CHAPTER 12:

FINAL ENGINEERING PHASE & CONSTRUCTION PHASE ACTIVITIES

Environmental Commitments and the Environmental Consultation Form

General Information

With completion of the environmental document in the PDP Environmental Engineering Phase, the environmental commitments for a project are summarized as part of the environmental document. This summary provides the link between the environmental phase of a project and the later phases of the PDP. Environmental commitments are binding agreements with agencies of jurisdiction (based on consultation) and are then incorporated into final plan development on projects.

Environmental commitments are project specific and can be widely varied. For example, commitments can be plan notes, additional research, additional field work (and specific timing of field work), construction monitoring, timing of fieldwork with other project work (such as utility or geotechnical work), project design features, and/or additional agency reviews.

Communication during plan development is the key to a successful environmental commitment process on a project. It is critical for knowing whether a commitment is feasible or not, especially for commitments to avoid resources. As an example for an avoidance commitment, preliminary design could be advanced for the area of avoidance in order to examine feasibility. That kind of project management and communication is proactive and gives the project team time to make any necessary changes with the project and still honor the environmental commitment.

Avoidance, minimization, and mitigation plans are developed during the Environmental Engineering Phase and environmental commitment plan notes are drafted for incorporation into project plans during the PDP Final Engineering Phase. The environmental commitments must be incorporated into a project and followed in order to avoid, minimize, or mitigate impacts to environmental resources. The summary of environmental commitments must be provided to the Project Manager at the end of the Environmental Engineering Phase.

Stage 3 Detailed Design plans are reviewed during the Final Engineering Phase to confirm compliance with environmental commitments and mitigation plans.

All environmental commitments from the environmental document are carried forward on the Environmental Consultation Form (ECF) in the final engineering plan package submitted by the ODOT District Office for final approval and contract sale. The ECF documents that there is an approved NEPA document on a project and that there is compliance with agency coordination. The ECF contains the summary of environmental commitments and may be used for pre-bid meetings as well as for pre- and post-construction meetings during the Construction Phase.

Cultural Resource/Section 106 Commitments

The ODOT-OES cultural resource staff works with the OHPO to monitor commitments agreed to during the Section 106 process. Cultural resource/Section 106 commitments are most commonly made in project consultation letters between ODOT and OHPO and in an interagency Memorandum of Agreement (MOA) for a project. Those commitments are carried forward as part of the environmental commitments summarized in an environmental document. ODOT-OES serves as liaison between the OHPO and the ODOT Districts regarding commitments and the development of plan notes. Though ODOT-OES does not write the plan notes, they communicate the intent of the commitments and need for the commitments to the District so that accurate plan notes can be written. The District Environmental Coordinator (DEC)
works with the project manager, design, and construction to produce feasible, compliant, and cost effective plan notes.

ODOT-OES reports the completion and/or disposition of cultural resource avoidance, minimization, and mitigation commitments to both the OHPO and FHWA via project specific communication, and copies the DEC with this communication. This is ongoing as a project progresses through the PDP. This reporting is standard procedure between the agencies and is part of the ongoing inter-agency reporting and consultation on a project. ODOT-OES may ask ODOT District staff for assistance and could use the ECF in compiling information for this reporting and consultation on projects. The completion of commitments is also reported during annual compliance review for the Section 106 Programmatic Agreement.

Refer to the example of a District commitments tracking sheet on the last page of this chapter. This type of document is not only very useful for the District staff, but also for the District to give to ODOT-OES for transmitting to both OHPO and FHWA. This example is specific for commitments from a project MOA. However, it could be modified to track commitments of any kind that are summarized in environmental documents and on the ECF. Examples include using such a sheet to track submission of final plans to OHPO for review/comment to ensure avoidance or minimization; monitoring completion of HABS/HAER documentation prior to demolition; and for when some commitments are completed as part of construction plans or completed ahead of construction by using a task order consultant.

As discussed in Chapters 9 and 10, a project could involve a very wide range of avoidance, minimization, and/or mitigation commitments for cultural resources. The specifics will be entirely dependent upon the project.

A commitment made in the Section 106 consultation correspondence with the OHPO to avoid a cemetery, for example, could result in a no historic properties affected determination, and would be carried forward as a construction plan note.

Commitments resulting from a no adverse effect determination would be outlined in the Section 106 consultation correspondence with the OHPO or in a project Memorandum of Agreement. For an adverse effect determination, commitments would be embodied as stipulations in a project MOA or Programmatic Agreement. Cultural resource commitments are subject to review and comment through consultation with Section 106 consulting parties and the public; specifically, through formal or informal consultations with the OHPO, local communities, local or state agencies, local or statewide organizations, federally recognized Native American Indian tribes, and from NEPA public involvement meetings.

A no adverse effect determination could result in commitments for avoidance or minimization with no direct disturbance of a historic property. This would be done by including construction plan notes for avoiding or protecting a resource by placing temporary fencing around it, reducing or eliminating the area of a right-of-way take, documenting a resource prior to its burial by construction fill, etc.

Commitments for minimization and mitigation of an adverse effect due to direct disturbance of an archaeological site would be included in construction plan notes stating that Phase III archaeological excavation (archaeological data recovery) would take place once right-of-way acquisition for the property in question was completed (which is an early Final Engineering Phase task). GPS points will have been taken on all archaeological sites during Phase I and Phase II survey work. For sites designated for avoidance, minimization, or mitigation, those GPS points should be noted in the project plans. The plan notes should also state that the project construction schedule must accommodate the completion of both the field investigations and subsequent OHPO consultation before properties containing archaeological sites under mitigation could be released for construction activities. Construction can be on going in other areas of a project, but this process must be completed in the field and with OHPO prior to construction activities on the archaeological site areas.

This process is similar to mitigation commitments for HAER documentation on a bridge prior to its removal or alteration, or to HABS documentation on a building, structure or object prior to removal or alteration. If the commitments for mitigation on a historic bridge include the production and installation of
commemorative plaques, the project plans must reflect both those designs for production and plan notes for installation. It is critical that environmental commitment summaries, the ECF, and project plans are all clear on the time frames that must be built into project schedules for completion of mitigation actions.

Construction plan notes could also include commitments to conduct archaeological monitoring in specific construction locations requiring deep excavations, such as for bridge piers. Such notes would have to state how the construction schedule would accommodate this monitoring work.

Construction plan notes with commitments for aesthetic treatments could result from Section 106 consultation regarding context sensitive design. Such commitments could include treatments to retaining walls or noise walls, installation of specific lighting, fencing, or landscaping, bricks or other types of pavers, sidewalk and curb treatments, signage, etc.

Construction plan notes with commitments specifically for historic bridges would detail the specific tasks for a bridge’s dismantling, restoration, storage, and re-erection at another locale for reuse (such as on a multi-use trail). On a project where a historic bridge would be demolished, plan notes would state the process for removal and preservation (and re-use of) any structural elements of a bridge. Such plan notes may require additional OHPO review before Stage 3 Detailed Design plans are complete.

**Borrow and Waste Areas**

If borrow and waste areas are to be included in project construction plans, those locations would be included in the project’s scope and APE. As such, they would be evaluated by ODOT under Section 106 and NEPA for the project.

If borrow and waste areas are not included in project construction plans (which is usually the case), the contractor will follow Sections 105.16 and 107.10 of ODOT’s Construction and Material Specifications:

- All properties used by the Contractor outside the project right-of-way must be cleared for all environmental resource impacts (including cultural resources) prior to the beginning of work. The contractor (rather than ODOT) is responsible for securing all environmental clearances and permits prior to beginning any construction activities.

- All areas proposed by the Contractor for use outside the project construction limits must be reviewed by ODOT prequalified environmental consultant(s) for each environmental resource. The environmental consultant(s) must certify that the areas proposed for use for the contractor will not impact environmental resources (including cultural resources). All properties to be utilized by the contractor outside the project right-of-way must be cleared for all environmental resource impacts prior to beginning of construction work.

It is extremely important that those areas where ODOT has interagency commitments in place for avoidance must be avoided by the contractor during selection of borrow and waste areas. If those areas are close enough to the project limits, they may be noted in the construction plans. If not, they would be noted in the ECF. ODOT would not be in favor of reopening the NEPA document and Section 106 consultation due to contractor impact to an area noted for avoidance. This underscores the need for the ECF to be provided at both pre-bid and pre-construction meetings.
Post Section 106 Review Discoveries

Since completion of Section 106 review occurs during the PDP Environmental Engineering Phase, post review discoveries on projects usually result from changes in final design or unforeseen construction issues and fall into one (or sometimes both) of two broad categories on projects:

Discoveries Made Prior to Project Construction: Final design and right-of-way acquisition issues can change a project’s scope and APE into new areas and require additional/supplemental cultural resource investigations if the new additional areas were not previously surveyed. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered in the new areas prior to commencement of project construction, ODOT-OES, in consultation with OHPO, will carry out the applicable requirements of 36 CFR Section 800.13 on behalf of FHWA.

Discoveries Made After Project Construction Begins: If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after project construction begins, that portion of the project will stop immediately pursuant with Section 203.04 of ODOT’s Construction and Material Specifications. The project engineer will immediately contact ODOT-OES and/or the appropriate ODOT District Environmental Coordinator who will notify FHWA within 24 hours.

No further construction in the area of discovery will proceed until the requirements of 36 CFR Section 800.13 have been satisfied, including consultation with federally recognized Native American Indian tribes that may attach traditional cultural and religious significance to the discovered property. ODOT-OES will consult with FHWA, OHPO and federally recognized Native American Indian tribes, as appropriate, to record, document and evaluate NRHP eligibility of the property and the project’s effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.

Any cultural resource investigation on a post review discovery requires a re-evaluation of the environmental document. Any changes to the Section 106 finding and cultural resources commitment will depend on the identification and evaluation of the post review discovery.

Treatment of Human Remains

Historic and prehistoric human remains are subject to protection under ORC Sections 2909.05 and 2927.11. As such, if previously unidentified human remains are discovered during construction, work in that portion of the project will stop immediately. The remains will be covered and/or protected in place in such a way that minimizes further exposure of and damage to the remains.

The ODOT project engineer will immediately contact the ODOT District Environmental Coordinator, the ODOT-OES Cultural Resources Section, local law enforcement and/or the County Coroner, and FHWA. If the project has a US Army Corps of Engineers (USACOE) permit issued, the ODOT District Environmental Coordinator must notify the ODOT-OES Permits Section and the USACOE. ODOT-OES cultural resource staff will notify OHPO.

If the remains are found to be Native American Indian, a treatment plan will be developed by ODOT-OES and OHPO in consultation with FHWA and appropriate federally recognized Native American Indian tribes. FHWA and ODOT-OES will ensure that any treatment and reburial plan is fully implemented. If the remains are not Native American Indian, the appropriate local authority will be consulted to determine final disposition of the remains. Avoidance and preservation in place is the preferred option for treating human remains.

For Native American Indian human remains discovered on federal lands, the federal land managing agency will be responsible for consultation under the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601). For skeletal remains discovered on property owned by the State of Ohio, ODOT will comply with Section 149.53 of the ORC. Under this section, the Director of the Ohio Historical Society shall determine final disposition of any discovered skeletal remains.
Example: District Document for Tracking Environmental Commitments & Compliance on Project

MUS SR 696 (PID 80762) MOA CONCURRENCE

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