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## 7.0 MITIGATION COMMITMENTS AND COORDINATION

The NEPA regulations require implementation and monitoring of mitigation measures to reduce or eliminate adverse environmental impacts associated with a planned action (for statutory guidance, see 42 USC 4371 *et seq.*, Executive Order 11514, 23 CFR 771.109(b), and 40 CFR 1505.2(C) and 1505.3).

A mitigation commitment is a measure that UDOT or a local agency implements in order to minimize or offset the severity of an adverse impact. Commitments are often made to the general public, businesses, local communities, and state and federal resource agencies. Commitments may be implemented to address resource agencies' comments and are included as required elements of environmental permits. Such measures are typically identified during the environmental study phase of a project. It is important that all commitments be carried forward from the environmental phase through design, construction, and maintenance.

It is UDOT's policy to preserve, protect, and, where feasible, enhance the environment. However, if no impacts to a resource are expected, mitigation measures are not required.

### 7.1 Types of Mitigation Commitments

When evaluating impacts to sensitive resources, the project team should follow a three-step approach when considering project impacts and possible mitigation commitments. The first step is to avoid the resource if possible. If a sensitive resource cannot be avoided, the second step is to minimize the impact to the greatest extent possible. The third step is to consider mitigation measures to offset impacts that remain after avoidance and minimization.

The common types of environmental commitments are described in the following sections.

#### A. Avoidance

When impacts to sensitive resources are identified during the environmental study phase, the project team should revise alternatives, if possible, to avoid affecting these resources. Avoidance can include shifting alignments or selecting an entirely new alignment to avoid a sensitive resource.

For projects where several different sensitive resources are present, avoiding one resource might affect another resource. These projects require extensive coordination with resource agencies and stakeholders to determine the best project solution that minimizes overall impacts to critical resources.

## **B. Minimization**

Where avoidance is not possible, the project team should work to minimize impacts to sensitive resources. Minimization involves measures that reduce impacts to a resource, which can include but are not limited to:

- Shifts in horizontal alignment.
- Using a retaining wall instead of a fill slope to minimize the impact on an adjacent wetland.
- Avoiding construction activities during the breeding season or spawning season of a sensitive species.
- Constructing stormwater conveyance systems and detention facilities that reduce stormwater releases into sensitive water resources.
- Constructing noise walls or depressing a section of road to reduce noise impacts.
- Including landscaping to control erosion and serve as a visual screen.

## **C. Compensation**

Compensation is a type of mitigation that replaces land, facilities, or resources that were lost due to a project. When right-of-way requires displacing homes or businesses, compensation includes payment for the property as well as relocation assistance. Compensation is also used to mitigate impacts to natural resources—for example, when new wetlands are constructed to compensate for wetlands removed or when endangered species habitat on private land is purchased and secured for permanent wildlife use to replace habitat removed.

Mitigation commitments should be proportionate to the impact caused by the project. For example, if a project does not have an impact on a resource, there should not be any mitigation for that resource. Conversely, if a project has a significant impact on a resource, substantial mitigation commitments would likely be required. The environmental study process allows the project team to study the severity of impacts to the various resources of concern. As a result, mitigation measures can be developed that are proportional to the severity of impacts.

## **D. Programmatic Commitments**

Programmatic commitments are standard practices that apply to every UDOT project to help reduce construction-related impacts. Many programmatic commitments are included in UDOT's standard specifications and special provisions. These commitments are requirements of all UDOT construction projects and are included in all construction

contracts; they do not need to be called out as separate mitigation commitments. Examples of programmatic commitments include:

- Environmental Protection Standard Specification
  1. Describes necessary actions if a hazardous substance is discovered.
  2. Describes noise-control practices during construction.
  3. Describes environmental clearances for off-site work.
  4. Describes necessary actions if an archaeological or paleontological resource is discovered during construction.
- Environmental Controls Standard Specification
  1. Describes requirements for controlling erosion and sediment on the project site.
  2. Describes requirements for installing, inspecting, and maintaining erosion- and sediment-control measures.

## **E. Enhancements**

Some types of mitigation measures involve enhancements to a natural resource, such as restoring a natural stream channel, increasing hydrology to a wetland, or removing undesirable plant species. Other types of enhancements are project elements that go beyond merely trying to “make up” for an impact and attempt to create conditions or features that are better than current conditions. Examples of enhancements are landscaping to such a high level that it creates a gateway to a city or town where a gateway did not previously exist. Another example is installing playground equipment at or adding paved pedestrian paths to a park that has lost a small amount of its land to a new highway.

These kinds of joint-development opportunities will require innovative partnerships with nongovernmental organizations and other agencies. In most cases, these entities will need to help pay for the enhancements. Consider cost-sharing on enhancements that local entities request. It is advisable to get concurrence on an enhancement from UDOT management before developing and finalizing it in the environmental document. Other examples include but are not limited to:

- Developing bicycle trails or paths adjacent to roads.
- Including aesthetic treatments on structures.
- Assisting communities with projects that strengthen their efforts to protect historic sites and neighborhoods.

## 7.2 Developing Environmental Commitments

The environmental study process can result in many environmental commitments. Commitments generated under different laws, regulations, or procedures might overlap, resulting in commitments that are unclear, inconsistent, or even contradictory. These problems can be avoided by establishing a systematic process for reviewing potential environmental commitments during the environmental study phase. A general process to develop environmental commitments should include the following tasks:

- Determine the likely adverse impacts from the proposed project.
- Develop preliminary commitments that are proportional to the impacts. Remember that only the project sponsor or joint lead agencies can make commitments.
- Consider the effects of the various commitments on design, construction, and maintenance. As commitments are developed, the project team should involve UDOT staff from design, right-of-way, and maintenance.
- Coordinate and negotiate commitments with the agencies and stakeholders with jurisdiction over the resource(s). Resolve any inconsistencies or contradictions among different commitments and ensure that they are clearly worded.
- Determine which commitments should be described separately in the environmental document and which will be included in standard specifications or environmental permits.
- If any commitments require mitigation beyond what is provided in the standard specifications, submit the list of proposed commitments to the Project Manager and District Engineer for approval.

Environmental commitments can be obtained from the following sources:

- NEPA environmental documents: EIS/ROD, EA/FONSI, CE
- SES
- Section 106 Memorandums of Agreement (MOA)
- Biological Opinions/Incidental Takes issued by the USFWS
- Section 404 wetland permits
- Stream Alteration Permits
- UPDES permits
- Right-of-way documents
- Stakeholder negotiations
- UDOT project managers

## 7.3 Communicating Environmental Commitments

UDOT has developed a project commitment database in ePM (screen 775) to facilitate communicating and tracking environmental commitments through design, construction, and maintenance. The commitments generated by the environmental study phase are merged with commitments made through other processes such as right-of-way acquisition. A [Powerpoint presentation](#) that describes the project commitment database in ePM is available online. Environmental commitments may also be documented and tracked in a shared database with the project team and distributed as necessary throughout various phases of a project.

After the environmental document is approved, the UDOT Region Environmental Manager ensures that all mitigation commitments are added to the project commitment database in ePM or on a shared database and are transmitted to the design staff for inclusion in the project plans, specifications, and estimate.

In addition, it is helpful to list the mitigation commitments applicable to the construction phase in a table within the plan set. This will help notify construction staff of the various environmental commitments and permits that apply to the construction phase.

All mitigation commitments that are the contractor's responsibility must be included in the plans, specifications, and estimate for the project. This will result in a clear understanding of roles and responsibilities.

## 7.4 Tracking Environmental Commitments

Commitments for each project are tracked in the ePM project commitment database or on a shared database. The database should be updated when the status of a commitment changes or when a commitment has been completed. The Region Environmental Manager ensures that the project commitment database is current. This requires regular communication between region construction staff, region environmental staff, and the project manager. The database includes the following fields where information is added:

- **Description of Commitment.** This field describes the essential elements of the commitment. The commitment can be paraphrased from the source document or quoted directly. If the commitment is paraphrased, make sure that important aspects of the commitment are not omitted. For example, if a permit restricts certain activities during specific times of day or times of year, it is important to include those specific periods in the database. Or, if a commitment includes documenting a historic property, ensure that this happens prior to construction activities.
- **Resource.** This field assigns each commitment to one or more resource categories (for example, air quality, water quality, traffic, or noise). Resource

categories reflect the major topics addressed in the environmental document. This field allows commitments to be sorted by environmental topic.

- **Responsible to Implement.** This field identifies the entity with the responsibility for carrying out or addressing the commitment. For example, a commitment regarding project design would typically be assigned to the design consultant, and a commitment regarding construction methods would typically be assigned to the construction contractor. For a design-build project, the design-build contractor might be listed for both design and construction tasks.
- **Source.** This field lists the source document(s) that provide the basis for the commitments (for example, the FEIS, ROD, Section 404 permit, or Section 106 MOA). If the source document is large, it might be helpful to include a reference to the specific page or section of the source document.
- **Plan Sheet Reference.** This field provides the plan sheet number(s) that apply to the mitigation commitment.
- **Status.** This field describes the current status of the commitment. For example, a commitment can be designated as pending, ongoing, or completed.
- **Due Date.** This field gives the due date for the commitment.

After all commitments from the environmental phase are entered into the database, it is important for the project team to be alert for any new commitments made during the final design phase, including permits obtained after the environmental document is approved. All new commitments and permits should be included in the final project plans and specifications and entered into the database.