

1. Environmental Procedures Overview

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1.1. Introduction

As part of the Federal Highway Administration (FHWA) Surface Transportation Project Delivery Program ([23 U.S. Code \[USC\] 327](#)), commonly known as the NEPA Assignment Program, the Alaska Department of Transportation and Public Facilities (DOT&PF) has assumed FHWA responsibilities for complying with the National Environmental Policy Act (NEPA) when developing federally-funded highway projects in Alaska that DOT&PF designs and constructs. Under the NEPA Assignment Program Memorandum of Understanding ([MOU](#)) between FHWA and DOT&PF dated November 3, 2017, DOT&PF has also assumed FHWA's legal responsibilities and liabilities for its actions and decisions pertaining to the environmental review and approval responsibilities assigned under the NEPA Assignment Program, including interagency consultation, and environmental regulatory compliance.

1.1.1. Purpose

The *Alaska DOT&PF Environmental Procedures Manual* (EPM) identifies environmental requirements to be followed on highway projects under the NEPA Assignment Program and supports compliance with the terms of the MOU. This overview chapter:

- Presents background on NEPA and the NEPA Assignment Program, including key responsibilities and MOU provisions
- Describes the roles and responsibilities of the DOT&PF environmental team
- Discusses the interrelationships between project development and the environmental process
- Outlines DOT&PF NEPA Assignment Program policies and procedures that support appropriate DOT&PF environmental decision-making and the preparation of project environmental documentation that meets NEPA and NEPA Assignment Program requirements

This manual describes the requirements for preparing and processing environmental documentation under the NEPA Assignment Program. Links to additional resources on statutes, regulations, best practices, and environmental resource analysis are provided throughout the EPM chapters. Use of the information in this manual will support development of environmental documents that are compliant, concise, and informative. This manual should be used in conjunction with other resources, including those noted in this manual, to complete the environmental process and produce compliant documents in a timely and efficient manner.

1.1.2. Background

On January 1, 1970, President Nixon signed into law the National Environmental Policy Act of 1969, which established a broad national framework for protecting the environment. The Council on Environmental Quality (CEQ) was also created under NEPA. Its purpose is to oversee NEPA implementation, develop NEPA Implementing Regulations ([40 Code of Federal Regulations \[CFR\] 1500–1508](#)), approve environmental procedures of federal agencies, and adjudicate environmental disputes between federal agencies. Each federal agency is responsible for implementing NEPA on its projects and for developing its own NEPA implementation regulations.

FHWA, the Federal Transit Administration (FTA), and the Federal Railroad Administration (FRA) issued regulations ([23 CFR 771](#)) to provide direction for applying NEPA to highway, transit, and railroad projects. FHWA has also issued guidance addressing those regulations, which includes FHWA [Technical Advisory 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#). FHWA's Technical Advisory provides detailed information on the content and processing of environmental documents. FHWA, FTA, and FRA have also issued regulations to address additional environmental requirements related to the project development process (23 CFR [772](#) [noise], [774](#) [Section 4(f)], [777](#) [mitigation for wetlands and natural habitats]).

1.1.3. 23 USC 327 NEPA Assignment

In the 2005, a federal transportation bill, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), was signed

into law. Section 6005 of SAFETEA-LU, codified at [23 USC 327](#), established a Pilot Program to assign FHWA's full NEPA project level decision making responsibilities to up to five states.

The 2012 federal transportation bill, Moving Ahead for Progress in the 21st Century Act ([MAP-21](#)), expanded FHWA's authority to assign FHWA's full NEPA project-level decision-making responsibilities to all interested states. DOT&PF and FHWA signed a [MOU](#) on November 3, 2017, under the authority of [23 USC 327](#), through which the FHWA assigned FHWA's full NEPA project-level decision-making responsibilities to DOT&PF. This NEPA Assignment Program covers all environmental classes of action (COAs): Categorical Exclusions (CEs), Environmental Assessments (EAs), and Environmental Impact Statements (EISs). All federal-aid highway projects, except those noted in Part 3.3.2 of the MOU, are included in the assignment.

Assignment of Federal Laws other than NEPA

For projects assigned under the NEPA Assignment Program, DOT&PF assumed FHWA's responsibilities for:

- Environmental review and documentation
- Interagency consultation and coordination
- Regulatory compliance
- Compliance with the federal environmental laws listed in Part 3.2.1. of the MOU

In addition to FHWA's responsibilities for the listed environmental laws, DOT&PF is responsible for complying with the requirements of any federal environmental laws that apply directly to DOT&PF (MOU Part 3.2.2).

There are exceptions to assignment of federal environmental responsibilities. Any FHWA environmental review responsibility not explicitly listed in Part 3.2.1 of the MOU remains the responsibility of FHWA unless added by written agreement (MOU Part 3.2.2). The following responsibilities are **not** assigned:

- FHWA's air quality conformity responsibilities required by Section 176 of the Federal Clean Air Act (42 USC 85.7506(c)) (MOU Part 3.2.4)
- Federal responsibilities for government-to-government consultation with Indian tribes as

defined in 36 CFR 800.16(m). FHWA remains responsible for all government-to-government consultation. However, notice from DOT&PF to a tribe advising the tribe of a proposed activity is not considered "government-to-government consultation" (MOU Part 3.2.3)

- FHWA's responsibility to make a determination under 23 CFR 650.113 and 650.115 that a significant encroachment into a floodplain is the only practicable alternative (MOU Part 3.2.1)
- FHWA's responsibility to make an preliminary determination for an exception under 23 USC 144(c)(2) for bridge permitting under Section 502(b) of the General Bridge Act of 1946 and Section 9 of the Rivers and Harbors Act of 1899 (MOU Part 5.1.1 B)

DOT&PF coordination with the FHWA Alaska Division office staff is required for FHWA environmental review responsibilities not assigned.

Responsibilities and Requirements

By signing the MOU, DOT&PF became responsible for carrying out all of the FHWA responsibilities it assumed under the NEPA Assignment Program for assigned projects. FHWA has no responsibility or liability for any project actions or decisions made by DOT&PF under the program. Key MOU responsibilities and commitments include:

- DOT&PF has committed to maintaining adequate organizational and staff capability for the NEPA Assignment Program, including use of competent and qualified consultants where beneficial, to effectively carry out its NEPA Assignment Program responsibilities. This includes:
 - Using appropriate environmental, technical, legal, and managerial expertise
 - Devoting adequate staff resources
 - Demonstrating in a consistent manner the capacity to perform the responsibilities assumed under the MOU and applicable federal laws
- In assuming FHWA's responsibilities, DOT&PF is subject to the same procedural and substantive requirements that apply to FHWA in carrying out these responsibilities. These requirements include:
 - Federal laws and regulations

- Presidential Executive Orders
- U.S. Department of Transportation (USDOT) Orders
- FHWA Orders
- Official guidance and policy issued by USDOT, FHWA, or the CEQ
- Applicable federal court decisions
- Interagency agreements (e.g., programmatic agreements, memoranda of understanding, memoranda of agreement) that relate to the environmental review process

For the purposes of carrying out its NEPA Assignment Program responsibilities, DOT&PF is deemed to be a federal agency with respect to the environmental review, consultation, and other related actions required under those responsibilities (MOU Part 5.3.1).

Litigation

The State of Alaska agreed to waive its federal constitutional right to sovereign immunity, and will defend any challenges brought in federal court seeking judicial review of DOT&PF's exercise of the responsibilities assumed under the NEPA Assignment Program. This makes the State of Alaska, rather than FHWA, legally liable and responsible for its decisions and actions on projects under the NEPA Assignment Program, including any action for compliance, discharge, and/or enforcement of any of the responsibilities assumed by DOT&PF.

Meeting Federal Requirements

The processes outlined in this manual are designed to meet the requirements of FHWA's NEPA regulations

([23 CFR 771](#)) and CEQ NEPA regulations ([40 CFR 1500–1508](#)), as well as other applicable federal regulations (e.g., [23 CFR 774](#), [36 CFR 800](#)), executive orders, formal FHWA guidance, and negotiated agreements between DOT&PF and other regulatory agencies.

DOT&PF is responsible for conducting all necessary environmental studies and preparing all environmental review documents for projects assumed under the NEPA Assignment Program. This involves an assessment of whether the project may affect sensitive or regulated resources, such as floodplains, wetlands, endangered/ threatened species, historic and archeological sites, private properties, businesses, communities, minority or low-income populations, air quality, and wildlife habitat. As documented in this manual and in the associated *Quality Assurance and Quality Control Plan* (QA/QC Plan) developed for the NEPA Assignment Program, DOT&PF has instituted an internal review and approval process to support appropriate compliance with all environmental requirements on NEPA Assignment Program projects.

1.2. Environmental Team – Structure, Roles, and Responsibilities

The DOT&PF environmental team has personnel at the three regions (Central, Northern, and Southcoast; see Figure 1-1) and at the statewide level (Headquarters, including the Statewide Environmental Office). Regional and Statewide Environmental Office (SEO) personnel work as a team to ensure that the environmental requirements for all projects are met. The goals of the environmental team are aligned to support DOT&PF compliance with all applicable environmental laws, rules, and regulations.

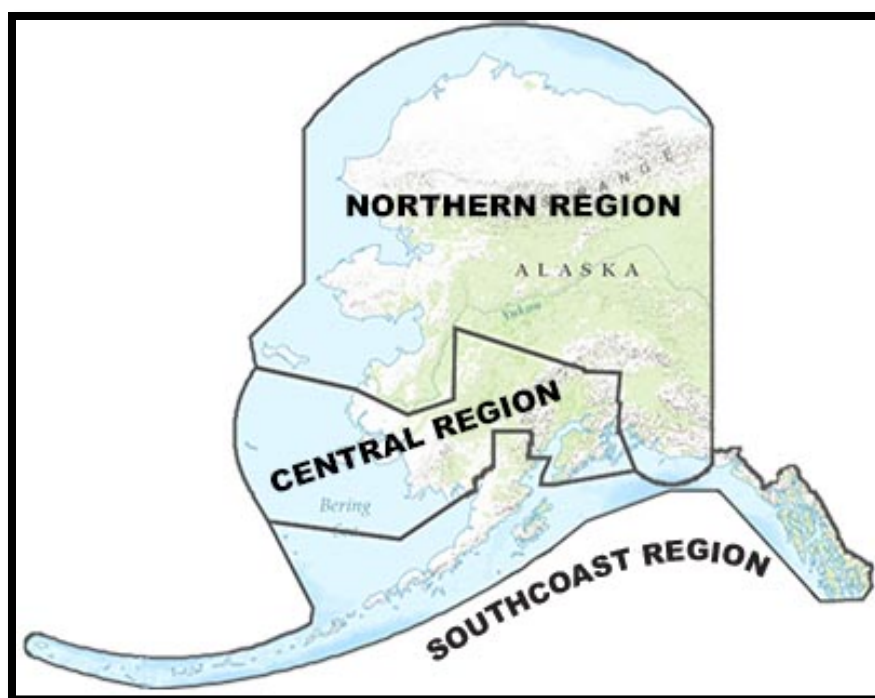


Figure 1-1
DOT&PF Regions

1.2.1. Environmental Impact Analysts

In each region and at the statewide level, Environmental Impact Analysts perform numerous functions in the environmental documentation and permitting process. Job functions of an Environmental Impact Analyst may range from conducting a field analysis (e.g., wetland delineation) to preparing an environmental document (e.g., an EA). The majority of project-specific environmental documentation and permitting work is conducted by Environmental Impact Analysts in the regional offices. Senior regional Environmental Impact Analysts may also be delegated Regional Environmental Manager (REM) approval authorities. There are SEO and regional personnel who specialize in cultural and archaeological resources as part of the Cultural Resources Team, as well as SEO staff focused on stormwater permitting and compliance.

1.2.2. Regional Environmental Managers

Each REM has direct oversight and responsibility for meeting the environmental requirements of projects developed within each region.

Examples of the REM's responsibilities include:

- Represent DOT&PF in meetings and consultations with federal and state agencies, and in public forums
- Supervise and support regional environmental staff
- Supervise preparation of environmental documents (providing edit/review functions)
- Approve Programmatic Categorical Exclusions (PCEs) and PCE Re-evaluations
- Undertake quality assurance (QA) and quality control (QC) review of environmental documents
- Monitor compliance with environmental commitments and permit stipulations
- Coordinate projects with the public and resource agencies
- Serve as the regional point-of-contact for emergency permits
- Serve as the regional point-of-contact for state and federal resource agencies

- Serve as the regional point-of-contact with the SEO on all environmental matters
- Recommend compensatory mitigation

1.2.3. Statewide NEPA Assignment Program Manager and NEPA Program Managers

The SEO Statewide NEPA Assignment Program Manager is responsible for managing the implementation of the NEPA Assignment Program and supervises and distributes the workload of the SEO NEPA Program Managers. The Statewide NEPA Assignment Program Manager and the NEPA Program Managers are responsible for providing QC and oversight for NEPA Assignment projects as well as QA and QC for the NEPA Assignment Program.

Examples of the NEPA Program Manager's responsibilities include:

- Serve as SEO point-of-contact with regard to each region's environmental document processing
- Concur with COA determination recommendations
- Approve non-Programmatic CEs and non-Programmatic CE Re-evaluations
- May be delegated signature authority by the Statewide Environmental Program Manager for EAs and Findings of No Significant Impact (FONSI) (see EPM Chapter 4)
- Approve Section 4(f) De Minimis Impact Findings and Programmatic Evaluations

Examples of the Statewide NEPA Assignment Program Manager responsibilities include:

- Act as a deputy to the Statewide Environmental Program Manager
- Serve as a point-of-contact to FHWA regarding the NEPA Assignment Program
- Lead internal self-assessments and reporting under the MOU
- Update the NEPA Assignment Program EPM and associated forms

As the supervisor, the Statewide NEPA Assignment Program Manager has all the same approval

authorities and may fulfill the same project-level responsibilities, as workloads require, as a NEPA Program Manager. Therefore, any references to a NEPA Program Manager is assumed to include the Statewide NEPA Assignment Program Manager.

1.2.4. Statewide Environmental Program Manager

The Statewide Environmental Program Manager is responsible for managing environmental and regulatory issues at the statewide level and ensuring that DOT&PF implements environmental policies and procedures accurately and consistently.

Examples of the Statewide Environmental Program Manager's responsibilities include:

- Advise DOT&PF Executive Management Team and Commissioner on environmental matters
- Provide oversight for the NEPA Assignment Program
- Provide support and guidance to REMs on environmental and permitting issues
- Concur with COA determination recommendations
- Approve CE, EA, FONSI, EIS, ROD, and Re-evaluation documents
- Approve Section 4(f) Individual Evaluations
- Conduct and coordinate environmental and permit training
- Facilitate conflict resolution between DOT&PF and regulatory agencies
- Identify and implement measures to streamline environmental and permitting processes
- Serve as the point-of-contact for U.S. Army Corps of Engineers (USACE) concerning Section 404 and Section 10 requirements
- Represent DOT&PF on statewide interagency task forces and working groups
- Directly manage an interdisciplinary team of environmental professionals

1.3. Project Development and the Environmental Process

Project development and the environmental process begin with the authorization of project activity funds. Environmental steps occur throughout development of the project, from the planning phase through completion of construction. This section provides a brief overview of the steps involved in project development and the environmental process.

FHWA's NEPA project development regulations require the project to ([23 CFR 771.111\(f\)](#)):

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.

FHWA's Environmental Review Toolkit provides discussion on [segmentation](#) and the development of [logical termini](#).

FHWA's NEPA regulations require NEPA approval prior to final design and project construction ([23 CFR 771.113\(a\)](#)).

1.3.1. Project Development

For a federal-aid project to be developed, it must have an approved Project Development Authorization (PDA) and Authority to Proceed (ATP). The engineering manager develops the initial PDA request with input from the planning, design, and environmental sections ([Alaska Highway Preconstruction Manual](#), Project Development). The ATP provides authorization from FHWA to proceed with the different stages of project development, and is granted after the initial project funding steps are complete.

The project funding request includes the following information:

- The requested ATP level and funding requirements by phase and year
- A *Project Information Document* (PID) signed by the engineering manager and the REM

- The REM completes the portion of the PID that describes the environmental status of the project, including COA and re-evaluation status.

- A project map showing the limits and approximate length of the project
- A detailed budget for the authorization request

The different project ATP authorizations are for:

- Utility Relocation
- Planning and Research
- Preliminary Engineering (PE) through Reconnaissance Engineering
- PE through Environmental Document Approval
- PE through Final Plans, Specifications, and Estimate
- Right-of-Way Appraisal and Acquisition
- Construction

Most new projects initially receive ATP for PE through Environmental Document Approval. Consult the [Alaska Highway Preconstruction Manual](#) (HPCM) for a more in-depth discussion on project development.

1.3.2. Preparing Environmental Documents

Environmental document development and approval is a mandatory step in the delivery of every federally-funded project. To comply with NEPA and other federal laws and regulations, environmental documents must accurately describe multiple aspects of the project, including:

- Project purpose and need
- Project description
- Affected environment
- Environmental consequences
- Environmental commitments and mitigation measures
- Permits and authorizations
- Public and agency involvement, comments, and coordination

Additional information regarding development of compliant environmental documents is presented in subsequent chapters of this manual.

1.3.3. Environmental Project File

Each region may choose to develop its own file organization structure or may use an SEO suggested file structure to meet the requirements of the MOU Part 8.2.3.

The MOU mandates that the environmental project file should include the environmental document and all supporting documentation associated with the environmental analysis, such as:

- Separate files for privileged communications or confidential material
- Checklists and forms, including NEPA approval forms
- Approved environmental decision documents
- Public and governmental agency letters and correspondence
- Public and agency notices, scoping, comments and other correspondence, and meeting notes
- Environmental resource information
- Environmental permits and authorizations
- Relevant project-related correspondence and emails
- Final technical information and reports
- Field surveys and notes
- Other types of supporting information, such as maps, typical sections, permits, and plans
- Documentation of QA and QC

An organized environmental project file facilitates efficient project management and reduces the risk of overlooking important environmental requirements. Documentation from the environmental project file forms part of the administrative record, providing evidence of compliance with federal requirements. Information included in the environmental project file is subject to public records laws, such as the Alaska Public Records Act. The environmental project file is subject to periodic audits by the FHWA and the SEO.

Documentation of Quality Assurance and Quality Control

Evidence of QA shall be maintained in the region project file and includes: Emails; telephone conversation notes; meeting notes summarizing collaborative discussions about any aspect of environmental document development held by the project environmental team, as well as meetings with the following groups as appropriate: broader project team, resource agencies, participating agencies, and local government sponsors. For additional details, see EPM Chapter 11.

The [MOU](#), Part 8.2.3, requires DOT&PF make NEPA Assignment Program project and general administrative files reasonably available for inspection by FHWA at the files' locations upon reasonable notice (not less than five business days). These files shall include, but are not limited to, letters and comments received from governmental agencies, the public, and others with respect to DOT&PF's MOU responsibilities. The MOU also requires DOT&PF to maintain privileged communications in separate files and, at the request of FHWA, provide those communications to FHWA's counsel for the purposes of FHWA's review and monitoring of the NEPA Assignment Program and to preserve DOT&PF's privileges in those communications.

1.3.4. Record Retention Requirements

The record retention and disposition schedules for the SEO and region environmental offices are established by the DOT&PF Statewide Design & Engineering Services Division schedules ([SOA Schedule No. 25-539.2](#)). These schedules conform with the requirements of FHWA Records Disposition Manual (Field Offices) Chapter 4, FHWA [Order No. 1324.1B](#), issued July 29, 2013.

Draft documents will be kept until a final version is approved. Once a document is made final, all earlier versions or drafts are considered to have no administrative value and may be discarded.

According to Records Retention and Disposition Schedule 25-539.2, NEPA decision documents shall be retained permanently and transferred to the state archives as stated in the schedule. Environmental project files will be retained for ten years after project closeout, unless otherwise required by the schedule.

DOT&PF will permanently store records for Significant Transportation Projects as they are defined in FHWA Order No. 1324.1B.

The [MOU](#), Part 8.3.2, describes required retention schedules for FHWA-DOT&PF Environment Correspondence Files; NEPA and Related Documents; EISs - Other Agencies; and Noise Barriers.

Technical Appendix

Quality Assurance and Quality Control Plan on the [DOT&PF Statewide Environmental Office](#) webpage for detailed quality assurance and quality control procedures.

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