

4. Environmental Assessment and Finding of No Significant Impact

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4.1. Introduction

An Environmental Assessment (EA) is prepared for projects when the significance of the potential environmental impacts is uncertain. The EA provides the analysis for the Alaska Department of Transportation and Public Facilities (DOT&PF) to determine if a proposed action has the potential to cause significant environmental impacts. If the EA indicates that no significant impacts would occur, a Finding of No Significant Impact (FONSI) may be prepared. An EA and FONSI are prepared in accordance with the procedures in this chapter. If the EA indicates the proposed action would cause significant environmental impacts, an Environmental Impact Statement (EIS) would be prepared in accordance with Chapter 5, Environmental Impact Statement, and the information contained in the EA would facilitate preparation of the EIS.

The EA should be succinct, and:

- Include the purpose and need for the action
- Describe impacts to the social, economic, and natural environment
- Account for direct, indirect, and cumulative effects
- Include a comparison of potential impacts from each build alternative being considered
- Discuss the no build alternative
- Evaluate one or more build alternatives
- Include public and agency involvement

- Provide the necessary evidence and analyses for determining whether a FONSI is appropriate or if an EIS is required

4.2. Preparation of the EA

The EA is intended to be a concise document and will likely require more complex analysis than a Categorical Exclusion (CE). Technical analyses should be briefly summarized and incorporated by reference in the EA. Final technical reports, studies, or analyses prepared in support of the project are generally not appended to the EA, but are maintained in the region office as part of the project file and are available for public review upon request. The EA should focus on the social, economic, and natural environment resources that are potentially impacted by the proposed action. If an analysis demonstrates that a resource category would not be potentially impacted by the proposed action, this determination should be stated early in the EA and the resource category should not be discussed further.

An EA is developed in two-stages, with a Draft EA circulated for public and agency comments and a Final EA providing a basis for a final decision. During the preparation of the EA, agency and public comments and DOT&PF responses, as well as documentation of coordination efforts, will be maintained in the region project file. The comments and responses are to be summarized in the EA Comments and Coordination chapter and attached in an appendix to the EA.

The following are required in an EA:

- Cover Page
- Purpose and Need
- Alternatives (including no build and proposed action/preferred alternative)
- Affected Environment (including avoidance, minimization, and mitigation measures)
- Environmental Consequences
- Comments and Coordination
- Section 4(f) Evaluation (if applicable)
- Appendices (supporting information: e.g., scoping report, Section 6(f) analysis)

The National Environmental Policy Act (NEPA) Assignment Program Memorandum of Understanding (MOU) (Part 3.1.2.) requires the following language be included on the cover page of each EA in a way that is conspicuous to the reader:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by DOT&PF pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated November 3, 2017, and executed by FHWA and DOT&PF.

If only one build alternative is evaluated, the EA must briefly describe alternatives that were considered and eliminated from further study. If an alternative is eliminated from further consideration because it does not meet the purpose and need, the EA must explain how or why the particular alternative did not meet the purpose and need.

If more than one build alternative is evaluated in the EA, a preferred alternative should be identified. DOT&PF may decide to not include a preferred alternative in the EA, but this decision must be approved by the Statewide Environmental Program Manager. If a preferred alternative is not identified in the EA, it must be identified in the Final EA and made available for additional public involvement.

The EA should disclose any primary/ancillary project connections (e.g., tiered projects or phased construction over time), analyze the cumulative impacts of the connected projects, and reference any previously approved environmental documents for the connected projects.

The following references should be consulted for additional guidance on preparation of the EA:

- Federal Highway Administration (FHWA) Technical Advisory on National Environmental Policy Act (NEPA) document preparation ([T 6640.8A](#))
- [American Association of State Highway and Transportation Officials' Improving the Quality of Environmental Documents](#) – information on EA content and format

- [FHWA Environmental Review Toolkit](#) – tools for NEPA and Section 4(f) analysis and documentation and resources for water, wetlands, wildlife, and historic preservation
- [23 U.S. Code \(USC\) 139](#), may be used to assist the preparer verify that all necessary components are included in the environmental document

4.3. DOT&PF Review and Approval Process

The project development team, as established by the region, performs Quality Assurance (QA) during development of the EA through collaboration, project meetings, and intradepartmental review of sections, chapters, or the entire document. Statewide Environmental Office (SEO) review of specific EA chapters may occur prior to submitting the final document for SEO review and approval. The region and SEO will perform separate Quality Control (QC) reviews for the Draft EA, Final EA, FONSI and any supplemental EA, as described in Chapter 11, Quality Assurance and Quality Control. After each QC review, a legal review of the environmental document must be requested. It is important to recognize that more than one review cycle may be necessary prior to receiving document approval.

4.4. Public Involvement and Agency Coordination

For EAs, DOT&PF generally conducts the public involvement steps listed below. Additional public involvement requirements and information are located in Chapter 7, Public and Agency Involvement.

- Notice to Begin Engineering and Environmental Studies
- Public Involvement Plan
- Scoping
- Notice of Availability
- Public Meeting(s)/Hearing

The MOU (Part 3.1.3.) requires that the following language be disclosed to the public and agencies as part of public involvement and agency outreach procedures, including any Notice of Intent, scoping, or public meeting notice, Notice of Availability, or public hearing:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by DOT&PF pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated November 3, 2017, and executed by FHWA and DOT&PF.

4.4.1. Notice of Availability

An EA approved for public availability must be made available to the public through a notice of availability that briefly describes the action, its impacts and specifies locations where the EA can be reviewed. The region will first distribute copies of the EA to the appropriate agencies and public for their review and comment, and then publish a notice of availability by the following methods as appropriate:

- In local newspapers, if any
- In the Alaska Online Public Notices
- By mail or email
- By other methods, as appropriate

The region will make the approved EA available for public review as follows:

- By request
- Online (e.g., project websites, Facebook)
- At local libraries, if any
- At DOT&PF region and SEO offices
- At other locations, as appropriate (e.g., community centers)

It is recommended that public and agency review occur concurrently. Refer to Chapter 7, Public and Agency Involvement, for additional information. The EA is made available for review for a minimum of 30 days from the date the notice of availability was published ([23 CFR 771.119\(e\)](#)). The notice of availability is to be mailed to those who request it ([40 CFR 1506.6\(b\)\(1\)](#)) and should be published in a local newspaper, if any, and sent by DOT&PF to affected federal, state, and local government entities and state intergovernmental review contacts ([23 CFR 771.119\(d\),\(e\),\(f\)](#)). A 30-day review period is standard, but may be reduced or increased in rare circumstances with SEO approval.

Final technical studies may be made available for public or agency review with the EA, with the exception of technical studies and other documentation regarding cultural resources (e.g., Section 106 consultation materials) containing sensitive information, which may be restricted. The Environmental Impact Analyst or REM will consult with the region Cultural Resource Specialist for consistency with DOT&PF's [Cultural Resources Confidentiality Guidelines](#) before allowing public or agency review of materials containing potentially sensitive information.

See Section 7.5.5., Public and Agency Involvement, Notice of Availability and EA Distribution, for additional information.

4.4.2. Public Hearing / Public Meeting

Public hearings are formal meetings required by FHWA regulations as described below. Public hearings also have specific requirements that must be met. See Section 7.5.6., Public and Agency Involvement, Public Hearing, for additional information on public hearings. SEO is responsible for the decision to hold a public hearing. While the degree of public participation and agency involvement and the means of soliciting input for EAs are commensurate with project type and complexity, an EA project will provide, at a minimum, the opportunity for a public hearing during the project development process.

If a public hearing is not required or requested, public meetings, workshops, and other means of involvement may be used throughout the project development process. Refer to Chapter 7, Public and Agency Involvement, for additional information regarding required actions for project public meetings and public hearings.

Projects requiring reviews or approvals as part of other regulatory processes (Section 106 and Section 4(f)) may require additional public and agency involvement and/or notification procedures, which should be integrated into the NEPA process as early as possible. Section 106 and Section 4(f) approvals are standalone documents that must be completed in support of a complete environmental document. For instance, if the project requires an Individual Section 4(f) Evaluation, it must be circulated to the appropriate agencies. Requirements for agency review of Section 4(f) evaluations are found in [23 CFR 774](#) and in Chapter 8 of this manual.

4.5. Final EA

At the conclusion of the public review period, a summary of the comments received and a response to each substantive comment or category of comments is prepared and the EA is revised accordingly. The REM, in consultation with the SEO staff member, determines whether to incorporate revisions into the Final EA through errata sheets or with strike-outs and revised text in a newly printed document. The Final EA is documentation of a separate approval action. Additional legal review of the Final EA must occur after incorporating modifications resulting from the public review process.

The Final EA will:

- Include a new cover page with the required MOU disclosure (Part 3.1.2.)
- Identify the preferred alternative if not previously identified, or if changed since the EA public review period (Additional public involvement is required prior to the approval of the decision document.)
- Identify changes in the proposed action, impacts, mitigation measures, findings, agreements and commitments, determinations, and laws or regulations
- Discuss comments received during the EA public review period, and responses provided, including changes to the project or the EA made in response to comments
- Include a new signature sheet

The format for the Final EA may be either:

- An updated version of the EA with strike-outs of revised text, and comments and responses included as an appendix to the Final EA; or
- Errata sheets attached to the EA with the comments and responses included along with the errata sheets (not in the appendix):
 - Changes in the proposed action, impacts, mitigation measures, findings, agreements, determinations, and laws or regulations are reflected in the errata sheets
 - For use in situations where only very minor changes, including corrections, are necessary, and must include page numbers for public

involvement comment responses and for locations of any text changes

The Final EA is reviewed for QC as described in Chapter 11, Quality Assurance and Quality Control.

A FONSI may be submitted to SEO for approval along with the Final EA.

4.6. Finding of No Significant Impact ([23 CFR 771.121\(a\)](#))

A FONSI is both the determination by the SEO that the project will have no significant impacts on the environment, and the documentation of the decision. The Final EA, and any other appropriate environmental documents, is referenced as the basis for the determination. A FONSI is prepared after the 30-day Draft EA public review period is complete and SEO determines that no significant environmental impacts will result from the proposed action. The FONSI is a standalone document with separate signature approval from Final EA, though they may be bound together. A FONSI may be submitted to SEO for approval along with the Final EA. The FONSI determination is made by the Statewide Environmental Program Manager, and may be delegated to the NEPA Program Manager. If significant impacts are identified through the EA process and the project continues to move forward, the SEO is consulted regarding document classification and preparation of an EIS.

A FONSI will include the following:

- A description of the selected alternative
- A summary of environmental impacts, commitments, and mitigation measures
- A description of changes to the proposed action in response to the public and agency comments

Per the NEPA Assignment Program MOU (Part 3.1.2.), the following language will be included on the FONSI cover page:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by DOT&PF pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated November 3, 2017, and executed by FHWA and DOT&PF.

The FONSI is reviewed for QC as described in Chapter 11, Quality Assurance and Quality Control.

4.6.1. Legal Sufficiency Review

All Final EAs or FONSI's relying on a Statute of Limitations (SOL) Notice prepared per 23 U.S. Code (USC) 139(l) likewise are required to receive a legal sufficiency review and determination.

Communications with LAW and legal advice are confidential and are maintained in a separate file for privileged communications, which is not available for consultant, public, or agency distribution or review. When all legal comments have been appropriately addressed, LAW provides a memorandum documenting that the legal sufficiency review has been completed. The LAW memorandum documenting completion of the legal sufficiency review is included in a non-confidential folder of the project file. The Statewide Environmental Program Manager cannot approve a SOL Notice for a Final EA and FONSI until it has been determined to be legally sufficient.

4.7. Notice of Availability

After the FONSI is approved, or concurrent with the SEO review, the region will prepare a notice of availability of the FONSI for SEO approval. After SEO approval, the region will issue DOT&PF's notice of availability of the FONSI to the public and appropriate federal, state, and local agencies ([23 CFR 771.121\(b\)](#)) as described in Section 7.5.8., Public and Agency Involvement, Availability of FONSI, and Section 7.5.4., Notice of Public Availability.

4.8. Limitation of Claims Notice

In accordance with [23 CFR 771.139](#), SEO may prepare a 23 U.S. Code (USC) 139(l) notice of final agency action for publication in the *Federal Register* by FHWA. Section 139(l) refers to a federal statute, [23 USC 139\(l\)](#), establishes a 150-day statute of limitations (SOL) on legal claims against USDOT and other federal agencies for certain environmental and other approval actions, if specific circumstances apply. A Limitation of Claims Notice must be placed in the *Federal Register* for the 150-day SOL to apply. Publication in the *Federal Register* starts the clock for the SOL. As with other *Federal Register* notices, DOT&PF prepares the notice and transmits it to FHWA for placement in the *Federal Register*.

SOL notices should list or describe all permits, licenses, and approvals by federal agencies that relate to and are within the scope of the project and are final

as of the date of the notice. The SOL notice should include the key laws under which the federal agencies took final action (*PROPOSED REVISED GUIDANCE FOR PUBLIC COMMENT, ENVIRONMENTAL REVIEW PROCESS GUIDANCE*, [Appendix D: FHWA Guidance on the Statute of Limitations \(SOL\) provision under 23 U.S.C. Section 139\(l\)](#) (Question D-5)). SOL Notices require legal sufficiency review (23 USC 139(l)).

The region Environmental Impact Analyst will prepare the SOL for the REM's review and submittal to the Statewide Environmental Program Manager for review and submittal to LAW for the legal sufficiency review.

4.9. Supplemental EA

Federal courts have consistently recognized that the CEQ standards for supplementing environmental documents (40 CFR 1502.9) are the same for EAs and EISs. Accordingly, a supplement to either a Draft EA or a Final EA is to be prepared if:

- The agency makes substantial changes in the proposed action that are relevant to environmental concerns, or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

When developing a supplemental Draft or Final EA follow the procedures, exclusive of scoping, for developing the Draft and Final EAs presented earlier in this chapter. The procedures for public and agency review and comment, DOT&PF review and approval, and quality control review also apply to the supplemental Draft and Final EAs.

4.10. Quality Control Review

QC is an integral part of the DOT&PF environmental review process. The goals of QC are to identify and correct errors and omissions, support a quality finished product, and document QC. QC is a review process that occurs after the document is complete, prior to document approval. QC review is completed on the Draft EA, the Final EA, and the FONSI. Procedures for each of these review steps are described in Chapter 11, Quality Assurance and Quality Control.

QC review comments, comment responses, and resolutions at each stage of the process are

documented in writing and placed in the region project file to document QC review.

Technical Appendix

FHWA NEPA regulations on preparing EAs can be found at [23 CFR 771, Environmental Impact and Related Procedures](#).

The complete CEQ regulations for implementing NEPA can be found at [40 CFR 1500-1508](#).

FHWA's "Efficient Environmental Review Process" is designed to improve and streamline project-specific environmental decision-making. For more information, see [23 USC 139](#).

The [FHWA Environmental Review Toolkit](#) provides information on methods and analyses regarding specific environmental resource categories.

Assistance with environmental and Section 4(f) document preparation and processing can be found in FHWA [Technical Advisory 6640.8A](#).

DOT&PF's 2002 [EA Preparation guidance](#) has useful suggestions for EA content and format.

FHWA has also developed [guidance on the EA and FONSI](#).

The California Department of Transportation has developed annotated outlines for various environmental document types, including an [EA Annotated Outline](#).

The [American Association of State Highway and Transportation Officials' publication "Improving the Quality of Environmental Documents"](#) provides information on EA content and format.

Consult the [Alaska Highway Preconstruction Manual](#) (HPCM) for a more in-depth discussion on project development.

Consult the [NEPA Assignment Program Quality Assurance and Quality Control Plan](#) for additional discussion on QA/QC documentation.

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