

01/31/2017

NEPA

Permitting

Process

**<TARGET><BILL></BILL><SUBJECT>01-31-2017 NEPA Permitting
Process</SUBJECT><COMM></COMM></TARGET>**



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Transportation and Public Facilities

OFFICE OF THE COMMISSIONER
Marc Luiken, Commissioner

3132 Channel Drive
P.O. Box 112500
Juneau, Alaska 99811-2500
Main: 907.465.3900
dot.state.ak.us

February 3, 2017

The Honorable Bert Stedman
Alaska State Senate
Capitol Building Room 30
Juneau, Alaska 99801

Dear Senator Stedman:

Thank you for the opportunity to present on the National Environmental Policy Act (NEPA) Permitting Process during the January 31, 2017, meeting of the Senate Transportation Committee. In response to questions posed by committee members, the following information is provided:

- ***Are there any examples of projects which highlight the scheduling difficulties involved with the federal requirement to offer historic bridges for sale before demolition?***

The Surface Transportation and Uniform Relocation Assistance Act of 1987: Section 123(F) for Historic Bridges 23 U.S.C. 144(o) (P.L. 100-17) encourages the rehabilitation, reuse, and preservation of historic bridges. The statute, now codified at 23 USC 144(g), states that any State that proposes to demolish a historic bridge for a replacement project shall first make the historic bridge available for donation.

There are several recent examples of DOT&PF projects where the historic bridge was offered but no interested parties were able to take possession:

- Brotherhood Bridge in Juneau – 2014
- Captain William Henry Moore Bridge in Skagway – 2015
- Tok River Bridge east of Tok – 2017

Notice of the Illiamna River Bridge south of Pile Bay was given in September of 2016; the DOT&PF is in discussions with interested parties.

- ***Has DOT&PF requested delegation of NEPA authority from the Federal Aviation Administration (FAA) for projects in Alaska? If not, why not?***

DOT&PF has not made a request for such delegation. DOT&PF believes that some level of delegation of NEPA responsibilities from FAA to states or airport sponsors would speed up our project development process. Creation of a formal FAA NEPA assignment program would require enabling legislation through the U.S. Congress. Other options, such as a

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programmatic agreement between the state and FAA, may be possible. DOT&PF has done some monitoring of interest and will continue informal discussions as opportunities arise.

➤ ***What is the difference between FAA's NEPA process for state-owned and municipal-owned airports, e.g., Juneau International Airport, in Alaska?***

There is no significant difference. State and municipal airports must both develop projects through the FAA-led NEPA process. The FAA may require the airport sponsor (i.e. the DOT&PF or City and Borough of Juneau) conduct the environmental analyses required for the FAA NEPA decision. As we described during the hearing, location does make a difference when considering mitigation options. The environment around Juneau's airport likely creates mitigation challenges that other large airports may not face.

➤ ***Is there an agricultural exemption from Storm Water Pollution Prevention Plan (SWPPP) requirements that are required for construction projects under the Clean Water Act?***

Nonpoint source agricultural and silvicultural activities, including runoff from farm and forest lands, are exempt under the stormwater regulations per 40 CFR 122.3(e). This exemption does not extend to the construction of buildings. Construction of any building that disturbs 1 acre or more of agricultural or agriculture-related operations must obtain coverage under a construction permit for storm water discharges, which may include developing a SWPPP.

Additionally, agricultural exemptions in the Clean Water Act are found in Section 404, which governs the permitting for dredging and filling activities. Section 404(f)(1)(A) & (E) specifically exempt the discharge of dredged or filled material from normal farming, silviculture, and ranching activities and exempts the construction and maintenance of farm roads and forest roads.

If you or your committee members have further questions, please feel free to contact Mike Lesmann at (907) 465-4772.

Sincerely,



Marc Luiken
Commissioner

Cc: Darwin Peterson, Legislative Director, Office of the Governor
Mike Lesmann, Legislative Liaison, DOT&PF



Alaska Department of Transportation & Public Facilities

NEPA permitting process

Marc Luiken, Commissioner
Lance Mearig, Chief Engineer

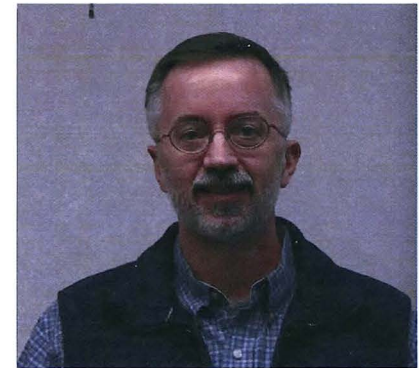
January 31, 2017

Keep Alaska Moving through service and infrastructure

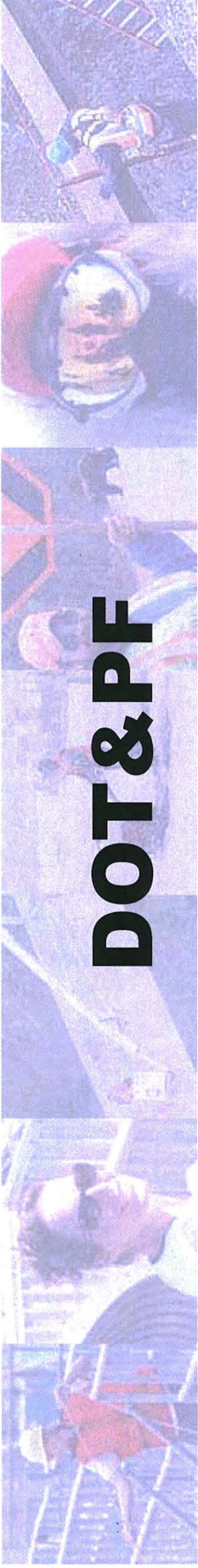
Our DOT&PF People: Alaskans Serving Alaskans

Brett Nelson

Northern Region Environmental Manager



- Brett is married with three teenagers and is a U.S. Air Force veteran. He earned a Bachelor of Science in Wildlife from UAF and a Master of Science in Biology from Northern Michigan University. Before coming to the department, Brett worked for Michigan Department of Natural Resources and Michigan Department of Agriculture. He enjoys spending time with family, hunting, fishing, hiking and living in Alaska.
- Nine and a half years with DOT&PF
- As environmental manager, Brett helps to ensure the department remains in compliance with environmental regulations through completion of the National Environmental Policy Act and acquires necessary permits. He also acts as a liaison with resource agencies.
- Environmental compliance is part of every DOT&PF project and many operations. Brett's job is to help keep projects and operations moving as effectively and efficiently as possible through the environmental processes.
- Brett has acquired a wide range of experience. He exemplifies the department's core value of excellence by utilizing that experience to further projects through completion of environmental documents and permits.
- Brett earned an honorable mention in the Crisis Responder Team category for the 2011 Governor's Denali Peak Performance Awards for his work on the Taylor Highway flood response



- **Mission**
 - **Mission statement**
 - **Statutory responsibilities**
 - **RBA/Core Services**
- **Alaska's transportation program**
 - **Average annual \$\$ amount of work**

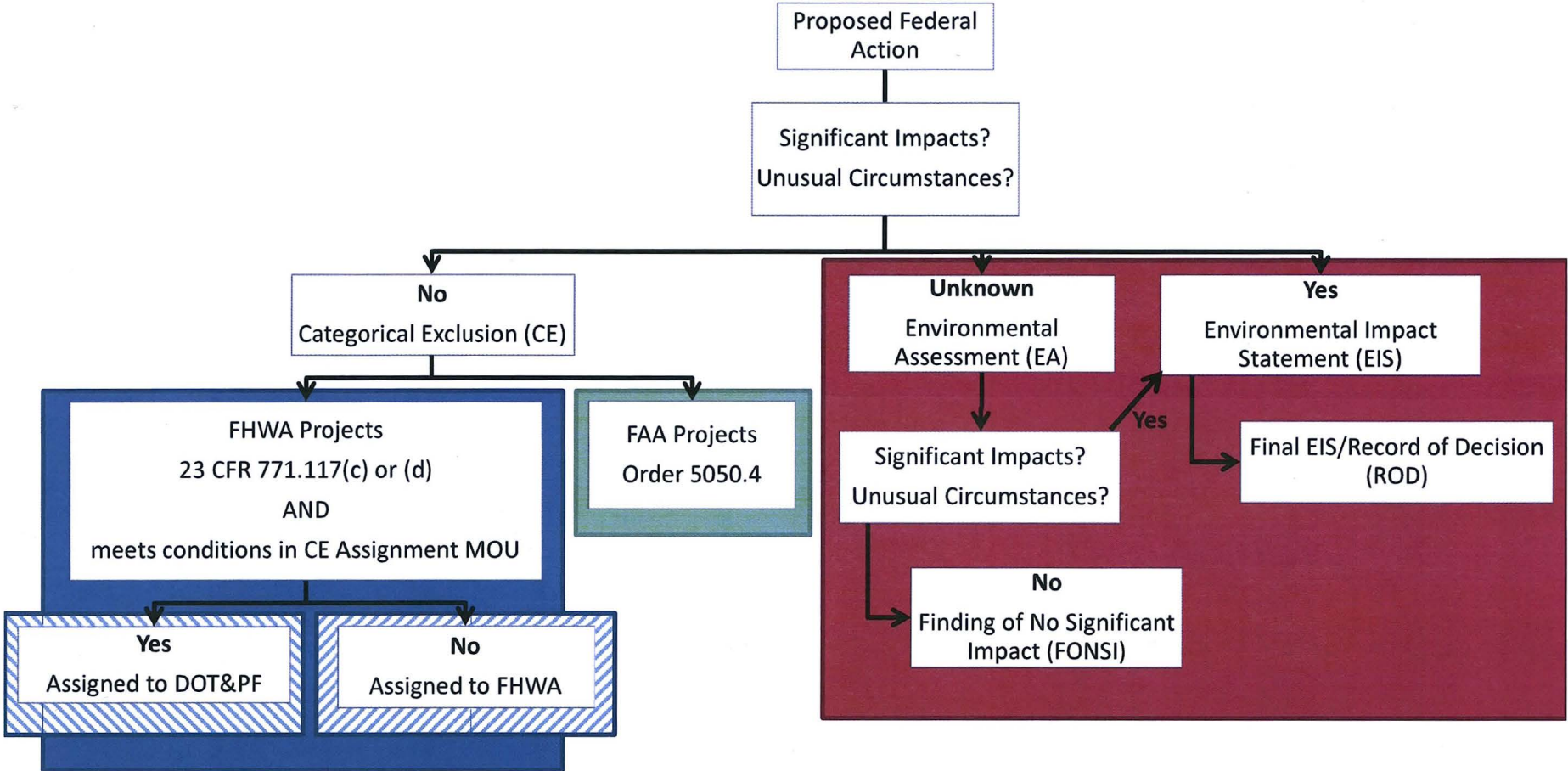


Outline

- NEPA Process
 - The “Hockey Stick”
 - Flow chart
 - Causes of delay
- Ideas for Streamlining the Permitting Process
- Project Development Process
 - Number of projects per year
 - Average amount of time
 - Bridge permitting
 - Airport permitting
 - Costs of wetlands mitigation



NEPA Process





Potential causes of delay

Prior to NEPA Approval

- Section 4(f)
- Section 106
- ESA Biological Opinions
- MMPA Authorizations
- Other resource impacts

Concurrent with/after NEPA Approval

- USCG Sect. 9 (Bridge) permit
- USACE Sect. 10/404 permit
- Bald Eagle Take permits
- Other applicable permits



Ideas for streamlining environmental permitting (1)

- NEPA Assignment Program: DOT&PF approval of EA and EIS projects
- Section 404 wetlands permitting: exemption for evacuation/emergency infrastructure
- ESA/MMPA authorizations: consultation process coordination



Ideas for streamlining environmental permitting (2)

- Section 4(f)/Section 106: relax the requirement to offer historic bridges for sale before demolition
- Bald eagle permits: programmatically approve common DOT&PF activities



2015 FAST Act – included reforms

NEPA Coordination & Acceleration

- **Sec. 1304** – Heart of NEPA & Federal Permitting Integration

Federal Permitting Efficiencies

- **Sec. 1301** – Section 106 and Section 4(f) in single decision

Bridge Efficiencies

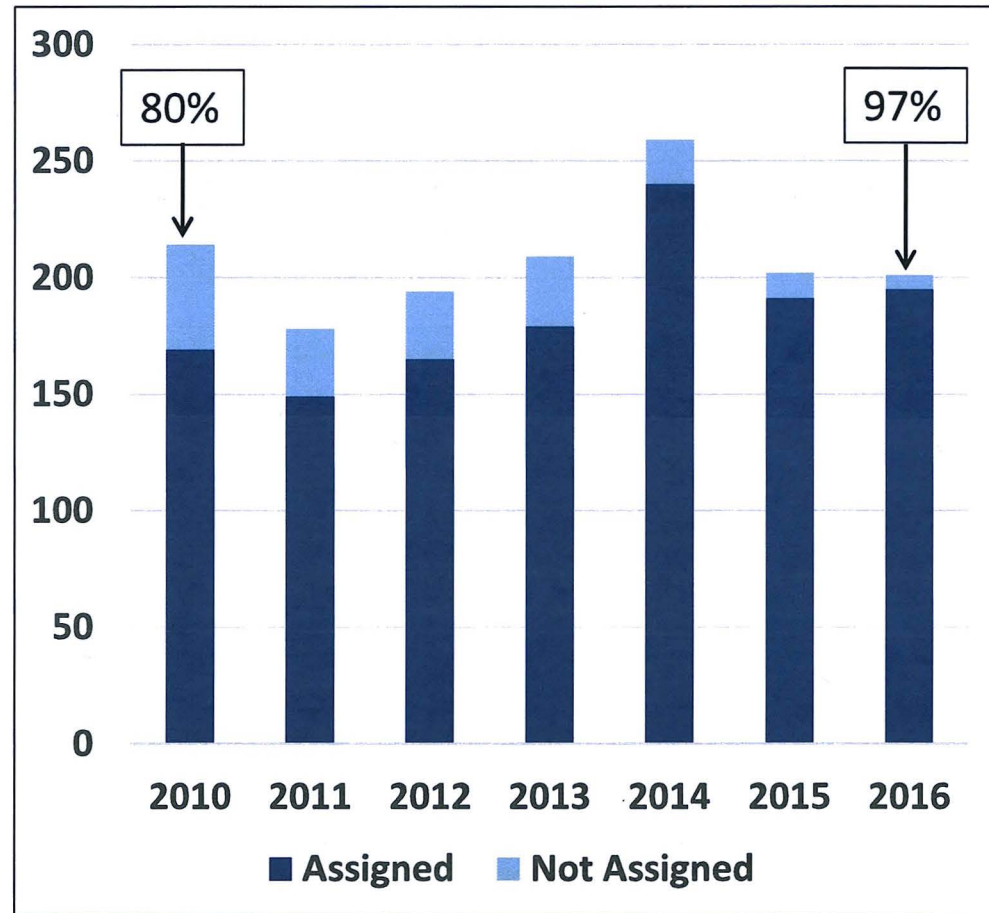
- **Sec. 1111** – Bundling bridge permits
- **Sec. 1303** – Bridge exemption from Section 4(f)

Incorporation of Wider Scope Planning Documents

- **Sec. 1305** – Integration of Planning and Environmental Review
- **Sec. 1306** – Programmatic Mitigation Plans

DOT&PF NEPA performance (since 2009 CE assignment)

- Average 190 highway projects starts (NEPA Initiation) annually
- 97% are CEs assigned to DOT&PF
 - 91% are programmatically approved in the regions
 - Average CE approval time is 112 days
- EAs and EISs are rare, but more complicated





Bridge Permitting

- Required for projects constructing or altering bridges across navigable waters.
- Bridge permitting is relatively rare
 - One permit in last 5 years
 - FHWA exemption (23 U.S.C. § 144(c) and 23 CFR part 650, Subpart H)



Airport Permitting

- FAA leads agency coordination and approves all environmental documents
 - DOT&PF project teams prepare CEs and EAs; FAA prepares EISs
 - Permitting process otherwise similar to highway projects

- FAA cannot delegate NEPA responsibilities



Wetlands Permitting and Mitigation

- USACE regulations require DOT&PF to avoid, minimize, mitigate project impacts
- Options when mitigation is required:
 - Mitigation Bank
 - In-lieu Fee Provider
 - Permittee Responsible Mitigation
- Cost of mitigation varies based on:
 - # acres impacted
 - Quality and function of wetlands
 - Price per mitigation credit
 - Location



Thank you

Contact Information:

Marc Luiken

Commissioner

marc.luiken@alaska.gov

(907) 465-3900

Lance Mearig

Chief Engineer

lance.mearig@alaska.gov

(907) 465-6958

Transportation is an *economic driver*

- Preserve, operate, and modernize existing infrastructure
- Provide transportation services
- Federally funded capital improvement projects

Impacts *daily quality of life*

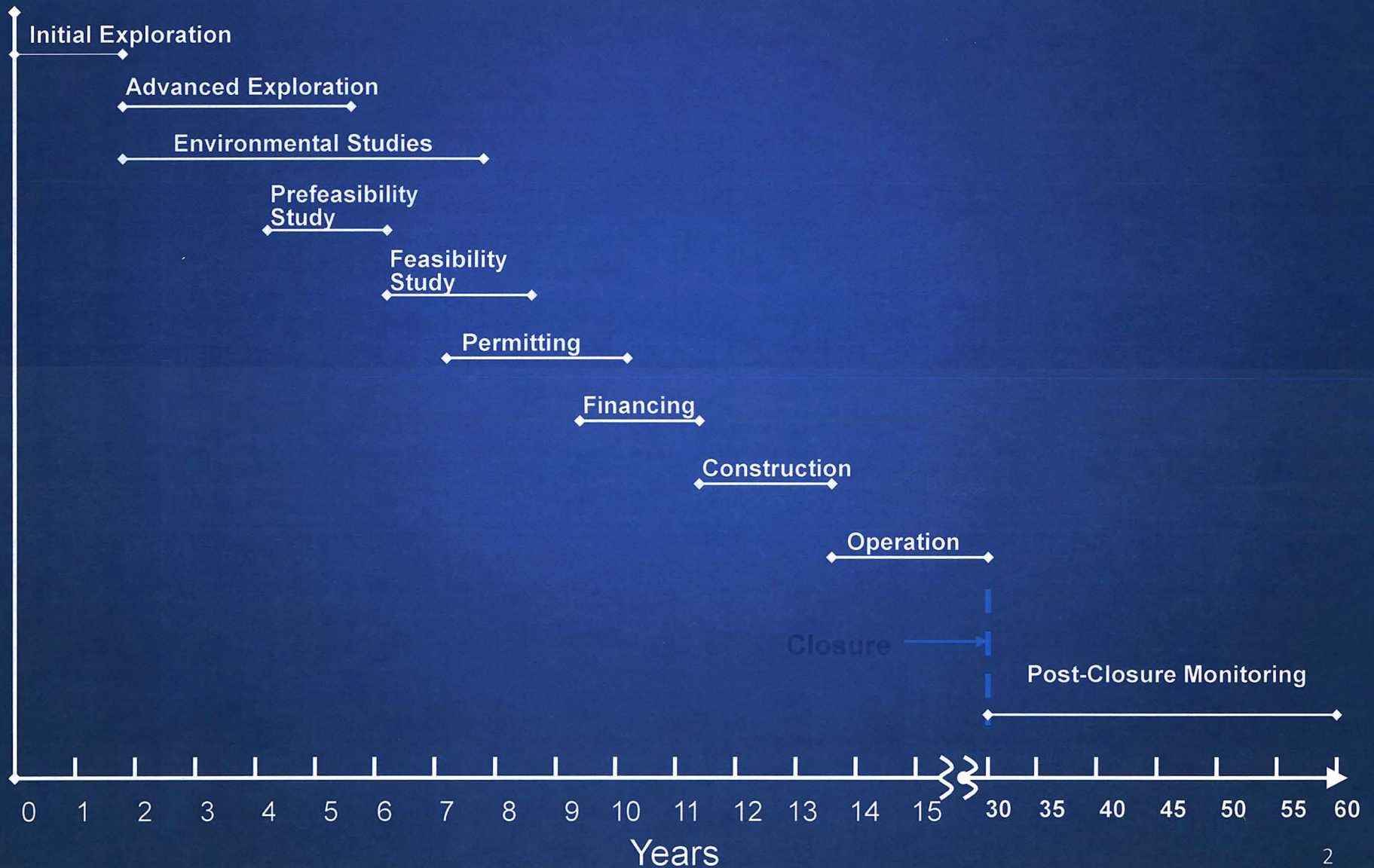
- Safety
- Mobility
- Connectivity



PERMITTING LARGE PROJECTS IN ALASKA

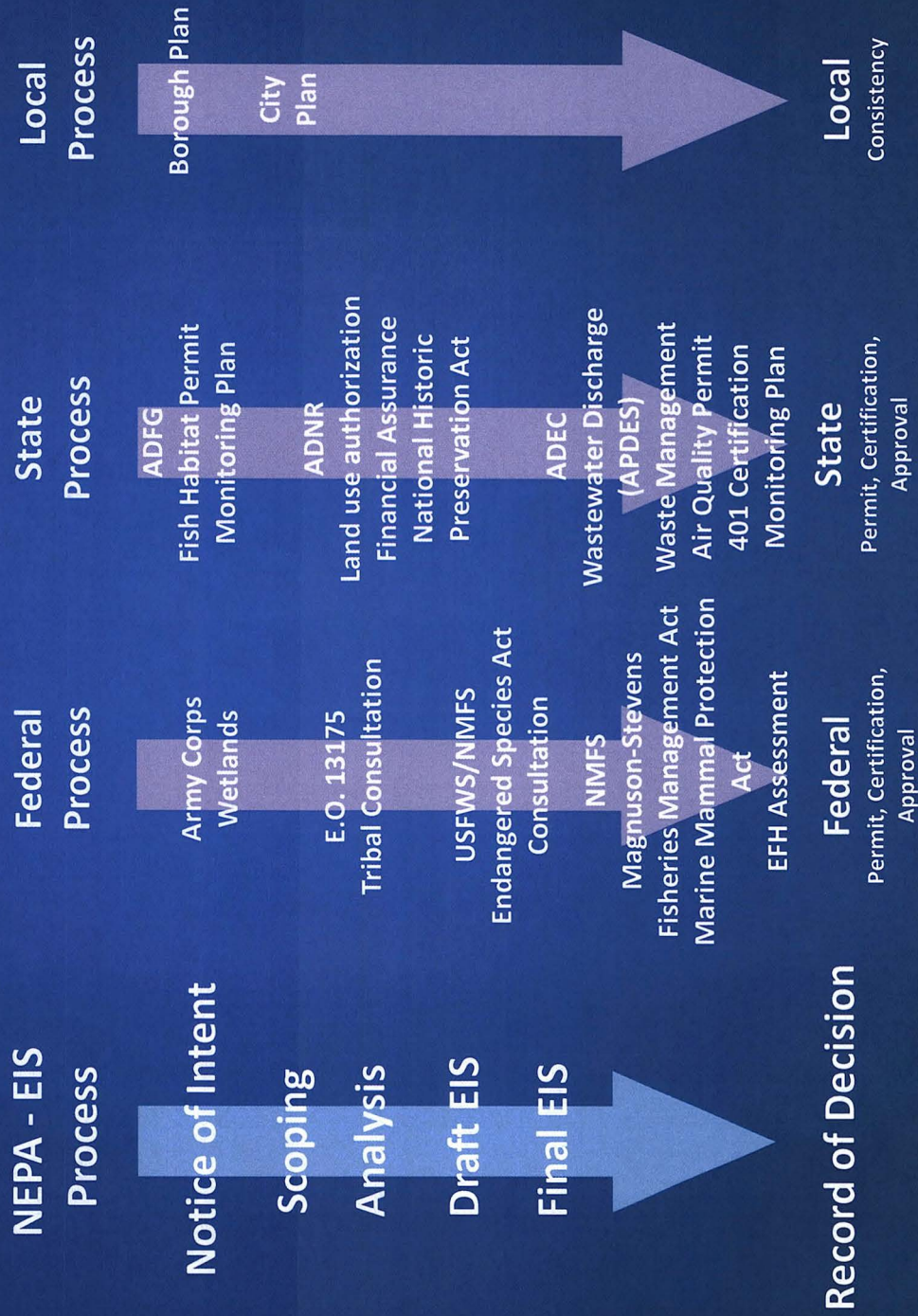
Office of Project Management and Permitting
Department of Natural Resources

POTENTIAL TIMELINE FOR MINING PROJECT



PARALLEL PROCESSES

OPMP works to integrate the permitting processes so they run concurrently



STATE/FEDERAL LARGE PROJECT PERMITTING AGENCIES

STATE DEPARTMENTS

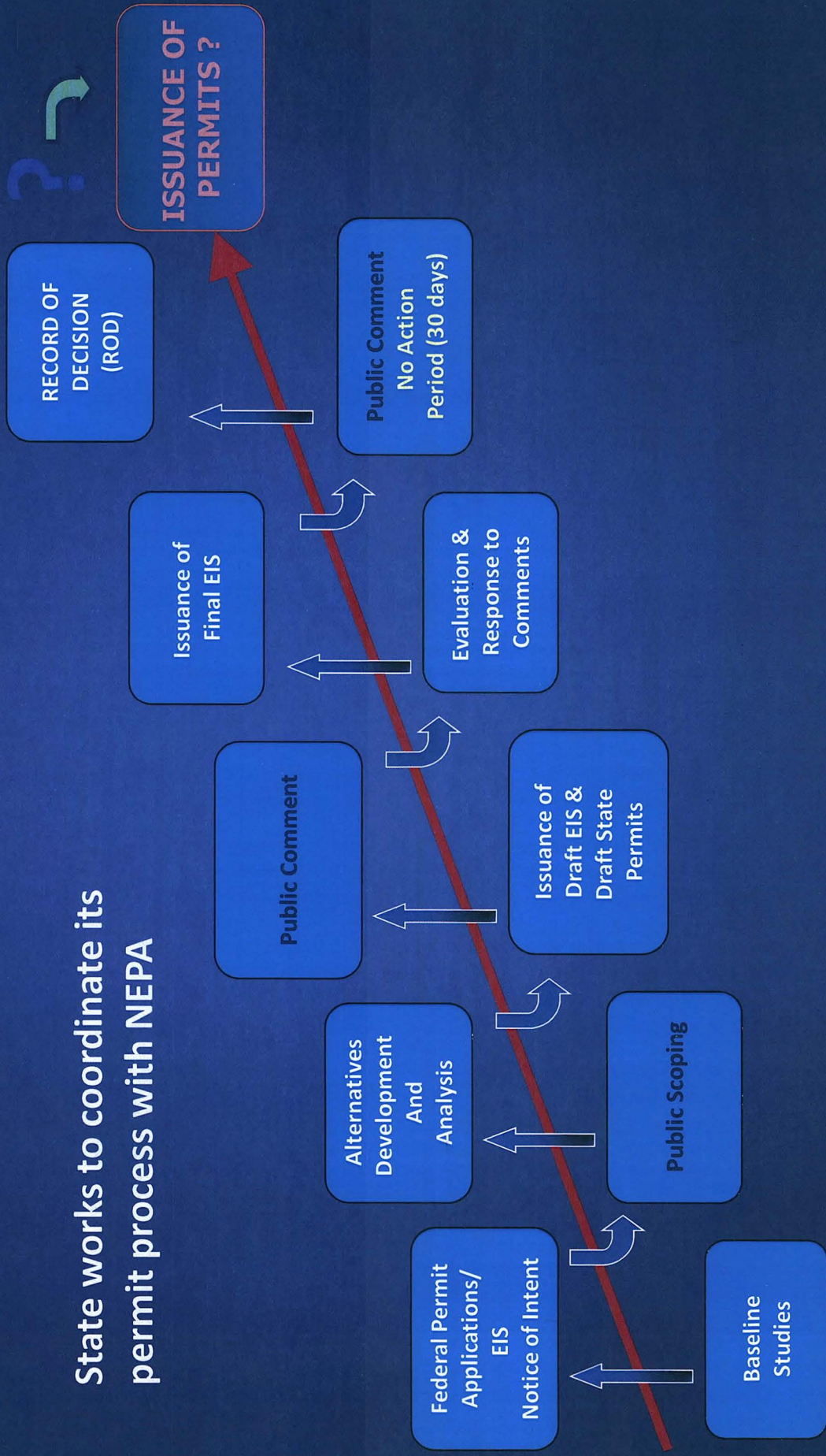
- **Natural Resources (ADNR)**
- **Transportation & Public Facilities (ADOTPF)**
- **Environmental Conservation (ADEC)**
- **Fish and Game (ADF&G)**
- **Health and Social Services (ADHSS)**

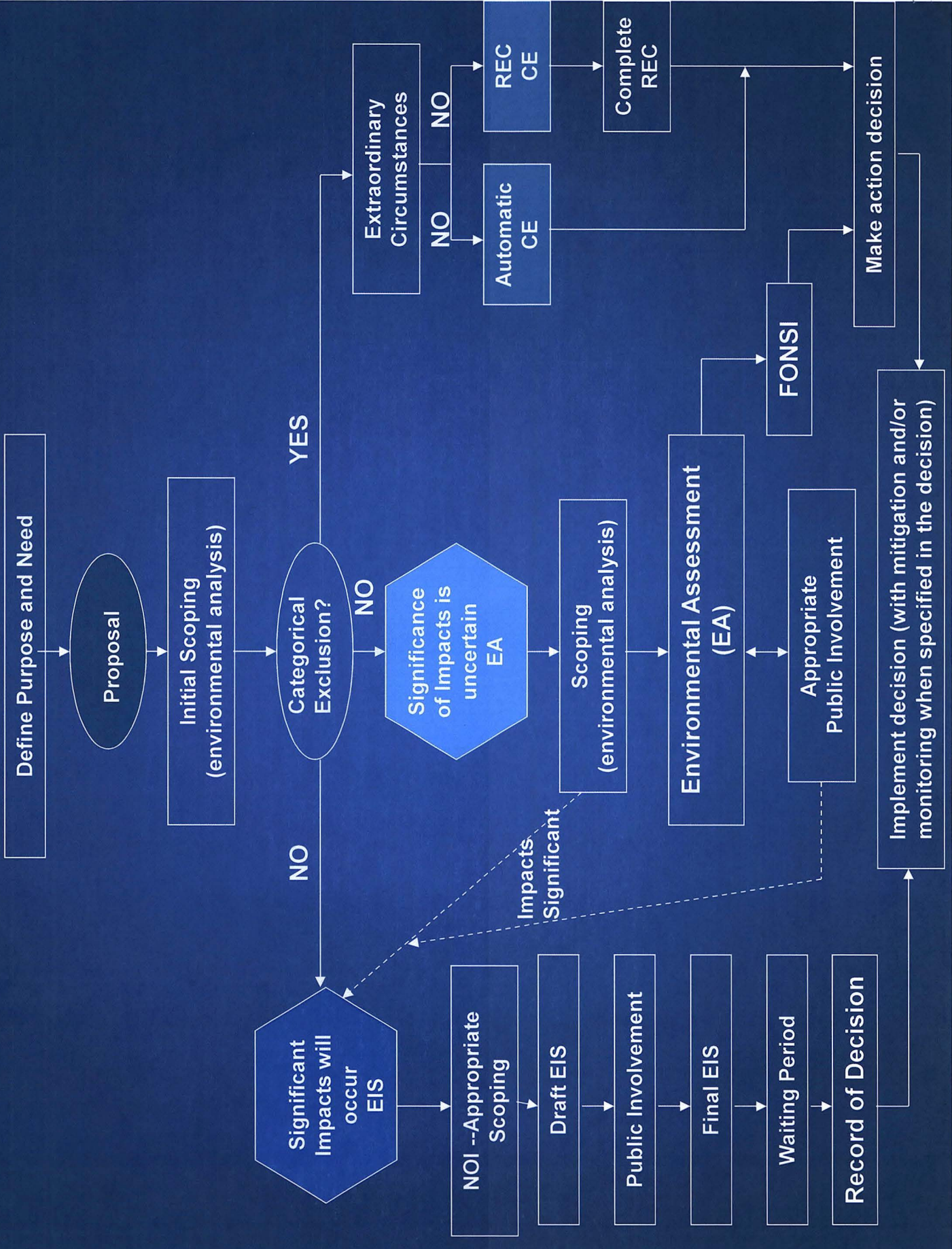
FEDERAL

- **US Army Corps of Engineers**
- **US Environmental Protection Agency**
- **US Fish and Wildlife Service**
- **NOAA-National Marine Fisheries Service**
- **Federal Land Managers: Bureau of Land Management/U.S. Forest Service/U.S. Fish & Wildlife Service/U.S. Park Service**
- **Federal Energy Regulatory Commission**
- **Bureau of Ocean, Energy Management, Regulation and Enforcement**
- **US Coast Guard**

National Environmental Policy Act (NEPA) Process for an EIS

State works to coordinate its permit process with NEPA



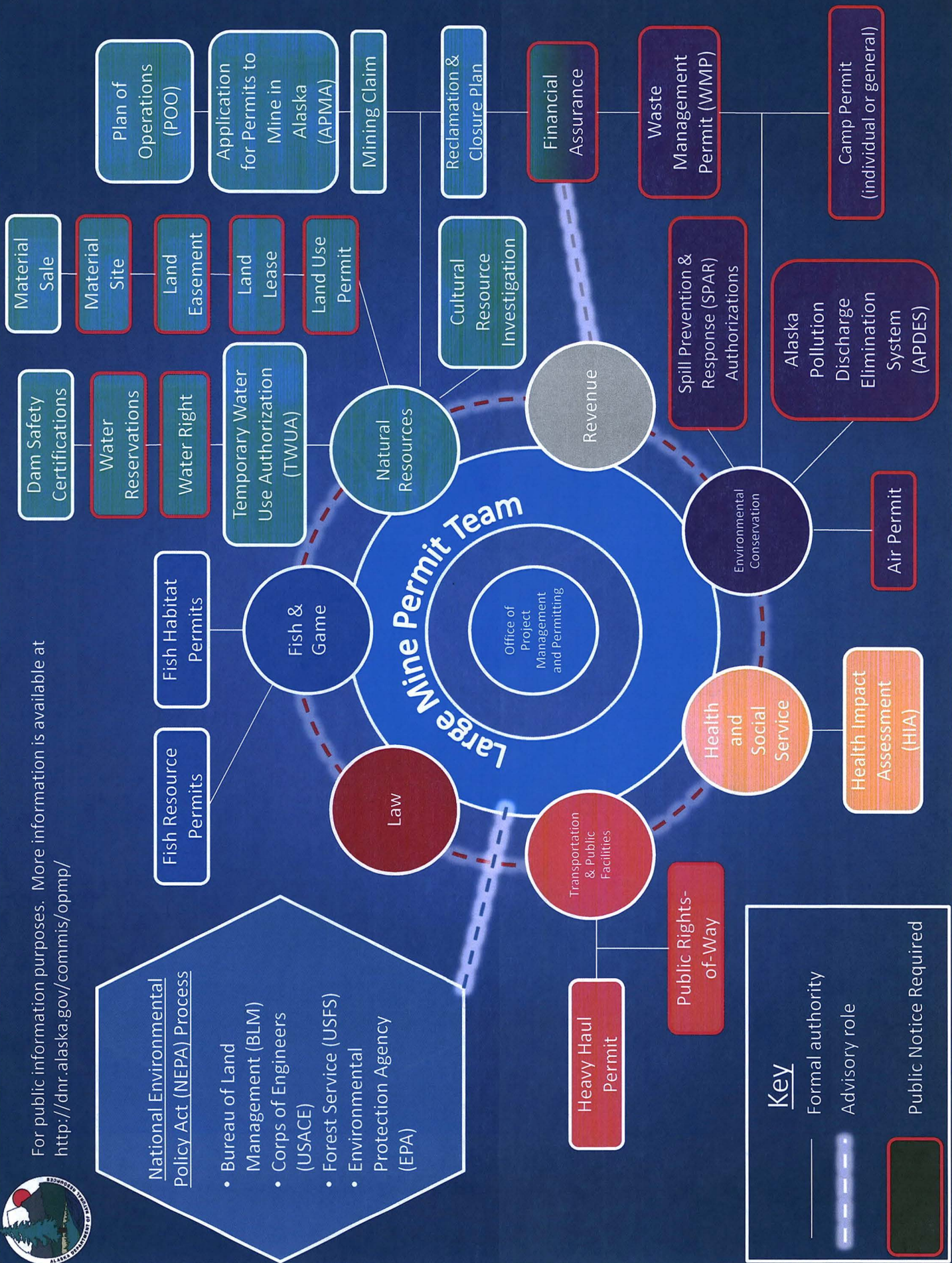




For public information purposes. More information is available at <http://dnr.alaska.gov/commis/opmp/>

National Environmental Policy Act (NEPA) Process

- Bureau of Land Management (BLM)
- Corps of Engineers (USACE)
- Forest Service (USFS)
- Environmental Protection Agency (EPA)



Key

- Formal authority
- - - Advisory role
- Red outline Public Notice Required

PROCESSES/PERMITS WITH THE LONGEST LEAD TIME

- NEPA
 - Development of an Environmental Impact Statement (EIS)
 - Baseline data collection
 - Inconsistencies in Federal processes and methodologies
- Air permits - Prevention of Significant Deterioration Permit (PSD)
 - Several years to collect baseline data

BASELINE STUDIES

State recommends early consultation with regulating agencies to help assure correct baseline information is collected.

- Surface Water Quality & Quantity
- Groundwater Quality & Quantity
- Aquatic Life (Includes Marine & Freshwater Fish, Invertebrates, etc.)
- Traditional Ecological Knowledge
- Health Impact Assessment
- Wildlife
- Wetlands
- Socioeconomics
- Subsistence
- Cultural Resources
- Air Quality
- Geotechnical
- Visual Resources
- Noise

LITIGATION

- Litigious society
- Can cause severe time delays
- Can potentially make baseline data stale
- The fear of litigation can add to timelines and can often lead a process to go above and beyond what is reasonable
- Sometimes litigation can make future decisions or processes more efficient or transparent depending on the situation and outcome

EARLY COORDINATION

- Project proponents should start a dialog with State, Federal, and local entities early in the process
 - Reduce timelines and costs by identifying and understanding agency needs & requirements early on in the process allowing applicants to propose a project that considers all of those needs in the early stages of design
 - Helps assure that everyone is on the same page about baseline data and collection

QUESTIONS AND CONTACT

Jeff Bruno

907-269-7476

jeff.bruno@alaska.gov

**Office of Project Management &
Permitting (OPMP), Department
of Natural Resources**