

# **Maine Department of Transportation**

Application for Assumption of Federal

Highway Administration

National Environmental Policy Act

Responsibilities

Pursuant to the Surface Transportation Project Delivery Program

23 U.S.C. § 327



**May 15, 2025**

State of Maine, Department of Transportation

Application for Assumption of Federal Highway Administration  
Responsibilities Pursuant to the  
Surface Transportation Project Delivery Act  
23 U.S.C. § 327



This is the Maine Department of Transportation's application to assume the U.S. Secretary of Transportation's and Federal Highway Administration's responsibilities under the Surface Transportation Project Delivery Program, 23 United States Code (U.S.C.) § 327.

A handwritten signature in blue ink, appearing to read "Bruce A. Van Note".

Bruce A. Van Note, Commissioner  
Maine Department of Transportation

May 15, 2025

Date

For questions regarding this application, please contact:  
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## **Introduction**

The Maine Department of Transportation (MaineDOT) appreciates the opportunity afforded by Congress to allow States to assume the responsibilities of the Federal Highway Administration (FHWA) for the National Environmental Policy Act (NEPA) and related laws through applying to participate in the Surface Transportation Project Delivery Program (NEPA Assignment Program) pursuant to 23 United States Code (U.S.C.) 327. MaineDOT hereby submits the enclosed application. This application follows the requirements established in the Final Rule for the NEPA Assignment Program application (23 Code of Federal Regulation (C.F.R.) issued in the Federal Register (Vol. 79, No. 179) on September 16, 2014.

As required by 23 C.F.R. §773.107 (b): Public comment, the MaineDOT's draft application was publicly noticed on April 28, 2025, for a 30-day comment period. Comments were due by the close of business on May 27, 2025. Summaries of all comments received and of changes made to the application in response to the comments received will be provided in the final application (Appendix D), which will be submitted to FHWA.

MaineDOT is applying to assume all of FHWA's project-level responsibilities under NEPA for state highway system projects (including Interstates, U.S. highways, and state routes) which MaineDOT is the project sponsor and Federal-aid Highway Program Local Public Agency (LPA) projects that are not part of the state highway system in Maine (subject to exclusions below). MaineDOT is also applying to assume all of FHWA's responsibilities for environmental review, resource agency consultation, and other environmental regulatory compliance-related actions pertaining to the review or approval of MaineDOT projects in Maine. This application identifies the scope of highway projects MaineDOT would assume and projects excluded from the assignment. Section 773.109 (a)(1) of this application identifies the projects Maine requests to be excluded from the NEPA Assignment Program; this list is subject to change until the NEPA Assignment Program MOU is signed.

NEPA directs federal agencies to consider the environmental effects of their actions using a systematic, interdisciplinary approach. In Maine, as the agency responsible for providing safe and reliable transportation solutions, MaineDOT is also responsible for achieving environmental compliance for MaineDOT sponsored highway projects. MaineDOT integrates environmental considerations into its activities to achieve compliance with applicable laws, regulations, and standards. MaineDOT delivers safe, efficient transportation projects and makes sound decisions based on a balanced consideration of transportation needs and the social, economic, and environmental impacts of proposed transportation improvements. MaineDOT's balanced decision-making is similar to FHWA's NEPA policy expressed in 23 C.F.R. 771.105.

As required by NEPA and FHWA's NEPA regulations codified in 23 C.F.R. 771, MaineDOT examines and discloses the environmental effects of its proposed activities; identifies the ways that environmental impacts can be avoided or minimized; prevents significant, avoidable environmental impacts by modifying its projects and/or implementing mitigation when appropriate; and publicly discloses the impacts of its projects and its project decisions, emphasizing balanced decision-making. As part of this process, MaineDOT undertakes timely and consistent outreach with the public, local jurisdictions, regional transportation planning agencies, resource and regulatory agencies, and tribal governments. MaineDOT will continue to work

cooperatively with its agency partners, communities, Tribes, and the general public under the NEPA Assignment Program.

Based on the capabilities of MaineDOT's environmental staff, FHWA has previously delegated to MaineDOT certain aspects of its responsibilities, including coordination responsibilities with its federal resource agency partners, within the framework of agreements with certain agencies. Since 2001, MaineDOT has been responsible under a programmatic agreement with FHWA for making Categorical Exclusion (CE) determinations and undertaking environmental reviews of projects meeting the criteria of 23 C.F.R. § 771.117 (c) and (d). Under the provisions of the programmatic agreement, FHWA has authorized MaineDOT to make CE determinations and certify CEs that fall under a "programmatic" classification. MaineDOT has also been entrusted by FHWA with responsibilities for informal consultation under the Endangered Species Act. MaineDOT and FHWA have also executed a Memorandum of Understanding for NEPA assumption under 23 U.S.C. 326 for all Categorical Exclusion level projects and all environmental reviews and consultations.

MaineDOT has worked cooperatively with FHWA on Federal-aid projects to successfully meet NEPA requirements. MaineDOT also works cooperatively with federal and state agency partners and tribal governments; and has developed extensive procedures and tools to support this work. Based on MaineDOT's current experience, expertise, and current level of involvement in consultations, its resources will continue to be adequate to assume FHWA's responsibilities for resolving issues with external agencies. MaineDOT's extensive staff capabilities together with the steps that MaineDOT has taken and will continue to take to strengthen its program under the NEPA Assignment Program, are summarized in this application.

Under the NEPA Assignment Program, MaineDOT will comply with all applicable federal environmental laws and FHWA environmental regulations, policies, and formal guidance. The NEPA Assignment Program will not modify or revise federal environmental protection standards. Under NEPA, FHWA regulations, other federal environmental regulations, executive orders, state statutes, and rules, MaineDOT currently conducts the studies and prepares the documentation for Federal-aid transportation projects that protect the environment. MaineDOT will continue to apply these same rigorous environmental protection standards to projects under the NEPA Assignment Program.

To ensure the success of the NEPA Assignment Program, MaineDOT will conduct yearly self-assessments to gauge the effectiveness of its environmental procedures under the program and to identify the need for any program corrections. In addition, FHWA will audit MaineDOT annually for the first four years of the NEPA Assignment Program to ensure MaineDOT is meeting its obligations, which will include the provisions in the NEPA Assignment Program Memorandum of Understanding (MOU).

The NEPA Assignment Program will streamline Maine's environmental review process and reduce project delivery time. Once FHWA and MaineDOT execute an MOU that assigns NEPA responsibilities, MaineDOT will be solely responsible for its NEPA decisions on assigned highway and Federal-aid Highway Program LPA projects in the state.

This application contains the following components, as required by 23 C.F.R. § 773:

§ 773.107(a):	Coordination meeting
§ 773.107(b):	Public comment
§ 773.107(c) & (d):	Sovereign immunity waiver and comparable State laws
§773.109 (a)(1):	Classes of highway projects for which MaineDOT is requesting NEPA responsibility
§773.109 (a)(2):	Federal environmental laws other than NEPA for which MaineDOT is requesting responsibility
§773.109 (a)(3)(i):	Existing organization and procedures
§773.109 (a)(3)(ii):	Changes to be made for assumption of responsibilities
§773.109 (a)(3)(iii):	Legal sufficiency
§773.109 (a)(3)(iv):	Prior concurrence
§773.109 (a)(3)(v):	Project-delivery methods
§773.109 (a)(4)(i):	Staff dedicated to additional functions
§773.109 (a)(4)(ii):	Changes to the organizational structure
§773.109 (a)(4)(iii):	Use of outside consultants for the Assignment Program
§773.109 (a)(5):	Financial resources under the Assignment Program
§773.109 (a)(6):	Certification for consent to exclusive federal court jurisdiction and waiver of sovereign immunity
§773.109 (a)(7):	Certification that the State of Maine's Freedom of Access Law is comparable to the Federal Freedom of Information Act

## **Pre-application requirements**

### **§ 773.107(a): Coordination meeting**

On October 14, 2020, MaineDOT met with FHWA headquarters staff and FHWA Maine Division staff to participate in a NEPA assignment interest presentation to discuss the NEPA Assignment Program. As required by rule [§773.107 (a): Coordination meeting], on December 21, 2021, MaineDOT met with FHWA headquarters staff and FHWA Maine Division staff to participate in a formal coordination meeting to discuss the NEPA Assignment Program. In April 2022, MaineDOT and FHWA conducted two coordination meetings and MaineDOT received Gap Analysis questions from FHWA headquarters. From May through July 2022, MaineDOT and FHWA met six times to discuss MaineDOT's organizational structure, filing and documentation, procedures, and responses to FHWA Gap Analysis questions. In August and September 2022, FHWA conducted interviews with MaineDOT, the Maine Historic Preservation Commission, the Army Corps of Engineers, and the National Marine Fisheries staff. FHWA provided NEPA Assignment training to MaineDOT staff on August 23, 2023. MaineDOT will continue to meet with FHWA through the application process.

### **§ 773.107(b): Public comment**

Per rule [§773.107 (b): Public comment], MaineDOT's draft application was publicly noticed on April 11, 2025, for a 30-day comment period. Comments were due by the close of business on May 14, 2025. A notice of the draft application's availability was sent via MaineDOT's notification system.

MaineDOT also sent notice of the application with a request for comment to federal and state agencies and all federally recognized Tribes in Maine. Lastly, MaineDOT posted the application and instructions on how to provide comments on MaineDOT's website. Appendix D is reserved to include all comments received and MaineDOT responses to each. Summaries of all comments received, and changes made to the application in response to these comments are provided in Appendix D.

### **§ 773.107(c) & (d): Sovereign immunity waiver and comparable State laws**

Per § 773.107(c) & (d), Appendix C contains the following certifications:

- As stated in the Maine Revised Statutes ([23 M.R.S.A. § 4206, sub-§1, P](#)), MaineDOT is legally authorized by State law to assume the responsibilities of the United States Department of Transportation with respect to duties under NEPA and other federal environmental laws.
- As provided for by the recently enacted [23 M.R.S.A. § 4206, sub-§1, P](#), which was signed by Governor Janet Mills on May 25, 2021, and effective on October 18, 2021, the State of Maine expressly consents to exclusive federal court jurisdiction with respect to the compliance, discharge, and enforcement of any responsibility of the United States Department of Transportation that is to be assumed by MaineDOT.
- The Maine Freedom of Access Act ([M.R.S.A. Title 1 § 400 to 521](#)) is comparable to 5 U.S.C. § 552 (Freedom of Information Act), including providing that any decision



regarding the public availability of a document under that State law is reviewable by a court of competent jurisdiction. Maine Freedom of Access Act would govern records generated under MaineDOT's NEPA assignment. Letters from Maine's Attorney General are included in Appendix C.

## **Application Requirements**

### **§ 773.109(a)(1): Classes of highway projects for which MaineDOT requests NEPA responsibility**

MaineDOT is requesting to assume FHWA's responsibilities under NEPA for the following classes of MaineDOT sponsored highway projects upon execution of the NEPA Assignment Program MOU. In general, this includes all highway, roadway, bridge, and multimodal (rail/ferry) projects in Maine whose source of federal funding comes from FHWA or that require FHWA approvals. The assigned projects may include funding from other federal sources; for these projects, MaineDOT requests to assume only FHWA's NEPA responsibilities and not the NEPA responsibilities of other federal agencies. On the effective date of the NEPA Assignment Program MOU, FHWA will remain liable for its previous decisions [e.g., NEPA, Section 4(f)] and MaineDOT will be responsible for its decisions under the NEPA Assignment Program.

1. All Class I, or Environmental Impact Statement (EIS), projects both on and off State Highway System (SHS) that are funded by FHWA or that require FHWA approvals. Currently there are no projects that have a Draft Environmental Impact Statement pending or a Final EIS is pending in Maine. The following projects will *not* be assigned to MaineDOT. This list is subject to change until the NEPA Assignment Program MOU is signed:
  - None
2. All Class II, or Categorically Excluded, projects, both on and off SHS that are funded by FHWA or that require FHWA approvals. Maine and FHWA have an executed MOU under 23 U.S.C. 326 for Categorical Exclusions. The following project(s) will *not* be assigned to MaineDOT. This list is subject to change until the NEPA Assignment Program MOU is signed:
  - None
3. All Class III, or Environmental Assessment (EA), projects, both on and off SHS that are funded by FHWA or that require FHWA approvals. The following projects will *not* be assigned to MaineDOT. This list is subject to change until the NEPA Assignment Program MOU is signed:
  - None

MaineDOT intends to establish appropriate relationships with other operating administration(s) involved in a multimodal project, including cooperating agency, participating agency, and lead or co-lead agency relationships under NEPA. In addition, MaineDOT may use or adopt other federal

agencies' NEPA analyses consistent with U.S. Department of Transportation and FHWA regulations, policies, and guidance.

The following projects are specifically excluded from assignment pursuant to 23 CFR 773.105(c) and the definition of highway project in 23 CFR 773.103:

- Any highway project authorized under 23 U.S.C. §§ 202 (Tribal transportation program), 203 (Federal lands transportation program), and 204 (Federal lands access program) unless such project will be designed and constructed by MaineDOT.
- Projects involving international border crossings and projects that cross state boundaries. For purposes of this agreement, a project is considered "adjacent to international boundaries" if it requires the issuance of a new, or the modification of an existing, Presidential Permit by the U.S. Department of State.
- Any highway project that crosses State boundaries.
- Programs and projects advanced by direct recipients of Federal-aid Highway Program funds other than MaineDOT, including but not limited to:
  - Recreational Trails Program (23 U.S.C. 206).
  - Discretionary grants or other subsequent similar funding programs.
  - Direct recipient tribal project
  - Transportation Infrastructure Finance and Innovation Act (TIFIA) Credit Program.

MaineDOT's program-wide assumption of these responsibilities will provide for the highest degree of consistency and efficiency in document review and agency coordination. It will also provide the greatest opportunity for streamlining benefits.

### **§ 773.109(a)(2): Federal environmental laws other than NEPA for which MaineDOT requests responsibility**

MaineDOT requests to assume all of FHWA's responsibilities for environmental review, interagency consultation, and other regulatory compliance-related actions pertaining to the review or approval of projects for which MaineDOT is requesting assumption of responsibilities under NEPA. MaineDOT requests to assume these responsibilities under all applicable federal environmental laws and Executive Orders including, but not limited to, federal laws, regulations, and Executive Orders listed in Appendix B of the application. MaineDOT requests assumption of these responsibilities upon execution of the NEPA Assignment Program MOU. These responsibilities are not planned to be phased in. The FHWA will use its best efforts to ensure that any new or revised Federal policy or guidance, which are final and applicable to FHWA's responsibilities under NEPA and other laws that will be assumed by MaineDOT under the MOU, are communicated to MaineDOT within 10 business days of issuance.

### **§ 773.109(a)(3)(i): Existing organization and procedures**

#### **Existing State Organization**

MaineDOT is the legally authorized transportation department for the State of Maine, created and established pursuant to 23 M.R.S.A. §4205, with responsibility for planning, designing, engineering, constructing, improving, operating, and maintaining highways, bridges, and public multimodal assets. MaineDOT is led by the Commissioner of Transportation, who is appointed by the Governor subject to confirmation by the Maine Legislature, as provided in Section 23 M.R.S.A. §4205. MaineDOT, pursuant to 23 M.R.S.A. §§ 52 and 4206, is empowered to discharge the duties required by 23 U.S.C. 302 and 23 C.F.R. 1.3. (See organization chart in Figure 1).

Reporting directly to the MaineDOT Commissioner are executive leaders, including the Deputy Commissioner, Chief Operating Officer, and Chief Engineer.

Also reporting directly to the Commissioner is the Legal Services Office. The Legal Services Office assists with all legal matters, including guidance and reviews under Section 4(f) and NEPA. The Environmental Office works closely with both.

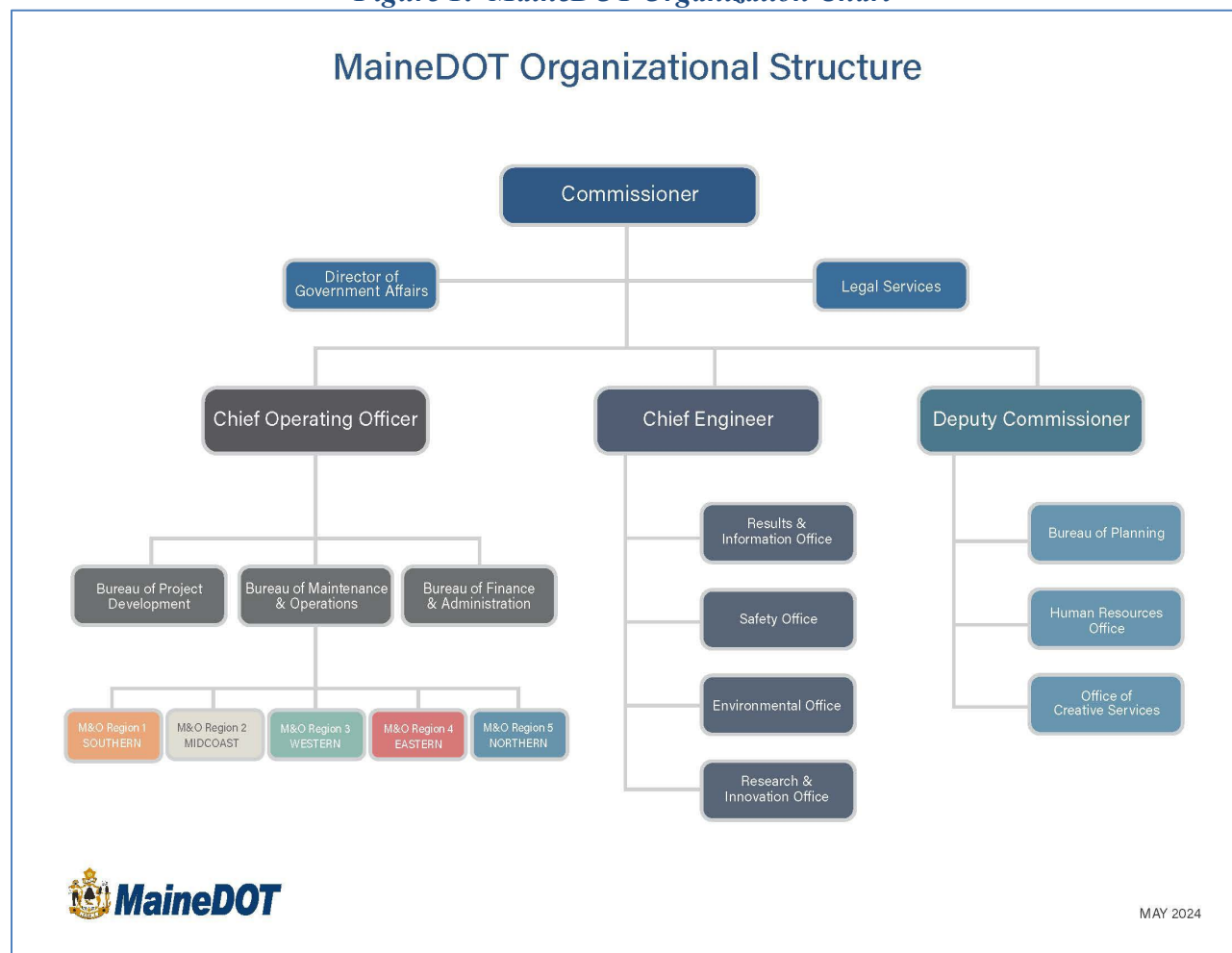
The Bureau of Planning reports to the Deputy Commissioner. The Bureau conducts long-range planning, feasibility studies, municipal, business, and village initiatives, and MPO outreach.

The Bureau of Project Development resides under the Chief Operating Officer and consists of the Highway, Bridge, Regional, and Multimodal programs. These programs are responsible for the design and delivery of MaineDOT's project development projects, which are identified in MaineDOT's Three-Year Work Plan (The Three-Year Work Plan includes all capital projects and programs, maintenance, and operations activities, and planning initiatives). Also housed within the Bureau of Project Development is the Property Office.

The Bureau of Maintenance and Operations is under the Chief Operating Officer and is responsible for the maintenance of MaineDOT's highway system.

Reporting to the Chief Engineer is the Results and Information Office. This office is responsible for asset management and development of MaineDOT's Three-Year Work Plan. Also reporting to the Chief Engineer is the Environmental Office.

**Figure 1: MaineDOT Organization Chart**



### Environmental Office

The Environmental Office (ENV) is responsible for developing and implementing the environmental program for MaineDOT by providing environmental reviews and clearances, technical assistance, and education to MaineDOT and its customers. ENV provides expertise to the department by integrating environmental considerations into MaineDOT activities to achieve environmental compliance. ENV develops environmental policies and procedures, including those for preparing and processing environmental documents; conducts specific environmental field studies; assists in the management of environmental NEPA actions/projects; conducts all agency coordination efforts; and works on a variety of environmental streamlining initiatives. ENV provides policy, procedure, training, guidance, and technical studies/assistance to other organizational units of the department. Subjects of technical support include biology, hazardous materials, history and architecture, hydrology, NEPA, Section 4(f) determinations, and water quality. ENV also manages environmental programs and monitors changing laws and regulations.

MaineDOT ENV consists of 33 full-time employees of which 27 are located at headquarters in Augusta. ENV has one full-time Environmental Coordinator in each of the five Regional Offices. The capability of ENV staff to provide the expertise required to meet the responsibilities to be assumed under this application has been demonstrated in the successful implementation of the

long-standing Maine CE Programmatic Agreement, the Maine Section 106 Programmatic Agreement, and the Maine Atlantic Salmon Programmatic Agreement, through which many of FHWA's responsibilities have already been delegated to MaineDOT ENV to carry out on their behalf. ENV currently conducts most of the work and initial determinations under NEPA, Section 106, Section 4(f), and the Endangered Species Act. ENV's existing organization and reporting structure have demonstrated sustainability in staffing quality and quantity. ENV management has an average of 24 years of environmental and policy experience. ENV is committed to adjusting and filling vacancies as they arise through the normal attrition that any organization faces. MaineDOT ENV has added five positions in anticipation of assuming the NEPA Assignment Program (described in the following paragraphs).

#### *ENV Director*

ENV is led by the MaineDOT Environmental Office Director, who reports directly to the Chief Engineer (Figure 2). The Director formulates and ensures that policy, objectives, strategies, and goals as it relates to MaineDOT and the environment are met. This position provides the leadership and strategic planning for MaineDOT as it relates to the environment (NEPA, natural, social, cultural, and economic). This position establishes environmental and production goals, and sets priorities, and manages the staff and resources to meet these goals. The position directs two Senior Environmental Managers and 30 staff within 7 Divisions of the Environmental Office. The Environmental Office is responsible for the National Environmental Policy Act (NEPA), preparing for and assuming the NEPA Assignment Program and all federal environmental laws, regulations, and Executive Orders under NEPA for MaineDOT projects. The MaineDOT will be the lead federal agency and the Director along with the two Senior Environmental Managers, the Chief Engineer, and the Chief Operations Officer (Senior Agency Official) will lead all MaineDOT NEPA actions and decisions. All NEPA approval authority is within ENV headquarters and with the Chief Engineer at headquarters. Please see the [MaineDOT NEPA CE Guidance](#), Section 4.0, and the [MaineDOT EA and EIS Guidance](#), Section 1.3 for details on NEPA decision-making. Also, see Figure 11 in this application for Preparation, Review, and Approval Responsibilities under the NEPA Assignment Program.

#### *Senior Environmental Managers (2)*

One of the Senior Environmental Managers oversees NEPA for MaineDOT and will manage the NEPA Assignment Program for MaineDOT. This position is also called the Senior Environmental Manager/NEPA Manager. The position will oversee the federal responsibility granted to MaineDOT for applicable federal laws, regulations, and executive orders under NEPA Assignment. The Senior Environmental Manager/NEPA Manager will work closely with the ENV Director to ensure the processes and requirements of the NEPA Assignment MOU are carried out. The Senior Environmental Manager/NEPA Manager will serve as the lead contact point with FHWA regarding the MOU. The position manages the **NEPA/Coordination/Permits Division, Cultural Resources Division, and Sustainability Division**.

The other Senior Environmental Manager oversees the **Natural Resources Division, Hydrology/Stormwater Division, Groundwater/Hazardous Materials Division, and Environmental Construction Support Division**. The position will oversee the federal responsibility granted to MaineDOT for applicable federal laws, regulations, and executive orders under NEPA Assignment. This position manages fisheries and wildlife resources, state and federal endangered species, hazardous material management, hydrological analysis, environmental construction compliance through coordination with MaineDOT project development, maintenance,

state and federal agencies, and the public. This position will oversee MaineDOT responsibilities under Section 7 of the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Marine Mammals Protection Act, Migratory Bird Treaty Act, and Comprehensive Environmental Response Compensation and Liability Act to name a few.

#### Environmental Attorney (1)

This position reports to the Legal Office under the direction of the Chief Legal Counsel. This position does not report to the Environmental Office.

In planning for NEPA assignment, MaineDOT added a full-time attorney to provide legal expertise related to Administrative Law including NEPA compliance for EISs, Section 4(f) legal reviews, and broader environmental review processes. This Environmental Attorney is supported by MaineDOT's Legal Office and the Chief Legal Counsel. The Environmental Attorney is devoted to the NEPA Assignment Program and MaineDOT's Environmental Office needs. The attorney's duties include working jointly with the Maine Attorney General's Office in litigation, performing legal sufficiency reviews of Final EISs and 4(f) evaluations, and providing legal review of memorandum of understanding, programmatic agreements, and administrative records. The Environmental Attorney also oversees and ensures final compliance on any legal matters, even if outside legal consultants are used for support work.

MaineDOT ENV consists of the following seven Divisions:

#### ***NEPA, Coordination, and Permits Division***

Responsible for NEPA, NEPA public involvement, federal and state permitting, Coastal Zone Management Act, Clean Water Act, farmland, wild and scenic rivers, Clean Air Act (transportation conformity), noise, and project coordination.

#### Team Leaders (3)

Team Leaders are responsible for coordinating with Project Development to deliver projects for the Bridge, Highway, Regional, Multimodal, and Maintenance programs. Team Leaders are responsible for NEPA documentation and CE certification under the Maine Programmatic CE agreement and the NEPA Assignment Program. The Team Leaders are also responsible for federal permitting, and overall coordination with MaineDOT project development, maintenance, state and federal agencies, and the public regarding the environment.

Environmental Team Leaders and the Senior Environmental Manager/NEPA Manager lead the NEPA process for MaineDOT and Federal-aid Highway Program LPA projects with a team of experts in ENV, design, legal, planning, project development, right of way, and utilities. ENV coordinates closely with the Bureau of Project Development which is responsible for oversight and delivery of projects for the Three-Year Work Plan and MaineDOT's production goals.

#### ***Regional Environmental Coordinator (5)***

The Regional Environmental Coordinators are responsible for the coordination of MaineDOT's maintenance and regional capital projects. There is one coordinator in each of the five regions. The coordinators ensure project information and details that come out of the Regions are provided to the Team Leader responsible for Maintenance and Regional projects. They appropriately support the decision-making process. The Team Leader is

responsible for the process, the public involvement, and interagency coordination required for the NEPA decision. The majority of maintenance projects are not federally funded nor have a FHWA action and therefore will not require NEPA approval. [See MaineDOT Region Map.](#)

#### *Environmental Specialist-NEPA (1)*

This Environmental Specialist is responsible for assisting the Senior Environmental Manager/NEPA Manager. This position conducts quality reviews on NEPA documentation and filing, reviews for noise analysis, reviews for transportation conformity, baseline screening, and compliance. This position was created in anticipation of NEPA Assignment. This position will assist in the FHWA audit process under NEPA Assignment and assist the Senior Environmental Manager/NEPA Manager in ensuring the processes and requirements of the NEPA Assignment MOU are carried out.

#### *Environmental Specialist-Permits (1)*

This Environmental Specialist is responsible for permitting, project screening, and impact plans.

### ***Cultural Resources Division***

Responsible for Section 106 of the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act, and the Land and Water Conservation Funds Act (LAWCON). The Division is responsible for all above-ground architectural surveys, project specific eligibility determinations for the National Register of Historic Places, determination of effects under Section 106, consultation with the Maine State Historic Preservation Officer. The Historic Preservation Coordinator and Historic Preservationist will also forward information on the project to the Archaeological staff at MHPC (this is not the SHPO) for existing data review, and work closely with the archaeology staff and other qualified archaeology consultants. For more information see 326 NEPA Categorical Exclusion Guidance document- Appendix J: Section 106 SOP- Section 4.7: Archaeological Surveys.

The Division is responsible for identifying Section 4(f) properties and ensuring the process, analysis, and evaluations follow 23 C.F.R. 774. The Division is responsible for identifying 6(f) properties and ensuring compliance with LAWCON. The Division utilizes qualified consultants. FHWA's current role is mainly oversight and reviewing final documentation [for adverse effects/MOAs/consultation under Section 106, and evaluations and legal sufficiency review under Section 4(f)].

#### *Historic Preservation Coordinator (1)*

The Historic Preservation Coordinator meets the Secretary of Interior's standards as professionally qualified. The Historic Coordinator leads this Division and ensures the processes and requirements of Section 106, Section 4(f), and LAWCON are carried out.

#### *Historic Preservationist (1)*

The Historic Preservationist meets the Secretary of Interior's standards as professionally qualified. The Historic Preservationist assists the Historic Preservation Coordinator to ensure the processes and requirements of Section 106, Section 4(f), and LAWCON are carried out. This is a new position added to ENV in anticipation of assuming the NEPA Assignment Program.

### ***Sustainability Division***

Works on special projects related to sustainability, resilience, and innovative projects.

#### ***Resource Management Coordinator (1)***

This position works closely with the MaineDOT Chief Engineer on resilient transportation assets and special projects.

#### ***Planning Specialist (1)***

This position works closely with the MaineDOT Chief Engineer on resilient transportation assets and special projects.

### ***Natural Resources Division***

Responsible for Endangered Species Act (Section 7), Magnuson-Stevens Fishery Conservation and Management Act (EFH), marine mammals, anadromous fish, fish and wildlife, migratory birds, coastal barriers, bald and golden eagles, wetland/streams/vernal pools, state fish and wildlife. This Division currently conducts most of the process and evaluations under these Acts and the coordination and consultation with agencies. FHWA's current role is mainly oversight and reviewing final documentation (for Biological Assessments under Section 7, and official BA submittals to USFWS or NMFS).

#### ***Senior Biologist (1)***

The Senior Biologist oversees the Natural Resources Division. The position evaluates natural resources and environmental aspects of projects, reporting and coordination with MaineDOT staff, agencies, and the public. The Senior Biologist ensures, with assistance from the Senior Environment Manager of this Division, that the processes and requirements for the federal laws this Division is responsible for are carried out. This position was created in anticipation of assuming the NEPA Assignment Program. The position, along with the Division's Senior Environmental Manager will act as FHWA in consultation with federal agencies for Section 7 and EFH under the NEPA assignment program.

#### ***Biologist (4)***

The Biologist are responsible for collecting natural resource data, coordinating with agencies, evaluating resources and project impacts, writing evaluations, and following processes to ensure compliance with laws that fall under the Division's responsibility.

#### ***Environmental Specialist (1)***

The position assists the Division and the Biologist with data collection, evaluations, reporting, documentation, and compliance.

### ***Hydrology and Stormwater Division***

Responsible for floodplains, state and federal stormwater, sole source aquifers. This Division currently

conducts most of the process, evaluations, coordination, and consultation with agencies. FHWA's current role is mainly oversight.

#### ***Hydrology Manager (1)***



The Hydrology and Stormwater Manager oversees the Division and evaluates hydrology, hydraulics, and stormwater design and compliance for projects. The Manager ensures, with assistance for the Senior Environment Manager of this Division, that the processes and requirements for the federal laws this Division is responsible for are carried out.

Hydrologist (1)

The Hydrologist conducts analysis and design to ensure habitat connectivity through MaineDOT assets located in streams. The Hydrologist designs assets for fish passage.

Stormwater Manager (1)

The Stormwater Manager oversees the stormwater program including complex technical evaluations. The Manager ensures compliance with MaineDOT policies and MaineDOT's Surface Water Quality Program, Construction Erosion and Sediment Control Program, Maine Pollution Discharge Elimination System (MPDES) permitting, and compliance with MS4.

Environmental Specialist-Stormwater (1)

The Environmental Specialist supports the Stormwater Manager in compliance with the Municipal Separate Storm Water Systems (MS4) Transportation permit requirements, the stormwater Memorandum of Agreement (MOA) with Maine DEP. The Environmental Specialist supports the Hydrology and Stormwater Manager screening projects for compliance with the floodplain rules. This position was recently created.

***Groundwater and Hazardous Materials Management Division***

Responsible for Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendments and Reauthorization Act, Resource Conservation and Recovery Act. This Division currently conducts most of the process and evaluations under these Acts and the coordination and consultation with agencies. FHWA's current role is mainly oversight.

Groundwater and Hazardous Material Management Manager (1)

The Groundwater and Hazardous Material Management Manager oversees the Division and evaluates Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendments and Reauthorization Act, Resource Conservation and Recovery Act. The Manager ensures that the processes and requirements for the federal laws this Division is responsible for are carried out.

Senior Geologist (1)

The Senior Geologist evaluates Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendments and Reauthorization Act, Resource Conservation and Recovery Act. The Senior Geologist works closely with the Groundwater and Hazardous Material Management Manager to ensure that the processes and requirements for the federal laws this Division is responsible for are carried out.

Senior Technician (1)

Under state law, the Senior Technician is responsible for MaineDOT's well claims program.

***Environmental Construction Support Division***

Engineering Technicians (3)

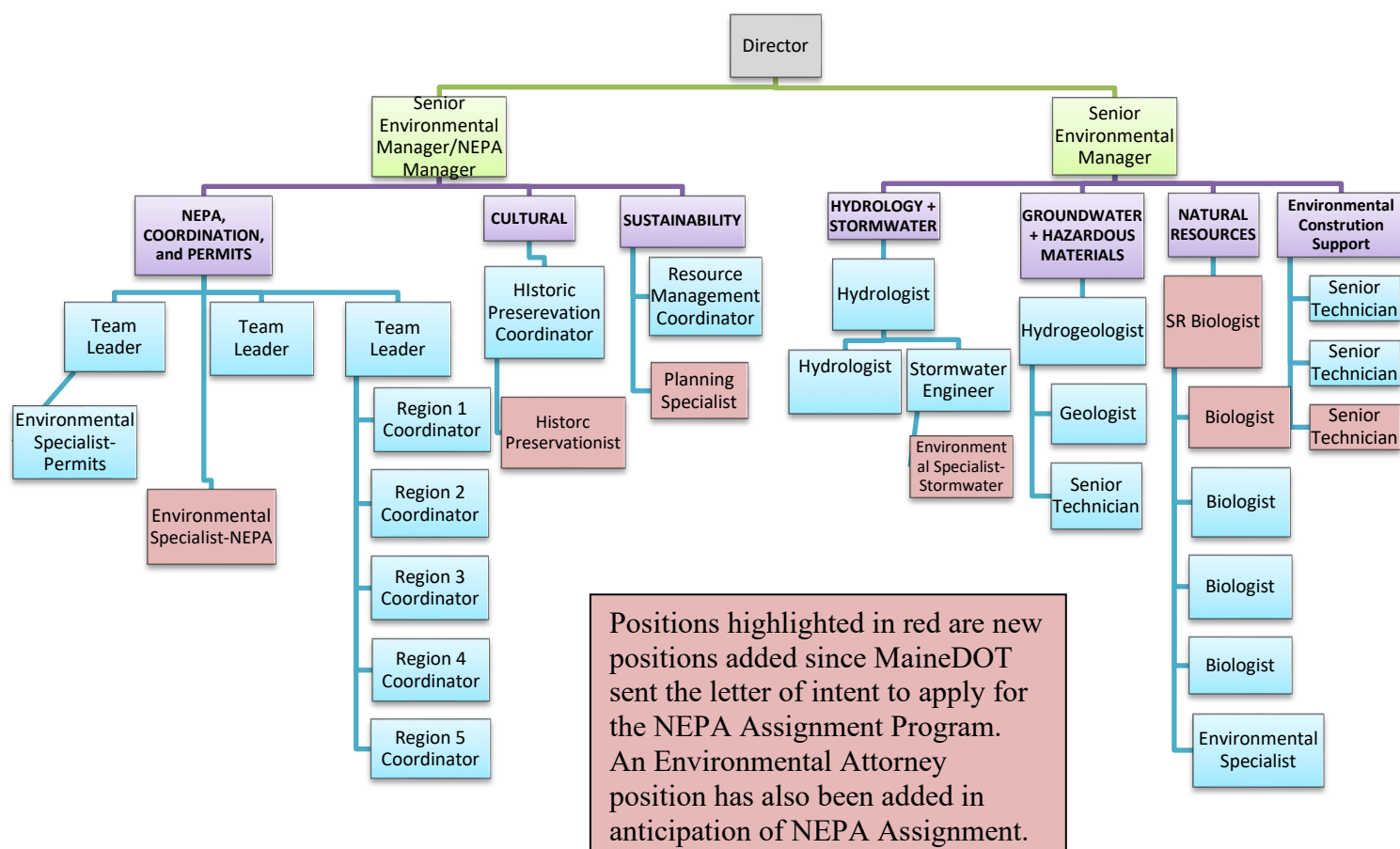
The two Engineering Technicians are responsible for compliance and issue resolution for projects

under construction. The Engineering Technicians are responsible for certain parts of the state and work closely with Resident Engineers, Project Managers, ENV staff, and Contractors to ensure compliance with environmental stipulations and commitments.

In addition to in-house staff, ENV contracts with consultants on environmental matters, including, but not limited to, historic resources, endangered species, NEPA, and hazardous materials. Consultants have been utilized by MaineDOT and MaineDOT ENV for decades. Consultants are used for project-specific environmental surveys, technical studies, reviews, and environmental document preparation/reviews. MaineDOT uses a Qualifications Based Selection (QBS) process when awarding non-construction contracts. Consultant qualifications are reviewed by MaineDOT Environmental Senior Managers and technical experts prior to qualifying them. The use of consultants is on a need basis and allows MaineDOT to utilize them to supplement ENV staff. The consultant work is required to meet ENV requirements, policies, and guidance. ENV staff are still responsible for all legal requirements under NEPA. MaineDOT has used consultants to conduct wetland delineations, stream assessments, draft permit applications, draft biological assessments, draft NEPA EIS documents, and assist with scheduling and public process. The utilization of environmental consultants occurs today with FHWA as the agency legally responsible for NEPA. Under NEPA Assignment, consultants will be utilized in the same manner.

Additionally, per MaineDOT's established consultation protocols, MaineDOT coordinates with Indian tribes as well, however, it is FHWA's responsibility to initiate and carry out consultation with federally recognized Indian Tribes to the greatest extent permitted by law when they may be impacted by potential Federal-aid highway projects. This responsibility may not be officially delegated to the State DOT's; however, FHWA may rely on State DOTs to carry out administrative, project-specific tasks on behalf of FHWA. This government-to-government responsibility will remain with FHWA, even under the NEPA Assignment Program. FHWA retains responsibility for government-to-government consultation with federally recognized Indian tribes, including participating in any conflict resolution that may come about through government-to-government consultation. For such projects where FHWA is involved in government-to-government consultation, MaineDOT however, will remain responsible and liable for compliance with all Federal requirements and related laws under the NEPA Assignment Program.

*Figure 2: MaineDOT Environmental Office Organization Chart*



The Environmental Office Director, Senior Environmental Managers, and Team Leaders work closely to ensure the processes and requirements of NEPA are carried out, and in the future, will do the same for the NEPA Assignment MOU. Most environmental staff work for supervisors and managers with many years of experience and broad backgrounds in environmental analyses and/or strong technical knowledge in one or more environmental specialty areas.

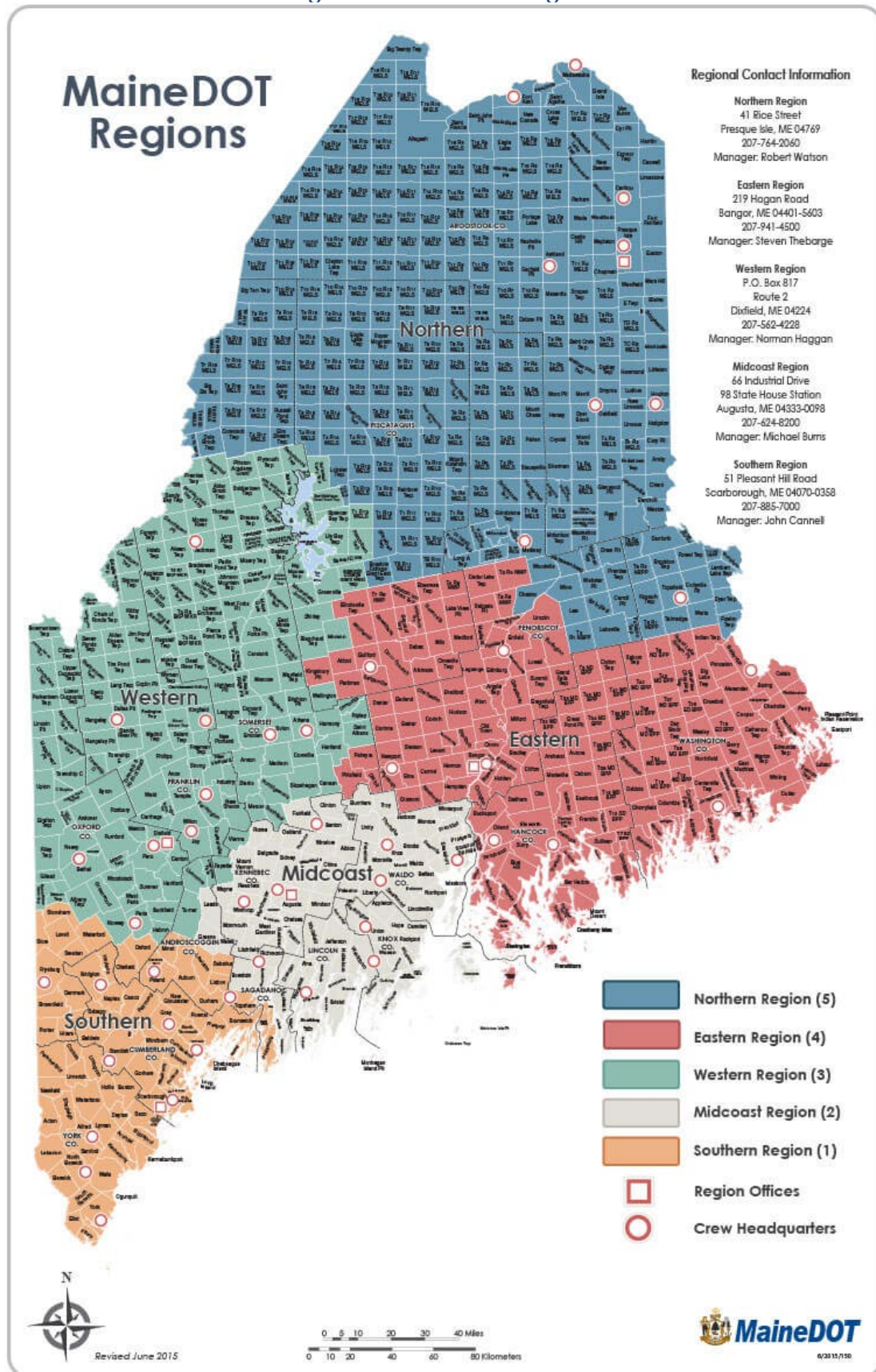
*Table 1: MaineDOT Environmental Office Technical Expertise*

MaineDOT Technical Expertise	MaineDOT Environmental Office - Headquarters
Biological Resources/Endangered Species/EFH/Fisheries and Wildlife	X
Section 106	X
Section 4(f)	X
Noise	X
Air Quality	X
Hazardous Materials Management	X
Stormwater/Water Quality	X
Wetlands/Streams/Vernal Pools/Section 404	X
Floodplains/Hydraulics	X
Environmental Permitting	X
NEPA Process	X
Environmental Legal Counsel (Legal Office)	X

### **MaineDOT Region Organization**

In addition to the organizational structures depicted in Figures 1 and 2, MaineDOT is divided into five regions (Figure 3) managed by Region Managers who report to the Bureau of Maintenance and Operations. The regions are primarily responsible for maintenance of the state highway system and for identifying and constructing some improvement projects in their jurisdictions. Each Region includes a Region Environmental Coordinator (described in the previous Environmental Office section). The Regional Environmental Coordinators report to an ENV Team Leader (responsible for the Regional Program and Maintenance Program) at the headquarters office in Augusta. The Regional Coordinators work with Project Managers, Region Engineers, and the ENV headquarters staff to ensure process, approvals, and construction oversight for environmental commitments are conducted properly.

Figure 3: MaineDOT Regions



## **Approach to Environmental Document Preparation**

MaineDOT integrates environmental considerations into its activities to achieve compliance with applicable laws, regulations, and standards. MaineDOT supports economic opportunity and quality of life by responsibly providing our customers the safest and most reliable transportation system possible. The delivery of safe, efficient transportation projects is accomplished through sound decisions based on the balanced consideration of transportation needs and of social, economic, and environmental impacts of proposed transportation improvements. MaineDOT complies with NEPA and all other federal environmental requirements on its projects requiring federal funding or approval.

Maine has no state environmental review procedures (as defined under state statute to be a state-level “NEPA Equivalent”). MaineDOT Federal aid projects follow the NEPA process. State-funded actions follow a state review permitting process, but that review excludes certain federal requirements such as the USDOT Act of 1966 – Section 4(f).

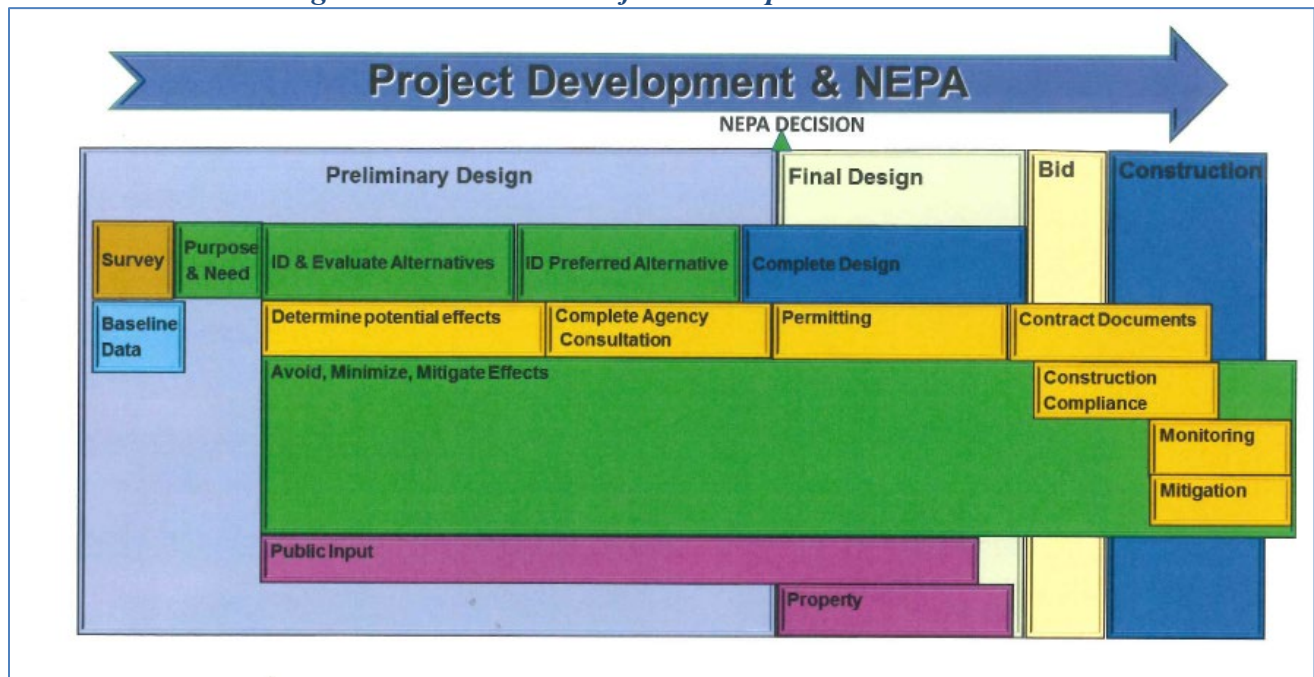
MaineDOT’s Bureau of Planning conducts all feasibility, enhanced scoping, and [community-based initiatives](#) to develop programs and deliver projects that bring out a shared vision and highlight shared priorities. Products from these initiatives and studies can range from emails to public meetings to full feasibility studies and reports. These products will help inform and be part of the NEPA documentation to support the decisions. These projects will eventually be classified as CEs, EAs, or EISs if they move forward. Initiatives by the MaineDOT Bureau of Planning will include input from MaineDOT’s Senior Environmental Manager/NEPA Manager. Projects determined to have a probable class of action (COA) of EA or EIS require funds to be programmed for additional feasibility and scoping studies, including NEPA. The probable COA identification for these projects happens early and typically in the planning and programming process.

MaineDOT’s project development process begins in the Results and Information Office (RIO). This office is responsible for the identification of projects for the Work Plan. The MaineDOT Work Plan outlines the work that the department plans to perform over the next three years. The Work Plan is calendar year-based and includes all MaineDOT work activities. Projects and activities listed for the first calendar year of the Work Plan have the most definite schedules and estimates. Candidate projects for the new Work Plan are assessed by teams comprising Bridge, Highway, and Multimodal experts. The asset deficiencies are reviewed and become the basis of the NEPA need statements for mostly CE COA projects. These candidate projects are typically not part of a Bureau of Planning scoping process but are based on asset management. The Environmental Office plays a role at this stage in identifying possible environmental concerns with these candidate projects (e.g., historic bridge, endangered species habitat).

The majority of asset needs identified in the Work Plan are assigned to a Project Development Program (Bridge, Highway, Regional, Multi-modal) and a Project Development Project Manager. The Environmental Office Team Leaders are the lead in coordinating with Project Development and the Environmental Office staff. They are also the lead for the NEPA process. A Project Development and NEPA flow chart is outlined in Figure 4.



*Figure 4: MaineDOT Project Development and NEPA*



As described in the Environmental Office section of this application, MaineDOT's ENV staff are qualified to manage FHWA and MaineDOT environmental compliance requirements. These include requirements and standards for project environmental documents and decisions, expectations for proactive resource agency engagement, and an approach to environmental commitments. MaineDOT ENV works with Project Development and Planning staff through all phases of transportation project development, from planning through construction. ENV coordinates, prepares, and provides environmental compliance for all MaineDOT projects. ENV integrates environmental considerations and impact analyses into its activities to achieve compliance with applicable laws, regulations, and standards and oversees the preparation of environmental documents in accordance with the requirements of NEPA.

ENV staff guide an interdisciplinary approach to environmental document preparation, maintaining expertise in a broad variety of environmental disciplines (e.g., historic, endangered species, NEPA, wetlands). The ENV Team Leaders are part of all project teams and are tasked with providing oversight, guidance, management, and delivery of the overall NEPA program. ENV technical staff are responsible for the guidance, expertise, and delivery of documentation in specialties including architectural history, biology, hydrology, noise, water resources, and hazardous materials. This interdisciplinary interaction ensures that project-specific environmental impacts and mitigation measures are addressed and implemented appropriately up to and through the construction phase.

The ENV Team Leaders and Senior Environmental Managers work closely with the ENV technical specialists (Biologist, Cultural staff, etc.) to ensure that environmental documents comply with survey methodologies and protocols required by resource and regulatory agencies such as the U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), Maine Department of Environmental Protection, and State Historic Preservation Officer (SHPO). The ENV technical staff works closely with state and federal agency staff to stay current with guidance and to encourage efficient and timely environmental agency reviews. MaineDOT funds

staff positions at USACE (1 position) and USFWS (2 positions), to help expedite resource agency reviews of MaineDOT environmental permitting and documentation.

For categorical exclusions (CEs), MaineDOT ENV maintains NEPA guidance ([MaineDOT NEPA CE Guidance](#)) that aids the process, preparation, and approval of CEs. This guidance provides information and direction to develop CE projects that are in compliance with applicable federal and state laws. Projects that require EISs and EAs follow well-established NEPA guidance and procedures as outlined in FHWA guidance for the preparation of such documents located in the FHWA Environmental Review Toolkit. FHWA guidance for the preparation and processing of EISs is included in [Technical Advisory T6640.8A - Guidance for Preparing and Processing of Environmental and Section 4\(f\) Documents](#). MaineDOT has developed NEPA EA and EIS Guidance in anticipation of assuming NEPA responsibilities under the NEPA Assignment Program.

### **Class of Action Determinations**

The MaineDOT Environmental Office makes all probable COA determinations, including LPAs. The Environmental Team Leaders are responsible for declaring and certifying actions that are categorically excluded from the requirements to prepare an EA or EIS. This is accomplished through MaineDOT and FHWA executed [23 U.S.C. 326 Memorandum](#) of Understanding executed 10/9/2024, and a long-standing CE Agreement with FHWA ([Maine CE Programmatic Agreement](#) - revised in 2021). MaineDOT will process all CE's under the 23 U.S.C 326 CE Assignment MOU. The MOU and PA authorize MaineDOT to determine whether a project qualifies for a CE. The MOU and PA also authorize MaineDOT to approve CEs. The Senior Environmental Manager/NEPA Manager is responsible in coordination with the Environmental Office Director and Environmental Team Leaders in declaring probable COAs classified as EAs and EISs. These probable classes of actions are currently discussed with the FHWA Maine Division. The official COA declaration is currently done by FHWA Maine Division. MaineDOT ENV will be fully responsible for declaring COA under NEPA Assignment. This will be done for all classes of action by the Senior Environmental Manager/NEPA Manager, ENV Director, and Environmental Team Leaders.

In general, EAs and EISs, including required Federal Register notices, are prepared by the ENV Team Leader, Senior Environmental Manager/NEPA Manager, and/or qualified consultant and are reviewed by the Environmental Office Director and currently FHWA Maine Division. FHWA Maine Division staff currently review these documents at key milestones for approval, including approving the release of the EA and DEIS for public/agency review and approval of the Revised EA and Finding of No Significant Impact (FONSI) and Final EIS (FEIS) and Record of Decision (ROD). MaineDOT ENV will be fully responsible for EAs and EISs COA determinations and review and approval of all documents for the EA and EIS process under NEPA Assignment (see Defining the COA, page 41). This will be done by the Senior Environmental Manager/NEPA Manager, ENV Director, and Environmental Team Leaders. Under NEPA assignment, MaineDOT's Senior Environmental Manager/NEPA Manager and ENV director will provide the project information (within 90 days of the NOI) for all EISs via the [Permitting Dashboard web site](#). MaineDOT's Senior Environmental Manager/NEPA Manager will be responsible for responding to any Office of the Secretary (OST) requests. For more see [NEPA EA and EIS Guidance- Section 8.14: Federal Infrastructure Permitting Dashboard](#).

The majority (99%) of projects are completed as CEs. Each MaineDOT project is assigned an environmental Team Leader, who has overall responsibility for successfully directing and



delivering the NEPA environmental document. In coordination with ENV technical specialists, a determination on the specific type of CE to be applied is made by the Team Leader. The determination depends on the type of project, project scope, and potential impacts. ENV technical staff and qualified consultants are assigned to investigate and evaluate the project's environmental conditions and impacts and confirm with the Team Leader the project issues and environmental requirements and then prepare technical documents, the NEPA document, permits, and other documentation.

The Environmental Team Leader and Senior Environmental Manager/NEPA Manager will evaluate the need to change the COA based on environmental impacts identified during the process or if an extraordinary circumstance is present. The Team Leader and Senior Environmental Manager/NEPA Manager will discuss their decision with the ENV Director. This discussion will include justification for the change in COA or justification for pursuing a mitigated FONSI. All documentation will be saved in the project CPD e-file. See further discussion on COA in [MaineDOT's NEPA EA/EIS Guidance, Section 2](#).

### **MaineDOT Project Development Milestones**

MaineDOT [ENV NEPA Roles by Project Milestones matrix](#) outlines all ENV technical specialist roles in the Project Development and NEPA process for each key project milestone. Project development schedules and milestones can vary based on the scope of the project. The following is MaineDOT's typical key project milestones and activities.

#### **❑ Project Kick-off (KO)**

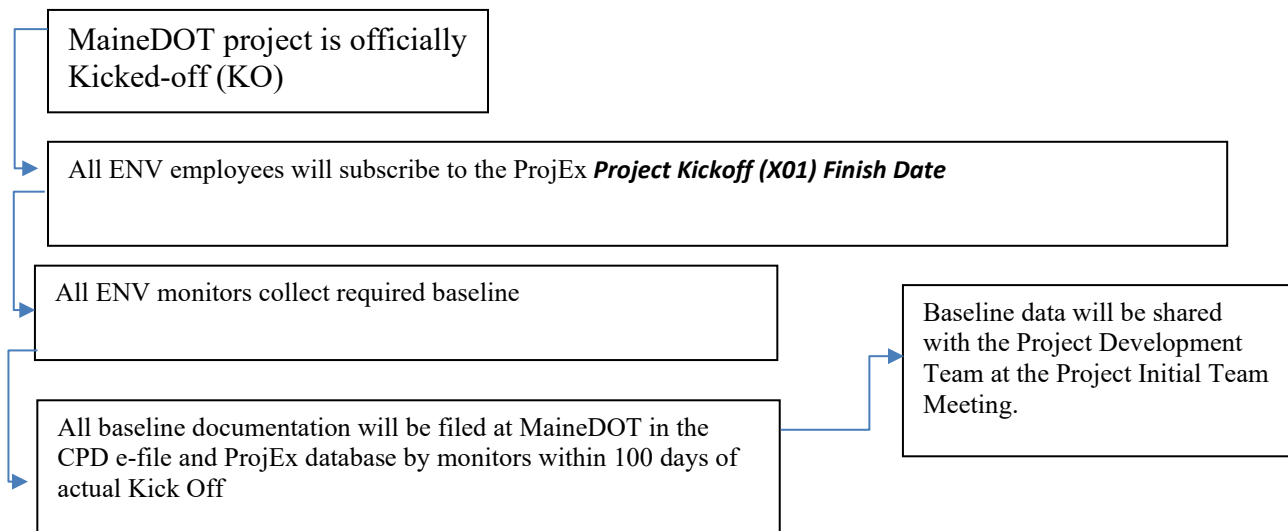
The project team is notified that the project has been kicked off so the team can begin collecting preliminary data (project manager, design engineers, right of way specialist, geotechnical engineers, utility coordinators, surveyors) and the environmental team (team leader, biologist, historic coordinator, hydrologist, hazardous material specialist, stormwater specialist). The environmental team collects the baseline environmental data.

Figure 5 outlines the environmental baseline data collection process. Baseline data collection includes desktop screening, field surveys, and resource identification. This includes probable NEPA COA determinations, consultation levels, resource data, and public involvement levels. Initial agency coordination is also conducted. This is collected by environmental technical specialists and the Team Leader. Team Leaders will present all baseline data at the Initial Team Meeting.

The Environmental Team Leader ensures that the environmental team assigned (referred to as monitors or technical specialists) to the project is collecting the baseline environmental data within 100 days of kick-off (e.g., wetland delineation, surface water evaluation, hazardous waste assessment, endangered species, screening, evaluation of culvert sizes for streams based on resources, historic and 4(f) resources).

FHWA Maine Division must be contacted by the Project Manager for their comments on projects with federal oversight.

*Figure 5: MaineDOT Environmental Baseline Data Collection*



#### ☐ Initial Team Meeting

The Initial Team Meeting is with all project team members to share and discuss all information gathered by the project team to help identify project constraints. The Environmental Team Leader provides all baseline environmental data to the project team and brings forward key issues (as all team members do) for consideration in development of the project. The information gathered during this stage is used to develop the project scope. The information may identify locations that require additional study, coordination, design approaches, or increased right-of-way or construction costs. Specific environmental resources may include historic properties, archaeology sites, wetlands, rivers, and streams, threatened and endangered species, land uses, Section 4(f) properties, and hazardous materials.

The Environmental Team Leader, Senior Environmental Manager/NEPA Manager, and Project Manager ensure development of a purpose and need statement based on the asset needs, technical studies, and concerns that have been generated at this point in the project. For more information see [NEPA EA and EIS Guidance- Section 3: Purpose and Need](#).

The environmental baseline data and other project details provided by the project team define the scope which serves as a management tool to guide environmental activities during project development, including public involvement and resource agency coordination activities. It also helps scale the environmental effort to the context and intensity of a project's anticipated impacts. This environmental baseline data and project team data become the basis to meet 23 C.F.R. 771.123(b) for an EIS COA. A study with a probable EA or EIS COA is conducted in MaineDOT's Bureau of Planning. A project with a probable CE COA is conducted out of MaineDOT's Bureau of Project Development.

FHWA does not attend these meetings. FHWA currently provides feedback on the draft purpose and need statement. This feedback will not occur under NEPA Assignment and be the full responsibility of MaineDOT and the staff listed above.

#### ☐ Preliminary Public Meeting

A preliminary public meeting is in cooperation with the local municipality and could be fully on-demand or a combination of on-demand and in-person. The public meeting will follow [MaineDOT's Public Involvement Plan](#). Project information is shared with the public based on asset needs and the baseline data collected. The meeting serves as an opportunity to hear from the public and gather new information and concerns to assist with scoping the project. The Project Manager, along with the team, work with the Virtual Public Involvement Coordinator to develop the on-demand meeting. For in-person meetings, the Project Manager acts as the moderator and other team members attend as needed (including environmental staff). After the meeting, the Project Manager communicates to the team a summary of the input received and distributes any transcript. The Project Manager and team members review the transcript and follow-up with the public and municipality on substantive comments, questions, requests. The Project Manager and Team utilize the public input to assist in developing the project.

FHWA is currently invited to participate in the public meeting and provided the transcript (if in-person meeting held). This will not occur under NEPA Assignment.

#### ☐ Preliminary Design Report (PDR)

The draft PDR and Preliminary Plans are distributed to the project team for review and comments. This distribution initiates the PDR review process. The draft PDR is distributed to the Chief Engineer, Chief Operating Officer, Director and Assistant Director of Project Development, the Property Office Director, and the project team for one final review.

Design plans are developed with consideration of baseline data, public input, and agency input. These plans are preliminary and do not necessarily take into account all constrictions due to ROW, environment and other areas. The intent is to develop a baseline for use in defining minimization.

Once the draft PDR has completed its final review, the final PDR is signed by the Program Manager. Preliminary design continues to a level appropriate to define project impacts.

The ENV Team Leader, technical specialist, and SOI qualified staff begin to process Section 106 effects, Section 4f documentation for approval, finalizing the stormwater design, finalizing fish passage design, drafting hazardous waste special provisions, writing permits and other special provisions, and finalizing biological assessments based on these preliminary plan impacts.

#### ☐ Formal Public Meeting

A formal public meeting in cooperation with the local municipality could be fully on-demand or a combination of on-demand and in-person. All project public meetings have an on-demand component. The on-demand meeting has shown to receive more public participation and comments than the in-person meeting. The public meeting will follow [MaineDOT's Public Involvement Plan](#). The project details are presented to the public by the Project Manager and other team members. This could be by a public meeting and/or a letter to the municipalities (depending on scope and issues). If a public meeting is held, a court reporter is retained, and meeting minutes will be distributed to the team, municipality, and FHWA (FHWA will not receive under NEPA Assignment). The public's comments and concerns are received. Comments will be incorporated into the plans as determined by the Project Manager and team.

ENV also utilizes other public participation methods, if needed, for Section 106 and Section 4(f). These methods are described in [MaineDOT's NEPA Public Involvement Plan \(NPIP\)](#).

FHWA is currently invited to participate in the public meeting and provided the transcript. FHWA currently reviews any formal public comments for Section 106 and Section 4(f). FHWA currently reviews MaineDOT's responses to substantive comments. This will not occur under NEPA Assignment.

☐ Plan Impacts Complete (PIC)

Plan Impacts Complete are distributed to the project team for review. PIC includes sufficient information to finalize impacts and environmental permits.

NEPA is typically approved by the ENV Team Leader (if it meets the CE agreement) or FHWA. MaineDOT Environmental Office or Chief Engineer will approve all NEPA classes of Action under NEPA Assignment.

☐ Plan, Specification, and Estimate (PS&E)

The environmental package (contains all required permits and special provisions) is provided to the Project Manager for the PS&E and Contract Package. PS&E plans are distributed to the project team for review and comments. This distribution initiates the PS&E review process. At this point, comments can be returned to the Project Manager or can be discussed at the PS&E Milestone Meeting (if held). Comments will be incorporated into the plans after being discussed at or as determined by the Project Manager.

A draft of the Contract Bid Book and Contract Plan Set are reviewed by Project Development Program Management and Construction Support.

PS&E Reviewed by Contracts (Contracts & Specifications Engineer)

The Project Manager assembles the Plans, Specifications, and Estimates for the Project into one package and forwards it to the Contracts & Specifications Engineer for review. The final package includes Plans, Specifications, Certifications, Permits, and an Engineer's Estimate. This package will be reviewed to make sure all commitments are clearly understood, and responsibilities for meeting the commitments are assigned and communicated. Respective team members will be responsible for the delivery of those products to the Project Manager. Once the PS&E package is approved, it is passed to the Finance and Administration office for Construction Authorization which is necessary for federal approval and advertising federal projects.

☐ Construction Begin and End

ENV has construction specialist that provide guidance and review commitment compliance in the field. The ENV construction specialist and ENV technical specialist are available to assist with any issues.

When construction is substantially complete, the Project Manager and the Construction Resident typically arrange for an on-site final inspection team meeting to review the project. The purpose of this meeting is to provide another channel of direct feedback that will continue to improve our process. This team meeting is recommended for most projects to discuss how the process worked during the development of the project. At the meeting, team members will

discuss what went right, what went wrong, and how the project development process could be improved.

ENV technical specialists (project monitors assigned in MaineDOT's ProjEx database) are responsible for documenting compliance is complete with oversight by the ENV Team Leader.

Once construction and commitments are complete, the ENV CPD e-file is technically complete.

### **MaineDOT Environmental Office Records**

The ProjEx database is MaineDOT's project database and is used by all Environmental Office staff and Project Development to track schedules, finances, team rosters, project details, environmental assessments, approvals, and NEPA certification. FHWA Maine Division Office has access to this database.

MaineDOT Environmental Office has an electronic filing system named the Coordination and Project Documentation e-file (CPD e-file). All final environmental documentation, signoffs, approvals, photographs, field data collection forms, surveys, and correspondence with the public are placed in the project file within the CPD e-file. FHWA Maine Division Office has access to this electronic filing system.

Categorical Exclusions account for approximately 99% of MaineDOT's actions. All assessments, documentation, and approvals are tracked in ProjEx and saved in the Environmental Office CPD e-file. ProjEx houses the NEPA checklist, assessments, assessment details, determinations, and certifications. The Environmental Team Leaders, Senior Environmental Manager/NEPA Manager, Environmental Specialist-NEPA, and Environmental Office Director are the only MaineDOT staff that can determine the NEPA COA and certify NEPA.

When all necessary assessments, documentation, approvals, and public process are completed and all NEPA checklist items have been checked (Figure 6), then the Environmental Team Leader will make a NEPA determination (Figure 7) and place an actual NEPA approval date in ProjEx (Figure 8).

NEPA cannot be approved if the project's next phase (ROW, Construction) has not been identified in the Statewide Transportation Improvement Program (STIP). If the project is expected to go to construction in the timeframe of the STIP then the entire project and all phases must be in the STIP. The Team Leader ensures the STIP (and phases) have been approved before approving the CE. ProjEx is also built with an automated tracking system that will not allow the ROW negotiation phase to occur until after a CE approval.

**Figure 6: MaineDOT ProjEx NEPA Compliance Checklist**

**PM NEPA Checklist** David Gardner, you have 668 messages

Project Information ▾ Location ▾ Environmental ▾ Finance ▾ Schedule ▾ Planning ▾ Roster ▾ Comments ▾ Links ▾ Setup ▾

Save Cancel Export to Excel PSN or WIN Go To

**Project: 68032/021708.00 - WHITING, NEW CRANE BR #2194**

KO Date: 04/14/2016 A PDR Date: 06/07/2017 A PIC Date: 07/14/2017 A PS&E Date: 11/03/2017 F CNBEG Date: 01/24/2018 F CNCMP Date: 06/12/2019 F

Environmental Team Leader: CHAMBERLAIN, KRISTEN

NEPA Compliance Checklist NEPA Determination NEPA Certification

**Section 1: Compliance with NEPA policy to complete all other applicable environmental requirements**

Checklist Category	Checklist Item	Compliance Applicable	Last Updated By	Updated Date
RIGHT OF WAY	Substantial Public Opposition	No	CHAMBERLAIN, KRISTEN	9/7/2017
	Right-of-Way Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
AIR QUALITY	Relocations Required	No	CHAMBERLAIN, KRISTEN	9/7/2017
	Air Quality Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
FISHERIES & WILDLIFE	Noise Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
	Section 7 Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
HAZMAT MANAGEMENT	Essential Fish Habitat Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
	Marine Mammal Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
	Migratory Bird Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
	Hazardous Materials Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
	Section 106 Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
	Adverse Effect on Historic Landmark Present	No	CHAMBERLAIN, KRISTEN	9/7/2017
	Section 4(f) Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
	Individual 4(f) Required	No	CHAMBERLAIN, KRISTEN	9/7/2017

**Figure 7: MaineDOT ProjEx NEPA Determination**

**PM NEPA Checklist** David Gardner, you have 668 messages

Project Information ▾ Location ▾ Environmental ▾ Finance ▾ Schedule ▾ Planning ▾ Roster ▾ Comments ▾ Links ▾ Setup ▾

Save Cancel Export to Excel PSN or WIN Go To

**Project: 68032/021708.00 - WHITING, NEW CRANE BR #2194**

KO Date: 04/14/2016 A PDR Date: 06/07/2017 A PIC Date: 07/14/2017 A PS&E Date: 11/03/2017 F CNBEG Date: 01/24/2018 F CNCMP Date: 06/12/2019 F

Environmental Team Leader: CHAMBERLAIN, KRISTEN

NEPA Compliance Checklist NEPA Determination NEPA Certification

**NEPA Classification**

Programmatic CE ▾

**Section 2: NEPA Determination**

In accordance with 23 CFR 771.117, and based on an examination of the supporting information, the action:

- Does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and
- Has considered unusual circumstances pursuant to 23 CFR 771.117 (B).

The project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act.

MaineDOT has been assigned, and hereby certifies that it has carried out the responsibility to make this determination pursuant the Categorical Exclusion Programmatic Agreement dated February 2016, executed between FHWA and MaineDOT.

MaineDOT has determined the project is a Categorical Exclusion under:

23 CFR 771.117 ( c ) ( 28 )

☐ Not listed in 23 CFR 771.117 (if not listed, Send ICE to FHWA for Approval)

*Figure 8: MaineDOT ProjEx NEPA Certification*

The screenshot displays the 'PM NEPA Checklist' web application. At the top, a blue header bar contains the title 'PM NEPA Checklist' and a user notification for 'David Gardner, you have 668 messages.' Below the header is a navigation menu with tabs for Project Information, Location, Environmental, Finance, Schedule, Planning, Roster, Comments, Links, and Setup. A secondary bar includes 'Save', 'Cancel', 'Export to Excel', and a 'PSN or WIN' field with a 'Go To' button. The main content area shows project details for 'Project: 68032/021708.00 - WHITING, NEW CRANE BR #2194'. It lists various dates: KO Date: 04/14/2016 A, PDR Date: 06/07/2017 A, PIC Date: 07/14/2017 A, PS&E Date: 11/03/2017 F, CNBEG Date: 01/24/2018 F, and CNCMP Date: 06/12/2019 F. The Environmental Team Leader is listed as CHAMBERLAIN, KRISTEN. Below this, three tabs are visible: 'NEPA Compliance Checklist', 'NEPA Determination', and 'NEPA Certification', with the latter being the active tab. The 'NEPA Certification' section is titled 'Section 3: NEPA Certification' and contains a statement: 'Based on the information obtained during the environmental review process and included in this checklist, project files and databases, the project is determined to be a Categorical Exclusion pursuant to the National Environmental Policy Act and is in compliance with all other applicable environmental laws, regulations and Executive Orders.' Below this statement are fields for 'Certification Name' (set to CHAMBERLAIN, KRISTEN), 'Certification Date' (set to 9/7/2017), 'Last Updated By' (set to CHAMBERLAIN, KRISTEN), and 'Last Update Date' (set to 9/7/2017 2:40:11 PM).

MaineDOT Environmental Team Leaders approve all CEs under the 23 U.S.C. 326 MOU and the FHWA/MaineDOT Programmatic CE Agreement. Over the past 20 years, “Individual” CEs” under the Programmatic CE Agreement were required to be sent to the FHWA Maine Division Office for approval. For approximately 97% of MaineDOT’s projects, FHWA has not been involved in the project development/NEPA approval process because the projects met the “programmatic” CE under the CE agreement. All CE approvals will be the responsibility of MaineDOT ENV under NEPA Assignment. This transition will be seamless since MaineDOT now approves 100% of projects and has developed the knowledge, experience, and agency relationships to be successful.

All project CE Reports are saved in the project-specific CPD e-file. The CE contains project information, assessment details, a NEPA checklist, and certification. All final approvals will also be saved to the project NEPA folder (e.g., Section 106 concurrence memos and MOAs, Section 4(f) evaluation approvals, ESA biological opinions).

In 2015, the Fixing America’s Surface Transportation (FAST) Act was enacted and created a set of procedures to improve the Federal environmental review and authorization process for “covered” infrastructure projects. This led to the creation of the Federal Permitting Improvement Steering Council and the online Permitting Dashboard. [42 U.S.C. 4370m](#) defines a “covered” project.

FHWA Maine Division Office is currently responsible for uploading project information for all EISs. Under NEPA Assignment, MaineDOT’s Senior Environmental Manager/NEPA Manager and Environmental Office Director will provide the project information (within 90 days of the NOI) for all EISs via the [Permitting Dashboard](#) website.

The Permitting Dashboard provides the following [FAST-41 Process](#):

#### Locally Administered Projects (LAP)

Locally Administered Projects [(or Local Project Administration (LPA))] through MaineDOT enables cities, towns, and nonprofit agencies to make transportation improvements with federal



and state money. A certified staff member takes charge of a locally administered project in partnership with MaineDOT, which makes sure all federal and state requirements are met.

MaineDOT requires municipalities and other local agencies to take [Certification Training](#), and the Environmental Office participates in this training. MaineDOT does not delegate NEPA, Section 106, Section 4(f), endangered species, or hazardous material management to the LPA. The Environmental Section of the [MaineDOT LPA Manual](#) describes the LPA process and obligations. FHWA also provides [LPA guidance](#).

Since MaineDOT oversees the NEPA process with assistance from the LPA, compliance, and resolution of noncompliance are documented the same as a non-LPA project. The LPA is responsible for obtaining and complying with Maine Department of Environmental Protection and USACE and other environmental permits and provides the information to MaineDOT as described in the LPA Manual.

Scope and schedule are set by the LPA with assistance from MaineDOT. The MaineDOT Environmental Office Team Leader is responsible for NEPA documentation and certification. The MaineDOT Environmental Office Historic Coordinator is responsible for Section 106 and Section 4(f). The MaineDOT Environmental Office Biologist is responsible for Section 7 consultation. These are not delegated to the LPA. Documentation is provided by the LPA. All NEPA documentation is filed in ENV's CPD e-file and in ProjEx.

### **Public Involvement Procedures**

A major goal of NEPA is that state and federal transportation agencies develop a process that provides the opportunity for stakeholders and the public to actively participate in transportation decision-making. Before a project is approved for federal funding and construction, MaineDOT is required to consider and assess the social, natural, cultural, and economic impacts a project may have on a community. The overall goal is to gain meaningful input from stakeholders, the public, and interested parties. [MaineDOT's Public Involvement Plan \(PIP\) and NEPA Public Involvement Plan \(NPPIP\)](#) are used to guide projects through the public process.

Documentation of public involvement activities is critical to measure successes and demonstrate federal and state compliance for public involvement. Appropriate and complete documentation of public involvement activities, especially public feedback, involves not only MaineDOT Environmental Office staff, but the entire project team. Public involvement documentation provides a history and record of commitments made as a result of the outreach activities throughout each stage of the transportation decision-making process. Members of the public should also have access to such documentation to confirm their input was heard or otherwise received and considered. Proper documentation includes compiling all materials related to the public involvement activity, summarizing, and analyzing comments, and describing how the comments are being addressed.

MaineDOT may develop a project-specific PIP for EIS projects to ensure compliance with NEPA and other federal environmental laws and regulations. Public involvement requirements for EISs and EAs are briefly described within the NPPIP.

The purpose of the project-specific PIP is to develop, implement, and document methods used to reach members of the public who may be affected by or who are interested in a proposed project. A project-specific PIP is typically used as a "roadmap" to guide public involvement at each stage



of the transportation decision-making process. It will generally include project development, design, and construction. The ultimate goal is to incorporate as many members of the public into the decision-making process as possible, adjust to the community's needs, and solicit input. The project-specific PIP should also demonstrate how adjustments or accommodations were made to involve the public at each stage of the transportation- decision-making process. The decision to develop an EIS project specific PIP will be made by the MaineDOT Senior Environmental Manager/NEPA Manager and MaineDOT EIS team.

MaineDOT also follows the requirements of 23 U.S.C. §139 for efficient environmental review and applies it to projects for which EISs are prepared. These requirements emphasize collaboration between federal, state, local, and tribal government entities and the public when preparing EISs. Title 23 U.S.C §139 requires lead agencies to provide, as early as practicable in the environmental review process, an opportunity for the public and participating agencies to provide input in the development of the purpose and need and the range of alternatives to be considered. It states that the Lead Federal Agency will also collaborate with the cooperating and participating agencies during the study process on study methodologies to be used, and the level of detail required for the analysis of project alternatives. Following the requirements of 23 U.S.C. §139 (g), the Coordination Plan identifies the lead agencies for the project (federal, state, and local) along with the cooperating and participating agencies and describes expectations for each of the roles. The plan also describes the agency coordination that will take place and includes guidance for inter-agency coordination and ways to encourage opportunities for agency and public participation during scoping, development of purpose and need and alternatives, and public review of the environmental document.

MaineDOT will have a court reporter at all public hearings for EAs and EISs. The court reporter will provide the transcript to MaineDOT for the administrative record. The Environmental Team Leader will ensure the transcript is saved to the project file (CPD e-file). The MaineDOT Senior Environmental Manager/NEPA Manager ensures the project team reviews the submitted public and agency comments from meetings and hearings and evaluates the comments received. Modifications to the alternatives or design concepts may occur based on the comments received.

The FHWA Maine Division is currently the Lead Federal agency, has oversight of the MaineDOT NEPA public process, and reviews public and agencies comments and responses. The MaineDOT Senior Environmental Manager/NEPA Manager will have this responsibility under the NEPA Assignment Program.

Public involvement effectiveness is measured by the MaineDOT Public Virtual Public Involvement Coordinator. The Senior Environmental Manager/NEPA Manager will also assess public involvement in the NEPA process. Any suggestions will be discussed with the Environmental Office Director and Coordinator. Results of Virtual Public Involvement Effectiveness.

### **Quality Assurance and Quality Control**

MaineDOT is committed to quality environmental reviews and documentation in compliance with the National Environmental Policy Act and other applicable laws, regulations, and executive orders.

MaineDOT utilizes a flexible approach and emphasizes internal communication and collaboration among its various bureaus, ENV NEPA staff, and technical subject matter experts to produce a quality process and documentation that supports balanced decisions. MaineDOT's [QA/QC](#)

[Guidance](#) is located on the MaineDOT Environmental web page.

Quality Assurance (QA) and Quality Control (QC) are part of the ENV's process that occurs at a program level and at multiple points during a project. QA is utilized to proactively focus on the prevention of issues and manage the quality of the process. QA involves assessing a program/process after tasks have been completed to identify issues that need to be addressed. A MaineDOT example of NEPA QA is conducting our annual NEPA quality review and identifying any program process or documentation issues and areas ENV can improve or streamline. This is documented and located in the CPD e-file. QC is utilized to verify the quality of the project process and documentation. QC is the daily effort of identifying and correcting deficiencies and errors. This occurs at the project level and in MaineDOT's and ENV's production process. A MaineDOT example of NEPA QC is the Senior Environmental Manager/NEPA Manager reviewing the draft Environmental Assessment section on historic resources and identifying deficiencies to be addressed. QC for an EA would be conducted through track changes within the document and MaineDOT's EA quality review checklist.

The Senior Environmental Manager/NEPA Manager and Environmental Director are responsible for ensuring the documents and process comply with regulatory requirements and are technically sound.

#### Internal Quality Review

In addition to reviewing individual project documents, ENV also conducts an annual internal quality review. This review is conducted by the Senior Environmental Manager/NEPA Manager, Environmental Office Director, and Environmental Specialist-NEPA. The review involves a process review of procedures, databases, COA determinations, environmental assessment details, NEPA checklists, NEPA certifications, documentation, and filing. For any identified processes, activities, or documentation that is identified as deficient, a follow-up meeting is held with the Senior Environmental Manager/NEPA Manager, Environmental Office Director, Environmental Specialist-NEPA, and Team Leaders. Action items are developed and implemented to resolve the noted issue. Current practices will be the foundation upon which expanded QA/QC roles, guidance, policies, and practices will be developed to fully address NEPA responsibilities spelled out in the MOU.

#### Legal Review

A legal review is completed by the MaineDOT Environmental Attorney for EISs, EAs, and Section 4(f) individual evaluations. Legal review may be requested for any other issue, associated documents, or legal guidance. The primary goal of this review is to assess the document or issue for compliance with legal requirements. ENV receives legal review of all DEISs, FEISs, and EAs, prior to recommending those documents for approval for public notice. The MaineDOT legal reviews are in addition to FHWA's legal sufficiency review, when required. Under NEPA Assignment, the Maine Attorney General's Office will conduct the legal sufficiency reviews. The MaineDOT Senior Environmental Manager/NEPA Manager will provide the EIS, and cultural staff will provide the individual Section 4(f) evaluation for MaineDOT legal counsel to review and for the Maine Attorney General's Office to conduct a legal sufficiency review. The Senior Environmental Manager/NEPA Manager will discuss and incorporate suggestions/requirements from the legal reviews.

#### **Environmental Commitments**

Environmental commitments resulting from coordination under the laws and regulations

mentioned in this application will be carried forward in the form of plan notes, special provisions, memorandums of agreement, construction contract language, permits, environmental construction contract packages, and in lieu fee payments. Commitments and compliance are tracked in the Commitments Section of the ProjEx database. All commitments for a project are assigned to an environmental monitor to track compliance. MaineDOT developed a NEPA Commitment Guidance document to further describe environmental commitments tracking.

*Figure 9: MaineDOT ProjEx Commitments and Compliance*

**PM Commitments** David Gardner, you have 673 messages.

Project Information Location Environmental Finance Schedule Planning Roster Comments Links Setup

Load Commitments Add Commitment Add Checkpoint Filter on Commitment Category All (Display Only) Export to Excel PSN or WIN Go To

Project: 68032/021708.00 - WHITING, NEW CRANE BR #2194  
 KO Date: 04/14/2016 A PDR Date: 06/07/2017 A PIC Date: 07/14/2017 A PS&E Date: 11/03/2017 F CNBEG Date: 01/24/2018 F CNCMP Date: 06/12/2019 F  
 Default Assigned Monitor for Selected Commitment Category: Not Assigned

Edit	Category	Stipulation	Monitor	Commitment Note	Status	Close Date	Last Updated...	Updated...	Delete
	ACOE Stipulations	All cofferdams removed from stream immediately after construction activities	ANNIS, RYAN		Active		CHAMBERLAIN, KRISTEN	9/7/2017	
	ACOE Stipulations	All off-road vehicles cleaned prior to entering construction site	ANNIS, RYAN		Active		CHAMBERLAIN, KRISTEN	9/7/2017	
	ACOE Stipulations	All work within in-water work window	ANNIS, RYAN		Active		CHAMBERLAIN, KRISTEN	9/7/2017	
	ACOE Stipulations	BMPs	ANNIS, RYAN		Active		CHAMBERLAIN, KRISTEN	9/7/2017	
	ACOE Stipulations	Compliance Certification	ANNIS, RYAN		Active		CHAMBERLAIN, KRISTEN	9/7/2017	

1 - 10 of 17 items

Commitment Checkpoints: All cofferdams removed from stream immediately after construction activities

Edit	Checkpoint	Checkpoint Note	Close Date	Due Date	Last Updated By	Updated...
No items to display						

## Tools and Guidance

MaineDOT works with FHWA to implement NEPA requirements on MaineDOT's program. As the state highway agency for Maine, MaineDOT routinely prepares NEPA documents for FHWA's independent evaluation and approval. MaineDOT also works with municipalities to prepare NEPA documents for LPA project. The process for preparing these documents and review of draft and final NEPA documents by FHWA Maine Division will be the responsibility of MaineDOT under the NEPA Assignment Program and is spelled out in MaineDOT's NEPA CE Guidance and NEPA EA and EIS Guidance.

To implement NEPA requirements effectively, MaineDOT has developed tools, programmatic agreements, guidance materials, and utilizes FHWA formal guidance documents that guide environmental document development and provide specific requirements for individual technical subject areas. These tools and guidance are located on [MaineDOT' Environmental Web pages](#) and ensure that environmental documents and technical reports meet quality standards and are consistent with federal and state requirements.

As current project sponsor, current preparer of environmental documents for FHWA approval, and future federal lead and approver under NEPA Assignment, MaineDOT relies on [FHWA's Technical Advisory T6640.8A – Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#). The Technical Advisory was developed by FHWA for the purpose of providing the best available guidance to its field offices and applicants regarding the types of information needed to comply with NEPA, section 4(f) of the DOT Act of 1966, and other environmental requirements. In addition, the [FHWA Section 4\(f\) Policy Paper](#) and [FHWA Section](#)

[4\(f\) Tutorial](#) contain all the guidance material needed to conduct Section 4(f) analyses.

For the environmental review responsibility of Section 4(f), the Policy Paper states: “In situations where a State has assumed the FHWA responsibility for Section 4(f) compliance, this guidance is intended to help the State fulfill its responsibilities. Such situations may arise when Section 4(f) responsibilities are assigned to the State in accordance with 23 U.S.C. §§ 325, 326, 327, or a similar applicable law. Unless otherwise noted, references to “FHWA” in this document include a State Department of Transportation (State DOT) acting in FHWA's capacity pursuant to an assumption of FHWA's responsibilities under such laws.”

Together with other federal agencies, MaineDOT has also participated in the development of, and is a signatory to, several programmatic agreements (PAs) that streamline the environmental review and project delivery processes.

MaineDOT's policy and guidance resources address the environmental requirements associated with planning and delivering highway projects. The policies and guidance are a compilation of environmental procedures and processes related to environmental, cultural, and social resources. These online reference materials are intended for use by project sponsors and environmental practitioners who conduct environmental work on behalf of MaineDOT, as well as by MaineDOT environmental staff.

### **Additional Guidance**

In addition to MaineDOT's guidance, MaineDOT and its consultants use the wealth of FHWA NEPA guidance in developing environmental documents and studies. [FHWA online guidance, websites](#), and tools covering a comprehensive listing of environmental topics such as historic preservation, water quality, wetlands, wildlife, Section 4(f), noise and air quality to name a few.

The [Environmental Review Toolkit Topics](#) cover many topics in depth with direction and methodologies for performance of studies and assessments ranging from community impact assessments to air analyses. FHWA's [Environmental Review Toolkit](#) includes comprehensive guidance on a wide variety of topics such as historic preservation, water, wetlands and wildlife and Section 4(f).

The American Association of State Highway and Transportation Officials (AASHTO) maintains a series of [practitioner's handbooks](#) for a wide range of environmental topics that assist with environmental project development and NEPA documentation.

### **Programmatic Agreements and Agency Consultation**

MaineDOT has participated in the development of, and is a signatory to, several programmatic agreements (PAs) that streamline the environmental review and project delivery process. A PA documents the terms of a formal, binding agreement between MaineDOT and other state or federal agencies. A PA may establish a process for consultation, review and/or compliance with one or more federal laws. It may also function as an expression of collaborative intent between agencies. MaineDOT has several PAs, as described below.

#### Liaison Position Agreements

MaineDOT led the development of liaison position agreements directly with USFWS and USACE.

USFWS: MaineDOT has two federally funded liaison positions at USFWS. The Cooperative

Agreement effectively establishes a predictable streamlined process and allows USFWS staff to focus on MaineDOT projects. This Cooperative Agreement sets forth the responsibilities of USFWS, MaineDOT, and FHWA relative to priority review of Maine state transportation projects constructed by or under the authorization of MaineDOT, to achieve timely design and implementation of adequate, safe, and economical transportation infrastructure improvements while ensuring compliance with laws for the protection of fish and wildlife resources for which USFWS is responsible under federal statute and regulation.

USACE: MaineDOT has one federally funded liaison position at the USACE Maine Division Office. This MOA sets forth the responsibilities of the USACE, MaineDOT, and FHWA relative to the expedited review of permit applications for MaineDOT and local federal-aid transportation projects located in Maine. The purpose of the agreement is to achieve timely decision-making for transportation improvements within the State of Maine while also assuring transportation project design and implementation is sensitive to the protection of federal aquatic resources, in accordance with the federal statutes USACE administers. The parties will work proactively to enhance each agency's ability to realize its mission through open communication and teamwork.

#### [Atlantic Salmon Programmatic Biological Assessment / Atlantic Salmon Programmatic Biological Opinion](#)

MaineDOT led the development of the Atlantic Salmon Programmatic Biological Assessment directly with USFWS. The programmatic consultation creates a streamlined and transparent process for Section 7 consultation for Atlantic salmon with efficiencies realized by MaineDOT, FHWA, USACE, and USFWS. The Programmatic Biological Assessment covers routine transportation activities and has reduced consultation from an average of 9 months to 1 week.

#### **23 U.S.C. 326 Memorandum of Understanding**

FHWA assigns, and the State assumes, subject to the terms and conditions set forth in 23 U.S.C. § 326 and the MOU, the responsibility for determining whether a proposed FHWA action is within the category of action that has been designated as a CE by the DOT Secretary. This assignment applies only to projects for which the Maine Department of Transportation (MaineDOT) is the direct recipient of Title 23 program funding or is the project sponsor or cosponsor within the scope of 23 U.S.C. § 326 and this MOU for a project requiring approval by the FHWA- Maine Division Office. MaineDOT also assumes the responsibilities for environmental review, consultation, or other related actions required under Federal laws and Executive Orders applicable to CE projects.

#### [Maine NEPA CE Agreement](#)

MaineDOT led the development of the CE Agreement directly with FHWA. The purpose of this Agreement is to authorize MaineDOT to determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 C.F.R. 771.117 This Agreement also authorizes MaineDOT to certify to FHWA that an action not specifically listed in 23 C.F.R. 771.117 but meeting the CE criteria in 23 C.F.R. 771.117(a), qualifies for a CE as long as there are no unusual circumstances present that would require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS), as indicated in 23 C.F.R. 771.117(b).

#### [Section 106 Programmatic Agreement](#)

MaineDOT led the original development (2004) of the Section 106 Programmatic Agreement directly with MHPC, ACHP, FTA, and FHWA. FHWA led the recent revised 2022 agreement. The Programmatic Agreement sets forth the process by which FHWA, FTA, MaineDOT will meet



their respective responsibilities for undertakings pursuant to Section 106. The Agreement exempts approximately 50% of MaineDOT federal nexus projects from any further 106 process due to scope of work. The agreement also spells out the required process for non-exempt projects.

#### Stormwater Memorandum of Agreement

MaineDOT led the development of the MOA. The MOA is between MaineDOT, Maine Turnpike Authority (MTA), and Maine DEP. The MOA applies to MaineDOT projects that would be required to meet the State DEP Stormwater Management Law (38 M.R.S. 420-D(7)(G)). The MOA addresses the specific technical issues associated with transportation projects and specifies stormwater quality and quantity standards.

MaineDOT acknowledges that under the NEPA Assignment Program, MaineDOT will be required by FHWA to work with signatories of these agreements to ensure any required amendments to address MaineDOT as the federal agency.

### **§ 773.109(a)(3)(ii): Changes to be made for assumption of responsibilities**

This section describes how MaineDOT intends to continue to utilize established and successful practices and to modify its environmental compliance program to implement its new responsibilities under the NEPA Assignment Program. This section also describes the procedures that MaineDOT will implement to support the development of compliant NEPA documents that meet quality standards and of NEPA decisions that are sound, supportable, and made independently.

#### **Organization and Procedures under the NEPA Assignment Program**

MaineDOT has worked to ensure its programmatic agreements, memorandum of agreements, and guidance are reviewed regularly for continuous improvement opportunities that support appropriate environmental analysis and decision-making under NEPA and associated laws and regulations. MaineDOT has updated guidance and procedure documents to recognize MaineDOT as the lead federal agency [23 U.S.C. 326(e) and 23 U.S.C.327(m)] for FHWA projects. MaineDOT understands that the designation of the official lead federal agency for FHWA projects is not effective until the NEPA Assignment MOU is executed. These guidance documents and ENV's staff and consultant resources will provide appropriate tools and expertise in areas where MaineDOT has requested assignment of FHWA's environmental responsibilities.

In addition to those described in this application, changes are expected to occur as staff gain experience using the updated procedures and identify the need for clarification, adjustment, or additional procedures. The ENV self-assessments and FHWA audit reports will provide further opportunities for standards and procedural improvements. Procedural change would also result when MaineDOT self-assessments or FHWA audits identify the need for additional change. As soon as MaineDOT is notified and instructed by FHWA regarding any new or changed FHWA program policy and guidance or MaineDOT identifies needs for policy or guidance changes (via internal quality reviews or FHWA NEPA audits), the MaineDOT Environmental Office Director, Senior Environmental Manager/NEPA Manager and any applicable Manager and technical specialist will assess and implement required changes to MaineDOT guidance and process. Training will be provided to the impacted staff and areas of MaineDOT at the time of any changes.

MaineDOT ENV staff includes experienced NEPA practitioners and a variety of subject-matter

experts in hazardous waste, stormwater, and natural and cultural resources. MaineDOT, in anticipation of NEPA Assignment, has added positions to the Environmental Office and Legal Office (Environmental Specialist-NEPA, Senior Biologist, Historic Preservationist, and Environmental Attorney) to help ensure the workload and responsibilities of NEPA Assignment are met. MaineDOT will continue to implement its long-standing, successful approach to completing resource analyses and preparing environmental documents under the NEPA Assignment Program. MaineDOT follows the sound professional judgment of ENV staff to determine the necessary environmental analyses for specific projects and prepare quality environmental documents, supported by applying established standards for environmental documents and technical studies. MaineDOT will continue to use environmental consultants as appropriate to meet its environmental analysis, documentation, and management needs.

The major change that will occur under the NEPA Assignment Program is MaineDOT's assumption of FHWA's role as environmental project decision-maker for the State of Maine. The NEPA Assignment Program will expand MaineDOT's traditional role of project sponsor to serve as Lead Federal Agency with responsibility and liability for making independent NEPA decisions on projects. The NEPA Assignment Program will also allow MaineDOT to deepen its strong, proactive working relationships with its federal and state resource agency partners and to continue its commitment to work collaboratively with these resource agency partners to develop and implement innovative environmental mitigation. See the Independent Environmental Decision-Making section on page 41.

MaineDOT's standards and procedures, combined with its expert staff and consultant resources, will provide appropriate tools and expertise in all areas that MaineDOT has requested assignment of FHWA's environmental responsibilities. The NEPA Assignment program will rely on the professional experience, knowledge, and judgment of MaineDOT's environmental staff in determining the scope and appropriate environmental analyses for each specific project, supported by established standards for the preparation of environmental documents and technical studies. MaineDOT will continue its adherence to FHWA's public outreach requirements as defined in 23 C.F.R. § 771.111 and the MaineDOT PIP, as well as the EIS public and agency collaboration requirements in 23 U.S.C. §139(g).

MaineDOT will use its procedures, policies, and guidance in undertaking its NEPA Assignment Program responsibilities with the expectation that statewide use of those procedures, internal self-assessment, and FHWA audit will identify opportunities to improve those standards and procedures, or staff implementation of those standards and procedures. Problems that are identified will be accompanied by development of corrective actions and adoption of recommendations for continuous improvement of MaineDOT's environmental program.

### **Expanded Quality Assurance/Quality Control Procedures**

MaineDOT believes that its approach, as described in this application and [MaineDOT's QA/QC Guidance](#) document, to quality is sound, and that its emphasis on staff's professional judgment, internal collaboration among its NEPA staff and environmental technical subject matter experts, and appropriate use of consultant expertise results in quality environmental documents. MaineDOT will continue to strengthen its reliance on strong quality assurance and quality control under the NEPA Assignment Program that will further support the development of NEPA-compliant environmental documents and decisions with quality built in.

Quality Assurance (QA) and Quality Control (QC) guidance will be modified for the NEPA

Assignment Program to reflect the changes resulting from transferring environmental review responsibility from FHWA to MaineDOT. MaineDOT will integrate NEPA Assignment Program requirements to meet performance measures that will be defined in the NEPA Assignment Program MOU. MaineDOT will update its QA plan to describe the new activities needed to support self-assessments and FHWA audits.

Following NEPA Assignment, MaineDOT will continue to implement QA and QC during the development of the environmental documents.

The QA component of the plan will be expanded to include the formal requirements outlined in the NEPA Assignment MOU which will include performance measures to keep track of success of the program and outline the need for formal FHWA audits as required under 23 U.S.C. 327. MaineDOT has proposed performance measures included in the QA/QC Guidance document. These measures will be discussed with FHWA and finalized in the NEPA Assignment MOU.

Quality assurance and quality control will occur at several steps during the development of all NEPA Assignment Program environmental documents. Quality assurance begins when the project environmental team collaborates in the development of the project scope. The scope identifies expectations for the project COA, environmental analysis, and technical studies. Technical studies are then prepared following established standards. The first element of QC takes place when technical studies undergo QC by a MaineDOT technical expert prior to their approval. The environmental document itself may briefly summarize studies and focus on the information necessary to support an informed decision.

The primary difference between the current QC process and the process to be used under the NEPA Assignment Program is that an MaineDOT “QC Review” replaces the FHWA reviews of the environmental documents to be prepared under NEPA Assignment. Comment resolution, or verification that no comment resolution is needed, will be a required step. The Senior Environmental Manager/NEPA Manager and/or ENV Director, and/or Environmental Specialist-NEPA will review the environmental document along with any requested legal advice, as needed or required. The Senior Environmental Manager/NEPA Manager and/or ENV Director and/or Environmental Specialist-NEPA will verify that the QC review was performed before recommending that the environmental document is ready for signature.

ENV will conduct self-assessments to determine the effectiveness of its guidance and procedures under the NEPA Assignment Program as well as ENV staff adherence to the provisions of the NEPA Assignment Program MOU. In addition to problem identification, self-assessments will be used to assess whether specific problems are systemic, confined to specific areas of the state, or to specific individuals. ENV will use self-assessments to:

- identify areas that are working well, as well as areas that need improvement;
- make specific recommendations to improve adherence to standards and procedures;
- evaluate areas of concern previously identified in FHWA audits
- assess the need for corrective action;
- evaluate improvements from previous corrective actions; and
- evaluate previous program areas where corrective actions have been implemented.

It is anticipated that each self-assessment will be focused on select NEPA Assignment Program components.



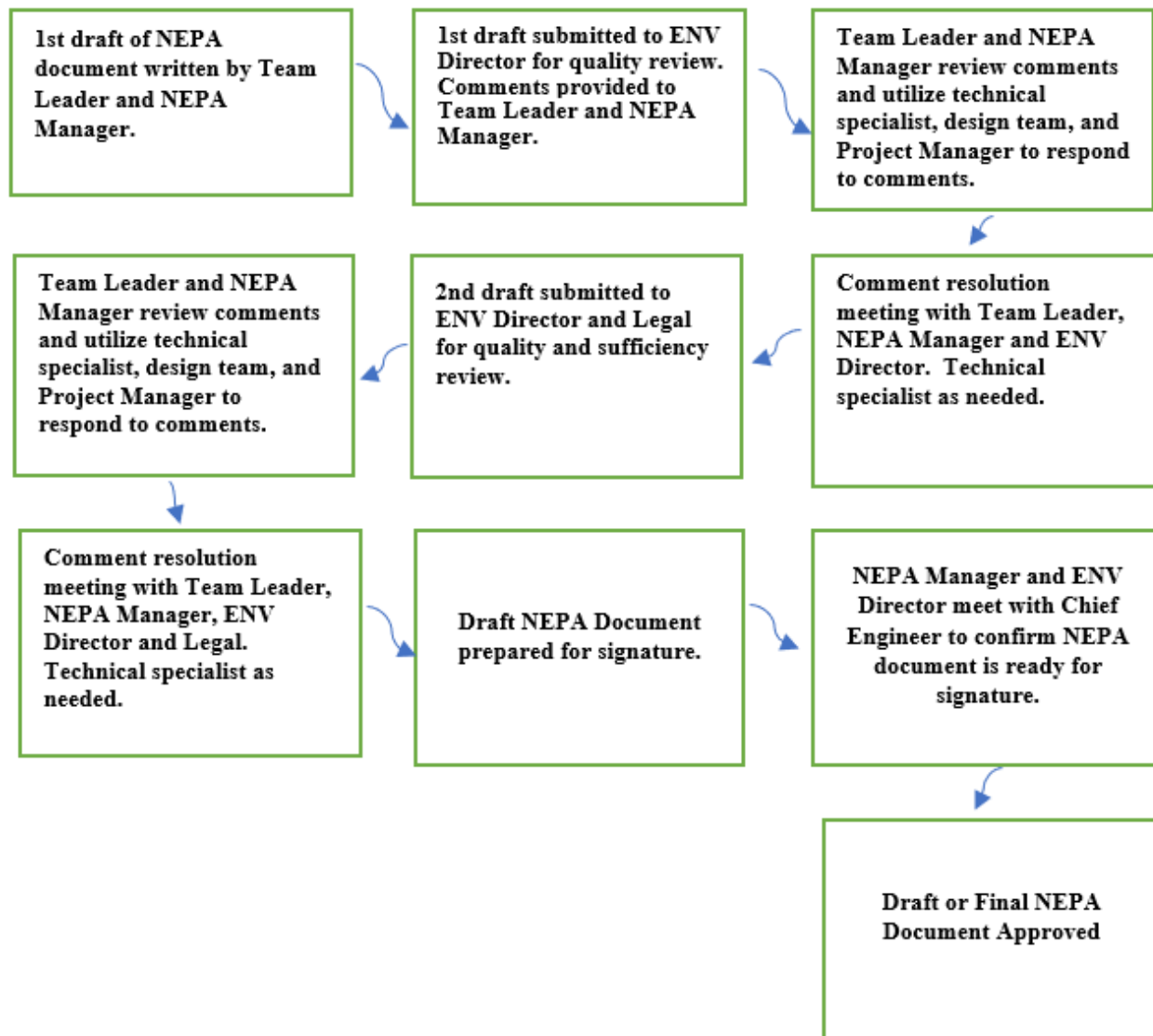
The QC reviews verify that the environmental document is: NEPA compliant and consistent with the supporting technical studies, and consistent with the project design concept and scope as described in the local or statewide plan. The QC review also verifies that the environmental document meets the requirements of federal and state environmental statutes, regulations, and policies. The steps in the review process are outlined in Figure 10.

In addition to the minimum federal requirements for finding legal sufficiency, a legal review will occur by MaineDOT's Environmental Attorney prior to circulation of any Draft EIS, Draft EA, and Draft Individual Section 4(f) Evaluation. The 23 C.F.R. § 771.125 and 23 C.F.R. § 774.7 required legal sufficiency review will occur for the final EIS and Individual Section 4(f) evaluation before approval. Legal review regarding EA reviews by the MaineDOT Legal Office will also occur. The MaineDOT Senior Environmental Manager/NEPA Manager and ENV Director will be responsible for any consultations with legal counsel on the final EIS and any individual Section 4(f) evaluation that goes through legal sufficiency review. Legal sufficiency reviews or consultation will be conducted by Maine Attorney General's Office. The legal sufficiency review will occur after completion of the QC review and after the Senior Environmental Manager/NEPA Manager has determined that the document is ready for legal sufficiency review. The final EIS or individual Section 4(f) determination will only be signed after legal sufficiency has been determined.

The approval of the EA, the Finding of No Significant Impact (FONSI), or approval of the Environmental Impact Statement, the Record of Decision (ROD), is developed by ENV Team Leader and Senior Environmental Manager/NEPA Manager and follows the QC review procedures in Figure 10. Following the completion of the QC review, the Chief Engineer will approve the FONSI or ROD, signifying the final agency decision.

All Section 4(f) documents will involve QC review by appropriate MaineDOT technical experts and Senior Environmental Manager/NEPA Manager. Once the QC review has been completed, a Section 4(f) use with a de minimis impact will be approved by the Senior Environmental Manager/NEPA Manager. Programmatic 4(f) Evaluations will be approved by the ENV Director. Individual Section 4(f) evaluations will complete QC review, after comment resolution, and then be submitted to legal counsel for legal sufficiency review. Individual Section 4(f) evaluations will be approved by the ENV Director after legal sufficiency is determined.

*Figure 10: MaineDOT EA/EIS Review Process Flow*



The MaineDOT Chief Engineer will approve draft EAs and draft EISs for public and agency review. The MaineDOT Chief Engineer will also approve all final EA/FONSI and final EIS/RODs. MaineDOT's planned delegation of authority is further outlined in Section § 773.109(a)(4)(i).

### **CE Review**

CEs are prepared by MaineDOT ENV Team Leaders. MaineDOT has review standards for CEs in place under the Programmatic CE and 23 U.S.C. 326 MOU, these will remain unchanged. The ENV Team Leaders will continue to approve CEs. The approver also verifies that the CE determination is appropriate. For more information see [NEPA Categorical Exclusion Guidance-Section 15: Re-evaluation of Categorical Exclusions](#).

### **Local Public Agency Projects**

Federal-aid Highway Program Local Public Agency projects are local projects federally funded and therefore require NEPA approval. LPA projects will follow the same approval processes and be reviewed and approved following the same standards as MaineDOT-sponsored projects. When LPA

documents are submitted to MaineDOT, they will be subject to the same QA/QC reviews as performed on MaineDOT environment documents. LPA project environmental documents will also be subject to the same legal consultation and legal sufficiency reviews.

### **Independent Environmental Decision-Making**

MaineDOT's organization supports environmental decision-making independent of administrative, political, or performance-based pressure. Under the NEPA Assignment Program, MaineDOT will assume the role of project-level Environmental Decision-Maker with full legal responsibility for that role, which is in addition to the traditional role of being the project sponsor. Approval for all environmental documents prepared under the NEPA Assignment Program will be independent of project design decisions. However, the MaineDOT environmental team will collaborate with project designers throughout the project development process on possible avoidance and minimization strategies when there are potential impacts to environmental resources of concern.

Under the NEPA Assignment Program, the same as now, all environmental staff involved in preparation or review of NEPA documents will be part of the ENV Office and will report to the ENV Director. Project Managers report to the Bureau of Project Development. Project Managers for EISs and some EAs report to the Bureau of Planning Director. The Environmental Office Director reports to the Chief Engineer and the Bureau Directors report to the Chief Operating Officer, who both report to the Commissioner.

There are many decisions and levels of decision-making in project development. The approvals under environmental review will be made by MaineDOT ENV. These decisions are made by staff independent of those directly managing the project and those responsible for delivering the project for construction advertisement. Although the decision is independent, the "NEPA Decision" is not made before there is consensus of the Project Team on design and engineering solutions and consideration of agency and stakeholder input on determining cooperating agencies, Purpose and Need, range of reasonable alternatives, preferred alternative, and consultations with tribes and resource agencies, Section 4(f) – Officials with Jurisdiction, consulting parties, and the public.

Projects qualifying as categorically excluded from the requirement to prepare an EA or EIS will be confirmed as CEs and approved by ENV Team Leaders. CE decisions are subject to MaineDOT QA. All formal environmental documents (EISs and EAs) will be independently reviewed by MaineDOT ENV Senior Environmental Manager/NEPA Manager and ENV Director prior to their approval. ENV will also ensure legal sufficiency reviews are performed by the MaineDOT Legal Office, Maine's Attorney General's Office, or by legal consultants that they oversee and manage as MaineDOT will be responsible for any future federal lawsuits.

### **Defining the COA**

MaineDOT Environmental Office is responsible for declaring and certifying actions that are Categorical Excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The Senior Environmental Manager/NEPA Manager is responsible in coordination with the Environmental Office Director and Environmental Team Leaders in declaring actions classified as EAs and EISs. The MaineDOT Environmental Office makes all COA determinations, including LPAs. A COA identification can occur at any point of the environmental review process from planning programming to planning scoping to project development preliminary design. Environmental data collection and assessments, alternatives development and analysis, public informational sessions, and feedback will occur to assist with a

COA identification. This determination will be made by the Senior Environmental Manager/NEPA Manager and Environmental Office Director.

### **Consultation and Coordination with Resource Agencies**

Coordination with resource agencies is essential in project planning and environmental development of proposed projects. MaineDOT currently performs the primary role in interagency coordination through agreements with various resource agencies. MaineDOT maintains a multi-disciplinary staff that works effectively and proactively with state and federal environmental resource and regulatory agencies. Under the NEPA Assignment Program, MaineDOT is committed to continuing to work positively and collaboratively with its federal and state resource agency partners. Senior Environmental Managers and the Environmental Office Director will assume the role of FHWA in dispute resolution.

MaineDOT has a large state funded project portfolio that requires coordination with state and federal resource agencies. These project coordination efforts involve well-qualified ENV staff that have successfully built positive relationships and successfully coordinated and consulted with the agencies without FHWA involvement.

This positive, collaborative approach with agency partners will also be evident as MaineDOT assumes responsibility for NEPA scoping on EIS projects. MaineDOT will meet the NEPA scoping requirements FHWA (23 C.F.R. § 771.123(b)), as well as the early consultation and coordination plan requirements articulated in 23 U.S.C. § 139 as described in MaineDOT's NEPA EA and EIS Guidance.

MaineDOT will request agencies, as appropriate, to become cooperating agencies, and will identify agencies to serve as participating agencies as described in MaineDOT's NEPA EA and EIS Guidance. All federal, state, Tribal, regional, and local government agencies that may have an interest in the project will continue to be invited to be participating agencies. For EIS projects, participating agencies, and the public will continue to be given an opportunity for input in the development of the purpose and need and the range of alternatives, and throughout the environmental process as appropriate. MaineDOT will also continue to collaborate with cooperating and participating agencies during the environmental study process on methodologies to be used and level of detail required for analyzing project alternatives.

MaineDOT project teams currently perform the routine procedures necessary for agency coordination efforts for EA and EIS projects with FHWA as the "lead federal agency." Under the NEPA Assignment Program, MaineDOT will assume the role of the lead federal agency. MaineDOT biologists, or consultants assisting MaineDOT, currently prepare Section 7 biological assessments. A MaineDOT biologist will approve all consultant-prepared biological assessments. Under the NEPA Assignment Program, MaineDOT will take on the FHWA role of formal consultation with USFWS and NOAA under Section 7 of the Endangered Species Act (ESA). Under the NEPA Assignment Program, MaineDOT will be responsible for informal and formal ESA consultation and compliance and ESA oversight in general. Formal consultation correspondence and documentation prepared under the NEPA Assignment Program will be submitted to the agencies by the MaineDOT Senior Biologist and will specify that consultation is being requested pursuant to 23 U.S.C. § 327.

In addition, MaineDOT will continue to work collaboratively with USFWS and NOAA to develop conservation strategies to ensure that projects will not jeopardize the continued existence of any

endangered species or result in the destruction or adverse modification of critical habitat or essential fish habitat. MaineDOT also consults with the USFWS and NOAA on projects that require review under the Fish and Wildlife Coordination Act (FWCA). Under the NEPA Assignment Program, MaineDOT is requesting to assume responsibility for ESA compliance and will continue FWCA coordination and informal ESA consultation responsibilities and will assume responsibility for formal Section 7 consultation on behalf of FHWA.

Under a Section 106 PA with the Maine Historic Preservation Office (SHPO), Advisory Council on Historic Preservation (ACHP), and FHWA, MaineDOT currently reviews and consults on projects for National Register eligibility and effects on behalf of FHWA. For projects involving adverse effects, FHWA is currently involved in consultation with the SHPO and other consulting parties to resolve adverse effects. Under the NEPA Assignment Program, MaineDOT is requesting to assume responsibility for compliance with Section 106 of the National Historic Preservation Act.

MaineDOT is currently entrusted with responsibility for initiating consultation with the federally recognized Tribes in Maine. FHWA cannot assign its Government-to-Government Tribal consultation responsibilities to MaineDOT under the NEPA Assignment Program, but MaineDOT would continue to use its current procedures to coordinate the meaningful input of all Native American Tribes with interests in Maine in the Section 106 process. MaineDOT's Section 106 SOP ([MaineDOT NEPA Guidance, Appendix J](#)) describes Government-to-Government consultation requests. If, at any time, a tribe requests FHWA Government-to-Government consultation, then that request will be addressed by FHWA.

MaineDOT ENV does not have a formal PA with the USACE or the U.S. Environmental Protection Agency (EPA), but MaineDOT currently manages permit submittals when Section 10 and Section 404 permits are required. Projects requiring an individual Section 404 permit are required to comply with the Section 404(b)(1) guidelines (40 C.F.R. Part 230). MaineDOT will continue to follow Section 404(b)(1) guidelines in analyzing project alternatives and determining the least environmentally damaging practicable alternative while working with USACE and EPA to obtain individual permits. Under the NEPA Assignment Program, MaineDOT requests to assume FHWA's responsibility as the lead federal agency to coordinate with USACE and EPA and will continue to perform this coordination and permitting functions. MaineDOT will be considered the "Federal Agency" on actions under the NEPA Assignment Program.

MaineDOT is actively involved in coordinating with the U.S. Department of Interior, and, as appropriate, other federal agencies, on Section 4(f) issues. When necessary and to ensure compliance with the Farmland Protection Policy Act (FPPA), MaineDOT completes coordination with the Natural Resource Conservation Service (NRCS). MaineDOT also is requesting to assume responsibility for compliance with these acts and would continue to perform these coordination functions under the NEPA Assignment Program.

FHWA would retain transportation conformity determinations for NEPA Assignment Program projects. The process for air quality conformity determinations is defined in [40 C.F.R 93 - Determining Conformity of Federal Actions to State or Federal Implementation Plans](#).

## **Issue Identification and Conflict Resolution Procedures**

### **Internal and Local Agency Process**

Although MaineDOT rarely has internal disputes over technical or procedural environmental issues, if a project environmental dispute were to arise among ENV staff or between ENV staff and other MaineDOT staff, the dispute would be resolved by escalation from staff to supervisor and through the MaineDOT chain of command. The ENV Director in collaboration with the Chief Engineer, Chief Operating Officer, and Bureau of Project Development Director would normally be the decision-makers for internal disputes.

### **Process with External Agencies**

MaineDOT's long history of working cooperatively with its federal and state partners is evidenced by the PAs, MOUs, and MOAs it operates under. These agreements and memoranda have been developed over the years to entrust certain responsibilities to MaineDOT or to improve coordination between MaineDOT and federal and state resource agencies. MaineDOT strives to be transparent in identifying impacts, working with agencies on appropriate mitigation to offset the impacts of its projects, and fulfilling its commitments. MaineDOT seeks to understand the basis for resource agency requirements and to diligently meet those requirements. Following this approach, MaineDOT is largely successful in avoiding conflicts with external agencies. MaineDOT expects to continue this general approach under the NEPA Assignment Program and will assume FHWA's role in resolving conflicts with external agencies without FHWA's involvement.

Under the NEPA Assignment Program, MaineDOT would assume FHWA's role in implementing the issue identification and resolution process under 23 U.S.C. § 139(h). The statute provides a formal process for resolving major issues that could delay or result in the denial of a required approval or permit for a project. By law, this process may be invoked by the project sponsor or the state governor and requires that the FHWA Division Administrator, as the lead agency, affected participating agencies, and the project sponsor meet to resolve issues.

Because of MaineDOT's experience, expertise, and current level of involvement in consultations, its resources already have been developed to a level that is adequate to assume FHWA's responsibilities for resolving issues with external agencies and Tribes.

MaineDOT will continue to be diligent in resource agency engagement, particularly with cooperating agencies and those agencies designated as participating agencies, following the requirements and spirit of 23 U.S.C. § 139. Where issues arise that create conflict between agencies or with Tribes, MaineDOT will be committed to conflict resolution and good-faith efforts to address the concerns of the other party.

When needed, resource agency or Tribal conflicts would be resolved through the implementation of a standard dispute-resolution ladder. Staff at MaineDOT and the resource agencies or Tribes needing assistance in resolving disputes would refer the dispute to their supervisors. Resolution efforts would continue up the chain of command at each agency until the dispute can be resolved to the satisfaction of all parties. MaineDOT will utilize trained staff and consultants experienced in environmental issues, disputes, or conflicts through facilitation, collaboration, and conflict resolution, if needed.

Issue identification and resolution at MaineDOT seeks to find solutions to issues between agencies that address a resource concern while meeting transportation need. This issue resolution process is available during any stage of a project. Participation in the process does not limit an agency's authority or responsibility to protect its jurisdictional resources, nor does it require an agency to act in a way contrary to law, regulation, rules, policy, or practice.



A strong commitment exists to resolve issues within ENV, prior to elevating them to higher level management. To facilitate meeting this goal, potential disputes are addressed as early as possible.

Under the NEPA Assignment Program, this dispute-resolution ladder will be utilized for issue resolution.

The ENV technical specialist works to informally resolve the issue(s) before elevating the discussion to the appropriate Senior ENV Manager. The process continues, if needed, and involves the Environmental Office Director, Chief Engineer, Chief Operating Officer, and ultimately the Commissioner.

Any agreements, understandings, and/or recommendations resulting from the resolution process are documented and accompany the project through project development.

### **Record keeping and Retention**

MaineDOT will maintain its digital project and administrative files pertaining to its NEPA Assignment Program responsibilities, as required by law, and by [MaineDOT's record management policy](#). ENV maintains an accurate and up-to-date project file that supports decision-making, provides required documents under Maine's Freedom of Access Act, and litigation under the Administrative Procedures Act. MaineDOT is required to prepare project records that demonstrate the environmental process and decisions MaineDOT makes comply with Federal statutes, regulations, Executive Orders, policy, and guidance.

Section 706 of the Administrative Procedures Act (APA) directs Federal courts evaluating the final decision of a Federal action to "review the whole record or those parts of it cited by a party." An agency whose decision has been challenged in court under the APA must compile an administrative record and provide it to the court and to the opposing parties in the lawsuit. The administrative record should contain "all documents and materials directly or indirectly considered by the agency" in making its decision.

The MaineDOT Environmental Office maintains an electronic filing system (CPD e-file) for all environmental project records. These files include, but are not limited to, letters and comments received from governmental agencies, the public, and others relative to the program. Project files will include the NEPA document, technical reports and studies, consultation/coordination correspondence, and public comments and responses. E-mails and related documents that support project decision-making, reflect deliberation and demonstrate a "hard look" under NEPA will be retained as part of the project file. Any attorney-client privileged, and attorney work products will be kept in a separate file and will not be made available upon request.

ENV also documents project details in MaineDOT's ProjEx database. Each project will contain information that supports the NEPA decision.

The CPD e-file, ProjEx, and other MaineDOT Bureau files contain the documentation that supports a project NEPA decision and administrative record.

### **Expanded Internal Compliance and Self-Assessment Reviews**

As required, MaineDOT will conduct yearly self-assessments to determine the effectiveness of its standards, guidance, and procedures under the NEPA Assignment Program and its staff's



adherence to the NEPA Assignment MOU, and to MaineDOT's established standards and procedures. Self-assessments will occur according to the requirements of the MOU with periodic self-assessment reports provided to FHWA.

In addition to problem identification, self-assessment will be used to evaluate root causes and to assess whether discovered problems are systemic, are confined to specific NEPA document types, or are specific to individuals. MaineDOT will use self-assessment to identify those areas that are performing to expectation, as well as those areas that require improvement, and then make specific recommendations to improve adherence to standards and procedures. This self-assessment will determine the need for corrective action, as well as identify necessary corrective actions, evaluate the improvements achieved by previous corrective actions, and re-evaluate previous program areas where corrective actions have been implemented. Self-assessments will be conducted using a variety of monitoring tools, such as reviews of files, data management systems, and discussions with MaineDOT staff. These self-assessments will gauge the success of the MaineDOT NEPA Assignment Program.

MaineDOT anticipates that certain elements of the NEPA Assignment Program will be evaluated with each self-assessment (e.g., performance measures, record-keeping, compliance with federal requirements, and environmental approval time frames), while other self-assessment components will be determined for each self-assessment based on input from the self-assessment team, the Senior Environmental Manager/NEPA Manager, and the ENV Director.

The ENV Director and Senior Environmental Manager/NEPA Manager will be responsible for overseeing MaineDOT's implementation of the NEPA Assignment Program, ensuring its success, and reporting on its performance to FHWA. The ENV Director is the highest-ranking environmental official at MaineDOT and is committed to the success of the NEPA Assignment Program, as is the entire MaineDOT organization. The Senior Environmental Manager/NEPA Manager will be responsible for the day-to-day management of the program and will serve as liaison to the FHWA NEPA Assignment Program audit team.

### **Performance Measures to Assess the Assignment Program**

MaineDOT currently conducts annual quality reviews to assess the NEPA process and documentation. MaineDOT will continue this under NEPA Assignment to monitor MOU performance measures, assist with self-assessments, and assist with FHWA audits. These are MaineDOT's proposed performance measures:

- A. Compliance with NEPA, FHWA NEPA regulations, and other Federal environmental statutes and regulations:
  - Maintain documented compliance with the requirements of all applicable Federal statutes and regulations for which responsibility is assumed (e.g., Section 106 of the NHPA, Section 7 of the ESA, etc.).
    - Measure: Percent of approved environmental documents that have approvals for other applicable laws in the project file supporting decisions for NEPA.
- B. QA/QC for NEPA decisions.
  - Maintain and apply internal quality control and assurance measures and processes, including record of:

- Completion of legal sufficiency reviews by Maine's Attorney General's Office
  - Measure: Percent of required legal sufficiency reviews conducted and documented.
- Compliance with FHWA's and MaineDOT's environmental document content standards and procedures, including those related to QA/QC.
  - Measure: Percent of quality control reviews for EAs and EISs with a completed Quality Control Checklist in the QAQC review file. Percent of Quality Control reviews for Categorical Exclusions with a completed QC review in ProjEx - NEPA Certification Checklist.

C. Relationships with agencies and the public.

- Maintain communication among MaineDOT, Federal and State resource agencies and the public.
  - Measure: Percent of projects with approved EA/EIS that have documentation of required regulatory notifications/consultations with resource agencies (e.g., USFWS/NMFS/SHPO/USACE, tribes, the public).
- Maintain effective responsiveness to substantive comments received from the public.
  - Measure: percent of EA/EIS projects that have a documented response to public comments in the file.
- Maintain effective NEPA conflict resolution processes whenever appropriate.
  - Measure: Percent of NEPA conflict resolution process on EA/EIS projects requesting a formal issue resolution meeting in accordance with 23 U.S.C. 139(h)(6).

D. Efficiency and timeliness in the completion of the NEPA process.

- Maintain completion of NEPA and all required environmental reviews and approvals within regulatory timeframes for EAs and EISs.
  - Measure: Percent of EA and EIS meeting 23 U.S.C. § 139(g)(1)(B)(iii) time limits.

### **Training to Implement the NEPA Assignment Program**

MaineDOT implements training necessary to meet its environmental obligations. MaineDOT shall continually assess the need for training.

MaineDOT's approach is to:

1. identify the minimum competencies (education, training, experience) for technical or subject matter experts with review responsibilities, NEPA decision-makers, and non-environmental team members and managers.
2. assess any individual training needs and track the competency status of individuals who are environmental subject matter experts or NEPA decision-makers.
3. identify general training needs that may be based on the need for refresher training, or training on newly developed guidance, policy, or requirements (in statute, regulation, or Executive Order).
4. ensure that consultants providing professional services are appropriately qualified and experienced and have access to training on State manuals and procedures.
5. develop a strategy for informal training through mentoring, periodic meetings, webinars,

and teleconferences.

ENV continues to rely heavily on on-the-job training and mentoring as an efficient and effective method of ensuring that environmental staff obtain the skills to accomplish their tasks. Collaborative on-the-job training and mentoring also provide valuable professional development for career staff.

In addition to on-the-job training, ENV will utilize virtual and in-person classroom training and conferences, including web-based training available through other agencies as well as conducting our information sessions on environmental topics on an as-needed basis.

The plan is not intended to encompass every possible training opportunity. Environmental staff and their supervisors are encouraged to explore additional training opportunities as the supervisor deems appropriate.

MaineDOT is committed to maintaining a quality training program for its employees. Training is developed to meet the identified needs of staff and is modified over time as necessary to meet evolving staff needs. MaineDOT's existing environmental [training guidance](#) provides training that supports developing the knowledge, skills, and abilities of its environmental staff necessary to meet state and federal environmental requirements. MaineDOT also has regular training sessions for [LPAs](#). The Environmental Office also provides training to other MaineDOT Bureaus.

To ensure that MaineDOT environmental staff have the knowledge and skills necessary to meet their new responsibilities under the NEPA Assignment Program, the MaineDOT ENV Director and Senior Environmental Manager/NEPA Manager will hold training on the NEPA Assignment MOU and its key provisions for ENV staff. Training topics will include the content of the MOU and MaineDOT's application, environmental document review procedures, QA/QC protocols, the self-assessment process, FHWA regulations, and MaineDOT environmental procedures and guidance. MaineDOT ENV will also hold an informational session summarizing the NEPA Assignment Program for MaineDOT staff in the Bureaus of Planning and Project Development (including Bureau Directors, Program Directors, and Project Managers). Also, with staff outside of MaineDOT including partnering agencies and consultants.

MaineDOT will prepare an internal staff Training Plan for the NEPA Assignment Program and will update it annually. During self-assessment, MaineDOT expects to evaluate its training to determine whether it is consistent with the NEPA Assignment Program and the current MaineDOT approach to the environmental process. MaineDOT will revise the training and develop new training to support the NEPA Assignment Program, as it determines necessary.

MaineDOT staff received NEPA Assignment training from FHWA on August 23, 2023.

FHWA Headquarters and FHWA Research Center staff have provided training in Section 4(f), Section 106, and Purpose and Need. MaineDOT may also request that FHWA provide program-level training from their Headquarters and/or FHWA Resource Center during the NEPA Assignment Program in these and other areas of environmental review.

In addition to internal training, MaineDOT sends its staff to environmental courses offered by FHWA, the National Highway Institute (NHI), The National Preservation Institute, the Advisory Council on Historic Preservation, resource agencies, local universities, and private vendors on an

as-available and as-needed basis.

MaineDOT will continue to routinely schedule environmental management staff meetings to discuss environmental programs, projects, issues, and updates. Regular discussions and updates will be held with ENV staff to share important NEPA Assignment Program information, communicate Assignment Program issues and their resolution, and respond to questions.

### **§ 773.109(a)(3)(iii): Legal sufficiency**

MaineDOT will conduct legal sufficiency reviews of Final EISs and individual Section 4(f) evaluations, which are the only environmental document types for which FHWA is required to conduct legal sufficiency reviews under federal regulation (see 23 C.F.R. § 771.125(b) and 23 § 774.7(d)). Legal sufficiency reviews will be conducted by the Maine Attorney General's Office, MaineDOT currently has EAs, EISs, and 4(f) evaluations reviewed by the MaineDOT Environmental Attorney, before being reviewed by FHWA. The primary goal of a legal sufficiency review will be to assess any environmental document from the perspective of legal standards, litigation risk, and legal defensibility. MaineDOT intends to use the following process:

1. ENV will submit the preliminary Final EIS or individual Section 4(f) evaluation to MaineDOT's legal counsel.
2. MaineDOT's legal counsel conducts a legal review before providing the document to the Attorney General's Office. The reviewing attorneys will prepare and submit to ENV written comments and/or suggestions to improve the document's legal defensibility (these comments would be protected by the attorney-client privilege and would not be shared outside MaineDOT).
3. The reviewing attorneys will be available to discuss the resolution of comments and suggestions with ENV staff and the project team.
4. After ENV addresses any comments, the reviewing attorneys will provide ENV with written documentation confirming that the reviewing attorney finds the document legally sufficient.
5. ENV will not approve a Final EIS or individual Section 4(f) evaluation before receiving written documentation that the document is legally sufficient.

MaineDOT's Chief Council, Environmental Attorney, Attorney General's Office, and the Environmental Office management staff have experience developing an administrative record and defending MaineDOT in federal court. The recent Brunswick-Topsham Frank J. Wood Bridge lawsuit is an example. MaineDOT has provided the FHWA NEPA Assignment review team with our administrative record for this project and is available to discuss abilities with the FHWA team.

### **§ 773.109(a)(3)(iv): Prior Concurrence**

For selected projects, "prior concurrence" pursuant to 23 C.F.R. § 771.125(c) will be obtained

before proceeding with key approvals under the NEPA Assignment Program. The prior concurrence decision will be made by the MaineDOT Chief Operating Officer, after consulting with MaineDOT's legal staff and Senior Environmental Manager/NEPA Manager to ensure that the project and document in question are acceptable from a policy and program perspective. The MaineDOT Legal Office would be notified of the start of any EIS. Prior concurrence may apply to MaineDOT approvals of draft and final EISs. Projects requiring prior concurrence will be identified on a case-by-case basis, based on input from ENV Team Leaders, the Senior Environmental Manager/NEPA Manager, and/or legal counsel, and may include projects meeting one or more of the following criteria as defined in regulation:

- (1) Any action for which MaineDOT determines that the final EIS should be reviewed at the Executive Office Level. This would typically occur when the Senior Environmental Manager/NEPA Manager determines that (i) additional coordination with other Federal, State or local governmental agencies is needed; (ii) the social, economic, or environmental impacts of the action may need to be more fully explored; (iii) the impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or (v) the action involves national policy issues.
- (2) Any action to which a Federal, State, or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

In completing the prior concurrence review, the MaineDOT Senior Environmental Manager/NEPA Manager will examine the elements of the EIS at issue and seek advice and input, as appropriate, from MaineDOT's Environmental Office Director and MaineDOT legal counsel. The MaineDOT Senior Environmental Manager/NEPA Manager will submit documentation and meet with the Chief Operating Officer. The MaineDOT Chief Operating Officer will make the prior concurrence decision before the document is approved by the Chief Engineer.

### **§ 773.109(a)(3)(v): Project delivery methods**

MaineDOT will ensure that all NEPA and permit elements are fully addressed for any project that uses alternative delivery methods. Per 23 C.F.R. § 771.113, NEPA elements must be completed prior to authorization for any construction activities. This requirement holds true even with alternative project-delivery methods. For projects using alternative delivery methods, MaineDOT will ensure that the requirements in 23 C.F.R. § 636 are met, including the requirements imposed to protect the objectivity and integrity of the NEPA process. MaineDOT has implemented traditional Design-Bid-Build, Design-Build, and Construction Manager General Contractor contracting.

### **§ 773.109(a)(4)(i): Staff dedicated to additional functions**

MaineDOT ENV employs 33 fulltime staff who are responsible for implementing MaineDOT's environmental program and ensuring environmental compliance. This includes experienced NEPA practitioners and a variety of technical specialists in hazardous waste, stormwater, and natural and cultural resources.

MaineDOT has added staff in preparation for NEPA Assignment (environmental specialist-NEPA, cultural specialist, senior biologist, environmental attorney). MaineDOT will continue to augment its staff and technical capabilities through the use of qualified consultants. The experienced environmental staff (described in this application) will contribute to NEPA Assignment related functions (described in section § 773.109(a)(3)(i) of this application) and will bring a wide range of perspectives and experience to the NEPA Assignment Program.

MaineDOT has identified and already put into place several key NEPA Assignment Program roles. MaineDOT's Senior Environmental Manager/NEPA Manager will be responsible for the day-to-day management of the program. The manager will serve as liaison to the FHWA audit team, coordinate training, and ensure, with the ENV Director, that self-assessment and performance reviews under the NEPA Assignment Program are conducted. The Environmental Team Leaders will be the central coordinator with MaineDOT project delivery teams.

Approvals and oversight are made by current staff already in place. The Senior Biologist will be responsible for endangered species, essential fish habitat, and marine mammal consultation. The cultural staff will oversee the Section 106 consultation and the Section 4(f) process and documentation. The ENV Director and Senior Environmental Manager/NEPA Manager will be responsible for overseeing MaineDOT's implementation of the NEPA Assignment Program, ensuring its success, and reporting on its performance to FHWA. Responsibilities for approvals that are currently FHWA decisions will be made by MaineDOT as outlined in Figure 11.

**Figure 11: MaineDOT NEPA Assignment Review, and Approval Responsibilities**

Action	Responsible Staff		
	Preparer	Quality Reviewer	Approver
Categorical Exclusions	ENV Team Leader	QC-Team Leader QA-Environmental Specialist-NEPA	ENV Team Leader
Environmental Assessments - Draft EA and Final EA/FONSI	ENV Team Leader, Senior Environmental Manager, Environmental Specialist-NEPA	ENV Director	Chief Engineer
Environmental Impact Statement - Draft and Final EIS/ROD	ENV Team Leader, Senior Environmental Manager, Environmental Specialist-NEPA	ENV Director	Chief Engineer
Section 7 Biological Assessment	Biologist	Senior Biologist	Senior Environmental Manager (Natural Resources)
Section 106 MOA	Historic Coordinator	ENV Director	Chief Engineer
Section 4(f) - De minimis	Historic Coordinator	ENV Team Leader	Senior Environmental Manager (NEPA Manager)
Programmatic 4(f)	Historic Coordinator	Senior Environmental Manager (NEPA Manager)	ENV Director
Individual Section 4(f)	Historic Coordinator	Senior Environmental Manager (NEPA Manager)	ENV Director
Legal Sufficiency –Individual Section 4(f)	Historic Coordinator	MaineDOT Legal Counsel	Maine Attorney General's Office
Legal Sufficiency - EIS		MaineDOT Legal Counsel	Maine Attorney General's Office

### **§773.109 (a)(4)(ii): Changes to the organizational structure**

There are no major organizational changes proposed that are necessary to provide for the efficient administration of the responsibilities to be assumed except for the previously mentioned



addition of staff (environmental specialist-NEPA, cultural specialist, senior biologist, biologist, senior technician, environmental attorney). MaineDOT will retain sufficient environmental staff and will fill any vacancies as expeditiously as possible, to effectively administer the responsibilities of the NEPA Assignment Program. MaineDOT will continue to use consultants as needed.

As previously detailed in sections (a)(3)(i) and (a)(3)(ii), MaineDOT's current overall organizational structure will not change under the NEPA Assignment Program. The MaineDOT ENV Director will oversee the implementation of the NEPA Assignment Program. The Senior Environmental Manager/NEPA Manager will be responsible for the day-to-day management of the program and will serve as liaison to the FHWA for matters concerning the NEPA Assignment Program, including FHWA audits and any reporting required under the NEPA Assignment Program MOU. The Environmental Office Director will coordinate internal self-assessments and quality assurance monitoring and performance measures. The Senior Environmental Manager/NEPA Manager will be responsible for implementing recommended improvements, as well as taking corrective action where needs are identified.

### **§ 773.109(a)(4)(iii): Use of outside consultants for the NEPA Assignment Program**

There will be no change in MaineDOT's general approach to using consultants as a result of the NEPA Assignment Program. MaineDOT employs consultants as needed to deliver its highway program. Consultants are to be used for environmental analysis, technical studies, environmental document preparation, environmental review services, project file and administrative record development, general staff support, and legal support. The use of consultants in preparing NEPA documents is allowed under CEQ regulations, and the full legal responsibility remains with MaineDOT.

The use of consultant services fluctuates in proportion to the annual MaineDOT workload. The level of consultant services used to augment MaineDOT's ENV staff is based on project delivery needs, which vary from year to year. MaineDOT uses consultant assistance on an as-needed basis through project-specific contracts and on-call contracts. In addition to providing services to manage workload fluctuations, consultants are used to develop environmental documents for projects that require the most complex environmental analysis and approvals. Consultants are also used to provide highly specialized environmental technical services in areas of expertise that may not be available internally or that require resources that are not available internally.

Consultants will continue to be used in this manner under the NEPA Assignment Program. Documents developed by consultants will be reviewed by MaineDOT ENV staff. Final review and approval of all environmental documents will occur at MaineDOT. Consultants will not make NEPA determinations under the NEPA Assignment Program.

While there will be attorneys at MaineDOT assigned to advise MaineDOT with respect to the NEPA Assignment Program, The Attorney General's Office will be used for legal sufficiency reviews of Final EISs and final individual Section 4(f) evaluations. The MaineDOT Environmental Attorney will be used to provide legal review of Draft individual Section 4(f) evaluations, Draft EISs, memoranda of understanding, programmatic agreements, and administrative records.

### **§ 773.109(a)(5): Financial resources under the NEPA Assignment Program**

The MaineDOT Work Plan outlines the work that the department plans to perform over the next three years and includes all capital projects and programs, maintenance, and operations activities, planning initiatives, and administrative functions. The plan for calendar years 2025, 2026, and 2027 contains over 2,700 individual work items with a total value of over \$4.8billion.

MaineDOT considers its budget to be sufficient to cover the costs of any additional environmental activities necessary to successfully meet its NEPA Assignment Program responsibilities, including consultation with state and federal environmental resource agencies, QA and QC of NEPA documents and supporting technical studies and undertaking monitoring activities with FHWA. MaineDOT commits to making adequate financial resources available to continue to meet the NEPA Assignment Program responsibilities it is assuming, and the staff resources needed to successfully execute those responsibilities.

The Attorney General's Office provides staff for MaineDOT-related legal services. If supplemental legal services are needed to support the NEPA Assignment Program, they would be funded from MaineDOT project budgets.

### **§ 773.109(a)(6): Certification of consent to exclusive federal court jurisdiction**

Certification is included in [Appendix C](#)

### **§ 773.109(a)(7): Certification that the State of Maine has laws comparable to the Federal Freedom of Information Act**

Certification is included in [Appendix C](#)

### **§ 773.109(a)(8): Public comments received on the NEPA Assignment Program application**

Included in [Appendix D](#) of the final application.

### **§ 773.109(a)(9): Point of contact**

David Gardner, Director  
Environmental Office  
Maine Department of Transportation  
24 Child Street, Augusta, ME 04330  
(207) 592-2471  
Email: [david.gardner@maine.gov](mailto:david.gardner@maine.gov)

## **Appendix A**

### Projects and Programs for Which MaineDOT Does Not Request NEPA Responsibility

Except those ongoing projects to be identified in the NEPA Assignment Program MOU, MaineDOT is requesting to assume the U.S. Secretary of Transportation's and FHWA's responsibilities for all NEPA actions for all Class I (EIS) projects, all Class II (CE) projects, and all Class III (EA) projects, both MaineDOT sponsored state highway system projects and LPA projects off the state highway system. MaineDOT is requesting FHWA to continue as the Lead Federal Agency on projects that are still to be determined because FHWA has had an active role in the environmental review process for these complex projects and/or because these projects are in the final phases of environmental review.

MaineDOT is not applying for assignment of the following projects under the NEPA Assignment Program. This list is subject to change until the NEPA Assignment Program MOU is signed. These projects, together with their current environmental document status are identified below:

- Any highway project authorized under 23 U.S.C. §§ 202 (Tribal transportation program), 203 (Federal lands transportation program), and 204 (Federal lands access program) unless such project will be designed and constructed by MaineDOT.
- Projects involving international border crossings and projects that cross state boundaries.
- Programs and projects advanced by direct recipients of Federal-aid Highway Program funds other than MaineDOT, including but not limited to:
  - Recreational Trails Program (23 U.S.C. 206).
  - BUILD, INFRA, and Discretionary grants or other subsequent similar funding programs.

## **Appendix B**

List of FHWA's Environmental Review Responsibilities for Which MaineDOT Requests to be Assigned under 23 U.S.C. § 327

### **Air Quality**

- Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671q, with the exception of any project-level conformity determinations
- **Noise**
  - Noise Control Act of 1972, 42 U.S.C. §§ 4901-4918
  - Compliance with the noise regulations in 23 CFR Part 772 (except approval of the State noise requirements in accordance with 23 CFR 772.7)

### **Wildlife**

- Anadromous Fish Conservation Act, 16 U.S.C. 757a-757f
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668 – 668d
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d, with Essential Fish Habitat requirements at 1855(b)(2)
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544

### **Historic and Cultural Resources**

- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)-470(mm)
- Native American Grave Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013; 18 U.S.C. 1170
- Preservation of Historical and Archeological Data, 54 U.S.C. §§ 312501-312508
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306108, et seq.<sup>1</sup>

### **Social and Economic Impacts**

- American Indian Religious Freedom Act, 42 U.S.C. § 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. §§ 4201–4209

### **Water Resources and Wetlands**

- Clean Water Act, 33 U.S.C. §§ 1251-1377 (sections 401, 404)
- Coastal Barrier Resources Act, 16 U.S.C. §§ 3501-3510
- Coastal Zone Management Act, 16 U.S.C. §§ 1451-1466
- Emergency Wetlands Resources Act, 16 U.S.C. §§ 3901, 3921
- FHWA wetland and natural habitat mitigation regulations, 23 CFR Part 777
- Flood Disaster Protection Act, 42 U.S.C. §§ 4001–4128
- Rivers and Harbors Act of 1899, 33 U.S.C. § 403
- Safe Drinking Water Act, 42 U.S.C. §§ 300f–300j–6
- Wetland Mitigation, 23 U.S.C. § 119(g), § 133(b)(14)
- Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271–1287

### Parklands

- Land and Water Conservation Fund (LWCF). Pub. L. 88-578. 78 Stat. 897 (known as
- Section 6(f))
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. § 138, 49 U.S.C. § 303 and implementing regulations at 23 CFR Part 774

### Hazardous Materials

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601–9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901–6992k
- Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. §§ 9671 – 9675

### Executive Orders Relating to Highway Projects

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR Parts 650.113 and 650.115)
- E.O. 11593, Protection and Enhancement of Cultural Resources
- E.O. 13007, Indian Sacred Sites
- E.O. 13112, Invasive Species

### FHWA-Specific


- FHWA/NOAA Greater Atlantic Regional Fisheries Office (GARFO) Programmatic Consultation for Section 7 and EFH
- FHWA/USFWS Range wide Programmatic Biological Opinion/Informal Concurrence for Indiana Bat and Northern Long-eared Bat
- Planning and Environmental Linkages, 23 U.S.C. § 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. § 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135

### Note:

<sup>1</sup> Under these laws and Executive Orders, FHWA will retain responsibility for conducting formal government-to-government consultations with Federally recognized Indian tribes. The State will continue to handle routine coordination with the tribes and understands that a tribe has the right to request government-to-government consultation with FHWA at any time. The State may also assist FHWA with formal consultations, with the consent of a tribe, but FHWA retains responsibility for conducting formal consultation at all times.

## Appendix C

### Certification of Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity

<b>AARON M. FREY</b> ATTORNEY GENERAL		REGIONAL OFFICES 84 HARLOW ST. 2ND FLOOR BANGOR, MAINE 04401 TEL: (207) 941-3070 FAX: (207) 941-3075
TEL: (207) 626-8800 TTY USERS CALL MAINE RELAY 711	STATE OF MAINE OFFICE OF THE ATTORNEY GENERAL 6 STATE HOUSE STATION AUGUSTA, MAINE 04333-0006	125 PRESUMPSCOT ST., SUITE 26 PORTLAND, MAINE 04103 TEL: (207) 822-0260 FAX: (207) 822-0259
14 ACCESS HIGHWAY, STE. 1 CARIBOU, MAINE 04736 TEL: (207) 496-3792 FAX: (207) 496-3291		
August 2, 2022		
Stephanie Pollack Deputy Administrator Federal Highway Administration 1200 New Jersey Ave, SE Washington, DC 20590		
<b>RE: Certification of Maine Attorney General pursuant to 23 C.F.R. §773.109(a)(6) – Authority to Assume Federal Environmental Responsibilities / Consent to Federal Court Jurisdiction</b>		
Greetings, Ms. Pollack:		
The regulations of the United States Department of Transportation (USDOT) at 23 C.F.R. Part 773 establish the requirements for an application by a State to participate in the Surface Transportation Project Delivery Program (the Program), 23 U.S.C. §327, under which the USDOT Secretary may assign, and a State may assume, responsibilities under the National Environmental Policy Act of 1969 and for environmental review, consultation, or other action required under certain Federal environmental laws with respect to transportation projects within the State.		
Section 773.109 of Part 773 provides that a State Department of Transportation (DOT) may apply to the Federal Highway Administration (FHWA) to participate in the Program and sets out application requirements. Section 773.109(a)(6) requires the application to include a certification by the State's Attorney General or other appropriate State official that the State has legal authority to assume the responsibilities of the USDOT Secretary for the Federal environmental laws and projects requested, and that the State consents to exclusive Federal court jurisdiction with respect to the responsibilities the State is requesting to assume.		
The Maine Transportation Act, 23 Me. Rev. Stat. §§ 4202 – 4251, established the Maine Department of Transportation, with a Commissioner of Transportation (MaineDOT Commissioner) appointed by the Governor subject to confirmation by the Maine Legislature. Section 4206(1) of Title 23 sets out the powers, duties, and responsibilities of the MaineDOT Commissioner. Section 4206(1)(P) authorizes the MaineDOT Commissioner		

[t]o enter into agreements and cooperate with the United States Department of Transportation or any other appropriate federal agency as provided in 23 United States Code, Sections 325 to 327 and as authorized under the federal Moving Ahead for Progress in the 21<sup>st</sup> Century Act, the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users and the federal National Environmental Policy Act of 1969. Pursuant to such an agreement, the commissioner may assume certain responsibilities of the Secretary of the United States Department of Transportation and take any other actions as required by any such agreement or by such federal laws.


Paragraphs (1) and (2) of Section 4206(1)(P) give the MaineDOT Commissioner the power to adopt rules and to make expenditures in connection with such an agreement. I hereby certify that Section 4206(1)(P) gives the State of Maine, through its MaineDOT Commissioner, legal authority to assume responsibilities of the USDOT Secretary requested in MaineDOT's application to the FHWA.

Section 4206(1)(P)(3) of Title 23 states:

Notwithstanding Title 14, chapter 741,<sup>1</sup> sovereign immunity from civil suit in federal court is waived consistent with 23 United States Code, Sections 326 and 327 and limited to the compliance, discharge or enforcement of a responsibility assumed by the department under this paragraph. This subparagraph applies only to actions that are authorized under this paragraph and does not create liability that exceeds the liability created under 23 United States Code, Sections 325 to 327.

I hereby certify that pursuant to Section 4206(1)(P)(3), the State of Maine has consented to exclusive federal jurisdiction with respect to the responsibilities the State is requesting to assume in MaineDOT's application to the FHWA. This consent encompasses future changes in relevant federal policies and procedures and, in any event, nothing in Section 4206(1)(P)(3) precludes or restricts any amendment of the State's consent to include such future changes.

Respectfully,

  
Aaron M. Frey  
Attorney General  
State of Maine

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<sup>1</sup> Chapter 741 of Title 14 is the Maine Tort Claims Act, and "except as otherwise expressly provided by statute," it immunizes the State and other governmental entities "from suit on any and all tort claims seeking recovery of damages." 14 Me. Rev. Stat. § 8103(1).



State of Maine's Freedom of Access Act is Comparable to the Federal Freedom of Information Act

AARON M. FREY  
ATTORNEY GENERAL

TEL: (207) 626-8800  
TTY USERS CALL MAINE RELAY 711



STATE OF MAINE  
OFFICE OF THE ATTORNEY GENERAL  
6 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES  
84 HARLOW ST. 2ND FLOOR  
BANGOR, MAINE 04401  
TEL: (207) 941-3070  
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PORTLAND, MAINE 04103  
TEL: (207) 822-0260  
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1  
CARIBOU, MAINE 04736  
TEL: (207) 496-3792  
FAX: (207) 496-3291

August 2, 2022

Stephanie Pollack  
Deputy Administrator  
Federal Highway Administration  
1200 New Jersey Ave., SE  
Washington, DC 20590

**RE: Certification of Maine Attorney General pursuant to 23 C.F.R.  
§773.109(a)(7) – Comparability of Maine Freedom of Access Act to Federal  
Freedom of Information Act**

Greetings, Ms. Pollack:

The regulations of the United States Department of Transportation (USDOT) at 23 C.F.R. Part 773 establish the requirements for an application by a State to participate in the Surface Transportation Project Delivery Program (the Program), 23 U.S.C. §327, under which the USDOT Secretary may assign, and a State may assume, responsibilities under the National Environmental Policy Act of 1969 and for environmental review, consultation, or other action required under certain Federal environmental laws with respect to transportation projects within the State.

Section 773.109 of Part 773 provides that a State Department of Transportation (DOT) may apply to the Federal Highway Administration to participate in the Program and sets out application requirements. Section 773.109(a)(7) requires the application to include a certification by the State's Attorney General or other appropriate State official that the State has laws comparable to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Maine's comparable law is the Maine Freedom of Access Act, 1 Me. Rev. Stat. §§ 400 – 414 (Maine FOAA), and a copy is attached hereto. Subject to certain enumerated exceptions, "records in the possession or custody of an agency or public official of this State or any of its political subdivisions" and "received or prepared for use in connection with the transaction of public or governmental business or contain[ing] information relating to the transaction of public or governmental business" are public records. 1 Me. Rev. Stat. § 402(3). Individuals may inspect and copy public records pursuant to 1 Me. Rev. Stat. § 408-A. An individual aggrieved by a failure

*Stephanie Pollack*  
*Deputy Administrator*  
*August 2, 2022*  
*Page 2*

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or refusal to inspect or copy a public record may appeal to the Maine Superior Court, which is Maine's trial court of general jurisdiction. 1 Me. Rev. Stat. § 409.

I hereby certify that Maine FOAA is comparable to FOIA and includes provisions allowing for any decision regarding the public availability of a document to be reviewed by a court of competent jurisdiction.

Respectfully,



Aaron M. Frey  
Attorney General  
State of Maine

[Title 1, Chapter 13: PUBLIC RECORDS AND PROCEEDINGS \(mainelegislature.org\)](https://www.mainelegislature.org)

## **Appendix D**

Copies of Comments Received on the NEPA Assignment Program Application and Responses Provided to the Commenters.

Per 23 C.F.R. 773.107(b)(2) the State must

- Summarize the comments received
- Develop responses to substantive comments
- Note any revisions or actions taken in response to the public comment.
- Submit copies of all comments received as a result of the publication of the respective application.

MaineDOT's Draft Application was posted on the MaineDOT website on April 11, 2025. A Public Notice was issued on April 11, 2025. Comments were due no later than May 14, 2025. MaineDOT also provided direct notice of the availability of the application with a request for comment to federal and state regulatory and resource agencies and Tribes.

### **Comments received**

MaineDOT received one response letter from the National Oceanic and Atmospheric Administration (NOAA) on May 15, 2025.

### **Summary of comment**

NOAA would like to coordinate further to develop reporting and dispute resolution procedures for projects covered by this authority once MaineDOT assumes responsibility. Once FHWA designates MaineDOT as the lead, NOAA GARFO will identify MaineDOT as the federal agency for any MaineDOT project covered under the 23 U.S.C. § 327. NOAA will recognize and engage with MaineDOT as the federal agency for the purposes of the Federal law under which the responsibility is exercised.

### **Responses developed to substantive comments**

MaineDOT did not provide a response as this comment is not substantive. MaineDOT will collaborate with NOAA once an MOU is executed.

### **Revisions taken in response to the public comments**

No revisions were made due to public comments.

## Letter from NOAA



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
55 Great Republic Drive  
Gloucester, MA 01930

May 15, 2025

David Gardner  
Director, Environmental Office  
Maine Department of Transportation  
16 State House Station  
Augusta, Maine 04333

**Re: Recognition of MaineDOT as the designated federal action agency for Federal Highway Administration responsibilities under the National Environmental Policy Act**

Thank you for providing NOAA Fisheries, Greater Atlantic Regional Fisheries Office (GARFO), an opportunity to comment on the Maine Department of Transportation (MaineDOT) Draft Application for the Surface Transportation Project Delivery Program (NEPA Assignment Program) under 23 United States Code (U.S.C.) § 327.

As described in the application, Congress allows States to assume the responsibilities of the Federal Highway Administration (FHWA) for the National Environmental Policy Act (NEPA) and related laws by applying to the NEPA Assignment Program. MaineDOT is applying to participate in the NEPA Assignment Program and to assume all FHWA's responsibilities for environmental review, resource agency consultation, and other environmental regulatory compliance-related actions for the review and approval of MaineDOT projects. The responsibility that would be assigned by FHWA and assumed by MaineDOT includes the Magnuson Stevens Conservation and Management Act, Fish and Wildlife Coordination Act, and Section 7 of the Endangered Species Act.

NOAA Fisheries, through our Habitat and Ecosystem Services and Protected Resources Divisions, has reviewed the draft application. We propose that MaineDOT and NOAA GARFO coordinate further to develop reporting and dispute resolution procedures for projects covered by this authority. Once the application is finalized and FHWA designates MaineDOT as the lead, NOAA GARFO will identify MaineDOT as the federal agency for any MaineDOT project covered under the 23 U.S.C. § 327. NOAA will recognize and engage with MaineDOT as the federal agency for the purposes of the Federal law under which the responsibility is exercised.

Thank you for your continued coordination on this important issue. If you have any questions regarding our comments, please contact Kaitlyn Shaw at 978-282-8457 or at [kaitlyn.shaw@noaa.gov](mailto:kaitlyn.shaw@noaa.gov), or Bill Barnhill at 978-282-8460 or at [william.barnhill@noaa.gov](mailto:william.barnhill@noaa.gov).

Sincerely,

*Christopher Boelke*

Christopher Boelke  
Chief, New England Branch  
Habitat and Ecosystem Services Division





# MaineDOT

## **PUBLIC NOTICE AND REQUEST FOR PUBLIC COMMENTS**

**Draft Application for MaineDOT to Participate in the Surface Transportation Project Delivery Program per 23 U.S.C. 327 Which Assigns the Environmental Responsibilities of the U.S. DOT Secretary to the State of Maine, Including the National Environmental Policy Act (NEPA) Authority for Categorical Exclusions (CEs), Environmental Assessments (EAs), and Environmental Impact Statements (EISs).**

**SUMMARY:** The State of Maine, acting by and through its Department of Transportation (State), propose a draft application to participate in the Surface Transportation Project Delivery Program per 23 U.S.C. 327. This program allows FHWA to assign its authority and responsibility under the National Environmental Protection Act.

This 23 U.S.C. 327 Draft Application for Public and Agency Comment document is available on the Maine Department of Transportation (MaineDOT) website at:

<https://www.maine.gov/mdot/env/NEPA/assignment/index.shtml>

**DATES:** Comments must be received on or before May 14, 2025.

**ADDRESSES:** You may submit comments by any of the methods described below. To ensure that you do not duplicate your submissions, please submit them by only one of the following means:

- Email: [environmentaloffice.mainedot@maine.gov](mailto:environmentaloffice.mainedot@maine.gov)
- Mail: Maine Department of Transportation, 24 Child Street, Augusta, ME 04330, Attn: Emily Morin, Environment

All comments received will be posted without change in MaineDOT's Final Application to the Federal Highway Administration.

### **FOR FURTHER INFORMATION CONTACT**

Emily Morin at [environmentaloffice.mainedot@maine.gov](mailto:environmentaloffice.mainedot@maine.gov)