

Local Project Administration Manual & Reference Guide

Environmental Review



MaineDOT

Integrity - Competence - Service

2016 Edition

Environmental Review

Before moving forward, transportation improvements must be evaluated to see how they might affect natural and cultural resources, such as wildlife habitats and historic homes. These mandatory reviews stem from several landmark federal laws – notably the National Environmental Policy Act (NEPA), the Endangered Species Act, and the National Historic Preservation Act. This section provides an overview and includes the following:

- A summary of the major laws and regulations (pages 4-1 to 4-6);
- An environmental checklist – Figure 4.1 (page 4-2);
- A table with state/local responsibilities – Figure 4.2 (page 4-3);
- Appendix 4A: Required submittals (page 4-7);
- Appendix 4B: Historic Preservation Act summary (page 4-12);
- Appendix 4C: Endangered Species Act summary (page 4-15).



4.1 National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) is the nation’s foremost environmental law. Under the law – found in Title 23 of the Code of Federal Regulations, Part 771 – MaineDOT may assess the potential impacts to a variety of natural and cultural resources as one process. When finished, MaineDOT receives from the Federal Government an environmental clearance that, for most locally administered projects in Maine, is known as a “Categorical Exclusion.” The document is a sign-off that a project will not have significant environmental impacts.

Caution! Right-of-way negotiations for federally funded projects cannot occur until MaineDOT receives NEPA clearance from the Federal Government.

NEPA review is required on projects with a federal action (funding/permits), as follows:

- MaineDOT must complete the NEPA process when a project has federal money. In this case, the local government or non-profit overseeing a project must provide information addressed in Communication 10 and Communication 11, on pages 4-8 through 4-10.
- The municipality or organization sponsoring a project must complete the NEPA process when no federal money is used, typically through the federal permit.
- All work regarding Section 106 (historic properties), Section 7 (endangered species), Section 4(f) (public parks, et. al.,) public involvement, hazardous materials review, and the level of federal permit must be done before NEPA can be completed.

ENVIRONMENTAL REVIEW CHECKLIST
A. National Environmental Policy Act (federally funded projects)

- Provide MaineDOT with the completed NEPA documentation checklist (**Communication 11**) and the required certification that a public process was held (**Communication 10**)

B. Environmental Permits

- Contact appropriate state and federal agencies for permitting requirements and approvals.**
 - Maine Department of Environmental Protection: www.maine.gov/dep/blwq/stand.htm
 - Augusta (Central Maine): 207-287-3901; 800-452-1942
 - Bangor (Eastern Maine): 207-941-4570; 888-769-1137
 - Portland (Southern Maine): 207-822-6300; 888-769-1036
 - Presque Isle (Northern Maine): 207-764-0477; 888-769-1053
 - U.S. Army Corp of Engineers: (207) 623-8367 or <http://www.nae.usace.army.mil/>
- Contact appropriate state agencies for their comments and concerns about the project.**
 - Maine Department of Inland Fisheries and Wildlife:
 - Fisheries Division for timing approval, freshwater fisheries and fisheries passage issues: (207) 287-8000
 - Wildlife Division for rare, threatened and endangered species and other wildlife issues: (207) 287-8000
 - Maine Department of Marine Resources, Wetlands and Permit Section
 - Sea-run fisheries, coastal resources and fish passage issues: <http://www.maine.gov/dmr/crd/hmo/Wetlands0.htm>
 - Maine Atlantic Salmon Commission
 - Timing approval, salmon habitat and fish passage issues: <http://www.maine.gov/dmr/searunfish/salmonframework.shtml>
- Complete appropriate state and federal permit applications**

C. Environmental Certification

- Send an environmental certification (use Communication 12, in Appendix 4A) and copies of all permits obtained for your project to the MaineDOT project manager.
 - The certification and documentation must be part of the final Plans, Specifications and Estimate (PS&E) package.
 - The paperwork must be submitted to MaineDOT before a project may be put out to bid.

State and Local Responsibilities

TASK	RESPONSIBILITY
National Environmental Policy Act (NEPA)	Federal funds: MaineDOT
	State funds only: Municipality through federal permit
Section 106 of the Historic Preservation Act	Federal funds: MaineDOT
	State funds only: Municipality through federal permit
Section 4(f) of the Department of Transportation Act	Federal funds: MaineDOT
	No U.S. DOT funds: 4(f) does not apply
Endangered Species Act (a.k.a. Section 7)	Federal funds: MaineDOT
	State funds only: Municipality through federal permit
Hazardous Materials	MaineDOT with assistance from municipality
Environmental Permits	Municipality
Dredge Materials	Municipality
Natural Resource (wetlands, streams, fisheries, etc.)	Municipality
Mitigation	Municipality
All Stormwater Permits (Ch500, ESC law, MPDES)	Municipality

MaineDOT Environmental Office contact:

Kristen Chamberlain , Environmental Team Leader	557-5089 (kristen.chamberlain@maine.gov)
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Approvals will take about **2 to 6 months** from when the design work for a project has reached the milestone Plan Impacts Complete and a municipality has completed **Communication 10**, **Communication 11**, and the NEPA Documentation Checklist, found on pages 4-8 through 4-10.

The MaineDOT Environmental Office requires a municipality to hold a **meeting** with MaineDOT Project Manager and Environmental Office **at project kick-off**, in order to coordinate the schedule of the project.

4.2 Section 106 of the National Historic Preservation Act

Section 106, found in federal regulation 36 CFR Part 800, serves to protect properties of historic and archeological significance. If a project has federal money, MaineDOT generally surveys all properties at least 45 years old in a project area for potential historic significance and potential adverse effects. This requirement commonly applies to buildings, culverts, bridges, monuments, and cemeteries. (*Guidance is found in Appendix 4B, on page 4-11.*)

- **MaineDOT** handles the Section 106 process on locally administered projects with federal money. The local administrator must provide MaineDOT with design plans showing right-of-way impacts in order to make final determinations of effect.
- With MaineDOT's approval, the **municipality** or other organization overseeing a project may hire a consultant to perform the required Section 106 reviews. Any consultant, however, must meet specific federal standards for conducting architectural surveys. MaineDOT, however, must first approve and meet with the consultant. All final determinations will be made by MaineDOT.
- If a project has no federal money, the **municipality** or organization administering the project must complete the Section 106 process. In this case, the project administrator will need to contact the Maine Historic Preservation Commission.



4.3 Endangered Species Act ("Section 7")

Section 7 falls under federal regulation 50 CFR Part 402. It covers a variety of fish, birds, reptiles, mammals and plants as listed on pages 4-16 and 4-17. In Maine, the law most often affects projects with in-water work in Atlantic salmon, short-nose sturgeon or Atlantic sturgeon waters, as well as in habitat for Canada lynx and the northern long-eared bat, listed in 2015.

Responsibility for Section 7 review is as follows:

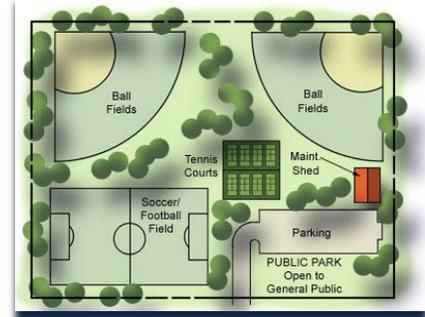
- If there is money from the Federal Highway Administration, **MaineDOT** will complete the Section 7 process. MaineDOT will need project plans and scope, construction timing and techniques, and proposed timeframe from the municipality or other agency overseeing a project.
- If a project has only state money or funding from a federal agency other than the FHWA, the Army Corps of Engineers (ACOE) generally is responsible for consultation under Section 7. In this case, the **municipality** or other organization administering a project is responsible for coordinating with the ACOE or other federal action agency. This is usually completed during the permit application process.



4.4 Section 4(f) of the Department of Transportation Act

Section 4(f) – found in regulation 23 CFR Part 774 – applies to public parks, recreation areas, wildlife refuges and historic properties. Potential impacts must be examined if federal transportation money is used, as follows:

- **MaineDOT** is responsible for completing the Section 4(f) process. To do so, MaineDOT will need project plans with proposed right of way from the municipality or other agency overseeing the project.
- The Section 106 process must be concluded before Section 4(f) documentation is submitted to the Federal Government under the NEPA process.



4.5 Natural Resources Protection Act

In Maine, the Natural Resources Protection Act (NRPA) is the primary state environmental law that applies to transportation projects. The law covers “protected natural resources” such as coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, great ponds, and rivers, streams or brooks. The NRPA is administered by the Maine Department of Environmental Protection (MaineDEP) in municipalities and other organized areas.

The **municipality** or other organization overseeing a locally administered project is responsible for complying with the NRPA. The local administrator (or consultant designing a project) must contact the MaineDEP to determine whether a NRPA permit will be needed. Generally, this applies when a project (a.k.a. “activity”) will be:

- Located in, on or over any protected natural resource; or
- Located adjacent to a coastal wetland; a great pond; a river, stream or brook; certain freshwater wetlands; or significant wildlife habitat contained within a freshwater wetland.

The law defines an "activity" as: (a) dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials; (b) draining or otherwise dewatering; (c) filling, including adding sand or other material to a sand dune; or (d) any construction, repair or alteration of any permanent structure.

For forms and information about the NRPA review process, visit the MaineDEP website:
<http://www.maine.gov/dep/land/nrpa/index.html>

4.6 Environmental Permits

The **municipality** or other agency administering a project must obtain all permits and adhere to applicable federal and state laws and regulations, including Maine's Natural Resources Protect Act. (*See Section 4.5, page 4-5.*) Before soliciting for construction bids, the organization in charge of a project must provide the MaineDOT project manager with an environmental certification (Communication 12, page 4-11) and copies of approved state and federal permits.

4.7 Hazardous Materials

MaineDOT is responsible for reviewing planned improvements to determine whether there may be contamination from petroleum or other hazardous materials in a project area. As part of the process, municipalities and other organizations overseeing project must provide MaineDOT with project plans showing proposed disturbance/excavation and any right-of-way impacts.

4.8 Stormwater Permits

Maine's stormwater management law provides standards for projects that disturb at least **1 acre** of land. Any stormwater permits are the responsibility of the municipality or other agency overseeing a project – including Erosion and Sedimentation Control requirements and MaineDEP Chapter 500 Stormwater Management Rules. The local project administrator should contact the MaineDEP to determine the required permits. (*Contacts are shown on page 4-2.*)

Once permits are obtained, the local administrator must provide MaineDOT's project manager with copies as part of the required environmental certification (Communication 12, page 4-11.)

4.9 Dredge Materials

Maine's solid waste management regulations define dredge materials as sand, silt, mud, gravel, rock, or other natural substance removed from beneath any body of water. These regulations typically apply to stream/river crossings and harbor improvement projects, which can require dredging. Under the regulations, dredge materials must be handled as special waste.

Beneficial Use Permits required by state law and associated regulations – Title 38 M.R.S.A. §1301-1319, Maine DEP Chapter 418 – are the responsibility of the **municipality** or other organization sponsoring a project. MaineDOT, however, can provide guidance.

When permits are obtained, the local project administrator must provide the MaineDOT project manager with an environmental certification (Communication 12, page 4-11) and copies of the approved permits.

Remember: Environmental approvals and certification (Communication 12) must be in place before a project may be put out to bid. Usually, these documents are provided to MaineDOT with the final Plans, Specifications & Estimate (PS&E) package.

Appendix 4A: Environmental Submittals



Instructions: This must be submitted on letterhead to MaineDOT with Communication 11 and the NEPA Documentation Checklist, found on the next two pages.

Date

_____, Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 State House Station
Augusta, ME 04333-0016

Subject: Public Process Certification
MaineDOT WIN _____

Dear _____:

The Municipality of _____ certifies that the public process required for **[project scope, WIN]** was done in accordance with requirements identified in the executed Project Agreement with MaineDOT dated **[execution date]**.

DESCRIBE ANY PUBLIC OPPOSITION HERE, IF APPLICABLE.

I have attached for your information the notification that was sent to abutters by registered mail, the public notice, the meeting minutes and sign-in sheet. If you need any additional information, please let me know.

Sincerely,

Local Project Administrator
Municipality of

Enclosure: Meeting minutes

Instructions: This letter and the checklist on the next page should be provided to MaineDOT with the Preliminary Design Report, if possible. At the very latest, it must be submitted with the Design Plan Impacts for a project.

Date

_____, Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 State House Station
Augusta, ME 04333-0016

Subject: NEPA Checklist Submission
MaineDOT WIN_____

Dear _____:

Attached is the completed National Environmental Policy Act (NEPA) documentation checklist for [**project scope, WIN**] in the Municipality of _____. We understand that this information is necessary for MaineDOT to complete the NEPA process.

Also attached is Communication 10, certifying that the Municipality conducted the required public participation process in accordance with requirements identified in the executed Project Agreement with MaineDOT dated [**execution date**].

If you need additional information, please let me know.

Sincerely,

Local Project Administrator
Municipality of _____

Enclosures:

- NEPA documentation checklist
- Public process certification (Communication 10)

Note: This checklist must be submitted with Communication 11

**NEPA DOCUMENTATION
For the Maine Department of Transportation, Federally Funded Projects**

Project Title & Location: _____

Federal Project #: _____ MaineDOT WIN: _____

Description of Work: _____

MaineDOT Project Manager: _____

Answer the following questions and attach supporting documentation as requested. If there is a “yes” response, explain on a separate sheet or contact your MaineDOT Project Manager for guidance.

1.) Public Involvement: Is there substantial public opposition to proposed action? Yes No
The answer should become apparent at a public meeting approving the project.

Documentation: Approved capital plan; meeting records; letters from the public; board meeting minutes; or Communication 10 (Public Process).

2.) Right-of-Way: Does action include a residential or commercial displacement, or acquisition of property rights that will result in substantial abutter impacts? Yes No
For help with “substantial,” contact your Project Manager at MaineDOT.

Documentation: Plan Impacts Complete for the project (Communication 9)

3.) Endangered Species & Essential Fish Habitat:

- a. Has a qualified person surveyed the project area for streams, rivers, coastal waters, wetlands, and vernal pools? Yes No
- b. Were any streams, rivers, coastal waters / wetlands, freshwater wetlands, or vernal pools identified? Yes No
- c. Is any work proposed in or adjacent to a stream, river or coastal waters? Yes No

Documentation: Resource delineation and plans with location of resource and work planned. If in-water work is proposed, project will be screened by the MaineDOT Environmental Office for intersection with habitat for endangered species and critical fish. Additional coordination with the Environmental Office will be required if the project is located in one of these areas and includes in-water work.

4.) Section 4(f) or 6(f):

- a. Does project area include or abut resources protected by Section 4(f) of the Department of Transportation Act: publicly owned land, parks, recreation areas, wildlife and waterfowl refuges, or historic sites? Yes No
- b. Will project require temporary or permanent rights on any protected 4(f) resource listed above? Yes No

Documentation: Existing and proposed right-of-way plan, and a description of how impacts to these properties were avoided and minimized.

Signed by: _____
 [Name, Local Project Administrator]

Date: _____

Instructions: This must be submitted on letterhead to MaineDOT with the final plans, specifications and estimate (PS&E) package.

Date

_____, Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 State House Station
Augusta, ME 04333-0016

Subject: Environmental Certification
MaineDOT WIN_____

Dear _____:

This document serves as official certification that all environmental permits required for [**project scope, WIN**] in the Municipality of _____ were obtained and approved in accordance with requirements identified in the executed Project Agreement with MaineDOT dated [**execution date**].

Attached are all of the approved permits. If you need additional information, please let me know.

Sincerely,

_____, Local Project Administrator
Municipality of _____

Enclosures: Environmental permits
Cc: MaineDOT Environmental Office

NOTE: Please attach all of the approved permits. If no permits are required, please supply a narrative as to why no permits were needed.

Appendix 4B: Section 106

- Historic Properties -



Section 106 Checklist

Section 106 review must take place on any project that receives federal funds or requires a federal permit. **Note:** *It is important to keep all documentation of the Section 106 process, including correspondence between any involved party.*

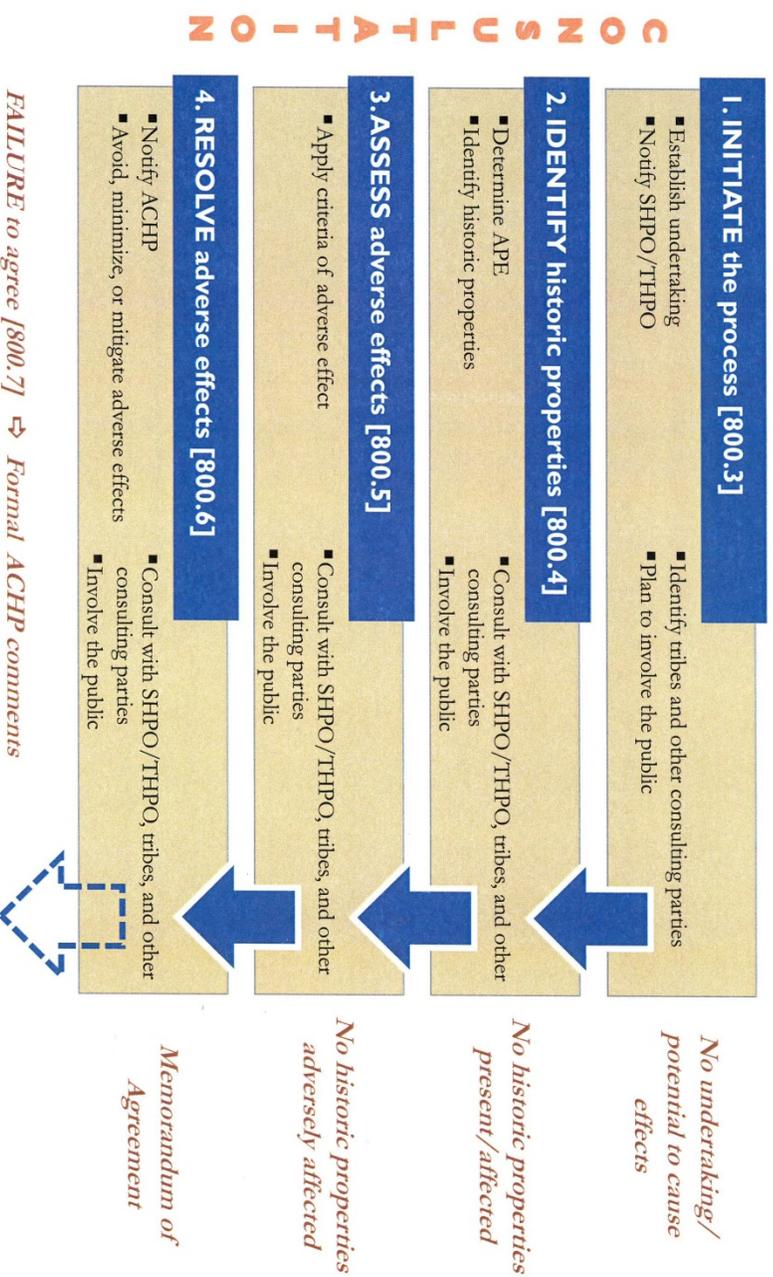
➔ If you have questions, contact **Megan Hopkin**, MaineDOT's Historic Coordinator, at megan.m.hopkin@maine.gov or (207) 592-3486.

Note: Only individuals meeting the Secretary of Interior's Professional Qualification Standards for Archaeology and Historic Preservation may officially identify, evaluate, and record historic properties under the Section 106 process: www.nps.gov/history/local-law/arch_stnds_9.htm

MaineDOT will be responsible for initial Section 106 review including definition of area of potential effect, mapping, tribal and archaeological consultation and project information. Once MaineDOT has established the need for an architectural survey, the following steps need to be taken in order to complete Section 106 review:

- Hire a qualified professional to conduct architectural survey and notify MaineDOT. If the chosen consultant has never conducted architectural surveys for MaineDOT, a meeting will need to be scheduled with MaineDOT's Historic Coordinator to discuss the Section 106 process.
- The consultant must obtain a username and password for the CARMA database from the Maine Historic Preservation Commission (MHPC): (207) 287-2132 or christi.mitchell@maine.gov
- Initiate architectural survey:
 - Architectural survey must meet MHPC and MaineDOT survey standards, found online: http://www.maine.gov/mhpc/architectural_survey/survey_guidelines.html
 - All properties 45 years or older must be surveyed in the project area including but not limited to buildings, objects, culverts, bridges, monuments, and cemeteries.
 - Digital pictures of properties, including street views, should be taken.
 - Enter data into the CARMA system – except for architectural survey report, matrix and map.
- Complete architectural survey by submitting to MaineDOT for review electronically.
 - If any edits need to be made, comments will be sent back.
 - Once MHPC and MaineDOT approve the survey electronically, a hard copy of the survey and survey materials must be sent to MaineDOT.
- Once MaineDOT receives the hard copy of the architectural survey, MaineDOT will be responsible for completing the remainder of the Section 106 process including making the determination of eligibility and final determination of effect.

THE SECTION 106 PROCESS



Appendix 4C: Endangered Species Act



ENDANGERED, THREATENED AND CANDIDATE SPECIES IN MAINE
(Source: U.S. Fish & Wildlife Service)

ENDANGERED (E) – Any species in danger of extinction throughout all or a significant portion of its range.

THREATENED (T) – Any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

CANDIDATE (C) – Those taxa for which the U.S. Fish & Wildlife Service has sufficient information on biological status and threats to propose to list them as threatened or endangered. We encourage their consideration in environmental planning and partnerships, however, none of the substantive or procedural provisions of the Act apply to candidate species.

CRITICAL HABITAT (CH) – The specific areas (i) within the geographic area occupied by a species, at the time it is listed, on which are found those physical or biological features (I) essential to conserve the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed upon determination that such areas are essential to conserve the species.

COMMON NAME		DISTRIBUTION	STATUS
FISH:	Atlantic salmon	Androscoggin, Aroostook, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo and Washington counties The Atlantic salmon distinct population segment in the Gulf of Maine encompasses all naturally spawned and conservation hatchery populations of sea-run salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River and wherever these fish occur in the estuarine and marine environment. Critical Habitat occurs in portions of the 14 counties listed above.	E CH
	Shortnose sturgeon*	Coastal Kennebec, Lincoln, Sagadahoc, Waldo, Penobscot, Hancock, Androscoggin and now Cumberland and York Counties	E
	Atlantic sturgeon*	Gulf of Maine coastal Kennebec, Lincoln, Sagadahoc, Waldo, Penobscot, Hancock, Androscoggin and now Cumberland and York Counties	T

MAMMALS:

Northern long-eared bat	Statewide	Endangered
Canada lynx	Aroostook, Franklin, Somerset, Piscataquis, Penobscot, Oxford, Washington Counties Boreal forest landscapes in northern Maine, in portions of Aroostook, Franklin, Penobscot, Piscataquis and Somerset	Threatened Critical Habitat
New England cottontail rabbit	York, Cumberland, Androscoggin, Kennebec, Sagadahoc, Lincoln Counties	Candidate
Several whale species*	Found in open waters of the Gulf of Maine	Endangered

PLANTS:

Furbish's lousewort	Aroostook County	Endangered
Eastern prairie fringed orchid	Aroostook County	Threatened
Small whorled pogonia	York, Cumberland and Kennebec counties	Threatened

BIRDS:

Piping plover	Coastal Sagadahoc, Cumberland, and York county.	Threatened
Roseate tern	Coastal statewide	Endangered

REPTILES:

Atlantic ridley turtle*	Pelagic, typically summertime	Endangered
Leatherback turtle*	Pelagic, typically summertime	Endangered
Loggerhead turtle*	Pelagic, typically summertime	Threatened

* Principal responsibility for these species lies with the National Marine Fisheries Service.

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