

MEMORANDUM OF UNDERSTANDING

between

FEDERAL HIGHWAY ADMINISTRATION

and

U.S. ARMY CORPS OF ENGINEERS, ALASKA DISTRICT

In recognition of the responsibility of the U.S. Army Corps of Engineers, Alaska District (hereinafter "COE") to regulate certain activities in waters of the United States under Section 404 of the Clean Water Act of 1977 (PL 95-217) (33 U.S.C. 1251 et seq) (hereinafter "CWA"); in navigable waters under applicable sections of the River and Harbor Act of 1899 (R&HA) (33 U.S.C. 401 et seq); and in recognition of the responsibility of the Federal Highway Administration (hereinafter FHWA) to prepare environmental documents as appropriate in accordance with applicable Department of Transportation and FHWA orders and to certify compliance with Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands), and FHWA regulations implementing these orders.

A. PURPOSE

The purpose of this memorandum of understanding is to achieve expeditious and systematic processing to avoid unnecessary duplication of effort in the processing of U.S. Army Corps of Engineers Section 404 and Section 10 permits in complying with the provisions of Executive Orders 11990 and 11988 and FHWA regulations

B. DEFINITIONS

- 1) COE – District Engineer, Alaska District, Corps of Engineers.
- 2) FHWA – This shall mean the Division Administrator of the Federal Highway Administration in Alaska.
- 3) Lead Agency – The Federal Highway Administration is recognized as the lead agency for highway projects constructed with Federal-aid funds.
- 4) Federally aided highway projects – Highway and bridge projects constructed with the assistance of FHWA administered funds.
- 5) HA – Alaska Department of Transportation and Public Facilities which is the Highway Authority empowered to receive and administer Federal-aid funded highway projects.
- 6) Environmental Document – An environmental impact statement, categorical exclusion, environmental assessment, or re-evaluation prepared under the direction of the FHWA during the development of a highway project.
- 7) Certification – A statement contained in the environmental document that certifies that the project complies with applicable laws and regulations.

C. AUTHORITY AND AGREEMENT

A significant number of highway projects in Alaska are constructed with the assistance of Federal funds administered by the FHWA. Most of these projects impact floodplains and/or wetlands and require a 404 permit from the Corps of Engineers prior to proceeding to the construction phase. The Corps of Engineers is required to make a determination prior to issuing the permit that the proposed action complies with Executive Order 11988, Flood Plain Management and Executive Order 11990, Protection of Wetlands. FHWA is also required to make these same determinations prior to approving the environmental document. It is agreed that the procedures set forth in this Memorandum of Understanding will eliminate a duplication of effort by the two agencies and that the results of the action taken will satisfy the requirements of both the Corps of Engineers and FHWA.

D. RESPONSIBILITY OF FHWA

The FHWA shall be responsible for the preparation of the environmental documents as appropriate in accordance with applicable Department of Transportation and FHWA orders and where applicable certify compliance with Executive Orders 11990 and 11988 and FHWA regulations implementing those orders. The regulations are attached to and a part of this Memorandum of Understanding. The FHWA will require the HA to maintain documents covering flood plain management and protection of wetlands. Environmental documents will be attached to the 404 permit application to the Corps of Engineers.

E. RESPONSIBILITY OF CORPS OF ENGINEERS

The certification of environmental documents by FHWA will normally be accepted by the Corps of Engineers as satisfactory compliance with Executive Orders 11990 and 11988 for the purpose of processing the U.S. Army Corps of Engineers Section 404 and Section 10 permits.

F. MODIFICATION OR TERMINATION

If in the course of operations within this understanding, either party finds it's terms in need of modification, he may notify the other of the nature of the desired changes. In that event the parties shall within 90 days negotiate such amendment as is considered desirable or may agree upon termination of this understanding at the end of the period.

Date: 1/3/85 Concur: /s/
Division Administrator

Date: 1/8/85 Concur: /s/
District Engineer
Corps of Engineers