



MaineDOT

NEPA EA and EIS Guidance

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1 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.

1.1 National Environmental Policy Act (NEPA)

NEPA was signed into law on January 1, 1970 (amended June 3, 2023) and the Council on Environmental Quality (CEQ) was created to oversee the implementation of NEPA and its associated regulations (40 Code of Federal Regulations [CFR] 1500 to 1508). Federal agencies are required to develop, and follow, NEPA implementing regulations that are consistent with CEQ regulations. To address CEQ regulations, FHWA issued 23 CFR 771, Environmental Impact and Related Procedures, to provide direction for implementing NEPA for transportation projects that fall under FHWA's purview. Additionally, FHWA Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents, offers guidance for content and format and for processing NEPA documents and associated environmental studies. 23 U.S.C. 139-Efficient environmental reviews for project decision making and One Federal Decision is applicable to all projects for which an Environmental Impact Statement is prepared under NEPA.

CEQ regulations state, "NEPA does not mandate particular results or substantive outcomes. NEPA's purpose is not to generate paperwork or litigation, but to provide for informed decision making".

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

1.2 Federal and State Environmental Laws and Regulations

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

1.3 Independent Environmental Decision-Making

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

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

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

All formal environmental documents (EISs and EAs) will be independently reviewed by MAINEDOT ENV Senior Environmental Manager/NEPA Manager and ENV Director prior to their approval. ENV will also ensure legal sufficiency reviews are performed by the MAINEDOT Legal Office and Maine Attorney General’s Office. The MAINEDOT Senior Agency Official is the Chief Operating Officer.

1.4 Scoping (Pre-NEPA)

MAINEDOT’s Bureau of Planning conducts all feasibility, enhanced scoping, and community-based initiatives (<https://www.maine.gov/mdot/pgc/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/NEPA Manager.

MAINEDOT’s Results and Information Office is responsible for creating the Three-Year Work Plan. Candidate projects for the new Work Plan are assessed by teams comprising Bridge, Highway, and Multimodal experts. The asset deficiencies are reviewed and become the basis of the NEPA need statements for mostly CE class of action projects. These candidate projects are typically not part of a Bureau of Planning scoping process but are based on asset management. Scoping material is utilized by the Bureau of Project Development and the Environmental Office.

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

LPAs have delegated authority for design and construction oversight but have no delegated NEPA review and approval authority. However, seeking agency and public input for projects is not a federal lead agency responsibility nor is this a federal approval that cannot be delegated. Therefore, sending scoping letters out under LPA letterhead is an appropriately delegated action.

1.5 Project Delivery Methods

MAINEDOT utilizes design-bid-build for the majority of projects. These guidelines speak to the NEPA process related to design-bid-build. Other methods MAINEDOT has utilized are Design-Build (DB) and Construction Manager/General Contractor (CMCG). MAINEDOT understands that these alternative methods can be complicated for the NEPA process. The Senior Environmental Manager/NEPA Manager and Environmental Office will work closely with the MAINEDOT Project Manager and project team.

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

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2 Identifying 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 ENV Director are responsible for determining the NEPA COA for projects. This section identifies the COAs and discusses considerations for determining the COA.

2.1 Class of Action

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

- **EIS (Class I)** [23 CFR 771.115(a)]: Actions that significantly affect the environment require an EIS (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 required documentation to support the CE determination. Additional actions of a similar type or scope of work may also be determined to qualify for the CE determination.

- **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 ENV Director.

2.2 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 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. 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:
 - (i) Both short- and long-term effects.
 - (ii) Both beneficial and adverse effects.
 - (iii) Effects on public health and safety.
 - (iv) Effects that would violate Federal, State, Tribal, or local law protecting the environment.

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

2.3 Identifying the 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 Excluded (CE) from the requirements to prepare and Environmental Assessment (EA) or Environmental Impact Statement (EIS). The Senior Environmental Manager/NEPA Manager is responsible in coordination with the ENV Director and Environmental Team Leaders in declaring actions classified as EAs and Environmental EISs.

The Environmental Team Leader and Senior Environmental Manager/NEPA Manager will evaluate the need to change the Class of Action based on environmental impacts identified during the process or if an extraordinary circumstance is present. The Team Leader and Senior Environmental Manager/NEPA Manager will discuss their decision with the ENV Director. This discussion will include justification for the change in Class of Action or justification for pursuing a mitigated FONSI. All documentation will be saved in the project CPD e-file.

3 Purpose and Need

This section discusses the key concepts and process related to preparing a purpose and need statement for a NEPA document based on 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:

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

3.1 Identifying Purpose and Need

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

The purpose and need drives the process for alternatives identification, evaluation, and in-depth analysis, and for the identification of a preferred alternative for the project. 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 development of Purpose and Need statements.

3.2 Need of the Project

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

- **System linkage.** Describe how the project fits into the existing transportation system, including whether it is a connecting link of that system.
- **Transportation demand.** Explain relationships to any statewide plan or other transportation plan together with the project's traffic forecasts, including whether such forecasts are substantially different at the preliminary design and NEPA 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, high maintenance costs).

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

3.3 Purpose of Project

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

- improve traffic flow
- correct roadway deficiencies
- reduce congestion and delays

- modernize deteriorating facilities
- accommodate high traffic volumes
- increase safety for motorists, 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

3.4 Purpose and Need Statement for an EA and EIS

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

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

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

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

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

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

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

consideration in the environmental document.

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

3.5 Logical Termini

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

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/NEPA Manager will work closely with the MaineDOT Project Manager and consider a number of different factors to determine logical termini. In addition to the ability of the project to meet an identified transportation need (safety, economic development, capacity, etc.), other factors considered could include 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 continues, there can be rationale for modifying the logical termini based on new information obtained. This can also occur as alternatives are evaluated and further refined. MAINEDOT will utilize the FHWA Environmental Review Toolkit, NEPA Implementation, and [The Development of Logical Project Termini. November 5, 1993.](#)

3.6 Independent Utility

An independent utility analysis focuses on whether a particular project is a “stand alone” project. That is, assuming that no other project is contemplated, the project serves a distinct purpose or function. The 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/NEPA Manager will work closely with the MaineDOT Project Manager to assess Independent Utility. Documentation will be saved in the CPD e-file.

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4 Development of Alternatives

This section describes the key concepts and process for identifying, analyzing, and screening alternatives and selecting a preferred alternative for an EA or EIS project, based on CEQ NEPA regulations (40 CFR 1500 to 1508), FHWA NEPA regulations (23 CFR 771), and CEQ and FHWA guidance. Once the purpose and need for a project has been identified and the study area has been defined, MAINEDOT must identify alternative ways to solve the transportation problem. MAINEDOT will identify and assess the reasonable alternatives to proposed actions that would avoid or minimize adverse effects of these actions upon the quality of the human environment.

In addition to CEQ requirements to evaluate alternatives to avoid, minimize, or mitigate adverse environmental impacts and FHWA regulations and guidance, other regulations require MAINEDOT to consider “avoidance” alternatives. Specifically, Section 4(f), Executive Order 11990 on Wetlands, Executive Order 11988 on Floodplains, Executive Order 12898 on Environmental Justice, and the Clean Water Act Section 404(b)(1) guidelines require agencies to develop alternatives that would avoid or minimize impacts on specific natural and built environment resources and on environmental justice populations.

4.1 General Guidance

CEQ regulations refer to “actions,” “action alternatives,” and the “no-action alternative.” MAINEDOT and many other state departments of transportation refer to “build alternatives” and the “No-Build Alternative.” In discussions of regulatory requirements, this guidance uses the “action alternative” terminology. When describing MAINEDOT practices, the term “build alternative” is used.

4.1.1 EIS Requirements

The evaluation of alternatives in an EIS compares the proposed action and the alternatives under consideration to define the issues and provide a clear basis for choosing among the options. 40 CFR 1502.14 requires that agencies:

- a. Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.
- b. Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.
- c. Include the no action alternative.
- d. Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement.
- e. Include appropriate mitigation measures not already included in the proposed action or alternatives.
- f. Limit their consideration to a reasonable number of alternatives.

CEQ defines reasonable alternatives as “a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action”.

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

4.1.2 EA Requirements

An environmental assessment shall:

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

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

4.2 Alternatives Screening Process

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

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

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

4.2.1 Preliminary Screening Process

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

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

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

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

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

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

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

The concept of independent utility arose from the Council on Environmental Quality (CEQ) requirement to consider connected actions in determining project scope. Connected actions should be discussed in the same environmental document. Actions are defined as connected if they:

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

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

4.2.2 Alternatives Screening Criteria

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

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

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

- **Technical factors:** Alternatives must be feasible and practicable from a number of technical factors that include design, engineering, drainage, safety, traffic operations, utilities, and long-term maintenance and operation. Alternatives may be dismissed on the basis of technical factors.
- **Financial feasibility:** Cost factors can be used in the screening of alternatives when costs substantially deviate from the programmed costs in the STIP or MAINEDOT three Year Work Plan, including consideration of construction and right-of-way costs, and the cost of business and residential relocations, as applicable.
- **Community and government support:** Support or lack of support for a MAINEDOT project by affected local communities and governments, community organizations, stakeholders such as local businesses, public issue organizations, and the public at large can be used to screen alternatives. Adopted economic development plans; future land use, transportation, and recreation plans; public and stakeholder acceptance of the project; the potential for public or local government controversy or opposition to the project; and agency concerns may be used to screen alternatives.
- **Section 4(f) and Section 404 considerations:** The screening of alternatives take into account the requirements of Section 4(f) and Section 404, both of which include their own alternatives analysis requirements. While impacts on Section 4(f) and Section 404 resources may not be fully known during the screening process, it is often possible to identify potential impacts on those resources. MAINEDOT seeks to ensure that the range of alternatives carried forward in the NEPA process will be sufficient to satisfy alternatives analyses required by Section 4(f) or Section 404. Coordination with potential Section 4(f) owners with jurisdiction in the study area and USACE for Section 404 compliance at key milestones, including adoption of purpose and need and screening of alternatives, can help to ensure that the range of alternatives is adequate for compliance with these other laws.

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

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

4.3 Alternatives Analysis for an EIS

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

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

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

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

4.3.1 Range of Reasonable Alternatives to the Proposed Action

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

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

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

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

No-Build Alternative

The No-Build Alternative is one of the alternatives evaluated in an EIS. CEQ regulations (40 CFR 1502.14) require the consideration of the existing situation without the proposed action. It can include other programmed activities already in the STIP or TIP, other nearby projects that have been constructed or approved, or long-term operation and maintenance activities that would occur even if the proposed project is not approved.

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

Alternatives Analysis and Comparison

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

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

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

CEQ requires that alternatives that were considered in the planning process and subsequently rejected be briefly described and the reasons for their elimination discussed [40 CFR 1502.14(a)]. Alternatives suggested by cooperating and participating agencies or the public during scoping that were eliminated without detailed study should be adequately documented, including the reasons why they were eliminated. The EIS should include sufficient detail to ensure that NEPA requirements regarding alternatives have been met, with the alternatives report containing the detailed technical data and analysis.

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

Preferred Alternative

The "preferred alternative" (which is the proper term to use in a MAINEDOT EIS) is the alternative which the MAINEDOT believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. The concept of a preferred alternative is different from the "environmentally preferable alternative," although in some cases one alternative may be both ([CEQ 40 Questions – 4a](#)). It is generally the alternative that MAINEDOT has determined would best fulfill its NEPA responsibilities while meeting the project purpose and need; minimizing impacts on the environment (natural, cultural, and socioeconomic); meeting MAINEDOT design, engineering, and economic feasibility standards; and being supported by the public and resource agencies. In many cases, alternatives are adjusted throughout the NEPA process to minimize harm to the environment and communities. The preferred alternative is typically the alternative that has incorporated these changes and achieves the best balance among needs, impacts, design

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

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

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

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

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

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

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

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

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

Developing a Preferred Alternative to a Higher Level of Detail

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

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

Providing a higher level of detail for a proposal or only one alternative (compared to the other alternatives) could run the risk of biasing the environmental analysis or introducing the perception of bias. The CEQ regulations indicate that Federal agencies must devote substantial treatment to each alternative so that reviewers may evaluate their comparable merits (40 CFR 1502.14). However, 23 U.S.C. 139 (f)(4)(D) permits the development of a higher level of detail for the preferred alternative to (1) facilitate the development of mitigation measures or (2) facilitate concurrent compliance with other applicable laws, as long as MAINEDOT Senior Environmental Manager/NEPA Manager and ENV Director determines that the development of such higher level of detail will not prevent the agency from making an impartial decision as to whether to accept another alternative being considered. Developing an alternative to a higher level of detail may be necessary for permit discussions, interagency agreements related to environmental requirements, or identifying appropriate mitigation.

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

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

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

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

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

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

23 U.S.C. 139 does not change the standard practices relating to the evaluation and presentation of alternatives. This includes disclosing the rationale for the identification of a preferred alternative. When the preferred alternative is developed at a higher level of detail, MAINEDOT will ensure that the evaluation of alternatives reflects the required objective analysis (40 CFR 1502.14). Each reasonable alternative must be explored at a sufficient level of detail to support a reasoned choice. The comparison of alternatives must be done in a fair and balanced manner. If there are substantial differences in the levels of information available for the alternatives, it may be necessary to apply assumptions about impacts or mitigation to make the comparisons fair.

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

In accordance with Section 139 of 23 U.S.C., the development of the preferred alternative to a higher level of detail than other NEPA alternatives may not proceed beyond that level necessary to develop mitigation or to comply with other applicable environmental laws. The degree of additional development needed and allowable will depend on the specific nature of the impact being mitigated or resource being protected, or the level of information required to comply with other applicable laws. The design will not reach the level of final design.

4.3.2 Additional EIS Alternative Considerations

Transportation System Management and Transportation Demand Management Alternatives

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

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

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

Transportation demand management (TDM) alternatives relate to various strategies that change travel behavior (such as how, when, and where people travel) and aim to increase transportation system efficiency. Key TDM principles include incentives to change travel mode, time, or destination; improve the transportation options available to consumers; and reduce the need for physical travel through mobility substitutes and more efficient

land use. TDM strategies are implemented to make transportation systems more efficient, safe, or convenient. TDM strategies focus on changing or reducing travel demand, particularly at peak commute hours, instead of increasing roadway capacity, to make more efficient use of the current roadway system.

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

Alternatives Analysis to Meet Other Federal Requirements

In addition to NEPA, other federal regulations and executive orders require consideration of “avoidance” alternatives. Specifically, Section 4(f), Executive Order 11990 on Wetlands, Executive Order 11988 on Floodplains, Executive Order 12898 on Environmental Justice, and the Clean Water Act Section 404(b)(1) guidelines require agencies to develop alternatives that would avoid or minimize impacts on specific natural and built environment resources and on environmental justice populations. For example, Section 4(f) requires that an alternative that has a “use” on a Section 4(f) property may not be selected unless there is no “prudent and feasible alternative” to that use and that the project has incorporated all possible planning to minimize harm. Similarly, early and consistent coordination with USACE on projects that require an individual Section 404 permit is necessary so that the MAINEDOT preferred alternative can be designated as the Section 404(b)(1) LEDPA.

4.4 Alternatives Analysis for an EA

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

4.4.1 Alternatives Analysis and Screening

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

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

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

No-Build Alternative

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

Alternatives Considered but Dismissed from Further Consideration

An EA is required to have only one build alternative in addition to the No-Build Alternative. During the alternatives evaluation process, however, other build alternatives may have been evaluated but dismissed from further consideration for a variety of reasons. The reasons for dismissing other alternatives considered should be briefly presented in the EA. MAINEDOT maintains all the data and information on the dismissed alternatives. MAINEDOT may prepare an alternatives report that fully evaluates each alternative considered. The level of detail to present

in the EA for alternatives considered but dismissed is decided by the MAINEDOT EA study team.

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

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

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

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

Preferred Alternative

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

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

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

If MAINEDOT determines that the identified preferred alternative would not result in significant direct or long-term adverse impacts, that preferred alternative is identified in the final EA, and a FONSI is prepared and approved. Once a FONSI is executed for the project, it can proceed to the next phase of design and engineering. If, however, the preferred alternative would result in significant adverse impacts that cannot be avoided, minimized, or mitigated, the lead agency determines whether to (1) pursue the project as defined and prepare an EIS, (2) not pursue the project, which means selecting the No-Build Alternative, or (3) modify the preferred alternative to reduce adverse impacts to less- than-significant levels.

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

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5 Public Involvement

MAINEDOT's public involvement provides an opportunity to understand a community's interests and help inform decisions. Effective public involvement will also be conducted to ensure equal access of the public to the transportation decision-making process. This section summarizes MAINEDOT's Public Involvement in Transportation Decision-making Plan (MaineDOT PIP) and MaineDOT's NEPA Public Involvement Plan (NPIP) (<https://www.maine.gov/mdot/env/NEPA/public/index.shtml>).

5.1 NEPA Public Involvement Plan (NPIP)

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

5.2 Project Specific Public Involvement Plan

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

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

5.3 Public Involvement Documentation

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

5.4 Public Involvement Summary

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

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

5.5 Managing Public Comments

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

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

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

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

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

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

6.1 Quality Control

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

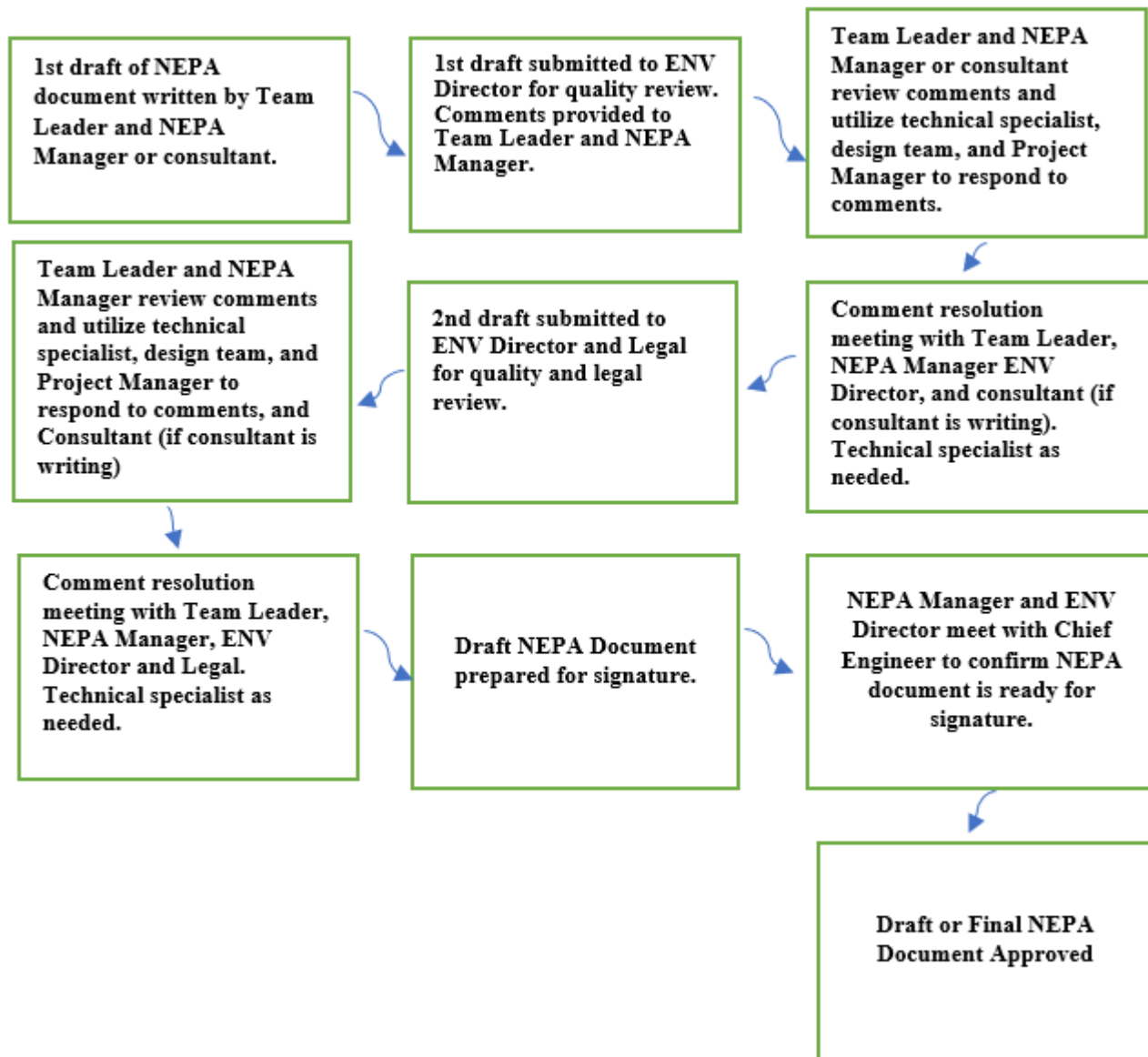
EAs, EISs will receive varying degrees of QC as they move through the process; however, the focus of the review and documentation requirements is generally the same. MAINEDOT's QC process focuses on the following:

- accuracy of content
- completeness
- compliance with CEQ and FHWA NEPA regulations regarding EISs (40 CFR 1508.9 and 23 CFR 771.123)
- compliance with MAINEDOT procedures
- compliance with MAINEDOT's PIP and NPIP
- consistency – both within the environmental document and between the environmental document and supporting technical reports
- errors and omissions
- readability
- compliance with FHWA nondiscrimination requirements for Title VI, LEP, and EJ

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

Figure 1 displays the QC process for a NEPA document.

Figure 1. EA/EIS QC



6.2 Legal Review and Sufficiency Review

Legal review is performed by MaineDOT Environmental Counsel for each draft EIS and draft EA. A legal sufficiency review is required for each final EIS [23 CFR 771.125(b)]. The Maine Attorney General's Office conducts the legal sufficiency reviews. The MaineDOT Senior Environmental Manager/NEPA Manager 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/NEPA Manager will discuss and incorporate suggestions/requirements from the legal reviews.

Legal review by MaineDOT Environmental Counsel will also be conducted on Individual Section 4(f) evaluations and Statute of Limitation (SOL) Notices. The Senior Environmental Manager/NEPA Manager and Historic Coordinator will provide the evaluations and SOL to the MaineDOT environmental Counsel for review. The Senior Environmental Manager/NEPA Manager and Historic Coordinator will discuss and incorporate suggestions/requirements from the legal reviews. See Section 7.8 and 8.12 for further information.

6.3 Conflict Resolution

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

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

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

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

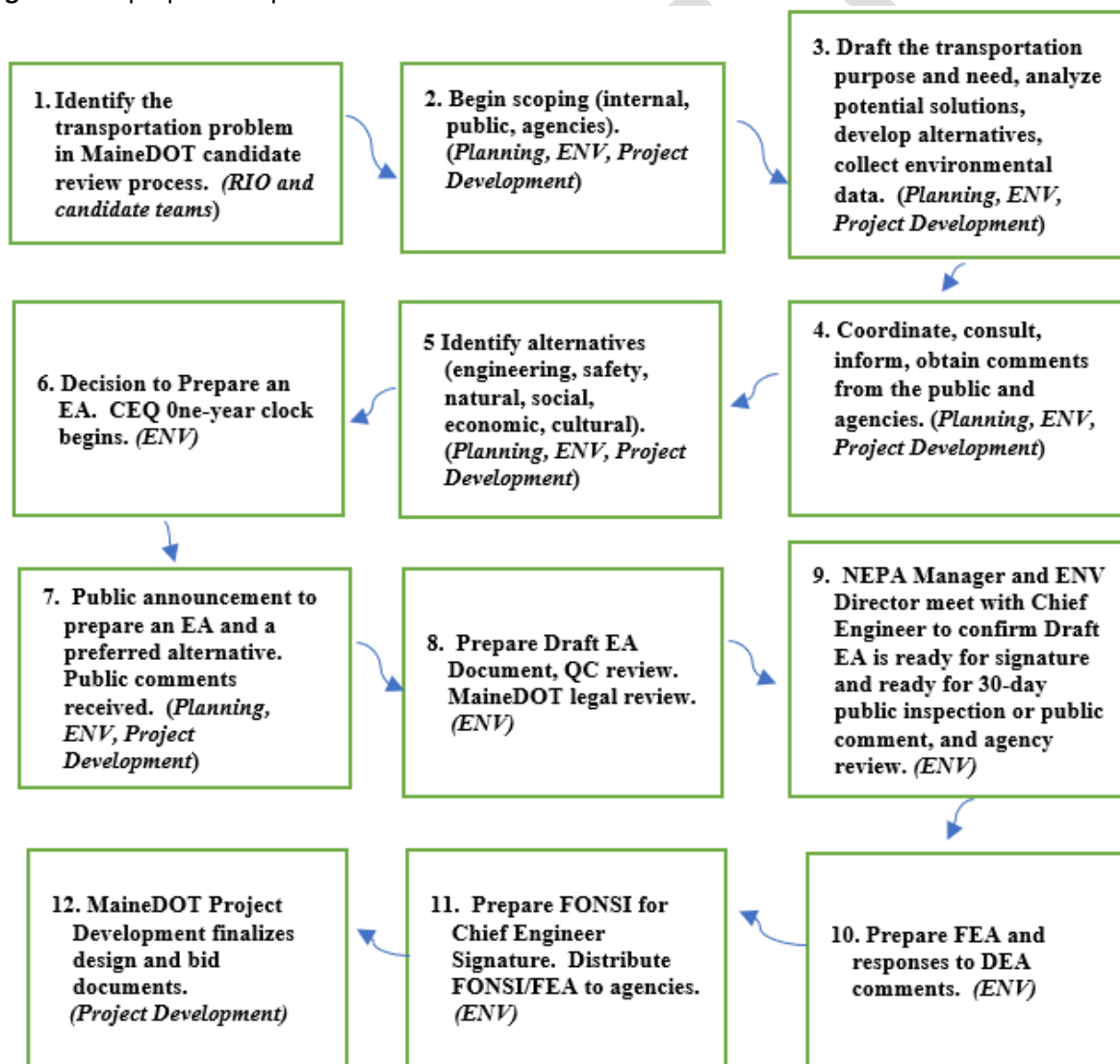
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7 Process for Developing an EA

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

An EA is prepared by following the procedures outlined in this section. Figure 3 shows steps undertaken to prepare an EA.

Figure 2. EA preparation process



7.1 Initiating Environmental Activities

Projects that are likely to be EAs will involve the Senior Environmental Manager/NEPA Manager and ENV Director from the beginning. The Environmental Office Team Leader will automatically be assigned based on program. The Senior Environmental Manager/NEPA Manager will determine if a consultant is assigned to prepare the EA.

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

7.1.1 Defining the Study Area

Once a project has been identified, the project study area is clearly defined. The study area is selected based on the project's logical termini and should encompass an area that will accommodate all anticipated alternatives. It is good practice to define the study area generously to accommodate potential adjustments to the project and to avoid the need for supplemental analyses.

7.1.2 Initiating Scoping and Public Involvement

CEQ regulations do not identify specific scoping requirements for an EA; however, MAINEDOT conducts early coordination with federal and state agencies and local governments and holds a public meeting for projects that are likely to be EAs. Tribal coordination and consultation occur within a separate, dedicated process based on government-to-government requirements. Early agency coordination helps in refining the study area, project purpose and need, and alternatives. It is also an opportunity to gather information on environmental resources and receive input from resource agencies regarding study expectations and potential mitigation requirements. Project information should be provided to agencies in advance of any early coordination meetings and may include a project description, preliminary purpose and need, project location map, study area map, alternatives under consideration. Information gathered at these meetings is documented and included in the project file.

Following early agency coordination meetings, a public meeting is generally held. 40 CFR 1506.6 and 23 CFR 771.105(c) require that practitioners "make diligent efforts to involve the public" in the NEPA process, which includes involving minority and low-income populations. To reach minority and/or low-income populations, MAINEDOT may have to use strategic outreach methods, such as holding neighborhood meetings, conducting one-on-one interviews at a community center, or interviewing community leaders from faith-based and social service organizations. MAINEDOT will also comply with Title VI and LEP federal requirements for Public Involvement as per MAINEDOT's PIP.

All comments received from agencies, tribes, and the public are considered in further development of the project. MAINEDOT gives careful consideration to input received in determining how to best advance. MAINEDOT reviews and responds to substantive comments received and prepares a comments/responses document.

7.1.3 Determining the Class of Action

After sufficient information is assessed and the agencies and public have provided comment, the MaineDOT Senior Environmental Manager/NEPA Manager and ENV Director determine a class of action. For EAs, this is when the CEQ one-year clock to finalize a FONSI or determine an EIS starts. This determination is based on engineering and environmental considerations through coordination with technical specialists, designers, and Project Managers.

7.2 Developing a Draft EA

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

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

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

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

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

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

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

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

- **Introduction:** Introduces why an EA is being written.
- **Background:** Provides background information on the transportation asset(s) and surrounding area.
- **Purpose and Need for Action:** The transportation need that the proposed action or project is intended to satisfy is the focus of the purpose and need section of the EA.
- **Alternatives:** Alternatives under consideration are presented in this section, including the no-build alternative and one or more build alternatives. The no-build alternative serves as a baseline for comparison with the build alternatives under consideration. Alternatives that were initially considered but

eliminated from further consideration are also briefly described.

- **Impacts:** The impacts section of the EA describes the natural, cultural, social, and economic impacts that would likely result from each alternative under consideration. Direct, indirect, and cumulative impacts are considered, as are both temporary (construction) and permanent impacts. Information presented should be sufficient to analyze each impact and to identify appropriate mitigation measures. For resources under the jurisdiction of resource agencies or tribes, the discussion should include the results of any completed or ongoing consultations, as applicable.
- **Coordination and Comments:** Early and ongoing coordination activities with agencies and the public are discussed in this section, along with key issues of concern agencies or the public may have. In the final EA, agency and public comments and MAINEDOT responses to those comments are included, typically as an appendix.
- **Section 4(f) Evaluation (if applicable):** If the project will have a “use” of a Section 4(f) property, a Section 4(f) evaluation is prepared. It is placed in a separate section of the EA. Note that while there may be potential Section 4(f) properties in the vicinity of the project, a formal Section 4(f) evaluation is prepared only when there is a use of a Section 4(f) property.

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

7.3 Review and Approval of the Draft EA

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

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

When all comments have been addressed and the draft EA has been reviewed by the ENV Director and MainedOT’s Legal Services Office, it is ready for public review. The Senior Environmental Manager/NEPA Manager and ENV Director recommend approval of the draft EA to the MAINEDOT Chief Engineer, who signs the draft EA to denote approval for public review.

7.4 Public Review of the Draft EA

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

FHWA’s NEPA regulations [23 CFR 771.119(e) or (f)] require the draft EA to be available for public review and comment for 30 days unless MAINEDOT (under NEPA Assignment) determines for good cause that a different review period is warranted.

7.5 Public Hearing

FHWA regulations require one or more public hearings or the opportunity for hearings for any federal-aid project

that meets one or more of the following criteria [23 CFR 771.111(h)(2)(iii)]:

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

While many EAs do not require a public hearing by regulation, it is MAINEDOT's practice to hold a public hearing or meeting for most EAs. The determination to hold a public hearing is made on a project-by-project basis by MAINEDOT ENV Director in cooperation with the Senior Environmental Manager/NEPA Manager and Project Manager. When a public hearing is held, the EA must be publicly available for a minimum of 15 days before the hearing and be available for review at the public hearing [23 CFR 771.119(e)]. When a public hearing is held, information regarding its date, time, and location is included in the EA public notice.

7.6 Developing the Revised EA

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

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

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

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

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

7.7 Project Decision

After the revised EA is complete, the Senior Environmental Manager/NEPA Manager and ENV Director make a determination regarding whether the impacts evaluated in the EA are significant, including whether mitigation measures can be used to avoid, minimize, or reduce adverse impacts to levels that are not significant. If the Senior Environmental Manager/NEPA Manager and ENV Director determine (on the basis of the evaluation of impacts

and public and agency review and input) that the proposed action would not result in significant impacts, a FONSI is recommended to the Chief Engineer. The EA documents the environmental assessment, evaluation, and recommended action and resolves the question of significance. The FONSI documents the decision for the project. It discusses the environmental issues and reaches appropriate decisions regarding mitigation and other commitments. The revised EA will be made available for public and agency review for 30 days before MAINEDOT makes a final decision.

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

7.7.1 Finding of No Significant Impact

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

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

If no significant impacts are identified, the revised EA/FONSI, the public hearing transcript (if applicable), copies of any comments received and responses, and all documentation that the NEPA decision was based on will be part of the administrative record and filed in the CPD e-file and ProjEx. The EA will document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance that their requirements can be met in accordance with 23 CFR 771.119(g). The FONSI will be written by the Senior Environmental Manager/NEPA Manager and reviewed by the ENV Director.

The following statement is the core of the FONSI:

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

The following statement must appear on the FONSI:

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

The FONSI is signed by the MAINEDOT Chief Engineer to denote approval. According to FHWA Technical Advisory

T6640.8A, formal distribution of the FONSI is not required; however, a notice of availability should be sent to involved federal, state, and local government agencies, and the FONSI should be made available to the public upon request [23 CFR 771.121(b)].

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

The FONSI may be a mitigated FONSI. It is the responsibility of MAINEDOT to ensure that the mitigation measures committed to in the environmental document are carried out. A summary of mitigation commitments will be included in the FONSI or ROD and made available and documented in the Environmental Office CPD e-file and ProjEx database.

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

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

7.8 Notice of Statute of Limitations

The statute of limitations on legal claims against a project FONSI and other related transportation project actions, such as a Section 404 permit, can be limited to 150 days provided specific conditions are met. The 150-day statute of limitations was established in 23 USC 139(I). The FONSI or other final agency action must be related to a transportation project, and a Limitation of Claims Notice must be placed in the *Federal Register* for the 150-day statute of limitations to apply. MAINEDOT prepares the statute of limitations notice for FHWA to place in the *Federal Register* (only federal agencies may publish in the *Federal Register*, even under NEPA Assignment). Publication in the *Federal Register* starts the clock for the statute of limitations. The *Federal Register* Limitation of Claims Notice is separate from the notice of availability and is often prepared later in the process.

Under 23 CFR 771.139, MAINEDOT can issue a limitation on claims notice in the *Federal Register* that reduces the statute of limitations for challenging a federal agency decision for a project from 6 years to 150 days. MAINEDOT will activate the 150-day statute of limitations for those projects deemed necessary.

Legal review by MaineDOT Environmental Counsel will be conducted on Statute of Limitation (SOL) Notices. The Senior Environmental Manager/NEPA Manager will provide the SOL to the MaineDOT Environmental Counsel for review. The Senior Environmental Manager/NEPA Manager will discuss and incorporate suggestions/requirements from the legal reviews. The MaineDOT Senior Environmental Manager/NEPA Manager is responsible for coordinating the placement of the notice in the *Federal Register* with FHWA's Maine Division.

8 Process for Developing an EIS

This section describes the process for initiating and completing an EIS and ROD in accordance with NEPA and related NEPA regulations from CEQ and FHWA. An EIS is prepared for an action that is likely to have significant impacts on the environment. An EIS is one of the three Classes of Action identified by FHWA. According to FHWA regulations, EISs are prepared for “actions that significantly affect the quality of the human environment” [23 CFR 771.115(a), 40 CFR 1508.27]. The EIS presents the evaluation of project alternatives and their potential impacts on the human and natural environment to support MAINEDOT’s decision regarding which alternative to approve. A ROD is prepared at the conclusion of the EIS process to document MAINEDOT’s decision and the basis for that decision.

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

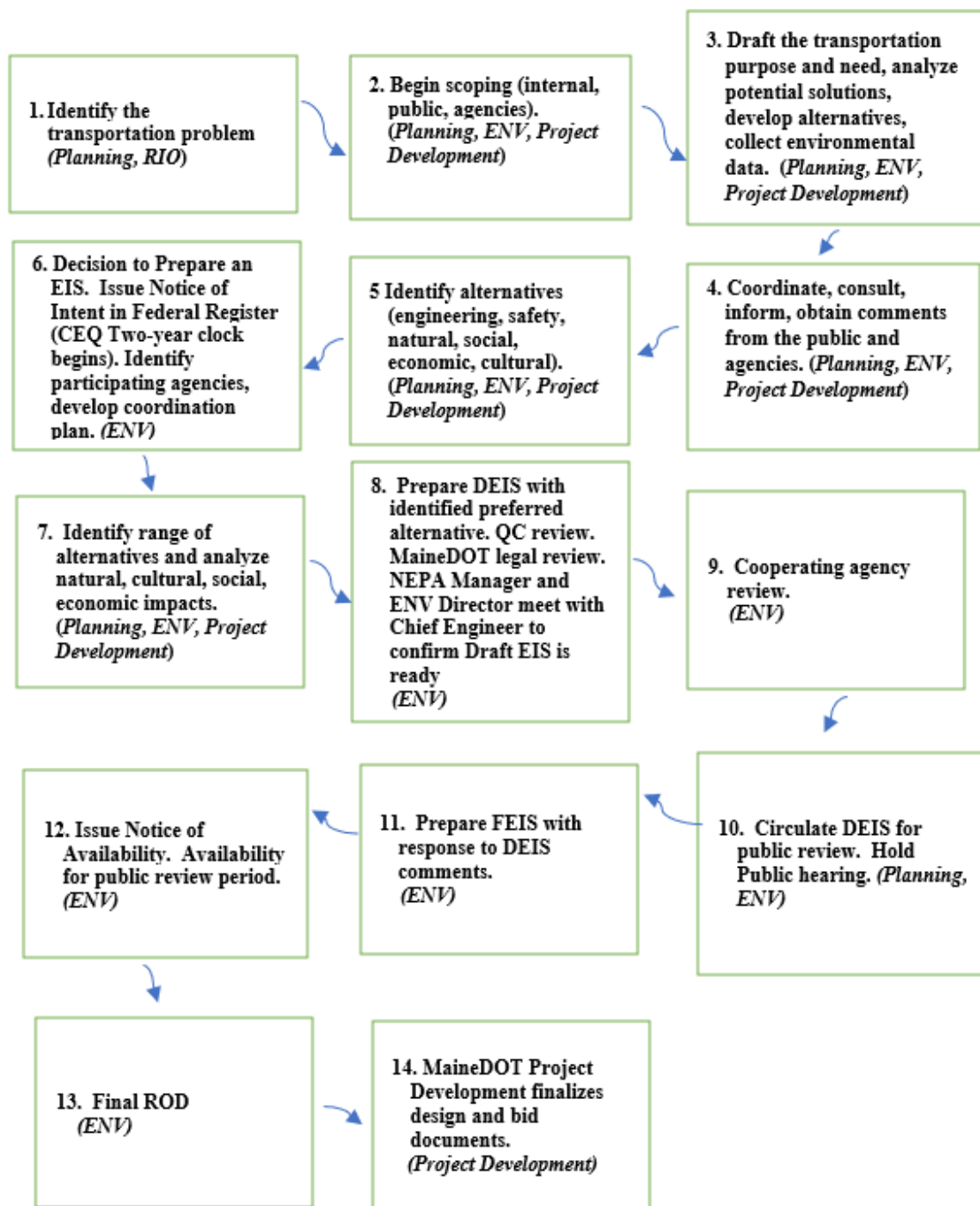
Actions requiring an EIS are considered Class I actions (23 CFR 771.115). Examples of Class I actions that normally require an EIS are:

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

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

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

Figure 3. EIS preparation process



8.1 Types of EISs

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

8.1.1 Project level EIS

The most common type of EIS is prepared for a specific project and is referred to as a project-level EIS. A project-level EIS evaluates a proposed action with known, defined elements and location and well-defined

implementation, construction, and operation characteristics. The proposed action would have independent utility and logical termini and would be part of an overall transportation program.

8.1.2 Tiered EIS

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

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

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

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

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

8.1.3 Supplemental EIS

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

8.2 Efficient Environmental Review Process

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

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

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

- FHWA/Federal Transit Administration *SAFETEA-LU Environmental Review Process Final Guidance* (<https://www.fhwa.dot.gov/hep/guidance/section6002/page00.cfm>)
- *Final Guidance on MAP-21 Section 1319 Accelerated Decision making in Environmental Review* (<https://www.fhwa.dot.gov/map21/guidance/guideaccdecer.cfm>)
- The AASHTO Practitioner's Handbook 9, *Using the SAFETEA-LU Environmental Review Process*

8.2.1 Environmental Review Process Participants

Lead Agency: Under NEPA Assignment, MAINEDOT is the federal lead agency for assigned projects. As the direct recipient of federal-aid funds, it is also required to be a joint lead agency under 23 USC 139(c)—thus, MAINEDOT serves in both roles. At MAINEDOT's discretion, other federal, state, or local agencies may act as joint lead agencies. See the *SAFETEA-LU Environmental Review Process Final Guidance* (<https://www.fhwa.dot.gov/hep/guidance/section6002/section6002.pdf>) for additional information.

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

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

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

Cooperating Agencies: Cooperating agencies are defined as any federal agency with jurisdiction by law or special expertise for any environmental issue that will be addressed in the EIS [40 CFR 1508.5, see also 40 CFR 1501.6 and 23 CFR 771.111(d)]. Any federal agency that meets this definition must be invited to be a cooperating agency. Any cooperating agency also meets the definition of a participating agency and needs to be formally invited to serve in both roles.

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

8.3 Notice of Intent

The EIS is initiated with the publication of an NOI, published in the *Federal Register*. The NOI informs the public of the upcoming EIS study and analysis and provides information regarding how the public can become involved. MAINEDOT prepares the NOI once it has consulted with any other project sponsors and has decided to prepare an EIS (23 CFR 771.123). Only federal agencies are permitted to publish in the *Federal Register*, so MAINEDOT submits the NOI to FHWA for publication. The NOI includes the following [40 CFR 1501.9(d)]:

1. The purpose and need for the proposed action
2. A preliminary description of the proposed action and alternatives the environmental impact statement will consider
3. A brief summary of expected impacts
4. Anticipated permits and other authorizations
5. A schedule for the decision-making process
6. A description of the public scoping process, including any scoping meeting(s)
7. A request for identification of potential alternatives, information, and analyses relevant to the proposed action
8. Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement

MAINEDOT posts the NOI on its website.

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

The following statement must appear in the NOI:

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

8.4 Early Public and Agency Involvement

Public and agency involvement is an essential element of EIS development. Because an EIS is prepared for only the most complex projects with significant environmental issues, public and agency involvement require specific steps. EIS public involvement requirements are intended to enhance public and agency engagement so issues that could delay project approval are identified early and resolved efficiently, with streamlined environmental approval and efficient project delivery being the goal. Federal agencies are directed to collaborate on issues and, where possible, to develop a single EIS that addresses the requirements of all federal agencies that must take action on the project (for example, approvals and/or permits issued under the Endangered Species Act, National Historic Preservation Act, and Clean Water Act).

8.4.1 Coordination Plan and Checklist

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

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

- identify resource agencies and organizations that can provide information about natural, cultural, and historic resources;
- develop the information needed to determine the range of alternatives; and
- improve interagency collaboration to help expedite the permitting process for the lead agency and participating agencies.

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

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

- the responsibilities of participating agencies under applicable laws;
- resources available to the cooperating agencies;
- overall size and complexity of the [project](#);

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

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

MAINEDOT will consult FHWA's Environmental Review Process Checklist (https://www.environment.fhwa.dot.gov/legislation/authorizations/safetealu/reviewProcess_checklist.aspx) for projects subject to 23 USC 139.

8.4.2 Scoping

Scoping is an early and open process through which the NEPA lead agency (MAINEDOT) gathers input from agencies and the public to determine the scope of issues to be addressed in the EIS and to identify the issues related to the proposed action (40 CFR 1501.7). The project purpose and need and range of alternatives to be addressed in the EIS are also identified through the scoping process (23 CFR 771.123). As part of the scoping process, the lead agency invites the participation of affected federal, state, and local agencies, affected Native American tribes, and the interested public (40 CFR 1501.7). Participating agencies and the public must be given the opportunity to provide input on the draft purpose and need and range of alternatives to be considered [23 USC 139(f)]. Following this input, the lead agency finalizes the project purpose and need and range of alternatives to be considered for the project. The lead agency, in collaboration with participating agencies, also determines the methodologies to be used and level of detail required for analysis of project alternatives [23 USC 139(f)].

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

While public meetings are not required as part of the scoping process, MAINEDOT typically holds a public meeting to solicit feedback from the public. Notification of any meeting must be published in a local or regional newspaper and will comply with FHWA's public involvement requirements for Title VI, LEP, and EJ as stated in MAINEDOT's PIP.

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

8.5 Developing a Draft EIS

The EIS presents a detailed evaluation of the proposed action and alternatives. Each alternative under consideration should be discussed in comparable detail to allow the reader to evaluate the comparative merits

of the alternatives. The impacts associated with each alternative must be objectively analyzed and rigorously evaluated. The EIS describes the area's existing natural, physical, and social environment and discusses the potential direct, indirect, and cumulative environmental effects of the project alternatives. MaineDOT utilizes the recommended EIS format and consults the following references for additional guidance:

- CEQ Regulations [40 CFR 1502.10-1502.19](#)
- [FHWA's Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#)
- [40 Most Asked Questions Concerning the CEQ's National Environmental Policy Act](#)
- [Interim Guidance on MAP-21 Section 1319 Accelerated Decision making in Environmental Reviews | Federal Highway Administration \(dot.gov\)](#)
- [FHWA Environmental Toolkit](#)

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

A preferred alternative may be identified in the draft EIS that is made available for public review and should be identified at that time if MAINE DOT has identified a preferred alternative. Otherwise, the preferred alternative is identified in the final EIS. Note that to use a combined final EIS and ROD, the preferred alternative must be identified in the draft EIS. To use this approach, the draft EIS must provide notification that the final EIS and ROD will be combined when it is filed with the U.S. Environmental Protection Agency (EPA).

MaineDOT has templates and previous EIS documents as format guides. A recommended format for an EIS is described in [40 CFR 1502.10](#) and section descriptions in 1502.11 – 1502.19.

8.6 Draft EIS Review and Approval

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

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

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

8.7 Public Review of the Draft EIS

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

Under NEPA Assignment, MAINEDOT files the draft EIS with EPA as specified in 40 CFR 1506. EPA publishes a notice of the EIS in the *Federal Register* (40 CFR 1506.11). The notice invites comments from all interested parties and identifies where the draft EIS can be reviewed, the date by which comments must be received, and the address of the person to which comments should be sent.

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

All draft EISs are submitted electronically to EPA through the use of the EPA e-NEPA online tool (<https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance>). After receiving the draft EIS, the Office of Federal Activities EIS Filing Section prepares and publishes the notice of the draft EIS for publication in the *Federal Register*. EPA assigns a unique identifier number to each EIS; this number is used for the final EIS and any other correspondence with EPA or publication in the *Federal Register* pertaining to the project.

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

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

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

8.8 Public Hearing

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

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

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

- What is NEPA?

- What is the purpose and need?

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

For additional information on the public hearing and how the agency will meet FHWA requirements for Title VI, LEP, and EJ in public engagement, see the MAINEDOT PIP.

8.9 Developing the Final EIS

MAINEDOT reviews all comments received on the draft EIS and considers these comments in developing the final EIS. MAINEDOT develops a response for each substantive comment received. The Senior Environmental Manager/NEPA Manager and ENV Director will determine which comments are substantive (and request review from MAINEDOT's Environmental Attorney, if necessary). Responses are crafted by technical experts, MaineDOT team members, and the Senior Environmental Manager/NEPA Manager. Responses are reviewed and given final approval by the Senior Environmental Manager/NEPA Manager, ENV Director, Project Manager, and MAINEDOT Environmental Attorney. All comments and responses to substantive comments are saved in the project CPD e-file. Comments received during the public review period, and the responses, are included in the final EIS. Once comments have been addressed, the final EIS can be prepared. It identifies the preferred alternative, explains why it was preferred, and evaluates all reasonable alternatives considered [23 CFR 771.125(a)(1), FHWA Technical Advisory T 6640.8A(J)]. If the preferred alternative identified in the final EIS is different from the preferred alternative presented in the draft EIS, the final EIS must clearly identify the changes, describe the reasons for the changes, and discuss the reasons why any new impacts are not of major concern. The final EIS must also discuss any responsible opposing view that was not adequately addressed in the draft EIS and provide MAINEDOT's response to the issues raised [40 CFR 1502.9(b)].

The final EIS also summarizes agency involvement and documents compliance with all applicable environmental laws and executive orders (for example, Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Section 4(f) of the U.S. DOT Act, and Section 404 of the Clean Water Act). When it is not possible to comply with all other applicable requirements, the final EIS must provide reasonable assurance that such requirements can be met [23 CFR 771.125(a)(1)]. Mitigation measures that are to be incorporated into the proposed action are described. Those mitigation measures presented as commitments in the final EIS will be incorporated into the project [23 CFR 771.109(b) and (d)].

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

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

8.10 Final EIS Review and Approval

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

8.10.1 Legal Sufficiency Review

The Senior Environmental Manager/NEPA Manager submits the final EIS to the MAINEDOT Environmental Attorney. The MAINEDOT Environmental Attorney will provide the document to the Maine Attorney General's

Office for a legal sufficiency review. The final EIS may not be approved until it has been determined to be legally sufficient [23 CFR 771.125(b)]. The Maine Attorney General's Office provides the MainEDOT Environmental Attorney written confirmation that the final EIS is legally sufficient and can be approved. This letter is provided to the Senior Environmental Manager/NEPA Manager for the file.

8.10.2 Final EIS Approval

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

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

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

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

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

8.10.3 Prior Concurrence

For selected projects, "prior concurrence" pursuant to 23 C.F.R. § 771.125(c) will be obtained before proceeding with key approvals under the NEPA Assignment Program. The prior concurrence decision will be made by the MAINEDOT Chief Operating Officer, after consulting with MaineDOT's legal staff and Senior Environmental Manager/NEPA Manager to ensure that the project and document in question are acceptable from a policy and program perspective. The MAINEDOT Legal Office would be notified of the start of any EIS. Prior concurrence may apply to MAINEDOT approvals of draft and final EISs. Projects requiring prior concurrence will be identified on a case-by-case basis, based on input from ENV Team Leaders and the Senior Environmental Manager/NEPA Manager, and/or legal counsel and may include projects meeting one or more of the following criteria as defined in regulation:

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

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

8.11 Record of Decision

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

The ROD presents the selected alternative and the basis for its selection (40 CFR 1505.2). It briefly describes each alternative and explains the balancing of values that formed the basis of the alternative selection. The ROD must also identify the environmentally preferred alternative (or alternatives) and—if a different alternative is selected—state the reasons why the environmentally preferred alternative was not selected. The ROD summarizes any mitigation measures that will be incorporated in the project and documents any required Section 4(f) approval.

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

The following statement must appear in the ROD:

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

The EIS, ROD, copies of any comments received and responses, and all documentation that the NEPA decision was based on will be part of the administrative record and filed in the CPD e-file and ProjEx. The EIS/ROD will document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance that their requirements can be met.

MaineDOT has templates and previous RODs as format guides. RODs are described in [40 CFR 1505.2](#).

8.11.1 Combined Final EIS and Record of Decision

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

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

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

- USDOT's *Final Guidance on MAP-21 Section 1319 Accelerated Decision making in Environmental Reviews* (<https://www.fhwa.dot.gov/map21/guidance/guideaccdecer.cfm>)
- FHWA/Federal Transit Administration *Revised Environmental Review Process Guidance for Public Comment* (https://www.fhwa.dot.gov/map21/docs/12mar_prop_env_proc_review_pc.pdf)

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

When a combined final EIS/ROD is prepared, the applicable requirements for both a final EIS and ROD must be met (MAP-21 Final Guidance, 23 CFR 771.125). The combined final EIS and ROD are made available to all agencies and individuals who provided substantive comments on the draft EIS or who requested a copy (40 CFR 1502.19). If the final EIS and ROD are combined, they cannot be signed any sooner than 90 days after the publication of the Notice of the draft EIS.

8.12 Statute of Limitations and Limitation of Claims Notice

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

Legal review by MaineDOT Environmental Counsel will be conducted on Statute of Limitation (SOL) Notices. The Senior Environmental Manager/NEPA Manager will provide the SOL to the MaineDOT Environmental Counsel for review. The Senior Environmental Manager/NEPA Manager will discuss and incorporate suggestions/requirements from the legal reviews.

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

8.13 Supplemental EIS

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

8.14 Federal Infrastructure Permitting Dashboard

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

project.

Under NEPA Assignment, MAINEDOT's Senior Environmental Manager/NEPA Manager and ENV Director will provide the project information (within in 90 days of the NOI) for all EISs via the Permitting Dashboard web site: <https://www.permits.performance.gov/fpisc-content/federal-permitting-improvement-steering-council>

The Permitting Dashboard provides the following FAST-41 Process: <https://www.permits.performance.gov/fpisc-content/fast-41-process>

8.15 Coordinating other Environmental Reviews with NEPA

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

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

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

- FHWA 2015 Red Book – *Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects*, Publication No. FHWA-HEP-15-047, September 2015 (includes Appendix C – Coordination & Implementation Table for a Sample EIS Project)
- AASHTO Practitioner's Handbook 17 – *Complying with Section 7 of the Endangered Species Act for Transportation Projects*, November 2016
- AASHTO Practitioner's Handbook 06 – *Consulting under Section 106 of the National Historic Preservation Act*, August 2016
- AASHTO Practitioner's Handbook 11 – *Complying with Section 4(f) of the U.S. DOT Act*, May 2009

In addition to the publications listed above, numerous resources on how to properly comply with and consult on the four environmental laws and other laws, regulations, and Executive orders are available in MaineDOT guidance documents on the MAINEDOT website and FHWA guidance documents on the FHWA website.

9 EA and EIS Re-Evaluations and Supplemental EISs

9.1 Re-evaluations

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

Re-evaluations are triggered by the following:

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

The re-evaluation should consider the entire project analyzed in the original NEPA document. All environmental sections require re-evaluation to review whether impacts have changed as compared with the previous NEPA document and whether any impact changes result in new or significant impacts (consider whether the changes would cause impacts that are different in type or intensity compared with the original NEPA document). Documentation should be appropriate to the project changes, environmental impacts from the changes, potential for controversy, and length of time since the last NEPA document was completed. Re-evaluation format can take different forms based on the age of the original document and the complexity of the changes.

- If there is a minor change to the project scope or only minor updates are required, then a simple narrative re-evaluation is appropriate. The re-evaluation will be completed by the Environmental Team Leader and documented in ProjEx and any documentation saved in the CPD e-file.

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

There are three possible outcomes for a re-evaluation:

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

The MAINEDOT Senior Environmental Manager/NEPA Manager approves the re-evaluation or makes the determination that a supplemental environmental document is necessary.

9.2 Supplemental EAs

If MAINEDOT is uncertain regarding the significance of new impacts, a supplemental EA may be prepared [23 CFR 771.130(c)]. Alternatively, MAINEDOT may know that the proposed project changes would not result in significant impacts but would choose to prepare formal NEPA documentation to support the conclusion of no new significant impacts. Analysis and documentation of a supplemental EA should focus only on changes to the project (https://www.environment.fhwa.dot.gov/legislation/nepa/overview_project_dev.aspx).

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

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

9.3 Supplemental EISs

Supplemental EISs are required under the following conditions [40 CFR 1502.9]:

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

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

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

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

Below are some considerations for a supplemental EIS:

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

9.4 Amended FONSI or ROD

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

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10 Environmental Commitments

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

As a project is developed, consideration should be given to environmental commitments to determine whether the commitment may be precedent setting. The study team should discuss environmental commitments and properly vet them through the appropriate MAINEDOT personnel prior to making the commitment. Once an environmental commitment has been fully vetted, it should be clearly documented and included in the project file. Tracking of these commitments is described in Section 10.2.

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

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

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

- *Avoiding* the impact altogether by not taking a certain action or parts of an action.
- *Minimizing* impacts by limiting the degree or magnitude of the action and 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.

10.1 Developing Mitigation Measures

Mitigation measures should be developed only to address adverse effects, regardless of whether the effect is significant or not. All other measures should be considered as avoidance and/or minimization. Note that standard specifications identified as part of permit requirements, permits needed for the project, and any items that are 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 to the MAINEDOT Project Manager.

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

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

10.2 Tracking Commitments

Project-specific mitigation measures presented in an EA or EIS are included in the project [23 CFR 771.109(b) and 23 CFR 771.125(a)(1)] and are tracked to ensure compliance. MAINEDOT uses a number of methods to track project-specific mitigation measures, including construction monitoring. MaineDOT tracks commitments in the ProjEx database.