

**Protocol for Internal DOT&PF Delegation of National Historic Preservation
Act Section 106 Process Review and Signature Authority under the Section
6004 MOU
April 6, 2011**

The 6004 MOU between FHWA and DOT&PF, signed into effect on September 22, 2009, assigned DOT&PF some of the FHWA's responsibilities for environmental review for projects designated as categorical exclusions (CEs). Under the 6004 MOU, DOT&PF is responsible for the development of NEPA documents, permit requests, and approvals, including consultation under Section 106 of the National Historic Preservation Act (36 CFR 800) for assigned CE projects. Currently, Statewide Environmental staff provides review, approvals, and signatures on Section 106 documentation for 6004 projects. Statewide NEPA managers approve procedural items such as determinations of no potential to affect historic properties, and Statewide cultural resources staff serve as the signature authority for Section 106 consultation correspondence under the 6004 MOU.

Upon request, DOT&PF Statewide Design and Engineering Services (D&ES) will delegate all Section 106 documentation review and signature authority for project actions that fall under the 6004 MOU to the Regions. This delegation allows the Regions to conduct the specified aspects of the Section 106 process in accordance with the regulations, Chief Engineer's Directives, and programmatic agreements that are currently in effect and applicable to DOT&PF, using established D&ES environmental procedures and the Section 106 Processing Instructions for 6004 SAFETEA-LU Projects unless superseded by future guidance or policy. This delegation protocol cannot, and does not, confer any additional procedural authority. A copy of this protocol has been provided to FHWA for their review, in compliance with the 6004 MOU.

SCOPE AND RESPONSIBILITIES

DOT&PF D&ES will delegate review and signature authority to the regions providing the following:

1. Staffing and Standards:

- The region shall employ staff or qualified consultants that meet the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9) in a regional review capacity. These personnel are to be designated as the professionally qualified individual(s) (Region PQI) who are responsible to ensure that all approvals, determinations, and findings for all delegated Section 106 documents meet the requirements of the 6004 MOU.
- Actions that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve reporting or documentation of such actions, are to be carried out by or under the supervision of a Region PQI.
- The Region PQIs are encouraged to consult with the Statewide Environmental Office PQI staff or other Regional PQI(s). Requests for major project assistance from Statewide PQI must be made through a request from the Regional Environmental Manager (REM) to the Statewide Environmental Manager.

2. Process for Requesting Delegation Authority:

- When a Region has a Region PQI, the Regional Director (RD) makes a written request for regional Section 106 delegation for 6004 projects to the Chief Engineer (CE). The CE will approve the request.

PERFORMANCE AND MONITORING

Regional Commitments:

- Consistency with 36 CFR 800.11, the *Alaska Office of History and Archaeology (OHA) Standards and Guidelines for Investigating and Reporting Archaeological and Historic Properties in Alaska (Historic Preservation Series #11)*, the Secretary of the Interior's Standards and Guidelines for reports (48 FR 44734-447837, and this delegation.
- Demonstration of satisfactory performance.
 - Timely SHPO concurrence on project determinations.
- Six weeks prior to the biannual 6004 internal monitoring efforts, each region will provide a Section 106 tracking spreadsheet to the Statewide Environmental Office. The spreadsheet should contain: (1) federal number, (2) project name, (3) indication of whether it is a new project or a reevaluation.

Statewide Commitments:

- To aid consistency among regions, the Statewide Environmental Office will take the lead to develop a process for sharing Section 106 documentation, guidance, and policies among REMs, Statewide Environmental Office PQIs, and management.
- To assist this delegation, training of the regional staff PQIs will be provided upon request.
- Statewide cultural resources staff will not discuss region project specific issues with the SHPO (or consulting parties) unless requested by the REM to the Statewide Environmental Manager.

DISPUTE RESOLUTION

To promote resolution of Section 106 issues at the lowest level, and specifically to promote resolution of project disputes between the Regions and the SHPO office, the following dispute resolution guide is presented:

Project Level:

- To the maximum extent practicable, Region PQI and the REM should attempt to resolve all disputes with SHPO (or consulting parties) prior to elevating.
- Should a Section 106 dispute remain unresolved between SHPO (or consulting parties) and the DOT&PF Region, the Region can request the assistance of the Statewide Environmental Office and be offered an opportunity to assist in the consultation efforts to resolve the issue before it is elevated..
- If in coordination with the REM, the Statewide Environmental Office determines that the Section 106 related dispute cannot be resolved through consultation, a recommendation may be made to advance the dispute to the Advisory Council on Historic Preservation (ACHP), or a review by the Keeper of the National Register of Historic Places (NRHP), whichever is appropriate to the situation. The RD and the CE will notify the Commissioner of a dispute that cannot be resolved through consultation with SHPO.