

## Chapter 10

# Environmental Processes

### 10.1 General Discussion

- As this manual outlines both the federal and state procedures that a local agency must follow for a Federal-aid funded project, compliance with the National Environmental Policy Act (NEPA) and Montana Environmental Policy Act (MEPA) will be described. If a local agency needs assistance in determining the environmental classification of a project, they are encouraged to contact the Montana Department of Transportation (MDT) Environmental Services Bureau (ESB). A field review of the proposed project can be arranged as needed.

When the project involves federal funds or federal permits, its environmental requirements are governed by:

- NEPA of 1969, 42-USC-4321 et seq.
- Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR, Parts 1500, et seq.
- Federal Highway Administration — Federal Transit Administration, 23 CFR, Part 771.
- Environmental Impact and Related Procedures, 49 CFR, Part 622.
- Section 4(f) of the Department of Transportation (DOT) Act of 1966.
- A variety of Executive Orders (EOs).
- Any other Federal, State and local environmental laws, regulations, rules, or executive orders that may be applicable to the project. Refer to the Departments Environmental Manual: <http://www.mdt.mt.gov/publications/docs/manuals/env/preface.pdf>

A local agency should be aware of the following Montana Environmental Policy Act (MEPA) requirements:

- MEPA – Title 75 Chapter 1 MCA.
- All projects that require a MDT action must comply with MEPA. The local government environmental documentation must also comply with MEPA.
- While environmental documentation that meets NEPA requirements usually satisfies MEPA requirements, MEPA documents do not necessarily satisfy NEPA requirements. Local governments need to be aware to the differences.
- MDT's rules implementing MEPA are found at ARM 18.2.201, et seq.

When a project involves an MDT action, the proposed project must meet the requirements of ARM 18.2.235 through 18.2.260. According to ARM 18.2.236 (1), an “action” means a project, program, or activity directly undertaken by an agency; a project or activity supported through contract, grant subsidy, loan, or other form of funding assistance from the agency, either singly or in combination with one or more other state agencies; or a project or activity involving the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the agency, either singly or in combination with other state agencies.

Environmental evaluation starts with project classification which is normally the initial step in project development. A project will fall into one of three defined classes, depending on the extent of its impacts. The three classes are defined in Section 10.2.

Federal and State regulations require the use of an interdisciplinary approach to assess a project's social, economic, and environmental impacts. "Interdisciplinary" means integrated consideration of the project's aspects through such disciplines as biology, economics, geology, sociology, urban planning, archeology, communications, and noise in addition to traditional civil engineering expertise. Interdisciplinary requirements for each class of project are discussed in Sections 10.3, 10.4, and 10.5. The MDT ESB can advise local agencies on how to set up an interdisciplinary approach.

For projects that may involve historic and/or archaeological resources, the local agency should contact the MDT ESB. MDT will contact the State Historic Preservation Office (SHPO) and/or Tribal Historic Preservation Office (THPO). For projects that may involve water resources, the local agency should contact the MDT ESB. MDT will contact the US Army Corps of Engineers; Fish Wildlife, and Parks; Department of Environmental Quality; Environmental Protection Agency; and/or Tribal Environmental Authorities, as necessary. If permits are deemed necessary for the project, contact MDT ESB to discuss procedures for securing the permits and determine entities that should be applying for the permits.

It is permissible to complete some activities such as budgeting, proposal development, legislative or feasibility studies, and value engineering studies prior to the environmental evaluation. At the discretion of the local agency, other activities, such as preliminary engineering for soil surveys and location studies, may be done in conjunction with or prior to the environmental evaluation. The regulations describe the timing of activities related to the timing of environmental documentation at 23 CFR 771.113.

All environmental documentation will be written in a standard format. Contact the MDT ESB to receive the most up to date information on format.

## **10.2 Project Classification**

All projects will be classified by the local agency, in coordination with MDT, as defined below. The classification should take place as early as possible in the project's development since the scope of the subsequent environmental evaluation and documentation processes depends on the project's class. Upon this determination, the local agency completes the environmental classification section of the project proposal. The following paragraphs define the three classes of projects and list types of work typically found in each class.

### **10.2.1 NEPA/MEPA — Environmental Impact Statement (EIS)**

Actions that have significant social, economic, or environmental impacts require an EIS (40 CFR 1508.27 and ARM 18.2.238). These projects may trigger the EIS for a variety of reasons including their potential effects upon land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, natural resources, or by virtue of the fact that they are apt to create "significant" public controversy. Refer to Sections 9.3 and 9.7. Projects which usually require an EIS are:

- a. A new controlled-access freeway.
- b. A highway project of four or more lanes on a new location.

- c. New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit).
- d. New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

Local agencies will perform the required environmental scoping as a priority after project funding is obligated. After scoping is completed, the local agency checks the “final” box and completes the ECS for submittal to the MDT ESB for MDT and FHWA final concurrence. The ECS should be submitted as early as possible and/or practical in the project development stage. On behalf of the local agency, MDT will distribute copies to resource agencies for information and coordination purposes.

### 10.2.2 NEPA/MEPA — Categorical Exclusion (CE)

CE’s are actions which meet the definition contained in 40 CFR 1508.4 and, based on past experience with similar actions; do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts. FHWA’s CEs are described at 23 CFR 771.117. MDT’s CEs are described at ARM 18.2.261 (1).

Any action which normally would be classified as a CE but could involve unusual circumstances will require the applicant to, in cooperation with the FHWA and MDT, conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- Environmental impacts;
- Inducing significant impact to planned growth or land use for the area;
- Require the relocation of significant numbers of people;
- Have a significant impact on any natural, cultural, recreations, historic to other resource;
- Involve significant air, noise, or water quality impacts, have significant impacts on travel patterns, or otherwise either individually or cumulatively have any significant environmental impacts;
- Substantial controversy on social, economic, or environmental grounds; and
- Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action.

For purposes of MEPA, as described at ARM 18.2.261 (2), the preparation of an environmental assessment or an environmental impact statement will be required if the project involves any of the following extraordinary circumstances:

- Significant impact on publicly owned parklands, recreation areas, wildlife or waterfowl refuges or any significant historic site;
- Significant impact on wetlands or prime farmlands;
- Significant impact on the human environment that may result from large acquisitions of right-of-way, relocations of persons or businesses, changes in traffic patterns, changes in grade, or other types of changes;
- Significant impact on air, noise, or water quality;

- Substantial controversy on environmental grounds; and
- Any other kind of significant environmental impact.

Potential social, economic, and environmental impacts of the proposed project must be investigated to ensure that significant impacts will not occur and that the Categorical Exclusion (CE) determination is appropriate. Documentation of the analysis is necessary to demonstrate that the CE determination was not arbitrary. The level of analysis should be proportional to the potential for significant impact. Projects may require detailed environmental studies for CE documentation. After obligation of PE funds, the detailed analyses can take place and the local agency finalizes the ECS for final approval. Some situations that may require detailed environmental studies are as follows:

1. The acquisition of more than minor amounts of temporary or permanent strips of right-of-way for construction of such items as clear vision corners and grading. Such acquisitions will not require any commercial or residential displacements.
2. The use of properties protected by Section 4(f) of the Department of Transportation Act (49 USC 303).
3. A determination of adverse effects by the SHPO and/or THPO.
4. A COE Section 404 or Section 10 permit.
5. A Tribal permit.
6. Work in wetlands or streams.
7. Work encroaching on a regulatory flood-way or any work affecting the flood-plain (100-year flood) elevations of a water course or lake.
8. Any impact to federally listed Threatened and Endangered Species.
9. Any changes in access control.
10. The use of a temporary road, detour, or ramp closure unless the use of such facilities satisfy the following conditions:
  - Provisions are made for access by local traffic and so posted.
  - Through-traffic dependent business will not be adversely affected.
  - The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.
  - The temporary road, detour, or ramp closure does not substantially change the environmental consequences of the action.
  - There is no substantial controversy associated with the use of temporary road, detour, or ramp closure.
11. Any known petroleum release, solid waste, hazardous materials or previous land uses with potential for petroleum release, solid waste, or hazardous materials sites remains within the right-of-way.
12. Any projects that involve unusual circumstances not listed or public opposition. The local agency should contact the MDT ESB for additional guidance.

### 10.2.3 NEPA — Environmental Assessment (EA)

For actions in which the significance of the impact on the environment is not clearly established, an EA is prepared to determine the extent of environmental impact and to determine whether an EIS is needed. No EIS is required when the EA process leads to a Finding of No Significant Impact (FONSI). Refer to Section 9.5 and 9.8.

The local agency checks the “preliminary” box and completes the Local Agency “Environmental Classification Summary” (ECS) form utilizing known project information, as developed in the

planning stage on all EA projects. The ECS is submitted by the local agency with the Project Proposal and the Local Agency Agreement to the MDT for ESB and FHWA preliminary concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

Local agencies will perform the required environmental scoping as a priority after project funding is obligated. After scoping is completed, the local agency checks the “final” box and completes the ECS for submittal to the MDT for MDT’s and FHWA’s final concurrence. On behalf of the local agency, MDT will distribute copies to resource agencies for information and coordination purposes.

### **10.3 Procedures for EIS Projects**

The procedures for an EIS project will be developed when necessary. MDT and FHWA will work with the local agency to develop project specific procedures for those projects requiring an EIS.

### **10.4 Procedures for CE Projects**

The activities described in this section are necessary for projects that are categorized as a Categorical Exclusion.

#### **10.4.1 Appointment of Disciplines and Project Manager**

After authorization of preliminary engineering funds, the local agency appoints experts in various disciplines to conduct all studies necessary for the CE preparation and appoints a Project manager (PM) to be responsible for development of the project. These projects do require the use of an interdisciplinary approach for the needed investigations.

#### **10.4.2 Coordination**

The local agency prepares necessary correspondence to coordinate with affected federal, state, and local agencies, Indian tribes, interest groups, and the public in determining the issues to be addressed. The PM is responsible for supporting MDT ESB in the coordination efforts. MDT or FHWA may direct the local agency to contact local, state, federal, tribal or other agencies. Documentation of appropriate coordination is necessary.

#### **10.4.3 Data Collection, Inventory, and Evaluation**

The various discipline representatives conduct studies to assess the project’s potential social, economic, and environmental impacts. The depth of a study varies with the magnitude of the project. Generally, discipline studies for a CE are developed using standard methods developed by the ESB. Contact the ESB for information methods and format. Once the preliminary analysis is made on the type and magnitude of the impact, the level and type of the studies can be determined. Studies are carried out to the point where the extent of environmental impact can be determined. If the potential “significance” of the impacts is unknown, an EA should be conducted. If the potential impacts are determined to be “significant”, either an EIS would need to be conducted or at the local agencies discretion the project and environmental analysis may be terminated as a “no build”. The decision to select a “no-build” alternative would require MDT and FHWA approval. Conversely, if the local agency decided to terminate the NEPA/MEPA document development with the selection of the “no-build” alternative the decision may require reimbursement of federal funds from the local agency.

#### 10.4.4 Public Involvement

Refer to the MDT Public Involvement Handbook.

#### 10.4.5 Submittal of Reports and ECS

The local agency completed an ECS form and prepares discipline reports, as appropriate. These may include but are not limited to, an Air Quality Analysis, Aquatic Findings Report (wetlands and streams), a Biological Resources Report, Cultural Resources Report, and Section 4(f) evaluation. The ESB can assist in providing the format and procedure for completing these reports. ESB will review the reports and ECS and determine the completeness. With proper documentation ESB will approve the CE and as necessary obtain FHWA approval.

#### 10.5 Procedures for EA Projects

The procedures for an EA project will be developed when necessary. MDT and FHWA will work with the local agency to develop project specific procedures for those projects requiring an EA.

#### 10.6 Project Reevaluation

As discussed in 23 CFR 771.129, whenever single or cumulative conditions have occurred that might cause new or more severe environmental impacts, the local agency must reevaluate an environmental document. A written reevaluation is required when any of the following conditions exist: (1) The project has not moved into the construction phase within three years of the FHWA approval of the environmental documentation. (2) Changes to environmental laws, rules, or regulations that affect the project have occurred. (3) The project scope has changed. (4) Conditions on the ground and/or resources in the area have changed.

The local agency reevaluates the project by conducting appropriate environmental studies. The reevaluation is submitted in written form to MDT ESB. If the reevaluation identifies changes in the proposed project, the affected environment, the anticipated impacts, or the proposed mitigation measures, a revised, new or supplemental document is prepared and circulated. For additional guidance on project reevaluations contact the ESB.

#### 10.7 Section 4(f) Evaluation (49 U.S.C. 303 and 23 CFR 774)

Section 4(f) is only required for projects that receive FHWA funding, there is no similar state requirement. Section 4(f) of the Department of Transportation Act states that the FHWA will not approve the use of land from a significant publicly owned, park recreations area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

- There is no feasible and prudent alternative to the use of land from the property; and
- The proposed action includes all possible planning to minimize harm to the property resulting from such use.

In Section 4(f) there are three types of determination that may be made:

- De Minimis – This may be used when the above referenced requirements are met and the impact is de minimis (very small). For further guidance on the use of de minimis finding contact the MDT ESB.
- Programmatic 4(f) evaluations – In certain circumstances a programmatic Section 4(f) evaluation may be used. There are four approved Nationwide Programmatic Section 4(f) evaluations. These evaluations are found at the FHWA Environmental Guidebook and the Project Development Website <http://www.environment.fhwa.dot.gov/guidebook/index.asp> Contact MDT ESB to receive copies of the current Programmatic 4(f) evaluation forms.

- Individual Section 4(f) evaluation – This evaluation and documentation is used when de minimis and programmatic 4(f) evaluations cannot be used due to the size or magnitude of impact. These are standalone documents that have public involvement and public comment requirements. For further information contact MDT ESB.

## 10.8 Project Reviews

### References

- a. NEPA: 40 CFR 1505.2 and 1505.3.
- b. FHWA Rules Implementing NEPA: 23 CFR 771.109(b).
- c. MEPA: 75-1-201 and 75-1-208 MCA
- d. MDT Rules Implementing MEPA: ARM 18.2.235 through 18.2.261

### Definition

Project reviews are procedures for monitoring project development to ensure that environmental commitments are kept and adverse impacts avoided, minimized, and/or mitigated. Reviews are conducted periodically by responsible local agency or monitoring agency officials throughout the various stages of project development and subsequent maintenance.

### Procedures

- a. The local agency ensures that decisions recorded in environmental documents are included into the project contract documents and accomplished in design and construction of projects and maintained or improved upon during the life of the project.
- b. The local agency continues to maintain the project environmental commitment file which follows the project through survey, design, right-of-way acquisition, construction, and maintenance.
- c. During construction, the local agency implements and monitors the adopted impact mitigation measures to ensure that they are satisfactorily maintained or improved upon.
- d. When unique or unusual mitigation is required, the local agency conducts periodic reviews during construction or maintenance to evaluate the effectiveness of mitigation measures that were incorporated into the construction contract.
- e. The local agency must request concurrence from the Chief Engineer (who may then need to seek concurrence from FHWA) for alterations to mitigation measures agreed to during the environmental process, even when changes are made during construction or maintenance.
- f. The local agency makes available progress reports and any results of the impact mitigation measures at the request of the public or agencies.

### Commitment Summary

Environmental commitments should be included in the environmental documentation and in the contract documents. Initially, as an initial part of project development, the local agency should establish a project commitment file. Establishment of this file generally coincides with preparation of the environmental document or could be at later stages as required. The file consists of proposed mitigating measures, commitments made to resource or other agencies with permitting authority, and other commitments made on the project. The file normally consists of design and environmental commitments. Other commitments may be added at the local agency's discretion, such as right-of-way, access, maintenance, permits, and agreements. The local agency continues to maintain the commitment file as a project progresses through its development process. Whenever commitments are made, they are incorporated into project documents and

transferred from one phase of the project to the next. Commitments are normally included or identified in the following documents or actions:

- a. Environmental Impact Statement (Record of Decision), Environmental Assessment (Finding of No Significant Impact), or Categorical Exclusion.
- b. Design reports.
- c. Right-of-way negotiations.
- d. Access plans.
- e. Findings and order.
- f. Contract plans.
- g. Preconstruction conference.
- h. Change orders.
- i. End of project report.

Any environmental commitments that are made in the design phase of project development must be incorporated into the contract plans and documents to ensure they are complied with in the construction phase of the project. If the commitment arises from an enforceable permit or regulation, it must be noted in the contract documents by such means as a special provision. For example, projects that require a Clean Water Act Section 404 Permit must include a special provision detailing the permitted activities and any special conditions. Similarly, projects that include design aspects that were put in place to avoid impacting a site protected by Section 4(f) of the Department of Transportation Act must include a special provision and notation on the contract plans indicating the avoidance area. Contact MDT ESB for example contract language and special provision templates.

**Maintenance:** Environmental commitments from the design and construction phases of the project must be communicated to the entity responsible for the long-term maintenance of the site. The commitments and the rationale for the commitments should be documented in writing and discussed verbally at the project closeout inspection after construction is complete. The commitment documentation must be included in the project file.

Commitments which require ongoing maintenance need to be retained in the files as long as the commitment is active.

## 10.9 Tools

Link to FHWA training videos on Environmental Regulations:

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=35>