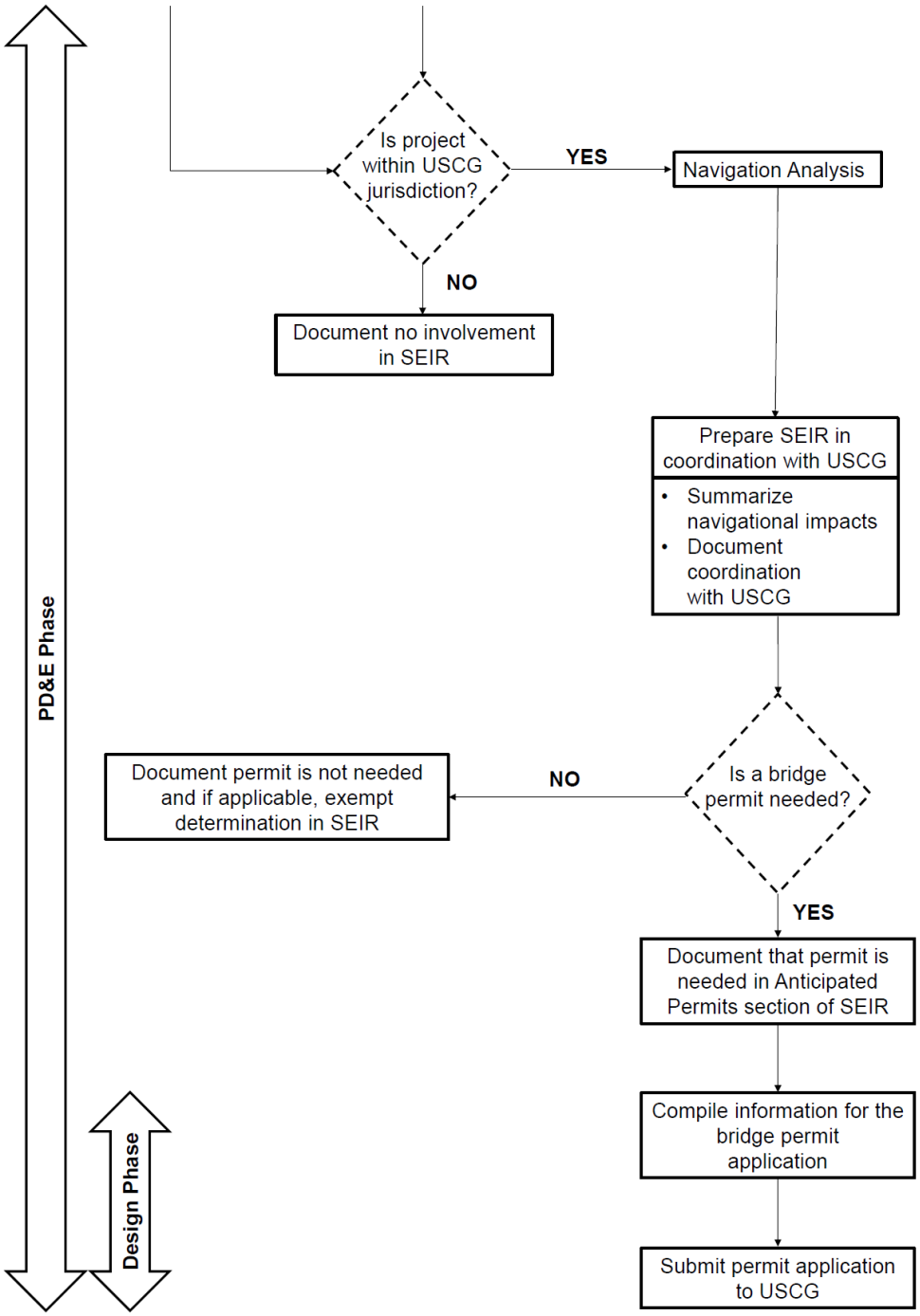

Figure 16-2 FDOT State Project Navigation Process (page 2 of 2)

FLORIDA DEPARTMENT OF TRANSPORTATION

PROJECT DEVELOPMENT & ENVIRONMENT MANUAL

Part 2: Topics and Analysis

Office of Environmental Management

FDOT

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PART 2 CHAPTER 1

PROJECT DESCRIPTION, PURPOSE AND NEED, AND PLANNING CONSISTENCY

1.1 OVERVIEW

This chapter provides guidance on developing and documenting the project description, purpose and need, and planning consistency for the project prior to and during the Project Development and Environment (PD&E) phase. The project description briefly describes the existing facility or existing conditions, project limits, project location, and the proposed improvements so that the Florida Department of Transportation (FDOT), resource agencies, and the public can understand the scope of the project and its effects on the environment. See ***Section 1.2.1*** for more information on the project description.

The purpose and need for a project is a basis for the development of the range of reasonable alternatives required in an Environmental Impact Statement (EIS), or identification of the build alternative(s) for other Environmental Document types. Moreover, the purpose and need for the project assists the Lead Federal Agency in evaluating project alternatives and selecting a preferred alternative (see ***Part 2, Chapter 3A, Alternatives Analysis***).

The purpose and need for a project begins in the Planning phase and can be refined during the PD&E phase. FDOT and planning agencies [e.g., Metropolitan Planning Organizations (MPO) and Transportation Planning Organizations (TPO)] identify transportation needs during the development of their respective transportation plans based on planning data. Prior to the PD&E phase, FDOT uses the Efficient Transportation Decision Making (ETDM) process to obtain input from resource agencies and the public on the purpose and need for projects that are screened through the Environmental Screening Tool (EST) (see ***Section 1.2.2.2***). Later, during the PD&E phase, the purpose and need discussion in the Environmental Document provides details about the objectives of the proposed action, such as achieving transportation-related needs identified in an MPO plan. If project alternatives do not fully address the stated purpose and need, they can be eliminated from further consideration with documentation (see ***Section 1.2.2.3***).

This chapter also provides guidance for meeting planning consistency which is mandatory prior to the final Environmental Document approval on all FDOT Federal Projects. Planning consistency is required to authorize the spending of federal dollars and thus advance to future phases of project development. See ***Section 1.2.3*** for more information on planning consistency.

1.2 PROCEDURE

1.2.1 Project Description

Prior to the PD&E phase, a description of the project and the logical termini is developed through the planning process and documented during the ETDM process. The logical termini are determined for the scope of both transportation improvements and environmental analysis. The project description briefly describes the project location, the existing facilities and the proposed improvements.

The project description used later in the PD&E Study should be similar to the one used in the ETDM process but should include more detailed information not available during the ETDM screenings. If the project description changes during preparation of the PD&E Study, Office of Environmental Management (OEM) should be made aware of and agree to the proposed changes before they can be incorporated into the Environmental Document.

1.2.1.1 Development of Project Description

The project description should be written to allow a person without prior knowledge to clearly understand the project. The project description may differ between the ETDM screening and the PD&E Study but should be consistent. In the ETDM process it should provide as much information as readily available, for example in the description of existing and proposed facilities the lane widths may not be known but the description should state the number of existing and proposed lanes. By the PD&E phase the details of the existing and proposed project will be known and reflected in the updated project description.

The project description must include the following information:

- A brief description of the existing facility including:
    - Typical section features (number of lanes, divided/undivided, pedestrian and bicycle accommodations, etc).
    - Existing Right of Way (ROW)
    - Bridge information (bridge number, overpass/underpass, name of waterway, navigability, etc.)
    - Intersections and/or interchanges and control type (stop, signal, etc.)
- The limits of the proposed project (such as its length and logical termini)
- The names of the City and County where the project is located
- A brief description of the proposed improvements

- Mode
- Typical section features (number of lanes, lane widths, median widths, bicycle and pedestrian accommodations, etc.)
- Facility type and context classification
- Brief description of pedestrian and bicycle accommodation
- Treatment of any major structures
- Navigational needs for Federal Projects involving bridges over waters

1.2.1.1.1 Logical Termini

The establishment of a project's logical termini is an important aspect of the proposed project and serves to define the study area. The identification of logical termini should be completed during the planning process and finalized through the ETDM screening. For FDOT Federal Projects, the determination of logical termini is coordinated with the OEM during the Programming Screen when the purpose and need is accepted (see ***Section 1.2.2.2***).

Logical termini are defined as the rational beginning and end points for a transportation project and serve as the basis for the area of potential effect for environmental issues/resources to be evaluated during the PD&E Study. They are often located at major traffic generators, such as an intersecting roadway. In most cases traffic generators determine the size and type of facility being proposed. The PD&E Study area generally covers a broader geographic area than the limits of the transportation improvements to ensure consideration of potential project impacts. Pursuant to ***23 Code of Federal Regulations (CFR) § 771.111(f)***, alternatives developed for Categorical Exclusions (CEs), Environmental Assessment (EAs), or EISs must:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope.
2. Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Consideration of the items above will prevent the problem of "segmentation" which may occur when a transportation need extends throughout an entire corridor, but environmental issues and transportation needs are inappropriately discussed for only a segment of the corridor.

When describing the logical termini, it is common to describe the termini points broadly, such as “the intersection at SR-XX.” However, termini that may not be considered logical without further discussion are county lines, rivers, and city limits.

The logical termini presented in an Environmental Document should be consistent with the “project limits” identified in the adopted cost feasible Long Range Transportation Plan (LRTP) of the respective MPO/TPO or other planning documents in a non-MPO area. The logical termini for a project in a “Non-attainment” or “Maintenance” area for Air Quality need to be consistent with the project limits established by the MPO/TPO. Any inconsistencies need to be resolved in coordination with FDOT’s District Planning Office, the MPO/TPO, and OEM.

1.2.2 Purpose and Need

The purpose and need is developed during the Planning phase for ETDM screening and may be refined during the PD&E phase if new information or needs are identified. If the purpose and need changes during the PD&E phase, OEM must be made aware of and agree to the proposed changes before they can be incorporated into the Environmental Document.

The purpose and need for a project provides the basis for developing, considering, evaluating, and eliminating alternatives. The purpose and need shapes the alternatives and in the case of an EIS, assists with identification of reasonable and feasible alternatives. The purpose and need should be clearly written in plain language, succinct and well defined to set the framework for the development and evaluation of alternatives. The purpose and need should briefly describe the project context including actions taken to date, other agencies and governmental units involved, actions pending, and schedules.

Project needs developed during the transportation planning process and identified in a statewide or metropolitan transportation plan can be the primary source of a project's purpose and need. The transportation planning process enables state and local governments and MPOs, with the involvement of resource agencies and the public, to establish a vision for a region's future transportation system, define a region's transportation goals and objectives for realizing that vision, decide which needs to address, and determine the timeframe for addressing these needs. Out of the planning process emerge proposed projects intended to meet the needs and achieve the objectives of the plan.

The purpose and need:

1. Should be a statement of the transportation problem (not a statement of a solution such as specific project alternatives);

2. Should be based on articulated planning factors and developed through a planning process pursuant to applicable federal law;

3. Should be specific enough so that the range of alternatives developed will offer real potential for solutions to the transportation problem;

4. Must not be so narrow in definition or so specific as to pre-determine a solution;

5. May reflect other priorities and limitations in the area, such as environmental resources, growth management, land use planning, and economic development; and

6. Should not list specific design criteria or standards to be met by the project.

Further guidance regarding the development of the purpose and need can be found in ***Federal Highway Administration (FHWA) Technical Advisory T6640.8A***, and ***FHWA Environmental Review Toolkit***.

1.2.2.1 Development of Purpose and Need

Transportation planning data developed for FDOT in non-MPO areas or for MPO/TPO LRTPs are the primary source of information used to establish the purpose and need. These data are obtained from corridor plans, subarea plans, regional models and other sources that help identify corridors and facilities where transportation improvements are needed. These data are also summarized in the Strategic Intermodal System (SIS) plan, MPO/TPO Transportation Improvement Program (TIP), and the State Transportation Improvement Program (STIP). District staff preparing the purpose and need during ETDM screening should coordinate with planning staff to obtain relevant data that support the purpose need for the project. Consistent with the conditions set forth in ***23 CFR Part 450*** and ***23 United States Code (U.S.C.) § 168***, planning products can be adopted or incorporated by reference into the ***National Environmental Policy Act (NEPA)***. See FDOT's ***Guidance for Linking Planning and Environmental Review*** on FDOT's ***PD&E Manual Website***.

1.2.2.1.1 Purpose

The purpose identifies the primary goals of the project and guides the alternatives that will be considered and developed in response to the established need. The purpose should be broad enough to encompass a reasonable range of alternatives for an EIS, but not so broad that it encompasses every possible alternative. Conversely, the purpose should not be so narrow as to preclude a range of alternatives that could reasonably meet the defined objectives or restrict decision-makers' flexibility in resolving conflicting interests.

An alternative that does not achieve the primary purpose of the project would be eliminated as unreasonable or not feasible. Secondary purposes do not, by themselves, provide a basis for eliminating alternatives from further study but could be considered in the selection of a preferred alternative.

1.2.2.1.2 Need

The need for the project may arise from deficiencies, issues, and/or concerns that currently exist or are expected to occur within the project area. The need serves as the foundation for the proposed project and provides the principal information upon which the "no-action" alternative discussion is based. It establishes the rationale for pursuing the action and is generally reflected in local, state or MPO/TPO transportation plans. The need should consist of a factual, objective description of the specific transportation problem supported by data and analysis. Detailed analysis supporting the need should be referenced in the purpose and need discussion.

The following is a list of common transportation needs to be considered in the discussion of the need for the proposed action. This list is not all-inclusive.

1. **Project Status** Briefly describes the project's history, including previous planning studies, measures taken to date, other agencies and governmental units involved, spending, funding, schedules, etc.

   System Linkage - Is the proposed project a local, regional, or intraregional "connecting link"?

   Discusses how the proposed project fits into the existing and future local, regional and state transportation system (network) and contributes to the movement of people, goods, and services. Also discusses how the proposed project contributes to the multi-modal transportation network.

2. **Capacity** - Is the capacity of the existing facility inadequate to serve the traffic? What is the projected transportation demand? What capacity is needed? What is the Level of Service (LOS) for existing and proposed facilities?

   Discusses the capacity of the existing facility, its existing and anticipated LOS, and any operational deficiencies of the facility.

3. **Transportation Demand** - Will the project accommodate the forecasted transportation demand as shown in the adopted state and local transportation plans? Will the project meet future transportation demands based on projected population, employment growth, an increase in freight movement, or other demands on the transportation system?

   Discusses the project relationship to any statewide transportation plan or adopted urban transportation plan.

4. **Legislation** - Is there a federal, state, or local governmental mandate for the action? Documents the need to respond to federal, state, or local government requirements.

5. **Social Demands or Economic Development** - What projected economic development/land use changes indicate the need to modify the transportation facility, network or system?

   Describes how the action will foster new employment, benefit schools, land use plans, recreation facilities. Discusses types of social and economic traffic generators, both existing and planned, which exert travel demands on the facility. For example, may include businesses, neighborhoods, recreational facilities, shopping centers, new developments, and any other traffic generators which could increase travel demands on the proposed facility.

6. **Modal Interrelationships** - How will the proposed project interface with and serve to complement other modes of transportation such as airports, freight facilities, rail and port facilities, and mass transit services?

   Identifies the need to address other modes of transportation (e.g., airports, rail and port facilities, mass transit services, bicycle accommodations, ridesharing, and special use lanes) associated with the project and discusses how the proposed action will complement other modes.

7. **Safety** - Is the proposed project necessary to correct an existing or potential safety hazard? Is the existing crash rate higher than the statewide average for similar facilities? How will the proposed project improve it?

   Discusses crashes which have occurred in the study area that may indicate a need for improvement. The discussion may include crash types, frequency, crash pattern, crash contributing causes, and the rate of crashes when compared with the statewide average for similar facilities. Identify existing high-hazard sections of the facility and how the project will address the safety problem. Discusses any traffic or transportation safety issues which are or could become a problem (e.g., hazardous material transportation).

8. **Roadway Deficiencies** - Is the proposed project necessary to correct existing roadway deficiencies? How will the proposed project address the deficiencies? Is there a deficient or substandard bridge?

   The need and rationale behind reconstructing or replacing a roadway or existing bridge **should** be provided. A detailed description of the existing structure(s) and their deficiencies is provided. Deficiencies may include substandard geometrics, load limits on structures, inadequate typical sections, poor pavement condition, inadequate drainage, and inadequate SIS roadway design standards. For bridges, the deficiencies identified may be the result of structural and functional ratings, horizontal and vertical clearances, state of repair, weight restrictions or limitations.

1.2.2.2 Purpose and Need during the ETDM Screening

The purpose and need may evolve as the project advances through the Planning phase, ETDM process, and through the PD&E phase. A project's purpose is usually first identified in the transportation plan(s), e.g., MPO LRTPs, the SIS plan and the TIP/STIP. While the purpose of a project does not change substantially over time, the need may be better defined as the project advances and more information becomes available.

OEM should provide opportunities for participating agencies and the public to provide input on the purpose and need in accordance with ***23 U.S.C. § 139(f)(1)***. Prior to engaging in the environmental review process, these obligations may be satisfied if agencies and the public are involved in the development of the project purpose and need during the transportation planning process. Nonetheless, FDOT accomplishes these goals through the ETDM process for all projects that are screened through the Environmental Screening Tool (EST). The ETDM process has two screening events: the Planning and Programming Screens. See the ***ETDM Manual, Topic No. 650-000-002*** for more information on project screening.

The following briefly describes the purpose and need during the screening events:

1. Planning Screen - The Planning Screen may be the first opportunity agencies and other interested parties have to provide input on a project's purpose and need. Coordination occurs with the District Planning Office to obtain the project purpose as identified in the MPO/TPO LRTP and SIS Plan.

2. Programming Screen - The Programming Screen is intended to occur prior to a project's adoption into the FDOT Work Program or TIP/STIP, and/or prior to the PD&E phase. This screening helps focus the scope of the PD&E Study and can provide scoping information for an EIS, if necessary. The information for the purpose and need is coordinated with the District Planning Office to ensure consistency. If the project was screened previously, then the purpose and need from the screening should be refined to reflect the information presented in the ***Planning Screen Summary Report*** with updated information, as appropriate. If any new information is available it should also be provided.

OEM provides a pre-screening review of the project description, purpose and need, and Preliminary Environmental Discussion (PED) before the Programming Screening event notification is distributed or before the Advance Notification (AN) is distributed separate from the screening event. An OEM Pre-screening Review may be done for a Planning Screen at the District's request.

The District Environmental Office staff should review and provide comments on the language in the project description, purpose and need, and PED prior to submission to OEM for the official OEM Pre-Screening Review. During the OEM Pre-Screening Review, the OEM Project Delivery Coordinator (PDC) and OEM Engineer review and provide comments about the project description, purpose and need, and PED. PDCs and OEM

Engineers have up to 14 days to provide comments and may also include subject matter experts. The PDC and OEM Engineer must provide an approval of the pre-screening in order to proceed with the release of the AN.

1.2.2.3 Purpose and Need during the PD&E Phase

The purpose and need information from the ***Programming Screen Summary Report*** is used to prepare the purpose and need for the Environmental Document. The final purpose and need developed in the PD&E phase should be consistent (e.g., same logical termini, elements of need) with the purpose and need found in the ***Programming Screen Summary Report***. During the PD&E Study the most up to date transportation plans are reviewed and verified to ensure information supporting the purpose and need is still valid, new data is gathered to fill any information gaps, and the purpose and need is refined if necessary. In addition, the needs are updated based on current data, such as traffic, crash, and existing conditions. OEM must be consulted if the project description or the purpose and need for a project changes substantially during the PD&E Study.

1.2.3 Planning Consistency

FDOT Federal Projects should meet planning consistency requirements outlined in ***23 CFR Part 450*** prior to being submitted to OEM for Location and Design Concept Acceptance (LDCA).See the ***FDOT/FHWA Consistency Guidance*** and ***Planning Consistency for NEPA Practitioners*** for more information on planning consistency. For the specific funding scenarios to obtain approval of the Environmental Document, refer to the ***Federal Strategies for Implementing Requirements for LRTP Updates for the Florida MPOs*** and ***Meeting Planning Requirements for NEPA Approval*** prior to submitting the Environmental Document. The Environmental Document includes a brief discussion of planning consistency presented in the form of a Planning Consistency Table. The table describes how and when the project will be implemented, including actions taken to date, coordination with other agencies and governmental units involved, actions pending, and schedules.

For a Type 2 CE, the Planning Consistency Table is included as a function of the StateWide Environmental Project Tracker (SWEPT). For a State Environmental Impact Report (SEIR), the Planning Consistency Table is optional and is also a function of SWEPT.

For an EA or an EIS, the Planning Consistency Table is included in the form of a table. See the sample table in ***Figure 1-1*** and the sample table for projects with segmented (phased) implementation in ***Figure 1-2***. The table summarizes information included in the planning documents including: project scope, project phases, cost, general funding sources, project description, and logical termini. The project implementation is described and the status of the planning requirements documented as follows:

a. MPO Areas:

1. Identifies the MPO area in which the project is located. The information provided in the Environmental Document should reference the MPO's currently adopted LRTP and TIP. Additionally, the Current STIP should be referenced, as the Current STIP provides the latest project information and is most consistent with the TIP.

2. Project limits: Confirms that the project description in the LRTP and Environmental Document are similar. Explains any differences, such as the PD&E Study is a shorter section than what is described in the LRTP or that the Environmental Document includes more than one LRTP project. If the LRTP shows that the project will be implemented in segments, then the segments should be described. Also confirms that the STIP/TIP and Environmental Document descriptions are similar, describing any differences.

3. Project Funding: Provide a narrative referencing the Cost Feasible Plan of the Long Range Transportation Plan (CFP LRTP), TIP, and Current STIP page. Document all project future phases [Design, ROW, and Construction], when those phases are to be funded, their anticipated costs, and the source of funds proposed to be used (e.g., state, local, federal, private or toll) which should be described in the first 10 years of the LRTP, referenced in the ***Federal Strategies for Implementing Requirements for LRTP Updates for the Florida MPOs***. If any phase is not funded, the estimated implementation dates should be provided, which can typically be found in the LRTP Needs Plan. The estimated total project cost and anticipated date of construction should also be included.

b. Non-MPO Areas:

1. In a non-MPO area, the information provided must reference the Current STIP and acknowledge consistency with the Florida Transportation Plan. Other long range planning documents, such as SIS CFP, Local Government Comprehensive Plan, or other publicly adopted plans may be used to support the project's planned implementation.

2. Project limits: Confirms that the project description in the STIP or other long range documents and Environmental Documents are similar. Explain any differences, such as the PD&E Study is a shorter section than what is described or that the Environmental Document includes more than one project.

3. Project Funding: Provides a narrative referencing the Current STIP page or other transportation plan that describes all future project phases (Design, ROW, and Construction), when those phases are to be funded, their anticipated costs, and the source of funds proposed to be used (e.g., state, local, federal, private or toll). If any phase is not funded, the estimated implementation dates should be provided. The estimated total project cost and anticipated date of construction should also be included.

In either case, if the project is going to be designed or constructed in segments, then each segment should be included in its own Planning Consistency Table and clearly shown on the project location map. The table and description should include the approximate implementation timeframes and estimated costs for each segment.

The LRTP, TIP, and Current STIP pages should be included in the Appendix of the Environmental Document. Documentation that snapshots the Work Program is not adequate documentation to demonstrate planning consistency. Documentation that snapshots the Work Program is not adequate documentation to demonstrate planning consistency.

When a Type 2 CE, EA, or Draft Environmental Impact Statement (DEIS) is released for public availability and there are inconsistencies between the Environmental Document and the planning documents, the Environmental Document should describe the differences and the steps needed to achieve consistency and a timeframe when this will occur. After the public hearing, planning consistency must be achieved prior to OEM approving the Type 2 CE, EA with Finding of No Significant Impact (FONSI), Record of Decision (ROD) or Final Environmental Impact Statement (FEIS)/ROD.

1.2.4 Documentation

In the Environmental Document and ***Preliminary Engineering Report (PER)***, a project location map illustrating the project limits should display any landmarks mentioned in describing the proposed project or action (i.e., cities, towns, rivers, airports, cross streets). The EST can be used to generate this map for screened projects.

PER – Project Description and Purpose and Need information is included in Section 1 (Project Summary). The Purpose and Need in the ***PER*** must be exactly the same as in the Environmental Document. The Project Description must be consistent with the Environmental Document.

The location of the project description, purpose and need, and planning consistency documentation differs depending on the Environmental Document type:

Type 2 CE– Project description, purpose and need, and planning consistency information is included in Section 1 (Project Information) of the ***Type 2 Categorical Exclusion Determination Form***. Planning consistency information is provided as a table in the form. The LRTP, TIP, and Current STIP pages should be included in the Appendix.

EA or EIS – The project description, purpose and need, and planning consistency information is included in the Project Information section of an EA (see ***Part 1, Chapter 6, Environmental Assessment***) or an EIS (see ***Part 1, Chapter 8, Draft Environmental Impact Statement***).

SEIR – Project description and purpose and need information is included in Section 1 (Project Information) of the SEIR. Planning consistency information (if available) is provided in a table in the form and the LRTP, TIP, and Current STIP pages should be included in the Appendix if applicable.

1.3 REFERENCES

American Association of State Highway and Transportation Offices (AASHTO), August 2016, Practitioner's Handbook: Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects.

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FHWA, July 23, 2003, memorandum "Guidance on Purpose and Need", to FHWA Division Administrators and FTA Regional Administrators,

FHWA and FTA, November 2012, Federal Strategies for Implementing Requirements for LRTP Update for the Florida MPOs. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/metrosupport/resources/fhwa-lrtp-expectations---2012.pdf?sfvrsn=70dd88be_1

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FDOT, Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Planning Consistency for NEPA Practitioners. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pdeman/planning-consistency-for-nepa-practitioners.pdf?sfvrsn=895090ea_1

Section 339.177, Florida Statutes (F.S.)

Title 23 U.S.C. § 134

Planning Requirements for Environmental Document Approvals

Document Information:

Date:	(Current Date)	**Document Type:**	EIS/EA/Type 2 CE	**Document Status:**	Draft/Final
Project Name:	(PD&E Project Title)			**FM #:**	(PD&E FM #)
Project Limits:	(NEPA Logical Termini/PD&E Study Limits)			**ETDM #:**	
Are the limits consistent with the plans?			**Y/N** (Limits presented for approval should be consistent with LRTP, TIP/STIP. If no, explain)		
Identify MPO(s) (if applicable):	(Provide MPO(s) Name)			**Original PD&E FAP#**	(FAP# Assigned to the PD&E if applicable)

Currently Adopted CFP-LRTP	**COMMENTS**
Y/N	(If N, then provide detail on how implementation and fiscal constraint will be achieved)

PHASE	**Currently Approved TIP**	**Currently Approved STIP**	**TIP/STIP $**	**TIP/STIP FY**	**COMMENTS**
PE (Final Design)	Y/N	Y/N	$		(provide comments as appropriate describing status, activities, and implementation steps needed to achieve consistency)
R/W	Y/N	Y/N	$		(provide comments as appropriate describing status, activities, and implementation steps needed to achieve consistency)
Construction	Y/N	Y/N	$		(provide comments as appropriate describing status, activities, and implementation steps needed to achieve consistency)

Project Segmented: **N**

Figure 1-1 Sample Planning Requirements for Environmental Document Approvals

Planning Requirements for Environmental Document Approvals with Segmented Implementation

Document Information:					
Date:	(Current Date)	**Document Type:**	EIS/EA/Type 2 CE	**Document Status:**	Draft/Final
Project Name:	(PD&E Project Title)			**FM #:**	(Original FM #)
Project Limits:	(NEPA Logical Termini/PD&E Study Limits)			**ETDM #:**	
Are the limits consistent with the plans?		Y/N (Limits presented for approval should be consistent with LRTP, TIP/STIP. If no, explain)			
Identify MPO(s) (if applicable):	(Provide MPO(s) Name)			**Original PD&E FAP#**	(FAP# Assigned to the PD&E if applicable)

Segment Information:	(Add additional tables as needed to describe all segments within the logical termini limits. Clearly identify segment representing the next funded phase)				
Segment Limits:				**Segment FM #**	
Currently Adopted CFP-LRTP	**COMMENTS**				
Y/N	(If N, then provide detail on how implementation and fiscal constraint will be achieved)				
PHASE	**Currently Approved TIP**	**Currently Approved STIP**	**TIP/STIP $**	**TIP/STIP FY**	**COMMENTS**
PE (Final Design)	Y/N	Y/N	$		(provide comments as appropriate describing status, activities, and implementation steps needed to achieve consistency)
R/W	Y/N	Y/N	$		(provide comments as appropriate describing status, activities, and implementation steps needed to achieve consistency)
Construction	Y/N	Y/N	$		(provide comments as appropriate describing status, activities, and implementation steps needed to achieve consistency)

Segment Information:	(Add additional tables as needed to describe all segments within the logical termini limits. Clearly identify segment representing the next funded phase)				
Segment Limits:				**Segment FM #**	
Currently Adopted CFP-LRTP	**COMMENTS**				
Y/N	(If N, then provide detail on how implementation and fiscal constraint will be achieved)				
PHASE	**Currently Approved TIP**	**Currently Approved STIP**	**TIP/STIP $**	**TIP/STIP FY**	**COMMENTS**
PE (Final Design)	Y/N	Y/N	$		(provide comments as appropriate describing status, activities, and implementation steps needed to achieve consistency)
R/W	Y/N	Y/N	$		(provide comments as appropriate describing status, activities, and implementation steps needed to achieve consistency)
Construction	Y/N	Y/N	$		(provide comments as appropriate describing status, activities, and implementation steps needed to achieve consistency)

Figure 1-2 Sample Planning Requirements for Environmental Document Approvals with Segmented Implementation

PART 2, CHAPTER 2

TRAFFIC ANALYSIS

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PART 2, CHAPTER 2

TRAFFIC ANALYSIS

2.1 OVERVIEW

This chapter provides guidance for conducting the traffic analysis and preparing a ***Project Traffic Analysis Report (PTAR)*** for Project Development and Environment (PD&E) Studies. Specifically, the chapter covers scoping the traffic analysis effort, traffic data requirements, analysis methodology and documentation.

Traffic analysis is an evaluation of the interaction between demand and supply of a transportation facility to determine how efficient the facility is serving the demand. This analysis forms the basis for evaluating the performance of project alternatives and design concepts based on demand, capacity, operational performance, environmental impacts, and safety concerns. Traffic analysis is one of the methods used to evaluate transportation needs during the Planning phase and PD&E Study. Additionally, traffic analysis produces data needed to support project-level environmental analyses such as noise and air quality impacts.

Traffic analysis is one of the critical activities for a PD&E Study and can impact the project schedule; the Project Manager should understand the effort associated with traffic data collection, forecasting, and analysis. Each project is unique and the approach for individual projects might differ. As such, when developing the project traffic data and performing the corresponding analysis, there must always be a balance between the project's goals and objectives, available schedule and budget, and the complexity of the analysis to be performed. The Project Manager should reach an early agreement with project reviewers on the traffic analysis approach and parameters for the analysis. Such agreement is vital to project success as it helps to avoid misunderstanding between traffic analysts and reviewers of traffic analysis reports that may negatively impact the project development schedule.

The chapter is intended for transportation practitioners who perform traffic analyses for Florida Department of Transportation (FDOT) projects and possess sufficient knowledge of traffic flow theory and traffic engineering including guidance documented in FDOT and national publications.

2.1.1 Definitions

The following definitions apply to terminology used in this chapter:

Annual Average Daily Traffic (AADT) - The total volume of traffic passing a point or a segment of a highway facility in both directions for one year, divided by the number of days in the year.

Average Daily Traffic (ADT) - The total traffic volume during a given period in whole days (greater than one day and less than a year) divided by the number of days in that period.

Axle Correction Factor - The factor developed to adjust axle counts into vehicle counts. It is developed from classification counts by dividing the total number of vehicle counts by the total number of axles on these vehicles.

Crash Modification Factor (CMF) – A multiplicative factor used to compute the expected number of crashes after implementing a given design element or treatment at a specific site. For example, a CMF of 0.95 for a design element would suggest that application of that element or treatment would decrease crashes by 5%.

Design Hour - An hour with a traffic volume that represents a reasonable value for designing the geometric and control elements of a facility.

Design Year - The year for which the project is designed; usually 20 years from the Opening Year but may be any time within a range of years from the present (for restoration type projects) to 20 years in the future (for new construction type projects).

Directional Design Hour Volume (DDHV) - The traffic volume expected to use a highway segment during the design hour of the design year in the peak direction.

Directional Distribution (D Factor) - The percentage of the total two-way peak hour traffic that occurs in the peak direction.

Level of Service (LOS) - A quantitative stratification of a performance measure or measures that represents quality of service of a transportation facility measured on an A-F scale, with LOS A representing the best operating conditions from the traveler's perspective and LOS F the worst.

Model Output Conversion Factor (MOCF) - A factor used to convert the traffic volumes generated by a travel demand forecasting model in Peak Season Weekday Average Daily Traffic (PSWADT) to AADT. The MOCF is the average of the 13 consecutive weeks during which the highest weekday volumes occur and when the sum of Seasonal Factors (SF) for those 13 weeks are the lowest. MOCF is used during model validation to convert AADT to PSWADT for the base year model network should also be used for adjusting future year model volumes from PSWADT to AADT.

Peak Season Weekday Average Daily Traffic (PSWADT) - The average weekday traffic during the peak season. Some Florida Standard Urban Transportation Model Structure (FSUTMS) traffic assignment volume represents PSWADT projections for the roadways represented in the model highway network. For ***Project Traffic Forecasting Reports***, the PSWADT should be converted to AADT using a MOCF. Although not all FSUTMS models report traffic assignment volume in PSWADT, there are currently several model outputs throughout the State that require conversion from PSWADT to AADT using MOCF.

Peak Spreading - The expansion of peak period of traffic, from the traditional one-hour peak to multi-hour peak period, as the demand to use the facility surpasses capacity.

R-Squared Value - A statistical measure, expressed as a percentage, of how well a regression model fits the real data points.

Regression Analysis - A statistical process for determining the strength of the relationship among one dependent variable and one or more independent variables.

Safety Performance Function (SPF) - A statistically derived equation that predicts the average number of crashes per year at a location as a function of traffic exposure (e.g., volumes of vehicles, bicyclists, pedestrians).

Saturation - Traffic operating conditions in which the traffic demand is equal to the capacity of a facility.

Over-saturation - Traffic operating conditions in which the traffic demand exceeds the capacity or saturation of a facility.

Seasonal Factor (SF) - Parameters used to adjust base counts which consider travel behavior fluctuations by day of the week and month of the year. The SF used in Florida is determined by interpolating between the Monthly SFs for two consecutive months.

Standard K (K Factor) - A factor used to convert AADT to a peak hour volume. Standard K values are statewide fixed parameters that depend on the general area types (location) and facility types (roadway characteristics). Values less than 9% typically represent a multi-hour peak period rather than a peak hour. Standard K does not apply to emergency evacuation routes and managed lanes. Recommended FDOT Standard K Factor ranges are available in FDOT's ***Project Traffic Forecasting Handbook***.

Truck Factor (T_{24}) - The percentage of truck traffic during a 24-hour period.

2.2 PROCEDURE

Traffic analysis for a PD&E Study includes developing objectives of analysis, identifying key performance measures to evaluate the project alternatives, determining analysis approach and tools to be used, determining data needs, collecting and analyzing data and documenting the results. Guidance for traffic analysis can be found in the following publications:

- ***Highway Capacity Manual (HCM)*** – Published by the Transportation Research Board (TRB), the ***HCM*** contains concepts, guidelines and methods for computing Level of Service (LOS) for freeways, highways (two-lane and multilane), urban streets and intersections (roundabout, signalized and unsignalized).

- ***FDOT Traffic Analysis Handbook*** – The ***FDOT Traffic Analysis Handbook*** provides guidance and general requirements for the uniform application of traffic analysis tools for roadway corridor, interchange, and intersection projects.

- ***Procedure No. 525-030-120, Project Traffic Forecasting*** – FDOT's ***Project Traffic Forecasting*** procedure offers guidelines and techniques for forecasting traffic (with and without a travel demand model), calculating Annual Average Daily Traffic (AADT) from short term counts, calculating Directional Design Hourly Volumes (DDHVs), estimating intersection turning movements and calculating Equivalent Single Axle Load (ESAL) forecasts.

- Traffic Analysis Tools – Federal Highway Administration (FHWA)'s ***Traffic Analysis Tools*** is a program that produces and maintains different guidance documents which support different aspects of traffic and transportation analyses. The Traffic Analysis Tools program also provides guidance on the selection of and application of traffic analysis tools, interpretation of performance measures and other pertinent information.

- ***Traffic Engineering Manual (TEM), Topic No. 750-000-005*** – FDOT's ***TEM*** provides traffic engineering standards and guidelines to be used for the State Highway System (SHS) by FDOT. It provides guidance for signs, signals, markings and specialized traffic operational topics.

- ***Manual of Uniform Traffic Studies (MUTS), Topic No. 750-020-007*** – The purpose of FDOT's ***MUTS*** is to establish minimum standards for conducting traffic engineering studies for roads under the jurisdiction of FDOT. In addition, local government traffic engineering agencies are recommended and encouraged to use the ***MUTS*** as a guideline for conducting studies within their area of responsibility.

- ***Manual on Intersection Control Evaluation, Topic No. 750-010-003*** – FDOT's ***Manual on Intersection Control Evaluation*** provides procedures for evaluating alternative intersection control strategies. These procedures contain spreadsheet tools to conduct operations and safety analysis to determine the best intersection control strategy.

- ***2023 Multimodal Quality/Level of Service Handbook (Q/LOS Handbook)*** - FDOT's ***Q/LOS Handbook*** is intended to be used by engineers, planners, and decision-makers to evaluate roadway users' quality/level of service (Q/LOS) at generalized planning levels. It also introduces Level of Traffic Stress (LTS) for evaluating bicycle and pedestrian quality of service.

- ***Interchange Access Request Users Guide (IARUG)*** – FDOT's ***IARUG*** provides guidance on how to prepare documents that support requests for new or modified access to the Florida Interstate system and non-interstate limited access facilities on the SHS.

- Highway Safety Manual (HSM) – American Association of State Highway and Transportation Official's (AASHTO's) ***HSM*** provides a variety of methods and tools for quantitatively estimating crash frequency or severity in the project development process. The ***HSM*** assists practitioners in selecting countermeasures and

prioritizing projects, comparing alternatives, and quantifying and predicting the safety performance of roadway elements.

- ***Transit Capacity and Quality of Service Manual (TCQSM), Transit Cooperative Research Program Report 165*** - The ***TCQSM*** provides quantitative techniques for calculating the capacity and other operational characteristics of bus, rail, demand-responsive, and ferry transit services, as well as transit stops, stations, and terminals.

2.2.1 Traffic Analysis Objectives

Given the importance of traffic forecasting and analysis in the PD&E Study schedule, the Project Manager should meet with the project team prior to starting the analysis to establish the traffic analysis objectives. The composition of the project team will vary depending on the type of project but will generally include FDOT planning and PD&E staff and consultant traffic staff. The objectives of the traffic analysis must reflect the purpose and need for the project and be measurable. Measurable objectives are essential for a comparable evaluation of project alternatives.

Before establishing traffic analysis objectives, the Project Manager and project team must review the purpose and need for the project, which is documented in previously completed planning studies and the Efficient Transportation Decision Making (ETDM) ***Programming Screen Summary Report***.

2.2.2 Level of Traffic Analysis

2.2.2.1 Traffic Analysis Scope

PD&E Studies vary in size and type, resulting in project traffic forecasting and analysis with varying levels of detail. FDOT's Project Manager should develop the scope of the traffic analysis effort based on the need for the project and the analysis objectives. The items that inform the traffic analysis scope are traffic study limits, design years, level of congestion and traffic flow characteristics, safety concerns, and multimodal considerations.

Traffic forecasts and analysis may be prepared as part of a planning study or advanced prior to the PD&E Study. Therefore, FDOT's Project Manager must review and consider previously completed traffic analysis activities when determining the scope or level of analysis needed during the PD&E phase.

The level of traffic analysis includes the methodology, analysis tools, and documentation. Decisions regarding scope and level of effort should be made in conjunction with the office responsible for the review of the traffic analysis, such as the Systems Planning Office. These decisions should be made after reviewing any previously completed planning and traffic operational studies in the project area. Additionally, the following items must be reviewed when determining the level of effort needed to conduct traffic analysis:

- Elements of the transportation problem being analyzed and the project's purpose and need.

- Traffic analyses conducted prior to the PD&E phase to determine their adequacy for inclusion in the PD&E Study as per ***23 Code of Federal Regulations (CFR) Part 450*** and ***23 United States Code (U.S.C.) § 168***. See ***Part 1, Chapter 4, Project Development Process*** for more guidance.

- Existing operating conditions to determine the degree of saturation and traffic analysis area of influence.

- Facility type and geographic context. This includes a review of current or future major traffic generators in the vicinity of the project.

- Presence of Intelligent Transportation Systems (ITS) technology.

- Proposed improvements for the project.

- Need for tolling.

The Project Manager should begin with an understanding of what level of analysis is needed and use that information to develop the scope of traffic analysis. For instance, regarding future traffic projections, a PD&E Study for a rural corridor may only require the forecast of daily traffic demand to evaluate alternatives. An express lanes PD&E Study would require the forecast of peak period traffic volumes for both general use lanes (non-tolled lanes) and for the express lanes (variable tolled lanes). Additionally, a PD&E Study for an over-saturated intersection or corridor may require extending both geographic area of analysis and analysis time periods to accommodate actual traffic demand and bottlenecks.

The Project Manager should work with the reviewers and decision makers of the traffic analysis report to understand the expected outcome of the study. This will help to reach agreement on analysis methods and assumptions early in the process which is vital to the success of the project. Additionally, the Project Manager must consider other analyses (economic, air and noise) which are dependent on the output of the traffic analysis and incorporate them into the scope.

2.2.2.2 Adopting Planning Phase Traffic Analyses

Project traffic analysis may be prepared prior to the PD&E phase as part of a corridor study, Master Plan, feasibility study, or Interchange Access Request (IAR) process. In addition, traffic analyses are conducted to determine transportation problems as part of a system-wide transportation needs plan. These planning studies may also be used to support the purpose and need for projects (see ***Part 1, Chapter 4, Project Development Process***). Some of the traffic operational analyses performed prior to the PD&E phase have the same level of detail as those conducted during a PD&E Study. For instance, an IAR traffic analysis for the interstate system follows a process that is agreed upon by

FHWA, FDOT, and the interchange access applicant. During the project scope development stage, the Project Manager should explore opportunities to reuse or incorporate by reference detailed planning analyses (such as those prepared in support of an IAR) in the PD&E Study.

Title 23 U.S.C. § 168 and ***23 CFR Part 450*** allow for decisions and analyses conducted during transportation planning to be used for the ***National Environmental Policy Act (NEPA)*** study. More information on how to adopt planning products is found in ***Part 1, Chapter 4, Project Development Process***. It is essential for FDOT's Project Manager to review the traffic analysis conducted during the Planning phase and determine its applicability in the PD&E Study early in the scope development stage. The Project Manager should also coordinate with planning staff when determining applicability of the planning products.

2.2.3 Performance Measures of Effectiveness

Comparative evaluation of project alternatives requires the selection of performance Measures of Effectiveness (MOEs) that fit the goals and objectives of the analysis. The traffic analysis computes MOEs that are used to quantify the existing and future operating conditions of the project. The appropriate MOEs help to compare the performance of various alternatives in achieving a project's traffic operational and safety objectives.

One of the primary MOEs is Level of Service (LOS). However, LOS is not effective when the facility is characterized with oversaturated conditions where the demand to use the facility exceeds capacity. In urban areas, traffic analysis may result in LOS F for all alternatives, which will not help in differentiating between alternatives. Under such conditions, the Project Manager must select the appropriate MOEs based on the needs and context of the individual project. It is important that all stakeholders associated with the project agree to the selected MOEs before the project team begins the analysis, since data requirements and the choice of traffic operational and safety analysis tools depend on MOEs.

A traffic analysis can also use the following MOE. Additional performance MOE and additional MOE details can be found in ***Chapter 9*** of the ***FDOT Traffic Analysis Handbook***.

- Throughput
- Vehicle Miles of Travel
- Volume/capacity ratio
- Demand-to-Capacity ratio
- Follower Density
- Arterial LOS

- Travel time
- Travel speed
- Control delay at intersections
- Queue length
- Number of stops
- Density
- Travel time reliability measures
- Hours of congestion
- Bicycle LTS
- Pedestrian LTS
- Network performance measures
- Latent Demand
- Experienced Travel Time

Typical MOEs for safety analysis include:

- Crash frequency
- Predictive crash frequency
- Crash rate
- Number of fatalities and serious injuries
- Economic loss
- Number of conflict points

Typical MOEs for transit analysis include:

- Ridership
- Person throughput
- On-time performance

- Passenger load factor
- Travel time
- Average headway
- Percent of population served
- Passenger wait time
- Travel reliability measures
- Cost (per passenger or per mile)

Additional MOEs for environmental/economic analyses include:

- Vehicle Miles of Travel
- Vehicle Hours of Delay
- Vehicles Hours of Travel
- Travel speed
- Mobile Source Emissions (e.g., amount of emissions)
- Number of crashes
- Travel time

2.2.4 Traffic Analysis Tools

Traffic analysis can vary from looking up generalized service volume tables for LOS to detailed microsimulation analysis. The tools selected for conducting the traffic analysis must correlate the complexity of the project and the magnitude of the traffic problem. Sophisticated tools and methods such as microsimulation must be used only for very complex problems such as those that require interactions of road users or involve oversaturated, congested conditions. The default tool for the analysis should be ***HCM***-based tools, as they are least complex and require less data. The traffic analyst must also consider limitations of the tools when selecting proper analysis methods that meet the project needs. The Project Manager and project team should refrain from selecting a tool that does not fit the analysis objectives.

The following tools may be used for different levels of analysis:

- Generalized Service Volume Tables, found in the ***Q/LOS Handbook*** may be used for general planning level analyses and high-level concepts screening. This tool should not be used for detailed operational analyses.

- Microsimulation tools can be used to analyze areas that require an understanding of interactions between various users or transportation systems or experience oversaturated, congested conditions. These tools can also analyze unconventional project concepts or the performance of the entire network/system.

- Capacity Analysis for Planning of Junctions (CAP-X) can be used to evaluate the operational performance of different intersection control types. It is used in Stage 1 ICE analysis.

- Safety Performance for Intersection Control Evaluation (SPICE) can be used to assess predicted crash frequency and severity for different intersection control types in a Stage 1 and Stage 2 ICE analysis.

- ***HSM Part C*** tools such as spreadsheets, Enhanced Interchange Safety Analysis Tool (ISATe), Crash Modification Factors (CMFs), and Interactive Highway Safety Design Model (IHSDM) can be used to conduct quantitative safety analyses.

The ***FDOT Traffic Analysis Handbook*** contains guidance for selecting the proper traffic analysis tools. Depending on project conditions or needs, the analysis may use tools other than those listed in this section or discussed in the ***FDOT Traffic Analysis Handbook***. Prior to using alternative tools not listed in the ***FDOT Traffic Analysis Handbook***, the traffic analyst must submit a request and provide justification to FDOT's Project Manager.

2.2.5 Data Collection

Data required for traffic analysis depends on various factors such as project context, project limits, analysis methods, and MOEs. At the beginning of the project, FDOT's Project Manager and project team must gather existing available traffic information from FDOT databases, past studies, prior projects, and other analysis performed within the project area. This information is essential to obtaining general knowledge of the project area and identifying any gaps in data that would be included in a data collection plan. Even when review of existing data indicates the data is sufficient, the project team must conduct field reviews. Field observations are necessary to confirm data and review driving characteristics and operational conditions. Aerial imagery and online street views can provide useful information about physical characteristics of the analysis area but they should not replace field reviews. FDOT's ***Manual of Uniform Traffic Studies (MUTS), Topic No. 750-020-007*** contains additional requirements for collecting data to support traffic signal warrant studies, travel time studies, and speed studies.

The data collection effort should consider all modes of transportation that exist or are planned within the project limits. FDOT's ***Complete Streets Policy, Topic No. 000-625-017*** requires that roadways consider all modes and users of all ages and abilities. Therefore, depending on project context, data collection should include information about transit stops, boarding and alighting, headways, pedestrian counts, and bicycle counts, as appropriate. Collection of data related to pedestrian generators and attractors should be considered in urban contexts.

The tools used to develop and analyze alternatives also affect the data collection effort. Microsimulation analyses require more detailed data than analytical methods or ***HCM***-based tools. The data collection plan for a microsimulation analysis must contemplate and include data needed for the proper calibration and validation of the model to be used in the analysis.

The data collection plan must include the traffic analysis area of influence, which may exceed the project limits. Examples of traffic studies where the data collection plan must extend beyond the PD&E Study limits are:

- **Interchange Access Requests** - Interchange access requests require analysis of the interchanges upstream and downstream of the project location and the crossroad up to one half-mile in either direction of the proposed access change. The geographic breadth of the analysis should be coordinated with the District's Interchange Review Coordinator (DIRC), Systems Implementation Office (SIO), and FHWA. See the ***IARUG*** for more guidance.

- **New Corridor Studies** - New corridor studies require a general understanding of the total demand, operations, and safety for the corridor traffic analysis area, which includes roadways parallel to or intersecting with the proposed roadway.

- **Bottlenecked and Oversaturated Roadway Facilities** - The analysis area must include operational constraint locations (with limited physical capacity) that restrict the roadway from serving the traffic demand, thus causing recurring congestion. The constraints may require extension of the analysis area beyond the predefined area of influence. Downstream bottlenecks cause queue spillbacks into the project area, while upstream bottlenecks may meter the flow and cause demand starvation within the project area.

- **Coordinated Arterials** - Project sections or points that are part of a coordinated arterial, or ***Integrated Corridor Management (ICM)*** network may require extension of the traffic analysis area to include coordinated signals.

- **Lane Repurposing** - Project converting (repurposing) existing lanes to dedicated bus lanes, parking lanes, or bicycle lanes may require a system or network analysis to evaluate the impact of traffic diverting to adjacent major roadways. See FDOT's ***Lane Repurposing Guidebook*** for more information.

- **Projects with Transit Routes** - Transit ridership on a project is based on several factors including accessibility (a measure of how an individual can pursue a desired mode at a desired location and time). Accessibility can include park and ride lots and transfer between modes, which may be located outside the PD&E Study limits. Additionally, terminal stations where transfers take place may be located outside the PD&E Study limits.

2.2.5.1 Types of Data Collection

The data collection effort can be divided into three categories—roadway characteristics, multimodal travel characteristics, and operations and safety characteristics. The type of traffic analysis will determine the requirement and level of detail in which elements in each category are to be collected. The following are the data elements for each category:

Roadway Characteristics

- Number of lanes
- Lane widths
- Length of auxiliary lanes
- Intersection types (signalized, stop controlled, roundabout, grade separated)
- Predominant land use types (existing and future) adjacent to corridor
- Roadway geometrics (curvature, intersection configuration, grades)
- Number of turn lanes
- Turn lane storage lengths
- Merge/diverge lengths
- Interchange and intersection spacing/density
- Presence of on-street parking
- Presence of transit lanes
- Type of transit stops (bus bays or bus stops)
- Bicycle lane width
- Sidewalks width
- Sidewalk distances from travel lanes
- Shoulder widths
- Lateral and vertical clearances
- Railroad crossings
- Toll plaza type (electronic vs. cash collection) and location

- Right of way map, tax map, parcel maps
- As built plans
- AADT

Multimodal Travel Characteristics

- Vehicle classification and vehicle mix
- Truck percentages
- Turning movements counts
- Pedestrian counts
- Bicycle counts
- Boarding and alighting at transit stops or stations
- Transit hours of operation
- Transit headways
- Route ridership
- Running time
- Utilization of special facilities (e.g., bus on freeways, transit centers, transit stops)
- Frequency of train service at railroad crossings

Operations and Safety Characteristics

- Peak hour factors (PHF)
- Origin-destination (OD) data
- Posted speed limits
- Average travel speeds
- Average travel times
- Signal density
- Signal timings

- Signal Phasing
- Locations of detectors and traffic signal heads
- Queue locations and queue lengths
- Number of crashes and location of crashes
- Severity of crashes (fatal, injury or property damage) and their contributing causes

FDOT and other agencies have developed the following databases containing several roadway, traffic, safety and operations characteristics, which can supplement the data collection effort:

- Florida Traffic Online (FTO)
- FDOT Forecasting Resource HUB
- FDOT Roadway Characteristic Inventory (RCI) Database
- Regional Integrated Transportation Information System (RITIS) at University of Maryland
- Signal Four Analytics
- FDOT State Safety Office Geographic Information System (GIS) Query Tool (SSOGIS)
- FDOT Transportation Data Portal
- Motor & Equipment Manufacturers Association (MEMA) vehicle fleet data

2.2.5.2 Data Collection Schedule

The Project Manager and the project team should determine the appropriate duration of the data collection effort. Data collected over multiple days provides a higher degree of confidence and is more robust if random events like traffic crashes or equipment failure occur while collecting data. Data collection cost increases with duration, therefore, the Project Manager must balance these competing considerations with the goals of the project. The project team must first review existing data sources, such as the ones from FTO, to determine 24-hour demand profiles. Demand profiles are a useful tool to estimate the duration of the data collection. In the absence of existing data, use Chapter 3 of the ***HCM*** for examples of monthly, weekly, and hourly variation in traffic volumes for rural and urban routes to determine the length of the data collection period. Chapter 2 of the FDOT ***Project Traffic Forecasting Handbook*** describes traffic adjustment factors and the variability of traffic counts.

The data collection effort should be accomplished in accordance with the FDOT ***Project Traffic Forecasting Handbook***.

The FDOT recommends that traffic counts be collected on Tuesday, Wednesday, or Thursday. To ensure the data is representative of average (typical) traffic conditions, traffic counts should not be collected during the summer or on holidays, since travel patterns during these times cannot be assumed to be representative of typical weekdays. However, for studies near recreational facilities weekend, or summer may provide the traffic analyst with more accurate "typical" pattern of travel.

A 72-hour period is recommended for traffic counts that are generated by automatic technologies such as tube counts, screen line counts, or temporary camera data counts. Collection of data over a 72-hour period is preferred over single-day to avoid poor and faulty data due to equipment failures, human errors, and traffic incidents, among other reasons. However, if the roadway is a typical commuter traffic route and there is adequate history (5 to 10 years) of traffic counts, a 24-hour to 48-hour count may be sufficient. A 24-hour to 48-hour traffic count should be verified against historical counts.

Classification counts from a Telemetered Traffic Monitoring Site (TTMS) or Portable Traffic Monitoring Site (PTMS) can be used as long as such site exists within the vicinity of the project. In absence of a TTMS or PTMS site, 72 consecutive hours of vehicle classification counts should be collected.

Intersection turning movements should generally be collected during the AM and PM peak periods for at least three days. For urban arterials serving predominantly commuter traffic, turning movement counts less than 3 days may be sufficient, provided there is historical data. Typical 8-hour intersection turning movement counts are collected over a day. The traffic analysist may review the FTO traffic synopsis report and collect more than 8-hour per day if the area experiences heavy peak periods throughout a typical weekday. Truck counts should also be collected as part of the intersection turning movement count.

Intersection turning movement counts must include bicycles and pedestrians. Bicycle and pedestrian usage varies considerably with location. Peak period counts may be adequate in areas with light pedestrian/bicycle usage. Downtown areas, university campuses, and areas with heavy pedestrian and/or bicycle usage should be counted for an 8-hour period.

Roadways serving commercial uses, shopping centers, and schools may peak during the midday period or during the weekends. The traffic analyst should review the traffic count synopsis report from the FTO to determine if midday turning movement counts are required.

If there is no history of traffic counts near the study intersection, conduct 72-hour approach and departure counts at the intersection to allow extrapolation of the peak hour turning movements from the daily turning movements.

Crash data should be obtained for the latest five full calendar years of historic crash data as well as the current year up to the date the analysis is performed. If five years of crash data are not available, use a minimum of three years with a corresponding explanation.

Transit projects can vary from new fixed guideway systems to Bus Rapid Transit (BRT) projects. The data collection for such projects depends on the type of project. For areas with existing transit service, the traffic analyst should consult with the local transit agency before beginning any data collection effort. Transit agencies and providers are required to develop a 10-year Transit Development Plan (TDP). TDP usually contains a significant amount of data that can be used for transit studies, such as demographic data, transportation system characteristics, market research and system surveys, and public transportation service performance and trends, among other useful information. The data collection effort may vary among routes depending on the ridership. For example, low ridership routes may only require a 7 to 10-day period of data collection to capture a sufficiently robust sample of responses. The Project Manager should coordinate with the District Transit Office for any projects which include transit.

2.2.6 Project Traffic Forecasting

Project traffic forecasting is the process of estimating the future year traffic demand for a given project. It includes estimating daily volumes and peak hour demand volumes. Daily volumes are represented by AADT while peak hour demand is represented as Design Hour Volume (DHV). Transportation practitioners use AADT and DHV to determine geometric features of the roadway, assess operational performance of the facility, and calculate the Equivalent Single Axle Loads (ESALs) for pavement design.

There are two options for forecasting traffic volumes:

- With a Travel Demand Model
- Without a Travel Demand Model

The ***Project Traffic Forecasting Handbook*** details FDOT's traffic forecasting process for both options. Documentation of traffic forecasts and analysis should detail the selection of the preferred forecasting method and its application.

2.2.6.1 Forecasting using a Travel Demand Model

Traffic forecasting for a project should begin with the most recently adopted version of a travel demand model. This model should have been used to develop the most recent Long Range Transportation Plan (LRTP). This model represents the latest planning assumptions regarding population, employment, land use, transportation plans, and revenue, and is referred to as the "adopted model".

Before using any travel demand model, the traffic analyst should determine if the model meets the area wide validation standards established by FDOT's Systems Traffic Modeling Office and published in the ***FSUTMS-Cube Framework Phase II – Model Calibration and Validation Standards Report***.

With the development of the Florida Statewide Model, all 67 counties within Florida are covered by at least one travel demand model. The determination of the preferred model for each study is dependent on several factors, such as project location, analysis years,

available data, transportation mode (e.g., freight, transit, automobile). Coordination should take place with the District Planning Office on the preferred travel demand model prior to commencing the traffic forecasting process and document the decision in the ***Project Traffic Assumption Form, Form No. 650-050-39*** in ***Figure 2-1***.

Finally, most of the travel demand models are validated to Peak Season Weekday Average Daily Traffic (PSWADT). The PSWADT traffic volumes generated by the model should be converted to AADT using the Model Output Conversion Factor (MOCF). In such cases, the following formula is applied:

$$AADT = PSWADT \times MOCF$$

Subarea or Corridor Validation

Some travel demand models may require subarea or corridor validation to improve the forecast within the project limits. Subarea validation is needed when a model meets area-wide validation standards but fails within a specific area or corridor under study. In a subarea or corridor validation, a smaller area or corridor is extracted from the regional model and the validation process is restarted with the goal of improving statistics such as demand/count ratios, Root Mean Square Error (RMSE). The subarea or corridor validation effort is not as intensive as a regional, Metropolitan Planning Organization (MPO) or county model validation, because it uses a smaller roadway network. Further information about the Subarea/Corridor Validation standards can be found in the ***FSUTMS-Cube Framework Phase II – Model Calibration and Validation Standards***.

Time of Day Model

Travel demand models were originally designed to produce future travel demand at the daily level. Most of the analysis done to determine geometric requirements of roadways and intersections is done for the design hour. Until recently, the process of converting AADT to peak hour assumed that 10% of the AADT occurred during the peak hour. While this process produces reasonable results in smaller urbanized areas where the peak period is limited to one hour, it fails in highly congested urban areas where the peak period spreads beyond the typical one hour.

The broadening of traffic flow profiles to multiple-hour peak periods is referred to as peak spreading. As the traffic congestion worsens during the peak hour, many drivers either leave early or delay the trip to avoid the peak hour. In some cases, they seek an alternative route or switch modes. As a result, the traffic generally traveling during the peak hour shifts to the adjacent shoulder hours.

To account for multi-hour congestion problems, many urban areas have developed a Time of Day (TOD) model that forecast traffic for the AM peak period, midday period, PM peak period and night/rest of the day period. Most TOD models add trip assignments for all time periods together to approximate daily traffic. TOD models require traffic count data by time of day to ensure accurate validation by each period. This adds to the level of complexity for validation checks and the Project Manager should consult with District Planning Office or MPO traffic modeling staff before using the TOD model.

Additional details regarding forecasting using a travel demand model can be found in Chapter 3 of the ***Project Traffic Forecasting Handbook***.

2.2.6.2 Forecasting without Travel Demand Models

Projects located in areas without an MPO travel demand model or in areas where the Florida Statewide Model or the MPO travel demand model is not performing well may have to rely on a combination of historic traffic trends or population growth for traffic forecasting.

Historic Trend Projections

The historic trends analysis should be based on a minimum of 10 years of data. A regression analysis is performed on the most recent 10 years of traffic counts to obtain a trend equation. Any obvious outliers should be removed from the data set and an explanation provided. Only trend equations with an R-square value of at least 75% should be used to estimate the future year traffic volumes. Trend analysis is not sensitive to capacity constraints or new capacity; therefore, care should be exercised when projected traffic demand exceeds capacity.

Growth Rates

Historic trends analysis works well for areas with stable land use, transportation network and growth patterns. In areas that are experiencing substantial growth, construction of parallel facilities and changes in land use should consider growth rates based on population and employment growth.

Once the growth rate has been determined and checked for reasonableness, it can then be applied to the existing year counts and projected forward to the future analysis years.

For additional details, see Chapter 4 of the ***Project Traffic Forecasting Handbook***.

2.2.6.3 Calculating Annual Average Daily Traffic and Directional Design Hour Volume

Annual Average Daily Traffic (AADT)

Traffic counts are usually collected over a 48- to 72-hour period through the placement of portable traffic counters. These counters are usually rubber hoses placed across the roadway to record the number of axles.

The short-term traffic count collected over 48 to 72 hours is called the Average Daily Traffic (ADT) or “raw count”. Due to the seasonal variations in traffic, the count should be adjusted by the Seasonal Factor (SF). In addition, the traffic counter only counts the number of axles and not vehicles, therefore the raw traffic count or ADT should be adjusted using the Axle Correction Factor (ACF) as follows:

$$AADT = ADT \times \text{Seasonal Factor} \times \text{Axle Correction Factor}$$

It is worth noting that there are methods for placing tubes in a pattern that will allow collection of classification counts based on axle spacing. Therefore, the analyst should review the data before applying the ACF.

Standard K Factor Range

The K Factor is critical in traffic forecasts because it defines the volume of traffic for which the road is being designed. K factors are developed based on field-collected data over long periods of time. Standard K factor range is established statewide for specific areas, roadway context classification, and facility types, using the data measured at permanent traffic monitoring sites, and should be applied to AADT to determine the DHV. K factors less than 9.0% essentially represent multi-hour peak period (or peak spreading) rather than typical peak hour conditions. See Chapter 2 of the ***Project Traffic Forecasting Handbook*** for the latest FDOT Standard K factor range.

D Factor

The Directional Distribution (D Factor) is the percentage of the total, two-way design hour traffic traveling in the peak direction. The D Factor is an essential parameter used to determine the DDHV. The D Factor is obtained from traffic counts and checked against the value from the FTO website.

To determine if a D Factor is acceptable for project traffic forecasting, its value should be cross-referenced against the acceptable range of values for D Factors listed in Chapter 2 of the ***Project Traffic Forecasting Handbook***.

Design Hour Volume (DHV) and Directional Design Hour Volume (DDHV)

The DHV is the traffic volume expected to use the roadway segment during the design hour of the design year. The DHV is calculated using the following formula:

$$DHV = AADT \times K\ Factor$$

The DDHV is the traffic volume expected to use the roadway segment during the design hours of the design year in the peak direction. The DDHV is calculated using the following formula:

$$DDHV = AADT \times K\ Factor \times D\ Factor$$

T Factor (Percent Trucks)

The T Factor measures the percentage of trucks on a daily basis and is the most critical factor in pavement design. The structural design of a roadway is primarily dependent upon on the heavy axle loads generated by commercial traffic and the T Factor measures the percentage of trucks on a daily basis.

For traffic analysis, the Design Hour Truck (DHT) Factor is used to convert trucks to passenger car equivalents. The DHT is calculated by dividing the T Factor by 2 because the percentage of trucks in the traffic is not evenly distributed throughout the day.

2.2.6.4 Re-evaluating Traffic Analysis

Most of traffic forecasting and analysis should be completed during the PD&E phase, if not already completed during the Planning phase. Once the traffic forecast and analysis are completed, the subsequent phases (Design and Construction) should use the same traffic data for design and operational purposes such as designing turn lanes, signal timing, or traffic control plans.

As transportation projects advance, they may require a Re-evaluation as described in ***Part 1, Chapter 13, Re-evaluations***. During the Design phase, the Project Manager and the project team should decide if the traffic forecast and analysis prepared for the project needs to be updated.

The validity of traffic forecasts and analysis depends on changed conditions brought on by:

- Substantial “macro-level” changes in the economy and driving habits since the project traffic forecast was prepared. Examples include the effects of economic recession, a substantial change in gas prices potentially affecting travel demand or implementation of an alternative travel mode.

- Substantial change in land uses or growth within the study area. For example, large scale developments, such as sector plans, approved near the study area which have the potential to change traffic generation and/or travel patterns.

- Substantial changes in the scope of work. For example, the addition of a new alternative that was not previously considered when the travel demand model or microsimulation model was developed. Model adjustment may be necessary to incorporate changes in trip patterns anticipated within the study area.

- Substantial changes in the transportation network near the study area. For example, the construction of major beltways or bypass routes. Traffic reports prepared before and after the network was changed may contain substantial differences in trip distribution patterns.

- Adoption of a new LRTP and regional travel demand model when the project traffic forecast is more than five years old. An update of the LRTP represents the latest planning assumptions regarding population, employment and land use, and coordinates transportation planning activities within and outside of the MPO area. If the traffic forecast is more than five years old and the MPO has adopted a new LRTP, the Project Manager and the traffic analyst should perform a sensitivity analysis of revised input and model assumptions to determine the magnitude of differences from prior analyses and their effects on past project decisions.

- Requirements specific to the documentation types. As an example, when re-evaluating an IAR, state and federal policy requires re-evaluations when an IAR does not progress to the construction phase within three years of approval.

The Project Manager should use conditions discussed above as a guide to determine the validity of previously completed traffic analysis. The project team may conduct sensitivity tests to assess the magnitude of differences from prior analyses resulting from use of new data and their effects on past decisions. The Project Manager and project team must consider any difference in the results to deliver the project decision. The focus should be on consistent conclusions from the analysis, rather than on any minor numerical differences between two different travel demand models outputs. If there is no substantial change in the traffic forecast, the study team would simply document the change and the sensitivity analysis results in the project file and proceed with the next phase of the project.

If there is a substantial change in the traffic forecast, the Project Manager must coordinate with the District Environmental Office, Office of Environmental Management (OEM), and the Systems Planning Office as appropriate to address the need for re-evaluating the traffic analysis for the project. The update of traffic analysis may require changes to the analysis methodology, data inputs and assumptions to update the traffic analysis to be consistent with the latest LRTP. The Project Manager should document decisions reached with the District Environmental Office and other project stakeholders.

2.2.7 Intersection Control Evaluation Analysis

ICE analysis is conducted in accordance with the ***Manual on Intersection Control Evaluation***. It is conducted for a PD&E Study when either existing or future signalized at-grade intersections are involved and should be based on the design year volumes. The Stage 1 analysis uses the build condition's basic lanes for the analysis. The CAP-X tool uses a critical lane volume analysis method to determine the volume to capacity ratios for a variety of intersection control strategies using ***HCM*** methodologies. The inputs for the CAP-X analysis are the AM and PM peak hour design hourly volumes and the future conditions basic lanes. The Stage 1 SPICE analysis uses ***HSM*** predictive methods for an opening year and design year crash prediction. The primary inputs are the opening year and design year AADTs. Not all intersection control strategies have predictive methods. In this case, the Safe System Intersection (SSI) method is used for comparative safety analysis. The SSI method is based on safe systems principles such as kinetic energy management and simplified decision making for road users. The SSI scores characterize the extent an intersection alternative, in a given context, aligns with the safe system principles. SPICE is also used in ICE Stage 2 for predictive safety analysis where more detailed CMFs are applied based on the concept development. Crash data can be applied if applicable.

The Stage 1 ICE analysis is used to determine viable at-grade intersection alternatives from a comparative operations and safety analysis perspective to be further analyzed in the PD&E's alternatives evaluation process. The ***Stage 1 ICE Form*** is to be completed and approved by the District Traffic Operations Engineer (DTOE) and District Design

Engineer (DDE) prior to conducting the public hearing. However, Stage 1 ICE may be completed prior to an Alternatives Public Workshop when needed to inform intersection alternatives for public feedback and as determined by the District. Stage 1 ICE analysis must be documented in the ***PTAR***.

Stage 2 ICE may be deferred until the project proceeds into final design and documented in the Re-evaluation. However, Stage 2 ICE analysis can be performed during the PD&E Study when:

- PD&E scope includes a final design component or PD&E Study is immediately followed by final design
- Project is a combined PD&E and Design project.
- PD&E is programmed as a Design-Build project.

Stage 2 ICE, if conducted in the PD&E Study under the conditions listed above, is documented in the ***Preliminary Engineering Report (PER)***. When Stage 2 ICE is conducted during the PD&E phase, Stage 1 ICE is to be conducted prior to an Alternatives Public Workshop (if held), so the results can be presented as part of the meeting's Comparative Evaluation Matrix. Stage 2 ICE is to be completed prior to the public hearing. The DTOE and DDE approved ***Stage 2 ICE Form*** is included in the ***PER's*** appendix.

If Stage 2 ICE has been deferred until final design initiates, the Stage 2 ICE is conducted using the design year volumes from traffic re-evaluation, if available. If these traffic volumes support changes in the ***Stage 1 ICE Form*** completed in the PD&E phase, the changes will be addressed in the Re-evaluation. The DTOE and DDE approved ***Stage 2 ICE Form*** is included in the Re-evaluation.

2.2.8 Traffic Analysis

Traffic analysis includes capacity and operational analysis to determine how well the project alternatives are meeting the project purpose and need. Detailed evaluation of project alternatives should only proceed on viable or feasible project alternatives (see ***Part 2, Chapter 3A, Alternative Analysis***). Also, the same assumptions and a similar set of tools should be consistently applied to perform traffic analysis for different alternatives in a project.

Depending on the project, the analysis may use the methodologies in the ***HCM*** or a more sophisticated tool such as microsimulation to analyze the interactions between different users on an entire network.

The decision on selecting the appropriate tool for the project depends on the analysis objectives and the available resources or data. Chapter 4 of the ***FDOT Traffic Analysis Handbook*** describes the various tools available and provides guidance on selecting the proper analysis tools.

2.2.8.1 Capacity Exceeds Traffic Demand

In scenarios where the roadway capacity exceeds traffic demand, all the traffic is accommodated during the time interval under study. As a result, there is no spillback of queues or congestion from one segment affecting adjacent segments.

In such a situation, analytical tools that can compute LOS and other operational MOEs for individual segments or isolated points should be used. These tools can compute LOS for uninterrupted flow facilities, interrupted flow facilities and multimodal transportation facilities (e.g., pedestrian, bicycle, and transit). ***HCM*** guidance on how to conduct analytical analysis is available in the ***HCM*** and supporting software.

2.2.8.2 Traffic Demand Exceeds Capacity

In scenarios where the traffic demand exceeds roadway capacity, the traffic demand is not accommodated during the time interval under study. As a result, congestion and queues spillback to adjacent segments and time intervals. The analysis should thoroughly analyze the period when traffic demand exceeds roadway capacity, including both the buildup and dissipation of congestion.

In such scenarios, a microsimulation traffic analysis should be used. Microsimulation tools use computer models to simulate the interaction of individual users, such as cars, based on specified driver behavior parameters. Microsimulation tools must be calibrated to local traffic conditions before being applied in the alternatives analysis. Chapter 7 of the ***FDOT Traffic Analysis Handbook*** and ***FHWA Traffic Analysis Toolbox Volumes III and IV*** provide guidance on the development, calibration and application of microsimulation tools.

2.2.9 Safety Analysis

Safety analysis includes analyzing crash history (usually five years) within the project limits to assess the existing safety performance and evaluating the potential safety implications of a project. Depending on project context, safety assessment of the project may use ***HSM*** methodologies and tools according to the ***Highway Safety Manual Implementation Policy, Topic Number 000-500-003***. The ***HSM*** is a collection of analytical procedures and techniques for identifying the causes of crashes and developing solutions for certain types of roadways. Certain data which is compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential crash sites, hazardous roadway conditions, or railway-highway crossings, or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data, per ***23 U.S.C. § 148*** and ***23 U.S.C. § 409***. Additional guidance for safety analysis can be found in the ***FDOT Safety Analysis Guidebook for PD&E Studies***.

2.2.9.1 Historical Crash Analysis

A historical crash analysis involves descriptive analysis of five years of crash data with respect to crash characteristics such as severity, types, frequency, rates, density, patterns, clusters, and their relationships with crash contributing causes. The results of the historical crash analysis are used to identify or confirm safety problems in the project study area. An understanding of crash characteristics along with crash contributing factors helps to determine and evaluate corrective actions or countermeasures that can be applied to the project alternatives. Crash countermeasures must be selected based on their appropriateness and effectiveness to address specific safety issues and project goals.

Historical crash analysis may be used to analyze existing conditions by comparing the crash rate of a project location to the statewide average. Locations with crash rates above the statewide average require further investigation to determine the cause of crashes and appropriate crash countermeasures. Appropriate crash countermeasures could still be determined in locations with crash rates below the statewide average.

The future conditions analysis should examine the safety performance of the alternatives based on project context which includes future traffic volumes, proposed geometrics, modal needs, and traffic control conditions as appropriate. Future conditions analysis must include a discussion of the proposed design context, traffic operational performance and users of the facility. Additionally, safety assessment for future conditions must examine how the proposed alternatives improve upon any existing or potential safety problems. This will include comparing the safety performance of existing conditions with both future no-build and build conditions.

2.2.9.2 Quantitative Safety Analysis

Quantitative safety analysis, also known as data-driven safety analysis, is a predictive analysis that uses crash, roadway, and traffic volume data to provide estimates of an existing or proposed roadway's expected safety performance in terms of crash frequency and severity. It uses ***HSM*** predictive methods that incorporate site specific characteristics and mathematical functions such as Safety Performance Functions (SPFs) and CMFs.

The ***HSM*** predictive methods are detailed and require a thorough knowledge and experience in their applications. The advantage of these methods is their ability to make relative comparisons between project alternatives based on the change in the number of crashes or crash severities. Additionally, ***HSM*** methods can assist transportation analysts to quantify safety impacts associated with proposed design elements, operational treatments, or future changes in the facility. Therefore, these methods can help analysts make more informed project development decisions that weigh safety with other project goals and evaluation criteria. In some conditions, the ***HSM*** methods may not quantify the safety performance of a design element or crash countermeasure as data, research, scientific knowledge, or current best practice may not be incorporated in the ***HSM*** predictive methods. It is therefore important to understand the limitations of the ***HSM*** methods when deciding on the safety analysis approach for the project.

The ***HSM*** continues to evolve and does not offer the ability to evaluate safety performance for every project scenario or context. In some cases, the SPF may require adjustments to Florida conditions because they were developed using national data and may not reflect typical Florida conditions. Users of the ***HSM*** should refer to the State Safety Office for publication of the current Florida specific SPF calibration factors.

HSM can be used to support the following project development activities:

- Evaluate purpose and need for the project
- Develop and refine the project alternatives
- Analyze and evaluate project alternatives

When the PD&E Study contains existing or future signalized intersections, the Stage 1 ICE analysis shall be conducted. The SPICE tool is used for the intersection predictive safety analysis. If the analysis moves to Stage 2, the SPICE analysis becomes more robust with concept development and associated SPFs or CMFs plus the use of crash data where appropriate.

The ***HSM Part C*** predictive methods can calculate historic and anticipated future safety performance of the project. ***HSM Part C*** is applicable to rural two-lane highways, rural multilane highways, suburban and urban arterials, freeways, and interchanges. ***HSM*** has specific guidance regarding how to estimate future crashes with and without safety improvements. Additionally, the human factors fundamentals published in the ***HSM*** can help traffic analysts identify safety-specific needs for a project and estimate the potential benefits for safety improvements.

Safety performance should be included in the project goals if the project's purpose is to address a safety problem. ***HSM*** predictive methods can support evaluation of the purpose and need for a project by predicting crashes that would occur in the project or identifying potential countermeasures and strategies that would improve safety performance when incorporated in the project.

Development and evaluation of alternatives can use ***HSM*** predictive methods to quantify the anticipated change in crash frequency or severity as the result of changes in geometric features or traffic conditions. If an assessment for a safety-specific project shows that some alternatives would have a negligible adverse effect on safety performance, those alternatives can be eliminated. Additionally, ***HSM*** predictive methods can be used to inform and evaluate project decisions on design changes implemented to address avoidance and minimization of potential impacts to environmental resources. The documentation needed to support evaluation of alternatives and environmental decision making could therefore include the information derived from the ***HSM*** methods.

Another method for quantifying safety impacts of project alternatives is a relative comparison of CMFs. This method estimates the relative magnitude of potential safety impacts based on the anticipated percent change in crash frequency based on applicable CMFs. CMFs are published in the ***HSM Part D*** and ***FHWA's Crash Modification Factors***

Clearinghouse website which include a star rating to indicate their quality. CMFs are also used to compare relative safety benefits of potential mitigation measures when selecting a treatment or strategy to address an identified safety issue. This method is relatively simple to apply, and when used appropriately can objectively support proposed improvements. CMFs are applicable to roadway segments, intersections, interchanges, special facilities, and various geometric situations.

2.2.9.3 Selecting Safety Analysis Method

The following should be considered when selecting appropriate safety analysis method for the project:

1. Capability (and limitations) of the method to answer the questions that the project is addressing

2. Data that is typically available in relation to the data required to use the safety analysis method correctly

3. Related project development tasks (such as purpose and need, interchange access, alternatives analysis, design exception) that may benefit from the same analysis method

4. The type of project and associated design or operational treatments that are the focus of safety analysis

It is important to discuss these considerations with the reviewers of the safety analysis during methodology development to set clear expectations for the level of analysis and documentation needed. The need to collect additional data to support analyses should also be discussed so that the desired safety analyses can be performed on time and within budget.

2.2.10 Environmental Analyses

Environmental impact analyses such as land use, air quality, and noise rely on the results of traffic forecasting and analysis. The most common traffic data required for environmental analyses are AADT, peak hour volumes, peak hour truck volumes and vehicle classification. Typical MOEs from the traffic analysis that are used for environmental analyses are listed in ***Section 2.2.3***. The Project Manager should work with the District Environmental Manager and other environmental subject matter experts to determine the traffic data needed for various environmental analyses.

2.2.11 Project Traffic Analysis Report

The ***Project Traffic Analysis Report (PTAR)*** documents the assumptions, methods, traffic forecasts, design traffic, safety analysis, and results of the traffic analysis for the project in plain language and in an easily understood format. It summarizes the data collection effort, input parameters, traffic and safety analysis tools, existing conditions, development of future traffic forecasts, and traffic operational and safety analyses of

project alternatives. The report must use the ***Technical Report Cover Sheet Requiring PE Signature, Form No. 650-050-38b*** as the cover sheet of the report. Traffic analysis reports support decisions regarding project actions. Therefore, the report should concisely present the results of the traffic analysis in a manner that can be readily understood by a variety of audiences. Discussion of the analysis results should be focused and avoid unnecessary information. Additionally, the report should include text that discusses information presented in tables and figures (charts, maps, and diagrams). MOEs presented in tables and figures should be clear, concise, and simple. The report should include other supporting technical data and output from analysis tools in the appendices. Additionally, highly detailed information such as data used to prepare figures and tabular summaries should be placed in the appendices.

The scope of the report depends on the size and complexity of the project, and whether traffic analyses conducted prior to the PD&E phase are going to be incorporated. Regardless of the complexity, the traffic analysis report should summarize the items presented in ***Section 2.2.11.2***. The ***PTAR*** should be signed and sealed by a professional engineer in accordance with ***Chapter 471, Florida Statutes (F.S.)***.

Traffic analysis reports for projects that are not complex can include the results of traffic forecasting. The approach to documentation (i.e., one ***PTAR*** or multiple technical memoranda) should be included in the scope and agreed upon by the FDOT Project Manager and project team. For complex projects, traffic forecasting and traffic analysis may be prepared under different project tasks and teams. For such projects, it is recommended that traffic forecasting results and traffic analysis be documented in different technical memoranda or reports. See the ***Project Traffic Forecasting Handbook*** on how to prepare a ***Project Traffic Forecasting Memorandum***.

Depending on the size and complexity of the project, safety analysis may be documented either in a standalone technical memorandum or as part of the ***PTAR***.

Documentation of safety analysis should include discussion of high crash locations, crash types, patterns, severity levels and crash contributing factors; potential countermeasures; quantitative analysis (assumptions, method and steps followed) for both existing and proposed conditions; summary of the findings; and recommendations of the analysis. Discussion of safety analysis results should be supported with data, relevant findings, and best practices. Additional guidance for safety analysis can be found in the ***FDOT Safety Analysis Guidebook for PD&E Studies***.

Quality control review for ***PTARs*** should include reviewing methods and assumptions used to develop the analysis, inputs, reasonableness of results, and completeness of the results. The review of reasonableness of traffic projections should include comparing observed (and projected) traffic volumes with historical trends, examining proposed roadway and transit network improvements, and reviewing demographic data and land use projections. Refer to the ***FDOT Traffic Analysis Handbook*** for checklists that may aid the review process.

2.2.11.1 Traffic Analysis Assumptions

The assumptions used to prepare the traffic analysis including traffic projections should be documented so that a reviewer can easily understand the methodology, input values, and analysis results. It is essential for the Project Manager to reach consensus with the project team and lead agency regarding the assumptions during the scope development stage of the project. The ***Project Traffic Assumption Form, Form No. 650-050-39*** in ***Figure 2-1***, can be used to summarize the assumptions.

The following should be included in the traffic analysis assumptions summary as appropriate.

1. Traffic Forecasting Assumptions Summary
    a. Traffic forecast method - travel demand model, historic trend, or growth rates
    b. For the travel demand model:
        i. Date of adoption of LRTP
        ii. Model base year
        iii. Horizon year of the travel demand model
        iv. MPO website which includes documentation of the LRTP
    c. Changes in land use, economy, population, and employment since the travel demand model was built.
    d. Data Collection Year
    e. Analysis years – opening year, design year and interim year (for phased projects)
    f. MOCF
    g. K Factor
    h. D Factor
    i. T Factor
2. Traffic (operational and safety) analysis assumptions summary should include:
    a. Study area (i.e., project limits, traffic study area, influence area)
    b. Key input parameters

c. Calibration and validation parameters

d. Analysis methods and tools

e. Analysis periods

f. Performance MOEs

2.2.11.2 Project Traffic Analysis Report Outline

The following is an outline for the ***PTAR***. The report should have headings and subheadings to effectively delineate the sections appropriate to the level of analysis.

1. Executive Summary – Summary of analysis results.

2. Traffic Analysis Assumptions – Summary of assumptions for input parameters, analysis years, analysis methodology.

3. Introduction – Brief description of the project with a project location map and traffic analysis objectives.

4. Traffic Analysis Method – Discussion of assumptions and analysis methodology including analysis years, traffic study area, data required, analysis tools including version, and MOE.

5. Existing Conditions Analysis – Summary of balanced turning movement counts for the study intersections/interchanges under existing conditions. Summary of operational and safety analyses for the existing conditions. Microsimulation analysis should also include base model development and calibration documentation. Calibration may be submitted as a standalone document.

6. Development of Future Year Traffic Forecast – Depending on the scale of the project, this may be developed and submitted as a standalone document, in which case it should be referenced within the ***PTAR***.

7. Alternatives Analysis – Description of project alternatives, assigning of project traffic volumes to alternatives. Summary of operational and safety analyses for each project alternative. For existing and/or future signalized intersections a summary of the Stage 1 Intersection Control Evaluation (ICE) analysis in determining intersection alternatives.

8. Summary of Analysis Results – Discussion of advantages and disadvantages of alternatives with respect to the traffic analysis objectives and goals.

9. Appendix – Raw data used to prepare input and analysis summaries. Other supporting data/information. DTOE/DDE approved ***Stage 1 ICE Form***.

2.2.11.3 Using Interchange Access Request as Project Traffic Analysis Report

In PD&E Studies that involve interchanges on Interstate Highway System, an IAR document can serve the purpose of ***PTAR*** if the PD&E Study limits are the same as the Area of Influence limits for the IAR. When the PD&E Study limits exceed the Area of Influence of an IAR, a ***PTAR*** will be needed in addition to an IAR. Coordination at the beginning of the project with the District Environmental Office, OEM, and Systems Planning Office is required for this topic.

2.3 REFERENCES

American Association of State Highway and Transportation Officials (AASHTO), 2010, Highway Safety Manual. https://www.highwaysafetymanual.org/Pages/default.aspx

FDOT, 2008, FSUTMS-Cube Framework Phase II – Model Calibration and Validation Standards.

FDOT, 2019, Safety Analysis Guidebook for Project Development and Environment (PD&E) Studies. https://www.fdot.gov/safety/safetyengineering/publications-and-manuals.shtm

FDOT, 2021, FDOT Traffic Analysis Handbook. https://www.fdot.gov/planning/systems/systems-management/traffic-analysis

FDOT, 2022, Interchange Access Request Users Guide. https://www.fdot.gov/planning/systems/systems-management/interchange-access-request

FDOT, 2023, Multimodal Quality/Level of Service Handbook (Q/LOS Handbook). https://www.fdot.gov/planning/systems/systems-management/quality-level-of-service

FDOT, 2024, Lane Repurposing Guidebook. https://www.fdot.gov/planning/systems/systems-management/lane-repurposing

FDOT, 2024, Project Traffic Forecasting Handbook. https://www.fdot.gov/planning/systems/systems-management/traffic-analysis

FDOT, Complete Streets Policy, Topic No. 000-625-017. https://pdl.fdot.gov/

FDOT, Highway Safety Manual Implementation Policy, Topic No. 000-500-003. https://www.fdot.gov/Safety/safetyengineering/safetyanalysismethods.shtm

FDOT, Manual on Intersection Control Evaluation, Topic No. 750-000-005. https://www.fdot.gov/traffic/trafficservices/intersection-control-evaluation

FDOT, Manual on Uniform Traffic Studies, Topic No. 750-020-007.
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FDOT, Project Traffic Forecasting, Procedure No. 525-030-120.
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FDOT, Traffic Engineering Manual, Topic No. 750-000-005.
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https://www.fhwa.dot.gov/policyinformation/tmguide/

FHWA, Crash Modification Factors Clearinghouse website.
https://cmfclearinghouse.fhwa.dot.gov/

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Institute of Transportation Engineers (ITE), 2015. Integration of Safety in the Project Development Process and Beyond: A Context Sensitive Approach.
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Transit Capacity and Quality of Service Manual (TCQSM), Transit Cooperative Research Program Report 165.
https://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_165ch-01.pdf

Transportation Research Board (TRB), 2022. Highway Capacity Manual.
https://www.nationalacademies.org/trb/transportation-research-board

2.4 FORMS

Project Traffic Assumption Form, Form No. 650-050-39

Technical Report Cover Sheet Requiring PE Signature, Form No. 650-050-38b

FDOT Forms are found in the Procedural Document Library

Traffic forecast for the project was developed using:	
☐ Travel Demand Model	☐ Growth Rates
Type of Travel Demand Model Used: ☐ Metropolitan Planning Model ☐ Other Model _____	*Refer to appropriate section of Project Traffic Analysis Report that discusses growth rates*
Is the travel demand model based on the latest adopted Long Range Transportation Plan?	
☐ YES	☐ NO
_____ Date when MPO adopted the latest Long Range Transportation Plan	Explain why?
_____ Base Year of Travel Demand Model	
_____ Horizon Year of Travel Demand Model	
Long Range Transportation Plan documentation is available at (provide web address): _____	
Traffic Data and Factors	
K Factor = _____ D Factor = _____ T_{Daily} = _____	Data Collection Year = _____ Opening Year = _____ Interim Year = _____ Design Year = _____
Discuss any changes in land use, economics, population and employment data since the model was built	
Traffic Analysis Assumptions	
Discuss study area, data calibration/validation parameters, analysis tools, analysis periods and MOEs	

Figure 2-1 Sample Project Traffic Assumption Form

PART 2, CHAPTER 3

ENGINEERING ANALYSIS

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PART 2 CHAPTER 3 ENGINEERING ANALYSIS

3.1 OVERVIEW

3.1.1 Purpose

This chapter contains the Florida Department of Transportation (FDOT's) procedure for engineering analysis to support development of project location and design concepts during Project Development and Environment (PD&E) Studies. The engineering analysis defines project features essential to the assessment of project impacts on the social, cultural, natural, and physical environment while also seeking to balance the extent to which project needs are addressed to ensure project costs and environmental impacts are minimized. Further, the analysis establishes necessary design considerations to support progression of the project from concept to preliminary design and eventually to final design. Engineering analysis builds upon the information developed and documented by FDOT during the Planning phase of a project.

This chapter provides guidance on engineering analysis and considerations including evaluation of existing conditions, selection of design parameters, engineering considerations for alternatives, selection of the preferred alternative(s), and documentation of engineering analyses in the ***Preliminary Engineering Report (PER)***.

3.1.2 Definitions

Access Management - Access management is a comprehensive approach to the management and regulation of driveways, medians, median openings, intersections, and freeway interchanges. The purpose of access management is to increase safety and efficiency of the transportation system by providing proper access from the State Highway System (SHS) to abutting lands while limiting and separating traffic conflict points. It also ensures balance between accessibility and mobility while increasing the capacity of a roadway system.

Alignment - Refers to both horizontal and vertical placement of a transportation facility. Horizontal alignment refers to the location of the transportation facility as described by curves and tangents. Vertical alignment refers to the vertical profile of the facility (i.e., below grade, at grade, or above grade).

Alternative - A potential transportation corridor, alignment, mode, or improvement under consideration.

Bicycle Lane - A bicycle lane (bike lane) is a portion of a curbed roadway designated for the exclusive use of bicyclists.

Build Alternative - A proposed improvement that involves constructing or implementing a project to address the project's purpose and need.

Corridor - Any land area designated by the state, a county, or a municipality which is between two geographic points and which is used or suitable for the movement of people and goods by one or more modes of transportation.

Design Exception - A documented decision for the reason(s) for a specific deviation from FDOT's governing criteria and the American Association of the State Highway and Transportation Officials' (AASHTO's) new construction criteria for Controlling Design Elements.

Design Variation - A documented decision for the reason(s) for a specific deviation from design elements that do not meet FDOT's criteria.

Final Design - Any design activities following preliminary design, expressly including the preparation of final construction plans and detailed specifications for the performance of construction work, final plans, final quantities, and final engineer's estimate for construction, also referred to as Plans Specifications & Estimates (PS&E).

Managed Lane - Highway facilities or sets of lanes within an existing highway facility where operational strategies are proactively implemented and managed in response to changing conditions with a combination of tools. These tools include access control, vehicle eligibility, variable pricing, or a combination thereof. Managed Lanes can include express lanes, high occupancy vehicle (HOV) lanes, reversible lanes, truck-only toll lanes, and vehicle-restricted lanes.

No-Action (No-Build) Alternative - The option in which the proposed project activity would not take place. The no-action (no-build) alternative provides the baseline for establishing impacts of the build alternatives. The terms no-action and no-build are used interchangeably.

Preferred Alternative - The alternative identified in the Environmental Document that will be advanced to the Design phase.

Preliminary Design – Activities that define the general project location and design concept. These include, but are not limited to preliminary engineering and other activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, utility investigation/coordination, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design. Prior to completion of the ***National Environmental Policy Act (NEPA)*** process, any such preliminary engineering and other activities and analyses must not materially affect the objective consideration of alternatives in the ***NEPA*** process as defined by ***23 Code of Federal Regulations (CFR) § 636.103*** and ***Federal Highway Administration (FHWA) Order 6640.1A Policy on Permissible Project Related Activities During the NEPA Process***.

Preliminary Engineering Report (PER) - The engineering report that documents engineering analyses and decisions made during the PD&E Study. The ***PER*** contains

preliminary design plans and design parameters that support advancing the project into final design.

Reasonable Alternatives - [Term used in the Environmental Impact Statement (EIS) only] A reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.

Sea Level Rise (SLR) - A projected change in ocean elevation, relative to land. For the purposes of this chapter, SLR refers to relative sea levels, not global mean sea levels.

Transportation Systems Management and Operations (TSM&O) – A set of strategies to manage traffic congestion and minimize other unpredictable causes of service disruption and delay to preserve the capacity and improve the security, safety, and reliability of the transportation system.

Viable Alternatives - [Term used in Type 2 Categorical Exclusion (CE), Environmental Assessment (EA), and State Environmental Impact Report (SEIR) only] - Alternatives that are technically and economically feasible and meet the purpose and need for the proposed action, if there is more than one build alternative proposed.

Watershed Approach to Evaluating Regional Stormwater Solutions (WATERSS) – An approach for proactively looking for opportunities for innovative stormwater management projects with agencies and/or stakeholders. The ***WATERSS Process Guidebook*** contains the steps and documentation required to complete the WATERSS process.

3.2 PROCEDURE

This section describes the procedure for conducting an engineering analysis during the PD&E phase. FDOT conducts engineering analyses consistent with the ***FDOT Design Manual (FDM), Topic No. 625-000-002***, and other manuals and procedures listed in ***Figure 3-1***. Engineering considerations for a project begin during the Planning phase where the project's purpose and need is first defined and continue throughout the PD&E process when conceptual and preliminary design plans are prepared. Engineering analysis and considerations include coordination with other FDOT offices within the District and Central Office, Federally Recognized Native American Tribes, agencies, the public, and Office of Environmental Management (OEM) as the Lead Federal Agency due to ***National Environmental Policy Act (NEPA)*** Assignment, as appropriate.

3.2.1 Level of Detail of Analysis

The level of detail for engineering analysis during the PD&E phase depends on the overall size and complexity of the project. It also depends on the type of Environmental Document prepared for the project. Type 1 Categorical Exclusion (CE) and Non-Major State Action (NMSA) projects require a lesser level of analysis and do not require a PD&E Study. Type 2 CE, Environmental Assessment (EA), Environmental Impact Statement (EIS), and State Environmental Impact Report (SEIR) projects require a more detailed level of analysis

and documentation. Refer to ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for additional information.

Projects that will have an accelerated schedule to construction may need to be developed to a higher level of detail during the PD&E phase to enhance the efficiency of project development and provide a higher level of detail for funding needs. For example, a project that is anticipated to be a design-build project may need to be developed to a greater level of engineering detail than a typical Design-Bid-Build project.

Regardless of the Environmental Document type, the engineering analysis should be performed to a level of detail that is sufficient to assess the effects of the alternatives on the social, cultural, natural, and physical environment. In order to analyze multiple alternatives, the Project Manager should ensure that all the alternatives are developed to the appropriate level of detail.

3.2.2 Project Coordination

Recognizing that coordination begins during the project scoping process, the PD&E Project Manager is responsible for timely coordination with other offices within the District and Central Office, as applicable, to ensure proper development and evaluation of alternatives. Refer to ***Part 2, Chapter 3A, Alternatives Analysis*** for additional information.

3.2.3 Preliminary Engineering Analysis

A variety of early engineering analyses may be needed during the PD&E phase to develop and analyze project alternatives and potential impacts based on existing and future conditions. The level of detail and extent of the preliminary design efforts are tied to the level of detail described in ***Section 3.2.1***.

The results of the engineering analyses are documented in a ***PER***. See ***Section 3.2.10*** for a description of the ***PER*** and required content. The ***FDOT Preliminary Engineering Report Outline and Guidance Document*** and the associated ***Preliminary Engineering Report QA/QC Checklist*** are also resources for the ***PER*** development.

The ***PER*** includes ***PER Project Involvement Checklists*** to document the presence or absence of considerations/conditions in the study area and any involvement with the proposed alternatives. If there is no involvement, further discussion on that item is not needed elsewhere in the ***PER***. These checklists are intended to reduce redundancy or irrelevant discussion between and within project documents. The ***PER Project Involvement Checklists*** are located in the ***PER Outline and Guidance Document***. See ***Section 3.2.4*** for more specific guidance on using the checklists.

The results of engineering analysis may also be documented separately in the Environmental Document, depending on the document type. For Type 2 CEs and SEIRs the engineering analysis may be summarized in the Project Description section of the Environmental Document and the ***PER*** is incorporated by reference. For EAs and EISs

the information in the ***PER*** is summarized in the Environmental Document. This chapter is focused on documentation in the ***PER***. See ***Part 2, Chapter 3A, Alternatives Analysis*** for guidance on documentation in the Environmental Document.

PD&E Studies for bridge replacement projects may not require preparation of a ***PER***, rather the preliminary engineering analysis results for these projects may be documented in the ***Bridge Development Report (BDR)*** or ***Bridge Replacement Report (BRR)***.

The key elements in performing engineering analysis during the PD&E Study are:

1. Project purpose and need
2. Data collection and existing conditions analysis
3. Design controls and criteria
4. Alternatives development and analysis

3.2.3.1 Project Purpose and Need

Purpose and need identification generally occurs during the Planning phase of the project as a part of the Efficient Transportation Decision Making (ETDM) Process. The Project Manager coordinates with the ETDM Coordinator and reviews the ***Programming Screen Summary Report*** for projects that were screened through the ETDM Process. The Project Manager should also review planning documents such as the Long Range Transportation Plan (LRTP), feasibility reports, and corridor evaluations.

It is important for the Project Manager to review and understand the project's purpose and need, which drives the development of alternatives considered and evaluated during the PD&E process and documented in the ***PER***. During the PD&E process, the project's purpose and need is further developed, however, any fundamental changes to the purpose and need, including adding or deleting any elements of need, must be approved by OEM. Refer to ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency*** for more information and documentation in the Environmental Document.

3.2.3.2 Data Collection and Existing Conditions Analysis

The data collection process should consider the purpose and need for the project and the goals and objectives of the PD&E Study. Specifically, data collection should start by obtaining the data to assess and support the purpose and need for the project, the existing conditions analyses, and alternatives evaluations. Data collection should include relevant data layers, project specific information, reports, and records to be utilized in understanding the project area, project constraints, and potential impacts. If needed, efforts should be made to determine any gaps in the data and approaches to fill the gaps.

The purpose of the existing conditions analysis is to document available information regarding the existing facility or corridor which can help to identify trends and areas for

further consideration. Existing conditions analysis documents the inventory of roadway elements, structure elements, and environmental features of the project. It also includes a review of planning issues contained in previous planning documents such as corridor feasibility studies or Interchange Access Requests (IARs). The existing conditions analysis helps to identify or confirm design and operational deficiencies associated with the project study area, as well as to verify, refine, and support the purpose and need for the project. It also establishes the baseline conditions from which environmental impacts are evaluated.

The sections below are elements of existing conditions analysis that must be discussed and/or documented in the ***PER*** for existing or new corridors. For new corridors, analysis of existing conditions requires a description of the adjacent transportation facilities to explain how the existing transportation system is currently operating.

3.2.3.2.1 Previous Planning Studies

Previous planning studies and corridor evaluations that were completed to support development of the PD&E Study should be reviewed and documented in the ***PER***. When Planning phase corridor studies identified and documented improvement options that may address the needs, the Project Manager should coordinate with the District Environmental Office to determine if planning products or decisions can be reused or adopted according to ***23 U.S.C. § 168*** and ***23 CFR § 450.318*** and ***Appendix A*** of ***23 CFR Part 450 - Linking the Transportation Planning and NEPA Processes***. Refer to ***Part 1, Chapter 4, Project Development Process*** for more information regarding planning studies and Planning and Environment Linkages (PEL).

If planning decisions or products were incorporated by reference into the ***NEPA*** process, then the ***PER*** should:

- Cite ***23 United States Code (U.S.C.) § 168***;
- Discuss the steps taken to incorporate them and how they were used in the PD&E Study;
- Provide a brief description of the planning decision or products;
- Summarize future policy assumptions used in the transportation planning process related to land use, economic development, transportation costs (comparative estimates, Transportation Improvement Plan (TIP), State Transportation Improvement Plan (STIP), etc.), and network expansion;
- Summarize assumptions used in the transportation planning process such as travel demand forecasts, alternatives development, project long-range costs, and purpose and need. It should verify they are consistent with the ***NEPA*** process;

- Discuss changes that have occurred in the area since the planning decision or products were completed and identify any data or analyses that are required to be updated since the planning decision;

- Include titles of the previous planning reports in the List of Technical Documents.

If there are no previous planning studies completed, the appropriate box is checked in the ***PER Project Involvement Checklist***.

3.2.3.2.2 Existing Roadway Conditions

Existing roadway conditions should be documented in the ***PER*** to reflect, at a minimum, the following elements:

1. Roadway typical sections of each corridor within the project limits. Include dimensions of each cross-sectional element (e.g., Right of Way (ROW), lanes, shoulders, median, curb and gutter, sidewalk, roadside protection, drainage swales).

2. Roadway functional and context classifications. Include any other special classifications (e.g., hurricane evacuation route, Strategic Intermodal System (SIS) corridor)

3. Access management classification and standards

4. ROW of existing roadways within the project limits including extent and type (e.g. limited access) and easements

5. Pavement type and conditions

6. Existing design speed and posted speed limit

7. Horizontal alignment (noting source of best available information):

    a. Deflections

    b. Horizontal curves (length, radius, and associated superelevation)

    c. Horizontal clearances

8. Vertical alignment (noting source of best available information):

    a. Grades

    b. Vertical curve components (length, K value)

    c. Vertical clearances

9. Multimodal facilities:

a. Pedestrian accommodations - Sidewalks, crosswalks, Americans with Disabilities Act (ADA) accessibility, and school routes

b. Bicycle facilities - Location, type, and width

c. Shared use paths - Location, width, and pavement type

d. Mass transit facilities including bus and rail services - Type, locations and number of stops, transfer centers, park-and-ride facilities, bus bays

e. Freight and intermodal logistics centers

f. Freight routes

10. Intersections - Lane configuration, intersection control type, technology, and operational conditions

11. Physical or operational restrictions such as multimodal use lanes, parking, evacuation routes, fixed objects, barriers, and clear zones

12. Traffic data - Annual Average Daily Traffic (AADT), peak hour volume, Directional Design Hour Volumes (DDHV), truck percentage, pedestrian and bicycle counts, and transit data

13. Roadway operational conditions - Level of Service (LOS) and relevant performance measures such as delay, travel time, and density

14. Safety data - Crash data including crash rates, severity, number (frequency), types, locations (e.g., a heat map or other similar diagram), as well as contributing causes and patterns. See FDOT's ***State Safety Office Website*** for information on FDOT's Target Zero Policy. Coordination with the District Safety Administrator or other District Staff is needed to obtain data from the ***Safety Assessment Dashboard***.

15. Drainage/Water Resources - Drainage map depicting basins and flow patterns, floodplains and stormwater management systems including regional facilities, size and location of cross drains and box culverts along the corridor. Known drainage or flooding concerns, are documented as well as designated water resource basins and characteristics, including special regulatory requirements. See ***Part 2, Chapter 11, Water Resources*** for more detail.

16. Utilities - Location, type, Utility Agency/Owner (UAO), and contact persons

17. Soils and geotechnical data - Soil map depicting soils and geotechnical data

18. Traffic signs - General description of the existing signage specifically including location(s) of any overhead cantilever and span sign structures

If the following roadway conditions are present in the project area, they should be documented in the ***PER***. If any of the considerations/conditions are not present, the appropriate box in the ***PER Project Involvement Checklist*** is checked to document the absence without requiring further discussion in the Existing Conditions section of the ***PER***.

1. Managed Lanes (e.g., Express Lanes or Toll Lanes) - configurations, and operations within the corridor

2. Railroad crossings - Number of tracks, number of train crossings, speed, type of train (passenger or freight), type of warning devices, operating characteristics, and railroad ROW.

3. Lighting - Location, type, condition, spacing, and maintaining agency

4. Aesthetic features - features such as scenic views, lighting, landscaping, signage, vegetation, and pavers. Including the maintaining agency of each feature.

5. Intelligent Transportation System (ITS)/Transportation Systems Management and Operations (TSM&O) Features - Operational and infrastructure requirements. Including review and a summary of Concepts of Operations (ConOps) and other systems engineering documents, if applicable.

6. Rest areas, weigh stations, truck parking areas.

7. Emergency Repairs - Identifying if the project has had two or more emergency repairs pursuant to ***23 CFR § 667***

If review of the existing conditions identifies a deficiency or substandard element, the findings are described in the appropriate subsection in the Existing Conditions section of the ***PER*** and discussed in detail in the Alternative Analysis section.

3.2.3.2.3 Existing Bridges and Structures

If existing bridges and structures are present in the project area, they should be discussed in the ***PER***. If there are no existing bridges or structures, the appropriate box is checked in the ***PER Project Involvement Checklist*** to document without further discussion in the Existing Conditions section of the ***PER***.

FDOT's Bridge Maintenance Office maintains ***Bridge Inspection Reports (BIRs)*** for every public bridge in the State of Florida. The Project Manager must obtain the recent ***BIR*** for each bridge on the existing corridor. Additionally, geotechnical and scour reports, environmental permits, and previous studies for existing bridges can be requested from the structures and environmental permits offices. If hydraulic analysis is anticipated, bridge information for each bridge upstream and downstream of the existing crossing can also be obtained. For bridges maintained by other agencies, all relevant information regarding the existing bridge should be requested from the owner of the bridges.

Evaluation of existing bridge conditions should include identification of wildlife crossing features. The results of the ***Wildlife Crossings Potential Report***, prepared for the project during the ETDM screening, should be reviewed. Wildlife crossing features include bridges, bridges with shelves, specially identified culverts, enlarged culverts or drainage culverts, and/or exclusionary devices such as fencing, walls or other barriers, or some combination of these features. The Project Manager should confirm the location of a wildlife crossing feature based on coordination with the District Environmental Manager, District Drainage Engineer, District Environmental Permits Coordinator, and District Structures Design Engineer. See ***FDOT Wildlife Crossing Guidelines*** for more information.

A fatigue evaluation is required for existing steel bridges to provide guidance during the decision-making process regarding whether the steel bridge (or portions thereof) should remain or be replaced. Refer to the ***Structures Manual, Volume 1, Section 7.5.4, Remaining Fatigue Life Estimate for Steel Bridges, Topic No. 625-020-018*** and the ***FDM, Part 1, Chapter 121, Bridge Project Development*** for more guidance.

Existing bridge conditions should be documented in the ***PER*** to reflect, at a minimum, the following elements:

1. Bridge number
2. Bridge Type
3. Typical Section
4. Facility crossed (waterway, roadway, or railroad)
5. Year structure was built and/or modified
6. Type of structure - Timber, concrete, or steel
7. Condition - Structural rating and suitability for widening or retrofitting
8. Load posting information
9. Horizontal and vertical clearances

If the following bridge conditions are present in the project area, they should be documented in the ***PER***. If any of the elements are not present, the appropriate box is checked in the ***PER Project Involvement Checklist*** to document the absence without requiring further discussion in the Existing Conditions section of the ***PER***.

1. Ship impact data
2. Span arrangement - Number and length of spans

3. Historical significance - i.e., ***National Register of Historic Places (NRHP)*** eligible or may be a potentially significant historic bridge (of 50 years of age or older). If a bridge is on the ***NRHP***, it is determined if the bridge is a critical landmark or a signature structure.

4. Geotechnical information from existing bridge borings, pile driving records, scour reports, and maintenance history where available

5. Channel data - Alignment, width, depth, and clearance requirements

6. On bridges with moveable spans - The average number of times the bridge opens per day, results of boat traffic and mast height surveys, including any special navigation (shipping/boating) requirements that will require accommodation during construction

7. Normal High Water and Mean High Water (for coastal bridges)

8. Bridge security issues

9. Remaining Fatigue Life Estimate for Steel Bridges

3.2.3.2.4 Existing Environmental Features

Existing conditions analysis must include a review of environmental features in the project area through coordination and review of supporting documentation. These environmental features (also called environmental topics/resources) undergo a separate environmental analysis during the PD&E phase. Therefore, close coordination between environmental and engineering staff is essential to developing alternatives that reduce environmental impacts.

Descriptions of the existing environmental features in the project area may be available in technical reports prepared during the environmental analysis [e.g., ***Natural Resources Evaluation (NRE), Cultural Resources Assessment Survey (CRAS) Report)***.

If any of the environmental conditions are not present in the study area, the appropriate box is checked in the ***PER Project Involvement Checklist*** to document their absence without requiring further discussion in the ***PER***. For environmental conditions that are present in the project area but are not involved with the build alternatives or the preferred alternative, no involvement is selected on the checklist. If there is no involvement discussion is not required to be included elsewhere in the ***PER***.

Environmental conditions that are present and involved with the build alternative(s), or the preferred alternative are discussed in the appropriate Build Alternatives subsection of the ***PER***. See ***Part 2, Chapter 3A, Alternatives Analysis*** for environmental considerations for build alternatives.

3.2.3.2.5 Survey and Mapping

Development of the horizontal and vertical alignments of the build alternative(s) requires survey topographic data from publicly available sources or other services that provide topographic data of higher accuracy and density. At the beginning of the PD&E phase, the Project Manager should consult with the District Survey Office and obtain existing information on survey control points, benchmarks, and control data (e.g., vertical and horizontal datum, coordinate system). The scale of surveying and mapping required depends on the project context, project complexity, and adjacent land use intensity. The scale of surveying and mapping also depends on the scope of the design effort for preliminary engineering. Engineering analysis for build alternatives may require the following:

1. Existing aerial photographs and imagery [for existing FDOT aerials see FDOT's ***Aerial Photo Look Up System (APLUS)***]
2. LiDAR data
3. Previous topographic surveys, maps, models, and reports
4. Previous roadway corridor mapping or as-built plans
5. ROW data, including supporting survey and title work
6. County data showing adjacent parcels, plats, and side streets
7. Utility locates

Refer to the ***Surveying and Mapping Procedure, Topic No. 550-030-101***, and ***Surveying and Mapping Handbook*** for standards and guidance for conducting surveying and mapping.

3.2.3.2.6 Geotechnical Investigation

Soil exploration during the PD&E phase is part of the analysis that supports location and design of build alternatives. A subsurface investigation may be required at the site of new structures, roadway construction, widening, trails, and rehabilitation locations as directed by the District Geotechnical Engineer or project scope. The scale of geotechnical investigation depends on the level of design analysis for the PD&E phase and the type of soils involved. Geotechnical and subsurface investigation during PD&E may involve:

1. Reviewing project requirements such as project location, alignment, structure location, structure loads, pier locations, and cut/fill area locations.
2. Performing field reconnaissance of the site and existing structures to determine conditions that may affect development and construction of the project.

3. Reviewing or obtaining ground survey data, aerial photography, geological information, U.S. Department of Agriculture (USDA) soil data, U.S. Geologic Survey (USGS) topo maps, U.S Coast and Geodetic Survey (USCGS) maps.

4. Planning and conducting field investigation and laboratory testing.

5. Preparing a preliminary geotechnical report summarizing available data and providing recommendations.

6. Identifying potential needs for the design investigation to address construction requirements and anticipate problems.

Geotechnical and subsurface investigations must be conducted by a geotechnical engineer and the report must be signed by the engineer, in accordance with geotechnical standards, policies, and procedures (refer to the ***Soils and Foundations Handbook***).

Geotechnical and subsurface investigations may reveal evidence of contamination, solid waste/land-filling activities, or archaeological findings. This information is useful to the environmental analyst tasked to perform additional assessment work on the same project. When these investigations reveal issues, the project geotechnical engineer should inform the Project Manager and the District Contamination Impact Coordinators as appropriate.

3.2.3.3 Design Controls and Criteria

Design controls are established parameters or physical characteristics that affect the selection of criteria and standards for geometric design of alternatives. Refer to ***FDM, Part 2, Chapter 201, Design Controls*** for further information on design controls.

For FDOT Federal Projects off the SHS, the ***FDM*** or ***Florida Greenbook*** may be the source of design criteria. Refer to the ***Local Programs Manual*** for more guidance on the selection of project design criteria, for Local Agency Projects.

The following design controls are documented in the ***PER***, as appropriate. If a design control is not applicable, a statement to that fact is included in the ***PER***.

1. Roadway context classification

2. Functional classification and SIS designation

3. Access management class and applicable standards

4. Design speed and Target Speed

5. Capacity and LOS Target

6. Design vehicle

The following are other design elements that may not apply to all projects but that could affect the selection of criteria and standards for geometric design of alternatives. The following elements are documented in the ***PER*** if they are applicable to the project.

1. Pedestrian and bicycle requirements
2. Physical constraints (e.g., existing ROW, approach roads, intersecting roads, railroads, major utilities)
3. Environmental constraints (e.g., public parks, historic and cultural features, wetlands, floodplains)
4. Type of stormwater management facilities (e.g., closed or open drainage systems)
5. Navigational requirements
6. Design high water, including impacts from sea level rise projections
7. Design wave heights for coastal bridges, including impacts from sea level rise projections

The design controls guide the selection of the appropriate design criteria to be used in developing alternatives. The ***FDM, Topic No. 625-000-002*** is the principal source of values for design criteria for projects on the SHS or National Highway System. The values for design criteria contained in the ***FDM*** have been accepted by FHWA.

A table is included in the ***PER*** listing the relevant roadway, structure, and drainage design criteria used in developing alternatives. References to the associated manuals, procedures, or guidelines that defined the criteria, and the published date of the source are included.

Table 3-1 provides an example of a list of items that are included in the design criteria table(s). The list is not exhaustive and should be tailored to each project.

3.2.4 Alternatives Development and Analysis

The alternatives analysis is completed by following guidance provided in ***Part 2, Chapter 3A, Alternatives Analysis***. The alternatives analysis includes the no-action (no-build), TSM&O, Multimodal, and build alternatives, and includes other project specific considerations (see ***Part 2, Chapter 3A, Alternatives Analysis***). Once the preferred alternative is selected, the ***PER*** can be modified to indicate which of the alternatives was selected as the preferred by highlighting or appending the alternative name to identify the preferred.

3.2.5 Required Engineering Considerations for Build Alternatives

The following considerations for build alternatives should be documented in the ***PER*** including a discussion for each proposed alternative.

3.2.5.4 Horizontal and Vertical Geometry

Build alternatives should be designed to comply with the horizontal and vertical design criteria as discussed in ***Section 3.2.3.3***. The horizontal and vertical geometry should be designed to an appropriate level of detail to determine potential ROW needs and potential impacts from the build alternative(s). Special attention should be given to vertical profile needs in areas such as constrained ROW, flooding or high ground water tables, as well as areas of vertical separation including bridges, bridge abutments, ramps, and other significant changes in vertical profile.

Preliminary concept plans showing the horizontal and vertical geometry of the project should be included in the Appendix of the ***PER***.

3.2.5.5 Typical Sections

The proposed typical sections for each build alternative are discussed. Rendered or graphic typical sections are often included in the ***PER*** from the presentation or public involvement materials to more easily depict the proposed alternative(s).

After the public hearing is held (if required), the ***Typical Section Package*** is signed by the Engineer of Record, finalized in accordance with ***FDM, Part 1, Chapter 120, Design Submittals***, and included in the Appendix of the ***PER***.

3.2.5.6 Right of Way

For each build alternative, the number and acreage of parcels impacted is documented along with the number of expected relocations, and the total cost estimate for the acquisition of those parcels. Considerations of future land use changes around the proposed ROW are included. If a ***Conceptual Stage Relocation Plan (CSRP)*** has been developed for the project, a reference to the plan and its conclusions is included. Details regarding costs for individual parcels must not be included in this discussion or elsewhere in the report.

3.2.5.7 Context Classification

Context classification establishes a framework for understanding the surrounding land use, community character, and multimodal activity that influence a transportation facility. It provides the foundation for decision-making throughout project development and requires early and ongoing coordination with local governments, Metropolitan Planning Organizations (MPOs), transportation agencies, and the public.

Context-based design, as a component of context classification, applies this framework to the physical design of a facility to ensure it appropriately serves users of all ages and abilities, while responding to the needs and character of the surrounding environment. A context-based approach to project development considers accommodating all transportation users and their relationship to safety, economy, mobility, and the environment.

Development of build alternatives must consider context classification early in the alternatives development process. Consideration and integration of context classification during the PD&E phase promotes the efficient development of a multimodal transportation system. Context-based designs should serve the transportation needs of users of all ages and abilities, including cyclists, pedestrians, motorists, transit riders, emergency responders, and freight handlers.

Understanding of community context (transportation network, land use, and local priority), potential users, and needs are key inputs for developing build alternatives that are context oriented. Context classification is determined based on the ***FDOT Context Classification Guide*** and coordinated with the District Planning Office to help ensure that the determination of context classification is collaborated for future approvals.

If the future context classification is different than the existing, the future context classification should be used when developing project alternatives. The future context classification for the project corridor(s) should be discussed in the ***PER***. The following are questions to consider when defining future context classifications:

- Are there any planned or new developments anticipated in the project area?
- What is the local government future land use vision as identified in the Local Government Comprehensive Plan (LGCP), corridor plan, policies or other credible sources?
- Does the adopted future land use plan include specific recommendations regarding development density, building setbacks, or urban design within the project area?
- Are there locally adopted multimodal plans or policies affecting non-motorists' trips or transit?

There is no single design solution for context-based design because each street and its context and travel demand are unique. For example, a street in an urban setting is quite different from a street in a rural setting; however, both streets must be designed to meet the users' needs and the transportation objectives of safety, mobility, and the environment. Incorporation of context may necessitate modification of design standards to allow typical sections to accommodate non-motorized traffic or allow raised medians, adequate shoulders, narrow lanes, and traffic calming features. Such modifications must follow FDOT's Design Exceptions and Design Variations process.

3.2.5.8 Multimodal/Pedestrians and Bicycle Accommodation

The 2010 United States Department of Transportation (USDOT) ***Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations*** encourages transportation agencies to integrate safe and convenient walking and bicycling facilities into all transportation projects, recognizing their health, safety, environmental, and quality-of-life benefits. This can be done by treating walking and

cycling as equal to other transportation modes, providing choices for all ages and abilities, and exceeding minimum design standards.

FHWA Bicycle and Pedestrian Planning, Program and Project Development provides additional guidance related to safety and accommodation of pedestrians and bicyclists.

FDOT's procedures are consistent with the 2010 USDOT ***Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations*** and further specify that facilities be context-appropriate, based on existing or planned land use. Additionally, ***Section 335.065, Florida Statutes (F.S.)***, requires full consideration of bicycle and pedestrian ways along state roads and transportation facilities during planning and project development unless contrary to public safety, disproportionate cost, or absence of need. Therefore, all build alternatives must consider pedestrian and bicycle accommodation.

Guidance on the design of pedestrian and bicycle facilities can be found in:

1. ***FDM, Part 2, Chapter 222, Pedestrian Facilities***, ***FDM, Part 2, Chapter 223, Bicycle Facilities***, and ***FDM, Part 2, Chapter 224, Shared Use Paths***

2. ***FHWA Bicycle and Pedestrian Planning, Program and Project Development***

3. ***Florida Greenbook*** (for off-system projects)

Sidewalks in highly developed urban areas and near schools may require additional width based on anticipated pedestrian volumes and context. When designing pedestrian facilities, the safe crossing needs of the pedestrian must be considered, such as providing median refuge, placing crosswalks perpendicular to the roadway or to match the intersection lines at skewed intersections, and minimizing pedestrian crossing length.

For interchange design, pedestrians and bicyclists' accommodation on the arterial must be considered from the beginning of the planning process and during the PD&E phase. Ramp configurations, speeds, and overall complexity can create impractical and unsafe conditions for bicyclists and pedestrians if not carefully considered throughout the design process.

Where current pedestrian or bicycle facilities or indications of use are identified, the Multimodal Accommodations section of the ***PER*** and the Bicycles and Pedestrians section of a SEIR, EA, or EIS should discuss the current and anticipated use of the facilities, the potential impacts of the build alternatives, and proposed measures, if any, to avoid or reduce adverse impacts to the facility and its users. Where new facilities are proposed as a part of the proposed highway project, the Environmental Document and ***PER*** should include sufficient information to explain the basis for providing the facilities (e.g., proposed bicycle facility is a link in the local plan or sidewalks will reduce project access impact to the community). Where the build alternative(s) would sever an existing major route for non-motorized transportation traffic, the proposed project needs to provide

a reasonable alternative route or demonstrate that such a route exists. This needs to be described in the relevant section of the Environmental Document according to the ***FHWA Technical Advisory T6640.8A***, and the ***PER*** Alternatives Analysis section as appropriate.

Other modes of transportation such as freight, transit, and rail should be considered if applicable to the project. Coordination should occur with the appropriate District office, and the applicable FDM Design Standard and criteria documented in the ***PER***.

Some features of the multimodal alternative may be incorporated into the build alternative(s), even if the multimodal alternative does not meet the purpose and need of the project on its own. See ***Part 2, Chapter 3A, Alternatives Analysis*** for more information regarding the required alternatives analysis.

3.2.5.9 Traffic Operations and Safety

Build alternatives should be evaluated for their impact on traffic operations. One of the primary objectives of traffic analysis is to determine if the build alternative(s) will operate within performance targets through the design year. Traffic analysis for build alternatives includes both travel demand forecasting and capacity analysis to determine the number of through lanes, intersection control type, intersection configurations, need for auxiliary lanes, or access management. Projects in urban areas may require additional traffic operational analysis as compared to projects in rural areas because of recurring congestion and ROW constraints.

Safety analysis for build conditions should occur after evaluation of crash data to determine any existing safety deficiencies and appropriate corrective measures. Evaluation of existing safety can also include a Road Safety Audit (RSA), which is an examination of safety conditions of a road by an independent audit team, or quantitative, data-driven safety analysis by utilizing the ***Highway Safety Manual (HSM)*** for existing conditions or predictive analysis of future conditions. Safety analysis for build conditions should analyze potential hazardous elements on the proposed project conditions and draw inferences based on interactions of these elements and users. Development of build alternatives should attempt to correct existing safety deficiencies and is documented in the ***Project Traffic Analysis Report (PTAR)***. For existing and prescreened safety needs, the District Traffic Operations Engineer, District Safety Administrator, or other appropriate position according to the Districts' processes are contacted. Refer to the FDOT's ***Safety Analysis Guidebook for PD&E Studies*** for further guidance on safety analysis.

Refer to the FDOT's ***Traffic Analysis Handbook***, ***Part 2, Chapter 2, Traffic Analysis***, and the ***Manual on Intersection Control Evaluation, Topic No. 750-010-003*** for further guidance on traffic operations evaluation, safety, and Intersection Control Evaluations (ICEs).

The ***PER*** should summarize the travel demand forecasting and traffic analysis results. The forecasting should include discussion of committed projects and discuss how future demand volumes and design hour volumes were estimated. Citation of the ***PTAR***, or

Interchange Access Request (IAR) document and ***Project Traffic Forecasting Memorandum*** may be included for more details, if applicable.

The ***PER*** should summarize the safety analysis, including existing safety deficiencies, analysis methods, and corrective measures proposed for the build alternative(s).

3.2.5.10 Intersection and Signal Analysis

The intersection and control strategy evaluations are discussed for the proposed build alternative(s). This may include ***Highway Capacity Manual (HCM)***, ***HSM*** and/or ICEs. Similar to general alternatives analysis, safety impacts of intersection types should be discussed and summarized in the ***PER***. Citation of the ***PTAR*** for traffic capacity and operational analyses, intersection control performance analysis, and a summary of any ICE procedures should be included. Rendered or graphic intersection diagrams are often included in the ***PER*** from the presentation or public involvement materials to more easily depict the proposed alternative(s). The proposed intersections and control types are included in the ***PER*** concept plans.

Refer to the FDOT's ***Traffic Analysis Handbook***, ***Part 2, Chapter 2, Traffic Analysis***, and the ***Manual on Intersection Control Evaluation, Topic No. 750-010-003*** for further guidance.

3.2.5.11 Access Management

Access management analysis should evaluate the existing and proposed access management classification. The PD&E Study should recommend appropriate locations for median openings and driveways, as applicable. Differences in access management between build alternatives should be considered in the comparison of alternatives. The ***PER*** should document spacings provided versus required for the preferred alternative.

Conceptual access management elements should be incorporated into the concept plan for the preferred alternative. The concept plans developed in the PD&E Study should show appropriate access management features, including access point changes such as median openings and driveways. Changes in access management should be consistent with ***Procedure No. 625-010-021, Median Openings and Access Management***, the ***FDOT Access Management Guidebook***, and ***FDM, Part 2, Chapter 201, Design Controls***. The Project Manager should coordinate with the District Access Management Review Committee (AMRC) for any proposed deviations from the access management and median opening standards.

The ***PER*** should document access management issues and preliminary design decisions and actions reached during the PD&E phase. The ***PER*** should include language about how the project complies with ***Section 335.199, F.S.***, if a public meeting is required based on changes in access management. This meeting can be conducted concurrently with any PD&E public meeting(s).

3.2.5.12 Drainage and Stormwater Management Facilities

During the PD&E phase, management of how the stormwater from the project area will meet water quality and quantity requirements of FDOT, Water Management Districts (WMDs), and the Florida Department of Environmental Protection (FDEP), is determined. This could include identifying innovative stormwater Best Management Practices (BMP), required pond sites and sizes, or only pond sizing. See the ***FDOT Drainage Manual, Topic No. 625-040-002***, which contains regulatory requirements and the drainage design standards for FDOT projects. See ***Part 2, Chapter 11, Water Resources*** for more information.

If the project uses the Watershed Approach to Evaluating Regional Stormwater Solutions **(**WATERSS) process, the Project Manager should coordinate with the WATERSS District Champion and the District Drainage Engineer to discuss watershed needs, innovative stormwater management and follow the WATERSS process. The ***WATERSS Process Guidebook*** contains the steps and documentation required to complete the WATERSS process. Stormwater management solutions developed through this process are documented in the project ***Stormwater Management Alternatives Report (SMARt)***, summarized in the ***PER***, and may be modified in future phases of the project.

For projects not using the WATERSS process, drainage decisions are documented in the ***PER*** and ***Pond Siting Report (PSR)*** or ***Conceptual Drainage Design Report***. For projects using ponds for stormwater management, a ***PSR*** is prepared, identifying potential pond sites. If the stormwater facilities are features other than ponds, a ***Conceptual Drainage Design Report*** is prepared (see ***Part 2, Chapter 11, Water Resources*** and ***Chapter 5*** of the ***Drainage Manual, Topic No. 625-040-002***. The results of the analysis are summarized in the ***PER***.

3.2.5.13 Water Quality

A water quality analysis should be performed for each alternative. Information associated with the water quality analysis should be documented in the ***PSR***, ***SMARt***, or ***Conceptual Drainage Design Report***, and summarized in the ***PER***.

The water quality analysis and documentation in the Environmental Document are discussed in detail in ***Part 2, Chapter 11, Water Resources***.

3.2.5.14 Hydrology and Floodplains

Analysis of build alternatives includes hydrology and hydraulic evaluation to determine preliminary location, type, and size of major drainage crossings that may impact floodplains and floodways. Protection of floodplains and floodways is required by ***Executive Order (EO) 11988, Floodplain Management***, ***USDOT Order 5650.2***, ***Floodplain Management and Protection*** and ***23 CFR Part 650A***. The intent of these directives is to avoid or minimize highway encroachments within the 100-year (base)

floodplains, where practicable, and to avoid supporting land use development which is incompatible with floodplain values.

Hydraulics evaluation involves field observations to determine or confirm needed improvements, analysis of existing and proposed drainage basins, design of cross drains and culverts, design of outfall structures, determination of special erosion control and flood control features, among other things. Hydraulics evaluation also determines and corrects roadway design profile issues that may cause roadway flooding or overtopping.

The results of hydrology and hydraulic evaluation are summarized in the ***PER*** from the ***Location Hydraulics Report (LHR)***. See ***Part 2, Chapter 13, Floodplains*** for guidance on how to prepare an ***LHR*** and documentation in the Environmental Document. For each build alternative, the impacts that occur to floodplains should be discussed in the ***PER***. This discussion should include whether the impacts will be longitudinal and transverse to the floodplain, and any mitigation strategies proposed.

3.2.5.15 Utilities and Railroads

The Project Manager should coordinate with the District Utility Office and District Railroad Coordinator whenever a project involves utilities and/or rail systems. The goal is to identify potential existing or future conflicts with the project. Coordination requirements for potential utilities and railroad conflicts are outlined in ***Part 2, Chapter 21, Utilities and Railroads***.

The ***PER*** should summarize the ***Utility Assessment Package*** and utility coordination efforts. If known, a cost estimate for utility relocations, both direct and indirect, should be included for each alternative.

Documentation of the coordination with the railroads must be included in the project file. The ***PER*** should discuss coordination and involvement with any rail facilities to the appropriate level of detail required to address any issues identified. Any railroad features incorporated into the build alternative(s) should be discussed along with costs, both direct and indirect, if known. Guidance on documentation in the Environmental Document is in ***Part 2, Chapter 21, Utilities and Railroads***.

3.2.5.16 Traffic Control Strategies

A review of conceptual traffic control and transportation management during construction should be completed for each build alternative to assess constructability issues and maintain multimodal traffic during construction. This review must include traffic control strategies, evaluation of potential fatal flaws for transportation management, and may also include additional work zone management strategies based upon the expected work zone impacts of a project. The traffic control review must be discussed in the ***PER*** including construction phasing to maintain traffic, potential detours, safety considerations, property access, and multimodal accessibility during construction. The ***PER*** should indicate any differentiators between alternatives regarding traffic control strategies if there are multiple build alternatives. For additional guidance related to the Transportation

Management Plan (TMP) development process, see ***FDM, Part 2, Chapter 240, Transportation Management Plan***.

3.2.5.17 Constructability

The evaluation of build alternatives requires review of constructability, including construction activities, and the ability to maintain traffic. This review should identify issues that may prevent implementation. Constructability review should include assessment of alignment, profile and cross section, vertical clearance, major utility conflicts, access for construction equipment, and adequacy of construction phasing. The Project Manager must include the Roadway Design Office, Structures Office, and Construction Office in the reviews of build alternative concept plans.

The proposed construction phasing of the build alternative(s) should be described in the ***PER*** and any challenges with implementation of the proposed project identified.

3.2.5.18 Construction Impacts

The discussion in the Construction section of the Environmental Document should include impacts which may occur, whether they are disruptive or beneficial, and measures, where feasible, to reduce the amount of disruption from construction impacts. Generally, FDOT has standard construction practices which take into consideration many of the direct impacts of construction and provide for measures to reduce or eliminate their effects. These measures are found in the ***Standard Specifications for Road and Bridge Construction***.

There are occasions where FDOT may commit to implement specific measures, features, or activities. Such measures will become commitments by FDOT and, as such, must be incorporated in the Commitments section of the Environmental Document consistent with ***Part 2, Chapter 22, Commitments*** and ***Procedure No. 650-000-003, Project Commitment Tracking***.

The following items may be evaluated as appropriate, as part of the construction impacts analysis.

1. Air quality impacts related to open burning and dust control, see ***Part 2, Chapter 19, Air Quality***

2. Noise and vibration impacts related to construction activities, see ***Part 2, Chapter 18, Highway Traffic Noise***

3. Water quality protection related to erosion control, sedimentation, and turbidity reduction, see ***FDM, Part 2, Chapter 251, Stormwater Runoff Control Concept (SRCC) Development***

4. Species and habitat protection related to construction activities, see ***Part 2, Chapter 16, Protected Species and Habitat***

5. Traffic control during construction
6. Disposal of construction materials
7. Stockpiling of construction materials and fill
8. Use of borrow areas
9. Mitigation measures proposed to reduce dredge and fill-related impacts

3.2.5.19 Project Costs

A table summarizing build alternative(s) costs should be included in the ***PER***. Project costs include the costs of design, right of way acquisition, residential and business relocation, construction, Construction Engineering Inspection (CEI), environmental mitigation, and utility relocation.

The construction cost for each build alternative may be developed using FDOT's Long Range Estimate (LRE) program or another acceptable cost estimation method, but at a minimum, the LRE should be developed for the preferred alternative once it has been identified. Design and CEI costs may be estimated as a fixed percentage of construction cost. Wetland mitigation costs can be based per acreage costs for the appropriate year in the most recent version of ***Chapter 11*** of FDOT's ***Work Program Instructions***. FDOT's ROW estimates are used for ROW costs. For a project with utility impacts, the costs of utility relocation (if known) both directly and indirectly to FDOT are included.

Projects estimated to have a total construction cost over $100 million require an Independent Project Cost (IPC) review on the preferred alternative. Coordination with Central Office Program Management Office is required.

3.2.5.20 Design Variations and Exceptions

Project features that will need a Design Variation or Design Exception based on the project design controls and criteria, are discussed for each build alternative. This should include any design variations or design exceptions which have received approval.

3.2.6 Project Specific Engineering Considerations for Build Alternatives

The following considerations should be documented in the ***PER*** for each build alternative, if appropriate. In instances of more than one build alternative, once the preferred alternative is selected, the ***PER*** can be modified to indicate which of the alternatives was selected as the preferred by highlighting or appending the alternative name to identify the preferred.

If any of the elements are not present in the proposed conditions, the appropriate box is checked in the ***PER Project Involvement Checklist*** to document without requiring further discussion in the ***PER***.

3.2.6.21 Managed Lanes and Tolled Projects

It is the policy of FDOT to employ Managed Lanes on appropriate facilities that currently, or are expected in the future to, experience significant congestion in accordance with FDOT's ***Managed Lanes, Policy No. 000-525-045***. Managed Lanes are highway facilities or sets of lanes where TSM&O strategies are proactively implemented and managed in response to changing traffic conditions to provide congestion relief. They are generally considered in congested urban areas with limited ROW and where the previous widening projects have not met travel demand. For this reason, the Managed Lanes alternative is evaluated for its ability to provide long-term mobility, managed capacity, travel time reliability, and travel options. The Central Office Connected Vehicles, Arterials & Managed Lanes Engineer and Systems Management Administrator can be contacted for guidance.

PD&E Studies can evaluate the Managed Lanes alternatives against the no-action (No-Build) alternative if the project is included in the MPO LRTP as a Managed Lanes project, or if previously completed planning or corridor studies had recommended Managed Lanes per ***23 U.S.C. §§ 129***, ***166***, and ***301***.

Typically, development of initial congestion pricing concepts and the decision to apply congestion pricing is made during the Planning phase. The initial congestion pricing concepts may be refined during the PD&E phase as more data related to engineering, finance, and public factors are collected. Therefore, the Project Manager should coordinate with the Florida Turnpike Enterprise Toll Studies and Forecasting Office about the decision to use congestion pricing and the scope of tolling analysis, if required during the PD&E phase.

If the project includes tolled facilities, the Project Manager must coordinate with the Florida Turnpike Enterprise Toll Studies and Forecasting Office for any tolled projects. The ***PER*** should discuss the results of the ***Toll Siting Technical Memorandum (TSTM)***, if applicable.

3.2.6.22 Interchanges on Interstate Highways

If the project includes a new interchange or a modification to an existing interchange, the Project Manager must coordinate with the District Interchange Review Coordinator (DIRC) throughout development of the project to ensure that the alternative which received Safety, Operational, and Engineering (SO&E) acceptability in the ***Interchange Justification Report (IJR)***, ***Interchange Modification Report (IMR)***, or ***Interchange Operational Analysis Report (IOAR)*** is included as one of the PD&E Study alternatives. Additionally, the Project Manager must coordinate the project schedule with DIRC such that the SO&E acceptability is obtained before the ***NEPA*** document is sent to OEM for final approval. The IAR process and PD&E approval is further discussed in ***Part 1, Chapter 4, Project Development Process***.

To streamline project development, the traffic operational analysis, safety analysis, and conceptual design analysis performed to address the requirements of ***23 CFR Part 624***

also support the development and evaluation of alternatives in the PD&E phase. FDOT's ***Interchange Access Request User's Guide*** provides guidance on how to prepare documents that support requests for new or modified access to the Florida Interstate system, Florida's Turnpike Enterprise, and non-interstate limited access facilities on the SHS.

If the preferred PD&E Study alternative is different from the interchange concept that received SO&E acceptability, the ***IJR***, ***IMR***, or ***IOAR*** must be re-evaluated to demonstrate that the preferred alternative meets the requirements of the IAR analysis procedure prior to the final approval of the ***NEPA*** document. The need and scope for the IAR re-evaluation must be determined through consultation with the DIRC, Statewide Interchange Review Coordinator (SIRC), and FHWA, as appropriate. See the ***Interchange Access Request User's Guide*** for IAR re-evaluation guidance.

3.2.6.23 ITS Transportation Systems Management & Operations Strategies

If a project uses federal funds and involves ITS technologies or a system of technologies, the requirements specified in the ***Procedure No. 750-040-003, Florida Department of Transportation Systems Engineering and Intelligent Transportation System (ITS) Architecture Procedure*** must be followed. The guidelines ensure an ITS project's compliance with ***23 CFR § 940.11*** and FDOT's requirements. Authorization of federal funds for construction or implementation of the project cannot proceed until compliance with ***23 CFR § 940.11*** is demonstrated.

23 CFR § 940.11 requires that all ITS projects funded with highway trust funds be based on systems engineering analysis and have a project level ITS architecture that is coordinated with the development of the regional ITS architecture before advancing to final design. The Project Manager must prepare a high-level project ConOps and a ***Preliminary System Engineering Management Plan (PSEMP)*** to document the results of the system engineering analysis. The ***PSEMP*** is a technical document that defines the project's system engineering process for ITS deployments from concept to system operations in Florida consistent with ***23 CFR Part 940***. ***PSEMP*** specifies systems engineering activities and what must be built to satisfy stakeholder needs. The Project Manager should coordinate with the District TSM&O Engineer or program manager and the County Engineer when developing the ***PSEMP***. Example of project alternatives that may require a ***PSEMP*** are Managed Lanes alternatives, transit alternatives, and any alternative with TSM&O strategies, because they involve ITS technologies and may be funded by federal funds.

Some features of the TSM&O alternative may be incorporated into the build alternative(s), even if the TSM&O alternative does not meet the purpose and need of the project on its own. See ***Part 2, Chapter 3A, Alternatives Analysis*** for more information regarding the required alternatives analysis.

For each build alternative, ITS facilities are discussed based on the systems engineering analysis and TSM&O strategies or technologies that will be added in the build

alternative(s). The applicability of TSM&O strategies or technologies should be confirmed with the District TSM&O Program Engineer.

3.2.6.24 Lane Repurposing

PD&E Studies that involve lane repurposing must meet the ***Corridor Capacity Policy, Topic Number 000-525-075*** and ***Lane Repurposing Guidebook*** requirements.

3.2.6.25 Landscape

Discuss any landscaping accommodations included in the build alternative(s). Refer to ***FDM, Part 2, Chapter 270, Planting Designs*** for more information on planting designs. The Project Manager should meet with the District Drainage Engineer and Landscape Architect to explore opportunities for integrating drainage features with existing and proposed landscaping.

3.2.6.26 Lighting

The ***PER*** should discuss lighting accommodations included in the build alternatives. Considerations should include safety, the impacts to neighborhoods, aesthetic impact, and impacts to sensitive species. Refer to ***FDM, Part 2, Chapter 231, Lighting*** for more information on lighting designs.

3.2.6.27 Wildlife Crossings

The ***PER*** should discuss potential wildlife crossings associated with the build alternative(s). See ***FDOT Wildlife Crossing Guidelines*** for more information on evaluating the appropriateness of including wildlife crossings for proposed projects and design considerations.

If applicable, the Project Coordination section of the ***PER*** should discuss the coordination with appropriate resource/regulatory agencies or reference the discussion included in the ***NRE***. Proposed wildlife crossings should also be coordinated with the Structures Office and included in the structures engineering and documentation.

3.2.6.28 Sea Level Rise

Coastal projects should meet the Sea Level Rise (SLR) requirements set forth in ***Chapter 3*** of the ***Drainage Manual, Drainage Manual, Topic No. 625-040-002***, if feasible. Consultation occurs with the District Drainage Engineer if the project is unable to meet the ***Drainage Manual*** SLR policy, or if using projected sea level elevations higher than the ***Drainage Manual*** are appropriate.

The SLR considerations and proposed measures are documented in the ***PER*** for each reasonable or viable alternative, including the influence of these measures on the engineering decisions for the alternatives' development and evaluation during the PD&E phase.

3.2.6.28.1 FDEP Sea Level Impact Projection Study

Per ***Chapter 62S-7, Florida Administrative Code (F.A.C.)***, FDOT must perform a Sea Level Impact Projection (SLIP) study for state-financed construction projects of a "potentially at-risk structure or infrastructure" within an "area at risk due to sea level rise". A "potentially at-risk structure or infrastructure" means a "critical asset", as defined in ***Section 380.093(2)(a)1.3, F.S.*** An "area at risk due to sea level rise" is defined as any location that is projected to be below the threshold for tidal flooding [two feet above (Mean Higher High Water)] within the next 50 years by adding the highest SLR projection required by ***Section 380.093(3)(d)3.b., F.S.*** In accordance with ***Section 380.0937, F.S.***, FDEP has developed a ***SLIP Study Tool*** for performing a SLIP study analysis and submitting it for review. Although consideration must be given to the findings of the SLIP studies, there is no requirement to implement mitigation strategies based on the ***SLIP Study Report***.

The ***Resilience Report*** that is prepared in the EST identifies whether a project requires a SLIP study. The results generated by the tool fulfill the requirements of ***Section 380.0937, F.S.*** The FDEP ***SLIP Study Tool*** must be accessed by an approved, registered user account. The FDOT Project Manager may be contacted for the registration account specific to each FDOT District. For these qualifying projects, per ***Rule 62S-7 F.A.C.***, FDOT may not commence construction until notified by the FDEP that:

- The ***SLIP Study Report*** was approved as meeting the requirements of ***Section 380.0937, F.S.***, and
- The FDEP 30-day publication period has ended.

The input parameters to the ***SLIP Study Tool*** should be documented within the ***PER*** produced as part of the PD&E Study. The ***SLIP Study Tool*** generates a ***SLIP Study Report***, which is published on the FDEP Slip Study website. If there are modifications to the preferred alternative in Design that would result in more significant impacts from SLR, the SLIP study is modified and resubmitted.

3.2.6.29 Structures and Bridges

The sections below include elements of build project alternatives that may require bridges, retaining walls, tunnels, culverts, or other structural analysis.

A proposed typical section and bridge concept for all bridges or build alternatives should be included in the ***PER*** along with the proposed superstructure, substructure, and foundation type for each bridge and the breakdown of cost.

3.2.6.29.1 Bridge Analysis

A bridge analysis is completed following ***FDM, Part 1, Chapter 121, Bridge Project Development***, which provides guidance on which elements and considerations are to be included in the analysis.

For projects involving replacement of a bridge that is considered historic, or has substantial community value, the study may include a rehabilitation or repair alternative.

If the bridge has an existing or proposed wildlife crossing feature, coordination with the District Environmental Manager and the resource agencies is required to ensure appropriate bridge design alternatives are considered.

The purpose of the bridge analysis is to determine the general attributes for the bridge alternative(s). The bridge analysis must provide conceptual guidance for the bridge designer who will develop specific attributes of the bridge (such as bridge design and structure type) in the ***BDR***. The scope of services for the PD&E phase must specify the level of structural analysis and development for each anticipated bridge structure in the study. The findings of the bridge analysis must be approved by the District Structures Design Office or the State Structures Design Office in accordance with ***FDM, Part 1, Chapter 121, Bridge Project Development***. The District Structures Design Engineer must concur with the findings of the bridge analysis by signing the ***Typical Section Package***. See ***FDM, Part 2, Chapter 260, Bridge Structures*** for the contents of the bridge analysis and ***BDR***. Bridge replacement PD&E Studies do not require preparation of a ***PER***, rather the preliminary engineering analysis results for these projects may be documented in the ***BDR*** or ***BRR***.

3.2.6.29.2 Braided Underpass Structures

Design of interchange concepts and ramp configurations must consider the three-dimensional relationship of roadway and bridge components. Such components can include the mainline, auxiliary lanes, ramps, Collector-Distributor (C-D) roads, braided (grade-separated) ramps, ramp terminal intersections, and ramp junctions. When an interchange concept involves braided underpass structures, the Project Manager must coordinate with the District Structures Design Engineer to ensure vertical and horizontal geometry of the bridges can be structurally designed. Braided underpass structures usually carry primary roadway traffic (e.g., mainline or C-D road traffic) over secondary roadway traffic (e.g., ramp traffic). They typically consist of single-span bridges where the beams or flat slab superstructure component is not oriented parallel to traffic of the overlying roadway and a portion of the superstructure and substructure extends beyond the limits of the traffic barriers (refer to the ***Structures Manual, Topic No. 625-020-018*** for details).

3.2.6.29.3 Bridge and Culvert Hydraulics

The drainage engineer must prepare an ***LHR*** for bridges over water in accordance with the procedures outlined in the ***Drainage Manual, Topic No. 625-040-002***. See ***Part 2, Chapter 13, Floodplains*** for guidance on how to prepare an ***LHR***. Depending on the level of engineering analysis during the PD&E phase, a ***Bridge Hydraulic Report (BHR)*** may be prepared to determine the hydraulic length of the bridge.

The District Drainage Engineer should review tidal projects, including impacts from SLR, to determine if coastal hydraulics is a meaningful consideration in a roadway or bridge

project's design. When coastal hydraulics is essential to the project, a coastal engineer must assist in determining the level of bridge analysis effort during project scoping. The ***Drainage Manual Topic No. 625-040-002*** discusses when a qualified coastal engineer should become involved in coastal analyses.

3.2.6.29.4 Perimeter Walls

The request for consideration of a perimeter wall must come from the local municipality in which the project is located or from a group of directly affected residences/property owners adjacent to the project. These requests should be documented in the project file as early in the project as possible (i.e., during the PD&E phase of the project). If a request for perimeter wall consideration has been made, it is the responsibility of the Environmental Office Project Manager to forward the request to the appropriate design staff/project manager to ensure complete follow through on the request.

Perimeter walls are not intended to provide any noise reduction, nor are they intended to serve as a substitute for noise barriers at locations where a noise analysis has determined that the construction of noise barriers is not feasible and cost reasonable. Perimeter walls are also not intended to be used as mitigation for environmental impacts. Perimeter walls will not be considered as a retrofit for existing conditions, and are only given consideration when a minimum of one of the following conditions are met:

1. Expanding the capacity of an existing highway by adding lanes to the outside of the existing travel lanes;

2. The significant alteration of the vertical or horizontal alignment of an existing highway;

3. A new highway on a new alignment;

4. The removal of existing extensive vegetation or visual barrier within the FDOT ROW;

Exceptions to any of the items listed above will be considered on a case-by-case basis by the Assistant Secretary of Engineering and Operations.

If at least one of the above conditions is met, further consideration for the construction of a perimeter wall can proceed. The following requirements must also be met:

1. Building permits for the structures on the adjacent land that would realize a benefit from the perimeter wall must be issued prior to the approval of the Environmental Document.

2. Traffic on the project roadway must be visible from the adjacent property.

3. All structures for which the perimeter wall is being considered must be immediately adjacent to the FDOT's ROW and within 150 feet of the edge of the nearest travel lane. Additionally, the perimeter wall must be constructible

within the FDOT's ROW or an easement must be granted to facilitate construction, if necessary.

4. The perimeter wall must be continuous, with no openings to accommodate driveways or other access requirements.

5. The cost of the perimeter wall per adjacent land owner, shall not exceed a unit cost equal to 2/3 that of a noise barrier, based on the current cost effectiveness criteria, for Noise Barriers (see ***Part 2, Chapter 18, Highway Traffic Noise***).

6. The height of a perimeter wall is limited to eight feet.

7. A simple majority of the adjacent property owners must support the construction of the perimeter wall. During the Design phase, FDOT will use either a perimeter wall workshop and/or a public survey to determine the wishes of the adjacent property owners. The survey effort may include a mailing of information related to the perimeter wall along with a survey form to be signed and returned to FDOT. Multiple techniques to solicit input may be used, including multiple mailings, door-to-door follow up, and even telephone solicitation (as needed) to provide adequate information to allow FDOT to make an informed decision on whether the perimeter wall is desired or not.

FDM, Part 2, Chapter 264, Noise Barriers and Perimeter Walls provides additional details on the requirements for consideration of perimeter walls.

3.2.6.30 Rest Areas, Weigh Stations, Truck Parking Areas

Features such as ramp configuration, signage, and ITS technologies should be coordinated with the Modal Development Office. Engineering considerations are discussed in the ***PER***.

3.2.6.31 Special Features

Any features that are not commonly associated with a transportation project should be discussed in the ***PER***. Examples could include any features included to protect or minimize impacts to the environment, or special aesthetic features such as public spaces, scenic views, lighting, landscaping, signage, vegetation, or pavers.

3.2.7 Environmental Considerations for Build Alternatives

The environmental topics/resources and environmental constraints identified within the project area must be incorporated as part of the alternative development and evaluation process. Refer to ***Part 2, Chapter 3A, Alternatives Analysis*** for detailed guidance.

If any of the elements are not present in the proposed conditions, the appropriate box is checked in the ***PER Project Involvement Checklist*** to document without requiring further discussion in the ***PER***.

3.2.8 Value Engineering

In accordance with the ***Value Engineering Program, Topic No. 625-030-002***, all projects on the National Highway System (NHS) utilizing federal aid highway funding with an estimated total cost of $50 million or more for non-bridge projects and $40 million or more for bridge projects shall have a minimum of one ***Value Engineering (VE) Study*** performed during the development of the project prior to the completion of final design. The estimated total cost shall include all costs associated with all phases of the project, including environment, design, ROW, utilities, and construction. Projects delivered with the Design-Build method of construction are not required by federal regulation to have a VE analysis. Projects that have a potential for value improvements and do not meet the minimum criteria may also be studied. For more information about conducting a VE Study, refer to ***Value Engineering Program, Topic No. 625-030-002***.

A VE Study can be conducted either during PD&E phase or during Initial Engineering Design. If the VE Study is conducted during the PD&E phase, it must occur after alternatives analysis is complete and before the public hearing (if held). When the VE Study is conducted during the PD&E phase, it gives the project an early review by other FDOT Offices, such as construction and maintenance, that could lead to significant life cycle cost savings. In addition, all VE issues/recommendations should be resolved before scheduling a public hearing. The Project Manager should coordinate scheduling of the VE Study with the District Value Engineer and make sure that the draft Environmental Document, ***PER***, and other technical documents are available for review by the VE team. Recommendations from the VE Study must be incorporated in the comparative alternatives evaluation and documented in the ***PER*** and the Environmental Document. If a VE Study is deferred to Initial Engineering Design, a statement to that fact is included in the ***PER***.

3.2.9 Preferred Alternative

The identification of the preferred alternative is based on the results of the alternatives evaluation, community feedback, and agency coordination. Refer to ***Part 2 Chapter 3A, Alternatives Analysis*** for information regarding alternatives development and analysis.

The Preferred Alternative section of the ***PER*** should include discussion of the supporting reasons for selecting a specific alternative as the preferred. In instances of more than one build alternative, once the preferred alternative is selected, the ***PER*** can be modified to indicate which of the alternatives was selected as the preferred by highlighting or appending the alternative name to identify the preferred. The ***PER*** should include the concept plans of the preferred alternative in the Appendices.

When the design features of the preferred alternative do not meet the designated design criteria, Design Exceptions or Design Variations must be prepared and approved per ***FDM, Part 1, Chapter 122, Design Exceptions and Design Variations***. Detailed design of these features is performed during final design, in accordance with the ***FDM, Part 1, Chapter 111, Final Engineering Design Process***.

The ***PER*** should discuss if the preferred alternative was designed to a higher level of detail compared to other alternatives and any updates after the public hearing. After the public hearing (if held) and public and agency comments are considered, appropriate sections of the ***PER*** are updated to include preliminary design details associated with the preferred alternative based on comments received.

3.2.10 Preliminary Engineering Documentation

A ***Preliminary Engineering Report (PER)*** is prepared to document the results of engineering analysis for a SEIR, Type 2 CE, EA, or EIS. This section provides guidance on documenting the engineering considerations and alternatives analysis in the ***PER***. Refer to ***Part 2 Chapter 3A, Alternatives Analysis*** for information on documenting alternatives in the Environmental Document. For bridge projects, a ***PER*** can be substituted with a ***BDR*** or ***BRR***.

PERs for FDOT Federal Projects are required to go through a Quality Assurance (QA)/Quality Control (QC) check at the District level before submittal to OEM for review. During this process the ***Preliminary Engineering Report QA/QC Checklist*** is completed and then submitted to OEM with the ***PER*** for review. The OEM review team has 30 days to review the ***PER***.

If the project requires a public hearing, a draft version of the ***PER*** is developed prior to the public hearing. After the public hearing is held, the draft ***PER*** is updated and finalized. A Florida registered Professional Engineer (PE) must sign and seal the Final ***PER*** in accordance with ***Chapter 471, F.S.***

The FDOT ***Preliminary Engineering Report Outline and Guidance Document*** provides guidance for the preparation of the ***PER***. At a minimum, the ***PER*** should contain the following:

1. Cover Page

    a. The ***PER*** must use the ***Technical Report Cover Sheet Requiring PE Signature, Form No. 650-050-38b*** as the cover page of the report. Only the Final Report is signed and sealed. “Draft” and the date should be included on the cover of the Draft Report. The cover page of the ***PER*** and any transmittal letters associated with information packages for FDOT Federal Projects should include the following ***NEPA*** Assignment standard statement (see ***Part 1, Chapter 4, Project Development Process***)

2. Project Summary

    a. Project Description - The project description includes a brief description of the project including name of the facility, location (City and County), project length, number of interchanges and bridges and/or major features, as applicable and as listed in ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency***. It must be consistent with

the Project Description in the Environmental Document. A project location map illustrating the project limits should display any landmarks mentioned in describing the proposed project or action. If the project is going to be designed or constructed in segments, then these segments should be clearly shown on the project location map.

b. Purpose and Need – This section includes the purpose and need for the project. It must match exactly with purpose and need described in the Environmental Document. Refer to ***Part 2, Chapter 1, Project Description, Purpose and Need, and Planning Consistency*** for more information.

   PER Project Involvement Checklists- The ***PER Project Involvement Checklists*** document presence in the study area and any involvement with the proposed alternatives. If any of the considerations/conditions listed on the checklist are present, but have no involvement with the alternatives, "no involvement" is selected in the ***PER Project Involvement Checklist***. Further discussion on that item is not needed elsewhere in the ***PER***. These checklists are intended to reduce redundancy or irrelevant discussion between and within project documents. The ***PER Project Involvement Checklists*** can be found in the ***PER Outline and Guidance Document*** on FDOT's ***Engineering Resources Website***.

c. Alternatives Analysis Summary – A summary of the alternatives analysis is provided per ***Section 3.2.4*** and ***Part 2, Chapter 3A, Alternatives Analysis***.

d. Description of the Preferred Alternative - This section includes a brief description of the preferred alternative, and explains why it was chosen as the preferred alternative, as well as any design exceptions or variations. An appropriate level of engineering detail is used to describe the preferred alternative such as alignment, number of lanes, their width, major structures, proposed capacity and safety improvements, multimodal accommodation, and estimated ROW to be acquired (parcels and acreage) and construction year per ***Section 3.2.9***.

e. List of Technical Documents – A list of technical documents prepared for the study is includes along with the dates of the draft or final Technical Documents as appropriate.

3. Existing Conditions - This section of the ***PER*** discusses previous planning studies, existing roadway conditions, and existing bridge conditions (if applicable) as listed in ***Section 3.2.3.2*** and ***Part 2, Chapter 3A, Alternatives Analysis***.

4. Design Controls and Criteria - Design controls and criteria used to develop alternatives are listed as discussed in ***Section 3.2.3.3***. This section also includes the sources of the applicable criteria.

5. Alternatives Analysis

    a. The no-action (no-build) alternative, TSM&O alternative, multimodal alternative, and build alternative(s) are included per ***Part 2, Chapter 3A, Alternatives Analysis***.

    b. Alternatives that have been considered but eliminated, both in previous planning studies and during the PD&E study are discussed per ***Part 2, Chapter 3A, Alternatives Analysis***.

    c. The engineering considerations in the development of build alternative(s) are discussed per ***Section 3.2.5*** and ***Section 3.2.6***.

    d. The potential environmental involvement for the build alternative(s) and no-action (no-build) alternative are summarized. The results of the environmental technical reports are incorporated by reference based on project involvement identified on the ***PER Project Involvement Checklists*** to reduce repetition and in accordance with ***Part 2, Chapter 3A, Alternatives Analysis***.

    e. The recommendations from the VE Study are summarized per ***Section 3.2.8*** in the comparative alternatives evaluation, if applicable. It should be stated if the VE Study will be performed in later project phases if not completed in PD&E. If a standalone VE Alternative was prepared, the findings are summarized per ***Part 2, Chapter 3A, Alternatives Analysis***. If other project specific alternatives were developed, they are summarized in accordance with ***Part 2, Chapter 3A, Alternatives Analysis***.

    f. The criteria used to assess the performance of the viable and reasonable alternatives and no-action (no-build) alternative are summarized. This should include an Alternatives Evaluation Matrix to tabulate the performance of each reasonable or viable alternative in meeting the evaluation criteria per ***Part 2, Chapter 3A, Alternatives Analysis***. The comparative alternative evaluation must include the no-action alternative (no-build alternative).

    g. The selection of the preferred alternative, and any other relevant details are discussed per ***Section 3.2.9***. The concept plans are included in the Appendix of the ***PER***.

6. Project Coordination

    a. Agency Coordination- This section briefly explains how the ETDM comments, local agency, and resource agency coordination were used to develop alternatives and select a preferred alternative.

    b. Public Involvement - This section includes a brief discussion of how public and stakeholder comments were considered in the development and

refinement of build alternatives and the comparative alternatives evaluation. It also should discuss any changes to the preferred alternative based on public hearing feedback. Refer to ***Part 1, Chapter 11, Public Involvement*** for public involvement requirements. It should include a reference to the project's ***Summary of Public Involvement (SPI)***.

c. Engineering Design Coordination - This section summarizes coordination with ongoing or committed projects near the project area. Major decisions affecting engineering items resulting from internal meetings and coordination should be noted. Refer to ***Part 2, Chapter 3A, Alternatives Analysis*** for more information on project coordination.

7. Appendices – The Appendices should include the ***Typical Section Package***, alternative(s) concept plans, and project costs. Draft ***PERs*** should include the concept plans that have been developed, and the Final ***PER*** should include the preferred alternative concept plans.

3.3 REFERENCES

Chapter 62S-7, F.A.C. Public Financing of Coastal Construction "Slip Study Rule". https://www.flrules.org/gateway/ChapterHome.asp?Chapter=62S-7

Executive Order (EO) 11988, Floodplain Management. https://www.epa.gov/cwa-404/floodplain-management-executive-order-11988

FDOT, 2021, WATERSS Process Guidebook. https://www.fdot.gov/environment/oem-divisions/eng/engineering-resources

FDOT, Access Management Guidebook. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/systems/systems-management/document-repository/access-management/fdot-access-management-guidebook---nov-19.pdf?sfvrsn=c5aa6e5_4

FDOT, Drainage Manual, Topic No. 625-040-002. https://www.fdot.gov/roadway/drainage/drainage-design-aids

FDOT, ETDM Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Florida Design Manual, Topic No. 625-000-002. https://www.fdot.gov/roadway/fdm/default.shtm

FDOT, FDOT Wildlife Crossing Guidelines. https://www.fdot.gov/environment/oem-divisions/env/protected-species-habitat

FDOT, Local Programs Manual, Topic No. 525-010-300. https://www.fdot.gov/programmanagement/LAP/LAP-TOC.shtm

FDOT, Preliminary Engineering Report Outline and Guidance Document. https://www.fdot.gov/environment/documents-resources

FDOT, Preliminary Engineering Report QA/QC Checklist. https://www.fdot.gov/environment/documents-resources

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

FDOT, State Safety Office Website. https://www.fdot.gov/Safety/default.shtm

FDOT, Safety Assessment Dashboard. https://www.fdot.gov/safety/safetyengineering/safetyanalysismethods.shtm

FDOT, Safety Analysis Guidebook for PD&E Studies. https://www.fdot.gov/Safety/safetyengineering/publications-and-manuals.shtm

FDOT, Traffic Analysis Handbook. https://www.fdot.gov/planning/systems/systems-management/traffic-analysis

FDOT, Work Program Instructions. https://www.fdot.gov/workprogram/development/wp-instructions.shtm

FDOT, Value Engineering Program, Topic No. 625-030-002. https://www.fdot.gov/roadway/qa/value-engineering.shtm

FHWA, 1987, FHWA Technical Advisory. T6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents. https://www.environment.fhwa.dot.gov/projdev/impta6640.asp

FHWA, 2019, FHWA Bicycle and Pedestrian Planning, Program and Project Development. https://www.fhwa.dot.gov/pgc/index.cfm?ddisc=121&dsub=1475

Section 335.065, F.S., Bicycle and pedestrian ways along state roads and transportation facilities. https://m.flsenate.gov/statutes/335.065

Section 380.093, F.S., Resilient Florida Grant Program. https://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0380/Sections/0380.093.html

Section 380.0937, F.S., Public Financing of Construction Projects Within Areas at Risk to Sea Level Rise. https://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0380/Sections/0380.0937.html

Title 23 CFR Part 450, Planning Assistance and Standards. https://www.ecfr.gov/cgi-bin/text-idx?SID=41629bc4699d654b4164d357da2329e0&mc=true&node=pt23.1.450&rgn=div5

Title 23 CFR Part 940, Intelligent Transportation System Architecture and Standards. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-K/part-940

Title 23 U.S.C. § 129, Toll roads, bridges, tunnels, and ferries. https://uscode.house.gov/view.xhtml?req=granuleid:USC-2010-title23-section129&num=0&edition=2010

Title 23 U.S.C. § 301, Freedom from Tolls. https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title23-section301&num=0&edition=prelim#:~:text=%C2%A7301.,from%20tolls%20of%20all%20kinds.

USDOT Order 5650.2, Floodplain Management and Protection. https://www.fhwa.dot.gov/engineering/hydraulics/policymemo/order56502.pdf

USDOT, United States Department of Transportation Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations. 2010. https://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/policy_accom.cfm

3.4 FORMS

Technical Report Cover Sheet Requiring PE Signature, Form No. 650-050-38b

Table 3-1 Example Elements in Design Criteria

Typical Section Design Criteria	
Travel lane width	Shared use path width
Bicycle lane width	Border width/Horizontal Clearance/Lateral Offset
Outside Shoulder width (paved width and full width) Inside Shoulder width (paved width and full width)	Pavement cross slope
Median width	Maximum roadside slopes
Sidewalk width	
Horizontal Alignment Design Criteria	
Maximum deflection without a horizontal curve	Desired length of curve
Maximum deflection angle through intersections	Maximum superelevation
Minimum radius of curve	
Vertical Alignment Design Criteria	
Maximum profile grade Vertical Clearance	Minimum stopping sight distance
Maximum change in grade without a vertical curve	Minimum crest vertical curve K value
Base Clearance	Minimum sag vertical curve K value
Minimum distances required between VPI's	Minimum crest vertical curve length
Minimum grade	Minimum sag vertical curve length
Structure Design Criteria	
Design loading and structural capacity	Inside shoulder width, bridge
Lane width, bridge	Cross slope, bridge
Bicycle lane width, bridge	Median width, bridge
Sidewalk and shared use path width, bridge	Vertical clearance, bridge
Outside shoulder width, bridge	
Drainage Design Criteria	
Water quality criteria	Hydraulic bridge/bridge-culvert design criteria
Water quantity/attenuation criteria	Coastal design criteria
Floodplain/Floodway criteria	Scour criteria
BMP design criteria	

Engineering analyses, design concepts, and accompanying reports should be prepared consistently with the latest edition of the following documents:

1. FDOT Design Manual (FDM), Topic No. 625-000-002
2. Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways (Florida Greenbook), Topic No. 625-000-015
3. Structures Manual, Topic No. 625-020-018
4. Approval of New or Modified Access to Limited Access Highways on the State Highway System (SHS), Topic No. 000-525-015
5. Level of Service Targets for the SHS, Topic No. 000-525-006
6. Median Openings and Access Management, Procedure No. 625-010-021
7. Manual on Uniform Traffic Studies (MUTS), Topic No. 750-020-007
8. Drainage Manual, Topic No. 625-040-002
9. Drainage Design Guide
10. Utility Accommodation Manual, Rule 14-46.001, F.A.C.
11. CADD Manual, Topic No. 625-050-001
12. Standard Plans for Road and Bridge Construction, Topic No. 625-010-003
13. Americans with Disabilities Act (ADA) Requirements for Access to Department Facilities, Topic No. 625-020-15
14. Transit Corridor Program, Topic No. 725-030-003
15. Right of Way Procedures Manual, Topic No. 575-000-000
16. Standard Specifications for Road and Bridge Construction
17. Project Traffic Forecasting, Procedure No. 525-030-120
18. Quality/Level of Service Handbook
19. Landscape, Policy No. 000-650-011
20. Traffic Engineering Manual (TEM), Topic No. 750-000-005

Figure 3-1 Manuals, Procedures, and Design Guides, and to Establish Project Development Design Controls and Criteria

21. Speed Zoning For Highways, Roads and Streets In Florida
22. Managed Lanes Guidebook
23. Context Classification Guide
24. Surveying and Mapping Procedure, Topic No. 550-030-101
25. Surveying and Mapping Handbook
26. Soils and Foundations Handbook
27. Interchange Access Request User's Guide
28. Traffic Analysis Handbook
29. Manual on Intersection Control Evaluation, Topic No. 750-010-003
30. FDOT Preliminary Engineering Report Outline and Guidance
31. Managed Lanes Policy, Policy No. 000-525-045
32. Systems Engineering and Intelligent Transportation System (ITS) Architecture Procedure, Procedure No. 750-040-003
33. General Tolling Requirements (GTR) Florida's Turnpike
34. WATERSS Process Guidebook
35. Corridor Capacity Policy, Topic No. 000-525-075
36. Lane Repurposing Guidebook

The engineering analysis may also use national publications such as:

1. Highway Capacity Manual (HCM)
2. American Association of the State Highway and Transportation Officials (AASHTO) A Policy on Highway Geometric Design (AASHTO Green book)
3. AASHTO Highway Safety Manual (HSM)
4. NCHRP Report 1043, Guide for Roundabouts
5. AASHTO Guide for the Development of Bicycle Facilities
6. AASHTO Guide for the Development of Pedestrian Facilities
7. Manual on Uniform Traffic Control Devices (MUTCD)

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PART 2, CHAPTER 3A

ALTERNATIVES ANALYSIS

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PART 2, CHAPTER 3A

ALTERNATIVES ANALYSIS

3A.1 OVERVIEW

This chapter contains the Florida Department of Transportation (FDOT's) procedure for the development and analysis of alternatives to support project location and design concepts during Project Development and the Environment (PD&E) phase. Alternatives development and analysis include, at a minimum, the no-build, transportation system management and operations (TSM&O), multimodal, and build alternative(s). The alternatives analysis identifies and accounts for features that are essential to assessing project impacts on the social, cultural, natural, and physical environment while balancing the extent to which needs are addressed and costs and environmental impacts are minimized.

This chapter provides guidance on the types of alternatives to be considered in the PD&E phase, comparative alternatives evaluation, elimination of alternatives, selection of the preferred alternative(s), and documentation of alternatives in both the Environmental Document and ***Preliminary Engineering Report (PER)***. Refer to ***Part 2, Chapter 3, Engineering Analysis*** for more guidance on engineering analyses and documentation in the ***PER***.

During the identification and evaluation of project alternatives, the Project Manager continuously coordinates with various offices within the District. This promotes collaboration between a multi-disciplinary team, including planners, engineers (Design, Drainage, Traffic Operations, etc.), and environmental specialists throughout the project development process. Continual coordination is critical to the project's success as it helps resolve and address issues that may affect the development of alternatives. This chapter provides guidance on the District coordination that should occur.

This chapter includes the same terminology as provided in the Definitions section of ***Part 2, Chapter 3, Engineering Analysis***.

3A.2 PROCEDURE

This section describes the procedure for the development and analysis of alternatives during the PD&E phase. Considerations for a project begin during the Planning phase where the project's purpose and need is defined and initial alternatives may be developed, analyzed, evaluated, and eliminated. The process is continued throughout the PD&E phase when alternatives may be further developed, refined, compared, and eliminated. Alternatives analyses includes coordination with other FDOT offices within the District and Central Office, Federally Recognized Native American Tribes, agencies, the public, and Office of Environmental Management (OEM) as the Lead Federal Agency due to ***National Environmental Policy Act (NEPA)*** Assignment, as appropriate.

3A.2.1 Project Coordination

A successful PD&E Study requires orderly and continuous coordination between planning, engineering, environmental, public involvement, and other staff from various offices. Recognizing that coordination begins during the project scoping process, the PD&E Project Manager is responsible for timely coordination with other offices within the District and Central Office, as applicable, to ensure proper development and evaluation of alternatives. Collaboration may occur in a formal meeting, or it may happen through regular project coordination, consistent with the guidance provided below and in ***Part 1, Chapter 4, Project Development Process***.

The Project Manager may coordinate the project development efforts with OEM for FDOT Federal Projects.

The Project Manager should also coordinate with staff from the other project phases prior to making any commitments to ensure the action involved is feasible. See ***Part 2, Chapter 22, Commitments*** and ***Procedure No. 650-000-003, Project Commitment Tracking***.

Project coordination and public involvement are documented in the Environmental Document depending on the type of document prepared and the specific topics/resources evaluated (see ***Part 1 Chapters 5-10*** of this ***Manual***).

The following technical reports specifically include a summary of project coordination:

- ***Summary of Public Involvement (SPI)***: The ***SPI*** contains each of the project components presented to agencies, elected officials, and the public. It includes contact lists, a summary of activities, materials, maps, invitations, flyers, and photos of any community interaction relating to the proposed project. This report compiles information gathered during public involvement activities and provides a repository for information to accurately assess the issues and concerns of a community. Refer to ***Part 1, Chapter 11, Public Involvement*** for further detail.

- ***Preliminary Engineering Report (PER)***: The Project Coordination Section of the ***PER*** should include a brief summary of any formal coordination, internal or external, that was relevant to the engineering decisions, and development and analysis of the alternatives. This does not include internal coordination between project team members and FDOT staff. However, meetings between FDOT groups, where project decisions or recommendations are made (such as coordination with the District Design Engineer, District Drainage Engineer, District Construction Engineer, etc.) should be summarized. Required coordination is highlighted in the ***Project Coordination Checklist***. Refer to ***Part 2, Chapter 3, Engineering Analysis*** for more information on the ***PER***.

The various coordination efforts the Project Manager undertakes during the development and analysis of alternatives in the PD&E Study is described below.

Planning

It is the responsibility of the Project Manager to request existing traffic data from the District Planning Office. See ***Part 1, Chapter 4, Project Development Process*** for guidance on using data from planning studies.

Projects involving Managed Lanes or tolled lanes require coordination with the Systems Planning Office, the Traffic Engineering and Operations Office in Central Office, and the Florida Turnpike Enterprise (FTE).

If the project includes a new interchange or a modification to an existing interchange, the Project Manager should coordinate with the District Interchange Review Coordinator (DIRC) throughout development of the project to ensure that the alternative which received safety, operational, and engineering (SO&E) acceptability in the ***Interchange Justification Report (IJR)***, ***Interchange Modification Report (IMR)***, or ***Interchange Operational Analysis Report (IOAR)*** is included as one of the PD&E Study alternatives.

The Project Manager should also coordinate with District Metropolitan Planning Organization (MPO)/Transportation Planning Organization (TPO) liaison to address and/or confirm planning consistency requirements.

Projects where a planning study was completed prior to the PD&E phase require the Project Manager to coordinate with the District Planning office (or the lead planning agency responsible for the study) to evaluate planning decisions that can be adopted into the PD&E phase (see ***Section 3A.2.3***).

Traffic Operations

Projects involving Intelligent Transportation System (ITS) and Transportation Systems Management and Operations (TSM&O) strategies need coordination with the Traffic Engineering and Operations Office.

The Project Manager should coordinate with the District Access Management Review Committee (AMRC) for any proposed deviations from the access management and median opening standards.

If a project involves Intersection Control Evaluation (ICE), coordination with District Traffic Operations is required.

Roadway Design

Alternatives should be reviewed for proper application of geometric design elements including design speed, typical section details, superelevation, horizontal and vertical alignment, constructability, and maintainability. Unconventional design alternatives and

innovative design concepts should be coordinated with the Central Office and/or District Design Engineer and the Structures Design Engineer.

During the development and analysis of alternatives, the reasonable or viable alternatives must be reviewed for situations that would require a Design Variation or Design Exception. If a variation or exception is needed, the Project Manager should coordinate with the District Design Engineer to receive District or Central Office approval, as required.

During the development of alternatives, the Project Manager should coordinate the typical sections with the District Design Engineer. After the public hearing is completed (if held) and the preferred alternative is confirmed by the District, a ***Typical Section Package*** is signed by the Engineer of Record and finalized in accordance with the ***FDOT Design Manual (FDM), Topic No. 625-000-002, Part 1, Chapter 120, Design Submittals***. The signed ***Typical Section Package*** is submitted as an appendix with the final ***PER***.

The Project Manager should coordinate with the District Construction Engineer regarding constructability, including construction activities, the ability to maintain traffic, major utility conflicts, access for construction equipment, and adequacy of construction phasing.

Coordination with the District Maintenance Office and District Pavement Engineer is needed for roadways that have required repair and reconstruction activities on two or more occasions due to emergency events pursuant to ***23 Code of Federal Regulations (CFR) § 667.9***. This includes review of the Transportation Asset Management Plan (TAMP) and related evaluation reports.

Multimodal Coordination

Coordination with the District Bicycle and Pedestrian Coordinator is needed to discuss multimodal connectivity, and the context sensitive solutions to be considered during the development of alternatives. The Project Manager should also coordinate with the District Transit or Modal Office prior to developing multimodal alternatives.

Toll Road

For projects that are on or within the vicinity of a toll road, the Project Manager should coordinate with the Florida's Turnpike Enterprise (FTE) Environmental Management Office's Project Development Engineer or responsible authority for the toll road. Alternatives should be reviewed for conformance to the ***General Tolling Requirements (GTR) Toll Siting 202 and 300 Toll Submittal Requirements***. Alternatives should also be coordinated with FTE's Tolls Design Office. After a preferred alternative is selected, a ***Toll Siting Technical Memorandum (TSTM)*** is prepared per the ***GTR*** using FTE's ***Toll Siting Technical Memorandum Template***.

Structures

The Project Manager should coordinate with the District Structures Design Engineer for conceptual location and design recommendations for each bridge alternative including

cost and any benefit-cost analyses used for selecting or recommending structure alternatives. The District Structures Design Engineer should approve the bridge analysis. In addition, the Project Manager should consult the District Structures Design Engineer if non-standard signs, lighting, signals, or other miscellaneous structures are under consideration.

Coordination with FDOT's Structures Design Office is required for Category 2 structures, as defined in ***FDM, Part 1, Chapter 121, Bridge Project Development***, Coordination with the US Coast Guard (USCG) (***Part 1, Chapter 16, Navigation***) and, the US Army Corps of Engineers (USACE) (***Part 1, Chapter 12, Environmental Permits***) is also required for permitting purposes and navigation requirements.

For coastal bridge replacement projects, consideration may be given to using clean demolition materials as an artificial reef under ***Title 33 United States Code (U.S.C.) Chapter 35***. This consideration should be part of the coordination and consultation process with the regulatory and resource agencies as well as with other stakeholders. The ***Bridge Development Report*** (***BDR)*** (see ***FDM, Part 1, Chapter 121, Bridge Project Development***) should include the approximate volume of debris and the estimated timeframe in which the material will be available.

Coordination with the District Maintenance Office and District Pavement Engineer is needed for bridges that have required repair and reconstruction activities on two or more occasions due to emergency events pursuant to ***23 CFR § 667.9***. This includes review of the Transportation Asset Management Plan (TAMP) and related evaluation reports.

Drainage

The Project Manager should meet with the District Drainage Engineer to explore watershed stormwater needs, floodplains, conveyance, and stormwater solutions or pond sites when developing alternatives.

If the project uses the Watershed Approach to Evaluating Regional Stormwater Solutions (WATERSS) process, the Project Manager should meet with the WATERSS District Champion and District Drainage Engineer to discuss the project's broad stormwater needs, review the Environmental Screening Tool (EST) ***WATERSS Report***, and review planning-level project characteristics that influence stormwater management strategies as the first step in the WATERSS process. Additional WATERSS coordination information is provided in FDOT's ***WATERSS Process Guidebook***.

The District Drainage Engineer should also review tidal projects to determine if coastal hydraulics will affect project design. If so, a Coastal Engineer should review the project in accordance with the ***Drainage Manual, Topic No. 625-040-002***. Per ***Chapter 62S-7, Florida Administrative Code (F.A.C.)***, FDOT must perform a Sea Level Impact Projection (SLIP) study for state-financed construction projects of a "potentially at-risk structure or infrastructure" within an "area at risk due to sea level rise". A "potentially at-risk structure or infrastructure" means a "critical asset", as defined in ***Section 380.093(2)(a)1.3, Florida Statutes (F.S.)***. An "area at risk due to sea level rise" is defined as any location that is projected to be below the threshold for tidal flooding [two feet above

(Mean Higher High Water)] within the next 50 years by adding the highest Sea Level Rise (SLR) projection required by ***Section 380.093(3)(d)3.b., F.S.*** See ***Part 2, Chapter 3, Engineering Analysis*** for more information on the SLIP Study.

Freight/Port

The Project Manager must coordinate with the District Seaport Coordinator and/or District Freight Coordinator whenever the project involves a port or is part of landside port transportation or access improvements, such as highways connecting Florida's ports to their markets.

Aviation

Federal regulations promulgated by the Federal Aviation Administration (FAA) exist to protect the national airspace system and must be considered and complied with when planning, designing, and constructing a FDOT project in the vicinity of a public-use or military airport. ***FDM, Part 1, Chapter 110, Initial Engineering Design Process*** provides guidance on the required action during Design.

FAA discourages placing stormwater management facilities within the airport's air operation area because of their potential for being hazardous wildlife attractants. The Project Manager must coordinate with the FDOT Airport Engineering Manager when stormwater treatment facilities are proposed within the vicinity of an airport. This coordination is essential to ensure the stormwater management facilities incorporate the FAA design criteria of no above-ground standing water.

For projects that are in the vicinity of a public use or military airport, the Project Manager must coordinate with the Airspace and Land Use Manager in the Department Aviation Office as early as possible in the initial phases of the project.

Scenic Highways

The Project Manager must coordinate with the District Scenic Highway Coordinator and the Byways Organization, for projects affecting designated scenic highways. If the project impacts a scenic highway and qualifies for screening, it will be identified in the EST as part of the Efficient Transportation Decision Making (ETDM) process.

Right of Way

The Project Manager should discuss Right of Way (ROW) requirements associated with the alternatives and coordinate with the District ROW office to identify or obtain ROW cost estimates, schedules, and work effort to complete ROW activities.

When relocations are anticipated for the preferred alternative, a ***Conceptual Stage Relocation Plan*** is developed consistent with ***Part 2, Chapter 4, Community Impact Assessment*** and ***Right of Way Procedures Manual, Topic No. 575-000-000***.

State-Owned Conservation Lands

Projects requiring the use of state-owned upland conservation lands which are managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation require additional coordination with the Acquisition and Restoration Council (ARC). 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 Project Manager should communicate with the Director of OEM 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 Project Delivery Coordinator (PDC). OEM will inform FDOT's Office of General Counsel (OGC) in Central Office as appropriate.

The project manager must coordinate early with the Land Management Agency and follow the procedures outlined in ***Part 2, Chapter 23, State-owned Upland Conservation Land Coordination*** for consideration by the ARC.

Landscape

The Project Manager should discuss landscaping needs for the preferred alternative with the District Landscape Architect.

Lighting

When applicable, the Project Manager should coordinate early with the local communities and stakeholders to identify the effects of project lighting. Considerations should include the impacts to neighborhoods, aesthetic impact, and impacts to sensitive species.

Wildlife

The Project Manager should discuss the opportunity or need for potential wildlife crossings or features with the District Environmental Manager, District Drainage Engineer, District Environmental Permits Coordinator, District Structures Design Engineer, and regulatory agencies and review the results of the ***Wildlife Crossings Potential Report*** prepared for the project during the ETDM screening.

Permits

Permits anticipated for the project are identified during the ETDM Programming Screen. Representatives from each of the environmental permit agencies comment on the general project (including potential permits from their agency). Early coordination with the District Environmental Permits Coordinator and regulatory agencies is necessary to support project permitting. For more information regarding the environmental permit process, see ***Part 1, Chapter 12, Environmental Permits***.

Utilities and Railroads

The Project Manager should begin early coordination with the District Utility Office and the District Railroad Office to identify and document potential utility and railroad conflicts, see ***Part 2, Chapter 21, Utilities and Railroads***.

Forecasting and Project Costs – Estimates

The Project Manager should begin early coordination with the Engineer of Record and District Estimates staff to determine appropriate inputs into the Long Range Estimate (LRE) program for all alternatives, and/or an Independent Project Cost (IPC) estimate for the preferred alternative, if applicable.

For a checklist of the recommended project coordination, see ***Table 3A-1***.

3A.2.2 Planning Phase Alternatives

The development and evaluation of alternatives may begin during the Planning phase. In this phase, the project's purpose and need are established based on identified transportation problems or deficiencies. Key sources of information include travel demand, land use, safety, as well as public and agency input.

Technical studies conducted during the Planning phase help define project parameters, determine funding needs, identify alternatives, and outline the concept and scope of transportation improvements. These studies support the development of the scope of work for PD&E phase and may include feasibility studies, ETDM screenings, master plans, corridor studies, multimodal corridor studies, traffic models, and freight corridor studies. Any relevant planning studies conducted prior to the PD&E phase should be listed in the ***PER***. Alternatives developed during the Planning phase must be documented in the ***PER*** and can be incorporated by reference into an Environmental Assessment (EA) or Environmental Impact Statement (EIS), provided certain conditions are met.

During the PD&E phase, the Project Manager reviews completed planning studies, documenting the alternatives already considered, screened, and eliminated through the planning process. The Project Manager must coordinate with the District Environmental Office and OEM to verify any planning decision, including alternatives eliminated and dismissed from further evaluation, that can be adopted or referenced in the Environmental Document and/or ***PER*** pursuant to ***23 U.S.C. § 168***, ***23 CFR § 450.318***, and ***23 CFR Part 450, Appendix A***. This coordination occurs during the project scoping process. See ***Part 1, Chapter 4, Project Development Process*** for more guidance.

Note that planning studies greater than five years old cannot be directly adopted into the PD&E Study and require an update of the data collected and potentially a refresh of both agency coordination and public involvement before proceeding.

If aspects of the project's alternative(s) analysis will be carried forward from any studies prior to the start of the PD&E phase, a brief summary of the study and any conclusions being carried forward should be documented in the ***PER***.

3A.2.3 Alternatives Development and Analysis during the PD&E Phase

Alternatives analysis is the process of developing, evaluating, and eliminating alternatives based on several factors including purpose and need, engineering and environmental aspects, and anticipated future conditions.

The process to develop and evaluate alternatives must also seek public and stakeholder input. This begins during the ETDM EST Programming screening, then is followed up by public involvement activities and coordination with agencies during the PD&E phase.

The alternatives analysis of a PD&E Study is documented in the Alternatives Analysis section of the ***PER*** (see ***Part 2, Chapter 3, Engineering Analysis***). The results of alternatives analysis are also documented separately in the Environmental Document, depending on the document type see ***Section 3A.2.9***.

The alternatives analysis of a PD&E Study must, at minimum, evaluate and document the following alternatives against the purpose and need of the project:

1. No-Action Alternative, or No-Build Alternative
2. TSM&O Alternative
3. Multimodal Alternative
4. Build Alternative(s)

Innovative alternatives such as Connected and Automated Vehicle (CAV) technology and tunneling can be given consideration when practicable, as based on the needs for the project, as defined in ***Part 1, Chapter 4, Project Development Process***, or for projects in highly congested urban areas. For more information on CAV see ***Florida's Connected and Automated Vehicle (CAV) Business Plan***.

3A.2.3.1 No-Action (No-Build) Alternative

The no-action alternative (or no-build alternative) serves as the baseline, or benchmark against which the build alternatives are evaluated. The no-action alternative is defined as the alternative in which the proposed project activity would not take place.

The alternatives analysis must analyze the effects of the no-action alternative on the surrounding social, cultural, natural, and physical environment to the same level of detail as the build alternative(s). The no-action alternative remains under consideration throughout the PD&E phase, including the public hearing. The ***PER***, EAs, and EISs must include and discuss the no-action alternative. Discussion about impacts of the no-action alternative should include the impacts to surrounding areas, such as increased travel demand on the existing facility and parallel routes, impacts to multimodal facilities, and impacts to safety and emergency response times, amongst others. If applicable, the no-action alternative should include a discussion of projects already programmed in the area

and if they change any of the anticipated impacts or the purpose and need of the PD&E project.

Documentation of the alternatives analysis in the ***PER*** should include advantages and disadvantages of the no-action alternative, and the reason(s) why the no-action alternative may or may not be the preferred alternative.

3A.2.3.2 Transportation System Management and Operations Alternative

The TSM&O alternative includes strategies with the operational objective of preserving the capacity and improving the security, safety, and reliability of the transportation system, while minimizing environmental impacts. These strategies may include upgrades or additions to the existing facility, such as ramp signals, arterial traffic management systems, traffic incident management, work zone traffic management, road weather management, traveler information services, congestion pricing, parking management, traffic control, commercial vehicle operations, transit priority signals systems, and freight management.

TSM&O alternative(s) may be considered in the Planning phase of the project, prior to evaluating build alternatives, engineering analysis must demonstrate that maximization of the existing system through various TSM&O strategies will not meet the purpose and need for the project. If the TSM&O alternative does not meet the purpose and need for the project, the ***PER*** must briefly explain why. If the TSM&O alternative meets the purpose and need, it should be discussed in the ***PER***. Discussion of the TSM&O alternative evaluation should consider Concept of Operations (ConOps) and system requirements as described in ***Florida's Statewide Systems Engineering Management Plan (SEMP)***.

Features considered and evaluated for the TSM&O alternative that do not meet the purpose and need on their own, may still be incorporated into build alternatives if appropriate.

3A.2.3.3 Multimodal Alternative(s)

Multimodal alternative(s) may be considered in the Planning phase of the project. If they are not eliminated early and are consistent with the purpose and need, they should be developed and analyzed as a build alternative(s).

The Project Manager should review the MPO Long Range Transportation Plan (LRTP), Local Government Comprehensive Plan (LGCP), local transit agency plans, Freight Mobility and Trade Plan, and the Transit Development Plan, where applicable, for any multimodal projects that are planned along the corridor for possible inclusion into the project and document in the ***PER***. Multimodal alternatives can include non-motorized facilities (for pedestrians and bicyclists) to meet the purpose and need for the project. These alternatives should include the types of facilities that are planned in the LGCP. Discussion of multimodal alternatives in the ***PER*** should include needs that are stated in

the LRTP and/or LGCP. If the multimodal alternative does not meet the purpose and need for the project, the ***PER*** must briefly explain why.

Features considered and evaluated for the multimodal alternative that do not meet the purpose and need on their own, may still be incorporated into build alternatives if appropriate.

3A.2.3.4 Build Alternative(s)

The build alternative(s) are proposed to address the project's purpose and need. Build alternatives should seek to avoid or minimize impacts to the environment by considering issues, concerns, and opportunities identified during the Planning phase of the project.

To ensure meaningful evaluation of alternatives, **each** build alternative **must** have:

1. Logical termini and should be of sufficient length to address environmental matters and the purpose and need on a broad scope.

2. Independent utility, i.e., to function as designed and be a reasonable expenditure even if no additional transportation improvements in the area are made.

The Project Manager and project team may consider opportunities for developing hybrid alternatives that could incorporate TSM&O strategies and/or multimodal options with the build alternative to meet the purpose and need for the project. Incorporation of TSM&O strategies in the build alternative requires the Project Manager to obtain input from the District TSM&O Program Engineer early during alternatives development.

Design details of the build alternative(s) should be commensurate with the information needed to define and evaluate environmental impacts, engineering considerations, traffic, and ROW needs. All build alternatives under consideration should be developed to a comparable level of detail so that their comparative merits may be evaluated. The design controls and criteria established for the project should be utilized for the design of each build alternative. Any existing deficiencies that do not meet the design criteria set forth for the project should be corrected through the design of the build alternative(s) where possible.

The design criteria and any deficiencies addressed or remaining should be discussed in the ***PER*** in accordance with ***Part 2, Chapter 3, Engineering Analysis***.

The ***PER Project Involvement Checklists*** are used to identify the features in the study area that are involved with the development and analysis of the project alternatives. Any identified features involved with the build alternatives or the preferred alternative are required to be discussed within the ***PER***. Any identified features that do not involve these alternatives should not be discussed elsewhere in the ***PER***; however, they should be discussed within the Environmental Document and technical reports as appropriate. The ***PER Project Involvement Checklists*** are located in the ***PER Outline and Guidance Document***. See ***Part 1, Chapter 3, Engineering Analysis*** for more information on the ***PER Project Involvement Checklists***.

3A.2.3.4.1 Evaluation of Build Alternatives

Alternatives may be developed through planning studies, corridor evaluations, and the ETDM screenings which refine the scope of the project and number of alternatives to be considered during the PD&E phase as discussed in ***Section 3A.2.2***.

The number of build alternatives to be analyzed during the PD&E phase should be considered carefully by the Project Manager as it will affect the project schedule and budget. The initial number of build alternatives to be analyzed in detail during the PD&E phase is based on the purpose and need and is typically relative to the size and complexity of the project. As such, only reasonable or viable build alternatives should be evaluated in detail.

For complex projects without a prior planning study that refined the number of alternatives to be considered in the PD&E phase, or where new information is available, an evaluation of alternatives may start by high-level screening of a broad number of improvements, concepts, or TSM&O strategies to eliminate unreasonable or nonviable alternatives from further detailed analysis. The high-level screenings can be used to quickly identify and evaluate the performance of various improvements and design concepts. FDOT design criteria and standards must be used when developing alternatives compatible with context classification and other applicable design controls.

A Type 2 Categorical Exclusion (CE) or State Environmental Impact Report (SEIR) must evaluate at least one build alternative and a no-action alternative.

An EA must evaluate at least one build alternative and a no-action alternative The EA does not need to evaluate in detail all reasonable alternatives for the project and may be prepared for one or more viable build alternatives.

An EIS must evaluate a reasonable range of alternatives in addition to a no-action alternative.

3A.2.3.4.2 Elimination of Alternatives that Do Not Meet Purpose and Need

Viable or reasonable alternatives are technically and economically feasible and meet the purpose and need for the proposed action, if there is more than one alternative proposed. The primary reason for eliminating an alternative from consideration early in the alternatives analysis is that it does not meet the project's purpose and need.

Once the purpose and need for a project is determined, whether in the planning or PD&E phase, the project alternatives must be evaluated for meeting the project purpose and need. Those alternatives that were considered but eliminated because they do not meet purpose and need are not feasible.

Whether this evaluation was completed during the Planning phase and is going to be adopted into the PD&E phase, or was conducted within the PD&E phase, a summary of

this evaluation should be included in the ***PER*** and the applicable Environmental Document per ***Section 3A.2.9***.

3A.2.3.5 Alternatives Considered but Eliminated

Project Managers are encouraged to consider and eliminate unviable or unreasonable alternatives early in alternatives development, and throughout the alternatives evaluation as appropriate. The high-level screening of alternatives determines if an individual alternative or a concept has one or more deficiencies that prevent it from being successfully implemented. The ***PER***, EA, and EIS should include all alternative types (TSM&O, multimodal, build) that were considered but eliminated.

Elimination of alternatives can be conducted in a series of eliminations (phases or steps) and should be conducted on alternatives that have been developed to the same level of detail. This could include a preliminary alternatives screening and elimination, after which the remaining alternatives are developed to a higher level of detail. If additional deficiencies are then identified, a secondary screening and elimination of alternatives would be appropriate. Once the screening of alternatives is complete, only alternatives carried forward for detailed analysis would remain to be included in the comparative alternatives evaluation and documented in detail in the ***PER*** and the applicable Environmental Document per ***Section 3A.2.9***.

Considerations during the screening of alternatives could include, but are not limited to the following:

- project purpose and need
- quantification of environmental impacts
- project and environment longevity considerations
- environmental controversy based on impacts to social, cultural, natural, or physical environment
- ROW and relocation impacts
- safety and emergency response issues
- limited access highways elevated section per ***Section 334.63, F.S.***
- agency and local government feedback
- design constraints
- constructability issues
- construction costs

- operational benefits

Although the no-action alternative does not typically meet the purpose and need, it must be considered throughout the PD&E phase. It serves as a benchmark during the comparative alternatives evaluation, and is used to identify the advantages and disadvantages of the alternatives.

The ***PER*** should include a section that discusses all alternatives which were considered for the project but eliminated from detailed study (during the planning or PD&E phase). The ***PER*** should include descriptions of each alternative considered in the alternatives evaluation; the methodology used for eliminating alternatives including screening criteria used; data used in evaluation; agency and public input into the evaluation process; and at what point in the process (planning or PD&E phase) the alternatives were eliminated. The Environmental Document briefly summarizes the development of alternatives and decisions made (including the reasons for eliminating alternatives from detailed analysis) during the alternatives evaluation.

3A.2.3.6 Project Specific Considerations

Some projects may require alternatives to be developed to address specific project requirements. If required or considered as part of the project then the details of these alternatives are summarized in the ***PER*** and the applicable Environmental Document per ***Section 3A.2.9***.

3A.2.3.6.1 Individual Section 4(f) Avoidance Alternative

An ***Individual Section 4(f) Evaluation*** is required when a project results in a “use” of ***Section 4(f)*** property that is **greater than a de minimis impact** and does not qualify for a ***Programmatic Section 4(f) Evaluation***. The evaluation must include the development and review of avoidance alternatives and other feasible and prudent alternatives.

An avoidance alternative is one that completely avoids using ***Section 4(f)*** property and it is determined feasible and prudent if it does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the ***Section 4(f)*** property (***23 CFR § 774.17***).

Alternatives should be developed only to the level of detail necessary to allow a reasoned determination of whether they:

- Avoid the ***Section 4(f)*** property,
- Meet the project’s purpose and need, and
- Are feasible and prudent based on engineering, environmental, and cost considerations.

If it is determined an avoidance alternative is feasible and prudent and meets the purpose and need of the project, this alternative must be selected by FDOT. If such an avoidance

alternative does not exist, then a Least Overall Harm Analysis is conducted to determine which of the potential feasible and prudent alternatives that "use" a ***Section 4(f)*** property have the net impact that results in the "least overall harm" in accordance with ***23 CFR § 774.3(c)(1)*** and "includes all possible planning to minimize harm to ***Section 4(f)*** property" as required by ***23 CFR § 774.3(c)(2)***. The District is responsible for selecting the alternative that has the least overall harm to a ***Section 4(f)*** property. If the net harm to the ***Section 4(f)*** properties in all the feasible and prudent alternatives is equal, the District may select any one of them. Refer to ***Part 2, Chapter 7, Section 4(f) Resources*** for more information regarding Feasible and Prudent Alternatives Analysis for ***Individual Section 4(f) Evaluations***.

3A.2.3.6.2 U.S. Army Corps of Engineers Permitting Consideration

The alternative that results in the least adverse impact on the aquatic ecosystem while also avoiding significant adverse effects to other environmental resources is required under the ***Section 404(b)(1) Guidelines*** of the ***Clean Water Act (CWA)***. This level of alternatives analysis is not required for every project; it applies only when a project will require an Individual Permit from the USACE. Under ***40 CFR § 230.7***, the consideration of alternatives described in ***40 CFR § 230.10(a)*** does not apply to General Permits**,** meaning projects that qualify for a General Permit do not require this analysis.

Projects involving new alignments or wetland impacts that exceed General Permit or Regional General Permit ***SAJ-92*** thresholds should consider preparing this analysis early, as these types of projects are more likely to fall under Individual Permit review. For projects with substantial wetland impacts, FDOT should invite the USACE to serve as a cooperating agency, ensuring early input on a project's purpose and need and on the alternatives analysis.

The USACE evaluates alternatives that can reasonably meet the project's overall purpose and that are practicable in terms of cost, logistics, and available technology. When FDOT selects an alternative with greater wetland impacts than another viable option, the documentation must clearly explain why (such as demonstrating that the chosen alternative reduces impacts to other important resources, including social, cultural, historic, or protected species considerations). Refer to FDOT's ***Permit Handbook*** and ***Part 1, Chapter 12, Environmental Permits*** for environmental permitting information.

3A.2.3.6.3 Interchange Access Request Alternative(s)

Interchange Access Request (IAR) alternatives involve a new interchange or changes to an existing interchange and thus require approval of an IAR document. An IAR demonstrates that a project is needed and is viable based on safety, operational and engineering criteria. To ensure access decisions are properly administered, both FHWA and FDOT have adopted policies regarding IARs. For projects involving interchanges on limited access facilities, refer to ***Part 1, Chapter 4, Project Development Process*** and the ***Interchange Access Request User's Guide*** for more information.

Interchange alternatives can be completed concurrently with the PD&E phase, but must be completed prior to ***NEPA*** approval. The final concept alternative in the IAR must match the preferred alternative in the PD&E Study for IAR approval.

3A.2.3.6.4 Limited Access Elevated Roadway Alternative

In accordance with ***Section 334.63, F.S.***, project concept studies and PD&E Studies for capacity improvement projects on limited access facilities must include the evaluation of alternative(s) that provide transportation capacity using elevated roadway above existing lanes.

3A.2.3.6.5 Value Engineering Alternative(s)

A Value Engineering (VE) Study can be conducted either during the PD&E phase or during Initial Engineering Design. If the VE Study is conducted during the PD&E phase, it must occur after alternatives analysis is complete and before the public hearing (if held).

Refinements to build alternatives or even entirely new alternatives can be developed as part of the VE analysis. These alternatives should be incorporated into the alternatives analysis at the appropriate level of detail for comparison.

Features considered and evaluated for the VE alternative that do not meet the purpose and need on their own, may still be incorporated into build alternatives if appropriate.

See ***Part 2, Chapter 3, Engineering Analysis*** for additional information regarding VE.

3A.2.4 Engineering Considerations for Build Alternatives

Refer to ***Part 2, Chapter 3, Engineering Analysis*** for detailed guidance on engineering considerations for build alternatives.

3A.2.5 Environmental Considerations for Build Alternatives

Development of build alternatives must consider the environment within which the project may be built and reflect any environmental constraints identified in the project area. Therefore, the development of the build alternatives should begin with overlaying existing environmental data and results of a field review on the base map. For projects that qualify for ETDM EST screening, additional information is also available in the Planning and/or ***Programming Screen Summary Report***.

FDOT environmental specialists and subject matter experts are involved throughout the project development process to evaluate potential environmental impacts and recommend impact avoidance, minimization, mitigation, or enhancement measures. The chapters in ***Part 2 of this Manual*** provide guidance on the environmental analysis to determine project impacts to environmental topics/resources. Technical reports are prepared early in the process and provide the details of the environmental analysis. The Environmental Analysis section of the Environmental Document discusses existing

environmental conditions of the project area, potential project impacts, and summarizes the results of the technical reports. These are documented differently depending on the Environmental Document type (see ***Chapters 5-10*** in ***Part 1 of this Manual***).

If any environmental topics/resources are not present in the study area, the appropriate box is selected in the ***PER Project Involvement Checklist*** to document the absence without requiring further discussion elsewhere in the ***PER***.

For environmental topics/resources that are present but are not involved with the build alternatives or the preferred alternative, the presence and "no involvement" is documented in the ***PER Project Involvement Checklist***. Environmental topics/resources that are involved with the build alternatives or preferred alternative and/or affect engineering decisions should be summarized in the appropriate Build Alternatives subsection of the ***PER***. ***Table 3A-2*** outlines the environmental topics/ resources to be considered, as needed, and provides links to the relevant chapters of this ***Manual*** for guidance on documentation requirements.

3A.2.6 Comparative Alternatives Evaluation

Each project presents a unique set of challenges, and the District should carefully provide a balance between the environmental impacts, engineering and operational considerations, project costs, and public and stakeholder input, when selecting the preferred alternative. A comparative alternatives evaluation is performed to objectively assess reasonable or viable alternatives at the same level of detail in a matrix format. The objective of the Alternatives Evaluation Matrix is to compare the performance of each alternative in meeting the evaluation criteria, and to qualify or quantify its impacts to the social, cultural, natural, and physical environment. Only reasonable or viable alternatives and the no-build alternative are included in the Alternatives Evaluation Matrix.

Alternative evaluation comparative measures should be presented in a manner to help the public, elected officials, and agencies to easily understand the advantages and disadvantages associated with each alternative.

Items to be compared in a matrix format in the ***PER*** and the Environmental Document are listed below. This list is not meant to be comprehensive, and should be tailored to each project.

Purpose and Need

1. Ability to meet Purpose and Need

Community Effects

1. Social (community facilities, community cohesion, etc.)
2. Economic (tax base, business access, etc.)

3. Land Use Changes (plan consistency, impact on planned developments, ability to encourage sprawl, etc.)
4. Aesthetic Effects (advertising signage, scenic highways, etc.)
5. Number of Parcels Impacted (business and residential)
6. Number of Relocations (business and residential)
7. Farmland

Cultural Resources

1. ***Section 4(f)*** or ***6(f)*** Resources
2. Historic Sites and Districts
3. Archaeological Sites
4. Parks, Recreational Areas, Wildlife/Waterfowl Refuges, and Protected Lands

Natural Resources

1. Wetlands and Other Surface Waters
2. Protected Species and Habitat
3. Essential Fish Habitat
4. Sole Source Aquifer(s)
5. Aquatic Preserves
6. Outstanding Florida Waters
7. Wild and Scenic Rivers
8. Coastal Barrier Resources
9. Floodplains
10. Water Resources

Physical Resources

1. Contamination/Hazardous Waste Sites
2. Noise Receptors
3. Navigation

4. Air Quality
5. Utilities and Railroads
6. Bicycles and Pedestrians
7. Constructability

Traffic Operations and Safety

1. Level of Service (LOS)
2. Throughput
3. Delay
4. Travel Time
5. Safety/ Crash Frequency
6. Vehicles Hours Traveled/Vehicle Miles Traveled (VMT)
7. Travel Time Reliability
8. Emergency response/Hurricane Evacuation details

Project Cost - The project cost should include costs associated with:

1. Design phase (may be estimated as a fixed percentage of construction cost)
2. ROW Acquisition (cost of acquiring ROW, relocation cost and business damages, if any)
3. Construction [developed using FDOT's LRE program or another acceptable cost estimation method] for the preferred alternative, projects requiring an IPC review should coordinate with the Central Office Program Management Office.
4. Construction Engineering and Inspection (CEI) (may be estimated as a fixed percentage of construction cost)
5. Environmental Mitigation Costs
6. Utility Relocation Cost (if known) both directly and indirectly to FDOT
7. Railroad Costs

An evaluation matrix for multimodal projects should include multimodal measures such as increased ridership, connectivity and accessibility, reduction of modal conflicts, and change in VMT.

For freight-focused projects, the comparative evaluation matrix should include freight-related performance measures. Such measures can include diversion estimates from through town, estimated travel-time savings between port and warehouse locations, travel time improvements for port access, travel-time differentials, and reduction in the number of truck trips.

3A.2.7 Preferred Alternative

The identification of the preferred alternative is based on the results of the alternatives evaluation, community feedback, and agency coordination. The District should identify the preferred alternative in the appropriate section of the ***PER***, and the applicable Environmental Document per ***Section 3A.2.9***. Both the ***PER*** and applicable Environmental Document should include supporting reasons for identifying the preferred alternative. The applicable Environmental Document should briefly discuss proposed design features of the preferred alternative. The ***PER*** requirements for discussion of the preferred alternative are discussed in ***Part 2, Chapter 3, Engineering Analysis***.

After a public hearing is held (if applicable) and public and agency comments are considered, appropriate sections of the Environmental Document and the ***SPI*** are updated to include information received from the public hearing. Additionally, the ***PER*** is updated to include preliminary design details associated with the preferred alternative based on comments received.

It is normally expected that a preferred alternative is chosen prior to the public hearing. If, in unusual circumstances a preferred alternative cannot be selected before the public hearing the District should coordinate with OEM (for FDOT Federal Projects). For these situations, additional public involvement after the public hearing could be necessary and could range from another public hearing to a meeting, or a flyer/mailer.

The preferred alternative (or portion thereof) for a project, after being identified in a Draft Environmental Impact Statement (DEIS), may be developed to a higher level of detail than other alternatives to facilitate the development of mitigation measures or compliance with requirements for permitting. The development of such higher level of detail must not prevent FDOT from making an impartial decision as to whether to accept another alternative that is being considered in the environmental review process. The District should coordinate with the State Environmental Development Engineer prior to developing the preferred alternative to a higher level of detail than other alternatives. If the DEIS does not identify the preferred alternative, the District should provide agencies and the public an opportunity to review the reasonably foreseeable impacts of the preferred alternative per ***23 CFR § 771.123***.

A Final Environmental Impact Statement (FEIS)/Record of Decision (ROD) or FEIS must identify the preferred alternative and should discuss the basis for its selection [See ***23 CFR § 771.125(a)(1)***]. The FEIS must also discuss substantive comments received on the DEIS and responses thereto, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. Refer to ***Part 1, Chapter 9, Final Environmental Impact Statement (FEIS)*** for more information.

3A.2.8 Commitments

During the PD&E phase, FDOT may need to make project commitments to resource agencies or other stakeholders to address social, cultural, natural, physical, or engineering issues. Once a Project Manager has identified a potential commitment, they are responsible for coordinating with the District Design Office, Construction Office, District Environmental Permits Coordinator, ROW Office, Environmental Office, or Maintenance Office to ensure the feasibility/viability of the commitment, before agreeing on the commitment. Refer to ***Part 2, Chapter 22, Commitments*** for procedures, coordination and documentation requirements for commitments.

3A.2.9 Alternatives Analysis Documentation

This section provides guidance on documenting the results of the alternatives analysis in the Environmental Document. Refer to ***Part 2, Chapter 3, Engineering Analysis*** for information on documenting alternatives in the ***PER***.

The location of alternatives documentation differs depending on the type of Environmental Document:

1. **Type 2 CE** - Alternatives analysis information is included in the ***PER***, and a description of the preferred alternative is included in the Project Description section of the Type 2 CE.

2. **EA** - Alternatives information from the ***PER*** is summarized in the Alternatives section of the EA.

3. **DEIS** - Alternatives information from the ***PER*** is summarized in the Alternatives section of the DEIS.

4. **SEIR** - Alternatives information is primarily included in the ***PER***, and a summary may be included in the Project Description section of the SEIR.

The Alternatives section of the **EA** or **DEIS** should:

1. Evaluate a reasonable range of alternatives for EISs, and for both, briefly discuss alternatives that the agency eliminated from detailed study and the reasons for their elimination.

2. Limit consideration to a reasonable number of alternatives.

3. Discuss each alternative considered in detail, including the proposed action so that reviewers may evaluate their comparative merits.

4. Include the no-action alternative.

5. Identify the preferred alternative or alternatives, if one or more exists

6. Include appropriate mitigation opportunities and measures not already included as a part of the proposed action or alternatives.

The Alternatives section of an **EA** or **DEIS** should be divided into the following sub-sections, as applicable:

1. Alternatives Development
2. Alternatives Considered but Eliminated
3. Alternatives Considered for Additional Study
4. Comparative Alternatives Evaluation
5. Preferred Alternative

Alternatives Development – This subsection includes a summary of planning studies, corridor evaluations, and screening reports. It provides a brief description of the original alternatives that were considered and the methodology used for evaluation, while referencing technical documents such as the ***PER*** and ***PTAR*** for detailed information. Public involvement is discussed as related to alternatives development.

Alternatives Considered but Eliminated - The alternatives considered but eliminated from detailed analysis are discussed, including alternatives considered and eliminated during the Planning phases. This subsection includes clarification of why the alternatives were eliminated, what criteria were used to eliminate them, and at what point in the process the alternatives were removed.

Alternatives Considered for Additional Study - The alternatives studied in detail during the PD&E phase are identified, including a concise discussion of how and why they were selected. Each alternative is described in sufficient detail to support decision-making. This subsection should provide a clear understanding of each alternative's termini, location, costs, and major design features (i.e., number of lanes, ROW requirements, median widths, access control). See ***Section 3A.2.5*** for information to consider for each build alternative. A summary of the environmental impacts of each alternative based on the information and analysis presented in the Environmental Analysis section of the Environmental Document is presented. The information should provide a clear basis for decision-making.

Comparative Alternative Evaluation – This subsection describes the methodology used to objectively compare all alternatives. It should present comparative evaluation results (qualitative and quantitative) in a matrix form. Information in the matrix should be consistent with the ***PER*** and applicable technical reports. It should describe the rationale and the factors used in the ranking of the alternatives.

Preferred Alternative - This subsection describes the alternative which the District is recommending to OEM for Location and Design Concept Acceptance (LDCA). The basis

for selection of the preferred alternative should be described in sufficient detail so the reader can understand the decision.

Below is an example of the discussion generally found in this section.

> *As a result of scoping, environmental analysis, the public hearing, and interagency coordination, the alternative identified for LDCA is (alternative name), which is (alternative description) (provide location of alternative specific details and typical sections).*

3A.3 REFERENCES

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FDOT, FTE General Tolling Requirements. https://floridasturnpike.com/business-opportunities/design/general-tolling-requirements/

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FDOT, Interchange Access Request User’s Guide. https://www.fdot.gov/planning/systems/systems-management/interchange-access-request

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Title 23 CFR § 667.9, Consideration of evaluations. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-667?toc=1

Title 23 CFR Part 450, Planning Assistance and Standards. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-E/part-450

Title 23 CFR Part 771, Environmental Impact and Related Procedures. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771

Title 23 CFR, Part 774, Parks, Recreation Areas, Wildlife and Waterfowl Refuges and Historic Sites (Section 4(f)). https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-774

Title 23 U.S.C. § 168, Integration of planning and environmental review. https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title23-section168&num=0&edition=prelim

Title 33 U.S.C. Chapter 35, Artificial Reefs. https://uscode.house.gov/view.xhtml?path=/prelim@title33/chapter35&edition=prelim#:~:text=(1)%20The%20term%20%22artificial,commercial%20and%20recreational%20fishing%20opportunities.

USACE, June 2014, Information for Preparing an Alternatives Analysis Under Section 404. https://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/Alternatives/20140624-Preparing_Alternatives_%20Analysis.pdf

Table 3A-1 Project Coordination Checklist

Category	When and What	Coordination
Planning	*Project Scoping* Discuss adoption of Planning phase analyses, review ETDM Screening Reports, request traffic data, and coordinate projects with Managed Lanes alternatives.	Coordinate with MPO/TPO liaison, Systems Planning Office, ETDM Coordinator and the Traffic Engineering and Operations Office in Central Office
Traffic Operations	*Project Scoping, throughout PD&E Phase* ITS and TSM&O strategies; intersection control evaluation considerations. Intersection Concept Evaluation New or modified interchange alternatives (SO&E acceptability in IJR, IMR, IOAR)	Coordinate with Traffic Engineering and Operations Office. DIRC
Roadway Design	*Throughout PD&E Phase* Application of geometric design elements; unconventional/innovative design concepts, design variations or exceptions, and typical sections (development and approval). Deviations from access management and median opening standards Repairs/reconstruction due to emergency events; review of TAMP and evaluation reports Constructability review including construction activities, the ability to maintain traffic assessment of alignment, profile and cross section, vertical clearance, major utility conflicts, access for construction equipment, and adequacy of construction phasing.	Coordinate with Central Office and District Design Engineer and Structures Design Engineer. District AMRC District Maintenance Office and Pavement Engineer District Construction Engineer

Table 3A-1 Project Coordination Checklist (Page 2 of 4)

Category	When and What	Coordination
Multimodal Coordination	Project Scoping, During PD&E Phase Multimodal connectivity; context sensitive solutions and development of multimodal alternatives	Coordinate with District Transit or Modal Office. Coordinate with District Bicycle and Pedestrian Coordinator
Toll Road	*During PD&E Phase* Conformance to General Tolling Requirements (GTR); TSTM preparation	Coordinate with FTE (or responsible authority) Environmental Management Office.
Structures	*Throughout PD&E Phase* Conceptual location/design recommendations for bridge alternatives; benefit-cost analyses; approval of bridge analysis. Discuss any non-standard signs, lighting, signals, or miscellaneous structures.	Coordinate with District Structures Design Engineer.
	Repairs/reconstruction due to emergency events for bridges; review of TAMP and evaluation reports	District Structures Design Engineer and Pavement Engineer
	Special bridge structures (moveable, historic, signature bridges); permitting and navigation requirements. Use of demolition materials as artificial reef for coastal bridge replacement.	District Structures Design Office; US Coast Guard (USCG); US Army Corps of Engineers (USACE)
Drainage	*Project Scoping, Throughout PD&E* WATERSS process for stormwater management strategies, including watershed stormwater needs, floodplains, conveyance, stormwater solutions/pond sites. Tidal projects and coastal hydraulics; SLIP Study for at-risk structures	Coordinate with District Drainage Engineer and/or WATERSS District Champion.

Table 3A-1 Project Coordination Checklist (Page 3 of 4)

Category	When and What	Coordination
Freight/Port	*During PD&E Phase* Port involvement or landside port transportation/access improvements	Coordinate with District Freight Coordinator and District Seaport Coordinator.
Aviation	*During PD&E Phase* Compliance with FAA regulations for projects near airports	FAA; FDOT Airport Engineering Manager; Airspace and Land Use Manager, Department Aviation Office.
Scenic Highways	*During PD&E Phase* For projects affecting designated scenic highways as identified in EST screening	Coordinate with District Scenic Highway Coordinator; Byways Organization
Right of Way	*For the Preferred Alternative* Review of Conceptual Stage Relocation Plan for relocations	Coordinate with District ROW office.
State-Owned Conservation Lands	*Project Scoping, throughout PD&E phase for the Preferred Alternative* For projects involving the use of state-owned upland conservation lands; Upland Easement Application requirements; early coordination for ARC consideration	Coordinate with Director of OEM; Project Delivery Coordinator (PDC); Land Management Agency; FDOT Office of General Counsel (OGC), and Acquisition and Restoration Council (ARC).
Landscape	*For the Preferred Alternative*	
	Discuss Landscaping needs for preferred alternative.	Coordinate with District Landscape Architect.
Lighting	*For the Preferred Alternative* Identify lighting impacts to neighborhoods, aesthetics, and sensitive species.	Coordinate with local communities, agencies, and stakeholders.

Table 3A-1 Project Coordination Checklist (Page 4 of 4)

Category	When and What	Coordination
Wildlife	*For the Preferred Alternative* Discuss potential wildlife crossings.	Coordinate with District Environmental Manager; District Drainage Engineer; District Environmental Permits Coordinator; District Structures Design Engineer; regulatory agencies.
Permits	*For the Preferred Alternative* Permits required for the project; early coordination for permitting	Coordinate with District Environmental Permits Coordinator and regulatory agencies.
Utilities and Railroads	*During the PD&E Phase* Identify and document potential utility and railroad conflicts.	Coordinate with District Utility Office and District Railroad Office.
Forecasting and Project Costs	*During PD&E Phase and for the Preferred Alternative* Determine Inputs for Long Range Estimate (LRE) program; IPC estimate for preferred alternative.	Coordinate with Engineer of Record and District Estimates staff for LRE program and IPC estimate.

Table 3A-2 Environmental Topics/Resources Considered

Topic/Resource	Part	Chapter
Community Effects		
Social	2	4
Economic	2	4
Land Use Changes	2	4
Mobility	2	4
Aesthetic Effects	2	5
Relocation Potential	2	4
Farmland	2	6
Cultural		
Historic Sites/Districts	2	8
Archaeological Sites	2	8
Section 4(f) of the USDOT Act of 1966, as amended	2	7
Section 6(f) of the Land and Water Conservation Fund Act of 1965	2	7
Recreational Areas and Protected Lands	2	7 and 23
Natural		
Protected Species and Habitat	2	16
Wetlands and Other Surface Waters	2	9
Essential Fish Habitat	2	17
Floodplains	2	13
Sole Source Aquifer	2	11
Water Resources	2	11
Aquatic Preserves	2	11
Outstanding Florida Waters	2	11
Wild and Scenic Rivers	2	12
Coastal Zone Consistency	2	14
Coastal Barrier Resources	2	15
Physical		
Highway Traffic Noise	2	18
Air Quality	2	19
Contamination	2	20
Utilities and Railroads	2	21
Bicycles and Pedestrians	2	3
Navigation	1	16
Construction	2	3

*FDOT PD&E Manual

PART 2, CHAPTER 4

COMMUNITY IMPACT ASSESSMENT

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PART 2, CHAPTER 4

COMMUNITY IMPACT ASSESSMENT

4.1 OVERVIEW

This chapter contains the Florida Department of Transportation's (FDOT's) procedures for conducting a Community Impact Assessment (CIA). Topics considered during a CIA include social, economic, land use changes, mobility, aesthetics effects, and relocations. Farmland is also considered during a CIA; however, it follows a different process for analysis provided in ***Part 2, Chapter 6, Farmland*** and is not included in the topics discussed in this chapter. The CIA process identifies and addresses potential effects of transportation projects on communities and community resources. The CIA process is collaborative, involving government agencies, the public, and other stakeholders, to ensure that community values and concerns receive consideration during project delivery and that no population groups are disproportionately affected.

4.2 PROCEDURE

FDOT proactively engages with communities in delivering transportation projects. The CIA process supports legal requirements during project development to consider and account for community resources that may be affected by project activities. Specific non-discrimination laws considered during the CIA process include those in ***Table 4-1***. Information gathered through the CIA process is carried forward and used to support decision-making throughout project delivery.

Table 4-1 Non-Discrimination Laws

Demographic Characteristics	Legal Authority for Protection from Discrimination
Race, color, or national origin	Title VI of the Civil Rights Act
Disability	Americans with Disabilities Act and Rehabilitation Act
Age	Age Discrimination Act of 1975
Gender	23 United States Code (U.S.C.) § 324
Handicap, age, race, color, sex, or national origin	23 Code of Federal Regulations (CFR) Part 771

The CIA process focuses on the topics listed in ***Table 4-2***. The topics are described in ***Section 4.2.2.3.1***.

Table 4-2 Community Impact Assessment Topics

Social Demographics Community Cohesion Safety/Emergency Response Community Goals Quality of Life Special Community Designations **Economic** Business & Employment Tax Base Traffic Patterns Business Access Special Needs Patrons	**Land Use Changes** Land Use – Urban Form Local Plan Consistency Open Space Sprawl Focal Points **Mobility** Modal Choices ○ Pedestrian ○ Bicyclists ○ Transit Transportation Disadvantaged Connectivity Traffic Circulation Public Parking	**Aesthetic Effects** Noise/Vibration Viewshed Compatibility **Relocation Potential** Residential Non-Residential Public Facilities Businesses

The CIA process typically starts at the earliest planning stages of a project and continues throughout the project delivery process. Each successive phase builds on the data, analysis, and results of previous assessments to achieve the particular objectives of the project phase. The level of analysis required to determine potential project effects varies according to project phase, project context and scope, intensity of public interest, and potential for project effects. Projects qualifying for screening through the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST) receive early consideration of CIA topics. Project types qualifying for ETDM screening are identified in the ***ETDM Manual, Topic No. 650-000-002***.

The ETDM screening evaluations available are:

1. Planning Screen – This initial screening identifies possible topics that need to be considered as the proposed project advances. This is the first opportunity for comments from other agencies, the public, and stakeholders.

2. Programming Screen - This screening builds upon the Planning Screen evaluation (if conducted) to further identify, refine, and understand potential project issues while supporting the development of a scope of service to complete the detailed analysis during the Project Development and Environment (PD&E) phase.

4.2.1 Projects Not Qualifying for Efficient Transportation Decision Making Screening

For projects not qualifying for an ETDM screening, such as Type 1 Categorical Exclusions (CEs) and Non-Major State Actions (NMSAs), consideration of the CIA topics is needed but an in-depth analysis is not required. The EST Area of Interest (AOI) tool may be used to obtain demographic and community focal point data for the CIA. If needed, a ***CIA Technical Memorandum*** may be prepared to address a potential adverse effect on one or more CIA topics. Additional information about ***CIA Technical Memorandums*** is provided in ***Section 4.2.2.3***.

4.2.2 PD&E Phase

The CIA process is an important part of the PD&E Study to comply with the ***National Environmental Policy Act (NEPA)***, which requires federal agencies to consider the human environment in the decision-making process. The CIA process also applies to FDOT State Projects. Generally, as a project transitions from the ETDM screening to the PD&E phase, the CIA topics receive more detailed consideration.

In the PD&E phase, project detail is developed to the level necessary to accurately assess and address potential project effects on the social, cultural, natural, and physical environments and support project decisions. The PD&E Study considers the potential environmental impacts of a project and the community's need for safe and efficient transportation. The CIA is the portion of the study that considers potential effects, both positive and negative, on the human environment.

The CIA process supports the development of an Environmental Document. Information on the various types of Environmental Documents is provided in ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***, and ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***. The level of assessment and documentation varies by project depending on the:

- Scale and complexity of the project
- Intensity of public interest
- Potential for significant impacts
- Degree and quality of information available from previous activities

CIAs are conducted for projects with minimal or no impact potential to those with greater impact potential. While CIA topics are considered, they are not usually evaluated in detail for projects with minimal or no impact. In determining the appropriate level of analysis and need for additional information for the CIA process, consider if the project would:

- Require large amounts of Right of Way (ROW).

- Displace a large number of people.
- Disproportionately affect a potentially distinct community or group.
- Cause a substantial increase or decrease in traffic through an area.
- Conflict with local government comprehensive plans.
- Impact community facilities, such as schools, parks, or churches.
- Impact historic districts or community landmarks.
- Adversely affect aesthetic features, such as a canopy road or scenic vista.
- Disrupt or divide a neighborhood.

In the PD&E phase, further evaluation of community effects may be unnecessary if:

- The CIA was adequately completed and potential community effects were adequately considered and documented during Planning phase;
- Conditions in the project area have not changed appreciably since the prior CIA, and
- A community concern is not identified during the Planning phase

Any CIA topic that was not adequately evaluated and documented during the Planning phase must be evaluated in the PD&E phase. Each of the CIA topics ***(Table 4-2)*** are discussed in the Environmental Document to show when and how they were considered in project decision-making.

4.2.2.1 Community Information and Data

Information from an earlier project phase or acquired in preparation for the PD&E Study can help determine the level of analysis for the CIA. For some projects, this information may indicate previously identified community concerns or topics requiring additional consideration such as potentially distinct communities or groups in the project vicinity.

Community information is used to describe the context of the project area including community facilities/services; presence of certain population groups; and indications of community values, concerns, and preferences. Sources for this information may include:

- EST (e.g., AOI Tool)
- Most recent U.S. Census Bureau data (e.g., American Community Survey)

- City/county/regional planners within government planning, transit, economic development, housing, and other departments
- Community plans or studies and related public involvement (e.g., neighborhood plan, redevelopment plan, public infrastructure/service plan, and corridor study)
- County property appraiser (e.g., parcel data)
- State licensing agencies (e.g., social service agency and business data)
- Bureau of Economic and Business Research (BEBR)
- Commercially available data sources (e.g., employment data)
- Local historical society (if the project is in a historic district or historically significant area)

A field review provides an opportunity to check for inconsistencies between data sources and field conditions. If needed, coordination with the Metropolitan Planning Organization (MPO)/Transportation Planning Organization (TPO), local government planners, and neighborhood groups can assist to identify community/neighborhood boundaries (e.g., local government jurisdiction, delineated neighborhood, and residential subdivision); special districts (e.g., school, legislative, historic, redevelopment, and employment); and community focal points, history, and goals.

4.2.2.2 Supporting Community Outreach

Special community outreach needs to support the CIA should be identified within the ***Public Involvement Plan*** (***PIP***). Close coordination between the PD&E team's CIA analyst and public involvement coordinator throughout the CIA process will help maximize effectiveness and minimize duplication of efforts in obtaining public input.

Community outreach should be performed throughout the project development process to provide opportunity for input on the project, verify community data, and identify community concerns and preferences for project alternatives/features. The focus of PD&E phase community outreach is specific to community groups and neighborhoods with potential for project effects. The methods and level of community outreach should be tailored to the specific community, the nature of the project, and the potential for project effects. Special considerations may be necessary to effectively involve potentially distinct communities or groups.

For more information about the development of the ***PIP*** and public involvement techniques, see ***Part 1, Chapter 11, Public Involvement*** and the ***FDOT Public Involvement Handbook***.

4.2.2.3 Conducting Community Impact Assessments

The inventory of community data and public commentary are examined relative to each CIA topic to evaluate potential project effects. The CIA also analyzes interrelationships among the CIA topics and how various considerations contribute to the avoidance, minimization, or mitigation of project impacts. When no adverse effects are anticipated, a brief summary of the analysis and findings can be incorporated within the Environmental Document. If an adverse effect is anticipated for one or more CIA topics, then a ***CIA Technical Memorandum*** can be prepared to support the findings summarized in the Environmental Document. The ***CIA Technical Memorandum*** should only address the CIA topic(s) resulting in an adverse effect. See ***Figure 4-1*** for a suggested outline of the ***CIA Technical Memorandum***. When preparing a separate ***CIA Technical Memorandum*** for FDOT Federal Projects, the cover page must include the ***NEPA*** Assignment standard statement and use the ***Technical Report Cover Sheet, Form No. 650-050-38a***.

4.2.2.3.1 Potential Direct Effects

Direct effects include the potential for both positive and negative impacts from the project on the community. An example of a direct effect is increased customer exposure to a grocery store due to a higher level of vehicle traffic on a widened road. The widened road might also make it more difficult for a local transportation-disadvantaged population to walk across the road to access the grocery store. ***Table 4-3*** provides a list of considerations to assist in identifying direct effects for each CIA topic.

Social

Assessing the potential effects on community groups and community resources includes consideration of the following: disproportionate impacts related to ***Title VI*** populations (race, color, national origin, disability, age, or gender) and other nondiscrimination statutes; community cohesion (potential for the project to create/eliminate barriers to interaction); potential changes affecting the safety of pedestrians, bicyclists, and motorists; potential changes affecting emergency service response times; and whether the project complements or detracts from the community's goals or special designations (e.g., community redevelopment area). Understanding the community's history, goals, focal points, unique attributes, and quality of life features help identify potential project effects.

Economic

Assessing the potential effects on economic activity includes consideration of the following: presence of business and employment activities in the study area, including industries with special needs (e.g., freight distributor) or considerations (e.g., regional employer); presence of economic-oriented land uses/designations; and understanding of economic development plans/goals and community development priorities in the study

area. Potential impacts on the local government tax base should be identified as well as changes to routes, access, parking, or visibility that could benefit or impair businesses, employment centers, or community facilities.

Land Use Changes

Assessing the potential effects on local and regional land use and transportation plans includes consideration of the following: project's consistency with the physical character of the area and applicable community plans; project's compatibility with the community's land use vision and existing/planned land use patterns and urban form, and consistency with the local government comprehensive plan(s). The potential for changes in the acreage devoted to recreational/open space and rural lands should be identified as well as agricultural lands not protected under the ***Farmland Protection Policy Act (FPPA) of 1981*** and ***7 Code of Federal Regulations (CFR) Part 658*** (see ***Part 2, Chapter 6, Farmland***).

Mobility

Assessing the potential effects on mobility and accessibility in the study area includes consideration of the following: non-driving population groups (i.e., elderly, young, disabled, and low-income individuals); existing and planned transportation modes (e.g., pedestrian, bicycle, transit, and vehicle); and existing and planned services (e.g., public bus routes, school bus routes, and transportation disadvantaged services). If a transportation-disadvantaged population is present in the study area, consider potential effects on the transportation system serving this population. If changes to existing travel patterns, traffic circulation, accessibility, or public parking are envisioned, consider who might benefit or be impacted as a result.

Aesthetic Effects

Assessing the project's compatibility with the community's aesthetic values includes consideration of the following: noise sensitive sites (e.g., residential areas, hotels, nursing homes, and parks); vibration sensitive sites (e.g., residential uses, eye clinics, dentist offices, and hospitals); special viewsheds and vistas; community focal points; historic structures, districts, and landmarks; and community character (e.g., existing and planned streetscaping, highway beautification, canopy roads, and development patterns). See ***Part 2, Chapter 5, Aesthetic Effects*** for further guidance on evaluating aesthetic effects.

Relocation Potential

The CIA must also identify residences, businesses, and institutional or community facilities that may require relocation to accommodate the project. ***Title VIII of the Civil Rights Act of 1968 [42 United States Code (U.S.C.) §§ 3601-3619]*** guarantees each person equal opportunity in housing. Typically, when relocations are anticipated for a project regardless of Environmental Document type, a ***Conceptual Stage Relocation Plan*** (***CSRP)*** is prepared. For projects requiring minor relocation needs, a memorandum

detailing the required relocation information may be prepared instead of a ***CSRP***. See ***Section 4.3.2*** and ***Section 4.3.3*** for more information.

4.2.2.3.2 Potential Indirect Effects

Indirect effects are caused by other actions that have an established relationship or connection to the project. These related actions would not or could not occur without the original project. For example, the displacement of an anchor tenant in a business complex as a result of a new road alignment could cause other tenants in unaffected buildings to relocate.

Use information from any previous planning studies, community data, community commentary, and the CIA considerations listed in ***Table 4-6*** to assist in identifying indirect effects. Methods for analyzing indirect effects include quantitative methods, such as travel demand models and integrated land use and transportation models, and qualitative methods, such as scenario writing, focus groups, and expert panels.

4.2.2.3.3 Determining Project Effects

A review of potential direct and indirect effects helps to identify the potential for project impacts on community resources, values, and desires, and the public's reaction to the proposed project. Consider both positive effects (benefits) and adverse effects (burdens). Project effects should be described based on the following factors:

- Magnitude - size or amount of effect
- Geographic extent - how widespread the effect may be
- Duration and frequency - whether the effect is a one-time event, intermittent, temporary, or chronic

When characterizing beneficial and adverse effects, consider the project context. Effects may vary depending on the setting, or context, of the project. Community input will help with this assessment.

One of the functions of the CIA is to identify methods to avoid, minimize, or mitigate potential project impacts or enhance the project's fit in the community. The range of solutions to address adverse project impacts are described as follows:

- **Avoidance** - Alterations to the project so that an adverse effect does not occur (e.g., minor alignment shifts or reduced typical-sections to avoid a community resource)
- **Minimization** - Modifications to the project to reduce the severity of the effect (e.g., timing construction to coincide with the tourism off-season)

- **Mitigation** - Actions to alleviate or offset an effect or replace a protected resource (e.g., replacement of impacted property or facilities)

- **Enhancement** - Additional desirable or attractive features added to the project to make it fit more harmoniously into the community (e.g., landscaping to complement the existing or planned community aesthetics, placement of crosswalks, refuge areas, and transit stops to improve pedestrian mobility and accessibility)

When considering any potential solution, coordination with appropriate FDOT offices (e.g., Design, Construction, ROW) takes place and any commitments must be documented consistent with ***Procedure No. 650-000-003, FDOT Commitment Tracking*** and ***Part 2, Chapter 22, Commitments***.

4.2.3 Updating Community Impact Assessments in Subsequent Phases

Project development for a transportation project may span several years and communities potentially impacted by the project may change over time. Therefore, potential effects to communities are updated at each phase of project delivery. Typically, in the design phase, community information and concerns are gathered through public involvement activities identified in the ***Community Awareness Plan (CAP)***. These activities vary depending on the community context, the nature and scope of the project, and the potential for adverse project effects. If commitments have been made, they are tracked according to FDOT ***Procedure No. 650-000-003, Project Commitment Tracking*** and documented in the Environmental Document (see ***Part 2, Chapter 22, Commitments*** for more information).

Changes to community effects are documented in a Re-evaluation as the project progresses per ***Part 1, Chapter 13, Re-evaluations***.

4.3 DOCUMENTATION

4.3.1 Environmental Document

The results of the CIA are documented in the Environmental Document. Information from the ***CSRP*** or memorandum, which supports the evaluation of potential relocation effects, is also included in the Environmental Document (see ***Section 4.3.3***).

Documentation of the CIA varies by Environmental Document type and complexity of the project as described below.

4.3.1.1 Type 1 Categorical Exclusions or Non-Major State Actions

Minimal documentation on community effects is needed for Type 1 CEs and NMSAs. **Type 1 CEs** - The results of the CIA are documented on the ***Type 1 Categorical Exclusion Checklist*** in the StateWide Environmental Project Tracker (SWEPT). See ***Part 1, Chapter 5, Categorical Exclusion*** for guidance on preparing the ***Type 1***

Categorical Exclusion Checklist. For these projects, "No" is selected if there are no community effects. If there are community effects, "Yes" is selected and a list of questions appear related to changes in community cohesion, characteristics, and potential impacts to distinct communities or groups, emergency services, access, and mobility. See ***Section 4.2.2.3*** for information about evaluating community effects. If questions do not apply "n/a" can be added. A ***CIA Technical Memorandum*** may be prepared to address a potential adverse effect on one or more CIA topics. If applicable, it is referenced and included in the SWEPT project file. It is recommended that it be placed within the Community Impact Assessment folder within SWEPT.

If there are relocations for a Type 1 CE project, the District should contact the Office of Environmental Management (OEM). The appropriateness of proceeding with the action as a Type 1 CE, given relocations, must be documented. If relocation is required, it is documented that the ***Uniform Relocation Act*** will be followed. See ***Section 4.3.2*** for guidance on relocations.

NMSAs - The results of the CIA are documented on the ***Non-Major State Action Checklist*** in SWEPT. See ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery*** for guidance on preparing the ***Non-Major State Action Checklist***. For a NMSA, "No" is selected to document that there are no CIA related issues. A ***CIA Technical Memorandum*** on one or more CIA topics may be prepared if additional documentation is needed to support a finding of no adverse effect. If applicable, it is referenced and included in the SWEPT project file. It is recommended that it be placed within the Community Impact Assessment folder within SWEPT.

4.3.1.2 Type 2 Categorical Exclusions

Community effects for a Type 2 CE are documented in the ***Type 2 Categorical Exclusion Determination Form*** in SWEPT. For additional information on the components of a Type 2 CE, see ***Part 1, Chapter 5, Categorical Exclusion***.

Environmental Analysis Section- The CIA topics are documented in the Community Effects sub-section. The evaluation may be incorporated directly into a Type 2 CE rather than requiring a separate ***CIA Technical Memorandum***. If applicable, a reference is added to any supporting data sources. It is recommended that they be placed within the Community Impact Assessment folder within SWEPT.

The minimization and mitigation actions or features that were developed in response to community input are summarized. The elements implemented in the preferred alternative that addressed community concerns should also be described.

To record that the project has fully considered effects to groups under the ***Civil Rights Acts of 1964***, and other nondiscrimination laws and regulations, the ***Civil Rights Act of 1964*** standard statement is included on the cover page of the ***Type 2 Categorical Exclusion Determination Form***:

This project has been developed without regard to race, color, national origin, age, sex, religion, disability, or family status.

4.3.1.3 Environmental Assessments

Environmental Analysis Section - The results of the CIA are summarized in the Community Effects sub-section. The summary should be commensurate in scope with the analysis results and should provide sufficient information to briefly describe the communities and community resources that have the likelihood to be impacted by the project; descriptions of foreseeable impacts to the CIA topics; and avoidance, minimization, mitigation, or enhancement actions.

If a ***CIA Technical Memorandum*** was prepared, it is referenced in the Environmental Assessment (EA) and included in the SWEPT project file. It is recommended that it be placed within the Community Impact Assessment folder within SWEPT.

To record that the project has fully considered effects to groups under the ***Civil Rights Acts of 1964***, and other nondiscrimination laws and regulations, the ***Civil Rights Act of 1964*** standard statement must be included in this section of the document:

This project has been developed without regard to race, color, national origin, age, sex, religion, disability, or family status.

4.3.1.4 Environmental Impact Statements

Executive Summary - To record that the project has fully considered effects to groups under the ***Civil Rights Acts of 1964***, and other nondiscrimination laws and regulations, the ***Civil Rights Act of 1964*** standard statement must be included in the Executive Summary:

This project has been developed without regard to race, color, national origin, age, sex, religion, disability, or family status.

Environmental Analysis Section - The Community Effects sub-section should provide a concise summary of the existing conditions for each of the CIA topics by using the compiled community information for the project. The potential community impacts are summarized for each alternative as well as the strategies for resolving adverse impacts. If any of the CIA topics have a significant impact, it should be clearly described in this section. Project features developed in conjunction with community outreach and coordination with government agencies, private groups, and the public should be discussed and the ***Civil Rights Act of 1964*** standard statement included.

If a ***CIA Technical Memorandum*** was prepared, it is referenced in the Environmental Impact Statement (EIS) and included in the SWEPT project file. It is recommended that it be placed within the Community Impact Assessment folder within SWEPT.

4.3.1.5 State Environmental Impact Reports

Community effects for a State Environmental Impact Report (SEIR) are documented in a SEIR form in SWEPT. For additional information on the components of a SEIR, see ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***.

Environmental Analysis Section - The evaluation completed for the CIA topics is summarized in the Community Effects sub-section. This information may be incorporated directly into a SEIR rather than requiring a separate ***CIA Technical Memorandum***. If applicable, supporting data sources are referenced and included in the SWEPT project file. It is recommended that they be placed within the Community Impact Assessment folder within SWEPT.

Any avoidance, minimization and mitigation actions or features that were developed in response to community impacts are summarized. A summary of community outreach and public involvement activities that supported the CIA are also included. Elements implemented in the preferred alternative that addressed community concerns should also be described.

To record that the project has fully considered effects to groups under the ***Civil Rights Acts of 1964***, and other nondiscrimination laws and regulations, the ***Civil Rights Act of 1964*** standard statement is included on the cover page of the SEIR:

> *This project has been developed without regard to race, color, national origin, age, sex, religion, disability, or family status.*

4.3.2 Conceptual Stage Relocation Plan

When relocations are anticipated for a project regardless of Environmental Document type, information regarding residences, businesses, and institutional or community facilities that may be relocated will be obtained and incorporated into the Environmental Document. Typically, a ***CSRP*** is prepared in accordance with ***Chapter 9*** of the ***Right of Way Procedures Manual, Topic No. 575-000-000***. The plan should include data about the demographics of the households and businesses being relocated, replacement property, and relocation assistance. For projects requiring minor relocation needs, a memorandum detailing the required relocation information may be prepared instead of a ***CSRP***. If there are no relocatees, or if relocation assistance is not going to be provided on the project, then a ***CSRP*** is not required.

The information from the ***CSRP*** or memorandum must be incorporated into the appropriate sections of the Environmental Document to address anticipated relocation effects. The ***CSRP*** or memorandum is then placed in the SWEPT project file. If the ***CSRP*** includes information that may be exempt from public records, the document should be identified as “potentially exempt” in the SWEPT project file.

4.3.3 Considerations for Evaluating Relocation Effects

Listed below are some important points in developing the information from the ***CSRP*** or memorandum for inclusion in the Relocation Potential section of the Environmental Document:

- Relocation information must be quantifiable (i.e., a general statement such as "There are sufficient resources available for residential relocatees" is not acceptable as quantifiable data).

- The ***CSRP*** or memorandum must document the sources of information used in developing the plan. Since most of the information provided in the ***CSRP*** or memorandum is secondary source information, the data are estimates. Ensure that the information provided in the Environmental Document is accurate, timely, and adequate with respect to identifying and discussing relocation effects within the project area.

- Pertinent data in the ***CSRP*** or memorandum is summarized and discussed in the Environmental Document. If relocations are anticipated, indicate the number and type of relocatees (residents, tenants, businesses, institutions or community facilities), and discuss the relocation impact to groups protected by nondiscrimination laws. If there is relocation potential, indicate whether comparable replacement housing is available.

- A brief discussion of Last Resort Housing must be provided when comparable replacement housing is not available. ***Section 4.3.3.1*** provides standard information to be incorporated into the Environmental Document.

- A brief summary of FDOT's Relocation Assistance Program must also be provided. ***Sections 4.3.3.2*** and ***Section 4.3.3.3*** provide standard information to be incorporated into the Environmental Document depending on whether there is involvement with relocatees.

If "functional replacement of real property in public ownership" pursuant to ***23 CFR § 710.509*** may be provided, the results of discussions and decisions concerning "functional replacement" must be included in the Environmental Document.

Any commitments must also be listed in the appropriate sections. See ***Procedure No. 650-000-003, FDOT Commitment Tracking***.

4.3.3.1 Last Resort Housing

When comparable replacement housing is not available, the following standard paragraph must be included in the Relocation Potential section of the Type 2 CE, EA, or EIS:

Comparable replacement housing for sale or rent is not available in the area. In accordance with 42 U.S.C. § 4626, replacement housing of last resort will be used to assure that comparable decent, safe, and sanitary housing will be made available to a displaced person when such housing cannot otherwise be provided within the person's financial means.

For a SEIR, include the following standard paragraph in the Relocation Potential section:

Comparable replacement housing for sale or rent is not available in the area. In accordance with Section 421.55, Florida Statutes, Relocation of displaced persons, replacement housing of last resort will be used to assure that comparable decent, safe, and sanitary housing will be made available to a displaced person when such housing cannot otherwise be provided within the person's financial means.

4.3.3.2 Information Required When a Relocatee is Involved

The following standard information must be included in the Relocation Potential section of a Type 2 CE, EA, or EIS when there is involvement of a relocatee:

In order to minimize the unavoidable effects of Right of Way acquisition and displacement of people, a Right of Way and Relocation Assistance Program will be carried out in accordance with Section 421.55, Florida Statutes, Relocation of displaced persons, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646 as amended by Public Law 100-17).

For an SEIR, include the following standard information in the Relocation Potential section:

In order to minimize the unavoidable effects of Right of Way acquisition and displacement of people, the Florida Department of Transportation will carry out a Right of Way and Relocation Assistance Program in accordance with Section 421.55, Florida Statutes, Relocation of displaced persons.

4.3.3.3 Information Required When There are No Relocations

The following standard information must be included in the Relocation Potential section of a Type 2 CE, EA, or EIS whenever the proposed action does not involve a residential or business relocation:

The proposed project, as presently conceived, will not displace any residences or businesses within the community. Should this change over the course of the project, a Right of Way and Relocation Assistance Program will be carried out in accordance with Section 421.55, Florida Statutes, Relocation of displaced persons, and the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646 as amended by Public Law 100-17).

For a SEIR, include the following standard information in the Relocation Potential section:

The proposed project, as presently conceived, will not displace any residences or businesses within the community. Should this change over the course of the project, the Florida Department of Transportation will carry out a Right of Way and Relocation Assistance Program in accordance with Section 421.55, Florida Statutes, Relocation of displaced persons.

4.4 REFERENCES

Chapter 187, Florida Statutes. State Comprehensive Plan.
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0187/0187ContentsIndex.html

Chapter 339, Florida Statutes. Transportation Finance and Planning.
https://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0339/0339.html

Chapter 760, Florida Statutes, Florida Civil Rights Act of 1992.
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0760/0760PARTIContentsIndex.html

FDOT, Right of Way Procedures Manual, Topic No. 575-000-000.
https://www.fdot.gov/rightofway/ProceduresManual.shtm

FDOT, 2025, Public Involvement Handbook.
https://www.fdot.gov/planning/policy/community-engagement/resource-guide.shtm

FDOT, Efficient Transportation Decision Making Manual, Topic No. 650-000-002.
https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

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

Federal Aid Highway Act, 23 U.S.C. Chapter 1. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-A/part-1

FHWA, 1987, Technical Advisory T6640.8A.
http://environment.fhwa.dot.gov/projdev/impta6640.asp

National Environmental Policy Act of 1969

State of Florida, Office of the Governor, Executive Order 07-01. Florida's Plain Language Initiative. 2007

Title 23 CFR Part 710, Right-of-way and Real Estate. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-710

Title 23 CFR Part 771, Environmental Impact and Related Procedures. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646 (as amended by Public Law 100-17), 42 U.S.C. Chapter 61 https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter61&edition=prelim

U.S. Age Discrimination Act of 1975, 42 U.S.C. 42, §§ 6101-6107. http://www.dol.gov/oasam/regs/statutes/age_act.htm

U.S. Civil Rights Act of 1964, Title VI. https://www.justice.gov/crt/fcs/TitleVI

U.S. Civil Rights Act of 1968, Public Law 90–284, Title VIII (Fair Housing Act), 42 U.S. C. 42, §§ 3601-3631. http://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap45.htm

U.S. Civil Rights Restoration Act of 1987

U.S. Rehabilitation Act of 1973, 29 U.S.C. § 701

4.5 FORMS

Technical Report Cover Sheet, Form No. 650-050-38a

Table 4-3 CIA Considerations

Social

1. What are the demographics of the potentially affected population?
2. What displacements of population, if any, would be expected as a result of the project?
3. Would any increases or decreases in population be expected as a result of the project?
4. Would any displacement of distinct communities or groups be expected as a result of the project?
5. Are there any disproportionate effects on distinct communities or groups?
6. Have distinct communities or groups previously been affected by other public projects in the area?
7. Would the project result in any barriers dividing an established neighborhood(s) or would it increase neighborhood interaction?
8. What changes, if any, in traffic patterns through an established neighborhood(s) would be expected as a result of the project?
9. Would any changes to social relationships and patterns be expected as a result of the project?
10. Would the project result in any loss, reduction or enhancement of connectivity to a community or neighborhood activity center(s)?
11. Would the project affect community cohesion?
12. Would the project result in the creation of isolated areas?
13. Would any increase or decrease in emergency services response time (fire, police, and EMS) be expected as a result of the project?
14. Does the project affect safe access to community facilities?
15. Would any changes in social value be expected as a result of the project?
16. Would the project be perceived as having a positive or negative effect on quality of life?
17. Have community leaders and residents had opportunities to provide input to the project decision-making process in the present and/or past?
18. Have previous projects in this area been compatible with or conflicted with the plans, goals and objectives of the community?
19. Is the proposed project consistent with the community vision?
20. Are transportation investments equitably serving all populations?

Economic

1. Would any changes to travel patterns be expected that would eliminate or enhance access to any businesses?
2. Would any increases or decreases in traffic through traffic-based business areas be expected?

Table 4-3 CIA Considerations (Page 2 of 3)

3. Would any changes in travel patterns be expected that would result in a business or district being bypassed?
4. Would access for special-needs patrons increase or decrease as a result of the project?
5. Would any increase or decrease in business visibility for traffic-based businesses be expected as a result of the project?
6. Would the loss of any businesses be expected as a result of the project?
7. Would any increases or decreases in employment opportunities in the local economy be expected as a result of the project?
8. Would regional employment opportunities be enhanced or diminished as a result of the project?
9. What is the effect of the project on military installations?
10. Would any real property be removed from the tax rolls as a result of the project?
11. Is it likely that taxable property values would increase or decline as a result of the project?
12. Would changes in business activities increase or decrease the tax base?

Land Use Changes

1. Would the project result in a change in the character or aesthetics of the existing landscape?
2. Would the amount of recreation/open space be expected to increase or decrease as a result of the project?
3. Would the project be compatible with local growth management policies?
4. Would the project be compatible with adopted land use plans?

Mobility

1. Would access to public transportation facilities be increased or reduced as a result of the project?
2. Would pedestrian mobility be increased or decreased as a result of the project?
3. Would non-motorist access to business and service facilities be increased or reduced as a result of the project?
4. How does the project affect intermodal connectivity?
5. Would any change in connectivity between residential and non-residential areas be expected as a result of the project?
6. What are the expected changes to existing traffic patterns as a result of the project?
7. Would a change in any public parking areas be expected as a result of the project?
8. Would access for transportation disadvantaged populations be affected?

Table 4-3 CIA Considerations (Page 3 of 3)

Aesthetic Effects

1. Are there noise or vibration sensitive sites near the project?
2. Is the project likely to affect a vista or viewshed?
3. Does the project blend visually with the area?
4. Is the project adjacent to any community focal point?
5. Is the project likely to be perceived as being compatible and in character with the community's aesthetic values?
6. What feature(s), if any, of the project might be perceived by the community as inconsistent with the character of that community?

Also see requirements in Part 2, Chapter 5, Aesthetic Effects.

Relocation Potential

1. Would any displacement of residences and/or dwellings be expected as a result of the project?
2. Would any displacement of non-residential land uses be expected as a result of the project?
3. Do any potentially displaced non-residential uses have any unique or special characteristics that are not likely to be reestablished in the community?
4. Would any displacement of community or institutional facilities be expected as a result of the project?

See additional requirements in Section 4.3.3, Considerations for Evaluating Relocation Effects.

CIA Technical Memorandum

I. Introduction
   A. Project Summary
   B. Project Purpose and Need
      - Project Purpose
      - Project Need

II. Alternatives
   A. No Build Alternative
   B. Transportation Systems Management and Operations (TSM&O) Alternative
   C. Build Alternatives

III. Community Characteristics Summary and Map

IV. Potential Effects
   A. Social
   B. Economic
   C. Land Use Changes
   D. Mobility
   E. Aesthetic Effects
   F. Relocation Potential

V. Commitments

Figure 4-1 Recommended CIA Technical Memorandum Outline

PART 2, CHAPTER 5

AESTHETIC EFFECTS

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PART 2, CHAPTER 5

AESTHETIC EFFECTS

5.1 OVERVIEW

5.1.1 Purpose

FDOT considers Aesthetic Effects (AE) during project development because it influences community cohesion, community values, and can affect the travel experience. Transportation actions can affect communities and influence aesthetic qualities. The Florida Department of Transportation (FDOT) ***Landscape, Policy No. 000-650-011*** was created to conserve, protect, and enhance Florida's natural resources and scenic beauty when planning, constructing, and maintaining the State Transportation System. FDOT identifies practical and feasible opportunities to improve project aesthetics during project delivery. AE are considered a Community Impact Assessment (CIA) topic; however, this chapter provides more detailed guidance on the AE analysis than in ***Part 2, Chapter 4, Community Impact Assessment***.

This chapter contains FDOT's procedures for evaluating AE during Efficient Transportation Decision Making (ETDM) process and the Project Development and Environment (PD&E) phase. The chapter also includes special considerations for Outdoor Advertising (ODA) and scenic highways. AE can be either positive or negative and should be evaluated based on the existing and proposed context of the project area. The aesthetic qualities of a community or area are defined by a combination of visual resources and other qualities that define the character of that community. The evaluation of AE should address the community's aesthetic ideals while producing an affordable, biddable, constructible, and maintainable design.

The AE process assesses the existing aesthetic context of the project area, evaluates a proposed project's aesthetic effects, and determines the most appropriate opportunities for enhancement within the project area by:

1. Developing transportation facilities that are compatible with the surrounding natural and/or man-made environment;

2. Balancing transportation design concepts with the community vision;

3. Selecting appropriate design approaches, materials, forms, styles, scale, color, pattern and texture; and

4. Accommodating existing and proposed landscapes.

5.2 PROCEDURE

The evaluation of AE begins in the Planning phase with data collected as part of the ETDM process. The evaluation continues through the PD&E process and into the Design and Construction phases (***Figure 5-1***).

An AE evaluation for a proposed transportation project should meet the following objectives:

1. Identify current aesthetic resources (e.g., Florida Scenic Highways, other special roadway designations, existing forested areas, wildflower areas, trees, landscape, community features, stormwater ponds and drainage features, bridge structures and other architectural features);

2. Analyze and categorize the aesthetic resources that could be affected;

3. Assess the value of the aesthetic resources to the community or study area;

4. Assess potential impacts; and,

5. Identify potential avoidance, minimization, mitigation and enhancement measures.

Typical considerations for an AE evaluation are summarized in ***Table 5-1***.

Table 5-1 Typical Aesthetic Effects Considerations

CHARACTER	Used to understand the aesthetic resources unique to the studied community and its environment(s). Each of the following may be identified and described before any value and/or impact assessments begin: adjoining architectural styles; adjoining land uses; available transportation modes; corridor width and alignment; context classification; level of (historical) maintenance; lighting; common materials; visual rhythms, patterns, forms, lines, colors and textures; vegetation; and vehicle speed; sounds; odors; and vibrations.
COMPATIBILITY	These base considerations may be evaluated in the land use context proposed: access; community cohesiveness; existing design characteristics; existing outdoor advertising signs; planned growth and land use patterns; sense of ownership /public boundaries; traffic patterns/congestion; design compatibility with community setting; and color and materials coordination (with evident patterns).
COMMUNITY VALUES	To utilize in understanding how the transportation project can contribute to public perceptions and will inform the determination of the intensity of potential AE impact. May include the following: community goals; cultural significance; gateways and focal points; local plan consistency; open space; quality of life; safety; and special community designations such as scenic highways.
SENSITIVE AREAS	Many of these contribute subtly to a community's identity and may need to be considered in the broader Community Values context (level of sensitivity to each): areas of recognized beauty; bicycle routes; commercial centers; historic or other culturally-important resources; parks and recreation areas; pedestrian facilities; public facilities (hospitals, colleges, universities); public parking areas (and access to them); residential areas; specific historic or cultural features; transit facilities; and specially designated water bodies.
VISUAL FEATURES	These are usually rated as very important and highly valuable by communities. They should be considered in the context of potential for both short- and long-term impacts of the project. They may include: scenic spaces (views and vistas); tree cover; natural shade/shadow patterns; vegetation and screening; water bodies; light features and evident lighting levels; other natural green spaces; recognized safety features; visual clutter (if present); and simplicity and attractiveness of signage.

5.2.1 Efficient Transportation Decision Making Screening Evaluations

Projects qualifying for screening through the ETDM process receive early consideration of AE during the CIA (***Part 2, Chapter 4, Community Impact Assessment***). The results of the CIA conducted during the ETDM Planning and Programming Screens provide descriptions of the existing visual resources, experiences and features that could be affected (both positively or negatively) by the proposed transportation project, including forested areas, wildflower areas, trees, landscaping and other aesthetic features. The evaluation should include input provided by the public, local planning organizations, and the Environmental Technical Advisory Team (ETAT). The AE evaluation builds upon information gathered during the CIA and is used to determine the level of effort necessary to adequately address aesthetic issues during the PD&E Study. The level of effort and expertise required are dependent upon the context, complexity and scope of the project and its potential for effects.

Generally, evaluating AE during ETDM includes describing the following information in the Preliminary Environmental Discussion (PED):

1. Planning Screen Evaluation – When conducted includes, identification of existing visual resources and features that could be affected or improved by the proposed transportation project, including forested areas, wildflower areas, trees, landscaping, scenic views, and other aesthetic features and the identification of issues related to aesthetics.

2. Programming Screen Evaluation - provides commentary about effects, summarize scoping recommendations, and identify public concerns to further understand the extent of potential aesthetic impacts and to determine methods for further evaluation during the PD&E phase.

5.2.2 Project Development & Environment

The AE evaluation during the PD&E phase builds upon previous planning and programming screening information by filling information gaps, analyzing issues of concern identified in ETDM, gathering public or community input, and completing the appropriate level of analysis.

5.2.2.1 Aesthetics Effects Evaluation

The AE evaluation should be tailored to the context, scope, complexity and public comments associated with the project. The ***Guidelines for the Visual Impact Assessment for Highway Projects*** may be used for methods to determine the level of AE evaluation. The typical AE considerations presented in ***Table 5-1*** should be considered during each step of the AE evaluation. If the Project Manager (PM) determines the evaluation completed during ETDM screening efforts is sufficient to address aesthetic issues, then effects should be summarized in the Environmental Document and include evaluation in the project file within the StateWide Environmental Project Tracker (SWEPT).

PD&E projects that require AE evaluation should:

Describe Existing Conditions - The study area will vary depending on the project context, resources involved, visual effects, and potential project impacts. Once the study area has been defined, the existing aesthetic characteristics, such as existing forested areas, wildflower areas, trees, special highway designations and landscape, are described.

This step may include using AE information available on the Environmental Screening Tool (EST) Area of Interest (AOI) tool, aerial photography, Roadway Characteristics Inventory (RCI), and other online tools. The analysis should include field reviews to verify data collected during the desktop review.

Evaluate Effects - This evaluation should identify the effects a project may have on the visual resources and qualitative physical characteristics of a study area.

Using the typical AE considerations in ***Table 5-1***, the positive and negative effects of the project on the study area's aesthetic resources are assessed. The interrelationship of effects varies with the type of transportation action and the affected community. Coordination takes place with appropriate program specialists (e.g., cultural resources, landscape architecture, scenic highways, water quality, noise) to determine how the project affects these areas from an aesthetic perspective. The effects are described with sufficient information to determine their magnitude. If there are multiple alternatives, sufficient information may be needed to differentiate between them (including the no-build alternative) when possible.

Determine Impacts - Based on knowledge of the affected area and the impact analysis, it is determined if the perceived AE is significant. Significance of the impact will vary with the setting of the proposed action and the surrounding area. To determine significance, the severity of the aesthetic impact is examined in terms of the type, quality and sensitivity of the aesthetic resource involved; the location of the proposed project; the duration of the impact (short or long term); and the community's value of the aesthetic resource. The determination of impacts is documented in the Environmental Document.

Recommend Measures to Resolve AE Issues - As a project moves through the PD&E process and AE are identified, potential solutions are considered to address effects or enhance the aesthetics of the proposed transportation project. In keeping with FDOT's ***Complete Streets, Policy No. 000-625-017***; consideration of solutions that would make the project fit the needs of the community may be warranted. Both standard and unique aesthetic enhancements should be considered based on community input. Coordination is needed with other internal offices to determine if a potential solution is feasible. There may be engineering, financial and maintenance reasons that make a potential solution not feasible.

Methods for resolving negative aesthetic effects associated with a transportation project can include **avoidance, minimization, mitigation,** and **enhancement measures**. Measures should consider short-term effects (during construction), and long-term effects as appropriate. The effects of these measures on the community are considered and it is determined whether the approach supports the project's purpose and need. The public is given the opportunity to provide input on measures to avoid, minimize or mitigate adverse AE, or measures to enhance aesthetics through the public involvement process (***Part 1, Chapter 11, Public Involvement***).

Application of aesthetic enhancements that are to be considered on structural elements, such as bridges and noise or retaining walls, should reflect documented community desires. Possible options for a project should be identified, and evaluated for safety, constructability, maintainability and costs. Project enhancements may need to be funded and maintained by local government agencies.

Aesthetic features should avoid conflicts with permitted ODA. See ***Section 5.2.3*** for more information on outdoor advertising.

5.2.2.2 Commitments

Prior to finalizing any aesthetic commitments, the PM must coordinate with the District Design, Construction, Maintenance and other offices as appropriate, to ensure that FDOT standards are considered and that proposed commitments are feasible. Some aesthetic enhancements may require a local agreement before such commitments can be made. AE commitments are documented and tracked according to ***Part 2, Chapter 22, Commitments*** and ***Procedure No. 650-000-003, Project Commitment Tracking***.

5.2.2.3 Documentation

The AE evaluation findings are documented in the appropriate Environmental Document as described below:

1. **Type 2 Categorical Exclusions (CE)** - The AE evaluation should be a brief summary documented in the ***Type 2 Categorical Exclusion Determination Form***. The AE summary should present the impact analysis and recommend avoidance, minimization, mitigation, and enhancement measures. Additional supporting information should be included in the SWEPT project file, if applicable. It is recommended that these documents be placed within the Aesthetic Effects folder in SWEPT.

2. **Environmental Assessments (EA) and Environmental Impact Statements (EIS)** - The AE evaluation is summarized in the AE section of the EA or EIS. The AE summary should present the impact analysis and recommend avoidance, minimization, mitigation, and enhancement measures.

3. **State Environmental Impact Report (SEIR)** - The results of the AE evaluation are summarized in the SEIR. The AE summary should present the impact analysis and recommend avoidance, minimization, mitigation, and enhancement measures.

5.2.2.4 Re-evaluation

If major design changes have taken place since approval of the Environmental Document, the Re-evaluation must assess changes to AE per ***Part 1, Chapter 13, Re-evaluations***. Changes in AE will need to be documented and may need to be coordinated with other internal offices and the community.

5.2.3 Outdoor Advertising

ODA regulations are found in ***Chapter 479, Florida Statutes (F.S.)***, and in ***Chapter 14-10, Florida Administrative Code (F.A.C.)***. When there are existing permitted ODA signs, the ODA permit status and the (ODA) view zones should be reviewed as early as possible during project development. The District should coordinate with FDOT's Outdoor Advertising Office (OAO), as appropriate, as issues with the anticipated blocking of the view of or impacts to ODA signs are identified. Consideration of the view of or impacts to

ODA signs being affected by the proposed project should be carried throughout project delivery as summarized below:

1. **ETDM Screenings** – During the screening process, current permitted sign locations can be identified utilizing the EST or the Outdoor Advertising Database on FDOT's ***Outdoor Advertising Website*** and confirmed by contacting the OAO as needed. The District should begin to consider how the view or disposition of the permitted sign could be affected by the proposed project. Consider for example, whether a sign is conforming or non-conforming (coordinate with OAO). Also note if any community preferences have been identified regarding the role of ODA in the proposed project.

2. **PD&E –** During PD&E, the presence of existing signs and their permit status is identified or confirmed. It is determined how each sign and/or its view zone is affected by the proposed project. Coordination with OAO, and the District Right of Way (ROW) Office is continued as appropriate.

3. **Re-evaluation –** The District should initiate or continue coordination with OAO to identify or confirm existing signs and their permit status along with the status of any plans for proposed signs. The District should also update any pertinent signage related commitments as appropriate and advise the PD&E staff of any changes. Design plans are reviewed considering view zones (see ***FDOT Design Manual, Part 1 Chapter 127, Topic No. 625-000-002***).

5.2.4 Florida Scenic Highways and Other Specially Designated Highways

There are four types of specially designated highways: local, state, national and legislative. Each designation may have different levels of protection, preservation, and public involvement.

The intent of the Florida Scenic Highways Program (FSHP) is to protect and to promote awareness of community resources that are valued by Florida's residents and tourists. These can include scenic, natural, historic, cultural, recreational and archaeological resources in accordance with the ***Current Florida Scenic Highways Program Guidance*** and FDOT ***Procedure No. 650-050-005, Florida Scenic Highways Program***.

The AE evaluation of potential project impacts to Florida Scenic Highways includes identification of intrinsic qualities or resources that are present on the project corridor and a determination of how a proposed project will potentially affect these resources. This evaluation also considers community preferred opportunities to conserve or enhance scenic highway qualities.

When practical and feasible, opportunities to avoid, minimize, or mitigate impacts to the documented resources on scenic highways are identified. Accommodation of scenic resources on a designated highway within the limits of a project may require the application of flexibility in highway design through use of appropriate Design Exceptions

and Design Variations. Each Florida Scenic Highway is associated with a Byway Organization and a Byway Management Plan (BMP). The concept of Context Sensitive Solutions (CSS) allows for collaboration with the Byway Organization and other corridor stakeholders and should be considered during the development of projects.

Consideration of designated scenic highways affected by the proposed project should be carried throughout project delivery as summarized below:

1. **ETDM Screenings –** The District Scenic Highways Coordinator (DSHC) is contacted for identification of designated Florida Scenic Highways. The District should also review the ***FDOT Legislatively Designated Scenic & Historic Highways Report*** which identifies many of the scenic and historic highways and provides limitations on altering these highways. The guidance in ***Part 2, Chapter 8, Archaeological and Historical Resources*** is used to evaluate historic highways designated by special legislation. The presence of locally designated scenic or historic highways should be coordinated with the local authorities.

2. **PD&E Evaluation –** Results from the ETDM screenings used to determine whether the proposed project would impact these resources is confirmed. Additionally, coordination occurs with the DSHC to become familiar with the regulations and BMP for a designated scenic or historic highway. Coordination with the DSHC and District Environmental Manager occurs to evaluate the regulations and potential impact of the project on the designated corridor.

   The project setting is reviewed to determine which scenic highway intrinsic qualities exist and project data is analyzed to determine potential impacts. The scenic highway evaluation should include an assessment of potential opportunities for FDOT to help fulfill goals identified in the BMP or partner on resource related issues. The evaluation should also recognize the relationship between existing intrinsic qualities on the scenic highway and community goals and objectives for the corridor as expressed in the BMP. The AE section of the Environmental Document should discuss whether the project has the potential to affect the scenic or historic highway.

   If the project impacts the resources of a scenic highway, the byway organization and the public can provide additional input to identify ways to avoid, minimize or mitigate adverse impacts or identify aesthetic enhancements during the public involvement process (***Part 1, Chapter 11, Public Involvement***). The Byway Organization's vision, goals and objectives as outlined in the BMP may be considered to collaboratively identify, preserve, maintain, or enhance the intrinsic qualities or resources while maintaining safety and mobility. Commitments are documented and tracked in accordance with ***Part 2, Chapter 22, Commitments*** and ***Procedure No. 650-000-003, Project Commitment Tracking***.

3. **Re-evaluation –** Collaboration occurs with the DSHC or District Environmental Manager to reconfirm/identify the presence of designated Florida Scenic Highways or other specially designated highways within the project boundaries. For Florida

Scenic Highways, coordination continues with the Byway Organization through the DSHC and updates on project status and AE commitments are provided.

5.3 REFERENCES

American Association of State Highway and Transportation Officials (AASHTO) Highway Subcommittee on Design Task Force for Environmental Design, June 1991. A Guide for Transportation Landscape and Environmental Design

FDOT, Construction Project Administration Manual, Topic No. 700-000-000

FDOT, Complete Streets, Topic No. 000-625-017

FDOT, Current Florida Scenic Highways Program Guidance. https://floridascenichighways.com/fshp-community/document-library/guidance-documents/

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FDOT, Landscape Policy No. 000-650-011

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

Federal Highway Administration (FHWA), Guidance for Preparing and Processing Environmental and Section 4(f) Documents, FHWA Technical Advisory T6640.8A. October 30, 1987.

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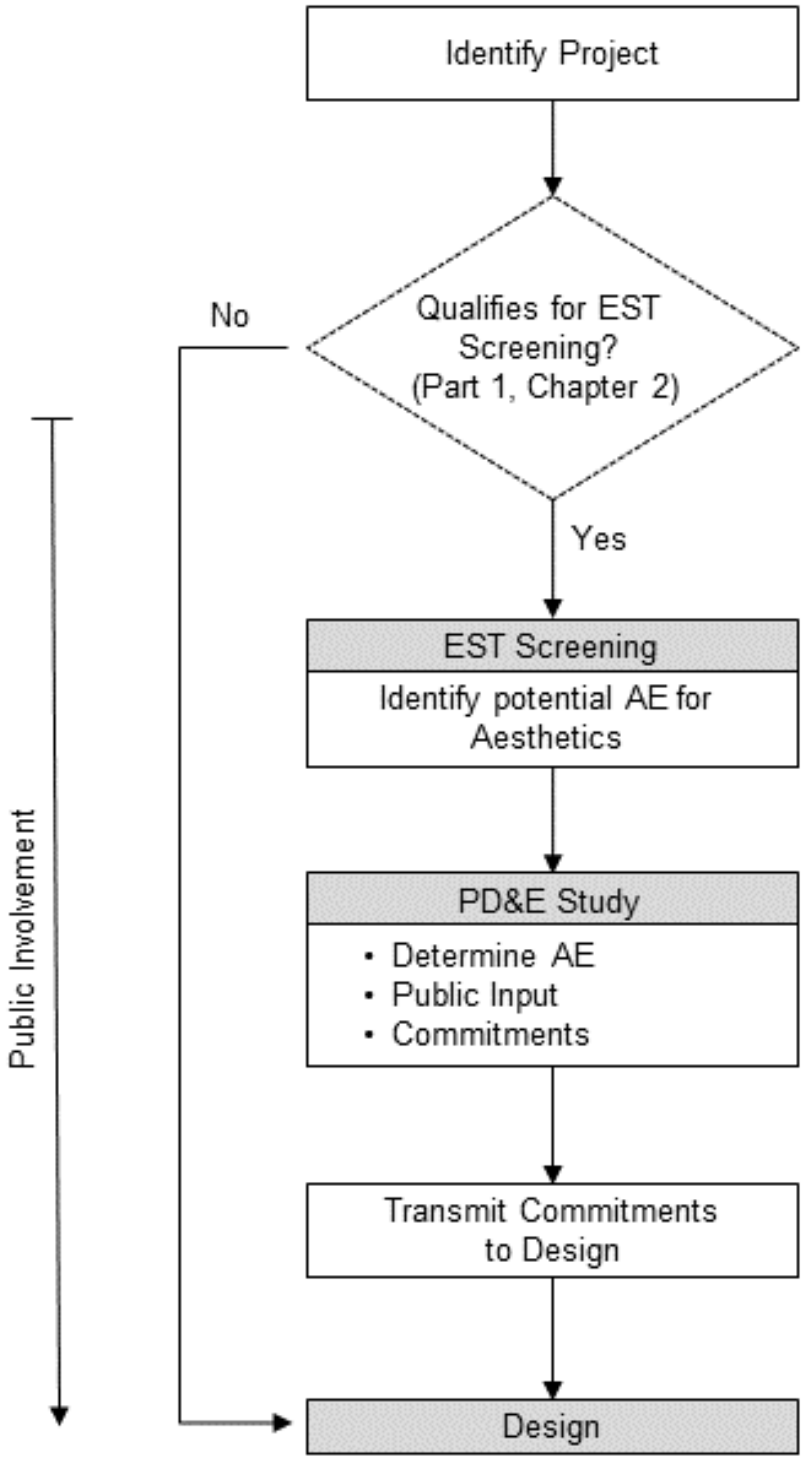

Figure 5-1 Aesthetic Effects Process Flow Chart

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FARMLAND

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PART 2, CHAPTER 6

FARMLAND

6.1 OVERVIEW

This chapter outlines the procedure for evaluating project impacts on farmland (see ***Figure 6-1***). The ***Farmland Protection Policy Act (FPPA) of 1981, 7 United States Code (U.S.C.) §§ 4201–4209*** [regulations located at ***7 Code of Federal Regulations (CFR) Part 658***], was established to minimize the conversion of farmland to nonagricultural uses by federal programs or by projects using federal assistance. The Natural Resources Conservation Service (NRCS), an agency under the United States Department of Agriculture (USDA), is responsible for ensuring that ***FPPA*** is implemented.

The term "farmland" as used in this chapter means prime or unique farmlands as defined in ***7 CFR § 658.2(a)***, or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the USDA Secretary to be farmland of statewide or local importance. See ***Section 523.20, Designating Important Farmland Soils***, of the NRCS ***Farmland Protection Policy Act Manual***.

FPPA requirements apply to farmlands even if not in active use as cropland. Qualifying farmlands can be forest land, pastureland, cropland or other land, but not land already in or committed to urban development or water storage. The process for agricultural lands not falling under these protections are provided in ***Part 2, Chapter 4, Community Impact Assessment***. Farmlands are considered a Community Effect topic; however, it follows a different process for analysis than the Community Impact Assessment (CIA) topics identified in ***Part 2, Chapter 4, Community Impact Assessment***.

Potential effects on farmlands may be identified in the Preliminary Environmental Discussion (PED) of the Planning or Programming Screens during the Efficient Transportation Decision Making (ETDM) process (see the ***Efficient Transportation Decision Making Manual, Topic No. 650-000-002***). However, a farmland evaluation occurs later in the project development process after Right of Way (ROW) needs have been identified.

The ***FPPA*** applies only to Federal Actions other than federal permits, and therefore the Florida Department of Transportation (FDOT) Federal Projects. FDOT State Projects such as a Non-Major State Action (NMSA) or State Environmental Impact Report (SEIR) are not subject to the provisions of the ***FPPA***.

6.2 PROCEDURE

The farmland evaluation starts by determining if the project is subject to the ***FPPA***. For projects screened through the ETDM process, Environmental Technical Advisory Team (ETAT) comments for the "Farmlands" topic in the ***Programming Screen Summary***

Report should be reviewed. Comments by NRCS may state specifically that the project may affect farmland. While screening information is preliminary, it is useful in determining the level of effort for farmland evaluation later during the Project Development and Environment (PD&E) phase which requires coordination with the NRCS. ***Figure 6-1*** shows the process that Districts use to document a farmland evaluation for a project. Most FDOT projects will be linear or corridor type projects requiring use of the ***Farmland Conversion Impact Rating for Corridor Type Projects Form NRCS-CPA-106***; other projects such as parking areas, buildings, or rest areas require use of the ***Farmland Conversion Impact Rating Form AD-1006***.

During the PD&E phase, the District:

1. Determines whether the project is exempt from the ***FPPA*** as discussed in ***Section 6.2.1***; no further evaluation of Farmlands is required if the project is not subject to provisions of ***FPPA***. However, agricultural lands not falling under these protections may still need to be evaluated with the Community Impact Assessment (***Part 2, Chapter 4, Community Impact Assessment***). Documentation of projects that are exempt from the ***FPPA*** is provided in ***Section 6.2.1.1***;

2. Completes the appropriate Farmland Conversion Impact Rating Form for projects requiring coordination with NRCS as discussed in ***Section 6.2.3***, and

3. Evaluates and document projects requiring coordination with NRCS to determine whether they have farmland involvement and are subject to the provisions of ***FPPA*** as discussed in ***Section 6.2.4***.

The District completes Parts I and III of ***Form NRCS-CPA-106*** or ***Form AD 1006*** and sends the form to the State Soil Scientist with the NRCS for farmland involvement determination. See ***Section 6.3*** for a link to these forms; copies are also provided in ***Figure 6-2*** and ***Figure 6-3***, respectively.

If NRCS determines the project does not involve farmlands, then the ***Form NRCS-CPA-106*** or ***Form AD 1006*** will be returned to the District. The District will include the Form in the project file within the StateWide Environmental Project Tracker (SWEPT) and document the information in the project's Environmental Document. No further evaluation is required.

If NRCS determines the project involves farmlands, then NRCS will complete Parts II and IV of ***Form NRCS-CPA-106*** or ***Form AD 1006*** and compile a total point score on Part V of the Form before it is returned to the District. The District will then complete Part VI of the Form and add the total points in Parts V and VI to determine the suitability of the site for protection as farmland.

6.2.1 Projects Exempt from the Farmland Protection Policy Act

The following project categories **do not** require compliance with the ***FPPA*** or coordination with the NRCS:

1. Project activities not subject to provisions of ***FPPA***:

    a. Federal permitting and licensing;

    b. Projects planned and completed without the assistance of a federal agency;

    c. Projects on land already in urban development or used for water storage;

    d. Construction within an existing ROW purchased on or before August 4, 1984. (ROW maps can be provided to NRCS for verification);

    e. Construction for national defense purposes;

    f. Small acreage (i.e., 10 acres or less per linear mile or three acres where there is a project for an existing bridge or interchange) projects where a statewide, local, or tribal land evaluation site assessment (LESA) system has been approved by the State Conservationist. Acreage includes both direct and indirect conversions. These exemptions are to encourage improvements to existing highways, instead of new construction.

    For additional exemptions see the ***NRCS Farmland Protection Policy Act Manual***.

2. Projects situated **entirely** within urbanized areas on the ***U.S. Census Bureau Mapper*** **with no farmlands located adjacent to a project corridor**. See ***Section 6.3*** for a link to the ***U.S. Census Bureau Mapper***. Maps for urbanized areas can be found in each District's planning section.

    Note that the land use designation on the maps takes precedence over actual land use (i.e., lands currently being used for agricultural purposes but shown on the map as non-agricultural are considered as non-agricultural).

6.2.1.1 Documentation of Projects Exempt from the Farmland Protection Policy Act

Projects are exempt from the ***FPPA*** if they fall within the categories listed in ***Section 6.2.1***; however, documentation is still required in the Farmland section of the applicable Environmental Document as follows:

a. Projects not subject to ***FPPA*** provisions:

This project is not subject to the provisions of the Farmland Protection Policy Act of 1981 because (State the reason).

b. Projects located in urbanized areas:

Lands within the project vicinity do not meet the definition of farmland as defined in 7 CFR § 658 and the provisions of the Farmland Protection Policy Act of 1981 do not apply because the entire project area is located in the urbanized area of (Name of urban area) with no designated farmlands adjacent to the project corridor.

6.2.2 Projects Requiring Coordination with NRCS

The following projects require the completion of ***Form NRCS-CPA-106*** as specified in ***Section 6.2.4***, and coordination with the NRCS.

1. Projects situated **entirely** within urbanized areas on the ***U.S. Census Bureau Mapper*** **with designated farmlands adjacent to the project corridor**. These maps are located in each District's planning section.

2. All non-urbanized areas.

These areas may have been identified during the Programming Screen; however, it is recommended that the urbanized area maps be reviewed during the PD&E phase when ROW needs have been conceptually defined.

6.2.3 Completion of the Farmland Conversion Impact Rating Form

For projects which are not exempt from the ***FPPA*** per ***Section 6.2.1***, the District completes ***Form NRCS-CPA-106*** or ***Form AD-1006*** after ROW needs have been conceptually defined.

6.2.3.1 Initial Evaluation - Completion of Parts I and III

The initial evaluation consists of the District completing Parts I and III of ***Form NRCS-CPA 106*** or ***Form AD-1006***, as described below, and submitting the form to the NRCS, which completes Part II. Note, descriptions are specific to ***Form NRCS-CPA-106*** and similar to ***Form AD 1006***.

PART I

Name of Project:

Includes the local name of the project and Financial Management number (e.g., SR-7, Volusia Avenue, 123123-1).

Type of Project:

Includes the type of project such as new construction, widening, or intersection improvements.

Date of Land Evaluation Request:

Includes the month, day, and year when Parts I and III are completed.

Federal Agency Involved:

FDOT is added as the Federal Agency per ***National Environmental Policy Act (NEPA) Assignment***.

County and State:

Includes the county and state (Florida) where project is located.

PART III

A. Total Acres to be Converted Directly:

Includes an estimate of the number of farmland acres of additional ROW required for each project alternative. Note, the converted acres should include only the new ROW and not include the existing ROW if the corridor qualifies for the August 4, 1984 exclusion.

B. Total Acres to be Converted Indirectly:

Includes the estimated number of acres for each alternative that would be unusable for farmland due to access restriction.

C. Total Acres in Corridor:

Includes an estimate of the total number of acres of existing plus additional ROW required for each alternative.

6.2.3.2 Actions Taken After Completion of Parts I and III

Upon completion of Parts I and III, the District sends ***Form NRCS-CPA 106*** or ***Form AD-1006*** and a project location map [Geographic Information System (GIS) shapefile or if not available Zipped Keyhole Markup Language (KMZ) file of project boundaries and alternatives)] to the Soil Scientist. The project location map should include the existing and proposed ROW including ponds and intersection clips. The NRCS prefers to receive these forms by email. The Soil Scientist's email address may be obtained by calling the phone number below. Should hard copies be necessary, the forms should be sent to:

State Soil Scientist
USDA - Natural Resources Conservation Service
2614 NW 43rd Street
P.O. Box 141510
Gainesville, FL 32614-1510
(352) 338-9535

NRCS will either complete Parts II, IV, and V or mark a NO in Part II indicating that no farmlands are involved. NRCS will respond within 10 working days of receipt unless a site visit or land evaluation system design is needed (up to 30 working days are allowed if a land evaluation must be completed or a site visit must be made). If more than 10 days are required, NRCS will notify the District of the need for additional time.

Where NRCS fails to provide its response within the required period and if further delay would interfere with construction activities per ***7 CFR § 658.4(a)***, the proposed project can proceed as though the site were not farmland. The Environmental Document must contain a statement that NRCS failed to provide land evaluation information within the required period, allowing the District to proceed as if the site were not farmland.

If no farmland involvement is indicated on the form, then the standard statement is provided in the Environmental Document as shown in ***Section 6.2.4.1***.

If farmland involvement is indicated on the form, then refer to ***Section 6.2.3.3*** for direction on completing Parts VI and VII of the form. Once ***Form NRCS-CPA 106*** or ***Form AD-1006*** has been updated, the District sends a copy of the completed form to the NRCS.

6.2.3.3 Final Evaluation - Completion of Parts VI and VII

PART VI

Part VI contains corridor assessment criteria to be completed by the District. These criteria assess the impact of each specific design alternative within a project corridor alignment for conversion of farmland. See ***7 CFR § 658.5(c)*** for an explanation of assessment and scoring criteria.

Upon assigning points to all criteria, all the points are added and the total is written in the row with the heading **TOTAL CORRIDOR ASSESSMENT POINTS**.

PART VII

Relative Value of Farmland (From Part V):

Includes the relative value of farmland to be converted indicated in Part V.

Total Corridor Assessment (From Part VI or a local site assessment):

Includes the total site assessment points from Part VI.

6.2.3.4 Actions Taken After Completion of Parts VI and VII

The total number of points indicated in Part VII is used to determine the site assessment given to farmland involved:

1. Corridors receiving a total score of **less than 160** points need not be given further consideration.

2. Corridors receiving a total score of **160 points or more** require stronger consideration for protection of farmland and additional coordination with NRCS. The form is returned to NRCS, who will make a determination of adverse impact for the project. The NRCS response will include a recommendation of ways to minimize the adverse impact. The NRCS recommendation for minimizing the adverse effects to protected farmland should be considered during alternative evaluation. The alternative with the lowest number of points should be selected. In the event this alternative is not selected, the Environmental Document should discuss the reasons.

6.2.4 Documentation of Projects Requiring Coordination with NRCS

Documentation of the assessment of farmland in a Type 2 Categorical Exclusion (CE), Environmental Assessment (EA) or Environmental Impact Statement (EIS) is in the form of standard statements, except where farmlands are involved. The following standard statements or documentation are included in the Environmental Document, depending on the level of involvement.

6.2.4.1 Projects with No Farmland Involvement

For Type 2 CE, EA, and EIS projects with no farmland involvement, the following standard statements should be included in the Farmland section:

a. In urbanized areas:

> *Through coordination with the Natural Resources Conservation Service, it has been determined that the project area which is located in the urbanized area of (Name of urban area) does not meet the definition of farmland as defined in 7 CFR Part 658. Therefore, the provisions of the Farmland Protection Policy Act of 1981 do not apply to this project.*

b. In non-urbanized areas:

> *Through coordination with the Natural Resources Conservation Service, it has been determined that no farmlands as defined by 7 CFR Part 658 are located in the project vicinity.*

Coordination documents with NRCS or ***Form NRCS-CPA-106*** or ***Form AD-1006*** indicating no involvement should be referenced in the Farmlands section of the Environmental Document and included in the Appendix and the project file within SWEPT.

When applicable, the standard statements should also be included in the Final Environmental Impact Statement (FEIS) Executive Summary.

6.2.4.2 Projects with Farmland Involvement

The following information is to be discussed in the Farmland section of the Environmental Document, regardless of whether the project is a Type 2 CE, EA, or EIS:

1. Quantification of farmland involvement
2. Coordination with NRCS
3. Viable alternative corridors
4. Project impacts and mitigation

The Environmental Document must document the assessment and coordination processes and provide the rationale for decisions made during the farmland evaluation. In addition, the Environmental Document should address any farmland issues that may have been raised by the ETAT during the project's ETDM Screening and address any comments received through project development, the public involvement process, or public hearing, as applicable.

Coordination documents with NRCS or ***Form NRCS-CPA-106*** or ***Form AD-1006***, should be referenced in the Farmlands section and included in the Appendix. The completed NRCS form and supporting documentation should be included in the project file within SWEPT. It is recommended that these documents be placed in the Farmland folder.

When a FEIS is prepared separately from a Record of Decision (ROD), the FEIS Executive Summary should summarize the extent of farmland involvement, reference consultation documentation and coordination efforts with the NRCS, and discuss whether or not mitigation is proposed. Appropriate text references should be provided.

6.3 REFERENCES

FDOT, Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

NRCS, Farmland Conversion Impact Rating Form (AD-1006). https://www.nrcs.usda.gov/sites/default/files/2022-06/AD1006.pdf

NRCS, Farmland Conversion Impact Rating Form for Corridor Type Projects (NRCS-CPA-106). https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/NRCS-CPA-106NRCS-CPA-106.PDF

NRCS, Farmland Protection Policy Act Manual. https://www.nrcs.usda.gov/sites/default/files/2022-08/FPPA_Manual_Final_2013_0.pdf

U.S. Census Bureau Mapper, http://tigerweb.geo.census.gov/tigerweb/

USDA, Farmland Protection Policy Act, 7 CFR Part 658

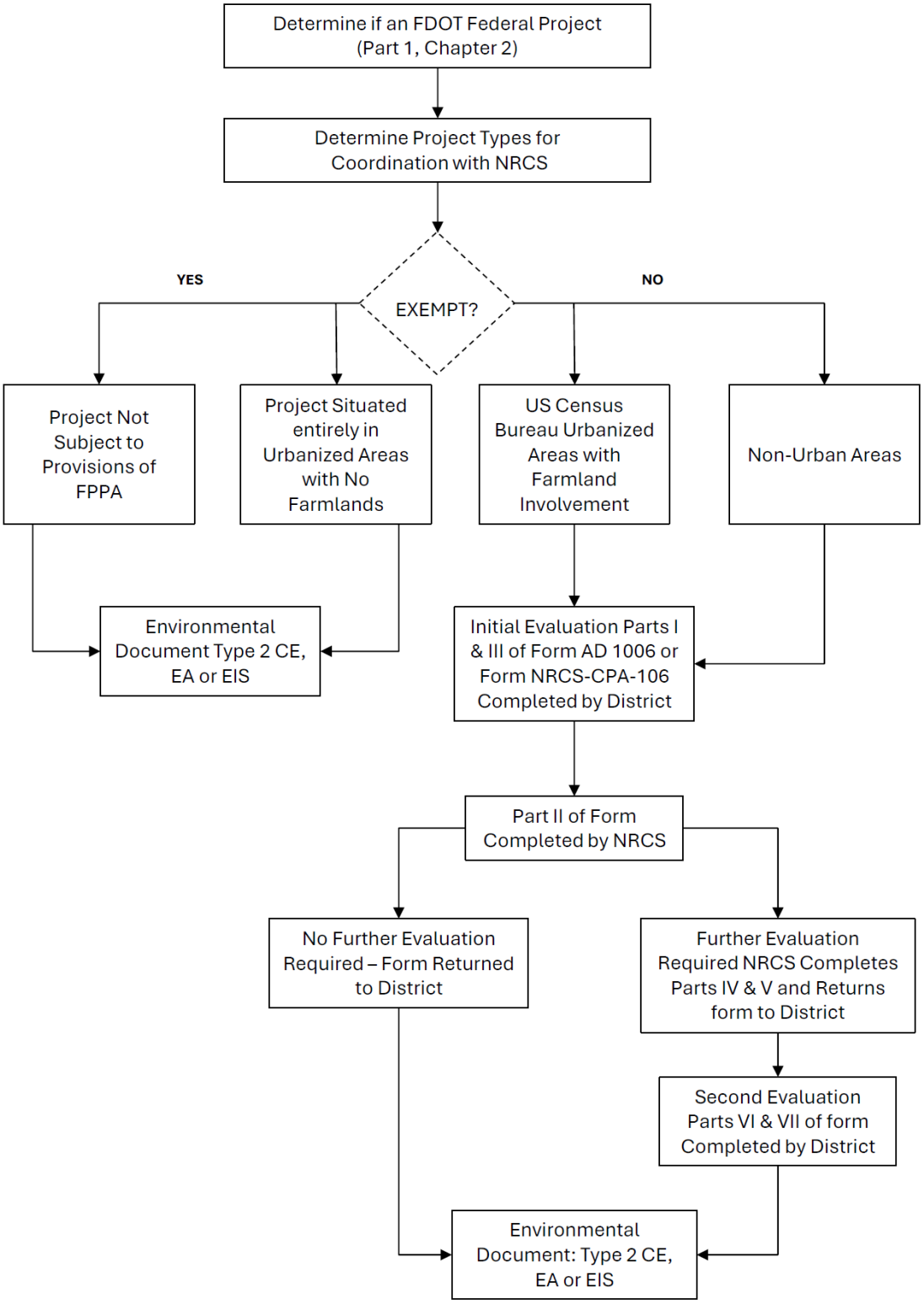

Figure 6-1 Farmland Evaluation Process

U.S. DEPARTMENT OF AGRICULTURE
Natural Resources Conservation Service

NRCS-CPA-106
(Rev. 1-91)

FARMLAND CONVERSION IMPACT RATING FOR CORRIDOR TYPE PROJECTS

PART I *(To be completed by Federal Agency)*	3. Date of Land Evaluation Request	4. Sheet 1 of _____
1. Name of Project	5. Federal Agency Involved	
2. Type of Project	6. County and State	

PART II *(To be completed by NRCS)*	1. Date Request Received by NRCS	2. Person Completing Form
3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form.) YES ☐ NO ☐		4. Acres Irrigated | Average Farm Size
5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: %	7. Amount of Farmland As Defined in FPPA Acres: %
8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS

PART III *(To be completed by Federal Agency)*	Alternative Corridor For Segment _____			
	Corridor A	**Corridor B**	**Corridor C**	**Corridor D**
A. Total Acres To Be Converted Directly				
B. Total Acres To Be Converted Indirectly, Or To Receive Services				
C. Total Acres In Corridor				
PART IV *(To be completed by NRCS) Land Evaluation Information*				
A. Total Acres Prime And Unique Farmland				
B. Total Acres Statewide And Local Important Farmland				
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				
PART V *(To be completed by NRCS) Land Evaluation Information Criterion Relative value of Farmland to Be Serviced or Converted (Scale of 0 - 100 Points)*				
PART VI *(To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))* — **Maximum Points**				
1. Area in Nonurban Use — 15				
2. Perimeter in Nonurban Use — 10				
3. Percent Of Corridor Being Farmed — 20				
4. Protection Provided By State And Local Government — 20				
5. Size of Present Farm Unit Compared To Average — 10				
6. Creation Of Nonfarmable Farmland — 25				
7. Availablility Of Farm Support Services — 5				
8. On-Farm Investments — 20				
9. Effects Of Conversion On Farm Support Services — 25				
10. Compatibility With Existing Agricultural Use — 10				
TOTAL CORRIDOR ASSESSMENT POINTS — 160	0	0	0	0
PART VII *(To be completed by Federal Agency)*				
Relative Value Of Farmland (From Part V) — 100	0	0	0	0
Total Corridor Assessment (From Part VI above or a local site assessment) — 160	0	0	0	0
TOTAL POINTS *(Total of above 2 lines)* — 260	0	0	0	0

1. Corridor Selected:	2. Total Acres of Farmlands to be Converted by Project:	3. Date Of Selection:	4. Was A Local Site Assessment Used? YES ☐ NO ☐

5. Reason For Selection:

Signature of Person Completing this Part: | DATE

NOTE: Complete a form for each segment with more than one Alternate Corridor

Clear Form

Figure 6-2 Form NRCS-CPA-106

NRCS-CPA-106 *(Reverse)*

CORRIDOR - TYPE SITE ASSESSMENT CRITERIA

The following criteria are to be used for projects that have a linear or corridor - type site configuration connecting two distant points, and crossing several different tracts of land. These include utility lines, highways, railroads, stream improvements, and flood control systems. Federal agencies are to assess the suitability of each corridor - type site or design alternative for protection as farmland along with the land evaluation information.

(1) How much land is in nonurban use within a radius of 1.0 mile from where the project is intended?
More than 90 percent - 15 points
90 to 20 percent - 14 to 1 point(s)
Less than 20 percent - 0 points

(2) How much of the perimeter of the site borders on land in nonurban use?
More than 90 percent - 10 points
90 to 20 percent - 9 to 1 point(s)
Less than 20 percent - 0 points

(3) How much of the site has been farmed (managed for a scheduled harvest or timber activity) more than five of the last 10 years?
More than 90 percent - 20 points
90 to 20 percent - 19 to 1 point(s)
Less than 20 percent - 0 points

(4) Is the site subject to state or unit of local government policies or programs to protect farmland or covered by private programs to protect farmland?
Site is protected - 20 points
Site is not protected - 0 points

(5) Is the farm unit(s) containing the site (before the project) as large as the average - size farming unit in the County ? (Average farm sizes in each county are available from the NRCS field offices in each state. Data are from the latest available Census of Agriculture, Acreage or Farm Units in Operation with $1,000 or more in sales.)
As large or larger - 10 points
Below average - deduct 1 point for each 5 percent below the average, down to 0 points if 50 percent or more below average - 9 to 0 points

(6) If the site is chosen for the project, how much of the remaining land on the farm will become non-farmable because of interference with land patterns?
Acreage equal to more than 25 percent of acres directly converted by the project - 25 points
Acreage equal to between 25 and 5 percent of the acres directly converted by the project - 1 to 24 point(s)
Acreage equal to less than 5 percent of the acres directly converted by the project - 0 points

(7) Does the site have available adequate supply of farm support services and markets, i.e., farm suppliers, equipment dealers, processing and storage facilities and farmer's markets?
All required services are available - 5 points
Some required services are available - 4 to 1 point(s)
No required services are available - 0 points

(8) Does the site have substantial and well-maintained on-farm investments such as barns, other storage building, fruit trees and vines, field terraces, drainage, irrigation, waterways, or other soil and water conservation measures?
High amount of on-farm investment - 20 points
Moderate amount of on-farm investment - 19 to 1 point(s)
No on-farm investment - 0 points

(9) Would the project at this site, by converting farmland to nonagricultural use, reduce the demand for farm support services so as to jeopardize the continued existence of these support services and thus, the viability of the farms remaining in the area?
Substantial reduction in demand for support services if the site is converted - 25 points
Some reduction in demand for support services if the site is converted - 1 to 24 point(s)
No significant reduction in demand for support services if the site is converted - 0 points

(10) Is the kind and intensity of the proposed use of the site sufficiently incompatible with agriculture that it is likely to contribute to the eventual conversion of surrounding farmland to nonagricultural use?
Proposed project is incompatible to existing agricultural use of surrounding farmland - 10 points
Proposed project is tolerable to existing agricultural use of surrounding farmland - 9 to 1 point(s)
Proposed project is fully compatible with existing agricultural use of surrounding farmland - 0 points

Figure 6-2 Form NRCS-CPA-106 (Page 2 of 2)

U.S. Department of Agriculture

FARMLAND CONVERSION IMPACT RATING

PART I *(To be completed by Federal Agency)*		Date Of Land Evaluation Request			
Name of Project		Federal Agency Involved			
Proposed Land Use		County and State county and state			
PART II *(To be completed by NRCS)*		Date Request Received By NRCS	Person Completing Form:		
Does the site contain Prime, Unique, Statewide or Local Important Farmland? *(If no, the FPPA does not apply - do not complete additional parts of this form)*	YES ☐ NO ☐	Acres Irrigated	Average Farm Size		
Major Crop(s)	Farmable Land In Govt. Jurisdiction Acres: %	Amount of Farmland As Defined in FPPA Acres: %			
Name of Land Evaluation System Used	Name of State or Local Site Assessment System	Date Land Evaluation Returned by NRCS			

PART III *(To be completed by Federal Agency)*	Alternative Site Rating			
	Site A	Site B	Site C	Site D
A. Total Acres To Be Converted Directly				
B. Total Acres To Be Converted Indirectly				
C. Total Acres In Site				
PART IV *(To be completed by NRCS)* Land Evaluation Information				
A. Total Acres Prime And Unique Farmland				
B. Total Acres Statewide Important or Local Important Farmland				
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				
PART V (To be completed by NRCS) Land Evaluation Criterion Relative Value of Farmland To Be Converted (Scale of 0 to 100 Points)				

PART VI *(To be completed by Federal Agency)* Site Assessment Criteria *(Criteria are explained in 7 CFR 658.5 b. For Corridor project use form NRCS-CPA-106)*	**Maximum Points**	Site A	Site B	Site C	Site D
1. Area In Non-urban Use	(15)				
2. Perimeter In Non-urban Use	(10)				
3. Percent Of Site Being Farmed	(20)				
4. Protection Provided By State and Local Government	(20)				
5. Distance From Urban Built-up Area	(15)				
6. Distance To Urban Support Services	(15)				
7. Size Of Present Farm Unit Compared To Average	(10)				
8. Creation Of Non-farmable Farmland	(10)				
9. Availability Of Farm Support Services	(5)				
10. On-Farm Investments	(20)				
11. Effects Of Conversion On Farm Support Services	(10)				
12. Compatibility With Existing Agricultural Use	(10)				
TOTAL SITE ASSESSMENT POINTS	160	0	0	0	0
PART VII ***(To be completed by Federal Agency)***					
Relative Value Of Farmland *(From Part V)*	100	0	0	0	0
Total Site Assessment *(From Part VI above or local site assessment)*	160	0	0	0	0
TOTAL POINTS ***(Total of above 2 lines)***	260	0	0	0	0

Site Selected:	Date Of Selection	Was A Local Site Assessment Used? YES ☐ NO ☐
Reason For Selection:		
Name of Federal agency representative completing this form:		Date:

(See Instructions on reverse side) **Form AD-1006 (03-02)**

Figure 6-3 Form AD-1006

STEPS IN THE PROCESSING THE FARMLAND AND CONVERSION IMPACT RATING FORM

Step 1 - Federal agencies (or Federally funded projects) involved in proposed projects that may convert farmland, as defined in the Farmland Protection Policy Act (FPPA) to nonagricultural uses, will initially complete Parts I and III of the form. For Corridor type projects, the Federal agency shall use form NRCS-CPA-106 in place of form AD-1006. The Land Evaluation and Site Assessment (LESA) process may also be accessed by visiting the FPPA website, http://fppa.nrcs.usda.gov/lesa/.

Step 2 - Originator (Federal Agency) will send one original copy of the form together with appropriate scaled maps indicating location(s)of project site(s), to the Natural Resources Conservation Service (NRCS) local Field Office or USDA Service Center and retain a copy for their files. (NRCS has offices in most counties in the U.S. The USDA Office Information Locator may be found at http://offices.usda.gov/scripts/ndISAPI.dll/oip_public/USA_map, or the offices can usually be found in the Phone Book under U.S. Government, Department of Agriculture. A list of field offices is available from the NRCS State Conservationist and State Office in each State.)

Step 3 - NRCS will, within 10 working days after receipt of the completed form, make a determination as to whether the site(s) of the proposed project contains prime, unique, statewide or local important farmland. (When a site visit or land evaluation system design is needed, NRCS will respond within 30 working days.

Step 4 - For sites where farmland covered by the FPPA will be converted by the proposed project, NRCS will complete Parts II, IV and V of the form.

Step 5 - NRCS will return the original copy of the form to the Federal agency involved in the project, and retain a file copy for NRCS records.

Step 6 - The Federal agency involved in the proposed project will complete Parts VI and VII of the form and return the form with the final selected site to the servicing NRCS office.

Step 7 - The Federal agency providing financial or technical assistance to the proposed project will make a determination as to whether the proposed conversion is consistent with the FPPA.

INSTRUCTIONS FOR COMPLETING THE FARMLAND CONVERSION IMPACT RATING FORM
(For Federal Agency)

Part I: When completing the "County and State" questions, list all the local governments that are responsible for local land use controls where site(s) are to be evaluated.

Part III: When completing item B (Total Acres To Be Converted Indirectly), include the following:

1. Acres not being directly converted but that would no longer be capable of being farmed after the conversion, because the conversion would restrict access to them or other major change in the ability to use the land for agriculture.
2. Acres planned to receive services from an infrastructure project as indicated in the project justification (e.g. highways, utilities planned build out capacity) that will cause a direct conversion.

Part VI: Do not complete Part VI using the standard format if a State or Local site assessment is used. With local and NRCS assistance, use the local Land Evaluation and Site Assessment (LESA).

1. Assign the maximum points for each site assessment criterion as shown in § 658.5(b) of CFR. In cases of corridor-type project such as transportation, power line and flood control, criteria #5 and #6 will not apply and will, be weighted zero, however, criterion #8 will be weighed a maximum of 25 points and criterion #11 a maximum of 25 points.

2. Federal agencies may assign relative weights among the 12 site assessment criteria other than those shown on the FPPA rule after submitting individual agency FPPA policy for review and comment to NRCS. In all cases where other weights are assigned, relative adjustments must be made to maintain the maximum total points at 160. For project sites where the total points equal or exceed 160, consider alternative actions, as appropriate, that could reduce adverse impacts (e.g. Alternative Sites, Modifications or Mitigation).

Part VII: In computing the "Total Site Assessment Points" where a State or local site assessment is used and the total maximum number of points is other than 160, convert the site assessment points to a base of 160.
Example: if the Site Assessment maximum is 200 points, and the alternative Site "A" is rated 180 points:

$$\frac{\text{Total points assigned Site A}}{\text{Maximum points possible}} = \frac{180}{200} \text{ X } 160 = 144 \text{ points for Site A}$$

For assistance in completing this form or FPPA process, contact the local NRCS Field Office or USDA Service Center.

NRCS employees, consult the FPPA Manual and/or policy for additional instructions to complete the AD-1006 form.

Figure 6-3 Form AD-1006 (Page 2 of 2)

Federal Highway Administration, Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents.

https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx

Natural Resources Conservation Service (NRCS) Web Soil Survey, http://websoilsurvey.nrcs.usda.gov/app/

U.S. Department of Agriculture (USDA), 2017. Agricultural Handbook 18, Soil Survey Manual,

https://www.nrcs.usda.gov/resources/guides-and-instructions/soil-survey-manual

USDA NRCS National Soil Survey Handbook,

https://www.nrcs.usda.gov/resources/guides-and-instructions/national-soil-survey-handbook

Figure 6-4 Farmland Information Sources

PART 2, CHAPTER 7

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PART 2, CHAPTER 7

SECTION 4(f) RESOURCES

7.1 OVERVIEW

This chapter outlines the Florida Department of Transportation's (FDOT's) procedures governing the use of land from publicly owned parks and recreation areas, wildlife and waterfowl refuges, and publicly or privately owned historic sites by Federal Projects in the State of Florida. These requirements are currently codified at ***23 United Stated Code (U.S.C.) § 138*** and ***49 U.S.C. § 303***. They originated in ***Section 4(f)*** of the ***Department of Transportation Act of 1966 (Pub. L. 89-670, 80 Stat. 931)*** and, as a result, practitioners commonly refer to this subject matter as ***Section 4(f)***. The resource types listed in the law are referred to as ***Section 4(f)*** protected properties and the use of land from any one of these resources by a transportation project is referred to as a ***Section 4(f)*** use. ***Section 4(f)*** regulations only apply to the U.S. Department of Transportation (USDOT) and its agencies, i.e., Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), Federal Transit Administration (FTA), and Federal Railroad Administration (FRA). FHWA and FTA adopted rules under ***23 Code of Federal Regulations (CFR) Part 774*** to implement the requirements of the federal statutes.

If one of the USDOT agencies other than FDOT's Office of Environmental Management (OEM) (as set forth in the ***National Environmental Policy Act (NEPA) Assignment Memorandum of Understanding (MOU)***) is the Lead Federal Agency, then the District consults with that agency to determine the applicability of ***Section 4(f)*** and the approval option to be pursued by the agency. OEM remains available as a resource to the Districts during the ***Section 4(f)*** evaluation and determination process. This chapter focuses on FDOT Federal Projects. Other agency approvals are not documented using the StateWide Environmental Project Tracker (SWEPT) ***Section 4(f) Tool***.

Section 4(f) requires OEM to make specific findings when FDOT Federal Projects require the use of land from a ***Section 4(f)*** protected property. During the planning and development of transportation facilities OEM may approve the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of an historic or archeological site of national, state, or local significance only when the following conditions are met:

- There are no feasible and prudent avoidance alternatives to the use of land; **and**
- The program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the proposed use.

Or

- The use of the property will have a *de minimis* impact as defined in the statutes and regulations.

This chapter focuses on the processes associated with the development of FDOT Federal Projects that have the potential to "use" lands from any property designated or functioning as a ***Section 4(f)*** resource as set forth in the statutes and implementing regulations, including actions which, though not requiring the acquisition of lands from the property, could significantly impair the function of the property for its protected purposes. See the ***Section 4(f) Decision Tree*** on FDOT's ***Section 4(f) and Section 6(f) Website***. Also, this chapter addresses the conversion of park and recreational properties funded wholly or in part under ***Section 6(f)*** of the ***Land and Water Conservation Fund Act (LWCFA) (16 U.S.C. § 4601-4 et seq., 36 CFR § 59)***, as well as other federal and state encumbrances and requirements which may overlap with ***Section 4(f)***.

For transportation projects funded by the Office of Federal Lands Highway, FTA, FRA, or FAA, those agencies will act as the Lead Agency for ***Section 4(f)*** analysis. In these situations, the District contacts the OEM Project Delivery Coordinator (PDC) and works with the officials of the lead transportation agency. ***Section 4(f)*** processes, evaluations, and alternative analyses vary depending upon on the type of transportation project being developed. In addition, certain approval options are not available for projects which are not FDOT Federal Projects. For example, the ***Nationwide Programmatic Section 4(f) Evaluations*** discussed in this chapter are not available to other agencies within the USDOT.

Regardless of which USDOT agency is the Lead Agency, the basic requirements set forth in the statutes for the approval of a project using ***Section 4(f)*** protected lands are the same.

7.1.1 Definitions

All possible planning *(23 CFR § 774.17)* - All reasonable measures identified in the ***Section 4(f)*** Evaluation to minimize harm or mitigate for adverse impacts and effects must be included in the project.

De minimis* Impact *(23 CFR § 774.17) -

- For parks, recreation areas, and wildlife and waterfowl refuges, a *de minimis* impact is one that is minimal and the use of the protected property is one that will not adversely affect the features, attributes, or activities qualifying the property for protection under ***Section 4(f),*** and the Official With Jurisdiction (OWJ) has concurred with this finding.

- For projects using land from historic properties, a *de minimis* impact finding means that OEM has determined, in accordance with ***36 CFR Part 800***, that no historic property is affected by the project or that there is no adverse effect to the historic property in question and that the State Historic Preservation Officer (SHPO) or, as appropriate, the Tribal Historic Preservation Officer (THPO) has concurred with this determination.

Feasible and prudent avoidance alternative *(23 CFR § 774.17)* - An alternative that avoids using the ***Section 4(f)*** property and does not cause other severe problems of a

magnitude that substantially outweighs the importance of protecting the ***Section 4(f)*** property.

Officials with Jurisdiction (OWJ) ***(23 CFR § 774.17)*** - The entities and individuals who own and/or administer the property are considered the OWJ.

- For public parks, recreation areas, and wildlife and waterfowl refuges, the OWJ are the officials of the agency or agencies that own or administer the property in question and who are empowered to represent the agency on matters related to the property.

- For historic properties (including archaeological sites), the OWJ are the SHPO, or, if the property is located on Tribal Land, the THPO.

    - When the property is located on Tribal Land but the relevant Federally Recognized Native American Tribe (Tribe) has not assumed the responsibilities of the SHPO, then a representative designated by the Tribe is recognized as an OWJ in addition to the SHPO.

    - When the Advisory Council on Historic Preservation (ACHP) is participating in consultation concerning a property under ***Sections 110 or 106 of the National Historic Preservation Act (NHPA)*** (***16 U.S.C. § 470***), the ACHP is also an OWJ.

    - When the historic property is a National Historic Landmark (NHL), the designated official of the National Park Service (NPS) is also an OWJ over the resource for the purposes of ***Section 4(f)***.

    - When a historic property is also a public park, recreation area, wildlife or waterfowl refuge, or when the historic site is located within the boundaries of such lands, the OWJ include the appropriate officials for historic properties as well as the officials of the agencies that own or administer the park, recreation or wildlife and waterfowl refuge lands.

Significance ***(23 CFR Part 774)*** -

- For public parks, recreation areas, or wildlife and waterfowl refuges, significance means that in comparing the availability and function of the property in question to similar properties in the area, the resource plays an important role in meeting the park, recreational, or refuge objective of the community it serves. Except for certain multiple use land holdings, significance determinations apply to the entire property, not just to the portions being acquired for the transportation project. Significance determinations of these types of publicly owned lands are made by the OWJ over the property. In the absence of a determination by the OWJ, the property will be presumed to be significant for the purposes of ***Section 4(f)*** [see ***23 CFR § 774.11*** and ***FHWA Section 4(f) Policy Paper***, Question 1A].

- For historic properties, significance normally means that the historic resource is either listed in or eligible for listing in the National Register of Historic Places

(NRHP) in accordance with ***36 CFR Part 63*** (regulations for Determinations of Eligibility for Inclusion in the NRHP*)* or is otherwise determined significant by the Lead Federal Agency during the consultation process with the OWJ over the historic resource as required under ***36 CFR Part 800*** and ***23 CFR Part 774*** [see definition of historic site in ***23 CFR § 774.17*** and ***FHWA Section 4(f) Policy Paper***, Question 2A].

Use *(23 CFR § 774.17)* - The "use" of a ***Section 4(f)*** resource occurs when a project:

- permanently incorporates land from a ***Section 4(f)*** property into a transportation facility; or

- requires a temporary occupancy of land within a ***Section 4(f)*** property that is adverse in terms of the statute's preservation purpose [see criteria in ***23 CFR § 774.13(d)*** or the ***FHWA Section 4(f) Policy Paper***, Question 7]; or

- has proximity impacts that, while not incorporating land from a protected property and which includes all possible measures to minimize harm, still results in a substantial impairment of the activities, features, and attributes which qualify the property for protection under ***Section 4(f)***. [i.e., constructive use (***23 CFR § 774.15***)].

7.2 SECTION 4(f) PROPERTIES AND EVALUATIONS

7.2.1 Substantive Requirements of Section 4(f)

Section 4(f) requires agencies of the USDOT to perform a substantive review as part of its decision-making process whenever approving a proposed project's use of a protected property. Congress intended ***Section 4(f)*** to bar unnecessary conversions of the property types identified in the statutes into transportation facilities. This "preservationist intent" allows agencies of the USDOT to use lands from a protected property when:

- the use of the property is so negligible as to represent a *de minimis* impact to the protected resource;

Or

- there is no prudent and feasible alternative to the use of the land and

- the proposed project includes all possible planning to minimize harm to the protected property resulting from the use of the land.

If the ***Section 4(f)*** resources cannot be avoided, FDOT's goal is to reduce the project impacts to the ***Section 4(f)*** protected property to a level where the impacts are *de minimis*, or "so minimal as to not constitute a use within the meaning of ***Section 4(f)***." If the impacts cannot be reduced to the level of *de minimis*, and one of the five nationwide ***Programmatic Section 4(f) Evaluations*** cannot be applied to the situation, FDOT processes the use of a protected property through an ***Individual Section 4(f) Evaluation***.

FDOT may only approve the use of a ***Section 4(f)*** protected property through the ***Individual Section 4(f) Evaluation*** once it has demonstrated that there are no prudent and feasible alternatives to the use of land and that the project includes all possible planning to minimize harm to the property.

In situations where there are no feasible and prudent avoidance alternatives and there are two or more alternatives requiring the use of ***Section 4(f)*** property, FDOT may approve only the alternative which results in the least overall harm as defined in the regulations at ***23 CFR § 774.3(c)(1)*** and in ***FHWA Section 4(f) Policy Paper***, ***Section 3.3.3.2***.

7.2.2 Applicable Projects

Section 4(f) applies to FDOT Federal Projects that involve the "use" of a ***Section 4(f)*** property or resource. For the ***Section 4(f)*** statute to apply, the project must meet all the following criteria:

1. Must be a transportation project that utilizes federal aid funds; or
2. Must require an approval from FDOT in order to proceed;
3. Must require the use of land from property protected under ***Section 4(f)*** [*see* ***23 U.S.C. § 138(a)*** and ***49 U.S.C. § 303***]; and
4. None of the exclusions, exceptions, or rules set forth in the statutes, regulations, or USDOT policies apply to the project or the property (see the FDOT's ***Section 4(f) and Section 6(f) Website*** or ***Section 7.2.3.1*** and ***Section 7.3.3***).

Examples of situations where ***Section 4(f)*** would not apply include, but are not limited to:

- A transportation project constructed solely using state or local funds, and not requiring OEM approval;
- A project intended to address a purpose that is unrelated to the movement of people, goods, and services from one place to another (i.e., not a transportation purpose);
- A project to be located adjacent to a ***Section 4(f)*** property, causing only minor proximity impacts to the ***Section 4(f)*** property (i.e., no constructive use); and
- A project that will take land from a privately-owned park, recreation area, or refuge.

7.2.3 Section 4(f) Protected Resources

For clarity in determinations and approvals, it is best to divide ***Section 4(f)*** resources into two categories: (1) publicly owned parks, recreation areas, and wildlife or waterfowl refuges, and (2) significant historic and archaeological properties in public or private ownership. ***Section 4(f)*** only applies to publicly owned parks, recreation areas, and wildlife and waterfowl refuges that have been determined to be significant. ***Section 4(f)***

does not apply to privately owned parks, recreation areas, and wildlife or waterfowl refuges even if such areas are open to the general public. ***Section 4(f)*** applies to significant historic and archeological sites regardless of ownership.

Except in cases of certain multiple use land holdings, ***Section 4(f)*** applies to the entire resource, not just the portion being used by the proposed project. For details about multiple use land holdings and ***Section 4(f)*** applicability, see ***Section 7.2.3.1***.

To be considered a ***Section 4(f)*** protected resource, a property must meet the following criteria:

A. **For Public Parks and Recreation Areas**

- Must be publicly owned which refers to ownership by local, state or federal government (this can also include permanent easements and long-term leases or other public proprietary interests)
- Must be open to the public during normal hours of operation
- The major purpose must be for park or recreation activities
- Must be designated or functioning as a significant park or recreational area

B. **For Wildlife and Waterfowl Refuge**

- Must be publicly owned which refers to ownership by local, state or federal government (this can also include permanent easements and long-term leases or other public proprietary interests)
- Must be open to the public unless public access is restricted for the protection of refuge habitat, function, or species
- The major purpose must be for wildlife or waterfowl refuge functions
- Must be designated or function as a significant wildlife or waterfowl refuge

C. **For Historic Sites**

- Must be eligible for listing or is listed in the National Register of Historic Places (NRHP) unless OEM determines that the application of ***Section 4(f)*** is otherwise appropriate.

For more detail related to determining when a property represents one of these ***Section 4(f)*** protected site types, see the Questions and Answers numbered 1 through 6 in Part II of the ***FHWA Section 4(f) Policy Paper*** which can be accessed from FDOT's ***Section 4(f) and Section 6(f) Website***.

7.2.3.1 Additional Considerations when Identifying Section 4(f) Properties

The ***FHWA Section 4(f) Policy Paper*** provides guidance regarding the applicability of ***Section 4(f)*** to a variety of property types. This is not an all-inclusive list. If the practitioner believes there is a property that is also protected under ***Section 4(f)*** not listed here, they should refer to the ***FHWA Section 4(f) Policy Paper*** or contact the PDC. See ***Section 7.6*** for a link to the ***FHWA Section 4(f) Policy Paper***.

A. **Historic Districts** - When a project uses land from an individually eligible property within a historic district, or a property that is a contributing element to the historic district, ***Section 4(f)*** is applicable. All elements within historic districts are presumed to be contributing resources to the district unless FDOT, in consultation with the State Historic Preservation Officer (SHPO)/ Tribal Historic Preservation Officer (THPO), determines that the element is not contributing. When a project requires land from a non-historic or non-contributing property lying within a historic district, and does not use other land within the historic district that is considered contributing to its historic significance, there is no direct ***Section 4(f)*** use of the historic district.

B. **Wild and Scenic Rivers** - Designation as a Wild and Scenic River, Study River, or listing on the Nationwide Rivers Inventory does not in itself confer ***Section 4(f)*** protections. Only those portions of the river or the river corridor which function as, or are designated as being significant publicly owned park or recreational areas, significant wildlife or waterfowl refuge areas, or which are significant historic sites are protected under ***Section 4(f)***. In certain cases, the river may be designated under the ***Wild and Scenic Rivers Act (WSRA) (16 U.S.C. § 1271 et seq.*** and ***36 CFR § 297.3)*** as a recreational river or is identified as a recreational resource in the river management plan. If a river meets either of those two conditions and it is publicly owned, then the river is protected under ***Section 4(f)*** as well as under the ***WSRA***. When determining the applicability of ***Section 4(f)*** to portions of designated Wild and Scenic Rivers or Study Rivers, contact the PDC to discuss ***Section 4(f)*** applicability, see ***Part 2, Chapter 12, Wild and Scenic Rivers*** and the ***Overview of the Wild and Scenic Rivers System*** on FDOT's ***Section 4(f) and Section 6(f) Website***.

C. **School Playgrounds** - Publicly owned school playgrounds, running tracks, and ball fields that provide recreational opportunities for the public during non-school hours may qualify as ***Section 4(f)*** properties.

D. **Trails and Shared Use Paths** - ***Section 4(f)*** applies to publicly owned shared use trails, paths, bikeways, or sidewalks (or portions thereof) designated or functioning primarily for recreation, unless the Officials With Jurisdiction (OWJ) determines that it is not significant for such purpose [***FHWA Section 4(f) Policy Paper***, Question 15] or when an exception to ***Section 4(f)*** applies under ***23 CFR § 774.13(f)***.

E. **Golf Courses** - ***Section 4(f)*** applies to golf courses that are owned, operated, or managed by a public agency for the primary purpose of public recreation, and that are determined to be significant by the OWJ. Golf courses that are owned by a public agency but are managed and operated by a private entity may still be subject to ***Section 4(f)*** requirements depending on the operating agreement. Golf courses listed in the NRHP are treated as other historic sites as described above.

F. **Museums, Aquariums, and Zoos** - Publicly owned museums, aquariums and zoos are not subject to ***Section 4(f)*** unless they are significant historic sites. These facilities will need to be evaluated on a case-by-case basis to determine if they provide additional park and recreational opportunities and if that is their primary purpose, which would make them subject to ***Section 4(f)***.

G. **Fairgrounds** - When fairgrounds are open to the public and function primarily for public recreation, ***Section 4(f)*** applies to those portions of the land determined significant for park or recreational purposes (see the Public Multiple Use Land Holdings discussion below). A fairground may also qualify as a historic site which would require consideration under ***Section 4(f)***.

H. **Bodies of Water** - ***Section 4(f)*** applies to lakes and rivers, or portions thereof, which are contained within the boundaries of a park, recreation area, refuge, historic site or adjacent to publicly owned lands to which ***Section 4(f)*** otherwise applies.

I. **Public Multiple Use Land Holdings** - Public multiple use land holdings, by definition, are comprised of multiple areas that serve different purposes. Generally, these properties are large and are usually established by legislation to serve a variety of functions, some of which are protected by ***Section 4(f)*** and some of which are not. For these kinds of properties (frequently these are State or National Forests, large tracts of conservation lands, or Water Management District properties), ***Section 4(f)*** only applies to those areas within a multiple-use public property which are significant historic sites or that function primarily as significant park, recreation, or refuge purposes. For example, within a National Forest, there could be some areas that qualify as ***Section 4(f)*** resources (e.g., campgrounds, trails, picnic areas) while other areas, such as those utilized for timber sales or mineral extraction, would not. Coordination with the OWJ and examination of the management plan for the area will be necessary to determine if ***Section 4(f)*** should apply to an area of a multiple-use property that would be used by a transportation project.

J. **Planned Facilities** - ***Section 4(f)*** applies to a planned facility when a public entity owns the property and has formally designated and determined it to be significant for park, recreation area, or wildlife and waterfowl refuge purposes. Evidence of formal designation could be the inclusion of the planned facility in an approved city or county master plan. The key is whether the planned facility is presently publicly owned, presently formally designated for ***Section 4(f)*** purposes, and presently significant. A simple expression of interest in developing a property, or a plan to

purchase privately held land to develop a property does not suffice to consider the property to be a planned facility.

K. **Jointly Planned Rails to Trails Projects** - A ***January 1996 MOU between the Florida Department of Environmental Protection (FDEP) and FDOT and Concurred in by FHWA*** established an automatic joint planning provision for planned Rails to Trails project corridors which may intersect or exist alongside a highway corridor. In accordance with this MOU, FDEP and FDOT will jointly plan Rail to Trail projects which may coincide with a planned transportation project to accommodate the recreational and highway objectives of both agencies. When such planning occurs, the requirements of ***Section 4(f)*** are satisfied.

7.2.3.2 Leases and Easements

A property may be considered publicly owned for ***Section 4(f)*** purposes if the land is being managed for a significant recreational or refuge purposes under a long-term lease or easement. The following should be considered when examining the applicability of ***Section 4(f)*** to a property subject to lease or easement: the purpose, terms, property management, parties involved, termination clauses, and other restrictions as set forth in the lease or easement agreement.

Additionally, FDOT has easements, such as drainage and Right of Way (ROW) easements, for transportation facilities that cross through property protected under ***Section 4(f)***. If there is an existing ROW easement, the property is already part of the transportation facility due to the easement encumbrance, and is not subject to ***Section 4(f)*** protection.

If a project is proposing a new easement across an existing ***Section 4(f)*** property, then it could constitute a “use” within the meaning of ***Section 4(f)*** and require a ***Section 4(f)*** determination. Historic property boundaries are established based upon historical records, settings, and characteristics of the historic resource or archaeological site. These boundaries may extend into existing or proposed ROW and easements, and ***Section 4(f)*** approval may be required for transportation projects involving historic properties. When a new easement is proposed through a ***Section 4(f)*** protected historic property, the ***Section 4(f)*** evaluation is triggered by the conversion of land into a transportation facility rather than by the simple acquisition of said land.

Any questions on ***Section 4(f)*** applicability to a lease or easement should be referred to OEM and the Office of General Counsel (OGC).

7.2.3.3 Tribal Properties and Section 4(f)

Federally recognized Native American Tribes (Tribes) are sovereign nations and the lands owned by them are not generally considered publicly owned within the meaning of ***Section 4(f)***. However, if a potential ***Section 4(f)*** resource is identified on Tribal Lands that serves a public function and is open to the general public, the property needs to be evaluated for ***Section 4(f)*** applicability (***FHWA Section 4(f) Policy Paper***, Question 1D).

In cases involving tribal trust lands, the Bureau of Indian Affairs (BIA) is contacted to determine if they should participate in any required consultations.

Also, Traditional Cultural Places (TCPs) may be subject to the provisions of ***Section 4(f)*** if the TCP is eligible for listing in or is listed in the NRHP [see ***FHWA Section 4(f) Policy Paper***, Question 6]. SHPO also comments on TCP involvement. For the requirements related to TCPs under ***Section 106***, see ***Part 2, Chapter 8, Archaeological and Historical Resources***.

Questions regarding whether tribally owned property is protected under ***Section 4(f)*** and how to proceed should be referred to the OEM and the OGC.

7.2.4 Overview of Section 4(f) Analysis

Section 4(f) analysis includes the following:

1. Identification of properties which may represent ***Section 4(f)*** resources.

2. Initial consultations between the District and the appropriate OWJ regarding potential ***Section 4(f)*** properties, including requesting the OWJ to provide and/or concur with a statement of significance. If the property is not significant, then the project does not require an approval under ***Section 4(f)***.

3. Identification and documentation of the findings of "use" or "no use" of ***Section 4(f)*** resources. When there is no use of lands protected by ***Section 4(f)***, then the project does not require an approval under ***Section 4(f)***.

4. Documentation of the appropriate ***Section 4(f)*** approval option when an approval under ***Section 4(f)*** is required.

FDOT recognizes the following types of documentation for ***Section 4(f)*** applicability and approval (see ***Section 7.3***):

Applicability of *Section 4(f)* to a project

- No ***Section 4(f)*** Involvement – there are no existing or formally planned ***Section 4(f)*** properties within or adjacent to the project area, or properties exist but there is no temporary or permanent acquisition of land from a potentially protected resource and no meaningful proximity impacts to the property.

- No Use – ***Section 4(f)*** properties exist within or adjacent to the project area, but the proposed project has no use of the properties within the meaning of ***Section 4(f)*** (see ***Section 7.3.2***, ***Section 7.3.4***, and ***Section 7.3.5.4***).

- Exceptions and Exemptions – situations and circumstances regarding specific actions or properties that are not subject to the requirements of ***Section 4(f)*** when meeting the conditions identified in the Statutes, regulations, or policies as discussed in ***Section 7.3.3***.

Approvals of the use of a *Section 4(f)* property

- ***De minimis*** – a ***Section 4(f)*** use that is so inconsequential that it will have no adverse effects on the attributes, features, or activities of the ***Section 4(f)*** property.

- ***Programmatic Section 4(f) Evaluation*** – a timesaving, procedural option that allows transportation officials to approve certain minor uses of ***Section 4(f)*** properties for projects meeting specific conditions without completing an ***Individual Section 4(f) Evaluation***.

- ***Individual Section 4(f) Evaluation*** – the standard, full ***Section 4(f)*** Evaluation and approval that is prepared when the use of a ***Section 4(f)*** property does not meet the ***Programmatic Section 4(f) Evaluation*** criteria and exceeds the definition of a *de minimis* impact.

- **Constructive Use** – occurs when the project does not incorporate land from a ***Section 4(f)*** property, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under ***Section 4(f)*** are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished.

Pursuant to the ***NEPA Assignment MOU***, if a determination of Constructive Use is anticipated on a project, the District notifies OEM to initiate consultation with FHWA. Both the applicability and approval for a Constructive Use can only be made in consultation with FHWA Headquarters in Washington D.C. For more detail on Constructive Use, see ***Section 7.3.5.4***.

7.2.5 Coordination with the Officials with Jurisdiction

The ***Federal-Aid Highway Act of 1968*** requires consultation with the OWJ over the ***Section 4(f)*** property when the use of a protected property is anticipated and/or more information is needed regarding the purpose and function of a property. The OWJ is the federal, state, or local agency official that owns or administers a ***Section 4(f)*** property or represents an agency on matters related to the property.

For public parks, recreation areas, and wildlife and waterfowl refuges, the OWJ is the official(s) of an agency or agencies that own and/or administer the property in question and who are empowered to represent the agency on matters related to the property.

The OWJ for historic sites is the SHPO/THPO [in some cases the National Park Service (NPS) and the Advisory Council on Historic Preservation (ACHP) may also serve as OWJ], and significance for historic sites is based upon listing in, or eligibility for listing in the NRHP. Most coordination with the OWJ for historic sites (including archaeological sites) within the ***Section 4(f)*** process takes place parallel to the coordination required by ***Section 106***. ***Sections 106 and 4(f)*** are different laws which require different findings and include different considerations. However, decisions and findings made while

following one of these processes often serve to guide the decisions and findings of the other.

When coordinating with the OWJ regarding a project and its impacts, FDOT must have a clear understanding of the property, its designated purpose, and its management plan. Coordination with the OWJ confirms the purpose of the property and its significance to the community, and whether the property is protected under ***Section 4(f)***. If the property is determined to meet the criteria for protection under ***Section 4(f)***, additional coordination with the OWJ follows as appropriate.

When requesting a determination of significance from the OWJ over the property, FDOT defines the term significance for the purposes of ***Section 4(f)***. Therefore, when providing the coordination letter to the OWJ for parks, recreation areas, and wildlife and waterfowl refuges, the District must include the following statement:

> *Significance means that in comparing the availability and function of the [name of the recreation area, park or wildlife and waterfowl refuge area] with the [appropriate function of the recreational, park and refuge] objectives of that community, the land in question plays an important role in meeting those objectives.*

In the absence of a determination of significance from the OWJ, FDOT presumes the property to be significant and the District continues the ***Section 4(f)*** process [***23 CFR § 774.11(c)***]. All determinations of significance, whether stated or presumed, are subject to review by OEM for reasonableness pursuant to ***23 CFR § 774.11***. When OEM changes a determination of significance, the basis for this change is included in the project file and discussed in the environmental documentation for the proposed action.

For historic and archaeological sites, the determinations of significance for historic properties generally occurs when the OWJ, FDOT, and other appropriate consulting parties agree with the findings contained in the ***Cultural Resources Assessment Survey (CRAS) Report*** completed pursuant to the requirements of ***Section 106*** of the ***NHPA***. If the OWJ does not respond within 30 days of the receipt of the ***CRAS Report***, FDOT may presume that the OWJ has concurred with the findings made in the report ***[36 CFR § 800.3(c)(4)]***. The ***CRAS Report*** identifies the historic resources which are either listed in or eligible for listing in the NRHP, and are therefore considered significant under ***Section 4(f)***.

Once FDOT has determined there is a use of land protected by ***Section 4(f)*** by the proposed transportation project, the District can work with the OWJ over the property to identify measures to avoid using land from the property or to minimize harm to the protected resource resulting from the “use” of the property. The District prepares and sends a letter (on FDOT letterhead) to the OWJ for concurrence. This letter includes a description of the property and its significance, anticipated impacts resulting from the project’s use of the protected property, the FDOT’s determination that ***Section 4(f)*** applies to the use of the property, and any measures to minimize harm to the protected resource. The agreed upon minimization/mitigation measures are incorporated as environmental commitments in the Environmental Document (see ***Part 2, Chapter 22,***

Commitments). After the OWJ has been notified of the "use", the District continues coordination to identify measures to minimize/mitigate harm to the property and to determine which of the available approval options is the most appropriate analysis for the action. OEM is available to review draft OWJ correspondence prepared by the District or Local Agency Program (LAP) agencies.

7.2.6 Standard Statement for NEPA Assignment and Section 4(f) Documentation

Technical memorandums, reports or other documents prepared for an FDOT Federal Project must include the ***NEPA*** Assignment standard statement (see ***Part 1, Chapter 4, Project Development Process***)

7.3 PROCEDURE

The procedural and documentation requirements outlined below are to be used for ***Section 4(f)*** analysis and file documentation.

7.3.1 Process and Documentation

FDOT uses the ***Section 4(f) Tool*** in SWEPT to record ***Section 4(f)*** applicability determinations and approval decisions, along with documentation supporting these decisions. When determining ***Section 4(f)*** applicability, the ***Section 4(f) Tool*** directs the preparer to provide information about the property and its relationship with each project alternative. The results of the ***Section 4(f) Tool*** are saved in the project file and attached to the Environmental Document. Documentation and processing requirements vary depending on the type of ***Section 4(f)*** property in question, however, all situations which involve ***Section 4(f)*** property necessitate some degree of documentation: either in the Environmental Document, a ***Section 4(f)*** Evaluation, or the project file.

- If ***Section 4(f)*** is clearly "Not Applicable", or the project has "No Involvement" with a protected property, the District may, at their discretion, utilize the ***Section 4(f) Tool*** to document the relationship between the resource and project area. If the "Not Applicable"/"No Involvement" determination is not recorded in the ***Section 4(f) Tool***, the District documents the determination in the project file.

- If ***Section 4(f)*** is clearly applicable, the District proceeds with the steps in the ***Section 4(f) Tool*** and submits the resource documentation for OEM review and concurrence or approval, as necessary.

- If, at any point, the applicability or outcome of ***Section 4(f)*** is unclear, the District coordinates with OEM to determine the appropriate course of action.

For projects requiring an ***Individual Section 4(f) Evaluation***, the appropriate document is completed outside the ***Section 4(f) Tool*** (see ***Section 7.3.5.3)***.

7.3.1.1 Initial Section 4(f) Review

Within FDOT's Efficient Transportation Decision Making (ETDM) process, certain projects qualify for screening through the Environmental Screening Tool (EST). For projects not qualifying for screening through the EST, the District has the option to review the project against the geographic information contained in the Area of Interest (AOI) Tool to determine if the proposed project may impact potential ***Section 4(f)*** protected properties. For more information on ETDM and qualifying projects for screening, see FDOT's ***ETDM Manual, Topic No. 650-000-002***.

Once an undertaking is established, to initiate the assessment of potential ***Section 4(f)*** involvement, the District should gather preliminary information to examine the following questions:

- Will the transportation project require funds or approvals from FHWA or other USDOT agency?
- Are there any ***Section 4(f)*** properties as defined in ***23 CFR § 774.11*** within or adjacent to the project area?
- Is it anticipated that the project will require any temporary occupancy or permanent incorporation of a ***Section 4(f)*** property during the project?
- Is it anticipated that the project's proximity impacts, as defined in ***23 CFR § 774.15***, could substantially impair the protected activities, features, or attributes that qualify the property for protection under ***Section 4(f)*** in a way that would meaningfully reduce or eliminate the value of the property in terms of its ***Section 4(f)*** purpose and significance?

It may be difficult to determine if a property is protected by ***Section 4(f)*** or if the proposed project involves a use of the protected property. In these cases, the District should coordinate with OEM to determine the applicability of ***Section 4(f)*** to a resource and/or project.

For situations where there is no involvement with properties protected by ***Section 4(f)*** or if the non-applicability is obvious, the decision may be recorded in the ***Section 4(f) Tool*** at the discretion of the District, and the supporting documentation may be simple and minimal. If the District utilizes the ***Section 4(f) Tool*** to document the resource/project relationship, the record includes the determination that there will be:

1. no acquisition or occupation of land from the protected property on either a temporary or permanent basis,
2. no meaningful proximity impacts to protected properties, and
3. no impacts to the access and usage of protected properties.

If, however, the determination is based upon the application of exemptions or regulatory interpretations, or if the determination is otherwise more complex, the decision is recorded through the ***Section 4(f) Tool*** in SWEPT.

For Type 1 Categorical Exclusions (CEs), the District provides the decision on the level of involvement in the ***Type 1 Categorical Exclusion Checklist*** and attaches sufficient documentation.

For Type 2 CEs, an Environmental Impact Statement (EIS), or Environmental Assessment (EA) with Finding of No Significant Impact (FONSI), if the District determines that ***Section 4(f)*** is "Not Applicable"', the following standard statement is included in the Environmental Document with the appropriate supporting documentation:

> *The proposed project [Project ID number and name] does not involve a use of any property that qualifies for protection under Section 4(f) of the USDOT Act of 1966, as amended.*

If the status of a property in terms of ***Section 4(f)*** changes, or if a permanent acquisition or a temporary occupation of a protected property is found to be necessary subsequent to the original "No Use" or "No" Involvement" determination, the District notifies OEM and develops the proper documentation for the approval of the project. Similarly, if subsequent analysis indicates that there may be meaningful proximity impacts to the property resulting from the project, the District notifies OEM.

7.3.1.2 Section 4(f) Resource Mapping

It is crucial to clearly depict the relationship between the project and the potential ***Section 4(f)*** resource. A map of each resource should be created regardless of the level of ***Section 4(f)*** documentation. The map should be at an appropriate scale to clearly depict the relationship between the resource and the project. When preparing a resource map, the following items should be shown and clearly labeled:

- Boundaries of any potential ***Section 4(f)*** properties in or adjacent to the project area (historic boundaries may differ and should also be depicted)
- Location of elements (activities, features, and attributes) contributing to the significance of each potential ***Section 4(f)*** property
- Areas of permanent and/or temporary impacts, measured in acres
- Boundaries of the existing and proposed ROW or any Temporary Construction Easements

7.3.2 Not Applicable and No Use Determinations

The District includes the determination as to whether ***Section 4(f)*** does or does not apply in the project file and in the appropriate Environmental Document. These **"Not Applicable"** decisions, along with sufficient supporting documentation, are recorded in the ***Section 4(f) Tool*** The output of the ***Section 4(f) Tool*** is included as an attachment

for all COAs. The complexity and detail of the supporting documentation may vary based upon the complexity of the project and its relationship with protected resources. In all cases, the supporting documentation must be clear and must present sufficient information to show that ***Section 4(f)*** does or does not apply.

A **"No Use"** determination is one where a project has no permanent acquisition of land from a ***Section 4(f)*** property, no temporary occupancies of land that are adverse in terms of the statute's preservation purpose, and no proximity impacts which significantly impair the protected functions of the property. This determination is similar to the determination of **"Not Applicable"**, but it may require more detailed or nuanced supporting information and documentation.

When a **"No Use"** determination is made, documentation in the project file or in the ***Section 4(f) Tool*** should include the following:

1. Map of sufficient scale to show the project activities, the ***Section 4(f)*** resource boundaries, the protected activities, features, and attributes, and the existing and proposed ROW or any Temporary Construction Easements;

2. Description of the ***Section 4(f)*** protected property;

3. An explanation of the relationship between the property and the project;

4. A record of the communication with the OWJ, if applicable; and

5. An explanation why the requirements of ***Section 4(f)*** do or do not apply to the project or the property involved.

When a ***Type 1 Categorical Exclusion Checklist*** is completed the appropriate option for ***Section 4(f)*** is checked and instructions are provided in the SWEPT form. For Type 2 CEs, EAs, and EISs the determination is included in the ***Section 4(f)*** section of the Environmental Document.

7.3.3 Exceptions and Exemptions to Section 4(f) Approval

There are multiple exceptions and exemptions to the requirement for a ***Section 4(f)*** approval. Most of these are included in the regulations implementing ***Section 4(f)*** at ***23 CFR Part 774*** (revised November 2018) and ***Sections 1303 and 11502 of the Fixing America's Surface Transportation (FAST) Act of 2015***. In addition, many exceptions and exemptions are in the ***FHWA Section 4(f) Policy Paper***. For the purposes of documenting the applicability of ***Section 4(f)*** for FDOT Federal Projects under these exemptions and conditions, the appropriate legislative, regulatory, or procedural provision is selected in the ***Section 4(f) Tool***. The verification that the selected exemption applies to the project or resource is included.

Exceptions identified under ***23 CFR § 774.13*** to the requirement for ***Section 4(f)*** approval include, but are not limited to:

a. The use of historic transportation facilities in the following circumstances:

1. Common post-1945 concrete or steel bridges and culverts that are exempt from individual review under ***54 U.S.C. § 306108*** (see ***Part 2, Chapter 8, Archaeological and Historic Resources*** for specific information on the ACHP Program Comment and see ***23 CFR § 774.13(a)(1)*** for the exemption from the requirements of ***Section 4(f)*** and for these bridges).

2. Improvement of railroad or rail transit lines that are in use or were historically used for the transportation of goods or passengers, including, but not limited to, maintenance, preservation, rehabilitation, operation, modernization, reconstruction, and replacement of railroad or rail transit line elements, except for

    i. stations;

    ii. bridges or tunnels on railroad lines that have been abandoned, or transit lines not in use, over which regular service has never operated, and that have not been railbanked or otherwise reserved for the transportation of goods or passengers; and

    iii. historic sites unrelated to the railroad or rail transit lines.

3. Maintenance, preservation, rehabilitation, operation, modernization, reconstruction, or replacement of historic transportation facilities, if FDOT concludes, as a result of the consultation under ***36 CFR § 800.5***, that:

    i. such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the NRHP, or this work achieves compliance with ***Section 106*** through a program alternative under ***36 CFR § 800.14***; and

    ii. the OWJ over the ***Section 4(f)*** resource have not objected to the FDOT conclusion that the proposed work does not adversely affect the historic qualities of the facility that caused it to be on or eligible for the NRHP, or FDOT concludes this work achieves compliance with ***54 U.S.C. § 306108 (Section 106)*** through a program alternative under ***36 CFR § 800.14***.

b. Archeological sites that are on or eligible for the NRHP when:

1. FDOT concludes that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where FDOT decides, with agreement of the OWJ, not to recover the resource; and

2. the SHPO/THPO or appropriate Tribes over the ***Section 4(f)*** resource have been consulted and have not objected to the FDOT finding.

c. Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action, with some exceptions

d. Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of ***Section 4(f)***. The following conditions must be satisfied:

   1. duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

   2. scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the ***Section 4(f)*** property are minimal;

   3. there are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;

   4. the land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and

   5. there must be documented agreement of the OWJ over the ***Section 4(f)*** resource regarding the above conditions.

e. Projects for the Federal lands transportation facilities described in ***23 U.S.C. § 101(a)(8)***.

f. Certain trails, paths, bikeways, and sidewalks, in the following circumstances:

   1. trail-related projects funded under the Recreational Trails Program, ***23 U.S.C. § 206(h)(2)***;

   2. National Historic Trails, designated under the ***National Trails System Act, 16 U.S.C. §§ 1241-1251***, with the exception of those trail segments that are historic sites any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the NRHP. The term includes properties of traditional religious and cultural importance to a Tribe that are included in, or are eligible for inclusion in the NRHP ***(23 CRF § 774.17)***;

   3. trails, paths, bikeways, and sidewalks that occupy a transportation facility ROW without limitation to any specific location within that ROW, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained; and

   4. trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation.

g. Transportation enhancement activities, transportation alternatives projects, and mitigation activities, where:

1. the use of the ***Section 4(f)*** property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for ***Section 4(f)*** protection; and

2. the OWJ over the ***Section 4(f)*** resource agrees in writing to paragraph (g)(1) of this section.

Exemptions under the regulations and the ***FAST Act***, as well as resources which do not qualify for the exemptions, are identified below:

1. ***23 CFR § 774.11(e)(2)*** - The interstate highway system is exempt from being treated as a historic resource under ***Section 4(f)*** with the exception of those individual elements of the Interstate System formally identified for ***Section 4(f)*** protection on the basis of national or exceptional historic significance.

    a. Interstate highway-related facilities in Florida determined historically significant and therefore not exempt under ***Section 4(f)*** are:

        (i) I-275 Bob Graham/Sunshine Skyway Bridge

        (ii) I-75 Alligator Alley - Milepost range 19.6-49.3

        (iii) I-75 Snake Wall

        (iv) I-95 Myrtle Avenue Overpass

2. ***23 CFR § 774.11(h)*** - When a property formally reserved for a future transportation facility temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to ***Section 4(f)***.

3. ***23 CFR § 774.11(i)*** - When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established, and concurrent or joint planning or development of the transportation facility and the ***Section 4(f)*** resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in ***23 CFR § 774.17***.

    (1) Formal reservation of a property for a future transportation use can be demonstrated by a document of public record created prior to or contemporaneously with the establishment of the park, recreation area, or wildlife and waterfowl refuge. Examples of an adequate document to formally reserve a future transportation use include:

        (i) A map of public record that depicts a transportation facility on the property;

        (ii) A land use or zoning plan depicting a transportation facility on the property; or

(iii) A fully executed real estate instrument that references a future transportation facility on the property.

(2) Concurrent or joint planning or development can be demonstrated by a document of public record created after, contemporaneously with, or prior to the establishment of the ***Section 4(f)*** property. Examples of an adequate document to demonstrate concurrent or joint planning or development include:

(i) A document of public record that describes or depicts the designation or donation of the property for both the potential transportation facility and the ***Section 4(f)*** property; or

(ii) A map of public record, memorandum, planning document, report, or correspondence that describes or depicts action taken with respect to the property by two or more governmental agencies with jurisdiction for the potential transportation facility and the ***Section 4(f)*** property, in consultation with each other.

7.3.3.1 Documentation and Coordination

The District submits an Exception/Exemption determination along with supporting documentation to OEM for concurrence via the ***Section 4(f) Tool*** in SWEPT. The submittal verifies that all conditions required by the exception or exemption are satisfied. An Exception/Exemption Determination by the District may require OWJ concurrence or no objection as outlined in ***Section 7.3.3***. The ***23 CFR Part 774*** and ***FHWA Section 4(f) Policy Paper***, Section 1.2.2 further describe situations where OWJ "no objection" or concurrence is required.

For a Type 1 CE, the District may not approve the ***Type 1 Categorical Exclusion Checklist*** until all of the exceptions and exemptions have been concurred with by OEM in SWEPT and the determination is referenced in the ***Type 1 Categorical Exclusion Checklist*** for ***Section 4(f)*** involvement. The output of the ***Section 4(f) Tool*** is included as an attachment.

For a Type 2 CE, the appropriate option for ***Section 4(f)*** is checked and instructions are provided in the ***Type 2 Categorical Exclusion Determination Form***. For EAs and EISs, the determination is also included in the ***Section 4(f)*** section of the Environmental Document. The output of the ***Section 4(f) Tool*** is included in the Appendix of the Type 2 CE, EA, or EIS

7.3.4 "Use" under Section 4(f)

Once the District has determined the resource is protected under ***Section 4(f)***, the District, in consultation with OEM, determines whether the project will require a transportation "use" of the protected resource.

The following sections describe uses within the meaning of ***Section 4(f)***.

7.3.4.1 Permanent Incorporation

The most common type of use occurs when land from a ***Section 4(f)*** protected resource is permanently incorporated into a transportation facility, such as a fee simple acquisition of land from the property. This definition of use also includes the acquisition of an easement for the maintenance or operation of a transportation facility or a transportation-related facility, such as maintenance easements and drainage easements.

7.3.4.2 Temporary Occupancy

A temporary occupancy occurs when a ***Section 4(f)*** protected resource is occupied, in whole or in part, for construction-related activities. A temporary occupancy results in a "use" within the meaning of ***Section 4(f)*** if the activities are considered to be adverse, even though the property is not permanently incorporated into a transportation facility.

A temporary occupancy does not always result in a ***Section 4(f)*** use. If the activity is not adverse, and if the conditions of ***23 CFR § 774.13(d)*** apply, the temporary occupancy is considered "so minimal as to not constitute a use within the meaning of Section 4(f)." According to the requirements of ***23 CFR § 774.13(d)(5)***, OWJ concurrence with the conditions of the temporary occupancy must be obtained.

7.3.4.3 Constructive Use

Constructive use occurs when a transportation project does not incorporate land from ***Section 4(f)*** property but when the project's proximity impacts are so severe that the protected activities, features, attributes that qualify the protected resource are substantially impaired (see ***23 CFR § 774.15*** and ***Section 7.3.5.4***). In cases where the District believes that a ***Section 4(f)*** use may arise due to proximity impacts and there is no acquisition of land from the protected property, the District must inform OEM. Once OEM is informed, FDOT determines if there is a potential for a substantial impairment to the protected property. If FDOT concludes that such a potential exists, OEM informs FHWA-Headquarters (HQ) of the circumstances and proceed in consultation with FHWA-HQ in accordance with the ***NEPA Assignment MOU***.

7.3.5 Section 4(f) Approvals

Once FDOT has determined that a project will result in a use within the meaning of ***Section 4(f)***, the District prepares either a *de minimis* impact determination, a ***Programmatic Section 4(f) Evaluation***, or an ***Individual Section 4(f) Evaluation*** for submittal to OEM. This does not apply to situations involving a determination of ***Section 4(f)*** applicability arising only from proximity impacts. When coordinating with the OWJ, external agencies, or the public, the Districts should copy the PDC on outgoing correspondence.

As set forth in ***23 CFR § 774.3***, FDOT **may not approve** the use of land from a significant publicly owned public park, recreation area, wildlife or waterfowl refuge, or any significant historic site unless it determines that:

- There is no feasible and prudent alternative to the use of land from the property; **and**

- The action includes all possible planning to minimize harm to the property resulting from such use;

Or

- The use of the property, including any measures to minimize harm (such as avoidance, minimization, mitigation or enhancement), will have a *de minimis* impact on the property.

To receive approval for the use of a property protected by ***Section 4(f)***, the District needs to submit one of the following documents to OEM:

1. a ***de minimis*** impact determination;

2. a ***Programmatic Section 4(f) Evaluation***; or

3. an ***Individual Section 4(f) Evaluation***.

Analyses of the “no prudent and feasible alternative” and the “all possible planning to minimize harm” standards are only required for approval of the individual and programmatic evaluations; it is not required for a *de minimis* impact determination. Once a determination is made that a ***Section 4(f)*** evaluation is required for a project approval, no final decisions on the alternatives or proposed actions can be made until the appropriate evaluation is completed, unless a determination is made to avoid the use of the ***Section 4(f)*** protected property.

7.3.5.1 The *de minimis* Section 4(f) Analysis

A *de minimis* impact is one that, after taking into account any measures to minimize harm (such as avoidance, minimization, mitigation, or enhancement measures), results in either:

1. a determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under ***Section 4(f)***; or

2. a finding under ***36 CFR § 800***, that there are ”No Historic Properties Affected” by the project or that the project will have ”No Adverse Effect” on the historic property in question.

The impacts of a transportation project on a park, recreation area, or wildlife or waterfowl refuge that qualifies for ***Section 4(f)*** protection may be determined to be *de minimis* if the transportation use of the ***Section 4(f)*** property, together with any measures to minimize harm, such as impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, do not adversely affect the activities, features, or attributes that qualify the resource for protection under ***Section 4(f)***.

In reaching an approval of the use of a ***Section 4(f)*** protected property, the project record must reflect that the following steps were completed in the order set forth in ***23 CFR § 774.5(b)*** and as outlined below:

1. OWJ *de minimis* Notification and Initial Consultation
2. Opportunity for Public Involvement Requirement
3. OWJ Concurrence following Public Involvement
4. Approval and Documentation Process

7.3.5.1.1 OWJ *de minimis* Notification and Initial Consultation

The OWJ must be notified of the intent to pursue a *de minimis* impact determination and consulted on measures to minimize harm. For parks, recreation areas, and wildlife and waterfowl refuges, the District notifies the OWJ that the activities, features, and attributes qualifying the property for ***Section 4(f)*** protection will be the basis for a *de minimis* impact determination [***23 CFR § 774.5(b)***]. This notice also informs the OWJ that there will be an opportunity for the public to comment on the project in relation to the protected resource.

For historic properties, the OWJ over the historic property (usually the SHPO or THPO) must be informed of the intent to make a *de minimis* impact determination should they concur with a finding of "No Historic Properties Affected" or "No Adverse Effect" to the property in question in accordance with ***36 CFR Part 800***. This notification of the intent to pursue a *de minimis* impact determination is typically included in the ***Transmittal Letter*** accompanying the submission of the cultural resource document presenting the ***Section 106*** project effects analysis and finding.

The ***Letter of Agreement (LOA)*** between FDOT and SHPO, appended to and referenced in the ***Programmatic Agreement Among the Federal Highway Administration, the Florida Department of Transportation, the Advisory Council on Historic Preservation, and the Florida State Historic Preservation Officer Regarding Implementation of the Federal-Aid Highway Program in Florida*** ***[Section 106 Programmatic Agreement (PA)]***, programmatically informs the SHPO and the ACHP that such a finding may result in FDOT approving the use of the property as *de minimis*. On a project-by-project basis, the ***Transmittal Letter*** accompanying the ***Section 106*** project effects analysis, most typically a ***Case Study Report***, contains a signature block for SHPO concurrence on the ***Section 106*** effects finding as well as the *de minimis* statement (see ***Part 2, Chapter 8, Archaeological and Historic Resources***).

Because neither the Tribes nor the NPS are signatories to the ***Section 106 PA***, in cases where either a THPO or a tribal ***Section 106*** official is acting as an OWJ (or in cases where the NPS is acting as an OWJ) FDOT must ensure that those officials are informed in writing that a concurrence with either a "No Historic Properties Affected" or "No Adverse Effect" finding means that FDOT may pursue a *de minimis* impact determination for the use of those properties. The ***Transmittal Letter*** accompanying review documents submitted to the THPO or tribal official should include this statement and request input from the THPO or tribal official but should not contain a concurrence signature block. As

with other *de minimis* approvals, the concurrence of these officials to those findings must be in writing.

7.3.5.1.2 Opportunity for Public Involvement Requirements

For a *de minimis* impact determination involving parks, recreation areas, or wildlife and waterfowl refuges, an opportunity for public review and comment must be provided in a manner appropriate to the nature of the resource and the public it serves [***23 CFR § 771.111(h)(2)(viii)*** and ***23 CFR § 774.5(b)(2)(i), (ii)***]. For these *de minimis* impact determinations, no additional public involvement outside the regular FDOT Public Involvement Process is required (***Part 1, Chapter 11, Public Involvement***). However, during public involvement for the project, the public's opinion must be specifically requested on the effects of the proposed impact on the activities, features, and attributes of the protected property. If a proposed action does not normally require public involvement, (e.g., Type 1 CE) an opportunity for the public to review and comment on the proposed *de minimis* impact determination must be provided as appropriate to the resource and prior to the d*e minimis* and Type 1 CE approvals. Similarly, if the need for a *de minimis* is identified after a public hearing, an opportunity for the public to review and comment on the proposed *de minimis* impact determination must be provided; the approach and methods for this public involvement should be determined in coordination with OEM. In all cases, the public opportunity for review and comment occurs prior to the formal opinion of the OWJ. OEM is available to review public involvement text to ensure compliance with ***Section 4(f)*** requirements prior to distribution to the public.

For historic properties, compliance with ***Section 106*** and ***36 CFR Part 800*** satisfies the public involvement and agency coordination requirements for *de minimis* impact determination for historic and archeological properties. This is typically achieved through FDOT Public Involvement Process, but again, the public's opinion on project effects on the historic property(s) in terms of ***Section 106*** and ***Section 4(f)*** *de minimis* impacts must be specifically requested. To document the public involvement activities for ***36 CFR Part 800*** the *de minimis* determination will not occur until after the public hearing and comment period for Type 2 CEs, EAs, and EISs. For Type 1 CEs that involve *de minimis* impact determinations for historic properties, the ***Section 106*** process is completed to make the *de minimis* determination and approval of the *de minimis* determination coincide with the Type 1 CE approval.

7.3.5.1.3 OWJ Concurrence following Public Involvement

The OWJ, after being informed of the public comments and FDOT's intent to make a *de minimis* impact determination, must concur that the project (including all measures to mitigate and minimize harm) will not adversely affect the activities, features, or attributes that make the property eligible for ***Section 4(f)*** protection. Obtaining OWJ concurrence is required prior to the District seeking OEM concurrence with the *de minimis* impact determination.

The OWJ concurrence **must be in writing** [***23 CFR § 774.5(b)(2)(ii)***]. This concurrence can be in the form of a signed letter on agency letterhead, signatures in concurrence

blocks on transportation agency documents or agreements provided via e-mail, or by other methods deemed acceptable by OEM.

For historic properties, SHPO completes the provided signature block in the ***Transmittal Letter*** to render their concurrence with both the ***Section 106*** finding of either "No Historic Properties Affected" or "No Adverse Effect" to the property in question at the same time as acknowledging FDOT's intent to pursue a *de minimis* impact determination in compliance with ***Section 4(f)***. The precise language for the SHPO signature block is available in the ***Section 106 PA*** appended materials, and in ***Part 2, Chapter 8, Archaeological and Historical Resources***. THPO typically provides comments under separate cover on their own letterhead. Suggested language for THPO ***Transmittal Letter*** is also available in ***Part 2, Chapter 8, Archaeological and Historical Resources***.

7.3.5.1.4 Approval and Documentation Process

De minimis determinations are documented and processed via the ***Section 4(f) Tool*** and are also reported in the appropriate Environmental Document. Once steps 1 through 3 are complete, the District can complete a *de minimis* form for the affected property in the ***Section 4(f) Tool***, as directed, and coordinate the incorporation of the ***Section 4(f)*** determination into the appropriate Environmental Document.

Approval Process - Once the completed *de minimis* form and documentation is submitted through the ***Section 4(f) Tool***, the OEM Subject Matter Expert (SME) conducts a review to determine if the *de minimis* impact documentation is complete and sufficient. The SME briefs the Director of OEM about the pending *de minimis* impact determination and upon the Director's approval, the SME concurs with the submitted draft document. The ***Section 4(f) Tool*** informs the District of OEM's concurrence with the *de minimis* documentation. The approval of the *de minimis* impact determination, however, occurs concurrent with the Director of OEM's signing and approval of the Environmental Document. For Type 2 CEs, SWEPT automatically coordinates the Director's approval and signature of both the *de minimis* impact determination and the Environmental Document. For Type 1 CEs the District must submit the *de minimis* document to the Director of OEM for approval in coordination of the District approving the Type 1 CE.

Documentation Process - When completing the ***Type 1 Categorical Exclusion Checklist***, the *de minimis* option for ***Section 4(f)*** is checked and instructions are provided in the checklist. When completing the ***Type 2 Categorical Exclusion Determination Form*** the appropriate option for ***Section 4(f)*** is checked and instructions are provided in the form. For EAs and EISs, the determination is included in the ***Section 4(f)*** section of the Environmental Document. In addition, any mitigation measures that were relied upon to reach a *de minimis* determination are documented as commitments in the Environmental Document in accordance with ***Part 2, Chapter 22, Commitments***. The output of the ***Section 4(f) Tool*** is included as an attachment or included in the Appendix for all COAs.

7.3.5.2 Programmatic Section 4(f) Evaluations

Programmatic Section 4(f) Evaluations are administrative alternatives to completing an ***Individual Section 4(f) Evaluation***, but which still require appropriate findings using supporting studies and consultation. ***Programmatic Section 4(f) Evaluations*** are prepared for certain uses that meet specific criteria set forth in the conditions and findings sections of the specific programmatic evaluation.

The benefit of using a ***Programmatic Section 4(f) Evaluation*** is that the conditions for each of these have already received legal sufficiency review and have already been coordinated with the appropriate federal agencies. Therefore, these evaluations do not require an individual legal sufficiency review or coordination with the U.S. Department of the Interior (DOI), the U.S. Department of Agriculture (USDA), or the U.S. Department of Housing and Urban Development (HUD). However, if a federal agency has to take specific action under a different federal law, such as a DOI approval under ***Section 6(f) of the LWCFA***, that federal approval will still be required (see Concurrent Requirements in ***Section 7.5***; also see the discussion of Wild and Scenic Rivers in ***Section 7.2.3.1***).

The conditions vary among the programmatic types, and generally relate to:

1. the type of project or ***Section 4(f)*** property,
2. the degree of use and impact to the ***Section 4(f)*** property,
3. the evaluation of avoidance alternatives,
4. the establishment of a procedure for minimizing harm to the ***Section 4(f)*** property, and
5. coordination and agreement with the OWJ.

The five ***Nationwide Programmatic Section 4(f) Evaluations*** provided under ***23 CFR § 774.3(d)*** are only applicable to FDOT Federal Projects. The ***Programmatic Section 4(f) Evaluations*** are (in order of publication):

1. Section 4(f) Statement of Determination for Independent Walkways or Bikeway Construction Projects
2. Programmatic Section 4(f) Evaluation and Approval for FHWA (Federal Aid) Projects that Necessitate the Use of Historic Bridges
3. Final Nationwide Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites
4. Final Nationwide Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges

5. Nationwide Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property; Section 4(f) Net Benefit Programmatic for Historic Sites, and Section 4(f) Net Benefit Programmatic for Public Parks, Recreation Lands, and Wildlife & Waterfowl Refuges

The specific applicability criteria and the required analyses for each of these evaluations can be reviewed by accessing the corresponding publication in the ***Federal Register (FR)***. The requirements for each ***Nationwide Programmatic Section 4(f) Evaluation*** are also located in the ***Section 4(f) Tool*** in SWEPT. The references section below provides links to the associated ***FR*** for each programmatic evaluation. Additional information can be found in the ***FHWA Environmental Review Toolkit*** which is linked at FDOT's ***Section 4(f) and Section 6(f) Website*** or accessed directly in ***Section 7.6***.

The District submits the ***Programmatic Section 4(f) Evaluation*** documentation to OEM through the ***Section 4(f) Tool*** in SWEPT. Once it is determined that the documentation is complete and sufficient, OEM informs the District of their concurrence with the decision. The approval of the ***Programmatic Section 4(f) Evaluation*** is concurrent with the signing and approval of the Environmental Document. Upon approval, the District sends a signed copy of the ***Programmatic Section 4(f) Evaluation*** to the OWJ.

When completing the ***Type 2 Categorical Exclusion Determination Form***, the ***Programmatic Section 4(f) Evaluation*** is summarized in the ***Section 4(f)*** section of the document.

For EAs and EISs, results of the ***Programmatic Section 4(f) Evaluation*** are summarized in the ***Section 4(f)*** section and circulated as required based on the Environmental Document type and the specific programmatic evaluation. The approval of the ***Programmatic Section 4(f) Evaluation*** is concurrent with the signing and approval of the FONSI, FEIS/ROD, or Final Environmental Impact Statement (FEIS). Upon approval, the District sends a signed copy of the ***Programmatic Section 4(f) Evaluation*** to the OWJ. In addition, any mitigation measures or commitments are documented in the Environmental Document and in accordance with ***Part 2, Chapter 22, Commitments***.

Once the applicable criteria have been met, the ***Section 4(f) Tool*** assigns the appropriate standard statement to the ***Programmatic Section 4(f) Evaluation*** based on which of the five programmatic evaluations is being applied. The output of the ***Section 4(f) Tool*** is included as an attachment or in the Appendix for all COAs.

7.3.5.3 Individual Section 4(f) Evaluations

An ***Individual Section 4(f) Evaluation*** is completed when a project requires a use of ***Section 4(f)*** property resulting in greater than a *de minimis* impact and does not meet the conditions of a ***Programmatic Section 4(f) Evaluation*** (***23 CFR § 774.3***). The ***Individual Section 4(f) Evaluation*** documents the proposed use of ***Section 4(f)*** property for all project alternatives. ***Individual Section 4(f) Evaluations*** are prepared as standalone documents, not within the ***Section 4(f) Tool***.

Based on sufficient analysis, the ***Individual Section 4(f) Evaluation*** must find:

1. There is no feasible and prudent alternative that completely avoids the use of ***Section 4(f)*** property; and

2. The project includes all possible planning as defined in ***23 CFR § 774.17*** to minimize harm to the ***Section 4(f)*** property resulting from the transportation use [see ***23 CFR § 774.3(a)***].

7.3.5.3.1 Outline for Preparing Draft Individual Section 4(f) Evaluations

The ***Draft Individual Section 4(f) Evaluation*** provides the analysis of project alternatives and the initial discussion and identification of avoidance, minimization, and mitigation opportunities. The Individual ***Section 4(f)*** analysis must provide the data which indicates that there is no feasible and prudent alternative which avoids using properties protected by ***Section 4(f)***. Additionally, when there is no prudent and feasible avoidance alternative and there are two or more alternatives that "use" ***Section 4(f)*** property, the individual evaluation must include a least overall harm analysis.

Draft evaluations should provide a comparative analysis of the various alternatives under consideration and should not include any preferences or recommendations. The draft is used by decision makers to select the preferred alternative. In addition, the evaluation must include an analysis for each project alternative at each ***Section 4(f)*** property location.

Formatting for the ***Individual Section 4(f) Evaluation*** is based on FHWA guidance as reflected in the ***FHWA Section 4(f) Policy Paper***.

The *Draft Individual Section 4(f) Evaluation* must include the following information:

1. appropriate statements concerning the applicability or non-applicability of ***Section 4(f)*** to the resources;

2. an identification and description of the relationships of each alternative to each location of ***Section 4(f)*** protected resources;

3. activities, features and attributes of each ***Section 4(f)*** property;

4. analysis of impacts to each ***Section 4(f)*** property by each alternative;

5. records of public involvement activities;

6. results of coordination with the OWJ for each protected property;

7. alternatives considered to avoid using the ***Section 4(f)*** property, including the analysis of the impacts caused by avoiding the ***Section 4(f)*** resource;

8. a least overall harm analysis, if appropriate;

9. all measures taken to minimize harm to the resources, including mitigation measures; and

10. comments submitted during the coordination procedures as required by ***23 CFR § 774.5*** and responses to those comments.

The following standard statement is included for the conclusion of the ***Draft Section 4(f) Evaluation***:

> *Upon final alternative selection the provision of Section 4(f) and 36 CFR Part 800 (if appropriate) will be fully satisfied.*

7.3.5.3.2 Feasible and Prudent Alternatives Analysis for Individual Section 4(f) Evaluations

The intent of the ***Section 4(f)*** statute is to avoid and, where avoidance is not feasible and prudent, to include all possible planning to minimize the harm caused by the use of the protected resource by the transportation project. When assessing the importance of protecting a ***Section 4(f)*** property, it is important to consider the relative value of its resources to the preservation purpose of the statute ***(23 CFR § 774.17)***. An avoidance "alternative analysis" [***23 CFR § 774.3(a) and (c)***] must be performed to determine if there is a feasible and prudent avoidance alternative.

7.3.5.3.2.1 Identifying a Range of Alternatives

A project alternative that avoids one ***Section 4(f)*** property by using another is not an avoidance alternative; true avoidance alternatives avoid the use of all ***Section 4(f)*** resources. A feasible and prudent avoidance alternative avoids using ***Section 4(f)*** property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the ***Section 4(f)*** property.

The alternative analysis identifies a reasonable range of project alternatives, including those that avoid using ***Section 4(f)*** property [***FHWA Section 4(f) Policy Paper***]. Depending on the project context, the potential alternatives may include the following:

- Location Alternatives - a location alternative refers to the re-routing of the entire project along a different alignment.

- Alternative Actions - an alternative action could be a different mode of transportation, such as rail transit or bus service, or some other action that does not involve construction such as the implementation of transportation management systems or similar measures.

- Alignment Shifts - an alignment shift is the re-routing of a portion of the project to a different alignment to avoid a specific resource.

- Design Changes - A design change is a modification of the proposed design in a manner that would avoid impacts, such as reducing the planned median width, building a retaining wall, or incorporating design exceptions.

For more information on developing and analyzing alternatives see ***Part 2, Chapter 3A, Alternatives Analysis***.

7.3.5.3.2.2 Feasible and Prudent Avoidance Analysis

The next step is to determine if each of the identified alternatives are feasible and prudent. "A feasible and prudent avoidance alternative avoids using ***Section 4(f)*** property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the ***Section 4(f)*** property" (***23 CFR § 774.17***). If it is determined an avoidance alternative is feasible and prudent and meets the purpose and need of the project, this alternative is selected by FDOT, and the ***Section 4(f)*** evaluation process is complete.

Under ***23 CFR § 774.17*** an avoidance alternative is not considered feasible if it cannot be built as a matter of sound engineering judgement.

Under ***23 CFR § 774.17*** an avoidance alternative is not considered prudent if it results in one of the following situations:

- it compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need;
- it results in unacceptable safety or operational problems;
- after reasonable mitigation, it still causes:
    - severe social, economic, or environmental impacts;
    - severe disruption to established communities;
    - severe disproportionate impacts to minority or low-income populations; or
    - severe impacts to environmental resources protected under other federal statutes;
- it results in additional construction, maintenance, or operational costs of an extraordinary magnitude;
- it causes other unique problems or unusual factors; or
- it involves multiple factors as outlined above that, while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

For more information on applying the prudent standard, see the ***FHWA Section 4(f) Policy Paper***, Sections 3.3.1 and 3.4 linked to FDOT's ***Section 4(f) and Section 6(f)***

Website. If there is more than one alternative that uses ***Section 4(f)*** property, then a Least Overall Harm Analysis of those alternatives in required (see ***Section 7.3.5.3.2.4***).

7.3.5.3.2.3 All Possible Planning to Minimize Harm

"All possible planning", as defined under ***23 CFR § 774.17***, means all reasonable measures identified in the ***Section 4(f)*** analysis to minimize harm or mitigate adverse effects to the resource resulting from the "use", were considered and documented. Impacts to the ***Section 4(f)*** property should be reduced or eliminated by including mitigation in the analysis. In addition, the mitigation measures are relied upon as part of the comparison of alternatives.

For public parks, recreation areas, and wildlife and waterfowl refuges, the measures to minimize harm may include, but are not limited to: design modifications or design goals; replacement of land or facilities of comparable value and function; or monetary compensation to enhance the remaining property or to mitigate the adverse impacts of the project in other ways. For historic sites, the measures to minimize harm normally serve to preserve the historic activities, features, or attributes of the site as agreed upon by FDOT and the SHPO/THPO, in accordance with the consultation process under ***Section 106*** (***36 CFR Part 800***).

In evaluating the "reasonableness of measures to minimize harm" under ***23 CFR § 774.3(a)(2)***, FDOT considers the preservation purpose of the statute and the following as described in ***23 CFR § 774.17(3)***:

- the views of the OWJ;
- whether the cost of the measures is a reasonable public expenditure in light of the adverse impacts of the project on the ***Section 4(f)*** property and the benefits of the measure to the property, in accordance with ***23 CFR § 771.105(d)***;
- any impacts or benefits of the measures to communities or environmental resources outside of the ***Section 4(f)*** property.

7.3.5.3.2.4 Least Overall Harm Analysis

Least overall harm analysis is conducted to determine which of the potential feasible and prudent alternatives that "use" a ***Section 4(f)*** property have the net impact that results in the "least overall harm" in accordance with ***23 CFR § 774.3(c)(1)*** and "includes all possible planning to minimize harm to ***Section 4(f)*** property" as required by ***23 CFR § 774.3(c)(2)***. Not all uses of ***Section 4(f)*** property have the same magnitude of impact, and not all ***Section 4(f)*** properties are of the same quality; therefore, the least overall harm analysis is a qualitative analysis. When preparing and examining the alternatives which impact ***Section 4(f)*** property it is important to ensure that comparable mitigation measures are included for each alternative. The District is responsible for selecting the alternative that has the least overall harm to a ***Section 4(f)*** property. If the net harm to the ***Section 4(f)*** properties in all the feasible and prudent alternatives is equal, the District may select any one of them.

To determine which of the alternatives would cause the least overall harm, FDOT compares the factors set forth in ***23 CFR § 774.3(c)(1)*** concerning the alternatives under consideration:

1. the ability to mitigate adverse impacts to each ***Section 4(f)*** property (including any measures that result in benefits to the property);

2. the relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each ***Section 4(f)*** property for protection;

3. the relative significance of each ***Section 4(f)*** property;

4. the views of the OWJ over each ***Section 4(f)*** property;

5. the degree to which each alternative meets the purpose and need for the project;

6. after reasonable mitigation, the magnitude of any adverse impacts to resources not protected by ***Section 4(f)***; and

7. substantial differences in costs among the alternatives.

7.3.5.3.3 Submission and Coordination of Draft Individual Section 4(f) Evaluations

The District uploads the ***Draft Individual Section 4(f) Evaluation*** in the Electronic Review and Comment System (ERC), assigning the PDC for review and comment. The PDC adds the ***Section 4(f)*** SME, OGC, and may add any other relevant reviewers. For Type 2 CEs, the ***Draft Individual Section 4(f) Evaluation*** is uploaded into ERC as a separate document. For EAs and EISs, the ***Draft Individual Section 4(f) Evaluation*** is incorporated into the EA or Draft Environmental Impact Statement (DEIS).

Once OEM has completed its review of the ***Draft Individual Section 4(f) Evaluation*** and the comments have been addressed by the District, OEM approves it for public availability and OEM circulates the document to the OWJ and DOI as well as any other appropriate agency for review and comment, such as the U.S. Forest Service and HUD. OEM uses electronic media to distribute the draft to agencies, as appropriate. It should be submitted to the DOI by email correspondence to environmental_review@ios.doi.gov. The document for review should be either attached or linked to in the email. If possible, these documents should be accessible without needing usernames or passwords. If a password is required, the password should not expire prior to the end of the comment period.

The District must wait a minimum of 45 days for receipt of comments. If comments are not received within 15 days after the comment deadline, the District may assume a lack of objection and proceed with the action (***23 CFR § 774.5***).

If any of these agencies raise issues during coordination, the District works with OEM and the agency to resolve the issues.

7.3.5.3.4 Public Involvement Requirements for Draft Individual Section 4(f) Evaluations

There is no specific requirement to provide public notice or a public opportunity to comment on ***Individual Section 4(f) Evaluations***. However, for most projects requiring the preparation of an ***Individual Section 4(f) Evaluation***, public involvement occurs pursuant to the requirements of ***Section 339.155(5)(b), Florida Statutes (F.S.)***, and ***23 CFR § 771.111***. When public involvement is required for a proposed project which includes an ***Individual Section 4(f) Evaluation***, the Draft Evaluation should be provided along with other project information and project documents and the public involvement effort must follow the procedures set forth in ***Part 1, Chapter 11, Public Involvement***. If a situation arises where the District staff is uncertain as what level of public involvement would be appropriate, they should contact the appropriate PDC.

For those actions that do not require public review and comment under ***NEPA*** or under ***Section 339.155, F.S.***, public involvement may still be required under a concurrent law such as ***Section 106*** of the ***NHPA*** when the ***Individual Section 4(f) Evaluation*** is for the approval of the use of a historic property.

7.3.5.3.5 Final Section 4(f) Individual Evaluation Outline

When the preferred alternative uses ***Section 4(f)*** land, the ***Final Individual Section 4(f) Evaluation*** must contain:

1. Information developed in the draft evaluation.

2. A discussion of the basis for concluding that there are no feasible and prudent alternatives to the use of the ***Section 4(f)*** land. The supporting information must demonstrate that the proposed action “does not cause severe problems of a magnitude that substantially outweighs the importance of protecting the section 4(f) property” (***23 CFR § 774.17***). This language should appear in the document together with the supporting information.

3. A discussion of the basis for concluding that the proposed action includes all possible planning to minimize harm to the ***Section 4(f)*** property. The ***Final Individual Section 4(f) Evaluation*** must demonstrate that the preferred alternative is a feasible and prudent alternative with the least harm to the ***Section 4(f)*** resources after considering mitigation to the ***Section 4(f)*** resources.

4. When there is more than one alternative which uses ***Section 4(f)*** resources, a discussion of the reasons for concluding that the selected action is the alternative which results in the least overall harm must be included.

5. A summary of the formal coordination with the OWJ and the Headquarters Office of the DOI and other agencies as appropriate. Copies of all formal coordination comments and a summary of other relevant ***Section 4(f)*** comments received, and an analysis and response to any questions raised should be included.

6. Where ***Section 6(f)*** land is involved, documentation of the results of the coordination with the NPS must be included.

7. Final approval ***Section 4(f)*** language must include the following statement:

> *Based upon the above considerations, there is no feasible and prudent alternative to the use of land from the [identify **Section 4(f)** property] and the proposed action includes all possible planning to minimize harm to the [**Section 4(f)** property] resulting from such use*.

7.3.5.3.5.1 Submission of Final Individual Section 4(f) Evaluation and Legal Sufficiency Review [23 CFR § 774.7(d)]

After completion of the circulation and public comment period, the District submits the ***Final Individual Section 4(f) Evaluation*** to OEM for review in SWEPT alongside (Type 2 CE) or incorporated in (EA with FONSI or FEIS/ROD or FEIS) the Environmental Document.

A copy of the ***Final Individual Section 4(f) Evaluation*** is sent to OGC for legal sufficiency review at this time through SWEPT. OGC certifies that the evaluation is legally sufficient before the ***Section 4(f)*** Evaluation can be approved by the Director of OEM as part of the Environmental Document

Where the ***Section 4(f)*** approval is documented in an FEIS, the basis for the ***Section 4(f)*** approval must be summarized in the Record of Decision (ROD).

The District then electronically distributes copies of the signed ***Final Individual Section 4(f) Evaluation*** to the agencies that received the draft.

7.3.5.3.5.2 Project File Documentation

When completing the ***Type 2 Categorical Exclusion Determination Form*** with an ***Individual Section 4(f) Evaluation***, the results of the evaluation are summarized in the ***Section 4(f)*** section of the form, and the ***Final Individual Section 4(f) Evaluation*** uploaded into SWEPT. For EAs the results of the ***Final Individual Section 4(f) Evaluation*** are included in the EA with FONSI and uploaded into SWEPT. For projects processed as an EIS, the ***Final Individual Section 4(f) Evaluation*** is included in the FEIS/ROD or FEIS and uploaded into SWEPT. In addition, any mitigation measures or commitments are documented in the Environmental Document.

7.3.5.4 Constructive Use

A “Constructive Use” occurs when the transportation project does not incorporate land from a ***Section 4(f)*** property, but the proximity impacts of the project are so severe that the protected activities, features, or attributes qualifying the property for protection under ***Section 4(f)*** are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished (***23 CFR § 774.15***).

If the District believes a project may involve a Constructive Use, the District contacts OEM to verify the potential for a Constructive Use and to assess the possibility to avoid a Constructive Use. When the District and OEM believe that a Constructive Use determination may be appropriate, OEM initiates consultation with FHWA-HQ Office of Project Development and Environmental Review in accordance with the ***NEPA Assignment MOU***.

Under ***23 CFR § 774.15***, when a Constructive Use determination is made, it is based on the following:

1. identification of the current activities, or attributes of the property which qualify for protection under ***Section 4(f)*** and which may be sensitive to proximity impacts;

2. analysis of the proximity impacts of the proposed project on the ***Section 4(f)*** resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should be not attributed to the proposed project; and

3. consultation, on the foregoing identification and analysis, with the OWJ over the ***Section 4(f)*** property.

Situations describing when a Constructive Use occurs can be found at ***23 CFR § 774.15(e)*** and situations describing when a Constructive Use does not occur can be found at ***23 CFR § 774.15(f)***, both of which can be accessed via FDOT's ***Section 4(f) and Section 6(f) Website***.

7.4 POST PROJECT DEVELOPMENT AND ENVIRONMENT

7.4.1 Late Designations, Unanticipated Discoveries, and Emergency Repairs

After the CE, FONSI, or ROD has been processed, a separate ***Section 4(f)*** approval will be required, except as provided in ***23 CFR § 774.13***, if:

1. a proposed modification of the alignment or design would require the use of ***Section 4(f)*** property; or

2. the District in consultation with OEM determines that ***Section 4(f)*** applies to the use of a property; or

3. a proposed modification of the alignment, design, or measures to minimize harm [after the original ***Section 4(f)*** approval] would result in a substantial increase in the amount of ***Section 4(f)*** property used, a substantial increase in the adverse impacts to ***Section 4(f)*** property, or a substantial reduction in the measures to minimize harm [***23 CFR § 774.9(c)(1)-(3)***].

A separate ***Section 4(f)*** approval required for a CE, FONSI, or ROD will not necessarily require the preparation of a new or supplemental ***NEPA*** document ***[23 CFR § 774.9(d)]***. Coordination is needed with OEM when there are changes to a project that result in changes to impacts to a ***Section 4(f)*** property.

There are times when late discoveries, late designations, or determinations of significance of ***Section 4(f)*** resources are made after the completion of the Environmental Document. When this involves a ***Section 4(f)*** resource other than an archaeological site, FDOT may allow the project to proceed without consideration under ***Section 4(f)*** if the property interest in the lands from the site was acquired prior to the change in the designation or the determination of significance as long as an adequate effort was made to identify properties protected by ***Section 4(f)*** prior to the acquisition. In cases involving a historic site, if it was reasonably foreseeable that a resource would be determined eligible for the NRHP prior to the start of construction, the resource should be treated as a significant historic site as set forth in ***23 CFR § 774.13(c)***.

In judging the adequacy of the effort made to identify properties protected by ***Section 4(f)***, FDOT considers the requirements and standards that existed at the time of the research.

When the post-review discovery is of an archeological site, FDOT consults with the SHPO/THPO and other appropriate parties in accordance with ***Section 106 of the NHPA*** to reach resolution regarding the treatment of the site within an expedited time frame. The decision to apply ***Section 4(f)*** to the site is based on the outcome of the ***Section 106*** process. If the archaeological site proves significant for more than the information it contains, this late discovery also triggers a request for an expedited ***Section 4(f)*** evaluation [***23 CFR § 774.9(e)***]. Because the DOI has a review responsibility for ***Individual Section 4(f) Evaluations*** but is not usually a party to the ***Section 106*** consultation process, the DOI must be notified and requested to provide any comments within a shortened response period (less than the standard 45 days) in regard to the treatment of the archaeological site [see ***FHWA Section 4(f) Policy Paper***, Section II, Questions 26(a) and (b) and ***23 CFR § 774.9***].

When responding to hurricanes, floods, or other natural disasters, Districts should avoid, to the maximum extent possible, using lands which may be protected by ***Section 4(f)*** for emergency repair actions and/or debris storage and materials staging areas. When using land from a known ***Section 4(f)*** protected resource, the District notifies the OWJ for that property and coordinates the action with them as much as is practicable and appropriate.

In cases where the ***Section 4(f)*** resource is a historic or archaeological site, please refer to ***Part 2, Chapter 8, Archaeological and Historical Resources*** to ensure the proper treatment of these properties under the appropriate provisions of ***Section 106*** and other, historic preservation laws.

The analysis for emergency repairs (those meant to restore essential functions in the immediate aftermath of an emergency) cannot fulfill the purpose of ***Section 4(f)*** to evaluate feasible and prudent avoidance alternatives. However, situations my arise where other ***Section 4(f)***-related documentation may be required if an activity uses a ***Section***

4(f) property. These immediate actions to restore essential functions include the initial clearing of debris off and to the side of a roadway for emergency vehicle access.

The analysis for permanent repairs remains subject to the requirements established for an approval under ***Section 4(f)*** as set forth in ***23 U.S.C. § 138*** and ***49 U.S.C. § 303***, ***23 CFR Part 774***, this Chapter, and other appropriate guidance and procedures.

Regarding debris storage areas established for post-emergency debris, these locations are generally approved and designated prior to the emergency response actions in order to ensure their availability in the event of the storm event or other emergency.

7.4.2 Commitment Compliance

Commitments must be recorded in the Environmental Document. Project commitments are carried forward into design, ROW, and construction phases of project delivery. The commitments and required coordination are updated per ***Procedure No. 650-000-003, Project Commitment Tracking***, ***Part 2, Chapter 22, Commitments***, and documented in the Commitment Status section of the ***Re-evaluation Form***.

Any changes to an existing commitment relating to ***Section 4(f)*** protected properties require coordination with the District Environmental Office. The District Environmental Office informs the appropriate consulting parties and re-initiates consultation as necessary. District staff must review the commitments made to avoid, minimize and mitigate effects to ***Section 4(f)*** protected properties and ensure compliance.

7.4.3 Re-evaluations

FDOT Federal Projects are re-evaluated per ***Part 1, Chapter 13, Re-evaluations***. Design changes could re-initiate consultation with the OWJ. Commitments and coordination are documented in the Commitment Status section of the ***Re-evaluation Form*** and tracked through ***Procedure No. 650-000-003, Project Commitment Tracking***. When completing Re-evaluations in relation to ***Section 4(f)*** properties, it is important to revisit proximity impacts as well as any direct uses of protected properties to ensure full consideration of the potential changes of impacts to ***Section 4(f)*** properties.

7.5 CONCURRENT REQUIREMENTS

Due to the nature of the resources protected under ***Section 4(f)***, there are often concurrent laws requiring separate federal and/or state findings or approvals such as ***Section 106 of the NHPA***, ***Section 12(a) of the WSRA***, and ***Section 7 of the Endangered Species Act***. The majority of these concurrent requirements overlap as part of the ***NEPA*** process. Acknowledgement of and compliance with the applicable concurrent requirements for a resource should be clearly addressed in all appropriate sections of the Environmental Document and documented in the project file.

There are also certain ***Section 4(f)*** protected properties encumbered with a federal interest. For projects that propose the use of land from a ***Section 4(f)*** property purchased or improved with federal grant-in-aid funds under the ***LWCFA***, the ***Federal Aid in Fish***

Restoration Act (Dingell-Johnson Act), the ***Federal Aid in Wildlife Act (Pittman-Robertson Act)***, or other similar laws, coordination with the appropriate federal agency is required to ascertain the agency's position on the land conversion or transfer. Other federal requirements that may apply to the property should be determined through consultation with the OWJ or the appropriate federal land managing agency as outlined in ***23 CFR § 774.5(d)***. These federal agencies may have regulatory authority or other requirements for converting land to a different use. These requirements are independent of the ***Section 4(f)*** requirements and should be satisfied during the project development process (see ***Part 1, Chapter 4, Project Development Process***). Most of these concurrent requirements also overlap within the ***NEPA*** process.

7.5.1 Section 6(f)

The most common federal encumbrance encountered when completing a ***Section 4(f)*** approval is the ***LWCFA***. State and local governments often obtain grants through the ***LWCFA*** to acquire or make improvements to parks and recreational areas. ***Section 6(f)*** of this ***Act*** prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the NPS. ***Section 6(f)*** directs the DOI to assure that replacement lands of equal value, location and usefulness are provided as conditions to such conversions. Consequently, where conversions of ***Section 6(f)*** lands are proposed for highway projects, replacement lands will be necessary. As with most other federal encumbrances, ***Section 6(f)*** **applies to all projects and not just those that are federally funded**. A project can have ***Section 6(f)*** impacts, but ***Section 4(f)*** may not apply.

To determine whether ***LWCFA*** funding was involved in the acquisition or improvement of a ***Section 4(f)*** property, the District should consult with the OWJ or reference the lists of these grants maintained by the NPS and FDEP. See ***Section 7.6*** for links to the appropriate NPS site and ***LWCFA*** property map. If ***LWCFA*** funds were used for acquisition or improvement, under ***36 CFR § 59.3*** the following prerequisites must be met:

- all practical alternatives to the proposed conversion must be evaluated;
- the fair market value of the property to be converted must be established by an appraisal meeting the “Uniform Appraisal Standards for Federal Land Acquisitions”;
- the replacement property must be of at least equal fair market value;
- the replacement property must be of reasonably equivalent usefulness and location to that being converted;
- the property proposed for substitution meets the eligibility requirements for ***LWCFA*** assisted acquisition;
- in the case of assisted sites that are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a

conversion is approved the unconverted area must remain recreationally viable or be replaced as well;

- the Regional Office of the NPS is assured that all environmental review requirements related to the project have been met;

- the state procedures including those of the FDEP have been adhered to if the project conversion and substitution constitute any changes to the ***LWCFA*** property;

- the proposed conversion and substitution are in accordance with the recreation plans of the state and the facility.

To convert ***Section 6(f)*** properties to non-recreation uses, the OWJ over the ***Section 6(f)*** property must agree to the conversion in a letter of transmittal recommending the proposal. The conversion must meet the prerequisites and be approved by the appropriate NPS Regional Director in writing. This is accomplished through coordination with the FDEP who, in turn, seeks NPS approval of the conversion and proposed acquisition of replacement property. See FDOT's ***Section 4(f) and Section 6(f) Website*** for additional ***Section 6(f)*** guidance. Regardless of the mitigation proposed, the ***Section 4(f)*** Evaluation and Environmental Document includes the NPS position relative to ***Section 6(f)*** conversion and analyze how the converted park land and recreational usefulness will be replaced.

If any ***Section 6(f)*** properties are identified in the project area, the District coordinates with FDEP and notifies the PDC. OEM is available for assistance with ***Section 6(f)*** coordination.

7.5.2 Acquisition and Restoration Council - Concurrent Requirement

While determining the applicability of ***Section 4(f)*** to state-owned lands or, during the coordination with the OWJ, the District may identify properties which require an approval from Florida's Acquisition and Restoration Council (ARC) before they can be converted into a transportation facility. For such properties, regardless of the applicability or non-applicability of ***Section 4(f)*** an easement from the Division of State Lands of the FDEP may be required prior to locating the project across these lands. This process is a state process and is independent from the ***Section 4(f)*** process although, when occurring on an FDOT Federal Project, the conditions developed during the coordination for the ARC's approval may dictate the inclusion of certain minimization and mitigation efforts into the ***Section 4(f)*** document.

The District staff should coordinate with the PDC at the earliest opportunity once they become aware of the proposed acquisition from FDEP protected land. For more detail on the ARC process, see ***Part 2, Chapter 23, State-owned Upland Conservation Land Coordination***.

7.5.3 Recreational Areas and Protected Lands - Documentation of Concurrent Requirements

Documentation of compliance with some of these concurrent requirements is included in the Recreational Areas and Protected Lands section of the Environmental Document. This section documents involvement with recreational or public lands for state funded projects, federal projects with no ***Section 4(f)*** involvement, and state-owned conservation lands including those subject to review and approval by the ARC. This section of an EA or EIS also documents involvement with recreational or public lands for projects that require ***Section 6(f)*** coordination if not already addressed as a ***Section 4(f)*** resource. This section narrative includes a summary of impacts and coordination with the OWJ and/or appropriate federal or state land managing agencies (e.g., NPS, FDEP). Correspondence during this process should be included in the project file.

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PART 2, CHAPTER 8

ARCHAEOLOGICAL AND HISTORICAL RESOURCES

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PART 2 CHAPTER 8

ARCHAEOLOGICAL AND HISTORICAL RESOURCES

8.1 OVERVIEW

This chapter describes Florida Department of Transportation (FDOT) procedures for addressing historic and archaeological resources in the development and delivery of transportation projects. FDOT conducts surveys to locate, identify, and evaluate potential impacts on historic properties resulting from proposed projects. This assessment is prepared to comply with ***Section 106*** of the ***National Historic Preservation Act (NHPA) of 1966***, as amended, ***36 Code of Federal Regulations (CFR) Part 800***, and the ***Florida Historical Resources Act, Chapter 267, Florida Statutes (F.S.),*** all of which require the lead agencies to take into account the effects of their undertakings on historic properties.

The process for compliance with ***Section 106*** and ***Chapter 267, F.S.***, is implemented through the ***Programmatic Agreement Among the Federal Highway Administration, the Florida Department of Transportation, the Advisory Council on Historic Preservation, and the Florida State Historic Preservation Officer Regarding Implementation of the Federal-Aid Highway Program in Florida*** **[*Section 106 Programmatic Agreement (PA)*]** executed on September 27, 2023.

Section 106 applies to all Federal Projects, regardless of the Class of Action (COA) established by Federal Highway Administration (FHWA) in ***23 CFR Part 771*** for compliance with ***National Environmental Policy Act (NEPA)***. ***Section 106*** requires federal agencies to consider the effects of all federal undertakings and programs on historic properties in the planning and delivery of the proposed action or program. As a part of this effort, federal agencies must provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the undertakings.

Fulfillment of ***Section 106*** must be reflected in the ***NEPA*** documentation the Lead Federal Agency or the applicant produces. The ***NEPA*** process provides a framework for all federal environmental impact documentation, and the ***Section 106*** process provides the decision-making procedure for considering effects to historic properties for all federal undertakings. Therefore, all federally funded or approved projects must comply with ***NEPA*** and the ***NHPA***.

In addition, permits from state and federal agencies also require compliance with the associated historic preservation laws. For example, most federal permits that FDOT must obtain for its projects include a documented record of compliance with the ***NHPA***. For state permits, documentation of compliance with ***Chapter 267, F.S.***, is included. Without that record, the permitting authority will be unable to permit the proposed activities.

The Florida Legislature charges each state agency of the executive branch to consider the effects of its undertakings on any historic resource that is eligible for inclusion or listed in the National Register of Historic Places (NRHP) prior to the expenditure of state funds on the undertaking. This consideration includes providing the Florida Department of State

(FDOS), Florida Division of State Historical Resources (FDHR), an opportunity to comment on such an undertaking. The Director of the FDHR also serves as the Florida State Historic Preservation Officer (SHPO), as per the ***NHPA***, and reviews federal-aid projects in this same capacity. ***Section 267.031, F.S.***, specifies the authority and duties of the FDHR, and ***Chapter 1A-46, Florida Administrative Code (F.A.C.)***, specifies the criteria under which the FDHR reviews ***Cultural Resource Assessment Survey (CRAS) Reports*** and the appropriate information required within the reports. ***Section 267.12, F.S.***, and ***Chapter 1A-32, F.A.C.,*** provide the procedures to obtain a permit for archaeological investigations on state lands. In order to protect important or sensitive archaeological sites, ***Section 267.135, F.S.***, provides for the non-disclosure of archaeological site locations.

In order to avoid costly delays in the later stages of project development, the CRAS identification and evaluation effort is initiated as early in the project development process as possible. This allows FDOT to avoid or minimize adverse effects to historic properties more quickly and easily. For additional clarification and guidance regarding the requirements outlined in this chapter, refer to FDOT's ***Cultural Resource Management (CRM) Handbook***. Compliance with historic preservation laws requires consideration of potential effects to historic properties and good faith consultation with all of the appropriate parties.

8.1.1 Definitions

Within this chapter, "cultural resources" is a term broadly used to include all archaeological sites, as well as historic buildings, structures, objects, and districts that are typically 50 years of age or older. In this chapter, the terms "cultural resources" and "historic resources" are used interchangeably. The terms "significant cultural resource" or "historic property" are used as meaning a historic resource included in, or eligible for inclusion in, the NRHP. For consistency, the definitions contained in the regulations implementing ***Section 106*** of the ***NHPA*** (***36 CFR Part 800***) are applicable to this chapter.

As used in this Chapter, the following definitions apply:

Advisory Council on Historic Preservation (ACHP) – An independent agency of the U.S. government whose members are charged with advising the President and the Congress on matters relating to historic preservation; recommending measures to coordinate activities of federal, state, and local agencies and private institutions and individuals relating to historic preservation; and advising on the dissemination of information pertaining to such activities. The ACHP reviews the policies and programs of federal agencies in regard to compliance with the ***NHPA***.

Area of Potential Effects (APE) – The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Consultation – The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the ***Section 106*** process. The ***Secretary of Interior's Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act*** provide further guidance on consultation. Throughout this chapter, consultation and coordination are used interchangeably when referring to FDOT's responsibility under ***NEPA*** Assignment and does not refer to the government-to-government consultation responsibilities retained by FHWA.

Consulting parties – Persons or groups that the federal agency consults with during the ***Section 106*** process, including, but not limited to, the ACHP, the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officers (THPOs) or tribal government officials or representatives, representatives of local governments, and individuals and organizations with a demonstrated interest in the undertaking.

Coordination – Refers to the actions, communications, collaborative efforts, and procedures that facilitate the consultation process. Throughout this chapter coordinate and coordination are used interchangeably with consult and consultation to describe the process of seeking, discussing, and considering the views of other participants during the ***Section 106*** process.

Cultural Resource Assessment Survey (CRAS) – The process of identification, documentation, and evaluation of archaeological, historical, architectural, and traditional cultural properties.

Effect/Affect – Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP.

Evaluation – The process of determining the eligibility of a cultural resource for listing in the NRHP.

Federally Recognized Native American Tribes (Tribes) – Indian tribes [as defined in ***36 CFR § 800.16(m)***] are those tribes that possess certain inherent rights of self-government (i.e., tribal sovereignty) and that are recognized as having a government-to-government relationship with the United States. This recognition is typically attained through treaties, acts of Congress, presidential executive orders, or other federal administrative actions or court decisions. A current list of Federally Recognized Native American Tribes (hereafter referred to as Tribes) is maintained by the U.S. Department of the Interior, Bureau of Indian Affairs. See ***Section 8.4*** for a link to the ***Tribal Leaders Directory***.

Finding – The official result of the ***Section 106*** process when referencing project effects on historic properties, also commonly called a determination of project effects. ***Section 106*** findings are limited to: "No Potential to Cause Effects", "No Historic Properties Affected", "No Adverse Effect to Historic Properties", and "Adverse Effect to Historic Properties". The phrase "Historic Properties Affected" may be utilized as a mid-process ***Section 106*** finding in ***CRAS Reports*** or documents, the use of which necessitates

additional steps to determine whether the effects are adverse or not adverse to the historic property.

Florida Master Site File (FMSF) – A comprehensive listing of recorded cultural resources in Florida, including archaeological sites, historic structures, bridges, cemeteries, resource groups, and NRHP-listed sites. It also includes records for resources that are no longer extant.

Government-to-Government Tribal Consultation – The official process of consultation between U.S. Department of Transportation (USDOT) and tribal officials for ***Section 106*** related matters when officially requested by a Tribe. ***Section 106*** related government-to-government tribal consultation responsibilities are retained by FHWA per ***NEPA*** Assignment and therefore not addressed within this document beyond FDOT's process for notifying FHWA.

Historic property – Defined in the ***NHPA*** as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior (also referred to as significant historic resources). This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to a Tribe which meet the NRHP criteria for historical significance.

Historic resource – As set forth in ***Section 267.021, F.S.***, any prehistoric or historic district, site, building, structure, object, or other real or personal property of historical, architectural, or archaeological value, and folklife resources which may or may not meet the NRHP criteria and are generally 50 years of age or older. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, and culture of the state.

Integrity – The authenticity of a cultural resource's identity, evidenced by the survival of physical characteristics that existed during the resource's historic or pre-contact period. The seven aspects of integrity are location, design, setting, materials, workmanship, feeling, and association.

Memorandum of Agreement (MOA) – The document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

Minimization – Active attempts to reduce harm to the historic property.

Mitigation – Any actions that reduce or compensate for damage or adverse effect that an undertaking may have on a NRHP-listed or eligible property. Mitigation may include project redesign, relocation, documentation, etc.

National Register of Historic Places (NRHP) – The official list of the Nation's historic properties deemed worthy of preservation per the NRHP criteria. The NRHP is maintained by the Secretary of the Interior.

NRHP criteria – The criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the NRHP ***(36 CFR Part 60)***.

NRHP eligible – A cultural resource that meets the criteria of eligibility for listing in the NRHP, but that has not been formally nominated to be listed. For the purpose of ***Section 106*** and ***Chapter 267, F.S.***, compliance, eligible properties are treated the same as listed properties. Cultural resources determined to have **insufficient information**, where the significance has not or cannot be determined definitively, are considered potentially eligible until proven otherwise and are treated in the same manner as eligible and listed properties.

Native American – Of, or relating to, a Tribe, people, or culture that is indigenous to the United States.

No Adverse Effect – When an undertaking has an effect on a historic property, but the effect would not be harmful to those characteristics that qualify the property for inclusion in the NRHP.

No Effect – When an undertaking has no effect of any kind (either harmful or beneficial) on historic properties. This term is not an official ***Section 106*** finding or determination, but is sometimes used when discussing compliance with state regulation.

Programmatic Agreement (PA) – A document that records the terms and conditions agreed upon to resolve the potential adverse effects of a federal agency program, complex undertaking or other situations in accordance with ***36 CFR § 800.14(b)***. PAs allow federal agencies to govern the implementation of a particular agency program or the resolution of adverse effects from complex projects or multiple undertakings similar in nature through negotiation of an agreement between the agency and the ACHP. PAs can be developed on a national, statewide, or regional scope for similar or repetitive undertakings, for undertakings with repetitive effects on historic properties, or for situations where the effects to historic properties cannot be fully determined prior to the approval of an undertaking.

State Historic Preservation Officer (SHPO) – The official appointed or designated pursuant to ***Section 101(b)(1) of the NHPA*** to administer the State historic preservation program or a representative designated to act for the SHPO.

Tribal Historic Preservation Officer (THPO) – The tribal official appointed by the Tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of SHPO for purposes of ***Section 106*** compliance on Tribal Lands in accordance with ***Section 101(d)(2) of the NHPA***.

Undertaking – A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency [as defined in ***36 CFR § 800.16(b)***], including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval.

Chapter 267, F.S., does not define "undertaking," but ***Rule 1A-46.002 (q), F.A.C.***, defines "State undertaking" as meaning "…a project, activity or program in which a state

agency of the executive branch has direct or indirect jurisdiction; those in which a state agency provides financial assistance to a project or entity; and those in which a state agency is involved through the issuance of state permits or licenses."

8.1.2 Legislative and Regulatory Framework

8.1.2.1 Federal Legislation

Section 106 of the ***NHPA*** of 1966, as amended, and its implementing regulations at ***36 CFR Part 800 (Protection of Historic Properties)***, as amended, requires federal agencies to consider the effects of their undertakings and programs on historic properties in the planning and delivery of the proposed action or program. Subpart B of the regulations defines how federal agencies meet the statutory responsibilities in the ***Section 106*** process, and how the steps of this process can be coordinated with reviews under other federal laws. As a part of this effort, federal agencies must provide the ACHP a reasonable opportunity to comment on the undertakings. Coordination with ACHP is addressed throughout Subpart B, and ***Appendix A to Part 800*** outlines ACHP involvement in reviewing individual ***Section 106*** cases. In addition to ***36 CFR Part 800***, ACHP has approved exemptions from the ***Section 106*** process and issued a number of official program comments addressing some broad topics. A summary of the ACHP issuances applicable to how FDOT complies with ***Section 106*** follows.

The ***Section 106 Exemption Regarding Effects to the Interstate Highway System (ACHP, March 10, 2005)*** presents guidance from ACHP for implementing the exemption from ***Section 106*** and ***Section 4(f)*** requirements created in the ***Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)*** for the bulk of the Interstate System.

The ***Program Comment for Common Post-1945 Concrete and Steel Bridges (ACHP, November 2, 2012)*** relieves FHWA and other federal agencies from the requirement under ***Section 106*** of the ***NHPA*** to consider the effects of undertakings on certain common bridges and culverts constructed of concrete or steel after 1945. The federal agencies using the Program Comment must still complete ***Section 106*** review for the undertaking, including the identification of historic properties and consideration of effects of the undertaking on historic properties other than the common bridge itself.

The ***Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way (ACHP, August 17, 2018)***, as amended June 10, 2019, relieves federal agencies from the requirement under ***Section 106*** of the ***NHPA*** to consider the effects of undertakings on historic rail properties within railroad and rail transit Right of Way (ROW). This program comment was prompted by the ***Fixing America's Surface Transportation (FAST) Act***, ***(49 United States Code (U.S.C.) 24202, December 4, 2015)***, which required that the Secretary of the USDOT propose an exemption of railroad rights of way from review under ***Section 106***, consistent with the exemption for interstate highways approved on March 10, 2005 ***[70 Federal Register (FR) 11928]***. This Program Comment is comprised of an activity-based approach, and a property-based approach. The activity-based approach provides a list of activities for which no further ***Section 106*** review is required. The property-based approach

establishes a process whereby project sponsors can opt to work with the relevant USDOT Operating Administrations and stakeholders to develop a list of excluded historic rail properties that would remain subject to ***Section 106*** review and exempt from review the effects of undertakings to all other historic rail properties within a designated area. The activity-based approach is immediately effective, but the property-based approach does not go into effect until USDOT publishes implementing guidance.

The ***Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment (ACHP, October 26, 2022)*** relieves FDOT from the requirement to conduct reviews under ***Section 106*** of the NHPA for effects on historic properties related to installation of certain electric vehicle supply equipment (EVSE) provided they meet the below conditions ***(87 FR 66201)***.

Except as noted below, all federal agencies are exempt from the ***Section 106*** requirements of taking into account the effects of the installation, maintenance, repair, or expansion of EVSE and Level 1, 2, or 3 [also known as Direct Current (DC) Fast Charging] charging stations, provided these:

1. Take place in existing parking facilities with no major electrical infrastructure modifications and are located as close to an existing electrical service panel as practicable;

2. Use reversible, minimally invasive, non-permanent techniques to affix the infrastructure;

3. Minimize ground disturbance to the maximum extent possible, and ensure that it does not exceed previous levels of documented ground disturbance;

4. Use the lowest profile EVSE reasonably available that provides the necessary charging capacity;

5. Place the EVSE in a minimally visibly intrusive area; and

6. Use colors complementary to surrounding environment, where possible.

Definitions applicable to this exemption presented in ***87 FR 66201*** are incorporated by reference herein.

This exemption does not apply on Tribal Lands, or to activities that may affect historic properties located on Tribal Lands, unless the Tribal Historic Preservation Officer (THPO), Tribe, or a designated representative of the Tribe has provided prior written notification to the ACHP that it agrees with the use of the exemption on its lands. ACHP provides notice on its website of any such agreements with Federally Recognized Native American Tribes (Tribes).

While the ACHP does not expect that activities carried out consistent with this exemption will affect historic properties of religious and cultural significance to Tribes, the ACHP advises that, where the installation of EVSE may occur in a location on or near an existing archaeological site, feature, or district, or any other property with known potential

significance to Tribes, FDOT should coordinate with interested Tribes to determine whether they ascribe significance to the site or property. Should a Tribe ascribe significance to the site area, FDOT should undertake a ***Section 106*** review.

Section 110 of the ***NHPA*** requires federal agencies to develop historic preservation programs to identify, evaluate, and protect historic properties that are under federal agency jurisdiction and/or potentially affected by Federal Actions. ***Section 110*** also requires the recording of historic properties altered, damaged, or destroyed as a result of a Federal Action, and the deposition of these records in the Library of Congress or other designated repository for future use and reference. Federal agencies are also instructed to consult with other federal, state, and local agencies, Tribes, the public, and other stakeholders, and to integrate historic preservation into their plans and programs and address the treatment of National Historic Landmarks (NHLs) impacted by an agency's programs and undertakings (i.e., their projects).

36 CFR Part 61 (Procedures for State, Tribal, and Local Government Historic Preservation Programs) authorizes the Secretary of the Interior to establish professional standards, techniques, and methods for historic preservation, and to guide local governments, states, and Tribes in the preservation of "historic properties" (as defined by the ***NHPA***) and the administration of historic preservation programs.

The ***Archaeological Resources Protection Act (ARPA) of 1979*** was enacted to secure the protection of archaeological resources and sites that are on public lands and Tribal Lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals.

The ***Archaeological and Historic Preservation Act of 1974 [Public Law (Pub. L.) 93-291;16 U.S.C. § 469]*** requires federal agencies to fund effects mitigation measures when their actions threaten to damage or destroy NRHP-eligible properties.

NEPA, as amended (***42 U.S.C. § 4321***) requires the examination and avoidance of potential impacts to the social and natural environment when considering approval of proposed transportation projects. In addition to evaluating the potential environmental effects, the ***NEPA*** process prescribes interagency cooperation, public involvement, and documentation. ***Section 102(c)*** of the Act also requires the federal government to "…preserve important historic, cultural, and natural aspects of our national heritage." The level of required ***NEPA*** documentation depends largely upon the nature and degree of project impacts upon the human and natural environment. These impacts, then, determine a COA, which can include a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

Section 4(f) of the ***United States Department of Transportation Act of 1966***, and its implementing regulations at ***23 CFR Part 774*** applies whenever a project incorporates land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of a historic site of national, State, or local significance into a transportation facility. Such incorporation is referred to as a "***Section 4(f)*** use of the

resource" and requires an approval under ***49 U.S.C. § 303*** and ***23 U.S.C. § 138*** prior to utilizing the land for the project.

The ***American Indian Religious Freedom Act (AIRFA) of 1978 (Pub. L. 95-341; 42 U.S.C. § 1996)*** establishes as federal policy the protection of the rights of Tribes to the free exercise of their religion, including access to sacred sites, and requires federal agencies to accommodate this policy. Amendments to ***Section 106*** of the ***NHPA*** in 1992 strengthened the interface with this ***Act*** by declaring that a federal agency must include the Tribes in the consultation process.

The ***Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (Pub. L. 101-601; 25 U.S.C. § 3001)*** addresses the proper treatment of Native American human remains and funerary and sacred objects located on federal or Tribal Lands.

Executive Order 11593: Protection and Enhancement of the Cultural Environment (1971) (3 CFR Part 154, reprinted in 16 U.S.C. § 470) requires all federal agencies to identify and take steps to avoid effects to archaeological and historic properties under their jurisdiction that are eligible for listing in the NRHP. It also requires complete documentation of NRHP-eligible properties that will be demolished as a result of the federal undertaking.

Executive Order 13007: Indian Sacred Sites (1996) requires federal agencies to protect Indian sacred sites by avoiding adverse effects to the physical integrity of such sites. It further accommodates access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners, and requires federal agencies to maintain confidentiality of information on such sites.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (2000) affirms and strengthens the federal government's commitment to meaningful consultation with Tribes concerning federal actions, renews federal commitment to recognition of tribal sovereignty, and recognizes the government-to-government relationship between Tribes and the U.S. government. In ***September 2004, President Bush's Memorandum, Government-to-Government Relationship with Tribal Governments*** reaffirmed the policy set forth in ***Executive Order 13175***.

8.1.2.2 State Legislation

Chapter 267, F.S. is the principal state law regarding the protection of archaeological and historical resources. It contains requirements similar to those of the federal ***NHPA***. ***Chapter 267, F.S.***, declares the state policy that the historic properties in this state represent "an important legacy to be valued and conserved for present and future generations." It requires that each state agency consider the effects of an undertaking on any historic property that is eligible for inclusion in the NRHP and to consult with FDHR to ensure that effects on historic properties are considered prior to the expenditure of state funds on the project.

Section 253.027, F.S., Emergency Archaeological Properties Acquisition Act of 1988 provides a procedure to purchase archaeological and historical resources of statewide significance that are endangered by development, vandalism, or natural events.

Section 872.05, F.S., Unmarked Human Burials (2011) accords equal treatment and respect for human burials and human skeletal remains regardless of ethnic origin, cultural background, or religious affiliation. This law pertains to any human burials, human skeletal remains, and associated burial artifacts on public or private lands within Florida. It is a third-degree felony to willfully and knowingly disturb, destroy, remove, or damage any unmarked human burials.

Chapter 1A-32, F.A.C., Archaeological Research (2014) provides the criteria, notification requirements, and prohibited practices associated with archaeological research conducted on state-owned lands, including submerged lands.

Chapter 1A-44, F.A.C., ***Procedures for Reporting and Determining Jurisdiction Over Unmarked Human Burials (1992)*** establishes the procedure to follow in the event that unmarked human burials are encountered during a project.

Chapter 1A-46, F.A.C., ***Archaeological and Historical Reports Standards and Guidelines (2002)*** specifies reporting and site recording requirements.

A more detailed list of authorities governing the CRM process is available in ***Chapter 1*** and Appendix A of the ***CRM Handbook***.

8.2 PROCESS

The guiding principle of FDOT's CRM process is to identify, evaluate, and document historic resources and analyze the potential effects (if any) of its undertakings on the significant historic resources (also referred to as historic properties), whether they are FDOT Federal Projects or FDOT State Projects. The detail and level of analysis varies depending on the type of historic property, potential for the project to affect them, and the degree or nature of the anticipated effects. Once FDOT completes this effort, FDOT develops practical ways to avoid or minimize identified effects. If the effects cannot be avoided or minimized, FDOT seeks ways to mitigate for identified adverse effects.

FDOT complies with applicable federal and state historic preservation mandates for its projects. FDOT Federal Projects, must adhere to the ***Section 106*** process. For FDOT State Projects that involve no Federal Actions, ***Chapter 267, F.S.***, directs the CRM process. To avoid confusion, the FDHR incorporated the ***Section 106*** process into the state's uniform compliance review program. The Director of the FDHR also serves as the State Historic Preservation Officer (SHPO); so regardless of whether an FDOT Federal Project or FDOT State Project, the state's point of contact for consultation is the same.

The primary differences between the two review processes are the involvement of Office of Environmental Management (OEM) and the ACHP and the role of tribal governments in the consultation process under ***Section 106***. FDOT procedures ensure compliance with both laws and regulations through a single process, the only difference of importance

for FDOT projects is the broader and more specific consultative requirements of the federal process with entities other than FDHR/SHPO.

8.2.1 Section 106 Process

The ***Section 106*** process is contained in the implementing regulations, ***36 CFR Part 800***, issued by the ACHP (incorporating amendments effective August 5, 2004). These regulations establish the four-step ***Section 106*** process. By following the four steps and applying the general requirements of ***Section 106***, FDOT ensures compliance with the other related laws and requirements. The steps established by ***36 CFR Part 800*** form the core process FDOT follows to meet its cultural resources management responsibilities.

The four steps of the ***Section 106*** process are:

- **Step One: Initiate the Section 106 Process *(8.3.2.2)***
- **Step Two: Identify Historic Properties *(8.3.2.3)***
- **Step Three: Assess Adverse Effects *(8.3.2.4)***
- **Step Four: Resolve Adverse Effects *(8.3.2.5)***

The goal of the ***Section 106*** process as stated in ***36 CFR 800.1*** is to "… accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effect of the undertaking on historic properties…." As a result, final actions performed by federal agencies can range from avoidance to complete loss of the historic property without violating ***Section 106***, as long as:

- the agency considers the effects of the action on the property;
- evaluates all available avoidance, minimization, and mitigation options; and
- offers the consulting parties an opportunity to comment on the effects of the undertaking on historic properties.

Consultation is a key element in the ***Section 106*** process. The ***Section 106*** regulations define consultation as "the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the ***Section 106*** process." FDOT serves as the Lead Federal Agency in most of the consultation required in this process, except for the government-to-government consultation required when requested by a Tribe affiliated with Florida. In those instances, OEM will inform FHWA of the Tribe's request. However, the normal ***Section 106*** consultation process conducted by FDOT with the Tribes is not considered government-to-government consultation. When developing the ***Section 106*** consultation effort for a proposed highway project, FDOT works closely with SHPO to identify the appropriate consulting parties and, as appropriate, informs the appropriate Tribes of projects which may affect properties of religious and cultural importance to the Tribe. Generally, FDOT

considers this to include historical or archaeological resources that have obvious ties to a Tribe, or archaeological sites that have a precontact component. For specific information about consulting parties, see ***Section 8.2.1.1*** and ***Section 8.3.2.2.3***.

The consultation effort must be appropriate to the size and scale of the proposed undertaking, as well as to the scope of the federal involvement. Often, the consultation effort may depend on the nature of the historic properties located in the APE of the proposed Federal Action.

Title 36 CFR Part 800 requires federal agencies to seek the views of the public during the ***Section 106*** process. Normally, FDOT's public involvement process, described in ***Part 1, Chapter 11, Public Involvement***, satisfies ***NEPA***, ***Section 4(f)***, and ***Section 106*** compliance provided the timing of the identification, evaluation, and documentation of the historic properties is appropriately coordinated with the public review and comment opportunity. However, in some cases, where the historic properties are of great concern to the public, where the consultation involves large numbers of local citizens, where special considerations for Tribes must be examined, or where historic properties were identified late or were absent from the initial public review and comment opportunity, additional or different types of public involvement efforts may be necessary. The nature of the sites may also trigger additional consultations to meet the requirements of other laws such as the ***Native American Graves Protection and Repatriation Act (NAGPRA)***, ***Chapter 872, F.S.***, or the ***AIRFA***.

8.2.1.1 Participants in the Section 106 Process

The ***Section 106*** process, and therefore FDOT's CRM process, involves several participants. The primary participants in the process include the following:

1. **FDOT** – The role of FDOT varies based upon its relationship to the proposed undertaking, the funding sources for the undertaking, and required approvals. These roles include the Lead Federal Agency per ***NEPA*** Assignment or serving as the lead for FDOT State Projects.

2. **Lead Federal Agency** – Under the ***NEPA Assignment Memorandum of Understanding (MOU)***, FDOT assumes FHWA's responsibility for ***Section 106*** for all highway transportation projects and serves as the Lead Federal Agency with the exception of government-to-government consultation with the Tribes. See ***8.2.1.2*** for government-to-government specifics and other tribal coordination details. In addition, there may be instances where other federal agencies serve as the Lead Federal Agency because they are granting a permit or approval.

3. **ACHP** – The ACHP issues the regulations to implement ***Section 106***, provides guidance on compliance with ***Section 106***, and oversees the ***Section 106*** process. The ACHP must be notified by FDOT when a project will have an adverse effect to historic properties, and the ACHP also may participate directly in the consultation process at its discretion or upon request from one of the consulting parties. The conditions under which the ACHP may participate directly in a specific circumstance are set forth in ***Appendix A to Part 800, Title 36***.

4. **SHPO** – SHPO represents the interests of Florida and its citizens in the preservation of their cultural heritage. Florida's SHPO is designated by the Florida Secretary of State, and reviews federal-aid projects, along with federal and state permitted projects. In Florida, the SHPO also serves as the Director of the FDHR, and in this capacity, reviews state-only undertakings and maintains Florida's state historic preservation plans and programs.

5. **Federally Recognized Native American Tribes (Tribes)** – There are six Tribes with cultural associations in Florida: the Miccosukee Tribe of Indians of Florida, the Mississippi Band of Choctaw Indians, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Tribe of Florida, and the Seminole Nation of Oklahoma. The U.S. government has a unique relationship with the Tribes as codified in treaties, the U.S. Constitution, Supreme Court rulings, and federal law.

6. ***Section 106* Consulting Parties** – These include the parties discussed above, as well as representatives of local governments, applicants for federal assistance, and other parties with a demonstrated interest in the effects of an undertaking on historic properties. For example, property owners and local historic preservation groups are usually specific to the project location. Projects involving NHLs normally involve the National Park Service (NPS). Projects involving publicly owned historic resources would need to include the agency owning or managing the resource.

7. **The Public** – The Lead Federal Agency must seek and consider the views of the public on the effects of its undertakings on historic properties.

8.2.1.2 Native American Consultation

Under ***36 CFR Part 800*** federal agencies must consult with Tribes regarding potential effects to historic properties that may be affected by a proposed undertaking and that may be of religious or cultural significance to the Tribe regardless of whether the property is located on or off Tribal Lands. FDOT considers resources, both historic and archaeological, that have an obvious tie to a Tribe, or archaeological sites that have a precontact component, as having the potential for tribal interest. In accordance with ***36 CFR § 800.2(c)***, consultation with a Tribe must recognize the government-to-government relationship between the federal government and Tribes. It is FDOT's responsibility to make a reasonable and good faith effort to identify the appropriate Tribes for coordination. FDOT must consult with representatives designated or identified by the tribal government, and consultation should be conducted in a manner sensitive to the concerns and needs of the Tribe. See ***Section 8.3.2.2.3.2*** for the considerations regarding the unique relationship of the Tribes to the consideration of historic properties in FDOT's CRM and project development processes.

While FHWA cannot assign its government-to-government tribal consultation responsibilities to FDOT under ***NEPA*** Assignment, the requirements in ***36 CFR § 800.2(c)*** do not preclude direct communication between project applicants and Tribes, as long as the Tribe consents to such communication. As such, FDOT will continue to coordinate

and meet with the Tribes regarding projects including notification of a proposed activity and the submittal of cultural resource reports or other appropriate documents. If, at any time, a Tribe requests government-to-government consultation with FHWA, OEM will notify FHWA. However, the ***NEPA Assignment MOU*** does not prevent FDOT, FHWA, and a Tribe from agreeing to allow FDOT to carry out consultation activities on behalf of FHWA; but, FHWA would remain legally responsible for government-to-government consultation.

8.2.2 Additional Requirements and Processes

The ***Section 106*** process encompasses compliance with other laws that touch upon the treatment of historic properties. Examples of such laws are:

Federal	State
NAGPRA	***Chapter 267, F.S.***
NEPA	***Chapter 872, F.S.***
Section 4(f) of the ***USDOT Act of 1966*** (as amended)	***Chapter 1A-32, F.A.C.***
Archaeological Resources Protection Act of 1979	***Chapter 1A-46, F.A.C.***
Executive Orders, such as ***EO 13007*** on Sacred Indian Sites	

The process for compliance with ***Section 106*** is implemented through the ***Section 106 Programmatic Agreement (PA)*** (executed, September 27, 2023). A ***Letter of Agreement (LOA)*** between FDOT and SHPO authorizes the processes and procedures outlined within the ***Section 106 PA*** to be utilized for compliance with ***Chapter 267, F.S.***, as well as compliance with ***Section 4(f)*** when SHPO is the official with jurisdiction (OWJ). The ***LOA*** is referenced in and attached to the ***Section 106 PA*** and includes the provision that all consultative efforts between FDOT and SHPO requiring regulatory or procedural acknowledgements be referenced singularly as the ***Section 106 PA*** or ***2023 PA***. The programmatic provisions address the requirements for the primary federal and state historic preservation laws only. They do not apply to projects occurring on Tribal Lands nor do they fulfill the requirements for consultation with Tribes under ***Section 106*** or any other law. These provisions also do not exempt undertakings from meeting the requirements set forth for resources protected by other laws (such as those resources designated by the Florida Legislature as State Historic Highways) or for resources protected by laws that do not require listing on or eligibility for the NRHP.

Under ***NEPA*** Assignment, FDOT assumes responsibility for compliance with ***Section 106*** of the ***NHPA*** and coordinates with the SHPO, other consulting parties, and the ACHP regarding cultural resource issues. The District is responsible for activities stipulated in the ***Section 106 PA***, including submittal and coordination of cultural resource surveys and other analyses to OEM and to other consulting parties as appropriate.

8.2.2.1 State-Designated Historic Highways

The Florida Legislature has designated certain highways as State Historic Highways, and a current list is maintained by the FDOS. Each highway is designated by a specific law

that sets the standards and guidance for its preservation and treatment. This designation is not based upon the NRHP eligibility criteria nor any other standard evaluation method used to evaluate historic properties. Rather, the designation reflects a specific importance to the local community. For some of these highways, the designation prohibits alteration of roadway dimensions and immediate surroundings as well as the expenditure of state funds on any action involving the designated highway prior to coordination and agreement with FDHR on the proposed action. These resources are identified as part of the identification and evaluation of historic properties undertaken for a proposed action, as detailed in ***Section 8.3***.

8.2.2.2 Burials, Cemeteries, and other Sites Containing Human Remains or Associated Burial Artifacts

FDOT's CRM process includes compliance with Florida's ***Unmarked Human Burials*** law in ***Section 872.05, F.S.***, which governs the treatment of human remains. For FDOT, this law usually applies to human remains encountered during project construction or during archaeological research associated with project development. When a potential for the occurrence of human remains or burial artifacts has been identified for a site or location within the construction area of a project, FDOT includes compliance with the provisions of ***Section 872.05, F.S.***, in its project development and delivery conditions.

The ***Unmarked Human Burials*** law differentiates between human remains of an individual that has been deceased less than 75 years and those of an individual deceased for 75 years or more. For those less than 75 years, the human remains come under the jurisdiction of the appropriate medical examiner. For those that are 75 years or more, the remains come under the jurisdiction of the state archaeologist. If these older remains are located on federal lands and they are associated with the cultural history of Tribes, the federal agency owning or administering the land is informed in order to ensure compliance with ***NAGPRA***. The requirements for the treatment of human remains are further addressed in FDOT's CRM process and in ***Section 7-1.6*** of FDOT's ***Standard Specifications for Road and Bridge Construction***. The ACHP's ***Policy Statement on Burial Sites, Human Remains, And Funerary Objects*** issued on March 1, 2023, established a set of standards and guidelines that FDOT will seek to implement in order to provide burial sites, human remains, and funerary objects the consideration and protection they deserve.

8.3 PROCEDURE

This section describes FDOT's procedures for considering historic and archaeological resources in the development of its projects and programs. FDOT's CRM responsibilities are vested in OEM at the state level, and the District Environmental Office at the District level. Project Managers (PMs), Environmental Managers, and Cultural Resource Coordinators (CRCs) in both OEM and the District Environmental Office have responsibility for maintaining compliance with appropriate state and federal historic preservation laws, regulations, rules, and Executive Orders (EO)s. OEM establishes overall guidance, procedures, training, and assistance in project reviews, and monitors the overall performance of FDOT's CRM process. OEM assists the District PMs,

Environmental Managers, and CRCs with the ***Section 106*** process as requested by the Districts, SHPO, and any other consulting party.

The primary responsibility of the District Environmental Office during the ***Section 106*** analysis is to ensure that individual projects follow the established FDOT processes and procedures. The District CRCs apply the applicable laws, regulations and procedures to the individual projects and conduct the day-to-day consultations with the appropriate parties.

In addition to staff, FDOT contracts with consultants to provide cultural resource studies and perform other tasks that require meeting the professional qualifications standards established by the U.S. Secretary of the Interior ***(FR, Vol. 62, 33708-33723)*** to perform identification, evaluation, registration, and treatment activities for historic properties. Consultants identify archaeological sites and historic resources, evaluate the identified resources in accordance with the criteria for historic significance set forth by the National Park Service (NPS), and apply the Criteria of Adverse Effect as defined in ***36 CFR § 800.5***. In all cases, the consultants' findings are professional recommendations.

FDOT staff or consultants performing actions to meet the requirements of historic preservation mandates must either meet or be supervised by individuals meeting the minimum criteria for archaeologists, historians, architectural historians, and other professionals as outlined in ***36 CFR Part 61*** and set forth in the Professional Qualifications Standards section of the ***Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation*** (***FR, Vol. 62, 33708-33723***) (June 20, 1997). The professional qualifications required to perform cultural resource assessments for FDOT are further described in ***Chapter 1*** of the ***CRM Handbook***.

FDOT undertakings receive some level of cultural resources analysis, even if it is to determine there is "No Potential to Cause Effects to Historic Properties" in the project area. A project's level of involvement with historic properties has the potential to impact the COA for the project. However, the anticipated COA does not dictate the expected level of effort necessary for ***Section 106*** compliance, nor does it substitute for an analysis of the project's potential to affect historic properties. Similarly, for FDOT State Projects, the requirements of ***Chapters 267*** and ***872, F.S.***, apply equally to Non-Major State Actions (NMSAs), as well as State Environmental Impact Reports (SEIRs). The level of analysis and documentation for compliance with historic preservation mandates vary based upon specific project activities, but it is the findings of the analysis that are used as a part of the COA decision.

As set forth in ***36 CFR Part 800*** and recognized in the ***Section 106 PA***, the decision concerning the level of survey effort and detail necessary to meet the requirements of historic preservation laws are based upon the nature and scope of proposed projects and the location of these projects in relation to both known and unknown historic properties. Therefore, determining the appropriate level of survey requires a careful review of all activities associated with the project, as well as the potential for the occurrence of historic properties in the geographic area that the project may directly or indirectly affect.

FDOT uses the four-steps established in ***36 CFR Part 800*** for both FDOT Federal Projects and FDOT State Projects. This process includes locating, documenting, evaluating, and assessing the effects on historic properties, as well as developing avoidance, minimization, and/or mitigation measures for adverse effects to significant cultural resources, all in consultation with the appropriate parties. Regardless of the funding source, similar requirements for the assessment of cultural resources apply.

For proposed federally funded or approved actions, if the undertaking includes an additional Federal Action [such as a U.S. Coast Guard (USCG) or U.S. Army Corps of Engineers (USACE) permit], then the federal agency taking the permitting action must comply with ***Section 106*** of the ***NHPA***; however, in these cases those agencies will typically adopt FDOT's ***NEPA*** analysis and associated findings including those under ***Section 106*** to fulfill their requirements. For proposed FDOT State Projects, if the undertaking includes a Federal Action (such as a USCG or USACE permit), then the federal permitting agency must comply with ***Section 106*** of the ***NHPA***. As permits are often granted only for the specific activity or location being permitted, the ***Section 106*** compliance in these situations may not relieve FDOT of its ***Chapter 267, F.S.***, responsibilities for the remainder of the proposed project.

8.3.1 Early Consideration of Archaeological and Historical Resources

Section 106 and FDOT's CRM process require consideration of historic properties in the earliest stages of project development. FDOT's Efficient Transportation Decision Making (ETDM) screening process allows Districts to use the Environmental Screening Tool (EST) to review projects to determine if projects fall into the programmatic categories established in the ***Section 106 PA***. See ***Section 8.3.2.2.2*** for additional procedures related to reviewing Minor Project Activities.

Screening of qualifying transportation projects is required during the ETDM screening events (see ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***). The early screenings for these projects include consideration of cultural resources and loosely correlate to steps one and two of the ***Section 106*** process. The Planning Screen and Programming Screen are conducted through the EST and are briefly described below (FDOT's ***ETDM Manual, Topic No. 650-000-002***).

The screening evaluations are:

1. **Planning Screen** – This initial screening identifies possible issues/resources that need to be considered as the proposed project advances. This is the first opportunity for comments from other agencies with either responsibilities for, or consultative roles in, the ***Section 106*** process.

2. **Programming Screen** – This second screening event provides additional opportunity to scope the proposed project, identify potential project effects, and provide recommendations for technical studies, including the cultural resources survey and evaluation effort. This screening event may also present an opportunity to establish contact with the interested parties for coordination of some of the early

decisions, such as the identification of the appropriate consulting parties for the project and, more rarely, the delineation of the APE for the project.

Following the Programming Screen, the District produces a ***Programming Screen Summary Report***. This report includes a summary of the comments provided by the resource agencies, FDOT's transportation partners, and other interested parties, including consulting parties under ***Section 106***. The comments from those with a consultative role in the ***Section 106*** process are especially important for consideration as the District plans its PD&E Study for the proposed undertaking. In addition, comments from SHPO/THPO and the Tribes are used to develop the scope of services needed to complete the Cultural Resource Assessment Survey (CRAS) for the proposed project.

For screened projects, there may be enough information to determine if the project may affect any historic resources. In part, these screening events should be used as part of the first two steps of the ***Section 106*** process (see ***Section 8.3.2.2*** and ***Section 8.3.2.4***).

Regardless of whether a project qualifies for screening in the EST, an archaeological and historic resources evaluation is required (see ***Section 8.3.2***).

8.3.2 Archaeological and Historical Resources Evaluation

FDOT uses the ***Section 106*** process to ensure compliance with state and federal historic preservation regulations.

8.3.2.1 Section 106

The ***Section 106*** process is set forth in ***36 CFR Part 800***. As specified in ***Section 8.2.1***, there are four steps in the ***Section 106*** review process and, therefore, in FDOT's CRM process.

A flow chart of the ***Section 106*** four-step process and a listing of the activities associated with each of the steps is included on FDOT's ***Cultural Resources Website***. This process is also discussed in FDOT's ***CRM Handbook***. The ***Chapter 267, F.S.***, requirements are similar to the ***NHPA*** requirements and this same four-step process is applicable to projects that do not require federal approvals or assistance, with the exception being that no coordination with federal agencies or the ACHP is required. If it is anticipated that a federal agency will become involved later in project development, the ***Section 106*** process should be followed to avoid unnecessary delays.

The level of effort involved in the ***Section 106*** evaluation is based on the potential for the project to affect historic properties, consideration of where the project occurs, and the nature of the proposed undertaking.

8.3.2.2 Step One: Initiate the Section 106 Process

This step involves the following four actions:

- Establish the undertaking
- Apply appropriate program alternative(s) and coordinate with other reviews
- Identify the consulting parties
- Create a plan to involve the public

8.3.2.2.1 Establish the Undertaking

In accordance with ***36 CFR § 800.3***, establishing the undertaking consists of a determination as to whether the proposed action constitutes an undertaking as defined in ***36 CFR § 800.16(y)***, and if so, whether it is a type of activity with a potential to cause effects to historic properties should any such properties be present. An undertaking consists of a project, activity, or program that is funded, sponsored, permitted or otherwise approved by a federal agency. Any federal involvement in this regard requires compliance with ***Section 106***; state-only undertakings require compliance with ***Chapter 267, F.S***. In some cases, an undertaking and its associated activities are so minor that it does not have potential to cause effects to historic properties, assuming historic properties are present. These actions are defined as non-construction related activities. For example, purchasing equipment, planning, and design all fall under this portion of the regulation. In accordance with ***36 CFR § 800.3(a)(1)***, if the District finds that the proposed project has "No Potential to Cause Effects", FDOT has no further obligations under ***Section 106*** or under ***Chapter 267, F.S.***, for that undertaking. Findings of "No Potential to Cause Effects to Historic Properties" must be recorded in the appropriate Environmental Document for the proposed project, along with the basis for the finding. All construction-related actions with a Federal Action must comply with ***36 CFR. §§ 800.4* to *800.6*** including any maintenance, new construction, and all construction related actions. Questions about applicability of ***36 CFR. § 800.3(a)(1)*** should be referred to OEM.

The ***Section 106 PA*** establishes FDOT's CRM process in Florida and identifies activities which will result in a finding of "No Historic Properties Affected" provided that the appropriate conditions specified in the ***Section 106 PA*** are met and SHPO does not object to the finding (***Section 8.3.2.2.2***). If the undertaking is a type of activity that has potential to cause effects to historic properties, then the project proceeds to the next step in the ***Section 106*** process.

8.3.2.2.2 Apply Appropriate Program Alternative(s) and Coordinate with Other Reviews

The ***Section 106 PA*** specifies two primary considerations that govern the required level of effort for the cultural resources study and review: (1) the project location in regard to the potential for cultural resources to be present in the area of the undertaking, and (2) the specific activities associated with the development, construction, and scope of the

project and their potential to affect significant cultural resources, should such resources be present.

Regarding project location, some geographic areas are unlikely to contain historic resources, while other projects are so minor in scope that unless the specific project corridor itself contains, abuts, or is a historic resource, there is very little chance the undertaking could affect historic properties. Such circumstances may minimize the level of effort needed to fulfill the requirements for identifying historic properties in the project APE. However, if the basic historicity of the area is unknown, then a determination on the potential of the proposed project to affect historic properties, no matter how minor the project is, cannot be made with any certainty without a review of the structural and archaeological environment surrounding the project. Therefore, in order to reach an accurate decision, FDOT conducts the necessary level of review.

Regarding specific activities associated with a project, the ***Section 106 PA*** defines two categories of Minor Project Activities with either minimal potential to affect historic properties or which are considered unlikely to affect historic properties. The first group includes six project activity types that have minimal potential to affect historic properties and can result in a finding of "No Historic Properties Affected", provided the following conditions are met:

1. The undertaking is a stand-alone project;

2. The undertaking does not occur on Tribal Lands;

3. The undertaking's activities are limited to those specified in Appendix 1 of the ***Section 106 PA***;

4. The undertaking's APE does not include any historic resources; and

5. SHPO and OEM have been notified of the finding of "No Historic Properties Affected" and the rationale for the finding via the form developed by OEM, and they have not objected to the finding within thirty (30) days of receipt of the notification.

The six project activity types specified in Appendix 1 of the ***Section 106 PA*** which may qualify for this category are:

1. Installation of fencing, signs, pavement markings, rumble strips, small passenger shelters, traffic signals, and railroad warning devices within the existing footprint of the roadbed, curbing, medians, swales, drainage structures or sidewalks where no substantial land acquisition or traffic disruption will occur

2. In kind replacement or ordinary repair of existing lighting, guardrails, traffic signals, curbs, and sidewalks

3. Activities included in the state's highway safety plan under ***23 U.S.C. § 402***

4. Preventive maintenance activities such as joint repair, pavement patching, shoulder repair and the removal and replacement of old pavement structure that

does not extend beyond the horizontal or vertical extent of the original construction footprint

5. Restoration, rehabilitation, and/or resurfacing existing pavement that does not extend beyond the horizontal or vertical extent of the original construction footprint

6. Restoration and rehabilitation of an existing bridge (including painting, crack sealing, joint repair, scour repair, scour counter measures, fender repair, bridge rail or bearing pad replacement, seismic retrofit, etc.)

The second category of Minor Project Activities are considered unlikely to affect historic properties but require desktop evaluation to either verify that the project will result in "No Historic Properties Affected" or to determine what consultation or additional efforts are needed to meet the requirements of the historic preservation laws. The following conditions must be confirmed to be true for undertakings consisting of this group of 52 project activity types (see Appendix 2 of the ***Section 106 PA***):

1. The undertaking is a stand-alone project;

2. The undertaking does not occur on Tribal Lands;

3. The undertaking's activities are limited to those listed in Appendix 1 and/or Appendix 2 of the ***Section 106 PA***;

4. The undertaking's activities do not involve ground disturbance within or adjacent to a cemetery;

5. The undertaking's APE includes one or more of the following situations:

    i. There are no historic resources in the project APE;

    ii. There are historic resources that have been evaluated by SHPO as ineligible for listing on the NRHP within the last ten (10) years;

    iii. There are resources that are exempt from ***Section 106*** review per the nationwide program alternatives listed in Attachment 1 of the ***Section 106 PA***; or

    iv. There are linear resource segments that have been evaluated by SHPO as non-contributing, ineligible segments of a larger resource determined eligible or potentially eligible for NRHP listing or which has insufficient information for a definitive NRHP determination for the whole resource.

6. The SHPO has been notified of the finding of "No Historic Properties Affected", and the rationale for the finding via the form developed by OEM, and they have not objected to the finding within thirty (30) days of receipt of the notification.

See the list of 52 types of project activities identified in Appendix 2 of the ***Section 106 PA***.

Reviewing Minor Project Activities

FDOT's procedure for reviewing the two categories of Minor Project Activities listed in the ***Section 106 PA***, consists of an internal review and, as appropriate, an assessment of historic resources' NRHP eligibility determinations, and notification and coordination. The ***Section 106 PA*** specifies that the internal review be conducted by qualified cultural resource staff or consultants, including an archeologist and architectural historian or historian, meeting the ***Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (36 CFR Part 61 and 48 FR 44716, September 29, 1983)***, and that they employ a multi-disciplinary approach to implement the following internal review process, as appropriate to the project:

- Determine if the project constitutes an undertaking as defined in ***36 CFR Part 800***.
- Determine if the undertaking is the type of activity which has the potential to cause effects to historic properties if such properties are present.
- Determine the project's APE.
- Review existing information [including the Florida Master Site File (FMSF)] on recorded properties in the APE.
- Assess the likelihood that unidentified properties exist in the APE.
- Determine the degree of existing disturbance within the APE, performing a field inspection where warranted.
- Determine whether there are historic resources or properties within the APE. If there are historic resources within the APE which have not yet been documented and evaluated for NRHP eligibility, the minor project process cannot be used and the project should be processed according to the standard ***Section 106*** process outlined in Stipulation VII of the ***Section 106 PA***.
- Assess the project's effects on any historic properties if any are present within the APE, by applying the definition of Effect in ***36 CFR § 800.16*** and the Criteria of Adverse Effect in ***36 CFR § 800.5(a)***. Minor Projects must result in "No Historic Properties Effected". If the application of the criteria of adverse effect suggests a different finding, the project must be processed according to the standard ***Section 106*** process outlined in Stipulation VII of the ***Section 106 PA***.

For projects that do not include historic resources or properties within the APE or that by their nature have minimal potential or are considered unlikely to affect historic properties, FDOT documents the finding in the StateWide Environmental Project Tracker (SWEPT) project file. This is accomplished by the District notifying SHPO of its finding of "No Historic Properties Affected" on a ***Section 106 Program Alternative Form*** developed for minor project notifications. The State CRC is copied on this notification, and it is saved to the SWEPT project file. The ***Section 106 Program Alternative Form*** includes the project description, a map showing the location and area of potential effect, (APE) along with

other information supporting the finding, as appropriate. Unless SHPO, OEM, or another consulting party objects to the finding, FDOT is not required to take any further action in the ***Section 106*** process.

If a Tribe expresses interest in a minor project, the District will provide the project information and supporting documentation via a ***Notification Letter*** in accordance with the communication preferences discussed on FDOT's ***Native American Tribal Consultation Website*** The Project Delivery Coordinator (PDC) and the State CRC is copied in on these notifications and a copy of the notification and any tribal response is saved in the SWEPT project file.

8.3.2.2.3 Identify the Consulting Parties

FDOT, in consultation with SHPO/THPO, determines which particular agencies, organizations, citizens, or tribal governments should be invited to be a consulting party for the purposes of ***Section 106,*** as set forth in ***36 CFR Part 800***.

The consulting parties may be any of the following:

1. Tribes that attach traditional religious and cultural significance to historic properties that may be affected by the undertaking.

2. Other consulting parties, which may include:

    - Applicants for federal funding assistance, permits, licenses, or other approvals.

    - Representatives of local governments with jurisdiction over the area in which the effects of an undertaking may occur.

    - Parties with legal or economic interest in the undertaking or an affected historic property.

    - Those concerned with the undertaking's effects on historic properties, such as local preservation groups, historical societies, or individual tribal members with special knowledge or expertise in identifying properties of traditional religious and cultural significance to that Tribe.

FDOT, in consultation with SHPO/THPO, makes the final decision regarding consulting party status. Note that the ACHP is a participant in the ***Section 106*** process and may enter into the consultations at any time, particularly if there is a disagreement between two or more consulting parties, or if requested to participate by the public or any other consulting party. In addition, in the case of NHLs, the lead agency must consult with the NPS in order to comply with ***Section 110*** of ***NHPA***, as well as ***Section 106***. Once the consulting parties are identified the following procedures must be followed.

8.3.2.2.3.1 General Consultation

The ***Section 106*** process seeks input from and coordination with a broad base of partners with the goal of achieving the best possible result for all involved. When distributing

general notifications and/or project communications which include multiple entities such as the public, local government officials, or Tribes, the communication to the Tribes must be provided to each appropriate Tribe separately in accordance with their stated preferences available on the ***Native American Tribal Consultation Website***. Tribes are not part of the public and should not receive public notifications such as public hearings, public meetings, alternative meetings, etc., unless expressly requested by a Tribe. The following procedures apply to general notifications and tribal consultation is outlined in greater detail in ***Section 8.3.2.2.3.2***.

1. FDOT notifies potential consulting parties. The notification includes the project description, a discussion of efforts to identify historic properties, and an invitation to participate in the ***Section 106*** process.

2. FDOT submits documentation related to identification of and effects (or no effects) to historic properties to SHPO/THPO and the consulting parties, as appropriate. If SHPO/THPO requests additional information that will assist in completing their review of eligibility and effects, FDOT provides that information in a timely manner.

3. For projects where adverse effects to archaeological or historic properties have been identified, prior to initiating consultation with SHPO/THPO and other appropriate parties on the resolution of those adverse effects, the District coordinates with OEM.

8.3.2.2.3.2 Tribal Consultation

The objective of this coordination is to conduct a good faith effort to elicit information concerning properties of traditional, historical, or religious importance to the Tribes in a sensitive manner that is respectful of tribal sovereignty. To date, six major areas of concern to the Tribes have been identified:

1. Good faith consultation

2. Government-to-government relationships

3. Confidentiality

4. Human remains

5. Archaeological sites

6. Traditional Cultural Properties

Chapter 3 of the ***CRM Handbook*** provides additional information about the major issues of concern as well as expanded details for tribal consultation. The basic steps to follow when coordinating with Tribes are outlined below.

Step 1 – FDOT initiates coordination by providing the Advance Notification (AN) in the EST) or an early ***Notification Letter*** to each Tribe with interest in the project area. The AN or ***Notification Letter*** should be addressed to the Chief or Chair of each Tribe and

submitted via their preferred tribal contact (see FDOT's ***Native American Tribal Consultation Website*** for appropriate tribal contacts). These notifications should include the following:

1. A clear statement that the project is being conducted pursuant to ***Section 106*** of the ***NHPA***

2. A brief description of the project and proposed improvements

3. A map showing the location of the project and proposed improvements

4. A statement that a CRAS will be conducted and a copy of the report will be forwarded to the Tribe

5. A request for comments from the Tribe

6. The name of FDOT's designated contact for tribal comments

Two of the six Tribes, the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida, retain sovereign Tribal Land in Florida, and are consulted for projects occurring on their Tribal Land. However, for projects not occurring on Tribal Lands, it is appropriate to include the Tribes culturally affiliated with Florida. Some of the Tribes with cultural affiliation with Florida have expressed areas of interest. The Mississippi Band of Choctaw Indians only wish to be contacted on projects occurring in the Florida Panhandle, west of the Apalachicola River to the Alabama state line (including Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, and Gulf Counties). If the project does not include resources located in that designated area, project information is not forwarded to the Mississippi Band of Choctaw Indians. In addition, the Muscogee (Creek) Indians geographic area of interest in Florida does not include Broward, Miami-Dade, Monroe and Collier counties. Therefore, information on projects wholly confined to those counties need not be provided to the Muscogee (Creek) Nation.

Any coordination with the Tribes on FDOT State Projects is conducted through FDOT. The State CRC is copied on transmittals to Tribes. If a federal permit is required for the FDOT State Project, the Districts inform the federal permitting agencies when consultation with the Tribes will be needed and assist those agencies in the coordination and consultation with the Tribes and SHPO/THPO, as appropriate.

Step 2 – Following initial notification, information provided by a Tribe relating to a project's historic and archaeological survey area must be considered when developing and conducting the CRAS and must be addressed as appropriate in the ***CRAS Report***. Based on the nature of the response, tribal coordination will, in general, continue in one of three avenues.

1. If a Tribe previously expressed interest in the project and/or the CRAS in response to the early notification, the District may provide the requested information directly to the Tribe and copy the PDC and State CRC on the correspondence.

2. If no Tribe has previously expressed interest in the project **and** the survey does not result in the need to initiate tribal coordination, the resulting ***CRAS Report*** is submitted to SHPO and OEM. Note: The Muscogee (Creek) Nation and Mississippi Band of Choctaw Indians have requested to receive all ***CRAS Reports*** with significant ground disturbance within their areas of interest. Significant ground disturbance in this context is categorized as all ***CRAS Reports*** processed in accordance with the standard ***Section 106*** process outlined in Stipulation VII of the ***Section 106 PA***. As with any ***CRAS Report*** anticipating adverse effects to an historic property, submittal to the appropriate Tribes is through OEM. Current areas of interest are maintained on the ***Native American Tribal Consultation Website***.

3. If no Tribe has previously expressed interest in the project **but** the survey does result in the need to initiate tribal coordination, the District will provide a draft ***Transmittal Letter*** and the final ***CRAS Report*** to OEM for distribution to the appropriate Tribes. Instances where this may be applicable are most typically with the discovery of human remains and/or funerary objects, when sensitive sites are under discussion regardless of NRHP eligibility, or when a project has the potential to "Adversely Affect" significant pre-contact archaeological sites in which a Tribes may have an interest or claim cultural affinity. Post-contact sites without Native American cultural material or association are, generally, not within Tribes' areas of interest and would not require tribal coordination.

A sample transmittal letter for sending reports to a Tribe are provided in the ***CRM Handbook***.

Step 3 – The final stage of tribal coordination is guided by the tribal interest expressed for the project and/or the nature of the tribal response received, if any.

1. If comments on the project or CRAS are received from the Tribes, the District CRC coordinates with the PDC, State CRC, and the Project Manager to address the comments, and then with the THPO or ***Section 106*** tribal representative.

2. If no comments are received, FDOT proceeds with the ***Section 106*** process.

FDOT coordination with the Tribes is conducted electronically unless a request for hard copies has been made. The State CRC can provide direction and assistance to assure that meaningful tribal coordination occurs throughout project development including, but not limited to, coordination on the determination of effects and any subsequent efforts to find an appropriate avoidance, minimization, or mitigation solution as appropriate. Should a Tribe request government-to-government Consultation at any point during the ***Section 106*** process, FDOT will notify FHWA per the ***NEPA Assignment MOU***.

8.3.2.2.4 Create a Plan to Involve the Public

Under historic preservation laws, public involvement activities are dependent on the nature and complexity of the project and its potential to affect historic properties. The public includes elected officials, local property and business owners, historic preservation groups, and other concerned citizens with an interest in the undertaking. Efforts to involve

the public should be initiated early in the project development process and comments from the public will be solicited throughout the ***Section 106*** process.

The ***Section 106*** process to engage the public is coordinated with the FDOT public involvement procedures established in ***Part 1, Chapter 11, Public Involvement***, in accordance with ***36 CFR 800.2(d)***. Public involvement documents or presentations must mention any project involvement with archaeological and historic resources that are not exempt from disclosure. For projects involving a number of consulting parties, projects with a high degree of controversy, or projects that involve historic properties that are of a particular importance to the community, the public involvement needs may exceed those that are addressed by the procedures in ***Part 1, Chapter 11, Public Involvement***. In these cases, the District inform the PDC and State CRC as well as the SHPO/THPO and should ensure that ***Section 106*** public involvement activities are influenced by the scale and nature of the undertaking and the historic properties involved. Districts may also consider establishing a cultural resources coordinating committee for these projects. This more organized group of affected party representatives focuses solely on the minimization and mitigation measures for adverse effects to an historic property. Typically, cultural resources coordinating committees have regular meetings to make decisions about, or get updates on, the affected historic property up to and beyond the signing of a ***Memorandum of Agreement (MOA)*** to the implementation of the mitigation stipulations and sometimes project completion.

Section 267.135, F.S., defines the parameters for when a particular historic property location, purpose, or nature must be kept confidential. It is the District's responsibility to ensure that sensitivities for these properties are fully respected in the public involvement efforts. The District Environmental Manager and/or CRC reviews site information within publicly available documentation to ensure that FDOT does not inadvertently release information on sites that should remain confidential. The State CRC should be contacted for questions concerning redaction of sensitive material from cultural resources documents.

8.3.2.3 Step Two: Identify Historic Properties

The purpose of Step Two of the ***Section 106*** process is to identify all NRHP-listed, determined eligible, or potentially eligible archaeological sites and/or historic resources located within the project APE, as defined in ***36 CFR Part 800*** (see ***Section 8.1.1***). This is accomplished through the completion of a CRAS and its associated report. Step Two of the ***Section 106*** process includes the following four actions:

1. Determine the scope of the resource identification effort.

2. Identify historic resources (for example, archaeological sites, buildings, objects of 50 years of age or older, as defined in ***Section 267.021, F.S.***).

3. Evaluate the historic significance of the identified resources.

4. Document the historic and archaeological resources survey and evaluation effort.

8.3.2.3.1 Determine the Scope of the Resource Identification Effort

The following activities are used to identify the scope of the resource identification effort:

1. Determine and document the APE.

2. Review existing information about historic properties within the project APE, including data concerning the potential for the occurrence of historic properties not yet identified. Much of these data are available at the FMSF and in the Florida Geographic Data Library (FGDL) database available in the EST.

3. Seek information from parties likely to have knowledge of, or concerns about, historic properties in the area.

4. Gather information from the appropriate Tribes about properties to which they attach religious and cultural significance while remaining sensitive to issues of tribal sovereignty, and any concerns they may have about the confidentiality of this information.

In order to meet the "reasonable and good faith effort" required by ***36 CFR § 800.4***, these decisions must be based upon: (1) the activities associated with the proposed project and (2) the potential for the occurrences of historic properties within the project APE, as well as the types of resources that may be encountered. The level of effort required for the resource identification effort normally depends on ROW needs, the extent of ground-disturbing activities, size and scope of the proposed undertaking, the area of visual intrusion of the proposed project, and the potential for the occurrence of historic properties in the project APE.

The District PM and District CRC establish the project's APE, and when necessary, it is done in coordination with OEM and SHPO/THPO. In practice, a recommended APE is developed by the CRM professionals conducting the CRAS effort in tandem with the District PM and the District CRC. This APE is then defined in the cultural resource document, with a justification for its geographic limits (see ***Section 8.3.2.3.4*** for cultural resource document types approved for FDOT use).

In defining the APE, the full range of possible project effects is considered that could directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist, based on the scale and nature of the undertaking. Possible project effects include direct, indirect, and cumulative effects. Direct effects include ground-disturbing activities and destruction of the property or elements associated with the property, as well as auditory and visual effects. Indirect effects are reasonably foreseeable effects which may result from the project such as changes in transportation patterns and demands, abandonment of historic properties, changes in access to or from historic properties, and other effects which may be further removed from the project in distance or time, or which may be cumulative in nature. For historic properties, any analysis of such effects would be confined to those which may alter any of the character defining features that qualify the property for inclusion in the NRHP.

The identification of the APE should be based on the project scope and the potential to affect cultural resources; therefore, it should be sized to accommodate appropriate cultural resource investigations. Not all survey techniques are appropriate for the entire APE. For example, due to the nature of archaeological sites, how they can be affected, and the methods of identification and evaluation used, the survey efforts for these resources are different from the methods applied to other categories of historic properties. The survey effort for archaeological sites within the APE is usually focused on the area where ground disturbance may occur. In addition to the existing and proposed ROW, this includes potential temporary construction areas, staging areas, access roads, Stormwater Management Facilities (SMF), Floodplain Compensation Areas (FPC), and other project related activities which have the potential to affect historic properties. There also may be instances where proximity effects such as vibrations or destabilization of lands may affect archaeological resources beyond the proposed or existing ROW.

The survey effort for historic resources, such as historic structures, districts, and landscapes, takes into consideration direct effects like acquisition and demolition, but also factors such as potential visual and auditory effects, changes in vehicular access, and destruction of important landscapes resulting from equipment storage and other construction-related activities. Viewshed issues can be particularly important in guiding the outermost limits of the APE because above ground resources can be sensitive to alterations of their settings. The CRM professionals conducting the CRAS need to take into account both the view from the project looking outward, as well as the view from the outside looking towards the project. This is particularly appropriate in the case of elevated roadways and bridges, as well as projects that alter landscapes and approaches. As a result, the areas requiring survey and evaluation for above ground resources often extend beyond the geographic area identified for archaeological investigations. In all cases, the survey techniques and the geographic extent of these techniques within the APE must be identified in the cultural resource document.

If the scope changes during the project, the APE and the survey efforts may need to be revisited for archaeological sites and/or historic resources.

For most projects, the APE is determined by District cultural resource staff or consultants and documented in the cultural resource document. However, for multi-alternative, complex, and large projects, or for undertakings that may include a broad range of potential effects, consultation with the appropriate parties regarding the designation of the APE should be completed prior to initiating the CRAS. In cases where FDOT and SHPO, or other consulting parties, fail to agree on the establishment of the APE, OEM is responsible for making the final determination. For additional details on delineating the APE for a proposed project, refer to ***Chapter 5*** of the ***CRM Handbook***.

As stated in ***Section 8.3.2.2.2***, the ***Section 106 PA*** provides two categories of minor project types, along with the criteria that govern the level of effort for the assessment. When the proposed undertaking fails to meet these criteria, a more intensive survey effort will be needed. For most minor project types with minimal potential to affect historic properties, the resource identification effort typically entails a desktop review (background research). As outlined in ***Section 8.3.2.2.2***, the first category of minor projects includes specified activities that are so minor they normally could affect only those historic

properties directly involved or directly incorporated into the activity. When an undertaking comprised of these activities meets the program alternative conditions set forth in Stipulation V of the ***Section 106 PA*** and SHPO does not dispute the finding of "No Historic Properties Affected", the undertaking may proceed with no further involvement of SHPO. If, however, the project activity does not meet the conditions, it should, as appropriate, be processed in accordance with either Stipulation VI or Stipulation VII of the ***Section 106 PA***.

The second category of minor projects outlined in the ***Section 106 PA*** contains activities (see Appendix 2 of the ***Section 106 PA***) that are more involved than those listed in the first category. These project activities, due to their nature and definition, are considered unlikely to affect historic properties. However, the geographic area that could be affected by these activities may be broader than the areas for the first category. Therefore, it is necessary to confirm a lack of historic resources in the immediate vicinity of the proposed undertaking by completing an appropriate level of analysis and study.

If, as a result of this desktop analysis effort, FDOT finds that the project meets the program alternative conditions set forth in Stipulation VI of the ***Section 106 PA*** and in ***Section 8.3.2.2.2***, FDOT must inform SHPO of its finding of "No Historic Properties Affected" and include sufficient supporting information. If SHPO does not object to the finding within 30 days of notification, the project may proceed with no further involvement of SHPO. If, however, the conditions are not met, or when SHPO or another consulting party (such as a local preservation group or a permitting agency) object to the finding, then further consultation with SHPO, and the appropriate consulting party must be undertaken accordance with Stipulation VII of the ***Section 106 PA*** to complete the ***Section 106*** process. Additionally, the ***Section 106 PA*** does not address separate decisions which may be required under ***Section 106***, such as government-to-government consultation with federally recognized Tribes and FDHR review of State Historic Highways.

For projects meeting the criteria for either of the two program alternative categories set forth in Stipulations V and VI of the ***Section 106 PA*** between FDOT and SHPO (see ***Section 8.3.2.2.2***) the notification to SHPO—with a copy to the State CRC—is provided using the ***Section 106 Program Alternative Form*** developed for these minor projects. This completed form serves as the documentation to support the finding related to historic properties contained within the undertaking. Minor projects which do not meet the criteria for those program alternatives should be processed according to the standard ***Section 106*** process outlined in Stipulation VII of the ***Section 106 PA*** and ***36 CFR § 800.4(d)***, as outlined in ***Section 8.3.2.3.4***.

Unlike the undertakings meeting the program alternatives, which are generally minor projects, most major projects have a greater potential to affect historic properties. As a result, identification and evaluation surveys require a more robust effort, including preliminary background research, field reconnaissance, historical/architectural field reviews, property examinations, and systematic archaeological testing, as appropriate.

8.3.2.3.2 Identify Historic and Archaeological Resources

The purpose of the CRAS is to identify, document, evaluate, and provide the boundaries of the historic and archaeological resources in the APE and discuss the historic properties that may be affected by the proposed undertaking.

The CRAS includes a review and assessment of all previously recorded and newly identified archaeological sites and historic resources located within the project APE. A CRAS includes the following activities:

1. Complete Background Research
2. Develop a Research Design
3. Conduct an Archaeological Field Survey
4. Conduct an Historic and Architectural Resources Field Survey
5. Conduct Artifact Processing and Analysis
6. Provide for Artifact and Record Curation
7. Prepare FMSF forms

Each of these activities is described in detail in ***Chapter 5*** of FDOT's ***CRM Handbook***.

For projects occurring on state-owned lands, a research permit from the Bureau of Archaeological Research is required in accordance with ***Rule 1A-32.005, F.A.C.*** A ***Chapter 1A-32*** permit is not required for archaeological survey within FDOT's ROW. Archaeological research on federal lands requires an ***ARPA*** permit from the land managing agency.

8.3.2.3.3 Evaluate the Historic Significance of the Identified Properties

Title 36 CFR Part 60 establishes the criteria for evaluating the significance of historic resources in terms of eligibility for the NRHP. ***Title 36 CFR § 60.4*** states that

> . . .the quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and that meet at least one of the four criteria for evaluation:
>
> A. That are associated with events that have made a significant contribution to the broad patterns of our history (e.g., events, developments); or
>
> B. That are associated with the lives of persons significant in our past; or

C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction (e.g., architecture, engineering, or cultural trends); or

D. That have yielded, or may be likely to yield, information important in prehistory or history (e.g., research potential or value).

36 CFR § 60.4 also established a series of Criteria Considerations for evaluating the significance of resources which are not normally considered to have potential for historic significance (such as religious properties, cemeteries, properties that are not yet 50 years old, and properties that have been relocated).

The evaluation of each archaeological site and historic resource within the APE for an undertaking includes applying the NRHP Criteria for Evaluation. As indicated in the ***National Register Bulletin No. 15 (NPS, 1991, revised 1997)***, it is critical to address both significance and integrity when evaluating historic resources for eligibility and to develop specific reasons why a historic resource is or is not NRHP eligible and, if eligible, what criteria of eligibility apply to the property along with the property's character-defining features and associated elements. In order to comply with the provisions of ***Sections 106 and 4(f)***, justifiable boundaries for properties found to possess historic significance must be provided, along with any contributing landscape elements and associated structures or features that are located either within or near the proposed ROW for the project. In the case of historic districts, it is especially important to note the non-contributing features of the historic district contained within the existing and proposed ROW of the transportation corridor under study. See ***Part 2, Chapter 7, Section 4(f) Resources*** for guidance regarding evaluation of ***Section 4(f)*** resources for the purposes of compliance with ***Section 4(f) of the USDOT Act of 1966***, as amended. For further guidance on applying and reporting the NRHP Criteria for Evaluation in FDOT CRAS efforts, see ***Chapter 6*** of the ***CRM Handbook***.

In compliance with ***Section 106*** of the ***NHPA***, the information gathering and assessment effort includes parties with interests in and knowledge of the history of the area and the local value of the historic properties located in the APE. The special expertise of Tribes is included when assessing the eligibility of a property to which they may attach religious and cultural significance, even when it is not on Tribal Lands. Since Tribes may inform the OEM (or a lead federal permit agency) of their concerns directly, it is important for the District to maintain communication with OEM (and the federal permitting agency) regarding potential tribal interests in proposed undertakings and their potential to affect historic and archeological properties. It is also important for the District to inform the CRM consultants assigned to any projects which a Tribe expresses an interest in, as appropriate, and in consideration of the confidentiality of tribal information, so that the CRM professionals completing the survey are aware of these concerns while completing the cultural resources survey efforts.

Previous determinations of eligibility and non-eligibility of historic resources from earlier surveys may need a reassessment due to the passage of time or other factors. In

addition, not all eligibility determinations contained at the FMSF or summarized in the Geographic Information System (GIS) database for ETDM are accurate. Therefore, the SHPO concurrence letters and FMSF forms should be checked for accurate site evaluations prior to revisiting previously recorded cultural resources.

8.3.2.3.4 Document the Historic and Archaeological Resources Survey Effort

The approved cultural resources document types utilized by FDOT are: ***Section 106 Program Alternative Forms***, ***Notification Letters***, ***Desktop Analysis and Effects Determination Letters (Desktop Analysis)***, ***CRAS Reports***, ***CRAS Addendum Reports***, and ***Case Study Reports***. The District sends the appropriate cultural resource document to OEM or other Lead Federal Agency, SHPO/THPO, and the other consulting parties. The ***Section 106 Program Alternative Form*** is used to document compliance with Stipulations V and VI of the ***Section 106 PA*** and is addressed in ***Section 8.3.2.3.1***. For all undertakings processed in accordance with Stipulation VII of the ***Section 106 PA***, the remaining approved document types, ***Desktop Analysis***, ***Notification Letters***, ***CRAS Reports***, and ***CRAS Addendum Reports*** must:

- Identify, define, and justify the APE;
- Record historic resources evaluated as part of the survey effort (as appropriate), provide the cultural resources team's recommendations on the historic significance of the resources encountered in the project APE; and
- Provide a preliminary assessment of the potential effects of the proposed action on any identified historic properties only when the project description and activities are detailed enough to permit such an assessment.

The ***CRAS Report*** or ***CRAS Addendum Report*** may identify two kinds of historically significant properties: those properties already listed or determined eligible for listing in the NRHP, and those newly identified and assessed as potentially eligible for the NRHP. ***Desktop Analysis*** and ***Notification Letters*** identify and discuss only previously recorded and NRHP-evaluated historic properties and do not include the identification and NRHP assessment of new resources, with one exception (see ***8.3.2.8.2*** for the exception).

Considerations for reporting the findings of the CRAS include the nature of the undertaking, the historic and archaeological sensitivity of its location, the findings resulting from the survey effort, the applicability of the provisions contained in the ***Section 106 PA*** (see ***Section 8.3.2.2.2***), and the number and nature of the consulting parties. In accordance with ***36 CFR § 800.4(d)***, at the conclusion of Step 2 of the ***Section 106*** process, the FDOT, as the lead agency, moves to Step 3 of the ***Section 106*** process and makes an effect determination for the proposed undertaking. This effect determination is based on the information provided in the cultural resource document. Districts may present effects determinations along with the ***CRAS Report*** submission in the ***Transmittal Letter*** or in a subsequent submission. The project specifics will determine which type of submission is appropriate.

If the undertaking anticipates affecting historic properties, and the effects analysis did not accompany the ***CRAS Report***, it is presented within a ***Case Study Report, Desktop Analysis,*** or tribal ***Notification Letter***. Circumstances for the applicability of each document type is outlined in ***8.3.2.4***. In cases where SHPO/THPO objects or disagrees with the determination of significance contained in the cultural resource document, or if the ACHP or Secretary of the Interior requests it, FDOT obtains a determination of eligibility from the Keeper of the NRHP as set forth in ***36 CFR Part 63***.

There are two possible effects determinations:

1. "No Historic Properties Affected", or

2. "Historic Properties Affected"

If no historic properties are present or if historic properties are present but the undertaking will not affect them, the determination is "No Historic Properties Affected". If, however, historic properties are present and may be affected by the undertaking, the determination is "Historic Properties Affected".

The FDOT consults with SHPO/THPO and takes into account the views of any interested parties in order to meet the consultation requirements established by ***Section 106***.

When making a determination of "No Historic Properties Affected", FDOT must provide the following documentation to consulting parties per ***36 CFR § 800.11(d)***:

1. A description of the undertaking, specifying the federal involvement, and its APE, including photographs, maps, drawings, as necessary;

2. A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information to identify historic properties within the APE; and

3. The basis for determining that no historic properties are affected.

If, as a result of the CRAS documentation and consultation efforts, FDOT finds that there will be "No Historic Properties Affected" by the proposed project, then FDOT has fulfilled its ***Section 106*** responsibilities.

For undertakings where FDOT determines historic properties may be affected by the proposed project, and SHPO/THPO and appropriate consulting parties have been consulted, FDOT proceeds to Step Three of the ***Section 106*** process, as described in ***Section 8.3.2.4***. Regardless of the ***Section 106*** effect finding, if the proposed project involves the use of any land from within the site boundaries of any property listed or eligible for listing on the NRHP (even if the land in question already lies within FDOT-owned ROW) and it is a USDOT funded or permitted action, the ***Section 4(f)*** process must be initiated (***Part 2, Chapter 7, Section 4(f) Resources***).

For projects that may affect NHLs, consultation must include the NPS and the ACHP.

Combining Effect Determinations and Eligibility Recommendations

Eligibility determinations by FDOT for the NRHP are not final until the CRAS has been coordinated and accepted by SHPO/THPO and other appropriate consulting parties.

Combining a finding of "No Historic Properties Affected" or "No Adverse Effect to Historic Properties" with a recommendation on the eligibility of a historic or archaeological resource is only recommended if said eligibility recommendation is obvious. This is because project effects to historic properties cannot be final until the determinations on the eligibility of the identified historic resources have been made.

In certain circumstances, the survey findings may include District recommendations on potential effects and/or potential adverse effects of the undertaking on historic properties. The potential to affect historic properties occurs when a proposed undertaking may result in the "…alteration to characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register" [***36 CFR § 800.16 (i)***]. In these circumstances, it is important to provide sufficient information on the scope and activities of the proposed undertaking, along with the cultural resource document for the SHPO/THPO or OEM to make an effect finding or to understand and comment upon the survey and its findings.

The most common situations for which the effects and eligibility determinations are combined are where there are no historic or archaeological resources occurring in the project APE or where the project meets the criteria and conditions outlined in the ***Section 106 PA***.

8.3.2.4 Step Three: Assess Adverse Effects

After determining that the proposed project may have an effect on historic properties, the next step is to apply the Criteria of Adverse Effect for the project and the involved historic properties. These criteria are defined at ***36 CFR § 800.5(a)(1)*** as follows:

> "An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the NRHP. Adverse effects may include reasonably foreseeable effects caused by an undertaking that may occur later in time, be farther removed in distance or be cumulative."

Adverse effects on historic properties as listed at ***36 CFR § 800.5(a)(2)*** include:

- Physical destruction or damage to all or part of the property.
- Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped

access, that is not consistent with the Secretary of the Interior's Standards for Treatment of Historic Properties (see ***36 CFR Part 68***) and applicable guidelines.

- Removal of a property from its historic location.
- Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance.
- Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features.
- Neglect of a property that causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to a Tribe or Native Hawaiian organization.
- Transfer, lease, or sale of property out of federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

Ground-disturbing activities within significant historic properties are subject to the Criteria of Adverse Effect. Therefore, actions such as archaeological testing and excavation on NRHP listed or eligible archaeological sites, or on such sites that have previously been determined as eligible, should not be initiated without completing consultation with OEM, SHPO/THPO, and as appropriate, other consulting parties including the Tribes.

The application of the Criteria of Adverse Effect (***36 CFR § 800.5***) may result in a finding of either: (1) No Adverse Effect or (2) Adverse Effect. This determination is specific to the project, not to the historic properties. That is, where multiple historic properties are identified within a project APE, an adverse effect to one historic property is sufficient to determine an adverse effect for the project. Refer to ***Chapter 6*** of the ***CRM Handbook*** for more details about applying the Criteria of Adverse Effect.

As a rule, when a project may affect any historic properties identified in a cultural resource document (see ***Section 8.3.2.3.2***), the District prepares a project effects determination document that discusses and documents these effects. More importantly, this report contains the information required by ***36 CFR § 800.11(e)*** to support a finding of Adverse Effect or No Adverse Effect. This report needs to contain sufficient detail and illustration to support the recommended finding regarding adverse effects and to allow the consulting parties to reach independent conclusions as to the effect finding.

Section 106 determinations of "No Adverse Effect" can be presented in a ***Desktop Analysis*** or ***Case Study Report***. The document type chosen to present the information will depend on project specifics, the historic property(s) in question, and level of effort required to make a sound determination of project effects. Clear, uncomplicated arguments to justify an effect finding of "No Adverse Effect to Historic Properties" may fit sufficiently in a ***Desktop Analysis***. If the analysis is more complex leading up to the "No Adverse Effect" determination, or FDOT concludes the project will have "Adverse Effects to Historic Properties", the information must be presented in a ***Case Study Report***.

This ***Case Study Report*** is provided to OEM for its use in making and documenting a finding of Adverse Effect or No Adverse Effect. Once OEM makes its finding, it provides the ***Case Study Report*** and its finding to the SHPO/THPO and other consulting parties to seek their concurrence. In situations where there is an adverse effect, the ***Case Study Report*** should also enable the consulting parties to initiate discussion regarding the resolution of adverse effects.

The content and details of the ***Case Study Report*** depend on the level of involvement with historic properties, the degree of potential effects, and the complexity of the proposed undertaking and its relationship to historic resources. For projects involving the preparation of a ***Section 4(f)*** evaluation for the use of land from the affected historic property, information gathered and presented in the ***Section 4(f)*** evaluation is often used in the preparation of the ***Case Study Report*** or vice versa, language drafted for the ***Case Study Report*** may be used in the ***Section 4(f)*** document, as appropriate.

Generally, these reports are also used during the fourth step of the ***Section 106*** process (Resolve Adverse Effects) because information in the ***Case Study Report*** may be integrated into the agreement and/or the ***Project Commitment Record (PCR)*** to avoid, minimize or mitigate for any adverse effects associated with the project. Finally, the ***Case Study Report*** functions as FDOT's reporting mechanism for the ACHP's project effects review assessment when this review is needed. See ***Chapter 7*** of the ***CRM Handbook*** for more detail concerning the purpose and objectives of the ***Case Study Report*** and the considerations it must address.

The ***Case Study Report*** contains graphics sufficient to illustrate the relationship of the proposed project (including all alternatives) to the affected historic property or properties, including the boundary of each NRHP listed or eligible property. It also contains enough information to illustrate all avoidance and minimization efforts that have been examined and why it is or is not practical to avoid the historic resource(s) or effects cannot be minimized further.

As set forth in ***36 CFR § 800.5(b),*** a finding of No Adverse Effect is appropriate if:

1. The effects of the undertaking do not meet the Criteria of Adverse Effect.

2. The undertaking is modified to avoid adversely affecting historic properties. For example, in the case of an archaeological site that could have been adversely affected by the project or off-project related activities, effects are avoided by shifting the project away from the site or by excluding all project-related activities inside the boundaries of the site.

3. Conditions are imposed on the undertaking to avoid adverse effects (such as rehabilitation of a historic bridge in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, ***36 CFR Part 68***).

When FDOT finds that a project has "No Adverse Effect to Historic Properties", the following procedure applies:

1. FDOT provides the No Adverse Effect finding along with the pertinent information to SHPO/THPO and consulting parties, pursuant to ***36 CFR § 800.11(e)***.

2. SHPO/THPO has 30 days from receipt of the complete documentation to review the findings. Failure to respond within 30 days permits FDOT to assume concurrence, pursuant to ***36 CFR § 800.5(c)(1)***.

3. If SHPO/THPO either agrees with or does not object to the findings of effect made by FDOT and no consulting party has objected, FDOT carries out the proposed undertaking based upon the effect finding and the action as proposed.

4. In cases where FDOT determines there is No Effect or "No Adverse Effect to Historic Properties" and has received no objections to this finding, FDOT has fulfilled its responsibilities under ***Section 106***. This completes the ***Section 106*** process.

5. In the event that SHPO or any consulting party disagrees within the 30-day review period, they must specify the reasons for disagreeing with the finding. FDOT must then consult with the party to resolve the disagreement, or request that the ACHP review the finding, pursuant to ***36 CFR § 800.5(c)(3)***.

6. If the ACHP is asked to review the finding, it has 15 days to respond. If there is no response within 15 days, FDOT may assume concurrence and proceed with the undertaking.

7. If the ACHP provides comments, FDOT must consider them when reaching a final decision on its finding of effects.

If any agreements or commitments are made to reach a finding of No Adverse Effect, they are recorded according to ***Procedure No. 650-000-003, Project Commitment Tracking*** and ***Part 2, Chapter 22, Commitments*** and carried out as the project advances. If any changes occur that may alter the effect finding, consultation with the appropriate parties must be reinitiated.

All documentation pertaining to ***Section 106*** effect findings including FDOT findings, SHPO/THPO review and/or concurrence letter(s), and applicable comments from other consulting parties and the public, is included in the appropriate Environmental Document and uploaded into the SWEPT project file (see ***Section 8.3.3.1***).

In the case of an Adverse Effect finding, FDOT documents this finding and the basis for the finding, and transmits the finding and documentation to SHPO/THPO, the ACHP, and other consulting parties. In accordance with ***36 CFR § 800.6(a)(1)***, FDOT must notify ACHP of the Adverse Effect finding by providing the documentation specified in ***36 CFR § 800.11(e)***. This notification and documentation package can be sent via the ACHP's ***Electronic Section 106 Documentation Submittal System*** (***e106***). As the Lead Federal Agency, the ***e106*** submission needs to be transmitted by OEM. As such, Districts should prepare and send the form and all supporting materials to the PDC and State CRC. The submission should be in Microsoft Word format to allow for minor editing, as necessary. Following review, OEM will submit the documentation to ACHP, copying District

personnel. Once documentation is received, an automated receipt will be generated and the ACHP will have 15 days to respond.

If SHPO/THPO disagrees with the finding or another consulting party objects to the finding within the 30-day review period, the disagreeing entity must provide the reasons for the disagreement or objection. In these cases, FDOT will either consult with the appropriate parties in order to resolve the disagreement or request the ACHP to review the finding in accordance with ***36 CFR § 800.5(2)***. If no objections are received within the 30-day review period, FDOT may proceed to Step Four of the ***Section 106*** process.

8.3.2.5 Step Four: Resolve Adverse Effects

A finding of Adverse Effect requires further consultation among FDOT, SHPO/THPO, and the other consulting parties in order to resolve the adverse effects. This consultation brings together the parties to consider ways to avoid, minimize, or mitigate the adverse effects of the undertaking on the historic properties.

In conducting consultation, as well as in its efforts to engage the public, FDOT

1. Describes the proposed project and its purpose and need;
2. Clearly identifies any rules, processes, or schedules applicable to consultation;
3. Acknowledges the interests of others and seeks to understand them;
4. Develops and considers appropriate alternatives; and
5. Makes an effort to identify solutions that will leave all parties satisfied.

For most projects involving a finding of Adverse Effect, Steps Three and Four of the ***Section 106*** process are part of the same discussion(s).

In some instances, adverse effect consultation results in design considerations specifically related to the project such as avoidance or minimization treatments. Prior to making commitments concerning design elements during consultation with SHPO/THPO, the Tribes, and/or other consulting parties, the District Environmental Office must coordinate with the District Design and Construction Offices to review the feasibility of such elements which may be proposed during the consultation.

In other instances, consultation results in mitigation activities including, recordation, as well as educational or commemorative efforts related to specific sites or types of sites, specific historical periods, specific historic communities, or research efforts to promote more robust avoidance alternatives for the future. The specific measures required for these efforts are often contained in a MOA prepared for the project (see ***Chapter 8*** of the ***CRM Handbook***).

In accordance with the ***Section 106 PA*** (see ***Section 8.3.2.2***) and ***36 CFR § 800.10***, the ACHP and the NPS must be consulted when the project activity involves potential effects to a NHL. The ***Notification Letter*** to the ACHP is accompanied by the same

documentation required for a finding of No Adverse Effect or Adverse Effect, as called for in ***36 CFR § 800.11(e)***, though for projects involving an NHL, the emphasis on preservation will be greater.

As appropriate, FDOT provides project documentation to the consulting parties. Particular care must be taken to comply with the confidentiality provisions of ***Section 304*** of the ***NHPA*** and ***Section 267.135, F.S.***, regarding the protection of archaeological site locations within the project documentation, as applicable.

8.3.2.5.1 Minimize and Mitigate Adverse Effects

The procedures for resolving adverse effects include the following steps:

1. FDOT continues consultation with SHPO/THPO and other consulting parties to resolve the adverse effects by avoidance, minimization, or mitigation.

2. As appropriate, the ACHP is invited to participate or can decide to enter into consultation pursuant to ***Appendix A to Part 800, Title 36***. Any consulting party or the public may contact the ACHP and request its participation. The ACHP has 15 days from receipt of a request to participate to notify FDOT and consulting parties whether it will participate in the resolution process.

3. If ACHP does not participate and FDOT and SHPO/THPO reach consensus on measures to resolve adverse effects, these measures are outlined in an ***MOA***, pursuant to ***36 CFR § 800.6(b)***. In these cases, the process continues in Steps 4 through Step 8. If FDOT and SHPO/THPO fail to agree on measures, the process skips to Step 9.

4. The District prepares a draft ***MOA*** and is responsible for coordinating with all consulting parties for review. Additional guidelines for preparing agreements are provided in ACHP's ***Guidance on Agreement Documents: Executing Agreement Documents*** and FDOT's ***CRM Handbook***.

5. Once all consulting parties agree on the ***MOA*** contents, SHPO signs the ***MOA*** and routes it back to the District. The District coordinates the ***MOA*** signature process with any external partners and then the District Director of Transportation Development who sign the ***MOA*** as concurring parties. The agreement is then routed to the Director of OEM for approval. Signatures should be obtained digitally, circumstances permitting.

6. Once signed by OEM, the executed ***MOA*** is returned to the District for distribution. The District saves the executed ***MOA*** to the SWEPT project file and provides all signatories with a copy of the executed ***MOA***, including a copy to the State CRC for submittal to the ACHP.

7. If the ACHP is a consulting party, OEM provides ACHP with the ***MOA*** after OEM Director signs the agreement. The ACHP returns the fully executed ***MOA*** to OEM for disbursement to the District and SHPO. The District then disperses copies to any additional signatories.

8. If the undertaking proceeds according to the terms and stipulations of the ***MOA***, and FDOT has met all of its obligations under ***Section 106*** of the ***NHPA***, then the process skips to Step 11.

9. If FDOT and SHPO/THPO fail to agree on the terms of a MOA, FDOT requests the ACHP to join the consultation and provide a copy of the documentation package pursuant to ***36 CFR § 800.11(g)***. If ACHP doesn't join the consultation, FDOT must forward a copy of the documentation package and request comments.

10. The ACHP has 45 days from receipt to comment (FDOT should send the request electronically or by overnight mail). The ACHP provides its comments to FDOT with copies to all consulting parties.

11. FDOT is obligated to consider and take into account the comments of the ACHP. FDOT may choose whether or not to adopt the comments, or to proceed.

12. FDOT documents the final decision in accordance with ***36 CFR § 800.7(c)(4)***, the ACHP and all consulting parties are notified, and the project proceeds.

FDOT's commitment to carrying out the stipulations of the ***MOA*** should be listed in the Commitments section of the Environmental Document. The commitments and required coordination are updated and tracked according to ***Procedure No. 650-000-003, Project Commitment Tracking***.

The District is responsible for monitoring implementation of the conditions stipulated in the ***MOA***. In cases where consulting parties do not reach agreement, FDOT, SHPO/THPO, or the ACHP may decide to terminate consultation pursuant to ***36 CFR § 800.7***. Any party that terminates consultation must notify the other consulting parties in writing of their decision to and reasons for terminating consultation. Following this notification, the process varies depending on which consulting party terminated consultation [see ***36 CFR §§ 800.7(a)(1)-(4)***].

8.3.2.5.2 ACHP Participation

SHPO/THPO, a Tribe, or any other consulting party may at any time request the ACHP to participate in the consultation. The ACHP will decide on its participation within 15 days of receipt of a request pursuant to ***Appendix A to Part 800, Title 36 (Criteria for Council Involvement in Reviewing Individual Section 106 Cases)***. If a consulting party requests ACHP involvement, the District informs OEM prior to the initiation of this consultation.

If the ACHP decides to participate in the consultation process, it must notify FDOT (or the appropriate Lead Federal Agency) and the consulting parties. If the ACHP chooses to participate in the resolution of adverse effects, FDOT is responsible for coordinating consultation among all the parties, including SHPO/THPO.

New consulting parties may enter the consultation if FDOT and SHPO/THPO (and the ACHP, if participating) agree. If they do not agree and the ACHP is not a consulting party already, FDOT seeks the ACHP's opinion on the involvement of the consulting party. Any

party, including applicants, licensees or permittees, that may have responsibilities under an agreement document must be invited to participate as a consulting party.

8.3.2.6 Exemption from Section 106 for Interstate Highway System

On March 10, 2005, the ACHP issued the Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System. The exemption removed the majority of the Interstate Highway System from being considered as a historic property under ***Section 106*** of the ***NHPA***, except for those elements of the Interstate Highway System identified by SHPOs, state Departments of Transportation (DOTs), and state divisions of FHWA as being of exceptional importance.

This exemption does not apply to archaeological sites or resources that are not elements of the Interstate Highway System, even though they may be located within the ROW of the Interstate or otherwise intersect the Interstate. As a result, any undertaking (including Interstate undertakings) that may affect these non-Interstate properties must comply with the requirements of ***Section 106***.

In Florida, four (4) significant elements of the Interstate Highway System are excluded from the exemption when undertakings have the potential to affect them. These elements of the Interstate Highway System undergo the standard ***Section 106*** consultation and review processes. The four elements are:

1. Bob Graham/Sunshine Skyway Bridge, Pinellas and Manatee Counties
2. Alligator Alley, Collier and Broward Counties
3. I-75 Snake Wall, Alachua County
4. Myrtle Avenue Overpass, Downtown Jacksonville

8.3.2.7 Section 106 Program Comment on Post-1945 Common Bridge Types

At the request of FHWA, in November 2012, the ACHP issued a Program Comment that eliminates individual historic review requirements under ***Section 106*** for common post-1945 concrete and steel bridges and culverts (also referred to as post World War II common bridge types). The intent of the Program Comment is to ensure that historic bridges that are likely to be significant for preservation in place receive the attention, while the process is substantially streamlined for the more common bridge types (***77 FR 68790***). These common bridges were constructed in vast numbers after World War II using standardized plans. Although there has been little public interest in the preservation of these common bridges and culverts, FHWA was required under ***Section 106*** to consider and document the potential historic significance of any bridge approaching 50 years of age that might be affected by FHWA projects.

As part of this Program Comment, FHWA and ACHP requested the state DOTs and SHPOs submit a list of common, post-1945 bridges. FDOT, in consultation and

coordination with Florida's SHPO and FHWA's Florida Division identified nineteen (19) bridges that still require evaluation and/or individual treatment under ***Section 106*** of the ***NHPA***. These bridges are listed in an attachment to the ***Section 106 PA***.

While the Program Comment relieves the need to individually evaluate and consider the effects of the undertaking on these common bridges, these bridges located within the project APE still must be identified in the cultural resource document that is sent to SHPO. This documentation should note that while the bridge is historic, it is exempt from further analysis in accordance with the Program Comment for Common Post-1945 Concrete and Steel Bridges (***77 FR 68790***). FMSF forms do not need to be completed for these bridges.

8.3.2.8 Contents and Routing of Documentation Related to the Section 106 Process

The results of all cultural resources identification and evaluation efforts in support of ***Section 106*** compliance are documented in a cultural resource document which must be uploaded into the SWEPT project file. Cultural resources document types utilized by FDOT are ***Section 106 Program Alternative Forms***, ***Notification Letters***, ***Desktop Analysis***, ***CRAS Reports***, ***CRAS Addendum Reports***, and ***Case Study Reports***.

The standard components of cultural resource documents are provided in ***Section 8.3.2.2.2***, ***Section 8.3.2.8.1*** through ***Section 8.3.2.8.4***, and Chapter 7 of the ***CRM Handbook***. Routing of cultural resource documents is discussed in ***Section 8.3.2.8.5*** and ***Section 8.3.6.6***.

8.3.2.8.1 Section 106 Program Alternative Form and Notification Letters

For projects that meet the criteria for minor projects established in the program alternatives set forth in Stipulations V and VI of the ***Section 106 PA*** (see ***Section 8.3.2.3.1*** and ***Section 8.3.2.2.2***), and result in "No Historic Properties Affected", a notification is prepared using the ***Section 106 Program Alternative Form*** developed for those projects (see ***Section 8.3.2.2.2***). The notification must inform SHPO that FDOT has determined the proposed project meets the applicability criteria and, therefore, there are "No Historic Properties Affected" by the undertaking. This form outlines the project action, the project category, and an explanation of the project setting sufficient to verify that it meets the applicability criteria for that category of program alternative. This ***Section 106 Program Alternative Form*** is sent to SHPO by the District via the SWEPT ***Section 106 Tool***. Unless SHPO objects to this finding within 30 days of receipt of this notification, the project may proceed without further consultation under ***Section 106***.

When minor projects that meet the criteria to be processed under Stipulation V and VI of the ***Section 106 PA*** involve a historic property which may be of religious or cultural importance to a Tribe (regardless of NRHP eligibility) or if a Tribe has expressed interest or requested participation in said minor project, a ***Notification Letter*** is the alternate document format used to present the project. Because the Tribes are not signatories to the ***Section 106 PA,*** all information included in the ***Section 106 Program Alternative Form*** such as the project description, the "No Historic Properties Affected" finding, and

the materials supporting this finding, must be provided to the Tribe using a ***Notification Letter*** (not to be confused with a ***Transmittal Letter*** which must accompany cultural resource documents submitted to either SHPO or THPO, with and without a signature block, respectively). ***Notification Letters*** sent to Tribes should present information for their review and comment and identify the avenue for them to respond, but they should not include a concurrence signature block. Sufficient time must be allowed for a tribal response.

While the Tribes are most frequently the recipients of ***Notification Letters***, such letters may also be used for providing project-related updates to any agency or group participating in a ***Section 106*** consultation, reporting archaeological monitoring progress, and sharing any changes that are not otherwise documented in a report or deliverable.

If the proposed action changes in such a way that it may no longer meet the program alternative criteria set forth in Stipulations V and VI the ***Section 106 PA*** (see ***Section 8.3.2.2.2***), the District will need to re-analyze the project and its potential to affect historic properties. When there are historic resources located within the APE, then consultation regarding the historic significance of these resources with SHPO and other appropriate consulting parties must be initiated. In both of these circumstances, the project should be evaluated in accordance with the standard program process as set forth in Stipulation VII of the ***Section 106 PA***.

8.3.2.8.2 Desktop Analysis and Effects Determination Letter

For minor projects with a minimal APE and either no or minimal involvement with cultural resources, but which do not meet the criteria established for the Stipulation V and Stipulation VI program alternatives in the ***Section 106 PA***, a ***Desktop Analysis and Effects Determination Letter (Desktop Analysis),*** pursuant to ***36 CFR § 800.4(d)(1)*** is used to notify the SHPO/THPO, OEM, and other appropriate consulting parties of the determination of “No Historic Properties Affected”. A ***Desktop Analysis*** is most often used when the APE has been adequately previously surveyed or when there are historic properties in close proximity to the undertaking; both of these circumstances require additional discussion but no additional field work. The final purpose of the ***Desktop Analysis*** document is to present straightforward project effects analysis and proposed ***Section 106*** finding when the result is “No Adverse Effects to Historic Properties”. A ***Desktop Analysis*** sent to SHPO will include a signature block for concurrence. If sent to a Tribe, language requesting review and comment and instructions on providing feedback is included rather than a concurrence signature block.

If the sole reason a project does not meet the conditions to be processed as a Stipulation V or VI project is the presence of an unrecorded segment of historic aged road, a ***Desktop Analysis*** may record and evaluate the road segment in question via remote resources, and the document may discuss the “No Adverse Effect to Historic Properties” determination. This is the only circumstance where a historic resource can be newly documented and evaluated in a ***Desktop Analysis***. If the application of the criteria of adverse effect suggests an Adverse Effect to the resource, the project must adhere to the standard ***Section 106*** process as outlined in Stipulation VII of the ***Section 106 PA***.

8.3.2.8.3 CRAS Reports and CRAS Addendum Reports

The ***CRAS Report*** and ***CRAS Addendum Report*** (collectively referred to as ***Report***) provides the identification and evaluation of the significance or non-significance of all cultural resources located in the APE for the proposed undertaking. The ***Report*** must also include graphics clearly depicting the location and limits of the project and the boundaries of the APE for both archaeological and historical resources, as well as the rationale for these APE limits and the relationship of significant historic resources to the undertaking. It includes the boundaries of the resources identified as significant, highlights the features and characteristics that contribute to the significance of each historic property, and addresses the integrity of the property. Likewise, for those resources and sites identified as not eligible for the NRHP, the ***Report*** notes why the historic resource does not meet any of the four criteria of eligibility and/or explains how the property does not retain the aspects of integrity. In addition to the significance analysis, the ***Report*** includes the appropriate data from the background research, completed FMSF forms for all evaluated resources, and proposed determinations of eligibility and expanded FMSF forms for the properties recommended as NRHP-significant.

If no historic resources are present in the project APE, then the ***Report*** discusses the applicable circumstances and presents a conclusion regarding whether additional survey work is warranted. The accompanying ***Transmittal Letter*** includes the recommended finding of ”No Historic Properties Affected” (see the ***CRM Handbook*** for a sample ***Transmittal Letter***). If historic resources are located within the project APE, then findings on eligibility for the NRHP are made by FDOT, SHPO/THPO, and other appropriate consulting parties before a determination of effects on historic properties for the project can be made. There are some instances where eligibility findings and project effects determinations may be combined, but this should only be in instances where the findings are obvious (e.g., an undertaking on a bridge spanning a NRHP-eligible canal that will not be altered). If FDOT finds that none of the evaluated resources represents significant historic properties, SHPO/THPO concurs, and the consulting parties agree, then by definition, the project cannot have an adverse effect on historic properties.

The ***CRAS Reports***, ***CRAS Addendum Reports***, and ***Case Study Reports*** for FDOT Federal Projects **must** use the ***Technical Report Cover Sheet, Form No. 650-050-38a*** to prepare the cover page.

The standard components of the ***CRAS Report*** are:

1. Executive Summary
2. Introduction (including project description and alternatives)
3. Environmental, Archaeological, and Historical Overviews
4. Research Considerations and Methodology (including definition and justification of the project APE)
5. Survey Results (archaeological and historical/architectural) and Resource Evaluations

6. Conclusions

7. References

8. Appendices, including FMSF forms, Survey Log Sheet (each FMSF form or log must be submitted as stand-alone documents in addition to being appended)

When appropriate, an abbreviated ***CRAS Report*** may be used when minor projects have a minimal APE, and the undertaking has either no or minimal involvement with cultural resources. An abbreviated ***CRAS Report*** may elect to truncate or omit sections from the above outline that are not applicable to the undertaking. Intensive Environmental, Archaeological, and Historical Overviews, item 3 above, are the components most frequently abbreviated in these instances in favor of a more targeted or project-specific content. The report must still function as a stand-alone document and any report content abbreviations or omissions must be acknowledged and justified within the document.

The ***CRAS Addendum Report*** may be used in cases such as projects where changes, expansions, or updates to the APE have occurred after concurrence was received on a ***CRAS Report***. These projects may include alignment alterations, proposed pond siting, ROW transfers, Re-evaluations, and historic resources survey updates. For projects where a ***CRAS Report*** has already been prepared, the ***CRAS Addendum Report*** must reference this document, and not repeat information such as the environmental and cultural overviews.

The ***CRAS Addendum Report*** should include the following information:

1. Introductory information (e.g., project name, location, description, purpose, and need; purpose of the CRAS; definition of the project; justification for APE)

2. Results of background research for the project APE and vicinity, including the findings of the previous study, if applicable

3. Survey expectations vis-à-vis cultural resource potential

4. Archaeological and historical/architectural field survey results (including resource evaluations)

5. Conclusions

6. References

7. Appendices, including FMSF forms, Survey Log Sheet (each FMSF form or log must be submitted as stand-alone documents in addition to being appended)

In circumstances where consultation for a project under ***Section 106*** must be revisited due to project changes or other reasons that either change the APE for the project or change the potential historical value of the surrounding resources, a ***CRAS Addendum Report*** must be completed by FDOT, and coordinated with the consulting parties.

8.3.2.8.4 Case Study Reports

When a project may affect historic properties identified in a CRAS, the District prepares an effects determination document in order to assist the consulting parties in determining if the proposed action will have an adverse effect (see ***Section 8.3.2.4***). ***Desktop Analysis*** and ***Case Study Reports*** are the available document types to present the ***Section 106*** effects determination. Use of a ***Desktop Analysis*** for this situation is discussed in ***8.3.2.4*** and ***8.3.2.8.2***. The ***Case Study Report*** contains the supporting documentation as set forth in ***36 CFR § 800.11(e)***:

1. A description of the undertaking, including all viable alternatives and the preferred Build Alternative, specifying the federal involvement, and the project APE, including photographs, maps, and drawings, as necessary;

2. A description of the steps taken to identify historic properties;

3. A description of the affected historic properties, including information on the characteristics that qualify them for the NRHP (as well as historic property boundaries);

4. A description of the undertaking's effects on historic properties;

5. An explanation of why the Criteria of Adverse Effect were found applicable or not, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

6. Copies of summaries of views provided by consulting parties and the public (including public meeting agendas, handouts, newsletters, relevant slides).

FDOT is responsible for distribution to SHPO/THPO, the appropriate consulting parties, the ACHP (when participating), and the NPS (for NHLs). Whenever there is a finding of "Adverse Effect to Historic Properties", the ACHP must be notified and provided with the finding and the ***Case Study Report***, even when the ACHP is not participating in the consultation. This documentation should be prepared by the District but sent by OEM via the ACHP's ***Electronic Section 106 Documentation Submittal System (***e106***)***.

8.3.2.8.5 Routing

With the exception of the minor project ***Section 106 Program Alternative Form*** or ***Notification Letter***, cultural resource documents submitted to the SHPO/THPO for review are accompanied by a ***Transmittal Letter***. The ***Transmittal Letter*** is prepared by the District and includes standard summary information such as the project description, the APE, the survey findings and recommendations, and any consultation, coordination, or other related actions that may be needed should SHPO/THPO concur with the report The SWEPT ***Section 106 Tool*** submission forms contain a text box in which ***Transmittal Letter*** language is entered to accompany the SHPO submission. FDOT uses a concurrence signature block for CRAS transmittals containing signature and concurrence lines for SHPO. If appropriate, the signature block also informs SHPO that FDOT may

pursue a ***Section 4(f)*** *de minimis* impact determination for the use of the historic property if: (1) the project entails a use of the subject property and (2) SHPO/THPO concurs with a finding of No Adverse Effect to the historic property (see ***Part 2, Chapter 7, Section 4(f) Resources*** for more information on *de minimis* impact determinations). Signature blocks may also be used for a ***Desktop Analysis***, when appropriate, in which case an accompanying ***Transmittal Letter*** is not necessary. The ***Section 106 Tool*** in SWEPT automatically applies the appropriate signature block for SHPO submissions according to the project funding source as identified when setting up the project file in SWEPT and the project effects determination selected for the submission,

Transmittal Letters sent to the Tribes must not contain signature blocks. Pertinent information regarding FDOT's submission and requests for tribal review and comment should be contained within the body of the letter. For cultural resource documents requiring distribution to the Tribes, see ***Section 8.3.2.2.3.2*** and, as appropriate ***Section 8.3.2.2.2***.

The routing path of the final cultural resource document via the SWEPT ***Section 106 Tool***, from initial submittal by the consultant through review by SHPO/FDHR, is as follows:

1. The consultant prepares the cultural resource document and submits it to the District PM and/or District CRC for review.

2. The District PM/CRC reviews the report and requests changes if needed.

3. If adverse effects to historic properties are anticipated, the District PM/CRC submits a copy to OEM for review. The OEM reviewer may approve, approve with minor edits, or return for editing and resubmission.

4. Once the report is acceptable to FDOT, the cultural resource document is submitted by the District CRC with a ***Transmittal Letter*** and appropriate documentation (e.g., required digital FMSF package), to SHPO and other consulting parties. SHPO receives the submission through the SWEPT ***Section 106 Tool***. For cultural resource documents that require tribal comment, see ***Section 8.3.2.2.3.2***. For other consulting parties, the District may provide copies of the cultural resource document directly to them electronically and copy the PDC and the State CRC. There may be circumstances where OEM provides copies of the cultural resource document directly to consulting parties such as the ACHP, NPS, or SHPO.

5. Once SHPO/THPO has reviewed and commented, the SHPO/THPO response is provided to FDOT. SHPO typically returns a signed ***Transmittal Letter*** and THPO typically provides comments under separate cover. If SHPO/THPO objects to the findings on the significance of a historic resource, FDOT (District and OEM) discusses the finding with SHPO/THPO to resolve the objection. If the objection cannot be resolved, then information on the historical value of the resource must be submitted to the Keeper of the NRHP for a final determination of eligibility.

6. If FDOT, and SHPO/THPO (as well as other consulting parties) have concurred that historic properties occur within the APE, FDOT initiates Step 3 of the ***Section 106*** process, Assess Adverse Effects (see ***Section 8.3.2.4***). As mentioned above, submission of the cultural resource document and the effects analysis may be combined into one step, when appropriate.

7. If SHPO/THPO, FDOT, and, as appropriate, the other consulting parties concur with a finding that no historic properties occur within the APE, or with a combined finding on eligibility and ”No Historic Properties Affected” or ”No Adverse Effect to Historic Properties”, this finding is retained in the SWEPT project file along with the basis for the finding and the ***Section 106*** process is complete.

8. If SHPO/THPO, FDOT, and, as appropriate, the other consulting parties concur with a finding of an ”Adverse Effect to Historic Properties”, FDOT initiates Step 4 of the ***Section 106*** process, Resolve Adverse Effects (see ***Section 8.3.2.8.5*** for additional routing and content information).

9. ***Chapter 1A-46, F.A.C.***, requires that the final deliverables for each project must include the requested number of copies of the ***Report*** (which may vary, depending on the project), a ***Survey Log*** (with map), and a set of original FMSF forms (with maps). For historic resources and resource groups, digital photographs are included on the FMSF forms continuation sheets and are submitted as jpeg files (or current acceptable media files). The FMSF office requires paper copies of the final products for retention in the state archives in addition to digital versions of the deliverables.

8.3.2.8.6 Archaeological and Historical Resources Considerations for FDOT State Projects

The same considerations used to determine the potential to affect historic properties for Federal Actions are used to determine effects of non-federal actions. Therefore, the criteria established in the ***Section 106 PA*** for determining the level of assessment, review, and consultation apply to FDOT State Projects.

For FDOT State Projects that qualify for screening in the EST, a SEIR is prepared. The District is responsible for the development, review, and approval of the SEIR. The CRAS for SEIR projects follows the standard procedures established by ***Chapter 267, F.S.***, and ***Chapter 1A-46, F.A.C. Chapter 267, F.S.***, largely mirrors the requirements of ***Section 106***, but contains no requirement for consultation with Tribes beyond the normal considerations of public participation. Nonetheless, the Districts should inform the Tribes whenever a project may affect an historic resource that could be of cultural or religious importance to them. If the project changes from an FDOT State Project to an FDOT Federal Project, tribal comment will be required. See ***Section 8.3.2.2.3.2*** regarding Native American consultation for FDOT State Projects requiring a federal permit.

For FDOT State Projects, FDOT consults with FDHR to make determinations of eligibility for inclusion in the NRHP. For projects that do not include historic properties within the APE or where the undertaking has no potential to affect historic properties, FDOT

documents the finding in accordance with the ***Section 106 PA*** and ***Part 1, Chapter 10, State, Local or Privately Funded Project Delivery***. FDOT notifies FDHR of its finding within 30 calendar days of completing its review. The documentation package must include a map showing the project location and APE, along with sufficient information to support and explain the finding. In accordance with the ***Section 106 PA***, unless FDHR objects within 30 days of receipt of notification, FDOT is not required to take any further action unless there is a dispute.

For projects that may adversely affect historic properties, FDOT and FDHR consult to determine the significance of the historic resources within the APE. It is important to consider the additional property types protected under ***Chapter 267, F.S***. If significant historic resources occur within the APE, then FDOT consults with FDHR on the extent and nature of these effects and develop ways to avoid, minimize, or mitigate these effects. Generally, for FDOT State Projects, FDOT and FDHR record these commitments through an agreement between SHPO and the District Secretary outlining the effects of the project on the resource(s) in question and the measures adopted to minimize or mitigate these effects.

The findings of the CRAS are detailed in the cultural resource document and summarized in the SEIR. In addition, the potential effects of the proposed project on the archaeological sites and historic resources within the project APE are summarized and discussed in the appropriate sections (e.g., Cultural Resources, Commitments) of the SEIR. The cultural resources document and SEIR are transmitted to the Director of the FDHR for review and comment. See ***Section 8.3.3.1*** for guidance on documenting the findings of the CRAS in a SEIR or NMSA.

The ***Transmittal Letter*** prepared by the District is essentially the same as the letter provided as outlined in ***Section 8.3.2.8.5***. However, the letter is addressed to the Director of the FDHR and only requires the Director's signature. In addition, the term "SHPO" is replaced with "Director, Division of Historical Resources" in the body of the letter. The appropriate signature block language is automatically applied by SWEPT when filling out the SHPO submission form in the ***Section 106 Tool***.

As mentioned above, NMSA projects also require an historical and archaeological impact evaluation. Typically, detailed evaluations are not warranted because these projects are generally small in scope with minimal effects. These decisions cannot be made until the District documents the presence or absence of historic properties in the project APE. Just as the COA for a project does not dictate the level of analysis needed for historic properties, neither does the criteria for determining whether a project is a SEIR or a NMSA.

If the state-funded or assisted undertaking involves a federal permit, approval, or license, then FDOT initiates coordination with the appropriate federal agency as early in this process as possible. In some cases, it may be necessary to inform the permitting agency of any programmatic approaches applicable to the project. For the purposes of ***Section 106*** of the ***NHPA***, the permitting agency becomes the Lead Federal Agency for the permitted action.

8.3.3 Coordinating NEPA and Section 106

The regulations that implement ***Section 106*** of the ***NHPA [36 CFR § 800.3(b)]*** specifically encourage the coordination of ***Section 106*** responsibilities with the steps taken to satisfy other historic preservation and environmental laws. FDOT has adopted a streamlined approach to satisfy ***Section 106*** and ***NEPA*** compliance so that approvals are received concurrently. The ACHP's regulations ***[36 CFR § 800.8(a)]*** provide guidance on how the ***NEPA*** and ***Section 106*** processes can be coordinated.

NEPA documents, including an Environmental Assessment (EA) with Finding of No Significant Impact (FONSI), Final Environmental Impact Statement/Record of Decision (FEIS/ROD) or FEIS, include the information and results of the ***Section 106*** compliance efforts. This information includes a general presentation of the survey effort, a brief description of the historic properties identified, the consulting parties, the determinations of effect for the project, the consultation leading to the resolution of any adverse effects, and all commitments and agreements that supported the effect finding or the resolution of adverse effects. Any MOA developed under ***Section 106***, or (when applicable) the final comments of the ACHP, are addressed in the ROD. The ***MOA*** is executed before the ROD is issued, and the ROD provides for the implementation of the ***MOA's*** terms and stipulations. Details concerning the information and results to be included in the ***NEPA*** document are provided in ***8.3.3.1*** See ***8.3.2.2.4*** for information regarding the protection of historic property and archaeological site locations in publicly available ***NEPA*** documents and cultural resource documents.

8.3.3.1 Reporting Cultural Resources Findings in the Environmental Document

FDOT summarizes the findings of the CRAS, as presented in the cultural resource document, in the appropriate section of the Environmental Document. The cultural resource document is incorporated by reference into the Environmental Document and is uploaded into SWEPT along with consulting party correspondence, if necessary. It is recommended that these documents be placed within the Archaeological and Historical Resources folder in SWEPT. Any SHPO/THPO concurrence letters or MOA must be attached or included in the Appendix of the Environmental Document. In addition, commitments are documented in accordance with ***Part 2, Chapter 22, Commitments***.

Categorical Exclusions

For Type 1 CEs the finding of "No Historic Properties Affected" or "No Adverse Effect to Historic Properties", and related approvals if any, are attached to the completed ***Type 1 Categorical Exclusion Checklist*** for the proposed project. See the ***Guidance for Part 1, Chapter 5*** for a sample Type 1 CE Checklist.

In the case of Type 2 CEs, the consultation documents (e.g., concurrence letter, ***MOA***) related to the CRAS are included in Appendix of the Type 2 CE. See ***Guidance for Part 1, Chapter 5*** for more information on completing the ***Type 2 Categorical Exclusion Determination Form***.

EA and Draft Environmental Impact Statement

The description and evaluation of archaeological sites and historic resources identified within the project APE are included in the Cultural Resources section of an EA or Draft Environmental Impact Statement (DEIS). Once OEM approves the document for public availability, the District sends it to the appropriate agencies and consulting parties for review and comment. Commitments related to the treatment of, effects upon, or disposition of historic properties are included in the Commitments section according to ***Part 2, Chapter 22, Commitments***. Concurrence letters and a draft MOA (if applicable) should be included in the Appendix.

EA with FONSI and FEIS/ROD, or FEIS

If NRHP-listed or eligible archaeological sites and/or historic resources are identified within the project APE, the decisions made to resolve issues are addressed in the EA with FONSI, FEIS/ROD, or FEIS. The Cultural Resources section is updated to summarize the potential effects (e.g., direct use, visual, noise) on NRHP-listed or eligible historic properties, as well as potential mitigation measures for the anticipated effects associated with the preferred alternative.

A summary of the agency coordination efforts is added to the Comments and Coordination section, with the details included in the Cultural Resources section along with the determination of effects, and the development of mitigation measures. Reference to all correspondence related to the ***Section 106*** process is also included. Public outreach activities are discussed in the ***Summary of Public Involvement (SPI)***. The Commitments section of an EA with FONSI or FEIS/ROD or FEIS is updated with a description of the measures FDOT will use to minimize and mitigate adverse effects to the NRHP-listed or eligible historic properties. If the resolution of adverse effects includes any formal agreement such as an MOA or Conditional No Adverse Effect agreement (a finding of No Adverse Effect with conditions imposed or agreed to by the consulting parties), this document is included in the Appendix of the EA with FONSI, FEIS/ROD, or FEIS.

The correspondence providing FDOT's finding on effects to historic properties; SHPO/THPO opinion on this finding; and any correspondence related to the avoidance, minimization, or mitigation of effects to historic properties, as well as the opinions of the other consulting parties, should be included in the Appendix.

NMSA and SEIR

If the project is an NMSA the ***Non-Major State Action Checklist*** is prepared in SWEPT according to ***Part 1, Chapter 10, State, Local or Privately Funded Project Delivery***.

For SEIRs, the results of the CRAS are included in the Cultural Resources section. The SEIR must include FDOT's determination of effects to historic resources and the FDHR's opinion as to this determination. The Commitments section discusses all commitments made in regard to cultural resource issues. The correspondence providing FDOT's finding on effects to historic properties; SHPO/THPO opinion on this finding; and any correspondence related to the avoidance, minimization, or mitigation of effects to historic

properties, as well as the opinions of the other consulting parties, should be included in the Appendix.

Example CRAS Summaries

The EA, EIS, or SEIR must include standard language describing the CRAS, a definition of the project APE, the survey methods and findings, and a description and evaluation of all archaeological sites and historic resources identified within the project APE. In the case of the SEIR, FDHR becomes the consulting agency. For FDOT State Projects, state legal authorities are referenced and only FDHR is consulted unless there is a specific reason to include other consulting parties [for example, on state-owned land, the Florida Department of Environmental Protection (FDEP) should be included in the decision making].

The following are examples of text for the CRAS summary to be included in the Environmental Document. Typically, this summary language is also contained in the ***CRAS Report/CRAS Addendum Report's*** Executive Summary and is used in the CRAS ***Transmittal Letter***.

1. The Project Name, purpose of the CRAS, and applicable laws, regulations, and standards are included, for example:

> *A Cultural Resource Assessment Survey (CRAS) of the proposed [project name], including background research and field survey, has been performed. The purpose of the survey was to locate, identify, and bound any cultural resources within the project Are of Potential Effects (APE) and to assess their significance in terms of eligibility for listing in the National Register of Historic Places (NRHP). This CRAS was conducted in compliance with Section 106 of the National Historic Preservation Act (NHPA) (Pub. L. 89-665, as amended), as implemented by 36 Code of Federal Regulations (CFR) Part 800 (Protection of Historic Properties); National Environmental Policy Act (NEPA) [Public Law (Pub. L.) 91-190]; and Chapter 267, Florida Statutes (F.S.), revised. This study was conducted in accordance with Chapter 1A-46, Florida Administrative Code (F.A.C.), Part 2, Chapter 8 of the Florida Department of Transportation (FDOT) Project Development & Environment (PD&E) Manual, and the standards contained in the Florida Division of Historical Resources (FDHR) Cultural Resource Management (CRM) Standards and Operational Manual (FDHR 2003).*

2. The research methods used are summarized, for example:

> *Research methods included preliminary background research, the preparation of a research design for review and approval by FDOT, State Historic Preservation Officer*

(SHPO), and/or Tribes, if applicable, archaeological and historical/architectural field surveys, artifact analysis, and preparation of draft and final reports. The fieldwork was conducted between [month and year to month and year].

As appropriate, this statement includes the level of analysis for proposed or potential SMF/FPC locations.

3. The results of the background research for both archaeological sites and historic resources is summarized, for example:

   The initial review of the Florida Master Site File (FMSF), NRHP listings, and the ETDM Summary Report (Project # [xxxx]) for this project indicated that xx previously recorded archaeological sites ([FMSF numbers]) are located within or adjacent to the project APE, with another [xx] known sites located within 0.5 miles. Of the [xx] archaeological sites, [FMSF number(s)] was/were evaluated by SHPO as potentially eligible for inclusion in the NRHP; the other [xx] sites [FMSF numbers] were not evaluated by SHPO. The background research suggested a variable probability for archaeological site occurrence within the project APE.

   Background research indicated that [xx] historic resources ([FMSF numbers]) had been recorded previously within the project APE. These include [xx] [add architectural styles and composite build date range]. [Add SHPO evaluation]. A review of the relevant USGS quadrangle maps and property appraiser's website data revealed the potential for [xx] historic (pre-circa [date]) resources.

4. The results of the archaeological and historical/architectural field surveys, including a brief description and evaluation of all NRHP-listed or eligible historic properties identified within the project APE are summarized and the appropriate NRHP criteria and the relevant aspects of integrity are addressed. For example:

   As a result of archaeological field survey, cultural materials associated with [xx] of the previously recorded sites ([FMSF numbers]) were recovered. No evidence of the other [xx] sites was found. [xx] new archaeological site(s) ([FMSF numbers]) was/were identified. The total of [xx] previously recorded and newly identified sites are classified as lithic and artifact scatters. All were evaluated as not eligible for listing in the NRHP given the common nature, low research potential, and lack of any significant historical associations.

   Historical/architectural field survey resulted in the identification and evaluation of [xx] historic buildings ([FMSF

numbers]). With one exception [Site name, FMSF number], a [add build date, type, and style] all are Masonry Vernacular and Frame Vernacular style residences constructed between circa (ca.) 1945 and ca. 1960. These historic buildings represent commonly occurring types of architecture for the locale, and available data did not indicate any significant historical associations. In addition, alterations to the historic structures and/or lack of concentrated density appear to preclude their eligibility for the NRHP either individually or collectively as a district.

For any resources determined eligible, the basic information on the site is provided by extracting statements from the Determination of Eligibility or FMSF form for the property. The reasons the site is eligible, the characteristics that make it significant, its boundaries, etc., are noted. Measures that have been incorporated into the proposed undertaking to avoid, minimize, or mitigate effects to the property are included. Example language for findings of No Involvement with Cultural Resources/"No Historic Properties Affected" (***Section 8.3.3.1.1***) and both No Adverse Effect and Adverse Effect (***Section 8.3.3.1.2***) follows.

8.3.3.1.1 No Involvement with Cultural Resources/No Historic Properties Affected

If the CRAS shows an absence of archaeological sites and/or historic resources within the project APE, or if the CRAS has identified archaeological sites and/or historic resources within the project APE but FDOT and SHPO agree that none of the sites or historic resources are eligible for inclusion in the NRHP, one of the following standard statements below is provided, as applicable. The statement is included in the Cultural Resources section of the EA with FONSI, FEIS/ROD, FEIS, or in other appropriate locations for other Environmental Documents:

A Cultural Resource Assessment Survey (CRAS), conducted in accordance with 36 CFR Part 800, was performed for the project. No archaeological sites or historical resources were identified, and FDOT, in consultation with SHPO/THPO, has determined that the project will result in No Historic Properties Affected. Concurrence from SHPO/THPO was received on [date].

-OR-

A Cultural Resource Assessment Survey (CRAS), conducted in accordance with 36 CFR Part 800, was performed for the project, and the resources listed below were identified within the project Area of Potential Effect (APE). FDOT found that these resources do not meet the eligibility criteria for inclusion in the National Register of Historic Places (NRHP), and SHPO/THPO concurred with this determination on [date].

> *Therefore, FDOT, in consultation with SHPO/THPO, has determined that the proposed project will result in No Historic Properties Affected.*

This paragraph is followed with a description of the identified sites and their eligibility status.

For a SEIR, the findings are included in the Cultural Resources section. FDOT is referenced as the lead agency making the findings and the FDHR (instead of SHPO) is identified as the concurring/consulting party.

8.3.3.1.2 No Adverse Effect or Adverse Effect to NRHP Properties

In the case where the CRAS results identify NRHP-listed or eligible archaeological sites and/or historic properties within the project APE, and where the Criteria of Adverse Effect pursuant to ***36 CFR § 800.5(a)(1)*** have been applied and the project does not meet the criteria, the effects are summarized and the finding is described in the Cultural Resources section of the EA with FONSI, FEIS/ROD, or FEIS, or in other appropriate locations for other Environmental Documents. The following statement is provided in the ***Type 2 Categorical Exclusion Determination Form*** or should be included in the EA with FONSI, FEIS/ROD, or FEIS:

> *A Cultural Resource Assessment Survey (CRAS), conducted in accordance with 36 CFR Part 800, was performed for the project, and the resources listed below were identified within the project Area of Potential Effect (APE). FDOT found that some of these resources meet the eligibility criteria for inclusion in the National Register of Historic Places (NRHP), and SHPO/THPO has concurred with this determination. After application of the Criteria of Adverse Effect, and in consultation with SHPO/THPO, FDOT has determined that the proposed project will have No Adverse Effect on these resources.*

This paragraph is followed with a description of the sites, their eligibility status, and any commitments made for the project that contributed to the No Adverse Effect finding.

In the case where project development will result in adverse effects to NRHP-listed or eligible historic resources, FDOT's commitments to minimize effects are summarized in the Commitments section of the EA with FONSI, FEIS/ROD, or FEIS, as applicable. The following statement is provided in the ***Type 2 Categorical Exclusion Determination Form*** or should be included in the EA with FONSI, FEIS/ROD, or FEIS:

> *The proposed project will result in unavoidable adverse effects to the resource(s) listed below, which [is/are] [listed in/eligible for listing in] the National Register of Historic Places (NRHP). FDOT and the SHPO/THPO [will execute/have executed] a Memorandum of Agreement (MOA) which*

> *outlined conditions to minimize and mitigate adverse effects resulting from the project. Consequently, FDOT commits to the stipulations provided below as outlined in the MOA.*

This paragraph is followed with a list of the specific stipulations developed.

8.3.4 Coordinating Section 106 and Section 4(f)

Often, when a project has the potential to have an adverse effect on a historic property, it also requires approval under ***Section 4(f)*** of the ***USDOT Act of 1966***, as amended.

The properties protected under ***Section 4(f)*** include significant public parks and recreational resources, wildlife and waterfowl refuges, and historic sites. For historic resources, the word "significant" means that the resource is listed in or eligible for listing in the NRHP, and these are also the resources protected by ***Section 106*** of the ***NHPA***. As a result, FDOT often combines its ***Section 106*** compliance effort with a ***Section 4(f)*** analysis. The level of the ***Section 4(f)*** analysis depends upon the type of ***Section 4(f)*** evaluation or approval that is required for the use of the property in question. There are two types of ***Section 4(f)*** evaluations (programmatic and individual) and the level of effort and coordination is different for each. There is also a third ***Section 4(f)*** approval option that requires only a finding by FDOT that the proposed project has a minor, non-adverse effect on the protected property. This is referred to as a ***Section 4(f)*** *de minimis* impact determination. In these cases, no ***Section 4(f)*** evaluation is required because the effects of the project on the resource are inconsequential as a matter of the law.

Districts should endeavor to schedule the ***Section 106*** and ***Section 4(f)*** identification and evaluation so that historic properties, and anticipated project interactions with them, are accurately presented to the public as part of the planned public involvement opportunities. The guidance for compliance with the requirements of ***Section 4(f)*** for historic properties is provided in ***Part 2, Chapter 7, Section 4(f) Resources***.

8.3.5 Treatment of Human Remains

Historic and prehistoric human remains are protected under ***Chapter 872, F.S.*** The treatment of human remains encountered during project construction or any other FDOT project-related activity must conform to ***Chapter 872.05, F.S.,*** the provisions of ***36 CFR Part 800.13*** and Post Review Discoveries in Stipulation X of the ***Section 106 PA,*** as well as ***Chapter 3*** of the ***CRM Handbook*** and ***Section 7-1.6*** of FDOT's ***Standard Specifications for Road and Bridge Construction***. If human remains are encountered during project-related activities (other than during an archaeological investigation), all work ceases in the area of the human burial and necessary measures are taken to secure and protect the remains, including, as appropriate, stabilization and covering. The individual(s) making the discovery [the District Project Construction Engineering Inspector (CEI) or the PM] should immediately contact the appropriate Medical Examiner. If the Medical Examiner finds that the burial may be involved in a legal investigation or represents the burial of an individual who has been dead less than 75 years, the Medical Examiner assumes jurisdiction. If the Medical Examiner finds that the burial is not involved in a legal investigation and represents the burial of an individual who has been dead 75

years or more, he or she notifies the State Archaeologist, and the FDHR assumes jurisdiction over and responsibility for the burial.

In addition, FDOT's Native American Coordinator is notified so that the Tribes, the SHPO/THPO, as well as other appropriate consulting parties, receive the proper information and are included in the determination of effects, if applicable. For Native American human remains discovered on federal lands, the federal land managing agency is responsible for consultation under ***NAGPRA***. Also, see ***Sections 8.2.2.2*** and ***8.3.6*** for related procedures.

8.3.6 Archaeological and Historical Resources Considerations Following the PD&E Phase

8.3.6.1 Commitments

Commitments developed under ***Section 106*** and all other associated federal and state laws governing the treatment or consideration of historic resources and properties are recorded in the Environmental Document and in the ***PCR***. ***Part 2, Chapter 22, Commitments*** provides the process that must be followed to ensure commitment compliance for FDOT projects. Tracking project commitments follows FDOT's ***Procedure No. 650-000-003, Project Commitment Tracking***.

If either the Design or Construction Office cannot meet a commitment, they inform the District Environmental Office as soon as they are aware of that situation so that the District Environmental Office can inform the appropriate consulting parties and re-initiate the consultation.

8.3.6.2 Re-evaluations

Re-evaluations are prepared as outlined in ***Part 1, Chapter 13, Re-evaluations***. Because the status of historic properties can change over time, evaluations of archaeological sites and historic resources or ***CRAS Reports*** may need to be updated, as appropriate, before advancing a proposed project into a new phase of development. For example, if the previous CRAS was completed more than ten years ago, a supplementary survey and ***CRAS Addendum Report*** may be necessary. Whenever there is a change to a project's potential to affect historic properties, consultation with SHPO/THPO and other appropriate parties is revisited and updated, as necessary. There are times when this may necessitate a change to the ***Section 106*** documentation or findings for the project, amendments to an MOA, or other changes to the commitments.

8.3.6.3 Permitting

Environmental permits obtained by FDOT may include provisions for the protection or consideration of historic properties. These provisions arise from the general permit conditions requiring compliance with state or federal laws. However, if a commitment is made during the PD&E phase to avoid, minimize, or mitigate harm to a significant historic resource, this commitment may be contained as a specific condition in the permit.

Occasionally, a permitting agency may conduct its own consultations under ***Section 106*** or under ***Chapter 267, F.S.***, and include specific conditions in the permit.

8.3.6.4 Cultural Resources Considerations during Construction

If a contractor requires the use of a borrow pit, offsite staging area, or an area for offsite construction activity not proximal to the project, the contactor is required to consult with the SHPO or FDHR to ensure that no historic properties will be affected by the use of these areas ***(Section 120-6.2, Furnishing of Borrow Areas*** of FDOT's ***Standard Specifications for Road and Bridge Construction)***. If previously unidentified historic properties are discovered during construction, or if unanticipated impacts to known or previously unidentified historic properties occur during construction, all construction-related activity in the vicinity of the discovery must stop, and the procedures set forth in Stipulation IX of the ***Section 106 PA*** must be followed.

8.3.6.5 Review and Compliance Requirements

Prior to the approval of the construction plans and any design modifications proposed during construction, the Construction Office reviews the plans and/or the modifications to verify that the commitments associated with the project's relationship to or effects upon historic properties, as well as federal and state regulations, are incorporated into the design and plans. These reviews require the involvement of the District Environmental Office (see ***Section 8.1***).

In addition to the plan notes and specifically outlined conditions provided with the project construction plans, the Contractor follows the provisions set forth in the most recent version of FDOT's ***Standard Specifications for Road and Bridge Construction***.

8.3.6.6 Emergency Repair Actions

To maintain compliance with ***Section 106***, ***Chapter 267, F.S.***, and ***Section 4(f)*** for emergency repair actions, the following guidelines should be adhered to. These procedures apply only if a disaster or emergency has been declared by the President, Governor, or tribal government, or if responding to other immediate threats to life or property. In accordance with ***36 CFR § 800.12(d)***, immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of ***Section 106***, and work can proceed without performing the notification procedures listed below.

Repair actions are categorized either as "emergency" or "permanent." Emergency repairs are made during and immediately following a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. Permanent repairs to restore the highway to its pre-emergency condition normally occur after the emergency repairs have been completed. For emergency repairs, compliance with ***Section 106***, ***Section 4(f)***, and other related environmental laws occurs concurrent with or after the emergency repairs have been completed. For permanent repairs, compliance is undertaken as part of the normal ***NEPA*** project development process.

1. Project forms, notifications, and other appropriate documentation should be completed at the project level, which may be based on individual or multiple ***Detailed Damage Inspection Reports (DDIRs)***.

2. The standard ***Section 106 Program Alternative Form*** may be used, if appropriate, to notify SHPO (with a copy to OEM) of the emergency repair action. Be sure to identify these actions as emergency repairs on the form. Where a District has a large number of emergency projects, SHPO is provided the notification using a table, list, or spreadsheet of the emergency repair actions, and clearly identified projects where follow-up or additional coordination will be needed in regard to archaeological or historic resources and properties. If properties that may be of religious and cultural importance to a Tribe are present within the APE, the appropriate Tribe must be notified of the action.

3. In certain situations, the proposed emergency or permanent repair may consist of an action or actions which have no potential to cause effects to historic properties when assuming historic properties are present in the project area as set forth at ***36 CFR § 800.3(a)(1)***. In these situations, see ***Section 8.3.2.2.1***, and document the finding as appropriate.

4. For all emergency repair actions not involving a historic or archaeological site (e.g., improvements within a non-historic roadway or roadway features), Stipulation V of the ***Section 106 PA*** should be used. Stipulations VI and VII can also be applied, as appropriate.

5. ***Section 106*** documentation can be completed concurrent with or after the action, but must be provided to SHPO within six months of the completion of the action. If no cultural resources are identified within the APE of the emergency repair action, ***Section 106*** obligations are fulfilled by the standard SHPO ***Transmittal Letter.***

6. If previously unidentified cultural resources are uncovered, or if unanticipated impacts to known historic properties are discovered as a result of the action, FDOT still complies with ***Section 7-1.6*** of FDOT's ***Standard Specifications for Road and Bridge Construction***, the procedures for inadvertent discovery of human remains contained in ***Chapter 872.05, F.S.***, (see ***Section 8.3.5***), the provisions of ***36 CFR Part 800.13***, and the provisions regarding Post-Review Discoveries in Stipulation X of the ***Section 106 PA***.

7. To the maximum extent possible, Districts should avoid using land which may be protected by ***Section 4(f)*** or ***Section 106*** for emergency repair actions. Districts should avoid using land which may be protected by ***Section 4(f)*** or ***Section 106*** for debris storage and/or materials staging areas. If using a known historic or archaeological site, restoration or mitigation may be required as appropriate.

8. Although the purpose of ***Section 4(f)*** (to evaluate feasible and prudent avoidance alternatives) cannot be fulfilled after an emergency repair is completed, appropriate documentation may still be required if an activity requires the use of a ***Section 4(f)***-protected resource. If using potential ***Section 4(f)*** resource (public

park, recreational area, historic property, or wildlife or waterfowl refuge), the appropriate consultation is initiated to ensure that the conditions of the site being utilized are restored to the same level, or better than, they were prior to the emergency event, as appropriate (see ***Part 2, Chapter 7, Section 4(f) Resources***).

9. Related emergency repair documentation is uploaded into the SWEPT project file upon SHPO concurrence or, as appropriate, when FDOT makes its final determination. If the action or any additional cultural resources coordination is completed under a new Financial Management number for the subsequent permanent repair, a note is made to the original emergency repair SWEPT project file that describes where the documentation is located.

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PART 2, CHAPTER 9

WETLANDS AND OTHER SURFACE WATERS

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PART 2, CHAPTER 9

WETLANDS AND OTHER SURFACE WATERS

9.1 OVERVIEW

Wetlands and other surface waters provide important and beneficial functions including: protecting and improving water quality, providing fish and wildlife habitat, and storing floodwaters. They are protected at the federal and state level because of the important functions they perform. The ***Rivers and Harbors Act***, ***Clean Water Act (CWA)***, and associated regulations aim to restore and maintain existing aquatic resources. These require that agencies strive to first avoid adverse impacts, and then minimize adverse impacts, and finally offset unavoidable adverse impacts to existing aquatic resources; and for wetlands, strive to achieve a goal of no overall net loss of values and functions. This chapter provides procedures for identifying, evaluating, and documenting potential wetland and other surface water impacts associated with transportation projects and describes regulatory mitigation requirements.

At the federal level, waters of the United States (wetlands and other surface waters) are regulated by the United States Army Corps of Engineers (USACE) with support from United States Environmental Protection Agency (EPA), United States Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS). In Florida, wetlands and other surface waters are regulated by the Florida Department of Environmental Protection (FDEP) and the Water Management Districts (WMDs).

When it is determined that there are unavoidable adverse impacts to wetlands, compensatory mitigation is required pursuant to ***33 Code of Federal Regulations (CFR) Part 325 and 332, 40 CFR Part 230, 33 United States Code (U.S.C.) § 1344, and Sections 373.4137 and 373.414, Florida Statutes (F.S.)***.

This chapter includes the same terminology as provided in the Definitions Section of ***Part 1, Chapter 12, Environmental Permits***.

9.1.1 Regulation of Wetlands and other Surface Waters

The USACE authority to regulate work in the Nations' waters comes from ***Section 10*** of the ***Rivers and Harbors Act of 1899 (33 U.S.C. § 403)***, which established permit requirements to prevent unauthorized obstruction or alteration of any navigable water of the United States, and ***Section 404*** of the ***CWA (33 U.S.C. § 1344)***, which authorizes the USACE to require permits for the discharge of dredged or fill material into waters of the United States at specified disposal sites.

In Florida, state authority over activities in surface waters and wetlands is administered by the FDEP and the five WMDs. The Florida Fish and Wildlife Conservation Commission

(FWC) advises the FDEP and WMDs on wildlife issues as a requirement under Florida's Environmental Resource Permitting (ERP) Program.

Wetlands are one of the public interest factors identified in ***33 CFR § 320.4, Public Interest Review***. If a ***Section 404*** permit is being pursued, the public interest factors relevant to each alternative should be evaluated and balanced. Relevant factors may include conservation, economics, aesthetics, wetlands, cultural values, navigation, fish and wildlife values, water supply, water quality, and any other factors judged important to the needs and welfare of the people.

A methodology for identifying and delineating wetlands in Florida is provided in ***Chapter 62-340, Florida Administrative Code (F.A.C.), Delineation of the Landward Extent of Wetlands and Surface Waters***. This methodology is a unified statewide approach to wetland and other surface water delineation and recognizes the vegetation, hydrologic, and soil features that specifically exist in Florida. The USACE uses the ***Corps of Engineers Wetland Delineation Manual, 1987*** and ***Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, 2010*** to determine the federal wetland jurisdictional boundary. State and federal wetland boundaries may or may not match one another, so confirmation on this boundary should be obtained from each agency.

The Uniform Mitigation Assessment Method (UMAM) detailed in ***Chapter 62-345, F.A.C.***, is the state-wide method to determine the functional value provided by wetlands and other surface waters. In some cases, a different type of functional assessment may need to be used in order to utilize a mitigation bank that was not permitted under UMAM. Regulatory agency coordination is required for sites where other assessment methodologies were used.

9.1.2 Federal Highway Administration Wetlands Policy and Guidance

Presidential Executive Order (EO) 11990 entitled "Protection of Wetlands" establishes a National Policy to "avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative."

The U.S. Department of Transportation (USDOT) in implementing ***EO 11990*** set forth its policy on wetlands in ***USDOT Order 5660.1A***, Preservation of the Nation's Wetlands, which is "to assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable during the planning, construction and operation of transportation facilities and projects. New construction in wetlands shall be avoided unless there is no practicable alternative to the construction and the proposed action includes all practicable measures to minimize harm to wetlands which may result from such construction. In making a finding of no practicable alternative, economic, environmental, and other factors may be taken into account. Some additional cost alone will not necessarily render alternatives or minimization measures impracticable, since

additional cost would normally be recognized as necessary and justified to meet national wetland policy objectives." More guidance on practicable alternatives is provided in ***40 CFR § 230.10(a)***.

To fulfill the requirements of ***USDOT Order 5660.1A***, the Federal Highway Administration (FHWA) has issued a ***Technical Advisory T6640.8A***, which provides guidance on the preparation of Environmental Documents, including the assessment of project impacts on wetlands.

As stated in ***Technical Advisory T6640.8A***, for an Environmental Impact Statement (EIS) or an Environmental Assessment (EA), the Environmental Document should:

1. Identify the type, quality and function of wetlands involved
2. Describe the direct and indirect impacts to the wetlands that may result from the proposed alternative(s)
3. Evaluate alternatives which would avoid wetland impacts
4. Identify practicable measures to minimize harm to wetlands

In evaluating the impact of the proposed project on wetlands, the following should be addressed:

1. The importance of the impacted wetland(s)
    a. The primary functions of the wetlands (e.g., flood control, wildlife habitat, ground water recharge)
    b. The relative importance of these functions to the total wetland resource of the area
    c. Other factors such as uniqueness that may contribute to the wetlands importance
2. The severity of the impact
    a. The analysis should show the project's effects on the stability and quality of the wetland(s)
    b. The analysis should consider the short and long-term effects on the wetlands and the importance of any loss

FHWA's policy and procedures for the evaluation and mitigation of adverse environmental impacts to wetlands and natural habitat resulting from Federal Projects are contained in ***23 CFR Part 777***. ***FHWA's Environmental Policy Statement (1990, amended 1994)***, provides that FHWA will "participate to the fullest extent permitted by law, in funding

mitigation and enhancement activities required by Federal, State, and local statutes and regulations for project related impacts to the natural environment, neighborhoods, and communities."

9.2 PROCEDURE

9.2.1 FDOT Wetland Evaluation Process

Involvement with wetlands and other surface waters should be evaluated regardless of whether the project is an FDOT Federal Project, FDOT State Project, or qualifies for Environmental Screening Tool (EST) screening. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for project types qualifying for EST screening. ***Figure 9-1*** provides a flow chart of the wetland evaluation process.

For projects that do not qualify for EST screening, a field visit or a desktop analysis using the EST's Area of Interest tool, or other mapping tools can be used to determine if a project will impact wetlands or other surface waters. This information can be documented in the ***Type 1 Categorical Exclusion Checklist*** or the ***Non-Major State Action Checklist***, as appropriate.

For projects qualifying for EST screening, the District uses information from the ***Programming Screen Summary Report*** to initially determine the project's involvement with wetlands. The analyst should review the Environmental Technical Advisory Team (ETAT) comments made for the "Navigation" and "Wetlands and Surface Waters" issues and coordinate with appropriate District staff (e.g., Environmental Manager, Environmental Permits Coordinator). It may also be helpful to review ETAT comments on other related issues such as "Coastal and Marine," "Water Resources," and in some cases "Protected Species and Habitat." Comments from agencies that regulate wetlands (such as USACE, FDEP, and WMDs) are especially important. The results of the screening can help the District identify the level of evaluation that may be needed, if permits may be necessary, and whether potential mitigation opportunities in the project area exist. The report may state specifically that a ***Natural Resource Evaluation (NRE)*** is needed in the "Anticipated Technical Studies" section of the report. Other sections of the report may be useful such as the "General Project Recommendations" and "Anticipated Permits" sections. At the beginning of the Project Development and Environment (PD&E) process, it is important to contact the commenting agencies to confirm their recommendations made during the EST screening events and to ensure wetland issues are addressed.

Wetland evaluations and impact analyses conducted during the PD&E phase are detailed in the Wetland Evaluation section of an ***NRE*** or in a technical memorandum ***(Section 9.2.2)***. Wetland and other surface water impacts requiring either a standard/individual permit or a regional general permit must be documented in an ***NRE***. For a Type 1 Categorical Exclusion (CE), if an ***NRE*** is only required due to the type of USACE permit, a technical memo or other information to support the permit application is sufficient if

saved in the project file and described in the Environmental Document. For projects with impacts allowable under a federal USACE Nationwide permit, or a general 404 permit or ERP, a technical memorandum discussing wetland and other surface water impacts may be sufficient.

The analysis and the results of agency coordination/consultation are then summarized in the Environmental Document. Regardless of the Environmental Document to be produced, wetland involvement or impacts are addressed in the appropriate wetland section. For the purposes of this chapter, the term "wetland section" means the location where wetland involvement or impacts are discussed in the Environmental Document. See ***Section 9.2.4*** for details on documentation.

In accordance with ***EO 11990*** and ***USDOT Order 5660.1A***, a formal "Wetlands Finding" is required for projects processed as a CE, EA, or an EIS as described in ***Section 9.2.4***. Non-Major State Actions and State Environmental Impact Reports (SEIRs) are not subject to ***EO 11990*** and do not require a "Wetlands Finding." Potential wetland involvement must also be made available for early public review through various public involvement mechanisms. If a public hearing is required for a project, wetland impacts are identified in the public hearing advertisement and presentation as described in ***Section 9.2.5***.

The integration of the *National Environmental Policy Act (NEPA)* process with *Section 404(b)(1) Guidelines* of the *CWA* is desirable for projects requiring a USACE standard/individual permit *(**Section 9.2.6**)*. More information can be found in ***Part 1, Chapter 12, Environmental Permits***.

9.2.2 Wetland Evaluation

The wetland evaluation is recorded in the Wetland Evaluation section of the ***NRE***, which is an FDOT technical report that documents protected species and habitat, wetlands and other surface waters, and Essential Fish Habitat issues to support the Environmental Document. Each wetland and other surface waters with potential involvement is identified and evaluated. The District should consider commentary from the ETAT with wetland jurisdictional responsibility when preparing the ***NRE***.

The Wetland Evaluation section of the ***NRE*** should follow the ***Natural Resources Evaluation Outline and Guidance***, as applicable and include:

1. The identification of existing wetlands and other surface waters within the project area. Include maps of the wetlands and other surface waters in the project area.

2. A delineation of each wetland as detailed in the ***Corps of Engineers Wetland Delineation Manual, 1987***; ***Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, 2010***; ***The Florida Wetlands Delineation Manual, 1995; and Rule 62-340, F.A.C., Delineation of the Landward Extent of Wetlands and Surface Waters,*** as appropriate.

3. A description of wetlands in the project area according to the Florida Land Use Cover Classification System (FLUCCS) and the USFWS Classification System as described in ***Classification of Wetlands and Deepwater Habitats of the United States***.

4. An evaluation of the potential direct and indirect effects the project will have on the wetlands. Wetland impacts regulated under Florida's ERP Program or USACE's ***Section 10 of the Rivers and Harbors Act/Section 404*** of the ***CWA*** process need to be identified and evaluated.

5. A discussion of the proposed project's potential contribution to cumulative impacts on the identified wetlands per ***Section 404*** of the ***CWA***.

6. A discussion of practicable measures to avoid minimizing harm to wetlands and other surface waters. Minimization could involve measures included in FDOT's ***Standard Specifications for Road and Bridge Construction***.

7. A functional assessment of the wetlands in accordance with UMAM.

8. A discussion of the potential mitigation options available and description of how those measures can be incorporated into the project.

The District must submit the draft ***NRE***, for FDOT Federal Projects, to the Office of Environmental Management (OEM) for review prior to submitting to the appropriate agencies for coordination/consultation. The ***NRE*** should be retained in the project file, and it is recommended that it be placed within the Natural Resources Evaluation folder within the StateWide Environmental Project Tracker (SWEPT).

9.2.3 Conceptual Mitigation Plan

9.2.3.1 Federal Highway Administration Policy and Funding

23 CFR Part 777, Mitigation of Impacts to Wetlands and Natural Habitat, provides FHWA policy and procedures that apply to FDOT Federal Projects regarding wetland impact and mitigation. FDOT projects should avoid and minimize wetland impacts to the extent practicable and provide compensatory mitigation for unavoidable wetland impacts. The ***USDOT Order 5660.1A, Preservation of the Nation's Wetlands, 1978*** provides similar guidance regarding avoidance and minimization strategies prior to the use of compensatory mitigation for unavoidable wetland impacts. This policy requires demonstration that "there is no practicable alternative to the use of the wetlands and that all practicable measures to minimize harm to the wetlands have been included." While the lead agency has the authority to restore and enhance existing wetlands and to create new wetlands, these do not counterbalance the effects of adverse impacts to wetlands which are avoidable or satisfy USDOT policy for the "protection, preservation and enhancement of the nation's wetlands to the fullest extent practicable."

33 CFR Part 332, Compensatory Mitigation for Losses of Aquatic Resources, details the USACE's standards and criteria for the use of compensatory mitigation, "including on-site, off-site permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation to offset unavoidable impacts to waters of the United States authorized by USACE permits". Additional mitigation information is detailed in the USACE's Final Rule: ***Compensatory Mitigation for Losses of Aquatic Resources FR, Vol. 73, No. 70, April 8, 2008]***, "Compensatory mitigation can be carried out through four methods: the restoration of a previously-existing wetland or other aquatic site, the enhancement of an existing aquatic site's functions, the establishment (i.e., creation) of a new aquatic site, or the preservation of an existing aquatic site."

FHWA will fund the appropriate compensatory mitigation for FDOT Federal Projects as per the ***Federal Highway Administration Environmental Policy Statement, 1994***. "It is FHWA policy to fully participate in the costs of environmental mitigation for project impacts that are necessary to satisfy Federal law while ensuring that mitigation necessitated by State law and all environmental enhancement measures represent a reasonable expenditure of highway funds." In order for FHWA to participate in the funding of mitigation, the wetland analysis must meet the requirements of ***23 CFR Part 777***.

9.2.3.2 Wetland Mitigation

During the PD&E phase, FDOT considers a project's impacts to wetlands. Projects should first avoid and minimize wetland impacts to the extent practicable. Then any unavoidable wetland impacts must be addressed with compensatory mitigation detailed in a conceptual mitigation plan. The level of detail for the conceptual mitigation plan is determined through coordination with the appropriate regulatory agency(s) and is dependent upon the amount of mitigation required. These considerations should be discussed during interagency coordination and documented in the Environmental Document. During permitting, the District will coordinate with the permitting agencies and finalize the mitigation plan.

As per ***Section 373.4137, F.S.***, compensatory mitigation of wetland impacts resulting from FDOT projects "will be funded by the Department of Transportation and be carried out by the use of mitigation banks and any other mitigation options that satisfy state and federal requirements." Specific information concerning the procedure for implementing the provisions of ***Section 373.4137, F.S.***, is included in ***Part 1, Chapter 12, Environmental Permits***.

For projects which cannot be mitigated through the purchase of mitigation bank credits due to credit availability or use of WMDs mitigation services due to site availability, FDOT will propose alternative mitigation and the general type(s) of mitigation (creation, restoration, enhancement, or preservation) to be used in the conceptual mitigation plan.

Early resolution of state and federal permit agencies' concerns and joint agreement on appropriate mitigation is promoted by OEM. Early agreements may substantially reduce

delays during the permitting process and should be documented in the Environmental Documents.

FDOT documents compensatory mitigation for unavoidable impacts through discussion of mitigation options available and through the use of standard statements (see ***Section 9.2.4***). If additional project-specific information (e.g., site selection, conceptual planning) is available on the individual mitigation project to be used, this information is also included in the Environmental Document.

The Environmental Document should describe the proposed mitigation opportunities considered and demonstrate that mitigation is available to offset impacts to wetlands. FDOT Districts should review mitigation information available on FDEP, WMD and USACE websites (***Figure 9-2***). This information is documented in the wetland section of the Environmental Document. District staff should coordinate with the District Environmental Permits Coordinator when considering mitigation opportunities.

9.2.4 Documentation

The Environmental Document includes a summary of the ***NRE*** including relevant wetland information, evaluations, and proposed mitigation. If there is more than one alternative, the discussion should provide adequate information to compare alternatives ***(Part 2, Chapter 3A, Alternatives Analysis)***.

9.2.4.1 Categorical Exclusions

A UMAM or other functional assessment is conducted per state and federal guidelines as appropriate, based on interagency coordination and existing permitting thresholds, for proposed CE projects involving wetlands.

Wetland involvement may be identified for projects that do not require EST screening and immediately advance to the Design phase. For these projects, a summary of wetland impacts, agency coordination, the mitigation standard statement, and a “Wetlands Finding” (as appropriate) is provided in the ***Type 1 Categorical Exclusion Checklist (Part 1, Chapter 5, Categorical Exclusion)***. The appropriate wetland evaluation is included in the project file. Should this analysis indicate a significant impact, the project cannot be processed as a CE.

For Type 2 CE projects, documentation includes a concise summary of wetland and other surface water impacts, their approximate acreage, agency coordination, the UMAM or other functional assessment, and if applicable, the mitigation standard statement and a “Wetlands Finding.” This information should be added to the wetland section of the ***Type 2 Categorical Exclusion Determination Form***. The appropriate wetland evaluation is included in the project file. It is recommended that these documents be placed within the Wetlands and Other Surface Waters folder within SWEPT.

Wetland mitigation should be documented by use of the following standard statement:

Wetland impacts which will result from the construction of this project will be mitigated pursuant to Section 373.4137, F.S., to satisfy all mitigation requirements of Part IV of Chapter 373, F.S., and 33 U.S.C. §1344.

The "Wetlands Finding" references ***EO 11990*** and includes the rationale used to reach the determination that:

1. The proposed project will have no significant short-term or long-term adverse impacts to wetlands,

2. There is no practicable alternative to construction in wetlands, and

3. Measures have been taken to minimize harm to wetlands.

This finding should be concisely summarized in the wetland section of the ***Type 2 Categorical Exclusion Determination Form*** with detailed information contained in the project file.

9.2.4.2 Environmental Assessment and Environmental Impact Statement

The Environmental Analysis section of an EA or EIS should include a description of the wetland environment within the proposed project alternatives. Documentation includes:

1. A description of wetland systems in the project vicinity (i.e., size and function)

2. A map showing the relationship of the project to the wetlands identified

Documentation for EA and EIS projects involving new construction in wetlands contains an evaluation of potential wetland impacts to the level of detail appropriate for the involvement. The results of the wetland evaluation and relevant elements of the ***NRE***, including the UMAM or other functional assessment, are summarized in the wetland section of the Environmental Analysis section. The following impact discussion is included in the wetland section of the EA or EIS:

1. An identification of wetlands impacted by the proposed project alternatives using the USFWS Classification System and Florida Land Use, Cover and Forms Classification System (FLUCCS)

2. A discussion of the importance of the wetlands impacted by the proposed project alternative to the surrounding biological community. This includes consideration of:

    a. Primary functions of the wetlands (e.g., flood control, wildlife habitat, erosion control)

b. Relative importance of these functions to the total wetland resources of the area

c. Other factors, such as uniqueness, that may contribute to the wetland's importance

3. A description of the impacts of each alternative on the wetlands identified, including the approximate area impacted per site (both directly affected by dredge and fill and indirectly affected by project activities) and the potential loss of wetland function. This includes evaluation of:

    a. Effects on the stability and quality of the wetlands

    b. Short-term and long-term effects on the wetlands

    c. Significance of any wetland loss on primary functions and values

4. An identification and evaluation of alternatives which would avoid and/or minimize wetland impacts

5. An identification of all practicable measures used to minimize wetland impacts

6. Maps showing the location of wetlands identified in relation to each alternative under consideration including alternatives to avoid and/or minimize construction in wetlands

7. A discussion of conceptual mitigation efforts necessary to compensate for unavoidable impacts to wetlands, based on the results of the UMAM or other functional assessment. Mitigation measures which should be considered include:

    a. Compensatory mitigation pursuant to ***Section 373.4137, F.S.***, and as appropriate, ***33 CFR § 332***

    b. Creation of new wetlands from upland areas

    c. Acquisition of private wetlands for preservation, restoration or enhancement

8. A discussion of agency coordination on the proposed avoidance and minimization activities and conceptual mitigation measures to limit adverse impacts

For EA or EIS projects, a standard statement is used to provide information on the mitigation for the purposes of public information. The standard statement is included in the Environmental Analysis section. EA and EIS projects should include information on the conceptual mitigation plans and add the following standard statement:

Wetland impacts which will result from the construction of this project will be mitigated pursuant to Section 373.4137, F.S., to satisfy all mitigation requirements of Part IV of Chapter 373, F.S., and 33 U.S.C. §1344. Compensatory mitigation for this project will be completed through the use of mitigation banks and any other mitigation options that satisfy state and federal requirements.

When there is no practicable alternative to an action which involves new construction in wetlands, the EA or the Draft Environmental Impact Statement (DEIS) also includes the "Wetlands Finding".

The “Wetlands Finding” is required by ***EO 11990*** and ***USDOT Order 5660.1A***. Approval of the EA with Finding of No Significant Impact (FONSI), Final Environmental Impact Statement (FEIS), or FEIS/Record of Decision (ROD) containing the “Wetlands Finding” documents compliance with the requirements of ***EO 11990***.

The “Wetlands Finding” includes in summary form the following information:

1. A reference to ***EO 11990***

2. A discussion of the basis for the determination that there are no practicable alternatives to the proposed action

3. A discussion of the basis of the determination that the proposed action includes all practicable measures to minimize harm to wetlands

4. A standard concluding statement as follows:

   Based upon the above considerations, it is determined that there is no practicable alternative to the proposed construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

If there is no wetlands involvement on a project, a finding is still provided. The wetland finding states that there is no wetland involvement and cites ***EO 11990***, as provided below:

The proposed project does not impact any wetlands, and, therefore, Executive Order 11990 does not apply.

The “Wetlands Finding” statement is documented in the Environmental Analysis section of the EA or DEIS and remains in the subsequent EA with FONSI or FEIS/ROD. It is included in the Executive Summary of a FEIS if one is prepared separately from the ROD (***Part 1, Chapter 9, Final Environmental Impact Statement***).

Documentation of coordination with applicable agencies (e.g., letters, meetings, emails) should be included in the Appendix.

9.2.4.3 State Environmental Impact Report

SEIRs follow the same process for wetland evaluation as FDOT Federal Projects. The results of the wetland evaluation and relevant elements of the ***NRE*** or technical memorandum, including the UMAM or other functional assessment and potential mitigation options are summarized in the wetlands section of the SEIR (***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***).

Wetland mitigation should be documented by use of the following standard statement:

> *Wetland impacts which will result from the construction of this project will be mitigated pursuant to Section 373.4137, F.S., to satisfy all mitigation requirements of Part IV of Chapter 373, F.S., and 33 U.S.C. § 1344.*

9.2.5 Public Notice of Wetland Involvement

In compliance with ***EO 11990***, the FDOT "shall provide an opportunity for early public review of any plans or proposals for new construction in wetlands". This opportunity is typically accomplished through traditional public involvement procedures during the ***NEPA*** process including but not limited to public meetings, workshops, flyers, or project websites. For projects requiring a public hearing, the public hearing notices must include a statement informing the public of any wetland involvement on a project, as described in ***Part 1, Chapter 11, Public Involvement***. In addition, FDOT's public hearing presentation must also mention any wetland involvement for a project in order to increase public awareness of wetland impacts and provide an opportunity for public comment.

9.2.6 Merging the NEPA Process and Section 404 of CWA

In 1988, federal agencies including FHWA and the USACE developed a handbook titled ***Applying the Section 404 Permit Process to Federal-Aid Highway Projects***, also known as the ***Red Book***. It emphasized how the synchronization of ***NEPA*** and other federal regulatory reviews can help expedite project delivery. This handbook was updated in the ***2015 Red Book Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects***. This concurrent review by the lead transportation agency and the USACE for projects requiring a standard or individual ***Section 404*** permit can reduce duplication of analysis and allows for joint decision-making resulting in time and cost savings. The ***NEPA/404*** merger expedites project delivery for transportation projects and allows FDOT and the USACE to coordinate common elements under ***NEPA*** as both agencies are required to evaluate alternatives, assess impacts to resources, and balance resource impacts prior to making a ***NEPA*** decision. Information gathered during the FDOT's ***NEPA*** process is coordinated with the USACE to ensure compliance with both agency's requirements. For transportation projects requiring a standard/individual permit,

the USACE may be invited by FDOT to be a cooperating agency for the action of preparing a ***NEPA*** document. A ***NEPA/404*** merger may not be warranted for projects requiring a general permit (e.g., Nationwide or Regional General Permits) as the consideration of alternatives is not directly applicable to general permits ***(40 CFR Part 230.7)***.

The common elements under ***NEPA*** and ***Section 404 of the CWA*** are:

1. Project Need
2. Wetlands Identification, Delineation (as coordinated with USACE or WMD), and Classification
3. Wetlands Impact Assessment
4. Alternatives Analysis
5. Avoidance and Minimization Analysis
6. Conceptual Mitigation
7. Coordination

9.2.6.1 Process

The ***NRE*** developed during the PD&E Study provides technical information on wetland impact assessment and mitigation analysis which supports the ***NEPA*** decision making process. It can also provide preliminary information toward satisfying the USACE's regulatory requirements in accordance with the ***Section 404(b)(1)*** Guidelines. The ***NRE***, including the UMAM or other functional assessment, will be contained in the project file. Based on the information in the ***NRE*** a "Wetlands Finding" is included in the ***NEPA*** document. The common elements documented in the ***NRE*** which are relevant to both ***NEPA*** and ***Section 404(b)(1)*** Guidelines are detailed below:

1. **Project Need** - The project need typically contains capacity information, system linkage, transportation demand, modal interrelationships, safety information, and roadway deficiencies as supporting evidence for the project.

2. **Wetlands Identification, Delineation, and Classification** - The identification, delineation, and classification is developed according to the procedures described in ***Section 9.2.2***. The USACE Jacksonville District has a process for preparing preliminary jurisdictional determinations.

3. **Wetlands Impact Assessment** - The assessment of potential impacts to wetland functions is developed using the information obtained in the identification and delineation procedure, and utilizing UMAM or other functional assessment.

4. **Alternatives Analyses** - Each alternative, including the No-Build alternative is analyzed for wetland involvement. For a Type 2 CE typically only the preferred alternative is included in the ***NRE***.

5. **Avoidance and Minimization Analysis** - The analysis will document practicable measures considered to avoid and/or minimize wetland impacts. The Environmental Document should clearly indicate the steps taken for avoidance and minimization of impacts in order to eliminate the need to reassess and justify project design during the permitting phase.

6. **Conceptual Mitigation Plan** - A conceptual mitigation plan for unavoidable wetland impacts is developed in the PD&E phase and refined during the permitting process. The conceptual mitigation plan should identify the estimated amount of mitigation necessary to replace the loss of wetland functions as identified by UMAM or other functional assessment. It should also identify mitigation opportunities that FDOT will implement to off-set adverse impacts such as the purchase of mitigation credits from a permitted mitigation bank, payment to FDEP/WMD for mitigation services, development of its own mitigation site, or any other option that meets state and federal requirements. Appropriate regulatory agency coordination regarding the conceptual mitigation plan is necessary.

7. **Coordination** - Coordination on the elements contained in the ***NRE*** will be included in the Environmental Document. Coordination with federal, state and local regulatory agencies is necessary to the point that the environmental permits are achievable.

9.2.7 Permits for Wetland Impacts

FDOT is required to obtain authorization for wetland impacts pursuant to state and federal regulatory requirements. Refer to ***Part 1, Chapter 12, Environmental Permits*** for more information regarding FDOT procedures for obtaining permits and providing wetland mitigation.

9.2.8 Re-evaluation

Change in wetland impacts or mitigation strategies after approval of the Environmental Document must be documented per ***Part 1, Chapter 13, Re-evaluations***.

9.2.9 Design and Construction

Wetland impacts and mitigation established during the PD&E Study and/or agency coordination must be addressed through the permitting process. Wetland impact review during Design and permit compliance during Construction consists of the following:

1. Plans Received - Review for completeness; identify/confirm project limits.

2. Field Review - Conduct on-site field review(s) with appropriate professionals to confirm existing wetland resources within project limits that are addressed in the plans.

3. Regulatory Agency Coordination and Permitting - The District coordinates with regulatory agencies. Review mitigation specific to wetlands and coordinate with appropriate environmental staff to ensure wetland mitigation is addressed.

4. Impact Review - Review plans and provide comments on wetlands that were identified and resolutions that should be coordinated with appropriate regulatory agencies or incorporated into the contract documents.

5. Bid Document Review - Verify that completed final design plans and specifications incorporate required mitigation into the bid documents, as applicable.

6. Compliance during Construction - The Construction Office verifies compliance with permit conditions and commitments, as appropriate.

7. Construction Final Acceptance - Ensure that the wetland mitigation, as appropriate, is addressed as specified in the contract plans, including modifications approved during construction. This is done by the Construction Office, but may require the Environmental Office involvement (***Construction Project Administration Manual (CPAM), Topic No. 700-000-000, Chapter 12, Section 12.1***). Permit and mitigation sign-off is done through a separate process with the regulatory agency.

The District should verify regulatory compliance as the project advances. Additional minimization actions can be conducted during the project Design phase. These additional actions may need to be addressed in permitting.

9.3 REFERENCES

Chapter 62-340 Florida Administrative Code (F.A.C), Delineation of the Landward Extent of Wetlands and Surface Waters

Chapter 62-345 F.A.C., Uniform Mitigation Assessment Method

Chapter 373 Part IV, F.S., Water Resources. Management and Storage of Surface Waters. http://www.flsenate.gov/Laws/Statutes/2016/Chapter373/Part_IV

Clean Water Act of 1972, https://www.govinfo.gov/content/pkg/STATUTE-86/pdf/STATUTE-86-Pg816.pdf

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Federal Register, Vol. 65, No. 251, December 29, 2000. Mitigation of Impacts to Wetlands and Natural Habitat. 23 CFR Part 777. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-777?toc=1

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Presidential Executive Order 11990, Protection of Wetlands, May 23, 1977. https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Req-EO11990wetlands.pdf

Rivers and Harbors Act of 1899

Section 373.4137, F.S., Mitigation Requirements for Specified Transportation Projects. http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0373/Sections/0373.4137.html

Title 33 CFR § 320.4, General Policies for Evaluating Permit Applications. http://www.ecfr.gov/cgi-bin/text-idx?SID=2bd9905827b72ddd21ecf34c76714286&mc=true&node=pt33.3.320&rgn=div5#se33.3.320_14

Title 33 CFR Part 325, Processing of Department of the Army Permits. http://www.ecfr.gov/cgi-bin/text-idx?SID=2bd9905827b72ddd21ecf34c76714286&mc=true&node=pt33.3.325&rgn=div5

Title 33 CFR Part 328, Definition of Waters of the United States. http://www.ecfr.gov/cgi-bin/text-idx?SID=2bd9905827b72ddd21ecf34c76714286&mc=true&node=pt33.3.328&rgn=div5

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USACE, Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region. Version 2.0, November 2010. https://usace.contentdm.oclc.org/utils/getfile/collection/p266001coll1/id/7594

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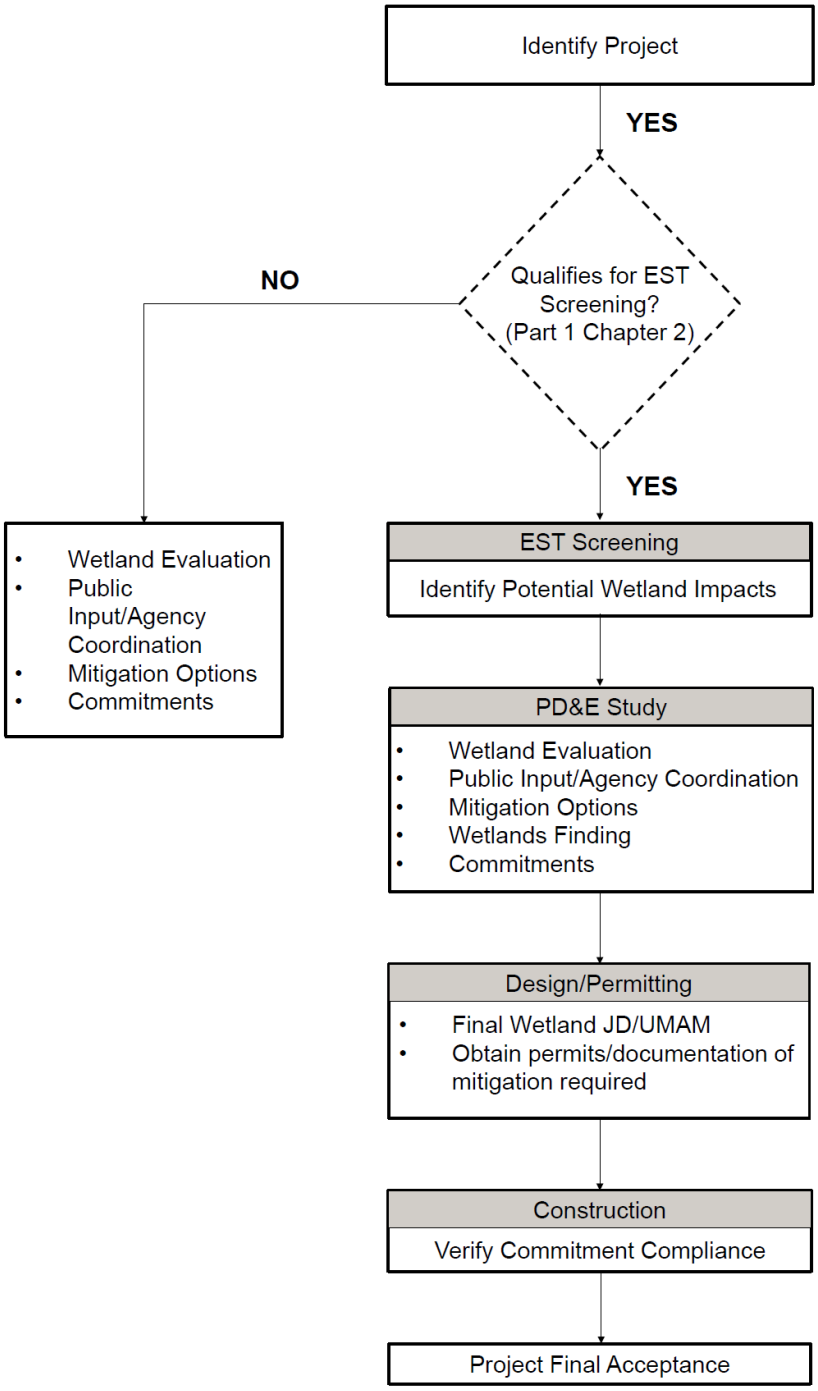

Figure 9-1 Wetland Evaluation Process

Florida Department of Environmental Protection:

https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking

Water Management Districts:

Northwest Florida

https://nwfwater.com/Water-Resources/Regional-Wetland-Mitigation-Program/

Southwest Florida

https://www.swfwmd.state.fl.us/

St. Johns River

http://webapub.sjrwmd.com/agws10/mt/Default.htm

South Florida

https://www.sfwmd.gov/doing-business-with-us/mitigation-program

Suwannee River

https://www.mysuwanneeriver.com/

United States Army Corps of Engineers:

https://ribits.ops.usace.army.mil/ords/f?p=107:2

Figure 9-2 FDEP, WMDs, and USACE Mitigation Information

PART 2, CHAPTER 11

WATER RESOURCES

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PART 2 CHAPTER 11

WATER RESOURCES

11.1 OVERVIEW

This chapter provides procedures for assessing and documenting potential impacts to water resources from transportation projects to comply with the ***National Environmental Policy Act (NEPA)***, the ***Clean Water Act (CWA)***, and other related federal and state environmental laws and regulations. The ***CWA*** is the primary law regulating pollution of the nation's waterways. Originally enacted in 1948 as the ***Federal Water Pollution Control Act***, it was amended in 1972 under the ***CWA*** to add programs for water quality improvements with the goal of restoring and maintaining the chemical, physical, and biological integrity of the country's water ***[33 United States Code (U.S.C)] § 1251 et seq)***. The ***CWA*** became the Act's common name with the amendments in 1972. The ***CWA*** made it unlawful to discharge any pollutant from a point source into navigable waters unless a permit was obtained. Additionally, the Environmental Protection Agency (EPA) has set water quality standards for contaminants in surface waters. In Florida, the Florida Department of Environmental Protection (FDEP) and five regional Water Management Districts (WMDs) implement the ***CWA*** programs under ***Chapters 403*** and ***373, Florida Statutes (F.S.)***.

Section 403.021(2), F.S., declares that it is public policy of the state to conserve the waters of the state and to protect, maintain, and improve their quality. Even though state surface water quality standards applicable to waters of the state do not apply within a stormwater management system, as provided by ***Section 373.4142, F.S.***, as long as the stormwater management system is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit, this statute does require Florida Department of Transportation (FDOT) to provide reasonable assurance that the water quality within its stormwater management system will not adversely impact public health, fish and wildlife, or adjacent waters. Therefore, FDOT projects are evaluated for potential impacts on water quality from stormwater runoff and are designed to address and mitigate impacts from stormwater runoff through compliance with stormwater management plans and applicable regulatory requirements. ***Section 373.4596, F.S.***, requires FDOT projects to fully comply with state, WMD, and, when delegated by the state, local government stormwater management programs.

Additionally, this chapter provides guidance on documenting water resource information and coordinating with water resource agencies and other stakeholders. The chapter does not cover impacts to wetlands and other surface waters not related to stormwater. See ***Part 2, Chapter 9, Wetlands and Other Surface Waters*** for wetland evaluation procedures.

The term "water resources" used throughout this chapter includes both surface and groundwater resources such as, aquatic preserves, Outstanding Florida Waters (OFWs),

and Sole Source Aquifers (SSA). Water resource analysis also includes identification of impaired waters. The level of water quality analysis depends upon the extent of potential impacts of a proposed project on surface and/or groundwater resources. Specifically, the impacts covered in this chapter are related to direct and indirect stormwater discharges from transportation projects into surface water (other than wetlands) and groundwater.

11.1.1 Definitions

Aquatic Preserves – are state-owned sovereign submerged lands in areas which have exceptional biological, aesthetic, and scientific value, as described in ***Section 258.39, F.S.***

Basin Management Action Plan (BMAP) – a comprehensive plan, coordinated by the FDEP, of regulatory and non-regulatory actions to meet the Total Maximum Daily Load (TMDL) for a given waterbody. BMAPs are designed to implement restoration strategies that reduce pollutant concentrations to meet a TMDL.

Designated Uses – the present and future most beneficial use of a body of water as designated by the Environmental Regulation Commission by means of the Waterbody Classification.

Environmental Regulation Commission – The Florida Environmental Regulation Commission is a non-salaried, seven-member board created by the Legislature as a part of the FDEP. The Florida Environmental Regulation Commission is charged with setting statutorily specified air and water quality standards by evaluating their scientific and technical validity, economic impacts, and risks and benefits to the public and Florida's natural resources.

FDEP Group Number – the number and name assigned to waterbodies and water segments by FDEP, based on watersheds/basins that have been developed for the state and that form the basis for Basin Rotation.

Hydrologic Unit Code (HUC) – the hydrologic cataloging unit assigned to a geographic area representing a surface watershed drainage basin. Each hydrologic unit is assigned a two-digit to 12-digit number that uniquely identifies each of the six levels of classification within six two-digit fields.

Impaired Waters – surface waters that do not meet the standards set for them are determined to be "impaired" and in need of restoration. Using data from assessments, FDEP maintains a verified list of impaired Florida waterbodies. The statewide comprehensive verified list of impaired waters contains waterbody-parameter combinations that have been verified as impaired based on criteria and assessment methodologies in ***Chapters 62-302*** and ***62-303***, ***Florida Administrative Code (F.A.C.)***.

Municipal Separate Storm Sewer System (MS4) – a publicly-owned conveyance or system of conveyances, such as roads with stormwater systems, municipal streets, or catch basins, that are designed or used for collecting or conveying stormwater that discharges into surface waters of the state.

Nonpoint Source – any pollutant source that cannot be considered a "point source" according to the ***CWA*** and EPA regulations. Nonpoint source pollution generally results from stormwater runoff, precipitation, atmospheric deposition, or seepage.

Numeric Nutrient Criteria (NNC) – statewide numeric nutrient standards for Florida's waters (including springs, rivers, lakes and estuaries but excluding wetlands, tidal creeks, managed conveyances and south Florida flowing waters) established under ***Chapter 62-302.531, F.A.C.*** and ***Chapter 62-302.532, F.A.C.***

Outstanding Florida Waters (OFWs) – waterbodies designated by the Environmental Regulation Commission as worthy of special protection because of their natural attributes. This special designation is applied to certain waters and is intended to protect existing good water quality. ***(Chapter 62-302.700, F.A.C.)***

Outstanding National Resource Waters (ONRWs) – waterbodies designated by the Environmental Regulation Commission that are of such exceptional recreational or ecological significance that water quality should be maintained and protected under all circumstances.

Point Source – any discernable, confined, and discrete conveyance from which pollutants may be discharged, such as a pipe, vessel, channel, or ditch.

Potable Water Well – any water well which supplies water for human consumption to a community water system or to a non-transient non-community water system. ***(Chapter 62-521, F.A.C.)***

Reasonable Assurance Plan (RAP) or 4b Plan – waterbody restoration plan for waterbodies that are impaired but with control programs already in place to restore water quality standards.

Site Specific Alternative Criteria (SSAC) – an alternative surface water quality standard that can replace the criteria applicable statewide in cases where site specific information supports different numeric criteria. The SSAC must fully support and protect the designated uses of the waterbody.

Sole Source Aquifer (SSA) – an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer ***[Title 40 Code of Federal Regulation (CFR) § 149]***. These areas may have no alternative drinking water source(s) that could physically, legally, and economically supply all those who depend on the aquifer for

drinking water. EPA has identified two SSAs in Florida, the Volusia-Floridan and Biscayne Aquifers.

Special Water – a waterbody demonstrated to be of exceptional recreational or ecological significance as listed in ***Chapter 62-302.700(9)(i), F.A.C.***

Total Maximum Daily Load (TMDL) – a scientific determination of the maximum amount of a given pollutant that a waterbody can absorb and still meet the water quality standards that protect human health and aquatic life. FDEP is responsible for the TMDL program.

Water Quality Criteria – elements of the state water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports the present and future most beneficial use, as listed in ***Chapter 62-302.200(41), F.A.C.***

Water Quality Standards – composed of designated present and future most beneficial uses (classification of waters), the numerical and narrative criteria, including Site Specific Alternative Criteria, applied to the specific water uses or classification, the Florida anti-degradation policy, and the moderating provisions, such as variances, mixing zone rule provisions, or exemptions, as listed in ***Chapter 62-302.200(42), F.A.C.***

Waterbody Classification – a classification of surface waters of the state according to designated use as established by ***Chapter 62-302.400, F.A.C.***, as follows:

Class I	Potable Water Supplies
Class II	Shellfish Propagation or Harvesting
Class III	Fish Consumption; Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife
Class III-Limited	Fish Consumption; Recreation or Limited Recreation; and/or Propagation and Maintenance of a Limited Population of Fish and Wildlife
Class IV	Agricultural Water Supplies
Class V	Navigation, Utility, and Industrial Use

Waterbody Identification Number (WBID) – unique identifiers assigned to polygons that roughly delineate the drainage basins surrounding the waterbody assessment units (drainage basins, lakes, lake drainage areas, springs, rivers and streams, segments of rivers and streams, coastal, bay, and estuarine waters in Florida). WBIDs are assigned an FDEP district as part of their attribution. Projects can be in more than one WBID.

Wellhead Protection Area – an area consisting of a 500-foot radial setback distance around a potable water well where groundwater is provided the most stringent protection measures to protect the groundwater source for a potable water well and includes the surface and subsurface area surrounding the well. ***(Chapter 62-521, F.A.C.)***

11.2 WATER RESOURCES

Identifying and addressing potential water resource impacts associated with a transportation project first involves identifying water resources in the project area. See ***Table 11-1*** for links to water resource information.

The list of Sole Source Aquifers (SSAs) in Florida is maintained by the EPA. There are two SSAs in Florida: Biscayne Sole Source Aquifer and Volusia-Floridan Sole Source Aquifer. Recharge zones should also be identified.

Identifying and addressing water resource impacts associated with transportation projects also involves engaging various state and federal agencies, as well as other local and regional stakeholders. Coordination requirements specific to the resource, is discussed in the following sections ***(Section 11.2.1*** through ***Section 11.2.4)***. Coordination may begin as early as the Planning phase and Efficient Transportation Decision Making (ETDM) process including using the Watershed Approach to Evaluating Regional Stormwater Solutions (WATERSS) process and tools (see ***Part 2, Chapter 3, Engineering Analysis*** and ***Part 2, Chapter 3A, Alternative Analysis***). The goal of early coordination is to proactively identify potential water quality and stormwater requirements and to explore opportunities for innovative stormwater solutions or joint/regional stormwater management projects with stakeholders.

The District's Project Development and Environment (PD&E) Project Manager should document coordination efforts internally and with external stakeholders and agencies, as well as areas of potential cooperation and/or agreements in the ***Pond Siting Report (PSR), Stormwater Management Alternatives Report (SMARt)***, and/or the ***Preliminary Engineering Report (PER)*** for future follow up as the project progresses into the Design phase.

11.2.1 Aquatic Preserves

Section 258.37, F.S., defines aquatic preserve as "an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition". The Florida Legislature, through the ***Florida Aquatic Preserve Act of 1975 (Act), Sections 258.35 – 258.394*** and ***258.40 - 258.46, F.S.***, set aside state-owned submerged lands with exceptional biological, aesthetic, and scientific value as aquatic preserves. The Board of Trustees of the Internal Improvement Trust Fund through the FDEP Division of State Lands is responsible for the implementation, administration, and enforcement of the ***Act***, including the adoption of rules for management of aquatic preserves as found in ***Chapter 18-20, F.A.C.***

Most of the aquatic preserves are located along the coast and involve marine or estuarine environments, with the exception of a few aquatic preserves which are located inland. Many of the aquatic preserves are associated with state or federal parks and refuges. Generally, aquatic preserves designated under ***Chapter 258, F.S.***, are also considered OFWs under ***Rule 62-302.700(2)(f), F.A.C.*** (***Section 11.2.3***).

For projects in an aquatic preserve, coordination with FDEP is needed if potential impacts to an aquatic preserve have been identified [e.g., sovereign submerged lands, right of way (ROW), in-water work]. Once ROW requirements have been defined, aerial maps depicting alternatives with ROW located within the boundary of an aquatic preserve are submitted to FDEP for review and comment. They are addressed to:

Director, Office of Resilience and Coastal Protection
Florida Department of Environmental Protection
2600 Blair Stone Road
Mail Station 235
Tallahassee, FL 32399-2400

A letter requesting a response from FDEP within 30 days accompanies the aerials. This letter must contain the ***NEPA*** Assignment standard statement for FDOT Federal Projects (see ***Part 1, Chapter 4, Project Development Process***).

11.2.2 Impaired Waters

Stormwater treatment systems located within a Hydrologic Unit Code (HUC) 12 sub-watershed which contains an impaired water, and located upstream of that impaired water, are subject to stricter water quality requirements of ***Chapter 62-330, F.A.C.*** and the ***Environmental Resource Permit (ERP) Applicant's Handbook Volume I***.

Using data from assessments, FDEP maintains a verified list of impaired waterbodies. The impairments are separated into the following assessment categories:

1 Attains all designated uses.

2 Attains some designated uses and insufficient or no information or data are present to determine if remaining uses are attained.

3a No data and information are present to determine if any designated use is attained.

3b Some data and information are present but not enough to determine if any designated use is attained.

3c Enough data and information are present to determine that one or more designated uses may not be attained according to the Planning List methodology.

4a Impaired for one or more designated uses but does not require Total Maximum Daily Load (TMDL) development because a TMDL has already been completed.

4b Impaired for one or more designated uses but does not require TMDL development because the water will attain water quality standards due to existing or proposed measures.

4c Impaired for one or more criteria or designated uses but does not require TMDL development because impairment is not caused by a pollutant.

4d Waterbody indicates non-attainment of water quality standards, but FDEP does not have enough information to determine a causative pollutant; or current data show a potentially adverse trend in nutrients or nutrient response variables; or there are exceedances of stream nutrient thresholds, but FDEP does not have enough information to fully assess non-attainment of the stream nutrient standard.

4e Waterbody indicates non-attainment of water quality standards and pollution control mechanisms or restoration activities are in progress or planned to address non-attainment of water quality standards, but FDEP does not have enough information to fully evaluate whether proposed pollution mechanisms will result in attainment of water quality standards.

5 Water quality standards are not attained and a TMDL is required.

Section 303(d) of the CWA requires states to identify waters where current pollution control technologies alone cannot meet the water quality standards set for that waterbody. Every two years, states are required to submit a list of impaired waters, plus any waters that may soon become impaired, to the EPA for approval. The impaired waters are prioritized based on the severity of the pollution and the designated use of the waterbody (e.g., fish propagation or human recreation). States must establish the TMDLs of the pollutant(s) in the waterbody for impaired waters on their respective lists.

The ***Florida Watershed Restoration Act (FWRA),*** which is codified at ***Section 403.067, F.S.***, was enacted to protect waters of the state through the TMDL program as required by ***Section 303(d) of the CWA*** and ***33 U.S.C. § 1251***. The TMDL program promotes improvements in water quality by coordinating pollution control from both point and nonpoint sources. TMDLs are adopted for waters identified as impaired by FDEP in accordance with ***Chapter 62-303, F.A.C.***, also known as the ***Impaired Waters Rule (IWR)***. TMDLs are adopted by law in ***Chapter 62-304, F.A.C.*** TMDLs may be implemented through Basin Management Action Plan (BMAPs), National Pollutant Discharge Elimination System (NPDES) permits, or through other pollution reduction strategies.

BMAPs are developed under ***Section 403.067, F.S.***, with local stakeholders, including FDOT. The BMAP implementation and updates provide opportunities for local stakeholders and FDOT to seek joint/regional water quality projects.

The list of TMDLs and their BMAPs can be found on the FDEP ***Basin Management Action Plans Website*** (see link in ***Section 11.4***). Projects that are located within a BMAP boundary or within the HUC12 basin of an impaired waterbody with established TMDLs are subjected to stricter water quality requirements of ***Chapter 62-330, F.A.C*** and the ***ERP Applicant's Handbook Volume I***. The District Project Manager should coordinate with the Drainage and Environmental Permits Coordinator to confirm the applicable criteria/requirements. Examples of BMAP activities are permit limits on wastewater facilities, urban and agricultural best management practices, stormwater best management practices, conservation programs, financial assistance, and revenue generating activities.

FDEP implements Reasonable Assurance Plans (RAPs) to restore waterbodies to meet their designated uses. Implementation of RAPs alleviates the need to establish TMDLs. ***Rule 62-303.600, F.A.C.***, allows FDEP to delist impaired waters if pollution control programs, such as RAPs, are being implemented to restore water quality standards. FDEP's decision to adopt a RAP shall be based on reasonable assurances that the proposed pollution control mechanism and expected water quality improvements will attain applicable water quality standards. Adopted RAPs can be found on the FDEP ***RAPs Category 4b Assessments and Documentation Website*** (see link in ***Section 11.4***). It is important to note that the BMAP and RAP boundaries generally encompass a larger area than the TMDL or impaired waterbody.

If the project is located within a BMAP or RAP area, the District should first coordinate with the District NPDES Permit Coordinator and also coordinate with BMAP/RAP stakeholders to understand FDEP and local concerns. Coordination may also identify the level of water quality evaluation needed, additional stakeholders, permitting needs, project commitment for nutrients reductions, and whether any potential regional water resource improvement opportunities exist for the project. FDOT is an active stakeholder for the BMAPs and RAPs within their jurisdiction under the District NPDES Permit Coordinator. Coordination should occur with the District NPDES Permit Coordinator on projects located within a BMAP and/or RAP and results documented in accordance with ***Section 11.3.5.4***.

11.2.3 Outstanding Florida Waters

Section 403.061(27), F.S., grants FDEP rulemaking authority to establish a special category of waterbodies within the State, to be designated as OFWs, which shall be worthy of special protection because of their natural attributes. OFWs are listed in ***Rule 62-302.700(9), F.A.C.***, which include:

(a) Waters within National Parks and National Memorials

(b) Waters within National Wildlife Refuges

(c) Waters within State Parks, State Wildlife Parks, and State Recreation Areas

(d) Waters within State Ornamental Gardens, State Botanical Sites, State Historic Sites, and State Geological Sites

(e) Waters within State Preserves, State Underwater Archaeological Preserves, and State Reserves

(f) Waters within Areas Acquired through Donation, Trade, or Purchased Under the Environmentally Endangered Lands Bond Program, Conservation and Recreation Lands Program, Land Acquisition Trust Fund Program, and Save Our Coast Program

(g) Waters within National Seashores

(h) Waters within State Aquatic Preserves

(i) Special Waters

Stormwater treatment systems located within a HUC 12 subwatershed containing an OFW and located upstream of that OFW, are subject to stricter water quality requirements of ***Chapter 62-330, F.A.C.*** and the ***ERP Applicant's Handbook Volume I***.

Coordination with FDEP is needed if OFW impacts have been identified on projects that are not a Type 1 Categorical Exclusion (CE) or Non-Major State Action (NMSA). Once ROW requirements have been defined, aerial maps depicting alternatives with ROW located within the OFW boundary are submitted to FDEP for review and comment.

A letter requesting a response from FDEP within 30 days accompanies the aerials. This letter must contain the ***NEPA*** Assignment standard statement for FDOT Federal Projects.

Submittals are addressed to:

Director, Office of Resilience and Coastal Protection
Florida Department of Environmental Protection
2600 Blair Stone Road
Mail Station 235
Tallahassee, FL 32399-2400

After coordination with FDEP, documentation of any anticipated impacts to the OFW is provided in accordance with ***Section 11.3.5.2***.

11.2.4 Sole Source Aquifer

The list of SSAs in Florida is maintained by the EPA. There are two SSAs in Florida: Biscayne Sole Source Aquifer and Volusia-Floridan Sole Source Aquifer.

When a project has the potential to impact a SSA, the District must coordinate with EPA's Region 4 Ground Water and Underground Injection Control (UIC) Section to obtain EPA concurrence with ***Section 1424(e) of the Safe Drinking Water Act (SDWA)*** and ***40 CFR § 149***.

Projects with federal funding located within the boundaries of designated SSA must be planned and designed to ensure they will not contaminate the aquifer. During the PD&E Study, the District coordinates with EPA's Region 4 for evaluation and concurrence using the ***EPA Region 4 Sole Source Aquifer Project Review Form***. Concurrence is documented in an email from EPA Region 4, which serves as the official record of the EPA decision. The District should respond to EPA's inquiries, comments, or mitigation measures before the Environmental Document is finalized.

Projects excluded from EPA review under SSA program include those that are funded entirely by state, local, or private entities.

11.3 PROCEDURE

Project impacts to water resources must be evaluated and documented, regardless of whether the project is required to meet federal and/or state environmental review requirements. The evaluation should include the information necessary to estimate potential impacts to water resources as part of the project development process in compliance with the goals and requirements of the ***CWA***, ***Chapter 373, F.S.***, and ***Chapter 403, F.S.***

11.3.1 Level of Assessment Determination

The level of assessment for water resources depends on the project's involvement with water resources, the quality of the water resources, potential impacts, and the potential implementation of non-traditional water quality treatments. If the project is located in, over, or adjacent to a water resource designated as an OFW, aquatic preserve, impaired waters, or SSA, additional assessment may be needed.

In accordance with ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***, qualifying projects must complete an ETDM Programming Screen; these projects may have also completed a prior ETDM Planning Screen. The following items should be addressed as the projects advance through either screening type and the project development process:

1. **ETDM Planning Screen Evaluation** – In the Preliminary Environmental Discussion (PED), the District may provide a discussion about known potential project involvement with surface waterbodies and groundwater resources and their designations in accordance with ***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***. The District identifies water resources

located within the project area using online resources maintained by the FDEP and WMDs, as well as other data sources.

Specific information identified during the screening may include:

a. Surface Water

1. Identification of surface waterbody to which stormwater discharges;
2. Any special designations of receiving waterbodies (e.g., OFW, impaired waters, Outstanding National Resource Waters (ONRW), aquatic preserve);
3. Waterbody Classification;
4. Whether the project is within a permitted Municipal Separate Storm Sewer System (MS4);
5. WBIDs in the project area and associated FDEP Group Number and name;
6. Listing status—whether the WBID is identified as impaired, has a TMDL or is located within a BMAP or RAP boundary;
7. The appropriate numeric nutrient standard for the waterbody, if applicable; and
8. If project directly discharges to a waterbody identified as impaired [including the pollutant(s) of concern, numeric nutrient standard, or TMDL (whichever applies)].
9. WMD in which the project is located;
10. Water Control Districts or Regional Water Authorities;
11. HUC 12 basin ID.

b. Groundwater

1. Groundwater recharge mechanism;
2. Identification of an SSA and the aquifer where the project is located;
3. Potentially affected springsheds and spring protection zones;
4. Whether the potentially affected spring has a TMDL, BMAP, or RAP plan; and
5. Water Control Districts or Regional Water Authorities with potable water well fields.

2. **ETDM Programming Screen Evaluation** – Whether or not a Planning Screen Evaluation has been completed, the information listed above in the Planning

Screen Evaluation is required to be included in the Programming Screen Evaluation. The District should include a discussion about potential project involvement with surface waterbodies and groundwater resources (based on the District's familiarity with the project area and information from the Planning Screen) in the PED and the Advance Notification (AN) Package, as appropriate. The District ETDM Coordinator and the District Project Manager should coordinate with other District staff, such as the District Drainage Engineer, District Environmental Permits Coordinator, and others who will be involved with the project in subsequent phases, to document pertinent information regarding affected water resources and to explore opportunities for stormwater management. The District should coordinate, as needed, with the Environmental Technical Advisory Team (ETAT) and other stakeholders throughout the ETDM screening process.

For projects that were screened through the ETDM process, water resource data as well as potential associated project impacts provided through ETAT comments, are presented in the ***Programming Screen Summary Report (ETDM Manual, Topic No. 650-000-002)***. The EST includes a WATERSS Analysis Tool to assist in the identification of Water Resources and areas of water quality concerns. The ***WATERSS Report*** specifically includes Geographic Information System (GIS) data and applicable maps that identify the proximity of the proposed action to aquatic preserves, impaired waters, OFWs, or SSAs. ETAT comments under the Special Designations topic should identify any potential project impacts to these resources. Comments by FDEP are especially important as they may identify potential project impacts on other issues such as Wetlands and Surface Waters, and Water Resources.

Detailed evaluations are generally not warranted for transportation projects not qualifying for ETDM screening (typically Type 1 CEs and NMSAs). These projects have no significant environmental effects; therefore, documentation of drainage considerations should be included in the appropriate checklist.

11.3.2 Existing Water Resource Conditions

The District identifies water resource basins or watershed boundaries where the project may have a direct impact on water quality and specific water resource characteristics within the basins. Data to evaluate potential water resources within the project area can be obtained from various sources such as the EST, FDEP and the relevant WMD websites, GIS water resource data, county and city water atlases, regional stormwater master plans, and flood studies. The District reviews the project area for innovative stormwater solutions or joint/regional opportunities by using the WATERSS process. Joint/regional stormwater management projects may require considerations beyond the project's immediate hydrologic basin boundary(ies) and preferred alternatives.

If a ***Programing Screen Summary Report*** is completed, the Project Development Engineer and/or the District Drainage Engineer should review the ETAT comments provided for the following resources: Water Quality and Quantity (including comments

pertaining to SSAs), Coastal and Marine, Wetlands and Surface Waters, Floodplains, and Special Designations. WATERSS comments related to innovative stormwater solutions or joint/regional opportunities suggested by ETAT members should also be reviewed. After comments are reviewed, the project's involvement is determined, water resources characteristics are identified, as well as any potential involvement. Information from the ETDM screening is used to scope the water quality and stormwater evaluation efforts during the PD&E Study. The Project Manager should discuss scoping activities with other offices such as Drainage, Maintenance, and with the District Permits Coordinator.

The Project Manager should coordinate with the District Drainage Office to determine any additional areas associated with pond siting, stormwater storage, hydrologic restoration, recharge or treatment. Coordination should also include the District Environmental Permits Coordinator, State Drainage Engineer, and NPDES Permit Coordinator to identify areas where pollutant load reduction efforts may be needed to meet requirements of ***Chapter 62-330, F.A.C*** and the ***ERP Applicant's Handbook Volume I***.

The ***Programing Screen Summary Report***, ETAT comments, and results from the coordination efforts are used to document the existing water resources and Special Designations affected by the proposed project. The detailed results of the water resources analysis are documented in the ***PSR*** and/or ***SMARt***, and summarized in the Water Resources section of the Environmental Document. If more than one project alternative is analyzed in detail, a water resources analysis is completed for each alternative and basin. The results of each alternative are then compared and documented in the ***Conceptual Drainage Report, PSR, SMARt, PER,*** and summarized in the Environmental Document (see ***Section 11.3.5.6***).

11.3.3 Water Quality Analysis

The water quality analysis is the analysis of potential project impacts on water quality and should be performed for each alternative when applicable. The purpose of the water quality analysis is, assess a project's potential impacts to identified water resources, identify and evaluate mitigation measures (if necessary), and document stakeholder coordination that has occurred. Water quality requirements and basin designations affect design criteria and may affect the stormwater pond and/or facilities' size requirements. Project impacts to an aquatic preserve, impaired waters, ONRW, OFW, or SSA must also be identified in the water quality analysis.

Information associated with the water quality analysis should be documented in the ***PSR***, ***Conceptual Drainage Report***, or ***SMARt***, and summarized in the ***PER***.

In addition to the ***PSR, Conceptual Drainage Report***, and/or ***SMARt***, the water quality analysis should be briefly summarized in the Environmental Document [Type 2 CE, Environmental Assessment (EA), Environmental Impact Statement (EIS), or State Environmental Impact Report (SEIR)], and uploaded to the project file in the SWEPT (see ***Section 11.3.5.6***).

11.3.4 Stormwater Impacts

Stormwater impacts associated with transportation projects are addressed with an ERP through FDEP, the respective WMD, or a delegated local program.

In accordance with ***Chapter 62-330.301, F.A.C.***, to obtain an approval of an ERP, FDOT must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the project:

a. will not cause adverse water quantity impacts to receiving waters and adjacent lands;

b. will not cause adverse flooding to off-site property;

c. will not cause adverse impacts to existing surface water storage and conveyance capabilities;

d. will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters;

e. will not adversely affect the quality of receiving waters such that the state water quality standards will be violated;

f. will not cause adverse secondary impacts to the water resources;

g. will not adversely impact the maintenance of surface or groundwater levels or surface water flows established pursuant to ***Section 373.042, F.S.;***

h. will not cause adverse impacts to a Work of the District established pursuant to ***Section 373.086, F.S.***;

i. will be capable, based on generally accepted engineering and scientific principles, of performing and functioning as proposed;

j. will be conducted by a person with the financial, legal, and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and,

k. will comply with any applicable special basin or geographic area criteria established in ***Chapter 62-330.301(1)(k), F.A.C.***

11.1.1.1 Federal and State Stormwater Regulations and Permits

FDOT projects must adhere to federal and state stormwater regulations. This section summarizes regulations and programs designed to improve water quality and address stormwater impacts associated with transportation projects. Refer to ***Part 1, Chapter 12,***

Environmental Permits for more information regarding FDOT procedures for obtaining environmental permits.

FDOT transportation projects involving the construction, alteration, operation, maintenance, repair, abandonment and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works including structures, dredging and filling located in, on or over wetlands or other surface waters as defined in ***Chapter 62-340, F.A.C.***, are governed by the ERP Program under ***Chapter 62-330, F.A.C.*** and ***Chapter 14-86, F.A.C.*** The ***ERP Applicant's Handbook Volume I*** includes statewide stormwater rule requirements. ERP requirements can vary among WMDs. Stormwater pond design criteria for slopes, berms, and clearances, found in the ***Drainage Manual, Topic Number 625-040-002***, are set to satisfy similar WMD pond design criteria.

Generally, ERP requirements regulate stormwater discharge leaving FDOT ROW. Typically, maximum post-development discharge is limited to no greater than pre-development discharge for the specified design storm events required by the WMD. However, in certain basins with historical flooding or limited stormwater conveyance infrastructure, WMDs require onsite development reductions from pre-development discharge. On FDOT transportation projects, ERPs are obtained prior to construction, typically when the drainage design is substantially complete (i.e., after Phase II design plans).

11.3.4.1 Existing Drainage Conditions

For each project alternative being evaluated in the PD&E Study, the existing drainage and water quality conditions should be identified and documented in the ***PSR***, ***Conceptual Drainage Report*** or ***SMARt***, as appropriate:

1. General drainage patterns near the project;
2. Description of the existing drainage basins with their respective outfalls (including information about name and size of basin and whether it is an open or closed basin);
3. The receiving waterbodies, their classifications and special designations (if appropriate);
4. Previous permit information—WMD's permits and drainage connection permits;
5. Base flood elevation, tidal information, Water Control District's control elevations, seasonal high-water table;
6. The land use within the project area;
7. Deficiencies in existing conditions—history of flooding, substandard clearances, scour/erosion problems;

8. The soil types within the project area;

9. Description of existing stormwater systems and stormwater management facilities including conveyance system; location and size of cross drains; location and description of bridges; location, type, and size of ponds; other stormwater facilities;

10. Known above or below ground contamination materials that have a potential to be impacted by the project and affect water quality;

11. Information regarding historical, archeological, and environmental resources that have the potential to be impacted by the drainage of the project;

12. Whether the project is within a permitted MS4;

13. WBIDs in which the project is located and associated FDEP Group Number and Name;

14. WMD in which the project is located;

15. Water Control Districts or Regional Water Authorities;

16. Listing status – whether the WBID is identified as impaired, has a verified TMDL, or is located within a BMAP/RAP boundary as listed by FDEP;

17. The appropriate numeric nutrient standard for the waterbody, if applicable;

18. If project directly discharges to a waterbody identified as impaired (including the pollutant(s) of concern, nutrient numeric criteria, or TMDL (whichever applies));

19. HUC 12 basin information;

20. Whether the project is directly discharging to an OFW;

21. Groundwater recharge mechanism;

22. Identification of the aquifer where the project is located;

23. Identification of SSA;

24. Potentially affected springsheds and spring protection zones;

25. Whether the potentially affected spring has a BMAP or RAP plan;

26. Whether the project is located within a well protection area or nearby; and

27. Water Control Districts or Regional Water Authorities with potable water well fields.

11.3.4.2 Proposed Drainage Conditions

For each project alternative being evaluated in the PD&E Study, the proposed drainage and water quality conditions should be identified and documented in the ***PSR***, ***Conceptual Drainage Report*** or ***SMARt***, as appropriate:

1. Description of the onsite drainage basins with their respective outfalls;
2. Discussion on how stormwater from offsite area will be handled;
3. WMD requirements for water quality treatment and the rate (or volume) discharge;
4. Pre- and post-development pollutant loading analysis per basin to meet the statewide stormwater rule requirements under ***Chapter 62-330 F.A.C.*** and the ***ERP Applicant's Handbook Volume I***;
5. Floodplain compensation requirements and estimated compensation volume;
6. General discussion of the preliminary proposed drainage (ditched, piped, ponds);
7. Approximate sizes and potential locations of Stormwater Management Facilities;
8. Approximate locations and sizes of cross drains (new and existing)— potential for ROW, including drainage or construction easements;
9. Treatment of existing cross drains (e.g., lengthened, type of end treatment, replaced, plugged);
10. Proposed new bridge structures;
11. Modifications to existing bridge structures;
12. Drainage related design variations;
13. Utility conflicts;
14. Canal rework or relocation; and
15. Potential effects to water quality associated with project construction and/or operations.

11.3.4.3 Regional Stormwater Management

The ***WATERSS Process Guidebook*** contains the steps needed to proactively identify and evaluate innovative stormwater management opportunities. WATERSS provides a framework for how FDOT can partner in innovative, cooperative, regional stormwater management solutions that can lead to improved environmental benefit and/or reduced

stormwater management costs. Coordination with regulatory agencies and stakeholders on stormwater management should begin in the Planning phase/ETDM process and continue through PD&E and Design phases.

Stakeholders, identified in the WATERSS process or through other means, may be able to provide information on current water quality or drainage concerns, possible innovative stormwater management solutions, and mitigation credit opportunities for the project. WATERSS solutions must be coordinated with other FDOT offices and personnel such as, Maintenance, the Environmental Office, Drainage, District Environmental Permits Coordinator, District NPDES Permit Coordinator, Legal, and others as needed.

11.3.4.3.1 Stormwater Management Alternatives Report

When the WATERSS process is followed, the results are documented in the ***SMARt***. The ***SMARt*** summarizes the stormwater activities and resulting strategy decisions in both the Planning and PD&E phases. The ***SMARt*** includes summaries of all coordination, the water quality analysis, drainage analysis results, all drainage alternatives considered, stormwater management, floodplain and environmental analysis, permit considerations, and legal agreements with stakeholders. The ***WATERSS Process Guidebook*** includes a ***SMARt*** template.

11.3.4.4 Pond Siting Analysis

Drainage and pond siting analyses conducted during the PD&E phase are dependent on the level of engineering and design analyses required for the PD&E Study. For stormwater ponds requiring ROW acquisition, a pond siting evaluation is required during the PD&E phase, in accordance with ***NEPA*** and as part of obtaining environmental clearances for the project.

At a minimum, the PD&E phase pond siting analysis should identify the following:

- Project's regulatory requirements
- General size and potential location of stormwater management facilities (ponds)
- Stormwater management facility options (e.g., detention, retention, infiltration)
- ROW needs
- Possible challenges that may affect the overall stormwater management approach
- Potential impacts to other environmental resources
- Construction and Maintenance considerations

- Contamination, geotechnical, and utility considerations
- Possible stormwater design concepts that mitigate stormwater runoff and meet regulatory requirements.
- Comparison of pond site alternatives and selection of the preferred alternative.

Stormwater pond design considerations during the PD&E Study include seasonal high groundwater table, soil permeability, tailwater, maintenance, constructability, aviation safety issues, attenuation (quantity control) and water quality treatment (quality control) regulatory requirements, including the special standards for OFWs and ONRWs set forth in ***Rule 62-4.242(2)*** and ***Rule 62-4.242(3), F.A.C.*** and wetland and protected species potential impacts.

When identifying the size and location of pond sites, it is important to consider the aesthetic qualities of stormwater management ponds. The ***FDOT Drainage Manual, Topic No. 625-040-002*** requires the design of stormwater management facilities to be consistent with the ***Landscape, Policy No. 000-650-011*** and integrated with existing and proposed landscaping and adjoining land uses. Location of ponds for the preferred alternative must be evaluated for potential impacts to the social, natural, cultural, and physical environment. The Project Team should first explore innovative opportunities such as regional facilities, joint facilities, and stormwater re-use systems, through the WATERSS process. See the ***WATERSS Process Guidebook*** for more information.

The pond siting analysis, including stormwater management facility type, size, location, and cost are documented in detail in the ***PSR*** and/or ***SMARt*** and summarized in the ***PER*** and in the Water Resources section of the Environmental Document (see ***Section 11.3.5.6***). More information on the ***PSR*** can be found in the ***Section 5 of the Drainage Manual*** and ***Chapter 9 of the FDOT Drainage Design Guide***.

The ***PSR*** should be organized into headings and subheadings that clearly delineate the information analyzed in the pond siting analysis. Refer to the ***WATERSS Process Guidebook***, ***Appendix D*** for a sample ***PSR*** report template. The cover page should be prepared using the ***Technical Report Cover Sheet Requiring Professional Engineer (PE) Signature, Form No. 650-050-38b*** and be signed and sealed by a professional engineer in accordance with ***Chapter 471, F.S.***

Refer to the ***WATERSS Process Guidebook*** for the ***SMARt*** report template.

11.3.4.5 Conceptual Drainage Design

A ***PSR*** might not be warranted for projects in an urban core area where adjacent land is fully developed and there are no ROW needs. In such cases, a ***Conceptual Drainage***

Design Report is prepared to document a preliminary drainage analysis and data that will support drainage design in the Design phase. The contents for the ***Conceptual Drainage Design Report*** are typically expanded during the Design phase when the stormwater management systems are designed in detail.

The ***Conceptual Drainage Design Report*** should have headings and subheadings to effectively delineate the sections appropriate to the level of analysis. The cover page should be prepared using the ***Technical Report Cover Sheet Requiring PE Signature, Form No. 650-050-38b*** and be signed and sealed by a professional engineer in accordance with ***Chapter 471, F.S.***

11.3.5 Environmental Document

Data collection, existing and proposed conditions, impacts to water resources (including aquatic preserves, impaired waters, or OFWs), and the drainage analysis are all summarized in the appropriate section of the Environmental Document.

11.3.5.1 Documentation of Aquatic Preserves

If a project is located in an Aquatic Preserve it is documented in the Environmental Document whether there are impacts or not.

No Impacts to Aquatic Preserve(s)

For Type 1 CE or NMSA projects located in an aquatic preserve which will have **no impact** on the aquatic preserve, a copy of the FDEP coordination letter(s) (if applicable) should be uploaded into the project file in SWEPT.

For a Type 2 CE, EA, EIS, or SEIR located in an aquatic preserve, which will have **no impact** on the aquatic preserve, the following standard statement is included in the Aquatic Preserves section of the Environmental Document.

> *This project is within the boundaries of (Name of Aquatic Preserve). After coordination with the Florida Department of Environmental Protection, it has been determined that the project will not have an impact on the (Name of Aquatic Preserve).*

Coordination with FDEP should also be discussed in the Environmental Document. The ***FDEP Aquatic Preserves Correspondence Letter*** should be referenced, uploaded to the SWEPT project file, and included in the Appendix. It is recommended that it be saved in the Aquatic Preserves and Outstanding Florida Waters folder within SWEPT.

Impacts to Aquatic Preserve(s)

For a Type 1 CE or NMSA **with impacts** to an aquatic preserve, they would be addressed during permitting.

For a Type 2 CE, EA, EIS, or SEIR **with impacts** to an aquatic preserve, the following information should be included in the Aquatic Preserves section of the Environmental Document:

- Identification of the aquatic preserve affected including the location of that part of the project that may affect the aquatic preserve on a figure or map,
- Discussion of the extent of potential impacts to the aquatic preserve,
- An assessment of the impacts that the proposed project will have on the aquatic preserve,
- Discussion on why there is no practicable alternative to location the project inside the aquatic preserve,
- Identification of measures to minimize harm to the aquatic preserve,
- Identification of permits needed and appropriate permitting agencies,
- The results of coordination with appropriate agencies having jurisdiction over the aquatic preserve,
- Resolution of ETAT comments.

The ***FDEP Aquatic Preserves Correspondence Letter*** and any other correspondence should be referenced, uploaded to the SWEPT project file, and included in the Appendix. It is recommended that correspondence be saved in the Aquatic Preserves and Outstanding Florida Waters folder within SWEPT.

11.3.5.2 Documentation of Outstanding Florida Waters

If a project is located in an OFW it is documented in the applicable Environmental Document.

For a Type 1 CE or NMSA located in an OFW, a copy of the FDEP coordination letter(s) (if applicable) should be uploaded into the project file in SWEPT.

For a Type 2 CE, EA, EIS, or SEIR located in an OFW, the following information should be included in the Outstanding Florida Waters section of the Environmental Document:

- Identification of the OFW and a map or figure showing how it relates to the project,

- Resolution of related ETAT comments,
- Potential impacts to OFWs that can be evaluated prior to permitting, including potential treatment strategies.

The results of the assessment and discussion of coordination with FDEP should be included in the Outstanding Florida Waters section of the Environmental Document. Correspondence with FDEP should be referenced, uploaded to the SWEPT project file, and included in the Appendix. It is recommended that this correspondence be saved in the Aquatic Preserves and Outstanding Florida Waters folder within SWEPT.

11.3.5.3 Section 4(f) and/or Section 6(f) Applicability

Aquatic Preserves and OFWs with park, recreation, or refuge purposes, or which contain a significant historic resource site, may be protected by ***Section 4(f)*** and/or ***Section 6(f)*** depending on the ownership, funding source, and manner in which they are administered by the managing agency. ***Section 4(f)*** defines this type of resources as multiple-use properties or facilities under ***23 CFR § 774.11(d)***. ***Section 4(f)*** only applies to those portions of multiple-use properties which are designated by statute, or identified in the official management plan, as providing park or recreational purposes, functioning as wildlife and waterfowl refuges, or which are significant historic sites. Coordination with the Official with Jurisdiction (OWJ) will identify the activities, features, and attributes which are protected under ***Section 4(f)*** as well as the significance of the activities, features, and attributes in consideration of the primary purpose of the aquatic preserve or OFW. Establishing the primary purpose of the property is especially important in the absence of distinct activity areas where functions or purposes coexist in the same space. See ***Part 2, Chapter 7, Section 4(f) Resources*** for more information on ***Section 4(f)*** applicability.

Project interaction of park and recreational properties funded wholly or in part under ***Section 6(f) of the Land and Water Conservation Fund Act (LWCFA) (16 U.S.C. § 4601-4 et seq., 36 CFR § 59)***, as well as other federal and state encumbrances and requirements may overlap with ***Section 4(f)***.

Coordination with the District Environmental Manager is needed on projects that include aquatic preserves and OFWs that may be considered protected by ***Section 4(f)*** and/or ***Section 6(f)***. The District should determine if the aquatic preserve or OFW in question is a multiple-use facility as defined by ***23 CFR § 774.11(d)*** and assess the project interaction location in consideration of that area's purpose or function within the aquatic preserve or OFW. OEM subject matter experts should be contacted if there are any questions in determining ***Section 4(f)*** or ***Section 6(f)*** project interaction with a multiple-use facility. A brief summary of results of the assessment and ***Section 4(f)*** and/or ***Section 6(f)*** findings should be included in the Aquatic Preserves or Outstanding Florida Waters section of the Environmental Document, with references to the ***Section 4(f)*** and or ***Section 6(f)*** sections of the Environmental Document.

11.3.5.4 Documenting Impaired Waters

If a project may impact an impaired water resource, it is documented in the applicable Environmental Document.

A Type 1 CE or NMSA should verify that the project does not involve significant impacts on impaired water resources. See ***Part 1, Chapter 5, Categorical Exclusion*** and ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery*** for more guidance.

For a Type 2 CE, EA, EIS, or SEIR the following information should be included in the Water Resources section of the Environmental Document:

- Identification of the impaired waters and a map or figure showing how it relates to the project,
- Resolution of related ETAT comments,
- Identification of potential impacts to impaired waters that can be evaluated prior to permitting, including potential treatment strategies.
- A Summary of the major elements of the water quality analysis
- Documentation of the results of coordination meetings and, when applicable, commitments are included in the Commitments section.

11.3.5.5 Documenting Sole Source Aquifer Project Review

For a Type 2 CE, EA, or EIS, comments raised by EPA should be addressed in the Sole Source Aquifer section of the Environmental Document, and when applicable, avoidance or minimization measures documented in the Commitments section. The results of coordination meetings should also be summarized in the Environmental Document.

If received, the ***Sole Source Aquifer EPA Concurrence Email*** is referenced, included in the Appendix of the Environmental Document, and uploaded to the SWEPT project file. It is recommended that it be saved in the Water Quality and Quantity folder within SWEPT.

11.3.5.6 Documenting Water Quality and Quantity

The water quality and water quantity requirements are verified as follows:

A Type 1 CE or NMSA should verify that the project does not involve significant impacts on water resources. See ***Part 1, Chapter 5, Categorical Exclusion*** and ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery*** for more guidance.

For a Type 2 CE, EA, EIS, or SEIR, major elements of the water quality analysis should be identified and the ***PSR*** and/or ***SMARt*** are summarized in the Water Resources section

of the Environmental Document. A statement should be included that states whether the project will meet the WMD regulatory criteria for attenuation (quantity control) and water quality treatment (quality control). The results of coordination meetings should be documented in the Water Resources section and, when applicable, the Commitments section. It is recommended that correspondence be saved in the Water Quality and Quantity folder within SWEPT.

11.3.5.7 Commitments

Water resource commitments may be related to BMAP/RAP commitments, WATERSS, stakeholder commitments, or actions/activities required to advance the project and/or required during construction. Commitments may include the retrofitting of structures to increase water quality treatment, building of water quality improvement features, hydrologic enhancement, recharge or reuse projects, or continued coordination with water resource agencies or other stakeholders. Commitments must be coordinated with other offices in the District prior to inclusion in the Environmental Document to ensure commitments are feasible. See FDOT's ***Standard Environmental Commitments Guidance***.

Commitments related to water resource issues made by the FDOT should be included in the Environmental Document consistent with ***Part 2, Chapter 22, Commitments*** and transmitted to the next phase of project development in accordance with ***Procedure No. 650-000-003, Project Commitment Tracking***.

11.3.6 Re-evaluation

Changes to the project which may affect impacts to water resources after approval of the Environmental Document must be documented consistent with ***Part 1, Chapter 13, Re-evaluations***. The water quality analysis, in the ***PSR*** and/or ***SMARt*** should be updated during a Re-evaluation if changes have occurred to water quality status, such as the delisting of a waterbody from the verified impaired waterbody list, adoption of new TMDLs, or inclusion in a BMAP or RAP boundary, or if the project impacts to water quality have changed, or regulatory updates. Commitments and coordination, and the status of permits, should be discussed in the Water Resources, Commitment Status, and/or Status of Permits sections of the ***Re-evaluation Form***.

11.4 REFERENCES

Chapter 14-86, F.A.C., Drainage Connections

Chapter 62-302, F.A.C., Surface Water Quality Standards

Chapter 62-303, F.A.C., Identification of Impaired Surface Waters

Chapter 62-304, F.A.C., Total Maximum Daily Loads

Chapter 62-330, F.A.C., Environmental Resource Permit (ERP) Program

Chapter 62-340, F.A.C., Delineation of the Landward Extent of Wetlands and Surface Waters

Chapter 62-521, F.A.C., Wellhead Protection

Chapter 62-621, F.A.C., Generic Permits

Chapter 62-624, F.A.C., Municipal Separate Storm Sewer Systems

Chapter 373, F.S., Water Resources

Chapter 403, F.S., Environmental Control

Clean Water Act of 1972, https://www.govinfo.gov/content/pkg/STATUTE-86/pdf/STATUTE-86-Pg816.pdf

EPA, EPA Region 4 Sole Source Aquifer Project Review Form https://www.epa.gov/dwssa/forms/epa-region-4-sole-source-aquifer-project-review-form-section-b-determination-potential

EPA, Sole Source Aquifers, 40 CFR Part 149. https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol25/pdf/CFR-2019-title40-vol25-part149.pdf

FDEP, Basin Management Action Plans Website. https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps

FDEP, ERP Applicant's Handbook Volume I. https://floridadep.gov/water/engineering-hydrology-geology/content/erp-stormwater-resource-center

FDEP, Guidance on Developing Restoration Plans and Alternatives to TMDLs – Assessment Category 4b and 4e Plans, 2015. https://floridadep.gov/dear/watershed-assessment-section/documents/guidance-developing-restoration-plans-alternatives-tmdls

FDEP, Permitted MS4s in Florida. https://floridadep.gov/water/stormwater/content/stormwater-facility-information

FDEP, Reasonable Assurance Plans (RAPs) Category 4b Assessments and Documentation Website. https://floridadep.gov/dear/alternative-restoration-plans/content/reasonable-assurance-plans-raps-category-4b-assessments

FDEP, Wastewater Facility Information. https://floridadep.gov/water/domestic-wastewater/content/wastewater-facility-information

FDOT, Drainage Design Guide.
https://www.fdot.gov/roadway/Drainage/Manualsandhandbooks.shtm

FDOT, Drainage Manual, Topic No. 625-040-002.
https://www.fdot.gov/roadway/Drainage/Manualsandhandbooks.shtm

FDOT, Efficient Transportation Decision Making Manual, 2019.
https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Landscape, Policy No. 000-650-011. https://pdl.fdot.gov/

FDOT, Standard Environmental Commitments Guidance.
https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pde---general/commitment-guidance.pdf?sfvrsn=8df1b700_1

FDOT, Statewide Stormwater Management Plan, 2012.
https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/maintenance/fdotstormwatermgmtplan2012.pdf?sfvrsn=858ebaa2_0

FDOT, WATERSS Process Guidebook, 2021.
https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/waterss-process-guidebook-2021-0916.pdf?sfvrsn=d0682cb_8

Rule 62-4.242(2) and (3), F.A.C. https://flrules.org/gateway/RuleNo.asp?id=62-4.242

11.5 FORMS

Technical Report Cover Sheet Requiring PE Signature, Form No. 650-050-38b

Table 11-1 Water Resources References

Reference	Available Information
Efficient Transportation Decision Making (ETDM)	The designated water resource and characteristics is determined by using the Environmental Screening Tool (EST) and reported in the Programming Screen Summary Report. Note - Designated water resource data layers stored in the Florida Geographic Data Library can be accessed through the EST independent of running an ETDM screening event
Rule 62-302.700(9)(h), F.A.C.	A list of waters within state aquatic preserves which is maintained by the FDEP
Chapter 258, F.S.	Provides confirmation of aquatic preserves shown in Rule 62-302.700(9) F.A.C.
Rule 62-302.700(9), F.A.C.	Provides a list of OFWs. This list includes an identification of all OFWs by County. (Some examples of OFWs include aquatic preserves, National Seashores, waters in national parks, waters in state parks and specially designated areas.)
ERP Stormwater Resource Center | Florida Department of Environmental Protection	A resource for identifying the HUC 12 basins and impaired waters
FDOT Drainage Manual, Section 5	Provides a discussion of the statewide stormwater rule requirements. The statewide stormwater rule establishes minimum performance standards for impaired waters, OFWs, and traditional systems, in accordance with the Environmental Resource Permit (ERP) Applicant's Handbook Volume I.

PART 2, CHAPTER 12

WILD AND SCENIC RIVERS

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PART 2 CHAPTER 12

WILD AND SCENIC RIVERS

12.1 OVERVIEW

This chapter provides procedures for identifying and determining effects of Florida Department of Transportation (FDOT) Federal Projects on state or federally designated Wild and Scenic Rivers, Study Rivers, or rivers listed on the Nationwide Rivers Inventory (NRI).

These procedures also apply to FDOT State Projects [such as State Environmental Impact Reports (SEIRs)], that require federal permits. Technical Assistance with the National Part Service (NPS) may occur during Project Development and Environment (PD&E). Consultation would then be conducted by the federal permitting agency as part of the permitting process.

12.1.1 Definitions

Eligibility - Qualification of a river for inclusion into the National Wild and Scenic Rivers System through the determination that it is free-flowing and, with its adjacent land area, possesses at least one river-related value considered to be outstandingly remarkable. This determination is made by the NPS. ***(Interagency Wild and Scenic Rivers Coordinating Council, A Compendium of Questions & Answers Relating to Wild & Scenic Rivers)***.

Florida Wild and Scenic River- A certain segment of the Myakka River designated by the Florida Legislature in ***Section 258.501, Florida Statutes (F.S.)***, that is located in Manatee, Sarasota, and Charlotte Counties that possesses outstandingly remarkable ecological, fish and wildlife, and recreational values which are unique in the State of Florida.

Nationwide Rivers Inventory (NRI) - A source list of rivers which have been determined by the NPS and other federal land managing agencies as being potentially eligible for the National Wild and Scenic Rivers System ***(Interagency Wild and Scenic Rivers Coordinating Council, A Compendium of Questions & Answers Relating to Wild & Scenic Rivers)***. Please note, these are not the same as Study Rivers.

Outstandingly Remarkable Values (ORVs) - Values among those listed in ***Section 1(b) of the Wild and Scenic Rivers Act (WSRA)*** are “scenic, recreational, geological, fish and wildlife, historical, cultural, or other similar values...” Other similar values which may be considered include botanical, hydrological, paleontological, scientific, rare landscapes, or unique attractions within a river segment. The NPS uses professional judgment to determine whether values exist to an outstandingly remarkable degree ***(Interagency Wild and Scenic Rivers Coordinating Council, A Compendium of Questions &***

Answers Relating to Wild & Scenic Rivers). They are resources within a river corridor worthy of special protection.

River Administering Agency - One of the four federal agencies that may be charged with administration of a component of the Wild and Scenic Rivers System. These agencies are the Bureau of Land Management (BLM), NPS, U.S. Fish and Wildlife Service (USFWS), and U.S. Forest Service (USFS). ***(Interagency Wild and Scenic Rivers Coordinating Council, Wild & Scenic Rivers Act: Section 7)***. For federally designated Wild and Scenic Rivers in Florida, only the NPS is a River Administering Agency.

River Corridor - A river and the adjacent area within the boundaries of a designated Wild and Scenic River, or a river and the adjacent area within one-quarter mile of the banks of a congressionally authorized Study River.

Study River - a river and the adjacent area within one quarter mile of the banks of the river which is designated for study as a potential addition to the National Wild and Scenic River System pursuant to ***Section 5(a) of the WSRA (36 CFR §297.3)***.

Water Resources Project - any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the ***Federal Power Act (16 United States Code (U.S.C.) Chapter 12)*** or other construction of developments which would affect the free-flowing characteristics of a Wild and Scenic River or Study River. Water resources projects may also include dams, water diversion projects, fisheries habitat and watershed restoration/enhancement projects, bridges and other roadway construction/reconstruction projects, bank stabilization projects, channelization projects, levee construction, recreation facilities, and activities that require a 404 permit from the U.S. Army Corps of Engineers (USACE) ***(Interagency Wild and Scenic Rivers Coordinating Council, Wild & Scenic Rivers Act: Section 7)***.

Wild and Scenic River (federal definition)- a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System pursuant to ***Section 3(a) or 2(a) (ii) of the WSRA (36 CFR § 297.3)***.

12.1.2 Federally Designated Wild and Scenic Rivers and Study Rivers

The ***Wild and Scenic Rivers Act (WSRA)***, ***16 United States Code (U.S.C.) 1271 et seq.***, as amended, was signed into law on October 2, 1968 ***(Public Law 90-542, as amended)*** to identify and preserve select river segments and their immediate surroundings possessing “outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values in free-flowing condition” for the enjoyment of present and future generations.

Wild and Scenic Rivers are designated by Congress or through an administrative action by the Secretary of the Interior to include a river already protected by a state upon the request of that state’s governor. Boundaries of designated segments generally average

one-quarter mile on either bank to protect river-related values and may include tributaries. Each river is administered by a federal River Administering Agency. The NPS is the River Administering Agency for the two designated Wild and Scenic rivers in Florida.

Designated Wild and Scenic Rivers create the National Wild and Scenic Rivers System and are classified, designated, and administered as one of the following:

1. Wild River Areas: Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

2. Scenic River Areas: Those rivers or sections of rivers that are free of impoundments with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

3. Recreational River Areas: Those rivers or sections of rivers that are readily accessible by roads or railroads, that may have some development along their shorelines, and that may have undergone some impoundments or diversion in the past.

The following segments of two rivers in Florida are currently designated as Wild and Scenic Rivers:

1. **Northwest Fork of the Loxahatchee River:** From River Bend Park downstream 7.6 miles to Jonathan Dickinson State Park. The responsible agency/federal River Administering Agency is the NPS, however it is considered state-administered and Jonathan Dickinson State Park is identified as the managing agency. This river segment is located in FDOT District 4.

2. **Wekiva River:** Consists of 41.6 total miles. The Wekiva River from its confluence with the St. Johns River to Wekiva Springs. Rock Springs Run from its headwaters at Rock Springs to the confluence with the Wekiva Springs Run. Black Water Creek from the outflow from Lake Norris to the confluence with the Wekiva River. The Southeast Regional Office of the NPS is identified as the responsible/federal River Administrating Agency and the managing agency. This river segment is located in FDOT District 5.

The ***Wild and Scenic Rivers Act (WSRA)*** also identifies Study Rivers for possible inclusion in the Wild and Scenic Rivers System. These rivers, along with others identified since creation of the ***WSRA*** have been authorized by congress to be studied further for potential inclusion into the Wild and Scenic Rivers System. These Study Rivers are protected for three years from the date the President forwards the study report to Congress and are also protected during the multi-year study phase prior to formal submission of the report.

The following segments of three rivers in Florida are currently designated as Study Rivers:

1. St. Marys River: The study area included the river from the headwaters of the North prong at river mile 125.8 downstream to the confluence of Bells River at river mile 12. It was found to be not suitable for designation in 1995. Although the study report was never transmitted to Congress, the ***WSRA*** provides no expiration period in a case where the study report is not transmitted. Based on the law and current policy, the St. Marys remains in permanent Study River status, and is subject to review and determination under ***Section 7(a)*** of the ***WSRA***. This river segment is located in FDOT District 2.

2. Kissimmee River: The study area includes the restored segment of the Kissimmee River, beginning approximately 16 miles downstream of Lake Kissimmee and ending approximately 15 miles upstream of Lake Okeechobee. This study was authorized on 12/29/2022 under ***Public Law 117-328***. This river segment is located in FDOT Districts 1 and 5.

3. Little Manatee River: The study area includes a 50-mile segment beginning at the source in southeastern Hillsborough County, downstream to the point at which the river enters Tampa Bay, including appropriate tributaries, but not including some portions lying within Manatee County. This study was authorized on 12/29/2022 under ***Public Law 117-328***. This river segment is located in FDOT District 7.

Section 7(a) of the ***WSRA***, along with the implementing rules, requires that no federal license, permit, or other authorization (federal assistance) be issued for a water resources project (defined in ***Section 12.1.1***) which would have a direct and adverse effect on the values for which a designated Wild and Scenic River or Study River was established, namely its free-flowing condition, water quality, and Outstandingly Remarkable Values (ORVs). Some water resources projects that are related to transportation projects include, but are not limited to: transmission lines and pipelines; bridge and other roadway construction/reconstruction projects; water conduits; bank stabilization projects; channelization projects; levee construction; reservoirs; recreation facilities, such as boat ramps or fishing piers; or dredge and fill projects that require a federal permit. Federal assistance includes federal funding of projects. The “direct and adverse” standard applies to projects within the river corridor and may apply to abutting lands that contribute to the ORVs.

Section 7(a) also precludes federal assistance to projects outside the river corridor but on the same river, or on a tributary of a designated Wild and Scenic River that have been determined to “invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation…”. The “invade or unreasonably diminish” standard applies to projects below (downstream), above (upstream), or on a stream tributary to the boundaries. This section provides the same protection to Study Rivers, except that the qualifying word “unreasonably” does not appear before “diminish”. The effect is to provide greater protection for study rivers during the short-term study process. See ***Section 12.2.2*** for guidance on how this determination takes place during the ***National Environmental Policy Act (NEPA)*** process.

12.1.3 Rivers on the Nationwide Rivers Inventory

The NRI is a listing of rivers (or river segments), which are considered to meet eligibility criteria for the National Wild and Scenic River System based on their free-flowing status and resource values. The NRI is maintained and revised as necessary by the NPS. Listing on the NRI, or any other source list, does not represent an official determination of eligibility, and conversely, absence does not indicate a river's ineligibility.

Rivers on the NRI are afforded some protection from the adverse impacts of federal projects until they can be studied in detail. The NRI was compiled to fulfill ***Section 5(d)(1) of the WSRA's*** mandate that federal agencies consider impacts on potential Wild and Scenic Rivers in all agency "planning for the use and development of water and related land resources." Under a ***Presidential Directive issued in 1979***, each federal agency, as part of its normal planning and environmental review processes, is required to take care to avoid or mitigate adverse effects to rivers in the NRI. As part of the environmental process, consultation with the NPS is required prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the NRI.

12.1.4 Florida Wild and Scenic Designation

A segment of the Myakka River in Manatee, Sarasota, and Charlotte Counties is designated as a Florida Wild and Scenic River by ***Section 258.501, F.S.***, ***Myakka River Wild and Scenic Designation and Preservation Act*** because of its outstandingly remarkable ecological, fish and wildlife, and recreational values which are unique in the State of Florida. This segment (river area) includes the corridor of land surrounding and beneath the Myakka River between river mile 7.5 and river mile 41.5 together with a corridor including the maximum upland extent of wetlands vegetation as delineated by the Florida Department of Environmental Protection (FDEP). This segment is located in FDOT District 1, between State Road 780 in Sarasota County and the Sarasota-Charlotte County line. The Environmental Screening Tool (EST) Map Viewer can be used to identify the location of this river section by selecting the Wild and Scenic Rivers (National and State) data layer.

The ***Myakka River Wild and Scenic River Rule, Chapter 62D-15, Florida Administrative Code (F.A.C.)*** implements a regulatory program that includes a permit program to protect and enhance the resource values identified in the ***Myakka River Wild and Scenic River Management Plan***. Activities within the river area, which may have adverse impacts on resource values are regulated by FDEP Division of Recreation and Parks and listed in ***Chapter 62D-15, F.A.C***. A Myakka Wild and Scenic River permit is required under ***62D-15.006, F.A.C***. for renovating, replacing, or expanding facilities required for utilities, bridges or roads as well as constructing or creating after the effective date of the rule, utility, bridge or road crossings in unimpacted areas. The standards for issuance or denial of a Myakka River permit is that, "no permit shall be issued unless the department finds that the proposed activity will not adversely impact resource values in the river area".

The ***Myakka River Wild and Scenic Designation and Preservation Act*** also designates a Wild and Scenic Protection Zone which includes a corridor of uplands surrounding the river area which extends 220 feet landward from the river area. The EST Map Viewer can be used to identify the Wild and Scenic Protection Zone by selecting the Wild and Scenic Rivers Buffer data layer. This area is managed by local governments to ensure compatibility of land development within the zone. Activities such as construction and development, earthmoving, onsite sewage disposal systems, vegetation removal, tree removal and wetland impacts within this zone may be prohibited by the ***Sarasota County Consolidated Myakka River Protection Ordinance 2008-002*** and ***City of North Port Myakka River Protection Zone Ordinance 2008-36***.

If an FDOT project is located near this segment of the Myakka River, consultation is needed with the OEM and a Myakka Wild and Scenic River permit from the FDEP will be required. Districts will coordinate with local governments as appropriate. Any coordination with FDEP or local governments should be documented in the Environmental Document.

12.2 PROCEDURE

12.2.1 Determination of Involvement

For projects located near the state designated Myakka Wild and Scenic River segment see ***Section 12.1.4*** for guidance on determining involvement, coordination, and documentation. The remainder of this chapter provides the procedure for river segments with federal designations. FDOT Federal Projects, as well as FDOT State Projects requiring federal permits, need to be reviewed for potential impacts to Wild and Scenic Rivers, Study Rivers, and rivers on the NRI. FDOT State Projects, with no anticipated federal permits, do not require Wild and Scenic River project review.

It is the responsibility of the District to determine whether a project involves a designated Wild and Scenic River, Study River, or a river listed in the NRI, as early as possible in the project development process. There is **involvement with a Wild and Scenic River or Study River** if project activities are located within the river corridor (at within one quarter mile of the banks), across, or adjacent to (upstream, downstream, or on a tributary) the designated river segment. There is **involvement with a river on the NRI** if a project is located within the vicinity of the NRI segment.

Involvement is often determined during the Efficient Transportation Decision Making (ETDM) process where qualifying projects are entered into the EST by the ETDM Coordinator (***ETDM Manual, Topic No. 650-000-002***). During the development of the Preliminary Environmental Document (PED), the District should view the Wild and Scenic Rivers (National and State), National Wild and Scenic Active Study Rivers, and National Rivers Inventory (and buffer) data layers in the EST and include its initial evaluation of Wild and Scenic River, Study River, or NRI river involvement for the project (***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***). In the PED this should be discussed under Special Designations in the Wild and Scenic Rivers section.

During the PD&E Study, the District reviews information from the ETDM process contained in the ***Programming Screen Summary Report***, especially any Environmental Technical Advisory Team (ETAT) comments for the "Special Designations" issue. It may be helpful to also review ETAT comments on other issues such as "Water Resources." Comments by the NPS are especially important.

Detailed evaluations are generally not warranted for projects not qualifying for ETDM screening; however, the District must determine if the project involves a river segment designated as a Wild and Scenic River, Study River, or a river listed in the NRI. These river segments can be delineated and identified using the Area of Interest (AOI) tool in the EST. Mapping tools are also available on the National Wild and Scenic Rivers System and NPS NRI websites. The NPS NRI website also includes a link to other research sources for NRI rivers. See ***Figure 12-1*** for links to these websites. No involvement with designated Wild and Scenic Rivers, Study Rivers, or rivers listed in the NRI should be documented in the Environmental Document according to ***Section 12.2.3.2.1***, and no further action is required.

If the project involves a Wild and Scenic River or Study River, consultation is needed with OEM. Through coordination, OEM may assist with impact determination or recommend a change in Class of Action (COA).

If the project will have an adverse effect on the natural, cultural, or recreational values of an NRI River segment, coordination with the NPS is required and the project cannot be a Type 1 CE (***Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory and Guide for Identifying Potential Adverse Effects***).

A Type 2 CE, Environmental Assessment (EA), or an Environmental Impact Statement (EIS) may be required, depending on the significance of the effects. If an EIS is necessary on projects that involve rivers designated as a Wild and Scenic River or as Study River, or affect a river listed on the NRI, FDOT should request NPS to be a Cooperating Agency.

12.2.2 Federally Designated Wild and Scenic Rivers and Study Rivers

12.2.2.1 Coordination and Analysis

For Federal Projects involving either a designated Wild and Scenic River or Study River, consultations with the NPS and managing agency must be conducted in accordance with ***Section 7*** of the ***WSRA*** (***Interagency Wild and Scenic Rivers Coordinating Council: Wild & Scenic Rivers Act: Section 7, 2004)***. The NPS will provide direction on the scope of data and analysis needed for their effects determination. Coordination with the NPS and other interested parties should occur early in the planning process to avoid or greatly minimize possible adverse consequences and to avoid delays or costs associated with projects that are unacceptable under ***Section 7***. Establishing this contact is especially important for Wild and Scenic Rivers, or Study Rivers with existing transportation systems (or those with potential for expansion) within the river corridor. See ***Figure 12-1*** for NPS

contact information. There is no way to draw a clear line establishing a threshold for when a project may have an adverse effect on wild and scenic river values. Critical factors to consider are 1) the size of a river, 2) the amount and types of existing development, and 3) the outstandingly remarkable values of the river, whether the proposed project is within or outside the designated river or a congressionally authorized Study River. Therefore, projects that involve Wild and Scenic Rivers or Study Rivers (regardless of the type of Environmental Document) should be coordinated with the NPS. River managers will provide input for the environmental analysis if requested and may recommend measures to eliminate adverse effects.

For minor activities, a simple email from the NPS will suffice to document that there is no adverse effect. Other times, a more formal adverse effects determination will be conducted. During the PD&E Study, the District conducts an analysis of potential impacts the project will have on a designated Wild and Scenic River or Study River. For each alternative under consideration, the environmental analysis will identify the potential effects on the natural, cultural and recreational values of the designated Wild and Scenic River or Study River. If the NPS determines any of the alternatives could adversely impact the values for which a river was designated, or foreclose options to designate a congressionally authorized Study River, those alternatives cannot be selected without elimination of adverse effects.

The ***NEPA*** analysis in itself does not substitute for a ***Section 7*** Determination by the NPS. The NPS is responsible for conducting the ***Section 7*** analysis and making a determination under the statue. A ***Section 7*** Determination is required when:

1. A federal project is proposed in the bed or banks of a designated Wild and Scenic River or congressionally authorized Study River, or

2. A federal project is proposed in the bed or banks of river below (downstream), above (upstream) or on a stream tributary to a designated Wild and Scenic River or congressionally authorized Study River **and** the project is likely to result in effects within a designated Wild and Scenic River or congressionally authorized Study River.

For FDOT State Projects (such as SEIRs) that require a federal permit, FDOT may coordinate with NPS for Technical Assistance during the PD&E phase. Consultation will be conducted by the federal permitting agency [e.g., USACE or the U.S. Coast Guard (USCG)] during the permitting process.

12.2.2.2 Documentation

As appropriate, the Environmental Document documents involvement with a Wild and Scenic River or Study River and includes the results of coordination with the NPS and managing agency. If applicable, this should include discussion of avoiding or mitigating impacts. In this case, the final Environmental Document should identify measures that will be included in the Preferred Alternative to avoid or mitigate such impacts.

12.2.2.2.1 Projects Not Involving Designated Wild and Scenic or Study Rivers

Documentation for projects not involving rivers designated as Wild and Scenic or Study Rivers is as follows:

Type 1 CE: In the ***Type 1 Categorical Exclusion Checklist***, it is identified that the project does not involve a river designated as a Wild and Scenic or Study River.

Type 2 CE or SEIR: "Not present" is selected on the Wild and Scenic Rivers section of the ***Type 2 Categorical Exclusion Determination Form*** or SEIR.

EA or EIS: The Environmental Analysis section should clarify that project activities are not located within the river corridor (including within one quarter mile of the banks), across, or adjacent to (upstream, downstream, or on a tributary) the designated river segment. It should clearly state that the ***WSRA*** does not apply to the project.

12.2.2.2.2 Projects Involving Designated Wild and Scenic or Study Rivers Without Impacts

Documentation for projects involving rivers designated as Wild and Scenic or Study Rivers which will have no impacts on the river, is as follows:

Type 1 CE: In the ***Type 1 Categorical Exclusion Checklist***, the applicable river is selected and the results of coordination with the NPS is summarized in the comment box. It should identify that there will be no direct or adverse effects on the values for which the river was designated. Correspondence with the NPS should be added to the project file in the StateWide Environmental Project Tracker (SWEPT). It is recommended that these documents be placed in the Wild and Scenic Rivers folder within SWEPT.

Type 2 CE or SEIR: Select "present" and then "not impacted" on the ***Type 2 Categorical Exclusion Determination Form*** or ***SEIR*** for the Wild and Scenic Rivers category. Federally Designated Wild and Scenic River or Study River is selected and the name of the river is identified. This section identifies that there will be no direct or adverse effects on the values for which the river was designated and provides details to support this determination. If there are any other protected rivers present in the project limits, they are identified. Correspondence, or an NPS ***Section 7*** Determination should be added as a Technical Material, and it is recommended that these documents be placed in the Wild and Scenic Rivers folder within SWEPT.

EA or EIS: The Wild and Scenic Rivers section should identify the name of the river or river segment that is designated as a Wild and Scenic River or Study River, identify if it is a Wild and Scenic River or Study River, and discuss the results of the analysis and coordination with the NPS. This section should identify that there will be no direct or adverse effects on the values for which the river was designated. NPS and managing agency correspondence, and the NPS ***Section 7*** Determination should be included in the

Appendix and it is recommended that these documents be placed in the Wild and Scenic Rivers folder within SWEPT.

12.2.2.2.3 Projects Impacting Rivers Designated as Wild and Scenic or Study Rivers

For projects with potential impacts on the values for which the river was designated as a Wild and Scenic River or Study River, the following areas should be assessed and included in the summary in the Wild and Scenic Rivers section of the Type 2 CE, SEIR, EA, or EIS.

The name of the river and/or segment of the river should be identified, along with whether it is a Wild and Scenic, or Study River. Comments submitted by the NPS, managing agency, and other appropriate agencies should be addressed and the referenced letters included in the Appendix of an EA or EIS, or as a Technical Material for a Type 2 CE or SEIR. It is recommended that these documents be placed in the Wild and Scenic Rivers folder within SWEPT. NPS completed ***Section 7*** Determination should be included in, or appended to, the project's Environmental Document.

For each alternative under consideration, the potential adverse effects should be identified through coordination with the NPS. Examples of adverse impacts include:

1. Alteration of free-flowing nature of river,
2. Alteration of the setting,
3. Deterioration of water quality, or
4. An increase in the degree of activity from the project or otherwise causing visual, noise or air quality impacts on the river corridor that would conflict with the values of a wild, scenic, or recreational river.

The Environmental Document should identify measures that will be included in the Preferred Alternative to avoid or mitigate impacts.

12.2.3 Rivers Listed on the Nationwide Rivers Inventory

12.2.3.1 Analysis and Coordination

If the project involves a river on the NRI, further analysis is needed. The effect of proposed developments within the river corridor should be assessed in terms of severity of the effect and extent of area affected. Developments outside the river corridor which would cause visual, noise, or air quality impacts on the river corridor should also be examined.

Only proposed new construction or proposed expansion of existing developments need be considered in assessing impacts. Repair or rehabilitation of existing structures would not have a negative impact, except if the action would result in substantial expansion of the facility or if the construction process itself would cause an irreversible impact on the

environment. These types of projects may involve rivers on the NRI but will not affect the river segment. For example, repaving an existing bridge over an NRI river segment is unlikely to impact the river. If the project will not affect an NRI river, provide documentation in the Environmental Document (***Section 12.2.3.2.2***), and no further action is necessary.

If the project may affect the river, then the first step is to determine if there will be an adverse effect on the natural, cultural or recreational values of the NRI segment. If it is unclear whether a project will adversely affect an NRI river segment, the NPS can provide technical assistance.

Any action which could alter the river segment's ability to meet the eligibility and classification criteria for inclusion in the National System should be considered an adverse impact. Adverse effects on NRI rivers may occur under conditions which include, but are not limited to:

1. Destruction or alteration of all or part of the free-flowing nature of river;

2. Introduction of visual, audible, or other sensory intrusions which are out of character with the river or alter its setting;

3. Deterioration of water quality; or

4. Transfer or sale of property adjacent to an NRI river without adequate conditions or restriction for protecting the river and its surrounding environment.

If a project, including one or more alternatives, could have an adverse effect on an NRI river, an EA or an EIS must be prepared, depending on the significance of impacts. NPS staff is available to assist in determining the significance or severity of the effects in connection with the project.

Guidance on determining whether the project could have adverse effects is provided in the ***Guide for Identifying Potential Adverse Effects***, which is appended to the ***Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory***.

If the project could have an adverse effect on the natural, cultural or recreational values of the NRI, or effectively downgrade any portion of the NRI segment, coordination with NPS is required. The ***Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory*** document identifies types of developments that generally require consultation with NPS because of the potential for adverse effects. Examples of the developments include: small bulkhead, clearing and snagging, drainage canal, culvert or outfall, rip-rap, bank stabilization or erosion control structure, small reservoir, increase in commercial navigation, dredging or filling, road, railroad, building (any type), pipeline, transmission line, bridge or ford, water well, recreation area, and change in flow regime.

The next step is to determine whether the proposed action could foreclose options to classify any portion of the NRI segment as wild, scenic, or recreational river areas. A

project such as repaving is not likely to do that; however, something like a bridge replacement, concrete boat ramp, riprap, even lighting could. NPS may assist in determining whether any of the alternatives under consideration would foreclose designation by providing an analysis of the impacts on natural cultural and recreational values.

The ***Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory*** document identifies types of development that are most likely to cause adverse effects if constructed adjacent to or in close proximity to an NRI river. Examples include a major highway, impoundment, channelization, airport, or railroad yard. The developments identified almost always require consultation with NPS because: 1) effects are likely to conflict with the values of a potential wild, scenic or recreation river and 2) effects could be severe enough to foreclose designation of the affected river segment.

The last step is to incorporate mitigation/avoidance measures in the project to the maximum extent feasible within FDOT's authority. NPS may also assist in developing appropriate avoidance/mitigation measures. FDOT must avoid or mitigate projects that could foreclose the river from potential Wild and Scenic designation at some point in the future.

To coordinate with NPS, aerials depicting alternatives including conceptual right of way (ROW) limits will be submitted for review and comment to the NPS. See NPS contact information in ***Figure 12-1***. The letter should include the ***NEPA*** Assignment Standard Statement (see ***Part 1, Chapter 4, Project Development Process***).

The NPS should respond to the request within 30 days. Any responses or comments received should be resolved. There are times when this may require close coordination with the NPS for certain projects where there may be either a physical or visual intrusion of the proposed project on the river. It is FDOT's responsibility to ensure that effects to NRI rivers are avoided or mitigated. Instructions on the consultation process with NPS are available in the ***Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory*** and on the NPS NRI website (***Figure 12-1***). In all cases, the responses, comments and resolutions are included and discussed in the Wild and Scenic Rivers section of the Environmental Document, as appropriate (***Section 12.2.3.2***). If NPS does not respond to a request for assistance within 30 days, proceed with preparation of the Environmental Document. Even where NPS has been unable to comment on the Environmental Document, FDOT is still obligated to avoid or mitigate projects that could foreclose the river from potential Wild and Scenic designation at some point in the future.

12.2.3.2 Documentation

As appropriate, the Environmental Document will document involvement with a river listed on the NRI and include the results of any coordination with the NPS.

12.2.3.2.1 Projects Not Involving Rivers Listed on the Nationwide Rivers Inventory

Documentation for projects not involving rivers included on the NRI, is as follows:

Type 1 CE: The ***Type 1 Categorical Exclusion Checklist***, should identify that the project will not involve a river on the NRI.

Type 2 CE or SEIR: "Not present" is selected on the Wild and Scenic Rivers section of the Type 2 CE or SEIR.

EA or EIS: It is identified that the project is not located within the vicinity of an NRI segment and clearly state that the ***WSRA*** does not apply to this project.

12.2.3.2.2 Projects Involving Rivers Listed on the Nationwide Rivers Inventory Without Impacts

Documentation for projects involving rivers included on the NRI which will have no impacts on the NRI river segment, is as follows:

Type 1 CE: The ***Type 1 Categorical Exclusion Checklist***, identifies that the project will involve, but will not affect a river segment on the NRI. It identifies the name of the river and includes details to support this determination. Any correspondence with NPS should be added to the project file in SWEPT. It is recommended that these documents be placed in the Wild and Scenic Rivers folder within SWEPT.

Type 2 CE or SEIR: "Present" and then "not impacted" is selected on the ***Type 2 Categorical Exclusion Determination Form*** or SEIR for the Wild and Scenic Rivers category. Nationwide Rivers Inventory is selected identify the name of the river identified. This section should identify that there will be no direct or adverse effects on the natural, cultural, or recreational values of the NRI River segment. Details are included to support this determination and identify if there are any other protected rivers present in the project limits. Any correspondence with NPS should be added as a Technical Material in the project file in SWEPT. It is recommended that these documents be placed in the Wild and Scenic Rivers folder within SWEPT.

EA or EIS: The Wild and Scenic Rivers section identifies the name of the river that is listed in the NRI and identifies it as an NRI river. This section should summarize the analysis and discuss any coordination with the NPS. This section should identify that there will be no direct or adverse effects on the natural, cultural, or recreational values of the NRI River segment. Any NPS correspondence should be included in the Appendix. It is recommended that these documents be placed in the Wild and Scenic Rivers folder within SWEPT.

12.2.3.2.3 Projects Impacting Rivers Listed on the Nationwide Rivers Inventory

Documentation for projects with potential impacts to rivers on the NRI is as follows:

Type 1 CE: The ***Type 1 Categorical Exclusion Checklist***, identifies that the project will affect a river on the NRI, but will not have an adverse effect on the natural, cultural, or recreation values of the NRI river segment. The name of the river is added in the text box and includes details to support this determination. Any correspondence with NPS should be added as a Technical Material in the project file in SWEPT. It is recommended that these documents be placed in the Wild and Scenic Rivers folder within SWEPT. If the project will have an adverse effect on the on the natural, cultural, or recreation values of the NRI river segment, coordination with the NPS is required and the project cannot be processed as a Type 1 CE.

Type 2 CE, SEIR, EA, EIS: The following should be included in the summary in the Wild and Scenic Rivers section of the Type 2 CE, SEIR, EA or EIS. The name of the river should be identified along with discussion that the river is listed on the NRI. Any adverse impacts on natural, cultural, and recreational values should be identified. Comments submitted by the NPS and other appropriate agencies should be addressed, and letters included in the Appendix of an EA or EIS, or as a Technical Material for a Type 2 CE or SEIR referenced. It is recommended that these documents be placed in the Wild and Scenic Rivers folder within SWEPT. If applicable, avoidance or mitigation to avoid impacts that could foreclose the river from potential Wild and Scenic designation at some point in the future should be described.

12.2.4 Section 4(f) Applicability

Publicly-owned waters of designated Wild and Scenic Rivers, Study Rivers, or NRI rivers may be protected by ***Section 4(f)*** based upon their designated functions or the designated functions adjacent to and within sections of the designated river. Publicly owned lands in the immediate proximity of such rivers may also be protected by ***Section 4(f)***, depending on the ownership and, when publicly owned, the manner in which they are administered by the federal, state, or local government managing the land. Designation under the ***WSRA*** does not in itself create a ***Section 4(f)*** resource. However, ORVs often include consideration of surrounding areas or areas within the river which function for ***Section 4(f)*** protected purposes. In addition, the river management may include ***Section 4(f)*** functions over the length of the river or in certain areas of the river. ***Section 4(f)*** would only apply to sites that function as, or which are designated as public parks, recreation areas, wildlife and waterfowl refuges, and historic and archaeological sites. Therefore, during the consultations with the NPS for projects which are within, across, or adjacent to rivers designated as Wild and Scenic, Study Rivers, or listed in the NRI, the FDOT District must include consultations regarding the functions of the river and its surroundings in the area of the proposed project. When ***Section 4(f)*** applies to the use of property which is either within the river corridor or which represents an element of the ORVs, consultations with the official of the agency having jurisdiction over the property in question, the NPS, and other appropriate agencies will be needed to evaluate and resolve

potential alterations to the protected functions of the river and the river corridor. Concurrence on the ***Section 4(f)*** finding/approval will need to fulfill the coordination and approval requirements of ***Sections 7 and 12*** of the ***WSRA***. See ***Part 2, Chapter 7, Section 4(f) Resources***, or Questions 21 B,C and D contained in the ***July 20, 2012 Section 4(f) Policy Paper*** located at FDOT's ***Section 4(f) and Section 6(f) Website*** for more information.

12.3 REFERENCES

Council on Environmental Quality Memorandum, Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory, August 10, 1980, Includes Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory and Guide for Identifying Potential Adverse Effects. https://www.nps.gov/subjects/rivers/upload/Council-on-Environmental-Quality_508.pdf

City of North Port Myakka River Protection Zone Ordinance 2008-36. http://myakkarivermanagement.org/Files/MRWSMP/Appendix%20K%20-%20Ord08-36-MyakRProtZone[1].pdf

FDEP and South Florida Water Management District, Loxahatchee River National Wild and Scenic River Management Plan, Plan Update 2010. https://www.rivers.gov/sites/rivers/files/documents/plans/loxahatchee-plan.pdf

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FHWA, Section 4(f) Policy Paper. July 20, 2012. https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp

Interagency Wild and Scenic Rivers Coordinating Council, An Introduction to Wild and Scenic Rivers, revised February 2019. https://www.rivers.gov/sites/rivers/files/2022-06/wsr-primer.pdf

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NPS Southeast Regional Office, St. Marys River Wild and Scenic River Study, Florida and Georgia, Final Report, March 1995 https://www.rivers.gov/sites/rivers/files/2023-02/st-marys-study.pdf

NPS Southeast Support Office, Wekiva River Rock Spring Run & Seminole Creek Wild and Scenic River Study, June 1999 http://www.lake.wateratlas.usf.edu/upload/documents/wekivawildscenicstudypart1.pdf

National Wild and Scenic Rivers Systems; Final Revised Guidelines for Eligibility, Classification and Management for River Areas, Federal Register, Vol. 47, No. 173, September 7, 1982

Presidential Directive, Wild and Scenic Rivers and National Trails, August 2, 1979 https://www.nps.gov/subjects/rivers/consultation-instructions.htm or https://www.nps.gov/subjects/rivers/upload/Presidental-Memorandum-for-Heads-of-Departments-and-Agencies_508-2.pdf

Public Law 117-328, Title IV-Wild and Scenic River Designations. Section 403 Designation for Study of Wild and Scenic River Segments, Little Manatee River Florida and Section 404 Designation for Study of Wild and Scenic River Segments, Kissimmee River Florida. https://www.rivers.gov/rivers/rivers/documents?field_resource_type_target_id=All&field_agency_target_id=All&field_state_target_id=All

Sarasota County Consolidated Myakka River Protection Ordinance 2008-002. http://myakkarivermanagement.org/Files/MRWSMP/Appendix%20J%20-%202008-002.pdf

Section 258.501, F.S., Myakka River Wild and Scenic Designation and Preservation Act. http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0200-0299/0258/Sections/0258.501.html

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The Wild and Scenic Rivers Act, Public Law 90-542
https://www.rivers.gov/sites/rivers/files/2023-01/complete-act-compilation.pdf

National Park Service Contact:

Jeffery R. Duncan, PhD.
National Park Service-Southeast Region
Science and Natural Resources Division
Fisheries and Aquatic Resources
100 West Martin Luther King, Jr. Blvd., Suite 215
Chattanooga, TN 37402
(423) 987-6127
Jeff_duncan@nps.gov

Websites:

National Wild and Scenic Rivers System webpages:

Map of the Wild and Scenic Rivers System: https://www.rivers.gov/apps/map

Section 7 Project Reviews guidance: https://www.rivers.gov/apps/project-review

Study Rivers website: https://www.rivers.gov/study-rivers

Nationwide Rivers Inventory website: https://www.nps.gov/subjects/rivers/nationwide-rivers-inventory.htm

Figure 12-1 National Park Service Contact Information and Websites

PART 2, CHAPTER 13

FLOODPLAINS

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PART 2, CHAPTER 13

FLOODPLAINS

13.1 OVERVIEW

This chapter outlines the procedure for evaluating project impacts on 100-year (base) floodplains and provides guidance on how to document floodplain analysis in the ***Preliminary Engineering Report (PER)***, ***Location Hydraulics Report (LHR)***, and Environmental Document to comply with ***23 Code of Federal Regulations (CFR) Part 771*** and applicable regulations, guidance, and Executive Orders (EOs).

Protection of floodplains and floodways is required by ***EO 11988*: *Floodplain Management***, as amended; ***U.S. Department of Transportation (USDOT) Order 5650.2, Floodplain Management and Protection***; and ***Federal-Aid Policy Guidance on Location and Hydraulic Design of Encroachments on Flood Plains, 23 CFR Part 650A***. The intent of these regulations is to avoid or minimize highway and land use development encroachments that reduce storage and increase water surface elevations within base floodplains. Where encroachment is unavoidable, the regulations require Florida Department of Transportation (FDOT) to take appropriate measures to minimize or mitigate impacts.

Further guidance for implementation of ***EO 11988: Floodplain Management*** can be found in the ***Guidelines for Implementing EO 11988*** and ***EO 13807***, ***Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure***. The Federal Highway Administration (FHWA) regulations in ***23 CFR Part 650A***, are followed rather than the Federal Flood Risk Management Standard on any highway construction, reconstruction, rehabilitation, repair, or improvement undertaken with federal or federal-aid highway funds or FHWA approval. The existing U.S. Army Corps of Engineers (USACE) guidance for ***EO 11988*** still applies to planning, design, and construction of Civil Works projects, operations and maintenance activities.

Location hydraulics studies required by ***23 CFR Part 650A*** should be prepared during the Project Development and Environment (PD&E) phase commensurate with the level of encroachment to allow consistent evaluation and identification of impacts. The results of location hydraulic studies should be documented in the ***LHR***. The ***LHR*** should be reviewed by the District Drainage Engineer to verify that all base floodplains are identified and the ***LHR*** is consistent with existing basin and floodplain management program. The results of the location hydraulic studies should be briefly summarized in the Environmental Document and ***PER***.

13.1.1 Definitions

Base Flood - The flood or tide having a one percent chance of being exceeded in any given year (commonly known as a 100-year flood). ***(23 CFR Part 650A)***

Base Floodplain - The area subject to flooding by the base flood.

Direct Effects – Impacts which occur as a direct result of an action and occur at the same time and place as the action.

Environmental Impacts - Changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives. Impacts include ecological (such as the impacts on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the impacts on employment), social, or health impacts. Impacts appropriate for analysis under the ***National Environmental Policy Act (NEPA)*** may be either beneficial or adverse, or both, with respect to these values. ***(USDOT Order 5610.1D, 26.e)***

Encroachment - Activities or construction within the floodplain including fill, new construction, substantial improvements, and other development.

Floodplain - Any land area susceptible to being inundated by floodwaters from any source.

Flood Receptor -The entity that may be harmed (e.g., a person, property, habitat), by flood.

Hydraulic Capacity - Measure of the volume of water which can pass through a given structure or culvert or measure of the volume and flow of water within a watercourse.

Indirect Effects – Impacts which are reasonably foreseeable effects that occur because of an action but occur later in time or are removed from the action location.

Natural and Beneficial Floodplain Values - Include but are not limited to fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, forestry, natural moderation of floods, water quality maintenance, and groundwater recharge.

Regulatory Floodway - The floodplain area that is reserved in an open manner by federal, state or local requirements, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so that the cumulative increase in water surface elevation is no more than a designated amount [not to exceed one foot as established by the Federal Emergency Management Agency (FEMA) for administering the National Flood Insurance Program (NFIP)]. ***(23 CFR Part 650A)***

Risk - The consequences associated with the probability of flooding attributable to an encroachment, including the potential for property loss and hazard to life during the service life of a facility.

Support Base Floodplain Development - The process to encourage, allow, serve, or otherwise facilitate additional base floodplain development. Direct support results from an encroachment, while indirect support results from an action out of the base floodplain.

13.2 PROCEDURE

Potential floodplain impacts are assessed for FDOT projects which involve activities or construction near or within the floodplain. Each project alternative should be analyzed for potential floodplain encroachment and the resulting effects or impacts (positive and negative) should be documented in the ***LHR*** (as applicable) and briefly summarized in the Environmental Document and ***PER***.

Evaluation of potential floodplain impacts involves the following activities:

1. Determining if a project is located in or will affect the base floodplain.

    a. Utilizing National Flood Insurance Program (NFIP) maps or;

    b. Utilizing Water Management District (WMD) maps. ***Rule 62-40.458, Florida Administrative Code (F.A.C.)***, requires the WMD to determine, at a minimum, the 100-year flood levels for priority floodplains. In locations with maps developed by the WMD, coordination with the District Drainage Engineer and the WMD is needed to determine which map to use in the ***LHR***. The rationale is documented in the ***LHR***, or;

    c. Utilizing maps developed by FDOT.

2. Conducting early public involvement and interagency coordination.

3. Identifying and evaluating practicable alternatives to locating in the base floodplain, including alternative sites outside of the floodplain.

4. Identifying impacts as (positive and negative) of the project on the floodplain.

5. If impacts cannot be avoided, developing measures to minimize the impacts; and measures to restore and preserve the floodplain, as appropriate.

6. Re-evaluating alternatives to determine if locating the project in the floodplain is still practicable.

7. Documenting the results in the ***LHR*** and Environmental Document and presenting the findings to the public.

13.2.1 Determine Level of Analysis

The level of assessment and documentation for potential impacts to floodplains during the PD&E phase depends on the significance of the base floodplain encroachments. Detailed floodplain evaluations are generally not warranted for transportation projects not qualifying for screening in the FDOT's Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST) [typically Type 1 Categorical Exclusions (CEs) and Non-Major State Actions (NMSA)], or where there is no floodplain involvement. In these projects, reviewing the Federal Emergency Management Agency (FEMA) ***Flood***

Insurance Rate Maps (FIRM) and identifying if any cross drains culverts are to be modified may be sufficient. See ***Part 1, Chapter 5, Categorical Exclusion*** for more guidance on how to document floodplains on Type 1 CE projects. CEs listed in ***23 CFR 771.117 (c) 26, 27,*** and ***28*** that do not satisfy the criteria of ***23 CFR § 771.117(e)*** with a floodplain encroachment and are not functionally dependent uses (e.g., bridges, wetlands) or actions facilitating open space use (e.g., recreational trails, bicycle and pedestrian paths); require OEM coordination to determine the Class of Action (COA).

Transportation projects qualifying for ETDM screening generally are more complex. In accordance with ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***, qualifying projects must complete the ETDM Programming Screen and may also have completed the Planning Screen.

The Project Manager should coordinate with the regulatory and resource agencies, and local agencies throughout the project development process. Coordination with these agencies is useful in identifying floodplain issues, environmental data, and local drainage or watershed specific studies in the project area. Additionally, the Project Manager should coordinate with the District Drainage Engineer, the District Environmental Permits Coordinator, District Environmental Office staff, and others who may be involved in the project.

1. **Planning Screen Evaluation** - The Preliminary Environmental Discussion (PED) is prepared in accordance with ***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***. The PED includes a discussion about known potential project involvement with floodplains, drainage basins/watershed and receiving water bodies and their designations.

   Information available in the Planning Screen is reviewed regarding the location of floodplains as identified by FEMA ***FIRM,*** the locations of Special Flood Hazard Areas (SFHA), Flood Insurance Study (FIS), and the ***Resilience Report*** for tidal influences. Specific information about areas of flood hazards that were provided by the Environmental Technical Advisory Team (ETAT) are reviewed.

2. **Programming Screen Evaluation** - Includes discussion about known potential project involvement related to the floodplain, drainage basins and receiving water bodies based on information obtained in the Planning Screen (if completed) and the District familiarity with the project area in the PED and the Advance Notification (AN), as appropriate.

   After screening is completed, ETAT comments related to the floodplain from the ***Programming Screen Summary Report*** are reviewed. This information is reviewed to determine the level of potential floodplain impacts and how they may be evaluated and mitigated in the PD&E Study. Evaluation and documentation of existing conditions begins for use in the floodplain analysis.

3. **PD&E Evaluation** - The ***Programming Screen Summary Report*** is reviewed for ETAT comments on the floodplain topic as well as ETAT comments on other issues that may concern possible floodplain impact and drainage designs, such as “Coastal

and Marine" and "Wetlands and Surface Waters". The WMDs comments may reference a recent drainage study (prepared in accordance with ***Rule 62-40.458, F.A.C.***), as being the best available information, which may supersede existing floodplain maps. Coordination with the WMD is needed to verify that the study has been submitted to FEMA for a map revision.

The impacts of the project on floodplain should be understood before the preferred alternative is selected. The appropriate level of analysis is completed, and documentation should be based on the project context, anticipated impacts, and outcome of any resource agency coordination. There are four categories of encroachments as they pertain to base floodplain involvement: no involvement, no encroachment, minimal encroachment, and significant encroachment (see ***Section 13.2.2***). The Project Manager should make preliminary determination of the level of floodplain encroachment and the type of documentation necessary for the ***LHR*** based on field review, ETDM screening results and consultation with the District Drainage Engineer.

Where floodplain impacts will occur, the analysis should be sufficient to determine the level of impacts and whether they will be significant. The analysis will be documented in the ***LHR***. Floodplain commitments are documented in the Environmental Document and transmitted to the next phase of project development in accordance with ***Procedure No. 650-000-003, Project Commitment Tracking*** and ***Part 2, Chapter 22, Commitments***. See ***Section 13.2.4*** for documentation of floodplain impacts in the Environmental Document.

13.2.2 Location Hydraulic Studies and Report

Title 23 CFR Part 650A requires location hydraulic studies for all alternatives containing floodplain encroachments and for those actions which would support base floodplain development, commensurate with the significance of the risk or environmental impact. Location hydraulic studies must include:

1. NFIP maps (or information developed by the highway agency, if NFIP maps are not available), to determine whether a highway location alternative will include an encroachment.

2. Evaluation and discussion of the practicability of alternatives to any longitudinal encroachments

3. Discussion of the following items, commensurate with the significance of the risk or environmental impact, for all alternatives containing encroachments and for those actions which would support base flood-plain development:

    a. The risks associated with implementation of the action.

    b. The impacts on natural and beneficial floodplain values.

    c. The support of probable incompatible floodplain development.

d. The measures to minimize floodplain impacts associated with the project.

e. The measures to restore and preserve the natural and beneficial floodplain values impacted by the project.

4. Evaluation and discussion of the practicability of alternatives to any significant encroachments or any support of incompatible floodplain development.

To satisfy the requirement of preparing a location hydraulic studies for all alternatives containing floodplain encroachments, FDOT requires a ***LHR*** to be prepared for any Type 2 CE, Environmental Assessment (EA), Environmental Impact Statement (EIS), or State Environmental Impact Report (SEIR) project that has a potential to encroach on the base floodplain, pursuant to ***23 CFR Part 650A***, see ***Section 13.2.2.5*** for additional information. A ***LHR*** is not typically required for Type 1 CE or for NMSAs.

The ***LHR*** describes the types of construction activities near floodplains and includes a description of the measures to avoid or minimize floodplain impacts associated with the project. The District Drainage Engineer or designee should review the ***LHR*** and verify that all base floodplains are identified and the ***LHR*** is consistent with existing basin and floodplain management programs. Additionally, the Project Manager or designee should consult with local natural resource and floodplain management agencies when a hydraulic study shows an impact to the floodplain.

The information contained in the ***LHR*** is site specific, and the level of floodplain analysis is dependent upon the flood risk associated with each type of encroachment. Use of detailed calculations for every drainage structure associated with a project is not usually necessary and should be avoided, unless the project is accelerated and includes Design phase activities with the PD&E phase or detailed calculations are required to develop the preferred roadway alternative for a new alignment. The encroachment types are listed below:

1. **No Involvement** - No involvement means that there are no floodplains in the vicinity of the project alternatives.

2. **No Encroachment** - No encroachment means that there are floodplains in the vicinity of the project alternatives, but there is no floodplain encroachment.

3. **Minimal Encroachments** - Minimal encroachments on a floodplain occur when there is floodplain involvement but the impacts on human life, transportation facilities, and natural and beneficial floodplain values are not significant and can be resolved with minimal efforts. Normally, these minimal efforts to address the impacts consist of applying FDOT's drainage design standards and following the WMD's procedures to achieve results that will not increase or significantly change the flood elevations and/or limits.

4. **Significant Encroachments** - A highway encroachment and any direct support of likely base floodplain development that would involve one or more of the following construction or flood related impacts:

a. A significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles, or which provides a community's only evacuation route

b. A significant risk

c. A significant adverse impact on natural and beneficial floodplain values

When the project causes significant encroachment on a floodplain a risk analysis is required to establish a level of risk allowable for a project area and to design the alternative to that level. See the ***Drainage Design Guide*** for more information. A proposed action will not be approved unless OEM finds that the proposed significant encroachment is the only practicable alternative.

Note that even though the amount of floodplain involvement could be small, the impacts may be important or notable enough to be considered a significant encroachment.

It is possible that a project will involve more than one type of encroachment. When this occurs, it is necessary to include information that addresses each of the encroachment types in the ***LHR***.

13.2.2.1 Location Hydraulic Study

Every wetland and cross drain has an associated floodplain; however, it is not necessary to evaluate the hydraulic impacts of each one. The impacts to flood elevations and limits are minimized by designing cross drain facilities in accordance with the ***FDOT Drainage Manual, Topic No. 625-040-002***. Only those alternatives or design features that may create substantial differences in flood elevations and limits should be evaluated. For projects or alternatives that would not create substantial changes in the flood elevations, include a statement in the ***LHR***, ***PER***, and the Environmental Document indicating that the drainage features will be designed in accordance with the ***FDOT Drainage Manual, Topic No. 625-040-002***, and no adverse impacts to floodplains are anticipated as a result of the project. See ***Figure 13-1*** for sample statements to be included in the ***LHR***, ***PER***, and Environmental Document.

The expected change in flood elevations due to a project should be estimated to perform the appropriate level of risk evaluation, see ***Section 13.2.2.4***. Alternatives that avoid longitudinal encroachment of the floodplain should include evaluation and discussion of the practicability of the alternatives. New alignment alternatives usually require a preliminary evaluation to determine hydraulic capacity for anticipated bridge/culvert size. When new alignments include encroachments, they should be analyzed to determine any increase in the base flood elevation. On existing alignments, the possibility of decreased hydraulic performance of existing structures requires an evaluation to determine the change in the base flood elevation upstream (and downstream where appropriate).

If the hydraulic evaluation determines that flood elevations will not change significantly, no further evaluation is needed and the encroachment should be minimal.

If the hydraulic evaluation shows that flood elevations will increase either upstream or downstream, a location hydraulic study should be performed on the area impacted to evaluate the potential for flood impacts. The location hydraulic study should consist of a more detailed floodplain model to size proposed structures (bridges/culverts) appropriately. The model needs to identify the downstream constraint (tailwater limitation) that is affecting the floodplain stage and limits within the project. This information needs to be documented in the ***LHR*** to demonstrate the resulting impacts have been adequately addressed by the proposed design and the constraints are outside of the FDOT's control.

Additionally, the location hydraulic study should consist of an evaluation of the floodplain to determine any increase in the number of flood receptors and the increase in damage to flood receptors that will result from any increase in flood elevations. If necessary, appropriate coordination with FEMA, and local natural resource and floodplain management agencies should be initiated to adequately assess flood impacts.

Whenever it is determined that the project will involve a regulatory floodway, the District Drainage Engineer, or designee, should coordinate with local agencies and FEMA to ensure the project will be developed consistent with local floodway plans and floodplain management programs. This coordination effort and associated drainage work should be documented in the ***LHR*** and summarized in the Environmental Document.

The impacts of each encroachment on natural floodplain values should be evaluated. After evaluating the impacts to the floodplain, a statement explaining the significance of any encroachments will be included in the ***LHR*** for each type of construction activity in the floodplain. Similar types of floodplain construction activities should be grouped together and the significance of their floodplain encroachments addressed accordingly. ***Figure 13-1*** provides several sample statements for use in the ***LHR***, ***PER***, and Environmental Document. The statements may be modified to fit the project activities and flood risk identified in the ***LHR***.

13.2.2.2 Significant Encroachment

Evaluation to determine the significance of each encroachment should include assessment of construction or flood related impacts to lives, property, and transportation facilities that serve emergency vehicles or provide emergency evacuation. Additionally, the evaluation should include assessment of construction or flood related impacts to determine the potential for loss or gain to natural and beneficial floodplain values. The following floodplain values should be included in the assessment:

1. Natural moderation of floods
2. Water quality maintenance
3. Groundwater recharge
4. Fish and wildlife habitat
5. Plants

6. Open space and natural beauty
7. Recreation
8. Agriculture and Aquaculture
9. Forestry

If a floodplain analysis determines that the impacts to lives, property and floodplain values cannot be avoided, the District should develop measures to minimize and mitigate the impacts to the floodplain and document it in the ***LHR***.

13.2.2.3 Only Practicable Alternative Finding

Pursuant to ***23 CFR § 650.113***, a proposed alternative which includes a significant encroachment will not be approved unless it is the only practicable alternative. The finding of the only practicable alternative must be approved by FHWA. To obtain the finding, the District must provide the recommendation and supporting information to the District's FHWA Transportation Engineer with a copy to OEM. The only practicable alternative finding must be included in the Environmental Document and ***PER*** and must be supported by the following information:

1. The reasons why the proposed action must be located in the floodplain,
2. The alternatives considered and why they were not practicable, and
3. A statement indicating whether the action conforms to applicable state or local floodplain protection standards.

13.2.2.4 Risk Evaluation

Determination of floodplain encroachments should include an evaluation of flood-related risk to the project and surrounding environment. Evaluation of risk should include the following:

1. Risks to transportation infrastructure – road closure, repair costs
2. Risks to highway users – loss of life, service disruption
3. Risks to residents – damages, service disruption, property loss

Typically, the level of risk is reduced through application of design standards and drainage design procedures when the project potentially encroaches into the floodplain. FDOT has established design parameters for the design frequency, backwater limitations, and limiting velocity, which are based on the importance of the transportation facility to the system and allowable risk for that facility. Additionally, design standards of other agencies that have control or jurisdiction over the waterway or facility concerned are considered in the evaluation.

To quantify the risk on project alternatives that encroach floodplains, FDOT uses risk assessment or risk analysis depending on the significance of floodplain encroachment. Risk assessment is performed for minimal encroachments while risk analysis is performed for significant encroachments that are anticipated to increase or substantially change floodplain elevations and/or limits. The cost and effort required for a risk analysis is considerably higher than for a risk assessment. Risk evaluation should be documented in the ***LHR***. The District Drainage Engineer and Project Manager should review the ***LHR*** and verify the determination of the significance of each floodplain encroachment and any risk evaluation.

Risk assessment is a subjective analysis of the risks resulting from various design alternatives, without detailed quantification of flood risks and losses. It may consist of developing the construction costs for each alternative, and subjectively comparing the risks associated with each alternative. A risk assessment is more appropriate for small structures, or for structures which size is not influenced by hydraulic constraints.

Risk analysis is an economic comparison of alternatives using expected total costs (construction costs plus risks costs) to determine the alternative with the least total expected cost to the public. It should include probable flood related costs during the service life of the facility for highway operation, maintenance, and repair, for highway aggravated flood damage to other property, and for additional or interrupted highway travel. See ***Appendix G*** of the ***Drainage Design Guide*** for more guidance on this evaluation.

13.2.2.5 Location Hydraulic Report

The ***LHR*** is prepared during the PD&E phase. The ***LHR*** should have headings and subheadings to effectively delineate the sections appropriate to the level of analysis. The cover page of the ***LHR*** should be prepared using ***Technical Report Cover Sheet, Form No. 650-050-38a***.

The following describes the requirements necessary for the completion of the ***LHR*** for each level of significance of encroachment.

1. **No Encroachment or No Involvement** - For projects where the level of significance for the floodplain encroachment is No Encroachment or No Involvement, a location hydraulic report is not required and the review of the project alternatives is documented in the Environmental Document and the ***PER***.

2. **Minimal Encroachments** - If a project has minimal impacts due to floodplain encroachments, the ***LHR*** should describe the types of floodplain construction activities and measures to minimize project impact to floodplain. Any commitments made to restore and/or preserve floodplain should be documented in the Environmental Document.

   The following items must be included in the ***LHR*** for all alternatives containing minimal encroachments. Each item should be discussed to a level that adequately addresses the environmental impacts and flood risks:

a. General description of the project including location, length, existing and proposed typical sections, drainage basins, and cross drains;

b. Determination of whether the proposed action is in the base floodplain;

c. The history of flooding of the existing facilities and/or measures to minimize any impacts due to the proposed improvements;

d. Determination of whether the encroachment is longitudinal or transverse, and if it is a longitudinal encroachment, an evaluation and discussion of practicable avoidance alternatives;

e. The practicability of avoidance alternatives and/or measures to minimize impacts;

f. Impact of the project on emergency services and evacuation;

g. Impacts of the project on the base flood, likelihood of flood risk, overtopping, location of overtopping, backwater;

h. Determination of the impact of the project on regulatory floodways, if any, and documentation of coordination with FEMA and local agencies to determine the requirements for the project to be developed consistent with the regulatory floodway;

i. The impacts on natural and beneficial floodplain values, and measures to restore and preserve these values (this information may also be addressed as part of the wetland impact evaluation and recommendations);

j. Consistency of the project with the local floodplain development plan or the land use elements in the Local Government Comprehensive Plan (LGCP), and the potential of encouraging development in the base floodplain;

k. Measures to minimize flood-plain impacts associated with the project, and measures to restore and preserve the natural and beneficial floodplain values impacted by the project.

l. A map showing project, location, and impacted floodplains. A ***FIRM Map*** should be used if available. If not, other maps (e.g., U.S. Geological Survey (USGS), USACE, Soil Conservation Service (SCS), Bureau of Land Management (BLM), U.S. Forest Service (USFS), a map developed by FDOT, or best available information from the WMDs) may be used. Copies of applicable maps should be included in the appendix; and,

m. Results of any risk assessments performed.

3. **Significant Encroachments** - In addition to the items listed in the requirements for minimal encroachments, the following items must be included in the ***LHR*** for all

alternatives containing significant encroachments and for those actions which would support base flood development:

a. The hydraulic adequacy of existing structures;

b. The frequency of traffic interruption due to flooding for the existing facility;

c. When replacing structures and for structures proposed as alternatives on new alignments, discussion of the requirements to meet hydraulic needs for the project;

d. Drainage problems which would result from extending or replacing existing structures in addition to downstream tailwater constraints that affect the flood elevations within the project limits;

e. Estimation of both the existing floodplain volume (capacity) and the volume of the encroachment (this information can be estimated based on FIRM Maps, USGS Maps, LiDAR maps, existing drainage maps, a map developed by FDOT, or best available information from the WMDs; and

f. Flooding impacts to private property both upstream and downstream.

If the project involves a bridge structure, and if a separate ***Bridge Hydraulic Report (BHR)*** is not prepared during the PD&E phase, the following items must be addressed in the ***LHR***:

1. Conceptual bridge length,

2. Conceptual scour considerations, and

3. Preliminary clearances both vertically and horizontally.

4. The need, if any, for the input of a coastal engineer during final design.

The scope of the ***LHR*** should be scaled to fit the scope and impacts of the project and should be coordinated with the District Drainage Engineer. Once the ***LHR*** is complete, its information is briefly summarized in the Environmental Document per ***Section 13.2.4***.

13.2.3 Bridge Hydraulic Report

BHRs are not normally completed during the PD&E phase of a project. However, a ***BHR*** may be prepared to determine the “hydraulic length” of the bridge or the length necessary to meet the hydraulic requirements. This is particularly important in situations where the bridge or culvert has a history of roadway overtopping. Correcting the overtopping usually involves raising the road and providing much larger hydraulic capacity through the bridge or culvert. This situation may be appropriate for a Risk Analysis to compare the construction costs to risk costs. The construction costs should be documented in the Environmental Document. If bridge alternatives will be developed to avoid or minimize

wetland impacts, then a ***BHR*** will analyze and document the costs and benefits of the additional bridge length, in accordance with ***Appendix G*** of the ***Drainage Design Guide***.

If the entire project consists of a bridge replacement with no other encroachments, then the requirements of the ***LHR*** must be included in the draft ***BHR***.

When the draft ***BHR*** is prepared during the PD&E phase, its cover page should be prepared using ***Technical Report Cover Sheet, Form No. 650-050-38a***.

13.2.4 Environmental Document

13.2.4.1 Type 1 Categorical Exclusion or Non-Major State Action

It should be verified that the project does not encroach on the base floodplain or support base floodplain development. For Type 1 CEs, if the project has a floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths) coordination with OEM is needed. If applicable, the ***LHR*** and/or ***BHR*** and any other supporting documentation is uploaded to the project file. It is recommended that these files be placed in the Floodplains folder within the Statewide Environmental Project Tracker (SWEPT).

See ***Part 1, Chapter 5, Categorical Exclusion*** and ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery*** for more guidance.

13.2.4.2 Type 2 Categorical Exclusion

For a Type 2 CE, the project involvement with the floodplain is summarized based on the results of floodplain analysis in the Floodplains Section of the ***Type 2 Categorical Exclusion Determination Form***. The ***LHR*** and/or ***BHR*** and any other supporting documentation is uploaded to the project file. It is recommended that these files be placed in the Floodplains folder within SWEPT. Sample statements that can be included for projects with No Encroachment and Minimal Encroachment can be found in ***Figure 13-1***. The summary should at least answer the following questions:

1. Is there a floodplain within the vicinity of the proposed alternative(s)?

2. Will there be an encroachment (Minimal Encroachment or No Encroachment) or a benefit to the floodplain as a result of the project?

3. What type of encroachment impact will the preferred alternative have on the floodplain and what is the level of encroachment?

4. What measures have been taken to minimize and mitigate floodplain impacts associated with the project?

If there is regulatory floodway involvement then the ***Type 2 Categorical Exclusion Determination Form*** should address the project's consistency with the regulatory

floodway's ability to discharge the base flood without cumulatively increasing the water surface elevation more than the designated height, and demonstrate coordination with FEMA and local floodway management agencies on the consistency issue. For additional information, see ***FEMA Guidance for Flood Risk Analysis and Mapping, Floodway Analysis and Mapping***.

13.2.4.3 State Environmental Impact Report

SEIRs should include a summary of the results of the ***LHR*** and/or ***BHR*** and coordination in the Floodplains section of the SEIR. This should include justification of the decision and information to substantiate the impact determination. The project involvement with floodplains is summarized and documentation is included in the project file. It is recommended that these files be placed in the Floodplains folder within SWEPT.

13.2.4.4 Environmental Assessment and Environmental Impact Statement

The Floodplain section for an EA or Draft Environmental Impact Statement (DEIS) should include:

1. Identification of the geographic area of the base floodplain and a determination of whether the proposed action will encroach upon the base floodplain using available reference maps. The potential references include:

    a. ***FIRM*** must be used, if available. The map reference number must be provided in the document. If the project is not in a FEMA-identified hazard area, ***FIRM*** will not be available and other sources should be used.

    b. Other maps (e.g., USGS, USACE, SCS, BLM, USFS, or best available information from the WMDs) may be used.

    c. Appropriate maps are developed by the Drainage Engineer if no other maps are available.

2. An exhibit showing the relationship of each project alternative under study with each base floodplain and regulatory floodway involved.

3. If there is no encroachment on a base floodplain and the proposed action will not support development in the base floodplain, a statement to that effect will be provided (see ***Figure 13-1*** for sample statements).

4. If the project encroaches or supports base floodplain development within a base floodplain, the following information is discussed for each proposed alternative that causes the impacts commensurate with the level of impacts:

    a. Flood risks associated with, or resulting from, the proposed action.

    b. Impacts on natural and beneficial floodplain values.

c. Degree to which the action provides direct effects and/or indirect effects in the support of development in the base floodplain.

d. The potential for significant interruption or termination of community's only evacuation route or facility for emergency vehicles.

e. Measures to minimize floodplain impacts associated with each alternative.

f. Measures to restore and preserve the natural and beneficial floodplain values that are impacted.

The EA or EIS should briefly summarize the results of the ***LHR*** and/or ***BHR*** and identify the number of encroachments and any support of incompatible base floodplain developments and their potential impacts. Where an encroachment results in substantial impacts or supports incompatible floodplain development, the EA or DEIS should provide more information on the location, impacts, and appropriate mitigation measures. The EA or DEIS should also include an evaluation and discussion of practicable alternatives to avoid or minimize such involvements.

If an alternative encroaches upon a regulatory floodway, the following questions must be addressed in the EA or DEIS:

1. Can the highway encroachment be located so that it is consistent with the regulatory floodway? or

2. Can the regulatory floodway be revised to accommodate the project? (This typically involves a FEMA map revision.)

For each alternative encroaching upon a designated or proposed regulatory floodway, the EA or DEIS should provide a preliminary indication of whether the encroachment would be consistent with, or require a revision to the regulatory floodway. Engineering and environmental analyses should be undertaken, commensurate with the level of encroachment, to allow the appropriate evaluation of impacts. Coordination with FEMA and appropriate state and local governmental agencies should be undertaken for each regulatory floodway encroachment.

When the preferred alternative includes significant encroachments but the human environment is not significantly affected, the finding must be provided in the Floodplain section of an EA or EIS.

If the preferred alternative includes significant encroachments that significantly affect the human environment, the Environmental Analysis Section of the Final Environmental Impact Statement (FEIS) or FEIS/ Record of Decision (ROD) must include an "Only Practicable Alternative Finding" required by ***23 CFR § 650.113*** and ***EO 11988*** (see ***Section 13.2.2.3***). This finding must also be included in the Executive Summary of a FEIS with separate ROD.

If the preferred alternative encroaches on a regulatory floodway, the EA with Finding of no Significant Impact (FONSI), FEIS, or FEIS/ROD should discuss the consistency of the action with the regulatory floodway. If a regulatory floodway revision is necessary, the EA with FONSI, FEIS, or FEIS/ROD should include evidence from FEMA and local or State agency indicating that such revision is acceptable.

If the project has no involvement with or is not located within a floodplain, a finding is still provided. See ***Figure 13-1*** for sample statements.

13.2.5 Public Involvement

In accordance with ***EO 11988***, the FDOT must provide public notice if there will be a significant floodplain encroachment. To comply, the District should include in its public workshop or hearing advertisements, a statement that the project involves encroachments on base floodplains and, if applicable, involvement with a regulatory floodway. At public workshops, the District should include information concerning any anticipated floodplain encroachments. If a public hearing is held, the presentation at the public hearing must also include any anticipated floodplain encroachments. See ***Part 1, Chapter 11, Public Involvement*** for information on public involvement activities.

13.3 REFERENCES

FEMA, Guidance for Flood Risk Analysis and Mapping, Floodway Analysis and Mapping, November 2023. https://www.fema.gov/media-collection/guidance-femas-risk-mapping-assessment-and-planning

FHWA, Technical Advisory T6640.8A, Guidance for Preparation and Processing Environmental and Section 4(f) Documents. https://www.environment.fhwa.dot.gov/projdev/impTA6640.asp

FDOT, Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Drainage Manual, Topic No. 625-040-002 https://www.fdot.gov/roadway/drainage/manualsandhandbooks.shtm

FDOT, Standard Plans for Road and Bridge Construction. https://www.fdot.gov/design/standardplans/sprbc.shtm

Guidelines for Implementing Executive Order 11988, Floodplain Management and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. January 30, 2015. https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf

Presidential Executive Order 11988, Floodplain Management and Protection https://www.epa.gov/cwa-404/floodplain-management-executive-order-11988

Presidential Executive Order 14030, Climate-Related Financial Risk. https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk

Rule 62-40.458, F.A.C., Floodplain Protection. https://www.flrules.org/gateway/RuleNo.asp?title=WATER%20RESOURCE%20IMPLEMENTATION%20RULE&ID=62-40.458

Title 23 CFR Part 650A, Location and Hydraulic Design of Encroachments on Flood Plains. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-650/subpart-A

13.4 FORMS

Technical Report Cover Sheet, Form No. 650-050-38a

Suggested Statements for LHR, PER, and Environmental Documents

The following sample summary statements may be appropriate for common types of base floodplain construction activities not resulting in significant floodplain impacts. These statements should be modified based on the results of the location hydraulic studies documented in the Location Hydraulics Report.

1- PROJECTS WHICH WILL NOT INVOLVE ANY WORK BELOW THE 100 YEAR FLOOD ELEVATION

The following statement is used when the 100-year flood elevation is available from existing information, and it is evident that project will not involve any work below the 100-year flood elevation.

Although this project is located within the limits of the 100-year floodplain, no work is being proposed below the 100-year flood elevation and, thus, this project does not encroach upon the base floodplain.

2- PROJECTS WHICH WILL NOT INVOLVE THE REPLACEMENT OR MODIFICATION OF ANY DRAINAGE STRUCTURES

These projects must be on existing alignment. They may involve a change in the profile grade elevation of a magnitude normally associated with resurfacing. There are no known drainage problems within the limits of the project, or other factors that override the need for concurrent drainage improvements.

This project will not involve the replacement or modification of any existing structures, or the addition of any new drainage structures. Thus, this project will not affect flood heights or base floodplain limits. Additionally, the project will not increase flood risks or damage; and there will be no significant change in the potential for interruption or termination of emergency service or emergency evacuation routes. Therefore, it has been determined that this encroachment is not significant.

3- PROJECTS INVOLVING MODIFICATION TO EXISTING DRAINAGE STRUCTURES

Work under this type of project will not involve the replacement of any existing drainage structures or the construction of any new drainage structures. Work will only involve modification of existing structures (e.g., extending cross drains, adding headwalls, or extending bridge piers). Projects that affect flood heights and flood limits, even minimally, may require further evaluation to support statements that emphasize the insignificance of the modifications.

Figure 13-1 Floodplain Statements

Modifications to existing drainage structures (SPECIFY e.g., extending cross drains, adding headwalls, or extending bridge piers) included in this project will result in an insignificant change in their capacity to carry floodwater. These modifications will cause minimal increases in flood heights and flood limits which will not result in any significant adverse impacts on the natural and beneficial floodplain values or any significant change in flood risks or damage. There will be no significant change in the potential for interruption or termination of emergency service or emergency evacuation routes as the result of modifications to existing drainage structures. Therefore, it has been determined that this encroachment is not significant.

4- PROJECTS ON EXISTING ALIGNMENT INVOLVING REPLACEMENT OF EXISTING DRAINAGE STRUCTURES WITH NO RECORD OF DRAINAGE PROBLEMS

This type of work excludes replacement activities that would increase the hydraulic performance of existing facilities. Also, there should be no record of drainage problems and no unresolved complaints from residents in the area.

The proposed structure will perform hydraulically in a manner equal to or greater than the existing structure, and backwater surface elevations are not expected to increase. Thus, there will be no significant adverse impacts on natural and beneficial floodplain values. There will be no significant change in flood risk, and there will not be a significant change in the potential for interruption or termination of emergency service or emergency evacuation routes. Therefore, it has been determined that this encroachment is not significant.

5- PROJECTS ON EXISTING ALIGNMENT INVOLVING REPLACEMENT OF DRAINAGE STRUCTURES IN HEAVILY URBANIZED FLOODPLAINS

These projects include work in flood sensitive, heavily urbanized floodplains, where the conditions of flooding are largely attributable to the low-lying terrain. The work does not include those replacement structures that will reduce the hydraulic performance of existing facilities or a change in the profile grade when the existing grade is overtopped by an event below the 100-year storm. Replacement drainage structures are limited to hydraulically equivalent structures in most instances.

Replacement drainage structures for this project are limited to hydraulically equivalent structures which are not expected to increase the backwater surface elevations. The limitations to the hydraulic equivalency being proposed are basically due to restrictions imposed by the geometrics of design, existing development, cost feasibility, or practicability. An alternative encroachment location is not considered since it does not meet the project's purpose and need or is economically unfeasible. Since flooding conditions in the project area are inherent in the topography or are a result of other outside contributing sources, and there is no practical alternative to eradicate flooding problems in any significant amount, existing flooding will continue, but will not increase as the result of the construction of this project.

Figure 13-1 Floodplain Statements (Page 2 of 3)

Furthermore, the project will not affect existing flood heights or floodplain limits. There will be no significant change in the potential for interruption or termination of emergency service or emergency evacuation routes as the result of construction of this project. Therefore, it has been determined that this encroachment is not significant.

In addition to the above statements, for those projects which do not involve regulatory floodways and do not support incompatible base floodplain development, the following positive statement can be added:

It has been determined, through consultation with local, state, and federal water resources and floodplain management agencies that there is no regulatory floodway involvement on the project and that the project will not support base floodplain development that is incompatible with existing floodplain management programs.

Figure 13-1 Floodplain Statements (Page 3 of 3)

PART 2, CHAPTER 14

COASTAL ZONE CONSISTENCY

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PART 2, CHAPTER 14

COASTAL ZONE CONSISTENCY

14.1 OVERVIEW

This chapter provides an overview of the Federal Consistency Review process and guidance on documenting of the Federal Consistency Determination in the Environmental Document to comply with the ***Coastal Zone Management Act (CZMA)*** and ***Florida Coastal Management Act of 1978***. This documentation is required for Florida Department of Transportation (FDOT) Federal Projects that qualify for screening in the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST).

14.1.1 Definitions

Consistency Reviewer- Florida Coastal Management Program (FCMP) member agency with a statutory interest in the activity who provides Federal Consistency Review through the Florida State Clearinghouse (SCH).

Federal Actions- For the purposes of this chapter a Federal Action includes federal agency activities, federal license or permit activities, and federal financial assistance activities. Please note this is different from the definition of Federal Action used in other chapters of this ***Manual***. ***[National Oceanographic and Atmospheric Administration (NOAA) Federal Consistency website]***

Federal Consistency Determination- The Florida Department of Environmental Protection (FDEP)'s determination on behalf of the State of Florida regarding the consistency of a Federal Action with the policies included in the FCMP.

Federal Consistency Review- The review of Federal Actions by consistency reviewers to ensure consistency with the laws contained in the FCMP that leads to FDEP's Federal Consistency Determination.

Florida Coastal Management Program (FCMP) Member Agencies- The state agencies and Water Management Districts (WMDs) participating in the FCMP.

Florida State Clearinghouse (SCH)- Section of the FDEP's Office of Intergovernmental Programs that administers the intergovernmental coordination and review process of certain state and federal activities within the State of Florida which involve federal financial assistance and/or direct federal activity. The SCH reviews all programs which federal agencies have indicated are eligible for inclusion under ***Presidential Executive Order 12372***. ***Section 403.061(43), Florida Statute (F.S.)***, identifies the SCH as the state's single point of contact for coordinating the state's review of these activities.

14.1.2 Legislative and Regulatory Framework

14.1.2.1 Coastal Zone Management Act

Congress passed the ***CZMA*** in 1972 to resolve conflicts between competing uses in the nation's coastal zone. The ***CZMA*** sought to preserve, protect, develop, and where possible, restore and enhance the resources of the nation's coastal zone. Congress provided coastal states with incentives to encourage them to develop and implement comprehensive management programs which balance the need for coastal resource protection with the need for economic growth and development within the coastal zone.

The ***CZMA*** authorizes the federal government, through the Secretary of Commerce, to provide coastal states with grant-in-aid to assist with the development and implementation of their coastal management programs. Coastal states are required to submit their management programs to the Secretary of Commerce's designee, the Director of the National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management for approval. When the state management program receives federal approval, ***Section 307*** of the ***CZMA*** provides the state with the ability to review federal activities within or adjacent to their coastal zone to determine whether the federal activity complies with the enforceable policies included in the state's approved management program.

Section 307 of the ***CZMA*** and its implementing regulations, ***15 Code of Federal Regulation (CFR) Part 930***, stipulate that all federal agency activities that affect any land or water use or natural resource of the coastal zone must be consistent, to the maximum extent practicable, with the enforceable policies of the state's federally approved management program. Federal licenses or permits, and federal financial assistance for activities affecting any land or water use or natural resource of the coastal zone are required by ***Section 307*** to be fully consistent with the enforceable policies of state coastal management programs.

14.1.2.2 Florida Coastal Management Program

The ***Florida Coastal Management Act of 1978 [Chapter 380, Part II, Florida Statutes (F.S.)]*** authorized the state to develop a comprehensive state coastal management program based on existing statutes and rules. The Florida Coastal Management Program (FCMP) received federal approval on September 24, 1981. The Florida Department of Environmental Protection (FDEP) published a ***Florida Coastal Management Program Guide*** detailing information about the program.

The FCMP consists of a network of twenty-four statutes administered by nine state agencies and the five water management districts, designed to ensure the wise use and protection of the state's water, cultural, historic, and biological resources; to minimize the state's vulnerability to coastal hazards; to ensure compliance with the state's growth management laws; to protect the state's transportation system; and to protect the state's proprietary interest as the owner of sovereign submerged lands. ***Figure 14-1*** provides a

list of statutes included in the FCMP. ***Figure 14-2*** lists the participating FCMP member agencies.

The State of Florida's review of Federal Actions for consistency with the ***CZMA*** is coordinated by FDEP, which serves as the lead agency for the FCMP. In accordance with ***Section 403.061(43), F.S.***, the FDEP serves as the state's single point of contact for performing the responsibilities described in ***Executive Order 12372 - Intergovernmental Review of Federal Programs***. FDEP uses the State Clearinghouse (SCH), which is located within FDEP, to facilitate the coordination process. Federal agencies and applicants are required by the FCMP to provide the SCH with a detailed description of proposed Federal Actions in accordance with ***15 CFR Part 930***. Proposed Federal Actions are distributed by the SCH to each consistency reviewer. Comments provided by the FCMP member agencies are used by FDEP to make a determination on behalf of the State of Florida regarding the consistency of a proposed Federal Action with the policies included in the FCMP.

As a member of the FCMP, FDOT participates in the review of Federal Actions to ensure consistency with the FCMP statutes under its purview, and reviews Federal Actions within or adjacent to the state to ensure that the Federal Action will not result in adverse impacts to the state transportation system, or FDOT's ability to perform its statutory functions. Individual Federal Actions are evaluated by FDOT for compliance with the applicable requirements of ***Chapter 334*** and ***Chapter 339, F.S.*** In this capacity FDOT is a consistency reviewer; however, this chapter is focused on when FDOT Federal Projects undergo this review by other FCMP member agencies.

When FDOT is seeking federal assistance, a determination of consistency with the FCMP may be required prior to the allocation of federal assistance for the project A determination of consistency with the FCMP is also required for other Federal Actions (***Section 14.2.1***). If the project also requires a federal license or permit, a separate Federal Consistency Review for federal licenses or permit applications may be required in accordance with ***15 CFR § 930, Subpart D*** and ***Section 380.23, F.S.*** Federal Consistency Reviews of projects which require permits from the U.S. Army Corps of Engineers (USACE) or the U.S. Coast Guard (USCG), or a state Environmental Resource Permit are conducted during the permitting process.

In accordance with ***Section 380.23, F.S.***, the issuance or denial of the state permit serves as the state's consistency decision. Procedures governing the Federal Consistency Review of state permits are included in ***Section 373.428, F.S***.

14.2 PROCEDURE

14.2.1 Projects Requiring a Federal Consistency Review

FDOT Federal Projects that qualify for screening in the EST are subject to Federal Consistency Review as a part of the Advance Notification (AN) process. See ***Section 14.2.1.1*** for guidance on Federal Consistency Review with AN. These projects require

documentation of the Federal Consistency Determination in the Type 2 Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS). See ***Section 14.2.2*** for how this determination is documented in the applicable Environmental Document. Federal Consistency Review is typically not required for Type 1 CEs until permitting, if a permit is required.

FDOT State Projects such as State Environmental Impact Reports (SEIRs) and Non-Major State Actions (NMSAs) do not require a Federal Consistency Determination until permitting, if a federal permit is required.

14.2.1.1 Federal Consistency Review with Advance Notification

For FDOT Federal Projects qualifying for screening in the EST, the ETDM Coordinator or Project Manager prepares the Advance Notification (AN) package in accordance with ***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification*** and the ***ETDM Manual, Topic No. 650-000-002***. The AN can occur during the Programming Screen or be processed separately before the Project Development and Environment (PD&E) Study. If done during screening, the completed AN package is emailed along with a Programming Screen Notice to the SCH and to each consistency reviewer. The SCH may then forward the information to additional interested parties, if needed.

Issuance of the electronic notice for the Programming Screen begins a 45-calendar day comment period, to allow for the distribution, receipt, and discussion of agency responses consistent with the Programming Screen and Federal Consistency Review. Upon notification by the District ETDM Coordinator/Project Manager, consistency reviewers are responsible for providing comments in the EST to ensure that the project complies with the statutes and requirements within their jurisdiction. Each FCMP member agency's consistency reviewer will also indicate whether the project is consistent with the FCMP.

The SCH has 15 days after receipt of all comments to complete the Federal Consistency Review for the State of Florida. The SCH consolidates the consistency reviewers' comments, reviews the comments, and indicates a determination of the project's consistency with the FCMP in the EST. FDEP's Federal Consistency Determination is first documented in the ***Final Programming Screen Summary Report***. The following determinations (defined below) are available for the SCH to select for documentation in the ***Programming Screen Summary Report***:

> **Consistent:** Based on the information contained in the Advance Notification and comments submitted by the reviewing agencies, the state has no objections to allocation of federal funds for the subject project and, therefore, the funding award is consistent with the Florida Coastal Management Program. State agency comments should be considered in developing the preliminary project design. For projects subject to coastal management consistency review that advance to the work program, the final review of the project's consistency with the Florida Coastal Management Program will be conducted during the environmental permitting review.

Consistent, With Comments: Although the final alignment and design details have not yet been determined, at this time the State of Florida has no objections to the project concept described in the Advance Notification and no objections to the allocation of federal funds for the necessary planning, preliminary design and environmental evaluation activities. Therefore, the funding award is consistent with the Florida Coastal Management Program. Specific comments and recommendations concerning the project concept have been submitted to the project sponsor through the Efficient Transportation Decision Making (ETDM) process. Specific objections to the project, if any, that have been identified during ETDM will be resolved through the ETDM conflict resolution process prior to the project advancing in the FDOT Five-Year Work Program for any purpose other than technical studies and preliminary design to resolve the objections. For projects subject to coastal management consistency review that advance to final design, right-of-way acquisition or construction, the final review of the project's consistency with the Florida Coastal Management Program will be conducted during the environmental permitting review.

Inconsistent: The project has been determined to be inconsistent with the Florida Coastal Management Program. Unless the objections are addressed and the project determined to be consistent, the project shall not proceed further in the programming and PD&E phases.

Should additional review time be required, a written request for a 15-day time extension must be submitted to the District ETDM Coordinator within the initial 45-day comment period. If more than a 30-day extension is required by the SCH, the project should be placed into issue resolution (***Section 14.2.2.1***) until the review is complete. The District should not proceed with further project development before receiving a Federal Consistency Determination.

If significant concerns are not identified during the AN review, additional coordination will not be required unless the nature, location, or scope of the project is substantially changed. The District is still required to comply with all conditions needed to ensure compliance with the FCMP.

If significant concerns are identified during the AN review, the District will be advised by FDEP of conditions of approval or the need for additional coordination. The SCH should be provided with project information of sufficient scope and detail to determine whether the project is consistent with the requirements of all applicable FCMP statutes. The requested project information should be provided as soon as the information becomes available. Issues or concerns identified during the AN review should be addressed.

14.2.1.2 Subsequent Federal Consistency Review

Changes in a Federal Consistency Determination can come at any stage of project development. If after the AN process is completed, an FCMP agency determines that the project is no longer consistent, the consistency determination may be modified. The final

review of the project's consistency with the FCMP is conducted during the environmental permitting review.

14.2.2 Determinations of Inconsistency

Whenever a project is determined to be inconsistent with the FCMP, a letter of inconsistency will be issued by the FDEP on behalf of the state. A finding of inconsistency must cite the section of the relevant statute under the consistency reviewer's authority with which the project is inconsistent and must identify actions that can be taken to resolve the conflict. However, prior to issuing a finding of inconsistency, the consistency reviewer should immediately call the SCH if problems are identified. If any consistency reviewer indicates that the project is not consistent, this would trigger discussions with the SCH and possibly initiate the issue resolution process (see the ***ETDM Manual, Topic No. 650-000-002***). If an inconsistency letter is received, it is uploaded to the EST as support documentation for the project file.

14.2.2.1 Mediation During Advance Notification

If a recommendation or determination of inconsistency with the FCMP is made by the SCH and its consistency reviewers during AN, the project will go through the ETDM Issue Resolution Process, which is discussed in detail in the ***ETDM Manual, Topic No. 650-000-002***. The goal of the ETDM issue resolution process is to resolve conflicts at the agency staff level, providing as many opportunities for resolution as possible prior to elevation of the dispute within FDOT and the review agencies. Once the issue has been resolved, the issue resolution process will be documented in the EST.

14.2.2.2 Mediation During Subsequent Federal Consistency Review

If a FCMP member agency determines that a project is inconsistent at a later stage of project development, the agency must provide FDEP with a written determination signed by the agency head or authorized designee which includes the following:

1. The specific statutes, rules, or regulations with which the project is in conflict; and

2. Provide for FDOT's consideration of suggested alternatives, if any, that would allow the project to be consistent with the FCMP.

Where an FCMP member agency fails to identify the authority with which the project is in conflict, or the FCMP member agency's objection is signed by an unauthorized individual, the determination will not form the basis of a finding of inconsistency by FDEP, the lead coastal management agency.

If FDEP receives a FCMP member agency objection or notice of a pending objection, FDOT will be advised of the basis for the objection. FDEP will work in consultation with the Governor's Office, FDOT, and the objecting FCMP member agency to resolve the objection prior to the need for a formal state consistency decision. If the objection cannot

be resolved, the FDEP will provide FDOT and the NOAA Office of Ocean and Coastal Resource Management (OCRM) with a state consistency objection letter in accordance with ***15 CFR Part 930***.

When FDOT receives a ***Letter of Inconsistency*** from FDEP, FDEP will mediate interagency disputes in an attempt to resolve conflicts. This mediation will be a tiered process, beginning with the interagency review group and continuing, if necessary, to the agency head.

If, after the FDEP mediation, an objecting FCMP member agency continues to deem the project to be inconsistent, FDOT and/or the FDEP may refer the objection to the Governor for final determination in accordance with ***Section 380.23(2)(b), F.S.***

In the event of a disagreement between FDEP and FDOT regarding whether or not a federal assistance activity is subject to Federal Consistency Review, FDOT may request OCRM mediation or Secretarial mediation in accordance with ***15 CFR § 930.99***. In such cases, the procedures and time limits set forth in ***15 CFR § 930, Subpart G***, will apply.

14.2.3 Documentation

During the PD&E phase, the Federal Consistency Determination from the ***Final Programming Screen Summary Report*** is documented in the Environmental Document.

Type 2 CE: The following standard statement along with the date of determination is included on the cover sheet.

> *On (consistency date) the State of Florida has determined that this project is consistent with the Florida Coastal Zone Management Program.*

This statement auto-populates if this determination was made during the Programming Screen and the project's ETDM Number was previously entered into the StateWide Environmental Project Tracker (SWEPT). If the Type 2 CE was not screened in the EST, the following statement is included:

> *The State of Florida will determine if the project is consistent with the Florida Coastal Zone Management Program during the permitting process if applicable.*

EA and EIS: The following standard statement is documented in a dedicated Coastal Zone Consistency section.

> *On (consistency date) the State of Florida has determined that this project is consistent with the Florida Coastal Zone Management Program.*

It should include the date that the determination was made in the ***Final Programming Screen Summary Report***. The statement should also be included in the Final

Environmental Impact Statement (FEIS) Executive Summary ***(Part 1, Chapter 9, Final Environmental Impact Statement)*** when applicable.

14.3 REFERENCES

Chapter 334, F.S., Transportation Administration

Chapter 339, F.S., Transportation Finance and Planning

Chapter 380, Part II, F.S., Coastal Planning and Management

FDEP, Florida Coastal Management Program website. https://floridadep.gov/rcp/fcmp

FDEP, Florida Coastal Management Program Guide - A Guide to the Federally Approved Florida Coastal Management Program. 2024. https://floridadep.gov/sites/default/files/FCMP-Program-Guide-2024-09-30.pdf

FDEP, Florida State Clearinghouse website. https://floridadep.gov/oip/oip/content/clearinghouse

FDEP, Policy and Procedure Manual. https://floridadep.gov/oip/oip/content/policy-and-procedure-manual

FDOT, Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002

NOAA, Federal Consistency website. https://coast.noaa.gov/czm/consistency/

Presidential Executive Order 12372, Intergovernmental Review of Federal Programs. https://www.archives.gov/federal-register/codification/executive-order/12372.html

Section 373.428, F.S., Federal Consistency

Section 403.061(43), F.S., https://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.061.html

Title 15 CFR Part 930, Federal Consistency with Approved Coastal Management Programs

Title 16 United States Code 1456, Coordination and Cooperation

The enforceable policies of Florida's federally approved management program, the Florida Coastal Management Program, consist of the following Florida Statutes and their implementing regulations in the Florida Administrative Code. The authority derived from these statutes is applied by the state agencies charged with their implementation to ensure protection of Florida's coastal resources.

Chapter 161	Beach and Shore Preservation
Chapter 163, Part II	Intergovernmental Programs: Growth Policy; County and Municipal Planning; Land Development Regulation
Chapter 186	State and Regional Planning
Chapter 252	Emergency Management
Chapter 253	State Lands
Chapter 258	State Parks and Preserves
Chapter 259	Land Acquisitions for Conservation or Recreation
Chapter 260	Florida Greenways and Trails Act
Chapter 267	Historical Resources
Chapter 288	Commercial Development and Capital Improvements
Chapter 334	Transportation Administration
Chapter 339	Transportation Finance and Planning
Chapter 373	Water Resources
Chapter 375	Outdoor Recreation and Conservation Lands
Chapter 376	Pollutant Discharge, Prevention and Removal
Chapter 377	Energy Resources
Chapter 379	Fish and Wildlife Conservation
Chapter 380	Land and Water Management
Chapter 381	Public Health; General Provisions
Chapter 388	Mosquito Control
Chapter 403	Environmental Control
Chapter 553	Building Construction Standards
Chapter 582	Soil and Water Conservation
Chapter 597	Aquaculture

Figure 14-1 Florida Coastal Management Program Statutes

Florida Department of Commerce

Florida Department of Environmental Protection

Florida Department of Agriculture and Consumer Services

Florida Department of Health, Division of Environmental Health

Division of Historical Resources of the Florida Department of State,

Florida Department of Transportation

Florida Fish and Wildlife Conservation Commission

Florida Division of Emergency Management

Florida Building Commission of the Florida Department of Business and Professional Regulation

Northwest Florida Water Management District

St. Johns River Water Management District

South Florida Water Management District

Southwest Florida Water Management District

Suwannee River Water Management District

Figure 14-2 Florida Coastal Management Program Agencies

PART 2, CHAPTER 15

COASTAL BARRIER RESOURCES

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PART 2, CHAPTER 15

COASTAL BARRIER RESOURCES

15.1 OVERVIEW

This chapter contains the procedures to determine whether an Florida Department of Transportation (FDOT) project is subject to the provisions of the ***Coastal Barrier Resources Act of 1982 (CBRA)*** which was later amended by the ***Coastal Barrier Improvement Act (CBIA) of 1990***, collectively "the Acts", found at ***16 United States Code (U.S.C.) §§ 3501-3510***. The chapter also details the coordination, consultation and documentation required to ensure compliance with the Acts. This chapter is only applicable to FDOT Federal Projects.

15.1.1 Legislative and Regulatory Framework

In 1982, the ***CBRA*** was signed into law ***(Public Law 97-348)***, to preserve the ecological integrity of areas that serve to buffer the U.S. mainland from storms and provide important habitats for fish and wildlife by prohibiting federal expenditures for the development of designated undeveloped coastal barriers and their associated aquatic habitat, including wetlands, estuaries, and inlets.

The ***CBRA*** required the U.S. Department of the Interior (USDOI) to establish the Coastal Barrier Resource System (CBRS) creating designated "units" or areas that fall under this protection.

Three goals of the ***CBRA*** are to:

1. Minimize loss of human life by discouraging development in high risk areas;
2. Reduce wasteful expenditure of federal resources; and
3. Protect the natural resources associated with coastal barriers.

The ***CBRA*** accomplishes these goals by restricting federal expenditures and financial assistances which have the effect of encouraging development of coastal barriers, by establishing the CBRS, and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.

15.1.1.1 Types of Coastal Barrier Resources

The ***CBRA*** defines an "undeveloped coastal barrier" as:

> (A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that–

(i) consists of unconsolidated sedimentary materials,

(ii) is subject to wave, tidal, and wind energies, and

(iii) protects landward aquatic habitats from direct wave attack; and

(B) all associated aquatic habitats, including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters; but only if such feature and associated habitats contain few manmade structures and these structures, and man's activities on such feature and within such habitats, do not significantly impede geomorphic and ecological processes.

Types of coastal barriers include:

1. **Bay barriers** – Coastal barriers that connect two headlands, and enclose a pond, marsh, or other aquatic habitat.

2. **Tombolos** – Sand or gravel beaches that connect offshore islands to each other or to a mainland.

3. **Barrier spits** – Coastal barriers that extend into open water and are attached to the mainland at only one end.

4. **Barrier islands** – Coastal barriers completely detached from the mainland.

The ***CBIA*** amended the ***CBRA*** by adding units to the CBRS and establishing a category identified as Otherwise Protected Areas (OPAs). OPAs are undeveloped coastal barriers within the boundaries of conservation lands, such as those reserved as wildlife refuges, parks, or areas for other conservation purposes. New construction within OPAs cannot receive federal flood insurance unless it conforms to the purposes for which the area is protected. No other restrictions are placed on federal expenditures in these areas.

In Florida, CBRS units (i.e. specific coastal barriers) have been designated along the Atlantic and Gulf Coasts. The U.S. Fish and Wildlife (USFWS) issues maps identifying the boundaries of CBRS units and OPAs. These maps can be found on the USFWS website or by viewing the mapper built into the ***CBRS Validation Tool***. See ***Section 15.3*** for links to these resources.

15.1.1.2 Limitations on Federal Expenditures

The ***CBRA*** restricts most federal or financial assistance for development within the boundaries of designated coastal barrier units, except for OPAs identified on maps of the System. The ***CBRA*** defines financial assistance as "any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect federal assistance." ***Section 5*** of the ***CBRA (16 U.S.C. § 3504)*** provides that no new expenditures or new financial assistance may be made available under authority of any federal law for any purpose within the CBRS, including, but not limited to:

1. Construction or purchase of any structure, appurtenance, facility, or related infrastructure;

2. Construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to a CBRS unit;

3. Assistance for erosion control or stabilization of any inlet, shoreline, or inshore area, except in certain emergencies.

15.1.1.2.1 Exceptions to Limitations on Federal Expenditures

Exceptions to the prohibition on financial assistance are provided in ***Section 6*** of the ***CBRA (16 U.S.C. § 3505)***.

A federal expenditure is allowable within CBRS units if it meets the exceptions in ***16 U.S.C. § 3505(a)(1)-(5)***. Those applicable to FDOT include:

- Maintenance or construction of improvements to existing federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including disposal of dredge materials related to such maintenance or construction.

- The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system.Construction, operation, maintenance, and rehabilitation of U.S. Coast Guard (USCG) facilities and access to them.

A federal expenditure is allowable within CBRS units if it meets the exceptions in ***16 U.S.C. § 3505(a)(6)(A)-(G)*** and is also consistent with the three goals of the ***CBRA***. Those applicable to FDOT include:

- Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

- Scientific research, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.

- Maintenance, replacement, reconstruction, or repair, but not the expansion (except for U.S. Highway 1 in the Florida Keys) of publicly owned or publicly operated roads, structures, or facilities; (All highways on the federal network are essential links in a larger network or system).

- Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.

For projects which may qualify for an exception under ***Section 6*** of ***CBRA***, the consultation requirements described in the Advisory Guidelines contained in the ***48 Federal Register (FR) 45664***, must be satisfied. Under these guidelines, the USFWS must be consulted with and allowed to comment on the proposed action prior to commitment of federal funds. The USFWS provides comments and determines if the project is consistent with the ***CBRA***. Consultation with USFWS is **not required** in areas identified as OPAs. See ***Section 15.2.2*** for consultation requirements.

15.2 PROCEDURE

Since funding for a project can be rescinded by Lead Federal Agencies, it is necessary to determine, as early as possible, whether an FDOT Federal Project is located within, or in the vicinity of, a coastal barrier resource designated under the ***CBRA*** (see ***Section 15.2.1***). This determination should be made early during the Planning phase and/or the Efficient Transportation Decision Making (ETDM) process (***ETDM Manual, Topic No.650-000-002***).

Projects in which federal funds are restricted under ***Section 5*** of the ***CBRA (Section 15.1.1.2)*** **and are not** included in the exceptions listed in ***Section 6*** of the ***CBRA (Section 15.1.1.2.1)*** are either removed from FDOT's Work Program or assigned as FDOT State Projects or Local Agency Managed projects. This determination also occurs during the Planning phase.

For projects which may qualify for an exception under ***Section 6*** of ***CBRA (Section 15.1.1.2.1)***, the District coordinates with USFWS during the project development phase ***(Section 15.2.2)***. The coastal barrier resources process is shown in ***Figure 15-1***.

15.2.1 Determining if Provisions of Coastal Barrier Resources Act Apply

The first step is for the District to determine if a project is subject to provisions of the ***CBRA*** by first identifying if the project is located on or leads to a coastal barrier island. If so, the next step is to view CBRS unit maps to determine if the project site is within a CBRS unit. There are several ways of viewing CBRS unit maps:

- PDFs on the USFWS website (see ***Section 15.3*** for link).
- The ***CBRS Validation Tool*** which includes a CBRS interactive mapper and provides the means to print/create maps.
- The Environmental Screening Tool (EST) ***CBRA*** data: The data layer can be viewed along with the project limits. The unit type on ***CBRA*** data layer's metadata should identify whether the area is an OPA or CBRS unit. OPAs are denoted on the unit number with a **P** after the CBRS number (e.g., FL-03**P**, P31**P**).

For projects that qualify for ETDM EST screening, the District should review the CBRS unit maps and include its initial evaluation of coastal barrier involvement for the project in the Preliminary Environmental Discussion (PED)(***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***).The results of the Geographical Information System (GIS) analysis for the ***CBRA*** data layer should be reviewed and discussed in the PED. The unit type on ***CBRA*** data layer's metadata should identify whether the area is an OPA or CBRS unit. OPAs are denoted on the unit number with a **P** after the CBRS number (e.g., FL-03**P**, P31**P**). During the screening events, the Environmental Technical Advisory Team (ETAT) will review the PED and available Geographic Information System (GIS) layers in the EST. At the end of the Programming Screen, the District reviews the information published in the ***Programming Screen Summary Report*** with attention to any ETAT comments for the Coastal and Marine topic. Comments by USFWS are especially important.

For projects that do not qualify for ETDM EST screening, the Area of Interest (AOI) tool may be used to view the GIS layers in the EST.

If the District determines that the project is neither in the vicinity of nor leads directly to a designated coastal barrier resource unit, documentation is included in the Environmental Document according to ***Section 15.2.3***.

If the District determines that the project is in the vicinity of or leads directly to a designated coastal barrier resource unit that is not otherwise identified as an OPA, then the USFWS must be consulted as required in ***Section 15.2.2***. Consultation with USFWS is not required for projects designated as OPA units.

15.2.2 Consultation Requirements

The District is responsible for initiating consultation with the USFWS. The USFWS has developed a ***Template for Interagency CBRA Consultation*** to facilitate this consultation (see ***Section 15.3*** for link). This includes providing a description of the proposed action and map showing the project location, the CBRS unit(s), and a reference to the appropriate CBRS unit map (see ***Section 15.2.1***).The following should also be included:

- The ***National Environmental Policy Act (NEPA)*** Assignment standard statement (see ***Part 1, Chapter 4, Project Development Process***)
- The ETDM Number, Financial Management Number, and Federal-Aid Project Number (if available)
- A statement to the effect that:

  This project information package is being provided to you to initiate consultation in compliance with the Coastal Barrier Resources Act (CBRA). The subject project and its relationship to a federally-designated coastal barrier resource is described in this package.

> *Please review the attached information and provide the District Environmental Engineer/Manager a written opinion regarding whether the project meets the exception under Section 6 of CBRA within thirty (30) calendar days.*

This information is sent to the local field office of the USFWS. The District's USFWS ETAT representative is contacted to determine the appropriate office/contact for consultation.

15.2.3 Documentation in Environmental Document

Documentation depends on the Environmental Document Type.

Type 1 Categorical Exclusion (CE) - Documentation of the consultation process and final determination (if applicable) is included in the StateWide Environmental Project Tracker (SWEPT) project file and attached to the ***Type 1 Categorical Exclusion Checklist***. It is recommended that these be placed within the Costal Barrier Resources folder within SWEPT.

Type 2 CE, Environmental Assessment (EA), or Environmental Impact Statement (EIS) – If the District determines that the project is neither in the vicinity of nor leads directly to a designated coastal barrier resource unit; **or** the project is along coastal areas where the provisions of the ***CBRA*** could apply but following the appropriate review it has been determined that there is no CBRS involvement, the following or similar statement is included in the Coastal Barrier Resources section of the Environmental Document:

> *It has been determined that this project is neither in the vicinity of, nor leads directly to a designated coastal barrier resource unit pursuant to the Coastal Barrier Resources Act of 1982 (CBRA) and the Coastal Barrier Improvement Act of 1990 (CBIA).*

If consultation was required, the consultation process and final determination is summarized in the Coastal Barrier Resources subsection of the Environmental Analysis section. The correspondence, and other documents developed during the consultation process (e.g., maps from the ***CBRS Validation Tool***) are referenced and included in the Appendix as well as the project file in SWEPT. It is recommended that these be placed within the Coastal Barrier Resources folder within SWEPT.

15.2.4 Emergency Consultation

In cases where temporary emergency repairs may affect Coastal Barrier Resources, consultation with the USFWS is not required where an emergency threatens life, land, and property immediately adjacent to a CBRS unit ***[16 U.S.C. 3504(a)(3)]***. In this case an email notification of the activity occurring under this exemption may be emailed to ***cbra@fws.gov***. Related emergency action correspondence is discussed in the Environmental Document and uploaded into the SWEPT project file. Permanent

repairs must follow the appropriate consultation for the ***CBRA*** outlined in ***Section 15.2.2***.

15.3 REFERENCES

48 FR 45664, October 6, 1983

Coastal Barrier Improvement Act of 1990

Coastal Barrier Resources Act of 1982

Coastal Barrier Resources Reauthorization Act of 2000

Coastal Barrier Resources Reauthorization Act of 2005

Public Law 97-348, October 18, 1982

Title 16 U.S.C. §§ 3501-3510, Coastal Barrier Resources. https://uscode.house.gov/view.xhtml?path=/prelim@title16/chapter55&edition=prelim

USFWS, CBRA Consultation website (including the Template for Interagency CBRA Consultation). https://www.fws.gov/service/coastal-barrier-resources-act-project-consultation

USFWS, CBRS Validation Tool website. https://www.fws.gov/service/coastal-barrier-resources-system-property-documentation

USFWS PDF of CBRS unit maps. https://www.fws.gov/library/collections/coastal-barrier-resources-system-maps-florida

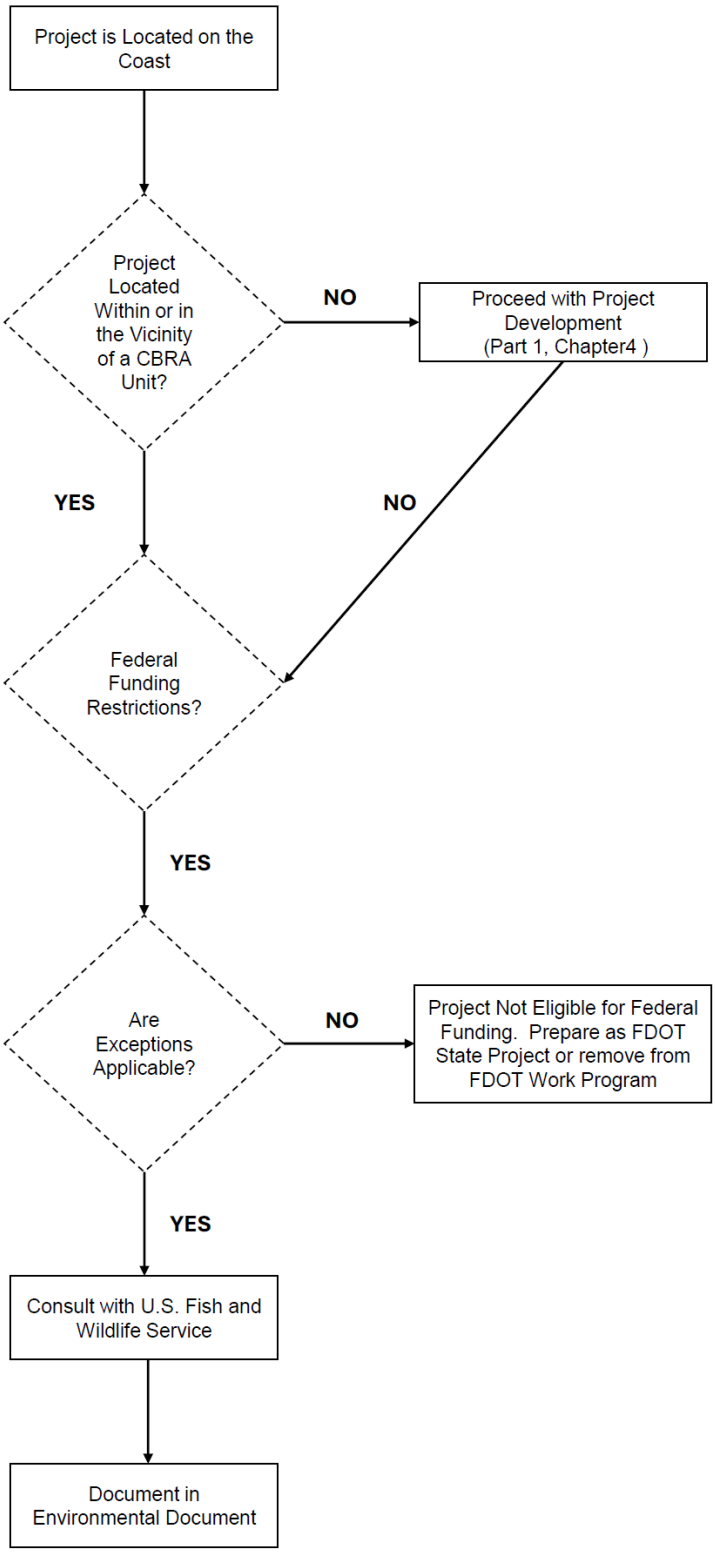

Figure 15-1 Coastal Barrier Resources Process

PART 2, CHAPTER 16

PROTECTED SPECIES AND HABITAT

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PART 2, CHAPTER 16

PROTECTED SPECIES AND HABITAT

16.1 OVERVIEW

16.1.1 Purpose and Use

This chapter provides procedures for determining effects of transportation projects on protected species and habitat. The chapter also provides guidance on coordinating with natural resource agencies to ensure compliance with the ***Endangered Species Act (ESA) of 1973***, as amended, and the ***Florida Endangered and Threatened Species Act, Section 379.2291, Florida Statutes (F.S.)***. The term protected species is used throughout this chapter as a general term for species that are protected by law, regulation, or rule. When the term listed species is used, it refers to species that are identified as threatened or endangered at the federal or state level. This chapter also provides guidance on documenting protected species and habitat impacts, coordination with natural resource agencies, and related commitments. Guidance on consultation with natural resource and regulatory agencies, documentation, and procedures during Design (permitting) and Construction phases, as well as emergency consultation with resource agencies is also provided.

16.1.2 Definitions

Action agency – Any department or agency of the United States proposing to authorize, fund, or carry out an action under existing authorities (***Endangered Species Glossary***).

Action area - All areas to be affected directly or indirectly by the Federal Action and not merely the immediate area involved in the action [***50 Code of Federal Regulations (CFR) § 402.02***].

Adverse modification (or destruction) of critical habitat - A direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species (***50 CFR § 402.02***).

Affect/Effect - To affect (a verb) is to bring about a change (“The proposed action is likely to adversely affect piping plovers nesting on the shoreline”). The effect (usually a noun) is the result (“The proposed highway is likely to have the following effects on the Florida scrub jay”). “Affect” appears throughout ***Section 7*** regulations and documents in the phrases “may affect” and “likely to adversely affect.” “Effect” appears throughout ***Section 7*** regulations and documents in the phrases “adverse effects,” “beneficial effects,” “discountable effects”, “effects of the action,” and “no effect”.

Biological Assessment (BA) - Information prepared by, or under the direction of, a Lead Federal Agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of

species that are proposed for listing; or (3) adversely modify proposed critical habitat. ***BAs*** must be prepared for "major construction activities". The outcome of the ***BA*** determines whether formal consultation or a conference opinion is necessary (***50 CFR § 402.02, 50 CFR § 402.12***).

Biological Opinion (BO) - Document which includes: (1) the opinion of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) as to whether a federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat [***50 CFR § 402.02, 50 CFR § 402.14(h)***].

Candidate species - Plant and animal taxa considered for possible addition to the List of Endangered and Threatened Species pursuant to the ***ESA***. These are taxa for which USFWS has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposal to list, but issuance of a proposed rule is currently precluded by higher priority listing actions [***61 Federal Register (FR) 7596-7613 (February 28, 1996)***].

Compensatory Mitigation - Serves to compensate for unavoidable impacts to species or habitat by replacing or providing substitute resources having similar functions of equal or greater ecological value.

Conference - Process of early interagency cooperation involving informal or formal discussions between a federal agency and USFWS or NMFS pursuant to ***Section 7(a)(4)*** of the ***ESA*** regarding the likely impact of an action on proposed species or proposed critical habitat. Conferences are: (1) required for proposed federal actions likely to jeopardize the continued existence of a proposed species, or destroy or adversely modify proposed critical habitat; (2) designed to help federal agencies identify and resolve potential conflicts between an action and species conservation early in a project's planning; and (3) designed to develop recommendations to minimize or avoid adverse effects to proposed species or proposed critical habitat (***50 CFR § 402.02, 50 CFR § 402.10***).

Conservation measures - Actions to benefit or promote the recovery of listed species that are included by the federal agency as an integral part of the proposed action. These actions will be taken by the resource agency or applicant and serve to minimize or compensate for project effects on the species under review. These may include actions taken prior to the initiation of consultation, or actions which the federal agency or applicant have committed to complete in a ***BA*** or similar document.

Conservation recommendations - The Service(s)’s non-binding suggestions resulting from formal or informal consultation that: (1) identify discretionary measures a federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or proposed species, or designated or proposed critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or proposed species, *or* designated or proposed critical habitat; and (3) suggestions on how an action agency can

assist species conservation as part of its action and in furtherance of the authorities under ***Section 7(a)(1)*** of the ***ESA; 50 CFR § 402.02***.

Constituent elements - Designated or proposed critical habitat essential to the conservation of the species. Takes into consideration both physical and biological features, including, but not limited to: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographic and ecological distributions of a species as prescribed by ***50 CFR § 424.12(b)***. **Primary constituent elements** are specific elements of physical or biological features that provide for a species' life history processes and are essential to species conservation.

Critical habitat - For listed species consists of: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of ***Section 4*** of the ***ESA***, on which are found those physical or biological features (constituent elements) (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of ***Section 4*** of the ***ESA***, upon a determination by the Secretary that such areas are essential for the conservation of the species ***[16 United States Code (U.S.C.) §§ 1532-1533]***. Designated critical habitats are described in ***50 CFR § 17 and § 226***. Evaluations of critical habitat make a determination of whether the proposed action will result in the "destruction or adverse modification of critical habitat." This determination language is used for critical habitat under the purview of both the NMFS and the USFWS.

Effects of the action – All consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action (***50 CFR § 402.02***).

Environmental baseline – Refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the past and present impacts of all federal, state, or private actions and other human activities in the action area, the anticipated impacts of all proposed federal projects in the action area that have already undergone formal or early ***Section 7*** consultation, and the impact of state or private actions which are contemporaneous with the consultation in process. The impacts to listed species or designated critical habitat from federal agency activities or existing federal agency facilities that are not within the agency's discretion to modify are part of the environmental baseline (***50 CFR § 402.02***).

Essential Fish Habitat (EFH) - Those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle. EFH is described in ***Fishery Management Plans*** and is approved by the Secretary of Commerce acting through the National Oceanic and Atmospheric Administration (NOAA) Fisheries (***50 CFR § 600.10***).

Formal consultation - A process between USFWS or NMFS and a federal agency or applicant that: (1) determines whether a proposed federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with a federal agency's written request and submittal of a complete initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement by either USFWS or NMFS. If a proposed federal action may affect a listed species or designated critical habitat, formal consultation is required (except when USFWS or NMFS concur, in writing, that a proposed action "may affect, is not likely to adversely affect" listed species or designated critical habitat) (***50 CFR § 402.02, 50 CFR § 402.14***).

Findings - A determination made by the lead agency on the level of impact a proposed action has on a resource. This determination is derived from all known information including coordination/consultation with the resource/regulatory agency.

Incidental take (federal) - Take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a federal agency or applicant, or contractors working on behalf of the applicant (***50 CFR § 402.02***).

Incidental Take (state) - Any taking otherwise prohibited, if such taking is incidental to, and not the purpose of the carrying out of an otherwise lawful activity [***Chapter 68A-27.001(5), Florida Administrative Code, (F.A.C.)***].

Incidental Take Statement (federal) - The part of a non-jeopardy ***BO*** that estimates the amount or extent of incidental take of listed species anticipated from the action subject to consultation as authorized under ***50 CFR § 402.14(i)*** and the resulting incidental take will not violate ***ESA Section 9 (16 U.S.C. § 1538)*** take prohibitions.

Indirect effects - Those effects that are caused by or will result from the proposed action and are later in time but are still reasonably certain to occur ***(USFWS and NMFS, 1998)***.

Informal consultation - An optional process that includes all discussions and correspondence between the Service(s) and a federal agency or designated non-federal representative, prior to formal consultation, to determine whether a proposed federal action may affect listed species or critical habitat. This process allows the federal agency to utilize the Services expertise to evaluate the agency's assessment of potential effects

or to suggest possible modifications to the proposed action which could avoid potentially adverse effects. If a proposed federal action may affect a listed species or designated critical habitat, formal consultation is required (except when USFWS or NMFS concur, in writing, that a proposed action "may affect, is not likely to adversely affect" listed species or designated critical habitat) (***50 CFR § 402.02, 50 CFR § 402.13***).

Jeopardize the continued existence of - To engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (***50 CFR § 402.02***).

Listed species (federal) - Any species of fish, wildlife or plant which has been determined to be endangered or threatened under ***Section 4*** of the ***ESA***. Listed species are found in ***50 CFR § 17.11-17.12*** (***50 CFR § 402.02***).

Listed species (state) - Animal species listed as state-designated threatened by the Florida Fish and Wildlife Conservation Commission (FWC) in ***Chapter 68A-27, F.A.C.***; plant species listed by the state as Endangered, Threatened, or Commercially Exploited on the ***Regulated Plant Index (5B-40.0055, F.A.C.)***.

Major Construction Activity - A construction project (or other undertaking having similar physical impacts) which is a major federal action significantly affecting the quality of the human environment as referred to in the ***NEPA, [42 U.S.C. § 4332(2)(C), 50 CFR § 402.02]***. Under ***NEPA*** major construction activities require Environmental Impact Statements.

May affect - The appropriate conclusion when a proposed action may pose **any** effects, detrimental or beneficial on listed species or designated critical habitat. May affect includes both “may affect not likely to adversely affect” and “may affect, likely to adversely affect” determinations. A determination of “may affect” without a “not likely to adversely affect” or “likely to adversely affect” determination should not be submitted to the Service(s) as a finding ***(USFWS and NMFS, 1998)***.

May affect, not likely to adversely affect - The appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. “Beneficial effects” are contemporaneous positive effects without any adverse effects to the species. “Insignificant effects” relate to the size of the impact and should never reach the scale where a take occurs. “Discountable effects” are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur ***(USFWS and NMFS, 1998)***.

May affect, likely to adversely affect - The appropriate finding in a ***BA*** (or conclusion during informal consultation) if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated actions or interdependent actions, and the effect is not: discountable, insignificant, or beneficial (see definition of "may affect, not likely to adversely affect"). In the event the overall effect of the proposed action is beneficial to the listed species, but is also likely to cause some adverse effects,

then the proposed action "is likely to adversely affect" the listed species. If an incidental take is anticipated to occur as a result of the proposed action, a "may affect, is likely to adversely affect" determination should be made. A "may affect, is likely to adversely affect" determination requires the initiation of formal ***Section 7*** consultation ***(USFWS and NMFS, 1998)***.

Natural Resources Evaluation (*NRE*) - An FDOT technical report that provides documentation of protected species and habitat, wetland, and EFH issues to supplement the Environmental Document. The ***NRE*** may be sent to USFWS or NMFS to serve as a ***BA*** when necessary but also includes information on state listed species and other protected species and habitat.

No effect - The appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat (e.g., no effect whatsoever, neither detrimental nor beneficial). Concurrence from USFWS or NMFS is not required (***USFWS and NMFS, 1998***).

Primary constituent element – see Constituent Element definition.

Proposed critical habitat - Habitat proposed in the ***FR*** to be designated as critical habitat, or habitat proposed to be added to an existing critical habitat designation, under ***Section 4*** of the ***ESA*** for any listed or proposed species (***50 CFR § 402.02***).

Proposed species - Any species of fish, wildlife or plant that is proposed in the ***FR*** to be listed under ***Section 4*** of the ***ESA*** (***50 CFR § 402.02***).

Protected species - In this chapter this term is used for species that are protected by federal or state regulations such as the ***ESA***, ***Migratory Bird Treaty Act (MBTA) of 1918***, ***Marine Mammal Protection Act (MMPA) of 1972***, ***F.S.***, ***F.A.C.***, etc.

Reasonable and prudent alternatives - Alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that USFWS or NMFS believe would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of designated critical habitat. These are applicable only when the Service determines an action is likely to result in jeopardy or adverse modification (***50 CFR § 402.02***).

Reasonable and prudent measures - Actions the Service(s)'s Director considers necessary or appropriate to minimize the impact of the incidental take on the species (***50 CFR § 402.02)***. These measures are considered nondiscretionary (mandatory) if a jeopardy or adverse modification opinion is to be avoided.

Service(s) - USFWS or NMFS (or both).

Take (federal) - To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct **[*16 U.S.C. § 1532(19)*]**. "Harm" is further

defined by USFWS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. “Harass” is defined by USFWS as intentional or negligent acts or omissions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering (***50 CFR § 17.3***).

Take (State) - To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct **(*Chapter 68A-27, F.A.C.*)**. The term “harm” in the definition of take means an act which kills or injures fish or wildlife. Such act may include significant habitat modification or degradation where it kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The term “harass” in the definition of take means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

Technical Assistance – any coordination between FDOT and the Service(s) outside of defined ***Section 7*** consultation procedures, primarily when FDOT is not the action agency.

Technical memo - A brief memorandum documenting the species evaluation for projects with little to no impacts on protected species and habitat and do not require consultation with the Service(s) or coordination with FWC or the Florida Department of Agriculture and Consumer Services (FDACS).

16.1.3 Legislative and Regulatory Framework

Section 7(a)(2) of the ***Endangered Species Act (ESA) (16 U.S.C. § 1536)*** requires federal agencies to consult with U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as appropriate, to ensure that federally funded or authorized actions are not likely to jeopardize the continued existence of federally endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat. The term “critical habitat” has a specific legal meaning and is a term defined and used in the ***ESA (16 U.S.C. § 1532)***. It pertains to specific geographic areas that contain features essential to the conservation of threatened or endangered species and may require special management and protection ***(USFWS, 2013)***. Generalized maps and detailed legal descriptions of critical habitat can be obtained through USFWS and/or ***Federal Register (FR)*** notices.

The Secretary of the U.S. Department of Interior (DOI), acting through USFWS, and the Secretary of the U.S. Department of Commerce, acting through NMFS, hereinafter referred to as the Services, are mandated to protect and conserve all forms of wildlife, plants, and marine life they find in serious jeopardy. In general, USFWS coordinates ***ESA*** activities for terrestrial and freshwater species and NMFS coordinates ***ESA*** activities for marine and anadromous species. Consultation responsibilities are shared for some species, (e.g., marine sea turtles and the anadromous Gulf sturgeon) which may be

present in different habitats depending on the season or their life cycle stage.

Amendments to the ***ESA*** in 1978, 1979 and 1982 changed the consultation requirements of ***Section 7*** and established the implementing regulations (***50 CFR Part 402***). These procedures allow federal agencies to consolidate ***Section 7*** requirements with interagency cooperation procedures required by other statutes, such as ***National Environmental Policy Act (NEPA)*** (***42 U.S.C. § 4321 et seq.***). ***Section 7*** requirements are met through the environmental review process, ***NEPA*** and environmental permitting.

Section 404 of the ***Clean Water Act of 1972 (CWA)*** regulates the discharge of dredged or fill material into waters of the United States. The Environmental Protection Agency (EPA) provides oversight of the ***Section 404*** program and policies, while the U.S. Army Corps of Engineers (USACE) administers the day-to-day program and is responsible for federal wetland determinations and wetland permitting. ***Section 10*** of the ***Rivers and Harbors Appropriations Act of 1899*** is administered by the USACE and applies to any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the US. See ***Part 1, Chapter 12, Environmental Permits*** for more information. Impacts to wetlands and other surface waters provide a "nexus" for involvement of the Services as cooperating federal agencies, where the Services advise the USACE or other Lead Federal Agency on the potential for permitted actions to affect federally listed species and their habitat. See ***Section 16.3.3.3*** for more information on permitting.

Section 9 of the ***Rivers and Harbors Appropriations Act of 1899*** and the ***General Bridge Act of 1946*** gives the U.S. Coast Guard (USCG) the regulatory authority to prevent interference of navigable waters by bridges or other obstructions. The USCG approves the location, plans, and navigable clearances of bridges through the issuance of bridge permits or bridge permit amendments. Bridge permits issued by the USCG also provide a "nexus" for involvement of the Services as cooperating federal agencies, where the Services advise the USCG on the potential for permitted actions to affect federally listed species and their habitat.

The USACE and/or USCG may be required to prepare ***NEPA*** documents for permit issuance and may participate as a cooperating agency on a transportation project. As cooperating agencies, USACE and USCG routinely adopt FDOT's ***NEPA*** document for projects for which they provide federal permits under ***Section 404*** of the ***CWA*** or ***Sections 9 and 10*** of the ***Rivers and Harbors Appropriations Act of 1899***.

When two or more federal agencies are involved in an activity affecting listed species or critical habitat, one agency is designated as the lead (***50 CFR § 402***), often based on which agency has the principal responsibility for the project (***USFWS and NMFS, 1998***). For FDOT Federal Projects, FDOT serves as the Lead Federal Agency and is responsible for consulting with the Service(s) for potential impacts to listed species and critical habitat. For FDOT State Projects, [e.g., Non-Major State Action (NMSA) or State Environmental Impact Report (SEIR)] the ***Section 7*** consultation will not be conducted until permitting and the USACE or USCG is the lead agency; however, FDOT can coordinate with the Service(s) for Technical Assistance during PD&E or prior to permitting.

Just as the federal agencies oversee the protection of certain species and resources, the Florida Constitution establishes the Florida Fish and Wildlife Conservation Commission (FWC), ***Article IV, Section 9, Fla. Const.***, entrusted to "exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and...marine life." These powers and duties are further carried out through the legislative directives enacted in ***Chapter 379, F.S.***, and embodied in the implementing regulations adopted in ***Chapter 68, F.A.C***. Similarly, the Florida Department of Agriculture and Consumer Services (FDACS) oversees the protection of native plants through ***Chapter 5B-40, F.A.C.***

16.1.4 Protected Species and Habitat Evaluation Process Summary

Figure 16-1 provides a flow chart of the protected species and habitat evaluation process. Involvement with protected species and wildlife habitat is evaluated for both FDOT Federal Projects and FDOT State Projects. Similarly, this evaluation should take place regardless of whether the project qualifies for screening through the Efficient Transportation Decision Making (ETDM) process. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects,*** for project types qualifying for ETDM screening. ***Section 16.3.1.1*** provides guidance for documenting protected species and habitat evaluation for projects not qualifying for ETDM screening.

For projects that qualify for screening, species and habitat evaluation begins during the Planning or Programming Screen as explained in ***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***. As part of the screening event, the District requests an official species list from the Service(s) Environmental Technical Advisory Team (ETAT) members and a list from the FWC ETAT members for state listed, or other protected species.

The District first reviews information from the ***Programming Screen Summary Report***, then gathers information from various sources to aid in the determination of potential involvement with a federally listed threatened or endangered species, proposed threatened or endangered species, or designated or proposed critical habitat (***Section 16.3.1.2.1***) within the action area. Information should also be collected on state listed species, habitat connectivity, areas that are ecologically important, and species that are otherwise protected by regulation. This information is field verified during project development and then evaluated to determine the effects of the proposed action to each species and habitat. This evaluation on protected species and habitats is compiled into an ***Natural Resources Evaluation (NRE)***, or technical memo when appropriate, and submitted to federal and state agencies for concurrence and/or review (see the ***Natural Resources Evaluation Outline and Guidance*** on FDOT's ***Protected Species and Habitat Website***). Draft ***NREs*** for FDOT Federal Projects are reviewed by Office of Environmental Management (OEM) prior to submittal to the resource agencies. ***NREs*** for FDOT State Projects are not required to be reviewed by OEM. ***NREs*** are final documents once they are submitted to the resource agencies and should not be revised. If changes to the ***NRE*** are needed, an addendum to the original ***NRE*** document is required.

If federally listed species or critical habitat have the potential to be within the action area, then consultation with the Service(s) may be necessary. Consultation may be as simple as a brief informal consultation or may require a more in-depth formal consultation (***Section 16.2.2.1***). In addition, if state listed species have the potential to be present within the action area, then coordination with FWC and/or FDACS is recommended.

A project requires an official federal document, called a ***Biological Assessment (BA)***, if federally listed species or critical habitat may be present in the action area that requires an Environmental Impact Statement (EIS) (***50 CFR § 402.12***) or if a project's proposed action results in a determination of "may affect, is likely to adversely affect" (see ***Section 16.1.2*** for definitions of the different effect determinations). In these cases, the District requests that OEM initiate formal consultation under ***Section 7*** of the ***ESA*** (***Section 16.2.2.1***) for FDOT Federal Projects. For projects where ***Section 7*** consultation will be conducted by USACE or USCG during permitting, FDOT can request Technical Assistance from the Service(s). An ***NRE*** can be submitted to the Services for use as a ***BA***. Formal consultation results in a ***Biological Opinion*** (***BO***) from the Services that determines whether a proposed action is likely to jeopardize the continued existence of a listed species (jeopardy) or destroy or adversely modify critical habitat (adverse modification).

Information on state listed species and valuable natural habitats should also be collected for the project. FDOT must evaluate projects for compliance with the ***Florida Endangered and Threatened Species Act of 1977*** (***Chapter 379, F.S., Chapter 68A-27, F.A.C., Chapter 5B-40, F.A.C.***). Involvement with state listed or otherwise protected species and natural areas [e.g., Strategic Habitat Conservation Areas (SHCAs), Florida Natural Areas Inventory (FNAI) rare natural communities, Aquatic Preserves, and Marine Protected Areas (MPA)] should be discussed. Impacts to these species and habitats should be discussed in the Environmental Document and associated technical reports (i.e., ***NRE***, technical memo).

For off-project activities associated with construction of the project the District follows the same procedures for identifying possible involvement with protected species or habitat (***Section 16.3.3.5***).

16.1.5 Key Points for Protected Species and Habitat Coordination Process

1. Engage in early, continual, and strategic coordination with resource and regulatory agencies (i.e., USFWS, NMFS, FWC, USACE, and FDACS).

2. For projects qualifying for ETDM screening, information from the screening should be used to prepare the scope of services for the PD&E Study and provide focus for the protected species and habitat analysis/impact assessment.

3. Projects with protected species and habitat involvement need to be evaluated and addressed regardless of the type of Environmental Document. This evaluation should be appropriate to the scope of the project. The level of detail should be

weighed according to the ecological importance and distribution of affected species and intensity of potential impacts of the project.

4. Coordinate internally with FDOT PD&E, Design, and Construction staff (as applicable) throughout the process (e.g., ETDM screening, analysis, impact assessment, making commitments). Since PD&E Studies may result in commitments developed to address the specific protected species and habitat issues of a project, it is critical that appropriate internal coordination efforts within the District occur before commitments are made.

5. Consultation may be needed with the applicable Service when federally listed species and/or critical habitat may exist within the action area. This may be informal consultation or may require the initiation of formal consultation by the Lead Federal Agency.

6. Request concurrence from the Services. Concurrence is not required for determinations of "no effect" or when use of a programmatic key or a programmatic approach indicates that a "may affect, not likely to adversely affect" determination does not require further consultation. A species key can only be used when the scope of the key is applicable to the project and all appropriate conservation measures are carried out, as required.

7. If an issue is identified during consultation that could affect the completion of the consultation process, the District must inform OEM to determine the appropriate course of action.

8. The contents of the ***NRE*** are summarized in the Environmental Document, including effect determinations, dates of concurrence, and/or outcomes of consultation.

16.2 REGULATORY AGENCY PROCESS

16.2.1 Coordination/Consultation/Engagement with Agencies

Effectively addressing protected species and habitat for transportation projects depends on engaging the various federal and state resource and regulatory agencies by adhering to the three generalized coordination principles outlined below. The key elements of successful agency coordination can be summarized as follows: **"Early, continual, and strategic coordination"**.

Early coordination - Engagement with federal and state agencies should occur as early in the project as appropriate. For projects screened through the ETDM process, official agency engagement may occur during the Planning Screen, or more commonly during the Programming Screen (see ***Section 16.3.1.2.1***). The overall goal of early engagement during the PD&E phase is to be **proactive** in identifying potentially protected species and habitat, and then **actively coordinating** with wildlife and other agencies to formulate strategies and responses that address those resources. Early coordination with agencies provides an important opportunity for the agencies to review data and analyses that have been developed, and to discuss the steps for advancing protected species/habitat

coordination for the PD&E Study. It also aids in the development of alternatives and informs permitting and future phases.

Continual coordination - Continual engagement with agencies involves communication to determine the level of assessment and documentation required; confirm which species and/or habitats may be affected by the project; decide whether informal or formal ***Section 7*** consultation is required; and obtain agency confirmation for effect determinations, as appropriate. Continual coordination promotes an **ongoing dialog** between FDOT and the resource and regulatory agencies, minimizing the chances of miscommunication or misunderstandings that could delay, complicate, or compromise a project.

Strategic coordination - Each project possesses unique circumstances and "facts on the ground." Strategic coordination involves thoughtful consideration of an **overall strategy** for handling protected species and habitat throughout Planning, PD&E, Design, Construction and Maintenance.

The advantages of developing a strategic approach include:

1. Early awareness of potential protected species/habitat;
2. Avoidance/minimization of potential impacts;
3. Aids in the development of alternatives;
4. A decrease in timeframes for resource and regulatory agency approvals;
5. Supports short or long term surveys, research, species studies, which may be required;
6. Complete documentation for the administrative record; and
7. Seamless transfer of information and commitments into the Design and Construction phases.

16.2.2 Endangered Species Act Process

For Federal Projects, ***Section 7*** of the ***ESA*** requires consultation with the Service(s) to ensure that actions are not likely to jeopardize the continued existence of federally endangered or threatened species, or result in the destruction or adverse modification of critical habitat. Data collected on federally listed species and critical habitats should be included in an ***NRE*** or technical memo per the ***Natural Resources Evaluation Outline and Guidance*** document on FDOT's ***Protected Species and Habitat Website***. The ***NRE***, coordination meetings, commitments, and consultation with the Services should be summarized in the Environmental Document (***Section 16.3.2.6.2***).

It is highly recommended that the District reference the ***Endangered Species Consultation Handbook (USFWS and NMFS, 1998)***, if involvement with a federally listed species is possible.

For FDOT State Projects, the Districts **must** coordinate with the Service(s) if the project has the potential to affect federally listed species or critical habitat. The Districts can request Technical Assistance from the Services. In accordance with the ***Endangered Species Consultation Handbook***, "Technical assistance from the Services may take a variety of forms: it includes the species list provided by the Services, information on listed species, and candidate species, was well as names of contacts having information on other sensitive species or State listed species. The Services may recommend that the action agency conduct additional studies on species' distribution in the area affected by the action." It is highly recommended that the data collection process be the same as or similar to what is compiled for Federal Projects. This can be important in the event that a Federal Action (e.g., federal funding or federal permit) is identified later on in project development.

When Technical Assistance is requested, the Services may respond in several ways. If species are not likely to be present, the consultation requirement is met, and the Services may advise the District in writing. If historical records or habitat similarities suggest the species may be in the area, then some survey work may be recommended to make a more precise determination. If the species is definitely in the project area, but the Services determines it will not be adversely affected, the Services should notify the agency of that opinion.

If no Federal Action exists and listed species may be present, consultation with the Service(s) may determine that ***Section 10*** of the ***ESA***, which authorizes incidental take permit(s) and requires submittal of a Habitat Conservation Plan(s) (HCP), may apply to the project. More information on ***Section 10 of the ESA*** and how to prepare an HCP can be found in the ***Habitat Conservation Plans: Section 10 of the Endangered Species Act*** document. District staff should coordinate closely with OEM if no apparent Federal Action exists to determine if ***Section 10*** consultation may be necessary, as these consultations are usually lengthy and more complex than the ***Section 7*** process. OEM will coordinate with the Service(s) to determine the process.

16.2.2.1 Consultation With Federal Agencies

Interagency consultation with the Service(s) is an administrative review that operates in parallel with the science-based review process used for effects determinations. Overall, the information used for consultation should focus on conducting a thorough review of the effects of the alternative(s) for each listed species and/or critical habitat(s) potentially affected by the action.

Under federal law, each agency shall use the best scientific and commercial data available to complete an interagency consultation (***16 U.S.C. § 1536***). The consultation documentation should lead the reviewer (i.e., the Service) through a discussion of effects to a logical, well-supported conclusion. It is essential that FDOT, as an **action agency** (through ***NEPA*** Assignment), evaluate and summarize project effects in a logical, objective and scientific manner that clearly supports the ultimate effect determinations and consultation conclusions. For example, ***NREs*** should not only include appropriate

effect determinations, but need to include sufficient supporting evidence and rationale to adequately justify these determinations.

Coordination with the Service(s) involves more than simply submitting documentation and obtaining review comments. **Early** coordination should identify listed species and/or critical habitat present in the action area, and which species and habitats have the potential to be affected by the project. **Continual** coordination requires ongoing communication with the Service(s) to document consensus, to identify areas of disagreement, and to resolve outstanding issues. **Strategic** coordination requires an evaluation of project-related listed species and habitat issues, thoughtful consideration of how to minimize project impacts to listed species and habitats, and an overall approach for conducting an efficient federal coordination/consultation process. Coordination could also include discussion on other protected species.

The coordination/consultation process must be performed for **each** listed species and/or **each** type of critical habitat within the action area that may be affected by the project. The level of federal coordination required (no consultation, informal consultation, or formal consultation) will be determined by each effect determination. ***Table 16-1*** provides a step by step process to follow for each effect determination.

The starting point for an effect determination is the environmental baseline (see ***Section 16.1.2*** for definition). The term "environmental baseline" is not synonymous with "existing conditions." The environmental baseline "is an analysis of the effects of past and ongoing human and natural factors leading to the current status of the species, its habitat (including designated critical habitat), and ecosystem, within the **action area**" (***USFWS and NMFS, 1998***). It therefore considers not only "existing conditions," but past activities that have already affected listed species and designated critical habitat, and any other existing/proposed private, local, state, or federal actions that are contemporaneous with FDOT's proposed action.

The possible effect determinations are "no effect," "may affect, not likely to adversely affect," or "may affect, likely to adversely affect" for species listed under the ***ESA*** or "destruction or adverse modification" or "no destruction or adverse modification" of critical habitat. For proposed or candidate species or proposed critical habitat, a determination of "is likely to jeopardize proposed/candidate species" or "adversely modify proposed critical habitat" is possible.

Species and/or critical habitat receiving a "no effect" determination are not subject to consultation but are required to have the appropriate documentation as described in ***Section 16.2.2.1.2***.

Species and/or critical habitat(s) subject to a "may affect, not likely to adversely affect" determination are handled via informal consultation (***Section 16.2.2.1.4***) unless otherwise agreed upon through a programmatic approach or effect determination key (***Section 16.2.2.1.1***).

Formal consultation occurs when a "may affect, likely to adversely affect" determination is made for listed species and/or critical habitat (***Section 16.2.2.1.5***), and must be initiated

through OEM. If one species has a “may affect, likely to adversely affect” determination, then the Service will likely include all potentially involved species in the formal consultation process, regardless of effect determination.

Figure 16-2 provides a flow chart for the federal coordination/consultation process. The flow chart serves as a useful aid for each listed species and/or critical habitat that may be subject to federal coordination, as an effect determination and subsequent coordination will be required for each one.

The NMFS Southeast Regional Office has procedures for action agencies to submit ***Section 7*** consultation requests electronically. See FDOT’s ***How To Guide for submission of Natural Resource Evaluations to the National Marine Fisheries Service (NMFS) for Endangered Species Act (ESA) and Essential Fish Habitat (EFH) Consultations*** and accompanying flowchart on the FDOT’s ***Protected Species and Habitat Website*** under the Consultation Guidance Documents section.

Re-initiation of consultation with the Service(s) is required to occur when the ***BO*** terms and conditions are exceeded. Re-initiation may also be required after initial consultation has been completed due to changes in scope or design of the project, discovery of the presence of listed species, or the listing of new species or designation of critical habitat.

16.2.2.1.1 Programmatic Keys and Approaches

When appropriate, species effect determination keys may be used to determine anticipated species effects. FDOT in agreement with USFWS has identified effect determination keys commonly used by FDOT. See ***FDOT Use of Programmatic Effect Determination Keys*** on FDOT’s ***Protected Species and Habitat Website***. There is also a link to the ***USACE Source Book*** where specific species keys can be located. A species key can only be used when the scope of the key is applicable to the project and all appropriate conservation measures are carried out, as required.

Programmatic approaches may be used to determine anticipated species effects. See FDOT’s ***Protected Species and Habitat Website*** for links to programmatic approaches available for use such as the ***FDOT Programmatic Approach for Minor Transportation Activities*** as well as others developed for specific species.

The ***FDOT Programmatic Approach for Minor Transportation Activities*** includes activities conducted by FDOT that result in none to moderate amounts of ground-disturbing work as a result of routine maintenance or modernization activities .). The activities are limited to those within existing FDOT ROW and coverage is not provided for new construction activities in newly acquired ROW. It covers specific species and specific activities and is completed using the Minor Activities Programmatic Approach tool in the StateWide Environmental Project Tracker (SWEPT). The SWEPT report from the Minor Activities Programmatic Approach tool ***(Programmatic Approach Form)*** is saved in the project file.

Concurrence from the USFWS is not required when the use of a programmatic key or a programmatic approach indicates that a “may affect, not likely to adversely affect”

determination and the application of required conservation measures will satisfy consultation requirements. For FDOT State Projects when ***Section 7*** is not applicable, the ***FDOT Programmatic Approach for Minor Transportation Activities*** can be used to provide guidance for avoiding and minimizing adverse effects to federally protected species. However, any conservation measures required by a key or programmatic approach determination must be included as a commitment to provide the USFWS with regulatory assurance. Please note these keys and programmatic approaches are only for species under the jurisdiction of USFWS, not NMFS.

16.2.2.1.2 "No Effect" Determinations

Where FDOT determines that an action will have "no effect" on a listed species or critical habitat (see ***Section 16.1.2***), consultation with the Service(s) is not required. A "no effect" determination means no effect whatsoever (neither detrimental or beneficial) to a species or critical habitat, in the short term or long term. Although consultation is not required for a "no effect" determination, the analysis supporting it should be documented in the project file, technical memo, or ***NRE*** as appropriate and in the final Environmental Document. Concurrence from the Service(s) is not required for this determination.

16.2.2.1.3 Section 7 Consultation

When federally listed species and/or designated critical habitat have the potential to be within the action area and a "may affect, not likely to adversely affect" or "may affect, is likely to adversely affect" determination applies, consultation with the Service(s) is necessary. There are two types of ***Section 7*** consultation processes: informal and formal. Informal consultation is a process designed to help determine whether formal consultation is needed. In contrast, formal consultation is a required process when the effect of a proposed action is "may affect, is likely to adversely affect".

As stated in the ***Endangered Species Consultation Handbook (USFWS and NMFS, 1998, E-21)***, "The 'may affect' evaluation looks not only at effects on the entire species or local management unit but also considers the effect on individual members of the species. If even one individual may be affected, the biologist must conclude that there is a 'may affect' situation."

The interaction between effect determinations and consultation procedures are primarily determined by existing conditions (e.g., ecological importance and distribution of listed species, potential listed species presence), combined with the project scope and intensity of potential impacts. In some cases, formal consultation may be unavoidable, as in cases where major construction unavoidably impacts listed species that have a restricted range or impacts designated critical habitat for a relatively long distance. However, in other cases, avoidance and minimization efforts can limit impacts to listed species and/or designated critical habitat to a degree that may change an initial "may affect, likely to adversely affect" determination (formal consultation) to a "may affect, not likely to adversely affect" determination that triggers informal consultation.

An effect determination is made for each listed species and/or each designated critical habitat within the action area. It takes only one "may affect, likely to adversely affect" determination to trigger formal consultation. If a project impacts only one listed species to a degree where formal consultation is required, it may be advisable to avoid or minimize the impact of a project (if possible) to an extent that justifies a "may affect, not likely to adversely affect" determination.

16.2.2.1.4 Informal Consultation

Informal consultation is initiated when federally listed species or designated critical habitat are potentially present within the project's action area and may be affected by the action. This consultation can provide FDOT the opportunity to implement project scope revisions or conservation activities prior to project implementation. If informal consultation is needed with the Service(s), documentation in the form of an ***NRE*** is developed by the District.

After OEM review of the ***NRE***, the District initiates informal consultation by submitting an ***NRE*** to the Service(s) for review along with a request for concurrence on the effect determination(s). This information should include reasons supporting the determination, any modifications to the project and/or implementation measures or commitments to reduce impacts, and, if applicable, compensatory mitigation. Upon receipt of a written request for concurrence, the Service must provide written concurrence or non-concurrence within 60 days. This timeframe may be extended upon mutual consent of all parties, but cannot exceed 120 days.

For USFWS, contact the local office. Contact information is provided in the ***Guidance for Part 2, Chapter 16***. Informal consultation with the NMFS is initiated by following the guidance in FDOT's ***How To Guide for submission of Natural Resource Evaluations to the National Marine Fisheries Service (NMFS) for Endangered Species Act (ESA) and Essential Fish Habitat (EFH) Consultations*** and accompanying flowchart on FDOT's ***Protected Species and Habitat Website***.

During informal consultation, the District(s) and the Service(s) work together to evaluate potential impacts on listed species and eliminate or reduce potential impacts where possible. In many cases, the ultimate effect determinations may be influenced by project modifications. FDOT and the Service(s) may engage in continual coordination to reach agreement on effect determinations and project modifications necessary to accommodate federally listed species. During informal consultation, coordination with OEM may occur as necessary.

If the Service agrees with the effect determination, they will document that agreement in a concurrence letter. If the Service does not concur with the "may affect, not likely to adversely affect" determination, the Service will send a non-concurrence letter to FDOT and FDOT must either 1) initiate formal consultation through OEM, or 2) modify the project to avoid adverse impacts. Either option will require continued coordination with the Service(s). It is also possible that the Service may not have enough information to complete consultation (see ***Section 16.2.2.1.6***).

16.2.2.1.5 Formal Consultation

Formal consultation may be required for any project regardless of the Environmental Document needed. FDOT and the Service(s) work together to determine if options exist that could allow the action to advance without jeopardizing the species' existence or destroying or adversely modifying critical habitat. Although OEM must initiate formal consultation, the Districts work closely with OEM and the Services throughout the formal consultation process.

The differences between informal consultation and formal consultation are that formal consultation:

1. Occurs when there is a "may affect, likely to adversely affect" determination;

2. Must be initiated by OEM;

3. Results in a ***BO*** which may determine whether the proposed activity will jeopardize the continued existence of a listed species (jeopardy) or destroy or adversely modify critical habitat (adverse modification).

In short, formal consultation is a manageable process that involves a higher level of scrutiny and analysis.

Formal consultation cannot be initiated until the ***NRE*** is completed by the District and reviewed by OEM. If the District determines that the action "**may affect, is likely to adversely affect**" listed species or designated critical habitat, then OEM as the action agency initiates formal consultation. OEM, with assistance from the District, sends a written request to the Service(s) through the EST Document Review module. The submitted information includes an initiation package (***NRE*** for FDOT projects) describing the project and its relevance to federally listed species and habitats (see ***USFWS and NMFS, 1998, 4-4***) and a cover letter requesting initiation of formal consultation. Once the initiation package is received, the Service has 30 working days to review the package for completeness and should provide a written acknowledgement of the consultation request to the action agency. Within the 30-day period, the Service must advise the action agency of any data deficiencies and request additional information to complete the initiation package (see ***USFWS and NMFS, 1998, 4-1***).

The formal consultation period officially begins when the Service determines that the initiation package is complete. The ***ESA*** and ***Section 7*** regulations require that formal consultation be completed within 90 calendar days **[*50 CFR § 402.14(e)*]**. The Service strives to issue the ***BO*** during the formal consultation period, but must deliver the ***BO*** to the action agency no later than 45 calendar days after the conclusion of formal consultation **[*50 CFR § 402.14(e)(3)*]**. This 45-day period is often used by the action agency and the Service to review and refine the ***BO***. The entire process can take up to 135 days to complete after the initiation of formal consultation, underscoring the need for "early, continual, and strategic coordination".

In response to a request for formal consultation and submittal of a ***BA*** (usually in the form of the ***NRE***), the Service issues a ***BO***, which is the document with the Service's opinion as to whether the project "action" is likely to jeopardize the continued existence of a federally listed species or destroy or adversely modify designated critical habitat.

Jeopardy is determined by the Service at the listed species population level. "The determination of jeopardy or adverse modification is based on the effects of the action on the continued existence of the entire population of the listed species or on a listed population, and/or the effect on critical habitat as designated in a final rulemaking" (***USFWS and NMFS, 1998, 4-36***).

For non-jeopardy opinions from the Service(s), the ***BO*** will contain an ***Incidental Take Statement,*** which provides exemption from the ***ESA Section 9*** prohibitions to address actions that may cause an unintentional taking of non-plant species. The ***ESA*** does not prohibit incidental take of listed plants; however, cautions may be provided in the ***BO*** on prohibitions against deliberate removal or destruction of plants. Any terms and conditions provided in the ***Incidental Take Statement*** are "non-discretionary measures that are necessary and appropriate to minimize the impact of incidental take," in order for the exemption in ***Section 7(a)(2)*** of the ***ESA*** to apply (***USFWS and NMFS, 1998, 4-49 and 4-53***). During formal consultations, the key to reaching non-jeopardy opinions is to focus on the avoidance and minimization of project impacts.

If the ***BO*** reaches a jeopardy or adverse modification conclusion, it will also include reasonable and prudent alternatives and associated reasonable and prudent measures for implementing the project to avoid jeopardy or adverse modification. Note that the Services should include the action agency and applicant in developing reasonable and prudent alternatives and measures. Depending upon project-specific circumstances, several reasonable and prudent alternatives may exist, only one alternative may exist, or no alternatives may exist. Reasonable and prudent measures are the nondiscretionary (mandatory) actions developed for each alternative, which are necessary for a given alternative to avoid a jeopardy or adverse modification opinion. The reasonable and prudent measures developed for each of several alternatives may be the same or different, depending upon the specific alternative. In response to the Services proposed reasonable and prudent alternatives/measures, FDOT may:

1. Adopt the reasonable and prudent alternatives/measures;

2. Not advance the project;

3. Request an exemption from ***Section 7(a)(2)***;

4. Modify the action or offer reasonable and prudent alternatives/measures not yet considered, and reinitiate consultation; or

5. Proceed with the action if upon review of the ***BO***, FDOT believes that such action satisfies ***Section 7(a)(2)***.

FDOT must notify the Service(s) of its final decision on any proposed action that receives a jeopardy or adverse modification biological opinion. If FDOT adopts the reasonable and prudent measures, then these nondiscretionary actions must be incorporated into the Environmental Document as commitments.

16.2.2.1.6 Consultation Completion

For FDOT Federal Projects with a PD&E Study, ***ESA*** consultation is expected to be completed during the PD&E phase, and summarized in the Environmental Document as required in ***Section 16.3.2.6.2***. In some instances, consultation cannot be completed at this project phase, especially if one of the Services does not have enough information (i.e., project details may not yet be available) to concur with (or not concur with) an FDOT effect determination. In these situations, the Districts should coordinate with OEM. Together OEM and the District will determine the appropriate course of action to advance the project. When consultation cannot be completed during the PD&E phase, the Environmental Document should include a summary of the consultation to date, the reasons why it cannot be completed, documentation that the Service(s) agree to complete consultation prior to construction and that the Service(s) does not anticipate a jeopardy opinion, and any other information that may provide reasonable assurance the requirements will be fulfilled consistent with ***23 CFR § 771.133***. Commitments made during this coordination should be included in the Commitments section of the Environmental Document. An update to the commitment(s) must be provided in subsequent project Re-evaluations and ***Project Commitment Record (PCR)***.

16.2.2.1.7 Proposed and Candidate Species

Proposed species are those that are proposed in the ***FR*** to be listed under ***Section 4*** of the ***ESA***. Species and critical habitat proposed for listing may require a **conference** with the Service(s), according to ***ESA Section 7(a)(4)*** and ***50 CFR § 402.10***, if agency action is likely to jeopardize the continued existence of such proposed species or result in the destruction or adverse modification of proposed critical habitat. Informal conference is an early interagency coordination, similar to informal consultation, where the Service(s) assist in determining effects and may advise on ways to avoid and minimize adverse effects to proposed species or proposed critical habitat. Following informal conference, the Service(s) issue a conference report containing recommendations for reducing adverse effects. These recommendations are advisory until a listing becomes effective – but following the report's recommendations helps avoid future conflicts and the need to reinitiate a consultation once the species is listed or critical habitat is designated.

Formal conference must be initiated by OEM and is required when a project is likely to jeopardize the continued existence of a proposed species, or is likely to adversely modify proposed critical habitat. Formal conference procedures are the same as formal consultation. The opinion at the end of formal conference is a conference opinion and follows the contents and format of a ***BO***. When the species is listed or critical habitat is designated, the Services have the option of adopting the conference opinion as the ***BO*** for the project. OEM must request the Services to adopt the conference opinion as the ***BO*** after the species is listed or critical habitat designation is made. An ***Incidental Take***

Statement issued with a conference opinion does not become effective unless the Services adopt the conference opinion as the ***BO*** once the species is listed and/or critical habitat is designated (***50 CFR § 402.10; FHWA, 2002***).

Candidate species are not proposed for listing but are species for which the development and publication of proposed rules for listing are anticipated. Effective candidate species conservation may reverse the species decline, ultimately eliminating the need for ***ESA*** protection. ***Section 7*** consultation is not required for candidate species though consideration of conservation measures may help to minimize project delays if a candidate species becomes federally listed before construction of a project has been completed (***FHWA, 2002***). While consultation and protections are not required for candidate species, reinitiation of consultation for these species will be required once the species is officially listed. For this reason and to prevent work stoppages, OEM will at times work with the USFWS to derive conservation measures, which if applied to the project as commitments, will be considered as a "may affect not likely to adversely affect" determination and can receive concurrence as part of the ***NRE***. However, since no protections are afforded candidate species, the inclusion of commitments for a candidate species is not required.

16.2.3 Other Federal Protections

Several species that are not federally listed and therefore not subject to ***ESA*** review may be protected by other federal regulations such as the ***Migratory Bird Treaty Act (MBTA)*** and/or the ***Bald and Golden Eagle Protection Act (BGEPA)***. During the protected species and habitat evaluation, the District should evaluate the project's potential effects on these species.

Pursuant to the ***MBTA***, it is unlawful to take, possess, buy, sell, purchase, or barter any migratory bird including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations. It should be noted that all non-exotic birds in the state of Florida are protected by the ***MBTA***. Rules promulgated under the ***MBTA (50 CFR Part 21)*** prohibit the destruction of active nests (i.e., nests which contain eggs or flightless young) without a federal permit.

The federal ***Bald and Golden Eagle Protection Act [16 U.S.C. § 668-668(d)]*** prohibits anyone from taking, possessing, or transporting a bald eagle or golden eagle, or the parts, nests, or eggs of such birds without prior authorization. This includes inactive nests as well as active nests. The USFWS has Bald Eagle Monitoring Guidelines (***USFWS, September 2007***) that provides information for applicants proposing construction activities occurring within 660 feet of an active bald eagle nest during the nesting season. See ***Part 1, Chapter 12, Environmental Permits***, for guidance on permits for the bald eagle, Florida burrowing owl, and osprey. Effect determinations using ***Section 7*** verbiage are not made for species protected under the ***MBTA*** or the ***Bald and Golden Eagle Protection Act***. However, an evaluation of impacts to those species is included in the ***NRE*** discussion, using verbiage separate from listed species determination language, and also summarized in the Environmental Document.

16.2.4 Coordination with State Agencies

The procedures for coordination with the FWC are not as rigidly prescribed as those for the federal process, but the general process, overall goals, and documentation requirements are similar. FDOT places the same emphasis on "early, continual, and strategic coordination" with FWC, to ensure that state-protected species and habitat issues are considered from the earliest planning phase and carried through the PD&E, Design, and Construction phases of the project. ***Figure 16-3*** provides a flow chart for the state protected species process.

Coordination with FWC focuses on state listed wildlife species and habitats as well as other protected species (e.g., Florida black bears, bat species). In order to avoid regulatory duplication for threatened and endangered species, the following state rule applies: "Activities that result in take or incidental take of federally-designated Endangered and Threatened Species do not require a permit from the Commission when authorized by the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration's National Marine Fisheries Service…" (***Rule 68A-27.007, F.A.C.)***. Some species that are federally protected may also require coordination with FWC, such as Florida manatees and sea turtles.

For projects that qualify for ETDM screening, the ETDM process initiates the project-level coordination with FWC, as FWC is represented on the ETAT that participates in the Planning and/or Programming Screens (***Section 16.3.1.2***). The FWC ETAT should provide focused comments and a list of state listed species, or otherwise protected species that should be considered/analyzed during the PD&E Study (***Section 16.3.1.2.1***).

As the coordination with FWC progresses, through the PD&E Study, issues related to particular state listed species, other protected species, and habitats are addressed, and FWC comments are documented via correspondence and/or memos. The FWC typically requests that effect determinations, similar to those made for federally listed species (***Section 16.2.2.1***, see also the ***Natural Resources Evaluation Outline and Guidance*** FDOT's ***Protected Species and Habitat Website***), be made for state listed species. State imperiled wildlife species effect determinations are made using the determination language "No effect anticipated", "No adverse effect anticipated", or "Potential for adverse effect". The coordination process continues throughout the PD&E process, and commitments to FWC (e.g., wildlife crossing, species-specific survey) are recorded in the Environmental Document. Species-specific surveys or permitting may be necessary after conclusion of the PD&E phase.

16.2.5 Listed Plant Species- Federal and State

Under federal law, activities that may impact federally-listed plant species are subject to regulation under the ***ESA***. Destruction, damage or relocation of protected plants is not prohibited unless these activities take place on federal lands or are otherwise in violation of state law on other lands.

In cases where projects may impact lands under federal jurisdiction (commonly National Forests, National Park Service lands, National Wildlife Refuges, military bases, and areas designated as critical habitat), USFWS can determine through ***Section 7*** consultation that there are no other options available and that the action will not jeopardize the continued existence of the species. In those cases, USFWS may authorize destruction of plants on federal lands.

Input from the ETAT representatives during ETDM screening should identify federally listed plant species that may occur within the action area. Coordination with the appropriate agencies for federally listed plant species is always included as part of the federal consultation process, if any listed plant species are potentially present. Should federally listed plant species be identified within the action area, they need to be considered together with listed wildlife species during consultation to avoid and minimize overall project impacts. Based on consultation with USFWS, listed plants may be transplanted to suitable habitats or removed for propagation (typically in coordination with conservation agencies) in order to avoid direct impacts.

State listed plant species are regulated by the FDACS, but state regulation only addresses the harvesting, transport, and/or sale of listed plant species. Plant species listed by the state as Endangered, Threatened, or Commercially Exploited are included on the Regulated Plant Index (***Rule 5B-40.0055, F.A.C.***). State rules do not specifically regulate or prohibit the incidental taking of state listed plants in the course of project activities, but general principles of avoidance and minimization (such as transplanting) apply to projects impacting listed plant species.

If it is determined during the preparation of the ***NRE*** or technical memo that state listed plants could be impacted by the project, the District forwards the ***NRE*** or technical memo to FDACS, Division of Plant Industries, for review. Upon evaluation, FDACS will in turn notify the Endangered Plant Advisory Council or interested native plant Nongovernmental Organizations (NGOs) to alert them to the potential for plant salvage activities. If the NGO is interested in plant conservation efforts within FDOT Right of Way (ROW), they will coordinate directly with the District. Once the ***NRE*** is forwarded to FDACS, and if NGOs have not expressed an interest in plant conservation efforts, no additional follow up is required by the District until the project is ready to be advertised. The District notifies FDACS and the Endangered Plant Advisory Council when bids for construction projects are first advertised as indicated by ***Section 581.185(10), F.S.***, For additional guidance on state listed plants as well as non-listed plants of interest or concern to NGOs, please refer to FDOT's ***Protected Species and Habitat Website*** under the Plant Guidance Documents section.

16.3 PROCEDURE

16.3.1 Level of Assessment

The level of assessment and documentation during the PD&E phase depends on the potential for protected species and habitat impacts, the scope of the project, ecological

importance and distribution of the affected species, and intensity of potential impacts of the project.

Detailed evaluations are generally not warranted for transportation projects not qualifying for screening in the ETDM Environmental Screening Tool (EST) [typically Type 1 Categorical Exclusions (CEs) and NMSAs]. See ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for clarification on projects that qualify for screening. Projects that do not require screening, based on analysis, have no significant effects. The evaluation for these types of projects can usually be streamlined.

A higher potential for protected species and habitat involvement usually exists with transportation projects qualifying for screening [typically Type 2 Categorical Exclusion (Type 2 CE), Environmental Assessment (EA), EIS, or SEIR]. These project classifications may warrant a more detailed level of analysis and documentation. Most PD&E projects will have received prior consideration of protected species and habitat issues during the ETDM process. The results of the Programming Screen are available in a ***Final Programming Screen Summary Report***. The protected species and habitat evaluation in the PD&E Study builds on issues identified during the Programming Screen.

16.3.1.1 Projects Not Qualifying for Screening

Protected species and habitat involvement must be identified for projects regardless of the type of Environmental Document, including those that do not require EST screening and advance straight to the Design phase. For projects not qualifying for EST screening, the protected species and habitat evaluation should be in sufficient detail to ensure that the project considers protected species and habitat. If consultation is not needed with the Service(s), documentation can be in the form of a technical memo (***Section 16.3.2.4***). If informal consultation is needed with the Service(s), additional documentation in the form of an ***NRE*** is developed (***Section 16.3.2.5***). If during this coordination it is determined that formal consultation may be needed, the District must coordinate with OEM. Decisions and conditions should be documented in the project file, summarized in the Environmental Document, and addressed through incorporation into the final design plans. Documentation in the Environmental Document is as follows:

1. **Type 1 Categorical Exclusions (CEs)** - Type 1 CEs may involve listed species and critical habitat as long as the documentation demonstrates the proposed project has no significant effects on them and supports the effect determinations made. For these projects, a summary of the evaluation of listed species and habitat impacts, agency coordination and compensation for impacts (as appropriate) is included in the ***Type 1 Categorical Exclusion Checklist (Part 1, Chapter 5, Categorical Exclusion)***. If species keys or programmatic approaches were used to make an effect determination for a species, then they are referenced in the checklist and the steps used in the key should be outlined in the supporting documentation. Any conservation measures required by a key or programmatic approach become a project commitment and are included in the ***PCR***. If the Programmatic Approach for Minor Transportation Projects applies, a ***Programmatic Approach Form*** resulting from the SWEPT analysis is included in

the project file. If a technical memo or ***NRE*** was prepared, it is referenced in the checklist and uploaded to the SWEPT project file. Agency coordination letters are also included in the project file, while concurrence letters are attached to the checklist. Required conservation measures should be included as commitments in the checklist and a ***PCR*** developed for the project.

2. **Non-Major State Actions (NMSAs)** - For a NMSA "No" is selected for the protected species topic on the ***Non-Major State Action Checklist*** to document that there are no listed species or critical habitat affected by the project (***Part 1, Chapter 10, State, Local or Privately Funded Project Delivery***). If "Yes" is selected, the project may not meet the criteria of a NMSA and a SEIR may be necessary. For these projects a summary of the evaluation of listed species and habitat impacts, agency coordination and compensatory mitigation for impacts (as appropriate) is included in the project file as supporting information to the NMSA. If a technical memo or ***NRE*** was prepared, it is referenced and included in the project file. If applicable, a ***Programmatic Approach Form*** should also be included in the project file.

3. **Type 2 Categorical Exclusions** - Some Type 2 CEs may not require screening through the EST. For these projects listed species and habitat impacts are documented as if the project was screened. See ***Section 16.3.2.6.2*** for guidance on documenting Type 2 CEs.

16.3.1.2 Projects Qualifying for Screening

Transportation projects qualifying for EST screening are generally more complex. In accordance with ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***, qualifying projects must complete the ETDM Programming Screen and may also have completed the Planning Screen. As projects advance, protected species and habitat issues should be considered as follows:

1. **Planning Screen Evaluation** - Potential listed species and/or critical habitat within the project area that could affect the advancing of the project in a timely manner is identified and may assist with the elimination of fatally flawed alternatives, or require consideration of avoidance, minimization, or mitigation measures at this early planning stage. Protected species may also be identified during this evaluation.

2. **Programming Screen Evaluation** - Commentary about effects is provided and scoping recommendations are summarized to further understand the level of potential listed species and habitat impacts. Existing conditions are prepared for the Environmental Document. Protected species may also be identified during this evaluation.

3. **PD&E Evaluation** – The PD&E evaluation builds upon previous evaluations by filling information gaps. Coordination occurs with the Services and FWC on issues of concern identified in planning and programming screens, an impact assessment is performed, and alternatives are compared. The appropriate level of protected

species and habitat documentation is completed based on the project and associated impacts to listed species and commitments are documented.

4. **Design** - Any commitments made are incorporated. If there are changes or updates identified during a review of the final plans, they are documented in a Re-evaluation (***Part 1, Chapter 13, Re-evaluations***). Additional coordination with the Service(s) and FWC may be necessary if impacts have changed or if commitments require it (e.g., survey results will be shared prior to construction). Consultation may need to be re-initiated prior to permitting. The project must meet federal and state regulations.

5. **Construction** - Implementation of any protected species and habitat commitments (e.g., avoidance, inclusion, installation) and compliance with federal and state regulations Is verified. For construction guidance for some specific species interactions see FDOT's ***Protected Species and Habitat Website***.

16.3.1.2.1 ETDM Process Contribution to PD&E

For projects qualifying for EST screening, the proposed project is entered into the EST (see the ***ETDM Manual, Topic No. 650-000-002***). The Advance Notification (AN) package may be distributed as part of the Programming Screen in the EST and includes a Preliminary Environmental Discussion (PED) (***Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification***). Protected species and habitat information is included in the PED, reflecting the District's initial understanding of the project's potential involvement with protected species and habitat resources. The PED should also identify the location of federally designated critical habitat and provide a description of how protected species and habitat are to be evaluated in the PD&E Study. The AN package may also include a list of permits and technical studies that may be needed.

The District uses the EST to send the AN to the Services and FWC along with other ETATs, state and federal agencies, and other organizations. If sent during the Programming Screen it initiates the project-level coordination with the Services and FWC. As ETAT members, the Services and FWC review the proposed project, respond with comments, provide a species list, and identify any critical habitat(s) within the action area. The ETAT should provide focused comments and actionable recommendations to avoid or minimize potential effects to protected species and their habitat. They should also identify potential permits, compensatory mitigation opportunities, technical studies, and other items within their jurisdiction/responsibility.

The EST reports and stores the ETAT review in the ***Programming Screen Summary Report***, which includes comments related to protected species and habitat issues as well as wildlife connectivity issues. This report provides a foundation for the District to coordinate directly with the Services and FWC. For example, the ETAT should provide a list of potential listed species and/or critical habitats that warrant further review with the Services and/or FWC, as well as information on otherwise protected species. The

Districts should use this list of species as a starting point for preparing the existing conditions for the ***NRE*** (see ***Section 16.3.2.1.2***).

Information from the ETDM screening process should be used to prepare the PD&E scope of services and focus the protected species and habitat analysis/impact assessment. During PD&E, FDOT determines the project's involvement with federally listed threatened or endangered species, proposed (under review) threatened or endangered species, or designated or proposed critical habitat from resource agency comments and information included in the ***Programming Screen Summary Report***. The Districts should review ETAT comments and Degree of Effect (DOE) determinations for the "Protected Species and Habitat" issue in the ***Programming Screen Summary Report*** as well as ETAT comments on other issues such as "Coastal and Marine," "Wetlands and Surface Waters," and "Water Resources." However, the associated DOE from the agencies is not a finding.

FDOT should focus on comments from the Services and FWC as resource experts. The ***Programming Screen Summary Report*** may identify an ***NRE*** as being needed in the "Anticipated Technical Studies" section of the report. Other sections of the report may be useful such as the "General Project Recommendations" and "Anticipated Permits" sections. Information from the screening should be used in preparing the existing conditions for the Environmental Document.

The ETDM Coordinator and Project Manager should coordinate internally with District Environmental Permits Coordinators, District Environmental Offices, and others who may be involved in the project following the screening.

16.3.2 PD&E Phase

16.3.2.1 Describe Existing Conditions

The District should coordinate with the Services and/or FWC to discuss comments from the ***Programming Screen Summary Report*** and ensure that potential protected species and habitat have not changed since the screening. The District should collect data and conduct field surveys to identify the initial existing conditions in the action area, such as the protected species and federally designated critical habitat that may occur there, as well as habitat types. The District begins preparing existing conditions based on ETAT commentary. However, presence or absence of some species can change over time and initial screenings or surveys may be considered out of date by the Services or FWC at the time a project is scheduled to begin construction, if they are done too far ahead of time.

16.3.2.1.1 Identify Action Area

The action area is defined as "all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action" (***50 CFR § 402.02***) (***USFWS and NMFS 1998***). The action area boundaries for the project are established in coordination with the Services. This coordination is important, as any disagreement

regarding the action area boundaries can affect subsequent listed species and habitat analyses. Coordination with other FDOT offices is suggested to determine any additional areas (e.g., maintenance of traffic) that may need to be included in the action area.

16.3.2.1.2 Identify Protected Species and Critical Habitat that May Occur in the Action Area

The species of concern identified by the Services and/or FWC during the ETDM process should form the basis of a list of species to be analyzed in the PD&E Study. During the Programming Screen, the Service(s) should provide the official species list. Coordination with the Service(s) and/or FWC in PD&E may identify additional species to be included on the list.

The Service(s) online species lists, available data sources, current literature, and species specialists may also be consulted to help identify what federally listed species may be in the action area. Species and critical habitats "proposed" for federal listing, as well as federal "candidate" species, are included on the list. Federally designated critical habitat within the action area also needs to be identified.

The District should also review official lists of state listed animals regulated by the FWC and plants regulated by the FDACS using online species lists and data, as well as other data sources. See ***Guidance for Part 2, Chapter 16*** for listed species information sources.

16.3.2.1.3 Collect Data and Map Habitat

The best and most current scientific and commercial data available should be gathered from various sources to help determine the possibility for species occurrence within the action area. Sources include the Service(s)' websites, Geographic Information System (GIS) species occurrence data, existing studies or surveys, information from past ***BOs,*** and ***NREs***, status reports and listing rules, critical habitat designations, recovery plans, habitat management guidelines, and species specific studies. Information on wide ranging or migratory species that may not be listed by state or federal regulations should be collected since migratory bird species are protected by the ***MBTA of 1918***, as amended.

Habitat maps provide a baseline for analysis of species presence/absence and potential impacts. Land covers/land uses, the presence/absence and quality of suitable habitats, and rare natural communities in the project site should be mapped and described. The presence of critical habitat, and/or SHCAs, consultation areas, natural areas and focal areas should also be identified and mapped. The habitat mapping effort should include the evaluation of various existing digital data sets and historical and recent aerial photography.

A field survey conducted by a biologist is needed to compare existing site conditions with digital data and to map the presence, extent, and configuration of existing land uses/land covers, potential habitats, and rare natural communities. Photo-interpretation and

extrapolation may also prove valuable in mapping large projects, and should be based on observations during field surveys.

16.3.2.1.4 Conduct Field Surveys

Appropriate field surveys should be conducted to determine and record the presence of protected species individuals, evidence of listed species utilization, and document the presence and quality of existing habitats. Areas in which listed species (federal and state) or species' habitat is known or suspected to occur within the action area should be surveyed for individuals or signs of individuals of the listed species. The field survey may result in observations of additional, previously unidentified listed species or habitats. All observations of listed species, signs of listed species, and species' habitat should be recorded, Global Positioning System (GPS) coordinates taken, and the quality of habitats should be assessed and recorded.

It is recommended that field surveys for federally and state listed species and habitats, as well as otherwise protected species, be conducted concurrently. This survey is often conducted concurrently with field verification of habitat mapping. During this survey, plant species should be identified and recorded for each vegetative community and dominant species noted for each stratum present (e.g., canopy, subcanopy, shrub/understory, and ground cover).

Field surveys for specific species may be required and should be designed to account for life histories and behaviors (e.g., breeding, foraging, resting, migration, flowering, seeding) of the listed species that are expected to be, or could potentially be, present on a given site. Survey design should consider appropriate time of day and season of the year for species identification, as well as species' habitat quality and current site conditions including, but not limited to, recent and long-term fire and hydrologic history; recent and current climatic events (e.g., drought, flooding) and weather conditions; soil, topographic, and vegetative health or disturbances; noise levels; and typical human usage. Some listed species have agency developed or approved survey methodologies, including season-specific timeframes, which should be followed.

Consultation/coordination with the Services or FWC may identify the need to obtain quantitative data for a specific species; in those instances, a more intensive survey than is usually required may be warranted. Examples of quantitative data are percent cover for plants and population size for wildlife such as gopher tortoises. Methods for collecting quantitative data should be provided by the Services or FWC during consultation/coordination. Copies of survey results and associated field notes should be provided to the Services or FWC soon after surveys are completed. Note that some survey information, such as nest sites, may become outdated after one season. Through consultation with the Service(s) and OEM, species-specific surveys for federally listed species may be delayed until permitting to support permit issuance (***Section 16.3.3.3***). During the PD&E Study, a commitment to conduct a species-specific survey later in the process may need to be included as a commitment in the Environmental Document (***Part 2, Chapter 22, Commitments***).

16.3.2.2 On-going Agency Coordination

When federally listed species and/or critical habitat may occur within the action area, informal consultation or formal consultation may be needed with the applicable Service (***Section 16.2.2.1***). Any coordination activities with the Service(s) or ETAT members during the informal consultation process should be clearly documented in the project file.

When there is potential for involvement with state listed species, or valuable natural areas, coordination with the FWC ETAT is recommended (***Section 16.2.3***). Early coordination with FWC is advantageous to assess potential impacts to these natural resources. Coordination may save time later in the design phase when state or federal permits may be required prior to commencement of work.

The ***FDOT Wildlife Crossing Guidelines*** are followed when wildlife crossing features are being considered, which were developed in coordination with USFWS and FWC. Wildlife crossing feature locations should be identified as early as possible in the project planning and development processes, and prior to project design. The guidelines note that “wildlife crossing feature(s)” may include, but are not limited to new or modified structures, such as bridges, bridges with shelves, specially designed culverts, enlarged culverts or drainage culverts and/or exclusionary devices such as fencing, walls or other barriers, or some combination of these features. The guidelines were developed for use by FDOT to evaluate the appropriateness of including wildlife crossings (upland or wetland) and associated features for proposed projects on the State Highway System (SHS) and establish criteria to be considered during design. In cases where a FDOT District has an off-SHS project, the District coordinates with the OEM regarding possible inclusion of any wildlife crossing features.

When making commitments to the Services or FWC to address specific protected species and habitat issues of a project, it is critical that appropriate internal coordination efforts within the District (e.g., Design, Permitting, Structures, Construction and Maintenance Offices) are completed before such commitments are made. See ***Part 2, Chapter 22, Commitments*** for more information on commitments.

16.3.2.3 Conduct Protected Species and Habitat Analysis/Impact Assessment

Protected species and habitat analysis begins with determining the potential for species occurrence in the action area, and identifying any designated or proposed critical habitat(s). The potential for species occurrence is derived by comparing the habitat mapping of the project site with known species ranges, habitat preferences, and the locations and proximity of known occurrences. This information is then used to evaluate the type and degree of potential impacts, if any, associated with the project.

The impact assessment includes comparing the species and habitat mapping data and field survey results (***Section 16.3.2.1***) (per each viable alternative as applicable), with the proposed project footprint from the plan sheets (if available) to evaluate direct, indirect, and in some instances cumulative effects to listed species and habitats (see ***Section***

16.1.2 for definitions). It is also important to consider potential project impacts related to habitat connectivity for wildlife, not just protected species, as habitat fragmentation can directly or indirectly impact multiple species. Although there are no federal or state requirements to avoid habitat fragmentation for unlisted species, this can be considered in coordination with the Services and/or FWC. If wildlife crossings are considered they should follow the ***FDOT Wildlife Crossing Guidelines*** and what details are known at this stage should be discussed in the ***NRE*** and the Environmental Document if being considered for the project. Refer to the results of the ***Wildlife Crossings Potential Report*** prepared for the project during the ETDM screening.

Since CEs are generally minor in nature and do not have significant impacts, indirect and cumulative effects assessments will generally not be warranted. There may be exceptions, which can be evaluated on a case-by-case basis. It is recommended that the District Environmental Office staff coordinate with the District Design and Permitting staff when conducting the impact assessment.

The detailed results of the protected species and habitat analysis and impact assessment are documented in an ***NRE*** or technical memo (per the ***Natural Resources Evaluation Outline and Guidance*** document) and summarized in the Environmental Document. If more than one alternative is proposed (typically EAs and EISs), each alternative is then compared based on impacts to protected species and habitat using the analysis performed and documented in the Environmental Document. Typically for Type 2 CEs, only the preferred alternative needs to be described and there is no need to include the no build alternative.

If designated or proposed critical habitat is identified within the action area during the ETDM process, the identified habitat(s) must be evaluated for potential impacts. The steps outlined below are taken directly from the ***ESA Consultation Handbook (USFWS and NMFS 1998),*** for determining whether a proposed action is likely to cause “destruction or adverse modification” of critical habitat.

The status of the critical habitat as designated and the environmental baseline within the action area is reviewed. The status and environmental baseline for any constituent elements or primary constituent elements may have been modified by actions considered in earlier ***BOs***.

1. Those ***BOs*** are reviewed to determine the current baseline.

2. The effects of the proposed action on the constituent elements of critical habitat are evaluated.

3. The cumulative effects in the action area on the critical habitat and its constituent elements are evaluated.

4. It is assessed whether the aggregate effects of these analyses will appreciably diminish the value of the critical habitat in sustaining its role in both the survival and recovery of the species.

16.3.2.4 Technical Memo

For projects that do not require ***ESA*** consultation and have minimal involvement with state or other protected species and habitat, an abbreviated report in the form of a brief technical memo rather than an ***NRE*** is completed and may be provided to the Service(s) and/or FWC for informational purposes. Technical memos should briefly discuss potential involvement with protected species or habitat and how this involvement is not significant. The effect determinations made must be supported in the documentation.

Any technical memo prepared for an FDOT Federal Project must include the ***NEPA*** Assignment standard statement (see ***Part 1, Chapter 4, Project Development Process*****).**

16.3.2.5 Biological Assessment and Natural Resources Evaluation

A ***BA*** is a technical report required by the Services if federally listed or proposed species or critical habitat "may be present" in the action area of a major construction activity. A major construction activity is defined as major federal projects significantly affecting the environment; therefore, all EISs require the preparation of a ***BA***. This interpretation is consistent with that of the ***Federal Highway Administration (FHWA) Memo, Management of the ESA Analysis and Consultation Process (FHWA, 2002)***. A ***BA*** is also required for EAs or CEs that have "may affect, likely to adversely affect" determinations requiring formal consultation. If a ***BA*** is required, the District should prepare a protected species and habitat section of an ***NRE*** to be submitted to the Service(s) as a ***BA***. The ***NRE*** includes information on listed, proposed, and candidate species, and associated critical or proposed critical habitat.

An ***NRE*** documents the protected species and habitat, wetlands, and Essential Fish Habitat (EFH) analysis/impact assessment. The "Protected Species and Habitat" section of the ***NRE*** is prepared to help make the determination of whether the proposed action is likely to: (1) adversely affect federally listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely destroy or modify proposed critical habitat. During informal consultation, the conclusions contained in the ***NRE*** determine the need for formal consultation or conference.

The District should consider commentary from the Services and FWC ETAT members and consult with them as necessary when preparing the ***NRE***. The contents are discretionary, and coordination with the Services and FWC is recommended to determine the depth of detail needed for the ***NRE***.

16.3.2.5.1 Content of the Natural Resources Evaluation

The ***NRE*** should include the assessment of impacts to protected species and habitat, wetlands, and EFH as separate sections and as applicable to the project. If it is determined that there is no involvement with one of these resource groups, an explanation must be provided (e.g., through field reconnaissance, desktop analysis).

Additional guidance can also be found in the ***Natural Resources Evaluation Outline and Guidance*** document on FDOT's ***Protected Species and Habitat Website***.

The "Protected Species and Habitat" section of the ***NRE*** includes all state listed, federally listed threatened, endangered, proposed and candidate species and critical habitats, as well as other protected species that may be present within the action area (e.g., migratory birds, American bald eagles, bat species, Florida black bears). Information gathered from sources identified in the ***Programming Screen Summary Report*** can be used to support the preparation of the ***NRE***.

An ***NRE*** prepared for a project in which OEM serves as the Lead Federal Agency must use the ***Technical Report Cover Sheet, Form No. 650-050-38a***..

The content of a ***BA*** is described in ***50 CFR § 402.12(f)***. For an example ***BA*** template and instructions see the link in the ***Guidance for Part 2, Chapter 16***. The FHWA template may be used for the Protected Species and Habitat section of the ***NRE***.

When the Protected Species and Habitat section of the ***NRE*** is submitted to the Services as a ***BA*** the following information is included:

1. The proposed project, project location, and the purpose of the action is described. The action area, which is all areas to be affected directly or indirectly by the action and not merely the immediate area involved, is defined. The description of the proposed project should include all activities related to construction and emphasize both long-term and short-term anticipated impacts on federally listed species and suitable habitat in the action area. Project and design alternatives (including construction methods) should also be addressed. This description should be brief, and not include large amounts of information copied from the Environmental Document. Discussion of existing conditions (e.g., current typical sections, land use, soils, natural features) should be included.

2. Prior coordination with the Service(s) or FWC is summarized.

3. The federally listed species, proposed species, candidate species, critical habitat, and proposed critical habitat that occur, or could potentially occur within the action area (***Section 16.3.2.1***) is identified. Brief background information on these species in terms of overall range, population status, habitat needs, and life history requirements is provided. Only relevant information on the species should be included. Details such as the species description (e.g., size, coloring) and general species information are not needed. Information (such as species lists) should be summarized in tables when appropriate. A summary of any prior coordination with the Service(s) or FWC is also included.

4. The methods used to determine involvement of federally listed species and critical habitat within the action area is described. It may be useful to rank potential involvement of each species based on probability of occurrence (e.g., low, moderate, high) and define the basis for these probabilities. The probability of

occurrence given to each species discussed should agree with the defined parameters of that probability.

5. The results of the comprehensive field survey of the project area (***Section 16.3.2.1.4***) is discussed including discussion of survey methodology, and details on: the qualifications of persons doing surveys; what types of surveys were conducted and on what species; when they were done [for how long, what dates, what seasons (breeding, spawning, nesting, fall, spring) and what times of day]; weather conditions; and how often. The specific area(s) that may be affected by the project is described. Any information pertinent to the comprehensive evaluation of federally listed species and/or critical habitat impacts is identified. Also, the reliability and validity of the survey and assessment and whether future studies may be required to validate and/or update the survey results is discussed. If applicable, the length of time the survey remains valid is stated. Field notes should not be appended to the ***NRE*** but may be included in the SWEPT file as supporting documentation. However, the survey findings report may be appended.

6. Any data gaps are identified and discussion of any difficulties in obtaining data pertinent to the comprehensive survey is included. Any data gaps or lack of information should be explained and their effects addressed.

7. The methods and results of studies that contribute information relevant to determining actual and potential impacts of the proposed project or associated activities on a federally listed species or critical habitat are described. Types of studies include studies of mating, nesting, reproduction, feeding, and migration of those species that may be found in the action area.

8. The effects of the action and any cumulative effects are evaluated.

    a. The ***NRE*** should describe:

        1. Effects of the action, which are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside of the immediate area involved in the action (***50 CFR § 402.02***).

        2. Cumulative effects of the project on a federally listed species or critical habitat. Cumulative effects are defined as “those effects of future state or private activities, not involving federal activities, that are reasonably certain to occur within the action area of the federal action subject to consultation” ***(50 CFR § 402.02)***. Note: this definition of cumulative effects is different than what is required for ***NEPA***.

9. Efforts that will be taken to avoid, minimize, or offset the effects of the action on federally listed species or critical habitat are discussed. This should include precautionary measures, design modifications, conservation measures, and special construction methods that will eliminate or reduce adverse impacts. Special conservation measures and strategies may be appropriate and necessary for the avoidance of impacts. Any planned conservation measures for candidate species should also be described ***(FHWA, 2002)***.

10. Conclusions should be made on the significance of impacts to federally listed species and critical habitat within the action area.

11. Any other relevant information is included.

The above information is used by the District to come to an "effect" determination for each federally listed species and designated critical habitat to be included in the ***NRE*** (see ***Section 16.2.2.1***).

The ***NRE*** should also discuss potential impacts to state listed species and include state imperiled wildlife species effect determinations for those species (see ***16.2.4***). The report should include information on other protected species likely to occur in the action area. The presence of natural communities, such as FWC designated SHCAs and FNAI rare natural communities, or Marine Protected Areas should also be identified. Any species-specific surveys or permits that may be needed later in the process should also be discussed. This analysis and any coordination with the FWC or FDACS should be included in the ***NRE***. Generally, final agency concurrence has not yet been obtained and is not summarized in the ***NRE***. The ***NRE*** is used to complete consultation and will become a supporting document to and summarized in the final Environmental Document.

16.3.2.5.2 Submittal to and Review by OEM and Resource Agencies

The District should conduct a quality control review of the draft ***NRE*** and must submit it to OEM for review prior to submitting to the appropriate agencies for coordination/consultation. Draft watermarks or notations should be removed from the ***NRE*** prior to submittal to OEM and the agencies for review.

After OEM review and comment resolution, the final ***NRE*** can be distributed to the Services, Cooperating Agencies, FDACS, and FWC. Informal consultation may be initiated by the District via e-mail or letter to the Service(s), requesting concurrence on the applicable federal species effect determinations. See FDOT's ***How To Guide for submission of Natural Resource Evaluations to the National Marine Fisheries Service (NMFS) for Endangered Species Act (ESA) and Essential Fish Habitat (EFH) Consultations*** and accompanying flowchart on the FDOT's ***Protected Species and Habitat Website*** for guidance on submitting ***Section 7*** consultation requests to NMFS.

If required, formal consultation will be initiated by OEM via the Manage Document Review Events screen in the EST. The District should provide OEM with the final ***NRE*** and a cover letter requesting formal consultation from the Service(s). OEM will forward the information to the Service(s) and the formal consultation review period is tracked by the

EST. The District remains responsible for providing the ***NRE*** to all other interested agencies (e.g., FWC, FDACS).

Typically, the ***NRE*** is submitted to the resource agencies prior to the submittal of the EA or Draft Environmental Impact Statement (DEIS) for public availability. Consultation should be completed prior to the public hearing when possible, or otherwise prior to Location and Design Concept Acceptance (LDCA). If consultation cannot be completed prior to LDCA, see ***Section 16.2.2.1.6***.

If the District receives comments from the Service(s), FDACS, or FWC, an ***NRE*** addendum or other correspondence (i.e., e-mail or letter) addressing the comments is prepared. ***NREs*** are final documents prior to submittal to the resource agencies and should not be revised. If changes to the ***NRE*** are needed, they should be made by drafting an addendum to the original ***NRE*** document.

16.3.2.6 PD&E Documentation

Project documentation consists of maintaining the project file in SWEPT, completing the appropriate protected species and habitat section of the Environmental Document, and documenting project commitments.

16.3.2.6.1 Project File

The District Project Manager is responsible for collecting and maintaining the information gathered during the protected species and habitat evaluation as part of the project file. Information in the project file documents any formal or informal coordination or consultation with the agencies, the determination of effects on listed species and critical habitat, agency concurrence as well as commitments made during the PD&E Study. All assessment materials (e.g., maps, analyses, survey reports) are contained in the project file which resides in SWEPT. All technical reports (***NRE***, technical memo), agreements, and agency coordination should also be included.

16.3.2.6.2 Environmental Document

The results of the protected species and habitat evaluation are documented in the Environmental Document as described below:

1. **Type 2 Categorical Exclusions (CEs)** - Evaluation material should be briefly summarized and included in the Protected Species and Habitat section of the ***Type 2 Categorical Exclusion Determination Form***. Documentation includes a concise summary of protected species and habitat impacts and agency coordination, supported effect determinations for each species and critical habitat, and dates of agency concurrence. This includes the documentation of programmatic approaches or species keys used to reach effect determinations and what steps were used to reach those determinations. All conservation measures required by the keys/programmatic approaches must also be appropriately documented and implemented. Any protected species and habitat related

commitments should be included in the Commitments section of the form. The ***NRE***, technical memo, or technical assistance meeting minutes should be referenced and placed in the SWEPT project file. If a concurrence letter or ***BO*** was needed from the Services, it must be attached to the ***Type 2 Categorical Exclusion Determination Form*** and included in the project file.

2. **Environmental Assessments (EA) and Environmental Impact Statements (EIS)** - The results of the protected species and habitat analysis/listed species impact assessment detailed in the ***NRE*** or technical memo are summarized in the Environmental Document.

    a. EIS Executive Summary – Federally listed species and habitat information should be included in the Executive Summary of an EIS according to ***Part 1, Chapter 8, Draft Environmental Impact Statement*** and ***Part 1, Chapter 9, Final Environmental Impact Statement***. The following standard statement must be used in the Executive Summary for EISs when a "no effect" determination is applicable:

        It has been determined by FDOT, that the project, as proposed, will have "no effect" on any federally threatened or endangered species or designated critical habitat.

        For a Final Environmental Impact Statement/Record of Decision (FEIS/ROD) this finding is included in the ROD.

        If disagreements exist, they should be identified in the Unresolved Issues and Areas of Controversy section of the FEIS Executive Summary (***Part 1, Chapter 9, Final Environmental Impact Statement***).

    b. Environmental Analysis Section - The discussion of protected species and habitat in the Environmental Analysis section should include a description of protected species that may occur in the project area as well as habitat types that may be impacted by the proposed project alternatives. It is also discussed whether critical habitat is present and if it will be destroyed or adversely modified. Documentation should also include maps showing the relationship of the project to the protected species and/ or critical habitat identified and the relationship of the project to the habitat types.
        This section of an EIS or EA also includes a summary of the Protected Species and Habitat section of the ***NRE*** and presents the results of the impact assessment, effect determinations, and recommended avoidance, minimization, compensation for impacts, and enhancement measures. This includes the documentation of programmatic approaches or species keys used to reach effect determinations and what steps were used to reach those determinations. All conservation measures required by the keys/programmatic approaches must also be appropriately documented and implemented. This section should provide sufficient information on the impact assessment such that a reviewer can determine the validity of the methodology.

This section must describe the protected species and habitat impacts of the proposed project for each alternative. The information should have sufficient scientific and analytical substance to provide a comparison of alternatives, as well as provide enough information for the decision-maker to determine the alternatives that would have the least and most impact to listed species and habitat resources. This includes impacts to listed species, critical habitat, and may include wildlife habitat connectivity and other protected species. The use of charts, tables, maps, and other graphics to illustrate comparisons between the alternatives and their respective impacts should be used. The results of this section should be used in the Alternatives matrix (***Part 2, Chapter 3A, Alternatives Analysis***).

The following standard statement (findings) must be included in the Environmental Analysis section of an EIS or EA if federally endangered or threatened species or critical habitat are not present in the action area:

> *This project has been evaluated for impacts on federally threatened and endangered species and designated critical habitat. A review was conducted to determine those possible threatened or endangered species which may inhabit the project area. This search resulted in findings that no federally listed species are likely to be present in the action area and no critical habitat was identified. This was determined after undertaking a listed species and habitat evaluation and a field survey of the project area by a biologist.*
>
> *The determination was made that the project will not impact any proposed threatened or endangered species, any threatened or endangered species, or affect or modify any critical habitat. A determination of "no effect" has been made, and the project is consistent with the Endangered Species Act, as amended.*

The ***NRE*** (or technical memo/meeting minutes if applicable) should be, referenced, and placed in the SWEPT project file.

This section should summarize the coordination/consultation with USFWS, NMFS, FWC, or other resource or regulatory agencies regarding protected species and habitat. Correspondence (e.g., coordination letters, emails, meeting minutes, comments on technical reports, concurrence letters) should be referenced, included in the Appendix, and added to the SWEPT project file.

c. Commitments - Protected species and habitat commitments are documented in the Commitments section of an EA or EIS (see ***Section 16.3.2.6.3***). See ***Part 2, Chapter 22, Commitments*** for more detail on how to prepare this section of the EIS or EA. Additional guidance on commitment language can be found in FDOT's ***Standard Environmental Commitments Guidance*** document.

3. **SEIR** - The results of the protected species and habitat evaluation are included in the Protected Species and Habitat Section of the SEIR. Documentation includes a concise summary of protected species and habitat impacts and agency coordination or technical assistance. If applicable, this section includes the documentation of programmatic approaches or species keys used to reach effect determinations and what steps were used to reach those determinations. All conservation measures required by the keys/programmatic approaches must also be appropriately documented and implemented. The ***NRE***, technical memo, or technical assistance meeting minutes should be referenced and placed in the SWEPT project file. Any protected species and habitat related commitments should be included in the Commitments section. See ***Part 1, Chapter 10, State, Local or Privately Funded Project Delivery*** for more detail on how to prepare a SEIR.

4. **Consultation Completion** - There may be some instances when one of the Services does not have enough information to concur with, or not concur with an FDOT effect determination. In these cases, the Protected Species and Habitat section of the Environmental Document will include information as described in ***Section 16.2.2.1.6***. Associated commitments must also be provided in the Commitments section of the ***Type 2 Categorical Exclusion Determination Form***, EA or EIS. In these instances, a statement similar to the following is used:

> *Based on coordination with (insert U.S. Fish and Wildlife Service and/or National Marine Fisheries Service) to comply with Section 7 of the Endangered Species Act, FDOT commits to reinitiate consultation and provide information necessary to complete consultation on the [insert name of specie(s)] prior to advancing the project to construction. The letter from (insert U.S. Fish and Wildlife Service and/or National Marine Fisheries Service) is intended to provide reasonable assurance, per 23 CFR § 771.133, that requirements of the ESA are able to and will be met prior to construction. The status of this commitment will be updated in any subsequent project re-evaluations.*

16.3.2.6.3 Commitments

Protected species and habitat commitments may be ***BO*** or ***Incidental Take Statement*** commitments, conservation measures required by a key or programmatic approach, or actions/activities required to advance the project and require action in a later project phase to implement. Commitments may include incorporating special construction provisions into the contract documents, retrofitting of structures to serve as wildlife passages, building of wildlife crossings and/or fencing, wildlife signage, crossing structure monitoring, protected species surveys during later phases, and continued coordination with federal and state resource agencies when consultation cannot be completed during the PD&E phase. See FDOT's ***Standard Environmental Commitments Guidance*** for examples of commonly made commitments. Commitments must be coordinated with other FDOT offices to ensure each commitment is feasible.

Commitments related to protected species and habitat made by FDOT over the course of the project study are documented according to FDOT ***Procedure No. 650-000-003, Project Commitment Tracking***. See ***Part 2, Chapter 22, Commitments*** for more information. These commitments are also included in the Commitments section of the Environmental Document. Commitments may be initially identified in the ***NRE*** submitted to the resource agencies for their review. When a concurrence letter, ***BO*** or other agency correspondence modifies initial commitments, the language in the resource agency response should be the commitment listed in the Environmental Document.

At the conclusion of consultation, the Services may include conservation recommendations, which are non-binding (discretionary) suggestions provided separately from a ***BO*** or ***Incidental Take Statement (USFWS and NMFS, 1998, 4-62)***. The District should consult with District management and OEM prior to making conservation recommendations a commitment.

16.3.3 Design and Construction Phases

16.3.3.1 Re-evaluation

The following information must be documented in a Re-evaluation per ***Part 1, Chapter 13, Re-evaluations***:

1. Changes in impacts to protected species or habitats;
2. Changes in mitigation strategies;
3. Changes in listing status;
4. Results of surveys, continued coordination, or other commitments needed to be fulfilled prior to advancing the project to the next phase.

See ***FDOT's Re-evaluation Guidance for Section 3- Changes in Applicable Law or Regulation*** for guidance on identifying information to include in the Re-evaluation depending on the date regulatory change(s) were implemented.

16.3.3.2 Design Considerations

Project commitments may include construction conditions for protected species, specific design requirements (e.g., the construction of wildlife crossings, or wildlife crossing features that can minimize take) or other project specific treatments (e.g., exclusionary fencing, curb heights, etc.). In some cases, special provisions or modified special provisions may need to be considered. Plan notes are only used when absolutely necessary and must be project-specific and cannot repeat specifications, permit conditions and/or design standards.

16.3.3.3 Permitting

The federal and state permitting processes, as related to protected species and habitat issues, are relatively straightforward if the project team has engaged in **"early, continual, and strategic coordination"** throughout Planning, PD&E, and Design. During PD&E these issues should have been addressed with resource agencies and project commitments made, therefore it is important that the Project Manager and District Environmental Permits Coordinator coordinate during permitting. Prior to permitting, ongoing coordination and thorough documentation of resource agency decisions and commitments (if any) should have produced a well-developed basis for successful permitting.

Federal permitting authority for FDOT projects typically originates from proposed impacts to jurisdictional wetlands and/or other surface waters, or from bridge or causeway construction over navigable waters of the United States. The USACE regulates the discharge of dredged and fill material into waters of the United States, including wetlands, under ***Section 404*** of the ***CWA*** and ***Section 10 of the Rivers and Harbors Appropriations Act of 1899***. The USCG administers the permitting program for bridge and causeway construction under a variety of statutes, including ***Section 9 of the Rivers and Harbors Appropriations Act of 1899***, the ***General Bridge Act of 1946***, and other authorities. Refer to ***Part 1, Chapter 12, Environmental Permits***, ***Part 1, Chapter 16, Navigation***, and the FDOT ***Permit Handbook***.

The issuance of federal permits requires coordination with USFWS and/or NMFS to determine if actions associated with the permitted activity will impact federally listed species, following the ***ESA Section 7*** consultation process outlined previously in ***Section 16.2.2.1***.

For FDOT Federal Projects, FDOT will complete consultation with USFWS and/or NMFS and provide the completed consultation information (i.e., concurrence letters) to USACE and/or USCG as part of the permit application(s) to be incorporated in the regulatory agency action. See ***FDOT Lead Agency Role for Endangered Species Act Consultation*** letter for details.

For FDOT State Projects requiring ***ESA Section 7*** consultation as a result of federal permitting, FDOT will obtain Technical Assistance from the USFWS as part of the preparation of the Environmental Document and include the results with the federal permit application(s). At the time of permitting, USACE and/or USCG will coordinate with FDOT to determine which permitting agency should act as the "lead agency" to initiate ***ESA*** consultation. As part of the permitting process, the Service(s) may request additional data, including recent species-specific field surveys, confirmation of habitat mapping and characterization, and data on any observed listed species occurrences. This information provides the "facts on the ground" that complement the Environmental Document.

Issuance of federal permits from USACE and/or USCG is contingent upon approval from the Service(s) that the project has "no effect," or "may affect, is not likely to adversely affect" federally listed species and that there will be "no destruction or adverse

modification" of critical habitat, or that the action "may affect, is likely to adversely affect" one or more listed species or that "destruction or adverse modification" of critical habitat will occur and incidental take is authorized by an ***Incidental Take Statement*** in a ***BO***.

To ensure that ***ESA Section 7*** consultations do not delay the issuance of federal permits for transportation projects, the Districts are encouraged to conduct "early, continual, and strategic coordination" with the permitting agency, USFWS, and/or NMFS.

Issuance of a state general, individual, or conceptual Environmental Resource Permit (ERP) from the Florida Department of Environmental Protection (FDEP) or a Water Management District (WMD) requires that the activity "will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters" (e.g., ***Rule 62-330.301(d), F.A.C.***). As part of the state permitting procedure for the ERPs, the state permitting agency sends the permit application to other agencies (e.g., FWC and the Department of State, Division of Historical Resources). The Project Manager and District Environmental Permits Coordinator should facilitate the communication of relevant resource agency decisions documented during the preparation of the Environmental Document's commitments to FDEP or the WMD as part of the state permit application process.

16.3.3.3.1 Federal and State Protected Species Permits

Federal and state permits may be required for unavoidable impacts to or for take of protected species. Species protected by the federal ***ESA*** may require an Incidental Take permit from USFWS or NMFS. The FWC also requires Incidental Take permits for activities that may result in take of state listed species.

Species such as the American Bald Eagle, Florida burrowing owl and gopher tortoise are not subject to ***ESA*** review, yet may require species specific permits during project permitting. Detailed guidance on the most common protected species permit types required for transportation projects is provided in the FDOT ***Permit Handbook*** and ***Part 1, Chapter 12, Environmental Permits***.

16.3.3.4 Contractor Requirements

FDOT developed ***FDOT Contractor Requirements for Unanticipated Interaction with Protected Species*** for use by contractors when interaction with protected species is not anticipated and the following conditions exist: A "no effect" determination has been made, no commitments have been made (as described in FDOT ***Procedure No. 650-000-003, Project Commitment Tracking***), and/or no permit conditions exist. These requirements address common protected species that may be encountered on FDOT projects and provides guidance in the event that a protected species is encountered during construction activities. The Construction Project Administrator (CPA), Consultant Construction Engineering and Inspection (CCEI), Contractor, Project Manager, and Field Superintendents should be reminded of these requirements during the pre-construction meeting or at the pre-proposal meeting for Design-Build projects. A link to these

requirements is provided in ***Section 7-1.4*** of the ***Florida Department of Transportation Standard Specifications for Road and Bridge Construction***.

16.3.3.5 Off-project Activities

Off-project activities performed by FDOT or Contractor could have the potential to impact protected species or critical habitat. Examples of such activities are borrow pits, disposal sites, concrete plants, asphalt plants, and material or equipment storage sites also known as staging areas. Stormwater management facilities identified in project plans should be surveyed like the rest of the project during permitting. Off-project activities are not exempt from the requirements of ***Section 7*** of the ***ESA*** or state regulations.

A field survey is required for all Contractor activities which might involve federally listed species consideration in accordance with ***Section 7-1.4*** of the ***Florida Department of Transportation Standard Specifications for Road and Bridge Construction***. Survey methods in ***Section 16.3.2.1.4*** also apply to off-project locations and are to be performed by District environmental personnel. An ***NRE*** should be completed and ***Section 7*** consultation may be requested by the Services for any activity which, through reduction of habitat or physical presence, would impact a federally listed species or critical habitat. The presence of state listed species, or otherwise protected species must also be determined in off-project impact areas. The procedures for this determination are the same as described in this chapter for the project area. Coordination may be necessary with both the Services and FWC.

16.3.3.5.1 Procedure

At the pre-construction conference, District staff must notify the CPA that it is the Contractor's responsibility to submit a written request for the District to conduct a biological evaluation of any site where off-project activities are proposed. The District Environmental Office must notify the CPA that the Contractor request necessary biological evaluations with sufficient lead time so they may be completed without delaying the related off-project activity.

The written request should include the location of the activity (Section, Township, Range, County, City) with a map identifying haul or access roads. The project description should be identified by Financial Management Number and Contract Number. This will provide District environmental personnel the opportunity to research if any protected species are reported for the specified area. The District environmental personnel will notify the Resident Engineer and CPA of their scheduled arrival (date, time) for the evaluation of the site.

Upon completion of the field evaluation, if no species issues are identified, the District will send a written notice to the CPA stating that the contractor may proceed with the project. The District Materials Engineer and Resident Engineer should be copied. A sample letter is provided in ***Guidance for Part 2, Chapter 16*** . The District should notify the CPA if a potential listed species is identified in the off-project area and if ***ESA Section 7***

consultation is required. If ***ESA Section 7*** consultation is required, the District Environmental Office and CPA should coordinate with the Contractor on how to proceed.

16.3.3.6 Maintenance Activities

Maintenance activities such as roadside mowing, culvert repair/replacement, herbicide/fertilizer application, tree/shrub trimming, guardrail repair, bridge maintenance and repair typically are undertaken without impacting protected species or wildlife habitat. District Environmental Office staff should assist the Office of Maintenance when protected species issues arise (***Section 16.3.3.4***) or maintenance activities that may affect protected species or wildlife habitats are planned. Examples include:

1. Culvert repair/replacement in areas known to be inhabited by the Panama City Crawfish;

2. Mowing and/or herbicide/fertilizer application on roadsides inhabited by listed plant species;

3. Bridge repair/maintenance in bridges that may be roosting sites for protected bat species;

4. Bridge repair/maintenance requiring in water work; and,

5. Tree/shrub trimming in mangrove areas

A field survey is required for maintenance activities which might involve federally listed species consideration in accordance with ***Section 7*** of the ***Florida Department of Transportation Standard Specifications for Road and Bridge Construction***. Survey methods in ***Section 16.3.2.1.4*** apply to off-project locations as well as the project area and are to be performed by District environmental personnel. An ***NRE*** or technical memo should be completed and ***Section 7*** consultation may be requested by the Services for any activity which, through reduction of habitat or physical presence, would impact a federally listed species or critical habitat. Coordination may be necessary with both the Services and FWC.

16.4 EMERGENCY CONSULTATION

In cases where emergency actions may affect federally listed species and/or critical habitats, emergency consultation with the Services is required by ***Section 7*** of the ***ESA***, as amended (***50 CFR § 402.05***). USFWS defines an emergency to include an act of God, disasters, casualties, national defense or security emergencies, and includes response activities that must be taken to prevent imminent loss of human life or property. Consultation may be conducted informally through alternative procedures that the Service(s)'s Director determines to be consistent with the requirements of the ***ESA***. Emergency consultation procedures allow federal agencies to incorporate endangered species concerns into their response actions - they are **not** intended to interfere with emergency response efforts.

The District initiates consultation by contacting the Service(s). See the ***FDOT Environmental Review Guidance for Emergency Relief Projects*** on ***FDOT's Documents and Resources Webpage*** for details on contacting the USFWS and/or NMFS for emergency ***Section 7*** consultation.

Recommendations from the Services may include strategies to avoid and/or minimize incidental take, and conservation recommendations to help protect federally listed species and their habitats within the emergency action area. In their recommendations, the Services should indicate if the emergency actions may result in "jeopardy" or "adverse modification" to federally listed species or critical habitat, and if any means for reducing or avoiding this effect are apparent. The District must implement and maintain the on-site protective measures that the Service(s) identified during the emergency ***Section 7*** consultation.

As soon as possible after the emergency is under control, formal consultation with the Services **must** be initiated if federally listed species or critical habitat have been adversely affected. Procedurally, the emergency formal consultation is treated like any other formal consultation by the Services, which means consultation must be initiated by OEM.

If OEM must initiate formal consultation after an emergency, the District should provide the following information to OEM to forward to the Services:

1. A description of the emergency;

2. A justification for the expedited consultation; and

3. An evaluation of the response to, and the impacts of, the emergency on affected species and their habitats. This includes documentation demonstrating how the Services' recommendations were implemented, and the results of implementation in minimizing take.

After concluding formal consultation, the Service(s) then issues an emergency ***BO*** which documents its recommendations and the results of agency implementation of the recommendations on federally listed species. This ***BO*** also may document the actual or estimated take occurring from the emergency response actions.

The Services' emergency consultation procedures are found in the ***USFWS/NMFS Endangered Species Consultation Handbook, Sections 8.1 and 8.2***. For additional information on current emergency coordination procedures, current contact information, executive orders, and best management practices, view the OEM website or the Service(s)' websites.

Coordination with FWC in cases where emergency actions may affect state listed and/or protected species is recommended.

16.5 REFERENCES

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Chapter 68A-27, F.A.C., Rules Relating to Endangered or Threatened Species

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ESA of 1973, as amended 1978, 1979 and 1982. https://www.fws.gov/sites/default/files/documents/endangered-species-act-accessible.pdf

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Fish and Wildlife Coordination Act of 1934, as amended. https://www.law.cornell.edu/topn/fish_and_wildlife_coordination_act

Marine Mammal Protection Act of 1972, as amended. https://www.fws.gov/law/marine-mammal-protection-act

MBTA of 1918, as amended. http://www.fws.gov/laws/lawsdigest/migtrea.html

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USFWS and NMFS, 1998. Endangered Species Consultation Handbook. Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act, March 1998 Final. https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf

16.6 FORMS

Technical Report Cover Sheet, Form No. 650-050-38a

Table 16-1 Effect Determinations

STEP	EFFECT DETERMINATIONS		
	No Effect	**May Affect, Not Likely to Adversely Affect**	**May Affect, Likely to Adversely Affect**
1.	No consultation with Services required.	District initiates informal consultation.	NRE is completed. At least one listed species receives a "may affect, likely to adversely affect" determination.
2.	Document the "No Effect" determination and justification in the Environmental Document.	District works with Service(s) to evaluate and reduce potential impacts to species and/or critical habitat.	District sends a written request to OEM, requesting initiation of formal consultation. The request includes an "initiation package" that describes the project and potential impacts.
3.	**Process complete**.	District reaches determination of "May Affect, Not Likely to Adversely Affect."	OEM initiates formal consultation with the Service(s).
4.		District sends package to Service(s) for review and concurrence, with the reasons supporting determination, and project modifications and/or commitments to reduce potential impacts.	The Service has 30 working days to review the initiation package for completeness. If incomplete, a request for additional information is issued.
5.		If Service sends a concurrence letter, District documents the concurrence and any associated commitments in the Environmental Document. **Process complete**.	OEM, District, and Service(s) work together to avoid a listed species jeopardy opinion, and/or avoid destruction or adverse modification of critical habitat, while maintaining the project purpose and viability (if feasible).
6.		If Service sends a non-concurrence letter, District must either a) request that OEM initiate formal consultation; or b) modify the project to obtain concurrence.	Formal consultation must be concluded within 90 days of receiving a complete initiation package. The BO must be delivered to the action agency (OEM) within 45 days after conclusion of formal consultation.
			If a non-jeopardy BO is issued (no jeopardy to listed species and/or no destruction or adverse modification of critical habitat exists), the Service issues an Incidental Take Statement in association with the BO. The Incidental Take Statement conditions are non-discretionary and must be included by FDOT in the Commitments documentation. **Process complete.**
			If BO reaches a jeopardy or adverse modification conclusion, it will include reasonable and prudent alternatives to avoid jeopardy and/or adverse habitat modification. OEM must notify the Service of its final decision for proceeding with the project.

Note: Please see sections 16.2.2.1.6 and 16.3.2.6.2 if the Service(s) do not have enough information to concur or not concur.

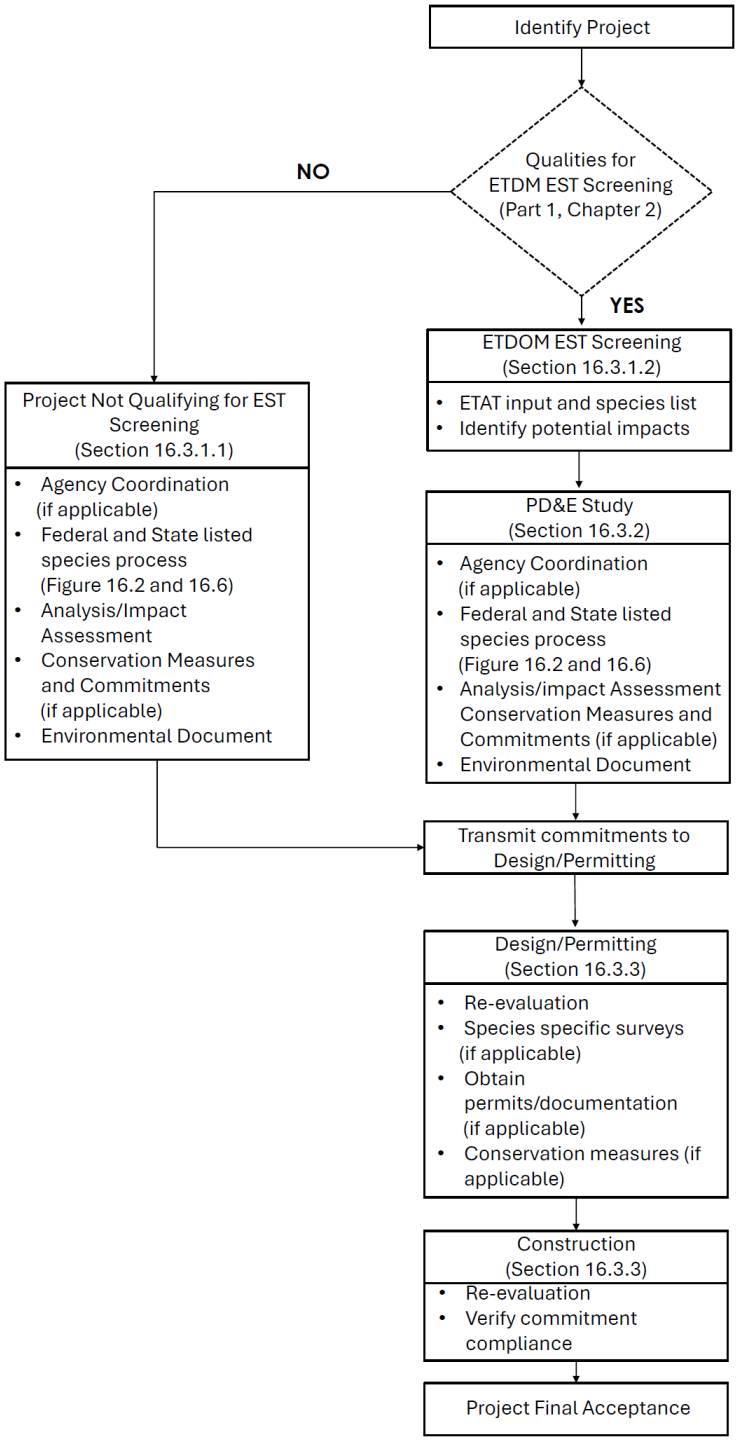

Figure 16-1 Protected Species and Habitat Evaluation Process

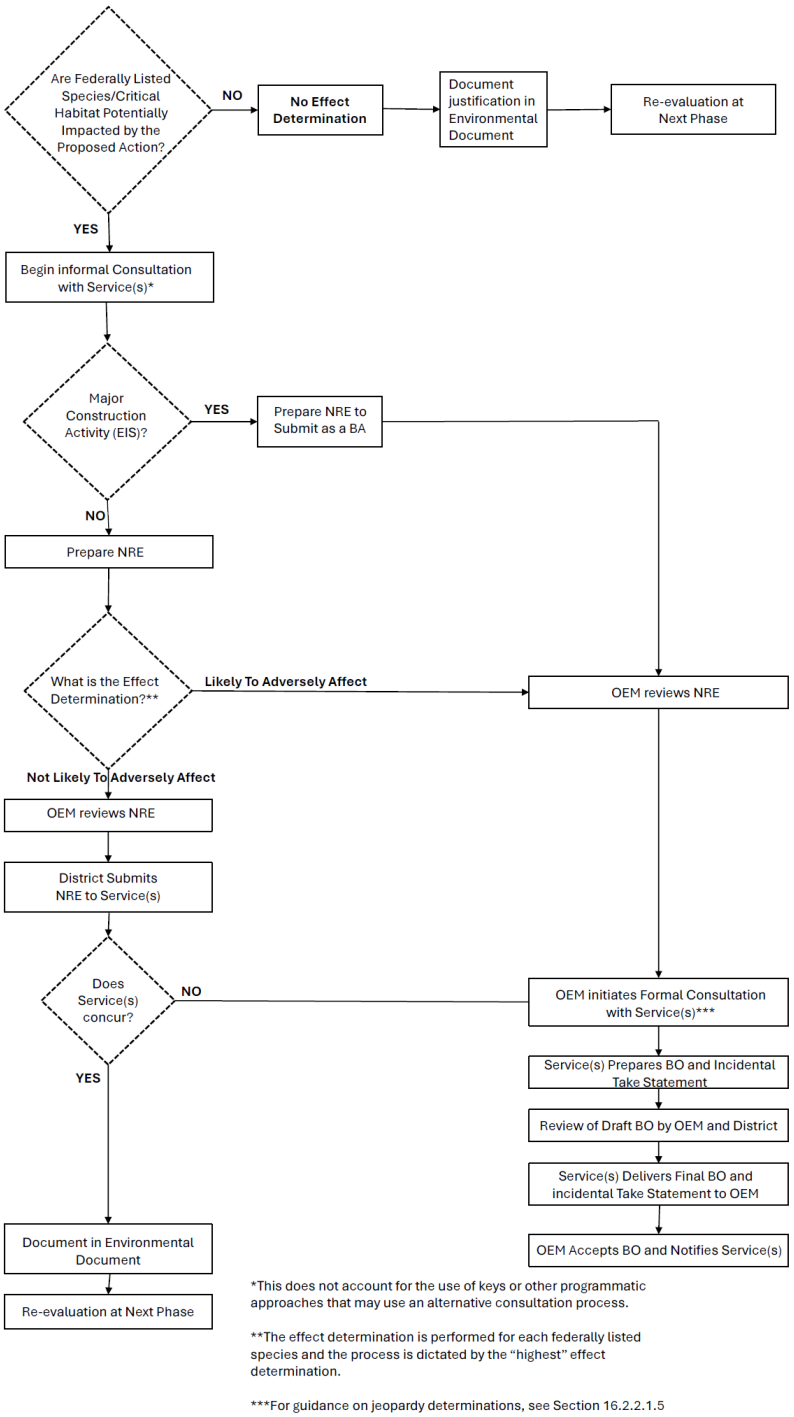

Figure 16-2 Federally Listed Species Process

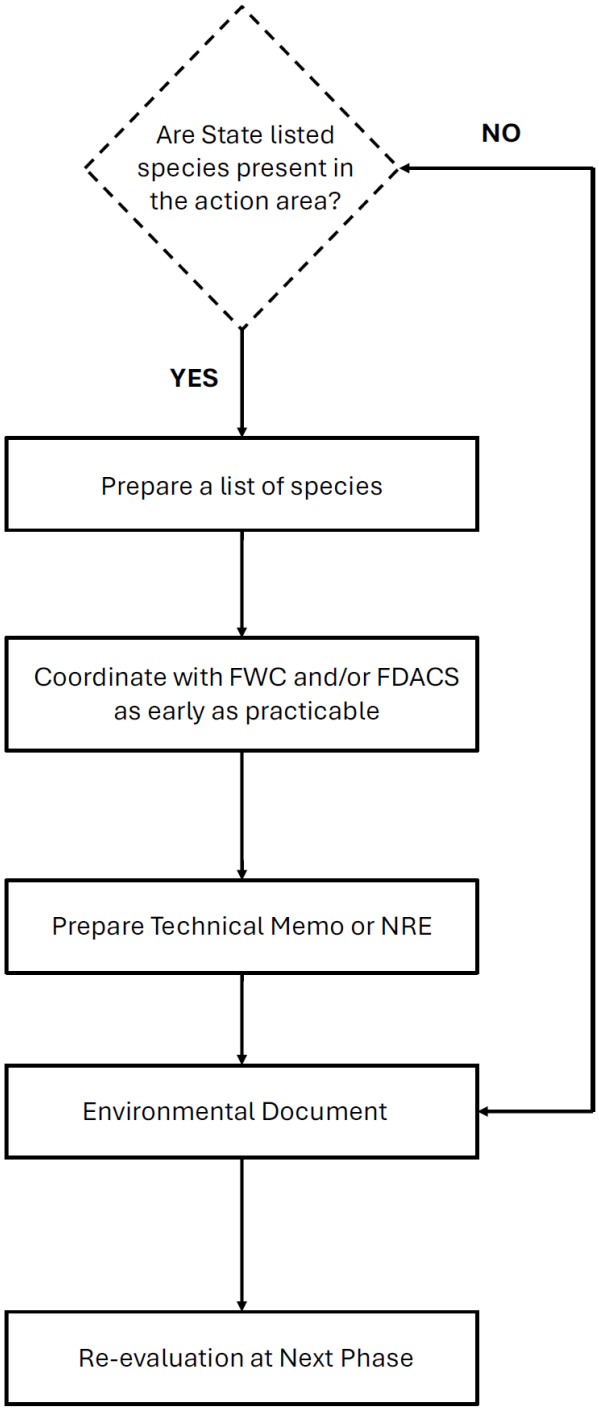

Figure 16-3 State Listed Species Process

PART 2, CHAPTER 17

ESSENTIAL FISH HABITAT

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PART 2, CHAPTER 17

ESSENTIAL FISH HABITAT

17.1 OVERVIEW

This chapter integrates the Essential Fish Habitat (EFH) coordination and consultation processes with the Project Development and Environment (PD&E) process. It provides guidelines for EFH consultations and technical assistance with the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), also referred to as NOAA Fisheries. EFH consultation takes place for Florida Department of Transportation (FDOT) Federal Projects and technical assistance for FDOT State Projects with a Federal Action (e.g., federal permit) (see ***Section 17.2.3.1***). This chapter also provides guidance on documenting the analysis and coordination in the Environmental Document.

17.1.1 Legislative and Regulatory Framework

According to the ***Magnuson-Stevens Fishery Conservation and Management Act (MSA)***, areas designated as EFH are "…those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." ***[16 United States Code (U.S.C.) § 1802(10)]***. The ***MSA (16 U.S.C. § 1801 et. seq.)*** created regional Fishery Management Councils (FMCs) "responsible for the fisheries that require conservation and management in their region" and are required to "develop and amend Fishery Management Plans" (FMP). FMPs also provide information on Habitat Areas of Particular Concern (HAPC) within EFH areas.

In 1996 the ***MSA*** was amended and set forth a mandate for NMFS and regional FMCs to identify and protect important marine and anadromous (species born in fresh water that migrate to the ocean to mature and then return to fresh water to spawn) fish habitat, and to establish means for designating EFH. Rules to implement the EFH provisions of this Act, ***[50 Code of Federal Regulations (CFR) §§ 600.805 - 600.930]***, specify that FMP amendments be prepared to describe and identify EFH. The rules also establish procedures to promote the protection of EFH through interagency coordination. ***Section 305 (b)(2)*** of the ***MSA [16 U.S.C. § 1855(b)(2)]*** states that federal agencies are required to consult with NMFS regarding projects that fund, permit or carry out activities that may adversely affect EFH. An adverse effect "means any impact that reduces quality and/or quantity of EFH" (***Preparing Essential Fish Habitat Assessments: A Guide for Federal Action Agencies. V1, 2004***). EFH consultations are required for Federal Projects, when such project may adversely affect EFH.

NMFS made a finding pursuant to ***50 CFR § 600.920(e)*** that EFH consultation requirements can be incorporated into the existing ***National Environmental Policy Act (NEPA)*** document created through the FDOT's PD&E process and designated FDOT to conduct EFH consultations in Florida pursuant to ***50 CFR § 600.920(c)*** as memorialized

in the ***Essential Fish Habitat Findings Letter, July 19, 2000***. (Note that ***NEPA*** Assignment has removed NMFS consultation with the Federal Highway Administration (FHWA) from this process).

17.2 PROCEDURE

To satisfy the ***MSA***, FDOT determines potential involvement with designated EFH and Habitat Areas of Particular Concern (HAPCs) for the project. See ***Figure 17-1*** for a flowchart of the FDOT EFH Process. If EFH may be adversely affected by the project, an ***EFH Assessment*** will be prepared (see ***Section 17.2.3.1.1***) and summarized in the Environmental Document (***Section 17.2.3.2***).

17.2.1 Determination of Level of Assessment

17.2.1.1 Projects Qualifying for ETDM Screening

Projects that qualify for screening are evaluated through the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST) (see ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for a list of qualifying projects). Preliminary EFH information can be found in the ***Programming Screen Summary Report***, within the Environmental Technical Advisory Team (ETAT) comments for the "Coastal and Marine" and "Wetlands and Surface Waters" issues. It may also be helpful to review ETAT comments on "Protected Species and Habitat" and "Water Resources" as well as "General Project Recommendations" and "Anticipated Permits".

Comments provided by NMFS are especially important. The "Technical Studies Anticipated" section of the ***Programming Screen Summary Report*** should state if an ***EFH Assessment*** is needed. NMFS should provide a list of the federally-managed species that the assessment should address. Generally, NMFS will assign a "no involvement" degree of effect for projects that do not have a direct or indirect effect. Projects that only have indirect effects will generally be assigned a "minimal" degree of effect in the EST. These two scenarios generally do not require an ***EFH Assessment***. If EFH may be adversely affected by a project, the NMFS will request an ***EFH Assessment*** which is prepared following the procedure in ***Section 17.2.3***.

Information from FMPs, FMCs, and from literature review and contacts described in the ***Guidance for Part 2, Chapter 17*** serve as reference material for involvement determinations.

As a project advances to the PD&E phase, it is important to address ETAT comments received during the EST screening event. FDOT may contact NMFS to discuss ETAT comments and FDOT course of action to address their comments (See ***ETDM Manual, Topic No. 650-000-002***).

17.2.1.2 Projects Not Qualifying for ETDM Screening

For projects that do **not** qualify for screening through the EST (see ***Part 1, Chapter 2, Class of Action Determination for Federal Projects*** for a list of qualifying projects) coordination with NMFS is still required for FDOT Federal Projects or FDOT State Projects requiring a Federal Action (e.g., a federal permit) that may involve EFH. To determine the level of evaluation for these projects, a review of FMPs, FMCs and literature is performed. This information is also used to develop an Abbreviated Managed Species List as noted in ***Section 17.2.1.3***. If NMFS indicates that an ***EFH Assessment*** is not required, it is documented as discussed in ***Section 17.2.2***. If NMFS indicates that an ***EFH Assessment*** is required, the procedure in ***Section 17.2.3*** is followed. The ***EFH Assessment*** review and resulting project evaluation and Conservation Recommendations (when provided) are handled during the permitting process [e.g., for Type 1 Categorical Exclusions (CEs)].

17.2.1.3 Request for Abbreviated Managed Species List

NMFS responds during the ETDM process with adequate information about the species involved in the project such that an ***EFH Assessment*** can begin when appropriate. In this case the species identified in the ***Programming Screen Summary Report*** response can be used to begin the ***EFH Assessment***, and an abbreviated list may not need to be requested.

For instances where NMFS has not provided adequate information to begin the ***EFH Assessment*** or for projects that did not go through EST, it is recommended that Districts create their own abbreviated lists using the Managed Species Lists available from the regional FMC and NMFS, as well as identify EFH for those species (see ***Section 17.2.1.2***). NMFS also has an interactive EFH Mapper to assist in identifying EFH (see ***Section 7.3*** for the link). Once an abbreviated list is compiled, it is recommended that the District send a letter (which may be sent via e-mail) to NMFS requesting confirmation. Requests should be sent to the appropriate Habitat Conservation Division Florida Office. Contact information and a sample request letter are provided in ***Guidance for Part 2, Chapter 17***. The confirmed abbreviated list can then be used to begin the ***EFH Assessment*** (***Section 17.2.3.1.1***). NMFS confirmation of the abbreviated list will help expedite the ***EFH Assessment***.

The request to confirm an abbreviated list is not an official procedure for EFH consultation and NMFS is not required to respond. If NMFS does not respond to the request within 10 days, the District may use the abbreviated list compiled using the Managed Species Lists to begin the ***EFH Assessment***.

17.2.1.4 Fishery Management Plans

Information on EFH within the project area can be gathered from regional FMCs and NMFS. Two councils cover areas within the State of Florida: the Gulf Council and the South Atlantic FMC. Each council has lists of Managed Species and EFH identified within

their jurisdictional area and specific FMPs for the species they manage. NMFS' Southeast Regional Office also has FMPs and Managed Species Lists for highly migratory species, which they manage. The NMFS Southeast Regional Office can be contacted for more site-specific information. EFH information from these organizations is also available online. See the ***Guidance for Part 2, Chapter 17*** for links to additional information and contacts.

FMPs explain the physical, biological, and chemical characteristics of EFH and include information on species life history stages, species range maps as well as information on potential threats and recommended conservation and enhancement measures. The amount of information available for EFH determinations will vary depending on the species that may be affected.

FMPs also provide information on HAPC, which are habitats or habitat associations identified within EFH that are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. These areas are identified by the FMCs in their respective FMPs and are discussed and addressed during the EFH consultation process (see ***Section 17.2.3.1***).

17.2.2 Documentation if no EFH Assessment Needed

If the project is located outside of areas where ***MSA*** applies, an ***EFH Assessment*** is not required and consultation with NMFS is also not required. It is documented in the Environmental Document that there is no EFH in the project area.

For projects located in areas where the ***MSA*** could apply, but the project will either have no involvement with EFH or no adverse effect on EFH, it should be addressed in the Environmental Document as follows:

1. Type 1 CE: It is discussed in the ***Type 1 Categorical Exclusion Checklist*** and supporting information is included in the project file (i.e., Geographic Information System (GIS) data analysis, technical memo, site visit, knowledge of the area).

2. Type 2 CE: "No involvement" is selected on the ***Type 2 Categorical Exclusion Determination Form*** and supporting documentation is added to the form and project file.

3. Environmental Assessments (EAs), Environmental Impact Statements (EISs) or State Environmental Impact Reports (SEIRs): The following statement is included in the Environmental Analysis section as appropriate:

   > *This project has been coordinated with NMFS and there is no involvement with, or adverse effect on Essential Fish Habitat; therefore, Essential Fish Habitat consultation and preparation of an Essential Fish Habitat Assessment are not required.*

17.2.3 Actions Taken if EFH Assessment is Required or NMFS Comments Need to be Addressed

NMFS provides comments during the ETDM process for projects with potential direct effects on EFH and may comment regarding indirect effects (e.g., stormwater from a bridge over a river that would flow into a nearby estuary). These comments should be addressed during the PD&E process, but an ***EFH Assessment*** is only required when specifically requested by NMFS or when FDOT determines that a project may adversely affect EFH.

If the District determines that a project may adversely affect EFH and/or an assessment was requested by NMFS in the ***Programming Screen Summary Report***, then:

1. An ***EFH Assessment*** is prepared as described in ***Section 17.2.3.1.1***.
2. Consultation is requested with NMFS and they are provided the ***EFH Assessment***.
3. NMFS provides a written project evaluation which may include EFH Conservation Recommendations.
4. The District responds to NMFS Conservation Recommendations, if provided, within the required timeline (***Section 17.2.3.1.2***).
5. A summary of the results is included in the final Environmental Document.

If NMFS receives information regarding an FDOT project that may adversely affect EFH and FDOT has not initiated EFH consultation, then NMFS may inform FDOT of the ***MSA*** requirement to consult and ask FDOT to initiate EFH consultation. FDOT is not required to agree to NMFS's request; however, NMFS is required by the ***MSA*** to provide EFH Conservation Recommendations, and FDOT is required to respond to these recommendations in writing regardless of whether FDOT initiated consultation.

17.2.3.1 Essential Fish Habitat Consultation and Technical Assistance

EFH consultation is initiated for FDOT Federal Projects when NMFS receives an ***EFH Assessment*** with a cover letter requesting consultation, which is submitted by the District. If formal ***Endangered Species Act (ESA)*** consultation is also needed for the project (see ***Part 2, Chapter 16, Protected Species and Habitat***), the Office of Environmental Management (OEM) submits the ***Natural Resource Evaluation (NRE)***, formal ***ESA*** consultation cover letter, and the EFH cover letter to NMFS on behalf of the District through the EST.

The negotiated procedure for conducting EFH consultations is specified in the ***Essential Fish Habitat Findings*** letter. The key components to the consultation process include

preparation of an ***EFH Assessment*** which is provided to NMFS, proposed Conservation Recommendations by NMFS, and agency response to Conservation Recommendations. It is recommended that the Districts refer to the NMFS's document ***EFH Consultation Guidance Version 1.1 (April 2004)*** for detailed information on consultations.

EFH consultation is expected to be completed during the PD&E phase. In some instances, consultation cannot be completed at this project phase, especially if NMFS does not have enough information (i.e., project details may not yet be available) to concur with (or not concur with) the effect of the project on EFH. In these situations, the Districts should coordinate with OEM. Together OEM and the District will determine the appropriate course of action to advance the project.

Technical assistance may be requested by FDOT for coordination with NMFS outside of the consultation process. This takes place for a ***NEPA*** document when consultation cannot be completed during the PD&E phase. Technical assistance is also requested for FDOT State Projects with a Federal Action (e.g., federal permit). In this instance, EFH consultation will be initiated, if warranted, by the Lead Federal Agency (U.S. Army Corps of Engineers (USACE)/U.S. Coast Guard (USCG) during permitting. Technical assistance may involve coordination such as requesting NMFS conduct an initial review of the proposed action, determine sufficiency of supporting materials, or provide advice regarding project activities or modifications to avoid or minimize any anticipated adverse effects to EFH.

17.2.3.1.1 Essential Fish Habitat Assessment

An ***EFH Assessment*** is an analysis of a project's potential adverse effects on EFH and if necessary, measures to avoid, minimize, or mitigate those effects. An ***EFH Assessment*** is completed if there are potential adverse effects to EFH on FDOT Federal Projects or FDOT State Projects with a Federal Action (e.g., a federal permit), regardless of the type of Environmental Document prepared. Coordination may be needed with NMFS while preparing the ***EFH Assessment***.

The ***EFH Assessment*** is included as a section of the ***NRE*** instead of a stand-alone document. The ***NRE*** documents project effects on protected species and habitat, wetland, and EFH resources and can be provided to NMFS as an ***EFH Assessment***. The FDOT ***Natural Resources Evaluation Outline and Guidance*** provides detailed guidance on preparing and incorporating the ***EFH Assessment*** into the ***NRE***.

The ***EFH Assessment*** section of the ***NRE*** must contain:

1. Identification of EFH, HAPC(s), and managed species that may be affected. An analysis of the effects, including indirect and cumulative effects, of the project on EFH, HAPC(s), the managed species, and associated species by life history stage,

2. Proposed measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH, and

3. FDOT's determination regarding the effects of the project on EFH.

For projects that do not require an ***NRE*** per the ***Natural Resources Evaluation Outline and Guidance***, the District prepares the ***EFH Assessment*** as a technical memo and should use the ***Technical Report Cover Sheet, Form No. 650-050-38a***.

The level of detail required for project specific consultations varies depending on the degree the project may adversely impact EFH. This level of detail is based on project specific conditions such as ecological importance or sensitivity of the area, type and extent of EFH that would be impacted, and the type of activity proposed.

A detailed ***EFH Assessment*** is prepared for projects that are expected to have substantial adverse effects. A detailed assessment should include the results of on-site inspections, the views of experts on the affected species or their habitat, literature review, an analysis of alternatives to the proposed project and other relevant information. More detail on suggested contents and examples of ***EFH Assessments*** are included in NMFS's guidance document, ***Preparing Essential Fish Habitat Assessments: A Guide for Federal Action Agencies (February 2004)***. If FDOT determines that a detailed ***EFH Assessment*** is not necessary, and NMFS does not agree, then NMFS can request additional information from FDOT in writing.

Information for the ***EFH Assessment*** should be gathered for species included in the ***Programming Screen Summary Report*** or on the Abbreviated Managed Species List (***Section 17.2.1.3***) using FMPs as explained in ***Section 17.2.1.2***. General information is available from contacts included in the ***Guidance for Part 2, Chapter 17***. It may be useful to include a table of species and EFH that may be affected. The best available information must be used to determine the effects of the proposed project on EFH. FDOT's determination of effects should be clearly stated in the assessment as minimal, more than minimal but less than substantial, or substantial. It is recommended that the ***EFH Assessment*** be concluded with the use of best management practices, avoidance and minimization measures, and mitigation strategies, if needed.

For FDOT Federal Projects, the District must submit the draft ***NRE*** including the ***EFH Assessment*** to OEM for review. After comment resolution with OEM, the District submits the final ***NRE*** to the appropriate agencies for coordination/consultation.

Completed ***EFH Assessments*** should be sent to the appropriate NMFS Habitat Conservation Division Florida Office at least 60 days prior to a final decision on the proposed project or at least 90 days prior if substantial adverse impacts are anticipated. Office contact information is provided in the ***Guidance for Part 2, Chapter 17***.

17.2.3.1.2 EFH Conservation Recommendations

Once the NMFS receives the ***EFH Assessment***, it will prepare a written project evaluation (either letter, memo, or e-mail) with EFH Conservation Recommendations, as appropriate. Conservation Recommendations, which are non-binding (i.e., discretionary), may include measures to avoid, minimize, or mitigate adverse effects on EFH. Unless a

shorter timeframe is agreed to, this coordination must comply with the timelines mandated by the ***MSA***. FDOT is required to respond to NMFS Conservation Recommendations within 30 days of receipt explaining how FDOT will proceed. If the signed Finding of No Significant Impact (FONSI), Final Environmental Impact Statement (FEIS)/Record of Decision (ROD), or ROD that includes FDOT's response to Conservation Recommendations cannot be completed in 30 days and/or FDOT does not yet have a response to the Conservation Recommendations then an interim response should be sent to NMFS before the specified deadline. Sample letters are provided in the ***Guidance for Part 2, Chapter 17***. A detailed written response should be submitted to NMFS at least 10 days prior to taking final action (e.g., signing a FONSI, FEIS/ROD or ROD). The response should include a description of measures proposed by FDOT for avoiding or mitigating the impact of the proposed activity on EFH. The response should also include the ***NEPA*** Assignment standard statement (see ***Part 1, Chapter 4, Project Development Process***).

If the response is inconsistent with the NMFS EFH Conservation Recommendations, FDOT must explain its rationale for not implementing the NMFS's proposed Conservation Recommendations, including the scientific justification for the anticipated effects of the project and/or measures needed to avoid, minimize, or mitigate such effects. The NOAA Assistant Administrator for Fisheries can request a meeting with the Director of OEM to discuss the proposed project and the opportunity to resolve disagreements per ***50 CFR § 600.920(k)(2)***.

NREs are final documents once they are submitted to the resource agencies and should not be revised. If changes are needed to document Conservation Recommendations or other changes after the ***NRE*** is finalized, an addendum to the original ***NRE*** document is prepared. Any new agency coordination/consultation letters should be included in the Environmental Document and project file.

17.2.3.2 Documentation

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

Type 1 CE - A Type 1 CE may involve EFH, providing the documentation demonstrates the proposed project has no significant effects. For these projects, a summary of the EFH assessment, agency coordination and compensation for impacts (as appropriate) is included in the ***Type 1 Categorical Exclusion Checklist*** (***Part 1, Chapter 5, Categorical Exclusion***). If an ***EFH Assessment*** was prepared it should be included in the project file. Agency coordination letters and/or meeting minutes are also included in the project file, while concurrence letters are attached to the checklist.

Type 2 CE, EA, or EIS - The Environmental Document is prepared and processed as described in ***Part 1, Chapter 5, Categorical Exclusion; Part 1, Chapter 6, Environmental Assessment;*** or ***Part 1, Chapter 8, Draft Environmental Impact Statement***. The potential impacts to EFH, consultation with the NMFS, and compensation for impacts (as appropriate) are summarized. The Environmental Document should

include the following statement, if applicable, in the Essential Fish Habitat section of the Environmental Document, when an EFH Assessment is required:

> *An EFH Assessment has been prepared and consultation has been completed in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). It has been determined that this project [will have] [will not have] adverse effects to Essential Fish Habitat.*

When consultation cannot be completed during the PD&E phase, the Environmental Document should include a summary of the consultation to date, the reasons why it cannot be completed, documentation that NMFS agrees to complete consultation prior to construction, and any other information that may provide reasonable assurance the requirements will be fulfilled consistent with ***23 CFR § 771.133***. In these instances, a reasonable assurance statement similar to the following is included in the Environmental Document of an FDOT Federal Project:

> *Based on coordination with the National Marine Fisheries Service to comply with Magnuson-Stevens Fishery Conservation and Management Act (MSA), FDOT commits to reinitiate consultation and provide information necessary to complete consultation on the [insert name of specie(s)] prior to advancing the project to construction. FDOT's commitment is intended to provide reasonable assurance, per 23 CFR § 771.133, that requirements of the MSA are able to and will be met prior to construction and this approach is affirmed by the National Marine Fisheries Service. The status of this commitment will be updated in any subsequent project re-evaluations.*

The ***EFH Assessment*** section of the ***NRE*** and associated consultation or technical assistance correspondence and/or meeting minutes should be summarized in the Environmental Document, referenced, and retained in the StateWide Environmental Project Tracker (SWEPT) project file. When NMFS provides Conservation Recommendations these, as well as FDOT's responses, are included in the Appendix of the Type 2 CE, EA or EIS and made an addendum to the ***EFH Assessment*** section of the ***NRE***. Any additional consultation or technical assistance correspondence created since submittal to NMFS should also be included in the addendum. The final ***NRE*** (with any addenda) should be included in the SWEPT project file.

SEIR - The SEIR is prepared and processed as described in ***Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery***. It should include a summary of the potential impacts to EFH, the evaluation, and technical assistance with NMFS. The SEIR should state that EFH consultation will be initiated, if warranted, by the Lead Federal Agency (USACE/USCG) during permitting. It should include the following statement in the Essential Fish Habitat section of the Environmental Document, when an EFH Assessment is required:

> *An EFH Assessment has been prepared and technical assistance with the National Marine Fisheries Service (NMFS) has occurred in*

accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). It is anticipated that this project [will have] [will not have] adverse effects to EFH.

The ***EFH Assessment*** section of the ***NRE*** and associated technical assistance correspondence and/or meeting minutes should be summarized in the SEIR, referenced, and retained in the SWEPT project file.

17.2.4 Commitments

Any Conservation Recommendations considered for inclusion as commitments in the Environmental Document must be coordinated with the appropriate FDOT offices to ensure each commitment is feasible. The District should consult with District management prior to making Conservation Recommendations a commitment.

If EFH consultation is not completed during the PD&E phase, the reasonable assurance statement in ***Section 17.2.3.2*** should be included as a commitment. Commitments related to EFH made by FDOT over the course of project development should be discussed in the EFH section of the Environmental Document with sufficient context to understand the purpose of the commitment. Commitments should also be listed in the Commitments section and documented according to ***Procedure No. 650-000-003, Project Commitment Tracking*** (see ***Part 2, Chapter 22, Commitments***).

An update to the commitment(s) must be provided in subsequent project Re-evaluations and in the ***Project Commitment Record (PCR)***.

17.2.5 Re-evaluation

The following information must be documented in a Re-evaluation when applicable per ***Part 1, Chapter 13, Re-evaluations***:

1. Changes in impacts to EFH;
2. Changes in mitigation strategies;
3. Changes in EFH designation; and
4. Results of surveys, continued coordination, or other commitments which must be met prior to advancing the project to the next phase.

17.2.6 Emergency Consultation

Consultation is required for emergency Federal Actions that may adversely affect EFH. These actions may include hazardous material clean-up, response to natural disasters, or actions to protect public safety. FDOT should contact NMFS early in emergency response planning, however consultation may occur after-the-fact if not practicable before

the emergency action. ***NOAA's NMFS Emergency EFH/ESA Section 7 Consultation Procedures for FDOT Projects*** is provided in ***Guidance for Part 2, Chapter 17***.

17.3 REFERENCES

Essential Fish Habitat Findings, July 19, 2000 letter to George Hadley of FHWA and Joshua Boan of FDOT from NMFS' Rickey Ruebsamen. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/efh-finding-among-nmfs-fhwa-fdot-2000-0719.pdf?sfvrsn=cb9f6689_0

FDOT, Natural Resources Evaluation Outline and Guidance. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/protected-species/finalnreguidance082322.pdf?sfvrsn=dd265025_2

Magnuson-Stevens Fishery Conservation and Management Act (MSA) https://media.fisheries.noaa.gov/dam-migration/msa-amended-2007.pdf

NMFS, September 2003. EFH: New Marine Fish Habitat Conservation Mandate for Federal Agencies. NMFS Habitat Conservation Division, Southeast Regional Office. St. Petersburg, FL

NMFS, February 2004. Preparing Essential Fish Habitat Assessments: A Guide for Federal Action Agencies. V1

NMFS, April 2004. Essential Fish Habitat Consultation Guidance. V1.1 NMFS Office of Habitat Conservation, Silver Spring, MD. https://repository.library.noaa.gov/view/noaa/4187

NMFS, Essential Fish Habitat Mapper. https://www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper

NMFS, website: http://sero.nmfs.noaa.gov/habitat_conservation/index.html

Title 50 CFR §§ 600.805 - 600.930. https://ecfr.io/Title-50/pt50.12.600

17.4 FORMS

Technical Report Cover Sheet, Form No. 650-050-38a

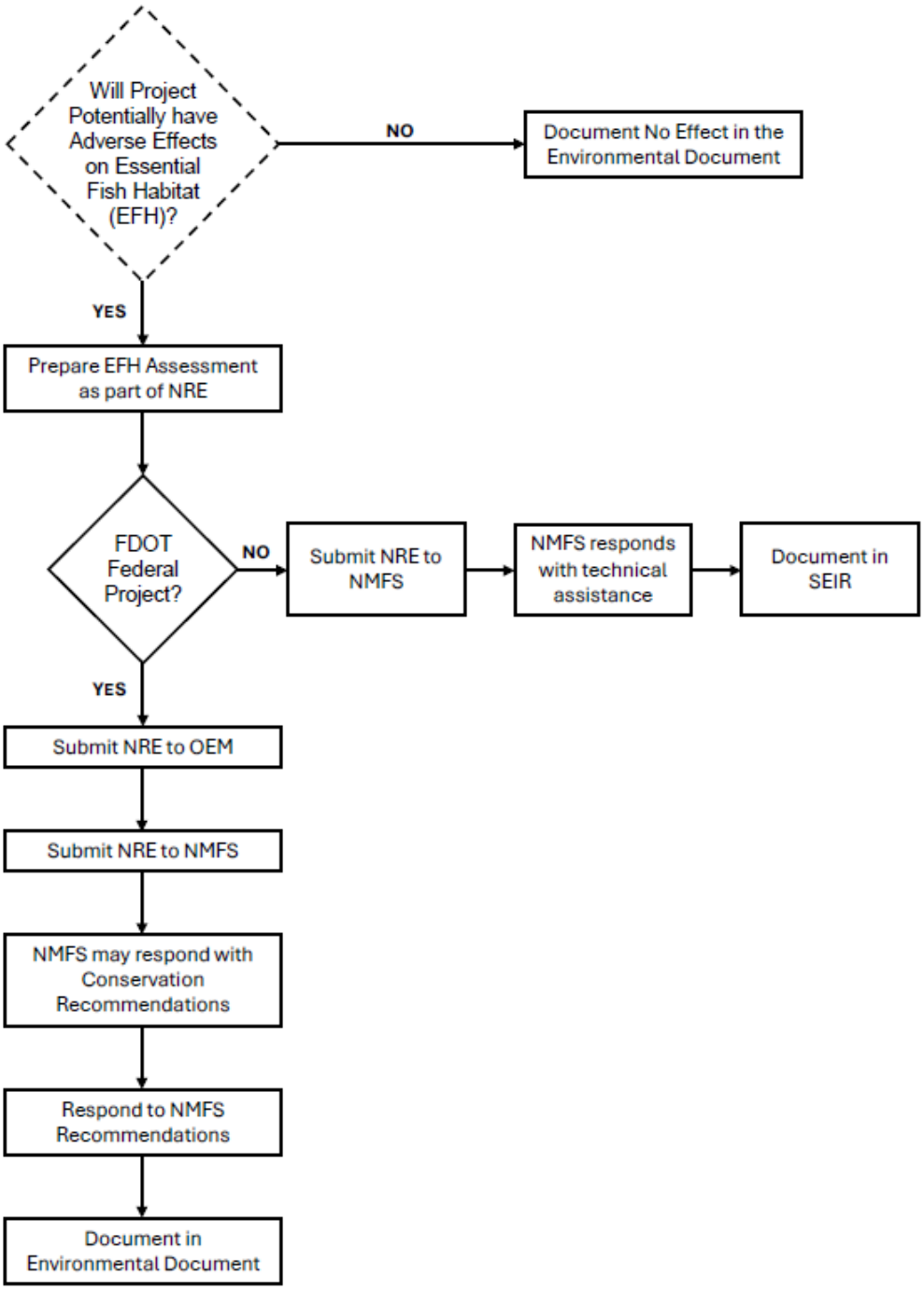

Figure 17-1 Essential Fish Habitat Process

PART 2, CHAPTER 18

HIGHWAY TRAFFIC NOISE

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PART 2 CHAPTER 18

HIGHWAY TRAFFIC NOISE

18.1 OVERVIEW

18.1.1 Purpose

This chapter is the official Florida Department of Transportation (FDOT) noise policy and procedure for the purpose of meeting the requirements of ***Title 23 of the Code of Federal Regulations (CFR) Part 772*** **and applicable state laws**. FDOT will apply these policies and procedures uniformly and consistently statewide.

Roadway traffic is one of the more dominant sources of noise in urban and rural areas of Florida. In an effort to encourage the control of noise, Congress passed the ***Noise Control Act of 1972***. Congress further directed the Federal Highway Administration (FHWA) to develop noise standards associated with traffic. However, effective control of traffic noise requires both the control of land use planning next to highways and feasible and reasonable abatement associated with highway projects.

The control of land use is a local government responsibility. The control of traffic noise associated with specific highway projects is the responsibility of the transportation agency (or agencies) planning, designing, and constructing a project.

The noise impact and abatement analysis policy and procedures provided in this chapter are based on ***23 CFR Part 772, Procedures for Abatement of Highway Traffic Noise and Construction Noise*** dated July 13, 2010, and the FHWA guidance document ***Highway Traffic Noise: Analysis and Abatement Guidance*** dated December 2011. These two documents are incorporated into this chapter by reference. In addition, ***Section 335.17, Florida Statutes (F.S.)***, requires FDOT to develop a project in conformity with federal standards contained in ***23 CFR Part 772*** regardless of funding source and include the noise standards mandated by ***23 United States Code (U.S.C.) § 109(i)***. Highway projects developed in conformance with this regulation meet FHWA noise standards.

18.1.2 Definitions

Approach Criteria – Approaching the criteria means within 1 A-weighted decibel [dB(A)] of the appropriate FHWA Noise Abatement Criteria (NAC) provided in ***Table 18-3***.

Common Noise Environment (CNE) – A group of receptors within the same activity category found in ***Table 18-3*** that are exposed to similar noise sources and levels, traffic volumes, traffic mix, speed, and topographic features. A CNE involves a group of receptors that would benefit from the same noise barrier or noise barrier system (i.e., overlapping/continuous noise barriers).

Date of Public Knowledge (DPK) – The approval date of the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), the Record of Decision (ROD), State Environmental Impact Report (SEIR) or Non-Major State Action (NMSA). For a Type 1 CE and NMSA, this is the approval date of the ***Type 1 Categorical Exclusion Checklist*** or ***Non-Major State Action Checklist***. Approved Environmental Documents are in the StateWide Environmental Project Tracker (SWEPT).

Decibel – A logarithmic expression of a sound level. For traffic noise analysis purposes and as specified by ***23 CFR Part 772***, the A-weighted scale, which closely approximates the range of frequencies a human ear can hear, is used. The A-weighted decibel is abbreviated dB(A).

Design Year – The future year used to estimate the forecast traffic volume for which a highway is designed.

Existing Noise Levels – The noise levels that occur during the worst noise hour resulting from the combination of natural and mechanical sources and human activity usually present in a particular area.

Feasibility – A combination of acoustical and engineering factors considered in the evaluation of a noise abatement measure.

Insertion Loss – The reduction in traffic noise levels as a direct result of a specific type of abatement measure determined by calculating the difference between future build noise levels with abatement to future build noise levels without abatement.

Level Equivalent (Leq) – The equivalent steady-state sound level, which, in a stated period of time, contains the same acoustic energy as the time-varying sound level during the same time period, with Leq(h) being the hourly value of Leq.

Noise Analysis Area (NAA) – The area within and beyond the project limits that has Type I project characteristics and that requires a noise analysis. The NAA shall completely encompass the area where alterations and construction will occur, and also include any area beyond the construction limits where design year traffic may contribute to noise impacts from the project. The NAA can be sub-divided based on geographic, traffic, and other similar characteristics for grouping of CNEs.

Noise Abatement Criterion (NAC) – The noise level, depending upon activity category, at which FDOT must consider noise abatement for an impacted receptor. The NAC can be found in ***Table 18-3***.

Noise Barrier – A physical obstruction that is constructed between the highway noise source and the noise sensitive receptor(s) for the purpose of lowering the noise level, including stand-alone barrier structures, berms (earth or other materials), and combination berm/barrier structure systems.

Noise Reduction Design Goal (NRDG) – The optimum desired dB(A) noise reduction (insertion loss) determined by calculating the difference between future build noise levels with abatement to future build noise levels without abatement. The FDOT has selected 7 dB(A) as the NRDG for one (1) or more benefited receptors.

Permitted – Development will be deemed to be permitted if the local agency with jurisdiction has granted a building permit for a specific structure associated with a noise sensitive land use such as, residential, school, place of worship, medical facility, or institutional, prior to the project's DPK.

Predicted Existing Traffic Noise Level – The traffic noise level that is determined through the use of the FHWA Traffic Noise Model (TNM) for existing roadway conditions.

Predicted Future Traffic Noise Level – The traffic noise level that is determined through the use of the TNM for the future design year traffic and roadway geometry, including build and no-build alternatives.

Property Owner – An individual or group of individuals that hold a title, deed, or other form of legal documentation showing ownership of a commercial or residential property.

Reasonableness – The combination of social, economic, and environmental factors considered in the evaluation of a noise abatement measure. Reasonableness factors include consideration of viewpoints by benefited receptors, cost-effectiveness of abatement measures, and achieving the FDOT NRDG.

Receptor – A discrete or representative location for any of the land use categories listed in ***Table 18-3***.

> Benefited Receptor – A receptor that receives a noise reduction at or above the minimum threshold of 5 dB(A) as a result of an abatement measure.

Impacted Receptor – A receptor with a design year build alternative traffic noise level that is predicted to approach, meet, or exceed the NAC for its respective activity category, or will experience an increase in noise levels of 15 dB(A) or more in the design year over the existing noise levels.

Modeled Receptor – A georeferenced location within FHWA's TNM that represents a single or a group of receptors with the same characteristics where noise levels are predicted.

Substantial Noise Increase – For a Type I project (see definition below), an increase in noise levels of 15 dB(A) or more in the design year over the existing noise level (measured or predicted) as a direct result of the transportation improvement project. A substantial increase will normally occur only on new alignment projects.

Traffic Noise Impacts – Design year build condition noise levels that approach, meet, or exceed the federal NAC listed in ***Table 18-3*** for the future build condition, or design year build condition noise levels that create a substantial noise increase over existing noise levels.

Type I Projects – A highway construction project on new location or a physical alteration of an existing highway which substantially changes the horizontal and vertical alignment, profile, or adds a through lane(s). Specific project definitions according to ***23 CFR Part 772*** are listed in ***Section 18.1.3.1***.

Type II Projects - A federal or state highway project for noise abatement on an existing highway that is not being modified as part of a Type I project. Type II projects are commonly referred to as retrofit projects and are allowed (but not mandatory) under ***23 CFR Part 772***. The development and implementation of Type II projects are not mandatory requirements of ***23 U.S.C. § 109(i)***. The FDOT does not have a Type II program.

Type III Projects – A project that does not meet the classifications of a Type I or Type II project. Type III projects do not require a noise analysis.

18.1.3 Applicability

18.1.3.1 Type I Projects

This policy applies to all Type I projects authorized under ***Title 23 U.S.C.*** and ***Section 335.17, F.S.*** All FDOT highway projects, regardless of funding source, shall be developed in conformance with federal standards for noise abatement as contained in ***23 CFR Part 772***.

The effective date of the revisions to ***23 CFR Part 772*** is July 13, 2011. The following types of projects are "grandfathered" and do not have to meet the ***23 CFR Part 772*** final rule:

1. Federal-aid highway projects for which the Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) has been signed by the effective date of the final rule, which is July 13, 2011.

2. Re-evaluations conducted during the Design phase for which approval has been received prior to July 13, 2011.

If approval of the Environmental Document and the Re-evaluation conducted during the Design phase has not been received prior to July 13, 2011, the noise study must follow the requirements of ***23 CFR Part 772***. Projects for which the Environmental Document has not been approved after July 13, 2011, shall have their noise studies performed in conformance with ***23 CFR Part 772*** and this chapter as they exist on that date. For details concerning the Date of Public Knowledge (DPK), see ***Section 18.1.3.1.1***.

FDOT will apply these policies and procedures uniformly and consistently statewide. ***Title 23 CFR Part 772*** applies to all Type I projects unless the regulation specifically indicates that a section only applies to Type II or Type III projects. FDOT State Projects shall be "grandfathered" and will not have to meet the ***23 CFR Part 772*** final rule if the State Environmental Impact Report (SEIR) or ***Non-Major State Action Checklist*** has been signed by July 13, 2011.

It should be noted that the project type (defined here as "Type I, Type II, or Type III") is independent of the Class of Action (COA) determination for the overall project. ***Title 23 CFR § 772.5*** and FDOT policy define Type I projects as:

1. The construction of a highway on new location;

2. The physical alteration of an existing highway where there is either;

    i. Substantial Horizontal Alteration – A project that halves the distance between the traffic noise source (edge of the nearest travel lanes) and the closest receptor between the existing condition to the future build condition; or,

    ii. Substantial Vertical Alteration – A project that removes shielding [not including vegetation removal by FDOT within FDOT Right of Way (ROW)] that exposes the line-of-sight between the receptor and the traffic noise source. This may happen when the vertical alignment of the highway is altered, or if the topography between the highway traffic noise source and the receptor is altered, such as reducing the back slopes of a cut section so that the line of sight is no longer blocked;

3. The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a High-Occupancy Vehicle (HOV) lane, High-Occupancy Toll (HOT) lane, express/managed lane, bus lane, or truck climbing lane;

4. The lengthening of an existing interchange ramp's acceleration or deceleration lane and associated merging into the mainline to a total of more than 2,500 feet (from the gore to the end of the lane) (FDOT policy);

5. The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane;

6. The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange;

7. Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane;

8. The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot, or toll plaza. (Note: Reconstruction of an existing rest stop/service plaza in the median of an existing highway that does not cause substantial alteration and does not affect existing traffic patterns on the roadway, along with the conversion of a conventional toll plaza to an all-electronic toll plaza do not qualify as Type I projects).

9. If any section of a project is determined to be a Type I project under this definition, then the Noise Analysis Area (NAA) shall completely encompass the entire project area as defined in the Environmental Document and shall also include any area beyond the construction limits where design year traffic may contribute to noise impacts from the project. The NAA can be sub-divided based on geographic, traffic, and other similar characteristics for grouping of Common Noise Environments (CNEs).

For more detailed descriptions of Type I projects, please see the Type I Project Matrix in ***Table 18-4***.

For projects that propose to use highway shoulders for part-time use, it should be determined whether such an improvement constitutes a Type I project as discussed in FHWA's publication ***Use of Freeway Shoulders for Travel — Guide for Planning, Evaluating, and Designing Part-Time Shoulder Use as a Traffic Management Strategy***. In general, for bus-on-shoulder projects, noise analysis may be qualitative because the number of additional vehicles and changes in speed are small or nonexistent. For static and dynamic part-time shoulder use that involves higher volumes of mixed traffic, the need for noise analysis will typically be determined in a manner similar to a conventional widening project because the shoulder essentially functions as an additional travel lane.

18.1.3.1.1 Date of Public Knowledge

The DPK is defined in ***23 CFR § 772.5*** and is the date of approval of the Environmental Document. The original DPK for projects where the Environmental Document has been approved will remain valid unless Office of Environmental Management (OEM) determines that a ***National Environmental Policy Act (NEPA)*** document or decision needs to be revisited and re-evaluated in accordance with ***23 CFR § 771.129*** or ***23 CFR § 771.130***.

If a project has design changes that do not require a new Environmental Document but would independently constitute a Type I noise project, where it is determined that a project change warrants an update of the original ***Noise Study Report (NSR)***, then additional noise impacts may be considered and mitigated in the areas of the design changes, including those not meeting the original DPK. However, the original DPK for projects where the Environmental Document has been approved will remain valid.

18.1.3.2 Type II Projects

A Type II Project is a federal or state highway project for noise abatement on an existing highway. Type II projects are commonly referred to as retrofit projects in ***23 CFR Part 772***. The development and implementation of Type II projects are not mandatory as described in ***23 U.S.C. § 109(i)***. **FDOT does not have a Type II program**.

18.1.3.3 Type III Projects

A Type III Project is a federal or state highway project that does not meet the classifications of a Type I or Type II project. Type III projects do not require a noise analysis or consideration of abatement measures.

Examples of Type III projects include:

1. Construction of turn lanes at intersections associated with arterial highways.
2. Construction of bicycle and pedestrian lanes, paths, and facilities;
3. Activities included in the FDOT highway safety plan under ***23 U.S.C § 402***, provided those activities do not contain elements of Type I projects;

4. Landscaping (including the removal of existing vegetation by FDOT within FDOT ROW);

5. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur;

6. Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience;

7. Modernization of a highway by surfacing, restoration, rehabilitation, or reconstruction, provided the project does not contain elements of Type I projects; or

8. Placement of overhead gantries on a highway to collect tolls electronically that do not disrupt existing traffic patterns.

18.2 PROCEDURE

18.2.1 Efficient Transportation Decision-Making Screening

During the Efficient Transportation Decision-Making (ETDM) screening and prior to the Project Development and Environment (PD&E) phase, a preliminary review of potential noise impacts associated with a project is conducted by the FDOT. This review determines if noise sensitive receptors are or may be located within the project area and if there is a possibility that noise sensitive receptors will be impacted due to predicted traffic noise levels with a build alternative approaching or exceeding the Noise Abatement Criteria (NAC) shown in ***Table 18-3***. The review includes the assessment of land use plans, aerial photographs, field reviews, modeling, and/or similar efforts. This allows the District Noise Specialist and the Project Manager to determine whether noise impacts are likely to occur based on the types of land uses present and their proximity to the proposed project and assist in the development of the scope of services for the PD&E Study.

18.2.2 Project Development and Environment Phase

During a the PD&E phase for a Type I project, FDOT will conduct predictive analysis required by ***23 CFR § 772.9*** using the FHWA Traffic Noise Model (TNM) software that is current as of the time of analysis (Note: TNM version 2.5 may be used until the next version of TNM is required for use by FHWA). Traffic noise prediction must adhere to all direction contained in the FDOT ***Traffic Noise Modeling and Analysis Practitioners' Handbook*** and the following:

1. A traffic noise analysis shall be completed for the alternative(s) under detailed study and for each Activity Category of the NAC shown in ***Table 18-3*** that is present in the study area. Consistent with ***23 CFR § 772.11(c)***, noise level predictions will be required for the following project alternatives and study years:

ALTERNATIVE	YEAR
No-build	Existing and Design year
Build	Design year only

2. For low-volume two lane roadways (that will be two lanes wide after completion of the project), a screening test can be initiated using the FHWA Traffic Noise Screening Tool (TNST), which is based on TNM. A detailed study (using TNM) is required if the project does not pass the screening test (see item 3 below), which means that the calculated noise levels are within 5 dB(A) of the NAC.

3. See ***Part 1, Chapter 102 of the FDOT Design Manual (FDM), Topic No. 625-000-002*** for the definition of "low volume road" and ***Table 102.1.1, Average Annual Daily Traffic (AADT) Thresholds for Low and High Volume Roads***, for the urban and rural low volume AADTs for two-lane roadways.

4. Traffic characteristics that yield the highest traffic noise impact for the design year shall be used for predicting noise levels and assessing noise impacts.

5. ***Title 23 CFR Part 772*** specifies that either the Leq(h) or L10(h) metric, but not both, may be used on a project. Consistent with this requirement, FDOT requires use of the Leq(h) metric.

6. Consistent with ***23 CFR § 772.9(b)***, average pavement type shall be used in the FHWA TNM for future noise level predictions. However, in the assessment of existing conditions (including the validation of field measurements), the actual pavement type may be used at the discretion of the District Noise Specialist.

The use of noise contour lines is allowed for project alternative screening or for land use planning to comply with ***23 CFR § 772.17***, but noise contours shall not be used for determining highway traffic noise impacts or the determination of the feasibility and reasonableness of providing noise impact abatement.

The results of the PD&E Study noise analyses should be reported in a ***NSR*** and summarized in the appropriate section of the Environmental Document. For Type I projects that qualify as a Type 1 Categorical Exclusion or Non-Major State Action (NMSA), FDOT will follow the same procedure as for the PD&E phase.

18.2.2.1 Environmental Document

The expected level of noise impacts varies depending on the type of Environmental Document. The Environmental Document shall identify locations (NAA or CNEs) where noise impacts are predicted to occur, where noise abatement is feasible and reasonable, and locations with impacts that have no feasible or reasonable noise abatement alternative.

The final ***NSR*** is uploaded into the SWEPT project file and a summary should be included in the Environmental Document. The Highway Traffic Noise section of the Environmental Document should contain enough detail to convey the degree of noise impact attributed

to the proposed project, along with certain required statements. The Environmental Document must reference the ***NSR*** for additional details using a statement similar to the following:

> *The **Noise Study Report** for this project is available from the District Office, located at _____.*

The Environmental Document will also include information regarding the consideration of noise abatement measures that have or have not been determined to be feasible and reasonable based on the information available at the time the ***NSR*** was completed.

After OEM grants Location and Design Concept Acceptance (LDCA) for an FDOT Federal Project, or a SEIR has been approved, a copy of the ***NSR*** is sent to the appropriate local government officials who have jurisdiction where the highway project is located. Other information to aid these officials in their planning and land use decisions to minimize highway noise impacts in the future may be sent along with the ***NSR***.

Type III projects do not require a noise analysis. For these projects, the Highway Traffic Noise section within the Environmental Document should include a statement similar to the following:

> *This project has been determined to be a Type III project as defined in **23 CFR § 772.5** and does not require a noise analysis.*

18.2.2.1.1 Type 2 Categorical Exclusion

On the ***Type 2 Categorical Exclusion Determination Form*** in SWEPT, identify if it is a Type I or Type III project (***Section 18.1.3***) pursuant to ***23 CFR Part 772*** and ***Section 335.17, F.S.*** Summarize the results of noise impacts documented in the ***NSR***. The summary should include locations (NAA or CNEs) with the predicted noise impacts that have feasible and reasonable abatement barriers, and locations with Impacts that have no feasible or reasonable noise abatement alternative. Include the ***NSR*** as Technical Material and add a map for noise as an attachment, if applicable.

18.2.2.1.2 Environmental Assessment with Finding of No Significant Impact

The Highway Traffic Noise section of the Environmental Assessment (EA) must reference and summarize the ***NSR***. Specific references to the items discussed in ***Section 18.2.2*** and ***Section 18.2.3*** are included as appropriate. Coordination which occurred during the noise study is included in the Appendix. This includes letters from agencies including comments on the ***NSR***. Comment resolution is also documented in the Appendix. In the FONSI, provide a summary of all noise impacts resulting from the project if there were changes from the EA, or refer to the appropriate section of the EA. If abatement measures are being recommended for further consideration, identify the sites for which the abatement is proposed. For those locations (NAA or CNEs) with impacts where abatement is not feasible and/or reasonable, provide those locations and an explanation

as to why the abatement measure(s) considered was determined to not be feasible and/or reasonable.

18.2.2.1.3 Draft Environmental Impact Statement

The Highway Traffic Noise section of a Draft Environmental Impact Statement (DEIS) should summarize the ***NSR*** and include the following information:

1. A brief description of noise sensitive areas and their location (NAA or CNEs), including information on the numbers and types of activities which may be impacted. The availability of the ***NSR*** at the District Office.

2. The extent of the impact (in decibels). Including a brief description of the methodology used and identification of the computer model used, along with a comparison of the future predicted noise levels with both FHWA NAC and the existing predicted noise levels.

3. Noise abatement measures which have been considered and those measures that would likely be incorporated into the proposed project.

4. Noise impacts for which no feasible and reasonable abatement is available and the reasons why.

18.2.2.1.4 State Environmental Impact Report

The Highway Traffic Noise section of a SEIR should summarize the anticipated traffic noise impacts identified in the ***NSR*** and appropriately reference the basis for decision the same as for an FDOT Federal Project as described in ***Section 18.2.2.1***. The applicable standard statements and Statement of Likelihood contained in the FDOT ***Traffic Noise Modeling and Analysis Practitioners' Handbook*** should be included.

18.2.3 Design Phase

During the Design phase, noise level predictions are required for the selected build alternative and Design year only, unless a substantial increase has been identified during the project's PD&E phase. If a substantial increase of 15 dB(A) or greater is identified during the PD&E phase, existing noise levels must be re-evaluated during subsequent evaluations. Noise predictions must adhere to all direction contained in the FDOT ***Traffic Noise Modeling and Analysis Practitioners' Handbook***.

The results of the Design phase noise analyses should be reported in a ***Design Noise Study Report (DNSR)*** and summarized in the appropriate section of the Environmental Document or Re-evaluation (see ***Part 1, Chapter 13, Re-evaluations***).

18.2.4 Re-evaluations

The Re-evaluation of any Environmental Document that included an ***NSR*** should also include an update of the traffic noise analysis. Assumptions made and data used during the original noise analysis and documented in the ***NSR*** should be reviewed and updated

to ensure the assumptions and any preliminary commitments are still valid. This may include, but not necessarily be limited to, current and future traffic data (volumes, speeds, composition), roadway alignment (horizontal and vertical), land use, propagation path, barriers/buffers (including trees, berms, structures), variation in terrain between noise source and receptors. Changes to the horizontal and vertical roadway alignment should follow the guidance provided in the Type I Projects Matrix provided in ***Table 18-4***. The Re-evaluation may result in no change to the ***NSR*** or in a completely new ***NSR*** being required. At a minimum, it must be documented that the original noise study and analysis was reviewed and that the assumptions, project conditions and results are still valid. Computer modeling efforts are conducted, using the latest approved version, for any subsequent Re-evaluation as a result of a major design change that requires additional noise analysis.

Coordination with OEM during the Re-evaluation process on FDOT Federal Projects is required (see ***Part 1, Chapter 13, Re-evaluations***).

The final noise abatement commitments must be documented in the Re-evaluation and the ***DNSR*** prior to construction advertisement, regardless of project funding sources. Additionally, the ***Project Commitment Record (PCR)*** must also be updated. If the ***DNSR*** is substantially modified from the version previously distributed to the affected local governments, a revised version should be sent out to them.

18.3 NOISE IMPACT DETERMINATION

Table 1 of 23 CFR Part 772 – Noise Abatement Criteria establishes the thresholds that are used to determine whether a highway traffic noise impact occurs. The table is also found in ***Table 18-3***. A traffic noise impact occurs when the modeled future highway traffic noise levels for the worst-case noise condition approach or exceed the NAC. A traffic noise impact also occurs when modeled future highway traffic noise levels substantially exceed the existing highway traffic noise level, even though the modeled levels may not exceed the NAC. FDOT has determined that the NAC is approached when it is within 1 dB(A) of the appropriate federal NAC and that a substantial increase occurs when the increase over existing conditions (measured or predicted) is 15 dB(A) or greater. To assess the highway traffic noise impact of a project, both criteria (approach of the NAC and substantial increase) must be evaluated.

Design year traffic noise impacts are based on the modeled build noise levels or the difference between the build and existing measured or modeled traffic noise levels. If one or more noise sensitive receptors are impacted by project related traffic noise levels that approach or exceed the NAC or substantially increase when compared to existing (measured or predicted) noise levels, then abatement measures must be considered. If the abatement criteria are not approached or exceeded and if projected traffic noise levels do not substantially exceed existing noise levels, abatement measures will not be considered.

18.3.1 Existing Noise Barriers

Projects which have existing noise barriers present should follow guidance in the FDOT's publication ***Methodology to Evaluate Existing Noise Barriers***.

18.4 NOISE ABATEMENT MEASURES

When impacted receptors are identified, noise abatement shall be considered and evaluated for feasibility and reasonableness. FDOT should determine and analyze alternative noise abatement measures to abate identified impacts by giving weight to the benefits and costs of abatement and the overall social, economic, and environmental effects by using feasible and reasonable noise abatement measures for decision-making. In abating traffic noise impacts, FDOT should give primary consideration to exterior areas where frequent human use occurs. Noise abatement will not be required for Activity Category F or Activity Category G uses described in ***Table 18-3***.

Federal funds may be used for noise abatement on Type I projects when traffic noise impacts have been identified and abatement measures have been determined to be feasible and reasonable pursuant to ***23 CFR § 772.13(d)***. The abatement measures listed in ***23 CFR § 772.15(c)*** are eligible for federal funding.

The primary noise abatement measure considered by FDOT for incorporation into a Type I project to reduce traffic noise impacts is the construction of a noise barrier.

It is not a standard practice for FDOT to use absorptive treatments on noise barriers. Their use is considered on a case-by-case basis under the following conditions:

1. Absorptive surface treatments for the roadway side of a noise barrier should only be considered in parallel noise barrier situations where a width-to-height ratio of 10:1 or more cannot be achieved. The width is the distance between the two parallel noise barriers and the height is the average height of the barriers above the roadway. For example, if the average height of two parallel noise barriers is 20 feet, they should be at least 200 feet apart to avoid a reduction in their effectiveness due to reflections. The parallel barrier analysis module within TNM should be used to evaluate the impact of reflections on the performance of parallel noise barriers.

2. Absorptive surface treatments should only be considered for the roadway side of single (non-parallel) noise barriers when the distance from the face of the noise barrier to the nearest noise sensitive receptor on the opposite side of the roadway (across from the barrier) is less than 10 times the average height of the noise barrier above the roadway.

As noted in ***23 CFR § 772.13(c)(1)***, at a minimum, the FDOT should consider noise abatement in the form of a noise barrier.

When considering noise barriers for noise abatement, the feasibility and reasonableness factors discussed in this policy and discussed in the FDOT ***Traffic Noise Modeling and***

Analysis Practitioners' Handbook must be evaluated for each viable alternative under detailed analysis. **Landscaping is not a viable noise abatement measure**. Feasibility and reasonableness factors are listed in ***Table 18-1*** and are discussed in detail in ***Section 18.4.1*** and ***Section 18.4.2***.

Table 18-1 Feasible and Reasonable Requirements for a Noise Barrier

Feasible	Reasonable
At least two impacted receptors must be provided a noise reduction of 5 dB(A).	A noise barrier must also attain the Noise Reduction Design Goal (NRDG), which states that a minimum noise reduction of 7 dB(A) for at least one benefited receptor must be achieved. This receptor may also have been previously identified as meeting the feasibility requirement of receiving a 5 dB(A) reduction.
Engineering factors (design/construction, safety, access, ROW, maintenance, drainage, and utility) must be considered, and all conflicts must be resolved.	The cost of the noise barriers should not exceed $64,000 per benefited receptor. This is the upper cost limit established by FDOT. A benefited receptor is defined as a recipient of an abatement measure that experiences at least a 5 dB(A) reduction as a result of providing a noise barrier. The current unit cost used to evaluate cost reasonableness is $40 per square foot (sq. ft.).
--	The viewpoint of benefited receptors must be considered.

18.4.1 Feasibility Factors

Feasibility factors for noise abatement measures involve both acoustic (noise reduction) and engineering considerations when considering a potential abatement measure.

1. Any receptor that receives a minimum noise level reduction of 5 dB(A) due to a noise barrier shall be considered a benefited receptor. The number of impacted receptors required to achieve a 5 dB(A) reduction or greater in order for a noise barrier to be considered feasible will be equal to two residences or greater.

2. Consideration should be given to whether a noise barrier can be constructed using standard construction methods and techniques. Factors to be considered include terrain changes, utilities, safety (e.g., lane closures, sight distance), bridges, overpasses, and similar difficulties.

18.4.2 Reasonableness Factors

The following reasonableness factors must collectively be achieved in order for the noise abatement measure to be deemed reasonable:

1. Achievement of the FDOT Noise Reduction Design Goal (NRDG). As stated in ***23 CFR § 772.13(d)(2)(iv)*** for an abatement measure to be considered reasonable, it must attain the FDOT NRDG. To ensure the provision of reasonable traffic noise abatement consideration at the greatest number of impacted locations, FDOT has selected a 7 dB(A) noise level reduction for one or more benefited receptors as the NRDG. Failure to achieve the NRDG results in the noise abatement measure being deemed not reasonable. The NRDG should be applied to residential as well as non-residential (i.e., special land uses) noise barrier evaluations.

2. Cost-effectiveness of the highway traffic noise abatement measure. FDOT has established cost-effectiveness criteria. The basis for the cost-effectiveness criteria is that FDOT has provided approximately 1,600 square feet of noise barrier per benefited receptor at a reasonable cost. Using the current average unit cost of $40 per square foot, a reasonable cost of $64,000 per benefited receptor is looked upon as the upper limit. Only benefited receptors will be included in the calculation used to determine if a proposed noise abatement measure has a reasonable cost. Note that this cost does not include the cost of an optional additional taper of vertical height for shoulder mounted noise barriers, as this is a safety feature. Cost factor elements are re-analyzed by FDOT every five years, with the last analysis and approval occurring in 2024. The relationship between unit costs and the upper limit for cost-effectiveness will be based on maintaining a constant upper limit of 1,600 square feet of noise barrier per benefited receptor. This upper limit is derived by multiplying the statewide average height of noise barriers in Florida of 16 feet by a theoretical barrier length of 100 feet. FDOT considers the following elements as part of the overall calculation of cost effectiveness of a noise barrier:

    a. The cost of materials and labor ($40 per square foot multiplied by the area of a proposed noise barrier, as referenced above);

    b. The cost of additional ROW (including the cost of construction and/or maintenance easements) needed exclusively to construct the noise barrier (if any);

    c. The cost of new or upgraded drainage structures required by the construction of a noise barrier;

    d. The standard cost of the barrier foundation and any specialized foundation due to site conditions are to be included in the calculations of cost-effectiveness. However, if the foundation and earthwork is part of the road construction, it should not be included in the noise barrier cost calculations.

    e. On projects where Florida Gas Transmission (FGT) facilities are present within FDOT ROW, the ***FGT Agreement and Global Settlement*** controls the responsibilities of both FDOT and FGT. Where a noise barrier is proposed to be located within the below clearances to FGT's facilities, FGT may, at its sole discretion, decide to move its facilities.

        1. Single Line:

a. Nine inch internal diameter or greater: 15 feet unencumbered from the outside edge of the line plus 25 feet additional temporary workspace on one side of the 15-foot unencumbered space.

b. Less than nine inch internal diameter: 5 feet unencumbered from the outside edge of the line plus 10 feet additional temporary workspace on one side of the 5-foot unencumbered space.

2. Two Lines: 60 feet, measured from the center line of the pipelines, with no additional temporary workspace.

3. Three Lines: 75 feet, measured from the center line of the two outside pipelines, with no additional temporary workspace.

For pipelines at those locations where the width between two pipelines is greater than 30 feet, and for three pipelines where the width between the center line of the two outermost pipelines is greater than 45 feet, such pipelines should constitute single pipelines as identified in item number 1 (Single Line) above for the purposes of establishing the Specified Width; provided, however, pipelines that are equal to or less than 30 feet apart measured from the center line of the two pipelines should be treated as two pipelines consistent with item number 2 above (Two Lines).

If FGT decides to move its facilities, FGT and FDOT may split the cost of ROW acquisition, construction, and other project costs in accordance with the ***FGT Agreement and Global Settlement***. Any additional costs incurred by FDOT should be included in the cost reasonableness calculations for the proposed noise barrier. If FGT decides not to relocate its facilities, alternative locations for noise barrier placement shall be investigated. Any additional costs incurred as a result of the relocated noise barrier should be included in the cost reasonableness calculations for that noise barrier.

Cost elements do not include the cost of designing the noise barrier, relocation of utilities (above or below ground) that are permitted within FDOT ROW, clearing and grubbing, mobilization, maintenance of traffic, construction engineering and inspection, and related activities that are considered as part of the total construction project. To be considered as a noise abatement cost, the costs must be incurred solely because of the installation of the noise barrier. An example would be when there is a need to extend a culvert that would not be necessary for roadway construction but is required to construct the noise barrier.

The FDOT ***Methodology to Evaluation Highway Traffic Noise at Special Land Uses*** shall be used to ensure the reasonableness of abatement for Activity Category C, D, and E land uses described in ***Table 18-3***.

In the case of Recreational Vehicle (RV) parks that also serve as a mobile home site, noise abatement will be considered when at least 51 percent of the noise impacted spaces are occupied 51 percent of the year or more by “permanent”

residents. A permanent resident would be one who occupies the dwelling unit at least 51 percent of the calendar year. For these locations, where usage is often seasonal and of short duration, the property owner will determine the occupancy rate of that portion of the facility that is impacted by traffic noise. If less than 51 percent of the impacted spaces are occupied less than 51 percent of the year, abatement measures are not considered. The same occupancy requirements apply for other forms of temporary housing not identified here and are considered on a case-by-case basis in consultation with OEM. The noise abatement measure must be feasible and reasonable before it will be considered further.

Third-party funding is not allowed to subsidize the cost of a noise barrier for the purpose of making the noise barrier feasible or reasonable. Third-party funding as noted in ***23 CFR § 772.13(j)*** is acceptable on an FDOT Federal Project that is a Type I project to make functional enhancements as long as the noise abatement measure already has been determined to be feasible and reasonable.

3. Consideration of the viewpoints of the benefited property owners and residents.

   During the Design phase of the project, FDOT uses a noise abatement workshop and/or a public survey to determine the wishes of the benefited receptors. Each benefited receptor (owner or resident) is given the opportunity to provide input to FDOT regarding their desire to have the proposed noise abatement measure constructed. They may also be given the opportunity (at the discretion of the District) to provide input regarding their aesthetic preferences from a list of pre-selected options.

   It is the desire of FDOT to obtain a response for or against the noise barrier from a numerical majority (greater than 50 percent) of the benefited receptors (owners and residents) that provide a response to the survey. Multiple techniques to solicit input may be used, including multiple mailings, door-to-door follow-up, and even telephone solicitation (as needed) to provide adequate information to allow FDOT to make an informed decision on whether abatement is desired or not. If, after three attempts to gather the input from the benefited receptors, a minimum response rate of 50 percent is not achieved, FDOT may determine the abatement measure to be not reasonable. If a numerical majority of the benefited residents and property owners that provide a response to the survey do not favor the construction of a noise barrier, FDOT will not provide the noise barrier. It is important to note that the viewpoints of the property owner are considered as having the greatest weight in the decision as to whether FDOT will provide noise abatement. While the viewpoint of the non-owner resident is considered, their viewpoint carries less weight, consistent with the formula shown in ***Table 18-2***.

Table 18-2 Viewpoint Weighting Factors

Property Type	Owner Occupies Property	Owner Does not Occupy Property	
		Owner	Renter
Single Family	100%	90%	10%
Multifamily (duplex, apartments, condominiums)*	100%	90%	10%
Mobile Home Park*	100%	80%	20%
Offices, Businesses	100%	80%	20%
* The weighting factor is for each unit (mobile home, apartments, condominiums), not for the entire mobile home park, apartment complex or condominium building.			

The input of Homeowners Associations (HOA) should be considered during the survey process, especially if the HOA owns common land adjacent to FDOT ROW where the noise barrier would be located. However, no formal vote should be made by the HOA and the desires of the HOA cannot preclude those benefited receptors behind the noise barrier.

The construction of business names/logos or building addresses on noise barriers is in violation of ***23 CFR § 750.709***. For noise barriers in urban and suburban areas, imprinting of subdivision names or logos on the noise barrier may be considered only at the portion of the noise barrier at the legal entrance to the subdivision. FDOT allows consideration of noise barrier aesthetic enhancement that meets FHWA regulations related to this process. Each request for such an application is handled on a case-by-case basis.

If additional property is needed to accommodate provision of a noise barrier that is feasible and cost-reasonable, the FDOT can consider the purchase of additional ROW or make a request for the donation of ROW from the adjacent property owners(s) for the purpose of noise barrier construction and/or maintenance. Per ***Section 7.14.3.1*** of the ***Right of Way Procedures Manual, Topic No. 575-000-000***, prior to accepting a donation of property, FDOT must advise the owner that they have the right to receive just-compensation for the property being donated, and reimbursement of any incidental costs associated with the transfer of the property. All donated/purchased property needed to accommodate noise abatement must be contiguous to FDOT ROW and must be included in the cost-reasonable calculation. If the purchase of additional ROW for the sole purpose of noise barrier construction and/or maintenance exceeds the cost-reasonable limit, the barrier may be found to be not reasonable.

Noise abatement is analyzed a minimum of two times during the development of a project. The first time is during the PD&E phase when the Environmental Document is prepared. The second time noise abatement is analyzed is during the Design phase prior to Plans, Specifications, and Estimates (PS&E) approval. Any noise sensitive receptor that is permitted between the completion of the ***NSR*** and the DPK will be analyzed for traffic noise impacts and, if impacts are predicted, abatement will be considered during the Design phase of the project.

18.4.3 Outdoor Advertising Sign Impacts

Although it is not to be considered as either a feasibility or reasonableness option, Florida Law requires consideration of the potential to construct a noise barrier that might block the motorist's view of an existing, conforming, and legally permitted outdoor advertising sign.

Outdoor advertising signs that are legally permitted, conforming, and erected may increase the height of the sign if visibility is blocked due to the construction of "noise attenuation" barriers consistent with ***Section 479.25, F.S.*** This statute requires FDOT to notify a local government or local jurisdiction before erecting a noise barrier that will block a lawfully permitted sign. The local government or local jurisdiction is then required to notify FDOT if increasing the height of an outdoor advertising sign will violate any local ordinance or land development regulation of the local government. When the notice has been received from the local government or local jurisdiction, and prior to the erection of the noise barrier, FDOT shall inform all property owners identified as impacted by highway noise and who may benefit from the proposed noise attenuation barrier, as part of a written survey, that:

1. Erection of a specific noise barrier may block the visibility of an existing outdoor advertising sign;

2. The local government or local jurisdiction may restrict or prohibit increasing the height of the existing outdoor advertising sign to make it visible over the noise barrier; and

3. If a majority of the impacted property owners vote for the construction of the noise barrier, the local government or local jurisdiction will be required to:

    a. Allow an increase in the height of the sign in violation of a local ordinance or land development regulation;

    b. Allow the sign to be relocated or reconstructed at another location if the sign owner agrees; or

    c. Pay the fair market value of the sign and its associated interest in the real property.

The statute also requires FDOT to hold a public hearing within the boundaries of the affected local government or local jurisdiction. This public hearing solicits input on proposed noise barriers that may conflict with the local ordinances or land development regulations. The public hearing also suggests or considers alternatives or modifications to the proposed noise barrier to alleviate or minimize the conflict with the local ordinances or land development regulations, and/or minimize any costs associated with relocation, reconstructing, or paying for the affected outdoor advertising sign. Alternatives or modifications to proposed noise barriers that would not provide the minimum 5 dB(A) reduction will not be considered. See ***Part 1, Chapter 11, Public Involvement*** for details on holding a public hearing.

FDOT shall not construct a noise barrier that screens or blocks the visibility of a lawfully permitted outdoor advertising sign until after the public hearing is held and the numerical majority of the impacted property owners have approved the construction of the noise barrier. If the construction of the noise barrier is approved, FDOT shall notify the local governments or local jurisdictions. The local governments or local jurisdictions shall then exercise one of the options listed above.

18.5 COMMUNITY COORDINATION

The degree and type of community coordination and participation will vary from project to project. For projects in the PD&E phase, requiring consideration of abatement, the community involvement activities should include presentation and discussion of noise impacts related to the project. Opportunities for such involvement will be provided, as appropriate, during the PD&E phase as part of the public involvement and/or public hearing process.

When noise abatement is anticipated in the Design phase, community coordination will include a survey of benefited property owners and residents to determine their viewpoints regarding abatement. The viewpoint of the benefited receptors (property owners and residents) related to abatement should be analyzed in the decision-making process in accordance with ***Section 18.4.2***. of this policy.

When the Environmental Document is approved, a copy of the project's ***NSR*** is transmitted to the appropriate local government officials within whose jurisdiction the highway project is located. A sample ***NSR*** transmittal letter can be found in the ***FDOT Noise Modeling and Analysis Practitioners' Handbook***. The following information should be transmitted along with the ***NSR*** consistent with ***23 CFR § 772.17(a)***:

1. Noise compatible planning concepts;

2. A representation of the estimated distances from the proposed edge of pavement at which traffic noise levels would approach or exceed the NAC for Activity Categories A through E, described in ***Table 18-3***, for each segment of the project; and

3. After the DPK, FDOT is no longer responsible for providing noise abatement to new development which occurs adjacent to the proposed highway project.

The above items are intended solely to assist local officials and private developers in promoting compatibility between land development and highways. Upon request, FDOT may provide additional available material and technical guidance which may assist local officials and private developers in this respect.

18.5.1 Abatement Measure Reporting

Title 23 CFR § 772.13(f) requires that each highway agency maintain an inventory of all constructed noise abatement measures. To comply with the inventory requirement, FDOT maintains an inventory of all noise abatement barriers constructed on the State Highway

System (SHS) in a Geographic Information System (GIS) layer housed in the University of Florida's GeoPlan Center Florida Geographic Data Library (FGDL). Each District Noise Specialist must annually gather and provide inventory data to the University of Florida's GeoPlan Center.

This inventory data will include at least the following parameters:

1. Type of abatement;
2. Cost (overall cost, unit cost per/sq. ft.);
3. Average height;
4. Length;
5. Area;
6. Location (state, county, city, route);
7. Year of construction;
8. Average insertion loss/noise reduction as reported by the model in the noise analysis;
9. NAC category(s) protected;
10. Material(s) used (precast concrete, berm, block, cast in place concrete, brick, metal, wood, fiberglass, combination, plastic [transparent, opaque, other]);
11. Features (absorptive, reflective, surface texture);
12. Foundation (ground mounted, on structure); and
13. Project type (Type I, Type II) and optional project types such as state funded, county funded, tollway/turnpike funded, other, unknown. The FHWA will collect this information, in accordance with Office of Management and Budget's Information Collection requirements.

For a complete list of items to be reported by the District Noise Specialist, see the FGDL attributes metadata website (***Section 18.6***). Federal submission requirement fields are prefaced with FED in the FGDL database.

The noise abatement barriers data is reported tri-annually to FHWA once a request is received to submit the report. At the request of OEM, the GeoPlan Center prepares the tri-annual report submitted by the State Noise Program Coordinator to the FHWA Florida Division Office in the format required by *23 CFR § 772.13(f)*.

18.6 REFERENCES

FHWA, Report Number FHWA-PD-96-009, FHWA Traffic Noise Model User's Guide. April 2004. http://www.fhwa.dot.gov/environment/noise/traffic_noise_model/tnm_v25/users_manual/index.cfm

FHWA, Report FHWA-HEP-10-025, Highway Traffic Noise: Analysis and Abatement Guidance, December 2011. https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/revguidance.pdf

FHWA, Use of Freeway Shoulders for Travel — Guide for Planning, Evaluating, and Designing Part-Time Shoulder Use as a Traffic Management Strategy, February 2016. https://ops.fhwa.dot.gov/publications/fhwahop15023/

FDOT, Design Manual, Topic No. 625-000-002. https://www.fdot.gov/roadway/fdm

FDOT, Methodology to Evaluate Highway Traffic Noise at Special Land Uses, December 2024. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/noise/slu-guidance-document_december-2024.pdf?sfvrsn=5e5abcb2_3

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FDOT, Right of Way Procedures Manual, Topic No. 575-000-000. https://www.fdot.gov/rightofway/ProceduresManual.shtm

FDOT, Traffic Noise Modeling and Analysis Practitioners' Handbook, September 2025. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/noise/noise-practitioners-handbook_september-2025.pdf?sfvrsn=81a11a24_1

Section 335.02, F.S., Authority to designate transportation facilities and rights-of-way and establish lanes; procedures for re-designation and relocation; application of local regulations. http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0335/Sections/0335.02.html

Section 479.25, F.S., Erection of noise-attenuation barrier blocking view of sign; procedures; application. July 1, 2014. http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0479/Sections/0479.25.html

Section 335.17, F.S., State highway construction; means of noise abatement. 2012. http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0335/Sections/0335.17.html

Title 23 CFR § 750.709, On-property or on-premise advertising. https://ecfr.io/Title-23/pt23.1.750

Title 23 CFR § 771, Environmental Impact and Related Procedures. https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771

Title 23 CFR § 772, Procedures for Abatement of Highway Traffic Noise and Construction Noise, Tuesday, July 13, 2010. http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr772_main_02.tpl

University of Florida, GeoPlan Center. Florida Geographic Data Library (FGDL) Metadata Explorer. http://fgdl.org/metadataexplorer/explorer.jsp

Table 18-3 Noise Abatement Criteria

NOISE ABATEMENT CRITERIA (NAC) [Hourly A-Weighted Sound Level-decibels (dB(A))]				
Activity Category	Activity Leq(h)[1]		Evaluation Location	Description of Activity Category
	FHWA	FDOT		
A	57	56	Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B[2]	67	66	Exterior	Residential
C[2]	67	66	Exterior	Active sports areas, amphitheaters, auditoriums, campgrounds, cemeteries, day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreational areas, Section 4(f) sites, schools, television studios, trails, and trail crossings.
D	52	51	Interior	Auditoriums, day care centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, schools, and television studios.
E[2]	72	71	Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties, or activities not included in A-D or F.
F	_	_	_	Agriculture, airports, bus yards, emergency services, industrial, logging, maintenance facilities, manufacturing, mining, rail yards, retail facilities, shipyards, utilities (water resources, water treatment, electrical), and warehousing.
G	_	_	_	Undeveloped lands that are not permitted.

(Based on Table 1 of 23 CFR Part 772)

1 The Leq(h) Activity Criteria values are for impact determination only, and are not design standards for noise abatement measures.

2 Includes undeveloped lands permitted for this activity category.

Note: FDOT defines that a substantial noise increase occurs when the existing noise level is predicted to be exceeded by 15 decibels or more as a result of the transportation improvement project. When this occurs, the requirement for abatement consideration will be followed.

Table 18-4 Type I Project Matrix

Type I Project Activities (Noise Study Required)		Not Type I (No Noise Study Required)
1	Construction of highway on new location.	
2	New or relocated interchanges.	
3	Addition of new interchange ramps (add a ramp where no ramps existed). Viewed as a new location.	
4	Relocation of an interchange ramp where the edge of the outside lane on any segment of the ramp reduces the distance to the closest receptor by one-half. (See #6 for realignment of ramps.)	
5	Increasing capacity to an existing on or off interchange ramp (by adding lanes) including associated merge lanes. Viewed as a new location.	
6	Lengthening an existing interchange ramp's acceleration or deceleration lane and associated merging into the mainline to a total of more than 2,500 feet (from the gore to the end of the lane), or re-aligning where any segment of the ramp reduces the distance to the closest receptor by one-half.	Lengthening an existing interchange ramp's acceleration or deceleration lane and associated merging into the mainline (total length less than 2,500 feet), or re-aligning where any segment of the ramp DOES NOT REDUCE the distance to the closest receptor by one-half.
7	Alteration of the horizontal alignment of an existing highway such that the edge of the outside lane reduces the distance to the closest receptor by one-half.	Alteration of the horizontal alignment of an existing highway such that the edge of the outside lanes DOES NOT REDUCE the distance to the closest receptor by one-half.
8	Alteration of the vertical alignment, or the surrounding topography, where existing shielding is removed and the line of sight between the noise source and the receptor is now direct. (Activity does not include removal of vegetation).	
9	Addition of new through-lanes that increase capacity to an existing highway. (Noise analysis required on both sides of the highway whether the lanes are all in one direction or both directions of travel.)	
10	Restriping existing pavement to add a through-lane or auxiliary lane. (See #13 and #14 for auxiliary lanes.)	
11	Addition of new or substantially altered weight station, rest stop, ride share lot or toll plaza.	
12	Addition of ramps or new lanes serving as climbing lanes for buses and trucks.	
13	Addition of auxiliary lanes used as through lanes on local roads.	
14	Auxiliary lanes on freeways and expressways connecting two or more interchanges. (continuous lanes longer than 2,500 feet from gore to gore.)	Auxiliary lanes on freeways and expressways connecting two closely spaced interchanges (less than 2,500 feet from gore to gore) to accommodate weaving traffic.
15		Turn lanes at intersections associated with arterial highways.
16		Bicycle and pedestrian paths.
17		Safety activities. (23 U.S.C. § 402.)
18		Landscaping.
19		Installation of fencing, signs, pavement marking, small passenger shelters, traffic signals, or railroad warning signals (that don't disrupt traffic patterns.)
20		Deployment of electronics, photonics, communications, or information processing to improve safety and security.
21		Re-surfacing, restoration, rehabilitation, or reconstruction of an existing facility (unless there is a change in horizontal or vertical alignment per 7 & 8 above.)
22		Electronic toll collection facilities that do not disrupt traffic patterns.

PART 2, CHAPTER 19

AIR QUALITY

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PART 2, CHAPTER 19

AIR QUALITY

19.1 OVERVIEW

This chapter explains how to evaluate project level air quality effects [specifically, Carbon Monoxide (CO), Particulate Matter (PM), and Mobile Source Air Toxics (MSATs)] of Florida Department of Transportation (FDOT) projects, and how to address those effects during the environmental review process. Because Florida does not currently have any areas which are in nonattainment, it is generally not necessary to prepare an extensive report to document potential impacts to air quality. Rather, a brief ***Air Quality Technical Memorandum*** is prepared if warranted, and the results are summarized in the Environmental Document.

19.1.1 Legislative and Regulatory Framework

The ***Clean Air Act (CAA)***, as amended, requires the Environmental Protection Agency (EPA) to set ***National Ambient Air Quality Standards (NAAQS)*** to protect public health and welfare. The EPA established the first set of primary and secondary ***NAAQS*** for six air pollutants that are common in outdoor air and are considered harmful to public health and the environment. The six criteria air pollutants are: ozone (O_3), nitrogen dioxide (NO_2), particulate matter (PM), sulfur dioxide (SO_2), carbon monoxide (CO), and lead (Pb). The current standards are provided in ***Table 19-1***. The ***NAAQS*** show the maximum allowable concentration of a pollutant by averaging time. For example, the maximum allowable primary and secondary ambient concentration of ozone is 0.070 parts per million (ppm) averaged over an 8-hour period.

In accordance with the ***CAA***, all areas within the United States are designated with respect to the ***NAAQS*** as being “attainment,” “nonattainment,” “maintenance,” or “unclassifiable.” Areas with documented air pollutant levels less than the ***NAAQS*** are designated attainment. Areas with documented air pollutant levels greater than the ***NAAQS*** are designated nonattainment. Maintenance areas are nonattainment areas that have been re-designated to attainment status. An area is designated as unclassifiable when the EPA is not able to determine an area’s status after evaluating the available information. Current information on the status of nonattainment areas with respect to the ***NAAQS*** is available within the ***EPA Green Book***.

In 1990, the ***CAA*** was amended to include strategies to achieve and maintain the ***NAAQS*** for criteria air pollutants, to reduce air pollutant and pollutant precursor emissions from mobile sources, and to provide enforcement sanctions for not achieving and maintaining the ***NAAQS***.

At the time of this publication, Florida has one maintenance area for Pb according to the standard last updated in 2008. The maintenance area for Pb is located in Tampa. Florida also has three maintenance areas for sulfur dioxide according to the 2010 standard. The

maintenance areas for SO_2 are located in Hillsborough County, Hillsborough/Polk County, and Nassau County. However, on-road motor vehicles are no longer considered a significant source of sulfur dioxide or lead. On-road engine fuels have been regulated at much lower levels of sulfur in the past three decades. In addition, the use of leaded fuel in on-road vehicles was banned in 1996. Therefore, project level analysis for sulfur dioxide and lead is not needed. Florida is currently in attainment for all other ***NAAQS***.

According to the ***EPA Green Book***, counties in Florida are currently designated as maintenance areas for the revoked 1-hour ozone standard under the ***CAA***. Although the standard has been revoked, transportation conformity remains a federal requirement to ensure that federally funded or approved transportation projects do not interfere with air quality goals.

In maintenance areas, Metropolitan Planning Organizations (MPOs) must demonstrate conformity by showing that emissions of ozone precursors—Nitrogen Oxides (NOx) and Volatile Organic Compounds (VOC)—from planned transportation projects do not exceed the Motor Vehicle Emissions Budgets (MVEBs) established in the ***State Implementation Plan (SIP)***.

To meet transportation conformity requirements, a project must be included in the region's Transportation Improvement Program (TIP). Inclusion in the TIP ensures that the project's emissions are accounted for in the regional travel demand model and evaluated using EPA's Motor Vehicle Emission Simulator (MOVES) model to estimate mobile-source emissions.

MSATs are hazardous air pollutants emitted by mobile sources that are known, or suspected, to cause cancer or serious health and environmental effects. The EPA has identified nine compounds with significant contributions from mobile sources that are among the national and regional-scale cancer risk contributors and non-cancer hazard contributors from the ***2011 National Air Toxics Assessment (NATA)***. In the ***Updated Interim Guidance on MSAT Analysis in National Environmental Policy Act (NEPA) Documents (Federal Highway Administration (FHWA) Interim Guidance)***, FHWA considers the same nine compounds priority MSATs. The nine priority MSATs are acetaldehyde, acrolein, benzene, 1,3-butadiene, diesel particulate matter (diesel PM), ethylbenzene, formaldehyde, naphthalene, and polycyclic organic matter.

19.1.2 Definitions

Attainment – The designation that an area has monitored air quality that meets the EPA ***NAAQS*** for a particular pollutant.

CAL3QHC – A dispersion model currently approved by EPA to determine pollutant concentrations at receptor locations near highways using the emission rates determined by the MOVES model.

COFlorida24 – An FDOT CO screening test for project level analysis of intersections and interchanges that incorporates emission factors produced from the EPA's MOVES model.

It has a CAL3QHC module built into it, with several different intersection and interchange configurations pre-programmed as separate input files. ***COFL2024*** can be used to screen for ambient CO near the intersections, which include ramp terminals. It incorporates worst case conservative assumptions in regard to traffic, temperatures, meteorology, and location of receptors. If the model shows no exceedances of the CO ***NAAQS***, it is not necessary to run more detailed models (MOVES and CAL3QHC).

Maintenance Area- Nonattainment areas that have been re-designated to attainment status.

Micron (or Micrometer) (µm) – One millionth of a meter, symbolized as 1×10^{-6} meter.

Mobile Source Air Toxics (MSATs) – Hazardous air pollutants emitted by mobile sources that are known, or suspected, to cause cancer or serious health and environmental effects.

Motor Vehicle Emission Simulator (MOVES) – An EPA emissions model that estimates the emission rates for mobile sources for criteria air pollutants, and air toxics.

National Ambient Air Quality Standards (NAAQS) – EPA's list of the maximum level of pollutants allowed as required by the ***CAA***. The six criteria air pollutants are: Ozone (O_3), nitrogen dioxide (NO_2), Particulate Matter (PM), sulfur dioxides (SO_2), CO, and lead (Pb).

Nonattainment- The designation that an area has monitored air quality that does not meet the EPA ***NAAQS*** for a particular pollutant.

Primary Standards – Ambient air pollution standards set to protect public health.

Secondary Standards – Ambient air pollution standards set to protect public welfare, such as protecting against visibility degradation and damage to animals, crops, vegetation, and buildings.

19.2 PROCEDURE

NEPA requires that air quality be considered in the preparation of Environmental Documents. Air quality analysis is performed as part of the environmental review process to identify project-related impacts, and to evaluate possible mitigation, if appropriate. Project level air quality analysis varies according to the size of the project, existing air quality issues, and the degree of controversy regarding the project.

19.2.1 ETDM Screening

Evaluation of project effects on air quality starts during the Efficient Transportation Decision Making (ETDM) screening for qualifying projects (see ***Part 1, Chapter 2, Class of Action Determination for Federal Projects***). Potential air quality effects, including attainment status of the area, should be discussed in the Preliminary Environmental

Discussion (PED). During the Planning and Programming Screens of the ETDM process, the EPA, which is an Environmental Technical Advisory Team (ETAT) member, provides comments on the topic of air quality. The ETAT comments are considered along with the FDOT expertise where the results of the review are summarized in the ETDM ***Planning Screen Summary Report*** and ***Programming Screen Summary Report***. These reports support the development of the scope for air quality analysis for a Project Development and Environment (PD&E) Study. For more information, refer to FDOT's ***ETDM Manual, Topic No. 650-000-002***.

19.2.2 Air Quality Analysis

As stated above, Florida does not currently have any areas which are in nonattainment; however, a limited air quality analysis may be required, depending on the project; as detailed below. The three pollutants analyzed in the Environmental Document for air quality are CO, PM, and MSATs.

19.2.2.1 Carbon Monoxide Analysis

Project level analysis is only required for Federal Projects in nonattainment and maintenance areas. The entire state of Florida is currently in attainment for Carbon Monoxide (CO), and most transportation improvement projects reduce delay and congestion. Modeling performed on projects statewide have consistently shown no exceedance of the ***NAAQS*** CO standard. Therefore, exceedance of the ***NAAQS*** is not expected to occur. Even though Florida is in attainment for the ***NAAQS***, detailed air quality analysis for CO may be needed, depending on project conditions.

The process for assessing CO is depicted in ***Figure 19-5***. A screening test using the ***COFL2024*** model is needed when:

1. The Class of Action for the project is an Environmental Impact Statement (EIS) and/or;

2. The total vehicular delay time (veh-hours) at an intersection in the design year build condition is projected to increase when compared to the design year no-build condition and/or;

3. The project is expected to have community controversy regarding air quality. (Coordination with District specialists may be required to determine potential community controversy.)

When use of the screening test is not warranted the Environmental Document includes a statement that the project is not expected to have adverse effects on air quality (***Section 19.2.4***).

When use of the screening test is warranted, intersections and interchanges within the project corridor are required to be reviewed to evaluate the potential for a violation of the CO ***NAAQS***. Concentrations of CO tend to be the highest adjacent to intersections. At a

minimum, the intersection with a combination of the highest intersection approach volume, the highest level of delay (on specific turning movements or for the intersection as a whole) and the lowest approach speed is screened using the ***COFL2024*** screening test. The screening test is performed for future design year conditions with and without the proposed roadway improvements. For additional information on data requirements for the CO screening test, see the ***COFL2024 Users Guide*** for the screening methodology and FDOT's ***Engineering Resources Website*** to download the ***COFL2024*** model. The ***Traffic Data for Air Quality Analysis, Form No. 650-050-36*** is to be used for entering traffic data in the ***COFL2024*** model.

The ***COFL2024*** model can be used to screen for the ambient CO near intersections (including interchange ramps). ***COFL2024*** incorporates worst case conservative assumptions including peak hour traffic, January time-frame temperatures, meteorology conditions favorable for higher concentrations of CO (wind speed, stability class, and wind 360-degree angle search), and close-in receptors. ***COFL2024*** has built in different intersection configurations that are analyzed after certain inputs are entered by the user.

If the CO ***NAAQS*** are not exceeded during screening, using the worst-case assumptions, the intersection passes the screening test and no detailed modeling has to be performed. Documentation of the evaluation is prepared and provided in an ***Air Quality Technical Memorandum*** and in the Air Quality section of the Environmental Document.

If the results of the screening test predict CO concentrations exceeding the standard noted in ***Table 19-1*** (35 ppm for a 1-hour period or 9 ppm for an 8-hour period), a detailed microscale emissions rates and dispersion analysis is performed on the intersection failing the test to insure there are no violations of the CO ***NAAQS***. A detailed assessment requires using actual intersection and receptor geometry, actual traffic predictions for all legs of the intersection, and running the latest versions of EPA's emission rates model (MOVES) and the dispersion model (CAL3QHC) independently. See ***Figure 19-1*** for links to latest MOVES and CAL3QHC models.

If the detailed microscale analysis shows that the intersection still violates the CO ***NAAQS***, mitigation measures are evaluated through changes in lane configurations, signal timing, exclusive vehicle allowances per lane, or other techniques. Once this is done the modeling analysis is run for the adjusted scenarios. Compliance with the ***NAAQS*** standards must be achieved for the proposed project to proceed.

19.2.2.2 Particulate Matter Analysis

Florida is currently in attainment for particulate matter (PM), both $PM_{2.5}$ and PM_{10}, therefore no project level analysis is needed. Only particulate emissions associated with construction activity are considered.

Project level impacts during construction are temporary in nature. PM emissions that can be associated with construction activities include dust as well as products of combustion, roadway deposits from brake dust, tire particles, and roadway dirt. These impacts are

minimized by adherence to applicable state regulations and to the ***FDOT Standard Specifications for Road and Bridge Construction***. See ***Section 19.2.4*** for how to include this information in the Environmental Document.

On February 7, 2024, EPA finalized a rule for the PM ***NAAQS***. The final rule lowered the primary $PM_{2.5}$ annual ***NAAQS*** from 12.0 microgram per cubic meter ($\mu g/m^3$) to 9.0 $\mu g/m^3$ but retained the 24-hour standard. In the event a Florida county is newly identified by the EPA as a PM nonattainment area under the new 2024 standard, any new project proposed within that county and identified as a Project Of localized Air Quality Concern (POAQC) through the interagency consultation process may undergo a quantitative hot spot assessment. The rule is currently considered for vacatur, and coordination with the Office of Environmental Management (OEM) is required.

The interagency consultation process for POAQC involves coordination among federal, state, and local transportation and air quality agencies, including FHWA, EPA, FDOT and the relevant MPO in the project area. The process determines whether a project significantly impacts air quality by evaluating traffic volumes, fleet mix, and potential emissions, ensuring conformity with applicable regulations. The interagency consultation process would follow the procedures for determining localized PM_{10}, and $PM_{2.5}$ concentrations listed in ***40 Code of Federal Regulations (CFR) § 93.123(b)(1)*** to determine if the project would require a PM_{10} and/or $PM_{2.5}$ hot-spot analysis based on the following criteria:

- New highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;
- Projects affecting intersections that are at Level of Service (LOS) D, E, or F with a significant number of diesel vehicles, or those that will change to LOS D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;
- New bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;
- Expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and
- Projects in or affecting locations, areas, or categories of sites which are identified in the $PM_{2.5}$ and PM_{10} applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

If a project is deemed to be a POAQC, then the subsequent air quality assessment should follow the ***EPA's Transportation Conformity for Guidance for Quantitative Hot-spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas***, which utilizes the project level MOVES model to estimate emissions from on-road vehicle exhaust, brake

wear, tire wear based on the project specific road type, traffic volume, speed and vehicle classification. Additionally, EPA's ***AP-42: Compilation of Air Emissions Factors from Stationary Sources, Chapter 13.2.1 Paved Roads*** should be used to assess the quantity of re-entrained road dust.

The emissions factors from MOVES should then be transferred to the AERMOD dispersion model as line source, area source or volume source. These factors, in units of grams per vehicle miles traveled (g/VMT), should be combined with project specific data, such as roadway width, to calculate the emissions rates for each traffic link. The emissions rates should then be mapped onto geographic locations within the AERMOD model, which will simulate the dispersion patterns over the surrounding sensitive receptors.

Background PM concentrations from the nearest monitoring location should be incorporated to obtain the design concentrations for build and no-build scenarios. The design concentrations should be compared against the NAAQS to determine conformity, and assess if additional mitigation or control measures are required. Finally, the assessment must document all assumptions, results, and the overall conformity determination while covering both the no-build and build scenarios.

19.2.2.3 Mobile Source Air Toxics Analysis

This section presents the varying levels of analysis associated with MSATs. The analysis process is depicted in ***Figure 19-6***, consistent with the ***FHWA Interim Guidance***. Project level MSAT analysis is only required for federal projects and documented depending on the following specific projects circumstances:

1. No analysis for projects with no potential for meaningful MSAT effects;
2. Qualitative assessment for projects with low potential MSAT effects; or
3. Quantitative analysis to differentiate alternatives for projects with higher potential MSAT effects.

19.2.2.3.1 Projects with No Potential MSAT Effects

Projects that have no potential meaningful MSAT effects are **exempted** from MSAT analysis. These projects include:

- Projects qualifying as Categorical Exclusions (CEs);
- Projects exempt under the ***CAA*** conformity rule under ***40 CFR § 93.126***, which are primarily focused on safety, maintenance, and transit improvements; and
- Other projects with no meaningful impacts on traffic volumes or vehicle mix.

Analysis or discussion of MSAT is not necessary for these projects. Documentation demonstrating that the project is exempt will suffice. For other projects with no or negligible traffic impacts, MSAT analysis is not recommended. However, an Environmental Assessment (EA) or EIS should document the basis for the determination of no meaningful potential impacts with a brief description of the factors considered.

Refer to ***Figure 19-2*** for suggested language to be used in the EA or EIS when the project is exempt from MSAT analysis.

19.2.2.3.2 Projects with Low Potential MSAT Effects

Projects in this category are EAs and EISs that improve operations of highway, transit, or freight without adding substantial new capacity or without creating a facility that is likely to meaningfully increase MSAT emissions. Examples of these types of projects are minor widening projects; new interchanges; replacing a signalized intersection; and projects where design year traffic is projected to be less than 140,000 annual average daily traffic (AADT).

For these projects, a **qualitative assessment** of emission projections should be conducted. This qualitative assessment should compare the expected effect of the project on traffic volumes, vehicle mix, or routing of traffic and the associated changes in MSAT for the project alternatives, including the No-Build, based on VMT, vehicle mix, and speed. It should also discuss national trend data projecting substantial overall reductions in emissions due to stricter engine and fuel regulations issued by EPA.

Refer to ***Figure 19-2*** for suggested language to be used in the EA or EIS for projects that require qualitative MSAT analysis.

19.2.2.3.3 Projects with High Potential MSAT Effects

Projects that have high potential MSAT effects include projects that:

- Create or significantly alter a major intermodal freight facility that has the potential to concentrate high levels of diesel PM in a single location, involving a significant number of diesel vehicles for new projects or accommodating with a significant increase in the number of diesel vehicles for expansion projects; or

- Create new capacity or add significant capacity to urban highways such as interstates, urban arterials, or urban collector-distributor routes with traffic volumes where the AADT is projected to be 140,000 or greater by the design year; and

- Are proposed in proximity to populated areas.

Projects in this category require **quantitative analysis** to forecast specific emission trends of MSAT for each viable alternative to use as a basis of comparison. If there are meaningful differences in MSAT levels among viable alternatives, mitigation options should be considered. See ***FDOT Mobile Source Air Toxics Quantitative Analysis***

Guidance and ***Emission Rates Look-up Tables*** for the analysis procedure and documentation requirements. Example strategies to mitigate MSAT emissions are presented in ***Figure 19-3***.

See ***Figure 19-2*** for suggested language to be used in an EA or EIS for projects that require qualitative MSAT analysis.

19.2.3 Air Quality Technical Memorandum

It is not necessary to prepare an extensive report to document the status of the project with respect to air quality since Florida does not currently have any areas which are in nonattainment. If a CO screening test and/or qualitative MSAT assessment (i.e., when the AADT is 140,000 or less)/quantitative MSAT analysis (i.e., when AADT is greater than 140,000) was performed, a brief ***Air Quality Technical Memorandum*** is prepared. When final, the memorandum should be placed in the project file. A sample ***Air Quality Technical Memorandum*** is provided as ***Figure 19-4***. The ***Air Quality Technical Memorandum*** should include:

1. A disclosure that the review and evaluation was conducted by FDOT under ***NEPA*** Assignment, see standard language included in the first paragraph of the sample ***Air Quality Technical Memorandum*** (***Figure 19-4***).

2. A brief description of the project and the area where the project is located (e.g., residential, commercial or industrial).

3. A brief description of air quality conditions within the area with respect to the ***NAAQS***. The following statement should be included since Florida is in attainment for CO and PM ***NAAQS***:

   > *This project is not expected to create adverse impacts on air quality because the project area is in attainment for all National Ambient Air Quality Standards. Therefore, the Clean Air Act conformity requirements do not apply to the project. Additionally, the project is expected to [improve/maintain] the Level of Service (LOS) and [reduce/not affect] delay and congestion on all facilities within the study area.*

4. Confirmation the project was reviewed for air quality impacts, as appropriate, and provide the results of the CO screening test for the project alternatives when conducted. See ***Section 19.2.2.1*** for screening test requirements. It should also confirm if the project is identified as a POAQC for PM, and provide the results of the PM analysis, as compared to the ***NAAQS***.

5. The standard language provided in ***Figure 19-2*** when the project has no or low potential MSAT effects.

6. The following when the project has high potential MSAT effects, and a quantitative MSAT analysis was performed:

    a. **Project specific MSAT information-** A brief project description, project location, analysis years (base year and design year), identification of whether an interim year is required, names of alternatives evaluated; and explanation of why quantitative MSAT analysis is performed.

    b. **Methodology used to estimate MSAT emissions**- FDOT ***Mobile Source Air Toxics Quantitative Analysis Guidance and Emission Rates Look-up Tables*** are used. The MSAT area of analysis with appropriate data (traffic volumes and average speeds in each link, length of each link) is developed and the source of traffic inputs referenced.

    c. **Estimation of MSAT emissions**- For each link in the project area, the applicable emission rates for each priority MSAT is multiplied by VMT. The emissions from each link are aggregated to determine total emissions for each priority MSAT. The emissions for each priority MSAT are aggregated to determine the total MSAT emissions. A table with total MSAT emissions for the priority MSAT by analysis year, for each alternative analyzed is included. The percent change of emission between the analysis years is also included in the table.

    d. **Discussion of MSAT analysis results and comparison of the MSAT emission changes** The analysis results for the base year, interim year (if applicable), and design year for each build alternative and the no-build alternative are discussed. Discussion of how the proposed improvements affect base MSAT emissions is also included with a bar chart or similar chart to visually compare MSAT trends between analysis years.

    e. **Incomplete or unavailable information**. Since the MSAT analysis is evolving, a discussion of unavailable information for project-specific MSAT health impact analysis from Appendix C of the ***FHWA Interim Guidance*** should be used.

    f. **Mitigation strategies** (if needed for projects with potentially significant MSAT levels)- Appendix E of the ***FHWA Interim Guidance*** for information on mitigation strategies is used.

19.2.4 Documentation in the Environmental Document

19.2.4.1 Non-Major State Action

Projects evaluated as Non-Major State Actions (NMSAs) typically have no effect on area-wide air quality levels but may provide some air quality benefits on a local basis. For projects evaluated as NMSAs, a CO screening analysis is not necessary unless one of the criteria of ***Section 19.2.2.1*** is met. If necessary, the screening test should be

performed using ***COFL2024*** and the results reported in an ***Air Quality Technical Memorandum*** and summarized in the NMSA. For projects identified as a POAQC for PM, the results of the PM analysis should be reported in an ***Air Quality Technical Memorandum***. This memorandum is added to the project file in the StateWide Environmental Project Tracker (SWEPT). It is recommended that it be placed in the Air Quality folder within SWEPT.

If it is determined that there are no impacts to air quality, the ***Non-Major State Action Checklist*** can include this statement:

> *This project is not expected to create adverse impacts on air quality because the project area is in attainment for all National Ambient Air Quality Standards (NAAQS) and because the project is expected to [improve/maintain] the Level of Service (LOS) and [reduce/not affect] delay and congestion on all facilities within the study area.*

19.2.4.2 State Environmental Impact Report

For projects evaluated as State Environmental Impact Reports (SEIRs), a CO screening analysis is not necessary unless one of the criteria of ***Section 19.2.2.1*** is met. If necessary, the screening test should be performed using ***COFL2024*** and the results reported in an ***Air Quality Technical Memorandum***. For projects identified as a POAQC for PM, the results of the PM analysis should be reported in an ***Air Quality Technical Memorandum***. This memorandum is added to the project file in SWEPT. It is recommended that it be placed in the Air Quality folder within SWEPT.

If an analysis is performed, the results are included in the Air Quality section of the SEIR. See ***Part 1, Chapter 10, State, Local and Privately Funded Project Delivery*** for more detail on how to prepare a SEIR.

The Air Quality section of the SEIR can state as follows:

> *This project is not expected to create adverse impacts on air quality because the project area is in attainment for all National Ambient Air Quality Standards (NAAQS) and because the project is expected to [improve/not change] the Level of Service (LOS) and [reduce/not change] delay and congestion on all facilities within the study area.*
>
> *Construction activities may cause short-term air quality impacts in the form of dust from earthwork and unpaved roads. These impacts will be minimized by adherence to applicable state regulations and to applicable FDOT Standard Specifications for Road and Bridge Construction.*

19.2.4.3 Type 1 Categorical Exclusion

Projects evaluated as Type 1 CEs typically have no effect on area-wide air quality levels but may provide some air quality benefits on a local basis. For projects evaluated as Type

1 CEs, CO screening analysis is not necessary unless one of the criteria of ***Section 19.2.2.1*** is met. If necessary, the screening test should be performed using ***COFL2024*** and the results reported in an ***Air Quality Technical Memorandum*** and summarized in the Type 1 CE. For projects identified as a POAQC for PM, the results of the PM analysis should be reported in an ***Air Quality Technical Memorandum***. This memorandum is added to the project file in SWEPT. It is recommended that it be placed in the Air Quality folder within SWEPT.

If it is determined that there are no significant impacts to air quality, this is documented in the general verification checkbox of the ***Type 1 Categorical Exclusion Checklist*** that confirms there are no significant impacts.

19.2.4.4 Type 2 Categorical Exclusion

Projects evaluated as Type 2 CEs typically have no effect on area-wide air quality levels but may provide some air quality benefits on a local basis. For projects evaluated as Type 2 CEs, CO screening analysis is not necessary unless one of the criteria of ***Section 19.2.2.1*** is met. If necessary, the screening test should be performed using ***COFL2024*** and the results reported in an ***Air Quality Technical Memorandum***. For projects identified as a POAQC for PM, the results of the PM analysis should be reported in an ***Air Quality Technical Memorandum***. This memorandum is added to the project file in SWEPT. It is recommended that it be placed in the Air Quality folder within SWEPT.

The air quality assessment is summarized in the Air Quality section of the Type 2 CE.

The Air Quality section of the Type 2 CE can state as follows:

> *This project is not expected to create adverse impacts on air quality because the project area is in attainment for all National Ambient Air Quality Standards (NAAQS) and because the project is expected to [*improve/not change] the Level of Service (LOS) and [reduce/not change*] delay and congestion on all facilities within the study area.*
>
> *Construction activities may cause short-term air quality impacts in the form of dust from earthwork and unpaved roads. These impacts will be minimized by adherence to applicable state regulations and to applicable FDOT Standard Specifications for Road and Bridge Construction.*

19.2.4.5 Environmental Assessment and Environmental Impact Statement

While it is recognized that Florida is currently in attainment for CO and there is low likelihood of adverse air quality impacts associated with projects that reduce delay and congestion, a CO screening test is performed for projects where an EIS is prepared.

The screening test should be performed using ***COFL2024*** in accordance with ***Section 19.2.2.1*** and the results reported in an ***Air Quality Technical Memorandum***. However, if the predicted CO concentrations exceed the standard noted in ***Table 19-1***, a more detailed emissions rates and microscale dispersion analysis using computer modeling techniques should be used. See ***Figure 19-1*** for links to latest emissions and dispersion models (MOVES and CAL3QHC).

For projects where an EA is prepared, CO screening analysis is not necessary unless one of the criteria of ***Section 19.2.2.1*** is met. If necessary, the screening test should be performed using ***COFL2024*** and the results reported in an ***Air Quality Technical Memorandum***.

For projects identified as a POAQC for PM, the results of the PM analysis should be reported in an ***Air Quality Technical Memorandum***. This memorandum is added to the project file in SWEPT. It is recommended that it be placed in the Air Quality folder within SWEPT.

The air quality analyses documented in the ***Air Quality Technical Memorandum*** are summarized in the Environmental Analysis section of the EA or EIS, including the results of the screening test, the results of the PM analysis (if required), a statement that indicates that there will not be any violations of the ***NAAQS*** for CO and PM, and the results of the appropriate MSAT analysis. Each alternative, including the No-Build alternative, is analyzed. The No-Build analysis is for the project opening year and the design year. In most circumstances, the build alternatives will indicate an improvement in CO and/or PM concentrations. If a detailed microscale analysis is required and shows that the intersection exceeds the CO and/or PM ***NAAQS***, mitigation measures are incorporated and discussed in the EA or EIS. Compliance with the ***NAAQS*** standards must be achieved for the proposed project to proceed.

Appropriate statements regarding MSAT analysis based on the project specifics are included in the Environmental Document as appropriate. Statements for projects with no or low potential MSAT effects are included in ***Figure 19-2***. Documentation for quantitative MSAT analysis in the EA or EIS should include a summary of MSAT analysis and reference the ***Air Quality Technical Memorandum***.

The Air Quality section of the EA or EIS can state as follows:

> *This project is not expected to create adverse impacts on air quality because the project area is in attainment for all National Ambient Air Quality Standards (NAAQS) and because the project is expected to [improve/not change] the Level of Service (LOS) and [reduce/not change] delay and congestion on all facilities within the study area.*
>
> *Construction activities may cause short-term air quality impacts in the form of dust from earthwork and unpaved roads. These impacts will be minimized by adherence to applicable state regulations and to applicable FDOT Standard Specifications for Road and Bridge Construction.*

19.3 REFERENCES

EPA, AP-42: Compilation of Air Emissions Factors from Stationary Sources. https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors-stationary-sources

EPA, National Air Toxics Assessment Results, 2011. https://www.epa.gov/national-air-toxics-assessment/2011-nata-assessment-results

EPA, National Emissions Inventory, 2014. https://epa.gov/air-emissions-inventories/national-emissions-inventory-nei

EPA, The Green Book Nonattainment Areas for Criteria Pollutants, as of March 31, 2025. https://www.epa.gov/green-book

EPA, Transportation Conformity Guidance for Quantitative Hot-spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas, October 2021. https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013C6A.pdf

FDOT, COFL2024. https://www.fdot.gov/environment/oem-divisions/eng/engineering-resources

FDOT, COFL2024 User's Guide, FDOT Intersection Air Quality (CO) Screening Model. https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/software/cofl2024-userguide.pdf?sfvrsn=1086c114_1

FDOT, MSAT Look-up Tables and Quantitative Analysis Guidance February 2018. http://www.fdot.gov/environment/pubs/MSAT.shtm

FHWA, A Methodology for Evaluating Mobile Source Air Toxic Emissions Among Transportation Project Alternatives. https://www.fhwa.dot.gov/environment/air_quality/air_toxics/research_and_analysis/mobile_source_air_toxics/msatemissions.cfm

FHWA, Advisory T6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents, October 30, 1987; available from the FHWA Environmental Guidebook. https://www.environment.fhwa.dot.gov/projdev/impta6640.asp

FHWA, Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents (FHWA Interim Guidance), January 18, 2023. https://www.fhwa.dot.gov/environment/air_quality/air_toxics/policy_and_guidance/msat/

Title 40 CFR Part 93, Determining Conformity of Federal Actions to State or Federal Implementation Plans. http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr93_main_02.tpl

19.4 FORMS

Traffic Data for Air Quality Analysis, Form No. 650-050-36

Table 19-1 National Ambient Air Quality Standards (NAAQS)				
Pollutant		**Averaging Time**	**Primary[e]**	**Secondary[f]**
Ozone (O_3)		8-hour[a]	0.070 ppm[g]	0.070 ppm
Nitrogen Dioxide (NO_2)		1-hour[b]	100 ppb[h]	NA
		Annual Arithmetic Mean	53 ppb	53 ppb
Particulate Matter	2.5 microns or less in size ($PM_{2.5}$)	24-hour[k]	35 µg/m^3	35 µg/m^3
		Annual Arithmetic Mean[c]	9 µg/m^3	15.0 µg/m^3
	10 microns or less in size (PM_{10})	24-hour[l]	150 µg/m^3	150 µg/m^3
Sulfur Dioxide[d] (SO_2)		1-hour	75 ppb	NA
		Annual Arithmetic Mean[m]	NA	10 ppb
Carbon Monoxide (CO)		1-hour[i]	35 ppm	NA
		8-hour[i]	9 ppm	NA
Lead (Pb)		Rolling 3-Month Average[j]	0.15 µg/m^3	0.15 µg/m^3

[a] The ozone standard is attained when the fourth highest daily maximum 8-hour concentration measured at each site in a year, averaged over three years, is equal to or less than the standard.
[b] To attain the 1-hour standard, the 3-year average of the annual 98th percentile of the 1-hour daily maximum concentrations at each site must not exceed 100 ppb.
[c] To attain this primary standard, the 3-year average of the annual arithmetic mean concentrations from single or multiple community-oriented monitors must not exceed 12.0 µg/m^3.
[d] To attain the 1-hour standard, the 3-year average of the annual 99th percentile of the 1-hour daily maximum concentrations at each site must not exceed 75 ppb. To attain the 3-hour standard, it is not to be exceeded more than once per year.
[e] Primary standards are designed to establish limits to protect public health, including the health of "sensitive" individuals such as asthmatics, children, and the elderly.
[f] Secondary standards set limits to protect public welfare including protection against decreased visibility and damage to animals, crops, vegetation, and buildings.
[g] ppm = parts per million
[h] ppb = parts per billion
[i] Not to be exceeded more than once per year.
[j] To attain the lead standard, the levels during the rolling 3-month averaging period may not exceed the 0.15 µg/m^3 level over a 3-year period
[k] To attain the primary/secondary standard, the 3-year average of the annual 98th percentile concentrations from single or multiple community-oriented monitors must not exceed 35 µg/m^3
[l] To attain these standards, these levels are not to be exceeded more than once per year on average over 3 years.
[m] To attain this primary standard, the 3-year average of the annual arithmetic mean concentrations must not exceed 10 ppb.

NA = Not applicable
ppm = parts per million
ppb = parts per billion
µg/m^3 = microgram per cubic meter

Source: United States Environmental Protection Agency, 2024

Federal Highway Administration

Policies and Guidance Papers.
http://www.fhwa.dot.gov/environment/air_quality/conformity/policy_and_guidance

Air Quality.

http://www.fhwa.dot.gov/environment/air_quality/

Transportation conformity.
https://www.fhwa.dot.gov/environment/air_quality/conformity/index.cfm

Florida Department of Environmental Protection

Current air quality rules.

https://floridadep.gov/air/air-business-planning/content/current-air-rules

General Air Quality Publications.

https://floridadep.gov/division-publications/Air

U.S. Environmental Protection Agency

EPA, 2020. National Emissions Inventory.

https://epa.gov/air-emissions-inventories/national-emissions-inventory-nei

What Are the Six Common Air Pollutants?

https://www.epa.gov/criteria-air-pollutants

National Ambient Air Quality Standards (NAAQS).

https://www.epa.gov/criteria-air-pollutants/naaqs-table

CAL3QHC Model.

https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models#cal3qhcx

Guidance on Hot Spot Analysis for PM_{10} and $PM_{2.5}$.

https://www.epa.gov/state-and-local-transportation/project-level-conformity-and-hot-spot-analyses#pmguidance

Figure 19-1 Air Quality Information Sources

Motor Vehicle Emission Simulator (MOVES) Model.

https://www.epa.gov/moves

EPA Air Quality Implementation Plans.

https://www.epa.gov/air-quality-implementation-plans

2011 NATA: Assessment Results.

https://www.epa.gov/national-air-toxics-assessment/2011-nata-assessment-results

The Green Book Nonattainment Areas for Criteria Pollutants.
https://www.epa.gov/green-book

Other Sources

42 U.S.C. Chapter 85, Subchapter I (Programs and Activities), Part A (Air

Quality and Emission Limitations).
http://uscode.house.gov/browse/prelim@title42/chapter85/subchapter1/partA&edition=prelim

Figure 19-1 Air Quality Information Sources (Page 2 of 2)

MSAT Standard Language

[USE THIS LANGUAGE FOR EAs OR EISs THAT ARE EXEMPT FROM MSAT ANALYSIS]

The purpose of this project is to (*insert major deficiency that the project is meant to address*) by constructing (*insert major elements of the project*). This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxic (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location, or any other factor that would cause a meaningful increase in MSAT impacts of the project from that of the No-Build alternative.

Moreover, Environmental Protection Agency (EPA) regulations for vehicle engines and fuels will cause overall MSAT emissions to decline significantly over the next several decades. Based on regulations now in effect, an analysis of national trends with EPA's MOVES3 model forecasts a combined reduction of over 76 percent in the total annual emissions rate for the priority MSAT from 2020 to 2060 while vehicle-miles of travel are projected to increase by over 31 percent (Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents, Federal Highway Administration, January 18, 2023). This will both reduce the background level of MSAT as well as the possibility of even minor MSAT emissions from this project.

[USE THIS LANGUAGE FOR EAs OR EISs THAT REQUIRE QUALITATIVE MSAT ANALYSIS]

Introduction

A qualitative analysis provides a basis for identifying and comparing the potential differences among MSAT emissions, if any, from the various alternatives. The qualitative assessment presented below is derived in part from a study conducted by FHWA entitled A Methodology for Evaluating Mobile Source Air Toxic Emissions Among Transportation Project Alternatives.

MSAT Effects Consideration

[Select the appropriate language based on the purpose of the project (widening, interchanges or freight focus projects). Modify the language to meet the project context.]

A. Widening Projects and Interchange Projects

For each alternative analyzed in this EA/EIS (*specify*), the amount of mobile source air toxics (MSAT) emitted would be proportional to the vehicle miles traveled (VMT) if other variables such as fleet mix are the same for each alternative. The VMT estimated for each of the Build Alternatives is slightly higher than that for the No-Build Alternative, because the additional capacity increases the efficiency of the roadway and may attract some trips from elsewhere in the transportation network. Refer to Table ___ (*specify*).

Figure 19-2 Mobile Source Air Toxics Standard Language

This increase in VMT would lead to higher MSAT emissions for the preferred alternative along the highway corridor, along with a corresponding decrease in MSAT emissions along the parallel routes. The emissions increase is offset somewhat by lower MSAT emission rates due to increased speeds; according to the Environmental Protection Agency's (EPA) MOVES3 model, emissions of all priority MSAT decrease as speed increases. Because the estimated VMT under each of the Alternatives are nearly the same, varying by less than ___ *(specify*) percent, it is expected there would be no appreciable difference in overall MSAT emissions among the various alternatives. Also, regardless of the alternative chosen, emissions will likely be lower than present levels in the design year because of EPA's national control programs that are projected to reduce annual MSAT emissions by over 76 percent between 2020 and 2060 (Refer to Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents, Federal Highway Administration, January 18, 2023). Local conditions may differ from these national projections in terms of fleet mix and turnover, VMT growth rates, and local control measures. However, the magnitude of the EPA-projected reductions is so great (even after accounting for VMT growth) that MSAT emissions in the project area are likely to be lower in the future in nearly all cases.

[Include the following paragraph if the project will construct travel lanes closer to populated areas, such as residences, schools and businesses.]

The proposed improvements may have the effect of moving some traffic closer to nearby populated areas; therefore, under each alternative there may be localized areas where ambient concentrations of MSAT could be higher under certain Build Alternatives than the No-Build Alternative. However, the magnitude and the duration of these potential increases compared to the No-Build alternative cannot be reliably quantified due to incomplete or unavailable information in forecasting project-specific MSAT health impacts. In sum, when a highway is widened, the localized level of MSAT emissions for the Build Alternative could be higher relative to the No-Build Alternative, but this could be offset due to increases in speeds and reductions in congestion (which are associated with lower MSAT emissions). Also, MSAT will be lower in other locations when traffic shifts away from them. However, on a regional basis, EPA's vehicle and fuel regulations, coupled with fleet turnover, will over time cause substantial reductions that, in almost all cases, will cause region-wide MSAT levels to be significantly lower than today.

B. Improvements or Expansions to Intermodal Centers or Other Projects that Affect Truck Traffic

For each alternative in this EIS/EA (*specify*), the amount of mobile source air toxics (MSAT) emitted would be proportional to the amount of truck vehicle miles traveled (VMT) and rail activity, if other variables (*such as travel not associated with the intermodal center*) are the same for each alternative. The truck VMT and rail activity estimated for each of the Build Alternatives are higher than that for the No-Build

Figure 19-2 Mobile Source Air Toxics Standard Language (Page 2 of 4)

Alternative, because of the additional activity associated with the expanded intermodal center. Refer to Table ___ (specify). This increase in truck VMT and rail activity associated with the Build Alternatives would lead to higher MSAT emissions (particularly diesel particulate matter) near the intermodal center. The higher emissions could be offset somewhat by two factors: 1) the decrease in regional truck traffic due to increased use of rail for inbound and outbound freight; and 2) increased speeds on area highways due to the decrease in truck traffic. The extent to which these emissions decreases will offset intermodal center-related emissions increases is not known.

Because the estimated truck VMT and rail activity under each of the Build Alternatives are nearly the same, varying by less than ___ (specify) percent, it is expected there would be no appreciable difference in overall MSAT emissions among the various alternatives. Also, regardless of the alternative chosen, emissions will likely be lower than present levels in the design year because of the Environmental Protection Agency's (EPA) national control programs that are projected to reduce annual MSAT emissions by over 76 percent from 2020 to 2060 (Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents, Federal Highway Administration, January 18, 2023).

Local conditions may differ from these national projections in terms of fleet mix and turnover, VMT growth rates, and local control measures. However, the EPA-projected reductions are so significant (even after accounting for VMT growth) that MSAT emissions in the study area are likely to be lower in the future as well.

[*The following discussion may apply if the intermodal center is close to other development.]*

The additional freight activity contemplated as part of the project alternatives will have the effect of increasing diesel emissions near nearby homes, schools, and businesses; therefore, under each alternative there may be localized areas where ambient concentrations of MSAT would be higher than under the No-Build alternative. The localized differences in MSAT concentrations would likely be most pronounced under Alternatives _____ (specify). However, as discussed above, the magnitude and the duration of these potential differences cannot be reliably quantified due to incomplete or unavailable information in forecasting project-specific health impacts. Even though there may be differences among the Alternatives, on a region-wide basis, EPA's vehicle and fuel regulations, coupled with fleet turnover, will cause substantial reductions over time that in almost all cases the MSAT levels in the future will be significantly lower than today.

[Insert a description of any emissions-reduction activities that are associated with the project, such as truck and train idling limitations or technologies, such as auxiliary power units; alternative fuels or engine retrofits for container-handling equipment, etc.]

Figure 19-2 Mobile Source Air Toxics Standard Language (Page 3 of 4)

Overall, the Build Alternatives in the design year could be associated with higher levels of MSAT emissions in the study area, relative to the No-Build Alternative, along with some benefit from improvements in speeds and reductions in region-wide truck traffic. There also could be slightly higher differences in MSAT levels among Alternatives in a few localized areas where freight activity occurs closer to homes, schools, and businesses. Under all alternatives, MSAT levels are likely to decrease over time due to nationally mandated cleaner vehicles and fuels.

Incomplete or Unavailable Information for MSAT Effects Analysis

Documentation of qualitative analysis in the Air Quality Technical Memo should be concluded by a 40 CFR Part 1502 assessment of incomplete or unavailable information. Refer to Appendix C of the ***Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents, Federal Highway Administration, January 18, 2023*** for details.

Figure 19-2 Mobile Source Air Toxics Standard Language (Page 4 of 4)

MSAT Mitigation Strategies

Lessening the effects of mobile source air toxics should be considered for projects with substantial construction-related MSAT emissions that are likely to occur over an extended building period, and for post-construction scenarios where the NEPA analysis indicates potentially meaningful MSAT levels. Such mitigation efforts should be evaluated based on the circumstances associated with individual projects, and they may not be appropriate in all cases. However, there are a number of available mitigation strategies and solutions for countering the effects of MSAT emissions.

Mitigating for Construction MSAT Emissions

Construction activity may generate a temporary increase in MSAT emissions. Project-level assessments that render a decision to pursue construction emission mitigation will benefit from a number of technologies and operational practices that should help lower short-term MSAT. In addition, the Federal Highway Administration has supported a host of diesel retrofit technologies in the Congestion Mitigation and Air Quality Improvement (CMAQ) Program provisions – technologies that may lessen a number of MSATs.

Construction mitigation includes strategies that reduce engine activity or reduce emissions per unit of operating time, such as reducing the numbers of trips and extended idling. Operational agreements that reduce or redirect work or shift times to avoid community exposures can have positive benefits when sites are near populated areas. For example, agreements that stress work activity outside normal hours of an adjacent school campus would be operations-oriented mitigation. Verified emissions control technology retrofits or fleet modernization of engines for construction equipment could be appropriate mitigation strategies. Technology retrofits could include particulate matter traps, oxidation catalysts, and other devices that provide an after-treatment of exhaust emissions. Implementing maintenance programs per manufacturers' specifications to ensure engines perform at EPA certification levels, as applicable, and to ensure retrofit technologies perform at verified standards, as applicable, could also be deemed appropriate. The use of clean fuels, such as ultra-low sulfur diesel, biodiesel, or natural gas also can be a very cost-beneficial strategy.

The EPA has listed a number of approved diesel retrofit technologies; many of these can be deployed as emissions mitigation measures for equipment used in construction. This listing can be found at: https://www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel.

Figure 19-3 Examples of Mitigation Strategies for MSAT Emissions

Post-Construction Mitigation for Projects with Potentially Significant MSAT Levels

Travel demand management strategies and techniques that reduce overall vehicle-mile of travel; reduce a particular type of travel, such as long-haul freight or commuter travel; or improve the transportation system's efficiency will mitigate MSAT emissions. Examples of such strategies include congestion pricing, commuter incentive programs, and increases in truck weight or length limits. Operational strategies that focus on speed limit enforcement or traffic management policies may help reduce MSAT emissions even

beyond the benefits of fleet turnover. Well-traveled highways with high proportions of heavy-duty diesel truck activity may benefit from active Intelligent Transportation System programs, such as traffic management centers or incident management systems. Similarly, anti-idling strategies, such as truck-stop electrification can complement projects that focus on new or increased freight activity.

Planners also may want to consider the benefits of establishing buffer zones between new or expanded highway alignments and populated areas. Modifications of local zoning or the development of guidelines that are more protective also may be useful in separating emissions and receptors.

The initial decision to pursue MSAT emissions mitigation should be the result of interagency consultation at the earliest juncture. Options available to project sponsors should be identified through careful information gathering and the required level of deliberation to assure an effective course of action. Such options may include local programs, whether voluntary or with incentives, to replace or rebuild older diesel engines with updated emissions controls. Information on EPA clean diesel programs can be found at https://www.epa.gov/verified-diesel-tech/clean-diesel-technology.

Figure 19-3 Examples of Mitigation Strategies for MSAT Emissions (Page 2 of 2)

Date:

To: Name, Title

From: Name, Title

Subject: Financial Management Number(s)_____
Air Quality Technical Memorandum
Project Name,
_____County

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022 and executed by the Federal Highway Administration and FDOT.

The proposed project is located in _____ County, an area currently designated as being in attainment for particulate matter (2.5 microns in size and 10 microns in size) and carbon monoxide (CO).

The project alternatives were vetted through a CO screening model called **COFL2024** that makes various conservative worst-case assumptions related to site conditions, meteorology and traffic. The Florida Department of Transportation's (FDOT's) **COFL2024** model uses the latest United States Environmental Protection Agency (EPA)-approved software to produce estimates of one-hour and eight-hour CO at default air quality receptor locations. The one-hour and eight-hour estimates can be directly compared to the current one-and eight-hour **National Ambient Air Quality Standards** (**NAAQS**) for CO.

The roadway intersection forecast to have the highest total approach traffic volume was *name of intersection or ramp terminal*. The Build and No-Build scenarios for both the opening year (*year*) and the design year (*year*) were evaluated. The traffic data input used in the evaluation is attached to this memorandum.

Estimates of CO were predicted for the default receptors which are located 10 feet to 150 feet from the edge of the roadway. Based on the results from **COFL2024**, the highest project-related CO one- and eight-hour levels are not predicted to meet or exceed the one- or eight-hour **National Ambient Air Quality Standards** (**NAAQS**) for this pollutant with either the No-Build or Build alternatives. As such, the project "passes" the screening model. The results of the screening model are attached to this memorandum.

This project is not expected to create adverse impacts on air quality because the project area is in attainment for all National Ambient Air Quality Standards. Therefore, the Clean Air Act conformity requirements do not apply to the project. Additionally, the project is expected to [improve/not change] the Level of Service (LOS) and [reduce/not change] delay and congestion on all facilities within the study area.

[For MSAT analysis, also include the applicable language from Figure 19-2 or if the project has high potential MSAT effects, include the project specific MSAT information, methodology used to estimate MSAT emissions, estimation of MSAT emissions, discussion of MSAT analysis results and comparison of the MSAT emission changes, incomplete or unavailable information, and mitigation strategies, if needed.]

Figure 19-4 Sample Air Quality Technical Memorandum

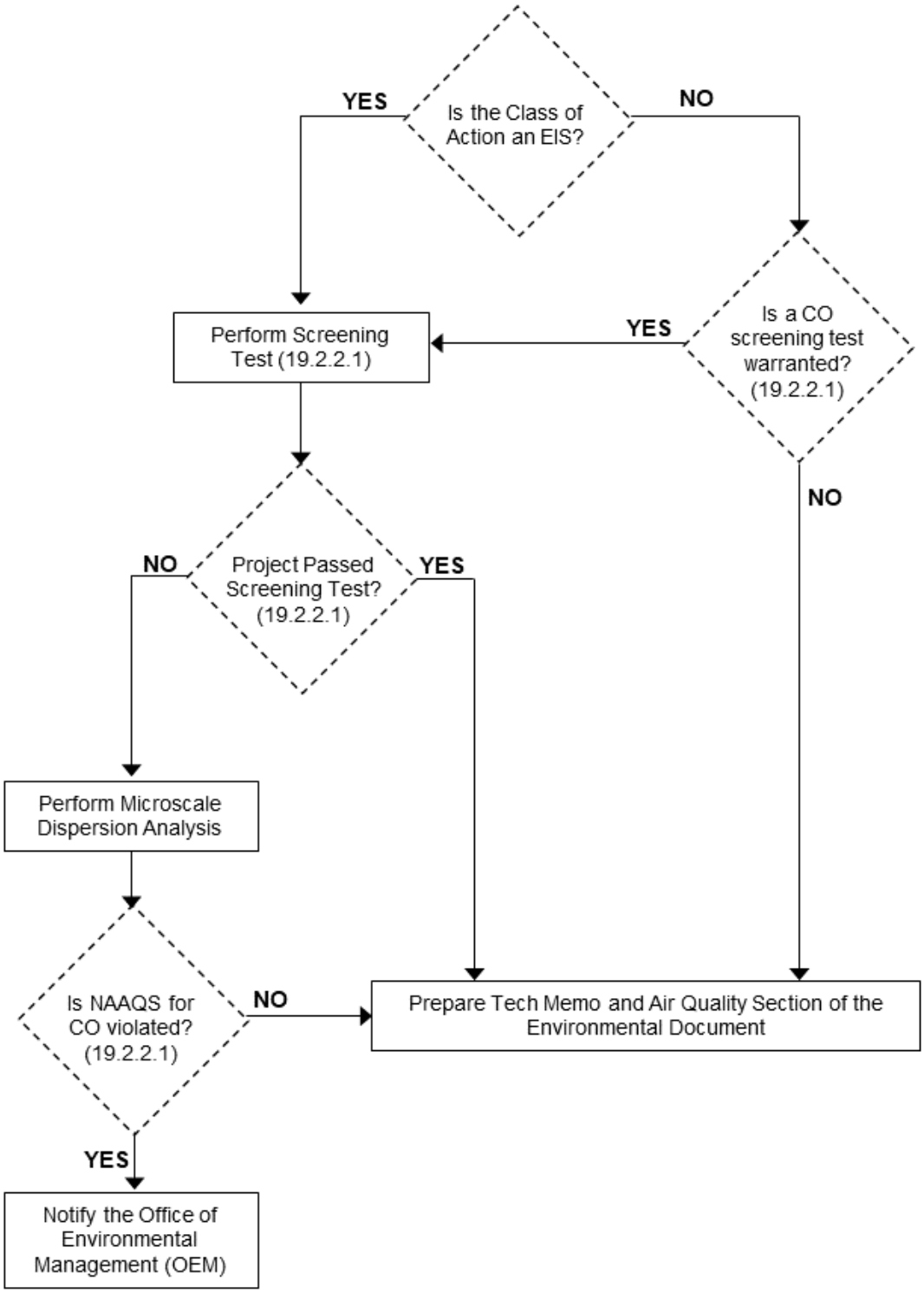

Figure 19-5 Air Quality Analysis Process for Carbon Monoxide

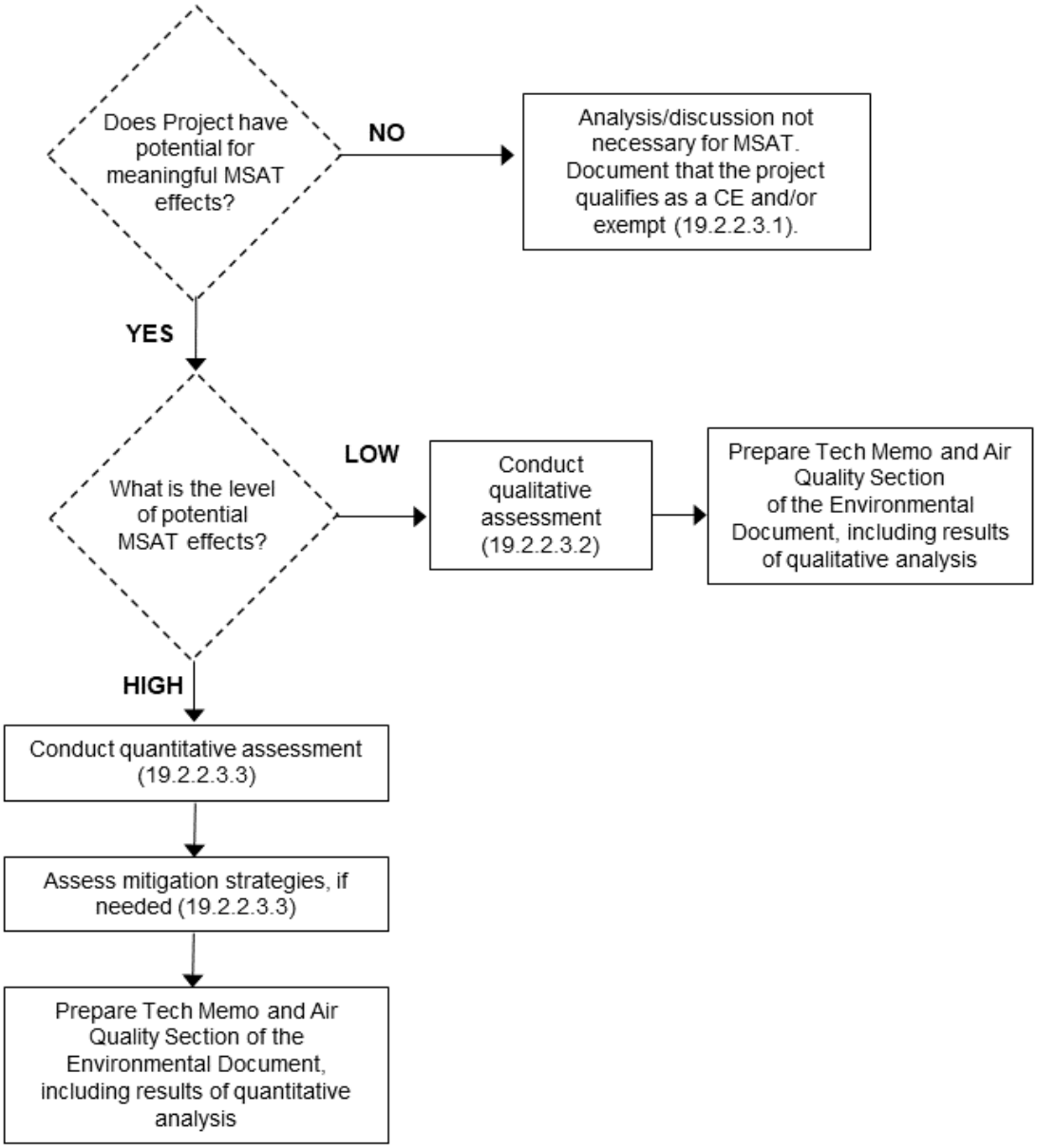

Figure 19-6 Air Quality Analysis Process for MSAT

PART 2, CHAPTER 20

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PART 2 CHAPTER 20

CONTAMINATION

20.1 OVERVIEW

20.1.1 Purpose

This chapter provides guidance on identifying, evaluating, and handling potential contamination involvement associated with Florida Department of Transportation (FDOT) projects in all phases of the project development process [Planning, Project Development and Environment (PD&E), Design and Construction] to comply with federal and state laws and regulations.

Federal requirements for contamination evaluation are contained in the ***Resource Conservation and Recovery Act (RCRA***) as amended by ***Hazardous and Solid Waste Amendments (HSWA)*** and the ***Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)*** as amended by ***Superfund Amendment and Reauthorization Act (SARA)***. ***RCRA*** deals with waste management for protecting human health and the environment from the potential hazards of waste disposal. ***CERCLA*** (also known as Superfund) sets federal requirements for responding to spills of hazardous substances and establishes liability for cleanup cost to responsible parties.

Florida's requirements for pollution prevention and control are contained in ***Chapters 376 and 403, Florida Statutes (F.S.)***, respectively and requirements for dealing with hazardous wastes, and rehabilitation of contaminated sites are outlined in ***Chapters 62-730 and 62-780, Florida Administrative Code (F.A.C.)***, respectively.

The 1988 Federal Highway Administration (FHWA) Memorandum titled ***Interim Guidance – Hazardous Waste Sites Affecting Highway Project Development*** provides direction on dealing with contaminated materials during project development and construction of federal transportation projects. The FHWA interim guidance emphasizes the need to identify and assess potentially contaminated sites early in the project development process and to use measures that avoid or minimize involvement with substantially contaminated sites.

In 1998, FHWA issued a ***Policy Revision to Support the Brownfields Economic Redevelopment Initiative*** which encourages acquisition and/or clean-up of land within brownfields for transportation purposes in certain instances: 1) where such actions are feasible, reasonable, within acceptable limits of liability exposure, 2) when cooperating partners are available, and 3) when parties legally responsible for the contamination are pursued to the maximum extent practicable.

Contamination within or adjacent to FDOT right of way (ROW) has the potential for liability to FDOT through property ownership and due to contaminated/hazardous material exposure, handling and disposal, and may require assessment, and remediation. However, in most instances FDOT is exempt from any liability for pre-existing soil or

groundwater contamination due solely to ownership. See ***Section 337.27(4), F.S.*** FDOT will not be held liable for providing assistance to contain or removing any pollutant, in accordance with ***Section 376.305, F.S***. Therefore, FDOT considers the potential for encountering contamination within the limits of every project, including excavation, dewatering, acquiring new ROW or easements, proposed stormwater management sites, utility work, and structure demolition/modifications. To avoid or minimize impacts to the environment or construction schedule, evaluation of potential contamination sites begins early in the project development process and continues through construction.

Contamination in soil, groundwater, surface water, sediments, and structures may affect an FDOT project in the following ways:

- Human exposure
- Potential or actual human health effects
- Exacerbation of the contamination by construction activities
- Design modifications or special construction provisions for work within contaminated areas
- Dewatering permitting requirements
- Requirements for the proper handling and disposal of contaminated material
- Potential cost and/or schedule impacts

Thus, understanding and addressing the type and extent of potential contamination early can reduce costs and risks to FDOT. FDOT should utilize the best available information to identify, screen, evaluate, and remediate potential contamination.

If areas with the potential for contamination are identified within or adjacent to an FDOT project, the Project Manager (PM) and District Contamination Impact Coordinator (DCIC) work together to determine actions to address the issues. The PM and DCIC should share this information in a timely manner with the District management and appropriate technical offices (such as ROW, Design, Construction and Maintenance) and the Office of General Counsel (OGC), to allow for informed project-related decisions.

20.1.2 Definitions

Asbestos – A naturally occurring, fibrous silicate mineral, including chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated and/or altered. All types of asbestos are known to cause serious health hazards.

Asbestos Containing Materials (ACM) - Any material containing more than one percent (1%) asbestos as defined in ***29 Code of Federal Regulations (CFR) § 1926.1101, Occupational Health & Safety Administration (OSHA)***.

Brownfield area - As per ***Section 376.79, F.S.***, brownfield area means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency (EPA)-designated brownfield pilot projects.

Brownfield sites – As per ***Section 376.79, F.S.***, brownfield sites means real property, the expansion, redevelopment or reuse of which may be complicated by actual or perceived environmental contamination.

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Superfund Amendment and Reauthorization Act (SARA) - Federal rules that set requirements for responding to spills of hazardous substances and establish liability for cleanup cost to responsible parties.

Cleanup Target Level – The concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete as per ***Section 376.301(8), F.S.***

Contamination Assessment and Remediation (CAR) Contractor – A vendor selected by FDOT that provides services related to hazardous and contaminated materials, emergency response services, site assessment, source removal services, and other environmental services as required by the contract.

Contaminated or Contamination - The presence of any contaminant in surface water, groundwater, soil, sediment, or upon the land, in concentrations that exceed the applicable Cleanup Target Levels (CTLs) specified in ***Chapter 62-777, F.A.C***., or water quality standards in ***Chapter 62-302*** or ***62-520, F.A.C***., or in concentrations that may result in contaminated sediment.

Contaminant - Any physical, chemical, biological, or radiological substance present in any medium which may result in adverse effects to human health or the environment, or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.

Contaminated Site - Any site with hazardous substances, pollutants, or contaminants that are harmful or likely to be harmful to human health or the environment.

Contamination Screening Buffer – An area within and adjacent to the project that should be evaluated for possible additional contamination assessment.

Contamination Source - The place of origin or major concentration of contaminants from which contamination migrates to surrounding areas through the soil, groundwater, or other media.

Hazardous - Refers to something that involves risk, danger, or exposure to harm or loss. It can describe situations, substances, or activities that pose a threat to health, safety, or well-being.

Hazardous Material - A general term that includes all waste, materials, and substances which are now designated or defined as hazardous by federal or state law or by the rules or regulations of the state or any federal agency: ***40 CFR §§ 261.1 - 261.4, 40 CFR §§ 261.20 - 261.24, Section 376.301, F.S.,*** and ***Section 403.74, F.S.***

Hazardous Waste Site - A site at which wastes as defined in ***Chapter 62-730, F.A.C.***, and ***40 CFR §§ 261.1 - 261.41***, have been disposed, treated, or stored.

Lead-Based Paint (LBP)- Paint or other surface coatings as defined in ***Section 381.983, F.S.*** that contain lead equal to or exceeding 1.0 milligram per square centimeter, 0.5 percent by weight, 5,000 parts per million (ppm) by weight or 5,000 milligrams per kilogram.

Contamination Screening Evaluation Report (CSER) - A technical report that identifies and evaluates known or potential contamination problems, presents recommendations, and discusses possible impacts to a proposed project area. It documents screening methodology and evaluation results in accordance with specific guidelines. The report helps identify potential contaminants that require further evaluation for exposure pathways.

Level of Investigation - To standardize contamination evaluations on transportation projects, FDOT uses the following levels of contamination investigation:

> **Level I** – A contamination screening evaluation consisting of a desktop review of historical and current records to identify past and present activities within or immediately adjacent to the contamination screening buffer defined in ***Section 20.2.2.1***. It is used to assess the risk relative to sites of concern and determine if a field investigation is or will likely be needed. For PD&E Studies, the Level I is usually summarized in a ***CSER***, but may be presented in a ***Contamination Screening Technical Memorandum*** or other Level I evaluation report in cases with little to no contamination involvement. See ***Section 20.2.2*** for further details.
>
> **Level II** – A field investigation consisting of testing the media of potential contaminated sites based on the findings of the respective Level I evaluation and the most current design information. When applicable, a Level II assessment includes soil sampling, surface water sampling, installation of groundwater monitoring wells, sampling groundwater, sampling structural materials for asbestos/metals based paint, and laboratory analysis for sites and structures with known or potentially contaminated materials. This is done to assess the presence or type and extent of contamination in suspect areas where construction is planned and determine whether a ***Modified Special Provision (MSP) 102-1.3 Identified Areas of Known Contamination*** should be prepared for inclusion in the project construction specifications package.
>
> **Level III** – Requisite construction support activities resulting from identified or suspected involvement identified by the Level II assessment. Though not as common, Level III may also be directed by Level I evaluation findings. Level III support involves, but is not limited to, any requisite remediation or abatement of

contamination, including hazardous materials. It necessitates a detailed plan for the removal and disposal of contaminated media, storage tanks, and/or other hazardous materials that may directly involve construction activities or ROW acquisition and clearance. See ***Section 20.2.4*** for further details.

Metal-Based Coatings (MBC) – Surface coatings are likely to contain heavy metals, including cadmium, arsenic, lead, zinc, and chromium that could be present at concentrations considered to be hazardous.

Modified Special Provision (MSP) - A specification, prepared, signed, and sealed in accordance with ***Chapters 471 and/or 481, F.S.***, that revises an implemented specification (Standard Specification, Supplemental Specification, or Special Provision) to address a project specific need and is approved for use by the State Specifications Engineer.

National Pollutant Discharge Elimination System (NPDES) - the NPDES Stormwater Program is a comprehensive two-phased national program (established by the ***Clean Water Act***) for addressing the non-agricultural sources of stormwater discharges which adversely affect the quality of our nation's waters. The program uses the NPDES permitting mechanism to require the implementation of controls designed to prevent harmful pollutants from being discharged by stormwater runoff into local water bodies.

Potentially Contaminated Site - A site, within or adjacent to the project limits, suspected to have existing contamination based on past or current activities on or near the site as evidenced by records review, historical land use evaluation, or field reconnaissance.

Remediation - Those activities necessary to remove, treat, or otherwise reduce contamination to a level acceptable to the regulatory agency having jurisdiction in accordance with ***Chapter 62-780, F.A.C***, or applicable federal programs (e.g. ***RCRA***).

Sediment – Unconsolidated solid matrix occurring immediately beneath any surface water body. The surface water body may be present, part or all of the time and may support a wetland environment or vegetation.

SolidWaste - Includes any garbage, refuse, or discarded material, such as sludge from treatment plants, resulting from industrial, commercial, mining, and agricultural operations, as well as community activities. It does not include solid or dissolved materials in domestic sewage or certain other specified materials. **(*RCRA)***

Superfund Site - Land in the United States that has been contaminated by hazardous waste and identified (in the National Priorities List) by the EPA as a candidate for cleanup because it poses a risk to human health or the environment.

Technical Special Provisions (TSPs) - Specifications of a technical nature, prepared, signed, and sealed in accordance with ***Chapters 471, 481, or 481 Part 2, F.S.*** TSPs describe work that is not covered by the ***Standard Specifications*** or Workbook and are included as Appendices in a Specifications Package.

20.2 PROCEDURE

Contamination involvement can include, but is not limited to, potential exposure during construction to contaminated media (soil, groundwater, other subsurface debris), Asbestos-Containing Material (ACM), or Metal-Based Coatings (MBC). Another contamination concern is the potential for plume disturbance during construction efforts. Contamination involvement also requires the consideration of contaminants or storage tanks present on parcels identified for ROW acquisition or disposal. The Level I, Level II, and Level III activities evaluate the proximal sites which have the potential to affect construction, delineate the contamination impacts, and provide the appropriate information needed to address contamination concerns at each respective phase of project development. This chapter provides guidance for Level I evaluations performed during the PD&E phase. Details regarding the PD&E Level I process are presented in ***Section 20.2.2***.

For projects that do not undergo a PD&E Study, Level I evaluations take place during the Design phase. Although a ***Contamination Screening Evaluation Report (CSER)*** is not required for such projects, this Chapter provides guidance for Design phase Level I evaluations.

Level II field investigations typically commence during the Design phase and are completed prior to project letting to determine if impacts to construction exist and properly communicate that information to the Contractor. The Level II process is discussed further in ***Section 20.2.3***.

Level III support activities typically occur during construction but may also occur earlier when feasible. The Level III process is detailed further in ***Section 20.2.4***.

As noted in ***Section 20.1.2***, Level II and Level III activities are rarely performed as part of a PD&E phase. However, Level I, Level II assessment, and Level III remediation may be conducted during any phase, as determined by the DCIC and District Environmental Office staff, in coordination with the PM. As a project advances from the PD&E phase to construction, the contamination section of the Re-evaluation provides a status of the associated Level of Investigation at each phase.

Level I, Level II, and Level III efforts for sites with previously documented petroleum contamination should be coordinated with the Florida Department of Environmental Protection (FDEP), as per the ***2014 Memorandum of Understanding (MOU) between FDEP and FDOT*** , see ***Section 20.2.5.1***. Ideally, petroleum contaminated sites identified during the PD&E phase are addressed and remediated by FDEP through the provisions of the ***2014 MOU between FDEP and FDOT*** prior to ROW acquisition or construction.

The DCIC is the District's point of contact for all contamination issues within the existing or proposed FDOT ROW. The DCIC's responsibilities include, but are not limited to:

- Administration of the District's contamination program

- Management of the Contamination Assessment and Remediation (CAR) contract(s)
- Coordination of contamination activities in all phases of the project development and delivery processes
- Emergency response oversight for contamination discharges on FDOT ROW or facilities
- Maintenance and retention of documentation for contamination work performed within the District
- Additional duties may include coordination of hazardous materials and petroleum compliance issues with appropriate personnel for FDOT facilities and maintenance yards.

20.2.1 Contamination in the Project Development Process

Contamination issues can be avoided or minimized by changing the project's design, or through feasible remediation of impacts identified early enough in the project development process. Early evaluation of potential contamination minimizes the chances of encountering unanticipated impacts during project construction. Potential contamination concerns for FDOT projects are identified during the Efficient Transportation Decision Making (ETDM) screening, scope of services development, and the PD&E Study. Many options are available to effectively manage contamination discovered early in the project development process, which include conducting a Level II assessment, modifying designs, developing Modified Special Provisions (MSPs), Technical Special Provisions (TSPs), and remediating contamination prior to or during construction using the CAR Contractor, as appropriate. Additionally, some sites contaminated with petroleum may be remediated through coordination with FDEP through the ***2014 MOU between FDEP and FDOT*** (***Section 20.2.5.1***).

The DCIC must be consulted before or during the Level I evaluation to ascertain if the District Maintenance Office and District Construction Office have any additional information regarding existing contamination documented during previous projects. The FDOT Survey office may have maps delineating impacted areas within the FDOT ROW from contaminated sites that have been assigned a ***Site Rehabilitation Completion Order (SRCO)*** in accordance with the ***2014 MOU between FDEP and FDOT***.

Each project's contamination issues are unique; therefore, the DCIC and PM should be both flexible and innovative in addressing the issues.

20.2.1.1 ETDM Screening and Project Scope Development

For projects that qualify for screening in the ETDM Environmental Screening Tool (EST), evaluation of potential contamination sites begins when the District prepares a Preliminary Environmental Discussion (PED) (See ***Part 1, Chapter 3, Preliminary***

Environmental Discussion and Advance Notification). The ETDM process provides an opportunity for regulatory agencies [i.e. FDEP, Environmental Protection Agency (EPA), and Water Management Districts (WMDs)] to comment on sites or properties that have or had regulated activities During ETDM, evaluation of potential contamination impacts is limited to identifying the broad potential effects that known or suspected contaminated sites may have on the project scope. The District can use the ETDM EST, FDOT records and/or other online resources maintained by the FDEP, EPA, local agencies and WMDs to obtain data for preparation of the PED.

The PM, DCIC and ETDM Coordinator should coordinate with regulatory agencies and other appropriate local agencies throughout the ETDM screening process on issues related to contamination. Coordination should also include District staff such as the District Drainage Engineer, Environmental Permits Coordinator, District Design Engineer, Design PM, District Structures Engineer, District Construction Environmental Coordinator, Office of Environmental Management (OEM), and others who might be involved in future phases of the project.

The following project activities occur during the ETDM process:

- **Planning Screen** – Specific information identified in the PED of the Planning Screen includes information about known or potential contaminated sites located within or adjacent to project alternatives. The District may begin to coordinate with the FDEP for potential assessment or remediation of petroleum contaminated facilities within or adjacent to the project ROW, as provided in the ***2014 MOU between FDEP and FDOT*** (***Section 20.2.5.1***).

- **Programming Screen** – The PED should include discussion about known or potential project involvement with contamination based on the District's familiarity with the project area and anticipated project activities. The PED should also list any known and potential contamination issues located within the project area using available data and District staff familiarity with the project area. The PED should indicate whether a Level I evaluation is anticipated. The District begins to coordinate or update the status of coordination with the FDEP on potential assessment or remediation of petroleum contaminated sites within or adjacent to the project ROW, as provided in the ***2014 MOU between FDEP and FDOT***.

After the ETDM screening, the PM and DCIC review the Environmental Technical Advisory Team (ETAT) comments related to contamination issues published in the ***Programming Screen Summary Report*** for the project. While reviewing the report, the PM and DCIC should pay close attention to any list of potential contamination sources and/or sites that warrant further investigation.

Based on the results of the ETDM screening and the District's familiarity with potential contaminated sites in the project area, the PM and DCIC determine the requirements for a ***CSER*** and the scope of the PD&E phase.

20.2.1.2 PD&E Phase Contamination Screening

During the PD&E phase, a Level I screening is performed to identify known and/or potentially contaminated sites that may impact project alternatives. See ***Section 20.2.2*** for guidance on performing a PD&E Level I evaluation. The identified potential contaminated sites are evaluated and rated for risk to impact the project using existing information and assigned a risk rating for each project alternative (see ***Section 20.2.4***).

The Level I evaluation is typically documented in a ***CSER***. The ***CSER*** findings are then summarized in the appropriate Environmental Document and saved in the StateWide Environmental Project Tracker (SWEPT) (see ***Section 20.2.2.6***).

For projects that overlap the PD&E and Design phases, the Level I evaluation and Level II assessment may be completed consecutively or combined, within the ***CSER***.

20.2.1.3 Projects Not Qualifying for Efficient Transportation Decision Making Screening

Evaluation of potential contamination impacts for projects that do not have a PD&E phase [e.g., Type 1 Categorical Exclusion (CE), Non-Major State Action (NMSA)] begins during the development of the scope for the Design phase of the project. Depending on the type of construction activity, these projects generally require less extensive level of contamination evaluation than a PD&E Study. The Design PM should work with the DCIC to determine the scope of contamination evaluation and documentation requirements for these projects.

20.2.1.4 Design Phase Contamination Screening

During the Design phase, planned ROW acquisition and project design features should be considered in determining the potential contamination impacts to the project. There may be instances when contamination involvement can be avoided with minor design changes; for example, moving drainage structures or redesigning French drains to solid pipes in areas identified as having potential for soil or groundwater contamination. In addition, the drainage pond and floodplain compensation (FPC) alternatives should be evaluated. The Level I contamination screening evaluation must be updated if there has been a change in design that could change the potential impacts to the contaminated sites or ROW acquisition since the PD&E ***CSER***. Updating the ***CSER*** may also be warranted based on consideration of changes to the project area's land use and potential new information regarding risk ratings for identified potential contamination sites.

A Level II assessment is based on the design scope and construction elements that have the potential to encounter contamination impacts.

The DCIC continues to coordinate with the Design PM and ROW staff. Design plans and their revisions are reviewed by the DCIC to determine if design features may be impacted by or exacerbate any identified contamination. Additionally, drainage easements should be evaluated if there is a potential for contamination impacts to construction activities.

The DCIC should also coordinate with regulatory agencies as necessary, such as coordinating with FDEP for projects that may require remediation through the ***2014 MOU between FDEP and FDOT***, solid waste/storage tank removal, well abandonment, or dewatering permits.

20.2.1.5 Construction Phase Contamination Involvement

For projects with identified contamination issues, the DCIC should attend the pre-construction meeting and coordinate closely with the construction PM to ensure the contractor is fully aware of potential involvement, commitments, remediation activities, avoidance measures, modified special provisions, TSPs, plan notes, or any further coordination or measures. During the Construction phase, the DCIC should support the PM on contamination-related matters and verify completion of any necessary Level III activities (see ***Section 20.2.4***).

If avoidance of contamination is not possible, steps must be taken to remove or properly address the contaminated media prior to or during construction.

20.2.2 Level I / Contamination Screening Evaluation

The Level I contamination screening evaluation is initiated early in the PD&E phase and finalized after the public hearing, if held. The Level I is performed to identify potentially contaminated sites that are within or adjacent to the project, but does not involve testing of soil, groundwater, or other suspect media. For projects which do not have a PD&E phase, a Level I is typically performed during the 30% or 60% design phases.

The Level I review of the corridor is similar in methodology to the ASTM E1527 Phase I Environmental Site Assessment Practices; however, the latter screening process is specific to commercial real estate transactions and has associated standards and liabilities which are not required for transportation projects. Furthermore, ASTM standards suggest a much shorter timeline than would be feasible for development of most transportation projects. Other key differences include the utilization of dissimilar terminology [example: risk ratings vs. Recognized Environmental Conditions (RECs)], the emphasis on proximal contamination sources versus onsite impacts, and the discretion regarding future investigations related to the initial evaluation.

The information obtained from the Level I evaluation should be sufficient to determine potential contamination risk on each project alternative. The Level I evaluation consists of a desktop review of the proposed project scope of work; contamination-related records; site reconnaissance/field review, interviews; estimating risk ratings; and preparation of a ***CSER***, ***Contamination Screening Technical Memorandum***, or other Level I evaluation report or clearance letter, as detailed in ***Section 20.2.5***. The decision to prepare either a ***CSER*** or ***Contamination Screening Technical Memorandum*** should be made in consultation with DCIC during the scope of services negotiations as the process detailed herein may require modification.

Level I evaluation may reveal through review of environmental records and field review evidence that some sites are not suspected for contamination (e.g., properly constructed

and decommissioned landfills, contamination at the site was handled and disposed of according to regulations, or documented contaminants stored pose no risk to humans and environment). If the Level I evaluation finds no contamination issues in the project area, no further investigation is required unless there are new discharges causing contamination; or changes in design or construction activities on the site that can exacerbate contamination issues.

If sites (ranked Medium or High) are identified during the Level I evaluation, then the sites are further considered for Level II assessment.

20.2.2.1 Desktop Review

The purpose of the desktop review is to identify potential contaminated sites within the project area and assess the likelihood of encountering contamination during construction based on current and/or previous land uses. Desktop reviews should be performed prior to the field review. The desktop review should include consideration of land use adjacent to the transportation project when screening for contamination.

Review of historical city directories, historical aerial photos, and Sanborn maps can also provide information on potential contamination sources. The EST contamination layers and comparisons of old and new aerial photographs and Sanborn maps may identify sources of contamination [e.g., land-filling or other earth disturbing activities, historic non-regulated gasoline service stations, past agricultural uses, trucking facilities, possible cattle ranching activities (cattle dipping vats), automotive repair facilities, dry cleaners, and heavy industrial uses]. Databases maintained by federal, state, or local governments or regulatory agencies are also reliable sources of data for desktop review.

Sources of data for desktop review are the EST, publicly available databases, or databases from commercial environmental data service companies. Commercial environmental databases have limitations, therefore use of these commercial environmental data bases should be approved by the DCIC.

The EST should be used to evaluate contamination on a project. The following includes available Geographic Information Services (GIS) layers to be referenced when evaluating contamination on a project.

1. FDEP Point Layers (Sublayer Group in Waste Category)
2. EPA Point Layers (Sublayer Group in Waste Category)
3. Waste Related Polygon Layers (Sublayer Group in Waste Category)
4. Other Point Layers (Sublayer Group in Waste Category)
5. Bridges (Group)
6. Rail (Group)

7. FDEP Mandatory Phosphate Mine Boundaries
8. Generalized Land Use – Agricultural
9. WMD Agricultural Lands
10. Irrigated Cropland and Non Irrigated Agricultural Areas

Not all of the above sublayers will be necessary for all projects, but should be considered and utilized when appropriate. Because the EST utilizes information collected from various agencies and may add or remove databases, the above list may change and is not exhaustive. Other resources that should be considered include, but are not limited to:

1. Historical FDOT Reporting (Level I, Level II, and Level III)
2. FDOT ROW Map Notes
3. Historical/Current Aerial Photos
4. Google Earth (or similar)
5. United States Geological Survey (USGS) Mapping
6. Florida Geological Survey Mapping
7. United States Department of Agriculture (USDA) Mapping
8. Sanborn Maps
9. County/City/Municipals Directories and Registries
11. District GIS Databases
10. Superfund Enterprise Management System (SEMS)
11. EPA Enforcement and Compliance History Online (ECHO) Database
12. Florida Geographic Data Library (FGDL)
13. Other available federal, state, and local data resources

Note that some of the “other” informational tools listed above and commercially available third-party resources may provide information also presented in the EST.

Search distances (contamination screening buffers) used for the desktop review may vary depending on the context of the project and type of contamination source. The analyst performing the Level I investigation should coordinate with the DCIC if the buffer distance requires modification based on project context. The following buffer distances are recommended on FDOT projects:

1. 500 feet from the proposed ROW line for petroleum, drycleaners, and other potentially contaminated sites not included in number 2 below. Non-landfill solid waste sites (such as recycling facilities, transfer stations and debris management areas) within this distance are also evaluated. Projects in heavily industrialized or urbanized areas with dewatering planned near the contaminated sites need to be addressed with FDEP, WMD, or the local delegated program lead.

2. 1/2 mile from the proposed ROW line for ***CERCLA***, National Priorities List (NPL) Superfund sites, or Landfill sites. A detailed discussion of these sites is included in the ***CSER*** if they are expected to potentially impact the project. Coordination with OGC and environmental permitting agencies may be needed.

The desktop review of land use may reveal areas or properties warranting further inspection during site reconnaissance or eventual Level II testing. This evaluation aids in identifying sites and properties that may not appear on contamination-related registries but still represent a risk for impacts to the project. Examples include, but are not limited to railways, agricultural lands, golf courses that are present within or adjacent to the project limits. Undesirable fill, former cattle dip vats, and other concerns may be discovered.

Hydrologic conditions of the project area should be evaluated to determine the potential for contamination migration from potential sources to areas and depths of construction.

For projects involving existing bridges, building structures, and existing or abandoned utilities (which will be moved or demolished), the potential need for ACM, Lead-Based Paint (LBP), or MBC surveys should be identified. Similar considerations are given to projects involving bridge timbers, fender systems, or railroad ties due to the potential for regulated compounds in wood preservatives. The DCIC should be involved to determine the extent and timing of the survey(s).

The desktop review should also include a search for the presence of additional considerations to be reported in the Level I screening evaluation, as detailed in ***Section 20.2.5***. Items to be noted include but are not limited to sites that may require coordination with FDEP through the ***2014 MOU between FDEP and FDOT***, ***CERCLA***/Superfund sites that may necessitate EPA involvement, structures that may warrant hazardous material surveys, and contaminated facilities that may affect construction National Pollutant Discharge Elimination System (NPDES) dewatering.

20.2.2.2 Field Review/Site Reconnaissance

A field review or site reconnaissance is performed to verify the locations of potentially contaminated sites identified during the desktop review and discover any other previously undocumented sources that may impact the project. Field review is typically conducted from existing FDOT or public ROW and should not require reviewers to enter a property suspected to have contamination issues.

Field reviews may include observations of potential contamination concerns (e.g., apparent changes in topography such as depressions or mounds, visual indications of

surface spills, surface staining, areas of suspect liquids, tanks, suspicious odors, apparent sink holes, distressed vegetation, ventilation pipes, former pump islands/tank pads, soakage pits, drums, or chemical storage containers). Photographs should be taken of each evaluated site, including stormwater management (pond) locations, and any specific areas of concern noted during reconnaissance. Information about current and former uses of the site (ascertained through visual inspection or interviews) should be noted. Aboveground utilities, and any evidence of belowground utilities, should be documented on field notes. Field photographs depicting identified sites and concerns are to be included in the ***CSER*** with pertinent details captioned for each image.

The lack of visual characteristics for contamination does not imply the media is not contaminated. Based on the results of the desktop review, field review, and interviews with the operators of the site, it may be necessary to conduct a Level II assessment to sample and test soil, groundwater, and/or surface water.

20.2.2.3 Interviews

Interviews with present and past owners, adjacent property owners, operators, and/or occupants of the properties with contamination concerns may be used to identify potential contaminants and environmental concerns at a site with little existing information. Coordination between the DCIC and state and local agency representatives may identify other sites of potential contamination concern, recent assessment or remediation information not yet documented in public domain, or existing ACM/MBC surveys for structures.

20.2.2.4 Contamination Risk Rating

FDOT uses a contamination risk rating system to evaluate the likelihood that a potentially contaminated site may impact a project. The rating system provides information needed to address potential contamination impact to the project area through avoidance, special management procedures during construction, and/or remediation. The presence of a contaminated site adjacent to the project area does not always mean a High risk is present on the project. The analyst should consider proposed construction activities and determine if the scope of work may cause direct contact with the contaminant.

There are three contamination risk rating categories (Low, Medium or High) that are assigned to each property or site evaluated for potential contamination impacts to the project. Each risk rating category and its appropriate use is explained as follows:

- **Low** - After a review of conceptual or design plans and findings from the Level I evaluation indicate that contamination impacts are not expected.

- **Medium** - After a review of conceptual or design plans and findings from the Level I evaluation, a potential contamination impact to the project has been identified, and there is insufficient information (such as regulatory records or site historical documents) to determine if contamination impacts exist at the project footprint.

- **High** - After a review of all available information and conceptual or design plans, there is appropriate analytical data that shows contamination will impact construction activities, have implications to ROW acquisition or have other potential transfer of contamination related liability to the FDOT.

A recommendation for each site with a rating of Medium or High should include a listing of the analytical parameters of concern and media (e.g., soil, groundwater), a discussion of potential involvement with ROW acquisition and/or construction and if the site is anticipated to warrant additional (Level II or III) assessment.

The contamination risk rating can subsequently change based on changes in design, construction activities, construction methods, ROW needs, or other factors when the project progresses from the PD&E phase to Design and Construction.

Documentation of contamination evaluations, commitments, and recommendations are summarized in the Environmental Document and progressively updated with subsequent Re-evaluations as described in ***Section 20.2***.

20.2.2.5 Contamination Technical Reports and Memos

Documentation of the contamination screening evaluation is required to demonstrate that contamination involvement in the project was considered and addressed as appropriate. For PD&E Studies, the documentation of the Level I evaluation is typically presented in a ***CSER***. A ***Contamination Screening Technical Memorandum*** or contamination clearance letter or other Level I evaluation report may be prepared for some projects with no contamination impacts or with minimal involvement with contamination.

The ***CSER*** or a ***Contamination Screening Technical Memorandum*** documents screening methodology results. The report/memo also lists sources reviewed; data findings; previous remedial actions; evaluated site risk ratings; conclusions with all Level II assessment recommendations; and cost estimates for future investigation and support for the projects. Risk ratings, conclusions and the need for additional assessment presented in the report/memo must be supported by data.

The location of each site with known or potential contamination must be clearly marked (with stations and offsets, if appropriate) on a figure or figures showing each project alternative. The level of detail of the ***CSER*** or ***Contamination Screening Technical Memorandum*** depends on the complexity and scope of the project; severity of potential contaminated material; and number of potential contaminated sites. The level of detail of the design plans also affects the evaluation of contamination sites within the PD&E phase The report/memo should be reviewed for technical accuracy, clarity of presentation and quality. Sources of all information and supporting documentation should be included (or appended) in the report/memo.

For FDOT Federal Projects, the ***Technical Report Cover Sheet, Form No. 650-050-38a*** is used to prepare the cover page of the ***CSER*** or ***Contamination Screening Technical Memorandum***.

The ***CSER*** has required headings and subheadings to effectively delineate the sections appropriate to the level of analysis. See ***Figure 20-1*** for an outline including section details and example language.

20.2.2.5.1 Contamination Screening Evaluation Report Update

When necessary, the ***CSER*** is updated during the Design phase to document changes in factors including proposed ROW acquisition, designs, area land use, and risk ratings of potential contamination sources since the PD&E Study. The revised ***CSER*** does not need to include items or factors that have not changed since the previous ***CSER*** but follows the document outline in ***Figure 20-1***.

20.2.2.6 Environmental Document

A summary of any contamination screening should be included in the Environmental Document as outlined in this section. All commitments are recorded in the Environmental Document and transmitted to the next phases of project development (Design and Construction) in accordance with ***Procedure No. 650-000-003, Project Commitment Tracking*** and ***Part 2, Chapter 22, Commitments***.

20.2.2.6.1 Type 1 Categorical Exclusions and Non-Major State Actions

Type 1 CEs – A brief summary of Level I evaluation is included in the ***Type 1 Categorical Exclusion Checklist (Part 1, Chapter 5, Categorical Exclusion)***. The Level I evaluation report, ***Contamination Screening Technical Memorandum***, or contamination clearance letter as well as documentation of subsequent assessment, as appropriate, is uploaded in the SWEPT. It is recommended that these documents be placed within the Contamination folder in SWEPT.

NMSAs – A brief summary of Level I evaluation is included in the ***Non-Major State Action Checklist (Part 1, Chapter 10, State, Local, or Privately Funded Project Delivery)***. The Level I evaluation report, ***Contamination Screening Technical Memorandum***, or contamination clearance letter as well as documentation of subsequent evaluation, as appropriate, is uploaded in SWEPT. It is recommended that these documents be placed within the Contamination folder in SWEPT.

20.2.2.6.2 Type 2 Categorical Exclusions

The ***Type 2 Categorical Exclusion Determination Form*** should include a brief summary of the results of the ***CSER*** or ***Contamination Screening Technical Memorandum***. The summary should at least answer the following questions:

1. Are there any known or potentially contaminated sites within or near the project area? It should identify High, Medium, and Low risk potential sources of contamination identified within the project search buffer.

2. Were there project changes driven by contamination concerns?

3. Are there sites that require additional investigation (i.e. Level II assessment)?

The ***CSER***, or a ***Contamination Screening Technical Memorandum*** as well as documentation of subsequent evaluation, as appropriate, is uploaded to SWEPT. It is recommended that these documents be placed within the Contamination folder in SWEPT. A copy of the contamination map from the ***CSER*** is included in the Appendix.

20.2.2.6.3 Environmental Assessment and Environmental Impact Statement

The findings from the ***CSER*** or ***Contamination Screening Technical Memorandum*** are summarized in the Contamination section of an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). A summary table of impacts for each alternative should also be provided. High, Medium, and Low risk potential sources of contamination identified within the project search buffer are discussed. Coordination which occurred during the contamination impact assessment is summarized in the Contamination section. When there are potential contamination impacts to construction, the following statement should be provided:

> *The State of Florida has evaluated the proposed project corridor and has identified potentially contaminated sites for the project alternatives, including the preferred alternative. Appropriate Level II assessment activities will be performed to determine all impacts to the project and provide any requisite remediation options with the associated costs.*

Note that a determination of significance for contamination involvement is rare. Any potential significant involvement should be coordinated with OEM and OGC as early as practical during the development of the project.

For an EA with a Finding of No Significant Impact (FONSI), the availability of the ***CSER***/***Contamination Screening Technical Memorandum*** in the project file should be noted. If known or potentially contaminated sites may affect the preferred alternative, the Final Environmental Impact Statement (FEIS)/Record of Decision (ROD), FEIS, or EA with FONSI should briefly discuss these issues and remediation/mitigation measures to eliminate or minimize the impacts.

The ***CSER***, or ***Contamination Screening Technical Memorandum*** along with documentation of any subsequent evaluation, is uploaded to SWEPT. It is recommended that these documents be placed within the Contamination folder in SWEPT. A copy of the contamination map from the ***CSER*** is included in the Appendix.

20.2.2.6.4 State Environmental Impact Reports

SEIRs should summarize the results of the contamination screening evaluation in the Contamination section.

The summary should answer the following questions:

1. Are there known or potentially contaminated sites within or near the project area? It should identify High, Medium, and Low risk potential sources of contamination identified within the project search buffer.

2. Did the project avoid or minimize impact to any known or potentially contaminated sites?

3. Are there sites that require additional investigation (i.e., Level II assessment)?

A copy of the contamination map from the ***CSER*** is included in the Appendix. The ***CSER*** or ***Contamination Screening Technical Memorandum***, as appropriate, is saved in the SWEPT project file. It is recommended that these documents be placed within the Contamination folder in SWEPT.

20.2.2.7 Re-evaluations

Changes to contamination impacts after approval of the Environmental Document must be re-evaluated consistent with ***Part 1, Chapter 13, Re-evaluations***. Design changes to the approved PD&E concept should be evaluated for potential contamination concerns. The risk rating for all previously evaluated sites are confirmed or updated based on relevant factors. Any previous or anticipated activities to resolve contamination issues must be discussed in the ***Re-evaluation Form***. Re-evaluations must also include a review of the project area for new potential contamination sites. A Re-evaluation completed for construction advertisement should detail any plans to resolve previously identified contamination issues. Those resolutions may be limited to a general description of how the issues will be communicated to the Contractor, the typical methodologies to address the impacts, and whether the Level III contamination support will occur prior to or during construction.

Where ROW acquisition is anticipated, the DCIC should inform and coordinate further related activities with the PM, the assigned ROW agent and/or OGC as appropriate. Prior to ROW acquisition, Level II assessment must be performed to characterize the types, concentrations, and extent of contamination within the acquisition area unless this information is already available from regulatory agencies (see ***Section 20.2.3***).

20.2.3 Level II Assessment During the Design Phase

A Level II assessment, also referred to as an Impact to Construction Assessment (ICA) involves collection, analysis, and evaluation of soil and/or water samples to verify presence/absence of contamination attributed to Medium or High rated sites identified during the Level I contamination screening. A Level II is usually performed to assess the type and extent of potential contamination impacts to construction activities on the project or ROW acquisition. Results of a Level II assessment may be used to establish a basis for developing remediation goals or developing a ***MSP 120-1.3*** consistent with the project construction. A Level II assessment is normally performed only on projects identified for property acquisition or construction in FDOT's 5-year Work Program. The DCIC determines the Level II scope of work to be conducted by the District CAR contractor.

Level II assessment should be considered by the DCIC and design PM for all Medium or High rated potential contamination sites. The DCIC should determine needs for Level II assessment based on consultation with ROW representatives regarding proposed acquisition and/or the project's Engineer of Record (EOR)/design team regarding anticipated construction timing and activities proximal to identified Medim and High rated potential contamination sites.

The scope and timing of Level II assessment may depend on the type of construction contracting method for the project. Design Build (DB) and Public, Private Partnership (P3) projects often require an increased level of effort much earlier in the Design phase to identify potential impacts and ensure contamination issues are understood and considered in the DB and P3 processes. For these projects, FDOT can adjust the assessment requirements (e.g., performing multiple levels of investigation concurrently), based on additional project information and design plans that are made available for review during the process.

The assessment methodology should be consistent with ***FDEP Standard Operating Procedures (SOPs)*** provided in ***Chapter 62-160, F.A.C***. For guidance on assessment methods and cleanup target levels, refer to the FDEP's website, as well as ***Chapters 62-302, 62-780, and 62-777***, ***F.A.C.***

The Level II process typically involves advancing soil borings, installing temporary monitoring wells, and/or accessing existing groundwater monitoring wells to aid in determining the presence, type, and extent of contamination in suspect areas where construction is planned.

Level II investigation findings are presented in an ICA or similarly named report. The ICA identifies impacts to construction, develops Level III support recommendations, and estimates remediation costs. The ICA findings may provide measures to reduce or avoid construction contamination involvement. Although Level II assessment is typically performed during the Design phase, prior to ROW acquisition and construction, field testing may be performed during the PD&E phase for projects with advanced production or when it is required to substantiate the involvement of potentially contaminated sites on the preferred alternative.

Property Access Agreements*:* Notification to access properties that have not been acquired or that currently have tenants may be needed prior to conducting Level II assessment. The PM is responsible for sending a written notification to property owners or tenants. The notification requirements to enter the property of others to conduct a survey, drill a test well, and collect samples are contained in ***Section 337.274, F.S***. Any testing (if warranted and approved by the DCIC) should be conducted in accordance with existing ***FDEP SOPs***.

20.2.3.1 Right of Way Support

For parcels with building structures that might be purchased or demolished as part of the ROW acquisition, an evaluation should be performed which includes a review of building

interiors, if possible. This should include a survey for the potential for ACM and/or MBC (if not addressed by a separate District ROW contract), hazardous materials storage, staining, or other conditions that may indicate that potential/suspect contamination is or may be present. If contamination issues are identified on parcels to be acquired by FDOT, the DCIC should coordinate with the District ROW Office and provide contamination-related information to support the appraisal of the parcel.

A contamination screening desktop review should be conducted prior to ROW declaring parcels as “Surplus.”

20.2.3.2 Contamination Plan Markings and Special Provisions

If there are areas of contamination that cannot be avoided, the locations of known or presumed contamination impacts that will be encountered during construction must be marked on applicable design contract plans. Examples of contamination issues that can be shown on the design plans are limits of contaminated soil, debris (fill), storage tank system components, pump islands, monitoring wells, and groundwater contamination plumes.

Project notes (such as “General Notes Concerning Contamination”) that explain how the contractor will handle cleanup activities during construction are prohibited in the design plans. Instead, the PM and DCIC should rely on applicable implemented Standard Specifications and Special Provisions that explain how contamination remediation plans will be executed during construction. If the Standard Specifications or Special Provisions do not adequately address contamination management needs for the project, the DCIC should work with the project’s EOR to develop MSPs and TSPs, as appropriate, to ensure contaminated materials are handled and disposed of properly. Development of MSPs and TSPs requires coordination with the District and State Specifications Engineers as outlined in ***Specifications Package Preparation Procedure, Topic No, 630-010-005***.

20.2.4 Level III Remedial Action/Construction Support

Level III remediation activities can take place during the Design phase, when acquiring ROW (if advanced acquisition has been completed), prior to the start of construction (to avoid project delays). More often, Level III is performed during project construction. These activities require coordination for appropriate funding allocation prior to construction letting.

Each site with potential contamination impacts should have a clearly defined scope of work for remediation activities, which conforms to the requirements of the appropriate regulatory agency. The liability provisions in ***Section 337.27, F.S.***, should always be considered when identifying the need for regulatory involvement and the extent of remedial activities.

In certain cases, the Project Engineer, in coordination with the DCIC, may implement changes to the original design to avoid or limit construction activities within contaminated areas.

The Level III scope of work, established by ***MSP 120-1.3 Identified Areas of Contamination*** prepared by the project EOR with input be the DCIC. This includes links to reports for the Level II assessment with recommendations on the limits of contamination and recommended remediation or construction support activities. If soil or groundwater remediation is necessary, the procedures should follow the applicable standards of the appropriate regulatory agency. Petroleum related Level III activities should be coordinated with the FDEP consistent with the ***2014 MOU between FDEP and FDOT***, see ***Section 20.2.5.1***.

20.2.5 Additional Considerations

20.2.5.1 2014 MOU between FDEP and FDOT

In June 2014, FDEP and FDOT entered into an MOU (***2014 MOU between FDEP and FDOT***) to address discharges of petroleum pollutants in the FDOT transportation facilities. The MOU provides a process where FDEP can prioritize funding for assessment and remediation of petroleum pollutants from trust fund-eligible source sites to state highways). Additionally, the MOU provides the procedure for dealing with inactive sites that have contaminant plumes extending beneath the FDOT ROW where FDOT adds a map note on the roadway ROW map as an institutional control to provide notice of existing contamination.

Based on the MOU, FDEP may conduct cleanup or provide funding to a third-party contractor to assist with cleanup activities for petroleum contaminated sites. Projects covered under the ***2014 MOU between FDEP and FDOT*** should continue to be tracked throughout the project life cycle. If costs are incurred by FDOT, they may be recoverable under the ***2014 MOU between FDEP and FDOT***. FDOT should coordinate with FDEP prior to construction if seeking reimbursement.

20.2.5.2 CERCLA / Superfund Sites

When a ***CERCLA*** or abandoned Superfund site is located within the project limits, the OGC should be contacted if the contamination has the potential to be exacerbated by project activities. The DCIC should also coordinate with the EPA (and/or FDEP if they have been given delegation) for any remedial action decisions that are made for that site.

20.2.5.3 Asbestos Containing Materials and Metal Based Coating Surveys

It is FDOT's responsibility to protect the health and safety of its employees, contractors, consultants and the traveling public through inspections and proper handling, management and removal of ACM or MBC. Therefore, ACM and MBC surveys should be performed as early as possible in the Design phase, possibly as early as the PD&E phase, to allow for an evaluation of the impacts prior to the Construction phase. The asbestos and coatings surveys must be conducted according to the Asbestos Management Procedure in the ***Right of Way Procedures Manual, Topic No. 575-000-000***.

The DCIC should coordinate with the District Structures Engineer, District Bridge Engineer, District Maintenance Engineer, or District Facilities Engineer, as appropriate, when survey or abatement actions are required for facilities or structures that have or may have ACM, LBP, or MBC. The District Structures Engineer, District Bridge Engineer, District Maintenance Engineer, or District Facilities Engineer may have additional information acquired during surveys or previous maintenance activities regarding ACM and MBC on structures/bridges within the project.

The DCIC should make sure an ACM or MBC survey is performed on all bridges and other structures prior to renovation or demolition. Asbestos abatement should be performed prior to construction when feasible. If regulated ACM is not accessible until construction commences, the DCIC and CAR Contractor will coordinate with the Project Engineer and Roadway Contractor to develop an appropriate Level III construction support scope. When ACM has been identified, abatement plans and provisions for worker safety, handling, storage, shipping, and disposal of the hazardous material should be prepared.

The proper handling and disposal of MBC is the responsibility of the Roadway Contractor. If testing reveals the MBC waste is characterized as “hazardous, the Roadway Contractor will be required to provide the Project Engineer and DCIC with waste profiling and disposal documentation.

Paint may have been removed as part of previous bridge repainting or maintenance operations. In this case, testing for MBC will likely not show the presence of MBC even though MBC may still be present within faying surfaces of splices and top flanges embedded in concrete decks. Therefore, abatement plans must be prepared regardless of the outcome of the survey for all bridges constructed in 1980 or earlier.

If the project involves replacement, modification, or rehabilitation of the bridge constructed in 1980 or earlier, include the following standard statement in the document that reports the ACM and MBC survey data:

> *Based on the age of the bridge, lead-based coating should be assumed to be present within faying surfaces of splices and top flanges embedded in concrete decks as well as other surfaces. Abatement plans for handling, management and removal of asbestos-containing materials and lead-based coating must be prepared before demolition, modification or rehabilitation of the bridge.*

20.2.5.4 Dewatering During Construction

Construction activities may require dewatering. Dewatering operations discharging to surface water must obtain a NPDES Generic Permit for Discharge of Groundwater, ***Rule 62-621.300(2), F.A.C.*** Dewatering operations seeking coverage under the NPDES Generic Permit for Stormwater Discharges from Large and Small Construction Activities under ***Rule 62-621.300(4), F.A.C***, are not required to obtain separate coverage under ***Rule 62-621.300(2), F.A.C***.

Contamination issues must be screened within 500 feet of the dewatering area before permit application. Any pollutants of concern (i.e. contamination) present in the ground water at the dewatering site in concentrations equal to or exceeding the surface water criteria under ***Rule 62-302.530 F.A.C*** must be remediated otherwise dewatering operation will not qualify for permit under ***Rule 62-621.300(2), F.A.C.***

Dewatering operations in areas identified with contamination issues require treatment of effluent prior to discharge. The DCIC will direct the CAR Contractor to obtain the appropriate permit, treat the groundwater prior to discharge, test the dewatering effluent, and perform requisite permit monitoring and reporting. Discharges from petroleum contaminated sites must be permitted using ***Rule 62-621.300(1), F.A.C***. Discharge of treated effluent from non-petroleum sites are permitted under ***Rule 62-620.910***. The permit approval process for non-petroleum sites can take up to a year.

20.3 REFERENCES

Chapter 62-302, F.A.C., Surface Water Quality Standards

Chapter 62-520, F.A.C., Ground Water Classes, Standards, and Exemptions

Chapter 62-528, F.A.C., Underground Injection Control

Chapter 62-610, F.A.C., FDEP Standard Operating Procedures

Chapter 62-621, F.A.C., Generic Permits

Chapter 62-701, F.A.C., Solid Waste Management Facilities

Chapter 62-730, F.A.C., Hazardous Waste

Chapter 62-761, F.A.C., Contaminated Site Cleanup Criteria

Chapter 62-761, F.A.C., Underground Storage Tank Systems

Chapter 62-762, F.A.C., Aboveground Storage Tank Systems

Chapter 62-777, F.A.C., Contaminant Cleanup Target Levels

Chapter 62-780, F.A.C., Contaminated Site Cleanup Criteria

FDEP, Contamination Locator Map (CLM).
http://ca.dep.state.fl.us/mapdirect/?focus=contamlocator

FDEP, Generic Permit for Discharge of Ground Water from Dewatering Operations, Document Number 62-621.300(2)(a).
https://www.flrules.org/gateway/readRefFile.asp?refId=4262&filename=Generic%20Permit%2062-621.300(2)(a).pdf

FDEP OCULUS website, http://depedms.dep.state.fl.us/Oculus/servlet/login

FHWA, Interim Guidance – Hazardous Waste Sites Affecting Highway Project Development,1988. https://www.environment.fhwa.dot.gov/legislation/other_legislation/documents/guidance_1988_hazardous_waste.pdf

FHWA, Policy Revision to Support the Brownfields Economic Redevelopment Initiative, March 4, 1998. https://www.environment.fhwa.dot.gov/Legislation/other_legislation/documents/PolicyRevision_BrownfieldsEconomicRedevelopment.pdf

FHWA, Technical Advisory T6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents, October 30, 1987.

FDOT, Efficient Transportation Decision Making Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, FDOT Design Manual (FDM), Topic No. 625-000-002. https://www.fdot.gov/roadway/fdm/Default.shtm

FDOT, Right of Way Procedures Manual, Topic No. 575-000-000. http://www.fdot.gov/rightofway/ProceduresManual.shtm

FDOT, Standard Specifications for Road and Bridge Construction. http://www.fdot.gov/programmanagement/Specs.shtm

FDOT, Statewide Stormwater Management. June 1997. http://www.fdot.gov/maintenance/FDOTStormWaterMgmtPlan2012.pdf

FDOT, Work Program Instructions Part III- Chapter 11. https://www.fdot.gov/workprogram/Development/WP-instructions.shtm

Memorandum of Understanding between FDEP and FDOT, June 16, 2014. https://www.fdot.gov/docs/default-source/environment/pubs/June-2014-MOU.pdf

Section 334.27, F.S. Soil or Groundwater Contamination Liability

Sections 337.27 and 337.274, F.S. Exercise of Power and Entering Land

Sections 376.031 and 376.301, F.S. Definitions

Section 381.983, F.S. Definitions

Section 403.031, F.S. Definitions

Title 23 Code of Federal Regulations (CFR) Part 771, Environmental Impact and Related Procedures. http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr771_main_02.tpl

Title 40 CFR §§ 230-300, Ocean Dumping and Solid Wastes. http://www.ecfr.gov/cgi-bin/text-idx?SID=9e41e4fb951c2baf6b8d495cfacbf88f&mc=true&node=pt40.27.230&rgn=div5

Title 49 CFR §§ 171-172, Hazardous Materials Regulations. http://www.ecfr.gov/cgi-bin/text-idx?SID=d97de10c4a7811818a0e8c2ce2169a55&mc=true&tpl=/ecfrbrowse/Title49/49cfrv2_02.tpl#0

United States Code, Title 29, Parts 1910 and 1926, U.S. Department of Labor, Occupational Health and Safety Administration (OSHA)

20.4 FORMS

Technical Report Cover Sheet, Form No. 650-050-38a

Cover Page—See the Technical Report Cover Sheet, Form No. 650-050-38a

Executive Summary—Briefly summarize the report. This should generally be no more than two pages.

Table of Contents

1. **Introduction**—Briefly state the purpose of the report and provide details on the basics of the project. The following is an example introduction:

   "The purpose of this report is to present the findings of a contamination screening evaluation for <<Insert Project Title>>. This report identifies known or potential contamination sites attributed to property use in the project vicinity and rates risks to project construction"

2. **Project Description**—Briefly describe the proposed improvements and define the project limits and construction activities. The description should also state if the project is anticipated to acquire new ROW. Include a project location map showing the project footprint boundary.

3. **Project Alternatives** —Briefly describe each viable alternative that is analyzed in detail. Illustrate project alternatives using maps or other relevant figures.

4. **Methodology**—Summarize the methods used to identify and evaluate risk of potential contamination to the project. Reference the PD&E Manual, Part 2, Chapter 20, Contamination for direction and expectations for reporting. The following is a methodology discussion example:

   "A contamination screening evaluation of _____ Road was conducted in accordance with the Contamination chapter of the PD&E Manual to identify potential contamination issues within the proposed project limits attributed to current or past land uses at the vicinity of the project. This evaluation consisted of the following tasks":

   a. Desktop Review –

      a. Specify the resources utilized to collect regulatory documentation, land use information, and hydrologic data.

      b. List the appropriate screening buffers.

      c. Explain process of evaluating available documents, aerial photographs, maps, and other sources listed data for contamination concerns.

Figure 20–1 Contamination Screening Evaluation Report Outline

b. State that a field review / site reconnaissance was conducted along the project limits to gather information regarding the sites of concern and identify any new potential impacts.

c. Note if interviews were conducted.

d. Present any additional considerations that need to be reported.

e. Explain that a determination of the potential contamination risk rating (i.e., Low, Medium or High) has been assigned for each potential contaminated site or property within the proposed project limits.

5. **Land Uses**— Provide a detailed description of past and present land use, referencing resources used (topographic maps, aerial imagery, Sanborn maps, city directories, etc.). Compare historical with contemporary aerial photos and describe key land use changes within and adjacent to the project limits. Summarize findings from the land use evaluation. Present a figure with a map to support the discussion. Indicate any previous land uses that may have resulted in contamination impacts. Incorporate land uses of concern as sites or include these locations in the additional concerns discussion. The following is a land use discussion example:

   "_____ Street, development has been in strip form fronting on _____ Road. The depth of commercial development is very shallow with residential apartments and single-family homes immediately behind the commercial property. A 23-acre shopping mall is located at the intersection of _____ Street. The area is fully developed with no open spaces remaining."

   Details in this section include the identification of current and previous users of each property and the type of business conducted at suspect locations. This information should be available through county records (most are now online), city directories, Sanborn Insurance maps, plat maps and in the local public library. (To streamline report preparation, specific former and current land uses at each site can be included in the narratives in Section 9– Project Impacts.)

6. **Hydrologic Features**— Provide a brief summary of the project limits and surrounding area's hydrology, including pertinent geologic details, soil types, surficial aquifer depths, and groundwater flow. This should be no longer than one page in length, unless there is a specific reason to provide more extensive detail. Explain how these factors may affect contamination involvement on the project. For example, if the depth to groundwater is greater than typical transportation elements and construction is thus less likely to encounter impacts for this reason. If groundwater is very shallow relative to construction, it is important to note that dewatering will likely be required for subsurface construction efforts.

Figure 20–1 Contamination Screening Evaluation Report Outline (Page 2 of 7)

An example of a hydrologic features description would be:

"The project area is generally underlain by the _____ aquifer, which is characterized by high porosity sands and limestone which typically allows rapid infiltration of rain-fall and surface runoff. The groundwater surface generally follows the ground surface with a North to South gradient at a depth of _____ feet below ground surface. Flow rates are estimated to be _____ feet per day. There are no surface water features (lakes, canals) or wells within the immediate project area. The _____ is located _____ from the project area and is considered outside any possible zone of influence. Existing surface drainage is flat, relying primarily on infiltration for removal."

7. **Field Review / Site Reconnaissance** – Summarize the activities performed during the project area visit. Incorporate the information into the evaluation, as necessary. Detail any key observations or new concerns. Photographs of each potentially impacted site, along with any specific issues of concern, must be taken during the field review and site reconnaissance and presented in a log of captioned imagery. Captioned information should indicate the site location, potential impact, photographer position, and camera direction, as necessary.

8. **Interviews** (if applicable)—Summarize the outcome of interviews with site owners, operators, managers, regulatory agency staff, and others.

   The City/County engineer should be able to provide current or historical permit information. The local WMD personnel can provide information on water wells in the area, problems associated with water quality, and discharge requests that have been approved, disapproved, or are under consideration.

   Utility companies may be able to provide additional information concerning the services provided to the site, such as a sewer connection or septic system, how much electrical capacity is provided to the facility, (e.g., large electrical capacity could mean large equipment for manufacturing) or any documentation of prior polychlorinated biphenyl (PCB) use, if present. Utility companies may also have information on materials used to construct their utility lines (i.e., Transite asbestos-containing pipes).

   (To streamline report preparation, outcome of interviews can be included in the narratives in Section 9 – Project Impacts.)

Figure 20–1 Contamination Screening Evaluation Report Outline (Page 3 of 7)

9. **Project Impacts**—Based on the outcome of desktop review and field review: 1) Describe the potential contamination source(s); 2) Detail the pertinent activities taken by regulatory agencies (regulatory status); and 3) Provide a narrative of contamination involvement on each project alternative, for each site with known or potential contamination. The narrative can include a table with details of each site or property by alternative that would be impacted. This table should include, at a minimum, the following information:
    a. Property description - Including facility name, physical address, and former site names.
    b. Permit or ID numbers - Include FDEP program identification numbers or other permit numbers.
    c. Type of Contamination involvement - List each hazardous material or potential hazard.
    d. Contamination sources for each site with known or potential contamination involvement. For storage tanks, required information includes their placement (above or below ground), capacity, contents, and age. List the status (active, abandoned, removed, etc.) of tank systems and related componentry. Other features such as hydraulic lifts, soakage pits, and potential ACM/LBP structures, must also be detailed.
    e. Regulatory status of contaminated sites summarizing pertinent activities taken by regulatory agencies for each site or property and briefly outline the potential contamination involvements that would have an impact on the proposed project or alternative.
    f. Distance of known contamination plumes, tanks, or sources from ROW (existing and/or proposed).
    g. Identify the contamination risk rating for each site and alternative. Present the number of known or potentially contaminated sites with risk rating for each of the alternatives being considered.
    h. List any additional considerations related to existing bridges or bridge-culverts within the project limits. If such structures are present, the CSER should explain the potential need for hazardous material surveys on each to identify any ACM or MBC. Similar considerations should be given to projects involving bridge timbers, fender systems, or railroad ties that may have the potential to contain wood preservatives.
    i. Discuss any additional considerations regarding utilities with known contamination or asbestos concerns within or adjacent to the project corridor.

Figure 20–1 Contamination Screening Evaluation Report Outline (Page 4 of 7)

j. List any additional considerations related to sites that may be considered under the 2014 MOU between FDEP and FDOT for advanced cleanup prior to construction or reimbursement for remediation required during the project.

k. Identify and evaluate any railways, agricultural lands, or golf courses that exist within or adjacent to the project limits for potential contamination involvements.

l. Any other concerns not previously discussed as a site must be discussed.

Locate known and/or potentially contaminated sites on the alternative concept plans. Summarize the number of potentially contaminated sites and their respective risk ratings for each alternative in a matrix format.

10. **Conclusion** - Briefly summarize the contamination involvement risks for construction of each alternative (see Number of Potentially Impacted Sites per Alternative, below in Tables). Provide recommendations for any Level II ICA, or for ACM/MBC testing of structures. When ascertainable, this section should note if the contamination involvements identified relate to ROW acquisition as well as potential involvement with construction. Unusual or notable involvements, such as CERCLA sites should be noted. Pertinent agency or stakeholder comments, coordination or commitments should be summarized. If this report is intended to be shared with other agencies or stakeholders for additional coordination, it can be stated in this section.

This section should also include a statement regarding potential for dewatering during construction.

This section should also include a very brief discussion of estimated costs for assessment and remediation, if known.

Figures

a. Project Location Map: An area map (topographic, county, state, etc.) showing the general location of the proposed project, including project limits with a detailed map of the immediate project area.

b. Project Alternatives Map: Use a recent aerial photograph as the base map. Show all alternatives, contamination buffers, and identified site numbers with ratings denoted by color. Include correlation of site number to site name in legend.

Figure 20–1 Contamination Screening Evaluation Report Outline (Page 5 of 7)

c. Land Use Map: A map or maps of the proposed project corridor and surrounding area showing current or future land uses (i.e., commercial, multi and single-family residential, schools, malls, parks) if the map adds value to the evaluation.

d. Potential Contamination Map: Show all alternatives, contamination buffers, and identified site numbers with ratings denoted by color. Include correlation of site number to site name in legend.

e. Figures/Maps should denote the project footprint and be scaled appropriately to present useful information and discern features or structures, if warranted. Multiple maps and enlarged sub-maps may also be utilized, but must provide consistent information regarding the project's limits, site locations, etc.

Tables

a. Potentially Contaminated Sites Risk Rating Evaluation: This table should present information on each contaminated site or property that was evaluated as part of this report.

b. Number of Potentially Contaminated Sites per Alternative: This table should present the number of known or potentially contaminated sites or properties with risk rating for each viable alternative. An example of this table would be:

Project Alternative	Contamination Risk		
	Low	Medium	High
A	#	#	#
B	#	#	#
C	#	#	#

= number of contaminated sites per risk rating for each viable alternative

11. **Appendices** - The CSER must include appendices that provide additional information required to substantiate the site risk ratings. The appended documents will vary for each site depending on the availability of records and the pertinent information utilized in selecting each site's risk rating. Examples of applicable information that should be included to support the evaluations are as follows:

    a. Electronic regulatory database radius search documents

Figure 20–1 Contamination Screening Evaluation Report Outline (Page 6 of 7)

b. Excerpts from regulatory assessment documents including pertinent text, figures, and tables
c. Hazardous Waste Generator documentation and permits
d. Other Permit information
e. Tank registration data
f. Pertinent historical and current compliance inspection reports
g. Copies of historical aerial photographs with the project boundary overlayed and related concerns identified
h. Field reconnaissance notes or site review checklists and, Site photographs with descriptive captions

Figure 20–1 Contamination Screening Evaluation Report Outline (Page 7 of 7)

PART 2, CHAPTER 21

UTILITIES AND RAILROADS

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PART 2, CHAPTER 21

UTILITIES AND RAILROADS

21.1 OVERVIEW

This chapter provides guidance to the District Project Development and Environment (PD&E) Project Managers (PM), the District Utility Offices (DUO), and the District Railroad Coordinators (DRC) for identifying and documenting utility and railroad conflicts during the PD&E phase. A utility, as defined in the Florida Department of Transportation's (FDOT's) ***Utility Accommodation Manual (UAM)***, is all active, deactivated or out-of-service electric transmission lines, telephone lines, telegraph lines, other communication services lines, pole lines, ditches, sewers, water mains, heat mains, gas mains, pipelines, gasoline tanks, and pumps owned by the Utility Agency/Owner (UAO). The ***UAM*** is incorporated by reference into ***Rule 14-46.001, F.A.C***.

Conflicts with utilities as well as railroad crossings affect both the cost and schedule of a project, and may influence the selection of the preferred alternative. FDOT must consider the potential for encountering utilities and rail lines within the limits of every project, including associated pond sites and other off-site improvements. Coordination between the District, the Railroads, and the UAOs should begin early and continue throughout the project development process to plan for the cost and time required for utility conflict resolution and relocations as well as railroad crossings.

For projects that do not have a PD&E phase, coordination with UAOs will be done by the DUO and the District's Design PM in accordance with the ***FDOT Design Manual (FDM), Topic No. 625-000-002*** and the ***UAM/Rule 14-46.001 F.A.C.*** Coordination with the Railroads will be conducted by the DRC.

21.2 PROCEDURE

Coordination, cooperation, and communication to eliminate, minimize, or mitigate utility or railroad related issues should be practiced throughout the PD&E phase. The District, through the PM, the DRC and the DUO, must coordinate with UAOs and Railroads and provide project information as early as possible.

Identification of Utilities and Railroads in a project area should begin prior to the PD&E phase during planning or corridor development. Calling Sunshine 811 along with site visits can help identify existing utilities within and adjacent to the project corridor. This information can be used to avoid major utility or railroad conflicts in choosing corridors or alternatives to carry forward to the PD&E phase. Existing utilities information will also be used in preparing the PD&E Scope of Services. Railroads do not fall under Sunshine 811, however early information on railroads can be obtained through coordination with the DRC.

During alternatives development, the DUO and PM should hold informational meetings with UAOs to discuss the PD&E Study as it relates to their existing and any proposed facilities. The goal of this early coordination is to assist with the development of concept plans that avoid conflicts with major utility facilities in the next phase of project development. All stakeholders will benefit from early coordination that identifies opportunities to reduce utility impacts, as well as impacts to the project schedule and cost. Similarly, early coordination with the DRC and Railroads impacted by PD&E projects is required to accommodate design changes and minimize delays. For projects that are with Design phase in the Five-Year Work Program or projects with combined PD&E and Design, utility locations will be shown on the preliminary engineering plans found in the ***Preliminary Engineering Report (PER)***.

UAOs and Railroads are project stakeholders and should be invited to public meetings and hearings, where they can receive direct feedback on potential issues. Attendance of UAOs and Railroads at public meetings also helps them to identify and resolve issues related to their facilities early in the process when adjustments to the project are more easily facilitated.

21.2.1 PD&E Project Scoping

The PM needs to coordinate with the DUO in preparing the Scope of Services for the PD&E Study. Information needed to prepare the scope includes: (a) the anticipated number of UAOs that may be within the PD&E Study limits, (b) the anticipated complexity of coordination with each UAO during the PD&E Study, and (c) the need to provide utility locations on the preliminary engineering plans. The UAOs in the project area may be identified using Sunshine 811 supplemented by site visits. When preparing the Scope of Services, requirements for UAO coordination and documentation in the ***Utility Assessment Package*** will be determined. The ***Utility Assessment Package*** (see ***Section 21.2.2.3***) is prepared either in-house by the DUO or by the PD&E Consultant during the PD&E phase. The DUO must review the Consultant's prepared ***Utility Assessment Package***.

While it is important to know the location of all utility facilities within the PD&E Study limits, the PD&E team should focus their efforts on utility facilities that could: (a) impact development of the preferred alternative, (b) entail lengthy or drawn out coordination efforts, (c) may be cost prohibitive to relocate, or (d) rise beyond the level of ordinary utility coordination. These utility facilities may include substations and electrical transmission lines for power companies, large "hubs" for telecommunication lines, large gas or oil transmission mains, military communication lines, and other underground lines. Some UAOs have special agreements with FDOT [e.g., the Florida Gas Transmission (FGT) Global Agreement], some utility facilities are fragile (e.g., large clay pipes and pipes that have been underground for decades). Therefore, the level of engineering detail required for the PD&E Study should be discussed in depth with the DUO during PD&E scoping. Projects with substantial utility concerns or accelerated schedules may require detailed locations of utilities. Therefore, the DUO will request the PD&E Study to include

Quality Level “B” Survey (Designates) and/or Subsurface Utility Engineering (SUE) services for these projects.

PD&E projects with advanced preliminary design or where the Design phase is concurrent with the PD&E phase will require a higher level of coordination with UAOs than projects that do not overlap phases. See ***Part 1, Chapter 4, Project Development Process*** for details. For these projects, the preliminary engineering plans will include the utility locations.

21.2.2 Utility Procedure

The process to address utilities during the PD&E phase consists of three stages: ***PD&E Request Package***; UAO Coordination; and ***Utility Assessment Package***. Each stage is discussed in the following sections.

21.2.2.1 PD&E Request Package

The PD&E PM is responsible for developing and submitting a ***PD&E Request Package*** to the DUO soon after the project alternatives are developed. The ***PD&E Request Package*** should consist of the project typical section(s) and concept plans for each alternative under evaluation. The typical section data should include, as appropriate, roadway and shoulder width, median width, sidewalks, border widths, and Right of Way (ROW) lines.

The concept plans should overlay viable project alternatives on an aerial photograph. At a minimum, the concept plans must contain the following information:

1. Travel lanes, shoulders, curb and gutter, swales, sidewalk/multi-use paths, barrier walls, and noise walls, if applicable;
2. Bridges;
3. Existing or proposed drainage structures;
4. ROW lines and width;
5. Access control lines;
6. Horizontal alignment stationing; and
7. Special landscaping or mitigation areas, if known.

21.2.2.2 Utility Coordination

Once the ***PD&E Request Package*** has been developed and submitted to the DUO, the DUO will notify the UAOs within the project area by forwarding them the ***PD&E Request***

Package. This transmittal should request that the UAOs provide information for above ground and below ground utilities within the PD&E project area, and request information for both existing and planned utility facilities. The transmittal should also request that the UAOs provide information pertaining to any existing easements or other property interests that may be affected by the project. The UAOs contacted by the DUO should review the concept plans and typical section(s) to identify all major facilities, buildings, and other obstructions or encroachments of UAOs within or adjacent to the project. Each UAO should identify both existing and planned utility corridors and installations in, or adjacent to, each project alternative. Generally, the UAOs should respond in writing and delineate their facilities and any property interests on the concept plans, in accordance with the ***UAM/ Rule 14-46.001 F.A.C.***

A meeting to discuss utility impacts related to the project alternatives should be held with each UAO approximately 30 days after sending the ***PD&E Request Package***. In the meeting, the UAO, DUO, and PM should discuss alternatives that may minimize or avoid conflicts, evaluate and consider recommended mitigation/avoidance strategies, discuss timelines for new installations or relocations that are anticipated to be unavoidable, as well as possible potential amounts of relocation costs, and schedule impacts for those relocations. If a UAO's easements or property interests could be affected, the DUO will need to discuss potential conflicts and encroachments, as well as potential subordination of those interests to FDOT's ROW interest. However, no determinations should be made at this stage as to any compensation for a UAO's easement or property interest. The DUO shall take any inquires or requests for compensation to the District Office of General Counsel (OGC) for guidance. The possibility of a UAO entering into a Utility Work Agreement, should also be discussed with the District OGC.

The DUO may have additional meetings with any individual UAO that have the potential for major conflicts with the project to better understand those conflicts and discuss their resolutions.

If applicable, the PM and the DUO in conjunction with the District ROW Office, should consider the feasibility of joint ROW acquisition to minimize any utility ROW replacement costs. This should be discussed in the Utilities and Railroads section and in the Relocation Potential section of the Environmental Document. In addition, if FGT is anticipated to require ROW per the ***August 21, 2013 Florida Gas Transmission Agreement and Global Settlement***, this should be discussed with the District OGC and documented in the Environmental Document.

A listing of agreements made between FDOT and UAOs, including the ***August 21, 2013 Florida Gas Transmission Agreement and Global Settlement***, can be found on the FDOT Utility Office website on the ***Utility Agreements, Resolutions and Certificate of Incumbency*** Table.

21.2.2.3 Utility Assessment Package

The information provided by the UAOs through coordination is used in preparing the ***Utility Assessment Package***. A ***Utility Assessment Package*** should be generated for each proposed alternative and include the following information:

1. Names of all identified UAOs;

2. One set of aerials denoting the location of major existing and planned utility facilities. Aerials should be developed in such a way that information regarding the major utility facilities is easily discernable. For example, to facilitate an understanding of the total impacts to the affected utilities, aerials should show multiple UAO facilities instead of each UAO being depicted on separate sets of aerials;

3. A description of all existing and planned utilities;

4. A discussion of mitigation/avoidance recommendations to reduce utility conflicts;

5. A cost estimate and anticipated time frames for relocation of major facilities where conflicts are anticipated to be unavoidable (including ROW costs);

6. A discussion of joint ROW acquisition;

7. A discussion of ROW needs for FGT, if applicable;

8. A discussion of which UAOs are likely to enter a ***Utility Work by Highway Contractor Agreement (UWHCA),*** including whether existing facilities are affected by the project or are proposed installations. Include cost and schedule impacts;

9. A description of existing or proposed encroachments onto any UAO easement or property interest as well as any subordinations; and

10. Information concerning the UAO disposition if it is determined that a UAO will not be affected by the project.

Any discussion in the ***Utility Assessment Package*** regarding conversations with the UAO concerning compensation or legal determinations should be reviewed and approved by the District OGC before being included.

The ***Utility Assessment Package*** shall be provided to the PM for consideration in comparing alternatives and selecting a preferred alternative. The Environmental Document will include a summary of this package (see ***Section 21.3***).

Should there be an opportunity for FDOT to enter into a formal agreement with a UAO during the PD&E phase, the DUO must inform the PM. Together, the DUO and the PM will coordinate with the District OGC as appropriate to negotiate and execute the agreement with the UAO. Agreements reached during the PD&E phase will be included in the ***Utility Assessment Package*** and documented in the project files. These agreements could include ROW acquisition, utility easements, or preliminary engineering.

21.2.3 Railroad Procedure

For projects that include a railroad crossing or work on or near a railroad corridor, it is the responsibility of the PM to initiate coordination with the DRC, who will provide information concerning present and future use of the rail line, and existing or proposed protection devices at the crossing. In addition, the DRC can provide information about rail crossings such as: crossing status (active or inactive), train speed, condition of the crossing, crash incidents, number of tracks, crossing purpose, railroad schedules, and the owner of the railway. If a project requires adding a new railroad crossing (at- grade or grade separated) additional coordination with the DRC as well as public involvement specific to railroad crossing may be required.

Coordination with Railroads and local governments is required for any project that requires construction or reconstruction of a highway-rail grade crossing, in accordance with ***Section 337.11, Florida Statutes (F.S.)***, see also ***Chapter 14-57, F.A.C.*** The DRC is responsible for this coordination. For projects that require closing or constructing a new grade crossing, ***Railroad Grade Crossing Application, Form No. 725-090-66a*** or ***Railroad Grade Crossing Application, Form No. 725-090-66b*** must be completed. Some of the information required for this form includes:

1. A safety analysis of the grade crossing,
2. Discussion of land use and traffic generators served by the crossing,
3. Existing and projected traffic,
4. Effect on rail operations, and
5. Effect on emergency vehicles access.

See ***Railroad Grade Crossing Application, Form No. 725-090-66a*** or ***Railroad Grade Crossing Application, Form No. 725-090-66b*** for complete instructions.

For design requirements, including vertical and horizontal clearances, for grade separated crossings and at grade crossings refer to ***Part 2, Section 220 Railroad Crossing*** of the ***FDOT Design Manual, Topic No. 625-000-002*** and ***Chapter 14-57, F.A.C.*** The PM should also coordinate with the DRC to determine if there are any special requirements.

The PM and the DRC need to work closely together to maintain the project schedule. The level of coordination will vary depending on the level of engineering detail required for the PD&E phase. For standard PD&E projects followed by a traditional design-bid-build, it is important to begin coordination with the railroad to ensure both FDOT and the railroad company understand the impacts of each alternative when choosing the preferred alternative. If the railroad is listed or is eligible for listing on the National Register for Historic Places (NRHP), additional coordination with District Environmental Office as well as the State Historic Preservation Officer (SHPO) may be required. Refer to ***Part 2, Chapter 8, Archeological and Historical Resources*** for more guidance.

The PM, DRC, and railroad company should also work together to establish and anticipate any coordination efforts that may be needed as the project advances. For a project with advanced preliminary design or Design phase concurrent with the PD&E phase, or a project with the PD&E phase followed by an alternative contracting method such as design-build contract (see ***Part 1 Chapter 4, Project Development Process***), coordination may require additional details such as deciding who will fund the at grade improvements, scheduling the work, and determining if the railroad company will perform construction. The DRC is responsible for this coordination.

Documentation of the coordination with the railroads must be included in the project file. The Environmental Document and ***PER*** (see ***Part 2 Chapter 3, Engineering Analysis***) should discuss this coordination and involvement with any rail facilities to the appropriate level of detail required to address any issues identified.

For any work, including survey, within the railroad ROW a flagger must be present. Work with the DRC if access to the railroad ROW is needed.

For rail safety projects that are Type 1 Categorical Exclusions (CEs) use the ***Type 1 Categorical Exclusion Checklist*** per the guidance in ***Part 1, Chapter 5, Categorial Exclusion***. The DRC must coordinate with the District Environmental Office.

21.3 ENVIRONMENTAL DOCUMENT

The utilities and railroads impact evaluation and coordination is be summarized in the appropriate sections of the Environmental Document. The contact names and numbers and/or the estimated costs are not to be included in this summary. The ***Utilities Assessment Package***, documentation of railroad coordination, and other relevant information that support the impact evaluation are uploaded to the StateWide Environmental Project Tracker (SWEPT) project file. It is recommended that these documents be placed within the Utilities and Railroads folder in SWEPT.

Commitments are documented in the Commitments section of the Environmental Document and documented and tracked in accordance with ***Procedure No. 650-000-003, Project Commitment Tracking*** and ***Part 2, Chapter 22, Commitments***.

21.3.1 Type 2 Categorical Exclusions

For Type 2 Categorical Exclusions (CEs), the results of the utilities and railroad impact evaluation and coordination is briefly summarized, including the names of the UAO and railroads, in the Utilities and Railroads section of the ***Type 2 Categorical Exclusion Determination Form*** in SWEPT. Any railroad coordination and/or ***Utilities Assessment Package*** is added as Technical Materials.

21.3.2 Environmental Assessments and Environmental Impact Statements

For Environmental Assessments (EAs) and Environmental Impact Statements (EISs), the results of the utilities and railroad impact evaluation and coordination is briefly summarized, including the names of the UAO and railroads, in the Utilities and Railroads section of the EA or the EIS.

21.3.3 FDOT State Projects

For State Environmental Impact Reports (SEIRs), the results of the utilities and railroad impact evaluation and coordination is briefly summarized, including the names of the UAO and railroads, in the Utilities and Railroads section of the SEIR form in SWEPT. Any railroad coordination and/or ***Utilities Assessment Package*** is added as Technical Materials.

21.4 RE-EVALUATION OF UTILITY AND RAIL IMPACTS

Project Re-evaluation should document changes to utilities and railroads in accordance with ***Part 1, Chapter 13, Re-evaluations***. The DUO and the DRC must be coordinated with during the Re-evaluation process.

21.5 REFERENCES

Chapter 335, F.S., State Highway System. http://www.leg.state.fl.us/Statutes/

Chapter 337, F.S., Contracting; Acquisition, Disposal, and Use of Property. http://www.leg.state.fl.us/Statutes/

FDOT, Construction Project Administration Manual, Topic No. 700-000- 000. https://www.fdot.gov/construction/manuals/cpam/cpammanual.shtm

FDOT, FDOT Design Manual, Topic No. 625-000-002. http://www.fdot.gov/roadway/fdm/

FDOT, Standard Specifications for Road and Bridge Construction, Florida Department of Transportation. https://www.fdot.gov/programmanagement/Specs.shtm

FDOT, Utility Accommodation Manual.
https://www.fdot.gov/programmanagement/utilities/default.shtm

FDOT, Utility Agreements, Resolutions and Certificate of Incumbency.
https://www.fdot.gov/programmanagement/utilities/97LaterUA.shtm

Rule 14-46.001 F.A.C., Utilities Installation or Adjustment.
https://www.flrules.org/gateway/ruleNo.asp?id=14-46.001

Rule 14-57, F.A.C., Railroad Safety and Clearance Standards, and Public Railroad-Highway Grade Crossings Rule.
https://www.flrules.org/gateway/ChapterHome.asp?Chapter=14-57

Title 23 CFR § 645(a), Utility Relocations Adjustments and Reimbursement.
http://www.ecfr.gov/cgi-bin/text-idx?SID=62260a79a5de349c9956cf878c41325f&mc=true&tpl=/ecfrbrowse/Title23/23cfr645_main_02.tpl

Title 23 CFR § 645(b), Accommodation of Utilities. http://www.ecfr.gov/cgi-bin/text-idx?SID=62260a79a5de349c9956cf878c41325f&mc=true&tpl=/ecfrbrowse/Title23/23cfr645_main_02.tpl

Title 23 CFR § 646(b), Railroad-Highway Projects. https://www.ecfr.gov/cgi-bin/text-idx?SID=662c928e6d84c4a93d53ec5f220fcd8c&mc=true&node=pt23.1.646&rgn=div5

Title 23 CFR Part 771, Environmental Impact and Related Procedures.
http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=3f0e8ae65ee76fc13c0bc7a240e9fc59&mc=true&r=PART&n=pt23.1.771

21.6 FORMS

Railroad Grade Crossing Application, Form No. 725-090-66a

Railroad Grade Crossing Application, Form No. 725-090-66b

FDOT forms are found in the FDOT Procedural Document Library

PART 2, CHAPTER 22

COMMITMENTS

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PART 2, CHAPTER 22

COMMITMENTS

22.1 OVERVIEW

Commitments are an important component of a transportation project as they provide assurance to resource agencies and other stakeholders that identified concerns will be addressed in future phases of project delivery. The primary purpose of this chapter is to provide guidance to the 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 ensure the appropriate documentation and tracking of commitments through all phases of project delivery. 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 are documented as described in ***Section 22.2***. This chapter also provides guidance on documenting commitments for projects that do not require a PD&E Study [e.g., Type 1 Categorical Exclusion (CE), Non-Major State Action (NMSA)].

FDOT requires that commitments be tracked through each phase of project delivery consistent with ***Procedure No. 650-000-003, FDOT Commitment Tracking*** and that commitments be reviewed and their status documented in subsequent Re-evaluations. This procedure provides guidance on tracking and documenting project commitments throughout PD&E, 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)***. See ***Section 22.2.3.1*** for guidance on how to document and track commitments.

Commitments are also applicable to Local Agency Program (LAP) projects through which Local Agencies plan, develop, design, acquire ROW, and construct transportation facilities. When FDOT contracts with any Local Agency for reimbursement using federal funds administered by the Federal Highway Administration (FHWA), FDOT must ensure Local Agencies track and fulfill commitments.

22.1.1 Project Commitments

A 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 topics/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, Design Office, Construction Office, District Environmental Permits 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 that are the result of agency consultation and are not regulatory requirements.

Project managers should be mindful of whether statewide precedence is being created when making new or unique commitments, as well as of making any long-term obligations, 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 Office of Environmental Management (OEM) prior to making the commitment.

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 before agreeing on the commitment. 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. These 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. See FDOT's ***Standard Environmental Commitments Guidance*** for examples of commonly made commitments.

22.1.1.1 Local Agency Program Commitments

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. FDOT should review the commitments to ensure that the commitments are incorporated into the contract documents. See ***Local Programs Manual, Topic No. 525-010-300*** for more information on LAP projects.

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 as conditions 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, when required, and included in the project file, as appropriate. 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 condition 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 Design Project Manager (see ***Section 22.2.3.1***). The ***PCR*** is generated using the 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 Federal Projects*** and 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. It is recommended that the ***PCR*** be uploaded to the project file in the StateWide Environmental Project Tracker (SWEPT) within 30 days after the approval of the Environmental Document.

22.2.1 Projects Not Qualifying for Screening

For transportation projects not qualifying for EST screening, commitments result from 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)** - A ***Type 1 Categorical Exclusion Checklist*** is prepared according to ***Part 1, Chapter 5, Categorical Exclusion*** indicating that there are project commitments in the Project Commitment Record section of the checklist. It should include any commitments that were required through the use of programmatic approaches or species effect determination keys. The ***PCR*** (if available) is uploaded to the checklist before

submittal **and/or** uploaded to the project file within 30 days (recommended) after the checklist has been approved. Once uploaded it is included as an Attachment.

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, and generate a ***PCR*** as detailed in ***Section 22.1.2***. The ***PCR*** (if available) is uploaded to the checklist before submittal **and/or** uploaded to the project file within 30 days (recommended) after the checklist has been approved. Once uploaded it is included as an Attachment.

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*** 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***. These screening events initiate 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 the PD&E phase, FDOT should review the ***Programming Screen Summary Report*** to consider ETAT member comments and recommendations. The Project Manager is responsible for collecting and maintaining correspondence with agencies/organizations (e.g., letters, emails), and 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 to discuss 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 Environmental Permits Coordinator, ROW Office, or Maintenance Office to ensure the feasibility/viability of the commitment, before agreeing 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 Type 2 CE, Environmental Assessment (EA), Environmental Impact Statement (EIS), 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 or as a result of public involvement activities. Commitments may also be identified 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 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***.

The ***PCR*** is not included in the Environmental Document but must be uploaded to the project file. For a Type 2 CE, the ***Environmental Document Submittal Form*** will automatically select 'Yes' for commitments when commitments are added to the Type 2 CE form. It is recommended that the ***PCR*** be uploaded to the project file within 30 days after the approval of the ***Type 2 Categorical Exclusion Determination Form***.

For an EA or EIS, it is indicated that the project has commitments at the bottom of the ***Environmental Document Submittal Form***. It is recommended that the ***PCR*** is uploaded to the project file within 30 days after the approval of the Environmental Document.

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 progress of the commitments within the "Commitment Status" section of the ***PCR***. Commitments can be made after an Environmental Document has been approved. These new commitments typically arise from subsequent agency negotiations or public involvement activities. They should be discussed in the appropriate resource

section of the ***Re-evaluation Form*** 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 District Environmental Permits 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 District Environmental Permits Coordinator to ensure commitments related to permit conditions (e.g., species protection measures) are addressed.

The Design Project Manager is responsible for updating the status of commitments during the 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 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 identified 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 identified 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 they are included in the project's contract documents to be implemented during construction, as appropriate. 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 project commitments are 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. https://www.fdot.gov/construction/manuals/cpam/cpammanual.shtm

FDOT, Efficient Transportation Decision Making Manual, Topic No. 650-000-002. https://www.fdot.gov/environment/oem-divisions/qa-qc/etdm-manual

FDOT, Local Programs Manual, Topic No. 525-010-300. https://www.fdot.gov/programmanagement/LAP/LAP-TOC.shtm

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

FDOT, Standard Environmental Commitments Guidance.
https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pde---general/commitment-guidance.pdf?sfvrsn=8df1b700_1

FDOT, Standard Specifications for Road and Bridge Construction.
https://www.fdot.gov/programmanagement/implemented/specbooks/default.shtm

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

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 the Florida Department of Transportation's (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 follows 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 follows the procedure outlined in this chapter under ***Section 23.4***.

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. 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.

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. These other laws/regulations are further discussed in ***Section 23.4***.

The District is expected to keep the Office of Environmental Management (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 is 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 *(**Section 23.3**)*.

23.2.2 Coordination

23.2.2.1 Coordination Between FDOT and the Land Management Agency

If it is determined early in the development and environmental review (***Section 23.2.1***) 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. If additional written coordination is required following initial communication with the Land Management Agency, 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 anticipated impacts 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. Upon receipt of a letter from the appropriate Land Management Agency, the District begins preparing the ***Upland Easement Application*** in coordination with the BPLA according to ***Section 23.2.3***.

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 informs 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 coordinates with the Land Management Agency and begins early preparation of a Memorandum of Agreement (MOA) if necessary. The MOA formalizes FDOT's mitigation commitments for the proposed impact, and/or the necessary funds (or land donation) that provide mitigation.

23.2.3 Application Process and ARC Review

Once coordination with all appropriate agencies has been conducted, and a letter of "no objection" received from the Land Management Agency, the District prepares an ***Upland Easement Application*** (***Section 23.2.3.1***) and includes supplemental information (***Section 23.2.3.2***). 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)*** (***Section 23.2.3.3***). The BPLA then assembles these documents into an ***ARC Agenda Item Package*** for ARC review at a regularly scheduled ARC meeting. Document specific details are provided in ***Sections 23.2.3.1 - 23.2.3.3***, followed by the process for submission and review of the ***ARC Agenda Item Package*** in ***Section 23.2.3.4***.

23.2.3.1 Upland Easement Application

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. Under ***Rule 18-2.109(4), F.A.C.***, agencies do not have to pay a non-refundable application fee.

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

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.

    f. A summary of coordination with the Land Management Agency having jurisdiction over the subject property.

    g. A description regarding net positive benefit recommendations made by the Land Management Agency.

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.

e. Correspondence with the Land Management Agency regarding the net benefit recommendations.

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***.

23.2.3.2 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.

23.2.3.3 State Lands Impact Report

The ***SLIR*** is a detailed report which is prepared by the District utilizing similar information gathered from information prepared during the PD&E phase. The report further addresses the ***Supplemental Information to the Upland Easement Application*** described in ***Section 23.2.3.2***. Coordination with the Land Management Agency having jurisdiction over the subject property is summarized in the ***Upland Easement Application*** narrative, but when extensive information is needed, it may be provided in a ***SLIR***. 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.

23.2.3.4 Scheduling ARC Meeting Agenda Item

Once the BPLA provides the ARC Agenda Item Package to the ARC Staff Director, then the item is 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 District 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.

23.2.3.5 ARC Review of ARC Agenda Item Package

The ARC meetings are public meetings. The District informs 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 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 are helpful in explaining the proposed impact to such lands.

23.2.3.6 ARC Determination and Development of the MOA

After review of the ARC Agenda Item Package, the ARC makes 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 are administered to project mitigation for the impacts to state-owned conservation lands.

23.2.3.7 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 by all agencies pertinent to the MOA.

In addition, BPLA prepares 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.

23.2.4 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.

23.2.4.1 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*** must be negotiated with the FDEP DSL based on the type of activity.

23.2.4.2 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 must be countersigned by the applicant. Appraisals are not required for ***Letters of Authorization***. Consideration for this type of authorization must be negotiated based on the type of activity.

23.2.4.3 Procedures to Obtain

To obtain a ***Use Agreement*** or ***Letter of Authorization***, the District prepares an FDEP ***Supplemental Questionnaire for Land Use Application, FDEP Form DRP-081***, and includes 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

A summary of the state-land impacts and ARC coordination is documented in the applicable Environmental Document. Ideally, project plans should be at or beyond 60 percent completion, and detailed impacts to state-owned conservation lands firmly established, before completing ARC coordination. Given the need for more advanced

state of project plans, ARC coordination is typically not complete when the Environmental Document is ready for approval. In these instances, the “result” or “final decisions” of the ARC coordination summarized in the Environmental Document is that additional coordination is needed or that coordination will continue during a later phase of the project. Late-stage project design alterations which affect the degree of involvement with state-lands may necessitate additional ARC coordination. The documentation required for each type of Environmental Document is outlined below:

Type 1 Categorical Exclusion (Type 1 CE) - The ***Type 1 Categorical Exclusion Checklist*** (***Part 1, Chapter 5, Categorical Exclusion***) should identify if there are state-owned conservation lands being acquired in the project area that are subject to review and approval by the ARC. It should include a summary of impacts and coordination (as appropriate) under the Right of Way 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 StateWide Environmental Project Tracker (SWEPT) project file.

Non-Major State Action (NMSA) - The ***Non-Major State Action Checklist*** should identify if there are state-owned conservation lands being acquired in the project area that are subject to review and approval by the ARC. It should include a summary of impacts and coordination (as appropriate) and include any correspondence in the project file. Final decisions by the Council and MOA if applicable, should be referenced and included in the SWEPT 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, it should describe the state-owned conservation land subject to review by ARC in the comment box and summarize the impact to state-owned conservation land and outcome of coordination. Correspondence should be included 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 to the Type 2 CE and saved to the SWEPT project file. If ARC coordination is not finalized and/or the MOA is not yet signed, the status of the coordination thus far is provided and specifics of when coordination will continue or be completed are included.

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 SWEPT project file. If final decisions by the ARC and MOA are made prior to LDCA, they should be included in the Appendix. If ARC decisions are not finalized and/or the MOA is not yet signed, the status of the coordination thus far is provided and specifics of when coordination will continue or be completed are included.

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 approval of the SEIR, they should be attached.

State-owned conservation land commitments, including commitments in the MOA, are documented in the Environmental Document. See ***Part 2, Chapter 22, Commitments*** for more detail. 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 ***Manual***, it should be noted that other, similarly-related federal laws may need to be considered, as applicable, concurrent with ARC coordination.

Because of ***National Environmental Policy Act (NEPA)*** Assignment, FDOT has assumed Federal Highway Administration (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 Official with Jurisdiction (OWJ). FHWA consultation is necessary for a determination that an action constitutes constructive use. 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. https://www.flrules.org/gateway/ChapterHome.asp?Chapter=18-2

Chapter 253, F.S., State Lands. https://www.flsenate.gov/Laws/Statutes/2018/Chapter253

Chapter 259, F.S., Land Acquisitions for Conservation or Recreation. https://www.flsenate.gov/Laws/Statutes/2018/Chapter259

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/

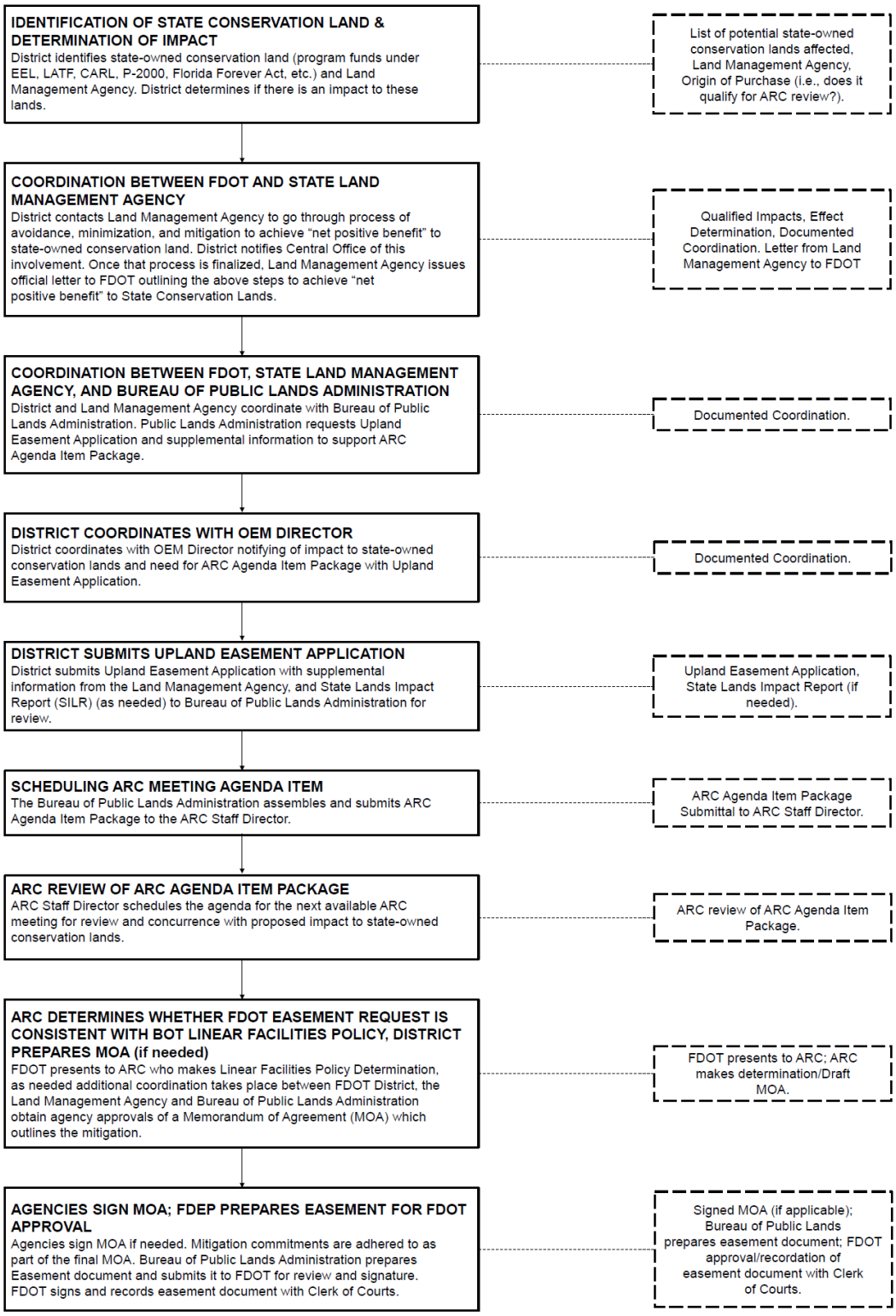

Figure 23-1 FDOT Coordination Process: Acquisition and Restoration Council

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@floridadep.gov

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