

Agency Operating Agreement for  
Continuing the Efficient Transportation Decision Making Process in Florida

Between

U.S. Fish and Wildlife Service  
and Florida Department of Transportation  
and the Federal Highway Administration

October 1, 2008

Agency Operating Agreement  
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U.S. Fish and Wildlife Service

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# Agency Operating Agreement Continuing the Efficient Transportation Decision Making Process in Florida U.S. Fish and Wildlife Service

## Section 1.0 Introduction

The Efficient Transportation Decision Making (ETDM) Process is designed to accomplish the streamlining objectives identified in Section 1309 of the Transportation Efficiency Act for the 21st Century and Section 6002(j) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The ETDM Process creates linkages between land use, transportation, and environmental resource planning initiatives, through early, interactive agency involvement. In implementing the ETDM Process, all Environmental Technical Advisory Team (ETAT) agencies are responsible for reviewing and commenting on transportation improvements consistent with their respective agencies' statutory and regulatory authority. Process objectives include effective/timely decision making without compromising environmental quality, full and early public and agency participation, integrating National Environmental Policy Act (NEPA) reviews with issuance of project permitting, and implementing meaningful dispute resolution mechanisms. The results of the ETDM Process include concurrent actions and approvals, interactive planning, efficiency gained from technology, and ultimately better transportation decisions. The ETDM Process described in this Agency Operating Agreement (AOA) follows the guidelines set forth in the Florida Department of Transportation's ETDM Planning and Programming Manual and Project Development and Environment Manual. The tables below identify the information available, from the project's purpose and need, to technical reports and environmental documents. The tables also identify the agency's review responsibilities from project planning through compliance with NEPA. The tables have been divided into three basic phases of a transportation project: planning, programming, and project development. Program and project efficiency is gained by two environmental screening events that occur at the transportation planning and programming phases. The Planning and Programming Screens apply only to major capacity improvement projects, including roadway widenings, new roadways, new rail systems and all bridge projects.

## Section 2.0 Planning Screen

In Metropolitan Planning Organization (MPO) areas, the Planning Screen will occur on capacity improvements contained in the Long Range Transportation Needs Plan and prior to the development of the MPO Long Range Transportation Plan (LRTP), with the exception of the Florida Intrastate Highway System (FIHS) facilities. FIHS facilities will be screened during the development of the FIHS Cost Feasible Plan for both the MPO and non-MPO areas. FDOT staff is responsible for uploading the FIHS project information into the ETDM database.

The table below identifies the information available to the U.S. Fish and Wildlife Service (USFWS) during the Planning Screen (via the ETDM database). The table also addresses Federal Highway Administration/Florida Department of Transportation (FHWA/FDOT) and the USFWS ETAT representative review and coordination responsibilities. The review will take place on the interactive ETDM Web site, and all comments will be entered directly into the ETAT review database.

**Table 1  
Planning Screen Information and Responsibilities**

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT	USFWS
<ul style="list-style-type: none"> <li>Purpose and Need</li> <li>Project limits and logical termini</li> <li>Mobility Alternatives</li> <li>USFWS plans and programs</li> <li>Demographics (Sociocultural Effects)</li> <li>Agency-specific GIS databases can be found in the EST</li> <li>Example Indirect and Cumulative Effects GIS data sets can be found in the EST</li> </ul>	<ul style="list-style-type: none"> <li>In MPO areas, assist in developing the Purpose and Need Statement and establishing logical termini</li> <li>In non-MPO areas, FDOT in consultation with FHWA establishes Purpose and Need Statement and logical termini</li> <li>In MPO and non-MPO areas, establish Purpose and Need for FIHS projects</li> <li>Ensure project information is available for ETAT review</li> <li>ETDM Coordinator will</li> </ul>	<ul style="list-style-type: none"> <li>Review and comment on Purpose and Need for project</li> <li>Review and comment on logical termini</li> <li>Review and comment on mode choice and mobility alternatives (demand management, transit, highways)</li> <li>Review and comment on order of magnitude of impact</li> <li>Identify significant environmental resource issues</li> <li>Input agency plans and programs that affect the project area</li> </ul>

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Table 1  
Planning Screen Information and Responsibilities

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT	USFWS
	<ul style="list-style-type: none"> <li>consult and resolve project issues, where feasible</li> <li>• Produce the Planning Summary Report, which will comprise the following key components: <ul style="list-style-type: none"> <li>– Project Description</li> <li>– Purpose and Need statement</li> <li>– Agency comments, issues and recommendations for potential direct impacts</li> <li>– System-wide GIS mapping depicting social, cultural, and natural resources</li> <li>– Potential indirect and cumulative effect issues and recommendations</li> <li>– Summary of degree of effect comments</li> <li>– Summary of public involvement comments</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Identify need for future agency involvement and anticipated agency coordination and consultation</li> <li>• Identify resource management policies, goals and objectives</li> <li>• Identify recommended course of action to preserve and protect resources</li> <li>• Evaluate potential indirect and cumulative effects</li> <li>• Provide Project Recommendations</li> <li>• Submit comments electronically within 45 calendar days of notification</li> <li>• The Planning Summary Report will be made available to the ETAT representatives through the ETDM Web site</li> </ul>

### Section 3.0 Programming Screen

The Programming Screen will be performed annually on all bridge projects contained in the Annual Bridge Repair and Replacement Report and on major capacity improvement projects contained in the MPOs' lists of priority projects prior to inclusion into FDOT's Five-Year Work Program, with the exception of the FIHS facilities. The FIHS facilities for MPO and non-MPO areas will be screened during FDOT's development of the FIHS Ten-Year Plan. FDOT staff will be responsible for uploading the FIHS project information into the ETDM database. Major capacity improvements and bridge projects located on the State Highway System in rural areas will also undergo review prior to inclusion into FDOT's Five-Year Work Program.

The Programming Screen will initiate the Advance Notification (AN) process. The table below identifies the information available to the USFWS during the Programming Screen (via the ETDM database). The table also addresses FHWA/FDOT and the USFWS ETAT representative review and coordination responsibilities. The review will once again take place on the interactive ETDM Web site, and all comments will be entered directly into the ETAT review database.

Table 2  
Programming Screen Information and Responsibilities

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT	USFWS
<ul style="list-style-type: none"> <li>• AN process</li> <li>• Coastal Zone Consistency Determination</li> <li>• Local Government Comprehensive Plan Consistency</li> <li>• Goals of the State</li> </ul>	<ul style="list-style-type: none"> <li>• Distribute AN to agencies including all ETAT representatives</li> <li>• Determine Level of NEPA Environmental Documentation (Class of Action Determination)</li> </ul>	<ul style="list-style-type: none"> <li>• Review and comment on AN</li> <li>• USFWS assigns project manager</li> <li>• USFWS may become a Cooperating Agency, if appropriate</li> <li>• Agree through formal documentation on adequacy of corridor-wide resource inventory</li> </ul>

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Table 2  
Programming Screen Information and Responsibilities

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT	USFWS
<ul style="list-style-type: none"> <li>• Clean Air Act Conformity Designation</li> <li>• USFWS plans and programs</li> <li>• Demographics (Sociocultural Effects)</li> <li>• Agency-specific GIS databases can be found in the EST</li> <li>• Example Indirect and Cumulative Effects GIS data sets can be found in the EST</li> </ul>	<ul style="list-style-type: none"> <li>• Publish Notice of Intent for EIS</li> <li>• Establish an interdisciplinary project team</li> <li>• Consult with USFWS on Section 7 as necessary</li> <li>• Produce Programming Summary Report, which will comprise the following key components: <ul style="list-style-type: none"> <li>--- Project Description</li> <li>--- Purpose and Need statement</li> <li>--- Class of Action Determination</li> <li>--- System-wide mapping depicting social, cultural, and natural resources</li> <li>--- Agency comments, issues, and recommendations for potential direct effects</li> <li>--- Preliminary outline of the Project Development scope</li> <li>--- Dispute resolution issues</li> <li>--- Summary of Degree of Effect comments</li> <li>--- Summary of public involvement comments</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Review and comment on project effects: quantity and types of wetlands, protected species</li> <li>• Identify need for Section 7 Consultation</li> <li>• Review and comment on Class of Action</li> <li>• Initiate agency analysis of the project concepts and possible typical sections</li> <li>• Evaluate potential indirect and cumulative effects</li> <li>• Identify all permitability issues and general mitigation needed based on the statutory responsibility of the USFWS</li> <li>• 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</li> <li>• Review and comment on summary of community issues, and public concerns</li> <li>• 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</li> <li>• Submit comments electronically within 45 calendar days of notification</li> <li>• The Programming Summary Report will be made available to the ETAT representatives through the ETDM Web site</li> </ul>

#### Section 4.0 Project Development Documentation

During project development, the USFWS will assist the FDOT in compliance with the Endangered Species Act (ESA) and the Fish and Wildlife Coordination Act to satisfy NEPA and potential permit issues and concerns so that the resultant approvals are acceptable to all parties and received concurrently. The table below identifies the reports and coordination responsibilities for FDOT, FHWA and the USFWS ETAT representative. Project development studies or environmental documents may require the development and maintenance of a project Web site. The ETDM interactive database will have links to the project development Web sites for agencies to continue their electronic reviews, where such sites exist.

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For federally funded major transportation capacity improvement projects which do not individually or cumulatively have a significant environmental effect on the human and natural environment, a Categorical Exclusion (CE) will be prepared. The CE level of conceptual engineering, environmental analysis and public involvement will be documented in technical support studies and be of sufficient detail to support the CE determination. For those major transportation capacity improvement projects that do not qualify for a CE, an Environmental Assessment (EA) or Environmental Impact Statement (EIS) will be completed, in compliance with the Council on Environmental Quality (CEQ) regulations implementing NEPA and 23 CFR 771. The non-federally funded major transportation capacity improvement projects requiring a State Environmental Impact Report (SEIR) will follow a process similar to that used for federal documents.

Table 3  
Project Development Information and Responsibilities

FDOT	FHWA	USFWS
<b>Preliminary Alternatives Analyses</b>		
<ul style="list-style-type: none"> <li>Develop and analyze alternatives</li> <li>Assess major effects of all alternatives</li> <li>Consult with USFWS regarding potential impacts and Best Management Practices (BMPs) for mitigation</li> </ul>	<ul style="list-style-type: none"> <li>Participate in development of alternatives</li> </ul>	<ul style="list-style-type: none"> <li>Review and comment on preliminary alternatives and analysis</li> </ul>
<b>Technical Reports</b>		
<ul style="list-style-type: none"> <li>Complete technical studies as defined by ETAT and scope of services, such as: <ul style="list-style-type: none"> <li>Wetland Evaluation Report (WER)</li> <li>Cultural Resource Assessment (CRA)</li> <li>Endangered Species Biological Assessment (ESBA)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Review ESBA and provide to USFWS</li> <li>In consultation with USFWS, determine need for formal Section 7 consultation</li> </ul>	<ul style="list-style-type: none"> <li>Review and comment on ESBA and other technical reports</li> <li>Provide technical assistance, as needed</li> <li>Complete informal Section 7 consultation and provide comments within 30 calendar days of receipt of ESBA</li> <li>If required, complete formal Section 7 consultation within 90 calendar days and issue Biological Opinion within 45 calendar days</li> </ul>
<b>EA/DEIS</b>		
<ul style="list-style-type: none"> <li>Incorporate ESBA into Environmental Document</li> <li>Complete EA and publish Notice of Availability (NOA)</li> <li>Complete EA/DEIS and submit to USFWS for review</li> </ul>	<ul style="list-style-type: none"> <li>Review and approve EA/DEIS with comments incorporated (30 calendar days)</li> <li>Publish NOA of DEIS in Federal Register</li> </ul>	<ul style="list-style-type: none"> <li>Review and comment on EA or DEIS</li> <li>Review and comment on Section 404 compatibility for each alternative</li> <li>Provide reviews within 30 calendar days of receipt of information or 45 calendar days for DEIS</li> </ul>
<b>Public Hearing</b>		
<ul style="list-style-type: none"> <li>Identify opportunities, constraints and feasibility of Joint Public Notice and Hearing, if appropriate</li> <li>Hold Public Hearing</li> <li>Prepare transcript and certification</li> </ul>	<ul style="list-style-type: none"> <li>Attend hearing and participate as necessary</li> </ul>	<ul style="list-style-type: none"> <li>Attend joint public hearing and participate as necessary or conduct simultaneous public hearing for obtaining NEPA approval and permit approvals if applicable</li> <li>Provide technical assistance on public hearing topics to satisfy permitting requirements</li> </ul>

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Table 3  
Project Development Information and Responsibilities

FDOT	FHWA	USFWS
FONSI/FEIS		
<ul style="list-style-type: none"> <li>Document decisions in Finding of No Significant Impact (FONSI) and FEIS</li> <li>Complete FONSI/FEIS and submit to USFWS for review, as applicable</li> <li>Respond to comments</li> <li>Obtain project permits concurrent with NEPA approval if appropriate</li> </ul>	<ul style="list-style-type: none"> <li>Review FONSI or FEIS</li> <li>Approve FONSI or FEIS</li> <li>Publish notice of FEIS availability in Federal Register</li> <li>Issue Record of Decision</li> </ul>	<ul style="list-style-type: none"> <li>Review FONSI or FEIS and concur within 30 calendar days of notification on NEPA documents</li> </ul>
Environmental Reevaluation		
<ul style="list-style-type: none"> <li>Environmental reevaluation and consultation with USFWS and FHWA on design modifications and/or any changes to EA/FONSI or FEIS commitments</li> </ul>	<ul style="list-style-type: none"> <li>Approve Environmental Reevaluation</li> <li>Participate in reviews to monitor implementation of EA/FONSI or FEIS commitments</li> </ul>	<ul style="list-style-type: none"> <li>Consult with FDOT on design modification and project mitigation measures to assure compliance with EA/FONSI or FEIS commitments</li> </ul>

## Section 5.0 Environmental Reevaluation

Each project is reevaluated, in consultation with FHWA if appropriate, by FDOT, prior to advancing to the next phase of project development. During the reevaluation phase, consultation with permit and resource agencies will occur where major design changes affecting the permit have occurred, or where permits whose effective date may expire prior to project construction have been identified and a time extension in permit duration is needed that will allow for construction to be completed, or where commitments are being implemented or require change.

## Section 6.0 Emergency Consultation

In the event emergency actions may affect federally listed species and/or designated critical habitats, consultation with the USFWS is required. The ESA regulations recognize that an emergency (natural disaster or other calamity) may require expedited consultation. Emergency consultation will be conducted in accordance with 50 CFR Part 402 and Chapter 8 of the ESA Section 7 Consultation Handbook (available on-line at: <http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>). Additional information can also be found on the FDOT link at: <http://www.dot.state.fl.us/emo/>.

## Section 7.0 Agency Operating Agreement Modification

This AOA is between FDOT, FHWA and USFWS. Any changes, amendments, corrections, or additions to this AOA shall be executed and approved by the same officials (or their designees) who executed and approved the original agreement and applicable appendices in accordance with applicable laws. This AOA shall become effective upon signing the agreement. Any party may terminate its participation in this AOA upon sixty (60) days written notice to the FDOT, provided that the party requesting termination has provided sufficient notice and opportunity for remedy of issues and dispute resolution.

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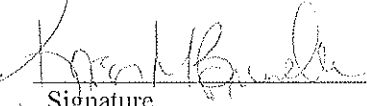

**Section 8.0 Period of Performance**

This AOA shall not expire unless specifically requested by the USFWS or FDOT; however, the Funding Agreement (FA) shall govern with regard to the period of performance and be renewable subject to all parties agreeing to renewal. The parties to this AOA have consulted and agreed to continue participation in the ETDM Process as signatories to the Master Agreement (MA), AOA and FA, with the FA's termination date serving as the controlling date.

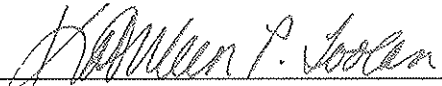
The period of performance for this AOA shall be reviewed at least every five (5) years beginning from the date of the final signatures. In the event of a conflict between any provision of the MA and the AOA, the latter shall govern. The FA shall govern with regard to the period of performance.

**Section 9.0 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.

 _____ Signature Secretary Florida Department of Transportation	 _____ Signature Florida Division Administrator Federal Highway Administration	 _____ Signature Chief, USFWS Contracting Office, Region 4 U.S. Fish and Wildlife Service
11/24/08 Date	11/24/08 Date	11/18/08 Date

_____ Print Name Secretary Florida Department of Transportation	KAREN M. BENNETT _____ Print Name Florida Division Administrator Federal Highway Administration	Don Calder 11/19/08 _____ Print Name Chief, USFWS Contracting Office, Region 4 U.S. Fish and Wildlife Service
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\_\_\_\_\_  
Signature  
Office General Counsel      Date 11/21/08  
Florida Department of  
Transportation

Kathleen P. Toolan  
\_\_\_\_\_  
Print Name  
Office of General Counsel Date  
Florida Department of  
Transportation





## Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0458

STEPHANIE C. KOPELOUSOS  
SECRETARY

### DELEGATION OF AUTHORITY

I, Stephanie C. Kopelousos, Secretary of the Florida Department of Transportation, delegate to Kevin J. Thibault, as the Assistant Secretary for Engineering and Operations, Deborah L. Hunt, as the Assistant Secretary for Intermodal Systems Development, and William F. Thorp, as the Interim Assistant Secretary for Finance and Administration, the authority and responsibility to take action on my behalf at anytime during my absence from the Department headquarters in Tallahassee. I also rescind any prior delegations to the contrary.

Stephanie C. Kopelousos, Secretary  
Florida Department of Transportation

Date