Alaska Department of Transportation & Public Facilities

Categorical Exclusion (CE)

Assignment Compliance Review

(23 U.S.C. 326)

Corrective Action Plan

September 30, 2011

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INTRODUCTION

Purpose

The purpose of this Corrective Action Plan is to address specific findings and observations that were outlined within the May 2011 *Categorical Exclusion (CE) Assignment Compliance Review Final Report* that was issued by the Federal Highway Administration (FHWA). The report was issued as a result of the FHWA program performance review per the *Memorandum of Understanding between Federal Highway Administration, Alaska Division and the Alaska Department of Transportation and Public Facilities, State Assumption of Responsibility for Categorical Exclusions*, which was executed on September 22, 2009. In February 2011 the FHWA initiated this program performance review with interviews and project file reviews conducted in the Statewide, Southeast Region, and Central Region offices. FHWA provided a draft report for the Department of Transportation and Public Facilities (DOT&PF) to review and comment on April 19, 2011. DOT&PF provided comments on the draft report on May 19, 2011. A final draft was transmitted to DOT&PF on May 25, 2011.

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 has assumed the Secretary of Transportation's (Secretary) authorities and responsibilities for determining if a transportation project qualifies for a Categorical Exclusion (CE), listed under 23 CFR 771.117. For assigned projects categorically excluded from the requirement to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), DOT&PF has 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 informal consultations with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act Section 7, 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 has assumed the legal responsibility for all NEPA decisions, and it is subject to Federal court jurisdiction. The State of Alaska has 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 FHWA, Alaska Division to implement the CE Assignment Program in Alaska. The MOU outlines the specific terms that describe the 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 take place at least every 12 months. FHWA conducted the first such compliance review in March of 2010 and conducted the second compliance review in February and March of 2011. It is the intent of this corrective action plan to address those findings and observations made by FHWA during the second compliance review of the State's 6004 program. A draft corrective action plan was submitted to FHWA on July 29, 2011 for their review and comment. DOT&PF met with FHWA on September 29, 2011 to discuss FHWA comments on the draft corrective action plan. FHWA comments have been incorporated into this final draft of the corrective action plan. DOT&PF continues to be committed to making the 6004 program a success as well as implementing the corrective actions listed in this plan.

2011 FINDINGS AND ASSOCIATED CORRECTIVE ACTIONS

The *Categorical Exclusion (CE) Assignment Compliance Review Final Report* listed eight (8) specific findings that resulted from the 2011 Compliance Review and listed six (6) observations and findings that remained open from the 2010 Compliance Review. A finding is a statement pertaining to compliance with a regulation, statute, FHWA guidance, policy, or procedures, DOT&PF procedures, or the Section 6004 MOU. Within the report findings were followed by recommended corrective actions that FHWA felt would address the specific finding. This corrective action plan lists out the findings made by FHWA and then the corresponding corrective action that DOT&PF staff believes will address this finding.

FHWA Finding (1)

One (1) project file was reviewed that did not contain adequate documentation to verify that it was an assignable category of action or had met Stipulation IV. The project file contained a reference to a scope of work that might render the project not assignable, but contained no documentation addressing the questions regarding applicability of assignment. DOT&PF should adequately document the basis for its assumption of CE responsibilities for each project. The cause of this finding is unknown. The effect is an increased risk to the State that a project may not be properly assigned to the State, which would violate the terms of the MOU.

During development of this report, the Alaska Division was formally notified by the DOT&PF that the project files were reexamined and that the project has been excluded. Consultation between the agencies has identified a corrective action that will resolve this finding. We consider the finding closed at this time.

DOT&PF Corrective Action (1)

In the final draft of the 2011 Compliance Review Report, FHWA indicated that this finding was closed.

FHWA Finding (2)

There have been six (6) Quarterly Reports submitted since the execution of the MOU. Quarterly Reports for the third, fourth, fifth, and sixth quarters have been submitted since the 2010 Review was conducted. All of these reports have been submitted prior to the due date; however, all appeared to contain omissions of some State and/or Federal project numbers. During our 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. We were informed that the State intends to submit a revised Quarterly Report to remedy these discrepancies.

Information gathered during interviews for the 2011 Review reveal that the State has recently implemented corrective actions aimed at improving the Quarterly Reports by devising a spreadsheet to track CE approvals and verify those approvals with the Region Offices. The Review Team believes these efforts should improve the quality of the Quarterly Reports and correct the errors and omissions that have existed in Quarterly Reports submitted to date. The cause for the errors and omissions may have been the lack of a shared data base to collect, track and manage information for assigned projects. The effect is uncertainty regarding which projects have been approved and should be included in the Quarterly Report. The corrective action may include a proposal described during an interview with SEO staff noting a long term solution that involves the development of an electronic documentation and tracking system. The staff member also acknowledged that DOT&PF would need to develop a short term corrective action until the electronic tracking system is developed. The DOT&PF should propose a short term remedy to address the weakness of the current system and we recommend the State aggressively pursue a long term solution. In addition, the State should submit a revised fifth Quarterly Report to address the previously noted errors and omissions.

DOT&PF Corrective Action (2)

In 2009 during the initial development of the 6004 MOU between FHWA and DOT&PF it was anticipated that the Project Information Sheet (PIS) would be modified and used to notify FHWA when DOT&PF had approved a project under the 6004 MOU. A revised PIS was approved by FHWA on August 18, 2009. DOT&PF has determined that the best method for providing this information to FHWA would be to develop an electronic document management system. 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 a final version of the electronic document management 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. DOT&PF will implement a new 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. 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.

As mentioned by FHWA in this finding, DOT&PF has implemented corrective actions in an effort to increase the accuracy and completeness of the quarterly reports. On a monthly basis, SEO staff transmit the 6004 project tracking spreadsheet to each Regional Environmental Manager (REM) in an effort to identify and correct any error or omission prior to the quarterly reporting deadlines. SEO staff also contact the REMs and other DOT&PF staff to gather state and federal project numbers when developing the quarterly reports. It is still possible that occasionally project numbers are not available at the time a quarterly report is due. In these cases, DOT&PF will notify FHWA of the omitted project numbers when the following quarterly report is submitted to the FHWA Alaska Division office.

On July 28, 2011, DOT&PF submitted to FHWA two updated quarterly reports (Quarter 5 and Quarter 6) which contain an accurate list of project approvals during the respective quarters. DOT&PF remains committed to developing a long-term solution that includes an electronic document management system that is capable of producing accurate and timely project reports.

<u>FHWA Finding (3)</u>

The Team found evidence in two (2) project files where the SEO indicated on the class of action form that the action did not qualify as a PCE. The CE approval on those projects was made on the CE documentation form by the Regional Environmental Manager (REM) as a PCE, with a concurrence signature from the SEO. The State should have followed its review and approval procedures, for either for a PCE or non-PCE. The documentation in the project files is inconsistent with the procedures in the Environmental Manual. The cause may be the SEO not rechecking or recalling their earlier decision after receiving the CE documentation form; or the cause may be lack of documentation of a subsequent decision revising the original determination that a PCE was not applicable. The effect is that the record is unclear whether the CE is properly approved or not. The corrective action could be a quality control review step that compares the class of action outcome with the proposed CE approval.

Ten (10) of 28 PCE project files had no printed name for the CE approval on the CE documentation form. The State should document all the information required by the MOU for CE approvals. The possible cause is the absence on the CE documentation form of a space for the approving official to print their name. The effect is inadequate documentation to demonstrate compliance with the MOU. As a corrective action the State should modify the CE documentation form to include a space for the printed name of the approving official.

DOT&PF Corrective Action (3)

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 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 revised versions of these forms include spaces for the printed names of all approving officials, 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.

FHWA Finding (4)

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 effect is documentation that is inconsistent with the DOT&PF's procedures. As a corrective action the State should further clarify the applicability determination and approval process for PCE projects through revising their Environmental Manual.

DOT&PF Corrective Action (4)

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 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. DOT&PF is revising the Environmental Procedures Manual and plans to issue an updated Chapter 5 - Categorical Exclusions to FHWA for approval by December 31, 2011. By June 30, 2012 SEO plans to complete training with each of the three regions on the use of the new COA and CE forms. 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 a final version of the electronic document management system will be in place by September 30, 2013. Effective November 1, 2011, evidence of environmental document approval will be required for Project Information Sheet (PIS) submission to FHWA. This interim corrective action will ensure evidence is provided that a project received appropriate environmental approval prior to requesting FHWA funding.

FHWA Finding (5)

The State's environmental 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. The cause of the missing information is unfamiliarity with the requirement and that a space is not provided to record this information on the PIS. The effect is inadequate project documentation. According to information provided in interviews, the PIS form has not been revised. SEO staff acknowledged that the use of the PIS form (even if revised) for this purpose is not the answer. As a corrective action, the DOT&PF could collaborate with FHWA to identify a revised or new procedure for documentation of PCE approval, and revise the environmental manual accordingly.

DOT&PF Corrective Action (5)

Effective October 31, 2011 DOT&PF will implement a new procedure (see DOT&PF Corrective Action #2) 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 be in place by September 30, 2013. The implementation of an electronic document management system will greatly increase the accuracy of environmental document approval reporting.

FHWA Finding (6)

The MOU requires the State to provide to the FHWA evidence that the CE processing and any other environmental responsibilities assigned under the MOU have been completed. At the time the MOU was executed, FHWA and DOT&PF agreed to utilize the PIS for the State to provide evidence that all responsibilities for an assigned CE project were completed. 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 SEO staff acknowledge 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 State should identify a more reliable way to provide accurate information on the approval status of an assigned project. The reason why the DOT&PF staff has not revised the PIS form or notification process may be because they have not fully developed a solution to best provide evidence to FHWA of their completed assigned projects. 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. 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 90 days while the development of an electronic system is pursued.

DOT&PF Corrective Action (6)

Effective November 1, 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 be in place by September 30, 2013. The implementation of an electronic document management system will greatly increase the accuracy of environmental document approval reporting.

FHWA Finding (7)

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. The cause of this issue may be tied to the unrevised forms and a need for clarity in project processing procedures. The effect is that the State's records do not consistently document consideration of unusual circumstances and thus do not reflect compliance with 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.

DOT&PF Corrective Action (7)

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 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.

FHWA Finding (8)

Interviews with FHWA Area Engineers revealed that internal FHWA training and discussions on the roles and responsibilities of FHWA and DOT&PF was conducted in September 2010.

Despite this, 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 cause of this action is likely that the FHWA Area Engineer had a genuine desire to assist the State in streamlining its processing of CE projects. However, the engineer did not consider that this involvement likely caused confusion for the REM about which projects are assignable and which are not. Finally, by this action, the engineer unintentionally undermined the authority and role of the Statewide Environmental Manager in his role of implementing the provisions of the 6004 MOU. It is important to note that the Division Environmental Program Manager immediately notified the Area Engineer and the Field Operations Engineer of the seriousness of this action and provided direction that will likely preclude its recurrence.

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. The Division Office staff must carefully consider how they respond to project specific questions, even when the questions involve projects the State has decided are excluded from the 6004 MOU. As a corrective action, FHWA should provide additional training to emphasize the significance of maintaining their appropriate role in the 6004 program.

DOT&PF Corrective Action (8)

No DOT&PF action is required. DOT&PF staff would like to thank FHWA staff for their continued assistance on program-level questions and providing training sessions.

OBSERVATIONS AND FINDINGS THAT REMAIN OPEN FROM THE 2010 REPORT

The 2011 CE Assignment Compliance Review report listed six (6) observations or findings that remained open from the 2010 Report.

FHWA 2010 Finding (1)

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.

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.

DOT&PF Corrective Action (1)

Effective September 1, 2011, DOT&PF is using newly revised COA and CE Documentation forms. The revised COA form includes the FHWA suggested corrective action and currently documents the consideration of environmental impacts in 'c' list project approvals. Additionally, DOT&PF is revising Chapter 5 – Categorical Exclusions of the Environmental Procedures Manual to make the use of the revised COA form mandatory for all 6004 assigned projects (December 31, 2011).

FHWA 2010 Finding (2)

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).

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.

DOT&PF Corrective Action (2)

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 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 revised forms now include spaces to identify specific activities. The Re-evaluation form is slated to be revised by March 31, 2011 and will include spaces to identify specific activities on the form. Revisions to Chapter 8 – Re-evaluations of the Environmental Procedures Manual will also reflect the form revisions and include instructions on identifying the correct actions. The revised chapter will be submitted to FHWA by March 31, 2012. Additionally, SEO intends to conduct training sessions to address the changes to the forms and manual, as well as identifying actions and re-evaluations, by June 30, 2012.

FHWA 2010 Finding (3)

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.

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 in unavailable. As a corrective action, the DOT&PF should revise the forms and procedures related to this finding.

DOT&PF Corrective Action (3)

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 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 revised forms now include spaces to print the names of all signatories.

The Environmental Procedures Manual Chapter 5 is currently being modified to reflect the form revisions and will include instructions on identifying the correct actions. This chapter will be submitted to FHWA for review and approval by December 31, 2011.

FHWA 2010 Finding (4)

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.

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.

DOT&PF Corrective Action (4)

By September 30, 2012, SEO plans on providing training opportunities within all three of the regions regarding both the Section 106 and the 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.

FHWA 2010 Finding (5)

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, the SEO has identified Section 4(f) as a core course in our initial development of a training plan for DOT&PF environmental staff.

2011 Finding

Six (6) of 46 files did not provide sufficient evidence that the projects are in compliance with all federal laws and regulations. Two (2) 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).

DOT&PF Corrective Action (5)

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 currently 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.

FHWA 2010 Finding (6)

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.

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 a lacked of 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

DOT&PF Corrective Action (6)

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 a 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 the 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 September 2011 and will conduct a second file audit of Central Region 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 projects files could be improved.

CONCLUSION

The July 2011 *Categorical Exclusion (CE) Assignment Compliance Review Final Report* that FHWA wrote has demonstrated that the State's 6004 Program continues to improve, with twenty-four (24) findings closed from the 2010 Final Report and FHWA identifying five (5) successful practices within the state's 6004 Program. DOT&PF continues to be committed to working with FHWA in successfully implementing the State's 6004 program.