



Alaska Department of



Transportation & Public Facilities

Keep Alaska Moving through service and infrastructure



National Environmental Policy Act (NEPA) PROCEDURES MANUAL TRAINING

MODULE 12

EMERGENCY PROCEDURES

2021 CLASSROOM GUIDE





Module 12: Emergency Procedures

- ① Emergency NEPA Process Overview
- ② Requirements for FHWA Emergency Relief
- ③ When NEPA Applies
- ④ Class of Action Determination
- ⑤ Emergency NEPA Document Preparation
- ⑥ Compliance with Section 106 and Section 7



Length of training module: Approximately 18 minutes.



This module provides an overview of the DOT&PF emergency procedures for adhering to the National Environmental Policy Act (NEPA) during response to an emergency event. The emergency procedures describe the NEPA document process and address the repair, reconstruction, or relief actions for Federal-aid highway facilities that will be eligible for FHWA emergency relief (ER). Keep in mind that the information presented here is intended to be used in conjunction with the *Alaska Department of Transportation and Public Facilities Environmental Procedures Manual*, which serves as a reference and the source material for this online training.

By the end of this module, you should be able to:

- Describe the DOT&PF process for responding to an emergency event
- Identify the requirements for FHWA emergency relief funding.
- Identify when NEPA applies to the emergency repair work.
- Make a Class of Action determination for emergency repair work.
- Work through the process of preparing an emergency NEPA document.
- Comply with Section 106 of the NHPA and Section 7 of the ESA for emergency repair activities.

Let's get started with a description of the emergency NEPA process on the next slide.



Emergency NEPA Process Overview



Photo credit: [Anchorage Daily News](#)

- After an emergency event, the state is empowered to undertake immediate emergency repairs.
- While the NEPA process should start as soon as possible, emergency repairs can start prior to this.
- Similar process to non-emergency actions
 - ✓ Obtain COA from SEO
 - ✓ Prepare CE or EA (rare)



→ [FHWA Emergency Relief Program 23 CFR 668](#)
→ [CEQ Guidance for Emergencies and NEPA](#)



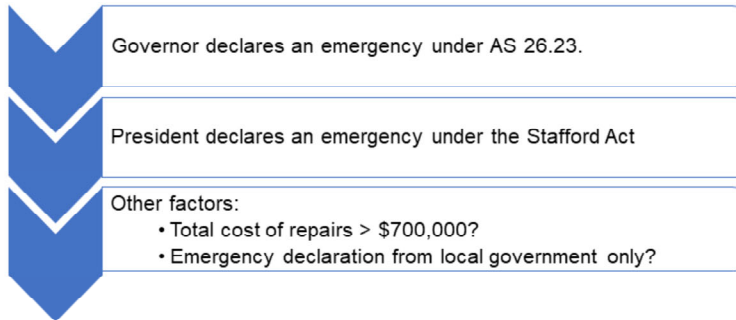
When an emergency event has occurred the state can immediately begin emergency repairs to restore essential traffic service and to prevent further damage to Federal-aid highway facilities. As soon as is practical, the NEPA process should get underway, however, it is allowable to have repair work begin prior to NEPA document approval if certain conditions are met (described further on Slide 6). The NEPA process for emergency repairs is substantively similar to the process for non-emergency actions. Always begin with obtaining a Class of Action from the SEO and then move through the usual steps as described in Chapter 3 of the EPM.

In the rare instance that a CE is not appropriate and an Environmental Assessment (EA) is required, coordinate with SEO (see EPM Chapter 4), and follow the Council on Environmental Quality (CEQ) Memorandum on Emergencies and NEPA for a concise, focused EA.



FHWA Emergency Relief Project Requirements

All proposed emergency repair projects must meet the following criteria for Emergency Relief (ER) funding:



- [AS 26.23](#)
- [Stafford Act](#)
[42 U.S.C. 5121](#)



Deterioration or failure caused by delayed maintenance, in the absence of a sudden and unexpected event, *is not an emergency.*



In order for an emergency event to qualify for FHWA emergency relief funding, at least one of the following emergency declarations is required:

- The Governor declares an emergency under Alaska Statute (AS) 26.23 for the project area and FHWA concurs; or
- The President of the United States declares an emergency under the Stafford Act Section 5121 of Title 42 of the United States Code (42 U.S.C. 5121).

The FHWA may also determine whether an event or multiple events are ER eligible, if the total costs of repairs will exceed \$700,000. The Emergency Relief program provides the funding to repair and restore highway facilities to pre-disaster conditions.

If no qualifying emergency declaration has been made, but the damage was caused by a sudden and unexpected external event, such as a natural or manmade disaster, explosion, or hazardous spill, and the local government has declared an emergency or is requesting emergency assistance, then proceed with the expectation that a qualifying emergency declaration will be made in the future.

Deterioration or failure caused by delayed maintenance, in the absence of a sudden and unexpected event, is not an emergency.



When is an emergency repair eligible for FHWA ER funds?

Damage is a direct result of a natural disaster or catastrophic failure from an external cause

The damaged facilities are Federal-aid highways*



→ [FHWA Emergency Relief Manual](#)

*public roads classified as arterial, urban collectors, and major rural collectors



For the purposes of NEPA compliance, assume that the emergency repair is or will be eligible for FHWA ER funds if the roads and bridges are damaged as a direct result of a natural disaster or catastrophic failure from an external cause and are Federal-aid highways. Federal-aid highways are public roads that are classified as arterial, urban collectors and major rural collectors.

Highways that are classified as minor rural collectors or local roads are *not* eligible for ER funding even if other Federal-aid funds have been used on those roads. For example, "off system" bridges that were replaced with Federal-aid funds or non-highway projects that were constructed with enhancement funds are not eligible for ER funding.



Emergency Repairs Prior to NEPA Documentation Approval:

*Photo Credits: [Photo 1](#); [Photo 2](#); [Photo 3](#);
[Photo 4](#); [Photo 5](#)*



Necessary to protect public safety or restore essential travel.



Necessary to minimize the extent of damage or protect the remaining facilities.



The repairs will not have significant adverse impacts.



There are no unusual circumstances.



The repair action is within 180 days of the emergency event.



The previously mentioned conditions that must be met in order for emergency repair work to start prior to NEPA documentation approval include the following:

- The work must be necessary to protect public safety where there is imminent danger,
 - or necessary to restore essential travel, minimize the extent of damage, or protect the remaining facilities of a damaged transportation system.
- The work cannot have significant adverse impacts on environmental or cultural resources.
- There can be no unusual circumstances.
- The repair action must occur within 180 days of the emergency event.
 - In some cases an extension to the 180 days can be given, for example:
 - If the emergency event occurs during the winter months, but the full extent of damage cannot be determined until the spring break-up is complete.



Class of Action Determination

Emergency Repair Actions Will Most Likely Be Under →  → [23 CFR 771.117\(c\)\(9\)](#)

The (c)(9) COA can be used if the action:

- ① Is an Emergency Repair under 23 U.S.C. 125; and
- ② Occurs within existing ROW and conforms to preexisting design, function and location; and
- ③ Is commenced within a 2-year period beginning on the date of the declaration.



If the action qualifies for a CE, the most appropriate Class of Action will likely be 23 CFR 771.117(c)(9).

c(9) actions include

- i. Emergency repairs under 23 U.S.C. 125; and
- ii. Actions that include the repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility, that is in operation or under construction when damaged:
 - i. The repair actions must occur within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original. Upgrades are allowable to meet existing codes and standards as well as to address conditions that have changed since the original construction; and
 - ii. The work must be commenced within a 2-year period beginning on the date of the declaration.

Any project classified as c(9) must also have an emergency declaration by the Governor of the State, or a disaster or emergency declared by the President

pursuant to the Robert T. Stafford Act (42 U.S.C. 5121).

The (c)(9) COA can be used for emergency repairs for which prior NEPA approval is not required and also repairs that stem from the emergency event, but for which NEPA approval is required prior to the action.

Emergency repair work prior to NEPA approval must begin within 180 days of the emergency event declaration. Once past the first 180 days, NEPA documents should be approved prior to beginning work.

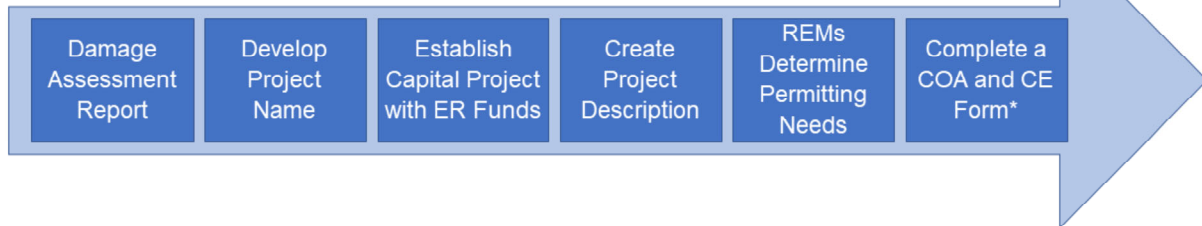
In addition to NEPA review, emergency operations need to comply with other applicable environmental laws, regulations, and Executive Orders, and additional agency coordination will be needed to obtain the appropriate permits and approvals. Many of the common permits and approvals have exemptions or expedited review procedures under emergency situations, and generally are still required prior to repairs. Regional Environmental Managers should contact and coordinate with the relevant agencies as soon as possible to begin the permitting process or emergency exemptions.

(such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes)



Emergency NEPA Document Preparation

For a federal-aid project to be developed, it must have an approved **Project Development Authorization (PDA)** and **Authority to Proceed (ATP)**, which provides authorization from FHWA to proceed with each stage of project development, including the following:



*if the action does not qualify for a CE, contact SEO, and determine whether an EA/FONSI will be required



There are six main steps to follow when preparing a NEPA document for emergency repair work.

1. DOT&PF will complete a damage assessment report or preliminary assessment report as soon as practical following the emergency. The REM should work with the Regional Emergency Response Point of Contact to obtain the report.
2. Project control will develop a project name, which should correspond with the location of the emergency, type of event, and date of occurrence.
 - a. The project name should also identify whether the project is for Emergency or Permanent Repairs
3. Project control will then establish a Capital Project with ER funding for 1st Responders to charge to
4. Emergency repair projects will not have a STIP project description, so the project description for NEPA purposes should be created to include all the work that was, or will be, completed for the project.
5. The Regional Environmental Managers determine which if any permitting agencies (state and federal) need to be contacted based on the specific emergency repair action. Contact permitting agencies as soon as possible to inform them of the emergency action, coordinate operations and obtain any necessary authorizations. Most permitting agencies (state and federal) have emergency authorization procedures. Obtaining authorizations from permitting agencies can proceed prior to the NEPA document process.
6. Complete a COA form and CE form for the action

Finally, if the action does not qualify for a CE, contact SEO, and determine whether an EA (see Chapter 4) and Finding of No Significant Impact (FONSI) will be required.

the emergency event and emergency relief/repair. For example: *Johnston Bridge Replacement Anchorage Earthquake Emergency Relief*. For projects that are in response to the emergency event, but do not qualify as an emergency repair, include PR (Permanent Repair) in the project name.



Section 106 and Emergency Actions



Photo credit: [Alaska Journal of Commerce](#)

For Emergency Repairs



**Notify the
SHPO!**



For Permanent Repairs



**Standard 106 Process
or
Streamlined Review**



→ [EPM Chapter 10, Section 10.5](#)
→ [Section 106 Programmatic Agreement - Stipulation VI](#)



The process for implementing Section 106 during emergency situations is described at Stipulation VI of the DOT&PF Programmatic Agreement for implementing Section 106. Stipulation VI describes emergency projects as occurrences that require emergency highway system/facility repairs that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system/facilities; 3) protect remaining highway facilities; or 4) restore essential traffic. For Alaska road emergencies, the FHWA and the DOT&PF follow the FHWA Emergency Relief Manual for Federal-Aid Highways (link on Slide 5).

The procedure to take historic properties into account is as follows:

- A. First, the PQI will determine if the emergency repair qualifies for *Streamlined Project Review*.
- B. Second, a determination must be made whether the work will be an initial emergency response or follow-up permanent repair.
- C. For Initial Emergency Responses a formal emergency or disaster declaration is not required.
 1. Initial emergency responses are repairs to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities that are initiated within thirty (30) days of the emergency situation.

2. If the PQI determines that an emergency repair does not qualify for Streamlined Project Review, the DOT&PF will notify the SHPO, the FHWA, any Tribe that may attach religious and cultural significance to historic properties in the area, and other consulting parties within forty-eight (48) hours of the emergency or as soon as conditions permit. The SHPO will respond to an emergency notice within five (5) days of notification.
 3. An additional notification of the emergency repairs will be provided to the consulting parties following damage assessment of the site. The notice will be clearly and prominently marked as an emergency notification, and will include an explanation of how the action meets the requirements for emergency as defined herein. The notice will also include a brief description of the eligibility and/or significance of the known resource(s) involved, the effects of the emergency repair on the resource(s), and the anticipated time frame available for comment.
- A. For Follow-up Permanent Repairs, the Section 106 consultation process should be completed prior to beginning work.
- A. Follow-up permanent repairs are undertaken after the occurrence of an emergency situation to restore the highway to its pre-emergency condition. These undertakings, which sometimes utilize emergency funding, are intended to provide additional repair work and generally do not commence until after the initial emergency response is completed. When these follow-up repair undertakings do not qualify for Streamlined Project Review, the DOT&PF will comply with the delegated Section 106 process.



Section 7 ESA Emergency Consultation

Initiate Contact with FWS and/or NMFS (call emergency contact)

Proceed with necessary actions to stop threat to life & property; agency will respond within 48 hours

A. Initiate informal consultation and explain why the action did not likely adversely affect any listed species or
B. Identify any incidental take and/or an adverse effect and initiate formal consultation

Agency will evaluate the emergency

Agency will **A.** generate a Letter of Concurrence or **B.** prepare an after-the fact biological opinion with the incidental take statement incl. reasonable and prudent measures and terms and conditions that could further minimize the take that has occurred.



Photo credit: [Alaska Dep. of Fish and Game](#)

→ [EPM Chapter 9](#)

→ [Endangered Species Consultation Handbook Chapter 8 - Emergency Consultation](#)

The process for emergency consultation under Section 7 of the Endangered Species Act starts by immediately initiating contact with the appropriate staff at the U.S. Fish and Wildlife Service or the National Marine Fisheries Service by phone or email, and provide the project location, a description of the emergency response action and timelines.

After that, DOT&PF does not have to contact the agency until the emergency is over and can proceed with the necessary actions to stop the threat to life and property. The agency will respond within 48 hours after being contacted.

Based on the available information the agency will evaluate the emergency and consider the next steps.

Formal consultation shall be initiated as soon as practicable after the emergency is under control.

The next step can either be A. to initiate informal consultation and explain why the action did not likely adversely affect any listed species or B. to identify any incidental take and/or an adverse effect and initiate formal consultation.

Based on the situation the agency will either A. generate a Letter of Concurrence or B. prepare an after-the fact biological opinion with the incidental take statement including

reasonable and prudent measures and terms and conditions that could further minimize the take that has occurred.

Please see Chapter 9 of the Environmental Procedures Manual and Chapter 8 of the Endangered Species Consultation Handbook for more information. You can find the links on this slide.



Module Review

Module 12: What You've Learned...



- ✓ The emergency response process
- ✓ What events qualify as an emergency event
- ✓ What types of emergency repairs can be done that qualify for FHWA ER
- ✓ When emergency repair work can commence
- ✓ How to comply with NEPA during an emergency response, including
 - ✓ Section 106
 - ✓ Section 7



This concludes the introduction to the Alaska DOT&PF's Emergency Procedures.

To complete the requirements for this training course, please click on the quiz link embedded in the slide. This will bring you to the DOT&PF T2 page where you will need to log-in and access your Scheduled Training. From there please click on the take test link for Module 12. The results will automatically show up in your transcript.