

## OES Guidance for Writing Environmental Commitments (10.6.17)

Environmental commitments are any agreed-upon actions to mitigate (restore, enhance, avoid, minimize, and/or replace) impacts to the human environment. The human environment includes social, economic, natural, and cultural resources. Typically, these actions are agreed upon between ODOT, and the regulatory agencies, as part of the coordination processes and compliance with state and federal law. Failure to comply and/or follow-through with these actions can result in loss of federal funding and approvals, degraded public and agency relations, fines, project schedule delays, or potentially criminal charges against individuals associated with the action. Furthermore, failure to comply with environmental commitments could negatively impact ODOT's NEPA Assignment status. Environmental commitments can originate and require implementation at any point in the Project Development Process and during operations & maintenance. Environmental commitments can be as simple as a requirement for seasonal work restrictions or as complex as a treatment plan for cultural resources. This simple guidance summarizes for users how to decide what actions become environmental commitments, how to write environmental commitments, how to communicate with the responsible individuals, and how to record and track successful implementation of environmental commitments in EnviroNet.

**Decide**, during NEPA, what actions ODOT will take to mitigate (restore, enhance, avoid, minimize, and/or replace) impacts to the human environment:

1. Are the impacts for which the mitigation is proposed a result of the ODOT action?
2. Does the proposed mitigation represent a reasonable public expenditure considering the impacts of the action and the benefits of the proposed mitigation?
3. Consider, among other factors, what is the extent to which the proposed mitigation would assist in complying with a Federal statute, Executive Order, or local/state/federal regulation or policy.
4. Discuss mitigation opportunities with staff from environmental, design, engineering, operations & maintenance, OES or others as needed to decide what actions will be elevated to environmental commitments.
5. The actions that ODOT will include as environmental commitments are written in the NEPA document.

**Write** the Environmental commitments into the NEPA document:

1. Environmental commitments should be simple, clear, and should address “Who, What, Where, When” and potentially the “How” of the action. **Note:** some commitments may not require all five areas.
  - a) **Who**<sup>1</sup>: name the entity responsible for implementing the environmental commitment. If using acronyms, be sure to define them. A commitment may have multiple responsible entities.
  - b) **What**: provide direction as to what the commitment is requiring and includes where and when.
  - c) **Where**: provide direction for the area or location(s) that this commitment addresses.
  - d) **When**: provide a specific timeframe for the work, and a deadline if necessary. Avoid subjective terms such as “reasonable amount of time” and “minimal” as these are not enforceable.
  - e) **How**: if possible and applicable provide explicit methods for how to complete the commitment. This can often be directly related to the performance measure of the commitment developed in EnviroNet.

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<sup>1</sup> Colors and font style variations are for illustrative purposes only.

**Example** - ODOT receives the following comment from resource agencies: “Suitable habitat for the timber rattlesnake is present within or immediately adjacent to the project area. Due to the potential for timber rattlesnakes to occur in the project area, workers will be instructed to not harm or kill the snakes and to use caution, as the timber rattlesnake is a venomous species. If this species is encountered within the construction limits during construction operations, all construction operations will cease, and the USFWS Columbus Field Office will be notified immediately (614-416-8993). Activity will not continue until this additional coordination/consultation with USFWS is concluded.”

ODOT decided that this action is feasible and applicable, and therefore decided to include it as an environmental commitment.<sup>2</sup>

The following commitment was developed by applying the above guidance to the comment (**note:** colors are used to illustrate **who**, **what**, **where**, **when**, and **how**):

The Project Designer shall include the following note in the plans: Due to the potential for timber rattlesnakes to occur in the project area, the Contractor shall not harm or kill the snakes and shall use caution, as the timber rattlesnake is a venomous species. If this species is encountered within the construction limits during construction operations, all construction operations within vicinity of the snake will cease immediately, and the Project Engineer shall immediately contact the District Environmental Coordinator at (555-555-5555). The District Environmental Coordinator will immediately contact the USFWS Columbus Field Office. Construction activities shall not continue until this additional coordination/consultation with USFWS has concluded.

Environmental commitments are entered into EnviroNet. For C1 and C2 level projects, environmental commitments are listed in the C1/C2 tabs. For D1 and higher level projects environmental commitments are listed in each discipline specific tab. The environmental commitments are automatically carried forward to the Environmental Commitments Tab.

**Communicate** to the responsible entities their obligation to assist with and carry out the EC(s):

1. Utilize the Environmental Commitments Tab in EnviroNet. The tab allows for documentation and communication between those developing the commitments and those implementing the commitments, and also enables tracking commitments from planning through construction and Operations & Maintenance.
2. Use the instructions in Appendix A the Environmental Commitment Tab to alert the entity responsible for implementing the environmental commitment. This should be a specific person responsible for ensuring the commitment is completed successfully.
  - a. Environmental commitments to be completed prior to construction are assigned to an individual at ODOT or the Local Sponsor. For example, the ODOT DEC may be responsible for ensuring that ODOT allows an outside agency an opportunity to review plans prior to plan file, or to include a plan note directing the contractor to perform work in a specific manner. Real Estate may also have commitments regarding contaminated properties.
    - i. See Appendix A for screen shots of the Environmental Commitments Tab.
  - b. Environmental commitments to be completed in construction are typically incorporated in the project contract documents via plan notes or special provisions. All commitments applicable to

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<sup>2</sup> Please see list of common environmental commitments in Appendix B. **Note:** more commitments will be added.

construction should be part of the agendas and reviewed and discussed at the pre-bid and pre-construction meetings. Typically, it is the responsibility of the Project Engineer to ensure commitments are carried out during construction.

- c. Environmental commitments to be completed in Operations & Maintenance should be discussed in detail with the Highway Maintenance Administrator and applicable county(ies).

## Follow Through

1. Environmental commitments must be implemented successfully.
  2. Use the Environmental Commitments Tab to assign responsibilities and document commitments to completion. Assign LPAs responsibility for environmental commitments on Local-Let projects.
  3. **Active Compliance Assistance:** Projects with higher-level NEPA documents, highly sensitive resources, high public interest, or other sensitive issues should consider having on-the-ground, in-person monitoring of commitments at regular time intervals determined by project team or as required by the commitment. OES has found that monitoring should be more frequent at the beginning of a project and can then taper to less frequent once the project is underway.
    - a. Onsite inspections may be performed by District Environmental, OES, consultants, or construction.
    - b. Utilize the [Environmental Commitment Monitoring Report](#) form for every onsite inspection. Once the form is complete, the monitor shall upload the report to EnviroNet under Project File/Environmental Commitments/Environmental Monitoring Report\_1. Each subsequent report shall be uploaded as “Environmental Monitoring Report\_2” and so on.
    - c. Note: Not all active monitoring may require onsite inspections. Depending on the commitment, the monitor may be able to contact Construction and ask for a photograph or email to document compliance.
    - d. Active monitoring will culminate with a final monitoring check.
  4. **Final Monitoring Check:** Once construction is complete, the DEC shall review all environmental commitments for a project and document their completion via the Status box and Date Completed on the Environmental Commitments Tab and upload associated documents, or ensure they were uploaded, to the project file under Environmental Commitments. The DEC may document successful implementation of all environmental commitments using the simplest means possible (i.e. photographs, documents, emails, PDFs, reports, etc.), or conduct a final field inspection if necessary.
    - a. DEC or District Environmental Staff must perform a Final Monitoring Check to ensure and document all commitments were completed for every project, not only those that underwent active monitoring.
  5. Be aware of, and follow through on, environmental protection and restorations required in CMS. CMS items will not be part of the NEPA document, but still must be complied with during construction, especially when environmental approvals rely upon their implementation. A list of CMS items that may lead to environmental issues if not followed are included in the Environmental Monitoring Report form.
  6. Some commitments may go into Operations & Maintenance. Communicate to the long term owners of this responsibility (Operation & Maintenance and appropriate County forces).
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**APPENDIX A.** Description of the June 2017 Enhancements to the Environmental Commitment tab in EnviroNet.

1. The Environmental Commitments tab has a ribbon for each discipline. Tab labels with an asterisk (\*) indicate disciplines with commitments, making it easier for tracking throughout the life of the project. C1 and C2 projects will only have one tab for all disciplines. Once an environmental document is approved, the commitment text box will appear with a grey background and the commitment cannot be removed. New commitments can be added, but will appear with a white background. If the addition of a new commitment requires a re-evaluation of the document, then the added commitment will appear as grey.
2. Select a tab to see the commitments for a specific discipline. Click the arrow next to each commitment to open up the individual commitment information.
3. By selecting a commitment, you can assign the **Responsible Party** (they will receive an EnviroNet

Environmental \* Air Noise ESA \* Cultural Resources \* Ecological \* Other Resources \* Section(6f) \* Section(6f) Community Imp

« Collapse All » Expand All

**Environmental Commitments**

Commitment
14 A professional malacologist must collect and relocate the mussels in the Muskingum river to suitable and similar habitat upstream of the proposed consultation.
15 The Project Designer shall include the following note in the plans: Due to the potential for timber rattlesnakes to occur in the project area, ODOT and construction operations will cease immediately, and the Project Engineer shall immediately contact the District Environmental Coordinator at (555-555-5555) if USFWS is concluded.

Remove

Environmental Commitment 1

Environmental Commitment 2

**Responsible Party Task Queue**

Person	Title	User ID	Date Assigned
Amanda Foley	ENV SPEC 2	DOT\afoley	06/23/2017

Remove Assign

Status:

Planning/PDP: complete. Construction: in progress and compliant.

Date Completed:

alert email). A responsible person must be assigned prior to completing the other boxes related to the commitment. This person is responsible for filling out the information in the remaining fields.

4. **Status:** provides a space to record compliance/non-compliance information, implementation updates, etc. This box should be completed by responsible party.

5. **Date Completed:** the date the commitment was implemented to completion. If a commitment has multiple parts, the date completed is when the final action is completed.

6. **Compliance Measure:** A simple, comprehensive description of what measures and/or actions need to be completed to sufficiently document how the environmental commitment was implemented successfully.

7. **Timing of Implementation:** Which phase of project development the commitments need to be implemented/completed. Options include Planning/PDP, Construction, and Post-Construction.

8. **Plan Sheet #** (if applicable): The location of the plan note, drawing, or other important information related to the commitment. Only applies to commitments that will be implemented during construction or post-construction.

**Environmental Commitment 15**

The Project Designer shall include the following note in the plans: Due to the potential for timber rattlesnakes to occur in the project area, ODOT and the Contractor during construction operations, all construction operations will cease immediately, and the Project Engineer shall immediately contact the District Environmental Coordinator if timber rattlesnakes are seen. The District Environmental Coordinator will upload documentation of coordination with USFWS.

Compliance Measure: ⓘ

The Project Manager will check to ensure the plan note is included in the plans. The Project Engineer will ensure all construction activities stop and the District Environmental Coordinator is contacted if timber rattlesnakes are seen. The District Environmental Coordinator will upload documentation of coordination with USFWS.

Timing of Implementation ⓘ

Planning/PDP and Construction

Plan Sheet#: ⓘ

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**Hover over the question mark icon and a Quick Tip box will appear and provide guidance on what information to include in the text boxes.**

## **APPENDIX B. List of Common Commitments**

### **General**

1. The Project Designer shall incorporate the following note into the plans: The Contractor shall maintain pedestrian movement through the construction zone at all times.
2. The Project Designer shall incorporate the following note into the plans: The Contractor must submit the OEPA Demolition/Renovation Form to the OEPA within 10 business days prior to demolition.

### **Air**

3. The Contractor shall avoid impacting the existing air quality monitor [located at \_ or as shown on the plans] during construction.
4. The Project Designer shall delineate adjacent air quality sensitive areas on the plans and incorporate the following plan note: The Contractor shall establish truck staging areas in locations that will have a minor air quality impact on adjacent sensitive areas.

### **Cultural**

5. Once the stage two design plans are available, the District Environmental Coordinator will provide the plans to ODOT OES for coordination with the State Historic Preservation Office staff prior to the commencement of construction for a 30 day review period.
6. The Project Designer shall incorporate the following note into the plans: ODOT shall monitor the archaeological site [name site] during construction to record and recover any archaeological material that might be uncovered. The Contractor shall notify ODOT's Office of Environmental Services (OES) of the proposed construction schedule (a minimum of XX days prior to work in the vicinity of [name site]) so that the monitor can be present. No work in the vicinity of [name site] is allowed without the presence of OES staff unless the Contractor receives a written waiver from OES.
7. The Project Designer shall delineate in the plans areas requiring geosynthetic fabric for protection of archaeological resources and incorporate the following note into the plans: In order to protect and minimize harm to [identified sensitive environmental resources OR Site Name], the Contractor shall place geosynthetic fabric over the existing ground prior to any earth disturbing activities/placing fill as per the plans.
8. The Project Designer shall delineate in the plans boundaries of the following historic properties [name of sites] and incorporate the following note into the plans: Prior to beginning work in the vicinity of [name site], the Contractor shall place temporary construction fencing around the site boundary within the work limits. Work within the historic property boundary is prohibited.
9. The [project manager] shall ensure a LIDAR scan of the existing bridge is completed the winter prior to construction to provide a permanent detailed record of the historic structure. The scan shall be submitted to the Office of Environmental Services.
10. The Project Designer shall include a plan or drawings detailing the salvage of [bride or bridge components] for [reuse on or near the bridge] and incorporate the following note into the plans: The Contractor shall salvage and set aside [items salvaged] for [reuse/storage/giveaway].
11. [ODOT's Office of Environmental Services in consultation with consulting parties] shall design [two] commemorative plaque[s]. The Project Designer shall incorporate the plaque design and locations ([superstructure of existing structure and on/in the vicinity of the reused historic superstructure]) in the plans.

### **Ecological**

12. The Project Designer shall incorporate the following note into the plans: The project is located within the known habitat ranges of the federally listed and protected Indiana bat and northern long-eared bat. [The Contractor] shall not remove trees under this project from April 1 through September 30. All necessary tree removal shall occur from October 1 through March 31. This requirement is necessary to avoid and minimize impacts to these species as required by the Endangered Species Act. For the purposes of this note, a tree is defined as a live, dying, or dead woody plant, with a trunk three inches or greater in diameter at a height of 4.5 feet above the ground surface, and with a minimum height of 13 feet.
13. The Project Designer shall incorporate the following note into the plans: Timber Rattlesnake - Due to the potential for timber rattlesnakes to occur in the project area, the Contractor shall not harm or kill the snakes and shall use caution, as the timber rattlesnake is a venomous species. If this species is encountered within the construction limits during construction operations, all construction operations will cease within the vicinity of the snake, and the Project Engineer shall immediately contact the DEC, who will immediately contact the USFWS Columbus Field Office. Construction activities shall not continue until this additional coordination/consultation with USFWS is concluded.  
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14. The Project Designer shall incorporate the following note into the plans: To avoid impacts to hibernating bats from percussive activities, the Contractor shall only perform blasting activities between May 1 and September 30. \*\*
15. The Project Designer shall incorporate the following note into the plans: A federally permitted malacologist must complete a mussel salvage and relocation the field season prior to the initiation of construction (after July 1) in accordance with the most recent version of the Ohio Mussel Survey Protocol. The federally permitted malacologist will submit the salvage and relocation work plan to USFWS for review and approval prior to any survey work. The contractor cannot perform any work below ordinary high water mark until the mussel salvage and relocation work has been completed.
16. The Project Designer shall incorporate the following note into the plans: Within 1 year prior to the start of construction, the Contractor must inspect the bridge for evidence of bats. The Contractor must provide written confirmation of the inspection, including a statement regarding whether evidence of bats was found, to the ODOT Construction Engineer prior to the start of construction. If bats are present, construction may not be initiated between April 1 and September 30. \*\*
17. The Project Designer shall incorporate the following note into the plans: The Contractor shall notify the Project Engineer 25 days prior to work within 1000 feet of the [Scenic River]. The Project Engineer shall notify the District Environmental Coordinator 20 days prior to work within 1000 feet of the scenic river. The District Environmental Coordinator shall coordinate with ODNR Scenic Rivers 15 days prior to any work within 1000 feet of [Scenic River].
18. The Project Designer shall incorporate the following note into the plans: The Contractor is not permitted to work within 300-feet of the existing Peregrine falcon nest on the bridge between February 1st and August 31<sup>st</sup>.

*\*\*Example of creating a commitment based on an Avoidance and Minimization Measure (AMM) from the Section 7 Consultation Template. For projects that require AMMs, please develop the commitment based on the writing criteria listed above (who, what, where, when), and the measures required by the AMM.*

#### **Noise**

19. The Project Designer shall incorporate the following note into the plans: No construction involving the use of power-operated equipment including, but not limited to: front loaders, backhoes, dozers, tractors, scrapers, graders, pavers, roller compactors, slip form equipment, pavement planing equipment, dump trucks, concrete mixers, concrete pumps, cranes, compressors, generators,

pumps, pile drivers, jack hammers, rock drills, pneumatic tools, saws, and vibrators shall be performed from [9:00 p.m. to 7:00 a.m.] without the prior permission of the Project Engineer. [Note - local ordinances, if in place, will supersede.]

20. Prior to Stage 3 approval, [ODOT] shall conduct noise public involvement to determine the desire, color, and texture of the noise wall. The Project Designer shall ensure the noise wall designs are incorporated fully into the plans.
21. The Project Designer shall design and incorporate project specific Vegetative Screening into the plans in accordance with and approval from ODOT's Office of Environmental Services.
22. The Project Designer shall provide the noise wall construction plans to the Office of Environmental Services for review and approval a minimum of 30 days prior to finalizing the plans.
23. The Project Engineer shall provide the noise wall shop drawings to the Office of Environmental Services for review and approval a minimum of 30 days prior to manufacturing the noise walls.
24. The Project Designer shall develop a plan note or construction plans for utilizing waste material to construct a noise berm at [insert location]. The note must be reviewed and approved by the Office of Environmental Services and District Environmental Staff prior to finalizing the plans.

#### **Section 4(f)/Section 6(f)**

25. The Project Designer shall incorporate the following note into the plans: The Contractor is not permitted to stage equipment or materials within [name of park(s)].
26. The Project Designer shall incorporate the boundary of [insert resource/park name] within the project area in the plans.
27. The Project Designer shall incorporate the following note into the plans: The Contractor must maintain access to [name of park(s)] adjacent to the project at all times.
28. The Project Designer shall incorporate the following note into the plans: Contractor shall maintain access to [multi-use paths] at all times during construction.
29. The Project Designer shall incorporate the following note into the plans: To protect the [name of 4(f) property] and the public, the Contractor shall install temporary construction fencing within the project construction limits along the [name of 4(f) property] boundary prior to the start of construction activities.

#### **Waterway Permits**

30. ODOT will obtain all appropriate waterway permits prior to any work below the ordinary high water mark of any waterway and all Special Provisions for waterway permits will be included in the project plans.
31. The Project Designer shall incorporate the following note into the plans: The Contractor is not authorized to place any fill or work within any waterway below the ordinary high water mark during construction until the permit(s) are obtained.
32. The Project Designer shall incorporate the following note into the plans: The Contractor shall not place temporary or permanent fill in wetlands or below the ordinary high water mark of any waterway during construction of this project, including scaffolding or bracing. The contractor shall not place equipment below the ordinary high water mark. If debris enters the waterway during construction, the Contractor shall remove the debris immediately utilizing equipment staged above the ordinary high water mark.
33. The Project Designer shall incorporate the following note into the plans: Under no circumstances shall the contractor impact [Stream/Wetland] at any time throughout construction. No excavation,

grading, or filling operations shall be performed in [Stream/Wetland]. Under no circumstances shall the Contractor store construction equipment [below the ordinary high water mark/within the wetland boundary].

34. The Project Designer shall incorporate the following note into the plans: The contractor shall prevent any incidental discharges associated with the excavation and hauling of material from streams and ditches. This pertains to any excavation operation such as foundation, pier or abutment excavation, erosion and scour repair, channel clean out, and excavation for rock channel protection.
35. The Project Designer shall incorporate the following note into the plans: The Contractor must immediately remove all materials removed from streams and/or ditches to an upland site and stabilize (i.e. seed) to prevent redistribution into any Waters of the U.S. The U.S. Army Corps of Engineers defines immediate removal as depositing the removed materials directly into a truck and removing the material from the site. Placing removed materials into wetlands or on the banks of a stream, even temporarily, is considered a fill activity and requires a waterway permit action.