



NEPA GUIDANCE

National Environmental Policy Act

42 U.S.C. 4331

40 CFR 1500-1508

23 CFR 771

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1.0 Introduction

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

1. FHWA funding (this includes any amount of federal funding, including federal funding for any contracts associated with the project and requirements to be eligible for future federal funding).
2. FHWA approval (examples of FHWA approvals include access revision request, design exception approval², NEPA, use and occupancy (e.g., air space lease and access break)
3. NEPA is also triggered by federal permits (e.g., U.S. Army Corps of Engineers – this would not involve FHWA unless bullets 1 or 2 were met.)

NEPA requires federal agencies (or states that have assumed responsibility under [\(23 USC 326 and/or 327\)](#) when planning projects to conduct environmental reviews to consider their proposed actions' potential impacts on the environment. The Maine Department of Transportation (MAINEDOT) has assumed NEPA responsibilities under 23 U.S.C. 327, meaning MAINEDOT is legally responsible for all NEPA decisions.

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

The Council on Environmental Quality (CEQ) regulations ([40 CFR parts 1500-1508](#)) implement section 102(2) of NEPA and provide direction to determine actions subject to procedural requirements.

The Federal Highway Administration (FHWA) issued Environmental Impact and Related Procedures (23 CFR 771) regulations to address the NEPA responsibilities established by CEQ.

2.0 NEPA Assignment

Pursuant to 23 United States Code 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 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. MAINEDOT will be the Lead Federal Agency for MAINEDOT-sponsored highway projects.

3.0 Programmatic Categorical Exclusion

The renewal of the [Programmatic Categorical Exclusion Agreement \(CE Agreement\)](#) between FHWA and MAINEDOT regarding the processing of actions classified as Categorical Exclusions (CE) went into effect on

February 8, 2021. FHWA has authorized MAINEDOT to determine, on FHWA's behalf, whether a project is categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq).

Projects that do not exceed any of the thresholds described in the Agreement can be approved by MAINEDOT on behalf of FHWA; these are termed Programmatic CEs. Projects that exceed any one of the thresholds and meet the CE criteria in 23 CFR 771.117 can be certified by MAINEDOT but must be submitted to FHWA for approval; these are termed Individual CEs. The Agreement will remain in place after NEPA Assignment for individual projects that do not fall under NEPA Assignment (e.g., projects that cross state and international borders).

4.0 Independent Decision Making

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

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

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

MAINEDOT's elements of NEPA decision-making include:

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

5.0 Scoping

MAINEDOT's Bureau of Planning conducts all feasibility, enhanced scoping, and community-based initiatives (<https://www.maine.gov/mdot/pga/cbi/>) 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 Senior Environmental Manager (also referred to as the 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.

See MAINEDOT NEPA EA and EIS Guidance for further information on scoping (Sections 1.4, 7.1.2, and 8.4.2).

6.0 Class of Action

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

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

- **EIS (Class I)** [23 CFR 771.115(a)]: Actions that significantly affect the environment require an EIS (40 CFR 1508.27). EIS documentation requirements include an NOI, draft EIS, final EIS, and ROD. Determined by MAINEDOT Environmental Office Senior Environmental Manager/NEPA Manager and Director.
- **CE (Class II)** [23 CFR 771.115(b)]: Categories of actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EIS or EA. These actions are approved with a CE determination. Determined by MAINEDOT Environmental Team Leaders

Actions that typically meet the definition of a CE are identified on two specific lists, commonly referred to as the "(c) list" [23 CFR 771.117(c)] and the "(d) list" [23 CFR 771.117(d)]. Actions on the (c) list generally involve minor or common construction activities and activities that do not lead to construction. The (d) list presents examples of actions generally found appropriate for CE classification, but that require documentation to support the CE determination. Additional actions of a similar type or scope of work may also be determined to qualify for the CE determination.

- **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) (40 CFR

1508.9). Determined by the MAINEDOT Environmental Office Senior Environmental Manager/NEPA Manager and Director.

6.1 Identifying Significant Impacts

CEQ NEPA regulations (40 CFR 1501.3) provide guidance regarding appropriate level of NEPA review and considering whether the effects of the proposed action are significant.

40 CFR 1501.3 (b) states:

In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and the degree of the effects of the action. Agencies should consider connected actions consistent with [§ 1501.9\(e\)\(1\)](#).

1. In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. The significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area.
2. In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action:
 - a. Both short- and long-term effects.
 - b. Both beneficial and adverse effects.
 - c. Effects on public health and safety.
 - d. Effects that would violate Federal, State, Tribal, or local law protecting the environment.

6.2 Identifying Class of Action

Due to time limit requirements in CEQ regulation (40 CFR 1501.10), 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 and official start of the EA one-year clock and EIS two-year clock. 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 Exclusions (CE) which are actions excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The Senior Environmental Manager is responsible for coordination with the Environmental Office Director and Environmental Team Leaders in declaring actions classified as EAs and Environmental EISs.

The Environmental Team Leader and Senior Environmental Manager will evaluate the need to change the Class of Action based on environmental impacts identified during the process or if an extraordinary circumstance is present. The Team Leader and Senior Environmental Manager will discuss their decision with the Environmental Office Director. 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.

7.0 Purpose and Need

This section discusses the key concepts and process related to preparing a purpose and need statement for a NEPA document based on CEQ NEPA regulations (40 CFR 1500 to 1508), 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:

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

7.1 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. CEQ regulations require that an EA and EIS 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 aids MAINEDOT in the development of Purpose and Need statements.

7.2 Need of the Project

The need for the project establishes the transportation problem to be solved and describes why the problem

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

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

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

7.3 Purpose of the Project

The project's purpose defines the solution to the problem and 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, pedestrians, and bicyclists
- increase multimodal travel options
- provide lane continuity and balance
- optimize highway system operations
- improve mode connectivity
- improve connectivity among transportation modes
- improve pedestrian/bicycle mobility

7.4 Purpose and Need Statement

A purpose and need statement is required for all EA and EIS documents. CEQ regulations require an EIS to “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action” (40 CFR 1502.13). For an EA, the regulations require a “brief discussion of the need for the proposal” (40 CFR 1508.9 b).

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

See the MAINEDOT NEPA EA and EIS Guidance (Section 3) for information on Purpose and Need.

7.5 Logical Termini

As part of the NEPA process, MAINEDOT will determine what constitutes the geographic extent of a project. The limits of the project being evaluated are known as “logical termini,” and are defined by the Federal Highway Administration (FHWA) as: 1. rational end points for a transportation improvement and 2. rational endpoints for a review of the environmental impacts.

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

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

MAINEDOT Environmental Team Leaders and the Senior Environmental 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 socioeconomic factors, topography, future travel demand, other infrastructure improvements in the area, and more. Logical termini can be locations where there are major

traffic generators or changes in traffic volumes, major crossroads or system intersections, and/or locations where there are changes in settlement patterns, such as a transition from an urbanized area to a suburban or rural area.

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

See the MAINEDOT NEPA EA and EIS Guidance (Section 3) for information on logical termini.

7.6 Independent Utility

An independent utility analysis focuses on whether a particular project is a “stand alone” project. That is, assuming that no other project is contemplated, the project serves a distinct purpose or function. The Council on Environmental Quality (CEQ) regulations use the term “unconnected single actions” to describe this concept. According to 40 CFR 1508.25(a), if an action i) does not automatically trigger other actions potentially requiring an EIS, ii) is not an interdependent part of larger actions it depends for its justification, and iii) does not require prior or simultaneous actions to be taken for the action to proceed, then the action should be said to demonstrate “independent utility” and the scope of the EIS should be for the direct, indirect, and cumulative impacts of the proposed action only.

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

See the MAINEDOT NEPA EA and EIS Guidance (Section 3) for information on independent utility.

8.0 Public Involvement

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

8.1 NEPA Public Involvement Plan (NPIP)

The purpose of the NPIP is to provide guidance to MAINEDOT Environmental Office staff and Project Managers engaged in the 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 the coordination of public involvement activities, including meetings and public hearings. Also, these procedures seek to ensure early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions. The NPIP pertains to NEPA actions classified as Categorical Exclusions (CE), Environmental Assessments (EA), and Environmental Impact Statements (EIS). Additionally, the NPIP fulfills the requirements of 23 CFR 771.111(h), ensuring that States have procedures approved by FHWA to carry out public involvement. The MAINEDOT PIP should be used for all other purposes not stated in the NPIP.

8.2 Public Involvement Documentation

Documentation of public involvement activities is critical to measure successes and demonstrate federal and state compliance for public involvement. Appropriate and complete documentation of public involvement activities, especially public feedback, involves not only MAINEDOT Environmental Office staff but the entire project team. Public involvement documentation provides a history and record of commitments made because of the outreach activities throughout each stage of the transportation decision-making process. Proper documentation includes compiling all materials related to the public involvement activity, summarizing, and analyzing comments, and describing how the comments are being addressed.

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

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

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

8.3 Managing Public Comments

The public may have diverse views and concerns regarding issues 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.

9.0 Quality Assurance and Quality Control

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

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

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 Environmental Office Director reviewing the draft Environmental Assessment section on historic resources and identifying deficiencies addressed prior to finalizing. MaineDOT maintains a [NEPA Quality Assurance and Quality Control Guidance](#).

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

10.0 Legal Review and Legal Sufficiency Review

Legal review is performed by MAINEDOT Environmental Counsel for each draft EIS, draft EA, and draft individual Section 4(f) evaluation. A legal sufficiency review is required for each final EIS [23 CFR 771.125(b)] and individual Section 4(f) evaluation. The Maine Attorney General's Office conducts the legal sufficiency reviews. The MAINEDOT Senior Environmental Manager, or Cultural staff for Section 4(f), will provide the EAs and EISs for MAINEDOT legal counsel to review and an EIS to the Maine Attorney General's Office for a legal sufficiency review. The Senior Environmental Manager will discuss and incorporate suggestions/requirements from the legal reviews.

10.1 Freedom of Information Act and Freedom of Access Act

23 CFR Section 773.109 (a)(7) requires the application for the NEPA Assignment Program to include a certification by the State's Attorney General or other appropriate State official that the State has laws comparable to the Freedom of information Act (FOIA), 5 U.S.C. § 552.

Maine's comparable law is the Maine Freedom of Access Act, 1 Me. Rev. Stat. §§ 400 -414 (Maine FOAA). Subject to certain enumerated exceptions, "records in the possession or custody of an agency or public official of this State or any of its political subdivisions" and "received or prepared for use in connection with the transaction of public or governmental business or contain[ing] information relating to the transaction of public or governmental business" are public records. 1 Me. Rev. Stat. § 402(3). Individuals may inspect and copy public records pursuant to 1 Me. Rev. Stat. § 408-A. An individual aggrieved by a failure or refusal to inspect or copy a public record may appeal to the Maine Superior Court, which is Maine's trial court of general jurisdiction. 1 Me. Rev. Stat. § 409.

The Maine Attorney General has certified that Maine FOAA is comparable to FOIA and includes provisions allowing for any decision regarding the public availability of a document to be reviewed by a court of competent jurisdiction.

MAINEDOT follows [Administrative Policy Memorandum 13](#). All FOAA requests will be handled by MAINEDOT's Chief Counsel and the Legal Office. FHWA is required to direct any FOIA requests that fall under MAINEDOT's NEPA Assignment responsibilities to MAINEDOT'S Chief Counsel.

11.0 Statute of Limitations

The statute of limitations (SOL) on legal claims against a ROD, FONSI, or CE and other related transportation project actions, such as a Section 4(f) or Section 404 permit, can be limited to 150 days provided specific conditions are met. The 150-day statute of limitations was established in 23 USC 139(l)(1). The final agency action must be related to a transportation project, and a limitation of claims notice must be published in the *Federal Register* for the 150-day statute of limitations to apply. It reduces the statute of limitations for challenging a federal agency decision for a project from 6 years to 150 days.

Legal review by MAINEDOT Environmental Counsel will be conducted on SOL notices. The Senior Environmental Manager will provide the SOL to the MAINEDOT Environmental Counsel for review. The Senior Environmental Manager will discuss and incorporate suggestions/requirements from the legal reviews. For additional information, see MAINEDOT's EA and EIS Guidance sections 6.2, 7.8, and 8.12.

Publication in the *Federal Register* starts the clock for the statute of limitations. The *Federal Register* limitation of claims notice is separate from the EPA *Federal Register* Notice of the DEIS and FEIS and is often prepared later in the process. The MAINEDOT Senior Environmental Manager is responsible for coordinating the placement of the notice in the *Federal Register* with FHWA's Maine Division.

12.0 Conflict Resolution

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

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

- FHWA Environmental Review Toolkit: [Conflict Resolution](#)

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.

13.0 Environmental Commitments

Environmental commitments consist of those agreements made as part of an assurance to the community, stakeholders, and other entities that measures to address specific issues identified during 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 13.2.

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

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

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

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

MAINEDOT first considers avoidance of an impact and, if this is not possible, then it considers minimizing the impact, and so on, following the sequencing of mitigation.

13.1 Developing Mitigation Measures

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

13.2 Tracking Environmental Commitments

Project-specific mitigation measures presented in an EA or EIS are included in the project [23 CFR 771.109(b)] and Environmental commitments resulting from coordination under the laws and regulations mentioned in this document will be carried forward in the form of plan notes, special provisions, memorandum of agreements, construction contract language, permits, environmental construction contract packages, and in lieu fee payments. Commitments and compliance are tracked in the Commitments Section of the ProjEx database. All commitments for a project are assigned to an environmental monitor to track compliance. The commitments will show as active or completed. See Appendix U.

MAINEDOT ProjEx Commitments and Compliance

PM Commitments David Gardner, you have 673 messages.

Project Information Location Environmental Finance Schedule Planning Roster Commitments Links Setup

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

Project: 68032/021708.00 - WHITING, NEW CRANE BR #2194
 KO Date: 04/14/2016 A PDR Date: 06/07/2017 A PIC Date: 07/14/2017 A PS&E Date: 11/03/2017 F CNBEG Date: 01/24/2018 F CNCMP Date: 06/12/2019 F

Default Assigned Monitor for Selected Commitment Category: Not Assigned

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

1 - 10 of 17 items

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

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

30 items per page

14.0 Categorical Exclusion Process

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

All assessments, documentation, and approvals are tracked in ProjEx and saved in the Environmental Office Coordination and Project Documentation (CPD) e-file. ProjEx is MAINEDOT's project database and houses the NEPA checklist, assessments, determination, and certification. The Environmental Team Leaders, Environmental Specialist, Senior Environmental Manager, and Environmental Office Director are the only MAINEDOT staff that can determine the NEPA category and certify NEPA. The Environmental Team Leaders will ensure all NEPA checklist items are complete prior to certifying a CE.

When all necessary assessments, documentation, approvals, and public process are completed and all NEPA checklist items have been checked, then the Environmental Team Leader will place an actual NEPA approval date in ProjEx. Typically, NEPA approval is usually completed between 1 month and 6 months after the final Preliminary Design Report (PDR), which documents the engineering recommendation. This is based on information in the PDR that is needed to finalize Section 106, Section 4(f), public process, and Section 7.

NEPA cannot be approved if the project's next phase (ROW, Construction) has not been identified in the Statewide Transportation Improvement Program (STIP). If the project is expected to go to construction in the timeframe of the STIP then the entire project and all phases must be in the STIP.

MAINEDOT ProjEx NEPA Compliance Checklist

PM NEPA Checklist

David Gardner, you have 668 messages.

Project Information Location Environmental Finance Schedule Planning Roster Comments Links Setup

Save Cancel Export to Excel PSN or WIN Go To

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

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

Environmental Team Leader: CHAMBERLAIN, KRISTEN

NEPA Compliance Checklist NEPA Determination NEPA Certification

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

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

MAINEDOT ProjEx NEPA Determination

PM NEPA Checklist

David Gardner, you have 668 messages.

Project Information Location Environmental Finance Schedule Planning Roster Comments Links Setup

Save Cancel Export to Excel PSN or WIN Go To

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

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

Environmental Team Leader: CHAMBERLAIN, KRISTEN

NEPA Compliance Checklist NEPA Determination NEPA Certification

NEPA Classification

Programmatic CE

Section 2: NEPA Determination

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

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

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

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

MaineDOT has determined the project is a Categorical Exclusion under:

23 CFR 771.117 (c) (28)

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

MAINEDOT ProjEx NEPA Certification

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

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

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

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

15.0 Re-evaluation of Categorical Exclusions

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

- If the project scope or limits have changed that results in impacts not previously evaluated.

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

- If there is a minor change to the project scope or only minor updates are required, then a simple narrative re-evaluation is appropriate. The re-evaluation will be completed in ProjEx and any documentation saved in the CPD e-file.
- If the original document was a CE and the project scope has changed substantially or the impacts have changed substantially, a new NEPA document should be completed.

Re-evaluations will be identified and conducted by the Environmental Team Leader and reviewed by the Senior Environmental Manager. All documentation will be saved to the CPD e-file and ProjEx.

See MAINEDOT's NEPA EA and EIS Guidance section 9 for additional information on re-evaluations.

16.0 Environmental Assessment

An EA is prepared by the Environmental Office for each action that is not a CE and significant environmental effects are uncertain. MAINEDOT will develop an EA with public involvement and follow 40 CFR 1500-1508 and 23 CFR 771.123-771.127 to determine if an EIS is required to be prepared or if there is a Finding of no significant impacts (FONSI). The EA project team typically consist of a Project Manager from the Bureau of Planning, the Senior Environmental Manager, the Environmental Office Director, a Project Manager from the Bureau of Project Development, and the option for a qualified NEPA consultant. Under NEPA Assignment the Finding of No Significant Impacts (FONSI) will be written by the Senior Environmental Manager, reviewed by the Environmental Office Director and Legal Office, and signed by the Chief Engineer. All assessments, documentation, and approvals are tracked in ProjEx and saved in the Environmental Office CPD e-file.

See MAINEDOT's NEPA EA and EIS Guidance for additional information.

17.0 Environmental Impact Statement

An EIS is prepared by the Environmental Office when an action is likely to cause significant impacts on the environment. MAINEDOT will develop an EIS with public involvement and follow 40 CFR 1500-1508, 23 CFR 771.123-771.121, and 23 U.S.C. 139. The EIS project team typically consist of a Project Manager from the Bureau of Planning, the Senior Environmental Manager, the Environmental Office Director, a representative from the Bureau of Project Development, and the option for a qualified NEPA consultant. Under NEPA Assignment the Record of Decision (ROD) will be written by the Senior Environmental Manager, reviewed by the Environmental Office Director, MAINEDOT Legal Office, and the Maine Attorney General 's Office, and signed by the Chief Engineer. All assessments, documentation, and approvals are tracked in ProjEx and saved in the Environmental Office CPD e-file.

See MAINEDOT's NEPA EA and EIS Guidance for additional information.

18.0 Locally Administered Projects

Locally Administered Projects [(or Local Project Administration (LPA))] through MAINEDOT enables cities, towns, and nonprofit agencies to make transportation improvements with federal and state money. A certified staff member takes charge of a locally administered project in partnership with MAINEDOT, which makes sure all federal and state requirements are met.

MAINEDOT requires municipalities and other local agencies to take certification training (<https://www.maine.gov/mdot/lpa/>), and the Environmental Office participates in this training. MAINEDOT does not delegate NEPA, Section 106, Section 4(f), endangered species, or hazardous material management to the LPA. The Environmental Section of the MAINEDOT LPA Manual describes the LPA process and obligations (<https://www.maine.gov/mdot/lpa/manual/>). FHWA also provides guidance (www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=38) for LPA.

Since MAINEDOT oversees the NEPA process with assistance from the LPA, compliance, and resolution of noncompliance are documented the same as a non-LPA project. The LPA is responsible for obtaining and complying with the Maine Department of Environmental Protection and US Army Corps of Engineers (USACOE) and other environmental permits providing the information to MAINEDOT as described in the LPA Manual.

Scope and schedule are set by the LPA with assistance from MAINEDOT. The MAINEDOT Environmental Office Team Leader is responsible for NEPA documentation and certification. The MAINEDOT Environmental Office

Cultural staff is responsible for Section 106 and Section 4(f). The MAINEDOT Environmental Office Biologist is responsible for Section 7 consultation. These are not delegated to the LPA. Documentation is provided by the LPA. All NEPA documentation is filed in the CPD e-file and in ProjEx.

19.0 FHWA Oversight and Monitoring

FHWA will conduct annual NEPA Assignment audits for the first four years in accordance with the MOU executed on XX. FHWA will not provide project specific guidance under NEPA assignment but will provide program guidance.

20.0 Environmental Laws and Executive Orders Guidance

Projects that receive federal funding, approval, or permits must comply with NEPA. NEPA compliance includes assessing and documenting environmental resources (natural, cultural, social, economic) and avoiding, minimizing, and/or mitigating impacts on those resources. Projects without significant environmental impacts are considered Categorical Exclusions (CE) in accordance with 23 CFR 771.115. Environmental Assessments (EA) are required documents for actions in which significant environmental impacts have not been clearly established, and Environmental Impact Statements (EIS) are required for actions that significantly affect the environment. The MAINEDOT Environmental Office will review actions and determine the appropriate class (CE, EA, EIS) in accordance with 23 CFR 771.115-771.123.

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

All CEs will be classified as a “c” or “d” listed CE in accordance with 23 CFR 771.117. The “c” list actions meet the criteria for CEs in CEQ regulation and normally do not require any further NEPA approvals. The “D” list may be designated as CEs only after approval by the MAINEDOT Environmental Office (under NEPA assignment). Approval will be supported by documentation that demonstrates that the criteria for a CE are satisfied.

Projects classified as EAs will involve the preparation of an EA document in accordance with 23 CFR 771.119. Additional guidance is provided in the MAINEDOT NEPA EA and EIS Guidance document.

Projects classified as EIS will involve the preparation of an EIS document in accordance with 23 CFR 771.123 and 23 U.S.C. 139. Additional guidance is provided in the MAINEDOT NEPA EA and EIS Guidance document.

Section 21.0 outlines the specific federal environmental laws and Executive Orders that must be adhered to and complied with for all projects with a federal nexus. MAINEDOT has assumed responsibility for these under the NEPA Assignment Program. Section 22.0 provides additional information on the documentation and approval processes. All actions will be processed and documented in MAINEDOT’s ProjEx database and MAINEDOT’s Environmental Office CPD e-file. **Additionally, more detailed information regarding how to properly document and ensure compliance with all the federal environmental laws and regulations is provided in the attached appendices.**

21.0 Federal Environmental Laws and Executive Orders

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

21.1 Public Involvement

NEPA (23 CFR 771.111)

Each state must have procedures approved by FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508. State public involvement/public hearing procedures must provide for (i) Coordination of public involvement activities and public hearings with the entire NEPA process; (ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with the relocation of individuals, groups, or institutions.

Section 106 (36 CFR 800.2(d))

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

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

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

21.2 Right of Way

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

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

21.3 Air Quality

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

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

21.4 Noise

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

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

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

23 U.S.C. 109(1) mandates noise standards. FHWA developed regulations to provide procedures for noise studies and noise abatement measures to help protect the public's health, welfare, and livability, to supply noise

abatement criteria, and establish requirements for information to be given to local officials for use in planning and design of highways.

21.5 Fisheries and Wildlife

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21.6 Hazardous Material Management

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

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

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

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

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

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

21.7 Historic, Cultural, and Parklands

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

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

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

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

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

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

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

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

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

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

such items are unexpectedly discovered on federal or tribal lands. Excavation or removal of any such items also must be done under procedures required by the Archaeological Resources Protection Act.

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

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

21.8 Social and Economic

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

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

E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires all federal agencies to ensure that environmental justice consideration is part of their missions by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations in the United States and its territories and possessions.

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

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

21.9 Water Resources and Wetlands

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E.O. 11990, Protection of Wetlands

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

E.O. 11988, Floodplain Management

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

E.O. 13112, Invasive Species

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

22.0 Assessing and Documenting Environmental Federal Laws and Executive

This section provides a brief overview on the documentation and approval processes. All actions will be processed and documented in MAINEDOT's ProjEx database and MAINEDOT's Environmental Office CPD e-file. **Additionally, more detailed information regarding how to properly document and ensure compliance with all the federal environmental laws and regulations is provided in the appendices.**

22.1 Public Involvement

Assessment

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

MAINEDOT will have a court reporter at all public meetings for EAs and EISs. The court reporter will provide the transcript to MAINEDOT for the administrative record. The Environmental Team Leader will ensure the transcript is saved to the project file (CPD e-file). All public comments will be reviewed and assessed for response and consideration by the Team Leader and Senior Environmental Manager.

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

Documentation

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

See Appendix A.

-NEPA, Section 106, and Section 4(f) public involvement tracked under Milestones, comments, Section 106, and Section 4(f) in ProjEx.

22.2 Right of Way

Assessment

The MAINEDOT Property Office will determine the required rights on projects. Based on required rights, the Property Office will also determine the need for residential and business displacements. This assessment will be considered under NEPA, and no negotiations will occur prior to a NEPA approval and right of way is authorized. This process is conducted in accordance with the MAINEDOT Right of Way Manual.

Documentation

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

-Uniform Relocation Assistance tracked under Milestones, Status and Authorizations, and comments in ProjEx.

-Documents saved in CPD e-file, Property Office files and Bureau of Project Development plans.

22.3 Air Quality

Assessment

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

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

Documentation

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

See Appendix B.

-Clean Air Act tracked under Air Quality in ProjEx.

-Documents saved in Environmental Office Air Quality.

22.4 Noise

Assessment

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

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

Documentation

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

See Appendix C.

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

22.5 Fisheries and Wildlife

Assessment

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

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

Documentation

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

See Appendices D-H.

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

22.6 Hazardous Material Management

Assessment

MAINEDOT conducts database and field assessments to address issues of liability and materials management which may affect transportation projects. The assessment addresses the liability of acquiring portions or the entire property under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

and the Superfund Amendment and Reauthorization Act (SARA). If properties are shown to be contaminated, then those materials must be removed from the site during construction and must be properly identified and managed under the Resources Conservations and Recovery Act (RCRA). MAINEDOT also assesses projects for known spill sites and addresses proper handling for those sites.

Documentation

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

See Appendix I.

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

22.7 Historic, Cultural, and Parklands

Assessment

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

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

Documentation

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

See Appendices J-L.

- Section 106 tracked under Section 106 in ProjEx.
- Section 4(f) tracked under Section 4(f) in ProjEx.
- Archeological Resources Protection Act tracked as part of the Section 106 process in ProjEx.
- Preservation of Historical and Archeological Data tracked as part of the Section 106 process in ProjEx.
- Native American Grave Protection and Repatriation Act (NAGPRA) tracked as part of the Section 106 process in ProjEx.
- Land and Water Conservation Fund (6(f)) tracked under Section 6(f) in ProjEx.
- American Indian Religious Freedom Act tracked as part of the Section 106 process in ProjEx.

22.8 Social and Economic

Assessment

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

MAINEDOT also ensures minority and low-income populations are not disproportionately impacted by projects under Executive Order 12898- Environmental Justice in Minority Populations and Low-Income Populations.

Documentation

The Environmental Team Leader will ensure any effects are assessed under Executive Order 12898- Environmental Justice and Farmland Protection Policy Act. These assessments, documents and approvals will be tracked in ProjEx and saved in the CPD e-file. All approvals will be obtained prior to NEPA approval.

See Appendices M and N.

-Farmland Protection Policy Act tracked under Prime and Unique Farmland in ProjEx.
-E.O. 12898 Environmental Justice in Minority Populations and Low-Income Populations tracked under Environmental Justice in ProjEx.
-Documents saved in CPD e-file.

22.9 Water Resources and Wetlands

Assessment

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

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

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

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

A compensatory mitigation plan for unavoidable impacts to resources is sometimes a required component of a permit application. The Environmental Office is responsible for evaluating possible mitigation opportunities and ensuring that an acceptable mitigation plan accompanies the permit applications. The Environmental Office

works with the agencies to deliver a mitigation plan that satisfies 404 and 401 requirements, which can involve in-lieu fee payments.

Documentation

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

See Appendices O-Q.

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

23.0 NEPA Links

Laws, Regulations, Orders

NEPA Statute ([42 U.S. Code § 4331 - Congressional declaration of national environmental policy | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#))

CEQ Regulations [40 CFR 1500](#) (http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr1500_main_02.tpl)

FHWA Regulations [23 CFR 771](#) (<https://www.law.cornell.edu/cfr/text/23/part-771>)

FHWA Regulations [23 U.S.C. 139](#) (<https://uscode.house.gov/view.xhtml?req=%28title:23%20section:139%20edition:prelim%29>)

FHWA Order [66401A](#) (<https://www.fhwa.dot.gov/legisregs/directives/orders/66401a.cfm>)

Highway Acts

SAFETEA-LU (2005) (<https://www.fhwa.dot.gov/safetealu/>)

MAP-21 (2012) (<https://www.fhwa.dot.gov/map21/>)

FAST Act (2015) (<https://www.fhwa.dot.gov/fastact/>)

Websites

Council on Environmental Quality ([Council on Environmental Quality | The White House](#)) and ([NEPA | National Environmental Policy Act \(doe.gov\)](#))

FHWA Environmental Toolkit ([Environmental Review Toolkit | FHWA \(dot.gov\)](#))

MAINEDOT NEPA webpage (<https://www.maine.gov/mdot/env/NEPA/index.shtml>)

AASHTO

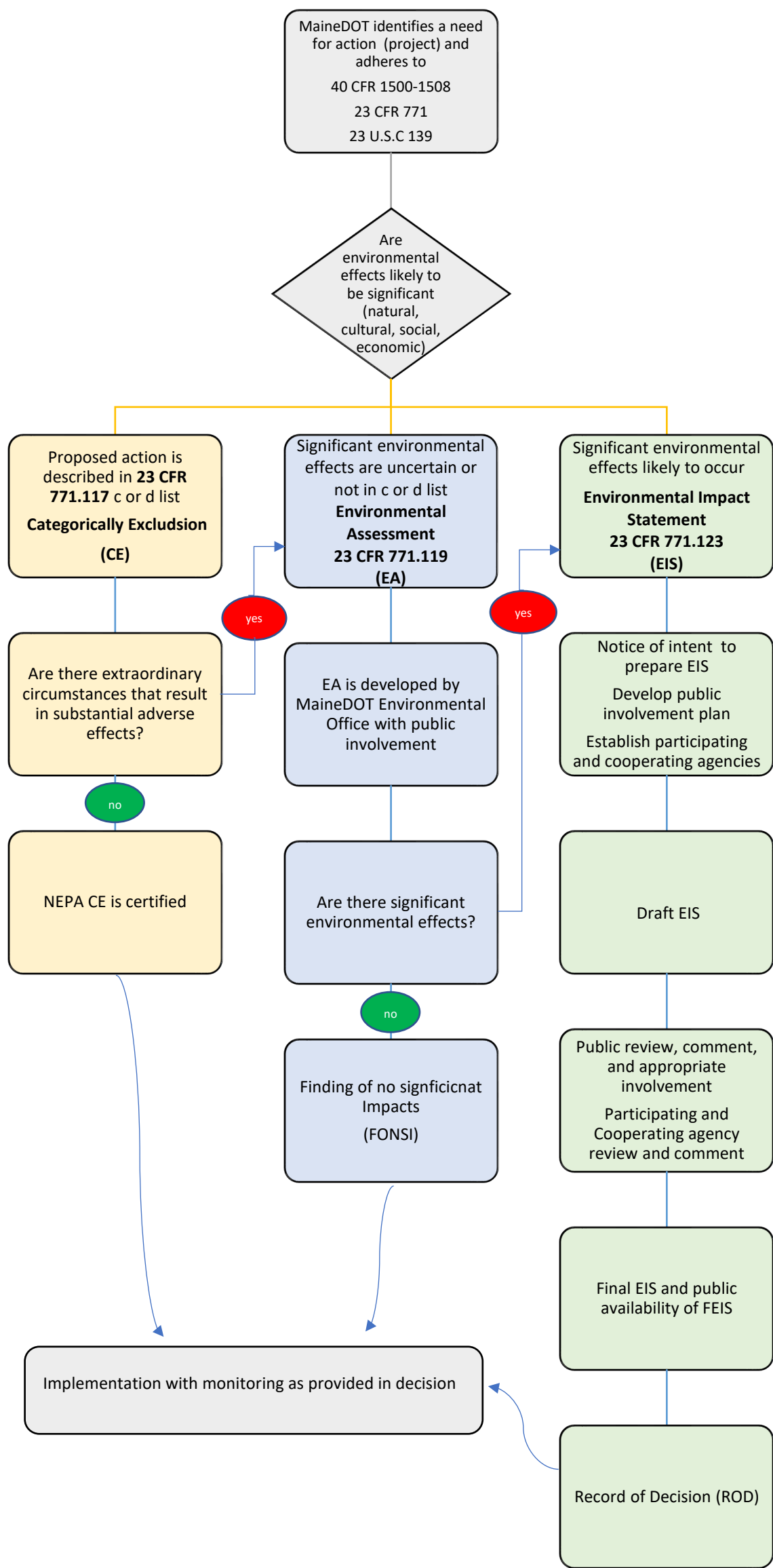
Environmental Practitioner's Handbooks ([Practitioner's Handbooks \(transportation.org\)](#))

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

24.0 NEPA Flow Chart

The flow chart is on the following page.

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NEPA Public Involvement

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for public involvement.

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, 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 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for the Clean Air Act and Transportation Conformity.

The Clean Air Act (42 U.S.C. 7401-7671q) 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 rule 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



NEPA Air Quality Guidance

approved SIP, or project phases that have already received funding commitments by FHWA or FTA may proceed.

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

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 Statewide Transportation Improvement Program (STIP)?

Current MaineDOT Approved STIP <https://www.maine.gov/mdot/stip/>

Projects exempt from the requirement to determine conformity (40 CFR 93.126 Table 2) will not be called out in the conformity analysis section but will be listed in the STIP under the Project Specific Information section.

Non-exempt projects must be included in a conforming STIP before NEPA can be certified.

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 required conformity tests 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. Since a PM₁₀ hot-spot determination is no longer required, the conditions for the Presque Isle PM₁₀ maintenance area have also been satisfied. Therefore, the 2021-2024 STIP, and the 2021-2024 PACTS and KACTS TIPs, conform to the current SIP and satisfy the conformity requirements of the Clean Air Act Amendments of 1990.

If the Project is not in the STIP, 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 the CPD e-file.

2.0 Project Not in STIP

If the project is not in the STIP, the Environmental Specialist will work with the Program Development Manager in the Office of Results and Information to amend the STIP and get FHWA approval. Once the project is in the STIP the Environmental Specialist can finalize the Air Quality review. NEPA will not be approved for the project in the STIP. All actions will be processed and documented in MaineDOT's ProjEx database and the CPD e-file.

3.0 Links and Agreements

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

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

Transportation Conformity Regulations <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100E7CS.PDF?Dockkey=P100E7CS.PDF>

Maine DEP Chapter 139 Transportation Conformity <https://www.epa.gov/sites/default/files/2017->



MaineDOT

NEPA Air Quality Guidance

[10/documents/2008-me-ch139.pdf](#)

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

FHWA Air Quality Planning for Transportation Officials

https://www.fhwa.dot.gov/environment/air_quality/publications/air_quality_planning/aqplan00.cfm

AASHTO Practitioner's Handbook

<https://environment.transportation.org/wp-content/uploads/2021/04/ph18-1-ol.pdf>

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

<https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=13231f1bb1344425bb18833668f309a3>)

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NEPA Noise Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for noise evaluation.

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 and Type II projects. 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. Highway traffic noise analysis for Type II projects will only be performed for development that predated the existence of the highway and has not previously been analyzed as a part of a previous Type I or Type II project. Therefore, Type II projects are not part of this process.

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 MaineDOT Highway Traffic Noise Policy 4
 - 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 Environmental Specialist is responsible for assessing and ensuring compliance with 23 CFR 772 and MaineDOT's Noise Policy under NEPA Assignment (23 U.S.C. 327).



NEPA Noise Guidance

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

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 (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 and MaineDOT's Environmental CPD e-file.

2.0 Noise Analysis

The Environmental Specialist in MaineDOT's Environmental Office will perform or 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).

For Type I Projects, highway traffic noise analysis will be performed for developed lands and undeveloped lands for which development is planned, designed, and programmed. The development will be deemed to be planned, designed, and programmed 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. Type II analyses are performed only after a municipality has submitted a formal request in writing. Type II analyses are dependent upon available Workplan funding. Type II noise abatement will be considered separately in the Workplan for future available funding.

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.



NEPA Noise Guidance

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' 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:

1. Does the noise analysis approach or exceed noise abatement criteria 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.

3.0 Evaluation of Abatement Measures

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

- a. Traffic management measures such as traffic control devices and signing for the prohibition of certain vehicle types, time use restrictions for certain vehicle types, modified speed limits, and exclusive lane designations.
- b. Alteration of the highway project's horizontal and vertical alignments.
- c. Construction of noise barriers (including landscaping for aesthetic purposes and the acquisition of property rights) within or outside the highway right of way.
- d. Acquisition of real property or interests therein (predominantly unimproved property) to serve as a buffer zone to preempt development that would be adversely impacted by traffic noise. This measure may be included in Type I projects only.
- c. Noise insulation of public use or non-profit institutional structures only, such as, but not limited to churches, schools, hospitals, or libraries.

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..



MaineDOT

NEPA Noise Guidance

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:

2. Are abatement measures reasonable and feasible?

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.

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.

After the 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 maintain the noise insulation of publicly owned buildings, such as schools, 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 Links

Procedures for Abatement of Highway Traffic and Construction Noise

[23 CFR 772](#)

FHWA Noise Guidance

<https://www.fhwa.dot.gov/environment/noise/>

MaineDOT Noise Policy

[MaineDOT Noise Policy 2021.PDF](#)

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](#)

MaineDOT NEPA Guidance - Appendix C - Noise

R:\Environment\Env_Public\@ENV - Common\ENV - Agreements, general permits\NEPA\MaineDOT NEPA Guidance
2023

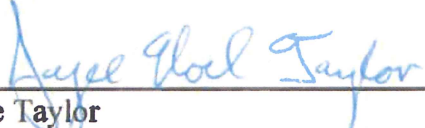
Highway Traffic Noise Policy

State of Maine Department of Transportation

Effective November 23, 2021


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

Recommend Approval:

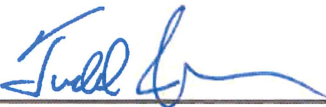
 11-23-2021

Joyce Taylor Date
Chief Engineer, MaineDOT

Approved:

 12-13-21

Bruce A. Van Note Date
Commissioner, MaineDOT

 12/21/21

Todd Jorgensen Date
Division Administrator, FHWA

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EXECUTIVE SUMMARY

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

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

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

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

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

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

I. INTRODUCTION

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

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

II. HIGHWAY TRAFFIC NOISE ANALYSIS

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

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

A highway traffic noise analysis will include the following steps.

A. Identification of Noise Sensitive Areas and Receptors

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

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

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

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

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

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

B. Determination of Existing Noise Levels.

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

C. Prediction of Future Noise Levels

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

D. Determination of Impacts

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

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

E. Evaluation of Abatement Measures

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

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

F. Incorporation of Feasible and Reasonable Criteria

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

G. Selection of Abatement Measures

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

H. Documentation

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

I. Completion of Follow-up Measures

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

III. TYPE I PROJECTS

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

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

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

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

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

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

IV. TYPE II PROJECTS

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

V. TYPE III PROJECTS

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

VI. FEASIBILITY CRITERIA

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

A. Noise Reduction

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

B. Safety

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

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

C. Barrier Height

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

D. Other Considerations

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

VII. REASONABLENESS CRITERIA

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

A. Maximum Cost of Abatement

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

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

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

B. Noise Reduction Design Goal

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

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

C. Third Party Funding

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

State Funded Projects

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

D. Residents' Desires

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

VIII. LOCAL COORDINATION AND COMMUNITY INVOLVEMENT

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

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

IX. LOCAL/PRIVATE PROJECTS

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

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

X. CONSTRUCTION NOISE

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

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

APPENDIX A. HIGHWAY NOISE FUNDAMENTALS

The Basics of Sound

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

Table A-1 Typical Sound Levels⁵

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

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

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

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

Highway Traffic Noise

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

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

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

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

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

Highway Traffic Noise Strategies

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

Motor vehicle control

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

Land use control

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

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

⁶MRSA 29-A§ 1912

Highway planning and design

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

Abatement

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

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

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

APPENDIX B. GLOSSARY

Abatement. A reduction in sound levels.

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

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

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

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

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

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

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

Leq (h). The hourly value of Leq.

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

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

Noise. Any unwanted sound.

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

Table B-1 Noise Abatement Criteria (NAC)

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

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

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

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

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

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

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

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

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

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

APPENDIX C. FHWA HIGHWAY TRAFFIC NOISE REGULATION

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

Section Contents

772.1 Purpose.

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772.19 Construction noise.

Table 1 to Part 772--Noise Abatement Criteria

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

Sec. 772.1 Purpose.

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

Sec. 772.3 Noise standards.

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

Sec. 772.5 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 772.7 Applicability.

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

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

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

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

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

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

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

Sec. 772.9 Traffic noise prediction.

(a) Any analysis required by this subpart must use the FHWA Traffic Noise Model (TNM), which is described in "FHWA Traffic Noise Model" Report No. FHWA-PD-96-010, including Revision No. 1, dated April 14, 2004, or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. These publications are incorporated by reference in accordance with section 552(a) of title 5, U.S.C. and part 51 of title 1, CFR, and are on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to http://www.archives.gov/federal/register/code_of_federal_regulations/ibr_locations.html.

These documents are available for copying and inspection at the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, as provided in part 7 of title 49, CFR. These documents are also available on the FHWA's Traffic Noise Model Web site at the following

URL: <http://www.fhwa.dot.gov/environment/noise/index.htm>.

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

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

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

Sec. 772.11 Analysis of traffic noise impacts.

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

(1) For projects on new alignments, determine traffic noise impacts by field measurements.

(2) For projects on existing alignments, predict existing and design year traffic noise impacts.

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

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

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

Sec. 772.13 Analysis of noise abatement.

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

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

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

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

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

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

(1) Feasibility:

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

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

(2) Reasonableness:

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

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

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

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

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

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

agency's reasonableness design goal.

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

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

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

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

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

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

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

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

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

Sec. 772.15 Federal participation.

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

(1) Traffic noise impacts have been identified; and

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

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

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

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

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

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

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

(3) Alteration of horizontal and vertical alignments.

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

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

Sec. 772.17 Information for local officials.

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

(1) Noise compatible planning concepts;

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

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

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

Sec. 772.19 Construction noise.

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

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

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

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

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

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

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

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

³ Includes undeveloped lands permitted for this activity category.



NEPA Endangered Species Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for endangered species and provides the process for identifying and determining the appropriate level of coordination that is required.

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



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with the signatories in order to act as FHWA in these agreements under NEPA Assignment.

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 an 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. 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 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.



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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 assessment. 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 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 after 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. Once MaineDOT has received a letter of concurrence, consultation is concluded.

3.2 Formal Consultation

Adverse effects on a listed species result in the need for formal consultation. MaineDOT drafts a BA using coordination from the USFWS or NMFS and the action agency. 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. The issuance of a biological opinion concludes 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.



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All ESA commitments are tracked in ProjEx.

4.0 Links and Agreements

Endangered Species Act: <https://www.law.cornell.edu/uscode/text/16/chapter-35>

Interagency Coordination, Consultation Procedures – Biological Assessments [50 CFR 402.12](https://www.law.cornell.edu/cfr/text/50/402.12):
<https://www.law.cornell.edu/cfr/text/50/402.12>

Information for Planning and Consultation (IPaC): <https://www.fws.gov/ipac/>

Atlantic Salmon Programmatic Biological Opinion and User's Guide
<https://www.maine.gov/mdot/maspc/>

Northern Long-eared Bat Programmatic Biological Opinion and User's Guide:
<https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/UserGuideFHWAibatNLEBRevDec2016.pdf>

AASHTO Practitioner's Handbook for Section 7
<https://environment.transportation.org/resources/practitioners-handbooks/complying-with-section-7-of-the-endangered-species-act-for-transportation-projects/>

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 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for the Bald and Golden Eagle Act and provides the process for identifying Bald and Golden Eagle locations to determine the appropriate level of agency coordination required for a proposed project.

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.

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.



NEPA Bald and Golden Eagle Guidance

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

<https://www.law.cornell.edu/uscode/text/16/668a>

Eagle Permits

<https://www.law.cornell.edu/cfr/text/50/part-22>



NEPA Marine Mammal Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for marine mammals and provides the process for identifying and determining the appropriate level of coordination that is required.

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. 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).

2.0 Marine Mammal Coordination, Review, and Approval

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



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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 and MaineDOT's Environmental CPD e-file.

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.

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 prior to the commencement of construction. All documentation will be placed in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

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



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will develop a plan of action and document the plan in the CPD E-File. NEPA will be approved prior to obtaining an IHA, however, the IHA will be obtained prior to the project advertising.

All MMPA commitments are tracked in ProjEx.

4.0 Links

Marine Mammal Protection Act

<https://www.law.cornell.edu/uscode/text/16/chapter-31>

NOAA Fisheries-Marine Mammal Guidance

<http://www.nmfs.noaa.gov/pr/laws/mmpa/>

National Marine Fisheries Service Policy Directive PD 02-038

[Track-Changes Process for Distinguishing Serious from Non-Serious Injury \(noaa.gov\)](#)



NEPA Migratory Bird Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for migratory birds and provides the process for identifying and determining the appropriate level of coordination that is required.

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.

1.0 Migratory Bird Coordination and Documentation

The MaineDOT Biologist and Team Leader will document the applicability of the MBTA in ProjEx 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.
2. No active migratory bird nests (nests containing eggs and/or young) will be removed or destroyed.
 - 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.
3. 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.
4. Inactive nests will be removed from the project area to minimize the potential for reuse by migratory birds during the construction period.



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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

<https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>

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NEPA Essential Fish Habitat Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for essential fish habitat and provides the process for identifying and determining the appropriate level of coordination that is required.

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 that are 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.

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

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](#), and other stream information.

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.

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.



NEPA Essential Fish Habitat Guidance

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 Adverse Effect	None	N/A
Adverse Effect-Not Substantial (as defined in EFH Regulation)	Abbreviated	NMFS must respond in writing within 30 days of EFH Assessment submittal (50 CFR 600.920(h)(4))
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(h)(4))

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.

3.0 Essential Fish Habitat Coordination, Review and Approval

The MaineDOT Biologist will prepare an EFH Assessment based on the consultation level and submit 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).

Conservation recommendations from NMFS are advisory, 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



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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 Links

Magnuson-Stevens Fishery Conservation and Management Act [16 USC 1855](#)

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

EFH Consultation worksheet for abbreviated consultation

<https://media.fisheries.noaa.gov/2021-08/EFHWorksheet-fillable%20form-aug%202021-final.pdf>

FHWA Programmatic EFH Consultation

[https://media.fisheries.noaa.gov/dam-migration/fhwa_programmatic_efh_consultation_april_2018_\(2\).pdf](https://media.fisheries.noaa.gov/dam-migration/fhwa_programmatic_efh_consultation_april_2018_(2).pdf)

EFH Consultation Process Guide

[FHWA/NMFS Consultation Process Guide \(noaa.gov\)](#)

Programmatic Consultations (contains Consultation Guide, BMPs, EFH Memo, Programmatic EFH Consultation, Fillable Verification Form)

<https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/programmatic-consultations>

EFH Mapper https://www.habitat.noaa.gov/apps/efhmapper/?page=page_3



NEPA Hazardous Material Management Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance on hazardous material management and defines the process for identifying and determining the appropriate level of coordination.

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.

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 Material 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.



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2.0 Hazardous Material 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. The appropriate comment is made in ProjEx and 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. Is hazardous material 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.

3.0 Links and Standard Operating Procedures

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

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

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

MaineDOT Environmental Office maintains a Standard Operating Procedure for Hazardous Material

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

1.0 APPLICABILITY.

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

2.0 PURPOSE.

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

3.0 RESPONSIBILITIES.

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

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

3.1 CONFORMITY

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

3.2 ORIGINATION, DEVELOPMENT & PROCESS

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

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

The Manager of the HMM will oversee coordination efforts within

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

3.3 APPROVAL

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

4.0 PROCEDURES.

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

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

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

4.1 INITIAL SITE ASSESSMENT

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

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

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

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

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

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

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

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

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

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

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

4.2 DETAILED SITE INVESTIGATION

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

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

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

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

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

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

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

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

4.3 HIRING A CONSULTANT.

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

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

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

ATTACHMENT A

Initial Site Assessment Checklist

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

ATTACHMENT #1

“Model” Special Provision

(from Blaine/Mars Hill Route 1 Project)



NEPA Section 106 Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for Section 106 of the National Historic Preservation Act and provides for identifying historic property to determine the appropriate level of coordination that is required.

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 Cultural staff are responsible for assessing and ensuring compliance with Section 106 under NEPA Assignment. 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 MaineDOT Cultural staff (CS) 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 CS will document this determination in ProjEx. 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 CS will apply the October 2004 Section 106 Programmatic Agreement (PA), Section 2 (Projects exempted from SHPO, Federal Highway Administration [FHWA], and Federal Transit Administration [FTA] review).

2.0 Applying the Section 106 Programmatic Agreement



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In the 2022 Section 106 PA, the FHWA and FTA delegated the Section 106 process and determination to the MaineDOT. MaineDOT acts as FHWA under NEPA assignment.

The CS will make a determination 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 CS 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 CS 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 CS 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 CS will also forward information on the project to the Archaeological staff at MHPC for review. The CS 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 CS will invite other consulting parties (local government representatives, local historic groups) to participate in the Section 106 process via mailed letters or email.

3.0 Consulting Parties Invitation

The CS 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 PA Section 4 (A). Typically, the consulting parties include SHPO and/or THPO, Native American tribes, representatives of local governments, and local historic groups.

The lead federal agency 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, Penobscot Nation, and Aroostook Band of Micmacs have THPO status under Section 106 and are not currently signatories to the Section 106 PA; the same is true of the Army Corps of Engineers (ACOE).

The CS will invite the federally recognized tribes in Maine: Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe-Indian Township, Passamaquoddy Tribe-Pleasant Point, and Penobscot Indian Nation and request their comments. The tribal comments will be sent directly to the lead federal agency to complete the consultation. *There are no known "out-of-state" tribes with an interest or claim in Maine.*

The CS will invite the appropriate town officials and any known local historic groups to participate in the Section 106 process for the undertaking/project and request comments from these parties.



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If no response is received from an invited consulting party after 30 calendar days, the CS will assume that the party does not wish to participate and will not send future notices of determinations or invite their participation in the resolution of adverse effects, if necessary. 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 CS will file all documentation in the CPD e-file and dates will be entered into ProjEx.

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).

4.0 Identification of Historic Properties (36 CFR 800.4)

The CS will determine the Area of Potential Effect (APE) and then conduct an above-ground cultural resources Survey or assign projects to the consultant(s) and/or the MHPC archaeological staff. 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 CS will provide topographic maps with the APE clearly identified and written project scope of work. The CS will enter dates into ProjEx indicating when the surveys were assigned and completed. The CS 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 CS or the consultant. All surveys and determinations of eligibility and effects will meet the requirements of the MHPC Survey Guidelines.

The following is a breakdown of responsibility for 36 CFR § 800.4:

§800.4 (a) (1) - MaineDOT/CS

§800.4 (a) (2) - MaineDOT/CS, consultant, MHPC archaeological staff, and Tribes

§800.4 (a) (3) - MaineDOT/CS

§800.4 (a) (4) - MaineDOT/CS and the lead federal agency

§800.4 (b), (c), and (d) - MaineDOT/CS, consultant, MHPC archaeological staff, and Tribes.

The CS, and/or the MHPC archaeological staff, and/or the THPO (as appropriate) 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 CS 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 CS 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 CS will make a final determination and forward the supporting documentation with a detailed cover



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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 CS 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 CS, 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 CS 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 CS will make a final determination of eligibility for the SHPO's concurrence. For nearly all projects, the determination of National Register 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 CS, the lead federal agency, and the SHPO will meet to resolve the disagreement, or the lead federal agency 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.

5.0 Assessment of Effects on Historic Properties (36 CFR 800.4 (d))

The CS will provide National Register eligible and listed property information to the Environmental Team Leader and Project Manager at Baseline Complete. This will allow the design to consider measures to avoid and minimize. The CS will determine the effects on historic properties at the Preliminary Design Report Milestone (PDR), unless sufficient information is provided prior to PDR. The CS will prepare information for scheduled public meetings to inform the public about an undertaking and its effects on



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historic properties in accordance with § 800.2(d)(2). If the project is not scheduled to have a public meeting, then the CS 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 CS 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 CS 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 CS, 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 finding 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 CS, 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.

6.0 Assessment of Adverse Effects (36 CFR 800.5)

The CS in accordance with 36 CFR § 800.5, will apply the criteria of adverse effect to historic properties within the APE. The CS will provide a determination of effect report as outlined in MHPC's Survey Guidelines. The CS 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 CS 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



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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 CS 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 CS in writing that it disagrees with the finding of no adverse effect and specifies the reason, then the CS, 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 CS and the lead federal agency will follow 36 CFR § 800.5(d) (2) and § 800.6 - § 800.7. The CS 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 CS 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 CS 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 CS 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



NEPA Section 106 Guidance

included. The CS will obtain all signatures. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

This will complete Section 106. 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 CS in writing that it disagrees with the finding of no adverse effect and specifies the reason, then the CS 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 CS is responsible for Section 106 determinations and the development and implementation of all Section 106 MOAs.

Once MaineDOT assumes NEPA assignment, the CS will lead the consultation with all consulting parties including the ACHP. Any MOA requirements will also be led through final signatures by the CS.

7.0 Links

Section 106 of the National Historic Preservation Act
[Advisory Council on Historic Preservation](#)

Protection of Historic Properties
[36 CFR 800](#)

[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 assignment program (23 U.S.C. 327). Any reference in the SOP to FHWA will be the responsibility of MaineDOT unless a project does not fall under NEPA assignment (e.g., border projects).

3.2 Maintenance

The Coordination, Assessment, and Permits Division Manager and Cultural staff (CS) 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, Permits, and Coordination Division's CS shall review all projects within the MaineDOT Work Plan, identified as a scoping project, identified in the Annual Maintenance and Operations Work Plan, 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 CS will document this determination in the MaineDOT ProjEx database or Maintenance 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 CS will apply the July 2022 Section 106 Programmatic Agreement (PA), Appendix A (Projects exempted from State Historic

Preservation Officer [SHPO], Federal Highway Administration [FHWA], and Federal Railroad Administration [FRA] 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 CS will make a determination 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 Section VII of the Programmatic Agreement.

A. If the project meets one of the exemptions; the CS will document the determination in the MaineDOT ProjEx database. The project will also be documented in the annual PA report to FHWA, FRA, and SHPO [this will be revised under NEPA Assignment and the revised/amended PA]. All documentation will be filed in the CPD e-file and ProjEx.

B. If the project does not meet one of the PA exemptions, the CS conducts an Above Ground Cultural Resource Survey in accordance with the MHPC Above Ground Cultural Resource Survey Manual, February 2006 (MHPC Survey Guidelines) or the CS 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 CS will also forward the project to the Archaeological staff at Maine Historic Preservation Commission (MHPC) for review. The CS will send the project to the federally recognized Tribes and Tribal Historic Preservation Officer (THPO) as appropriate. The CS will invite other consulting parties (local government representatives, local historic groups) to participate.

4.3 Consulting Parties Invitation

The CS 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 CS 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 CS 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.

The CS 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 CS 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 CS 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 CS will review and approve the party.

Tribal Consultation

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 CS 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. *There are no known "out-of-state" tribes with an interest or claim in Maine.* 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 CS 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 CS will determine the Area of Potential Effect (APE) and then conduct an Above Ground Cultural Resource Survey or assign projects to the consultant(s) and/or the MHPC archaeological staff. 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 CS will provide topographic maps with the APE clearly identified and written project scope of work. The CS will enter dates into ProjEx for Section 106 architectural survey and Section 106 archaeological survey for when the surveys were assigned and completed.

All above-ground surveys will be entered into the web-based historic properties database (Maine Historic Property Workbench) by the CS or the consultant. All surveys and determinations of eligibility and effects will meet the requirements of the MHPC Survey Guidelines.

The following is a breakdown of responsibility for 800.4:

§800.4 (a) (1) - MaineDOT/CS

§800.4 (a) (2) - MaineDOT/CS, consultant, MHPC archaeological staff, and Tribes

§800.4 (a) (3) - MaineDOT/CS

§800.4 (a) (4) - MaineDOT/CS

§800.4 (b), (c), and (d) - MaineDOT/CS, consultant, MHPC archaeological staff, and Tribes.

The CS, and/or consultant, and/or the MHPC archaeological staff, and/or the THPO (as appropriate) 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 CS 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 CS 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 CS 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 CS 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 CS and the SHPO will follow §800.4(d)(1)(ii) by meeting to resolve the disagreement, or the CS 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 CS 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 CS will make a final determination of eligibility for the SHPO's concurrence. For nearly all projects, the determination of National Register 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 CS and the SHPO will meet to resolve the disagreement, or the CS will forward the finding and supporting documentation to the Secretary of the Interior (specifically the Keeper of the National Register within the U.S. Dept 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 CS will determine whether historic properties will be affected after sufficient project details or plans are provided by the MaineDOT ENV Team Leader. The CS 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 CS 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.

A. If the determination is the undertaking/project will have **no effect** on historic properties as defined in § 800.16(i), then the CS 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 CS 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 CS 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 CS and the SHPO will follow §800.4(d)(1) (ii) by meeting to resolve the disagreement, or the CS 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 CS 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 CS, 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 CS in accordance with 36 CFR § 800.5, will apply the criteria of adverse effect to historic properties within the APE. The CS will provide a determination of effect report as outlined in MHPC's Survey Guidelines. The CS 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 CS 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 are required. The exact wording to be used is as follows: *"MaineDOT will be processing 4(f) de minimis documentation with FHWA 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 will be entered into ProjEx. The CS will also put the type of determination in ProjEx on the Permit page.

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 CS 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 CS in writing that it disagrees with the finding of no adverse effect and specifies the reason, then the CS, and/or the SHPO, and/or consulting parties will follow §800.5(c)(2) by meeting to resolve the disagreement, or the CS 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 CS 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 CS will follow 36 CFR § 800.5(d) (2) and § 800.6 - § 800.7. The CS will notify the SHPO, THPO, and any other participating consulting parties. The CS 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 CS 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 CS pursuant to §800.6 (c). At a minimum, signatories will include the SHPO and/or THPO and the ACHP if they choose to participate. Additional invited signatories or concurring parties may also be included. The CS will be responsible for obtaining all signatures. All documentation will be filed in the CPD e-file and dates will be entered into ProjEx.

i. In the failure to resolve adverse effects, the participating parties will follow § 800.7.

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 CS 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 CS.

4.8 National Historic Landmarks (36 CFR 800.10)

The CS will notify the Environmental Team Leader and the NEPA Manager when an NHL may potentially be adversely affected by an undertaking/project. The CS will be responsible for following § 800.10. The CS will be responsible for inviting the Advisory Council and the Secretary of the Interior to participate in consultation.

4.9 Emergency Situations (36 CFR 800.12)

In accordance with 36 CFR § 800.12, an emergency undertaking/project is defined as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property. The CS will work with the NEPA Manager in these situations.

In emergency situations, as defined in § 800.12, the CS will notify the NEPA Manager and will notify the ACHP and the SHPO/THPO prior to the undertaking and afford them an opportunity to comment within seven days. If the CS 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. Immediate rescue and salvage operations conducted to preserve life or property are exempt from Section 106 review. Any action that extends beyond 30 days following the emergency is subject to the regular Section 106 review process unless an extension has been granted by the ACHP. The CS will also work with the Environmental Team Leader and Project Manager.

4.10 Post-Review Discoveries (36 CFR 800.13)

In the event of post-review discoveries, the CS will work with the SHPO/THPO and Tribes in accordance with § 800.13. The CS will also work with the NEPA 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 CS 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 CS 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)

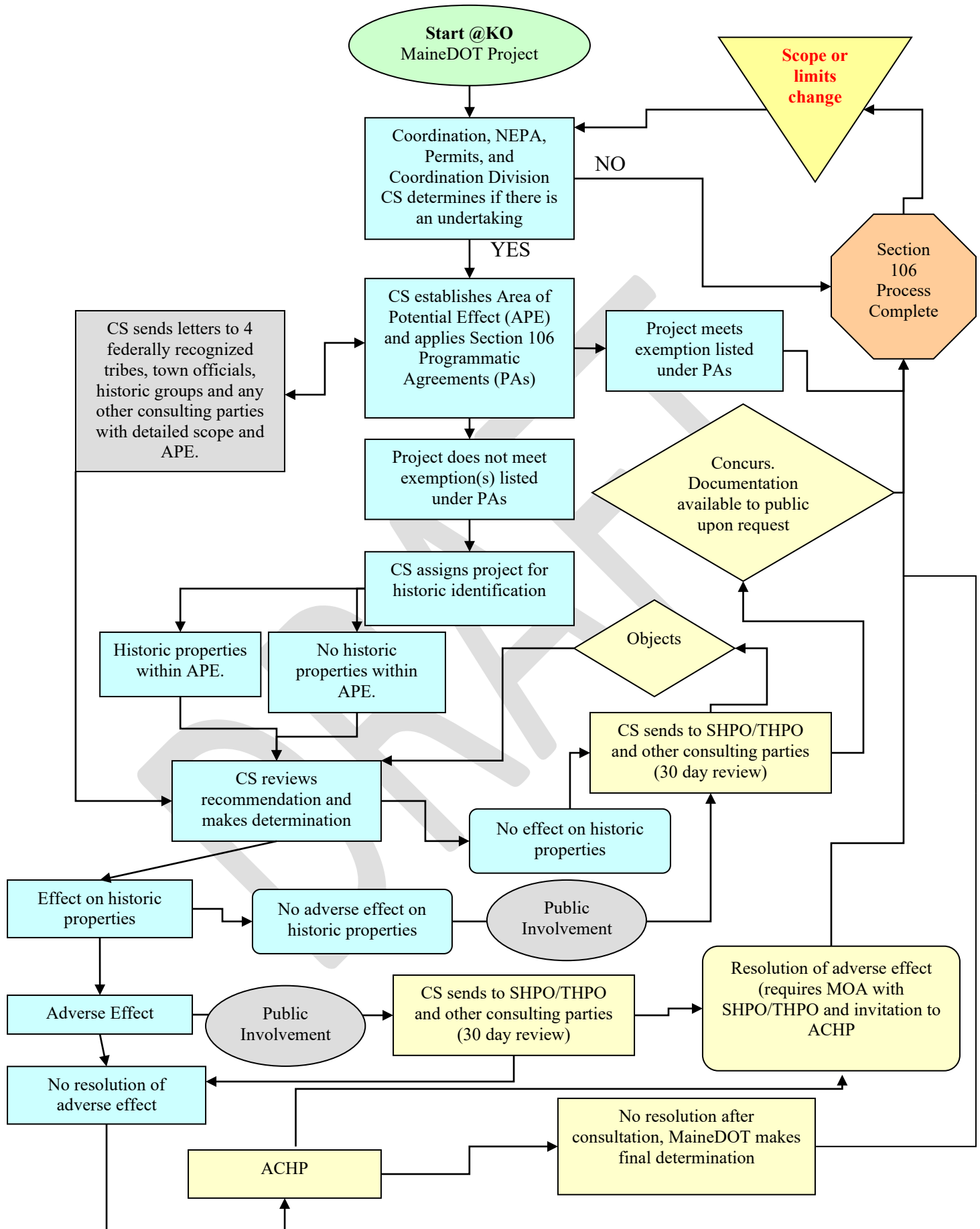
All above-ground surveys conducted by or for the MaineDOT will be completed via the Cultural Architectural Resource Management Archive (CARMA).

4.14 National Environmental Policy Act (NEPA)

When Section 106 has concluded the CS will check yes or no for Section 106 on the Maine Checklist in ProjEx.

Final NEPA approval (and therefore the expenditure of federal funds and/or approval of federal permits) cannot be granted until Section 106 review is complete [36 CFR § 800.1(c)]. Draft EA and EIS documents can be circulated prior to the completion of Section 106 review provided that a MOA has been executed allowing for phased identification and evaluation of properties. All Section 106 determinations of eligibility and effect, and any related MOAs, must be completed before the issuance of a FONSI or ROD. The CS is responsible for 106 determinations and the development and implementation of all 106 MOAs.

Section 106 Process for MaineDOT Projects – Process Flow Chart





NEPA Section 4(f) Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

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.

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 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).



NEPA Section 4(f) Guidance

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.

3.0 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.

4.0 Section 4(f) Documentation and Approval

After determining the Section 4(f) documentation level, the HC will write the document and submit it to the NEPA Manager for quality review and to the Environmental Office Director for approval. 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. The NEPA 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.

5.0 Links and Standard Operating Procedures

Section 4(f) of the Department of Transportation Act of 1966 ([49 U.S.C. 303](#))
Regulation ([23 CFR 774](#))

FHWA Section 4(f) Guidance

<https://www.environment.fhwa.dot.gov/legislation/section4f.aspx>

MaineDOT maintains a Section 4(f) Standard Operating Procedure.

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. 327).

3.2 Maintenance

The Senior Environmental Manager and Cultural staff (CS) 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 CS oversees the Section 4(f) process for all MaineDOT projects and studies. The CS will be responsible for sending plans with final right-of-way, historical data, and/or 4(f) documents to the Senior Environmental Manager for review and written approval.

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 CS 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 CS will process projects under 23 CFR 774.

4.3 Identification of 4(f) Resources

The CS shall review all projects within the Work Plan, and projects identified as candidate projects for scoping that have U.S. DOT funds. The CS 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 CS 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, etc. The CS will work closely with MaineDOT's Environmental Legal Counsel regarding Section 4(f) applicability criteria. All decisions will be documented in ProjEx.

- A. If no 4(f) resources are identified, the CS 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 CS 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 CS 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 CS.

4.4 Determination of major primary purpose and significance for recreation, parks, or wildlife/waterfowl refuge.

The CS 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 CS 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 CS 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 CS'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 CS will place a note in the Maine DOT 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 CS 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 CS 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 CS, MHPC archeological staff, and/or the historic consultant 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 CS 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 CS 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 CS 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 CS 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 CS 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 CS 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 CS will occur throughout the project development process.

4.7 Determination of “Use” at Preliminary Design Report (PDR) Phase

The CS 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 CS 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 CS, then the CS will enter dates and comments into ProjEx. u. 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 CS 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 CS 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 CS 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 usually be satisfied during an early and traditional Maine DOT Informational Meeting or Public Hearing.

The Maine DOT CS 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)

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 45 days in which to do that. In addition, the draft document must be reviewed by MaineDOT Environmental Counsel and the Maine Attorney General's Office for legal sufficiency prior to its finalization. The CS and Senior Environmental Manager are responsible for coordinating the legal reviews and incorporating suggestions/requirements from the legal reviews. For additional information, see MaineDOT's EA and EIS Guidance sections 6.2. 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 CS will prepare the 4(f) documentation for all MaineDOT projects and studies. The CS will determine the appropriate level of 4(f) documentation. If there is some uncertainty regarding the appropriate level of 4(f) documentation, the CS 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 CS 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 feasible and prudent, it must be selected.

The CS 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 CS 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 CS 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 CS will submit an electronic version for review and approval in accordance with the chart below:

Action	Responsible Staff		
	Preparer	Quality Control Reviewer	Approver
Section 4(f) - De minimis	Cultural Staff	ENV Team Leader	Senior Environmental Manager (NEPA Manager)
Programmatic	Cultural Staff	Senior Environmental Manager (NEPA Manager)	ENV Director
Individual Section 4(f)	Cultural Staff	Senior Environmental Manager (NEPA Manager)	ENV Director
Legal Sufficiency – EIS & Individual Section 4(f)		MaineDOT Legal Counsel	Maine Attorney General's Office

A. Sign the *de minimis* or programmatic document.

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 CS.

B. Find the Individual Draft 4(f) evaluation document satisfactory and forward it to the Department of the Interior (DOI) for a minimum 45-day review.

If the Draft Individual Section 4(f) Evaluation is found complete, then the CS/Senior Environmental Manager will forward the document to DOI for a minimum 45-day review period and to the MaineDOT Environmental Counsel and Maine Attorney General's Office for legal sufficiency. If there are no substantive comments from DOI and the document is found legally sufficient, then the Final Individual Section 4(f) Evaluation will be prepared, including a draft Section 4(f) Statement to be signed by the Environmental Office Director. The CS will place dates into ProjEx. All documentation will be filed in the CPD e-file.

C. Submit comments on the entire document to the CS.

If the Senior Environmental Manager has content or format-based comments on the 4(f) document, then the CS 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.

4.14 Timeframes

The CS will prepare the 4(f) documentation for all MaineDOT projects and studies. The timeframes below outline standardized preparation and review times and are dependent on all

necessary information being available for adequate documentation and review. Any change in scope or anticipated impacts will reset the schedule for both the preparation and review components. In addition, there may be separate but concurrent Section 106 processes (e.g., MOA, ACHP invitation to participate) that may affect the schedules if further resolution or consultation is required. The reader is directed to the Section 106 SOP for a detailed discussion of the process, responsible parties, and timeframes.

A. Preparation

The following preparation times assume that all required materials and information have been obtained from the Environmental Team Leader, PM, designer, Right-of-Way team member, SHPO/THPO, OWJ, and any other relevant party. Timeframes are in calendar days.

<i>De minimis</i> with a cover memo	CS plus public comment period	20 days
Programmatic 4(f)	CS	15 days
Preliminary Draft 4(f) Individual Evaluation	CS and revisions	30 days
Draft 4(f) Individual Evaluation	DOI review period	45 days (60 max)
Draft 4(f) Individual Evaluation	CS revises in response to MaineDOT comments	15-20 days
Final 4(f) Individual Evaluation	CS revises in response to DOI, Environmental Counsel, and other relevant parties' comments; prepares draft Final 4(f) Statement for ENV Director's approval	15 days

4.15 Section 4(f) Document Complete

Section 4(f) is considered complete when the CS determines 4(f) is not applicable or the Senior Environmental Manager or ENV Director signs the 4(f) document. The CS will place a date in the MaineDOT ProjEx database. All documentation will be filed in the CPD e-file.

4.16 National Environmental Policy Act (NEPA)

When Section 4(f) has concluded the CS will complete the NEPA checklist Section 4(f) section in ProjEx.

Final NEPA approval cannot be granted until Section 4(f) is complete.

4.17 DOT Locally Administered Projects (LAP)

The CS will conduct the Section 4(f) process as laid out in this SOP for all U.S. DOT-funded LAP Projects.

4.18 Additional Resources and Guidance

Regulatory Citations

Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303)

23 CFR 774.

Federal Highway Administration (FHWA Docket No. FHWA-2002-13290), 2005. Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects that have a Net Benefit to a Section 4(f) Property; *Federal Register* 70(75), p. 20618-20630

Federal Highway Administration (FHWA Docket No. FHWA-05-22884) and the Federal Transit Authority, 2006. Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, Notice of Proposed Rulemaking (NPRM); *Federal Register* 71(144), p. 42611-42622.

Federal Highway Administration (FHWA Docket No. FHWA-2006-24902), 2006. Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System; *Federal Register* 71(243); p. 76019-76021.

Guidance Papers

Federal Highway Administration, 1987. Technical Advisory T6640.8A: Guidance for Preparing and Processing Environmental and Section 4(f) Documents, dated October 30, 1987.

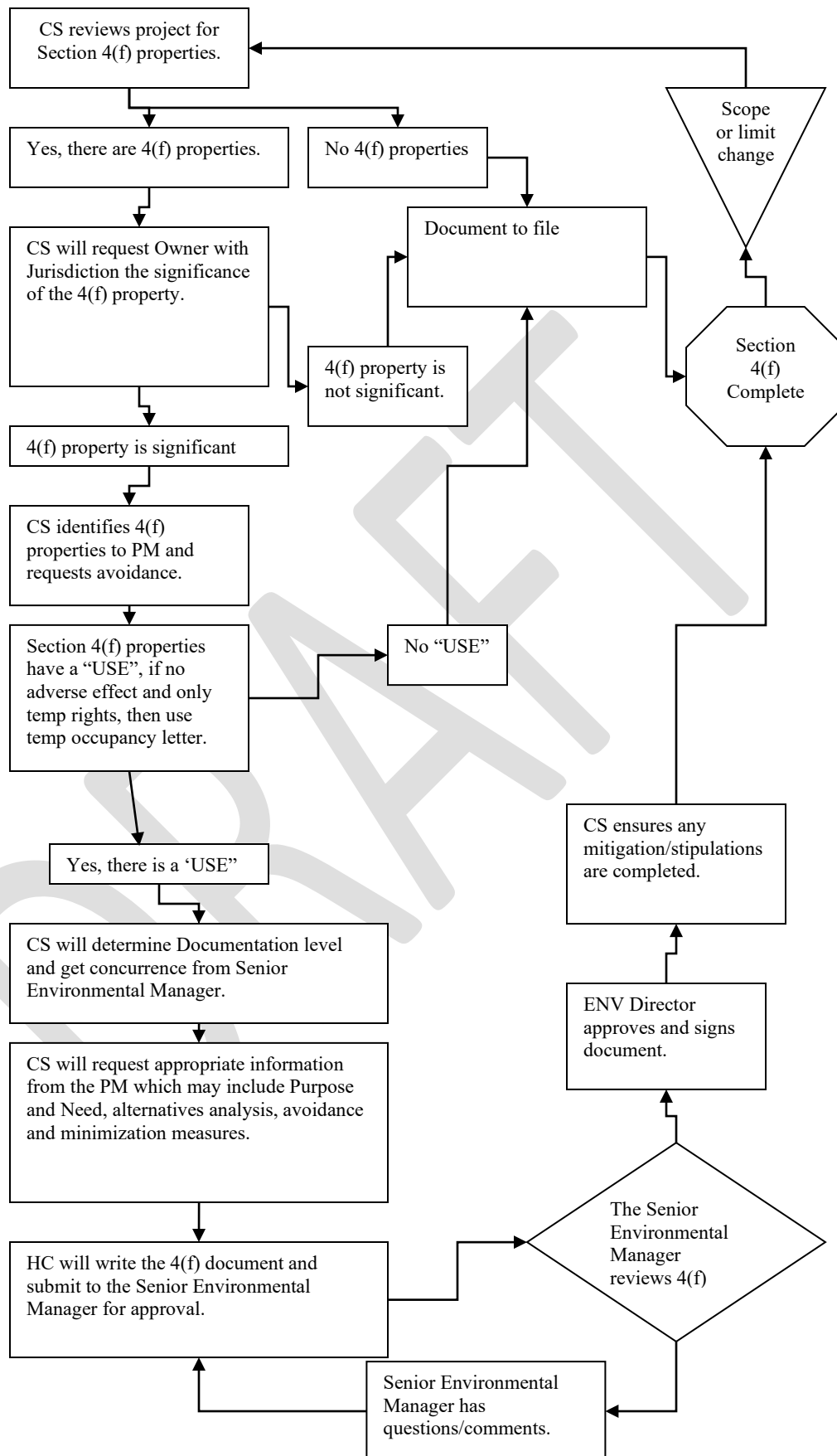
Federal Highway Administration, 2012. FHWA Section 4(f) Policy Paper; dated July 20, 2012 66 p.

Websites

4(f) Guidebook references

<http://environment.fhwa.dot.gov/guidebook/Results.asp?selSub=68&Submit=Search+Guidebook>

Section 4(f) Process for Maine DOT Projects - Process Flow Chart is on the following page.





NEPA Section 6(f) Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for Section 6(f) and defines the process for identifying Section 6(f) property to determine the appropriate level of coordination that is required.

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.

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.**



NEPA Section 6(f) Guidance

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 in order 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



NEPA Section 6(f) Guidance

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 in a similar manner 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 with the exception of 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 by 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 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.



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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 which 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, 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 to 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:

<https://www.nps.gov/ncrc/programs/lwcf/protect.html>

Maine Department of Agriculture, Conservation and Forestry web page

[Land and Water Conservation Fund: Bureau of Parks and Lands: Maine DACF](#)



NEPA Farmland Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for prime farmland identification and the appropriate level of coordination that is required.

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.



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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 review of the Natural Resources Conservation Service (NRCS) Web Soil Survey mapping to identify Prime and Unique Farmland (go to 2.0). A No response concludes the Prime and Unique Farmland assessment as this resource will not be converted to non-agricultural use. Compliance with the FPPA is satisfied. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

2.0 Identifying Prime and Unique Farmlands

If right-of-way acquisitions are required, the MaineDOT Environmental Team Leader will use the NRCS Web Soil Survey to identify Prime and Unique Farmlands within the proposed project area and save this information to the CPD e-file in the NEPA folder.

To use 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



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the site as farmland on a scale of 0 to 100 according to the information sources listed in 7 CFR § 658.5(a). NRCS will fill out sections II, IV and V. NRCS will respond to these requests within 10 working days of their receipt except that in cases where a site visit or land evaluation system design is needed, NRCS will respond in 30 working days. In the event that NRCS fails to complete its response within the required period, if further delay would interfere with construction activities, the agency should proceed as though the site were not farmland.

After MaineDOT receives the score of a site's relative value from NRCS as described in 7 CFR § 658.4(a), The Team Leader will then apply the site assessment criteria which are set forth in 7 CFR § 658.5 (b) and (c), and fill out sections VI and VII, assigning to the site a combined score of up to 260 points, composed of up to 100 points for relative value and up to 160 points for the site assessment. With this score MaineDOT will be able to identify the effect of its project on farmland, and make a determination as to the suitability of the site for protection as farmland. Once this score is computed, USDA recommends:

- (1) Sites with the highest combined scores be regarded as most suitable for protection under these criteria and sites with the lowest scores, as least suitable.
- (2) Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated.
- (3) Sites receiving scores totaling 160 or more be given increasingly higher levels of consideration for protection.
- (4) When making decisions on proposed actions for sites receiving scores totaling 160 or more, MaineDOT should consider:
 - (i) Use of land that is not farmland or use of existing structures;
 - (ii) Alternative sites, locations and designs that would serve the proposed purpose but convert either fewer acres of farmland or other farmland that has a lower relative value;
 - (iii) Special siting requirements of the proposed project and the extent to which an alternative site fails to satisfy the special siting requirements as well as the originally selected site.

To meet reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, after MaineDOT has made a final decision on a project in which one or more of the alternative sites contain farmland subject to the FPPA, a copy of the Form, which indicates the final decision, will be provided to NRCS.

Compliance with the FPPA will be accomplished as part of the National Environmental Policy Act (NEPA) process. The project file must contain the necessary evidence that the FPPA has been followed before NEPA can be approved.

5.0 Prime and Unique Farmland Document (form NRCS-CPA-106) Assessment Criteria

Criteria were developed by the Secretary of Agriculture in cooperation with other Federal agencies. They are in two parts, (a) the land evaluation criterion for which NRCS will provide the rating or score, and (b) the [site](#) assessment criteria, for which MaineDOT must develop its own ratings or scores. The criteria are as



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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.)



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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?

Proposed project is incompatible to existing agricultural use of surrounding farmland - 10 points

Proposed project is tolerable to existing agricultural use of surrounding farmland - 9 to 1 point(s)

Proposed project is fully compatible with existing agricultural use of surrounding farmland - 0 points

6.0 Links

Farmland Protection Policy Act (7 USC 4201-4209)

<https://www.law.cornell.edu/uscode/text/7/chapter-73>

Regulation 7 CFR 658

<https://www.law.cornell.edu/cfr/text/7/part-658>

USDA Farmland Protection Policy Act

[Farmland Protection Policy Act | Natural Resources Conservation Service \(usda.gov\)](#)

NRCS Web Soil Survey

<http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

NRCS-CPA-106 Form

[NRCS-CPA-106NRCS-CPA-106.PDF \(usda.gov\)](#)



NEPA Environmental Justice and Title VI Guidance

Introduction

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Title VI of the Civil Rights Act (42 USC 2000(d)(1–7)) states, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” This substantive law requires any recipient of federal funding, including MaineDOT, to ensure non-discrimination for all persons under Title VI and states that agency actions are subject to judicial review of compliance with Title VI.

MaineDOT is committed to ensuring that the fundamental principles of equal opportunity are upheld in all decisions involving our employees and contractors/consultants, and to ensuring that the public at large is afforded access to our programs and services. To that end, no person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any MaineDOT program or activity on the grounds of race, color, or national origin.

MaineDOT will work with staff, sub-recipients, contractors, and service beneficiaries to promote awareness of the provisions of Title VI and the responsibilities associated with that Act.

In accordance with Executive Order 12898 (Environmental Justice), each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

The U.S. DOT Order (5610.2) on Environmental Justice defines "minority" in the definitions section of the appendix and provides clear definitions of the five (5) minority groups addressed by the Executive Order. These groups are:

1. Black (a person having origins in any of the black racial groups of Africa).
2. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
3. Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands).
4. American Indian and Alaskan Native (a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition).
5. Native Hawaiian or Other Pacific Islander - a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.



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The FHWA Order defines "low-income" as "a person whose household income is at or below the Department of Health and Human Services poverty guidelines." The guidelines are updated annually and available online at <http://aspe.hhs.gov/poverty/>. The Department of Health and Human Services (HHS) poverty guidelines are used as eligibility criteria for the Community Services Block Grant Program and a number of other Federal programs. However, a State or locality may adopt a higher threshold for low-income as long as the higher threshold is not selectively implemented and is inclusive of all persons at or below the HHS poverty guidelines.

All reasonably foreseeable adverse social, economic, and environmental effects on minority populations and low-income populations must be identified and addressed. The definition of an adverse effect under environmental justice is the totality of significant individual or cumulative human health or environmental effects and the definition of disproportionately high and adverse as predominately borne by minority and/or low-income populations that is appreciably more severe or greater in magnitude than adverse effects that will be suffered by non-minority and/or low-income population. Adverse effects include, but are not limited to:

- Bodily impairment, infirmity, illness, or death.
- Air, noise, water pollution, and soil contamination.
- Destruction or disruption of man-made or natural resources.
- Destruction or diminution of aesthetic values.
- Destruction or disruption of community cohesion or a community's economic vitality.
- Destruction or disruption of the availability of public and private facilities and services.
- Vibration.
- Adverse employment effects.
- Displacement of persons, businesses, farms, or nonprofit organizations.
- Increased traffic congestion, isolation, exclusion, or separation of minority or low-income individuals within a given community or from the broader community.

During planning and project development, MaineDOT will use the following tools to the maximum extent possible to engage minority and low-income populations:

- Utilizing EPA's EJ Mapper to identify populations in the project area.
- Ensuring the participation of identified minority and low-income populations located within the limits of a proposed project by holding meetings that are close to or adjacent to the project areas.
- Providing good access for public participation – holding public forums and meetings at facilities that are ADA-accessible and providing translation services requested for non-English speaking populations when they are requested.
- Providing adequate notice of virtual or in-person meetings that are accessible to low-income populations/limited Internet population (e.g., providing meeting materials in a



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- mobile phone accessible format and/or placing meeting notices at town halls, libraries, and schools).
- Designating and training Environmental Justice liaisons – ensuring that they are knowledgeable about the EJ requirements of federal agencies.

See MaineDOT's [Public Involvement Plan Section 3.2](#) and [MaineDOT's NEPA Public Involvement Plan Section VI\(D\)](#) for further guidance.

MaineDOT Team Leaders in coordination with the Project Manager are responsible for assessing and ensuring compliance with these laws under NEPA Assignment. EJ information is incorporated into the overall NEPA decision.

1.0 Reviewing Project Scope

The Team Leader will answer the following Question in ProjEx:

1. Does the scope of the project have a potential for disproportionately high and adverse human health or environmental effects on minority populations and low-income populations?

The MaineDOT Environmental Office Team Leader will review the scope of the project to determine if there is potential for disproportionately high and adverse human health or environmental effects of the project on minority populations and low-income populations. If the scope has no potential for disproportionately high and adverse human health or environmental effects on minority populations and low-income populations, the Team Leader will document in ProjEx and the EJ screening will be complete **unless Environmental Justice issues are raised as a result of public involvement activities conducted as part of the proposed project**. If EJ issues are raised, MaineDOT will work with the community to assess disproportionate adverse impacts and issues.

If a project scope has the potential for disproportionately high and adverse human health or environmental effects of the project on minority populations and low-income populations, then the Team Leader will continue to 2.0.

Scopes of work with no potential for disproportionately high and adverse human health or environmental effects of the project on minority populations and low-income populations:

- Projects that do not lead to construction;
- Routine maintenance and repair of transportation assets (pavement, culverts, signs, guardrails, bridge-wearing surfaces, paint, railings, vegetation management, drainage, scour countermeasures);
- Replacement of transportation assets within the same general footprint with no permanent property acquisitions (pavement, culverts, signs, guardrails, fences, drainage, bridge-wearing surfaces, bridge paint, bridge railings); and
- Structural strengthening (piers, abutments, joints).

The basis for this determination is that these projects do not include any of the following:



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- residential or business relocations;
- permanent changes to roadway access or traffic patterns;
- more than minimal temporary traffic disruption; or
- special and unique circumstances;
- more than minimal human health or environmental effects

2.0 Identifying Environmental Justice Populations

MaineDOT's Bureau of Project Development and Bureau of Planning will conduct in-person public meetings when a minority population within the project-defined area (within a census tract) is at 5% or greater, as defined by the *Minority by County* document located on MaineDOT's Civil Rights Office website.

The MaineDOT Environmental Team Leader will use USEPA's EJSCREEN tool to identify Environmental Justice Population demographics within the proposed project area and upload this information to the CPD e-file in the NEPA folder. Team Leaders also utilize the [Climate and Economic Justice Screening Tool](#).

To use EJSCREEN, first go to the link below: <http://www2.epa.gov/ejscreen>

Click on the link in the box labeled "Launch the EJSCREEN Tool".

Follow the steps below to obtain US Census Data from this website for the project. You will want to obtain block group data for your specific project or study area.

For Minority Populations:

1. Type in the town and state in the search engine in which the project is located.
2. Click on the tab labeled 'Reports' (looks like a sheet of paper), then select 'Draw an Area'. Draw the project or study area by clicking on the map to draw the project area. Connect the last point to the first to complete the polygon. Click on the box and a pop-up box and label the area. Close out of the 'Chart or Report' pop-up box.
3. Click on the tab labeled 'Maps' (looks like a stack of paper) and select 'Additional Demographics'. Select the 2010 Census tab and then the Category Population. Next, select the Variable 'Pct. People of Color Population'. Then Click 'Add to Map'.
4. Once this layer is turned on you can click on the block groups to obtain the data for that block group.
5. To save the map as a pdf to the CPD e-file in the Project NEPA folder, click the tab labeled 'Tools' (looks like a pen and wrench), then select 'Print'. Make sure the Page Setup is 'Letter ANSI A landscape', and the File format is 'PDF'.
6. Title the Map with the town, WIN, and EJ Minority. If helpful add the Percent People of Color Population to the Title (e.g., "TOWN XXXXXX.XX EJ Minority (X.X %)")
7. Click Export, then click on the exported pdf file.
8. Print the Map and then select 'Save as PDF'. Click the 'Save' button and save to CPD E-file for the project in the NEPA folder.

For Low-Income Populations:

1. Utilizing the same screen in the EJSCREEN Tool that already has your project limits, find the box



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labeled 'Map Contents' and click on the 'X' to close the Pct. People of Color Population block group legend.

2. Click on the tab labeled 'Maps' (looks like a stack of paper) and select 'Additional Demographics'. Select the 2016-2020 ACS tab and then the Category Income/Poverty. Next, select the Variable 'Pct. Population Below Poverty Level'. Then Click Add to Map.
3. Once this layer is turned on you can click on the block groups to obtain the data for that block group.
4. To save the map as a pdf to the CPD e-file in the Project NEPA folder click the tab labeled 'Tools' (looks like a pen and wrench), then select 'Print'. Make sure the Page Setup is 'Letter ANSI A landscape', and the File format is 'PDF'.
5. Title the Map with the town, WIN, and EJ Low Income. If helpful, add the % to the Title (e.g., "TOWN XXXXXX.XX EJ Low Income (X.X%)").
6. Click Export, then click on the exported pdf file.
7. Print the Map and then select 'Save as PDF'. Click the 'Save' button and save to CPD E-file for the project in the NEPA folder.

3.0 Environmental Justice Initial Project Question

The following question is required to be answered by the MaineDOT Environmental Team Leader:

2. Are any of the minority or low-income block groups over 15% or were any issues raised during the public process?

The block group percentages from the map EJ Screen Tool are used to determine whether you have a block group of 15% or higher within your proposed project area.

A Yes response requires additional assessment (Go to 4.0).

A No Response concludes the Environmental Justice review. If all the block groups within your proposed project area indicate Environmental Justice populations below 15% **and no Environmental Justice issues were raised as a result of public involvement activities conducted as part of the proposed project**, then no additional Environmental Justice analysis or coordination is required. The proposed project will have no disproportionately high and adverse impacts on minority or low-income. Therefore, in accordance with the protections of Executive Order 12898 and FHWA Order 6640.23A, no further Environmental Justice analysis is required. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file. MaineDOT's Virtual Public Involvement Coordinator also tracks demographics and comments from the public on EJ concerns. All Public Meetings at MAineDOT include an on-demand meeting.

4.0 Environmental Justice Secondary Project Question and Identifying Impacts

The following question will need to be answered if the minority and/or low-income data indicate a population of 15% or greater within the project area.

3. Are there impacts on EJ communities? (residential or business relocations, changes in access, highway/bridge closures, neighborhood connectivity, access to transit, or were EJ issues raised by



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the public)

A Yes response requires additional assessment (Go to 5.0).

A No Response concludes the Environmental Justice review. The proposed project will have no disproportionately high and adverse impacts on minority or low-income. **No Environmental Justice issues were raised as a result of public involvement activities conducted as part of the proposed project.**

Therefore, in accordance with the protections of Executive Order 12898 and FHWA Order 6640.23A, no further Environmental Justice analysis is required. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file. MaineDOT's Virtual Public Involvement Coordinator also tracks demographics and comments from the public on EJ concerns. All Public Meetings at MAineDOT include an on-demand meeting.

5.0 Environmental Justice Project Question, Identifying Impacts, and Documentation

The following question will need to be answered if there are impacts to EJ communities Responses to the questions will indicate whether an Environmental Justice Analysis Report is required.

4. Are there disproportionately high and adverse impacts on EJ communities? (business relocation primarily serving EJ communities, substantial job loss to EJ communities, access to shopping, bus stops, schools, jobs, recreational resources, community centers, man-made dividers such as an overpass, bridge, 4-lane or greater roadway or railroad access to or use of the transportation improvement be denied to any low income or minority population or groups, were any Environmental Justice issues that could result in a disproportionately high and adverse effect raised during Public Involvement)

A Yes response requires a Justification Report and coordination (Go to 6.0).

A No Response concludes the Environmental Justice review. The proposed project will have no disproportionately high and adverse impacts on minority or low-income. No Environmental Justice issues were raised as a result of public involvement activities conducted as part of the proposed project.

Therefore, in accordance with the protections of Executive Order 12898 and FHWA Order 6640.23A, no further Environmental Justice analysis is required. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

6.0 Environmental Justice Analysis Report

The Environmental Team Leader will develop a report to address disproportionately high and adverse impacts on an Environmental Justice population and to document any avoidance and mitigation measures. The report will be reviewed by the Senior Environmental Manager and then forwarded to the Environmental Office Director for approval.

Outline for Environmental Justice Analysis Reports

1. Project Description
2. Purpose and Need
3. Underserved Population Data



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- a. Minority
 - b. Low-Income
 - c. Linguistically isolated
 - d. Over age 64
4. Discussion of overall Impacts and Impacts to Environmental Justice population(s)
 - a. Amount of temporary and/or permanent right-of-way to be acquired
 - b. Number of residential relocations
 - c. Number of business relocations
 - d. If there are business relocations listed on a Small Business Administration
 - e. If the businesses primarily serve Environmental Justice populations
 - f. Results in job loss for an Environmental Justice population
 - g. Changes to access
 - h. Changes to transportation modes (transit, vehicles, bikes, pedestrians, etc.)
 - i. Environmental impacts (noise, air, vibration, water quality, etc.) to Environmental Justice populations
 - j. Secondary or cumulative impacts on Environmental Justice populations
5. Public Involvement Summary
 - a. Describe the Public Involvement process for the project and how Environmental Justice populations were included in this process.
 - b. State whether Environmental Justice issues were raised during the Public Involvement process.
 - c. If Environmental Justice issues were raised during Public Involvement, discuss these comments and the responses provided.
6. Discussion of Avoidance and Minimization or Mitigation Measures
 - a. Describe other alternatives and whether the impacts were different for each alternative
 - b. Describe any mitigation or enhancement measures and include them as environmental commitments
 - c. Describe temporary impacts, access changes during construction, maintenance, etc.
7. Summary
 - a. The summary should recap the report and include a final determination of whether the project will have a disproportionately high and adverse impact on the Environmental Justice population. The summary should include a justification for the determination.
 - b. Avoidance, Minimization, and/or Mitigation may be necessary if it is determined impacts will occur to these populations.

7.0 Findings

The Environmental Office Director will approve the action only if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse impact are not practicable. The Environmental Office Director will take the social, economic (including costs), and environmental effects of avoiding and mitigating the adverse effects into account when determining practicability.

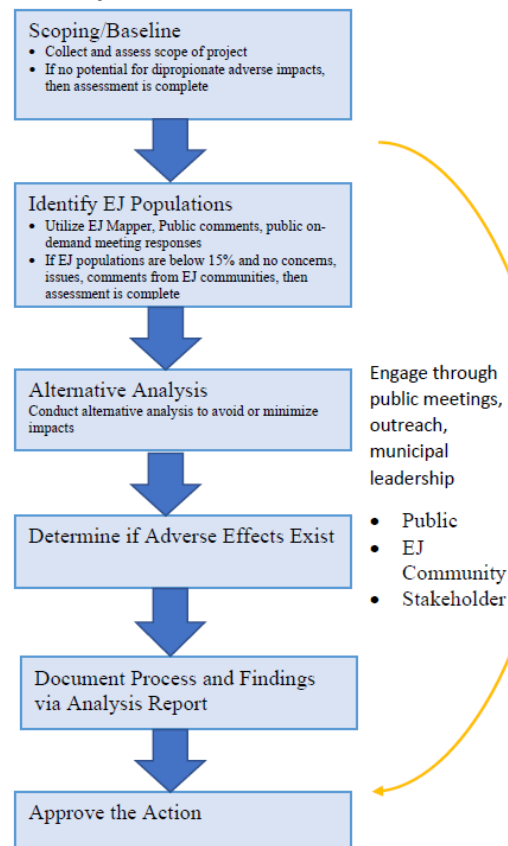


NEPA Environmental Justice and Title VI Guidance

The project must have a substantial need, based on overall public interest, and alternatives with less adverse impacts on protected populations have adverse social, economic, environmental, or human health impacts that are severe or would involve increased costs of extraordinary magnitude.

Once the report is approved by the Environmental Office Director the Environmental Justice review is complete. The Environmental Justice Report will be saved in MaineDOT's Environmental CPD e-file.

EJ Analysis Process



8.0 Links

Title VI of the Civil Rights Act

[42 U.S. Code § 2000d - Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin](#) | U.S. Code | US Law | LII / Legal Information Institute (cornell.edu)

23 U.S.C. 109(h)

https://www.environment.fhwa.dot.gov/projdev/imp109_h.asp

Executive Order 12898

<https://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>



NEPA Environmental Justice and Title VI Guidance

DOT Order 5610.2(a) <https://www.transportation.gov/transportation-policy/environmental-justice/departments-transportation-order-56102a>

FHWA Order 6640.23A

<https://www.fhwa.dot.gov/legisregs/directives/orders/664023a.cfm>

FHWA Guidance on Environmental Justice and NEPA

https://www.environment.fhwa.dot.gov/projdev/guidance_ej_nepa.asp

FHWA Environmental Justice Reference Guide

[EJ in Environmental Review - Reference Guide 2015 - Publications - Environmental Justice - Environment - FHWA \(dot.gov\)](#)

MaineDOT Civil Rights Web Page

<https://www.maine.gov/mdot/civilrights/>

FHWA Civil Rights Program

https://www.fhwa.dot.gov/civilrights/programs/title_vi/toolkit.cfm

FHWA Community Impact Assessment

https://www.fhwa.dot.gov/livability/cia/quick_reference/ciaguide_053118.pdf



NEPA Coastal Barrier Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for coastal barriers and the process for identifying coastal barriers to determine what appropriate level of coordination is required.

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

This guidance document defines the process for identifying CBRS to determine what appropriate level of coordination is required.

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

1.0 Coastal Barrier Initial Project Question and Documentation

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

1. Does the project intersect with a Coastal Barrier Resource System?

The MaineDOT Biologist will use the USFWS Interactive Mapper [CBRS Mapper \(usgs.gov\)](https://www.usgs.gov/interactive-mapper) to answer this question.

A Yes response to Question 1 requires a review of the categories of activities listed as exceptions (16 USC 3505(a)) to the federal expenditure prohibition (go to 2.0). A No response concludes the Coastal Barrier assessment as CBRA would not apply to the project. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

2.0 Coastal Barrier Exception Process and Documentation

Once it has been determined that the location for a proposed project is within a system unit, the MaineDOT Biologist will notify the NEPA Manager. The next step is for the NEPA Manager to compare the project description to the exception criteria, and then determine if the project qualifies for an exception to the



NEPA Coastal Barrier Guidance

prohibition to use federal funding to develop an undeveloped coastal barrier resource. The CBRA exception criteria are listed in 16 USC 3505. The CBRA makes provisions for several exceptions for transportation which require additional consultation and the preparation of written evidence supporting the determination that an exception applies. Exceptions do not apply to project activities that involve the expansion of publicly owned or publicly operated roads or structures. If the proposed project is within a system unit and does not meet the exception criteria, the proposed project is not eligible for federal funding. The following are the two exceptions that will be reviewed:

- a. Compare the project description to the exceptions listed in 16 USC 3505(a)(3) to determine if project activities qualify for an exception because the project is an essential link.

Essential Link Exception

Project activities excepted under 16 USC 3505(a)(3) must be essential links in a larger network or system. An essential link is that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

- b. Compare the project description to the exceptions listed in 16 USC 3505(a)(6)(F) to determine if project activities qualify for an exception and if the project is consistent with the purposes of the CBRA (16 USC 3501(b))

CBRA Consistent Exception

Project activities excepted under 16 USC 3505(a)(6)(F) must be consistent with the purposes of the CBRA. According to 16 USC 3501(b), the purposes of the CBRA are to minimize the following:

- Loss of human life
- Wasteful expenditure of federal revenues
- Damage to fish, wildlife, and other natural resources associated with coastal barriers

If the project qualifies as an exception, the NEPA Manager prepares written evidence to support the determination. If the project does not qualify for an exception, then the project activities are not eligible for federal funding under the CBRA. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

3.0 Agency Coordination, Review, and Approval Process

Once a determination is made regarding whether the project meets the threshold for one of the CBRA exceptions and written evidence supporting the exception has been prepared, the NEPA Manager will submit the evidence to USFWS. USFWS will provide an opinion as to whether the activity is allowed under a CBRA exception. However, the USFWS response is considered an opinion only. MaineDOT has the final decision under NEPA assignment. The NEPA Manager will consult with the Environmental Office Director for a final determination.

Compliance is met by obtaining the USFWS opinion if a project meets the exception criteria. For those projects, NEPA approval cannot be granted until the procedural requirement to solicit a USFWS opinion has been satisfied. USFWS opinions will be documented in MaineDOT's ProjEx database and MaineDOT's



MaineDOT

NEPA Coastal Barrier Guidance

Environmental CPD e-file.

4.0 Links

Coastal Barrier Resources Act

<https://www.law.cornell.edu/uscode/text/16/chapter-55>

CBRA Mapper

[CBRS Mapper \(usgs.gov\)](https://www.usgs.gov/cbra-mapper)

CBRA Maps

[Maps and Data | U.S. Fish & Wildlife Service \(fws.gov\)](https://www.fws.gov/cbra)

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NEPA Floodplain Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for floodplains and provides the process for identifying and determining the appropriate level of coordination that is required.

Executive Order (EO) 11988 and 13690 require federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. 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 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. 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."

MaineDOT Environmental Specialist-stormwater and Hydrologist are responsible for assessing and ensuring compliance with floodplain EOs and FHWA policy 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).

This guidance document defines the process for identifying and determining the appropriate level of coordination that is required.

Floodplain information is provided to and discussed with the Team Leader. 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 the MaineDOT Environmental Specialist-stormwater. To answer the question MaineDOT evaluates potential floodplain impacts on a project-by-project basis through initial reviews of National Flood Insurance Policy (NFIP) floodplain mapping.

1. Does the action encroach on the base floodplain or floodway?

A base flood is a flood having a one percent chance of being equaled or exceeded in any given year. This is



NEPA Floodplain Guidance

the regulatory standard also referred to as the "100-year flood." The base flood is the national standard used by the National Flood Insurance Program (NFIP) (44 CFR 59, 60, 65, 70) and all Federal agencies for the purposes of requiring the purchase of flood insurance and regulating new development. Base Flood Elevations (BFE) are typically shown on Flood Insurance Rate Maps (FIRM); additional information can also be found on Floodway Boundary and Floodway Maps (FBFM) and Flood Hazard Boundary Maps (FHBM).

A "Yes" response to Question 1 requires an assessment of effects (go to 2.0).

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.

2.0 Impact Assessment of Action on Base Floodplains

The Hydrologist and Environmental Specialist-stormwater will perform an Impact Assessment of the encroachment on the base floodplain and/or floodway. If appropriate, this assessment is supplemented by follow-up coordination with local officials and the State and Federal entities responsible for the administration of the NFIP (Maine Department of Agriculture, Conservation and Forestry, and FEMA) to ensure compatibility with local floodplain management programs, to determine the extent of hydraulic analysis required and to determine the significance of floodplain encroachment.

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 decision-making process required in Section 2(a) of EO 11988.

1. Identify and evaluate practicable alternatives to encroaching on the base floodplain, including alternative sites outside of the floodplain.
2. Identify the direct and indirect impacts of the proposed action on the base floodplain.
3. If impacts cannot be avoided, develop measures to minimize the impacts.
4. Implement the action through design or mitigation measures.

A hydraulic analysis will be performed for any encroachment into the floodplain. The analysis shall demonstrate and be certified by a licensed Maine Professional Engineer (Manager, Hydrology and Stormwater Division, Environmental Office) that the proposed project:

1. will not increase hazards on site
2. will not result in any elevation increase in a mapped floodway (prohibits encroachment, including fill, new construction in floodway)
3. will result in no more than one-foot (1-ft) rise in the floodplain.

The analysis will complete the Supporting Information for the Floodplain Evaluation form (attached) with supporting calculations, analysis, and any relevant additional information. This documentation will be saved in the CPD e-file project folder.

For projects involving minor amounts of fill-in floodplains and floodways, FEMA is satisfied with a simplified hydraulic analysis. FEMA has indicated that when the cross-sectional area of the floodway at the critical



NEPA Floodplain Guidance

cross-section (normally at the structure) is increased or not reduced, a detailed hydraulic analysis is not warranted, since conveyance and hydraulic capacity will not be reduced. Projects that minimally reduce the cross-sectional area of the floodway at the critical section may be proposed if it can be shown that conveyance is not reduced.

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 Executive Order 11988?

A “Yes” response concludes the floodplain assessment. All supporting documentation shall be saved in the CPD e-file project folder for the administrative record.

A “No” response requires that HSD discuss the project with the NEPA manager for resolution and discussion of avoidance and minimization measures. HSD shall subsequently discuss with the National Flood Insurance Program (NFIP) Manager for Maine (Maine Department of Agriculture, Conservation and Forestry) for resolution and determine the need for possible follow-up action, such as a Letter of Map Revision (LOMR). The NFIP contact is currently Sue Baker (sue.baker@maine.gov).

All actions will be processed and documented in MaineDOT’s ProjEx database and MaineDOT’s Environmental CPD e-file for the administrative record.

4.0 Links

Executive Order 11988

[Executive Orders | National Archives](#)

Executive Order 13690

[Executive Orders | National Archives](#)

23 CFR 650

<https://www.law.cornell.edu/cfr/text/23/part-650>

National Flood Insurance Program Regulations – Appendix E (44 CFR parts 59, 60, 65, 70)

<https://www.ecfr.gov/current/title-44/chapter-I/subchapter-B/part-59>

FEMA Guidelines for Implementing EO 11988 and EO 13690

https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf



MaineDOT

Supporting Information for Floodplain Evaluation

MAINEDOT WIN:

Project Title:

1.0 Floodplain Identification and Documentation

The following question shall be answered by the MaineDOT Hydrology and Stormwater Division (HSD). In order to answer the question MaineDOT evaluates potential floodplain impacts on a project-by-project basis through initial reviews of National Flood Insurance Program (NFIP) floodplain mapping.

1. Does the action encroach on the base floodplain or floodway?

Base flood is the flood having a one percent chance of being equaled or exceeded in any given year. This is the regulatory standard also referred to as the "100-year flood." The base flood is the national standard used by NFIP and all Federal agencies for the purposes of requiring the purchase of flood insurance and regulating new development. Base Flood Elevations (BFEs) are typically shown on Flood Insurance Rate Maps (FIRMs); additional information can also be found on Floodway Boundary and Floodway Maps (FBFM) and Flood Hazard Boundary Maps (FHBM).

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	YES, go to Section 2
floodplain	floodway	both	
			NO, analysis is complete

2.0 Impact Assessment of Action on Base Floodplains and/or Floodways

HSD will perform an Impact Assessment of the action on the base floodplain. If appropriate, this assessment is supplemented by follow-up coordination with local officials and the State and Federal entities responsible for the administration of the NFIP (Maine Department of Agriculture, Conservation and Forestry, and FEMA) to ensure compatibility with local floodplain management programs, to determine the extent of hydraulic analysis required and to determine the significance of floodplain encroachment.

1. Identify direct and indirect impacts of the proposed action on the base floodplain.	
2. Identify and evaluate practicable alternatives to encroaching on base floodplain, including alternative sites outside of the floodplain.	
3. If impacts cannot be avoided, develop measures to minimize the impacts.	
4. Implement the action through design or mitigation measures.	



Supporting Information for Floodplain Evaluation

MAINEDOT WIN:

Project Title:

3.0 Floodplain Secondary Project Questions and Documentation

<p>1. Zones A1-30 and AE adjacent to areas of flowing water within designated regulatory floodway: <i>Encroachment with fill, new construction, substantial improvement, or other development within designated regulatory floodway will not result in any increase in flood levels within the township, plantation, or town during the occurrence of the base flood discharge.</i></p>	
<p>2. Zones A1-30, AE, and A adjacent to areas of flowing water, for which no regulatory floodway* is designated: <i>Encroachments, including without limitation fill, new construction, substantial improvement the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:</i> <i>(a) Will not increase the water surface elevation of the base flood more than one foot at any point within the township, plantation, or town; and</i> <i>(b) Is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors. FEMA. (37/ January 1995).</i></p>	

After completing the floodplain effects assessment, HSD shall answer the following question:

2. Does the action comply with Executive Order 11988?

	YES
	NO

4.0 Preparer Information

Name	
Signature/Stamp	

ATTACH ALL RELEVANT CALCULATIONS/ANALYSIS/SUPPORTING INFORMATION. Save all documentation to CPD e-file, and enter data into ProjEx.



Supporting Information for Floodplain Evaluation

MAINEDOT WIN:

Project Title:

5.0 Links

Executive Order 11988

[Executive Orders](#) | [National Archives](#)

23 CFR 650

<https://www.law.cornell.edu/cfr/text/23/part-650>

National Flood Insurance Program Regulations – Appendix E (44 CFR parts 59, 60, 65, 70)

[eCFR :: 44 CFR Part 59 -- General Provisions](#)

LUPC Chapter 10 10.25,T,2,k,(2)

https://www.maine.gov/dacf/lupc/laws_rules/rule_chapters/Ch10_SubchapterIII.pdf

01-672 CHAPTER 10

10.25,T

k. Development in Floodways.

- (1) In Zones A1-30 and AE adjacent to areas of flowing water, encroachments, including fill, new construction, substantial improvement and other development shall not be permitted within a regulatory floodway which is designated on the township's, plantation's, or town's "Flood Insurance Rate Map" or "Flood Boundary and Floodway Map," unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the township, plantation, or town during the occurrence of the base flood discharge.
- (2) In Zones A1-30, AE, and A adjacent to areas of flowing water, for which no regulatory floodway is designated, encroachments, including without limitation fill, new construction, substantial improvement and other development shall not be permitted in the floodway as determined in Section 10.25,T,2,k,(3) below unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - (a) Will not increase the water surface elevation of the base flood more than one foot at any point within the township, plantation, or town; and
 - (b) Is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors. FEMA. (37/ January 1995).
- (3) In Zones A1-30, AE, and A adjacent to areas of flowing water for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other flowing water and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.



NEPA Additional Federal Laws and Executive Orders Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

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.

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



NEPA Additional Federal Laws and Executive Orders Guidance

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. <https://www.epa.gov/cwa-401/overview-cwa-section-401-certification>

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. <https://www.epa.gov/cwa-404/overview-clean-water-act-section-404>

8. Coastal Zone Management Act

In Maine, standards and criteria of state environmental permitting and licensing laws and regulations serve as the enforceable policies of the Maine Coastal Program (Coastal Zone Management (CZM)) and are satisfied through the issuance of a Maine Department of Environmental Protection permit or by meeting an exemption.

9. Safe Drinking Water Act

MaineDOT complies with the Safe Drinking Water Act through the MaineDOT/Maine DEP Stormwater MOA, the Maine DEP Pollution Discharge Elimination System Permits, MaineDOT Best Management Practices for Erosion and Sedimentation Control, and review and protection of Sole Source Aquifers.

10. Rivers and Harbors Act

The issuance of an Army Corps of Engineers General Permit, Individual permit, or exemption satisfies the Rivers and Harbors Act.

The construction of any structure in or over any navigable water of the U.S., or the accomplishment of any other work affecting the course, location, condition, or physical capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. Activities requiring section 10 permits include structures (e.g., piers, wharfs, breakwaters, bulkheads, jetties, weirs, transmission lines) and work such as dredging or disposal of dredged material, or excavation, filling, or other modifications to the navigable waters of the United States. The geographic jurisdiction includes all navigable waters of the United States which are defined (33 C.F.R. Part 329.4) as, "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce."

11. Wild and Scenic Rivers Act

MaineDOT complies with Section 7 of the Wild and Scenic Rivers Act and [36 CFR 297](#). ([Fact sheet, Publications](#))

The Allagash River is designated as a Wild and Scenic River in Maine. No MaineDOT structures cross or are adjacent to the designated portion of the River.



NEPA Additional Federal Laws and Executive Orders Guidance

The York River is designated as a Wild and Scenic River in Maine. MaineDOT is coordinating with the National Park Service (NPS) to develop a Programmatic Agreement for transportation assets within the York River watershed. MaineDOT will coordinate with the NPS on all projects located within the York Watershed. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

12. Executive Order 11990, Protection of Wetlands

The issuance of an Army Corps of Engineers General Permit, Individual permit or exemption satisfies Executive Order 11990. MaineDOT and FHWA also have a Programmatic Wetland Finding for Categorical Exclusions that satisfies this Executive Order.

13. Executive Order 13112, Invasive Species

Executive Order 13112 directs federal agencies to prevent the introduction and control of the spread of invasive species. Invasive species are defined by the EO as "an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health."

MaineDOT limits the introduction of invasive species by utilizing the following:

- a. Utilizing only non-invasive, native seed and mulch mix.
- b. Planting only native, non-invasive trees and plants
- c. Complying with the Army Corps of Engineers Permit stipulation regarding invasive species.

14. Wetland Mitigation (23 USC 119g)

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

15. General Bridge Act

The Environmental Office works with the Project Development Bridge Program to comply with the General Bridge Act. If a project is not exempt from a bridge permit, then the Bridge Program will apply for a Bridge Permit from the U.S. Coast Guard.

U.S. Coast Guard Bridge Permits and Permit Exemption Decision Tool (23 USC 144 (c)(2))

<https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Bridge-Programs/Bridge-Permit-Application-Process/>

FHWA/U.S. Coast Guard MOA [USCG FHWA MOA Final Signed.pdf](#)



Environmental Baseline

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

This guidance information defines how the MaineDOT Environmental Office obtains baseline environmental data early in the project schedule to:

1. better serve the Bureau of Project Development and Bureau of Maintenance and Operations.
2. document NEPA compliance/ other approvals earlier.
3. provide detailed information early in the process to inform decision-making.

Expectation

The target for MaineDOT Capstone Measure #5A is 80% of the Capital Work Plan delivered on time in the calendar year.

The environmental baseline for all projects is to be completed within 100 days after the actual kick-off. Units within ENV can opt to complete a Desktop Screening for all projects in the work plan prior to March 31 of each year. Maintenance projects with modified schedules will be screened as requested. Desktop screening entails filling out the entire *Assessments* and *Assessment Details* page in ProjEx. This includes preliminary effect determinations, consultation levels, BFWs, and proposed stream crossing widths. Team Leaders will present all baseline information at the Initial Team Meeting.

ProjEx

ProjEx is to be used by all Environmental Office staff. If a project does not need review because of scope/ programmatic agreements/ or other reasons, then an issued date must still be entered for the appropriate item on the PM Permits page. This helps the Environmental Office track all reviews and approvals. ProjEx will be used to track desktop screening and results from field assessments that are important to the project teams.

CPD e-file

All final documentation/sign-offs/approvals/labeled photographs/field data collection forms/surveys are required to be placed in the project file within the CPD e-file.

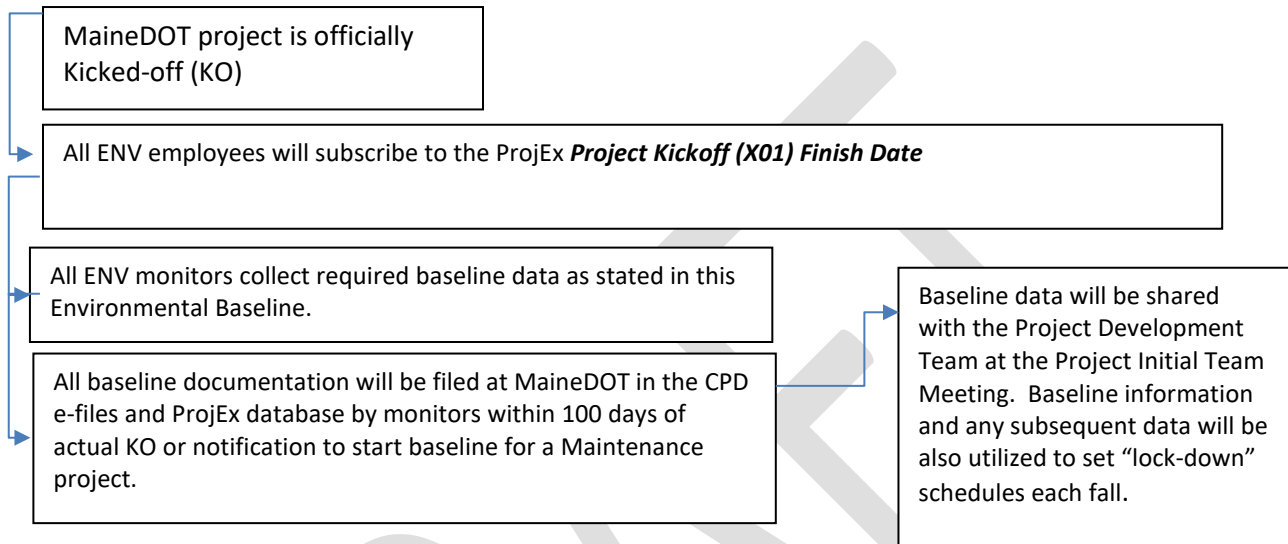
Project Kick-off: All Environmental Office staff are required to subscribe to the schedule notification **Project Kickoff (X01) Finish Date Change** in ProjEx. Everyone assigned to work on a project (indicated in ProjEx Roster) will be responsible to begin the baseline after receiving a notification that a project has



Environmental Baseline

been kicked off. It is expected that all baseline data will be collected and entered in ProjEx and the CPD e-file within **100 days** from the actual kick-off date.

Environmental Baseline Responsibilities and Expectations



Environmental Office - NEPA, Permits, and Coordination

Team Leaders

NEPA: NEPA management and certification, Public Involvement, Clean Water Act, Coastal Zone Management Act, Rivers and Harbors Act, Wild and Scenic Rivers Act, Executive Order 11990 (protection of Wetlands), Executive Order 12898 (Environmental Justice), Farmland Protection Policy Act

NEPA- Team Leader determines the initial NEPA level if there is a Federal Action. The level of the public process will be assessed. Coordination with Environmental Team Members will begin. Dates and notes are placed in ProjEx PM Permits and NEPA Checklist. Final baseline documentation is placed in the CPD e-file.

Historic Coordinator

NEPA: Section 106 of the National Historic Preservation Act, Public Involvement, Section 4(f) of the Department of Transportation Act, Land and Water Conservation Fund Act

Section 106 Historic Coordinator determines if the project has a federal nexus, meets programmatic agreement exemption, or requires a survey. All National Register-eligible properties identified will be mapped. Dates and notes are placed in ProjEx PM Permits and Historic Assessment Details. Final baseline documentation is placed in the CPD e-file.



Environmental Baseline

Sections 4(f)/6(f) Historic Coordinator determines if there are 4(f) and/or 6(f) properties. All properties identified will be mapped. Dates and notes are placed in ProjEx PM Permits and Historic Assessment Details. Final baseline documentation is placed in the CPD e-file.

NEPA: *Clean Air Act, Noise Control Act*

Air and Noise The Environmental Specialist will analyze if a project is considered a type I project under the Highway Traffic Noise Policy. If so, a Noise assessment will be conducted which typically be completed after baseline. Dates and notes are placed in ProjEx PM Noise Assessment Details. Final baseline documentation is placed in the CPD e-file.

Environmental Office - Natural Resources Division

NEPA: *Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act (EFH), Marine Mammals, Anadromous Fish Conservation Act, Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, Coastal Barriers Resources Act, Bald and Golden Eagle Act, Executive Order 11990 (protection of Wetlands) and state fish and wildlife.*

Wetlands Scope or Biologist/Team Leader discussion determines if wetland delineation is required. If required, NRD will delineate in the field and label wetland types, place them in Microstation, and check in Microstation. Dates and notes are placed in ProjEx PM Permits and Biological Assessment Details. Final baseline documentation is placed in the CPD e-file. Final delineation is saved in wetlands.dgn in the topo folder. Delineation should include information necessary to complete the Functions and Values Assessment if required (including labeled photos).

Vernal Pools Scope or Biologist/Team Leader discussion determines if vernal pool delineation is required. If required, NRD will delineate in the field and label the vernal pool type, place in Microstation, and check in Microstation. Dates and notes are placed in ProjEx PM Permits and Biological Assessment Details. Final baseline documentation is placed in the CPD e-file. Final delineation is in wetlands.dgn in topo folder.

Database Screening NRD determines if the project area contains federal endangered species, critical habitat, Essential Fish Habitat, or state ESA/EH areas. Dates and notes are placed in ProjEx PM Permits and Biological Assessment Details. Final baseline documentation is placed in the CPD e-file.

Stream Assessment Scope or Biologist/Team Leader discussion determines if stream assessment is required. If required, NRD will conduct a stream assessment (using the Stream Assessment form) and label boundaries, place in Microstation and check in Microstation. Bank Full Width measurements will be obtained and placed in ProjEx Assessment Assets. Species of concern, in-water work concerns, design concerns, and passage goals will be determined during baseline. Dates, notes, and assessment



Environmental Baseline

forms are placed in ProjEx PM Permits and Biological Assessment Details. Final baseline documentation is placed in the CPD e-file. Final delineation is in wetlands.dgn in topo folder. The Stream Assessment, database screening for endangered species, and state fisheries information and hydrology are utilized by the Biologist to determine a proposed stream structure size and entered in ProjEx Assessment Assets.

Environmental Office – Hydrology and Stormwater Division

Stormwater

NEPA: Executive Order 11988 (Floodplain Management), Safe Drinking Water Act, State Stormwater

Floodplains Scope determines if a database review is required to identify floodplains. If so, floodplains will be identified during baseline review and documented in ProjEx Hydrology Assessment Details, and final baseline documentation is placed in the CPD e-file.

Stormwater

The level of post-construction stormwater treatment/volume control required under any of the following permits:

- The Maine Stormwater Management Law (Chapter 500) under the Memorandum of Agreement (MOA) with the Maine Department of Environmental Protection (DEP).
- Maine Pollutant Discharge Elimination System (MPDES) Construction General Permit (disturbance of greater than 5 acres at a time)
- General Permit for the Discharge of Stormwater from Maine Department of Transportation and Maine Turnpike Authority Municipal Separate Storm Sewer Systems (MS4)
- The surface Water Quality Unit will also determine if the project is in the Long Creek watershed, and determine if the project is regulated under the MPDES Multi-Sector General Permit.

Dates and notes are placed in ProjEx PM Permits and Floodplain and Stormwater Assessment Details. Final baseline documentation is placed in the CPD e-file.

Hydrology

NEPA: Endangered Species Act (hydrology analysis and design)

Hydrology and Design Bureau of Project Development and/or TL requests hydrology analysis and design expectation analysis. Hydrology analysis will be completed during baseline and dates and notes placed in ProjEx PM Permits, Hydrology Assessment Details, and Assessment Assets. Final baseline documentation placed in CPD e-file.



MaineDOT

Environmental Baseline

Environmental Office - Ground Water and Hazardous Materials Division

NEPA: Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Superfund Amendments and Reauthorization Act (SARA), Resource Conservation and Recovery Act (SARA)

Hazardous Waste The Hazardous Materials Division conducts initial site assessment based on the scope of any known petroleum or hazardous materials. Additional investigations and special provisions are noted in ProjEx. Dates and notes are placed in ProjEx PM Permits and Hazardous Materials Assessment Details. Final baseline documentation is placed in the CPD e-file.

Environmental Office Regional Coordinators (RC)

RCs request a baseline for maintenance projects and produce a Project Information Sheet to start the maintenance baseline. Project WINs and schedule must be in ProjEx. RCs ensure that baseline coordination for Regional Bureau of Project Development projects is completed. RCs coordinate directly with the Team Leader and Environmental Office Divisions.

All staff will begin coordination with applicable state and federal agencies during the collection of baseline data.

	Responsibility	Acual Kick-off (KO)	Initial Team Meeting (ITM)	Preliminary Design Report (PDR)	Plan Impacts Complete (PIC)	PS+E	Construction
			approximately 3 months after KO	approximately 6 months after ITM	approximately 12 to 18 months after PDR	approximately 3 to 6 months after PIC	
Team Leader	NEPA Public Involvement ACOE + State Permit CZM Clean Water Act Environmental Justice Farmland Wild and Scenic River	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Procdedures and NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile. *Assist Project Development Team with P+N, public process and setting schedules.	*Team Leader provides Project Development Team with environmental baseline information at Initial Team Meeting. Team Leader may invite members of ENV team as necessary. *Coordinate with ENV team members *EJ , Farmland is followed. *Public process is reviewed	*PDR is distributed and reviewed *NEPA is completed if all Checklist Items can be answered. *Project impacts are calculated to determine permit levels and if mitigation is required. *Passage blockage is determined. *EJ and Farmland reviews are finalized.	*NEPA is completed for projects that could not have all Checklist quetions answered at PDR. *Plans are distributed and reviewed. *mpacts are finalized and all required permit applications are written and submitted. *Special Provisions are drafted, if needed, and sent to team members for review.	*Special Provision 105 is finalized and placed in Environmental Contract Package. *Entire Environmental Package is finalized and sent to PM and contracts.	* MaineDOT Environmental Office Compliance Procedures will be followed. * Any stipulations are tracked in ProjEx and complied with. * Available to review non-compliance and other construction related issues. * Request permit amendments * Ensure construction monitor is invited to Precon meeting
Biologist/PRA	Section 7 EFH Marine Mammals Anadromous Fish Fish and Wildlife Act Migratory Birds Coastal Barriers Bald+ Golden Eagles Wetlands + Streams State Fish and Wildlife	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Procdedures and NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile.	*Biological Assessment/Essential Fish Habitat (EFH) documentation begins for projects requiring a BA and /or EFH with a goal of submittal 1 month after PDR. Any other need (State fishery/wildlife/ESA, MMA) is also started at this time. *Microstation wetland.dgn is reviewed, cleaned and in topo folder ready to use. *Fish Passage Procedure and PBO User Guides are followed and expectations on passage design are made clear to team. * Any monitoring is finalized to determine presence of species.	*PDR is reviewed *Projects requiring a BA and/or EFH documentation should be officially submitted at 1 month after final PDR. Also any other need (State fishery/wildlife/ESA, MMA) is also submitted. *Any passage design expectations are finalized at final PDR. *A Functional Assessment report is started, if needed.	*Plans are reviewed. *A Biological Opinion or Letter of Concurrence and/or EFH approval are final and in ProjEx/CPD efile, if needed. Any other approvals (State fishery/wildlife/ESA, MMA) is final and in files. *Functional Assessments are finalized for permit applications.		* MaineDOT Environmental Office Compliance Procedures will be followed. *Any permit/BO stipulations are tracked in ProjEx and complied with (i.e. monitoring, evacuations, etc). *Available to review non-compliance issues
Hydrologist	Hydrology and design for Section 7 and state fisheries	*Notified of project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Procdedures. All data/documentation is placed in ProjEx and CPD efile. * Stream Profiles are started.	*Any required or requested analysis/stream profile is underway and provided to Project Development Team and TL. *Fish Passasge Procedure and PBO User Guides are followed and expectations on passage design are made clear to team.	*PDR is reviewed *Any design expectations are finalized at final PDR.	*Plans are reviewed. *Special provision for special back fill is drafted, if needed.	*Design and any Special provision for special back fill is finalized and placed in Environmental Contract Package, if needed.	*Available to review non-compliance issues
Stormwater/ Water Quality Team Members	Floodplains State +Fed Stormwater Sole Source Aquifers	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Procdedures and NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile.	* If project triggers storwater general standards, then team members will be involved in design. Coordinate with TL and PM. *If project is within a FEMA floodplain, then team member will review and advise. *Floodplain Guidance is followed.	*PDR is reviewed *Any required stormwater design will be finalized at PDR. *ENV contruction/compliance members review PDR.	*Plans are reviewed.		* MaineDOT Environmental Office Compliance Procedures will be followed. *Onsite during construction activities for ENV oversight (Env Compliance Monitor). *Track/comply with ENV stipulations and conditions. * Report on compliance
Historic Coordinator	Public Involvement Sectiion106 Section 4(f) Section 6(f)	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with MaineDOT Environmental Baseline Procdedures and NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile.	*Any historic, 4(f) or 6(f) properties are identified. *Section 106 and Section 4(f) SOPs are followed. *Section 6(f) Guidance is folowed. *Public process is reviewed.	*PDR is reviewed. *Effects to properties are assessed and Section 106 and Section 4(f) documentation is started, if needed. *Doucmentation for Section 106 and Section 4(f) that requires right of way information is requested (estimates) and incorporated into documentation. *Any required mitigation/MOA is drafted. * Section 106 and Section 4(f) documents are finalized as soon after PDR as possible and sent to agencies for concurrence/approval.	*Plans are reviewed *Mitigation stipulations are scheduled and assigned, if needed. *Special Provision 105.9 is drafted, if needed.	Special Provision 105.9 is finalized placed in Environmental Contract Package, if needed.	*Section 106 and/or 4(f) commitments are tracked in ProjEx and complied with.
Groundwater / Hazardous Waste Team Member	CERCLA SARA RCRA	*Notified of actual project kick-off via email. Start collecting baseline information in accordance with NEPA CE Guidance and SOP documents. All data/documentation is placed in ProjEx and CPD efile.	*Any known sites are identified and dscussed with Project Development Team and TL.	*PDR is reviewed. *Dredge requirements are discussed and documentation is started. *Any structures that will be aquired will be assessed.	*Plans are reviewed. *Dredge quantities are finalized. *Special Provision 203 are drafted if needed.	Special Provision 203 is finalized and placed in Environmental Contract Package, if needed.	*Available to review non-compliance and other construction related issues.
Air/Noise Planning Property PM	Public Involvement Right of Way Air Quality Noise Design/Cost	*PM officially kicks off project and reviews public process. PM notifies Team Leader via email and enters actual kickoff date in ProjEx. *Environmental Specialist is notified of project kick-off via email and Air and Noise assessments are started. All data is placed in ProjEx.	*Environmental Baseline data is discussed with Project Development Team at Initial Team Meeting. This includes structure sizing. *Public process is reviewed *P+N is reviewed.	*PDR is distributed and reviewed. *Preliminary public meeting has occurred, if needed (public informed of historic and any other possible environmental issues). *Air and Noise assessments are completed and data in in ProjEx. * Right of way information is requested.	*Plans are distributed and reviewed. *Impacts and right of way is finalized. .	Contract packages are complete.	*Any stipulations are tracked in ProjEx and complied with. *Available to review non-compliance and other construction related issues.



NEPA Filing and Documentation Guidance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for filing and documentation.

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 in accordance with 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



NEPA Filing and Documentation Guidance

- 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 included in the environmental project file is subject to public records laws, such as the Maine Freedom of Access Act. The environmental project file is subject to periodic audits by the FHWA and MaineDOT Environmental Office. The project file is where the department and auditors will look for project documents.

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 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.

5.0 Access to Information

MaineDOT’s NEPA files are subject to public records laws, such as the federal Freedom of Information Act and Maine’s Freedom of Access Act. MaineDOT also has an Administrative Policy Memorandum No. 13 regarding Access to Public Records Under the Maine Freedom of Access Act.

Additionally, under the NEPA Assignment MOU, MaineDOT is required to make files available for inspection by FHWA after receiving a request for information.

6.0 File System

The MaineDOT Environmental Office maintains an electronic filing system (the CPD e-file) for all



NEPA Filing and Documentation Guidance

environmental project records. The Environmental Team Leader typically creates the project file. If a project file is not in the CPD e-file, any environmental office staff member can create a project file by copying and pasting the template subfiles (<\\som.w2k.state.me.us\Data\DOT-GENERAL\EnvPermits\CPD Files\CPD E-File\~subfiles>)

The CPD e-file contains files listed by town and work identification number (WIN). Within each project folder are subfiles that are standardized. All projects have the same subfile template. Some will have more information in each subfolder than others.

Subfiles are created for the following areas:

- Army Corps of Engineers Permitting (ACOE)
- Air-Noise
- Compliance
- Environmental Justice
- Environmental Contract Documents
- Essential Fish Habitat
- Fish and Wildlife
- Hazardous Materials
- Hydrology
- NEPA
- Section 7 - Endangered Species
- Section 106
- Section 4(f) and Section 6(f)
- Stormwater
- Preliminary Design
- Maine Dept of Environmental Protection permitting (DEP)
- Wetlands and Streams

It is the responsibility of the environmental team member 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.

In addition to the Environmental Office CPD e-file, MaineDOT will also utilize platforms like Microsoft Teams and project websites to maintain, exchange, and provide documents and public information. The Environmental Office will assign a staff member to manage the files on certain projects (EAs, EISs).

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. The Team Leader will review all files and 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.



NEPA Filing and Documentation Guidance

7.0 File Naming Convention

Environmental Office staff are required to use the following naming convention:

Year.Month.Day_WIN_Subject_Description of Document

Example: 2021.03.01_16714.00_Section 7_Biological Opinion

This filing naming convention puts the documents by date. This shows staff what documents are the most current.

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

ProjEx PM Team Roster

PM Team Roster

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

PSN or WIN: [Go To] [Save] [Add] Enter PSN or WIN to copy and replace the Team Roster: [Copy Team Roster] [Apply Default Roles]

Information Saved

Project: 50804/022627.00 MILO, Pleasant River BR #3244

Project Manager: LATHE, ANDREW

Program Manager: FRANKHAUSER, WAYNE

Edit	Role Name	Team Member	Delete
	Consultant	HINTS CORPORATION, CONSULTANT	
	ENV Air Noise	BRADY, ANDREA	
	ENV Biologist	WALSH, JOSEPH	
	ENV CAP Manager	CHAMBERLAIN, KRISTEN	
	ENV Construction Monitor	ANNIS, RYAN	
	ENV Cultural Coordinator	SENK, JULIE	
	ENV Floodplains	DIONNE, CINDY	
	ENV Haz. Waste	TIRONE, BRADLEY	
	ENV Hydrologist-PP	HEBSON, CHARLES	
	ENV Hydrologist-H/H	HEBSON, CHARLES	
	ENV Team Leader	BRADY, ANDREA	
	ENV Water Resources	DIONNE, CINDY	
	Utilities	SMALL, DENVER	



MaineDOT

NEPA Filing and Documentation Guidance

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 state and federal permits and Section 106, Section 4(f), Endangered Species)
- **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 team members (biologists, historical coordinators, etc.) use assessment and assessment details to make a determination (no effect, NLAA, etc.)

ProjEx PM Permits

PM Permits											
Navigation you have 49 messages											
Project Information GIS Environmental Finance Schedule Planning Roster Comments Links Setup											
PSN or WIN Go To Save Cancel Add Single Permit Load All Permits Export to Excel											
Project: 50804/022627.00 - MILO, Pleasant River BR #3244 (F)											
KO Date: 08/04/2015 A PDR Date: 09/18/2019 A PIC Date: 01/08/2020 A PS&E Date: 08/25/2020 A CNBEG Date: 11/11/2020 A CNCMP Date: 03/01/2023 F											
Permit Description	Permit Category	Notes	Monitor	Target Due D...	Applied Date	Appro... Date	Expira... Date	Last Updat...	Updated ...	Del...	
ES107 - NEPA	NEPA	Re-evaluation for post-NEPA changed condition	BRADY, ANDREA	3/26/2020		9/9/2021		CHAMBERLAIN, KRISTEN	5/24/2022	<input type="checkbox"/>	
ES107 - NEPA	NEPA	CE per 23 CFR 771.117 d(13)	BRADY, ANDREA	3/26/2020		5/13/2020		BRADY, ANDREA	5/24/2022	<input type="checkbox"/>	
ES119 - Section 106	Section 106	Adverse effect	SENK, JULIE	12/17/2019	3/3/2020	3/12/2020		SENK, JULIE	4/9/2020	<input type="checkbox"/>	
ESS - Section 4(f)	Section 4(f)	Programmatic Evaluation	SENK, JULIE	1/16/2020	5/8/2020	5/11/2020		SENK, JULIE	5/11/2020	<input type="checkbox"/>	
ES10 - 6F LAWCON	Section 6(f)	No properties	SENK, JULIE	6/4/2019		10/31/2017		SENK, JULIE	6/3/2022	<input type="checkbox"/>	
ES222 - Air Quality	Air		BRADY, ANDREA	11/12/2015		5/8/2020		WEBSTER, DANIEL	5/8/2020	<input type="checkbox"/>	
ES06 - Federal Endangered Species	Federal Endangered Species		WALSH, JOSEPH	3/16/2020	1/23/2020	3/3/2020		CHAMBERLAIN, KRISTEN	5/24/2022	<input type="checkbox"/>	
ES199 - Essential Fish Habitat	Essential Fish Habitat		WALSH, JOSEPH	3/16/2020		3/5/2020		GARDNER, DAVID	5/16/2022	<input type="checkbox"/>	
ES152 - Field Resources	Field Resources		WALSH, JOSEPH		4/4/2016	11/13/2019		WALSH, JOSEPH	11/13/2019	<input type="checkbox"/>	

ProjEx PM Assessment Details

PM Assessment Details											
Navigation you have 49 messages											
Project Information GIS Environmental Finance Schedule Planning Roster Comments Links Setup											
PSN or WIN Go To Export to Excel											
Project: 50804/022627.00 - MILO, Pleasant River BR #3244											
KO Date: 08/04/2015 A PDR Date: 09/18/2019 A PIC Date: 01/08/2020 A PS&E Date: 08/25/2020 A CNBEG Date: 11/11/2020 A CNCMP Date: 03/01/2023 F											
Environmental Team Leader: BRADY, ANDREA											
Biological Historic, Social, Air & Noise Water Quality Hydrology Hazardous Materials & Dredge Spoils NEPA											
Sub Category	Assessment Group	Item	Current Value	Input	Edit	Last Updated By	Updated Date				
Federal ESA/EH	Essential Fish Habitat Present	Species	ATS		Edit	BOYDEN, SARAH	11/2/2017				
		Effect	Adverse Effect Not Substantial		Edit	BOYDEN, SARAH	11/2/2017				
		Consultation Level	Abbreviated		Edit	BOYDEN, SARAH	11/2/2017				
	Atlantic Salmon DPS/CH Present	DPS	Yes		Edit	BOYDEN, SARAH	11/2/2017				
		Critical Habitat	Yes		Edit	BOYDEN, SARAH	11/2/2017				
		Effect	LAA		Edit	WALSH, JOSEPH	8/30/2019				
		Tier	1		Edit	BOYDEN, SARAH	11/2/2017				
		Consultation Level	Formal		Edit	HAM, ERIC	1/3/2018				
		Agency	USFWS		Edit	BOYDEN, SARAH	11/2/2017				
		Atlantic Salmon Consultation Complete	3/3/2020		Edit	BRADY, ANDREA	6/4/2020				



MaineDOT

NEPA Filing and Documentation Guidance

ProjEx PM NEPA Checklist

Checklist Category	Checklist Item	Checklist Response	Last Updated By	Updated Date
PUBLIC INVOLVEMENT	NEPA Public Process Complete	Yes	BRADY, ANDREA	5/8/2020
	Substantial Public Opposition	No	BRADY, ANDREA	5/8/2020
RIGHT OF WAY	Right-of-Way Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
	Relocations Required	No	BRADY, ANDREA	5/8/2020
AIR QUALITY	Air Quality Assessment Complete	Yes	WEBSTER III, DANIEL	5/8/2020
NOISE	Noise Assessment Complete	Yes	WEBSTER III, DANIEL	5/8/2020
FISHERIES & WILDLIFE	Section 7 Assessment Complete	Yes	BRADY, ANDREA	6/4/2020
	Essential Fish Habitat Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
	Maine Mammal Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
	Migratory Bird Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
HAZARDOUS MATERIALS	Hazardous Materials Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
HISTORIC & CULTURAL RES	Section 106 Assessment Complete	Yes	BRADY, ANDREA	5/18/2020
	Adverse Effect on Historic Landmarks Present	No	GARDNER, DAVID	5/18/2020
	Section 405 Assessment Complete	Yes	SENE, JULIE	5/11/2020
SOCIAL & ECONOMIC	Individual 405 Required	No	BRADY, ANDREA	5/13/2020
	Section 605 Assessment Complete	Yes	BRADY, ANDREA	5/8/2020
	Farmland Protection Act Assessment Complete	Yes	BRADY, ANDREA	5/13/2020

The assigned environmental team member is responsible for the assessments and data entry. The Environmental Team Leader is responsible for overseeing environmental team members complete their assessments on schedule and data is entered into ProjEx.

The CPD e-file and ProjEx contain the documentation that supports a project NEPA decision and administrative record. Environmental Office staff will utilize the [ProjEx User Guide](#) and training from management regarding entering data.

9.0 Links

Administrative Procedure Act

<https://www.law.cornell.edu/uscode/text/5/part-1/chapter-5>

Maine Freedom of Access Act

<https://www.mainelegislature.org/legis/statutes/1/title1ch13sec0.html>

AASHTO Practitioner's Handbook – Maintaining a Project File and Preparing an Administrative Record for a NEPA Study

<https://environment.transportation.org/wp-content/uploads/2021/05/ph01-2.pdf>

FHWA Records Disposition Manual (Field Offices) Chapter

<https://www.fhwa.dot.gov/legisregs/directives/orders/envi-reg.cfm>

FHWA Order No. 1324.1B, issued July 29, 2013.

<https://www.fhwa.dot.gov/legisregs/directives/orders/13241b.cfm#:~:text=This%20directive%20issues%20revised%20Federal,formats%2C%20including%20paper%20and%20electronic.>

MAINEDOT Records Management Administrative Policy

<https://mdotweb.state.me.us/apm/APM121UPDATE2015.pdf>

MainedOT Access to Public Records under the Maine Freedom of Access Act Administrative Policy

<https://mdotweb.state.me.us/apm/FOAADAPM13MAY172017.pdf>



NEPA Commitment Compliance

Introduction

Pursuant to 23 United States Code 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 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. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

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 users 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.

MaineDOT has the responsibility of commitment compliance under NEPA assignment (23 U.S.C. 327).

1.0 Mitigation Measures

MaineDOT's Environmental Office project staff and management decide what actions MaineDOT will take to mitigate impacts on the human 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, project development, or others as needed to decide what actions will be elevated to environmental commitments.
5. The actions that MaineDOT will include as environmental commitments are recorded in ProjEx, EA, and EIS documents.



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2.0 Record Environmental Commitments in ProjEx and EA/EIS

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 requires and include Where and When.
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 EAs, EISs, ProjEx, and 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). This section allows tracking commitments from planning, project development, and construction.

MaineDOT ProjEx Commitments and Compliance

PM Commitments

Navigation

Project Information

GIS

Environmental

Finance

Schedule

Planning

Roster

Comments

Links

Setup

PSN or WIN

Go To

Load Commitments

Add Commitment

Add Checkpoint

Filter on Commitment Category

Section 106 MOA/Section 4(f)

Export to Excel

Project: 68082/021736.00 - MADAWASKA, INT BR #2399

KO Date: 08/27/2018 A

PDR Date: 01/24/2020 A

PIC Date: 02/14/2020 A

PS&E Date: 12/18/2020 A

CNBEG Date: 04/26/2021 A

CNCMP Date: 07/04/2025 F

Default Assigned Monitor for Selected Commitment Category: SENK, JULIE

Edit	Category	Stipulation	Monitor	Commitment Note	Status	Close ...	Last Upd...	Update...	Delete
	Section 106 MOA/Section 4(f)	Adaptive Reuse	SENK, JULIE		Complete	4/30/2020	GARDNER, DAVID	8/26/2021	
	Section 106 MOA/Section 4(f)	Other	SENK, JULIE	FHWA Coordination with Wolaostoqey Nation	Active		GARDNER, DAVID	8/26/2021	
	Section 106 MOA/Section 4(f)	Other	SENK, JULIE	consultant parties design review at 60% and 90%	Complete	12/30/2020	GARDNER, DAVID	8/26/2021	
	Section 106 MOA/Section 4(f)	Recordation	SENK, JULIE	HAER #2299	Active		GARDNER, DAVID	8/26/2021	
	Section 106	Special Provision 105.9	SENK, JULIE		Active		CHAMBERLAIN,	1/14/2021	

1 - 5 of 5 items

Commitment Checkpoints: Recordation

Edit	Checkpoint	Checkpoint Note	Close Date	Due Date	Last Updated By	Updat...	Delete
	Interim Check	Recordation narrative		12/30/2021	GARDNER, DAVID	8/26/2021	

The Environmental Monitor (roster member) 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 Section 106 monitor (roster member) will load commitments made under Section 106 of the National Historic Preservation Act, such as



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archaeological exclusion areas). 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. 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).

ProjEx Environmental Manager

EM-Home												
Navigation Gardner, David, you have 6430 messages. ?												
Assessments Commitments Permits Issues Assignments												
Apply Filter Category: Section 106 MOA/Section 4(f) Monitor: SENK, JULIE Status: Export to Excel												
Environmental Commitments												
PSN	WIN	Project Title	KO Date	PDR Date	PSE Date	PIC Date	CN Beg Date	Team Lead	Monitor	Category	Stipulation	Close Date
70865	02296.00	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	
58489	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	
62656	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 prior to construction (e.g. during design, right of way process, etc.) are assigned to the Team Leader or Environmental Monitor. For example, MaineDOT is committing to design the asset to 1.2 bank full width due to the presence of Atlantic salmon. The Environmental Monitor and Team Leader will work with the Project Manager and designer to ensure this commitment is satisfied during project development.

Environmental commitments to be completed in construction must be incorporated in the project contract documents, plan notes, and/or special provisions. All commitments applicable to construction should be reviewed and discussed at pre-construction meetings.

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In addition, the Environmental Office will utilize in-house staff members to track all project commitments and work with the Commitment Monitors to ensure tracking is complete within ProjEx. The in-house staff, Commitment Monitors, and Team Leaders will ensure commitments are complied with and documented.

The Team Leaders determine if all the commitments are successfully implemented, meet their intent, and close out the environmental portion of the project. Resource agencies can also determine non-compliance and violations within the laws they enforce.

The commitment flow is displayed in Figure 3.

Commitment Flow

