2. Categorical Exclusion (CE)

2.1. Overview

A “Categorical Exclusion” (CE) is a category of action for federally funded highway projects that does not individually or cumulatively have a significant effect on the human environment and, therefore, does not require either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) (40 CFR 1508.4). The
Federal Highway Administration (FHWA) regulations for implementing the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508) further define Categorical Exclusions based on past experience. Categorical Exclusions are actions that do not:

- Induce significant impacts to planned growth or land use for the area;
- Require the relocation of significant numbers of people;
- Have a significant impact on any natural, cultural, recreational, historic or other resource;
- Have significant impacts on travel patterns; and/or
- Involve significant air, noise or water impacts.

The FHWA CE regulations are codified in 23 CFR 771.117 (a) through (e). Actions that typically meet the CE definition are identified in two primary lists, commonly referred to as the “c” list [23 CFR 771.117(c)] and the “d” list [23 CFR 771.117(d)]. Projects and activities that fall under the “c” or “d” list require different levels of coordination and documentation depending on the nature of the activity and the resources that potentially may be affected. The regulations indicate that any action that normally would be classified as a CE but could involve unusual circumstances will require appropriate environmental studies to determine if the CE classification is appropriate. Unusual circumstances may include:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impacts on properties protected by Section 4(f) of the DOT Act of 1966 or Section 106 of the National Historic Preservation Act; or
- Inconsistencies with any Federal, State or local law, requirement or administrative determination relating to the environmental aspects of the action.

If an action involves any of these unusual circumstances, the project does not qualify as a CE and an EA or EIS must be prepared. If this occurs, see Chapter 6 for information on EAs and Chapter 7 for information on EISs. The following paragraphs briefly describe the “c” and “d” lists:

1. “c” list. The “c” list contains specific activities that normally meet the criteria for CEs. Actions on the “c” list seldom cause significant environmental impacts. Typically, “c” list actions are either non-construction activities (e.g., planning, grants for training, research programs) or very minor construction activities. Table 2-1 presents the “c” list actions.

FHWA and DOT&PF have agreed that a CE Documentation Form must be prepared for “c” list activities identified in Table 2-1 with an asterisk (*) and for those “c” list activities that may affect a protected resource. In this context, a protected resource would be something that, if affected, would trigger a compliance requirement with a local, State or Federal law, regulation, executive order, etc. that must be met during project development and/or implementation. Involvement with a protected resource will not normally change a CE designation. However, additional public and/or agency coordination may be required for project approval. Examples of typical protected resources would include wetlands, anadromous fish streams, historic properties and Section 4(f) properties. The CE Documentation Form is used to document the evaluation of effects and the coordination process, and to ensure to the approving official that an appropriate review for unusual circumstances has been conducted.

The CE Documentation Form and Instructions are in Section 2.3 and can be downloaded from the DOT&PF Environmental website.

2. “d” list. The “d” list provides example activities that the FHWA has determined do not typically result in significant environmental impacts. They usually involve a greater likelihood for adverse environmental effects than “c” list actions and, therefore, require the preparation of a CE Documentation Form to verify compliance with other local, State or Federal requirements and to verify that the project does not involve any
unusual circumstances that would require preparation of an EA or EIS. Table 2-2 provides the examples of “d” list actions as identified in 23 CFR 771.117(d).

2.2. CE Approval Process

The CE process starts with a class of action determination request by the REM to the Statewide NEPA Manager for 6004 to determine if the project qualifies as a CE per 23 CFR 771.117 (c) (Table 2-1) or (d) (Table 2-2) and whether it can be assigned to the State per the Section 6004 MOU discussed in Section 2.2.1. If enough information is known about the project, a determination on whether a programmatic agreement applies or if a CE Documentation Form (Section 2.3) is required may be made at the same time.

It is important that the REM provide the Statewide NEPA Manager for 6004 via email, form, or memo with all applicable and relevant project information. This information should include the project name, numbers and termini, CE designation number, scope, purpose and need, funding source(s) (e.g., FHWA, FAA, FTA, BIA, DOI), and information on potential actions that may exclude the project from Section 6004 assignment (e.g. Formal Section 7 consultation, ANILCA land use, Individual Section 4(f) Evaluation approval). The Statewide NEPA Manager for 6004 will provide the REM with written concurrence (via e-mail, returned form, or memo) that the project or activity qualifies for the CE assignment and verifies the probable CE designation. If the project qualifies under a programmatic agreement and the CE Documentation Form is not required, the REM certifies the project and notifies a Statewide NEPA Manager for 6004 by memo or email. No further documentation is necessary from the REM. A copy of the notification and concurrence must be attached to any project funding request that is submitted to the FHWA Area Engineer.

If the project requires a CE Documentation Form and the project meets the terms of a programmatic CE (Section 2.2.2) the REM approves the form and forwards a copy to the Statewide NEPA Manager for 6004 (assigned CEs) or the FHWA Area Engineer (non-assigned CEs) for their written concurrence and file. If the project requires a CE Documentation Form but does not meet the terms of a particular programmatic CE, then the REM signs the form and forwards it to the Statewide NEPA Manager for 6004 (assigned CEs) or the FHWA Area Engineer (non-assigned CEs) for their approval.

2.2.1 Assignment of Responsibility for CE Determination (23 U.S.C. §326)

23 U.S.C. §326, enacted as Section 6004 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), provides all 50 States the opportunity to assume responsibility for determining whether certain designated activities qualify as a CE. In this capacity, the State would function as the lead Federal agency for NEPA and other applicable environmental requirements. A Memorandum of Understanding (MOU) with the FHWA is required for assignment of this responsibility and clarification of any conditions. By assuming these Federal responsibilities, the State DOT gains efficiencies in the processing and approval of CE projects. However, the assignment of responsibility also makes the State, rather than FHWA, liable and responsible for its decisions and actions. Therefore, practitioners should be very conscientious when making decisions regarding assignment and any subsequent processing because they are subject to the same requirements as apply to FHWA when it carries out those responsibilities. This includes any interagency agreements, MOUs or other agreements that relate to the environmental process for CE projects.

The Alaska DOT&PF has elected to assume CE responsibility and, therefore, has developed and implemented a CE Assignment MOU with the FHWA Alaska Division (Section 2.5). The MOU describes the specific responsibilities assigned to the State and those responsibilities that remain with the FHWA. The MOU also describes actions, conditions or determinations that exclude projects from qualifying for State approval (Figure 2-12.

CE actions assigned to the State under the MOU include:

- all activities listed in 23 CFR 771.117(c) (Table 2-1), and
- all example activities listed in 23 CFR 771.117(d) (Table 2-2).
### Table 2-1
**“c” list CE Actions [23 CFR 771.117(c)]**

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training, engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.</td>
</tr>
<tr>
<td>2</td>
<td>Approval of utility installations along or across a transportation facility.</td>
</tr>
<tr>
<td>3</td>
<td>Construction of bicycle and pedestrian lanes, paths, and facilities.*</td>
</tr>
<tr>
<td>4</td>
<td>Activities included in the State’s highway safety plan under 23 U.S.C. 402. (PA does not apply to construction projects.)</td>
</tr>
<tr>
<td>5</td>
<td>Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.</td>
</tr>
<tr>
<td>6</td>
<td>The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.* (PA is only applicable for alterations to existing publicly owned buildings to provide for noise reduction.)</td>
</tr>
<tr>
<td>7</td>
<td>Landscaping.*</td>
</tr>
<tr>
<td>8</td>
<td>Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.* (PA agreement only applies to pavement markings.)</td>
</tr>
<tr>
<td>9</td>
<td>Emergency repairs under 23 U.S.C. 125.*</td>
</tr>
<tr>
<td>10</td>
<td>Acquisition of scenic easements.*</td>
</tr>
<tr>
<td>12</td>
<td>Improvements to existing rest areas and truck weigh stations.*</td>
</tr>
<tr>
<td>13</td>
<td>Ridesharing activities. (PA only applies when there is no on-the-ground construction.)</td>
</tr>
<tr>
<td>14</td>
<td>Bus and rail car rehabilitation.</td>
</tr>
<tr>
<td>15</td>
<td>Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.</td>
</tr>
<tr>
<td>16</td>
<td>Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.</td>
</tr>
<tr>
<td>17</td>
<td>The purchase of vehicles by the applicant, where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.</td>
</tr>
<tr>
<td>18</td>
<td>Track and railbed maintenance and improvements when carried out within the existing right-of-way.*</td>
</tr>
<tr>
<td>19</td>
<td>Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.</td>
</tr>
<tr>
<td>20</td>
<td>Promulgation of rules, regulations, and directives.</td>
</tr>
<tr>
<td>21</td>
<td>Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.*</td>
</tr>
</tbody>
</table>

*Actions that require completion of the CE Documentation Form.

The references to “PA” pertain to exceptions to the programmatic agreement for certain “c” list CE Projects. See Section 2.2.2 Item 2.
Table 2-2
“d” list CE Actions [23 CFR 771.117(d)]

<table>
<thead>
<tr>
<th>Number</th>
<th>Examples include, but are not limited to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).</td>
</tr>
<tr>
<td>2</td>
<td>Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.</td>
</tr>
<tr>
<td>3</td>
<td>Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.</td>
</tr>
<tr>
<td>4</td>
<td>Transportation corridor fringe parking facilities.</td>
</tr>
<tr>
<td>5</td>
<td>Construction of new truck weigh stations or rest areas.</td>
</tr>
<tr>
<td>6</td>
<td>Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.</td>
</tr>
<tr>
<td>7</td>
<td>Approvals for changes in access control.</td>
</tr>
<tr>
<td>8</td>
<td>Construction of new bus storage and maintenance facilities in areas used predominately for industrial or transportation purposes where such construction is not inconsistent with existing zoning and is located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.</td>
</tr>
<tr>
<td>9</td>
<td>Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.</td>
</tr>
<tr>
<td>10</td>
<td>Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.</td>
</tr>
<tr>
<td>11</td>
<td>Construction of rail storage and maintenance facilities in areas used predominately for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.</td>
</tr>
<tr>
<td>12</td>
<td>Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed. (i) Hardship acquisition is early acquisition of property by the applicant at the property owner’s request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others. (ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.</td>
</tr>
<tr>
<td>13</td>
<td>Acquisition of pre-existing railroad right-of-way pursuant to 49 U.S.C. 5324(c). No project development on the acquired railroad right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.</td>
</tr>
</tbody>
</table>
The CE Assignment MOU assigns to the State all responsibility for processing the CEs designated in Table 2-1 and Table 2-2 including any necessary CE approval actions. The State is made responsible for environmental review, consultation and other related actions required under Federal laws applicable to CE projects except for: 1) government-to-government consultations with Indian Tribes [as defined in 36 CFR 800.16(m)], 2) formal consultation under Section 7 of the Endangered Species Act, 3) formal consultation with the Department of Interior (DOI) for actions that require the use of Alaska National Interest Lands Conservation Act (ANILCA) designated land and 4) review and approval of Individual Section 4(f) Evaluations. Notice from the State to an Indian tribe advising the tribe of a proposed project is not considered “government-to-government” consultation within the terms of the MOU and does not need FHWA involvement or notification by the Region. Formal government-to-government consultation has not been assigned to the State pursuant to 23 U.S.C. 326 rather consultation occurs between FHWA and the Alaska Tribe [as defined by 36 CFR 800.16(m)] when it is initiated by the FHWA, is requested by the tribe, or it is required by Section 106 of the National Historic Preservation Act. The DOT&PF Statewide NEPA Manager for 6004 will maintain regular contact with the FHWA Alaska Division providing notification of assigned projects and transmitting reports required by the MOU. In the event that government-to-government consultation is required, the Region should initiate contact with their FHWA Area Engineer and transfer project information and materials necessary for the FHWA to complete their government-to-government consultation requirements.

Any activity that is not designated for assignment by the MOU will be processed by the FHWA. The following conditions or impacts will exclude a project from assignment to the State and will require FHWA processing:

2. The project or activity will require the use of Alaska National Interest Lands Conservation Act (ANILCA) designated lands.
3. An Individual Section 4(f) Evaluation will be required.
4. Formal consultation is required under Section 7 of the Endangered Species Act.
5. The action has Federal funding sources in addition to Federal-Aid Highway Funding (e.g., FTA or FAA funding).

If a previously assigned CE is subsequently determined to be excluded from assignment, the Regional Environmental Manager (REM) will facilitate the notification of FHWA through the DOT&PF Statewide NEPA Manager for 6004, as indicated in the project activity descriptions in Section 2.2.4.

2.2.2 Programmatic Agreements

The Environmental Impact Analyst should review any existing FHWA programmatic and/or DOT&PF internal agreements that approve certain categorical exclusion actions. Agreements have been issued for designated actions if they meet criteria established in the applicable agreements.

Currently four (4) FHWA programmatic agreements and one (1) internal DOT&PF programmatic agreement [with three (3) programmatic approvals] for categorical exclusions (see Section 2.4 for copies of the agreements) allow the REM to certify that certain projects meet the terms of a particular agreement and determine if documentation is needed or not. When making the decision regarding documentation, the REM consults with a Statewide NEPA Manager for 6004 (for assigned CEs) or FHWA Area Engineer (non-assigned CEs) to determine if a CE Documentation Form is required. If a programmatic agreement applies and a CE Documentation Form is required, the REM will approve (certify) the completed form and forward a copy to the Statewide NEPA Manager for 6004 (assigned CE) or the FHWA Area Engineer (non-assigned CE) for their written concurrence and file.

For projects processed by the FHWA, there are four programmatic agreements between the FHWA and DOT&PF where the FHWA has issued approval for an action contingent upon DOT&PF certification that the requirements of the agreement have been met.
The four programmatic agreements are as follows:

1. **Programmatic Categorical Exclusion Agreement for use on Federal-Aid Highway Projects in Alaska (Figure 2-7).** In this 2008 programmatic agreement, the FHWA approved the designation of categorical exclusion for certain highway projects of the type identified in 23 CFR Part 771.117, if the DOT&PF can certify that those actions meet the following conditions:

   a. The action does not have significant environmental impacts as described in 23 CFR 771.117(a).

   b. The action does not involve unusual circumstances as described in 23 CFR 771.117(b).

   c. The action does not involve the following:
      
      • a road on new location;
      
      • the acquisition of more than minor amounts of right-of-way (if the project requires the acquisition of an entire parcel or portions of more than 25 parcels, this programmatic agreement cannot be used);

      • the displacement of any commercial or residential occupants;

      • the use of properties protected by Section 4(f), 49 U.S.C. §303;

      • a determination of adverse effect by the FHWA under Section 106 of the National Historic Preservation Act;

      • a U.S. Coast Guard bridge permit;

      • work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevation of a watercourse or lake;

      • construction in, across or adjacent to a river designated as a component of the National System of Wild and Scenic Rivers;

      • work involving more than 10 acres of wetlands;

      • a change in access control; or

      • the acquisition of property involving a known hazardous material site.

   d. In air quality non-attainment and maintenance areas, the project conforms with the State Implementation Plan (SIP).

   e. The action does not involve Federally listed threatened or endangered species or their critical habitat.

   All determinations under this programmatic classification shall be documented using a CE Documentation Form.

2. **Agreement between DOT&PF and FHWA for Certain “c” List Activities (Figure 2-8).** The FHWA has approved actions listed in 23 CFR 771.117(c) as categorical exclusions if they meet certain conditions. Any action that could involve unusual circumstances (e.g., local controversy, require right-of-way, constructive use of Section 4(f) property) or involve a protected resource, will require completion of a CE Documentation Form before it can be approved.

   Table 2-1 identifies the entire “c” list and indicates those actions that always require completion of a CE Documentation Form. The table also identifies exceptions to this programmatic agreement.

3. **NHS, AMHS Ferry Vessel Improvement Projects (Figure 2-9).** Each year, the Alaska Marine Highway System (AMHS) has numerous ferry vessel improvement projects funded under the National Highway System (NHS) Program. These projects include improvements such as replacing ship generators, upgrading on-board computers, maintaining compliance with international safety regulations and hotel function
upgrades, etc. All of these improvements to existing fleet qualify under this programmatic agreement. This approval does not cover shore side facilities or any new ferry vessels.

4. Programmatic Categorical Exclusion for Right-of-Way Actions Approved Under 23 CFR 771.117(d)(6) (Figure 2-10). The FHWA has approved the disposal of excess right-of-way or limited or joint use of right-of-way provided that DOT&PF can certify that the following conditions are met:

a. The action does not have significant environmental impacts as described in 23 CFR 771.117(a).

b. The action does not involve unusual circumstances as described in 23 CFR 771.117(b).

c. The proposed use of right-of-way does not have significant adverse impacts.

d. The proposed use meets the following conditions:

   • Does not use properties protected by Section 4(f), 49 U.S.C. §303.

   • Has no potential to affect historic properties and, therefore, does not require further Section 106 consultation per 36 CFR 800.3(a)(1). Note: This precludes the use of this programmatic agreement for any proposal within or adjacent to an eligible historic property, district or landmark.

   • Does not affect a regulatory floodway or the base (100-year) floodplain elevations of a watercourse or lake.

   • Does not construct in, across or adjacent to a river designated as a component of the National System of Wild and Scenic Rivers.

   • Does not affect wetlands.

   • Does not change access control.

   • Does not affect a known hazardous material site.

   • Does not involve Federally listed threatened or endangered species or their critical habitat.

   e. The proposed action or use is exempt from the requirement to determine Air Quality Conformity as defined in 40 CFR 93.126.

The agreements between the DOT&PF and FHWA apply to projects processed by the FHWA. For projects that are assigned to DOT&PF through the CE Assignment MOU, the FHWA agreements do not apply. An internal DOT&PF programmatic agreement (with three programmatic approvals) has been developed to match numbers 1, 2, and 4 above (see Section 2.3 and Figure 2-11).

2.2.3 Documented CEs

Projects or actions that meet the definition of a CE but are not covered by an existing programmatic agreement are required to be documented through the completion of a CE Documentation Form. The CE Documentation Form is prepared by the Environmental Impact Analyst, reviewed by the Engineering Manager and signed by the REM. The REM will then forward the completed form to the Statewide NEPA Manager for 6004 (assigned CEs) or FHWA Area Engineer (non-assigned CEs) for approval.

The CE Documentation Form and Instructions are located in Section 2.3.

2.2.4 Process for Assigned CEs

Figure 2-1 presents an overview of the approval process for projects assigned to the DOT&PF for CE designation.

Figure 2-2 provides a precedence activity network for the approval process for assigned CEs. Following the figure is a brief description of each activity in the network.
Process Overview for CEs Assigned to DOT&PF

Verify Project Purpose and Scope through Data Collection, Modeling and Design with Traffic Projections, Safety Hazards, pavement Condition, etc.

Use Proposed Scope/Route to Determine Required Environmental Studies:
- Wetlands Present?
- Noise Rejection?
- Hazardous Materials?
- T&E Specified?

Initiate Scoping with Public, Agencies, and Tribes, as appropriate.

Is the action an:
- "Yes-List?"
- "No-List?"

Does it Meet the Criteria for the Internal PA?

Yes = No CE Form Required

No = CE Form Required

Complete CE Form

REM Approves (Certified) and provides written notification to the Statewide NEPA Program Manager for 6004.

REM Approves Form and Sends to Statewide NEPA Manager for 6004 for Concurrence and File.

REM Signs Form and Sends to Statewide NEPA Manager for 6004 for Approval.

REM Approves Form and Sends to Statewide NEPA Manager for 6004 for Concurrence and File.

REM Signs Form and Sends to Statewide NEPA Manager for 6004 for Approval.

REM Approves (Certified) and provides written notification to the Statewide NEPA Program Manager for 6004.

REM Approves Form and Sends to Statewide NEPA Manager for 6004 for Concurrence and File.

REM Signs Form and Sends to Statewide NEPA Manager for 6004 for Approval.

REM Approves Form and Sends to Statewide NEPA Manager for 6004 for Concurrence and File.

REM Signs Form and Sends to Statewide NEPA Manager for 6004 for Approval.

REM Approves (Certified) and provides written notification to the Statewide NEPA Program Manager for 6004.

REM Approves Form and Sends to Statewide NEPA Manager for 6004 for Concurrence and File.

REM Signs Form and Sends to Statewide NEPA Manager for 6004 for Approval.

REM Approves Form and Sends to Statewide NEPA Manager for 6004 for Concurrence and File.

REM Signs Form and Sends to Statewide NEPA Manager for 6004 for Approval.

REM Approves (Certified) and provides written notification to the Statewide NEPA Program Manager for 6004.

REM Approves Form and Sends to Statewide NEPA Manager for 6004 for Concurrence and File.

REM Signs Form and Sends to Statewide NEPA Manager for 6004 for Approval.

REM Approves Form and Sends to Statewide NEPA Manager for 6004 for Concurrence and File.

REM Signs Form and Sends to Statewide NEPA Manager for 6004 for Approval.

REM Approves (Certified) and provides written notification to the Statewide NEPA Program Manager for 6004.
Figure 2-2
Activity Steps for CEs Assigned to DOT&PF
<table>
<thead>
<tr>
<th>PROJECT ACTIVITY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Activity Title:</strong></td>
</tr>
<tr>
<td><strong>Activity No.:</strong></td>
</tr>
</tbody>
</table>

**Activity Description:**

For assigned CE designations, no FHWA environmental approvals are necessary during the development of the project, unless one or more of the exclusions listed in the CE Assignment MOU are identified (Section 2.2.1). Note that Authorization to Proceed will still be required from FHWA for the use of federal funds.

The CE process is initiated when the Statewide Transportation Improvement Program (STIP) process identifies a transportation problem and potential solution and the project is programmed for development and implementation. In some cases, a legislative mandate, earmark or local government referendum may cause a project to be initiated with state funds but until it is included in the STIP process, federal funding may not be used. Inclusion in the STIP is the responsibility of the DOT&PF Area Planner.

The Engineering Manager will prepare a Project Information Sheet (PIS) as part of their request for Authorization to Proceed. Submittal of the PIS to the REM by the Engineering Manager or Project Control staff generally initiates the class of action determination process. Chapter 4 of the *Alaska Preconstruction Manual* describes the process and responsibility for completing a PIS and a Federal-aid funding request.

For a class of action determination, the REM will consult in writing with the Statewide NEPA Manager for 6004 to determine if the project qualifies as a CE per 23 CFR 771.117 (c) (Table 2-1) or (d) (Table 2-2). The REM should identify the specific CE activity [e.g. d(4)]. If enough information is known about the project a determination on whether a programmatic agreement applies or if a CE Documentation Form (Section 2.3) is required may be made.

It is important that the REM provide the Statewide NEPA Manager for 6004 via email, form, or memo with all applicable relevant information, including the project name, numbers, scope, purpose and need and funding source (e.g., FHWA, FAA, FTA, BIA, DOI). The Statewide NEPA Manager for 6004 will provide the REM with written concurrence (via e-mail, returned form, or memo) that the project or activity qualifies for the CE assignment, verify the probable CE designation, and verify any applicable programmatic approval. If the project qualifies under a programmatic agreement and the CE Documentation Form is not required, then no further documentation is necessary from the REM. A copy of the notification and concurrence must be attached to any project funding request that is submitted to the FHWA Area Engineer.

If the project requires the CE Documentation Form, the Environmental Impact Analyst scopes the project and prepares the form.

If the project is not assigned to DOT&PF or if it appears an exclusion will prevent it from being assigned, the Statewide NEPA Manager for 6004 will notify the REM in writing and the REM should consult with the appropriate FHWA Area Engineer on how the project should be processed (see Section 2.2.5).
### PROJECT ACTIVITY

<table>
<thead>
<tr>
<th>Activity Title:</th>
<th>Begin Data Gathering and Preparing CE Document (for assigned projects)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity No.:</td>
<td>2</td>
</tr>
</tbody>
</table>

**Activity Description:**

Documentation is required for all “d” list projects, as well as some “c” list projects and some right-of-way encroachment permits based on the respective programmatic agreements. In general, those projects that potentially affect a protected resource (e.g., anadromous fish streams, wetlands, historic properties, etc.) or require additional right-of-way (ROW) will require completion of a CE Documentation Form. The form and instructions are located on the DOT&PF Environmental website. The process for completing the CE Documentation Form includes initiating environmental studies, conducting public and agency coordination, as necessary, and working with design staff to avoid, minimize and assess impacts to natural and social resources.

The Environmental Impact Analyst should use the CE Documentation Form to identify compliance requirements that will require environmental studies and initiate them as early in project development as possible so that information is available to designers as they design the project. The Engineering Manager should be informed of any agency reviews (e.g. ADEC review for Phase I hazardous waste reports) so these can be included in the project schedule. Agency review often involves specific time frames that may be non-negotiable and have a material effect on the project schedule. Public, agency, and tribal consultation/coordination requirements must also be determined and placed into the project schedule. Public and agency coordination and tribal consultation are described in Activities 3, 4 and 5.

The CE Documentation Form is necessary for many activity types. The amount of information and level of effort to complete the form, including the supporting documentation (e.g., impact analysis, public and agency coordination), will vary depending on the complexity of the project and the impact categories affected, regardless of whether the action is a “c” or “d” list activity. Completing the CE Documentation Form will establish whether the action may result in significant environmental impacts or have substantial controversy on environmental grounds; and, therefore, whether or not it qualifies as a CE and perhaps if a programmatic agreement applies. See Section 2.3 for detailed information on the CE Documentation Form.

The CE Documentation Form has been developed so the Environmental Impact Analyst can confirm that an activity is one that is assigned to the State pursuant to the CE Assignment MOU. The Form should also be used to identify whether or not an exclusion to the assignment will be triggered. An exclusion from the assignment late in project development may result in a substantial project delay because no approval may be issued until the FHWA has conducted their review and any necessary coordination that may have triggered the exclusion (e.g., formal Section 7 Consultation.)
**PROJECT ACTIVITY**

<table>
<thead>
<tr>
<th>Activity Title:</th>
<th>Initiate Public Coordination (for assigned projects)</th>
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<tr>
<td>Activity No.:</td>
<td>3</td>
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</table>

**Activity Description:**

Public coordination is an essential component of the environmental phase. It is **required** for all projects that:

- require additional ROW; or
- may affect a protected resource.

It also may be required by applicable laws, regulations or Executive Orders (e.g., E.O. 11990, E.O. 11988, Alaska Coastal Management Program (ACMP), Section 106).

The Engineering Manager and REM will consult with the Statewide NEPA Manager for 6004 to determine if public involvement, a Public Involvement Plan (PIP) and/or a public meeting or hearing are necessary for the project. Meaningful public involvement is critical to developing a sound context sensitive transportation solution.

If public involvement is determined to be necessary, the Environmental Impact Analyst and Engineering Manager must work closely to ensure dissemination of adequate and understandable project information so that interested and affected parties can provide informed comments. In the initial correspondence to agencies and the public, it is critical that they be given sufficient information to understand the nature of the proposed project, the project location, the purpose and need for the project and the anticipated project schedule. In all correspondence, it is important to provide specifics while minimizing the use of technical jargon.

Public coordination usually begins with the Environmental Impact Analyst placing a Notice of Intent in a local or regional newspaper stating the Department’s intent to begin engineering and environmental studies. See Figure 2-3 for what should be in a Notice of Intent. This Notice must cite applicable authorities and Executive Orders (e.g., E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management). In addition to the Notice of Intent, the Environmental Impact Analyst should send letters describing the project to individual property owners and businesses from whom right-of-way is needed or who will be directly affected by the action.

The Engineering Manager and the REM or his or her designee, must consider all issues raised by the public. The project cannot be approved as a CE until all issues raised by the public are considered, nor can it be approved as a CE by deferring resolution of mitigation or other issues (e.g., Section 106 surveys, wetlands mitigation development, Section 7 coordination or Essential Fish Habitat (EFH) consultation) to the Plans, Specifications and Estimates (PS&E) or permit phases. Issues should be summarized in the Comments and Coordination section of the CE Documentation Form and letters attached in an appendix to the form.

The decision to hold a public meeting or hearing may change during the completion of the CE Documentation Form due to public interest or controversy. See Chapter 10 “Public Involvement” of this Manual and Chapter 5 of the Alaska Preconstruction Manual. Note that a public hearing transcript must be prepared and included in the project record following any public hearing and should be attached in an appendix to the form.
Project Name and Project Numbers

Notice of Intent to Begin Engineering and Environmental Studies

Notice of Wetlands Involvement E.O. 11990 (if applicable)
Notice of Floodplain Involvement E.O. 11988 (if applicable)
And any other applicable E.O. or regulation

Provide the following information in as much detail as practicable.

1. Project description.
2. Description of the need for the project.
3. Preliminary project schedule.
4. List of alternatives being considered (if applicable).
5. List of anticipated permits and approvals necessary for the project.
6. Location map (if deemed valuable).
7. Preliminary assessment of adverse environmental effects (e.g., floodplain or wetland involvement).
8. Point of contact for the project and comment deadline.
9. Appropriate Americans with Disability Act text.
<table>
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<tr>
<th>Activity Title:</th>
<th>Initiate Agency Coordination (for assigned projects)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity No.:</td>
<td>4</td>
</tr>
</tbody>
</table>

**Activity Description:**

Coordination with regulatory and resource agencies is required to determine if a project may affect a protected resource (e.g., wetlands, anadromous fish streams, historic resources, threatened and endangered species). The REM and Engineering Manager must work closely to ensure dissemination of adequate project information to local, State, and Federal regulatory and resources agencies so they can understand the nature of the proposed project, the project location, the purpose and need for the project and the anticipated project schedule. In all correspondence, it is important to provide specifics and as much information as possible. Examples of agencies that may be involved include:

- Corps of Engineers (USACE);
- Environmental Protection Agency (EPA);
- National Marine Fisheries Service (NMFS);
- Fish and Wildlife Service (USF&WS);
- Alaska Department of Fish and Game (ADF&G);
- Alaska Department of Natural Resources (DNR);
- Alaska Department of Environmental Conservation (DEC);
- State Historic Preservation Office (SHPO);
- *Alaska Native Claims Settlement Act (ANCSA)* Corporations; and
- if applicable, local coastal districts.

It is good practice for the REM or Environmental Impact Analyst to hold an agency scoping meeting and/or field review to explain the project to agencies. This allows the regulatory and resource agency staff to discuss the project in person with DOT&PF engineering and environmental staff. Project delays due to misunderstandings or requests for additional information may be avoided with an agency scoping meeting. The recommended comment period provided to regulatory and resource agencies is between 14 and 30 calendar days; however, it can be longer or shorter depending on the complexity of the project or the level of agency involvement anticipated. The Statewide NEPA Manager for 6004 should be invited to the agency scoping meeting and/or field review.

The purpose of agency coordination is to identify resources, impacts and compliance requirements for the proposed activity. The Environmental Impact Analyst should identify specific requirements for surveys, impact analysis and review time frames so they are included in the project schedule and coordinated with the design staff.

The Engineering Manager and Environmental Impact Analyst must work together to respond in writing to all comments made by the regulatory and resource agencies. The REM should sign the response letters. A project cannot be approved by deferring compliance with applicable environmental laws (e.g., Section 106, identifying wetlands mitigation, Section 7 or EFH consultation) to the PS&E or permit phases.
Activity Title: Initiate Tribal Coordination (for assigned projects)
Activity No.: 5

Activity Description:

Tribal coordination should be conducted any time a proposed activity may affect a resource that may be of interest to an Alaska Native tribal entity (e.g. Alaska tribe or 501(c)(3) native organization).

A scoping letter and a tribal consultation options form should be sent to each affected tribe describing the scope, location and probable effects of the proposed activity and invite tribal participation in the public involvement process. The scoping letter should inform the tribe of their option to consult with the State directly or that they may request formal government-to-government consultation with the FHWA. The scoping letter will ask the tribe if the project area contains any resources of religious or cultural significance, which would trigger Section 106 of the National Historic Preservation Act if such resources are present and may be affected.

Formal government-to-government consultation has not been assigned to the State pursuant to 23 U.S.C. §326. Formal government-to-government consultation occurs between the FHWA and the Alaska Tribe [as defined at 36 CFR 800.16(m)].

Formal government-to-government consultation will occur when:
1. It is initiated by the FHWA,
2. It is requested by a tribe, or
3. It is required by Section 106 of the National Historic Preservation Act.

The DOT&PF will need to coordinate with the FHWA when formal government-to-government consultation is necessary. This will require identifying the requirement, transmitting adequate project information to the FHWA for their submission to the tribe and working with all parties to resolve any concerns. The DOT&PF Environmental Impact Analyst must be aware that failure to satisfactorily resolve a tribal issue is grounds for excluding a project from CE Assignment. Accordingly, it is very important that the State attempts to understand and resolve issues raised by a tribal government.
For assigned “c” and “d” list activities that require completion of the CE Documentation Form, the approval process is as follows:

1. The Environmental Impact Analyst submits the completed “draft” CE Documentation Form to the Engineering Manager for a Quality Control/Quality Assurance review.
2. A second review is conducted by a Senior Environmental Impact Analyst (e.g., EIA III) or the REM for readability, accuracy, and content.
3. After both reviews are complete and no further modifications are necessary, the Environmental Impact Analyst signs the form and submits it to the Engineering Manager.
4. The Engineering Manager will do a final review, confirm inclusion of the project in the STIP, and sign the form if appropriate. The Engineering Manager’s signature on the form will indicate concurrence that:
   - the project description is accurate and complete,
   - mitigation measures and commitments will be carried forward into the project design documents, and
   - design phase funding will be requested.
5. If the project meets the conditions of the DOT&PF programmatic agreement the REM signs the completed form certifying that the project meets the conditions of the internal programmatic agreement and forwards a copy to a Statewide NEPA Manager for 6004 for written concurrence that it qualifies for the internal programmatic. If it qualifies the form is filed; if it does not qualify the REM will be contacted.
6. If the project does not meet the conditions of the DOT&PF programmatic agreement the REM reviews and signs the form and submits it to a Statewide NEPA Manager for 6004 for approval.
7. The Statewide NEPA Manager for 6004 reviews the CE Documentation Form for consistency with the MOU under 23 U.S.C. §326, ensures that it meets the requirements of 23 CFR 771.117 and if complete signs the form.
8. When the approved signature page is returned to the REM, the Environmental Impact Analyst should notify any State and Federal resource agency that had comments or input that the project was approved as a CE.

For right-of-way encroachment permits:

1. The REM determines if the project meets the terms of the DOT&PF Programmatic CE for Right-of-Way Actions Approved under 23 CFR 771.117(d)(6) (Programmatic Approval #3), or one of the other programmatic approvals and receives class of action concurrence in writing from the Statewide NEPA Manager for 6004.
2. If the conditions of the Programmatic CE can be met and completion of the CE Documentation Form
### PROJECT ACTIVITY

| Activity Title: Complete CE and Secure Approval (for assigned projects) |
| Activity No.: 6 |

is not required, the REM may certify that the project meets the criteria of the Programmatic Agreement, sends this certification to the encroachment permit file and notifies the Statewide NEPA Manager for 6004 by memo or email. The Statewide NEPA Manager for 6004 files the notification in the statewide file and no further documentation is necessary from the REM.

3. If the conditions of the DOT&PF Programmatic CE cannot be met and completion of the CE Documentation Form is required, the REM reviews the completed form and, if appropriate, certifies the project as a CE by signing the CE Documentation Form and sending it to a Statewide NEPA Manager for 6004 for approval.

4. The Statewide NEPA Manager for 6004 reviews the CE Documentation Form and, if complete, signs it to verify that the project qualifies as a CE.

5. The Statewide NEPA Manager for 6004 notifies the REM of the approval by e-mail or memo and returns a copy of the signature page to the REM for the encroachment permit file.
### PROJECT ACTIVITY

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<tr>
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**Activity Description:**

The Environmental Impact Analyst or clerical staff distributes the approved CE Documentation Form to appropriate staff and files it in the project files, along with associated correspondence, technical studies, supporting documentation, and public involvement and agency coordination documentation.

The signing of the CE enables the Engineering Manager to request subsequent project authorizations (e.g., PS&E, ROW, construction). A copy of the approved signature page and any subsequent consultations or re-evaluations should be attached to the funding request.

It is very important that the project file be complete and in order. Future project re-evaluations and authorizations will be faster and easier to complete if the project file is comprehensive and intact.
2.2.5 Non-Assigned CEs

Non-assigned CEs are actions that require FHWA involvement in the process for their approval.

Figure 2-4 presents an overview of the process for non-assigned CE projects.

Figure 2-4
Process Overview for Non-Assigned CEs
Figure 2-5 provides a precedence activity network that shows the steps involved for processing a non-assigned CE project. Following the figure is a brief description of each activity in the network.
<table>
<thead>
<tr>
<th>Activity Title:</th>
<th>Initiate CE Process (for non-assigned projects)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity No.:</td>
<td>1</td>
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</table>

**Activity Description:**

For CEs that are not assigned to the State, the FHWA will either issue approval via one of the existing Federal programmatic agreements or the project will be approved on a project-by-project basis by the FHWA Area Engineer.

The CE process is initiated when the STIP process identifies a transportation problem and potential solution and the project is programmed for development and implementation. In some cases, a legislative mandate, earmark or local government referendum may cause a project to be initiated with State funds but until it is included in the STIP process, federal funding may not be used. Inclusion in the STIP is the responsibility of the DOT&PF Area Planner.

The Engineering Manager will prepare a Project Information Sheet (PIS) as part of their request for Authorization to Proceed. Submittal of the PIS to the REM by the Engineering Manager or Project Control staff generally initiates the class of action determination process with the DOT&PF Statewide Manager for 6004. If the level of documentation cannot be determined at this stage of development the project can only be authorized through the Environmental Document. Chapter 4 of the *Alaska Preconstruction Manual* describes the process and responsibility for completing a PIS and a Federal-aid funding request.

The class of action determination will be used to make an initial determination regarding whether or not the project/activity is one that has been assigned pursuant to 23 U.S.C. §326. If non-assigned, the REM must consult with the FHWA Area Engineer to determine the appropriate class of action and the applicability of any FHWA programmatic agreement. Documentation of this consultation is required and must be provided to the FHWA Area Engineer (an email is sufficient) for the project file. The FHWA Area Engineer will be the person concurring in or approving the CE.
### PROJECT ACTIVITY

**Activity Title:** Begin Data Gathering and Preparing CE Document  
(for non-assigned projects)

**Activity No.:** 2

**Activity Description:**

Documentation is required for all “d” list projects, as well as some “c” list projects, ferry boat improvements and right-of-way encroachment permits based on the applicability of respective programmatic agreements. In general, those projects that potentially affect a protected resource (e.g., anadromous fish streams, wetlands, historic properties) or require additional right-of-way (ROW) will require completion of a CE Documentation Form. The process to complete the CE Documentation Form includes initiating environmental studies, conducting public and agency coordination, as necessary, and working with design staff to avoid, minimize and assess impacts to natural and social resources.

The Environmental Impact Analyst should use the CE Documentation Form to identify compliance requirements that will require environmental studies and initiate them as early in project development as possible so that survey information is available to designers as they are developing the improvement. Any required external agency review should be identified to the Engineering Manager so it can be included in the project schedule and any necessary design information will be made available when environmental studies are complete so that impacts may be assessed. External agency review and concurrence often involves specific time frames that may be non-negotiable and may have a material effect on the project schedule. Public and agency coordination and tribal consultation requirements must also be determined and placed into the project schedule plan. Coordination and consultation are described further in Activities 3, 4 and 5.

The CE Documentation Form may be necessary for many activity types. The amount of information and level of effort to complete the form, including the supporting documentation (e.g., impact analysis, public and agency coordination), will vary depending on the complexity of the project and the impact categories affected, regardless of whether the action is covered by a programmatic approval. Completing the CE Documentation Form will establish whether the action may result in significant environmental impacts or have substantial controversy on environmental grounds; and, therefore, whether or not it qualifies as a CE. See Section 2.3 for detailed information on the CE Documentation Form.
### PROJECT ACTIVITY

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<tr>
<th>Activity Title:</th>
<th>Initiate Public Coordination (for non-assigned projects)</th>
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<td>Activity No.:</td>
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</table>

#### Activity Description:

Public coordination is an essential component of the environmental phase. It is required for all projects that:

- require additional ROW; or
- may affect a protected resource.

It also may be required by applicable laws, regulations or Executive Orders (e.g., E.O. 11990, E.O. 11988, ACMP, Section 106).

The Engineering Manager and REM will consult with the FHWA Area Engineer to determine what level of public involvement will be required for a project and if a Public Involvement Plan (PIP) and/or a public meeting or hearing will be necessary. Meaningful public involvement is critical to developing a context sensitive transportation solution.

If public involvement is deemed necessary, the Environmental Impact Analyst and Engineering Manager must work closely to ensure dissemination of adequate and understandable project information so that interested and affected parties can provide informed comments. In the initial correspondence to agencies and the public, it is critical that they be given sufficient information to understand the nature of the proposed project, the project location, the purpose and need for the project and the anticipated project schedule. In all correspondence, it is important to provide specifics while minimizing the use of technical jargon.

Public coordination usually begins with the Environmental Impact Analyst placing a Notice of Intent in a local or regional newspaper stating the Department intends to begin engineering and environmental studies. See Figure 2-3 for what should be in a Notice of Intent. This Notice must cite applicable authorities and Executive Orders (e.g., E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management). In addition to the Notice of Intent, the Environmental Impact Analyst should send letters describing the project to individual property owners and businesses directly affected by the action.

The Engineering Manager and the REM or his or her designee, must consider all issues raised by the public. The project cannot be approved as a CE until all issues raised by the public are addressed, nor can it be approved as a CE by deferring resolution of mitigation or other issues (e.g., Section 106 surveys, wetlands mitigation development, Section 7 or EFH consultation) to the PS&E or permit phase.

The decision to hold a public meeting or hearing may change during the completion of the CE Documentation Form due to public interest or controversy. See Chapter 10 “Public Involvement” of this Manual and Chapter 5 of the Alaska Preconstruction Manual. Note that if a public hearing is held, a copy of the transcript and a certificate that a required hearing or a hearing opportunity was offered must be attached to the CE Documentation Form.
### PROJECT ACTIVITY

**Activity Title:** Initiate Agency Coordination (for non-assigned projects)

**Activity No.:** 4

**Activity Description:**

Coordination with regulatory and resource agencies is required if a project may affect a protected resource (e.g., wetlands, anadromous fish streams, historic resources, threatened and endangered species). The REM and Engineering Manager must work closely to ensure dissemination of adequate project information to local, State and Federal regulatory and resources agencies so they can understand the nature of the proposed project, the project location, the purpose and need for the project and the anticipated project schedule. In all correspondence, it is important to provide specifics and as much information as possible. Examples of regulatory and resource agencies that may be involved include:

- Corps of Engineers (USACE);
- Environmental Protection Agency (EPA);
- National Marine Fisheries Service (NMFS);
- Fish and Wildlife Service (USF&WS);
- Alaska Department of Fish and Game (ADF&G);
- Alaska Department of Natural Resources (DNR);
- Alaska Department of Environmental Conservation (DEC);
- State Historic Preservation Office (SHPO);
- *Alaska Native Claims Settlement Act (ANCSA)* Corporations; and
- if applicable, local coastal districts.

It is good practice for the REM or Environmental Impact Analyst to hold an agency scoping meeting and/or field review to explain the project to agencies. The FHWA Area Engineer should be invited to that meeting and/or field review. This allows the regulatory and resource agency staff to discuss the project in person with DOT&PF engineering and environmental staff. Project delays due to misunderstandings or requests for additional information may be avoided with an agency scoping meeting. The recommended comment period for regulatory and resource agencies is between 14 and 30 calendar days; however, it can be longer or shorter depending on the complexity of the project or the level of agency involvement anticipated. Note: some comment periods are established in statute and may not be shortened.

The purpose of agency coordination is to identify resources, impacts and compliance requirements for the proposed activity. Environmental Impact Analysts should identify specific requirements for surveys, impact analysis and review time frames so they are included in the project schedule and coordinated with the design staff.

The Engineering Manager and Environmental Impact Analyst must work together to respond in writing to all comments made by the regulatory and resource agencies. The project cannot be approved by deferring resolution of mitigation or other issues (e.g., Section 106 surveys, wetlands mitigation development, Section 7 or EFH consultation) to the PS&E or permit phases. The REM is responsible for signing the response letters.
PROJECT ACTIVITY

Activity Title: Initiate Tribal Coordination (for non-assigned projects)

Activity No.: 5

Activity Description:

Tribal coordination will be conducted any time a proposed activity may affect a resource of interest to an Alaska tribe.

A scoping letter and tribal consultation option form must be sent to the tribe describing the scope, location and probable effects of the proposed activity and invite tribal participation in the public involvement process. The scoping letter should also inform the tribe of their option to consult with the State directly or that they may request formal government-to-government consultation with the FHWA. The scoping letter will ask the tribe if the project area contains any resources of religious or cultural significance, which would trigger Section 106 of the National Historic Preservation Act if such resources are present and may be affected.

The DOT&PF may conduct tribal coordination as part of their public involvement process. However, formal government-to-government consultation occurs between the FHWA and the subject Indian Tribe [as defined at 36 CFR 800.16(m)].

Formal government-to-government consultation is required when:

1. It is initiated by the FHWA,
2. It is requested by a tribe, or
3. It is required by Section 106 of the National Historic Preservation Act.

The DOT&PF will need to coordinate with the FHWA Area Engineer when formal government-to-government consultation is necessary. This will require identifying the requirement, transmitting adequate project information to the FHWA for their submission to the tribe and working with all parties to resolve any concerns.
### PROJECT ACTIVITY

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<th>Activity Title:</th>
<th>Complete CE and Secure Approval (for non-assigned projects)</th>
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<td>Activity No.:</td>
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</table>

#### Activity Description:

For non-assigned “c” and “d” list activities that require completion of the CE Documentation Form, the approval process is as follows:

1. The Environmental Impact Analyst submits the completed CE Documentation Form to the Engineering Manager for a Quality Control/Quality Assurance review.
2. A second review is conducted by a Senior Environmental Impact Analyst (e.g., EIA III) or the REM for readability, accuracy, and content.
3. After both reviews are complete and no further modifications are necessary, the Environmental Impact Analyst signs the form and submits it to the Engineering Manager.
4. The Engineering Manager will do a final review, confirm inclusion of the project in the STIP, and sign the form if appropriate. The Engineering Manager’s signature on the form will indicate concurrence that:
   - the project description is accurate and complete,
   - mitigation measures and commitments will be carried forward into the project design documents, and
   - design phase funding will be requested.
5. If the project meets the conditions of one of the federal programmatic agreements the REM signs the completed CE Documentation Form certifying that the project meets the conditions of the programmatic agreement and forwards a copy of the entire form to a FHWA Area Engineer for their concurrence.
6. If the project does not meet the conditions of a federal programmatic agreement the REM reviews and signs the form and submits it to a FHWA Area Engineer for FHWA approval.
7. The FHWA Area Engineer reviews the CE Documentation Form and if it is complete signs the form.
8. When the approved signature page is returned to the REM, the Environmental Impact Analyst should notify any State and Federal resource agency that had comments or input that the project was approved as a CE.

For right-of-way encroachments permits:

1. The REM determines if the project meets the terms of the Programmatic CE for Right-of-Way Actions Approved under 23 CFR 771.117(d)(6) or meets another Programmatic Agreement and has received class of action concurrence from the FHWA Area Engineer.
2. If the programmatic agreement applies, the REM may certify that the project meets the criteria of the Programmatic Agreement, sends this certification to the encroachment permit file, and notifies the FHWA Area Engineer by e-mail or memo. The FHWA Area Engineer files the notification and no further documentation is necessary from the REM.
### PROJECT ACTIVITY

**Activity Title:** Complete CE and Secure Approval (for non-assigned projects)  
(Continued)

**Activity No.:** 6

3. If completion of the CE Documentation Form is required:
   - the REM reviews the form for completeness and, if appropriate, certifies the project as a CE by signing the CE Documentation Form and sending it to the FHWA Area Engineer for approval,
   - the FHWA Area Engineer reviews the CE Documentation Form and, if complete, signs it to verify that the project qualifies as a CE, and
   - the FHWA Area Engineer notifies the REM of the approval by email or memo and returns the CE Documentation Form signature page to the REM for the encroachment permit file.

For Ferry Vessel Improvements:

1. The REM determines if the project meets the terms of the Programmatic Agreement for Alaska Marine Highway System ferry vessel improvements under 23 CFR 771.117(c) and receives documented class of action concurrence from the FHWA Area Engineer.

2. If the conditions of the Programmatic Agreement can be met and completion of the CE Documentation Form is not required, the REM may certify that the project meets the criteria of the Programmatic Agreement and notifies the FHWA Area Engineer by memo or email; a copy of the memo or email must be attached to subsequent funding requests. No further documentation is necessary from the REM.

3. If the conditions of the Programmatic Agreement cannot be met and completion of the CE Documentation Form is required, the REM reviews the completed form and, if appropriate, certifies the project as a CE by signing the CE Documentation Form and sending it to the FHWA Area Engineer for approval.

4. The FHWA Area Engineer reviews the CE Documentation Form and, if it is complete, signs it to verify that the project qualifies as a CE.

5. The FHWA Area Engineer notifies the REM of the approval by e-mail or memo and returns a copy of the signature page to the REM for their files.
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<th>Activity Title:</th>
<th>Ensure Completeness of Project File (for non-assigned projects)</th>
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<td>Activity No.:</td>
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**Activity Description:**

The Environmental Impact Analyst or clerical staff distributes the approved CE Documentation Form to appropriate staff and files it, both electronically and in the paper project files, along with associated correspondence, technical studies, supporting documentation and public involvement and agency coordination documentation.

The signing of the CE enables the Engineering Manager to request subsequent project authorizations (e.g., PS&E, ROW, construction).

It is very important that the project file be complete and in order. Future project re-evaluations and authorizations will be faster and easier to complete if the project file is comprehensive and intact.
2.3. **CE Documentation Form and Instructions**

This Section provides instructions for completing the CE Documentation Form. The instructions correspond to the sections on the Form. Refer to the sample CE Documentation Form in Figure 2-6.

The Form and instructions may also be downloaded from the DOT&PF Environmental website.

Note that it is important that the REM and the Engineering Manager discuss the level of engineering and environmental analysis anticipated for completion of the CE Documentation Form in order to program adequate funding and time.

1. **Project Name:** As shown in the STIP.

2. **Project Number:** Provide both the state and federal project numbers. The state number is generally a 5 digit number.

3. **CE Designation:** Provide the appropriate CE activity alphabetical and numeric number.

I. **Project Purpose and Need:**

- Describe the purpose of and need for the project in a clear, concise, well-defined paragraph or two. It should establish what the problem is, why the project is needed and what the goals are for the project. State the intended objective that the project hopes to achieve.

- Projects that affect a resource protected by a law, Executive Order (E.O.) or regulation [e.g., E.O. 11990, E.O. 11988, Section 4(f)] need to be described in greater detail and be more comprehensive and specific. This will enable alternatives that minimize or avoid the impact but do not satisfy the projects purpose and need to be dismissed.

II. **Project Description:**

- Describe the proposed action in as much detail as possible, in particular, pertinent design features that could affect right-of-way requirements and/or project impacts (e.g., typical section; general horizontal and vertical alignment; location, size and type of structures; and any design exceptions that may be required). The discussion must include a description and explanation of the project termini.

- The design team may need to develop designs to “plans-in-hand” detail to evaluate the effects of the project on protected resources. Give special attention to river and stream crossings, wetland fills, drainage control structures and work in or adjacent to Section 4(f) properties or other protected resources.

- In rare cases, final design detail may be necessary to determine if avoidance alternatives are practicable (e.g., for involvements with Section 4(f) resources).

III. **Environmental Consequences:**

This section has 17 impact categories that must be evaluated by the department’s Environmental Impact Analyst or Consultant to determine if a significant impact would result from the action.

- Each impact category (A-Q) that is marked “yes” requires a brief detailed discussion of the impact. The description and summary of impacts should include what mitigation is being incorporated into the project to minimize the impact.

- Append supporting documentation (e.g., Avoidance and Minimization Form, wetlands finding, T&E Biological Assessment) to the CE Documentation Form and list it as an attachment in the title box.
- Refer to the FHWA Environmental Guidebook ([http://environment.fhwa.dot.gov/guidebook/index.asp](http://environment.fhwa.dot.gov/guidebook/index.asp)) or the FHWA Technical Advisory T6640.8A “Guidance for Preparing and Processing Environmental and Section (f) Documents” for detailed information on each impact category.

A. **Right-of-Way Impacts:**

- Coordinate with the Engineering Manager and Utility and Right-of-Way Sections to determine if and how many permanent easements, full and partial property acquisitions, relocations or land transfers from another state agency or the federal government are required. If relocations are involved, be sure the ROW Section prepares a conceptual stage relocation study in accordance with the FHWA Technical Advisory T6640.8A, October 30, 1987 and attach that document to the CE Documentation Form. If there are more than a few full or partial acquisitions it is helpful to have a table of the acquisitions for potential re-evaluation(s).

- Identify if there are any low-income or minority populations in the project area. Contact the Department’s Civil Rights Office for current low-income and minority population figures.

- Notify the public and provide for public comment for any project that might affect a predominately low-income area or minority community or is located in a community with a Federally recognized tribal government (E.O. 12898 “Environmental Justice”).

- If there is a disproportionately high and adverse effect on minority populations or low-income populations describe the results of the identification and assessment of any adverse effects and document the consultation process in Section V, Comments and Coordination of the form.

- Determine if the project will require use of land from the Alaska National Interest Lands Conservation Act (ANILCA). If yes, the project can not be assigned to the State per SAFETEA-LU Section 6004 and the CE must be sent to FHWA for approval.

- Describe/summarize ROW impacts.

B. **Social Impacts:**

- Coordinate with the public, local government, community council and community organizations to assist in the identification of potential adverse social effects on the community. Summarize the adverse effects in this section and document coordination in Section V, Comments and Coordination.

- Contact the Department’s Engineering Manager, Area Planner, Traffic Engineer, etc., to determine if the project will adversely affect traffic patterns and accessibility and in particular, access to businesses and subdivisions.

- Coordinate with local school district officials and other local officials to determine if the project may affect school districts or bus routes, recreational areas, churches, businesses or police and fire protection.

- Coordinate to determine if the project will adversely affect special interest groups, minorities, economically disadvantaged, etc.

- Describe any adverse affects in this section and document coordination in Section V, Comments and Coordination. If project issues or concerns of a local Indian tribe [as defined in 36 CFR 800.16(m)] are not satisfactorily resolved then the project is not assigned to the State per SAFETEA-LU Section 6004 and the CE must be sent to FHWA for approval. The FHWA and/or the tribe will determine adequacy (see Section III.C in the 6004 MOU).

C. **Economic Impacts:**

- Coordinate with the local government, borough or State agencies to assess the local and regional economic effects of the proposed action.
• Address the effects on established businesses and business districts, including changes to accessibility that affect ingress and egress to businesses. Even minor changes in access could substantially impair a convenience type business. Have the ROW Agent coordinate as necessary with affected business owner(s).

• Describe any adverse effects in this section and document coordination in Section V, Comments and Coordination.

D. **Local Land Use and Transportation Plans:**

• Review the most current local land use and transportation plans to ensure the project is consistent with those plans.

• Make sure the Department’s Area Planner has coordinated the project with the local planning authority (e.g. AMATS, FMATS).

• Evaluate whether the project will induce adverse indirect and cumulative impacts.

• Describe adverse impacts and any proposed mitigation measures.

E. **Impacts to Historic Properties:**

• Review the list of actions determined to be *Program Undertakings with No Potential to Cause Effects on Historic Properties* per the May 6, 2006 letter from FHWA Alaska Division Administrator David C. Miller to DOT&PF Commissioner Mike Barton. If the project qualifies, attach confirmation from the FHWA Area Engineer or a Statewide NEPA Manager for 6004.

• Check the OHA Oracle database to determine if there are known historic properties in or near the area of potential effect (APE).

• Initiate consultation for projects that involve work off the existing embankment slopes with the State Historic Preservation Officer (SHPO), certified local government, federally recognized tribes and village or regional corporations as applicable to determine if a historic properties survey is necessary. Be sure to use the most current initiation template forms (see our Departments website) and Statewide review procedures.

• If determined necessary, a survey for historic properties will be performed by a Qualified person meeting the Secretary of the Interiors Professional Qualification Standards.

• Have the Qualified person evaluate potentially eligible properties against the NRHP eligibility criteria and prepare appropriate documentation.

• If properties are identified that are on or eligible for the NRHP have the Qualified person determine the effect and complete the Section 106 process in accordance with 36 CFR Part 800 and Department procedures.

• Summarize the results of the Section 106 process and attach copies of all correspondence to the CE Documentation Form.

F. **Wetland Impacts:**

• Determine if wetlands (both jurisdictional and non-jurisdictional) as defined by the US Army Corps of Engineers (USACE) will be affected by the proposed action, in accordance with the “Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Alaska Region (Version 2.0) Sept. 2007 or new version. Attach Jurisdiction Determination and Wetlands Delineation to the CE Documentation Form.
• If wetlands are affected, quantify and coordinate with State and Federal resource agencies (including local coastal districts, if applicable) and provide the public the opportunity to comment by placing an ad that complies with E.O. 11990 – Protection of Wetlands in a local newspaper.

• Carefully document and evaluate alternatives that avoid and minimize the wetland involvement. Completion of the Highway Avoidance and Minimization Procedures Form is recommended.

• Develop a mitigation plan for unavoidable wetlands impacts.

• Document resource agency acceptance of the wetlands impact assessment and any mitigation measures, including actions to compensate for unavoidable adverse wetland impacts. Attach this coordination to the CE Documentation Form.

• Document the results of the functional assessment and alternatives analysis in a “wetlands finding” and append it to the CE Documentation Form. The wetlands finding also must document measures taken to avoid and minimize adverse wetland impacts and to compensate for unavoidable adverse wetland impacts per the 2008 final rule from the USACE and USEPA on compensatory mitigation.

G. Fish and Wildlife:

The following four subheadings must be addressed under this section:

• anadromous or resident fish habitat,
• Essential Fish Habitat (EFH),
• wildlife resources (game/subsistence species), and
• Bald and Golden Eagle Protection Act.

The Environmental Impact Analyst or Consultant should review available fish and wildlife resource information on appropriate state and federal websites prior to contacting resource agencies for additional information.

1. Anadromous or Resident Fish Habitat:

• Review the ADF&G Anadromous Waters Catalog/Atlas/Maps and Fish Passage Inventory Program to determine if the proposed action affects a cataloged or inventoried fish stream. The catalog will provide a reference number, indicate species present and type of use (e.g., spawning, rearing).

• If an anadromous fish stream is affected, coordinate with appropriate State and Federal regulatory and resource agencies (remember that a fish stream is a “Water of the US” subject to protection under Section 404 of the Clean Water Act).

• Document the type of stream habitat affected by the project. This is essential in determining the magnitude of the impact, the appropriate structure type and any necessary mitigation.

• Holding an on-site meeting with agencies is a good practice, but not required.

• If you do not hold an on-site meeting, if possible video-tape or photograph the site and present those resources to the agencies.

• If a stream is not cataloged, but is a tributary to a cataloged stream without an obvious fish block, it may be necessary to determine if fish are present. Discussion with Department staff (e.g. Project Engineer, Hydrologist) and F&G Area or Habitat Biologist is recommended. If fish are present, the primary concern is providing for fish passage through in-stream structures. Fish sampling requires a scientific sampling permit issued by the ADF&G Sport Fish Division.

• If fish pass culverts are to be placed, replaced or repaired follow the most recent MOU between ADF&G and DOT&PF for the “Design, Permitting and Construction of culverts for fish passage”.

2. Essential Fish Habitat (EFH):
   • EFH is covered by a provision of the Magnuson-Stevens Fishery Conservation and Management Act (50 CFR 900.20) and is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.” In Alaska, EFH applies to any species regulated by the North Pacific Fisheries Management Council. The Act requires any Federal action agency (e.g., FHWA as the lead Federal agency or DOT&PF if the project is an assigned CE) to identify potential adverse impacts on EFH and requires NMFS to recommend actions that would conserve and enhance EFH affected by the action.
   • EFH is applicable for some projects that affect intertidal and subtidal areas and all projects that affect anadromous fish streams. Check the EFH Resource maps and/or consult with NOAA personnel.
   • EFH requires consultation with NMFS and may require preparation of an EFH Assessment in accordance with 50 CFR 600.920. Follow the Departments “EFH Process Guidance for Categorical Exclusions” found on the DOT website.
   • The assessment must document the resources present, potential adverse effects and any measures taken to minimize harm.
   • The REM must inform NMFS how their EFH recommendations have been incorporated into the project. NMFS has 30 days to determine if an expanded consultation is necessary.

3. Wildlife Resources (game/subsistence species):
   • Evaluate the project area to identify any wildlife resources (game/subsistence species, migratory birds) of particular concern, especially any species of concern identified by ADF&G (e.g., Queen Charlotte grouse hawk in SE).
   • You should analyze the impact categories of habitat fragmentation, bisecting migration corridors and areas of high wildlife/vehicle crashes.
   • Analyze potential impacts on migratory bird species for compliance with the Migratory Bird Treaty Act.

4. Bald and Golden Eagle Protection Act of 1940 and Migratory Bird Treaty Act:
   • Review the National Bald Eagle Management Guidelines, May 2007 which replaces the “Bald Eagle Basics” handbook.
   • In coastal areas and river and stream corridors, check with USF&WS to determine if any eagle nesting trees (active or non-active) are located within the project area. Other agencies that might have nesting information include local government offices, DOT&PF M&O employees and F&G Area Biologists.
   • If the nest is or recently was active, determine the approximate distance and vegetation coverage from the project slope limits or construction blasting range to the nesting tree.
   • You must maintain close coordination with USF&WS to determine if the project will adversely affect the nesting tree.
   • Document the results of the coordination and any mitigation measures (e.g. construction timing window, observer requirements) to be implemented.

H. Threatened and Endangered Species (T&E):
   • Check with USF&WS and NMFS to determine if the project may affect a listed T&E species or designated critical habitat for T&E species. If so, you must consult with the USF&WS or NMFS.
• If preparation of a biological assessment or evaluation is required, attach the study to the CE Documentation Form.

• Note: If a T&E species or designated critical habitat is directly or indirectly affected by the project, the CE can not be approved until the T&E process is complete.

• Note: A project that will adversely affect a federally listed species will require Formal Section 7 consultation and will be excluded from 6004 assignment.

I. Water Body Involvement:

• Consult materials (e.g. maps and aerial photos) to determine if the project will affect a water body (i.e., pond, lake, river, stream). If any water bodies are present, evaluate practicable avoidance alternatives.

• Depending on the type of project involvement, various regulatory requirements may be applicable (e.g., USACE Section 404/10 permit or USCG Section 9 permit).

• Determine if the water body is navigable as defined by the USCG and the USACE.

• For projects that involve bridge construction or reconstruction over or in navigable waters coordinate with FHWA for possible USCG permitting (this includes assigned CEs).

• Check the Alaska Anadromous Waters Catalog to determine if the water body is a cataloged anadromous fish stream. If so, coordinate with ADF&G.

• If the water body is not anadromous, it may support important resident species (i.e., rainbow trout, char, grayling, white fish) so coordination with ADF&G is recommended.

• Determine if the water body is designated as a segment of the Wild and Scenic Rivers system. If it is, compliance with the requirements in 36 CFR Part 297 is necessary. Also, if the project may affect a designated Wild and Scenic River or land adjacent to a Wild and Scenic River, the REM must consult with the FHWA Environmental Program Manager (non-assigned CEs) or a Statewide NEPA Manager for 6004 (for assigned CEs) to determine applicability of Section 4(f).

• Check the type of involvement (i.e., bridge, culvert, embankment fill, diversion) and type of habitat (i.e., spawning, rearing, pool, riffle, undercut bank). Describe any substantive adverse impacts and proposed mitigation.

J. Alaska Coastal Management Program (ACMP):

A project located in the coastal zone must be consistent with the ACMP to receive Federal-aid approval.

• Determine if the project is located within the ACMP boundaries.

• If the boundary maps are not available, contact the DNR Division of Coastal & Ocean Management.

• If the project is located within the coastal zone of the State, determine if the project is located within an approved Local Coastal District (contact DNR, if necessary).

• Review the ABC List (Classification of State Agency Approvals) to determine if a project is “categorically” approved without conditions (A List), listed as general concurrence (B List) or requires individual consistency (C List).

• Review the local district management plan and evaluate preliminary consistency.

• Determine project consistency after review of comments from State and Federal resource agencies, local coastal district and the public.
K. Hazardous Waste:

- Consult Alaska Department of Environmental Conservation (ADEC) Above-ground and Underground Storage Tank databases for potential contaminated sites in the proposed area.

- Conduct an Initial Site Assessment (ISA) for all projects where ROW acquisition and/or excavation are proposed.

- If contamination is known to be substantial, you must complete a detailed site investigation and proposed cleanup/remediation [Corrective Action Plan (CAP)] during the environmental phase. Attach documentation, correspondence and plan approval from ADEC.

- If there is a potential of encountering contamination during construction, the decision to delay a detailed site investigation until the design or ROW phase (unless the information is necessary to compare alternatives) may be warranted. When to do the Phase II investigation should be discussed with the REM and a Statewide NEPA Manager for 6004 (assigned CE) or FHWA Area Engineer (non-assigned CE).

- In addition, estimate the amount of contaminated material (i.e., soil, water) to be handled during construction, develop an ADEC CAP and prepare an estimate of cost to clean up.

- Summarize impacts in the CE Documentation Form and attach the appropriate hazardous waste report(s) and DEC correspondence.

L. Air Quality (Conformity):

- If your project is located in an air quality maintenance area or nonattainment area for CO or PM10 fill out this section of the form. Note: EPA is considering raising the PM standards to PM2.5 which may effect some Northern and Southeast Region projects. Check with ADEC for conformity areas.

- If your project is not in a maintenance area or nonattainment area proceed to the next section of the CE Documentation Form.

- If the project is in a maintenance or non-attainment area, certain types of projects are exempt from all or some part of EPA’s transportation conformity requirements. Generally, these are “c” list CE type projects that are non-construction activities. Check 40 CFR Part 93, Section 93.126, Table 2 for the list of exempt activities. Some projects that are exempt from regional emission analysis still require a project level analysis. These are currently shown in 40 CFR Part 93, Section 93.126, Table 3.

- The project must come from a transportation plan and Transportation Improvement Program (TIP) that conforms with EPA’s Transportation Conformity Rule 40 CFR Part 93 (Subpart T - “Conformity to State and Federal Implementation Plans, Programs and Projects,” 62 FR 43780).

- There must not be a significant change in scope or design concept described in the MPO’s transportation plan (e.g., AMATS) and TIP conformity analysis.

- In CO nonattainment or maintenance areas, all projects, except those exempt from analysis requirements under the EPA Transportation Conformity Rule (40 CFR Part 93 Section 93.126), require a CO analysis. The analysis must show that the project does not cause or contribute any new localized CO violations or increase the frequency or severity of violations of any existing CO violations. This is satisfied if the analysis demonstrates that no new local violations will be created and the severity of existing violations will not be increased as a result of the project. If CO mitigation or control measures are necessary, written commitments are required before the mitigation or control measures may be assumed within the project-level hot spot analysis and DOT&PF must comply with these commitments.

- In PM10 nonattainment and maintenance areas, document that the project does not cause or contribute to any new localized PM10 violations or increase the frequency or severity of any existing PM10 violations in...
the PM$_{10}$ nonattainment and maintenance areas. The project must also comply with PM$_{10}$ control strategies in the applicable implementation plan. This requirement is satisfied if the project-level conformity determination contains a written commitment that the final PS&E contains those control measures identified in the applicable implementation plan (i.e., for the purpose of limiting PM$_{10}$ emissions from construction activities and/or normal use and operation associated with the project).

- The procedures for determining localized CO and PM$_{10}$ concentrations (project level analysis or “hot spot”) are specified in 40 CFR Part 51.
- If a rural project is located in a nonattainment area or maintenance area and is outside an MPO planning area (i.e., AMATS, FMATS), the same degree of regional and project-level hot spot emission analysis must be done to ensure conformity with EPA’s Transportation Conformity Rule [40 CFR 93.109(g)].

M. Floodplain Impacts (23 CFR Part 650, Subpart A):

- A project encroaching into a 100-year floodplain (i.e., base floodplain in fresh or marine waters) requires public comment on the action and preparation of a “Location Hydraulic Study.” A project encroaching on a 100-year floodplain may not raise the base flood elevation more than 1 foot as established by the Federal Emergency Management Agency (FEMA) for administering the National Flood Insurance Program without a modification of the 100-year floodplain designation and map. For these types of projects, attach any comments received and the Location Hydraulic Study to the CE Documentation Form.

- A project encroaching on a designated or proposed regulatory floodway must be consistent with the regulatory floodway, i.e. may not raise the base flood elevation as established by the Federal Emergency Management Agency (FEMA) for administering the National Flood Insurance Program without a modification of the regulatory floodway designation and map.

- Perform an adequate engineering and environmental analysis to determine the level of encroachment and the increase in the base flood elevation that would result from the project. If possible, avoid longitudinal encroachments. A project that proposes a longitudinal encroachment requires an avoidance analysis.

- Coordinate with the FEMA and appropriate State and local government agencies for floodway encroachments.

- If a floodway revision is necessary, document coordination from FEMA and local or State agencies indicating the revision would be acceptable.

- Document consistency with Executive Order 11988 and 23 CFR 650, Subpart A. Include:
  + the reason(s) why the proposed action must be located in the floodplain;
  + the alternative(s) considered and why they were not practicable; and
  + a statement indicating whether the action conforms to applicable State or local floodplain protection standards.

- Summarize the results of the Location Hydraulic Study including the flooding risk and any adverse floodplain impacts.

N. Noise Impacts:

- Evaluate projects to determine if they are “Type I” projects, as defined in 23 CFR 772.5 (i.e., a project on new location or the physical alteration of an existing highway which significantly changes either the horizontal or vertical alignment or increases the number of through traffic lanes). All Type I projects are subject to the requirement for a traffic noise analysis in accordance with 23 CFR 772 and the Department’s Noise Policy.
• The traffic noise analysis must evaluate Type I projects to identify any adjacent sensitive receivers or land uses and potential noise impacts on those receivers.

• If there are noise impacts, evaluate potential noise abatement in accordance with the Department’s Noise Policy and 23 CFR 772.13(c)(1-5).

• Summarize any noise impacts and abatement measures considered, if applicable. Attach the technical report and Noise Abatement Recommendation Worksheets to the CE Documentation Form. Note: the worksheets may not be filled out or approved by a consultant.

O. Water Quality Impacts:

• Projects must meet State and Federal water quality standards.

• Evaluate projects for potential effects on public or private potable drinking water sources, particularly projects that involve blasting in the vicinity of a potable drinking water well.

• Identify any DEC Section 303(d) Impaired Waterbody and take appropriate measures to mitigate any impact on those waters.

• The project must comply with the EPA NPDES Phase I and Phase II Construction Permit regulations, as applicable.

• Estimate the amount of ground-disturbing activities proposed and identify sensitive receiving waters.

• Determine if the project is located within or would affect an area covered by a Municipal Separate Storm Sewer System (MS4) NPDES permit or if runoff from the project will be mixed with discharges from an NPDES permitted industrial facility.

• Summarize potential impacts to water quality and proposed mitigation measures.

P. Construction Impacts:

• Identify impacts anticipated during construction (the primary ones are listed).

• Describe adverse construction impacts. Generally, these are temporary; however, some can result in substantial impacts (e.g., on businesses).

Q. Section 4(f)/6(f) (23 CFR 774):

• Evaluate the project area to identify any Section 4(f) and Section 6(f) resources. Consult with the FHWA Environmental Program Manager (non-assigned CEs) or the Department’s Statewide NEPA Manager for 6004 (assigned CEs) to determine if there is a “use” and the type of documentation that will be required.

• Coordinate with the property manager and/or SHPO, if applicable.

• Determine if funds from the Land and Water Conservation Fund were previously used in the project corridor and if so, coordinate the potential “conversion of use” with the ADNR Grants Administrator.

• Attach the Individual or Programmatic Section 4(f) Evaluation, or the de minimis impact finding, as applicable, documentation of coordination with and responses from the land management agency and DNR regarding proposed Section 6(f) conversion to the CE Documentation Form. Note that the need to prepare an Individual Section 4(f) Evaluation will exclude the project from 6004 assignment.

IV. Permits and Authorizations:
• Identify any Federal, State or local environmental permits and authorizations necessary for the proposed action.

V. Comments and Coordination:

• You must coordinate with the public and agencies for any project that affects a protected resource or requires additional ROW.

• You must also issue a public notice for projects that affect predominately low-income areas or a predominately minority community or that are located in a community with a Federally recognized tribal government.

• Describe any issues raised as a result of coordination with State and Federal regulatory and resource agencies, local government, tribal government, Native corporation or the public.

• Summarize the issues raised and resolution of the issues in this section.

• Attach copies of scoping letters, newspaper notices, meeting minutes and comments and responses to the CE Documentation Form.

VI. Environmental Commitments and Mitigation Measures:

• List any environmental commitments or mitigation measures to be incorporated in the project.

VII. Environmental Documentation Approval:

• Determine if the project is covered by the MOU with FHWA assigning CE approval authority to DOT&PF pursuant to 23 U.S.C. §326.

• Indicate if the project meets the criteria for programmatic approval under a Programmatic Agreement.
Figure 2-6
Categorical Exclusion Documentation Form
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### B. Social Impacts

1. The project will affect neighborhoods or community cohesion.  
2. The project will affect travel patterns and accessibility (e.g., vehicular, commuter, bicycle, or pedestrian).  
3. The project will affect school boundaries, recreation areas, churches, businesses, police and fire protection, etc. Include the direct and indirect impacts from the displacement of businesses in the analysis.  
4. The project will adversely affect the elderly, handicapped, nondrivers, transit-dependent, minority and ethnic groups, or the economically disadvantaged.  
5. There are unresolved project issues or concerns of a local Indian tribe [as defined in 36 CFR 800.16(m)]. If yes, the project is not assigned to the State per SAFETEA-LU Section 6004 and the CE must be sent to FHWA for approval.  
6. Summarize impacts, if any.

### C. Economic Impacts

1. The project will have economic impacts on the regional and/or local economy, such as effects on development, tax revenues and public expenditures, employment opportunities, accessibility, and retail sales.  
2. The project will affect established businesses or business districts.  
3. Summarize impacts, if any.

### D. Local Land Use and Transportation Plans

1. Project is consistent with local land use plan.  
2. Project is consistent with local transportation plan.  
3. Project would induce adverse indirect and cumulative effects.  
4. Summarize any adverse effect on the local transportation and land use plan, including indirect and cumulative effects.

### E. Impacts to Historic Properties

1. This project would have no potential to affect historic properties. This project meets the criteria for no formal review under Section 106 of the National Historic Preservation Act [36 CFR 800.3(a)(1)] per the May 2, 2006 determination by the Alaska Division of FHWA. If yes, attach concurrence from the FHWA Area Engineer (non-assigned projects) or Statewide NEPA Manager for 6004 (assigned-projects) and proceed to next section.  
2. Is a National Register listed or eligible property in the Area of Potential Effect?  
3. Date Consultation/Initiation Letters sent ______ Attach copies to this form. If no letters sent explain why not.

| Project Name: | 2 |
| Project Number (state/federal): | | Form revised July 2009

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**Figure 2-6**  
**Categorical Exclusion Documentation Form**  
**Page 2 of 9**
### E. Impacts to Historic Properties

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<td>N/A</td>
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<td>NO</td>
</tr>
<tr>
<td>2. Date SHPO concurred with “Finding of Effect”:</td>
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<tr>
<td>3. Will there be an adverse effect on a historic property? If yes, attach correspondence and signed MOA. If not, Programmatic Agreements (PCE) do not apply.</td>
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<td>4. Summarize affects to historic properties.</td>
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### F. Wetland Impacts

1. Project involves wetlands as defined by the U.S. Army Corps of Engineers (USACE). If yes, document public and agency coordination required per E.O. 11990, Protection of Wetlands.

2. Wetlands delineated in accordance with the “Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Alaska Region (Version 2.0) Sept. 2007”.

3. Estimated area of involvement (in acres): __________

4. Estimated fill quantities (cubic yards): __________

5. Estimated dredge quantities (cubic yards): __________

6. USACE authorization anticipated? If yes, type: NWP __ Individual __ GP __ Other __

7. Summarize wetlands impacts and attach following supporting documentation as appropriate:
   - Avoidance and Minimization Checklist.
   - Wetlands Delineation.
   - Jurisdictional Determination.
   - Copies of public and resource agency letters received in response to the request for comments.

Wetlands impacts are as follows: __________

8. Wetlands Finding:
   a. Are there practicable alternatives to the proposed construction in wetlands? If yes, the project cannot be approved as proposed.
   b. Does the project include all practicable measures to minimize harm to wetlands? If no, the project cannot be approved as proposed. List any commitments and mitigative measures in Section VIII.
   c. Only practicable alternative: Based on the evaluation of avoidance and minimization alternatives, there are no practicable alternatives that would avoid the project’s impacts on wetlands. The project includes all practicable measures to minimize harm to the affected wetlands as a result of construction. If no, the project cannot be approved as proposed.
### G. Fish and Wildlife

1. Anadromous or resident fish habitat.
   - Adverse effect on spawning habitat. □ □* □
   - Adverse effect on rearing habitat. □ □* □
   - Adverse effect on migration corridors. □ □* □
   - Adverse effect on subsistence species. □ □* □

2. Essential Fish Habitat (EFH).
   - EFH present in project area. □ □ □
   - Project proposes construction in EFH. If yes describe EFH impacts in No. 5. □ □ □
   - Project may adversely affect EFH. If yes, attach EFH Assessment. □ □* □
   - Project includes conservation recommendations proposed by NOAA Fisheries. If no, formal notification must be made to NOAA Fisheries. (Summarize the final conservation measures in No. 5 and list in Section VI). □ □ □

3. Wildlife Resources (game/subsistence species):
   - Project is in area of high wildlife/vehicle accidents. □ □ □
   - Project would bisect migration corridors. □ □ □
   - Project would segment habitat. □ □ □
   - Project would adversely affect species of concern to Alaska Department of Fish and Game (ADF&G). If yes, attach appropriate documentation from ADF&G that demonstrates the project would not result in significant adverse impacts. □ □* □

4. Bald and Golden Eagle Protection Act
   - Project visible from an eagle nesting tree? If yes, consult with USFWS National Bald Eagle Management Guidelines and attach documentation of consultation. □ □* □
   - Project within 330 feet of an eagle nesting tree? If yes, consult USFWS National Bald Eagle Management Guidelines and attach documentation of consultation. □ □* □
   - Project within 660 feet of an eagle nesting tree? If yes, consult USFWS National Bald Eagle Management Guidelines and attach documentation of consultation. □ □* □
   - Will the project require blasting or other activities that produce extreme loud noises within 1/2 a mile from an active nest? If yes, consult USFWS National Bald Eagle Management Guidelines and attach documentation of consultation. □ □* □

5. Summarize adverse fish and wildlife impacts.

### H. Threatened and Endangered Species (T&E)

1. Listed threatened or endangered species present. □ □ □
2. Threatened or endangered species migrate through the project area. □ □ □
3. Proposed species present in project area. □ □ □
4. Candidate species present in project area. □ □ □
5. Project is likely to adversely affect a listed T&E species or critical habitat. If yes, formal Section 7 consultation is required, and the project may not be assigned to the

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**Figure 2-6**

**Categorical Exclusion Documentation Form**

**Page 4 of 9**
H. Threatened and Endangered Species (T&E)  
State per SAFETEA-LU Section 6004 and the CE must be sent to FHWA for approval.

6. Summarize the findings of the biological assessment and the biological opinion of the agency with jurisdiction.

I. Water Body Involvement

1. Project affects a water body.
2. Project affects a navigable water body as defined by USCG, (i.e. Section 9).
3. Project affects Waters of the U.S. as defined by the USACE, Section 404.
4. Project affects Navigable Waters of the U.S. as defined by the USACE, Section 10.
5. Project affects a resident fish stream (i.e. A.S. 16.14.841)  
7. Project affects a designated Wild and Scenic River or land adjacent to a Wild and Scenic River. If yes, the Regional Environmental Manager should consult with the Statewide NEPA Manager for 6004 (assigned CEs) or FHWA Area Engineer (non-assigned CEs) to determine applicability of Section 4(f).

8. Proposed river or stream involvement: Bridge □ Culvert □ Embankment Fill □ Relocation □ Diversion □ Temporary □ Permanent □ N/A □
9. Type of stream or river habitat impacted: Spawning □ Rearing □ Pool □ Riffle □ Undercut bank □ N/A □
10. Amount of fill below: OHW _____ MHW _____ HTL _____
11. Summarize impacts:

J. Alaska Coastal Management Program (ACMP)

1. Project is within the Alaska Coastal Management Program boundary.
2. Project is within a local coastal management district. If yes, consult with the local coastal management official and attach correspondence.
3. Project is consistent with local and state coastal management plans. If no, the project cannot be approved as proposed.
4. Finding:

K. Hazardous Waste (HW)

1. There are known or potentially contaminated sites along the corridor.
2. The existing and/or proposed ROW is contaminated.
3. Extensive excavation is proposed adjacent to, or within, a known HW site.
4. Potential for encountering hazardous waste during construction is high.
5. Summarize impacts of any ‘yes’ marked in 1-4 and attach appropriate HW investigation report.

L. Air Quality (Conformity)

1. The project is located in an air quality maintenance area or nonattainment area (CO or

Project Name:  
Project Number (state/federal):  
Form revised July 2009
### L. Air Quality (Conformity)
- PM-10: If yes, indicate CO □ or PM-10 □ and complete the remainder of this section. If no, continue to next section.
- 2. If applicable, the project is included in a conforming Long Range Transportation Plan (LRTP) and Transportation Improvement Program (TIP) (state dates of FHWA/FTA conformity determination). Date: ______
- 3. The project is exempt from an air quality analysis per 40 CFR 93.126 (Table 2 and Exempt Projects). If yes, continue to next section. If no, complete the remainder of this section. Note: A project-level air quality conformity analysis is required for CO nonattainment and maintenance areas and a qualitative project-level analysis is required for PM-10 nonattainment and maintenance areas.
- 4. Have there been any significant changes in the design, concept, and/or scope as discussed in the most recent conforming TIP and LRTP? If yes, describe changes in No. 7. In addition, the project must satisfy the conformity rule’s requirements for projects not from a plan and TIP. Or the plan and TIP must be modified to incorporate the revised project (including a new conformity analysis).
- 5. If required, a CO project-level analysis was completed meeting the requirements of Section 93.123 of the conformity rule. The results satisfy the requirements of Section 93.116(a) for all areas or 93.116(b) for nonattainment areas. Attach a copy of the analysis.
- 6. If required, a PM-10 project-level air quality analysis was completed meeting the requirements of Section 93.123 of the conformity rule. The results satisfy the requirements of Section 93.116(a). (The thresholds are different for PM-10 than they are for CO). Attach a copy of the analysis.
- 7. Summarize air quality impacts:

### M. Floodplain Impacts (23 CFR Part 650, Subpart A)
- 1. Project encroaches longitudinally into the 100-year floodplain (i.e. base floodplain in fresh or marine waters). If yes, public comments on the action must be requested and comments received attached. Summarize the findings and attach the “Location Hydraulic Study” developed per 23 CFR 650.111.
- 2. Project encroaches into a regulatory floodway. If yes, attach the “location hydraulic study.”
- 3. The proposed action would increase the base flood elevation one-foot or greater. If yes, attach the “Location Hydraulic Study”.
- 4. The encroachment is significant as defined by 23 CFR 650.105. If yes, the project cannot be approved as proposed without a finding that the proposed action is the “Only Practicable Alternative” as defined in 23 CFR 650.113. Attach the finding for approval.
- 5. Project conforms to local flood hazard ordinances.
- 6. Project is consistent with E.O. 11988 (Floodplain Protection). If no, the project cannot be approved as proposed.
- 7. Summarize risk and adverse floodplain impacts:

### N. Noise Impacts (23 CFR Part 772)
- 1. There are noise-sensitive receivers/land uses adjacent to the proposed project. If yes,
### Figure 2-6

**Categorical Exclusion Documentation Form**

**Page 7 of 9**

<table>
<thead>
<tr>
<th>L. Air Quality (Conformity)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attach the noise analysis, if applicable (see 2). If no, go to section &quot;O&quot;.</td>
</tr>
<tr>
<td>Category A: There are adjacent lands where serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.</td>
</tr>
<tr>
<td>Category B: There are adjacent picnic areas, recreation areas, playgrounds, active sports areas, parks, residences, hotels, motels, schools, churches, libraries, or hospitals.</td>
</tr>
<tr>
<td>Category C: There are adjacent developed lands, properties, or activities not included in categories A or B above. This would include commercial properties.</td>
</tr>
<tr>
<td>2. The project is located on new location, would result in substantial changes in vertical or horizontal alignment, or would increase the number of through lanes. If yes, a noise analysis is required. If not, go to Section O.</td>
</tr>
<tr>
<td>3. There is an existing noise impact.</td>
</tr>
<tr>
<td>4. The project would create a noise impact.</td>
</tr>
<tr>
<td>5. Noise analysis demonstrates potential noise impacts.</td>
</tr>
<tr>
<td>6. There are feasible and reasonable measures that can reduce noise impacts (attach analysis).</td>
</tr>
<tr>
<td>7. The noise abatement measures listed in 23 CFR 772.13(c)(1-5) have been considered for those receivers where a noise impact would occur.</td>
</tr>
<tr>
<td>8. Summarize noise impact and abatement measures considered, if applicable.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>O. Water Quality Impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Project would involve a public or private drinking source. If yes, explain in no. 7.</td>
</tr>
<tr>
<td>2. Project would result in a discharge of storm water to a Waters of the U.S.</td>
</tr>
<tr>
<td>3. Project would discharge storm water into or affect an ADEC designated impaired water body. If yes, list in no. 4 and describe in no. 7.</td>
</tr>
<tr>
<td>4. List name(s) and location(s).</td>
</tr>
<tr>
<td>5. Estimate the acreage of ground-disturbing activities that will result from the project?</td>
</tr>
<tr>
<td>_ _ _ _ _ _ acres</td>
</tr>
<tr>
<td>6. Is there a municipal separate storm sewer system (MS4) NPDES permit, or will runoff be mixed with discharges from an NPDES permitted industrial facility? If yes, NPDES permit #:</td>
</tr>
<tr>
<td>7. Summarize the impacts of any &quot;yes&quot; marked in Section O.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>P. Construction Impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. There will be temporary degradation of water quality.</td>
</tr>
<tr>
<td>2. There will be temporary stream diversion.</td>
</tr>
<tr>
<td>3. There will be temporary degradation of air quality.</td>
</tr>
<tr>
<td>4. There will be temporary delays and detours of traffic.</td>
</tr>
<tr>
<td>5. There will be temporary impact on businesses.</td>
</tr>
</tbody>
</table>

---

Project Name: 7

Form revised July 2009
6. There will be other construction impacts, including noise.
7. Summarize construction impacts associated with any "yes".

**Q. Section 4(f)/6(f) - (23 CFR 774)**

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Section 4(f) properties would be affected by the proposed action.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2. There would be a &quot;use&quot; of land from these 4(f) properties.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3. The project will require an Individual Section 4(f) Evaluation. If yes, the project is excluded from State assignment and the CE and Section 4(f) Evaluation must be approved by FHWA.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>4. The project would affect Section 6(f) properties.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>5. Funds from the Land and Water Conservation Fund Act (LWCFA) were used for improvement to the 4(f) property.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>6. Is the use of the property receiving LWCFA funds a &quot;conversion of use&quot; per Section 6(f) of the LWCFA? Attach the correspondence received from the ADNR 6(f) Grants Administrator.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>7. Project is adjacent to a Section 4(f) resource. If yes, consult with the Statewide NEPA Manager for 6004 (assigned CEs) or FHWA Environmental Program Manager (non-assigned CEs) to determine applicability of &quot;constructive use&quot;.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>8. Summarize the type of involvement. Coordinate with the land manager and attach appropriate documentation (i.e. Section 4(f) or Section 6(f) Evaluation).</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

**IV. Permits and Authorizations**

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. USACE, Section 404/10 (includes APP, NWP &amp; GP)</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2. Coast Guard, Section 9</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3. Department of Fish and Game (ADFG) Fish Habitat Permit (T16.871 and 16.841)</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>4. Flood Hazard</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>6. ADEC 401</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>7. DNR, ACMP consistency</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>8. Other. If yes, list.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

**V. Comments and Coordination**

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Public/agency involvement for project (required if protected resources are involved).</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2. Public Meetings. Date: ____</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3. Newspaper ads Name of newspaper: ____</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>4. Agency scoping letters. Date sent: ____</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>5. Agency scoping meeting. Date of meeting: ____</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>6. Field review</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>7. Summarize comments and coordination efforts for this project. Discuss pertinent issues raised. Attach</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

---

**Figure 2-6**

Categorical Exclusion Documentation Form
Page 8 of 9
V. Comments and Coordination

correspondence that demonstrates coordination and that there are no unresolved issues.

VI. Environmental Commitments and Mitigation Measures

List the environmental commitments or mitigation measures included in the project.

VII. Environmental Documentation Approval

1. The project meets the criteria of a Department or FHWA programmatic agreement. If yes, the CE may be approved by the Regional Environmental Manager but needs a QA/QC check (see shaded block).

2. The State has determined that the project has no significant impacts on the environment and that the project is categorically excluded from the requirements to prepare an EA or EIS under NEPA. The State has been assigned, and hereby certifies that it has carried out the responsibility to make this determination pursuant to Chapter 3 of title 23, United States Code, Section 326 and the MOU dated {WE'LL NEED TO INSERT DATE} executed between the FHWA and the State. If yes, the CE may be approved by a Statewide NEPA Manager for 6004. If no, the CE must be approved by FHWA.

Prepared by: ___________________________ Date: ____________
Environmental Impact Analyst

Reviewed by: __________________________ Date: ____________
Engineering Manager

Approved by: __________________________ Date: ____________
Regional Environmental Manager

If Assigned CE

Approved by: __________________________ Date: ____________
[Print] DOT&PF Statewide NEPA Manager for 6004

[Signature] DOT&PF Statewide NEPA Manager for 6004

If Non-Assigned CE

Approved by: __________________________ Date: ____________
FHWA Area Engineer

* If the CE meets the conditions of either the Internal Programmatic Agreement (DOT&PF Statewide NEPA Manager for 6004 verifies) or one of the Programmatic Agreements with FHWA (FHWA Area Engineer verifies) then:

Concurrence by: __________________________ Date: ____________
DOT&PF Statewide NEPA Manager or FHWA Area Engineer
2.4. Programmatic Categorical Exclusion Agreements

2.4.1 FHWA Programmatic Agreements

For projects being processed by the FHWA, there are four programmatic agreements between the FHWA and DOT&PF where the FHWA has issued approval for an action contingent upon DOT&PF certification that the requirements of the agreement have been met. Discussion of the four programmatic agreements can be found in Section 2.2.2.

The four programmatic agreements are:

1. Programmatic Categorical Exclusion Agreement for use on Federal-Aid Highway Projects in Alaska (Figure 2-7).

2. Agreement between DOT&PF and FHWA for Certain “c” List Activities (Figure 2-8).

3. NHS, AMHS Ferry Vessel Improvement Projects (Figure 2-9).

4. Programmatic Categorical Exclusion for Right-of-Way Actions Approved Under 23 CFR 771.117(d)(6) (Figure 2-10).

2.4.2 DOT&PF Programmatic Agreement

For CE projects assigned to the Department there is one internal programmatic agreement (Figure 2-11) between the Commissioner and the Regional Directors that covers three categories of projects that have programmatic approval as categorical exclusions.

The three categories are:

1. Certain projects processed under 23 CFR 771.117(c) (Programmatic Approval 1);

2. Certain projects processed under 23 CFR 771.117(c) & (d) (Programmatic Approval 2);


2.5. CE Assignment MOU

Figure 2-12 contains the Memorandum of Understanding (MOU), including associated Appendices, that assigns authority for approval of certain CE projects to DOT&PF pursuant to 23 U.S.C. §326.
PROGRAMMATIC CATEGORICAL EXCLUSION AGREEMENT
For Use On Federal-Aid Highway Projects in Alaska

The Alaska Department of Transportation and Public Facilities (DOT&PF) and the Federal Highway Administration (FHWA) concur in advance with the classification as categorical exclusions (CEs) for certain highway projects, of the type identified in 23 CFR 771.117, meeting the conditions stated in this Agreement. The DOT&PF certifies that the conditions identified in this agreement will be satisfied for all projects classified under this programmatic process.

The following conditions apply to those actions that are processed under this Agreement.

1. The action does not have significant environmental impacts as described in 23 CFR 771.117(a).

2. The action does not involve unusual circumstances as described in 23 CFR 771.117(b).

3. The action does not involve the following:
   a. A road on a new location.
   b. The acquisition of more than minor amounts of right-of-way. (If the project requires the acquisition of an entire parcel or portions of more than 25 parcels, this programmatic agreement cannot be used).
   c. The displacement of any commercial or residential occupants.
   d. The use of properties protected by Section 4(d), 49 U.S.C. 303.
   e. A determination of adverse effect by the FHWA under Section 106 of the National Historic Preservation Act.
   f. A U.S. Coast Guard bridge permit.
   g. Work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevation of a watercourse or lake.
   h. Construction in, across or adjacent to a river designated as a component of the National System of Wild and Scenic Rivers.
   i. Work involving more than 10 acres of wetlands.
   j. A change in access control.
   k. The acquisition of property involving a known hazardous material site.

4. In air quality non-attainment and maintenance areas, the project conforms with the State Implementation Plan (SIP).

5. The action does not involve Federally listed Threatened or Endangered species or their Critical Habitat.
All determinations made by DOT&PF under this Programmatic classification shall be documented. The documentation will be provided to the FHWA for review prior to approval of further project activities. For projects being advanced under the "One-step" Authorization process, the documentation will be provided to FHWA immediately following DOT&PF approval.

This agreement will remain in effect for three-years beginning on the date it is ratified.

1/14/08  
Date

Division Administrator  
Alaska Division  
Federal Highway Administration

2/5/08  
Date

Commissioner  
Alaska Department of Transportation and Public Facilities
ADVANCED NEPA APPROVAL FOR CERTAIN “C” LIST CATEGORICAL EXCLUSIONS

Between the Alaska Department of Transportation and Public Facilities and the Federal Highway Administration, Alaska Division

To streamline the environmental approval process for minor activities identified in 23 CFR 771.117(c), the Alaska Department of Transportation and Public Facilities (ADOT&P) and the Federal Highway Administration (FHWA), Alaska Division agree that those actions listed below are approved as Categorical Exclusions by the regulation and do not typically require additional documentation or approval by the FHWA.

Any action listed in this agreement that could involve unusual circumstances (e.g., locally controversial, require right of way or constructive use of Section 4(f) property) or involve a protected resource (e.g., wetlands, fish stream, historic/archaeological site or Section 4(f) property) require an Environmental Checklist before it can be approved as a “C” list CE. Any exceptions to this agreement are identified in “italics.”

The “C” list activities covered by this approval are as follows:

(1) Activities which do not involve or lead directly to construction, such as, planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 134; approval of unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(4) Activities included in the State’s highway safety plan under 23 U.S.C. 402. (This does not apply to construction project.)

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction. (This agreement is only applicable for alterations to existing publicly owned buildings to provide for noise reduction.)

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur. (This agreement only applies to pavement markings.

(11) Determinations of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.

(13) Ridesharing activities. (This category does not apply if there is any on-the-ground construction.)

(14) Bus and rail car rehabilitation.

Advanced NEPA Approval for Certain “c” list CEs

Figure 2-8
Advanced NEPA Approval for Certain “c” List Categorical Exclusions
Page 1 of 2
(15) Alterations to facilities or vehicles in order to make them accessible for the elderly and handicapped.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations and directives.

ADOT&PF Regional Environmental Coordinator will certify on the "Project Information Sheet" that a proposed action is approved under this Agreement. Any project approved by this agreement can be programmed for Initial ATP through Final FS&E.

Aug 15, 2001
Date

[Signature]
Division Administrator
Alaska Division
FHWA

Aug 17, 2001
Date

[Signature]
Commissioner
ADOT&PF

Figure 2-8
Advanced NEPA Approval for Certain “c” List Categorical Exclusions
Page 2 of 2
MEMORANDUM

TO: Stephen A. Moreno  
Division Administrator  
FHWA

FROM: Patrick J. Kemp, P.E.  
Preconstruction Engineer

DATE: March 16, 1999

FILE NO.: NHS, AMHS Ferry Vessel Improvement Projects

TELEPHONE NO.: 455-4498

SUBJECT: Environmental Approval

Each year, the Alaska Marine Highway System (AMHS) has numerous ferry vessel improvement projects funded under the National Highway System Program. These projects include improvements such as: replacing ship generators, upgrading on-board computers, maintaining regulatory compliance with international safety regulations, and hotel function upgrades, etc.

All of these improvements to the existing fleet qualify as categorical exclusion (CE) under 23 CFR 701.117(c). I recommend that all projects programmed to improve the existing ferry vessels be programmatically approved as CEs at this time. This approval does not cover shore side facilities or any new ferry vessels. Those projects would be evaluated on a case-by-case basis.

Your concurrence is hereby requested. If you have any questions, please contact Bill Ballard, Regional Environmental Coordinator.

Concur: James A. Bryan  3/17/99

Do not concur: 

#BB/

cc: Loren Rasmussen, P.E., Preliminary Engineering/Environmental/Special Projects  
Philip Grasser, Engineering Manager, AMHS  
Martha Wysor, CIP Analyst, Southeast Region

Figure 2-9
NHS, AMHS Ferry Vessel Improvement Project Approval
Page 1 of 1
PROGRAMMATIC CATEGORICAL EXCLUSION
For Right-of-Way Actions Approved under 23 CFR 771.117(d)(6)

The Alaska Department of Transportation and Public Facilities (DOT&PF) and the Federal Highway Administration (FHWA) concur in advance that right-of-way approvals for disposal of excess right-of-way or for joint or limited use of right-of-way are approved as Categorical Exclusions (CE) by this agreement provided that the conditions stated 1 through 5 below are met. DOT&PF certifies that the conditions identified in this agreement will be satisfied for all right-of-way approvals processed under this agreement.

The following conditions must be met for right-of-way approvals processed under this Agreement.

1. The action does not have significant environmental impacts as described in 23 CFR 771.117(a).

2. The action does not involve unusual circumstances as described in 23 CFR 771.117(b).

3. The proposed use of right-of-way does not have significant adverse impacts.

4. The proposed use meets the following conditions:
   b. Has no potential to affect historic resources and therefore does not require further Section 106 consultation per 36 CFR 800.3(a)(1). Note: this precludes the use of this Programmatic CE for any proposal within or adjacent to an eligible historic property, District, or Landmark.
   c. Does not affect a regulatory floodway or the base floodplain (100-year flood) elevations of a watercourse or lake.
   d. Does not construct in, across or adjacent to a river designated as a component of the National System of Wild and Scenic Rivers.
   e. Does not affect wetlands.
   f. Does not change access control.
   g. Does not affect a known hazardous material site.
   h. Does not involve Federally listed threatened or endangered species or their critical habitat.

5. The proposed action or use is exempt from the requirement to determine Air Quality Conformity as defined in 40 CFR Part 51.126 (Found in Table 2: Exempt Projects).

Programmatic CE for Right-of-Way Actions

Figure 2-10
Programmatic Categorical Exclusion for Right-of-Way Actions Approved Under 23 CFR 771.117(d)(6)
Page 1 of 2
If applicable, DOT&PF Regional Environmental Coordinators will certify on DOT&PF encroachment form #25A-3968 that a proposed action requested under an encroachment permit application falls within the bounds of this agreement. This agreement will remain in effect for 5 years, beginning on the date it is ratified.

April 28, 2008
Date

David C. Miller
Division Administrator
Alaska Division
FHWA

June 9, 2008
Date

Leo von Scheben
Commissioner
DOT&PF

Figure 2-10
Programmatic Categorical Exclusion for Right-of-Way Actions Approved Under 23 CFR 771.117(d)(6)
Page 2 of 2
PROGRAMMATIC CATEGORICAL EXCLUSIONS
For Use on Federal-Aid Highway Program Projects Authorized Under
The State Assumption of Responsibilities for Categorical Exclusions
Pursuant to 23 U.S.C. 326

Three categories of projects are hereby programmatically approved as Categorical Exclusions under the State Assumption of Responsibilities for Categorical Exclusions. These three programmatic approvals are for:

1. Certain projects processed under 23 CFR 771.117(c)
2. Certain projects processed under 23 CFR 771.117(c)(d)(2)
3. Certain Right-of-Way actions under 23 CFR 771.117(d)(6)

Projects developed under these three programmatic approvals must meet the conditions specified in each Programmatic Categorical Exclusion (PCE). The Regional Environmental Manager must certify that the conditions of the applicable PCE are met.

Programmatic Approval 1: Some of the “c” list activities listed in 23 CFR 771.117(c) are covered by this approval. Exceptions to the activities listed in this approval are identified in italics. The “c” list activities covered under this PCE are as follows:

(1) Activities which do not involve or lead directly to construction, such as, planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(4) Activities included in the State’s highway safety plan under 23 U.S.C. 402. (This does not apply to construction projects.)

(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction. (This approval is only applicable for alterations to existing publicly owned buildings to provide for noise reduction.)

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisitions or traffic disruption will occur. (This approval only applies to pavement markings.)

(13) Ridesharing activities. (This category does not apply if there is any on-the-ground construction.)

(14) Bus and rail car rehabilitation.
PROGRAMMATIC CATEGORICAL EXCLUSIONS

(15) Alterations to facilities or vehicles in order to make them accessible for the elderly and handicapped.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detection devices, lane management systems, electronic payment equipment, automatic vehicle locators, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

DOT&PF Regional Environmental Managers will certify on the Project Information Sheet that a proposed action meets the requirements of this PCE.

Programmatic Approval 2: Some highway projects listed in 23 CFR 771.117(c) and (d) are covered by this programmatic approval. The following conditions apply to those actions that are processed under this PCE:

1. The action does not have significant environmental impacts as described in 23 CFR 771.117(a).

2. The action does not involve unusual circumstance as defined in 23 CFR 771.117(b).

3. The action does not involve the following:
   a. A road on a new location.
   b. The acquisition of an entire parcel or portions of more than 25 parcels.
   c. Displacement of any commercial or residential occupants.
   e. A determination of adverse effect under Section 106 of the National Historic Preservation Act.
   f. A U.S. Coast Guard bridge permit.
   g. Work encroaching on a regulatory floodway or work affecting the base floodplain (i.e., 100-year flood) elevation of a watercourse or lake.
   h. Construction in, across, or adjacent to a river designated as a component of the National System of Wild and Scenic Rivers.
   i. Work involving more than 10-acres of Wetlands of the US or wetlands (individually or in combination).
   j. A change in access control.
   k. Acquisition of property involving a known hazardous material site.
   l. In air quality non-attainment and maintenance areas, the project conforms with the State Implementation Plan (SIP).

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Approved — April 2009
PROGRAMMATIC CATEGORICAL EXCLUSIONS

5. The action does not involve federally listed Threatened or Endangered species or their Critical Habitat.

6. The action conforms to the U.S. Fish and Wildlife Service Bald and Golden Eagle management plan.

Any action processed under this approval will require preparation and approval of a DOT&PF CE Documentation Form. The Regional Environmental Manager shall document all actions processed under this PCE in accordance with the DOT&PF categorical exclusion procedures (Chapter 3, DOT&PF, Environmental Procedures Manual). The Regional Environmental Manager will provide the Statewide Environmental Office a copy of the signed CE documentation form in accordance with the DOT&PF Environmental Procedures Manual. DOT&PF Regional Environmental Managers will certify on the Project Information Sheet that a proposed action meets the requirements of this PCE.

Programmatic Approval: Consistent with 23 CFR 771.117(d)(6), certain proposals for the disposal of excess right-of-way or for the joint or limited use of right-of-way are approved by this PCE, where the proposed use does not have significant adverse impacts. The proposed action must meet the following conditions:

1. The disposal or proposed use does not result in significant environmental impacts as described in 23 CFR 771.117(a).

2. The disposal or proposed use does not involve unusual circumstances as described in 23 CFR 771.117(b).

3. The disposal or proposed use does not use properties protected by Section 4(f), 49 U.S.C. 303.

4. The disposal or proposed use has no potential to effect historic resources and therefore does not require further Section 106 consultation per 36 CFR Part 800.5(1)(1). Note: this PCE cannot be used for properties within or adjacent to an eligible historic property, district, or landmark.

5. The disposal or proposed use does not affect a regulatory floodway or the base floodplain (100-year flood) elevations of a watercourse or lake.

6. The disposal or proposed use will not result in construction in, across, or adjacent to a river designated as a component of the National System of Wild and Scenic Rivers.

7. The disposal or proposed use does not affect wetlands.

8. The disposal or proposed use does not dispose of or use a site where known hazardous materials are stored or where there has been a release of hazardous materials.

9. The disposal or proposed use does not involve or affect a federally-listed threatened and endangered species or their critical habitat.

10. The disposal or proposed use is exempt from the requirement to determine Air Quality Conformity as defined in 40 CFR Part 93.126 (Table 2: Exempt Projects).

Approved:
Leo van Schouw, P.E., L.S., M.B.A.
Commissioner
Alaska Department of Transportation and Public Facilities

Date: 2/3/09

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MEMORANDUM OF UNDERSTANDING  
between  
Federal Highway Administration, Alaska Division  
and the  
Alaska Department of Transportation and Public Facilities  

State Assumption of Responsibility for Categorical Exclusions  

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made and entered into this ___ day of  
2008, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED  
STATES DEPARTMENT OF TRANSPORTATION ("FHWA") and the STATE of ALASKA, acting by  
and through its DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES ("State"), hereby  
provides as follows:  

WITNESSETH:  

Whereas, Section 6004(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-591) (SAFETEA-LU), codified as Section 326 of amended Chapter 3 of title 23, United States Code (23 U.S.C. 326) allows the Secretary of the United States Department of  
Transportation (USDOT Secretary), to assign, and a State to assume, responsibility for determining  
whether certain designated activities are included within classes of action that are categorically excluded  
from requirements for environmental assessments or environmental impact statements pursuant to  
regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of  
Federal Regulations (CFR) (as in effect on October 1, 2003), and  

Whereas, if a State assumes such responsibility for making categorical exclusion (CE) determinations  
derived from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), the USDOT  
Secretary also may assign and the State may assume all or part of certain Federal responsibilities for  
environmental review, consultation, or other related actions required; and  

Whereas, on __________, the FHWA published a notice of the availability of the proposed MOU in the  
Federal Register and provided a 45-day opportunity for comment; and  

Whereas, on __________, the State published a notice of the availability of the proposed MOU in the  
and provided a 45-day opportunity for comment; and  

Whereas, the State and the FHWA have considered the comments received; and  

Whereas, the USDOT Secretary, acting by and through the FHWA, has determined that specific  
designated activities are CEs and that it will assign specific responsibilities with respect to CEs to the  
State in accordance with this MOU; and  

Whereas, the State wishes to assume such Federal agency responsibilities in accordance with this MOU  
and applicable law.  

Now, therefore, the FHWA and the State agree as follows:  

Memorandum of Understanding
STIPULATIONS

I. CATEGORICAL EXCLUSION RESPONSIBILITIES ASSIGNED TO THE STATE BY FHWA

A. For the proposed projects covered by this MOU, the FHWA hereby assigns, and the State hereby assumes, subject to the terms and conditions set forth in 23 U.S.C. §326 and this MOU, the responsibility for determining whether a proposed Federal-aid action is within a category of action that has been designated as a CE by the USDOT Secretary, as specified in Stipulation I(B) and meets the definition of a CE as provided in 49 CFR 1508.4 (as in effect on October 1, 2005) and 23 CFR 771.117(a) and (b). This assignment applies only to projects for which the Alaska Department of Transportation and Public Facilities is the direct recipient of Federal-aid Highway Program funding or is the project sponsor or co-sponsor for a project requiring approval by the FHWA – Alaska Division Office.

B. This assignment pertains only to the designated activities described in this Stipulation I(B). The assignment includes the following:

1. Activities listed in 23 CFR 771.117 (c);
2. The example activities listed in 23 CFR 771.117(d); and
3. Additional actions listed in Appendix A. None.

C. This MOU transfers to the State all responsibility for processing the CEs designated in Stipulation I(B) of this MOU, including any necessary CE approval actions. The State shall process all proposed projects that are CE candidates (CE projects) and any required reevaluations of CEs under 23 CFR 771.129 for all CE projects not completed prior to the date of this MOU, in accordance with the provisions of this MOU. With respect to matters covered by and subject to the terms of this MOU, this MOU supersedes any existing programmatic agreement that is solely between the State and the FHWA concerning CEs. Such programmatic agreement remains in effect with respect to matters not covered in this MOU until said programmatic agreement is terminated, or superseded, by subsequent agreement(s) between the State and FHWA or by law. A CE project that is excluded from this MOU, but is within the scope of a programmatic CE agreement between the FHWA and the State, may be processed pursuant to such programmatic agreement so long as that agreement remains in effect.

D. The State, when acting pursuant to 23 U.S.C. §326 and this MOU, holds assigned authority to make decisions and commitments pertaining to only the individual proposed projects and activities within the scope of §326 and this MOU. No action by the State shall bind the FHWA to future action of any kind. No determination or agreement made by the State with respect to mitigation or other activities shall constitute a precedent for future determinations, agreements, or actions in the Federal-aid Highway Program unless the FHWA consents, in writing, to such commitment.

Memorandum of Understanding

Figure 2-12
MOU for State Assumption of Responsibility for Categorical Exclusions
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II. OTHER FHWA RESPONSIBILITIES ASSIGNED TO THE STATE

A. For proposed projects covered by this MOU, the FHWA hereby assigns, and the State hereby assumes, the following FHWA responsibilities for environmental review, consultation, or other related actions required under Federal laws and Executive Orders applicable to CE projects. See Appendix B for a description of the environmental responsibilities assigned to the State by the FHWA for proposed projects subject to this MOU. This assignment includes transfer to the State of the obligation to fulfill the assigned environmental responsibilities on any proposed projects meeting the criteria in Stepulation II(B) that were determined to be CEs prior to the effective date of this MOU but that have not been completed as of the effective date of the MOU. Such projects are included in the term “proposed projects” in this MOU.

B. The FHWA reserves responsibility for any environmental review, consultation, or other related action that is not expressly assigned under this MOU, including:

1. All government-to-government consultation with Indian tribes as defined in 36 CFR 800.16(m). Notice from the State to an Indian tribe advising the tribe of a proposed activity is not considered “government-to-government consultation” within the meaning of this MOU. If the State adequately resolves any project-specific tribal issues or concerns, then the FHWA’s role in the environmental process shall be limited to carrying out the government-to-government consultation process. If FHWA determines through consultation with a tribe, or a tribe indicates to the FHWA that the proposed resolution of tribal issues or concerns by the State is not adequate, then Stepulation III(C) applies. This MOU is not intended to abrogate, or prevent future entry into, any written agreement among the State, the FHWA, and a tribe under which the tribe agrees to permit the State to administer government-to-government consultation activities for the FHWA. However, such agreements are administrative in nature and do not relieve the FHWA of its legal responsibility for government-to-government consultation.

2. Responsibility for:
   a. Formal Consultation under Section 7 of the Endangered Species Act (ESA).
   b. Formal Consultation with the Department of Interior for actions that require use of Alaska National Interest Lands Conservation Act (ANILCA) lands where such use would require a Title XI approval.
   c. Review and approval of Individual Section 4(f) Evaluations. [See Stepulation III(D) that explains that proposed projects requiring such actions have been excluded from assignment under this MOU].

3. In connection with the execution of their respective responsibilities under this MOU, the State and FHWA will ensure that:
   a. The State provides to FHWA any information necessary in order for the FHWA to carry out its consultation, evaluation, or decision-making for Stepulation II(B)(1)-(2) activities.

Memorandum of Understanding
b. The FHWA provides the State with a documented decision on any related information used for Stipulation II(B)(1)-(2) decisions and needed by the State in order for the State to evaluate the proposed project and make its decision whether the proposed project qualifies as a CE.

c. As part of any request for FHWA authorization for funding or other action, the State will provide to the FHWA evidence that the CE processing and any other environmental responsibilities assigned under this agreement have been completed in accordance with this MOU.

C. The State agrees that its execution of environmental review, reevaluation, consultation, and other related responsibilities for CE projects assigned under this MOU are subject to the same existing and future procedural and substantive requirements as if those responsibilities were carried out by the FHWA. This includes, without limitation, the responsibilities of the FHWA under interagency agreements, memoranda of understanding, memoranda of agreement, and other similar documents that relate to the environmental review process for CE projects. This includes the interagency agreements listed in Appendix C of this MOU. If such interagency agreements are between the State and the FHWA only, then the assignment occurs automatically upon the signing of this MOU for proposed projects covered by this MOU. If the interagency agreement involves signatories other than the FHWA and the State, then the FHWA and the State will work to obtain any necessary consents or amendments. Such actions include:

1. Consulting with the other parties to obtain written consent to the continuation of the interagency agreement or any substitute agreement, but with the substitution through assignment of the State for the FHWA with respect to interagency agreement provisions applicable to CE projects.

2. Negotiating with the other parties to amend the interagency agreement as needed so that the interagency agreement continues but that the State assumes the FHWA’s responsibilities with respect to the assigned CE projects.

3. If a third party does not agree to the assignment or amendment of the interagency agreement, then to the extent permitted by applicable law and regulation, the State must carry out the assigned environmental review, consultation, or other related activity in accordance with applicable laws and regulations but without the benefit of the provisions of the interagency agreement.

D. The State shall carry out the assigned consultation, review and coordination activity in a timely and proactive manner. The State shall make all reasonable and good faith efforts to identify and resolve conflicts with Federal agencies, state and local agencies, Indian tribes as defined in 36 CFR 800.16(m), and the public during the consultation and review process.

III. ACTIONS, CONDITIONS, OR DETERMINATIONS THAT EXCLUDE DESIGNATED ACTIVITIES FROM ASSIGNMENT OF RESPONSIBILITIES

A. Notwithstanding any other provision of this MOU, any activity that does not satisfy the criteria for the CE categories described in Stipulation II(B) is excluded from this assignment, as is any project that involves a condition or impact specified in Stipulation

Memorandum of Understanding
III(D) Exclusion also may occur at any time during the environmental process if the State determines that the project fails to meet the CE criteria or falls within stipulation III(D). The provisions of stipulation IV(C) apply to such cases.

B. Because the State assumes responsibility for environmental processing of the CEs designated in this MOU, the FHWA no longer will be responsible for conducting the environmental review, consultation or other related actions assigned under this MOU (see stipulation XI). However, in furtherance of its stewardship and oversight responsibilities, the FHWA will evaluate the State’s environmental processing of any project if the FHWA has any reason to believe that the State’s performance with respect to the project does not satisfy the terms and conditions of this MOU. The scope of the evaluation will be commensurate with the potential problem. If the FHWA subsequently determines that the State’s performance does not satisfy the terms and conditions of this MOU, then the FHWA will take action to resolve the problem. Such action may include action to facilitate the State’s compliance with the MOU or action to exclude the project from assignment under this MOU. The provisions of stipulation X(A)-X(E) apply to such FHWA-initiated exclusion.

C. If a project-related concern or issue is raised in a government-to-government consultation process with an Indian tribe, as defined in 36 CFR 800.16(m), and either the Indian tribe or the FHWA determines that the issue or concern will not be satisfactorily resolved by the State, then the FHWA shall reassert responsibility for processing the project. The FHWA shall notify the State that the project will be excluded from this MOU. The provisions of stipulation X(A)-X(E) apply to such FHWA-initiated exclusion.

D. Other conditions or impacts that exclude a project from assignment to the State under this MOU are as follows:

1. The Department of Interior determines that the project will require use of Alaska National Interest Lands Conservation Act (ANILCA) designated lands where such use would require a Title XI approval.

2. The State has determined that an Individual Section 4(f) Evaluation will be required.

3. The State has determined, in consultation with the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS), that their action is likely to adversely affect a listed endangered or threatened species or their critical habitat, such that formal consultation under Section 7 of the Endangered Species Act (ESA) is required; or the USFWS or NMFS determined that the State’s action is likely to jeopardize the continued existence of any proposed species or would result in the destruction or adverse modification of proposed critical habitat, such that a conference is required.

4. The action has Federal funding sources in addition to Federal-aid highway funding (e.g., FTA funding).

IV: STATE PERFORMANCE REQUIREMENTS

Memorandum of Understanding
A. Compliance with governing laws, regulations and MOU. The State shall make all
determinations under this MOU in accordance with 23 CFR 771.117(a) and (b) and
succeeding regulations. All actions by the State in carrying out its responsibilities under
this MOU shall comply with, and be consistent with, the coordination provisions of
Stipulation 11 and all applicable Federal laws, regulations, policies, and guidance. The
State also shall comply with State and local laws to the extent applicable.

1. Failure to meet the requirements of Stipulation IV(A) is grounds for a decision by
the FHWA to terminate this MOU pursuant to Stipulation IX(A) if the FHWA
determines, after good-faith consultation with the State, that there is an
irreconcilable material conflict between a provision of State law, regulation,
policy, or guidance and applicable Federal law, regulation, policy, or guidance, and
the FHWA reasonably determines that such conflict is preventing the State from
meeting its Stipulation IV(A) obligations. The grounds for such decision may
include, but are not limited to, the mere existence of the conflict (i.e., as it stands)
and/or the effect of the conflict on the State’s decision(s) on proposed CE
project(s) (i.e., as applied).

2. Official USDOT and FHWA formal guidance and policies relating to
environmental review matters are posted online at FHWA’s website (currently at
http://www.fhwa.dot.gov/epc/legreg.htm), contained in the FHWA Environmental
Guidebook (currently at http://environment.fhwa.dot.gov/guidebook/index.asp), or
sent to the State electronically or in hard copy.

3. After the effective date of this MOU, the FHWA will use its best efforts to ensure
that any new or revised FHWA policies and guidance that are final and applicable
to the State’s performance under this MOU are communicated to the State within
10 days of issuance. Delivery may be accomplished by e-mail, mail, by publication
in the Federal Register, or by means of a publicly available online posting
including at the sites noted above. If communicated to the State by e-mail or mail,
such material may be sent either to the party specified in this MOU to receive
notices, or to the Statewide Environmental Manager.

4. In the event that a new or revised FHWA policy or guidance is not made available
to the State as described in the preceding paragraph, and if the State had no actual
knowledge of such policy or guidance, then a failure by the State to comply with
such Federal policy or guidance will not be a basis for termination under this
MOU.

5. The State will work with all other appropriate Federal agencies concerning the
laws, guidance, and policies relating to any Federal laws that such other agencies
administer.

6. In order to minimize the likelihood of a conflict as described in (1) above, after the
effective date of this MOU the State will use its best efforts to ensure that any
proposed new or revised State laws, regulations, policies, or guidance that are
applicable to the State’s performance under this MOU are communicated to the
FHWA for review and comment before they become final. Delivery may be
accomplished by e-mail, mail, or personal delivery. If communicated to the

Memorandum of Understanding
B. Processing proposed projects assigned under the MOU: State identification, documentation, and review of effects. For proposed projects and other activities assigned under this MOU that the State determines are included in the classes of CE assigned to the State under this MOU, the State shall:

1. Institute a process to identify and review the environmental effects of the proposed project.

2. For CEs [including those designated in 23 CFR 771.117(c)] carry out a review of proposed CE determinations, including consideration of the environmental analysis and project file documentation, prior to the State’s approval of the CE determination. The process shall include at a minimum, review of the documentation and proposed determination by a competent reviewer who is not a preparer of the CE documentation. The reviewer may make a recommendation to the State’s decision-maker about whether the project meets CE criteria or, if appropriately authorized, the reviewer may make the CE decision.

3. Carry out the other environmental responsibilities that are assigned under this MOU, as necessary or appropriate for the activity.

4. Document its approval of the determination, specifying the assigned CE that applies to the proposed project and including, at a minimum, the printed name, title, and date of the State official approving the determination.

5. Include the following determination statement when documenting the CE findings:

   “The State has determined that this project has no significant impacts on the environment and that the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to 23 U.S.C. 402 and a Memorandum of Understanding dated [fill in MOU date], executed between the FHWA and the State.”

6. Document in the project file the specific categorically excluded activity, the CE finding, including the determination that there are no unusual circumstances (23 CFR 771.117(b)), and completion of all applicable FHWA responsibilities assigned under Stipulations I and II.

C. Excluded projects: determination and documentation. For proposed projects that are candidates for CE classification but that the State determines should be excluded from processing under this assignment, the State shall:

1. Document the exclusion findings in the project file, including the reason for the finding.

2. Notify the FHWA, and
3. Working with the FHWA as the responsible party under NEPA, proceed with review and documentation of the project under the appropriate NEPA procedures including those under a programmatic CE agreement, if applicable.

D. Required State resources, qualifications, expertise, standards, and training.
1. The State must maintain adequate organizational and staff capability and expertise to effectively carry out the responsibilities assigned to it under this MOU. This includes, without limitation:
   a) Using appropriate technical and managerial expertise to perform the functions required under this MOU and applicable laws, regulations, policy, and guidance.
   b) Devoting adequate financial and staff resources to carry out the responsibilities assumed by the State; and
   c) Demonstrating, in a consistent manner, the capacity to perform the State's responsibilities under the MOU and applicable Federal law.

2. The State agrees that it shall maintain on its staff or through the use of consultant services all of the environmental and other technical expertise needed to carry out its responsibilities under this MOU and 23 U.S.C. §526. Without limiting the foregoing, when carrying out the requirements of Section 106 of the National Historic Preservation Act, as amended, the State shall comply with 36 CFR 800.2(a)(1). All actions that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meet the Secretary of Interior's Professional Qualifications Standards (published at 48 FR 44758-44759). The State shall ensure that all documentation required under 36 CFR 800.11 is reviewed and approved by a staff member or consultant who meets the Professional Qualifications Standards.

E. State quality control.
1. The State agrees to carry out regular quality control activities through the Statewide Environmental Office to ensure that its CE determinations are made in accordance with applicable laws and this MOU. (to view the State’s environmental procedures manual visit http://www.dot.state.ak.us/twddes/deconviron/resources2_shum1b/)

2. At a minimum, the State shall monitor its processes relating to project determinations, environmental analysis, and project file documentation, and check for errors and omissions. The State shall take corrective action as needed. The State shall document its quality control activities and any needed corrective actions taken.

3. If the State implements training to meet the capability requirements of this MOU or as a corrective action, the State shall be responsible for the training. The State shall provide notice of the training to the FHWA.

Memorandum of Understanding
4. Without limiting the foregoing, the State also shall implement the quality control procedures (http://www.dot.state.ak.us/stwddcs/desenviron/resources2.shtml) found in the State’s procedures.

F. MOU performance monitoring and quality assurance. The FHWA and the State shall cooperate in monitoring performance under this MOU and each party shall modify its practices as needed to assure quality performance by the State and the FHWA. Monitoring by the FHWA and the State will include consideration of the technical competency and organizational capacity of the State, as well as the State’s performance of its CE processes. Performance considerations will include, without limitation, the quality and consistency of the State’s project determinations, adequacy and capability of the resources applied by the State, and the quality and consistency of the State’s administration of its responsibilities under this MOU. In support of the monitoring efforts:

1. Within 15 business days after the end of each fiscal quarter, the State shall submit to the FHWA a list of the CE determinations that the State approved that fiscal quarter. At any time after the State’s completion of the first four (4) fiscal quarters of its performance under this MOU, based on the State’s satisfactory performance of this MOU during the first 12 months, the FHWA may reduce the frequency of this reporting requirement, provided that in no event will the reporting frequency be less than once each year. Such reduction in reporting frequency, and any revocation of such reduction by the FHWA, shall not be deemed an amendment under Stipulation VIII.

2. The State shall submit to the FHWA (via electronic or hard copy) a report summarizing its performance under the MOU at the conclusion of the 15th month and 30th month of the MOU and at similar intervals thereafter if the term of the MOU is renewed. The report will identify any areas where improvement is needed and what measures the State is taking to implement those measures. The report will include actions taken by the State as part of its quality control efforts under Stipulation IV. Following submission of a report, the State shall schedule a follow-up meeting with the FHWA at which the parties will discuss the report, the State’s performance of the MOU, and the FHWA’s monitoring activities. If the MOU is renewed, the reports will be due at the conclusion of the 15th and 30th months unless otherwise provided by the parties in the renewed MOU.

3. The State shall maintain paper or electronic project records and general administrative records (as soon as practicable the State will establish an electronic records system), pertaining to its MOU responsibilities for proposed projects processed hereunder. The records shall be available for inspection by the FHWA at any time during normal business hours. The State shall provide the FHWA with copies of any documents the FHWA may request. The State shall retain those records, including all letters and comments received from governmental agencies, the public, and others about the performance of activities delegated under this MOU, for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve the State of its project or program recordkeeping responsibilities under 49 CFR 18.42 or any other applicable laws, regulations, or policies.
4. The State shall ensure that project records are available to the public consistent with requirements applicable to Federal agencies under 5 U.S.C. 552 (the Freedom of Information Act, as amended in 2002) and NEPA.

5. The FHWA periodically shall review the State’s records and may interview State staff or others to evaluate the State’s performance under this MOU. Such reviews will occur no less than every 12 months, and may be coordinated with the review of the State’s report under Stipulation IV(F)(2). The FHWA anticipates that under normal circumstances, its evaluation of the State’s performance will be based on a modified version of a typical FHWA CE process review (to view FHWA guidance on how monitoring should occur visit http://www.fhwa.dot.gov/hep/6004/stateassumpt.htm). Modifications to the CE process review will include incorporation of measures specific to the responsibilities assigned to the State pursuant to 23 U.S.C. §326, and will include performance measurements of quality and time. However, the FHWA reserves the right to determine in its sole discretion the frequency, scope, and procedures used for monitoring activities. The State, by its execution of this MOU acknowledges that it is familiar with the FHWA CE Process Review procedures and with the expected modifications that will be adopted for the purpose of monitoring the State’s MOU performance.

6. Nothing in this Stipulation shall prevent the FHWA from undertaking other monitoring actions, including audits, with respect to the State’s performance of the MOU. The FHWA, in its sole discretion, may require the State to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with this MOU, 23 U.S.C. §326, and other applicable Federal laws and regulations. Such requirement shall not be deemed an amendment under Stipulation VIII.

7. The State agrees to cooperate with the FHWA in all quality assurance activities.

G. State Liability: The State agrees that it is solely responsible and solely liable for complying with and carrying out this MOU, for the performance of all assigned responsibilities as provided by applicable law and for any decisions, actions, or approvals by the State. The FHWA shall have no responsibility or liability for the performance of responsibilities assigned to the State, including without limitation any decision or approval made by the State: Where a State exercises any assigned authority on a proposed project which FHWA determined to be a CE prior to the effective date of this MOU, the State assumes sole responsibility and liability for NEPA on that project (this includes, for example, NEPA re-evaluation prior to FHWA approval of construction funding).

H. Litigation: This section assumes that the FHWA will not be named as a party in litigation brought in connection with the State’s discharge of its responsibilities under this MOU. If either the FHWA or another agency of the United States is named in such litigation, however, nothing in this MOU affects the United States Department of Justice’s authority to litigate such claims, including the authority to approve a settlement, on behalf of the United States.

1. The State shall defend, at its own expense, all claims brought in connection with its discharge of any responsibility assigned to the State.
2. The State shall notify the FHWA of any notice of claim the State receives prior to initiation of litigation, which notice is given in connection with the State's acts or omissions pursuant to this MOU. The State shall provide the FHWA with a copy of any such notice of claim within 7 calendar days after the State's receipt of the notice.

3. In the event of litigation, the State shall provide qualified legal counsel, including outside counsel if necessary. The State will notify the FHWA's Division Office and the U.S. Department of Justice, through its Office of the Assistant Attorney General, Environment and Natural Resources Division, ("DOJ"), within 7 calendar days of the receipt of service of process, of any complaint concerning its discharge of any responsibility assumed under this MOU. The State's notification to the FHWA and DOJ shall be made prior to its response to the complaint. The State agrees to provide the FHWA's Division Office and DOJ with copies of the complaint and any motions, pleadings, briefs, and other such documents filed in any case concerning its discharge of any responsibility assumed under this MOU. The State will deliver such copies to the FHWA and DOJ via express mail or delivery service within 7 calendar days of the service or receipt of any document or, in the case of any documents filed by or on behalf of the State, within 7 calendar days of the date of filing.

4. The State agrees to notify FHWA’s Division Office and DOJ of the State’s decision to settle any lawsuit concerning its discharge of any responsibility assumed under this MOU prior to settling the case, and shall provide the FHWA and DOJ with a reasonable amount of time to review, and comment on, the proposed settlement. The State agrees not to enter into any litigation settlement agreement that affects the interpretation or application of any Federal law without FHWA and DOJ consent.

5. For either litigation or pre-litigation settlement agreements, the lack of FHWA approval of such settlement is grounds for FHWA denial of Federal-aid eligibility for any State claims for reimbursement of costs arising out of or relating to the settlement agreement.

6. The State hereby consents to intervention by the FHWA in any action or proceeding arising out of, or relating to the State’s discharge of any responsibility assigned to the State under this MOU.

7. If the FHWA re-assumes responsibility for processing a project and makes the final CE determination for the project, then the FHWA shall be responsible for defending that CE determination in the event of a challenge to actions the FHWA takes after re-assumption. This shall include the final CE determination. Nothing in this paragraph shall relieve the State of its liability for acts or omissions prior to the FHWA’s re-assumption of responsibility for processing the project.

Federal Register: While the MOU is in effect, if any CE project or program documents are required to be published in the Federal Register, such as a notice of final agency action under 23 U.S.C. §139(f), the State shall transmit such document to the FHWA’s Division Office and the FHWA will publish such document in the Federal Register on behalf of the State. The State is responsible for the expenses associated with the

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publishing of such documents in the Federal Register, in accordance with guidance issued by the FHWA.

V. STATE CERTIFICATIONS AND ACCEPTANCE OF JURISDICTION

A. The State hereby certifies that it has the necessary legal authority and the capacity to:

1. Accept the assignment under this MOU;

2. Carry out all of the responsibilities assigned to the State; and

3. Agree to and perform all terms and conditions of the assignment as contained in this MOU and in 23 U.S.C. §326.

B. The State consents to and accepts the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the USDOT Secretary that the State assumes under this MOU pursuant to 23 U.S.C. §326. The State understands and agrees that this consent constitutes a waiver of the State’s immunity under the Eleventh Amendment to the U.S. Constitution for the limited purposes of addressing the compliance, discharge, and enforcement of the USDOT Secretary’s responsibilities that the State assumes under this MOU pursuant to 23 U.S.C. §326. That consent to Federal court jurisdiction shall remain valid after termination of the MOU, or re-assumption of the USDOT Secretary’s responsibilities by the FHWA, for any act or omission by the State in its compliance, discharge, or enforcement of any responsibility under this MOU pursuant to 23 U.S.C. §326.

1. Alaska Statute 44.42.2001 authorizes the State’s assumption of the assignment responsibilities. If at any time the State ceases to have the necessary legal authority under State law to carry out this assignment, then this MOU terminates automatically, subject to applicable survival and transitional provisions of this MOU.

2. Alaska represents that all conditions precedent to the waiver of its sovereign immunity have been satisfied. Alaska Statute 44.42.2001(g), authorizes the Attorney General of Alaska to waive the State’s sovereign immunity. By his execution of this MOU, the Attorney General exercises that authority for the purposes stated in this MOU and certifies that the waiver is valid and meets the requirements of this MOU and 23 U.S.C. §326. If this waiver is terminated, or determined by a court of competent jurisdiction to be invalid with respect to performance of any aspect of this MOU, then the State’s authority to participate in this MOU terminates under Federal law and this MOU terminates automatically, subject to applicable survival and transitional provisions of this MOU.

C. In accordance with 23 U.S.C. §326(e), the State agrees that it shall be deemed to be a Federal agency for the purposes of the Federal law(s) under which the State exercises any responsibilities pursuant to this MOU and 23 U.S.C. §326.

D. The State may not assign or delegate its rights or responsibilities under this MOU to any other agency, political subdivision, or entity, or to any private individual or entity. Without limiting the foregoing, the State understands and agrees that it must retain the

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environmental decision-making responsibilities assigned to it under this MOU and may not assign or delegate such decision-making responsibilities to consultants or others.

E. With respect to the public availability of any document or record under the terms of this MOU or the State’s open records law, Alaska Statute 40.25.100-220, the State certifies that the laws of the State provide that any decision regarding the release or public availability of a document or record may be legally challenged or reviewed in the courts of the State.

F. The State certifies that the persons signing this MOU are each duly authorized to do so and have the respective legal authority between them to:

1. Consent to Federal court jurisdiction as specified above;
2. Enter into this MOU on behalf of the State;
3. Make the certifications set forth in this MOU; and
4. Bind the State to the terms and conditions contained in this MOU.

The State’s Attorney General, by signing this MOU certifies that the foregoing is true and that upon execution of this MOU the certifications, terms, and conditions of the MOU will be legally binding and enforceable obligations of the State.

VI. PUBLIC NOTICE AND COMMENT

A. The execution of this MOU, and of any amendment or renewal, requires prior public notice and an opportunity for comment.

B. The State shall publish notice of the availability of the initial MOU, and any proposed amendment or renewal, for public review and comment in one or more newspapers of statewide circulation.

C. The FHWA Division Office shall publish in the Federal Register a notice of availability of the initial proposed MOU, and any proposed amendment or renewal, for public review and a 45-day comment period. If this MOU, or any amendment or renewal, includes assignment of CE authority in Stipulation (B)(3), the notice will expressly request comments on any types of activities proposed for the assignment under Stipulation (B)(3), and will include a description of the public availability of supporting documentation for any assignment under Stipulation (B)(3). The notice must advise the public about how to learn about FHWA’s final decision on the proposed MOU, including how to obtain a copy of any resulting final MOU. The FHWA will establish a docket in the Federal docket system at http://www.regulations.gov/search/index.jsp to receive comments.

D. The State and the FHWA shall consider comments provided by the respondents to the public notices before finalizing the MOU, or any proposed amendment or renewal agreement. Upon completion of the decision-making process, the FHWA shall publish a notice in the Federal Register that announces the agency’s decision and the execution of the MOU. The notice also will inform the public of the availability in Memorandum of Understanding.
the Federal docket system of a brief summary of the results of the decision-making process and a copy of any final MOU executed by the State and FHWA, whether initial, amended, or renewed. The notice also will advise where the final MOU is available on the State’s Web site.

E. The State agrees that at all times that this MOU is in effect, the State will post on its Web site (http://www.dot.state.ak.us/stwvdes/environment/resources/2shmu/) and make available to the public upon request, copies of the State’s quarterly reports of the CE determinations under Stipulation IV(F)(1), the State’s performance reports under Stipulation IV(F)(2), and FHWA performance monitoring reports pursuant to Stipulation IV(F)(5). The FHWA will arrange for the posting of a similar notice on the FHWA’s web site or create a link from the FHWA’s site to the State’s site.

VII. INITIAL TERM AND RENEWAL

A. This MOU shall have an initial term of three (3) years, beginning on the date of the last signature.

B. This MOU is renewable for additional terms of three (3) years each if the State requests renewal and the FHWA determines that the State has satisfactorily carried out the provisions of this MOU. In considering any renewal of this MOU, the FHWA will evaluate the effectiveness of the MOU and its overall impact on the environmental review process. The FHWA may decide not to renew the MOU if the FHWA determines that the operation of the MOU has substantial adverse effects on the environmental review process. Such evaluation may include consideration of any effects from the assumption by the State of only some, but less than all, of the FHWA’s environmental review, consultation, or other related responsibilities as listed in Stipulation II.

At least six (6) months prior to the end of the initial term and of any renewed term of this MOU, the State and the FHWA shall meet to discuss the results of the monitoring and consider any amendments to this MOU. This meeting may be combined with a meeting to discuss performance under the monitoring provisions in Stipulation IV(F)(2) and (F)(5) of this MOU.

C. If the parties do not renew the MOU, then it shall expire at the end of the term then in effect. The provisions of Stipulation X(A)(4), and X(C)-(E) shall apply.

VIII. AMENDMENTS

A. Any party to this MOU may request that it be amended, whereupon the parties shall consult to consider such an amendment.

B. If, after the required public notice and comment, the parties agree to amend the MOU, then the FHWA and the State may execute an amendment with new signatures and dates of the signatures. The term of the MOU shall remain unchanged unless otherwise expressly stated in the amended MOU. Any amendment that extends the term of the MOU shall be treated as a renewal and the FHWA must make the determinations required for a renewal under Stipulation VII.

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IX. TERMINATION

A. Entire MOU. The State, or the State and FHWA by mutual agreement, may terminate this MOU in its entirety. The FHWA may terminate this MOU without the agreement of the State if the FHWA determines that the State has failed to adequately meet MOU requirements. The procedures in Stipulation X apply.

B. Part of MOU. By mutual agreement, the FHWA and the State may terminate the State’s responsibilities with respect to particular designated activities under Stipulation I, or with respect to one or more responsibilities assigned under Stipulation II. The FHWA may exercise such partial termination without the agreement of the State if the FHWA determines that the State has failed to adequately meet MOU requirements for the responsibilities in question, but that termination of the entire MOU is not warranted. The procedures in Stipulation X apply.

X. PROCEDURES FOR TERMINATION AND FHWA-INITIATED PROJECT EXCLUSIONS

A. Except as provided in Stipulation X(B) below, the process for termination under Stipulation IX(A)-IX(B), and for exclusion of a project from the MOU assignment by the FHWA under Stipulation III(B)-III(C), is as follows:

1. The party wishing to initiate the termination or exclusion shall provide to the other party a written notice of intent. The notice should identify the proposed action and explain the reason(s) for the proposed action.

2. Following the notice, the parties shall have a 30-day period during which the FHWA and the State shall consult on amendments or other actions that would avoid termination or exclusion. By agreement, the parties may extend this consultation period, provided that such extension may not exceed the term of the MOU.

3. Following the consultation period, any termination or exclusion shall be effective as of a date thirty (30) days after the date of either a post-consultation agreement between the State and FHWA, or the date of the State’s receipt of a FHWA notice of final determination of termination or exclusion. All responsibilities covered by the termination or exclusion shall revert to the FHWA as of that effective date.

4. In the event of termination or exclusion, the State and the FHWA agree to cooperate to make the transfer of responsibilities back to the FHWA effective in an orderly and administratively efficient manner as possible. The State will promptly provide to FHWA any documents, records and other project-related material needed for FHWA to proceed with processing any affected project. Appropriate NEPA procedures, including those under any applicable programmatic CE agreement, shall apply to the subsequent processing of projects.

B. The FHWA, in its sole discretion, may exclude a project from this MOU pursuant to Stipulation III(B)-III(C), or terminate this MOU pursuant to Stipulation IX(A)-IX(B), without the 30-day consultation or final notice periods, if the FHWA determines that...
1. The State is not performing in accordance with this assignment; and

2. Extreme conditions exist that justify immediate exclusion or termination and transfer back to the FHWA of the responsibilities covered by the exclusion or termination.

In such cases, the FHWA shall notify the State in writing of its determination and action, and specify the reasons for the action.

C. The State's liability for its acts and omissions under this MOU, and the provisions of Stipulation V, shall survive the MOU. This survival clause includes, without limitation, the provisions of Stipulations IV(G)-IV(H) relating to liability and litigation.

D. Termination and exclusion actions, and any decision not to renew, do not require public notice and comment.

E. Termination or other action by the FHWA in accordance with the provisions of this MOU does not limit or otherwise affect the FHWA's ability to seek any other remedy or to take action under other provisions of applicable law, including without limitation any appropriate remedies as provided in 23 CFR 1.36.

XI. STATE EXECUTION OF ASSIGNED RESPONSIBILITIES WITHOUT FHWA INVOLVEMENT

A. The FHWA will not provide any project-level assistance to the State in carrying out any of the responsibilities assigned under this MOU. “Project-level assistance” includes advice, consultation, or document review with respect to the discharge of such responsibility for a particular highway project. However, project-level assistance does not include discussions concerning issues addressed in prior projects, legal interpretations of any applicable law contained in titles 23 or 49 of the United States Code, legal interpretations of any FHWA or USDOT regulation, or interpretations of FHWA or USDOT policies or guidance. If a need for project-level assistance is identified as a result of the government-to-government consultation process described in Stipulation II(B)(1), then the FHWA shall reassume responsibility for the project as provided in Stipulation III(C).

B. The FHWA will not intervene, broker, act as intermediary, or be otherwise involved in any issue involving the State’s consultation or coordination with another Federal, State, or local agency with respect to the State’s discharge of any of the responsibilities the State has assumed under this MOU for any particular highway project. However, the FHWA holds both monitoring and quality assurance obligations under this MOU and general oversight and stewardship obligations under the Federal-aid Highway Program. In furtherance of those obligations, the FHWA occasionally may elect to attend meetings between the State and other Federal agencies. Based on its observations, the FHWA may submit comments to the State and the other Federal agency, if the FHWA determines such comment is necessitated by rare or extreme circumstances including:

1. The FHWA reasonably believes that the State is not in compliance with this MOU; or

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2. The FHWA determines that an issue between the State and the other Federal agency has broad or unique policy implications for the administration of the national Federal-aid Highway Program.

XII. NOTICES

Any notice to either party may be given electronically so long as a paper original of the notice also is delivered to the party. The effective date of the notice shall be the date of delivery of the paper original. Paper notices shall be delivered as follows:

State of Alaska:
Commissioner
Department of Transportation and Public Facilities
P.O. Box 112500
Juneau, Alaska 99811-2500

Federal Highway Administration
Division Administrator
Federal Highway Administration, Alaska Division
P.O. Box 21648
Juneau, Alaska 99801-1648

U.S. Department of Justice:
Office of the Assistant Attorney General
Environment and Natural Resources Division
950 Pennsylvania Avenue, NW
Room 2143
Washington, D.C. 20530
Execution of this MOU and implementation of its terms by the State is formal evidence that the parties have reviewed this MOU and determined that it complies with the laws, regulations and policies applicable to the FHWA and the State. Accordingly, this MOU is approved and is effective upon the date of the last signature below.

FEDERAL HIGHWAY ADMINISTRATION

_________________________________________  Date
David C. Miller
Division Administrator

STATE OF ALASKA

_________________________________________  Date
Leo von Scheben, P.E., L.S., M.B.A.
Commissioner
Department of Transportation and Public Facilities

_________________________________________  Date
Talis J. Colberg
Attorney General
Department of Law

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APPENDIX A

23CFR 771.117(d) Determinations the USDOT Secretary Assigns to the State Pursuant to Stipulation 1 (B)(3)

1. NONE.
Appendix B
List of FHWA Responsibilities Assigned

Air Quality
Clean Air Act (CAA), 42 U.S.C. 7401–7671q. Determinations for project-level conformity if required for the project.

Noise
Compliance with the noise regulations in 23 CFR 772

Wildlife
Marine Mammal Protection Act, 16 U.S.C. 1361
Anadromous Fish Conservation Act, 16 U.S.C. 757a–757g
Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668–668c

Historic and Cultural Resources
Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f) et seq.1
Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 409–409(c)

Social and Economic Impacts

Water Resources and Wetlands
Clean Water Act, 33 U.S.C. 1251–1377
   Section 404
   Section 401
   Section 319
Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
Coastal Zone Management Act, 16 U.S.C. 1451–1465
Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–n
Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
TEA-21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11)

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Flood Disaster Protection Act, 42 U.S.C. 4001–4128

**Parklands**
Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4 (known as Section 6(f))

**Hazardous Materials**
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
Superfund Amendments and Reauthorization Act of 1986 (SARA)
Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k

**Land**
Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 519

**Executive Orders Relating to Highway Projects**
E.O. 11990, Protection of Wetlands
E.O. 11988, Floodplain Management
E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
E.O. 11593, Protection and Enhancement of the Cultural Environment
E.O. 13007, Indian Sacred Sites
E.O. 13175, Consultation and Coordination with Indian Tribal Governments
E.O. 13112, Invasive Species

Note:
1. Under these laws and Executive Orders, FHWA will retain responsibility for conducting formal government-to-government consultations with Federally recognized Indian tribes. The State will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with FHWA upon request. The State may also assist FHWA with formal consultations, with the consent of a tribe, but FHWA remains responsible that this consultation occurs. FHWA’s retention of formal consultation responsibilities under NAGPRA will not limit State’s existing activities under this law.
2. Except as specified in Stipulation II.B.2 of this Section 6004 MOU.

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APPENDIX C
Statewide Agreements

Alaska Interagency Consultation and Coordination Agreement for FHWA/DOT&PF
Transportation Projects

Signatories to Agreement: FHWA, DOT&PF, U.S. Environmental Protection Agency, US Fish
Department of Environmental Conservation, Alaska Department of Natural Resources, Alaska
Department of Fish and Game

Effective Date: April 21, 2005

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