

Local Project Administration Manual & Resource Guide

Environmental Review



4. ENVIRONMENTAL
REVIEW



MaineDOT

Integrity - Competence - Service

Updated Spring 2022

Environmental Review

Before moving ahead, transportation projects must be assessed for their potential impacts to natural and cultural resources, such as wildlife habitats and historic places. These required environmental reviews stem from a series of landmark laws – primarily the National Environmental Policy Act of 1969.

Chapter 4 provides a summary of environmental requirements, a breakdown of state and local responsibilities, and sample submittals to MaineDOT. It contains the following:

- Environmental requirements – *updated* (pages 4-1 to 4-7);
- Environmental review checklist (page 4-2);
- State and local responsibilities (page 4-3);
- Appendix 4A: Submittals to MaineDOT – *updated* (page 4-8).



4.1 National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) is a landmark environmental law requiring federal agencies to assess a variety of potential environmental impacts. MaineDOT completes the NEPA process for projects with federal transportation funding in accordance with a Programmatic Agreement between MaineDOT and the Federal Highway Administration (FHWA).

Projects with no significant environmental impacts to natural or cultural resources are considered “Categorically Excluded,” according to Title 23 in the Code of Federal Regulations, part 771.117. Most MaineDOT and locally administered projects meet the Categorical Exclusion criteria.

NEPA review is required on projects with a federal action (funding/permits), as follows:

- MaineDOT completes the NEPA process if a project has federal transportation funding or requires an approval from the U.S. Department of Transportation. The local agency managing a project must provide information addressed in Letter 10 and Letter 11, found on pages 4-9 through 4-11.
- A city, town or other local agency must complete the environmental review process when there is no federal transportation money, typically through federal permitting.
- All work on Section 106 (historic properties), Section 7 (endangered species), Section 4(f) (public parks, et. al.,) public involvement, contaminated materials review, and the level of federal permit must be finished before the NEPA process can be completed.
- The NEPA finding must be reviewed if a project is not constructed within **five years** of the original NEPA completion date. Additionally, a re-evaluation may be needed if a project changes in scope or requires new federal approvals after the NEPA process is complete.

ENVIRONMENTAL REVIEW CHECKLIST

National Environmental Policy Act (federally funded projects)

- When a project is kicked off, review the NEPA checklist (page 4-11) and gather economic and demographic information for the project area from sources that include the MaineDOT MapViewer tool: <https://www.maine.gov/mdot/mapviewer/>
- Upon completing the Preliminary Design Report (PDR), provide MaineDOT with the public process certification (**Letter 10**) and completed NEPA checklist (**Letter 11**), found on pages 4-9 through 4-11 of this section.

Environmental Permits

- Contact appropriate state and federal agencies for permit requirements and approvals.**
 - Maine Department of Environmental Protection: <https://www.maine.gov/dep/permits/>
 - Augusta (Central Maine): (207) 287-7688
 - Bangor (Eastern Maine): (207) 941-4570 • (888) 769-1137
 - Portland (Southern Maine): (207) 822-6300 • (888) 769-1036
 - Presque Isle (Northern Maine): (207) 764-0477 • (888) 769-1053
 - U.S. Army Corp of Engineers, Maine Project Office, Augusta: (207) 623-8367 or <https://www.nae.usace.army.mil/Missions/Regulatory/>
- Contact appropriate state agencies for their comments and concerns about the project.**
 - Maine Department of Inland Fisheries and Wildlife:
 - Fisheries Division for timing approval, freshwater fisheries and fisheries passage issues: (207) 287-8000
 - Wildlife Division for rare, threatened and endangered species: (207) 287-8000
 - Maine Department of Marine Resources, Wetlands and Permit Section
 - Sea-run fisheries, coastal resources and fish passage issues: <https://www.maine.gov/dmr/science-research/searun/index.html>
- Complete appropriate state and federal permit applications**

Environmental Certification

- Send an environmental certification in the format of Letter 12 and copies of all permits obtained for your project to the MaineDOT project manager. An example is found on page 4-12 of this section.
 - The certification and documentation must be part of the final Plans, Specifications and Estimate (PS&E) package.
 - MaineDOT must receive this paperwork before giving authorization to advertise a project for construction.

State and Local Responsibilities

TASK	RESPONSIBILITY
National Environmental Policy Act (NEPA)	Federal funds: MaineDOT
	State funds: Local Agency through federal permit
Section 106 of the Historic Preservation Act	Federal funds: MaineDOT
	State funds: Local Agency through federal permit
Section 4(f) of the Department of Transportation Act	Federal funds: MaineDOT
	No U.S. DOT funds: 4(f) does not apply
Endangered Species Act (a.k.a. Section 7)	Federal funds: MaineDOT
	State funds: Local Agency through federal permit
Contaminated Materials	MaineDOT with assistance from Local Agency
Environmental Permits	Local Agency
Dredge Materials	Local Agency
Natural Resource (wetlands, streams, fisheries, etc.)	Local Agency
Mitigation	Local Agency
Stormwater Permits (Ch500, ESC law, MPDES)	Local Agency

MaineDOT Environmental Office contact:

Danielle Tetreau, Environmental Team Leader	207-592-2358 (Danielle.Tetreau@maine.gov)
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NEPA review takes **3 to 6 months** from finalization of the Preliminary Design Report and a local agency’s submittal to MaineDOT of Letter 10, Letter 11, and the NEPA Documentation Checklist, found on pages 4-9 through 4-11 of this chapter.

MaineDOT’s Environmental Office encourages the agency administering a project to consult with the assigned MaineDOT project manager and environmental team leader early – **ideally at kickoff**.

Remember: Right-of-way negotiations with property owners cannot begin until NEPA is complete.

4.2 Section 106 of the National Historic Preservation Act

Section 106, found in federal regulation 36 CFR Part 800, “Protection of Historic Properties,” covers properties of historic and archeological significance. If a project has federal money, MaineDOT typically surveys buildings at least 45 years old in a project area for historic significance and potential adverse impacts. Section 106 commonly affects buildings, culverts, bridges, monuments, and cemeteries – especially those within historic districts.

Responsibility for Section 106 review is as follows:

- **MaineDOT** handles Section 106 review and coordination with the Maine Historic Preservation Commission on projects with federal money. The local project administrator must provide MaineDOT with design plans showing impacts, which are necessary for MaineDOT to make final determinations of effect.
- If a project is limited to state funds, the administering **local agency** must take care of Section 106 coordination if the project needs a federal permit. In such cases, the local project administrator should contact the Maine Historic Preservation Commission: <https://www.maine.gov/mhpc/programs/project-review>



4.3 Section 7 of the Endangered Species Act of 1973

Section 7 of the Endangered Species Act directs federal agencies to use their authorities both to conserve threatened and endangered species and to ensure that their actions don't jeopardize listed species or harm critical habitat. In Maine, the law most commonly affects projects in waters for Atlantic salmon and in habitat for Canada lynx, the northern long-eared bat and the rusty-patched bumble bee. In such cases, MaineDOT may have to place restrictions on projects with in-water work or tree clearing to protect listed species.

- If a project has federal money, **MaineDOT** will complete Section 7 review. MaineDOT will need design plans and the scope of work, construction timing and techniques, and proposed timeframe from the local agency administering the project.
- If a project has only state money or has federal funding other than from the U.S. Department of Transportation, then the U.S. Army Corps of Engineers (ACOE) or other federal action agency is responsible for consultation under Section 7. In such a case, the **local agency** administering a project must coordinate Section 7 review with the ACOE or other federal action agency. This coordination is usually performed during the permit application process.

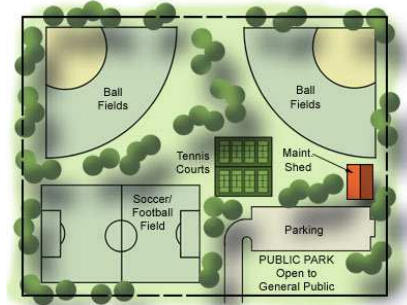


Threatened and endangered species are listed in [50 CFR §17.11](#) and [50 CFR §17.12](#).

4.4 Section 4(f) of the USDOT Act of 1966

Section 4(f) affects projects with federal transportation funding. It applies to public parks, recreation areas, wildlife refuges and historic properties. (Requirements can be found in federal regulation 23 CFR Part 774.) Under the law, an agency must consider potential impacts if federal transportation money is used, as follows:

- **MaineDOT** completes the Section 4(f) process for projects with federal transportation funding. As part of the process, the local agency administering a project must provide design plans showing proposed right-of-way impacts.
- Section 106 reviews (historic preservation) must be concluded before Section 4(f) documentation is approved by the U.S. Department of Transportation. The right-of-way impacts from a project must be provided as part of the review process.



4.5 Section 6(f) of the Land & Water Conservation Fund Act

Section 6(f) of the Land & Water Conservation Fund Act (LAWCON) protects lands purchased or developed with LAWCON funds for public outdoor recreation purposes from being converted to non-recreational uses. The program covers publicly owned parks, recreation areas, wildlife or waterfowl refuges, and any significant historical or archeological site.

In Maine, the Department of Agriculture, Conservation and Forestry (DACF) oversees the program to assist in preserving and developing outdoor recreation resources, as follows:

- For projects funded by the FHWA, **MaineDOT** completes Section 6(f) review and coordination with DACF. The local agency administering a project must provide MaineDOT with design plans showing proposed right-of-way impacts.
- Agencies undertaking projects with federal funds should avoid making permanent acquisitions that would convert land covered by Section 6(f) to a non-recreational use.
- If such a conversion is unavoidable, MaineDOT will consult with DACF to determine remediation measures and will notify the FHWA of such.

4.6 Environmental Justice – Executive Order 12898

Presidential Executive Order 12898, issued in 1994, directs federal agencies to achieve Environmental Justice (EJ) by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations.

Similar to Civil Rights, EJ means that agencies undertaking projects with federal funds must offer minority and low-income populations – and the organizations representing those groups within a community – opportunities to provide public comments.

- **MaineDOT** completes the EJ review and documents compliance with the executive order for projects funded by the U.S. Department of Transportation. MaineDOT evaluates the population demographics and economics at the census block level through the Environmental Protection Agency’s mapping tool, known as EJScreen.
- If a project intersects with a census block where more than 15 percent of the population consists of people of color or people living at or below the federal poverty guidelines, further review of the scope and potential effects is required.
- The **local agency** managing a project must conduct the public process for the project. If a project may have high or adverse effects to EJ populations, the agency managing the project must document efforts to inform those populations about the project.

4.7 Maine Natural Resources Protection Act

In Maine, the Natural Resources Protection Act (NRPA) is the primary state environmental law that applies to transportation projects. The law covers natural resources such as great ponds, coastal and freshwater wetlands, significant wildlife habitats, fragile mountain areas, and rivers, streams and brooks. The Maine Department of Environmental Protection (DEP) administers the NRPA in municipalities and other organized areas.

The law commonly affects projects with activities in, on or over the protected natural resources listed above – or activities adjacent to certain types of protected natural resources. The NRPA defines an “activity” as:

- dredging, bulldozing, removing or displacing sand, soil, vegetation or other materials;
- draining or dewatering; and
- filling, or any construction, repair or alteration of a permanent structure.

The **local agency** administering a project is responsible for complying with the NRPA. The local project administrator, or the consultant designing a project, must contact the DEP to determine whether a NRPA permit will be needed. *Note that Permit-by-Rule 11, for state transportation facilities, is not allowed for use by municipalities on locally administered projects.*

For additional NRPA information, visit:

The DEP’s NRPA page: www.maine.gov/dep/land/nrpa/index.html

The DEP’s MapViewer tool, found at:

maine.maps.arcgis.com/apps/webappviewer/index.html?id=60d544dbbc8f412cbdf638e62e0b010e

4.8 Environmental Permits

The **local agency** administering a project must obtain all permits and follow federal and state laws and regulations, including Maine’s Natural Resources Protection Act (Section 4.7) and the federal Clean Water Act. Before advertising for construction bids, the local project administrator must provide MaineDOT’s project manager with copies of approved permits and a signed environmental certification modeled after Letter 12, found on page 4-12 of this section.

4.9 Contaminated Materials and Substances

MaineDOT is tasked with assessing whether there may be soil or groundwater contamination from petroleum or other hazardous materials in a project area. The **local agency** administering a project, in turn, must provide MaineDOT with design plans showing proposed areas of excavation. Additional site investigation may be warranted, based on the information provided. If so, MaineDOT will provide the local agency with guidance on next steps.



If the initial assessment or additional site investigation finds that a contractor is likely to encounter contamination, MaineDOT either will prepare a general note or negotiate, with the DEP, a special provision to be included in the project contract book. Those documents either will advise the contractor to use caution when excavating or will provide specific guidance for handling and disposing of affected soil and/or groundwater.

4.10 Stormwater Permits

Maine's stormwater management law provides standards for projects that disturb at least **1 acre**. Stormwater permits are the responsibility of the **local agency** administering a project – including erosion and sedimentation control requirements and DEP Chapter 500 Stormwater Management Rules. Either the local project administrator or an agency's engineering consultant should contact the DEP to determine the required permits. (*Contacts are shown on page 4-2 of this section.*)

Once permits are obtained, the local project administrator must provide MaineDOT's project manager with copies as part of the environmental certification. (Refer to Letter 12, page 4-12.)

4.11 Dredge Materials

Maine's solid waste management regulations define dredge materials as sand, silt, mud, gravel, rock, or other natural substance removed from beneath any body of water, based on the classification of the water quality of the waterbody. The regulations typically apply to stream/river crossings and harbor improvement projects, which can require dredging. Under the regulations, some dredge materials must be handled as special waste.

Beneficial Use Permits required by state law and associated regulations – Title 38 M.R.S.A. §1301-1319, Maine DEP Chapter 418 – are the responsibility of the **local agency** administering a project. The local project administrator must provide the MaineDOT project manager with an environmental certification and copies of approved permits. (Refer to Letter 12, page 4-12.)

Remember: Letter 12 and copies of all permits must be submitted to the project manager at MaineDOT before your project may be advertised for construction.

Appendix 4A: Submittals to MaineDOT

- ❑ Electronic documents are found in the “Environmental Review” section of MaineDOT’s LPA web page: <https://www.maine.gov/mdot/lpa/lpadocuments/>

Instructions: This certification must be submitted on letterhead to MaineDOT with Letter 11 and the NEPA Documentation Checklist, found on the next two pages.

[DATE]

[NAME], Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 State House Station
Augusta, ME 04333-0016

**Subject: Public Process Certification, Federal Project
MaineDOT WIN:**

Dear [NAME]:

The Municipality of [NAME] hereby certifies that a public process was carried out for the [LOCATION and SCOPE] project in accordance with Title 23 in the Code of Federal Regulations, Part 771.111, “Early coordination, public involvement, and project development.”

IF APPLICABLE, DESCRIBE ANY PUBLIC OPPOSITION HERE.

IF APPLICABLE, DESCRIBE ACCOMODATIONS FOR ENVIRONMENTAL JUSTICE COMMUNITIES HERE. EXAMPLES INCLUDE:

- Virtual or in person meeting options
- Document how the public meeting is advertised
- Contact community groups representing those populations
- Document responses to comments received

I have attached for your information the following:

- A copy of the notification that was sent to abutters by registered mail;
- A copy of the meeting notice;
- A copy of the sign-in sheet; and
- Meeting minutes / hearing transcript.

Sincerely,

[NAME], Local Project Administrator

Instructions: *This letter must be submitted on letterhead to MaineDOT with the checklist on the next page once MaineDOT approves the Preliminary Design Report.*

[DATE]

[NAME], Environmental Team Leader
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 State House Station
Augusta, ME 04333-0016

Subject: NEPA Documentation, Federal Project
MaineDOT WIN:

Dear [NAME]:

Attached is the required NEPA documentation checklist for the [LOCATION and SCOPE] project in the Municipality of [NAME].

Also attached is Letter 10, certifying that the Municipality carried out a public process in accordance with the regulations in 23 CFR 771.111.

If you need additional information, please let me know.

Sincerely,

[NAME], Local Project Administrator

Enclosures:

- NEPA documentation checklist
- Public process certification (Letter 10)

NEPA DOCUMENTATION CHECKLIST

Project Title & Location: _____

Federal Project #: _____ MaineDOT WIN: _____

Description of Work: _____

MaineDOT Project Manager: _____

Answer the following questions and attach supporting documentation. If there is a “yes” response, explain on a separate sheet or contact your MaineDOT Project Manager for guidance.

1.) Public Involvement: Is there substantial public opposition to proposed action? Yes No
The answer should become apparent at a public meeting.

Documentation: Approved capital plan; meeting records; letters from the public; board meeting minutes; or Communication 10 (Public Process).

2.) Right-of-Way: Does action include a residential or commercial displacement or acquisition of property rights that will result in substantial abutter impacts? Yes No
For help with “substantial,” contact your Project Manager at MaineDOT.

Documentation: Plan Impacts Complete for the project

3.) Endangered Species & Essential Fish Habitat:

- a. Has a qualified person surveyed the project area for streams, rivers, tidal waters, wetlands, or vernal pools identified coastal waters, wetlands, and vernal pools? Yes No
- b. Any streams, rivers, tidal waters, wetlands, or vernal pools identified? Yes No
- c. Is any work proposed in or adjacent to a stream, river or coastal waters? Yes No
- d. Does the project require clearing trees or trimming limbs 3” or greater in diameter? Yes No

Documentation: Resource delineation and plans with location of resource and work planned. If in-water work is proposed, project will be screened by the MaineDOT Environmental Office for intersection with habitat for endangered species and critical fish. Additional coordination with the Environmental Office will be required if the project is in one of these areas and includes in-water work or involves clearing.

4.) Section 4(f) or 6(f):

- a. Does project area include or abut resources protected by Section 4(f) of the Department of Transportation Act: publicly owned land, parks, recreation areas, wildlife and waterfowl refuges, or historic sites? Yes No
- b. Will project require temporary or permanent rights on any protected 4(f) resource listed above? Yes No

Documentation: Existing and proposed right-of-way plan, and a description of how impacts to these properties were avoided and minimized.

5.) Executive Order 12898 (Environmental Justice): Does the project affect businesses, housing agency property, community services, public transportation, or pedestrian access; or will it limit access to these services (either permanently or temporarily)? Yes No

Signed by: _____
[Name, Local Project Administrator]

Date: _____

Instructions: This must be submitted on letterhead to MaineDOT with the final plans, specifications and estimate (PS&E) package.

[DATE]

[NAME], Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 State House Station
Augusta, ME 04333-0016

Subject: Environmental Certification
MaineDOT WIN [NUMBER]

Dear [NAME]:

If permits were required, use this paragraph:

The Municipality of [NAME] hereby certifies that it has obtained all environmental permits and approvals for the subject project, satisfying one of the pre-construction requirements in the executed project agreement with MaineDOT. Attached are copies of the permits, which are required for MaineDOT to complete the Environmental Summary Sheet for the contract package.

If NO permits were required, use this paragraph:

The Municipality of [NAME] hereby certifies that no environmental permits were needed for the subject project. This certification satisfies one of the pre-construction requirements in the executed project agreement with MaineDOT.

Sincerely,

[NAME], Local Project Administrator

Cc: MaineDOT Environmental Office

NOTE: Please attach permits, if applicable

– END OF CHAPTER 4 –