

# 1. Environmental Overview

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## 1.1. Introduction

### 1.1.1 Purpose

The purpose of this manual is to provide consistency in the preparation and processing of environmental documents for Alaska Department of Transportation and Public Facilities (referred to as DOT&PF or the Department) projects funded by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA).

### 1.1.2 Applicability

Use this guidance for all environmental documents. It provides consistency in the format, content, and processing of the various environmental studies and documents developed by and for DOT&PF. It meets the FHWA and FTA environmental regulations found in 23 CFR 771 and is consistent with applicable state and federal requirements for environmental documents.

Use the guidance in combination with a knowledge and understanding of the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR 1500-1508), FHWA's Environmental Impact and Related Procedures (23 CFR 771), and other environmental statutes and administrative and executive orders.

### 1.1.3 Background

The Department is responsible for the evaluation and documentation of the impacts of a proposed action on sensitive resources (e.g., human and natural environments) on behalf of the appropriate federal agency. These resources include, but are not limited to, floodplains, wetlands, endangered species, historic and archeological sites, businesses, communities, disadvantaged residents, air quality, wildlife habitat, etc.

The Department established the environmental sections (statewide and regional) with approval of the

*State of Alaska Department of Highway Action Plan*, January 14, 1974 (Action Plan). The governor and regional administrator of FHWA determined that it was necessary for an interdisciplinary approach in systems planning and project development, to help the engineering staff address social, economic and environmental impacts. This approach to the development of federally funded highway projects in Alaska is required by FHWA's federal directive to implement the 1970 CEQ guidelines for the preparation of environmental documents.

In addition to establishing the environmental sections, the Action Plan set out guidelines to ensure compliance with the original FHWA environmental policy that implemented the National Environmental Policy Act of 1969 (NEPA) prior to CEQ developing implementing regulations found in 40 CFR 1500. NEPA has three major goals that have influenced the FHWA and all federal agencies: (1) it sets national environmental policy; (2) it establishes a basis for environmental impact statements (EISs); and (3) it created the CEQ. To the greatest extent possible, regulations and policies of federal agencies are to be interpreted and administered in accordance with NEPA.

The CEQ regulations established uniform processing options for all federal agencies. These options are categorical exclusions (CE), environmental assessments (EA), and environmental impact statements (EIS). FHWA regulations (23 CFR 771) go further than the CEQ regulations and require consideration of adverse economic and social impacts that could result from federal-aid highway projects.

### 1.1.4 Environmental Documents

This manual includes the following as "environmental documents":

- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)
- Section 4(f)
- Environmental Re-Evaluation
- Environmental Permits

Environmental documents must be clear and concise. Many documents are too lengthy and do not focus on the important impacts and issues, which has led to

confusion and excessive rewrites before FHWA approval. Each environmental document evaluation [e.g., CE, EA, EIS, or Section 4(f)] must be supported with technical information such as engineering studies, socioeconomic analyses, wetlands evaluations, and fish and wildlife studies. It is helpful, particularly with consultant-prepared documents, for each section of the document to have a technical memorandum or technical report.

## **1.2. Responsibility of the Environmental Coordinators**

The Department's 1974 Action Plan established the responsibilities of the state and regional environmental units, and these responsibilities are essentially the same today. Since 1974, the Department has been through several reorganizations, most notably the 1976 creation of the Department of Transportation and Public Facilities (DOT&PF). This consolidated the Departments of Highways and Public Works. With the creation of DOT&PF, the state and regional environmental coordinators' responsibilities were expanded from just highway projects to all projects that require an environmental document or resource agency permit.

When the Department decentralized in the early 1980s, the regional environmental coordinators were given direct oversight of the environmental requirements of projects developed within their regions, as well as responsibility for acquiring all resource agency permits for construction and maintenance activities. The regional environmental coordinators are responsible for:

- Supervising regional environmental staff
- Supervising preparation of environmental documents
- Monitoring compliance of environmental commitments and permit stipulations
- Coordinating projects with the public and resource agencies
- Serving as the regional point-of-contact for emergency permits
- Serving as the regional point-of-contact for state and federal resource agencies
- Approving CEs
- Recommending compensatory mitigation

The state environmental coordinator is responsible for managing environmental and regulatory issues of

statewide importance and ensuring statewide consistency in implementation of departmental environmental policies and procedures. The state environmental coordinator:

- Serves as the Department's point of contact concerning Corps of Engineers Section 404 and Section 10 issues
- Provides support and guidance to regional environmental coordinators on environmental and permitting issues
- Conducts annual environmental and permit training
- Facilitates conflict resolution between the Department and resource agencies
- Identifies and implements measures to streamline environmental and permit processes where practicable
- Represents the Department on statewide interagency taskforces and working groups (e.g. Alaska Coastal Management Program [ACMP] Working Group)

## **1.3. Project Development Process**

### **1.3.1 Project Authorizations/Authority to Proceed**

The FHWA authorizes project development by Authority to Proceed (ATP). The ATP approvals are:

- Reconnaissance Study
- Environmental document approval
- Final PS&E
- Appraisals and Acquisitions
- Utility Relocation
- Construction

The FHWA will not fund any charges to a project prior to the ATP authorization (i.e., such charges are "non-participating"). Attached with each ATP request is a Project Development Authorization (PDA) establishing funding levels for the project phases (i.e., Design, Right-of-Way, Construction, and Utilities).

For new project starts, the engineering manager prepares the Project Information Sheet, which describes the scope, purpose, and estimated costs of the project. The engineering manager provides the information sheet to the regional environmental coordinator, who identifies the anticipated environmental "Class of Action" (see Section 1.3.2 for details) and states whether or not a public meeting or hearing is anticipated or required. The regional

environmental coordinator may also assist in establishing cost estimates. These determinations are made based on project scope. Most new projects initially receive ATP to Environmental Document Approval. Some projects can be authorized through Final PS&E (e.g., CE projects that require no additional ROW acquisition or don't affect protected resources). Once the regional environmental coordinator has completed and signed off on the Project Information Sheet, the engineering manager submits it and other supporting documentation to Project Control, which prepares the PDA and ATP requests and submits them to HQ Planning and FHWA for approval.

### **1.3.2 Processing Options**

There are three options for processing environmental documents: (1) Categorical Exclusion, (2) Environmental Assessment, and (3) Environmental Impact Statement.

#### **Significant Impact**

It is essential to understand the term “significant” to determine the appropriate “class of action.” The CEQ regulations (40 CFR 1508.27) state that two main points should be considered in determining significance: *context and intensity*. Impacts can be considered in the context of society as a whole, the affected region, or the locality. In the case of a site-specific action, significance would usually depend on the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant. For example, filling one acre of a 100-acre wetland probably would not be considered significant, but filling one acre of a high-value two-acre wetland may be considered, under certain circumstances, a significant impact. The intensity is the same, but the context is different.

Factors to consider regarding intensity or severity of impacts include:

1. Impacts that may be both beneficial and adverse
2. The degree to which the proposed action affects public health or safety
3. Unique characteristics of the geographical area
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial
5. The degree to which the possible effects on the human environment are highly uncertain

- or involve unique or unknown risks
6. The degree to which the action may establish a precedent for future actions with significant effects
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts
8. The degree to which the action may adversely affect resources listed in or eligible for listing in the National Register of Historic Places
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat
10. Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment

#### **Categorical Exclusion (CE)**

Actions that do not individually or cumulatively have a significant social, economic, or environmental effect are excluded from the requirement to prepare an EA or EIS. Process these actions as CEs. A specific list of CEs normally not requiring NEPA documentation is set forth in 23 CFR 771.117(c). Other projects, pursuant to 23 CFR 771.117(d), qualify as CEs if appropriately documented that there are no significant impacts. There are various approaches to documenting CE determinations where required. The regional environmental coordinator approves projects that meet the requirements of the programmatic CE agreement between FHWA and DOT&PF (see Chapter 2). The FHWA area engineer must concur with all nonprogrammatic CEs. Chapter 2 and Appendix A give details on CEs.

#### **Environmental Assessment (EA)**

Prepare an EA when you are uncertain about the significance of the project's impacts. The CEQ says that an EA should discuss in detail only those areas where there is potential for a significant impact. FHWA Technical Advisory 6640.8A and Chapter 3 of this manual provide suggestions for format. You must address project description, need, alternatives considered, impacts, and comments and coordination.

FHWA must approve the EA before it is made available to the public. After completing the review process, if you determine that there are no significant impacts associated with the project, request that FHWA issue a FONSI (Finding Of No Significant Impact). FHWA Technical Advisory T6640.8A and Chapter 3 and Appendix B of this manual talk about

FONSI in greater detail.

### **Environmental Impact Statement (EIS)**

When the proposed action is anticipated to have a significant impact on the environment, you must prepare an EIS. Less than 5 percent of all FHWA projects require an EIS, but these are the projects that take the most time and effort to complete. If, at any time, you identify a significant impact, you must prepare an EIS. Submit the Draft EIS to the public for review and comment. FHWA approves the Final EIS, which gives the basis for the preferred alternative and shows any changes made to the Draft EIS and the reason for the changes. FHWA must issue a Record of Decision (ROD) before the Department gives any project approvals (e.g., for design, right-of-way acquisition, construction) on the selected course of action. Chapter 4 and Appendix C give details for the preparation and processing of an EIS.

#### **1.3.3 Re-Evaluations**

You must periodically re-evaluate the approved environmental document (i.e. CE, EA/FONSI, or FEIS/ROD) to ensure that the environmental approval remains valid. This re-evaluation documents any changes in the project or the affected environment before proceeding with major project approvals or authorizations. See Chapter 5 and Appendix D for details on re-evaluations.

#### **1.3.4 Mitigation and Environmental Enhancements**

The Department will take the practicable measures necessary to mitigate adverse impacts (both significant and non-significant) and incorporate those into the proposed action [23 CFR 771.105(d)]. The CEQ regulations (40 CFR 1508.20) describe the mitigation hierarchy:

1. Avoidance
2. Minimizing impacts by limiting the scope of the action
3. Rehabilitating or restoring the affected environment
4. 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 actually 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 FHWA Environmental Policy Statement (EPS), first issued in 1990 and revised in 1994, (see the D&ES environmental web site at <http://www.dot.state.ak.us/stwddes/dcsenviron/index.html> for details) called for an expanded interpretation of these requirements, and specifically itemized full and objective consideration to avoidance, innovative designs to minimize harm, and identification of opportunities to contribute to a healthier, more attractive environment through improved mitigation and enhancement. The only restrictions that the EPS placed on funding environmental enhancement activities were that such activities represent a reasonable public expenditure, be in the best overall public interest, and be reasonably related to an eligible highway project. (Please note that the environmental enhancement described in the EPS should not be confused with the “transportation enhancement” provision in the ISTEA legislation as amended by TEA 21, which is a 10 percent funding set aside for twelve specific types of enhancement activities. That program is one element of our overall enhancement policy.)

The Department will ensure that the mitigation and enhancement measures committed to in the environmental document, as well as those contained in permits, are carried out. You must include a summary of mitigation/enhancement commitments in the FONSI or ROD and make them available to the appropriate project personnel.

#### **1.3.5 Public and Agency Coordination**

Early coordination with other agencies and the public is an essential part of the project development process. The regional environmental coordinator is responsible for ensuring that appropriate public and agency coordination occurs during the environmental document approval phase of the project. Early coordination with the public and agencies helps determine the appropriate level of documentation. It defines the issues that need resolution, as well as identifying the permit requirements of other agencies, the range of alternatives, impacts to resources, possible mitigation measures, and opportunities for environmental enhancements.

When you begin early coordination, be aware of four items: (1) agencies with jurisdiction by law; (2) the

Memorandums of Understanding between DOT&PF/FHWA and agencies [available on the Design & Construction Standards website at <http://www.dot.state.ak.us/stwddes/dcsaboutus/index.html>]; (3) the local governmental contact (i.e. planning director, mayor, manager etc.); and (4) federally recognized tribal governments. The level of coordination will depend on the degree of potential impact.

Over 90 percent of highway projects in Alaska affect protected resources (e.g., wetlands, anadromous fish streams, or essential fish habitat). A complete and thorough coordination process is essential to a timely completion of the environmental document approval phase. We must consider and respond to issues raised by the public and agencies during this phase before approval of the environmental document. We can't defer the resolution of issues to a later phase of project development.

It is important that the regional environmental coordinator maintain a current project mailing list. We recommend that the Environmental Section's clerical staff maintain this list.

### **Public Involvement Process**

The level of public involvement depends on the magnitude of the project. As part of the design manager's project management plan (see the Alaska Preconstruction Manual for details), the manager reviews the anticipated level of public involvement. Any project that involves a protected resource (i.e., wetland, floodplain, and cultural resources) or additional right-of-way requires coordination with the public.

Environmental scoping is the initial phase of public and agency involvement. During scoping, the regional environmental coordinator prepares a "Public Notice" for publication in a newspaper with general circulation in the project area to notify the public of the proposed action. The notice should describe the proposed action and cite all applicable executive orders (e.g. Executive Orders 11990, 11988 and 12898) that require public notice of a federally sponsored or funded action.

The notice must indicate when comments are due and who the contact person is (e.g. design manager or project environmental coordinator). A 30-day comment period is the norm, but a 21-day notice is sufficient on projects with anticipated minor adverse

effects.

After the environmental document is approved, a public meeting or hearing may be held. If so, the public must have a minimum of 21-day advance notice. They should be given at least 10 days after the meeting or hearing to provide comments to the design manager or regional environmental coordinator.

### **Agency and Local Government Coordination**

The level of agency and local government coordination depends on the magnitude of the project. At a minimum, any project that involves a protected resource (i.e., wetland, floodplain, or cultural resources), requires additional right-of-way, or involves a federally recognized tribal government requires coordination.

During scoping, the regional environmental coordinator sends a letter to state and federal resource agencies (in the coastal zone to DGC and the local Coastal District) and local government authority for project reviews. The scoping letter should describe the proposed action in as much detail as possible and cite all resources that may be affected by the action. It should describe what we are doing, why, when, and where. It should identify anticipated permits and clearance necessary for construction of the project.

The regional coordinator should send the letter to the area supervisor of each agency or the agency staff assigned to the area. For local governments, send the notice to the local planning authority (planning director and coastal zone coordinator, when applicable). If there is no planning authority, send the notice to the administrative head of the community, such as the mayor or manager. If there is a federally recognized tribe, send the letter to the appropriate tribal representative.

Each scoping letter should offer the opportunity to meet and discuss the project in detail in the office and/or the field. At a minimum, you should hold an office meeting for projects with more than minor potential effects.

The comment period is generally 30 days, but a 21-day notice is sufficient for minor projects. You should give agencies advance notice, by telephone or e-mail, of all projects. This will help predetermine the level of coordination, the need for an informational meeting, and the level of agency involvement. In the scoping letter, you must provide adequate supporting

documentation (photos, purpose and need, preliminary drawings).

You should use electronic means as much as possible to promote the exchange of information and comments between the Department and agencies. Consult with agencies to determine the best format for transmitting information such as drawings, photos, and other pertinent project and resource information.

The electronic exchange of information is a useful tool to ensure that agencies are able to provide informed comments in a timely manner. However, sometimes an agency will not respond within the comment period. In such cases, follow these steps:

1. Contact the agency after the comment period ends to ensure that they weren't providing any comments on the project.
2. Document the conversation in a "memo to the file" or phone log.
3. Copy the agency with your memo or phone log (e-mail or fax).
4. Continue to provide the agency with project information as appropriate (e.g., responses to issues raised by other agencies).

When you are submitting a request for a formal review of a project analysis (e.g., Section 106, EFH, or Section 7) where the nonresponse can be concluded to be "tacit" approval by the agency with jurisdiction, do the following:

1. Contact the agency to verify that they didn't send a formal response.
2. If they didn't respond, tell them that you are moving forward.
3. Verify the conversation in a "memo to the file" or phone log.
4. Copy the agency with your memo or phone log (e-mail or fax).

In the Comments and Coordination Section of your NEPA document (i.e., CE Checklist, EA, or EIS), state that no comments were received by (whatever agency) in response to your request.

When you receive a letter from local government or agencies in response to your scoping letter, place the original in the "official" project file and make copies for appropriate staff and the FHWA area engineer. You must resolve and respond in writing to any issue

raised in response to the scoping letter before the FHWA can approve the environmental document.

#### **1.4. Adopting Another Agency's Environmental Document**

NEPA allows us to adopt an environmental document prepared by another federal agency (40 CFR 1506.3 Adoption). Under the right circumstances, adopting another agency's environmental document can result in a substantial savings of cost and time, but you should consult with the FHWA area engineer as early as possible to ensure that the environmental document will not have to be revised to satisfy the requirements of 23 CFR 771.

Although we can adopt another agency's environmental document, the regional environmental coordinator must prepare an independent decisional document (CE determination, EA, or ROD) for approval by the FHWA area engineer.

There are two primary circumstances where we would adopt another agency's environmental document. One is when FHWA is a cooperating agency rather than the lead agency. This usually occurs when FHWA is providing some level of funding, but is not the primary funding source or sponsor. Examples include an EA prepared the Corps of Engineers, the Bureau of Indian Affairs, or the National Park Service.

The other circumstance is when a project is developed with a non-federal-aid funding source prior to DOT&PF or FHWA involvement, where the environmental document was prepared for a federal permit action, such as Corps of Engineers Section 404/10. Federal agencies must prepare an environmental document before they can issue a permit. For example, the Corps prepares an EA for each permit it issues. The Corps' EAs are usually in a checklist format similar to our Environmental Checklist (see Chapter 2 and Appendix A).

When adopting an environmental document where FHWA is not the lead agency, you must ensure that the document meets the environmental requirements of 23 CFR 771. In particular, you need to ensure that a Section 4(f) resource is not affected; otherwise you must prepare a Section 4(f) Evaluation (see Chapter 6). FHWA can't participate in a project that would use land from a significant Section 4(f) resource if there is a prudent and feasible alternative, even if

another agency has granted environmental approval.

Generally, the regional environmental coordinator can adopt another agency's environmental document with little if any modifications and not recirculate it for review. The coordinator must consult with the FHWA area engineer to determine if the document (EA or EIS) must be recirculated for comment. If not, the coordinator attaches the appropriate revisions to the environmental document and prepares a new decisional document (FONSI or ROD as appropriate) for FHWA approval.