



U.S. Department
of Transportation
**Federal Highway
Administration**

Alaska Division

August 19, 2009

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Mr. Roger Healy, P.E., Chief Engineer
Alaska Department of Transportation
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P.O. Box 112500
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In Reply Refer To:
ENV 21-2

Dear Mr. Healy:

In anticipation of ratifying a Memorandum of Understanding (MOU) between the FHWA - Alaska Division and the Alaska Department of Transportation and Public Facilities (DOT&PF) pursuant to 23 U.S.C 326, also referred to as 6004, I hope to use this letter to address a few outstanding items related to advancing the MOU. These include the DOT&PF's Environmental Procedures Manual – including proposed procedures for implementation of 6004; the proposed revised Project Information Sheet; some clarification on the application of Section 4(f) under the MOU; and finally the FHWA - Alaska Division's interpretation of the scopes of work submitted by the DOT&PF during the development of a proposed Appendix A to the MOU. This Appendix was subsequently dropped from the proposed MOU; however the FHWA - Alaska Division believes some of those scopes are consistent with Categorical Exclusions (CE) currently listed in our regulations.

As you are aware, our staffs have been working for several months on updating the DOT&PF's Environmental Procedures Manual. I would like to complement the efforts of your staff and their willingness to work cooperatively in a difficult and labor-intensive undertaking. On July 20, 2009, you submitted the first three chapters of the updated manual for approval. These chapters; Chapter 5 Categorical Exclusions, Chapter 8 Reevaluations, and Chapter 9 Section 4(f), required updating in order to allow the DOT&PF to assume the FHWA's environmental responsibilities under the terms of the MOU. With this letter, the FHWA approves the use of these chapters (Attachment 1) subsequent to the approval of the MOU. As both of our agencies advance into the new process envisioned under the MOU, we agree that it will be necessary for the manual to be a "living" document, undergoing regular updates and revisions as we learn how to best manage the unanticipated challenges that will result from this new process.

As a result of ongoing consultation regarding Section 4(f) under the proposed MOU, we wanted to provide some clarification regarding one scenario that could occur. If the DOT&PF believes a Constructive Use under Section 4(f) would occur on an assigned project, the project would by definition, require an Individual Section 4(f) Evaluation (in the State's opinion). Consistent with the terms of the MOU, this project would be exempted from assignment, and the FHWA would retain responsibility for the any environmental review of that project.

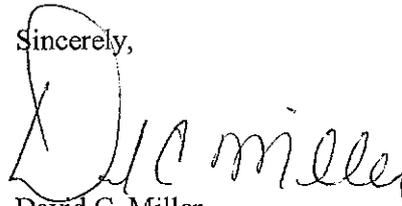


Under the terms of the MOU, the DOT&PF must, as part of any request for the FHWA's authorization, provide the FHWA with evidence that the CE processing and any other environmental responsibilities assigned have been completed in accordance with the MOU. Our staffs have agreed that the DOT&PF's Project Information Sheet (PIS) is the most appropriate tool to meet this requirement. With this letter, the FHWA - Alaska Division is approving the use of the PIS form submitted by Mr. Ben White of your staff, via email on August 14, 2009 (Attachment 2).

Finally, at the request of your staff, we have compiled a list of each scope of work submitted over many months by the DOT&PF for the proposed Appendix A to the MOU - scopes that the State believed were not currently accommodated by the existing CE lists in the FHWA's regulations. We have provided the FHWA - Alaska Division's formal interpretation of the applicability of those specific scopes to the existing CE lists provided in our regulations (Attachment 3). It is important to note that just because a scope falls within the activities listed as CEs in our regulations, it does not mean a CE is necessarily the appropriate Class of Action for a project. The project would still have to meet the definition found in 23 CFR 771.117(a), and not result in the unusual circumstances described in 23 CFR 771.117(b). Our hope is that Attachment 3 will provide some clarity during the DOT&PF's stewardship of this new process.

I look forward to meeting with you shortly to discuss the upcoming ratification of the MOU. I also look forward to working with you and your staff during the upcoming years on implementing this radical departure from our traditional process. If you have any questions or wish to discuss further, do not hesitate to call me at (907) 586-7180.

Sincerely,



David C. Miller
Division Administrator

Enclosures:

Attachment 1 – *Alaska Environmental Procedures Manual – Chapter Re-Evaluations
Chapters 5, 8, and 9*

Attachment 2 – *Project Information Sheet (PIS)*

Attachment 3 – *FHWA – Alaska Division Formal Interpretations*

cc with attachments:

Mr. Owen Lindauer, FHWA Project Development Specialist

Attachment 3

1. Addition of new travel lanes to existing facilities – While the addition of new travel or “through-lanes” is not found within the “c” or “d” lists, the addition of auxiliary lanes (e.g. parking, weaving, turning, or climbing) is found under d(1), “Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes, (e.g. parking, weaving, turning, climbing)”. The FHWA - Alaska Division believes that the addition of intermittent passing lanes may also be approved under d(1).

2. Construction or reconstruction or resurfacing of village “ATV” roads, trails and boardwalks – The FHWA - Alaska Division has approved construction of new village roads under CEs in the past and could in the future; however, construction of new roads is not on the “c” or “d” lists. Reconstruction and resurfacing of roads is provided for under d(1). The FHWA - Alaska Division does not believe ATV boardwalks or trails were envisioned during the development of the regulations and therefore were not listed in the “c” or “d” lists.

3. AMHS Activities – Unfortunately, it appears that when the FHWA’s regulations were developed, ferry activities were not considered. None of the activities below are listed on the “c” or “d” lists.

- a. Ferry terminal or ancillary facility reconstruction or rehabilitation
- b. Dolphin and fender additions or replacements
- c. Mooring structures and trestles
- d. Dredging mooring basins
- e. Staging area expansions
- f. Ferry vessel construction
- g. Improvements to existing ferry vessels
- h. Reconstruction or rehabilitation of docks

4. Ketchikan shipyard improvements – This category is broad and most previous actions under the federal-aid program at the shipyard were for activities very similar to those listed above in AMHS Activities. As stated, the FHWA - Alaska Division does not believe these activities are listed in the “c” or “d” lists.

5. Transportation Enhancement Activities (TEA) including boat launches, sport fishing/recreation docks, floating platforms, elevated and non-elevated boardwalks, scenic overlooks, trails, trailheads and waysides – Currently there is no provision for boat launches, docks, or floating platforms within the listed CEs. Construction of bicycle and pedestrian lanes, paths, and facilities is listed in c(3) and we believe that bike and pedestrian trails (including TEA-funded elevated and non-elevated boardwalks) fall within that category. TEA projects that provide stand-alone bank stabilization and rehabilitation may fit within activity c(7), “Landscaping”. In addition, The FHWA - Alaska Division has traditionally approved TEA-funded improvements to existing waysides, scenic overlooks, and trailheads under activity c(12), “Improvements to existing rest areas and truck weigh stations” and construction of new scenic overlooks, trailheads, and waysides under d(5), “Construction of new truck weigh stations and rest areas”. We continue to believe this application is consistent with these listed activities.

6. Replacement, modifications, or repair of culverts or other drainage structures for fish passage improvements – If these activities are associated with improving a roadway, they would fall within activity d(1), “Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes, (e.g. parking, weaving, turning, climbing)”.

7. Construction, modification, or repair of storm water treatment devices (e.g. detention basins, bioswales, media filters, infiltration basins), protection measures such as slope stabilization and other erosion control measures - If these activities are associated with improving a roadway, they would fall within activity d(1), “Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes, (e.g. parking, weaving, turning, climbing)”.

8. Revetment reconstruction or repairs – The FHWA - Alaska Division believes that replacing armor rock on side slopes that has been washed out falls under activity d(1). In addition, we believe reconstruction or repair of spur dikes also falls within the bounds of d(1).

9. Temporary and permanent repair of facilities damaged by floods, landslides, earthquake or other - Temporary rehabilitation or reconstruction of existing facilities may fall under activity c(9), “Emergency repairs under 23 U.S.C. 125” (if all criteria are met), or may fall within the activities described in d(1). Permanent repairs of existing facilities would normally fall within the activities described in d(1); however, some permanent solutions may not, e.g. building a new facility on new location.

10. Village dust control – Past federal-aid projects in Alaska for village dust control usually fell within two potential scopes, resurfacing or application of a dust palliative. Resurfacing a facility would be covered under activity d(1). The FHWA - Alaska Division believes applying a dust palliative would fall under activity c(1), “Activities that do not involve or lead directly to construction...”.

11. Construction of winter trails or trail markings – No one in the FHWA - Alaska Division was aware of ever funding a project to “construct a winter trail”. However, we have traditionally approved the construction and installation of winter trail markings under two different “c” list activities. If the scope of work includes the assembly of trail markers and installation of those markers with a method that has no ground disturbance and requires no acquisition of property interest, we believe that scope of work falls within the c(1) activity, “Activities that do not involve or lead directly to construction...”. It should be noted that the FHWA - Alaska Division has determined that this type of project would not result in a Section 4(f) use of land.

If the scope of work entails installation of markers that requires ground disturbing activities or acquisition of property interests, then that work would be consistent with activity c(8), “Installation of fencing, signs, pavement markings...where no substantial land acquisition or traffic disruption will occur”.

12. Vegetation removal or thinning – The FHWA - Alaska Division believes this activity is consistent with c(7), “Landscaping”.

13. Curb cuts and sidewalk improvements for ADA compliance – The FHWA - Alaska Division believes these improvements are consistent with activity c(15), “Alterations of facilities or vehicles in order to make them accessible for elderly and handicapped persons”.

14. Replacement/Modification of an existing Interstate interchange – This activity is not specifically identified on the “c” or “d” lists and is relatively broad in scope. It is possible, dependent on the specific proposed scope, that a project could fall within the activity d(1).

15. **Construction of a new roadway or new alignment** – This activity is not on the “c” or “d” lists.

16. **Air Space Leases that are subject to Subpart D, Part 710, Title 23 CFR** – This activity is listed specifically in d(6), “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”.

17. **Construction of wildlife crossings** – This activity is not on the “c” or “d” lists.