

**FIRST AMENDED PROGRAMMATIC AGREEMENT  
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND THE ALASKA DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES  
REGARDING IMPLEMENTATION OF SECTION 106  
OF THE NATIONAL HISTORIC PRESERVATION ACT  
FOR THE FEDERAL-AID HIGHWAY PROGRAM IN ALASKA**

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REGARDING IMPLEMENTATION OF SECTION 106  
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FOR THE FEDERAL-AID HIGHWAY PROGRAM IN ALASKA**

**WHEREAS**, the Federal Highway Administration (FHWA), under authority of 23 U.S.C. 101 et seq., implements the Federal-Aid Highway Program (FAHP) in the State of Alaska by funding and approving State and locally sponsored transportation undertakings (also referred to as projects), that are administered by the Alaska Department of Transportation and Public Facilities (DOT&PF); and

**WHEREAS**, DOT&PF administers FAHP undertakings throughout the State of Alaska as authorized by Title 23 U.S.C. 302 and Title 17 of the Alaska Administrative Code (17 AAC); and

**WHEREAS**, Title 23 United States Code Section 327 (23 USC § 327) allows the United States Department of Transportation (USDOT) Secretary, acting through the FHWA, to assign responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA) and other federal environmental laws to a State Department of Transportation through a memorandum of understanding (MOU); and

**WHEREAS**, the FHWA has assigned to the DOT&PF the responsibility for project-level environmental reviews on certain FAHP Categorical Exclusions, Environmental Assessments, and Environmental Impact Statements in accordance with 23 U.S.C. 327 (NEPA Assignment Program) as outlined in a 2017 *Memorandum of Understanding Between the Federal Highway Administration and the Alaska Department of Transportation and Public Facilities Concerning the State of Alaska's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. 327* (NEPA Assignment MOU) and this assignment is expected to continue under subsequent NEPA Assignment MOU renewals; and

**WHEREAS**, pursuant to the NEPA Assignment MOU, DOT&PF has assumed the FHWA's responsibilities under Section 106 of the National Historic Preservation Act of 1966, as amended (54 USC 306108) (NHPA), and the associated implementing regulations at 36 CFR Part 800 with the exception of certain undertakings for which FHWA has retained the federal role as designated in the MOU; and

**WHEREAS**, this Programmatic Agreement (Agreement) applies to all FAHP undertakings [NEPA Assignment Program and non-NEPA Assignment Program (the Programs)]; and

**WHEREAS**, the FHWA and the DOT&PF have determined that implementation of the FAHP in Alaska may result in effects upon properties included in or eligible for inclusion in the National

Register of Historic Places (NRHP) (36 CFR Part 60), hereafter referred to as historic properties; and

**WHEREAS**, on October 14, 2014, the FHWA, the Alaska State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP) and the DOT&PF entered into a Programmatic Agreement (2014 Agreement) regarding the implementation of Section 106 of the NHPA to set forth a streamlined review process for considering the effects of undertakings under Section 106 for the FAHP, and to allow the DOT&PF to carry out certain Section 106 process actions on behalf of the FHWA for non-assigned program undertakings; and

**WHEREAS**, in development of the 2014 Agreement the FHWA invited consultation with potentially affected federally recognized Tribes as defined in the 77 Federal Register 47868-47873 (August 10, 2012 notice), regional and village corporations as defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), local governments, certified local governments, and local historic preservation groups, and had taken any comments received into account; and

**WHEREAS**, at that time, the DOT&PF was operating under a previous MOU with the FHWA that assigned the FHWA's NEPA and other federal environmental law responsibilities to the DOT&PF for certain FAHP projects processed as categorical exclusions; a program authorized under 23 USC 326 and known as the "6004 Program"; and

**WHEREAS**, the DOT&PF is now operating under the NEPA Assignment MOU authorized under 23 USC 327; and

**WHEREAS**, this Agreement amends the 2014 Agreement to account for the change in assignment programs; and

**WHEREAS**, this Agreement does not supersede other existing agreements currently in use by the FHWA, the DOT&PF, the SHPO, and the ACHP; other existing agreements remain in force and are separate from this Agreement;

**WHEREAS**, the FHWA Alaska Division Administrator is the agency official responsible for ensuring that the FAHP in Alaska complies with Section 106 of the NHPA, and codified at its implementing regulations, 36 CFR 800, for non-NEPA Assignment Program undertakings; and

**WHEREAS**, the DOT&PF is deemed to be the federal agency for all FAHP NEPA Assignment Program undertakings it has assumed, and has established the Statewide Environmental Program Manager at DOT&PF as the agency official responsible for ensuring that the FHWA undertakings assigned to DOT&PF under the NEPA Assignment MOU and this Agreement comply with Section 106 of the NHPA; and

**WHEREAS**, the FHWA recognizes that it has a unique legal relationship with federally-recognized Indian Tribes (Tribes) established in the Constitution of the United States, treaties, statutes, and court decisions, and, therefore, consultation with an Indian Tribe must recognize the government-to-government relationship between the federal government and the Tribes; and

**WHEREAS**, the FHWA retains responsibility for government-to-government consultation with Tribes when FHWA's participation has been so requested by the Tribes; and

**WHEREAS**, this Agreement shall not apply to undertakings that occur on or affect tribal lands, which are all lands within the exterior boundaries of any Indian reservation, and all dependent Indian communities (36 CFR 800.16(x)); for such undertakings the FHWA shall follow the procedures in 36 CFR 800; and

**WHEREAS**, the Alaska Department of Natural Resources, Office of History and Archaeology (OHA) under SHPO's direction maintains the Alaska Heritage Resources Survey (AHRS) a restricted statewide inventory of Alaska's reported historic, prehistoric, and archaeological resources under the authority of AS 41.35.070(a); and

**WHEREAS**, the purpose of the AHRS is to assist with the resource identification and evaluation efforts for research, planning, protection, and development, and the AHRS is available to DOT&PF and FHWA staff via web access; and

**WHEREAS**, the DOT&PF maintains professional staff meeting the professional qualifications standards established by the Secretary of the Interior (as defined in 36 CFR 61) in the Statewide Environmental Office (SEO) and the regional offices; and

**WHEREAS**, cooperating federal agencies that recognize the FHWA or DOT&PF as the lead federal agency for an undertaking may fulfill their Section 106 obligations by adopting the process carried out by FHWA or DOT&PF as allowed under 36 CFR 800.2(a)(2); and

**NOW, THEREFORE**, the FHWA, the SHPO, the ACHP, and the DOT&PF, as signatory parties to this amended Agreement, agree that the FAHP in Alaska shall be carried out in accordance with the following stipulations in order to take into account the effects of the Programs on historic properties in Alaska and that these stipulations shall govern compliance of the FAHP with Section 106 of the NHPA until this Agreement expires or is terminated.

## **STIPULATIONS**

The FHWA and the DOT&PF shall ensure that the following measures are carried out:

### **I. APPLICABILITY AND SCOPE**

- A. Streamlined Project Review: Through this Agreement, the FHWA and the DOT&PF establish Programmatic Allowances (Allowances) through two tiers – Tier 1 and Tier 2 – of streamlined review for certain undertakings (Stipulation V *Streamlined Project Review*). These undertakings are processed by DOT&PF and do not require further consultation under Section 106.
- B. Delegation of FHWA non-NEPA Assignment Program authorities to DOT&PF: The DOT&PF is authorized to carry out the Delegated Section 106 Process (Appendix D

*Delegated Section 106 Process*) for all undertakings that do not meet the established criteria for the streamlined review process as defined for the Tier 1 and Tier 2 projects.

## II. PROFESSIONAL QUALIFICATIONS STANDARDS

- A. The DOT&PF commits to employing professional staff meeting the Professional Qualifications Standards established by the Secretary of the Interior (48 FR 44738-44739) in the SEO and the regional offices. The DOT&PF staff who possess professional qualifications are referred to in this Agreement as a professionally qualified individual (PQI).
- B. When the PQI responsible for the review of an undertaking requires cultural resource expertise outside of his/her area of specialty, the PQI will consult with another PQI having that area of expertise, or request the assistance of SHPO staff.
- C. In accordance with 36 CFR 800.2 (a)(3), Section 106 documentation may be prepared by a consultant (or a local agency professional) who meets the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) in the appropriate field (Stipulation IX.A *Documentation*). Consultant responsibilities do not include formally approving Section 106 documents on behalf of the DOT&PF, making official agency findings, signing consultation letters, or otherwise functioning as an agency official for the purposes of Section 106. The consultant may seek technical assistance and guidance from the SHPO.

## III. RESPONSIBILITIES

The following section identifies the responsibilities of the FHWA, the DOT&PF, and the SHPO in complying with the terms of this Agreement. These responsibilities are listed in more detail in the Stipulation IX *Administrative Stipulations*. Under the NEPA Assignment Program, the DOT&PF is deemed a federal agency and has responsibility for conducting the Section 106 process for the undertakings it has assumed under the NEPA Assignment MOU. For all other FAHP undertakings, the DOT&PF will be acting under the authority delegated by the FHWA in this Agreement.

- A. The FHWA Responsibilities
  1. On all FAHP projects, the FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with federally recognized Tribes currently defined in the 77 Federal Register 47868-47873 (August 10, 2012 notice) and as updated. Notwithstanding any other provision of this stipulation, the FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement. The FHWA may re-assume the Section 106 responsibility for a project from DOT&PF under limited circumstances, defined in the NEPA Assignment MOU. In particular, the FHWA may re-assume Section 106 responsibility for a project if tribal consultation is not adequately resolved. Should this occur, the FHWA will notify all consulting parties for the project.

2. For FAHP undertakings that are not assigned under the NEPA Assignment Program, the FHWA is the federal agency responsible for ensuring that the FAHP in Alaska complies with Section 106 review for all undertakings with the potential to affect historic properties prior to approving the expenditure of any federal funds on the undertaking or the issuance of any license or permits. On such projects, the FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out for compliance with Section 106 of the NHPA. The FHWA Alaska Division Administrator or the FHWA Environmental Program Manager may inquire as to the status of any such undertaking at any point in the Section 106 process, and at their discretion may directly participate. Should the FHWA choose to directly participate in the consultation for an undertaking, it may either carry out consultation in accordance with the procedures in this Agreement or follow procedures in 36 CFR 800.3-800.6.
3. Review of NEPA Assignment Program undertakings: For NEPA Assignment Program undertakings, the FHWA may conduct interviews, review any project records, or conduct any other review it deems appropriate as part of its monitoring responsibilities under the terms of the NEPA Assignment MOU.

B. The DOT&PF Responsibilities

1. The DOT&PF is responsible and liable for all NEPA Assignment Program undertakings it has assumed, since under the NEPA Assignment MOU it has been deemed the responsible federal agency. For all non-NEPA Assignment undertakings, the DOT&PF is acting under the authority delegated by the FHWA in this Agreement. The DOT&PF will provide notice to the SHPO, whether it is consulting on behalf of the FHWA or has assumed FHWA responsibility under the NEPA Assignment Program. Except on such occasions when the FHWA elects to consult directly with the SHPO or the ACHP for non-NEPA Assignment Program undertakings, all Section 106 consultation with the SHPO and determinations and findings made under this Agreement will be performed or approved by a PQI. The PQI may consult, or seek advice or technical assistance, at any time with the SHPO on any undertaking.
2. In this Agreement, a reference to "PQI" should be interpreted to indicate that such responsibilities can be fulfilled either by SEO PQI or Regional PQI. Should a Regional PQI not be available for processing documentation and consultation, another Regional PQI or SEO PQI will conduct the review.
3. The SEO PQI and the Statewide Environmental Program Manager will be responsible for the Stipulation IX.D *Reporting Requirements*, and will monitor the Stipulation V *Streamlined Project Review* tracking. The Regional PQI and the Regional Environmental Manager (REM) process FAHP undertakings within their respective regions and have project level responsibilities to ensure that the terms of this Agreement are carried out in the regional offices.
4. As further defined in Appendix D *Delegated Section 106 Process*, the SEO PQI will participate in reviews of findings of adverse effect (36 CFR 800.5), and participate in consultations on resolutions of adverse effect (36 CFR 800.6), and resolutions of dispute (36 CFR 800.5(c)(2)). The SEO PQI has the discretion to participate in the consultations as needed.

5. For resolutions of adverse effect (36 CFR 800.6), the DOT&PF Regional Directors will have signature authority on the Memorandum of Agreement (MOA) or Programmatic Agreement (PA) document for regional FAHP undertakings. For projects where the SEO takes the lead environmental processing role, the DOT&PF Chief Engineer will have signature authority on the MOA or PA document for FAHP undertakings.
6. The PQI staff and the Statewide Environmental Program Manager are included in the DOT&PF Cultural Resources Team (CRT). The CRT promotes compliance of the DOT&PF Section 106 review process, works to develop consistent protocol among the regional offices, and monitors the DOT&PF Section 106 program. The Regional PQIs will be responsible for project tracking, while the SEO will be responsible for the monitoring and reporting requirements of this Agreement in accordance with Stipulation IX.D *Reporting Requirements*.
7. The SEO will pursue funding through the Statewide Transportation Improvements Program (STIP) to help support SHPO priorities: maintenance and continued development of the AHRS, the OHA cultural resources liaison position for the DOT&PF, and Section 106 planning studies for transportation corridors.

C. The SHPO Responsibilities

1. The SHPO will advise and assist the FHWA and the DOT&PF in carrying out responsibilities under this Agreement. The SHPO also offers technical assistance and guidance to the FHWA, the DOT&PF, and other parties.
2. The OHA cultural resources liaison position, under the direction of the SHPO, will provide technical assistance. This liaison will provide counsel as requested by the DOT&PF to aid the PQI review and approval of Tier 1 and Tier 2 projects and the delegated Section 106 process for individual undertakings.
3. As identified under Administrative Stipulation IX.C-D *Review and Evaluation of this Agreement and Reporting Requirements*, the SHPO will review and monitor activities carried out pursuant to this Agreement, which include the reviews of the Tier 1 and Tier 2 Project Tracking and the Annual Monitoring Report, and participation in the annual meeting to evaluate the terms and activities of this Agreement.

D. Cooperating Federal Agencies

1. Cooperating Federal agencies who recognize DOT&PF or FHWA as the lead agency for an undertaking and notify DOT&PF and SHPO in writing may fulfill their obligations under Section 106 of the NHPA according to 36 CFR 800.2(a)(2), provided that DOT&PF follows the requirements of this Agreement and the cooperating Federal agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by DOT&PF.

**IV. CONSULTATION WITH THE TRIBES**

- A. The FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with federally recognized Tribes currently defined in the 77 Federal Register 47868-47873 (August 10, 2012 notice) and as updated. Notwithstanding any other provision of this stipulation, the

FHWA shall honor the request of any Tribe for further government-to-government consultation regarding an undertaking covered by this Agreement. The FHWA shall conduct the government-to-government consultation, and, if the Tribe agrees, involve DOT&PF in that consultation process.

- B. Undertakings processed in accordance with Stipulation V *Streamlined Project Review* (the Programmatic Allowances defined in Appendix B) will generally not involve further tribal consultation. Those projects have been determined through the consultation review of this Agreement to have low potential to affect historic properties and will not require further Section 106 review. However, should tribal concerns or public controversy related to historic preservation be identified (Tier 2 Allowances, General Conditions), the DOT&PF will conduct the delegated Section 106 process for the entire undertaking in accordance with 36 CFR 800.3-800.6, pursuant to Appendix D *Delegated Section 106 Process*.
- C. For those undertakings processed in accordance with Appendix D *Delegated Section 106 Process*
1. The DOT&PF will contact the Tribes early in an undertaking's development by letter using the most current agreed upon process between the FHWA and the DOT&PF. Follow up consultations with the Tribes will be conducted by either the DOT&PF or the FHWA, in accordance with the wishes of the Tribes.
  2. The DOT&PF on behalf of the FHWA will ensure that consultation with the Tribes is initiated early in the planning process using currently approved letter templates to identify places of traditional religious and cultural importance to Tribes and to allow adequate time for their consideration. However, upon receipt of a written request from any Tribe or officially designated representative of a Tribe to consult with the FHWA in lieu of the DOT&PF, the FHWA will consult with that Tribe for the particular undertaking.
  3. The DOT&PF will ensure that consultation continues with the Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking. If a Tribe objects to a determination of NRHP eligibility, a finding of effect, or a resolution of adverse effect, the FHWA will enter the consultation process at the request of the Tribe.

## V. STREAMLINED PROJECT REVIEW

Programmatic Allowances are identified under this Agreement as types of projects that have been determined to have low potential to affect historic properties if implemented as specified in Appendix B Programmatic Allowances. These projects will not require further Section 106 review or consultation. The PQI will screen projects to verify whether the project is on either of the Tier 1 or Tier 2 Allowances lists and meets specified criteria. If the PQI determines that any portion of a project's scope of work does not conform to the Tier 1 or Tier 2 lists, the DOT&PF shall conduct a delegated Section 106 process for the entire project in accordance with Appendix D *Delegated Section 106 Process*.



- A. Programmatic Allowances (Allowances): Appendix B defines the lists of Allowances. The Allowances consist of two tiers – Tier 1 and Tier 2. Review and processing will be accomplished through a PQI. The PQIs are encouraged to consult with the SHPO cultural resources liaison, for technical assistance and guidance.
1. Tier 1 Allowances: When a project is determined by a PQI to qualify as a Tier 1 Allowance, the project is documented to the file using the Streamlined Project Review form (Appendix C).
  2. Tier 2 Allowances:
    - a. These projects will result in limited changes to existing conditions.
    - b. The project must consist entirely of Allowances found on the Tier 2 list, or a combination of the Tier 1 and Tier 2 lists, to qualify for this review process.
    - c. These projects have agreed upon criteria that must be met to qualify, including conditions noted for specific Allowances and General Conditions.
    - d. When a project is determined by a PQI to qualify as a Tier 2 Allowance, the project is documented to the project file using the Streamlined Project Review form.
- B. For Regional Office projects, the PQI will provide a copy of the Streamlined Project Review form to the REM and the SEO PQI. For Statewide Office projects, the SEO PQI will document review of the project in the applicable project files and if the project is in a specific region provide a copy to the Regional PQI. Administrative Stipulation IX.D *Review and Evaluation of this Agreement and Reporting Requirements*, provides for the tracking of Tier 1 and Tier 2 undertakings.

## VI. EMERGENCY SITUATIONS

Flexibility for emergency situations is addressed at 36 CFR 800.12. For the purposes of this Agreement, emergency projects are 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. The procedures to take historic properties into account will be:

- A. The PQI will determine if the emergency repair qualifies for Stipulation V *Streamlined Project Review*.
- B. Initial Emergency Responses: These are repairs to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities initiated within thirty (30) days of the triggering emergency situation. A formal emergency or disaster declaration is not required to implement this process.
  1. 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.

2. 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.

C. Follow-up Permanent Repairs: These are repairs 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 (Appendix D).

## VII. DISCOVERIES

### A. Planning for Discoveries

When the DOT&PF's identification efforts in accordance with 36 CFR 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking or the PQI recommends archaeological monitoring due a high potential for discovery the DOT&PF will include a plan for discovery and/or monitoring. Procedures for Archaeological Monitoring are provided in Appendix F.

### B. Post-Review Discoveries

1. If previously unidentified cultural resources, or unanticipated effects, are discovered during construction of the project, that portion of the project will stop immediately, in accordance with *DOT&PF Standard Specification Section 107-1.01 and 1.02 Legal Relations and Responsibility to Public: Laws to be Observed; Permits, Licenses, and Taxes; and Section 107-1.07 Archaeological or Historical Discoveries* (Appendix G). No further project construction activities in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
2. The DOT&PF will consult with the SHPO, the Tribes, (and the FHWA for non-NEPA Assignment Program undertakings) as appropriate, pursuant to the discovery plan procedures to record, document, and evaluate the NRHP eligibility of the property and the project's effect on the property; and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
3. If neither the SHPO nor a Tribe objects to the DOT&PF's plan for addressing the discovery, within seventy-two (72) hours of being contacted, the DOT&PF will carry out the requirements of 36 CFR 800.13 for post-review discoveries and the ACHP does not need to be notified. If there is an objection, DOT&PF shall take into account

the recommendations of the objecting party in accordance with 36 CFR 800.13(b)(3).

### **VIII. PROCEDURES FOR DISCOVERY OF HUMAN REMAINS**

Any time human remains are encountered, that portion of the work affecting the discovery will stop immediately and the DOT&PF will immediately take steps to secure and protect the discovery location, and proceed in accordance with the *Procedures and Laws Pertaining to the Discovery of Human Remains* provided in Appendix H.

### **IX. ADMINISTRATIVE STIPULATIONS**

#### **A. Documentation**

1. All documentation that supports determinations and findings made under this Agreement will be consistent with 36 CFR 800.11, and will follow the *OHA Standards and Guidelines for Investigating and Reporting Archaeological and Historical Properties in Alaska (Historic Preservation Series #11)* and the Secretary of the Interior's Standards and Guidelines for reports (48 FR 44734-44737), and with applicable guidelines and procedures of land-managing agencies that may be affected by the undertaking.
2. Documentation prepared by consultants (or local agency professionals) in support of any determinations and findings will be submitted to the DOT&PF for review and approval by a PQI. The professional qualifications of the consultant (or local agency professional) are to correspond with the resources being evaluated. When the PQI responsible for the review of an undertaking requires cultural resource expertise outside of his/her area of specialty, the PQI will consult with another PQI having that area of expertise, and/or request the assistance of the SHPO cultural resources liaison, to identify the appropriate SHPO staff having that area of expertise. The PQI will submit all project related documentation to the SHPO. The DOT&PF will not transmit to the FHWA or the SHPO any documentation unless it has been reviewed and approved by a PQI.
3. All reports required under this Agreement, other than the actual project records maintained at the regional offices, will be kept on file at the DOT&PF SEO and made available to consulting parties and the public as stipulated by the Agreement, consistent with applicable confidentiality requirements (as described in 36 CFR 800.11(c)).

#### **B. Training**

Periodic training on Section 106 compliance and on this Agreement is needed to maintain an understanding of the requirements of each. Required training for the PQI is: *Implementation of the Alaska 106 PA* (a training session to be developed by DOT&PF), *Beyond Compliance: Historic Preservation in Transportation Project Development* or a substitute Section 106 Basics course, an advanced Section 106 course on writing agreement documents, and the OHA AHRS database training, as made available in Alaska. Appendix E provides the details of this training and the DOT&PF, the FHWA, and the SHPO staff required to receive the training under the provisions of this Agreement.

### C. Review and Evaluation of this Agreement

1. Upon request, signatory parties to this Agreement may review project files or request records from project files to determine if the appropriate review and processing procedures were applied in making decisions and determinations, and that project review and compliance documentation is complete. Copies of requested project documentation will be provided by the DOT&PF (i.e., the DOT&PF regional or SEO office responsible for the processing and development of the project).
2. The SEO will coordinate an annual meeting among the DOT&PF, the FHWA, and the SHPO, to be held by the end of March, to evaluate the Agreement and to suggest any revisions to its provisions based on the review of the Annual Program Review and Monitoring Report draft (Stipulation IX.D.2.a *Annual Program Review and Monitoring Report*). Thirty (30) calendar days prior to any such meetings, the ACHP will be notified and may participate at its discretion.

### D. Reporting Requirements

The DOT&PF will provide information and documentation on the undertakings carried out pursuant to this Agreement to the FHWA, the SHPO, and the ACHP for their review. This information will be provided in two forms:

1. Tiers 1 and 2 Project Tracking
  - a. On a semiannual basis, the SEO PQI will compile a statewide tracking list of the Tier 1 and Tier 2 undertakings that were processed during the previous six (6) month period (October 1 – March 31 and April 1 – September 30). The list will be based on tracking information provided by the Regional PQIs, with a breakout according to NEPA Assignment and non-NEPA Assignment Program undertakings. The Statewide Environmental Program Manager will submit the tracking information to the FHWA and the SHPO by the end of the following month (submitted by April 30 and October 31).
  - b. Project Tracking will be made available to the public on the DOT&PF SEO website.
2. Annual Program Review and Monitoring Report
  - a. The SEO will conduct an annual program review and prepare a monitoring report on the undertakings carried out under this Agreement for the previous federal fiscal year. The Statewide Environmental Program Manager will make this information available to the FHWA, the SHPO, and the ACHP in the form of an Annual Report. The SEO will prepare the first Annual Monitoring Report following completion of the first federal fiscal year under this Agreement.
  - b. The report will provide program observations, conclusions, and recommendations. The report will include a complete list of undertakings processed under the Agreement the previous year, including categories of programmatic allowances and any resolutions of adverse effects. The report may also document accomplishments, public objections, post-review discoveries, identification of issues, and provide recommendations for improving the implementation of the Agreement. The reporting will assist the signatories in the evaluation of the implementation and effectiveness of the Agreement.

- c. Annual Monitoring Report development will proceed according to the following timelines:
  - i. The DOT&PF Statewide Environmental Program Manager will submit the Draft Annual Monitoring Report to the FHWA, ACHP, and the SHPO for review no later than January 31.
  - ii. The FHWA, ACHP, and the SHPO will provide any comments to the DOT&PF no later than two (2) weeks prior to the annual meeting, required to occur by the end of March. The DOT&PF will address the comments and resubmit the final report by May 15. The FHWA will provide written approval of the Final Annual Monitoring Report by June 15.
  - iii. After receipt of written approval, the DOT&PF Statewide Environmental Program Manager will forward the Final Annual Monitoring Report to the FHWA, the SHPO, and the ACHP by June 30.
- d. Annual Monitoring Reports will be required thereafter until this Agreement is terminated or expires.
- e. Annual Monitoring Reports will be made available to the public on the DOT&PF SEO website.

E. Resolving Objections to Implementation of this Agreement

1. Should any signatory party object in writing to the DOT&PF or the FHWA regarding the manner in which the terms of this Agreement are carried out, the party who received the objection will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. The FHWA will honor the request of any signatory party to participate in the objection consultation and will take any comments provided by such parties into account. The FHWA will establish a reasonable time frame for objection consultations.
2. If the objection is resolved through consultation, the FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
3. If after initiating objection consultation, the FHWA determines that the objection cannot be resolved through consultation, the FHWA, in consultation with all signatory parties, shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including the FHWA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
  - a. Advise the FHWA that the ACHP concurs in the FHWA's proposed response to the objection, whereupon the FHWA will respond to the objection accordingly; or
  - b. Provide the FHWA with recommendations, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
  - c. Should the ACHP not exercise one of the foregoing options within thirty (30) calendar days after receipt of all pertinent documentation, the FHWA may assume the ACHP's concurrence in its proposed response to the objection.
4. The FHWA shall take into account all of the ACHP recommendation or comment and all comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection.

5. The FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
6. The FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the process with this Stipulation has been followed.

#### F. Amendment

1. Agreement: Any signatory party to this Agreement may at any time propose amendments to the body of the Agreement, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties. Amendments go into effect on the date of the last signature
2. Agreement Appendices: The FHWA, the DOT&PF, and the SHPO may agree to amend the appendices to this Agreement through consultation without requiring amendment to the body of the Agreement, unless the FHWA, the DOT&PF, and the SHPO through such consultation decide otherwise.
  - a. With the exception of Appendix D *Delegated Section 106 Process*, amendments to the appendices are allowed with written approval of the FHWA, the DOT&PF, and the SHPO. Any amendments to Appendix D will also include written approval from the ACHP.
  - b. If the FHWA, the DOT&PF, and the SHPO agree to amend an appendix, the DOT&PF will obtain the written concurrences on the amendment, and will append the written concurrences to the Agreement. The DOT&PF shall notify all signatory parties of the amendment within thirty (30) calendar days of the amendment approval date. Appendix I has been reserved to log amendments, which will be provided to all signatory parties of the Agreement following each amendment. The Appendix C – *Screening Form* may be amended via email concurrence from the FHWA, the DOT&PF, and the SHPO. DOT&PF will ensure the most current versions of appendices are posted on the DOT&PF historic properties website.

#### G. Termination

1. Any signatory party may terminate this agreement. If any signatory party proposes termination of this Agreement, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no less than thirty (30) calendar days to seek alternatives to termination.
2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
3. Should this Agreement be terminated, the FHWA (or the DOT&PF for NEPA Assignment Program projects) shall carry out the requirements of 36 CFR 800.3-800.6 for individual projects.

#### H. Confidentiality

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of the NHPA. Section 304 allows the FHWA (or the DOT&PF for NEPA Assignment Program projects) to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the DOT&PF determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all signatory parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

#### I. Duration of Agreement


1. This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect unless it is terminated prior to that time.
2. Beginning with the ninth (9<sup>th</sup>) annual review (pursuant to Stipulation IX.C *Review and Evaluation of this Agreement* and thereafter, provided there are no objections from the signatory parties during the annual meeting, the terms of the Agreement will automatically be extended each year for one (1) year. If any signatory party objects to extending the Agreement, or proposes amendments, the DOT&PF will consult with the parties to consider amendments or other actions to renew the Agreement.

Execution and implementation of this agreement evidence that the FHWA and the DOT&PF, when it is acting as the Federal agency, have afforded the ACHP a reasonable opportunity to comment on the FAHP Program in Alaska and its individual undertakings, that the FHWA and the DOT&PF have taken into account the effects of the FAHP Program and its individual undertakings on historic properties, and that the FHWA and the DOT&PF have complied with Section 106 of the NHPA and 36 CFR 800 for the FAHP Program and its individual undertakings.

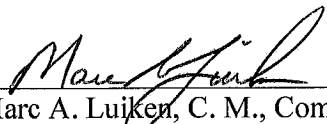
**FEDERAL HIGHWAY ADMINISTRATION**

By:  Date: 10-26-17  
Sandra A. Garcia-Aline, Division Administrator, Alaska Division


**ALASKA STATE HISTORIC PRESERVATION OFFICER**

By:  Date: 10-27-17  
Judith E. Bittner, State Historic Preservation Officer

**ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

By:  Date: 20 Oct 2017  
Marc A. Luiken, C. M., Commissioner

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By:  Date: 11/1/17  
John M. Fowler, Executive Director



## APPENDIX A

### Acronyms and Abbreviations

#### NEPA Assignment Program MOU

The Memorandum of Understanding in accordance with 23 U.S.C. 327 between the FHWA and the DOT&PF in which the FHWA delegates and DOT&PF assumes the FHWA's responsibilities for project-level environmental reviews under the National Environmental Policy Act

#### NEPA Assignment Program

The DOT&PF's program to implement the terms of the MOU

AAC	Alaska Administrative Code
ACHP	Advisory Council on Historic Preservation
Agreement	<i>First Amended Programmatic Agreement Regarding Implementation of Section 106 of the National Historic Preservation Act for the Federal-Aid Highway Program in Alaska</i>
AHRS	Alaska Heritage Resources Survey
Allowances	Streamlined Project Review Programmatic Allowances
APE	Area of Potential Effects
CFR	Code of Federal Regulations
CRT	Cultural Resources Team
DOT&PF	Alaska Department of Transportation and Public Facilities
FHWA	Federal Highway Administration
FAHP	Federal-Aid Highway Program
MOA	Memorandum of Agreement
MP	Highway Milepost
NHPA	National Historic Preservation Act
NRHP	National Register of Historic Places
OHA	Alaska Department of Natural Resources, Office of History and Archaeology
PA	Programmatic Agreement
PQI	DOT&PF Professionally Qualified Individual
REM	DOT&PF Regional Environmental Manager
SEO	DOT&PF Statewide Environmental Office
SHPO	State Historic Preservation Officer
STIP	Statewide Transportation Improvements Program
TE Road	Road Treated as Eligible under the <i>Interim Guidance for Addressing Alaska Historic Roads</i>
Tribes	Federally-Recognized Indian Tribes
USC	United States Code

## APPENDIX B

### Programmatic Allowances

This list of Programmatic Allowances (Allowances) contains types of undertakings (projects) that have been determined to have low potential to affect historic properties if implemented as specified in this Appendix pursuant to Stipulation V.A *Streamlined Project Review*. These projects will not require further Section 106 review or consultation. The Allowances consist of two tiers – Tier 1 and Tier 2. Review and processing of the undertakings will be performed by a DOT&PF Professionally Qualified Individual (PQI).

If the PQI determines that any portion of a project’s scope of work does not conform to either the Tier 1 or Tier 2 lists, the DOT&PF shall conduct delegated Section 106 review for the entire undertaking in accordance with 36 CFR 800.3-800.6, pursuant to Appendix D *Delegated Section 106 Process*.

When referenced in the Allowances:

- “previously disturbed” refers to soils where previous work or activities have reduced the likelihood of possessing historic properties within their original depositional contexts. Intact subsurface soils may exist below and adjacent to the disturbed soils and any proposed work or activities must consider the depth at which the intact soils could be encountered.
- “ground disturbance” refers to any work or activity that results in a disturbance of the soil (including planting, excavating, digging, trenching, plowing, drilling, tunneling, auguring, backfilling, blasting, topsoil stripping, land leveling, peat removing, quarrying, and clearing and grading).
- “new ground disturbance” refers to any ground disturbance in previously undisturbed soils.

#### **Review and Processing Documentation:**

The DOT&PF PQI shall verify:

- that the project activities are listed as Tier 1 Allowances or Tier 2 Allowances; and
- if the project is subject to and meets conditions noted specifically for
  - any allowances; and
  - if applicable, all Tier 2 General Conditions.

Tier 1 reviews can be conducted by any PQI. When the PQI responsible for the review of a Tier 2 undertaking requires cultural resource expertise outside of his/her area of specialty, the PQI will consult with another PQI having that area of expertise, and/or request the assistance of the SHPO cultural resources liaison, to identify the appropriate SHPO staff having that area of expertise.

1. **Tier 1 Allowances (Low Potential Projects):** When a project is determined by a PQI to qualify as a Tier 1 Allowance (Table 1), the project is documented to the project file using the *Streamlined Project Review form* (Appendix C).
2. **Tier 2 Allowances (Projects Requiring Additional PQI Screening):**
  - a. These projects will result in limited changes to existing conditions.
  - b. These projects have agreed upon criteria that must be met to qualify, including General Conditions and conditions for specific allowances.
  - c. When a project is determined by a PQI to qualify as a Tier 2 Allowance (Table 2), the determination is documented to the project file using the *Streamlined Project Review form*.
  - d. Projects must consist entirely of allowances found on the Tier 2 list, or a combination of the Tier 1 and Tier 2 lists, to qualify for this review process.

For projects where the lead environmental processing role occurs in a DOT&PF Regional Office, the PQI will provide a copy of the *Streamlined Project Review form* to the Regional Environmental Manager (REM) and the Statewide Environmental Office (SEO) PQI. For projects where environmental processing occurs in the DOT&PF Statewide Environmental Office, the SEO PQI will document review of the project in the applicable project file.

The SHPO and the FHWA staff may review project files or request records from project files to determine if the appropriate review and processing procedures were applied in making decisions and determinations, and that project review and compliance documentation is complete (Stipulation IX.C.1 *Review and Evaluation of this Agreement*).

**Table 1**

<b>Tier 1 Allowances</b>		
<b>Tier #</b>	<b>Project Activities</b>	<b>Conditions</b>
<b>1.a</b>	Maintenance or rehabilitation of pavement and other roadway and parking lot surfaces, bicycle, and pedestrian facility surfaces, including crack-sealing, pavement edge safety improvements such as ‘safety edge’ technology, pothole repair, overlaying, milling, resurfacing, grooving, application and reapplication of pavement markings on roads with existing pavement markings, and installation of rumble strips.	<i>No new ground disturbance would occur. The maintenance or rehabilitation is limited to existing surfaced areas with no surface expansion other than that needed to provide pavement edge safety improvements, and re-surfacing does not include gravel to chip seal or asphalt upgrades.</i>
<b>1.b</b>	Shoulder treatments, placement of fill material, and landscaping on fore slopes.	<i>Work is limited to within the existing toe of foreslope embankment.</i>
<b>1.c</b>	Replacement of riprap.	<i>No new ground disturbance would occur; work is limited to the previous footprint of the riprap being replaced.</i>

<b>1.d</b>	Cleaning and reconditioning of ditches and catch basins, street sweeping, cleaning, repair, maintenance of culverts and drainage structures, culvert extensions, and replacement of similar diameter culverts.	<i>No new ground disturbance would occur, and culvert replacement would take place in the same general location(s) as existing.</i>
<b>1.e</b>	Removal, repair or replacement of signs, signals, lighting, and railroad warning devices.	<i>The repair or replacement is limited to similar materials on existing devices and no new ground disturbance would occur.</i>
<b>1.f</b>	Repair or replacement of guardrails, barriers, curb, gutter, and sidewalks.	<i>The repair or replacement is limited to the use of similar materials to existing features and no new ground disturbance would occur.</i>
<b>1.g</b>	Purchase of marine vessels for the Alaska Marine Highway System.	
<b>1.h</b>	Brush cutting and removal of new growth within previously cleared areas with <b><u>handheld tools</u></b> .	<i>No new ground disturbance would occur from clearing methods or brush disposal activities.</i>
<b>1.i</b>	Removal, repair, upgrades, replacement, or installation of monitoring equipment.	<i>Proposed equipment is consistent with existing setting and no new ground disturbance would occur.</i>
<b>1.j</b>	Installation, repair, or replacement of plug-in outlets in existing parking lots.	<i>No new ground disturbance would occur.</i>
<b>1.k</b>	Repair and maintenance of ferry terminal facilities, including docks, floats, trestles, dolphins, offshore piles, and buildings.	<i>The repair or maintenance is limited to the use of similar materials to existing features.</i>
<b>1.l</b>	Rehabilitation of existing pavement or wearing surface on bridge decks, and/or application of new pavement/wearing surface of a bridge consistent with existing type.	
<b>1.m</b>	Bridge cleaning and washing.	
<b>1.n</b>	Debris removal around piers and abutments of a bridge.	
<b>1.o</b>	Repairs and replacement of bridge deck joints, expansion joints, and failed grout.	<i>Limited to similar materials and design.</i>
<b>1.p</b>	Bridge spall repairs.	<i>Work must be consistent with the current appearance of the bridge.</i>
<b>1.q</b>	Bridge repainting and similar surface treatments.	
<b>1.r</b>	Rehabilitation, repair, removal, or replacement of existing non-original bridge components.	

**Table 2**

**Tier 2 Allowances**

**General Conditions** (*All General Conditions must be met.*)

1. The project is a transportation project or activity on an existing transportation facility (including associated features).
2. The Area of Potential Effects (APE) is not within a National Historic Landmark.
3. The PQI has given careful consideration to the project’s possible effects on Historic and/or Archaeological Districts.
4. No standing buildings or structures (including bridges) within the APE are more than 45 years of age, or if such properties are present, they were:
  - a. previously determined not eligible for listing on the National Register of Historic Places (NRHP), or
  - b. excluded from further Section 106 review by an Advisory Council on Historic Preservation approved programmatic agreement or program comment.
5. If the project includes ground disturbance:
  - a. ground disturbance is limited to areas that are documented as previously disturbed; or
  - b. a professional who meets the Secretary of the Interior’s qualification standards in archaeology has reviewed the proposed ground disturbing activities and has determined that: no archaeological resources are present, or the project is in a low probability area for archaeological resources, or all such resources were previously determined not eligible for the NRHP with State Historic Preservation Officer concurrence.
6. The project has no known tribal concerns or public controversy related to historic preservation.
7. If the APE includes a road treated as eligible under the May 2, 2012 *Interim Guidance for Addressing Alaska Historic Roads* (TE road), the project does not include any activities requiring consultation on effects to the TE road.

<b>Tier #</b>	<b>Project Activities</b>	<b>Additional Conditions</b>
<b>2.a</b>	Maintenance, rehabilitation, and repairs to roadway, parking lots, bicycle, and pedestrian facility surfaces and prism that modifies existing conditions. This allows the following surface material treatments: <ul style="list-style-type: none"> <li>• chip seal applications to asphalt;</li> <li>• dust palliative applications that are not asphalt emulsion based to unpaved roads;</li> <li>• application of pavement markings on roads without existing pavement markings; and</li> <li>• paving roadway shoulders and access road/driveway approach aprons.</li> </ul>	

<b>2.b</b>	Routine roadside maintenance activities, including slope stabilization; berm stabilization; landscaping; removal of accumulated debris.	
<b>2.c</b>	Landscaping, brush cutting, and removal of new growth within previously cleared areas.	<p><i>Does not apply to Sterling Hwy between MP 47.8-58.</i></p> <p><i>The PQI shall give special consideration to the project's possible effects to cultural resources along:</i></p> <ul style="list-style-type: none"> <li>• <i>McCarthy Road MP 0-59.3,</i></li> <li>• <i>Kalifornsky Beach Road MP 0-22.2, and</i></li> <li>• <i>Sterling Hwy between MP 37-47.8 and between MP 58 and 179.3.</i></li> </ul>
<b>2.d</b>	Culvert and drainage structure replacement, upgrades, extensions, or new installation.	<p><i>Construction access is considered when applying the conditions to this type of activity.</i></p>
<b>2.e</b>	Placement of new riprap.	
<b>2.f</b>	Stream restoration and bank stabilization activities within the existing active channel banks.	
<b>2.g</b>	Removal, replacement, technological upgrade, rehabilitation, or installation of new roadway components (including, but not limited to: curbing, guardrail, end terminals, crash cushions, barriers, delineators, lighting, fencing, poles, retaining walls, signs, traffic signals and direction control devices, cameras, weather and roadway condition sensors/devices [and associated electrical components], and bicycle and pedestrian facilities).	<p><i>For purposes of 2.g, roundabouts are not considered roadway components. Apply 2.r to roundabouts and similar structures.</i></p>
<b>2.h</b>	Improvements to existing pedestrian facilities to meet requirements of the Americans with Disabilities Act.	
<b>2.i</b>	Construction of turning and auxiliary lanes, shoulder treatments, and driveways.	<p><i>Does not apply to the addition of through lanes.</i></p>
<b>2.j</b>	Rehabilitation of existing at-grade railroad crossings.	<p><i>Does not require modification to the railroad alignment or grade.</i></p>
<b>2.k</b>	Upgrades and rehabilitation of existing safety rest areas, park and ride lots, parking lots, and truck weigh stations. Conversion of existing parking lots to park and ride lots.	<p><i>Does not expand the existing lot footprint.</i></p>

<b>2.l</b>	Utility replacement, upgrades, or repairs.	<i>Does not apply to stand-alone utility installation. Give careful consideration for archaeological resources with any below ground construction.</i>
<b>2.m</b>	Herbicide and pesticide application.	<i>The APE must incorporate any adjacent potentially historic rock art (pictograph/petroglyph) areas to account for potential indirect effects. This allowance cannot be used when potentially historic rock art is present in an APE.</i>
<b>2.n</b>	Upgrades and rehabilitation of ferry terminal facilities, including docks, floats, trestles, dolphins, offshore piles, and buildings.	
<b>2.o</b>	Rehabilitation, repair, or replacement of bridge components and associated approaches.	<i>The APE does not include any bridges excluded under General Condition #4. The APE also does not include any bridges identified for potential consideration of exceptional significance via the 2012 Program Comment for Common Post-1945 Concrete and Steel Bridges consultation or during historic bridge inventory consultations with OHA. These include: 0271 Yukon River, 0740 Gastineau Channel, 0245 Sitka Harbor, 1304 Captain Wlm Moore Creek, 0381 Eyak River Bridge, and 0688 Canyon Creek.</i>
<b>2.p</b>	Bridge replacement.	

<p><b>2.q</b></p>	<p>Geotechnical investigation.</p> <p>Note: Because geotechnical investigations can take place at various times in project development (sometimes before the full extent of other project elements are known); they may be reviewed independently of the larger undertaking.</p>	<p><i>If there is activity occurring off existing road prism, bridge structures, or previously disturbed areas of a material site:</i></p> <ul style="list-style-type: none"> <li>• <i>Streamlined review documentation must specify the means of access to the investigation site(s), e.g., helicopter, tracked vehicle, etc.</i></li> <li>• <i>APE must include access and maneuver areas, including any proposed areas of land clearing.</i></li> </ul> <p><i>The PQI may consult informally with the SHPO to clarify and resolve situations where geotechnical activities have low or no potential to adversely affect historic properties. In such cases, the PQI must attach documentation of the resolution to the streamlined review form.</i></p>
<p><b>2.r</b></p>	<p>Construction of new roundabouts, or removal, replacement, upgrade, or rehabilitation of existing ones.</p>	<p><i>The APE must include properties subject to</i></p> <ul style="list-style-type: none"> <li>• <i>Right of Way (ROW) acquisition</i></li> <li>• <i>change in access</i></li> <li>• <i>potential visual effects, e.g., adjacent first tier properties from which a new roundabout may be visible</i></li> </ul>
<p><b>2.s</b></p>	<p>Land disposal (i.e. excess ROW), in cases requiring FHWA approval.</p>	<p><i>The PQI must also confirm that General Condition 5 is met, whether or not ground disturbance is identified as part of the disposal action.</i></p>



**APPENDIX C**

**Streamlined Project Review Forms**

# 106 PA Streamlined Project Review Screening Record

Form version  
10-17-17

*This form is required when Programmatic Allowances are being considered.  
It is not needed when circumstances lead directly to Sec 106 consultation under Appendix D.*

Project Name:

State Project #:

Federal Project #:

Assignable:  Yes  No

**Project Description:**

Project Activities (please list individually; continue on next page if needed)	If a Programmatic Allowance applies, indicate which one (Ex: Tier 1.a or Tier 2.b)	Are all conditions met?*	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

*\* If yes, attach documentation of identification efforts that support this decision. This documentation must be sufficient to allow any reviewing party to understand the basis for the decision. The Area of Potential Effect (APE) must be included in this documentation for Tier 2 allowances.*

**Description of APE (attach figures):** *If all activities above are Tier 1, an APE is not required*

**For Tier 2 projects, does the APE include a Treated as Eligible (TE) road ?** *If yes, attach a completed Interim Guidance screening form.*  Yes  No

**Screening Results:**

Does the project include any activities which are not covered under the Appendix B Programmatic Allowances and/or which do not meet the conditions? *If yes, conduct delegated Section 106 review for the entire project in accordance with PA Appendix D.*  Yes  No

I have screened this project and determined that it  does  does not qualify for processing as a Programmatic Allowance.

Date:

\_\_\_\_\_  
DOT&PF PQI (printed name and signature)

## Continuation Sheet- 106 PA Screening Review Record

Project Activities-Continuation	If a Programmatic Allowance applies, indicate which one	Are all conditions met?*	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Additional comment space:**

# 106 PA Streamlined Project Review Screening Record-for project updates

Form version  
10-17-17

*This form is required when Programmatic Allowances are being considered.  
It is not needed when circumstances lead directly to Sec 106 consultation under Appendix D.*

Project Name:

State Project #:

Federal Project #:

Assignable:  Yes  No

**Project Description:**

Project Activities (please list individually; continue on next page if needed)	If a Programmatic Allowance applies, indicate which one (Ex: Tier 1.a or Tier 2.b)	Are all conditions met?*	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

*\* If yes, attach documentation of identification efforts that support this decision. This documentation must be sufficient to allow any reviewing party to understand the basis for the decision. The Area of Potential Effect (APE) must be included in this documentation for Tier 2 allowances.*

**Description of APE (attach figures):** *If all activities are Tier 1, an APE is not required*

**For Tier 2 projects, does the APE include a Treated as Eligible (TE) road ?** *If yes, attach a completed Interim Guidance screening form.*  Yes  No

**Screening Results:** This is an addendum to a previously reviewed project. See Comments Section for details.

Does this update include any activities which are not covered under the Appendix B Programmatic Allowances and/or which do not meet the conditions? *If yes, conduct delegated Section 106 review in accordance with PA Appendix D.*  Yes  No

I have screened this update and determined that it  does  does not qualify for processing as a Programmatic Allowance.

\_\_\_\_\_  
DOT&PF PQI (printed name and signature)

Date:

## Continuation Sheet- 106 PA Screening Review Record

Project Activities-Continuation	If a Programmatic Allowance applies, indicate which one	Are all conditions met?*	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Additional comment space:**

## APPENDIX D

### Delegated Section 106 Process

This Appendix describes the delegated Section 106 process which the Department of Transportation and Public Facilities (DOT&PF) will follow for any Federal-Aid Highway Program (FAHP) undertakings (NEPA Assignment Program and non-NEPA Assignment Program) not processed under the terms of Stipulation V *Streamlined Project Review*.

Under the NEPA Assignment Program, the DOT&PF is deemed a federal agency and has responsibility for conducting the Section 106 process for the undertakings it has assumed. For all other FAHP undertakings, the DOT&PF will be acting under the authority delegated by the FHWA in this Agreement. The DOT&PF will notify the SHPO and consulting parties whether it has assumed responsibility for an undertaking under the NEPA Assignment Program.

Under both Programs, the DOT&PF is authorized to initiate consultation with Tribes. The DOT&PF will ensure that consultation to identify places of traditional religious and cultural importance to Tribes is initiated early in the planning process to allow adequate time for their consideration, and that the consultation will continue throughout the Section 106 review process prescribed by this Agreement. In accordance with Stipulation III.A *FHWA Responsibilities* and Stipulation IV *Consultation with the Tribes* the FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement.

The delegated Section 106 process follows 36 CFR 800.3-800.6. (Refer to 36 CFR 800 for the comprehensive Section 106 processing steps.) Processing details are provided to clarify the roles of the DOT&PF Professionally Qualified Individual (PQI) during the general review of projects and are not intended to recreate each Section 106 regulatory processing step. The DOT&PF will perform or approve: initiation of the Section 106 process, identification of historic properties, assessment of effects, and resolution of adverse effects. There are slight processing differences between the two FAHP Programs and these are identified in the steps where they arise. For example, for non-NEPA Assignment Program undertakings, the FHWA will handle elevations of disputes over determinations of eligibility to the Keeper of the NRHP, resolution of objections regarding findings of adverse effect, and elevations of consultation to the ACHP when consulting parties are unable to agree on resolution of adverse effects.

For the purposes of this agreement, undertakings requiring no further documentation under 36 CFR 800.3(a)(1) are limited to those which would not do any of the following: change a building, structure, or landscape in any way; disturb the ground (regardless of whether previous disturbance has occurred); alter noise levels or change visual characteristics in the area; or change traffic patterns or land use of an area.

#### **A. Initiation of the Section 106 Process**

1. The DOT&PF will be responsible for establishing the undertaking and initiating the Section 106 Review Process. The DOT&PF will identify and invite consulting

parties to participate in the Section 106 review in accordance with 36 CFR 800.2(c) and 36 CFR 800.3(c-f).

2. A PQI will prepare or oversee and approve initiation notifications to the consulting parties using the currently approved Consultation Initiation letter templates. Exceptions to the submittal of formal consultation initiation letters will be made by the PQI on a case by case basis using the currently approved Direct to Findings Form documentation to project files.

## **B. Identification and Evaluation of Historic Properties**

1. Determine and Document the Area of Potential Effects  
A PQI will determine for each undertaking the Area of Potential Effects (APE), in consultation with the SHPO and any other consulting parties in accordance with 36 CFR 800.4. The PQI is responsible for conducting the consultation.
2. Identify and Evaluate Significance of Historic Properties
  - a. The PQI may prepare documentation and consultation letters supporting the identification of historic properties that may be affected by the undertaking in accordance with 36 CFR 800.4, or oversee and approve documentation from consultants who meet the Secretary of Interior's Professional Qualification Standards in the appropriate field of expertise.
  - b. Consistent with the confidentiality provisions of 36 CFR 800.11(c) as needed, the PQI will submit the documentation to all consulting parties, including the SHPO and the Tribes, for comment.
  - c. Determinations regarding the National Register of Historic Places (NRHP) eligibility of properties evaluated hereunder, and any disagreements pertaining thereto, shall be governed by 36 CFR 800.4(c)(2), except that in the event of a disagreement the PQI will first consult with the consulting parties to resolve the issue.
    - i. For Regional Office projects, if a dispute raised by any consulting party cannot be resolved by the Regional Office, the Regional Environmental Manager (REM) will consult with the Regional Office and the Statewide Environmental Office (SEO) PQIs to resolve the issue. If after consultation the issue remains unresolved, the REM along with the Regional Office and SEO PQIs will refer the dispute to the appropriate Environmental Program Manager. For non- NEPA Assignment Program undertakings, this will be the FHWA Environmental Program Manager. For NEPA Assignment Program undertakings, this will be the Statewide Environmental Program Manager
    - ii. For projects where the SEO takes the lead environmental processing roles, the SEO PQI will consult to resolve the issue before referring the dispute to the appropriate NEPA Assignment Program or non- NEPA Assignment Program Environmental Program Manager as described above.
    - iii. If the disagreement is not resolved, the Environmental Program Manager will proceed in accordance with 36 CFR 800.4(c)(2).

## **C. Findings of No Historic Properties Affected**

1. In accordance with 36 CFR 800.4(d)(1), if the PQI finds that no historic properties are present within the APE or historic properties are present but the undertaking will have

no effect on the characteristics that qualify the properties for inclusion in the NRHP, the PQI will submit documentation to the SHPO and all consulting parties using the currently approved No Historic Properties Affected letter templates.

2. Consistent with the confidentiality provisions of 36 CFR 800.11(c) as needed, the PQI will submit the finding of effect and supporting documentation to all consulting parties, including the SHPO and the Tribes, for comment.
3. If the SHPO does not comment on determinations and findings contained in a submission within thirty (30) calendar days of receipt, the DOT&PF's responsibilities under Section 106 are fulfilled pursuant to 36 CFR 800.4(d)(1)(i).
4. If the SHPO or any consulting party object within thirty (30) calendar days of receipt of the finding, the PQI will consult with all consulting parties to resolve the issue and the DOT&PF will ensure the Section 106 process is completed on the undertaking in accordance with 36 CFR 800.4(d).

#### **D. Assessments of Effect on Historic Properties**

If a PQI determines that historic properties may be affected, the Criteria of Adverse Effect set forth in 36 CFR 800.5 will form the basis for determining whether there is an adverse effect. The PQI will apply the Criteria of Adverse Effect at 36 CFR 800.5(a) to any historic property eligible for listing in the NRHP in consultation with the SHPO. Consistent with the confidentiality provisions of 36 CFR 800.11(c) as needed, the PQI will submit the finding of effect and supporting documentation to all consulting parties, including the SHPO and the Tribes, for comment.

##### **1. Finding of No Adverse Effect**

- a. If the PQI finds that the undertaking will have no adverse effect on historic properties, the PQI will submit documentation to the SHPO and all consulting parties using the currently approved No Adverse Effect letter templates.
- b. If the SHPO does not comment on determinations and findings contained in a submission within thirty (30) calendar days of receipt, the DOT&PF may assume concurrence and proceed to the next step in the consultation process pursuant to 36 CFR 800.3(c)(4).
- c. If the SHPO or any consulting party object within thirty (30) calendar days of receipt of the finding, the PQI will consult with all consulting parties to resolve the issue and the DOT&PF will ensure the Section 106 process is completed on the undertaking in accordance with 36 CFR 800.5(c)(2).

##### **2. Finding of Adverse Effect**

- a. If the PQI finds that the undertaking will have an adverse effect on historic properties:
  - i. Finding Determinations
    1. For Regional Office projects, the Regional PQI will consult with the SEO PQI before making the finding of Adverse Effect on historic properties. The Regional Office PQI will submit documentation to the SHPO and all consulting parties, including notification of the ACHP, using the currently approved Adverse Effect letter templates.



2. For projects where the SEO takes the lead environmental processing role, the SEO PQI will make the finding of Adverse Effect on historic properties. The SEO PQI will submit documentation to the SHPO and all consulting parties including notification of the ACHP, using the currently approved Adverse Effect letter templates.
  3. If the SHPO does not comment on determinations and findings contained in a submission within thirty (30) calendar days of receipt, the DOT&PF may assume concurrence and proceed to the next step in the consultation process pursuant to 36 CFR 800.3(c)(4).
- ii. Resolution of Objections
1. For Regional Office projects, if the SHPO or any consulting party objects within thirty (30) calendar days of receipt of the finding, the Regional Office and SEO PQIs will consult with the consulting parties to resolve the issue. If after consultation the issue remains unresolved, the REM along with the Regional Office and SEO PQIs will refer the dispute to the appropriate Environmental Program Manager. For non-NEPA Assignment Program undertakings, this will be the FHWA Environmental Program Manager. For NEPA Assignment Program undertakings, this will be the Statewide Environmental Program Manager.
  2. For projects where the SEO Office takes the lead environmental processing role, the SEO PQI will consult with the consulting parties to resolve the issue before referring the dispute to the appropriate Environmental Program Manager as described above.
  3. The FHWA (for non-NEPA Assignment Program undertakings) or the DOT&PF (for NEPA Assignment Program undertakings) will ensure the Section 106 process is completed on the undertaking in accordance with 36 CFR 800.5(c)(2).

**E. Resolution of Adverse Effect**

If the PQI determines an undertaking may have an adverse effect on historic properties, the PQI will continue consultation to resolve the adverse effects in accordance with 36 CFR 800.6.

1. Resolution Consultation
  - a. For Regional Office projects, the Regional Office and the SEO PQIs will consult with the SHPO and other consulting parties to develop and evaluate alternatives or mitigation that could avoid, minimize, or mitigate adverse effects of the undertaking to historic properties. The SEO PQI has the discretion to participate in the consultations as needed.
  - b. For projects where the SEO takes the lead environmental processing role, the SEO PQI will consult with the SHPO and other consulting parties to develop and evaluate alternatives or mitigation that could avoid, minimize, or mitigate adverse effects of the undertaking to historic properties
2. Such alternatives or mitigation will be documented in a Section 106 Memorandum of Agreement (MOA) or other appropriate agreement document executed by the DOT&PF and the SHPO.

- a. The DOT&PF will ensure the Section 106 review process is completed in accordance with 36 CFR 800.6(a). The DOT&PF shall notify the ACHP of the adverse effect finding and provide the ACHP and all consulting parties with the documentation specified in 36 CFR 800.11(e). If the ACHP has elected to participate in consultation it will also be a signatory to the MOA. When the ACHP is participating in consultation or when a Tribe so requests, the FHWA will also participate in consultation and be a signatory to the MOA (except for NEPA Assignment Program undertakings).
  - b. For Regional Office projects, the Regional Office and SEO PQIs will assist in the development of and review the MOA. Text of the MOA will be approved by the SEO PQI. The Regional Office Directors will have signature authority on the MOA.
  - c. For projects where the SEO takes the lead environmental processing role, the SEO PQI will assist in the development of and review the MOA. Text of the MOA will be approved by the SEO PQI. The Chief Engineer will have signature authority on the MOA.
3. If the DOT&PF, the SHPO, and FHWA (if participating) fail to reach agreement on the resolution of adverse effects,
- a. For non-NEPA Assignment Program undertakings, the SEO will refer the issue to the FHWA. The FHWA shall request the ACHP to join the consultation in accordance with 36 CFR 800.6(b)(1)(v). If the parties are still unable to agree on the terms of a MOA, the FHWA, the SHPO, or the ACHP may terminate consultation and the FHWA shall request the ACHP comment in accordance with 36 CFR 800.7.
  - b. For NEPA Assignment Program undertakings, the SEO shall request the ACHP to join the consultation in accordance with 36 CFR 800.6(b)(1)(v). If the parties are still unable to agree on the terms of a MOA, the DOT&PF, the SHPO, or the ACHP may terminate consultation and the SEO will request the ACHP comment in accordance with 36 CFR 800.7.

## APPENDIX E

### DOT&PF Cultural Resources Staff Qualifications and Training

This Appendix describes specific commitments made by the Department of Transportation and Public Facilities (DOT&PF) for conducting the Section 106 process for all Federal-Aid Highway Program (FAHP) activities. A series of training requirements to effectively implement the original September 14, 2014 agreement have already been carried out.

#### **I. Professional Qualification Standards and PQI Responsibilities**

Pursuant to the Agreement's Stipulation II *Professional Qualifications Standards* and Stipulation III.B *The DOT&PF Responsibilities*:

- A. The DOT&PF commits to employing professional staff meeting the Professional Qualifications Standards established by the Secretary of the Interior (48 FR 44738-44739) in the Statewide Environmental Office and Regional Offices. The DOT&PF staff who possess professional qualifications are referred to in this Agreement as a professionally qualified individual (PQI).
- B. All Section 106 consultation with the SHPO and determinations and findings made under this Agreement will be performed or approved by a PQI. The professional qualifications of the PQI responsible for actions taken in individual project reviews are to correspond with the resources being evaluated. As needed, the PQI will consult with another PQI having that area of expertise.
- C. There are PQI staff at the Statewide Environmental Office (SEO PQI) and PQI staff at the regional offices (Regional PQI). A reference to "PQI" for project review and/or consultation should be interpreted to indicate that such responsibilities can be fulfilled either by SEO PQI or Regional PQI. Should a Regional PQI not be available for processing documentation and consultation, another Regional PQI or SEO PQI will conduct the review.
- D. The SEO PQI will participate in consultations on findings of adverse effect (36 CFR 800.5), with resolutions of adverse effect (36 CFR 800.6), and resolutions of dispute (36 CFR 800.5(c)(2)).

#### **II. Cultural Resources Training Requirements**

Pursuant to Stipulation IX.B *Training*, ongoing training requirements to effectively implement this Agreement are as follows. Training may be provided through distance delivery options.

- A. Annual Training: Following the Annual Program Review meeting (Stipulation IX.C.2), the DOT&PF will invite SHPO to meet with the PQIs for annual training on implementation of this Agreement.

- B. Beyond Compliance: Historic Preservation in Transportation Project Development (National Highway Institute course number 142049). Initial delivery was completed under the 2014 agreement and is to be renewed once every three (3) years or earlier as may be required to maintain staff stewardship training requirements. A Section 106 Basics course is allowed as a substitute for the Beyond Compliance training. This training is required for the PQIs, the REMs, and Environmental Analysts. The DOT&PF, with assistance of the FHWA and the SHPO, may identify other required staff. Newly hired PQIs, the REMs, and Environmental Analysts should attend the course within one (1) year of hire.
  
- C. Advanced Section 106 course: Delivery to the PQIs was completed under the 2014 agreement, and is to be renewed once every three (3) years or earlier. This is a required course for the PQIs.
  
- D. Office of History and Archaeology (OHA) Alaska Heritage Resources Survey (AHRIS) database training: (Training to be presented by the OHA – for each Regional Office. The DOT&PF shall schedule this with the OHA). Initial training was completed under the 2014 agreement and is to be renewed annually or earlier as may be required in the event of substantive staff changes. This is a required course for the PQIs, and is encouraged for the REMs, the NEPA Managers, and Environmental Analysts.
  
- E. In addition, the DOT&PF staff is encouraged, but not required, to attend any other cultural resources courses related advanced training, conference, or meeting opportunities that may arise. One such meeting is: OHA Annual Workshop (OHA – in Anchorage).

## APPENDIX F

### Archaeological Monitoring and Discovery Plan

#### **Purpose and Scope:**

This describes the general procedures to be followed during archaeological monitoring and the protocol for coordination in the event of inadvertent discovery of cultural resources, for projects which have not addressed such procedures through a Memorandum of Agreement (MOA). These procedures apply to all Federal Highway Administration (FHWA) Federal-Aid Highway Program (FAHP) projects and 23 U.S.C. 327 assigned projects (NEPA Assignment Program) where the DOT&PF has assumed Section 106 responsibilities.

#### **Professional Qualifications:**

Work under the terms of the Archaeological Monitoring and the Discovery Plan is to be carried out by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards for Archaeologists* (48 FR 44738-44739).

**I. Archaeological Monitoring:** Archaeological monitoring is the stationing of an archaeologist on a construction site to watch for evidence of archaeological remains as the construction proceeds. Certain projects will commit to archaeological construction monitoring because the Section 106 process has indicated that there is high potential to impact buried cultural resources material or probability to encounter human remains; the project is planned in or near recorded archaeological sites; or there is phased identification and evaluation of properties. Monitoring requirements are generally implemented during subsurface, ground disturbing activities.

#### **A. On-Site Responsibilities:**

1. The Archaeological Monitor will follow provisions of a monitoring plan for the project developed in consultation with the DOT&PF, (and the FHWA for non-NEPA Assignment Program Projects), and the SHPO that is consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-44737), the Alaska Office of History and Archaeology's *Standards and Guidelines for investigating and reporting archaeological and historic properties in Alaska (Historic Preservation Series Number 11)*, and *Monitoring Guidelines (Historic Preservation Series Number 15)*.
2. The Archaeological Monitor(s) will conduct on-site monitoring of ground-disturbing activities that extend into cultural resource sensitive areas identified through Section 106 consultation for the project. The Archaeological Monitor(s) will remain on-site in the delineated areas unless the supervising Archaeological Monitor determines after field observations and consultation with the Section 106 consulting parties identified in the monitoring plan that monitoring is not necessary.

3. The on-site supervising Archaeological Monitor is authorized to halt construction in a specific location if any previously unidentified cultural resources are encountered during earth-moving activities.

**B. Pre-construction Meeting:**

1. Before work begins on the project, the DOT&PF Project Engineer, the DOT&PF Professionally Qualified Individual (PQI), and the Archaeological Monitor(s) will conduct a pre-construction meeting with the Construction Contractor to explain any Section 106 terms or conditions for the project and the procedures to follow if archaeological materials are found, as well as the role of the Archaeological Monitor.
2. The PQI will provide the meeting participants with contact information for the following in case of cultural resources discovery notifications:
  - DOT&PF Project Engineer, PQI, and Regional Environmental Manager (REM)
  - State Historic Preservation Officer (SHPO)
  - Local Tribes
  - State Troopers and State Medical Examiner (SME)
    - *For non- NEPA Assignment Program Projects*, the FHWA Regional Area Engineer; or
    - *For NEPA Assignment Program Projects*, the DOT&PF Statewide Environmental Office (SEO) NEPA Program Manager.

**C. Reporting Requirements:**

1. *Weekly Monitoring Memos:* The Archaeological Monitor will provide a summary construction monitoring memo on a weekly basis to the DOT&PF Project Engineer and the PQI. The PQI will submit a copy of the memo to the SHPO and other consulting parties as identified in the Monitoring Plan.
2. *Summary Monitoring Report:* When the construction monitoring is complete, the Archaeological Monitor will provide to the Project Engineer and PQI draft and final summary reports detailing the construction monitoring activities. The report is to meet contemporary professional standards and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (FR Vol. 48, No. 190, pp. 44734-44737). The PQI will provide the summary report to SHPO and other consulting parties as identified in the Monitoring Plan.

**II. Discovery Plan:** Late discoveries are almost always archaeological. This outlines the procedures to follow if cultural resources are discovered after the Section 106 process has been completed or if unanticipated effects to historic properties occur during project construction.

**A. On-Site Responsibilities:**

1. *Step 1: Stop Work at a Discovery Site.* If a cultural resource is uncovered during the project, all work adjacent to the discovery must stop. The discovery site is to be secured by the Contractor. If human remains are encountered, treat them with

dignity and respect, and follow the protocols outlined in Appendix H (DOT&PF Procedures and State and Federal Laws Pertaining to the Discovery of Human Remains).

2. *Step 2: Notify the DOT&PF Project Engineer, PQI, and Archaeological Monitor (if any).* If the Project Engineer cannot be reached, contact the PQI (or REM). If there is a monitoring plan in place, the Archaeological Monitor will follow its provisions. The supervising Archaeological Monitor is authorized to halt construction in a specific location, or to redirect work to other locations while recovering previously unidentified cultural resources. The DOT&PF staff will make all other calls and notifications.

**B. DOT&PF Project Engineer Responsibilities at the time of Discovery:**

1. *Discovery Site:* The Project Engineer is responsible for taking appropriate steps to protect the discovery site. All work will stop in an area adequate to provide for the security, protection, and integrity of the cultural resource. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site.
2. *Direct Construction Elsewhere from Discovery Site:* The Project Engineer may direct construction away from cultural resources to work in other areas prior to contacting the discovery notification consulting parties.
3. *Contact the PQI (or REM):* If the PQI (or REM) has not yet been contacted, the Project Engineer will do so.

**C. DOT&PF PQI and REM Responsibilities at the time of Discovery:**

1. *Identify Discovery:* The PQI will coordinate with the Project Engineer to ensure that a qualified professional archaeologist examines the discovery to determine if it is a cultural resource.
  - a. If it is determined to not be a cultural resource, work may proceed with no further delay.
  - b. If it is determined to be a cultural resource and/or if the discovery includes human remains, the PQI will continue with consulting party notifications. For human remains, the procedures described in Appendix H (DOT&PF Procedures and State and Federal Laws Pertaining to the Discovery of Human Remains) will be followed.
2. *Notify the DOT&PF Statewide Environmental Office [SEO] NEPA Program Manager (or the FHWA Regional Area Engineer for non-NEPA Assignment Program Projects), the SHPO, Tribes, and other consulting parties as appropriate:* The PQI (or REM) will be responsible to contact these parties within 48 hours of the discovery in accordance with 36 CFR 800.13.

**D. Documentation of Cultural Resource Materials:**

1. The PQI will be the DOT&PF point of contact for consultation with the FHWA, the SHPO, Tribes, and other consulting parties as appropriate to ensure that the previously unidentified resource or unanticipated effect is evaluated, and an appropriate treatment plan is developed.

2. Evaluation: If the project is not already using an Archaeological Monitor, the Project Engineer, the PQI, and the Contractor will coordinate to procure archaeological services.
  - a. As a streamlining measure, after a qualified archaeologist confirms that the find is cultural and establishes the boundaries of the discovery site, the PQI may assume an archaeological resource is eligible for inclusion in the National Register of Historic Places (National Register) under Criterion D.
  - b. Alternatively, if the find is confirmed as cultural, the PQI may opt to have the cultural resource formally assessed for eligibility to the National Register using established National Register criteria (36 CFR 800.4(c)) and will provide the National Register evaluation report to the SHPO, Tribes, and other consulting parties as appropriate. The PQI will determine National Register eligibility in consultation with the SHPO and Tribes.
3. For properties deemed to be eligible for the National Register, the PQI will apply the criteria of adverse effect (36 CFR 800.5) in consultation with the SHPO and the Tribes.
4. Any treatment plan resulting from the discovery will be developed in consultation with the PQI (or the FHWA for non-NEPA Assignment Program Projects), SHPO and Tribes. The PQI will coordinate with the Project Engineer and the Construction Contractor to ensure that the treatment plan is implemented.
  - a. Should data recovery be required by the plan, it will be implemented prior to any continued construction at the discovery site. The PQI will provide the data recovery report to the SHPO and Tribes.
  - b. All artifacts, faunal remains, and related materials recovered on State land as well as associated field notes, shall remain the property of the State of Alaska. Materials recovered on land not owned by the State shall remain the property of the land owner or managing entity. Materials owned by the State of Alaska shall be accessioned to the University of Alaska Museum of the North in Fairbanks.
5. All documentation, testing and treatment plan, evaluation, data recovery, and reporting of cultural resource materials as described for these procedures will follow and meet the contemporary professional standards and the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716).

**E. Proceeding with Construction:**

1. Project construction outside the discovery site may continue as directed by the Project Engineer and the Construction Contractor while documentation and assessment of the cultural resources at the discovery site proceeds.
2. When the PQI ensures that recovery of cultural resource materials as outlined above is satisfied and complete, and the PQI determines that compliance with State and federal laws is complete, the Project Engineer may allow construction at the discovery site to resume.



**APPENDIX G**  
**DOT&PF Standard Specifications for Highway Construction**  
**Section 107 Legal Relations and Responsibility to Public**  
Revised September 2004

**107-1.01 Laws to be Observed**  
**107-1.02 Permits, Licenses, and Taxes**  
**107-1.07 Archaeological or Historical Discoveries**

Alaska Department of Transportation and Public Facilities Standard Specifications for highway construction contracts are prepared and adopted under the authority of Alaska Statute 19.10.160.

**107-1.01 LAWS TO BE OBSERVED.** The Contractor shall keep fully informed of, observe, and comply with all federal, state, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, that in any manner affect those engaged or employed on the work or which in any way affect the conduct of the work.

The Contractor and the Surety shall defend, indemnify, and hold harmless the state and its representatives against any claim or liability related to violations of any laws, regulations or decrees by the Contractor, the Contractor's agents, the Contractor's employees, a subcontractor at any tier, or a supplier or service provider.

The Contractor has the affirmative duty to keep informed of and comply with all laws. The Contractor is not entitled to and shall not rely on any Department employee's interpretation, whether oral or written, of any law, ordinance, or regulation.

**107-1.02 PERMITS, LICENSES, AND TAXES.** The terms, conditions, and stipulations in permits obtained either by the Department or by the Contractor are made a part of this Contract.

The Department will:

1. Secure permits and licenses that the Department determines are required for the construction of the proposed project, and the use of mandatory sources, designated sources and designated waste disposal areas for the proposed project; and
2. Modify Department-acquired permits during the performance of the contract, if deemed necessary by the Engineer.

The Contractor shall:

1. Acquire any permits and licenses required to complete the project that are not acquired by the Department;
2. Provide qualified professionals to collect data or perform studies necessary to acquire permits for the use of sites not previously permitted;
3. Give all notices required for the prosecution of the work;
4. Abide by all permits and licenses whether acquired by the Department or by the Contractor;

5. Notify the Engineer promptly if any activity cannot be performed as specified in the permits, and cease conducting the activity until permit modifications or any required additional permits are obtained;
6. Obtain modifications to permits acquired by the Contractor;
7. Pay all charges, fees and taxes; and
8. Provide proof of payment of all taxes before the Department makes final payment.

In addition, before using an area not previously permitted for use by the Contract, the Contractor shall:

1. Contact all government agencies having possible or apparent permit authority over that area;
2. Obtain all required permits and licenses from those agencies;
3. Obtain permission from any property owners or lessees with an interest in the property; and
4. Provide all of the following to the Engineer:
  - a. All permits or clearances necessary to use the site for its intended purpose(s);
  - b. A written statement that all permits or clearances necessary have been obtained;
  - c. Written evidence that the Contractor has contacted all of the relevant agencies and that no additional permits are required on the part of the Contractor, including at a minimum the name of the agency and staff person contacted, the date contacted, and result of coordination; and
  - d. A plan that identifies how the site will be finally stabilized and protected.

**107-1.07 ARCHAEOLOGICAL OR HISTORICAL DISCOVERIES.** When the Contractor's operation encounters prehistoric artifacts, burials, remains of dwelling sites, paleontological remains, shell heaps, land or sea mammal bones, tusks, or other items of historical significance, the Contractor shall:

1. Immediately cease operations at the site of the find;
2. Immediately notify the Engineer of the find; and
3. Not disturb or remove the finds or perform further operations at the site of the finds until directed by the Engineer.

The Engineer will issue an appropriate Change Order if the Engineer orders suspension of the Contractor's operations or orders the Contractor to perform extra work in order to protect an archaeological or historical find.

## APPENDIX H

### Department of Transportation and Public Facilities (DOT&PF) Procedures and State and Federal Laws Pertaining to the Discovery of Human Remains

#### DOT&PF Procedures

##### **Purpose and Scope:**

This describes the general procedures to be followed in the event of inadvertent discovery of human remains for projects which have not addressed such procedures through a Memorandum of Agreement (MOA). These procedures apply to all Federal Highway Administration (FHWA) Federal-Aid Highway Program (FAHP) projects and 23 U.S.C. 327 assigned projects (NEPA Assignment Program) where the DOT&PF has assumed Section 106 responsibilities.

1. **Step 1: Stop Work at the Discovery Site.** Any time human remains are encountered, that portion of the work affecting the discovery will stop immediately and the DOT&PF Project Engineer will immediately take steps with the Construction Contractor to secure and protect the discovery location.
2. **Step 2: Notifications.**
  - a. The Project Engineer and a DOT&PF professionally qualified individual (PQI) staff (staff meeting the Professional Qualifications Standards established by the Secretary of the Interior [48 FR 44738-44739]) or the DOT&PF Regional Environmental Manager will provide information about the discovery in their notification to the
    - the Alaska State Troopers;
    - the State Medical Examiner (SME);
    - the State Historic Preservation Officer (SHPO); and
    - *For NEPA Assignment Program Projects*, the DOT&PF Statewide Environmental Office (SEO) NEPA Program Manager; or
    - *For non-NEPA Assignment Program Projects*, the Federal Highway Administration (FHWA) Regional Area Engineer.
  - b. The SME will determine if the remains are of a forensic nature and/or subject to criminal investigation. If the remains are part of a crime scene, the SME will take control of the discovery.
3. **Step 3: Consultation.**
  - a. If the human remains are determined or believed to be of or are associated with Tribal descent, the PQI will assist the SEO (or the FHWA for non-NEPA Assignment Program Projects) to concurrently notify any potentially affiliated Tribe and expeditiously consult on the treatment and disposition of such remains.
  - b. If the encounter of human remains occurs on Federal land, the PQI will notify and receive further direction from the respective Federal land manager.

- c. The DOT&PF will also adhere to State laws and protocols in accordance with, AS 11.46.482(a)(6), AS 12.65.5, AS 41.35.200, and AS 18.50.250 of this Section 106 Agreement) pertaining to the discovery of human remains within the State of Alaska.

### **State (Alaska Statute) Laws**

- AS 11.46.482(a)(6):** Applies to all lands in Alaska, makes the “intentional and unauthorized destruction or removal of any human remains or the intentional disturbance of a grave” a class C felony.
- AS 12.65.5:** Requires immediate notification of a peace officer of the state (police, Village Public Safety Officer, or Alaska State Trooper [AST]) and the State Medical Examiner when death has “been caused by unknown or criminal means, during the commission of a crime, or by suicide, accident, or poisoning.” The AST has interpreted notification procedures as applicable to all remains, including ancient remains. In addition to a local peace officer (if within a local jurisdiction), notification should include the AST Criminal Investigation Bureau.
- AS 41.35.200:** Applies only to state lands, makes the disturbance of "historic, prehistoric and archeological resources" (including ‘graves’) a class A misdemeanor.
- AS 18.50.250:** Requires the issuance of burial-transit and disinterment-reinterment permits by the State Registrar of Vital Statistics or an authorized local registrar under certain circumstances.

### **Federal (United State Code) Laws**

- 16 USC 470ee (Archeological Resources Protection Act or ARPA):** Prohibits the unauthorized destruction or removal of archaeological materials, including human remains (i.e., more than 100 years old) on federal lands and federal trust lands. Violations may be prosecuted as a misdemeanor or felony, as warranted by the severity of the violation. Violations of state or local laws, regardless of land ownership, may be prosecuted under ARPA if the archaeological materials are transported across state boundaries.
- 25 USC 3001-30013 (PL 101-601) (Native American Graves and Repatriation Act or NAGPRA):** Governs the treatment and disposition of human remains on federal or federal trust lands that are determined to be Native American. NAGPRA also applies to Native American human remains from any lands if the remains are curated in an institution that receives federal funds.

## **APPENDIX I**

### **Amendment Log**

#### Amendment

1. Amendment to Appendix B, Streamlined Project Review Programmatic Allowances. Adds three new activities to the Tier 2 Programmatic Allowance list (2.q, 2.r, 2.s) and clarifies language on existing Programmatic Allowances 1.e, 1.i, 1.j, 1.r, 2.g., 2.i, 2.o.

#### Approval Date

December 11, 2017