

Agency Operating Agreement

for

Continuing the Efficient Transportation Decision Making Process in Florida

Between

National Marine Fisheries Service

and

Florida Department of Transportation

and the

Federal Highway Administration

Date of Agreement

Agency Operating Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

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Section 1.0 Introduction

On December 14, 2001, the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service (NMFS), Natural Resources Conservation Service, U.S. Environmental Protection Agency, U.S. Coast Guard, Federal Transit Administration, Advisory Council on Historic Preservation, National Park Service, U.S. Forest Service, Florida Department of Environmental Protection, Northwest Florida Water Management District (WMD), Suwannee River WMD, St. Johns River WMD, Southwest Florida WMD, South Florida WMD, Florida Fish and Wildlife Conservation Commission, State Historic Preservation Officer, Metropolitan Planning Organization Advisory Council, Florida Department of Community Affairs, Florida Department of Agriculture and Consumer Services, the Florida Department of Transportation (FDOT) and the Federal Highway Administration (FHWA), collectively referred to as Environmental Technical Advisory Team (ETAT), signed a Memorandum of Understanding agreeing to develop an Efficient Transportation Decision Making (ETDM) Process in Florida. The agencies endorsed the ETDM concept and agreed to support, establish, and implement the ETDM Process within their respective agency to the extent feasible, within existing legal authority, staffing capabilities, and budget.

Provided below is a current list of agencies participating in the ETDM Process:

- Advisory Council on Historic Preservation
- Federal Highway Administration
- Federal Transit Administration
- Florida Department of Agriculture and Consumer Services
- Florida Department of Community Affairs
- Florida Department of Environmental Protection
- Florida Department of State, Historic Preservation Officer
- Florida Fish and Wildlife Conservation Commission
- Metropolitan Planning Organization Advisory Council
- National Marine Fisheries Service
- National Park Service
- Natural Resources Conservation Service
- Northwest Florida Water Management District
- South Florida Water Management District
- Southwest Florida Water Management District
- St. Johns River Water Management District
- Suwannee River Water Management District
- U.S. Army Corps of Engineers
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- U.S. Forest Service

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Section 2.0 Agreement Framework and Regulatory Authority

This Agency Operating Agreement (AOA) is entered into voluntarily by all parties and has been designed to outline how transportation projects in the state of Florida will be planned, programmed and developed using the ETDM Process, pursuant to the laws and regulations cited in Appendix A. This AOA describes the ETDM Process, the Environmental Screening Tool (EST), the establishment of an ETAT for each FDOT geographic District, the Planning and Programming Screens and automated summary reports, agency resource requirements, the ETDM Dispute Resolution Process, the training and educational components, and ETDM performance measures. It also identifies the Metropolitan Planning Organization (MPO) and FDOT deliverables and the specific agency reviews and responsibilities during the Planning and Programming and Project Development phases, and includes the information to be uploaded into the EST, the necessary Geographic Information Systems (GIS) datasets, the deliverables and review responsibilities of the MPO and FDOT, and the review responsibilities of the Agency representatives. This AOA also includes language for agreement modifications, renewals, and termination.

Section 3.0 ETDM Process

The ETDM Process is designed to accomplish the streamlining objectives identified in Section 1309 of the Transportation Equity Act for the 21st Century and Section 6002 of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). All major capacity improvement projects that are required by law to be contained in a Long Range Transportation Plan (LRTP) or FDOT's Five-Year Work Program will be subject to the ETDM screening process, per FDOT policy. FDOT policy concerning projects to be screened is summarized in the Matrix for ETDM Programming Screen for Major Transportation Projects, including capacity additions and bridge replacements, which is available in the ETDM Library via the EST.

The ETDM Process creates linkages between land use, transportation, and environmental resource planning initiatives through early, interactive agency involvement, which is expected to improve transportation decisions and reduce the time, effort, and cost to implement transportation improvements.

Most importantly, the ETDM Process provides resource agencies early and continual review of potential project effects. In implementing the ETDM Process, all ETAT agencies are responsible for reviewing and commenting on proposed transportation improvements consistent with their respective agency's statutory and regulatory authority. Process objectives include effective/timely decision making without compromising environmental quality, full and early public and agency participation, National Environmental Policy Act (NEPA) reviews concurrent with project permitting coordination and review, and implementing meaningful dispute resolution mechanisms. Essentially, the ETDM Process is intended to begin an ongoing environmental review process, including noticing the project, establishing project purpose and need, and initiating permitting "pre-application review," which all culminate with an approved project alternative and an eventual permit application submittal. The goal is to seamlessly transition from identifying a project's purpose and need to permit issuance once the necessary environmental and engineering data are available.

Program and project efficiency is gained by two environmental screening events that occur in the transportation Planning and Programming phases. The screenings allow for concurrent review of possible NEPA issues and potential permit questions ("pre-application review") during Planning and Programming phases. As a project moves into the Work Program and the Project Development & Environment (PD&E) documentation phase, the ETAT representatives' role transitions to one of coordination within their respective agency to ensure expeditious agency response during both the NEPA and pre-application review processes. The ETDM Process is used by the MPOs and the FDOT in developing, evaluating, and prioritizing transportation plans and projects. Prior to these events, information must be entered into the EST. The ETDM Process diagram is shown in Figure 1.

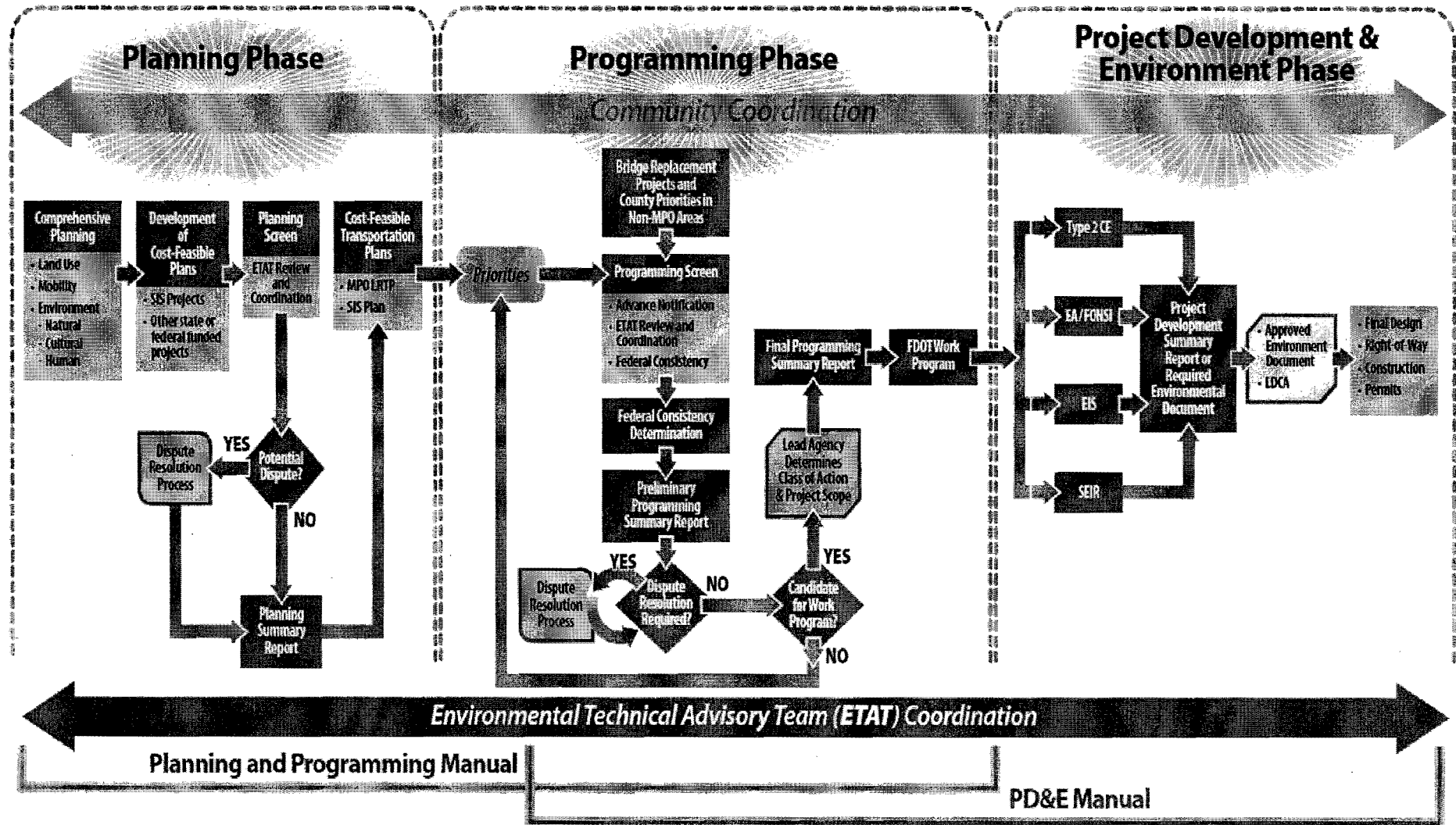
The benefits of the ETDM Process include concurrent reviews, interactive planning, efficiencies gained from technology, and ultimately better transportation decisions. The ETDM Process described in this AOA follows the guidelines set forth in the FDOT's ETDM Planning and Programming Manual and FDOT's Project Development and Environment Manual. Tables 1, 2 and 3 in Sections 5, 6 and 7, respectively, identify the information available in the ETDM database, which

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includes the project's purpose and need, technical reports, and environmental documents. The tables also identify the agency's review responsibilities from project planning through project development and eventual permit application and issuance, to construction and maintenance. The tables have been divided into three basic phases of a transportation project: Planning, Programming, and Project Development.

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Figure 1 - ETDM Process Flow Chart



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Section 4.0 Environmental Screening Tool

The State of Florida has developed a comprehensive digital information database, the Florida Geographic Data Library (FGDL), which is housed at the GeoPlan Center at the University of Florida. FDOT has developed an environmental screening application (the EST) that utilizes the FGDL and provides for an interactive review of proposed transportation projects by ETAT representatives. The EST is accessed through the Internet and performs standardized GIS analyses and queries using information contained in the FGDL, along with the transportation planning and project information provided by MPOs and FDOT. The EST is used to:

- Integrate data pertinent to land use, human and environmental resources, and transportation programs from multiple sources into standard format
- Analyze the effects of proposed projects on the environment
- Disseminate information among ETAT representatives and to the public
- Store and report results of the ETAT review

FGDL will provide an automated electronic notice through the EST whenever new data or analyses are available and when agreed-upon review time frames have been exceeded.

A User's Guide and training program for using the EST are provided by the FDOT and made available to all ETAT representatives.

Section 5.0 Planning Screen

In MPO areas, the Planning Screen will occur for capacity improvements contained in the Long Range Transportation Needs Plan and prior to the development of the MPO LRTP, with the exception of the Strategic Intermodal System (SIS) facilities. SIS facilities will be screened during the development of the SIS Ten-Year Cost-Feasible Plan, by FDOT, for both the MPO and non-MPO areas. FDOT staff will be responsible for uploading the SIS project information into the EST.

This Planning Screen review allows the Agency to comment on the effects of projects very early in the planning process. It also allows the Agency to provide plans, programs, and technical reports that are not contained in existing databases, but are an important part of the Agency's resource management and protection initiatives and may affect a proposed project. This early agency involvement will enable planners to adjust project concepts to avoid or minimize adverse effects and to identify potential mitigation alternatives/concerns and costs for possible unavoidable effects. Indirect effects will be evaluated on a project basis in connection with the Planning Screen. The LRTPs are updated by the MPOs every five years, depending on the air quality designation by the U.S. Environmental Protection Agency. The SIS Cost-Feasible Plan is updated by FDOT every five years depending on funding and legislative issues.

Table 1 identifies the information available to the NMFS during the Planning Screen (via the EST). The table also addresses FHWA/FDOT responsibilities and the NMFS representative review and coordination responsibilities. The review will take place on the EST, where all comments will be recorded and saved as part of the project record for subsequent review and use.

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**Table 1
Planning Screen Information & Responsibilities**

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT	NMFS
<ul style="list-style-type: none"> • Purpose and Need • Project limits and logical termini • Mobility Alternatives • NMFS plans and programs • Demographics (Sociocultural Effects Evaluations) • Agency-specific databases can be found in the EST 	<ul style="list-style-type: none"> • In MPO areas, assist in developing the Purpose and Need Statement and establishing logical termini • In non-MPO areas, FDOT in consultation with FHWA establishes Purpose and Need Statement and logical termini • In MPO and non-MPO areas, FDOT establishes Purpose and Need for SIS projects • Ensure project information is available for ETAT review • ETDM Coordinator will consult and resolve project issues, where feasible • Produce the Planning Summary Report, which will include the following key components: <ul style="list-style-type: none"> – Project Description – Purpose and Need Statement – Agency comments, issues, and recommendations for potential direct effects – System-wide GIS mapping depicting social, cultural, and natural resources – Potential indirect and cumulative effects issues and recommendations – Summary of Degree of Effects (DOE) comments – Summary of public involvement comments – Respond to agency comments and prepare summary of DOEs • The Planning Summary Report will be made available to ETAT representatives and the public through the ETDM Web site. 	<ul style="list-style-type: none"> • Review and comment on Purpose and Need for project • Review and comment on logical termini • Review and comment on mode choice and mobility alternatives (demand management, transit, highways) • Review and comment on order of magnitude of impact • Identify significant environmental resource issues • Input agency plans and programs that affect the project area • Identify need for future agency involvement and anticipated agency coordination and consultation • Identify resource management policies, goals and objectives • Identify recommended course of action to preserve and protect resources • Evaluate potential secondary and cumulative impacts • Provide Project Recommendations • Submit comments electronically within 45 calendar days of notification

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Section 6.0 Programming Screen

Major transportation projects are selected annually for inclusion into FDOT's Tentative Work Program. The Tentative Work Program is a compilation of all District/Turnpike Enterprise Work Programs, drawing projects from MPO Transportation Improvement Programs, County Commission priorities, and various FDOT programs, including SIS. Projects identified in the Tentative Work Program that are under consideration for adoption into FDOT's Five-Year Work Program and are reviewed through the ETDM Process are subject to a second screening event called the "Programming Screen."

This second screening of major transportation projects occurs before projects are funded in the FDOT Five-Year Work Program. This screen initiates the NEPA process for federally funded projects or the State Environmental Impact Report (SEIR) for state funded projects. FDOT staff will be responsible for uploading the SIS project information into the ETDM GIS database in both rural and urban areas. The Agency representatives will provide technical assistance and assist FDOT in scoping technical studies necessary to satisfy NEPA and obtain project permits. Agency member input about the potential effects to environmental and community resources is the basis for "agency scoping" to facilitate compliance with NEPA and other applicable federal and state laws that apply to the NEPA Process ("NEPA" refers collectively to all applicable environmental laws). The Programming Screen will begin when the District ETDM Coordinator distributes the Advance Notification (AN) and notifies the Agency that projects are available for review. This notice will also initiate the Federal Consistency Review (FCR) if the project is federally funded or requires a federal permit or federal action. The AN and FCR processes apply only to major transportation capacity improvement projects that are subject to the ETDM Process. The Programming Screen notice will be distributed to the Agency representatives via the EST. After receiving the Programming Screen notice, the NMFS representative will review project and resource information available through the EST to determine the project effects, and identify and document the need for technical studies, if any, to be performed during the next phase, Project Development. The NMFS representative will input NMFS commentary about project effects and technical studies, if any, into the EST, or indicate "no effect." Table 2 identifies the information available to the NMFS during the Programming Screen (via the EST). The table also addresses FHWA/FDOT responsibilities and NMFS representative review and coordination responsibilities.

**Table 2
Programming Screen Information & Responsibilities**

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT	NMFS
<ul style="list-style-type: none"> • Intergovernmental Coordination and Review Process • Coastal Zone Consistency Determination • LGCP Consistency • Goals of the State • Clean Air Act Conformity Designation • NMFS plans and programs • Demographics (Community Impact Assessment) • Agency-specific GIS databases can be found in the EST 	<ul style="list-style-type: none"> • Distribute ICAR to agencies including all ETAT representatives • Determine Level of NEPA Environmental Documentation (Class of Action Determination) • Publish Notice of Intent for EIS • Establish an interdisciplinary project team • Consult with NMFS on Section 7 as necessary • Consult on essential fish habitat • Produce Programming Summary Report which will comprise the following key 	<ul style="list-style-type: none"> • Review and comment on ICAR • NMFS assigns project manager • NMFS becomes Cooperating Agency, as appropriate • Agree through formal documentation on adequacy of corridor-wide resource inventory • Review and comment on project impacts: quantity and types of wetlands, protected species • Identify need for Section 7 Consultation • Identify need for essential fish habitat consultation • Review and comment on Class of Action • Initiate agency analysis of the project concepts and possible typical sections • Identify all permitability issues and general

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**Table 2
Programming Screen Information & Responsibilities**

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT	NMFS
	<p>components:</p> <ul style="list-style-type: none"> – Project Description – Purpose and Need statement – Class of Action Determination – System-wide mapping depicting social, cultural, and natural resources – Agency comments, issues, and recommendations for potential direct impacts – Preliminary outline of the Project Development scope – Dispute resolution issues – Summary of public involvement comments • The Programming Summary Report will be made available to the ETAT representatives through the ETDM Web site. 	<p>mitigation needed based on the statutory responsibility of the NMFS</p> <ul style="list-style-type: none"> • Perform project scoping activities based on review of ETDM databases and project information and identifying required technical studies prior to the beginning of the project development phase • Review and comment on summary of community issues, and public concerns • Participate in dispute resolution, if necessary, to assist the ETDM Coordinator in identifying solutions to project concerns. Participate in ETAT Review Committee, as needed, to review and resolve conflicts at an informal local level • Submit comments electronically within 45 calendar days of notification

FHWA and/or FDOT identify a Class of Action Determination for each priority project, which is summarized along with ETAT and community input, preliminary project concepts, reasonable project alternatives, and scoping recommendations in the Final Programming Summary Report. This report is used as the transition document to the Project Development Phase, and is available electronically, in the EST, to project managers, resource agencies and the public.

Section 7.0 Project Development & Environment

During Project Development, NMFS will assist FDOT in compliance with NMFS's proprietary and regulatory laws and rules cited in Appendix A, and will coordinate resource permit processing, as applicable to State of Florida laws and/or Federal regulations so that project approvals are acceptable to all parties. PD&E studies may include a project Web site for use in the coordination of project reviews and comments. The NEPA documents will be developed using information supported by technical studies. Table 3 identifies the reports and coordination responsibilities for FDOT, FHWA, and the NMFS ETAT representative.

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**Table 3
Project Development Phase Responsibilities**

FDOT	FHWA	NMFS
Preliminary Alternatives Analyses		
<ul style="list-style-type: none"> • Develop and analyze alternatives • Assess major impacts of all alternatives • Consult with NMFS regarding potential impacts and Best Management Practices (BMPs) for mitigation 	<ul style="list-style-type: none"> • Participate in development of alternatives 	<ul style="list-style-type: none"> • Review and comment on preliminary alternatives and analysis • Accept alternatives under consideration
Technical Reports		
<ul style="list-style-type: none"> • Complete technical studies as defined by ETAT and scope of services, such as: <ul style="list-style-type: none"> – Wetland Evaluation Report (WER) – Cultural Resource Assessment (CRA) – Endangered Species Biological Assessment (ESBA) – Essential Fish Habitat Assessment 	<ul style="list-style-type: none"> • Reviews ESBA and provide to NMFS • In consultation with NMFS, determine need for formal Section 7 consultation. • Consult on essential fish habitat 	<ul style="list-style-type: none"> • Review and comment on ESBA and other technical reports • Provide technical assistance, as needed • Complete informal Section 7 consultation and provide comments within 30 calendar days of receipt of ESBA • If required, complete formal Section 7 consultation within 90 calendar days and issue Biological Opinion within 45 calendar days • Complete consultation on essential fish habitat, and provide recommendations as needed • For projects determined to be CEs, permits will be issued upon completion and acceptance of technical studies and issuance of Location and Design Acceptance (LDCA)
EA/DEIS		
<ul style="list-style-type: none"> • Incorporate ESBA and EFH Assessment into Environmental Document • Complete EA/DEIS and submit to NMFS for review • Apply for project permits 	<ul style="list-style-type: none"> • Review and approve EA/DEIS with comments incorporated (30 calendar days) • Publish Notice of availability of DEIS in Federal Register 	<ul style="list-style-type: none"> • Review and comment on draft EA or DEIS • Review and comment on Section 404 compatibility for each alternative • Provide reviews within 30 calendar days of receipt of information
Public Hearing		
<ul style="list-style-type: none"> • Identify opportunities, constraints and feasibility of Joint Public Notice and Hearing, if appropriate • Hold Public Hearing • Prepare transcript and certification 	<ul style="list-style-type: none"> • Attend hearing and participate as necessary 	<ul style="list-style-type: none"> • Attend joint public hearing and participate as necessary or conduct simultaneous public hearing for obtaining concurrent permits/NEPA approval and/or issue formal public notice • Provide technical assistance on public hearing topics to satisfy permitting requirements

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**Table 3
Project Development Phase Responsibilities**

FDOT	FHWA	NMFS
FONSI/FEIS		
<ul style="list-style-type: none"> • Document decisions in FONSI and FEIS • Complete FONSI/FEIS and submit to NMFS for review • Respond to comments • Obtain project permits concurrent with NEPA approval 	<ul style="list-style-type: none"> • Review FEIS or FONSI • Approve FONSI or FEIS • Publish notice of FEIS availability in FR • Issue Record of Decision 	<ul style="list-style-type: none"> • Review FONSI or FEIS and comment within 30 or 45 calendar days respectively of receipt regarding NEPA and permit compliance, as needed.
Final Design		
<ul style="list-style-type: none"> • Environmental reevaluation and consultation with NMFS and FHWA on any major design modifications 	<ul style="list-style-type: none"> • Approve Environmental Reevaluation • Participate in reviews to monitor implementation of EA or FEIS commitments 	<ul style="list-style-type: none"> • Consult with FDOT on design modification and project mitigation measures to assure commitment compliance with EA/FONSI or FEIS
Construction and Maintenance		
<p>For those projects not subject to 373.4137, F.S., the following applies:</p> <ul style="list-style-type: none"> • Monitor implementation of mitigation measures as required by permit • Correct deficiencies found as required by permit • Prepare periodic reports on mitigation activities and provide to resource agencies 	<ul style="list-style-type: none"> • Monitor implementation and status of mitigation efforts and sites, as appropriate 	<ul style="list-style-type: none"> • Review periodic reports, field reviews and consult with FDOT on mitigation success, as necessary

Section 8.0 Public Involvement and Interagency Coordination

Public involvement will be a continuous effort throughout the ETDM Process. The EST will be the resource for providing information to agency representatives and for collecting agency responses about project effects, avoidance or minimization strategies, and scopes of technical studies required to address a specific issue of concern. The system provides access to all concerned parties about project needs, issues of concern to agencies, and suggested alternatives, as well as agency decisions. The public will have read-only access to key project information, allowing the general public and non-government organizations (NGOs) to view project data. Public comments to the MPO or FDOT will be submitted using existing public involvement channels during development of the LRTP and FDOT Five-Year Work Program. The public can also provide comments directly to Community Liaison Coordinators (CLCs), which can then be summarized by the CLCs as part of the information provided for the Planning and Programming Screens.

The project information available to the public and NGOs will include the project description, summarized GIS analysis graphics, summarized results of the agency project effects analyses, previously submitted public comments, and other information related to the project.

The ETDM Process also includes the opportunity to combine agency public noticing and public involvement activities whenever possible. Through the ETDM Process, federal agencies and state agencies involved in NEPA and the issuing of project permits have the opportunity to issue joint public notices and conduct joint public involvement activities.

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Section 9.0 Cooperating/Participating Agency

During the programming and project development phases, the NMFS will serve as a cooperating agency and partner with FHWA and FDOT on all major transportation capacity improvement projects, where applicable. In those situations where NMFS elects not to be a cooperating agency, they will serve as a participating agency consistent with SAFETEA-LU. As a cooperating agency, the NMFS will provide technical assistance, attend scoping and coordination meetings, attend joint field reviews, provide substantive and early input on issues of concern, recommend needed technical studies, and review technical reports and draft and final environmental documents, as required.

Section 10.0 ETAT Representative

The Agency ETAT representative will be responsible for coordinating and performing all agency actions to satisfy the statutory obligations of the representative's agency with respect to the planning and implementation of transportation projects. This responsibility will require diverse and excellent communication skills, especially the ability to function effectively within the agency and to coordinate with other agencies in the ETAT. The Agency representatives will be involved with the full spectrum of agency actions related to transportation projects, as detailed in Tables 1, 2 and 3. The person selected as the Agency ETAT representative should be:

- In charge of or responsible for reviewing and issuing or recommending issuance of environmental permits
- Well-versed in the statutory authority and obligations of the agency
- Knowledgeable of the agency actions required at each phase of agency involvement (e.g., planning, NEPA process, permitting, construction, post-construction, monitoring)
- Able to perform and understand comprehensive environmental effects analyses
- Respected within the agency; accorded access to key decision makers; able to achieve informed consent internally within the agency; and entrusted to present an opinion or recommendations on behalf of the agency
- Cognizant of the different, yet related, perspectives of other agencies and able to create solutions and function as a problem solver
- Effective in dispute resolution functions within the ETAT
- Proficient in computer usage, including the Internet
- An effective verbal and written communicator
- Able to anticipate agency actions required as projects proceed through phases and to prepare those responsible for prompt, efficient participation in the project to minimize delays
- Able to effectively communicate within the Agency and convey Agency comments and positions on projects to permitting staff for consideration in the issuance of any necessary permits from the Agency

Persons having most of the above attributes will be dynamic and motivated within the agency. Through their previous agency successes they will have achieved a level of recognition, trust, and effectiveness that will enable their success as an ETAT representative. They will regard the appointment as an ETAT representative as acknowledgement by agency leadership of their success. Their subsequent actions as the agency ETAT representative should receive high visibility and endorsement by agency leaders to ensure that this position is highly sought after in the future.

If the Agency representative is unable to perform their duties, the Agency will identify an alternate Agency representative to complete the Agency's regulatory or resource review responsibilities in the agreed upon time frames.

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Section 11.0 ETDM Coordinator

Each FDOT District has identified an "ETDM Coordinator" who will be responsible for implementation of Florida's ETDM Process, as specified in Tables 1, 2 and 3. The FDOT ETDM Coordinator duties include the following:

- Coordinates with District management, MPOs, project management teams, and individual project managers to ensure appropriate development of the ETAT screening events during both the Planning and Programming phases. Submits projects to be screened to the interagency ETAT representatives for integrated planning, early consultation and coordination, environmental review, and interagency technical assistance in satisfying and complying with NEPA.
- Coordinates internally with project managers and district permit administrators, and partners externally with ETAT representatives, MPOs, and FHWA during Project Development to ensure transportation projects and technical studies are developed in full compliance with NEPA and will satisfy potential permit requirements as established in the ETDM Manual and prescribed in this AOA.
- Coordinates with the District Permit Administrator and District Design Office to ensure efficient transition and exchange of information necessary for permit applications.
- Coordinates and consults internally with District offices and externally with ETAT representatives in the review of federal and state legislation, federal and state regulations, environmental ordinances, rules, executive orders, and internal agency procedures which affect the ETDM Process.
- Conducts ETDM training and provides technical assistance to support ETAT representatives, the MPOs, and FDOT District Planning, FDOT Environmental Management, FDOT Design, and other offices, where appropriate.
- Where appropriate, reviews and comments on jurisdictional agency invoices within 48 working hours.

If the ETDM Coordinator is unable to perform their duties, the relevant FDOT District Office will identify an alternate ETDM Coordinator to complete the FDOT responsibilities in the agreed upon time frames.

Section 12.0 Agency Resource Requirements

Agency resource needs, including personnel, equipment, review responsibilities, and Agency funding requirements will be determined based on existing resources and specific needs from the Agency. The success of the ETDM Process will in part be based on the quality of the GIS resource data, agency coordination and consultation, timeliness and regulatory nature of review comments, and technical assistance provided to satisfy NEPA and permitting requirements.

The Agency representative will be a single point of contact and is responsible for obtaining all existing digital information about the resources their Agency is responsible for, and for ensuring that this information is available to the University of Florida GeoPlan Center for use with the ETDM Process and projects. Also, new digital resource information obtained from agency plans, initiatives, biological assessments, research projects, and field reviews should be made available to FGDL within 90 calendar days of completion. Digital information will be provided to the University of Florida GeoPlan Center at no cost. The information will include documentation that describes the format, intent, and source material used to develop and maintain the information. Agency representatives will coordinate with the GeoPlan Center to ensure that new data meet the quality and format protocols of the EST.

Agency representatives shall have access to a desktop computer with Internet connectivity adequate to ensure the effective use of the EST and to exchange e-mail messages with other ETAT members. The minimum hardware and software requirements for ETAT representative desktop computers are as follows:

OPERATING SYSTEM

- Microsoft Windows XP Professional or Home, Windows 2000 (NT, 95, 98, will also work)

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HARDWARE

- 700 MHz, Intel Pentium III or equivalent AMD Processor
- 1024 X 768 video card resolution
- 3 -Gigabyte of free disk space
- 256 MB RAM (348 MB RAM recommended)
- 17-inch color monitor (19-inch recommended)
- Minimum of 128 KB Internet connection (T-1 recommended)
- Access to color printer recommended, but not required

SOFTWARE

- Microsoft Internet Explorer, version 7.0 or higher
- Adobe Acrobat Reader, version 7.0 or higher

Section 13.0 ETAT Performance Standards

ETAT Agency performance standards include fulfillment of Agency responsibilities and level of involvement, quality of submittals, number of revisions, number of requests for substantive additional information, interagency communication and coordination, and review delays. Performance guidelines for project reviews include responding to FDOT submittals within 30 or 45 calendar days, depending on the type of submittal. Other guidelines include providing specific information about data needs to bring about compliance with the respective legal and regulatory requirements contained in Appendix A; documentation of the consultation process; documentation of all formal/informal commitments to protect resources and mitigation plans; and documentation of all actions designed to expedite NEPA and permit approvals.

Performance standards established for FDOT and ETAT member agencies include:

- ETAT member agency review of Planning and Programming Screens within 45 days
- FDOT response to comments and inquiries within 30 calendar days
- FDOT response to requests for additional information within 30 calendar days
- Establishment of quality assurance protocols for digital information. Quality checks on GIS system performed by ETAT member agency within 90 calendar days of completing field reviews and technical reports.
- Completion of Dispute Resolution Process within 120 calendar days.
- ETAT member agency review of all environmental documents and technical reports within 30 calendar days, with the exception of the DEIS, which is 45 calendar days.

The performance standards will be tracked and monitored in the ETDM Performance Management Program. FDOT will provide the agency with periodic performance reports from the ETDM Performance Management Program.

Section 14.0 ETDM Dispute Resolution Process

In the December 14, 2001 ETDM Process MOU, all agency signatories agreed to implement effective dispute resolution on projects with “substantial adverse effects” before the project advances into the design or construction phase within the FDOT Work Program. Agencies signing the MOU agreed “...to the extent feasible within existing legal authority and the availability of manpower and budgets, to implement effective dispute resolution with the goal of developing mutually

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agreeable solutions at meaningful points within the ETDM Process to avoid programming projects with significant unresolved disputes.”

The ETDM Dispute Resolution Process (as shown in Figure 2) was developed to facilitate meeting this commitment. A potential for dispute may be identified as early as the Planning Phase in the ETDM Process. Disputes can also be identified in the Programming Phase where the Dispute Resolution process first proceeds with an informal process followed by a formal process, if necessary.

The Dispute Resolution process begins when the ETDM Coordinator assigns a Summary Degree of Effect as “Potential Dispute Resolution” in the Planning Phase or “Dispute Resolution” in the Programming Phase. The ETDM Coordinator is responsible for working with the appropriate ETAT representatives to try to address all known issues at the agency staff level before elevating the dispute to the formal Dispute Resolution process. The following are “triggers” an ETAT agency may use for flagging a project as needing “Dispute Resolution” (or red flag) that may subsequently initiate the Dispute Resolution process:

- Project is non-permittable
- Project is contrary to a state or federal resource agency’s program, plan, or initiative
- Project has significant environmental cost (apply a broad interpretation of the term cost) such as funding, environmental effects, or quality of life
- Project Purpose and Need is disputable (only applicable to Lead Agency)

Any agreements, understandings, and/or recommendations resulting from the Dispute Resolution process in the Planning or Programming phases are entered in the Dispute Log and incorporated into the project record as it advances into PD&E. Unresolved disputes may be elevated to the Governor for final decision-making. Should a federal agency disagree with the Governor’s decision, the federal dispute resolution process may be initiated.

Nothing in the Dispute Resolution Process affects the statutorily prescribed duties and obligations of any agency or any agency’s responsibility or ability to discharge fully such duties and obligations under all applicable laws and regulations. The Dispute Resolution Process seeks to fulfill all statutory obligations by seeking solutions to complex issues among agencies. Additional information regarding this process can be found in the Dispute Resolution Process brochure.

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**Agency Operating Agreement
National Marine Fisheries Service
Continuing the Efficient Transportation Decision Making Process in Florida**

Section 15.0 Training and Educational Programs

FDOT offers a training program to ETAT members to fully explain the ETDM Process, NEPA and permit documentation, and the use of the EST. An educational component has also been developed to inform NGOs, local governments, and citizens about the ETDM Process and how they can participate and affect the transportation decision-making process. Other training opportunities may be made available to ETAT members and FDOT staff in the context of natural, historic, and sociocultural resources or issues on an as available, as needed, basis to enhance the transportation decision making process.

Section 16.0 Periodic Review of ETDM Process

The NMFS will meet regularly with the ETDM Coordinator to review program issues and concerns, including, without limitation, workload, staffing, and resource needs. At these meetings and any District-wide ETAT meetings, the participants will exchange information related to the efficacy of the ETDM Process and identify any program deficiencies and ways to improve the process.

Section 17.0 Modification of Agency Operating Agreement

This AOA may be modified in writing at any time by mutual agreement of the parties. Any amendment may be made in whole or in part, and upon execution and adoption by the parties, such amended AOA shall supersede the corresponding provision(s) of previous versions. Any changes, amendments, corrections, or additions to this AOA shall be executed and approved by the same parties (or their designees) who executed and approved the original AOA, in accordance with applicable laws. No addendum, modification, or waiver of any of the terms of this AOA shall be effective unless in writing, signed by the parties, and executed in the same manner as the AOA. The parties agree that any attempt to modify this AOA orally or by conduct shall be ineffective. The failure of any party to insist in any one or more instances upon the strict performance by the other party of any of the terms or provisions of the AOA shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect.

Section 18.0 Conflict between Agreements

This AOA and any Funding Agreement (FA) entered into with the NMFS shall supersede any prior understanding, agreement, memorandum, letter, or other written or oral arrangement between the parties relating to the matters covered therein. In the event of a conflict between a FA and this AOA, the latter shall govern, except that the FA shall govern with regard to the services the NMFS may be reimbursed for and the period of performance.

Section 19.0 Term, Renewals and Period of Performance

This AOA shall not expire unless specifically requested by the NMFS or FDOT, but is contingent upon the performance period in the FA.

Any party may terminate its participation in the AOA without cause upon 60 days prior written notice to the other party or parties and the FDOT Environmental Quality Performance Administrator. During the 60-day notification period, the parties will endeavor to resolve any pending issues or conflicts, as applicable.

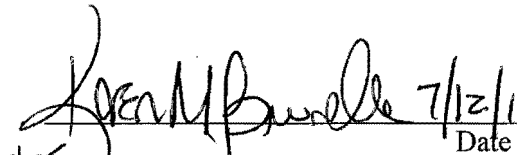
**Agency Operating Agreement
National Marine Fisheries Service
Continuing the Efficient Transportation Decision Making Process in Florida**

Section 20.0 Signatures

In witness thereof, the parties hereto have caused this AOA to be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.


Date

Secretary
Florida Department of
Transportation


Date

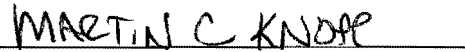
for Florida Division Administrator
Federal Highway Administration


Date

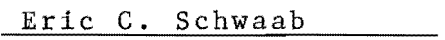
Assistant Administrator
National Marine Fisheries Service



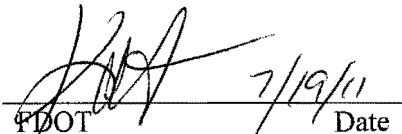
Print Name Date
Secretary
Florida Department of
Transportation



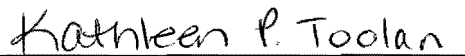
Print Name Date
Florida Division Administrator
Federal Highway Administration



Print Name Date
Assistant Administrator
National Marine Fisheries Service


Date

PDOT
Legal Counsel



Print Name
Legal Counsel

Appendix A

National Marine Fisheries Service – Agency Statutory Authority

It is the intent of this AOA to implement the ETDM process for all transportation projects in the State of Florida that require coordination, consultation, and compliance with the following agency's laws, regulations, orders, and statutes.

Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration	<ul style="list-style-type: none"> • NEPA of 1969 • Section 6001 SAFETEA-LU • Section 6002 SAFETEA-LU • FTA Section 5309 New Starts Funding • 23 USC 139(j) • 40 CFR 1500-1508 • Section 334.044(2) Florida Statutes • USDOT Order 5610.1C • USDOT Order 5650.2 • E.O. 11990/USDOT Order 5660.1A • Technical Advisory 6640.8A • Title 6, 7 of the US Civil Rights Act of 1964 and ADA Compliance • Title 23, CFR 771 • Federal Aid Policy Guide • Section 4(f) of the USDOT Act of 1966 • 16 USC 470(f), Public Laws 89-665, 91-243, 93-54, 94-422, 94-458, 96-515 National Historic Preservation Act • EO 11990 • EO 11988 • 23 CFR 650A
U.S. Army Corps of Engineers	<p>Regulatory Authority</p> <ul style="list-style-type: none"> • Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) • Section 404 of the Clean Water Act (33 U.S.C. 1344) <p>Related Laws</p> <ul style="list-style-type: none"> • Section 401 of the Clean Water Act (33 U.S.C. 1341) • Section 307 (c) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)) • NEPA of 1969 (42 U.S.C. 4321-4347)
U.S. Fish and Wildlife Service	<ul style="list-style-type: none"> • 16 USC 661, Fish and Wildlife Coordination Act of 1956 • 16 USC 742f(a)(4), Fish and Wildlife Act of 1956 • 16 USC 662, Section 2 Fish and Wildlife Coordination Act • 16 USC 1531, Coastal Zone Management Act of 1972 • 16 USC 1536, Section 7, 9 & 10 Endangered Species Act of 1973, as amended • 16 USC 1536, (a)-(d) Endangered Species Act, as amended • Federal Coastal Barriers Resource Act (COBRA) • 16 USC 703-711, Migratory Bird Treaty Act
National Marine Fisheries Service	<ul style="list-style-type: none"> • 16 USC 1536, (a)-(d) Endangered Species Act, as amended • 16 USC 1531, Coastal Zone Management Act of 1972 • 16 USC 1855 (b), Magnuson-Stevens Fishery Conservation and Management Act • Marine Mammal Protection Act

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Natural Resource Conservation Service	<ul style="list-style-type: none"> • Farmlands Protection Policy Act of 1981 (7USC 4201)
U.S. Environmental Protection Agency	<ul style="list-style-type: none"> • 36 Code of Federal Regulations Parts 60 and 63 • 40 Code of Federal Regulations 81 • 40 Code of Federal Regulations 93, Subpart T • 40 Code of Federal Regulations Part 93, Title 1 • EPA NPDES Permit for Stormwater from Construction Activities • NPDES General Permit for Stormwater Discharge from Construction Sites • Safe Drinking Water Act • Resource Conservation and Recovery Act (RCRA) • Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) • Clean Water Act of 1977 (33 U.S.C. 1251)
U.S. Coast Guard	<ul style="list-style-type: none"> • Section 9 of the Rivers and Harbors Act of 1899 • General Bridge Act of 1946: Delegation of Authority (49CFR 1.46) • NEPA of 1969
Advisory Council on Historic Preservation	<ul style="list-style-type: none"> • National Historic Preservation Act of 1966 • 36 Code of Federal Regulations Part 800
National Park Service	<ul style="list-style-type: none"> • Wild and Scenic Rivers and National Trails Presidential Directive (8/2/79) • Section 6(f) • Director's Order #12
U.S. Forest Service	<ul style="list-style-type: none"> • Organic Administrative Act of 1897 • Forest Highway Act of 1958 • Multiple Use-Sustained Yield Act of 1960 • Wilderness Act of 1964 • National Forest Roads and Trails Act of 1964 • National Historic Preservation Act of 1966 • Wild and Scenic Rivers Act of 1968 • NEPA of 1969 • Endangered Species Act of 1973 • Forest and Rangeland Renewable Resources Planning Act of 1974 • National Forest Management Act of 1976 • Clean Air Act of 1977 • Clean Water Act of 1977 • 36 Code of Federal Regulations Part 200
Florida Department of Environmental Protection	<p>Statutes Common to All Water Management Districts and the Department</p> <ul style="list-style-type: none"> • Chapter 120, F.S., Administrative Procedure Act • Chapter 253, F.S., 1 State Lands • Chapter 258, F.S., 1 State Parks and Preserves • Chapter 373, F.S., Water Resources • Chapter 403, F.S., Environmental Control

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Rules Common to All Water Management Districts and the Department

Procedural

- Chapter 28, Uniform Rules

Wetland Delineation

- Chapter 62-340, F.A.C., Delineation of the Landward Extent of Wetlands and Surface Waters Water Quality
- Sections 62-4.242 and .244 (sections dealing with Outstanding Florida Waters, anti-degradation and mixing zones)
- Chapter 62-302, Surface Water Quality Standards
- Chapter 62-312, Dredge and Fill Activities (regarding dredging and filling within the Northwest Florida Water Management District, grandfathered activities under Part IV of Chapter 373, and activities in the Florida Keys)
- Chapter 62-520, Groundwater Classes, Standards, and Exemptions
- Chapter 62-522, Groundwater Permitting and Monitoring Requirements
- Chapter 62-550, Drinking Water Standards, Monitoring, and Reporting

Delegations

- Chapter 62-344, Delegation of the Environmental Resource Permit Program to Local Governments

Sovereign Submerged Lands

- Chapter 18-14, Administrative Fines for Damaging State Lands or Products Thereof
- Chapter 18-18, Biscayne Bay Aquatic Preserve
- Chapter 18-20, Florida Aquatic Preserves
- Chapter 18-21, Sovereignty Submerged Lands Management

Application and Notice Forms

- Joint Application for: Environmental Resource Permit, Authorization to Use State Owned Submerged Lands, Federal Dredge and Fill Permit (Form No. varies by District and Department)
- Petition for a Formal Wetland and Surface Water Determination (Form No. varies by District and Department)
- Construction Commencement Notice (Form No. varies by District and Department)
- Annual Status Report for Surface Water Management Systems Construction (Form No. varies by District and Department)
- Mitigation Bank Performance Bond (Form No. varies by District and Department)
- Mitigation Bank Irrevocable Letter of Credit (Form No. varies by District and Department)
- Mitigation Bank Standby Trust Fund Agreement (Construction and Implementation) (Form No. varies by District and Department)

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<p>Florida Department of Environmental Protection, Continued</p>	<p><i>Noticed General Permits Related to Transportation Activities¹</i></p> <ul style="list-style-type: none"> • 40X¹-400.439 & 62-341.439 General Permit for the Construction or Maintenance of Culverted Driveways, Road Crossings and Bridges of Artificial Waterways. • 40X¹-400.443 & 62-341.443 General Permit to the Florida Department of Transportation, Counties and Municipalities for Minor Bridge Alteration, Replacement, Maintenance and Operation. • 40X¹-400.447 & 62-341.447 General Permit to the Florida Department of Transportation, Counties and Municipalities for Minor Activities Within Existing Rights-of-Way or Easements. • 40X¹-400.453 & 62-341.453 General Permit for Installation, Maintenance, Repair and Removal of Underground Cable, Conduit, or Pipeline. <p>Rules Specific to the Florida Department of Environmental Protection</p> <ul style="list-style-type: none"> • Chapter 62-4, Permits (sections dealing with permit fees statewide, and processing permits within the Northwest Florida Water Management District) • Chapter 62-25, Regulation of Stormwater Discharge (only within the limits of the Northwest Florida Water Management District) • Chapter 62-40, Water Resource Implementation Rule • Chapter 62-103, Rules of Administrative Procedure-Final Agency Action (Non Rulemaking and Appeal) • Chapter 62-110, Exceptions to the Uniform Rule of Procedure • Chapter 62-113, Delegations • Chapter 62-330, Environmental Resource Permitting (adopts by reference specific water management rules used in the ERP program) • Chapter 62-341, Noticed General Environmental Resource Permits • Chapter 62-342, Mitigation Banks • Chapter 62B-33, Coastal Construction Excavation • Chapter 62-B41, Application for Coastal Construction Permit • DEP Document No. 62-621.300(4)(A), General Permit for Stormwater Discharge <p>Florida's Coastal Zone Management Program (Chapter 163 of Florida Statutes)</p>
<p>Water Management Districts</p>	<p>Rules Applicable to Specific Water Management Districts</p> <p><i>Northwest Florida Water Management District</i></p> <ul style="list-style-type: none"> • Chapter 40A-1, General and Procedural • Chapter 40A-4, Management and Storage of Surface Water • Chapter 40A-6, Works of the District <p><i>Suwannee River Water Management District(UPDATE)</i></p> <ul style="list-style-type: none"> • Chapter 40B-1, General and Procedural Rules • Chapter 40B-4, Regulations • Chapter 40B-400, Environmental Resource Permits • Applicant's Handbook: Environmental Resource Permits <p><i>St. Johns River Water Management District</i></p> <ul style="list-style-type: none"> • Chapter 40C-1, Organization and Procedures • Chapter 40C-4: Environmental Resource Permits: Surface Water Management Systems • Chapter 40C-8: Minimum Flows and Levels • Chapter 40C-40: Standard Environmental Resource Permits

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	<ul style="list-style-type: none"> • Chapter 40C-41: Environmental Resource Permits: Surface Water Management Basin Criteria • Chapter 40C-42: Environmental Resource Permits: Regulation of Stormwater Management Systems • Chapter 40C-400: Noticed General Environmental Resource Permits • Applicant's Handbook: Management and Storage of Surface Waters • Applicant's Handbook: Regulation of Stormwater Management Systems <p><i>Southwest Florida Water Management District</i></p> <ul style="list-style-type: none"> • Chapter 40D-4, Individual Environmental Resource Permits • Chapter 40D-6, Works of the District • Chapter 40D-40, Standard General Environmental Resource Permits • Chapter 40D-400, Environmental Resource Permit • Basis of Review for Environmental Resource Permits <p><i>South Florida Water Management District</i></p> <ul style="list-style-type: none"> • Chapter 40E-0, Exceptions to the Uniform Rules of Procedure • Chapter 40E-1, General and Procedural • Chapter 40E-4, Surface Water Management • Chapter 40E-40, General Surface Water Management Permits • Chapter 40E-41, Surface Water Management Basin and Related Criteria • Chapter 40E-400, No Notice and Noticed General Environmental Resource Permits • Basis of Review for Environmental Resource Permit Applications • Chapter 40D-1, Procedural • Chapter 40D-4, Individual Environmental Resource Permits
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¹ Where "X" = "A" for Northwest Florida Water Management District
 "B" for Suwannee River Water Management District
 "C" for St. Johns River Water Management District
 "D" for Southwest Florida Water Management District
 "E" for South Florida Water Management District

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Agency	Citation
Florida Fish and Wildlife Conservation Commission	<ul style="list-style-type: none"> • Article IV, Section 9, Florida Constitution • Chapter 379 Florida Statutes • Coastal Zone Management Act • Fish and Wildlife Coordination Act
Florida Department of State, State Historic Preservation Officer	<ul style="list-style-type: none"> • National Historic Preservation Act of 1966 • 36 Code of Federal Regulations Part 800 • Section 106 of the NHPA (Florida Statutes 253 and 267) • Section 110(f)
Metropolitan Planning Organizations	<ul style="list-style-type: none"> • Florida Statutes, Chapter 339 • 23 USC 134 and citation for Clean Air Act
Florida Department of Community Affairs	<ul style="list-style-type: none"> • Organization, Powers, Duties and Functions (Section 20.18, F.S.) • Growth Policy, County and Municipal Planning, Land Development Regulations (Chapter 163, Part II, F.S.) • Community Redevelopment (Chapter 163, Part III, F.S.) • Emergency Management (Chapter 252, F.S.) • Energy Resources (Chapter 377, F.S.) • Land and Water Management (Chapter 380, F.S.) • Housing (Chapter 420, F.S.) • Flood Insurance (National Flood Insurance Reform Act) • Growth Management (Chapter 187) • Rule 9J-5 F.A.C.
Florida Department of Agriculture and Consumer Services	<ul style="list-style-type: none"> • Florida Constitution, Article 10, Section 18 Disposition of Conservation Lands (Division of Forestry) • Florida Statutes, Chapter 253 State Lands, Chapter 259 Land Acquisitions for Conservation or Recreation, Chapter 589 Forestry (Division of Forestry) • Board of Trustees Linear Facilities Policy (Division of Forestry) • Florida Statute Chapter 597 Florida Aquaculture Policy Act (Division of Aquaculture) • Florida Statute Chapter 581.185 and 581.186 Preservation of Native Flora of Florida (Division of Plant Industry)