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January 30, 2017

Ms. Sandra Garcia-Aline
Federal Highway Administration
Alaska Division
709 West 9th Street, Room 851
P.O. Box 21648
Juneau, Alaska 99802

Re: 6004 Program – 15 Month CE Assignment Performance Report

Dear Ms. Garcia-Aline:

The Alaska Department of Transportation and Public Facilities (ADOT&PF) hereby submits the 15 Month CE Assignment Performance Report pursuant to the renewed Memorandum of Understanding (MOU) between ADOT&PF and the Federal Highway Administration (FHWA) Alaska Division regarding State assumption of responsibilities 23 U.S.C 326.

If you have any questions or wish to discuss this further do not hesitate to call me.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Lance Mearig".

D. Lance Mearig, P.E.
Chief Engineer

Enclosure: 15 Month CE Assignment Performance Report, January 2017

cc: (electronic)

Melissa Goldstein, Statewide NEPA Program Manager
Linda Heck, Statewide NEPA Program Manager
Taylor Horne, Statewide Environmental Program Manager
Amy Sumner, Statewide NEPA Program Manager
Tim Haugh, FHWA AK Division, Environmental Program Manager

Alaska Department of Transportation & Public Facilities

Categorical Exclusion (CE) Assignment 15 Month CE Assignment Performance Report (23 U.S.C. 326)

January 2017



**Prepared by: Amy Sumner, NEPA Program Manager
Melissa Goldstein, NEPA Program Manager
Linda Heck, NEPA Program Manager
Taylor Horne, Statewide Environmental Manager**

Background

On September 18, 2015, the Alaska Department of Transportation (DOT&PF) and the Federal Highway Administration (FHWA) renewed the Memorandum of Understanding (MOU), pursuant to 23 U.S.C. 326. Through this MOU the FHWA assigned, and the DOT&PF assumed, the responsibility for determining whether a proposed federal-aid action is within a category of actions designated as a categorical exclusion (CE) by the USDOT Secretary, as specified in 23 CFR 771.117(a - d), and meets the definition of a CE as provided in 40 CFR 1508.4 (6004 Program). Under the MOU, the DOT&PF was also assigned the FHWA's responsibilities for consultation with all federal resource agencies and for compliance with all applicable federal regulations. For the CE determinations assigned under the MOU, the State of Alaska assumed the legal responsibility for its NEPA decisions, and it is subject to federal court jurisdiction. The State of Alaska waived its 11th Amendment sovereign immunity against actions brought by its citizens in federal court for assigned CE determinations.

Stipulation IV(F)(2) of the MOU requires the DOT&PF to submit to the FHWA reports summarizing its performance under the MOU at the conclusion of the 15th month and the 30th month of the MOU. For the DOT&PF, the 15th month is December 2016 and the 30th month will be March 2018. The reports are required to:

- Identify any areas where improvement is needed and what measures the DOT&PF is taking to implement these measures.
- Summarize actions taken by the DOT&PF as part of its quality control efforts as described in Stipulation IV.

This report is the 15th Month Performance Report, covering the period from September 18, 2015 to December 31, 2016. In February 2017, the DOT&PF intends to meet with the FHWA Alaska Division Office to discuss the findings of this 15th Month Performance Report and the DOT&PF's performance administering the responsibilities assigned to it under the MOU.

Purpose

The primary objective of the 15th Month Performance Report is to provide the FHWA with a summary of the DOT&PF's performance administering the CE authorities and responsibilities assigned to it under the MOU. This report will provide the following information:

- A summary of recent changes made in administering the 6004 Program (Section I)
- A statistical summary of the CE and Section 4(f) determinations for which the DOT&PF has assumed responsibility (Section II).
- A statistical summary of the 6004 Program's processing times for the DOT&PF Statewide Environmental Office's project approvals (Section III).
- A summary of DOT&PF's quality control efforts, a statistical summary of internal review findings that identify areas for improvement, and improvement measures taken (Section IV).
- A qualitative discussion of the DOT&PF's performance of the six quality measures, and the one timeliness measure described in the MOU Monitoring Plan (Section V).
- Recommendations that the DOT&PF believes could improve implementation of the MOU (Section VI).

I. 6004 Program Changes

Since the renewal of the MOU on September 18, 2015, the Statewide Environmental Office (SEO) implemented a variety of changes in the administration of the 6004 Program. These changes include:

- Assuming FHWA responsibility for projects with mixed federal funding;
- Assuming FHWA responsibility for formal Section 7 consultations under the Endangered Species Act and implementing a 6004 *Interim Guidance on Section 7 Consultations*;
- Revised internal Programmatic Categorical Exclusion (PCE) Approvals delegating the Regional Environmental Managers authority to approve certain CEs under the 6004 MOU;
- Improving the *Class of Action Consultation Form*, the *Categorical Exclusion (CE) Documentation Form*, the *Expedited CE Approval Form*, the *Environmental Re-evaluation Form*, and the *Expedited Re-Evaluation Approval Form*;
- Adopting a 23 CFR 771.117(e) Form to document conditions in 23 CFR 771.117(e) have been met for projects approved as CEs under 23 CFR 771.117(c)(26), (c)(27) and (c)(28);

The manner in which these changes have greatly improved the efficiency and quality of the 6004 Program are discussed in detail in Section V, as well as throughout this report.

II. Statistical Summary from Semi-Annual Reports

Stipulation IV(F)(1) of the MOU requires that reports be provided to the FHWA on all CE and Section 4(f) determinations made by the DOT&PF. The DOT&PF has met this stipulation as required by the MOU to date. All reports are available on the DOT&PF website at:

<http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>

This section provides a statistical summary of the information previously provided to FHWA under Stipulation IV(F)(1). During this 15-month reporting period, DOT&PF has assumed responsibility for and approved 335 CE determinations and re-evaluations of CEs under the MOU. The number of approvals per quarter is shown in Figure 1.

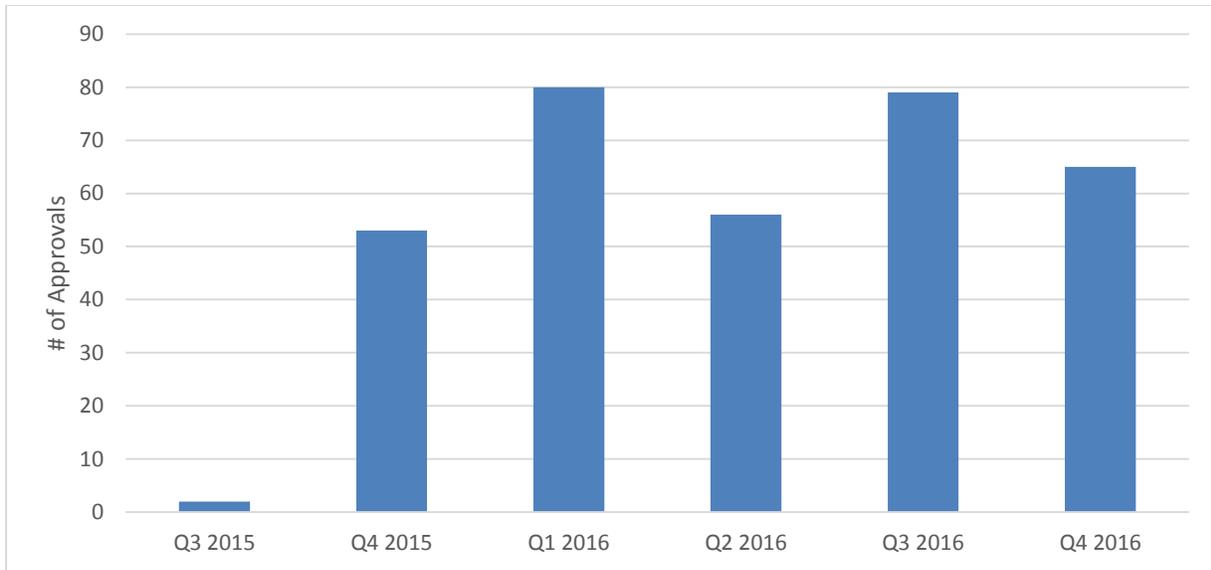


Figure 1. Number of determinations (CEs and re-evaluations) approved, by quarter, under the MOU during this 15-month reporting period (9/18/2015 – 12/18/2016). The third quarter of 2015 (Q3 2015) only accounts for those approvals occurring on or after 9/18/2015.

The DOT&PF has three Regional Environmental Offices (Regions) and a Statewide Environmental Office (SEO). During the development of the original MOU, the DOT&PF developed an internal DOT&PF programmatic agreement mirroring the previously approved programmatic agreements between the FHWA and the DOT&PF. These programmatic agreement approvals, as described in the *6004 Program Environmental Procedures Manual*, allow the Regional Environmental Manager (REM) to approve certain CE determinations for Regional projects, or the Statewide Environmental Manager for Statewide projects. The majority of CE determinations and re-evaluations (91.6%, or 307 of 335) approved by the DOT&PF within this reporting period have met the requirements of this internal programmatic agreement, and are referred to as PCEs (Figure 2).

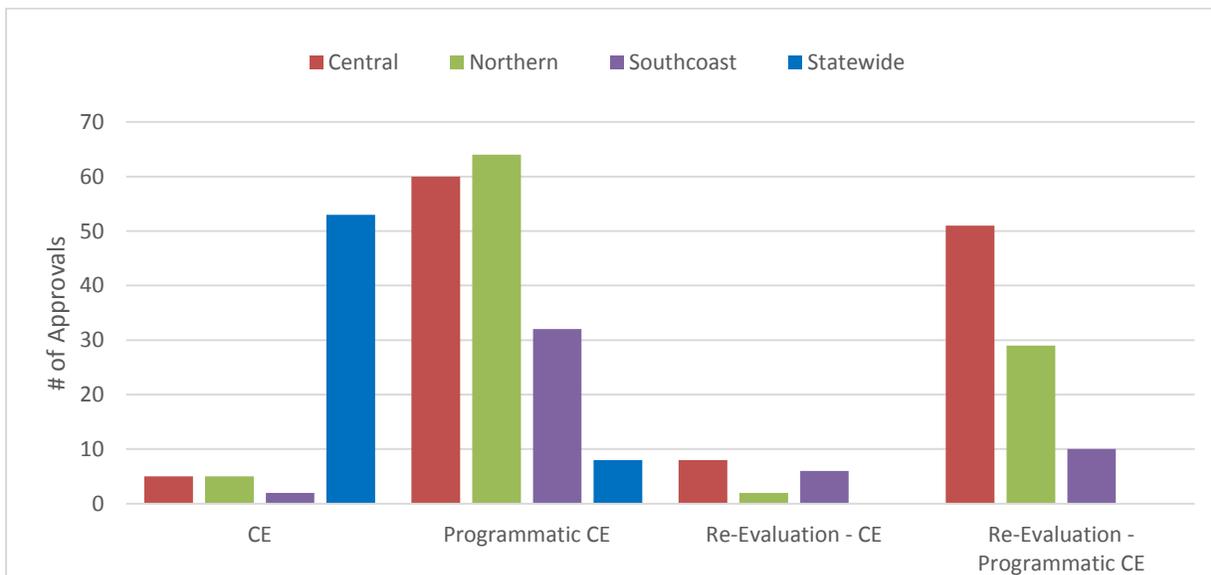


Figure 2. Number and type of determinations produced in each of the three Regions and SEO. CEs and re-evaluations of CEs are approved by the NEPA Program Managers in the SEO. PCEs and re-evaluations of PCEs are approved by the REMs for Regional projects and the Statewide Environmental Manager for Statewide projects.

As evidenced in Figure 3, the majority of determinations approved by the DOT&PF under the MOU were classified under 23 CFR 771.117(c)(1), (c)(26), and (d)(13):

- (c)(1) – Activities that do not lead directly to construction, such as planning and research projects (25%)
- (c)(26) – Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in 23 CFR 771.117(e) (25%)
- (d)(13) – Actions described in 23 CFR 771.117(c)(26), (c)(27), and (c)(28) that do not meet the constraints in 23 CFR 771.117(e). (11%)

It should be noted that FHWA regulations promulgated in 2014 affected the distribution of CE classifications. For example, the CE categories in 23 CFR 771.117(d)(1), (d)(2) and (d)(3) are no longer available and, therefore, new projects that would have been formerly classified in these categories were classified under new CE categories, such as 23 CFR 771.117(c)(26) or (d)(13). However, projects with CEs approved prior to the regulatory changes that were re-evaluated during the reporting period are reported under their former classification if the CE determination remained valid; otherwise, a new CE determination under the new CE categories was required.

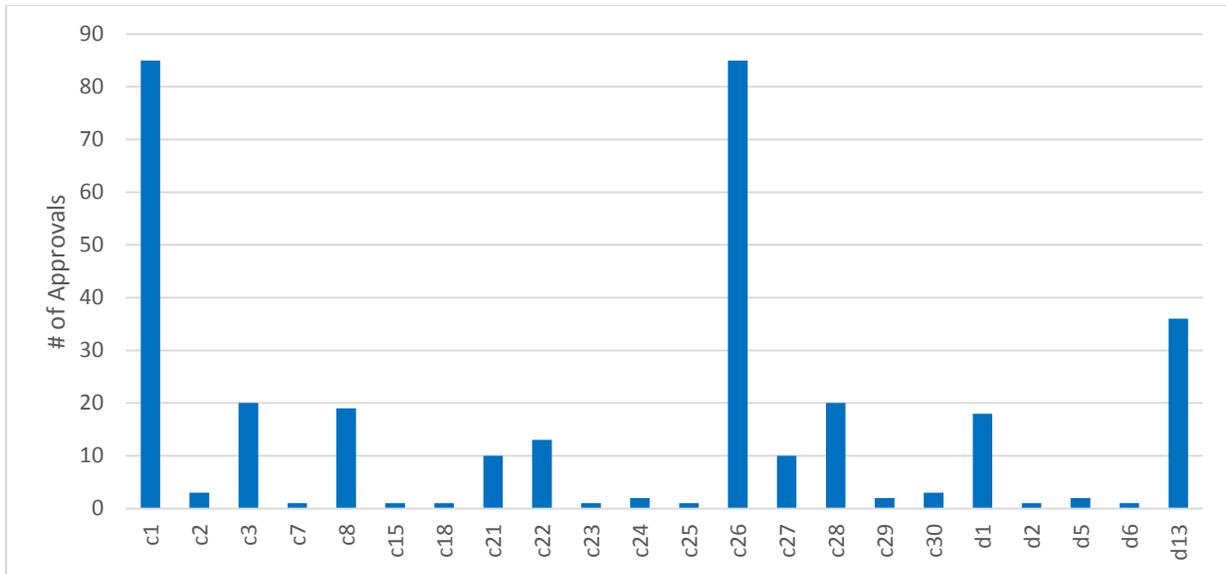


Figure 3. The number of determinations (CEs and re-evaluations) by category in 23 CFR 771.117 approved under the MOU during this 15-month reporting period (9/18/2015 – 12/18/2016). The c-listed activities are (c)(1) – (c)(30) and d-listed activities are (d)(1) – (d)(13). If the category is not shown, no CE or re-evaluations were approved in that category. Categories (c)(22) and (c)(23) were available starting February 15, 2014. Categories (c)(24) – (c)(30) and (d)(13) were available starting November 5, 2014; and (d)(1) – (d)(3) were reserved and no longer available after November 5, 2014. Re-evaluations of CE approved prior to the regulatory changes are reported under former classifications.

DOT&PF has the additional responsibility to determine the potential Section 4(f) impacts of those projects assigned under the MOU. As required in Stipulation IV(F)(1), DOT&PF provides a list of projects where a Section 4(f) approval was required and the type of approval used (*de minimis* impact finding, programmatic approval or individual evaluation) in each semiannual report to FHWA. Per Stipulation III(D)(2), any project requiring an individual Section 4(f) evaluation is excluded from assignment to the State. No individual Section 4(f) determinations were identified during the first 15 months of the renewed MOU. During this reporting period, DOT&PF did not approve any Section 4(f) *de minimis* impact findings or Programmatic Section 4(f) Evaluations.

III. 6004 Program Processing Times

The SEO tracks data in the 6004 Reporting Database to calculate the timeframes to complete the various steps in the 6004 Program approval process.

Time Required for Approving Class of Actions

The time required for the SEO’s approval of a Class of Action (COA) is determined by the time elapsed between the date the SEO received the *Categorical Exclusion (CE) Class of Action Consultation Form* and the date that SEO approved the COA. During this reporting period, on average, the SEO approved COAs on the same day they were received (within 0.4 calendar days). COA approvals for c-listed and d-listed activities did not vary greatly; averaging 0.4 days, and 0.2 days respectively. The maximum timeframe for any COA approval during this reporting period was 6 calendar days. The processing time for COA approvals is further discussed in Section V – *Quality & Timeliness Discussions*.

Time Required for Statewide Environmental Office Approval of CE Determinations

The time required for the SEO's approval of a CE determination is determined by the time elapsed between the date the SEO received the CE determination and the date SEO approved the determination. This includes the review and revision process, which occurs between submission of the document and document approval. On average, the SEO approved CE determinations, including CE re-evaluations, 2.6 calendar days after the document was received during this reporting period. There was a negligible difference in the average for c-listed (2.5 days) and d-listed (2.7 days) activities requiring the *CE Documentation Form*. The maximum timeframe for any of SEO's approvals was 27 calendar days. The processing time for CE approvals is further discussed in Section V – *Quality & Timeliness Discussions*.

IV. Areas for Improvement and the DOT&PF Improvement Measures Taken:

Summary of Quality Control Efforts:

The SEO has maintained a rigorous Quality Control (QC) process. The SEO believes the current QC procedures are consistent with the requirements of Stipulation IV(E) of the MOU. However, the DOT&PF *CE Assignment MOU Monitoring Plan* (<http://www.dot.state.ak.us/stwddes/desenviron/resources/6004.shtml>) required by Stipulation IV(E)(4) does not reflect our current practices. The DOT&PF is creating a QA/QC Plan in association with its effort to enter into the NEPA Assignment Program under 32 U.S.C. 327. The QA/QC Plan will include the Quality Assurance (QA) and QC procedures that will be implemented and closely follow the current QC process described below.

To summarize DOT&PF's current QC process, each assigned CE must be reviewed by someone who was not the preparer as well as the REM, who must review the CE prior approving it. This ensures two reviews occur for each CE before final approval.

Additionally, the SEO staff reviews the majority of assigned CEs, including PCE determinations approved by the Regions, to ensure that the CE was classified correctly, and that the *CE Documentation Form* was prepared correctly. Those CE determinations requiring the SEO staff approval are required to have any errors corrected prior to signature by the SEO.

The SEO utilizes a QA/QC Microsoft Access Database to compile review comments and classify each comment by risk-level and type of error.

Risk levels are defined as follows:

- **High Risk** – The impact significance cannot be clearly determined from the environmental document provided.
- **Caution** – The document meets the requirements for a PCE, but the document/determination appears weak to the reviewing Statewide NEPA Program Manager, such as not consulting with a resource agency, or not field verifying online information for wetlands or other resources covered in a PCE.
- **Information** – The document contains non-critical typos, organizational, or formatting issues.

Error types include: incomplete information, conflicting statement, insufficient justification, and other.

Information regarding errors identified during the SEO’s review of PCE determinations is provided to the REM through internal Quarterly QA/QC Reports generated using the database. The Quarterly QA/QC Report provides the REM a way to quickly assess trends in the types of errors occurring in PCEs approved by the Regions.

Though the QA/QC Reports are generated quarterly, the REMs are immediately notified of any high-risk errors such as an error in CE classification or an error in use of the programmatic agreement. This process allows the SEO to work with the REMs to immediately rectify more serious errors within PCE determinations, while still providing them with a tool to identify and correct reoccurring lower risk errors.

During this 15-month reporting period, the SEO conducted 340 reviews of determinations approved under the MOU. This number differs from the total number of determinations approved as some determinations were reviewed multiple times. All 335 determinations approved under the MOU were reviewed by the SEO during this reporting period.

The majority (78%, or 266 of 340) of SEO’s reviews did not identify errors or concerns. Only 22 percent (74 of 340) of the reviews identified errors or other concerns in the documentation. These 74 reviews resulted in a total of 131 comments of varying risk level and error types. Keep in mind that each review can result in multiple comments, and multiple comments may reference the same error throughout a document.

Information and Cautionary comments encompass 91 percent of the total comments; High Risk comments are 9 percent of the total. The majority of High Risk comments are due to incomplete information error types (see Table 1). During this reporting period, the most common High Risk errors involved floodplain, Section 4(f), and CE designation requirements.

Table 1. The number of comments by risk level and error type

Risk Level/Error Type	Count of Comments
High Risk	12
Conflicting Statement	3
Incomplete Information	6
Insufficient Justification	0
Other	3
Caution	70
Conflicting Statement	10
Incomplete Information	39
Insufficient Justification	3
Other	18
Information	49
Conflicting Statement	19
Incomplete Information	18
Insufficient Justification	2
Other	10
Grand Total	131

The 12 High Risk comments were generated by 11 separate reviews. The SEO has documentation that all of the High Risk errors have been resolved. To resolve these items, the NEPA Program Managers worked with the REMs to identify and implement appropriate corrective action. Following are descriptions of the corrective actions taken for the most common High Risk errors.

Two High Risk errors are the result of lack of public noticing under the Executive Order on Floodplains, and missing location hydraulic studies for projects encroaching on the base floodplain. This was corrected at the project level by issuing a public notice or attaching the appropriate information to the CE. On a program level, the SEO requested that the REMs verify compliance with these requirements during their review of the CE prior to their signature. A discussion with REMs revealed that there is confusion with the requirements under EO and that guidance from the SEO as well as training would improve understanding of and consistency with the requirements. In response to this, the SEO has developed a floodplain guidance.

This floodplain guidance is still in draft form, as its preparation has spurred much discussion among environmental staff and the hydraulic engineers responsible for the location hydraulic studies. The hydraulic engineers have requested SEO seek further input and guidance from the FHWA to ensure consistency with their expectations and practices nationwide. A FHWA-led webinar is being organized for February 2017 to discuss FHWA floodplain regulations and policies, and to answer questions generated by the preparation of the SEO's guidance. The SEO hopes to finalize the guidance shortly after the webinar. Training for each region's environmental staff will be scheduled when the guidance is issued.

Two High Risk errors are the result of missing Section 4(f) consultation or not providing complete information during a Section 4(f) consultation. This was corrected at the project level by requiring Section 4(f) consultation to be completed and included in a newly approved document.

Two High Risk errors are the result of projects being classified as a CE under 23 CFR 771.117(c)(28) during the COA consultation process, but were found to not meet the conditions in 23 CFR 771.117(e) during the SEO's review of the *CE Documentation Form*. This was corrected at the project level by completing and approving new COA determinations and *CE Documentation Forms* for these two projects.

The SEO staff is also in the process of conducting its internal process review of projects assigned under the MOU in compliance with MOU Stipulation IV.E.2 State quality control. This process review will focus on projects that have one or more of the following characteristics:

- Four or more documents (CEs and Re-evaluations)
- FHWA approved CEs that were re-evaluated under 6004 Program
- Multiple Environmental Re-evaluation Forms
- Documentation spanning multiple years

The purpose of this focused audit is to identify potential environmental process risks and non-compliance issues in the 6004 Program environmental documents associated with scope and resource impact changes, including consideration of the project's *FEDERAL-AID PROJECT AGREEMENT AND APPROVAL/AUTHORIZATION* form and any subsequent modifications.

Summary of Training Efforts:

The SEO is in the application process for NEPA Assignment under 23 U.S.C. 327. As part of this effort, the SEO is focusing current and future training opportunities on preparing DOT&PF environmental staff for implementing a NEPA Assignment Program. In this regard, the SEO submitted a training request to FHWA which includes 10 courses the SEO wants to provide before 2018. The SEO is working with the FHWA Alaska Division and the FHWA Resource Center to schedule the requested courses. To date, four of these course have been provided: Purpose and Need; Alternatives; Endangered Species Act (ESA)/Marine Mammal Protection Act (MMPA); and 327 Audit and Legal Sufficiency.

The ESA/MMPA training was included as a priority since the DOT&PF assumed FHWA’s responsibilities for formal Section 7 consultations under the ESA with the 2015 CE Assignment “6004” Program MOU. All classroom and online trainings offered to environmental staff during this reporting period are listed in Table 2.

The SEO also continues to hold monthly teleconferences with the Regional REMs and their staff to discuss policies, procedures, and regulation changes. In addition, SEO staff continues to attend Design Status Meetings in order to provide time to discuss in-person project specific and overall process questions and concerns.

The SEO developed a DOT&PF *Environmental Training Program Plan* (Oct. 2014) detailing the training opportunities the SEO intends to provide to environmental staff. This plan is available online on the DOT&PF environmental training website, which also includes a training slides, presentations, and handouts from prior trainings. This Plan will be updated under the NEPA Assignment Program. The DOT&PF environmental training website can be accessed at <http://www.dot.state.ak.us/stwddes/desenviron/resources/training.shtml>.

Table 2. Training offered to DOT&PF Environmental staff.

Date	Training
10/29/2015	FHWA Purpose and Need Training
11/2-3/2015	ANILCA Training
11/12/2015	FHWA Alternatives Training
2/29 – 3/1/2016	ANILCA Training
4/11-12/2016	Endangered Species Act/Marine Mammal Protection Act Training
10/20-21/2016 (FBKS) 10/24-25/2016 (JNU) 10/27-28/2016 (ANC)	Introduction to Managing Environmental Conflict
10/31/2016	U.S. Army Corps of Engineers Permitting and Debit/Credit Methodology
11/30/2016	EDC4 –Integrating NEPA and Permitting (Portland, OR)
12/7-8/2016	327 Audit and Legal Sufficiency Training

V. Quality & Timeliness Discussions

As part of the *FHWA Monitoring Review of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* document¹, six quality measures and one timeliness measure are qualitatively evaluated to assess the efficiency and productivity of the Section 6004 assignment. These measures are:

¹ <http://www.fhwa.dot.gov/hep/guidance/superseded/6004stateassumpt.cfm>

Quality Measures

- CE decisions are appropriately and timely documented
- CE decisions are factually and legally supportable at the time the decision is made
- CE decision-making procedures comply with NEPA, 23 CFR 771.117, and the MOU
- DOT&PF has met staffing and quality control requirements of the MOU
- DOT&PF has complied with other State and federal legal requirements
- DOT&PF has complied with recordkeeping requirements

Timeliness Measure

- The CE assignment reduces the time required for processing assigned CEs.

For the qualitative evaluation of these measures, the DOT&PF is relying on data from the 6004 Reporting and QA/QC Databases, program reviews and the issues that have become apparent since the MOU was signed.

Discussion:

The Quality and Timeliness Measures have been met by the following 6004 Program accomplishments:

Resolution of All Findings from the FHWA CE Assignment Compliance Reviews

Stipulation IV(F)(5) of the original MOU required the FHWA to conduct a CE Assignment Compliance Review to verify DOT&PF's compliance with the Section 6004 MOU, evaluate the State's performance in carrying out the procedures established for CE assignment, and to evaluate the effectiveness of those procedures in achieving compliance. The original MOU (2009) provided that the Compliance Reviews be performed at least every 12 months. The 2012 MOU lengthened this to at least every 18 months.

Under the prior MOUs, four CE Assignment Compliance Reviews were conducted by FHWA in March 2010, February/March 2011, December 2011, and January 2015. FHWA produced a report following each compliance review, the last of which was the FHWA May 2015 *Categorical Exclusion (CE) Assignment Compliance Review Final Report* (2015 Final Report). These reports detailed FHWA's findings, which is defined as "a statement pertaining to the compliance with a regulation, statute, FHWA guidance, policy or procedures, DOT&PF procedures, or the Section 6004 MOU" (2015 FHWA Final Report, p. 11).

In response to each of FHWA's reports, DOT&PF developed and implemented a *Corrective Action Plan* to address the findings identified during the prior compliance review. As a result of DOT&PF implementing these plans, the number of new findings and open findings from previous compliance reviews decreased each time a review was conducted (Table 3).

Table 3. The number of new and open findings identified during each FHWA Compliance Review.

FHWA Final Report Year	New Findings	Open Findings from Previous Reviews
2010	38	--
2011	8	6
2013	0	3
2015	1	0

With submission of the August 2015 *Corrective Action Plan* on August 3, 2015, the DOT&PF has resolved all of FHWA’s findings. This accomplishment demonstrates DOT&PF is administering a quality program which complies with the requirements of NEPA, 23 CFR 771.117, and the MOU. All of FHWA’s compliance review reports and the DOT&PF Corrective Action Plans can be found on DOT&PF’s website.

Implementation of the 6004 Program Environmental Procedures Manual and Associated Forms

SEO continues implementing a *6004 Program Environmental Procedures Manual (EPM)*. To date, six chapters of the *6004 Program EPM* have been approved (see Table 4). The SEO suspended revising and drafting new *6004 Program EPM* chapters, as the DOT&PF is currently pursuing NEPA Assignment under 23 U.S.C. 327 and is revising its *EPM* to accommodate this future change. The current *6004 Program EPM* can be found online at: <http://dot.alaska.gov/stwddes/desenviron/resources/enviromanual.shtml>

Table 4. Chapters issued for the *6004 Program Environmental Procedures Manual*

Chapter	Date Issued
Chapt. 1 – Environmental Procedures Overview	December 2012
Chapt. 2 – Class of Action and 6004 Assignability	December 2012
Chapt. 3 – Categorical Exclusions	December 2012
Chapt. 6 – Reevaluations	March 2013
Chapt. 9 – Section 4(f) and 6(f)	September 2013
Chapt. 16 – Water Quality	February 2015

The SEO utilizes documented Interim Guidance to provide procedural guidance to address immediate needs in the absence of an adopted EPM topic chapter. For example, the SEO issued an *Interim Guidance for Section 7 Consultations* in order to address the need for consultation procedures when the DOT&PF assumed responsibility for formal Section 7 consultations under the 2015 MOU renewal. The ability to issue this Interim Guidance has been a beneficial time-saving process and it can provide the basis for a future EPM chapter. The *Interim Guidance for Section 7 Consultations* can be found online at: http://www.dot.state.ak.us/stwddes/desenviron/assets/pdf/resources/esa_sec7_procedures.pdf

In addition to implementing a *6004 Program EPM*, the SEO has issued new and revised forms associated with the 6004 Program procedures. In September 2015, the SEO adopted a new 23 CFR 771.117(e) Verification Form. This form allows the DOT&PF to document that the conditions outlined in 23 CFR 771.117(e) have been met for projects approved as a CE under 23 CFR 771.117(c)(26), (c)(27) and (c)(28). In February 2016, the *Class of Action Consultation Form*, the *Categorical Exclusion Documentation Form*, and the *Environmental Re-evaluation Form* were revised to accommodate program changes, reduce documentation errors and ensure that sufficient analysis has been completed. The current forms can be found online at: <http://dot.alaska.gov/stwddes/desenviron/resources/docprep.shtml>

Class of Action Processing Times and Appropriateness of Approvals

The processing time for the Class of Action (COA) is determined by the time elapsed between the date the SEO received the *Class of Action Consultation Form* and the date that SEO approved the COA. The overall average time for the SEO to approve the COA was 0.4 calendar days during this 15-month reporting period under the 2015 MOU, which is an improvement from

the overall time it for the SEO to approve the COA under the original and 2012 MOUs. In fact, processing times have reduced by more than half each MOU renewal period. In addition, there is now no appreciable difference in the time it takes to process activities on the c and d list, as there once was (Table 5). Given the overall reduction and current processing timelines, it is likely that DOT&PF has reached maximum efficiency in approving COAs.

Table 5. A comparison of the average processing time for Class of Action (COA) approvals under the original, 2012, and 2015 MOU. This is broken into the overall average processing time for all COA approvals; and the processing time for COAs for c-list and d-list actions. For the 2015 MOU, this average only includes approvals during the 15-month reporting period. Note: Data may be different than previous reported, as DOT&PF has been cleaning-up data, particularly older data that was transferred from the Section 6004 Monitoring Tracking Excel Spreadsheet into the 6004 Reporting Microsoft Access Database.

Average Time for Approval (calendar days)	ORIGINAL MOU	2012 MOU	2015 MOU
	9/22/2009 – 9/19/2012 36 months	9/20/2012 – 9/17/2015 36 months	9/18/2015 – 12/18/2016 15 months
Overall	5.3	1.1	0.4
C-list Actions	2.5	1.0	0.4
D-list Actions	8.9	1.6	0.2

In addition, based on information in the *QA/QC Database*, there have not been any errors in the classification of CEs. As such, the DOT&PF feels that it has continually been successful in making appropriate and timely decisions on Class of Actions.

Improved Project Tracking and Reporting

The SEO has continued use of the Section 6004 Reporting Microsoft Access Database. The database allows the SEO to easily generate and analyze program data and produce reports to satisfy Stipulation IV(F)(1) of the MOU. Though the reports under Stipulation IV(F)(1) now cover a longer reporting period, the level of effort in producing the reports has not drastically changed. The FHWA recognized SEO’s new tracking system as a best practice in administering the CE Assignment “6004” Program (2015 FHWA Final Report, p. 4 and 15).

Success of QA/QC Procedures and Minimal High Risk Errors

DOT&PF has met the quality control requirements listed in Stipulation (IV)(E) of the MOU during this 15-month reporting period. Though the *Monitoring Plan* does not reflect changes to the QC process, the implementation of these changes have improved the efficiency and utility of the QC process.

According to the QC data, the SEO reviewed 100 percent of all determinations approved during this 15-month reporting period. Only 22 percent (74 of 340) of SEO’s reviews reported errors with the documentation, which is an improvement from the 26 percent reported in the 30 month reports submitted under the 2012 MOU. Only 3 percent of all documents (11 of 335) approved this reporting period identified High Risk errors. The SEO has documentation that all of these High Risk errors were resolved. As such, the DOT&PF believes the established QC procedure is successful in identifying and resolving any High Risk concerns and has improved the quality of

the documentation to ensure that CE determinations have been made appropriately; based on legal, factual information at the time of approval; and in compliance with NEPA and other state and federal regulations. Furthermore, the FHWA recognized SEO's QA/QC process as a best practice in administering the CE Assignment "6004" Program (2015 FHWA Final Report, p. 3 and 15).

DOT&PF Environmental Staff

DOT&PF has met the staffing requirements listed in Stipulation (IV)(D) of the MOU during this 15-month reporting period. The SEO is headed by the Statewide Environmental Program Manager, who has a staff of full time employees organized in three functional groups: NEPA Program Managers, Cultural Resources, and Stormwater Compliance. The SEO staff reporting to the Statewide Environmental Manager consists of two Environmental Resource Specialists (stormwater and cultural resources), two Environmental Program Managers (stormwater and cultural resources), and three NEPA Program Managers. The SEO currently has a vacant cultural resource specialist position, as the former cultural resource specialist was promoted to the cultural resource manager position after the previous manager retired. Otherwise, the SEO's positions have been consistently staffed.

In regards to Regional staff, two of the three REMs have been constant throughout the 15-month reporting period. The new REM in Southcoast Region was a senior member of the regional environmental staff, having been an environmental analyst for nearly 10 years with seven of those years as an Environmental Lead, and having acted as REM on numerous occasions. This has allowed for a smooth transition in the Region with little additional oversight and training needed by the SEO.

Perceived Time Savings for Processing Assigned CEs

The DOT&PF continues to be highly satisfied with the perceived time savings experienced as a result of the CE assignment. The SEO approved about 8 percent of all assigned CEs this reporting period. The remaining 92 percent were approved in the Regions under the PCE approvals, which delegate the REMs authority to approve certain CEs under the 6004 MOU. The SEO does not track the processing time for CEs approved in the Regions, only those approved in the SEO.

CE processing time is determined by the time elapsed between the date the SEO received the *Categorical Exclusion Documentation Form* and the date that SEO approved the CE. This takes into account the review and revision process. On average, all CE determinations being approved by the SEO are approved within three days from when the document is received. This is an improvement from the average approval time under the original MOU. In addition, approval time is no longer appreciably different for c-listed and d-listed activities (Table 6). The maximum timeframe for any of SEO's approvals was 27 calendar days. However, this particular approval was for a project that required careful consideration of cumulative effects to ensure a CE under 23 CFR 771.117(d)(13) was appropriate. Given this, the CE was submitted and reviewed multiple times, delaying the approval time more than is typical for projects. The next maximum timeframe for a CE approval from SEO was 8 days, which is more consistent with timeframes previously reported.

Table 6. A comparison of the average processing time for Categorical Exclusion (CE) determinations and Re-evaluations approved by the Statewide Environmental Office (SEO) under the original, 2012, and 2015 MOU. This is broken into the overall average processing time for all CEs; and the processing time for CEs for c-list and d-list actions. For the 2015 MOU, this average only includes approvals during the 15-month reporting period. Note: Data may be different than previous reported, as DOT&PF has been cleaning-up data, particularly older data that was transferred from the Section 6004 Monitoring Tracking Excel Spreadsheet into the 6004 Reporting Microsoft Access Database.

Average Time for Approval (calendar days)	ORIGINAL MOU	2012 MOU	2015 MOU
	9/22/2009 – 9/19/2012 36 months	9/20/2012 – 9/17/2015 36 months	9/18/2015 – 12/18/2016 15 months
Overall	14.4	2.3	2.6
C-list Actions	6.7	3.0	2.5
D-list Actions	18.0	2.1	2.7

Under the 2012 MOU, note that the CEs for c-listed actions are slightly greater than that of the d-listed actions, which may not be expected (Table 6). However, CE approval times during this period was influenced by the promulgation of FHWA’s regulations. For example, CEs categorized under 23 CFR 771.117 (c) (26)-(28) may have required additional review time to ensure that they met the criteria in 23 CFR 771.117(e). Furthermore, there were several new c-listed CE categories. The use of the 23 CFR 771.117(e) Verification Form has helped in making review of this criteria more efficient.

The increased average approval time under the 2015 MOU may be influenced by several considerations: 1) the identified outlier of a 27 day approval time; 2) the increased complexity of projects that can now be assigned and are being approved by NEPA Program Managers; 3) the NEPA Program Managers’ recent workload increase with the pursuit of full NEPA Assignment, and 4) the 2015 MOU’s numbers are averaged over a shorter timeframe (Table 6).

However, the overall processing time during the 2012 and 2015 MOU implementation periods is relatively consistent. This demonstrates that the SEO and the Regions have improved the efficiency in processing CE determinations that do not meet programmatic CE conditions. Given the similarities in processing times under the 2012 and 2015 MOU renewal periods, it is likely that the DOT&PF has neared maximum efficiency in approving non-programmatic CEs.

While the SEO does not track the Region’s processing time for CE approvals, the Regions conceivably gain additional time savings when approving assigned CEs under the PCE approvals. However, this process was affected in 2014 when FHWA’s new regulations created new CE categories, not included in the programmatic approval for PCEs.

Processing was improved when the Chief Engineer issued the revised *Programmatic Categorical Exclusion Approvals* on March 4, 2015. The revised PCE approvals better accommodate the new CE categories by utilizing impacts-based criteria for the approvals and allowing all c-listed categories, under certain conditions, to be approved under Programmatic Approval 1 and the expedited procedures as described in the *6004 Program EPM*. The PCE Approvals were revised

and re-issued in December 2015 to clarify some of the impacts-based criteria. The revised Programmatic Categorical Exclusion approvals are available on the DOT&PF webpage at: <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>

Perceived Time Savings for Formal Section 7 Consultations

With the renewal of CE Assignment MOU in September 2015, the DOT&PF assumed responsibility for formal Section 7 consultations. At present, it is too soon to know what time savings benefits, if any, this assumption will provide for projects. Since the renewal of the MOU, only one project has been assigned that requires formal consultation.

Perceived Time Savings for Projects with Mixed Federal Funding

With the renewal of CE Assignment MOU in September 2015, the DOT&PF assumed responsibility for projects with mixed federal funding. Since the renewal of the MOU, only eight projects with mixed federal funding have been assigned. There is little data on such projects to discuss time savings, and the SEO does not tend to track turnaround times for non-assigned projects.

Perceived Time Savings for the FHWA Alaska Division Environmental Staff

Prior to the CE assignment, the FHWA Alaska Division office performed the review and approval process of more *Categorical Exclusion Documentation Forms* than under the CE assignment. The MOU allows the DOT&PF to approve CEs for the majority of projects that fall under 23 CFR 771.117 (c) or (d) without FHWA review and approval. However, since the beginning of the program, the number of non-assigned projects has decreased, from about 20 percent of projects in 2010 to about 3 percent of projects in 2016 (Figure 4). The decrease in non-assigned projects over the last 3 years is attributed to FHWA’s clarification of assigning projects with minor realignments and roundabouts as well as the new FHWA regulations.

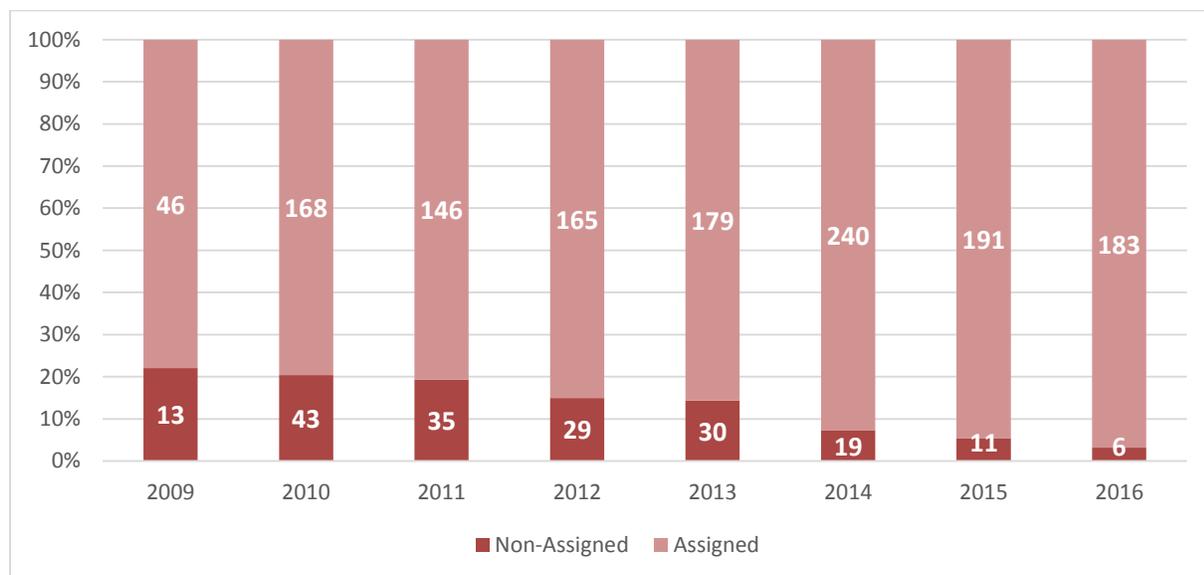


Figure 4. The number/percent of project Class of Action (COA) consultations determined to encompass assigned and non-assigned actions under the 6004 Program since the original MOU became effective on Sept. 22, 2009 by year.

By continuing to administer the CE Assignment “6004” Program, the DOT&PF recognizes that it allow the FHWA Alaska Division Office to devote more time and resources to larger more complex issues, such as Environmental Assessments (EAs), Environmental Impact Statements (EISs), and program matters. For example, the DOT&PF and FHWA mutually benefit from FHWA staff’s ability to work on tasks in preparation for full NEPA Assignment.

VI. Recommendations

With the renewal of CE Assignment MOU in September 2015, the recommendations from the 30-month report submitted under the 2012 MOU were adopted. These included:

- State assumption of formal consultation under Section 7 of the Endangered Species Act
- State assumption of projects with multiple sources of federal funding

At this time, the DOT&PF is pursuing full NEPA Assignment under 23 U.S.C. 327. The DOT&PF intends to continue administering the CE Assignment “6004” Program until the NEPA Assignment Program is effective. As part of its application, the DOT&PF notified the FHWA of its intent to terminate the current CE Assignment MOU contingent on the execution of an MOU between DOT&PF and FHWA under 23 U.S.C. 327. For this reason, the SEO is not making any current recommendations for improving the CE Assignment (“6004”) Program.

However, the SEO would like to discuss with FHWA a transition plan to the NEPA Assignment Program. NEPA Assignment will greatly impact the SEO’s administration by expanding the number and types of projects that can be approved by the DOT&PF. The SEO has started preparations for this responsibility, including hiring a consultant to help develop new and revise existing procedures and forms. The SEO has also worked with FHWA Alaska Division and the Resource Center to provide training for environmental staff and is updating its Training Program Plan for NEPA Assignment. The SEO would like to discuss with FHWA a plan for transitioning projects in which the environmental process is currently being administered by FHWA to being administered by the DOT&PF under NEPA Assignment. The DOT&PF looks forward to working with the FHWA Alaska Division Office in determining the best way to adapt our policies and procedures to accommodate these changes.