CHAPTER 11 - COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

11.1 OVERVIEW

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

Whereas, all federally funded projects must comply with NEPA, projects converted to federal funds from other fund sources must be evaluated for Federal-Aid funding eligibility and NEPA compliance. Additionally, the need for federal environmental permits will require evaluation and consultation activities that meet requirements under the federal regulatory agency’s NEPA process. The Department’s Project Development and Environment (PD&E) Process meets these requirements. The Local Agency must be well versed with the Department’s PD&E Manual (Topic No. 650-000-001) and specifically, Part 1, Chapter 2, which determines the level of documentation required under NEPA and Part 2, Chapter 22 Commitments, to understand how commitments are made and tracked. The preparation of NEPA documents is described in detail in Part 1 of the PD&E Manual.

The Department maintains a comprehensive PD&E Manual detailing the steps involved for NEPA compliance, therefore, the purpose of this Chapter is to provide basic information on the processes that may be required on a LAP project and when a Local Agency should seek additional information from the PD&E Manual. Many LAP projects are determined by the FDOT to be a Type 1 Categorical Exclusion (in accordance with the Part 1, Chapter 2 of the PD&E Manual), but this Chapter identifies requirements for all project Class of Action (COA) determinations.
11.2 EFFICIENT TRANSPORTATION DECISION MAKING

As part of the planning and programming of Federal-Aid projects, qualifying projects complete an environmental screening and interagency review as part of the Department’s Efficient Transportation Decision Making (ETDM) process (see the ETDM Manual Topic No. 650-000-002). ETDM provides information used to aid in developing and focusing the project scope for the NEPA document. The decision of whether a project is screened in ETDM is based on a qualifying project type (ETDM Manual Chapter 2, Section 2.3.1), and the conditions illustrated in the ETDM Programming Screen Matrix contained in Table 2.2 of the ETDM Manual Chapter 2, Section 2.3.1. The screening of qualifying projects provides sufficient information to support agreement on a COA determination by the District and OEM.

The District, in consultation with OEM, is responsible for determining a project’s COA. Ultimately, the COA is approved by OEM. A Local Agency cannot make the COA determination. The District ETDM Coordinator must enter the proposed COA into the Environmental Screening Tool (EST) for OEM approval. The District administers the screening event on behalf of the Local Agency and completes the ETDM process for qualifying projects.

Planning activities that may take place before the NEPA process (e.g., ETDM process and Alternative Corridor Evaluation process) can be used to narrow the NEPA scope. The Department has these procedures established in the ETDM and PD&E Manuals that link planning and the NEPA process. If the Local Agency intends to perform planning activities and intends to seek adoption into the NEPA process, then it should coordinate with the Department as early as possible. Local Agency Program projects should follow the processes and documentation methods outlined in Part 1 Chapter 4, Section 4.2.2 of the PD&E Manual to the extent practicable.

11.3 PROJECT DEVELOPMENT AND ENVIRONMENT

The NEPA process requires an assessment of the environmental effects of federal actions. The environmental review process ensures consideration of effects to the human, natural, and physical environments. Furthermore, it informs and involves citizens; documents project impacts and efforts taken to avoid, minimize, and mitigate any project impacts; and, documents that informed decisions have been made and duly considered the impacts resulting from the project. All applicants for Federal funding must document the impacts of a proposed action through one of the following COAs: Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS). The level of documentation required for each COA is described in Part 1 of the...
The Department is responsible for review, quality assurance, and approval of NEPA documents. The administrative process may require OEM to review and approve documents, including reevaluations. This review depends on the COA according to Parts 1 and 2 of the Department’s PD&E Manual. The Department may authorize the Local Agency to prepare portions of the NEPA documents, but this will be determined on a case by case basis. The District Environmental Administrator prepares and signs the Status of Environmental Certification Form, Form No. 650-050-13 for all COAs.

A project cannot be submitted for Federal Authorization for construction without an executed Status of Environmental Certification Form attached to the request. The form must be submitted within one year of signature date by the District, or it must be resubmitted for re-evaluation.

The Final Design phase cannot be initiated until the NEPA process is complete. If a Local Agency intends to advance preliminary engineering activities, then it must coordinate with the Department to ensure compliance with FHWA requirements as described in Part 1, Chapter 4 of the PD&E Manual.

For projects determined by the Department to be a Type 1 Categorical Exclusion (in accordance with the Part 1, Chapter 2 of the PD&E Manual), the environmental review occurs concurrently with Design and must be coordinated with the District Environmental Office. The environmental review must be concluded prior to advancing the project to the right of way or construction phase.

**11.4 LOCAL AGENCY RESPONSIBILITIES**

When the COA is determined by OEM (Type 2 Categorical Exclusion, Environmental Assessment or Environmental Impact Statement) or the District (Type 1 Categorical Exclusion), the Local Agency is responsible for conducting environmental analysis, obtaining permits, preparing the NEPA documentation, and coordinating with Department staff. The requirements for the environmental and engineering analyses are described in the PD&E Manual. Requirements may include, but are not limited to, providing the Department assistance with cultural resource assessments, State Historic Preservation Office reviews, Contamination Assessments, as well as Threatened and Endangered Species Surveys. The District LAP Administrator, in consultation with the District Environmental Management Office, will coordinate with and obtain needed approvals from OEM.

The Local Agency must follow Procedure No. 650-000-003, FDOT Commitment
Tracking. This procedure provides guidance on tracking and documenting project commitments throughout Project Development, Design, Right of Way (ROW), and Construction phases. If or when project commitments are identified for a LAP project by either Local Agency staff or Department staff (i.e. project engineer, project manager, Environmental Management Office) **FDOT Form No. 650-000-01 Project Commitments Record (PCR)** must be generated and provided to the Local Agency and District LAP Administrator for the project file. The PCR must be included in the Local Agency’s construction and CEI contracts if commitments have been identified prior to advertisement. In addition, the final version of the PCR showing all commitments are met must be included in the LAP project close out package (Chapter 23).

Per FDOT Standard Specifications 7-1.4 and 7-1.8, Local Agencies must ensure compliance of the contractor’s proposed staging/storage area with the Endangered Species Act, Section 4F and Section 106 of the Code of Federal Regulations. Required Sections of 7-1.4 and 7-1.8 of Standard Specifications are included in FDOT’s Division 1 Specification Package for Local Agencies on the FDOT [Specs on the Web](#) page (additional information on Specs on the Web is located in Chapter 20).

**11.5 RESOURCES**

- **Project Development and Environment (PD&E) Topic No. 650-000-001**
- **ETDM Manual Topic No. 650-000-002**
- Project Commitments Record (PCR) FDOT Form No. 650-000-01 (form may only be generated by FDOT staff)
- Status of Environmental Certification Form, Form No. 650-050-13 (form is generated by District Environmental Management Office Staff)