



NEPA CATEGORICAL EXCLUSION GUIDANCE

National Environmental Policy Act

42 U.S.C. 4331

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Acronyms

AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act ADOT
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
COA	class of action (CE, EA, EIS)
DOT	Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
ENV	MaineDOT Environmental Office
EPA	U.S. Environmental Protection Agency
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FONSI	finding of no significant impact
FTA	Federal Transit Administration
KO	Kick Off (project)
LEDPA	least environmentally damaging practicable alternative
MaineDOT	Maine Department of Transportation
MAP-21	Moving Ahead for Progress in the 21st Century Act
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
NEPA	National Environmental Policy Act
NHI	National Highway Institute
NHS	National Highway System
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NPIP	MaineDOT's NEPA Public Involvement Plan
NRHP	National Register of Historic Places
PDR	Preliminary Design Report
PEL	Planning and Environmental Linkages
PIP	Public Involvement Plan
PS&E	plans, specifications, and estimates
QA	quality assurance
QC	quality control
ROD	record of decision
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act, A Legacy for Users
STIP	State Transportation Improvement Program
TIP	Transportation Improvement Program
U.S.C.	United States Code
USACE	U.S. Army Corps of Engineers
USDOT	U.S. Department of Transportation
USFWS	U.S. Fish and Wildlife Service

1.0 Introduction

The National Environmental Policy Act (NEPA) is a federal procedural law that establishes a national environmental policy. NEPA provides a framework for environmental planning and decision-making for projects that have a federal nexus.

NEPA requires federal agencies (or states that have assumed responsibility under [23 U.S.C. 326](#)) when planning projects to conduct environmental reviews to consider their proposed actions' potential impacts on the environment. The Maine Department of Transportation (MaineDOT) has assumed NEPA responsibilities under 23 U.S.C. 326.

Section 101 of NEPA provides a national policy "to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." [42 U.S.C. 4331\(a\)](#). Section 102 of NEPA establishes procedural requirements, applying that national policy to proposals for major federal actions significantly affecting the quality of the human environment by requiring federal agencies to prepare a detailed statement on (1) the environmental impact of the proposed action; (2) any adverse effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action.

The Federal Highway Administration (FHWA) administers its NEPA responsibilities under the US. Statute ([23 U.S.C. 139](#)), Environmental Impact and Related Procedures ([23 CFR 771](#)) regulations, and other policies, regulations, and Executive Orders to address the NEPA responsibilities.

2.0 NEPA Assignment

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on October 9, 2024, the MaineDOT has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions. These responsibilities and exceptions are identified in the 23 U.S.C. 326 MOU. In accordance with 23 U.S.C. 326(e), MaineDOT is deemed to be a federal agency for the purposes of the Federal law(s) under which MaineDOT exercises any responsibilities pursuant to the 326 MOU and 23 U.S.C. 326.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

3.0 Programmatic Categorical Exclusion

The renewal of the [Programmatic Categorical Exclusion Agreement \(CE Agreement\)](#) between FHWA and MaineDOT regarding the processing of actions classified as Categorical Exclusions (CE) went into effect on February 8, 2021. FHWA has authorized MaineDOT to determine, on FHWA's behalf, whether a project is categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq).

Projects that do not exceed any of the thresholds described in the Agreement can be approved by MaineDOT on behalf of FHWA; these are termed Programmatic CEs. Projects that exceed any one of the thresholds and meet

the CE criteria in 23 CFR 771.117 can be certified by MaineDOT but must be submitted to FHWA for approval; these are termed Individual CEs.

The Agreement will remain in place after the 23 U.S.C. 326 MOU is executed for individual projects that do not fall under NEPA Assignment.

4.0 Independent 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. Final design and right-of-way negotiations cannot occur before NEPA approval.

Under the NEPA Assignment Program, the same as now, all environmental staff involved in the preparation or review of NEPA documents will be part of the Environmental Office (ENV) and will report to the ENV Director. Project Managers report to the Bureau of Project Development and 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. MaineDOT ENV staff roles are included in Appendix U.

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.

MaineDOT's elements of NEPA decision-making include:

- Assessment of the social, economic, and environmental impacts of a proposed action or project
- Analysis of a range of reasonable alternatives to the proposed project, based on the purpose and need for the project
- Consideration of appropriate impact mitigation: avoidance, minimization, and compensation
- Interagency participation: coordination and consultation
- Public involvement including opportunities to participate and comment
- Documentation and disclosure.

5.0 Feasibility Studies and Asset Management Needs

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 the shared priorities. Products from these initiatives and studies can range from emails to public meetings to full feasibility studies and reports. All products are part of MaineDOT's administrative record and utilized to make study decisions. 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.

Scoping initiatives by the MaineDOT Bureau of Planning will include input from MaineDOT ENV.

MaineDOT's Results and Information Office is responsible for creating the Three-Year Work Plan. 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 class of action projects. These candidate projects are typically not part of a Bureau of Planning scoping process but are based on asset management. Scoping material is utilized by the Bureau of Project Development and the Environmental Office.

All projects that have FHWA funding or require FHWA approval (Bureau of Planning and Bureau of Project Development projects) are in MaineDOT's Three-Year Work Plan. All projects are loaded into ProjEx by the Results and Information Office with associated Work Identification Numbers (WIN). Environmental Office staff are notified of project kick-offs via ProjEx notifications and Project Managers.

6.0 Class of Action

A class of action (COA) is identified for all federally funded projects or projects requiring federal approval. The MaineDOT Environmental Office assesses each project to determine the appropriate COA. Determination of the COA includes consideration of potential environmental impacts. MaineDOT Environmental Team Leaders, Senior Environmental Manager/NEPA Manager, and Director are responsible for determining the NEPA COA for projects. This section identifies the COAs and discusses considerations for determining the COA. The focus of this guidance document is Categorical Exclusions.

FHWA's NEPA regulations identify three environmental COAs (23 CFR 771.115), and prescribe the level of documentation:

- **EIS (Class I)** [23 CFR 771.115(a)]: Actions that significantly affect the environment require an EIS. EIS documentation requirements include an NOI, draft EIS, final EIS, and ROD. Determined by MaineDOT Environmental Office Senior Environmental Manager/NEPA Manager and Director.
- **CE (Class II)** [23 CFR 771.115(b)]: Categories of actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EIS or EA. These actions are approved with a CE determination. Determined by MaineDOT Environmental Team Leaders

Actions that typically meet the definition of a CE are identified on two specific lists, commonly referred to as the "(c) list" [23 CFR 771.117(c)] and the "(d) list" [23 CFR 771.117(d)]. Actions on the (c) list generally involve minor or common construction activities and activities that do not lead to construction. The (d) list presents examples of actions generally found appropriate for CE classification, but that required documentation to support the CE determination. Additional actions of a similar type or scope of work may also be determined to qualify for the CE determination. Any [action](#) that normally would be classified as a CE but could involve unusual circumstances will require the Environmental Office to conduct appropriate [environmental studies](#) to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the [National Historic Preservation Act](#); or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the [action](#).

- **EA (Class III)** [23 CFR 771.115(c)]: Actions for which the significance of the environmental impact is not clearly established require an EA. An EA is used to determine whether the environmental impacts are significant and whether there will be a need for further analysis and documentation. An EA is a concise document that briefly provides sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact (FONSI). Determined by the MaineDOT Environmental Office Senior Environmental Manager/NEPA Manager and Director.

6.1 Identifying Class of Action

The MaineDOT Environmental Office makes all Class of Action declarations, including LPAs for CEs. The Environmental Team Leaders are responsible for declaring and certifying actions that are Categorical Exclusions (CE) which are actions excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS). MaineDOT's NEPA Specialist, Environmental Specialist, and Senior Environmental Manager will also certify CEs at times. All projects will include the name of the responsible person designated to certify NEPA in ProjEx. 99% of MaineDOT's projects are classified as CEs. If a project meets the c or d list, then it will be initially classified as a CE.

The Senior Environmental Manager is responsible for coordination with the Environmental Office Director, Environmental Team Leaders, and FHWA Maine Division in declaring actions classified as EAs and EISs. FHWA Maine Division will be notified and lead all EA and EIS classes of actions.

The Environmental Team Leader and Senior Environmental Manager will evaluate the need to change the Class of Action based on environmental impacts identified during the process or if an extraordinary circumstance is present. The Team Leader and Senior Environmental Manager will discuss their decision with the Environmental Office Director and FHWA Maine Division. This discussion will include justification for the change in Class of Action or justification for pursuing a mitigated FONSI. FHWA Maine Division will be notified and lead all EA and EIS classes of action.

7.0 Purpose and Need

This section discusses the key concepts and process related to preparing a purpose and need statement for a NEPA document based on FHWA NEPA regulations (23 CFR 771), and FHWA and AASHTO guidance documents. The purpose and need statement provides the foundation and framework for determining which alternatives to consider and for selecting the preferred alternative.

The project's need is the transportation problem or an underperforming aspect of the transportation system. The project's purpose identifies how MaineDOT wants the transportation facility to perform after implementing a project. The purpose is a statement of the action to be taken and the goals and objectives that MaineDOT intends to fulfill as part of a successful solution to the problem.

To be considered a viable project following FHWA regulations and guidance, a clear need for the project must be demonstrated. This need must be considered in the context of the natural, social, economic, and cultural environment; topography; future travel demand; and other related infrastructure improvement considerations.

To ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, three general principles are used to define project alternatives. FHWA regulations at 23 CFR 771.111(f) specify any COA evaluated under NEPA must:

- Connect logical termini.
- Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.
- Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

The [FHWA Purpose and Need Companion](#) document aids MaineDOT in the development of Purpose and Need statements.

7.2 Need of the Project

The need for the project establishes the transportation problem to be solved and describes why the problem needs to be addressed. Community goals and objectives that support the need should be discussed in the need section. The need section serves as the foundation for the proposed action and provides the principal information upon which the comparison of the proposed build alternatives and No-Build Alternative is based. The following examples of possible project needs are from FHWA Technical Advisory T 6640.8A:

- **System linkage.** Describe how the project fits into the existing transportation system, including whether it is a connecting link to that system.
- **Transportation demand.** Explain relationships to any statewide plan or other transportation plan together with the project's traffic forecasts, including whether such forecasts are substantially different at the preliminary design and NEPA stage of the project than those made during the planning stage (23 USC 134).
- **Capacity.** Describe how the capacity of the existing transportation system is inadequate for the present or projected system load. Define what levels of service are required for existing and proposed facilities.
- **Legislation.** Identify federal, state, or local governmental mandates that must be met by the project.
- **Social demands or economic development.** Identify all projected economic development/land use changes driving the need for the project, including new employment, schools, land use plans, and recreation.
- **Modal interrelationships.** Describe how the study evaluates modes of transportation as an alternative to highway travel and how the project interfaces with and complements other transportation features in the corridor, including existing highways, airports, rail and intermodal facilities, and mass transit services.
- **Safety.** Discuss the existing or potential safety hazards in the study area, including data related to existing accident rates, and other plans or projects designed to improve the situation.
- **Roadway deficiencies.** Describe any existing deficiencies associated with study area roadways (for example, substandard or outdated geometrics, load limits on structures, inadequate cross-section, and high maintenance costs).

The statement of need should be a factual, objective description of the specific transportation problem, with a summary of the data and analysis that support the conclusion that there is a problem requiring action. Quantified data—such as vehicle miles of travel, travel speeds, time of day characteristics, current and projected levels of service, accident rates, and/or road condition assessments—should be used where applicable. Full documentation, such as reports and studies developed during the project planning process, should be referenced in the need statement and must be available upon request of reviewing agencies and the public.

7.3 Purpose of the Project

The project's purpose defines the solution to the problem and guide the alternatives that will be considered in response to the established need. [The American Association of State Highway and Transportation Officials \(AASHTO\) Practitioners' Handbook 7, Defining the Purpose and Need and Determining the Range of Alternative for Transportation Projects](#), advises that the project purpose be clearly and succinctly stated, which can often be done in a single sentence. If the proposed project has several distinct purposes, each should be separately listed. The following are examples of possible project purposes:

- improve traffic flow
- correct roadway deficiencies
- reduce congestion and delays
- modernize deteriorating facilities
- accommodate high traffic volumes
- increase safety for motorists
- increase multimodal travel options
- provide lane continuity and balance
- optimize highway system operations
- improve mode connectivity
- improve connectivity among transportation modes

7.4 Purpose and Need Statement

A Purpose and Need statement is not developed for every project. Projects classified as a “c” list CE typically will not have a P+N statement. Other projects classified as CE will have a P+N statement.

7.5 Logical Termini

As part of the NEPA process, MaineDOT will determine what constitutes the geographic extent of a project. The limits of the project being evaluated are known as “logical termini,” and are defined by the Federal Highway Administration (FHWA) as:

1. rational endpoints for a transportation improvement and
2. rational endpoints for a review of the environmental impacts.

FHWA requires that the project or action being evaluated in the NEPA process meet three principles to avoid commitments to transportation improvements before the impacts are fully evaluated:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. Establishing logical termini ensures that project needs are addressed and reduces the risk of unexpected effects that could result from analyzing an insufficient geographic area. Additionally, they are intended to prevent segmentation, which occurs when a need may extend beyond the project area but needs and environmental impacts are artificially targeted to a limited area to avoid application of NEPA requirements to some of the project's segments.

Development of logical termini begins during the Work Plan development phase with the 5 MaineDOT Work Plan Committees (Bridge, Highway, Safety, Multimodal, Maintenance)(See Appendix X). In addition to the ability of the project to meet an identified transportation need (safety, economic development, capacity, etc.), other factors considered could include socioeconomic factors, topography, future travel demand, other infrastructure improvements in the area, and more. Logical termini can be locations where there are major traffic generators or changes in traffic volumes, major crossroads or system intersections, and/or locations where there are changes in settlement patterns, such as a transition from an urbanized area to a suburban or rural area.

The Work Plan Committees will review the three criteria when establishing the termini for each project. Typically, for non-bridge projects, the endpoints are set by previous construction and asset needs. The endpoints are reviewed in the field and typically set to MaineDOT's corresponding mile points. The endpoints are entered into the ProjEx database system for every project and include Bridge project end points will typically be set by asset needs.

Logical termini and purpose and need interact with one another. As investigations into data, transportation problems, and impacts to resources continue, there can be rationale for modifying the logical termini based on new information obtained. This can also occur as alternatives are evaluated and further refined. MaineDOT will utilize the FHWA Environmental Review Toolkit, NEPA Implementation, and [The Development of Logical Project Termini. November 5, 1993.](#)

7.6 Independent Utility

An independent utility analysis focuses on whether a particular project is a “stand-alone” project. That is, assuming that no other project is contemplated, the project serves a distinct purpose or function.

The Federal Highway Administration (FHWA) regulations outline three general principles at 23 CFR 771.111(f) that are to be used to frame a highway project:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. **Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and**
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

The MaineDOT evaluates Independent Utility during Work Plan scoping.

8.0 Public Involvement

MaineDOT's public involvement provides an opportunity to understand a community's interests and help inform decisions. Effective public involvement will also be conducted to ensure equal access of the public to the transportation decision-making process. This section summarizes [MaineDOT's Public Involvement in Transportation Decision-making Plan \(MaineDOT PIP\)](#) and [MaineDOT's NEPA Public Involvement Plan \(NPIP\)](#).

8.1 NEPA Public Involvement Plan (NPIP)

The purpose of the NPIP is to guide MaineDOT Environmental Office staff and Project Managers engaged in the development of transportation projects funded or approved by the FHWA. This NPIP intends to outline the process for carrying out public involvement following the requirements of the National Environmental Policy Act (NEPA), its associated implementing regulations, and other federal environmental laws and regulations. These procedures describe the coordination of public involvement activities, including meetings and public hearings. Also, these procedures seek to ensure early and continuing opportunities during project development for the

public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions. The NPIP pertains to NEPA actions classified as Categorical Exclusions (CE), Environmental Assessments (EA), and Environmental Impact Statements (EIS). Additionally, the NPIP fulfills the requirements of 23 CFR 771.111(h), ensuring that States have procedures approved by FHWA to carry out public involvement. The MaineDOT PIP should be used for all other purposes not stated in the NPIP. Appendix A discusses Public Involvement.

8.2 Public Involvement Documentation

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 because of the outreach activities throughout each stage of the transportation decision-making process. Proper documentation includes compiling all materials related to the public involvement activity, summarizing, and analyzing comments, and describing how the comments are being addressed. ProjEx contains dates of public meetings and CPD e-file contains comments and replies to substantive environmental comments.

Public involvement effectiveness is measured by the MaineDOT Virtual Public Involvement Coordinator. MaineDOT conducts on-demand public meetings for all projects that require a public meeting. This may be in combination with an in-person public meeting.

For every project that has a public meeting, MaineDOT receives stats from our on-demand meeting from Facebook on engagement. The Public Involvement Management Application (PIMA) app provides MaineDOT information including the # of stakeholders, comments, and favorability of the project. MaineDOT will also conduct a demographic survey that provides data for each project for members of the public who choose to take the optional survey. Questions include age, how you identify, income, education, disability, ethnicity, race, and language spoken.

The Senior Environmental Manager will also assess public involvement in the NEPA process. Any suggestions will be discussed with the Environmental Office Director and Virtual Public Involvement Coordinator. Results of [Virtual Public Involvement Effectiveness from 2021-2022](#).

8.3 Managing Public Comments

The public may have diverse views and concerns regarding issues about their specific transportation needs. Conducting meaningful public involvement includes seeking public input at specific and key points in the transportation decision-making process. The most common way for the public to provide input is through verbal and written methods. It is not only critical to obtain public input, but it is even more important to demonstrate to members of the public that their comments have been heard or otherwise received and truly influenced the decision or set of actions. These comments can be collected at any time during the decision-making process using a variety of tools and methods. Public comments and responses to substantive comments will be filed in the project CPD e-file.

9.0 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 emphasizes internal communication and collaboration among its various bureaus, Environmental Office staff, and technical subject matter experts to produce a quality process and documentation that supports balanced decisions.

MaineDOT maintains a [NEPA Quality Assurance and Quality Control Guidance](#).

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

10.0 Legal Sufficiency Review for CE Actions

A legal sufficiency review is required for individual Section 4(f) evaluation. The MaineDOT Legal Counsel conducts legal sufficiency reviews.

- The MaineDOT Cultural staff will provide the draft Individual Section 4(f) document to the Senior Environmental Manager for quality review.
- The MaineDOT Senior Environmental Manager will provide the draft individual 4(f) document to the Environmental Office Director for approval and send it to MaineDOT Legal Counsel for legal sufficiency review.
- The MaineDOT Cultural staff will discuss and incorporate suggestions/requirements from the legal sufficiency review.
- MaineDOT Legal Counsel will provide a sufficiency memo. The memo will be filed in the CPD e-file.

10.1 Freedom of Information Act and Freedom of Access Act

Maine's comparable law to the Freedom of Information Act (FOIA), [5 U.S.C. § 552](#) is the [Maine Freedom of Access Act \(FOAA\), 1 Me. Rev. Stat. §§ 400-414](#) (Maine FOAA). 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 under 1 Me. Rev. Stat. § 408-A. An individual aggrieved by a failure or refusal to inspect or copy a public record may appeal to the Maine Superior Court, Maine's trial court of general jurisdiction. 1 Me. Rev. Stat. § 409.

The Maine Attorney General has certified 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. These letters are posted on MaineDOT's NEPA Web Page.

MaineDOT's Chief Counsel is the [FOAA contact](#) for MaineDOT.

FOAA is a Maine law that guarantees access to "public records" of state and local government agencies and other bodies. It is essentially a "government in the sunshine" or open government law, intended to make the functioning of government more transparent and accessible. Because of this overarching principle, Maine courts require that the FOAA statute be liberally interpreted to achieve its purposes.

Since the purposes of the FOAA statute can only be achieved if public records are available, it's important to retain records, including emails, following any established records retention schedules. If records are prematurely deleted, it undercuts the ability to meet the spirit and intent of the FOAA law. For government transparency – and to meet the FOAA law – records must first be retained and preserved.

Anyone – the public, a business, the media, anyone – can request and get a copy of a public record. There's no special form to fill out and the request does not need to mention that it is a FOAA request. No reason needs to be given why the record is being requested.

Nothing about FOAA requires that any new document be created – it deals with existing public records that we own or possess.

While the statute does not require the request to be in writing, most agencies, including MaineDOT, will ask that the request be submitted in writing to ensure certainty on when the request was received and what specific records are being requested.

The FOAA statute includes an expansive definition of "public records." As the statute says, they include any written or graphic material or any mechanical or electronic data from which information can be obtained in a form that can be seen or heard that has been prepared or received for use in public or governmental business. Included in that broad definition are books; papers; documents; emails, text messages, and voicemails, including any attachments; plans, maps, and other drawings; and any other record, regardless of its physical or digital form as long as it is connected to governmental business and is not confidential.

A "public record" does not include confidential documents, whether they are designated as confidential by the FOAA statute itself or by another law.

Here's what staff at MAINDOT do if they receive a request:

1. The first thing to do is to send it to the Chief Legal Counsel so that the Senior Paralegal can log it in and send an acknowledgment of its receipt to the person requesting it within 5 working days. That timing is tied to a provision in the FOAA statute that says that the request is deemed denied if it's not acknowledged within those 5 days and when a request is denied, a legitimate reason needs to be provided. You don't need to determine whether it's asking for confidential information – that's Legal's job.
2. MaineDOT's Legal Office will then determine the appropriate person or persons who can help us respond to the request and ask for a time estimate for searching for and compiling the documents (we indicate that if the time is 2 hours or less, to go ahead and search for and gather the requested documents). Here's why we ask for a time estimate: Under the FOAA statute, the first two hours to search for and compile documents are free, but there's a \$25/hour charge after that and if the amount exceeds the 2 hours, we're required to give the requester a cost estimate and we collect payment before moving forward.
3. When the Legal Office receives payment, they then ask the person or persons who can help to respond to the request to search for the documents and send them to us. The Legal Office has a reasonable time to provide the requested documents. The context of "reasonable time" is affected by how many documents, including emails and their attachments, turn up in the search. If, for example, there are only 10 short documents, a "reasonable time" is shorter than if we have to run an OIT email search for emails of 10 different people that turns up thousands of emails with attachments that then need to be reviewed for relevance.

Once a FOAA request is in Legal's hands, all communications with the person making the request go through Legal, whether that's the initial acknowledgment, providing a cost estimate, asking for more specificity or clarification so that we know what to provide, and sending out the requested documents.

11.0 Statute of Limitations

The statute of limitations (SOL) on legal claims against a CEs and other related transportation project actions, such as a Section 4(f) or Section 404 permit, can be limited to 150 days provided specific conditions are met. The 150-day statute of limitations was established in 23 USC 139(l)(1). The final agency action must be related to a

transportation project, and a limitation of claims notice must be published in the *Federal Register* for the 150-day statute of limitations to apply. It reduces the statute of limitations for challenging a federal agency decision for a project from 6 years to 150 days. The Environmental Senior Manager and Environmental Office Director will determine when a project classified as a CE will require a SOL notice. They will draft the SOL notice utilizing the Federal Register template.

Legal review by MaineDOT Environmental Counsel will be conducted on SOL notices for CE-level projects. The Senior Environmental Manager will provide the SOL to the MaineDOT Environmental Counsel for review. The Senior Environmental Manager will discuss and incorporate suggestions/requirements from the legal reviews.

Publication in the *Federal Register* starts the clock for the statute of limitations. The *Federal Register* limitation of claims notice is separate from the EPA *Federal Register* Notice of the DEIS and FEIS and is often prepared later in the process. The MaineDOT Senior Environmental Manager is responsible for coordinating the placement of the notice in the *Federal Register* with FHWA's Maine Division. ProjEx NEPA Assessments and Assessments Details contains the checklist to guide Environmental Office staff.

12.0 Conflict Resolution

Occasionally during the environmental process, conflict regarding a specific environmental issue or disagreement arises within MaineDOT. When this occurs, MaineDOT has open and timely discussions, and internal experts are engaged to formulate potential solutions. If an issue cannot be resolved at the lowest level, then the issue will be elevated up the proper chain of command until resolved.

Sometimes a conflict arises with outside agencies. The chain of command process described above applies and resolutions are typically reached. For conflict resolution between agencies, refer to the following guidance and checklist:

- FHWA Environmental Review Toolkit: [Conflict Resolution](#) (checklist in Figure 2)

Ultimately the conflict would be elevated to the Chief Operating Officer (Senior Agency Official) and include the MaineDOT Commissioner. Resolutions are documented in the project file.

13.0 Environmental Commitments

Environmental commitments consist of those agreements made as part of an assurance to the community, stakeholders, and other entities that measures to address specific issues identified during project development will be implemented at a future stage in the project. An example of a commitment may be a specific type of lighting fixture requested by the community. Environmental commitments also include legally binding mitigation measures that are developed to address adverse effects on a specific resource and are developed in conjunction with the regulatory agency responsible for the resource. Examples of mitigation measures include wetland mitigation.

As a project is developed, consideration should be given to environmental commitments to determine whether the commitment may be precedent setting. The study team should discuss environmental commitments and properly vet them through the appropriate MaineDOT personnel prior to making the commitment. Once an environmental commitment has been fully vetted, it should be clearly documented and included in the project file. Tracking of these commitments is described in Section 13.2.

Environmental commitments, which are also mitigation measures required by regulation, are developed to minimize or mitigate the adverse effects that would result from a proposed action and are essential parts of the NEPA process. MaineDOT is required to identify and include in a proposed action all relevant and reasonable

measures that it proposes to improve that action.

Effective mitigation begins early in the NEPA process, not at the end. Avoidance, minimization, and mitigation should be integral to the process of alternative development and analysis. Some mitigation measures will be developed through consultation and coordination with resource agencies, and the public, and others will be reasonable measures that MaineDOT determines are appropriate for the action.

NEPA requires a systematic approach to mitigation called *sequencing*. The sequencing of mitigation is as follows:

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- Reducing or eliminating the impact over time by preservation maintenance and operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources.

MaineDOT first considers avoidance of an impact and, if this is not possible, then it considers minimizing the impact, and so on, following the sequencing of mitigation. Avoidance and minimization are documented in the Preliminary Design Report (PDR).

13.1 Developing Mitigation Measures

Mitigation measures should be developed only to address adverse effects, regardless of whether the effect is significant or not. All other measures should be considered as avoidance and/or minimization. Note that standard specifications identified as part of permit requirements, permits needed for the project, and any items that are required (but not directly related to an adverse effect) are not considered mitigation. The impacts of the project are considered after the incorporation of these required items.

Mitigation measures should be written and identify who is responsible for implementing the mitigation, what is being performed as mitigation, and when it will be performed in the project lifecycle (for example, final design, and construction). The mitigation must be enforceable (that is, biddable). Where appropriate, mitigation measures should be crafted as performance specifications so there is a means of verifying that the contractor has met the obligations in the measure.

Mitigation measures for all projects are developed in coordination with the MaineDOT Environmental Office technical staff and reviewed by the Environmental Office Team Leaders and Senior Managers. The MaineDOT Team Leader will coordinate the proposed mitigation measures with the MaineDOT Project Manager.

Environmental Office technical experts and Team Leaders will develop contract special provisions to capture mitigation measures and environmental commitments for the project's construction contract.

Note that FHWA's mitigation policy states that for mitigation measures to be eligible for federal funding, the impacts must result from the proposed action and the proposed mitigation must be considered a reasonable expenditure of public funds [23 CFR 771.105(d)].

13.2 Tracking Environmental Commitments

Project-specific mitigation measures and environmental commitments resulting from coordination under the laws and regulations mentioned in this document will be carried forward in the form of plan notes, special provisions, memorandum of agreements, 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. The commitments will show as active or completed. See Appendix R.

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 Updat...	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.						

3/0 items per page

14.0 Categorical Exclusion Process

Baseline screening data is collected during the planning candidate work plan stage for some projects that involve in-water work. The remainder of the baseline data and fieldwork is collected during the first few months after the project development kickoff. This includes but is not limited to, historic properties, Section 4(f) properties, endangered species distinct population segments (DPS) and critical habitat, 100-year floodplains, wetlands, streams, essential fish habitats, and coastal barriers. This data is utilized to avoid and minimize impacts and to determine required documentation and approvals.

All assessments, documentation, and approvals are tracked in ProjEx and saved in the Environmental Office Coordination and Project Documentation (CPD) e-file. ProjEx is MaineDOT's project database and houses the NEPA checklist, assessments, determination, and certification. ProjEx is MaineDOT's Environmental Office master checklist and guides the environmental office staff. The Environmental Team Leaders, Environmental Specialist, NEPA Specialist, Senior Environmental Manager, and Environmental Office Director are the only MaineDOT staff that can determine the NEPA category and certify NEPA. The Environmental Team Leaders will ensure all NEPA checklist items are complete before certifying a CE. See Appendix T – Filing and Documentation Guidance.

Every year MaineDOT receives federal funding for several projects (referred to as Administration projects) that will not lead directly to construction or have minimal to no environmental impact. These projects utilizing federal funds that do not risk having environmental impacts, including but not limited to those classified as C(1) actions, do not require environmental assessments and approvals in ProjEx to complete a CE certification. A CPD e-file folder and NEPA report will not be generated, instead a note will be entered into ProjEx identifying the project as classification that does not require assessments and approvals. A discussion with the Senior Environmental Manager/NEPA Manager will be had if there is any question about if a project falls into the C(1) determination.

When all necessary assessments, documentation, approvals, and public process (See Appendices for individual guidance documents) are completed and all NEPA checklist items have been checked, then the Environmental Team Leader will place an actual NEPA approval date in ProjEx. Typically, NEPA approval is usually completed between 1 month and 9 months after the final Preliminary Design Report (PDR), which documents the engineering recommendation. This is based on information in the PDR that is needed to finalize Section 106, Section 4(f), public process, and Section 7.

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.

MaineDOT Finance staff will check ProjEx to make sure that NEPA has been completed prior to submitting a project to the FHWA Maine Division for FHWA approval in Financial Management and Information Systems (FMIS). The FHWA Maine Division has access to MaineDOT's ProjEx database and will verify that the information is correct before approval. If there are any issues, the FHWA Maine Division will contact MaineDOT Finance staff to make any changes and then move forward accordingly.

MaineDOT ProjEx NEPA Compliance Checklist

David Gardner, you have 668 messages

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

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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
	Relocations Required	No	CHAMBERLAIN, KRISTEN	9/7/2017
AIR QUALITY	Air Quality Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
	Noise Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
FISHERIES & WILDLIFE	Section 7 Assessment Complete	Yes	CHAMBERLAIN, KRISTEN	9/7/2017
	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
HAZMAT MANAGEMENT	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

MaineDOT ProjEx NEPA Determination

 **PM NEPA Checklist**

David Gardner, you have 668 messages.   

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

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

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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 to 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 () ()

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

MaineDOT ProjEx NEPA Certification

 **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

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Environmental Team Leader: CHAMBERLAIN, KRISTEN

NEPA Compliance Checklist NEPA Determination NEPA Certification


Section 3: NEPA Certification

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.

Certification Name

CHAMBERLAIN, KRISTEN ▾

Certification Date

9/7/2017 

Last Updated By

CHAMBERLAIN, KRISTEN

Last Update Date

9/7/2017 2:40:11 PM

Under the 23 U.S.C. 326 MOU, the MaineDOT Environmental Office Team Leaders, Environmental Specialist, and NEPA Specialist will be responsible for certifying NEPA for all projects classified as CEs. This includes CE re-evaluations. The Senior Environmental Manager provides technical support and conducts regular check-ins with the Team Leaders to discuss project specifics.

All documentation for CEs will be part of the administrative record and filed in the CPD e-file and ProjEx (See Appendix T). The CE and certification will document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance that their requirements can be met.

For non-NEPA Assignment projects MaineDOT Environmental Team Leaders approve “programmatic” CEs under the current Programmatic CE agreement. “Individual” CEs are required to be sent to the FHWA Maine Division Office for approval.

15.0 Re-evaluation of Categorical Exclusions

Re-evaluation of NEPA documents should be conducted in the following circumstances:

- If the project scope or limits have changed that results in impacts not previously evaluated.
- If there are substantial new circumstances or information around the environmental reviews that have the possibility of changing the impact. (i.e. New endangered species or change in endangered species range, change to historic property listing, etc.)

The re-evaluation format can take different forms based on the age of the original document and the complexity of the changes.

- If there is a minor change to the project scope or only minor updates are required, then a simple narrative re-evaluation is appropriate. Record of a NEPA Re-Evaluation and the date of its completion will be completed in ProjEx under the Assessment Details NEPA Section. The date the re-evaluation was completed as well as a note on what caused the need to re-evaluate will be recorded on the Permits page of ProjEx. A new NEPA report will be saved to the CPD e-file and the original will remain to document the changes.
- If the original document was a CE and the project scope or project impacts have changed substantially, a new NEPA document should be completed.

Re-evaluations will be identified and conducted by the Environmental Team Leader and reviewed by the Senior Environmental Manager. All documentation will be saved to the CPD e-file and ProjEx. ProjEx NEPA Assessments and Assessment Details tab contains the checklist to guide the Environmental Office.

16.0 Locally Administered Projects

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 will assign a Project Manager and an Environmental Team Leader to the project.

MaineDOT requires municipalities and other local agencies to take [certification training](#), and the Environmental Office participates in this training and provides any updates (such as NEPA assignment) at these trainings. MaineDOT does not delegate NEPA, Section 106, Section 4(f), endangered species, or hazardous material management to the LPA. The MaineDOT CE Guidance is followed by the Team Leader.

TASK	RESPONSIBILITY
National Environmental Policy Act (NEPA)	Federal funds: MaineDOT State funds only: Local Agency through federal permit
Section 106 of the Historic Preservation Act	Federal funds: MaineDOT State funds only: Local Agency through federal permit
Section 4(f) of the Department of Transportation Act	Federal funds: MaineDOT No U.S. DOT funds: 4(f) does not apply
Endangered Species Act (Section 7) and Essential Fish Habitat	Federal funds: MaineDOT State funds only: Local Agency through federal permit
Executive Order 12898 (Environmental Justice)	Federal Funds: MaineDOT
Hazardous Materials	MaineDOT with assistance from Local Agency
Wetland and Stream Surveys, Environmental Permits, Dredged Material Evaluation and Approvals, Mitigation, All Stormwater Permits (Chapter 500, MPDES, Erosion & Sedimentation Control Law)	Local Agency

The Environmental Section of the MaineDOT [LPA Manual](#) describes the LPA process and obligations. The LPA is required to submit documents and checklists to the Team Leader for the Team Leader to review and certify NEPA. These documents and checklists are located at [MaineDOT Locally Administered Projects Documents](#).

FHWA also provides [guidance for LPA](#).

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 the Maine Department of Environmental Protection and US Army Corps of Engineers (USACOE) and other environmental permits, providing 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 Cultural staff 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. All NEPA documentation is filed in the CPD e-file and ProjEx the same as non-LPA projects.

17.0 Environmental Laws and Executive Orders Guidance

Projects that receive federal funding, approval, or permits must comply with NEPA. NEPA compliance includes assessing and documenting environmental resources (natural, cultural, social, economic) and avoiding, minimizing, and/or mitigating impacts on those resources. Projects without significant environmental impacts are considered Categorical Exclusions (CE) following 23 CFR 771.115. Environmental Assessments (EA) are required documents for actions in which significant environmental impacts have not been established, and Environmental Impact Statements (EIS) are required for actions that significantly affect the environment.

Projects classified as CEs will include project documentation developed by MaineDOT that demonstrates CE actions meet the criteria established in this guidance and that individual actions meet the definition of a CE defined in 23 CFR 771.117(a) and have no unusual circumstances defined in 23 CFR 771.117(b). MaineDOT will complete the task of analyzing environmental impacts and preparing environmental documentation for NEPA compliance. CE approvals will be used as consideration of notice to proceed to final design, right-of-way negotiations, acquisitions, and construction.

All CEs will be classified as a “c” or “d” listed CE following 23 CFR 771.117. The “c” list actions meet the criteria for CEs and normally do not require any further NEPA approvals. The “D” list may be designated as CEs only

after approval by the MaineDOT Environmental Office (under the 23 U.S.C. 326 MOU). Approval will be supported by documentation that demonstrates that the criteria for a CE are satisfied.

Section 18 outlines the specific federal environmental laws and Executive Orders that must be adhered to and complied with for all projects with a federal nexus. MaineDOT has assumed responsibility for these under the 23 U.S.C. 326 MOU. Section 19 provides additional information on the documentation and approval processes. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental Office CPD e-file. **Additionally, more detailed information regarding how to properly document and ensure compliance with all the federal environmental laws and regulations is provided in the attached appendices.**

18.0 Federal Environmental Laws and Executive Orders The following federal environmental laws and Executive Orders are required to be complied with for all MaineDOT-administered and locally administered federal highway-funded projects or those that require FHWA approval action. This section provides a brief overview of each statute.

18.1 Public Involvement

NEPA (23 CFR 771.111)

Each state must have procedures approved by FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128. State public involvement/public hearing procedures must provide for (i) Coordination of public involvement activities and public hearings with the entire NEPA process; (ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with the relocation of individuals, groups, or institutions.

Section 106 (36 CFR 800.2(d))

Information about an undertaking and its effects on historic properties must, except where appropriate to protect the confidentiality concerns of affected parties, be provided to the public and also seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making.

Section 4(f) (23 CFR 774.5 (b)(2))

Public notice and an opportunity for public review and comment concerning the de minimis effects on the protected activities, features, or attributes of a public park, recreational area, or wildlife refuge must be provided.

18.2 Right of Way

Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs (42 USC Ch. 61)

The Uniform Act interprets the legal meaning of the federal constitutional provisions and defines procedures for establishing just compensation and providing due process to property owners. These just compensation and due process requirements apply to all federally funded MaineDOT activities, including those carried out by local public agencies and some private parties.

18.3 Air Quality

Clean Air Act (42 U.S.C. 7401-7671g)

Section 176(c) of the Clean Air Act prevents federal agencies from approving any project or from issuing any permit for actions not conforming to the provisions of an approved Federal Implementation Plan (FIP) or a State Implementation Plan (SIP).

18.4 Noise

Noise Control Act (42 U.S.C. 4901-4918)

The Noise Control Act requires highway agencies proposing to use federal-aid highway funds for Type I projects to perform a noise analysis of sufficient scope to provide information needed to make the determination if abatement is required, reasonable, and feasible.

Procedures for Abatement of Highway Traffic Noise and Construction Noise (23 CFR 772)

23 U.S.C. 109(1) mandates noise standards. FHWA developed regulations to provide procedures for noise studies and noise abatement measures to help protect the public's health, welfare, and livability, to supply noise abatement criteria, and establish requirements for information to be given to local officials for use in planning and design of highways.

18.5 Fisheries and Wildlife

Section 7 of the Endangered Species Act (16 U.S.C. 1531-1544)

Section 7 of the Endangered Species Act requires each federal agency to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

Marine Mammal Protection Act (16 U.S.C. 1361-1423h)

The Marine Mammal Protection Act prohibits, with certain exceptions, the take of marine mammals in U.S. waters. If a take may occur, an Incidental Take Authorization or Letter of Authorization is required through NOAA.

Anadromous Fish Conservation Act (16 U.S.C. 757a-757f)

The Anadromous Fish Conservation Act was adopted to conserve, develop, and enhance the anadromous fish resources of the U.S. that are subject to depletion from water resources development and other causes. The Secretary of the Interior is authorized to enter into cooperative agreements with one or more states that are concerned with the development, conservation, and enhancement of such anadromous fish.

Fish and Wildlife Coordination Act (16 U.S.C. 661-667d)

The Fish and Wildlife Coordination Act provides the basic authority for the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) involvement in evaluating impacts to fish and wildlife from proposed water resource development projects. It requires that fish and wildlife resources receive equal consideration to other project features. It also requires federal agencies that construct, license or permit water resource development projects to first consult with the Service and the state fish and wildlife agency regarding the impacts on fish and wildlife resources, but does not require agencies to accept conservation recommendations.

Migratory Bird Treaty Act (16 U.S.C. 703-712)

The Migratory Bird Treaty Act (MBTA) implements various treaties and conventions between the U.S., Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the MBTA, taking, killing, or possessing migratory birds (other than game birds during valid hunting seasons) is unlawful. Protections extend to migratory bird nests determined to contain eggs or young.

Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801-1891d), with Essential Fish Habitat requirements at 1855(b)(2)

The Magnuson Stevens Fishery Conservation and Management Act requires federal agencies that fund, permit, or carry out activities that may adversely impact Essential Fish Habitats (EFH) to consult with the National Marine Fisheries Service (NMFS) regarding potential adverse effects of actions on EFH.

Bald and Golden Eagle Protection Act (16 USC 668a-d)

The Bald and Golden Eagle Protection Act provides for the protection of the bald eagle and the golden eagle by prohibiting the take, possession, sale, purchase, barter, offer to sell, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest, or eggs without a permit issued by the Secretary of the Interior.

18.6 Hazardous Material Management

Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675)

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires an environmental site assessment investigation which must address the liability of acquiring portions or the entire property.

Superfund Amendments and Reauthorization Act (42 U.S.C. 9671-9675)

The Superfund Amendment and Reauthorization Act (SARA) requires an environmental site assessment investigation which must address the liability of acquiring portions or the entire property.

Resource Conservation and Recovery Act (42 U.S.C. 6901-6992k)

The Resources Conservations and Recovery Act (RCRA) requires that a property shown to be contaminated must have the materials removed from the site during construction and must be properly identified and managed.

18.7 Historic, Cultural, and Parklands

Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306101 et seq.)

Section 106 of the National Historic Preservation Act requires that federal agencies take into account the effects of their undertaking on historic properties that are included on the National Register of Historic Places or that meet the criteria for the National Register.

Section 4(f) of the Department of Transportation Act (23 U.S.C. 138 and 49 U.S.C. 303)

Section 4(f) of the Department of Transportation Act does not allow approval of any project that requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction, or any land from a historic site of national, state, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) project includes all possible planning to minimize harm to such park, recreational area, wildlife, and waterfowl refuge, or historic site resulting from such use.

Archeological Resources Protection Act (16 U.S.C. 470aa-470mm)

The Archaeological Resources Protection Act does not allow any excavation, removal, damage, or alteration of any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit, or the exemption contained in section 470cc(g)(1) of this title.

Preservation of Historical and Archeological Data (54 U.S.C. 312501- 312508)

The Preservation of Historical and Archaeological Data requires when any federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, the agency shall notify the Secretary, in

writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity.

Native American Grave Protection and Repatriation Act (25 U.S.C. 3001-3013; 18 U.S.C. 1170)

One of the major purposes of the Native American Grave Protection and Repatriation Act (NAGPRA) is to provide greater protection for Native American burial sites and more careful control over the removal of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on federal and tribal lands. NAGPRA requires that Indian tribes or Native Hawaiian organizations be consulted whenever archeological investigations encounter, or are expected to encounter, Native American cultural items or when such items are unexpectedly discovered on federal or tribal lands. Excavation or removal of any such items also must be done under procedures required by the Archaeological Resources Protection Act.

Land and Water Conservation Fund Act (54 U.S.C. 200302 – 200310)

Section 6(f) of the Land and Water Conservation Fund Act (LWCFA) ensures that once an area has been funded with LWCFA assistance, it is continually maintained in public recreation use unless the National Park Service (NPS) approves substitution property of reasonably equivalent usefulness and location and of at least equal fair market value. The Secretary must approve all conversions of property acquired or developed with LWCFA assistance under this section to other than public outdoor recreation uses.

18.8 Social and Economic

Farmland Protection Policy Act (7 U.S.C. 4201-4209)

The Farmland Protection Policy Act requires the consideration of adverse effects of all federally funded transportation projects on farmland preservation and to consider alternative actions that could lessen those impacts.

American Indian Religious Freedom Act (42 U.S.C. 1996)

The American Indian Religious Freedom Act protects the rights of Native Americans to exercise their traditional religions by ensuring access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional sites. Because such sites may be eligible for inclusion in the National Register, any effects that may occur, as a result of providing access to them, may trigger Section 106 review under the National Historic Preservation Act. This law applies to traditional cultural sites located on federal Land.

18.9 Water Resources and Wetlands

Clean Water Act (33 U.S.C. 1251-1387, 33 U.S.C. 1344 (Section 404) , 33 U.S.C. 1341 (Section 401))

Section 401 of the Clean Water Act (CWA) prohibits federal permitting or licensing agencies from issuing authorizations for construction activities having discharges into navigable waters, until the appropriate water quality certifying agency has issued a water quality certification (WQC) or waiver procedures have been satisfied.

Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation. This permit is obtained post-NEPA but before construction.

Coastal Barrier Resources Act (16 U.S.C. 3501-3510)

The Coastal Barrier Resources Act (CBRA) established the Coastal Barrier Resources System (CBRS) and was enacted to minimize the loss of human life, wasteful expenditure of federal revenues, and the damage to fish,

wildlife and other natural resources associated with the coastal barriers. Projects within the CBRS may not receive federal funding unless they are in compliance and meet an exception to the CBRA.

Coastal Zone Management Act (16 U.S.C. 1451-1466)

The Coastal Zone Management Act (CZM) requires all projects located within the designated coastal zone of a state to be consistent with the state's federally approved CZM plan. The CZM grants Maine and other coastal states that have an approved coastal management program the authority to review federal activities, federal license or permit activities, and federally funded activities to ensure that federal actions that may affect its coastal area meet the "enforceable policies" of the state's coastal program. The process by which a state decides whether a federal action meets its enforceable policies is called federal consistency review.

Safe Drinking Water Act (42 U.S.C. 300f - 300j-26)

The Safe Drinking Water Act protects public health by regulating the nation's public drinking water supply. The law requires actions to protect drinking water and its sources—rivers, lakes, reservoirs, springs, and groundwater wells.

Rivers and Harbors Act (33 U.S.C. 401-406)

Section 10 of the Rivers and Harbors Act of 1899 requires authorization from the Secretary of the Army, acting through the Corps of Engineers, for the construction of any structure in or over any navigable water of the United States. Structures or work outside the limits defined for navigable waters of the United States require a Section 10 permit if the structure or work affects the course, location, or condition of the water body. The law applies to any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the United States and applies to all structures. The geographic jurisdiction includes all navigable waters of the United States which are defined (33 C.F.R. Part 329.4) as, "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce."

Wild and Scenic Rivers Act (16 U.S.C. 1271-1287)

The Wild and Scenic Rivers Act prohibits the issuance of any federal permit for construction of projects having adverse impacts on a river with values qualifying it for protection under this act.

General Bridge Act, 33 U.S.C. 525-533

The General Bridge Act of 1946 requires the location and plans for the construction, maintenance, and operation of bridges and approaches over navigable waters of the United States be approved by the Secretary of the department in which the Coast Guard is operating before construction is commenced, and, in approving the location and plans of any bridge, the Secretary may impose any specific conditions relating to the maintenance and operation of the structure which the Secretary may deem necessary in the interest of public navigation, and the conditions so imposed shall have the force of law.

Wetland Mitigation 23 U.S.C. 119(g), 23 U.S.C. 133 (b)(14)

Allows for Natural habitat and wetlands mitigation efforts relating to projects funded under this title, which may include, participation in mitigation banking or other third-party mitigation arrangements; contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands; and the development of statewide and regional environmental protection plans, including natural habitat and wetland conservation and restoration plans.

E.O. 11990, Protection of Wetlands

Executive Order 11990 states that no federally approved project will occur in wetlands unless there is no practical alternative to constructing in the wetlands. Projects must ensure that the project design includes all practicable measures to avoid, minimize and mitigate wetland impacts.

E.O. 11988, Floodplain Management

Executive Order 11988 requires federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.

E.O. 13112, Invasive Species

Executive Order 13112 requires each federal agency whose actions may affect the status of invasive species to prevent the introduction of invasive species and not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species.

19.0 Assessing and Documenting Environmental Federal Laws and Executive

This section provides a brief overview of the documentation and approval processes. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental Office CPD e-file (See Appendix T). Additionally, more detailed information regarding how to properly document and ensure compliance with all the federal environmental laws and regulations is provided in the appendices.

19.1 Public Involvement

Assessment

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 \(NPIP\)](#) are used to guide projects through the public process.

MaineDOT will have a court reporter at all public meetings 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). All public comments will be reviewed and assessed for response and consideration by the Team Leader and Senior Environmental Manager.

Public involvement effectiveness is measured by the MaineDOT Public Virtual Public Involvement Coordinator. The Senior Environmental Manager will also assess public involvement in the NEPA process. Any suggestions will be discussed with the Environmental Office Director. Results of [Virtual Public Involvement Effectiveness from 2021-2022](#).

Documentation

The Environmental Team Leader will work with the Project Manager and Cultural staff to ensure public process includes applicable environmental discussions and affords the public an opportunity to comment. The public notice/public meeting dates will be documented in the ProjEx database, and any comments will be included in the CPD e-file.

See Appendix A.

-NEPA, Section 106, and Section 4(f) public involvement tracked under Milestones, comments, Section 106, and Section 4(f) in ProjEx.
-Documents saved in CPD e-file and Bureau of Project Development files.

19.2 Right of Way

Assessment

The MaineDOT Property Office will determine the required rights on projects. Based on required rights, the Property Office will also determine the need for residential and business displacements. This assessment will be considered under NEPA, and no negotiations will occur prior to a NEPA approval and right of way is authorized. This process is conducted following the [MaineDOT Right of Way Manual](#).

Documentation

The Environmental Team Leader will work with the Project Manager and Property Office to ensure any needed property rights are assessed under NEPA and no negotiations occur until NEPA is approved and right of way is authorized. Any property rights will be documented in the design plans.

-Uniform Relocation Assistance tracked under Milestones, Status, and Authorizations, and comments in ProjEx.
-Documents saved in CPD e-file, Property Office files and Bureau of Project Development plans.

19.3 Air Quality

Assessment

The MaineDOT Environmental Office provides guidance that is necessary to ensure that transportation projects are in compliance with the Clean Air Act, Transportation Conformity, and NEPA relative to air quality issues.

The Clean Air Act established National Ambient Air Quality Standards (NAAQS) for six priority pollutants to protect public health and the environment. Areas that do not meet the NAAQS are designated as nonattainment areas and, thus, are subject to transportation conformity. Maintenance areas are geographic regions that were previously designated as nonattainment but are now consistently meeting the NAAQS. Maine has two maintenance areas. Transportation conformity requires nonattainment and maintenance areas to demonstrate that all future transportation projects will not hinder the area from reaching and maintaining its attainment goals. FHWA retains all Transportation Conformity approval.

Documentation

The Environmental Office Environmental Specialist will work with the Transportation Conformity team to ensure air quality assessments are completed as part of NEPA approval. FHWA will provide an Air Conformity Approval Letter for every STIP. Air compliance will be documented in MaineDOT's Work Plan and ProjEx for each project. See Appendix B.

-Clean Air Act tracked under Air Quality in ProjEx.
-Documents saved in Environmental Office Air Quality.

19.4 Noise

Assessment

MaineDOT Environmental Office evaluates project effects under the Noise Abatement Criteria (NAC) (23 CFR 772) levels and MaineDOT Noise Policy. If the evaluation indicates levels approach or exceed NAC or result in a substantial increase, then MaineDOT determines if abatement is reasonable and feasible before NEPA approval.

Noise reduction measures that are determined by MaineDOT to be practicable, reasonable and acceptable to the affected public must be incorporated into the project. These measures are eligible for federal funding in the same proportion as other aspects of the project.

Documentation

The Environmental Team Leader and Environmental Specialist will ensure noise assessments are completed as part of NEPA approval. Noise compliance will be documented in ProjEx for each project. Any documentation will be saved to the CPD e-file.

See Appendix C.

-Noise Control Act tracked under Noise in ProjEx.
-Documents saved in CPD e-file.

19.5 Fisheries and Wildlife

Assessment

Several laws (including the Endangered Species Act (ESA), Fish and Wildlife Coordination Act, Magnuson-Stevens Fishery Conservation and Management Act-EFH, Migratory Bird Treaty Act, and Marine Mammal Protection Act) require all proposed federally funded projects to undergo an assessment to determine the impacts projects have on fisheries and wildlife.

The Environmental Office conducts project database and field assessments to inventory the resources in the vicinity of the proposed project. The data is used to coordinate the project impacts with the resource agencies to solicit comments and approvals. Consultations and approvals under these federal laws and applicable regulations are obtained before NEPA approval. Except for the Marine Mammal Act (due to the time restrictions on the approval, this is obtained just before project advertising).

Documentation

The Environmental Biological staff will conduct baseline database and field assessments at project kickoff to inventory the resources near the proposed project. The coordination effort and assessments for any ESA, Marine Mammal, Essential Fish Habitat (EFH) species, and critical habitats will be documented in ProjEx. The Biological staff will assess the project's effects on these species and habitats. All approvals will be obtained prior to NEPA approval.

See Appendices D-H.

-Section 7 tracked under Federal ESA in ProjEx.
-Marine Mammal Protection Act tracked under Marine Mammals in ProjEx.
-Migratory Bird Treaty Act tracked under Migratory Birds in ProjEx.
-Essential Fish Habitat tracked under EFH in ProjEx.
-Anadromous Fish Conservation Act tracked as part of the coordination with Dept of Marine Resources. Comments tracked in ProjEx.
-Fish and Wildlife Coordination Act tracked as part of the coordination with USFWS and NMFS under US Army Corps of Engineers Permit in ProjEx.
-Bald and Golden Eagle Protection Act tracked under Bald and Golden Eagle in ProjEx.
-Documents saved in CPD e-file.

19.6 Hazardous Material Management

Assessment

MaineDOT conducts database and field assessments to address issues of liability and materials management which may affect transportation projects. The assessment addresses the liability of acquiring portions or the entire property under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Superfund Amendment and Reauthorization Act (SARA). If properties are shown to be contaminated, then those materials must be removed from the site during construction and must be properly identified and managed under the Resources Conservations and Recovery Act (RCRA). MaineDOT also assesses projects for known spill sites and addresses proper handling for those sites.

Documentation

The Environmental Office hazardous material technical staff will conduct baseline database and field assessments at project kickoff to identify liability and management issues in the vicinity of the proposed project. The coordination effort, assessments and all documentation and approvals (Special Provisions, etc.) will be tracked in ProjEx and saved in the CPD e-file. A special provision to handle any special waste will be drafted prior to NEPA approval.

See Appendix I.

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) tracked under Hazardous Material Review in ProjEx.
- Superfund Amendments and Reauthorization Act (SARA) tracked under Hazardous Material Review in ProjEx.
- Resource Conservation and Recovery Act (RCRA) tracked under Hazardous Material Review in ProjEx.
- Documents saved in the CPD e-file

19.7 Historic, Cultural, and Parklands

Assessment

The Environmental Office Cultural staff assesses impacts of projects with a federal nexus on properties, sites, buildings, structures, and places that are listed on, or may be eligible for inclusion on the National Register of Historic Places under Section 106 of the National Historic Preservation Act. The Environmental Office also evaluates property impacts on resources (publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or privately owned historic sites) protected under Section 4(f) of the United States Department of Transportation Act and assesses impacts of property acquisitions on properties with Land and Water Conservation Funds [Section 6(f)].

The Environmental Office Cultural staff conducts project database and field assessments to inventory the resources in the vicinity of the proposed project. The data is used to coordinate the project impacts with the resource agencies and consulting parties to solicit comments and approvals. Consultations and approvals under these federal laws and applicable regulations are obtained prior to NEPA approval.

Documentation

The Cultural staff will conduct baseline database and field assessments at project kickoff to inventory the resources in the vicinity of the proposed project. The coordination effort and assessments for any Section 106, Section 4(f) and Section 6(f) resources will be documented in ProjEx. The Cultural staff will assess the project effects on these resources. All documentation and approvals (Section 106 Determination of Effect, Section 106 concurrence, Section 4(f) documentation, etc.) will be tracked in ProjEx and saved in the CPD e-file. All approvals will be obtained before NEPA approval.

See Appendices J-L.

- Section 106 tracked under Section 106 in ProjEx.
- Section 4(f) tracked under Section 4(f) in ProjEx.
- Archeological Resources Protection Act tracked as part of the Section 106 process in ProjEx.
- Preservation of Historical and Archeological Data tracked as part of the Section 106 process in ProjEx.
- Native American Grave Protection and Repatriation Act (NAGPRA) tracked as part of the Section 106 process in ProjEx.
- Land and Water Conservation Fund (6(f)) tracked under Section 6(f) in ProjEx.
- American Indian Religious Freedom Act tracked as part of the Section 106 process in ProjEx.
- Documents saved in CPD e-file.
- Historic resource mapping saved in the CARMA database.

19.8 Social and Economic

Assessment

Following the Farmland Protection Policy Act, MaineDOT considers the adverse effects of all federally funded transportation projects on farmland preservation and considers alternative actions that could lessen those impacts.

Documentation

The Environmental Team Leader will ensure any effects are assessed under the Farmland Protection Policy Act. These assessments, documents, and approvals will be tracked in ProjEx and saved in the CPD e-file. All approvals will be obtained before NEPA approval.

See Appendices M.

-Farmland Protection Policy Act tracked under Prime and Unique Farmland in ProjEx.
-Documents saved in CPD e-file.

19.9 Water Resources and Wetlands

Assessment

Several laws and Executive Orders (including the Clean Water Act, Rivers and Harbor Act, Coastal Zone Management Act, and Floodplain Management) require that all proposed federally funded projects undergo assessments to determine the impacts on the natural environment resulting from projects.

Baseline data is assessed for all projects. Surveys are performed to inventory the resources in the vicinity of the proposed project. This data contains information on streams, wetlands, vernal pools, floodplains, and terrestrial ecosystems. The resource assessment and any other resource-specific reports are used to coordinate the project impacts with the resource agencies to solicit comments and approvals. The coordination effort and any subsequent environmental commitments are included in the NEPA document.

Transportation projects that impact rivers, streams and/or wetlands require a permit or combination of permits. The permits are required by state and federal laws and regulations, such as the Clean Water Act.

The Environmental Team Leaders review transportation projects during their development to identify the type(s) of permits required. The permit applications are then prepared and submitted to the appropriate agencies for approval. Permits are not required to be obtained prior to NEPA approval. Avoidance, Minimization and Mitigation are discussed with the project team.

A compensatory mitigation plan for unavoidable impacts to resources is sometimes a required component of a permit application. The Environmental Office is responsible for evaluating possible mitigation opportunities and ensuring that an acceptable mitigation plan accompanies the permit applications. The Environmental Office works with the agencies to deliver a mitigation plan that satisfies 404 and 401 requirements, which can involve in-lieu fee payments.

Documentation

The Environmental Office will conduct baseline database and field assessments at project kickoff to inventory the resources in the vicinity of the proposed project. The coordination effort and assessments for wetlands, vernal pools, streams, mitigation, Clean Water Act, Rivers and Harbor Act, Coastal Zone Management Act, and Floodplain Management will be documented in ProjEx. The Environmental Office will assess the project's effects on these species, habitats, and resources. All documentation and approvals (survey, permits, recommendations) will be tracked in ProjEx and saved in the CPD e-file.

See Appendices O-Q.

- Clean Water Act tracked under US Army Corps of Engineers Permit in ProjEx.
- Coastal Barrier Resources Act tracked under Coastal Barriers in ProjEx.
- Coastal Zone Management Act tracked under Maine DEP Permit in ProjEx.
- Safe Drinking Water Act tracked under NEPA Checklist and the Stormwater tab in ProjEx.
- Rivers and Harbors Act tracked under US Army Corps of Engineers Permit in ProjEx.
- Wild and Scenic Rivers Act tracked under NEPA checklist in ProjEx.
- E.O. 11990, Protection of Wetlands tracked under US Army Corps of Engineers Permit in ProjEx.
- E.O. 11988, Floodplain Management tracked under FEMA Floodplains in ProjEx.
- E.O. 13112, Invasive Species tracked under US Army Corps of Engineers Permit in ProjEx.
- Documents saved in CDP e-file.

20.0 NEPA Links

Laws, Regulations, Orders

NEPA Statute ([42 U.S. Code § 4331 - Congressional declaration of national environmental policy](#))

FHWA Regulations [23 CFR 771](#)

Efficient environmental reviews for project decision-making and One Federal Decision

[23 U.S.C. 139](#)

FHWA [Order 6640.1A](#)

Highway Acts

[SAFETEA-LU \(2005\)](#)

[MAP-21 \(2012\)](#)

[FAST Act \(2015\)](#)

[The Infrastructure Investment and Jobs Act \(IIJA\) \(2021\)](#)

Websites

[Council on Environmental Quality](#)

[FHWA Environmental Toolkit](#)

[MaineDOT NEPA webpage](#)

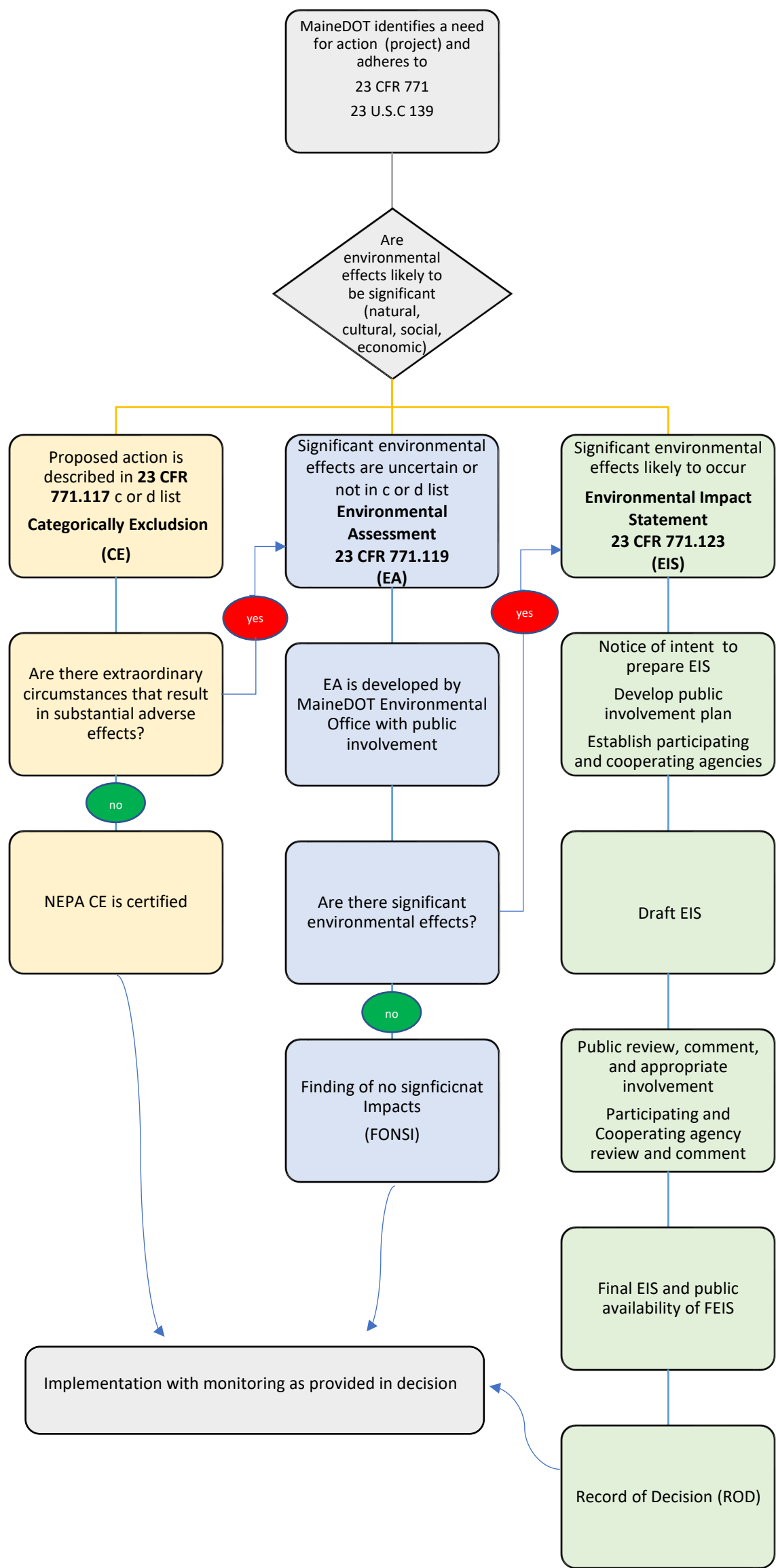
AASHTO

Environmental Practitioner's Handbooks ([Practitioner's Handbooks \(transportation.org\)](#))

Quality NEPA documents ([Improving the Quality of Environmental Documents \(transportation.org\)](#))

21.0 NEPA Flow Chart

The flow chart is on the following page.





MaineDOT

NEPA Public Involvement

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

MaineDOT adopted the policy of managing the NEPA project development and decision-making process as an "umbrella," under which all applicable environmental laws, executive orders, and regulations are considered and addressed before the final project decision and document approval. The conclusion of the NEPA process results in a decision that addresses multiple concerns and requirements. The FHWA NEPA process allows transportation officials to make project decisions that balance engineering and transportation needs with social, economic, and natural environmental factors. During the process, a wide range of partners including the public, businesses, interest groups, and agencies at all levels of government provide input into project and environmental decisions.

A major goal of NEPA is to develop a public involvement process that affords the opportunity for the public to participate in transportation decision-making. Obtaining meaningful input from stakeholders, the public, and all interested parties during the project development process is important in helping MaineDOT understand social, natural, cultural, and economic factors.

MaineDOT will:

- Pursue communication and collaboration with Federal, state, and local partners in the transportation and environmental communities.
- Maintain quality partnerships with tribal governments, businesses, transportation and environmental interest groups, resource and regulatory agencies, affected neighborhoods, and the public.
- Ensure those historically underserved by the transportation system, including minority and low-income populations, are included in outreach.
- Actively involve partners and all affected parties in an open, cooperative, and collaborative process, and providing them with project information and obtaining their input, beginning at the earliest planning stages and continuing through project development, construction, and operations.
- Ensure comprehensive and cooperative public involvement programs during statewide and metropolitan planning and project development activities.

MaineDOT has developed a Public Involvement Plan and a NEPA-specific Public Involvement Plan that provide guidance for conducting public involvement activities. Environmental Office Team Leaders, cultural



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NEPA Public Involvement

staff, and the Senior Environmental Manager will ensure the required public process is completed and documented in ProjEx and the CPD e-file. Public process guidance is located in the Public Involvement plans, NEPA Guidance document, EA and EIS Guidance document, and the FHWA Environmental Review Toolkit. The AASHTO also offers guidance on public involvement and responding to public comments.

1.0 Public Involvement Documents

[NEPA - Public Involvement | MaineDOT](#)

[FHWA Environmental Review Toolkit](#)



NEPA Air Quality Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP). MaineDOT's assumption includes all highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA responsibilities or NEPA Assignment includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

Section 176(c) of the Clean Air Act (42 U.S.C. 7401-7671q) prevents federal agencies from approving any project or from issuing any permit for actions not conforming to the provisions of an approved Federal Implementation Plan (FIP) or a State Implementation Plan (SIP).

The Clean Air Act established National Ambient Air Quality Standards ([NAAQS](#)) for six priority pollutants to protect public health and the environment. Areas that do not meet the NAAQS are designated as nonattainment areas and, as a result, are subject to transportation conformity. Maintenance areas are geographic regions that were previously designated as nonattainment but are now consistently meeting NAAQS. There are two maintenance areas in Maine. Transportation conformity requires nonattainment and maintenance areas to demonstrate that all future transportation projects will not hinder the area from reaching and maintaining its attainment goals.

On July 20, 2012, the entire State of Maine was designated as attainment for the 2008 8-hour ozone NAAQS. On February 16, 2018, the U.S. Court of Appeals for the District of Columbia vacated major portions of the 2015 final rule to implement the 2008 ozone NAAQS that established procedures for transitioning from the 1997 Ozone NAAQS to the 2008 Ozone NAAQS. As a result of this decision, the State of Maine is once again subject to transportation conformity requirements for the Portland and Midcoast 8-hour ozone maintenance areas established under the 1997 ozone NAAQS. Orphan maintenance areas were defined in the court decision as areas that were maintenance areas for the 1997 Ozone NAAQS at the time of its revocation and were designated attainment for the 2008 Ozone NAAQS in EPA's original designations. The Portland and Midcoast areas of Maine fall into the category of orphan areas.

Transportation conformity ensures that federally funded or approved transportation plans, programs, and projects conform to the air quality objectives established in the State Implementation Plan (SIP). Transportation conformity regulations are developed by EPA, with the U.S. Department of Transportation's (DOT's) input and concurrence. The U.S. DOT (through the FHWA and FTA) is responsible for implementing conformity regulation in nonattainment and maintenance areas. EPA has a consultative role in the analysis and findings that are required. In terms of transportation plans and transportation improvement programs (TIPs), FHWA/FTA's joint conformity determination is based on a quantitative demonstration that projected motor vehicle emissions from the planned transportation system do not exceed the motor vehicle emissions budget established in the SIP. The budget provides the upper limits for emissions in specific years that serve as milestones intended to bring the area into attainment of the air quality standards. If the transportation plan or TIP cannot meet the motor vehicle emissions budget, then changes may need to be made to the transportation plan or TIP, or the SIP. Otherwise, if conformity is not determined according to the timeframes established in the regulations, a conformity "lapse" will occur. When conformity lapses,



MaineDOT

NEPA Air Quality Guidance

only Federal projects that are exempt from transportation conformity (e.g., safety projects), TCMs in an approved SIP, or project phases that have already received funding commitments by FHWA or FTA may proceed.

Transportation Conformity analysis is part of MaineDOT's Statewide Transportation Improvement Program (STIP) for the Portland, Maine and Midcoast Maine Maintenance areas under the 1997 8-hour ozone NAAQS. The STIP is a four-year, federally required, transportation capital improvement program. The STIP contains non- MPO and all MPO projects (all MPOs TIP). The Environmental Protection Agency reviews the conformity analysis contained in the STIP and provides concurrence to the FHWA Maine Division Office. As part of the STIP process, FHWA certifies that the State's transportation program and MPO TIPs conform to the Federal Air Quality regulations and goals of the State Implementation Plan (SIP).

Following [FHWA Interim Guidance on Mobile Source Toxic Analysis \(MSAT\) in NEPA Documents](#) dated January 18, 2023, 99% of MaineDOT projects fall in the No Analysis for projects with no potential for meaningful MSAT effects because they qualify as CEs under 23 CFE 771.117.

The MaineDOT Environmental Director will assess the need for qualitative and quantitative analysis for projects not meeting the No Analysis category.

MaineDOT has executed an agreement with the Maine Department of Environmental Protection to assist with the Motor Vehicle Emissions Simulator (MOVES) modeling application used to support National Emissions Inventory Modeling Platforms for transportation projects (when necessary). This will be determined by the Environmental Office Director.

The Environmental Office Environmental Specialist will work with the Transportation Conformity team to ensure air quality assessments are completed as part of NEPA approval. FHWA will provide a transportation conformity determination letter as required for every Work Plan. Air Quality (transportation conformity) compliance will be documented in MAINEDOT's Work Plan and ProjEx for each project.

1.0 Air Quality Project Question and Documentation

The following question is required to be answered by the Environmental Specialist-NEPA:

Is the project contained in an approved STIP and in the MPOs metropolitan plan and TIP that met the requirements in 40 CFR 93.114 and .115?

[Current MaineDOT Approved STIP](#)

Projects exempt from the requirement to determine conformity (40 CFR 93.126, .127 and .128) will not be called out in the conformity analysis section but will be listed in the conforming metropolitan plan and TIP and the STIP under the Project Specific Information section.

Non-exempt projects must be included in the STIP's Transportation Conformity Determination Section (this section includes information related MPOs metropolitan plan and TIP and its related transportation conformity status) before NEPA can be certified.



NEPA Air Quality Guidance

Non-exempt projects will be listed in the Conformity Analysis Section of the MaineDOT STIP

An approved STIP has similar language to the following:

All the conformity requirements were satisfied in the Portland and Midcoast maintenance areas. A regional emissions analysis is not required in the orphan areas so the remaining criteria were evaluated and satisfied. Therefore, 2021-2024 PACTS and KACTS TIPs, conform to the current SIP and satisfy the conformity requirements of the Clean Air Act Amendments of 1990 and are incorporated in the 2021-2024 STIP.

If the Project is not in the STIP or has not met the requirements in 40 CFR 93.114 and 115, go to 2. If the Project is in the STIP, Air Quality review is complete. All actions will be processed and documented in MaineDOT's ProjEx database and on the MaineDOT web site.

2.0 Project Not in STIP

If the project is not in the STIP or has not met the transportation conformity requirements in 40 CFR 93.114 and 115, the Environmental Specialist will work with the Program Development Manager in the Office of Results and Information to ensure the project meets all the transportation conformity requirements, amend the STIP and get FHWA approval. Once the project is in the STIP the Environmental Specialist can finalize the Air Quality review.

3.0 Checklist

The following pages within MaineDOT's ProjEx database are MaineDOT's checklist and part of the project record.

1. If the project receives federal funds
 - a. Check to see if the project is contained in an approved STIP with the date (which also contains the MPOs TIP). If the Project receives federal funds but does not have a STIP approval date, see step 2 below.
 - b. In ProjEx, on the **permits** page, under air quality **notes**, write STIP with the approval date (Ex: STIP 5/2/2023) and sign off on the **approved date**.
 - c. On the **assessment** page, under **Historical, Social, Air & Noise** tab, navigate to the assessment subcategory **Air**. Under **is the project is an approved STIP**, click **yes**.
 - d. On the **assessment details** page, under **Historical, Social, Air & Noise** tab, navigate to the subcategory **Air**. Under **transportation conformity approved STIP date**, insert the STIP date.
 - e. Air quality assessment/analysis is complete, and no documents will be filed in the CPD E-file folder Air-Noise.
2. If the project receives federal funds but does not have a STIP date
 - a. In ProjEx, on the **permits** page, under air quality **notes**, write needs STIP approval date and leave the approval date empty. Leave all other pages (assessment and assessment details) blank.
 - b. Email the Program Development Manager in the Office of Results and Information to ensure the project meets all the conformity requirements, amend the STIP and FHWA approval.
 - c. Once the project is in the STIP with an approval date, follow the steps listed above to



NEPA Air Quality Guidance

complete air quality assessment/analysis.

3. If the project does not receive federal funds

- In ProjEx, on the **permits** page, under air quality **notes**, write n/a state-funded and sign off on the approved date.
- On the **assessment** page, under **Historical, Social, Air & Noise** tab, navigate to the assessment subcategory **Air**. Under **is the project in an approved STIP**, click **no**.
- Air quality assessment/analysis is complete, and no documents will be filed in the CPD E-file folder Air-Noise.

Permits Page - used to indicate final approval of Transportation Conformity.

PM Permits

Navigation

Project Information | GIS | Environmental | Finance | Schedule | Planning | Roster | Comments | Links | Setup

PSN or WIN | Go To | Save | Cancel | Add Single Permit | Load All Permits | Export to Excel

Project: 81513/027320.00 - Presque Isle, Routes 10,167, 1A (F)

KO Date: 08/01/2023 A | PDR Date: | PIC Date: | PS&E Date: 01/10/2024 F | CNBEG Date: 05/13/2024 F

Permit Description	Permit Category	Notes	Monitor	Target Due Date	Applied Date	Approved Date	Expiration Date
ES107 - NEPA	NEPA		BROWN, JOSHUA	2/17/2024		11/30/2023	
ES119 - Section 106	Section 106	PA - A	SENK, JULIE	12/29/2023		11/22/2023	
ES5 - Section 4(f)	Section 4(f)	no ROW/no use	SENK, JULIE	1/23/2024		11/22/2023	
ES10 - 6F LAWCON	Section 6(f)	no ROW/no takes	SENK, JULIE	12/29/2023		11/22/2023	
ES222 - Air Quality	Air	STIP 5/2/2023	BROWN, JOSHUA	11/9/2023		10/19/2023	
ES772 - Noise	Noise		BROWN, JOSHUA	11/9/2023		10/19/2023	
ES86 - Federal Endangered Species	Federal Endangered Species	NLEB- no effect	SWEITZER, JUSTIN	12/29/2023		10/16/2023	
ES199 - Essential Fish Habitat	Essential Fish Habitat	ATS - no effect based on scope	SWEITZER, JUSTIN	11/29/2023		10/16/2023	
ES152 - Field Resources	Field Resources	N/A based on scope	SWEITZER, JUSTIN	11/9/2023		10/16/2023	
ES80 - State Endangered Species	State Endangered Species	None mapped	SWEITZER, JUSTIN	12/29/2023		10/16/2023	
ES173 - H/H Design and Review	Hydrology	no IWW, based on scope	HEBSON, CHARLES	11/9/2023		11/21/2023	
ES1998 - Fish Passage Hydrology Design	Fish Passage Hydrology	NO IWW, based on scope	HEBSON, CHARLES	12/29/2023		11/21/2023	
ES205 - Chapter 500 Stormwater MOA	Water Quality	Academy St. in UIS-N/A due to scope	DIONNE, CINDY	12/29/2023		10/13/2023	
ES206 - MEPDES	Water Quality		DIONNE, CINDY	12/29/2023		10/13/2023	
ES1188 - FEMA Floodplains	FEMA Floodplains	n/a based on scope - no lww		12/29/2023		10/19/2023	
ES194 - Hazardous Materials	Hazardous Materials	Review not warranted based on Scope	TIRONE, BRADLEY	12/29/2023		10/13/2023	
ES179 - Dredge	Dredge Spoils	No dredge per PIS / Scope	TIRONE, BRADLEY	12/29/2023		10/13/2023	
ES208 - Project Information Sheet	Project Info Sheet		ODONNELL, CARA	5/15/2023	10/13/2023	10/13/2023	
ES404 - ACOE Permit	ACOE	NA	BROWN, JOSHUA	12/11/2023		11/21/2023	
ES41 - DEP Permit	DEP	NA	BROWN, JOSHUA	12/11/2023		11/21/2023	

Assessments Page – indicates if the project is in an approved STIP and therefore Transportation Conformity is approved.

PM Assessments

Navigation

Project Information | GIS | Environmental | Finance | Schedule | Planning | Roster | Comments | Links | Setup

PSN or WIN | Go To | Save | Cancel | Add Group | Export to Excel

Project: 81513/027320.00 - Presque Isle, Routes 10,167, 1A

KO Date: 08/01/2023 A | PDR Date: | PIC Date: | PS&E Date: 01/10/2024 F | CNBEG Date: 05/13/2024 F

Environmental Team Leader: BROWN, JOSHUA


Biological | Historic, Social, Air & Noise | Water Quality | Hydrology | Hazardous Materials & Dredge Spoils | NEPA

Assessment Category	Assessment Sub Category	Assessment Group	Assessment
	Air	Is the Project in an Approved STIP?	Yes



NEPA Air Quality Guidance

Assessment Details Page – indicates the date of the Transportation Conformity (and STIP/MPO TIP) approval.



PM Assessment Details

Project Information ▼GIS ▼Environmental ▼Finance ▼Schedule ▼Planning ▼Roster ▼CommentsLinksSetup ▼

PSN or WINGo ToExport to Excel

Project: 70943/022250.00 - MACWAHOC PLT, Kingman Road Bridge #5021

KO Date: 07/29/2017 APDR Date: 10/24/2022 APIC Date: 12/07/2022 APS&E Date: 01/03/2024 F

Environmental Team Leader: BRADY, ANDREA

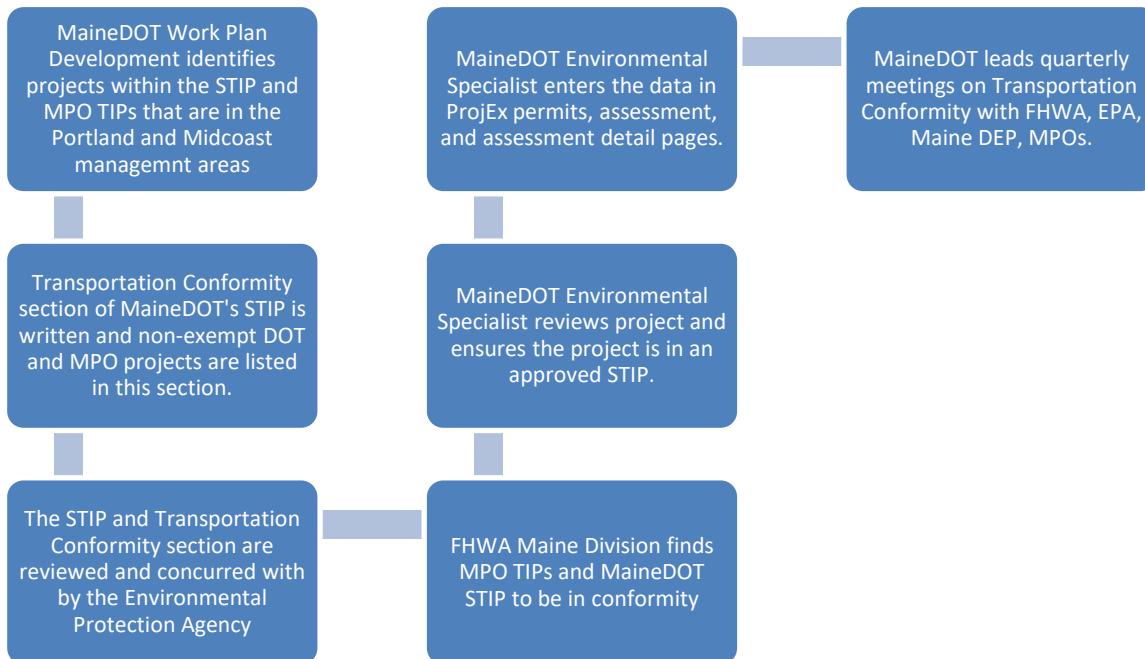
Biological	Historic, Social, Air & Noise	Water Quality	Hydrology	Hazardous Materials & Dredge Spoils	NEPA
Sub Category	Assessment Group	Item	Current Value		
LAWCON	LAWCON Required	6(f) Properties	No		
		Property Acquisition (takes)	No		
		Contact DOC/Replace Property			
Social/Economic	Does Scope have Potential for Adverse Effects on EJ (9/23)	Environmental Justice Community > 15% (9/23)	No		
		Are there impacts to EJ communities? (relocation, access)	No		
		Are there disproportionately high and adverse impacts to EJ?	No		
		Is an Environmental Justice (EJ) report required?	No		
		EJ completed			
		EJ completed	11/14/2023		
Air	Is the Project in an Approved STIP?	Transportation Conformity Approved-STIP Date	5/2/2023		

4.0 Flow Chart

On the following page.



NEPA Air Quality Guidance



5.0 Links and Agreements

Clean Air Act ([42 U.S.C. 7401-7671g](#))

Exempt Projects ([40 CFR § 93.126 Table 2](#) and [40 CFR § 93.127 Table 3](#))

[Transportation Conformity Regulations](#)

[Maine DEP Chapter 139 Transportation Conformity](#)

Conformity Analysis [8-Hour Ozone Maintenance Areas](#)

[FHWA Air Quality Planning for Transportation Officials](#)

AASHTO Practitioner's Handbook: [Addressing Air Quality Issues in the NEPA Process for Highway Projects Practitioner's Handbook](#)

Midcoast or Portland 8-Hour Ozone Maintenance Areas? (see EPA interactive map)

6.0 - Air Quality Conformity Analysis within the Statewide Transportation Improvement Program (STIP) Example

Please see the current [MaineDOT approved STIP](#), for the entire STIP and FHWA approval letter.



MaineDOT

NEPA Noise Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

Procedures for abatement of highway traffic noise and construction noise under 23 CFR 772 and MaineDOT's Highway Traffic Noise Policy apply to MaineDOT Type I. MaineDOT does not have a Type II Program. Type I highway noise evaluations are conducted for new highway or capacity-adding projects (i.e. additional travel lanes) to existing highways. Type II noise evaluations may be conducted for noise abatement measures along existing highways that are not included in a highway improvement project

A Type I project includes the following types of proposed highway projects as defined in 23 CFR 772.5:

- A. The construction of a highway on a new location; or,
- B. The physical alteration of an existing highway where there is either:
 - 1. Substantial Horizontal Alteration. A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition; or,
 - 2. Substantial Vertical Alteration. A project that removes shielding therefore exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor; or,
 - 3. The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as an HOV lane, High-Occupancy Toll (HOT) lane, bus lane, truck climbing lane; or,
 - 4. The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane; or,
 - 5. The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange; or
 - 6. Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or,
 - 7. The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot, or toll plaza.

MaineDOT Environmental Office is responsible for assessing and ensuring compliance with 23 CFR 772 and MaineDOT's Noise Policy under NEPA Assignment (23 U.S.C. 326).



NEPA Noise Guidance

1.0 Noise Initial Project Question and Documentation

The following question is required to be answered by the Environmental Specialist:

Is this a Type I project?

A Yes response to Question 1 indicates the project will require a Noise Analysis. The analysis will be conducted by a qualified consultant. (go to 2.0). A No response concludes the Noise assessment, and no abatement measures will be required. All actions will be processed and documented in MaineDOT's ProjEx database.

2.0 Noise Analysis

The Environmental Specialist in MaineDOT's Environmental Office will oversee the highway traffic noise analysis for Type I projects. The purpose of a highway traffic noise analysis is to identify impacted land uses based on the Noise Abatement Criteria (NAC) and determine the feasibility and reasonableness of abatement measures. MaineDOT Environmental Office maintains a noise monitoring procedure and TNM input guide (saved in <R:\Region0\Environment\Public\@ENV - Common\ENV - Agreements, general permits\Air Noise\Noise> for internal use only). MaineDOT will utilize [FHWA guidance](#)

For Type I Projects, highway traffic noise analysis will be performed for developed lands and undeveloped lands for which development is programmed. Development will be deemed to be permitted if a land use, such as, but not limited to residences, schools, churches, hospitals, or libraries, has received site approval or a building permit from the local agency with jurisdiction prior to the approval of the highway project's environmental document, i.e., the date of approval of the NEPA document.

Type I analyses are performed during the NEPA stage of a project. The costs for Type I analyses, including abatement, are funded as part of the highway project.

The basic steps involved in a Highway Traffic Noise Analysis include 1) Determination of Existing Noise Levels; 2) Prediction of Future Noise Levels 3) Determination of Impacts; 4) Evaluation of Abatement Measures; 5) Incorporation of Feasible and Reasonable Criteria; 6) Selection of Abatement Measures; and 7) Completion of Follow-up Measures.

A typical noise analysis takes approximately 4 weeks (160 hours) to complete, including fieldwork, modeling, and technical documentation. The number of impacted properties and alignment alternatives considered during NEPA may increase the timeline.

Existing noise levels will be determined throughout the highway traffic noise study area through a combination of Leq¹ noise measurements and computer modeling. The study area is defined as 500'

¹ Leq. The equivalent steady state sound level which in a stated period of time contains the same acoustic energy as the time varying sound level during the same time period. Leq (h). The hourly value of Leq in decibels (dBA) is used for highway traffic noise analysis.

NEPA Noise Guidance

from the proposed edge of pavement for Type I analyses. All computer modeling will be done using the most current readily available version of the FHWA Traffic Noise Model (FHWA TNM).

For Type I projects only, future highway traffic noise levels will be predicted for the design year, usually twenty years in the future, for each alternative under detailed study, including the “no-build” alternative, within the study area.

Highway traffic noise impacts will be determined for each Type I project. Type I project impacts occur when the predicted future highway traffic noise levels approach within 1 dBA or exceed the NAC or when the predicted future highway traffic noise levels exceed the existing levels by at least 15 dBA.

In determining traffic noise impacts, primary consideration is to be given to exterior areas where frequent human use occurs such as patios, porches, swimming pools, playgrounds, etc. If no exterior areas are present, the interior NAC will be used as the basis for determining noise impacts.

The following question is required to be answered by MaineDOT Environmental Specialist:

2. Does the noise analysis show that the project’s noise levels approach or exceed noise abatement criteria levels or cause a substantial increase over existing levels?

A Yes response to Question 2 indicates the project will require evaluation of abatement measures (go to 3.0). A No response concludes the Noise assessment and no abatement measures will be required. All actions will be processed and documented in MaineDOT’s ProjEx database and MaineDOT’s Environmental CPD e-file, including the noise analysis report.

3.0 Analysis of Noise Abatement

If a highway traffic noise impact is identified, the MaineDOT Environmental Office will assess noise abatement and evaluate for feasibility and reasonableness per 23 CFR 772.13. MaineDOT Environment Office will determine and analyze alternative noise abatement measures to abate identified impacts by giving weight to the benefits and costs of abatement and the overall social, economic, and environmental effects by using feasible and reasonable noise abatement measures for decision-making. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located. the following abatement measures may be considered for incorporation into the project to reduce traffic noise impacts [23 CFR 772.16 (c)]:

(1) Construction of noise barriers, including the acquisition of property rights, either within or outside the highway right-of-way. Landscaping is not a viable noise abatement measure.

(2) Traffic management measures including, but not limited to, traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive lane designations.

(3) Alteration of horizontal and vertical alignments.

NEPA Noise Guidance

(4) Acquisition of real property or interests therein (predominantly unimproved property) to serve as a buffer zone to preempt development which would be adversely impacted by traffic noise. This measure may be included in Type I projects only.

(5) Noise insulation of Activity Category D land use facilities listed in Table 1. Post-installation maintenance and operational costs for noise insulation are not eligible for Federal-aid funding.

- a. All Type I noise abatement measures will be evaluated based upon Feasible and Reasonable criteria in MaineDOT's Highway Traffic Noise Policy.

The following question is required to be answered by MaineDOT Environmental Specialist:

1. Are abatement measures feasible and reasonable? Utilize 23 CFR 772.13(d) and the MaineDOT Noise Policy.

A Yes response to Question 3 indicates the project will require the selection and completion of abatement measures (go to 4.0). A No response concludes the Noise assessment and no abatement measures will be required. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file [23 CFR 772.13(f-g)]

4.0 Selection and Completion of Abatement Measures

The last step of the analysis will include a selection of the noise abatement measures to be used if the abatement has met all the necessary criteria. Abatement measures will be documented in the CPD e-file and on plans. Measures will be shared with the municipality and the public.

After the abatement is constructed follow-up noise measurements will be taken to determine the effectiveness of the abatement and to verify the noise model analysis. MaineDOT will provide the necessary maintenance to ensure the effectiveness of any abatement measure. However, MaineDOT will not maintain noise insulation, or any other noise abatement measures not constructed by MaineDOT.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

All Noise commitments are tracked in ProjEx.

5.0 Flow Checklist

The Environmental Specialist will complete the Noise assessment and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.

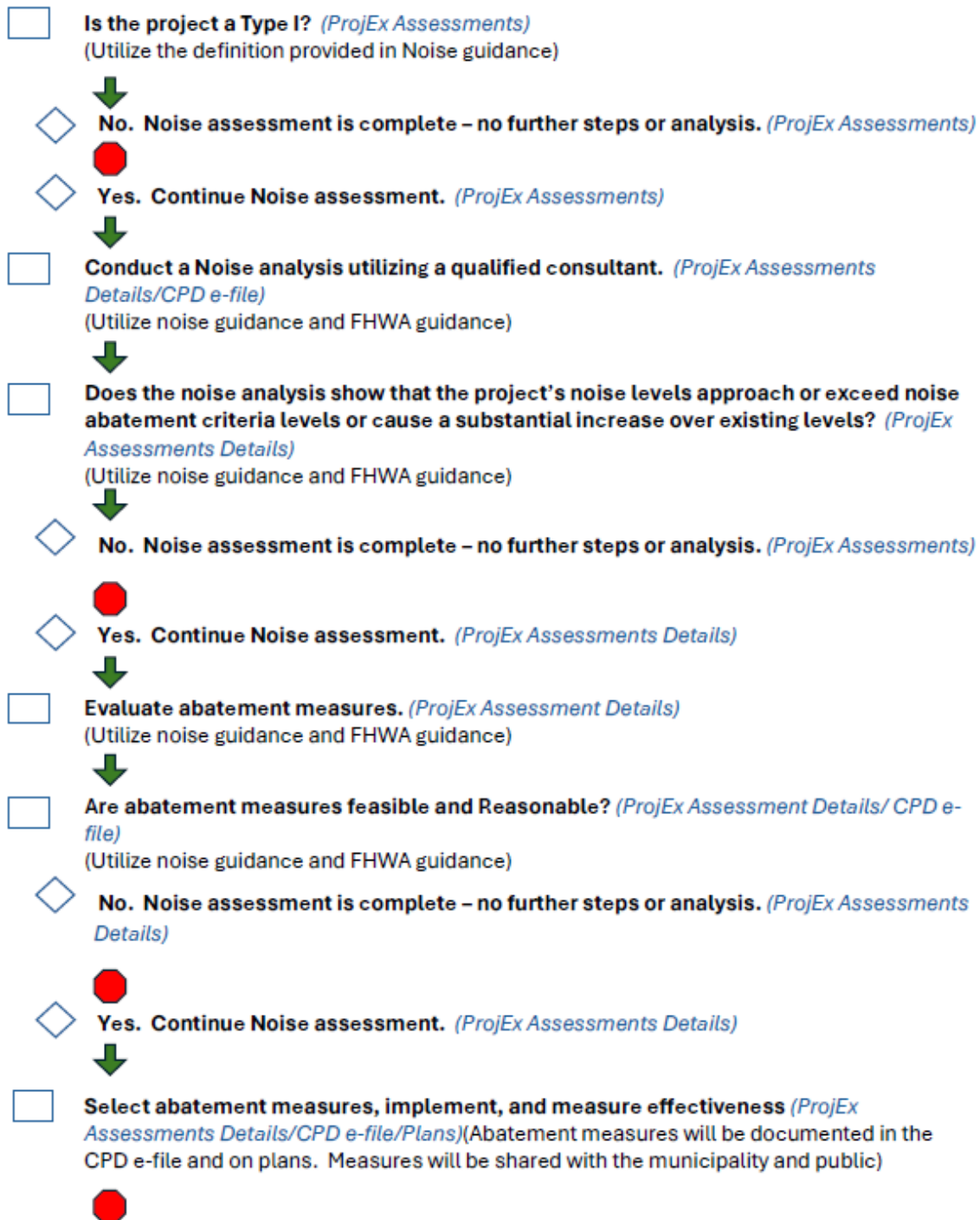


MaineDOT

NEPA Noise Guidance

Noise Flow Checklist for Categorical Exclusions

The Environmental Specialist will complete the Noise assessment and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.





MaineDOT

NEPA Noise Guidance

6.0 Links

Procedures for Abatement of Highway Traffic and Construction Noise

[23 CFR 772](#)

[FHWA Noise Guidance](#)

MaineDOT Noise Policy

[MaineDOT Noise Policy](#)

MaineDOT Monitoring Procedures (internal)

[R:\Region0\Environment\Public\@ENV - Common\ENV - Agreements, general permits\Air Noise\Noise\Noise Procedures](#)

MaineDOT TNM Inputs (internal)

[R:\Region0\Environment\Public\@ENV - Common\ENV - Agreements, general permits\Air Noise\Noise\Noise Procedures](#)

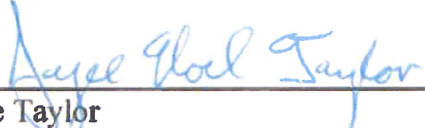
Highway Traffic Noise Policy

State of Maine Department of Transportation

Effective November 23, 2021


This policy cancels and replaces the previous version of February 1, 2015

Recommend Approval:

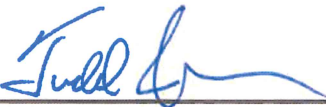
 11-23-2021

Joyce Taylor Date
Chief Engineer, MaineDOT

Approved:

 12-13-21

Bruce A. Van Note Date
Commissioner, MaineDOT

 12/21/21

Todd Jorgensen Date
Division Administrator, FHWA

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EXECUTIVE SUMMARY

This document serves as the Maine Department of Transportation (MaineDOT) policy on the evaluation and abatement of highway traffic noise impacts. Pursuant to Federal Highway Administration (FHWA) regulation, MaineDOT's highway traffic noise policy was originally adopted in 1998 and revised in 2001, 2008, 2011, and 2014. This version incorporates minor revisions to the 2015 policy, including an updated cost estimate and reasonable cost threshold for abatement.

Noise abatement measures are evaluated in two separate categories. Type I highway noise evaluations are conducted for new highway or capacity-adding projects (i.e., additional travel lanes) on existing highways. Type II noise evaluations may be conducted for noise abatement measures along existing highways that are not being undertaken as a part of a highway improvement project. MaineDOT does not have a Type II Program¹.

The purpose of a highway traffic noise analysis is to identify impacted land uses (homes, schools, business, etc) and determine the feasibility and reasonableness of abatement measures. The terms "feasibility" and "reasonableness" are terms commonly used in highway traffic noise analysis to determine, among other things, the effectiveness (in terms of noise reduction) and the acceptable cost for any noise abatement measure. All noise abatement measures are evaluated based on the feasibility and reasonableness criteria identified in this policy.

Appropriate land use strategies along Maine's highways can be an effective means of avoiding highway traffic noise impacts. MaineDOT encourages municipalities to establish appropriate land use controls over undeveloped lands adjacent to highways to prevent the development of incompatible activities along existing highways.

Appendix A provides useful information regarding the basics of sound, the fundamentals of highway traffic noise, and strategies for highway traffic noise abatement and control. Appendix B provides a glossary of specific terms used throughout the policy.

¹ For a complete definition of Type I and II noise projects, please see Sections III. and IV.

I. INTRODUCTION

MaineDOT will use the following guidelines to determine the need, feasibility, and reasonableness of noise-abatement or -reduction measures along proposed highway construction projects. This policy is based on established principles, practices, and procedures used by federal and state transportation agencies to assess highway-related noise levels.

This policy fully incorporates by reference the requirements of Title 23, Part 772 of the U.S. Code of Federal Regulations (23 CFR 772), the FHWA Highway Traffic Noise: Analysis and Abatement Guidance, June 2010 (Revised January 2011), or the most current version, and the noise-related requirements of the National Environmental Policy Act (NEPA) of 1969. MaineDOT and FHWA will jointly review this policy every three years and adopt appropriate revisions when necessary. Any changes to this policy that are required as a result of federal or state statutory, regulatory, or policy changes will be incorporated into this policy and submitted to FHWA for approval within 60 days.

II. HIGHWAY TRAFFIC NOISE ANALYSIS

MaineDOT's Environmental Office will perform or oversee the highway traffic noise analysis for Type I projects². Requirements for the analysis and abatement of highway construction noise are discussed in Section X. ***The purpose of a highway traffic noise analysis for either type of project is to identify impacted land uses based on the Noise Abatement Criteria (NAC), and to determine the feasibility and reasonableness of abatement measures.***

Highway traffic noise analysis will be performed for developed lands, and for undeveloped lands that are permitted for development, prior to the approval of the highway project's environmental document, i.e., the date of approval of the Categorical Exclusion (CE), Finding of No Significant Impact (FONSI) or Record of Decision (ROD). Subsequent to this date, the MaineDOT is not responsible for providing noise abatement for new development.

A highway traffic noise analysis will include the following steps.

A. Identification of Noise Sensitive Areas and Receptors

The first step in the highway traffic noise analysis is to identify areas with potential for noise impacts, the receptors of noise in each area, and the applicable noise abatement criteria (NAC)³ for each receptor identified in the study area.

When determining the number of receptors in the study area, the following rules apply:

NAC Activity Category B: Single-family residential units are considered one receptor. Structures that contain multiple residential units (apartments, condominiums, and duplexes) are considered to have one receptor per residential unit.

² For a complete definition of Type I, II and III noise projects, please see Sections III, IV and V.

³ Refer to Appendix B, Table B-1 for more information on the NAC Activity Categories.

NAC Activity Categories C, D, and E: A single structure is considered a single receptor. For outdoor noise-sensitive land uses (parks, campgrounds, cemeteries, trails, etc.) the number of receptors will be determined by dividing the frontage of the land use by the average lot frontage in the study area.

B. Determination of Existing Noise Levels.

Existing noise levels will be determined through a combination of noise measurements and traffic noise modeling. All traffic noise modeling will be done using the most current readily available version of the FHWA Traffic Noise Model (FHWA TNM). Noise measurements and noise modeling will be conducted using equivalent continuous noise levels (leq) during the hour that is predicted to yield the greatest traffic noise levels.

C. Prediction of Future Noise Levels

Future highway traffic noise levels will be predicted for the design year, usually 20 years in the future, for each alternative under detailed study, including the "no-build" alternative, within the study area.

D. Determination of Impacts

All highway traffic noise impacts, associated with the project, will be identified during the highway traffic noise analysis. Type I project impacts occur when the predicted future highway traffic noise levels are within 1 dBA of, or exceed, the NAC, or when the predicted future highway traffic noise levels exceed the existing levels by at least 15 dBA (substantial increase). (See Appendix B, Table B-1 for the NAC)

In determining traffic noise impacts, primary consideration is to be given to exterior areas where frequent human use occurs, such as patios, porches, swimming pools, playgrounds, etc. If no exterior areas are present, the interior NAC will be used as the basis for determining noise impacts where applicable.

E. Evaluation of Abatement Measures

If a highway traffic noise impact is identified, the following abatement measures may be evaluated:

1. Traffic management measures such as traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive lane designations.
2. Alteration of the highway project's horizontal and/or vertical alignments.
3. Construction of noise barriers (including landscaping for aesthetic purposes and the acquisition of property rights) within or outside the highway ROW.
4. Acquisition of real property or interests therein (predominantly unimproved property) to serve as a buffer zone to preempt development which would be adversely impacted by traffic noise. This measure may be included in Type I projects only.
5. Noise insulation of Activity Category D facilities only.

F. Incorporation of Feasible and Reasonable Criteria

All Type I noise abatement measures will be evaluated based upon Feasible and Reasonable criteria in Sections VI and VII.

G. Selection of Abatement Measures

The last step of the analysis will include selection of the noise abatement measures to be used, if abatement has met all the necessary criteria.

H. Documentation

The noise analyses completed under this policy, including project description, existing and future noise levels, impacts, evaluations, and abatement considered, will be documented in the project files. A Statement of Likelihood will be included in the environmental document, since feasibility and reasonableness determinations may change due to changes in project design after approval of the environmental document. The statement of likelihood will include the preliminary location and physical description of noise abatement measures determined feasible and reasonable in the preliminary analysis. The statement of likelihood shall also indicate that final recommendations on the construction of an abatement measure(s) is determined during the completion of the project's final design and the public involvement processes.

I. Completion of Follow-up Measures

After abatement is complete, follow-up noise measurements will be taken to determine the effectiveness of the abatement and to verify the noise model analysis. MaineDOT will provide the necessary maintenance to ensure the effectiveness of any abatement measure. However, MaineDOT will not pay for maintenance or operational costs of the noise insulation of Activity Category D facilities or any other noise abatement measures not constructed by MaineDOT.

III. TYPE I PROJECTS

A Type I project includes the following types of proposed highway projects as defined in 23 CFR 772.5:

- A.** The construction of a highway on new location; or,
- B.** The physical alteration of an existing highway where there is either:
 - 1. Substantial Horizontal Alteration. A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition; or,
 - 2. Substantial Vertical Alteration. A project that removes shielding therefore exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor; or,
 - 3. The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a HOV lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane; or,

4. The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane; or,
5. The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange; or,
6. Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or,
7. The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza.

If a project is determined to be a Type I project under this definition, then the entire project area as defined in the environmental document is a Type I project. Such federally funded projects require the completion of an approved Environmental Impact Statement, Environmental Assessment, or Categorical Exclusion to satisfy the requirements of the National Environmental Policy Act. As part of this analysis, the need for noise abatement is evaluated for each individual highway project. Noise abatement measures for Type I projects will be funded as part of the proposed highway project.

An area or site must satisfy the following criteria to be eligible for noise abatement for a Type I project:

- A. Noise abatement must be feasible and reasonable as defined in Sections VI and VII.
- B. The project must be eligible for federal aid construction funding.

IV. TYPE II PROJECTS

Type II or “retrofit” projects are noise abatement projects along existing highways. The implementation of a Type II program is not required by federal or state statute or FHWA regulation. MaineDOT does not have a Type II Program.

V. TYPE III PROJECTS

Type III projects are Federal or Federal-aid highway projects that do not meet the classifications of a Type I or Type II project. Type III projects do not require a noise analysis.

VI. FEASIBILITY CRITERIA

Feasibility is defined as the engineering and acoustical ability of abatement measures to provide effective noise reduction. When noise abatement measures are evaluated, feasibility criteria will include the following:

A. Noise Reduction

Can a 5 dBA or greater noise reduction be achieved? Abatement measures are not feasible if a 5 dBA noise reduction cannot be achieved for a majority (greater than 50%) of impacted receptors.

B. Safety

Will the barrier, or other measure, create a safety issue? If so, the abatement measures are not feasible. Safety factors that should be considered in the design of the barrier include

maintaining a clear recovery zone, redirection of crash vehicles, adequate sight distance, and emergency vehicle access. MaineDOT will use the most recent version of the American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Geometric Design of Highways and Streets* when making safety determinations.

C. Barrier Height

The maximum height of a noise barrier allowed under this policy is 20 feet based upon safety and engineering considerations.

D. Other Considerations

Other issues including, but not limited to, maintenance, drainage, snow removal, ROW acquisition, access to adjacent properties, and environmental impacts will also be considered when determining the feasibility of abatement. For any other considerations that may arise, MaineDOT will make a feasibility determination based on best engineering practices. For example, it is possible that a noise barrier, or other abatement measure, may satisfy Parts A, B and C of this Section, but, not be feasible if substantial wetland impacts and mitigation, other environmental impacts, or extensive fill and drainage are necessary to complete the project.

VII. REASONABLENESS CRITERIA

Reasonableness implies that common sense and good judgment have been applied in arriving at a decision. The overall noise abatement benefits must outweigh the overall adverse social, economic, and environmental effects and the costs of the abatement measures. When noise abatement measures are considered, reasonableness criteria will include the following:

A. Maximum Cost of Abatement

The maximum cost of abatement is \$36,000 per benefited receptor. All receptors within the study area, as defined in Section II A, attaining at least a 5 dBA reduction will be counted as "benefited" and included in the cost calculation.

For the purposes of developing the total barrier cost, a cost of \$39.00 per square foot for Preliminary Engineering (PE), ROW, and construction will be used, realizing that actual costs will vary. However, additional project costs, not included in the \$39.00 per square foot figure, may occur as a result of unique physical or natural conditions when modeling and designing a noise abatement barrier or other measure. Section VI. D of this policy addresses "other considerations" that will be evaluated when determining the feasibility of proposed noise abatement measures.

Abatement costs were estimated based on recent construction costs and historical data provided by FHWA. Both the unit cost and cost-per-benefited-receptor will be updated when the policy is reviewed, as defined in Section I, to reflect actual barrier costs.

B. Noise Reduction Design Goal

During the traffic noise modeling and design stage, MaineDOT will attempt to reduce predicted noise levels at impacted receptors by 10 dBA. Various factors, including topography or the limitation of barrier height (see Section VI C) may reduce the effectiveness of noise abatement for certain receptors. At a minimum, noise abatement measures will be designed to reduce noise levels at a majority (greater than 50%) of benefited receptors by 7 dBA. Abatement

measures are not Reasonable if the 7 dBA design goal cannot be achieved for a majority of benefitted receptors.

C. Third Party Funding

Third-party funding is not allowed on a project if the noise abatement measure would require the additional funding from the third party to be considered feasible and/or reasonable. Third-party funding is acceptable on a project to make functional enhancements, such as absorptive treatment and access doors or aesthetic enhancements, to a noise abatement measure already determined feasible and reasonable.

State Funded Projects

If a project contains no federal funding or FHWA approvals, a municipality may appeal to the Department for a 50/50 cost share. The Department will consider paying 50% of all costs associated with a noise barrier if the municipality pays for 50% of these costs. This type of State-funded noise abatement measure may not be included in a Federal Aid project scope/contract.

D. Residents' Desires

A noise barrier will not be considered reasonable if fewer than 75% of the benefitted receptors approve of the construction of a noise barrier. In the case of rental or leased properties, the views of both the owner and the residents will be solicited to determine reasonableness. MaineDOT will establish the approval rate of a noise barrier for benefitted receptors by conducting a survey through certified or registered mail and a self-addressed stamped envelope.

VIII. LOCAL COORDINATION AND COMMUNITY INVOLVEMENT

Coordination with local agencies and community involvement is an important part of highway traffic noise control and the prevention of future impacts. Highway traffic noise impacts can be most effectively reduced through a program of shared responsibility. Local governments should use their power to regulate land development in such a way that particularly noise sensitive land uses are either prohibited from being located adjacent to a highway, or that developments are planned, designed, and constructed so that highway traffic noise impacts are minimized.

Upon completion of the highway traffic noise analysis, information shall be provided to local government agencies within whose jurisdiction the highway project is located, as to the implications of the project on that particular local community in the future. At a minimum, this will include modeled future highway traffic noise levels for both developed and undeveloped lands in the immediate vicinity of the project⁴. The information will be disseminated through the distribution of highway project environmental documents and noise analysis reports, and informational public meetings. The overall goal of this effort will be to prevent future highway traffic noise impacts on currently undeveloped lands and to promote noise-compatible planning.

IX. LOCAL/PRIVATE PROJECTS

The use of MaineDOT's Right of Way (ROW) for local/private noise abatement projects is prohibited.

⁴ For a complete list of FHWA-required information for local officials see 23 CFR 772.17

X. CONSTRUCTION NOISE

The following general steps are to be performed for all Type I projects:

During the NEPA and design phases of transportation projects, MaineDOT will work with local public officials and community members to limit, minimize, or eliminate adverse construction-noise impacts to the community, as practicable. Construction noise control measures will be incorporated into the plans and specifications on a project-by-project basis.

APPENDIX A. HIGHWAY NOISE FUNDAMENTALS

The Basics of Sound

The decibel (dB) is the unit of measurement for sound. The decibel scale audible to humans spans approximately 140 decibels. A level of 0 decibels corresponds to the threshold of human hearing, while 140 decibels produces a sensation more akin to pain than sound, similar to standing near a jet engine as it takes off. Table A-1 shows sound levels for some common noise sources.

Table A-1 Typical Sound Levels⁵

NOISE SOURCE OR ACTIVITY	SOUND LEVEL dBA
Jet engine at takeoff	140
Fire engine siren	130
Jackhammer	120
Rock Concert	110
Circular Saw	100
Heavy truck or motorcycle	90
Garbage disposal	80
Busy restaurant	70
Normal Speech	60
Background music	50
Bedroom, Bird song	40
Quiet library, soft whisper	30
Quiet basement w/o mechanical equipment	20
Human breathing	10
Threshold of Hearing	0

The decibel scale is logarithmic rather than arithmetic. Consequently, traffic sound levels cannot be added by ordinary arithmetic means. For instance, two noise sources, each producing 90 dB, will combine to produce 93 dB, not 180 dB. In other words, a doubling of the noise source produces only a 3 dB increase in the sound pressure level. Studies have shown that this increase is barely detectable by the human ear. Furthermore, an increase or decrease of 5 dB would result in a clearly noticeable change in the sound level. A change of 10 dB in the sound pressure level will be perceived by an observer to be a doubling or halving of the sound.

The "A" weighting scale for decibel measurement is widely used in environmental work because it closely resembles the ear's sensitivity to noise. Therefore, the unit of measurement for highway traffic noise becomes dBA. The noise descriptor used for environmental analysis is the equivalent

sound level, Leq. The equivalent sound level is the steady sound level that has the same acoustic energy as the time varying sound level over the same time period.

Highway Traffic Noise

Sound can be either desirable or undesirable. Music is an example of desirable sound. Sound generated by motor vehicles traveling along highways is, generally, undesirable and is referred to in this policy as highway traffic noise.

Highway traffic noise is generated by four major sources: engine/drive-train, exhaust, aerodynamics, and tire-to-pavement friction. Recent research indicates that tires are the dominant

⁵ Actual sound levels may vary depending on a number of factors, including the distance between source and receiver, intensity of the particular activity, and the degree of background noise.

noise source at speeds greater than 20 mph for cars and 30 mph for trucks. Tire sound levels increase with vehicle speed but also depend upon road surface, vehicle weight, tread design and wear. Changes in any of these factors can vary highway traffic noise levels. At lower speeds, especially in trucks and buses, the dominant noise source is the engine and related accessories.

The level of highway traffic noise depends on three things: (1) the volume of free flow traffic, (2) the speed of the traffic, and (3) the number of trucks in the flow of traffic. Generally, the loudness of highway traffic noise is increased by heavier traffic volumes, higher speeds, and greater numbers of trucks. The loudness of highway traffic noise can also be increased by defective or modified exhaust systems and other faulty equipment on vehicles. Any condition (such as a steep incline) that causes heavy laboring of motor vehicle engines will also increase highway traffic noise levels. Other physical and environmental factors, such as distance from source to receptor, terrain, vegetation, and natural and manmade obstacles, also affect the loudness of highway traffic noise.

Highway Traffic Noise Strategies

Highway traffic noise can be addressed by a number of different strategies including motor vehicle control, land use control, highway planning and design, and abatement. The responsibilities for implementing these strategies are shared by all levels of government: federal, state, and local.

Motor vehicle control

The State of Maine requires⁶ that all automobiles (excluding motorcycles) must be equipped with a muffler in good working order, and prohibits amplification of exhaust noise above that emitted by the muffler originally installed on the vehicle. However, modifications are allowed if the muffler or exhaust system does not emit noise in excess of 95 decibels. In general, quieter vehicles would bring about a substantial reduction in highway traffic noise along Maine's roads and streets. MaineDOT does not have the authority to regulate motor vehicles. The Environmental Protection Agency (EPA) has issued regulations that limit the noise levels for new trucks with a gross vehicle weight rating (GVWR) of more than 10,000 pounds. In addition, many local governments have passed some form of community noise ordinance.

Land use control

Proper land use control along Maine's highways is an effective means of controlling the impacts of highway traffic noise. FHWA and MaineDOT encourage municipalities to plan, design, and construct new development projects and roadways that minimize potential highway traffic noise impacts. More specifically, municipalities are encouraged to establish building setbacks and vegetative buffer zones along existing highways. Noise-compatible planning encourages the location of less noise-sensitive land uses near highways, promotes the use of berms and open space separating roads from developments, and suggests special construction techniques that minimize the impact of highway traffic noise.

According to FHWA, there are several hundred thousand miles of existing highways in this country bordered by vacant land, which may some day be developed. Proper land use control can help to prevent many future highway traffic noise problems in these areas. For more information about noise compatible planning, visit FHWA's website at <https://www.fhwa.dot.gov/environment/noise/>

⁶MRSA 29-A§ 1912

Highway planning and design

Early in the highway planning and design stages, MaineDOT evaluates highway traffic noise and construction noise as part of the NEPA process. The purpose of this study is to determine if any of the proposed project alternatives will create noise impacts. MaineDOT will use the procedures outlined in Section II to identify noise impacts (if any) and evaluate potential abatement measures. Any noise abatement measures that satisfy all of the requirements of this policy will be implemented as part of a Type I project.

Abatement

Noise barrier walls and earth berms are frequently used to provide abatement for highway traffic noise. Noise barriers are solid walls built between the highway and noise-sensitive land uses (such as homes and schools) along the highway. Barriers can be formed from earth mounds along the road (earth berms) or from high, vertical walls. MaineDOT limits noise walls to a maximum of 20 feet in height for safety and structural concerns. Noise walls can be built from a variety of materials, including, but not limited to: wood, concrete, masonry, and metal.

Openings in noise walls for driveways, business entrances, or intersecting streets defeat the effectiveness of noise barriers. In many areas of Maine, homes are scattered too far apart to permit highway noise barriers to be built at a reasonable cost.

See Section II. D of this policy for the list of eligible noise abatement measures.

APPENDIX B. GLOSSARY

Abatement. A reduction in sound levels.

Benefited Receptor. A receptor that is expected to receive a minimum noise reduction of 5 dBA from the proposed abatement measure.

Biennial Capital Work Plan. The Biennial Capital Work Plan is a dynamic document that represents MaineDOT's entire two-year capital program and includes all existing projects in production.

dBA. A-weighted decibel unit used to measure sound that best corresponds to the frequency response of the human ear.

Design Year. The future year used to estimate the probable traffic volume for which a highway is designed.

Existing Noise Level. The worst noise hour, resulting from the combination of natural and mechanical sources and human activity present in a particular area.

Impacted Receptor. Any receptor that approaches (within 1 dBA) or exceeds the NAC for the corresponding land use category, or any receptor that exceeds existing noise levels by 15 dBA.

Leq. The equivalent steady-state sound level, which, in a stated period of time contains the same acoustic energy as the time-varying sound level during the same time period.

Leq (h). The hourly value of Leq.

National Environmental Policy Act (NEPA). Federal legislation that establishes environmental policy for the nation for federally funded projects. It provides an interdisciplinary framework to ensure that decision-makers adequately take environmental factors into account.

Noise Barrier. A natural or man-made object that interrupts the path of sound. A barrier could be a wall, an earth berm, or a combination of both.

Noise. Any unwanted sound.

Noise Abatement Criteria (NAC). FHWA-determined noise levels for various land uses and activities used to identify traffic noise impacts. The NAC are listed in Table B-1.

Table B-1 Noise Abatement Criteria (NAC)

NOISE ABATEMENT CRITERIA (NAC)		
ACTIVITY CATEGORY	Leq(h) dBA	DESCRIPTION OF ACTIVITY CATEGORY
A	57 Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	67 Exterior	Residential
C	67 Exterior	Active sport areas, amphitheaters, auditoriums, campgrounds, cemeteries, day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreation areas, Section 4(f) sites, schools, television studios, trails, and trail crossings.
D	52 Interior	Auditoriums, day care centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, schools, and television studios.
E	72 Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties or activities not included in A-D or F.
F	-----	Agriculture, airports, bus yards, emergency services, industrial, logging, maintenance facilities, manufacturing, mining, rail yards, retail facilities, shipyards, utilities (water resources, water treatment, electrical), and warehousing
G	-----	Undeveloped lands that are not permitted.

Permitted. A definite commitment to develop land with an approved specific design of land use activities, as evidenced by the issuance of a building permit.

Highway Traffic Noise Impacts. Impacts that occur when the predicted highway traffic noise levels approach or exceed the noise abatement criteria (Table B-1 - above), or when the predicted highway traffic noise levels substantially exceed the existing noise levels.

Type I Project. (1) The construction of a highway on new location; or,
 (2) The physical alteration of an existing highway where there is either:
 (i) Substantial Horizontal Alteration. A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition; or,
 (ii) Substantial Vertical Alteration. A project that removes shielding therefore exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor; or,
 (3) The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a HOV lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane; or,
 (4) The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane; or,
 (5) The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange; or,
 (6) Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or,

(7) The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza.

(8) If a project is determined to be a Type I project under this definition then the entire project area as defined in the environmental document is a Type I project.

Type II Project. A proposed project for noise abatement along an existing highway.

Receptor. The technical term used to describe the location of any properties included in the noise analysis.

Study Area. The study area is defined as 500' from the *proposed* edge of pavement for Type I analyses. However, if highway traffic noise impacts are identified at 500' then the study area will be expanded to identify all potential impacts.

Substantial noise increase. One of two types of highway traffic noise impacts. For a Type I project, an increase in noise levels of 15 dBA in the design year over the existing noise level.

APPENDIX C. FHWA HIGHWAY TRAFFIC NOISE REGULATION

23 CFR PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

Section Contents

772.1 Purpose.

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772.9 Traffic noise prediction.

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772.19 Construction noise.

Table 1 to Part 772--Noise Abatement Criteria

Authority: 23 U.S.C. 109(h) and (i); 42 U.S.C. 4331, 4332; sec. 339(b), Pub. L. 104-59, 109 Stat. 568, 605; 49 CFR 1.48(b).

Sec. 772.1 Purpose.

To provide procedures for noise studies and noise abatement measures to help protect the public's health, welfare and livability, to supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning and design of highways approved pursuant to title 23 U.S.C.

Sec. 772.3 Noise standards.

The highway traffic noise prediction requirements, noise analyses, noise abatement criteria, and requirements for informing local officials in this regulation constitute the noise standards mandated by 23 U.S.C. 109(1). All highway projects which are developed in conformance with this regulation shall be deemed to be in accordance with the FHWA noise standards.

Sec. 772.5 Definitions.

Benefited Receptor. The recipient of an abatement measure that receives a noise reduction at or above the minimum threshold of 5 dB(A), but not to exceed the highway agency's reasonableness design goal.

Common Noise Environment. A group of receptors within the same Activity Category in Table 1 that are exposed to similar noise sources and levels; traffic volumes, traffic mix, and speed; and topographic features. Generally, common noise environments occur between two secondary noise sources, such as interchanges, intersections, cross-roads.

Date of Public Knowledge. The date of approval of the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision (ROD), as defined in 23 CFR part 771.

Design Year. The future year used to estimate the probable traffic volume for which a highway is designed.

Existing Noise Levels. The worst noise hour resulting from the combination of natural and mechanical sources and human activity usually present in a particular area.

Feasibility. The combination of acoustical and engineering factors considered in the evaluation of a noise abatement measure.

Impacted Receptor. The recipient that has a traffic noise impact.

L10. The sound level that is exceeded 10 percent of the time (the 90th percentile) for the period under consideration, with L10(h) being the hourly value of L10.

Leq. The equivalent steady-state sound level which in a stated period of time contains the same acoustic

energy as the time-varying sound level during the same time period, with $Leq(h)$ being the hourly value of Leq .

Multifamily Dwelling. A residential structure containing more than one residence. Each residence in a multifamily dwelling shall be counted as one receptor when determining impacted and benefited receptors.

Noise Barrier. A physical obstruction that is constructed between the highway noise source and the noise sensitive receptor(s) that lowers the noise level, including stand alone noise walls, noise berms (earth or other material), and combination berm/wall systems.

Noise Reduction Design Goal. The optimum desired dB(A) noise reduction determined from calculating the difference between future build noise levels with abatement, to future build noise levels without abatement. The noise reduction design goal shall be at least 7 dB(A), but not more than 10 dB(A).

Permitted. A definite commitment to develop land with an approved specific design of land use activities as evidenced by the issuance of a building permit.

Property Owner. An individual or group of individuals that holds a title, deed, or other legal documentation of ownership of a property or a residence.

Reasonableness. The combination of social, economic, and environmental factors considered in the evaluation of a noise abatement measure.

Receptor. A discrete or representative location of a noise sensitive area(s), for any of the land uses listed in Table 1.

Residence. A dwelling unit. Either a single family residence or each dwelling unit in a multifamily dwelling.

Statement of Likelihood. A statement provided in the environmental clearance document based on the feasibility and reasonableness analysis completed at the time the environmental document is being approved.

Substantial Construction. The granting of a building permit, prior to right-of-way acquisition or construction approval for the highway.

Substantial noise increase. One of two types of highway traffic noise impacts. For a Type I project, an increase in noise levels of 5 to 15 dB(A) in the design year over the existing noise level.

Traffic Noise Impacts. Design year build condition noise levels that approach or exceed the NAC listed in Table 1 for the future build condition; or design year build condition noise levels that create a substantial noise increase over existing noise levels.

Type I Project. (1) The construction of a highway on new location; or,
 (2) The physical alteration of an existing highway where there is either:
 (i) Substantial Horizontal Alteration. A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition; or,
 (ii) Substantial Vertical Alteration. A project that removes shielding therefore exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor; or,
 (3) The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a HOV lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane; or,
 (4) The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane; or,
 (5) The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange; or,
 (6) Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or,
 (7) The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza.

(8) If a project is determined to be a Type I project under this definition then the entire project area as defined in the environmental document is a Type I project.

Type II Project. A Federal or Federal-aid highway project for noise abatement on an existing highway. For a Type II project to be eligible for Federal-aid funding, the highway agency must develop and implement a Type II program in accordance with section 772.7(e).

Type III Project. A Federal or Federal-aid highway project that does not meet the classifications of a Type I or Type II project. Type III projects do not require a noise analysis.

Sec. 772.7 Applicability.

(a) This regulation applies to all Federal or Federal-aid Highway Projects authorized under title 23, United States Code. Therefore, this regulation applies to any highway project or multimodal project that:

- (1) Requires FHWA approval regardless of funding sources, or
- (2) Is funded with Federal-aid highway funds.

(b) In order to obtain FHWA approval, the highway agency shall develop noise policies in conformance with this regulation and shall apply these policies uniformly and consistently statewide.

(c) This regulation applies to all Type I projects unless the regulation specifically indicates that a section only applies to Type II or Type III projects.

(d) The development and implementation of Type II projects are not mandatory requirements of section 109(i) of title 23, United States Code.

(e) If a highway agency chooses to participate in a Type II program, the highway agency shall develop a priority system, based on a variety of factors, to rank the projects in the program. This priority system shall be submitted to and approved by FHWA before the highway agency is allowed to use Federal-aid funds for a project in the program. The highway agency shall re-analyze the priority system on a regular interval, not to exceed 5 years.

(f) For a Type III project, a highway agency is not required to complete a noise analysis or consider abatement measures.

Sec. 772.9 Traffic noise prediction.

(a) Any analysis required by this subpart must use the FHWA Traffic Noise Model (TNM), which is described in "FHWA Traffic Noise Model" Report No. FHWA-PD-96-010, including Revision No. 1, dated April 14, 2004, or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. These publications are incorporated by reference in accordance with section 552(a) of title 5, U.S.C. and part 51 of title 1, CFR, and are on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to http://www.archives.gov/federal/register/code_of_federal_regulations/ibr_locations.html. These documents are available for copying and inspection at the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, as provided in part 7 of title 49, CFR. These documents are also available on the FHWA's Traffic Noise Model Web site at the following URL: <http://www.fhwa.dot.gov/environment/noise/index.htm>.

(b) Average pavement type shall be used in the FHWA TNM for future noise level prediction unless a highway agency substantiates the use of a different pavement type for approval by the FHWA.

(c) Noise contour lines may be used for project alternative screening or for land use planning to comply with Sec. 772.17 of this part, but shall not be used for determining highway traffic noise impacts.

(d) In predicting noise levels and assessing noise impacts, traffic characteristics that would yield the worst traffic noise impact for the design year shall be used.

Sec. 772.11 Analysis of traffic noise impacts.

(a) The highway agency shall determine and analyze expected traffic noise impacts.

- (1) For projects on new alignments, determine traffic noise impacts by field measurements.
- (2) For projects on existing alignments, predict existing and design year traffic noise impacts.

(b) In determining traffic noise impacts, a highway agency shall give primary consideration to exterior areas where frequent human use occurs.

(c) A traffic noise analysis shall be completed for:

- (1) Each alternative under detailed study;
- (2) Each Activity Category of the NAC listed in Table 1 that is present in the study area;
- (i) Activity Category A. This activity category includes the exterior impact criteria for lands on which serenity and quiet are of extraordinary significance and serve an important public need, and where the preservation of those qualities is essential for the area to continue to serve its intended purpose. Highway agencies shall submit justifications to the FHWA on a case-by-case basis for approval of an Activity Category A designation.
- (ii) Activity Category B. This activity category includes the exterior impact criteria for single-family and multifamily residences.
- (iii) Activity Category C. This activity category includes the exterior impact criteria for a variety of land use facilities. Each highway agency shall adopt a standard practice for analyzing these land use facilities that is consistent and uniformly applied statewide.
- (iv) Activity Category D. This activity category includes the interior impact criteria for certain land use facilities listed in Activity Category C that may have interior uses. A highway agency shall conduct an indoor analysis after a determination is made that exterior abatement measures will not be feasible and reasonable. An indoor analysis shall only be done after exhausting all outdoor analysis options. In situations where no exterior activities are to be affected by the traffic noise, or where the exterior activities are far from or physically shielded from the roadway in a manner that prevents an impact on exterior activities, the highway agency shall use Activity Category D as the basis of determining noise impacts. Each highway agency shall adopt a standard practice for analyzing these land use facilities that is consistent and uniformly applied statewide.
- (v) Activity Category E. This activity category includes the exterior impact criteria for developed lands that are less sensitive to highway noise. Each highway agency shall adopt a standard practice for analyzing these land use facilities that is consistent and uniformly applied statewide.
- (vi) Activity Category F. This activity category includes developed lands that are not sensitive to highway traffic noise. There is no impact criteria for the land use facilities in this activity category and no analysis of noise impacts is required.
- (vii) Activity Category G. This activity includes undeveloped lands.
 - (A) A highway agency shall determine if undeveloped land is permitted for development. The milestone and its associated date for acknowledging when undeveloped land is considered permitted shall be the date of issuance of a building permit by the local jurisdiction or by the appropriate governing entity.
 - (B) If undeveloped land is determined to be permitted, then the highway agency shall assign the land to the appropriate Activity Category and analyze it in the same manner as developed lands in that Activity Category.
 - (C) If undeveloped land is not permitted for development by the date of public knowledge, the highway agency shall determine noise levels in accordance with 772.17(a) and document the results in the project's environmental clearance documents and noise analysis documents. Federal participation in noise abatement measures will not be considered for lands that are not permitted by the date of public knowledge.
 - (d) The analysis of traffic noise impacts shall include:
 - (1) Identification of existing activities, developed lands, and undeveloped lands, which may be affected by noise from the highway;
 - (2) For projects on new or existing alignments, validate predicted noise level through comparison between measured and predicted levels;
 - (3) Measurement of noise levels. Use an ANSI Type I or Type II integrating sound level meter;
 - (4) Identification of project limits to determine all traffic noise impacts for the design year for the build alternative. For Type II projects, traffic noise impacts shall be determined from current year conditions;
 - (e) Highway agencies shall establish an approach level to be used when determining a traffic noise impact. The approach level shall be at least 1 dB(A) less than the Noise Abatement Criteria for Activity Categories A to E listed in Table 1 to part 772;
 - (f) Highway agencies shall define substantial noise increase between 5 dB(A) to 15 dB(A) over existing noise levels. The substantial noise increase criterion is independent of the absolute noise level.
 - (g) A highway agency proposing to use Federal-aid highway funds for a Type II project shall perform a noise analysis in accordance with Sec. 772.11 of this part in order to provide information needed to make the determination required by Sec. 772.13(a) of this part.

Sec. 772.13 Analysis of noise abatement.

(a) When traffic noise impacts are identified, noise abatement shall be considered and evaluated for feasibility and reasonableness. The highway agency shall determine and analyze alternative noise abatement measures to abate identified impacts by giving weight to the benefits and costs of abatement and the overall social, economic, and environmental effects by using feasible and reasonable noise abatement measures for decision-making.

(b) In abating traffic noise impacts, a highway agency shall give primary consideration to exterior areas where frequent human use occurs.

(c) If a noise impact is identified, a highway agency shall consider abatement measures. The abatement measures listed in Sec. 772.15(c) of this part are eligible for Federal funding.

(1) At a minimum, the highway agency shall consider noise abatement in the form of a noise barrier.

(2) If a highway agency chooses to use absorptive treatments as a functional enhancement, the highway agency shall adopt a standard practice for using absorptive treatment that is consistent and uniformly applied statewide.

(d) Examination and evaluation of feasible and reasonable noise abatement measures for reducing the traffic noise impacts. Each highway agency, with FHWA approval, shall develop feasibility and reasonableness factors.

(1) Feasibility:

(i) Achievement of at least a 5 dB(A) highway traffic noise reduction at impacted receptors. The highway agency shall define, and receive FHWA approval for, the number of receptors that must achieve this reduction for the noise abatement measure to be acoustically feasible and explain the basis for this determination; and

(ii) Determination that it is possible to design and construct the noise abatement measure. Factors to consider are safety, barrier height, topography, drainage, utilities, and maintenance of the abatement measure, maintenance access to adjacent properties, and access to adjacent properties (i.e. arterial widening projects).

(2) Reasonableness:

(i) Consideration of the viewpoints of the property owners and residents of the benefited receptors. The highway agency shall solicit the viewpoints of all of the benefited receptors and obtain enough responses to document a decision on either desiring or not desiring the noise abatement measure. The highway agency shall define, and receive FHWA approval for, the number of receptors that are needed to constitute a decision and explain the basis for this determination.

(ii) Cost effectiveness of the highway traffic noise abatement measures. Each highway agency shall determine, and receive FHWA approval for, the allowable cost of abatement by determining a baseline cost reasonableness value. This determination may include the actual construction cost of noise abatement, cost per square foot of abatement, the maximum square footage of abatement/benefited receptor and either the cost/benefited receptor or cost/benefited receptor/dB(A) reduction. The highway agency shall re-analyze the allowable cost for abatement on a regular interval, not to exceed 5 years. A highway agency has the option of justifying, for FHWA approval, different cost allowances for a particular geographic area(s) within the State, however, the highway agency must use the same cost reasonableness/construction cost ratio statewide.

(iii) Noise reduction design goals for highway traffic noise abatement measures. When noise abatement measure(s) are being considered, a highway agency shall achieve a noise reduction design goal. The highway agency shall define, and receive FHWA approval for, the design goal of at least 7 dB(A) but not more than 10 dB(A), and shall define the number of benefited receptors that must achieve this design goal and explain the basis for this determination.

(iv) The reasonableness factors listed in Sec. 772.13(d)(5)(i), (ii) and (iii), must collectively be achieved in order for a noise abatement measure to be deemed reasonable. Failure to achieve Sec. 772.13(d)(5)(i), (ii) or (iii), will result in the noise abatement measure being deemed not reasonable.

(v) In addition to the required reasonableness factors listed in Sec. 772.13(d)(5)(i), (ii), and (iii), a highway agency has the option to also include the following reasonableness factors: Date of development, length of time receivers have been exposed to highway traffic noise impacts, exposure to higher absolute highway traffic noise levels, changes between existing and future build conditions, percentage of mixed zoning development, and use of noise compatible planning concepts by the local government. No single optional reasonableness factor can be used to determine reasonableness.

(e) Assessment of Benefited Receptors. Each highway agency shall define the threshold for the noise reduction which determines a benefited receptor as at or above the 5 dB(A), but not to exceed the highway

agency's reasonableness design goal.

(f) **Abatement Measure Reporting:** Each highway agency shall maintain an inventory of all constructed noise abatement measures. The inventory shall include the following parameters: type of abatement; cost (overall cost, unit cost per/sq. ft.); average height; length; area; location (State, county, city, route); year of construction; average insertion loss/noise reduction as reported by the model in the noise analysis; NAC category(s) protected; material(s) used (precast concrete, berm, block, cast in place concrete, brick, metal, wood, fiberglass, combination, plastic (transparent, opaque, other); features (absorptive, reflective, surface texture); foundation (ground mounted, on structure); project type (Type I, Type II, and optional project types such as State funded, county funded, tollway/turnpike funded, other, unknown). The FHWA will collect this information, in accordance with OMB's Information Collection requirements.

(g) Before adoption of a CE, FONSI, or ROD, the highway agency shall identify:

(1) Noise abatement measures which are feasible and reasonable, and which are likely to be incorporated in the project; and

(2) Noise impacts for which no noise abatement measures are feasible and reasonable.

(3) **Documentation of highway traffic noise abatement:** The environmental document shall identify locations where noise impacts are predicted to occur, where noise abatement is feasible and reasonable, and locations with impacts that have no feasible or reasonable noise abatement alternative. For environmental clearance, this analysis shall be completed to the extent that design information on the alternative(s) under study in the environmental document is available at the time the environmental clearance document is completed. A statement of likelihood shall be included in the environmental document since feasibility and reasonableness determinations may change due to changes in project design after approval of the environmental document. The statement of likelihood shall include the preliminary location and physical description of noise abatement measures determined feasible and reasonable in the preliminary analysis. The statement of likelihood shall also indicate that final recommendations on the construction of an abatement measure(s) is determined during the completion of the project's final design and the public involvement processes.

(h) The FHWA will not approve project plans and specifications unless feasible and reasonable noise abatement measures are incorporated into the plans and specifications to reduce the noise impact on existing activities, developed lands, or undeveloped lands for which development is permitted.

(i) For design-build projects, the preliminary technical noise study shall document all considered and proposed noise abatement measures for inclusion in the NEPA document. Final design of design-build noise abatement measures shall be based on the preliminary noise abatement design developed in the technical noise analysis. Noise abatement measures shall be considered, developed, and constructed in accordance with this standard and in conformance with the provisions of 40 CFR 1506.5(c) and 23 CFR 636.109.

(j) Third party funding is not allowed on a Federal or Federal-aid Type I or Type II project if the noise abatement measure would require the additional funding from the third party to be considered feasible and/or reasonable. Third party funding is acceptable on a Federal or Federal-aid highway Type I or Type II project to make functional enhancements, such as absorptive treatment and access doors or aesthetic enhancements, to a noise abatement measure already determined feasible and reasonable.

(k) On a Type I or Type II projects, a highway agency has the option to cost average noise abatement among benefited receptors within common noise environments if no single common noise environment exceeds two times the highway agency's cost reasonableness criteria and collectively all common noise environments being averaged do not exceed the highway agency's cost reasonableness criteria.

Sec. 772.15 Federal participation.

(a) Type I and Type II projects. Federal funds may be used for noise abatement measures when:

(1) Traffic noise impacts have been identified; and

(2) Abatement measures have been determined to be feasible and reasonable pursuant to Sec. 772.13(d) of this chapter.

(b) For Type II projects. (1) No funds made available out of the Highway Trust Fund may be used to construct Type II noise barriers, as defined by this regulation, if such noise barriers were not part of a project approved by the FHWA before the November 28, 1995.

(2) Federal funds are available for Type II noise barriers along lands that were developed or were under substantial construction before approval of the acquisition of the rights-of-ways for, or construction of, the existing highway.

(3) FHWA will not approve noise abatement measures for locations where such measures were previously determined not to be feasible and reasonable for a Type I project.

(c) Noise Abatement Measures. The following noise abatement measures may be considered for incorporation into a Type I or Type II project to reduce traffic noise impacts. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located.

(1) Construction of noise barriers, including acquisition of property rights, either within or outside the highway right-of-way. Landscaping is not a viable noise abatement measure.

(2) Traffic management measures including, but not limited to, traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive lane designations.

(3) Alteration of horizontal and vertical alignments.

(4) Acquisition of real property or interests therein (predominantly unimproved property) to serve as a buffer zone to preempt development which would be adversely impacted by traffic noise. This measure may be included in Type I projects only.

(5) Noise insulation of Activity Category D land use facilities listed in Table 1. Post-installation maintenance and operational costs for noise insulation are not eligible for Federal-aid funding.

Sec. 772.17 Information for local officials.

(a) To minimize future traffic noise impacts on currently undeveloped lands of Type I projects, a highway agency shall inform local officials within whose jurisdiction the highway project is located of:

(1) Noise compatible planning concepts;

(2) The best estimation of the future design year noise levels at various distances from the edge of the nearest travel lane of the highway improvement where the future noise levels meet the highway agency's definition of "approach" for undeveloped lands or properties within the project limits. At a minimum, identify the distance to the exterior noise abatement criteria in Table 1;

(3) Non-eligibility for Federal-aid participation for a Type II project as described in Sec. 772.15(b).

(b) If a highway agency chooses to participate in a Type II noise program or to use the date of development as one of the factors in determining the reasonableness of a Type I noise abatement measure, the highway agency shall have a statewide outreach program to inform local officials and the public of the items in Sec. 772.17(a)(1) through (3).

Sec. 772.19 Construction noise.

For all Type I and II projects, a highway agency shall:

(a) Identify land uses or activities that may be affected by noise from construction of the project. The identification is to be performed during the project development studies.

(b) Determine the measures that are needed in the plans and specifications to minimize or eliminate adverse construction noise impacts to the community. This determination shall include a weighing of the benefits achieved and the overall adverse social, economic, and environmental effects and costs of the abatement measures.

(c) Incorporate the needed abatement measures in the plans and specifications.

TABLE 1 TO PART 772—NOISE ABATEMENT CRITERIA
[Hourly A-Weighted Sound Level, decibels (dB(A))¹]

Activity category	Activity Leq(h)	Criteria ² L10(h)	Evaluation location	Activity description
A	57	60	Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B ³	67	70	Exterior	Residential.
C ³	67	70	Exterior	Active sport areas, amphitheaters, auditoriums, campgrounds, cemeteries, day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreation areas, Section 4(f) sites, schools, television studios, trails, and trail crossings.
D	52	55	Interior	Auditoriums, day care centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, schools, and television studios.
E ³	72	75	Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties or activities not included in A–D or F.
F	Agriculture, airports, bus yards, emergency services, industrial, logging, maintenance facilities, manufacturing, mining, rail yards, retail facilities, shipyards, utilities (water resources, water treatment, electrical), and warehousing.
G	Undeveloped lands that are not permitted.

¹ Either Leq(h) or L10(h) (but not both) may be used on a project.

² The Leq(h) and L10(h) Activity Criteria values are for impact determination only, and are not design standards for noise abatement measures.

³ Includes undeveloped lands permitted for this activity category.



NEPA Endangered Species Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

The Endangered Species Preservation Act of 1966 was established to provide the means for limited protections to native animal species listed as endangered and threatened. In 1973, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was signed and later in 1973, the US Congress passed the Endangered Species Act (ESA). The ESA defines "endangered" and "threatened", expanded the types of species receiving protection, prohibited "take" on all endangered species, required federal agencies to use their authorities to conserve listed species and consult on "may affect" actions, and prohibited federal agencies from authorizing, funding, or carrying out any action that would jeopardize a listed species or destroy or modify its "critical habitat." It is administered by the Department of the Interior's U.S. Fish and Wildlife Service (USFWS) and the Commerce Department's National Marine Fisheries Service (NMFS). The USFWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of NMFS are mainly marine wildlife such as whales and anadromous fish such as salmon. Section 7 of the ESA, called "Interagency Cooperation," is the mechanism by which Federal agencies ensure the actions they take, including those they fund or authorize, help to recover species and do not jeopardize the existence of any listed species. The ESA further requires Federal agencies (e.g., Federal Highway Administration or its designee) to document their effect determination by coordinating with USFWS or NMFS through informal or formal consultation. A Biological Assessment (BA) is required when a project results in an adverse effect on a listed species or critical habitat, and specific elements are required in the BA (50 CFR §402.12(f)). Consultation under Section 7 of the ESA requires that there is a federal nexus for the project. The federal action agency with the nexus serves as the lead in consultation.

MaineDOT is a non-federal designated representative for the Federal Highway Administration (FHWA) and can act as the action agency when making no-effect determinations and engaging informal consultation. When a project has two action agencies, a lead agency must be designated (§ 402.07 Designation of the lead agency.) This will remain in place under NEPA assignment for projects that are not included in the assignment program.

FHWA is a participant in multiple programmatic consultation agreements for listed species in Maine. These processes streamline Section 7 consultation by setting specific parameters for each agreement. If the project meets the parameters of the program, the submittals on each project are abbreviated and the review time is reduced. This guidance document defines the process for MaineDOT to document the appropriate assessment of impacts to ESA-listed species for NEPA on behalf of FHWA. MaineDOT will work with the signatories in order to act as FHWA in these agreements under NEPA Assignment.



NEPA Endangered Species Guidance

MaineDOT Senior Environmental Manager and Biologist are responsible for assessing and ensuring compliance with the Endangered Species Act and consulting directly with USFWS and NMFS under NEPA Assignment (23 U.S.C. 327). MaineDOT has the responsibility of FHWA under NEPA assignment. MaineDOT is FHWA in this document, except for projects not under NEPA assignment (e.g., border projects).

Endangered species information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision.

1.0 Endangered Species Initial Project Question and Documentation

The following question is required to be answered by the MaineDOT Biologist:

1. Do any Federally listed threatened or endangered species or Critical Habitat occur in the proposed project location?

A MaineDOT Biologist screens projects using the best available commercial and scientific data. This may include the use of the USFWS and NOAA online mapping tool as well as other data that is available from state resource agencies. The Team Leader will communicate with the Biologist about whether a U.S. Army Corps permit application will be submitted for the project. If a permit is needed, the Team Leader will need a consultation code that is generated from the USFWS Information for Planning and Consultation (IPaC) online tool.

Due to the northern long-eared bat (NLEB), whose range is throughout the state Maine; the response to this question is always “Yes”.

A Yes response to Question 1 indicates the project will require an effects determination (go to 2.0). Potential Federal species presence will be documented in MaineDOT’s ProjEx database and any backup documentation will be saved to MaineDOT’s Environmental CPD e-file.

2.0 Federal Endangered and Threatened Species (Section 7) Assessment

The MaineDOT Biologist and Team Leader will review the scope of work with the Project Manager to determine whether there may be potential impacts to listed species or critical habitats (e.g. vegetation clearing, or in-stream work). If necessary, they will identify avoidance measures or alternatives to the project that will avoid or minimize adverse effects. The MaineDOT Biologist will assess the effects and determine the consultation level.

MaineDOT, FHWA, and the U.S. Army Corps of Engineers are participants in a Section 7 No Effect Agreement whereby the MaineDOT is delegated to determine that an action will have no effect on a species. Under NEPA Assignment the MaineDOT Biologist will make all no-effect determinations. See Section 4.

An effect and consultation level graphic is on the following page.

Effect and Consultation Level



NEPA Endangered Species Guidance

Effect	Consultation Level with USFWS
No Effect (NE)	None
May affect, is not likely to adversely affect (NLAA) following active programmatic consultation	Project Notification Form/Verification Form from appropriate programmatic consultation.
May affect, is not likely to adversely affect (NLAA)	Concurrence request and informal consultation
May affect, is likely to adversely affect (LAA) following active programmatic consultation	Project Notification Form/Verification Form from appropriate programmatic consultation.
May affect, is likely to adversely affect (LAA)	Biological Assessment and formal consultation

A no-effect determination concludes the Federal ESA consultation requirements for determinations at that level. Any “may affect” determination requires consultation with the USFWS or NMFS (go to 3.0). The MaineDOT Biologist will coordinate consultation and is responsible for submitting consultation documentation. All actions will be processed and documented in MaineDOT’s ProjEx database and MaineDOT’s Environmental CPD e-file.

3.0 Federal ESA Coordination, Review, and Approval

MaineDOT will initiate coordination and communication with the USFWS or NMFS as early in the process as possible. This coordination may involve technical assistance requests, document reviews, conversations, and potential site visits. Following coordination, the MaineDOT Biologist will submit the required consultation documentation to the agencies.

3.1 Informal Consultation

The USFWS and NMFS have a goal to respond with a letter of concurrence for informal consultation within 30 days of receiving the request. Avoidance and minimization measures that relate directly to avoiding an adverse effect can be discussed with and proposed by the action agency. In an informal consultation process, the USFWS and NMFS cannot require the action agency to comply with anything except what is proposed by the action agency. Therefore, avoidance and minimization measures are required to be conveyed from MaineDOT to the contractor. Once MaineDOT has received a letter of concurrence, ESA consultation is concluded.

3.2 Formal Consultation

Adverse effects on a listed species result in the need for formal consultation. MaineDOT drafts a BA coordinating with USFWS or NMFS. MaineDOT utilizes previous BA documents as templates. The contents of a [biological assessment](#) are at the discretion of MaineDOT and will depend on the nature of the Federal [action](#) [50 CFR 402.12(f)]. The following may be considered for inclusion:

- (1) The results of an on-site inspection of the area affected by the [action](#) to determine if listed or [proposed species](#) are present or occur seasonally.
- (2) The views of recognized experts on the species at issue.
- (3) A review of the literature and other information.
- (4) An analysis of the [effects of the action](#) on the species and habitat, including consideration of [cumulative effects](#), and the results of any related studies.



NEPA Endangered Species Guidance

(5) An analysis of alternate [actions](#) considered by the Federal agency for the proposed [action](#).

The BA is submitted directly to USFWS or NMFS after a quality review. USFWS or NMFS will review the BA to ensure the information is complete and send correspondence to the action agency when consultation begins. Consultation occurs within 90 days and the USFWS/NMFS receives an additional 45 days to issue a biological opinion for a total of 135 days from the date a complete BA is submitted. The issuance of a biological opinion concludes ESA consultation.

3.3 Reinitiating Consultation

Any changes to the proposed action require review from the federal action agency to determine if reinitiating consultation is necessary (§ 402.16 Reinitiation of [formal consultation](#))

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file with species, effect, consultation, and document information.

All ESA commitments are tracked in ProjEx.

4.0 ESA Flow Checklist

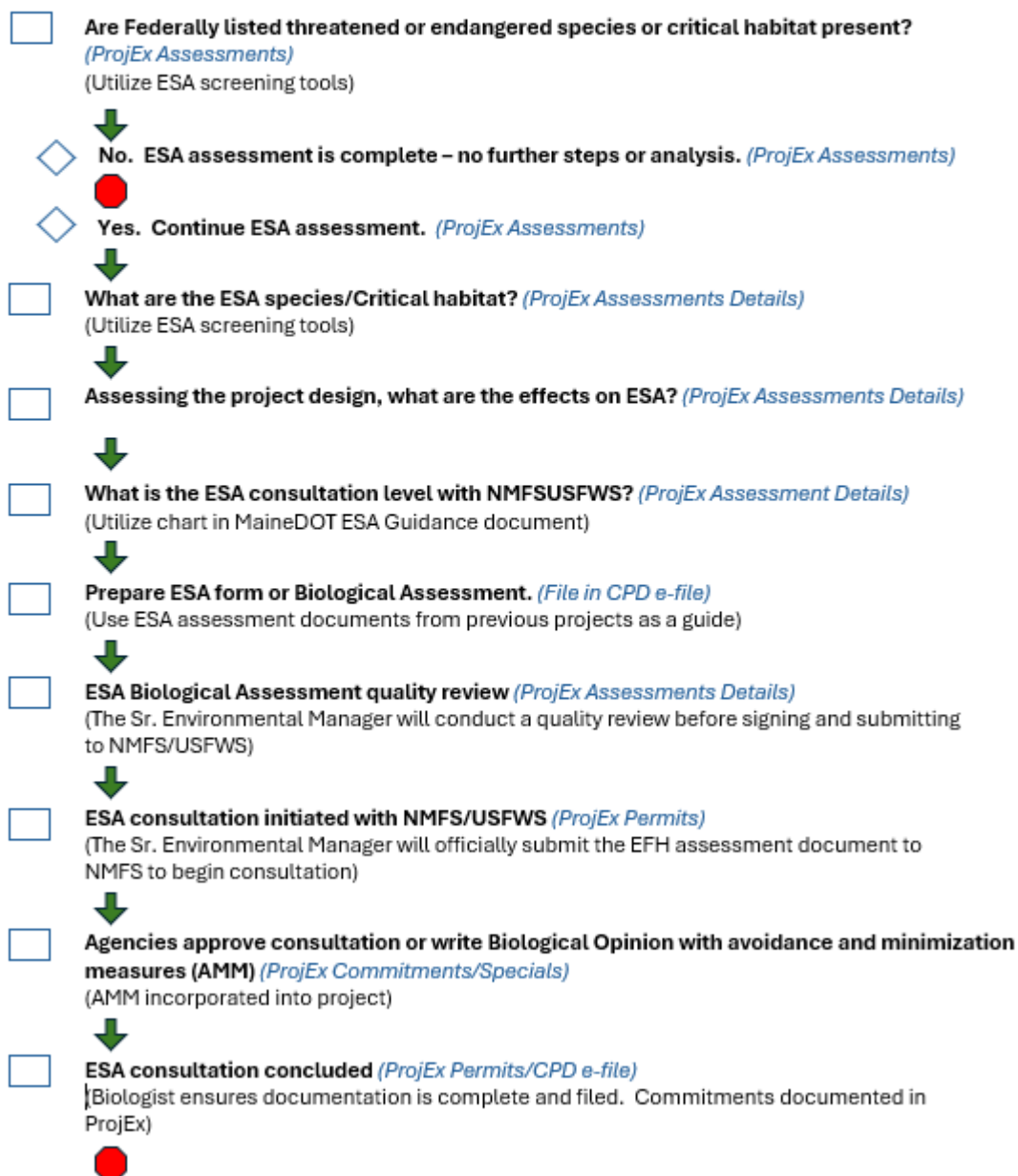
The ESA Flow Checklist is on the following page.



NEPA Endangered Species Guidance

Endangered Species (ESA) Flow Checklist for Categorical Exclusions

The biologist will complete the ESA assessment/determination of effect/consultation with National Marine Fisheries (NMFS)/U.S. Fish and Wildlife Service (USFWS) and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.



5.0 Links and Agreements



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[Endangered Species Act](#)

Interagency Coordination, Consultation Procedures – Biological Assessments [50 CFR 402.12](#):

Information for Planning and Consultation ([IPaC](#))

Atlantic Salmon Programmatic Biological Opinion and User's Guide

[Maine Atlantic Salmon Programmatic Consultation](#)

[Northern Long-eared Bat Programmatic Biological Opinion and User's Guide](#)

[AASHTO Practitioner's Handbook for Section 7](#)

MaineDOT's Environmental Office utilizes the following agreements and internal documents related to Federal Endangered Species and effects determination. These documents are available on the Environmental Office Common Drive:

NMFS/FHWA programmatic agreement for effects on Sturgeon and Salmon

MaineDOT/FHWA/ACOE No Effect Agreement, updated: January 2019

Atlantic Salmon Programmatic Agreement



MaineDOT

NEPA Bald and Golden Eagle Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

The Bald and Golden Eagle Protection Act (16 USC 668a-d, Eagle Act) was enacted in 1940 prohibiting anyone without a permit from taking bald eagles and providing criminal penalties for persons from owning or transacting any eagle, parts, nest, or eggs; alive or dead. Transportation projects are subject to the implementing regulations at 50 CFR 22, prohibiting, except under certain specified conditions, from taking of such birds, including their parts, nests, or eggs. The U.S. Fish and Wildlife Service (USFWS) has regulatory authority over The Eagle Act. The Eagle Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb" and defines "disturb" as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior". This includes impacts resulting from human-induced alterations around a previously used nest site when eagles are not present. Bald eagles were listed in the Endangered Species Act (ESA) in 1978 and upgraded to Threatened status in 1995 due to recovery efforts. In 2007 the bald eagle was removed from the Federal Endangered Species List, and in 2009 from the Maine Endangered Species List. The Golden Eagle is listed as Endangered on Maine's Endangered Species List and has not been listed on the Federal Endangered Species List. Golden eagles were last documented to breed in Maine in 1998.

The Maine Department of Inland Fisheries and Wildlife maintains a geographic database of current and past eagle nest locations but defers all regulatory coordination activities to the USFWS.

MaineDOT Biologists are responsible for assessing and ensuring compliance with this law under NEPA Assignment. Bald and Golden Eagle information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision. The process checklists are built into MaineDOT's ProjEx database. The Biologist is required to fill in the Assessment, Assessment Details, and PM Permits sections. ProjEx will generate the final CE Report with this information for the CPD e-file.

1.0 Bald and Golden Eagle Initial Project Question and Documentation

The following question is required to be answered by the MaineDOT Biologist:

1. Is the project located within 1,320 feet of a mapped Bald or Golden Eagle nest?

The MaineDOT Biologist will use the [Maine Department of Inland Fisheries and Wildlife's](#) State Endangered Threatened and Special Concern Species Layer to answer this question. This does not involve an on-site



NEPA Bald and Golden Eagle Guidance

survey (only mapped known nests).

A Yes response to Question 1 requires further analysis of the nest location, project activity, and schedule. Work within 660 feet of a nest that cannot be completed outside the breeding season requires consultation with USFWS (go to 2.0).

A No response concludes the Bald and Golden Eagle assessment as the project is not within the range and/or suitable habitat for Bald or Golden Eagles and does not otherwise have the potential to take either species.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

2.0 Bald and Golden Eagle Secondary Project Question

The following question is required to be answered by the MaineDOT Biologist:

2. Is the project located within 660 feet of a mapped Bald or Golden eagle nest?

A Yes response to Question 2 requires further analysis of the activity and will require seasonal restrictions on project activity (Go to 3.0). Any timing restriction will be written in a Special Provision for the project's environmental contract package. A No response to question 2 concludes the Bald and Golden Eagle assessment.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

3.0 Bald and Golden Eagle Impacts Assessment, Agency Coordination, Review, and Approval Process

The following question is required to be answered by the MaineDOT Biologist:

3. Will the project involve a potential take on the Bald or Golden eagle?

A Yes response requires analysis of the nest for activity. Once it has been determined that the location of a proposed project is within the USFWS-regulated area of a mapped eagle nest and that the work must occur during the nesting period, and that the nest is actively used; the MaineDOT Biologist will coordinate with USFWS and the MaineDOT Team Leader to assess avoidance measures or alternatives to the project and potential permitting requirements. If, through coordination with USFWS, it is determined that the project could result in impacts to Bald or Golden Eagles, an incidental take permit must be acquired from USFWS prior to NEPA approval. The MaineDOT Biologist will complete and submit the permit application in coordination with USFWS.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

4.0 Links

[Bald and Golden Eagle Protection Act](#)

[Eagle Permits](#)



MaineDOT

NEPA Marine Mammal Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

The U.S. Marine Mammal Protection Act (MMPA) (16 USC Chapter 1361-1423h) of 1972 protects populations of marine mammals, including all cetaceans (whales, dolphins, and porpoises), pinnipeds (seals and sea lions), sirenians (manatees and dugongs), sea otters, and polar bears within the waters of the United States. Protection of these species is shared by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (Service). The Service is responsible for issuing take permits when exceptions to the MMPA are applied.

In the MMPA, "take" means to harass, hunt, capture, or kill; or attempt to harass, hunt, capture, or kill. In 2012, the NMFS released a policy paper for distinguishing Serious from Non-Serious Injury of Marine Mammals. Maine Department of Marine Resources maintains a list of known harbor and gray seal haul-out locations. MaineDOT reviews coastal projects to evaluate the presence of marine mammals (e.g., seal species) habitat and utilizes observations during site visits and anecdotal observations incidentally reported during the public process.

MaineDOT Biologists are responsible for assessing, ensuring compliance, and consulting directly with NMFS under NEPA Assignment. The process checklists are built into MaineDOT's ProjEx database. The Biologist is required to fill in the Assessment, Assessment Details, and PM Permits sections. Marine Mammal information is provided to and discussed with the Team Leader.

1.0 Marine Mammal Initial Project Question and Documentation

The following question is required to be answered by the MaineDOT Biologist:

1. Are Marine Mammals Present?

MaineDOT Biologist will work with the Maine Department of Marine Resources and NMFS to assess presence.

A No response concludes the marine mammal assessment. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

A Yes response to Question 1 indicates the project will require an assessment regarding incidental harassment of marine mammals as a result of project construction activities (go to 2.0).



NEPA Marine Mammal Guidance

2.0 Marine Mammal Coordination, Review, and Approval

The following question is required to be answered by a MaineDOT Biologist:

2. Is a Marine Mammal Harassment Authorization required?

If MaineDOT construction activities cause harassment, then authorization is required. See chart below.

A No response concludes the marine mammal assessment. All actions will be processed and documented in MaineDOT's ProjEx database. A No Response in ProjEx means the project scope and construction activities do not cause harassment of marine mammals.

A Yes response to Question 2 indicates the project will require an Incidental Harassment Authorization (IHA) or Letter of Authorization (LOA) application.

Once it has been determined that the proposed project will harass marine mammals protected under the MMPA, the MaineDOT Biologist will conduct early coordination with the National Marine Fisheries Service (NMFS). The MaineDOT Biologist and Team Leader will work with the Project Manager to assess avoidance measures or alternatives to the project, potential permitting requirements, and mitigation for unavoidable impacts. The MaineDOT Biologist will prepare one of the following applications for incidental take:

- Incidental Harassment Authorization (IHA)
- Letter of Authorization (LOA)

If the Project has the potential to:	Then MaineDOT should:
Result in "harassment" only (i.e., injury or disturbance)	Apply for an IHA (effective up to 1 year)
Result in "harassment" only (i.e., injury or disturbance) AND is planned for multiple years	Apply for an LOA (effective up to 5 years)
Result in "serious injury" or mortality	Apply for an LOA (effective up to 5 years)

The documentation must contain enough detailed information to allow for a thorough assessment of the entire duration of the construction activity. Level A Harassment means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild. Level B Harassment means any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild. The MaineDOT Environmental Office utilizes previous project applications as guidance template documents (e.g., Blue Hill, Eastport).

The MaineDOT Biologist must plan for a 9-month application review and consultation process for IHAs and plan for an 18-month application review and consultation process for LOAs.

An IHA or LOA must be obtained from NMFS before the commencement of construction. All documentation will be placed in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.



NEPA Marine Mammal Guidance

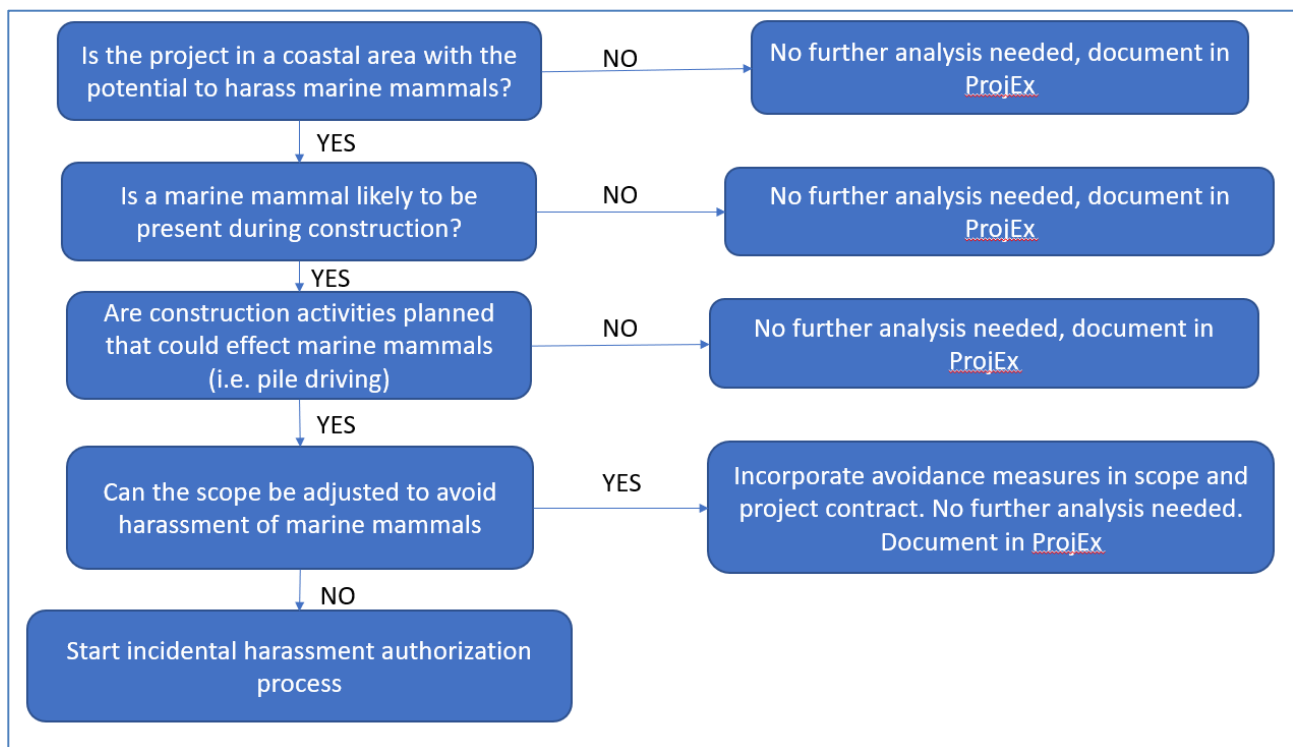
3.0 Marine Mammal Compliance Process

Incidental Harassment Authorization is the primary potential impact on Marine Mammals in Transportation projects. The IHA expires after 1-year, to avoid duplicative and unnecessary document review, MaineDOT will develop a plan of action and document the plan in the CPD E-File. NEPA will be approved for obtaining an IHA, however, the IHA will be obtained before the project advertising.

The contractor must notify the environmental technical staff for the project of changes that could impact marine mammals that were not included in the consultation and special provision. Work can't commence until clearance is given by the environmental technical staff. Documentation will be saved in the CPD e-file.

All MMPA commitments are tracked in ProjEx.

4.0 Marine Mammals Flow Chart



5.0 Links

[Marine Mammal Protection Act](#)

[NOAA Fisheries-Marine Mammal Guidance](#)

[National Marine Fisheries Service Policy Directive PD 02-038](#)



NEPA Migratory Bird Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

[50 CFR 21](#) provides certain exceptions to permit requirements for public, scientific, or educational institutions, and establishes depredation orders which provide limited exceptions to the Migratory Bird Treaty Act. MaineDOT does not obtain permits and does not utilize these exceptions.

The Migratory Bird Treaty Act (MBTA)(16 USC 703-712) was enacted in 1918 and implements various treaties and conventions between the U.S., Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the act, taking, killing, or possessing migratory birds (other than game birds during valid hunting seasons) is unlawful. Protections extend to migratory bird nests determined to contain eggs or young. U.S. Fish and Wildlife Service (USFWS) has regulatory authority over this act.

MaineDOT Biologists are responsible for assessing, ensuring compliance, and directly consulting with USFWS under NEPA Assignment. Migratory bird information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision. The Biologist will determine and document in ProjEx if a nest survey or breeding survey is required. The biologist will discuss the surveys with the Sr biologist and Sr Environmental Manager. The process checklists are built into MaineDOT's ProjEx database. The Biologist is required to fill in the Assessment, Assessment details, and PM Permits sections. ProjEx will generate the final CE Report with this information for the CPD e-file.

1.0 Migratory Bird Coordination and Documentation

The MaineDOT Biologist and Team Leader will discuss and document the applicability of the MBTA in ProjEx based on the scope of work and, if required, incorporate the following commitments into the contract document via a special provision:

1. Clearing and tree trimming (as defined in Standard Specifications section 201.01) will be minimized to the greatest extent practicable to complete any projects.

No active migratory bird nests (nests containing eggs and/or young) will be removed or destroyed. No active migratory bird nests (nests containing eggs and/or young) will be removed or destroyed. If a nest is located during construction, the contractor must cease all work that could affect nesting behavior and notify the environmental technical staff for the project. Work cannot commence until clearance is given by the environmental technical staff.



NEPA Migratory Bird Guidance

- a. A breeding bird survey may be completed. Clearing and trimming may be completed at any time if it is found that there is no active nest in the project area.
 - b. If an active nest is found, an appropriate buffer for the bird and the activity may be placed around the nest. This buffer will be coordinated with the ENV office.
 - c. Incidental take of swallow species nesting on bridge structures is allowed following guidance in the FAST ACT Section 1439.
2. Measures, to the extent practicable, will be used to prevent or discourage migratory birds from building nests within portions of the project area planned for construction.
 3. Inactive nests will be removed from the project area to minimize the potential for reuse by migratory birds during the construction period. This is allowed in Maine.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

2.0 Links

[USFWS Migratory Bird Treaty Program](#)



MaineDOT

NEPA Essential Fish Habitat Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855) requires that Essential Fish Habitat (EFH) be identified for all federally managed fisheries. EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The National Marine Fisheries Service (NMFS) has regulatory authority over this act. The act further requires projects funded, permitted, or implemented by federal action agencies to consult with NMFS regarding potential adverse impacts to EFH (50 CFR 600.905-600.930) for the purpose of conserving and enhancing EFH.

On August 28, 2012, and in accordance with 50 CFR 600.920(c), the Federal Highway Administration (Maine Division) designated MaineDOT as their non-Federal representative to conduct EFH consultation with NMFS. The designation was granted exclusively to staff biologists working in the MaineDOT Environmental Office. This will remain in place for projects not under the NEPA assignment program.

On February 12th, 2025, NOAA signed the General Concurrence for Atlantic salmon Essential Fish Habitat Consultations in Maine (saved to the MaineDOT CPD e-file). The goal of which is to improve efficiency of the EFH consultation process, while maintaining a high level of protection for Atlantic salmon and its habitat. The General Concurrence (GC) may be used for activities with minimal adverse effects covered under the existing regulatory processes US Fish and Wildlife uses for the Endangered Species Act (ESA). This allows MaineDOT to use the [USFWS Programmatic Biological Opinion](#) with its [Avoidance and Minimization measures \(AMM's\)](#) to fulfill the consultation requirements of the Magnuson-Stevens Act Essential Fish Habitat and Fish and Wildlife Coordination Act (FWCA).

Under the GC a project can fulfill the requirements of consultation if the project will likely result in no more than minimal adverse effects, determined by the biologist during Essential Fish Habitat Assessment. If the project will take place within only the freshwater portions of the Atlantic salmon critical habitat and Gulf of Maine Distinct Population Segment as defined in Endangered and Threatened Species; Designation of Critical Habitat for Atlantic Salmon (*Salmo salar*) Gulf of Maine Distinct Population Segment; Final Rule (Part 226). If the project will meet all applicable AMM's for the project type described in the User's Guide for the Maine Atlantic Salmon Programmatic Consultation (MAP).

MaineDOT Biologists are responsible for assessing and ensuring compliance, and directly consulting with NMFS under NEPA Assignment. EFH information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision.



NEPA Essential Fish Habitat Guidance

1.0 Essential Fish Habitat Initial Project Question and Documentation

The following question is required to be answered by the MaineDOT Biologist:

1. Is Essential Fish Habitat Present?

MaineDOT Biologist screens projects using the EFH screening layer, [EFH Mapper](#).

A Yes response to Question 1 indicates the project will require an effects assessment (go to 2.0). A No response concludes the EFH assessment. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file. The process checklists are built into MaineDOT's ProjEx database. The Biologist is required to fill in the Assessment, Assessment details, and PM Permits sections. ProjEx will generate the final CE Report with this information for the CPD e-file.

2.0 Essential Fish Habitat Assessment

If there is no in-water work, then no EFH consultation is necessary, and the Biologist will document a "No Effect" in the ProjEx database. EFH will be documented in the NEPA CE Report.

Once it has been determined that the proposed project is within EFH and includes in-water work, the MaineDOT Biologist and Team Leader will work with the Project Manager to assess avoidance measures or alternatives to the project. The MaineDOT Biologist will conduct an assessment of the effects and determine the consultation level.

An adverse effect determination indicates the project will require consultation with NMFS (go to 3.0). 50 CFR 600.910(a) defines adverse effect as "any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, and biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species, and their habitat, and other ecosystem components if such modifications reduce the quality and/or quantity of EFH".

Effect	Consultation Level with NMFS	Timing
No Effect	None	N/A
No Adverse Effect	None	Annual Reporting Required.
Minimal Adverse Effect	None	Annual Reporting Required.
Adverse Effect-Not Substantial (as defined in EFH Regulation)	Abbreviated or Programmatic	NMFS must respond in writing within 30 days of EFH Assessment submittal (50 CFR 600.920(h)(4)). Annual Reporting Required for Programmatic Consultations
Adverse Effect-Substantial (as defined in EFH Regulation)	Expanded	NMFS must respond in writing within 60 days of EFH Assessment submittal (50 CFR 600.920(i)(4))

If a project has a finding of Minimal Adverse Effect and meets the requirements of the General Concurrence



NEPA Essential Fish Habitat Guidance

(Feb. 12, 2025) a separate EFH consultation is not required with NMFS and concludes the EFH assessment. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file. EFH will be documented in the NEPA CE Report. Annual reporting to NMFS will be required for all projects processed under the GC.

A no adverse effect concludes the EFH assessment. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file. EFH will be documented in the NEPA CE Report. Annual reporting to NMFS will be required for all determined to have no adverse effect.

3.0 Essential Fish Habitat Coordination, Review and Approval

The MaineDOT Biologist will prepare an EFH Assessment based on the consultation level and submit it to NMFS for consultation. The mandatory contents of an EFH Assessment include:

1. A description of the proposed action,
2. An analysis of the potential adverse effects of the action on EFH and the managed species,
3. The Federal agency's conclusion regarding the effects of the action on EFH,
4. Proposed mitigation, if applicable (per 50 CFR 600.920(e)(3))

The MaineDOT Biologist will use the checklist on pages 29-36 of the [FHWA/NMFS Consultation Process Guide for Transportation Actions in the NMFS Great Atlantic Region \(April 2018\)](#) as a guide for information to submit as part of the EFH consultation. The MaineDOT Biologist will also follow Section IV - EFH Assessment on pages 42-45 of the guide for the preparation of EFH assessments (abbreviated and expanded). The MaineDOT Biologist will also utilize previous EFH Assessment Documents as guides.

Conservation recommendations from NMFS are advisory and non-binding to the federal action agency, but MaineDOT will consider and incorporate those it deems appropriate. MaineDOT must respond to NMFS recommended conservation recommendations within 30 days of receipt of any conservation recommendations (50 CFR 600.920(k)(1), indicating the conservation measures that will and will not be implemented. Any recommendations not accepted by MaineDOT will be discussed with NMFS. Under NEPA Assignment, the NMFS recommendations will be reviewed and responded to by the MaineDOT Environmental Office Senior Environmental Manager.

All conservation measures accepted will be documented, tracked in ProjEx, and complied with by the MaineDOT Environmental Office.

NEPA will not be approved until the EFH consultation is complete.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file with species, effect, consultation, and document information.

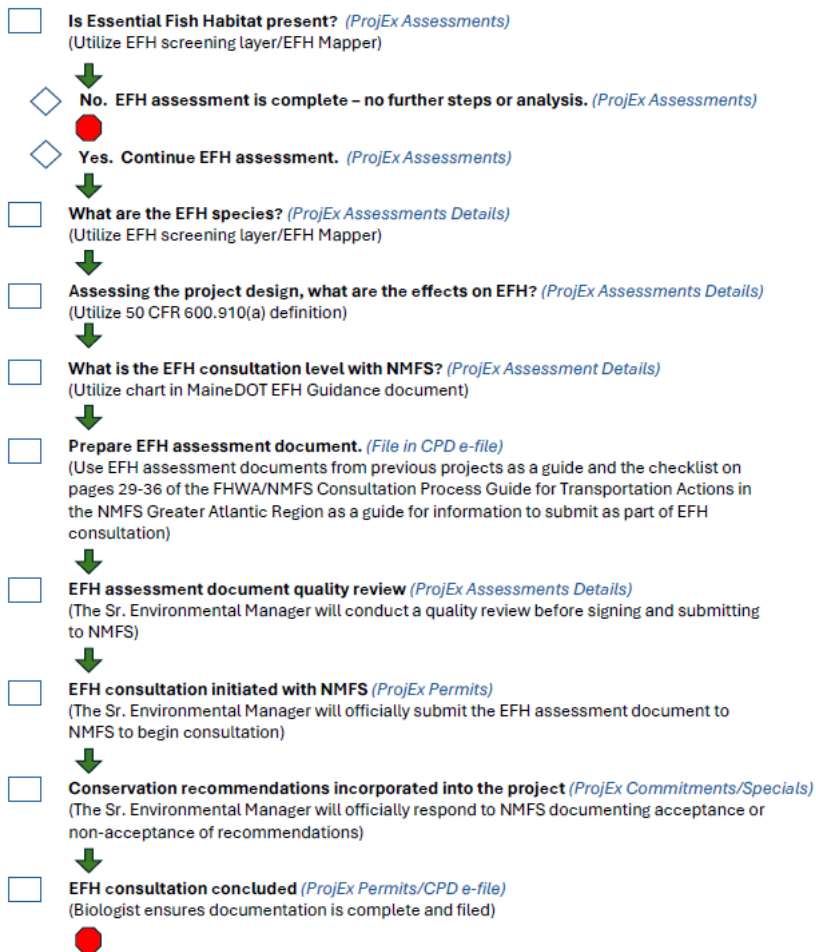
4.0 EFH Flow Checklist for CEs



NEPA Essential Fish Habitat Guidance

Essential Fish Habitat (EFH) Flow Checklist for Categorical Exclusions

The biologist will complete the EFH assessment/determination of effect/consultation with National Marine Fisheries (NMFS) and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.



5.0 Links

[Magnuson-Stevens Fishery Conservation and Management Act](#)

[EFH Part K 50 CFR 600.905-600.930](#)

[EFH Consultation worksheet for abbreviated consultation](#)

[FHWA Programmatic EFH Consultation](#)

[EFH Consultation Process Guide](#)

[Programmatic Consultations \(contains Consultation Guide, BMPs, EFH Memo, Programmatic EFH Consultation, Fillable Verification Form\)](#)

[EFH Mapper](#)

[FAQ](#)



NEPA Hazardous Material Management Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675), Superfund Amendments and Reauthorization Act (42 U.S.C. 9671-9675), and Resource Conservation and Recovery Act (42 U.S.C. 6901-6992k), MaineDOT conducts environmental site assessment investigation to address the liability of acquiring portions or all of a property, as well as, requiring that a property shown to be contaminated must have the materials removed from the site during construction and must be properly identified and managed.

MaineDOT Hazardous Materials Manager (Hydrogeologist) and Senior Geologist are responsible for assessing and ensuring compliance with these laws under NEPA Assignment. Hazardous material management information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision. ProjEx contains the master checklist.

1.0 Hazardous Materials Management Initial Project Question and Documentation

The following question is required to be answered by MaineDOT Environmental Office Hazardous Material staff:

1. In accordance with MaineDOT's Standard Operating Procedures, is hazardous material review required?

Every acquisition or sale of property for any purpose is applicable. Any project that includes the purchase of new right-of-way, excavation that requires Dig-Safe review, structure demolition, or structure modification will require at least an Initial Site Assessment (ISA) to assess if there are known or potential uncontrolled petroleum or hazardous waste issues within the proposed project limits. Projects within the existing right-of-way when there is no change to the cross-section, grade, or utilities involved, generally will not require an ISA.

A Yes response to Question 1 indicates the project will require further Hazardous Materials Assessment (go to 2.0). A No response concludes the Hazardous Materials Assessment. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.



NEPA Hazardous Material Management Guidance

2.0 Hazardous Materials Review

If the ISA suggests no obvious issues, a comment to this effect is made under the proper WIN or PSN in the ProjEx database. The supporting documentation is filed in MaineDOT's Environmental CPD e-file.

If it is determined that the potential for contamination exists on the project, a Detailed Site Investigation (DSI) will be performed. DSIs are completed during project development between project kick-off and plan impacts complete. The Initial Site Assessment Checklist (Attachment A of the Hazardous Materials SOP) is filled out and placed in the CPD e-file. The appropriate comment is made in ProjEx and the ENV Team Leader, the Project Manager, and the Designer are informed of the potential for contamination being encountered.

A DSI is conducted only when an Initial Site Assessment (ISA) reveals known or potential uncontrolled petroleum or hazardous waste contamination. The DSI is undertaken to investigate ISA findings, estimate the nature and extent of contamination at the site, and provide a basis for assessing the need, type, and cost of remediation. The activities and methods incorporated in a DSI depend on the nature of the project and the findings of the ISA. The following list identifies activities that may be appropriate on a case-by-case basis: 1) geophysical studies, 2) Soil borings/monitoring wells, 3) test pits, 4) chemical field screening, 5) sampling and laboratory analysis, 5) mitigation assessment, including feasibility and estimated cost analysis and 7) written documentation of findings. Remedial action goals are defined, and in some cases, baseline risk assessments are performed.

The following question is required to be answered by MaineDOT Environmental Office Hazardous Material staff:

2. Are hazardous materials encountered and is a General Note or Special Provision in the contract required?

A Yes response to Question 2 indicates the project will require a Special Provision or General Note in the Contract. The Hazardous Material staff will write and save any required documents in the CPD e-file and place them in the contract. A No response concludes the Hazardous Material review. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file. The Special Provisions detail the actions required to properly remove and dispose of hazardous material.

3.0 Flow Checklist

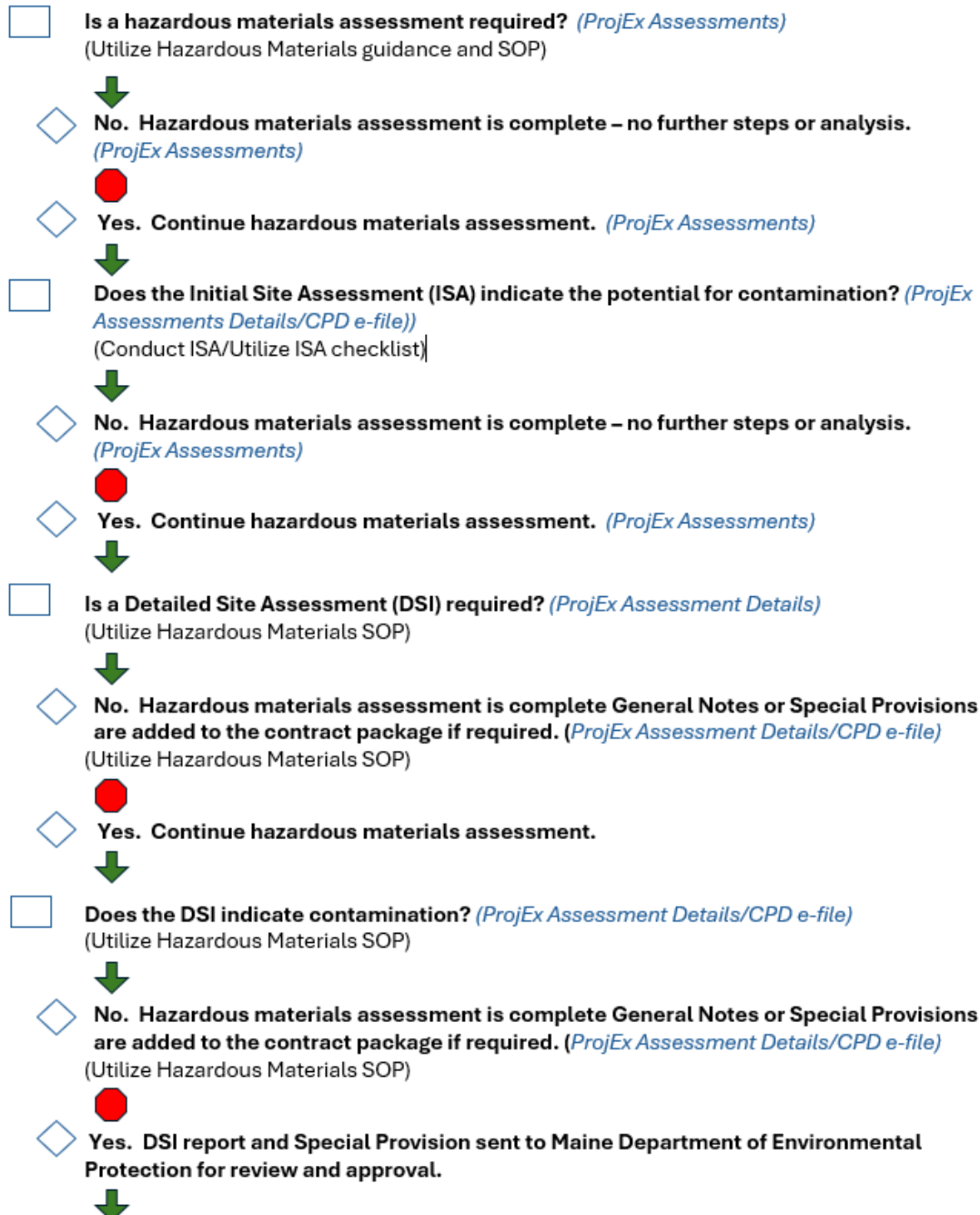
Hazardous Material Management Flow Checklist is on the following page.



NEPA Hazardous Material Management Guidance

Hazardous Materials Flow Checklist for Categorical Exclusions

The Groundwater and Hazardous Materials Division will complete the Hazardous Materials assessment and document it in the CPD e-file and ProjEx Permits, Assessments, and Assessment Details. Documentation will be in the NEPA CE Report and the CPD e-file.





NEPA Hazardous Material Management Guidance

- ☐ **Special Provision is added to the contract package.** (*ProjEx Assessment Details/CPD e-file*)
(Utilize Hazardous Material SOP)



- ☐ **Hazardous Materials assessment complete.** (*ProjEx Permits*)
(Utilize Hazardous Material guidance)



4.0 Links and Standard Operating Procedures

[Comprehensive Environmental Response, Compensation, and Liability Act](#)

[Superfund Amendments and Reauthorization Act](#)

[Resource Conservation and Recovery Act](#)

MaineDOT Environmental Office maintains a Standard Operating Procedure for Hazardous Material

Environmental Office
MaineDOT
Standard Operating Procedure
Uncontrolled Petroleum and Hazardous Waste Environmental Site Assessments

1.0 APPLICABILITY.

This Standard Operating Procedure (SOP) applies to staff in the Maine Department of Transportation's Environmental Office Hazardous Material Management Division (HMM) charged with assessing the presence of uncontrolled petroleum or hazardous waste contamination on Maine Department of Transportation (MaineDOT) projects throughout the state. The document also outlines procedures for incorporating site assessments for uncontrolled petroleum and hazardous waste into the development of projects by the Bureau of Planning, Bureau of Project Development, Bureau of Maintenance and Operations, Environmental Office, Office of Freight Transportation, and Office of Passenger Transportation.

2.0 PURPOSE.

The overarching purpose of this SOP is to outline a series of procedures to be used by the HMM to ensure that the MaineDOT is in compliance with state and federal uncontrolled petroleum and hazardous waste laws and to protect the health and safety of MaineDOT workers and the public. Conducting environmental site assessments focuses on identifying potential areas of contamination involving uncontrolled petroleum or hazardous waste within the work area that may require special handling of soils and groundwater. The site assessments are the MaineDOT's due diligence procedure to limit long term environmental liability and to protect workers from exposure to contamination. The MaineDOT environmental site assessments are based on the ASTM document E 1527-05 Standard Practice Site Assessments Phase 1 Environmental Site Assessments Process.

3.0 RESPONSIBILITIES.

The occurrence of wastes, uncontrolled petroleum and hazardous materials has created substantial problems in the planning, design, and construction of transportation facilities. Land purchased or considered for purchase by state transportation agencies is sometimes contaminated by petroleum, solid wastes, or hazardous waste. The presence of these substances can create a multitude of problems affecting the project development and/or land acquisition process, and requires coordination within the transportation agency, as well as with environmental regulatory agencies. Waste and contamination problems often have the potential to impact transportation programs by increasing costs, creating time delays and providing greater opportunities for litigation if not identified early in the project development process. Federal and State regulations require that state transportation agencies develop and implement plans for resolving

these problems. For MaineDOT, the fundamental statutes for dealing with uncontrolled petroleum and hazardous waste Issues are the Resource Conservation and Recovery Act of 1976 (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), the Hazardous and Solid Waste Amendments to RCRA of 1984 (HSWA), the Superfund Amendments and Reauthorization Act to CERCLA of 1986 (SARA), Maine Law under Chapter 13 Title 38, and the Code of Maine Regulations (CMR) Chapters 850-857.

3.1 CONFORMITY

HMM personnel involved in conducting Initial Site Assessments and Detailed Site Investigations proposed by MaineDOT are responsible for becoming familiar, and complying with, the contents of this procedure. Further it is advisable that ENV managers and supervisors, Legal Office personnel and managers within the Bureau of Project Development become acquainted with this Policy to garner an understanding of how these initiatives integrate with their respective programs.

3.2 ORIGINATION, DEVELOPMENT & PROCESS

The Bureau that introduces the project into the Work Plan (e.g., Project Development or Maintenance and Operations) will request an Initial Site Assessment (ISA) from the HMM. For each geographical Region within the Bureau of Maintenance & Operations, a biannual review of upcoming activities will be conducted with the Manager of the ENV or the designee to determine if an ISA is applicable. Every acquisition or sale of property for any purpose is applicable. Any project that includes the purchase of new right-of-way, excavation that requires Dig-Safe review, structure demolition or structure modification will require at least an ISA to assess if there are known or potential uncontrolled petroleum or hazardous waste issues within the proposed project limits. Projects within the existing right-of-way when there is no change to the cross section, grade or utilities involved, generally will not require an ISA.

A Detailed Site Investigation (DSI) is conducted only when the ISA reveals known or potential uncontrolled petroleum or hazardous waste contamination. The DSI is undertaken to investigate ISA findings, estimate the nature and extent of contamination at the site, and provide a basis for assessing the need, type, and cost of remediation. The activities and methods incorporated in a DSI depend on the nature of the project and findings of the ISA. The following list identifies activities that may be appropriate on a case by case basis: 1) geophysical studies, 2) Soil borings/monitoring wells, 3) test pits, 4) chemical field screening, 5) sampling and laboratory analysis, 6) mitigation assessment, including feasibility and estimated cost analysis and 7) written documentation of findings. Remedial action goals are defined, and in some cases, baseline risk assessments are performed.

The Manager of the HMM will oversee coordination efforts within

MaineDOT and between MaineDOT, the Maine Department of Environmental Protection (MDEP) and the Environmental Protection Agency (EPA). In addition, decisions concerning the need for and level of project involvement will be made by this position. The Manager of the HMM will make the final decision since even minor excavation could involve uncontrolled petroleum and hazardous waste migration from off-site sources.

3.3 APPROVAL

The Manager of the HMM will review the results of ISA's and DSI's to verify compliance with this policy and relevant federal and state regulations. Additionally, review, input and consultation will be requested from the Legal Office relative to issues associated with problematic environmental habitat concerns that may potentially prove burdensome for MaineDOT.

4.0 PROCEDURES.

The assessment work performed by the HMM will be performed in a phased manner. ISA requests will be made directly to the Manager of the HMM or through the Environmental Office Project Team Leader. The HMM then conducts an ISA. The results of the ISA are documented to the Environmental Office project files and the Environmental Office Project Team Leader or the initiating Bureau. A comment summarizing the findings is also inserted into the Projex database system. If potential contamination exists, the HMM will notify the appropriate Bureau or Environmental Office Project Team Leader. The Manager of the HMM will decide if a DSI should be conducted, and will be responsible for coordinating within MaineDOT, with any consultants, and with the MDEP.

If a DSI is required, the HMM (or its consultant) will prepare a work plan and obtain access to the site(s). Subsurface exploration and sampling programs may be coordinated with MaineDOT's field geotechnical group, an exploration contractor and/or an environmental laboratory. The DSI findings will be documented in a report for the Environmental Office files and to the appropriate Bureau or Environmental Office Project Team Leader. The report shall show contaminated areas in relation to project alternatives, shall discuss preliminary types of treatment and/or disposal, potential or current environmental habitat issues under each option and present cost estimates for remediation or mitigation. The HMM shall document the Department's proposed resolution of contamination concerns, including treatment/disposal measures (to the extent possible) and shall indicate what needs to be done to comply with applicable laws and regulations. The proposal shall be sent to MDEP, the Project Team Leader and the Legal Office (when applicable).

Specifics associated with the procedures for implementing the phased investigate assessments are provided below:

4.1 INITIAL SITE ASSESSMENT

An ISA involves evaluating a site to determine if it has the potential to be contaminated with uncontrolled petroleum or hazardous waste or contains other

regulated wastes. In general, the ISA starts with a reconnaissance of the project area. The site visit is used to visually identify potential structures or site features that suggest contamination may be in the proposed construction area. Some features of interest that the reconnaissance focuses on include current gasoline stations, buildings that have the appearance of being former gasoline stations/automotive and small engine garages, industrial facilities, landfills, transformer stations, current or former mills, Junk yards, automotive repair facilities and bulk fuel storage facilities.

The site reconnaissance efforts are followed with a detailed database review using both Maine Department of Environmental Protection (MDEP) and Environmental Protection Agency (EPA) sources. The databases typically reviewed include the following:

- EPA's Toxic Release Inventory list (TRI)
- EPA's Water Discharge Permits Compliance System (PCS)
- EPA's Air Release list (AIRS/AFS)
- EPA's Resource Conservation and Recovery Act (RCRAinfo) list
- EPA's Super Fund list including National Priority List (NPL) and CERCLA
- MDEP Voluntary Response Action Program (VRAP) list
- MDEP Uncontrolled Hazardous Substance Site Program List
- MDEP Registered Landfill list
- MDEP Master Underground Storage Tank List
- MDEP Oil and Hazardous Material Spill Reports
- MDEP Long Term Petroleum Remediation Priority list
- MDEP Arc Map data base
- Department of Health and Human Services (DHHS) Public Water Resource Information System data base
- Department of Defense (DOD) data base

These databases are reviewed to confirm potential contamination issues identified during the site visit or to identify other areas not readily determined during the site reconnaissance such as the location of hazardous materials and/or petroleum spills. Typically, a visit is made to the MDEP Augusta office to review and obtain copies of any pertinent spill reports or files that pertain to a given site being investigated. However, most spill reports and some files are now available on-line from the MDEP.

On occasion, it may be necessary to use a vendor to perform the database research. Typically, MaineDOT uses Environmental First Search. This can be done by going to their web page at <http://www.efsn.com> and following their instructions. In general, the same information they provide is assessable at the above mentioned databases. This vendor may be useful for larger projects like

proposed corridors or long segments of planned work through urban or industrial areas.

Another source of information is interviews with people knowledgeable about the project site and municipal officials that may have knowledge of any contamination issues. These individuals include, but are not limited to, MDEP officials, Code Enforcement Officers, Fire Chiefs, Town Managers, Municipal Sewer and Water Supervisors, Town Historians and others familiar with the area's history.

The ISA data is collected in a folder marked with the name of the project and its Work Identification Number (WIN) or Project Scoping Number (PSN). A two page cover sheet titled "Initial Site Assessment Checklist" (see Attachment A) is reviewed, completed and placed in the file along with the rest of the pertinent data.

If the ISA suggests no obvious issues, a comment to this effect is made under the proper WIN or PSN in the Projex database. The supporting documentation is then submitted to be scanned into the TEDOCS file management database and CPD e-file.

If it is determined that the potential for contamination exists on the project, a DSI will be performed. The appropriate comment is made in ProjEx and the Project Manager and Designer are informed of the potential for contamination being encountered.

4.2 DETAILED SITE INVESTIGATION

The DSI typically involves the advancement of subsurface explorations at select areas identified during the ISA as having the potential for contamination.

Prior to performing field work, a Health and Safety Plan following OSHA 29 CFR 1910.120(e)(8) is prepared and reviewed. This plan states the type of contamination that is expected to be encountered and action levels to be followed to ensure workers are not exposed to hazardous chemicals while working on-site.

A predetermined number of subsurface explorations are advanced within the MaineDOT Right-of-Way at the area of concern with soil samples collected for testing of volatile organic constituents in the field. This is generally done following the MDEP TS004 Compendium of Field Testing of Soil Samples for Gasoline and Fuel Oil in combination with MDEP Chapter 691, MDEP Appendix Q Determination of the Presence and Concentration of Oil Contaminated Soils by Field and Laboratory Analytical Methods as Part of an Underground Oil Storage Facility Closure Site Assessment. Typically, MaineDOT personnel use either a Thermo 580B Photoionization Meter or a MiniRAE 3000 Photoionization meter to do the field screening. Usually, a soil sample with the highest field screening

reading from each location is submitted to an MDEP approved laboratory for analytical testing.

The analytical parameters typically screened for include: Volatile Petroleum Hydrocarbons (VPH) using the MA VPH method, Extractable Petroleum Hydrocarbons (EPH) using the MA EPH method, Volatile Organic Hydrocarbons (VOCs) using EPA method 8260 and total lead using EPA Method 6010B. Depending on the type of suspected contaminants that may be present, other analysis may be necessary, especially if PCBs or heavy metals are suspected.

If the laboratory results indicate contamination has adversely impacted the site, MDEP is contacted along and an environmental site assessment report is developed and forwarded to them for their review. The report summarizes the findings of the ISA and DSI and includes copies of the laboratory results, site plans/figures/boring locations and a draft copy of a Special Provision, Section 203 "Excavation and Embankment (Contaminated Soil and Groundwater Management) The Special Provision is based on a Memo of Understanding between the MaineDOT and the MDEP titled "Special Provision for Contaminated Soil and Ground Water Management for Maine Transportation Construction Projects" dated August 21, 1996 (see Attachment B). The Special Provision details the areas of contamination, field screening methods and affected soil management practices.

Once MDEP approves the Special Provision, this document then becomes part of the construction bid package. A copy of the Special Provision is provided to the Project Manager/Designer and is also placed into the relevant projects CPD e-file. A copy is also scanned into TEDOCS and the appropriate comments are entered into ProjEx.

If the subsurface explorations do not suggest contamination or the contamination is determined to be deeper than the planned excavation at the site, a General Note is prepared indicating that the possibility of contamination exists. The General Note is submitted to the Project Manager and Designer for inclusion in the bid package. The document is also copied to the project CPD e-file and scanned into TEDOCS. Appropriate comments are also entered into ProjEx. The primary intent of the Note is to inform the contractor of the potential environmental issues and to spell out their responsibilities if contamination is discovered during work.

4.3 HIRING A CONSULTANT.

In some instances, such as a heavily urbanized or industrial area or if in-house resources are unavailable a pre-approved consultant is hired to perform an ISA or DSI investigation following ASTM E 1527-05 guidelines.

Once the consultant's report is submitted, reviewed by staff for completeness

and a determination is made on the type and amount of contamination present and then the previous outlined steps are taken if it is determined that a Special Provision or General Note is needed. If a Special Provision is determined to be necessary, a copy of the consultant's report along with a draft Special Provision is sent to MDEP for their review and approval of the Special Provision. Once the Special Provision has been accepted by MDEP, the above previous mentioned procedures are followed for inclusion of the Special Provision into the bid Package.

ATTACHMENT A

Initial Site Assessment Checklist

Maine Department of Transportation Groundwater and Hazardous Waste Unit INITIAL SITE ASSESSMENT CHECKLIST	Project No.
	Arterial / Bridge / Multimodal / Traffic

Project Name		Region No.	Route No.
Milepost/Box Number-Begin:	Milepost/Box Number-End:	County Name	
Location and work description:			
PROJECT FEATURES: (check "yes" if the answer is maybe)			
<input type="checkbox"/> No	<input type="checkbox"/> Yes - New ROW	<input type="checkbox"/> No	<input type="checkbox"/> Yes - Easement
<input type="checkbox"/> No	<input type="checkbox"/> Yes - Relocate utilities	<input type="checkbox"/> No	<input type="checkbox"/> Yes - Dredging
<input type="checkbox"/> No	<input type="checkbox"/> Yes - Excavation		

HAZARDOUS MATERIALS/WASTE SCREENING (You may use the back of this form or add pages for comments)

1. What is the project setting?	<input type="checkbox"/> Rural	<input type="checkbox"/> Mixed	<input type="checkbox"/> Urban
2. What is the current land use?	<input type="checkbox"/> Industrial <input type="checkbox"/> Light industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agricultural <input type="checkbox"/> Residential <input type="checkbox"/> Undeveloped <input type="checkbox"/> Other: _____		
3. What is the past land use?	<input type="checkbox"/> Industrial <input type="checkbox"/> Light industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agricultural <input type="checkbox"/> Residential <input type="checkbox"/> Undeveloped <input type="checkbox"/> Other: _____		
4. Are properties serviced by public or private water supplies?	<input type="checkbox"/> Public	<input type="checkbox"/> Private	
5. Were any of the following records/information sources used in this assessment?	<input type="checkbox"/> NPL <input type="checkbox"/> RCRA <input type="checkbox"/> Personal interviews <input type="checkbox"/> MDEP Spills <input type="checkbox"/> CERCLIS <input type="checkbox"/> Utility Representatives <input type="checkbox"/> MDEP Uncontrolled Sites <input type="checkbox"/> MDEP/VRA <input type="checkbox"/> Maine Department of Health <input type="checkbox"/> Other: _____ <input type="checkbox"/> Photographs		
6. Are any known hazardous material/waste sites adjacent to the project area (approximately 250 feet) which may affect the project?	<input type="checkbox"/> No <input type="checkbox"/> Yes - identify and explain: _____ 		
NOTE: If there is potential for hazardous material/waste involvement, use the back of this form to draw a sketch map, quad map or attach photograph(s) with the potential hazardous material/waste site(s) identified.			

VISUAL INSPECTION

Was a visual inspection conducted?
<input type="checkbox"/> No - why not: _____
<input type="checkbox"/> Yes - Inspection date _____ - Check below to indicate if any of these features are present in the immediate project area. Indicate whether or not these features appear to present a potential hazardous material/waste problem.

INSPECTION (Cont'd)Physical features: **SITE NAME****LOCATION**

				<i>Potential Problem</i>						<i>Potential Problem</i>	
	Y	N	Unk	Y	N		Y	N	Unk	Y	N
Underground tanks						Transformers					
Surface tanks						Chemical Storage					
Sumps						Service Stations					
Basins						Landfill					
Containers											

Contamination:

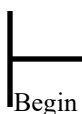
				<i>Potential Problem</i>						<i>Potential Problem</i>	
	Y	N	Unk	Y	N		Y	N	Unk	Y	N
Surface Staining						Vegetation Damage					
Oil Sheen											
Odors											

Physical features: **SITE NAME****LOCATION**

				<i>Potential Problem</i>						<i>Potential Problem</i>	
	Y	N	Unk	Y	N		Y	N	Unk	Y	N
Underground tanks						Transformers					
Surface tanks						Chemical Storage					
Sumps						Service Stations					
Basins						Landfill					
Containers											

Contamination:

				<i>Potential Problem</i>						<i>Potential Problem</i>	
	Y	N	Unk	Y	N		Y	N	Unk	Y	N
Surface Staining						Vegetation Damage					
Oil Sheen											
Odors											

Sketch Map
Begin
End**INITIAL SITE ASSESSMENT CONCLUSION**

- | | | |
|---|-----------------------------|--|
| 1. Does the project have potential hazardous material/waste involvement? | <input type="checkbox"/> No | <input type="checkbox"/> Yes |
| 2. Does the project require pre-construction well sampling? | <input type="checkbox"/> No | <input type="checkbox"/> Yes |
| 3. Should the project include any specifications? | <input type="checkbox"/> No | <input type="checkbox"/> Yes
specify: _____ |
| 4. Based on this Initial Site Assessment, is a Detailed Site Investigation recommended? | <input type="checkbox"/> No | <input type="checkbox"/> Yes |

Name & Title (print)

Signature

Date

ATTACHMENT B

Memo of Understanding between the MaineDOT and the MDEP
Special Provision for Contaminated Soil and Ground Water Management for Maine
Transportation Construction Projects
August 21, 1996

MEMORANDUM OF UNDERSTANDING
on the

*Special Provisions for Contaminated Soil and Ground Water
Management for Maine Transportation Construction Projects*

MAINE DEPARTMENT OF TRANSPORTATION

and

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

(August 21, 1996)

The Maine Department of Transportation (MDOT) and Maine Department of Environmental Protection (MDEP) agree to develop and implement a mutually beneficial approach to deal with petroleum-contaminated soil and ground water that affects State transportation projects

General The Maine Department of Transportation (MDOT) is responsible for constructing and maintaining Maine's transportation infrastructure and the Maine Department of Environmental Protection (MDEP) is responsible for ensuring a clean and safe environment. This MEMORANDUM OF UNDERSTANDING (MOU) establishes policies and procedures for work on transportation projects that encounter petroleum contaminated soil and ground water. It also establishes guidance that MDOT design engineers can reference for contamination-related special design and budget considerations.

MDOT construction projects in developed commercial and industrial areas frequently encounter soil and ground water contaminated with petroleum compounds. This contamination commonly affects the installation of underdrains, storm drains, and catch basins. Contamination can also adversely affect replacement and maintenance of public water and sewer distribution pipes in the project right-of-way. To mitigate contamination-related impacts to the environment and to public health, MDOT develops special provisions for contaminated soil and ground water management on a project-specific basis. Unmitigated, the potential adverse impacts of construction in contaminated areas may include the following:

- migration of contaminated ground water along underdrains and contamination of the underlying soil and ground water,
- discharge of contaminated ground water to surface water bodies,

- ° transportation of contaminated soils offsite without proper transportation and disposal restrictions,
- ° exposure of construction personnel and the general public near a construction site to potentially hazardous concentrations of petroleum compounds

Applicability The policies and procedures addressed in this document apply to soils and ground water contaminated with virgin¹ petroleum products that are in areas served by public water supplies. Generally, these areas are, or would be, designated as Baseline Sites (BL-1 or BL-2) according to MDEP's *Procedural Guidelines for Establishing Standards for the Remediation of Oil Contaminated Soil and Ground Water in Maine* (effective February 1, 1995). The policies and procedures contained in this MOU strive to minimize the possibility that construction will exacerbate an existing contamination problem.

MDOT Project Contamination Assessments MDOT currently performs contamination assessments for construction projects that will involve excavation work below a depth of approximately 3 ft. Contamination assessments begin with general field screening to identify project contamination potential. As warranted, a more detailed Phase I Contamination Assessment (so-called Phase I Environmental Site Assessment) follows. For projects that have significant contamination potential, MDOT performs a Phase II Contamination Assessment which generally involves soil borings, test pits, and/or monitoring wells and field and laboratory chemical testing. The primary purpose of these investigations is to identify the extent of subsurface contamination that will affect a project. The Phase II Contamination Assessment provides enough subsurface information to identify areas containing contaminated and petroleum-saturated soils according to project coordinates. MDOT contamination assessments are performed under the supervision of a Maine Certified Geologist or Professional Engineer.

For projects with documented contamination, MDOT currently submits a copy of each Phase II Contamination Assessment report to MDEP's Bureau of Remediation and Waste Management, Division of Technical Services. MDEP uses this report as a

1 Virgin petroleum product refers to petroleum product that is devoid of non-petroleum impurities or contaminants. Used petroleum product (e.g., waste oil) or petroleum product that has been mixed or contaminated with impurities (e.g., organic solvents) is not considered virgin petroleum product.

basis for understanding the project contamination and for determining the adequacy MDOT's proposed special provisions

Function of the Special Provision After characterizing and identifying the extent of soil and ground water contamination on a project, MDOT develops a contract Special Provision for Contaminated Soil and Water Management (hereafter, Special Provision) This Special Provision establishes management requirements and procedures for MDOT construction projects that involve contaminated soil and ground water The Special Provision integrates modern construction and engineering technology and practice with environmental and health & safety regulations It identifies important project considerations including

- vertical and horizontal extent and nature of contamination,
- disposition of contaminated soil and ground water,
- special construction considerations for work in contaminated areas,
- contamination-related worker health and safety requirements,
- environmental and industrial hygiene monitoring requirements,
- contingencies for unknown contamination,
- basis for payment of contamination-related work

The goals of the Special Provision are to ensure that project construction does not exacerbate contamination in the area and that contamination does not compromise worker health and safety It is important to note that during the contract bidding process, the Special Provision also enables MDOT to solicit and receive competitive bids for contamination-related items Thus, the Special Provision must be comprehensive to enable bidders to determine expenditures that are beyond the normal scope of construction activities

Role of the Model Special Provision The example special provision attached to this MOU (Attachment #1) will serve as a "Model" Special Provision which establishes management requirements and procedures for future MDOT construction projects that will involve excavation in or disturbance of contaminated soil and ground water. It is important to note these special provisions are not required if the construction would be unaffected by the contamination The Model Special Provision covers the typical MDOT construction project that is located in a developed commercial or industrial area served by public water Generally, MDEP would apply baseline clean-up standards to such a site based on current or historical land use and the site would be

classified as BL1 (industrial) or BL2 (urban, commercial, densely developed). The clean-up standard for BL1 sites requires only that petroleum-saturated soils and free product be removed. The clean-up standards for BL2 sites also require removal of petroleum-saturated soils and free product. In addition, at sites with gasoline contamination, the BL2 standard requires removal of soils with VOC headspace concentrations greater than 1,000 ppm, at sites with fuel oil or kerosene contamination, the BL2 standard requires removal of soils with VOC headspace concentrations greater than 400 ppm. It is important to note that MDOT's Model Special Provision also requires removal of petroleum-saturated soils. However, it differs from the BL2 clean-up standard because non-saturated petroleum-contaminated soils are allowed to remain in-place or to be reused on the project with some restrictions (e.g., placed under pavement), regardless of the degree of contamination present. MDOT may tailor portions of the Model Special Provision to address construction on contaminated sites that would require MDEP's Stringent or Intermediate clean-up, but this will be done on a case-by-case basis after conferring with MDEP.

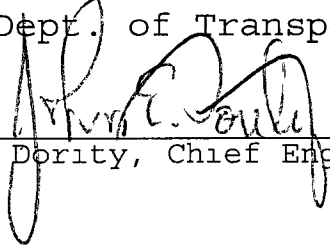
Procedure for Employing the Model Special Provisions After performing a project Phase II Contamination Assessment, MDOT will submit a copy of the assessment report to MDEP's Bureau of Remediation and Waste Services in Augusta with a letter identifying the future project construction plans and the need for developing special provisions. The MDOT contact person for the project will be the Hydrogeologist in the Office of Environmental Services (OES). MDEP will then assign the appropriate staff person to work with MDOT to develop project-specific special provisions and to act as the MDEP Contact Person for the effort. In consultation with the MDEP Contact Person, MDOT will develop the Special Provisions. As appropriate, the MDEP Contact Person will assemble a team within MDEP to assist with development and review of the Special Provision. Upon MDEP approval of the Special Provision, MDEP will assign a person familiar with the project (preferably, the Contact Person) to act as its representative on the project during construction. This person would be the MDEP project contact for all contamination-related inquiries and issues.

Field-Implementation of the Special Provision The Project Engineer is responsible for ensuring that the Contractor abides by the requirements of the Special Provision, and, upon completion of construction, will certify that this has been done. As necessary, the Project Engineer will consult with the OES Hydrogeologist for guidance on soil handling and identification of contamination. The Contractor will be

responsible for industrial hygiene monitoring to ensure worker health and safety


This agreement is valid indefinitely until either agency terminates or renegotiates the agreement 30 days after providing written notice of such intent

Maine Dept. of Transportation



John E Dority, Chief Engineer

Maine Dept. of Environmental Protection



Allan R Ball, Director
Bureau of Remediation and Waste Management

ATTACHMENT #1

"Model" Special Provision
(from Mechanic Falls Route 121 Project)

Mechanic Falls, Route 121
Project No F-STP-017P(73)X/2843 10
June 14, 1996

SPECIAL PROVISION
SECTION 203
EXCAVATION AND EMBANKMENT
(CONTAMINATED SOIL AND WATER MANAGEMENT)

General The work under this Special Provision shall be performed in conformance with all the procedures and requirements described herein for the following activities contaminated soil handling, reuse, temporary stockpiling, transportation, storage, and disposal, and, contaminated water handling, storage, treatment, and disposal. This Special Provision also addresses contaminated soil location, identification, and classification. The intent of this Special Provision is to ensure that contaminated soil and water encountered during construction are managed in a manner that protects worker health and safety, public welfare, and the environment.

Environmental Site Conditions MDOT conducted a subsurface contamination investigation along portions of the project in Mechanic Falls to locate and evaluate potential sources of petroleum contamination identified during project environmental screening. The results of this investigation are summarized in a MDOT report to MDEP entitled, *MDOT Mechanic Falls Route 121 Reconstruction Project, Petroleum Contamination in Front of C&C Garage Located at the Intersection of Spring Street and Route 121* (dated May 23, 1996). This report is available from MDOT's Office of Environmental Services for review at the MDOT office in Augusta, Maine.

The contamination investigation targeted two (2) areas along the proposed alignment that MDOT determined to be potentially contaminated. MDOT installed 12 soil borings at these locations and screened the soils for contamination. The Contractor may also encounter contaminated soils and ground water at other locations within the construction. The Contractor shall follow the procedures and requirements of this Special Provision when the work encounters previously identified or unidentified contamination.

Identified Areas of Contamination Using field screening methods, MDOT identified soil or ground water contamination in only one area of the project. MDOT detected petroleum contaminated soils in five borings located between Sta 216+00, 16 ft right and Sta 217+55, 21 ft right. Laboratory testing from the most highly

Mechanic Falls Route 121
Special Provisions

contaminated soil interval within this area detected the following gasoline and lead concentrations

Sta 216+50, 20 ft right, 2 5-ft depth -- 160 mg/kg gasoline and 13 mg/kg total lead

Identifying and Screening Contaminated Soil and Ground Water
The excavated soils shall be classified as Group 1 or Group 2

Group 1 soils shall have no visible or olfactory evidence of contamination and PID field screening will indicate relative concentration of volatile organic compounds (VOCs) less than or equal to 20 parts per million (ppm) as measured in the soil headspace

Group 2 soils shall have PID field screening measurements indicating headspace concentration of VOCs greater than 20 ppm, and contain no "petroleum-saturated" soils or free-phase petroleum product. It is important to note that there is no maximum limit for VOC headspace concentration in Group 2 soils

Soils in **Group 1** and **Group 2** may be re-used as acceptable backfill material within the trench section of origin. Based on field screening and laboratory chemical data, it is unlikely that the contaminated soils identified on within the project are petroleum-saturated as defined by MDEP procedures. If encountered, petroleum-saturated soils would require off-site disposal or treatment as MDEP-approved special waste.

In the underdrain and catch basin excavations between Sta 216+00 and Sta 217+55, soils encountered below the subgrade line shall be handled as Group 2 soils unless the Engineer determines that the soils are Group 1 or are petroleum-saturated. The Engineer may classify excavated soils based on their visual and olfactory evidence of contamination (including discoloration, texture, and odor), and photo ionization detector (PID) field screening. Field screening with a PID shall be performed according to the MDEP "Jar/Poly Bag Headspace Technique" contained in Appendix Q of *Regulations for Registration, Installation, Operation and Closure of Underground Oil Storage Facilities, Chapter 691* (MDEP, 9/16/91) and using MDEP's May 1995 calibration set-points. Analysis to determine "petroleum-saturation" shall be performed according to MDEP guidance in *Procedural Guidelines for Establishing Standards for the Remediation of Oil Contaminated Soil and Ground Water in Maine* (MDEP, 1/11/95).

Based on boring information, it is unlikely that the Contractor will encounter ground water during excavation in the contaminated area. In March 1996, MDOT encountered ground water at a depth of 11.3 ft below ground surface at Sta 217+00, 19 ft right. If trenching encounters ground water between Sta 216+00 and Sta 217+55 it shall be considered contaminated. Elsewhere, ground water is considered potentially contaminated if the Engineer or the Contractor observes or

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notes petroleum, solvent, or similar unusual odors, a sheen across the water surface, a layer of floating oil, or globules of oil in the water within the excavations. If the Contractor detects such contamination, it must be brought to the Engineer's attention immediately.

Areas of Potential Contamination MDOT investigated the area near C&C Garage (adjacent to Station 216+75, right) and near the Cumberland Farms Store (adjacent to Station 240+00, left) because they had moderate contamination potential based on knowledge of existing and historical land uses and locations of petroleum or chemical spills. Significant contamination in other areas is not expected, but the Contractor shall be alert for the presence of contamination throughout the project area.

If the work in other areas exposes soil or water which exhibits staining, is unusually discolored, has a sheen, has a strong odor, or contains unidentified waste, the Contractor will suspend work in the potentially contaminated area immediately and notify the Engineer immediately. As appropriate, the Engineer will screen the suspect material or area with a PID and classify the soils as Group 1 or Group 2. Work may proceed in accordance with the handling, stockpiling, and disposal requirements for this Special Provision. For potentially contaminated ground water, the Engineer will determine requirements for pumping, storage, treatment, and disposal, and the work will proceed as directed by the Engineer.

Health and Safety/Right-to-Know All contractors must notify their workers of the site history and of contamination that may be present. The Contractor shall prepare a Health and Safety Plan (HASP) for its workers and subcontractors who may work in contaminated areas of the site. The HASP will satisfy the requirements of 29 CFR 1910.120 and 1926.65, Hazardous Waste Operations and Emergency Response, whether or not these regulations specifically address the project contamination and scope. The HASP will be developed by a Qualified Health and Safety Professional with certified training and no less than three (3) years of documented experience in field implementation of the following federal regulations:

29 CFR 1910.120 or 29 CFR 1926.65	Hazardous Waste Operations and Emergency Response
29 CFR 1910.134	Respiratory Protection
29 CFR 1910.146	Permit-Required Confined Spaces
29 CFR 1926.650	Excavations -- Scope,
29 CFR 1926.651	Excavations -- General Requirements
29 CFR 1926.652	Excavations -- Requirements for Protective Systems

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The Contractor shall designate a Hazardous Waste Operations Competent Person (Competent Person) to provide direct on-site supervision and health and safety monitoring for work in the contaminated sections. The Competent Person shall have certified training and experience in field implementation of the aforementioned regulations. In the field, the Competent Person shall be responsible for all aspects of worker health and safety arising from the Contractor's work in the contaminated area including HASP implementation and Contractor compliance with the HASP. The Competent Person shall have the authority to stop work in a contaminated area if hazardous conditions arise or if work practices do not comply with the HASP.

Workers and subcontractors working in contaminated areas of the site shall be trained in Health and Safety procedures according to the OSHA regulations under 29 CFR 1910.120 and 1926.65, Hazardous Waste Operations and Emergency Response, and be current in their annual OSHA refresher course. Work inside contaminated trench sections which are deeper than four feet may be subject to OSHA's permit-required confined space regulations under 29 CFR 1910.146. Workers involved in trench work governed by these regulations shall be trained according to the regulatory requirements. The Contractor, or its subcontractor, shall have a permit-required confined space program as defined by the regulations before performing the affected work. The Qualified Health and Safety Professional and the Competent person shall receive an additional eight hours of Supervisory Training as required by 29 CFR 1910.120 and 1926.65.

Health and Safety Monitoring Within the contaminated areas of the project, the Competent Person shall monitor the worker breathing zone atmosphere continuously for concentration of oxygen, combustible gases, and volatile organic compounds. Direct-reading portable field instruments shall be used to monitor oxygen and combustible gases. A photo ionization detector (PID) calibrated according to the appropriate MDEP instrument set-point (May 1995 version) for gasoline shall be used to monitor volatile organic compounds in the identified contaminated areas. The Contractor shall provide all required health and safety monitoring equipment.

Submittals Within ten (10) working days in advance of excavation work in the contaminated areas, the Contractor shall submit the following to the Engineer:

- ° a letter that identifies the Qualified Health and Safety Professional and the Competent Person and presents their training and experience,
- ° copies of training certificates and appropriate health monitoring information for the Qualified Health and Safety Professional and the Competent Person, and,
- ° a copy of the HASP.

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Training certificates and health monitoring information for all workers covered by the HASP shall be incorporated into the HASP

Trench and Underdrain Design in Contaminated Sections

Between the catch basin at Sta 216+15 and the catch basin at Sta 218+30, non-perforated Option III pipe will be used instead of perforated underdrain pipe to minimize infiltration of contaminated ground water into the subsurface drainage system. Within this area, trench backfill and pipe bedding material shall consist of recompacted native soils or fills that were excavated from each trench segment. Whenever possible, the more highly contaminated soils shall be placed near the bottom of the trench. Contaminated soil shall not be placed above the road subgrade line.

Handling and Disposition of Contaminated Soil Materials and Ground Water All excavated contaminated soil will be used as backfill material unless otherwise directed by the Engineer. A layer of clean backfill with a minimum thickness of 1 ft shall be placed over petroleum-contaminated backfill.

Group 1 soils are not considered contaminated. Thus, special handling and disposal are not required for Group 1 soils.

Group 2 soils shall be placed as backfill into the trench sections of origin. Temporary (overnight) on-site stockpiling of Group 2 soils prior to backfilling is allowed provided that the soils are placed on a layer of 20-mil polyethylene, completely covered with a layer of 20-mil polyethylene, and enclosed within barricades or a fence approved by the Engineer. Group 2 soils shall not be removed from the project unless approved by the Engineer.

The Contractor shall arrange and undertake disposal of Surplus Group 2 soils at a landfill in Maine licensed by the MDEP to accept special waste. If the Contractor proposes other viable disposal or treatment options, the Contractor is solely responsible for obtaining the associated permits and approvals from all relevant municipal, State, and Federal agencies at no additional cost to the State. The Engineer is responsible for signing all manifests required to transport and dispose contaminated soil.

Boring information suggests that the construction will not encounter petroleum-saturated soils. If construction encounters petroleum-saturated soils, the Contractor shall handle, excavate, remove, and dispose the soil as directed by the Engineer.

MDOT does not expect that underdrain and catch basin excavations will encounter ground water. The Engineer will determine the requirements for contaminated ground water pumping, storage, and treatment or disposal. As directed by the Engineer, the Contractor will be responsible for undertaking or arranging pumping, storage, and treatment or disposal of the contaminated water. The Engineer will sign all manifests required to transport, treat, and dispose contaminated water.

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On-Site Water Storage Tanks - Materials If dewatering is required, on-site storage tanks used to store the potentially contaminated water shall be **contamination-free** prior to use

Dust Control The Contractor shall employ dust control measures to minimize the creation of airborne dust during construction in potentially contaminated areas. As a minimum, standard dust control techniques shall be employed where heavy equipment will be traveling. These may include techniques such as watering-down the site or spreading hygroscopic salts.

Contingencies If the Contractor encounters unanticipated contamination or potentially hazardous conditions related to contamination, the Contractor shall suspend work in the affected area and notify the Engineer accordingly. These conditions include, but are not limited to, encountering buried containers, drums, tanks, "petroleum-saturated soils", presence of petroleum sufficient to cause a sheen on subsurface water, or presence of soil or ground water exhibiting a strong odor.

The area of concern will be secured to minimize health risk and to prevent a release of contaminants into the environment. The source of suspected contamination will be evaluated by the Engineer. As required, the Engineer will notify MDEP Division of Response Services regarding the contamination. The Mechanic Falls Fire Department and the Maine Fire Marshal's Office must also be notified prior to removal of buried storage tanks and associated piping. The Contractor will evaluate the impact of the contamination or condition on the work and incorporate applicable health and safety measures to safeguard workers.

Method of Measurement There will be no measurement for identification and environmental screening of contaminated ground water and soil material and for providing construction personnel who are trained according to OSHA regulations contained in 29 CFR 1910.120. Measurement for developing the HASP, for providing a Hazardous Waste Operations Competent Person, and for supplying associated monitoring equipment and documentation (e.g., permit-required confined space program) shall be by lump sum. Measurement for the following items shall be according to Subsection 109.04: construction of a Secured Stockpile Area, hauling contaminated soils and other contaminated materials designated by the Engineer to the Secured Stockpile Area, placing and stockpiling contaminated soil material at the Secured Stockpile Area, off-site disposal of contaminated soils, or disposal of other contaminated materials designated by the Engineer, pumping and storing potentially contaminated water into on-site holding tanks, providing each on-site holding tank for the duration of the dewatering effort, and, testing and treatment or disposal of contaminated water.

Basis of Payment There will be no payment for identification and environmental screening of contaminated ground water and soil.

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Secured Stockpile Area Group 2 soils to be disposed off-site will require laboratory chemical testing prior to disposal. Pending receipt of laboratory data (generally at least two to three weeks), the Contractor shall store these soils in a Secured Stockpile Area approved by the Engineer. The Secured Stockpile shall be placed on a layer of 20-mil polyethylene and securely covered with 20-mil polyethylene. To prevent surface water run-off and run-on in the stockpile area, the Contractor shall install a continuous 1-ft high compacted soil berm around the Secured Stockpile. The polyethylene cover shall also cover the soil berm and be installed to ensure that water drains directly to the berm perimeter without pooling inside. The Secured Stockpile and the berm shall be enclosed within a perimeter of concrete Jersey barriers. The area within the Jersey barriers shall be identified as a "restricted area" to prevent unauthorized access to the contaminated soils.

Material requiring chemical testing shall be stored in the Secured Stockpile Area and tested by the Contractor to determine the requirements for treatment and/or disposal. Treatment or disposal shall be undertaken by the Contractor as directed by the Engineer.

Secured Stockpile Area - Materials

A Polyethylene Polyethylene used for the liner in the Temporary Secured Stockpile Area shall have a minimum thickness of 20 mils and shall meet the requirements of ASTM D3020.

B Common Borrow Fill used in the construction of the Secured Stockpile Area shall consist of Common Borrow and meet the requirements of Section 703.18.

C Concrete Barrier Concrete barriers to form the sides of the Secured Stockpile Area shall meet the requirements of Section 526.

Dewatering As discussed previously, MDOT does not anticipate that dewatering will be necessary to install the underdrains and catch basins within the contaminated section. Dewatering within the contaminated section would be necessary only if the ground water would rise above the lowest drainage pipe invert elevation before the pipe installation could be completed. The need for dewatering at ground water levels between the bottom of the catch basin sumps and pipe inverts shall be determined by the Engineer. All contaminated ground water removed from the trenches between Sta. 216+00 and Sta. 217+55 shall be stored in storage tanks pending laboratory testing and evaluation of the treatment or disposal options. As directed by the Engineer, the Contractor shall provide adequate water storage tank capacity for the duration of the dewatering effort. Water removed from the contaminated regions or water judged by the Engineer to be contaminated shall be chemically tested by the Contractor to determine the proper treatment or disposal options. Treatment or disposal of the stored water shall be undertaken by the Contractor as directed by the Engineer.

**Mechanic Falls Route 121
Special Provisions**

material and for providing construction personnel who are trained according to OSHA regulations contained in 29 CFR 1910.120. Payment for developing a HASP, for providing a Hazardous Waste Operations Competent Person, and for providing associated monitoring equipment and documentation (e.g., permit-required confined space program) shall be at the contract lump sum price. Payment for the following items shall be according to Subsection 109.04: construction of a Secured Stockpile Area, hauling contaminated soils and other contaminated materials designated by the Engineer to the Secured Stockpile Area, placing and stockpiling contaminated soil material at the Secured Stockpile Area, off-site disposal of contaminated soils, or disposal of other contaminated materials designated by the Engineer, pumping and storing potentially contaminated water in on-site holding tanks, providing each on-site holding tank for the duration of the dewatering effort, and, testing and treating or disposing the contaminated water.

Pay Item	Pay Unit
203 2312 Developing a Hazardous Waste Operations Health & Safety Plan, providing a Hazardous Waste Operations Competent Person, and supplying monitoring equipment	Lump Sum

SRPoes

file = MECHspec.doc

ATTACHMENT #1

“Model” Special Provision

(from Blaine/Mars Hill Route 1 Project)

**SPECIAL PROVISION
SECTION 203
EXCAVATION AND EMBANKMENT
(CONTAMINATED SOIL AND GROUNDWATER MANAGEMENT)**

General. The work under this specification shall be performed in conformance with all the procedures and requirements described herein for the following activities: contaminated soil handling, reuse, temporary stockpiling, transportation, storage and disposal and, contaminated water handling, storage, treatment and disposal. This specification also addresses contaminated soil location, identification, and classification. The intent of this specification is to ensure that any contaminated soil and/or water encountered during construction will be managed in a manner that protects worker health and safety, public welfare and the environment.

Environmental Site Conditions. The Maine Department of Transportation's Office of Safety and Compliance (MaineDOT's-OSC.) has conducted a series of assessments related to the Blaine and Mars Hill main Street (Route 1) Highway Improvement Project. An initial Phase I Environmental Assessment for the project area was completed to obtain a general understanding of the environmental conditions along the project corridor. Data garnered from this assessment was used to design a Modified, Phase II Contamination Assessment for the project. The primary focus of the assessments was to evaluate the type and extent of subsurface contamination along the project corridor. The Phase I Assessment included a review of relevant Maine Department of Environmental Protection's (MaineDEP's) and Environmental Protection Agency's (EPA's) databases and field reconnaissance of the project area. During Phase II, borings were advanced along the project's length for investigative purposes. Using data gathered from the advancement of these borings and previous work by others, two areas with impacted soil were identified. A photo-ionization detector (PID) was used to test soil grab samples from select explorations for volatile organic compound (VOC) concentrations indicative of petroleum products. (See *Identified Areas of Contamination* below). Select samples for laboratory testing were also taken to further aid in evaluating subsurface conditions. The results of these investigations are available for review from the Senior Geologist at MaineDOT's-OSC in Augusta (207-624-3004).

Identified Area of Contamination. MaineDOT's-OSC investigation identified two areas of soil contamination associated with the Main Street (Route 1) Highway Improvement Project. For reference, these areas are designated as "**Area A**" and "**Area**

B” respectively. The location of **Area A** is defined as located in the vicinity of the Dead River Office Building roughly between MaineDOT survey stations 741+75 to roughly MaineDOT station 742+75 left of centerline along Main Street (Route 1). Within **Area A**, poly-bag field samples screened with a photo-ionization detector (PID) were 40 parts per million (PPM). Laboratory results in the vicinity of the Dead River Company indicated the following VOCs were detected; Naphthalene at 98 ppm. Gasoline Range Organics (GRO) were detected at 51 ppm. Diesel Range Organics (DRO) were detected at 1600 ppm. These concentrations define the soils as potential special waste per State remedial guidelines. Soil contamination in **Area A** appears to be related to the past use and storage of petroleum related products (gasoline and fuel oil).

The location of **Area B** is defined as in the vicinity of a Dave’s Auto located roughly between MaineDOT stations 753+25 to roughly MaineDOT station 754+00 right of center line. Within **Area B**, poly-bag field samples screened with a PID were 241 ppm to 343 ppm. Laboratory results collected by others had results for the following: Extractable Petroleum Hydrocarbons (EPH); C9-C12 at 590 ppm, C19-C36 at 740 ppm and C11-C22 at 2400 ppm, Naphthalene at 26 ppm, 2-methylnaphthalene at 50 ppm, Phenanthrene at 13 ppm, Acenaphthylene at 14 ppm, Fluorene at 18 ppm, Anthracene at 3.6 ppm, Fluoranthene at 19 ppm, Pyrene at 17.1 ppm, Benzo(a)anthracene at 13 ppm, Chrysene at 13 ppm, Benzo(b)fluoranthene at 14 ppm, Benzo(k) fluoranthene at 14 ppm, and Benzo(a)pyrene at 12 ppm, Benzo(g,h,j)perylene at 8.4 ppm, Indeno(1,2,3-cd)Pyrene at 9.7 ppm and Pyrene at 23 ppm. For Volatile Petroleum Hydrocarbons (VPH) the following were detected; C9-C12 Aliphatic Hydrocarbons at 590 ppm, C5-C8 Aliphatic Hydrocarbons at 73 ppm and C9-C10 Aromatic Hydrocarbons at 630 ppm, and Naphthalene at 20 ppm. Total lead was 37.7 ppm, Arsenic at 8.8 ppm, Barium at 58 ppm, Chromium at 29 ppm, and Mercury at 0.19 ppm. These concentrations define the soils as potential special waste per State remedial guidelines. Soil contamination in **Area B** appears to be related to the past use and storage of gasoline.

Identifying and Screening Contaminated Soil and Groundwater. Within the contaminated sections designated **Area A** and **Area B**, excavated soils will be classified by the Resident (or a MaineDOT-OSC representative) based on photo-ionization detector (PID) field screening measurements.

The excavated soils shall be classified as Group 1 or Group 2.

Group 1 soils shall have PID field screening measurements indicating relative concentrations of volatile organic compounds (VOCs) less than or equal to 20 parts per million (ppm) as measured in a 200 gram soil headspace using a foil bag.

Group 2 soils shall have PID field screening measurements indicating VOC concentrations greater than 20 ppm as measured in a 200 gram headspace sample and less than the value indicated in Table 1 of SOP-TS004 when screened in accordance with the “Excavation-Construction Worker” clean-up scenario. Field screening will also be done using an oleophilic dye test.

Group 3 soils shall exceed the threshold limit stated in the TS004 Compendium of Field Testing of soil samples exceeding “Excavation-Construction Worker” clean-up scenario or has a saturated result using the oleophilic dye test.

Handling and Disposition of Soil Materials. Within **Area A and Area B** soil material excavated during construction shall be handled as follows:

Group 1 soils are not considered contaminated. Thus, special handling and disposal are not required for Group 1 soils.

Group 2 soils shall be placed back into their excavation section of origin. The Contractor shall make every attempt to side cast any Group 2 soils next to their excavation site. Upon completion of the given constructional feature, the Group 2 soils shall be placed back into the excavation up to 2 feet below ground surface. Group 2 materials not handled in this manner shall be considered Surplus Group 2 soils. Surplus Group 2 soils must be disposed of or treated at a facility licensed by the MDEP to accept petroleum contaminated special waste. The Contractor is solely responsible for obtaining the associated permits and approvals for the disposal or treatment of the Surplus Group 2 soils from all relevant Municipal, State, and Federal agencies at no additional cost to the State. Notification shall be given to the Resident once approval is granted for the acceptance of this material at the off site facility. No removal of Surplus Group 2 soils from the project shall occur without prior approval by the Resident. If any Surplus Group 2 soils cannot be transported to the pre-approved, properly licensed facility within 8 hours of their excavation, they must be placed in a Temporary Secure Stockpile Area somewhere within the project limits (See Temporary Secured Stockpile Area below).

Group 3 soils shall not be excavated without prior approval by the Resident. The Contractor shall arrange and undertake disposal of all Group 3 soils at a landfill or treatment facility licensed to accept petroleum contaminated special waste. The Contractor is responsible for all additional testing required by the receiving facility. Group 3 soils that cannot be disposed of within 8 hours of excavation shall be stored in a Temporary Secured Stockpile area. If the Contractor proposes other disposal or treatment options, the Contractor is solely responsible for obtaining the associated permits and approvals from all relevant Municipal, State, and Federal agencies at no additional cost to the State.

The Resident is responsible for signing any manifests or bills of lading required to transport and dispose of contaminated soil. The Resident will send all manifests and bills of lading to MaineDOT, Office of Safety and Compliance, Station 16, Augusta, Maine 04333.

Trench and Underdrain/Stormdrain Design in Contaminated Sections. In **Area B**, solid, Option III, non-perforated pipe shall be used instead of perforated underdrain pipe to help prevent the infiltration and transportation of potentially contaminated groundwater within the underdrain/stormdrain system. The Contractor shall backfill around the pipe and trenches in this section with uncontaminated material. Backfilling of the trench shall be in accordance with Section 206.03. All stones larger than 3 inches, frozen lumps, dry chunks of clay or any other objectionable matter shall be removed before backfilling.

Seepage control dikes (SCD) shall be installed roughly every 60 feet along the stormwater pipe trench

The SCDs shall consist of a mineral clay material with a liquid limit of equal to or greater than 24 and a natural moisture content of at least 20 percent. The clay should be placed in dry excavations in 6 inch maximum, thick lifts and compacted to 90% of the maximum dry unit weight as determined by AASHTO T99 (Standard Proctor). The SCDs shall be 5 feet long, be in intimate contact with the trench floor, trench walls and circumference of the pipe and extend up to the bottom of the road base. The excavated existing road base or similar material may be placed on top of the SCDs. The Contractor shall take care to ensure that no voids or uncompacted soil is left beside or beneath the Option III culvert pipe.

Secured Stockpile Area. Direct transport of Surplus Group 2 or Group 3 soils to a pre-approved management facility is recommended. However, should the Contractor temporarily store any Surplus Group 2 or Group 3 soils at the site for more than 8 hours following excavation, they must be placed into a properly constructed Temporary Secured Stockpile Area. The Temporary Secured Stockpile Area must be constructed as defined herein and must be approved by the Resident prior to its use.

Should the Contractor utilize a Temporary Secured Stockpile Area, they shall install a continuous 0.3 meter high compacted soil berm around the Secured Stockpile. The Secured Stockpile shall be placed on a liner of 20-mil polyethylene and securely covered with 20-mil polyethylene. The polyethylene liner and cover shall be placed over the soil berm and be installed to ensure that precipitation water drains directly to the outside of the berm perimeter while leachate from the contaminated soil is retained within the stockpile. The Secured Stockpile and soil berm shall be enclosed within a perimeter of concrete Jersey barriers or wooden barricades. The area within the Jersey barriers (or wooden barricades) shall be identified as a "restricted area" to prevent unauthorized access to the contaminated soils.

Secured Stockpile Area - Materials.

A. Polyethylene. Polyethylene used for liner in the Secured Stockpile Area shall have a minimum of 20-mil thickness and shall meet the requirements of ASTM D3020.

B. Common Borrow. Fill used in the construction of the Temporary Secured Stockpile Area soil berm shall consist of Common Borrow and meet the requirements of Section 703.18

C. Concrete Barriers or Wooden Barricades. Concrete barriers or Wooden Barricades to form the sides of the Temporary Secured Stockpile Area shall meet the requirements of Section 526 or 652.05.

Health and Safety/Right-to-Know. Contractors and subcontractors are required to notify their workers of the history of the site and contamination that may be present and to be alert for evidence of contaminated soil and groundwater. The Contractor shall notify the Resident **at least three business days** prior to commencing any excavation in **Areas A and Area B.**

The Contractor shall prepare a site specific Health and Safety Plan (HASP) for its workers and subcontractors who may work in the contaminated areas of the site. A Qualified Health and Safety Professional shall complete the HASP. The Qualified Health and Safety Professional will be an expert in field implementation of the following federal regulations:

29 CFR 1910.120 or 29 CFR 1926.65	Hazardous Waste Operations and Emergency Response
29 CFR 1910.134	Respiratory Protection
29 CFR 1926.650	Subpart D - Excavations
29 CFR 1926.651	General Requirements
29 CFR 1926.652	Requirements for Protective Systems

MaineDOT is voluntarily ameliorating the contamination in **Areas A and Area B.** The remedial efforts defined herein have been reviewed and approved by MaineDEP. Given that this is a voluntary clean up effort approved by a regulatory agency, the OSHA requirements as defined in 29 CFR 1910.120 apply. These requirements mandate that workers and any subcontractors working in the contaminated areas shall comply with all OSHA regulations for Hazardous Waste Operations and Emergency Response including a 40 hour initial hazardous waste operations certification [OSHA 1910.120(e)], annual 8 hour refresher course within the last 12 months and medical surveillance [OSHA 1910.120(f)] within the last 12 months.

The contractor shall designate a person to provide direct on-site supervision of the work in the contaminated areas. This person shall have the training under OSHA 1910.120 (e) as above and in addition be qualified as a construction Competent Person.

It is the responsibility of the competent person to make those inspections necessary to identify situations that could result in hazardous conditions (e.g., possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions), and then to insure that corrective measures are taken.

Submittals. The Contractor shall submit a site specific Health and Safety Plan (HASP) to the Resident at least two weeks in advance of any excavation work on the project. The Contractor shall not proceed with work until MaineDOT has reviewed the plan and notified the Contractor that it is acceptable.

Health and Safety Monitoring. Within the contaminated areas of the project, the Contractor's designated on-site person shall monitor the worker breathing zone for those constituents specified in the Contractor's HASP. The Contractor shall provide all required health and safety monitoring equipment.

Dewatering. Groundwater may be encountered and its removal necessary to complete work within **Area A** and **Area B**. It will be treated as "contaminated" water. The Contractor shall inform the Resident before any dewatering commences. The "contaminated" water shall be pumped into a temporary holding tank(s). The Contractor will be responsible for the procurement of any holding tank(s). Any testing, treatment and/or disposal of the stored, petroleum-contaminated water shall be undertaken by the Contractor in accordance with applicable Federal, State and local regulatory requirements.

On-Site Water Storage Tanks - Materials. If dewatering within the identified contaminated area becomes necessary the holding tanks used for temporary storage of contaminated water pumped from excavations shall be contamination free and have a minimum capacity of 2,000 gallons.

Dust Control. The Contractor shall employ dust control measures to minimize the creation of airborne dust during the construction process in potentially contaminated areas. As a minimum, standard dust control techniques shall be employed where heavy equipment and the public will be traveling. These may include techniques such as watering-down the site or spreading hygroscopic salts.

Unanticipated Contamination. If the Contractor encounters previously undiscovered contamination or potentially hazardous conditions related to contamination, the Contractor shall immediately suspend work and secure the area. The Contractor will then notify the Resident immediately. These potentially hazardous conditions include, but are not limited to, buried containers, drums, tanks, "oil saturated soils", strong odors, or the presence of petroleum sufficient to cause a sheen on the groundwater. The area of potential hazard shall be secured to minimize health risks to workers and the public and to prevent a release of contaminants into the environment. The source of any suspected contamination shall be evaluated by the Resident (or MaineDOT's -OSC representative). As appropriate, the Resident will notify the MDEP's Response Services Unit in Presque Isle and MaineDOT's-OSC. The Blaine and /or Mars Hill Fire Department(s) must also

be notified prior to removal of buried storage tanks and associated piping. The Contractor will evaluate the impact of the hazard on construction, amend the HASP if necessary, and with the Resident's approval, recommence work in accordance with the procedures of this Special Provision.

Method of Measurement. There will be no measurement for identification and environmental screening of contaminated soil material (this will be done by the Resident or MaineDOT-OSC representative).

Measurement for the development of a Health and Safety Plan (HASP) and providing health and safety equipment and personnel shall be by lump sum.

Measurement of the off site treatment or disposal of Surplus Group 2 and all Group 3 soils will be by the ton of Special Excavation.

There will be no measurement for construction of a Temporary Secured Stockpile Area. Construction of a Temporary Secured Stockpile Area, if necessary, is considered incidental to project construction. There will be no measurement for hauling Surplus Group 2 material or Group 3 soils to the Temporary Secure Stockpile area or placement and removal of Surplus Group 2 or Group 3 soils in or out of the Temporary Secure Stockpile area. All hauling and any subsequent management/placement of contaminated soils are considered incidental to project construction.

There will be no measurement for additional laboratory testing of contaminated soil that is required by the landfill or treatment facility. Testing is incidental to the disposal of Special Excavation.

Measurement for the following items shall be according to Subsection 109:04 ("Change Order"/Force Account): any necessary contaminated water holding tank(s); and treatment or disposal of any contaminated groundwater.

Basis of Payment. There will be no payment for the identification and environmental screening of contaminated soil material (this will be done by the Resident or MaineDOT-OSC representative).

Payment for the development of a Health and Safety Plan (HASP) and providing health and safety equipment and personnel shall be by the lump sum

Payment for off site disposal or treatment of contaminated Surplus Group 2 and all Group 3 soils at a MDEP licensed facility shall be by the ton of Special Excavation.

There will be no payment for the construction of the Temporary Secured Stockpile Area or hauling/management/placement of contaminated soils to the Temporary Secured Stockpile Area. The Temporary Secured Stockpile Area shall be considered incidental to project construction.

Payment for the following items shall be according to Subsection 109:04
("Change Order"/Force Account): any necessary contaminated water holding tank(s);
and treatment or disposal of any contaminated groundwater.

Pay Item		Pay Unit
203.2312	Health and Safety Plan (HASP)	L.S.
203.2333	Disposal/Treatment of Special Excavation	Ton



NEPA Section 106 Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

Section 106 of the National Historic Preservation Act (16 U.S.C. 470) requires Federal agencies to take into account the effects of their undertakings on historic properties. The procedures are laid out in 36 CFR 800 and the process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation.

This guidance document defines the process to determine the appropriate level of coordination that is required. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file with survey, property, tribal, town, public, eligibility, effects, consultation, and document information.

MaineDOT Historic Coordinators (HC) are responsible for assessing and ensuring compliance with Section 106 under NEPA Assignment. All MaineDOT Historic Coordinators and qualified consultants meet the Secretary of Interior Professional Qualification Standards. Section 106 information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision.

1.0 Initiating Section 106 Process and Establish Undertaking (36 CFR 800.3)

The HC shall review all projects within the MaineDOT Work Plan, identified as a scoping project or Work Plan Candidate, or any other type of project to determine if there is an undertaking/project in accordance with 36 CFR § 800.3 (a) and § 800.16 (y).

A. If there is no undertaking/project as defined in 36 CFR § 800.3 (a) and 36 CFR § 800.16 (y), then the HC will document this determination in ProjEx. ProjEx will generate the final CE Report with this information for the CPD e-file. This will complete Section 106.

B. If there is an undertaking/project as defined in 36 CFR § 800.3 (a) and 36 CFR § 800.16 (y), then the HC will apply the Section 106 Programmatic Agreement (PA), Appendix A (Projects exempted from further review).

2.0 Applying the Section 106 Programmatic Agreement



NEPA Section 106 Guidance

In the 2022 Section 106 Programmatic Agreement the Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA) delegated the Section 106 process and determination to the MaineDOT. Although the MaineDOT has this authority, 36 CFR Part 800 states that the lead federal agency still retains ultimate legal responsibility. [The MaineDOT will retain legal responsibility under NEPA Assignment and the 2022 Section 106 Programmatic Agreement will be revised/amended accordingly]

The HC will determine if an undertaking/project is exempt from further Section 106 review based on the project scope, known resources (such as known National Register eligible bridges from the Bridge Management Plan and existing historic GIS data), and applying the Section 106 PA.

- A.** If the project meets one of the exemptions; the HC will document the determination in the MaineDOT ProjEx database. The project will also be documented in the annual PA report to FHWA, FTA, and SHPO.

- B.** If the project does not meet one of the PA exemptions, the HC establishes an area of potential effect (APE) and conducts an Above Ground Cultural Resources Survey in accordance with the Maine Historic Preservation Commission (MHPC) Above Ground Cultural Resources Survey Manual, February 2013 (MHPC Survey Guidelines) or the HC will assign the project to a MaineDOT Historic Architectural Consultant (consultant) for an above ground survey to be completed in accordance with the MHPC Survey Guidelines. The HC 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. The Code of Maine Rules contains two chapters that regulate professional archaeological work in Maine. Chapter 100 sets forth the standards and procedures for access to archaeological site records. Chapter 812 contains the composition and functions of the Archaeological Advisory Committee, the credentials requirements from persons on the Commission's approved lists of archaeologists, the procedure for review of credentials, the procedure for removal from approved lists, and environmental impact project guidelines and procedures. The code of Maine Rules also contains Chapter 13 ([Maine Antiquities Law](#)) which directs excavation activities. The HC will send information on the project to the federally recognized Tribes and Tribal Historic Preservation Officer (THPO) as appropriate (see Section 106 SOP for more information on tribal consultation). The HC will invite other consulting parties (local government representatives, local historic groups) to participate in the Section 106 process. Invitations and responses will be documented in ProjEx and the CPD e-file.

3.0 Tribal Consultation (Government to Government)

In accordance with 36 CFR 800, federal agencies must consult with federally recognized Indian Tribes that attach religious and cultural significance to historic properties that may be affected by an undertaking.

Tribal consultation is a federal government-to-government relationship. It cannot be delegated by a federal agency to a state or local agency. MaineDOT can and does perform project-level tribal



NEPA Section 106 Guidance

consultation on behalf of FHWA as described in this guidance. This includes consultation for LPA projects that receive FHWA funding. The HC will invite the federally recognized tribes in Maine: Mi'kmaq Nation, Houlton Band of Maliseet Indians, Passamaquoddy Tribe-Indian Township, Passamaquoddy Tribe-Pleasant Point, and Penobscot Nation and request their comments. However, the tribes have the option to work directly with the FHWA division office if they choose. All direct project consultation is conducted by the HC on behalf of FHWA. LPAs and consultants shall not contact federally recognized tribes on MaineDOT/FHWA's behalf.

4.0 Consulting Parties Invitation

The HC will identify and invite consulting parties in accordance with 36 CFR § 800.2 (a) (4) and (c) and (d), § 800.3 (e) and (f), and the Maine Section 106 Programmatic Agreement. Typically, the consulting parties include SHPO and/or THPO, Native American tribes, representatives of local governments, and local historical groups.

The HC will notify the SHPO and/or THPO of an undertaking/project and request their advice and assistance in carrying out MaineDOT's Section 106 responsibilities. The HC is responsible for consulting with the THPO in lieu of the SHPO regarding undertakings/projects occurring on or affecting historic properties on tribal lands. In Maine, the Passamaquoddy Tribe, Houlton Band of Maliseet Indians, Mi'kmaq Nation, and the Penobscot Nation have THPO status under Section 106 and are not currently signatories to the Section 106 Programmatic Agreement; the same is true of the Army Corps of Engineers. At any time if a Tribe requests Government-to-Government consultation, the HC will notify FHWA Maine Division. FHWA Maine Division will then lead the Government-to-government consultation.

The HC will invite the appropriate town officials and any known local historical groups of the undertaking/project and request comments from these parties.

If no response is received from an invited consulting party after 30 days, the HC will assume that the party does not wish to participate and will not send future notices of determinations or invite them to participate in the resolution of adverse effects. The invited party can choose to participate at a later date, but their participation and involvement will not reset the clock – they can only make official comments and recommendations on actions that have not yet been resolved.

The HC will file all documentation in the CPD e-file and dates will be entered into ProjEx. There are drop-downs for all tribal and municipal coordination.

All consulting parties that participate in the Section 106 process will be provided information about the undertaking and its effects on historic properties, subject to confidentiality provisions of § 800.11(c).

Parties can also submit requests to be a consulting party and MaineDOT HC will review and approve the party.

5.0 Identification of Historic Properties (36 CFR 800.4)



NEPA Section 106 Guidance

The HC will determine the Area of Potential Effect (APE) and then conduct an above-ground cultural resources Survey or assign projects to the consultant(s). MaineDOT obtains qualified consultants that meet the Secretary of Interior Professional Qualification Standards for architecture and archaeology. Archaeology consultants also have to meet State code described in Section 2 B. The SHPO/THPO will concur or comment on the APE when reviewing MaineDOT's determination of eligibility. The identification and evaluation of historic properties must be performed by professionals who meet the professional standards established by the Secretary of the Interior [§ 800.2(a)(1)]. The Professional Qualification Standards are published in 36 CFR 61. The HC will provide topographic maps with the APE identified and written project scope of work. The HC will enter dates into ProjEx indicating when the surveys were assigned and completed. The HC will also enter the name of the surveyor.

All above-ground surveys will be entered into the web-based historic properties database and GIS layer by the HC or the consultant. All surveys and determinations of eligibility and effects will meet the requirements of the MHPC Survey Guidelines.

The HC in accordance with 36 CFR § 800.4 (c) and MHPC Survey Guidelines, will evaluate and recommend whether properties within the APE are eligible for and/or listed on the National Register of Historic Places. The HC will make a final determination of eligibility for the SHPO's concurrence.

A. If there are no National Register eligible or listed properties within the APE, a survey report with eligibility recommendations will be supplied to the HC by the architectural consultant, and/or the MHPC archaeological staff, and/or the THPO (see MHPC Survey Guidelines for Architectural Survey Report guidelines). The report will include all properties surveyed and indicate (property by property) why they are not eligible for the National Register. The HC will make a final determination and forward the supporting documentation with a detailed cover memo and finding of **No historic properties affected** to the SHPO/THPO for concurrence. In accordance with § 800.4(d), all participating consulting parties will be notified, and the documentation will be made available subject to confidentiality provisions of 800.11(c). Documentation will be in accordance with 36 CFR § 800.4(d) and § 800.11(d). All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

i. If the SHPO/THPO does not object within 30 days of receipt of an adequately documented finding, a memo will be forwarded from the SHPO/THPO to the HC stating so. If no response is received after 30 days from the SHPO/THPO, concurrence will be assumed [see §800.4(d)(1)(i)]. This will complete Section 106. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

ii. If the SHPO/THPO objects to the finding of no historic properties affected, then the HC, the lead federal agency, and/or the SHPO will follow §800.4(d)(1)(ii) by meeting to resolve the disagreement or the lead federal agency will forward the finding and supporting documentation to the Advisory Council on Historic Preservation (ACHP) and request that the ACHP review the finding pursuant to §800.4(d)(1)(iv)(C).



NEPA Section 106 Guidance

B. If there are National Register eligible or listed properties identified within the APE, a survey report with eligibility recommendations will be supplied to the HC by the architectural consultant, and/or the MHPC archaeological staff, and/or the THPO (see MHPC Survey Guidelines for Architectural Survey Report guidelines). The report will indicate under which National Park Service National Register Criteria (Criteria A, B, C, or D) the property is eligible and which of the seven aspects of integrity (Location, Design, Setting, Materials, Workmanship, Feeling, and/or Association) the property retains to convey its significance. The HC will make a final determination of eligibility for the SHPO's concurrence. For nearly all projects, the determination of National Register above-ground boundaries will automatically default to the modern-day parcel boundaries. Assessments of archaeology boundaries are assessed on a case-by-case basis.

i. If the SHPO/THPO objects to the finding of National Register eligibility, then the HC, , and the SHPO will meet to resolve the disagreement, or the HC will forward the finding and supporting documentation to the Secretary of the Interior (specifically the Keeper of the National Register within the U.S. Department of Interior/National Park Service) pursuant to 36 CFR § 63 requesting a determination of eligibility. The Keeper of the National Register will respond within 45 days with a determination.

6.0 Assessment of Effects on Historic Properties (36 CFR 800.4 (d))

The HC will determine whether historic properties will be affected after sufficient project details or plans are provided by the MaineDOT ENV Team Leader. The HC will prepare information for scheduled public meetings to inform the public about an undertaking and its effects on historic properties in accordance with § 800.2(d)(2). If the project is not scheduled to have a public meeting, then the HC will post the documentation to the MaineDOT website and provide public notice for review and comment. Documentation will be in accordance with § 800.11(e). All documentation will be filed in the CPD e-file and dates entered into ProjEx.

A. If the determination is the undertaking/project will have **no effect** on historic properties as defined in § 800.16(i), then the HC will forward a determination of effect report as outlined in MHPC's Survey Guidelines with a detailed cover memo and finding of **No historic properties affected** to the SHPO/THPO for concurrence. In accordance with § 800.4(d), all participating consulting parties will be notified, and the documentation will be made available subject to confidentiality provisions of § 800.11(c). Documentation will be in accordance with 36 CFR § 800.4(d) and § 800.11(d). All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

i. If the SHPO/THPO does not object within 30 days of receipt of an adequately documented finding, a memo will be forwarded from the SHPO/THPO to the HC stating so. If no response is received after 30 days from the SHPO/THPO, concurrence will be assumed [see §800.4(d)(1)(i)]. This will complete Section 106. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.



NEPA Section 106 Guidance

ii. If the SHPO/THPO objects to the finding of no historic properties affected, then the HC, the lead federal agency (MaineDOT under NEPA assignment), and the SHPO will follow §800.4(d)(1) (ii) by meeting to resolve the disagreement or the lead federal agency will forward the finding and supporting documentation to the Advisory Council on Historic Preservation (ACHP) and request that the ACHP review the finding pursuant to §800.4(d)(1)(iv). The ACHP has 30 days to review the findings and provide the lead federal agency with a determination.

B. If the determination is that the undertaking/project will have an effect on historic properties as defined in § 800.16(i), the HC, will then make an assessment of adverse effect in accordance with 36 CFR § 800.5. All documentation will be filed in the CPD e-file.

7.0 Assessment of Adverse Effects (36 CFR 800.5)

The HC in accordance with 36 CFR § 800.5, will apply the criteria of adverse effect to historic properties within the APE. The HC will provide a determination of effect report as outlined in MHPC's Survey Guidelines. The HC will make a final determination of the effect for the SHPO's concurrence.

A. If the determination is the undertaking/project will have no adverse effect on historic properties in accordance with § 800.5, then the HC will forward the supporting documentation in accordance with 36 CFR § 800.11(e) with a detailed cover memo and finding of **no adverse effect** to the SHPO for concurrence. The memo will also include language notifying the SHPO that a concurrence with a determination of no adverse effect will result in a finding of *de minimis* under Section 4(f) if property rights need to be acquired. The exact wording to be used is as follows: "*MaineDOT will be processing a Section 4(f) de minimis determination upon concurrence with this finding.*" In accordance with § 800.5(c), all participating consulting parties will be notified and provided documentation as specified in § 800.11(e), subject to confidentiality provisions of 800.11(c). All documentation will be filed in the CPD e-file and dates in will be entered into ProjEx.

i. If the SHPO/THPO or participating consulting party does not object within 30 days of receipt of an adequately documented finding, a memo will be forwarded from the SHPO/THPO or consulting parties to the HC stating so. If no response is received after 30 days for a determination of no adverse effect from either the SHPO/THPO or participating

consulting party, concurrence will be assumed [see § 800.5(c)(1)]. This will complete Section 106. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

ii. If within 30 days the SHPO/THPO or any consulting party notifies the HC in writing that it disagrees with the finding of no adverse effect and specifies the reason, then the HC, the lead federal agency (MaineDOT under NEPA assignment), and/or the SHPO, and/or consulting parties will follow §800.5(c)(2) by meeting to resolve the disagreement, or the lead federal agency will forward the finding and supporting documentation to the Advisory Council on Historic Preservation (ACHP) and request that the ACHP review the finding



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pursuant to §800.5(c)(3)(i) and (ii). The ACHP has 30 days to review the findings and provide the lead federal agency with a determination.

B. If the recommendation is the undertaking/project will have an **adverse effect** on historic properties in accordance with § 800.5, then the HC and the lead federal agency will follow 36 CFR § 800.5(d) (2) and § 800.6 - § 800.7. The HC will notify the SHPO, THPO, and any other participating consulting parties.

i. If the SHPO/THPO or participating consulting party does not object within 30 days of receipt of an adequately documented finding, a memo will be forwarded from the SHPO/THPO or consulting parties to the HC stating so. If no response is received after 30 days for a determination of no adverse effect from either the SHPO/THPO or participating consulting party, concurrence will be assumed [see § 800.5(c)(1)].

MaineDOT will be responsible for notifying the Advisory Council on Historic Preservation (ACHP) by providing documentation in accordance with § 800.11(e). The ACHP will have 15 days to comment (if no comment is received within 15 days, it is assumed that the ACHP is not participating). The HC will work with the Team Leaders, Project Managers, the SHPO and/or THPO, and other participating consulting parties to propose adequate minimization and mitigation measures for the adverse effect. These measures will be documented in a Memorandum of Agreement (MOA) developed by the HC pursuant to §800.6 (c). At a minimum, signatories will include MaineDOT, SHPO, and/or THPO, and the ACHP if they choose to participate. Additionally invited signatories or concurring parties may also be included. The HC will obtain all signatures. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

a. In the failure to resolve adverse effects, the participating parties will follow § 800.7.

ii. If within 30 days the SHPO/THPO or any consulting party notifies the HC in writing that it disagrees with the finding of no adverse effect and specifies the reason, then the HC and/or the SHPO, and/or consulting parties will follow §800.5(c)(2) by meeting to resolve the disagreement, or the lead federal agency (MaineDOT under NEPA assignment) will forward the finding and supporting documentation to the Advisory Council on Historic Preservation (ACHP) and request that the ACHP review the finding pursuant to §800.5(c)(3)(i) and (ii). The ACHP has 30 days to review the findings and provide the lead federal agency with a determination.

Final NEPA approval (and therefore the expenditure of federal funds and/or approval of federal permits) cannot be granted until the Section 106 process is completed [36 CFR § 800.1(c)]. All Section 106 determinations of eligibility and effect, and any required MOAs filed with the ACHP, must be completed before the approval of NEPA. The HC is responsible for Section 106 determinations and the development and implementation of all Section 106 MOAs.



MaineDOT

NEPA Section 106 Guidance

Once MaineDOT assumes NEPA assignment, the HC will lead the consultation with all consulting parties including the ACHP. Any MOA requirements will also be led through final signatures by the HC.

8.0 Links

[Section 106 of the National Historic Preservation Act](#)

[Protection of Historic Properties](#)

[MaineDOT Section 106 Programmatic Agreement](#)

MaineDOT Environmental Office maintains a Standard Operating Procedure for Section 106.

Environmental Office, MaineDOT
Standard Operating Procedure
Section 106 of the National Historic Preservation Act
Process for MaineDOT

1.0 APPLICABILITY.

This standard operating procedure (SOP) pertains to all staff in the Maine Department of Transportation's (MaineDOT's) Environmental Office (ENV) charged with evaluating regulatory jurisdictions, requirements, and review for resources protected under Section 106 of the National Historic Preservation Act of 1966 (Section 106). This standard applies to the processing of Section 106 for MaineDOT's projects/undertakings.

2.0 PURPOSE.

This SOP is to ensure that the MaineDOT is in compliance with historic preservation laws by incorporating historic preservation principles into project planning through consultation with federal agencies, the State Historic Preservation Officer, Native American Tribes, and local municipal officials and historians. The objective is to establish procedures to identify historic properties, assess the project's effects on them, and seek ways to avoid, minimize, and mitigate adverse effects.

3.0 RESPONSIBILITIES.

3.1 Conformity

All ENV personnel involved in coordinating and consulting on transportation projects proposed by MaineDOT are responsible for becoming familiar and complying with, the contents of this procedure. The attached flowchart serves as a reference throughout the regulatory review of a proposed project. ENV managers and supervisors are responsible for ensuring that appropriate ENV personnel are familiar with and adhere to the procedures outlined in this SOP.

MaineDOT is responsible for Section 106 under the NEPA Categorical Exclusion (CE) assignment program (23 U.S.C. 326). Any reference in the SOP to FHWA will be the responsibility of MaineDOT unless a project does not fall under NEPA assignment. All MaineDOT Historic Coordinators and qualified consultants meet the Secretary of Interior Professional Qualification Standards.

3.2 Maintenance

The NEPA, Coordination, and Permits Division Manager and Historic Coordinators (HC) will ensure that this SOP reflects current needs and standards on an annual basis. Attachments will be updated as needed and the updated information provided to all parties.

4.0 SECTION 106 PROCESS FOR MAINEDOT

4.1 Initiating Section 106 Process and Establish Undertaking (36 CFR 800.3)

The MaineDOT NEPA, Coordination, and Permits Division's HC shall review all projects within the MaineDOT Work Plan, identified as a scoping project, or any other type of project to determine if there is an undertaking/project in accordance with 36 CFR § 800.3 (a) and § 800.16 (y).

- A. If there is no undertaking/project as defined in 36 CFR § 800.3 (a) and 36 CFR § 800.16 (y) (federal nexus), then the HC will document this determination in the MaineDOT ProjEx database. ProjEx will generate the final CE Report with this information for the CPD e-file. This will complete Section 106.

B. If there is an undertaking/project as defined in 36 CFR § 800.3 (a) and 36 CFR § 800.16 (y) (federal nexus), then the HC will apply the Section 106 Programmatic Agreement (PA), Appendix A (Projects exempted from further review).

4.2 Applying the Section 106 Programmatic Agreement

In the 2022 Section 106 Programmatic Agreement the Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA) delegated the Section 106 process and determination to the MaineDOT. Although the MaineDOT has this authority, 36 CFR Part 800 states that the lead federal agency still retains ultimate legal responsibility. [The MaineDOT will retain legal responsibility under NEPA Assignment, and the 2022 Section 106 Programmatic Agreement will be revised/amended accordingly]

The HC will determine if an undertaking/project is exempt from further Section 106 review based on the project scope, known resources (such as known National Register eligible bridges from the Bridge Management Plan and existing historic GIS data), and applying the Section 106 PA.

A. If the project meets one of the exemptions; the HC will document the determination in the MaineDOT ProjEx database. The project will also be documented in the annual PA report to FHWA, FTA, and SHPO.

B. If the project does not meet one of the PA exemptions, the HC establishes an area of potential effect (APE) and conducts an Above Ground Cultural Resources Survey in accordance with the Maine Historic Preservation Commission (MHPC) Above Ground Cultural Resources Survey Manual, February 2013 (MHPC Survey Guidelines) or the HC will assign the project to a MaineDOT Historic Architectural Consultant (consultant) for an above ground survey to be completed following the MHPC Survey Guidelines. The HC will also forward information on the project to the Archaeological staff at MHPC (This is not the SHPO) for existing data review. The Code of Maine Rules contains two chapters that regulate professional archaeological work in Maine. Chapter 100 sets forth the standards and procedures for access to archaeological site records. Chapter 812 contains the composition and functions of the Archaeological Advisory Committee, the credentials requirements from persons on the Commission's approved lists of archaeologists, the procedure for review of credentials, the procedure for removal from approved lists, and environmental impact project guidelines and procedures. The HC will send information on the project to the federally recognized Tribes and Tribal Historic Preservation Officer (THPO) as appropriate (see Section 106 SOP for more information on tribal consultation). The HC will invite other consulting parties (local government representatives, local historic groups) to participate in the Section 106 process. Invitations and responses will be documented in ProjEx and the CPD e-file.

4.3 Consulting Parties Invitation

The HC will identify and invite consulting parties in accordance with 36 CFR § 800.2 (a) (4) and (c) and (d), § 800.3 (e) and (f), and the Maine Section 106 Programmatic Agreement. Typically, the consulting parties include SHPO and/or THPO, Native American tribes, representatives of local governments, and local historical groups.

The HC will notify the SHPO and/or THPO of an undertaking/project and request their advice and assistance in carrying out MaineDOT's Section 106 responsibilities. The HC is responsible for consulting with the THPO in lieu of the SHPO regarding undertakings/projects occurring on or affecting historic properties on tribal lands. In Maine, the Passamaquoddy Tribe, Houlton Band of Maliseet Indians, Mi'kmaq Nation, and the Penobscot Nation have THPO status under Section 106 and are not currently signatories to the Section 106 Programmatic Agreement; the same is true of the Army Corps of Engineers. At any time if a Tribe requests Government-to-

Government consultation, the HC will notify FHWA Maine Division. FHWA Maine Division will then lead the Government-to Government consultation.

The HC will invite the appropriate town officials and any known local historical groups of the undertaking/project and request comments from these parties.

If no response is received from an invited consulting party after 30 days, the HC will assume that the party does not wish to participate and will not send future notices of determinations or invite them to participate in the resolution of adverse effects. The invited party can choose to participate at a later date, but their participation and involvement will not reset the clock – they can only make official comments and recommendations on actions that have not yet been resolved.

The HC will file all documentation in the CPD e-file and dates will be entered into ProjEx. There are drop-downs for all tribal and municipal coordination.

All consulting parties that participate in the Section 106 process will be provided information about the undertaking and its effects on historic properties, subject to confidentiality provisions of § 800.11(c).

Parties can also submit requests to be a consulting party and MaineDOT HC will review and approve the party.

Tribal Consultation (Government -to Government)

In accordance with 36 CFR 800, federal agencies must consult with federally recognized Indian Tribes that attach religious and cultural significance to historic properties that may be affected by an undertaking.

Tribal consultation is a federal government-to-government relationship. It cannot be delegated by a federal agency to a state or local agency. MaineDOT performs project-level tribal consultation on behalf of FHWA. This includes consultation for LPA projects that receive FHWA funding. The HC will invite the federally recognized tribes in Maine: Mi'kmaq Nation, Houlton Band of Maliseet Indians, Passamaquoddy Tribe-Indian Township, Passamaquoddy Tribe-Pleasant Point, and Penobscot Nation and request their comments. However, the tribes have the option to work directly with the FHWA division office if they choose. All direct project consultation is conducted by the HC on behalf of FHWA. LPAs and consultants shall not contact federally recognized tribes on MaineDOT/FHWA's behalf.

4.4 Identification of Historic Properties (36 CFR 800.4)

The HC will determine the Area of Potential Effect (APE) and then conduct an above-ground cultural resources Survey or assign projects to the consultant(s). MaineDOT obtains qualified consultants that meet the Secretary of Interior Professional Qualification Standards for architecture and archaeology. Archaeology consultants also have to meet the State code described in Section 4.2 B. The SHPO/THPO will concur or comment on the APE when reviewing MaineDOT's determination of eligibility. The identification and evaluation of historic properties must be performed by professionals who meet the professional standards established by the Secretary of the Interior [§ 800.2(a)(1)]. The Professional Qualification Standards are published in 36 CFR 61. The HC will provide topographic maps with the APE clearly identified and written project scope of work. The HC will enter dates into ProjEx indicating when the surveys were assigned and completed. The HC will also enter the name of the surveyor.

All above-ground surveys will be entered into the web-based historic properties database (Maine Historic Property Workbench) by the HC or the consultant. All surveys and determinations of eligibility and effects will meet the requirements of the MHPC Survey Guidelines.

The HC, (in accordance with 36 CFR § 800.4 (c) and MHPC Survey Guidelines, will evaluate and recommend whether properties within the APE are eligible for and/or listed on the National Register of Historic Places. The HC will make a final determination of eligibility for the SHPO's concurrence.

- A.** If there are no National Register eligible or listed properties within the APE, a survey report with eligibility recommendations will be supplied to the HC by the architectural consultant, and/or the MHPC archaeological staff, and/or the THPO (see MHPC Survey Guidelines for Architectural Survey Report guidelines). The report will include all properties surveyed and indicate (property by property) why they are not eligible for the National Register. The HC will make a final determination and forward the supporting documentation with a detailed cover memo and finding of **No historic properties affected** to the SHPO/THPO for concurrence. In accordance with § 800.4(d), all participating consulting parties will be notified and the documentation will be made available subject to confidentiality provisions of 800.11(c). Documentation will be in accordance with 36 CFR § 800.4(d) and § 800.11(d). All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.
- i. If the SHPO/THPO does not object within 30 days of receipt of an adequately documented finding, a memo will be forwarded from the SHPO/THPO to the HC stating so. If no response is received after 30 days from the SHPO/THPO, concurrence will be assumed [see §800.4(d)(1)(i)]. This will complete Section 106. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.
 - ii. If the SHPO/THPO objects to the finding of no historic properties affected, then the HC and the SHPO will follow §800.4(d)(1)(ii) by meeting to resolve the disagreement, or the HC will forward the finding and supporting documentation to the Advisory Council on Historic Preservation (ACHP) and request that the ACHP review the finding pursuant to §800.4(d)(1)(iv)(C).
- B.** If there are National Register eligible or listed properties identified within the APE, a survey report with eligibility recommendations will be supplied to the HC by the architectural consultant, and/or the MHPC archaeological staff, and/or the THPO (see MHPC Survey Guidelines for Architectural Survey Report guidelines). The report will indicate under which National Park Service National Register Criteria (Criteria A, B, C or D) the property is eligible and which of the seven aspects of integrity (Location, Design, Setting, Materials, Workmanship, Feeling, and/or Association) the property retains to convey its significance. The HC will make a final determination of eligibility for the SHPO's concurrence. For nearly all projects, the determination of National Register above-ground boundaries will automatically default to the modern-day parcel boundaries. The need for more refined and individual assessments of boundaries beyond that will be assessed on a case-by-case basis.
- i. If the SHPO/THPO objects to the finding of National Register eligibility, then the HC, , and the SHPO will meet to resolve the disagreement, or the HC will forward the finding and supporting documentation to the Secretary of the Interior (specifically the Keeper of the National Register within the U.S. Department of Interior/National Park Service) pursuant to 36 CFR § 63 requesting a determination of eligibility. The Keeper of the National Register will respond within 45 days with a determination.

4.5 Assessment of Effects to Historic Properties (36 CFR 800.4 (d))

The HC will determine whether historic properties will be affected after sufficient project details or plans are provided by the MaineDOT ENV Team Leader. The HC will prepare information for scheduled public meetings to inform the public about an undertaking and its effects on historic properties in accordance with § 800.2(d)(2). If the project is not scheduled to have a public meeting, then the HC will post the documentation to the MaineDOT website and provide public notice for review and comment. Documentation will be in accordance with § 800.11(e). All documentation will be filed in the CPD e-file and dates entered into ProjEx.

A. If the determination is the undertaking/project will have **no effect** on historic properties as defined in § 800.16(i), then the HC will forward a determination of effect report as outlined in MHPC's Survey Guidelines with a detailed cover memo and finding of **No historic properties affected** to the SHPO/THPO for concurrence. In accordance with § 800.4(d), documentation will be made available to consulting parties upon request and subject to confidentiality provisions of § 800.11(c). Documentation will be in accordance with 36 CFR § 800.4(d) and § 800.11(d). All documentation will be filed in the CPD e-file and dates will be entered into ProjEx. The HC will also put the type of determination on the ProjEx Permit page for tracking purposes.

i. If the SHPO/THPO does not object within 30 days of receipt of an adequately documented finding, a memo will be forwarded from the SHPO/THPO to the HC stating so. If no response is received after 30 days from the SHPO/THPO, concurrence will be assumed [see §800.4(d) (1)(i)]. This will complete Section 106. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

ii. If the SHPO/THPO objects to the finding of no historic properties affected, then the HC and the SHPO will follow §800.4(d)(1) (ii) by meeting to resolve the disagreement, or the HC will forward the finding and supporting documentation to the Advisory Council on Historic Preservation (ACHP) and request that the ACHP review the finding pursuant to §800.4(d)(1)(iv). The ACHP has 30 days to review the finding and provide the HC with a determination.

B. If the determination is that the undertaking/project will have an effect on historic properties as defined in § 800.16(i), the HC, and/or consultant, and/or MHPC archaeological staff, and/or the THPO will then make an assessment of adverse effect in accordance with 36 CFR § 800.5. All documentation will be filed in the CPD e-file.

4.6 Assessment of Adverse Effects (36 CFR 800.5)

The HC in accordance with 36 CFR § 800.5, will apply the criteria of adverse effect to historic properties within the APE. The HC will provide a determination of effect report as outlined in MHPC's Survey Guidelines. The HC will make a final determination of the effect for the SHPO's concurrence.

A. If the determination is the undertaking/project will have no adverse effect on historic properties in accordance with § 800.5, then the HC will forward the supporting documentation in accordance with 36 CFR § 800.11(e) with a detailed cover memo and finding of **no adverse effect** to the SHPO for concurrence. The memo will also include language notifying the SHPO that a concurrence with a determination of no adverse effect will result in a finding of *de minimis* under Section 4(f) if property rights need to be acquired. The exact wording to be used is as follows: *"MaineDOT will be processing a Section 4(f)*

de minimis determination upon concurrence with this finding.” In accordance with § 800.5(c), all participating consulting parties will be notified and provided documentation as specified in § 800.11(e), subject to confidentiality provisions of 800.11(c). All documentation will be filed in the CPD e-file and dates in will be entered into ProjEx.

i. If the SHPO/THPO or participating consulting party does not object within 30 days of receipt of an adequately documented finding, a memo will be forwarded from the SHPO/THPO or consulting parties to the HC stating so. If no response is received after 30 days for a determination of no adverse effect from either the SHPO/THPO or participating

consulting party, concurrence will be assumed [see § 800.5(c)(1)]. This will complete Section 106. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

ii. If within 30 days the SHPO/THPO or any consulting party notifies the HC in writing that it disagrees with the finding of no adverse effect and specifies the reason, then the HC, the lead federal agency (MaineDOT under NEPA assignment), and/or the SHPO, and/or consulting parties will follow §800.5(c)(2) by meeting to resolve the disagreement, or the lead federal agency will forward the finding and supporting documentation to the Advisory Council on Historic Preservation (ACHP) and request that the ACHP review the finding pursuant to §800.5(c)(3)(i) and (ii). The ACHP has 30 days to review the finding and provide the lead federal agency with a determination.

B. If the recommendation is the undertaking/project will have an **adverse effect** on historic properties in accordance with § 800.5, then the HC and the lead federal agency will follow 36 CFR § 800.5(d) (2) and § 800.6 - § 800.7. The HC will notify the SHPO, THPO, and any other participating consulting parties.

i. If the SHPO/THPO or participating consulting party does not object within 30 days of receipt of an adequately documented finding, a memo will be forwarded from the SHPO/THPO or consulting parties to the HC stating so. If no response is received after 30 days for a determination of no adverse effect from either the SHPO/THPO or participating consulting party, concurrence will be assumed [see § 800.5(c)(1)].

MaineDOT will be responsible for notifying the Advisory Council on Historic Preservation (ACHP) by providing documentation in accordance with § 800.11(e). The ACHP will have 15 days to comment (if no comment is received within 15 days, it is assumed that the ACHP is not participating). The HC will work with the Team Leaders, Project Managers, the SHPO and/or THPO, and other participating consulting parties to propose adequate minimization and mitigation measures for the adverse effect. These measures will be documented in a Memorandum of Agreement (MOA) developed by the HC pursuant to §800.6 (c). At a minimum, signatories will include MaineDOT

, SHPO, and/or THPO, and the ACHP if they choose to participate. Additionally invited signatories or concurring parties may also be included. The HC will obtain all signatures. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

a. In the failure to resolve adverse effects, the participating parties will follow § 800.7.

- ii. If within 30 days the SHPO/THPO or any consulting party notifies the HC in writing that it disagrees with the finding of no adverse effect and specifies the reason, then the HC and/or the SHPO, and/or consulting parties will follow §800.5(c)(2) by meeting to resolve the disagreement, or the lead federal agency (MaineDOT under NEPA assignment) will forward the finding and supporting documentation to the Advisory Council on Historic Preservation (ACHP) and request that the ACHP review the finding pursuant to §800.5(c)(3)(i) and (ii). The ACHP has 30 days to review the finding and provide the lead federal agency with a determination.

Final NEPA approval (and therefore the expenditure of federal funds and/or approval of federal permits) cannot be granted until the Section 106 process is completed [36 CFR § 800.1(c)]. All Section 106 determinations of eligibility and effect, and any required MOAs filed with the ACHP, must be completed before the approval of NEPA. The HC is responsible for Section 106 determinations and the development and implementation of all Section 106 MOAs.

4.7 Archaeological Surveys

In order to complete a historic archaeological review, it may be necessary to conduct surveys under project agreement contracts. It is the responsibility of the HC to obtain the scope and budgets as well as prioritize the work. Archaeological Reports will be filed in the ENV Office and a note will be placed in ProjEx by the HC. The HC 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. The Code of Maine Rules contains two chapters that regulate professional archaeological work in Maine. Chapter 100 sets forth the standards and procedures for access to archaeological site records. Chapter 812 contains the composition and functions of the Archaeological Advisory Committee, the credentials requirements from persons on the Commission's approved lists of archaeologists, the procedure for review of credentials, the procedure for removal from approved lists, and environmental impact project guidelines and procedures. The code of Maine Rules also contains Chapter 13 (Maine Antiquities Law) which directs excavation activities (<https://www.maine.gov/mhpc/programs/protection-and-community-resources/laws-and-regulations>).

4.8 National Historic Landmarks (36 CFR 800.10)

The HC will notify the Environmental Team Leader and the Senior Environmental Manager when an NHL may potentially be adversely affected by an undertaking/project. MaineDOT will avoid adverse impacts to the greatest extent possible. If adverse effects cannot be avoided, MaineDOT will follow 36 CFR 800.10, and invite the Advisory Council and the Secretary of the Interior to participate in the consultation.

4.9 Emergency Situations (36 CFR 800.12)

Emergencies are defined consistent with 36 C.F.R. § 800.12 as occurrences that require emergency highway system and facility repairs that are necessary to:

- (1) protect the life, safety, or health of the public;
- (2) minimize the extent of damage to the highway system and facilities;
- (3) protect remaining highway facilities; or
- (4) restore essential traffic.

The following stipulations apply to emergency situations:

- A. Repairs to address emergency situations as defined above can occur regardless of funding category or declarations made by Federal, state, or local agencies. MaineDOT may take immediate remedial action without waiting for comment if such action is necessary to prevent further escalation of the emergency by the circumstances causing it.

Immediate rescue and salvage operations conducted to preserve life or property are exempt from Section 106 review.

B. If the emergency repair project could affect historic properties, MaineDOT's HC will work with the Environmental Team Leader in these situations and shall notify the SHPO, FHWA, and Tribes within 48 hours, when feasible. If possible, the SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected shall be given seven days to respond. If the HC determines that circumstances do not permit seven days for comment, the ACHP and SHPO/THPO will be notified and invited to comment within the time available.

C. For projects where the repair must be made within the first 30 days of the occurrence of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of environmental documentation will happen concurrently or after the fact. In these cases, MaineDOT will comply with the procedures to the extent possible, but the reviews will likely be conducted after the emergency work is completed.

D. For projects taking longer than 30 days for repair, MaineDOT will comply with the procedures in Sections 4.1 – 4.6.

4.10 Post-Review Discoveries (36 CFR 800.13)

In the event of post-review discoveries, the HC will work with the SHPO/THPO and Tribes in accordance with § 800.13. The HC will also work with the Senior Environmental Manager, Environmental Team Leader, Project Manager, and the Resident Engineer and Contractor if construction has begun in accordance with § 800.13 and the Department of Transportation Standard Specifications (12/2014) § 105.9.

4.11 DOT State Funded Projects with Army Corps of Engineers (ACOE) as Federal Lead

The HC will apply the process as laid out in this SOP (even applying the Programmatic Agreement exemptions). The DOT as an applicant for an ACOE Federal Permit will abide by the ACOE Programmatic General Permit (Historic Properties). All applicable Section 106 information will be documented on the ACOE permit cover sheet by the MaineDOT Environmental Team Leader when applying for an ACOE permit.

4.12 DOT Locally Administered Projects (LAP)

The HC will conduct the Section 106 process as laid out in this SOP for LAP Projects with federal funding. The municipality/ACOE will be responsible for Section 106 for projects with no federal funding.

4.13 Cultural Architectural Resource Management Archive Database (CARMA)

All above-ground surveys conducted by or for the MaineDOT will be completed via the Cultural Architectural Resource Management Archive (CARMA).

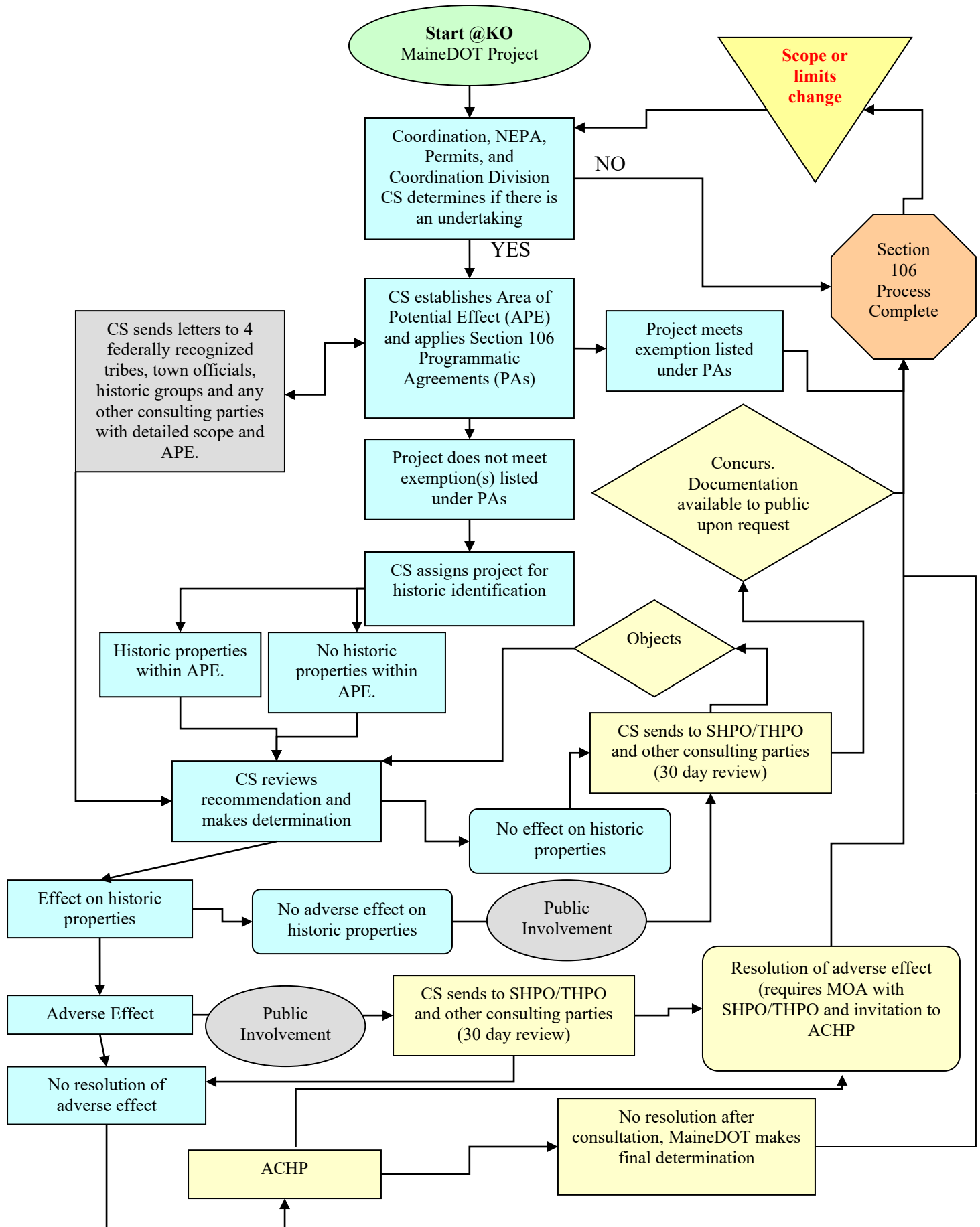
4.14 National Environmental Policy Act (NEPA)

When Section 106 has concluded the HC will check yes or no for Section 106 on the Maine Checklist in ProjEx.

Final NEPA approval (and therefore the expenditure of federal funds and/or approval of federal permits) cannot be granted until Section 106 review is complete [36 CFR § 800.1(c)]. Draft EA and EIS documents can be circulated prior to the completion of Section 106 review provided that a MOA has been executed allowing for phased identification and evaluation of properties. All Section 106 determinations of eligibility and effect, and any related MOAs, must be completed

before the issuance of a FONSI or ROD. The HC is responsible for 106 determinations and the development and implementation of all 106 MOAs.

Section 106 Process for MaineDOT Projects – Process Flow Chart





NEPA Section 4(f) Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

The following provides guidance for Section 4(f) of the U.S. Department of Transportation Act and provides for identifying historic property to determine the appropriate level of coordination that is required.

Section 4(f) of the Department of Transportation Act (49 U.S.C. 303 and the implementing regulations at 23 CFR Part 774) prohibits the use of land of significant publicly owned public parks, recreational areas, wildlife and waterfowl refuges, and land of a historic site for transportation projects unless the Federal transportation agency determines that there is no feasible and prudent avoidance alternative and all possible planning to minimize harm has occurred.

MaineDOT Historic Coordinators are responsible for assessing and ensuring compliance with Section 4(f) under NEPA Assignment. Section 4(f) information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision. ProjEx contains the master checklist questions.

1.0 Section 4(f) Initial Project Question and Documentation

The following question is required to be answered by the MaineDOT Historic Coordinator (HC).

1. Are there U.S. DOT funds involved in the project (Is Section 4(f) required)?

A Yes response to Question 1 requires a review of Section 4(f) properties (go to 2.0). A No response concludes the Section 4(f) assessment. All actions will be processed and documented in MaineDOT's ProjEx database.

2.0 Scope and Use

1. Based on scope, are there property rights required for the project?

A Yes response to Question 1 requires a review of Section 4(f) properties (go to 3.0). A No response concludes the Section 4(f) assessment. All actions will be processed and documented in MaineDOT's ProjEx database with No right of way/No use.



NEPA Section 4(f) Guidance

3.0 Section 4(f) Properties

After identifying U.S. DOT Funding in the project, the HC is required to answer the following question:

2. Are there Section 4(f) properties?

Refer to the Section 4(f) SOP and FHWA guidance on determining 4(f) properties.

A Yes response to Question 2 requires the HC to review the right of way to determine if property rights are required on any Section 4(f) property or if an adverse effect will occur on a historic transportation structure (go to 3.0).

A No response concludes the Section 4(f) assessment. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file. Section 4(f) will be documented in the NEPA CE Report.

4.0 Section 4(f) Use

After identifying Section 4(f) properties, the HC is required to answer the following question:

3. Is there a Use of a Section 4(f) property?

Refer to Section 4(f) SOP and FHWA guidance on determining Use.

A Yes response to Question 2 requires the HC to review the right of way, and effects and correspond with the Owner with Jurisdiction to determine the proper documentation level (go to 4.0).

A No response concludes the Section 4(f) assessment. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

The HC and the ENV Team Leader will review project plans, 4(f) resources, and right-of-way at the Preliminary Design Report (PDR) stage.

5.0 Section 4(f) Documentation and Approval

After determining the Section 4(f) documentation level, the HC will write the document and submit it for quality review and approval following the MaineDOT Quality Assurance and Control Guidance. All documents and approvals will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

Under NEPA assignment, a legal review will be conducted by MaineDOT's Legal Office and legal sufficiency by the Maine Attorney General's Office for Individual Section 4(f) evaluations. The Senior Environmental Manager will conduct a quality review of the draft Section 4(f) document.

Refer to Section 4(f) SOP and FHWA guidance on documentation and approval.

6.0 Links and Standard Operating Procedures

[Section 4\(f\) of the Department of Transportation Act of 1966 \(49 U.S.C. 303\)](#)



MaineDOT

NEPA Section 4(f) Guidance

Regulation

FHWA Section 4(f) Guidance

<https://www.environment.fhwa.dot.gov/legislation/section4f.aspx>

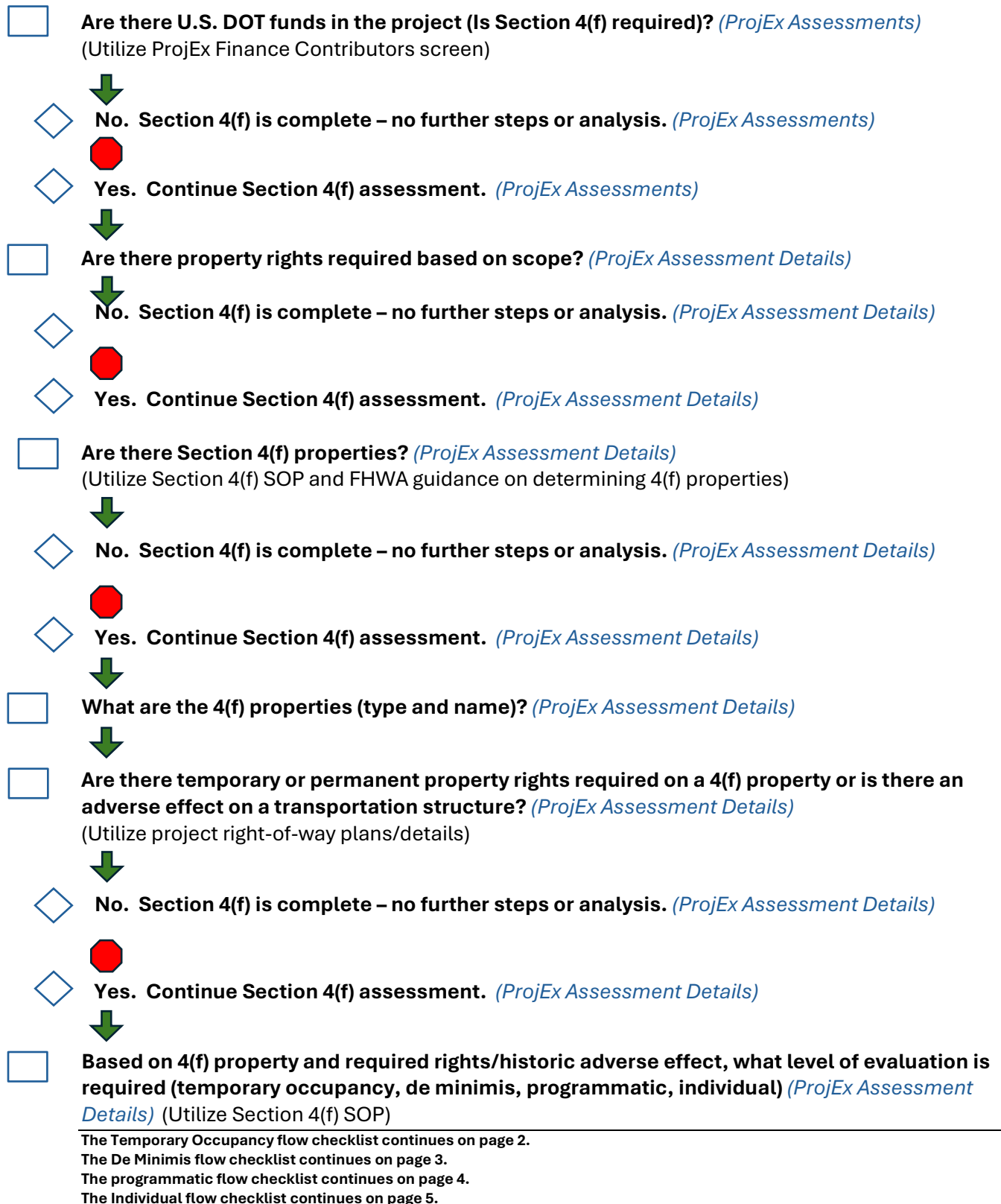
MaineDOT maintains a Section 4(f) Standard Operating Procedure.

7.0 Section 4(f) flow checklist

Begins on the following page.

Section 4(f) Flow Checklist for Categorical Exclusions


The Historic Coordinators will complete the Section 4(f) assessment and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.



Section 4(f) Flow Checklist for Categorical Exclusions

The Historic Coordinators will complete the Section 4(f) assessment and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.

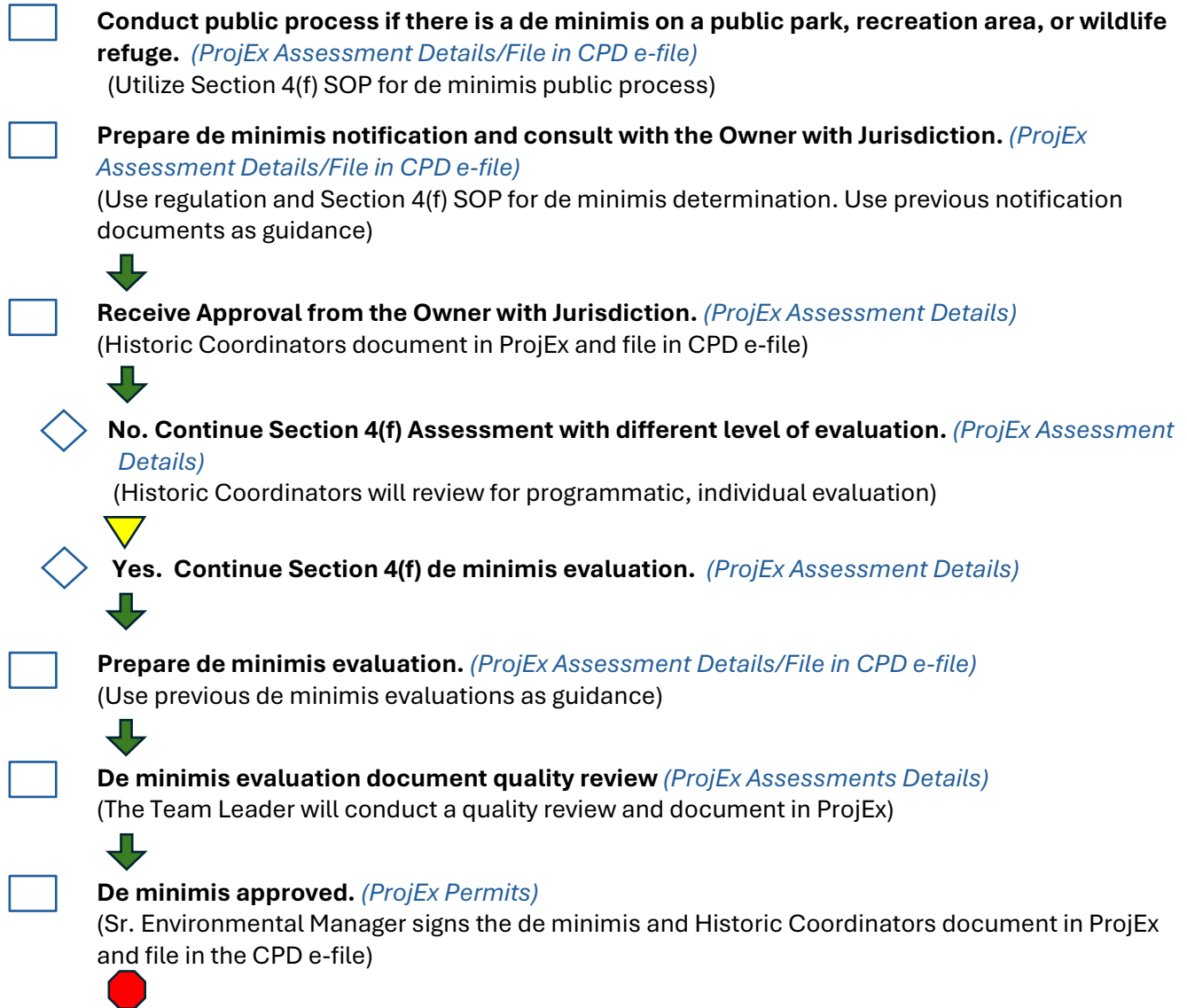
Temporary Occupancy

- ☐ **Prepare Temporary Occupancy notification and consult with the Owner with Jurisdiction.** *(ProjEx Assessment Details/File in CPD e-file)*
(Use regulation and Section 4(f) SOP for Temporary Occupancy determination. Use previous notification documents as guidance)
- ↓
- ☐ **Receive Approval from the Owner with Jurisdiction.** *(ProjEx Assessment Details)*
(Historic Coordinators document in ProjEx and file in CPD e-file)
- ↓
- ☐ **Yes. Section 4(f) is complete – no further steps or analysis.** *(ProjEx Permits)*
- 
- ☐ **No. Continue Section 4(f) Assessment with different level of evaluation.** *(ProjEx Assessment Details)*
(Historic Coordinators will review for de minimis, programmatic, individual evaluation)
- ▼

Section 4(f) Flow Checklist for Categorical Exclusions

The Historic Coordinators will complete the Section 4(f) assessment and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.

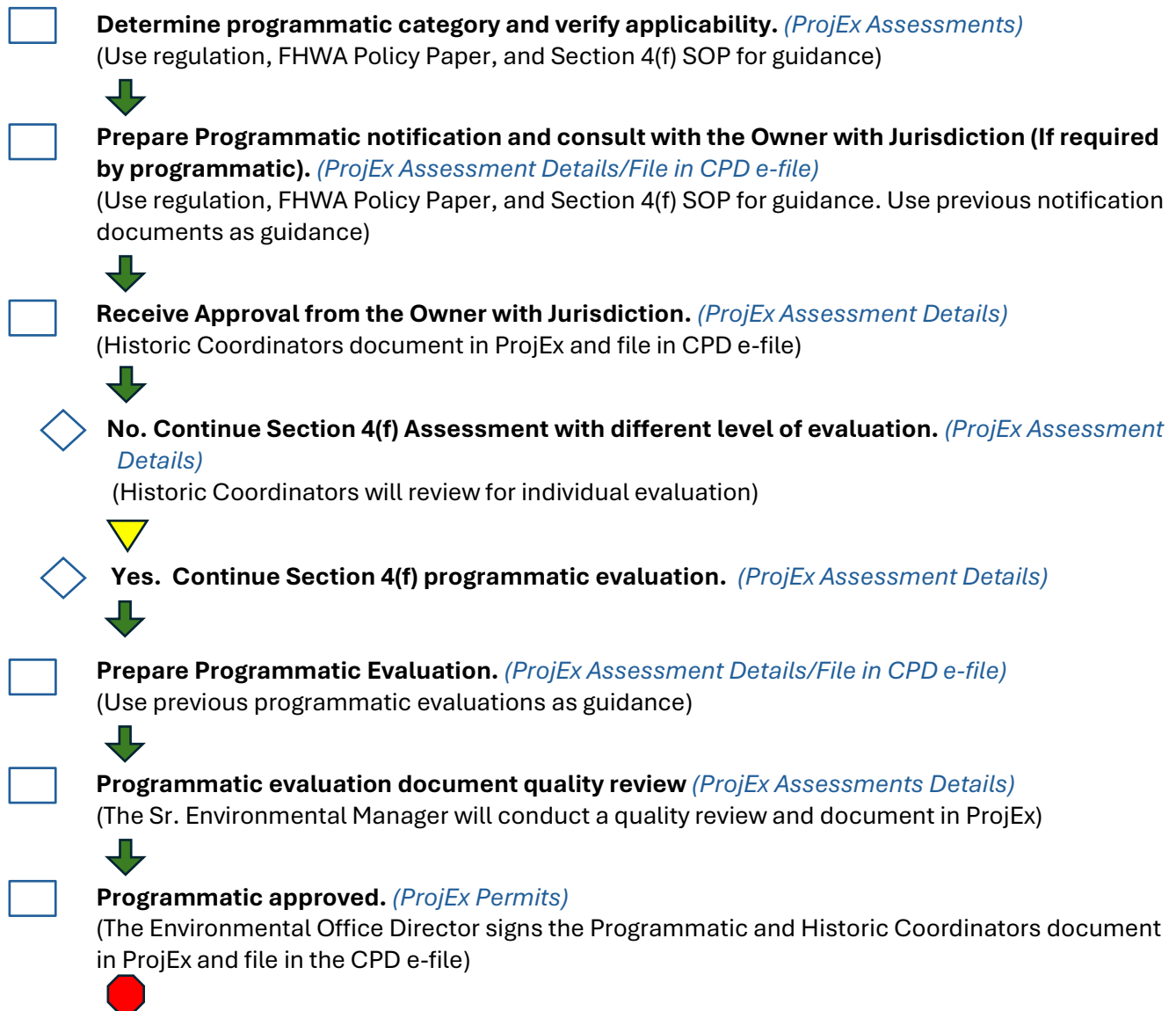
De Minimis



Section 4(f) Flow Checklist for Categorical Exclusions

The Historic Coordinators will complete the Section 4(f) assessment and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.









Programmatic



Section 4(f) Flow Checklist for Categorical Exclusions

The Historic Coordinators will complete the Section 4(f) assessment and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.

Individual

- ☐ **Prepare draft Individual evaluation.** *(ProjEx Assessment Details/File in CPD e-file)*
(Historic Coordinators use previous Individual evaluations as guidance, work with the team leader and Project Manager for project details)

- ☐ **Individual evaluation document quality review** *(ProjEx Assessments Details)*
(The Sr. Environmental Manager will conduct a quality review and document in ProjEx)

- ☐ **Send Individual evaluation to the Department of the Interior (DOI) for review and comments.** *(ProjEx Assessment Details)* (Historic Coordinator sends Individual 4(f) to DOI for review)

- ☐ **Receive comments to incorporate into individual evaluation from DOI.** *(ProjEx Assessment Details/CPD e-file)*
(Historic Coordinator will file comments in the CPD e-file and incorporated into the evaluation)

- ☐ **Send Individual evaluation to MaineDOT Chief Legal Counsel for Legal Sufficiency Review.** *(ProjEx Assessment Details)* (MaineDOT Chief Legal Counsel conducts a legal sufficiency review)

- ☐ **Receive comments to incorporate into individual evaluation from Chief Legal Counsel.** *(CPD e-file)* (The Environmental Office will incorporate any comments/edits)

- ☐ **Receive Chief Legal Counsel legal sufficiency approval.** *(ProjEx Assessment Details/CPD e-file)*

- ☐ **Individual Approved.** *(ProjEx Permits)*
(The Environmental Office Director signs the Individual evaluation and Historic Coordinator document in ProjEx and files in the CPD e-file)


Environmental Office, MaineDOT
Standard Operating Procedure
Section 4(f) of the Department of Transportation Act
Process for MaineDOT

1.0 APPLICABILITY.

This standard operating procedure (SOP) pertains to all staff in the Maine Department of Transportation's (MaineDOT's) Environmental Office (ENV) charged with evaluating regulatory jurisdictions, requirements, and review for resources protected under Section 4(f) of the Department of Transportation Act of 1966 (Section 4(f)). This standard applies to the processing of Section 4(f) for MaineDOT's projects.

2.0 PURPOSE.

This SOP is to ensure that the MaineDOT is in compliance with cultural resource laws by incorporating preservation principles into project planning through consultation with federal agencies, the State Historic Preservation Officer, the Tribal Historic Preservations Officers, Native American Tribes, and local municipal officials, and Officials With Jurisdiction over Section 4(f) properties. The objective is to establish procedures to identify publically-owned public parks, recreational areas, wildlife and waterfowl refuges, and NR-listed or –eligible historic properties, assess the project's use and effects on them, and seek ways to avoid, minimize, and mitigate uses and adverse effects.

3.0 RESPONSIBILITIES.

3.1 Conformity

All ENV personnel involved in coordinating with and consulting on transportation projects proposed by MaineDOT are responsible for becoming familiar with and complying with, the contents of this procedure. The attached flowchart serves as a reference throughout the regulatory review of a proposed project. ENV managers and supervisors are responsible for ensuring that appropriate ENV personnel are familiar with and adhere to the procedures outlined in this SOP.

MaineDOT has assumed the responsibility of Section 4(f) under NEPA Assignment (23 U.S.C. 326)

3.2 Maintenance

The Senior Environmental Manager and Historic Coordinators (HC) will ensure that this SOP reflects current needs and standards on an annual basis. Attachments will be updated as needed and the updated information provided to all parties

4.0 SECTION 4(f) PROCESS FOR MAINEDOT

4.1 All Projects and Studies

The HC oversees the Section 4(f) process for all MaineDOT projects and studies. The HC will be responsible for sending plans with final right-of-way, historical data, and/or 4(f) documents to the quality reviewer in accordance with the quality and approval chart in section 4.13 of this document.

Any changes in right-of-way, design, or impacts to the 4(f) resources during project development or construction will need to go through the Environmental Office for approval.

4.2 Initiating Section 4(f) Process

The HC shall review all projects that have U.S. DOT funds or oversight to determine if Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303) is applicable. The HC will process projects under 23 CFR 774.

The HC will determine if the project has the potential for incorporation of new property into the transportation system. If the scope, such as milling and paving on existing pavement, will not require temporary or permanent easements or rights, the HC will complete the Section 4(f) review for these projects with a “no use” determination. Should project details change, the Team Leader will inform the HC that the 4(f) determination requires re-evaluation.

4.3 Identification of 4(f) Resources

The HC shall review all projects within the Work Plan, and projects identified as candidate projects for scoping that have U.S. DOT funds. The HC will identify public parks, public recreation areas, public wildlife and waterfowl refuges, and historic properties (NR-eligible and -listed resources) as early in the project schedule as possible by utilizing the Realty Management System, historic consultants, regional coordinators, the Property Office (existing conditions plans), town offices, the historic GIS database, and any other available information. The HC will utilize [FHWA’s Section 4\(f\) Guidance \(Environmental Toolkit\)](#) and the [FHWA Section 4\(f\) Policy Paper](#) for guidance with Section 4(f) applicability criteria, including mixed-use properties, properties reserved for transportation use, exceptions, temporary occupancy, etc. All decisions will be documented in ProjEx.

A. If no 4(f) resources are identified, the HC will place a note in the MaineDOT ProjEx database and dates and comments will be entered into ProjEx. Section 4(f) is then complete.

B. Historic (i.e., NR-eligible or -listed) resources identified by the HC will be sent to the State Historic Preservation Officer (SHPO) for concurrence on their eligibility. The term “historic” includes both architectural and archeological resources. Disputes concerning eligibility will be addressed as outlined in MaineDOT’s Section 106 SOP.

C. If a publicly owned property is identified, the HC will determine if the primary use of the property is for recreational activities, as a park, or as a wildlife/waterfowl refuge. The ownership of the parcel (publicly owned either through title or via a significant oversight role on the part of a public agency), level of access (open to the general public regardless of affiliation), and significance of the property will also be verified by the HC.

4.4 Determination of major primary purpose and significance for recreation, parks, or wildlife/waterfowl refuge.

The HC will contact the official with jurisdiction (OWJ) to determine the primary use of the property. The OWJ is most often the property owner, although there may be cases where there is shared authority (for example between a property owner and lessee, or when the administering agency delegates some of its authority to another entity) that may require more than one point of contact.

A. If the OWJ indicates that the primary use for the property is not for recreation, as a park, or as a wildlife/waterfowl refuge, then the HC will place a note in the MaineDOT ProjEx database and dates will be entered into ProjEx. All documentation will be filed in the CPD e-file.

- B.** If the OWJ indicates that the property is used for recreational purposes, as a park, or as a wildlife or wildfowl refuge, the HC will contact the OWJ, in writing, to confirm that understanding, to make a determination of the property's significance, and to comment on MaineDOT's assessment of effects and any proposed minimization and mitigation efforts made with respect to that property. The OWJ must respond in writing to the HC's request for information. The reply from the owner/official with jurisdiction will be filed in the CPD e-file and noted in ProjEx.
- i.** If the property is deemed not significant by the OWJ, the HC will place a note in the MaineDOT ProjEx database and dates will be entered into ProjEx. All documentation will be filed in the CPD e-file.
 - ii.** If the property is deemed significant by the OWJ, then the HC will consider the property a 4(f) resource. This information, along with the location of the property, will be provided to the Project Manager (PM) by the HC so that design adjustments can be made to **avoid and minimize a use that would have a negative impact on the 4(f) property.** All documentation will be filed in the CPD e-file.

4.5 Historic Properties

The HC will identify National Register eligible and listed historic (architectural and archeological) properties within the project's area of potential effect (APE). (See Section 106 SOP for a detailed account of this identification process.)

- A.** If MaineDOT determines there are no properties within the APE that are NR-listed or eligible, and the SHPO concurs, the HC will place a note in the MaineDOT ProjEx database. All documentation will be filed in the CPD e-file.
- B.** If MaineDOT identifies an NR-listed or –eligible architectural property and SHPO concurs, then the HC will document the property as a Section 106 and 4(f) resource. This information, along with the location of the property, will be provided to the Project Manager (PM) by the HC so that design adjustments can be made to **avoid and minimize** any uses that would have a negative impact on the 4(f) property. All documentation will be filed in the CPD e-file.
- C.** If MaineDOT identifies an NR-listed or –eligible archeological property that is important to preserve in place and SHPO concurs, then the HC will document the property as both a Section 106 and 4(f) resource. If the archeological property is NR-listed or –eligible but is not important to preserve in place, it will remain a Section 106 resource, but will not qualify for protection under Section 4(f). This information, along with the location of the property, will be provided to the Project Manager (PM) by the HC so that design adjustments can be made to **avoid and minimize** any uses that would have a negative impact on the 4(f) property. All documentation will be filed in the CPD e-file.

4.6 Providing 4(f) Resource Information to the Project Manager

The HC will provide the 4(f) resource information to the PM as early in the project schedule as possible. The PM will be required in accordance with 49 U.S.C 303 and 23 CFR 774 to avoid a “use” to the identified 4(f) resource(s). A “use” includes such actions as acquisitions, easements, and any permanent or temporary change that may adversely affect the value of the resource. ***The primary responsibility of the PM and the design and right-of-way team is to avoid 4(f) resources.*** The information regarding 4(f) resources will guide the PM and Team in designing the project. Coordination and communication between the PM, Design Team, Environmental Team Leader, and the HC will occur throughout the project development process.

4.7 Determination of “Use” at Preliminary Design Report (PDR) Phase

The HC and the ENV Team Leader will review project plans, 4(f) resources, and right-of-way at the PDR stage or when appropriate design and right-of-way plans or notes are developed. The term use—as it relates to Section 4(f)—denotes an adverse impact to, or occupancy of, a Section 4(f) property. There are three conditions under which use occurs:

- Permanent Incorporation – when a Section 4(f) property is acquired outright for a transportation project.
- Temporary Occupancy – when there is temporary use of property that is adverse in terms of Section 4(f)'s preservationist purpose.
- Constructive Use – when the proximity impacts of a transportation project on Section 4(f) property, even without acquisition of the property, are so great that the activities, features, and attributes of the property are **substantially impaired**.

When a transportation project results in a use of land from a Section 4(f) property, MaineDOT generally acquires interest in land by one of the following methods or has an adverse effect on a transportation asset within the existing right of way:

- fee simple
- permanent easement
- temporary easement

Determining a Constructive Use under NEPA Assignment is still determined by FHWA Headquarters. Project documents will contain the evaluation of proximity effects and a discussion of whether or not there is substantial impairment to a Section 4(f) property. The term "constructive use" need not be used, except when responding to review comments in environmental documents that specifically address constructive use. In cases where a constructive use determination appears appropriate the HC or public will notify the FHWA Division Office. The FHWA Division must consult with the FHWA Headquarters Office of Project Development and Environmental Review to make the final determination.

A. If there is no “use” and 4(f) is determined not to be applicable by the HC, then the HC will enter dates and comments into ProjEx. All documentation will be filed in the CPD e-file. Section 4(f) is then complete. ***If there are any changes to design or right-of-way after no “use” is determined the PM is obligated to bring this to the attention of the HC as soon as possible.*** If the changes result in the use of the 4(f) resource, then the review process is reinitialized.

B. If the “use” of a historic site, significant public recreational area, public park, public wildlife or waterfowl refuge cannot be avoided (there is no prudent and feasible avoidance alternative (See Section 4.10 for further guidance on Prudent and Feasible), the PM must explore design modifications which will minimize that use. Depending on the extent of the impact and the ability to minimize it, mitigation may be required. The PM must provide an alternative analysis that explains why avoiding the “use” of the property is not feasible and prudent. The extent and level of detail of that analysis are dependent upon the level of impact to the resource. The Team Leader and HC will assist the PM with the alternative analysis. ***If there are any changes to design or right-of-way after the 4(f) documentation is complete, the PM is obligated to bring this to the attention of the CPD as soon as possible.*** The changes may require that the review process be reinitialized.

C. The use of a 4(f) property requires written documentation that is developed with input from the appropriate consulting parties (e.g., SHPO, OWJ, tribes, public). The level of documentation and consultation is commensurate with the extent of the overall impact on the 4(f) property(s).

4.8 Temporary Occupancy

A temporary occupancy occurs when project impacts on the 4(f) resource are so minimal as to not constitute a use within the meaning of Section 4(f). The HC is responsible for contacting the OWJ in writing that MaineDOT will have a temporary occupancy on the Section 4(f) resource. The OWJ is to sign this letter in concurrence and send it back to MaineDOT. This is then documented in the CPD e-file, as well as in ProjEx

4.9. Types of 4(f) Documents

The following section offers a generalized overview of the various classes of 4(f) documentation, including their general applicability and requirements. The complexity of the 4(f) statute is such that it makes it necessary to review each project individually in order to determine the appropriate level of involvement. For detailed discussions, the reader is referred to the 2012 FHWA Section 4(f) Policy Paper (full citations listed under Section 13: Guidance).

A. *De minimis* Evaluation

When is it used? The *de minimis* documentation is used in instances where there is negligible impact on the 4(f) resource. Findings of no adverse effect under Section 106 or no significant impact from the OWJ on non-historic 4(f) resources are instances in which *de minimis* documentation can be used.

What is required? There must be written concurrence from the SHPO/THPO and/or OWJ with the assessment of effects and that the action will have a minor impact on the 4(f) resource. In the case of recreational resources, parks, and wildlife/waterfowl refuges, the public must also be notified of the proposed impact and given the opportunity to comment. This public involvement requirement can be satisfied during an early and traditional MaineDOT Informational Meeting or Public Hearing or through publishing a notice for a public comment period in the local newspaper.

The MaineDOT HC submits the following *de minimis* documentation to the MaineDOT Team Leader for quality review and Senior Environmental Manager for approval:

- summary matrix of the resources;
- appropriate plan sheets;
- written letters of concurrence from the SHPO/THPO and/or OWJs;
- a summary of the project scope detailing any avoidance, minimization or mitigation measures;
- a cover letter.
- a location map

Prior to submitting a *de minimis* documentation for a public park, wildlife refuge or recreational resource, the *de minimis* documentation package will be posted via public notice in the project's local newspaper and on the MaineDOT ENV website for public comment for a period of two weeks. This will occur if public involvement is not satisfied during an early and traditional Maine DOT Informational Meeting or Public Hearing.

B. Programmatic Evaluation

When is it used? Recognizing the reoccurrence of certain classes of actions, the FHWA developed a series of standardized, streamlined documents that could be used in prescribed

circumstances. Programmatic Evaluations do not require review/approval beyond the MaineDOT Environmental Office Director. Currently, there are 5 different types of programmatic evaluations; a brief overview of each is provided below. For detailed discussions, the reader is referred to the FHWA Section 4(f) Policy Paper.

Programmatic Section 4(f) Evaluation and Approval for Projects that Necessitate the Use of Historic Bridges

This evaluation sets forth the basis for approval that there are no feasible and prudent alternatives to the use of certain historic bridge structures to be replaced or rehabilitated with Federal funds and that the projects include all possible planning to minimize harm resulting from such use.

Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aid Highway Projects with Minor Involvements with Public Parks, Recreational Lands, and Wildlife and Waterfowl Refuges

This programmatic evaluation is applicable for projects that improve existing highways and use minor amounts of publicly owned public parks, recreation lands, or wildlife and waterfowl refuges that are adjacent to existing highways.

Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aid Highway Projects with Minor Involvements with Historic Sites

This programmatic evaluation has been prepared for projects that improve existing highways and use minor amounts of land (including non-historic improvement thereon) from historic sites that are adjacent to existing highways where the effect is determined not to be adverse.

Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects that Have a Net Benefit to a Section 4(f) Property

Unlike the other programmatic which require minor involvement, the use of this programmatic is not dependent on impact level, so it can be used with EIS projects, realignments, relocating entire 4(f) resources, findings of adverse impacts on 106 properties, etc. However, two criteria must be met to use this evaluation: (1) the project must result in an overall enhancement of the 4(f) property, and (2) the project cannot substantially diminish the values that make the property eligible for 4(f) protection. The enhancement and diminishment evaluations are determined by MaineDOT in conjunction with the official with jurisdiction over that property. All parties must agree otherwise the programmatic cannot be used.

Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects

This negative declaration applies to bikeway and/or walkway projects that require the use of land from Section 4(f) resources. This programmatic exempts independent (i.e., not connected with a highway project) bikeways and walkways that require the use of recreation and park areas that are maintained primarily for recreation purposes. Written concurrence must be obtained from the OWJ. It does not apply to public wildlife or waterfowl refuges or historic sites.

What is required?

As with the *de minimis* requirements, there must be written concurrence from the SHPO/THPO and/or OWJ with the assessment of effects. Additionally, with the exception of the historic bridge programmatic, all other programmatic requires that the proposed action will have either a minor or positive impact on the 4(f) resource. However, unlike the *de*

minimis process, the general public does not need to be notified of the proposed impact and given the opportunity to comment within the context of Section 4(f).

Standardized documentation templates have been developed for each of the first four programmatic evaluations, and examples may be viewed in the ENV Office. While there is some variability with respect to the documentation requirements among the different evaluations, the following elements are required for all:

- basic project purpose and need
- documentation that all programmatic criteria have been met
- alternative analysis (including the no build, building on new location, and improvement without using the 4(f) resource)
- avoidance and minimization efforts
- mitigation (if required)

The MaineDOT HC submits the programmatic documentation to the MaineDOT Senior Environmental Manager for quality review and the Environmental Office Director for approval.

C. Individual Evaluation

When is it used?

An Individual 4(f) Statement is prepared when neither the *de minimis* nor programmatic criteria can be met.

What is required?

While the basic elements are similar to those used in a programmatic, the individual evaluation is more involved and requires more detailed documentation, interagency coordination, and regulatory review than the programmatic. The Department of the Interior is required to review the draft and has a minimum of 30 days per Section 11316 of the Infrastructure Investments and Jobs Act (IIJA), Pub L. No. 117-58 (2021). In addition, the draft document must be reviewed by MaineDOT Environmental Counsel for legal sufficiency prior to its finalization. The Environmental Office Director is responsible for coordinating the legal sufficiency review and working with the HC and Senior Environmental Manager to incorporate suggestions/requirements from the legal sufficiency review. The Draft and Final 4(f) Evaluations may be circulated with the NEPA document, or separately. As with the programmatic, there is no requirement for public involvement within the context of 4(f).

4.9 Writing the 4(f) Document

The HC will prepare the 4(f) documentation for all MaineDOT projects and studies. The HC will determine the appropriate level of 4(f) documentation. If there is some uncertainty regarding the appropriate level of 4(f) documentation, the HC will consult with the Senior Environmental Manager requesting their opinion. Once the appropriate level of documentation is determined, the document will be written by the HC with assistance from the Environmental Team Leader and Design Team. All documentation will be developed in accordance with the appropriate guidance offered in the FHWA Section 4(f) Policy Paper, the individual programmatic evaluations, FHWA Section 4(f) guidance online, the FHWA Technical Advisory T6640.8A, (full citations listed under Section 13: Guidance).

4.10 Prudent and Feasible

A feasible and prudent avoidance alternative avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property. In assessing the importance of protecting Section 4(f)

property, it is appropriate to consider the relative value of the resource to the preservation purpose of the statute.

The regulations [23 CFR 774.17](#) set out factors to consider in determining whether an avoidance alternative is feasible and prudent:

- An alternative is not feasible if it cannot be built as a matter of sound engineering judgment.
- An alternative is not prudent if:
 - It compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need;
 - It results in unacceptable safety or operational problems;
 - After reasonable mitigation, it still causes:
 - Severe social, economic, or environmental impacts;
 - Severe disruption to established communities;
 - Severe disproportionate impacts on minority or low-income populations;or
 - Severe impacts to environmental resources protected under other Federal statutes;
 - It results in additional construction, maintenance, or operational costs of an extraordinary magnitude;
 - It causes other unique problems or unusual factors; or
 - It involves multiple factors listed above, that while individually minor, cumulatively
 - cause unique problems or impacts of extraordinary magnitude

If an avoidance alternative is determined to be prudent and feasible, it must be selected.

The HC will work with the Senior Environmental Manager, Environmental Team Leader, and Project Manager to determine if an alternative is prudent and feasible. This will be documented in the Section 4(f) evaluation.

4.11 Measures to Minimize Harm

The HC will work closely with the Environmental Team Leader and Project Manager on avoidance and minimization measures. These measures will be documented in the 4(f) evaluation.

Before an alternative involving the use of a Section 4(f) resource can be selected, avoidance alternatives and minimization measures must be considered. (For *de minimis* impacts, mitigation measures should be considered in making the determination.) Avoidance alternatives are those that totally avoid the use of Section 4(f) properties while meeting the defined project needs; minimization measures are efforts to minimize the impact of a project on a Section 4(f) property. Minimization measures may include mitigation, which is compensation for Section 4(f) impacts that cannot be avoided. Mitigation may entail the replacement of Section 4(f) property or facilities.

- If an alternative would have only a *de minimis* impact, it may be selected without further evaluation under Section 4(f).
- If an avoidance alternative is determined to be feasible and prudent, it must be selected.
- If multiple alternatives under consideration use Section 4(f) property and no feasible and prudent avoidance alternative exists, the alternative that will cause the least overall harm must be selected.

4.12 Least Overall Harm

When multiple alternatives use Section 4(f) property and the evaluation of avoidance alternatives concludes that there is no prudent and feasible avoidance alternative, then MaineDOT may approve, from the remaining alternatives that use Section 4(f) property, only the alternative that causes the least overall harm in light of the preservation purpose of the statute. [23 CFR 774.3\(c\)](#) includes a list of factors to consider in making this determination of least overall harm. These factors include the ability to mitigate adverse impacts to Section 4(f) property; the relative severity of remaining harm, after mitigation, to Section 4(f) property; the views of the officials with jurisdiction; and the relative significance of each Section 4(f) property. Other factors include the degree to which alternatives meet the project purpose and need, substantial differences in cost, and impacts on other resources. The HC will work with the Environmental Team Leaders and Project Manager to understand and consider these factors.

4.13 Submission of the 4(f) Document

The HC will submit an electronic version for review and approval in accordance with the chart below:

Action	Responsible Staff			
	Preparer	Quality Reviewer	Legal Sufficiency Review	Approver
De minimis Section 4(f)	Historic Coordinator	ENV Team Leader	N/A	Senior Environmental Manager (NEPA Manager)
Programmatic Section 4(f)	Historic Coordinator	Senior Environmental Manager (NEPA Manager)	N/A	ENV Director
Individual Section 4(f)	Historic Coordinator	Senior Environmental Manager (NEPA Manager)	MaineDOT Legal Counsel	ENV Director

A. De Minimis and Programmatic If the document is signed, then 4(f) is complete. A copy of the document will be filed in the CPD e-file and an approval date will be placed in ProjEx by the HC.

B. Individual

Quality Review.

The Senior Environmental Manager will review the 4(f) Individual evaluation. If the Senior Environmental Manager has content or format-based comments on the 4(f) document, then the HC will schedule a working session with the Senior Environmental Manager, the CR consultant (if applicable), and the design team (if necessary) to address the comments and complete the document.

Find the Individual Draft 4(f) evaluation document satisfactory and forward it to the Department of the Interior (DOI). If the Draft Individual Section 4(f)

Evaluation is found complete by the Senior Environmental Manager and Environmental Office Director, then the HC will forward the document to DOI for a minimum 30-day review period.

- If there are substantive comments from DOI, MaineDOT will work with DOI to resolve.
- If there are no substantive comments from DOI, MaineDOT may proceed.
- If comments are not received within 15 days after the comment deadline, MaineDOT may assume a lack of objection and proceed.

Legal Sufficiency Review

The Environmental Office Director will send an approved draft to the MaineDOT Legal Counsel for legal sufficiency review. MaineDOT legal counsel will review all Section 4(f) approvals under [§§ 774.3\(a\)](#) and [774.3\(c\)](#) for legal sufficiency.

- MaineDOT Legal Counsel will provide a memo to the Environmental Office Director once the 4(f) evaluation is found legally sufficient.
- The Environmental Office Director cannot approve the 4(f) document until it is found legally sufficient by MaineDOT Legal Counsel.
- After MAineDOT Legal Counsel finds the 4(f) evaluation legally sufficient, then the Final Individual Section 4(f) evaluation will be prepared, including a Section 4(f) Statement to be signed by the Environmental Office Director. The HC will place dates into ProjEx. All documentation will be filed in the CPD e-file.

4.14 Section 4(f) Document Complete

Section 4(f) is considered complete when the HC determines 4(f) is not applicable or the Senior Environmental Manager or ENV Director signs the 4(f) document. The HC will place a date in the MaineDOT ProjEx database. All documentation will be filed in the CPD e-file.

4.15 National Environmental Policy Act (NEPA)

When Section 4(f) has concluded the HC will complete the NEPA checklist Section 4(f) section in ProjEx.

Final NEPA approval cannot be granted until Section 4(f) is complete.

4.16 DOT Locally Administered Projects (LAP)

The HC will conduct the Section 4(f) process as laid out in this SOP for all U.S. DOT-funded LAP Projects.

4.17 Additional Resources and Guidance

Regulatory Citations

Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303) 23 CFR 774.

Federal Highway Administration (FHWA Docket No. FHWA-2002-13290), 2005. Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects that have a Net Benefit to a Section 4(f) Property; *Federal Register* 70(75), p. 20618-20630

Federal Highway Administration (FHWA Docket No. FHWA-05-22884) and the Federal Transit Authority, 2006. Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, Notice of Proposed Rulemaking (NPRM); *Federal Register* 71(144), p. 42611-42622.

Federal Highway Administration (FHWA Docket No. FHWA-2006-24902), 2006. Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System; *Federal Register* 71(243); p. 76019-76021.

Guidance Papers

Federal Highway Administration, 1987. Technical Advisory T6640.8A: Guidance for Preparing and Processing Environmental and Section 4(f) Documents, dated October 30, 1987.

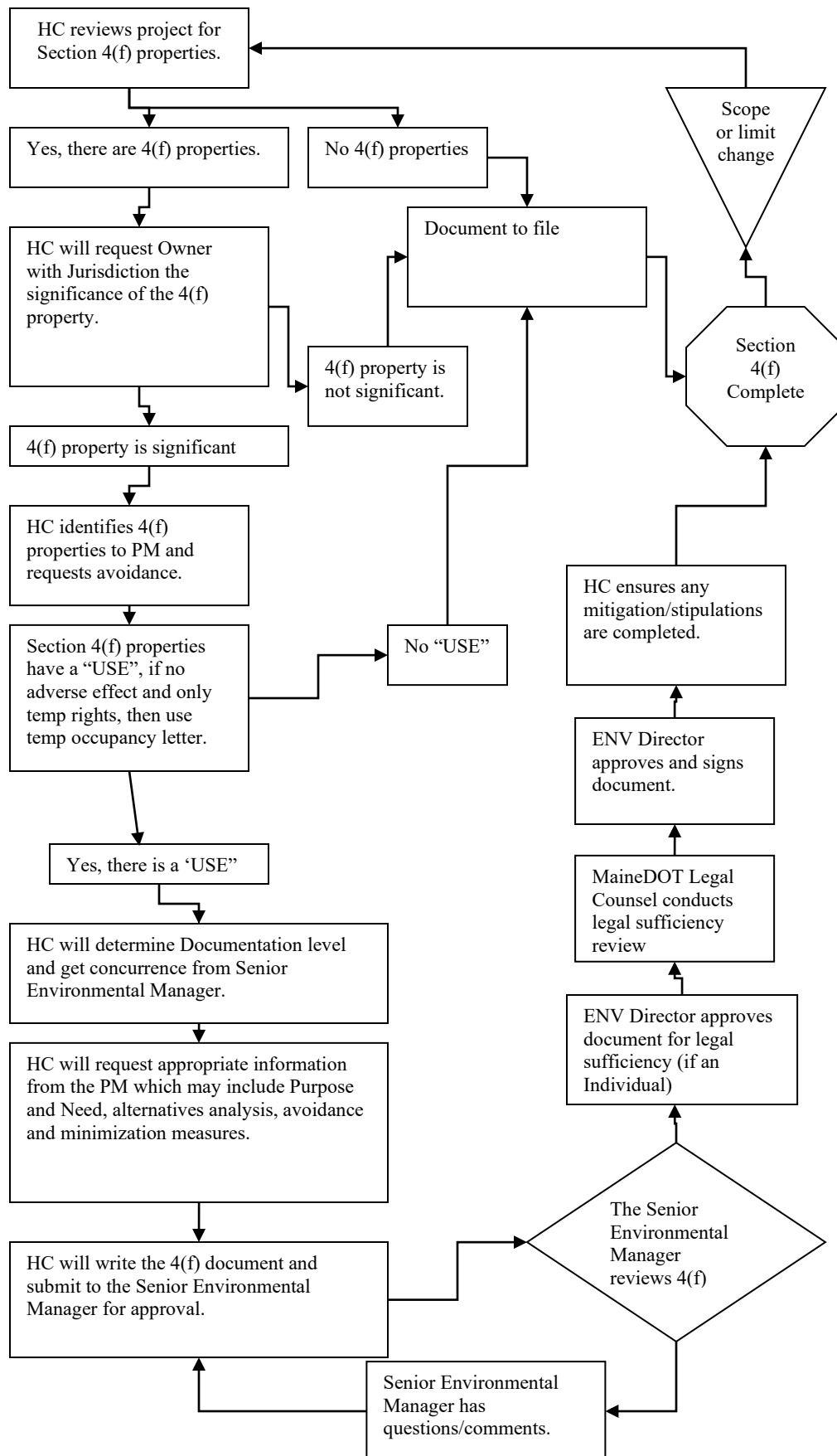
Federal Highway Administration, 2012. FHWA Section 4(f) Policy Paper; dated July 20, 2012 66 p.

Websites

4(f) Guidebook references

<http://environment.fhwa.dot.gov/guidebook/Results.asp?selSub=68&Submit=Search+Guidebook>

Section 4(f) Process for Maine DOT Projects - Process Flow Chart is on the following page.





NEPA LAWCON-Section 6(f) Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

Section 6(f) of the Land & Water Conservation Fund (LAWCON) Act (16 U.S.C. 4601-4 et seq. and the implementing regulations at 36 CFR Part 59) protects certain recreation lands that received LAWCON funding from being converted into a non-recreational use. The Maine Department of Agriculture, Conservation, and Forestry (DACF) oversees this program for the State of Maine to assist in the preservation and development of outdoor recreation resources. MaineDOT coordinates all 6(f) processes with DACF. All properties established and/or enhanced through this program are subject to the requirements of Section 6(f).

MaineDOT Historic Coordinators are responsible for assessing and ensuring compliance with Section 6(f) under NEPA Assignment. Section 6(f) information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision. ProjEx is used as the master checklist.

1.0 Section 6(f) Initial Project Questions and Documentation

The following question is required to be answered by the MaineDOT Historic Coordinator (HC):

1. Are Section 6(f) properties present within the project area?

The MaineDOT HC will review the MaineDOT Property Realty Management System and the [Maine Department of Agriculture, Conservation and Forestry \(DACF\) LAWCON database](#) to determine if public properties are located on the project (LAWCON funds are only used on public properties).

A Yes response to Question 1 requires a review of property acquisitions on LAWCON property (go to 2.0). A No response concludes the LAWCON assessment. All actions will be processed and documented in MaineDOT's ProjEx database in Permits, Assessments, and Assessment Details.

Section 6(f) properties will also be subject to Section 4(f) regulations if the project is receiving federal-aid transportation funds or requires federal approval. However, **it is important to note that Section 6(f) will always apply to a property that received the LAWCON funds, regardless of the funding source secured for the project.**

2.0 Section 6(f) Project Questions, Identifying Impacts, and Documentation



NEPA LAWCON-Section 6(f) Guidance

After identifying Section 6(f) properties, the HC is required to answer the following question:

2. Are property acquisitions required on Section 6(f) properties?

A Yes response to Question 2 requires the HC to review the LAWCON database and if necessary, contact DACF to obtain the boundaries of the Section 6(f) property(ies) and to identify Section 6(f) items that received the allotted funds. The HC and Team Leader will work with the Project Manager to avoid permanent acquisitions of the 6(f) property. Once these items have been identified, the HC will start the documentation as outlined in Section 3.0.

A No response concludes the LAWCON assessment as this resource will not be converted to non-recreational use. All actions will be processed and documented in MaineDOT's ProjEx database in Permits, Assessments, and Assessment Details, and MaineDOT's Environmental CPD e-file.

3.0 LAWCON Coordination Process

If there are permanent acquisitions of Section 6(f) property, the action results in a conversion of land to a non-recreational use.

The HC will work with DACF to ensure all requirements under 36 CFR § 59.3 Conversion requirements are met. The HC will draft documents and provide them to DACF. DACF will coordinate with

(a) Background and legal requirements. Section 6(f)(3) of the LAWCON Act is the cornerstone of Federal compliance efforts to ensure that the Federal investments in LAWCON assistance are being maintained in public outdoor recreation use. This section of the Act assures that once an area has been funded with LAWCON assistance, it is continually maintained in public recreation use unless NPS approves substitution property of reasonably equivalent usefulness and location and of at least equal fair market value.

(b) Prerequisites for conversion approval. Requests from the project sponsor for permission to convert LAWCON-assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the [State](#) Liaison Officer (DACF) to the appropriate NPS [Regional Director](#) in writing. NPS will consider conversion requests if the following prerequisites have been met:

- (1) All practical alternatives to the proposed conversion have been evaluated.
- (2) The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by an approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not serve a recreation purpose.
- (3) The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and at the discretion of the [Regional Director](#), the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider [State](#) (DACF) requests to change the project sponsor when it is determined that a different

NEPA LAWCON-Section 6(f) Guidance

political jurisdiction can better carry out the objectives of the original project agreement. Equivalent usefulness and location will be determined based on the following criteria:

(i) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated similarly to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests except those where wetlands are proposed as replacement property. Wetland areas and interests therein which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion regardless of the nature of the property proposed for conversion.

(ii) Replacement property need not necessarily be directly adjacent to or close to the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation needs. While generally, this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if the property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the project sponsor should seek to locate the substitute area in another location within the jurisdiction. Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of Federal assistance, for assuring compliance with these regulations and the substitution of replacement property.

(iii) The acquisition of one parcel of land may be used in the satisfaction of several approved conversions.

(4) The property proposed for substitution meets the eligibility requirements for LAWCON-assisted acquisition. The replacement property must constitute or be part of a viable recreation area. Unless each of the following additional conditions is met, land currently in public ownership, including that which is owned by another public agency, may not be used as replacement land for land acquired as part of a LAWCON project:

(i) The land was not acquired by the sponsor or selling agency for recreation.

(ii) The land has not been dedicated or managed for recreational purposes while in public ownership.

(iii) No Federal assistance was provided in the original acquisition unless the assistance was provided under a program expressly authorized to match or supplement LAWCON assistance.

(iv) Where the project sponsor acquires the land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

In the case of development projects for which the State match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development



NEPA LAWCON-Section 6(f) Guidance

itself, public land which has not been dedicated or managed for recreation/conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost.

(5) In the case of assisted sites that are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

(6) All necessary coordination with other Federal agencies has been satisfactorily accomplished including, for example, compliance with section 4(f) of the Department of Transportation Act of 1966.

(7) The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 6(f)(3) action. In cases where the proposed conversion arises from another Federal action, a final review of the [State's](#) proposal shall not occur until the NPS Regional office is assured that all environmental review requirements related to that other action have been met.

(8) [State](#) intergovernmental clearinghouse review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original Land and Water Conservation Fund project.

(9) The proposed conversion and substitution are in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and/or equivalent recreation plans.

DACF will receive approval for the conversion and acceptability of the replacement property in writing from the NPS Regional Director. DACF will provide the approval to MaineDOT HC.

All documentation will be placed in MaineDOT's ProjEx database Permits, Assessments, and Assessment Details, and MaineDOT's Environmental CPD e-file.

4.0 Links

[Land and Water Conservation Fund Act:](#)

[Regulation](#)

Maine Department of Agriculture, Conservation and Forestry web page

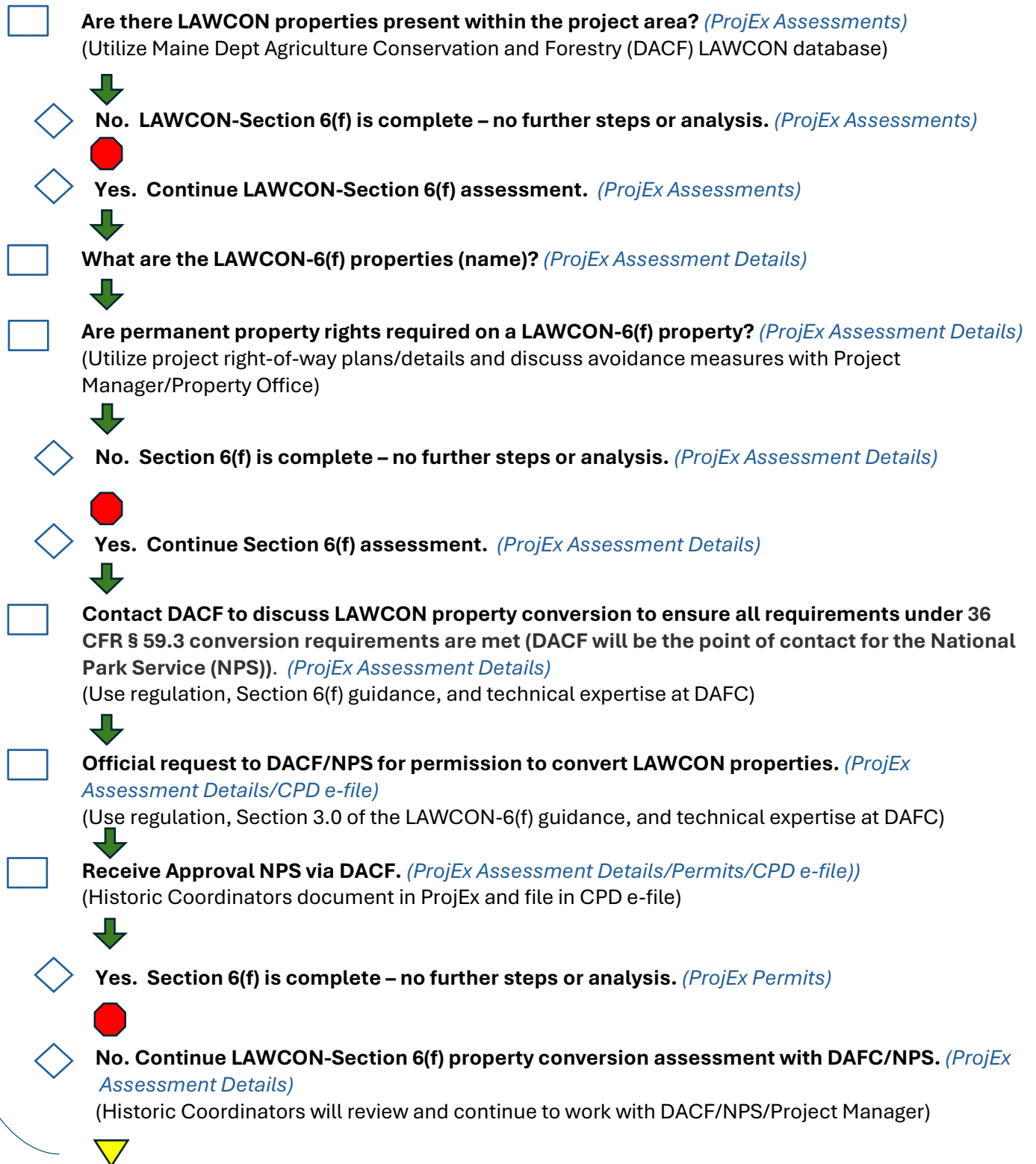
[Land and Water Conservation Fund: Bureau of Parks and Lands: Maine DACF](#)

5.0 LAWCON-Section 6(f) Flow Checklist

The flow checklist begins on the following page.

LAWCON-Section 6(f) Flow Checklist for Categorical Exclusions

The Historic Coordinators will complete the LAWCON-Section 6(f) assessment and document in the CPD e-file and ProjEx Permits, Assessments, Assessment Details, and Commitments. Documentation will be in the NEPA CE Report and the CPD e-file.





NEPA Farmland Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

In accordance with the Farmland Protection Policy Act (FPPA) and the implementing regulations at 7 CFR 658, Federal-aid highway projects that require right-of-way acquisition are required to consider the type of impacts a proposed project may have upon prime, unique, statewide importance, and local importance farmland and to determine what avoidance, minimization and mitigation measures may be needed.

Prime Farmland is farmland that has the best combination of physical and chemical characteristics for producing food, feed, and crops.

Unique Farmland is land other than prime farmland that is used for the production of a specific high-value food or crop and has a special combination of soil quality, location, growing season, and moisture needed to produce sustained high-quality or high yields of specific crops (e.g. cotton, tobacco).

Farmland of statewide importance is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oil seed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

Farmland of local importance is land where there is a concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. In places, additional farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinances.

MaineDOT Team Leaders are responsible for assessing, ensuring compliance, and consulting with USDA under NEPA Assignment. Farmland information is incorporated into the overall NEPA decision. The process checklists are built into MaineDOT's ProjEx database. The Team Leaders will fill in the Assessment, Assessment details sections. ProjEx will generate the final CE Report with this information for the CPD e-file.



NEPA Farmland Guidance

1.0 Prime and Unique Farmland Initial Project Questions and Documentation

The following question is required to be answered by the MaineDOT Team Leader:

1. Are right-of-way acquisitions required on prime or unique farmland greater than 10 acres (for new highways) or greater than 3 acres (for existing highways)?

These thresholds are part of exempted categories under the FPPA Manual Section 523.11 (E)(1).

A Yes response to Question 1 requires a review of the Natural Resources Conservation Service (NRCS) Web Soil Survey mapping to identify Prime and Unique Farmland (go to 2.0). A No response concludes the Prime and Unique Farmland assessment as this resource will not be converted to non-agricultural use. Compliance with the FPPA is satisfied. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

2.0 Identifying Prime and Unique Farmlands

If right-of-way acquisitions are required, the MaineDOT Environmental Team Leader will use the NRCS Web Soil Survey to identify Prime and Unique Farmlands within the proposed project area and save this information to the CPD e-file in the NEPA folder.

To use the NRCS Web Soil Survey, first go to the link below:

<http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

Click on the Start WSS tab and follow the four basic steps to produce the map for the project area.

3.0 Prime and Unique Farmland Project Questions, Identifying Impacts, and Documentation

After completing the Web Soil Survey and mapping, the Team Leader is required to answer the following question. The answers to the question will indicate whether or not form NRCS-CPA-106, the FARMLAND CONVERSION IMPACT RATING FOR CORRIDOR TYPE PROJECTS is required to be filled out and submitted to NRCS. MaineDOT will always use this form.

2. Are right-of-way acquisitions required on Prime and Unique Farmlands (soils classified as Prime or Statewide Importance in the NRCS Web Soil Survey) and a Farmland Conversion Impact Rating required?

A Yes response to Question 2 requires form NRCS-CPA-106 to be submitted to NRCS (go to 4.0). A No response concludes the Prime and Unique Farmland Assessment as this resource will not be converted to non-agricultural use. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

4.0 Prime and Unique Farmland Document (form NRCS-CPD-106) Process

The Team Leader will initially fill out sections I and III and submit form NRCS-CPA-106 and required maps to NRCS via email for proposed projects that may convert farmland, as defined in the FPPA to nonagricultural uses. If the site is concurred by NRCS to be subject to the Act, then NRCS will measure the relative value of



NEPA Farmland Guidance

the site as farmland on a scale of 0 to 100 according to the information sources listed in 7 CFR § 658.5(a). NRCS will fill out sections II, IV and V. NRCS will respond to these requests within 10 working days of their receipt except that in cases where a site visit or land evaluation system design is needed, NRCS will respond in 30 working days. In the event that NRCS fails to complete its response within the required period, if further delay would interfere with construction activities, the agency should proceed as though the site were not farmland.

After MaineDOT receives the score of a site's relative value from NRCS as described in 7 CFR § 658.4(a), The Team Leader will then apply the site assessment criteria which are set forth in 7 CFR § 658.5 (b) and (c), and fill out sections VI and VII, assigning to the site a combined score of up to 260 points, composed of up to 100 points for relative value and up to 160 points for the site assessment. With this score MaineDOT will be able to identify the effect of its project on farmland, and make a determination as to the suitability of the site for protection as farmland. Once this score is computed, USDA recommends:

- (1) Sites with the highest combined scores be regarded as most suitable for protection under these criteria and sites with the lowest scores, as least suitable.
- (2) Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated.
- (3) Sites receiving scores totaling 160 or more be given increasingly higher levels of consideration for protection.
- (4) When making decisions on proposed actions for sites receiving scores totaling 160 or more, MaineDOT should consider:
 - (i) Use of land that is not farmland or use of existing structures;
 - (ii) Alternative sites, locations and designs that would serve the proposed purpose but convert either fewer acres of farmland or other farmland that has a lower relative value;
 - (iii) Special siting requirements of the proposed project and the extent to which an alternative site fails to satisfy the special siting requirements as well as the originally selected site.

To meet reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, after MaineDOT has made a final decision on a project in which one or more of the alternative sites contain farmland subject to the FPPA, a copy of the Form, which indicates the final decision, will be provided to NRCS.

Compliance with the FPPA will be accomplished as part of the National Environmental Policy Act (NEPA) process. The project file must contain the necessary evidence that the FPPA has been followed before NEPA can be approved.

5.0 Prime and Unique Farmland Document (form NRCS-CPA-106) Assessment Criteria

Criteria were developed by the Secretary of Agriculture in cooperation with other Federal agencies. They are in two parts, (a) the land evaluation criterion for which NRCS will provide the rating or score, and (b) the [site](#) assessment criteria, for which MaineDOT must develop its own ratings or scores. The criteria are as follows:



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- a. Land Evaluation Criterion - Relative Value.** The land evaluation criterion is based on information from several sources including national cooperative soil surveys or other acceptable soil surveys, NRCS field office technical guides, soil potential ratings or soil productivity ratings, land capability classifications, and important farmland determinations. Based on this information, groups of soils within a local government's jurisdiction will be evaluated and assigned a score between 0 to 100 for agricultural production of the farmland to be converted by the project compared to other farmland in the same local government jurisdiction. This score will be the Relative Value Rating on the Form.
- b. Site Assessment Criteria.** MaineDOT will use the following criteria to assess the suitability of each proposed site or design alternative for protection of farmland along with the score from the land evaluation criterion described in 7 CFR § 658.5(a). Each criterion will be given a score on a scale of 0 to the maximum points shown. Conditions suggesting top, intermediate and bottom scores are indicated for each criterion. MaineDOT will make scoring decisions in the context of each proposed site or alternative action by examining the site. Where one given location has more than one design alternative, each design should be considered as an alternative site. The following criteria are to be used for transportation projects:
- (1) How much land is in nonurban use within a radius of 1.0 mile from where the project is intended?
More than 90 percent - 15 points
90 to 20 percent - 14 to 1 point(s)
Less than 20 percent - 0 points
 - (2) How much of the perimeter of the site borders on land in nonurban use?
More than 90 percent - 10 points
90 to 20 percent - 9 to 1 point(s)
Less than 20 percent - 0 points
 - (3) How much of the site has been farmed (managed for a scheduled harvest or timber activity) more than five of the last 10 years?
More than 90 percent - 20 points
90 to 20 percent - 19 to 1 point(s)
Less than 20 percent - 0 points
 - (4) Is the site subject to state or unit of local government policies or programs to protect farmland or covered by private programs to protect farmland?
Site is protected - 20 points
Site is not protected - 0 points
 - (5) Is the farm unit(s) containing the site (before the project) as large as the average-size farming unit in the County? (Average farm sizes in each county are available from the NRCS field offices in each state (MaineDOT contacts the NRCS office in Bangor). Data are from the latest available Census of Agriculture, Acreage or Farm Units in Operation with \$1,000 or more in sales.)
As large or larger - 10 points



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Below average - deduct 1 point for each 5 percent below the average, down to 0 points if 50 percent or more below average - 9 to 0 points

(6) If the site is chosen for the project, how much of the remaining land on the farm will become non-farmable because of interference with land patterns?

Acreage equal to more than 25 percent of acres directly converted by the project - 25 points

Acreage equal to between 25 and 5 percent of the acres directly converted by the project - 1 to 24 point(s)

Acreage equal to less than 5 percent of the acres directly converted by the project - 0 points

(7) Does the site have available adequate supply of farm support services and markets, i.e., farm suppliers, equipment dealers, processing and storage facilities and farmer's markets?

All required services are available - 5 points

Some required services are available - 4 to 1 point(s)

No required services are available - 0 points

(8) Does the site have substantial and well-maintained on-farm investments such as barns, other storage building, fruit trees and vines, field terraces, drainage, irrigation, waterways, or other soil and water conservation measures?

High amount of on-farm investment - 20 points

Moderate amount of on-farm investment - 19 to 1 point(s)

No on-farm investment - 0 points

(9) Would the project at this site, by converting farmland to nonagricultural use, reduce the demand for farm support services so as to jeopardize the continued existence of these support services and thus, the viability of the farms remaining in the area?

Substantial reduction in demand for support services if the site is converted - 25 points

Some reduction in demand for support services if the site is converted - 1 to 24 point(s)

No significant reduction in demand for support services if the site is converted - 0 points

(10) Is the kind and intensity of the proposed use of the site sufficiently incompatible with agriculture that it is likely to contribute to the eventual conversion of surrounding farmland to nonagricultural use?

The proposed project is incompatible to the existing agricultural use of surrounding farmland - 10 points

The proposed project is tolerable to existing agricultural use of surrounding farmland - 9 to 1 point(s)

The proposed project is fully compatible with the existing agricultural use of surrounding farmland - 0 points

6.0 Links

[Farmland Protection Policy Act \(7 USC 4201-4209\)](#)

[Regulation](#) 7 CFR 658

[USDA Farmland Protection Policy Act](#)

[NRCS Web Soil Survey](#)

[NRCS-CPA-106 Form](#)



NEPA Coastal Barrier Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

In accordance with the Coastal Barrier Resources Act (CBRA) (16 USC 3501-3510), projects located within a system unit of the Coastal Barrier Resources System (CBRS) may not be processed with federal funding if the exception criteria are not met. The CBRS is delineated and maintained by the U.S. Department of the Interior through USFWS. While most activities that involve federal expenditures are prohibited within the CBRS, several categories of activities are listed as exceptions (16 USC 3505(a)) to the federal expenditure prohibition.

MaineDOT Biologists are responsible for assessing and ensuring compliance with these laws under NEPA Assignment

Coastal Barrier information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision. The process checklists are built into MaineDOT's ProjEx database. The Biologist is required to fill in the Assessment, Assessment details sections. ProjEx will generate the final CE Report with this information for the CPD e-file.

1.0 Coastal Barrier Initial Project Question and Documentation

The following question is required to be answered by the MaineDOT Biologist:

1. Does the project intersect with a Coastal Barrier Resource System?

The MaineDOT Biologist will use the USFWS Interactive Mapper [CBRS Mapper \(usgs.gov\)](https://www.usgs.gov/interactive-mapper) to answer this question. The Coastal Barrier System needs to be mapped in the CBRS Mapper for this to be a yes response.

A Yes response to Question 1 requires a review of the categories of activities listed as exceptions (16 USC 3505(a)) to the federal expenditure prohibition (go to 2.0). A No response concludes the Coastal Barrier assessment as CBRA would not apply to the project. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

2.0 Coastal Barrier Exception Process and Documentation

Once it has been determined that the location for a proposed project is within a system unit, the MaineDOT Biologist will notify the NEPA Manager. The next step is for the NEPA Manager to compare the project description to the exception criteria, and then determine if the project qualifies for an exception to the



NEPA Coastal Barrier Guidance

prohibition to use federal funding to develop an undeveloped coastal barrier resource. The CBRA exception criteria are listed in 16 USC 3505. The CBRA makes provisions for several exceptions for transportation which require additional consultation and the preparation of written evidence supporting the determination that an exception applies. Exceptions do not apply to project activities that involve the expansion of publicly owned or publicly operated roads or structures. If the proposed project is within a system unit and does not meet the exception criteria, the proposed project is not eligible for federal funding. The following are the two exceptions that will be reviewed:

- a. Compare the project description to the exceptions listed in 16 USC 3505(a)(3) to determine if project activities qualify for an exception because the project is an essential link.

Essential Link Exception

Project activities excepted under 16 USC 3505(a)(3) must be essential links in a larger network or system. An essential link is that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

- b. Compare the project description to the exceptions listed in 16 USC 3505(a)(6)(F) to determine if project activities qualify for an exception and if the project is consistent with the purposes of the CBRA (16 USC 3501(b))

CBRA Consistent Exception

Project activities excepted under 16 USC 3505(a)(6)(F) must be consistent with the purposes of the CBRA. According to 16 USC 3501(b), the purposes of the CBRA are to minimize the following:

- Loss of human life
- Wasteful expenditure of federal revenues
- Damage to fish, wildlife, and other natural resources associated with coastal barriers

If the project qualifies as an exception, the NEPA Manager prepares written evidence to support the determination. If the project does not qualify for an exception, then the project activities are not eligible for federal funding under the CBRA. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

3.0 Agency Coordination, Review, and Approval Process

Once a determination is made regarding whether the project meets the threshold for one of the CBRA exceptions and written evidence supporting the exception has been prepared, the NEPA Manager will submit the evidence to USFWS. USFWS will provide an opinion as to whether the activity is allowed under a CBRA exception. However, the USFWS response is considered an opinion only. MaineDOT has the final decision under NEPA assignment. The NEPA Manager will consult with the Environmental Office Director for a final determination.

Compliance is met by obtaining the USFWS opinion if a project meets the exception criteria. For those projects, NEPA approval cannot be granted until the procedural requirement to solicit a USFWS opinion has been satisfied. USFWS opinions will be documented in MaineDOT's ProjEx database and MaineDOT's



MaineDOT

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Environmental CPD e-file.

4.0 Links

[Coastal Barrier Resources Act](#)

[CBRA Mapper](#)

[CBRA Maps](#)



NEPA Floodplain Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understandings (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP). MaineDOT's assumption includes all highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA responsibilities or NEPA Assignment includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

As part of NEPA Assignment, MaineDOT Environmental Office is responsible for assessing and ensuring compliance with FHWA floodplain obligations under 23 CFR 650 Subpart A – Location and Hydraulic Design of Encroachments on Flood Plains (excluding 650.115 & 650.117). MaineDOT has the responsibility of FHWA under NEPA assignment and is identical to FHWA in this document, except for projects not under NEPA assignment (e.g., border projects).

Executive Order (EO) 11988 requires federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accomplishing this objective, "each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by flood plains in carrying out its responsibilities". FHWA implements EO 11988 through 23 CFR 650 Subpart A. NEPA compliance means compliance with 23 CFR 650 Subpart A.

The following provides guidance for floodplains and lays out the process for identifying and determining the appropriate level of coordination. The ultimate intent of this process is to establish whether a project constitutes a "significant encroachment" (605.105; Gordon-Cleckley memo, 4/2/1985) on a base floodplain. If the encroachment is not significant, the project is deemed approved with respect to floodplain obligations under 650. If the encroachment is significant, then the process must then establish that the proposed action is "the only practicable alternative" (605.113). Part 650.113 will not be delegated to MaineDOT. FHWA will remain responsible for determining the only practicable alternative.

FHWA policy and procedures located in 23 CFR 650 Subpart A apply to all encroachments (actions within the limits of the base floodplain) and to all actions that affect base floodplains, except for repairs made with emergency funds (23 CFR 668) during or immediately following a disaster (650.107). 23 CFR 650 Subpart A defines an action as "any highway construction, reconstruction, rehabilitation, repair, or improvement undertaken with Federal or Federal-aid highway funds or FHWA approval."

NEPA floodplain compliance and FEMA floodplain compliance are complementary efforts and 23 CFR 650 explicitly identifies as policy (650.103) that FHWA be "consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where appropriate". Still, these are two distinct and separate programs, and this Guidance is focused on NEPA compliance only.



NEPA Floodplain Guidance

Process for 23 CFR 650 Subpart A Compliance

Floodplain information is developed by the MaineDOT Hydrology and Stormwater Division (HSD) and provided to and discussed with the Team Leader (TL). This information is incorporated into the overall NEPA decision.

1.0 Determination and Documentation of Base Floodplains and Floodways

The following question shall be answered by HSD:

1. *Does the action encroach on the base floodplain or floodway?*

Per 650.111, National Flood Insurance Program (NFIP) maps or information developed by the highway agency, if NFIP maps are not available, shall be used to determine whether a highway location alternative will include an encroachment.

Per 650.105, *encroachment* shall mean an action within the limits of the base flood plain; the *base flood* shall mean the flood or tide having a 1-percent chance of being exceeded in any given year; and the *base flood plain* shall mean the area subject to flooding by the base flood.

To answer the question, HSD evaluates potential floodplain impacts on a project-by-project basis through initial reviews of National Flood Insurance Program (NFIP) floodplain mapping when available. Much of Maine is not covered by NFIP mapping, in the absence of which other relevant information will also be considered. In particular, project scope can provide a strong preliminary indication of likely encroachment status and impacts. As design proceeds, HSD will evaluate project hydrologic/hydraulic (H/H) products to finalize NEPA floodplain findings.

By this definition, the base flood is the flow with an Annual Exceedance Probability (AEP) = 0.01 and is commonly referred to as the 100-yr flow Q100 (that flow with a return period/recurrence interval of 100 yrs). Subject to availability, NFIP maps and reports are useful sources for base flood information, along with H/H information developed specifically for the project. But regardless of NFIP product availability, every point on a river or stream can be assigned a base flood (Q100) value and corresponding flood plain.

Therefore, MaineDOT assumes that any action in or adjacent to a stream or river is an encroachment unless eliminated after further consideration.

A “YES” response to Question 1 triggers two (2) requirements:

- a. Location Hydraulic Study (650.111) (impact assessment) - go to 2.0.
- b. Provision of opportunity for public review and comment (650.109)

A “NO” response concludes the Floodplain Assessment. All actions will be processed and documented in MaineDOT’s ProjEx database and MaineDOT’s Environmental CPD E-File. The NEPA CE Report will contain information on floodplains.



NEPA Floodplain Guidance

2.0 Location Hydraulic Study (Impact Assessment) of Action on Base Floodplain

HSD will perform a Location Hydraulic Study (LHS) of the encroachment on the base floodplain and/or floodway, following 650.111, in order to assess the impacts of the action. This guidance is intended to inform decision-making on projects that have potential impacts on the base floodplain. The general steps are summarized below and reflect the evaluation process described in 650.11 “Location Hydraulic Studies”. The LHS will be completed under the responsible charge of a Maine Professional Engineer with expertise in Hydrology and Hydraulics.

The LHS does not follow a prescribed scope or work plan. Rather, the LHS level of effort is appropriate to the project particulars. The great majority of MaineDOT project encroachments will only require a minimal screening level of H/H assessment. Furthermore, most bridge and many large culvert projects routinely develop H/H/ models that will inform the LHS. Nearly all projects are on the existing right-of-way and involve maintenance, rehabilitation, or replacement of existing assets; new right-of-way projects and new hydraulic structures (where none existed previously) are extremely rare in MaineDOT work plans. Within a narrow range of options, there are relatively few practicable alternatives within a given project scope.

Replacement of Hydraulic Structures: Many projects involve replacement or rehabilitation of existing hydraulic structures. Nearly all replacements maintain conveyance, as demonstrated by calculation (e.g, culvert end area; hydraulic conveyance; Q100 headwater elevation). In such cases the LHS consists of verifying and recording maintenance of conveyance (or equivalent surrogate), resulting in a finding of “not a significant encroachment” and project approval.

Fill: Another major category of encroachment is that of fill in a base floodplain. For projects involving minor amounts of longitudinal fill (typically associated with slope stabilization and highway projects), a simple geometric evaluation based on available floodplain maps is often sufficient to demonstrate whether or not the encroachment is significant. If floodplain maps are not available or the screening suggests a “significant encroachment”, additional H/H analysis may be required. The effects of transverse fill associated with bridge embankments can be extracted from the hydraulic models executed for bridge projects. Transverse fill associated with culvert projects (lengthening or extension) is considered minimal and taken as “not significant encroachment”.

Temporary Fill and Structures: temporary fill and other structures during construction are taken as “not significant encroachments” because the probability of experiencing the 100-yr flood during construction is so much less than the probability of experiencing Q100 during the service life of the completed project.

3.0 Floodplain Secondary Project Questions and Documentation

After completing the floodplain effects assessment, the HSD shall answer the following question:

2. Does the action comply with 23 CFR 650?

A “YES” response indicates a finding of “not a significant encroachment” and concludes the floodplain assessment.



NEPA Floodplain Guidance

A “NO” response indicates a finding that all of the alternatives currently under consideration constitute “significant encroachments”. This will initiate discussions among HSD, MaineDOT NEPA manager, and the design team in order to identify additional alternatives for consideration that might not pose significant encroachments or the potential for a more sophisticated H/H analysis that might better characterize the nature of the encroachment. If a successful alternative cannot be identified, the process will proceed to the protocol for a determination of “no practicable alternative” as described in 650.113. Any significant impact will elevate the NEPA documentation to an EIS. The FHWA Maine Division will be notified and take over the lead of the NEPA process.

Official documentation of a determination of encroachment status will be entered in ProjEx with essential explanatory notes. For “not a significant encroachment”, the ProjEx entries will complete documentation for NEPA purposes. Additional technical documentation will be retained in MaineDOT’s Environmental CPD E-File for the administrative record, including the “Supporting Information for Floodplain Evaluation” form (attached).

4.0 NFIP Coordination

As noted, it is FHWA policy (650.103) that where appropriate, that location and design of encroachments in flood plains should be consistent with NFIP. If warranted and in a mapped floodplain, this assessment may be supplemented by follow-up coordination with local, State (Maine Floodplain Management Program) and Federal (FEMA) entities responsible for NFIP administration. This is to ensure compatibility with local floodplain management programs, to determine the extent of hydraulic analysis required, and to determine the significance of floodplain encroachment.

5.0 Links and References

[Gordon, S. 04/02/1985. “Significant Encroachments”, memo to E. Cleckley, FHWA.](#)

[Executive Order 11988](#)

[Executive Order 13690](#)

[23 CFR 650 Subpart A](#)

[National Flood Insurance Program Regulations – Appendix E \(44 CFR parts 59, 60, 65, 70\)](#)

[FEMA Guidelines for Implementing EO 11988 and EO 13690](#)



NEPA Additional Federal Laws and Executive Orders Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

This guidance information defines how MaineDOT complies with the following Federal Laws and Executive Orders that do not have individual Guidance Documents or Standard Operating Procedures. This information is incorporated into the overall NEPA decision. The process checklists are built into MaineDOT's ProjEx database. ProjEx Assessments, Assessment Details, and PM Permits sections utilized.

1. Anadromous Fish Conservation Act

Maine is covered under the Atlantic States Marine Fisheries Commission Management Agreements. It requires coordination with the Maine Department of Marine Resources (DMR) for compliance with management plan recommendations under the Anadromous Fish Conservation Act.

2. Fish and Wildlife Coordination Act

MaineDOT coordinates with the U.S. Fish and Wildlife Service and National Marine Fisheries Service through the Army Corps of Engineers permit process and NEPA for compliance with the Fish and Wildlife Coordination Act.

3. Archaeological Resources Protection Act

MaineDOT complies with the Archaeological Resources Protection Act through coordination with the Maine Historic Preservation Commission Archaeological staff, tribes, and Section 106.

4. Preservation of Historical and Archaeological Data

MaineDOT complies with the Preservation of Historical and Archaeological Data through coordination with the Maine Historic Preservation Commission Archaeological staff, tribes, and Section 106.

5. Native American Grave Protection and Repatriation Act

MaineDOT complies with the NAGPRA through coordination with the Maine Historic Preservation Commission Archaeological staff, tribes, and Section 106.

6. American Indian Religious Freedom Act

MaineDOT complies with the American Indian Religious Freedom Act through coordination with the Maine Historic Preservation Commission Archaeological staff, tribes, and Section 106.



NEPA Additional Federal Laws and Executive Orders Guidance

7. Clean Water Act

Water Quality Certification (WQC) (Section 401). The Maine Department of Environmental Protection (DEP) and Land Use Planning Commission (LUPC) have combined the decision concerning WQC with the review of an application for a state permit that already requires compliance with state water quality standards. MaineDOT complies with [Section 401](#) through the issuance of WQC with a state permit or by meeting an exemption.

Section 404. Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into the waters of the United States. The issuance of an Army Corps of Engineers General Permit, Individual permit, or exemption satisfies [Section 404](#) of the Clean Water Act.

8. Coastal Zone Management Act

In Maine, standards and criteria of state environmental permitting and licensing laws and regulations serve as the enforceable policies of the Maine Coastal Program (Coastal Zone Management (CZM)) and are satisfied through the issuance of a Maine Department of Environmental Protection permit or by meeting an exemption.

9. Safe Drinking Water Act

MaineDOT complies with the Safe Drinking Water Act through the MaineDOT/Maine DEP Stormwater MOA, the Maine DEP Pollution Discharge Elimination System Permits, MaineDOT Best Management Practices for Erosion and Sedimentation Control, and review and protection of Sole Source Aquifers.

10. Rivers and Harbors Act

The issuance of an Army Corps of Engineers General Permit, Individual permit, or exemption satisfies the Rivers and Harbors Act.

The construction of any structure in or over any navigable water of the U.S., or the accomplishment of any other work affecting the course, location, condition, or physical capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. Activities requiring section 10 permits include structures (e.g., piers, wharfs, breakwaters, bulkheads, jetties, weirs, transmission lines) and work such as dredging or disposal of dredged material, or excavation, filling, or other modifications to the navigable waters of the United States. The geographic jurisdiction includes all navigable waters of the United States which are defined (33 C.F.R. Part 329.4) as, "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce."

11. Wild and Scenic Rivers Act

MaineDOT complies with Section 7 of the Wild and Scenic Rivers Act and [36 CFR 297](#). ([Fact sheet, Publications](#))

The Allagash River is designated as a Wild and Scenic River in Maine. No MaineDOT structures cross or are adjacent to the designated portion of the river.



NEPA Additional Federal Laws and Executive Orders Guidance

The York River is designated as a Wild and Scenic River in Maine. MaineDOT is coordinating with the National Park Service (NPS) to develop a Programmatic Agreement for transportation assets within the York River watershed. MaineDOT will coordinate with the NPS on all projects located within the York Watershed. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

12. Executive Order 11990, Protection of Wetlands

The issuance of an Army Corps of Engineers General Permit, Individual permit or exemption satisfies Executive Order 11990. MaineDOT and FHWA also have a Programmatic Wetland Finding for Categorical Exclusions that satisfies this Executive Order.

13. Executive Order 13112, Invasive Species

Executive Order 13112 directs federal agencies to prevent the introduction and control of the spread of invasive species. Invasive species are defined by the EO as "an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health."

MaineDOT limits the introduction of invasive species by utilizing the following:

- a. Utilizing only non-invasive, native seed and mulch mix.
- b. Planting only native, non-invasive trees and plants
- c. Complying with the Army Corps of Engineers Permit stipulation regarding invasive species.

14. Wetland Mitigation (23 USC 119g)

A compensatory mitigation plan for unavoidable impacts on resources is sometimes a required component of a permit application. The Environmental Office is responsible for evaluating possible mitigation opportunities and ensuring that an acceptable mitigation plan accompanies the permit applications. The Environmental Office works with the agencies to deliver a mitigation plan that satisfies 404 and 401 requirements, which can involve in-lieu fee payments.

15. General Bridge Act

The Environmental Office works with the Project Development Bridge Program to comply with the General Bridge Act. If a project is not exempt from a bridge permit, then the Bridge Program will apply for a Bridge Permit from the U.S. Coast Guard.

[U.S. Coast Guard Bridge Permits and Permit Exemption Decision Tool \(23 USC 144 \(c\)\(2\)\)](#)

FHWA/U.S. Coast Guard MOA [USCG FHWA MOA Final Signed.pdf](#)



NEPA Commitment Compliance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

Environmental commitments are agreed-upon actions to mitigate (restore, enhance, avoid, minimize, and/or replace) impacts on the human environment. The human environment includes social, economic, natural, and cultural resources. Typically, these actions are agreed upon between MaineDOT and the regulatory agencies, as part of the NEPA processes and compliance with state and federal law. Failure to comply and/or follow through with these actions can result in loss of federal funding and approvals, degraded public and agency relations, fines, project delays, and criminal charges against individuals associated with the action. Environmental commitments can originate and require implementation at any point in the project development process, construction, and during maintenance and operations. Environmental commitments can be as simple as a requirement for seasonal work restrictions or as complex as hydroacoustic monitoring for endangered species protection. This guidance summarizes for the MaineDOT Environmental Office how to decide what actions become environmental commitments, how to write environmental commitments, and how to record and track the successful implementation of environmental commitments in ProjEx and contract packages.

1.0 Mitigation Measures

MaineDOT's Environmental Office technical specialist and management decide what actions MaineDOT will take to mitigate impacts on the human and natural environment:

1. Are the impacts for which the mitigation is proposed a result of the MaineDOT action?
2. Does the proposed mitigation represent a reasonable public expenditure considering the impacts of the action and the benefits of the proposed mitigation?
3. Consider, among other factors, what is the extent to which the proposed mitigation would assist in complying with a Federal statute, Executive Order, or state/federal regulation or policy.
4. Discuss mitigation opportunities with staff from environmental, and project development, to decide what actions will become environmental commitments.
5. The actions that MaineDOT will include as environmental commitments are recorded in ProjEx, EA, and EIS documents.



NEPA Commitment Compliance

2.0 Record Environmental Commitments in ProjEx

Environmental commitments must be actionable, trackable, measurable, and biddable, and therefore should address “Who, What, Where, When”.

1. Who: name the entity responsible for implementing the environmental commitment.
2. What: describe the intent of the commitment or what it is.
3. Where: provide a clear demarcation of the area or location(s) that this commitment addresses or applies to.
4. When: provide a specific timeframe or duration for the elements of the commitment, and a deadline if necessary.

Environmental commitments resulting from coordination under environmental laws and regulations will be documented in ProjEx Commitments for construction and mitigation. See Section 4.

Construction and mitigation commitments will be carried forward in the form of design, plan notes, special provisions, agreements, construction contract language, permits, environmental construction contract packages, and in lieu fee payments. Commitments and compliance are tracked in the PM Commitments Section of the ProjEx database (Figure 1) by the assigned monitors (environmental office technical specialists) for each commitment. The monitor is assigned automatically within ProjEx based on assigned team members/technical specialists. This section allows tracking commitments from planning, project development, and construction. Commitments are developed through internal conversations with Environment and Project Development, and through negotiations with agencies.

Figure 1 MaineDOT ProjEx Commitments and Compliance

PM Commitments

Navigation

Project Information

GIS

Environmental

Finance

Schedule

Planning

Roster

Comments

Links

Setup

PSN or WIN

Go To

Load Commitments

Add Commitment

Add Checkpoint

Filter on Commitment Category

Section 106 MOA/Section 4(f)

Export to Excel

Project: 68082/021736.00 - MADAWASKA, INT BR #2399

KO Date: 08/27/2018 A

PDR Date: 01/24/2020 A

PIC Date: 02/14/2020 A

PS&E Date: 12/18/2020 A

CNBEG Date: 04/26/2021 A

CNCMP Date: 07/04/2025 F

Default Assigned Monitor for Selected Commitment Category: SENK, JULIE

Edit	Category	Stipulation	Monitor	Commitment Note	Status	Close ...	Last Upd...	Update...	Delete
<div>Edit</div>	Section 106 MOA/Section 4(f)	Adaptive Reuse	SENK, JULIE		Complete	4/30/2020	GARDNER, DAVID	8/26/2021	<div>X Delete</div>
<div>Edit</div>	Section 106 MOA/Section 4(f)	Other	SENK, JULIE	FHWA Coordination with Wolastoqey Nation	Active		GARDNER, DAVID	8/26/2021	<div>X Delete</div>
<div>Edit</div>	Section 106 MOA/Section 4(f)	Other	SENK, JULIE	consultant parties design review at 60% and 90%	Complete	12/30/2020	GARDNER, DAVID	8/26/2021	<div>X Delete</div>
<div>Edit</div>	Section 106 MOA/Section 4(f)	Recordation	SENK, JULIE	HAER #2299	Active		GARDNER, DAVID	8/26/2021	<div>X Delete</div>
<div>Edit</div>	Section 106	Special Provision 105.9	SENK, JULIE		Active		CHAMBERLAIN,	1/14/2021	<div>X Delete</div>

1

1 - 5 of 5 items

Commitment Checkpoints: Recordation

Edit	Checkpoint	Checkpoint Note	Close Date	Due Date	Last Updated By	Updat...	Delete
<div>Edit</div>	Interim Check	Recordation narrative		12/30/2021	GARDNER, DAVID	8/26/2021	<div>X Delete</div>



MaineDOT

NEPA Commitment Compliance

The Environmental Monitor for each environmental specialty will be responsible for loading commitments into ProjEx on the PM Commitments page. The Environmental Monitors for each specific project are listed on the PM Permit Page (e.g., The historic coordinator will load commitments made under Section 106 of the National Historic Preservation Act, such as archaeological exclusion areas. The Biologist will enter commitments made under Section 7, such as fish evacuation). The Environmental Team Leader will ensure commitment loading is completed.

3.0 Environmental Commitments Tracking and Documentation

ProjEx will automatically assign a Commitment Monitor to track each specific commitment based on the assigned team member/technical specialist. This can change depending on the commitment (e.g., a commitment that is part of construction will typically be assigned to the environmental construction specialist). Commitment Monitors can view project and specific commitment responsibilities via ProjEx Environmental Manager (Figure 2).

Figure 2 ProjEx Environmental Manager

Navigation

Gardner, David, you have 6430 messages.

Assessments

Commitments

Permits

Issues

Assignments

Apply Filter

Category: Section 106 MOA/Section 4(f)

Monitor: SENK, JULIE

Status:

Export to Excel

Environmental Commitments

PSN	WIN	Project Title	KO Date	PDR Date	PSE Date	PIC Date	CNReg Date	Team Lead	Monitor	Category	Stipulation	Close Date
70865	022296.00	CHESTERVILLE-FARMINGTON, FARMINGTON FALLS BR #2273	10/20/2017 A	5/5/2020 A	7/20/2021 A	8/26/2020 A	10/20/2021 F	BRADY, ANDREA	SENK, JULIE	Section 106 MOA/Section 4(f)	Other	6/30/2021 F
69499	021904.00	YORK, ROUTE 1A @ LONG SANDS RD	4/15/2018 A	9/25/2019 A				TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Other	
69495	021651.00	YORK, ROUTE 1A, Phase 1	7/10/2018 A	9/25/2019 A	1/25/2023 F	10/14/2020 A	5/1/2023 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Interpretative Items	5/30/2021 F
69092	021736.00	MADAWASKA, INT BR #2399	8/27/2018 A	1/24/2020 A	12/18/2020 A	2/14/2020 A	4/26/2021 A	CHAMBERLAIN, KRISTEN	SENK, JULIE	Section 106 MOA/Section 4(f)	Other	
69092	021736.00	MADAWASKA, INT BR #2399	8/27/2018 A	1/24/2020 A	12/18/2020 A	2/14/2020 A	4/26/2021 A	CHAMBERLAIN, KRISTEN	SENK, JULIE	Section 106 MOA/Section 4(f)	Adaptive Reuse	
69092	021736.00	MADAWASKA, INT BR #2399	8/27/2018 A	1/24/2020 A	12/18/2020 A	2/14/2020 A	4/26/2021 A	CHAMBERLAIN, KRISTEN	SENK, JULIE	Section 106 MOA/Section 4(f)	Recordation	
69092	021736.00	MADAWASKA, INT BR #2399	8/27/2018 A	1/24/2020 A	12/18/2020 A	2/14/2020 A	4/26/2021 A	CHAMBERLAIN, KRISTEN	SENK, JULIE	Section 106 MOA/Section 4(f)	Interpretative Items	
67194	018915.00	BREWER-EDDINGTON, I-395/9 CONN	8/27/2016 A	11/26/2019 A	9/17/2021 F	9/18/2020 A	11/29/2021 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Design Review	
67194	018915.00	BREWER-EDDINGTON, I-395/9 CONN	8/27/2016 A	11/26/2019 A	9/17/2021 F	9/18/2020 A	11/29/2021 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	National Register Nomination	
67194	018915.00	BREWER-EDDINGTON, I-395/9 CONN	8/27/2016 A	11/26/2019 A	9/17/2021 F	9/18/2020 A	11/29/2021 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Annual Report	
67194	018915.00	BREWER-EDDINGTON, I-395/9 CONN	8/27/2016 A	11/26/2019 A	9/17/2021 F	9/18/2020 A	11/29/2021 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Adaptive Reuse	
67194	018915.00	BREWER-EDDINGTON, I-395/9 CONN	8/27/2016 A	11/26/2019 A	9/17/2021 F	9/18/2020 A	11/29/2021 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Architectural Survey	
67194	018915.00	BREWER-EDDINGTON, I-395/9 CONN	8/27/2016 A	11/26/2019 A	9/17/2021 F	9/18/2020 A	11/29/2021 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Recordation	
67194	018915.00	BREWER-EDDINGTON, I-395/9 CONN	8/27/2016 A	11/26/2019 A	9/17/2021 F	9/18/2020 A	11/29/2021 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Interpretative Items	
67194	018915.00	BREWER-EDDINGTON, I-395/9 CONN	8/27/2016 A	11/26/2019 A	9/17/2021 F	9/18/2020 A	11/29/2021 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Other	
67194	018915.00	BREWER-EDDINGTON, I-395/9 CONN	8/27/2016 A	11/26/2019 A	9/17/2021 F	9/18/2020 A	11/29/2021 F	TETREAU, DANIELLE	SENK, JULIE	Section 106 MOA/Section 4(f)	Conservation Items	
66102	018735.00	GARDNER, BRIDGE ST. BRDG 2101	4/16/2015 A	9/5/2017 A	11/9/2018 A	9/18/2017 A	1/30/2019 A	BRADY, ANDREA	SENK, JULIE	Section 106 MOA/Section 4(f)	Recordation	4/5/2019 F
66102	018735.00	GARDNER, BRIDGE ST. BRDG 2101	4/16/2015 A	9/5/2017 A	11/9/2018 A	9/18/2017 A	1/30/2019 A	BRADY, ANDREA	SENK, JULIE	Section 106 MOA/Section 4(f)	Recordation	
62656	022657.00	FRENCHVILLE, ROUTE 1	6/30/2014 A	11/16/2020 A	12/8/2022 F	8/1/2021 F	6/13/2023 F	ARBO, AUDIE	SENK, JULIE	Section 106 MOA/Section 4(f)	Other	5/4/2021 F
47804	017712.00	BLUE HILL, Falls Bridge #5038	4/1/2010 A	2/10/2020 A	9/15/2021 F	12/18/2020 A	12/15/2021 F	BRADY, ANDREA	SENK, JULIE	Section 106 MOA/Section 4(f)	Other	
47804	017712.00	BLUE HILL, Falls Bridge #5038	4/1/2010 A	2/10/2020 A	9/15/2021 F	12/18/2020 A	12/15/2021 F	BRADY, ANDREA	SENK, JULIE	Section 106 MOA/Section 4(f)	Adaptive Reuse	
47804	017712.00	BLUE HILL, Falls Bridge #5038	4/1/2010 A	2/10/2020 A	9/15/2021 F	12/18/2020 A	12/15/2021 F	BRADY, ANDREA	SENK, JULIE	Section 106 MOA/Section 4(f)	Interpretative Items	
47804	017712.00	BLUE HILL, Falls Bridge #5038	4/1/2010 A	2/10/2020 A	9/15/2021 F	12/18/2020 A	12/15/2021 F	BRADY, ANDREA	SENK, JULIE	Section 106 MOA/Section 4(f)	Recordation	
43131	022603.00	BRUNSWICK, FRANK WOOD BR #2016	11/17/2014 A	9/6/2017 A	10/8/2021 F	10/25/2020 A	12/29/2021 F	BRADY, ANDREA	SENK, JULIE	Section 106 MOA/Section 4(f)	Recordation	12/31/2020 F
43131	022603.00	BRUNSWICK, FRANK WOOD BR #2016	11/17/2014 A	9/6/2017 A	10/8/2021 F	10/25/2020 A	12/29/2021 F	BRADY, ANDREA	SENK, JULIE	Section 106 MOA/Section 4(f)	Other	9/1/2023 F

Environmental commitments to be completed during project development (e.g., during design, right-of-way process, etc.) are not tracked in the commitments section of ProjEx. They are assigned to the team leader or technical specialist. For example, MaineDOT is committing to designing the asset to 1.2 bank full width due to the presence of Atlantic salmon. The technical specialist and team leader will work with the project manager and designer to ensure this commitment is satisfied during project development and incorporated into the design plan.

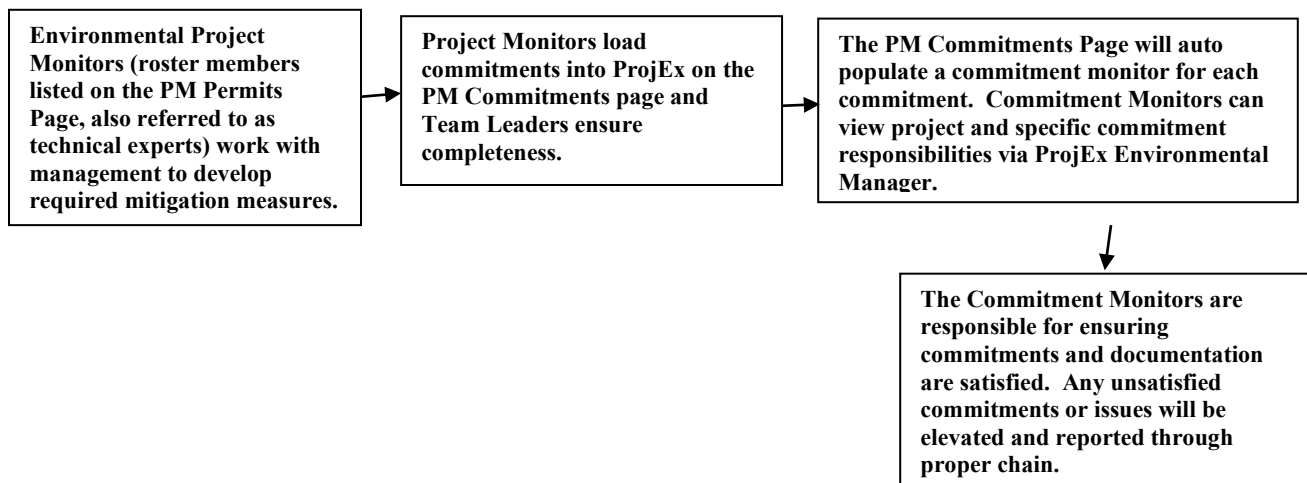
NEPA Commitment Compliance

Environmental commitments to be completed in construction must be incorporated in the standard specifications, project contract documents, plan notes, and/or special provisions. All commitments applicable to construction should be reviewed and discussed at pre-construction meetings. Commitments that are part of the standard specification (e.g., clearing for migratory birds) are not entered into the commitment tracking section of ProjEx. Commitments required to be tracked and monitored during construction will be entered into the Commitment section of ProjEx by the technical specialist. These include, but are not limited to the following examples:

- In water work timing restrictions
- Fish evacuations
- Fish passage monitoring
- Hydroacoustic monitoring
- Archaeology exclusion zones
- Section 106 MOA stipulations
- NEPA EA and EIS commitments
- USACE special conditions
- Mitigation/compensation
- Clearing

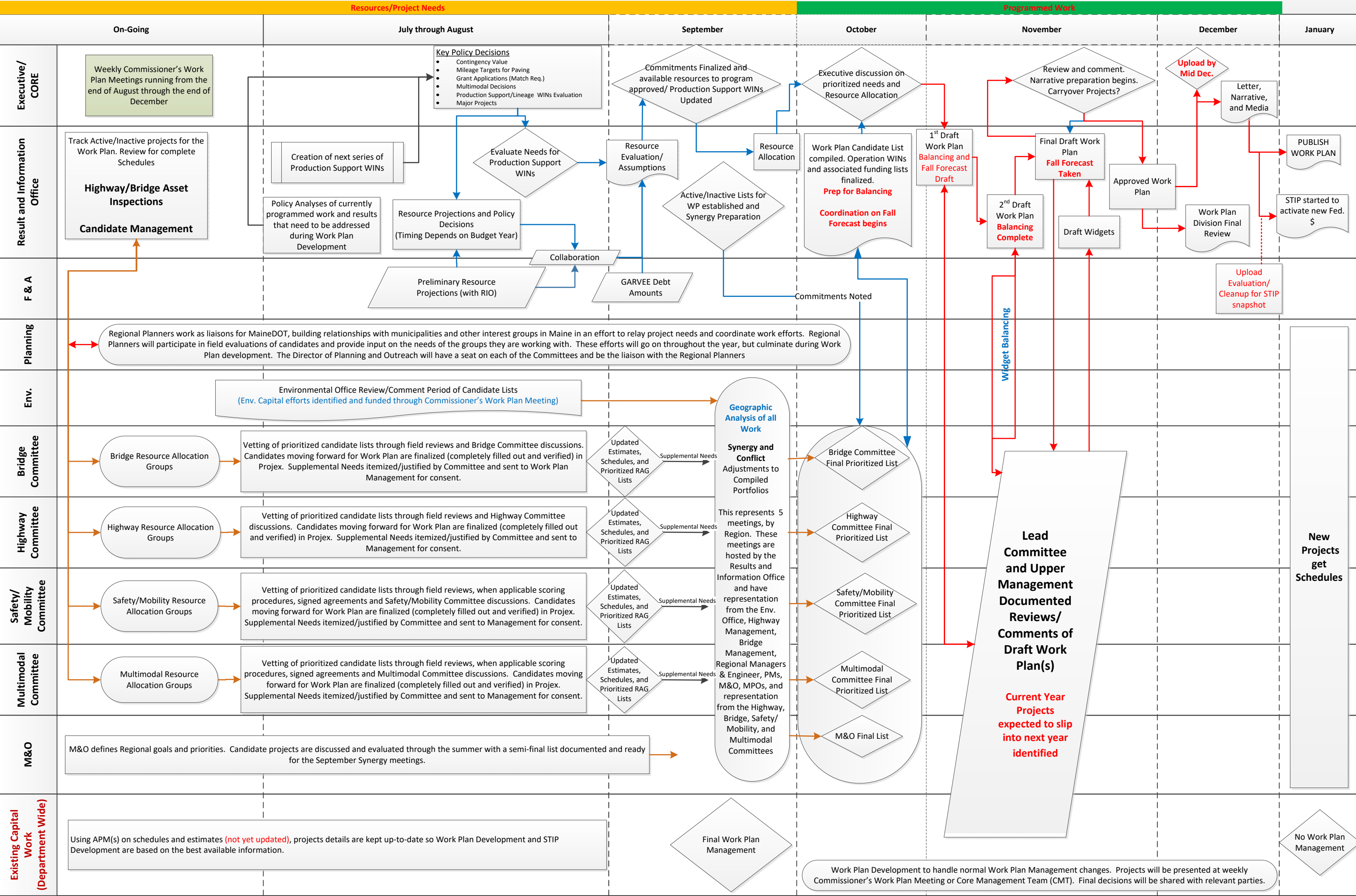
Duplicate commitment types can be used. e.g., varying in-water work restrictions on different streams. The technical specialist should use in water work window stipulation for each varying in-water work requirement. Team Leader will make final confirmation.

Figure 3 Commitment Flow



Annual Work Plan Development

1/13/23





NEPA - Filing and Documentation Guidance

Introduction

Pursuant to 23 United States Code 326 and the implementing Memorandum of Understanding (MOU) executed on 10/9/2024, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP) for Categorical Exclusions. MaineDOT's assumption includes all MaineDOT-sponsored highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA's responsibilities includes responsibility for environmental review, interagency consultation, and approval of NEPA actions.

MaineDOT-sponsored highway projects with FHWA funding that do not fall under the 23 U.S.C. 326 MOU will be led by the Federal Highway Administration.

The MaineDOT Environmental Office maintains an accurate and up-to-date project file that supports decision-making and provides required documents under Maine's Freedom of Access Act ([FOAA](#)) and litigation under the Administrative Procedure Act. MaineDOT is required to prepare project records that demonstrate the environmental process, decisions, and compliance with Federal statutes, regulations, Executive Orders, policy, and guidance.

Under NEPA Assignment, MaineDOT is responsible for records that support NEPA decisions, administrative records, and FOAA requests. The environmental project files are maintained in the Environmental Office by the project environmental team members and Team Leader. The Team Leader, Environmental NEPA Manager, and Director will work with MaineDOT's Environmental Counsel for administrative records and FOAA requests. MaineDOT maintains its files following MaineDOT's [Administrative Policy Memorandum 121](#) for Records Management.

1.0 Documents

Documents include, but are not limited to, letters, technical reports, emails, meeting minutes, and studies. A document is anything the decision-making authority (MaineDOT under the NEPA Assignment Program) considered or presented, or information was reasonably available during the process. The format does not matter (e.g., handwritten notes, transcripts, comment cards).

2.0 Project File

A project file refers to the files maintained by the project team to support the NEPA decision. The project file should include information MaineDOT considered that was reasonably available during the process, including documentation of contrary opinions, and resolution of issues or concerns raised. Documents maintained in the project file for each project include, but are not limited to:

- The environmental document (CE, EA, EIS) and all supporting documentation associated with the environmental analysis, such as:
 - Approved environmental decision documents
 - Public and governmental agency letters and correspondence
 - Public and agency notices, scoping, comments and other correspondence, and meeting notes
 - Environmental resource information



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- Environmental permits and authorizations
- Relevant project-related correspondence and emails
- Final technical information and reports
- Field surveys and notes
- Other types of supporting information, such as maps, typical sections, permits, and plans

The most important factor in documenting environmental reviews is to ensure the environmental document and supporting materials are in the project files (CPD e-file and ProjEx).

An organized environmental project file facilitates efficient project management and reduces the risk of overlooking important environmental requirements. Documentation from the environmental project file forms part of the administrative record, providing evidence of compliance with federal requirements. The information in the environmental project file is subject to public records laws, such as the Maine Freedom of Access Act.

3.0 Administrative Record

Section 706 of the Administrative Procedure 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 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 administrative record is MaineDOT’s official record of the NEPA decision-making process and is created from the project files (CPD e-file and ProjEx).

4.0 Record Management

The project file shall be maintained electronically within the Coordination and Project Documentation e-file (CPD e-file). The Environmental Team Leader is responsible for maintaining an accurate and up-to-date project file with the assistance of the environmental office project team.

All project files in the CPD e-file are kept for at least 10 years after project construction ends. Records for significant projects as defined by [FHWA Records Disposition Manual Chapter 4](#) are permanently stored in the CPD E-file. The Environmental Office Director, Senior Environmental Manager, and Environmental Specialist-NEPA will conduct an annual review of the CPD e-file.

5.0 Access to Information

MaineDOT’s NEPA files are subject to public records laws, such as the federal [Freedom of Information Act](#) and [Maine’s Freedom of Access Act](#). MaineDOT also has an [Administrative Policy Memorandum No. 13](#) regarding Access to Public Records Under the Maine Freedom of Access Act. Additionally, under the NEPA Assignment MOU, MaineDOT is required to make files available for inspection by FHWA after receiving a request for information.

6.0 File System

The MaineDOT Environmental Office maintains an electronic filing system (the CPD e-file) for all



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environmental project records.

The **CPD e-file** contains files listed by town and work identification number (WIN). Within each project folder are standardized subfiles. All projects have the same subfile template that is housed in the CPD e-file. The project file creator must copy and paste the template subfiles at (<\\som.w2k.state.me.us\Data\DOT-GENERAL\EnvPermits\CPD Files\CPD E-File\~subfiles>) into the project file. Environmental technical staff may add subfolders under the subfiles if they see fit. For example, the Biologist may add a subfolder, in a project-specific Section 7 folder, titled Supporting Documents.

Projects will contain the following Subfiles:

- 4(f) - 6(f)
 - De Minimis
 - Individual Evaluation
 - Programmatic
 - Public Notice
 - Town or SHPO Letters
- Army Corps of Engineers Permitting (ACOE)
- Air-Noise
- Compliance
- Correspondence
- DEP-LUPC
- Dredge-Hazardous
- Essential Fish Habitat (EFH)
- (Reserved)
- ENV contract package
- Fish & Wildlife
- Hydrology
- NEPA
- PIS - PDR
- Plans
- Section 7
- Section 106
 - Archaeology
 - Field Check
 - Final Determination
 - Initial Notification and Responses
 - Phase I
 - Phase II
 - Phase III
 - Architectural Survey
 - Photos
 - Determination and Concurrences



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- Determination of Effect Materials & Memos
- Eligibility Memos
- Final Memos
- MOA
 - ACHP Correspondence
 - Annual Reports
 - Draft MOA
 - Final Moa
 - MOA Materials
- Old_Misc
- Town-Historic Group Consultation
 - Consulting Party
 - Kick-Off Notification & Responses
 - Public Notice
- Tribal
- Stormwater
- Wetlands + Streams

It is the responsibility of the Environmental technical staff assigned to the project to place memos, documents, emails, approvals, permits, etc. into the appropriate project file. All draft files should be kept in the project file. Documents will be saved as Word, excel, pdf, .msg, etc.

Final decision/approval documents (NEPA report, BO, 106 MOU, 4(f) programmatic, etc.) will be saved in the CPD e-file project NEPA folder by the Environmental Team Leader and the Environmental technical staff. The Team Leader will conduct a quality control check to ensure files that document the decision are in the CPD e-file and to determine when a project file is complete based on the following:

- A file and record are complete for NEPA at the time NEPA is approved.
- A file is not archived until construction and all commitments are complete.

7.0 File Naming Convention

Environmental Office staff are required to use the following file naming convention for all documents:

Year.Month.Day_WIN_Subject_Description of Document

Example: 2021.03.01_16714.00_Section 7_Biological Opinion

Project-specific emails can either use the file naming convention listed above or the email naming convention listed below:

Year.Month.Day_WIN_First initiallast name_General content of message

Example: 2021.03.01_16714.00_Jsmith_Wetland Delineation



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General email correspondence on a project will be placed in the correspondence sub-file folder. Email correspondence with technical-specific information such as Section 7, EFH, Section 106, etc., will be placed in the applicable technical sub-file folder.

The Environmental Team Leader typically creates the master project file. If a project file is not in the CPD e-file, any environmental office staff member can create a project file by utilizing the following name convention:

Town (copied from ProjEx), WIN (e.g., Auburn-Lewiston, 25761.00)

Projects with lineage WINs will be created using the mother WIN as the master project file and all lineage WINs placed within the mother WIN file. A note in ProjEx indicating a lineage WIN is within a mother WIN is required.

Presque Isle, 6462.00 (master file)
Presque Isle, 6462.01 (lineage WIN)
Presque Isle, 6462.20 (lineage WIN)
Presque Isle, 6462.30 (lineage WIN)
Presque Isle, 6462.40 (lineage WIN)

Each lineage WIN file will require template subfiles (<\\som.w2k.state.me.us\Data\DOT-GENERAL\EnvPermits\CPD Files\CPD E-File\~subfiles>)

8.0 ProjEx Documentation

ProjEx is MaineDOT's project database that houses information on all FHWA federally funded projects. Environmental staff are assigned to a project at kick-off and are listed in the MaineDOT ProjEx database. MaineDOT Environmental Office has team member roster roles for the following areas:

- Air
- Noise
- Biologist
- NEPA Manager
- Environmental Construction Monitor
- Cultural/Historic Coordinator
- Floodplains
- Hazardous Materials
- Hydrologist
- Environmental Team Leader
- Water Resources



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ProjEx PM Team Roster

Edit	Role Name	Team Member	Delete
	Consultant	HNTB CORPORATION, CONSULTANT	
	ENV Air Noise	BRADY, ANDREA	
	ENV Biologist	WALSH, JOSEPH	
	ENV CAP Manager	CHAMBERLAIN, KRISTEN	
	ENV Construction Monitor	ANNIS, RYAN	
	ENV Cultural Coordinator	SENK, JULIE	
	ENV Floodplains	DIONNE, CINDY	
	ENV Haz. Waste	TIRONE, BRADLEY	
	ENV Hydrologist-PP	HEBSON, CHARLES	
	ENV Hydrologist-H/H	HEBSON, CHARLES	
	ENV Team Leader	BRADY, ANDREA	
	ENV Water Resources	DIONNE, CINDY	
	Utilities	SMALL, DENVER	

The Environmental Office documents project details in MaineDOT's ProjEx database. Each project will contain information that supports the NEPA decision. Environmental information is in the following sections of ProjEx:

- **Permits** (contains approvals for permits, Section 106, Section 4(f), Endangered Species, etc.)
- **Assessment** (assesses the presence and requirements of federal regulations and Executive Orders under the NEPA umbrella)
- **Assessment Details** (contains project details for the required assessments)
- **Assessment Assets** (contains detailed information on stream crossing assets)
- **NEPA Checklist** (contains the NEPA CE checklist, NEPA determination, and NEPA certification)
- **Commitments** (contains and tracks environmental commitments)

The environmental technical staff (biologists, historical coordinators, etc.) use assessment and assessment details to decide effect determinations (no effect, NLAA, etc.). The assessment and assessment details page are checklists that are built within ProjEx that assist the environmental technical staff in screening and determinations. **ProjEx is the Environmental Office master checklist and will generate the NEPA CE Report.**



MaineDOT

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ProjEx PM Permits

PM Permits											
Navigation you have 49 messages.											
Project Information GIS Environmental Finance Schedule Planning Roster Comments Links Setup											
PSN or WIN Go To Save Cancel Add Single Permit Load All Permits Export to Excel											
Project: 50804/022627.00 - MILO, Pleasant River BR #3244 (F)											
KO Date: 08/04/2015 A PDR Date: 09/18/2019 A PIC Date: 01/08/2020 A PS&E Date: 08/25/2020 A CNBEG Date: 11/11/2020 A CNCMP Date: 03/01/2023 F											
Permit Description	Permit Category	Notes	Monitor	Target Due D...	Applied Date	Appro... Date	Expira... Date	Last Updat...	Updated ...	Del...	
ES107 - NEPA	NEPA	Re-evaluation for post-NEPA changed condition	BRADY, ANDREA	3/26/2020		9/9/2021		CHAMBERLAIN, KRISTEN	5/24/2022	<input type="checkbox"/>	
ES107 - NEPA	NEPA	CE per 23 CFR 771.117 d(13)	BRADY, ANDREA	3/26/2020		5/13/2020		BRADY, ANDREA	5/24/2022	<input type="checkbox"/>	
ES119 - Section 106	Section 106	Adverse effect	SENK, JULIE	12/17/2019	3/3/2020	3/12/2020		SENK, JULIE	4/9/2020	<input type="checkbox"/>	
ES5 - Section 4(f)	Section 4(f)	Programmatic Evaluation	SENK, JULIE	1/16/2020	5/8/2020	5/11/2020		SENK, JULIE	5/11/2020	<input type="checkbox"/>	
ES10 - 6F LAWCON	Section 6(f)	No properties	SENK, JULIE	6/4/2019		10/31/2017		SENK, JULIE	6/3/2022	<input type="checkbox"/>	
ES222 - Air Quality	Air		BRADY, ANDREA	11/12/2015		5/8/2020		WEBSTER III, DANIEL	5/8/2020	<input type="checkbox"/>	
ES86 - Federal Endangered Species	Federal Endangered Species		WALSH, JOSEPH	3/16/2020	1/23/2020	3/3/2020		CHAMBERLAIN, KRISTEN	5/24/2022	<input type="checkbox"/>	
ES199 - Essential Fish Habitat	Essential Fish Habitat		WALSH, JOSEPH	3/16/2020		3/5/2020		GARDNER, DAVID	5/16/2022	<input type="checkbox"/>	
ES152 - Field Resources	Field Resources		WALSH, JOSEPH		4/4/2016	11/13/2019		WALSH, JOSEPH	11/13/2019	<input type="checkbox"/>	

ProjEx PM Assessment Details

PM Assessment Details											
Navigation you have 49 messages.											
Project Information GIS Environmental Finance Schedule Planning Roster Comments Links Setup											
PSN or WIN Go To Export to Excel											
Project: 50804/022627.00 - MILO, Pleasant River BR #3244											
KO Date: 08/04/2015 A PDR Date: 09/18/2019 A PIC Date: 01/08/2020 A PS&E Date: 08/25/2020 A CNBEG Date: 11/11/2020 A CNCMP Date: 03/01/2023 F											
Environmental Team Leader: BRADY, ANDREA											
Sub Category	Assessment Group	Item	Current Value	Input	Edit	Last Updated By	Updated Date				
Federal ESA/EPH	Essential Fish Habitat Present	Species	ATS		Edit	BOYDEN, SARAH	11/2/2017				
		Effect	Adverse Effect-Not Substantial		Edit	BOYDEN, SARAH	11/2/2017				
		Consultation Level	Abbreviated		Edit	BOYDEN, SARAH	11/2/2017				
	Atlantic Salmon DPS/CH Present	DPS	Yes		Edit	BOYDEN, SARAH	11/2/2017				
		Critical Habitat	Yes		Edit	BOYDEN, SARAH	11/2/2017				
		Effect	LAA		Edit	WALSH, JOSEPH	8/30/2019				
		Tier	1		Edit	BOYDEN, SARAH	11/2/2017				
		Consultation Level	Formal		Edit	HAM, ERIC	1/3/2018				
		Agency	USFWS		Edit	BOYDEN, SARAH	11/2/2017				
		Atlantic Salmon Consultation Complete	3/3/2020		Edit	BRADY, ANDREA	6/4/2020				



NEPA - Filing and Documentation Guidance

ProjEx PM NEPA Checklist

Checklist Category	Checklist Item	Checklist Response	Last Updated By	Updated Date
PUBLIC INVOLVEMENT	NEPA Public Process Complete	Yes	BRADY, ANDREA	5/8/2020
	Substantial Public Opposition	No	BRADY, ANDREA	5/8/2020
RIGHT OF WAY	Right-of-Way Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
	Relocations Required	No	BRADY, ANDREA	5/8/2020
AIR QUALITY	Air Quality Assessment Complete	Yes	WEBSTER III, DANIEL	5/8/2020
	Noise Assessment Complete	Yes	WEBSTER III, DANIEL	5/8/2020
FISHERIES & WILDLIFE	Section 7 Assessment Complete	Yes	BRADY, ANDREA	6/4/2020
	Essential Fish Habitat Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
	Marine Mammal Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
	Migratory Bird Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
HAZMAT MANAGEMENT	Hazardous Materials Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
HISTORIC & CULTURAL RES	Section 106 Assessment Complete	Yes	BRADY, ANDREA	5/13/2020
	Adverse Effect on Historic Landmark Present	No	GARDNER, DAVID	5/16/2022
	Section 4(f) Assessment Complete	Yes	SENG, JULIE	5/11/2020
	Individual 4(f) Required	No	BRADY, ANDREA	5/13/2020
SOCIAL & ECONOMIC	Section 6(f) Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
	Farm and Protection Act Assessment Complete	Yes	BRADY, ANDREA	5/13/2020

The assigned Environmental technical staff is responsible for the assessments and data entry. The Environmental Team Leader is responsible for overseeing environmental technical staff complete their assessments on schedule and data is entered into ProjEx. Environmental Office staff will utilize the [ProjEx User Guide](#).

The Team Leader conducts a quality control review before approving a CE utilizing the PM Permits, Assessments, Assessment Details, and NEPA Checklist built into ProjEx (discussed in Section 8.0) and reviewing the files in the CPD e-file (discussed in Section 6.0). Quality assurance is conducted after NEPA approval by the Environmental Specialist-NEPA utilizing the [CE Quality Assurance Checklist](#). The CE QA checklist will be filed at R:\Region0\Environment\Public\@ENV - Common\ENV - Agreements, general permits\NEPA\NEPA QAQC\NEPA CE Quality Reviews and in the project-specific file.

9.0 Links

[Administrative Procedure Act](#)

[Maine Freedom of Access Act](#)

[AASHTO Practitioner's Handbook – Maintaining a Project File and Preparing an Administrative Record for a NEPA Study](#)

[FHWA Records Disposition Manual \(Field Offices\) Chapter](#)

[FHWA Order No. 1324.1B, issued July 29, 2013.](#)

[MAINEDOT Records Management Administrative Policy](#)

[MaineDOT Access to Public Records under the Maine Freedom of Access Act Administrative Policy](#)



Organization and Environmental Roles

Existing MaineDOT Organization ([Org Chart](#))

MaineDOT is the legally authorized transportation department for the State of Maine, created and established under 23 M.R.S.A. §4205, responsible for planning, designing, engineering, constructing, improving, operating, and maintaining highways, bridges, and public multimodal assets. MaineDOT is led by the Commissioner of Transportation, appointed by the Governor subject to confirmation by the Maine Legislature, as provided in Section 23 M.R.S.A. §4205. MaineDOT, under 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).

Executive leaders report directly to the MaineDOT Commissioner, 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 comprises 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, planning initiatives, for three years). 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 responsible for maintaining MaineDOT's highway system.

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

Environmental Office ([Org Chart](#))

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



Organization and Environmental Roles

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 34 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, sets priorities, and manages the staff and resources to meet these goals. The position directs two Senior Environmental Managers and 31 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.

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.**



Organization and Environmental Roles

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 (23 USC 326). 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



Organization and Environmental Roles

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, and consultation with the Maine State Historic Preservation Officer. 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 Cultural Coordinator assists the Historic Coordinator to ensure the processes and requirements of



Organization and Environmental Roles

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 processes 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 biologists 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 – Natural Resources (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



Organization and Environmental Roles

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

Hydrology and Stormwater 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 in screening projects for compliance with the floodplain rules. This position was recently created.

Groundwater and Hazardous Materials Management Division

Responsible for the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendments and Reauthorization Act, and Resource Conservation and Recovery Act. This Division currently conducts most of the processes 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 the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendments and Reauthorization Act, and 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 the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendments and Reauthorization Act, and Resource Conservation and Recovery Act. The Senior Geologist works closely with the Groundwater and Hazardous Material Management



Organization and Environmental Roles

Manager to ensure that the processes and requirements for the federal laws this Division is responsible for are carried out.

Senior Technician (1)

The Senior Technician is responsible for MaineDOT's well claims program under state law.

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 Contracts to ensure compliance with environmental stipulations and commitments.

In addition to in-house staff, ENV contracts with a variety of 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 before 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. ENV staff will act as FHWA in making NEPA decisions, not the consultants.

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 DOTs; 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.



NEPA - Project Development Process

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.

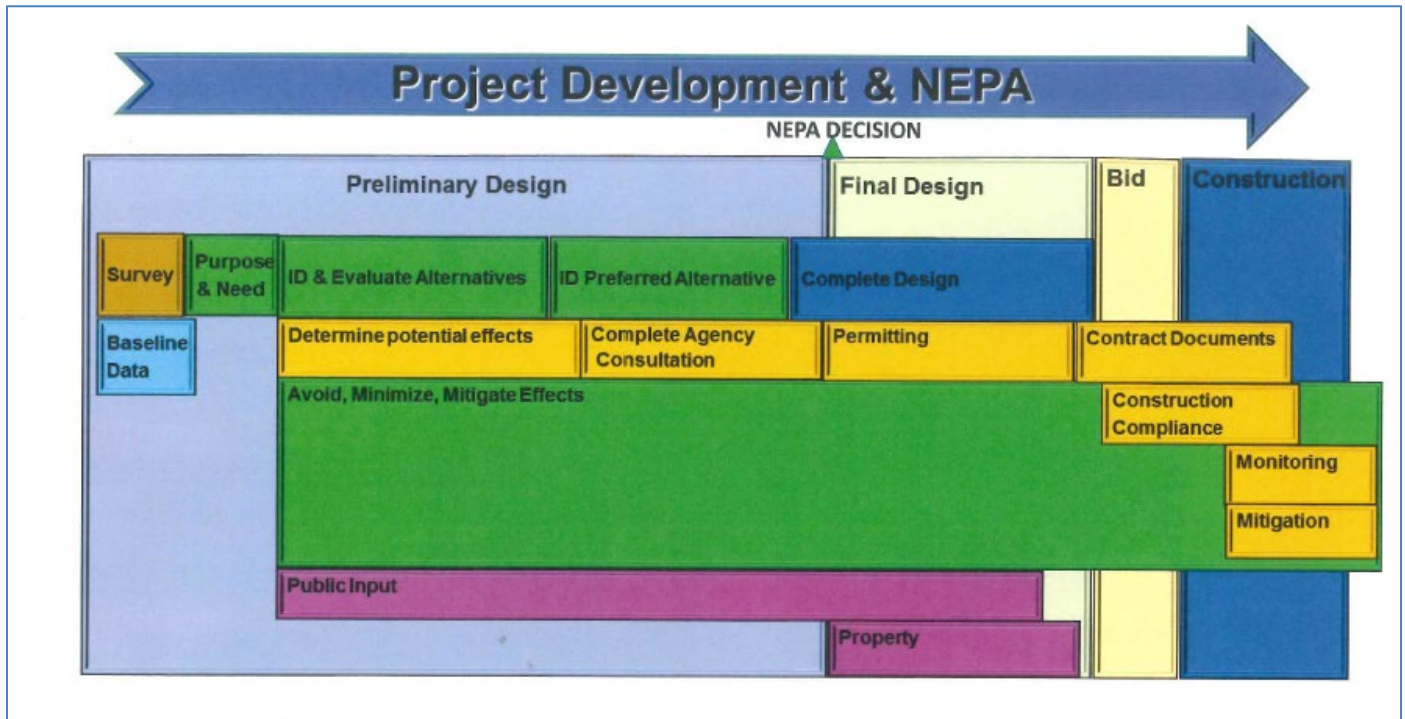
MaineDOT's project development process begins in the Results and Information Office (RIO). This office is responsible for the identification of projects for the [Work Plan](#). The MaineDOT Work Plan outlines the work that the department plans to perform over the next three years. The Work Plan is calendar 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 1 on the following page.

All projects that have FHWA funding or require FHWA approval (Bureau of Planning and Bureau of Project Development projects) are in MaineDOT's Three-Year Work Plan. All projects are loaded into ProjEx by the Results and Information Office with associated Work Identification Numbers (WIN). Environmental Office staff are notified of project kick-offs via ProjEx notifications and Project Managers.

NEPA - Project Development Process

Figure 1: MaineDOT Environmental Baseline Data Collection



MaineDOT Project Development Milestones

MaineDOT ENV NEPA Roles by Project Milestone matrix (Appendix W) 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 are 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 ([Environmental Baseline Guidance – internal only](#)).

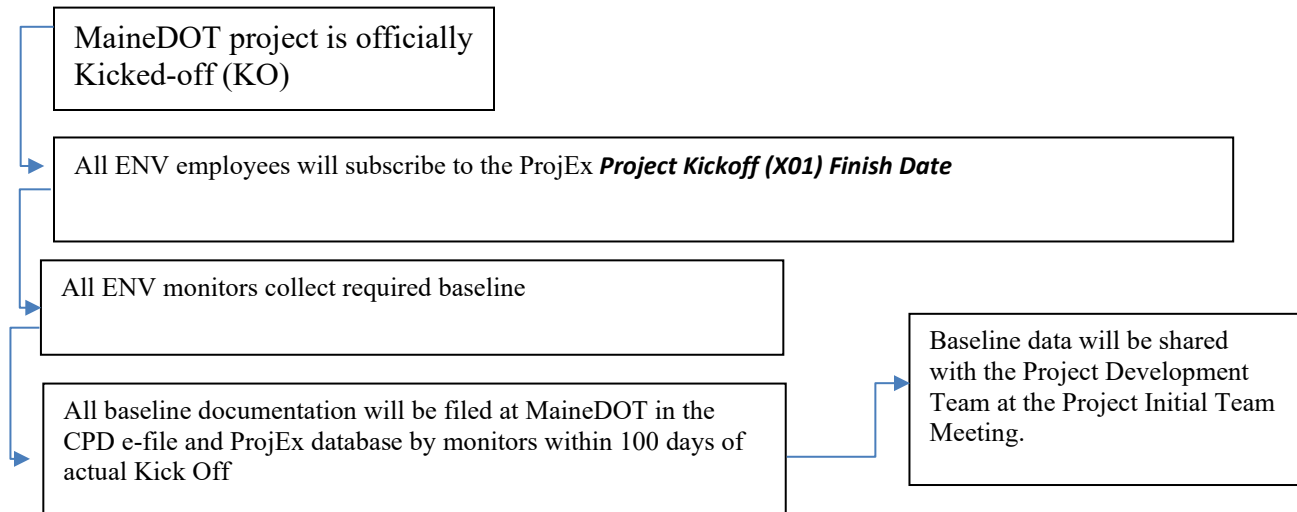
Baseline data collection includes desktop screening, field surveys, and resource identification. This includes probable NEPA COA determinations, consultation levels, resource data, and public involvement levels. Initial agency coordination is also conducted. This is collected by environmental technical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

NEPA - Project Development Process

The Environmental Team Leader ensures that the environmental team assigned (referred to as monitors or technical specialist) 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 2: 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 the 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 the 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.



NEPA - Project Development Process

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 the 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, works 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, and 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 provide the transcript (if an in-person meeting is 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.



NEPA - Project Development Process

The ENV Team Leader and technical specialist 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 been 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 them 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.



NEPA - Project Development Process

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. 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 specialists who 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 that compliance is complete with oversight by the ENV Team Leader. Once construction and commitments are complete, the ENV CPD e-file is technically complete.

	Responsibility	Acual Kick-off (KO)	Initial Team Meeting (ITM)	Preliminary Design Report (PDR)	Plan Impacts Complete (PIC)	PS+E	Construction
			approximately 3 months after KO	approximately 6 months after ITM	approximately 6 months after PDR	approximately 3 to 6 months after PIC	
Team Leader	NEPA Public Involvement ACOE + State Permit CZM Clean Water Act Farmland Wild and Scenic River	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Prodcedures and NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile. *Assist Project Development Team with P+N, public process and setting schedules.	*Team Leader provides Project Development Team with environmental baseline information at Initial Team Meeting. Team Leader may invite members of ENV team as necessary. *Coordinate with ENV team members *Farmland is followed. *Public process is reviewed	*PDR is distributed and reviewed *NEPA is completed if all Checklist Items can be answered. *Project impacts are calculated to determine permit levels and if mitigation is required. *Passage blockage is determined. *Farmland reviews are finalized.	*NEPA is completed for projects that could not have all Checklist quetions answered at PDR. *Plans are distributed and reviewed. *Impacts are finalized and all required permit applications are written and submitted. *Special Provisions are drafted if needed.	*Special Provision 105 is finalized and placed in Environmental Contract Package. *Entire Environmental Package is finalized and sent to PM and contracts.	*MaineDOT Environmental Office Compliance Procedures will be followed. *Any stipulations are tracked in ProjEx and complied with. *Available to review non-compliance and other construction related issues. *Request permit amendments *Ensure construction monitor is invited to
Biologist/PRA	Section 7 EFH Marine Mammals Anadromous Fish Fish and Wildlife Act Migratory Birds Coastal Barriers Bald+ Golden Eagles Wetlands + Streams State Fish and Wildlife	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Prodcedures and NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile.	*Biological Assessment/Essential Fish Habitat (EFH) documentation begins for projects requiring a BA and /or EFH with a goal of submittal 1 month after PDR. Any other need (State fishery/wildlife/ESA, MMA) is also started at this time. *Microstation wetland.dgn is reviewed, cleaned and in topo folder ready to use. *Fish Passage Procedure and PBO User Guides are followed and expectations on passage design are made clear to team. * Any monitoring is finalized to determine presence of species.	*PDR is reviewed *Projects requiring a BA and/or EFH documentation should be officially submitted at 1 month after final PDR. Also any other need (State fishery/wildlife/ESA, MMA) is also submitted. *Any passage design expectations are finalized at final PDR. *A Functional Assessment report is started, if needed.	*Plans are reviewed. *A Biological Opinion or Letter of Concurrence and/or EFH approval are final and in ProjEx/CPD efile, if needed. Any other approvals (State fishery/wildlife/ESA, MMA) is final and in files. *Functional Assessments are finalized for permit applications.		* MaineDOT Environmental Office Compliance Procedures will be followed. *Any permit/BO stipulations are tracked in ProjEx and complied with (i.e. monitoring, evacuations, etc). *Available to review non-compliance issues
Hydrologist	Hydrology and design for Section 7 and state fisheries	*Notified of project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Prodcedures. All data/documentation is placed in ProjEx and CPD efile. * Stream Profiles are started.	*Any required or requested analysis/stream profile is underway and provided to Project Development Team and TL. *Fish Passasge Procedure and PBO User Guides are followed and expectations on passage design are made clear to team.	*PDR is reviewed *Any design expectations are finalized at final PDR.	*Plans are reviewed. *Special provision for special back fill is drafted, if needed.	*Design and any Special provision for special back fill is finalized and placed in Environmental Contract Package, if needed.	*Available to review non-compliance issues
Stormwater/ Water Quality Team Members	Floodplains State +Fed Stormwater Sole Source Aquifers	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Prodcedures and NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile.	* If project triggers storwater general standards, then team members will be involved in design. Coordinate with TL and PM. *If project is within a FEMA floodplain, then team member will review and advise. *Floodplain Guidance is followed.	*PDR is reviewed *Any required stormwater design will be finalized at PDR. *ENV contruction/compliance members review PDR.	*Plans are reviewed.		* MaineDOT Environmental Office Compliance Procedures will be followed. *Onsite during construction activities for ENV oversight (Env Compliance Monitor). *Track/comply with ENV stipulations and conditions. * Report on compliance
Historic Coordinator	Public Involvement Section106 Section 4(f) Section 6(f)	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Prodcedures and NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile.	*Any historic, 4(f) or 6(f) properties are identified. *Section 106 and Section 4(f) SOPs are followed. *Section 6(f) Guidance is folowed. *Public process is reviewed.	*PDR is reviewed. *Effects to properties are assessed and Section 106 and Section 4(f) documentation is started, if needed. *Documentation for Section 106 and Section 4(f) that requires right of way information is requested (estimates) and incorporated into documentation. *Any required mitigation/MOA is drafted. * Section 106 and Section 4(f) documents are finalized as soon after PDR as possible and sent to agencies for concurrence/approval.	*Plans are reviewed *Mitigation stipulations are scheduled and assigned, if needed. *Special Provision 105.9 is drafted, if needed.	Special Provision 105.9 is finalized placed in Environmental Contract Package, if needed.	*Section 106 and/or 4(f) commitments are tracked in ProjEx and complied with.
Groundwater/ Hazardous Waste Team Member	CERCLA SARA RCRA	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile.	*Any known sites are identified and dscussed with Project Development Team and TL.	*PDR is reviewed. *Dredge requirements are discussed and documentation is started. *Any structures that will be aquired will be assessed.	*Plans are reviewed. *Dredge quantities are finalized. *Special Provision 203 are drafted if needed.	Special Provision 203 is finalized and placed in Environmental Contract Package, if needed.	*Available to review non-compliance and other construction related issues.
Planning Property PM	Public Involvement Right of Way Air Quality Noise Design/Cost	*PM officially kicks off project and reviews public process. PM notifies Team Leader via email and enters actual kickoff date in ProEx. *Environmental Specialist is notified of project kick-off via email and Air and Noise assessments are started. All data is placed in ProjEx.	*Environmental Baseline data is discussed with Project Development Team at Initial Team Meeting. This includes structure sizing. *Public process is reviewed *P+N is reviewed.	*PDR is distributed and reviewed. *Preliminary public meeting has occurred, if needed (public informed of historic and any other possible environmental issues). *Air and Nopise assessments are completed and data in in ProjEx and Planning files. * Right of way information is requested.	*Plans are distributed and reviewed. *Impacts and right of way is finalized. .	Contract packages are complete.	*Any stipulations are tracked in ProjEx and complied with. *Available to review non-compliance and other construction related issues.