



U.S. Department
of Transportation

**Federal Highway
Administration**

**FHWA Alaska
Division**

**FHWA Resource
Center**

**FHWA Office of
Project
Development of
Environmental
Review**

Program Review

Categorical Exclusion (CE) Assignment Compliance Review (23 U.S.C. 326)

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FINAL REPORT



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**Federal Highway
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Executive Summary

The purpose of this compliance review is to satisfy the requirement of Section 6004 of SAFETEA-LU for monitoring the Alaska Department of Transportation and Public Facilities' (DOT&PF) compliance with the provisions of the Section 6004 MOU. The State's performance is important as an ongoing matter and will be considered when it is time to determine whether or not to renew the current MOU when it expires. This review, the third 6004 review in Alaska, will also serve to evaluate the State's performance in carrying out the procedures established for the CE Assignment, and to evaluate the effectiveness of those procedures in achieving compliance. This review also will determine the current status of the implementation of tasks in the September 2011 DOT&PF Corrective Action Plan.

A Team of three (3) individuals from the Federal Highway Administration (FHWA), representing the Alaska Division Office (Alaska Division), the FHWA Resource Center, and the Headquarters Office of Project Development and Environmental Review, visited two (2) DOT&PF Region offices and two (2) DOT&PF Statewide offices to conduct monitoring tasks between December 12 and December 16, 2011. The Team elected to perform a review focused on the State's assumption of responsibilities related to Section 106 of the National Historic Preservation Act. This Team conducted interviews with key project development staff at each DOT&PF office visited, as well as with the Alaska State Historic Preservation Officer (SHPO). They also reviewed project records for CE projects that were determined assignable under the MOU. Only DOT&PF Region office files were reviewed, though some specific Statewide Environmental Office (SEO) records were requested and obtained for support. No project files or financial files were reviewed in the Alaska Division. The Team reviewed 62 approval actions from 34 project files at DOT&PF offices. Based on this assessment, DOT&PF has carried out its assigned responsibilities adequately and in good faith. An outcome of this monitoring is a number of recommendations and corrective actions that all offices visited should consider implementing in order to improve the effectiveness and efficiency of the State's processing of projects categorically excluded from the requirement to prepare either an environmental assessment or environmental impact statement.

The objectives of the review were to evaluate six performance areas that were formalized as Section 6004 MOU Stipulations:

1. Compliance with governing laws, regulations, and the Section 6004 MOU.
2. Processing projects assigned under the MOU: State identification, documentation, and review of effects.
3. Excluded projects: Determination and documentation of CEs excluded from the CE Assignment Program, and retained by FHWA.
4. Adequate State resources (including provision of financial resources), qualifications, expertise, standards, and training.



5. Effective State quality control.
6. MOU performance monitoring and quality assurance.

In addition, the Team used the review to evaluate the status of the corrective actions proposed by DOT&PF in response to the findings and observations made in the May 2011 Final Report. This December monitoring review differs from the one completed in May 2011 in that the Southeast Region Office and the Statewide Environmental Office (SEO) in Juneau were not visited. Also, where the goal of the previous review was to inspect all or nearly all the project files processed by the state, this review focused on a sample of records from project files which pertain to Section 106 compliance.

The general conclusions resulting from the objectives of the review are:

1. Our review of project files identified a limited number of deficiencies related to missing documentation, unsigned versions of correspondence, and lack of documentation to support critical decisions that had been made during the environmental phase of projects. While these deficiencies were relatively few in number, when considered with previous reviews' findings they may point to a lack of emphasis on good file management and a need for training.
2. The Team observed, as an outcome of project file reviews, the use of outdated or apparently modified templates for Section 106 consultation letters. This practice may require an increased focus on the behalf of the SEO and the DOT&PF's Cultural Resource Team to oversee the documentation process, instruct the region staffs, and to ensure that the consultation required by Section 106 is carried out in an appropriate manner.
3. We were told by the SHPO that the overall increase in the number of DOT&PF qualified staff [Professionally Qualified Individual (PQI) per Secretary of the Interior Professional Qualification Standards 48 FR (44738 - 44739)] and their involvement has increased communication and trust, leading to faster review and approval times for most projects. The SHPO also noted that improvements in Section 106 consultation for assigned projects have streamlined the compliance for unassigned projects as well. However, the Team noted that the lack of a centralized quality control review of correspondence may have led to inconsistencies in processing and the consultation with other consulting parties. Some of these inconsistencies were observed during our project file reviews.
4. We also found through our interviews, that the Project Information Sheet (PIS) used to inform FHWA that a CE for a project has been assumed and approved by the State, has not been revised to address Findings from the May 2011 Final Report and the 2010 Final Report. We learned that interim procedures to address this step that were proposed in the DOT&PF's September 2011 Corrective Action Plan have



not yet been instituted. However, we understand that a draft of a revised PIS is currently being circulated throughout the DOT&PF.

5. While the Review Team learned of many instances of training that had occurred over the recent months, the comprehensive training plan proposed by the State for all environmental staff, as a corrective action to May 2011 Final Report findings and 2010 Final Report findings, has not been completed.
6. We learned that development of a proposed environmental document management system has not been completed, but that a consultant was on board for this effort. The SEO staff believes this system will provide an integrated approach to tracking 6004 project decisions and documents and has proposed it to address past findings from the May 2011 Final Report and the 2010 Final Report. The SEO has continued the best practice of bi-annual audits of region offices' project files and noted that they are identifying trends that are resulting in helpful recommendations.

During the review, the Team identified eight (8) best practices in DOT&PF offices that included:

1. Discussing and resolving issues with SHPO prior to transmitting findings letters.
2. Establishing regularly scheduled monthly SHPO meetings to conduct early consultation on projects.
3. Conducting informal SHPO consultation via email, phone calls, and meetings.
4. Addressing project scope changes through reinitiated Section 106 consultation and completing it expeditiously.
5. Conducting informal SHPO consultation to resolve differences and address issues more expeditiously.
6. Undertaking and documenting, in project files, informal follow up with Federally-recognized Tribes.
7. Developing a new form that combines several Section 106 steps, when appropriate, for Section 106 compliance.
8. SEO PQIs successfully coordinating with and carrying out Section 106 responsibilities for a region office during a vacancy of the region PQI position.

As a direct result of the December 2011 Compliance Review, the DOT&PF's 30 month Performance Report and MOU Monitoring Plan, the FHWA currently believes the 6004 assignment remains an area of medium risk deserving of continued evaluation and monitoring.



Background

Pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 6004, codified in 23 U.S.C. 326, the Alaska Department of Transportation and Public Facilities (DOT&PF) assumed the Secretary of Transportation's (Secretary) authorities and responsibilities for determining if a transportation project qualifies for a Categorical Exclusion (CE), listed in 23 CFR 771.117. For assigned projects categorically excluded from the requirement to prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA), DOT&PF also assumed the Secretary's authorities and responsibilities for coordination and consultation with Federal resource agencies for all associated Federal environmental laws. These authorities and responsibilities include Endangered Species Act Section 7 informal consultations with the U.S. Fish & Wildlife Service and NOAA National Marine Fisheries Service, Section 106 consultations with the State Historic Preservation Officer and the Advisory Council on Historic Preservation, and coordination with the U.S. Environmental Protection Agency for project-level air quality conformity findings.

For the CE Assignment, the State of Alaska assumed the legal responsibility for its NEPA decisions, and it is subject to Federal court jurisdiction. The State waived its 11th Amendment sovereign immunity against actions brought by its citizens in Federal court for the purpose of NEPA Assignment. On September 22, 2009, DOT&PF entered into the formal Section 6004 MOU with the Federal Highway Administration (FHWA) Alaska Division to implement the CE Assignment Program in Alaska. The MOU was renewed on September 20, 2012 for another (3) three year term. However, the Team conducted its review prior to the renewal of the MOU and this review is based on the terms of the first MOU. The MOU outlines specific terms that describe the DOT&PF's new roles and responsibilities under the CE Assignment.

The Section 6004 MOU [Stipulation IV(f)(5)] establishes that a CE Assignment Compliance Review in Alaska will be conducted at least every 18 months. This was the third Compliance Review that has been conducted of the State's 6004 Program.



Purpose and Objective

The overall purpose of the monitoring review is to verify the DOT&PF's compliance with the provisions of the Section 6004 MOU, to evaluate the State's performance in carrying out the procedures established for the CE Assignment, and to evaluate the effectiveness of those procedures in achieving compliance. In evaluating the State's compliance with the provisions of the MOU, this review also considers procedures and actions of Alaska Division Staff in the project development process. The overall objective is to identify opportunities for enhancing the quality of CE decision-making and develop baseline information for future evaluation.

A key component of the Section 6004 MOU is the six (6) performance areas that the FHWA will use in evaluating the success of the CE Assignment in Alaska. The following performance areas establish the foundation for the objectives of this review:

1. Compliance with governing laws, regulations, and the Section 6004 MOU.
2. Processing projects assigned under the MOU: State identification, documentation, and review of effects.
3. Excluded projects: Determination and documentation of CEs excluded from the CE Assignment Program, and retained by FHWA.
4. Adequate State resources (including provision of financial resources), qualifications, expertise, standards, and training.
5. Effective State quality control.
6. MOU performance monitoring and quality assurance.

Specifically regarding the implementation of the DOT&PF Corrective Action Plan the Review Team assessed:

- whether a new procedure had been implemented that requires staff attach to the Project Information Sheet (PIS) either the signature page of the CE Documentation Form or the approval email from the SEO to the Region that verifies the completion of the environmental process;
- whether the SEO staff had transmitted the 6004 project tracking spreadsheet to each Regional Environmental Manager (REM) in order to identify and correct any errors and omissions prior to the quarterly report deadline;
- whether the new and revised Class of Action Form and CE documentation forms were being utilized and if they documented whether an action approval occurred as a Programmatic Categorical Exclusion (PCE), listing which CE citations apply, and identifying all approving officials;



- whether training in the proper use of the new forms and PCE approval procedures had occurred and whether the revisions to the Categorical Exclusion Chapter of the Environmental Manual were ongoing and likely to meet the deadline of producing a draft for FHWA review by December 31, 2011;
- whether the DOT&PF had initiated the process to develop an electronic document management system;
- whether the DOT&PF had revised the Re-evaluation form to identify specific activities on the form; had initiated training sessions related to the revisions; and if changes had been made to the Environmental Manual to reflect these revisions;
- whether the DOT&PF had completed a comprehensive training plan for all staff members who participate in the environmental review process and how DOT&PF had initiated that training plan;
- and, whether DOT&PF SEO had completed a second internal audit of the Southeast, Central, and Northern Region Offices.

Scope and Methodology

The scope of this review differed from previous ones in that the Review Team interviewed staff outside of the DOT&PF in order to assess the State's assumption of Section 106 responsibilities. Due to the DOT&PF's adoption of processing changes that delegated certain Section 106 responsibilities from the SEO to the region offices, and since the two previous reviews were more global in nature, the Review Team chose to perform a more focused review.

The Alaska State Historic Preservation Officer was interviewed as well as DOT&PF staff responsible for assumed Section 106 decision making. This review also focused on findings identified in the May 2011 Compliance Review Final Report and the State's commitments to address those issues through corrective action (see DOT&PF's September 2011 Corrective Action Plan).

The Review Team visited staff of the DOT&PF Statewide Environmental Office (SEO) in Anchorage and Fairbanks to review project files, documentation of Quality Control efforts, evidence of ongoing guidance provided to Regions, documentation of any corrective actions taken, and documentation related to the SEO monitoring and evaluation. Interview questions were also asked about the provision of financial and staff resources committed to implement the provisions of the MOU.



In addition, two DOT&PF Region Offices (Central and Northern Regions) were visited. The Review Team evaluated a sample of project files from the Regions' projects identified in the State's quarterly reports and from the "DOT&PF Regional Delegation Section 106 Project Reviews" spreadsheet of October 21, 2011. The Review Team verified that the CE determinations were appropriate and well-supported by the technical studies and the administrative record.

These visits were closely coordinated with DOT&PF. There also was a brief informal closeout meeting, which included all offices visited, at the completion of the Review.

The Team reviewed 34 project files at DOT&PF Offices which correspond to 62 decisions made by DOT&PF under the 6004 assignment.

Interviews were conducted of the following staff:

- Alaska State Historic Preservation Officer (1)
- DOT&PF Statewide Environmental Manager (1)
- DOT&PF Statewide Cultural Resources Manager (1)
- DOT&PF Statewide Cultural Resource Specialist (1)
- DOT&PF Region Environmental Manager (2)
- DOT&PF Region Design and Environment Group Chief (2)
- DOT&PF Regional Cultural Resources Specialist (1)



Team Members

Tim Haugh, Environmental Program Manager of the Alaska Division, served as the Review Team Leader. He was responsible for coordinating the Team's activities, keeping the review on schedule and alerting management to any issue that may affect the completion of the review. Tim has a broad understanding of the provisions of SAFETEA-LU Sec. 6005 and has performed numerous audits of Caltrans' 6005 program. He is a NEPA and Section 4(f) subject matter expert and has extensive knowledge and experience of the environmental program.

Owen Lindauer, FHWA HQ Project Development Specialist joins the Review Team from the FHWA Office of Project Development and Environmental Review. He brings extensive knowledge of the SAFETEA-LU Sec. 6004 provisions in that he led the development of the preparation of all Sec. 6004 guidance and the Sec. 6004 template MOU. He has oversight in the implementation of Sec. 6004 in California and Utah as well, and brings a national perspective to this program review. He is also a recognized NEPA, Section 106 of the NHPA, and Section 4(f) expert.

David Grachen, FHWA Resource Center Environmental Specialist joins the Review Team from the Resource Center's Environmental Technical Services Team. He brings extensive knowledge of SAFETEA-LU Sec. 6005 provisions and experience conducting audits of Caltrans' assumption of environmental responsibilities under the pilot program. He is also a recognized NEPA project development, Section 4(f), Section 106, and monitoring environmental commitments expert.



Observations and Findings

Observations and Findings are organized as:

- Observations from the December 2011 Review – These are comprehensive explanations that have been provided for more complex situations, involve multiple observations/findings, or apply to multiple MOU stipulations
- Findings from the May 2011 Final Report that Remain Open
- Findings from the 2010 Final Report that Remain Open

Appendices:

- Appendix A provides the details of findings from the May 2011 Final Report that have been closed
- Appendix B provides the details of findings from the 2010 Final Report that have been closed
- Appendix C contains a Master File Review Spreadsheet that identifies the project files that were reviewed during the December 2011 Review and identifies the findings and observations that were based on those file reviews.

Information is presented as:

Finding - A statement pertaining to compliance with a regulation, statute, FHWA guidance, policy, or procedures, DOT&PF procedures, or the Section 6004 MOU.

Observation - Circumstances noted where FHWA believes a process or procedure may be improved.

Note - All Findings/Observations will identify a cause and effect.

Corrective Action – An action required to address a deficiency identified in a finding.

Recommendation – The Team's suggestion on how to improve a process or procedure based on an Observation.

Observations from the December 2011 Monitoring Review

- 1) MOU Stipulation IV(F)(3) – Maintain paper or electronic project records and general administrative records pertaining to MOU responsibilities for projects**

Stipulation IV(F)(3) requires the state to maintain project records that demonstrate that any MOU responsibilities for a project have been satisfied. It requires the state



to make project records available that the FHWA may request, including all letters and comments received from governmental agencies, the public and others.

December 2011 Observations

Of the thirty-four (34) project files reviewed, twenty-eight (28) contained findings letters. Of these, thirteen (13) used the direct-to-findings (DTF) approach which combines the initiation and findings phases into one step. There was no documentation of the decision and the supportive rationale to use the DTF approach in three (3) of the thirteen (13) project files. The decision to use the DTF approach and the documentation required is addressed in the "Section 106 Processing Instructions for 6004 SAFETEA-LU Projects – revised April 29, 2011." The files should have contained supporting documentation. The lack of documentation of the DTF decision and supportive rationale was caused by the DOT&PF region offices being unfamiliar with the April 29, 2011 processing instructions and/or a lack of clarity whether these instructions are required procedures or are optional guidance. The effect of this inconsistent implementation and documentation of the DTF decision process is insufficient evidence to verify that Section 106 compliance for the projects was adequate.

The Team is aware that following our review the DTF form was modified, procedures were developed that mandated its use for this method, and training in these procedures was presented to all region offices. FHWA applauds these efforts of the SEO and believes these steps should greatly increase the consistency of documentation for these projects.

Three (3) of thirty-four (34) project files reviewed did not contain signed copies of the letters transmitted to the State Historic Preservation Officer (SHPO), Federally-recognized tribes, ANCSA Corporations, and other consulting parties containing Section 106 compliance information. The project files should have contained complete and signed copies of all correspondence transmitted to, and received from, consulting parties relating to the Section 106 process. The cause of this may be a lack of standardized project filing system or a lack of understanding of the importance of complete files. The effect of not having a complete and accurate record of all correspondence transmitted and received relating to the Section 106 process is insufficient evidence to verify that Section 106 compliance for the projects was adequate. We recommend the DOT&PF institute a standardized system of project file development and provide instruction on the file management on a regular basis.

One (1) project file lacked documentation to support the decisions regarding the applicability and use of a potential Section 4(f) resource on the project. The documentation in the project file should have clearly indicated whether the resource in question was eligible for Section 4(f) protection or not, and if so, whether there was a Section 4(f) use of the eligible resource. The cause of this may possibly be a lack of understanding of the requirements of Section 4(f) or lack of priority in maintaining



documentation of the decision and supportive rationale. The effect of this is that it is unclear if the decisions related to Section 4(f) compliance on this project were correctly completed. FHWA recommends that the State continue to regularly schedule Section 4(f) training.

These instances of project file inadequacy are consistent with observations from previous reviews and may point to a lack of instruction or emphasis on proper file management or a lack of standardized practice. The State should safeguard that project files are maintained to contain appropriate documentation and should continue to ensure that project file review is part of their approach to quality control and quality assurance.

2) MOU Stipulation IV(E)(2) –Monitor processes relating to project determinations, environmental analyses, and project file documentation and check for errors and omissions.

Stipulation IV(E)(2) requires the State to monitor its project records and check for errors and omissions and to take any needed corrective actions.

December 2011 Observation

One (1) project file contained Section 106 consultation letters with inconsistent compliance findings. The DOT&PF letter identified a finding of no historic properties affected for the project. The SHPO's letter response was a "concurrence" that no historic properties would be adversely affected by the project. These are two different Section 106 findings and this difference went undetected by the DOT&PF. The findings and concurrences for the project should match and the DOT&PF should have noted this error and resolved the issue with SHPO. The cause of this is unknown. The effect of this is that Section 106 compliance on the project was not completed correctly.

This is likely an isolated error that could have been identified with a review of the project file once the CE determination was made. The State should continue to ensure that project file review is part of their approach to quality control and quality assurance.

December 2011 Observation

Eight (8) project files contained Section 106 consultation initiation letters that were sent to Federally-recognized tribes and ANCSA Corporations prior to the development of the 4/29/11 template. Of these, three (3) did not request information about possible concerns. Section 106 consultation initiation letters sent to Federally-recognized tribes and ANCSA Corporations should consistently transmit and request appropriate information. The cause of this may be use of old or inappropriately modified templates. The effect of the



inconsistencies in initiation letters is an increase in the potential for inadequate consultation in the Section 106 compliance process.

Subsequent to our review, the SEO developed new templates and instructions for all 106 correspondence under the 6004 program. Drafts of both were provided to FHWA for their review and comment on January 3, 2013. FHWA provided comments to the DOT&PF on January 10, 2013 and the new templates and instructions were approved for use and posted on the DOT&PF website on January 16, 2013. A review of the DOT&PF's website confirmed this. The text of these updated documents addressed the inconsistencies we observed during our review and their consistent use should support appropriate consultation and lead to adequate documentation of the consultation.

Ten (10) of twenty-six (26) projects that had Section 106 consultation initiation or findings letters transmitted to Federally-recognized tribes or ANCSA Corporations after the development of the 4/29/11 template did not follow the template. Section 106 consultation letters transmitted after development of the 4/29/11 template should have followed the template. The cause of this may be the practice of overwriting old letters rather than downloading the current template from the State's website. The effect of this is inconsistent compliance with approved procedures and increased potential for errors in the Section 106 compliance process. The development and approval of new templates noted above will result in heightened risk of this happening; we recommend that SEO emphasize the importance of using the currently approved templates to the DOT&PF Cultural Resource Team and reinforce this message to the REMs and region staffs.

December 2011 Observation

FHWA was aware that on April 11, 2011, the DOT&PF Chief Engineer [recognizing that each region office at that time was staffed with at least one Professionally Qualified Individual (PQI)] adopted a new procedure that delegated certain 106 processing responsibilities under 6004 from the SEO to the region offices. Based on information gained from the interview with the State Historic Preservation Officer (SHPO), we confirmed that each of the DOT&PF region PQIs had been conducting Section 106 consultation for projects in that region.

We learned from the SHPO that following the delegation to the region offices, the consistency of Section 106 documentation decreased, but had been improving. She noted specifically some inconsistency in documentation related to evaluation of the "built environment". Our project file reviews also suggested that having no centralized quality control review may have resulted in inconsistency in record keeping and in the consultation process used for consulting parties.

The DOT&PF should consistently follow the Section 106 process and procedures in fulfilling their 106 consultation responsibilities. The region offices should increase their



efforts at quality control of consultation correspondence. The cause may be unfamiliarity with the relatively new process. The effect is a heightened risk of not complying with Section 106 requirements and the risk of a reduction in trust with consulting parties. Because of the increased potential for inconsistency and variability, DOT&PF should recognize the regional assumption of Section 106 responsibilities as a risk to be specifically addressed in their 6004 monitoring plan.

Findings from the May 2011 Final Report that remain Open

1) MOU Reference II(B)(3)(c) – Providing evidence of CE processing to FHWA

Stipulation II(B)(3)(c) requires that, 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.

May 2011 Finding

The 2010 Final Report indicated that the use of the PIS for this purpose was confusing at times and the DOT&PF corrective action plan indicated the State would revise the PIS. According to information provided in interviews, the PIS form has not been revised and the SEO staff acknowledged that the use of the PIS form for this purpose is not the answer. SEO staff described a long term solution involving the development of an electronic documentation and tracking system. The staff member also recognized that DOT&PF would need to develop a short term corrective action until the electronic tracking system becomes available. The DOT&PF should propose a revised notification process and procedure as a corrective action. The Team recommends that the DOT&PF propose a short-term corrective action within 120 days while the development of an electronic system is pursued.

September 2011 DOT&PF Proposed Corrective Action

Effective October 31, 2011 DOT&PF will implement a new procedure for informing FHWA of environmental document approval that does not rely on the Project Information Sheet (PIS) as the sole method of verifying completion of the environmental process. This new procedure will become effective November 1, 2011 and remain in effect until September 30, 2013 when it is anticipated that an electronic document management system will be available to DOT&PF. This new procedure provides identification of the applicable PCE under which a document is approved on the PIS form, and a copy of the environmental document approval email or signature page to FHWA along with the PIS form submission. It is anticipated that a prototype of the electronic document management system will be available for DOT&PF use by September 30, 2012 and that a final version of the electronic



document management system will greatly increase the accuracy of environmental document approval reporting.

December 2011 Finding

Based on an interview with SEO staff, DOT&PF staff had drafted a process for implementing the interim procedures but were not yet using the interim procedure that requires staff to attach to the new PIS either the signature page of the CE Documentation Form or the approval email from the SEO to the region that verifies the completion of the environmental process. REM interviews confirmed this. The SEO staff indicated that they had scheduled a statewide teleconference to discuss this process. The Review Team was also told that the SEO staff was trying to revise the PIS but that it had not yet been finalized because it was still in internal review. As of November 28, 2012 the draft of the revised PIS was still undergoing internal review. FHWA was provided a courtesy copy of the circulation email.

The SEO should have implemented its interim procedure for ensuring that FHWA has been properly notified of environmental document approvals for projects. The reason for the delay in the implementation is unknown. The effect is that there may still be some confusion, at the time of a request for authority to proceed, that an assigned project approval is complete. In addition, another effect is that this deficiency means the State is not in compliance with the State's procedures. The DOT&PF must revise the current form and/or procedures to address this recognized deficiency. For corrective action the DOT&PF should implement their interim procedure within 120 days or propose an alternative procedure and a schedule for implementation within 60 days. FHWA considers this finding still open.

Findings from the 2010 Final Report that Remain Open

1) MOU Stipulation IV(A)

Stipulation IV(A) of the MOU requires the State to document compliance with all governing laws, regulations, and the MOU in its approval of determinations.

2010 Final Report Finding

Twenty-two (22) of 102 files did not provide sufficient evidence that the projects are in compliance with all federal laws and regulations. Five (5) files (3 projects) did not contain sufficient evidence to verify compliance with Section 4(f). DOT&PF relied on questionable or inappropriate determinations made by FHWA that a project had no potential to effect historic properties in 16 of the 22 instances. In two (2) of the 22 cases, it appeared that DOT&PF made questionable or inappropriate determinations that a project had no potential to effect historic properties. Project files should contain evidence that projects comply with all federal laws and regulations. The causes for the reliance on questionable



or incorrect determinations made by FHWA may be attributable to a belief that the decision had been made and does not need to be revisited. The causes for lacking sufficient evidence for the Section 4(f) compliance and inappropriate determinations under Section 106 may be due to lack of a precise understanding of the requirements and how to apply them in a given situation. The effects of these instances are an increased risk that a compliance requirement will be missed during NEPA. This may result in damage to protected resources, loss of public trust and credibility with other agencies.

2010 DOT&PF Proposed Corrective Action

The program review did not identify specific concerns, particularly in the project spreadsheet for "106 finding appropriate". This lack of specifics made it difficult to propose corrective actions directed at the specific concerns, rather than to the overall Section 106 process. One (1) issue that may have occurred involved documentation of historic property boundaries. This is being addressed during reviews of cultural resource reports and Section 106 initiation and finding letters.

The SEO will work with the Regions to develop a list of core courses to be added to a training program for the environmental staff. Section 4(f) training needs to be offered routinely to the regions and the SEO has identified Section 4(f) as a core course in our initial development of a training plan for DOT&PF environmental staff.

May 2011 Finding

Six (6) of 46 files did not provide sufficient evidence that the projects are in compliance with all federal laws and regulations. One (1) of the six (6) project files did not contain an approved environmental document; two (2) of the six (6) project files did not contain sufficient evidence to verify compliance with Section 4(f). In three (3) of the six (6) instances the project files failed to provide clear evidence of compliance with Section 106. Project files should contain evidence that projects comply with all federal laws and regulations. The causes for lacking sufficient evidence for the Section 4(f) compliance and Section 106 compliance may be due to lack of a precise understanding of the requirements and how to apply them in a given situation. The effects of these instances are an increased risk that a compliance requirement will be missed during the NEPA project development process. This may result in damage to protected resources, loss of public trust and credibility with other agencies. The corrective action could entail instituting a comprehensive training program that provides for continuing availability of courses in Section 106 and Section 4(f).

September 2011 DOT&PF Proposed Corrective Action

DOT&PF is currently developing a comprehensive training plan for all staff members that participate in the environmental review process. This will include Section 4(f), Section 106, and NEPA training offered by both DOT&PF and FHWA. The training plan is expected to be completed by March 31, 2012. Additionally DOT&PF has started the process to revise the Environmental Procedures Manual which involves updating all chapters to reflect



current laws and regulations. It is anticipated that the revised Environmental Procedures Manual will be completed by September 30, 2013. Through teleconferences, meetings in the regions with environmental staff, and through email responses to questions the SEO staff are also concurrently working to provide guidance and advice to regional staff on how to comply with all federal laws and regulations, as well as how to adequately document such compliance.

December 2011 Finding

We learned through SEO staff interviews that the comprehensive training plan and its implementation tasked in the Corrective Action Plan was incomplete, but was proceeding according to schedule at that time. They indicated they had drafted a comprehensive training plan for environmental analysts and that the next step was to finalize the draft with the State's technology transfer and research group.

Regarding the State's proposed corrective action related to updating procedures, subsequent to our review, three chapters of the new 6004 Environmental Procedures Manual (Overview, COA, and CEs), which included an updated CE documentation form, were submitted to the FHWA for review and comment on December 21, 2011; comments were provided from FHWA on January 9, 2012; and the chapters were approved for use via a Chief Engineer Directive effective December 3, 2012. Review of the DOT&PF's website confirmed this approval. Training of the Regional Environmental Managers (REMs) and some staff on the new procedures was provided on December 5-6, 2012; the FHWA attended these sessions.

We recognize the substantial accomplishment of advancing the development of the 6004 Environmental Procedures Manual; however, because the comprehensive training plan is yet unfinished, FHWA considers this finding to be open.

2) MOU Stipulation IV(E)(2); IV(F)(1,2,3) – MOU Performance Monitoring and Quality Assurance

Stipulation IV(E)(2) requires the State to monitor its process for making CE determinations as part of quality control. Stipulation IV(F)(1,2,3) describes aspects of required performance monitoring and quality assurance.

2010 Final Report Finding

Several different approaches exist among Region and Statewide Offices to maintain project and administrative records pertaining to MOU responsibilities. Reviews of paper and electronic project files in both Regions and Statewide Offices revealed that for an individual project, sometimes the complete record was found in the region, at other times at the SEO. Occasionally a complete record could be compiled from records found in both the region and Statewide Offices. Additionally, there appeared to be little attempt to compile non-project administrative records, such as records of training events, agendas,



and actions taken to improve or resolve 6004 program implementation and little attempt to compile those data for later incorporation in a summary report.

2010 DOT&PF Proposed Corrective Action

The SEO has advocated for and continues to strive toward a consistent project file system. The SEO provided a generic file structure to the regions shortly after the 6004 MOU was signed, and offered the regions assistance in uniformly structuring existing files. The SEO will continue to work with the regions on developing documented guidance for project file structure that would provide environmental staff with a method for determining what information should be retained within the project file. The SEO is working with the regions on developing a project file checklist for incorporation into each project file to promote complete project file documentation. The SEO has initiated a project file review procedure that promotes consistent project file management. This file review procedure will be incorporated into our 6004 Monitoring Plan that will be developed prior to submittal of the 15-month monitoring report. The SEO will continue to work with the regions in developing project file structure training.

May 2011 Finding

Four (4) project files from two Regions were incomplete. They either lacked an environmental document, lacked a signature for appropriate approval, and/or lacked evidence of notice to FHWA of project being excluded. The missing information in region office project files was found in project files at the SEO.

The cause of these inconsistencies in project and program records may result from the State's implementation of procedures that are still relatively new and a lack of a standardized checklist to ensure a completed project file contains all necessary records. The effect of inconsistent project recordkeeping and the absence of an overall procedure for retaining records of program implementation have resulted in actions that may not be compliant with the provisions of the MOU. The corrective action is that the State should modify its quality control processes to ensure project files are complete.

September 2011 DOT&PF Proposed Corrective Action

DOT&PF will have a consultant on board starting October 3, 2011 who will assist in the development of an electronic document management system that will greatly increase the accuracy of environmental approval reporting. It is anticipated that a prototype of the electronic document management system will be available for DOT&PF use by September 30, 2012 and that final version of the electronic document management system will be in place by September 30, 2013. It is also anticipated that this electronic document management system will greatly increase the accuracy and completeness of files as well as allow for automatic reporting and document sharing with FHWA.

Per the January 31, 2011 Monitoring Plan that outlined frequency of project file reviews, the SEO staff remains committed to conducting bi-annual file audits within all regions. The



SEO conducted file audits within all three regions between September and October 2010. The SEO has completed a second file audit of Southeast Region and Northern Region in September 2011 and will conduct a second audit of Central Region in October 2011. SEO staff will provide region-specific guidance on correct environmental document and project file preparation and provide suggestions to regional staff on how project files could be improved.

December 2011 Finding

Based on an interview with SEO, a consultant was currently developing a work plan and flow chart for an electronic document management system and has provided a status on the implementation of interim procedures. The Review Team learned from the SEO staff interview that two meetings with the consultant had occurred that discussed some general ideas and concepts. SEO indicated that they provided copies of forms to the consultant to be converted into "smart forms" so that information will be digitally recorded and stored. The approach should reduce or eliminate the human errors in filling out paper forms and at the same time, the information would be entered into a searchable data base.

The biannual audits conducted of region's project files is a continuing practice as confirmed in the SEO and region staff interviews. Based on this audit, we learned SEO gave recommendations to all regions. SEO staff indicated that in general the files looked good, but recommendations were made that the project files contain all the supporting documentation. SEO staff noted that the structure of the files differed among the regions. The Northern and Southeast regions have a file structure that is based on a file checklist. The Central region does not use a file checklist. The result of the audits show that files with a checklist tend to be more complete compared with files lacking the checklist. We were told that the SEO staff was thinking about recommending that all project files contain a file checklist. We learned that the SEO staff continues to believe that performing biannual audits is a best practice.

The Review Team learned from interviews that DOT&PF was making progress toward implementing an electronic document management system and appeared to be on the schedule identified in the 2011 DOT&PF Corrective Action Plan.

We applaud the SEO staff's use of regular project file audits and support the SEO staff recommendation of adopting a standardized project file checklist for all projects. It is of note that the Review Team observed similar project file documentation gaps in this review as were found in the SEO's audits. Based on consultations with the SEO subsequent to our review, we learned that the development of the electronic document management system has been delayed due to circumstances beyond the State's control. We recommend that the DOT&PF propose an interim system to address this finding in a timely manner. Since the implementation of the electronic document management system has not yet occurred, FHWA considers this finding to still be open.



Successful Practices

The review Team observed several successful practices taken by the DOT&PF that have improved their stewardship of the Section 106 process. We saw evidence of good practices that were only reflected in a single project and others that were observed on multiple projects and appear to be successfully integrated into the overall project development process. All of these practices have led to improved working relationships between DOT&PF staff [including the Regional Professionally Qualified Individuals (PQIs)] and the SHPO staff as a result of greater trust. The specific successful practices we observed include:

1. DOT&PF discussing project impacts with the SHPO staff leading to resolution of concerns prior to transmitting findings letters to the SHPO.
2. The Central Region PQI establishing a regular monthly meeting with SHPO staff to conduct informal early consultation on projects.
3. Similarly, other DOT&PF Region staff is meeting face-to-face with SHPO staff on a more regular basis to conduct early project consultation, and is more frequently conducting informal consultation through emails or phone calls.
4. DOT&PF staff reassessing the results of prior Section 106 compliance when a project scope changes. Northern Region staff reinitiated Section 106 consultation with SHPO for a project when the scope of the project was expanded to include a culvert replacement during construction. The SHPO responded one day after receiving the revised findings letter.
5. Conducting informal consultation as a means to resolve differences. One Northern Region project file contained emails reflecting informal consultation with SHPO that successfully resolved concerns resulting in the SHPO's concurrence, allowing the project to move forward expeditiously.
6. Following up on written tribal consultation correspondence. Documentation in five project files provided evidence of DOT&PF staffs' efforts (via email or telephone) to follow up written correspondence to Federally-recognized tribes to ensure receipt of consultation letters and to discuss comments or concerns.
7. The Central Region staff developed a new form (direct-to-findings form) providing evidence of the basis for, and documentation of, the decision to combine certain steps in the 106 process when potential to affect historic properties is limited. A version of this form has been approved for use statewide.
8. SEO PQIs successfully coordinating with and carrying out Section 106 responsibilities for a region office during a vacancy of the region PQI position.



Conclusion

This report summarizes the results of the third compliance review of the State's assumption of environmental responsibilities under the 6004 MOU. The Review Team has evaluated how the issues or problems identified as findings and observations in the May 2011 Final Report and the 2010 Final Report have been addressed. This conclusion also identifies several new observations.

Based on review of project files, information gained from interviews with the State Historic Preservation Officer, the Statewide and Region offices of DOT&PF, and facts presented in the State's 15 month report, the Review Team can conclude that the State is substantially in compliance with the provisions of the Section 6004 MOU.

The Review Team has made a number of new observations that should be utilized by the State to improve the efficiency and effectiveness of procedures, documentation, and decision making related to this assignment of CE responsibilities. Also, as a result of the consideration of information gained from this compliance review, the Review Team recommends that four (4) findings previously described in the May 2011 Final Report be considered closed (refer to Appendix A for details), and four (4) findings previously described in the 2010 Final Report also be considered closed (refer to Appendix B for details).

The overall purpose of the review was to verify DOT&PF's compliance with the provisions of the Section 6004 MOU, to evaluate the State's performance in carrying out the procedures established for the CE Assignment, and to evaluate the effectiveness of those procedures in achieving compliance. This conclusion summarizes, in Table 1, the outcomes of the six (6) objectives used for this compliance review.

Table 1. Review Objectives (1 through 6) with December 2011 Review Status and Findings (f)/Observations (o)

Objective	2011 Review Status	2011 Finding (f)/ Observation (o)
1-Comply with governing laws, regulations, and the Section 6004 MOU.	The State is in compliance.	
2-Processing projects assigned under the MOU: State identification, documentation, and review of effects	The State is in compliance.	



3- Excluded projects: determination and documentation of CEs excluded from the CE Assignment Program, and retained by FHWA	The State is in compliance.	
4- Adequate State resources (including provision of financial resources, qualifications, expertise, standards, and training)	The State is in compliance.	
5-Effective State quality control	The State is in compliance.	
6- MOU performance monitoring and quality assurance	The State is in compliance.	(o) DOT&PF should revise its monitoring plan to include performance monitoring and quality assurance in the regional delegation of Section 106 responsibilities.

Table 2. September 2011 DOT&PF Proposed Corrective Action Plan Tasks (1 through 8) with December 2011 Review Status and Findings (f)/Observations (o)

Corrective Action Plan Task	December 2011 Status	December 2011 Finding (f)/ Observation (o)
(1) New procedure will be implemented that requires staff attach to the Project Information Sheet (PIS) either the signature page of the CE Documentation Form or the approval email from the SEO to the Region that verifies the completion of the environmental process		(f) A new procedure has not been finalized. The PIS form has been drafted but is not yet finalized.
(2) SEO staff will transmit the 6004 project tracking spreadsheet to each Regional Environmental Manager (REM), in order to identify and correct any errors and omissions prior to the quarterly report deadline	SEO has transmitted spreadsheet, errors and omissions are corrected.	



(3) New and revised Class of Action Form and CE documentation forms will be utilized and they document whether an action approval occurred as a Programmatic Categorical Exclusion (PCE), list which CE citations apply, and identify all approving officials	COA and CE forms were revised to correct deficiencies. Forms in use since 9/1/11	
(4) Training in proper use of new forms and PCE approval procedures will occur and revisions to the Categorical Exclusion Chapter of the Environmental Manual ongoing and likely to meet the deadline of producing a draft for FHWA review by December 31, 2011	Training in use of new forms and procedures completed. Deadline met and new CE Chapter approved.	
(5) DOT&PF will initiate the process to develop an electronic document management system	DOT&PF has initiated a process. A consultant has been hired and is working on the EDMS.	
(6) DOT&PF revises Re-evaluation form to identify specific activities on the form; and initiates training sessions related to the revisions; and changes had been made to the Environmental Manual to reflect these revisions	DOT&PF revised the re-evaluation form and has scheduled training sessions. Environmental Manual chapter being revised; however, revision unnecessary to address original finding.	
(7) DOT&PF completes comprehensive training plan for all staff members who participate in the environmental review process and identifies method of implementation		(f) DOT&PF has not completed a comprehensive training plan for all environmental staff.
(8) DOT&PF SEO will complete a second internal audit of the Southeast, Central, and Northern Region Offices.	DOT&PF has completed a second internal audit of all the Region Offices.	



Appendices

Appendix A: Findings from May 2011 Final Report that have been closed

- 1) MOU Stipulation IV(F)(1) – MOU Performance Monitoring and Quality Assurance: Quarterly Reports

Stipulation IV(F)(1) requires the state to submit a report of its CE determinations to FHWA on a quarterly basis. This stipulation also requires the State to apply performance considerations regarding the quality and consistency in the State's administration of its responsibilities under the MOU.

May 2011 Final Report Finding

During the March 2011 review, the Team identified two (2) approval actions that had been omitted from the fifth Quarterly Report. We also learned from interviews that the fifth Quarterly Report errantly reported an approval action which did not take place and failed to report an additional project approval.

September 2011 DOT&PF Proposed Corrective Action

DOT&PF has determined that the best method for providing information to FHWA would be to develop an electronic document management system. Starting October 3, 2011, the State will have a consultant on board who will assist in the development of an electronic document management system that will greatly increase the accuracy of environmental approval reporting. It is anticipated that a prototype of the electronic document management system will be available for DOT&PF use by September 30, 2012 and that a final version of the system will be in place by September 30, 2013.

Until the electronic document management system can be developed and becomes operational DOT&PF will implement a short term remedy. The state will implement a new procedure that requires staff to attach a new PIS either to the signature page of the CE Documentation For or the approval email from the SEO to the region that verifies the completion of the environmental process. This process will also require that DOT&PF submit to FHWA a modified PIS by October 31, 2011. This new procedure will be effective starting November 1, 2011.

Other ongoing corrective actions implemented by DOT&PF include, on a monthly basis, SEO staff have submitted on a monthly basis a 6004 project tracking spreadsheet to each Regional Environmental Manager (REM). Also, SEO staff will contact REMs and other staff to gather state and federal project numbers when developing quarterly reports.



December 2011 Review Status

The Review Team did not identify any projects in its review of project files that were not listed in the Quarterly Reports. Since the previous monitoring review, all the Quarterly Reports arrived on time.

SEO staff indicated they transmit the spreadsheets to the Regions on a monthly basis and this was confirmed in the interviews of the REMs. This has helped improve communication between the SEO and the Region offices. It also has helped the tracking of active projects, project numbers, and missing data. Region staff indicated they have helped SEO address gaps in the spreadsheets which has helped SEO with the accuracy and completeness of quarterly reporting. The SEO staff said in the interview that they think the Region staff like the spreadsheet because it helps them track their own projects as well.

Based on information gathered in the review of project files and quarterly reports as well as from DOT&PF staff interviews, we consider this finding to be closed.

2) MOU Stipulation II(B)(3)(c); IV(B)(2,4); IV(E)(1); DOT&PF Procedures for processing and documenting Programmatic Categorical Exclusions (PCEs)

Stipulation II(B)(3)(c) requires that, 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. Stipulation IV(B)(2) requires the State to carry out a review of proposed CE determinations, including consideration of environmental analysis and project file documentation, prior to the State's approval of the CE determination. It further states that the process shall include at a minimum, review of the documentation and proposed determination by a competent reviewer who is not the preparer of the CE documentation. Stipulation IV(B)(4) requires that the State document its approval of the CE determination with the printed name, title, and date of the State official approving the determination. Stipulation IV(E)(1) requires the State to carry out regular quality control activities through the SEO to ensure that its CE determinations are made in accordance with applicable laws and the MOU.

May 2011 Findings

Ten (10) of 28 PCE project files had no printed name for the CE approval on the CE documentation form. The Review Team noted five (5) instances where the REM sent a request to the SEO for concurrence on a CE class of action and SEO staff replied with an email that indicated, 1) the action was a CE, 2) it qualified as a PCE and identified the internal PCE, and 3) it included some or all of the language in the approval finding specified by the MOU. The DOT&PF environmental manual indicates the REM should consult with the SEO on the applicability of a PCE and if applicable, the REM can make



the PCE approval. It is confusing to find that a PCE project has been approved by the SEO rather than a REM. The cause of confusion may be ambiguity in the environmental manual.

The Environmental Procedures Manual says that the PIS will include information about a PCE approval including a certification identifying the specific internal agreement by which the project was approved. Based on review of PISs contained in project files, this procedure has not been followed.

September 2011 DOT&PF Proposed Corrective Action

On July 13, 2011 DOT&PF submitted revised versions of the Class of Action (COA) and Categorical Exclusion (CE) forms to FHWA for review and comment and the Division staff responded on July 18, 2011. These revised forms include spaces for the printed names of all approving officials and verbiage detailing under which approval a PCE is approved, as well as sections dealing with unusual circumstances and significant environmental impacts. These revisions were implemented to improve the documents by clarifying whether a document is approved under a PCE, listing which PCE applies, listing which CE citations apply to the document, and identifying all approving officials.

By June 30, 2012, SEO intends to conduct training sessions with all REMs on the new forms and the PCE approval process. DOT&PF is currently revising Chapter 5- Categorical Exclusions of the Environmental Procedures Manual to incorporate instructions for the newly revised forms and enhanced sections on the PCE and CE approval process. The manual revisions will also include a revision that requires the use of the COA form for all projects to determine whether a project is assigned under the 6004 MOU and to ensure the proper approval analysis is completed for all projects. By December 31, 2011, DOT&PF anticipates submitting a revised Chapter 5 of the Environmental Procedures Manual to FHWA for approval.

December 2011 Finding

SEO staff indicated in an interview that the new Class of Action form and CE Documentation form, introduced September 1, 2011 were being used. REM staff interviews and inspection of the SEO website also confirmed their revision. The SEO staff informed the Review Team that whether an action approval occurs as a PCE is now addressed on the form with a check box and a new signature block with a space for a printed name is now included.

The SEO staff also was asked to provide the current status of the development of training sessions for the REMs on the new forms and PCE approval process. We were told SEO was developing training sessions in December and January 2012 and were hoping to hold the training sessions in early Spring 2012. Subsequent to our review, the DOT&PF REMs (and some staff) were trained in the use of the new forms and the new PCE approval process on November 15, 2011.



The SEO staff interview asked for the status of the revisions to the Categorical Exclusion Chapter of the Environmental Procedures Manual. We were told that chapter had been drafted and was in internal review (with comments due 12/9/11) with a submittal to the FHWA Division expected by the end of the calendar year. The draft chapter was submitted to the FHWA for review and comment on December 21, 2011; comments were provided from FHWA on January 9, 2012; and the chapter was approved for use via a Chief Engineer Directive making the procedures effective December 10, 2012. Review of the DOT&PF's website confirmed this approval. Training of the REMs (and additional staff) on the new procedures was provided on December 5-6, 2012; the FHWA attended these sessions.

Information gained from interviews and inspection of project files demonstrates that the DOT&PF has followed its corrective action plan. New COA and CE forms have been developed and are now being utilized by the Regions. Based on information provided by REMs, these forms are an improvement in that they more improved and refined such that they "more accurately reflect what we are doing." The new CE Chapter of the 6004 Environmental Procedures Manual has been approved for use and training on these new procedures has occurred. Based on these factors, we consider this finding to be closed.

3) MOU Reference IV(B)(6) – CE Project File Documentation

Stipulation IV(B)(6) requires the State to document in the project file the specific categorically excluded activity, the CE finding, including the determination that there are no unusual circumstances, and the completion of all FHWA responsibilities assigned under Stipulations I and II.

May 2011 Finding

Based on our review, 26 of 46 project files lacked evidence of consideration of unusual circumstances. In one (1) Region Office, eight (8) of 13 project files reviewed, had this deficiency. In another Region Office, 13 of 15 project files review reflected this deficiency. The State should have documented their consideration of unusual circumstances as specified in the MOU. We learned from an interview with SEO staff that the DOT&PF realizes this is still a problem. We were told that revised forms have been drafted and would be shared with FHWA this spring. We also learned that if the forms are revised, the environmental procedures would be revised at the same time. We believe that these measures should be implemented as a corrective action.

September 2011 DOT&PF Proposed Corrective Action

On July 13, 2011, DOT&PF submitted revised revisions of the Class of Action (COA) and Categorical Exclusion (CE) forms to FHWA for review and comment per Stipulation IV(A)(6) of the MOU. FHWA, Alaska Division provided a review of the COA form and approved the CE Documentation Form in an email on July 18, 2011. Both the revised



COA form and the CE Documentation form were implemented September 1, 2011. The Chapter 5- Categorical Exclusions of the Environmental Procedures Manual is currently being revised to include instructions for the new forms and consideration of unusual circumstances, and is expected to be submitted to FHWA by December 31, 2011.

December 2011 Finding

SEO staff indicated in an interview that the new Class of Action form and CE Documentation form, introduced September 1, 2011 are being used. REM staff interviews and a visit to the SEO website also confirmed their revision. The CE form now includes a question on unusual circumstances, which we were informed from a SEO interview derives from an old 2005 version of the form. We learned from the SEO staff interview that the revisions to the Categorical Exclusion Chapter of the Environmental Procedures Manual had been drafted but an internal review was still ongoing and they intended to submit the draft chapter to FHWA by the end of the calendar year. Subsequent to our review, the draft chapter (which included an updated CE documentation form) was submitted to the FHWA for review and comment on December 21, 2011; comments were provided from FHWA on January 9, 2012; and the chapter was approved for use via a Chief Engineer Directive making the procedures effective December 10, 2012. Review of the DOT&PF's website confirmed this approval. Training of the REMs (and some staff) on the new procedures was provided on December 5-6, 2012; the FHWA attended these sessions.

Based on information gained from interviews and inspection of project files, the DOT&PF has followed its corrective action plan. New COA and CE forms have been developed and are now being utilized by the Regions. The new CE Chapter of the Environmental Procedures Manual has been approved for use and training on these new procedures has occurred. Based on these facts, the FHWA considers this finding to be closed.

4) MOU Stipulation XI(A) - Alaska Division Office Actions and State Execution of Assigned Responsibilities without FHWA Involvement

Stipulation XI(A) states that FHWA Division Office staff shall not provide project-level assistance to the State in carrying out any of the responsibilities assigned under the MOU.

May 2011 Finding

In February 2011, an Area Engineer in the Alaska Division became involved in the State's 6004 program via an exchange of emails with the DOT&PF. Based on our review of documentation, the DOT&PF had appropriately determined that a proposed project was not assignable under the 6004 MOU. In accordance with the MOU and the State's Environmental Procedures Manual, the REM contacted the FHWA Area Engineer via email to obtain concurrence that the appropriate class of action was a CE. The FHWA Area Engineer responded that the project was an action listed in regulation under 23 CFR 771.117 (d)(1), which indirectly contradicted the State's determination that the project was



not assignable. The engineer then initiated a new email providing questionable direction that in effect served as inappropriate guidance to the DOT&PF relative to how the State should implement their assumption or exclusion of projects under the 6004 program. The Area Engineer should have only responded to the specific question and not interjected himself into issues related to the assignability of the project.

The FHWA Division Office must ensure that any actions they take are in accordance with the MOU stipulations for the 6004 program. The assignment of responsibilities for CE determinations to the DOT&PF under the 6004 program is an environmental streamlining provision developed by Congress. FHWA staff has an obligation to respect the provisions of the 6004 MOU as well as the roles and authority of the DOT&PF staff in making determinations according to the MOU. As a corrective action, FHWA should provide additional training to emphasize the significance of maintaining their appropriate role in the 6004 program.

December 2011 Review Status

The Alaska Division Environmental Program Manager presented training on the Section 6004 MOU to the Division NEPA Project Managers on May 18, 2011. Also, based on interview responses to questions about FHWA involvement in assigned projects made by DOT&PF Regional and SEO staff, there had been no instances of FHWA Division Office staff involvement in assigned projects. FHWA considers this finding to be closed.



Appendix B: Findings from 2010 Final Report that have been closed

1) MOU Reference IV(A); IV(B)(1); and Environmental Manual Sections 5.1 & 5.2

Stipulation IV(A) makes the State responsible for compliance with governing laws, regulations and the MOU and requires the State to make all determinations under the 6004 MOU in accordance with 23 CFR 771.117(a) and (b) and succeeding regulations. Stipulation IV(B)(1) requires the State to institute a process to identify and review the environmental effects of the proposed project.

2010 Final Report Finding

Twenty-four (24) of 102 Files reviewed provided no evidence of identifying and reviewing environmental effects of the proposed project. Twenty-two (22) of the 24 were for projects processed as 'c' list CEs.

2010 DOT&PF Proposed Corrective Action

The SEO will review and provide additional guidance on the way 'c' list projects are processed so that the environmental impacts are identified and analyzed before the projects receive environmental approval. The SEO office will also review and modify the class of action form to address this issue.

There were several observations that also pertained to 'c' list projects and how they are reviewed and processed. By the SEO reviewing the process and modifying the class of action form these observations would also be addressed.

May 2011 Finding

Based on information gained from interviews, the SEO said they were in the process of modifying the class of action form to address analysis of environmental effects associated with 'c' listed projects. The Review Team was told that the SEO would modify the forms in coordination with FHWA and submit proposed revisions to the environmental manual. The State must document consideration of environmental impacts for each action assumed under the MOU. The cause is likely the SEO resource constraints over the last year. The effect is lack of documentation and evidence that the State is in compliance with the MOU. As a corrective action, the DOT&PF could include a check box on their class of action form where a 'c' list action is determined applicable, to record the decision that, by the nature of the proposed action, no environmental impacts would occur. In this way, the State could demonstrate how it has identified and analyzed environmental impacts prior to approval.



December 2011 Review Status

SEO staff indicated in an interview that the COA form had been revised and was introduced to the Region staff for use on September 1, 2011. We confirmed this change by visiting the Statewide Environmental Office website where this revised form is posted. For those projects that can be identified on the 'c' list, the COA form includes a new question asking whether the action would involve significant environmental impacts. This revision meets the minimum requirements in FHWA regulation for 'c' listed CE actions. The May 2011 finding addressed a need for the State to demonstrate how impacts were identified and analyzed for projects, prior to their approval as CEs. This modification to the COA form minimally meets the requirement in the MOU for the State to document consideration of impacts for actions it assumes. FHWA now considers this finding to be closed.

2) MOU Reference IV(B)(6) – CE Project File Documentation

Stipulation IV(B)(6) requires the State to document in the project file the specific categorically excluded activity, the CE finding, including the determination that there are no unusual circumstances, and the completion of all FHWA responsibilities assigned under Stipulations I and II.

2010 Final Report Finding

Twenty-three (23) of 102 files did not identify the specific categorically excluded activity. Seventeen (17) of those 23 files were for projects assumed with Re-evaluations of prior approvals. The MOU requires the State to identify the specific categorically excluded activity for each project assumed under the MOU. The cause may be the sometimes informal process used in documenting consultations that serve as Re-evaluations. The cause may be a lack of understanding that Re-evaluations require identification of the specific activity category; it should be noted that some previous versions of the Categorical Exclusion Documentation Form did not identify the specific activity. The effect is inadequate documentation to demonstrate due consideration of the applicability of a project for assignment and to demonstrate compliance with the terms of the MOU.

2010 DOT&PF Proposed Corrective Action

The SEO will review procedures and forms to determine if they need to be modified to capture the specific CE activity. Re-evaluations make up the bulk of the projects with deficiencies and the Re-evaluation process has been addressed. The Re-evaluation form will be updated to capture the necessary changes. The SEO will continue to work with all three (3) Regions to develop and implement training that specifically targets 6004 process, including processing Re-evaluations. FHWA staff will be provided the opportunity to attend these training sessions per the 6004 MOU Stipulation IV(E)(3).



May 2011 Finding

Eleven (11) of 46 project files, either lacked identification of the specific activity or the activity was misclassified. Of those 11 files, five (5) project files were for Re-evaluations of projects approved prior to the MOU, that have subsequently been assumed. We also observed that most of the SEO files from a single Region's projects (seven (7) of the ten (10)) had evidence of this deficiency. The State should have identified the specific activity category, as required in the MOU. The cause of the deficiency may have been partly addressed by the State's corrective action by training. The effect is inadequate documentation. As a corrective action the State should revise its procedures for Re-evaluation consultations and implement focused training to address this deficiency.

September 2011 DOT&PF Proposed Corrective Action

Both the revised COA form and the CE documentation form were implemented September 1, 2011. The Re-evaluation form is slated to be revised by March 31, 2012 and will include spaces to identify specific activities on the form.

December 2011 Finding

Information gained from DOT&PF interviews and inspection of the Statewide Environmental Office website confirmed that the COA and CE forms had been revised, but the Re-evaluation form had not been revised. A SEO staff interview indicated that the Re-evaluation form had been revised and is in draft form. SEO intended to share the draft form with the regions in the first week of January 2012 for their comment and review. After Region staff comment in January SEO staff indicated they hoped to send it to FHWA in the first part of February. After our review, the draft Re-evaluation form was sent to the FHWA for review and comment on December 4, 2012. Comments were provided by the FHWA on December 6, 2012; and the new form was approved for use on January 29, 2013. Training in the use of the form has been scheduled for the week of April 22, 2013.

Based on the fact that the COA, CE, and Re-evaluation forms have been revised to address the finding, FHWA considers this finding closed.

3) MOU Stipulation IV(B)(4)

Stipulation IV(B)(4) requires the State to document its approval of determinations, including at a minimum, the printed name, title, and date of the State official approving the determination.

2010 Final Report Finding

Many project files lacked evidence of the printed name of the State official approving the determination. These were mainly 'c' list CE approvals, Consultations that served as Re-evaluations, and PCEs. Project documentation should include the printed name of the approving official in each approval taken under the assignment. The cause is likely that



the State's procedures and forms were not developed and revised to address this requirement. The effect is that required documentation is unavailable.

2010 DOT&PF Corrective Action

The FHWA review of the State's 6004 program was conducted less than seven (7) months into the program, and there was some initial confusion regarding the implementation of 'c' list activities.

The SEO will continue to work with the Regions on the development of guidance for how to process 'c' listed projects and what is required for these projects. This will also be emphasized in training provided to all the Regions. The SEO will add a place for the printed names on our various forms.

May 2011 Finding

Of the 46 project files reviewed, ten (10) lacked evidence of the printed name of the approving official; all ten (10) of the projects were approved as PCEs. The Team learned from interviews that no forms had been revised to address this shortcoming. One SEO interview indicated that revised forms and procedures have been developed and they will be submitted to FHWA soon. Project documentation should include the printed name of the approving official in each approval taken under the assignment. The cause is likely that the State's procedures and forms were not developed and revised to address this requirement. The effect is that required documentation is unavailable. As a corrective action, the DOT&PF should revise the forms and procedures related to this finding.

2011 DOT&PF Proposed Corrective Action

Both the revised COA form and the CE documentation form were implemented September 1, 2011. The revised forms now include spaces to print names of all signatories.

December 2011 Finding

The findings identified in 2010 and 2011 identified a need for inclusion of evidence of the printed name of the approval official on DOT&PF COA, CE, and Re-evaluation forms. The 2011 DOT&PF proposed corrective action was to revise only the COA and CE forms, which occurred in September 2011, and we confirmed these changes on the Statewide Environment Office web site. We learned from DOT&PF staff interviews and the 2011 Corrective Action Plan that the Re-evaluation form was on a schedule to be revised to address a different finding, but the changes had not been finalized. After our review, the draft Re-evaluation form was sent to the FHWA for review and comment on December 4, 2012. Comments were provided by the FHWA on December 6, 2012; and the new form was approved for use on January 29, 2013. Training in the use of the form has been scheduled for the week of April 22, 2013.

Based on the fact that the COA, CE, and Re-evaluation forms have been revised to address the finding, FHWA considers this finding closed.



4) MOU Reference IV(B)(5); DOT&PF Environmental Manual Chapter 8 – CE Determinations and Re-evaluations

Stipulation IV(B)(5) requires the State to document in each approval of its determinations the following finding: “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 Chapter 3 of title 23, United States Code, Section 326 and a Memorandum of Understanding dated September 22, 2009, executed between FHWA and the State”. Chapter 8 of the DOT&PF Environmental Manual requires that Re-evaluations address whether the original environmental document and decision is still valid.

2010 Final Report Finding

Several files were identified where FHWA approved an original CE determination that contained errors or omissions or where compliance with an applicable environmental law was lacking (i.e., inappropriate Section 106 No Potential to Effect Determinations) that were not remedied by the State during a Re-evaluation under the Assignment.

2010 DOT&PF Proposed Corrective Action

The FHWA review of the State’s 6004 program was conducted less than seven (7) months into the program, and there was some initial confusion regarding the implementation of Re-evaluations as the process was different than it was under FHWA prior to the signing of the 6004 MOU.

The SEO will provide Re-evaluation process and 6004 process training to all three (3) Regions. The SEO will work with the Regions to develop a core course that will be added to a training program for the environmental staff.

May 2011 Review Finding

Two (2) of the project files cited in the 2010 Finding were reexamined, since approval actions had taken place on those projects since the 2010 Review. Both projects were in the same Region and both had been Re-evaluated since the 2010 Final Report. One of the Re-evaluations corrected the deficiency cited; however, the second Re-evaluation failed to resolve the errors noted in the 2010 Review. The State should resolve the known errors or omissions when preparing Re-evaluations of earlier documents and decisions. The cause is unclear, since one (1) project file provided evidence of laudable efforts to correct mistakes, but the other project file did not. The cause may have been a pending deadline to proceed to the next phase. The effect is inadequate documentation of



compliance with all Federal laws, regulations, and the MOU. The corrective action could involve additional training on Re-evaluations and reinforcement of this principle during the training.

September 2011 DOT&PF Proposed Corrective Action

By September 30, 2012, SEO plans on providing training opportunities within all three of the regions regarding both the Section 106 and re-evaluation process. Coupled with the revised forms and revised Chapter 5 (CEs) and 8 (Re-evaluations) of the Environmental Procedures Manual, these corrective actions will increase the accuracy of CE determinations and re-evaluations. A revised Chapter 5 will be provided to FHWA for review and approval December 31, 2011 to be followed by a revised Chapter 8 which will be submitted to FHWA for review and approval by March 31, 2012.

December 2011 Finding

Both the FHWA May 2011 recommendation for corrective action and the 2011 DOT&PF proposed corrective action identified providing training opportunities for all three regions for Section 106 and the re-evaluation process. Based on information gained from DOT&PF SEO and Region staff, general training opportunities had occurred with the completion of NHI classes and one-on-one mentoring between SEO and PQI staff. No specific training sessions on the new forms or the re-evaluation process had been completed, according to interviews with DOT&PF staff. The Re-evaluation form had not been finalized and we were told in a SEO staff interview that the training on the revised form was being developed. We learned from SEO staff interviews that revisions to both the CE Chapter and the Re-evaluation Chapter were still ongoing and proceeding according to the schedule identified in the 2011 DOT&PF Corrective Action Plan.

Subsequent to our review, the draft CE chapter (which included an updated CE documentation form) was submitted to the FHWA for review and comment on December 21, 2011; comments were provided from FHWA on January 9, 2012; and the chapter was approved for use via a Chief Engineer Directive effective December 3, 2012. Review of the DOT&PF's website confirmed this approval. Training of the REMs (and some staff) on the new procedures was provided on December 5-6, 2012; the FHWA attended these sessions.

Interviews with the SEO and Region staff indicated training for Section 106 had occurred in both the Central and Southeast Regions. The SEO staffs said in their interviews that they intended to hold Section 106 training that included procedures under the Alaska Historic Roads Programmatic Agreement, in all three regions. Following our review, this training took place in all the region offices (and with FHWA and DOT&PF management) during the months of October and November, 2012.

Also subsequent to our review, the draft Re-evaluation form was sent to the FHWA for review and comment on December 4, 2012. Comments were provided by the FHWA on



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December 6, 2012; and the new form was approved for use on January 29, 2013. Training in the use of the form has been scheduled for the week of April 22, 2013.

Based on the updating of the CE Chapter, the CE documentation form, and the Re-evaluation forms and the subsequent training efforts related to the new procedures and forms, FHWA considers this finding closed.



Appendix C: Spreadsheet showing project files that were reviewed during December 2011 Review.

State Project #	Federal Project #	Status as of Dec. 2011	direct-to-finding (DTF) approach	After 4/29/11 template	Dec. 2011 Review Observations (O), Findings (F), or Successful Practices (SP)	Other Comments
52782	RPD-0527(19)	4/8/11 Findings	Yes	No	SP - Good follow-up with tribes. SP - Documentation of DTF decision.	
52119	HEE-000S(694)	1/28/11 Initiation 4/12/11 Findings	No	No		
52105	HPP-000S(697)	3/7/11 Initiation 4/12/11 Findings	No	No	SP - Good follow-up with tribes.	
52971	TBA	4/20/11 Findings	Yes	No	O - No copies of findings letters in project file. SP - Documentation of DTF decision.	
55659	CM-0001(282)	4/19/11 Initiation 6/6/11 Findings	No	Yes (6/6/11 Findings)	O - Initiation letters predate 4/29/11 template, but did not transmit consultation options form the tribes and ANCSA corporations.	
52081	IM-0A3-3(19)	4/19/11 Initiation	No	No	O - No request for TCP identification in Section 106 initiation letter.	
52461	EBL-MGS-MGE-001(422)	4/20/11 Initiation	No	No	O - No request for TCP identification in Section 106 initiation letter.	
52991	IM-OA31(47)	5/4/11 Findings	Yes	Yes	SP - Documentation of DTF decision.	
52121	HHE-0A3-1(44)	5/5/11 Findings	Yes	Yes	SP - Good follow-up with tribes. SP - Documentation of DTF decision.	



State Project #	Federal Project #	Status as of Dec. 2011	direct-to-finding (DTF) approach	After 4/29/11 template	Dec. 2011 Review Observations (O), Findings (F), or Successful Practices (SP)	Other Comments
52451	ACHHE-0A3-1(46)	5/11/11 Initiation, 7/29/11 Findings	No	Yes	O - 4/29/11 template not followed.	
53469	IM-0A41(28)	6/6/11 Findings	Yes	Yes	SP - Good follow-up with tribes. SP - Documentation of DTF decision.	
52458	STP-0411(8)	3/23/11 Initiation 5/9/11 Findings	No	Yes (5/9/11 Findings)		
51922	HHE-001(405)	6/23/11 Findings	Yes	Yes	O - 4/29/11 template not followed. O - DTF not documented.	
51924	HHE-0515(3)	6/23/11 Findings	Yes	Yes	O - 4/29/11 template not followed. O - DTF not documented.	
58197	ACHHE-0001(344)	6/20/11 Findings	Yes	Yes	SP - Documentation of DTF decision.	
55007	MGS-0001(311)	9/12/11 Findings	Yes	Yes	SP - Good follow-up with tribes. SP - Documentation of DTF decision.	
53451	TBA	8/24/11 Findings	Yes	Yes	O - Project file not contain signed copy of findings letters. SP - Documentation of DTF decision.	
56938	ER-NH-0075(2)	10/6/11 Findings	Yes	Yes	O - Project file not contain signed copy of findings letters. O - 4/29/11 template not followed. SP - Documentation of DTF decision.	



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State Project #	Federal Project #	Status as of Dec. 2011	direct-to-finding (DTF) approach	After 4/29/11 template	Dec. 2011 Review Observations (O), Findings (F), or Successful Practices (SP)	Other Comments
63571	BR-065-5(10)	7/14/11 Findings	No	Yes	O - 4/29/11 template not followed.	Initiation letters predate template, but findings letters are post-template.
63579	BR-0680(33)	8/9/11 Initiation 10/21/11 Findings	No	Yes		
60922	IM-TEA-0A1-4(6)	5/20/11 Findings (first) 7/25/11 Findings (supplemental)	No	Yes	O - 4/29/11 template not followed. O - SHPO concurred in a no adverse effect determination, but DOT&PF made a no historic properties affected call. DOT&PF did not catch this error.	
63513	STP-0648(2)	4/14/11 Findings	No	No	O - Copies of emails in project file document interaction between NR and SEO regarding Section 4f resources. More detail/clarity of decision would be desirable since resource was a privately-owned park.	
63577	BR-0002(243)	5/5/11 Initiation	No	Yes	O - 4/29/11 template not followed.	
66166	STP-0130(32)	6/16/11 Findings	No	Yes	SP - Informal consultation with SHPO to resolve differences.	
76719	TEA-0002(194)	8/3/11 Findings	No	Yes	O - 4/29/11 template not followed.	



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State Project #	Federal Project #	Status as of Dec. 2011	direct-to-finding (DTF) approach	After 4/29/11 template	Dec. 2011 Review Observations (O), Findings (F), or Successful Practices (SP)	Other Comments
61275	IM-0A4-4(15)	4/29/11 Findings	No	Yes	O - 4/29/11 template not followed.	Project was incorrectly identified as 61725 on original
63364	IM-0A1-3(15)	8/23/11 Findings	No	No	SP - reinitiating consultation with SHPO to address project scope changes.	
63567	BR-0A1-2(4)	8/19/11 Initiation	No	Yes		Project went to no historic properties affected finding on 11/4/11
63836	IM-0A41-3(16)	6/27/11 Initiation	No	Yes	O - 4/29/11 template not followed.	
63909	NH-0850(27)	10/19/11 Initiation	No	Yes		
63913	SDD-HPRM-000S(770)	Findings letter in process	Yes	Yes	O - DTF not documented.	
67052	TEA-0672(3)	6/24/11 Findings	No	Yes	O - 4/29/11 template not followed, but odd circumstances would have made using the template inappropriate.	
63559	STP-000S(736)	9/20/11 Initiation	No	Yes		Findings letters sent 11/8/11 which is an update to the original database.



State Project #	Federal Project #	Status as of Dec. 2011	direct-to-finding (DTF) approach	After 4/29/11 template	Dec. 2011 Review Observations (O), Findings (F), or Successful Practices (SP)	Other Comments
63565	BR-0A1-2(3)	Initiation letter in process				Project is not assignable and should not have been included in the review list. File contained a Section 106 initiation letter sent to FHWA by email on 11/7/11. No other info in project file.
63915	TBA	Findings letter in process	Yes	Yes		No DTF form was available at the time, but REM requested and received input from SEO for DTF.



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3/13/13
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