

# 1. Environmental Procedures Overview

---

- 1.1. Introduction
- 1.2. Environmental Team
- 1.3. Project Development and the Environmental Process

## 1.1. Introduction

As part of the Federal Highway Administration (FHWA) Surface Transportation Project Delivery Program ([23 U.S. Code \[USC\] 327](#)), the Alaska Department of Transportation and Public Facilities (DOT&PF) assumes FHWA responsibilities for complying with the National Environmental Policy Act (NEPA) when developing federally-funded highway projects designed and constructed by DOT&PF in Alaska that DOT&PF designs and constructs. This program is commonly known as the NEPA Assignment Program.

Under the NEPA Assignment Program Memorandum of Understanding ([MOU](#)) between FHWA and DOT&PF dated April 13, 2023, 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 for highway projects under the NEPA Assignment Program and complies 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 relevant resources, such as those referenced in the technical appendices, 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 addresses noise
- 23 CFR 774 addresses Section 4(f) issues
- 23 CFR 777 addresses mitigation for wetlands and natural habitats

### **1.1.3. 23 USC 327 NEPA Assignment**

Section 6005 of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), established a Pilot Program to assign FHWA's full NEPA project level decision making responsibilities to up to five states; codified in [23 USC 327](#).

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 renewed an MOU on April 13, 2023, 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 (COA): Categorical Exclusions (CE), Environmental Assessments (EA), 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 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)
- 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 air quality conformity responsibilities required by Section 176 of the Federal Clean Air Act (42 USC 85.7506(c)) (MOU Part 3.2.4)

- The USDOT Secretary’s authorities under 23 U.S.C. 144(c) (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. This includes project types listed in MOU 3.3.2. For questions or clarifications on excluded projects, contact the DOT&PF Statewide Environmental Office (SEO).

### **Responsibilities and Requirements**

By signing the MOU, DOT&PF became responsible for carrying out all FHWA responsibilities 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 commitments include 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 acting as FHWA 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 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 follows an internal review and approval process to support appropriate compliance with all environmental requirements for 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 SEO). Regional and SEO personnel work cooperatively 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.

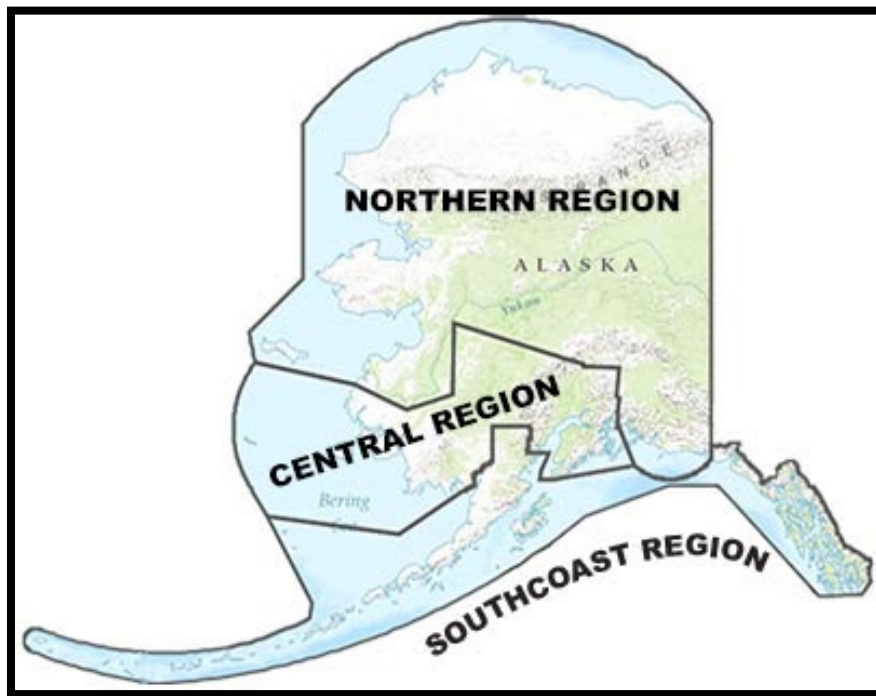


Figure 1-1  
DOT&PF Regions

### 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 documents (e.g., an EA).

The majority of project-specific environmental documentation and permitting work is conducted by Environmental Impact Analysts in the regional offices. Regional Environmental Impact Analysts may also be delegated Regional Environmental Manager (REM) approval authority.

Certain Environmental Impact Analysts in regional offices and at SEO are designated cultural resources specialists, known as Professionally Qualified Individuals (PQIs) (see Chapter 10 of this manual for more details) and comprise the Department’s Cultural Resources Team.

There are also 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 Statewide NEPA Assignment Program Manager manages the implementation of the NEPA Assignment Program and supervises and distributes the workload of the NEPA Program Managers. The Statewide NEPA Assignment Program Manager and the NEPA Program Managers are responsible for providing quality control and oversight for NEPA Assignment projects as well as QA/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 NEPA Assignment Program Manager for Environmental Assessments (EAs) and Findings of No Significant Impact (FONSIs) (see EPM Chapter 4)
- Approve Section 4(f) applicability of exceptions, no use determinations, *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
- Perform NEPA Program Manager responsibilities as needed

#### **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

#### **1.2.5. Consultants**

Consultant staff may be hired to provide project support as part of the environmental team. Consultants may prepare technical reports (e.g., cultural resource survey) and conduct field analysis (e.g., wetland delineation) required to prepare an environmental document.

Upon approval by the Regional Environmental Manager (REM), a consultant may fulfill the role of Environmental Impact Analysts including preparation of environmental documents for approval. A consultant may not be delegated REM approval authorities and may not consult on behalf of DOT&PF (e.g., Section 7 consultation, Section 106 consultation).

Quality Assurance and Quality Control procedures must be completed by DOT&PF staff (See: Chapter 11).

### **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 project development, 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:

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 project development regulations are [23 CFR 771.111\(f\)](#).

NEPA approval is required 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. See Chapter 4: Project Development Process in the [Alaska Highway Preconstruction Manual \(HPCM\)](#). 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.
  - For the first PDA, the NEPA Manager makes a COA determination prior to the REM signing the PID, unless more data is required to recommend a COA (see EPM Section 2.3).
  - For subsequent PDAs requiring REM approval, an environmental status is supported with an environmental document or re-evaluation (EPM Chapter 6).
- 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 (ROW) Appraisal and Acquisition
- Construction

Most new projects initially receive ATP for PE through Environmental Document Approval. Consult the *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 on developing compliant environmental documents is found later in 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 may be 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 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 to make available to FHWA any project files, general administrative files, and letters or comments received from governmental agencies and the public which pertain to DOT&PF's responsibilities assumed under the MOU.

### **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 to the requirements of FHWA Records Disposition Manual (Field Offices) Chapter 4, FHWA [Order No. 1324.1B](#), issued July 29, 2013.

Draft documents are 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 10 years after project closeout, unless otherwise required by the schedule.

Records for Significant Transportation Projects, as defined in FHWA Order No. 1324.1B, are permanently stored.

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.