MaineDOT

NEPA EA and EIS Guidance

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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
RIO	Results & Information Office
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 Introduction

Pursuant to 23 United States Code (U.S.C.) 327 and the implementing Memorandum of Understanding (MOU) executed on XX, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its project-level 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. . In accordance with 23 U.S.C. 327(m), 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 327 MOU and 23 U.S.C 327.

1.1 National Environmental Policy Act (NEPA)

NEPA was signed into law on January 1, 1970) and FHWA issued 23 CFR 771, Environmental Impact and Related Procedures, to provide direction for implementing NEPA for transportation projects that fall under FHWA's purview. Additionally, FHWA Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents, offers guidance for content and format and for processing NEPA documents and associated environmental studies. 23 U.S.C. 139-Efficient environmental reviews for project decision making and One Federal Decision is applicable to all projects for which an Environmental Impact Statement is prepared under NEPA. DOT Order 5610.1D provides procedures for considering environmental impacts.

The environmental review, consultation, and other actions required by appropriate Federal environmental laws are carried out by MaineDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and MaineDOT.

1.2 Federal and State Environmental Laws and Regulations

The preparation of NEPA documents requires consideration of numerous federal environmental laws, regulations, and executive orders and State of Maine environmental statutes and regulations. Consideration of these federal and state laws and regulations falls under the FHWA concept of the "NEPA umbrella" and requires consultation, coordination, and regulatory compliance with a range of federal and state agencies, Native American tribes, consulting parties, and the public.

1.3 Independent Environmental Decision-Making

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

Under the NEPA Assignment Program, 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 ENV Director reports to the Chief Engineer and the Bureau Directors report to the Chief Operating Officer, who both report to the Commissioner.

There are many decisions and levels of decision-making in project development. While all departments of MaineDOT are subject to NEPA assignment and must comply with all MOU stipulations, 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.

All formal environmental documents (EISs and EAs) will be independently reviewed by MaineDOT ENV NEPA Manager and ENV Director prior to their approval. ENV will also ensure legal sufficiency reviews are performed by the MaineDOT Legal Office and Maine Attorney General's Office for EISs and Individual Section 4(f) evaluations.

1.4 Pre-NEPA Planning Products

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's NEPA Manager.

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.

MaineDOT has all lead federal agency consultation responsibility for other environmental laws such as Section 106 of the National Historic Preservation Act and the Endangered Species Act. No consultation or NEPA approval authority is delegated to LPAs and MaineDOT Environmental Office is responsible for approving all NEPA documentation prepared by the LPAs projects. Each scoping letter prepared under the authority granted to MaineDOT under 23 U.S.C. 327, MaineDOT shall insert the following language: *The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by MaineDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding.*

LPAs have delegated authority for design and construction oversight but have no delegated NEPA review and approval authority. All legal activities conducted under the auspices of assignment are the legal responsibility of Maine DOT. If the LPA fails to comply with any NEPA provisions, the State DOT remains the responsible legal entity.

1.5 Project Delivery Methods

MaineDOT utilizes design-bid-build for the majority of projects. These guidelines speak to the NEPA process

related to design-bid-build. Other methods MaineDOT has utilized are Design-Build (DB) and Construction Manager/General Contractor (CMCG). In instances of DB and CMCG MaineDOT will complete the NEPA process, ending in a FONSI or ROD, before starting the delivery method. At which point commitments would be carried over from the NEPA process to the construction process.

MaineDOT will follow 23 CFR 636.109 (DB) and 23 CFR 635.505 and 635.506 (CMCG).

2 Identifying Class of Action

A class of action (COA) is identified for all federally funded projects or projects requiring federal approval (federal nexus). 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, NEPA Manager, and ENV Director are responsible for determining the NEPA COA for projects. This section identifies the COAs and discusses considerations for determining the COA.

2.1 Class of Action

FHWA's NEPA regulations identify three environmental COAs (23 CFR 771.115), and prescribes 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 NEPA Manager and Director.

- **CE (Class II)** [23 CFR 771.115(b)]: Categories of actions that do not individually orcumulatively 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 requiredocumentation 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.

- **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 NEPA Manager and ENV Director.

2.2 Identifying Significant Impacts

MaineDOT's guidance regarding the appropriate level of NEPA review and considering whether the effects of the proposed action are significant is as follows:

Significance determination—context and intensity. In considering whether an adverse effect of the proposed action is significant, agencies shall examine both the context of the action and the intensity of the effect. In assessing context and intensity, MaineDOT should consider the duration of the effect. MaineDOT may also consider the extent to which an effect is adverse at some points in time and beneficial in others (for example, in assessing the significance of a habitat restoration action's effect on a species, an agency may consider both any short-term harm to the species during implementation of the action and any benefit to the same species once the action is complete). However, MaineDOT shall not offset an action's adverse effects with other beneficial effects to determine significance (for example, MaineDOT will not offset an action's adverse effect on one species with its beneficial effect on another species).

(1) MaineDOT shall analyze the significance of an action in several contexts. MaineDOT should consider the characteristics of the geographic area, such as proximity to unique or sensitive resources. Depending on the scope of the action, MaineDOT should consider the potential global, national, regional, and local contexts as well as the duration, including short-and long-term effects.

(2) MaineDOT shall analyze the intensity of effects considering the following factors, as applicable to the proposed action and in relationship to one another:

- The degree to which the action may adversely affect public health and safety.
- The degree to which the action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- Whether the action may violate relevant Federal, State, Tribal, or local laws or other requirements or be inconsistent with Federal, State, Tribal, or local policies designed for the protection of the environment.
- The degree to which the potential effects on the human environment are highly uncertain.
- The degree to which the action may adversely affect resources listed or eligible for listing in the National Register of Historic Places.
- The degree to which the action may adversely affect an endangered or threatened species or its habitat, including habitat that has been determined to be critical under the Endangered Species Act of 1973.
- The degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders.

A project that results in significant impacts is a Class I project and requires an EIS.

2.3 Identifying the Class of Action

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

Levels of NEPA review. In assessing the appropriate level of NEPA review, MaineDOT may make use of any reliable data source and are not required to undertake new scientific or technical research unless it is essential to a reasoned choice among alternatives, and the overall costs and timeframe of obtaining it are not unreasonable. MaineDOT should determine whether the proposed action:

(1) Is appropriately categorically excluded;

(2) Is not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment; or

(3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement.

The Environmental Team Leader and NEPA 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 NEPA Manager will discuss their decision with the ENV Director. This discussion will include justification for the change in Class of Action or justification for pursuing a mitigated FONSI. All documentation will be saved in the project CPD e-file.

3 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 in accordance with 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:

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

3.1 Identifying Purpose and Need

The purpose and need statement is the critical foundation of a NEPA document that provides the framework for decision making and for evaluating and screening alternatives. In basic terms, the purpose and need identifies the transportation problem to be solved by the proposed project and establishes why a project is being proposed and why its priority and funding expenditure are warranted. The project need provides the data to support the project purpose. It identifies the conditions that have resulted in the problem or set of problems that need to be remedied. The project purpose defines the solution to the problem (or need) and outlines the goals and objectives of the proposed action.

The purpose and need drives the process for alternatives identification, evaluation, and in-depth analysis, and for the identification of a preferred alternative for the project. An EA and EIS need to address the "no-action" alternative and, for an EIS, evaluate reasonable alternatives. Without a well-defined, well-established, and well-justified purpose and need statement, it will be difficult to determine which alternatives are reasonable, prudent, and practicable, and it may not be possible to compare or dismiss the no-action alternative.

The purpose and need section in a NEPA document should be defined in terms that are easily understandable to members of the general public because they will have an opportunity to review the section and provide input through MaineDOT's public involvement process. The purpose and need should justify why the project should be implemented. The information presented should be as comprehensive and specific as possible to justify the need. FHWA Technical Advisory T 6640.8A encourages using maps, graphics,tables, and similar visual aids to help the reader understand the project's purpose and need. The FHWA Purpose and Need Companion document aides MaineDOT in development of Purpose and Need statements.

3.2 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 AdvisoryT 6640.8A:

- **System linkage**. Describe how the project fits into the existing transportationsystem, including whether it is a connecting link of 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 stageof 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 serviceare required for existing and proposed facilities.
- **Legislation**. Identify federal, state, or local governmental mandates that must be metby 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 withand 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, includingdata related to existing accident rates, and other plans or projects designed to improve the situation.
- **Roadway deficiencies**. Describe any existing deficiencies associated with studyarea roadways (for example, substandard or outdated geometrics, load limits on structures, inadequate cross section, 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.

3.3 Purpose of Project

The project purpose defines the solution to the problem and guides 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

3.4 Purpose and Need Statement for an EA and EIS

A purpose and need statement is required for all NEPA EA and EIS documents.

The 23 USC 139 Efficient Environmental Review Process requires that all highway projects, along with transit and multimodal projects for which an EIS is prepared, follow a specified environmental review process. For a purpose and need statement in an EIS, 23 USC 139 states that the following objectives can be included:

- achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan
- serving national defense, national security, or other national objectives, as established in federal laws, plans, or policies
- being consistent with approved planned land use or growth objectives established in applicable federal, state, local, or tribal plans

A proposed project's purpose and need should be well-defined and help refine the reasonable alternatives that should be analyzed to address the transportation problem.

The 23 USC 139 Efficient Environmental Review process also requires MaineDOT to give the public and participating agencies a chance to be involved in the development of the project purpose and need statement in a timely and meaningful way, including through project scoping. The opportunity for input must be publicized and may occur in the form of public workshops or meetings, solicitations of verbal or written input, the MaineDOT website, distribution of printed materials, or other public outreach activities. The opportunity must be provided prior to MaineDOT's final decision regarding the purpose and need. The 23 USC 139 provisions are required for an EIS and are discretionary, but rarely used for an EA (the MaineDOT ENV Director will make this decision).

The purpose and need statement in an EIS and an EA is also vital to meeting the requirements of Section 4(f) of the Department of Transportation Act (49 USC 303) and the Clean Water Act Section 404(b)(1) guidelines (40 CFR 230). The Section 404(b)(1) guidelines are the only regulations other than NEPA that require a purpose statement. Section 404 requires selection of the least environmentally damaging practicable alternative (LEDPA) for implementation. Because of the stringency of Section 404 requirements, the importance of U.S. Army Corps of Engineers (USACE) review and concurrence on the purpose and need statement for projects that require a Section 404 individual permit is vital to project success. Additionally, if an individual permit is required for a project, the individual permit process is undertaken during the final design stage.

All build alternatives under consideration in the NEPA document should fully address the stated purpose and need. Any build alternative that does not adequately address the purpose and need can be eliminated from further consideration in the environmental document.

The Purpose and Need is developed prior to the identification of project alternatives and establishes the transportation problem and why a project is being proposed. Projects designated as EA or EIS will include input from the Bureau of Planning, Bureau of Project Development, Environmental Team Leaders and NEPA Manager in the development of a Purpose and Need statement. MaineDOT utilizes the FHWA Purpose and Need Companion version 3 (January 2016) as a guide. The Purpose and Need statement is filed in the project CPD e-file and is part of the NEPA document and project record.

3.5 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 end points for a transportation improvement
2. rational end points for a review of the environmental impacts.

The project or action being evaluated in the NEPA process shall 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.

MaineDOT Environmental Team Leaders and the NEPA Manager will work closely with the MaineDOT Project Manager and consider a number of different factors to determine logical termini. In addition to the ability of the project to meet an identified transportation need (safety, economic development, capacity, etc.), other factors considered could include 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.

Logical termini and purpose and need interact with one another. As investigations into data, transportation problems, and impacts to resources continues, 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.

3.6 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 Environmental Team Leader and NEPA Manager will work closely with the MaineDOT Project Manager to assess Independent Utility. Documentation will be saved in the CPD e-file.

4 Development of Alternatives

This section describes the key concepts and process for identifying, analyzing, and screening alternatives and selecting a preferred alternative for an EA or EIS project, based on FHWA NEPA regulations (23 CFR 771), and FHWA guidance. Once the purpose and need for a project has been identified and the study area has been defined, MaineDOT must identify alternative ways to solve the transportation problem. MaineDOT will identify and assess the reasonable alternatives to proposed actions that would avoid or minimize adverse effects of these actions upon the quality of the human environment.

In addition to FHWA guidance and regulations to evaluate alternatives to avoid, minimize, or mitigate adverse environmental impacts, other regulations require MaineDOT to consider "avoidance" alternatives. Specifically, Section 4(f), Executive Order 11990 on Wetlands, Executive Order 11988 on Floodplains, and the Clean Water Act Section 404(b)(1) guidelines require agencies to develop alternatives that would avoid or minimize impacts on specific natural and built environment resources.

4.1 General Guidance

MaineDOT and many other state departments of transportation refer to "build alternatives" and the "No-Build Alternative." In discussions of regulatory requirements, this guidance uses the "action alternative" terminology. When describing MaineDOT practices, the term "build alternative" is used.

4.1.1 EIS Requirements

The evaluation of alternatives in an EIS compares the proposed action and the alternatives under consideration to define the issues and provide a clear basis for choosing among the options. MaineDOT will:

a. Explore and objectively evaluate reasonable alternatives to the proposed action, and, for alternatives that MaineDOT eliminated from detailed study, briefly discuss the reasons for their elimination. MaineDOT does not consider every conceivable alternative to a proposed action; rather, it shall consider a reasonable range of alternatives that will foster informed decision making.

b. Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.

c. Include the no action alternative.

d. Identify MaineDOT's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

e. Include appropriate mitigation measures not already included in the proposed action or alternatives.

f. Limit consideration to a reasonable number of alternatives.

Alternatives may be determined to be unreasonable and be eliminated from detailed study through a screening process that considers factors such as the inability or limited ability to meet the proposed project's purpose and need, creation of significant adverse environmental impacts, undesirable design and engineering attributes, or unreasonable costs.

4.1.2 EA Requirements

An environmental assessment shall:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; and
2. Briefly discuss the purpose and need for the proposed action, alternatives as required by section 102(2)(E) of NEPA, and the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted.
3. Agencies shall involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments.
4. The text of an environmental assessment shall be no more than 75 pages, not including any citations or appendices.

Consideration of the proposed action and a no-action alternative is often sufficient in an EA. Although not specified in FHWA Technical Advisory T 6640.8A, MaineDOT usually discusses any alternatives that were considered but dismissed from further consideration in an EA. This allows the public and agencies to understand the full scope of MaineDOT's decision-making process.

4.2 Alternatives Screening Process

The alternatives screening process involves reviewing a range of alternatives (sometimes a broad range, especially for an EIS) and selecting a more limited number of alternatives to be carried forward for detailed study in the NEPA document. For example, widening an existing road or improving an existing intersection is likely to have few alternatives, while building a new road in a new location may have numerous possible alignments that will be screened to produce a reasonable and representative range of alternatives.

Depending on the project's size and complexity, many potential alternatives may be identified, and may require several rounds of screening during the planning phase or early in the NEPA process. The screenings may include:

- initial alternatives screening prior to the NEPA process during the planning or scoping phase
- conceptual alternatives screening early in the NEPA process
- final screening to identify the range of alternatives to be evaluated in the draft EIS

4.2.1 Preliminary Screening Process

During the early phases of project development, a set of preliminary alternatives may have been identified from earlier studies, including the long-range transportation plan and transportation planning studies. While developing the preliminary alternatives (and throughout the project planning process) some alternatives may be revised and modified, while others may be eliminated from further consideration because they do not meet the project's purpose and need, are determined to not be practicable, or involve substantial adverse impacts. New or modified alternatives may also come to light as the scoping process (which is mandatory for an EIS and optional for an EA) proceeds, based on factors that could include:

- review and input by agencies and the public as part of MaineDOT's public involvement. This will be documented in the Environmental Office CPD-file by the NEPA staff).
- alternatives that provide a transportation solution at a lower cost and/or with fewerenvironmental impacts
- alternatives that reflect the full range of opportunities to meet the proposed project's purpose and need
- alternatives that include a combination of project elements, as opposed to single elements or concepts

Once a range of project alternatives has been identified by MaineDOT for further analysis, MaineDOT

must determine that the alternatives meet the following criteria in accordance with 23 CFR 771.111(f):

- Connect logical termini and are of sufficient length to address environmental matterson a broad scope
- Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the areaare made
- Not restrict consideration of alternatives for other reasonably foreseeabletransportation improvements

When developing a transportation project, MaineDOT must establish reasonable termini for the project, both for the improvement itself and for the scope of the environmental analysis. FHWA regulations require a project to have "logical termini," which are defined as rational end points for a transportation improvement. Similarly, alternatives are required to be of sufficient length to allow appropriate review of environmental impacts.
In developing a concept that can be advanced through planning, environmental review, design, and construction, MaineDOT must consider a "whole," or integrated, project or action.The action should satisfy an identified need. In addition, the project should be considered in the context of topography, future travel demand, and other infrastructure improvements. By not framing an action in this way, project needs may only be marginally meet or may cause unexpected side effects that require corrective action.

MaineDOT must also be aware of the problem of segmentation. Segmentation may occur when a transportation need extends throughout an entire corridor, but environmental impacts and transportation needs are evaluated for only a segment of the corridor, leaving a substantial portion of the need unsolved. The 1993 FHWA memorandum, *The Development of Logical Project Termini*, provides additional guidance on the development of logical termini.

Independent utility considers connected actions in determining project scope. Connected actions should be discussed in the same environmental document. Actions are defined as connected if they:

- Automatically trigger other actions which may require environmental impact statements.
- Cannot or will not proceed unless other actions are taken previously or simultaneously.
- Are interdependent parts of a larger action and depend on the larger action for their justification.

The term "independent utility" was first used by the courts in early NEPA litigation. The NEPA cases concerned project interdependence and whether an EIS was improperly avoided by separately evaluating segments of a larger highway project. This is also referred to as project segmentation. FHWA subsequently adopted terminology into its NEPA regulations to address connected actions through the concept of independent utility. If a project is determined to have independent utility the project is not connected to a larger action.

4.2.2 Alternatives Screening Criteria

The criteria used to screen alternatives should be specific, yet comprehensive enough to include the key factors that facilitate evaluating the validity and reasonableness of each build alternative. In addition to meeting the project's purpose and need, other criteria most frequently relevant to the alternatives screening process include:

- **Environmental impacts**: Impacts on environmental resources should be consideredduring screening and may support an early determination that an alternative is unreasonable. For example, an alternative could be screened out based on substantial impacts on a Section 4(f) property that would be avoided by similar alternatives. Note, however, that impact estimates at the alternatives screening stage may have a higher degree of uncertainty because the alternatives

are less well-defined and environmental field work may not have been completed to determine impacts to the degree, intensity, or amount needed to know whether the impacts could be avoided, minimized, or mitigated.

- **Technical factors**: Alternatives must be feasible and practicable from a number of technical factors that include design, engineering, drainage, safety, traffic operations,utilities, and long-term maintenance and operation. Alternatives may be dismissed on the basis of technical factors.

- **Financial feasibility**: Cost factors can be used in the screening of alternatives when costs substantially deviate from the programmed costs in the STIP or MaineDOT three Year Work Plan, including consideration of construction and right-of-way costs, and the cost of business and residential relocations, as applicable.

- **Community and government support**: Support or lack of support for a MaineDOTproject by affected local communities and governments, community organizations, stakeholders such as local businesses, public issue organizations, and the public atlarge can be used to screen alternatives. Adopted economic development plans; future land use, transportation, and recreation plans; public and stakeholder

acceptance of the project; the potential for public or local government controversy oropposition to the project; and agency concerns may be used to screen alternatives.

- **Section 4(f) and Section 404 considerations**: The screening of alternatives take into account the requirements of Section 4(f) and Section 404, both of which include their own alternatives analysis requirements. While impacts on Section 4(f) and Section 404 resources may not be fully known during the screening process, it is often possible to identify potential impacts on those resources. MaineDOT seeks to ensure that the range of alternatives carried forward in the NEPA process will be sufficient to satisfy alternatives analyses required by Section 4(f) or Section 404. Coordination with potential Section 4(f) owners with jurisdiction in the study area and USACE for Section 404 compliance at key milestones, including adoption of purpose and need and screening of alternatives, can help to ensure that the range of alternatives is adequate for compliance with these other laws.

The alternatives chapter of the EA or EIS for a large or complex project should summarize decisions made in the alternatives screening process and the reasons for those decisions. Typically, more detailed analysis, data, and documentation are included in a separate report, which should be referenced in the EA or EIS. Important issues to cover in this documentation include:

- description of each alternative
- overall methodology used for screening, including screening criteria
- data used in the screening process, including any important limitations of that data
- maps, graphics, tables, and other visual aids to make it easier understand thelocation of each alternative and the data used for its development
- agency and public input into the screening process
- rationale for eliminating an alternative from further consideration
- results of any additional screening-level analyses completed after the initialscreening.

4.3 Alternatives Analysis for an EIS

The alternatives screening process and procedures are more specific and rigorous for an EIS than an EA, although

similarities exist in the comparison, screening, preferred alternative identification, and use of the No-Build Alternative. The alternatives analysis chapter in an EIS must clearly indicate why a particular range of alternatives was developed, the process or methodology used, and public and agency input.

The alternatives analysis process for an EIS should follow a logical progression that includes:

- developing all reasonable alternatives for the proposed action
- comparing and screening alternatives to eliminate unreasonable alternatives
- obtaining agency and public input
- comparing alternatives to determine differences in impacts
- identifying the preferred alternative
- issuing a ROD selecting the preferred alternative for implementation

4.3.1 Range of Reasonable Alternatives to the Proposed Action

MaineDOT must identify and evaluate a range of reasonable alternatives, taking into consideration the need for safe and efficient transportation; social, economic, and environmental impacts of the proposed transportation improvements; and national, state,and local environmental protection goals (23 CFR 771.105). For an EIS, a reasonable range of alternatives could include:

- a variety of modes (even those that MaineDOT cannot pursue alone but could do so with a co-lead agency, as an example)
- a reasonable number of location alternatives (representative examples)
- avoidance alternatives [usually developed in accordance with other federalenvironmental regulations under the NEPA umbrella, such as Section 404,Section 4(f), Section 7, Section 106]

The advantages and disadvantages of each alternative are compared in the alternatives chapter of the EIS. The alternatives are assessed to determine how well they address the transportation issues identified in the purpose and need and potential environmental impacts.

The number of alternatives that constitutes a reasonable range is directly related the purpose and need statement. A well-defined purpose and need section will assist in limiting the number of alternatives that will achieve the project goals and provide the basis for a legally defensible alternatives discussion. FHWA Technical Advisory T 6640.8A provides a detailed discussion of the factors that may be considered in determining what constitutes a reasonable range of build (or action) alternatives.

No-Build Alternative

The No-Build Alternative is one of the alternatives evaluated in an EIS. MaineDOT will consider the existing situation without the proposed action. It can include other programmed activities already in the STIP or TIP, other nearby projects that have been constructed or approved, or long-term operation and maintenance activities that would occur even if the proposed project is not approved.

The No-Build Alternative is fully assessed in the same manner as a build alternative and is used as a baseline for comparison against the impacts of all other alternatives. The No-Build Alternative cannot be removed from analysis because it does not meet the purpose and need. The EIS should thoroughly describe the need for the proposed project and what problems or deficiencies it seeks to solve, and discuss a future in which the improvements are not undertaken (including potential impacts that would result from taking no action).
The No-Build Alternative can be considered in two primary ways: (1) continue present management activities on an existing facility, but do not undertake or construct the build alternative or (2) do not undertake a project within

a new corridor.

Alternatives Analysis and Comparison

After a range of reasonable alternatives has been identified, the alternatives together with the No-Build Alternative must be analyzed, evaluated, and compared objectively and individually. These alternatives should be presented in comparable detail, allowing the reader to evaluate their comparative merits or disadvantages. This does not dictate an amount of information to be provided for each alternative; rather, it prescribes a level of treatment that may, in turn, require varying amounts of information to enable a reader to evaluate and compare alternatives.

Each alternative should be described briefly using maps, comparative tables, plans, or other visual aids, along with a concise narrative in layman's terms. For large or lengthy projects, alternatives may be broken into segments or sections and described and evaluated geographically. At a minimum, the discussion of each alternative should include a clear, nontechnical description of the project concept, location, termini, costs, status of right-of-way needs, and any project features that clarify differences among alternatives. The alternatives chapter of the EIS should be devoted to describing and comparing the alternatives, with potential impacts discussion limited to a concise summary table in a comparative form. The detailed impact analysis is undertaken in the environmental consequences chapter of the EIS.

The alternatives analysis considers applicable laws and regulations in addition to NEPA (such as Section 404, Section 4(f), and Section 106 of the National Historic Preservation Act) in comparing alternatives and avoiding and minimizing impacts.

Alternatives that were considered in the planning process and subsequently rejected will be briefly described and the reasons for their elimination discussed. Alternatives suggested by cooperating and participating agencies or the public during scoping that were eliminated without detailed study should be adequately documented, including the reasons why they were eliminated. The EIS should include sufficient detail to ensure that NEPA requirements regarding alternatives have been met, with the alternatives report containing the detailed technical data and analysis.

FHWA, in its guidance for the implementation of Section 6002 of SAFETEA-LU (23 USC 139), explains that the development of a range of alternatives should be a collaborative process in which the lead agency or agencies must provide opportunities for the involvement of the public and participating agencies. The lead agency or agencies must consider the input provided by these groups. After considering their input, the lead agency is responsible for determining the range of alternatives to be considered in the NEPA document. The form and timing of the public and participating agency involvement is flexible, but the opportunity must be provided prior to a final decision regarding the reasonable range of alternatives. The provisions of 23 USC 139 are mandatory for an EIS and optional for an EA, depending on its size, complexity, environmental impact potential, potential for controversy, and related factors (the MaineDOT ENV Director will make this decision).

Preferred Alternative

The "preferred alternative" (which is the proper term to use in a MaineDOT EIS) is the alternative which the MaineDOT believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. It is generally the alternative that MaineDOT has determined would best fulfill its NEPA responsibilities while meeting the project purpose and need; minimizing impacts on the environment (e.g., natural, cultural); meeting MaineDOT design, engineering, and economic feasibility standards; and being supported by the public and resource agencies. In many cases, alternatives are adjusted throughout the NEPA process to minimize harm to the environment and communities. The preferred alternative is typically the alternative that has incorporated these changes and achieves the best balance among needs, impacts, design

standards, costs, etc. The evaluation of alternatives should present the preferred alternative, and all of the alternatives in comparative form, to best define the issues and provide a clear basis for choosing among the options.

When a preferred alternative is clear based on the analyses developed during the alternatives evaluation process, MaineDOT discloses it in the draft EIS and at the associated public hearing. When the preferred alternative is not clear, the draft EIS should state that:

- A preferred alternative has not been identified at this point in the NEPA process,
- A range of reasonable alternatives is still under consideration, and
- The identification of a preferred alternative will be made during the preparation of the Final EIS and ROD after public and agency review and comment on the draft EIS and public hearing. This includes any additional alternatives that may require evaluation during the final EIS process.

This information should be discussed in the executive summary of the draft EIS, if applicable, and at the conclusion of the alternatives chapter.

If the preferred alternative is modified or is no longer the preferred alternative after the draft EIS review period, the final EIS must clearly identify the changes and potential impacts.

In the final EIS, MaineDOT must identify the preferred alternative and discuss the basis for its identification and all reasonable alternatives considered. It must also discuss substantive comments received on the draft EIS, provide responses, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action [23 CFR 771.125(a)(1)]. The discussion must provide relevant information and rationale for the identification.

The identification of a preferred alternative does not lessen MaineDOT's responsibility to give all alternatives a similar degree of analysis and evaluation during the EIS process. Once the preferred alternative has been identified, it may be developed to a higher level of detail than other alternatives to facilitate development of mitigation measures and to ensure compliance with other laws and regulations if MaineDOT determines that doing so would not affect its ability to reach an impartial decision (23 USC 139).

The preferred alternative is also presented in the ROD as the "selected alternative," which is the alternative MaineDOT has selected to move forward with in the design, engineering, and eventual construction process.

If the preferred alternative from the final EIS is modified or is not the selected preferred alternative for some reason, the ROD must clearly address the changes.

Developing a Preferred Alternative to a Higher Level of Detail

Regardless of the Environmental Document type, the engineering analyses must be performed to a level of detail that is sufficient to assess the effects of the alternative(s) on the social, economic, natural, cultural, and physical environment.

MaineDOT will identify a preferred alternative in the Draft EA (DEA) or Draft EIS (DEIS). A preferred alternative in the DEIS will allow the ability to issue a combined FEIS/ROD document. Identification of a preferred alternative requires sufficient scoping and analysis of reasonable alternatives to support it. The scoping process is complete when MaineDOT provides the public and participating agencies with the opportunity to be involved in the development of purpose and need and the range of alternatives, and considered any input or comments received. After completion of scoping and a preliminary analysis of alternatives, MaineDOT will decide whether identification of a preferred alternative in the DEIS is appropriate. Providing a higher level of detail for a proposal

or only one alternative (compared to the other alternatives) could run the risk of biasing the environmental analysis or introducing the perception of bias. 23 U.S.C. 139 (f)(4)(D) permits the development of a higher level of detail for the preferred alternative to (1) facilitate the development of mitigation measures or (2) facilitate concurrent compliance with other applicable laws, as long as MaineDOT NEPA Manager and ENV Director determines that the development of such higher level of detail will not prevent the agency from making an impartial decision as to whether to accept another alternative being considered. Developing an alternative to a higher level of detail may be necessary for permit discussions, interagency agreements related to environmental requirements, or identifying appropriate mitigation.

The Project Manager in coordination with the NEPA Manager will develop the preferred alternative to a higher level of detail. This will be documented in the project CPD e-file.

- Reasons why the MaineDOT wants to develop the preferred alternative to a higher level of detail before completion of NEPA review, including the specific Federal laws, impacts, resources, and mitigation measures whose processing would be facilitated by the proposed differential treatment of the alternatives.
- Reasons why greater design detail will not prejudice the lead agencies' consideration of other alternatives.

The MaineDOT NEPA Manager decides whether the preferred alternative can be developed to a higher level of detail. That decision must ensure that: (1) it will not prevent MaineDOT from making an impartial decision on the appropriate course of action, and (2) it is necessary to facilitate the development of mitigation measures or concurrent compliance with other Federal environmental laws. The NEPA Manager, ENV Director and Project Manager must agree that a particular alternative is the preferred alternative and that the relevant conditions are met, before developing that alternative in greater detail.

MaineDOT should consider all factors relevant to the project that would prevent them from making impartial decisions about alternatives in the future. The factors will vary from project to project. Considerations that may be relevant to impartiality include the following:

- Whether the information on all alternatives is sufficiently developed to identify important resources and associated potential impacts to enable a reasonably informed choice.
- Whether the early coordination with the public and participating agencies and the collaboration with participating agencies on impact methodologies resulted in general agreement about the level of detail for alternatives to guide continued analysis of the alternatives.
- What the potential impact of the additional financial and time commitments on one alternative is to the overall project costs and schedule if another alternative ultimately is selected.
- What the likelihood is that fair comparisons among alternatives will result despite the development of a preferred alternative to a higher level of detail.
- Whether the development of a preferred alternative might have an unacceptably adverse effect on public confidence in the environmental review process for the project.
- Whether that adverse effect on public confidence could be avoided by delaying the differential development of alternatives until a later point in the environmental review process.
- How the difference in level of detail among the alternatives might affect the presentation of the alternatives in the environmental documents.
- What is the extent to which the results of public and participating agency involvement support the proposed preferred alternative.

The key question is whether developing the preferred alternative more fully would cause an imbalanced NEPA comparison among alternatives because of time, money, or energy expended. MaineDOT must determine that the decision on the choice of alternative is not prejudiced by the additional design work on the preferred alternative.

23 U.S.C. 139 does not change the standard practices relating to the evaluation and presentation of alternatives. This includes disclosing the rationale for the identification of a preferred alternative. When the preferred alternative is developed at a higher level of detail, MaineDOT will ensure that the evaluation of alternatives reflects the required objective analysis (23 CFR 771.123 f). Each reasonable alternative must be explored at a sufficient level of detail to support a reasoned choice. The comparison of alternatives must be done in a fair and balanced manner. If there are substantial differences in the levels of information available for the alternatives, it may be necessary to apply assumptions about impacts or mitigation to make the comparisons fair.

For example, if mitigation is designed only for the preferred alternative, then assumptions that comparable measures can be taken to mitigate the impacts of the other alternatives should be included in the comparative analysis of the alternatives even though those other alternatives are not designed to the same level of detail. This comparison of mitigation across alternatives will ensure that the preferred alternative is not presented in an artificially positive manner because of its greater design detail. The NEPA document should disclose the additional design work and the changes in impacts arising out of that design detail.

In accordance with Section 139 of 23 U.S.C., the development of the preferred alternative to a higher level of detail than other NEPA alternatives may not proceed beyond that level necessary to develop mitigation or to comply with other applicable environmental laws. The degree of additional development needed and allowable will depend on the specific nature of the impact being mitigated or resource being protected, or the level of information required to comply with other applicable laws. In accordance with NEPA permissible preliminary design guidance order 6640.1A the preferred alternative will not be developed past the preliminary design phase or to any extent that will limit the choice of reasonable alternatives. Maine DOT will not perform any final design activities until the action has been classified as a CE, a FONSI has been approved, or a final EIS has been approved and ROD has been signed.

4.3.2 Additional EIS Alternative Considerations

Transportation System Management and Transportation Demand Management Alternatives

Transportation system management (TSM) alternatives may be used to encourage more efficient use of existing facilities through improved management and operation of vehicles on an existing roadway to reduce traffic congestion. Examples of TSM alternatives include:

- traffic operations, such as roadway widening, intersection expansion, additional turning lanes, and grade separation
- traffic signalization, such as improved timing, new signals, and additional signals at freeway on ramps
- special roadways, such as bus, high-occupancy vehicle, and contra-flow lanes (flexlanes)
- intermodal coordination, such as park-and-ride facilities
- parking management, such as preferential parking for carpools and vanpools

These limited construction alternatives are generally relevant for major projects in densely developed urban areas. For rural areas, an alternative that considers reconstruction and rehabilitation of an existing facility or system should be included before selecting an alternative on a new alignment.

Transportation demand management (TDM) alternatives relate to various strategies that change travel behavior (such as how, when, and where people travel) and aim to increase transportation system efficiency. Key TDM

principles include incentives to change travel mode, time, or destination; improve the transportation options available to consumers; and reduce the need for physical travel through mobility substitutes and more efficient land use. TDM strategies are implemented to make transportation systems more efficient, safe, or convenient. TDM strategies focus on changing or reducing travel demand, particularly at peak commute hours, instead of increasing roadway capacity, to make more efficient use of the current roadway system.

FHWA Technical Advisory T 6640.8A guidance indicates that TSM or TDM alternatives should be considered, even though they may not be within the existing MaineDOT funding authority. Their evaluation and consideration may require coordination with entities outside of MaineDOT, such as metropolitan planning organizations, councils of government, regional transportation authorities, major employers, or major destinations (such as sports venues, ski areas, or other entertainment venues). Agreements must be secured with these entities before considering TSM or TDM alternatives to be viable.

Alternatives Analysis to Meet Other Federal Requirements

In addition to NEPA, other federal regulations and executive orders require consideration of "avoidance" alternatives. Specifically, Section 4(f), Executive Order 11990 on Wetlands, Executive Order 11988 on Floodplains, and the Clean Water Act Section 404(b)(1) guidelines require agencies to develop alternatives that would avoid or minimize impacts on specific natural and built environment resources. For example, Section 4(f) requires that an alternative that has a "use" on a Section 4(f) property may not be selected unless there is no "prudent and feasible alternative" to that use and that the project has incorporated all possible planning to minimize harm. Similarly, early and consistent coordination with USACE on projects that require an individual Section 404 permit is necessary so that the MaineDOT preferred alternative can be designated as the Section 404(b)(1) LEDPA.

4.4 Alternatives Analysis for an EA

The alternatives analysis, review, and identification of a preferred alternative in an EA is less rigorous and does not have to follow the mandatory process for an EIS.

4.4.1 Alternatives Analysis and Screening

An EA is not required to analyze a range of reasonable alternatives, as is required for an EIS. A build alternative and No-Build Alternative may be sufficient for an EA. A number of build alternatives may, however, be analyzed and screened to arrive at the alternatives to be formally considered in the EA, depending on the project's size and complexity.

The alternatives analysis in the EA discusses the build alternatives that have been developed to meet the project's purpose and need, along with the No-Build Alternative. The process used to develop the alternatives is discussed, and a summary of public and agency input is included. A comparative table of alternatives and associated impacts should be presented in terms that can be easily understood by the public.

The EA should present a thorough description of the current transportation need and describe expected future operational and environmental conditions in which a build alternative is or is not implemented.

No-Build Alternative

Treatment of the No-Build Alternative is basically the same for an EA as for an EIS. See the discussion of the No-Build Alternative in Section 4.3, *Alternatives Analysis for an EIS*.

Alternatives Considered but Dismissed from Further Consideration

An EA is required to have only one build alternative in addition to the No-Build Alternative. During the alternatives evaluation process, however, other build alternatives may have been evaluated but dismissed from further consideration for a variety of reasons. The reasons for dismissing other alternatives considered should be briefly

presented in the EA. MaineDOT maintains all the data and information on the dismissed alternatives. MaineDOT may prepare an alternatives report that fully evaluates each alternative considered. The level of detail to present in the EA for alternatives considered but dismissed is decided by the MaineDOT EA study team.

Deciding which alternatives to dismiss from further evaluation may be simple and straightforward or, depending on the complexity of the project, may involve several levels of screening and analysis before the build alternatives can be narrowed to an individual alternative or set of alternatives for final evaluation in the EA. Each build alternative carried forward into the EA should be discussed at a comparable level, allowing the reader to evaluate and compare each alternative and its merits or disadvantages. This does not dictate an amount of information to be provided for each alternative; rather, it prescribes a level of treatment that may require varying amounts of information.

The alternatives chapter of the EA should be devoted to describing and comparing the alternatives, with impact discussion limited to a concise summary in a comparative form, such as a table. The environmental impacts or environmental consequences section of the EA is the appropriate place to analyze the direct and indirect environmental, social, economic, and cultural impacts of the build alternative; redundancy between these sections should be avoided.

A key element of the alternatives evaluation process is providing specific, yet concise, information, reasoning, and criteria to support the rationale for identifying, evaluating, and eliminating build alternatives in the EA. If an alternative is eliminated because it does not meet the project's purpose and need, adequate explanatory data and information should be presented.

Alternatives recommended during the early coordination process by agencies, stakeholders, or the public that are eliminated without detailed study should be adequately documented, and the reason why they were eliminated should be provided.

Preferred Alternative

The preferred alternative is generally the alternative that would best meet the project purpose and need; avoid, minimize, or mitigate impacts on the environment (e.g., natural, cultural); meet technical and cost requirements; and receive the greatest support among agencies and the public. For some projects, the preferred alternative may be obvious. Regardless, the level of analysis presented as the basis for the preferred alternative must be neutral and objective in regard to all alternatives (with effective pre-decisional public involvement findings incorporated) and cannot be slanted to support a preferred alternative over any other alternative.

In most cases, alternatives can be adjusted throughout the preliminary design and NEPA process to minimize harm to the environment and communities. When a preferred alternative is identified in the draft EA, it is acceptable to collect additional information relevant to the alternative to develop it more fully and better understand its impacts.

In some cases, one alternative may clearly be the best or only practicable alternative that can be implemented. If MaineDOT identifies the preferred alternative before agency and public review of the draft EA, the preferred alternative would be identified in the draft EA. In this case, the preferred alternative will be the basis for agency and public review and comment during the draft EA review period and the public meeting or hearing.

If MaineDOT determines that the identified preferred alternative would not result in significant direct or long-term adverse impacts, that preferred alternative is identified in the final EA, and a FONSI is prepared and approved. Once a FONSI is executed for the project, it can proceed to the next phase of design and engineering. If, however, the preferred alternative would result in significant adverse impacts that cannot be avoided, minimized, or

mitigated, the lead agency determines whether to (1) pursue the project as defined and prepare an EIS, (2) not pursue the project, which means selecting the No-Build Alternative, or (3) modify the preferred alternative to reduce adverse impacts to less- than-significant levels.

When the preferred alternative is not determined before the draft EA is made available for public and agency review and comment, the draft EA should state that MaineDOT will identify a preferred alternative in the final EA. If the preferred alternative is modified after the draft EA public review period, the final EA must clearly identify the changes and discuss the reasons why any new impacts are not of major concern, if applicable.

5 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).

5.1 NEPA Public Involvement Plan (NPIP)

The purpose of the NPIP is to provide guidance to MaineDOT Environmental Office staff and Project Managers engaged in development of transportation projects funded or approved by the FHWA. The intent of this NPIP is to outline the process for carrying out public involvement in accordance with the requirements of the National Environmental Policy Act (NEPA), its associated implementing regulations, and other federal environmental laws and regulations. These procedures describe 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.

5.2 Project Specific Public Involvement Plan

MaineDOT may develop a project-specific PIP for EIS projects to ensure compliance with NEPA, its associated implementing regulations, 23 CFR 771.111(h), and other federal environmental laws and regulations. Public involvement requirements for EISs and EAs are briefly described within the NPIP

The purpose of the project-specific PIP is to develop, implement, and document methods used to reach members of the public who may be affected by or who are interested in a proposed project. A project-specific PIP is typically used as a "roadmap" to guide public involvement at each stage of the transportation decision-making process. It will generally include project development, design, and construction. The ultimate goal of each program is to incorporate as many members of the public into the decision-making process as possible, adjust to the community's needs, and solicit input. The project-specific PIP should also demonstrate how adjustments or accommodations were made to involve the public at each stage of the transportation- decision making process. The decision to develop an EIS project specific PIP will be made by the MaineDOT EIS team.

5.3 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 as a result of the outreach activities throughout each stage of the transportation decision-making process. Members of the public should also have access to such documentation to confirm their input was heard or otherwise received and considered. Proper documentation includes compiling all materials related to the public involvement activity, summarizing and analyzing comments, and describing how the comments are being addressed.

5.4 Public Involvement Summary

The public involvement summary should contain all project components completed in their respective transportation planning stages and how and when each was presented to the public, local agencies, elected

officials, and other stakeholders. This summary should be a concluding chapter in a project-specific PIP at the appropriate stage of the transportation decision-making process.

5.5 Managing Public Comments

The public, in any one area or jurisdiction, may have diverse views and concerns regarding issues pertaining to 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. To ensure public comments are included as part of the decision-making process and properly documented, a protocol is needed to collect, log, and respond to comments. 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.

Public involvement effectiveness is measured by the MaineDOT Public Virtual Public Involvement Coordinator. The NEPA Manager will also assess public involvement for the NEPA process. Any suggestions will be discussed with the ENV Director and coordinator. Results of Virtual Public Involvement Effectiveness.

6 Quality Assurance, Quality Control, Legal Review, and Conflict Resolution

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.

Quality Assurance (QA) and Quality Control (QC) are part of the Environmental Office process that occur at a program level and at multiple points during a project. QA is utilized to proactively focus on the prevention of issues and manage the quality of the process. QA involves assessing a program/process after tasks have been completed to identify issues that need to be addressed. A MaineDOT example of NEPA QA is conducting our annual NEPA quality review and identifying any program process or documentation issues and areas the Environmental Office can improve or streamline. QC is utilized to verify the quality of the project process and documentation. QC is the daily effort of identifying and correcting deficiencies and errors. This occurs at the project level and in MaineDOT's and Environmental Office's production process. A MaineDOT example of NEPA QC is the NEPA Manager reviewing the draft Environmental Assessment section on historic resources and identified deficiencies addressed prior to finalizing. **MaineDOT maintains a NEPA Quality Assurance and Quality Control Guidance.**

6.1 Quality Control

QC review is completed for the draft and final EAs and EISs, the decision document (FONSI or ROD), and technical reports and other supporting documents. QC review comments, comment responses, and resolutions are documented through track changes.

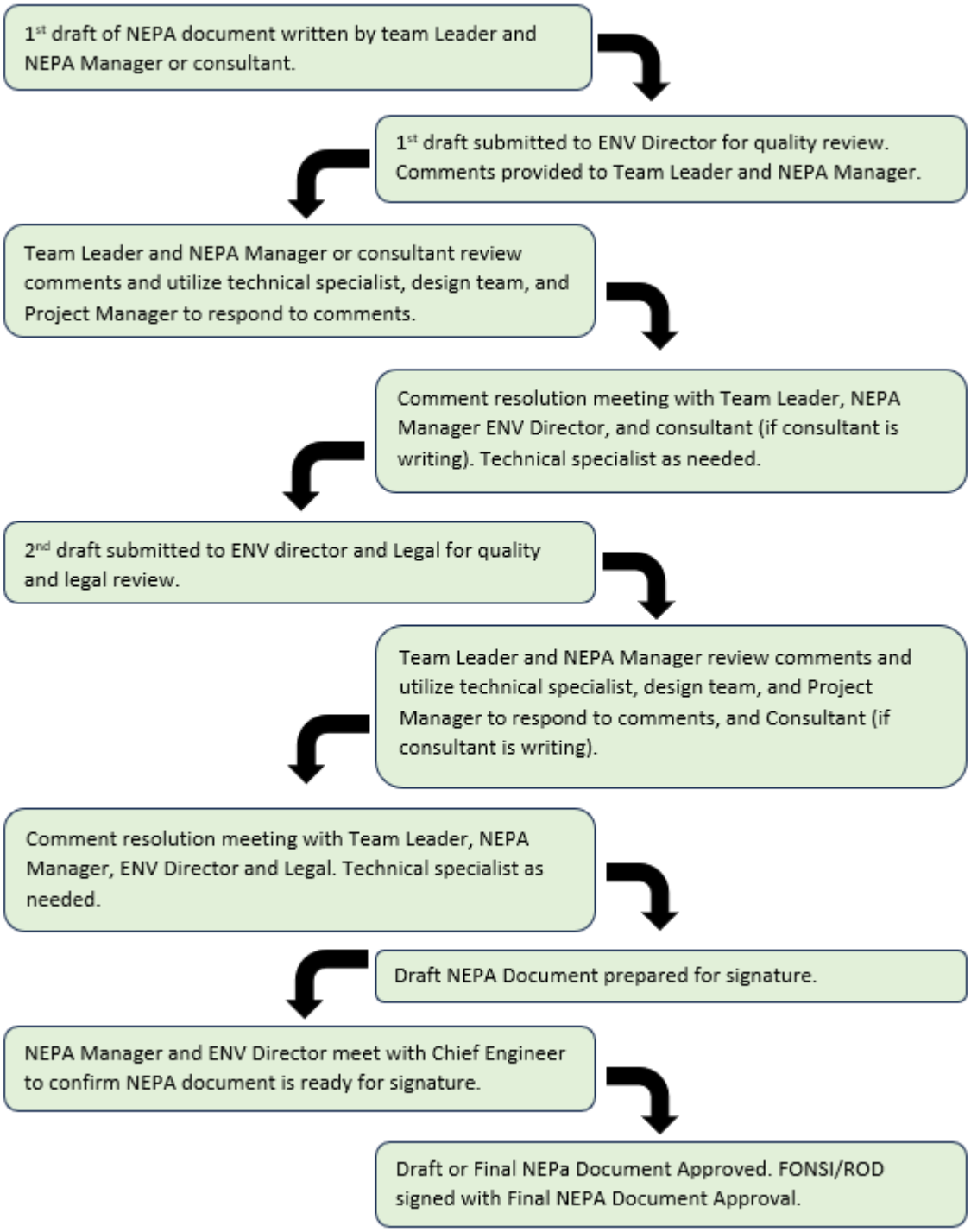
EAs, EISs will receive varying degrees of QC as they move through the process; however, the focus of the review and documentation requirements is generally the same.MaineDOT's QC process focuses on the following:

- accuracy of content
- completeness
- compliance with FHWA NEPA regulations regarding EISs (23 CFR 771.123)
- compliance with MaineDOT procedures
- compliance with MaineDOT's PIP and NPIP
- consistency – both within the environmental document and between the environmental document and supporting technical reports
- errors and omissions
- readability
-

The NEPA Manager and Environmental Director are responsible to ensure the documents and process comply with regulatory requirements and are technically sound.

Figure 1 displays the QC process for a NEPA document with each step being tracked by completion date in the ProjEx data base.

Figure 1. EA/EIS QC



6.2 Legal Review and Legal Sufficiency Review

Legal sufficiency review is performed by MaineDOT Legal Counsel for each final EIS. A legal sufficiency review is required for each final EIS [23 CFR 771.125(b)]. The Environmental Office Director will provide the EIS for MaineDOT legal counsel to review for legal sufficiency. The Environmental Office will discuss and incorporate suggestions/requirements from the legal sufficiency reviews. Completion of the legal sufficiency review will be

documented in the ProjEx database.

Legal sufficiency review by MaineDOT Environmental Counsel will also be conducted on Individual Section 4(f) evaluations. The Environmental Office Director will provide the evaluations to the MaineDOT environmental Legal Counsel for review. The Environmental Office will discuss and incorporate suggestions/requirements from the legal reviews. See Section 7.8 and 8.12 for further information.

6.3 Conflict Resolution

Occasionally during the environmental process, conflict regarding a specific environmental issue or disagreement arises. When this occurs, MaineDOT has open and timely discussion and internal experts are engaged to formulate potential solutions. If an issue cannot be resolved at the lowest level, then the issue will be escalated to an immediate supervisor. This will continue from one supervisory level to the next on both side until the issue can be resolved.

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

- FHWA Environmental Review Toolkit: Conflict Resolution
- FHWA Environmental Review Toolkit: Collaborative Problem Solving

Ultimately the conflict would be elevated to the Chief Operating Officer (Senior Agency Official) and include the MaineDOT Commissioner. MaineDOT may also reach out to Maine's Congressional Delegation.

6.4 Administrative Record

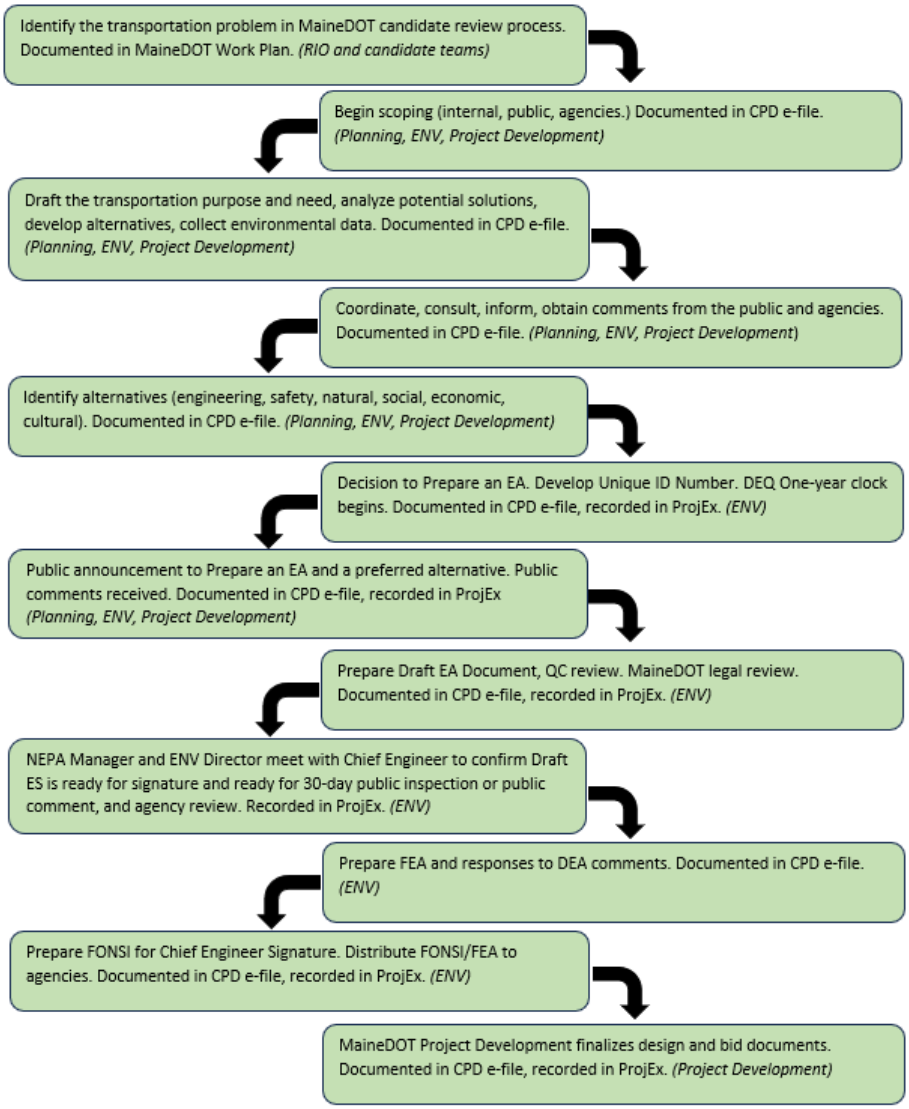
MaineDOT's Chief Counsel and the Maine Attorney General's Office lead the compilation of an administrative record for a project. The MaineDOT Environmental Office Director and NEPA Manager will assist the Chief Counsel. An example of a MaineDOT administrative record is the Brunswick Topsham, WIN 22603.00 project (**Administrative Record** – internal use only).

7 Process for Developing an EA

This section describes the process for initiating and completing an EA in accordance with FHWA NEPA regulations. An EA is one of the three classes of action identified by FHWA. According to FHWA regulations, EAs are "actions in which the significance of the environmental impact is not clearly established" [23 CFR 771.115(c)]. The EA provides the analysis that MaineDOT needs to assess the environmental impacts of its proposed action or project. If the EA identifies that the proposed project would result in no significant environmental impacts, then a FONSI is prepared. If, during the preparation of the EA, MaineDOT Environmental Office determines that the proposed action would result in significant environmental impacts, the level of NEPA documentation would be reassessed and an EIS would be prepared, if required.

An EA is prepared by following the procedures outlined in this section. Figure 2 shows steps undertaken to prepare an EA.

Figure 2. EA preparation process



7.1 Initiating Environmental Activities

Projects that are likely to be EAs will involve the NEPA Manager and ENV Director from the beginning. The Environmental Office Team Leader will automatically be assigned based on program. The NEPA Manager will determine if a consultant is assigned to prepare the EA. The decision to prepare an EA is the start of the one-year clock, and ends when the publication of the EA.

The NEPA Manager and Environmental Team Leader will work together to lead the project environmental process and coordination effort. They are responsible for coordinating with the MaineDOT Project Manager and environmental technical specialists assigned to the project. They are also responsible for managing the project's environmental deliverables, which are developed in compliance with NEPA and other federal environmental requirements.

7.1.1 Creation of Unique Identification Number

MaineDOT as the lead federal agency is responsible for creating a unique identification number (ID) for all EA and EIS projects. This number will be established to help the public and agencies to track the progress of EA and EIS projects as they move through the NEPA process. This unique ID will be refenced in all environmental documents associated with the EA as well as in MaineDOTs project database (CPD e-file) and project tracking system (ProjEx) tracking system.

Guidance for the creation of the unique ID can be found in the Memorandum for Heads of Federal Departments and Agencies Dated August 6, 2024.

7.1.2 Defining the Study Area

Once a project has been identified, the project study area is clearly defined. The study area is selected based on the project's logical termini and should encompass an area that will accommodate all anticipated alternatives. A map of the project study area will be generated following the above standards and saved to the project CPD e-file to be later implemented to the EA/EIS document. It is good practice to define the study area generously to accommodate potential adjustments to the project and to avoid the need for supplemental analyses.

7.1.3 Initiating Scoping and Public Involvement

MaineDOTconducts early coordination with federal and state agencies and local governments and holds a public meeting for projects that are likely to be EAs. Tribal coordination and consultation occur within a separate, dedicated process based on government-to- government requirements. Early agency coordination helps in refining the study area, project purpose and need, and alternatives. It is also an opportunity to gather information on environmental resources and receive input from resource agencies regarding study expectations and potential mitigation requirements. Project information should be provided to agencies in advance of any early coordination meetings and may include a project description, preliminary purpose and need, project location map, study area map, alternatives under consideration. Information gathered at these meetings is documented and included in the project file.

Following early agency coordination meetings, a public meeting is generally held. 23 CFR 771.105(c) requires that practitioners "make diligent efforts to involve the public" in the NEPA process, which includes involving minority and low-income populations. To reach minority and/or low-income populations, MaineDOT may have to use strategic outreach methods, such as holding neighborhood meetings, conducting one-on-one interviews at a community center, or interviewing community leaders from faith-based and social service organizations.

All comments received from agencies, tribes, and the public are considered in further development of the project.

MaineDOT gives careful consideration to input received in determining how to best advance. MaineDOT reviews and responds to substantive comments received and prepares a comments/responses document.

7.1.4 Determining the Class of Action

After sufficient information is assessed and the agencies and public have provided comment, the MaineDOT NEPA Manager and ENV Director determine a class of action. Class of action will be documented with a memo located in the NEPA folder of the projects CPD e-file. This determination is based on engineering and environmental considerations through coordination with technical specialists, designers, and Project Managers.

7.2 Developing a Draft EA

The EA should be a clear and concise document. It describes the existing natural, physical, and social environment and describes the potential direct, indirect, and cumulative effects of the project on the environment. The EA compares impacts of the project alternatives under consideration, including the no-build alternative and one or more build alternatives. The EA focuses on environmental resources that may be affected by the project (particularly resources for which the significance of the impacts is in question) and resources of concern identified through the scoping process. Resources with only minimal impacts should be briefly addressed. Environmental resource categories that will not be affected by the project should be acknowledged, but not further evaluated.

The target audience for the EA is the public, public officials, and regulatory agencies. Clear, plain language should be used to convey information and analyses. Detailed or lengthy descriptions of the information gathered and documented in technical reports should not be included in the EA. Instead, technical reports should be summarized in the EA using terminology easily understood by the public and should be made available for public review upon request. Tables, figures, and photographs or other graphics should be used to minimize the amount of documentation and to assist readers with their review and understanding of the project. All technical studies and other materials used to develop the EA are kept in the project file.

A preferred alternative should be identified, but is not required, in the draft EA that is made available for public review. In cases where there is no clear preferred alternative at the draft EA stage, the preferred alternative is identified in the final EA.

The environmental team should have a solid understanding of project effects on environmental resources and anticipated agency outcomes. Agency consultations do not need to be complete when the draft EA is made available for public review. The status of agency consultation and the steps necessary to complete consultation should be described in the draft EA.

FHWA's Technical Advisory T6640.8A, *Guidance for Preparing and Processing Environmental and Section 4(f) Documents*, suggests that the following information be included in the EA:

- **Cover Sheet**: The cover sheet presents the project name and project limits and identifies the NEPA lead agency and any cooperating agencies. The deadline for comments and the location where comments should be sent are also included. MaineDOT's EA approval signature is placed on the cover sheet.

  For NEPA Assignment projects, the following statement is required to appear on the cover page of the EA:

  The environmental review, consultation, and other actions required by applicable Federalenvironmental laws for this project are being, or have been, carried out by MaineDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and MaineDOT.

- **Introduction:** Introduces why an EA is being written.

- **Background:** Provides background information on the transportation asset(s) and surrounding area.

- **Purpose and Need for Action**: The transportation need that the proposed action or project is intended to satisfy is the focus of the purpose and need section of the EA.

- **Alternatives**: Alternatives under consideration are presented in this section, including the no-build alternative and one or more build alternatives. The no-build alternative serves as a baseline for comparison with the build alternatives under consideration. Alternatives that were initially considered but eliminated from further consideration are also briefly described.
- **Impacts**: The impacts section of the EA describes the natural, cultural, social, and economic impacts that would likely result from each alternative under consideration. Direct, indirect, and cumulative impacts are considered, as are both temporary (construction) and permanent impacts. Information presented should be sufficient to analyze each impact and to identify appropriate mitigation measures. For resources under the jurisdiction of resource agencies or tribes, the discussion should include the results of any completed or ongoing consultations, as applicable.

- **Coordination and Comments**: Early and ongoing coordination activities with agencies and the public are discussed in this section, along with key issues of concern agencies or the public may have. In the final EA, agency and public comments and MaineDOT responses to those comments are included, typically as an appendix.

- **Section 4(f) Evaluation (if applicable)**: If the project will have a "use" of a Section 4(f) property, a Section 4(f) evaluation is prepared. It is placed in a separate section of the EA. Note that while there may be potential Section 4(f) properties in the vicinity of the project, a formal Section 4(f) evaluation is prepared only when there is a use of a Section 4(f) property.

MaineDOT has established a template and has examples of previous EAs.

7.3 Review and Approval of the Draft EA

MaineDOT requires the subject matter experts and/or the consultant preparing an EA and supporting technical documents to conduct a technical QA/QC review of all documents. Consultant QC review includes a thorough technical edit (spelling and grammar) and a review for format, structure, and accurate content.

MaineDOT technical specialists assigned to the project are responsible for reviewing technical reports prepared in support of the EA. Technical specialists also work with the Team Leader and NEPA Manager to develop avoidance, minimization, and mitigation measures for resources in their areas of expertise.

When all comments have been addressed and the draft EA has been reviewed by the ENV Director and MaineDOT's Legal Services Office, it is ready for public review. The NEPA Manager and ENV Director recommend approval of the draft EA to the MaineDOT Chief Engineer, who signs the draft EA to denote approval for public review. Signing of the draft EA is recorded in ProjEx and the signed drafted is uploaded to the projects CPD e-file.

7.4 Public Review of the Draft EA

Once the draft EA is approved by the MaineDOT Chief Engineer, MaineDOT makes the draft EA available for public

review. To announce the availability of the draft EA for review, MaineDOT places a notice that briefly describes the project and its impacts in a news release. The notice states that the EA can be reviewed on the MaineDOT website, invites comments from all interested parties, describes where and how comments are to be submitted, and identifies the date by which comments are to be submitted. This notice is also sent to affected federal, state, and local agencies.

FHWA's NEPA regulations [23 CFR 771.119(e)or (f)] require the draft EA to be available for public review and comment for 30 days.

7.5 Public Hearing

FHWA regulations require one or more public hearings or the opportunity for hearings for any federal-aid project that meets one or more of the following criteria [23 CFR 771.111(h)(2)(iii)]:

- requires significant amounts of right-of-way
- substantially changes the layout or functions of connecting roadways or of the facility being improved
- has a substantial adverse impact on abutting property
- otherwise has a significant social, economic, environmental, or other effect
- is such that FHWA (MaineDOT, under NEPA Assignment) determines that a public hearing is in the public interest

While EAs do not require a public hearing by regulation. It is MaineDOT's practice to hold a public meeting for EAs. When a public meeting is held, the EA must be publicly available for a minimum of 15 days before the meeting and be available for review at the public meeting [23 CFR 771.119(e)]. When a public meeting is held, information regarding its date, time, and location is included in the EA public notice.

7.6 Developing the Revised EA

At the conclusion of the draft EA public review period, MaineDOT reviews all comments received and considers them in developing the final EA. MaineDOT evaluates the comments received to determine whether changes to the EA analysis, conclusions, or the project itself are warranted. Responses are provided for all substantive comments. Comments and responses become an attachment to the final EA.

The EA is revised based on public input, agency consultation, and any updated project information and becomes the final EA. If no preferred alternative was identified in the draft EA, the preferred alternative is identified in the final EA. If only one build alternative and the no-build alternative were analyzed in the draft EA, MaineDOT's decision is whether to move forward with the proposed project. If more than one build alternative was evaluated in the draft EA, the final EA identifies the preferred alternative from among the build alternatives evaluated. If no significant impacts are identified in the EA, the preferred alternative formally becomes the selected alternative in the FONSI.

The draft EA is revised by the Team Leader and NEPA Manager or Consultant to reflect any project changes, impacts, or mitigation, or to update consultation and coordination or other information regarding the project. The ENV Director reviews the revised EA and meets with the NEPA Manager to discuss whether the impacts evaluated in the EA are significant, including whether mitigation measures can be used to avoid, minimize, or reduce adverse impacts to levels that are not significant.

The following statement must appear on the cover page of the revised EA:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by MaineDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and MaineDOT.

7.7 Project Decision

After the revised EA is complete, the NEPA Manager and ENV Director make a determination regarding whether the impacts evaluated in the EA are significant, including whether mitigation measures can be used to avoid, minimize, or reduce adverse impacts to levels that are not significant. If the NEPA Manager and ENV Director determine (on the basis of the evaluation of impacts and public and agency review and input) that the proposed action would not result in significant impacts, a FONSI is recommended to the Chief Engineer. The EA documents the environmental assessment, evaluation, and recommended action and resolves the question of significance. The FONSI documents the decision for the project. It discusses the environmental issues and reaches appropriate decisions regarding mitigation and other commitments. The revised EA will be made available for public and agency review for 30 days before MaineDOT makes a final decision.

If MaineDOT concludes that the action would have significant impacts on the environment, MaineDOT could reconsider whether changes to the project design, location, or other elements would avoid, minimize, or mitigate project impacts below the level of significance. Alternatively, the MaineDOT NEPA Manger and ENV Director may recommend that an EIS be prepared. The EA would be used to facilitate the preparation of the EIS.

7.7.1 Finding of No Significant Impact

The FONSI is both the determination that the project has no significant impacts on the environment and the documentation of that decision. The FONSI is prepared only when MaineDOT determines that the project will not have a significant impact on the environment.

The FONSI is prepared by the NEPA Manager and reviewed by the ENV Director. The FONSI includes a statement selecting the preferred alternative that was identified in the EA and presents the determination that the project would have no significant impacts on the environment. The FONSI also documents all environmental commitments and mitigation measures and summarizes compliance with NEPA and other federal environmental requirements. The FONSI may be a very brief statement that incorporates the final EA and other environmental documentation by reference.

If no significant impacts are identified, the revised EA/FONSI, the public hearing transcript (if applicable), copies of any comments received and responses, and all documentation that the NEPA decision was based on will be part of the administrative record and filed in the CPD e-file and ProjEx. The EA 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 in accordance with 23 CFR 771.119(g). The FONSI will be written by the NEPA Manager and reviewed by the ENV Director.

The following statement is the core of the FONSI:

MaineDOT has determined that this project will not have any significant impact on the human or natural environment. This finding of no significant impact is based on the attached environmental assessment, which has been independently evaluated by MaineDOT and determined to adequately discuss the environmental issues and impacts of the proposed project. The environmental assessment provides sufficient evidence and analysis for MaineDOT to determine that an environmental impact statement is not required. MaineDOT takes full responsibility for the accuracy, scope, and content of the attached environmental assessment.

The following statement must appear on the FONSI:

> *The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Maine Department of Transportation pursuant to 23 United States Code 327 and a Memorandum of Understanding executed by the Federal Highway Administration and Maine Department of Transportation.*

The FONSI is signed by the MaineDOT Chief Engineer to denote approval. According to FHWA Technical Advisory T6640.8A, formal distribution of the FONSI is not required; however, a notice of availability should be sent to involved federal, state, and local government agencies, and the FONSI should be made available to the public upon request [23 CFR 771.121(b)].

MaineDOT will include measures to mitigate adverse impacts (both significant and non-significant) to be incorporated to the extent possible into the proposed action (23 CFR 771.105(e)). Some of the methods for mitigating impacts include avoidance, minimizing impacts by limiting the scope of the action, rehabilitating or restoring the affected environment, and compensating for the impact by replacing or providing substitute resources. Such measures would be eligible for Federal funding if: (1) the impact for which the mitigation was proposed resulted from the project and (2) the proposed mitigation represented a reasonable public expenditure, considering, among other things, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or other Administration regulation or policy.

The FONSI may be a mitigated FONSI, in which it shall state any mitigation that the agency adopted and any applicable monitoring or enforcement provisions. It is the responsibility of MaineDOT to ensure that the mitigation measures committed to in the environmental document are carried out. A monitoring and compliance plan for mitigation requirements and commitments shall be prepared, published, made available and documented in the Environmental Office CPD e-file and ProjEx database.

The final EA and FONSI are made available at MaineDOT and on the MaineDOT Environmental Office web page.

MaineDOT has established a template and has examples of previous EAs located in the CPD e-file.

7.8 Notice of Statute of Limitations

The statute of limitations on legal claims against a project FONSI and other related transportation project actions, such as a 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). The FONSI or other final agency action must be related to a transportation project, and a Limitation of Claims Notice must be placed in the *Federal Register* for the 150-day statute of limitations to apply. MaineDOT prepares the statute of limitations notice for FHWA to place in the *Federal Register* (only federal agencies may publish in the *Federal Register,* even under NEPA Assignment). Publication in the *Federal Register* starts the clock for the statute of limitations. The *Federal Register* Limitation of Claims Notice is separate from the notice of availability and is often prepared later in the process.

Under 23 CFR 771.139, MaineDOT can issue a limitation on claims notice in the *Federal Register* that reduces the statute of limitations for challenging a federal agency decisionfor a project from 6 years to 150 days. MaineDOT will activate the 150-day statute of limitations for those projects deemed necessary. The SOL will be saved in the project NEPA file in the CPD e-file.

Legal review by MaineDOT Counsel will be conducted on Statute of Limitation (SOL) Notices. The NEPA Manager

will provide the SOL to the MaineDOT Environmental Counsel for review. The NEPA Manager will discuss and incorporate suggestions/requirements from the legal reviews. The MaineDOT NEPA Manager is responsible for coordinating the placement of the notice in the *Federal Register* with FHWA's Maine Division.

8 Process for Developing an EIS

This section describes the process for initiating and completing an EIS and ROD in accordance with NEPA and FHWA regulations. An EIS is prepared for an action that is likely to have significant impacts on the environment. An EIS is one of the three Classes of Action identified by FHWA. According to FHWA regulations, EISs are prepared for "actions that significantly affect the quality of the human environment" [23 CFR 771.115(a)]. The EIS presents the evaluation of project alternatives and their potential impacts on the human and natural environment to support MaineDOT's decision regarding which alternative to approve. A ROD is prepared at the conclusion of the EIS process to document MaineDOT's decision and the basis for that decision.

An EIS describes the purpose and need for the proposed action, a range of reasonable alternatives that would address the purpose and need, and the affected environment. It presents a detailed analysis of the potential impacts resulting from each reasonable alternative. The EIS also documents the project's compliance with other applicable environmental laws, regulations, and executive orders.

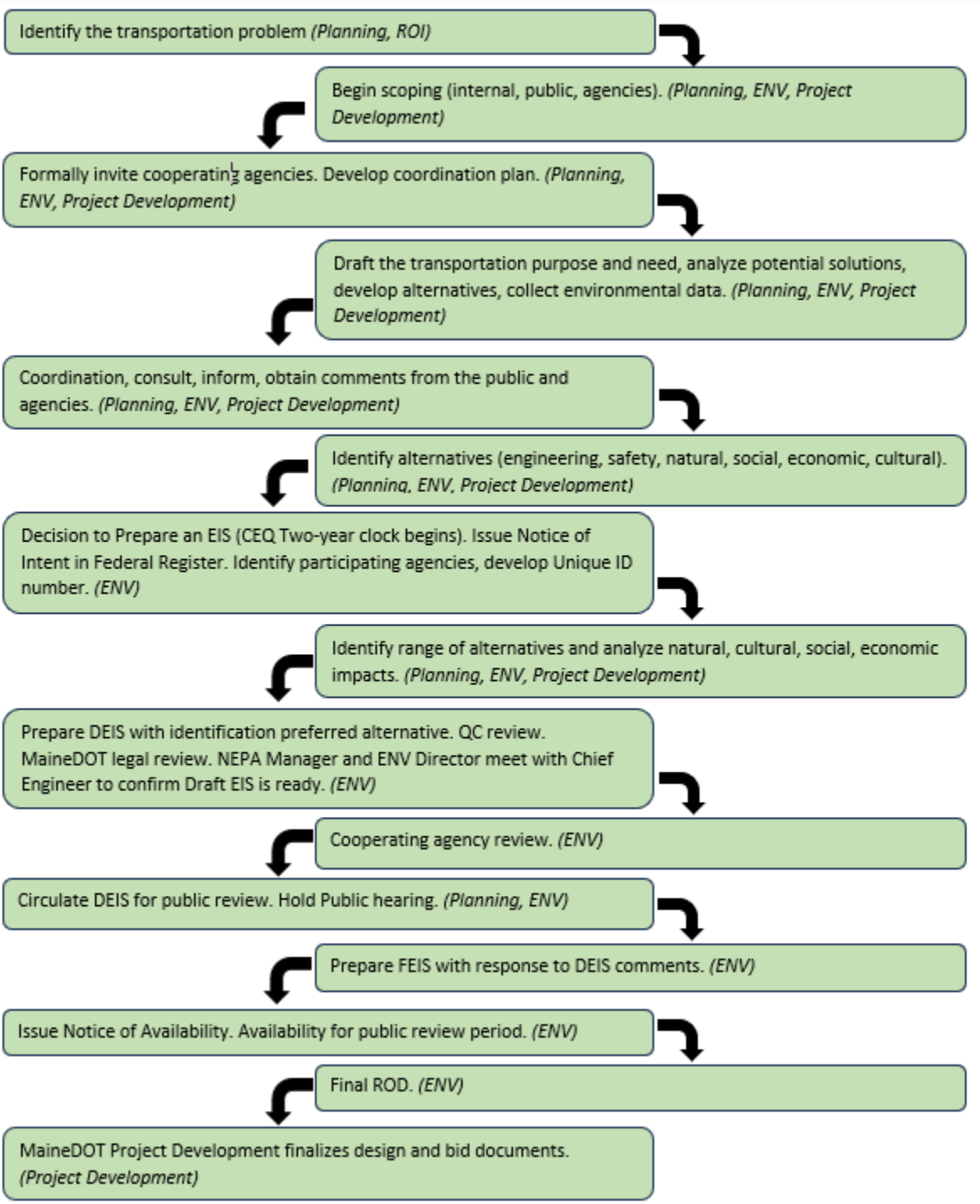
Actions requiring an EIS are considered Class I actions (23 CFR 771.115). Examples of Class I actions that normally require an EIS are:

1. A new controlled-access freeway
2. A highway project of four or more lanes in a new location
3. Construction or extension of a fixed transit facility (for example, rapid rail, light rail,commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way
4. New construction or extension of a separate roadway for buses or high-occupancy-vehicles not located within an existing highway facility

Fewer than 5 percent of federal-aid highway projects involve EISs. EISs are generally prepared for the most complex projects with the largest environmental impacts and require the most time and resources to complete.

Figure 4 shows the basic steps undertaken to prepare an EIS. For a supplemental EIS, it is important to determine the extent to which a change has occurred, whether agency and public scoping is needed, whether the initial purpose and need has changed, whether new alternatives have been added and require screening, and whether other similar changes have occurred that could affect the steps in the process.

Figure 3. EIS preparation process



8.1 Types of EISs

MaineDOT uses three types of EIS processes and documents to support its transportation decision-making process and the delivery of projects throughout the state: project-level, tiered, and supplemental.

8.1.1 Project level EIS

The most common type of EIS is prepared for a specific project and is referred to as a project-level EIS. A project-level EIS evaluates a proposed action with known, defined elements and location and well-defined implementation, construction, and operation characteristics. The proposed action would have independent utility and logical termini and would be part of an overall transportation program.

8.1.2 Tiered EIS

A tiered EIS is used when a project-level EIS is not appropriate but a decision on proposed transportation improvements is needed. With a tiered EIS approach, the environmental analysis starts at the broadest, or programmatic, level. A Tiered EIS evaluates the effects of broad proposals or planning-level decisions that may include:

- a wide range of individual projects
- implementation over a long-time frame
- implementation across a large geographic area

The level of detail in a Tiered EIS is sufficient to allow an informed decision to be made among broad planning-level alternatives and to develop broad mitigation strategies. For a transportation project, a Tiered EIS would typically select among several alternative corridors under consideration for future specific transportation projects. Project-level issues such as specific design details and precise project footprint are not evaluated in the Tiered EIS; this information is not available for consideration at the planning level. ATiered EIS is typically followed by site-specific environmental reviews that may take the form of a project specific EIS, an EA, or a CE.

For MaineDOT, use of a tiered EIS may be appropriate to analyze a broad transportation problem where funding for improvements is not yet identified and where no project is included in a fiscally constrained regional transportation plan. The tiered EIS process would allow MaineDOT to approve a project at a corridor level to facilitate planning activities within the affected jurisdictions before implementation of site-specific projects.

A Tiered EIS identifies transportation and environmental conditions within a study area, identifies a range of feasible opportunities for improvements, and evaluates the environmental effects of concept-level improvements. Information presented in a Tiered EIS is based primarily on available information; close coordination with local, state, and federal officials; and limited field surveys. This level of analysis is commensurate with the corridor-level decisions being made and is at an appropriate level of detail to allow a comparison of the relative differences in the range of costs and potential impacts of the improvement concepts. The build alternatives selected through the Tiered EIS would be analyzed in more detail in subsequent project specific NEPA studies. Subsequent studies at the project level would address site-specific details and NEPA review may be through EISs, EAs, or CEs.

8.1.3 Supplemental EIS

A supplemental EIS is prepared if substantial changes related to environmental concerns are made to a proposed action, or if new circumstances or information relevant to the environmental concerns of the proposed action become known. Circumstances such as development of a new alternative for consideration or design changes that result in new significant environmental impacts would likely require a supplemental EIS. Both a draft and final EIS may be supplemented because of substantial new or changed circumstances. A supplemental draft EIS would be prepared, if necessary, when major changes occur prior to approval of the final EIS. If circumstances relevant to the decision change substantially after the final EIS and ROD are approved, a supplemental final EIS would be prepared.

8.2 Efficient Environmental Review Process

Congress has made efforts to streamline transportation projects, establishing the "Efficient Environmental Review Process," which is mandatory for EISs and is codified at 23 USC 139, with the following requirements:

- USDOT is the lead agency for projects under 23 USC 139. For MaineDOT projects, FHWA is typically the modal administration involved. Under NEPA Assignment, MaineDOT takes the lead agency role for all 23 USC 139 activities.
- The lead agency must invite all federal, state, local, and tribal government agencies that may have an interest in the project to be participating agencies [23 USC 139(d)].
- Agencies defined as participating and cooperating agencies must carry out their obligations under other applicable laws concurrently and in conjunction with theirNEPA review in a timely and environmentally responsible manner [23 USC 139(d)(7)].
- The lead agency must develop a coordination plan for public and agency participation and comment during the environmental review process; the plan must include a schedule [23 USC 139(g)].
- Participating agencies and the public must be given an opportunity for providing input in the development of the project purpose and need and the range of alternatives to be considered [23 USC 139(f)].
- The lead agency must collaborate with participating agencies on the appropriatemethodologies to be used and the level of detail for the analysis of project alternatives [23 USC 139(f)(4)(C)].
- The lead agency and participating agencies must work cooperatively to identify and resolve issues that could delay the completion of the environmental review process or result in denial of any approvals required for the project under applicable laws. 23 USC 139(h) provides an issue identification and resolution process, including referral to CEQ and financial penalties.
- To the maximum extent practicable, all permits and reviews for a transportation project should rely on a single NEPA document developed by the lead agency. That NEPA document must be sufficient to satisfy the requirements for any federal approval or other federal action for the project, including federal agency permits [23 USC 139(d)(8)].
- A 150-day statute of limitations is established for project judicial review, provided that a notice of final agency action is published in the *Federal Register* [23 USC 139(l)].
- A single document including both the final EIS and ROD should be used, unless:
    - The final EIS makes substantial changes to the proposed project relevant toenvironmental or safety concerns, or
    - There are significant new circumstances or information relevant to environmentalconcerns that bear on the proposed project or its impacts [23 USC 139(n)].

The following documents provide additional guidance on complying with the 23 USC 139 environmental review process.

- FHWA/Federal Transit Administration *SAFETEA-LU Environmental Review Process Final Guidance*
- *Final Guidance on MAP-21 Section 1319 Accelerated Decision making in Environmental Review*
- The AASHTO Practitioner's Handbook 9, *Using the SAFETEA-LU Environmental Review Process*

8.2.1 Environmental Review Process Participants

Lead Agency: Under NEPA Assignment, MaineDOT is the federal lead agency for assigned projects. As the direct recipient of federal-aid funds, it is also required to be a joint lead agency under 23 USC 139(c)—thus, MaineDOT

serves in both roles. At MaineDOT's discretion, other federal, state, or local agencies may act as joint lead agencies. See the *SAFETEA-LU Environmental Review Process Final Guidance*for additional information.

Participating Agencies: The environmental review process established an agency category, called the "participating agency." This category is intended to encourage interested agencies at all levels of government to become engaged in the project and its NEPA evaluation. Any agency that "may have an interest in the project" must be invited to become a participating agency in the project environmental review [23 USC 139(d)]. There is a high bar for designating federal participating agencies: any federal agency invited to be a participated agency is designated as a participating agency unless it declines in writing, stating that it:

- Has no jurisdiction or authority with respect to the project;
- Has no expertise or information relevant to the project; *and*
- Does not intend to submit comments on the project.

State and local agencies are designated as participating agencies only if they agree in writing to serve as a participating agency. Participating agency invitation letters are required to be sent within 45 days of the NOI (see below) and must include a deadline for response.

Cooperating Agencies: Cooperating agencies are defined as any federal agency with jurisdiction by law or special expertise for any environmental issue that will be addressed in the EIS [23 CFR 771.111(d)]. Any federal agency that meets this definition must be invited to be a cooperating agency. Any cooperating agency also meets the definition of a participating agency and needs to be formally invited to serve in both roles.

The NEPA Manager and Team Leader will establish the participating and cooperating agency list and send out invitations. All letters, responses and documentation related to Participating, cooperating, lead agencies is saved in the CPD e-file.

8.3 Notice of Intent

The EIS is initiated with the publication of an NOI, published in the *Federal Register*. The publication of the NOI begins the 2-year clock for the EIS process. The NOI informs the public of the upcoming EIS study and analysis and provides information regarding how the public can become involved. MaineDOT prepares the NOI once it has consulted with any other project sponsors and has decided to prepare an EIS (23 CFR 771.123). Only federal agencies are permitted to publish in the *Federal Register*, so MaineDOT submits the NOI to FHWA for publication. The NOI includes the following :

1. The purpose and need for the proposed action
2. A preliminary description of the proposed action and alternatives the environmental impact statement will consider
3. A brief summary of expected impacts
4. Anticipated permits and other authorizations
5. A schedule for the decision-making process
6. A description of the public scoping process, including any scoping meeting(s)
7. A request for comment on alternatives and effects, as well on relevant information, studies, or analyses with respect to the proposed action
8. Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement
9. Identification of any cooperating and participating agencies, and any information that such agencies require in the notice to facilitate their decisions or authorizations that will rely upon the resulting environmental impact statement; and

10. A unique identification number for tracking purposes, which the agency shall reference on all environmental documents prepared for the proposed action and in any database or tracking system for such documents.

MaineDOT posts the NOI on its website.

See FHWA Technical Advisory T 6640.8A, Appendix B, for more information regarding the NOI content and format. Another document, *Federal Register Document Drafting Handbook* (January 7, 2022 revision), provides detailed instructions on preparing noticed for the *Federal Register*.

The following statement must appear in the NOI:

> *The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by MaineDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and MaineDOT.*

8.4 Early Public and Agency Involvement

Public and agency involvement is an essential element of EIS development. Because an EIS is prepared for only the most complex projects with significant environmental issues, public and agency involvement require specific steps. EIS public involvement requirements are intended to enhance public and agency engagement so issues that could delay project approval are identified early and resolved efficiently, with streamlined environmental approval and efficient project delivery being the goal. Early public and agency involvement will begin with letters sent to federal agencies and the public, a copy of the notification letter and any responses received will be saved to the projects CPD e-file.

Federal agencies are directed to collaborate on issues and, where possible, to develop a single EIS that addresses the requirements of all federal agencies that must take action on the project (for example, approvals and/or permits issued under the Endangered Species Act, National Historic Preservation Act, and Clean Water Act).

8.4.1 Coordination Plan and Checklist

The 23 USC 139 environmental review process requires that a coordination plan be developed and in place within 90 days of NOI publication [23 USC 139(g)]. The plan addresses how agencies and the public will participate and provide input during the environmental review process. An environmental review process schedule (established after consultation with and concurrence of each participating agency) is a required element of the coordination plan. Coordination plans are sent to participating agencies for review and comment. Template of a coordination plan can be found in the CPD E-file.

As part of the 23 USC 139 process [23 USC 139(e)(5)], MaineDOT, in consultation with participating agencies, is also required to develop a checklist (as appropriate) to help project sponsors identify potential natural, cultural, and historic resources in the area of the project. The checklist is intended to assist the lead agency and project sponsor:

- identify resource agencies and organizations that can provide information aboutnatural, cultural, and historic resources;
- develop the information needed to determine the range of alternatives; and
- improve interagency collaboration to help expedite the permitting process for the leadagency and

participating agencies.

The MaineDOT NEPA Manager will establish a plan for coordinating public and agency participation on the environmental review process for a project within 90 days of a NOI being published. MaineDOT will work with participating and cooperating agencies on a coordination plan before submitting an NOI in order to understand the agencies roles and timeframes. The plan will include all agencies, their roles and applicable regulations, input points, timeframes, and scheduled public participation.

MaineDOT will establish as part of the coordination plan, after consultation with and the concurrence of each participating agency for the project, a schedule for completion of the environmental review process for the project. MaineDOT will consider factors such as:

- the responsibilities of participating agencies under applicable laws;
- resources available to the cooperating agencies;
- overall size and complexity of the project;
- the overall time required by an agency to conduct an environmental review and make decisions under applicable Federal law relating to a project (including the issuance or denial of a permit or license) and the cost of the project; and
- the sensitivity of the natural and historic resources that could be affected by the project

The MaineDOT NEPA Manager may revise the plan and lengthen or shorten a schedule for good cause, unless, if doing so would impair the ability of a cooperating Federal agency to conduct necessary analyses or otherwise carry out relevant obligations of the Federal agency for the project. The NEPA Manager will work closely with the cooperating and participating agencies on any changes. MaineDOT and the participating agencies will work cooperatively in accordance with 23 U.S.C. 139 to identify and resolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws. MaineDOT and the participating agencies will follow the responsibilities, deadlines, involvement of the public, identification and resolution of issues spelled out in 23 U.S.C. 139

MaineDOT will consult FHWA's Environmental Review Process Checklist for projects subject to 23 USC 139.

8.4.2 Scoping

Scoping is an early and open process through which the NEPA lead agency (MaineDOT) gathers input from agencies and the public to determine the scope of issues to be addressed in the EIS and to identify the issues related to the proposed action. The project purpose and need and range of alternatives to be addressed in the EIS are also identified through the scoping process (23 CFR 771.123). As part of the scoping process, the lead agency invites the participation of affected federal, state, and local agencies, affected Native American tribes, and the interested public. Participating agencies and the public must be given the opportunity to provide input on the draft purpose and need and range of alternatives to be considered [23 USC 139(f)]. Following this input, the lead agency finalizes the project purpose and need and range of alternatives to be considered for the project. The lead agency, in collaboration with participating agencies, also determines the methodologies to be used and level of detail required for analysis of project alternatives [23 USC 139(f)].

Participating agency invitations are sent out and copies of these letters are included in the EIS, along with responses received and documentation of any early coordination meetings held with agencies or tribes.

While public meetings are not required as part of the scoping process, MaineDOT typically holds a public meeting to solicit feedback from the public. Notification of any meeting must be published in a local or regional

newspaper and will comply with FHWA's public involvement requirements.

All scoping comments received from agencies, tribes, and the public are considered in further development of the project and EIS. MaineDOT gives careful consideration to input received in determining how to best advance the EIS. MaineDOT responds to all substitutive comments received and prepares a summary. The summary is consulted during development of the EIS and included in the project file. A summary of scoping activities is also included in the EIS.

Steps	Check
Invite participation of affected federal, state, and local agencies, affected Native American tribes, and the Interested public.	☐
Invitations saved to be included in the EIS.	☐
Responses to invitations received and saved to be included in the EIS.	☐
Participating agencies and the public are provided an opportunity to provide input on the draft purpose and need as well as the range of alternatives.	☐
Comments received from participating agencies and the public.	☐
Responses to all substitutive comments received and summary prepared.	☐
Summarize all scoping activities to be included in the EIS.	☐

Figure 4. Scoping Checklist

8.5 Developing a Draft EIS

The EIS presents a detailed evaluation of the proposed action and alternatives. Each alternative under consideration should be discussed in comparable detail to allow the reader to evaluate the comparative merits of the alternatives. The impacts associated with each alternative must be objectively analyzed and rigorously evaluated. The EIS describes the area's existing natural, physical, and social environment and discusses the potential direct, indirect, and cumulative environmental effects of the project alternatives. MaineDOT utilizes the recommended EIS format and consults the following references for additional guidance:

- FHWA's Technical Advisory T 6640.8A, *Guidance for Preparing and Processing Environmental and Section 4(f) Documents*
- Interim Guidance on MAP-21 Section 1319 Accelerated Decision making in Environmental Reviews | Federal Highway Administration (dot.gov)
- FHWA Environmental Toolkit

The target audience for an EIS is the general public, public officials, and regulatory agencies. Clear, plain language should be used to convey information. Tables, figures, and photographs or other graphics should be used to assist readers with their review andunderstanding of the project. All technical studies and other materials used to develop the EIS must be kept in the project file.

A summary of information, including NOI comments and alternatives and analysis submitted by commenters, will be included in the Draft EIS or its appendices.

A preferred alternative may be identified in the draft EIS that is made available for public review and should be identified at that time if MaineDOT has identified a preferred alternative. Otherwise, the preferred alternative is identified in the final EIS. Note that to use a combined final EIS and ROD, the preferred alternative must be

identified in the draft EIS. To use this approach, the draft EIS must provide notification that the final EIS and ROD will be combined when it is filed with the U.S. Environmental Protection Agency (EPA).

MaineDOT has templates and previous EIS documents as format guides.

8.6 Draft EIS Review and Approval

MaineDOT utilizes prequalified consultants to prepare the EIS. MaineDOT requires the consultant preparing the EIS and supporting technical documents to conduct a technical QC review of all documents prior to submittal to MaineDOT for review. Consultant QC review includes a thorough technical edit (spelling and grammar) and a review for format, structure, and accurate content.

MaineDOT technical specialists assigned to the project are responsible for reviewing technical reports prepared in support of the EIS. Technical specialists also work with the Team Leader, NEPA Manager, and EIS consultant to develop avoidance, minimization, and mitigation measures for resources in their area of expertise.

When all comments have been addressed, the NEPA Manager will submit the draft EIS to the ENV Director for review and to the MaineDOT Legal Services Office for an initial legal review. Once the legal review has been completed and the draft EIS is ready for public review, the NEPA Manager and ENV Director recommend approval of the draft EIS to the MaineDOT Chief Engineer, who signs the draft EIS to denote approval for public review.

8.7 Public Review of the Draft EIS

Once the draft EIS is approved by the MaineDOT Chief Engineer, MaineDOT makes the draft EIS available for public review. MaineDOT's will notify the public and meet FHWA requirements to reach potential Title VI populations.

Under NEPA Assignment, MaineDOT files the draft EIS with. EPA publishes a notice of the EIS in the *Federal Register*. The notice invites comments from all interested parties and identifies where the draft EIS can be reviewed, the date by which comments must be received, and the address of the person to which comments should be sent.

In accordance with 23 CFR 771.123(i), the draft EIS must be available for public review and comment for not less than 45 days and not more than 60 days, unless MaineDOT (under NEPA Assignment) establishes a different comment period with the agreement of all participating agencies.

All draft EISs are submitted electronically to EPA through the use of the EPA e-NEPA online tool. After receiving the draft EIS, the Office of Federal Activities EIS Filing Section prepares and publishes the notice of the draft EIS for publication in the *Federal Register*. EPA assigns a unique identifier number to each EIS; this number is used for the final EIS and any other correspondence with EPA or publication in the *Federal Register* pertaining to the project.

Notices are published only on Fridays in the *Federal Register*. EPA must receive a draft EIS by the end of the preceding week in order for the notice to be published on the following Friday. MaineDOT also publishes a separate notice with the information in the *Federal Register* notice in a newspaper with local or regional circulation and on the MaineDOT website. This notice is also sent to affected federal, state, and local agencies.

The following statement must appear in the Notice of Availability (NOA) for the draft EIS:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by M AINEDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and MaineDOT.

8.8 Public Hearing

FHWA's public involvement requirements [23 CFR 771.111(h)] stipulate that one or more public hearings or opportunities for public hearings be held for projects requiring an EIS. The public hearing is held during the draft EIS comment period. Whenever a public hearing is held, the draft EIS must be available at the public hearing and for a minimum of 15 days in advance of the public hearing [23 CFR 771.111(h)]. The following information is to be explained at the public hearing, as applicable:

- purpose of and need for the project
- alternatives and major design features
- impacts of the project
- relocation assistance program and right-of-way acquisition process
- MaineDOT's procedures for receiving public comments, both oral and written

And, as a practical matter, to help the public gain a basic understanding of the NEPA process, include information on the following topics at any hearing:

- What is NEPA?
- What is the purpose and need?

MaineDOT will have a court reporter at all public hearings for EAs and EISs. The court reporter will provide the transcript to MaineDOT for our administrative record. The Environmental Team Leader will ensure the transcript is saved to the project file (CPD e-file).

For additional information on the public hearing and how the agency will meet FHWA requirements see the MaineDOT PIP.

8.9 Developing the Final EIS

MaineDOT reviews all comments received on the draft EIS and considers these comments in developing the final EIS. MaineDOT develops a response for each substantive comment received. The NEPA Manager and ENV Director will determine which comments are substantive (and request review from MaineDOT's Environmental Attorney, if necessary). Responses are crafted by technical experts, MaineDOT team members, and the NEPA Manager. Responses are reviewed and given final approval by the NEPA Manager, ENV Director, Project Manager, and MaineDOT Environmental Attorney. All comments and responses to substantive comments are saved in the project CPD e-file. Comments received during the public review period, and the responses, are included in the final EIS. Once comments have been addressed, the final EIS can be prepared. It identifies the preferred alternative, explains why it was preferred, and evaluates all reasonable alternatives considered [23 CFR 771.125(a)(1), FHWA Technical Advisory T 6640.8A(J)]. If the preferred alternative identified in the final EIS is different from the preferred alternative presented in the draft EIS, the final EIS must clearly identify the changes, describe the reasons for the changes, and discuss the reasons why any new impacts are not of major concern.

The final EIS also summarizes agency involvement and documents compliance with all applicable environmental laws and executive orders (for example, Section 7 of the Endangered Species Act, Section 106 of the National

Historic Preservation Act, Section 4(f) of the U.S. DOT Act, and Section 404 of the Clean Water Act). When it is not possible to comply with all other applicable requirements, the final EIS must provide reasonable assurance that such requirements can be met [23 CFR 771.125(a)(1)]. Mitigation measures that are to be incorporated into the proposed action are described. Those mitigation measures presented as commitments in the final EIS will be incorporated into the project [23 CFR 771.109(b) and (d)].

The following statement must appear on the cover page of the final EIS:

> *The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by MaineDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and MaineDOT.*

In the case where MaineDOT withdraws, cancels or otherwise ceases the consideration of a proposed action before the completion of a final EIS, MaineDOT will publish a notice in the Federal Register.

8.10 Final EIS Review and Approval

Review of the final EIS occurs in the same manner as the draft EIS review, as described previously. Once all comments have been addressed, the NEPA Manager and ENV Director determine the final EIS is ready for approval.

8.10.1 Legal Sufficiency Review

The Environmental Offic Director submits the final EIS to MaineDOT Legal Counsel for a legal sufficiency review. The final EIS may not be approved until it has been determined to be legally sufficient [23 CFR 771.125(b)]. The MaineDOT Legal Counsel provides written confirmation that the final EIS is legally sufficient and can be approved. This letter is saved in the CPD e-file.

8.10.2 Final EIS Approval

Following the determination of legal sufficiency, the MaineDOT NEPA Manager and ENV Director recommend approval of the final EIS to the MaineDOT Chief Engineer, who signs the final EIS to denote final approval.

When the final EIS has been approved, it follows the same filing and notice process with EPA as the draft EIS, as described in Section 8.7, *Public Review of the Draft EIS*. The final EIS is available for public review and comment for a 30-day period.

The following statement must appear in the Notice of Availability for the final EIS:

> *The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by MaineDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and MaineDOT.*

This information is also published in a local or regional newspaper and posted on the MaineDOT website. Email notification is sent to all involved agencies. The final EIS is made available at MaineDOT and on the MaineDOT Environmental Office web page.The public hearing transcript, public comments and MaineDOT responses are placed in the project file.

8.10.3 Prior Concurrence

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

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

1. Any action for which MaineDOT determines that the final EIS should be reviewed at the Executive Office Level. This would typically occur when the NEPA Manager determines that (i) additional coordination with other Federal, State or local governmental agencies is needed; (ii) the social, economic, or environmental impacts of the action may need to be more fully explored; (iii) the impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or (v) the action involves national policy issues.

2. Any action to which a Federal, State, or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

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

8.11 Record of Decision

After preparing the final EIS and selecting a project alternative, MaineDOT prepares a draft ROD. The draft ROD is prepared by the NEPA Manager or consultant and reviewed by the ENV Director. The MaineDOT NEPA Manager and ENV Director provide the final ROD the MaineDOT Chief Engineer for signature. The ROD may be signed no sooner than 30 days after publication of the final EIS notice in the *Federal Register* or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD represents MaineDOT's final decision on the project.

The ROD presents the selected alternative and the basis for its selection (23 CFR 771.127). It briefly describes each alternative and explains the balancing of values that formed the basis of the alternative selection. The ROD must also identify the environmentally preferred alternative (or alternatives) and—if a different alternative is selected—state the reasons why the environmentally preferred alternative was not selected. The ROD summarizes any mitigation measures that will be incorporated into the project and documents any required Section 4(f) approval.

The ROD will identify and respond to all substantive comments received on the final EIS [FHWA Technical Advisory T 6640.8A (VIII)(F)].

The following statement must appear in the ROD:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by MaineDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and MaineDOT.

The EIS, ROD, copies of any comments received and responses, and all documentation that the NEPA decision was based on will be part of the administrative record and filed in the CPD e-file and ProjEx. The EIS/ROD 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.

MaineDOT has templates and previous RODs as format guides.

8.11.1 Combined Final EIS and Record of Decision

Following the streamlining requirements of 23 USC 139(n) and 23 CFR 771.124, *Final environmental impact statement/record of decision document*, after circulation of a draft EIS and consideration of comments received, the lead agency must combine the final EIS and ROD, to the maximum extent practicable, unless:

1. The final EIS makes substantial changes to the proposed action that are relevant toenvironmental or safety concerns; or
2. There are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or the impacts of the proposed action.

To take advantage of this approach, the preferred alternative must be identified in the draft EIS. In addition, the draft EIS must provide notification that the final EIS and ROD will be combined to follow this approach. For additional information regarding the combined final EIS/ROD, see:

- USDOT's *Final Guidance on MAP-21 Section 1319 Accelerated Decision making in Environmental Reviews*
- FHWA/FederalTransit Administration *Revised Environmental Review Process Guidance for Public Comment*

The MaineDOT ENV Director determines whether to combine the final EIS and ROD based on the specifics of the proposed action, the cooperating and participating agencies involved, and the above guidance.

When a combined final EIS/ROD is prepared, the applicable requirements for both a final EIS and ROD must be met (MAP-21 Final Guidance, 23 CFR 771.125). The combined final EIS and ROD are made available to all agencies and individuals who provided substantive comments on the draft EIS or who requested a copy. If the final EIS and ROD are combined, they cannot be signed any sooner than 90 days after the publication of the Notice of the draft EIS.

8.12 Statute of Limitations and Limitation of Claims Notice

The statute of limitations on legal claims against a ROD 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 ROD or other 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.

Legal review by MaineDOT Environmental Counsel will be conducted on Statute of Limitation (SOL) Notices. The

NEPA Manager will provide the SOL to the MaineDOT Environmental Counsel for review. The NEPA Manager will discuss and incorporate suggestions/requirements from the legal reviews. The SOL will be saved in the project NEPA file in the CPD e-file.

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 NEPA Manager is responsible for coordinating the placement of the notice in the *Federal Register* with FHWA's Maine Division

8.13 Supplemental EIS

As described in Section 8.1.3 of this section, if an agency makes substantial changes to the proposed action or if it discovers significant new information relevant to environmental concerns that may affect the proposed action or its impacts, a supplement to either a draft or final EIS may be needed. If a supplemental draft or final EIS is warranted, the document is prepared following the procedures for developing a draft and final EIS outlined earlier in this section, including public and agency involvement, QC, and MaineDOT review and approval. Supplemental EIS will be documented in the project file and CPD e-file.

8.14 Federal Infrastructure Permitting Dashboard

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

Under NEPA Assignment, MaineDOT's NEPA Manager and ENV Director will provide the project information (within in 90 days of the NOI) for all EISs via the Permitting Dashboard web site.

The Permitting Dashboard provides the following FAST-41 Process.

8.15 Coordinating other Environmental Reviews with NEPA

This section briefly discusses the need to coordinate and sequence the NEPA EIS preparation and review process with the requirements of other environmental laws and regulations for review, comment, coordination, and consultation. While environmental reviews can be required for an EIS for numerous laws and regulations based on the type, location, and complexity of the MaineDOT project, this section focuses on the four laws that tend to involve reviews for EIS documents:

- Clean Water Act Section 404 permitting process, under the jurisdiction of USACE
- National Historic Preservation Act Section 106 consultation process, under the jurisdiction of the Advisory Council on Historic Preservation
- Endangered Species Act Section 7 compliance, under the jurisdiction of USFWS and NOAA
- Department of Transportation Act of 1966 Section 4(f) compliance

More detailed information is available in the following publications from FHWA and AAASHTO:

- FHWA 2015 Red Book – *Synchronizing Environmental Reviews for Transportationand Other Infrastructure Projects*, Publication No. FHWA-HEP-15-047, September 2015 (includes Appendix C – Coordination & Implementation Table for aSample EIS Project)
- AASHTO Practitioner's Handbook 17 – *Complying with Section 7 of the EndangeredSpecies Act for*

Transportation Projects, November 2016

- AASHTO Practitioner's Handbook 06 – *Consulting under Section 106 of the NationalHistoric Preservation Act*, August 2016
- AASHTO Practitioner's Handbook 11 – *Complying with Section 4(f) of the U.S. DOTAct*, May 2009

In addition to the publications listed above, numerous resources on how to properly comply with and consult on the four environmental laws and other laws, regulations, and Executive orders are available in FHWA guidance documents on the FHWA website. MaineDOT guidance can be found in the attached appendices, clean water act appendix Q, Section 106 appendix J, ESA appendix D, and Section 4(f) appendix K.

9 EA and EIS Re-Evaluations and Supplemental EISs

9.1 Re-evaluations

Re-evaluation of NEPA decisions is undertaken to determine the validity of a previously approved NEPA document. Note that re-evaluations are not required under NEPA or by the CEQ, but rather are required by FHWA regulation (23 CFR 771.129).

Re-evaluations are triggered by the following:

- substantial changes to the project, such as changes to engineering, design, or construction, project limits that result in impacts not previously evaluated.
- (for example, change in project footprint, change in construction timing,change in project elements)
- substantial changes to the environmental setting, such as federal delisting or newlisting of a species
- changes in environmental laws, regulations, or policies
- changes to environmental commitments (for example, replacing an environmental commitment with a different one or learning that the commitment is not constructible)that could change the impacts discussed in the environmental document
- a 3-year time lapse between a draft EIS an approved final EIS or between a final EIS and a ROD [23 CFR 771.129(a) and (b)]
- when the project, or a phase of the project, proceeds to the next major federal approval (final design, right-of-way acquisition, construction) [23 CFR 771.129(c)]

The re-evaluation should consider the entire project analyzed in the original NEPA document. All environmental sections require re-evaluation to review whether impacts have changed as compared with the previous NEPA document and whether any impact changes result in new or significant impacts (consider whether the changes would cause impacts that are different in type or intensity compared with the original NEPA document). Documentation should be appropriate to the project changes, environmental impacts from the changes, potential for controversy, and length of time since the last NEPA document was completed. 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. The re-evaluation will be completed by the Environmental Team Leader as a memo to the file saved in the CPD e-file and documented in the ProjEx database.

The re-evaluation does not require public circulation unless changes to environmental resources with legal public involvement requirements such as Section 4(f) (de minimis park impacts) and Section 106 are involved or MaineDOT believes public circulation of the re-evaluation is in its best interest.

There are three possible outcomes for a re-evaluation:

- Supplemental environmental documents are not required. If this is the case, then the re-evaluation determines that the previous document/finding (EA/FONSI, EIS/ROD) is still valid.
- Preparation of a supplemental EA is required.
- Preparation of a supplemental EIS is required.

The MaineDOT NEPA Manager approves the re-evaluation or makes the determination that a supplemental environmental document is necessary.

9.2 Supplemental EAs

If MaineDOT is uncertain regarding the significance of new impacts, a supplemental EA may be prepared [23 CFR 771.130(c)]. Alternatively, MaineDOT may know that the proposed project changes would not result in significant impacts but would choose to prepare formal NEPA documentation to support the conclusion of no new significant impacts. Analysis and documentation of a supplemental EA should focus only on changes to the project.

The outcome of a supplemental EA will be either (1) a determination or validation that the new impacts are not significant and, thus, do not warrant an EIS or (2) a determination that the new impacts are significant and will require an EIS.

If significant impacts are not identified in the supplemental EA, an amended FONSI is prepared. If significant impacts are identified, a draft and final EIS would be prepared, followed by a ROD.

9.3 Supplemental EISs

Supplemental EISs are required under the following conditions:

- A re-evaluation is completed after a draft EIS has circulated, and it identifies new significant impacts.
- Changes to the project (for example, design, scope) would result in significant environmental impacts not evaluated in the previously approved NEPA document.
- New information or circumstances related to environmental concerns would result insignificant impacts not evaluated in the previously approved NEPA document.

A Supplemental EIS is not required if the project changes, new information, or new circumstances reduce environmental impacts without causing other environmental impacts that are significant or not evaluated in the previous EIS.

Sometimes, a supplemental EIS may be required to address issues of limited scope (for example, extent of mitigation or location of design change for a limited part of the overall project). In this situation, preparation of the supplemental EIS does not necessarily prevent the granting of new approvals, withdraw previous approvals, or suspend project activities not directly affected by the supplemental EIS (23 CFR 771.130).

A Supplemental EIS is developed and processed the same way the previous draft EIS, final EIS, and/or ROD were developed; the only difference is that scoping is not required (MaineDOT, however, may choose to conduct additional scoping if, for instance, the changes may be controversial).

Below are some considerations for a supplemental EIS:

- Briefly describe the proposed action, the reason a supplemental EIS is being prepared, and the status of the previous EIS or ROD.
- Clearly state changes in the setting, circumstance, or design and compare such changes with the previous EIS.
- If the changes involve modifications to the purpose and need, clearly articulate these.
- Focus the analysis on new adverse impacts—including those with greater magnitude than discussed in the previous EIS—and significant adverse impacts.
- Briefly summarize unchanged impacts, incorporating the discussion in the previous EIS by reference.

- If needed, briefly summarize other project information and details or incorporate thediscussion by reference to the previous EIS.

9.4 Amended FONSI or ROD

Generally, an amended decision document presents the supplemental analysis and includes all previous NEPA determinations for the project. The amended decision document must clearly distinguish between new decisions and previous determinations that have not changed. The decision document should also clearly state that prior limitations on claims notices included in the previous FONSI or ROD are not changed by the amended decision document, except as it pertains to the new information. In other words, the amended decision document does not open the entire project for legal claims.

10 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 the course of 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 10.2.

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 alternatives development and analysis. Some mitigation measures will be developed through consultation and coordination with resource agencies, 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 itsimplementation.
- *Rectifying* the impact by repairing, rehabilitating, or restoring the affected environment.
- *Reducing* or *eliminating* the impact over time by preservation and maintenance andoperations 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.

10.1 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 require (but not directly related to an adverse effect) are not considered mitigation. The impacts of the project are considered after incorporation of these required items.

Mitigation measures should be clearly 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, 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 to the MaineDOT Project Manager.

Mitigation measures and other environmental commitments that are developed for each resource (as necessary), are compiled into a single document and presented in the Final EA or EIS. Environmental Office technical experts and Team Leaders will develop contract special provisions to capture mitigation measures and environmental commitments for project's construction contract.

Note that FHWA's mitigation policy states that in order 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)].

10.2 Tracking Commitments

Project-specific mitigation measures are presented in the FONSI or ROD for EA or EIS [23 CFR 771.109(b) and 23 CFR 771.125(a)(1)] and tracked to ensure compliance. MaineDOT uses a number of methods to track project-specific mitigation measures, including construction monitoring. MaineDOT tracks commitments in the ProjEx database to be referenced through all phases of the project. Appendix R discusses the process of accepting and tracking commitments.

NEPA Public Involvement

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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

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

MaineDOT

NEPA Air Quality Guidance

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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.

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,

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.

MaineDOT

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.

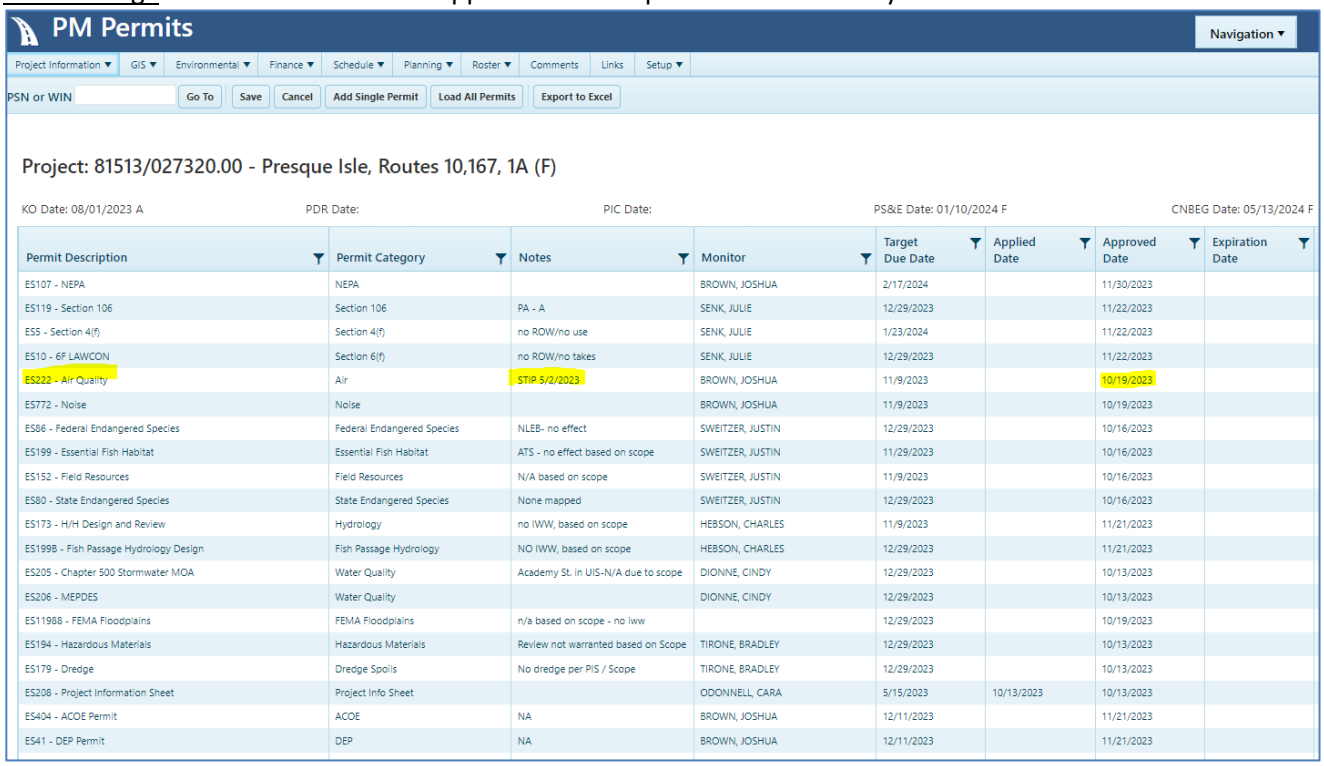
3.0 Checklist
The following pages within MaineDOT's ProjEx database are MaineDOT's checklist and part of the project record.

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

complete air quality assessment/analysis.

3. If the project does <u>not</u> receive federal funds
    a. In ProjEx, on the **permits** page, under air quality **notes**, write n/a state-funded and sign off on the approved date.
    b. 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**.
    c. Air quality assessment/analysis is complete, and no documents will be filed in the CPD E-file folder Air-Noise.

<u>Permits Page</u> - used to indicate final approval of Transportation Conformity.



PM Permits

Navigation

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

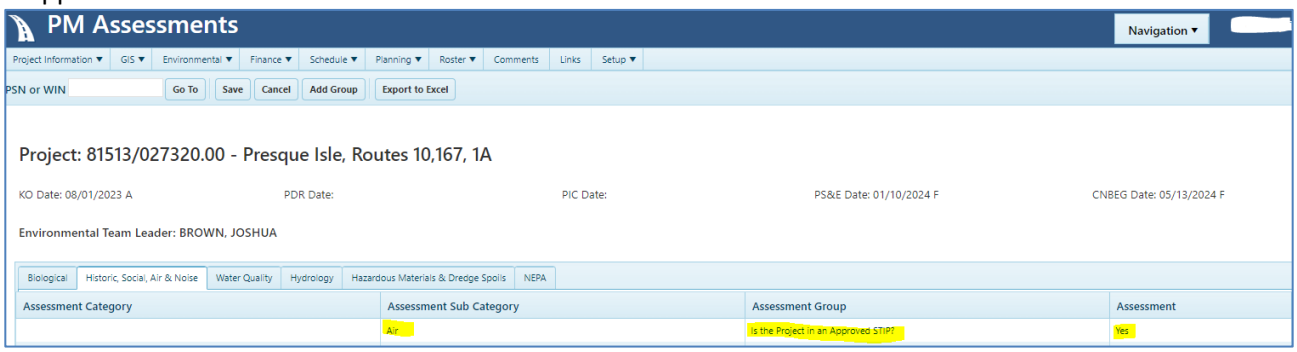
PSN or WIN | Go To | Save | Cancel | Add Single Permit | Load All Permits | Export to Excel

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	
ES199B - 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	
ES11988 - FEMA Floodplains	FEMA Floodplains	n/a based on scope - no iww		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	

<u>Assessments Page</u> – 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

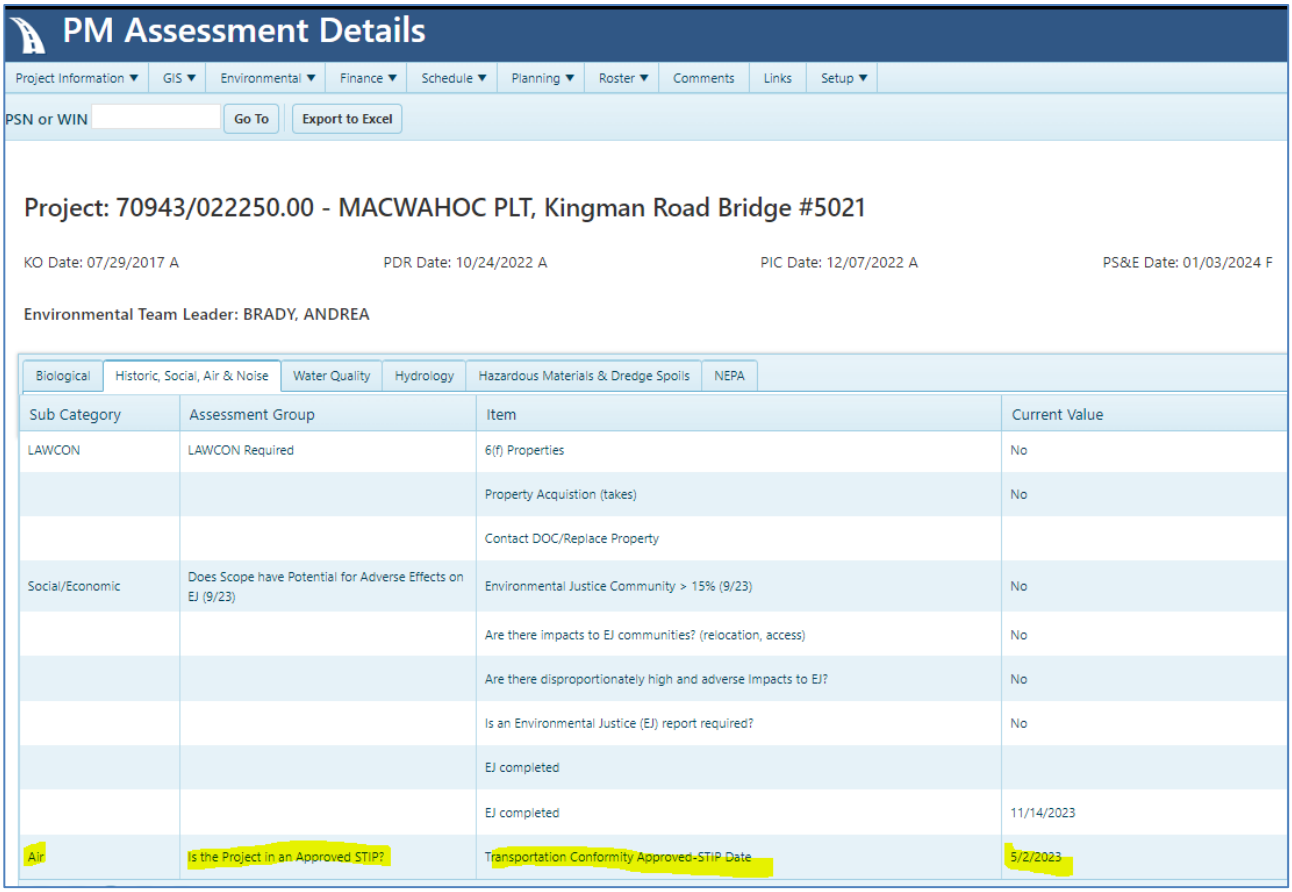
KO Date: 08/01/2023 A | PDR Date: | PIC Date: | PS&E Date: 01/10/2024 F | CNBEG Date: 05/13/2024 F

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

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 ▼ | Comments | Links | Setup ▼

PSN or WIN | Go To | Export to Excel

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

KO Date: 07/29/2017 A | PDR Date: 10/24/2022 A | PIC Date: 12/07/2022 A | PS&E Date: 01/03/2024 F

Environmental Team Leader: BRADY, ANDREA

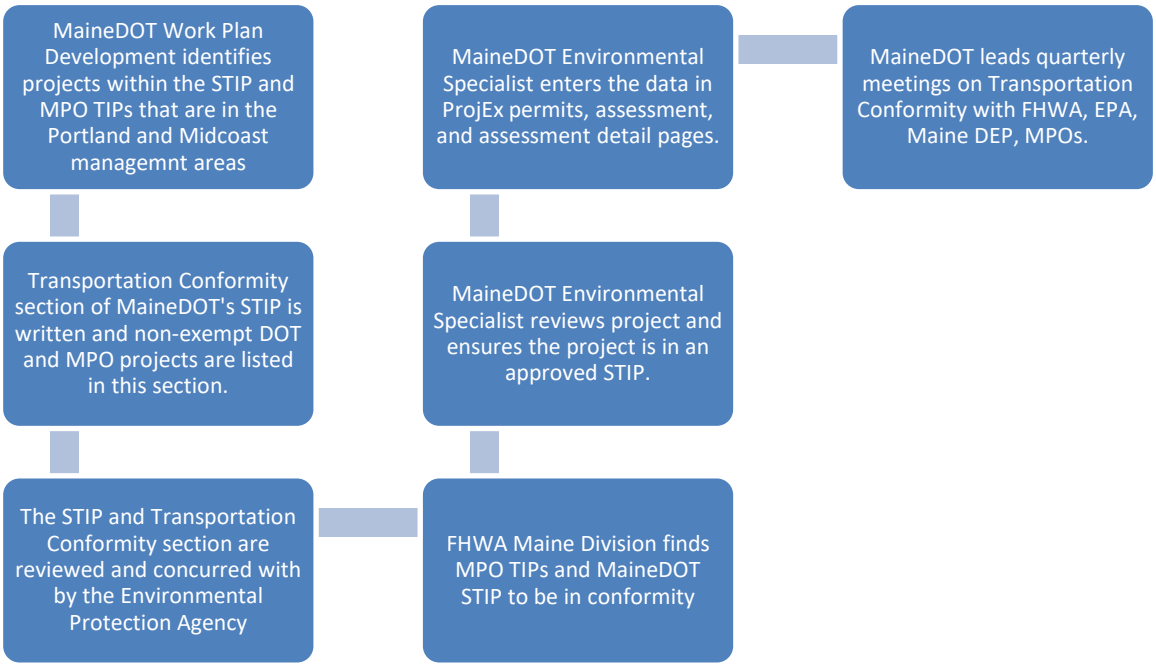
Biological | Historic, Social, Air & Noise | Water Quality | Hydrology | Hazardous Materials & Dredge Spoils | NEPA

Sub Category	Assessment Group	Item	Current Value
LAWCON	LAWCON Required	6(f) Properties	No
		Property Acquistion (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. 7401-7671q)
Exempt Projects (40 CFR § 93.126 Table 2 and 40 CFR § 93.127 Table 3)
Transportation Conformity Regulations
Maine DEP Chapter 139 Transportation Conformityv
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 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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).

MaineDOT

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 Leq[1] 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.

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.

(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.

☐ **Is the project a Type I?** *(ProjEx Assessments)*
(Utilize the definition provided in Noise guidance)

↓

◇ **No. Noise assessment is complete – no further steps or analysis.** *(ProjEx Assessments)*

🛑

◇ **Yes. Continue Noise assessment.** *(ProjEx Assessments)*

↓

☐ **Conduct a Noise analysis utilizing a qualified consultant.** *(ProjEx Assessments Details/CPD e-file)*
(Utilize noise guidance and FHWA guidance)

↓

☐ **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?** *(ProjEx Assessments Details)*
(Utilize noise guidance and FHWA guidance)

↓

◇ **No. Noise assessment is complete – no further steps or analysis.** *(ProjEx Assessments)*

🛑

◇ **Yes. Continue Noise assessment.** *(ProjEx Assessments Details)*

↓

☐ **Evaluate abatement measures.** *(ProjEx Assessment Details)*
(Utilize noise guidance and FHWA guidance)

↓

☐ **Are abatement measures feasible and Reasonable?** *(ProjEx Assessment Details/ CPD e-file)*
(Utilize noise guidance and FHWA guidance)

◇ **No. Noise assessment is complete – no further steps or analysis.** *(ProjEx Assessments Details)*

🛑

◇ **Yes. Continue Noise assessment.** *(ProjEx Assessments Details)*

↓

☐ **Select abatement measures, implement, and measure effectiveness** *(ProjEx Assessments Details/CPD e-file/Plans)*(Abatement measures will be documented in the CPD e-file and on plans. Measures will be shared with the municipality and public)

🛑

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:

Joyce Taylor 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

CONTENTS

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 Program[1].

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 projects[2]. 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 benefited 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 project[4]. 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 Levels[5]

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 requires[6] 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/

[6]MRSA 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

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 perrmitted, 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 alterative(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 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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

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 withinr 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.

(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.

MaineDOT

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.

☐ **Are Federally listed threatened or endangered species or critical habitat present?** *(ProjEx Assessments)*
(Utilize ESA screening tools)

↓

◇ **No. ESA assessment is complete – no further steps or analysis.** *(ProjEx Assessments)*

🛑

◇ **Yes. Continue ESA assessment.** *(ProjEx Assessments)*

↓

☐ **What are the ESA species/Critical habitat?** *(ProjEx Assessments Details)*
(Utilize ESA screening tools)

↓

☐ **Assessing the project design, what are the effects on ESA?** *(ProjEx Assessments Details)*

↓

☐ **What is the ESA consultation level with NMFSUSFWS?** *(ProjEx Assessment Details)*
(Utilize chart in MaineDOT ESA Guidance document)

↓

☐ **Prepare ESA form or Biological Assessment.** *(File in CPD e-file)*
(Use ESA assessment documents from previous projects as a guide)

↓

☐ **ESA Biological Assessment quality review** *(ProjEx Assessments Details)*
(The Sr. Environmental Manager will conduct a quality review before signing and submitting to NMFS/USFWS)

↓

☐ **ESA consultation initiated with NMFS/USFWS** *(ProjEx Permits)*
(The Sr. Environmental Manager will officially submit the EFH assessment document to NMFS to begin consultation)

↓

☐ **Agencies approve consultation or write Biological Opinion with avoidance and minimization measures (AMM)** *(ProjEx Commitments/Specials)*
(AMM incorporated into project)

↓

☐ **ESA consultation concluded** *(ProjEx Permits/CPD e-file)*
(Biologist ensures documentation is complete and filed. Commitments documented in ProjEx)

🛑

5.0 Links and Agreements

NEPA Endangered Species Guidance

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

NEPA Bald and Golden Eagle Guidance

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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

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

NEPA Marine Mammal Guidance

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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).

MaineDOT

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

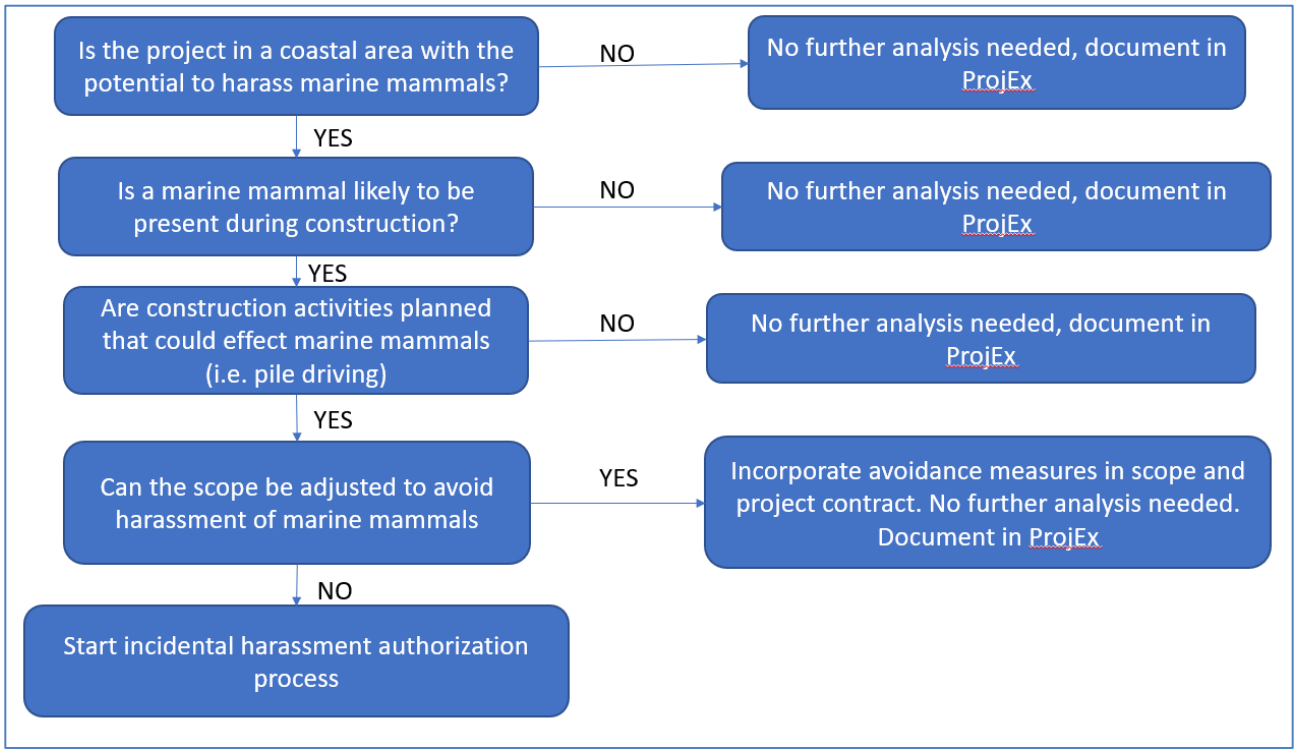
3.0 Marine Mammal Compliance Process

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 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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.

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

NEPA Essential Fish Habitat Guidance

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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.

MaineDOT

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

(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.

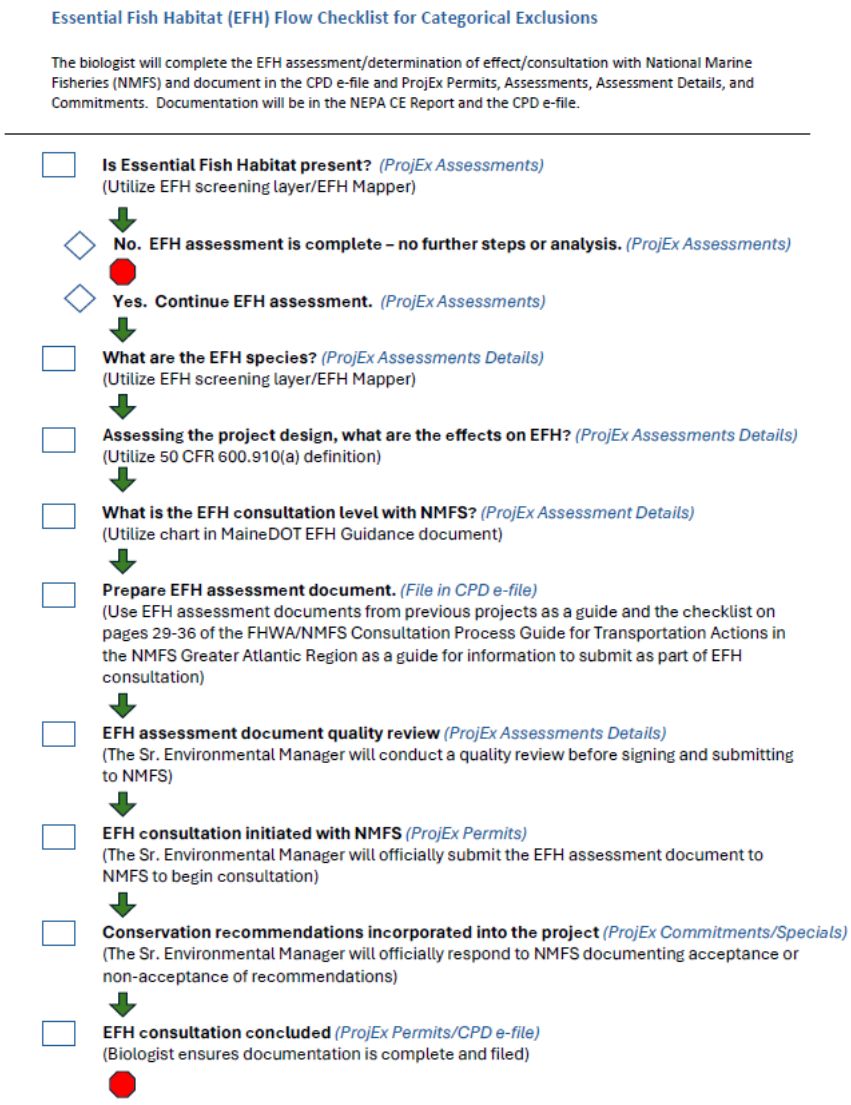
NEPA will not be approved until the EFH consultation is complete.

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

MaineDOT

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.

☐ **Is Essential Fish Habitat present?** *(ProjEx Assessments)*
(Utilize EFH screening layer/EFH Mapper)

↓

◇ **No. EFH assessment is complete – no further steps or analysis.** *(ProjEx Assessments)*

■

◇ **Yes. Continue EFH assessment.** *(ProjEx Assessments)*

↓

☐ **What are the EFH species?** *(ProjEx Assessments Details)*
(Utilize EFH screening layer/EFH Mapper)

↓

☐ **Assessing the project design, what are the effects on EFH?** *(ProjEx Assessments Details)*
(Utilize 50 CFR 600.910(a) definition)

↓

☐ **What is the EFH consultation level with NMFS?** *(ProjEx Assessment Details)*
(Utilize chart in MaineDOT EFH Guidance document)

↓

☐ **Prepare EFH assessment document.** *(File in CPD e-file)*
(Use EFH assessment documents from previous projects as a guide and the checklist on pages 29-36 of the FHWA/NMFS Consultation Process Guide for Transportation Actions in the NMFS Greater Atlantic Region as a guide for information to submit as part of EFH consultation)

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☐ **EFH assessment document quality review** *(ProjEx Assessments Details)*
(The Sr. Environmental Manager will conduct a quality review before signing and submitting to NMFS)

↓

☐ **EFH consultation initiated with NMFS** *(ProjEx Permits)*
(The Sr. Environmental Manager will officially submit the EFH assessment document to NMFS to begin consultation)

↓

☐ **Conservation recommendations incorporated into the project** *(ProjEx Commitments/Specials)*
(The Sr. Environmental Manager will officially respond to NMFS documenting acceptance or non-acceptance of recommendations)

↓

☐ **EFH consultation concluded** *(ProjEx Permits/CPD e-file)*
(Biologist ensures documentation is complete and filed)

■

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 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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.

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.

MaineDOT

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.

☐ **Is a hazardous materials assessment required?** *(ProjEx Assessments)*
(Utilize Hazardous Materials guidance and SOP)

↓

◇ **No. Hazardous materials assessment is complete – no further steps or analysis.** *(ProjEx Assessments)*

🛑

◇ **Yes. Continue hazardous materials assessment.** *(ProjEx Assessments)*

↓

☐ **Does the Initial Site Assessment (ISA) indicate the potential for contamination?** *(ProjEx Assessments Details/CPD e-file))*
(Conduct ISA/Utilize ISA checklist)

↓

◇ **No. Hazardous materials assessment is complete – no further steps or analysis.** *(ProjEx Assessments)*

🛑

◇ **Yes. Continue hazardous materials assessment.** *(ProjEx Assessments)*

↓

☐ **Is a Detailed Site Assessment (DSI) required?** *(ProjEx Assessment Details)*
(Utilize Hazardous Materials SOP)

↓

◇ **No. Hazardous materials assessment is complete General Notes or Special Provisions are added to the contract package if required. (***ProjEx Assessment Details/CPD e-file)*
(Utilize Hazardous Materials SOP)

🛑

◇ **Yes. Continue hazardous materials assessment.**

↓

☐ **Does the DSI indicate contamination?** *(ProjEx Assessment Details/CPD e-file)*
(Utilize Hazardous Materials SOP)

↓

◇ **No. Hazardous materials assessment is complete General Notes or Special Provisions are added to the contract package if required. (***ProjEx Assessment Details/CPD e-file)*
(Utilize Hazardous Materials SOP)

🛑

◇ **Yes. DSI report and Special Provision sent to Maine Department of Environmental Protection for review and approval.**

↓

☐ **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, 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 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 HWM 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 011 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 INVESTIGSTION

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

Prior to preforming field work, a Health and Safety Plan following OSHA 29 CFR 19io 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 contaminates 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 **INTITIAL 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)

☐ No ☐ Yes - New ROW ☐ No ☐ Yes - Easement ☐ No ☐ Yes - Excavation
☐ No ☐ Yes - Relocate utilities ☐ No ☐ Yes - Dredging

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

1. What is the project setting? ☐ Rural ☐ Mixed ☐ Urban

2. What is the current land use?
   ☐ Industrial ☐ Light industrial ☐ Commercial ☐ Agricultural
   ☐ Residential ☐ Undeveloped ☐ Other: _____

3. What is the past land use?
   ☐ Industrial ☐ Light industrial ☐ Commercial ☐ Agricultural
   ☐ Residential ☐ Undeveloped ☐ Other: _____

4. Are properties serviced by public or private water supplies? ☐ Public ☐ Private

5. Were any of the following records/information sources used in this assessment?
   ☐ NPL ☐ RCRA ☐ Personal interviews
   ☐ MDEP Spills ☐ CERCLIS ☐ Utility Representatives
   ☐ MDEP Uncontrolled Sites ☐ MDEP/VRA ☐ Maine Department of Health
   ☐ Other: ☐ P ☐ Photographs

6. Are any known hazardous material/waste sites adjacent to the project area (approximately 250 feet) which may affect the project?
   ☐ No
   ☐ 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?
   ☐ No - why not: _____

   ☐ 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)

l features: **SITE NAME** _____ **LOCATION** _____

				Potential Problem						*Potential Problem*	
	Y	N	Unk	Y	N		Y	N	Unk	Y	N
Underground tanks						Transformers					
Surface tanks						Chemical Storage					
Sumps						Service Stations					
Basins						Landfill					
Containers											

Contamination:

				Potential Problem						*Potential Problem*	
	Y	N	Unk	Y	N		Y	N	Unk	Y	N
Surface Staining						Vegetation Damage					
Oil Sheen											
Odors											

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

				Potential Problem						*Potential Problem*	
	Y	N	Unk	Y	N		Y	N	Unk	Y	N
Underground tanks						Transformers					
Surface tanks						Chemical Storage					
Sumps						Service Stations					
Basins						Landfill					
Containers											

Contamination:

				Potential Problem						*Potential Problem*	
	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? ☐ No ☐ Yes
2. Does the project require pre-construction well sampling? ☐ No ☐ Yes
3. Should the project include any specifications? ☐ No ☐ Yes specify:_____
4. Based on this Initial Site Assessment, is a Detailed Site Investigation recommended? ☐ No ☐ 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 *virgin*[1] 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

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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

file mou.doc

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

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

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

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

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

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

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

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

MaineDOT

NEPA Section 106 Guidance

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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

MaineDOT

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

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)

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.

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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).

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.

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

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.

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. he 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.

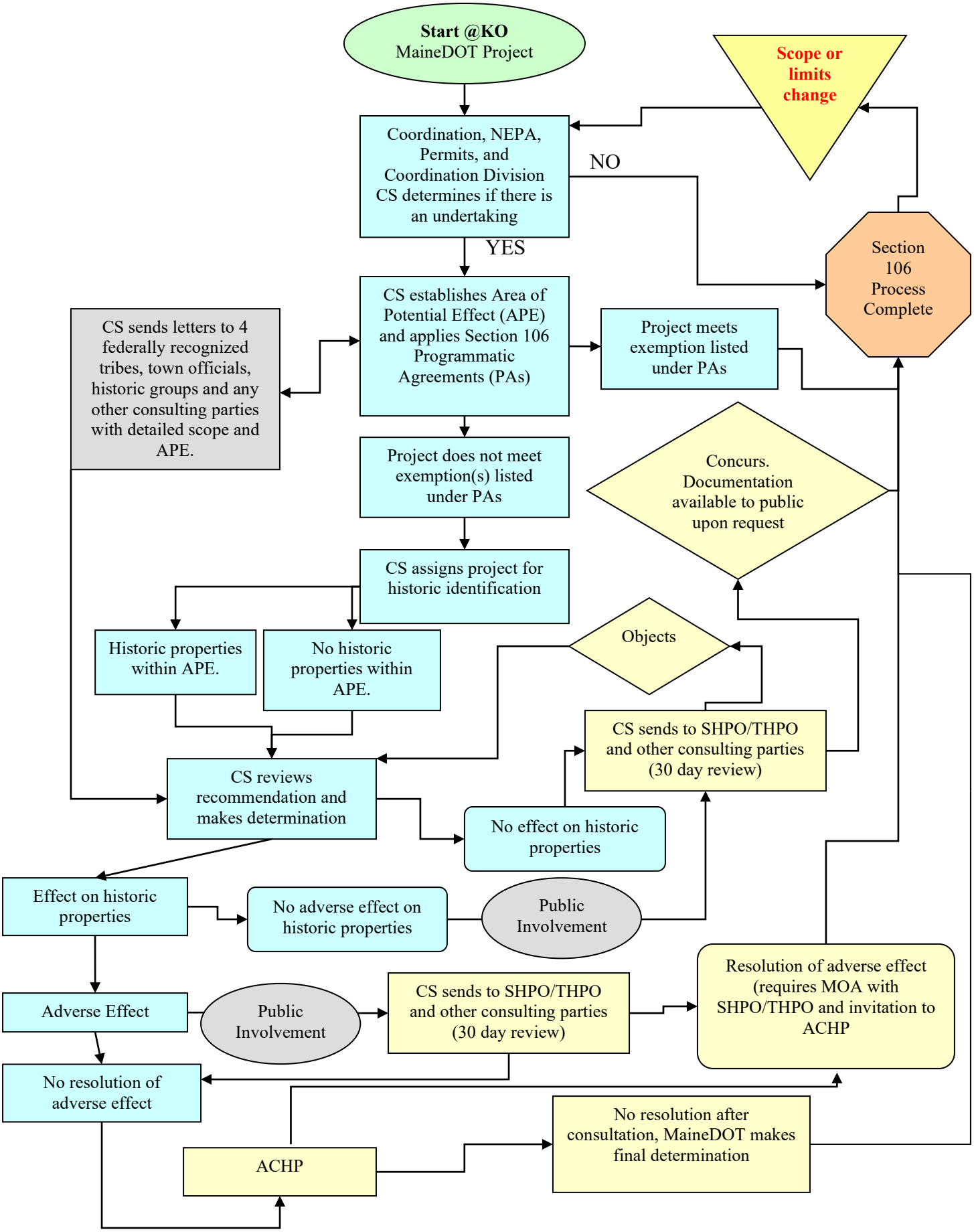
4.13 Cultural Architectural Resource Management Archive Database (CARMA)
All above-ground surveys conducted by or for the MaineDOT will be completed via the Cultural Architectural Resource Management Archive (CARMA).

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 Section106 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 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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.

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.

☐ **Are there U.S. DOT funds in the project (Is Section 4(f) required)?** *(ProjEx Assessments)*
(Utilize ProjEx Finance Contributors screen)

◇ **No. Section 4(f) is complete – no further steps or analysis.** *(ProjEx Assessments)*

◇ **Yes. Continue Section 4(f) assessment.** *(ProjEx Assessments)*

☐ **Are there property rights required based on scope?** *(ProjEx Assessment Details)*

◇ **No. Section 4(f) is complete – no further steps or analysis.** *(ProjEx Assessment Details)*

◇ **Yes. Continue Section 4(f) assessment.** *(ProjEx Assessment Details)*

☐ **Are there Section 4(f) properties?** *(ProjEx Assessment Details)*
(Utilize Section 4(f) SOP and FHWA guidance on determining 4(f) properties)

◇ **No. Section 4(f) is complete – no further steps or analysis.** *(ProjEx Assessment Details)*

◇ **Yes. Continue Section 4(f) assessment.** *(ProjEx Assessment Details)*

☐ **What are the 4(f) properties (type and name)?** *(ProjEx Assessment Details)*

☐ **Are there temporary or permanent property rights required on a 4(f) property or is there an adverse effect on a transportation structure?** *(ProjEx Assessment Details)*
(Utilize project right-of-way plans/details)

◇ **No. Section 4(f) is complete – no further steps or analysis.** *(ProjEx Assessment Details)*

◇ **Yes. Continue Section 4(f) assessment.** *(ProjEx Assessment Details)*

☐ **Based on 4(f) property and required rights/historic adverse effect, what level of evaluation is required (temporary occupancy, de minimis, programmatic, individual)** *(ProjEx Assessment Details)* (Utilize Section 4(f) SOP)

The Temporary Occupancy flow checklist continues on page 2.
The De Minimis flow checklist continues on page 3.
The programmatic flow checklist continues on page 4.
The Individual flow checklist continues on page 5.

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

☐ **Conduct public process if there is a de minimis on a public park, recreation area, or wildlife refuge.** *(ProjEx Assessment Details/File in CPD e-file)*
(Utilize Section 4(f) SOP for de minimis public process)

☐ **Prepare de minimis notification and consult with the Owner with Jurisdiction.** *(ProjEx Assessment Details/File in CPD e-file)*
(Use regulation and Section 4(f) SOP for de minimis 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)

◇ **No. Continue Section 4(f) Assessment with different level of evaluation.** *(ProjEx Assessment Details)*
(Historic Coordinators will review for programmatic, individual evaluation)

◇ **Yes. Continue Section 4(f) de minimis evaluation.** *(ProjEx Assessment Details)*

☐ **Prepare de minimis evaluation.** *(ProjEx Assessment Details/File in CPD e-file)*
(Use previous de minimis evaluations as guidance)

☐ **De minimis evaluation document quality review** *(ProjEx Assessments Details)*
(The Team Leader will conduct a quality review and document in ProjEx)

☐ **De minimis approved.** *(ProjEx Permits)*
(Sr. Environmental Manager signs the de minimis and Historic Coordinators document in ProjEx and file in 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.

Programmatic

☐ **Determine programmatic category and verify applicability.** *(ProjEx Assessments)*
(Use regulation, FHWA Policy Paper, and Section 4(f) SOP for guidance)

☐ **Prepare Programmatic notification and consult with the Owner with Jurisdiction (If required by programmatic).** *(ProjEx Assessment Details/File in CPD e-file)*
(Use regulation, FHWA Policy Paper, and Section 4(f) SOP for guidance. 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)

◇ **No. Continue Section 4(f) Assessment with different level of evaluation.** *(ProjEx Assessment Details)*
(Historic Coordinators will review for individual evaluation)

◇ **Yes. Continue Section 4(f) programmatic evaluation.** *(ProjEx Assessment Details)*

☐ **Prepare Programmatic Evaluation.** *(ProjEx Assessment Details/File in CPD e-file)*
(Use previous programmatic evaluations as guidance)

☐ **Programmatic evaluation document quality review** *(ProjEx Assessments Details)*
(The Sr. Environmental Manager will conduct a quality review and document in ProjEx)

☐ **Programmatic approved.** *(ProjEx Permits)*
(The Environmental Office Director signs the Programmatic and Historic Coordinators document in ProjEx and file in 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.

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 Manger 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 30days 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.

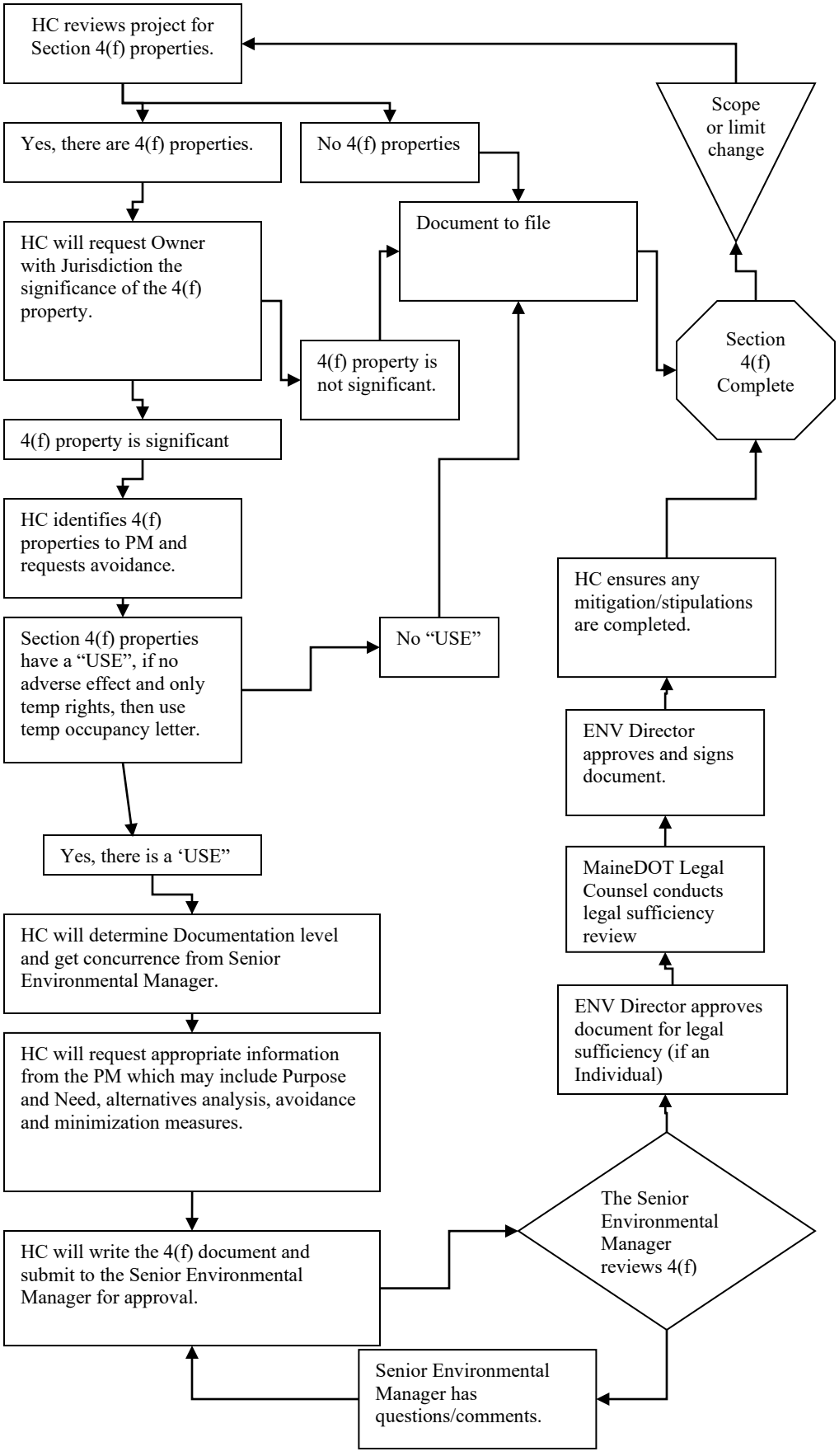
Federal Highway Administration, 2012. FHWA Section 4(f) Policy Paper; dated July 20, 2012 66 p.

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.


HC reviews project for Section 4(f) properties.
Yes, there are 4(f) properties.
No 4(f) properties
Scope or limit change
HC will request Owner with Jurisdiction the significance of the 4(f) property.
Document to file
4(f) property is not significant.
Section 4(f) Complete
4(f) property is significant
HC identifies 4(f) properties to PM and requests avoidance.
HC ensures any mitigation/stipulations are completed.
Section 4(f) properties have a "USE", if no adverse effect and only temp rights, then use temp occupancy letter.
No "USE"
ENV Director approves and signs document.
Yes, there is a 'USE"
MaineDOT Legal Counsel conducts legal sufficiency review
HC will determine Documentation level and get concurrence from Senior Environmental Manager.
ENV Director approves document for legal sufficiency (if an Individual)
HC will request appropriate information from the PM which may include Purpose and Need, alternatives analysis, avoidance and minimization measures.
The Senior Environmental Manager reviews 4(f)
HC will write the 4(f) document and submit to the Senior Environmental Manager for approval.
Senior Environmental Manager has questions/comments.

NEPA LAWCON-Section 6(f) Guidance

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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

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

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

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.

☐ **Are there LAWCON properties present within the project area?** *(ProjEx Assessments)*
(Utilize Maine Dept Agriculture Conservation and Forestry (DACF) LAWCON database)

↓

◇ **No. LAWCON-Section 6(f) is complete – no further steps or analysis.** *(ProjEx Assessments)*

🛑

◇ **Yes. Continue LAWCON-Section 6(f) assessment.** *(ProjEx Assessments)*

↓

☐ **What are the LAWCON-6(f) properties (name)?** *(ProjEx Assessment Details)*

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☐ **Are permanent property rights required on a LAWCON-6(f) property?** *(ProjEx Assessment Details)*
(Utilize project right-of-way plans/details and discuss avoidance measures with Project Manager/Property Office)

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◇ **No. Section 6(f) is complete – no further steps or analysis.** *(ProjEx Assessment Details)*

🛑

◇ **Yes. Continue Section 6(f) assessment.** *(ProjEx Assessment Details)*

↓

☐ **Contact DACF to discuss LAWCON property conversion to ensure all requirements under 36 CFR § 59.3 conversion requirements are met (DACF will be the point of contact for the National Park Service (NPS)).** *(ProjEx Assessment Details)*
(Use regulation, Section 6(f) guidance, and technical expertise at DACF)

↓

☐ **Official request to DACF/NPS for permission to convert LAWCON properties.** *(ProjEx Assessment Details/CPD e-file)*
(Use regulation, Section 3.0 of the LAWCON-6(f) guidance, and technical expertise at DACF)

↓

☐ **Receive Approval NPS via DACF.** *(ProjEx Assessment Details/Permits/CPD e-file))*
(Historic Coordinators document in ProjEx and file in CPD e-file)

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◇ **Yes. Section 6(f) is complete – no further steps or analysis.** *(ProjEx Permits)*

🛑

◇ **No. Continue LAWCON-Section 6(f) property conversion assessment with DAFC/NPS.** *(ProjEx Assessment Details)*
(Historic Coordinators will review and continue to work with DACF/NPS/Project Manager)

▽

NEPA Farmland Guidance

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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.

MaineDOT

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 FFPA 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

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 FFPA will be accomplished as part of the National Environmental Policy Act (NEPA) process. The project file must contain the necessary evidence that the FFPA 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:

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

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 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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) 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 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 Environmental CPD e-file.

4.0 Links

Coastal Barrier Resources Act

CBRA Mapper

CBRA Maps

MaineDOT

NEPA Floodplain Guidance

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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.

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.

Process for 23 CFR 650 Subpart A Compliance

MaineDOT

NEPA Floodplain Guidance

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.

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.

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 Order11988

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 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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.

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.

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 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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.

2.0 Record Environmental Commitments in ProjEx

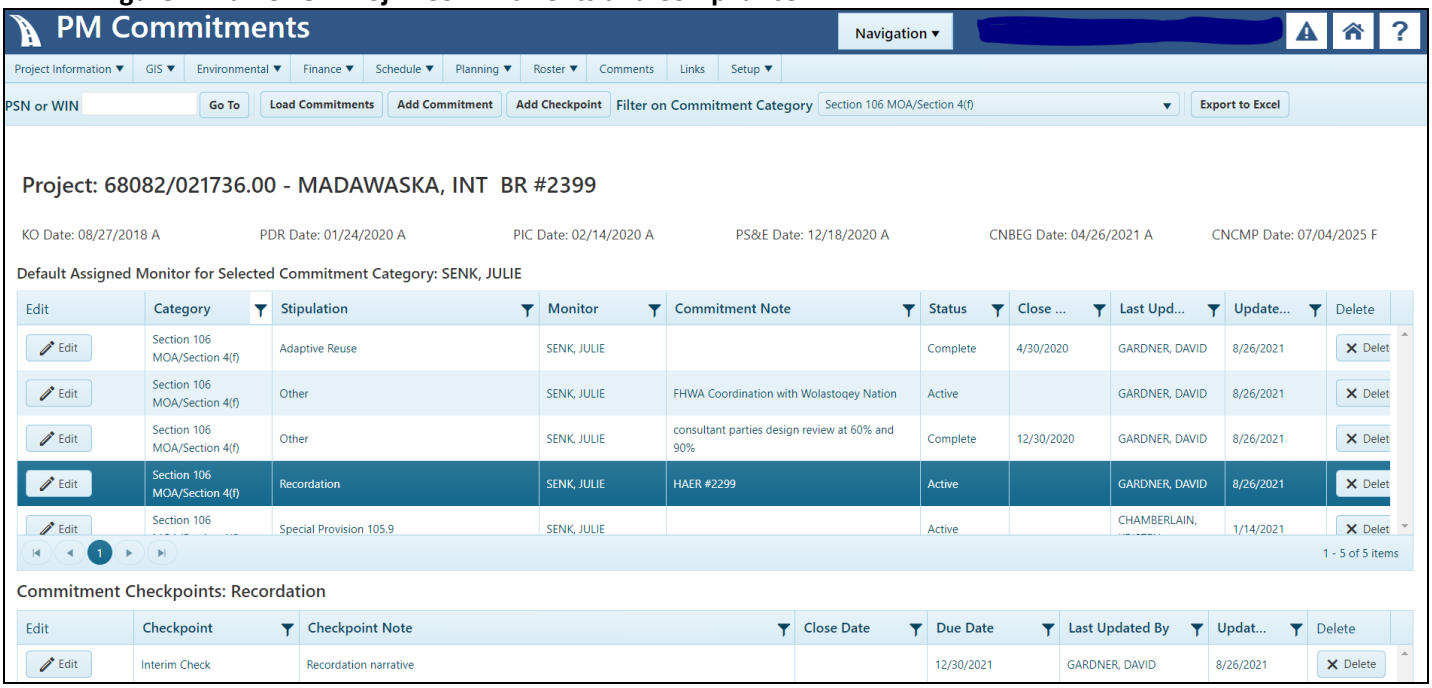
Environmental commitments must be actionable, trackable, measurable, and biddable, and therefore should address "Who, What, Where, When".

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



MaineDOT

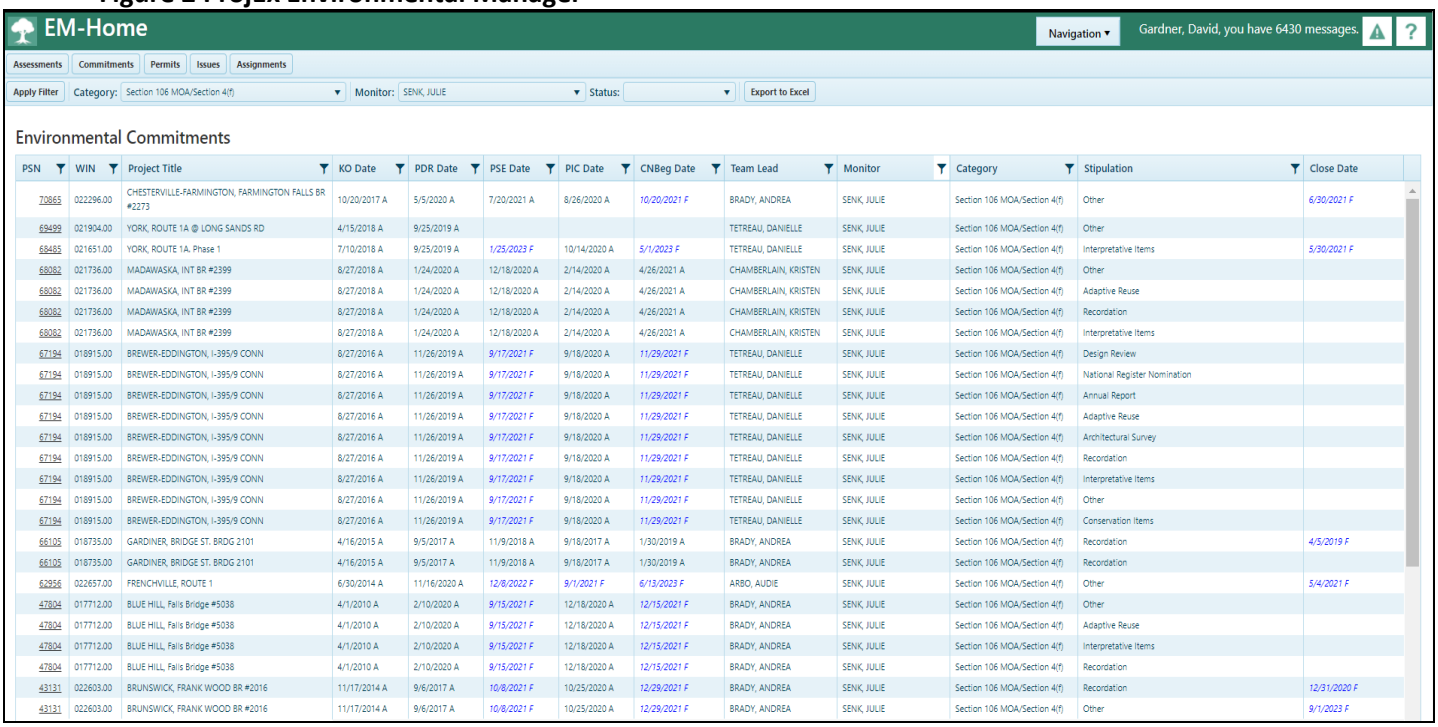
NEPA Commitment Compliance

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



PSN	WIN	Project Title	KO Date	PDR Date	PSE Date	PIC Date	CNBeg 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	
68485	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
68082	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	
68082	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	
68082	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	
68082	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	
66105	018735.00	GARDINER, 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
66105	018735.00	GARDINER, 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	
62956	022657.00	FRENCHVILLE, ROUTE 1	6/30/2014 A	11/16/2020 A	12/8/2022 F	9/1/2021 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.

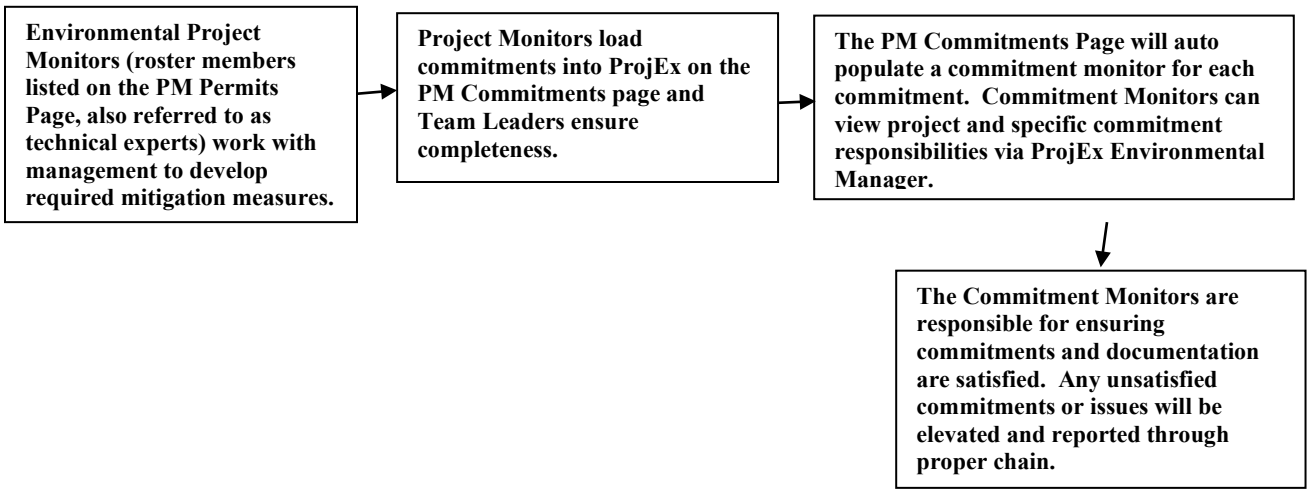
NEPA Commitment Compliance

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

Resources/Project Needs | **Programmed Work**

	On-Going	July through August	September	October	November	December	January
Executive/ CORE	Weekly Commissioner's Work Plan Meetings running from the end of August through the end of December	Key Policy Decisions • Contingency Value • Mileage Targets for Paving • Grant Applications (Match Req.) • Multimodal Decisions • Production Support/Lineage WINs Evaluation • Major Projects	Commitments Finalized and available resources to program approved/ Production Support WINs Updated	Executive discussion on prioritized needs and Resource Allocation	Review and comment. Narrative preparation begins. Carryover Projects?	Upload by Mid Dec.	
Result and Information Office	Track Active/Inactive projects for the Work Plan. Review for complete Schedules **Highway/Bridge Asset Inspections** **Candidate Management**	Creation of next series of Production Support WINs Evaluate Needs for Production Support WINs Policy Analyses of currently programmed work and results that need to be addressed during Work Plan Development Resource Projections and Policy Decisions (Timing Depends on Budget Year)	Resource Evaluation/ Assumptions Active/Inactive Lists for WP established and Synergy Preparation	Resource Allocation Work Plan Candidate List compiled. Operation WINs and associated funding lists finalized. **Prep for Balancing** **Coordination on Fall Forecast begins**	1st Draft Work Plan Balancing and Fall Forecast Draft 2nd Draft Work Plan **Balancing Complete** Final Draft Work Plan **Fall Forecast Taken** Draft Widgets Approved Work Plan	Letter, Narrative, and Media Work Plan Division Final Review	PUBLISH WORK PLAN STIP started to activate new Fed. $
F & A		Collaboration Preliminary Resource Projections (with RIO)	GARVEE Debt Amounts Commitments Noted		Widget Balancing	Upload Evaluation/ Cleanup for STIP snapshot	
Planning	Regional Planners work as liaisons for MaineDOT, building relationships with municipalities and other interest groups in Maine in an effort to relay project needs and coordinate work efforts. Regional Planners will participate in field evaluations of candidates and provide input on the needs of the groups they are working with. These efforts will go on throughout the year, but culminate during Work Plan development. The Director of Planning and Outreach will have a seat on each of the Committees and be the liaison with the Regional Planners						
Env.		Environmental Office Review/Comment Period of Candidate Lists (Env. Capital efforts identified and funded through Commissioner's Work Plan Meeting)					
Bridge Committee	Bridge Resource Allocation Groups	Vetting of prioritized candidate lists through field reviews and Bridge Committee discussions. Candidates moving forward for Work Plan are finalized (completely filled out and verified) in Projex. Supplemental Needs itemized/justified by Committee and sent to Work Plan Management for consent.	Updated Estimates, Schedules, and Prioritized RAG Lists → Supplemental Needs	Bridge Committee Final Prioritized List			
Highway Committee	Highway Resource Allocation Groups	Vetting of prioritized candidate lists through field reviews and Highway Committee discussions. Candidates moving forward for Work Plan are finalized (completely filled out and verified) in Projex. Supplemental Needs itemized/justified by Committee and sent to Management for consent.	Updated Estimates, Schedules, and Prioritized RAG Lists → Supplemental Needs	Highway Committee Final Prioritized List			
Safety/ Mobility Committee	Safety/Mobility Resource Allocation Groups	Vetting of prioritized candidate lists through field reviews, when applicable scoring procedures, signed agreements and Safety/Mobility Committee discussions. Candidates moving forward for Work Plan are finalized (completely filled out and verified) in Projex. Supplemental Needs itemized/justified by Committee and sent to Management for consent.	Updated Estimates, Schedules, and Prioritized RAG Lists → Supplemental Needs	Safety/Mobility Committee Final Prioritized List			
Multimodal Committee	Multimodal Resource Allocation Groups	Vetting of prioritized candidate lists through field reviews, when applicable scoring procedures, signed agreements and Multimodal Committee discussions. Candidates moving forward for Work Plan are finalized (completely filled out and verified) in Projex. Supplemental Needs itemized/justified by Committee and sent to Management for consent.	Updated Estimates, Schedules, and Prioritized RAG Lists → Supplemental Needs	Multimodal Committee Final Prioritized List			
M&O	M&O defines Regional goals and priorities. Candidate projects are discussed and evaluated through the summer with a semi-final list documented and ready for the September Synergy meetings.			M&O Final List			
Existing Capital Work (Department Wide)	Using APM(s) on schedules and estimates (not yet updated), projects details are kept up-to-date so Work Plan Development and STIP Development are based on the best available information.		Final Work Plan Management	Work Plan Development to handle normal Work Plan Management changes. Projects will be presented at weekly Commissioner's Work Plan Meeting or Core Management Team (CMT). Final decisions will be shared with relevant parties.			No Work Plan Management

Geographic Analysis of all Work

Synergy and Conflict Adjustments to Compiled Portfolios

This represents 5 meetings, by Region. These meetings are hosted by the Results and Information Office and have representation from the Env. Office, Highway Management, Bridge Management, Regional Managers & Engineer, PMs, M&O, MPOs, and representation from the Highway, Bridge, Safety/ Mobility, and Multimodal Committees

Lead Committee and Upper Management Documented Reviews/ Comments of Draft Work Plan(s)

Current Year Projects expected to slip into next year identified

New Projects get Schedules

NEPA - Filing and Documentation Guidance

Introduction

Pursuant to 23 U.S.C. 327 and the implementing MOU executed on XX/XX/XXXX, 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 Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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
- 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

MaineDOT

NEPA - Filing and Documentation Guidance

The MaineDOT Environmental Office maintains an electronic filing system (the CPD e-file) for all 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
  - 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 <u>all documents</u>:

Year.Month.Day_WIN_Subject_Description of Document

Example: 20*21.03.01_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*

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)

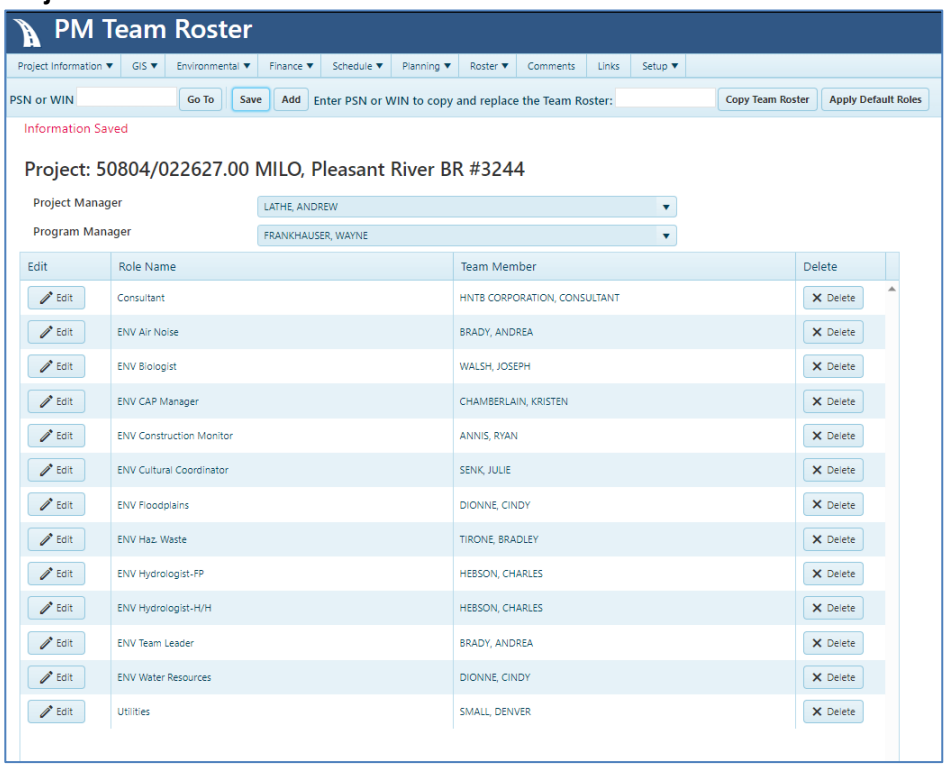
8.0 ProjEx Documentation

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

NEPA - Filing and Documentation Guidance

ProjEx PM Team Roster



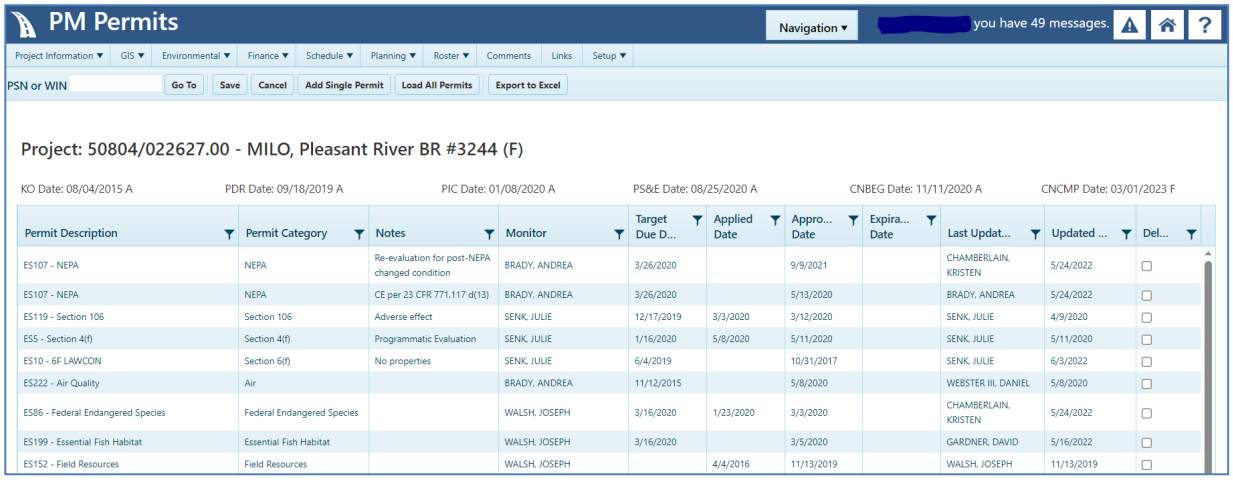
The Environmental Office documents project details in MaineDOT's ProjEx database. Each project will contain information that supports the NEPA decision. Environmental information is in the following sections of ProjEx:

- **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)

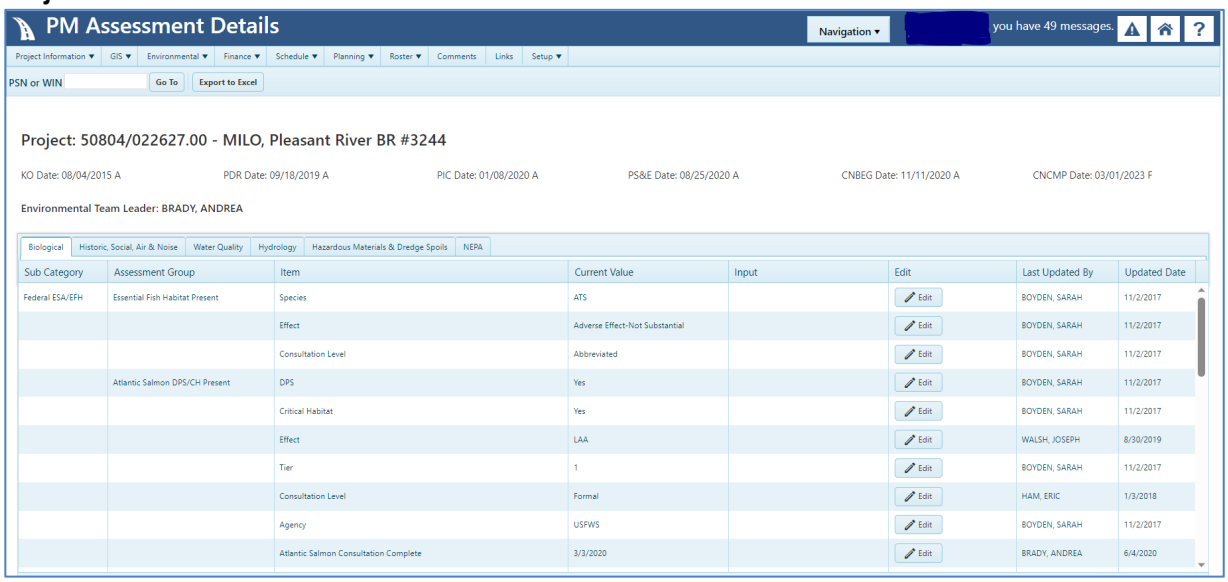
The environmental technical staff (biologists, historical coordinators, etc.) use assessment and assessment details to decide effect determinations (no effect, NLAA, etc.). The assessment and assessment details page are checklists that are built within ProjEx that assist the environmental technical staff in screening and determinations. **ProjEx is the Environmental Office master checklist and will generate the NEPA CE Report.**

NEPA - Filing and Documentation Guidance

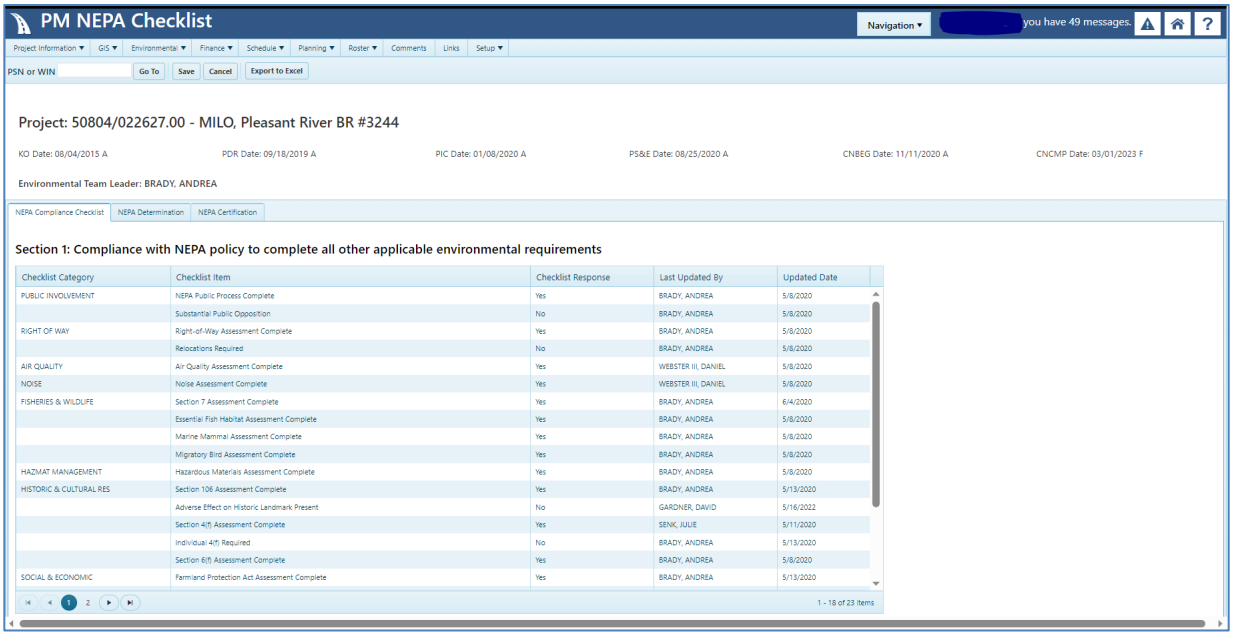
ProjEx PM Permits



ProjEx PM Assessment Details



ProjEx PM NEPA Checklist



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

MaineDOT

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

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**.

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 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

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 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

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.